

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

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

NOTICE OF MOTION

PLEASE TAKE NOTICE that on December 17, 2012, the above-captioned debtors and debtors in possession (collectively, the “Debtors”) filed the *Debtors’ Motion to Authorize Compensation of Insider Senior Executives Under Employee Incentive Programs* (the “Motion”).

PLEASE TAKE FURTHER NOTICE that the Debtors have requested a hearing on the Motion on Monday, December 17, 2012, at a time to be determined before the Honorable [_____] or any other judge who may be sitting in [his/her] place and stead, in Courtroom [___] in the United States Courthouse, 219 South Dearborn Street, Chicago, Illinois, at which time you may appear if you deem fit.

PLEASE TAKE FURTHER NOTICE that the hearing date and time once determined as well as copies of all documents are available free of charge by visiting the case website maintained by GCG, Inc. proposed notice and claims agent for these chapter 11 cases, available at www.edisonmissionrestructuring.com or by calling (866) 241-6491. You may also obtain copies of any pleadings by visiting the Court’s website at www.ilnb.uscourts.gov in accordance with the procedures and fees set forth therein.

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 Fuel Resources, Inc. (3014); Edison Mission Fuel Transportation, Inc. (3012); Edison Mission Holdings Co. (6940); Edison Mission Midwest Holdings Co. (6553); Midwest Finance Corp. (9350); Midwest Generation EME, LLC (1760); Midwest Generation, LLC (8558); Midwest Generation Procurement Services, LLC (2634); Midwest Peaker Holdings, Inc. (5282); Mission Energy Westside, Inc. (0657); San Joaquin Energy Company (1346); Southern Sierra Energy Company (6754); and Western Sierra Energy Company (1447). The location of parent Debtor Edison Mission Energy’s corporate headquarters and the Debtors’ service address is: 3 MacArthur Place, Suite 100, Santa Ana, California 92707.

Dated: December 17, 2012

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

James H.M. Sprayregen, P.C.
David R. Seligman, P.C.
Sarah Hiltz Seewer
KIRKLAND & ELLIS LLP
300 North LaSalle
Chicago, Illinois 60654
Telephone: (312) 862-2000
Facsimile: (312) 862-2200

- and -

Joshua A. Sussberg
KIRKLAND & ELLIS LLP
601 Lexington Avenue
New York, New York 10022-4611
Telephone: (212) 446-4800
Facsimile: (212) 446-4900

*Proposed Counsel to the Debtors
and Debtors in Possession
Other than Camino Energy Company*

- and -

David A. Agay
Joshua Gadharf
MCDONALD HOPKINS LLC
300 North LaSalle
Suite 2100
Chicago, Illinois 60654
Telephone: (312) 280-0111
Facsimile: (312) 280-8232

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

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DEBTORS’ MOTION TO AUTHORIZE COMPENSATION OF INSIDER SENIOR EXECUTIVES UNDER EMPLOYEE INCENTIVE PROGRAMS

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

Preliminary Statement

1. The Debtors’ employees are the backbone of the organization and a successful restructuring will demand the focus and commitment of all employees. Leading the charge are three executives (the “Senior Executives”) who take primary responsibility for motivating and coordinating efforts among the Debtors’ nearly 1,000 employees. To properly incentivize the Senior Executives—and thereby drive performance for the overall enterprise—the Debtors have historically offered incentive-based awards as part of their overall compensation strategy.

2. Since the Debtors began their restructuring efforts earlier this year, the Senior Executives have assumed the added burdens of piloting the Debtors’ restructuring process,

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providing leadership and reassurance to the Debtors' workforce amid considerable uncertainty, and maintaining the Debtors' power generation businesses in a competitive market that demands operational reliability and safety.

3. Now that the Debtors have commenced their chapter 11 cases, life will be no different; the Senior Executives will continue to lead the Debtors' restructuring efforts while ensuring that business continues as usual for the their customers, vendors, and employees and other stakeholders who interact with the Debtors on a daily basis. The Debtors do not believe that the current circumstances warrant a change in their employee compensation approach. Indeed, absent continuation of incentive programs (and the corresponding motivation of the workforce that results therefrom), the Debtors' financial and operational restructuring initiatives could be jeopardized at a critical crossroads for the Debtors' businesses.

4. With all of this in mind, the Debtors, with the support and guidance of their compensation consultant Hewitt Associates LLC (d/b/a Aon Hewitt) ("Aon Hewitt"), designed performance-based incentive plans for 2013 in which hundreds of the Debtors' employees, including the Senior Executives—who are "insiders" of the Debtors (as that term is defined in section 101(31) of the Bankruptcy Code)—are eligible to participate. The two incentive plans in which the Senior Executives are eligible to participate are: a short-term incentive plan for employees of Debtors Edison Mission Energy, Midwest Generation, LLC, Midwest Generation EME, LLC, Midwest Finance Corporation, as well as certain employees of non-Debtors Edison Mission Operation & Maintenance, Inc. and Edison Mission Marketing and Trading, Inc. (the "STIP") and a long-term incentive plan for senior managers of the Debtors and certain of their

non-Debtor subsidiaries (the “LTIP,” and, together with the STIP, the “Incentive Plans”).² The Debtors historically have offered all employees, as applicable, including the Senior Executives, the opportunity to participate in both short-term and long-term incentive programs designed to incentivize future performance and align management incentives with the Debtors’ business goals. The 2013 Incentive Plans generally continue the overall structure and philosophy of the Debtors’ historical incentive plans with certain adjustments as necessary to take into account the Debtors’ current circumstances.³

5. As explained herein and as will be demonstrated through testimony and necessary evidentiary support submitted in advance of the hearing on the Motion, the Debtors’ incentive programs are reasonable and market-based. In designing the Incentive Plans, the Company and Aon Hewitt analyzed the structure of incentive plans for comparable companies and the potential payouts available to senior management under such plans. By linking payouts with performance targets, the Incentive Plans will ensure that the Senior Executives are only compensated to the extent that value is *actually created* for the benefit of all stakeholders.

6. In summary, the Debtors’ proposed Incentive Plans are performance-based, justified by the facts and circumstances of these chapter 11 cases, and satisfy the applicable requirements of the Bankruptcy Code. For the reasons set forth herein, the Debtors respectfully request authority to make payments to the Senior Executives pursuant to the Incentive Plans.

² Contemporaneously herewith, the Debtors have filed the *Debtors’ Motion to Approve Implementation of Incentive Plans for Non-Insider Employees* (the “Incentive Programs Motion”), pursuant to which the Debtors have sought authority to implement incentive programs for their *non-insider* employees. The Incentive Programs Motion describes the STIP, the LTIP, and the Debtors’ overall incentive compensation strategy in more detail.

³ The 2013 Incentive Plans have been presented to and approved by the Compensation Committee of the Board of Directors of Debtor Edison Mission Energy (the “Compensation Committee”), which consists only of independent directors.

Relief Requested

7. By this Motion, the Debtors request entry of an order, substantially in the form attached hereto as **Exhibit A**, authorizing the Debtors to make payments to certain Senior Executives under the Incentive Plans.

Jurisdiction

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

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

10. The statutory bases for the relief requested herein are sections 105(a), 363(b), and 503(c) of title 11 of the United States Code (the "Bankruptcy Code") and rule 6004 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules").

Background

11. Edison Mission Energy, together with its Debtor and non-Debtor affiliates, is a leading independent power producing enterprise specializing in developing, operating, and selling energy and capacity from over 40 generating facilities in 12 states and the Republic of Turkey. The Debtors have approximately 950 employees and maintain headquarters in Chicago, Illinois and Santa Ana, California.

12. On the date hereof (the "Petition Date"), each of the Debtors filed a petition with this Court under chapter 11 of the Bankruptcy Code. The Debtors continue to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. Concurrently with the filing of this Motion, the Debtors requested procedural consolidation and joint administration of these chapter 11 cases pursuant to

Bankruptcy Rule 1015(b). No party has requested the appointment of a trustee or examiner in these chapter 11 cases, and no committees have been appointed or designated.

The Debtors' Incentive Plans

I. Development of the Incentive Plans

13. Historically, in addition to base salary, the Debtors have compensated their Senior Executives with a combination of short-term, cash-based and longer-term incentives to attract and motivate talented executives while simultaneously achieving certain financial and operational results. Specifically, the Debtors' incentive plans are designed to incentivize future performance, align management incentives with the Debtors' business objectives, and provide key management employees with competitive, market-based compensation.

14. In the face of challenging financial circumstances, it became clear that achieving a successful restructuring would, in part, depend upon appropriately incentivizing the workforce. To that end, in August 2012, the Debtors engaged Aon Hewitt to provide advice and support in connection with the evaluation and development of 2013 incentive plans. Over the course of more than four months, the Debtors, in consultation with Aon Hewitt and the Debtors' other advisors, carefully considered various compensation strategies that would best incentivize and reward employees while remaining competitive and market-driven. The Debtors also considered which elements of their 2012 (and other historical) incentive plans would need to be changed, if any, to take into account their financial situation. As a result of those discussions, the Debtors made certain adjustments to their existing and historical incentive programs, but generally retained the overall structure of their existing incentive programs.

15. More specifically, the Debtors and Aon Hewitt developed six incentive plans for 2013, which largely represent a continuation of the Debtors' historical incentive plans subject to certain adjustments necessary under the circumstances:

- the STIP for the Debtors’ more than 400 employees of Debtors Edison Mission Energy (“EME”), Midwest Generation, LLC (“MWG”), Midwest Generation EME, LLC (“MWG EME”), and Midwest Finance Corporation (“Midwest Finance”), approximately 60 management employees of non-Debtor Edison Mission Operation & Maintenance, Inc. (“EMOMI”), and approximately 80 non-energy trader employees of non-Debtor Edison Mission Marketing and Trading, Inc. (“EMMT”);
- the short-term incentive plan for the Debtors’ approximately 540 non-insider union employees (the “Union Plan”);
- the short-term incentive plan for the more than 180 non-management employees of non-Debtor EMOMI (the “EMOMI Plan”);
- the trader incentive plan for non-Debtor EMMT proprietary energy traders (the “Trader Incentive Plan”);
- the key contributor plan for approximately 50 key non-insider employees not eligible for the Debtors’ long-term incentive programs (the “Key Contributor Plan”); and
- the LTIP for more than 50 senior managers of the Debtors (and certain of their non-Debtor subsidiaries).⁴

16. The Debtors historically have included their senior-most executives in their short-term and long-term incentive programs. Having determined—in consultation with their advisors—that the Senior Executives are “insiders” (as that term is defined in section 101(31) of the Bankruptcy Code), the Debtors seek separate approval to ensure that the Senior Executives participate in the STIP and LTIP. Senior Executive participation in the Incentive Plans is essential to the success of the Debtors’ restructuring efforts. The Senior Executives are leading the Debtors’ restructuring efforts and need to be appropriately incentivized to drive this process and operate the business in a way that drives value and ultimately inures to the benefit of all

⁴ By this Motion, the Debtors are not seeking relief related to the Union Plan, EMOMI Plan, Trader Incentive Plan, and Key Contributor Plan, nor for non-insiders pursuant to the STIP and LTIP. The Debtors have requested such relief in the Incentive Programs Motion, Motion filed contemporaneously herewith, which describes in more detail the Union Plan, EMOMI Plan, Trader Incentive Plan, Key Contributor Plan, and STIP and LTIP for non-insiders, and seeks the relief necessary to implement these plans.

parties in interest. Furthermore, by ensuring that the Senior Executives receive competitive, market-based compensation, as reviewed and determined by Aon Hewitt, the Incentive Plans reduce the risk that the Senior Executives leave the Debtors' employ at a time when the Debtors most need their services.

II. Description of the Incentive Plans

A. Eligible Employees

17. As described above, the Debtors, in consultation with Aon Hewitt, developed six incentive plans for 2013, which largely represent a continuation of the Debtors' historical incentive plans subject to certain adjustments necessary under the circumstances. Two of the Debtors' 2013 incentive plans, the STIP and the LTIP, contemplate the participation of the Senior Executives, insiders whom the Debtors determined are instrumental to their ongoing business operations and restructuring initiatives. The Senior Executives eligible for the Incentive Plans include EME's (a) Director and President (the "President"); (b) Senior Vice President and Chief Financial Officer (the "CFO"); and (c) Senior Vice President and General Counsel (the "General Counsel").

18. The Debtors, in consultation with their advisors, engaged in an analysis of all senior management personnel to determine those employees that may be considered "insiders" pursuant to section 101(31) of the Bankruptcy Code. Regardless of an employee's title, the Debtors and their advisors considered (a) whether a particular employee sits on a particular board and the responsibilities and oversight roles of such board; (b) whether a particular employee is elected or appointed by a board to manage daily operations; and (c) whether a particular employee has a controlling interest in a Debtor or exercises sufficient authority over all of the Debtors so as to dictate corporate policy and the disposition of corporate assets. Based on this analysis, the Debtors (in consultation with their advisors) determined that the Senior Executives

would likely be considered “insiders” under the Bankruptcy Code. In addition, the Senior Executives have been materially involved in negotiations regarding the Debtors’ restructuring and have been and will continue to be heavily involved in the Debtors’ restructuring efforts and ongoing operations.

B. Senior Executive Incentive Awards Pursuant to the Incentive Plans

19. The Debtors, in consultation with their advisors, propose to include the Senior Executives in two of the Debtors’ incentive plans: (a) the STIP, a performance-based cash incentive program based on the attainment of certain short-term corporate and individual performance targets; and (b) the LTIP, a performance-based cash bonus program based on the attainment of certain long-term corporate performance targets.⁵

1. The STIP

20. The Senior Executives are eligible to participate in the STIP, which the Debtors offer to more than 400 employees of Debtors EME, MWG, MWG EME, and Midwest Finance approximately 60 management employees of non-Debtor EMOMI, and approximately 80 non-energy trader employees of non-Debtor EMMT. The STIP is a performance-based cash bonus program based on the attainment of certain corporate and individual performance targets. The incentive pool for the STIP is accrued through (a) the achievement of six-month target goals for cash flow based on adjusted EBITDAR and (b) an upward or downward adjustment based on the achievement of industry-standard worker and facility safety targets. The STIP includes six-month performance periods to allow for short-term goal-setting.

⁵ Prior to the hearing on this Motion, the Debtors shall submit additional details and evidentiary support demonstrating that the Incentive Plans are reasonable and market-based and the targets contained in the Incentive Plans will require attainment of difficult and challenging targets.

21. Once the incentive pool is determined based on the Debtors' overall performance, the Debtors' management calculates proposed individual awards, which may be adjusted up or down 20 percent based upon individual performance. Individual awards are capped at 200 percent of the target award.

22. The Compensation Committee of the Board of Directors of EME (the "Compensation Committee") must approve the proposed awards of the Senior Executives under the STIP. In 2011, the Senior Executives earned approximately \$750,000 in the aggregate on account of the STIP. In 2012, the Senior Executives earned approximately \$670,000 in the aggregate on account of the STIP.

23. The Debtors estimate that the total amount of the incentive pool that can be earned by the Senior Executives under the STIP in 2013 at target performance level is approximately \$456,990 for each six-month performance period (approximately \$913,980 annualized value).

2. The LTIP

24. The Senior Executives are among the more than 50 senior management personnel eligible to participate in the LTIP. The LTIP is designed to improve the Debtors' long-term stability and profitability by aligning management incentives with the Debtors' business objectives, while at the same time providing participants with competitive, market-based compensation. The Debtors, in their business judgment and after consultation with Aon Hewitt, will provide cash-based incentives through the 2013 LTIP. The LTIP is designed to be earned over a two-year period but may terminate before two years if the Debtors emerge from chapter 11 or implement a new program to provide employees with alternative long-term incentives.

25. The LTIP is entirely performance-based, with awards linked to three operating and performance metrics:

- 40 percent of the LTIP incentive pool is accrued by preserving corporate liquidity after adjusting for restructuring costs;
- 40 percent of the LTIP incentive pool is accrued by realizing overall reliability targets for the Debtors' coal, gas, and wind energy projects; and
- 20 percent of the LTIP incentive pool is accrued by successfully reducing general and administrative and controllable operations and maintenance expenses over the measurement period.

26. In 2012, the Debtors estimate that the Senior Executives earned approximately \$1.5 million in the aggregate on account of the LTIP.

27. Under the 2013 LTIP, the Debtors estimate that the total amount of incentive compensation that the Senior Executives can earn at target performance level is approximately \$1,828,875 per year.

Basis for Relief

I. Implementing the Incentive Plans Is an Exercise of Debtors' Sound Business Judgment and Is Authorized by Section 363(b) of the Bankruptcy Code.

28. The Debtors implementation of the Incentive Plans is a sound exercise of their business judgment and should be approved. Section 363(b)(1) of the Bankruptcy Code provides that a debtor "after notice and a hearing, may use, sell or lease, other than in the ordinary course of business, property of the estate." 11 U.S.C. § 363(b)(1). A debtor may use, sell, or lease property of the estate where a sound business purpose justifies such actions. Fulton State Bank v. Schipper (In re Schipper), 933 F.2d 513, 515 (7th Cir. 1991) (noting that the criteria for approval of a transaction under section 363(b) is whether the debtor has "an articulated business justification"); Contrarian Funds LLC v. Aretex LLC (In re WestPoint Stevens, Inc.), 600 F.3d 231, 248 n.8 (2d Cir. 2010); Comm. of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.),

722 F.2d 1063, 1070 (2d Cir. 1983); In re Borders Grp., Inc., 453 B.R. 459, 473 (Bankr. S.D.N.Y. 2011). Specifically, once a debtor articulates a valid business justification for a particular form of relief, the court reviews the debtor's request under the business judgment rule. See In re Commercial Mortg. and Fin. Co., 414 B.R. 389, 394 (Bankr. N.D. Ill. 2009) (noting that a debtor in possession "has the discretionary authority to exercise his business judgment in operating the debtor's business similar to the discretionary authority to exercise business judgment given to an officer or director of a corporation").

29. The business judgment rule is a presumption that in making a business decision the directors of a corporation acted on an informed basis, in good faith, and in the honest belief that the action taken was in the best interests of the company. See In re Abbott Labs. Derivative S'holders Litig., 325 F.3d 795, 807 (7th Cir. 2003). Consequently, a debtor's business decision "should be approved by the court unless it is shown to be 'so manifestly unreasonable that it could not be based upon sound business judgment, but only on bad faith, whim, or caprice.'" In re Aerovox, Inc., 269 B.R. 74, 80 (Bankr. D. Mass. 2001) (quoting In re Logical Software, Inc., 66 B.R. 683, 686 (Bankr. D. Mass. 1986) (citations omitted)). Thus, if a debtor's actions satisfy the business judgment rule, then the transaction in question should be approved under section 363(b)(1) of the Bankruptcy Code.

30. Implementing the Incentive Plans is a proper exercise of the Debtors' business judgment and is in the best interests of the Debtors, their estates, and their stakeholders. Pursuant to this Motion, the Debtors seek only authorization to make payments to the Senior Executives—their most essential employees—pursuant to the Incentive Plans during 2013, thereby retaining the same overall structure as the Debtors' prepetition incentive programs with certain adjustments to take into account the Debtors' current circumstances. The Incentive Plans

are available to more than 400 non-insider employees of Debtors EME, MWG, MWG EME, and Midwest Finance, approximately 60 employees of non-Debtor EMOMI, and approximately 75 employees of non-Debtor EMMT (the STIP), as well as more than 50 non-insider senior managers of the Debtors and certain of their non-Debtor subsidiaries (the LTIP).

31. The Debtors' restructuring initiatives have placed additional demands on the Senior Executives, making the provision of appropriate, market-based compensation and incentives essential to the success of the Debtors' restructuring efforts. In addition to their ordinary-course activities needed to drive the Debtors' financial and operational performance, the Senior Executives must work diligently to manage the Debtors' reorganization process. These Senior Executives and their skills, expertise, and motivation are essential to the Debtors' ability to achieve a successful reorganization in these chapter 11 cases and will position the Debtors for future success. And the Senior Executives are not singled out. Instead, the Senior Executives—like other employees—will be compensated commensurate with past practice pursuant to incentive plans that include the participation of other employees. Thus, incentives across the workforce will be properly aligned.

32. In fact, the Debtors have structured the Incentive Plans carefully to balance the Debtors' need to incentivize employees, including the Senior Executives, with appropriate, market-based compensation, but at the same time ensure that the Debtors' estates receive enhanced value in exchange for incentive payments. To that end, the Incentive Plans are entirely performance-based; payments depend on the Senior Executives leading the Debtors to attain the forthcoming cash flow, reliability, performance, and safety targets, all of which will increase the Debtors' value as a going concern. By linking the Senior Executives' increased compensation opportunities to enhanced value for the Debtors' estates, the Incentive Plans successfully and

fairly align the interests of the Debtors, their employees, and their stakeholders. Thus, the Incentive Plans are designed to achieve “desired performance.” See In re Dana Corp., 358 B.R. 567, 576 (Bankr. S.D.N.Y. 2006).

33. Not only are the Incentive Plans calculated to achieve desired performance, but the payments to be made under the Incentive Plans are reasonable. The Company and Aon Hewitt analyzed potential payouts using benchmarks for senior management compensation in publicly disclosed incentive plans for comparable companies, as well as information contained in several survey sources containing hundreds of participants each, and determined the potential payouts to be reasonable and within market practice. Moreover, to the extent that the Senior Executives meet the forthcoming performance metrics in the Incentive Plans, the Incentive Plans will result in the Senior Executives receiving similar awards as provided by the Debtors’ 2012 incentive programs.

34. Courts in this jurisdiction and others have recognized that programs such as the Incentive Plans can be an efficient means of maximizing value for a debtor’s estate and, accordingly, have approved similar incentive programs. See, e.g., In re Kimball Hill, Inc., No. 08-10095 (SPS) (Bankr. N.D. Ill. June 18, 2008) (approving operations incentive and discretionary bonus plans); In re Neumann Homes, Inc., No. 07-20412 (ERW) (Bankr. N.D. Ill. Feb. 20, 2008) (approving key employee severance and incentive plan); In re DDMG Estate (f/k/a Digital Domain Media Grp., Inc.), No. 12-12568 (BLS) (Bankr. D. Del. Oct. 22, 2012) (approving debtors’ key employee incentive plan); In re Velo Holdings, Inc., No. 12-11384 (MG), 2012 WL 2015870, at *9 (Bankr. S.D.N.Y. June 6, 2012) (approving key employee incentive plan for both insiders and non-insiders with incentive targets tied to financial performance and sales of debtors’ business units); In re AES E. Energy, L.P., No. 11-14138

(KJC) (Bankr. D. Del. Mar. 30, 2012) (authorizing payment of certain employee incentive awards and distribution of fully vested performance units under debtors' long-term compensation plan); In re NewPage Corp., No. 11-12804 (KG) (Bankr. D. Del. Dec. 13, 2011) (approving debtors' short-term incentive plan for insiders and authorizing payments thereunder); In re Borders Grp., Inc., No. 11-10614 (MG) (Bankr. S.D.N.Y. Apr. 22, 2011) (approving incentive plan for senior management employees, including insiders, based on achievement of certain financial performance metrics in addition to timely confirmation of a plan of reorganization or court-approved asset sale); In re Local Insight Media Holdings, Inc., No. 10-13677 (KG) (Bankr. D. Del. Mar. 29, 2011) (authorizing implementation of debtors' key employee incentive plan); In re TerreStar Networks Inc., No. 10-15446 (SHL) (Bankr. S.D.N.Y. Feb. 23, 2011) (approving incentive plan for insiders based on achieving certain financial performance goals at either plan confirmation or an approved asset sale); In re Lear Corp., No. 09-14326 (ALG) (Bankr. S.D.N.Y. Aug. 28, 2009) (approving insider incentive plan); Dana Corp., 358 B.R. at 584 (approving management incentive plan).⁶

35. Accordingly, the Debtors submit that implementing the Incentive Plans is a valid exercise of the Debtors' business judgment and the approval of the Incentive Plans is in the best interests of the Debtors, their estates, and all parties in interest in these chapter 11 cases.

II. The Incentive Plans Satisfy the Requirements of Section 503(c) of the Bankruptcy Code.

36. The Senior Executives are insiders of the Debtors; therefore, the Incentive Plans mandate compliance with section 503(c) of the Bankruptcy Code. Section 503(c) of the Bankruptcy Code contains three subsections: (i) section 503(c)(1) of the Bankruptcy Code

⁶ Because of the voluminous nature of the orders cited herein, such orders have not been attached to the Motion. Copies of these orders are available upon request to the Debtors' proposed counsel.

contains a general prohibition of retention plans; (ii) section 503(c)(2) of the Bankruptcy Code places limitations on severance payments; and (iii) section 503(c)(3) of the Bankruptcy Code sets forth standards governing other transfers to managers. See 11 U.S.C. § 503(c). The Debtors submit that neither sections 503(c)(1) nor 503(c)(2) of the Bankruptcy Code are applicable under the circumstances. In addition, while section 503(c)(3) of the Bankruptcy Code may be applicable to the Incentive Plans, that section mirrors section 363(b) of the Bankruptcy Code, and the standard for evaluating the Incentive Plans under section 503(c)(3) of the Bankruptcy Code is consistent with, and based upon, the standard for section 363(b) discussed above. See Dana Corp., 358 B.R. at 576 (applying business judgment rule to evaluate incentive plan). Accordingly, the Debtors' implementation of the Incentive Plans should be authorized as a sound exercise of the Debtors' business judgment.

A. The Incentive Plans Are Not Retention Plans Governed by Section 503(c)(1) or Severance Plans Governed by Section 503(c)(2).

37. Section 503(c)(1) of the Bankruptcy Code applies solely to retention plans. See 11 U.S.C. § 503(c)(1). Section 503(c)(2) provides for restrictions applicable only to severance plans. See 11 U.S.C. § 503(c)(2). Neither provision applies to performance-based incentive plans. See, e.g., Velo Holding, 2012 WL 2015870, at *6 (finding that an incentive-based plan alleviated the need for a section 503(c)(1) analysis); Borders Grp., 453 B.R. at 471 (finding that “the Debtors [had] met their burden of establishing that the KEIP [was] incentivizing, thereby alleviating the need for a section 503(c)(1) analysis”); Dana Corp., 358 B.R. at 584 (concluding that sections 503(c)(1) and 503(c)(2) did not apply to incentive plans); Transcript of Hearing at 84–85, In re Calpine Corp., No. 05-60200 (BRL) (Bankr. S.D.N.Y. Apr. 26, 2006) (stating that sections 503(c)(1) and 503(c)(2) of the Bankruptcy Code do not apply to incentive programs); In re Musicland Holding Corp., No. 06-10064 (SMB) (Bankr. S.D.N.Y. Feb. 1, 2006) (finding that

debtor continuing to provide incentive bonuses under management incentive plan did not violate section 503(c)); Transcript of Hearing at 67, In re Nobex Corp., No. 05-20050 (CSS) (Bankr. D. Del. Jan. 12, 2006) (explaining that section 503(c)(1) does not apply to incentive programs).

38. Merely stylizing a bonus program as an “incentive” plan, however, does not automatically exempt an insider compensation strategy from the requirements of section 503(c)(1). See, e.g. In re Residential Capital, LLC, 478 B.R. 154, 170 (Bankr. S.D.N.Y. 2012) (“The Debtors must show that the KEIP is a ‘pay for value’ plan that offers incentives based on performance rather than a ‘pay to stay’ plan.”); In re Hawker Beechcraft, Inc., 479 B.R. 308, 313 (Bankr. S.D.N.Y. 2012) (“The Court must examine a proposed KEIP . . . [to] determine whether the proposed targets are designed to motivate insiders to rise to a challenge or merely report to work.”). The milestones and targets triggering the incentives must force the participants to stretch and cannot be compared to “lay-ups” or “free throws” for the ease by which the participants could achieve the targets. See Dana Corp., 358 B.R. at 583; Hawker Beechcraft, 479 B.R. at 313 n.7.

39. Here, the primary effect of the Incentive Plans is to incentivize employees (including the Senior Executives) in a manner that will benefit the Debtors’ business as a whole and, as a result, all stakeholders. Importantly, the Incentive Plans do not contain either retention-based or severance components. The Senior Executives are not paid in the event their employment is terminated for cause, nor are they paid for merely maintaining their employment for a certain time period. Rather, awards under the Incentive Plans are paid only upon the Debtors’ achieving specific performance targets.

40. In their ongoing efforts to establish the performance thresholds under the Incentive Plans, the Debtors have looked at recent performance and their prospects and goals for

2013 to ensure that the Incentive Plans will provide challenging performance targets that cannot be compared to “lay-ups” or “free throws.” See Dana Corp., 358 B.R. at 583; Hawker Beechcraft, 479 B.R. at 313 n.7. In fact, there is no guarantee that the Senior Executives will receive any payments under the Incentive Plans. If the Debtors do not meet the performance targets under the Incentive Plans, the Senior Executives will receive no awards under these programs.

41. The Senior Executives will receive their “target” bonuses under the STIP only upon the achievement of certain levels of 2013 adjusted EBITDAR and industry-standard worker and facility safety targets. In addition, the LTIP will require the Debtors’ management to achieve challenging, value-maximizing performance targets. Accordingly, the Senior Executives will be required to achieve the threshold levels of performance under the STIP and LTIP before any payments become due and owing.

42. Therefore, the Debtors respectfully submit that sections 503(c)(1) and 503(c)(2) do not apply to the Incentive Plans or to this Motion and that the Incentive Plans constitute appropriate, performance-based incentive plans.

B. The Incentive Plans Satisfy the Requirements of Section 503(c)(3) of the Bankruptcy Code.

43. The Debtors’ implementation of the Incentive Plans is authorized under section 503(c)(3) of the Bankruptcy Code. See 11 U.S.C. § 503(c)(3). Section 503(c)(3) prohibits certain transfers made to officers, managers, consultants, and others that are both outside the ordinary course of business and not justified by the facts and circumstances of the case. See id. In applying section 503(c)(3), the court in Dana Corp. noted that the “test in section 503(c)(3) appears to be no more stringent than one courts must apply in approving any

administrative expense under section 503(b)(1)(A) . . . [an] expense must be an actual, necessary cost, or expense of preserving the estate.” Dana Corp., 358 B.R. at 576.

44. Further, courts that have analyzed the section’s prohibition on “other transfers” have applied a standard based upon the standard applied under section 363(b)—specifically, transfers are approved if made as a sound exercise of a debtor’s business judgment and warranted by the facts and circumstances of the case. See Velo Holdings, 2012 WL 2015870, at *9 (“Courts have held that the ‘facts and circumstances’ language of section 503(c)(3) creates a standard no different than the business judgment standard under section 363(b.)”); Dana Corp., 358 B.R. at 576; In re Global Home Prods., 369 B.R. 778, 783 (Bankr. D. Del. 2007) (“If [the proposed plans are] intended to incentivize management, the analysis utilizes the more liberal business judgment review under § 363.”); In re Mesa Air Grp., No. 10-10018, 2010 WL 3810899, at *4 (Bankr. S.D.N.Y. Sept. 24, 2010); In re Nobex Corp., No. 05-20050, 2006 WL 4063024, at *2 (Bankr. D. Del. Jan. 19, 2006).

45. The Dana Corp. court set forth six factors to consider in determining whether an incentive plan is appropriate: (a) whether the plan is calculated to achieve the desired performance; (b) whether the cost of the plan is reasonable in the context of a debtor’s assets, liabilities, and earning potential; (c) whether the scope of the plan is fair and reasonable or discriminates unfairly among employees; (d) whether the plan is consistent with industry standards; (e) whether the debtor performed due diligence in investigating the need for the plan; and (f) whether the debtor received independent counsel in performing due diligence, creating, and authorizing the plan. See Dana Corp., 358 B.R. at 576–77. These factors are not exhaustive elements required for approval of an incentive plan; rather, they are factors to be considered as a court evaluates the totality of the circumstances related to an incentive plan. See id. at 576.

46. As set forth below, the Incentive Plans are fully justified by the facts and circumstances of these chapter 11 cases and, therefore, satisfy the requirements of section 503(c)(3) of the Bankruptcy Code and the standard set forth in Dana Corp.:

- ***The Incentive Plans Are Calculated to Achieve Desired Performance.*** The Incentive Plans are calculated to achieve desired performance, specifically the achievement of financial and operational goals that would enhance the value of the Debtors' estates and benefit all parties in interest. The Incentive Plans require the Debtors to achieve the forthcoming cash flow, reliability, performance, and safety targets in order for the Senior Executive to receive any incentive payments. Payments under the Incentive Plans will thus be well-tailored to motivate the Senior Executives to successfully manage the operational initiatives necessary to attain corporate objectives that drive enterprise value. Absent realization of the Debtors' restructuring and operational goals, the Senior Executives will not be entitled to receive any awards under the Incentive Plans.
- ***The Cost of the Incentive Plans Is Reasonable.*** The cost of the Incentive Plans is reasonable, market-based, and, in the context of the size and earning potential of the Debtors, *de minimis*. Indeed, the aggregate amount of the payouts under the Incentive Plans—estimated at target to be approximately \$2,742,855—is a small amount in comparison to the obligations to be restructured as part of these chapter 11 cases. Moreover, to the extent the Senior Executives meet the forthcoming performance metrics in the Incentive Plans, the Incentive Plans will result in the Senior Executives receiving similar awards as provided by the Debtors' 2012 incentive programs.
- ***The Scope of the Incentive Plans Is Fair and Reasonable.*** The scope of the Incentive Plans is fair and reasonable and includes the three Senior Executives who are overseeing the Debtors' restructuring efforts in addition to their day-to-day responsibilities. Furthermore, the Incentive Plans do not discriminate unfairly among employees. In fact, all employees are treated similarly, as consistent with past practice, pursuant to the STIP and the LTIP. Indeed, the Debtors are only seeking authorization to allow the Senior Executives to participate in the STIP, which also includes more than 550 non-insider employees of Debtors EME, MWG, MWG EME, and Midwest Finance and non-Debtors EMOMI and EMMT, and the LTIP, which also includes approximately 50 non-insider senior managers of the Debtors (and certain of their non-Debtor subsidiaries). The Debtors have filed a separate stand-alone motion seeking authorization to provide 2013 incentives for all other eligible employees.
- ***The Incentive Plans Are Consistent with Industry Standards.*** In connection with the development of the Incentive Plans, Aon Hewitt reviewed publicly disclosed incentive plans from comparable companies. The Incentive Plans are in line with those plans and are thus consistent with industry standards.

- ***The Debtors Performed Due Diligence in Developing the Incentive Plans.*** To ensure that the Incentive Plans are competitive and market-based, the Debtors, with the assistance of Aon Hewitt, performed considerable due diligence and analyzed the Senior Executives' total direct compensation, including base salary and target incentive opportunities, as compared to total direct compensation provided at comparable companies. As a result of their due diligence, the Debtors, in consultation with their advisors, determined that: (a) there was a need to continue their existing incentive programs in 2013 with modifications to ensure the competitiveness of the Debtors' compensation and to take into account the Debtors' restructuring; (b) the Incentive Plans are fair and reasonable to all stakeholders and consistent with market practice and industry standards; and (c) the Incentive Plans are appropriately tailored to the Debtors' objectives of achieving improved financial and operational performance, maximizing creditor recoveries, and positioning the Debtors for long-term viability and success.
- ***The Debtors Received Independent Counsel in Developing the Incentive Plans.*** As set forth above, the Debtors received independent counsel from Aon Hewitt and other advisors in benchmarking and formulating the Incentive Plans, and the Compensation Committee (consisting of two independent directors) approved the 2013 incentive programs, including the Incentive Plans.

47. Based on the foregoing, the Debtors respectfully submit that the Incentive Plans are a proper exercise of the Debtors' business judgment and use of the Debtors' resources, are justified by the facts and circumstances of these chapter 11 cases and, therefore, satisfy the requirements of section 503(c)(3) of the Bankruptcy Code. The Debtors respectfully submit that the Incentive Plans will motivate the Debtors' Senior Executives to the ultimate benefit of all parties in interest in these chapter 11 cases and should be approved.

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

48. To implement the foregoing successfully, the Debtors request that the Court enter an order providing that notice of the relief requested herein satisfies Bankruptcy Rule 6004(a) and that the Debtors have established cause to exclude such relief from the 14-day stay period under Bankruptcy Rule 6004(h).

Notice

49. The Debtors have provided notice of this Motion to: (a) the Office of the U.S. Trustee for the Northern District of Illinois; (b) the entities listed on the Consolidated List of Creditors Holding the 30 Largest Unsecured Claims; (c) the indenture trustee for the Debtors' senior unsecured notes; (d) counsel to the ad hoc committee of certain holders of the Debtors' senior unsecured notes; (e) the indenture trustee of the lessor notes related to the Debtors' Powerton generating station in Pekin, Illinois, and units 7 and 8 of the Debtors' Joliet, Illinois, generating station and the pass-through trustee for the related pass-through certificates; (f) counsel to the ad hoc committee of certain holders of pass-through certificates related to the Debtors' Powerton and Joliet generating stations; (g) the owner trusts and the equity investors for the Debtors' Powerton and Joliet generating stations (and their respective counsel, if known); (h) the lender under Debtor Edison Mission Energy's letter-of-credit facility (i) the state attorneys general for states in which the Debtors conduct business; (j) United States Attorney for the Northern District of Illinois; (k) the Internal Revenue Service; (l) the Securities and Exchange Commission; and (m) the Environmental Protection Agency and similar state environmental agencies for states in which the Debtors conduct business. In light of the nature of the relief requested herein, the Debtors respectfully submit that no further notice is necessary.

No Prior Request

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

[Remainder of page intentionally left blank.]

WHEREFORE, the Debtors respectfully request that the Court enter an order, substantially in the form attached hereto as **Exhibit A**, granting the relief requested herein and such other and further relief as the Court deems appropriate.

Dated: December 17, 2012

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

James H.M. Sprayregen, P.C.
David R. Seligman, P.C.
Sarah Hiltz Seewer
KIRKLAND & ELLIS LLP
300 North LaSalle
Chicago, Illinois 60654
Telephone: (312) 862-2000
Facsimile: (312) 862-2200

- and -

Joshua A. Sussberg
KIRKLAND & ELLIS LLP
601 Lexington Avenue
New York, New York 10022-4611
Telephone: (212) 446-4800
Facsimile: (212) 446-4900

*Proposed Counsel to the Debtors
and Debtors in Possession
Other than Camino Energy Company*

- and -

David A. Agay
Joshua Gadharf
MCDONALD HOPKINS LLC
300 North LaSalle
Suite 2100
Chicago, Illinois 60654
Telephone: (312) 280-0111
Facsimile: (312) 280-8232

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

EXHIBIT A

Proposed Order

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
Eastern Division

In Re:)	BK No.: 12-49219
EDISON MISSION ENERGY, et al.,)	
)	Chapter: 11
)	
)	
)	
Debtor(s))	

**ORDER AUTHORIZING COMPENSATION OF INSIDER SENIOR EXECUTIVES UNDER
EMPLOYEE INCENTIVE PROGRAMS**

Upon the motion (the “Motion”) of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) for entry of an order (this “Order”) authorizing the Debtors to make payments to certain Senior Executives under the Incentive Plans, as more fully set forth in the Motion; and upon the First Day Declaration; and the Court having found that the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and the Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and the Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and the Court having found that the relief requested in the Motion is in the best interests of the Debtors’ estates, their creditors, and other parties in interest; and the Court having found that the Debtors provided appropriate notice of the Motion and the opportunity for a hearing on the Motion under the circumstances; and the Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before the Court (the “Hearing”); and the Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before the Court; and after due deliberation and sufficient cause appearing therefor, it is HEREBY ORDERED THAT:

1. The Motion is granted as set forth herein. Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion.

2. The Debtors are authorized but not directed to take all actions necessary to compensate the Senior Executives under the Incentive Plans on the terms and conditions set forth in the Motion, including, without limitation, making any payments to the Senior Executives with respect to the STIP and LTIP.

3. All postpetition payments from a Debtor to another Debtor are hereby accorded superpriority administrative expense status and shall have priority over any administrative claims that arise under section 503(b) of the Bankruptcy Code in accordance with the Court’s order approving continued use of the Debtors’ cash management system.

4. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion and the requirements of Bankruptcy Rule 6004(a) and the Local Rules of the United States Bankruptcy Court for the Northern District of Illinois are satisfied by such notice.

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

6. Notwithstanding the relief granted in this Order and any actions taken pursuant to such relief, nothing in this Order shall be deemed: (a) an admission as to the validity of any claim against a Debtor entity; (b) a waiver of the Debtors' right to dispute any claim on any grounds; (c) a promise or requirement to pay any claim; (d) an implication or admission that any particular claim is of a type specified or defined in this Order or the Motion; (e) a request or authorization to assume any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; or (f) a waiver of the Debtors' rights under the Bankruptcy Code or any other applicable law.

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

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

Enter:

Dated:

United States Bankruptcy Judge

Prepared by:

James H.M. Sprayregen, P.C.
David R. Seligman, P.C.
Sarah Hiltz Seewer
KIRKLAND & ELLIS LLP
300 North LaSalle
Chicago, Illinois 60654
Telephone: (312) 862-2000
Facsimile: (312) 862-2200

- and -

Joshua A. Sussberg
KIRKLAND & ELLIS LLP
601 Lexington Avenue
New York, New York 10022-4611
Telephone: (212) 446-4800
Facsimile: (212) 446-4900

Proposed Counsel to the Debtors
and Debtors in Possession
Other than Camino Energy Company

- and -

David A. Agay
Joshua Gadharf
MCDONALD HOPKINS LLC
300 North LaSalle
Suite 2100

Chicago, Illinois 60654
Telephone: (312) 280-0111
Facsimile: (312) 280-8232

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

EXHIBIT B

Senior Executive Compensation

Senior Executive Compensation

The following table summarizes the incentive awards available to the Senior Executives under the Incentive Plans:

Title	Current/Average Base Salary	STIP Award at Target	LTIP Award at Target
President	\$475,000	\$427,500	\$1,068,750
CFO	\$305,200	\$244,160	\$381,500
General Counsel	\$302,900	\$242,320	\$378,625
Maximum Award for Senior Executives at Target:		\$2,742,855	

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

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

CERTIFICATE OF SERVICE

I, David R. Seligman, P.C., an attorney, certify that on the date hereof, I caused to be served by GCG, Inc. (the proposed notice and claims agent for these chapter 11 cases) on behalf of the above-captioned debtors and debtors in possession, in the manner and to the parties set forth on the attached service lists, a true and correct copy of the foregoing pleading.

Dated: December 17, 2012

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

David R. Seligman, P.C.

KIRKLAND & ELLIS LLP

300 North LaSalle

Chicago, Illinois 60654

Telephone: (312) 862-2000

Facsimile: (312) 862-2200

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 Fuel Resources, Inc. (3014); Edison Mission Fuel Transportation, Inc. (3012); Edison Mission Holdings Co. (6940); Edison Mission Midwest Holdings Co. (6553); Midwest Finance Corp. (9350); Midwest Generation EME, LLC (1760); Midwest Generation, LLC (8558); Midwest Generation Procurement Services, LLC (2634); Midwest Peaker Holdings, Inc. (5282); Mission Energy Westside, Inc. (0657); San Joaquin Energy Company (1346); Southern Sierra Energy Company (6754); and Western Sierra Energy Company (1447). The location of parent Debtor Edison Mission Energy's corporate headquarters and the Debtors' service address is: 3 MacArthur Place, Suite 100, Santa Ana, California 92707.

PARTIES SERVED VIA OVERNIGHT DELIVERY

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

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

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

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

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

BP CANADA ENERGY
ATTN SANDRA ONSTOTT
3464 SOLUTIONS CENTER
CHICAGO IL 60677

CADWALADER, WICKERSHAM & TAFT LLP
ATTN GEORGE A. DAVIS
ONE WORLD FINANCIAL CENTER
NEW YORK NY 10281

CALIFORNIA ENERGY COMMISSION
ATTN ROBERT OGLESBY, EXECUTIVE DIRECTOR
1516 NINTH ST
MS-29
SACRAMENTO CA 95814-5512

CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
ATTN SECRETARYFOR ENVIRONMENTAL PROTECTION
OR GENERAL COUNSEL
1416 9TH ST
SACRAMENTO CA 95814

CALIFORNIA PUBLIC UTILITY COMMISSION
ATTN MICHAEL PEEVEY, COMMISSIONER-PRESIDENT
505 VAN NESS AVE
SAN FRANCISCO CA 94102

CITICORP
ATTN KEVIN DAVENPORT
390 GREENWICH ST
1SH FLOOR
NEW YORK NY 10013

CLENNON ELECTRIC
ATTN LARRY CLENNON OWNER
210 NORTH MAIN ST., PO BOX 368
WILMINGTON IL 60481

COMMONWEALTH EDISON COMPANY
ATTN ALISON HAVENS
THREE LINCOLN CENTER
OAKBROOK TERRACE IL 60181-4260

COMMONWEALTH OF KENTUCKY
OFFICE OF THE ATTORNEY GENERAL
ATTN JACK CONWAY
700 CAPITOL AVENUE
CAPITOL SUITE 118
FRANKFORT KY 40601

COMMONWEALTH OF PENNSYLVANIA
OFFICE OF THE ATTORNEY GENERAL
ATTN WILLIAM H. RYAN, JR.
1600 STRAWBERRY SQUARE
HARRISBURG PA 17120

DNB BANK A.S.A.
ATTN MARYBELLE ORTIZ
200 PARK AVE
31ST FLR
NEW YORK NY 10166-0396

ENVIRONMENTAL PROTECTION AGENCY
ATTN RICHARD L. NAGLE
BANKRUPTCY CONTACT
USEPA REGION 5
MAIL CODE: C-14J
CHICAGO IL 60604

ENVIRONMENTAL PROTECTION AGENCY
OFFICE OF GENERAL COUNSEL
1300 PENNSYLVANIA AVE, NW
U.S. EPA MAILCODE 2377R
WASHINGTON DC 20004

ENVIRONMENTAL PROTECTION AGENCY
ATTN DIANA SAENZ
1200 PENNSYLVANIA AVE, NW
STE 4209
WASHINGTON DC 20004

ENVIRONMENTAL PROTECTION AGENCY
REGION 5
OFFICE OF THE REGIONAL ADMINISTRATOR
77 W JACKSON BLVD
CHICAGO IL 60604

FEDERAL ENERGY REGULATORY COMMISSION
ATTN KIMBERLY D. BOSE, SECRETARY
888 1ST ST NORTHEAST
WASHINGTON DC 20426

ILLINOIS COMMERCE COMMISSION
ATTN DOUG SCOTT, CHAIRMAN
527 E CAPITOL AVE
SPRINGFIELD IL 62701

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

ILLINOIS DEPARTMENT OF REVENUE
ATTN BANKRUPTCY SECTION
PO BOX 64338
CHICAGO IL 64338

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY
ATTN DIRECTOR OR CHIEF LEGAL COUNSEL
1021 N GRAND AVE E
SPRINGFIELD IL 62794

ILLINOIS POLLUTION CONTROL BOARD
ATTN CHAIRMAN OR SENIOR ATTORNEY
1021 N GRAND AVE E
PO BOX 19274
SPRINGFIELD IL 62794

INDIANA DEPT OF ENVIRONMENTAL MGMT
ATTN COMMISSIONER OR LEGAL COUNSEL
100 N SENATE AVE
MAIL CODE 50-01
INDIANAPOLIS IN 46204

INTER-CON SECURITY SYSTEMS
ATTN GERARD NEVILLE
210 SOUTH DE LACEY AVE
PASADENA CA 91105-2048

INTERNAL REVENUE SERVICE
TERRITORY MANAGER, INSOLVENCY TERRITORY 7
230 S DEARBORN ST
MAIL STOP 5000 CHI
ROOM 3022
CHICAGO IL 60604

INTERNAL REVENUE SERVICE
CENTRALIZED INSOLVENCY OPERATION
11601 ROOSEVELT ROAD
MAIL DROP N781
PHILADELPHIA PA 10154

INTERNAL REVENUE SERVICE
CENTRALIZED INSOLVENCY OPERATION
PO BOX 7346
PHILADELPHIA PA 19101-7346

JOLIET TRUST II
C/O WILMINGTON TRUST COMPANY
ATTN ROBERT HINES, JR., CORPORATE TRUST ADMIN
RODNEY SQUARE NORTH
1100 NORTH MARKET STREET
WILMINGTON DE 19890

JOLIET TRUST II
C/O RICHARDS, LAYTON & FINGER, P.A.
ATTN: MICHAEL F. COLLINS
ONE RODNEY SQUARE
920 NORTH KING STREET
WILMINGTON DE 19801

KENTUCKY DEPT FOR ENVIRONMENTAL PROTECTION
ATTN COMMISSIONER OR LEGAL COUNSEL
300 FAIR OAKS LN
FRANKFORT KY 40601

KENTUCKY DEPT FOR NATURAL RESOURCES
ATTN COMMISSIONER OR LEGAL COUNSEL
#2 HUDSON HOLLOW
FRANKFORT KY 40601

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

KERN RIVER GAS TRANSMISSION COMPANY
ATTN KRISTIN GILLETTE
2755 EAST COTTONWOOD PARKWAY
SALT LAKE CITY UT 84121

LAFARGE NORTH AMERICA
ATTN: DAVE DIEDRICK
30600 TELEGRAPH ROAD
BINGHAM FARMS MI 48025-4530

MISSOURI DEPT OF CONSERVATION
ATTN COMMISSIONER OR GENERAL COUNSEL
2901 W TRUMAN BLVD
JEFFERSON CITY MO 65109

MISSOURI DEPT OF NATURAL RESOURCES
ATTN DIRECTOR OR GENERALCOUNSEL
DIVISION OF ENVIRONMENTAL QUALITY
PO BOX 176
JEFFERSON CITY MO 65102

mitsubishi power systems, inc
ATTN RICHARD D. SIDKOFF, ESQ.
NEW YORK BRANCH (USA)
100 BAYVIEW CIRCLE
NEWPORT BEACH CA 92660

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

MONTANA DEPT OF ENVIRONMENTAL QUALITY
ATTN DIRECTOR OR CHIEF LEGAL COUNSEL
1625 ELEVENTH AVE
HELENA MT 59620

NESBITT ASSET RECOVERY SERIES J-1
C/O WILMINGTON TRUST COMPANY
ATTN ROBERT HINES, JR., CORPORATE TRUST ADMIN
RODNEY SQUARE NORTH
1100 NORTH MARKET STREET
WILMINGTON DE 19890

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

NESBITT ASSET RECOVERY SERIES J-1
JENNER & BLOCK LLP
ATTN: DANIEL R. MURRAY & MELISSA M. HINDS
353 N. CLARK STREET
CHICAGO IL 60654

NESBITT ASSET RECOVERY SERIES P-1
C/O WILMINGTON TRUST COMPANY
ATTN ROBERT HINES, JR., CORPORATE TRUST ADMIN
RODNEY SQUARE NORTH
1100 NORTH MARKET STREET
WILMINGTON DE 19890

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

NESBITT ASSET RECOVERY SERIES P-1
C/O JENNER & BLOCK LLP
ATTN: DANIEL R. MURRAY & MELISSA M. HINDS
353 N. CLARK STREET
CHICAGO IL 60654

NORIT AMERICAS INC
ATTN ROB NEBERGALL, BUSINESS MANAGER
3200 UNIVERSITY AVENUE
MARSHALL TX 75670

NORTH AMERICAN ELECTRIC RELIABILITY CORPORATION
ATTN GENERAL COUNSEL
1325 G ST NW #600
WASHINGTON DC 20005

OFFICE OF THE UNITED STATES TRUSTEE
FOR THE NORTHERN DISTRICT OF ILLINOIS
ATTN
219 S DEARBORN ST
RM 873
CHICAGO IL 60604

PATTEN INDUSTRIES, INC.
ATTN CLYDE KESSEL
635 WEST LAKE STREET
ELMHURST IL 60126

PEABODY COAL SALES
ATTN MIKE SIEBERS
701 MARKET STREET
ST. LOUIS MO 63101-1826

PENNSYLVANIA DEPT OF CONSERVATION
AND NATURAL RESOURCES
ATTN SECRETARY OF CONSERVATION & NATURAL RESOURCES
400 MARKET ST
PO BOX 8767
HARRISBURG PA 17105

PENNSYLVANIA DEPT OF ENVIRONMENTAL PROTECTION
ATTN SECRETARY OF ENVIRONMENTAL PROTECTION
OR CHIEF COUNSEL
RACHEL CARSON STATE OFFICE BUILDING
400 MARKET ST
HARRISBURG PA 17101

PEOPLES GAS
ATTN JOSIE LEWIS
CHICAGO IL 60687-0001

POWERTRON TRUST II
C/O WILMINGTON TRUST COMPANY, AS OWNER TRUSTEE
ATTN: ROBERT HINES, CORPORATE TRUST ADMIN
RODNEY SQUARE NORTH
1100 NORTH MARKET STREET
WILMINGTON NY 10013

POWERTRON TRUST II
C/O RICHARDS, LAYTON & FINGER, P.A.
ATTN: MICHAEL F. COLLINS
ONE RODNEY SQUARE
920 NORTH KING STREET
WILMINGTON DE 19801

PSEG RESOURCE
ATTN JOAN MACDONALD
80 PARK PLZ
STE T-22
NEWARK NJ 07101

ROPES & GRAY LLP
ATTN KEITH H. WOFFORD
1211 AVENUE OF THE AMERICAS
NEW YORK NY 10036

ROWELL CHEMICAL CORP
ATTN KIP COCO, ACCT MGR
15 SALT CREEK LANE SUITE 205
HINSDALE IL 60521

SAFWAY SERVICES, LLC
ATTN SCOTT METZ, ACCT MGR
OS 490 ROUTE 83
OAKBROOK TERRACE IL 60181

SOUTHERN ENVIRONMENTAL
ATTN MICK CHAMBERS, DIRECTOR OF CONTRACTS
6690 WEST NINE MILE ROAD
PENSACOLA FL 32526

STATE OF ARKANSAS
OFFICE OF THE ATTORNEY GENERAL
ATTN: DUSTIN MCDANIEL
323 CENTER STREET, SUITE 200
LITTLE ROCK AR 72201

STATE OF CALIFORNIA
OFFICE OF THE ATTORNEY GENERAL
ATTN KAMALA HARRIS
1300 I ST
STE 1740
SACRAMENTO CA 95814

STATE OF ILLINOIS
OFFICE OF THE ATTORNEY GENERAL
ATTN LISA MADISON
500 S 2ND ST
SPRINGFIELD IL 62706

STATE OF INDIANA
OFFICE OF THE ATTORNEY GENERAL
ATTN GREG ZOELLER
INDIANA GOVERNMENT CENTER SOUTH
302 W. WASHINGTON ST.
INDIANAPOLIS IN 46204

STATE OF MISSOURI
OFFICE OF THE ATTORNEY GENERAL
ATTN CHRIS KOSTER
SUPREME COURT BUILDING
207 W HIGH ST
JEFFERSON CITY MO 65102

STATE OF MONTANA
OFFICE OF THE ATTORNEY GENERAL
ATTN STEVE BULLOCK
215 N SANDERS
JUSTICE BUILDING
HELENA MT 59620

STATE OF WYOMING
OFFICE OF THE ATTORNEY GENERAL
ATTN GREGORY PHILLIPS
123 CAPITOL
200 W 24TH ST
CHEYENNE WY 82002

STOCK EQUIPMENT
ATTN TONY LEGAN
SOLVERA PARTICULATE CONTROLS INC
16490 CHILLICOTHE ROAD
CHAGRIN FALLS OH 44023-4398

THE BANK OF NEW YORK
ATTN CHRIS GRELL
385 RIFLE CAMP RD
WEST PATERSON NJ 07424

THE CALIFORNIA FRANCHISE TAX BOARD
BANKRUPTCY SECTION MS A340
PO BOX 2952
SACRAMENTO CA 95812-2952

U.S. BANK, N.A.
ATTN ANNETTE MORGAN
300 DELAWARE AV
9TH FLR
MAIL CODE: EX-DE-WDAW
WILMINGTON DE 19801

U.S. SECURITIES AND EXCHANGE COMMISSION
CHICAGO REGIONAL OFFICE
ATTN REGIONAL DIRECTOR
175 W JACKSON BLVD
STE 900
CHICAGO IL 60604

U.S. SECURITIES AND EXCHANGE COMMISSION
SEC HEADQUARTERS
ATTN CHAIRMAN OR GENERAL COUNSEL
100 F ST, NE
WASHINGTON DC 20549

UNION PACIFIC RAILROAD
ATTN BILL STAHLHEBER
PO BOX 502453
ST. LOUIS MO 63150-2453

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

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

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

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

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

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

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

WILMINGTON TRUST COMPANY
ATTN ROBERT HINES
RODNEY SQUARE N
1100 N MARKET STREET
WILMINGTON DE 19890

WYOMING DEPT OF ENVIRONMENTAL QUALITY
ATTN DIRECTOR OR LEGAL COUNSEL
HERSCHLER BUILDING, 4TH FLR W
122 W 25TH ST
CHEYENNE WY 82002

YARA NORTH AMERICA, INC
ATTN DAN HEFFERNAN
100 NORTH TAMPA ST. SUITE 3200
TAMPA FL 33602