

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

In re:)	
)	Chapter 11
)	
EDISON MISSION ENERGY, et al., ¹)	Case No. 12-49219 (JPC)
)	
Debtors.)	(Jointly Administered)
)	
)	Re: Docket No. 1501

**NOTICE OF PENSION BENEFIT GUARANTY CORPORATION'S LIMITED
OBJECTION TO THE DEBTORS' EMERGENCY MOTION TO
AUTHORIZE EXTENSION OF INTERCOMPANY AND SHARED
SERVICES ARRANGEMENTS AND OTHER BENEFIT PLANS**

PLEASE TAKE NOTICE that, on November 5, 2013, the Pension Benefit Guaranty Corporation, by its attorney, Courtney L. Hansen, caused a copy of the **LIMITED OBJECTION TO THE DEBTORS' EMERGENCY MOTION TO AUTHORIZE EXTENSION OF INTERCOMPANY AND SHARED SERVICES ARRANGEMENTS AND OTHER BENEFIT PLANS** to be filed with the Clerk of the United States Bankruptcy Court for the Northern District of Illinois, Eastern Division, a copy of which is attached hereto and is herewith served upon you.

By: /s/ Courtney L. Hansen
**PENSION BENEFIT GUARANTY
CORPORATION**
1200 K Street N.W.
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¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, include: Edison Mission Energy (1807); Camino Energy Company (2601); Chestnut Ridge Energy Company (6590); Edison Mission Energy Fuel Services, LLC (4630); Edison Mission Finance Co. (9202); Edison Mission Fuel Resources, Inc. (3014); Edison Mission Fuel Transportation, Inc. (3012); Edison Mission Holdings Co. (6940); Edison Mission Midwest Holdings Co. (6553); EME Homer City Generation L.P. (6938); Homer City Property Holdings, Inc. (1685); Midwest Finance Corp. (9350); Midwest Generation EME, LLC (1760); Midwest Generation, LLC (8558); Midwest Generation Procurement Services, LLC (2634); Midwest Peaker Holdings, Inc. (5282); Mission Energy Westside, Inc. (0657); San Joaquin Energy Company (1346); Southern Sierra Energy Company (6754); and Western Sierra Energy Company (1447). The location of parent Debtor Edison Mission Energy's corporate headquarters and the Debtors' service address is: 3 MacArthur Place, Suite 100, Santa Ana, California 92707.

CERTIFICATE OF SERVICE

I, Courtney L. Hansen, an attorney, state that pursuant to Local Rule 9013-1(D) the above **Notice of Limited Objection** and the appended **LIMITED OBJECTION OF THE PENSION BENEFIT GUARANTY CORPORATION TO THE DEBTORS' EMERGENCY MOTION TO AUTHORIZE EXTENSION OF INTERCOMPANY AND SHARED SERVICES ARRANGEMENTS AND OTHER BENEFIT PLANS** were filed on November 5, 2013, and served on all parties identified as Registrants through the Court's Electronic Notice for Registrants.

/s/ Courtney L. Hansen

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EDISON MISSION ENERGY, et al., ²)	Case No. 12-49219 (JPC)
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LIMITED OBJECTION OF THE PENSION BENEFIT GUARANTY CORPORATION TO THE DEBTORS' EMERGENCY MOTION TO AUTHORIZE EXTENSION OF INTERCOMPANY AND SHARED SERVICES ARRANGEMENTS AND OTHER BENEFIT PLANS

Pension Benefit Guaranty Corporation (“PBGC”), a United States government agency, hereby files this limited objection to the aforementioned motion (“Shared Services Motion” or “Motion”) filed on an emergency basis on November 4, 2013, *see* Docket No. 1501, and states as follows:

1. The Shared Services Motion seeks an order from this Court which memorializes the terms of that certain letter agreement between Edison Mission Energy (“EME”) and Edison International (“EIX”) attached to the Motion as Exhibit 1. The Motion seeks relief that affects

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the following pension plans that provide retirement benefits to the employees of the Debtors, EIX, and Southern California Edison (“SCE”): (i) the Edison International Retirement Plan for Bargaining Unit Employees of Midwest Generation, LLC (“MWG Plan”); (ii) the Edison International Retirement Plan for Bargaining Unit Employees of EME Homer City Generation L.P. (“Homer City Plan”); and (iii) the Southern California Edison Company Retirement Plan (“SCE Plan”) (collectively, the “Pension Plans” or “Plans”). PBGC objects to the Shared Services Motion to the extent that the requested relief, with respect to the Pension Plans, effectively (i) divests any of the Debtors, EIX, or SCE from their obligations under the Employee Retirement Income Security Act of 1974 (as amended, “ERISA”),³ the Internal Revenue Code (“IRC”), and other federal law or (ii) prescribes obligations contrary to ERISA, IRC, and other federal law. PBGC further objects to the Motion and relief requested therein to the extent it seeks to prescribe when and how participants of the Pension Plans may accrue benefits under the Plans that is contrary to terms of the respective Pension Plans’ written documents and ERISA.

I. BACKGROUND

A. PBGC and ERISA

2. PBGC is a wholly-owned United States government corporation, and an agency of the United States, that administers the defined benefit pension plan termination insurance program under Title IV of ERISA. The program guarantees a secure, predictable retirement for more than 43 million American workers.⁴

³ 29 U.S.C. §§ 1301-1461 (2006 & Supp. V 2011).

⁴ PBGC 2012 Annual Management Report at 1, <http://pbgc.gov/documents/2012-annual-report.pdf>.

3. Pursuant to ERISA, a sponsor of a pension plan covered by Title IV and the sponsor's controlled group members must satisfy certain financial obligations to the plan.⁵ ERISA imposes responsibility on a controlled group member regardless of whether its employees participate in the pension plan. The responsibilities of the plan sponsor and controlled group members to an on-going pension plan include the following: (i) pay flat-rate and variable-rate insurance premiums to PBGC, 29 U.S.C. §§ 1306, 1307; and (ii) pay to the pension plan the statutorily required minimum funding contributions ("Minimum Funding Contributions"). *See* 26 U.S.C. § 412; 29 U.S.C. § 1082.

4. The liabilities of the plan sponsor and controlled group members with regard to the pension plan are joint and several. *See* 26 U.S.C. § 412(b)(2); 29 U.S.C. §§ 1082(b)(2), 1307(e)(2), 1362(a). Therefore, should the plan sponsor default on its obligations to a pension plan, the resulting liability for the plan rests with its controlled group members.

B. Plan Termination

5. Title IV of ERISA provides the exclusive means for a plan sponsor to terminate a pension plan – a standard termination or a distress termination. *See* 29 U.S.C. § 1341(a)(1); *see also Hughes Aircraft Co. v. Jacobson*, 525 U.S. 432, 446 (1999).

6. A standard termination requires sufficient assets to pay all of the pension plan's promised benefits. *See* 29 U.S.C. § 1341(b)(2)(A)(i)(III). A distress termination requires a showing, among other things, that each plan sponsor and controlled group member satisfies one of the three financial distress criteria: (i) liquidation in bankruptcy; (ii) inability to reorganize in bankruptcy unless the pension plan terminates; or (iii) inability to pay debts when due and

⁵ A group of trades or business under common control, referred to as a "controlled group," includes, for example, a parent and its 80% owned subsidiaries. Another example includes brother-sister groups of trades or business under common control. *See* 29 U.S.C. § 1301(a)(14)(A), (B); 26 U.S.C. § 414(b), (c); 26 C.F.R. §§ 1.414(b)-1, 1.414(c)-1, 1.414(c)-2.

continue in business unless the pension plan terminates. *See* 29 U.S.C. § 1341(c)(2)(B).

Separate from a standard and distress termination, PBGC can initiate termination of a pension plan pursuant to section 4042 of ERISA (“PBGC-initiated termination”). *See* 29 U.S.C. § 1342.

7. When a pension plan covered by Title IV terminates without sufficient assets to pay promised benefits, PBGC typically becomes the statutory trustee of the plan and pays covered plan participants and their beneficiaries their pension benefits up to the limits established by Title IV. *See* 29 U.S.C. §§ 1321, 1322, 1342(d)(1)(B)(i), 1361. As statutory trustee of a terminated pension plan, PBGC has authority to collect all amounts owed to the plan. *See* 29 U.S.C. § 1342(d)(1)(B)(ii).

8. Upon a distress termination or a PBGC-initiated termination of a pension plan, the contributing sponsor and controlled group members are subject to certain liabilities with regard to the terminated pension plan. For example, they become jointly and severally liable to PBGC for the plan’s underfunding on a termination basis – the difference between the plan’s full benefits and its assets, both measured as of the termination date (“Unfunded Benefit Liabilities” or “UBL”).⁶ *See* 29 U.S.C. §§ 1301(a)(18), 1362(b)(1)(A).

9. ERISA explicitly assigns the recovery of a terminated pension plan’s unfunded benefit liabilities exclusively to PBGC. *See* 29 U.S.C. § 1362(b). Upon termination, the plan sponsor and controlled group members remain jointly and severally liable to PBGC for any unpaid premiums – not just the flat-rate and variable-rate premiums, but also a termination premium at the rate of \$1,250 per plan participant per year for three years. *See* 29 U.S.C. §

⁶ The plan’s Unfunded Benefit Liabilities are valued under PBGC regulations, whose method approximates the cost of purchasing annuities to pay all plan benefits. *See* Final Rule on Valuation of Plan Benefits in Single-Employer Plans, 58 Fed. Reg. 50812 (Sep. 28, 1993) (This amendment “continues the regulation’s historical approach of assigning values to annuity benefits that are in line with private sector group annuity prices”). Subsequent revisions used the same methodology (regulation currently codified at 29 C.F.R. §§ 4044.41-75).

1306(a)(7). Because PBGC typically becomes the statutory trustee of the terminated pension plan, it has authority to collect all amounts owed to the pension plan, including any unpaid minimum funding contributions for which the plan sponsor and controlled group members are jointly and severally liable. *See* 29 U.S.C. §§ 1082(c), 1342(d), 1362(a), (c); 26 U.S.C. § 412(c).

10. Where the sponsor or a controlled group member is in bankruptcy, PBGC files claims so that it can receive its share of any distributions made to similarly-situated creditors. *See* 11 U.S.C. § 1123(a)(4). Thus, the fact that a plan sponsor or a controlled group member is in bankruptcy does not alter the obligation to satisfy the claims, and does not alter the underlying substantive law upon which the claims are based.

C. The Debtors' Pension Plans

11. Each of the Debtors, as well as EIX and SCE, are either a contributing sponsor or a member of the contributing sponsor's controlled group with regard to the Pension Plans. *See* 29 U.S.C. § 1301(a)(13), (14). The Plans are believed to be tax-qualified, defined benefit pension plans covered by Title IV of ERISA. *See* 29 U.S.C. § 1321. Over 31,000 employees of the Debtors and members of the Debtors' controlled group participate in the Plans.

D. The Debtors' Bankruptcy Proceedings

12. On December 17, 2012, seventeen of the Debtors filed voluntary Chapter 11 petitions with this Court. On May 2, 2013, three additional Debtors filed voluntary Chapter 11 petitions with this Court. These bankruptcy proceedings are being jointly administered for procedural purposes only pursuant to Bankruptcy Rule 1015(b).

13. On December 17, 2012, the Debtors filed a *Motion to Authorize Continued Performance of Obligations Under Intercompany and Shared Services Arrangements* (“First Day Motion”). *See* Docket No. 12. Then, on February 5, 2012, the Court entered the *Final Order*

Authorizing the Debtors to Continue Performance of Obligations Under Intercompany Arrangements (“Order”), which authorized the continuation of services shared by and among the Debtors, EIX and SCE until December 31, 2013. *See* Docket No. 400. As the Debtors explain in the Shared Services Motion, the First Day Motion and corresponding Order were filed and entered at a time when the Debtors were party to that certain Transaction Support Agreement, which has since been terminated with no further force and effect. *See* Motion at ¶¶8-9.

14. Because the Order is set to expire on December 31, 2013, the Debtors filed the Shared Services Motion on November 4, 2013. The Motion seeks entry of an order authorizing the extension of shared corporate service arrangements and agreements that are currently being administered by EIX, as evidenced by a letter agreement attached to the Motion as Exhibit 1. (“Extension Agreement”). *See* Motion at ¶1, Exhibit 1. Upon information and belief, the Extension Agreement includes the continued shared administration of the Pension Plans. *Id.* at ¶7; Extension Agreement at 3.

15. The Extension Agreement contemplates that:

“EME, or its applicable subsidiary, shall provide EIX with at least sixty (60) days written notice of its intention to discontinue funding of any Shared Services or related costs. ***EIX and SCE are authorized but not obligated to discontinue administering the applicable Shared Services if EME or its applicable subsidiary ceases funding such Shared Services or related costs.***”

Extension Agreement at 3; Motion at ¶13 (emphasis added).

16. The Extension Agreement further contemplates that:

“If Shared Services terminate before the Effective Date for EME and its subsidiaries, then for the period from the date on which the Shared Services terminate to the earlier of (a) December 31, 2014 or (b) the Effective Date, ***EIX, SCE and the applicable committees (x) will continue to administer the benefits provided to EME and its subsidiaries’ participating under the plans listed in Schedule 2 to the Extension Agreement*** (the “Schedule 2 Benefits”), ***(y) allow the EME employees who are participants in the Edison International Retirement Plan for Bargaining Unit Employees of Midwest Generation, LLC*** (the “MWG Pension Plan”) to continue to accrue benefits under MWG Pension

Plan in accordance with the terms of the MWG Pension Plan then in effect, and (z) EME and its subsidiaries will continue to fund the Schedule 2 Benefits and pay the costs incurred by EIX and SCE to administer the plans, in each case, consistent with past practice.”

Extension Agreement at 2-3; Motion at ¶13. (emphasis added).⁷

II. ARGUMENT

A. **The Motion Must Be Denied To The Extent That, With Respect To The Pension Plans, It Seeks An Order That Will (i) Divest Debtors, EIX, And/Or SCE Of Their Obligations Or Liabilities Under ERISA and IRC; Or (ii) Prescribe Obligations Contrary to Law**

17. The creation of a defined benefit pension plan is completely voluntary. Nothing in ERISA requires employers to establish such plans, nor does it mandate what benefits must be provided if such a plan is implemented. *Lockheed Corp. v. Spink*, 517 U.S. 882, 887 (1996) (citing *Shaw v. Delta Air Lines*, 463 U.S. 85, 91 (1983); *Alessi v. Raybestos-Manhattan, Inc.*, 451 U.S. 504, 511, (1981)). However, ERISA was created to protect the benefits and interests of plan participants and beneficiaries. *See Nachman Corp. v. Pension Benefit Guar. Corp.*, 446 U.S. 359, 361-362 (1980).

18. Among the protections included in ERISA is the concept of joint and several liability for the obligations of a pension plan, which attaches to the contributing sponsor and any member of the contributing sponsor’s controlled group. The Debtors, EIX, and SCE are all either a contributing sponsor or a member of the contributing sponsor’s controlled group under ERISA and, as such, are jointly and severally liable for all obligations to the Pension Plans. *See* 26 U.S.C. § 412(b)(2); 29 U.S.C. §§ 1082(b)(2), 1307(e)(2), 1362(a).

19. The Extension Agreement explicitly states that EIX and SCE are “authorized but not obligated to discontinue administering the applicable Shared Services if EME or its

⁷ The MWG Plan is among the benefits listed on Schedule 2.

applicable subsidiary ceases funding such Shared Services or related costs.” Extension Agreement at 3; Motion at ¶13. PBGC objects to the Motion to the extent that it seeks an order from this Court that is consistent with the Extension Agreement which has the effect of divesting any of the Debtors, EIX, or SCE from their statutory liabilities to the Pension Plans under ERISA, the IRC, or any other applicable law or regulation.

20. The Debtors cannot simply enter into a contract to avoid their obligations to administer and fund the Pension Plans as required by federal law. Similarly, a Court order should not absolve the Debtors – let alone non-Debtor entities – from such obligations. Indeed, approval of such an agreement would be contrary to Congressional intent and, thus against public policy. *See, e.g., Connolly v. Pension Benefit Guar. Corp.* 475 U.S. 211, 223-24 (1986) (“If the regulatory statute is otherwise within the powers of Congress, therefore, its application may not be defeated by private contractual provisions.”); *Davon Inc. v. Shalala*, 75 F.3d 1114, 1129 (7th Cir. 1996) (“Contracts, however express, cannot fetter the constitutional authority of Congress. Contracts may create rights of property, but when contracts deal with a subject matter which lies within the control of Congress, they have a congenital infirmity. Parties cannot remove their transactions from the reach of the dominant constitutional power by making contracts about them.”) (quoting *Norman v. Baltimore R.R.*, 294 U.S. 240, 307-308 (1935)); *Stuart Park Assocs. Ltd. Partnership v. Ameritech Pension Trust*, 846 F. Supp. 701, 707-708 (N.D. Ill. 1994) (holding generally that a contract that violated ERISA is unenforceable).

B. The Motion Must Be Denied To The Extent That It Seeks A Court Order That Will Dictate Or Determine Any Aspect Of A Participant’s Benefit Or Accrual Of A Benefit Under The Pension Plans.

21. ERISA obligates administrators to manage pension plans in accordance with the documents and instruments governing them. *Kennedy v. Plan Adm’r for DuPont Sav. & Inv. Plan*, 555 U.S. 285, 288 (2009); 29 U.S.C. § 1104(a)(1)(D). Thus, ERISA requires that every

employee benefit plan be established and maintained pursuant to a written instrument. 29 U.S.C. § 1102(a)(1). The basis for this requirement is, like most other provisions in ERISA, to protect plan participants and beneficiaries, so that “every employee may, on examining the plan documents, determine exactly what his rights and obligations are under the plan.” *Curtiss-Wright Corp. v. Schoonejongen*, 514 U.S. 73, 83-84 (1995) (citing H. R. Rep. No. 93-1280, p. 297 (1974)).

22. The Extension Agreement states that if “Shared Services terminate before the Effective date for EME and its subsidiaries,” Debtors, EIX and SCE will “allow the EME employees who are participants in the [MWG Plan] to continue to accrue benefits under [the MWG Plan] in accordance with the terms of the [MWG Plan] then in effect.” Extension Agreement at 2-3; Motion at ¶13. Although the Extension Agreement and Motion contemplate the accrual of benefits pursuant to the MWG Plan document, they also include the application of a letter agreement, Chapter 11 plan, and/or Court order when determining the continuation or cessation of participants’ benefit accruals under the MWG Plan. Thus, PBGC objects to the Motion to the extent it seeks a Court order that will tie-in or base, in any way, MWG Plan participants’ benefits on any documents other than the MWG Plan document and applicable federal law and regulations.

III. CONCLUSION

23. For the foregoing reasons, PBGC respectfully requests that this Court deny the Motion and the relief requested therein to the extent outlined above.

DATED: November 5, 2013

By: /s/ Courtney L. Hansen

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