

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

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

**NOTICE OF EME REORGANIZATION TRUST’S
TWENTY-SEVENTH OMNIBUS OBJECTION TO CERTAIN
PROOFS OF CLAIM (NO-LIABILITY CLAIMS)**

PLEASE TAKE NOTICE that on the **20th day of August, 2014, at 10:30 a.m. (Central Time)** or as soon thereafter as counsel may be heard, the EME Reorganization Trust (the “Reorganization Trust”) will appear before the Honorable 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, and present the attached *EME Reorganization Trust’s Twenty-Seventh Omnibus Objection to Certain Proofs of Claim (No-Liability Claims)* (the “Objection”).

PLEASE TAKE FURTHER NOTICE that any objection to the Objection must be filed with the Court, and served so as to be actually received by each of the following entities, by **August 7, 2014, at 4:00 p.m. (Central Time)**: (a) counsel to the Reorganization Trust; (b) the Office of the U.S. Trustee for the Northern District of Illinois; (c) the United States Attorney for the Northern District of Illinois; (d) the Internal Revenue Service; and (e) those parties who have requested service of papers in this case pursuant to Rule 2002 of the Federal Rules of Bankruptcy Procedure and the *Order Approving Case Management Procedures* [Docket No. 128].

PLEASE TAKE FURTHER NOTICE that copies of all documents filed in these chapter 11 cases are available free of charge by visiting the case website maintained by GCG, Inc., the notice and claims agent for these chapter 11 cases, available at www.edisonmissionrestructuring.com or by calling (866) 241-6491. You may also obtain copies

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.

of any pleadings by visiting the Court's website at www.ilnb.uscourts.gov in accordance with the procedures and fees set forth therein.

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Dated: July 18, 2014
Chicago, Illinois

By: /s/ James Savin
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Co-Counsel to the EME Reorganization Trust

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

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In re:)	Chapter 11
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EDISON MISSION ENERGY, <u>et al.</u> , ¹)	Case No. 12-49219 (JPC)
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Debtors.)	(Jointly Administered)
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**EME REORGANIZATION TRUST’S TWENTY-SEVENTH OMNIBUS OBJECTION
TO CERTAIN PROOFS OF CLAIM (NO-LIABILITY CLAIMS)**

The EME Reorganization Trust (the “Reorganization Trust”), as successor in interest to Edison Mission Energy (“EME”), one of the above-captioned debtors (together with its debtor affiliates, the “Debtors”) respectfully states the following in support of this objection (this “Objection”):

Relief Requested

1. The Reorganization Trust seeks entry of an order, substantially in the form attached hereto as **Exhibit A**, expunging and disallowing each claim identified on **Schedule 1** to the proposed order (collectively, the “EMEHC Retiree Claims”) in its entirety because each such claim relates to certain EMEHC Retiree Benefits (as defined below) that were terminated by Debtor EME Homer City Generation L.P. (“EMEHC”) prior to the Homer City Petition Date (as defined below) in accordance with the applicable Plan Documents (as defined below) and is not

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reflected in the Debtors' books and records. In support of this Objection, the Reorganization Trust submits the declaration of Daniel McDevitt (the "McDevitt Declaration"), to be filed in connection with this Objection.

Jurisdiction

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

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

4. The statutory bases for the relief requested in this Objection are sections 502 and 1106(a)(1) of title 11 of the United States Code (the "Bankruptcy Code"), rule 3007 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and rule 3007-1 of the Local Rules for the United States Bankruptcy Court for the Northern District of Illinois (the "Local Bankruptcy Rules").

Background

5. On December 17, 2012 (the "Initial Petition Date"), seventeen of the Debtors filed petitions with the Court under chapter 11 of the Bankruptcy Code. On May 2, 2013 (the "Homer City Petition Date"), Debtors EMEHC, Edison Mission Finance Co. and Homer City Property Holdings, Inc. (collectively, the "Homer City Debtors") filed petitions with the Court under chapter 11 of the Bankruptcy Code. The Debtors operated their businesses and managed their properties as debtors in possession pursuant to sections 1107(a) and 1108 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].

6. On January 7, 2013, the U.S. Trustee for the Northern District of Illinois (the “U.S. Trustee”) appointed an official committee of unsecured creditors (the “Committee”) in these chapter 11 cases [Docket No. 202] (as amended on January 18, 2013 [Docket No. 308]).²

7. On March 11, 2014, the Court entered an order [Docket No. 2206] confirming 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”).³ On April 1, 2014, the effective date under the Plan occurred and, among other things, EME consummated the sale of substantially all of its assets to NRG Energy, Inc. (“NRG”). Pursuant to Article IV.E of the Plan, the Reorganization Trust was established as the successor in interest to EME and the entity tasked with winding down the affairs of Debtor EMEHC.

The Claims Reconciliation Process

8. On February 14, 2013, the Debtors filed their schedules of assets and liabilities and executory contracts and unexpired leases (as amended, collectively, the “Schedules”) and statements of financial affairs, as required by section 521 of the Bankruptcy Code. On May 16, 2013, the Homer City Debtors filed their respective Schedules. On July 2, 2013, December 15, 2013, and January 16, 2014, certain Debtors filed amendments to their respective Schedules.

9. On April 10, 2013, the Court entered the *Order (A) Setting Bar Dates for Filing Proofs of Claim, Including 503(b)(9) Proofs of Claim and (B) Approving the Form and Manner of Notice Thereof* [Docket No. 669] (the “Original Bar Date Order”). On August 21, 2013, the Court entered the *Order (A) Setting Bar Dates for Filing Proof of Claim, Including Section*

² Pursuant to Article XIII.D of the Plan, the Committee was dissolved on the effective date of the Plan.

³ Capitalized terms used but not otherwise defined in this Objection will have the meanings ascribed to them in the Plan.

503(b)(9) Claims, Against EME Homer City Generation L.P., Edison Mission Finance Co., and Homer City Property Holdings, Inc. and (B) Approving the Form and Manner of Notice Thereof [Docket No. 1137] (together with the Original Bar Date Order, the “Bar Date Orders”). Together, the Bar Date Orders apply to all purported “claims” (as defined in section 101(5) of the Bankruptcy Code) against the Debtors that arose before the applicable petition date (each, a “Claim”). Notice of the Bar Date Orders was provided in accordance with the procedures outlined therein.

10. On July 17, 2013, the Court approved certain omnibus procedures for filing and resolving objections to Claims asserted against the Debtors [Docket No. 1022] (the “Objection Procedures”).

11. Various entities filed approximately 2,000 proofs of claim against the Debtors on an aggregate basis, collectively asserting more than \$12.2 billion in aggregate liabilities. The Reorganization Trust and NRG and their respective advisors in the process of reviewing the proofs of claim, including supporting documentation, if any, filed together with any proof of claim, and reconciling the proofs of claim with the Debtors’ books and records to determine the validity of the proofs of claim. For the reasons set forth in more detail below, and based on its review to date, the Reorganization Trust has determined that the EMEHC Retiree Claims should be expunged and disallowed as requested herein.

The Homer City Transaction

12. From December 2001 until December 14, 2012, EMEHC leased a generating station in Homer City, Pennsylvania (the “Facility”), which facility is comprised of three coal-fired electric generating units and related facilities with approximately 1,884 megawatts of generating capacity, from owner-lessors pursuant to a sale-leaseback financing transaction.

13. As EMEHC did not have, and did not expect to generate, sufficient capital to fund installation of certain scrubbers, and the operative documents of the sale-leaseback transaction limited EMEHC's ability to incur additional indebtedness, EMEHC and General Electric Capital Corporation ("GECC"), the ultimate equity owner of certain owner-lessors, agreed to facilitate the transition of beneficial ownership of the Facility and certain liabilities (but not liability with respect to the EMEHC Retiree Benefits) to an affiliate of GECC in exchange for GECC's agreement to enter into certain agreements for maintenance of the Facility and construction of the scrubbers.

14. On December 14, 2012, the parties consummated a transaction (the "Homer City Transaction") pursuant to which EMEHC transferred beneficial ownership of the Facility and substantially all of EMEHC's assets and certain assumed liabilities to GECC affiliate Homer City Generation L.P. ("HCG") in exchange for a release of its obligations under the sale-leaseback transaction.

The EMEHC Retiree Claims

15. As set forth in the McDevitt Declaration, the Reorganization Trust has determined that it is appropriate to expunge and disallow the EMEHC Retiree Claims identified on **Schedule 1** to **Exhibit A** to the Objection. More specifically, under the Edison International Welfare Benefit Plan (as amended, modified, or supplemented from time to time, the "EIX Plan"), EMEHC historically provided post-employment non-pension health benefits (collectively, the "EMEHC Retiree Benefits") to certain retirees and retirement-eligible employees, as well as

their dependents and surviving spouses (collectively, the “EMEHC Retirees”), including each of the non-union EMEHC Retirees that have filed the EMEHC Retiree Claims.⁴

16. The terms of the EIX Plan are described in simple and understandable language in summary plan descriptions (collectively, the “Plan Descriptions,” and together with the EIX Plan, the “Plan Documents”), which were distributed to all EMEHC Retirees, including the claimants asserting the EMEHC Retiree Claims. In each applicable Plan Document, EMEHC expressly reserved the unilateral right to modify or terminate EMEHC Retiree Benefits.⁵

17. As a result of the clear reservations of rights contained in the Plan Documents, together with the absence of any promise to provide EMEHC Retiree Benefits for *any* period of time, the EMEHC Retiree Benefits were not “vested.” Accordingly, EMEHC was entitled to unilaterally terminate the EMEHC Retiree Benefits at any time.

18. Prior to the Homer City Transaction, EMEHC funded the EMEHC Retiree Benefits with revenues from EMEHC’s operation of the Facility. Following the hand back of the Facility to HCG, EMEHC lacked revenue-generating operations that would allow EMEHC to continue to fund the EMEHC Retiree Benefits. In addition, HCG did not agree to assume responsibility for the EMEHC Retiree Benefits. Accordingly, with the EIX Plan administrator’s consent, EMEHC withdrew from the EIX Plan and terminated the EMEHC Retiree Benefits identified in the EMEHC Retiree Claims, effective as of May 1, 2013. Thereafter, on the Homer City Petition Date, the Homer City Debtors filed petitions with this Court under chapter 11 of the

⁴ For the avoidance of doubt, this Objection seeks disallowance of EMEHC Retiree Claims filed by non-union EMEHC Retirees and is not intended to affect any of the claims resolved by the *Debtors’ Motion for Approval of Settlement Between the Debtors and Certain Retirees Represented by International Brotherhood of Electrical Workers Local 459* [Docket No. 1922]. In addition, due to the fact that the EMEHC Retiree Claims relate solely to claims asserted by EMEHC Retirees, this Objection does not affect any of the claims resolved by the *Motion of the EME Reorganization Trust for Entry of Orders Approving (I) the Debtors’ Motion to Terminate Retiree Benefits and Related Relief; and (II) Settlement Among EME Reorganization Trust and the Retiree Group and Related Relief* [Docket No. 2352].

⁵ Due to their voluminous nature, the Plan Documents have not been included as exhibits to this Objection. Copies of the applicable Plan Documents will be made available upon request.

Bankruptcy Code to efficiently wind down their affairs and resolve their limited remaining assets and liabilities.

19. Failure to disallow and expunge the EMEHC Retiree Claims could result in the applicable claimants receiving unwarranted recoveries against EMEHC, to the detriment of other similarly situated creditors. Moreover, elimination of such EMEHC Retiree Claims will enable the Reorganization Trust to maintain a more accurate claims register. Accordingly, the Reorganization Trust requests that the Court enter the proposed order expunging and disallowing the EMEHC Retiree Claims identified on **Schedule 1** to the proposed order.

Basis for Relief

20. Section 502(a) of the Bankruptcy Code provides that “[a] claim or interest, proof of which is filed under section 501 of this title, is deemed allowed, unless a party in interest . . . objects.” 11 U.S.C. § 502(a). A debtor has the duty to object to the allowance of any claim that is improper. *See* 11 U.S.C. § 1106(a)(1).

21. As set forth in Bankruptcy Rule 3001(f), a properly executed and filed proof of claim constitutes *prima facie* evidence of the validity and the amount of the claim under section 502(a) of the Bankruptcy Code. *See In re Salem*, 465 F.3d 767, 779 (7th Cir. 2006). To receive the benefit of *prima facie* validity, however, the proof of claim must “set forth facts necessary to support the claim.” *Bank of Bellwood v. Stoecker (In re Stoecker)*, 143 B.R. 879, 883 (N.D. Ill. 1992), *aff’d in part, vacated in part by* 5 F.3d 1022 (7th Cir. 1993). Additionally, a claimant’s proof of claim is entitled to the presumption of *prima facie* validity under Bankruptcy Rule 3001(f) only until an objecting party refutes at least one of the allegations that is essential to the claim’s legal sufficiency. *See In re Relford*, 323 B.R. 669, 672–73 (Bankr. S.D. Ind. 2004). Once such an allegation is refuted, the burden reverts to the claimant to prove the validity of the claim by a preponderance of the evidence. *Id.* In other words, once the *prima*

facie validity of a claim is rebutted, “it is for the claimant to prove his claim, not for the objector to disprove it.” *In re Kahn*, 114 B.R. 40, 44 (Bankr. S.D.N.Y. 1990) (citations omitted).

22. In addition, numerous courts have held that where, as here, the applicable plan documents reserve the employer’s right to amend or terminate a retiree benefits plan at any time, the retiree benefits are not vested, and the employer has the right to amend or terminate the retiree benefits without liability. *See, e.g., Int’l Union of United Auto., Aerospace and Agric. Implement Workers of Am. U.A.W. v. Rockford Powertrain, Inc.*, 350 F.3d 698 (7th Cir. 2003); *Murphy v. Keystone Steel & Wire Co.*, 61 F.3d 560 (7th Cir. 1995); *Sprague v. Gen. Motors Corp.*, 133 F.3d 388 (6th Cir. 1998); *In re Unisys Corp. Retiree Med. Benefit “ERISA” Litig.*, 58 F.3d 896 (3d Cir. 1995); *Moore v. Metro. Life Ins. Co.*, 856 F.2d 488 (2d Cir. 1988).

23. Based on the foregoing and the McDevitt Declaration, the Court should expunge and disallow each EMEHC Retiree Claim. Consistent with the terms of the Plan Documents and applicable law, EMEHC and its affiliates withdrew from the EIX Plan prior to commencing chapter 11 cases and terminated the EMEHC Retiree Benefits identified in the EMEHC Retiree Claims. As a result, EMEHC has no liability on account of the EMEHC Retiree Claims.

24. If the EMEHC Retiree Claims are not formally expunged and disallowed as requested herein, the potential exists for the applicable claimants to receive recoveries to which they are not entitled, to the detriment of the Reorganization Trust’s other stakeholders. Thus, this relief is necessary to prevent any inappropriate distribution of estate funds and to facilitate the administration of the claims-allowance process.

Compliance with Bankruptcy Rule 3007(e)

25. The Reorganization Trust respectfully submits that this Objection complies with the requirements for omnibus objections set forth by Bankruptcy Rule 3007(e). Namely, the Reorganization Trust and GCG, Inc., its notice and claims agent, have created a personalized

form of notice that will be served upon each claimant affected by this Objection. Each such notice prominently identifies the claimant's: (a) name; (b) address; (c) applicable claim number; (d) proposed treatment pursuant to the Objection; and (e) does not include any other claimant's information on the notice.

26. As a result, each claimant can readily identify its Claim and proposed treatment and respond accordingly. The proposed form of order further identifies each claimant by category of claims subject to objection. This Objection conspicuously identifies the Reorganization Trust as the objecting party, identifies this Objection as the Reorganization Trust's twenty-seventh omnibus claims objection, and contains objections to fewer than 100 Claims. Accordingly, the Reorganization Trust respectfully submits that this Objection complies with Bankruptcy Rule 3007.

Separate Contested Matter

27. Each of the above objections to the proofs of claim constitutes a separate contested matter as contemplated by Bankruptcy Rule 9014. The Reorganization Trust requests that any order entered by the Court with respect to an objection asserted in this Objection be treated as a separate order with respect to each Claim.

Reservation of Rights

28. The Reorganization Trust expressly reserves the right to amend, modify, or supplement this Objection and to file additional substantive or nonsubstantive objections to the Claims objected to herein, or any other Claims, filed or not, that may be asserted against the Debtors. Should one or more of the grounds of objection stated in this Objection be overruled, the Reorganization Trust and the Debtors reserve the right to object on any other applicable grounds. In addition, the Reorganization Trust and the Debtors reserve the right to seek to reduce any Claim for any reason, including to the extent such Claim has been paid. The

Reorganization Trust and the Debtors reserve the right to raise further objections, including objections under section 502(d) of the Bankruptcy Code.

Notice

29. The Reorganization Trust has provided notice of this Objection to: (a) each holder of an EMEHC Retiree Claim; (b) the U.S. Trustee; (c) the United States Attorney for the Northern District of Illinois; (d) the Internal Revenue Service; and (e) those parties who have requested service of papers in this case pursuant to Rule 2002 of the Federal Rules of Bankruptcy Procedure and the *Order Approving Case Management Procedures* [Docket No. 128]. In light of the nature of the relief requested herein, the Reorganization Trust respectfully submits that no further notice is necessary.

CONCLUSION

WHEREFORE, the Reorganization Trust respectfully request that the Court enter an order, substantially in the form attached to this Objection as **Exhibit A**, granting the related relief requested herein and such other and further relief as the Court deems appropriate.

Dated: July 18, 2014
Chicago, Illinois

By: /s/ James Savin
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Co-Counsel to the EME Reorganization Trust

Exhibit A

Proposed Order

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

In re:)	
	)	Chapter 11
)	
EDISON MISSION ENERGY, <u>et al.</u> , ¹	)	Case No. 12-49219 (JPC)
)	
Debtors.	)	(Jointly Administered)
)	
	)	Re: Docket No. ____

**ORDER GRANTING DEBTORS’ TWENTY-SEVENTH OMNIBUS OBJECTION
TO CERTAIN PROOFS OF CLAIM (NO-LIABILITY CLAIMS)**

Upon the objection (the “Objection”) of the EME Reorganization Trust (the “Reorganization Trust”), as successor to Edison Mission Energy, one of the above-captioned debtors (collectively, the “Debtors”) for entry of an order (this “Order”) expunging and disallowing the EMEHC Retiree Claims identified on **Schedule 1** attached to this Order pursuant to sections 502 and 1106(a)(1) of the Bankruptcy Code, Bankruptcy Rule 3007, Local Bankruptcy Rule 3007-1, and the Objection Procedures, all as more fully set forth in the Objection; and the Court having found that the Court has jurisdiction over this matter under 28 U.S.C. §§ 157 and 1334; and the Court having found that this is a core proceeding under 28 U.S.C. § 157(b)(2); and the Court having found that venue of this proceeding and the Objection in this district is proper under 28 U.S.C. §§ 1408 and 1409; and the Court having found that the

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relief requested in the Objection is in the best interests of the Debtors' estates, their creditors, and other parties in interest; and the Court having found that the Reorganization Trust provided appropriate notice of the Objection and the opportunity for a hearing on the Objection under the circumstances; and the Court having reviewed the Objection and the McDevitt Declaration and having heard the statements in support of the relief requested in the Objection at a hearing before the Court (the "Hearing"); and the Court having determined that the legal and factual bases set forth in the Objection and at the Hearing establish just cause for the relief granted in this Order; and upon all of the proceedings had before the Court; and after due deliberation and sufficient cause appearing therefor, it is HEREBY ORDERED THAT:

1. The Objection is granted as set forth in this Order. Capitalized terms used but not otherwise defined herein will have the meanings ascribed to them in the Objection.

2. Any response to the Objection not otherwise withdrawn, resolved, or adjourned is hereby overruled on its merits.

3. The EMEHC Retiree Claims identified on Schedule 1 attached hereto are disallowed and expunged in their entirety.

4. GCG, Inc. is directed to update the claims register to reflect the relief granted in this Order.

5. Except as provided in this Order, nothing in this Order will be construed as: (a) an admission or finding as to the validity of any claim against any Debtor or the Reorganization Trust; (b) a waiver of the right of the Reorganization Trust or the Debtors to dispute any claim against the Reorganization Trust or any Debtor on any grounds whatsoever, at a later date; (c) a promise by, or requirement on, the Reorganization Trust or any Debtor to pay any claim; (d) an implication or admission that any particular claim is of a type specified or

defined in this Order; or (e) a waiver of the rights of the Reorganization Trust or the Debtors under the Bankruptcy Code or any other applicable law.

6. Each Claim and the objections by the Reorganization Trust to such Claim, as addressed in the Objection and set forth on **Schedule 1**, constitute a separate contested matter as contemplated by Bankruptcy Rule 9014. This Order will be treated as a separate Order with respect to each Claim. Any stay of this Order pending appeal by any claimants whose Claims are subject to this Order will only apply to the contested matter that involves that claimant and will not act to stay the applicability or finality of this Order with respect to the other contested matters identified in the Objection or this Order.

7. The Reorganization Trust is authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Objection.

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

Dated: _____, 2014
Chicago, Illinois

Jacqueline P. Cox
United States Bankruptcy Judge

Schedule 1

EMEHC Retiree Claims

Schedule 1 - No Liability Claims

Twenty-Seventh Omnibus Objection to Claims

Edison Mission Energy, et al.
12-049219 (JPC)

Note: Claimants are listed alphabetically.

SEQ NO.	CLAIM(S) TO BE DISALLOWED & EXPUNGED			OBJECTION PAGE NO. REFERENCE
	NAME	CLAIM NO.	CLAIM AMOUNT	
1	THOMAS J GREGG 141 LEFFLER DR JOHNSTOWN, PA 15904 Date Filed: 10/28/13 Debtor: EME Homer City Generation L.P.	1962	Priority: \$22,719.91	
2	WILLIAM M ORLOWSKY 321 WOODLAND ST EBENSBURG, PA 15931 Date Filed: 10/19/13 Debtor: EME Homer City Generation L.P.	1952	Unsecured: \$227,548.00	
3	THOMAS J OTT 179 WESTWOOD CT INDIANA, PA 15701 Date Filed: 10/15/13 Debtor: EME Homer City Generation L.P.	1943	Priority: \$86,712.64	
4	RICHARD G SHARBAUGH 163 MEADOW WOOD ROAD INDIANA, PA 15701 Date Filed: 10/19/13 Debtor: EME Homer City Generation L.P.	1954	Priority: \$75,847.60	
5	ALFRED A SLOWIK 107 MAPLE DR LIGONIER, PA 15658 Date Filed: 10/10/13 Debtor: EME Homer City Generation L.P.	1936	Unsecured: \$65,770.00	
6	MATTHEW E STEFANIK 430 LUTHER RD JOHNSTOWN, PA 15904 Date Filed: 06/17/13 Debtor: EME Homer City Generation L.P.	1584	Priority: Unliquidated	
7	FRANCIS J TREMEL 355 DEBBIE DR INDIANA, PA 15701 Date Filed: 10/19/13 Debtor: EME Homer City Generation L.P.	1953	Priority: \$91,817.65	

Total: \$570,415.80

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

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

DECLARATION OF DANIEL MCDEVITT IN SUPPORT OF EME REORGANIZATION TRUST’S TWENTY-SEVENTH 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-Seventh 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 shall 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 EMEHC Retiree 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** to **Exhibit A** attached to the Objection and the justifications set forth therein. Accordingly, I am familiar with the information contained in the Objection.

The Homer City Transaction

5. In my capacity as General Counsel of the Reorganization Trust, I am familiar with the Debtors' financial and business affairs, including the Homer City Transaction (as defined below).

6. From December 2001 until December 14, 2012, EMEHC leased the Facility, which facility is comprised of three coal-fired electric generating units and related facilities with approximately 1,884 megawatts of generating capacity, from owner-lessors pursuant to a sale-leaseback financing transaction.

7. As EMEHC did not have, and did not expect to generate, sufficient capital to fund installation of certain scrubbers, and the operative documents of the sale-leaseback transaction limited EMEHC's ability to incur additional indebtedness, EMEHC and General Electric Capital Corporation ("GECC"), the ultimate equity owner of certain owner-lessors, agreed to facilitate the transition of beneficial ownership of the Facility and certain liabilities (but not liability with respect to the EMEHC Retiree Benefits) to an affiliate of GECC in exchange for GECC's agreement to enter into certain agreements for maintenance of the Facility and construction of the scrubbers.

8. On December 14, 2012, the parties consummated a transaction (the "Homer City Transaction") pursuant to which EMEHC transferred beneficial ownership of the Facility and substantially all of EMEHC's assets and certain assumed liabilities to GECC affiliate Homer City Generation L.P. ("HCG") in exchange for a release of its obligations under the sale-leaseback transaction.

The EMEHC Retiree Benefits

9. I am familiar with the EIX Plan, the other applicable Plan Documents, the arrangement under which EMEHC provided the EMEHC Retiree Benefits and the circumstances under which EMEHC withdrew from the EIX Plan and terminated the EMEHC Retiree Benefits.

10. Under the EIX Plan, EMEHC historically provided the EMEHC Retiree Benefits to EMEHC Retirees, including each of the non-union EMEHC Retirees that have the EMEHC Retiree Claims.

11. The terms of the EIX Plan are described in simple and understandable language in Plan Descriptions, which were distributed to all EMEHC Retirees, including the claimants asserting the EMEHC Retiree Claims. In each applicable Plan Document, EMEHC expressly reserved the unilateral right to modify or terminate EMEHC Retiree Benefits.³

12. It is my understanding that, as a result of the clear reservations of rights contained in the Plan Documents, together with the absence of any promise to provide EMEHC Retiree Benefits for *any* period of time, the EMEHC Retiree Benefits were not “vested.” Accordingly, EMEHC was entitled to unilaterally terminate the EMEHC Retiree Benefits at any time.

13. Prior to the Homer City Transaction, EMEHC funded the EMEHC Retiree Benefits with revenues from EMEHC’s operation of the Facility. Following the hand back of the Facility to HCG, EMEHC lacked revenue-generating operations that would allow EMEHC to continue to fund the EMEHC Retiree Benefits. In addition, HCG did not agree to assume responsibility for the EMEHC Retiree Benefits. Accordingly, with the EIX Plan administrator’s consent, EMEHC withdrew from the EIX Plan and terminated the EMEHC Retiree Benefits identified in the EMEHC Retiree Claims, effective as of May 1, 2013. Thereafter, on the Homer

³ Due to their voluminous nature, copies of the applicable Plan Documents have not been included as exhibits to the Objection. Copies of the applicable Plan Documents will be made available upon request.

City Petition Date, the Homer City Debtors filed petitions with this Court under chapter 11 of the Bankruptcy Code to efficiently wind down their affairs and resolve their limited remaining assets and liabilities.

The EMEHC Retiree Claims

14. I have reviewed the Debtors' books and records, and to the best of my knowledge, information, and belief, I have determined that each EMEHC Retiree Claim identified on **Schedule 1** to **Exhibit A** to the Objection constitutes a claim on account of certain EMEHC Retiree Benefits that were terminated by Debtor EMEHC prior to the Homer City Petition Date in accordance with the Plan Documents and for which the Debtors are not liable.

15. Failure to expunge and disallow the EMEHC Retiree Claims could result in the applicable claimants receiving an unwarranted recovery against the Reorganization Trust, to the detriment of other similarly situated creditors. Moreover, elimination of such EMEHC Retiree Claims will enable the Reorganization Trust to maintain a more accurate claims register. Accordingly, I believe that the Court should enter an order expunging and disallowing in its entirety each EMEHC Retiree Claim identified on **Schedule 1** to **Exhibit A** to the Objection.

[Remainder of page intentionally left blank]

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: July 18, 2014



Daniel McDevitt
General Counsel
EME Reorganization Trust