UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

In re:	)	Chapter 11
EDISON MISSION ENERGY, et al.,[1]	)	Case No. 12-49219 (JPC)
Debtors.	)	Jointly Administered

NOTICE OF FILING OF DEBTORS' (I) MEMORANDUM OF LAW IN SUPPORT OF CONFIRMATION OF DEBTORS' JOINT CHAPTER 11 PLAN OF REORGANIZATION AND (II) OMNIBUS RESPONSE TO OBJECTIONS

PLEASE TAKE NOTICE that, on March 6, 2014, the above-captioned debtors and debtors in possession (collectively, the "Debtors") filed the *Debtors' (I) Memorandum of Law in Support of Confirmation of Debtors' Joint Chapter 11 Plan of Reorganization and (II) Omnibus Response to Objections* (the "Confirmation Brief") with the United States Bankruptcy Court for the Northern District of Illinois, attached hereto as **Exhibit A**.

PLEASE TAKE FURTHER NOTICE that a hearing to consider confirmation of the Debtors' joint chapter 11 plan of reorganization (the "Plan") is scheduled for **March 11, 2014, at 10:30 a.m. (Central Time)** before the Honorable Bankruptcy Judge Jacqueline P. Cox or any other judge who may be sitting in her place and stead, in Courtroom 680 in the United States Courthouse, 219 South Dearborn Street, Chicago, Illinois, at which time and at which place you may appear if you so desire.

PLEASE TAKE FURTHER NOTICE that additional copies of the Confirmation Brief, the Plan, and any other document filed in these chapter 11 cases are available for free by (a) accessing GCG, Inc.'s website at www.edisonmissionrestructuring.com (the "Notice, Claims, and Solicitation Agent"); (b) writing to the Notice, Claims, and Solicitation Agent, by first-class mail, Edison Mission Energy, et al., c/o GCG, P.O. Box 9942, Dublin, OH 43017-5942, or by writing, by hand delivery or overnight mail, Edison Mission Energy, et al., c/o GCG, 5151 Blazer Parkway, Suite A, Dublin, OH 43017; or (c) calling the Notice, Claims, and Solicitation

[1] The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, include: Edison Mission Energy (1807); Camino Energy Company (2601); Chestnut Ridge Energy Company (6590); Edison Mission Finance Co. (9202); 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); EME Homer City Generation L.P. (6938); Homer City Property Holdings, Inc. (1685); 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.

Agent at (866) 241-6491. You may also obtain copies of any pleadings by visiting the Court's website at www.ilnb.uscourts.gov in accordance with the procedures and fees set forth therein. Please be advised that the Notice, Claims, and Solicitation Agent is not permitted to provide legal advice.

Dated: March 6, 2014

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EXHIBIT A

Confirmation Brief

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

In re:	)	Chapter 11
EDISON MISSION ENERGY, et al.,[1]	)	Case No. 12-49219 (JPC)
Debtors.	)	(Jointly Administered)

DEBTORS' (I) MEMORANDUM OF LAW IN SUPPORT OF CONFIRMATION OF DEBTORS' JOINT CHAPTER 11 PLAN OF REORGANIZATION AND (II) OMNIBUS RESPONSE TO OBJECTIONS

[1] The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, include: Edison Mission Energy (1807); Camino Energy Company (2601); Chestnut Ridge Energy Company (6590); Edison Mission Energy Fuel Services, LLC (4630); Edison Mission Finance Co. (9202); Edison Mission Fuel Resources, Inc. (3014); Edison Mission Fuel Transportation, Inc. (3012); Edison Mission Holdings Co. (6940); Edison Mission Midwest Holdings Co. (6553); EME Homer City Generation L.P. (6938); Homer City Property Holdings, Inc. (1685); 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.

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The above-captioned debtors and debtors in possession (the "Debtors"), respectfully submit this memorandum of law in support of Confirmation of the *Debtors' Third Amended Joint Chapter 11 Plan of Reorganization* [Docket No. 2110] (as modified, amended, or supplemented from time to time, the "Plan").[2] In support of Confirmation, the Debtors respectfully state as follows:[3]

Preliminary Statement

1. The Debtors respectfully submit that the Plan, which brings an extremely successful conclusion to these chapter 11 cases and of nearly two years, should be confirmed. The Plan enjoys near unanimous support from those entitled to vote and each of the Debtors' major stakeholders, including the Committee, the Noteholder Group, the PoJo Parties and EIX. Of the thousands of parties in interest in these chapter 11 cases, only 13 parties filed objections to the Plan. And, as explained in **Exhibit A** attached hereto, all but four objections have been resolved. The Debtors will of course continue to work to resolve the four remaining objections ahead of Confirmation; in the absence of resolution, however, the Plan—as demonstrated herein—complies in all respects with section 1129 of the Bankruptcy Code and should be confirmed.

2. Through the Plan, EME will sell substantially all of its assets and interests in both Debtor and non-Debtor subsidiaries to NRG Energy, Inc. for a total purchase price of $2.635 billion (which includes $2.285 billion in cash and $350 million in NRG common stock). NRG has also agreed to assume substantial prepetition liabilities of both Debtors and non-

[2] Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Plan. To the extent that this memorandum of law conflicts with the proposed form of Confirmation Order or the Plan, the Confirmation Order or the Plan, as applicable, shall control.

[3] In further support of Confirmation of the Plan, the Debtors have submitted contemporaneously herewith the *Declaration of Maria Rigatti in Support of Confirmation of the Debtors' Third Amended Joint Chapter 11 Plan of Reorganization* (the "Rigatti Declaration") and the *Declaration of Kevin Cofsky in Support of Confirmation of the Debtors' Third Amended Joint Chapter 11 Plan of Reorganization* (the "Cofsky Declaration").

Debtors, including the obligations under the PoJo Leases and Documents.[4] The NRG transaction was agreed to following a robust marketing process, including marketing initiatives both before and after securing the terms of the plan sponsor agreement with NRG, as well as a process coordinated by the Debtors' management and advisors to analyze and construct a viable standalone restructuring alternative.

3. In addition, and after more than a year-long investigation spear-headed by EME's independent investigation committee, the Plan incorporates a global settlement of all claims and disputes with EIX, resulting in approximately $1 billion in additional value for these estates. Among other things, the EIX settlement results in EIX's payment of $225 million on the Effective Date and additional payments of approximately $400 million in 2015 and 2016 and the assumption by EIX of significant tax and employee-related obligations.[5]

4. The NRG transaction and the EIX settlement will result in recoveries of over 80% for holders of Allowed General Unsecured Claims against EME; the assumption of the PoJo leveraged lease obligations and payment of the agreed-upon $211 million cure amount; and payment in full (in Cash) of General Unsecured Claims against each of the Debtor Subsidiaries, including Midwest Generation. It is not surprising that all seven eligible voting Classes voted to

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[4] Restructuring the PoJo-related obligations was a significant undertaking during the course of these cases and presented many challenging and complex issues that would have required resolution absent the NRG transaction. See *Debtors' Motion to Authorize Performance of Obligations Under Forbearance Agreement Relating to the PoJo Facilities* [Docket No. 14]; *Debtors' Motion to Authorize Performance of Obligations Under Amended Forbearance Agreement Relating to the PoJo Facilities* [Docket No. 582].

[5] In addition, the settlement contemplates EIX retaining ownership of EME (to maintain EME's tax attributes) and the creation of the EME Reorganization Trust to collect and distribute consideration for the benefit of EME's creditors and otherwise wind-down any remaining affairs following consummation of the NRG transaction.

accept the Plan.[6] And this was not a close call: on average, among the seven voting classes, 99.8% in value and 99% in number voted in favor of the Plan.

5. Thus, with overwhelming stakeholder support and compliance with each of the factors set forth in section 1129 of the Bankruptcy Code, the Debtors respectfully request Confirmation of the Plan and entry of the Confirmation Order.

Background

I. Overview of the Debtors and These Chapter 11 Cases

6. 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 approximately 40 generating facilities in 12 states and the Republic of Turkey.

7. The Debtors' principal prepetition obligations included (a) approximately $3.7 billion of senior unsecured notes, (b) approximately $345 million of sale-leaseback obligation certificates (the "PoJo Certificates") related to the Powerton-Joliet leveraged lease transactions, (c) $1.367 billion of intercompany notes issued by EME to MWG, and (d) letter-of-credit facilities for EME and Midwest Generation EME, LLC. EME's project-level subsidiaries were also borrowers or issuers under approximately $1.2 billion of funded indebtedness that is nonrecourse to EME as well as certain letter of credit facilities.

8. In early 2012, recognizing its financial distress, EME began exploring various restructuring alternatives with its parent company, EIX, and the Noteholder Group. After nearly six months of intense, arm's-length negotiations beginning in June 2012, EME, EIX, and the Noteholder Group reached an agreement on a transaction designed to substantially deleverage EME's balance sheet (the "Prepetition Settlement Transaction"). More specifically, the

[6] See Voting Report; Plan, Art. III.G ("If a Class contains Claims eligible to vote and no Holders of Claims eligible to vote in such Class vote to accept or reject the Plan, the Plan shall be presumed accepted by the Holders of such Claims in such Class.").

Prepetition Settlement Transaction provided a framework for the Debtors to realize anticipated benefits through tax sharing agreements with EIX in exchange for a full release of EIX, but permitted the Debtors to conduct a thorough investigation of claims against EIX and diligence into the potential tax payments under the Prepetition Settlement Transaction to determine whether proceeding with that restructuring proposal was in their estates' best interests. The parties' commitment to the Prepetition Settlement Transaction was memorialized in that certain Transaction Support Agreement dated as of December 16, 2012 (the "Prepetition Transaction Support Agreement").[7]

9. On December 17, 2012, seventeen of the Debtors filed petitions with this Court under chapter 11 of the Bankruptcy Code. On May 2, 2013, three additional Debtors filed petitions with this Court under chapter 11 of the Bankruptcy Code. The Court approved procedural consolidation and joint administration of these chapter 11 cases pursuant to Bankruptcy Rule 1015(b) [Docket Nos. 115, 154, 780]. No party has requested the appointment of a trustee or examiner in these chapter 11 cases. 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. On January 7, 2013, the United States Trustee for the Northern District of Illinois (the "U.S. Trustee") appointed the Committee [Docket No. 202] (as amended on January 18, 2013 [Docket No. 308]).

10. After navigating a "soft landing" into chapter 11, the Debtors focused on core restructuring initiatives, including streamlining their operations, pursuing various regulatory actions, assessing near- and long-term strategic alternatives with respect to Debtor Midwest Generation, LLC and the complex PoJo leveraged lease structure and analyzing the merits of the

[7] See Rigatti Decl. ¶ 10.

Prepetition Settlement Transaction.[8] In addition, the EIX investigation occupied a significant amount of the Debtors' focus. EME (through a special investigation committee of its independent directors) conducted a comprehensive investigation of the Debtors' possible claims against EME pursuant to Federal Rule of Bankruptcy Procedure 2004. EME served subpoenas on EIX and SCE, and its counsel received and reviewed hundreds of thousands of pages of documents. EME's counsel also deposed several key EIX executives, and drafted a legal memorandum and complaint analyzing the merits of the Debtors' claims as well as a proposed draft complaint.

II. The Plan Sponsor Agreement

11. On July 25, 2013, the Noteholder Group terminated the Prepetition Transaction Support Agreement based in large part on the evolution of the projected tax benefits EME was projected to receive.[9] As the focus shifted away from a debt for equity conversion as contemplated under the Prepetition Transaction Support Agreement, EME, in consultation with its advisors and other parties in interest, began exploring all potential restructuring options.

12. On August 1, 2013, the Debtors, with the assistance with J.P. Morgan Securities LLC, launched a formal marketing and sale process for substantially all of EME's assets.[10] At the same time, the Debtors and their advisors spent several months developing a proposed business plan that would support a standalone restructuring.[11]

13. Also in August 2013, NRG and certain noteholders entered into a non-disclosure agreement to discuss a potential transaction involving the Debtors. The Debtors were not a party

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8 See *Debtors' First Status Report on Chapter 11 Cases* ¶ 17 [Docket No. 604].

9 See Rigatti Decl. ¶ 15; *Notice of Termination of Transaction Support Agreement* [Docket No. 1040].

10 See *Order Authorizing the Employment and Retention of J.P. Morgan Securities LLC as Financial Co-Advisor for the Debtors and Debtors in Possession* [Docket No. 1021].

11 See Cofsky Decl. ¶ 11; Rigatti Decl. ¶ 17.

to this non-disclosure agreement or a participant in the discussions. These discussions resulted in a term sheet proposal that reflected negotiations among NRG and the Supporting Noteholders, and which called for a fully consensual transaction among all major constituencies in these chapter 11 cases, including the Debtors, the Committee, and the PoJo Parties. Further, that term sheet was in all respects subject to further negotiation by the Debtors, negotiation of definitive documents among all parties, and appropriate solicitation of creditors in accordance with the Bankruptcy Code following Court approval. This term sheet was presented to the Debtors on or about September 9, 2013.

14. At the direction of EME's board of directors, the Debtors and their advisors analyzed and explored the proposed NRG transaction to determine if it would maximize the value of the Debtors' Estates.[12] At the same time, the Debtors continued their sale process and planning around a potential standalone restructuring.[13]

15. EME's board of directors ultimately determined and authorized the Debtors and their advisors to move forward in the negotiations with NRG, while at the same time continuing the ongoing sale process.[14] Thus, the Debtors and their advisors engaged NRG (as well as certain of the Supporting Noteholders, the Committee, the PoJo Parties, and their respective advisors) in several rounds of in-person and telephonic meetings to negotiate the key elements of the transaction.[15]

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12 See Rigatti Decl. ¶ 17.

13 See id.

14 See id. ¶ 18.

15 See id.

16. On October 18, 2013, the Debtors, NRG, the Committee, the initial Supporting Noteholders, and the PoJo Parties reached agreement on the terms of the Plan Sponsor Agreement, the Purchase Agreement, the Plan Term Sheet, and the PoJo Term Sheet.

17. On October 24, 2013, the Bankruptcy Court approved the Debtors' entry into the Plan Sponsor Agreement.[16]

III. The EIX Settlement

18. EIX is the Debtors' ultimate parent and one of the Debtors' most significant stakeholders. Following completion of its nearly year-long investigation, EME believes that it has a number of claims against EIX, certain EIX affiliates, and current and former members of EIX's and EME's boards of directors. EME, the Committee, and the Noteholder Group all believe the potential claims to be substantial.

19. EIX likewise asserted claims against the Debtors including claims arising under shared services agreements, litigation-related claims, director and officer liability claims, intellectual property and contract claims, tax claims, and power purchase agreement guaranty claims. The Debtors and the Committee have analyzed the proofs of claim asserted by EIX and its affiliates against the Debtors and have objected; in addition, as an alternative to disallowance, the Debtors have sought estimation of those claims at or near zero.[17] The absence of a settlement of these claims would necessitate litigation that would be inherently complex, protracted, and likely expensive. Indeed, prosecuting or defending these claims would also require significant time and the investment of critical resources. And a fully litigated process could seriously delay the Debtors' efforts to provide maximized and expeditious distributions to creditors.

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16 See *Order Approving (I) Entry Into Plan Sponsor Agreement, (II) Sponsor Protections, and (III) Related Relief* [Docket No. 1424].

17 See *Debtors' Motion to Estimate Disputed Claims* [Docket No. 1747].

20. Facing the prospect of prolonged litigation and disputes and objections with the respect to the Plan, the parties engaged in several months of settlement discussions to determine if a resolution could be reached ahead of Confirmation. These efforts were ultimately successful. On February 18, 2014, EIX, EME and the Supporting Noteholders entered into the EIX Settlement Agreement.[18] The EIX Settlement provides for a full and final resolution of all Claims asserted among the parties, maximizes value for all stakeholders, and is in the best interests of the Debtors' Estates.

21. Specifically, the principal terms of the EIX Settlement are as follows:[19]

- EIX will pay $225 million in cash to the Reorganization Trust on the Effective Date; and in addition, after the Effective Date, EIX will pay an estimated $400 million in 2015 and 2016 in incremental adjustments depending on the value of EME's tax attributes.

- EIX will assume and pay certain federal and state income taxes, pension, and deferred compensation obligations.

- EME will retain and pay certain retiree benefits obligations, liabilities to NRG, and all other liabilities of EME and its subsidiaries not assumed by NRG, including for taxes other than those assumed by EIX.

22. EME and EIX will generally release each of their respective claims against the other, other than (a) claims arising under the EIX Settlement Agreement or EIX Settlement Ancillary Documents, (b) Commercial Relationship Claims (as defined in the EIX Settlement Agreement, (c) EME's claims as an insured against any insurer in its capacity as an EIX Released Party, and (d) EIX's claims that are Assumed Liabilities. Further, and as a condition to the EIX Settlement, the Plan provides that "all Claims or other liabilities that may otherwise be

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18 *Notice of Filing of EIX Settlement Agreement* [Docket No. 2071].

19 The summary of the EIX Settlement Agreement presented here is qualified in its entirety by the terms and conditions of the EIX Settlement Agreement. To the extent of any inconsistency between the terms and conditions presented here and those in the EIX Settlement Agreement, the terms and conditions of the EIX Settlement Agreement will control.

asserted against the EIX Released Parties or their respective property (other than the Settlement Assumed Liabilities as defined in the EIX Settlement) shall be permanently released and enjoined" and treated pursuant to the Plan. As discussed further below, this provision is necessary to implement the terms of the EIX Settlement, and EIX insisted that any settlement include a release and protective injunction in favor of EIX to complete the deal.

IV. The Plan Confirmation Process

23. On December 18, 2013, the Court entered an order approving the Debtors' Disclosure Statement [Docket No. 1718] (the "Disclosure Statement Order"). On January 17, 2014, the Debtor filed an initial version of the Plan Supplement [Docket No. 1851].[20] On February 19, 2014, the Debtors filed certain revised exhibits to the Plan Supplement [Docket No. 2072], and on March 3, 2014, the Debtors filed the *Form of Reorganization Trust Agreement* [Docket No. 2155], which remains subject to further modification and final approval by the Debtors, the Committee and the Noteholder Group.

24. The objection deadline for Confirmation and the Voting Deadline was originally set as January 29, 2014. Thirteen parties filed formal objections (the "Objections"), and nine of the 13 Objections have been resolved by agreement between the Debtors and the applicable objecting party. **Exhibit A** hereto is a summary of the status of the Objections, including the resolution of certain Objections and the Debtors' responses to the other Objections not resolved as of the date hereof. The Debtors will continue to negotiate with the parties that filed the

[20] The Plan Supplement consisted of: (a) to the extent known, the identity of the members of the New Board and the nature and compensation for any member of the New Board who is an "insider" under section 101(31) of the Bankruptcy Code; (b) the Schedule of Assumed Executory Contracts and Unexpired Leases; (c) the Schedule of Rejected Executory Contracts and Unexpired Leases; (d) forms of the applicable New Corporate Governance Documents; (e) the Purchase Agreement; (f) a schedule identifying the EME Retained Causes of Action; (g) a schedule identifying the Purchaser Retained Causes of Action; (h) the Schedule of Eligible Employees; (i) the amount of the Disputed Claims Reserve Amount; (j) the calculation of the Agreed PoJo Cure Amount; (k) a summary of the Wind Down Budget, subject to appropriate confidentiality protections; and (l) any identification and tax information that will be requested of recipients of New Interests under Article VI.G.2 of the Plan.

remaining Objections before the Confirmation Hearing and expect that some, if not all, of the remaining Objections will be resolved.

25. After reaching agreement on the EIX Settlement, the Debtors filed an amended version of the Plan, which (among other things) incorporates the EIX Settlement and provides for the creation of the Reorganization Trust. In connection with the Plan modifications incorporating the EIX Settlement, the Debtors requested and obtained the Court's approval of the form of notice to be provided to all parties in interest regarding the material terms of the EIX Settlement and the Debtors' intention to seek approval of the EIX Settlement as part of the Plan.[21] Specifically, the notice included, among other things:

- the revised date and time of the Confirmation Hearing;
- a summary of the material terms of the EIX Settlement and a copy of the EIX Settlement Agreement;
- the deadline to object to the EIX Settlement;
- a disclosure of the releases and injunctions contained in the modified Plan;
- a copy of the modified Plan;
- revised estimates of recoveries for Holders of Allowed Class A4 and Class A5 Claims; and
- instructions for eligible Holders to change their vote on the Plan if they did not support the Plan as modified to incorporate the EIX Settlement.[22]

26. The Debtors promptly distributed the notice to parties in interest in these Chapter 11 Cases.[23] In addition, the Debtors published the notice in the *New York Times (National Edition)* and on the Debtors' restructuring website.[24]

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[21] See *Order Establishing Certain Scheduling and Notice Procedures for Confirmation of the Debtors' Modified Plan and Granting Related Relief* [Docket No. 2094].

[22] See id.; *Debtors' Motion for Entry of an Order Establishing Certain Scheduling and Notice Procedures for Confirmation of the Debtors' Modified Plan and Granting Related Relief* [Docket No. 2074].

[23] See *Affidavit of Service* [Docket No. 2108].

V. Voting Results

27. In accordance with section 1126 of the Bankruptcy Code, the Plan provides that only Holders of Claims and Interests in Impaired Classes receiving or retaining property on account of such Claims or Interests may vote on the Plan. In addition, Holders of Claims are not entitled to vote if their contractual rights are (a) Unimpaired by the Plan or (b) Impaired by the Plan such that they will receive no distribution of property under the Plan.

28. The following Classes of Claims are Unimpaired under the Plan. These Classes were not entitled to vote on the Plan and are presumed to accept the Plan. Accordingly, the Holders of such Claims were not solicited to vote on the Plan.

Class	Claims or Interests	Status
A1	Other Priority Claims against EME	Unimpaired
A2	Secured Claims against EME	Unimpaired
A8	EME Interests	Unimpaired
B1	Other Priority Claims against Debtor Subsidiaries	Unimpaired
B2	Secured Claims against Debtor Subsidiaries	Unimpaired
B6	Intercompany Interests in Debtor Subsidiaries	Unimpaired
C1	Other Priority Claims against Homer City Debtors	Unimpaired
C2	Secured Claims against Homer City Debtors	Unimpaired

29. The following Classes of Claims are fully Impaired under the Plan. These Classes were not entitled to vote on the Plan and are deemed to reject the Plan. Accordingly, the Holders of such Claims were not solicited to vote on the Plan.

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[24] See http://www.edisonmissionrestructuring.com.

Class	Claims or Interests	Status
A6	Intercompany Claims against EME	Impaired
A7	Subordinated Claims against EME	Impaired
B4	Intercompany Claims against Debtor Subsidiaries	Impaired
B5	Subordinated Claims against Debtor Subsidiaries	Impaired
C5	Subordinated Claims against Homer City Debtors	Impaired

30. Accordingly, the Debtors solicited votes only from Holders of Claims in Impaired Classes receiving or retaining property under the Plan. The voting results, as reflected in the Voting Report, are summarized as follows:[25]

Class	Percent of Number of Claims or Interests Accepting	Percent of Amount of Claims or Interests Accepting	Result
A3	100.0%	100.0%	Accept
A4	99.0%	99.9%	Accept
A5	100.0%	0.0%	Accept
B3	100.0%	100.0%	Accept
C3	97.7%	79.2%	Accept
C4	100.0%	100.0%	Accept
C6[26]	0.0%	0.0%	Deemed to Accept

Argument

I. The Debtors Satisfy Each Requirement for Confirmation.

31. To confirm the Plan, the Court must find that a plan proponent has satisfied the provisions of section 1129 of the Bankruptcy Code by a preponderance of the evidence.[27] As set

[25] See Voting Report.

[26] No valid Ballots were submitted by Holders of Claims in Class C6.

[27] See In re GAC Storage El Monte, LLC, 489 B.R. 747, 755 (Bankr. N.D. Ill. 2013) ("The plan proponent bears the burden of proving by a preponderance of the evidence that each of the requirements of Section 1129(a) are met."); In re Multiut Corp., 449 B.R. 323, 332 (Bankr. N.D. Ill. 2011) ("The proponent must meet its burden [under section 1129] by a preponderance of the evidence." (citing In re S. Beach Sec., Inc., 376 B.R. 881, 887 (Bankr. N.D. Ill. 2007); In re Repurchase Corp., 332 B.R. 336, 342 (Bankr. N.D. Ill. 2005))).

forth herein, the Plan fully complies with all of the requirements of sections 1122, 1123, and 1129 of the Bankruptcy Code. The following sections address each requirement individually, as well as the permissive elements of the Plan.

A. The Plan Complies with Section 1129(a)(1) of the Bankruptcy Code.

32. Section 1129(a)(1) of the Bankruptcy Code requires that a plan of reorganization comply with the applicable provisions of the Bankruptcy Code, including, principally, the rules governing classification of claims and interests and the contents of a plan of reorganization.[28] Accordingly, determining whether the Plan complies with section 1129(a)(1) requires application of sections 1122 and 1123 of the Bankruptcy Code. As explained below, the Plan complies with sections 1122 and 1123 in all respects.

1. The Plan Satisfies the Classification Requirements of Section 1122 of the Bankruptcy Code.

33. Section 1122 of the Bankruptcy Code requires that a class must contain claims or interests "substantially similar to the other claims or interests of such class."[29] The Plan satisfies section 1122's classification requirements because each Class differs from the others in a legal or factual nature or based on other relevant criteria. The Seventh Circuit has recognized that, under section 1122 of the Bankruptcy Code, "[a] debtor in bankruptcy has considerable discretion to classify claims and interests" in a chapter 11 plan.[30] Courts have identified several grounds justifying the separate classification of claims, including: (a) where "significant disparities exist

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[28] 11 U.S.C. § 1129(a)(1); Multiut Corp., 449 B.R. at 333 (finding that section 1129(a)(1) is most directly aimed at requiring compliance with the Bankruptcy Code's provisions regarding classification of claims and interests and plan contents); In re S&W Enter., 37 B.R. 153, 158 (Bankr. N.D. Ill. 1984) (same); see also Kane v. Johns-Manville Corp., 843 F.2d 636, 648-49 (2d Cir. 1988) (suggesting that Congress intended the phrase "'applicable provisions' in this subsection to mean provisions of Chapter 11 . . . such as section 1122 and 1123").

[29] 11 U.S.C. § 1122(a).

[30] In re Wabash Valley Power Ass'n, Inc., 72 F.3d 1305, 1321 (7th Cir. 1995) (citing In re Woodbrook Assocs., 19 F.3d 312 (7th Cir. 1994)); Multiut Corp., 449 B.R. at 334 (quoting same from Wabash Valley); see also GAC Storage, 489 B.R. at 770 (discussing limited nature of restrictions on claims classification).

between the legal rights of the holder[s of different claims] which render the two claims not substantially similar;" (b) where the Debtors have "good business reasons" for separate classification; and (c) where "the claimants have sufficiently different interests in the plan."[31] In this case, the Plan provides for the separate classification of Claims and Interests into Classes based upon differences in the legal nature, priority, and business interests of such Claims and Interests, including against which Debtor the Claims and Interests are held.

34. The Plan's classification scheme reflects, among other things, the Debtors' capital and corporate structure (and therefore relative priority between the Claims and Interests) as well as the varied treatment to be afforded different Claims and Interests pursuant to the Plan Sponsor Agreement.[32] Therefore, valid business, factual, and legal reasons exist for classifying separately the various Classes of Claims and Interests created under the Plan. Accordingly, the Debtors respectfully submit that the Plan satisfies the classification requirements of section 1122 of the Bankruptcy Code.

2. The Plan Satisfies the Mandatory Requirements of Section 1123(a) of the Bankruptcy Code.

35. Section 1123(a) of the Bankruptcy Code sets forth seven requirements, namely, that:

- the Plan designates Classes of Claims and Interests;
- the Plan identifies Unimpaired Classes of Claims and Interests;
- the Plan specifies treatment of Impaired Classes of Claims and Interests;

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31 See Wabash Valley, 72 F.3d at 1321; Multiut Corp., 449 B.R. at 334 (same); see also GAC Storage, 489 B.R. at 770 (holding Bankruptcy Code "provides that dissimilar claims cannot be placed into the same class" and "claims may be classified separately if significant disparities exist between the legal rights of the holders which render the two not substantially similar" (internal quotation marks and alterations omitted)).

32 See Rigatti Decl. ¶ 23.

- the Plan provides the same treatment for each Claim or Interest of a particular Class, unless the Holder of a particular Claim or Interest agrees to a less favorable treatment of such particular Claim or Interest;
- the Plan provides adequate means for its implementation;
- the Plan provides for the inclusion in the Debtors' charters (as applicable) of a prohibition of nonvoting equity securities and provides an appropriate distribution of voting power among the Classes of securities; and
- the Plan is consistent with the interests of the creditors and equity security holders and with public policy with respect to the manner of selection of the reorganized company's officers and directors.[33]

36. The Plan satisfies each of the requirements of section 1123(a) of the Bankruptcy Code. Article III of the Plan satisfies the first four requirements of section 1123(a) by: (a) designating Classes of Claims and Interests, as required by section 1123(a)(1) of the Bankruptcy Code; (b) specifying the Classes of Claims and Interests that are Unimpaired under the Plan, as required by section 1123(a)(2) of the Bankruptcy Code; (c) specifying the treatment of each Class of Claims and Interests that is Impaired, as required by section 1123(a)(3) of the Bankruptcy Code; and (d) specifying that the treatment of each Claim or Interest within a Class is the same, unless the Holder of a Claim or Interest consents to less favorable treatment on account of its Claim or Interest, as required by section 1123(a)(4) of the Bankruptcy Code.

37. Article IV and various other provisions of the Plan provide adequate means for the Plan's implementation, thus satisfying the fifth requirement of section 1123(a).[34] Finally, the sixth and seventh parts of section 1123(a) are satisfied by the terms of the forms of the New

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[33] See 11 U.S.C. § 1123(a)(1)–(7).

[34] 11 U.S.C. § 1123(a)(5). Section 1123(a)(5) specifies that adequate means for implementation of a plan may include: (i) retention by the debtor of all or part of its property; (ii) the transfer of property of the estate to one or more entities; (iii) cancellation or modification of any indenture; (iv) curing or waiving of any default; (v) amendment of the debtor's charter; or (vi) issuance of securities for cash, for property, for existing securities, in exchange for claims or interests or for any other appropriate purpose.

Governance Documents included in the Plan Supplement.[35] In light of the foregoing, the Debtors respectfully submit that the Plan satisfies section 1123(a) of the Bankruptcy Code.

B. The Debtors Have Complied with the Applicable Provisions of the Bankruptcy Code (Section 1129(a)(2)).

38. The Debtors have satisfied section 1129(a)(2) of the Bankruptcy Code, which requires that the proponent of a plan of reorganization comply with the applicable provisions of the Bankruptcy Code. The legislative history to section 1129(a)(2) provides that section 1129(a)(2) is intended to encompass the disclosure and solicitation requirements set forth in sections 1125 and 1126 of the Bankruptcy Code and the requirements of any court order.[36] As set forth below, the Debtors have complied with these provisions, as well as Bankruptcy Rules 3017 and 3018, by distributing the Disclosure Statement and soliciting acceptances of the Plan through its Voting and Solicitation Agent as required by the Disclosure Statement Order.

1. The Debtors Have Complied with the Disclosure and Solicitation Requirements of Section 1125.

39. Section 1125 of the Bankruptcy Code prohibits the solicitation of acceptances or rejections of a plan of reorganization "unless, at the time of or before such solicitation, there is transmitted the plan or a summary of the plan, and a written disclosure statement approved, after notice and a hearing, by the court as containing adequate information."[37]

40. Here, the Debtors have satisfied section 1125 of the Bankruptcy Code. Before the Debtors solicited votes on the Plan, the Court entered the Disclosure Statement Order approving

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35 See Plan, Art. IX.K.1(g).

36 See H.R. Rep. No. 95-595, at 412; S. Rep. No. 95-989, at 126 ("Paragraph (2) [of section 1129(a)] requires that the proponent of the plan comply with the applicable provisions of chapter 11, such as section 1125 regarding disclosure."); see also In re Sentinel Mgmt. Grp., Inc., 398 B.R. 281, 303 (Bankr. N.D. Ill. 2008) ("Section 1129(a)(2) requires that the plan comply with the applicable provisions of Title 11. . . . Courts have focused on a plan proponent's compliance with the disclosure and solicitation requirements of §§ 1125 and 1126.").

37 11 U.S.C. § 1125(b).

the Disclosure Statement as containing adequate information pursuant to section 1125(a)(1).[38] The Disclosure Statement Order also approved the contents of the solicitation packages provided to Holders of Claims and Interests entitled to vote on the Plan, the non-voting materials provided to creditors not entitled to vote on the Plan, and the relevant dates for voting and objecting to the Plan.[39] The Debtors, through the Voting and Solicitation Agent, complied in all respects with the content and delivery requirements of the Disclosure Statement Order, thereby satisfying sections 1125(a) and (b) of the Bankruptcy Code.[40] The Debtors also satisfied section 1125(c) of the Bankruptcy Code, which provides that the same disclosure statement must be transmitted to each holder of a claim or interest in a particular class. Here, the Debtors transmitted the same Disclosure Statement to all parties entitled to vote on the Plan.[41] In addition, the Debtors have solicited votes on the Plan in good faith in accordance with section 1125(e) of the Bankruptcy Code. The Debtors are not aware of any dispute as to compliance with the disclosure and solicitation requirements of section 1125 of the Bankruptcy Code.

2. The Debtors Have Satisfied the Plan Acceptance Requirements of Section 1126.

41. Section 1126 of the Bankruptcy Code provides that only holders of allowed claims and equity interests in impaired classes that will receive or retain property under a plan on account of such claims or equity interests may vote to accept or reject a plan.[42] As set forth in the Plan, the Disclosure Statement, the Disclosure Statement Order, and the Voting Report, in

38 See Disclosure Statement Order ¶ 3.

39 Id. ¶ 24.

40 See *Affidavit of Service* [Docket No. 1754] (the "Solicitation Affidavit"); Voting Report.

41 See Voting Report.

42 11 U.S.C. § 1126.

accordance with section 1126, the Debtors did not solicit votes on the Plan from Classes A1, A2, A6, A7, A8, B1, B2, B4, B5, B6, C1, C2, or C5.

42. Classes A1, A2, A8, B1, B2, B6, C1, and C2 are Unimpaired under the Plan (collectively, the "Unimpaired Classes").[43] Pursuant to section 1126(f) of the Bankruptcy Code, Holders of Claims and Interests in the Unimpaired Classes are conclusively presumed to have accepted the Plan: therefore, they are not entitled to vote on the Plan.

43. Classes A6, A7, B4, B5, and C5 are Impaired under the Plan and will not receive any distributions or retain any property under the Plan (collectively, the "Deemed Rejecting Classes").[44] Pursuant to section 1126(g) of the Bankruptcy Code, Holders of Claims and Interests in the Deemed Rejecting Classes are deemed to have rejected the Plan: therefore, they are not entitled to vote on the Plan.

44. Accordingly, the Debtors solicited votes only from Holders of Allowed Claims and Interests in Classes A3, A4, A5, B3, C3, C4, and C6 (collectively, the "Voting Classes") because each of these Classes is Impaired and entitled to receive a distribution under the Plan.[45] With respect to the Voting Classes, section 1126(c) of the Bankruptcy Code specifies the requirements for acceptance of a plan by a class of claims:

> A class of claims has accepted a plan if such plan has been accepted by creditors, other than any entity designated under subsection (e) of [section 1126], that hold at least two-thirds in amount and more than one-half in number of the allowed claims of such class held by creditors, other than any entity designated under subsection (e) of [section 1126], that have accepted or rejected such plan.[46]

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43 See Plan, Art. III.

44 See id.

45 See Plan, Art. III.

46 11 U.S.C. § 1126(c).

45. The Voting Report, as previously summarized, reflects the results of the voting process in accordance with section 1126 of the Bankruptcy Code.[47] As set forth in the Voting Report, each of the Voting Classes overwhelmingly accepted the Plan. The Debtors are not aware of any dispute as to compliance with section 1126 of the Bankruptcy Code.

C. The Plan Has Been Proposed in Good Faith and Not by Any Means Forbidden by Law (Section 1129(a)(3)).

46. Section 1129(a)(3) of the Bankruptcy Code requires that a plan of reorganization be "proposed in good faith and not by any means forbidden by law."[48] Good faith "is generally interpreted to mean that there exists a reasonable likelihood that the plan will achieve a result consistent with the objectives and purposes of the Bankruptcy Code."[49] Chapter 11's fundamental purpose is to enable a distressed business to reorganize its affairs and maximize creditor recoveries.[50] Thus, a plan is proposed in good faith if there is a likelihood that the plan will achieve a result consistent with these goals.[51] The requirement of good faith must be viewed in light of the totality of the circumstances surrounding the proposal of a chapter 11 plan.[52]

47. The Debtors negotiated, drafted, and implemented their proposed restructuring in good faith. The Sale Transaction and related documents were negotiated, proposed, and entered into by the Debtors and the Purchaser Parties in good faith and from arm's-length bargaining

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47 See Voting Report.

48 11 U.S.C. § 1129(a)(3).

49 In re Madison Hotel Assocs., 749 F.2d 410, 424–25 (7th Cir. 1984) (internal quotation marks omitted); see also GAC Storage, 489 B.R. at 771; Multiut Corp., 449 B.R. at 341; Sentinel Mgmt., 398 B.R. at 315–16.

50 See Bank of Am. Nat'l Trust & Sav. Ass'n v. 203 N. LaSalle St. P'ship, 526 U.S. 434, 453 (1999) (basic purposes of chapter 11 are "preserving going concerns" and "maximizing property available to satisfy creditors").

51 See GAC Storage, 489 B.R. at 771 ("Further, the plan must have a true purpose and fact-based hope of either preserving going concern or maximizing property available to satisfy creditors."); Multiut Corp., 449 B.R. at 341 (same).

52 See Madison Hotel, 749 F.2d at 425 (holding that, in determining the "good faith" of a plan, the court must view the plan "in light of the totality of the circumstances surrounding confection of the plan").

positions, without any collusion, fraud, or attempt to take grossly unfair advantage of any party, including any potential purchaser. Moreover, the Purchase Agreement provided for a "go shop" period during which the Debtors were free to continue to explore and develop alternative transactions.

48. As noted above, the Plan is a result of extensive collaboration among the Debtors, the Purchaser Parties, the Noteholder Group, the PoJo Parties, and the Committee, collectively representing a huge proportion of the Debtors' stakeholders. Consequently, the Debtors believe that the Plan has been proposed in good faith and satisfies all of the requirements of section 1129(a)(3) of the Bankruptcy Code. In addition, this issue is discussed further below in connection with the Debtors' responses to the Objections.

D. The Plan Provides for Bankruptcy Court Approval of Certain Administrative Payments (Section 1129(a)(4)).

49. Section 1129(a)(4) of the Bankruptcy Code requires that certain professional fees and expenses paid by the plan proponent, by the debtor, or by a person issuing securities or acquiring property under the plan, be subject to approval of the Court as reasonable.[53]

50. Here, all payments made or to be made by the Debtors for services or for costs or expenses in connection with these Chapter 11 Cases (and before the Effective Date), including all Accrued Professional Compensation Claims, have been approved by, or are subject to approval of the Court as reasonable. In addition, Article II.C.2 of the Plan provides that all final requests for payment of unpaid Professional Claims must be filed no later than 30 days after the Effective Date. Because the Court will determine the Allowed amounts of such Accrued Professional Compensation Claims, the Plan complies fully with the requirements of section

[53] See, e.g., In re WorldCom, Inc., Case No. 02-13533, 2003 WL 23861928, at *54 (Bankr. S.D.N.Y. Oct. 31, 2003); In re River Village Assocs., 161 B.R. 127, 147 (Bankr. E.D. Pa. 1993), aff'd, 181 B.R. 795 (E.D. Pa. 1995).

1129(a)(4) of the Bankruptcy Code. The Debtors are not aware of any dispute as to whether the Plan complies with section 1129(a)(4) of the Bankruptcy Code.

E. Post-Emergence Directors and Officers Have Been Disclosed in the Plan Supplement and Their Appointment Is Consistent with Public Policy (Section 1129(a)(5)).

51. The Bankruptcy Code requires the proponent of a plan to disclose the identity and affiliation of any individual proposed to serve as a director or officer of the debtor or a successor to the debtor under the plan.[54] Section 1129(a)(5)(A)(ii) further requires that the appointment or continuance of such officers and directors be consistent with the interests of creditors and equity security holders and with public policy.[55]

52. In this case, the Plan satisfies section 1129(a)(5)(A)(i) of the Bankruptcy Code because the Debtors have disclosed the identities and affiliations of all persons proposed to serve on the Reorganization Trust Oversight Board and as directors and officers of Post-Reorganization EME.[56] Accordingly, the Debtors have satisfied the requirements of section 1129(a)(5) of the Bankruptcy Code. The Debtors are not aware of any dispute as to whether the Plan satisfies section 1129(a)(5) of the Bankruptcy Code.

F. The Plan Does Not Require Governmental Approval of Rate Changes (Section 1129(a)(6)).

53. Section 1129(a)(6) of the Bankruptcy Code permits confirmation only if any regulatory commission that will have jurisdiction over the debtor after confirmation has approved any rate change provided for in the plan.[57] The Plan does not provide for any rate

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54 11 U.S.C. § 1129(a)(5)(A)(i).

55 11 U.S.C. § 1129(a)(5)(A)(ii).

56 *Notice of Filing of Members of the Board of Directors of Post-Reorganization EME and the Reorganization Trust Oversight Board and Section 1129(a)(5) of the Bankruptcy Code Disclosures* [Docket No. 2166].

57 11 U.S.C. § 1129(a)(6).

changes and no party has argued otherwise. Section 1129(a)(6) of the Bankruptcy Code is inapplicable here.

G. The Plan Is in the Best Interests of Creditors and Interest Holders (Section 1129(a)(7)).

54. Often called the "best interests" test, section 1129(a)(7) of the Bankruptcy Code requires that a chapter 11 plan provide, with respect to each class, that each holder of a claim or equity interest in such class either: (a) has accepted the plan; or (b) will receive or retain under the plan property of a value, as of the effective date of the plan, that is not less than the amount that such holder would receive or retain if the Debtors liquidated under chapter 7 of the Bankruptcy Code.[58] The best interests test is generally satisfied by a liquidation analysis demonstrating that an impaired class will receive no less under the plan than under a chapter 7 liquidation.[59]

55. In this case, the Plan satisfies the best interests test with respect to all Classes of Claims and Interests. To demonstrate compliance with section 1129(a)(7) of the Bankruptcy Code, the Debtors have compared the distributions under the Plan to Holders of Impaired Claims and Interests to the estimated recoveries of these Holders in a hypothetical chapter 7 liquidation and, as set forth in the Liquidation Analysis attached as Exhibit E to the Disclosure Statement, have determined the distributions these Holders will receive under the Plan will be greater than the distributions these Holders would receive in a hypothetical chapter 7 liquidation.[60]

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58 11 U.S.C. § 1129(a)(7)(A).

59 See Multiut Corp., 449 B.R. at 344 (holding that in satisfying section 1129(a)(7), "[f]ailure to attach a liquidation analysis violates § 1129(a)(7)"); In re AG Consultants Grain Div., Inc., 77 B.R. 665, 668 (Bankr. N.D. Ind. 1987) ("Without the [liquidation] analysis, creditors cannot determine whether they will receive more under the plan than they would in a Chapter 7 liquidation."); In re Jartran, Inc., 44 B.R. 331, 389–94 (Bankr. N.D. Ill. 1984) (best interests test satisfied by showing that, upon liquidation, the cash received would be insufficient to pay priority claims and secured creditors and that unsecured creditors and shareholders would receive nothing).

60 See Cofsky Decl. ¶¶ 16–20.

Accordingly, the Debtors believe the Plan is in the best interests of their stakeholders. Based on these facts, the Debtors respectfully submit that the Plan satisfies the "best interests" test under section 1129(a)(7) of the Bankruptcy Code.

H. The Plan Can Be Confirmed Notwithstanding the Requirements of Section 1129(a)(8).

56. Section 1129(a)(8) requires that each class of holders of claims or interests must either accept a plan or be unimpaired under a plan.[61] Although each of the Voting Classes has accepted the Plan, the Deemed Rejecting Classes are deemed to have rejected the Plan under section 1126(g) because Holders of Claims and Interests in these Classes are not entitled to receive or retain any property under the Plan. Nevertheless, the Debtors respectfully submit that the Plan is confirmable because it satisfies section 1129(b), as discussed below.

I. The Plan Complies with Statutorily Mandated Treatment of Administrative and Priority Tax Claims (Section 1129(a)(9)).

57. Section 1129(a)(9) of the Bankruptcy Code requires that persons holding claims entitled to priority under section 507(a) of the Bankruptcy Code receive specified cash payments under the Plan. Unless the holder of a particular claim agrees to a different treatment with respect to such claim, section 1129(a)(9) of the Bankruptcy Code requires the Plan to provide as follows:

> (A) with respect to a claim of a kind specified in section 507(a)(2) or 507(a)(3) of [the Bankruptcy Code], on the effective date of the plan, the holder of such claim will receive on account of such claim cash equal to the allowed amount of such claim;
>
> (B) with respect to a class of claims of a kind specified in section 507(a)(1), 507(a)(4), 507(a)(5), 507(a)(6) or 507(a)(7) of [the Bankruptcy Code], each holder of a claim of such class will receive:

[61] 11 U.S.C. § 1129(a)(8).

> (i) if such class has accepted the plan, deferred cash payments of a value, as of the effective date of the plan, equal to the allowed amount of such claim; or
>
> (ii) if such class has not accepted the plan, cash on the effective date of the plan equal to the allowed amount of such claim;
>
> (C) with respect to a claim of a kind specified in section 507(a)(8) of [the Bankruptcy Code], the holder of such claim will receive on account of such claim regular installment payments in cash—
>
> (i) of a total value, as of the effective date of the plan, equal to the allowed amount of such claim;
>
> (ii) over a period ending not later than 5 years after the date of the order for relief under section 301, 302, or 303; and
>
> (iii) in a manner not less favorable than the most favored nonpriority unsecured claim provided for by the plan (other than cash payments made to a class of creditors under section 1122(b)).[62]

58. In accordance with section 1129(a)(9) of the Bankruptcy Code, the Plan provides that each Holder of an Allowed Administrative Claim (other than any Accrued Professional Compensation Claim) will receive, in full and final satisfaction, settlement, and release of its Administrative Claim, Cash in an amount equal to the amount of such Allowed Administrative Claim either: (a) on the Effective Date; (b) if the Administrative Claim is not Allowed as of the Effective Date, thirty (30) days after the date on which an order Allowing such Administrative Claim becomes a Final Order, or as soon as reasonably practicable thereafter; or (c) if the Allowed Administrative Claim is based on liabilities incurred by the Debtors in the ordinary course of business after the Petition Date, pursuant to the terms and conditions of the particular transaction giving rise to such Allowed Administrative Claim, in each case without any further

[62] 11 U.S.C. § 1129(a)(9).

action by the Holder of such Allowed Administrative Claim and without any further notice to or action, order, or approval of the Bankruptcy Court.[63]

59. In addition, Article II.B of the Plan provides that each each Holder of an Allowed Priority Tax Claim due and payable on or before the Effective Date shall be treated in accordance with the terms set forth in section 1129(a)(9)(C) of the Bankruptcy Code.[64]

60. For the reasons set forth above, the Plan complies with the requirements of section 1129(a)(9) of the Bankruptcy Code.

J. At Least One Impaired Class of Claims Has Accepted the Plan, Excluding the Acceptances of Insiders (Section 1129(a)(10)).

61. Section 1129(a)(10) provides that if a class of claims is impaired under a plan, at least one impaired class of claims must accept the plan, excluding acceptance by any insider.[65]

62. As detailed herein and in the Voting Report, four Voting Classes have accepted the Plan, exclusive of any acceptances by insiders. Accordingly, the Plan complies with the requirements of section 1129(a)(10) of the Bankruptcy Code.

K. The Plan Is Feasible (Section 1129(a)(11)).

63. Section 1129(a)(11) of the Bankruptcy Code requires that the Bankruptcy Court find that the plan is feasible as a condition precedent to confirmation. Specifically, the Bankruptcy Court must determine that confirmation of a plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the debtor or any successor to the debtor under the plan, unless such liquidation or reorganization is contemplated by the Plan.[66]

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63 See Plan, Art. II.A.

64 See Plan, Art. II.B.

65 11 U.S.C. § 1129(a)(10).

66 11 U.S.C. § 1129(a)(11).

64. To demonstrate that a plan is feasible, a plan proponent only has to show reasonable assurance of commercial viability, not provide a guarantee of success.[67] As such, when evaluating the feasibility of a chapter 11 plan, courts in this District have identified the following probative factors:

- the adequacy of the capital structure;
- the earning power of the business;
- economic conditions;
- the ability of management;
- the probability of the continuation of the same management; and
- any other related matter which determines the prospects of a sufficiently successful operation to enable performance of the provisions of the plan.[68]

65. Under these factors, the Debtors' Plan is feasible. Pursuant to the Plan, certain of the Debtors' liabilities will be assumed by the Purchaser, an affiliate of NRG. NRG is a Fortune 500 and S&P 500 company and owns and operates one of the largest and most diversified power generation and wholesale and retail electricity businesses in the U.S.[69] NRG's current market capitalization is approximately $9 billion, and, as of September 30, 2013, it had more than $2.1 billion cash on hand.[70] Thus, the Debtors submit that the Purchaser's ability to satisfy the liabilities it is assuming is clearly sufficient to enable performance of the Plan.

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67 See In re 203 N. LaSalle St. P'Ship, 126 F.3d 955, 961–62 (7th Cir. 1997) ("In determining that the plan was feasible, the bankruptcy court need not find that it is guaranteed to succeed; only a reasonable assurance of commercial viability is required." (internal quotation marks and alterations omitted)); GAC Storage, 489 B.R. at 755 (same); Multiut Corp., 449 B.R. at 347 (same); Sentinel Mgmt., 398 B.R. at 318 (same).

68 GAC Storage, 489 B.R. at 755.

69 NRG Energy Inc., Quarterly Report (Form 10-Q) (Oct. 30, 2013).

70 See *NRG Energy, Inc. - Fortune 500 2013 - Fortune* (CNNMoney 2013) (available online at http://money.cnn.com/magazines/fortune/fortune500/2013/snapshots/11201.html); NRG Energy Inc., Quarterly Report (Form 10-Q) (Oct. 30, 2013).

66. In addition, EIX is assuming certain of the Debtors' liabilities pursuant to the EIX Settlement. Many of the liabilities to be assumed by EIX—principally tax and employee-related obligations—represent obligations historically satisfied by EIX before the Petition Date. Thus, there should be little concern whether EIX, another Fortune 500 company with a $17 billion market capitalization and approximately $12 billion in annual revenues, has the ability to continue to satisfy those obligations.[71]

67. Finally, the Debtors are establishing the Reorganization Trust, which will be funded with sufficient reserves to satisfy all of its obligations in connection with the wind-down of EME's remaining affairs. Accordingly, the Debtors believe the Plan satisfies the financial feasibility requirements of section 1129(a)(11).

L. The Plan Provides for Payment of All Fees Under 28 U.S.C. § 1930 (Section 1129(a)(12)).

68. Section 1129(a)(12) of the Bankruptcy Code requires the payment of all fees payable under 28 U.S.C. § 1930.[72] Article XIII.C of the Plan provides that such fees will be paid for each quarter (including any fraction thereof) until the Chapter 11 Cases are converted, dismissed, or closed, whichever comes first.[73] Therefore, the Plan complies with section 1129(a)(12) of the Bankruptcy Code. The Debtors are not aware of any dispute as to whether the Plan satisfies section 1129(a)(12) of the Bankruptcy Code.

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71 See *Edison International - Fortune 500 2013 - Fortune* (CNNMoney 2013) (available online at http://money.cnn.com/magazines/fortune/fortune500/2013/snapshots/2020.html) (visited Feb. 25, 2014); Edison Int'l, Quarterly Report (Form 10-Q) (Oct. 29, 2013).

72 11 U.S.C. § 1129(a)(12).

73 See Plan, Art. XIII.C.

M. The Plan Provides Proper Treatment of Retiree Benefits (Section 1129(a)(13)).

69. Section 1129(a)(13) of the Bankruptcy Code requires that all retiree benefits continue to be paid post-confirmation at any levels established in accordance with section 1114 of the Bankruptcy Code for the duration of the period the debtor has obligated itself to provide such benefits.[74] Article IV.H of the Plan details the Plan's treatment for retiree benefits in accordance with section 1114 and, therefore, satisfies section 1129(a)(13) of the Bankruptcy Code. Further, the Debtors have separately requested, out of an abundance of caution, authority to terminate certain retiree benefits,[75] and if the Bankruptcy Court grants that authority (by separate order in connection with those proceedings), the Debtors will do so as permitted under the Bankruptcy Code. Notably, as detailed in the summary of the status of Objections attached hereto as **Exhibit A**, the Debtors consensually resolved the only Objection on this issue.

N. The Plan Satisfies the "Cramdown" Requirements of Section 1129(b) of the Bankruptcy Code.

70. Section 1129(b) of the Bankruptcy Code provides that if all applicable requirements of section 1129(a) are met other than section 1129(a)(8), a plan may be confirmed so long as the requirements set forth in section 1129(b) are met. To confirm a plan that has not been accepted by all impaired classes (thereby failing to satisfy section 1129(a)(8)), the plan must "not discriminate unfairly" and must be "fair and equitable" with respect to the non-accepting impaired classes.[76]

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74 11 U.S.C. § 1129(a)(13).

75 See *Debtors' Motion for Entry of an Order (A) Authorizing Termination of Retiree Benefits and (B) Granting Related Relief* [Docket No. 1776]; *Brief in Further Support of Debtors' Motion to Terminate Retiree Benefits* [Docket No. 2144].

76 See 11 U.S.C. § 1129(b)(1).

71. As described above, Classes A6, A7, B4, B5, and C5 will receive no distribution under the Plan: therefore, they are deemed to have rejected the Plan. Nonetheless, despite the deemed rejection of the Plan by these Impaired Classes, the Plan satisfies the "cramdown" requirements under section 1129(b) of the Bankruptcy Code.

1. The Plan Does Not Unfairly Discriminate with Respect to the Deemed Rejecting Classes.

72. The Plan does not discriminate unfairly with respect to the Deemed Rejecting Classes. To be clear, section 1129(b)(1) of the Bankruptcy Code does not prohibit all forms of discrimination between classes of similarly situated creditors. Section 1129(b)(1) only prohibits "unfair" discrimination. The Bankruptcy Code does not provide a standard for determining when "unfair" discrimination exists: courts typically examine the facts and circumstances of the particular case to make such a determination.[77] Courts in this district have held that, in determining whether a plan discriminates unfairly under the facts and circumstances, a court should assess whether (a) there is a legally acceptable reason for the discrimination and (b) whether the discrimination is necessary in light of that reason.[78]

73. In this case, the treatment of separately classified Claims and Interests is proper because all similarly situated Holders of Claims and Interests will receive substantially similar treatment and the Debtors have a "legally acceptable rationale" for the Plan's classification scheme. Specifically, the Deemed Rejecting Classes include:

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[77] See In re Johns-Manville Corp., 68 B.R. 618, 636 (Bankr. S.D.N.Y. 1986) ("The language and legislative history of the statute provides little guidance in applying the 'unfair discrimination' standard."); In re Aztec Co., 107 B.R. 585, 589 (Bankr. M.D. Tenn. 1989) (noting that courts "have recognized the need to consider the facts and circumstances of each case to give meaning to the proscription against unfair discrimination"); see, e.g., Multiut Corp., 449 B.R. at 351–53 (considering various facts and circumstances of the case in determining whether unfair discrimination existed).

[78] See In re 203 N. LaSalle St. P'ship, 190 B.R. 567, 585–86 (Bankr. N.D. Ill. 1995) ("First, any discrimination must be supported by a legally acceptable rationale. . . . Second, the extent of the discrimination must be necessary in light of the rationale."); Multiut Corp., 449 B.R. at 351 (same (citing 203 N. LaSalle)).

- Intercompany Claims against EME;
- Intercompany Claims against the Debtor Subsidiaries;
- Subordinated Claims against EME;
- Subordinated Claims against the Debtor Subsidiaries; and
- Subordinated Claims against the Homer City Debtors.

74. None of these Classes are "similarly situated" with other Classes and there is a reasonable basis for separately classifying each Deemed Rejecting Class. Nor is there any other basis for "unfair discrimination." Holders of similarly situated Claims in the Deemed Rejecting Classes will receive the identical treatment—no distribution. All Claims in any particular Class are sufficiently related to one another. For these reasons, the Plan does not unfairly discriminate with respect to the Deemed Rejecting Classes and satisfies the requirements of section 1129(b) of the Bankruptcy Code.

2. The Plan Is Fair and Equitable With Respect to the Deemed Rejecting Classes.

75. For a plan to be "fair and equitable" with respect to an impaired class of unsecured claims or interests that rejects a plan (or is deemed to reject a plan), the plan must either: (a) provide that each holder of a claim or interest within such impaired class receive or retain property of a value equal to the value of such claim or interest as of the effective date of the plan; or (b) follow the "absolute priority" rule with respect to such impaired class and any junior class.[79] Generally, this requires that (a) no class of claims recover more than the amount of their allowed claims and (b) the impaired rejecting class of claims or interests either be paid in

[79] 11 U.S.C. § 1129(b)(2)(B), (C).

full or that any class junior to the impaired accepting class not receive any distribution under a plan on account of its junior claim or interest.[80]

76. The Plan satisfies the absolute priority rule with respect to the Deemed Rejecting Classes and is thus fair and equitable. With respect to each of the Deemed Rejecting Classes, the only junior Classes receiving any distribution are the Holders of either EME Interests or Intercompany Interests in the Debtor Subsidiaries.

77. As discussed herein, the Holders of EME Interests (namely, EIX) have agreed to contribute substantial consideration to the Debtors' Estates to have the EME Interests reinstated under the Plan, and they did so to secure, among other valuable consideration, EME's tax attributes. Therefore, the Holders of EME Interests are not receiving a distribution "on account of" their EME Interests, but instead on account of the new value contributed through the EIX Settlement.[81]

78. As to the Intercompany Interests in the Debtor Subsidiaries, these Interests are being purchased by, and reinstated at the request of, NRG. Moreover, the preservation of these Interests has no economic effect on the Plan or the recoveries to any of the Debtors' creditors.[82] Therefore, the reinstatement of the Intercompany Interests in the Debtor Subsidiaries is not "on account of" the Interests themselves, but on account of the consideration the Purchaser is

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80 See 203 N. LaSalle St. P'ship, 526 U.S. at 441–42 ("As to a dissenting class of impaired unsecured creditors, such a plan may be found to be 'fair and equitable' only if the allowed value of the claim is to be paid in full, § 1129(b)(2)(B)(i), or, in the alternative, if 'the holder of any claim or interest that is junior to the claims of such [impaired unsecured] class will not receive or retain under the plan on account of such junior claim or interest any property,' § 1129(b)(2)(B)(ii). That latter condition is the core of what is known as the 'absolute priority rule.'").

81 See 203 N. LaSalle, 526 U.S. at 458 (holding new value plans may be permissible where proposed new value is market-tested).

82 See In re ION Media Networks, Inc., 419 B.R. 585, 601 (Bankr. S.D.N.Y. 2009) ("This technical preservation of equity is a means to preserve the corporate structure that does not have any economic substance and that does not enable any junior creditor or interest holder to retain or recover any value under the Plan."). See also In re PWS Holding Corp., 228 F.3d 224, 242 (3d Cir. 2000) (equity holder's recovery cannot be deemed to be on account of equity interest without "some evidence" of a causal relationship).

providing and as a means of preserving the Debtors' corporate structure, and does not prejudice any of the Debtors' creditors. There is no violation of the absolute priority rule.

79. Accordingly, the Debtors submit that the Plan satisfies the requirements of sections 1129(b)(2)(B)(ii) and 1129(b)(2)(C)(ii) for the Deemed Rejecting Classes and, therefore, is fair and equitable with respect to those Classes.

O. The Principal Purpose of the Plan Is Not Avoidance of Taxes or Avoidance of Application of Section 5 of the Securities Act (Section 1129(d)).

80. Section 1129(d) of the Bankruptcy Code provides that "the court may not confirm a plan if the principal purpose of the plan is the avoidance of taxes or the avoidance of the application of section 5 of the Securities Act of 1933."[83] The purpose of the Plan is not to avoid taxes or the application of section 5 of the Securities Act of 1933. Moreover, no party that is a governmental unit, or any other entity, has requested that the Court decline to confirm the Plan on the grounds that the principal purpose of the Plan is the avoidance of taxes or the avoidance of the application of section 5 of the Securities Act of 1933. Accordingly, the Plan satisfies the requirements of section 1129(d) of the Bankruptcy Code. The Debtors are not aware of any dispute as to whether the Plan satisfies section 1129(d) of the Bankruptcy Code.

II. The Discretionary Contents of the Plan Are Appropriate and Should Be Approved.

81. Section 1123(b) of the Bankruptcy Code identifies various additional provisions that may be incorporated into a chapter 11 plan, including "any appropriate provision not inconsistent with the applicable provisions of this title."[84] As set forth below, the Plan includes certain of these discretionary provisions. The Debtors have determined as fiduciaries of their

[83] 11 U.S.C. § 1129(d).

[84] 11 U.S.C. § 1123(b)(1)–(6).

Estates and in the exercise of their reasonable business judgment, that each of the discretionary provisions of the Plan is appropriate given the circumstances of these Chapter 11 Cases.

A. The Plan's Settlement or Retention (as Applicable) of Claims and Controversies Is Fair and Equitable and Should Be Approved.

82. The Plan appropriately provides for the settlement of certain claims (and the retention of others).

83. Most notably, the EIX Settlement provides for a full mutual release between EME and EIX of all claims (other than certain specifically delineated claims) and for substantial contributions of value by EIX in the form of cash, deferred payments, and assumption of certain tax and employee-related liabilities. In light of this value and the mutual releases under the EIX Settlement, the EIX Settlement Agreement constitutes a good-faith compromise, is in the best interests of the Debtors, the Estates, and all Holders of Claims and Interests, and is fair, equitable, and reasonable.

84. At the same time, the EIX Settlement resolves a host of potentially costly disputes and contingencies, including, among other things, (a) the parties' assumption and retention of certain liabilities and shared services obligations and (b) releases and withdrawals of outstanding disputed claims, including, most notably, the EIX Litigation Claims and EIX's claims against the Debtors. The EIX Settlement, therefore, satisfies all of the applicable factors relevant to the determination of fairness—i.e., (a) the balance between the litigation's possibility of success and the settlement's future benefits; (b) the likelihood of complex and protracted litigation and risk and difficulty of collecting on the judgment; (c) the proportion of creditors and parties in interest that support the settlement; (d) the competency of counsel reviewing the settlement; (e) the nature and breadth of releases to be obtained by officers and directors; and (f) the extent to which

the settlement is the product of arm's-length bargaining—and, therefore should be approved in connection with Confirmation of the Plan under section 1123(b)(3)(A) of the Bankruptcy Code.[85]

85. In addition to the EIX Settlement, Article IV of the Plan provides for the settlement of Avoidance Actions other than any EME Retained Causes of Action or Purchaser Retained Causes of Action, which will be retained by the Reorganization Trust and the Purchaser (or the applicable Post-Effective-Date Debtor Subsidiaries), respectively.

86. Under section 1123(b)(3)(A), a chapter 11 plan may provide for "the settlement or adjustment of any claim or interest belonging to the debtor or to the estate."[86] Such settlements are appropriate when they are "in the best interests of the estate."[87] In making such a determination, a court should compare "the settlement's terms with the litigation's probable costs and probable benefits."[88] The Debtors respectfully submit that settling certain of their Avoidance Actions and certain other Claims as provided in the Plan and consummating the restructuring supported by all of the Debtors' constituencies is in the best interests of the Debtors' estates.

87. Under section 1123(b)(3)(B), a chapter 11 plan may also provide for "the retention and enforcement by the debtor" of any claim or interest belonging to the debtor or the

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85 See Andreuccetti, 975 F.2d at 420–21 (holding, in context of confirming chapter 11 plan, "[t]he benchmark for determining the propriety of a bankruptcy settlement is whether the settlement is in the best interests of the estate"); Am. Reserve Corp., 841 F.2d at 161–62 ("Central to the bankruptcy judge's determination is a comparison of the settlement's terms with the litigation's probable costs and probable benefits. Among the factors the bankruptcy judge should consider in his analysis are the litigation's probability of success, the litigation's complexity, and the litigation's attendant expense, inconvenience, and delay.").

86 11 U.S.C. § 1123(b)(3)(A).

87 See In re Andreuccetti, 975 F.2d 413, 420–21 (7th Cir. 1992) (holding, in context of confirming chapter 11 plan, "[t]he benchmark for determining the propriety of a bankruptcy settlement is whether the settlement is in the best interests of the estate" (quoting In re Energy Coop., Inc., 886 F.2d 921, 927 (7th Cir. 1989)); Official Comm. of Unsecured Creditors of Artra Grp., Inc. v. Artra Group, Inc. (In re Artra Group, Inc.), 300 B.R. 699, 702 (Bankr. N.D. Ill. 2003) ("The value of the proposed settlement . . . need only surpass 'the lowest point in the range of reasonableness.' ") (quoting In re Energy Coop, Inc., 886 F.2d at 929).

88 See Andreuccetti, 975 F.2d at 421.

estate.[89] Generally, a debtor need only describe "claims of a given type" by the disclosures in its plan to satisfy section 1123(b)(3).[90] The Debtors submit that the Plan's disclosure of the EME Retained Causes of Action, defined as "those Avoidance Actions of the Debtors that are identified" in the Plan Supplement, easily satisfies section 1123(b)(3) by identifying the parties against whom such Causes of Action are held and the category of the Causes of Action, respectively.

B. The Plan's Release Provisions Are Appropriate and Should Be Approved.

88. The Plan provides for the release of certain Causes of Action—both releases by the Debtors (the "Debtor Releases") and by a limited number of non-Debtor third parties. The release provisions in the Plan were necessary to generate consensus and support for the Plan and bring finality to these Chapter 11 Cases. As described below, the Debtor Releases are appropriate and the non-Debtor releases are narrowly tailored and only apply to a limited number of parties.

1. The Debtor Releases Are in the Best Interests of the Debtors' Estates and Are a Sound Exercise of the Debtors' Business Judgment.

89. As set forth in detail in Article VIII.C of the Plan, the Debtors shall fully discharge and release Claims and Causes of Action related to the Debtors and these Chapter 11 Cases that the Debtors may hold against the Released Parties.[91]

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89 11 U.S.C. § 1123(b)(3)(B).

90 See In re P.A. Bergner & Co., 140 F.3d 1111, 1117 (7th Cir. 1998) (noting courts "have focused on the requirement that plans unequivocally retain claims of a given type, not on any rule that individual claims must be listed specifically" in applying section 1123(b)(3)(B)); Multiut, 449 B.R. at 338 (same).

91 Pursuant to Article I.A.171 of the Plan, "Released Parties" is defined as "collectively: (a) the Purchaser Parties and the Acquired Companies; (b) the members of the Noteholder Group, generally, and the Supporting Noteholders, in such capacity; (c) the EME Senior Notes Indenture Trustee; (d) the Committee and the Committee Members; (e) the PoJo Parties; and (f) with respect to the foregoing entities in clauses (a) through (e), their respective current and former affiliates, subsidiaries, officers, directors, principals, members, employees, agents, financial advisors, attorneys, accountants, investment bankers, consultants, representatives, and other professionals and, solely with respect to the Purchaser Parties, the Acquired Companies, and the Supporting Noteholders, their permitted assigns; and (g) the Debtors' and Non-Debtors Subsidiaries' respective

90. Section 1123(b)(3)(A) of the Bankruptcy Code explicitly provides that a chapter 11 plan may provide for "the settlement or adjustment of any claim or interest belonging to the debtor or to the estate."[92] Although a release may not qualify as a settlement under Bankruptcy Rule 9019, "the rules governing the approval of a settlement are instructive and helpful to the court in determining whether [a release] should be approved as part of the [p]lan."[93] In reviewing releases in a debtor's plan, courts frequently use the "best interests of the estate" benchmark for approval of a settlement under Bankruptcy Rule 9019.[94]

91. It is well-settled that debtors are authorized to settle or release their claims as part of a chapter 11 plan, and courts in this district have approved similar debtor-release provisions in other chapter 11 cases.[95] In this case, the Debtor Releases are the product of arm's-length negotiations, are in exchange for substantial consideration, and have been critical to obtaining support for the Plan from various constituencies. The Debtors therefore submit that it is in the best interests of their estates to provide the Debtor Releases.

2. The Third Party Releases Are Fair, Equitable, and Reasonable, and Are in the Best Interests of the Debtors and All Stakeholders.

92. Article VIII.D of the Plan provides for Releases by the Releasing Parties (the "Third Party Releases"), which are mutual releases of Claims and Causes of Action that are related to the Debtors, their Estates, and these Chapter 11 Cases by and among the Debtors, the

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current officers, directors, principals, members, employees, agents, financial advisors, attorneys, accountants, investment bankers, consultants, representatives, and other professionals of the Debtors and Non-Debtor Subsidiaries that served in such capacities during the Chapter 11 Cases; provided that no EIX Litigation Party shall constitute a Released Party."

92 11 U.S.C. § 1123(b)(3)(A).

93 In re Envirodyne Indus., Inc., Case No. 1993 WL 566565, at *31 (Bankr. N.D. Ill. Dec. 20, 1993).

94 See id. (citing Energy Coop., 886 F.2d at 927; In re Miller, 148 B.R. 510, 516 (Bankr. N.D. Ill. 1992)).

95 See, e.g., In re XMH CORP. 1 (f/k/a Hartmarx Corp.), No. 09-02046 (CAD) (Bankr. N.D. Ill. May 15, 2013); In re Corus Bankshares, Inc., No. 10-26881 (PSH) (Bankr. N.D. Ill. Sept. 29, 2011); In re Amcore Fin., Inc., No. 10-37144 (SPS) (Bankr. N.D. Ill. Dec. 16, 2010); In re UAL Corp., No. 02-48191 (ERW) (Bankr. N.D. Ill. Jan. 20, 2006).

Released Parties, and the Releasing Parties. The Releasing Parties are limited in number and include: (a) the EME Senior Notes Indenture Trustee; (b) the Supporting Noteholders; (c) the Committee and the Committee Members; (d) the PoJo Parties; (e) the EIX Releasing Parties; and (f) Holders of Claims or Interests that do not opt out of the Third Party Releases.[96]

93. Only parties that have affirmatively agreed to the Third Party Releases or who have voted to accept the Plan and not otherwise opted out of the Third Party Releases are deemed to have granted the Third Party Releases. The Court-approved Ballots state clearly that a vote to accept the Plan without opting out of the Third Party Releases constitutes an acceptance and assent to the release provisions of Article VIII.D of the Plan. Thus, Holders of Claims and Interests voting to accept the Plan and choosing not to opt out of the provision regarding Third Party Releases were given due and adequate notice that they would be granting releases if they did not otherwise opt-out.

94. The Debtors respectfully submit that the Third Party Releases are appropriate under the circumstances of these Chapter 11 Cases. Each of the Released Parties provided substantial contributions to the Chapter 11 Cases and the Debtors' restructuring—including in connection with the NRG transaction, the EIX investigation, and the EIX Settlement. More specifically, each of the beneficiaries of the Third Party Release has made a substantial contribution to the Debtors' Estates:

- The purchase price to be paid by the Purchaser Parties will fund a significant portion of recoveries to creditors under the Plan, and the Purchaser Parties are assuming significant liabilities, including substantial administrative and priority claims. In addition, the Purchaser Parties (on behalf of the Acquired Companies)

[96] Pursuant to Article I.A.172 "Releasing Parties" means, "collectively: (a) the EME Senior Notes Indenture Trustee; (b) the Supporting Noteholders; (c) the Committee and the Committee Members; (d) the PoJo Parties; (e) the EIX Releasing Parties; and (f) without limiting the foregoing clauses (a), (b), (c), (d), and (e), each Holder of a Claim against or Interest in the Debtors who does not opt out of the Plan's release provisions with respect to the Released Parties pursuant to an election contained on the relevant Ballot."

required the inclusion of the Third Party Releases as a precondition to entering into the Purchase Agreement.

- The members of the Noteholder Group played a critical role in the Debtors' restructuring and helped negotiate each of the major restructuring agreements entered into during the course of the Debtors' restructuring. More specifically, the Supporting Noteholders, with the assistance of their advisors, played a key role in negotiating and documenting the the NRG transaction and the EIX Settlement Agreement. These efforts resulted in a Plan that pays the overwhelming majority of creditors in full in cash. In addition, the Noteholder Group and Supporting Noteholders required the inclusion of the Third party Releases as a precondition to entering into the Plan Sponsor Agreement and the transactions contemplated thereby.

- The Committee and the Committee Members have played a key role in these cases through their support and assistance in pursuing the EIX Investigation, the Plan Sponsor Agreement, and the Purchase Agreement.

- The PoJo Parties have participated in good faith in negotiations regarding the Powerton and Joliet leveraged leases throughout these Chapter 11 Cases. Even before the Petition Date, certain PoJo Parties agreed to forbear from exercising remedies against other PoJo Parties on account of the Debtors' chapter 11 filings. The PoJo Parties also agreed to extend the deadline under section 365(d)(4) of the Bankruptcy Code by which the Debtors must assume or reject leases of nonresidential real property. These efforts allowed the Debtors to explore potential restructuring strategies for their leveraged lease obligations. These efforts culminated in the negotiation and documentation of the Purchase Agreement, pursuant to which, with the PoJo Parties' agreement, the PoJo Leases and Documents will be assumed as modified.

- The EIX Released Parties have agreed to make significant payments and assume significant liabilities under the EIX Settlement Agreement. The EIX Released Parties also have agreed to withdraw or release claims asserted by EIX and its subsidiaries. Most importantly, the settlement with the EIX Released Parties obviates the need for the Debtors or the Reorganization Trust to engage in further potentially costly and uncertain litigation with EIX after the Effective Date. Finally, the EIX Released Parties have conditioned their support for the Plan and the EIX Settlement contemplated thereby on approval of the Third Party Releases.

- During the negotiation and documentation of the Plan, the EME Senior Notes Indenture Trustee represented the interests of the holders of all holders of the EME Senior Notes. In addition, the EME Senior Notes Trustee has agreed to facilitate billions of dollars of distributions to Holders of the EME Senior Notes under the Plan.

- The Reorganization Trust will serve as (and fulfill all obligations of) the Plan Administrator and, in such capacity, will wind down EME's and the Homer City Debtors' affairs after the Effective Date in an efficient and prudent manner, clearing the way for the Debtors to make distributions to their creditors in an streamlined, organized manner.

- The Debtors' and Non-Debtor Subsidiaries' affiliates, directors, managers, officers, advisors, and other agents have have successfully guided the Debtors throughout the restructuring and ensured that EME appropriately maximized value in an efficient and effective manner. These efforts resulted in a Plan that pays many of creditors in full in cash.

95. In the Seventh Circuit, consensual third party releases are permissible.[97] When non-consensual, the Seventh Circuit has ruled that a bankruptcy court has the affirmative power to release third parties from non-consensual creditors' claims if the release is appropriately limited.[98] The Third Party Releases are narrowly tailored and were necessary to bring closure and finality to these Chapter 11 Cases. Accordingly, the Third Party Releases in Article VIII.D of the Plan are an important aspect of the Plan and should be approved.

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97 See, e.g., In re Specialty Equip. Cos., 3 F.3d 1043, 1047 (7th Cir. 1993) (holding voluntary releases to be in accord with the Bankruptcy Code); In re Keck, Mahin & Cate, 241 B.R. 583, 592 (Bankr. N.D. Ill. 1999) ("In the Seventh Circuit, at a minimum, a Chapter 11 plan may provide for 'consensual and non-coercive' releases." (quoting Specialty Equip.)).

98 See Airadigm Commc'ns, Inc. v. FCC (In re Airadigm Commc'ns, Inc.), 519 F.3d 640, 657 (7th Cir. 2008) (holding that non-consensual third party release is permissible under the Bankruptcy Code where "appropriate and not inconsistent with any provision of the [B]ankruptcy [C]ode" (internal quotation marks omitted)); see also Multiut Corp., 449 B.R. at 338 (same). Other Circuit Courts of Appeal have held similarly. See, e.g. Deutsche Bank AG v. Metromedia Fiber Network, Inc. (In re Metromedia Fiber Network, Inc.), 416 F.3d 136 (2d Cir. 2005); Class Five Nev. Claimants v. Dow Corning Corp. (In re Dow Corning Corp.), 280 F.3d 648, 658 (6th Cir. 2002); Gillman v. Cont'l Airlines (In re Cont'l Airlines), 203 F.3d 203, 212-13 (3d Cir. 2000); SEC v. Drexel Burnham Lambert Grp., Inc. (In re Drexel Burnham Lambert Grp., Inc.), 960 F.2d 285, 293 (2d Cir. 1992).

C. The Plan's Exculpation and Injunction Provisions Are Appropriate and Should Be Approved.

1. The Exculpation Provision Should Be Approved.

96. Under Article VIII.E of the Plan, the Debtors seek protection for the Exculpated Parties[99] from "any liability for any claim, cause of action, or other assertion of liability for any act taken or omitted to be taken in connection with, or arising out of, the Chapter 11 Cases, the Transaction Support Agreement, the negotiation, formulation, or preparation of the Plan or any contract, instrument, document, or other agreement entered into pursuant thereto, or any distributions made pursuant to or in accordance with the Plan, and the effectuation of the Post-Effective-Date Reorganization Trust Matters; provided that the foregoing shall not affect the liability of any person that otherwise would result from any such act or omission to the extent such act or omission is determined by a Final Order to have constituted actual fraud, willful misconduct, or gross negligence"[100] (the "Exculpation Provision"). The scope of the Exculpation Provision is consistent with section 1125(e) of the Bankruptcy Code, is appropriately limited to the Exculpated Parties' participation in these Chapter 11 Cases, has no effect on liability that results from actual fraud, gross negligence, or willful misconduct, and does not apply to any acts or omissions expressly set forth in and preserved by the Plan.

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99 Pursuant to Article I.A.90 of the Plan, "Exculpated Parties" means, collectively: (a) the Purchaser Parties and the Acquired Companies; (b) the present and former members of the Noteholder Group, generally, and the Supporting Noteholders and the Consenting Noteholders, at any time, in such capacity; (c) the EME Senior Notes Indenture Trustee; (d) the Committee and the Committee Members; (e) the PoJo Parties; (f) the Debtors; (g) the Reorganization Trust; (h) the Plan Administrator; (i) the Post-Effective-Date Debtor Subsidiaries; (j) the Post-Effective-Date Homer City Debtors; (k) the EIX Released Parties; and (l) with respect to the foregoing entities in clauses (a) through (k), their respective current and former affiliates, subsidiaries, officers, directors, principals, members, employees, agents, financial advisors, attorneys, accountants, investment bankers, consultants, representatives, and other professionals and, solely with respect to the Purchaser Parties and the Acquired Companies and Supporting Noteholders, their permitted assigns; and (l) the officers, directors, principals, members, employees, agents, financial advisors, attorneys, accountants, investment bankers, consultants, representatives, and other professionals of the Debtors and Non-Debtor Subsidiaries that served in such capacities during the Chapter 11 Cases.

100 Plan, Art. VIII.E.

97. There are strong policy considerations that weigh heavily in favor of exculpatory clauses in chapter 11 plans. Notably, courts have ruled exculpation provisions do not affect the liabilities of third parties, but merely set forth the appropriate standard of liability for the exculpated parties.[101] Courts evaluate the appropriateness of exculpation provisions based upon a number of factors, including whether the plan was proposed in good faith, whether liability is limited, and whether the exculpation provision was necessary for plan negotiations.[102] For the reasons set forth below, the Exculpation Provision is appropriate and the Court should approve it.

98. As an initial matter, to confirm the Plan, the Court must find, among other things, that the Plan has been proposed in good faith and not by any means forbidden by law.[103] Findings that the Plan was proposed and negotiated in good faith extend to the parties involved in the negotiations. Thus, if the Court confirms the Plan, cause exists to approve the Exculpation Provision.

99. Failing to include an exculpation clause (such as the Exculpation Provision) in a plan of reorganization would chill the critical participation of a debtor's management and advisors, as well as essential creditor groups, in the process of trying to formulate and negotiate consensual chapter 11 plans. In light of the bankruptcy policy in favor of consensual chapter 11

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[101] See, e.g., In re PWS Holding Corp., 228 F.3d at 245 (the exculpation provision, "which is apparently a commonplace provision in Chapter 11 plans, does not affect the liability of [third] parties, but rather states the standard of liability under the Code").

[102] See, e.g., Captran Creditors' Trust v. McConnell (In re Captran Creditors' Trust), 128 B.R. 469, 476 (M.D. Fla. 1991) (the factors used to evaluate the language of an exculpation provision "include, but are not limited to: how the exculpatory clause limits liability, intent of the parties, and the manner in which the exculpatory clause was made a part of the agreement").

[103] 11 U.S.C. § 1129(a)(3).

plans and the negotiations that create them, it stands to reason that exculpation provisions are essential to encouraging the process and should be approved.[104]

100. The Exculpated Parties played a critical role in the formulation of the Plan, and the Exculpation Provision played a role in bringing those parties to the table. Moreover, the scope of the Exculpation Provision itself and the composition of the Exculpated Parties are entirely consistent with established practice in this District.[105]

2. The General Injunction Provision Is Appropriately Tailored to Implement the Plan.

101. Article VIII.F of the Plan enjoins all persons or entities from commencing or continuing any Causes of Action released pursuant to the Plan or Confirmation Order (the "Injunction Provision"). The Injunction Provision is necessary to effectuate the releases contained in the Plan and to protect the Debtors from any potential litigation from prepetition creditors after the Effective Date. Any such litigation would hinder the efforts of the Debtors to fulfill their responsibilities effectively as contemplated in the Plan and thereby undermine the Debtors' efforts to maximize value for all Holders of Claims and Equity Interests. The Debtors

[104] See Jartran, 44 B.R. at 363 ("[T]he spirit of Chapter 11 [is] to promote consensual plans."); see also In re Berwick Black Cattle Co., 394 B.R. 448, 459 (Bankr. C.D. Ill. 2008) ("[T]he now customary exculpation for acts and omissions in connection with the plan and the bankruptcy case requires, in effect, that any claims in connection with the case be raised in the case and not saved for future litigation."); In re Granite Broad. Corp., 369 B.R. 120, 139–40 (Bankr. S.D.N.Y. 2007) (holding that "[t]here is [ ] no reason to strike [an] exculpation provision from [a] Plan" after showing that the specific provision was reasonable); In re Homestead Partners, Ltd., 197 B.R. 706, 710 (Bankr. N.D. Ga. 1996) ("[T]he development of consensual reorganizations lies at the heart of Chapter 11 policy."); In re Pub. Serv. Co. of N.H., 88 B.R. 521, 539–40 (Bankr. D.N.H. 1988) ("[I]t is a 'strong policy' underlying chapter 11 of the Bankruptcy Code to foster consensual plans.").

[105] See, e.g., In re XMH CORP. 1 (f/k/a Hartmarx Corp.), No. 09-02046 (CAD) (Bankr. N.D. Ill. May 15, 2013) (approving exculpation provision covering conduct connected to chapter 11 cases and not extending to gross negligence or willful misconduct); In re Clare Oaks, No. 11-48903 (PSH) (Bankr. N.D. Ill. Nov. 15, 2012) (same); In re Corus Bankshares, Inc., No. 10-26881 (PSH) (Bankr. N.D. Ill. Sept. 29, 2011) (same); In re Amcore Fin., Inc., No. 10-37144 (SPS) (Bankr. N.D. Ill. Dec. 16, 2010).

narrowly tailored the Injunction Provision to achieve its purpose and similar injunctions have been approved by courts in other chapter 11 cases.[106]

3. The Purchaser Injunction Is Appropriately Tailored to Implement the Plan.

102. Article VIII.G provides that certain liabilities "that may otherwise be asserted against the Purchaser Parties, any Acquired Company, or any of their respective property shall be permanently released and enjoined pursuant to the Plan, and all Entities shall be enjoined from taking any Enjoined Action in relation thereto or otherwise asserting any such Excluded Liabilities or other such claims and liabilities, and any such Excluded Liabilities or other such claims and liabilities shall be paid or treated pursuant to the terms of the Plan" (the "Purchaser Injunction"). As further set forth below, the Purchaser Injunction is specifically tailored to effectuate the transactions contemplated by the Purchase Agreement and was a requirement of the Purchaser for entering into the Plan Sponsor Agreement. Accordingly, the Purchaser Injunction is appropriate and should be approved.

103. In the Seventh Circuit, a chapter 11 plan may impose a bar (whether by release, injunction, and/or exculpation) on future actions against non-debtors where "appropriate"—that is, where the restriction is (a) appropriately limited and (b) in favor of a party whose participation is essential to the debtor's restructuring and who would not participate without it.[107]

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[106] See, e.g., In re XMH CORP. 1 (f/k/a Hartmarx Corp.), No. 09-02046 (CAD) (Bankr. N.D. Ill. May 15, 2013); In re Clare Oaks, No. 11-48903 (PSH) (Bankr. N.D. Ill. Nov. 15, 2012) (same); In re Corus Bankshares, Inc., No. 10-26881 (PSH) (Bankr. N.D. Ill. Sept. 29, 2011) (same); In re Amcore Fin., Inc., No. 10-37144 (SPS) (Bankr. N.D. Ill. Dec. 16, 2010).

[107] See Airadigm Commc'ns, 519 F.3d at 657 (approving non-consensual third-party release where "the limitation itself is narrow," "the limitation is subject to the other provisions of the plan," and "the bankruptcy court found 'adequate' evidence that [lender] required this limitation before it would provide the requisite financing, which was itself essential to the reorganization"); In re Ingersoll, Inc., 562 F.3d 856, 865 (7th Cir. 2009) (approving non-consensual third-party release where release was appropriately limited, "an 'essential component' of the plan, the fruit of 'long-term negotiations' and achieved by the exchange of 'good and valuable consideration'").

Further, this Bankruptcy Court has counseled that non-debtor injunctions imposed by plans are appropriate where:

- there is danger of imminent, irreparable harm to the estate or the debtor's ability to reorganize;
- there is a reasonable likelihood of a successful reorganization;
- the harm to the debtor outweighs the harm to the creditors who would be restrained; and
- the public interest in successful bankruptcy reorganizations outweighs other competing societal interests.[108]

104. Based on this framework, the Seventh Circuit approved provisions similar to the Purchaser Injunction in In re Airadigm Communications, Inc. In Airadigm, the debtor's plan contained a release in favor of its largest secured creditor, which held $188 million in secured claims.[109] The creditor had agreed to fund the debtor's reorganization with a $33 million loan, and it was demonstrated that the financing would not otherwise have been available absent the plan's release.[110] The release was limited to claims "arising out of or in connection with the reorganization itself and [did] not include willful misconduct."[111] Based on these factors, the Seventh Circuit affirmed the lower courts' approval of the release.[112]

105. As noted in the Rigatti Declaration,[113] the Purchaser Injunction was a prerequisite to NRG's willingness to enter into the Plan Sponsor Agreement and ultimately reach agreement

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[108] See GAC Storage, 489 B.R. at 769–70.

[109] See Airadigm Commc'ns, 519 F.3d at 647.

[110] See FCC v. Airadigm Commc'ns, Inc. (In re Airadigm Commc'ns, Inc.), 396 B.R. 747, 754 (W.D. Wis. 2007).

[111] See Airadigm Commc'ns, 519 F.3d at 657 (internal quotation marks omitted).

[112] One year after the Airadigm decision, the Seventh Circuit again approved a third-party release in Ingersoll. After noting the limited nature of the Ingersoll release, the court stated: "Just as importantly, the bankruptcy court found that the release was an 'essential component' of the plan, the fruit of 'long-term negotiations' and achieved by the exchange of 'good and valuable consideration' by the [releases] that 'will enable unsecured creditors to realize distribution in this case.'" 562 F.3d at 865.

[113] See Rigatti Decl. ¶¶ 59–62.

on the value-maximizing Sale Transaction incorporated into the Plan.[114] As discussed above, NRG's contribution to the Debtors' Estates under the Plan Sponsor Agreement will result in payment in full of many Claims and significantly enhanced recoveries for stakeholders. The NRG transaction also ensures the continuation of the Debtor Subsidiaries' operations. And because the Purchaser is acquiring both Debtors and non-Debtors, the Purchaser Injunction is necessary to protect the Purchaser against legacy liabilities of both Debtors and non-Debtor affiliates that the Purchaser demanded in agreeing to the transaction. Further, the Purchaser Injunction is limited in scope, applying only to Excluded Liabilities and certain commercial and financial information EME provided to the Purchaser Parties in connection with the SEC registration statements related to the transaction here. Accordingly, the Debtors submit that the Purchaser Injunction is appropriate in light of the substantial value contributed by the Purchaser to the Debtors' estates.[115]

106. The Purchaser Injunction also satisfies the four factors outlined above. Specifically:

- without the Purchaser Injunction, the Purchaser may determine not to close the Sale Transaction in light of the significant additional liabilities and other risks to which it would be exposed;
- the Debtors' Plan faces little opposition and, as discussed herein, the Debtors have satisfied all requirements under the Bankruptcy Code, meaning Confirmation and a successful reorganization are reasonably likely;
- in comparison to the Debtors' creditors, who are the ultimate beneficiaries of the value infused by the Purchaser into the Estates, the harm the Debtors would suffer if the Purchaser Injunction is denied and the Purchaser walks away from the Plan and Sale Transaction is significantly greater; and

[114] See Plan Term Sheet, at 17.

[115] See Airadigm Commc'ns, 519 F.3d at 657; Ingersoll, 562 F.3d at 865.

- the Plan, which includes the Purchaser Injunction, fulfils the public interest in that the Plan is a blueprint for ensuring that a competitive energy business continues to operate and provide a valuable and necessary commodity.

Therefore, the Purchaser Injunction satisfies all requirements under applicable law and should be approved.

4. The EIX Injunction is Appropriately Tailored to Implement the Plan.

107. Article VIII.G further provides that "all Claims or other Causes of Action that may otherwise be asserted against the EIX Released Parties or their respective property (other than (1) Claims or other liabilities against the EIX Released Parties arising under the EIX Settlement Agreement and the EIX Settlement Ancillary Documents, (2) the Commercial Relationship Claims (as defined in the EIX Settlement Agreement), and (3) the Settlement Assumed Liabilities) shall be permanently released pursuant to the Plan, and all Entities shall be enjoined from taking any Enjoined Action in relation thereto or otherwise asserting such Claims or Causes of Action, and any such Claims or Causes of Action shall be paid or treated pursuant to the terms of the Plan" (the "EIX Injunction"). The EIX Injunction, like the Purchaser Injunction, is an appropriate restriction in favor of a third party who demanded and required this protection to participate in a value-maximizing aspect of the Debtors' restructuring and should, therefore, be approved.

108. As noted above and in the Rigatti Declaration,[116] the EIX Injunction was a critical, negotiated piece of the EIX Settlement that EIX required to be included in the EIX Settlement Agreement.[117] In return for, among other things, the protection of the EIX Injunction, EIX will make an initial payment of $225 million to the Reorganization Trust on the Effective Date and future payments currently estimated to be worth more than $400 million. And EIX will

[116] See Rigatti Decl. ¶ 51.

[117] See EIX Settlement Agreement § 2(k)–(l).

assume certain of the Debtors' federal and state income tax obligations, as well as employee-related obligations, further enhancing the immediate value created for the Debtors' estates through the EIX Settlement.

109. The EIX Injunction is necessary to implement the terms of the EIX Settlement. Absent inclusion of the EIX Injunction, it is unclear if EIX would be prepared to move forward with the EIX Settlement. Indeed, as discussed above, a release and protective injunction in favor of EIX has been one of EIX's primary requirements since restructuring negotiations began in the spring of 2012. In light of the substantial value the EIX Settlement creates for the Debtors and their Estates, the Debtors submit that the EIX Injunction is "appropriate" as required under Airadigm.[118]

110. Finally, the factors from the GAC Storage decision discussed above are satisfied here. The EIX Settlement resolves significant obstacles to the Debtors' Plan. Specifically, in addition to resolving potential objections of EIX, the Debtors believe that the terms of the EIX Settlement Agreement effectively resolve the Objections of the IRS.[119] Thus, approving the EIX Injunction decreases the risk of the Plan's failure and enhances the odds of a successful restructuring. Moreover, EME's creditors stand to gain more than $600 million in cash payments through the EIX Settlement, which will avoid protracted and costly litigation. Each of these elements will help drive the Debtors to a successful reorganization while preventing

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[118] See Airadigm Commc'ns, 519 F.3d at 657 (non-consensual third party release permissible under the Bankruptcy Code where "appropriate and not inconsistent with any provision of the [B]ankruptcy [C]ode" (internal quotation marks omitted)).

[119] See EIX Settl. Agmt. § 8.a, which provides that EIX will indemnify and hold harmless EME (and its subsidiaries) from any claims or obligations due and owing to the IRS. EME will be prepared to demonstrate at the Confirmation Hearing that EIX has adequate resources, and can provide adequate assurance, to the IRS with respect to any obligations for which the Debtors (and the non-Debtor subsidiaries) are jointly and severally liable.

judicially-draining litigation, all in the public interest. Therefore, the EIX Injunction should be approved as a central piece of the EIX Settlement and the Plan.

III. The Plan Modifications Should Be Approved.

111. On February 20, 2014, the Debtors filed an amended version of the Plan, reflecting several modifications.[120] Many of the modifications relate to implementation of the EIX Settlement. The Debtors also modified the Plan to reflect the terms of the resolution between the Debtors and certain retirees as well as to address technical changes or respond to individual concerns raised by particular parties in interest. Each of the modifications is permissible under section 1127 of the Bankruptcy Code and was the subject of notice approved by the Bankruptcy Court and issued to parties in interest, and the Plan, as modified, should be confirmed.

112. Section 1127(a) of the Bankruptcy Code permits a plan proponent to modify a chapter 11 plan "at any time before confirmation," as long as the plan as modified satisfies the requirements of sections 1122 and 1123 of the Bankruptcy Code.[121] Section 1127(d) of the Bankruptcy Code provides that all stakeholders that previously have accepted a plan should also be deemed to have accepted such plan as modified.[122]

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[120] Contemporaneously herewith, the Debtors will file a further amended Plan reflecting certain technical modifications and resolutions of individual parties' issues.

[121] Enron Corp. v. The New Power Co. (In re The New Power Co.), 438 F.3d 1113, 1117 (11th Cir. 2006); In re Cellular Info. Sys., Inc., 171 B.R. 926, 929 n.6 (Bankr. S.D.N.Y. 1994).

[122] See 11 U.S.C. § 1127(d) ("Any holder of a claim or interest that has accepted or rejected a plan is deemed to have accepted or rejected, as the case may be, such plan as modified, unless, within the time fixed by the court, such holder changes such holder's previous acceptance or rejection."). Bankruptcy Rule 3019(a) implements section 1127(d) by providing that, to the extent plan modifications: (a) do not adversely affect the treatment of any claim under the plan by any accepting creditor, such creditors shall be deemed to accept the modified plan; and (b) materially and adversely affect treatment of any claim received by a creditor who previously voted in favor of the plan, such creditor must accept the materially adverse modifications in writing. See Fed. R. Bankr. P. 3019(a) ("[A]fter a plan has been accepted and before its confirmation, the proponent may file a modification of the plan. If the court finds after hearing on notice to the trustee, any committee appointed under the Code, and any other entity designated by the court that the proposed modification does not adversely change the treatment of the claim of any creditor or the interest of any equity security holder who has not accepted in

113. Proposed modifications must comply with the disclosure requirements set forth in section 1125 of the Bankruptcy Code.[123] However, such disclosure requirements do not necessarily mandate resolicitation of the plan.[124] Indeed, further disclosure is only necessary where the proposed plan modification materially and adversely affects a claimant's treatment.[125]

114. A proposed plan modification will be considered material "if it so affects a creditor or interest holder who accepted the plan that such entity, if it knew of the modification, would be likely to reconsider its acceptance."[126] This reading of section 1127(c) is entirely consistent with the disclosure requirements in section 1125 because a modification that is not material is, "by definition, one which will not affect an investor's voting decision," and thus, "additional disclosure would serve no purpose."[127] In addition to being material, modifications to a chapter 11 plan must also be adverse to require re-solicitation.[128] Generally, a modification is "adverse" with respect to a creditor if it negatively affects that creditor's distribution under the plan.[129] Finally, the rules applicable to pre-confirmation plan modifications "should be read and

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writing the modification, it shall be deemed accepted by all creditors and equity security holders who have previously accepted the plan.").

123 11 U.S.C. § 1127(c).

124 Cellular Info. Sys., 171 B.R. at 929 n. 6 ("[N]onmaterial modifications . . . do not require resolicitation of the respective impaired classes of creditors and equity security holders.").

125 See Sentinel Mgmt., 398 B.R. at 301 ("[T]he issue before the Court is whether the modifications proposed by the Plan Proponents are material and adverse."); Resolution Trust Corp. v. Best Prods. Co., 177 B.R. 791, 802 (S.D.N.Y. 1995) (noting that the key inquiry was whether the modification materially altered the plan so that a claimant's treatment was adversely affected); New Power, 438 F.3d at, 1118 ("[A]s an initial matter, we consider whether there was any material and adverse modification from the First Amended Plan."); In re Kmart Corp., Case No. 02-02474, 2006 WL 952042, at *27 (Bankr. N.D. Ill. Apr. 11, 2006) ("[I]f the court finds, after hearing on proper and adequate notice, that the modification does not adversely change the treatment of claims, then resolicitation is not required.").

126 In re Am. Solar King Corp., 90 B.R. 808, 824 (Bankr. W.D. Tex. 1988) (citing 8 Collier on Bankruptcy, ¶ 3019.03 (15th ed. 1987)).

127 Id. at 824 n.28.

128 See Sentinel Mgmt., 398 B.R. at 301 ("[T]he issue before the Court is whether the modifications proposed by the Plan Proponents are material and adverse.");

129 See id. at 303 (noting miniscule dilution in distribution was adverse, but not material).

interpreted consistent" with the objective of "encourag[ing] consensual resolution of claims and disputes through the plan negotiation process."[130]

115. Many of the modifications relate to implementation of the EIX Settlement.[131] Here, the solicitation versions of the Plan and Disclosure Statement expressly stated that the Debtors and EIX were attempting to and could reach a settlement and that the result of those efforts would define the exact distribution to EME's relevant creditors.[132] With the EIX Settlement now in hand, the Plan was modified to include the EIX Settlement and the revised treatment (through increased recoveries) to the Holders of Claims in Class A4—General Unsecured Claims against EME (Not Assumed Liabilities). The solicitation version of the Plan advised Holders that they would receive a *pro rata* distribution of the Sale Proceeds, as well as the New Interests—the value of which was primarily dependent on the resolution of the EIX Litigation Claims and other matters. The Plan as modified provides for substantively the same treatment—*pro rata* distributions of the newly-defined Net Settlement Proceeds, together with *pro rata* distributions of the Sale Proceeds and the New Interests in the Reorganization Trust. Thus, while an important part of the Plan, the modifications to the Plan as a result of the EIX Settlement do not change the treatment of creditors under the Plan.[133]

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130 See id. at 301.

131 As described above, In connection with these Plan modifications incorporating the EIX Settlement, the Debtors distributed to all parties in interest a Court-approved notice regarding the material terms of the EIX Settlement and the Debtors' intention to seek approval of the EIX Settlement as part of the Plan. See *Order Establishing Certain Scheduling and Notice Procedures for Confirmation of the Debtors' Modified Plan and Granting Related Relief* [Docket No. 2094].

132 See Plan, Art. IV.B, IV.D, IV.E; Disclosure Statement at 8 (notes 5 and 6 to the recovery table describe explicitly the effect a settlement of the EIX Litigation Claims could have on recoveries for Holders of Claims against EME).

133 See Kmart Corp., 2006 WL 952042 at *29 (finding re-solicitation not required where under first plan, claimants would receive "their pro rata shares of stock and of Trust Recoveries" and "[u]nder the final confirmed Plan, they would likewise receive their pro rata shares of stock and of Trust Recoveries")

116. Moreover, the modifications to the Plan are by no means adverse to the Debtors' creditors and other stakeholders and, therefore, do not require re-solicitation.[134] The EIX Settlement avoids complex and costly litigation, provides a direct cash benefit to EME's creditors of over $600 million, and relieves EME's estates of significant tax and employee-related obligations.

117. Finally, Holders of Claims in Class A4 have had ample notice of the modifications. ***First***, the Debtors negotiated the EIX Settlement in collaboration with, and with the ultimate approval of, the Noteholder Group. ***Second***, the Debtors served the modified Plan and blackline on parties that received the solicitation version of the Plan. ***Third***, the Debtors filed and served, and the Court approved, the *Debtors' Motion For Entry of an Order Establishing Certain Scheduling and Notice Procedures for Confirmation of the Debtors' Modified Plan and Granting Related Relief* [Docket No. 2074], thereby providing Holders of Claims or Interests that cast votes on the Plan (each, an "Eligible Holder" and, collectively, the "Eligible Holders") further notice of the modifications and an opportunity to change their votes. Accordingly, notice of the modifications was satisfactory.[135] Notably, no creditor changed its vote to reject the Plan after being notified of the EIX Settlement.

118. In addition, the Debtors modified the Plan to reflect the terms of the resolution between the Debtors and certain retirees represented by Pedersen & Houpt, P.C. with respect to the retirees' Objection to Confirmation [Docket No. 1937]. Finally, the Debtors made certain

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[134] See id.; see also In re Heron, Burchette, Ruckert & Rothwell, 148 B.R. 660, 678 n.7 (Bankr. D. Colo. 1992) (noting cost savings and additional funds provided by settlement did not adversely change treatment of any claim).

[135] See Sentinel Mgmt., 398 B.R. at 300 ("Because the Plan Proponents properly served the Third Amended Plan on all parties in interest, there is no dispute that the Plan Proponents have disclosed the nature of the modifications."); Kmart Corp., 2006 WL 952042 at *28 ("Courts have recognized that modifications may be proposed a very short time prior to—and in appropriate circumstances even at—the confirmation hearing and that the hearing on adverse change in treatment under Rule 3019 may be combined with the hearing on confirmation of the plan.").

other modifications to address technical changes or respond to individual concerns raised by particular parties in interest. These non-substantive modifications do not materially or adversely affect the recoveries of the Holders of any Claims and Interests. Accordingly, the Debtors respectfully submit that they are not required to resolicit acceptances from the Holders in the Voting Classes, that prior acceptances other than those changed in accordance with the procedures set forth in the *Order Establishing Certain Scheduling and Notice Procedures for Confirmation of the Debtors' Modified Plan and Granting Related Relief* [Docket No. 2094] should be deemed votes to accept the modified Plan, and that the Plan as modified should be confirmed.

IV. The Outstanding Objections to Plan Confirmation Should Be Overruled.

119. As reflected on **Exhibit A**, only 13 parties filed Objections to the Plan. Of the 13 Objections, nine have been resolved. The sole remaining Objections—from the U.S. Internal Revenue Service (the "IRS"), the Illinois Department of Revenue (the "IDOR"), Commonwealth Edison Company ("ComEd"), and KeyBank National Association ("KeyBank")—should be overruled for the reasons articulated below.

A. The IRS Objection Should Be Overruled.

120. Most of the arguments included in the Objection [Docket No. 1945] (the "IRS Objection") filed by the IRS have been resolved as a result of the EIX Settlement, the recent withdrawal of claims asserted against the Debtors by the IRS, and certain modifications to the plan (with respect to the Administrative Claims Bar Date and offset and recoupment rights).[136] Moreover, EIX—a solvent and well-capitalized company—has agreed to indemnify and hold harmless the Debtors and their non-Debtor affiliates from any tax liability asserted by

[136] See Docket Nos. 2029–32.

the IRS.[137] The IRS's lone Objection—that the Plan's injunction provision renders the Plan "defective"—is misguided, and, for the reasons described below, should be overruled.

121. More specifically, the IRS argues that the Plan "improperly proposes to impair the rights of the IRS with respect to tax liabilities of members of a consolidated group under the Internal Revenue Code"[138] and improperly discharges, releases, and exculpates non-debtors from tax liability.[139] NRG has committed to the Plan, but only on the condition that it is not taking on taxes owing to any governmental authority by the Acquired Companies.[140] But because the EIX Settlement provides that EIX will satisfy any and all federal income tax obligations (and in fact will indemnify EME and its Debtors and non-Debtor subsidiaries in connection therewith), the IRS's concern and argument is moot as there is no need to assert claims against any Debtor or non-Debtor for these tax liabilities. [141] And the injunction provision itself was necessary and

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137 See, e.g., IRS Objection, ¶ 14(b) (alleging that Debtors are not entitled to a discharge under section 1141(d)(3)); id. ¶ 14(c) (alleging that Plan does not properly provide for IRS's unsecured priority claim under section 1129(a)(9)(C); id. ¶ 14(e) (alleging that Plan does not properly provide for a disputed claims reserve); id. ¶ 14(f) (alleging that Plan improperly impairs setoff and recoupment rights); id. ¶ 14(g) (alleging that Plan does not provide for the IRS's secured claim).

138 See id. ¶ 14(i).

139 See id. ¶ 14(d); see also id. ¶ 14(h) ("[T]he Plan improperly states that there has been a waiver, agreement, compromise, or settlement of the IRS's claims and rights.").

140 See Asset Purchase Agreement § 1.7 ("neither Purchaser nor Parent nor any Acquired Company shall assume or be liable or responsible for, and EME . . . shall retain and be responsible for, in accordance with the Plan, the Excluded Liabilities" including Excluded Tax Liabilities); id. at Annex 1 ("Excluded Tax Liabilities" include "any and all Taxes owing to any Governmental Authority, in each case which are imposed on, or are attributable to the operations, assets, revenues, sales, payroll or income of . . . any Acquired Company with respect to any Taxable period, or a portion of a Taxable period (including quarterly estimated Tax periods)).

141 See Plan, Art. I.A.187 ("Settlement Assumed Liabilities" means "the liability of any of the Debtors or the Non-Debtor Subsidiaries assumed by EIX pursuant to the EIX Settlement Agreement and defined as "Assumed Liabilities" in the EIX Settlement Agreement, ***including any liability on account of any United States federal or California state income taxes of the affiliated group of which EIX is the common parent***" (emphasis added)); Plan, Art. II.B ("Any Claims on account of any liability for United States federal or state income taxes (including, without limitation, any Claims asserted by the IRS or any other applicable Taxing Authority) shall be paid in full by EIX when due and payable under applicable law and subject to all rights and defenses under applicable law."); Plan, Art. IV.D.3 ("EIX shall make all payments on account of the Settlement Assumed Liabilities pursuant to the EIX Settlement Agreement."); Plan, Art. VIII.G (providing EIX is not released from the Settlement Assumed Liabilities); EIX Sett. Agt. § 1(o) ("Assumed Liabilities" means "collectively, any liability, whether or not contingent, on account of any of the following . . . ***any United States federal or any state income taxes of the Consolidated Group***" (emphasis added)); EIX Sett. Agt. § 2(d) ("EIX shall, effective

critical to securing the NRG transaction and the value maximizing reorganization that will be effectuated as a result.[142]

122. There is no question that EIX, a Fortune 500 company with roughly $12 billion in annual revenues, has the financial capability to satisfy all valid obligations to the IRS.[143] Moreover, throughout EME's existence as a subsidiary of EIX, EIX has always historically made tax payments for the consolidated group. Given EIX's agreement and ability to satisfy the tax obligations at issue, the IRS's concerns are, at best, purely hypothetical. In fact, the IRS ***admitted*** in pre-Confirmation discovery the following facts demonstrating that point:

- the IRS has not determined that EIX is insolvent;
- the IRS has not determined that EIX will fail to pay the full amount the IRS contends is owed by the EIX consolidated group;
- the IRS has not determined that EIX is at risk of failing to pay the full amount the IRS contends is owed by the EIX consolidated group;
- EIX is a Fortune 500 company with assets exceeding $1.3 billion;
- EIX has the wherewithal to pay the entirety of the $1.3 billion that IRS contends is owed by the EIX consolidated group; and
- if the IRS prevails in establishing that the EIX consolidated group owes $1.3 billion, the IRS could and would recover the entire $1.3 billion from EIX.[144]

123. Given the IRS's concession that the relevant tax obligations will be satisfied in full by EIX, there is no practical reason to deny Confirmation simply because the Plan and effective documents provide (permissibly so, as described below) that the Debtors and the

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as of the Effective Date, irrevocably assume and shall faithfully pay, perform, discharge, and fulfill, and if applicable, comply with, in each case when due or required, all of the Assumed Liabilities.").

142 See Rigatti Decl. ¶ 59–60.

143 See *Edison International - Fortune 500 2013 - Fortune* (CNNMoney 2013) (available online at http://money.cnn.com/magazines/fortune/fortune500/2013/snapshots/2020.html) (visited Feb. 25, 2014); Edison Int'l, Quarterly Report (Form 10-Q) (Oct. 29, 2013).

144 See Creditor United States' Resp. to Debtors' First Set of Reqs. for Admis. 3–5 (attached hereto as **Exhibit B**).

Non-Debtor Subsidiaries will no longer be obligors for the consolidated group's U.S. tax liabilities.

124. Beyond this practical resolution, the Bankruptcy Code authorizes the Plan's proposed treatment of the consolidated group's tax liabilities, i.e., that the Purchaser will acquire EME's assets—including its Non-Debtor Subsidiaries—"free and clear" of the tax obligations of the consolidated group (for which, as even the IRS recognizes, payment in full is not at risk).

125. Sections 363 and 1141 of the Bankruptcy Code permit the sale of a debtor's assets "free and clear" of claims and interests, including all claims and interests of taxing authorities affected by a sale pursuant to a chapter 11 plan.[145] Moreover, section 105 of the Bankruptcy Code—which authorizes a bankruptcy court to "issue any order . . . that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code]"—authorizes the logical and appropriate enforcement of the Bankruptcy Code's routine free and clear protections for claims against the Non-Debtor Subsidiaries under these circumstances.

126. The Debtors "free and clear" relief with respect to Non-Debtor Subsidiaries that are Acquired Companies under the Plan's Purchase Agreement is not controversial. Rather, it is

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[145] See, e.g., FutureSource LLC v. Reuters Ltd., 312 F.3d 281, 285 (7th Cir. 2002) ("The bankruptcy court's sale order, consistent with 11 U.S.C. § 363(f), extinguished all interests in the assets acquired by Reuters.") (quotations removed). See also Zerand-Bernal Grp., Inc. v. Cox, 23 F.3d 159, 163 (7th Cir. 1994) ("[The debtor's] assets were sold to [the purchaser] free from all liens and other encumbrances. And such a cleansing of the assets in the bankruptcy sale is a valid power of a bankruptcy court, 11 U.S.C. §§ 363(f), § 1141(c)."); In re Penrod, 50 F.3d 459 (7th Cir. 1995); In re Airadigm Commc'ns, Inc., 616 F.3d 642, 663 (7th Cir. 2010) ("The default rule is that a [claim] is extinguished as part of a plan of reorganization unless the plan says otherwise. 11 U.S.C. § 1141(c)."). Authority to effect transfers "free and clear" under sections 363 and 1141 applies to tax and other governmental entities, including the IRS. See, e.g., In re Leckie Smokeless Coal Co., 99 F.3d 573, 585 (4th Cir. 1996) (holding that "the Bankruptcy Court may extinguish [ ] successor [tax] liability pursuant to 11 U.S.C. § 363(f)(5)"); Order Authorizing Sale ¶ O, In re Inner City Media Corp., No. 11-13967 (SCC) (Bankr. S.D.N.Y. May 18, 2012) [Docket No. 500] (holding that the debtors, under section 363(f), could sell their assets free and clear of all successor liability, including "interests relating to any U.S. federal, state or local income tax liabilities"). Courts recognize such relief is appropriate where, as here, a purchaser requires the sale free and clear of claims, including rights or claims based on tax or successor or transferee liability. See id. ¶¶ M–N (noting that the buyer would not have entered into the purchase agreement without "free and clear" status as to tax liability, and that the debtors' inability to transfer assets "free and clear" of tax liability "would adversely impact the Debtors' efforts to maximize the value of their estates").

a logical and appropriate application of sections 363(f) and 1141(c) of the Bankruptcy Code. In In re Kmart Corp., the Seventh Circuit recognized that section 105(a) gives a bankruptcy court power to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of the Code," so long as that power is used to "implement[,] rather than override," provisions of the Code.[146] In this case, the Debtors seek to implement sections 363(f) and 1141(c)—***not*** to override any other Bankruptcy Code provisions. In Kmart, the Seventh Circuit recognized that section 105(a)'s application is appropriate where the Bankruptcy Code provides a substantive "grant of authority" under which a bankruptcy court could approve a debtor's request.[147] Here, the Debtors *can* rely upon such existing grants of authority—namely, sections 363(f) and 1141(c) of the Bankruptcy Code—under which this Court may approve the necessary and appropriate relief the Debtors' request.[148] In addition to the Court's 105(a) powers, section 1123(b)(6) of the Bankruptcy Code allows chapter 11 plans to "include any appropriate provision not inconsistent with the applicable provisions of this title." Notably, courts have held that section 1123(b)(6) authorizes a reorganization plan to include nondebtor release and injunction provisions if not inconsistent with the Code.[149] In this case, the Plan's treatment of

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146 In re Kmart Corp., 359 F.3d 866, 871 (7th Cir. 2004) (quotations removed). See also Norwest Bank Worthington v. Ahlers, 485 U.S. 197, 206 (1988) ("[W]hatever equitable powers remain in the bankruptcy courts must and can only be exercised within the confines of the Bankruptcy Code.").

147 359 F.3d at 872.

148 The holding from In re Insilco Techs., Inc., 351 B.R. 313 (Bankr. D. Del. 2006) does not apply here. In Insilco, the bankruptcy court held that the debtor's non-debtor subsidiary was not released from preference claims under a section 363 order, but only because the parties never negotiated, and the court never approved, such relief in the first instance. Id. at 321–23 (recognizing that 363 sale order (1) did not provide for release of non-debtor subsidiary and (2) expressly retained estate's preference actions). Insilco *does not* stand for the proposition that a bankruptcy court cannot extend free and clear protections to non-debtor subsidiaries under appropriate circumstances.

149 See In re Dow Corning Corp., 280 F.3d 648, 656–58 (6th Cir. 2002); see also In re Global Indus. Technologies, Inc., 645 F.3d 201, 206 (3d Cir. 2011) (stating that "injunctions may be authorized under § 105(a) and § 1123(b)(6)"); In re Lehman Fin. Grp., LLC, 2006 WL 2640210, at *6 (Bankr. N.D. Ill. Sept. 11, 2006) (noting that a plan injunction can be achieved through section 105(a) as well as section 1123(b)(6)).

the tax obligations is *not* inconsistent with any provision of the Code, and accordingly, is an appropriate plan provision under section 1123(b)(6).

127. Furthermore, contrary to the IRS Objection, 26 U.S.C. § 7421 (the "Anti-Injunction Act") does not preclude a debtor's sale of its assets free and clear. If it did, "free and clear" sales simply would not work as a viable mechanism in chapter 11.[150]

128. Accordingly, the treatment of the tax obligations under the Plan, including the injunction and exculpation provisions, is a permissible means of implementing the value-maximizing NRG transaction, is a necessary component of both the NRG transaction and the EIX Settlement, and is fully within the Court's authority to approve a sale "free and clear." The Court, therefore, should overrule the IRS Objection.

129. On March 6, 2014, the IRS filed ***another*** objection to the Plan [Docket No. 2179], restating the same arguments made in the original IRS Objection. And after 6:30 p.m. on that same day, the IRS also filed a new, even more untimely "declaration", trying to inject into the record information that the IRS had refused to provide to the Debtors in response to discovery requests. The Debtors reserve all rights with respect to the new objection and submit that the new objection and its accompanying "declaration"—which raise no argument related to the EIX Settlement at all—are clearly improper and should be stricken.

B. The IDOR Objection Should Be Overruled.

130. The IDOR's Objection [Docket No. 1950] (the "IDOR Objection") has either been addressed or should be overruled. Specifically, the IDOR Objection asserts that: (a) the

[150] See Tr. of Confirmation Hr'g at 87, In re Inner City Media Corp., No. 11-13967 (SCC) (Bankr. S.D.N.Y. Feb. 21, 2012) [Docket No. 346] (finding that if the Anti-Injunction Act applied in the context of asset sales, the government would receive a carve-out in every case); Leckie, 99 F.3d at 585 (stating that the debtors "require[d] a determination of whether, in an attempt to generate funds with which to pay . . . creditors, they [could] sell their assets free and clear of [tax] liabilities;" and holding that the bankruptcy court *did* have the authority to grant the "debtors' motions to sell their assets free and clear of [such obligations].").

administrative claims bar date should not apply to administrative tax claims; (b) the nondebtor release and exculpation provisions should not apply with respect to actions by taxing authorities; and (c) creditors should not be prevented from asserting recoupment rights against the Debtors. See IDOR Objection ¶¶ 3–5.

131. Importantly, the Debtors have accommodated the IDOR's requests with respect to the administrative claims bar date and recoupment rights. See Plan, Art. XIII.H.

132. The IDOR's argument that the nondebtor release and exculpation provisions should not apply to actions by taxing authorities, however, fails for the same reasons discussed above in connection with the IRS Objection. The Bankruptcy Court may, pursuant to sections 1141 and 363 of the Bankruptcy Code, permit the sale of the Debtors' assets "free and clear" of claims and interests, including all claims and interests of taxing authorities affected by a sale pursuant to a chapter 11 plan.[151] Additionally, section 105(a) of the Bankruptcy Code empowers the Bankruptcy Court to "issue any order . . . that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code]." The Plan's proposed treatment of claims and causes of action pursuant to the release and exculpation provisions is neither controversial nor novel—but is appropriate and fully authorized by the Bankruptcy Code.[152] And, as with the IRS, the IDOR's Objection to the nondebtor release and exculpation provisions fails because such provisions are critical to the success of the Plan and were specifically negotiated for by the parties benefiting from such protections.[153] Finally, as with the IRS, the IDOR's reliance on the Anti-Injunction Act is misplaced. The Anti-Injunction Act does not negate the Bankruptcy

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[151] See note 145 and accompanying text, supra.

[152] See Kmart, 359 F.3d at 872.

[153] See In re Ingersoll, Inc., 562 F.3d 856, 865 (7th Cir. 2009) (approving non-consensual third-party release where release was appropriately limited, "an 'essential component' of the plan, the fruit of 'long-term negotiations' and achieved by the exchange of 'good and valuable consideration'").

Court's authority to approve transactions free and clear of tax liabilities.[154] Instead, pursuant to the authority bestowed upon it by the Bankruptcy Code, the Bankruptcy Court may grant the Plan's proposed relief, and the IDOR Objection should be overruled.

C. The ComEd Objection Should Be Overruled.

133. ComEd filed a pleading that is styled as a Confirmation Objection [Docket No. 1947] (the "ComEd Objection"), but in reality is nothing more than a preview of a potential dispute with respect to a rejection damage claim that ComEd intends to file. More specifically, ComEd and MWG are parties to a prepetition agreement that allocates liability, defense responsibilities, and certain other obligations related to asbestos claims arising from certain MWG facilities purchased from ComEd in 1999. The ComEd Objection argues that Confirmation should not affect ComEd's Claim for rejection damages and should not prohibit ComEd from arguing that the Debtors are directly liable on such claims (whether admitted or adjudged) in connection with any asbestos claims asserted against ComEd. ComEd further suggests that the Plan improperly fails to provide for a section 524(g) asbestos trust to deal with asbestos-related liabilities.

134. From the Debtors' standpoint, Confirmation is neither the time nor place to argue over ComEd's potential rejection damages claim. Moreover, the Debtors have made clear to ComEd that all parties' rights are reserved with respect to any rejection damage or other claims that may be asserted. The Plan itself already provides a process for reconciling Claims, as is typical in large chapter 11 cases.[155] The Plan provides that Claims arising from the rejection of

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[154] See Leckie, 99 F.3d at 585.

[155] See Plan, Art. VII.A.1 ("Except as expressly provided in the Plan or in any order entered in the Chapter 11 Cases prior to the Effective Date (including the Confirmation Order), no claim shall become an Allowed Claim unless and until such Claim is deemed Allowed under the Plan or the Bankruptcy Code or the Bankruptcy Court has entered a Final Order, including the Confirmation Order, in the Chapter 11 Cases allowing such Claim."). Rejection damages are consistently determined within the claims resolution process. See, e.g., In re Qualteq,

Executory Contracts (like ComEd's) under the Plan must be asserted by filing a Proof of Claim within 30 days of the Effective Date.[156] Once a Proof of Claim is filed, the Debtors will have the opportunity to object to that Claim, with the Claim not becoming an Allowed Claim until the Bankruptcy Court has entered a Final Order allowing it.[157] The appropriate context for ComEd to raise its concerns is during that process, not now.

135. Moreover, ComEd's suggestion that the Debtors have not satisfied the requirements of section 524(g) of the Bankruptcy Code is misguided: the the Debtors are not attempting to establish a trust and seek a related injunction under section 524(g) of the Bankruptcy Code, nor would such a trust and injunction make sense in a case like MWG's, where the number and amount of asbestos claims are relatively limited and will not threaten MWG's ability to deal equitably with their liabilities post-Confirmation.[158] Thus, ComEd's concerns can and will be addressed in connection with any future dispute concerning ComEd's rejection damage claim.

Inc., d/b/a VCT New Jersey, Inc., No. 12-05861 (ERW) (Bankr. N.D. Ill. Apr. 23, 2013); In re Hartford Computer Hardware, Inc., No. 11-49744 (PSH) (Bankr. N.D. Ill. Sept. 25, 2012); In re Amcore Fin., Inc., No. 10-37144 (SPS) (Bankr. N.D. Ill. Dec. 15, 2010); In re Kimball Hill, Inc., No. 08-10095 (SPS) (Bankr. N.D. Ill. Mar. 12, 2009); In re UAL Corp., No. 02-48191 (ERW) (Bankr. N.D. Ill. Jan. 20, 2006).

156 See Plan, Art. V.E.

157 See Plan, Art. VII.A.1.

158 See 11 U.S.C. § 524(g)(2)(B)(ii) (requiring court to determine, before authorizing channeling injunction and trust, that, among other things "debtor is likely to be subject to ***substantial future demands for payment*** arising out of the same or similar conduct or events that gave rise to the claims that are addressed by the injunction," "the actual amounts, numbers, and timing of such future demands cannot be determined," and "pursuit of such demands outside the procedures prescribed by such plan is ***likely to threaten the plan's purpose*** to deal equitably with claims and future demands") (emphasis added); see also In re Flintkote Co., 486 B.R. 99, 127 (Bankr. D. Del. 2012) ("[T]o qualify for a § 524(g) channeling injunction, there must be, among other things, a likelihood that a substantial number of people, who are not yet able to prove damages from an asbestos-related disease, will eventually demand payment from the debtor as compensation for asbestos-related illnesses contracted through exposure to the debtor's products . . . [and] a high probability that the debtor will lack funds to provide them with just compensation."); see also In re Federal-Mogul Global Inc., 411 B.R. 148 (Bankr. D. Del. 2008) ("In enacting section § 524(g) Congress recognized that it was providing an extraordinary remedy for debtors overwhelmed by asbestos-related liabilities.").

D. The KeyBank Limited Objection Should Be Overruled.

136. The Court should also overrule KeyBank's limited Objection [Docket No. 1940] (the "KeyBank Limited Objection"). The KeyBank Limited Objection raised issues related to the Purchaser's assumption of certain of the Debtors' and Non-Debtor Subsidiaries' prepetition and postpetition contracts. This is not a Confirmation objection.

137. The Debtors have accommodated multiple and various diligence requests of KeyBank in an effort to resolve the KeyBank Limited Objection. To the extent KeyBank has any remaining inquiries, the Debtors and the Purchaser will continue to make all reasonable efforts to provide satisfactory responses to KeyBank, and the Debtors believe that KeyBank's issues should be resolved shortly. Confirmation of the Plan, however, should not be denied or delayed on account of KeyBank's potential allegations that the Plan lacks adequate assurance information or is otherwise deficient. As detailed above, the Debtors have provided ample evidence of the Purchaser's ability to perform its obligations under the Plan and the Purchase Agreement, as well as the feasibility of the Plan as a whole. Indeed, no other party in interest has raised any concern with respect to those issues. KeyBank's outstanding inquiries, if any, are not related to Confirmation. Accordingly, to the extent it remains outstanding as of the Confirmation Hearing, the Court should overrule the KeyBank Limited Objection.

Waiver of Bankruptcy Rules Regarding Notice and Stay of Confirmation Order

138. To allow the Debtors to timely consummate the transactions contemplated by the Plan, the Debtors request a waiver of the stay and notice requirements under Bankruptcy Rules 3020(e), 6004(a), or any other applicable Bankruptcy Rules or sections of the Bankruptcy Code. The Debtors have worked with their stakeholders during the Chapter 11 Cases and now are prepared to confirm the Plan that provides creditors with the best available recoveries and consummate the transactions contemplated thereunder. The Debtors and the Purchaser have

been preparing for consummation of the Sale for months and have undertaken significant efforts to enable the Effective Date to occur as soon as practicable after entry of the Confirmation Order. Absent a waiver of the 14-day stay provided under Bankruptcy Rule 3020, consummation of the Sale will be delayed, thereby unnecessarily imposing costs upon the Estates and other parties in interest. Accordingly, the Debtors respectfully submit that cause exists to authorize, and the Court should approve, waivers of the stay and notice requirements.

Conclusion

For all of the reasons set forth herein, in the Rigatti Declaration, and in the Cofsky Declaration, and as will be further shown at the Confirmation Hearing, the Debtors submit that the Plan fully satisfies all of the applicable requirements of the Bankruptcy Code. Accordingly, the Debtors respectfully request that the Court enter the proposed Confirmation Order confirming the Plan, overrule any outstanding Objections, and grant such other and further relief as is just and proper.

[Remainder of page intentionally left blank.]

Respectfully submitted,

Dated: March 6, 2014

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

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Exhibit A

Summary of Confirmation Objections

In re Edison Mission Energy, et al.
Chapter 11 Case No. 12-49219 (JPC)
Summary of Confirmation Objections[1]

Objection		Response
1.	*Retirees' Objection to Debtors' Second Amended Joint Chapter 11 Plan of Reorganization* [Docket No. 1937]	This objection was ***withdrawn*** pursuant to the *Stipulation and Agreed Order (I) Establishing Schedule Regarding Debtors' Motion for Entry of an Order (A) Authorizing Termination of Retiree Benefits and (B) Granting Related Relief (II) Resolving Motion to Appoint Official Retiree Committee Pursuant to 11 U.S.C. § 1114(d) and Retirees' Objection to Debtors' Second Amended Joint Chapter 11 Plan of Reorganization* [Docket No. 2034].
2.	*Limited Objection and Reservation of Rights of KeyBank National Association to Confirmation of Debtors' Second Amended Joint Chapter 11 Plan of Reorganization* [Docket No. 1940]	To the extent KeyBank has any remaining inquiries, the Debtors and the Purchaser will continue to make all reasonable efforts to provide satisfactory responses to KeyBank, and the Debtors believe that KeyBank's issues should be resolved shortly.
3.	*Limited Objection of Chevron Entities to the Debtors' Second Amended Joint Chapter 11 Plan of Reorganization* [Docket No. 1941]	This objection has been ***withdrawn*** [Docket No. 2152]. To resolve this objection, the Debtors included the following in Article XIII.G of the Plan: It is the intention of the Debtors that the Chevron Litigation not be affected or otherwise impacted by Confirmation or Consummation of the Plan. Therefore, notwithstanding anything to the contrary contained in the Plan, the Disclosure Statement, the Purchase Agreement, the Plan Sponsor Agreement, or the Confirmation Order, nothing contained therein or in any of them, as they may be amended or supplemented at any time, or Consummation of the Plan, shall (or shall be deemed to) discharge, release, enjoin, moot, prejudice, or otherwise affect in any way the Chevron Litigation, which shall be preserved as though Confirmation and Consummation of the Plan had not occurred. For the avoidance of doubt, the Chevron Plaintiffs' (as defined for purposes of the Chevron Litigation) withdrawal of (a) their objection to Confirmation of the Plan [Docket No. 1941], and (b) their votes to reject the Plan, is not (and shall not be deemed to be or to signify) an acceptance of the Plan or a waiver of any of their claims, rights or remedies under the Partnership Agreements or California law; nor shall such withdrawal constitute a waiver of any rights or claims against any third person, firm, or corporation. The Chevron Partnership Agreements shall be deemed removed from the Schedule of Assumed Executory Contracts and Unexpired Leases, given that the Chevron Partnership Agreements were previously assumed pursuant to order of the Bankruptcy Court [Docket No. 1564] (which order is the subject of an appeal pending as part of the Chevron Litigation).

[1] The Debtors continue their efforts to resolve outstanding Objections in advance of the Confirmation Hearing. Capitalized terms, used but not otherwise defined herein, shall have the meanings ascribed to them in the Plan.

Objection		Response
4.	*Objection of the Grundy County Collector to Confirmation of the Debtors' Second Amended Joint Chapter 11 Plan of Reorganization* [Docket No. 1942]	The objection was ***withdrawn*** pursuant to the settlement agreement approved by the *Order Approving Settlement Between Debtors and Grundy County Taxing Bodies* [Docket No. 2168].
5.	*Objection of Peabody COALSALES, LLC to the Confirmation of the Debtors' Second Amended Joint Chapter 11 Plan of Reorganization* [Docket No. 1943]	This objection was ***withdrawn*** [Docket No. 2157]
6.	*Objection by the California Department of Water Resources to Confirmation of the Debtors' Second Amended Joint Chapter 11 Plan of Reorganization* [Docket No. 1944]	This objection has been ***resolved*** by modifications to the Plan. To resolve this objection, the Debtors modified the Plan at Article XIII.H: Notwithstanding anything in the Plan or Purchase Agreement to the contrary, (1) the Proof of Claim filed by the California Department of Water Resources [Claim No. 1445] is not an Excluded Liability under the Plan or Purchase Agreement, (2) neither the Reorganization Trust nor the Purchaser Parties will seek to resolve such Proof of Claim before the Bankruptcy Court without the prior consent of the California Department of Water Resources on or before April 30, 2014, (3) to the extent that such Proof of Claim is Allowed by the Bankruptcy Court as a Claim against EME, it shall be an Assumed Liability under the Purchase Agreement, and (4) to the extent that the claim related to such Proof of Claim is asserted against Sunrise Power Co., LLC or any other Acquired Company that is not a Debtor, the liability will be governed by section 1.6(d) of the Purchase Agreement. The California Department of Water Resources agrees to hold in abeyance, and shall not require the Debtors, the Non-Debtor Subsidiaries, the Reorganization Trust, the Acquired Companies, or the Purchaser Parties to respond to, any outstanding subpoena, interrogatory, discovery request, or other document request related to EME and served on EME or Sunrise Power Co., LLC and to abstain from making, renewing, or otherwise prosecuting any such requests or similar requests, through April 30, 2014. The Debtors, the Non-Debtor Subsidiaries, the Reorganization Trust, the Acquired Companies, and the Purchaser Parties reserve all rights with respect to any Proof of Claim filed by the California Department of Water Resources.
7.	*Creditor United States' Opposition to Confirmation of the Debtors' Second Amended Joint Chapter 11 Plan of Reorganization* [Docket No. 1945], as amended and supplemented by *Creditor United States' Objection to Confirmation of the Debtors' Third Amended Joint Chapter 11 Plan of Reorganization and Memorandum of Law in Support Thereof* [Docket No. 2110]	The IRS's objection to the release and injunction provisions of the Plan should be overruled because these provisions are permissible under the Bankruptcy Code. See Brief ¶¶ [120–29].
8.	*Limited Objection of Commonwealth Edison Company to Debtors' Second Amended Joint Chapter 11 Plan of Reorganization* [Docket No. 1947]	ComEd's objection should be overruled; ComEd's rejection damages claim will addressed in due course in accordance with the procedures set forth in the Plan. Moreover, the Debtors are not seeking to establish an asbestos trust nor obtain the benefits of a channeling injunction under section 524(g) of the Bankruptcy Code.
9.	*Homer City Generation, L.P.'s Objection to Confirmation of Debtors' Second Amended Joint Chapter 11 Plan* [Docket No. 1949]	This objection has been ***resolved*** pursuant to a settlement among the Debtors and Homer City Generation, L.P. The Debtors intend to finalize such settlement in the near term and seek approval of such settlement by separate motion.

Objection		Response
10.	*Objection of Illinois Department of Revenue to Second Amended Joint Chapter 11 Plan of Reorganization* [Docket No. 1950]	The Debtors have proposed accommodations resolving two of the IDOR's objections. The IDOR's objection to the release and injunction provisions of the Plan should be overruled because these provisions are permissible as explained herein. See Brief ¶¶ [130–32].
11.	*Creditor, Stock Equipment Company, Inc.'s Limited Objection to Debtors' Plan Supplement to Debtors' Second Amended Joint Chapter 11 Plan of Reorganization* [Docket No. 1954]	This objection has been ***withdrawn*** [Docket No. 2064].
12.	*Objection of the U.S. Securities and Exchange Commission to Confirmation of Debtors' Joint Second Amended Plan* [Docket No. 2020]	This objection has been resolved and will be ***withdrawn*** based on modifications to the Plan.
13.	*Limited Objection and Reservation of Rights of Allied World National Assurance Company to Debtors' Second Amended Joint Chapter 11 Plan of Reorganization* [Docket No. 2053]	This objection has been ***withdrawn*** [Docket No. 2114].

Exhibit B

Creditor United States' Response to Debtors' First Set of Requests for Admission

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

In re:	)	Chapter 11
EDISON MISSION ENERGY, et al.,	)	Case No. 12-49219 (JPC)
Debtors.	)	(Jointly Administered)

CREDITOR UNITED STATES' RESPONSE TO DEBTORS' FIRST SET OF REQUESTS FOR ADMISSION

Pursuant to Rule 7036 of the Federal Rules of Bankruptcy Procedure and Rule 36 of the Federal Rules of Civil Procedure, made applicable to this contested matter by Rule 9014 of the Federal Rules of Bankruptcy Procedure, the creditor United States of America, Department of the Treasury, Internal Revenue Service, responds to the Debtors' first set of requests for admission in regard to the contested matter arising from the "Creditor United States' Opposition to Confirmation of the Debtors' Second Amended Joint Chapter 11 Plan of Reorganization" (Docket No. 1945) with the following objections and answers:

GENERAL OBJECTION

The creditor United States of America generally objects to these requests because they seek information that is beyond the scope of discovery permitted for this type of contested matter. Without waiving this objection, the United States responds:

REQUEST FOR ADMISSION NO. 1: Admit that EME is a member of the EIX consolidated group.

ANSWER TO REQUEST FOR ADMISSION NO. 1: Admits.

REQUEST FOR ADMISSION NO. 2: Admit that EME did not submit the return for the EIX consolidated group in the Open Tax Years.

ANSWER TO REQUEST FOR ADMISSION NO. 2: Denies.

REQUEST FOR ADMISSION NO. 3: Admit that the POC includes claims for amounts that are attributable to the taxable income of Southern California Edison.

ANSWER TO REQUEST FOR ADMISSION NO. 3: Denies.

REQUEST FOR ADMISSION NO. 4: Admit that the POC demands that the Debtors pay You taxes that are attributable to the taxable income of Southern California Edison.

ANSWER TO REQUEST FOR ADMISSION NO. 4: Denies.

REQUEST FOR ADMISSION NO. 5: Admit that the amount You claim in the POC is not solely attributable to the taxable income of the Debtors or their subsidiaries.

ANSWER TO REQUEST FOR ADMISSION NO. 5: Denies.

REQUEST FOR ADMISSION NO. 6: Admit that You seek to hold the Debtors responsible for the tax liability of non-Debtor members of the EIX consolidated group.

ANSWER TO REQUEST FOR ADMISSION NO. 6: Denies.

REQUEST FOR ADMISSION NO. 7: Admit that EME did not make payments to the IRS on account of the EIX consolidated group's returns for the Open Tax Years.

ANSWER TO REQUEST FOR ADMISSION NO. 7: Denies.

REQUEST FOR ADMISSION NO. 8: Admit that EME has not transferred to You any amounts on account of the tax liabilities of the EIX consolidated group in the last twenty years.

ANSWER TO REQUEST FOR ADMISSION NO. 8: Denies.

REQUEST FOR ADMISSION NO. 9: Admit that no Debtor made payments to You on account of the tax liabilities of the EIX consolidated group for the Open Tax Years.

ANSWER TO REQUEST FOR ADMISSION NO. 9: Denies.

REQUEST FOR ADMISSION NO. 10: Admit that EIX is the exclusive entity that has paid any amounts owing to You arising from the ability of the EIX consolidated group for the Open Tax Years.

ANSWER TO REQUEST FOR ADMISSION NO. 10: Denies.

REQUEST FOR ADMISSION NO. 11: Admit that, before EME filed for chapter 11 protection, the United States never sought to recover tax payments directly from EME.

ANSWER TO REQUEST FOR ADMISSION NO. 11: Denies.

REQUEST FOR ADMISSION NO. 12: Admit that You have not determined that EIX is insolvent.

ANSWER TO REQUEST FOR ADMISSION NO. 12: Admits.

REQUEST FOR ADMISSION NO. 13: Admit that You have not determined that EIX will fail pay the full amount the IRS contends is owed by the EIX consolidated group.

ANSWER TO REQUEST FOR ADMISSION NO. 13: Admits.

REQUEST FOR ADMISSION NO. 14: Admit that You have not determined that EIX is at risk to fail to pay the full amount the IRS contends is owed by the EIX consolidated group.

ANSWER TO REQUEST FOR ADMISSION NO. 14: Admits.

REQUEST FOR ADMISSION NO. 15: Admit that the amount EME would owe You on a standalone basis for the Open Tax Years does not exceed $100 million.

ANSWER TO REQUEST FOR ADMISSION NO. 15: Denies.

REQUEST FOR ADMISSION NO. 16: Admit that EIX is a Fortune 200 company with assets exceeding $1.3 billion.

ANSWER TO REQUEST FOR ADMISSION NO. 16: Admits.

REQUEST FOR ADMISSION NO. 17: Admit that EIX has the wherewithal to pay the entirety of the $1.3 billion that You contend is owed by the EIX consolidated group.

ANSWER TO REQUEST FOR ADMISSION NO. 17: Admits.

REQUEST FOR ADMISSION NO. 18: Admit that if You prevail in establishing that the EIX consolidated group owes $1.3 billion for the Open Tax Years, You could and would recover the entire $1.3 billion from EIX.

ANSWER TO REQUEST FOR ADMISSION NO. 18: Admits.

Respectfully submitted,

UNITED STATES OF AMERICA
(DEPARTMENT OF THE TREASURY,
INTERNAL REVENUE SERVICE),
Creditor

SARAH T. MAYHEW
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U.S. Department of Justice
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CERTIFICATE OF SERVICE

I, Sarah T. Mayhew, an attorney, state that pursuant to Local Rule 9013-1(D) the above Creditor United States' Response To Debtors' First Set of Requests for Admissions was served by First Class Mail on February 10, 2014, on .Kirkland & Ellis LLP, 300 North LaSalle, Chicago, Illinois 60654, Attn: Michael Slade.

Sarah T. Mayhew

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

In re:	)	Chapter 11
EDISON MISSION ENERGY, et al.,	)	Case No. 12-49219 (JPC)
Debtors.	)	(Jointly Administered)

CREDITOR UNITED STATES' RESPONSE TO DEBTORS' FIRST SET OF DISCOVERY REQUESTS

Pursuant to Rules 7033 and 7034 of the Federal Rules of Bankruptcy Procedure and Rules 33 and 34 of the Federal Rules of Civil Procedure, made applicable to this contested matter by Rule 9014 of the Federal Rules of Bankruptcy Procedure, the creditor United States of America, Department of the Treasury, Internal Revenue Service, responds to the Debtors' first request for documents and interrogatories in regard to the contested matter arising from the "Creditor United States' Opposition to Confirmation of the Debtors' Second Amended Joint Chapter 11 Plan of Reorganization" (Docket No. 1945) with the following objections and productions:

FIRST GENERAL OBJECTION

The creditor United States of America generally objects to these requests because they seek information that is beyond the scope of discovery permitted for this type of contested matter. In addition, the requests are unduly burdensome and overbroad.

SECOND GENERAL OBJECTION

The United States generally objects to these requests to the extent that they seek documents and communications that are protected under the government deliberative process privilege, the attorney client privilege, and the work-product doctrine

Without waiving these objections, the United States responds:

THIRD GENERAL OBJECTION

To the extent the "Order Approving (A) the Adequacy of the Disclosure Statement, (B) Solicitation and Notice Procedures with Respect to to Confirmation of the Debtors' Joint Chapter 11 Plan of Reorganization, (C) the Form of Ballots and Notices in Connection Therewith, and (D) the Scheduling of Certain Dates With Respect Thereto" applies to this contested matter, the United States objects because it was entered before this contested matter arose and without proper service on the United States.

DOCUMENT REQUEST NO. 1: All documents and communications concerning the POC's and any attachments thereto, including any documents that support or conflict with (a) the amount claimed; (b) the priority claimed; and (c) each and every allegation contained therein.

RESPONSE TO DOCUMENT REQUEST NO. 1: See General Objections.

Subject to and without waiving these objections, we will produce for inspection and copying the Internal Revenue Service's proof of claim, the income tax returns filed by the Debtors (to the extent the Debtors have not retained copies of them), and the Internal Revenue

Service Revenue Agent's Reports showing the determination of tax liability for the tax periods included on Proof of Claim Nos. 1097 and 1846-A, 2012, 2013, and 2014.

DOCUMENT REQUEST NO. 2: All documents and communications concerning the Objection and any attachments thereto, including any documents that support or conflict with (a) your contentions; and (b) each and every allegation contained herein.

RESPONSE TO DOCUMENT REQUEST NO. 2: See General Objections. Subject to and without waiving these objections, the Objection is based on provisions of the Tax Code (26 U.S.C.) and the Bankruptcy Code (11 U.S.C.). Copies of those statutes are publicly available. In addition, the documents that will be produced in response to Document Request No.1, above, will be produced.

DOCUMENT REQUEST NO. 3: All documents supporting or conflicting with your answer to each of the Interrogatories.

RESPONSE TO DOCUMENT REQUEST NO. 3: See General Objections. In addition, the documents that will be produced in response to Document Request No. 1, above, will be produced.

DOCUMENT REQUEST NO. 4: All documents you considered or referred to in responding to any of the Interrogatories.

RESPONSE TO DOCUMENT REQUEST NO. 4: See General Objections.

Subject to and without waiving these objections, we will produce for inspection and copying Internal Revenue Service's proof of claim, income tax returns filed by the Debtors (to the extent the Debtors have not retained copies of them), and the Internal Revenue Service Revenue Agent's Reports showing the determination of tax liability for the tax periods included on Proof of Claim Nos. 1097 and 1846-A, 2012, 2013, and 2014.

DOCUMENT REQUEST NO. 5: All documents you used, considered or referred to in your calculations of any amounts claimed against any Debtor in (a) your POC; and (b) your Answer to Interrogatory No. 2.

RESPONSE TO DOCUMENT REQUEST NO. 5: *See* General Objections. In addition, subject to and without waiving these objections, the documents that will be produced in response to Document Request No. 4. above, will be produced.

INTERROGATORIES

INTERROGATORY NO. 1: Identify the complete support, including any documents you relied upon, for each of the allegations and contentions in (a) the POC; and (b) the Objection.

RESPONSE TO INTERROGATORY NO 1: See General Objections. Notwithstanding and without waiving those objections, for the allegations and contentions in the Objection, the United States relied upon the Revenue Agents Reports produced in response to Document Request No. 1 and upon statutes and regulations.

INTERROGATORY NO. 2: State each amount you contend you are entitled to from any Debtor, and for each such amount, (a) state the Debtor you contend owes you any amount; (b) state your contention as to the priority that should be afforded that amount; (c) state the amount you contend you will be paid if your Objection is not sustained; (d) the amount you contend you will paid if your Objection is sustained; (e) provide a detailed description of how you calculated any amount given in your responses to this Interrogatory; and (f) all reasons for your foregoing answers.

RESPONSETO INTERROGATORY NO 2: See General Objections. Subject to and without waiving these objections, the United States states that the amounts claimed and the classification of those claims are set forth on the Internal Revenue Service's proof of claim. The details of those calculations are set forth in the Revenue Agent's Reports which will be produced..

INTERROGATORY NO. 3: Identify all persons you consulted or communicated with in forming your responses to any Interrogatory or Request, and for each such person, state the (i) name; (ii) title; (iii) address; and (iv) nature and subject matter of the consultation or communication.

RESPONSE TO INTERROGATORY NO. 3: See General Objections. Notwithstanding and without waiving these objections, the United States responds to Interrogatory No 3 as follows:

Robert Romashko
Office of the Chief Counsel, Internal Revenue Service
200 West Adams Street, Suite 2300
Chicago, Il 60606
(312) 368-8448
Discussions concerning production of documents from IRS files and membership of various entities in the consolidated group.

Renita Cannon
Bankruptcy Specialist, Internal Revenue Service
230 S. Dearborn Street, Rm. 2600
Chicago, IL 60604
(312) 292-2944
Discussions concerned preparation of the Proofs of Claim and amendments.

Carolyn Payne
IRS Office of Appeals
Appeals Case Team Leader
300 N. Los Angeles Street, Room 3054
Los Angeles, CA 09912
(213) 576-4838

Discussions concerned production of documents from the IRS files and status of the appeals filed by consolidated group.

INTERROGATORY NO. 4: Identify all documents you consulted or reviewed in forming your responses to any Interrogatory.

RESPONSE TO INTERROGATORY NO. 4: See General Objections. Notwithstanding and without waiving these objections, the United States responds to Interrogatory No 4 as follows: The United States consulted legal pleadings filed in this bankruptcy case by the United States and other parties, Revenue Agent Reports for the open tax years and select pages from the income tax returns of the Debtors' consolidated group that showed if an entity was a member of the consolidated group.

INTERROGATORY NO. 5: Identify all persons with knowledge about the Objection or the POC, and for each such person, state the (i) name, (ii) title, (iii) address; and (iv) subject matter of the person's knowledge.

RESPONSE TO INTERROGATORY NO. 5: See General Objections. Notwithstanding and without waiving these objections, the United States responds to Interrogatory No 5 as follows: Persons with knowledge of the Objection include:

Robert Romashko
Office of the Chief Counsel, Internal Revenue Service
200 West Adams Street, Suite 2300
Chicago, Il 60606
(312) 368-8448
Discussions concerning consolidated group.

INTERROGATORY NO. 6: State whether you contend that You will not be paid in full for the claims giving rise to the POC if Your claim is not paid by the Debtors, and describe in detail all reasons for your contention.

RESPONSE TO INTERROGATORY NO. 6: See General Objections. Notwithstanding and without waiving these objections, the United States does not so contend.

INTERROGATORY NO. 7: State whether you contend that Edison International, Inc. will fail to make any required payments to You related to the claims giving rise to the POC, and described in detail all reasons for your contention.

RESPONSE TO INTERROGATORY NO. 7: See General Objections. Notwithstanding and without waiving these objections, the United States does not so contend.

INTERROGATORY NO. 8: State your contentions to each of the following as they relate to each tax period You refer to in the POC, and provide a detailed description of each calculation: (a) the taxable income of the Debtors; (b) the amount owed to You that is attributable to the taxable income of the Debtors; and (b) the amount Debtor Edison Mission Energy would owe You if it were not a member of the EIX Consolidated Group.

OBJECTION TO INTERROGATORY NO. 8: See General Objections. The calculations for each member of the consolidated group, including the Debtors, is shown on the Internal Revenue Service's proof of claim and the Revenue Agent's report which will be produced.

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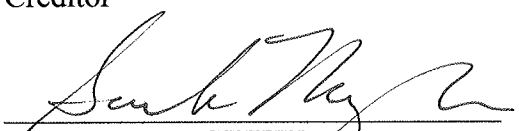
Respectfully submitted,

UNITED STATES OF AMERICA
(DEPARTMENT OF THE TREASURY,
INTERNAL REVENUE SERVICE),
Creditor

By: 

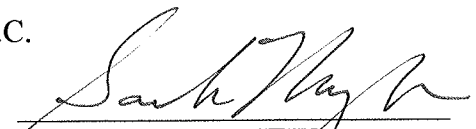
SARAH T. MAYHEW
Trial Attorney, Tax Division
U.S. Department of Justice
P.O. Box 55
Washington, D.C. 20044
202-616-1929 (v)
202-514-5238 (f)
Sarah.T.Mayhew@tax.usdoj.gov

Verification Of Responses

The within and foregoing Defendant United States' Responses To Plaintiff's Interrogatories were prepared by the undersigned counsel for the United States, based upon all available information.

I, Sarah T. Mayhew, pursuant to the provisions of 28 U.S.C. § 1746, declare that the foregoing responses are true and correct to the best of my knowledge, information, and belief, and hereby attest to the objections set forth above.

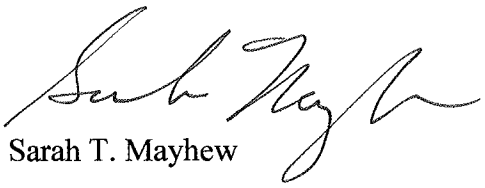
Dated, this 10th day of February in Washington, D.C.



SARAH T. MAYHEW
Trial Attorney, Tax Division

CERTIFICATE OF SERVICE

I, Sarah T. Mayhew, an attorney, state that pursuant to Local Rule 9013-1(D) the above **United States' Response To Debtors' First Set Of Discovery Requests** was served by First Class Mail on February 10, 2014, on .Kirkland & Ellis LLP, 300 North LaSalle, Chicago, Illinois 60654, Attn: Michael Slade.



Sarah T. Mayhew