

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 Authorize Performance of Obligations Under Forbearance Agreement Relating to the PoJo Facilities* (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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and Debtors in Possession*

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)
	)	

**DEBTORS’ MOTION TO AUTHORIZE PERFORMANCE OF OBLIGATIONS UNDER FORBEARANCE AGREEMENT RELATING TO THE POJO FACILITIES**

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, Edison Mission Energy (“EME”) and Midwest Generation, LLC (“MWG,” and, together with EME, the “PoJo Debtors”) request entry of an order, substantially in the form attached hereto as **Exhibit A**, authorizing EME and MWG to perform under the forbearance agreement dated as of December 16, 2012 (the “Forbearance Agreement,” a copy of which is attached hereto as **Exhibit B**), with respect to obligations related to MWG’s Powerton and Joliet Generating Stations in Illinois (the “PoJo Facilities”), and granting related relief.

<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); Aguila Energy Company (3425); 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); Pleasant Valley Energy Company (3233); 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> 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 Pleadings* (the “First Day Declaration”), filed contemporaneously herewith.

**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 363 and 365 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”).

**Background**

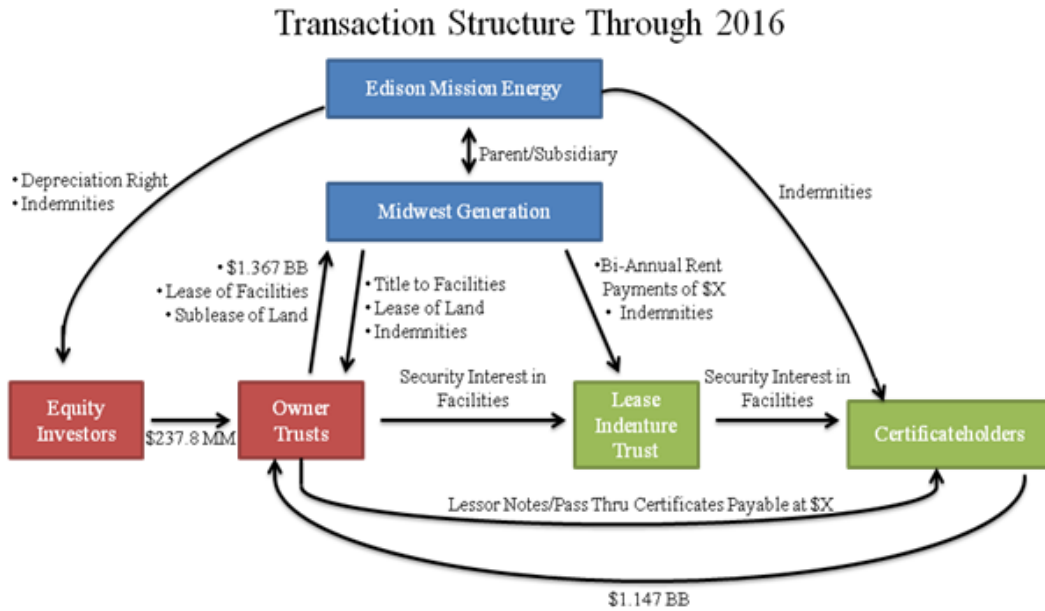
5. EME, together with its Debtor and non-Debtor affiliates, is a leading independent power producing enterprise specializing in developing, operating, and selling energy and capacity from over 40 generating facilities in 12 states and the Republic of Turkey. The Debtors have approximately 950 employees 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.

## The PoJo Facilities

### I. Sale-Leaseback Transaction Overview<sup>3</sup>

7. In 1999, MWG acquired the PoJo Facilities—two coal-fired electric power generating plants in Illinois. In 2000, the Debtors sought to raise capital from their equity in the PoJo Facilities. To achieve this, the Debtors entered into a traditional sale-leaseback transaction (the “Transaction”) illustrated below.



8. Pursuant to the Transaction, MWG raised approximately \$1.367 billion, including \$237 million from two equity investors (the “Equity Investors”),<sup>4</sup> and an additional \$1.147 billion from a second group of numerous, largely unaffiliated investors (collectively, the “Certificate Holders”). The Debtors, the Equity Investors, and the Certificate Holders interact

<sup>3</sup> The Debtors’ description of the PoJo sale-leaseback arrangement is for discussion purposes only, and the Debtors’ rights with respect to the proper characterization of the transaction is reserved in all respects. All capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in Appendix A to each Participation Agreement, dated as of August 17, 2000, among EME, MWG, and the other parties thereto (collectively, the “Participation Agreement”).

<sup>4</sup> The Equity Investors include Nesbit Asset Recovery LLC, as successor in interest to PSEGR Midwest, L.L.C., and Associates Capital Investments, L.L.C.

through a series of trusts and special purpose entities. Primary among those vehicles are four trusts (the “Owner Trusts,” which are also the “Owner Lessors”), which hold title to the PoJo Facilities for the benefit of the Equity Investors.<sup>5</sup> Each Owner Trust borrowed a portion of the purchase proceeds through financing governed by lease indentures (the “Lease Indentures”), which are overseen by indenture trustees (“Lease Indenture Trustees”) for the ultimate benefit of the Certificate Holders.

9. To implement the Transaction, and in exchange for \$1.367 billion, MWG transferred title to the PoJo Facilities, but not the underlying land on which the PoJo Facilities sit, to the Owner Trusts, for the benefit of the Equity Investors. MWG also leased the underlying land to the Owner Trusts. The Owner Trusts, as Owner Lessors, simultaneously leased the PoJo Facilities (and subleased the underlying land) back to MWG for 30 to 33.75 years, depending on the facility, under facility and land subleases (collectively, the “Leases”).

10. The Owner Trusts, in turn, issued notes that were secured by the PoJo Facilities pursuant to the Lease Indentures, with terms ranging from nine to sixteen years (the “Notes”). Pass through certificates were then issued to the Certificate Holders through several pass through trusts on terms that generally mirrored the Notes.<sup>6</sup>

11. The security interests of the Certificate Holders in the PoJo Facilities are

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<sup>5</sup> The Equity Investors also anticipated realizing certain tax benefits through the Transaction, including being able to depreciate the PoJo Facilities for tax purposes. EME entered certain confidential tax indemnity agreements with the Equity Investors, under which the Equity Investors may contend that EME, subject to various exclusions and exceptions, agreed to indemnify the Equity Investors for certain specified actions or breaches of certain specified representations set forth in the tax indemnity agreements.

<sup>6</sup> Both the Equity Investors and Certificate Holders also act through four different sets of subsidiaries and trusts, each memorialized by identical transactional documents. The Equity Investors created special purpose limited liability entities to hold each of the four Owner Trusts. The Certificate Holders created pass-through trusts to hold the Notes and to receive payments from the Indenture Trustee, and the Certificate Holders hold certificates in those pass through trusts. For the sake of simplicity, and because they are not material to the relief presently sought, this Motion ignores the various trusts, agreements, and entities and instead refers to the Certificate Holders, the Equity Investors, the Owner Trusts, and the Indenture Trustee.

governed by the Lease Indentures. The Lease Indentures give the Certificate Holders a number of remedies, subject to the Equity Investors' right to cure, following certain events of default (each, a "Lease Indenture Event of Default" and, collectively, "Lease Indenture Events of Default"). Among the Lease Indenture Events of Default is a bankruptcy filing by EME and MWG.

12. MWG makes payments under the Leases directly to the Lease Indenture Trustees. EME guarantees MWG's performance under the Facility Leases to the Owner Trusts and MWG's performance under any of the Operative Documents (as defined in the Participation Agreement) to the Owner Trusts and the Equity Investors. Pursuant to an agreed-upon payment schedule, the Lease Indenture Trustees transfer portions of such payments to the Certificate Holders (to service the Notes), and to the Equity Investors. The current outstanding principal balance under the Notes is approximately \$345 million. The next payment under the Leases is scheduled to be made on January 2, 2013, in the amount of approximately \$76 million to cover the preceding six-month period.

## **II. MWG's Chapter 11 Filing**

13. As explained in the First Day Declaration, the chapter 11 filings of EME and MWG have been precipitated by two disparate yet intertwined sources. First, state and federal regulatory regimes imposed rigorous emissions requirements on coal, requiring the Debtors to make significant capital expenditures on existing coal plants. Second, a confluence of economic and technological drivers has encouraged rampant natural gas production, resulting in a glut of relatively inexpensive natural gas and has caused wholesale electricity prices (and EME's resultant revenues) to plummet. These two factors, and the filing of these chapter 11 cases, necessitate the Debtors' review and consideration of all options related to the PoJo Facilities.

**The Forbearance Agreement**

14. In considering their restructuring alternatives, the Debtors were concerned that the Certificate Holders would allege that the Debtors’ chapter 11 filing constitutes a Lease Indenture Event of Default giving rise to the right to accelerate the Notes. Acceleration can lead to foreclosure proceedings against the Owner Trusts, which could potentially cause irreparable harm to the Debtors’ estates and potentially give rise to claims against the Debtors’ estates. Given this potential risk and corresponding litigation, in October 2012, MWG engaged counsel to an informal committee of Certificate Holders representing a majority of the outstanding Certificates and began providing due diligence materials and discussing EME’s overall restructuring efforts. In the weeks leading up to the filing of these chapter 11 cases, and to preserve the status quo at the PoJo Facilities pending further analysis and an opportunity to engage in meaningful discussions about potential restructuring options, EME, MWG, the Certificate Holders, the Equity Investors, and the Owner Trusts engaged in discussions regarding a short-term forbearance agreement with respect to the filing of these chapter 11 cases. As a consequence of these arm’s-length negotiations, the parties entered into the Forbearance Agreement.

15. The key terms of the Forbearance Agreement are as follows:<sup>7</sup>

Provision	Text of Provision
<b>Effective Date</b>  Forbearance Agreement, § 4.	The Forbearance Agreement becomes effective immediately upon its execution and delivery by each of the PoJo Debtors, the Owner Lessors, and Signing Certificate Holders holding not less than a majority of the outstanding Lease Debt.

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<sup>7</sup> This summary is qualified in its entirety by reference to the Forbearance Agreement, which shall control in the event of any conflict between it and this summary. All capitalized terms used in this summary and not otherwise defined shall have the meanings ascribed to them in the Forbearance Agreement.



<p><b>Certificate Holders' Forbearance</b></p> <p>Forbearance Agreement, § 1(a).</p>	<p>The Certificate Holders executing the Forbearance Agreement (the "<u>Signing Certificate Holders</u>") agree, for a period of up to 60 days from the Petition Date (such period, the "<u>Forbearance Period</u>"), not to exercise any rights or remedies in their individual capacity, or to direct the Lease Indenture Trustee to exercise any rights or remedies against EME, MWG, or the Owner Lessors, on account of:</p> <ul style="list-style-type: none"> <li>a. the commencement or continuation of the PoJo Debtors' chapter 11 cases;</li> <li>b. any default in the payment of principal or interest or any other amounts owing on the Notes;</li> <li>c. any default in the payment of rent or any other amounts owing under any of the Leases;</li> <li>d. any default in the payment of amounts owing under the Operative Documents (as defined in the Participation Agreement) (except to the extent such payment is expressly required pursuant the Forbearance Agreement);</li> <li>e. non-payment or acceleration of any indebtedness of the PoJo Debtors and their subsidiaries (whether or not resulting from the PoJo Debtors' commencing chapter 11 cases or items (a) through (d) above), and any cross-default or cross-acceleration events resulting therefrom;</li> <li>f. any failure of the PoJo Debtors or their subsidiaries to comply with any financial covenants (including any cross-default or cross-acceleration events resulting therefrom); and</li> <li>g. any other event of default under the Leases or the Lease Indentures related to the commencement of the PoJo Debtors' chapter 11 cases (such defaults described in (a) through (f) above, collectively, the "<u>Defaults</u>").</li> </ul>
<p><b>Owner Lessors' Forbearance</b></p> <p>Forbearance Agreement, § 1(b).</p>	<p>The Owner Lessors agree, for a period of 60 days, not to exercise any rights or remedies in their individual capacity, or to direct the Lease Indenture Trustee to exercise any rights or remedies against EME, MWG, any Lease Indenture Trustee, any Signing Certificate Holders, or any other holder of Lease debt on account of:</p> <ul style="list-style-type: none"> <li>a. the commencement or continuation of the PoJo Debtors'</li> </ul>

	<p>chapter 11 cases;</p> <ul style="list-style-type: none"> <li>b. any default in the payment of principal or interest or any other amounts owing on the Notes;</li> <li>c. any default in the payment of rent or any other amounts owing under any of the Leases;</li> <li>d. any default in the payment of amounts owing under the sale-leaseback operative documents (the “<u>Operative Documents</u>”) (except to the extent such payment is expressly required pursuant the Forbearance Agreement);</li> <li>e. non-payment or acceleration of any indebtedness of the PoJo Debtors and their subsidiaries (whether or not resulting from the Debtors’ commencing chapter 11 cases or items (a) through (d) above), and any cross-default or cross-acceleration events resulting therefrom;</li> <li>f. any failure of the PoJo Debtors or their subsidiaries to comply with any financial covenants (including any cross-default or cross-acceleration events resulting therefrom); and any other event of default under the Leases or the Lease Indentures related to the commencement of the PoJo Debtors’ chapter 11 cases (such defaults described in (a) through (f) above, collectively, the “<u>Defaults</u>”).</li> </ul>
<p><b>Parties’ Agreements with respect to Certain Rights under the Bankruptcy Code</b></p> <p>Forbearance Agreement, § 1(c).</p>	<p>The parties agree to forbear from taking (directly or indirectly), and (to the extent applicable) from directing the Lease Indenture Trustee to take, any action in either of the PoJo Debtors’ chapter 11 cases or other legal proceeding with respect to:</p> <ul style="list-style-type: none"> <li>a. the applicability of any Bankruptcy Code provision (including, without limitation, sections 365(d) and 502(b)(6) of the Bankruptcy Code) to any of the Operative Documents;</li> <li>b. the characterization of any of the Operative Documents as a true lease, a financing lease, a secured financing, or any other characterization;</li> <li>c. the characterization of the PoJo Facilities as real property or personal property;</li> <li>d. the characterization of any payments or allocations of</li> </ul>

	<p>payments under any of the Operative Documents;</p> <p>e. the relative rights of the Lease Indenture Trustees and the Owner Lessors with respect to amounts owing under any of the Operative Documents;</p> <p>f. the validity and enforceability (and, where applicable, perfection and priority) of any of the Operative Documents, the liens and security interests granted, and assignments of rights effected, pursuant to the Operative Documents and related documents, and obligations arising under the Operative Documents; or</p> <p>g. the value of the PoJo Facilities or any related rights or assets.</p>
<p><b>PoJo Debtors' Covenants</b></p> <p>Forbearance Agreement, §§ 2(a)-(e).</p>	<p>The PoJo Debtors agree to the following covenants and milestones during these chapter 11 cases, and to make certain payments to the Certificate Holders:</p> <p>a. to pay the Lease Indenture Trustees, on the day that is 60 days after the Petition Date, the ratable portion of the rent due under the Leases attributable to the period between the Petition Date and January 2, 2013 (the "<u>Initial Payment</u>");</p> <p>b. that the Notes will accrue interest at the default interest rate starting on the Petition Date; <u>provided, however</u>, that in the event the PoJo Debtors assume and cure all defaults required to be cured pursuant to section 365(b) of the Bankruptcy Code during the Forbearance Period, the Overdue Rate (as defined in the Participation Agreement) will only apply to the period before such assumption and cure;</p> <p>c. that the 180-day period described under section 4.4 of the Lease Indentures related to the Lease Indenture Trustees being stayed from exercising remedies under the Lease Indentures is deemed to commence on the Petition Date;</p> <p>d. to work diligently and in good faith, and to meet with the Owner Lessors and Signing Certificate Holders on or before the 25th day after the Petition Date to discuss the treatment of the Operative Documents and the PoJo Debtors' restructuring strategy; and</p> <p>e. to pay certain professional fees incurred by the Signing</p>

	Certificate Holders.
<p><b>Termination</b> Forbearance Agreement, §§ 3(a)-(b).</p>	<p>The Forbearance Agreement terminates (a) 60 days after the entry of an order approving the PoJo Debtors' entry into the Forbearance Agreement, or (b) following five business days written notice, if the Signing Certificate Holders terminate the Forbearance Agreement in accordance with its terms. The Forbearance Agreement may be terminated:</p> <ul style="list-style-type: none"> <li>a. by Signing Certificate Holders holding a majority of the Certificates after five business days written notice, if an order from the Court authorizing the PoJo Debtors to perform under the Forbearance Agreement (i) has not been entered within 15 days after the Petition Date, (ii) as entered is not in form and substance acceptable to the Signing Certificate Holders, or (iii) has been reversed, vacated, overturned, or amended or modified in any material respect without the prior written consent of the Signing Certificate Holders;</li> <li>b. by Signing Certificate Holders holding a majority of the Certificates after five business days written notice, if the PoJo Debtors or any Owner Lessors fail to perform of any of their obligations or covenants under the Forbearance Agreement; and</li> <li>c. by the PoJo Debtors, if after five business days notice from the Debtors, the aggregate principal amount of Note obligations held by the Signing Certificate Holders is, at any point, less than 60 percent of the aggregate principal amount of Note obligations then outstanding.</li> </ul>
<p><b>Further Assurances</b> Forbearance Agreement, § 5.</p>	<p>The PoJo Debtors and the Owner Lessors agree that, during the Forbearance Period, they shall, promptly upon the reasonable request of the Signing Certificate Holders, at the PoJo Debtors' or Owner Lessors (as applicable) cost and expense, take all commercially reasonable actions to ensure that the security interests in the PoJo Facilities are protected or perfected, including by filing or the executing documents required for the perfection of such interests in the PoJo Facilities.</p>

16. As described above, EME and MWG's bankruptcy filing could trigger a series of events that could have adverse consequences on the Debtors' restructuring efforts. The Forbearance Agreement averts these potentially detrimental events and gives the Debtors time to

commence a more detailed review and analysis of restructuring options related to the PoJo Facilities. Moreover, the Forbearance Agreement provides the Debtors, Certificate Holders, and other stakeholders with an opportunity to start engaging in discussions regarding a global resolution of their issues.

### **Basis for Relief**

#### **I. Section 363(b) of the Bankruptcy Code Authorizes the Debtors to Enter Into and Perform Obligations Under the Forbearance Agreement.**

17. Section 363(b) of the Bankruptcy Code authorizes a bankruptcy court, after notice and a hearing, to authorize a debtor to “use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1).

18. A debtor may use, sell, or lease property of the estate where a sound business purpose justifies such actions. Fulton State Bank v. Schipper (In re Schipper), 933 F.2d 513, 515 (7th Cir. 1991) (noting that the criteria for approval of a transaction under section 363(b) is whether the debtor has “an articulated business justification”); see also Contrarian Funds LLC v. Aretex LLC (In re WestPoint Stevens, Inc.), 600 F.3d 231, 248 n.8 (2d Cir. 2010); Comm. of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.), 722 F.2d 1063, 1070 (2d Cir. 1983); In re Borders Grp., Inc., 453 B.R. 459, 473 (Bankr. S.D.N.Y. 2011). Specifically, once a debtor articulates a valid business justification for a particular form of relief, the court reviews the debtor’s request under the business judgment rule. See In re Commercial Mortg. and Fin. Co., 414 B.R. 389, 394 (Bankr. N.D. Ill. 2009) (noting that a debtor in possession “has the discretionary authority to exercise his business judgment in operating the debtor’s business similar to the discretionary authority to exercise business judgment given to an officer or director of a corporation”).

**II. The Debtors' Determination to Perform Under the Forbearance Agreement Is a Sound Exercise of Business Judgment.**

19. The business judgment rule is a presumption that, in making a business decision, the directors of a corporation acted on an informed basis, in good faith, and in the honest belief that the action taken was in the best interests of the company. See In re Abbott Labs. Derivative S'holders Litig., 325 F.3d 795, 807 (7th Cir. 2003). There is a presumption that “in making a business decision the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action taken was in the best interests of the company.” In re Integrated Res., Inc., 147 B.R. 650, 656 (S.D.N.Y. 1992) appeal dismissed, 3 F.3d 49 (2d Cir. 1993) (quoting Smith v. Van Gorkom, 488 A.2d 858, 872 (Del. 1985)). Consequently, a debtor's business decision “should be approved by the court unless it is shown to be ‘so manifestly unreasonable that it could not be based upon sound business judgment, but only on bad faith, whim, or caprice.’” In re Aerovox, Inc., 269 B.R. 74, 80 (Bankr. D. Mass. 2001) (quoting In re Logical Software, Inc., 66 B.R. 683, 686 (Bankr. D. Mass. 1986) (citations omitted)).

20. At this early stage in these chapter 11 cases and the Debtors' restructuring more generally, it is important to preserve optionality and maintain the opportunity to review and consider all alternatives in due course. The possibility of default under the Lease Indentures, however, could impair the Debtors' ability to maintain flexibility to consider all potential options associated with the PoJo Facilities.

21. By entering into the Forbearance Agreement and preserving the status quo at the PoJo Facilities, the Debtors are able to avert potentially costly and time-consuming litigation that would have been necessary to avoid the repercussions of an acceleration. Avoiding the cost and distraction inherent in such a dispute at this critical juncture for the Debtors' estates, while at the

same time providing an opportunity for a review and dialogue regarding the PoJo Facilities, ensures value preservation for the benefit of all parties in interest.

22. Courts routinely authorize debtors to enter into and perform under forbearance agreements. See, e.g., In re Delta Petroleum Corp., No. 11-14006 (KJC) (Bankr. D. Del. July 5, 2012) (authorizing debtor to enter into forbearance agreement pursuant to section 363(b) of the Bankruptcy Code); In re Tronox Inc., No. 09-10156 (ALG) (Bankr. S.D.N.Y. Sept. 23, 2010) (authorizing debtor to enter into forbearance agreement related to defaults under replacement debtor-in-possession financing related to debtor's failure to meet reorganization milestones and have plan support agreement in place); In re Buffets Holdings, Inc., No. 08-10141 (MFW) (Bankr. D. Del. Oct. 14, 2008) (authorizing debtor to enter into forbearance agreement related to defaults under debtor-in-possession financing related to debtor's failure to meet EBITDA-related covenants); see also, In re CHL, Ltd., No. 12-12437 (KJC) (Bankr. D. Del. Sept. 24, 2012) (authorizing assumption under section 365 of the Bankruptcy Code of a support agreement outlining the terms and conditions of certain creditors' cooperation and support of the chapter 11 case and plan); In re Stellar GT TIC LLC, No. 11-22977 (PM) (Bankr. D. Md. June 22, 2011) (authorizing assumption under section 365 of the Bankruptcy Code of a support agreement under which certain creditors agreed to forbear from taking legal action against the debtors during the chapter 11 cases); In re Apex Silver Mines Ltd., No. 09-10182 (JMP) (Bankr. S.D.N.Y. Jan. 12, 2009) (authorizing assumption under section 365 of the Bankruptcy Code of a support agreement providing for the creditors' cooperation and support in the chapter 11 case, forbearance of legal action, and waiver or release of certain claims); In re MES Int'l, Inc., No. 09-14109 (PJW) (Bankr. D. Del. Dec. 18, 2009) (authorizing assumption under section 365 of the Bankruptcy Code of an agreement providing for creditors' support of the chapter 11 plan and forbearance of

legal action).<sup>8</sup>

23. For the reasons set forth above, the Debtors' performance under the Forbearance Agreement represents a sound exercise of the Debtors' business judgment and should be approved.

**III. The Debtors Satisfy the Requirements of Section 365(d) of the Bankruptcy Code or Other Applicable Law and the Time to Perform Under the Lease Should Be Extended Until 60 Days After the Petition Date.**

24. Section 365(d)(3) of the Bankruptcy Code authorizes the Court, for cause, to extend the time for performance under an unexpired lease of nonresidential real property for a period not to exceed 60 days after the Petition Date. See 11 U.S.C. § 365(d)(3). Similarly, section 365(d)(5) of the Bankruptcy Code authorizes the Court, after notice and hearing, and based on the equities of the case, to modify the time for performance under an unexpired lease of personal property, subject to certain exceptions not implicated by these chapter 11 cases. See 11 U.S.C. § 365(d)(5).

25. Mindful of section 365(d) of the Bankruptcy Code, the Forbearance Agreement includes the Certificate Holders' consent to defer payments under the Lease until the Termination Date. Specifically, the Certificate Holders consent to the MWG's deferral of any payments due on January 2, 2013 under the Lease for 60 days after the Petition Date (i.e., February 15, 2013). For their part, the Debtors agree that they will pay the Initial Payment (i.e., the portion of the January 2, 2013 lease payment that relates to post-petition periods) on February 15, 2013), with all other parties' rights (including the characterization of the Initial Payment) preserved.

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



26. The Debtors submit that the requirements under section 365(d), to the extent it applies,<sup>9</sup> for extending the time for the payment of rent under the Lease have been satisfied by mutual agreement of MWG and the Certificate Holders. Accordingly, the Court should authorize the Debtors to postpone their obligation to pay rent under the Lease through February 15, 2013 (i.e., 60 days after the Petition Date).<sup>10</sup>

**The Requirements of Bankruptcy Rule 6003 Are Satisfied**

27. Bankruptcy Rule 6003 empowers a court to grant relief within the first 21 days after the Petition Date “to the extent that relief is necessary to avoid immediate and irreparable harm.” Immediate and irreparable harm exists where the absence of relief would impair a debtor’s ability to reorganize or threaten the debtor’s future as a going concern. See In re Ames Dep’t Stores, Inc., 115 B.R. 34, 36 n.2 (Bankr. S.D.N.Y. 1990) (discussing the elements of “immediate and irreparable harm” in relation to Bankruptcy Rule 4001); In re Old Prairie Block Owner, LLC, 448 B.R. 482, 485 (Bankr. N.D. Ill. 2011) (discussing “immediate and irreparable” harm in relation to Bankruptcy Rule 4001).

28. For the reasons discussed above, the Forbearance Agreement is integral to the Debtors’ restructuring efforts and its effectiveness is critical at this stage of these chapter 11 cases. Failure to perform obligations under the Forbearance Agreement during the first 21 days of these chapter 11 cases could result in an acceleration of obligations under the Notes pursuant to the Lease Indentures, which could impact the viability of certain strategies and options related

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<sup>9</sup> For the avoidance of doubt, the parties to the Forbearance Agreement expressly reserve, and do not waive, their rights with respect to the applicability of section 365(d) of the Bankruptcy Code to the payment of rent under the Leases.

<sup>10</sup> As previously noted, the Debtors specifically preserve, and do not waive, their rights with respect to characterization of the Transaction, notwithstanding the request for relief under section 365 of the Bankruptcy Code.

to the PoJo Facilities. Accordingly, the Debtors submit that they have satisfied the “immediate and irreparable harm” standard of Bankruptcy Rule 6003 to support granting the Debtors the authority to enter into and perform obligations under the Forbearance Agreement.

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

29. 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**

30. 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 of the lessor notes related to the Debtors’ Powerton and Joliet leases 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 generating station in Pekin, Illinois, and units 7 and 8 of the Debtors’ Joliet, Illinois, generating station; (g) the state attorneys general for states in which the Debtors conduct business; (h) United States Attorney for the Northern District of Illinois; (i) the Internal Revenue Service; (j) the Securities and Exchange Commission; and (k) 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**

31. 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 an order, substantially in the form attached hereto as **Exhibit A**, 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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and Debtors in Possession*

**EXHIBIT A**

**Proposed 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) )

**ORDER AUTHORIZING BUT NOT DIRECTING  
THE DEBTORS' TO PERFORM OBLIGATIONS UNDER  
FORBEARANCE AGREEMENT RELATING TO THE POJO FACILITIES**

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 perform obligations under the Forbearance Agreement, 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 as set forth herein. Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion.
2. The Forbearance Agreement is hereby approved to the extent provided herein and the Debtors are authorized to perform any and all obligations under the Forbearance Agreement.
3. The time for the Debtors to satisfy obligations on account of rent payments under the Lease shall be extended to February 15, 2013 (i.e., the date that is 60 days from the Petition Date); provided, however, that to the extent Signing Certificate Holders holding at least a majority of the Certificates, in value, deliver written notice that a termination event has occurred in accordance with the Forbearance Agreement, such 60-day extension shall be revoked without further action by or order from the Court.
4. It is hereby ordered that solely during the Forbearance Period, notwithstanding that the Notes have not been accelerated, the Notes shall be deemed to accrue, from the Petition Date, interest for all purposes under the Operative Documents at the Overdue Rate, calculated based on the entire amount of principal and accrued but unpaid interest outstanding under the Notes as of the Petition Date, in all cases as though the Notes had been declared due and payable as of the Petition Date.
5. Any notice given pursuant to section 3 of the Forbearance Agreement shall be deemed permissible

and shall not be a violation of the automatic stay imposed by section 362 of the Bankruptcy Code.

6. The rights of the parties to the Forbearance Agreement are hereby reserved with respect to the applicability of section 365(d) of the Bankruptcy Code.

7. 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 honor checks presented for payment of obligations described in the Motion and all fund transfer requests made by the Debtors related thereto to the extent that sufficient funds are on deposit in such amounts.

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

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

10. 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.

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

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

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



**EXHIBIT B**

**Forbearance Agreement**

## FORBEARANCE AGREEMENT

This FORBEARANCE AGREEMENT (this “*Agreement*”) dated as of December 16, 2012, is made by and among EDISON MISSION ENERGY (“*EME*”) and MIDWEST GENERATION, LLC (“*MWG*” and, together with EME, the “*Debtors*”); NESBITT ASSET RECOVERY SERIES J-1 (f/k/a JOLIET TRUST I), as an Owner Lessor, JOLIET TRUST II, as an Owner Lessor, NESBITT ASSET RECOVERY SERIES P-1 (f/k/a POWERTON TRUST I), as an Owner Lessor, POWERTON TRUST II, as an Owner Lessor, NESBITT ASSET RECOVERY LLC, SERIES J-1 (as successor to JOLIET GENERATION I, LLC), as an Owner Participant, JOLIET GENERATION II, LLC, as an Owner Participant, NESBITT ASSET RECOVERY LLC, SERIES P-1 (as successor to POWERTON GENERATION I, LLC), as an Owner Participant, POWERTON GENERATION II, LLC, as an Owner Participant, ASSOCIATES CAPITAL INVESTMENTS, L.L.C., as an Equity Investor and NESBITT ASSET RECOVERY LLC, as an Equity Investor (collectively, the “*Owner Lessor Parties*”); and the holders of those certain 8.56% Series B Pass Through Trust Certificates, issued in the aggregate principal amount of \$813,500,000 pursuant to that certain Pass Through Trust Agreement B dated as of August 17, 2000, by and between MWG and United States Trust Company of New York, as Pass Through Trustee (the “*Pass Through Trust Agreement B*”), that are signatories hereto (collectively, the “*Signing Lease Debt Holders*” and, together with the Debtors and the Owner Lessor Parties, the “*Parties*”). Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to them in Appendix A to the relevant Participation Agreement (defined below).

### W I T N E S S E T H:

WHEREAS, pursuant to those certain (a) Participation Agreement dated August 17, 2000, among MWG, Powerton Trust I, Powerton Generation I, LLC, EME, and certain other parties; (b) Participation Agreement dated August 17, 2000, among MWG, Powerton Trust II, Powerton Generation II, LLC, EME, and certain other parties; (c) Participation Agreement dated August 17, 2000, among MWG, Joliet Trust I, Joliet Generation I, LLC, EME, and certain other parties; and (d) Participation Agreement dated August 17, 2000, among MWG, Joliet Trust II, Joliet Generation II, LLC, EME, and certain other parties (collectively, the “*Participation Agreements*”), the parties to the Participation Agreements entered into certain Operative Documents to effectuate a sale-leaseback of the Facilities; and

WHEREAS, pursuant to the Operative Documents, the Owner Lessors purchased the Facilities and leased the Facility Sites from MWG in exchange for payment of the Purchase Prices; and

WHEREAS, the Owner Lessors lease the Facilities and Facility Sites to MWG pursuant to, among other Operative Documents, the Facility Leases and Facility Site Subleases; and

WHEREAS, in order to provide the Purchase Prices payable by the Owner Lessors to MWG, (a) the Owner Participants made certain investments in the Owner Lessors, and (b) the Owner Lessors issued the Lessor Notes to the Pass Through Trusts; and

WHEREAS, the Pass Through Trusts issued the Certificates representing fractional undivided interests in the Pass Through Trusts. As of the date of this Agreement, only the Certificates issued pursuant to the Pass Through Trust Agreement B remain outstanding; and

WHEREAS, the Parties anticipate that on or about December 17, 2012, the Debtors will commence bankruptcy cases (the “*Debtors’ Cases*”) by filing voluntary petitions under chapter 11 of the bankruptcy code of the United States (the “*Bankruptcy Code*”) with the United States Bankruptcy Court for the Northern District of Illinois, Eastern Division (the “*Bankruptcy Court*”); and

WHEREAS, as a consequence of the commencement of the Debtors’ Cases, holders of a majority of the outstanding Lease Debt may instruct, subject to the provisions and restrictions in the Operative Documents, the Pass Through Trustee to instruct the Lease Indenture Trustees to exercise remedies under the Lease Indentures including, but not limited to, declaring the Lessor Notes to be due and payable, whereupon the unpaid principal of all Lessor Notes then outstanding, together with accrued but unpaid interest thereon and other amounts due thereunder or with respect thereto, would immediately become due and payable without presentment, demand, protest or notice; and

WHEREAS, as of the date of this Agreement, the Signing Lease Debt Holders hold not less than a majority of the outstanding Lease Debt; and

WHEREAS, the Signing Lease Debt Holders are willing to forbear from exercising (and from instructing the Pass Through Trustee and Lease Indenture Trustees to exercise), directly or indirectly, certain remedies against the Owner Lessors under the Lease Indentures during the Forbearance Period (as defined below), solely on the terms of, and subject to the conditions stated in, this Agreement.

NOW, THEREFORE, in consideration of the mutual agreements herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. Forbearance.

From the Effective Date (defined below) and for so long as this Agreement has not terminated or been terminated in accordance with its terms (the “*Forbearance Period*”):

(a) each Signing Lease Debt Holder, solely in its capacity as Lease Debt holder and not in any other capacity, agrees to forbear from exercising, directly or indirectly, and from directing the Pass Through Trustee (and directing, directly or indirectly, any Lease Indenture Trustee) to exercise, any rights or remedies against any Debtor or any Owner Lessor Party on account of (i) the commencement or continuation of the Debtors’ Cases, (ii) any default in the payment of principal or interest or any other amounts owing on any Lessor Note, (iii) any default in the payment of Rent or any other amounts owing under any Facility Lease or Facility Site Sublease, (iv) any default in the payment of amounts owing under the Operative Documents (except to the extent such payment is expressly required pursuant to this Agreement), including without limitation under any EME Guarantee, Reimbursement Agreement, EME OP Guarantee or Tax

Indemnity Agreement, (v) non-payment or acceleration of any Indebtedness of the Debtors and their subsidiaries (whether or not resulting from the Debtors' Cases or items (i) through (iv) above), and any cross-default or cross-acceleration events resulting therefrom (including any intercompany cross-defaults), (vi) any failure of the Debtors or their subsidiaries to comply with any financial covenants (including any cross-default or cross-acceleration events resulting therefrom) and (vii) any other Lease Event of Default or Lease Indenture Event of Default related to the commencement of the Debtors' Cases (including any cross-default or cross-acceleration provision with respect to the Facility Lessee or the Guarantor);

(b) each Owner Lessor Party agrees to forbear from exercising, directly or indirectly, any rights or remedies against any Debtor or any Lease Indenture Trustee, Pass Through Trustee or Lease Debt holder on account of (i) the commencement or continuation of the Debtors' Cases, (ii) any default in the payment of principal or interest or any other amounts owing on any Lessor Note, (iii) any default in the payment of Rent or any other amounts owing under any Facility Lease or Facility Site Sublease, (iv) any default in the payment of amounts owing under the Operative Documents (except to the extent such payment is expressly required pursuant to this Agreement), including without limitation under any EME Guarantee, Reimbursement Agreement, EME OP Guarantee or Tax Indemnity Agreement, (v) non-payment or acceleration of any Indebtedness of the Debtors and their subsidiaries (whether or not resulting from the Debtors' Cases or items (i) through (iv) above), and any cross-default or cross-acceleration events resulting therefrom (including any intercompany cross-defaults), (vi) any failure of the Debtors or their subsidiaries to comply with any financial covenants (including any cross-default or cross-acceleration events resulting therefrom) and (vii) any other Lease Event of Default or Lease Indenture Event of Default related to the commencement of the Debtors' Cases (including any cross-default or cross-acceleration provision with respect to the Facility Lessee or the Guarantor); provided, however, that nothing herein shall be deemed to affect any rights of the Owner Lessor Parties under Sections 2.10 or 2.12 of the Lease Indentures to purchase or assume the Lessor Notes, and the Owner Lessor Parties expressly reserve the right to exercise those rights during the Forbearance Period (it being understood and agreed that, notwithstanding any purchase or assumption of the Lessor Notes by the Owner Lessor Parties, the Owner Lessor Parties shall continue to be subject to the terms of this Agreement (including their agreement to forbear during the Forbearance Period) in all capacities (including, for the avoidance of doubt, their capacity as Owner Lessor Parties and as a holders of the Lessor Notes, if applicable)); and

(c) except as expressly provided in this Agreement, each of the Parties agrees to forbear from taking (directly or indirectly), and (to the extent applicable) from directing the Pass Through Trustee (and directing, directly or indirectly, any Lease Indenture Trustee) to take, any action in either of the Debtors' Cases or other legal proceeding (and all Parties' rights with respect to such matters are fully preserved) with respect to (i) the relative rights and obligations of each of the Parties under the Operative Documents including, without limitation, actions with respect to (A) the applicability of any Bankruptcy Code provision (including, without limitation, Bankruptcy Code sections 365(d) and 502(b)(6)) to any of the Operative Documents, (B) the characterization of any Operative Document as a true lease, a financing lease, a secured financing, or any other

characterization, (C) the characterization of the Facilities as real property or personal property, (D) the characterization of any payments or allocations of payments under any Operative Document, (E) the relative rights of the Lease Indenture Trustees and the Owner Lessor Parties with respect to amounts owing under any Operative Document, (F) the validity and enforceability (and, where applicable, perfection and priority) of any Operative Document, the liens and security interests granted, and assignments of rights effected, pursuant to the Operative Documents and related documents, and obligations arising under the Operative Documents, or (G) the value of the Facilities, the Facility Sites, or any related rights or assets; and (ii) any other affirmative relief against any of the other Parties;

provided, however, that nothing in this Section 1 shall prohibit or in any way limit any Party's right to respond in full to, and to otherwise protect fully its rights with regard to, and pleading or assertion made or other action taken, whether in the Debtors' Cases or otherwise, by any person that is not a Party to this Agreement. Each of the Parties acknowledges and agrees that, notwithstanding the foregoing: (u) except as expressly set forth in this Agreement, (i) the Signing Lease Debt Holders reserve the right to enforce, and to direct the Pass Through Trustee and (directly or indirectly) the Lease Indenture Trustees to enforce, each and every term of the Operative Documents and (ii) the Owner Lessor Parties and the Debtors reserve the right to enforce each and every term of the Operative Documents; (v) the Signing Lease Debt Holders are under no duty or obligation of any kind or any nature to grant the Debtors or the Owner Lessor Parties any additional period of forbearance beyond the Forbearance Period; (x) except for the limited forbearance set forth herein or as otherwise expressly provided in this Agreement, each of the Parties' actions in entering into this Agreement shall not be construed as a waiver or relinquishment of, or estoppel to assert, any rights or remedies of such Parties' under any of the Operative Documents, applicable law or in equity; (y) each of the Parties' actions in entering into this Agreement are without prejudice to such Parties' rights and or remedies to pursue any and all remedies under the Operative Documents, pursuant to applicable law, or in equity available to them in their sole discretion upon the termination (whether upon expiration or otherwise) of the Forbearance Period; and (z) but for this Agreement, and except as limited by the Bankruptcy Code, the commencement of the Debtors' Cases, and subject to the terms of the Operative Documents, the Signing Lease Debt Holders and Owner Lessor Parties would be entitled to exercise, or, in the case of the Signing Lease Debt Holders, to direct the Pass Through Trustee and Lease Indenture Trustees to exercise, their rights and remedies under the Operative Documents and applicable law in respect of, among other things, the commencement of the Debtors' Cases. For the avoidance of doubt, nothing in this Section 1 shall prohibit or in any way limit any Party's rights and obligations under this Agreement.

2. Covenants.

In consideration of the Parties' agreement to forbear as set forth in Section 1 hereof, the Parties agree as follows:

(a) On the date that is sixty (60) days after the commencement of the Debtors' Cases (or, if such date is not a Business Day, the first (1<sup>st</sup>) Business Day thereafter), MWG shall pay to the Lease Indenture Trustees, in accordance with the provisions of the Facility Leases, the ratable portion of the Basic Lease Rent due under the Facility Leases

on January 2, 2013, which is attributable to the period after the commencement of the Debtors' Cases (the "**Initial Payment**"). The Initial Payment will be distributed in accordance with the provisions of the Lease Indentures. All Parties' rights with regard to the appropriate characterization of the Initial Payment are fully preserved.

(b) Except as provided herein, the Parties agree (and the Bankruptcy Court order entered in the Debtors' Cases approving this Agreement (the "**Approval Order**") shall provide) that, solely during the Forbearance Period, notwithstanding that the Lessor Notes have not been accelerated, the Lessor Notes shall be deemed to accrue, from the commencement of the Debtors' Cases, interest for all purposes under the Operative Documents at the Overdue Rate, calculated based on the entire amount of principal and accrued but unpaid interest outstanding under the Lessor Notes as of the commencement of the Debtors' Cases, in all cases as though the Lessor Notes had been declared due and payable as of the commencement of the Debtors' Cases (such interest accruing during the Forbearance Period, the "**Overdue Interest Amount**"). For the avoidance of doubt, nothing in this Section 2(b) shall affect any determination regarding the applicability of, or allowance of postpetition interest against the Debtors under, section 506(b) of the Bankruptcy Code. Each Owner Lessor Party agrees that, to the extent it receives any amounts from the Debtors or the Lease Indenture Trustees or from proceeds of the Indenture Estates (other than with respect to Excepted Payments and payments to which the Owner Lessor Parties are entitled under this Agreement), to the extent the Special Default Interest Amount (as defined below) has not been paid, it will hold such amounts in trust and will promptly turn over such amounts to the Pass Through Trustee (and the Pass Through Trustee shall be entitled to retain for the benefit of, and distribute to, Lease Debt holders) but only to the extent such amounts are necessary to pay the Special Default Interest Amount. Notwithstanding the foregoing, in the event the Debtors assume and cure all defaults required to be cured pursuant to section 365(b) of the Bankruptcy Code under a Facility Lease and related EME Guarantee during the Forbearance Period, the Parties agree that this Section 2(b) shall apply only to the period prior to the effective date of such assumption and cure. "**Special Default Interest Amount**" means the portion of the Overdue Interest Amount attributable to the application of the Overdue Rate less the Applicable Rate.

(c) The Parties agree that the 180-day period described in section 4.4(a) of each Lease Indenture shall be deemed to have commenced as of the commencement of the Debtors' Cases, and each of the Parties shall be precluded from taking any contrary position in any proceeding in which the application of that period is at issue; provided, however, that nothing in this Agreement shall be deemed an admission by any Party or a determination regarding the applicability of such 180-day period to any Lease Indenture Trustee's right to exercise remedies under section 4.4(a) of the Lease Indentures or otherwise subject to the terms of the Operative Documents.

(d) During the Forbearance Period, the Debtors and the Owner Lessor Parties shall work diligently and in good faith, and shall, on or before the twenty-fifth (25th) day following the Effective Date and thereafter as requested, meet in person with the Signing Lease Debt Holders and/or their Professional Advisors to negotiate in good faith regarding the treatment of the Operative Documents in the Debtors' Cases and (unless the

Facility Leases and EME Guarantees are assumed by the Debtors prior to termination of the Forbearance Period) a chapter 11 plan for MWG or other resolution of its chapter 11 case.

(e) The Debtors shall pay, within fifteen (15) days following receipt of a customary summary invoice therefore (which may be redacted to protect privileged or confidential information), (i) all of the reasonable and documented fees and costs incurred by Cadwalader, Wickersham & Taft LLP (“**Cadwalader**”) and Shaw Fishman Glantz & Towbin LLC, as Illinois local counsel to the Signing Lease Debt Holders (together with Cadwalader, “**Lease Debt Counsel**”), (x) prior to the Effective Date and (y) during the Forbearance Period, (ii) a reasonable monthly fee during the Forbearance Period to Lazard LLC, as financial advisor to the Signing Lease Debt Holders (“**Lease Debt FA**”), (iii) all of the reasonable and documented fees and costs incurred by Jenner & Block LLP, counsel to Nesbitt Asset Recovery Series J-1, Nesbitt Asset Recovery Series P-1, Nesbitt Asset Recovery LLC, Series J-1, Nesbitt Asset Recovery Series P-1, and Nesbitt Asset Recovery LLC (“**Jenner**”), (x) prior to the Effective Date and (y) during the Forbearance Period, (iv) all of the reasonable and documented fees and costs incurred by Milbank, Tweed, Hadley & McCloy, LLP, counsel to Joliet Trust II, Powerton Trust II, Joliet Generation II, Powerton Generation II, and Associates Capital Investments, L.L.C., (“**Milbank**”) and one local Illinois counsel notified to the Debtors by Milbank (“**IL Counsel**”), (x) prior to the Effective Date and (y) during the Forbearance Period, (v) all of the reasonable and documented fees and costs (including reasonable fees and costs of counsel) incurred by U.S. Bank National Association, as owner trustee of Nesbitt Asset Recovery Series J-1, Nesbitt Asset Recovery Series P-1, Nesbitt Asset Recovery LLC, Series J-1 and Nesbitt Asset Recovery Series P-1, (“**U.S. Bank**”), (x) prior to the Effective Date and (y) during the Forbearance Period, (vi) all of the reasonable and documented fees and costs (including reasonable fees and costs of counsel) incurred by Wilmington Trust Company, as owner trustee of Joliet Trust II and Powerton Trust II, (“**WTC**”), (x) prior to the Effective Date and (y) during the Forbearance Period and (vii) a reasonable monthly fee during the Forbearance Period to financial advisors to the Owner Lessor Parties (“**Lease Equity FA**”) (Lease Debt Counsel, Jenner, Milbank, IL Counsel, U.S. Bank, WTC, Lease Debt FA and Lease Equity FA, together, the “**Professional Advisors**”), in each case, in connection with the negotiation, drafting and execution of this Agreement, implementation of this Agreement, the Debtors’ Cases and any negotiations or discussions regarding the Operative Documents. The Debtors shall receive customary summary monthly statements from each Professional Advisor (which statements may be redacted to protect privileged or confidential information), which statements shall set forth such Professional Advisor’s accrued fees and costs for the preceding month.

3. Termination of Forbearance.

Notwithstanding any other term of this Agreement, this Agreement shall terminate upon the earlier to occur of (1) the date that is sixty (60) days after the commencement of the Debtors’ Cases, and (2) five (5) Business Days after receipt by each of the other Parties of written notice executed by Signing Lease Debt Holders holding not less than a majority of the Lease Debt currently outstanding (and the Approval Order shall provide that giving such notice

and terminating this Agreement is permissible and is not a violation of the automatic stay imposed by section 362 of the Bankruptcy Code) following any of the following (each, a “*Termination Event*”):

(a) either Debtor or any Owner Lessor Party fails to timely observe or perform any provision contained in Section 1 hereof or any covenant contained in Section 2 hereof; or

(b) the Approval Order (i) has not been entered within fifteen (15) days after the commencement of the Debtors’ Cases, (ii) as entered is not in form and substance acceptable to the Signing Lease Debt Holders, or (iii) has been reversed, vacated, or overturned, or amended or modified in any material respect without the prior written consent of the Signing Lease Debt Holders.

Notwithstanding any other term of this Agreement, this Agreement shall terminate five (5) Business Days after receipt by each of the other Parties of written notice executed by the Debtors that they are terminating this Agreement as a result of the then-current aggregate principal amount of Lease Debt held by, or in funds managed by, Signing Lease Debt Holders being less than sixty percent (60%) of the aggregate principal amount of Lease Debt then outstanding.

The provisions of Section 2(a), Section 2(b), Section 2(c), Section 2(e) and Section 6 shall survive termination of this Agreement.

4. Effectiveness.

This Agreement shall become effective (the “*Effective Date*”) immediately upon its execution and delivery by each of the Debtors, the Owner Lessor Parties, and Signing Lease Debt Holders holding not less than a majority of the outstanding Lease Debt.

5. Further Assurances.

The Debtors and the Owner Lessor Parties hereby agree that, during the Forbearance Period, they shall, promptly upon the reasonable request of the Signing Lease Debt Holders, at the Debtors’ or Owner Lessor Parties’ (as applicable) cost and expense, take all commercially reasonable actions to ensure that the security interests in the Indenture Estates are protected or perfected, including by filing or the executing documents required for the perfection of such interests in the Indenture Estates.

6. Only Written Agreements; No Waivers.

No settlement, agreement, or understanding (a) entered into with respect to the Operative Documents or (b) purporting to amend, modify, or qualify the Operative Documents or to waive any rights or obligations set forth therein shall constitute a legally binding agreement or contract, or have any force or effect whatsoever, unless and until reduced to an original writing signed by authorized representatives of the relevant parties. Each of the Parties hereto acknowledges and agrees that, by executing this Agreement, it is precluded from claiming that (except as expressly provided in this Agreement) any modification or amendment of the



Operative Documents, oral, express, implied, or otherwise, can be effected during any discussions except by a signed writing in accordance with the terms of the Operative Documents.

7. Notices.

All notices and other communications in connection with this Agreement shall be in writing and shall be deemed to have been given if delivered personally, sent by e-mail or electronic facsimile (with confirmation), mailed by registered or certified mail (return receipt requested) or delivered by an express courier (with confirmation) to the Parties at the following addresses (or at such other address for any Party as may be specified by like notice):

If to the Debtors: Edison Mission Energy3 MacArthur Place, Suite  
100  
Santa Ana, California 92707Attention:

Maria Rigatti  
Phone: 714.513.8141  
Email: mrigatti@edisonmission.com

and

Daniel McDevitt  
Phone: (714) 513-8138 (Voice California)  
Phone: (312) 583-6117 (Voice Chicago)  
Fax: (312) 788-5286  
Email: dmcdevitt@mwgen.com

*with a copy to:* Kirkland & Ellis LLP  
Attn: David Seligman & Joshua Sussberg  
300 North LaSalle  
Chicago, IL 60654  
Tel: (312) 862-2463  
Fax: (312) 862-2200  
Email: david.seligman@kirkland.com  
joshua.sussberg@kirkland.com

If to the Signing  
Lease Certificate Holders: Cadwalader, Wickersham & Taft LLP  
Attn: George Davis & Josh Brant  
1 World Financial Center  
New York, NY 10281  
Tel: (212) 504-6797  
Fax: (212) 504-6666  
Email: george.davis@cwt.com  
josh.brant@cwt.com

If to Nesbitt Asset Recovery Series J-1  
Series J-1 or Nesbitt Asset Recovery Series P-1

Recovery Series P-1: c/o U.S. Bank National Association, as Owner  
Trustee  
U.S. Bank Corporate Trust Services  
300 Delaware Avenue, 9th Floor Mail Code: EX-  
DE-WDAW  
Wilmington, DE 19801  
Attn: Mildred Smith  
Tel: (302) 576-3703  
Email: milly.smith@usbank.com

With a copy to:

Jenner & Block LLP  
Attn: Daniel R. Murray & Melissa M. Hinds  
353 N. Clark Street  
Chicago, IL 60654  
Tel: (312) 222-3500  
Fax: (312) 527-0484

Email: dmurray@jenner.com  
mhinds@jenner.com

If to Joliet Trust II or Joliet Trust II  
Powerton Trust II: Powerton Trust II  
c/o Wilmington Trust Company, as Owner Trustee  
Rodney Square North  
1100 North Market Street  
Wilmington, DE 19890-0001  
Attn: Corporate Trust Administration, Robert Hines  
Tel: (302) 636-6197 |  
Fax: (302) 636-4140  
Email: rhines@wilmingtontrust.com

With a copy to:

Michael F. Collins  
Richards, Layton & Finger, P.A.  
One Rodney Square  
920 North King Street  
Wilmington, DE 19801  
Tel: (302) 651-7502  
Fax: (302) 498-7502

Email: MFCollins@rlf.com

If to Nesbitt Asset Recovery Series LLC, J-1 or Nesbitt  
Series LLC, J-1 or Nesbitt Asset Recovery Series LLC, P-1

Asset Recovery Series LLC, c/o U.S. Bank National Association, as Owner  
P-1:

Trustee  
U.S. Bank Corporate Trust Services  
300 Delaware Avenue, 9th Floor Mail Code: EX-  
DE-WDAW  
Wilmington, DE 19801  
Attn: Mildred Smith  
Tel: (302) 576-3703  
Email: milly.smith@usbank.com

With a copy to:

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Attn: Daniel R. Murray & Melissa M. Hinds  
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Tel: (312) 222-3500  
Fax: (312) 527-0484  
Email: dmurray@jenner.com  
mhinds@jenner.com

If to Joliet Generation II, LLC  
or Powerton Generation II,  
LLC:

Joliet Generation II, LLC  
Powerton Generation II, LLC  
c/o Associates Capital Investments, L.L.C.  
c/o Citigroup Global Markets Inc.  
Attn: Sugam Mehta & Brian Whalen  
388 Greenwich Street, 21<sup>st</sup> Floor  
New York, New York 10013  
Tel: (212) 816-1620  
Fax: To be advised  
Email: Sugam.mehta@citi.com  
Brian.whalen@citi.com

With a copy to:

Milbank, Tweed, Hadley & McCloy LLP  
Attn: William Bice & Tyson Lomazow  
1 Chase Manhattan Plaza  
New York, NY 10005  
Tel: (212) 530-5000  
Fax: (212) 530-5219  
Email: wbice@milbank.com  
tlomazow@milbank.com

8. Miscellaneous.

The provisions of this Agreement shall inure to the benefit of and be binding upon the Parties hereto and their respective successors and assigns, and shall be governed by the laws of the State of New York and, to the extent applicable, the Bankruptcy Code. The parties acknowledge and agree that the Bankruptcy Court shall have the power and authority to enforce, construe and interpret this Agreement. The terms of this Agreement may not be changed, waived, discharged, or terminated orally, but only by an instrument or instruments in writing, signed by the Party sought to be bound. This Agreement may be executed in one or more counterparts, each of which shall constitute an original. Each party executing this agreement represents and warrants that it has the authority to do so (subject only, with respect to the Debtors, approval of the Bankruptcy Court) and that the person signing on behalf of each Party has been authorized to do so.

This Agreement shall in no way be construed to limit or preclude in any manner the right of any Signing Lease Debt Holder or any of its affiliates to acquire any additional right, title or interest in respect of any Lease Debt or other claims against the Debtors, or to sell, transfer, assign, pledge, convey, hypothecate, grant a participation interest in, or otherwise dispose of, directly or indirectly, all or any portion of its right, title or interest in respect of any Lease Debt or other claims against the Debtors. In no event shall this Agreement impose on any Signing Lease Debt Holder or any of its affiliates any obligation to disclose the price for which it has acquired or disposed of any right, title or interest in respect of any Lease Debt or any other claims against the Debtors. On a weekly basis, by the Wednesday of each week, Cadwalader will solicit updates of holdings information from each of the Signing Lease Debt Holders and will provide a report to the Debtors setting forth the then-current aggregate principal amount of Lease Debt held by, or in funds managed by, Signing Lease Debt Holders. Cadwalader also will inform the Debtors promptly if, at any time, it has actual knowledge that the then-current aggregate principal amount of Lease Debt held by, or in funds managed by, Signing Lease Debt Holders is less than sixty percent (60%) of the aggregate principal amount of Lease Debt then outstanding. The Debtors agree that, except to the extent required by applicable law or regulation, they shall not disclose the identity of any Signing Lease Debt Holder without such person's prior written consent.

This Agreement shall in no way be construed to limit or preclude in any manner any right of the Owner Lessor Parties to purchase or assume the Lessor Notes pursuant to Sections 2.10 or 2.12 of the Lease Indentures.

Notwithstanding anything contained herein to the contrary, it is expressly understood and agreed by the parties that (a) this document is executed and delivered by (i) Wilmington Trust Company, not individually or personally, but solely as Owner Trustee of Joliet Trust II and Powerton Trust II, and (ii) U.S. Bank National Association, not in its individual capacity, but solely as Owner Trustee of Nesbitt Asset Recovery Series J-1, Nesbitt Asset Recovery Series P-1, Nesbitt Asset Recovery LLC, Series J-1 and Nesbitt Asset Recovery Series P-1, in the exercise of the powers and authority conferred and vested in them, (b) each of the representations, undertakings and agreements herein made on the part of the Owner Lessors is made and intended not as personal representations, undertakings and agreements by Wilmington Trust Company or U.S. Bank National Association, but is made and intended for the purpose for

binding only the Owner Lessors, (c) nothing herein contained shall be construed as creating any liability on Wilmington Trust Company or U.S. Bank National Association, individually or personally, to perform any covenant either expressed or implied contained herein, all such liability, if any, being expressly waived by the parties hereto and by any person claiming by, through or under the parties hereto, and (d) under no circumstances shall Wilmington Trust Company or U.S. Bank National Association be personally liable for the payment of any indebtedness or expenses of the Owner Lessors or be liable for the breach or failure of any obligation, representation, warranty or covenant made or undertaken by the Owner Lessors under this Agreement or any other related documents.

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

---

In re: )  
EDISON MISSION ENERGY, et al.,<sup>1</sup> ) Chapter 11  
Debtors. ) Case No. 12-[\_\_\_\_\_] (\_\_\_\_)  
) (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**

300 North LaSalle

Chicago, Illinois 60654

Telephone: (312) 862-2000

Facsimile: (312) 862-2200

---

<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.

# PARTIES SERVED VIA OVERNIGHT DELIVERY

ABB, INC.  
ATTN JOHN JOHNSON  
29801 EUCLID AVENUE  
WICKLIFFE OH 44092

ALTORFER INC.  
ATTN TIM KIRCHNER  
1 CAPITAL DRIVE  
EAST PEORIA IL 61611

ARCH COAL SALES COMPANY, INC.  
ATTN ROWDY SMITH  
PO BOX 96828  
CHICAGO IL 60603

ARKANSAS DEPT ENVIRONMENTAL QUALITY  
ATTN DIRECTOR OF CHIEF OF LEGAL DIVISION  
5301 NORTHSORE DR  
NORTH LITTLE ROCK AR 72118

BEEEMSTERBOER, INC.  
ATTN SIMON BEEEMSTERBOER  
22013 S. SCHOOLHOUSE RD  
NEW LENOX IL 60451

BP CANADA ENERGY  
ATTN SANDRA ONSTOTT  
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CHICAGO IL 60677

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SAN FRANCISCO CA 94102

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ATTN LARRY CLENNON OWNER  
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ILLINOIS COMMERCE COMMISSION  
ATTN DOUG SCOTT, CHAIRMAN  
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SPRINGFIELD IL 62701

ILLINOIS DEPARTMENT OF REVENUE  
ATTN BANKRUPTCY UNIT  
100 W RANDOLPH ST  
#7-400  
CHICAGO IL 60601

ILLINOIS DEPARTMENT OF REVENUE  
ATTN BANKRUPTCY SECTION  
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CHICAGO IL 64338

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1021 N GRAND AVE E  
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ILLINOIS POLLUTION CONTROL BOARD  
ATTN CHAIRMAN OR SENIOR ATTORNEY  
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INTERNAL REVENUE SERVICE  
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JOLIET TRUST II  
C/O WILMINGTON TRUST COMPANY  
ATTN ROBERT HINES, JR., CORPORATE TRUST ADMIN  
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1100 NORTH MARKET STREET  
WILMINGTON DE 19890

JOLIET TRUST II  
C/O RICHARDS, LAYTON & FINGER, P.A.  
ATTN: MICHAEL F. COLLINS  
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WILMINGTON DE 19801

KENTUCKY DEPT FOR ENVIRONMENTAL PROTECTION  
ATTN COMMISSIONER OR LEGAL COUNSEL  
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FRANKFORT KY 40601

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ATTN COMMISSIONER OR LEGAL COUNSEL  
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FRANKFORT KY 40601

KENTUCKY ENVIRONMENTAL QUALITY COMMISSION  
ATTN EXECUTIVE DIRECTOR OR LEGAL COUNSEL  
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FRANKFORT KY 40601

KERN RIVER GAS TRANSMISSION COMPANY  
ATTN KRISTIN GILLETTE  
2755 EAST COTTONWOOD PARKWAY  
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LAFARGE NORTH AMERICA  
ATTN: DAVE DIEDRICK  
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MISSOURI DEPT OF CONSERVATION  
ATTN COMMISSIONER OR GENERAL COUNSEL  
2901 W TRUMAN BLVD  
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MISSOURI DEPT OF NATURAL RESOURCES  
ATTN DIRECTOR OR GENERALCOUNSEL  
DIVISION OF ENVIRONMENTAL QUALITY  
PO BOX 176  
JEFFERSON CITY MO 65102

MITSUBISHI POWER SYSTEMS, INC  
ATTN RICHARD D. SIDKOFF, ESQ.  
NEW YORK BRANCH (USA)  
100 BAYVIEW CIRCLE  
NEWPORT BEACH CA 92660

MITSUBISHI POWER SYSTEMS, INC  
ATTN RICHARD D. SIDKOFF, ESQ.  
NEW YORK BRANCH (USA)  
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MONTANA DEPT OF ENVIRONMENTAL QUALITY  
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1625 ELEVENTH AVE  
HELENA MT 59620

NESBITT ASSET RECOVERY SERIES J-1  
C/O WILMINGTON TRUST COMPANY  
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RODNEY SQUARE NORTH  
1100 NORTH MARKET STREET  
WILMINGTON DE 19890

NESBITT ASSET RECOVERY SERIES J-1  
C/O U.S. BANK NATIONAL ASSOCIATION, AS OWNER TRUST  
ATTN: MILDRED SMITH, U.S. BANK CORPORATE TRUST  
300 DELAWARE AVENUE, 9TH FLOOR  
MAIL CODE: EX-DE-WDAW  
WILMINGTON DE 19801

NESBITT ASSET RECOVERY SERIES J-1  
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STOCK EQUIPMENT  
ATTN TONY LEGAN  
SOLVERA PARTICULATE CONTROLS INC  
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STE 900  
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U.S. SECURITIES AND EXCHANGE COMMISSION  
SEC HEADQUARTERS  
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UNION PACIFIC RAILROAD  
ATTN BILL STAHLHEBER  
PO BOX 502453  
ST. LOUIS MO 63150-2453

UNITED STATES ATTORNEY  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
ATTN JOEL R. NATHAN, ESQ.  
219 S DEARBORN ST  
5TH FLR  
CHICAGO IL 60604

WELLS FARGO BANK NATIONAL ASSOCIATION  
707 WILSHIRE BIVD  
17TH FLR  
LOS ANGELES CA 90017

WELLS FARGO BANK, NA., AS INDENTURE TRUSTEE  
ATTN: MADDY HALL  
CORPORATE TRUST ADMINISTRATION  
707 WILSHIRE BLVD, 17TH FLOOR  
LOS ANGELES CA 90017

WELLS FARGO BANK, NA., AS INDENTURE TRUSTEE  
ATTN: MADDY HALL  
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WELLS FARGO BANK, NA., AS INDENTURE TRUSTEE  
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YARA NORTH AMERICA, INC  
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