

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

	)	
In re:	)	Chapter 11
	)	
EDISON MISSION ENERGY, <i>et al.</i> , <sup>1</sup>	)	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 Lien Claimants 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](http://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](http://www.ilnb.uscourts.gov) in accordance with the procedures and fees set forth therein.

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<sup>1</sup> 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

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

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UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

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

**DEBTORS’ MOTION TO APPROVE PAYMENT OF  
PREPETITION CLAIMS OF CERTAIN LIEN CLAIMANTS  
AND TO AUTHORIZE PROCEDURES RELATED THERETO**

The above-captioned debtors and debtors in possession (collectively, the “Debtors”) state as follows in support of this motion (this “Motion”):<sup>2</sup>

**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 domestic common carriers, shippers, truckers, and logistics management companies (the “Shippers”), and third-party contractors, repairmen, and manufacturers who may assert tooling, mechanics’, and other possessory liens against the Debtors’ or their customers’ property (the

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<sup>2</sup> 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.

“Third-Party Contractors,” and together with the Shippers, the “Lien Claimants”), on an interim basis in an amount not to exceed \$300,000, and an aggregate amount not to exceed \$400,000, on the terms described herein, (b) approving and authorizing procedures to address any Lien Claimants that repudiate or otherwise refuse to honor contractual obligations to the Debtors, and (c) granting related relief.

### **Jurisdiction**

2. 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).

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

4. The statutory bases for the relief requested herein are sections 105(a), 363, 507(a)(8), 1107(a), 1108, and 1129(b)(2)(A) of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “Bankruptcy Code”) and rules 6003 and 6004 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”).

### **Background**

5. 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.

6. 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.

### **Lien Claimants**

#### **I. The Importance of Preserving the Debtors' Ongoing Operations**

7. The Debtors derive their operating revenues primarily from sales of energy and capacity generated by coal-fired power plants and natural gas and wind projects. The Debtors' ability to produce and deliver energy in a timely manner depends on their prompt receipt of raw materials, parts, and components used in the production of energy. To that end, the Debtors heavily rely upon the Shippers to ship, transport, and deliver goods. Further, the Debtors depend upon the Third-Party Contractors to produce energy and efficiently operate their businesses.

##### **A. The Shippers**

8. Certain of the Debtors contract with the Shippers to ship, transport, and deliver raw materials, parts, and components to the Debtors. The Debtors use certain raw materials, such as coal, activated carbon, urea, fuel oil, and bulk chemicals. Absent access to these raw materials, the Debtors cannot generate electricity and maintain compliance with environmental regulations. The Debtors' generating facilities employ sophisticated generating equipment to monitor the facilities, move supplies within the facilities, and produce energy, all of which requires replacement parts, supplies, calibration devices, and other critical goods to continue operating. An inability to acquire these parts from the Debtors' Shippers could result in a slow-down or shut-down of the Debtors' operations at various facilities.

9. Under certain state laws, a Shipper may have a lien on the goods in its possession, which secures the charges or expenses incurred in connection with the transportation or storage

of the goods.<sup>3</sup> In addition, pursuant to section 363(e) of the Bankruptcy Code, the Shippers, as bailees, may be entitled to adequate protection for any valid possessory lien. The Debtors expect that, as of the Petition Date, certain Shippers have outstanding invoices for goods delivered to the Debtors before the Petition Date or for goods currently in transit.

10. In light of these circumstances, the Shippers likely will argue that they have possessory liens for transportation or storage costs, and may refuse to deliver or release those goods in their possession until their invoices are paid and their liens redeemed. The Shippers may be unwilling to release the goods in their possession to which they may be entitled to liens, thereby releasing alleged security for prepetition claims. Moreover, a Shipper simply refusing to deliver the Debtors' goods and supplies would severely disrupt the Debtors' operations and may cause the Debtors to lose revenue and future business.

#### **B. The Third-Party Contractors**

11. The Debtors routinely transact business with a number of third-party contractors and vendors who can assert liens against the Debtors and their property (such as equipment) if the Debtors fail to pay for the goods delivered or services rendered. These Third-Party Contractors perform various services for the Debtors, including manufacturing and repair of equipment, and manufacturing component parts necessary for the Debtors' energy production equipment.

12. The Debtors' power plant staffing model places a great deal of importance on the services provided by these third party equipment maintenance providers. Unlike other energy

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<sup>3</sup> For example, section 7-307 of the Uniform Commercial Code provides, in pertinent part, that a "carrier has a lien on the goods covered by a bill of lading or on the proceeds thereof in its possession for charges after the date of the carrier's receipt of the goods for storage or transportation, including demurrage and terminal charges, and for expenses necessary for preservation of the goods incident to their transportation or reasonably incurred in their sale pursuant to law." U.C.C. § 7-307(a) (2003); see also 810 ILCS § 5/7-307(a) (2012) (same); CAL. COM. CODE § 7307(a) (2012) (same).

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 third parties on a regular or as-needed basis. For example, in the ordinary course of business, the Debtors frequently engage a third party servicer to perform essential repairs to the Debtors' energy production infrastructure, including emergency boiler repairs.

13. In addition, some of the manufacturers of the Debtors' equipment direct the Debtors to utilize certain services from particular vendors. An inability to acquire services from these manufacturer-directed vendors would render the Debtors unable to maintain their equipment or in breach of that manufacturer's contract (as a result of buying services from a non-approved vendor). For example, certain of the manufacturers of the Debtors' heavy equipment require that the Debtors use mechanics with necessary certifications to maintain and repair such heavy equipment. Failure to utilize such mechanics would result in the Debtors either breaching their leases or being unable to maintain their leased equipment; without use of such heavy equipment, the Debtors would simply be unable to maintain their power plants. For these reasons, replacing certain of these vendors would not only be especially difficult in the current market, but also could potentially disrupt or halt production at the Debtors' facilities.

14. Although the Debtors generally make timely payments to their vendors, as of the Petition Date, a substantial number of vendors may not have been paid for certain prepetition goods or services. As a result, many of the Third-Party Contractors may have a right to assert and perfect mechanics' or artisans' liens (collectively, the "Mechanics' Liens") against the Debtors' relevant facilities or the Debtors' goods, notwithstanding the automatic stay under section 362 of the Bankruptcy Code. In fact, pursuant to section 362(b)(3) of the Bankruptcy Code, the act of perfecting such Mechanics' Liens, to the extent consistent with section 546(b) of

the Bankruptcy Code, or to the extent the act is accomplished within the 30-day period set forth in section 547(e)(2)(A), is expressly excluded from the automatic stay.<sup>4</sup>

15. Many states afford certain tool makers and vendors who use specialized tooling liens on tooling manufactured for the Debtors and on the products manufactured (the “Statutory Liens”).<sup>5</sup> These Statutory Liens often allow such parties to retain possession of the tools or impair title to the tools by filing a security interest until the debtor satisfies the outstanding amounts owed. Arguably, any act to perfect these Statutory Liens is not subject to the automatic stay under section 362 of the Bankruptcy Code.

16. Unless they are paid for outstanding prepetition amounts, the Debtors believe Third-Party Contractors may refuse to perform their ongoing obligations under their existing agreements with the Debtors, including installation, servicing, and warranty obligations, or may refuse to release finished goods in their possession. Moreover, the value of the materials in the possession of the Third-Party Contractors generally exceeds the value of their respective prepetition claims.

17. In light of the foregoing, the Debtors seek authority but not direction to pay and discharge the claims of all Lien Claimants that have given or could give rise to a lien against the materials, goods, tooling, and facilities of the Debtors, regardless of whether such Lien Claimants have already perfected their interests. Notwithstanding the authority requested, the Debtors will not pay a Lien Claimant on account of any prepetition claims unless the Lien

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<sup>4</sup> Under section 546(b) of the Bankruptcy Code, a debtor’s lien avoidance powers “are subject to any generally applicable law that . . . permits perfection of an interest in property to be effective against an entity that acquires rights in such property before the date of perfection.” 11 U.S.C. § 546(b)(1)(A). Under section 547(e)(2)(A), a transfer for preference analysis purposes takes place “at the time such transfer takes effect between the transferor and the transferee, if such transfer is perfected at, or within 30 days after, such time.” 11 U.S.C. § 547(e)(2)(A).

<sup>5</sup> In Illinois, for example, tool and die shops that produce specialized tools and moldings have security interests in the finished or unfinished tools. See, e.g., 770 ILCS § 105/1.

Claimant has perfected or, in the Debtors' judgment, is or may be capable of perfecting one or more liens in respect of such claim irrespective of the automatic stay. Nor shall payment of a Lien Claimant's prepetition claim be deemed to be a waiver of rights regarding the extent, validity, perfection, or possible avoidance of such liens. The Debtors expect that they will pay only prepetition claims to the Lien Claimants when they believe, in their business judgment, the benefits to making such payments would exceed the costs, delays, and disruption associated with bringing an action to compel the turnover of such goods.

18. The Debtors' payments on account of the Lien Claimants' prepetition claims are not expected to exceed \$400,000 in the aggregate.

## **II. Proposed Treatment of Lien Claimants**

19. The Debtors seek to prevent the breakdown of their supply and maintenance network by requesting authority to pay certain prepetition claims relating to the Lien Claimants that the Debtors determine are necessary and appropriate to: (a) obtain release of critical or valuable goods, tooling, or equipment that may be subject to liens; (b) maintain a reliable, efficient and smooth distribution system; and (c) induce critical Lien Claimants to continue to provide goods, tooling, and equipment and make timely delivery. The Debtors propose to pay such claims when, in the Debtors' sole discretion, a creditor's exercise of such state law rights would unduly disrupt the Debtors' businesses.

20. Further, the Debtors propose conditioning payment of the claims of Lien Claimants upon such parties' agreement to continue supplying goods and services to the Debtors postpetition on 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 (the "Customary Trade Terms"). The

Debtors reserve the right to adjust normal trade terms with any such Lien Claimant according to the facts and circumstances.

21. The Debtors also request flexibility to deal with Lien Claimants who refuse or threaten to refuse performance of their obligations under valid and enforceable contracts absent payment of a claim arising before the Petition Date (collectively, the “Non-Conforming Lien Claimants”). The Debtors believe that such refusals on the part of Non-Conforming Lien Claimants would violate section 362 of the Bankruptcy Code.<sup>6</sup> Due to the Debtors’ sensitive supply needs, it is possible that a Lien Claimant may attempt to exert leverage against the Debtors by threatening (notwithstanding its existing legal obligations) either to retain goods belonging to the Debtors or to modify substantially the terms of existing contractual arrangements unless prepetition claims are paid.

22. To respond to such 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 waive the conditions set forth in this Motion for payment of a claim to a Lien Claimant (such action, the “Waiver”) and to conditionally pay the claim of such Non-Conforming Lien Claimant. In the event that the Debtors elect to grant a Waiver to a Non-Conforming Lien

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<sup>6</sup> The Bankruptcy Code prohibits non-debtor counterparties to executory contracts with debtors, such as the Lien Claimants, from ceasing performance or altering the terms of their obligations. See 11 U.S.C. § 362; NLRB v. Bildisco & Bildisco, 465 U.S. 513, 531 (1984) (holding contracts are enforceable against non-debtor, 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 non-debtor 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.”); In re Nat’l Steel Corp., 316 B.R. 287, 305 (Bankr. 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, non-debtor party is not free to ignore terms of contract and must continue to perform pursuant to those terms).

Claimant, the Debtors seek the authority to file with the Court a notice, in substantially the form attached hereto as **Exhibit C** (the “Notice of Waiver”), and a proposed Order to Show Cause, in substantially the form attached hereto as **Exhibit D** (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 Lien Claimant; (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’ 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.

23. At the first regularly-scheduled hearing occurring at least five (5) business days following entry of the Order to Show Cause, the Debtors propose that the Non-Conforming Lien Claimant 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 Lien Claimant has violated sections 362 and 365 of the Bankruptcy Code, the Debtors respectfully request that the Court require the Non-Conforming Lien Claimant 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 Lien Claimant 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.

24. Additionally, the Debtors propose to file an Order to Show Cause for any Lien Claimant who, despite receiving payment for its respective prepetition 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 Lien Claimants, the Debtors request that any such Lien Claimant be required to appear before the Court and demonstrate why such Lien Claimant 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.

### **Basis for Relief**

#### **I. Sections 363(b), 1107(a), and 1108 of the Bankruptcy Code Permit Paying the Prepetition Claims of Lien Claimants.**

25. 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).

26. 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., In re Kmart Corp., 359 F.3d 866, 872 (7th Cir. 2004) (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) (“[B]ankruptcy courts recognize that section 363 is a source of authority to pay critical trade vendor payments, and section 105 is used to fill in the gaps.”); 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).

27. In In re Kmart Corp., 359 F.3d at 872, 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.” 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.

28. 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 21 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.

29. 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.

30. Thus, following the Kmart decision, courts in the Seventh Circuit have authorized the payment (or other special treatment) of prepetition obligations to lien claimants in appropriate circumstances. Indeed, where debtors have shown that the payment of prepetition

lien claims is critical to the success of their chapter 11 cases, courts in this District and others have authorized payments to lien claimants under similar circumstances. See, e.g., In re XMH Corp. 1 (f/k/a Hartmarx Corp.), No. 09-02046 (BWB) (Bankr. N.D. Ill. Jan. 26, 2009) (order authorizing debtors to pay prepetition shipping claims, warehousing obligations, and import obligations in amount not to exceed \$22.1 million in the aggregate); In re Kimball Hill, Inc., No. 08-10095 (SPS) (Bankr. N.D. Ill. Apr. 25, 2008) (order authorizing debtors to pay prepetition lien claimant claims in amount not to exceed \$27.5 million in the aggregate); In re Select Snacks, Inc., No. 07-18769 (PSH) (Bankr. N.D. Ill. Oct. 18, 2007) (order authorizing debtors to pay prepetition lien claims, shipping charges, and warehousing obligations in amount not to exceed \$1.1 million in the aggregate); In re Arlington Hospitality, Inc., No. 05-34885 (Bankr. N.D. Ill. Sept. 2, 2005) (order authorizing payment of prepetition lienholder claims); In re Jernberg Indus. Corp., No. 05-25909 (Bankr. N.D. Ill. July 21, 2005) (same); see also In re Old Carco LLC (f/k/a Chrysler LLC), No. 09-50002 (AJG) (Bankr. S.D.N.Y. May 6, 2009) (order authorizing debtors to pay \$227 million in prepetition claims of lienholders); In re Aleris Int'l, Inc., No. 09-10478 (BLS) (Bankr. D. Del. Mar. 13, 2009) (order authorizing the debtors to pay \$11.3 million in prepetition claims of possessory lienholders, common carrier fees, and administrative fees); In re Pliant Corp., No. 09-10443 (MFW) (Bankr. D. Del. Feb. 12, 2009) (order authorizing the debtors to pay \$4.7 million in prepetition claims of shipping vendors and warehousemen and \$2.4 million in prepetition claims of third-party lien claimants).<sup>7</sup> In authorizing such payments, those courts generally rely on one of several legal theories rooted in sections 1107(a), 1108, 363(b), and 105(a) of the Bankruptcy Code. Here, the Court should follow the precedent in this district and authorize the Debtors to pay the prepetition claims of Lien Claimants.

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<sup>7</sup> 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.

31. Failure to pay the prepetition claims of Lien Claimants—or at least some portion of them—will jeopardize the Debtors’ production ability and reliability. If the Lien Claimants are unwilling to provide the Debtors with goods or services postpetition because of their outstanding prepetition claims, the Debtors’ operations would suffer, compromising the value of the Debtors’ estates to the detriment of all parties in interest. A lack of raw materials would grind the Debtors’ electricity-generating activities to a halt. And a lack of key supplies and components to maintain the Debtors’ key operating machinery would similarly force an interruption in operations. To avoid these disastrous consequences, the Debtors request authority to exercise their business judgment and pay Lien Claimants in their discretion.

**II. Payment of the Prepetition Claims of Lien Claimants Merely Alters the Timing of Such Payments.**

32. To the extent any Lien Claimants have perfected liens in the Debtors’ or their customers’ property, their claims are secured and, prior to obtaining confirmation of a chapter 11 plan, the Debtors are required to pay such claims in cash or allow the claimants to retain the liens securing such property. See 11 U.S.C. § 1129(b)(2)(A). 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’ other creditors. Instead, the Debtors merely seek to alter the timing of undisputed payments that Lien Claimants already are entitled to receive as a matter of statute. Rather than satisfying Lien Claimant 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 these claims, in the ordinary course of business, while such payments can still induce the individual Lien Claimant to adhere to favorable trade terms and do business with the Debtors on a going-forward basis.

**The Requirements of Bankruptcy Rule 6003(b) Are Satisfied**

33. 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 Lien Claimants’ prepetition claims within 21 days would plainly result in immediate and irreparable harm, both to the Debtors and to their stakeholders.

34. As discussed above, the ability to pay the Lien Claimants 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. The harm that would result from nonpayment of the Lien Claimants is undoubtedly immediate and irreparable, as the Debtors need goods and services to ensure the continuity and flow of operations. The Court, therefore, should permit the Debtors to pay the Lien Claimants’ prepetition claims.

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

35. 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**

36. 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**

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

*[Remainder of page intentionally left blank.]*

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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David R. Seligman, P.C.  
Sarah Hiltz Seewer  
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and Debtors in Possession  
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 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 LIEN  
CLAIMANTS 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 certain prepetition claims of lien claimants, and approving and authorizing procedures to address any lien claimants 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 pay in the ordinary course of business prepetition claims of Lien Claimants without further Court order; provided that with respect to each Lien Claimant’s prepetition claim, the Debtors are not authorized to pay a Lien Claimant’s prepetition claim unless the Lien Claimant has perfected or, in the Debtors’ judgment, is capable of perfecting or may be capable of perfecting in the future, one or more liens in respect of such claim; provided, further, that such payment shall not be deemed to be a waiver of rights regarding the extent, validity, perfection, or possible avoidance of the related liens.
4. The Debtors’ payment of prepetition claims owed to Lien Claimants shall not exceed, in the aggregate, \$300,000 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.

5. The Debtors will condition payment of the claims of Lien Claimants upon their agreement to continue supplying goods and services to the Debtors postpetition on 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 (the “Customary Trade Terms”); provided that the Debtors reserve the right to adjust normal trade terms with any such Lien Claimant according to the facts and circumstances.

6. 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 Lien Claimant (the “Non-Conforming Lien Claimants”), including any Lien Claimant who, despite receiving payment for its respective Lien Claimant 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 Lien Claimant; (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 Lien Claimant is required to appear before the Court and should the Court determine that the Non-Conforming Lien Claimant has violated sections 362 and 365 of the Bankruptcy Code, the Court will require the Non-Conforming Lien Claimant 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 Lien Claimant in violation.

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

8. If a Lien Claimant 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 D, setting forth the Debtors’ belief that the Lien Claimant is in violation of the Bankruptcy Code through its failure to perform under a prepetition agreement, identifying the name of the Lien Claimant, and the identity of the agreement in question, and seeking entry of such Order to Show Cause, which shall require the Lien Claimant 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 Lien Claimant pursuant to this Order, plus attorneys’ fees and costs.

9. Nothing herein shall prejudice the Debtors’ rights to request authority to make additional payments to Lien Claimants.

10. 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.

11. 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.

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

13. 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.

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

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

16. 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.

17. 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.

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

19. 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:**

James H.M. Sprayregen, P.C.

David R. Seligman, P.C.

Sarah Hiltz Seewer

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Proposed Counsel to the Debtors  
and Debtors in Possession  
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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 LIEN  
CLAIMANTS 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 a final order (this “Order”) authorizing but not directing the Debtors to pay certain prepetition claims of lien claimants, and approving and authorizing procedures to address any lien claimants that repudiate or otherwise refuse to honor contractual obligations to the Debtors all as more fully set forth in the Motion, 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 pay in the ordinary course of business prepetition claims of Lien Claimants without further Court order; provided that with respect to each Lien Claimant’s prepetition claim, the Debtors are not authorized to pay a Lien Claimant’s prepetition claim unless the Lien Claimant has perfected or, in the Debtors’ judgment, is capable of perfecting or may be capable of perfecting in the future, one or more liens in respect of such claim; provided, further, that such payment shall not be deemed to be a waiver of rights regarding the extent, validity, perfection or possible avoidance of the related liens.
  
3. The Debtors’ payment of prepetition claims owed to Lien Claimants shall not exceed, in the aggregate, \$400,000 unless otherwise ordered by the Court.
  
4. The Debtors will condition payment of the claims of Lien Claimants upon their agreement to continue supplying goods and services to the Debtors postpetition on 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 (the “Customary Trade Terms”); provided that the Debtors reserve the right to adjust normal trade terms with any such Lien Claimant according to the facts and circumstances.

5. 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 Lien Claimant (the “Non-Conforming Lien Claimants”), including any Lien Claimant who, despite receiving payment for its respective Lien Claimant 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 Lien Claimant; (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 Lien Claimant is required to appear before the Court and should the Court determine that the Non-Conforming Lien Claimant has violated sections 362 and 365 of the Bankruptcy Code, the Court will require the Non-Conforming Lien Claimant 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 Lien Claimant in violation.

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

7. If a Lien Claimant 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 D, setting forth the Debtors’ belief that the Lien Claimant is in violation of the Bankruptcy Code through its failure to perform under a prepetition agreement, identifying the name of the Lien Claimant, and the identity of the agreement in question and seeking entry of such Order to Show Cause, which shall require the Lien Claimant 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 Lien Claimant pursuant to this Order, plus attorneys’ fees and costs.

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

11. 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.

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

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

14. 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.

15. 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.

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

17. 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:**

James H.M. Sprayregen, P.C.

David R. Seligman, P.C.

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- and -

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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 Notice of Waiver**

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

	)	
In re:	)	Chapter 11
	)	
EDISON MISSION ENERGY, <i>et al.</i> , <sup>1</sup>	)	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 Lien Claimants and to Authorize Procedures Related Thereto* (the “Motion”).<sup>2</sup>

**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 conditions for payment of a prepetition claim (as defined in the Motion) with respect to

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<sup>1</sup> 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.

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

[\_\_\_\_\_] (“Non-Conforming Lien Claimant”) and conditionally paid prepetition claims of Non-Conforming Lien Claimant 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 Lien Claimant 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 Lien Claimant 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  
and Debtors in Possession  
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 D**

**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> , <sup>1</sup>	)	Case No. 12-[_____] (____)
	)	
Debtors.	)	(Joint Administration Requested)
	)	

**ORDER TO SHOW CAUSE**

Upon the motion (the “Motion”)<sup>2</sup> of the above-captioned debtors (collectively, the “Debtors”) for the entry of an order (the “Order”): (a) authorizing payment in the ordinary course of the Debtors’ businesses and in the Debtors’ sole discretion of Lien Claimants; and (b) approving a procedure to address those Lien Claimants who repudiate and refuse to honor their postpetition contractual obligations to the Debtors [Docket No. \_\_\_\_]; and upon the Debtors’ notice of waiver, dated [\_\_\_\_\_] , 2012, with respect to [\_\_\_\_\_] (“Claimant”); 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 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

---

<sup>1</sup> 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.

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

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 Claimant and conditionally paying prepetition claims of Claimant in the amount of \$[\_\_\_\_\_] on [\_\_\_\_\_] , 2012.

2. Claimant 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 Claimant 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 Claimant and (b) required to return any payment made by the Debtors to Claimant 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) Claimant; (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