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)

DECLARATION OF DANIEL MCDEVITT IN SUPPORT OF EME REORGANIZATION TRUST'S TWENTY-FOURTH OMNIBUS OBJECTION TO CERTAIN PROOFS OF CLAIM (NO-LIABILITY CLAIMS)

I, Daniel McDevitt, declare as follows:

1. I am the General Counsel of the EME Reorganization Trust (the "Reorganization Trust"), the successor in interest to Edison Mission Energy ("EME"), one of the above-captioned debtors (together with its debtor affiliates, the "Debtors"). I previously served as Senior Vice President and General Counsel of EME. I submit this declaration (this "Declaration") in support of *EME Reorganization Trust's Twenty-Fourth Omnibus Objection to Certain Proofs of Claim (No-Liability Claims)* (the "Objection").[2]

2. Except where specifically noted, the statements in this Declaration are based on my personal knowledge, information supplied or verified by employees or advisors of the Debtors and/or the Reorganization Trust that I supervise or former EME employees now

[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 the Reorganization Trust's service address is: 3 MacArthur Place, Suite 100, Santa Ana, California 92707.

[2] All capitalized terms used but otherwise not defined in this Declaration have the meaning set forth in the Objection.

employed by NRG Energy, Inc., my review of relevant documents, or my opinion based upon my experience and knowledge of the Debtors' and Reorganization Trust's operations and financial condition. If I were called upon to testify, I could and would testify competently to the facts set forth herein. I am authorized to submit this Declaration on behalf of the Reorganization Trust.

Background

3. In my current position as General Counsel of the Reorganization Trust and my previous position as Senior Vice President and General Counsel of EME, I am generally familiar with the Debtors' and Reorganization Trust's day-to-day operations, financing arrangements, business affairs, and books and records that reflect, among other things, the Debtors' liabilities and the amounts owed to creditors as of the Petition Date.

4. The Reorganization Trust and its advisors are continuing to review the proofs of claim (collectively, the "Claims"), including supporting documentation, if any, filed together with any proof of claim, and reconciling the proofs of claims with the Debtors' books and records to determine the validity of the proofs of claim. In connection with preparation of the Objection, I: (a) oversaw the review of (i) the claims register maintained by the Reorganization Trust's notice and claims agent, during which time individuals under my supervision identified Claims that should be disallowed and expunged and (ii) the books and records with respect to the Claims described in the Objection; (b) approved the inclusion of the Claims in the Objection; (c) reviewed the Objection and the proposed form of order attached thereto as **Exhibit A**; and (d) reviewed and approved the information contained on **Schedules 1−3** to **Exhibit A** attached to the Objection and the justifications set forth therein. Accordingly, I am familiar with the information contained in the Objection.

Background

A. The EIX Settlement

5. I am familiar with the settlement entered into between EME and its ultimate equity owner, Edison International ("EIX").

6. Following commencement of the Chapter 11 cases, the Debtors and the Committee conducted an extensive investigation on behalf of the Debtors' estates into causes of action and claims that the estates and their creditors potentially could assert against EIX, among others. As a result of this investigation, the parties negotiated and effectuated a settlement of these potential claims.

7. On February 18, 2014, EIX, EME, and certain EME noteholders entered into a settlement agreement [Docket No. 2071] (the "EIX Settlement").[3] Under the EIX Settlement, subject to the terms of the EIX Settlement and the *Debtors' Third Amended Joint Chapter 11 Plan of Reorganization (with Technical Modifications)* (as may be amended, modified, or supplemented from time to time, the "Plan") as described below, EIX agreed to assume and pay when due or required certain federal and state income tax, pension, and deferred compensation obligations of EME and its Debtor and non-Debtor subsidiaries. Specifically, under section 2(d) of the EIX Settlement, EIX shall, effective as of the effective date of the Plan, "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." Section 1(o) of the EIX Settlement defines the "Assumed Liabilities" as:

> collectively, any liability, whether or not contingent, on account of any of the following: (i) any United States federal or any state income taxes of the

[3] The EIX Settlement was approved in connection with confirmation of the Plan. See Plan, Art. IV.C; Confirmation Order, ¶ 6.

> Consolidated Group [defined as EIX and the affiliated group of corporations which duly elects to file a Consolidated Return], the Company [EME], or any Company Subsidiary [EME Subsidiary], including any interest or penalties and any taxes or charges on account of any audit related to Edison Mission Energy Taupo Ltd.; and (ii) any and all obligations or liabilities of the Company [EME] or the Company Subsidiaries [EME Subsidiaries] (or any affiliate for purposes of the Employee Retirement Income Security Act of 1974) in respect of current and/or former employees of the Company [EME] or the Company Subsidiaries [EME Subsidiaries] (and their respective beneficiaries) or otherwise (including with respect to any operational or documentary defects, prohibited transactions, or fiduciary breaches), whether direct to participants or to any plan, trust (including any multi-employer fund), the Pension Benefit Guaranty Corporation [(the "PBGC")], or otherwise, under or in respect of any qualified pension plan, any non-qualified executive pension plan, other executive retirement plan, or deferred compensation plan administered, sponsored, or maintained, or required to be contributed to by EIX or Southern California Edison (or their affiliates other than the Company [EME] and/or the Company [S]ubsidiaries [EME Subsidiaries]) for which the Company [EME] or the Company Subsidiaries [EME Subsidiaries] could have liability; provided that, for the avoidance of doubt, (1) such plans shall include those plans listed on Schedule 4 [of the EIX Settlement] and (2) the "Assumed Liabilities" shall not include the Retained Liabilities specified in clauses (i)-(iii) of Section 1.yyy [of the EIX Settlement].

8. Schedule 4 to the EIX Settlement sets forth the following pension, retirement, and deferred compensation plans: the Edison International Retirement Plan for Bargaining Unit Employees of Midwest Generation, LLC; the Edison International Retirement Plan for Bargaining Unit Employees of EME Homer City Generation LP; the Southern California Edison Company Retirement Plan; the Southern California Edison Company Executive Retirement Plan; the Edison International 2008 Executive Retirement Plan; the Edison International Executive Deferred Compensation Plan; the Edison International 2008 Executive Deferred Compensation Plan; the Edison International Affiliate Option Deferred Compensation Plan; the Southern California Edison Company 1985 Deferred Compensation Plan; the Southern California Edison Company Executive Supplemental Benefit Program; the Edison International 2008 Executive Survivor Benefit Plan; the Edison International 2008 Executive Disability Plan (only with

respect to current executives), the Edison International 2007 Performance Incentive Plan; the Edison International Equity Compensation Plan; and the Edison International 2000 Equity Plan.

B. The Asset Purchase Agreement with NRG

9. I am familiar with the Asset Purchase Agreement, dated October 18, 2013 [Docket No. 1375] (the "Asset Purchase Agreement"), whereby EME sold substantially all of its assets to NRG Energy Holdings Inc. and/or NRG Energy, Inc. (together, "NRG"), and NRG assumed certain of EME's liabilities. EME and NRG completed the transaction on April 1, 2014, the effective date under the Plan.

10. Under the Asset Purchase Agreement, subject to the terms of Plan as described below, NRG agreed to assume and pay when due or required certain employee benefits liabilities of EME and/or certain of its subsidiaries, including benefits related to vacation benefits and severance payments for each "Transferred Employee" and other "Eligible Employees" who did not receive employment offers on substantially similar terms as that employee's then-current employment terms.[4]

11. Specifically, under section 1.6(a) of the Asset Purchase Agreement, NRG agreed to (i) "irrevocably assume and agree to faithfully pay, perform, discharge and fulfill, and if applicable, comply with, in each case when due or required, all of the EME Assumed Liabilities" and (ii) "cause each Debtor Subsidiary that is an Acquired Company to irrevocably assume and

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[4] The Asset Purchase Agreement defines "Transferred Employee" as "(i) each Eligible Employee who accepts Purchaser's offer [of] employment as set forth in Section 9.6(a) and (ii) each Acquired Company Employee." (See Asset Purchase Agreement, Annex 1.) Moreover, it defines "Eligible Employee" as follows:

> (i) current employees of EME (other than, for the avoidance of doubt, Acquired Company Employees) (including, for the avoidance of doubt, any individual who (A) is not actively at work by reason of illness, paid time off, short-term disability or other leave of absence or (B) is, or is expected to become, an employee of EME), or (ii) any employee who is otherwise listed on Schedule A-2.

(Id.) Finally, it defines "Acquired Company Employee" as "any individual who is employed by an Acquired Company as of the Closing Date." (Id.) The Closing Date was April 1, 2014.

agree to faithfully pay, perform, discharge and fulfill, and if applicable, comply with, in each case when due or required, all of such Debtor Subsidiary's respective Debtor Subsidiary Assumed Liabilities."

12. Pursuant to section 1.6(b)(v) of the Asset Purchase Agreement, the definition of "EME Assumed Liabilities" includes the following:

> [A]ll Liabilities agreed to be assumed by Purchaser [NRG] or for which Purchaser [NRG] has agreed to be, or to cause the Acquired Companies to be responsible, in accordance with this Agreement (including as provided in Article 9 hereof) and the Ancillary Agreements[.]

Pursuant to section 1.6(c)(iv) of the Asset Purchase Agreement, the definition of "Debtor Subsidiary Assumed Liabilities" includes the following:

> [A]ll liabilities of the Debtor Subsidiaries that are Acquired Companies agreed to be assumed by Purchaser [NRG] or for which Purchaser [NRG] has agreed to be, or to cause the Debtor Subsidiaries that are Acquired Companies or the Acquired Companies generally, to be responsible, in accordance with this Agreement (including Section 9.6 hereof) and the Ancillary Agreements[.]

13. Under section 9.6 of the Asset Purchase Agreement, NRG agreed to, among other things, provide certain benefits, including vacation benefits and severance payments, to Transferred Employees and other Eligible Employees who did not receive employment offers on substantially similar terms as that employee's then-current employment terms.

14. Section 9.6(d) of the Asset Purchase Agreement provides as follows:

> During the period beginning on the Closing Date and ending on the first anniversary of the Closing Date (the "Benefit Period"), Parent shall, or shall cause any Acquired Company or an Affiliate to provide each Transferred Employee who continues to be employed with the Parent, an Acquired Company or an Affiliate with (A) base salaries and wage rates and cash bonus opportunities on a comparable basis and (B) benefit plans, programs and arrangements (other than equity based compensation, retiree medical and defined benefit plans) which are substantially similar in the aggregate to those provided by Parent or its Affiliates to its similarly situated employees during the Benefit Period; provided, however, that the Parties agree that Parent shall or shall cause an Acquired Company or one of its Affiliates to provide each Union Employee with compensation and benefits

(including vacation benefits) in accordance with the terms of any Collective Bargaining Agreement.

15. Section 9.6(f) of the Asset Purchase Agreement provides as follows:

Other than with respect to an Eligible Employee listed in Schedule 9.6(f), (i) if any Transferred Employee that is not a Union Employee (x) is terminated without Cause (as defined in the EME Severance Plan) at any time after the date hereof and ending on the one (1) year period following the Closing Date or (y) resigns his employment at any time after accepting the Offered Terms and prior to the one (1) year anniversary of the Closing Date because Purchaser or one of its Related Persons imposes, proposes or attempts to make adverse changes to the Offered Terms or (ii) with respect to any Excluded Employee who is involuntarily terminated by EME or any Affiliate of EME on or after the Closing Date (regardless of whether such Excluded Employee (A) was not offered employment pursuant to Section 9.6(a), (B) rejects an offer of employment from Parent or Parent's Affiliate; provided, however, that an Eligible Employee that rejects an offer of employment that contains substantially similar terms as such Eligible Employee's current employment terms (including principal location of employment not further than 50 miles from such Eligible Employee's principal place of employment as of the Closing Date and substantially similar base salary and wages) (the "Offered Terms"), shall not be included under this clause (B), or (C) fails to satisfy the Purchaser Employment Conditions and thus does not become a Transferred Employee), Parent [NRG] shall, or shall cause one of its Affiliates to, pay severance compensation to such employee that is at least as much as the maximum cash severance and other compensation such employee would have received under the EME Severance Plan based on such employee's (1) base salary immediately prior to the date hereof or, if greater, such employee's base salary as of the date of termination and (2) aggregate service (taking service recognized under severance programs of EME and the Acquired Companies or any of their Affiliates and post-Closing service with Parent and such Acquired Companies into account)) as of the date of termination, and such other amount as may be required under applicable Law.

16. Section 9.6(h) of the Asset Purchase Agreement provides, in part, as follows:

Parent [NRG] shall recognize and credit each Transferred Employee with up to a maximum of 40 hours for any vacation time accrued but not yet used prior to the Closing Date (the "Days Off Accrual"); provided, however, that the Parties agree that on or immediately preceding the Closing Date, EME or any applicable Affiliate shall pay out all amounts of accrued but unused vacation for each Transferred Employee in an amount equal to the greater of, (i) the amount required to the paid out as required by Law or applicable Collective Bargaining Agreement or (ii) the amount necessary to reduce each such Transferred Employee's accrued but unused vacation balance to 40 hours (collectively, the "Paid Vacation Liability"); provided further that to the extent the terms of any Collective Bargaining Agreement and this Section 9.6(h) are inconsistent, the

terms of the Collective Bargaining Agreement shall dictate how accrued vacation is treated with respect to the Union Employees.

The Disputed Claims

I. No Liability Benefits Claims

17. The No Liability Benefits Claims identified on **Schedule 1** to **Exhibit A** to the Objection assert claims on account of some or all of the following employee benefits: (i) deferred compensation; (ii) unpaid pension plan contributions; (iii) vacation; (iv) severance; (v) unpaid 401(k) company contributions; (vi) medical insurance; (vii) overtime pay; (viii) sick pay; and (ix) short- and long-term incentive plan payments.

18. I have reviewed the Debtors' books and records and, to the best of my knowledge, information, and belief, I have determined that each No Liability Benefits Claim identified on **Schedule 1** to **Exhibit A** to the Objection constitutes an employee benefits-related claim for which the Debtors are not liable because the liability was either assumed by EIX pursuant and subject to the EIX Settlement and the Plan, assumed by NRG pursuant to the Asset Purchase Agreement and the Plan, already satisfied by the Debtors, and/or not owed by the Debtors.

19. First, any alleged Debtor liability related to deferred compensation or unpaid pension plan contributions have been assumed by EIX pursuant and subject to the EIX Settlement and the Plan. Specifically, to the extent the No Liability Benefits Claims relate to deferred compensation or unpaid pension plan contributions, those claims assert liability under or in respect of some or all of the plans listed on Schedule 4 to the EIX Settlement.

20. Second, any alleged Debtor liability related to vacation or severance benefits has either been paid by the Debtors or assumed by NRG. The claimants who filed No Liability Benefits Claims received payment for all vacation time accrued as of March 31, 2014, except for up to 40 hours if the employee was a Transferred Employee. NRG has assumed any remaining

vacation benefits up to 40 hours pursuant and subject to the Asset Purchase Agreement and the Plan. Moreover, EME made severance payments to all claimants listed on **Schedule 1** to **Exhibit A** to the Objection that were terminated by March 31, 2014. Transferred Employees will receive the same severance from NRG that they would have received from EME, and if they remain employed for more than 12 months following April 1, 2014, they will be subject to NRG's severance plan.

21. Finally, I have reviewed the Debtors' books and records and, to the best of my knowledge, information, and belief, I have determined that the Debtors have no outstanding liability for unpaid 401(k) company contributions, medical insurance, overtime pay, sick pay, and short- and long-term incentive plan payments.

22. Failure to expunge and disallow the No Liability Benefits Claims could result in the applicable claimants receiving an unwarranted recovery against the Reorganization Trust, to the detriment of other similarly situated creditors. Accordingly, I believe that the Court should enter an order expunging and disallowing in its entirety each No Liability Benefits Claim identified on **Schedule 1** to **Exhibit A** to the Objection in its entirety.

II. No Liability Vacation Claims

23. The No Liability Vacation Claims identified on **Schedule 2** to **Exhibit A** to the Objection assert claims on account of vacation benefits.

24. I have reviewed the Debtors' books and records and, to the best of my knowledge, information, and belief, I have determined that each No Liability Vacation Claim identified on **Schedule 2** to **Exhibit A** to the Objection constitutes a claim for vacation benefits for which the Debtors are not liable because the liability was either assumed by NRG pursuant to the Asset Purchase Agreement and the Plan, or was already satisfied by the Debtors. Specifically, the claimants who filed No Liability Vacation Claims received payment for all vacation time

accrued as of March 31, 2014, except for up to 40 hours if the employee was a Transferred Employee. NRG has assumed any remaining vacation benefits up to 40 hours per employee pursuant and subject to the Asset Purchase Agreement and the Plan.

25. Failure to expunge and disallow the No Liability Vacation Claims could result in the applicable claimants receiving an unwarranted recovery against the Reorganization Trust, to the detriment of other similarly situated creditors. Accordingly, I believe that the Court should enter an order expunging and disallowing in its entirety each No Liability Vacation Claim identified on **Schedule 2** to **Exhibit A** to the Objection.

III. No Liability Supplemental Social Security Claims

26. I have reviewed the Debtors' books and records and, to the best of my knowledge, information, and belief, I have determined that each No Liability Supplemental Social Security Claim identified on **Schedule 3** to **Exhibit A** to the Objection constitutes a claim for supplemental social security benefits for which claimants have not qualified. Specifically, the No Liability Supplemental Social Security Claims assert liability for supplemental social security payments under the Edison International Retirement Plan for Bargaining Unit Employees of Midwest Generation, LLC (The "Bargaining Unit Plan"). The applicable claimants, however, do not qualify for supplemental social security payments under the Bargaining Unit Plan because they were not 55 years of age as of March 31, 2014. Moreover, even if the claimants who asserted No Liability Supplemental Social Security Claims did qualify for such benefits under the Bargaining Unit Plan (they did not), that liability would have been assumed by EIX pursuant and subject to the terms of the EIX Settlement and the Plan.

27. Failure to expunge and disallow the No Liability Supplemental Social Security Claims could result in the applicable claimants receiving an unwarranted recovery against the Reorganization Trust, to the detriment of other similarly situated creditors. Accordingly, I

believe that the Court should enter an order expunging and disallowing in its entirety each No Liability Supplemental Social Security Claim identified on **Schedule 3** to **Exhibit A** to the Objection.

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Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Dated: May 19 2014

Daniel McDevitt
General Counsel
EME Reorganization Trust