



certificates;<sup>2</sup> (g) counsel to the ad hoc committee of certain holders of pass-through certificates related to the Debtors' Powerton and Joliet generating stations; (h) the owner trusts and the equity investors for the Debtors' Powerton and Joliet generating stations (and their respective counsel, if known); (i) the lender under Debtor Edison Mission Energy's letter-of-credit facility; (j) the state attorneys general for states in which the Debtors conduct business; (k) United States Attorney for the Northern District of Illinois; (l) the Internal Revenue Service; (m) the Securities and Exchange Commission; (n) the Environmental Protection Agency and similar state environmental agencies for states in which the Debtors conduct business; (o) the Pension Benefit Guaranty Corporation; and (p) 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 any Certificateholder that fails to serve an objection on the Trustee (as defined in the Motion) in accordance with the terms hereof shall be deemed to consent to entry of the Extension Order (as defined in the Motion) and, upon entry of such order, shall not take, and hereafter such shall be forever barred, enjoined, and estopped from taking, any direct or indirect action to join, participate in, or otherwise assist or support any motion, application, request, or claim in respect thereof that may be filed against the Debtors by any third party, whether in the Debtors' chapter 11 cases or otherwise, including any Certificateholders, that is inconsistent with the Extension (as defined in the Motion).

**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 Debtors' notice and claims agent for these chapter 11 cases, available at [www.edisonmissionrestructuring.com](http://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](http://www.ilnb.uscourts.gov) in accordance with the procedures and fees set forth therein.

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<sup>2</sup> Pursuant to Section 10.1 of that certain Pass-Through Trust Agreement B, dated as of August 17, 2000, between Midwest Generation, LLC and the United States Trust Company of New York, as Pass-Through Trustee, the Pass-Through Trustee is required to transmit and disseminate the Motion and any attachments thereto to the respective holders of the pass-through certificates.

Dated: September 11, 2013

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

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

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

**DEBTORS’ EMERGENCY MOTION FOR ENTRY OF ORDER  
(I) FURTHER EXTENDING TIME TO ASSUME OR REJECT  
POWERTON AND JOLIET LEASES AND RELATED AGREEMENTS  
OR, ALTERNATIVELY, (II) AUTHORIZING REJECTION OF  
POWERTON AND JOLIET LEASES AND RELATED AGREEMENTS**

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

**Relief Requested**

1. In the face of ongoing restructuring discussions to effectuate a restructuring of the Leases (as defined below), as well as the recently launched process to explore a potential sale of certain or substantially all of the Debtors’ assets, by this Motion, the Debtors seek entry of an order, *either* in the form attached hereto as: (a) **Exhibit A** (the “Extension Order”), authorizing

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, include: Edison Mission Energy (1807); Camino Energy Company (2601); Chestnut Ridge Energy Company (6590); Edison Mission Finance Co. (9202); Edison Mission Energy Fuel Services, LLC (4630); Edison Mission Fuel Resources, Inc. (3014); Edison Mission Fuel Transportation, Inc. (3012); Edison Mission Holdings Co. (6940); Edison Mission Midwest Holdings Co. (6553); EME Homer City Generation L.P. (6938); Homer City Property Holdings, Inc. (1685); Midwest Finance Corp. (9350); Midwest Generation EME, LLC (1760); Midwest Generation, LLC (8558); Midwest Generation Procurement Services, LLC (2634); Midwest Peaker Holdings, Inc. (5282); Mission Energy Westside, Inc. (0657); San Joaquin Energy Company (1346); Southern Sierra Energy Company (6754); and Western Sierra Energy Company (1447). The location of parent Debtor Edison Mission Energy’s corporate headquarters and the Debtors’ service address is: 3 MacArthur Place, Suite 100, Santa Ana, California 92707.

entry into the term sheet attached as **Exhibit 1** to the Extension Order (the “Term Sheet”),<sup>2</sup> pursuant to which the deadline for Debtor Midwest Generation, LLC (“MWG”) to assume or reject the Leases will be extended to December 31, 2013; or (b) **Exhibit B** (the “Rejection Order”), authorizing the rejection of the Leases and any other agreements relating to the Facilities, including the documents identified on **Exhibit 1** to the Rejection Order (collectively, the “Lease Documents”), solely to the extent the Lease Documents are executory contracts or unexpired leases.

### **Jurisdiction**

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

3. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

4. The statutory bases for the relief requested herein are sections 363 and 365 of title 11 of the United States Code (the “Bankruptcy Code”) and rules 6006 and 9019 of the Federal Rules of Bankruptcy Practice and Procedure (the “Bankruptcy Rules”).

### **Background**

5. Edison Mission Energy (“EME”), together with its Debtor and non-Debtor affiliates, is a leading independent power producing enterprise specializing in developing, operating, and selling energy and capacity from approximately 40 generating facilities in 12 states and the Republic of Turkey. The Debtors have approximately 800 employees and maintain headquarters in Chicago, Illinois and Santa Ana, California.

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<sup>2</sup> Discussions among the parties may lead to the modification of certain terms set forth in the Term Sheet. As a result, and to the extent there are modifications, the Debtors reserve the right to supplement this motion before the hearing to identify any such modifications.

6. On December 17, 2012 (the "Petition Date"), seventeen of the Debtors filed petitions with this Court under chapter 11 of the Bankruptcy Code. On May 2, 2013, three additional Debtors filed petitions with this Court under chapter 11 of the Bankruptcy Code. The Court has approved procedural consolidation and joint administration of these chapter 11 cases pursuant to Bankruptcy Rule 1015(b) [Docket Nos. 115, 154, and 780]. No party has requested the appointment of a trustee or examiner in these chapter 11 cases. The Debtors continue to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. On January 7, 2013, the United States Trustee for the Northern District of Illinois 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]).

7. On April 11, 2013, the Court entered an order establishing July 1, 2013, as the deadline for MWG to assume or reject the Leases [Docket No. 670]. On June 27, 2013, the Court entered an order further extending the deadline for MWG to assume or reject the Leases through September 30, 2013 [Docket No. 943] (as amended on July 17, 2013 [Docket No. 1020]) (the "Original Extension Order"). On October 1, 2013, absent further action by the Debtors, the Leases will be deemed rejected pursuant to the Original Extension Order. As discussed below, following entry of the Original Extension Order, MWG and EME have continued to engage in discussions with their stakeholders regarding a potential consensual restructuring of the Leases and recently launched a sale process.

### **The Powerton-Joliet Facilities**

8. The Powerton and Joliet Facilities and the leveraged lease transactions related thereto (collectively, the "Transaction") were described in detail in the *Motion for Entry of Order (I) Extending Time to Assume or Reject Powerton and Joliet Facility Leases and Related*

*Agreements or, Alternatively, (II) Authorizing Rejection of Powerton and Joliet Facility Leases and Related Agreements* [Docket No. 851], which is incorporated herein by reference. A summary description is provided below.

**I. The Owner Lessors' Acquisition of the Facilities**

9. Effective as of August 17, 2000 (the "Closing Date"), MWG entered into the Transaction, pursuant to which MWG sold its Powerton Generating Station in Pekin, Illinois ("Powerton") and Units 7 and 8 of its Joliet Generating Station in Joliet, Illinois (collectively, "Joliet" and, collectively with Powerton, the "Facilities") to certain third-party investors and simultaneously leased the Facilities from such third-party investors. On the Closing Date, Powerton Trust I (n/k/a Nesbitt Asset Recovery Series P-1), Powerton Trust II, Joliet Trust I (n/k/a Nesbitt Asset Recovery Series J-1), and Joliet Trust II (collectively, the "Owner Lessors") purchased the Facilities from MWG for approximately \$1.367 billion in aggregate cash consideration.<sup>3</sup> Each Owner Lessor is a subsidiary of a special purpose entity (each, an "Owner Participant" and, collectively, the "Owner Participants").

10. To fund the \$1.367 billion purchase price for the Facilities, the Owner Lessors used \$237 million in equity funding from the Owner Participants and financed the remaining \$1.147 billion of the purchase price by issuing certain Lessor Notes (collectively, the "Lessor Notes") pursuant to lease indentures (collectively, the "Lease Indentures"), which Lessor Notes were held by pass-through trusts (collectively, the "Pass-Through Trusts"). The Pass-Through Trusts conducted a private offering of pass-through certificates (collectively, the "Certificates"), which Certificates were sold to qualified institutional buyers (such holders, collectively, the "Certificateholders"). The Certificates are held for the benefit of the Certificateholders by The

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<sup>3</sup> MWG did not transfer its ownership interests in the land on which the Facilities are located (collectively, the "Facility Sites") to the Owner Lessors in connection with the Transaction.

Bank of New York Mellon, in its capacity as successor pass-through trustee under that certain Pass-Through Trust Agreement B, dated as of August 17, 2000, with MWG (the "Trustee"). As of the date hereof, Certificates in the aggregate principal amount of \$345 million remain outstanding.

## **II. MWG's Leases of the Facilities**

11. On the Closing Date, MWG simultaneously leased an undivided interest in Powerton and Joliet from the Powerton Owner Lessors and the Joliet Owner Lessors, respectively, pursuant to the applicable Facility Lease Agreements (the "Facility Leases"). As of the Closing Date, MWG also leased the Facility Sites to the respective Owner Lessors pursuant to those certain Facility Site Sublease Agreements (collectively, the "Facility Site Subleases") and, collectively with the Facility Leases, the "Leases"). Absent early rejection or termination, the Powerton Leases expire in 2034 and the Joliet Leases expire in 2030.

12. Under the Facility Leases, rent is paid in arrears in semi-annual payments. Approximately \$75 million in lease rent became payable on January 2, 2013. Under the forbearance agreements discussed above, MWG paid approximately \$7.1 million in deferred lease rent on or about February 15, 2013. Approximately \$75 million in further lease rent payments were scheduled to become payable on July 2, 2013. Pursuant to the Original Extension Order, MWG paid \$3.75 million per month on each of July 3, 2013, August 1, 2013, and September 3, 2013 (for a total of approximately \$11.25 million). Including the unpaid balance of the July 2, 2013 rent payment, approximately \$548 million in lease rent payments will become payable under the Facility Leases before the termination of the Powerton leases in 2034 and the Joliet leases in 2030.

13. The lease rent payments under the Facility Leases are used by the Owner Lessors to support the principal and interest payments on the Certificates, which are secured by, among

other things, an assignment of the Facility Leases and a mortgage on the underlying Facilities. Lease rent payments in excess of the amounts required to service the Certificates are available for distribution to the Owner Participants.<sup>4</sup>

### III. EME's Obligations Under the Lease Documents

14. In addition to MWG's obligations under the Leases and other Lease Documents, EME is obligated under the Lease Documents in four ways.

- Under certain guarantees executed by EME in favor of the Owner Lessors (collectively, the "EME Guarantees") in connection with the Transaction, EME "unconditionally and irrevocably guarantees, as primary obligation and not merely as surety," MWG's payment of rent under the Facility Leases. See EME Guarantees § 2.1.
- Under certain guarantees executed by EME in favor of the Owner Participants and certain of their affiliates (collectively, the "OP Guarantees") in connection with the Transaction, EME "unconditionally and irrevocably guarantees, as primary obligation and not merely as surety" MWG's obligation to pay "all amounts" due to the Owner Participants. See OP Guarantees § 2.1.
- The participation agreements that govern the Transaction (collectively, the "Participation Agreements") require EME, subject to certain conditions, to indemnify the Owner Lessors, the Owner Participants, the Indenture Trustees, and the Trustees, among other entities, for certain non-tax claims related to the financing and operation of the Facilities. See Participation Agreements § 12.1.
- Under certain tax indemnity agreements between EME and each of the Owner Participants (collectively, the "Tax Indemnity Agreements") executed in connection with the Transaction, EME, subject to certain terms and conditions, agrees to indemnify each Owner Participant for the adverse tax consequences resulting from breaches of representations and warranties under the Tax Indemnity Agreement and certain acts or omissions of MWG. See Tax Indemnity Agreements § 6.1–6.10.

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<sup>4</sup> For over ten years, no lease rent paid by MWG to the Owner Lessors has been used to make distributions to the Owner Participants.

**MWG's and EME's Efforts to  
Restructure the Leases and Related Lease Documents**

**I. Restructuring Discussions Regarding the Leases**

15. Following months of discussions that began before the Petition Date, and in the face of the July 1, 2013 deadline under section 365(d)(4) of the Bankruptcy Code to assume or reject the Leases, the Debtors filed the Original Extension Motion. In the hope that additional time could afford MWG's key stakeholders—including the Owner Lessors, the Trustee, the Committee, and the ad hoc committee of certain holders of EME's unsecured notes (the "Noteholder Group")—the runway needed to reach a consensual restructuring of the Leases, the Original Extension Motion included proposed terms on which MWG and EME would be prepared to extend the deadline for MWG to assume or reject the Leases. Alternatively, and in the absence of approval of the Extension, the Original Extension Motion sought to reject the Leases on or before July 1, 2013.

16. Following discussions among MWG and EME and their respective stakeholders, the parties agreed to the terms of a consensual extension of the section 365(d)(4) deadline through September 30, 2013, which the Court approved through entry of the Original Extension Order on June 27, 2013.<sup>5</sup>

17. Since entry of the Original Extension Order, MWG and EME and their respective stakeholders continued to engage in discussions regarding the terms of a potential consensual restructuring of the Leases. On August 9, 2013, MWG delivered a proposal to its various stakeholders with respect to the terms of a consensual restructuring of the Leases. MWG and

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<sup>5</sup> As discussed in the *Supplement to Debtors' Motion for Entry of Order (I) Extending Time to Assume or Reject Powerton and Joliet Facility Leases and Related Agreements or, Alternatively, (II) Authorizing Rejection of Powerton and Joliet Facility Leases and Related* [Docket No. 925], the terms of the extension proposed in the Original Extension Motion were subsequently modified following discussions between MWG, EME, the Trustee, the Committee, and the Noteholder Group and their respective advisors.

EME have continued to engage their stakeholders in restructuring discussions.

## **II. The Debtors' Sale Process**

18. In addition to their efforts to restructure the Leases, the Debtors, with the assistance of their advisors and in close consultation with their major creditor constituencies, including the Committee and the Noteholder Group, have been focused on considering, analyzing, and potentially pursuing a sale of substantially all of their assets in an effort to maximize value in these chapter 11 cases.

19. On July 17, 2013, the Debtors obtained Court authority to retain J.P. Morgan Securities LLC ("J.P. Morgan") to advise them, together with Perella Weinberg Partners L.P., on all aspects of their sale process and any related transactions [Docket No. 1021]. On August 1, 2013, the Debtors, with the assistance of J.P. Morgan and their other advisors, commenced a formal marketing process to solicit proposals. The Debtors have subsequently executed nondisclosure agreements with potentially interested parties and recently disseminated a confidential information memorandum to certain such potentially interested parties. The Debtors' sale process-related efforts are expected to continue well beyond the current September 30, 2013 deadline to assume or reject the Leases.

## **III. The Extension Term Sheet**

20. Given the size and complexity of the lease structure, the number of parties involved, and the short timeframe before the deadline to assume or reject the Leases, the Debtors will not reach a final agreement, if at all, before the September 30, 2013 deadline under the Original Extension Order to assume or reject the Leases.

21. Therefore, as was the case back in June 2013, when the Court entered the Original Extension Order, the Debtors are faced with three choices. *First*, MWG can assume the Leases. Assumption of the Leases on their current terms, however, is not feasible because assumption

would impair stakeholder value in the face of an adjusted operating loss of \$253 million in 2012, scheduled rent payments in excess of \$500 million during the remaining terms of the Facility Leases, and the obligation to fund substantial capital expenditures at the Facilities in 2013, to comply with certain environmental regulations.

22. **Second**, MWG can allow the Leases to be rejected on September 30, 2013. Like assumption of the Leases, the rejection of the Leases is an undesirable outcome because rejection impairs—if not conclusively forecloses—the Debtors’ ability to facilitate continued discussions and analysis among all stakeholders to determine whether a restructuring of the MWG lease obligations can be achieved. Moreover, rejection could potentially impact the interest among participants in the sale process.

23. **Third**, MWG and its stakeholders can agree on an extension of the deadline to assume or reject the Leases to facilitate continued restructuring discussions in a manner that does not prejudice the Debtors’ estates or the rights of their stakeholders. Although the Debtors have begun to explore this third option with all relevant stakeholders, to date, an agreement among the parties has not yet been reached.<sup>6</sup>

24. To avoid assumption or rejection of the Leases pursuant to section 365(a) of the Bankruptcy Code at this time, which may impair stakeholder value, and to enable the Debtors to continue the sale process, MWG and EME are prepared to offer consideration to the Trustee, Certificateholders, and Owner Lessors in return for an extension of the deadline to assume or reject the Leases (the “Extension”). Specifically, MWG and EME are prepared to agree to an extension of the deadline for MWG to assume or reject the Leases through December 31, 2013,

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<sup>6</sup> The deadline to assume or reject an unexpired lease of nonresidential real property may be extended “upon prior written consent of the lessor . . .” 11 U.S.C. § 365(d)(4)(B)(ii). Accordingly, the Debtors hope to obtain the consent of the Owner Lessors to the Extension. The Debtors have also engaged the Trustee to obtain its consent, at the direction of the Certificateholders, to the Extension.

on terms that are substantially similar to those provided in the Original Extension Order. More specifically, the Extension contemplates the following:

- on the first business day of each month during the Extension Period, MWG shall pay by wire transfer to the Trustee the sum of \$3.75 million in partial satisfaction of any allowed postpetition administrative lease rent accruing from July 3, 2013, onward and the Trustee will refund to MWG the allocable portion of any monthly payment that covers the period subsequent to the effective date of rejection of any of the Facility Leases;
- MWG will continue to make presently scheduled environmental retrofit capital expenditures for the premises subject to the Leases from October 1, 2013, through the earlier of the date of the hearing to consider a motion to reject the Leases and December 31, 2013;
- MWG will pay certain professional fees and expenses of the advisors to the Trustee and the Owner Lessors (in addition to any professional fees payable under the Original Extension Order); and
- notwithstanding that the lessor notes have not been accelerated, the lessor notes shall be deemed to accrue, from the commencement of MWG's chapter 11 case, interest for all purposes under the operative documents at the overdue rate, calculated based on the entire amount of principal and accrued but unpaid interest outstanding under the lessor notes as of the commencement of MWG's chapter 11 case and at each scheduled lease payment date, in all cases as though the lessor notes had been declared due and payable as of the commencement of MWG's chapter 11 case. For the avoidance of doubt, nothing in the Term Sheet shall affect any determination regarding the applicability of, or allowance of postpetition interest against the Debtors under, section 506(b) of the Bankruptcy Code.

25. The Term Sheet also provides that the Extension is without prejudice to:

- all rights of all parties in interest in MWG's chapter 11 case (including, without limitation, the Committee and the Noteholder Group) with respect to the characterization of the Leases as true leases or secured financings;
- the rights of any party to assert any claims (including, without limitation, claims for rent, rejection damage claims, or cure claims) or defenses thereto associated with any attempted assumption or rejection of any Lease;
- notwithstanding the Partial Lease Payments, all rights, claims, defenses, and objections, of all parties in interest in MWG's chapter 11 case (including, without limitation, the Committee and the Noteholder Group) with respect to the amount of administrative lease rent claims accruing from and after the commencement of MWG's chapter 11 case, including, without limitation, the

Trustee's and the Owner Lessor Parties' rights (if any) and claims (if any) to assert that the unpaid portion of the \$75.7 million lease rent payment due under the Leases on July 2, 2013, was payable in full on such date as an administrative expense claim against MWG as the Leases had not been rejected as of such date, and MWG's defenses with respect thereto;

- all rights, claims (including, without limitation, administrative, secured, and unsecured claims), and interests of the Owner Lessor Parties, the Trustee, the Certificateholders, and all parties in interest in MWG's chapter 11 case (including, without limitation, the Committee and the Noteholder Group) under or in connection with the Leases, the related operative documents, and applicable law, including, without limitation, the Bankruptcy Code; and
- the right of MWG to file a motion requesting Bankruptcy Court authority to assume or reject any Lease at any time and the right of any party in interest with respect thereto; provided, however, that if MWG files a motion to reject any Lease, the effective date of rejection of any such Lease shall be no earlier than the hearing to consider such motion and, subject to the foregoing, all parties in interest in the MWG chapter 11 case (including, without limitation, the Committee and the Noteholder Group) shall maintain all of their rights and defenses with regard to the appropriate effective date of rejection of any such Lease. In the event that the Leases are determined by the Bankruptcy Court to be secured financings, the Partial Lease Payments will be deemed to be an adequate protection payment with all parties reserving their rights as to the application of such payment to principal or outstanding interest on the lessor notes.

26. As such, the Extension would be without prejudice to the right of MWG to assume or reject any of the Leases and related Lease Documents at any time. In addition, all parties would reserve their rights to assert any claims (including rejection damage claims or cure claims) or defenses thereto associated with MWG's potential future assumption or rejection of the Leases and related Lease Documents. The Extension would also reserve the rights of all parties with respect to the characterization of the Leases and all rights, claims and interests of the Owner Lessors, the Trustee, and the Certificateholders with respect to the Leases.

27. Alternatively, in the absence of an agreement on an extension, MWG and EME seek entry of an order rejecting the Leases and related Lease Documents at the hearing on September 19, 2013, with such rejection being effective as of the entry of the Rejection Order.

To the extent that the Leases and related Lease Documents are rejected pursuant to the Rejection Order, MWG intends to continue operating the Facilities in the ordinary course until the relevant, applicable required regulatory approvals are obtained to facilitate the orderly turnover of the Facilities to the Owner Lessors.

### **Basis for Relief**

#### **I. The Court Should Approve the Extension to Permit the Parties to Continue to Discuss Restructuring Alternatives With Respect to the Facilities.**

##### **A. Section 363(b) of the Bankruptcy Code Authorizes the Debtors' Request for the Extension.**

28. Section 363(b) of the Bankruptcy Code provides, in relevant part, 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). Although section 363 of the Bankruptcy Code does not set forth a standard for determining when a use of estate property outside the ordinary course of business should be authorized, courts in this and other circuits have consistently held that such use is appropriate if the transaction represents the sound or reasonable business judgment of the debtor. See, e.g., Fulton State Bank v. Schipper (In re Schipper), 933 F.2d 513, 515 (7th Cir. 1991) (noting that sale under section 363 involves exercise of fiduciary duties and requires an “articulated business justification”); Official Comm. of Unsecured Creditors of Artra Grp., Inc. v. Artra Grp., Inc. (In re Artra Grp., Inc.), 300 B.R. 699, 702 (Bankr. N.D. Ill. 2003) (noting that Bankruptcy Rule 9019 requires settlement to fall within range of reasonableness); In re Telesphere Commc’ns, Inc., 179 B.R. 544, 552 (Bankr. N.D. Ill. 1994) (same); see also Comm. of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.), 722 F.2d 1063, 1070 (2d Cir. 1983) (requiring “some articulated business justification to approve the use, sale, or lease of property outside of the ordinary course of business”). If a valid business justification exists for the use of property of the estate, a debtor’s decision enjoys a strong presumption that “in making the

business decision the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action was in the best interests of the company.” In re S.N.A. Nut Co., 186 B.R. 98, 102 (Bankr. N.D. Ill. 1995) (citations omitted); In re H. King and Assocs., 295 B.R. 246 (Bankr. N.D. Ill. 2003) (noting that business judgment standard presumes that corporate action was in the best interests of the company). Indeed, when applying the “business judgment” standard, courts show great deference to a debtor’s business decisions. See Pitt v. First Wellington Canyon Assoc. (In re First Wellington Canyon Assoc.), No. 89-C-593, 1989 WL 106838, \*3 (N.D. Ill. Sept. 8, 1989) (“Under this test, the debtor’s business judgment . . . must be accorded deference unless shown that the bankrupt’s decision was taken in bad faith or in gross abuse of the bankrupt’s retained discretion”); see also In re Johns-Manville Corp., 60 B.R. 612, 615–16 (Bankr. S.D.N.Y. 1986) (“[T]he Code favors the continued operation of a business by a debtor and a presumption of reasonableness attaches to a debtor’s management decisions”). 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.

29. Absent the Extension, the Leases and other related Lease Documents will be rejected after September 30, 2013. Absent a consensual restructuring proposal or extension consistent with the Extension, rejection of the Leases and other related Lease Documents is necessary to preserve stakeholder value in the face of an adjusted operating loss of \$253 million in 2012, scheduled rent payments in excess of \$500 million during the remaining terms of the Facility Leases, and the obligation to fund substantial capital expenditures at the Facilities in 2013, or consider shutting down certain units, to comply with certain environmental regulations.

30. The Extension, if agreed to by the necessary parties, would preserve the status quo and, most importantly, provide MWG and EME with the additional time necessary to

continue restructuring discussions with their stakeholders regarding potential alternatives with respect to the Facilities and to continue the sale process, potentially obviating costly and distracting litigation regarding rejection damages and other related claims. As such, there can be no doubt that an extension of time is in the best interests of *all* parties and, therefore, falls firmly within MWG's and EME's respective business judgment.

**B. Bankruptcy Rule 9019 Authorizes the Debtors' Entry into the Extension.**

31. In addition, Bankruptcy Rule 9019(a) permits a bankruptcy court to approve a debtor's "compromise or settlement" after notice and a hearing, provided that the settlement is "fair and equitable." Fed. R. Bankr. P. 9019(a); see Depoister v. Mary M. Holloway Found., 36 F.3d 582, 586 (7th Cir. 1994) ("In conducting a hearing under Rule 9019(a), the bankruptcy court is to determine whether the proposed compromise is fair and equitable and in the best interests of the bankruptcy estate.") (internal citations omitted); In re Andreuccetti, 975 F.2d 413, 421 (7th Cir. 1992) (noting that Bankruptcy Rule 9019(a) authorizes the court to approve a settlement if "the settlement is in the best interests of the estate."); In re Energy Co-op, Inc., 886 F.2d 921, 926–927 (7th Cir. 1989) (noting that "benchmark for determining the propriety of a bankruptcy settlement is whether the settlement is in the best interests of the estate.").

32. Compromises are tools for expediting the administration of the case and reducing administrative costs and are favored in bankruptcy. See Fogel v. Zell, 221 F.3d 955, 960 (7th Cir. 2000) ("Judges naturally prefer to settle complex litigation than to see it litigated to the hilt, especially when it is litigation in a bankruptcy proceeding—the expenses of administering the bankruptcy often consume most or even all of the bankrupt's assets."); In re Martin, 91 F.3d 389, 393 (3d Cir. 1996) ("To minimize litigation and expedite the administration of a bankruptcy estate, compromises are favored in bankruptcy").

33. It is well-settled that a proposed settlement need not be the best result that the debtor could have achieved, but only must fall “within the reasonable range of litigation possibilities.” Energy Co-op, 886 F.2d at 929; Artra Grp., 300 B.R. at 702 (noting that Bankruptcy Rule 9019 requires settlement to fall within range of reasonableness); In re Telesphere Commc’ns, Inc., 179 B.R. at 553 (same). Furthermore, the Seventh Circuit has instructed that, “[c]entral to the bankruptcy judge’s determination is a comparison of the settlement’s terms with the litigation’s probable costs and probable benefits. Among the factors the bankruptcy judge should consider in [the] analysis are the litigation’s probability of success, the litigation’s complexity, and the litigation’s attendant expense, inconvenience, and delay.” LaSalle Nat’l Bank v. Holland (In re Am. Reserve Corp.), 841 F.2d 159, 161 (7th Cir. 1987).

34. MWG and EME will continue to engage in discussions with their stakeholders regarding a potential consensual restructuring of the Leases and related Lease Documents. Indeed, on August 9, 2013, MWG delivered a proposal to restructure the Leases to its creditors. As such, the Debtors submit that the Extension is in the best interests of the Debtors’ estates because it would allow the parties continue to engage in restructuring discussions regarding the Leases. Moreover, the Extension will allow the sale process to continue without the distraction of a rejection of the Leases, which itself could impair interest and value.

35. And, notwithstanding the overwhelming benefits of the Extension, it also includes some major concessions by MWG. Specifically, the Extension contemplates that MWG will: (a) pay \$3.75 million on the first business day of each month during the Extension Period in partial satisfaction of any allowed postpetition administrative lease rent; (b) pay the reasonable and documented professional fees and expenses incurred by the Owner Lessors and Trustee; and (c) will continue to make presently scheduled environmental retrofit capital expenditures for the

Facilities from October 1, 2013, through the ultimate assumption or rejection of the Facility Leases. MWG is prepared to take on these obligations in light of its view of the value that a potential consensual restructuring of the Facilities may provide to the Debtors' estates.<sup>7</sup>

36. On balance, the Extension positions, at reasonable cost, MWG and EME to engage in further productive discussions with their stakeholders regarding the terms of a potential value-maximizing restructuring of the Leases. For these reasons, the Debtors submit that the Extension easily meets the reasonableness standard under Bankruptcy Rule 9019.

**C. MWG Hopes to Obtain the Owner Lessors' Consent to the Extension as Required Under Section 365(d)(4) of the Bankruptcy Code.**

37. Section 365(d)(4) permits a debtor-lessee to extend the deadline to assume or reject an unexpired lease of nonresidential real property "upon prior written consent of the lessor," among other requirements. 11 U.S.C. § 365(d)(4)(B)(ii). Here, MWG hopes to obtain the Owner Lessors' consent to extend the deadline to assume or reject the Leases. Accordingly, the Debtors submit that MWG will satisfy section 365(d)(4)(B)(ii) of the Bankruptcy Code.

**D. All Interested Parties Have Received Sufficient Notice of and May Be Bound by the Extension.**

38. The Debtors submit that the notice to be provided to all interested parties is sufficient and appropriate under the circumstances. Importantly, MWG and EME have been engaged in discussions with the advisors to the Owner Lessors, the Trustee, and Certificateholders holding approximately 80 percent of the Certificates by outstanding principal amount since before the Petition Date. Furthermore, the Debtors have provided 9 days' notice of the terms of the proposed Extension and an opportunity to object. Finally, in addition to the Certificateholders' independent right to object to the Motion, if the Trustee receives written

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<sup>7</sup> To the extent the terms of the Extension change, the Debtors will update to the Court and other parties in interest as soon as practicable before the hearing on this Motion.

direction from a majority in principal amount of the Certificateholders to object to the Extension on or before September 17, 2013, the Trustee will not be bound by the Extension.

39. The Debtors submit that such notice is sufficient under the facts and circumstances of these chapter 11 cases. Indeed, courts in this and other jurisdictions have approved settlements with similar notice provisions in other complex chapter 11 proceedings. See, e.g., In re Edison Mission Energy, No. 11-40219 (JPC) (Bankr. N.D. Ill. June 27, 2013); In re UAL Corp., No. 02-48191 (ERW) (Bankr. N.D. Ill. Feb. 15, 2005); In re Conseco Inc., No. 02-49672 (CAD) (Bankr. N.D. Ill. Jan. 29, 2003); see also In re Capmark Fin. Grp., 438 B.R. 471, 475 (Bankr. D. Del. 2010) (holding that settlement negotiated by ad hoc committee of certain lenders was binding on all lenders unless lenders opted out); In re U.S. Concrete, Inc., No. 10-11407 (PJW) (Bankr. D. Del. June 2, 2010) (approving class action settlement that bound any class members who failed to object or opt out); Floyd v. CIBC World Markets, Inc., 426 B.R. 622, 649 (Bankr. S.D. Tex. 2009) (finding that financial advisor's failure to object to settlement, despite knowing that it disapproved, waived financial advisor's right to approve settlement); In re DJK Residential LLC, Case No. 08-10375 (JMP) (Bankr. S.D.N.Y. Dec. 11, 2008) (approving class action settlement that bound any class members who failed to object or opt out); In re Calpine Corp., No. 05-60200 (BRL) (Bankr. S.D.N.Y. Nov. 26, 2007) (holding that settlement of make-whole obligations negotiated by ad hoc committee of certain lenders was binding on all lenders unless lenders opted out); In re Calpine Corp., No. 05-60200 (BRL) (Bankr. S.D.N.Y. Nov. 26, 2007) (same); In re Calpine Corp., No. 05-60200 (BRL) (Bankr. S.D.N.Y. Sept. 19, 2007) (same); In re Calpine Corp., No. 05-60200 (BRL) (Bankr. S.D.N.Y. Aug. 7, 2007) (same).

**II. Alternatively, the Court Should Authorize the Rejection of the Leases and Related Lease Documents.**

40. Section 365(a) of the Bankruptcy Code provides that a debtor in possession, “subject to the court’s approval, may assume or reject any executory contract or unexpired lease of the debtor.” 11 U.S.C. § 365(a); see also Johnson v. Fairco Corp., 61 B.R. 317, 319–20 (N.D. Ill. 1986) (“The debtor in possession’s decision to assume or reject an unexpired lease is subject to court approval after notice and hearing”). The decision to assume or reject an executory contract or unexpired lease is a matter within the “business judgment” of the debtor. See Nat’l Labor Relations Bd. v. Bildisco & Bildisco (In re Bildisco), 465 U.S. 513, 525 (1984) (noting that business judgment standard applies to decision to approve rejection or assumption of executory contracts and unexpired leases); see also In re Kmart Corp., No. 02-02474, 2007 WL 4556991, at \*7 (Bankr. N.D. Ill. Nov. 20, 2007) (same).

41. The business judgment standard provides that a court should approve a debtor’s business decision unless the decision is the product of bad faith, whim, or caprice. See Lubrizol Enters. v. Richmond Metal Finishes, 756 F.2d 1043, 1047 (4th Cir. 1985); see also In re Bullet Jet Charter, Inc., 177 B.R. 593, 601 (Bankr. N.D. Ill. 1995) (recognizing that decision to assume or reject executory contract or unexpired lease is governed by business judgment standard); In re Del Grosso, 115 B.R. 136, 138 (Bankr. N.D. Ill. 1990) (same). Further, “[t]his provision allows a trustee to relieve the bankruptcy estate of burdensome agreements which have not been completely performed.” Stewart Title Guar. Co. v. Old Republic Nat’l Title Ins. Co., 83 F.3d 735, 741 (5th Cir. 1996) (internal citation omitted).

**A. The Decision to Reject the Leases Is a Sound Exercise of MWG’s Business Judgment.**

42. MWG has determined, in its sound business judgment, that absent a negotiated resolution between Debtors and their respective stakeholders, the Leases are significantly

burdensome, provide no near-term cash flow to its estate, and will impair MWG's ability to reorganize absent rejection (or an acceptable restructuring of the obligations, which has not yet been achieved). As MWG's decision to reject the Leases is not motivated by "bad faith, whim, or caprice," MWG's decision to reject the Leases satisfies the "business judgment" standard. See Lubrizol, 756 F.2d at 1047.

43. The Facilities earn revenue principally through the sale of electricity and capacity and related services to PJM Interconnect, LLC ("PJM"). With respect to the sale of electricity, PJM dispatches power generated at the Facilities to meet real-time electricity demand in the states in which PJM operates. Pricing for the electricity is generally determined by the least efficient unit that PJM needs to meet demand for a respective zone. For MWG to earn revenue from generating electricity, its costs for fuel and operations must remain lower than the least efficient unit needed by PJM. To sell capacity, non-Debtor affiliate Edison Mission Marketing & Trading, Inc. markets its commitment for the units to be available as needed during future market periods. Pricing for these sales is calculated as a function of PJM's annual required reserve margin, the estimated net cost of "new entrant" generation, estimated peak demand, and the actual amount of capacity bid into the market at or below the demand curve.

44. At present, uncertainty regarding future energy and capacity prices coupled with the need to install environmental retrofits in excess of \$400 million presents a challenging economic situation for the Facilities. Overall, MWG projects negative adjusted earnings before interest, taxes, depreciation, and amortization ("EBITDA") under a range of future price scenarios. Further, the economic performance and capital expenditure requirements surrounding the Facilities and MWG's coal fleet more generally, have materially affected, and will continue to materially affect, the economic performance of the Debtors' broader business enterprise.

Importantly, between 2006 and 2012, MWG's adjusted EBITDA fell from \$631 million to negative \$152 million—a decline of approximately \$783 million. MWG's poor performance, in turn, has affected EME's overall performance during the same period, with EME's adjusted EBITDA falling from \$993 million in 2006 to \$80 million in 2012.<sup>8</sup> MWG and EME anticipate that these trends will continue unabated unless power markets stabilize and strengthen.

45. The current terms of the Leases further impede any possible improvement in MWG's financial health. As noted above, cash lease rent payments totaling approximately \$75 million became payable on July 2, 2013. Beyond this year, the Leases further require future lease rent payments of approximately \$151.3 million in 2014, approximately \$66.7 million in 2015, approximately \$26.1 million in 2016, and total lease rent payments from July 2, 2013, through the termination of the Powerton Leases in 2034 and the Joliet Leases in 2030 of approximately \$560.1 million. These upcoming lease rent payments are substantial in light of forecasts of energy and capacity prices, expected economic performance, and capital expenditures required to comply with environmental regulations and are indefensible in light of the fact that the market rental rate for the Leases is *de minimis*, if not zero.

46. In addition to such large semiannual rent payments, the Leases impose significant ongoing operational costs on MWG and the other Debtors. Among other things, MWG must maintain the Facilities in accordance with “prudent industry practice” and in compliance with applicable laws, which require MWG to make substantial capital expenditures. See Facility Leases §7.1. MWG anticipates that it would require hundreds of millions of dollars of additional liquidity to cover the Facilities' and MWG's near-term capital expenditure and other operational needs, including capital expenditure investments of approximately \$445 million through 2016.

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<sup>8</sup> EME's adjusted EBITDA for 2012 includes production tax credits and excludes restructuring charges.

**B. The Decision to Reject the Related Lease Documents Is a Sound Exercise of the Debtors' Business Judgment to the Extent that the Court Authorizes MWG to Reject the Leases.**

47. To the extent that MWG is authorized to reject the Leases, the Debtors submit that it is a sound exercise of their business judgment to reject the related Lease Documents, as these documents exclusively relate to the Facilities and complement the Leases and, accordingly, will have absolutely no purpose once MWG's underlying Lease obligations are rejected. Accordingly, the Debtors respectfully request that the Court authorize the Debtors to reject the related Lease Documents.

**C. The Court Should Authorize MWG to Continue to Operate the Facilities Following Rejection to Facilitate an Orderly Transfer to the Owner Lessors.**

48. To the extent that the Leases and related Lease Documents are rejected, MWG seeks authority to continue operating the Facilities in the ordinary course pending receipt of the relevant, applicable required regulatory approvals to facilitate the orderly turnover of the Facilities to the Owner Lessors. The Debtors submit that such relief is warranted due to the fact that MWG is *barred* under relevant, applicable laws and regulations from transferring the Facilities to the Owner Lessors after entry of the Rejection Order absent FERC approval. The Owner Lessors are likewise barred from operating the Facilities without prior FERC approval. Specifically, section 203 of the Federal Power Act ("FPA") requires that public utilities such as MWG obtain prior FERC authorization before transferring control of facilities such as the Facilities to the Owner Lessors, who will arguably become "public utilities" upon acquiring operational control over the Facilities, must obtain prior authorization from FERC to acquire control of these existing generation facilities. See 16 U.S.C. §§ 824b(a)(1)(A), 824b(a)(1)(D), 824(e); Calpine Fox LLC, 116 F.E.R.C. ¶ 61,261 at P1 (2006) (authorizing shifting control over facility from the lessee to the lessor); Mesquite Investors L.L.C., 111 F.E.R.C. ¶ 61,162 at P1

(2005) (identifying “interconnection facilities appurtenant to generating facilities” as among the jurisdictional facilities under section 203 of the FPA).<sup>9</sup> As noted above, MWG has filed an application with FERC requesting approval for the Owner Lessors to assume operational control of the Facilities.

49. Here, the Owner Lessors currently are not permitted by governing federal energy law to operate the Facilities, even after rejection. In addition to their being prohibited from taking control of the Facilities before receipt of FERC approval under section 203 of the FPA, the Owner Lessors are prohibited from operating the Facilities to sell power into the wholesale markets without first receiving FERC market-based rate authority. See 16 U.S.C. § 824d; and 18 CFR § 35. As such, MWG must temporarily retain operational control of the Facilities to comply with relevant, applicable law and regulations, including market rules and reliability standards that are enforceable under the FPA, to facilitate an orderly transfer of operations to the Owner Lessors. MWG will continue to operate the Facilities in the ordinary course. Operating the Facilities in the ordinary course will preserve the value of the Certificateholders’ collateral and fulfill any relevant, applicable regulatory requirements. Because the Owner Lessors are not authorized to accept immediate operational control of the Facilities without first having obtained an order from FERC allowing them to do so, the Debtors submit it is appropriate for MWG to continue to operate the Facilities, pending the Owner Lessors’ receipt of the necessary regulatory approvals to assume control of the Facilities.<sup>10</sup>

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<sup>9</sup> In addition, even if the Facilities were transferred to the Owner Lessors with the consent of FERC, certain variances with respect to Illinois environmental regulations may not be transferred without the consent of the Illinois Pollution Control Board. See, e.g., Ameren Energy Res. v. Ill. Env’tl. Prot. Agency, Ill. Pollution Control Bd. No. 12-126 (June 6, 2013).

<sup>10</sup> Moreover, it is the Owner Lessors’ legal inability to assume control of the Facilities—and not the Debtors’ limited operational control of the Facilities post-rejection—that prevents the Owner Lessors from reletting and/or operating the Facilities. Even in the absence of the commencement of these chapter 11 cases, had the terms of the Facility Leases simply expired of their own accord, the Owner Lessors would be unable to take

50. In addition, the Debtors are taking steps to facilitate an orderly and expeditious transfer of operational control of the Facilities. To that end, the Debtors have filed an application with FERC, requesting expedited approval for the Owner Lessors to assume operational control of the Facilities. MWG and EME have also engaged in preliminary discussions with the Owner Lessors regarding a plan to turn over operational control of the Facilities. And while the Debtors intend to continue operating the Facilities post-rejection and will continue to coordinate the potential turnover of the Facilities as part of an orderly transition, the Debtors reserve their rights to suspend and/or shut down operations at any time, subject to applicable nonbankruptcy law and legally enforceable market rules and reliability standards.

51. Given that the Owner Lessors are ineligible to take control of the Facilities until they receive certain necessary regulatory approvals, they will not suffer any prejudice from the Debtors' post-rejection operational control pending receipt of such regulatory approvals. Thus, the Court should authorize MWG's continued temporary control during the transition period.<sup>11</sup>

**D. Courts in the Seventh Circuit and Other Jurisdictions Have Authorized Debtors to Reject Similarly Burdensome Executory Contracts and Unexpired Leases.**

52. Finally, courts in the Seventh Circuit and in other districts have authorized

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control of the Facilities without first fulfilling the regulatory requirements for obtaining such control. Indeed, even if these chapter 11 cases had never commenced, the Owner Lessors (or the Certificateholders through foreclosure or deed in lieu of foreclosure) would be unable without regulatory approval to relet or operate the Facilities in the event of a default under the Facility Leases. See, e.g., Nevada Solar One, LLC, 119 F.E.R.C. ¶ 61,285 at P14 (2007) (approving a sale-leaseback transaction and finding that the lenders, owner lessor, and owner participants will not be "public utilities" under FPA and that, to repossess facilities, "would first be required to make the appropriate filings with [FERC]"). Therefore, whether or when the Leases and related Lease Documents are rejected or terminated does not affect who controls the Facilities.

<sup>11</sup> The Debtors also submit that rejection of the Leases pursuant to section 365(a) of the Bankruptcy Code merely constitutes a prepetition breach, and not termination, of the Leases, and that MWG, therefore, can continue to operate the Facilities following entry of the Rejection Order. See 11 U.S.C. § 365(g) (providing that rejection of unexpired lease constitutes a prepetition breach of lease as of date immediately before filing of debtor's bankruptcy petition); see also Eastover Bank for Sav. v. Sowahee Venture (In re Austin Dev. Corp.), 19 F.3d 1077 (5th Cir. 1994) (holding that rejection, whether deemed under section 365(d)(4) or otherwise, does not terminate underlying leasehold interest).

debtors to reject burdensome executory contracts and unexpired leases in the exercise of their sound business judgment. See, e.g., In re Edison Mission Energy, No. 12-49219 (JPC) (Bankr. N.D. Ill. Jan. 17, 2013); In re Southwest Women Working Together, No. 07-11659 (PSH) (Bankr. N.D. Ill. Aug. 23, 2007); see also In re Dynegey Holdings LLC, No. 11-3811 (CGM) (Bankr. S.D.N.Y. Dec. 20, 2011); In re NR Liquidation III Co. (f/k/a Neff Corp.), No. 10-12610 (SCC) (Bankr. S.D.N.Y. June 8, 2010); In re Critical Access Health Servs. Corp., No. 09-92085 (BHL) (S.D. Ind. Oct. 21, 2009); In re Old Carco LLC (f/k/a Chrysler LLC), No. 09-50002 (AJG) (Bankr. S.D.N.Y. May 20, 2009); In re DJK Residential LLC, No. 08-10375 (JMP) (Bankr. S.D.N.Y. Feb. 26, 2008).<sup>12</sup>

### **Notice**

53. The Debtors have provided notice of this Motion to: (a) the Office of the United States Trustee for the Northern District of Illinois; (b) the Committee; (c) the indenture trustee for the Debtors' senior unsecured notes; (d) counsel to the Noteholder Group; (e) the indenture trustee for the lessor notes related to the Facilities and the Trustee;<sup>13</sup> (f) all known holders of the Certificates and, via the Depository Trust Company's Legal Notice System (LENS), all holders of the Certificates; (g) the owner trusts and the equity investors for the Facilities (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; (m) the Environmental Protection Agency and

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<sup>12</sup> 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' counsel.

<sup>13</sup> Pursuant to Section 10.1 of that certain Pass-Through Trust Agreement B, dated as of August 17, 2000, between Midwest Generation, LLC and the United States Trust Company of New York, as Pass-Through Trustee, the Pass-Through Trustee is required to transmit the Motion and any attachments thereto to the respective holders of the pass-through certificates.

similar state environmental agencies for states in which the Debtors conduct business; (n) the Pension Benefit Guaranty Corporation; and (o) 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 Establishing Certain Notice, Case Management and Administrative Procedures* [Docket No. 128]. In light of the nature of the relief requested herein, the Debtors respectfully submit that no further notice is necessary.

**No Prior Request**

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

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

Dated: September 11, 2013

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

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and Debtors in Possession*

**Exhibit A**

**Proposed Extension Order**

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF ILLINOIS  
Eastern Division

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

**Re: Docket No. \_\_\_\_\_**

**ORDER FURTHER EXTENDING TIME TO ASSUME OR REJECT  
POWERTON AND JOLIET LEASES AND RELATED AGREEMENTS**

Upon the motion (the “Motion”) of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) for entry of an order (this “Order”) approving an extension of the date by which the Debtors must assume the Leases (as defined in the Motion) (the “Extension”); and the Debtors and the advisors to the Owner Lessors, the Trustee, the Noteholder Group, and the Committee having engaged in good faith negotiations regarding the proposed Extension; 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 fair and reasonable to MWG and EME; 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 FOUND AND DETERMINED THAT:

A. Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion.

B. The Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory bases for the relief requested herein are sections 363 and 365 of the Bankruptcy Code and Bankruptcy Rules 6006 and 9019.

C. As evidenced by the affidavits of service previously filed with the Court, and based on the representations of counsel at the hearing on the Motion, (i) notice of the Motion and the opportunity for a hearing on the Motion were appropriate under the particular circumstances, (ii) such notice was good and sufficient, and (iii) no other or further notice of the Motion is or shall be required.

D. Notice of the Extension, the Motion was provided to the Certificateholders. The notice provided to the Certificateholders was reasonable and sufficient and complied with the applicable provisions of all applicable indentures governing the Certificates and no further notice to the Certificateholders is required.

E. A reasonable opportunity to object or be heard with respect to the Motion and the relief requested therein has been afforded to all interested persons and entities, including: (i) the Office of the U.S. Trustee for the Northern District of Illinois; (ii) members of and counsel to the Committee; (iii) the indenture trustee for the Debtors' senior unsecured notes; (iv) counsel to the ad hoc committee of certain holders of the Debtors' senior unsecured notes; (v) the Trustee; (vi) the Owner Lessors and their respective counsel; (vii) the lender under Debtor Edison Mission Energy's letter-of-credit facility; (viii) the state attorneys general for states in which the Debtors conduct business; (ix) United States Attorney for the Northern District of Illinois; (x) the Internal Revenue Service; (xi) the Securities and Exchange Commission; (xii) the Environmental Protection Agency and similar state environmental agencies for states in which the Debtors conduct business; (xiii) the Pension Benefit Guaranty Corporation; and (xiv) 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 Establishing Certain Notice, Case Management and Administrative Procedures [Docket No. 128].

F. The Extension, as set forth in the term sheet attached hereto as Exhibit 1 (the "Term Sheet"), is fair and reasonable to MWG, EME, the Owner Lessor Parties, the Trustee and the Certificateholders.

G. MWG and EME have demonstrated both (i) good, sufficient, and sound business purpose and justification, and (ii) compelling circumstances for their entry into the Extension prior to, and outside of, a plan of reorganization, and the Extension pursuant to sections 363 and 365(d)(4) of the Bankruptcy Code and Bankruptcy Rule 9019 is the best alternative for their respective estates and creditors and the Certificateholders.

H. The Extension was proposed and negotiated into by the parties without collusion, in good faith and from arm's-length bargaining positions.

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:

1. The Motion is granted as set forth herein.
2. All objections, including any objection of any Certificateholder, to the Extension, or any portion thereof, that have not been withdrawn, waived, settled, or specifically addressed in this Order and all reservations of rights included in such objections, are hereby overruled on the merits. Accordingly, the Trustee is authorized and directed to take any and all actions and execute any and all documents and instruments that are reasonably necessary or appropriate to implement and effectuate the Extension in accordance with the Term Sheet. The Trustee shall have no liability to any Certificateholder as a result of any act or failure to act by the Trustee in connection with the Extension.
3. The settlement and compromise regarding the Extension, as reflected in the Term Sheet, is hereby approved in all respects and is binding in all respects on all current, former, and future Certificateholders and any successor to the Trustee as of the date of entry of this Order.
4. The deadline under section 365(d)(4) of the Bankruptcy Code to assume or reject the Leases (as defined in the Term Sheet) is hereby extended through and including December 31, 2013, in accordance with the Term Sheet.
5. MWG's and EME's entry into the Term Sheet is authorized and ratified pursuant to sections 363(b) and 365(d)(4) of the Bankruptcy Code and Bankruptcy Rule 9019, and MWG and EME are hereby authorized, empowered, and directed to enter into and perform, and consummate the transactions,

contemplated by the Term Sheet and to pay all consideration, fees, expenditures, and expenses as set forth in, and in accordance with, the terms and conditions of the Term Sheet and all such consideration, fees, expenditures, and expenses are approved.

6. Nothing in the Term Sheet or this Order shall be deemed to modify the Final Order Granting Motion to Authorize to (A) Continue Using Cash Management System; (B) Maintain Existing Bank Accounts and Business Forms; (C) Maintain Existing Investment Practices; (D) Continue Intercompany Transactions; and (E) Grant Superiority Administrative Expense Status to Post petition Intercompany Payments [Docket No. 768].

7. As provided by Bankruptcy Rule 6004(g), and notwithstanding Bankruptcy Rule 7062, this Order shall be effective and enforceable immediately upon entry.

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:**

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and Conflicts Counsel to the other Debtors  
and Debtors in Possession

**Exhibit 1**

**Term Sheet**

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**EDISON MISSION ENERGY, ET AL. Chapter 11 Cases  
Lease Restructuring Framework Term Sheet**

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**THIS TERM SHEET (THE “TERM SHEET”), PRESENTS TERMS OF A PROPOSED SETTLEMENT TRANSACTION PURSUANT TO WHICH CERTAIN ENTITIES SHALL AGREE OR BE DEEMED TO HAVE AGREED (I) TO EXTEND THE DATE BY WHICH MIDWEST GENERATION, LLC (“MWG”) MUST ASSUME OR REJECT THE FACILITY LEASE AGREEMENTS WITH RESPECT TO THE POWERTON GENERATING STATION (“POWERTON”) AND UNITS 7 AND 8 OF THE JOLIET GENERATING STATION (“JOLIET” AND, TOGETHER WITH POWERTON, THE “LEASED FACILITIES”) UNDER SECTION 365 OF TITLE 11 OF THE UNITED STATES CODE (THE “BANKRUPTCY CODE”); (II) TO PROVIDE CERTAIN ACCOMMODATIONS WITH RESPECT TO CERTAIN RENT OBLIGATIONS THEREUNDER IN THE CHAPTER 11 CASE OF MWG (TOGETHER WITH EDISON MISSION ENERGY (“EME”) AND CERTAIN OF THEIR AFFILIATES, THE “DEBTORS”) THAT IS PENDING BEFORE THE UNITED STATES BANKRUPTCY COURT FOR THE NORTHERN DISTRICT OF ILLINOIS (THE “BANKRUPTCY COURT”); AND (III) CONTINUE TO NEGOTIATE IN GOOD FAITH A FULLY CONSENSUAL RESTRUCTURING OR SALE OF MWG’S INTERESTS IN THE FACILITY LEASES AND RELATED OPERATING ASSETS, AND SUBJECT TO THE DETERMINATION OF THE OWNER PARTICIPANTS, A SALE OF THE LEASED FACILITIES.**

**THIS TERM SHEET DOES NOT CONSTITUTE AN OFFER OR A LEGALLY BINDING OBLIGATION OF MWG, THE CONSENTING CERTIFICATEHOLDERS, THE OWNER LESSOR PARTIES, THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS, OR ANY OTHER PARTY TO PURCHASE OR SELL SECURITIES, NOR DOES IT CONSTITUTE A SOLICITATION OF THE ACCEPTANCE OR REJECTION OF A CHAPTER 11 PLAN FOR PURPOSES OF SECTIONS 1125 AND 1126 OF THE BANKRUPTCY CODE.**

**THE PARTIES TO THIS TERM SHEET ARE REFERRED TO HEREIN, COLLECTIVELY, AS THE “PARTIES.”**

<b><u>TERM SHEET</u></b> <sup>1</sup>	
<b>Agreements Subject to this Term Sheet</b>	<p>“<u>Facility Leases</u>” mean: (a) that certain Facility Lease Agreement (T1), dated as of August 17, 2000, between MWG and Nesbitt Asset Recovery Series P-1 (f/k/a Powerton Trust I); (b) that certain Facility Lease Agreement (T2), dated as of August 17, 2000, between MWG and Powerton Trust II; (c) that certain Facility Lease Agreement (T1), dated as of August 17, 2000, between MWG and Nesbitt Asset Recovery Series J-1 (f/k/a Joliet Trust I); and (d) that certain Facility Lease Agreement (T2), dated as of August 17, 2000, between MWG and Joliet Trust II.</p> <p>“<u>Subleases</u>” mean: (a) that certain Facility Site Sublease Agreement (T1), dated as of August 17, 2000, between MWG and Nesbitt Asset Recovery Series P-1 (f/k/a Powerton Trust I); (b) that certain Facility Site Sublease Agreement (T2), dated as of August 17, 2000, between MWG and Powerton Trust II; (c) that certain Facility Site Sublease Agreement (T1), dated as of August 17, 2000, between MWG and Nesbitt Asset Recovery Series J-1 (f/k/a Joliet Trust I); and (d) that certain Facility Site Sublease Agreement (T2), dated as of August 17, 2000, between MWG and Joliet Trust II.</p> <p>“<u>Leases</u>” means the Facility Leases and the Subleases, to the extent they are unexpired leases of nonresidential real property.</p>
<b>Deadline to Assume or Reject the Facility Leases</b>	<p>Subject to entry by the Bankruptcy Court of an order approving this Term Sheet (the “<u>Approval Order</u>”), the payment by MWG of the Partial Lease Payments, and the terms contained herein, the Owner Lessor Parties and the Consenting Certificateholders hereby agree, and the Trustee and Non-Consenting Certificateholders shall be deemed to have agreed, to extend the deadline for MWG to assume or reject any Leases to December 31, 2013, so that the Parties hereto can cooperatively and in good faith work towards a fully consensual restructuring or sale of either (a) MWG’s interest in the Leases or (b) MWG’s interest in the Leases and the Owner Lessor Parties’ interest in the Leased Facilities (either (a) or (b), the “<u>PoJo Restructuring/Sale</u>”). The Approval Order shall provide that the Consenting Certificateholders will forbear and will direct the Trustee to forbear from seeking payment of, prior to the effective date of a chapter 11 plan for (or earlier sale of substantially all of the assets of) MWG, any administrative claim for rent accruing or payable during the Extension Period, other than the Partial Lease Payments (described below).</p>

<sup>1</sup> Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Facility Leases.

<b><u>TERM SHEET</u></b> <sup>1</sup>	
<b>Partial Lease Payment</b>	Subject to entry of the Approval Order, on October 1, 2013, and on the first business day of each month thereafter during the Extension Period, MWG shall pay by wire transfer to the Trustee the sum of \$3.75 million in partial satisfaction of any allowed postpetition administrative lease rent accruing from July 3, 2013 onward (the " <u>Partial Lease Payments</u> "); <u>provided</u> that the Trustee will refund to MWG the allocable portion of any monthly payment that covers the period subsequent to the effective date of rejection of any of the Facility Leases.
<b>Capital Expenditures</b>	The Approval Order shall provide that MWG will continue to make presently scheduled environmental retrofit capital expenditures for the premises subject to the Leases from October 1, 2013, through the earlier of the date of the hearing to consider a motion to reject the Leases and December 31, 2013.
<b>Interest Accrual</b>	The Approval Order shall provide that notwithstanding that the lessor notes have not been accelerated, the lessor notes shall be deemed to accrue, from the commencement of MWG's chapter 11 case, interest for all purposes under the operative documents at the overdue rate, calculated based on the entire amount of principal and accrued but unpaid interest outstanding under the lessor notes as of the commencement of MWG's chapter 11 case and at each scheduled lease payment date, in all cases as though the lessor notes had been declared due and payable as of the commencement of MWG's chapter 11 case. For the avoidance of doubt, nothing in this Term Sheet shall affect any determination regarding the applicability of, or allowance of postpetition interest against the Debtors under, section 506(b) of the Bankruptcy Code.

<b><u>TERM SHEET</u></b> <sup>1</sup>	
<b>Additional Approval Order Findings</b>	<p>The Approval Order shall, among other things, contain in substance the following findings:</p> <ul style="list-style-type: none"> <li>• that the manner in which notice of MWG’s motion for entry of the Approval Order was provided to all parties entitled to such notice is approved;</li> <li>• that the Approval Order is and shall be binding on all current, former, and future Certificateholders and any successor to the Trustee as of the date of entry of the Approval Order;</li> <li>• that the compromise and settlement set forth in this Term Sheet is fair and reasonable to MWG, the Owner Lessor Parties, the Trustee, and the Certificateholders; and</li> <li>• that the settlement and compromise set forth in this Term Sheet is approved.</li> </ul>
<b>Reservation of Rights and Claims</b>	<p>Except as otherwise provided herein, this Term Sheet and any court order entered or definitive documentation executed in connection herewith is without prejudice to (i) all rights of all parties in interest in MWG’s chapter 11 case (including, without limitation, the Committee and the Noteholder Group) with respect to the characterization of the Leases as true leases or secured financings; (ii) the rights of any party to assert any claims (including, without limitation, claims for rent, rejection damage claims, or cure claims) or defenses thereto associated with any attempted assumption or rejection of any Lease; (iii) notwithstanding the Partial Lease Payments, all rights, claims, defenses and objections, of all parties in interest in MWG’s chapter 11 case (including, without limitation, the Committee and the Noteholder Group) with respect to the amount of administrative lease rent claims accruing from and after the commencement of MWG’s chapter 11 case, including, without limitation, the Trustee’s and the Owner Lessor Parties’ rights (if any) and claims (if any) to assert that the unpaid portion of the \$75.7 million lease rent payment due under the Leases on July 2, 2013 was payable in full on such date as an administrative expense claim against MWG as the Leases had not been rejected as of such date, and MWG’s defenses with respect thereto; (iv) all rights, claims (including, without limitation, administrative, secured, and unsecured claims) and interests of the Owner Lessor Parties, the Trustee, the Certificateholders, and all parties in interest in MWG’s chapter 11 case (including, without limitation, the Committee and the Noteholder Group) under or in connection with the Leases, the related operative documents, and</p>

<b><u>TERM SHEET</u></b> <sup>1</sup>	
	<p>applicable law, including, without limitation, the Bankruptcy Code; and (v) the right of MWG to file a motion requesting Bankruptcy Court authority to assume or reject any Lease at any time and the right of any party in interest with respect thereto; <u>provided, however</u>, that the Approval Order shall provide that if MWG files a motion to reject any Lease, the effective date of rejection of any such Lease shall be no earlier than the hearing to consider such motion and, subject to the foregoing, all parties in interest in the MWG chapter 11 case (including, without limitation, the Committee and the Noteholder Group) shall maintain all of their rights and defenses with regard to the appropriate effective date of rejection of any such Lease. In the event that the Leases are determined by the Bankruptcy Court to be secured financings, the Partial Lease Payments will be deemed to be an adequate protection payment with all parties reserving their rights as to the application of such payment to principal or outstanding interest on the lessor notes.</p>
<b>Payment of Professional Fees</b>	<p>Subject to entry of the Approval Order and the terms contained herein, MWG agrees to pay, subject to a reasonableness review, within fifteen (15) days following receipt of a customary summary invoice by both MWG and the Committee (including, in the case of counsel, daily time records, which may be redacted to protect privileged or confidential information), the following fees and costs, with respect to discussions, negotiations, and diligence related to the PoJo Restructuring/Sale: (a) all of the reasonable and documented fees and costs incurred during the Extension Period by O’Melveny &amp; Myers LLP, as legal counsel to the Trustee; (b) the fixed monthly fees, together with any reasonable costs, incurred during the Extension Period by Lazard Frères &amp; Co. LLC (“<u>Lazard</u>”), as financial advisor to the Trustee, <u>provided</u> that such fixed monthly fees shall not exceed \$150,000; (c) all of the reasonable and documented fees and costs incurred during the Extension Period by Shaw, Fishman, Glantz &amp; Towbin LLC, as legal counsel to the Consenting Certificateholders and/or the Trustee; (d) all of the reasonable and documented fees and costs incurred during the Extension Period by Emmet, Marvin, &amp; Martin LLP, as legal counsel to the Trustee; (e) all of the reasonable and documented fees and costs incurred during the Extension Period by the Trustee; (f) all of the reasonable and documented fees and costs incurred during the Extension Period by Jenner &amp; Block LLP, Milbank, Tweed, Hadley &amp; McCloy, LLP, Arnstein &amp; Lehr, LLP, and Winston &amp; Strawn, LLP, as legal counsel to the Owner Participants and Equity Investors; and (g) all of the reasonable and documented fees and costs (including reasonable attorneys’ fees) incurred during the Extension Period by U.S. Bank National Association and</p>

<b><u>TERM SHEET</u></b> <sup>1</sup>	
	<p>Wilmington Trust Company, each in their capacities as trustees for the Owner Lessors; (h) the fixed monthly fees, together with the indemnity obligations under that certain indemnification agreement dated January 24, 2013, and any reasonable costs, incurred during the Extension Period by Centerview Partners LLC (“<u>Centerview</u>”), as financial advisor to the Owner Lessor Parties, <u>provided</u> that such fixed monthly fees shall not exceed \$150,000; and (i) the fixed monthly fees, together with any reasonable costs, incurred during the Extension Period by RPA Advisors, LLC, as financial advisor to the Owner Lessor Parties, <u>provided</u> that such fixed monthly fees shall not exceed \$150,000;<sup>2</sup> <u>provided, however</u>, that MWG shall not be obligated under this Term Sheet to pay such fees and costs that accrue during the period commencing after the later of (x) five (5) business days following written notice by MWG to the Trustee and the Owner Lessor Parties that MWG has determined in good faith that the Parties’ discussions and negotiations with regard to the PoJo Restructuring/Sale have reached an impasse and (y) the date of the filing of a motion to reject the Lease.</p>
<b>Failure to Enter Approval Order</b>	<p>If the Bankruptcy Court shall deny the entry of the Approval Order, in either case in whole or in part, then any agreements memorializing the transactions contemplated by this Term Sheet shall automatically terminate without further action by any of the Parties, whereupon such agreements shall be null and void, all Parties shall be released of their obligations thereunder, and all of the rights, claims, and interests of all Parties shall be restored to the status quo ante.</p>
<b>Governing Law</b>	<p>This Term Sheet shall be governed by and construed in accordance with the laws of the State of New York without regard to the conflict of law principles thereof.</p>
<b>Successors and Assigns</b>	<p>This Term Sheet shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns and, upon entry of the Approval Order, the Certificateholders and each of their respective successors and assigns.</p>
<b>Key Defined Terms</b>	<p>“<u>Certificateholders</u>” mean the holders of those certain 8.56% Series B Pass Through Certificates, issued in the original principal amount of \$813,500,000 pursuant to that certain Pass Through Trust Agreement</p>

<sup>2</sup> Notwithstanding the terms of any existing or future engagement letters or similar agreements, no other fees shall be payable by MWG to Centerview Partners LLC, Lazard, or RPA Advisors, LLC absent express written agreement of MWG.

**TERM SHEET**<sup>1</sup>

B, dated as of August 17, 2000 (the “Pass Through Trust Agreement B”), between MWG and The Bank of New York, as successor Pass Through Trustee.

“Committee” means the official committee of unsecured creditors in the Debtors’ chapter 11 cases.

“Consenting Certificateholders” mean the Certificateholders that are party hereto.

“Equity Investors” mean: (a) Associates Capital Investments, L.L.C.; and (b) Nesbitt Asset Recovery LLC.

“Extension Period” means the period from October 1, 2013, through December 31, 2013.

“Non-Consenting Certificateholders” means any Certificateholders other than the Consenting Certificateholders.

“Noteholder Group” means the ad hoc committee of holders of EME’s senior unsecured fixed rate notes.

“Owner Lessors” mean: (a) Nesbitt Asset Recovery Series J-1 (f/k/a Joliet Trust I); (b) Joliet Trust II; (c) Nesbitt Asset Recovery Series P-1 (f/k/a Powerton Trust I); and (d) Powerton Trust II.

“Owner Lessor Parties” mean the: (a) Owner Lessors; (b) Owner Participants; (c) and Equity Investors (as each is defined below).

“Owner Participants” mean: (a) Nesbitt Asset Recovery LLC, Series J-1 (as successor to Joliet Generation I, LLC), (b) Joliet Generation II, LLC; (c) Nesbitt Asset Recovery LLC, Series P-1 (as successor to Powerton Generation I, LLC), and (d) Powerton Generation II, LLC.

“Trustee” means The Bank of New York Mellon, in its capacity as successor Pass Through Trustee under the Pass Through Trust Agreement B.

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF ILLINOIS  
Eastern Division

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

**Re: Docket No. \_\_\_\_\_**

**ORDER AUTHORIZING REJECTION OF POWERTON  
AND JOLIET LEASES AND RELATED AGREEMENTS**

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 but not directing the Debtors to reject the Leases and related Lease Documents, effective as of July 1, 2013, all as more fully set forth in the Motion; 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 Leases and any other agreements relating to the Facilities, including those documents identified on Exhibit 1 attached hereto, are each rejected, effective as of the date of the entry of this order, pursuant to section 365(a) and 365(g)(1) of the Bankruptcy Code.
3. Consistent with the rejection of the Leases in accordance with paragraph 2 hereof, MWG is authorized but not directed to continue to operate the Facilities in accordance with terms of the Leases and related Lease Documents pending turnover of the Facilities to the Owner Lessors in accordance with applicable nonbankruptcy law.
4. Notwithstanding the relief granted in this Order and any actions taken pursuant to such relief, nothing in this Order shall constitute or be deemed to constitute: (a) an admission as to the validity of any claim against a Debtor entity; (b) a waiver of the right of the Debtors, the Committee, or the Noteholder Group to dispute or object to 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 right of the Debtors, the

Committee, or the Noteholder Group under the Bankruptcy Code or any other applicable law.

5. The Debtors are authorized but not directed to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Motion.

6. 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:**

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and Debtors in Possession

**Exhibit 1**

**Nesbitt Asset Recovery Series P-1 (f/k/a Powerton Trust I)  
Executory Contracts and Unexpired Leases**

Amended and Restated Trust Agreement (T1), dated as of August 17, 2000, between Nesbitt Asset Recovery LLC, Series P-1 (f/k/a Powerton Generation I, LLC) and Wilmington Trust Co.

Assignment and Assumption Agreement (T1), dated as of August 24, 2000, among Midwest Generation, LLC and Nesbit Asset Recovery (f/k/a PSEGR Midwest, LLC).

Bill of Sale (T1), dated as of August 17, 2000, executed by Midwest Generation, LLC in favor of Nesbitt Asset Recovery Series P-1 (f/k/a Powerton Trust I).

Certificates issued pursuant to the Pass-Through Trust Agreements.

Consent to the Sale of Assets, dated as of August 17, 2000, among Commonwealth Edison Company, Midwest Generation, LLC, and Nesbitt Asset Recovery Series P-1 (f/k/a Powerton Trust I).

Facility Deed, dated as of August 17, 2000, between Midwest Generation, LLC and Nesbitt Asset Recovery Series P-1 (f/k/a Powerton Trust I).

Facility Lease Agreement (T1), dated as of August 17, 2000, among Nesbitt Asset Recovery Series P-1 (f/k/a Powerton Trust I) (as owner lessor) and Midwest Generation, LLC (as facility lessee).

Facility Site Lease and Easement Agreement, dated as of August 17, 2000, among Midwest Generation, LLC (as ground lessor) and Nesbitt Asset Recovery Series P-1 (f/k/a Powerton Trust I) (as ground lessee).

Facility Site Sublease Agreement (T1), dated as of August 17, 2000, among Nesbitt Asset Recovery Series P-1 (f/k/a Powerton Trust I) (as ground sublessor) and Midwest Generation, LLC (as ground sublessee).

Guarantee, dated as of August 17, 2000, among Nesbitt Asset Recovery Series P-1 (f/k/a Powerton Trust I) and Edison Mission Energy (as guarantor).

Guaranty, dated as of August 17, 2000, among Nesbitt Asset Recovery LLC, Series P-1 (f/k/a Powerton Generation I, LLC), Nesbit Asset Recovery (f/k/a PSEGR Midwest, LLC), and Edison Mission Energy (as guarantor).

Indenture of Trust, Mortgage, and Security Agreement (T1), dated as of August 17, 2000, among Nesbitt Asset Recovery Series P-1 (f/k/a Powerton Trust I) and The Bank of New York (as successor lease indenture trustee).

Memorandum of Facility Site Lease and Easement Agreement, dated as of August 17, 2000, among Midwest Generation, LLC (as ground lessor) and Nesbitt Asset Recovery Series P-1 (f/k/a Powerton Trust I) (as ground lessee).

Memorandum of Facility Site Sublease, dated as of August 17, 2000, among Nesbitt Asset Recovery Series P-1 (f/k/a Powerton Trust I) (as ground sublessor) and Midwest Generation, LLC (as ground sublessee).

Memorandum of the Facility Lease (T1), dated as of August 17, 2000, among Nesbitt Asset Recovery Series P-1 (f/k/a Powerton Trust I) (as owner Lessor) and Midwest Generation, LLC (as facility lessee).

Operation Agreement, dated as of August 17, 2000, among Midwest Generation, LLC and Nesbitt Asset Recovery Series P-1 (f/k/a Powerton Trust I).

Owner Participant Guaranty, made by PSEG Resources, Inc. in favor of Edison Mission Energy, Nesbitt Asset Recovery Series P-1 (f/k/a Powerton Trust I), Midwest Generation, LLC, Wilmington Trust Company (as owner trustee), The Bank of New York (as successor lease indenture trustee), and The Bank of New York (as successor pass through trustee).

Participation Agreement (T1), dated as of August 17, 2000, among Midwest Generation, LLC, Nesbitt Asset Recovery Series P-1 (f/k/a Powerton Trust I), Wilmington Trust Company (as owner trustee), Nesbitt Asset Recovery LLC, Series P-1 (f/k/a Powerton Generation I, LLC), Edison Mission Energy, The Bank of New York (as successor lease indenture trustee), and The Bank of New York (as successor pass through trustee).

Pass-Through Trust Agreement A, dated as of August 17, 2000, among Midwest Generation, LLC and The Bank of New York (as successor pass through trustee).

Pass-Through Trust Agreement B, dated as of August 17, 2000, among Midwest Generation, LLC and The Bank of New York (as successor pass through trustee).

Purchase and Sale Agreement (T1), dated as of August 17, 2000, among Midwest Generation, LLC and Nesbitt Asset Recovery (f/k/a PSEGR Midwest, LLC).

Series A Lessor Note Due July 2, 2009.

Series B Lessor Note Due July 2, 2014.

Shared Facilities Agreement No. 1 (Powerton Trust I), dated as of August 17, 2000, between Midwest Generation, LLC and Nesbitt Asset Recovery Series P-1 (f/k/a Powerton Trust I).

Shared Facilities Agreement No. 1 (Powerton Trust II), dated as of August 17, 2000, between Midwest Generation, LLC and Powerton Trust II.

Shared Facilities Agreement No. 2 (Powerton Trust I), dated as of August 17, 2000, between Midwest Generation, LLC and the Nesbitt Asset Recovery Series P-1 (f/k/a Powerton Trust I).

Shared Facilities Agreement No. 2 (Powerton Trust II), dated as of August 17, 2000, between Midwest Generation, LLC and Powerton Trust II.

Subordination Agreement, dated as of August 17, 2000, among Nesbitt Asset Recovery Series P-1 (f/k/a Powerton Trust I), Nesbitt Asset Recovery LLC, Series P-1 (f/k/a Powerton Generation I, LLC), The Bank of New York (as successor lease indenture trustee), and Citibank, N.A. (as collateral agent).

Tax Indemnity Agreement (T1), dated as of August 17, 2000, among Nesbitt Asset Recovery LLC, Series P-1 (f/k/a Powerton Generation I, LLC) (as owner participant) and Edison Mission Energy.

**Powerton Trust II Executory Contracts and Unexpired Leases**

Amended and Restated Trust Agreement (T2), dated as of August 17, 2000, between Powerton Generation II, LLC and Wilmington Trust Co.

Assignment and Assumption Agreement (T2), dated as of August 24, 2000, among Midwest Generation, LLC and Associates Capital Investments, L.L.C.

Bill of Sale (T2), dated as of August 17, 2000, executed by Midwest Generation, LLC in favor of Powerton Trust II.

Certificates issued pursuant to the Pass-Through Trust Agreements.

Consent to the Sale of Assets, dated as of August 17, 2000, among Commonwealth Edison Company, Midwest Generation, LLC, and Powerton Trust II.

Facility Deed, dated as of August 17, 2000, between Midwest Generation, LLC and Powerton Trust II.

Facility Lease Agreement (T2), dated as of August 17, 2000, among Powerton Trust II (as Owner Lessor) and Midwest Generation, LLC (as facility lessee).

Facility Site Lease and Easement Agreement (T2), dated as of August 17, 2000, among Midwest Generation, LLC (as ground lessor) and Powerton Trust II (as ground lessee).

Facility Site Sublease Agreement (T2), dated as of August 17, 2000, among Powerton Trust II (as ground sublessor) and Midwest Generation, LLC (as ground sublessee).

Guarantee, dated as of August 17, 2000, among Powerton Generation II, LLC, Associates Capital Investments, L.L.C., and Edison Mission Energy (as guarantor).

Guarantee, dated as of August 17, 2000, among Powerton Trust II and Edison Mission Energy (as guarantor).

Indenture of Trust, Mortgage and Security Agreement (T2), dated as of August 17, 2000, among Powerton Trust II and The Bank of New York (as successor lease indenture trustee).

Memorandum of Facility Lease (T2), dated as of August 17, 2000, among Powerton Trust II (as Owner Lessor) and Midwest Generation, LLC (as facility lessee).

Memorandum of Facility Site Lease and Easement Agreement (T2), dated as of August 17, 2000, among Midwest Generation, LLC (as ground lessor) and Powerton Trust II (as ground lessee).

Memorandum of Facility Site Sublease (T2), dated as of August 17, 2000, among Powerton Trust II (as ground sublessor) and Midwest Generation, LLC (as ground sublessee).

Operation Agreement, dated as of August 17, 2000, among Midwest Generation LLC and Powerton Trust II.

Owner Participant Guaranty, made by Associates Capital Investments, L.L.C. in favor of Edison Mission Energy, Powerton Trust II, Midwest Generation, LLC, Wilmington Trust Company (as owner trustee), The Bank of New York (as successor lease indenture trustee), and The Bank of New York (as successor pass through trustee).

Participation Agreement (T2), dated as of August 17, 2000, among Midwest Generation, LLC, Powerton Trust II, Wilmington Trust Company (as Owner Trustee), Powerton Generation II, LLC, Edison Mission Energy, The Bank of New York (as successor lease indenture trustee), and The Bank of New York (as successor pass through trustee).

Pass-Through Trust Agreement A, dated as of August 17, 2000, among Midwest Generation, LLC and The Bank of New York (as successor pass through trustee).

Pass-Through Trust Agreement B, dated as of August 17, 2000, among Midwest Generation, LLC and The Bank of New York (as successor pass through trustee).

Purchase and Sale Agreement (T2), dated as of August 17, 2000, among Midwest Generation, LLC and Associates Capital Investments, L.L.C.

Series A Lessor Note Due July 2, 2009.

Series B Lessor Note Due January 2, 2015.

Shared Facilities Agreement No. 1 (Powerton Trust I), dated as of August 17, 2000, between Midwest Generation, LLC and Nesbitt Asset Recovery Series P-1 (f/k/a Powerton Trust I).

Shared Facilities Agreement No. 1 (Powerton Trust II), dated as of August 17, 2000, between Midwest Generation, LLC and Powerton Trust II.

Shared Facilities Agreement No. 2 (Powerton Trust I), dated as of August 17, 2000, between Midwest Generation, LLC and Nesbitt Asset Recovery Series P-1 (f/k/a Powerton Trust I).

Shared Facilities Agreement No. 2 (Powerton Trust II), dated as of August 17, 2000, between Midwest Generation, LLC and the Powerton Trust II.

Subordination Agreement, dated as of August 17, 2000, among Powerton Trust II, Powerton Generation II, LLC, The Bank of New York (as successor lease indenture trustee), and Citibank, N.A. (as collateral agent).

Tax Indemnity Agreement (T2), dated as of August 17, 2000, among Powerton Generation II, LLC (as owner participant) and Edison Mission Energy.

**Nesbitt Asset Recovery Series J-1 (f/k/a Joliet Trust I)**  
**Executory Contracts and Unexpired Leases**

Amended and Restated Trust Agreement (T1), dated as of August 17, 2000, between Nesbitt Asset Recovery LLC, Series J-1 (f/k/a Joliet Generation I, LLC) and Wilmington Trust Co.

Assignment and Assumption Agreement (T1), dated as of August 24, 2000, among Midwest Generation, LLC and Nesbit Asset Recovery (f/k/a PSEGR Midwest, LLC).

Bill of Sale (T1), dated as of August 17, 2000, executed by Midwest Generation, LLC in favor of Nesbitt Asset Recovery Series J-1 (f/k/a Joliet Trust I).

Certificates issued pursuant to the Pass-Through Trust Agreements.

Consent to the Sale of Assets, dated as of August 17, 2000, among Commonwealth Edison Company, Midwest Generation, LLC, and Nesbitt Asset Recovery Series J-1 (f/k/a Joliet Trust I).

Facility Deed, dated as of August 17, 2000, between Midwest Generation, LLC and Nesbitt Asset Recovery Series J-1 (f/k/a Joliet Trust I).

Facility Lease Agreement (T1), dated as of August 17, 2000, among Nesbitt Asset Recovery Series J-1 (f/k/a Joliet Trust I) (as Owner Lessor) and Midwest Generation, LLC (as facility lessee).

Facility Site Lease and Easement Agreement (T1), dated as of August 17, 2000, among Midwest Generation, LLC (as ground lessor) and Nesbitt Asset Recovery Series J-1 (f/k/a Joliet Trust I) (as ground lessee).

Facility Site Sublease Agreement (T1), dated as of August 17, 2000, among Nesbitt Asset Recovery Series J-1 (f/k/a Joliet Trust I) (as ground sublessor) and Midwest Generation, LLC (as ground sublessee).

Guarantee, dated as of August 17, 2000, among Nesbitt Asset Recovery LLC, Series J-1 (f/k/a Joliet Generation I, LLC), Nesbit Asset Recovery (f/k/a PSEGR Midwest, LLC), and Edison Mission Energy (as guarantor).

Guarantee, dated as of August 17, 2000, among Nesbitt Asset Recovery Series J-1 (f/k/a Joliet Trust I) and Edison Mission Energy (as guarantor).

Indenture of Trust, Mortgage and Security Agreement (T1), dated as of August 17, 2000, among Nesbitt Asset Recovery Series J-1 (f/k/a Joliet Trust I) and The Bank of New York (as successor lease indenture trustee).

Memorandum of Facility Lease (T1), dated as of August 17, 2000, among Nesbitt Asset Recovery Series J-1 (f/k/a Joliet Trust I) (as Owner Lessor) and Midwest Generation, LLC (as facility lessee).

Memorandum of Facility Site Lease and Easement Agreement (T1), dated as of August 17, 2000, among Midwest Generation, LLC (as ground lessor) and Nesbitt Asset Recovery Series J-1 (f/k/a Joliet Trust I) (as ground lessee).

Memorandum of Facility Site Sublease (T1), dated as of August 17, 2000, among Nesbitt Asset Recovery Series J-1 (f/k/a Joliet Trust I) (as ground sublessor) and Midwest Generation, LLC (as ground sublessee).

Operation Agreement, dated as of August 17, 2000, among Midwest Generation LLC and Nesbitt Asset Recovery Series J-1 (f/k/a Joliet Trust I).

Owner Participant Guaranty, made by PSEG Resources, Inc. in favor of Edison Mission Energy, Powerton Trust II, Midwest Generation, LLC, Wilmington Trust Company (as owner trustee), The Bank of New York (as successor lease indenture trustee), and The Bank of New York (as successor pass through trustee).

Participation Agreement (T1), dated as of August 17, 2000, among Midwest Generation, LLC, Nesbitt Asset Recovery Series J-1 (f/k/a Joliet Trust I), Wilmington Trust Company (as Owner Trustee), Nesbitt Asset Recovery LLC, Series J-1 (f/k/a Joliet Generation I, LLC), Edison Mission Energy, The Bank of New York (as successor lease indenture trustee), and The Bank of New York (as successor pass through trustee).

Pass-Through Trust Agreement A, dated as of August 17, 2000, among Midwest Generation, LLC and The Bank of New York (as successor pass through trustee).

Pass-Through Trust Agreement B, dated as of August 17, 2000, among Midwest Generation, LLC and The Bank of New York (as successor pass through trustee).

Purchase and Sale Agreement (T1), dated as of August 17, 2000, among Midwest Generation, LLC and Nesbitt Asset Recovery (f/k/a PSEGR Midwest, LLC).

Series A Lessor Note Due July 2, 2009.

Series B Lessor Note Due July 2, 2014.

Shared Facilities Agreement No. 1 (Joliet Trust I), dated as of August 17, 2000, between Midwest Generation, LLC and the Nesbitt Asset Recovery Series J-1 (f/k/a Joliet Trust I).

Shared Facilities Agreement No. 1 (Joliet Trust II), dated as of August 17, 2000, between Midwest Generation, LLC and the Joliet Trust II.

Shared Facilities Agreement No. 2 (Joliet Trust I), dated as of August 17, 2000, between Midwest Generation, LLC and the Nesbitt Asset Recovery Series J-1 (f/k/a Joliet Trust I).

Shared Facilities Agreement No. 2 (Joliet Trust II), dated as of August 17, 2000, between Midwest Generation, LLC and the Joliet Trust II.

Subordination Agreement, dated as of August 17, 2000, among Nesbitt Asset Recovery Series J-1 (f/k/a Joliet Trust I), Nesbitt Asset Recovery LLC, Series J-1 (f/k/a Joliet Generation I, LLC), The Bank of New York (as successor lease indenture trustee), and Citibank, N.A. (as collateral agent).

Tax Indemnity Agreement (T1), dated as of August 17, 2000, among Nesbitt Asset Recovery LLC, Series J-1 (f/k/a Joliet Generation I, LLC) (as owner participant) and Edison Mission Energy.

**Joliet Trust II Executory Contracts and Unexpired Leases**

Amended and Restated Trust Agreement (T2), dated as of August 17, 2000, between Joliet Generation II, LLC and Wilmington Trust Co.

Assignment and Assumption Agreement (T2), dated as of August 24, 2000, among Midwest Generation, LLC and Associates Capital Investments, L.L.C.

Bill of Sale (T2), dated as of August 17, 2000, executed by Midwest Generation, LLC in favor of Joliet Trust II.

Certificates issued pursuant to the Pass-Through Trust Agreements.

Certificates issued pursuant to the Pass-Through Trust Agreements.

Consent to the Sale of Assets, dated as of August 17, 2000, among Commonwealth Edison Company, Midwest Generation, LLC, and Joliet Trust II.

Facility Deed, dated as of August 17, 2000, between Midwest Generation, LLC and Joliet Trust II.

Facility Lease Agreement (T2), dated as of August 17, 2000, among Joliet Trust II (as Owner Lessor) and Midwest Generation, LLC (as facility lessee).

Facility Site Lease and Easement Agreement (T2), dated as of August 17, 2000, among Midwest Generation, LLC (as ground lessor) and Joliet Trust II (as ground lessee).

Facility Site Sublease Agreement (T2), dated as of August 17, 2000, among Joliet Trust II (as ground sublessor) and Midwest Generation, LLC (as ground sublessee).

Guarantee, dated as of August 17, 2000, among Joliet Generation II, LLC, Associates Capital Investments, L.L.C., and Edison Mission Energy (as guarantor).

Guarantee, dated as of August 17, 2000, among Joliet Trust II and Edison Mission Energy (as guarantor).

Indenture of Trust, Mortgage and Security Agreement (T2), dated as of August 17, 2000, among Joliet Trust II and The Bank of New York (as successor lease indenture trustee).

Memorandum of Facility Lease (T2), dated as of August 17, 2000, among Joliet Trust II (as Owner Lessor) and Midwest Generation, LLC (as facility lessee).

Memorandum of Facility Site Lease and Easement Agreement (T2), dated as of August 17, 2000, among Midwest Generation, LLC (as ground lessor) and Joliet Trust II (as ground lessee).

Memorandum of Facility Site Sublease (T2), dated as of August 17, 2000, among Joliet Trust II (as ground sublessor) and Midwest Generation, LLC (as ground sublessee).

Operation Agreement, dated as of August 17, 2000, among Midwest Generation LLC and Joliet Trust II.

Owner Participant Guaranty, made by Associates Capital Investment LLC in favor of Edison Mission Energy, Joliet Trust II, Midwest Generation, LLC, Wilmington Trust Company (as owner trustee), The Bank of New York (as successor lease indenture trustee), and The Bank of New York (as successor pass through trustee).

Participation Agreement (T2), dated as of August 17, 2000, among Midwest Generation, LLC, Joliet Trust II, Wilmington Trust Company (as Owner Trustee), Joliet Generation II, LLC, Edison Mission Energy, The Bank of New York (as successor lease indenture trustee), and The Bank of New York (as successor pass through trustee).

Pass-Through Trust Agreement A, dated as of August 17, 2000, among Midwest Generation, LLC and The Bank of New York (as successor pass through trustee).

Pass-Through Trust Agreement B, dated as of August 17, 2000, among Midwest Generation, LLC and The Bank of New York (as successor pass through trustee).

Purchase and Sale Agreement (T2), dated as of August 17, 2000, among Midwest Generation, LLC and Associates Capital Investments, L.L.C.

Series A Lessor Note Due July 2, 2009.

Series B Lessor Note Due July 2, 2014.

Shared Facilities Agreement No. 1 (Joliet Trust I), dated as of August 17, 2000, between Midwest Generation, LLC and the Joliet Trust I.

Shared Facilities Agreement No. 1 (Joliet Trust II), dated as of August 17, 2000, between Midwest Generation, LLC and the Joliet Trust II.

Shared Facilities Agreement No. 2 (Joliet Trust I), dated as of August 17, 2000, between Midwest Generation, LLC and the Joliet Trust I.

Shared Facilities Agreement No. 2 (Joliet Trust II), dated as of August 17, 2000, between Midwest Generation, LLC and the Joliet Trust II.

Subordination Agreement, dated as of August 17, 2000, among Joliet Trust II, Joliet Generation II, LLC, The Bank of New York (as successor lease indenture trustee), and Citibank, N.A. (as collateral agent).

Tax Indemnity Agreement (T2), dated as of August 17, 2000, among Joliet Generation II, LLC (as owner participant) and Edison Mission Energy.

**Other Executory Contracts and Unexpired Leases**

Purchase Agreement, dated as of August 17, 2000, between Edison Mission Energy, Midwest Generation, LLC, Credit Suisse First Boston Corporation, and Lehman Brothers, Inc.

Registration Rights Agreement, dated as of August 17, 2000, between Edison Mission Energy, Midwest Generation, LLC, Credit Suisse First Boston Corporation, and Lehman Brothers, Inc.

Reimbursement Agreement, dated as of October 26, 2001, among Edison Mission Energy and Midwest Generation, LLC.