

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)
)	

[AMENDED INTERIM] ORDER AUTHORIZING THE DEBTORS TO IMPLEMENT INCENTIVE PLANS FOR NON-INSIDER EMPLOYEES

Upon the motion (the “Motion”) of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) for entry of an order (this “Order”) (a) approving and authorizing the Debtors’ EME Plan, the 2012 EME Plan Overtime Payments, the Union Plan, the Long-Term Incentive Plan, the Key Contributor Plan, and the Retention Agreements (collectively, the “Employee Incentive Programs”) and (b) authorizing but not directing the Debtors to make certain payments to certain senior management employees under the Executive Incentive Programs, all as more fully set forth in the Motion; and upon the First Day Declaration; and the Court having found that the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and the Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and the Court having found that venue of this proceeding and the Motion, as limited by the relief granted in this Order, in this district is proper pursuant to 28 U.S.C. §§ 1408 and

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.

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 the Court having entered the *[Interim] Order Authorizing the Debtors to Implement Incentive Plans for Non-Insider Employees* [Docket No. 316]; and after due deliberation and sufficient cause appearing therefor, it is HEREBY ORDERED THAT:

1. The Motion is granted solely to the extent set forth herein; provided, however, that the relief requested in the Motion with respect to the Long-Term Incentive Plan will not apply to the Debtors' employees in salary band "E" (other than as set forth in paragraph 3 of this Order) until further order of the Court. Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion.

2. The Employee Incentive Programs, including the Key Contributor Plan and the Retention Agreements, are approved solely to the extent set forth herein.

3. The Debtors are authorized but not directed to implement the Employee Incentive Programs including, but not limited to, the EME Plan, the 2012 EME Plan Overtime Payments, the Union Plan, the Long-Term Incentive Plan, the Key Contributor Plan, and the Retention Agreements, on a postpetition basis, in the ordinary course of business, in accordance with the Debtors' prepetition policies and practices, and, in the Debtors' discretion, to pay and honor prepetition amounts related thereto, including payments under Employee Incentive Programs;

provided, however, that the “stretch” level of performance related to 2013 adjusted EBITDAR under the EME Plan shall be (a) \$33.8 million for the First Measurement Period and (b) \$223.2 million for the Second Measurement Period; and provided, further, however, that the Debtors are only authorized to make payments under the Long Term Incentive Plan at the “target” level of performance to participants other than employees in salary band “E” until further order of the Court, subject in all respects to the terms and conditions set forth in the LTIP (a copy of which was annexed as **Exhibit E** to the *Declaration of Todd McGovern in Support of Debtors’ Insider and Non-Insider Incentive Plans* [D.E. # 216]).

4. Subject to Paragraphs 5 and 6 of this Order, the Compensation Committee is hereby authorized, in its sole discretion, to administer the Employee Incentive Plans, approve or deny participation in the Employee Incentive Plans, approve or deny upward or downward adjustments to threshold, target, or stretch performance goals as justified by unanticipated and/or atypical circumstances, and make any and all other bonus determinations under the Employee Incentive Plans.

5. The Debtors are hereby authorized, but not directed, to implement the Key Contributor Plan; provided, however, that the Debtors shall notify counsel to each of the official committee of unsecured creditors (the “Committee”) and the ad hoc committee of certain noteholders of EME (the “Noteholder Group”) of any payments to be made under the Key Contributor Plan (each notice, a “Payment Notice”). Upon receipt of a Payment Notice, the Committee and the Noteholder Group shall have five (5) calendar days to notify the Debtors of any objection to the proposed payment under the Key Contributor Plan. If the Committee or the Noteholder Group informs the Debtors that it has no objection or if the Committee or the Noteholder Group fails to notify the Debtors of any objection within five (5) calendar days, the

Debtors may make the proposed payment under the Key Contributor Plan. If the Committee or the Noteholder Group does object within five (5) calendar days of receipt of the Payment Notice, the Debtors and the Committee or the Noteholder Group shall have three (3) calendar days to resolve the dispute. If the dispute remains unresolved after such three-day period, the Committee or the Noteholder Group may file an objection with the Court (within five (5) days thereafter) and the dispute shall be resolved at a hearing to be set at a mutually agreeable time.

6. To the extent the Debtors make any material modifications to the Employee Incentive Programs, the Debtors shall notify counsel to the Committee, the Noteholder Group, and the Office of the U.S. Trustee for the Northern District of Illinois (collectively the “Notice Parties”) of any such material modifications (each notice, a “Modification Notice”). Upon receipt of a Modification Notice, the Notice Parties shall have ten (10) calendar days to notify the Debtors of any objection to the proposed material modifications to the Employee Incentive Programs (such 10 calendar day period, the “Informal Objection Notification Period”). If the Notice Parties inform the Debtors that they have no objection or if the Notice Parties fail to notify the Debtors of any objection within the Informal Objection Notification Period, the Debtors may make the proposed material modifications to the Employee Incentive Programs. If any of the Notice Parties notify the Debtors of any objection during the Informal Objection Notification Period, the Debtors and the Notice Parties shall work in good faith to resolve the dispute. If the dispute remains unresolved, the Notice Parties may file an objection with the Court within seven (7) calendar days from the end of the Informal Objection Notification Period (such seven (7) calendar day period, the “Formal Objection Period”), and the dispute shall be resolved at a hearing to be set at a mutually agreeable time. For the avoidance of doubt, no material modifications may be made to the Employee Incentive Programs unless (a) the Informal

Objection Notification Period terminates without any of the Notice Parties notifying the Debtors of any objection, (b) the Formal Objection Period terminates without the filing of any formal objection by any of the Notice Parties, or (c) the Court rules on any formal objection by any of the Notice Parties.

7. In accordance with this Order and any other order of this Court, each of the financial institutions at which the Debtors maintain their accounts relating to the payment of the obligations described in the Motion is directed to receive, process, honor, and pay any and all checks, drafts, wire transfers, and automated clearing house transfers issued, whether before or after the Petition Date, for payment of obligations described in the Motion to the extent that sufficient funds are on deposit in such amounts.

8. The Debtors are authorized to issue postpetition checks, or to effect postpetition wire transfer requests, in replacement of any checks or wire transfer requests in respect of payments of prepetition obligations described in the Motion that are dishonored or rejected.

9. 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.

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

11. 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.


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

13. 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.

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

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

Dated: Feb. 5, 2013
Chicago, Illinois



Jacqueline P. Cox
United States Bankruptcy Judge