

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

)	
In re:	)	Chapter 11
)	
EDISON MISSION ENERGY, <i>et al.</i> , ¹	)	Case No. 12-[_____] (____)
)	
Debtors.	)	(Joint Administration Requested)
)	

NOTICE OF MOTION

PLEASE TAKE NOTICE that on December 17, 2012, the above-captioned debtors and debtors in possession (collectively, the “Debtors”) filed the *Debtors’ Motion to Approve Payment of Prepetition Claims of Certain Vendors and to Authorize Procedures Related Thereto* (the “Motion”).

PLEASE TAKE FURTHER NOTICE that the Debtors have requested a hearing on the Motion on Monday, December 17, 2012, at a time to be determined before the Honorable [_____] or any other judge who may be sitting in [his/her] place and stead, in Courtroom [___] in the United States Courthouse, 219 South Dearborn Street, Chicago, Illinois, at which time you may appear if you deem fit.

PLEASE TAKE FURTHER NOTICE that the hearing date and time once determined as well as copies of all documents are available free of charge by visiting the case website maintained by GCG, Inc. proposed notice and claims agent for these chapter 11 cases, available at www.edisonmissionrestructuring.com or by calling (866) 241-6491. You may also obtain copies of any pleadings by visiting the Court’s website at www.ilnb.uscourts.gov in accordance with the procedures and fees set forth therein.

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, include: Edison Mission Energy (1807); Camino Energy Company (2601); Chestnut Ridge Energy Company (6590); Edison Mission Energy Fuel Services, LLC (4630); Edison Mission Fuel Resources, Inc. (3014); Edison Mission Fuel Transportation, Inc. (3012); Edison Mission Holdings Co. (6940); Edison Mission Midwest Holdings Co. (6553); Midwest Finance Corp. (9350); Midwest Generation EME, LLC (1760); Midwest Generation, LLC (8558); Midwest Generation Procurement Services, LLC (2634); Midwest Peaker Holdings, Inc. (5282); Mission Energy Westside, Inc. (0657); San Joaquin Energy Company (1346); Southern Sierra Energy Company (6754); and Western Sierra Energy Company (1447). The location of parent Debtor Edison Mission Energy’s corporate headquarters and the Debtors’ service address is: 3 MacArthur Place, Suite 100, Santa Ana, California 92707.

Dated: December 17, 2012

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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

In re:)	
	)	Chapter 11
)	
EDISON MISSION ENERGY, <u>et al.</u> , ¹	)	Case No. 12-[_____] (____)
)	
Debtors.	)	(Joint Administration Requested)
)	

DEBTORS’ MOTION TO APPROVE PAYMENT OF PREPETITION CLAIMS OF CERTAIN VENDORS AND TO AUTHORIZE PROCEDURES RELATED THERETO

The above-captioned debtors and debtors in possession (collectively, the “Debtors”) hereby state the following in support of this motion (this “Motion”):²

Relief Requested

1. By this Motion, the Debtors seek entry of interim and final orders, substantially in the forms attached hereto as **Exhibit A** and **Exhibit B** (respectively, the “Interim Order” and the “Final Order”), (a) authorizing but not directing the Debtors to pay the prepetition claims of certain vendors and service providers (collectively, the “Critical Vendors”) on an interim basis in an amount not to exceed \$7.0 million, and an aggregate amount not to exceed \$8.2 million, on

1 The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, include: Edison Mission Energy (1807); Camino Energy Company (2601); Chestnut Ridge Energy Company (6590); Edison Mission Energy Fuel Services, LLC (4630); Edison Mission Fuel Resources, Inc. (3014); Edison Mission Fuel Transportation, Inc. (3012); Edison Mission Holdings Co. (6940); Edison Mission Midwest Holdings Co. (6553); Midwest Finance Corp. (9350); Midwest Generation EME, LLC (1760); Midwest Generation, LLC (8558); Midwest Generation Procurement Services, LLC (2634); Midwest Peaker Holdings, Inc. (5282); Mission Energy Westside, Inc. (0657); San Joaquin Energy Company (1346); Southern Sierra Energy Company (6754); and Western Sierra Energy Company (1447). The location of parent Debtor Edison Mission Energy’s corporate headquarters and the Debtors’ service address is: 3 MacArthur Place, Suite 100, Santa Ana, California 92707.

2 The facts and circumstances supporting this Motion are set forth in the *Declaration of Maria Rigatti, Senior Vice President and Chief Financial Officer of Edison Mission Energy, in Support of Chapter 11 Petitions and First Day Motions* (the “First Day Declaration”), filed contemporaneously herewith.

the terms described herein, (b) approving and authorizing procedures to address any vendors that repudiate or otherwise refuse to honor contractual obligations to the Debtors, and (c) granting related relief.

2. More specifically, the Debtors request the authority to pay up to \$8.2 million to Critical Vendors (as defined herein), \$7.0 million of which the Debtors seek authority to pay pending entry of the Final Order. Notably, \$1.6 million of the Critical Vendor claims are claims for the value of goods received by the Debtors in the ordinary course of their business during the twenty-day period before the Petition Date, which are entitled to administrative expense priority under section 503(b)(9).³

Jurisdiction

3. The United States Bankruptcy Court for the Northern District of Illinois (the “Court”) has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).

4. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

5. The statutory bases for the relief requested herein are sections 105(a), 363(b), and 503(b)(9) of title 11 of the United States Code (the “Bankruptcy Code”), and rules 6003 and 6004 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”).

³ These amounts are based on prepetition balances in the Debtors’ accounts payable system for the period ending December 14, 2012. Certain adjustments and reconciliations will be necessary to account for those invoices which had been issued by certain vendors but not yet received by the Debtors at the time of the filing of this Motion. Accordingly, the Debtors reserve the right to request increases in each of these amounts prior to the final hearing on such motions.

Contemporaneously with the filing of this Motion, the Debtors have filed the *Debtors’ Motion to Approve Payment of Prepetition Claims of Certain Lien Claimants and to Authorize Procedures Related Thereto* (the “Lien Claimants Motion”), requesting the authority to pay certain Lien Claimants (as defined in the Lien Claimants Motion).

Background

6. Edison Mission Energy, together with its Debtor and non-Debtor affiliates, is a leading independent power producing enterprise specializing in developing, operating, and selling energy and capacity from over 40 generating facilities in 12 states and the Republic of Turkey. The Debtors have approximately 950 employees and maintain headquarters in Chicago, Illinois and Santa Ana, California.

7. On the date hereof (the "Petition Date"), each of the Debtors filed a petition with this Court under chapter 11 of the Bankruptcy Code. The Debtors continue to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. Concurrently with the filing of this Motion, the Debtors requested procedural consolidation and joint administration of these chapter 11 cases pursuant to Bankruptcy Rule 1015(b). No party has requested the appointment of a trustee or examiner in these chapter 11 cases, and no committees have been appointed or designated.

Critical Vendors and Critical Vendor Claims

I. Overview of the Debtors' Critical Vendors

8. The Debtors are mindful of their duties to preserve and maximize the value of their estates for the benefit of all stakeholders in these chapter 11 cases. To that end, the Debtors have carefully examined all vendor claims as of the Petition Date, including the Critical Vendors' claims (the "Critical Vendor Claims"), and have determined that payment of the Critical Vendor Claims is absolutely necessary to maximizing enterprise value. And the Debtors have been mindful of the need to seek relief only for truly critical vendors. Indeed, the Critical Vendor Claims represent *less than one quarter of one percent* of the Debtors' and their non-Debtors affiliates' \$5.2 billion of total unsecured and project indebtedness. Many of the Critical Vendors hold claims on account of goods received by the Debtors in the ordinary course of their

business during the twenty-day period before the Petition Date, which claims may be entitled to administrative expense treatment.

9. Specifically, the Debtors have determined that continued delivery of goods and services by the Critical Vendors is essential to the Debtors' continued operations because the Critical Vendors:

- a. are sole- or limited-source providers;
- b. are required for the Debtors to remain compliant with applicable laws and regulations;
- c. provide customized products that alternative sources could not provide within a reasonable timeframe; and/or
- d. possess unique knowledge of the Debtors' businesses, acquired through dealings with the Debtors over time.

10. For any vendor meeting one or more of the above characteristics, the Debtors, together with their advisors, then considered whether failure to pay the vendor's prepetition claims would result in a substantial risk that the vendor would refuse to provide goods or services to the Debtors postpetition, thereby creating a risk of significant disruption to the Debtors' businesses. The Debtors' analysis considered, among other things: (a) whether the vendor was bound by contract to continue to provide goods and services to the Debtors; (b) the vendor's business, customer base, and financial position; (c) the business relationship and course of conduct between the Debtors and the vendor; and (d) prepetition discussions with the vendor and/or demands made by the vendor (and the credibility of such demands). This analysis and screening process ultimately resulted in the exclusion of the vast majority of the Debtors' vendors (and vendor claims) from consideration for Critical Vendor status.

11. To ensure the continued and uninterrupted operation of the Debtors' businesses and, in particular, to ensure the continuous operation of their core energy production business,

the Debtors are seeking relief intended to address potential refusals on the part of the Critical Vendors to provide goods or services after the Petition Date.

12. According to the Debtors' books and records, the total number of vendors to whom the Debtors may owe prepetition amounts exceeds 500. Of this amount, the Debtors currently estimate that less than four percent would be Critical Vendors. Additionally, the Debtors believe that approximately twenty percent of the total Critical Vendor Claims are entitled to administrative expense priority under section 503(b)(9). As stated in the First Day Declaration, the Debtors' ability to continue their operations in the aftermath of their commencement of these chapter 11 cases will largely depend upon the continued provision of goods and services by the Critical Vendors. Moreover, to further ensure that the Debtors' business operations will be minimally impacted during these chapter 11 cases, only those Critical Vendors who agree to provide reasonable and customary payment terms postpetition will be paid all or a portion of their prepetition claims.

13. The Debtors' Critical Vendors include Compliance Vendors, Sole- or Limited-Source Vendors, and Specialized Maintenance Vendors (defined below). The Debtors seek to pay all or part of the Critical Vendor Claims to ensure that the Critical Vendors provide necessary goods and services to the Debtors on a postpetition basis.

14. Accordingly, the relief requested herein is narrowly tailored to facilitate the Debtors' restructuring efforts. By contrast, the harm suffered by the Debtors' estates if essential goods and services provided by the Critical Vendors are withheld would be irreparable to the Debtors' reorganization efforts and their successful emergence from these chapter 11 cases.

B. Compliance Vendors

15. The Debtors rely on a number of Critical Vendors to assist the Debtors in complying with applicable governmental laws and regulations (collectively, the "Compliance

Vendors”). For example, the Debtors rely on certain companies that perform, among other services, (a) emissions testing, (b) services regarding the Debtors’ continuous emissions monitoring systems, (c) regulatory compliance, and (d) installation and maintenance of environmental upgrades to the Debtors’ facilities. Because the Compliance Vendors are employed and/or licensed by the state or local governments in the jurisdictions in which the Debtors operate, the Debtors may not be able to obtain qualified service from any other source on a timely basis.

16. Additionally, the Debtors must purchase certain calibration gases that the Debtors use to certify that they are in compliance with environmental control requirements. These gases take months to prepare and purify, and must be formulated according to the Debtors’ specific standards. An inability to obtain these gases from a Compliance Vendor would result in the Debtors being unable to meet certain regulatory requirements, which would force the Debtors to cease energy production operations.

17. The Debtors believe that some of the Compliance Vendors will refuse to perform postpetition services if their prepetition claims are not paid, thereby exposing the Debtors to the risk of noncompliance with applicable governmental laws and regulations. Any such potential violation of applicable governmental laws and regulations could cause governmental entities to levy fines or penalties against the Debtors or potentially require the closure of facilities, which could result in a shutdown of the Debtors’ energy production operations. In addition, proper disposal of the regulated waste and chemicals on an uninterrupted basis will help to protect the environment and benefit the public health, including the health and safety of the Debtors’ employees.

18. Since the Debtors must comply with applicable governmental laws and regulations on a postpetition basis and cannot afford the potentially irreparable damage to their businesses that would be caused by adverse governmental action for regulatory noncompliance, the Debtors believe that their ability, in their sole discretion, to pay the Compliance Vendors is essential to their reorganization efforts.

C. Sole- or Limited-Source Vendors

19. The Debtors rely on a number of vendors (the “Sole- or Limited-Source Vendors”) to supply essential raw materials, specialized replacement parts and supplies, operations consumables, and certain other goods and services required to operate the Debtors’ plants and ensure continuous business operations (collectively, the “Sole- or Limited-Source Goods”). The Sole- or Limited-Source Vendors typically are the only existing suppliers — or one of a limited number of suppliers — for a particular part, supply, or service.

20. In some cases, other suppliers cannot supply the required Sole- or Limited-Source Goods in sufficient quantity, quality, or reliability, or they are unable to supply the required Sole- or Limited-Source Goods on a cost-efficient and timely basis in the appropriate geographic areas. In other cases, even if a replacement vendor exists, the process of transitioning the Debtors’ business would take a significant amount of time and would disrupt operations. The Debtors also believe that replacement limited-source vendors (with which the Debtors have no current relationship or course of dealing) may be unwilling to offer the Debtors acceptable credit or payment terms.

21. For example, each power plant is designed to utilize bulk quantities of certain laboratory-grade chemicals, such as ammonia, hydrogen, and specialized diesel fuel, as part of its energy production and pollution control activities. Due to the chemical specifications and quantities involved, the Debtors are dependent on a few Critical Vendors nationwide that can

provide such chemicals to their plants to keep the plants running and compliant with environmental regulations. These chemicals are required for the operation of the Debtors' coal-fired power plants; without a steady supply of these chemicals, these plants could not produce energy. The Debtors lack the ability to maintain an on-site inventory of these chemicals, and these chemicals are only delivered to the Debtors on an as-needed basis. The chemical delivery system utilized by the Debtors' Sole-Source Vendor involves trailers that have been specially modified to be compatible with the Debtors' equipment and safety requirements, and any alternate supplier would have to undertake a lengthy process to modify its delivery equipment to be compatible with the Debtors' equipment. Any such time delay could deprive the Debtors of chemicals they need to produce energy, causing a shut-down in operations.

22. Similarly, other Sole- or Limited-Source Vendors supply the Debtors with specially fabricated repair and replacement parts for the Debtors' turbines, transformers, boilers, conveyor belts, elevators, HVAC systems, and other equipment used in the power generation process. Typically, this equipment is based upon patented designs available only from the manufacturer or is made or provided to the Debtors' exact specifications.

23. Since the Debtors do not have viable alternatives to obtain substitute Sole- or Limited-Source Goods from other suppliers, they have determined that they must have authority to satisfy the prepetition claims of these Sole- or Limited-Source Vendors, in the Debtors' discretion, to ensure the continued delivery of the Sole- or Limited-Source Goods to their plants and operational locations without interruption.

D. Specialized Maintenance Vendors

24. To ensure that the wide range of specialized equipment required for energy production and pollution control, including boilers, turbines, pumps, and other ancillary equipment, operates in an effective, safe, and efficient manner, the Debtors rely on specialized

maintenance and repair services provided by certain Critical Vendors (collectively the “Specialized Maintenance Vendors”). Further, due to the specialized and often hazardous nature of some of the services involved, certain of the services can only be obtained from the Specialized Maintenance Vendors with permits or licenses as required by state or federal laws and regulations. For example, routine maintenance and repair services that can typically be performed by a wide range of vendors (e.g., welding, electrical, and waste removal services) can only be performed by certain Specialized Maintenance Vendors possessing specialized skills and/or licenses when the services involve specialized or dangerous elements. Specialized or dangerous elements may include, among other things, scaffolding, underwater repairs and diving, asbestos and lead abatement, high speed rotation motors, toxic substances, high voltage electricity, and high pressure vessels.

25. Further, the Debtors’ plant staffing model places a great deal of importance on the services provided by the Specialized Maintenance Vendors. Unlike some other energy and public utility companies, the Debtors’ plants are operated with minimal in-house staffing capable of performing routine maintenance, but supplemented by the specialized maintenance and repair services provided by the Specialized Maintenance Vendors on a regular or as-needed basis.

26. Due to the limited availability of vendors able to provide the Debtors with these specialized maintenance and repair services, the Debtors believe that some of the Specialized Maintenance Vendors will refuse to provide postpetition services to the Debtors if all or a portion of their prepetition claims are not satisfied. Although the Debtors will make every effort to obtain continued performance from the Specialized Maintenance Vendors, it is vital that the equipment required for energy production and pollution control be maintained in an appropriate manner to reduce the risk of disruption to the Debtors’ operations. It is, therefore, crucial that

the Debtors have the authority to satisfy the prepetition claims of the Specialized Maintenance Vendors.

II. Proposed Treatment of the Critical Vendor Claims

27. The Debtors seek authority to pay Critical Vendor Claims in an aggregate amount not to exceed \$8.2 million (the “Critical Vendor Cap”).⁴ *The Critical Vendor Cap represents less than one quarter of one percent of the Debtors’ and their non-Debtors affiliates’ \$5.2 billion of total unsecured and project debt.* This Critical Vendor Cap also includes claims that the Debtors believe are entitled to administrative expense priority under section 503(b)(9). Payment of the amounts specified herein would allow the Debtors to obtain those goods and services most necessary to the Debtors’ postpetition operations.

28. To ensure that the Critical Vendors deal with the Debtors on Customary Trade Terms (as defined herein), the Debtors propose that the Interim and Final Orders provide authorization for the Debtors to do one or a combination of the following to satisfy the actual Critical Vendor Claims:⁵

- a. The Debtors are authorized but not directed to make payment to the Critical Vendors on the condition that the Critical Vendor agree to continue supplying goods and services to the Debtors on the terms that were most favorable to the Debtors and in effect within 120 days before the Petition Date (the “Customary Trade Terms”) during these chapter 11 cases.
- b. The Debtors reserve the right to negotiate trade terms with any Critical Vendor, as a condition to payment of any Critical Vendor Claim, that vary from the Customary Trade Terms (the “Negotiated Trade Terms”) to the extent the Debtors determine that such terms are necessary to procure

⁴ Nothing in the Motion should be construed as a waiver by any of the Debtors of their rights to contest any invoices submitted by a Critical Vendor under applicable law.

⁵ To that end, the Debtors are seeking to implement the terms of a critical trade program with the Critical Vendors in a letter agreement, a form of which is attached hereto as **Exhibit C**.

essential goods or services or are otherwise in the best interests of the Debtors' estates.

- c. The Debtors are authorized to obtain written verification of the Customary Trade Terms or the Negotiated Trade Terms, to be supplied by the Critical Vendors, before issuing payment hereunder.

29. If a Critical Vendor refuses to supply goods and/or services to the Debtors on Customary Trade Terms or Negotiated Trade Terms following receipt of payment of its Critical Vendor Claim, the Debtors seek authority, and without further order of the Court, to declare that provisional payments made to the Critical Vendor on account of the Critical Vendor Claim be deemed to have been in payment of then-outstanding postpetition claims of such vendors without further action. In such an instance, the Critical Vendor against which such right is exercised shall be required to immediately return to the Debtors any payments made to it on account of its Critical Vendor Claim to the extent that any such payments exceed the postpetition claims of such vendor then outstanding without giving effect to any further rights of setoff, claims, provision for payment of reclamation or trust fund claims, or otherwise. In short, the Debtors seek to return the parties to their respective positions with respect to all prepetition Critical Vendor Claims in the event a Critical Vendor refuses to supply goods and/or services to the Debtors on Customary Trade Terms or Negotiated Trade Terms following receipt of payment on account of its Critical Vendor Claim.

30. The Critical Vendor payments the Debtors seek to make pursuant to this Motion are key to stabilizing operations and, ultimately, a successful reorganization. The Debtors believe it is essential to pay the prepetition claims of the Critical Vendors to ensure that critical goods and services continue to be supplied without interruption on a postpetition basis. If the Motion is not granted, it is likely that certain of the Critical Vendors will stop providing goods to the Debtors on Customary Trade Terms, effectively reducing the amount of credit available to

the Debtors. Moreover, certain of the Critical Vendors could stop doing business with the Debtors altogether, leaving the Debtors unable to obtain certain essential goods and services and forcing the Debtors to incur higher costs to obtain replacement goods and services, to the extent available. All of which would be extremely damaging, if not devastating, to the Debtors, their estates, and their creditors.

31. Further, continued availability of trade credit in amounts and on terms consistent with those the Debtors enjoyed prepetition is vital to the Debtors' businesses because it allows the Debtors to maintain liquidity for operations and production levels consistent with operating profitability. Preserving working capital through the retention or reinstatement of traditional credit terms will enable the Debtors to maintain their competitiveness and to maximize the value of their businesses. Conversely, a deterioration of trade credit and a disruption or cancellation of deliveries of goods—many of which are not readily replaceable—would cripple the Debtors' business operations and ultimately impede the Debtors' ability to operate their facilities effectively.

32. The Debtors also request flexibility to deal with emergency situations. As discussed, and due to the Debtors' sensitive supply chain, it is possible that a vendor not meeting the Debtors' conditions set forth in this Motion may attempt to exert leverage against the Debtors by threatening (notwithstanding its existing legal obligations) either to withhold shipments or modify substantially the terms of their existing contractual arrangements unless its prepetition claim is paid. The Debtors believe that such actions violate section 362 of the Bankruptcy Code.⁶ The Debtors anticipate that a small percentage of their vendors will make such threats

⁶ Indeed, the Bankruptcy Code prohibits suppliers under executory contracts from ceasing performance or altering the terms of their obligations. See 11 U.S.C. § 362; In re Nat'l Steel Corp., 316 B.R. 287, 305 (Bankr. (Continued...))

and that such threats may in fact be credible, despite the Debtors' belief that the vendor does not meet the standards required for payment pursuant to this Motion and the vendor's failure to demonstrate otherwise.

33. Nonetheless, to respond to these threats on an expedited and provisional basis and to avoid any disruptions in their operations, the Debtors respectfully request that they be granted the authority to elect to waive the conditions set forth in this Motion for payment of a claim under the Critical Vendor Cap (such action, the "Waiver") and to conditionally pay the claim of such threatening or non-conforming vendor (the "Non-Conforming Vendor"). In the event that the Debtors elect to grant a Waiver to a Non-Conforming Vendor, the Debtors seek the authority to file with the Court a notice, in substantially the form attached hereto as **Exhibit D** (the "Notice of Waiver"), and a proposed Order to Show Cause, in substantially the form attached hereto as **Exhibit E** (the "Order to Show Cause"), within three (3) business days of payment pursuant to the Waiver. The Debtors further propose to serve any such Notice of Waiver and Order to Show Cause on: (a) the Non-Conforming Vendor; (b) the Office of the United States Trustee for the Northern District of Illinois; (c) counsel for any official committee of unsecured creditors appointed in these cases pursuant to section 1102 of the Bankruptcy Code (the "Creditors'

N.D. Ill. 2004) ("The non-debtor party must continue to perform under the contract prior to assumption or rejection."); In re Pittsburgh-Canfield Corp., 283 B.R. 231, 238 (Bankr. N.D. Ohio 2002) (holding that non-debtor party cannot unilaterally elect to withhold performance and must continue to perform upon executory contract prior to its assumption or rejection by debtor); In re El Paso Refinery, L.P., 196 B.R. 58, 71-72 (Bankr. W.D. Tex. 1996) (holding that non-debtor is bound by contract's terms, and thus, until court has affirmatively authorized rejection, no debtor party is not free to ignore terms of contract and must continue to perform pursuant to those terms); NLRB v. Bildisco & Bildisco, 465 U.S. 513, 531-32 (1984) (holding contracts are enforceable against the nondebtor, but not debtor); In re FBI Distrib. Corp., 330 F.3d 36, 43 (1st Cir. 2003) ("[A] prepetition executory contract remains in effect and enforceable against the nondebtor party to the contract."); Matter of Whitcomb & Keller Mortg. Co., Inc., 715 F.2d 375, 378 (7th Cir. 1983) (holding that data service provider with outstanding prepetition claim could not refuse to perform under terms of enforceable service contract pending assumption or rejection); U.S. Postal Serv. v. Dewey Freight Sys., Inc., 31 F.3d 620, 624 (8th Cir. 1994) ("[B]efore executory contracts are assumed or rejected under § 365(a), those contracts remain in existence, enforceable by the debtor but not against the debtor.").

Committee"); (d) counsel to the ad hoc committee of certain holders of the Debtors' senior unsecured notes; and (e) those persons who have formally appeared and requested service in this proceeding pursuant to Bankruptcy Rule 2002.

34. At the first regularly scheduled hearing occurring at least five (5) business days following entry of the Order to Show Cause by the Court, the Debtors propose that the Non-Conforming Vendor be required to appear before the Court and demonstrate why it should not be held in violation of sections 362 and 365 of the Bankruptcy Code and required to return payments made by the Debtors pursuant to any order approving this Motion. Should the Court determine that, by its conduct, the Non-Conforming Vendor has violated sections 362 and 365 of the Bankruptcy Code, the Debtors respectfully request that the Court require the Non-Conforming Vendor to disgorge the payments made by the Debtors pursuant to the Waiver, plus attorneys' fees and costs, within three (3) business days of entry of the order holding such Non-Conforming Vendor in violation. Furthermore, the Debtors expressly reserve their right to file any motions, adversary complaints or other pleadings that they determine in their sole and absolute discretion are necessary or appropriate to pursue other remedies including, without limitation, injunctive relief.

35. Additionally, the Debtors propose to file an Order to Show Cause for any Critical Vendor who, despite receiving payment for its respective Critical Vendor Claim, threatens to withhold performance of its obligations or refuses to perform under one or more executory contracts with the Debtors. As with Non-Conforming Vendors, the Debtors request that any such Critical Vendor be required to appear before the Court and demonstrate why such Critical Vendor should not be held in violation of sections 362 and 365 of the Bankruptcy Code and

required to return payments made by the Debtors pursuant to any order approving this Motion, plus attorneys' fees and costs.

Basis for Relief

I. Payment of Prepetition Administrative Claims is Contemplated in Section 503(b)(9) of the Bankruptcy Code.

36. Section 503(b)(9) provides in pertinent part that “there shall be allowed administrative expenses . . . including . . . the value of any goods received by the debtor within 20 days before the date of commencement of a case under this title in which the goods have been sold to the debtor in the ordinary course of such debtor’s business.” 11 U.S.C. § 503(b)(9).

37. The Debtors also believe that many of the prepetition Critical Vendor Claims are entitled to administrative expense priority under section 503(b)(9) because they are on account of goods that were received by the Debtors in the ordinary course of business within the twenty-day period before the Petition Date. To the extent these Critical Vendor Claims are administrative claims, the Debtors do not seek to alter the priority of these claims—much less do so in a manner that prejudices the rights of the Debtors’ general unsecured creditors. The Debtors believe that they will be authorized to pay such administrative claims pursuant to a plan of reorganization and thus payment of such claims now is only a timing issue.⁷

38. Instead of satisfying Critical Vendor Claims after confirmation of a plan of reorganization (at which time such payments may be too late to benefit the Debtors’ estates), the Debtors seek to pay some of these claims in the ordinary course of business, while such payments can still induce the individual vendor to adhere to favorable trade terms and do

⁷ To be confirmed, any chapter 11 plan must provide for payment in full in cash of allowed administrative expense claims, including claims entitled to administrative-expense treatment under section 503(b)(9) of the Bankruptcy Code. 11 U.S.C. § 1129(a)(9)(A).

business with the Debtors on a going-forward basis. The Debtors believe doing so is in the best interests of the Debtors' estates because favorable trade terms will prevent the contraction of the Debtors' liquidity and the Court's time and resources will not be burdened with numerous motions from individual vendors requesting payment on account of their administrative priority expense claims.

39. Although section 503(b)(9) does not specify a time for payment of these expenses, debtors have the discretion to pay administrative claims prior to confirmation if the debtor has the ability and there is a need to pay. Indeed, as the Court in Dura Automotive Systems noted, "arguably the debtor could pay its 503(b)(9) claimants without court approval." Dura Auto. Sys., No. 06-11202 (KJC) (Bankr. D. Del. Oct. 31, 2006) (approving payment of claims under section 503(b)(9) as part of "first day" relief). Accordingly, for the avoidance of doubt, the Debtors request that the Court enter an order clarifying that the Debtors are authorized to pay the portion of prepetition claims owed to Critical Vendors that is afforded administrative treatment under section 503(b)(9), or any part thereof, in the ordinary course of the Debtors' business and on such terms and conditions as set forth herein. Payment of such Critical Vendor Claims entitled to administrative priority under section 503(b)(9) will count towards the Critical Vendor Cap.

II. Section 363(b) of the Bankruptcy Code Justifies the Debtors' Payment of the Critical Vendors' Prepetition Claims.

40. Pursuant to sections 1107(a) and 1108 of the Bankruptcy Code, debtors in possession are fiduciaries "holding the bankruptcy estate[s] and operating the business[es] for the benefit of [their] creditors and (if the value justifies) equity owners." In re CoServ, L.L.C., 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002). Consistent with a debtor's fiduciary duties, courts have authorized payment of prepetition obligations under section 363(b) of the Bankruptcy Code

where a sound business purpose exists for doing so. Section 363(b) provides that, after notice and a hearing, the trustee “may use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1).

41. In In re Kmart Corp., 359 F.3d 866 (7th Cir. 2004), the Seventh Circuit Court of Appeals stated that the use of section 363(b)(1) as justification to pay prepetition claims was “promising,” because “satisfaction of a pre-petition debt in order to keep ‘critical’ supplies flowing is a use of property other than in the ordinary course of administering an estate in bankruptcy.” Id. at 872. The Seventh Circuit suggested that paying prepetition creditors may be appropriate if, but for immediate full payment, the vendors would cease doing business with the debtor and the other classes of creditors would be no worse off than if the payments were allowed. Id. at 873. In analogizing to the “cram down” analysis, the Seventh Circuit was in essence telling courts to look to the benefit or enhancement of the estate that will result from the payment of a prepetition claim, stating that “if the impaired class does at least as well as it would have under a Chapter 7 liquidation, then it has no legitimate objection and cannot block the reorganization.” Id. at 872–73.

42. Additionally, changes made to the Bankruptcy Rules following the Kmart decision confirm that the Court may authorize the postpetition satisfaction of prepetition claims by reference to these standards. The power is specifically provided for in the exception contained in Bankruptcy Rule 6003(b) which provides, in relevant part, that “[e]xcept to the extent that relief is necessary to avoid immediate and irreparable harm, the court shall not, within 20 days after the filing of the petition, grant relief regarding . . . a motion to pay all or part of a claim that arose before the filing of the petition.” Bankr. Rule 6003(b). This rule plainly provides that, where the failure to grant any such requested relief would result in immediate and

irreparable harm to the Debtor's estate, the Court may allow the Debtor to pay (prior to the twenty-first day following the Petition Date) all or part of a prepetition claim.

43. The "immediate and irreparable harm" standard established by Bankruptcy Rule 6003(b) is essentially congruent with the "necessary and indispensable to . . . the preservation of property" standard established by the Supreme Court in Miltenberger v. Logansport, Crawfordsville & Sw. Ry. Co., 106 U.S. 286, 311 (1982); see also In re Frontier Airlines Holdings, Inc., No. 08-11298 (RDD) (Bankr. S.D.N.Y. Apr. 14, 2008) (finding that the debtor had satisfied the standard of Bankruptcy Rule 6003(b) where "immediate relief [was] necessary to avoid irreparable harm" and ordering that the debtor could make expenditures related to certain prepetition customer obligations). Accordingly, Bankruptcy Rule 6003(b), in addition to providing independent grounds for the authorization of payment of prepetition claims, serves to complement this line of reasoning.

44. Thus, following the Kmart decision, courts in the Seventh Circuit have authorized the payment (or other special treatment) of prepetition obligations to critical vendors in appropriate circumstances. See, e.g., In re Ryan Int'l Airlines, Inc., No. 12-80802 (Bankr. N.D. Ill. Mar. 7, 2012) (authorizing payments to critical vendors); In re Grede Foundries, Inc., No. 09-14337 (Bankr. W.D. Wis. Aug. 31, 2009) (same).⁸ In authorizing such payments, those courts generally relied on the legal theories rooted in sections 363(b) and 105(a) of the Bankruptcy Code. Additionally, courts in this district have exercised their discretion and have authorized the payment of section 503(b)(9) claims during a chapter 11 case. See, e.g., In re GEI-RP (f/k/a Giordano's Enters., Inc.), No. 11-06098 (ERW) (Bankr. N.D. Ill. Feb. 17, 2011) (authorizing

⁸ Because of the voluminous nature of the orders cited herein, such orders have not been attached to the Motion. Copies of these orders are available upon request to the Debtors' proposed counsel.

payments to 503(b)(9) claimants); In re XMH Corp. 1 (f/k/a Hartmarx Corp.), No. 09-02046 (BWB) (Bankr. N.D. Ill. Jan. 26, 2009) (same); In re Kimball Hill, Inc., No. 08-10095 (SPS) (Bankr. N.D. Ill. Apr. 25, 2008) (same). Here, the Court should follow that precedent and authorize the Debtors to pay the Critical Vendors' prepetition claims, up to the Critical Vendor Cap.

45. The authorization of payment of prepetition obligations under section 363(b) of the Bankruptcy Code should be granted where a sound business purpose exists for doing so. See, e.g., Kmart, 359 F.3d at 872 (recognizing that payment of prepetition claims may be permitted under section 363, but holding that the debtor's evidentiary record did not support paying the prepetition claims of vendors); In re UAL Corp., No. 02-48191 (ERW) (Bankr. N.D. Ill. Dec. 11, 2002) (essential trade motion relying upon section 363 is "completely consistent with the Bankruptcy Code" and payments to critical trade vendors have further support when debtor seeks "the extension of credit under section 364 on different than usual terms, terms that might include the payment of a prepetition obligation"); see also In re Tropical Sportswear Int'l Corp., 320 B.R. 15, 20 (Bankr. M.D. Fla. 2005) ("Bankruptcy courts recognize that section 363 is a source of authority to make critical vendor payments, and section 105 is used to fill in the blanks."); In re Ionosphere Clubs, Inc., 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989) (finding that a sound business justification existed to justify payment of prepetition wages); Armstrong World Indus., Inc. v. James A. Phillips, Inc. (In re James A. Phillips, Inc.), 29 B.R. 391, 397-98 (S.D.N.Y. 1983) (allowing contractor to pay prepetition claims of suppliers who were potential lien claimants under section 363 because the payments were necessary for general contractors to release funds owed to debtors).

46. The Debtors believe the payment of the Critical Vendor Claims is necessary and appropriate under the circumstances. The Critical Vendors may, absent the payments contemplated herein, refuse to deliver goods or perform services, or refuse to do so on reasonable credit terms. Prompt payment of the Critical Vendor Claims is therefore necessary to ensure that the Debtors continue to receive essential raw materials and other goods and services that are actually or practically unavailable from other sources, and preserve critical relationships with the Debtors' key vendors and customers.

47. The Debtors strongly believe that the uninterrupted supply of goods and services on Customary Trade Terms is imperative to the ongoing operations and viability of the Debtors. The Debtors only seek to pay the Critical Vendor Claims where nonpayment of such claims would lead to the interruption of the delivery of goods and services or would seriously disrupt the Debtors' operations. Moreover, the sums involved are insignificant in relation to the potential disruption that would occur if relationships with these vendors were to be terminated. The \$8.2 million aggregate cap on the Critical Vendor Claims is less than one quarter of one percent of the Debtors' total unsecured and project debt. Thus, the Debtors submit that the requested relief is narrowly tailored to facilitate the Debtors' chapter 11 reorganization process.

The Requirements of Bankruptcy Rule 6003(b) Are Satisfied

48. Bankruptcy Rule 6003(b) empowers the Court to grant relief within the first 21 days after the Petition Date if the "relief is necessary to avoid immediate and irreparable harm." The Debtors' failure to pay the Critical Vendors' prepetition claims within 21 days would plainly result in immediate and irreparable harm, both to the Debtors and to their stakeholders.

49. As discussed above, the ability to pay the Critical Vendors is necessary to ensure the continued and uninterrupted operation of the Debtors' businesses and, in particular, to ensure

the continuous operation of their core energy production business. Nonpayment of the Critical Vendors could result in significant business disruption and significantly prejudice the Debtors' businesses and the interests of all stakeholders in these chapter 11 cases. The Court, therefore, should permit the Debtors to pay the Critical Vendors' prepetition claims within 21 days.

Satisfaction of Bankruptcy Rule 6004(a) and Waiver of Bankruptcy Rule 6004(h)

50. To implement the foregoing successfully, the Debtors request that the Court enter an order providing that notice of the relief requested herein satisfies Bankruptcy Rule 6004(a) and that the Debtors have established cause to exclude such relief from the 14-day stay period under Bankruptcy Rule 6004(h).

Notice

51. The Debtors have provided notice of this Motion to: (a) the Office of the U.S. Trustee for the Northern District of Illinois; (b) the entities listed on the Consolidated List of Creditors Holding the 30 Largest Unsecured Claims; (c) the indenture trustee for the Debtors' senior unsecured notes; (d) counsel to the ad hoc committee of certain holders of the Debtors' senior unsecured notes; (e) the indenture trustee for the lessor notes related to the Debtors' Powerton generating station in Pekin, Illinois, and units 7 and 8 of the Debtors' Joliet, Illinois, generating station and the pass-through trustee for the related pass-through certificates; (f) counsel to the ad hoc committee of certain holders of pass-through certificates related to the Debtors' Powerton and Joliet generating stations; (g) the owner trusts and the equity investors for the Debtors' Powerton and Joliet generating stations (and their respective counsel, if known); (h) the lender under Debtor Edison Mission Energy's letter-of-credit facility (i) the state attorneys general for states in which the Debtors conduct business; (j) United States Attorney for the Northern District of Illinois; (k) the Internal Revenue Service; (l) the Securities and

Exchange Commission; and (m) the Environmental Protection Agency and similar state environmental agencies for states in which the Debtors conduct business. In light of the nature of the relief requested herein, the Debtors respectfully submit that no further notice is necessary.

No Prior Request

52. No prior request for the relief sought in this Motion has been made to this or any other court.

WHEREFORE, the Debtors respectfully request that the Court enter interim and final orders, substantially in the forms attached hereto as **Exhibit A** and **Exhibit B**, granting the relief requested herein and such other and further relief as the Court deems appropriate.

Dated: December 17, 2012

/s/ David R. Seligman, P.C.

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*Proposed Counsel to Debtor Camino Energy Company
and Conflicts Counsel to the other Debtors
and Debtors in Possession*

EXHIBIT A

Proposed Interim Order

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
Eastern Division

In Re:	)	BK No.: 12-49219
EDISON MISSION ENERGY, et al.,)	
	)	Chapter: 11
)	
)	
)	
Debtor(s))	

INTERIM ORDER (A) APPROVING PAYMENT OF PREPETITION CLAIMS OF CERTAIN VENDORS AND (B) AUTHORIZING PROCEDURES RELATED THERETO

Upon the motion (the “Motion”) of the above captioned debtors and debtors in possession (collectively, the “Debtors”) for entry of an order (this “Order”) authorizing but not directing the Debtors to pay, in the Debtors’ sole discretion, the prepetition claims of certain critical vendors and service providers in an aggregate amount not to exceed \$7.0 million during the period from the date of this Order until the date that a final order is entered in this matter on the terms described in the Motion, including certain prepetition claims for goods received by the Debtors in the ordinary course of their business during the twenty-day period before the Petition Date, which may be entitled to administrative expense priority under section 503(b)(9) of the Bankruptcy Code, and approving and authorizing procedures to address any vendors that repudiate or otherwise refuse to honor contractual obligations to the Debtors, all as more fully set forth in the Motion; and upon the First Day Declaration; and the Court having found that the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and the Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and the Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and the Court having found that the relief requested in the Motion is in the best interests of the Debtors’ estates, their creditors, and other parties in interest; and the Court having found that the Debtors provided appropriate notice of the Motion and the opportunity for a hearing on the Motion under the circumstances; and the Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before the Court (the “Hearing”); and the Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before the Court; and after due deliberation and sufficient cause appearing therefor, it is **HEREBY ORDERED THAT:**

1. The Motion is granted on an interim basis as set forth herein. Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion.

2. The final hearing (the “Final Hearing”) on the Motion shall be held on _____, 2013 at __: __ m. (Central Time). Any objections or responses to entry of the final order shall be filed on or before _____, 2013 at 4:00 p.m. (Central Time).

3. The Debtors are authorized but not directed to make payment to the Critical Vendors on the condition that the Critical Vendor agrees to continue supplying goods and services to the Debtors on Customary Trade Terms or Negotiated Trade Terms.

4. The Debtors are authorized to negotiate trade terms with any Critical Vendor, as a condition to payment of any Critical Vendor Claim, that vary from the Customary Trade Terms (the “Negotiated

Trade Terms”) to the extent the Debtors determine that such terms are necessary to procure essential goods or services or are otherwise in the best interests of the Debtors’ estates.

5. The Debtors’ payment of prepetition claims owed to Critical Vendors shall not exceed, in the aggregate, \$7.0 million during the period from the date of this Order until the date that a final order is entered in this matter, unless otherwise ordered by the Court.

6. A Critical Vendor’s acceptance of payment is deemed to be acceptance of the terms of this Order, and if the Critical Vendor thereafter does not provide the Debtors with Customary Trade Terms or Negotiated Trade Terms during these cases, then any payments of prepetition claims made after the Petition Date may be deemed to be unauthorized postpetition transfers and therefore recoverable by the Debtors in these chapter 11 cases.

7. The Debtors are authorized but not directed to obtain written verification of Customary Trade Terms or Negotiated Trade Terms to be supplied by the Critical Vendors before issuing payment hereunder.

8. If a Critical Vendor refuses to supply goods and/or services to the Debtors on Customary Trade Terms or Negotiated Trade Terms following receipt of payment of its Critical Vendor Claim, the Debtors may, in their discretion and without further order of the Court, declare that provisional payments made to the Critical Vendor on account of the Critical Vendor Claim be deemed to have been in payment of then-outstanding postpetition claims of such vendors without further order of the Court or action by any person or entity. In the event the Debtors exercise the right set forth in the preceding sentence, the Critical Vendor against which such right is exercised shall immediately return to the Debtors any payments made to it on account of its Critical Vendor Claim to the extent that any such payments exceed the postpetition claims of such vendor then outstanding without giving effect to any further rights of setoff, claims, provision for payment of reclamation or trust fund claims, or otherwise.

9. In accordance with this Order and any other order of this Court, each of the financial institutions at which the Debtors maintain their accounts relating to the payment of the obligations described in the Motion is directed to receive, process, honor, and pay any and all checks, drafts, wires, and automated clearing house transfers issued, whether before or after the Petition Date, for payment of obligations described in the Motion to the extent that sufficient funds are on deposit in such amounts.

10. The Debtors are authorized to issue postpetition checks, or to effect postpetition wire transfer requests, in replacement of any checks or wire transfer requests in respect of payments of prepetition obligations described in the Motion that are dishonored or rejected.

11. The Debtors are hereby authorized to waive the conditions of this Order for payment of a claim (the “Waiver”) and to conditionally pay the claim of a threatening or non-conforming Non-Conforming Vendor, including any Critical Vendor who, despite receiving payment for its respective Critical Vendor Claim, threatens to withhold performance of its obligations or refuses to perform under one or more executory contracts with the Debtors. If the Debtors grant a Waiver, the Debtors may file a Notice of Waiver and a proposed Order to Show Cause with the Court within three (3) business days of payment pursuant to the Waiver. The Debtors will serve any Notice of Waiver and Order to Show Cause on: (a) the Non-Conforming Vendor; (b) the Office of the United States Trustee for the Northern District of Illinois; (c) counsel for any official committee of unsecured creditors appointed in these cases pursuant to section 1102 of the Bankruptcy Code; (d) counsel to the ad hoc committee of certain holders of the Debtors’ senior unsecured notes; and (e) those persons who have formally appeared and

requested service in this proceeding pursuant to Bankruptcy Rule 2002. At the first regularly scheduled hearing occurring at least five (5) business days following entry of the Order to Show Cause by the Court, the Non-Conforming Vendor is required to appear before the Court and should the Court determine that the Non-Conforming Vendor has violated sections 362 and 365 of the Bankruptcy Code, the Court will require the Non-Conforming Vendor to disgorge the payments made by the Debtors pursuant to the Waiver, plus attorneys' fees and costs, within three (3) business days of entry of the order holding such Non-Conforming Vendor in violation.

12. The form of Notice of Waiver attached to the Motion as Exhibit D and the form of Order to Show Cause attached to the Motion as Exhibit E are hereby approved by the Court in all respects for use in accordance with the provisions of the foregoing paragraph.

13. If a Critical Vendor that has received a payment pursuant to this Order refuses to perform its postpetition obligations pursuant to an executory contract with one or more of the Debtors in violation of the Bankruptcy Code, the Debtors may file an Order to Show Cause, substantially in the form attached to the Motion as Exhibit E, setting forth the Debtors' belief that the Critical Vendor is in violation of the Bankruptcy Code through its failure to perform under a prepetition agreement, identifying the name of the Critical Vendor, the identity of the agreement in question and seeking entry of such Order to Show Cause, which shall require the Critical Vendor to appear before the Court to show why it should not be (a) found to have willfully violated sections 362 and 365 of the Bankruptcy Code and (b) required to return any payment made by the Debtors to the Critical Vendor pursuant to this Order, plus attorneys' fees and costs.

14. The requirements set forth in Bankruptcy Rule 6003(b) are satisfied by the contents of the Motion.

15. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion and the requirements of Bankruptcy Rule 6004(a) and the Local Rules of the United States Bankruptcy Court for the Northern District of Illinois are satisfied by such notice.

16. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

17. All time periods set forth in this Order shall be calculated in accordance with Bankruptcy Rule 9006(a).

18. All postpetition payments from a Debtor to another Debtor are hereby accorded superpriority administrative expense status and shall have priority over any administrative claims that arise under section 503(b) of the Bankruptcy Code in accordance with the Court's order approving continued use of the Debtors' cash management system.

19. Notwithstanding the relief granted in this Order and any actions taken pursuant to such relief, nothing in this Order shall be deemed: (a) an admission as to the validity of any claim against a Debtor entity; (b) a waiver of the Debtors' right to dispute any claim on any grounds; (c) a promise or requirement to pay any claim; (d) an implication or admission that any particular claim is of a type specified or defined in this Order or the Motion; (e) a request or authorization to assume any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; or (f) a waiver of the Debtors' rights under the Bankruptcy Code or any other applicable law.

20. The Debtors are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Motion.

21. The Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.

Enter:

Dated:

United States Bankruptcy Judge

Prepared by:

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David R. Seligman, P.C.
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Proposed Counsel to Debtor Camino Energy Company
and Conflicts Counsel to the other Debtors
and Debtors in Possession

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
Eastern Division

In Re:	)	BK No.: 12-49219
EDISON MISSION ENERGY, et al.,)	
	)	Chapter: 11
)	
)	
)	
Debtor(s))	

FINAL ORDER (A) APPROVING PAYMENT OF PREPETITION CLAIMS OF CERTAIN VENDORS AND (B) AUTHORIZING PROCEDURES RELATED THERETO

Upon the motion (the “Motion”) of the above captioned debtors and debtors in possession (collectively, the “Debtors”) for entry of an order (this “Order”) authorizing but not directing the Debtors to pay, in the Debtors’ sole discretion, the prepetition claims of certain critical vendors and service providers in an aggregate amount not to exceed \$8.2 million on the terms described in the Motion, including certain prepetition claims for goods received by the Debtors in the ordinary course of their business during the twenty-day period before the Petition Date, which may be entitled to administrative expense priority under section 503(b)(9) of the Bankruptcy Code, and approving and authorizing procedures to address any vendors that repudiate or otherwise refuse to honor contractual obligations to the Debtors, all as more fully set forth in the Motion; and upon the First Day Declaration; and the Court having found that the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and the Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and the Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and the Court having found that the relief requested in the Motion is in the best interests of the Debtors’ estates, their creditors, and other parties in interest; and the Court having found that the Debtors provided appropriate notice of the Motion and the opportunity for a hearing on the Motion under the circumstances; and the Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before the Court (the “Hearing”); and the Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before the Court; and after due deliberation and sufficient cause appearing therefor, it is HEREBY ORDERED THAT:

1. The Motion is granted on a final basis as set forth herein. Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion.
2. The Debtors are authorized but not directed to make payment to the Critical Vendors on the condition that the Critical Vendor agrees to continue supplying goods and services to the Debtors on Customary Trade Terms or Negotiated Trade Terms.
3. The Debtors are authorized to negotiate trade terms with any Critical Vendor, as a condition to payment of any Critical Vendor Claim, that vary from the Customary Trade Terms (the “Negotiated Trade Terms”) to the extent the Debtors determine that such terms are necessary to procure essential goods or services or are otherwise in the best interests of the Debtors’ estates.
4. The Debtors’ payment of prepetition claims owed to Critical Vendors shall not exceed, in the

aggregate, \$8.2 million, unless otherwise ordered by the Court.

5. A Critical Vendor's acceptance of payment is deemed to be acceptance of the terms of this Order, and if the Critical Vendor thereafter does not provide the Debtors with Customary Trade Terms or Negotiated Trade Terms during these cases, then any payments of prepetition claims made after the Petition Date may be deemed to be unauthorized postpetition transfers and therefore recoverable by the Debtors in these chapter 11 cases.

6. The Debtors are authorized but not directed to obtain written verification of Customary Trade Terms or Negotiated Trade Terms to be supplied by the Critical Vendors before issuing payment hereunder.

7. If a Critical Vendor refuses to supply goods and/or services to the Debtors on Customary Trade Terms or Negotiated Trade Terms following receipt of payment of its Critical Vendor Claim, the Debtors may, in their discretion and without further order of the Court, declare that provisional payments made to the Critical Vendor on account of the Critical Vendor Claim be deemed to have been in payment of then-outstanding postpetition claims of such vendors without further order of the Court or action by any person or entity. In the event the Debtors exercise the right set forth in the preceding sentence, the Critical Vendor against which such right is exercised shall immediately return to the Debtors any payments made to it on account of its Critical Vendor Claim to the extent that any such payments exceed the postpetition claims of such vendor then outstanding without giving effect to any further rights of setoff, claims, provision for payment of reclamation or trust fund claims, or otherwise.

8. In accordance with this Order and any other order of this Court, each of the financial institutions at which the Debtors maintain their accounts relating to the payment of the obligations described in the Motion is directed to receive, process, honor, and pay any and all checks, drafts, wire transfers, and automated clearing house transfers issued, whether before or after the Petition Date, for payment of obligations described in the Motion to the extent that sufficient funds are on deposit in such amounts.

9. The Debtors are authorized to issue postpetition checks, or to effect postpetition wire transfer requests, in replacement of any checks or wire transfer requests in respect of payments of prepetition obligations described in the Motion that are dishonored or rejected.

10. The Debtors are hereby authorized to waive the conditions of this Order for payment of a claim (the "Waiver") and to conditionally pay the claim of a threatening or non-conforming Non-Conforming Vendor, including any Critical Vendor who, despite receiving payment for its respective Critical Vendor Claim, threatens to withhold performance of its obligations or refuses to perform under one or more executory contracts with the Debtors. If the Debtors grant a Waiver, the Debtors may file a Notice of Waiver and a proposed Order to Show Cause with the Court within three (3) business days of payment pursuant to the Waiver. The Debtors will serve any Notice of Waiver and Order to Show Cause on: (a) the Non-Conforming Vendor; (b) the Office of the United States Trustee for the Northern District of Illinois; (c) counsel for any official committee of unsecured creditors appointed in these cases pursuant to section 1102 of the Bankruptcy Code; (d) counsel to the ad hoc committee of certain holders of the Debtors' senior unsecured notes; and (e) those persons who have formally appeared and requested service in this proceeding pursuant to Bankruptcy Rule 2002. At the first regularly scheduled hearing occurring at least five (5) business days following entry of the Order to Show Cause by the Court, the Non-Conforming Vendor is required to appear before the Court and should the Court determine that the Non-Conforming Vendor has violated sections 362 and 365 of the Bankruptcy Code, the Court will require the Non-Conforming Vendor to disgorge the payments made by the Debtors

pursuant to the Waiver, plus attorneys' fees and costs, within three (3) business days of entry of the order holding such Non-Conforming Vendor in violation.

11. The form of Notice of Waiver attached to the Motion as Exhibit D and the form of Order to Show Cause attached to the Motion as Exhibit E are hereby approved by the Court in all respects for use in accordance with the provisions of the foregoing paragraph.

12. If a Critical Vendor that has received a payment pursuant to this Order refuses to perform its postpetition obligations pursuant to an executory contract with one or more of the Debtors in violation of the Bankruptcy Code, the Debtors may file an Order to Show Cause, substantially in the form attached to the Motion as Exhibit E, setting forth the Debtors' belief that the Critical Vendor is in violation of the Bankruptcy Code through its failure to perform under a prepetition agreement, identifying the name of the Critical Vendor, the identity of the agreement in question and seeking entry of such Order to Show Cause, which shall require the Critical Vendor to appear before the Court to show why it should not be (a) found to have willfully violated sections 362 and 365 of the Bankruptcy Code and (b) required to return any payment made by the Debtors to the Critical Vendor pursuant to this Order, plus attorneys' fees and costs.

13. The requirements set forth in Bankruptcy Rule 6003(b) are satisfied by the contents of the Motion.

14. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion and the requirements of Bankruptcy Rule 6004(a) and the Local Rules of the United States Bankruptcy Court for the Northern District of Illinois are satisfied by such notice.

15. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

16. All time periods set forth in this Order shall be calculated in accordance with Bankruptcy Rule 9006(a).

17. All postpetition payments from a Debtor to another Debtor are hereby accorded superpriority administrative expense status and shall have priority over any administrative claims that arise under section 503(b) of the Bankruptcy Code in accordance with the Court's order approving continued use of the Debtors' cash management system.

18. Notwithstanding the relief granted in this Order and any actions taken pursuant to such relief, nothing in this Order shall be deemed: (a) an admission as to the validity of any claim against a Debtor entity; (b) a waiver of the Debtors' right to dispute any claim on any grounds; (c) a promise or requirement to pay any claim; (d) an implication or admission that any particular claim is of a type specified or defined in this Order or the Motion; (e) a request or authorization to assume any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; or (f) a waiver of the Debtors' rights under the Bankruptcy Code or any other applicable law.

19. The Debtors are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Motion.

20. The Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.

Enter:

Dated:

United States Bankruptcy Judge

Prepared by:

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Proposed Counsel to Debtor Camino Energy Company
and Conflicts Counsel to the other Debtors
and Debtors in Possession

EXHIBIT C

Form of Critical Vendor Letter

_____, 2012

TO: [Vendor]

Dear Valued Vendor:

As you are aware, Edison Mission Energy and certain of its affiliates (collectively, the “Company” or the “Debtors”) filed voluntary petitions for relief under chapter 11 of the United States Bankruptcy Code in the United States Bankruptcy Court for the Northern District of Illinois (the “Bankruptcy Court”) on [_____] (the “Petition Date”). On the Petition Date, the Company requested the Bankruptcy Court’s authority to pay certain critical vendors in recognition of the importance of such vendors to the Company’s reorganization. On [_____] the Bankruptcy Court entered an order (the “Order”) authorizing the Company, under certain conditions, to pay a portion of the pre-bankruptcy claims of certain critical vendors that agree (a) to the terms set forth below and (b) to be bound by the terms of the Order. A copy of the Order is enclosed.

In order to receive payment on its pre-bankruptcy claims, each selected critical vendor must agree to continue to supply goods to the Company based on “Customary Trade Terms.” In the Order, Customary Trade Terms are defined as normal and customary trade terms, practices, and programs that were most favorable to the Debtors and that were in effect within 120 days before the Petition Date, or such other trade terms that are acceptable to the Debtors.

Any payment of your Prepetition Trade Claim in the manner set forth in the Order may only occur upon execution of this letter by a duly authorized representative of your company and the return of this letter to the Company. For the purposes of administration of this vendor program, as authorized by the Bankruptcy Court, the Company and you agree as follows (the “Trade Agreement”):

1. The estimated balance of your pre-bankruptcy trade claim (net of any setoffs, other credits or discounts) (the “Prepetition Trade Claim”) is \$[_____].
2. The Company will provisionally pay you \$[_____] of your Prepetition Trade Claim and this payment will be applied to your most recent invoices.
3. For a period of no less than two years from the Petition Date, you will supply goods and services to the Company on credit terms as follows (the “Customary Trade Terms”):

_____.

(if more space is required, attach continuation pages)

4. The open trade balance or credit line that you will extend to the Company for shipment of goods after the Petition Date is \$[_____] (which shall not be less than the greater of the open trade balance outstanding (a) on the

Petition Date or (b) on normal and customary terms on a historical basis for the period 120 days before and up to the Petition Date). You agree to use commercially reasonable steps to fully service the Company as requested pursuant to the terms set forth herein.

5. The Company's standard terms and conditions govern your commercial trade relationship.
6. In consideration for payment of your Prepetition Trade Claim (or a portion thereof), you will not file or otherwise assert against the Company, their assets or any other person or entity or any of their respective assets or property (real or personal) any lien, regardless of the statute or other legal authority upon which such lien is asserted, related in any way to any remaining pre-bankruptcy amounts allegedly owed to you by the Company arising from agreements entered into before the Petition Date. Furthermore, if you have taken steps to file or assert such a lien prior to entering into this Trade Agreement, you will take all necessary actions to remove such lien as promptly as possible.
7. You will release to the Company upon request any goods or other assets of the Company in your possession, and you agree that you have no lien on any assets of the Company based upon the Company's failure to pay any amounts owed to you before the Petition Date by the Company.
8. You will not separately assert or otherwise seek payment for reclamation claims or claims pursuant to section 503(b)(9) of the Bankruptcy Code outside the terms of the Order (unless your participation in the Trade Agreement is terminated).
9. If you later refuse to continue to supply goods to the Company on Customary Trade Terms, this Trade Agreement will be deemed terminated; any payments received by you on account of your Prepetition Trade Claim will be deemed to have been in payment of then outstanding postpetition obligations owed to you; and (a) you will immediately repay to the Company any payments made to you on account of your Prepetition Trade Claim to the extent that the aggregate amount of such payments exceeds the postpetition obligations then outstanding, without the right of any setoffs, claims, provision for payment of reclamation or trust fund claims, or otherwise or (b) at the Company's option, the Company will apply such payments against any outstanding administrative claim owed to you; and
10. You have reviewed the terms and provisions of the Order and you consent to be bound by such terms, including that any dispute with respect to this Trade Agreement or the Order shall be determined by the Bankruptcy Court.

Your execution of this letter and return of the same to the Company constitutes a binding agreement by you and the Company to the above terms. If you have any questions about this agreement or our financial restructuring, do not hesitate to call [_____] at [_____].

Sincerely,

[Applicable Debtor]

By:_____

Title:_____

Date:_____

Agreed and Accepted by:

[Name of Vendor]

By:_____

Title:_____

Dated:_____

EXHIBIT D

Form of Notice of Waiver

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

)	
In re:	)	Chapter 11
)	
EDISON MISSION ENERGY, <i>et al.</i> , ¹	)	Case No. 12-[_____] (____)
)	
Debtors.	)	(Joint Administration Requested)
)	

NOTICE OF WAIVER

PLEASE TAKE NOTICE that on December 17, 2012 the above-captioned debtors and debtors in possession (collectively, the “Debtors”) filed the *Debtors’ Motion to Approve Payment of Prepetition Claims of Certain Vendors and to Authorize Procedures Related Thereto* (the “Motion”).²

PLEASE TAKE FURTHER NOTICE that on [_____] , 2012, the United States Bankruptcy Court for the Northern District of Illinois (the “Bankruptcy Court”) entered an order granting the relief requested in the Motion (the “Order”).

PLEASE TAKE FURTHER NOTICE that, pursuant to the authority granted to the Debtors pursuant to paragraph [____] of the Order, the Debtors have determined to waive the

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, include: Edison Mission Energy (1807); Camino Energy Company (2601); Chestnut Ridge Energy Company (6590); Edison Mission Energy Fuel Services, LLC (4630); Edison Mission Fuel Resources, Inc. (3014); Edison Mission Fuel Transportation, Inc. (3012); Edison Mission Holdings Co. (6940); Edison Mission Midwest Holdings Co. (6553); Midwest Finance Corp. (9350); Midwest Generation EME, LLC (1760); Midwest Generation, LLC (8558); Midwest Generation Procurement Services, LLC (2634); Midwest Peaker Holdings, Inc. (5282); Mission Energy Westside, Inc. (0657); San Joaquin Energy Company (1346); Southern Sierra Energy Company (6754); and Western Sierra Energy Company (1447). The location of parent Debtor Edison Mission Energy’s corporate headquarters and the Debtors’ service address is: 3 MacArthur Place, Suite 100, Santa Ana, California 92707.

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion.

conditions for payment of a prepetition claim (as defined in the Motion) with respect to [_____] (“Non-Conforming Vendor”) and conditionally paid prepetition claims of Non-Conforming Vendor in the amount of \$[_____] on [_____] .

PLEASE TAKE FURTHER NOTICE that contemporaneously herewith, the Debtors are filing a proposed Order to Show Cause requesting that the Bankruptcy Court order Non-Conforming Vendor to appear before the Bankruptcy Court at a hearing to be held at __:__ .m. (Central Time) on [____], 2012, before the Honorable [____], United States Bankruptcy Judge, in the Bankruptcy Court, Courtroom [____], 219 S. Dearborn Chicago, IL, 60604 (the “Hearing”) and demonstrate why Non-Conforming Vendor should not be held in violation of the automatic stay provisions of 11 U.S.C. § 362.

Dated: _____, 2012

/s/

James H.M. Sprayregen, P.C.
David R. Seligman, P.C.
Sarah Hiltz Seewer
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*Proposed Counsel to the Debtors
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Other than Camino Energy Company*

- and -

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*Proposed Counsel to Debtor Camino Energy Company
and Conflicts Counsel to the other Debtors
and Debtors in Possession*

EXHIBIT E

Form of Order to Show Cause

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

)	
In re:	)	Chapter 11
)	
EDISON MISSION ENERGY, <i>et al.</i> , ¹	)	Case No. 12-[_____] (____)
)	
Debtors.	)	(Joint Administration Requested)
)	

ORDER TO SHOW CAUSE

Upon the motion (the “Motion”)² of the above-captioned debtors (collectively, the “Debtors”) for the entry of an order (the “Order”): authorizing but not directing the Debtors to pay, in the Debtors’ sole discretion, the Critical Vendors, and approving and authorizing procedures to address any vendors that repudiate or otherwise refuse to honor contractual obligations to the Debtors [Docket No. ____]; and upon the Debtors’ notice of waiver, dated [_____] , 2012, with respect to [_____] (“Vendor”); and it appearing that proper and adequate notice of the Debtors’ request for entry of this Order to Show Cause (the “Order to Show Cause”) has been given; and upon the First Day Declaration; it appearing that the relief requested is in the best interests of the Debtors’ estates, their creditors and other parties in

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² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion.

interest; the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334; consideration of the Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b); venue being proper before the Court pursuant to 28 U.S.C. §§ 1408 and 1409; notice of the Motion having been adequate and appropriate under the circumstances; and after due deliberation and sufficient cause appearing therefor, it is hereby ORDERED that:

1. The Debtors have complied with the procedures provided in paragraph [____] of the Order in determining to waive the conditions for payment of a prepetition claim (as defined in the Motion) with respect to Vendor and conditionally paying prepetition claims of Vendor in the amount of \$[_____] on [_____] , 2012.

2. Vendor is hereby ordered to show cause before the Court at a hearing to be held at [_____] , 2012, before the Honorable [_____] , United States Bankruptcy Judge, in the Bankruptcy Court, Courtroom [____] , 219 S. Dearborn Chicago, IL, 60604 (the “Hearing”) why the Vendor should not be (a) held in violation of 11 U.S.C. § 362 and/or § 365 for willfully threatening to withhold essential goods from the Debtors or refusing to perform under one or more contracts between the Debtors and Vendor and (b) required to return any payment made by the Debtors to Vendor pursuant to the Order, plus attorneys’ fees and costs.

3. Service of this Order to Show Cause is to be made by service upon: (a) Vendor; (b) counsel to the Debtors; (c) the Office of the United States Trustee for the Northern District of Illinois; (d) counsel for the official committee of unsecured creditors appointed in these cases pursuant to section 1102 of the Bankruptcy Code; (e) counsel to the ad hoc committee of certain holders of the Debtors’ senior unsecured notes; and (f) those persons who have formally

appeared and requested service in this proceeding pursuant to Bankruptcy Rule 2002. No further notice of the Hearing or of the entry of this Order to Show Cause need be served by the Debtors.

4. The Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.

Dated: _____, 2012
Chicago, Illinois

United States Bankruptcy Judge

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

In re:)
) Chapter 11
)
EDISON MISSION ENERGY, et al.,¹) Case No. 12-[_____] (____)
)
)
Debtors.) (Joint Administration Requested)
)

CERTIFICATE OF SERVICE

I, David R. Seligman, P.C., an attorney, certify that on the date hereof, I caused to be served by GCG, Inc. (the proposed notice and claims agent for these chapter 11 cases) on behalf of the above-captioned debtors and debtors in possession, in the manner and to the parties set forth on the attached service lists, a true and correct copy of the foregoing pleading.

Dated: December 17, 2012

/s/ David R. Seligman, P.C.

David R. Seligman, P.C.

KIRKLAND & ELLIS LLP

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Telephone: (312) 862-2000

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