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**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

**FORM 10-K**

**ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d)  
OF THE SECURITIES EXCHANGE ACT OF 1934**

For the fiscal year ended December 31, 2008

Commission File Number 333-92047-03

**EME Homer City Generation L.P.**

(Exact name of registrant as specified in its charter)

**Pennsylvania**  
(State or other jurisdiction of incorporation or  
organization)

**33-0826938**  
(I.R.S. Employer Identification No.)

**1750 Power Plant Road  
Homer City, Pennsylvania**  
(Address of principal executive offices)

**15748**  
(Zip Code)

Registrant's telephone number, including area code: **(724) 479-9011**

Securities registered pursuant to Section 12(b) of the Act:

**None**

(Title of Class)

**Not Applicable**

(Name of each exchange on which registered)

Securities registered pursuant to Section 12(g) of the Act:

**None**

(Title of Class)

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. YES  NO

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. YES  NO

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. YES  NO

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K .

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer or a smaller reporting company. See the definitions of "accelerated filer," "large accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer  Accelerated filer  Non-accelerated filer  Smaller reporting company

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). YES  NO

Aggregate market value of the registrant's common equity held by non-affiliates of the registrant as of June 30, 2008: \$0. Number of shares outstanding of the registrant's Common Stock as of March 2, 2009: Not applicable.

**The registrant meets the conditions set forth in General Instruction I.(1)(a) and (b) of Form 10-K and is therefore filing this Form 10-K under the reduced disclosure format.**

**DOCUMENTS INCORPORATED BY REFERENCE**

None

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## GLOSSARY

When the following terms and abbreviations appear in the text of this report, they have the meanings indicated below.

ARO(s).....	asset retirement obligation(s)
Btu.....	British thermal units
CAA.....	Clean Air Act
CAIR.....	Clean Air Interstate Rule
CAMR.....	Clean Air Mercury Rule
CONE.....	cost of new entry
EIA.....	Energy Information Administration
EME.....	Edison Mission Energy
EME Homer City.....	EME Homer City Generation L.P.
EMMT.....	Edison Mission Marketing & Trading, Inc.
EWG(s).....	exempt wholesale generator(s)
FASB.....	Financial Accounting Standards Board
FERC.....	Federal Energy Regulatory Commission
FGD.....	flue gas desulfurization
FIN No. 39-1.....	Financial Accounting Standards Board Staff Position No. 39-1, “Amendment of FASB Interpretation No. 39”
Fitch.....	Fitch Ratings
FPA.....	Federal Power Act
FSP SFAS No. 142-3.....	Financial Accounting Standards Board Staff Position SFAS No. 142-3, “Determination of the Useful Life of Intangible Assets”
GAAP.....	United States generally accepted accounting principles
GHG.....	greenhouse gas
GWh.....	gigawatt-hours
ISO(s).....	independent system operator(s)
kV.....	kilovolt
MD&A.....	Management’s Discussion and Analysis of Financial Condition and Results of Operations
MMBtu.....	million British thermal units
Moody’s.....	Moody’s Investors Service, Inc.
MW.....	megawatts
MWh.....	megawatt-hours
NAPP.....	Northern Appalachian
NOV.....	notice of violation
NO <sub>x</sub> .....	nitrogen oxide
NSR.....	New Source Review
NYISO.....	New York Independent System Operator
NYSEG.....	New York State Electric & Gas Corporation
PADEP.....	Pennsylvania Department of Environmental Protection
Penelec.....	Pennsylvania Electric Company

PJM.....	PJM Interconnection, LLC
PUHCA 1935 .....	Public Utility Holding Company Act of 1935 (as amended)
PUHCA 2005 .....	Public Utility Holding Company Act of 2005
RPM .....	reliability pricing model
RTO(s) .....	regional transmission organization(s)
S&P .....	Standard & Poor’s Ratings Services
SCR .....	selective catalytic reduction
SFAS.....	Statement of Financial Accounting Standards issued by the FASB
SFAS No. 133.....	Statement of Financial Accounting Standards No. 133, “Accounting for Derivative Instruments and Hedging Activities”
SFAS No. 157.....	Statement of Financial Accounting Standards No. 157, “Fair Value Measurements”
SFAS No. 158.....	Statement of Financial Accounting Standards No. 158, “Employers’ Accounting for Defined Benefit Pension and Other Post-Retirement Plans”
SFAS No. 161.....	Statement of Financial Accounting Standards No. 161, “Disclosures About Derivative Instruments and Hedging Activities” (an amendment of FASB No. 133)
SIP(s).....	state implementation plan(s)
SO <sub>2</sub> .....	sulfur dioxide
US EPA.....	United States Environmental Protection Agency

## Forward-Looking Statements

This annual report on Form 10-K contains “forward-looking statements” within the meaning of the Private Securities Litigation Reform Act of 1995. These statements reflect EME Homer City’s current expectations and projections about future events based on EME Homer City’s knowledge of present facts and circumstances and assumptions about future events and include any statement that does not directly relate to a historical or current fact. Other information distributed by EME Homer City that is incorporated in this annual report, or that refers to or incorporates this annual report, may also contain forward-looking statements. In this annual report and elsewhere, the words “expects,” “believes,” “anticipates,” “estimates,” “projects,” “intends,” “plans,” “probable,” “may,” “will,” “could,” “would,” “should” and variations of such words and similar expressions, or discussions of strategy or plans, are intended to identify forward-looking statements. Such statements necessarily involve risks and uncertainties that could cause actual results to differ materially from those anticipated. Some of the risks, uncertainties and other important factors that could cause results to differ, or that otherwise could impact EME Homer City, include but are not limited to:

- the effect of current economic conditions on the availability and creditworthiness of counterparties, and the resulting effects on liquidity in the power and fuel markets in which EME Homer City operates and/or the ability of counterparties to pay amounts owed in excess of collateral provided in support of their obligations;
- supply and demand for electric capacity and energy, and the resulting prices and dispatch volumes, in the wholesale markets to which EME Homer City’s generating units have access;
- the cost and availability of fuel and fuel transportation services;
- market volatility and other market conditions that could increase EME Homer City’s obligations to post collateral beyond the amounts currently expected, and the potential effect of such conditions on the ability of EME Homer City to provide sufficient collateral in support of its hedging activities and purchases of fuel;
- the cost and availability of emission credits or allowances;
- transmission congestion in and to each market area and the resulting differences in prices between delivery points;
- governmental, statutory, regulatory or administrative changes or initiatives affecting EME Homer City or the electricity industry generally, including market structure rules and price mitigation strategies;
- environmental laws and regulations, at both state and federal levels, or changes in the application of those laws, that could require additional expenditures or otherwise affect EME Homer City’s cost and manner of doing business;
- the extent of additional supplies of capacity, energy and ancillary services from current competitors or new market entrants, including the development of new generation facilities, and technologies that may be able to produce electricity at a lower cost than EME Homer City’s generating facilities and/or increased access by competitors to EME Homer City’s markets as a result of transmission upgrades;
- the difficulty of predicting wholesale prices, transmission congestion, energy demand, and other aspects of the complex and volatile markets in which EME Homer City participates;
- operating risks, including equipment failure, availability, heat rate, output, availability and cost of spare parts, and costs of repairs and retrofits;

- creditworthiness of suppliers and their ability to deliver goods and services under their contractual obligations to EME Homer City or to pay damages if they fail to fulfill those obligations;
- effects of legal proceedings, changes in or interpretations of tax laws, rates or policies, and changes in accounting standards;
- general political, economic and business conditions; and
- weather conditions, natural disasters and other unforeseen events.

Certain of the risk factors listed above are discussed in more detail in “Item 1A. Risk Factors” and in “Item 7. Management’s Discussion and Analysis of Financial Condition and Results of Operations—Market Risk Exposures.” Additional information about the risk factors listed above and other risks and uncertainties is contained throughout this annual report. Readers are urged to read this entire annual report, including the information incorporated by reference, and carefully consider the risks, uncertainties and other factors that affect EME Homer City’s business. Forward-looking statements speak only as of the date they are made, and EME Homer City is not obligated to publicly update or revise forward-looking statements. Readers should review future reports filed by EME Homer City with the Securities and Exchange Commission.

## PART I

### ITEM 1. BUSINESS

#### Overview

EME Homer City is a Pennsylvania limited partnership with Chestnut Ridge Energy Company as a limited partner with a 99.9 percent interest and Mission Energy Westside Inc. as a general partner with a 0.1 percent interest. Both Chestnut Ridge Energy and Mission Energy Westside are wholly owned subsidiaries of Edison Mission Holdings Co., a wholly owned subsidiary of EME. EME is an indirect wholly owned subsidiary of Edison International. EME Homer City was formed for the purpose of acquiring, owning and operating three coal-fired electric generating units and related facilities located near Pittsburgh, Pennsylvania with an aggregate capacity of 1,884 MW, which EME Homer City collectively refers to as the “Homer City facilities,” for the purpose of producing electric energy. EME Homer City acquired the Homer City facilities on March 18, 1999.

EME Homer City derives revenue from the sale of energy, capacity and ancillary services into PJM and from bilateral contracts with power marketers and load-serving entities within PJM and NYISO. EME Homer City has a contract with EMMT, a marketing affiliate, to sell energy, capacity and ancillary services from the Homer City facilities, which enables EMMT to engage in forward sales and hedging transactions to manage electricity price exposure.

On December 7, 2001, EME Homer City completed a sale-leaseback of its facilities to third-party lessors for an aggregate purchase price of \$1.591 billion, made up of \$782 million in cash and the assumption of the obligations under Edison Mission Holdings Co.’s 8.137% Senior Secured Bonds due 2019 and 8.734% Senior Secured Bonds due 2026, which EME Homer City refers to collectively as the senior secured bonds (the fair value of which was \$809.3 million), which were guaranteed by EME Homer City. EME Homer City’s transaction has been accounted for as a lease financing for accounting purposes. For more information on the sale-leaseback transaction, see “Item 8. Financial Statements and Supplementary Data—EME Homer City Generation L.P. Notes to Financial Statements—Note 9. Commitments and Contingencies.”

#### *Location and Available Information*

EME Homer City’s principal executive offices are located at 1750 Power Plant Road, Homer City, Pennsylvania, 15748-8009, and its telephone number is (724) 479-9011.

EME Homer City’s Annual Reports on Form 10-K, Quarterly Reports on Form 10-Q, Current Reports on Form 8-K, and amendments to those reports, are electronically filed or furnished pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended, and are available on the Securities and Exchange Commission’s internet web site at <http://www.sec.gov>.

EME is registered with the Securities and Exchange Commission and has financial statements that are filed in accordance with rules enacted by the Securities and Exchange Commission. For more information regarding EME, see its respective annual report on Form 10-K for the year ended December 31, 2008.

## **Description of the Industry**

### ***Electric Power Industry***

Historically, investor-owned utilities and government-owned power agencies were the only producers of bulk electric power intended for sale to third parties in the United States. However, the United States electric industry, including companies engaged in providing generation, transmission, distribution and retail sales and service of electric power, has undergone significant deregulation over the last three decades, which has led to increased competition, especially in the generation sector. Most recently, through the Energy Policy Act of 2005, the U.S. Congress recognized that a significant market for electric power generated by independent power producers, such as EME Homer City, has developed in the United States and indicated that competitive wholesale electricity markets have become accepted as a fundamental aspect of the electricity industry.

As part of the developments discussed above, the FERC has encouraged the formation of ISOs and RTOs. In those areas where ISOs and RTOs have been formed, market participants have open access to transmission service typically at a system-wide rate. ISOs and RTOs may also operate real-time and day-ahead energy and ancillary service markets, which are governed by FERC-approved tariffs and market rules. The development of such organized markets into which independent power producers are able to sell has reduced their dependence on bilateral contracts with electric utilities. See further discussion of regulations under “Regulatory Matters—U.S. Federal Energy Regulation.”

In various regional markets, electricity market administrators have acknowledged that the markets for generating capacity do not provide sufficient revenues to enable existing merchant generators to recover all of their costs or to encourage new generating capacity to be constructed. Capacity auctions have been implemented in some markets, including PJM, to address this issue. This approach is currently expected to provide significant additional capacity revenues for independent power producers.

### ***Electric Power Markets***

#### ***PJM***

The Homer City facilities are located in the control area managed by PJM, an RTO which includes all or parts of Delaware, Illinois, Indiana, Kentucky, Maryland, Michigan, New Jersey, North Carolina, Ohio, Pennsylvania, Tennessee, Virginia, West Virginia and the District of Columbia. PJM operates a wholesale spot energy market and determines the market-clearing price for each hour based on bids submitted by participating generators which indicate the minimum prices a bidder is willing to accept to be dispatched at various incremental generation levels. PJM conducts both day-ahead and real-time energy markets. PJM’s energy markets are based on locational marginal pricing, which establishes hourly prices at specific locations throughout PJM. Locational marginal pricing is determined by considering a number of factors, including generator bids, load requirements, transmission congestion and transmission losses. It can also be affected by, among other things, market mitigation measures and energy market price caps.

PJM requires all load-serving entities to maintain prescribed levels of capacity, including a reserve margin, to ensure system reliability. PJM also determines the amount of capacity available from each specific generator and operates capacity markets. PJM’s capacity markets have a single market-clearing price. Load-serving entities and generators, such as EME Homer City, may participate in PJM’s capacity markets or transact capacity sales on a bilateral basis. For a discussion of legal challenges to the prices

resulting from PJM's capacity auctions, see "Regulatory Matters—PJM Matters—RPM Buyers' Complaint."

## *NYISO*

The NYISO was established in 1999 to operate a competitive, non-discriminatory wholesale power market in response to the FERC's Open Access Rules and includes bid-based electricity and transmission usage markets. The market-clearing price for NYISO's day-ahead and real-time energy markets is set by supplier generation bids and customer demand bids.

Subject to PJM and NYISO transmission availability and reliability considerations, EME Homer City can transmit up to 1,884 MW from its generating units into NYISO and can deliver up to 1,884 MW into PJM. EME Homer City does not incur any access or wheeling charges for any energy delivered into PJM.

For a discussion of the market risks related to EME Homer City's sale of electricity, see "Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations—Market Risk Exposures."

## ***Competition***

EME Homer City is subject to intense competition from energy marketers, investor-owned utilities, government-owned power agencies, industrial companies, financial institutions, and other independent power producers. Some of EME Homer City's competitors have a lower cost of capital than most independent power producers and, in the case of utilities, are often able to recover fixed costs through rate base mechanisms, allowing them to build, buy and upgrade generation without relying exclusively on market clearing prices to recover their investments. These companies may also have competitive advantages as a result of their scale and the location of their generation facilities.

Environmental regulations, particularly those that impose stringent state specific emission limits, could put EME Homer City's coal-fired plants at a disadvantage compared with competing power plants operating in nearby states and subject only to federal emission limits. Potential future climate change regulations could also put EME Homer City's coal-fired power plants at a disadvantage compared to both power plants utilizing other fuels and utilities that may be able to recover climate change compliance costs through rate mechanisms. In addition, EME Homer City's ability to compete may be affected by governmental and regulatory activities designed to support the construction and operation of power generation facilities fueled by renewable energy sources.

## **Overview of Facilities Under Lease**

The Homer City facilities are located on a 2,413-acre site approximately 45 miles northeast of Pittsburgh within Indiana County, Pennsylvania. EME Homer City owns a fee interest in the land and leases the facilities on which the generating units are located pursuant to a sale-leaseback transaction completed in December 2001. The Homer City facilities consist of the generating units, a coal cleaning facility, water supply provided by a 1,800-acre reservoir site known as Two Lick Dam, which is not part of the 2,413-acre site, and associated support facilities. The Homer City generating units benefit from direct transmission access to both PJM and NYISO through seven high voltage lines which interconnect through a switchyard located on the site.

The Homer City units are coal-fired boilers and steam turbine-generator units (referred to as Units 1, 2 and 3 in this annual report). Units 1 and 2, which are essentially identical to one another, were placed

into commercial operation in 1969. Unit 1 has an installed capacity of 620 MW, and Unit 2 has an installed capacity of 614 MW. The Unit 1 and 2 boilers have been retrofitted with low NO<sub>x</sub> burners to meet Phase I NO<sub>x</sub> 1990 CAA standards. In addition, both boilers have supplemental over-fired air systems to further reduce NO<sub>x</sub> emissions to satisfy Pennsylvania Title I (ozone) requirements. SCR units have been installed on Units 1 and 2 for further reduction of NO<sub>x</sub> emissions.

Unit 3 commenced commercial operation in 1977 and has an installed capacity of 650 MW. The boiler for Unit 3 was originally constructed with low NO<sub>x</sub> burners which satisfied Phase I NO<sub>x</sub> 1990 CAA standards, and a supplemental over-fired air system was installed in 1995 to further reduce NO<sub>x</sub> emissions. In addition, a wet scrubber FGD system and a SCR system were installed on Unit 3 in 2001.

These improvements were made to enable the Homer City generating units to comply with Phase II of Title IV of the 1990 CAA regarding SO<sub>2</sub> emissions, the Pennsylvania NO<sub>x</sub> allowance regulations and Pennsylvania's response to the US EPA SIP Call regarding NO<sub>x</sub> emissions.

### **Power Sales**

All the energy and capacity from the Homer City facilities is sold under terms, including price and quantity, arranged by EMMT with customers through a combination of bilateral agreements (resulting from negotiations or from auctions), forward energy sales and spot market sales. Electric power generated at the Homer City facilities is generally sold into the PJM market. PJM has a short-term market, which establishes an hourly clearing price. The Homer City facilities are situated in the PJM control area and are physically connected to high-voltage transmission lines serving both the PJM and NYISO markets. For a discussion of the risks related to EME Homer City's sale of electricity, see "Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations—Market Risk Exposures."

### **Significant Customers**

During the past three fiscal years, EME Homer City derived a significant source of its operating revenues from electric power sold into the PJM market by EMMT. Sales into PJM accounted for approximately 54%, 70% and 58% of EME Homer City's operating revenues for the years ended December 31, 2008, 2007 and 2006, respectively. For the year ended December 31, 2008, EMMT also made sales to Constellation Energy Commodities Group, Inc. that accounted for approximately 24% of EME Homer City's operating revenues. For the year ended December 31, 2007, EMMT made sales to American Electric Power that accounted for approximately 11% of EME Homer City's operating revenues. For the year ended December 31, 2006, EMMT made sales to Coral Power, LLC that accounted for approximately 21% of EME Homer City's operating revenues.

### **Fuel Supply**

Units 1 and 2 collectively consume approximately 3.3 million to 3.5 million tons of mid-range sulfur coal per year. Approximately 90% or more of this coal is obtained under contracts with the remainder purchased in the spot market as needed. Two types of coal are purchased, ready to burn coal and raw coal. Ready to burn coal is of a quality that can be burned directly in Units 1 and 2, whereas the raw coal purchased for consumption by Units 1 and 2 must be cleaned in the Homer City coal cleaning facility, which has the capacity to clean up to 5 million tons of coal per year. The Homer City coal cleaning facility utilizes heavy media cyclones, froth flotation and spiral separators to reduce the ash and sulfur content of the raw coal to meet both combustion and environmental requirements. The Homer City

coal cleaning facility is operated by Homer City Coal Processing Corporation under a coal cleaning agreement that expires December 31, 2010.

Unit 3 consumes approximately 2 million tons of coal per year. EME Homer City purchases the majority of its Unit 3 coal under contracts with the balance purchased in the spot market as needed. A wet scrubber FGD system for Unit 3 enables this unit to burn less expensive, higher sulfur coal, while still meeting environmental standards for emission control.

In general, the coal purchased for all three units originates from mines that are within approximately 100 miles of the Homer City facilities. It is delivered to the station by truck and by rail.

See “Item 7. Management’s Discussion and Analysis of Financial Condition and Results of Operations—Liquidity and Capital Resources—Contractual Obligations, Commitments and Contingencies,” for additional discussion of contractual commitments related to EME Homer City’s fuel supply contracts.

### ***Emission Allowances***

The federal Acid Rain Program requires electric generating stations to hold SO<sub>2</sub> allowances sufficient to cover their annual emissions. Pennsylvania regulations implemented the federal NO<sub>x</sub> SIP Call which required, through 2008, the holding of NO<sub>x</sub> allowances to cover ozone season NO<sub>x</sub> emissions. In addition, pursuant to Pennsylvania’s implementation of the CAIR, electric generating stations are required to hold seasonal and annual NO<sub>x</sub> allowances beginning January 1, 2009. As part of the acquisition of the Homer City facilities, EME Homer City obtained the rights to the emission allowances that have been or are allocated to these facilities. EME Homer City purchases (or sells) emission allowances based on the amounts required for actual generation in excess of (or less than) the amounts allocated under these programs.

See “Item 8. Financial Statements and Supplementary Data—EME Homer City Generation L.P. Notes to Financial Statements—Note 9. Commitments and Contingencies—Environmental Matters and Regulations” for a discussion of environmental regulations related to emissions. See “Item 7. Management’s Discussion and Analysis of Financial Condition and Results of Operations—Market Risk Exposures—Commodity Price Risk—Emission Allowances Price Risk” for a discussion of price risks related to the purchase or sale of emission allowances.

### **Transmission and Interconnection**

Existing transmission lines leaving the Homer City generating units are interconnected with both PJM and NYISO. EME Homer City is able to transmit full plant output into PJM through an 85-mile 345 kV line and 34-mile, 19-mile and 15-mile 230 kV lines owned by Penelec, an affiliate of FirstEnergy Corp. Subject to PJM transmission availability and reliability considerations, EME Homer City has the ability to transmit full plant output into NYISO through 345 kV lines owned by NYSEG. In addition, a 13-mile 230 kV line from the Homer City generating units provides an indirect interconnection to the East Central Area reliability market.

The points of interconnection with the Homer City units include:

- (1) the 230 kV circuit from the Unit 1 main power transformer,
- (2) the 345 kV circuit from the Unit 2 main power transformer,
- (3) the 345 kV circuit from the Unit 3 main power transformer,

- (4) the 345/230/23 kV north and south autotransformers, and
- (5) substation services No. 1 and No. 2.

The ownership of the transmission and distribution assets for the Homer City facilities, including the site switchyard, substation and support equipment, remained with Penelec and NYSEG following EME Homer City's acquisition of the facilities. These companies entered into an interconnection agreement with EME Homer City's general partner, Mission Energy Westside, which provides EME Homer City with all services necessary to interconnect its generating units with their transmission systems, other than services provided under existing tariffs. Unless terminated earlier in accordance with its terms, the interconnection agreement will terminate on a date mutually agreed to by Mission Energy Westside, NYSEG and Penelec. This date will not exceed the retirement date of the Homer City units. NYSEG and Penelec have agreed to extend such interconnection services (but not the expiration of the agreement) to modifications, additions, upgrades or repowering of the Homer City units. Mission Energy Westside is required to compensate NYSEG and Penelec for all reasonable costs associated with any modifications, additions or replacements made to NYSEG or Penelec's interconnection facilities or transmission systems in connection with any modification, addition, upgrade or repowering of the Homer City units.

### **Water Supply and Other Support Facilities**

The Homer City generating units receive their water supply from Two Lick Creek. The water supply to Two Lick Creek is regulated by releases from Two Lick Dam, which is located approximately eight miles upstream from the Homer City facilities and is owned, operated and maintained by EME Homer City in accordance with a dam safety permit and a drought management plan and related consent order and agreement with the PADEP. These facilities were not sold to third parties as part of the 2001 sale-leaseback transaction. Each of the Homer City generating units has a natural draft-cooling tower. A portion of the waste heat in the water leaving the units' condensers is diverted from these towers to a 14-acre polyethylene roofed greenhouse complex located adjacent to the Homer City units. After the water passes through this greenhouse complex, it is returned to the basin of the cooling towers for reuse.

Other support facilities located on the site include an ash disposal area, a coal refuse disposal area, coal receiving and storage facilities and water treatment and pumping facilities.

### **Insurance**

EME Homer City maintains insurance policies that it believes are comparable to those carried by other electric generating facilities of similar size. The insurance program includes all-risk real and personal property insurance, including coverage for losses from boiler and machinery breakdowns, and the perils of earthquake and flood, subject to certain sublimits. The property insurance program currently covers losses up to \$1.325 billion. Under the terms of the participation agreements entered into as part of EME Homer City's sale-leaseback transaction, EME Homer City is required to maintain specified minimum insurance coverages if and to the extent that such insurance is available on a commercially reasonable basis. Although the insurance covering the Homer City facilities is comparable to insurance coverages normally carried by companies engaged in similar businesses, and owning similar properties, the insurance coverages that are in place do not meet the minimum insurance coverages required under the participation agreements. Due to the current market environment, the minimum insurance coverage is not commercially available at reasonable prices. EME Homer City has obtained a waiver under the participation agreements which will permit it to maintain its current insurance coverage through June 1, 2009.

EME Homer City also carries general liability insurance covering liabilities to third parties for bodily injury or property damage resulting from operations, automobile liability insurance and excess liability insurance. Limits and deductibles in respect of these insurance policies are consistent with the requirements of the participation agreements.

## **Seasonality**

Due to higher electric demand resulting from warmer weather during the summer months and cold weather during the winter months, electric revenues from the Homer City facilities vary substantially on a seasonal basis. In addition, maintenance outages generally are scheduled during periods of lower projected electric demand (spring and fall) further reducing generation and increasing major maintenance costs which are recorded as an expense when incurred. Accordingly, earnings from the Homer City facilities are seasonal and have significant variability from quarter to quarter. Seasonal fluctuations may also be affected by changes in market prices. See “Item 7. Management’s Discussion and Analysis of Financial Condition and Results of Operations—Market Risk Exposures—Commodity Price Risk—Energy Price Risk” for further discussion regarding market prices.

## **Regulatory Matters**

### ***General***

EME Homer City’s operations are subject to extensive regulation by government agencies. EME Homer City is subject to energy, environmental and other governmental laws and regulations at the federal, state and local levels in connection with the operation of its facilities, and the use of electric energy, capacity and related products, including ancillary services from those facilities. In addition, EME Homer City is subject to the market rules, procedures, and protocols of the markets in which it participates.

The laws and regulations that affect EME Homer City and its operations are in a state of flux. Complex and changing environmental and other regulatory requirements could necessitate substantial expenditures and could create a significant risk of expensive delays or significant loss of value in a power plant if the Homer City facilities were to become unable to function as planned due to changing requirements or local opposition.

### ***U.S. Federal Energy Regulation***

The FERC has ratemaking jurisdiction and other authority with respect to wholesale sales and interstate transmission of electric energy (other than transmission that is “bundled” with retail sales) under the FPA and with respect to certain interstate sales, transportation and storage of natural gas under the Natural Gas Act of 1938. Independent power production has been further encouraged by the passage of the Energy Policy Act in 1992, which provided additional exemptions from PUHCA 1935 for EWGs such as EME Homer City, and the Energy Policy Act of 2005, which included provisions for the repeal of PUHCA 1935, amendments to the Public Utility Regulatory Policies Act of 1978 (PURPA), merger review reform, the introduction of new regulations regarding transmission operation improvements, FERC authority to impose civil penalties for violation of its regulations, transmission rate reform and incentives for various generation technologies.

### ***Reliability Standards***

On July 20, 2006, the FERC certified the North American Electric Reliability Corporation (NERC) as its Electric Reliability Organization to establish and enforce reliability standards for the bulk power

system. Compliance with these standards became mandatory, on June 18, 2007. EME Homer City believes it has taken all steps to be compliant with current NERC reliability standards that apply to its operations.

### *Federal Power Act*

The FPA grants the FERC exclusive jurisdiction over the rates, terms and conditions of wholesale sales of electricity and transmission services in interstate commerce (other than transmission that is “bundled” with retail sales), including ongoing, as well as initial, rate jurisdiction. This jurisdiction allows the FERC to revoke or modify previously approved rates after notice and opportunity for hearing. These rates may be based on a cost-of-service approach or, in geographic and product markets determined by the FERC to be workably competitive, may be market based.

EWGs certified in accordance with the FERC’s rules under PUHCA 2005 are subject to the FPA and to the FERC’s ratemaking jurisdiction thereunder, but the FERC typically grants EWGs the authority to sell power at market-based rates to purchasers which are not affiliated electric utility companies as long as the absence of market power is shown. On March 12, 1999, the general counsel of the FERC issued a letter determining that, based on the facts stated in EME Homer City’s application for EWG status, EME Homer City is an EWG.

EME Homer City is authorized by the FERC to make wholesale market sales of power at market-based rates and is subject to the FERC ratemaking regulation under the FPA. The FERC’s order, as is customary with market-based rate schedules, reserves the right to revoke EME Homer City’s market-based rate authority on a prospective basis if it is subsequently determined that EME Homer City or any of its affiliates possess excessive market power. If the FERC were to revoke EME Homer City’s market-based rate authority, it would be necessary for EME Homer City to file, and obtain the FERC’s acceptance of, EME Homer City’s rate schedule as a cost-of-service rate schedule. In addition, the loss of market-based rate authority would subject EME Homer City to the accounting, record keeping and reporting requirements that are imposed on utilities with cost-based rate schedules. If EME Homer City were to lose its EWG status, defaults under the covenants in EME Homer City’s agreements could be triggered.

The FPA also grants the FERC jurisdiction over the sale or transfer of specified assets, including wholesale power sales contracts and generation facilities, and in some cases, jurisdiction over the issuance of securities or the assumption of specified liabilities and some interlocking directorates. Dispositions of EME Homer City’s jurisdictional assets or certain types of financing arrangements may require FERC approval.

### *Transmission of Wholesale Power*

EME Homer City utilizes power lines owned by others for the transmission of electricity. The prices and other terms and conditions of transmission contracts are regulated by the FERC when the entity providing the transmission service is a jurisdictional public utility under the FPA, Order No. 2000, and subsequent orders.

The Energy Policy Act of 1992 laid the groundwork for a competitive wholesale market for electricity by, among other things, expanding the FERC’s authority to order electric utilities to transmit third-party electricity over their transmission lines, thus allowing EWGs, such as EME Homer City, to more effectively compete in the wholesale market.

## *State Energy Regulation*

### *Overview*

State public utility commissions have broad jurisdiction over non-qualifying facility independent power projects, including EWGs, which are considered public utilities in many states. This jurisdiction can include the issuance of certificates of public convenience and necessity and/or other certifications to construct, own and operate a facility, engage in retail energy sales, as well as the regulation of organizational, accounting, financial and other corporate matters on an ongoing basis. Some states that have restructured their electric industries require generators to register to provide electric service to customers. Many states are currently undergoing significant changes in their electric statutory and regulatory frameworks that result from restructuring the electric industries that may affect generators in those states. Although the FERC generally has exclusive jurisdiction over the rates charged by a non-qualifying facility independent power project to its wholesale customers, a state's public utility commission has the ability, in practice, to influence the establishment of these rates by asserting jurisdiction over a purchasing utility's ability to pass the resulting cost of purchased power through to its retail customers. In addition, states may assert jurisdiction over the siting and construction of independent power projects and, among other things, the issuance of securities, related party transactions and the sale or other transfer of assets by these facilities. The actual scope of jurisdiction over independent power projects by state public utility commissions varies from state to state. Although state public utility commissions do not have any jurisdiction to modify the terms of wholesale power sales, EME Homer City cannot provide assurance that its power sales contracts will not be subject to adverse consequences as a result of regulatory actions by a state commission, even though it sells power exclusively at wholesale.

### *Pennsylvania*

Under the Pennsylvania Public Utility Law, the Pennsylvania Public Utility Commission regulates all public utilities operating in Pennsylvania. A "public utility" under this law includes any entity that owns or operates equipment or facilities for the production, generation, transmission or distribution of gas, electricity or steam for the production of light, heat or power to the public for consumption. The Pennsylvania Public Utility Law does not specifically address the utility status of entities selling electricity at wholesale within Pennsylvania. Because EME Homer City sells electricity exclusively in the wholesale market and does not hold itself out to the public generally as a supplier of utility service, EME Homer City is not likely to be regulated as a public utility under the Pennsylvania Public Utility Law. If, however, EME Homer City were deemed to be a Pennsylvania public utility, the Pennsylvania Public Utility Commission could retroactively apply several provisions of the Pennsylvania Public Utility Law to EME Homer City. One of those provisions requires every public utility to obtain a certificate of public convenience and necessity from the Pennsylvania Public Utility Commission prior to rendering service as a public utility. If the Pennsylvania Public Utility Commission were to require EME Homer City to obtain a certificate of public convenience and necessity, EME Homer City might be required to discontinue operation of its units pending application for, and receipt of, this certificate. Another provision requires every public utility to obtain Pennsylvania Public Utility Commission approval before it issues or guarantees securities. If EME Homer City were found to be a public utility, its failure to have obtained this approval could call into question the validity of its obligations under the documents entered into in connection with the sale-leaseback. In addition, EME Homer City would then be subject to other laws and regulations applicable to Pennsylvania public utilities, except for rate regulation. EME Homer City's rates would remain subject to the jurisdiction of the FERC.

## *New York*

Under the New York Public Service Law, the New York Public Service Commission regulates all public utility companies or utility companies operating in New York. A public utility company or utility company under the New York Public Service Law includes, among other things, any entity engaged in the production, transmission or distribution of electricity to the public for light, heat or power purposes. EME Homer City, as an EWG, does not provide electricity directly to the public, but instead sells only to power marketers and energy service companies. Although the New York Public Service Law is silent with respect to the utility status of electric corporations selling electricity wholesale within New York, EME Homer City will not likely be subject to regulation as a New York public utility. If, however, EME Homer City were deemed to be a public utility under the New York Public Service Law, the New York Public Service Commission could retroactively apply specified provisions of the statute to EME Homer City. In addition, EME Homer City would then be subject to other laws and regulations applicable to New York public utility companies, except for rate regulation. EME Homer City's rates would remain subject to the jurisdiction of the FERC.

### ***PJM Matters***

On June 1, 2007, PJM implemented the RPM for capacity. The purpose of the RPM is to provide a long-term pricing signal for capacity resources. The RPM provides a mechanism for PJM to satisfy the region's need for generation capacity, the cost of which is allocated to load-serving entities through a locational reliability charge. Also on June 1, 2007, PJM implemented marginal losses for transmission for its competitive wholesale electric market. For further discussion regarding the RPM and recent auctions, see "Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations—Market Risk Exposures—Commodity Price Risk—Capacity Price Risk."

### *RPM Buyers' Complaint*

On May 30, 2008, a group of entities referring to themselves as the "RPM Buyers" filed a complaint at the FERC asking that PJM's RPM, as implemented through the transitional base residual auctions establishing capacity payments for the period from June 1, 2008 through May 31, 2011, be found to have produced unjust and unreasonable capacity prices. On September 19, 2008, the FERC dismissed the RPM Buyers' complaint, finding that the RPM Buyers had failed to allege or prove that any party violated PJM's tariff and market rules, and that the prices determined during the transition period were determined in accordance with PJM's FERC-approved tariff. On October 20, 2008, the RPM Buyers requested rehearing of the FERC's order dismissing their complaint. This matter is currently pending before the FERC. EME Homer City cannot predict the outcome of this matter.

### *RPM CONE*

On December 12, 2008, PJM submitted revised RPM Tariff sheets pursuant to Section 205 of the FPA, proposing RPM auction modifications relating to CONE values, including a proposal to modify how scarcity pricing revenues are incorporated in the Net Energy and Ancillary Services Revenue Offset, new rules for participation of demand side management resources in the RPM auctions, and a proposed holdback of 2.5% of the reliability requirement from the Base Residual Auction. The CONE is used to construct the demand curve for RPM auctions, and its level affects the clearing price for those auctions (which is determined at the intersection of the supply and demand curves).

On February 9, 2009, PJM and several other parties to the proceedings filed a proposed settlement with the FERC with a proposed effective date of March 27, 2009. The CONE values in the proposed

settlement represent a 10% decrease from those contained in PJM's December 12, 2008 filing. The proposed settlement would retain the 2.5% holdback proposed in PJM's December 12 filing and would increase the length of forward commitment for new capacity resources to seven years, instead of the five years originally proposed by PJM.

There was a high level of opposition to PJM's proposed modifications from buyers and consumers, and a similarly high level of opposition is expected with respect to the proposed settlement. The effect of the FERC's actions on future RPM auctions cannot be determined at this time. The CONE as proposed for the May 2009 RPM auction for the 2012/2013 delivery year is higher than what is currently effective in the tariff.

## **Environmental Matters and Regulations**

See the discussion on environmental matters and regulations in Note 9—Commitments and Contingencies under “Item 8. Financial Statements and Supplementary Data—EME Homer City Generation L.P. Notes to Financial Statements,” as well as the discussions on the NOV issued to EME Homer City under “Item 3. Legal Proceedings.”

## **Employees**

At December 31, 2008, EME Homer City employed 265 employees, approximately 193 of whom are covered by a collective bargaining agreement governing wages, benefits and working conditions. This collective bargaining agreement will expire on December 31, 2012.

## **ITEM 1A. RISK FACTORS**

### **Market and Operating Risks**

*EME Homer City's ability to make payments of lease rent under the facility leases is subject to market risks related to wholesale energy prices.*

EME Homer City's ability to make payments of lease rent on the facility leases is dependent on revenues generated by the Homer City facilities, which depend on the facilities' performance level and on market conditions for the sale of capacity and energy.

The Homer City facilities derive revenues from the sale of energy and capacity into PJM and from bilateral contracts with power marketers and load-serving entities within PJM, NYISO and the surrounding markets. Participants in PJM and NYISO are not guaranteed any specified rate of return on their capital investments through recovery of mandated rates payable by purchasers of electricity. Therefore, with the exception of nominal revenue, EME Homer City's revenues and results of operations are dependent upon prevailing market prices for energy, capacity and ancillary services. The market prices for these products in PJM and NYISO are influenced by multiple factors beyond EME Homer City's control, which include:

- prevailing market prices for coal, natural gas and fuel oil, and associated transportation;
- the cost and availability of emission credits or allowances;
- the extent of additional supplies of capacity, energy and ancillary services from current competitors or new market entrants, including the development of new generation facilities or technologies that may be able to produce electricity at a lower cost than the Homer City facilities

and/or increased access by competitors to EME Homer City's markets as a result of transmission upgrades;

- transmission congestion in and to each market area and the resulting differences in prices between delivery points;
- the market structure rules established for, and regulatory developments affecting, PJM and NYISO, including any price limitations and other mechanisms adopted to address volatility or illiquidity in these markets or the physical stability of the system;
- legal and political challenges to the rules used to calculate capacity payments in the PJM market;
- the ability of regional pools to pay market participants' settlement prices for energy and related products;
- the availability, reliability and operation of competing power generation facilities, including nuclear generating plants where applicable, and the extended operation of such facilities beyond their presently expected dates of decommissioning;
- weather conditions prevailing in PJM and NYISO from time to time; and
- changes in the demand for electricity or in patterns of electricity usage as a result of factors such as regional economic conditions and the implementation of conservation programs.

In addition, unlike most other commodities, electric power can only be stored on a very limited basis and generally must be produced concurrently with its use. As a result, the wholesale power markets are subject to significant and unpredictable price fluctuations over relatively short periods of time.

There is no assurance that EME Homer City will be successful in selling power into its markets or that the prices received for its power will generate positive cash flow. If EME Homer City's operations do not meet these objectives, it may not be able to generate enough cash to service its own debt and lease obligations, which could have a material adverse effect on EME Homer City. See "Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations—Market Risk Exposures."

***EME Homer City's financial results can be affected by changes in fuel prices, fuel transportation cost increases, and interruptions in fuel supply.***

EME Homer City's business is subject to changes in fuel costs, which may negatively affect its financial results and financial position by increasing the cost of producing power. The fuel markets can be volatile, and actual fuel prices can differ from EME Homer City's expectations.

Although EME Homer City attempts to purchase fuel based on its known fuel requirements, it is still subject to the risks of supply interruptions, transportation cost increases, and fuel price volatility. In addition, fuel deliveries may not exactly match energy sales, due in part to the need to purchase fuel inventories in advance for reliability and dispatch requirements. The price at which EME Homer City can sell its energy may not rise or fall at the same rate as a corresponding rise or fall in fuel costs.

***EME Homer City may not be able to hedge market risks effectively.***

EME Homer City is exposed to market risks through its operation of the Homer City facilities. These market risks include, among others, volatility arising from the timing differences associated with buying fuel, converting fuel into energy and delivering energy to a buyer. Through EMMT, EME Homer City uses forward contracts and derivative financial instruments, such as futures contracts and options, to

manage market risks and exposure to fluctuating electricity and fuel prices. However, EME Homer City cannot provide assurance that these strategies will successfully mitigate market risks.

EME Homer City may not cover the entire exposure of its assets or positions to market price volatility, and the level of coverage will vary over time. Fluctuating commodity prices may affect EME Homer City's financial results, either favorably or unfavorably, to the extent that assets and positions have not been hedged.

The effectiveness of EME Homer City's hedging activities may depend on the amount of working capital available to post as collateral in support of these transactions, either in support of performance guarantees or as a cash margin. The amount of credit support that must be provided typically is based on the difference between the price of the commodity in a given contract and the market price of the commodity. Significant movements in market prices can result in a requirement to provide cash collateral and letters of credit in very large amounts. Without adequate liquidity to meet margin and collateral requirements, EME Homer City could be exposed to the following:

- a reduction in the number of counterparties willing to enter into bilateral contracts, which would result in increased reliance on short-term and spot markets instead of bilateral contracts, increasing EME Homer City's exposure to market volatility; and
- a failure to meet a margining requirement, which could permit the counterparty to terminate the related bilateral contract early and demand immediate payment for the replacement value of the contract.

As a result of these and other factors, EME Homer City cannot predict the effect that risk management decisions may have on its business, operating results or financial position.

***Competition could adversely affect EME Homer City's business.***

The independent power industry is characterized by numerous capable competitors, some of whom may have more extensive experience in the acquisition and development of power projects, larger staffs, and greater financial resources than EME Homer City. Several participants in the wholesale markets, including many regulated utilities, have a lower cost of capital than most merchant generators and often are able to recover fixed costs through rate base mechanisms, allowing them to build, buy and upgrade generation assets without relying exclusively on market clearing prices to recover their investments. This could affect EME Homer City's ability to compete effectively in the markets in which those entities operate.

Newer plants owned by EME Homer City's competitors are often more efficient than the Homer City facilities. This may put the Homer City facilities at a competitive disadvantage to the extent that its competitors are able to produce more power from each increment of fuel than the Homer City facilities are capable of producing. Over time, the Homer City facilities may become obsolete in their markets, or be unable to compete, because of the construction of newer, more efficient power plants.

In addition to the competition already existing in the markets in which EME Homer City presently operates or may consider operating in the future, EME Homer City is likely to encounter significant competition as a result of further consolidation of the power industry by mergers and asset reallocations, which could create larger competitors, as well as new market entrants. In addition, regulatory initiatives may result in changes in the power industry to which EME Homer City may not be able to respond in as timely and effective manner as its competitors.

*The Homer City facilities may be affected by general operating risks and hazards customary in the power generation industry. EME Homer City may not have adequate insurance to cover all these hazards.*

The operation of power generation facilities involves many operating risks, including:

- performance below expected levels of output, efficiency or availability;
- interruptions in fuel supply;
- disruptions in the transmission of electricity;
- curtailment of operations due to transmission constraints;
- breakdown or failure of equipment or processes;
- imposition of new regulatory, permitting, or environmental requirements, or violations of existing requirements;
- employee work force factors, including strikes, work stoppages or labor disputes;
- operator/contractor error; and
- catastrophic events such as terrorist activities, fires, tornadoes, earthquakes, explosions, floods or other similar occurrences affecting power generation facilities or the transmission and distribution infrastructure over which power is transported.

These and other hazards can cause significant personal injury or loss of life, severe damage to and destruction of property, plant and equipment, contamination of or damage to the environment, and suspension of operations. The occurrence of one or more of the events listed above could decrease or eliminate revenues generated by the Homer City facilities or significantly increase the costs of operating them, and could also result in EME Homer City's being named as a defendant in lawsuits asserting claims for substantial damages, potentially including environmental cleanup costs, personal injury, property damage, fines and penalties. Equipment and plant warranties, guarantees and insurance may not be sufficient or effective under all circumstances to cover lost revenues or increased expenses. A decrease or elimination in revenues generated by the facilities or an increase in the costs of operating them could decrease or eliminate funds available to make lease rent payments and could have a material adverse effect on EME Homer City.

EME Homer City is required to have insurance for the facilities, including all-risk property damage insurance, commercial general public liability insurance, boiler and machinery coverage and business interruption insurance. EME Homer City cannot provide assurance that the insurance coverage for the facilities will be available in the future on commercially reasonable terms. EME Homer City also cannot provide assurance that the insurance proceeds received for any loss of the facilities or any damage to the facilities will be sufficient to permit EME Homer City to make any payments of rent under the facility leases.

Due to the current market environment, the minimum insurance coverage specified under the EME Homer City sale-leaseback documents is not commercially available at reasonable prices. EME Homer City has obtained a waiver under the participation agreements that permits it to maintain its current insurance coverage through June 1, 2009. Failure to maintain insurance pursuant to the sale-leaseback documents, absent a waiver, could result in an event of default under the documents, which could have a material adverse effect on EME Homer City.

## **Regulatory and Environmental Risks**

***EME Homer City is subject to extensive environmental regulation and permitting requirements that may involve significant and increasing costs.***

EME Homer City's operations are subject to extensive environmental regulations with respect to, among other things, air quality, water quality, waste disposal, and noise. EME Homer City is required to obtain, and comply with conditions established by, licenses, permits and other approvals in order to construct, operate or modify its facilities. Failure to comply with these requirements could subject EME Homer City to civil or criminal liability, the imposition of liens or fines, or actions by regulatory agencies seeking to curtail EME Homer City's operations. EME Homer City may also be exposed to risks arising from past, current or future contamination at its facilities or with respect to off-site waste disposal sites that have been used in its operations.

EME Homer City devotes significant resources to environmental monitoring, pollution control equipment and emission allowances to comply with environmental regulatory requirements. EME Homer City believes that it is currently in substantial compliance with environmental regulatory requirements. However, the US EPA has issued an NOV to EME Homer City alleging violations of the CAA. The current trend is toward more stringent standards, stricter regulation, and more expansive application of environmental regulations. Environmental advocacy groups and regulatory agencies in the United States have been focusing considerable attention on carbon dioxide emissions from coal-fired power plants and their potential role in climate change. The adoption of laws and regulations to implement carbon dioxide controls could adversely affect the Homer City facilities. Also, coal plant emissions of NO<sub>x</sub> and SO<sub>2</sub>, mercury and particulates are subject to increased controls and mitigation expenses under current regulations and may be subject to new, possibly stricter, regulation in the future. The continued operation of the Homer City facilities may require substantial capital expenditures for environmental controls.

In addition, future environmental laws and regulations, and future enforcement proceedings that may be taken by environmental authorities could affect the costs and the manner in which EME Homer City conducts its business. There is no assurance that EME Homer City would be able to recover these increased costs from its customers or that its business, financial condition and results of operations would not be materially adversely affected. Changing environmental regulations could require EME Homer City to purchase additional emission allowances or install additional pollution control technology, and could make some units uneconomical to maintain or operate. If EME Homer City cannot comply with all applicable regulations, it could be required to retire or suspend operations at its facilities, or restrict or modify the operations of its facilities, and its business, results of operations and financial condition could be adversely affected.

Typically, environmental laws require a lengthy and complex process for obtaining licenses, permits and approvals prior to construction, operation or modification of a project or generating facility. Meeting all the necessary requirements can delay or sometimes prevent the completion of a proposed project as well as require extensive modifications to existing projects, which may involve significant capital or operational expenditures. EME Homer City cannot provide assurance that it will be able to obtain and comply with all necessary licenses, permits and approvals for the Homer City facilities.

***EME Homer City is subject to extensive energy industry regulation.***

EME Homer City's operations are subject to extensive regulation by governmental agencies. Federal laws and regulations govern, among other things, transactions by and with purchasers of power, including utility companies, the development and construction of generation facilities, the ownership and operations

of generation facilities, and access to transmission. Under limited circumstances where exclusive federal jurisdiction is not applicable or specific exemptions or waivers from state or federal laws or regulations are otherwise unavailable, federal and/or state utility regulatory commissions may have broad jurisdiction over non-utility owned electric power plants such as the Homer City facilities. Generation facilities are also subject to federal, state and local laws and regulations that govern, among other things, the geographical location, zoning, land use and operation of a project.

In addition to its exposure to government regulation affecting all electric power suppliers and generating companies on a national level, EME Homer City is especially susceptible to regulatory actions and litigation outcomes that are specific to the geographic power market in which the Homer City facilities are located. For example, the FERC may impose various forms of market mitigation measures, including price caps and operating restrictions, where it determines that potential market power might exist and that the public interest requires mitigation. In addition, ISOs and RTOs may impose bidding and scheduling rules, both to curb the potential exercise of market power and to facilitate market functions. Such actions may materially affect EME Homer City's results of operations.

There is no assurance that the introduction of new laws or other future regulatory developments will not have a material adverse effect on EME Homer City's business, results of operations or financial condition, nor is there any assurance that EME Homer City will be able to obtain and comply with all necessary licenses, permits and approvals for its facilities. If EME Homer City cannot comply with all applicable regulations, its business, results of operations and financial condition could be adversely affected.

## **Financing Risks**

### ***Restrictions in the participation agreements and facility leases limit or prohibit EME Homer City from entering into some transactions that it otherwise might enter into.***

Under the participation agreements entered into as part of the sale-leaseback transaction, EME Homer City's ability to enter into specified transactions and to engage in specified business activities, including financing and investment activities, is subject to significant restrictions. These restrictions could affect, and in some cases significantly limit or prohibit, its ability to, among other things, merge, consolidate or sell its assets, create liens on its properties or assets, enter into non-permitted trading activities, enter into transactions with its affiliates, incur indebtedness, create, incur, assume or suffer to exist guarantees or contingent obligations, make restricted payments to its partners, make capital expenditures, own subsidiaries, liquidate or dissolve, engage in non-permitted business activities, sublease its leasehold interests in the facilities or make improvements to the facilities. Accordingly, EME Homer City's liquidity is substantially based on its ability to generate cash flow from operations. If EME Homer City is unable to generate cash flow from operations necessary to meet its obligations, EME Homer City will have limited ability to obtain additional capital unless its partners provide funding, which they are under no legal obligation to do.

In connection with the sale-leaseback transaction, EME Homer City entered into a designated account representative agreement with the owner lessors which provides that, for as long as the facility leases are in effect, EME Homer City will be irrevocably able to appoint the designated account representatives on file with the US EPA or the PADEP, as the case may be, entitled to buy, sell and otherwise dispose of emission allowances without any payments or consideration to the owner lessors. The agreement provides that upon termination of a facility lease, the applicable owner lessor will have the right to appoint itself or any other person as EME Homer City's successor designated account representative for purposes of any future emission allowances not then owned by EME Homer City. If a

facility lease were to terminate before its expiration, this event would also terminate the account representative agreement, and EME Homer City would be required to write-off any unamortized emission allowances that it would no longer control.

***Restrictions in the financing documents binding on EME Homer City and its affiliates limit the ability of EME Homer City to enter into specified transactions that it otherwise might enter into.***

EME has entered into debt agreements that contain restrictive covenants that are applicable to their subsidiaries, including EME Homer City. EME Homer City's sale-leaseback documents also contain financial and investment covenants. These restrictions may significantly impede the ability of EME Homer City to take advantage of business opportunities as they arise, to grow its business or compete effectively, to make capital expenditures when required, or to develop and implement any refinancing plans in respect of its indebtedness.

In addition, in connection with the entry by EME Homer City or its affiliates into new financings or amendments to existing financing arrangements, EME Homer City's financial and operational flexibility may be further reduced as a result of more restrictive covenants, requirements for security and other terms that are often imposed on sub-investment grade entities.

### **Credit Risks**

***The creditworthiness of EME Homer City's customers, suppliers, transporters and other business partners could affect EME Homer City's business and operations.***

EME Homer City is exposed to risks associated with the creditworthiness of its key customers, suppliers and business partners, many of whom may be adversely affected by the current conditions in the financial markets. Deterioration in the financial condition of EME Homer City's counterparties increases the possibility that EME Homer City may incur losses from the failure of counterparties to perform according to the terms of their contractual arrangements.

EME Homer City's operations depend on contracts for the supply and transportation of fuel and other services required for the operation of its generation facilities and are exposed to the risk that counterparties to contracts will not perform their obligations. If a fuel supplier or transporter failed to perform under a contract, EME Homer City would need to obtain alternate supplies or transportation, which could result in higher costs or disruptions in its operations. If the defaulting counterparty is in poor financial condition, damages related to a breach of contract may not be recoverable. Accordingly, the failure of counterparties to fulfill their contractual obligations could have a material adverse effect on EME Homer City's financial results.

### **Volatility of Earnings**

***The accounting for EME Homer City's hedging activities may increase the volatility of its quarterly and annual financial results.***

EMMT, on behalf of EME Homer City, engages in hedging activities in order to mitigate EME Homer City's exposure to market risk with respect to electricity sales from its generation facilities, fuel utilized by those facilities and emission allowances. EMMT generally attempts to balance its fixed-price physical and financial purchases and sales commitments in terms of contract volumes and the timing of performance and delivery obligations through the use of financial and physical derivative contracts. These derivative contracts are recorded on EME Homer City's balance sheet at fair value pursuant to SFAS No. 133. Some of these derivative contracts do not qualify under SFAS No. 133 for hedge

accounting, and changes in their fair value are therefore recognized currently in earnings as unrealized gains or losses. As a result, EME Homer City's financial results will at times be volatile and subject to fluctuations in value primarily due to changes in electricity prices.

#### **ITEM 1B. UNRESOLVED STAFF COMMENTS**

Inapplicable.

#### **ITEM 2. PROPERTIES**

EME Homer City owns a fee interest in the 2,413-acre site on which its generating units and the other facilities are located, as well as another approximately 1,800 acres associated with the Two Lick Dam area. The site is approximately 45 miles northeast of Pittsburgh, Pennsylvania in Indiana County. As a result of the sale-leaseback transaction on December 7, 2001, EME Homer City leased the property on which the generating units are located to the owner lessors through site leases and each owner lessor in turn subleased its undivided ground interest in the property back to EME Homer City through site subleases. The term of the site leases is 45 years from the date of the sale-leaseback, with specified renewal options. The term of the site subleases is 33.67 years, the term of the sale-leaseback financing, and is renewable upon renewal of the EME Homer City facility leases. As long as the facility leases and the site subleases are in effect, the rents payable under the site leases and under the site subleases will be automatically offset against each other so that no amounts will be payable by EME Homer City or the owner lessors with respect to these agreements. EME Homer City also leases portions of its sites to other third parties. Some of those leases are described below.

EME Homer City leases the surface of an approximately 14-acre parcel to Alpha Coal Sales Company, LLC upon which the coal blending facility is located. Alpha Coal, using an operator, blends various coals mined by Alpha and others for sale to EME Homer City. The Alpha Coal lease expires on December 31, 2009.

EME Homer City entered into a Lease Agreement with Linn Operating LLC for access to the deep natural gas within the site, which provides Linn the right to operate and produce gas from existing wells located on the site, and to drill new wells on the site, spacing permitting, provided that gas is found in paying quantities. EME Homer City receives 18% of the market value of the gas at the wellhead as royalties. The lease expires on February 1, 2012.

#### **ITEM 3. LEGAL PROCEEDINGS**

##### **New Source Review Notice of Violation**

On June 12, 2008, EME Homer City received an NOV from the US EPA alleging that, beginning in 1988, EME Homer City (or former owners of the Homer City facilities) performed repair or replacement projects at Homer City Units 1 and 2 without first obtaining construction permits as required by the Prevention of Significant Deterioration requirements of the CAA. The US EPA also alleges that EME Homer City has failed to file timely and complete Title V permits. The NOV does not specify the penalties or other relief that the US EPA seeks for the alleged violations. EME Homer City has met with the US EPA and has expressed its intent to explore the possibility of a settlement. If no settlement is reached and the United States Department of Justice files suit, litigation could take many years to resolve the issues alleged in the NOV. EME Homer City cannot predict at this time what effect this matter may have on its facilities, its results of operations, financial position or cash flows.

EME Homer City has sought indemnification for liability and defense costs associated with the NOV from the sellers under the asset purchase agreement pursuant to which EME Homer City acquired the Homer City facilities. The sellers responded by denying the indemnity obligation, but accepting the defense of the claims.

EME Homer City notified the sale-leaseback owner participants of the Homer City facilities of the NOV under the operative indemnity provisions of the sale-leaseback documents. The owner participants of the Homer City facilities, in turn, have sought indemnification and defense from EME Homer City for costs and liability associated with the EME Homer City NOV. EME Homer City responded by undertaking the indemnity obligation and defense of the claims.

**ITEM 4. SUBMISSION OF MATTERS TO A VOTE OF SECURITY HOLDERS**

Inapplicable.

## **PART II**

### **ITEM 5. MARKET FOR REGISTRANT'S COMMON EQUITY, RELATED STOCKHOLDER MATTERS AND ISSUER PURCHASES OF EQUITY SECURITIES**

All the partners' equity of EME Homer City is, as of the date hereof, owned by Mission Energy Westside Inc. and Chestnut Ridge Energy Company. There is no market for EME Homer City's partnership interests.

Dividends will be paid when declared by EME Homer City's general partner. No cash dividends were paid by EME Homer City during 2008, 2007 or 2006.

## ITEM 6. SELECTED FINANCIAL DATA

The selected financial data was derived from EME Homer City's audited financial statements and is qualified in its entirety by the more detailed information and financial statements, including notes to these financial statements, included in this annual report.

	Years Ended December 31,				
	<u>2008</u>	<u>2007</u>	<u>2006</u>	<u>2005</u>	<u>2004</u>
	(in millions)				
<b>INCOME STATEMENT DATA</b>					
Operating revenues from marketing affiliate.....	\$ 717	\$ 764	\$ 642	\$ 591	\$ 497
Operating expenses.....	464	491	452	463	367
Operating income .....	253	273	190	128	130
Interest and other income.....	5	8	20	4	1
Interest expense.....	(124)	(139)	(145)	(147)	(151)
Income (loss) before income taxes.....	134	142	65	(15)	(20)
Provision (benefit) for income taxes.....	49	54	26	(4)	(8)
Net income (loss).....	<u>\$ 85</u>	<u>\$ 88</u>	<u>\$ 39</u>	<u>\$ (11)</u>	<u>\$ (12)</u>

	As of December 31,				
	<u>2008</u>	<u>2007</u>	<u>2006</u>	<u>2005</u>	<u>2004</u>
	(in millions)				
<b>BALANCE SHEET DATA</b>					
Assets.....	\$ 2,186	\$ 2,135	\$ 2,264	\$ 2,261	\$ 2,159
Current liabilities.....	309	309	310	488	236
Long-term debt to affiliates .....	358	394	512	439	476
Lease financing.....	1,150	1,207	1,260	1,310	1,357
Other long-term obligations .....	44	70	45	89	32
Partners' equity (deficit) .....	325	155	137	(65)	58

	Years Ended December 31,				
	<u>2008</u>	<u>2007</u>	<u>2006</u>	<u>2005</u>	<u>2004</u>
	(in millions)				
<b>CASH FLOW DATA</b>					
Cash provided by operating activities .....	\$ 50	\$ 152	\$ 89	\$ 77	\$ 68
Cash used in financing activities .....	(89)	(122)	(34)	(79)	(60)
Cash used in investing activities .....	(44)	(2)	(1)	(12)	(26)

## ITEM 7. MANAGEMENT’S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

*This MD&A contains “forward-looking statements” within the meaning of the Private Securities Litigation Reform Act of 1995. These statements reflect EME Homer City’s current expectations and projections about future events based on EME Homer City’s knowledge of present facts and circumstances and assumptions about future events and include any statement that does not directly relate to a historical or current fact. Other information distributed by EME Homer City that is incorporated in this MD&A, or that refers to or incorporates this MD&A, may also contain forward-looking statements. In this MD&A and elsewhere, the words “expects,” “believes,” “anticipates,” “estimates,” “projects,” “intends,” “plans,” “probable,” “may,” “will,” “could,” “would,” “should,” and variations of such words and similar expressions, or discussions of strategy or plans, are intended to identify forward-looking statements. Such statements necessarily involve risks and uncertainties that could cause actual results to differ materially from those anticipated. See “Forward-Looking Statements” and “Item 1A. Risk Factors” for a discussion of some of the risks, uncertainties and other important factors that could cause results to differ, or otherwise could impact EME Homer City. Additional information about the risks and uncertainties is contained throughout this MD&A. Readers are urged to read this entire annual report, including the information incorporated by reference, and carefully consider the risks, uncertainties and other factors that affect EME Homer City’s business. Forward-looking statements speak only as of the date they are made, and EME Homer City is not obligated to publicly update or revise forward-looking statements. Readers should review future reports filed by EME Homer City with the Securities and Exchange Commission.*

This MD&A presents a discussion of EME Homer City’s financial results and analysis of its financial condition. It is presented in four sections:

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Management’s Overview; Critical Accounting Policies and Estimates.....	24
Results of Operations .....	29
Liquidity and Capital Resources.....	34
Market Risk Exposures.....	42

### MANAGEMENT’S OVERVIEW; CRITICAL ACCOUNTING POLICIES AND ESTIMATES

#### Management’s Overview

##### *Introduction*

EME Homer City is a Pennsylvania limited partnership formed for the purpose of acquiring, owning and operating three coal-fired electric generating units and related facilities located near Pittsburgh, Pennsylvania with an aggregate capacity of 1,884 MW. EME Homer City does not have any plans to purchase or develop new power plants at this time. In December 2001, EME Homer City completed a sale-leaseback transaction of the Homer City facilities to third-party lessors. The sale-leaseback transaction is accounted for as a lease financing for financial reporting purposes.

The Homer City facilities are located in the control area managed by PJM. The energy and capacity from the Homer City facilities are sold under terms, including price and quantity, arranged by EMMT, on behalf of EME Homer City, to customers through a combination of bilateral agreements, forward energy sales and spot market sales. See “Market Risk Exposures” for further discussion of forward market prices.

## ***Commodity Prices***

The market price for merchant energy in PJM increased significantly during the first half of 2008 and then decreased significantly in the second half of the year. The average 24-hour PJM market price for energy per MWh at the Homer City busbar was higher in 2008 as compared to 2007 by 13.1%. However, since June 30, 2008, forward energy prices in PJM have decreased substantially driven by lower natural gas prices and current global economic conditions. At December 31, 2008, forward energy market prices for 2009 for the PJM West Hub have decreased by 42% since June 30, 2008. At the same time, EME Homer City's average cost of fuel per MWh increased in 2008 by 4%. At December 31, 2008, EME Homer City had contracted for substantially all of its coal requirements for 2009. Unless these energy prices change, energy gross margins for unhedged volumes from EME Homer City will decrease from 2008. See "Market Risk Exposures—Commodity Price Risk" for further discussion.

## ***Environmental Developments***

The content of potential climate change regulation in the future remains uncertain. While debate continues at the national level over domestic climate policy and the appropriate scope and terms of any federal legislation, many states are developing state-specific measures or participating in regional legislative initiatives to reduce GHG emissions. State and regional regulations may vary and may be more stringent and costly than federal legislative proposals currently being debated in the U.S. Congress. Key uncertainties include whether a cap-and-trade program will be implemented similar to the US EPA Acid Rain Program, and, if implemented, whether emission allowances would be provided to affected parties without cost for a period of time. In the absence of legislation, it is also possible that CO<sub>2</sub> will be regulated by the US EPA pursuant to authority granted under the CAA in its current form. Furthermore, the rate of decrease in GHG emissions and the cost to purchase allowances would be significant factors in determining whether environmental controls for other emissions would be economic to install. Programs to reduce GHG emissions could significantly increase the cost of generating electricity from fossil fuels as well as the cost of purchased power. The potential impact on EME Homer City will depend upon how the factors discussed above and many other considerations are resolved. For further discussion of environmental regulations, see "EME Homer City Generation L.P. Notes to Financial Statements—Note 9. Commitments and Contingencies—Environmental Matters and Regulations."

## ***Overview of EME Homer City's Operating Performance***

EME Homer City's net income was \$85 million in 2008 and \$88 million in 2007. The primary changes in earnings of 2008 compared to 2007 consisted of the following:

- a \$42 million (pre-tax) decline in realized gross margin resulting primarily from lower energy revenues as a result of lower generation;
- a \$31 million (pre-tax) increase in unrealized gains related to power contracts (see "Market Risk Exposures—Accounting for Energy Contracts" for more information); and
- a \$9 million (pre-tax) reduction in interest expense related to the subordinated revolving loan with Edison Mission Finance due to lower debt balances.

See "Results of Operations" for further discussion of EME Homer City's operating results.

## **Critical Accounting Policies and Estimates**

### ***Introduction***

The accounting policies described below are viewed by management as “critical” because their correct application requires the use of material judgments and estimates, and they have a material impact on EME Homer City’s results of operations and financial position.

### ***Derivative Financial Instruments and Hedging Activities***

EME Homer City uses derivative financial instruments for hedging activities for non-trading purposes. Derivative financial instruments are mainly utilized by EME Homer City to manage exposure from changes in electricity and fuel prices. EME Homer City follows SFAS No. 133, which requires derivative financial instruments to be recorded at their fair value unless an exception applies. SFAS No. 133 also requires that changes in a derivative’s fair value be recognized currently in earnings unless specific hedge accounting criteria are met. For derivatives that qualify for hedge accounting, depending on the nature of the hedge, changes in fair value are either offset by changes in the fair value of the hedged assets, liabilities or firm commitments through earnings, or recognized in other comprehensive income until the hedged item is recognized in earnings. The ineffective portion of a derivative’s change in fair value is immediately recognized in earnings. The remaining gain or loss on the derivative instrument, if any, is recognized currently in earnings. For further discussion, see “Market Risk Exposures—Accounting for Energy Contracts.”

Management’s judgment is required to determine if a transaction meets the definition of a derivative and, if it does, whether the normal sales and purchases exception applies or whether individual transactions qualify for hedge accounting treatment. Determining the fair value of derivatives under SFAS No. 133 is a critical accounting policy because the fair value of a derivative is susceptible to significant change resulting from a number of factors, including: volatility of energy prices, credits risks, market liquidity and discount rates. See “Market Risk Exposures” for a description of risk management activities and sensitivities to change in market prices.

### ***Fair Value Accounting***

EME Homer City follows SFAS No. 157 which established a framework for measuring fair value. SFAS No. 157 defines fair value as the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants as of the measurement date (referred to as an “exit price” in SFAS No. 157). EME Homer City’s assets and liabilities carried at fair value primarily consist of derivative contracts and money market funds. Derivative contracts primarily relate to power and include contracts for forward physical sales and purchases, options and forward price swaps which settle only on a financial basis (including futures contracts). Derivative contracts can be exchange traded, over-the-counter traded or structured transactions.

EME Homer City makes estimates and significant judgments in order to determine the fair value of an instrument including those related to quoted market prices, time value of money, volatility of the underlying commodities, non-performance risks and other factors. If quoted market prices are not available, internally maintained models are used to determine the fair value. Under SFAS No. 157, when actual market prices, or relevant observable inputs are not available it is appropriate to use unobservable inputs which reflect management assumptions, including extrapolating limited short-term observable data and developing correlations between liquid and non-liquid trading hubs. In assessing non-performance risks, EME Homer City reviews credit ratings of counterparties (and related default rates based on such credit ratings) and prices of credit default swaps. The market price (or premium) for credit default swaps represents the price that a counterparty would pay to transfer the risk of default, typically bankruptcy, to

another party. A credit default swap is not directly comparable to the credit risks of derivative contracts, but provides market information of the related risk of non-performance.

In addition, SFAS No. 157 established a fair value hierarchy that prioritizes the inputs to valuation techniques used to measure fair value. The hierarchy gives the highest priority to unadjusted quoted market prices in active markets for identical assets and liabilities (Level 1 measurements) and the lowest priority to unobservable inputs (Level 3 measurements). See “EME Homer City Generation L.P. Notes to Financial Statements—Note 2. Fair Value Measurements” for further information.

Level 3 includes primarily derivatives that trade infrequently (such as financial transmission rights at illiquid locations) and derivatives with counterparties that have significant non-performance risks. For illiquid financial transmission rights, EME Homer City reviews objective criteria related to system congestion on a quarterly basis and other underlying drivers and adjusts fair value when EME Homer City concludes a change in objective criteria would result in a new valuation that better reflects the fair value. Changes in fair values are based on the hypothetical sale of illiquid positions. In circumstances when EME Homer City cannot verify fair value with observable market transactions, it is possible that a different valuation model could produce a materially different estimate of fair value. As markets continue to develop and more pricing information becomes available, EME Homer City continues to assess valuation methodologies used to determine fair value.

### ***Impairment of Long-Lived Assets***

EME Homer City follows SFAS No. 144, “Accounting for the Impairment or Disposal of Long-Lived Assets” (SFAS No. 144). EME Homer City evaluates long-lived assets whenever indicators of impairment exist. This accounting standard requires that if the undiscounted expected future cash flow from a company’s assets or group of assets (without interest charges) is less than its carrying value, asset impairment must be recognized in the financial statements. The amount of impairment is determined by the difference between the carrying amount and fair value of the asset.

The assessment of impairment is a critical accounting policy because significant management judgment is required to determine: (1) if an indicator of impairment has occurred, (2) the forecast of undiscounted expected future cash flow over the asset’s estimated useful life to determine if an impairment exists, and (3) if an impairment exists, the fair value of the asset or asset group. Factors that EME Homer City considers important, which could trigger an impairment, include operating losses, projected future operating losses, the financial condition of counterparties or significant negative industry or economic trends. The expected future undiscounted cash flow from the Homer City facilities is a critical accounting policy because: (1) estimates of future prices of energy and capacity in wholesale energy markets and fuel prices are susceptible to significant change, (2) uncertainties exist regarding the impact of existing and future environmental regulations, (3) the period of the forecast is over an extended period of time due to the length of the estimated remaining useful lives, and (4) the impact of an impairment on EME Homer City’s financial position and results of operations would be material.

### ***Accounting for Contingencies***

In accordance with SFAS No. 5, “Accounting for Contingencies,” EME Homer City records loss contingencies when it determines that the outcome of future events is probable of occurring and when the amount of the loss can be reasonably estimated. These reserves are based on management judgment and estimates taking into consideration available information and are adjusted when events or circumstances cause these judgments or estimates to change. EME Homer City provides disclosure for contingencies when there is a reasonable possibility that a loss or an additional loss may be incurred. Gain contingencies are recognized in the financial statements when they are realized. Actual amounts

realized upon settlement of contingencies may be different than amounts recorded and disclosed and could have a significant impact on the liabilities, revenue and expenses recorded on the consolidated financial statements. See “Liquidity and Capital Resources—Contractual Obligations, Commitments and Contingencies—Contingencies,” and “EME Homer City Generation L.P. Notes to Financial Statements—Note 9. Commitments and Contingencies—Environmental Matters and Regulations” for a discussion of contingencies and regulatory issues, respectively.

### ***Income Taxes***

SFAS No. 109, “Accounting for Income Taxes” requires the asset and liability approach for financial accounting and reporting for deferred income taxes. EME Homer City uses the asset and liability method of accounting for deferred income taxes and provides deferred income taxes for all significant income tax temporary differences. Financial Accounting Standards Interpretation No. 48, “Accounting for Uncertainty in Income Taxes,” (FIN No. 48) clarified the accounting for uncertain tax positions. FIN No. 48 (adopted on January 1, 2007) requires an enterprise to recognize, in its financial statements, the best estimate of the impact of a tax position by determining if the weight of the available evidence indicates it is more likely than not, based solely on the technical merits, that the position will be sustained on audit. Management continues to monitor and assess new income tax developments. See “EME Homer City Generation L.P. Notes to Financial Statements—Note 7. Income Taxes” for additional details.

As part of the process of preparing its financial statements, EME Homer City is required to estimate its income taxes in each jurisdiction in which it operates. This process involves estimating actual current tax exposure together with assessing temporary differences resulting from differing treatment of items, such as depreciation, for tax and accounting purposes. These differences result in deferred tax assets and liabilities, which are included within EME Homer City’s balance sheet. In addition, estimated taxes for uncertain tax positions are accrued and included in accrued liabilities or other long-term liabilities in the balance sheet. Income tax expense includes the current tax liability from operations and the change in deferred income taxes during the year. Accounting for tax obligations requires judgments, including estimating reserves for potential adverse outcomes regarding tax positions that have been taken. Management uses judgment in determining whether the evidence indicates it is more likely than not, based solely on the technical merits, that the position will be sustained on audit.

At December 31, 2008, EME Homer City had net federal and state deferred tax assets of \$45 million. In assessing the realization of EME Homer City’s deferred tax assets, management considered whether it is more likely than not the deferred tax assets will be realized. The ultimate realization of EME Homer City’s deferred income tax assets depends upon its ability to generate taxable income in the future or utilize losses through a reduction in the loan with Edison Mission Finance Co. On a quarterly basis, management evaluates the recoverability of its deferred tax assets to ensure there is adequate support for the realization of the deferred tax assets. In the event management were to determine that EME Homer City would not be able to realize all or part of its net deferred tax assets in the future, an adjustment to the deferred tax assets would be charged as a reduction to income in the period such determination was made.

For additional information regarding EME Homer City’s accounting policies, see “EME Homer City Generation L.P. Notes to Financial Statements—Note 1. Summary of Significant Accounting Policies.”

## RESULTS OF OPERATIONS

### Summary

The table below summarizes total revenues as well as key performance measures related to coal-fired generation, which represents the majority of EME Homer City's operations.

	<u>Years Ended December 31,</u>		
	<u>2008</u>	<u>2007</u>	<u>2006</u>
<b>Operating Revenues</b> (in millions).....	\$ 717	\$ 764	\$ 642
<b>Statistics</b>			
Generation (in GWh).....	11,334	13,649	12,286
Equivalent availability(1) .....	80.7%	89.4%	81.9%
Capacity factor(2).....	68.3%	82.5%	74.3%
Load factor(3).....	84.6%	92.4%	90.7%
Forced outage rate(4).....	9.8%	4.1%	13.5%
Average realized energy price/MWh(5).....	\$ 56.24	\$ 54.40	\$ 48.02
Capacity revenue only (in millions) .....	\$ 46	\$ 30	\$ 16
Average fuel costs/MWh .....	\$ 23.35	\$ 22.45	\$ 23.05

- (1) The equivalent availability factor is defined as the number of MWh the coal plants are available to generate electricity divided by the product of the capacity of the coal plants (in MW) and the number of hours in the period. Equivalent availability reflects the impact of the unit's inability to achieve full load, referred to as derating, as well as outages which result in a complete unit shutdown. The coal plants are not available during periods of planned and unplanned maintenance.
- (2) The capacity factor is defined as the actual number of MWh generated by the coal plants divided by the product of the capacity of the coal plants (in MW) and the number of hours in the period.
- (3) The load factor is determined by dividing capacity factor by the equivalent availability factor.
- (4) Homer City refers to unplanned maintenance as a forced outage.
- (5) The average realized energy price reflects the average price at which energy is sold into the market including the effects of hedges, real-time and day-ahead sales and PJM fees and ancillary services. It is determined by dividing (i) operating revenue less unrealized SFAS No. 133 gains (losses) and other non-energy related revenue by (ii) total generation as shown in the table below. Revenue related to capacity sales are excluded from the calculation of average realized energy price.

	<u>Years Ended December 31,</u>		
	<u>2008</u>	<u>2007</u>	<u>2006</u>
	(in millions)		
Operating revenues.....	\$ 717	\$ 764	\$ 642
Less:			
Unrealized (gains) losses .....	(21)	10	(35)
Capacity and other revenues.....	(59)	(31)	(17)
Realized revenues.....	<u>\$ 637</u>	<u>\$ 743</u>	<u>\$ 590</u>
Generation (in GWh).....	11,334	13,649	12,286
Average realized energy price/MWh .....	\$ 56.24	\$ 54.40	\$ 48.02

### Operating Revenues

Operating revenues decreased \$47 million in 2008 compared to 2007, and increased \$122 million in 2007 compared to 2006. The 2008 decrease was primarily attributable to lower generation partially offset by higher average realized energy prices, an increase in unrealized gains related to hedge contracts

(described below), an increase in capacity revenues and the sale of excess coal inventory. Higher forced outages, lower off-peak dispatch and extended planned overhauls in 2008 contributed to lower generation. Capacity revenues increased in 2008 compared to 2007, as a result of participating in the PJM RPM auction. The 2007 increase was primarily attributable to higher generation and higher average realized energy prices, as compared to 2006. EME Homer City also had higher capacity revenues as a result of participating in the PJM RPM auctions. These increases were adversely affected by the timing of unrealized gains and losses from hedging activities. Hedging activities are described in more detail below.

Included in operating revenues were unrealized gains (losses) from hedging activities of \$21 million, \$(10) million and \$35 million for 2008, 2007 and 2006, respectively. Unrealized gains (losses) were primarily attributable to the ineffective portion of forward and futures contracts which are derivatives that qualify as cash flow hedges under SFAS No. 133. The ineffective portion of hedge contracts was primarily attributable to changes in the difference between energy prices at PJM West Hub and the energy prices at the Homer City busbar (the delivery point where power generated by the Homer City facilities is delivered into the transmission system). See “Market Risk Exposures—Commodity Price Risk” and “Market Risk Exposures—Accounting for Energy Contracts” for more information regarding forward market prices and unrealized gains (losses), respectively.

The average realized energy price received by EME Homer City increased to \$56.24/MWh in 2008 as compared to \$54.40/MWh in 2007 and \$48.02/MWh in 2006. The average realized energy prices compare to average real-time market prices at the Homer City busbar of \$57.72/MWh in 2008, \$51.03/MWh in 2007 and \$45.15/MWh in 2006. The average realized energy price for 2008 was below the average real-time market price at the Homer City busbar primarily due to effective hedge prices being below market prices for the same period. The average realized energy price for 2007 and 2006 was higher than the average real-time market price due to hedge contracts entered into in prior periods.

### ***Seasonal Disclosure***

Due to higher electric demand resulting from warmer weather during the summer months and cold weather during the winter months, electric revenues from the Homer City facilities vary substantially on a seasonal basis. In addition, maintenance outages generally are scheduled during periods of lower projected electric demand (spring and fall) further reducing generation and increasing major maintenance costs which are recorded as an expense when incurred. Accordingly, earnings from the Homer City facilities are seasonal and have significant variability from quarter to quarter. Seasonal fluctuations may also be affected by changes in market prices. See “Market Risk Exposures—Commodity Price Risk—Energy Price Risk” for further discussion regarding market prices.

### **Operating Expenses**

Operating expenses decreased \$27 million in 2008 compared to 2007, and increased \$39 million in 2007 compared to 2006. Operating expenses consisted of expenses for fuel, loss (gain) on sale of emission allowances, plant operations, depreciation and amortization, and administrative and general expenses. The change in the components of operating expenses is discussed below.

Fuel expenses decreased \$36 million in 2008 compared to 2007, and increased \$23 million in 2007 compared to 2006. The 2008 decrease was primarily attributable to lower coal consumption as a result of lower generation and lower SO<sub>2</sub> emission allowance costs. The 2007 increase was due to higher coal consumption as a result of higher generation, partially offset by lower coal prices and lower cost of SO<sub>2</sub> emission allowances. EME Homer City’s cost of SO<sub>2</sub> emission allowances was \$19 million, \$31 million

and \$35 million in 2008, 2007 and 2006, respectively. The 2008 decrease was attributable to lower emission allowances required due to lower generation and lower market prices. In 2007, EME Homer City purchased more SO<sub>2</sub> emission allowances, as compared to 2006, at lower market prices. See “Market Risk Exposures—Commodity Price Risk—Emission Allowances Price Risk” for more information regarding the price of SO<sub>2</sub> allowances.

Loss (gain) from the sale of emission allowances was \$(0.2) million, \$1 million and \$(2) million during 2008, 2007 and 2006, respectively. In 2008, EME Homer City sold excess SO<sub>2</sub> emission allowances to third parties. In 2007 and 2006, EME Homer City sold excess NO<sub>x</sub> emission allowances to affiliates and third parties.

Plant operations increased \$7 million in 2008 compared to 2007, and \$13 million in 2007 compared to 2006. Plant operations include labor and overhead, contract services, parts and supplies and other administrative costs. The 2008 increase was primarily attributable to higher maintenance expenses in 2008. EME Homer City had higher forced outages and scheduled maintenance in 2008 due to tube leak repairs, an extended planned overhaul and a fan motor failure. The 2007 increase was primarily attributable to higher maintenance costs related to a planned outage at Unit 2 during the second quarter. Planned maintenance expenses vary year to year based on the scheduled cycle times of equipment.

Depreciation and amortization were \$64 million, \$61 million and \$60 million during 2008, 2007 and 2006, respectively. As a result of the sale-leaseback in December 2001, depreciation and amortization consists primarily of EME Homer City’s leasehold interest, which is being depreciated over the minimum term of the leases of 33.67 years.

Administrative and general expenses were \$4 million, \$4 million and \$5 million during 2008, 2007 and 2006, respectively.

### **Other Income (Expense)**

Interest and other income was \$5 million, \$8 million and \$20 million during 2008, 2007 and 2006, respectively. Interest and other income typically relates to interest earned on cash and cash equivalents. In 2008, EME Homer City recorded other income of \$3 million related to the settlement of a legal dispute. In 2007, EME Homer City recorded other income of \$3 million related to an adjustment to the Unit 3 outage insurance claim from 2006. In 2006, EME Homer City recorded other income of \$11 million for the estimated insurance recovery related to a Unit 3 outage.

Interest expense was \$124 million, \$139 million and \$145 million during 2008, 2007 and 2006, respectively. Interest expense primarily relates to the lease financing of the Homer City facilities that originated in December 2001. Interest expense also included interest of \$29 million, \$38 million and \$40 million during 2008, 2007 and 2006, respectively, on EME Homer City’s subordinated revolving loan agreement with Edison Mission Finance Co. EME Homer City had lower long-term debt balances during 2008 as compared to 2007 on the subordinated revolving loan agreement.

### **Provision for Income Taxes**

EME Homer City had effective income tax provision rates of 37%, 38% and 40% in 2008, 2007 and 2006, respectively. EME Homer City’s effective income tax provision rate varies from the federal statutory rate of 35% primarily due to state income taxes and estimated benefits from a federal deduction related to qualified domestic production activities under Section 199 of the Internal Revenue Code.

## Related Party Transactions

### *EMMT Agreements*

EME Homer City has entered into a master purchase, sale and services agreement with EMMT, pursuant to which EMMT arranges for purchases and sales of the following products, including related services: (i) electric energy and capacity; (ii) fuel oil; and (iii) emission allowances.

EME Homer City compensates EMMT in accordance with the following table with respect to these transactions and reimburses EMMT for brokers fees, taxes, and other reasonably incurred direct out-of-pocket expenses. Payment for these services is due within 30 days of billing.

<u>Service</u>	<u>Compensation</u>
Energy and/or capacity .....	\$.02/MWh (\$.02/MW-day for capacity)
Fuel oil .....	\$.05/bbl
Emission allowances .....	\$.25/SO <sub>2</sub> allowance; and \$25/NO <sub>x</sub> allowance

The net fees earned by EMMT were \$1 million for each of the years ended December 31, 2008, 2007 and 2006. Beginning in the second quarter of 2003, EMMT began prepaying in full for the following month's expected power generation. As a result of the accelerated payments, EME Homer City had payables due to EMMT of \$65 million and \$73 million at December 31, 2008 and 2007, respectively.

EME Homer City entered into several transactions through EMMT for the purchase or sale of SO<sub>2</sub> and NO<sub>x</sub> allowances. All transactions were completed at market price on the date of the transaction. Net consideration paid by EME Homer City was \$33 million, \$74 million and \$27 million during 2008, 2007 and 2006, respectively.

### *Affiliate Financing*

EME Homer City obtained financing from Edison Mission Finance Co. in connection with its acquisition of the Homer City facilities, in the form of a subordinated revolving loan. The subordinated revolving loan matures in 2014, with no scheduled repayment prior to its maturity. This loan is subordinated to EME Homer City's lease rent obligations, with interest and principal payments subject to limitations based on EME Homer City's ability to make distributions under the sale-leaseback agreements. On December 8, 2003, EME Homer City amended and restated the subordinated revolving loan agreement and issued a note evidencing its repayment obligations under the loan agreement. The amended and restated subordinated revolving loan agreement had no effect on the financial terms of the agreement.

### *Tax-Allocation Agreements*

EME Homer City is included in the consolidated federal and state income tax returns of Edison International and is party to a tax-allocation agreement with its indirect parent, Edison Mission Holdings Co. As long as Edison International continues to own, directly or indirectly, at least 80% of the voting power of the stock of EME and its existing subsidiaries and at least 80% of the value of such stock, EME Homer City will be included in the consolidated federal and state income tax returns of Edison International. In accordance with the agreement and the tax-allocation procedures in effect since EME Homer City's formation, its current tax liability or benefit is generally determined on a separate return basis, except for calculating consolidated state income taxes, for which EME Homer City uses the long term state tax apportionment factors of the Edison International group. Also, while EME Homer

City is generally subject to separate return limitations for net losses, under the tax-allocation agreement EME Homer City is permitted to transfer to Edison Mission Holdings, or its subsidiaries, net operating loss benefits which would not yet be realized in a separate return in exchange for a reduction in its intercompany account balances (including the subordinated revolving loan). EME Homer City also files a separate state income tax return in Pennsylvania. Amounts included in due to affiliates on the balance sheet associated with this tax-allocation agreement totaled \$85 million and \$91 million at December 31, 2008 and 2007, respectively.

On March 31, 2006, EME Homer City entered into an amendment of its tax-allocation agreement with Edison Mission Holdings to provide for the option, at EME Homer City's discretion, to settle federal and state income tax liabilities under the tax-allocation agreement through an increase in indebtedness under the subordinated revolving loan agreement with Edison Mission Finance. In 2008 and 2006, pursuant to this amendment, EME Homer City elected this option to settle \$42 million and \$60 million, respectively, of intercompany tax liabilities through a loan under the subordinated revolving loan agreement with Edison Mission Finance.

### ***Services Agreements with EME and Edison International***

Certain administrative services such as payroll, employee benefit programs, insurance, and information technology are shared among all affiliates of Edison International and the costs of these corporate support services are allocated to all affiliates. The cost of services provided by Edison International and EME, including those related to EME Homer City, are allocated based on one of the following formulas: percentage of the time worked, equity in investment and advances, number of employees, or multi-factor (operating revenues, operating expenses, total assets and total employees). EME Homer City participates in a common payroll and benefit program with all Edison International employees. In addition, EME Homer City is billed for any direct labor and out-of-pocket expenses for services directly requested for the benefit of the partnership. EME Homer City believes the allocation methodologies are reasonable. EME Homer City made reimbursements for the cost of these programs and other services totaling \$8 million for each of the years ended December 31, 2008, 2007 and 2006. EME Homer City had a net payable of \$1 million and \$0.3 million at December 31, 2008 and 2007, respectively, due to Edison International.

EME Homer City participates in the insurance program of Edison International, including property, general liability, workers compensation and various other specialty policies. EME Homer City's insurance premiums are generally based on its share of risk related to each policy. In connection with the property insurance program, a portion of the risk is reinsured by a captive insurance subsidiary of Edison International.

### ***Management and Administration Agreement with Midwest Generation EME, LLC***

EME Homer City and Midwest Generation EME entered into a management and administration agreement pursuant to which Midwest Generation EME charges EME Homer City for management and administrative services. Actual costs billable under this agreement for the years ended December 31, 2008, 2007 and 2006 were \$3 million, \$2 million and \$3 million, respectively. EME Homer City had a payable of \$0.1 million at both December 31, 2008 and 2007 due to Midwest Generation EME related to this agreement.

### **New Accounting Pronouncements**

New accounting pronouncements are discussed in Note 1—Summary of Significant Accounting Policies—New Accounting Pronouncements under “EME Homer City Generation L.P. Notes to Financial Statements.”

## LIQUIDITY AND CAPITAL RESOURCES

### Introduction

The following discussion of liquidity and capital resources is organized in the following sections:

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Capital Expenditures and Lease Covenants.....	35
Payments Made Under Subordinated Revolving Loan and Tax Payments.....	36
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### Cash Flow

At December 31, 2008, EME Homer City had cash and cash equivalents of \$59 million compared to \$142 million at December 31, 2007. Net working capital at December 31, 2008 was \$(42) million compared to \$(55) million at December 31, 2007. The working capital deficit primarily results from amounts due to affiliates.

Net cash provided by operating activities was \$50 million, \$152 million and \$89 million in 2008, 2007 and 2006, respectively. The 2008 decrease was primarily due to an increase in coal inventory primarily due to lower than expected generation, lower realized operating revenues and timing of cash receipts and disbursements related to working capital items. The 2007 increase was primarily attributable to higher net income in 2007, an increase of SO<sub>2</sub> emission allowances and the timing of cash receipts and disbursement related to working capital items. EME Homer City made a \$35 million interest payment to Edison Mission Finance in January 2007.

Net cash used in financing activities was \$89 million, \$122 million and \$34 million in 2008, 2007 and 2006, respectively. The 2008 decrease was primarily due to \$82 million less in debt repayments under the subordinated revolving loan agreement, as compared to 2007. The 2007 increase was primarily attributable to total repayments of \$118 million in 2007, versus total borrowings of \$14 million in 2006, under the subordinated revolving loan agreement with Edison Mission Finance. In addition, EME Homer City received a payment of \$45 million from the termination of the lease swap agreement in 2007, compared to advances of \$61 million received under the lease swap agreement in 2006.

Net cash used in investing activities was \$44 million, \$2 million and \$1 million in 2008, 2007 and 2006, respectively. The 2008 increase was primarily due to a \$32 million increase in capital expenditures. The 2007 increase was primarily due to a release of funds from EME Homer City's restricted cash accounts in 2007 as compared to the 2006 proceeds received from the sale of emission allowances and from a settlement with Alstom Power in connection with the 2002 outage of Unit 3. Capital expenditures were \$44 million, \$12 million and \$11 million for the years ended December 31, 2008, 2007 and 2006, respectively. The increase in 2008 capital expenditures primarily related to the preparation of the Homer City facilities for year round operation of its SCR's due to annual NO<sub>x</sub> requirements in 2009, replacement of major boiler components and upgrades to boiler and turbine controls.

The use of EME Homer City’s cash generated from operations is restricted by the sale-leaseback agreements. EME Homer City believes that it will have adequate liquidity to meet its obligations as they become due in the next 12 months.

### Capital Expenditures and Lease Covenants

At December 31, 2008, the three-year estimated capital expenditures by EME Homer City were as follows:

	<u>2009</u>	<u>2010</u>	<u>2011</u>
	(in millions)		
Plant capital expenditures .....	\$ 29	\$ 55	\$ 29
Environmental expenditures .....	<u>8</u>	<u>14</u>	<u>32</u>
Total .....	<u>\$ 37</u>	<u>\$ 69</u>	<u>\$ 61</u>

Plant capital expenditures relate to non-environmental projects such as upgrades to boiler and turbine controls, replacement of major boiler components and main power transformer replacement. Environmental expenditures relate to projects such as mercury emission monitoring and control. EME Homer City plans to fund these expenditures with cash on hand or cash generated from operations. See further discussion regarding possible additional capital expenditures, including environmental control equipment, under “EME Homer City Generation L.P. Notes to Financial Statements—Note 9. Commitments and Contingencies—Environmental Matters and Regulations—Air Quality Regulation.”

Under the participation agreements entered into as part of the sale-leaseback transaction, EME Homer City’s ability to enter into specified transactions and to engage in specified business activities, including financing and investment activities, is subject to significant restrictions. These restrictions could affect, and in some cases significantly limit or prohibit, its ability to, among other things, merge, consolidate or sell its assets, create liens on its properties or assets, enter into non-permitted trading activities, enter into transactions with its affiliates, incur indebtedness, create, incur, assume or suffer to exist guarantees or contingent obligations, make restricted payments to its partners, make capital expenditures, own subsidiaries, liquidate or dissolve, engage in non-permitted business activities, sublease its leasehold interests in the facilities or make improvements to the facilities. Accordingly, EME Homer City’s liquidity is substantially based on its ability to generate cash flow from operations. If EME Homer City is unable to generate cash flow from operations necessary to meet its obligations, EME Homer City will have limited ability to obtain additional capital unless its partners provide additional funding, which they are under no legal obligation to do.

The rent payments that EME Homer City owes under the sale-leaseback agreements are comprised of two components, a senior rent portion and an equity rent portion. The senior rent is used exclusively for debt service to the holders of the senior secured bonds issued in connection with the sale-leaseback transaction, while the equity rent is paid to the owner-lessors. In order to pay the equity portion of the rent, EME Homer City is required to meet historical and projected senior rent service coverage ratios of 1.7 to 1 subject to reduction to 1.3 to 1 under circumstances specified in the participation agreements. During the 12 months ended December 31, 2008, the senior rent service coverage ratio was 2.05 to 1. The senior rent service coverage ratio is determined by dividing net cash flow as defined in the participation agreements by the senior rent due in that period. In addition, if EME Homer City does not meet specified debt service coverage ratios while the lease debt is outstanding, it will not pay the equity portion of the rent to the owner-lessors. Accordingly, the sale-leaseback documentation does not permit

the lessor to terminate the lease in the event of non-payment of the equity portion of the rent while the lease debt is outstanding.

EME Homer City's use of cash in its bank accounts is limited to specific operating and capital expenditures as set forth in the security deposit agreement executed as part of the sale-leaseback transaction. The amount in certain reserve accounts will be available for payments due on the equity portion of lease rent during specified periods, and in accordance with the sale-leaseback documents, unless there is a default in the payment of the senior portion of lease rent, in which case the amount will be available to pay such senior portion of the lease rent. The release of funds from these restricted cash accounts is permitted, provided EME Homer City maintains specified reserve balances in accordance with the sale-leaseback documents, no event of default shall have occurred or be continuing and no two failed rent payments shall have occurred. EME Homer City had \$30 million included in restricted cash at December 31, 2008 related to these reserve accounts.

### Payments Made Under Subordinated Revolving Loan and Tax Payments

The following table summarizes the payments by EME Homer City under its subordinated revolving loan with Edison Mission Finance Co., a subsidiary of EME, that constitute permitted distributions pursuant to the terms of the sale-leaseback transaction and payments made pursuant to tax-allocation agreements:

	<u>Years Ended December 31,</u>		
	<u>2008</u>	<u>2007</u>	<u>2006(1)</u>
	(in millions)		
Payment of interest .....	\$ 31	\$ 69	\$ —
Payment of principal .....	79	118	—
Subordinated revolving loan payments .....	110	187	—
Tax payments under tax-allocation agreements .....	15	—	—
Total payments .....	<u>\$ 125</u>	<u>\$ 187</u>	<u>\$ —</u>

(1) In 2006, EME made an equity contribution of \$8.8 million for working capital purposes. Subsequently, EME Homer City made a permitted distribution to EME of \$8.8 million through a payment of interest on the subordinated revolving loan.

### Credit Ratings

EME Homer City is not currently rated. EME Homer City has entered into a contract with EMMT for the sale of energy and capacity from its facilities, which enables this marketing affiliate to engage in forward sales and hedging. Credit ratings for EME and EMMT, at December 31, 2008, were as follows:

	<u>Moody's Rating</u>	<u>S&amp;P Rating</u>	<u>Fitch Rating</u>
EME .....	B1	BB-	BB-
EMMT .....	Not Rated	BB-	Not Rated

On December 23, 2008, S&P assigned a negative outlook to its corporate ratings for EME and EMMT. EME Homer City cannot provide assurance that the credit ratings above will remain in effect for any given period of time or that one or more of these ratings will not be lowered. EME Homer City notes that these credit ratings are not recommendations to buy, sell or hold securities and may be revised at any time by a rating agency.

EME Homer City's sale-leaseback documents restrict EME Homer City's ability to enter into trading activities, as defined in the documents, with EMMT to sell forward the output of its facilities if EMMT does not have an investment grade credit rating from S&P or Moody's or, in the absence of those ratings, if it is not rated as investment grade pursuant to EME's internal credit scoring procedures. These documents include a requirement that the counterparty to such transactions, and EME Homer City, if acting as seller to an unaffiliated third party, be investment grade. EME Homer City, which is not rated, sold all the output from its facilities through EMMT in 2008, which has a below investment grade credit rating. In order to continue to sell forward the output of its facilities through EMMT, either: (1) a consent from the sale-leaseback owner participant must be obtained; or (2) EMMT must provide assurances of performance consistent with the requirements of the sale-leaseback documents. EME Homer City has obtained a consent from the sale-leaseback owner participant that allows it to enter into such sales, under specified conditions, through March 1, 2014. EME Homer City is permitted to sell the output of its facilities into the spot market at any time. See "Market Risk Exposures—Commodity Price Risk."

## Contractual Obligations, Commitments and Contingencies

### Contractual Obligations

The following table summarizes EME Homer City's significant contractual obligations as of December 31, 2008:

<u>Contractual Obligations</u>	<u>Total</u>	<u>Payments Due by Period (in millions)</u>			
		<u>Less than 1 year</u>	<u>1 to 3 years</u>	<u>3 to 5 years</u>	<u>More than 5 years</u>
Long-term debt to affiliate(1).....	\$ 513	\$ —	\$ —	\$ —	\$ 513
Lease financing(2).....	2,280	151	315	309	1,505
Operating lease obligations(3).....	2	1	1	—	—
Purchase obligations:					
Capital improvements.....	17	17	—	—	—
Fuel supply contracts.....	280	233	43	4	—
Coal cleaning agreement.....	11	6	5	—	—
Other contractual obligations.....	40	7	24	9	—
Employee benefit plan contribution(4).....	1	1	—	—	—
<b>Total Contractual Obligations.....</b>	<b>\$ 3,144</b>	<b>\$ 416</b>	<b>\$ 388</b>	<b>\$ 322</b>	<b>\$ 2,018</b>

- (1) See "EME Homer City Generation L.P. Notes to Financial Statements—Note 6. Long-Term Debt" for additional details. Table assumes long-term debt is held to maturity. Amount also includes interest payments totaling \$155 million over life of debt.
- (2) Amount includes interest payments over the life of the lease.
- (3) See "EME Homer City Generation L.P. Notes to Financial Statements—Note 9. Commitments and Contingencies—Lease Commitments" for additional details.
- (4) Amount includes estimated contribution for pension plans and postretirement benefits other than pensions. The estimated contributions beyond 2009 are not available. For more information, see "EME Homer City Generation L.P. Notes to Financial Statements—Note 8. Compensation and Benefit Plans—Pension Plans and Postretirement Benefits Other Than Pensions."

### *Lease Financing*

On December 7, 2001, EME Homer City completed a sale-leaseback of its facilities to third-party lessors for an aggregate purchase price of \$1.591 billion, comprised of \$782 million in cash and assumption of debt (the fair value of which was \$809.3 million). Under the terms of the 33.67-year leases, EME Homer City is obligated to make semi-annual lease payments on each April 1 and October 1. The gain recognized on the sale of the facilities has been deferred and is being amortized over the term of the leases.

### ***Purchase Obligations***

#### *Capital Improvements*

At December 31, 2008, EME Homer City had firm commitments in 2009 for capital expenditures primarily related to non-environmental improvements such as upgrades to boiler and turbine controls, replacement of major boiler components and main power transformer replacement.

#### *Fuel Supply Contracts*

At December 31, 2008, EME Homer City had fuel purchase commitments with various third-party suppliers for the purchase of bituminous steam coal and fuel oil. The contracts require EME Homer City to purchase a minimum quantity over the term of the contracts, with an option at EME Homer City's discretion to purchase additional amounts as stated in the agreements.

#### *Coal Cleaning Agreement*

Effective January 1, 2006, EME Homer City entered into a coal cleaning agreement with Homer City Coal Processing Corporation to operate and maintain a coal cleaning plant owned by EME Homer City. The agreement expires on December 31, 2010.

#### *Other Contractual Obligations*

At December 31, 2008, EME Homer City had contractual commitments for the purchase of limestone, ammonia and materials for environmental controls equipment.

### ***Commercial Commitments***

#### *Interconnection Agreement*

EME Homer City's general partner, Mission Energy Westside, is a party to an interconnection agreement with NYSEG and Penelec to provide interconnection services necessary to interconnect the Homer City facilities with NYSEG's and Penelec's transmission systems. Unless terminated earlier in accordance with specified terms, the interconnection agreement will terminate on a date mutually agreed to by Mission Energy Westside, NYSEG and Penelec. This date will not exceed the retirement date of the Homer City units. NYSEG and Penelec have agreed to extend the interconnection services (but not the expiration of the agreement) to modifications, additions or upgrades to, or repowering of the Homer City units. Mission Energy Westside is required to compensate NYSEG and Penelec for all reasonable costs associated with any modifications, additions or replacements made to NYSEG's or Penelec's interconnection facilities or transmission systems in connection with any modification, addition or upgrade to, or repowering of the Homer City units.

## ***Guarantees and Indemnities***

### *Tax Indemnity Agreements*

In connection with the sale-leaseback transaction related to the Homer City facilities, EME Homer City and its indirect parent, EME, entered into tax indemnity agreements. Under these tax indemnity agreements, EME Homer City and EME agreed to indemnify the equity investors in the sale-leaseback transaction for specified adverse tax consequences that could result in certain situations set forth in the tax indemnity agreements, including specified defaults under the respective leases. The potential indemnity obligation under these tax indemnity agreements could be significant. Due to the nature of the obligations under these tax indemnity agreements, EME Homer City cannot determine a maximum potential liability which would be triggered by a valid claim from the lessors. EME Homer City has not recorded a liability related to these indemnities.

### *Indemnity Provided as Part of the Acquisition of the Homer City Facilities*

In connection with the acquisition of the Homer City facilities, EME Homer City agreed to indemnify the sellers with respect to specific environmental liabilities before and after the date of sale. Payments would be triggered under this indemnity by a valid claim from the sellers. EME guaranteed the obligations of EME Homer City. Due to the nature of the obligation under this indemnity provision, it is not subject to a maximum potential liability and does not have an expiration date. See “—Contingencies—New Source Review Notice of Violation” for discussion of the NOV received by EME Homer City and associated indemnity claims. EME Homer City has not recorded a liability related to this indemnity.

## ***Contingencies***

### *RPM Buyers’ Complaint*

On May 30, 2008, a group of entities referring to themselves as the “RPM Buyers” filed a complaint at the FERC asking that PJM’s RPM, as implemented through the transitional base residual auctions establishing capacity payments for the period from June 1, 2008 through May 31, 2011, be found to have produced unjust and unreasonable capacity prices. On September 19, 2008, the FERC dismissed the RPM Buyers’ complaint, finding that the RPM Buyers had failed to allege or prove that any party violated PJM’s tariff and market rules, and that the prices determined during the transition period were determined in accordance with PJM’s FERC-approved tariff. On October 20, 2008, the RPM Buyers requested rehearing of the FERC’s order dismissing their complaint. This matter is currently pending before the FERC. EME Homer City cannot predict the outcome of this matter.

### *New Source Review Notice of Violation*

On June 12, 2008, EME Homer City received an NOV from the US EPA alleging that, beginning in 1988, EME Homer City (or former owners of the Homer City facilities) performed repair or replacement projects at Homer City Units 1 and 2 without first obtaining construction permits as required by the Prevention of Significant Deterioration requirements of the CAA. The US EPA also alleges that EME Homer City has failed to file timely and complete Title V permits. The NOV does not specify the penalties or other relief that the US EPA seeks for the alleged violations. EME Homer City has met with the US EPA and has expressed its intent to explore the possibility of a settlement. If no settlement is reached and the United States Department of Justice files suit, litigation could take many years to resolve the issues alleged in the NOV. EME Homer City cannot predict at this time what effect this matter may have on its facilities, its results of operations, financial position or cash flows.

EME Homer City has sought indemnification for liability and defense costs associated with the NOV from the sellers under the asset purchase agreement pursuant to which EME Homer City acquired the Homer City facilities. The sellers responded by denying the indemnity obligation, but accepting the defense of the claims.

EME Homer City notified the sale-leaseback owner participants of the Homer City facilities of the NOV under the operative indemnity provisions of the sale-leaseback documents. The owner participants of the Homer City facilities, in turn, have sought indemnification and defense from EME Homer City for costs and liability associated with the EME Homer City NOV. EME Homer City responded by undertaking the indemnity obligation and defense of the claims.

#### *Ash Disposal Site*

EME Homer City's ash disposal site is a permitted Class I Residual Waste Landfill, the most stringently regulated of the three categories of residual waste landfills authorized by the regulations of the PADEP. EME Homer City's permit allows it to dispose of coal combustion by-products, including fly ash, bottom ash and pyrites, and miscellaneous plant wastes at the landfill. The wastes are deposited in compacted layers within lifts, or sections. Each lift where coal ash is disposed must be capped and covered when it reaches final grade. EME Homer City must also monitor groundwater quality at and adjacent to the ash disposal site through a network of monitoring wells and report the results to the PADEP on a periodic basis. In the event that a disposal facility's groundwater monitoring identifies degradation in any of its wells, the PADEP's regulations require the facility to first confirm the existence and nature of the degradation by conducting a groundwater assessment. If the assessment confirms groundwater degradation in excess of the applicable regulatory standards, the facility is then required to prepare and implement an abatement plan that could include measures such as installing a liner in a previously unlined area. To date, no degradation has been found in the groundwater monitoring system at EME Homer City that would require the development of an assessment or abatement plan. EME Homer City also provides financial assurance in the form of a surety bond to guarantee its closure and post-closure obligations at the landfill. The estimated closure date is 2018. Based on the remaining capacity of the landfill and the estimated material requiring future disposal, EME Homer City has begun permitting additional areas for expansion of the landfill. Management does not believe that the costs of maintaining and closing the ash disposal site will have a material impact on EME Homer City's financial statements.

#### *Insurance*

EME Homer City maintains insurance policies that it believes are comparable to those carried by other electric generating facilities of a similar size. The insurance program includes all-risk real and personal property insurance, including coverage for losses from boiler and machinery breakdowns, and the perils of earthquake and flood, subject to certain sublimits. The property insurance program currently covers losses up to \$1.325 billion. Under the terms of the participation agreements entered into as part of EME Homer City's sale-leaseback transaction, EME Homer City is required to maintain specified minimum insurance coverages if and to the extent that such insurance is available on a commercially reasonable basis. Although the insurance covering the Homer City facilities is comparable to insurance coverages normally carried by companies engaged in similar businesses, and owning similar properties, the insurance coverages that are in place do not meet the minimum insurance coverages required under the participation agreements. Due to the current market environment, the minimum insurance coverage is not commercially available at reasonable prices. EME Homer City has obtained a waiver under the participation agreements which permits it to maintain its current insurance coverage through June 1, 2009.

EME Homer City also carries general liability insurance covering liabilities to third parties for bodily injury or property damage resulting from operations, automobile liability insurance and excess liability insurance. Limits and deductibles in respect of these insurance policies are consistent with the requirements of the participation agreements.

### **Off-Balance Sheet Transactions**

EME Homer City has no material off-balance sheet transactions.

### **Environmental Matters and Regulations**

See the discussion on environmental matters and regulations in Note 9—Commitments and Contingencies under “EME Homer City Generation L.P. Notes to Financial Statements.”

## MARKET RISK EXPOSURES

### Introduction

EME Homer City’s primary market risk exposures are associated with the sale of electricity and capacity from, and the procurement of fuel for, its electric generating facilities. These market risks arise from fluctuations in electricity, capacity and fuel prices, emission allowances, and transmission rights. EME Homer City manages these risks in part by using derivative financial instruments in accordance with established policies and procedures.

This section discusses these market risk exposures under the following headings:

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Commodity Price Risk .....	42
Accounting for Energy Contracts .....	48
Fair Value of Financial Instruments .....	49
Credit Risk .....	50
Interest Rate Risk.....	51

### Commodity Price Risk

#### Introduction

EME Homer City sells all of its energy and capacity into wholesale power markets through EMMT. EMMT enters into forward contracts for EME Homer City’s electric output in order to provide more predictable earnings and cash flow. When appropriate, EMMT manages the spread between electric prices and fuel prices through the use of forward contracts, swaps, futures, or options contracts. There is no assurance that contracts to hedge changes in market prices will be effective.

EME Homer City’s operations expose it to commodity price risk, which represents the potential loss that can be caused by a change in the market value of a particular commodity. Commodity price risks are actively monitored by a risk management committee to ensure compliance with EME Homer City’s risk management policies, through EMMT. Policies are in place which define risk management processes, and procedures exist which allow for monitoring of all commitments and positions with regular reviews by a risk management committee. Despite this, there can be no assurance that all risks have been accurately identified, measured and/or mitigated.

In addition to prevailing market prices, EME Homer City’s ability to derive profits from the sale of electricity will be affected by the cost of production, including costs incurred to comply with environmental regulations. The costs of production of the units vary and, accordingly, depending on market conditions, the amount of generation that will be sold from the units is expected to vary.

EMMT uses “gross margin at risk” to identify, measure, monitor and control EME Homer City’s overall market risk exposure with respect to hedge positions at the Homer City facilities. The use of this measure allows management to aggregate overall commodity risk, compare risk on a consistent basis and identify the risk factors. Gross margin at risk measures the potential change in value of an asset or position, in each case over a given time interval, under normal market conditions, at a given confidence level. Given the inherent limitations of this measure and reliance on a single type of risk measurement tool, EMMT supplements this approach with the use of stress testing and worst-case scenario analysis for key risk factors, as well as stop-loss triggers and counterparty credit exposure limits.

## ***Hedging Strategy***

To reduce its exposure to market risk, EME Homer City hedges a portion of its electricity sales through EMMT. To the extent that EME Homer City does not hedge its electricity sales, the unhedged portion will be subject to the risks and benefits of spot market price movements. Hedge transactions are primarily implemented through:

- the use of future contracts cleared on the Intercontinental Trading Exchange and the New York Mercantile Exchange or executed bilaterally with counterparties,
- forward sales transactions entered into on a bilateral basis with third parties, including electric utilities and power marketing companies, and
- participation in capacity auctions.

The extent to which EME Homer City hedges its market price risk depends on several factors. First, EME Homer City evaluates over-the-counter market prices to determine whether the types of hedge transactions set forth above at forward market prices are sufficiently attractive compared to assuming the risk associated with fluctuating spot market sales. Second, EME Homer City's ability to enter into hedging transactions depends upon EMMT's credit capacity and upon the forward sales markets having sufficient liquidity to enable EME Homer City to identify appropriate counterparties for hedging transactions. In the case of hedging transactions related to the generation and capacity of the Homer City facilities, credit support is provided by EME.

## ***Energy Price Risk***

All the energy and capacity from the Homer City facilities is sold under terms, including price and quantity, arranged by EMMT with customers through a combination of bilateral agreements (resulting from negotiations or from auctions), forward energy sales and spot market sales. Electric power generated at the Homer City facilities is generally sold into the PJM market. PJM has a short-term market, which establishes an hourly clearing price. The Homer City facilities are situated in the PJM control area and are physically connected to high-voltage transmission lines serving both the PJM and NYISO markets.

The following table depicts the average historical market prices for energy per megawatt-hour at the Homer City busbar and in PJM West Hub (EME Homer City's primary trading hub) during the past three years:

	<b>Historical Energy Prices(1)</b>					
	<b>24-Hour PJM</b>					
	<b>Homer City Busbar</b>			<b>PJM West Hub</b>		
	<u>2008</u>	<u>2007</u>	<u>2006</u>	<u>2008</u>	<u>2007</u>	<u>2006</u>
January .....	\$ 54.32	\$ 40.30	\$ 48.67	\$ 66.80	\$ 44.63	\$ 54.57
February .....	61.74	64.27	49.54	68.29	73.93	56.39
March .....	65.37	55.00	53.26	70.48	61.02	58.30
April .....	61.99	52.42	48.50	69.12	58.74	49.92
May .....	49.37	48.12	44.71	59.84	53.89	48.55
June .....	78.72	45.88	38.78	98.50	60.19	45.78
July .....	72.39	48.23	53.68	91.80	58.89	63.47
August .....	60.16	55.44	58.60	73.91	71.00	76.57
September .....	52.33	48.90	33.26	66.04	60.14	34.40
October .....	44.46	53.89	37.42	52.88	61.11	39.65
November .....	44.99	47.27	40.13	54.50	55.25	44.83
December.....	46.74	52.58	35.29	50.62	59.67	40.53
Yearly Average.....	<u>\$ 57.72</u>	<u>\$ 51.03</u>	<u>\$ 45.15</u>	<u>\$ 68.56</u>	<u>\$ 59.87</u>	<u>\$ 51.08</u>

(1) Energy prices were calculated at the Homer City busbar (delivery point) and PJM West Hub using historical hourly real-time prices provided on the PJM web-site.

Forward market prices at the PJM West Hub fluctuate as a result of a number of factors, including natural gas prices, transmission congestion, changes in market rules, electricity demand (which in turn is affected by weather, economic growth and other factors), plant outages in the region, and the amount of existing and planned power plant capacity. The actual spot prices for electricity delivered by the Homer City facilities into these markets may vary materially from the forward market prices set forth in the table below.

The following table sets forth the forward month-end market prices for energy per megawatt-hour for the calendar year 2009 and calendar year 2010 “strips,” which are defined as energy purchases for the entire calendar year, as quoted for sales into the PJM West Hub during 2008:

	<b>24-Hour PJM West Hub Forward Energy Prices(1)</b>	
	<b>2009</b>	<b>2010</b>
January 31, 2008 .....	\$ 69.06	\$ 68.43
February 29, 2008 .....	75.03	72.59
March 31, 2008 .....	75.55	71.76
April 30, 2008 .....	79.64	74.91
May 31, 2008 .....	83.91	78.42
June 30, 2008 .....	94.90	87.10
July 31, 2008 .....	75.89	73.66
August 31, 2008 .....	70.49	70.44
September 30, 2008 .....	66.23	68.31
October 31, 2008 .....	59.32	62.97
November 30, 2008 .....	58.17	62.39
December 31, 2008 .....	54.66	59.21

(1) Energy prices were determined by obtaining broker quotes and information from other public sources relating to the PJM West Hub delivery point. Forward prices at PJM West Hub are generally higher than the prices at the Homer City busbar.

EMMT engages in hedging activities for the Homer City facilities to hedge the risk of future change in the price of electricity. Hedging activities are typically weighted toward on-peak periods. The following table summarizes EME Homer City’s hedge position at December 31, 2008:

	<b>2009</b>	<b>2010</b>
GWh .....	4,096	2,662
Average price/MWh(1) .....	\$ 82.94	\$ 90.53

(1) The above hedge positions include forward contracts for the sale of power during different periods of the year and the day. Market prices tend to be higher during on-peak periods and during summer months, although there is significant variability of power prices during different periods of time. Accordingly, the above hedge position at December 31, 2008 is not directly comparable to the 24-hour PJM West Hub prices set forth above.

The average price/MWh for EME Homer City’s hedge position is based on the PJM West Hub. Energy prices at the Homer City busbar have been lower than energy prices at the PJM West Hub. See “—Basis Risk” below for a discussion of the difference.

### ***Capacity Price Risk***

On June 1, 2007, PJM implemented the RPM for capacity. The purpose of the RPM is to provide a long-term pricing signal for capacity resources. The RPM provides a mechanism for PJM to satisfy the region’s need for generation capacity, the cost of which is allocated to load-serving entities through a locational reliability charge.

The following table summarizes the status of capacity sales for EME Homer City at December 31, 2008:

	<u>January 1, 2009 to May 31, 2009</u>	<u>June 1, 2009 to May 31, 2010</u>	<u>June 1, 2010 to May 31, 2011</u>	<u>June 1, 2011 to May 31, 2012</u>
<b>Fixed Price Capacity Sales</b>				
MW .....	820	1,670	1,813	1,771
Price per MW-day.....	\$111.92	\$191.32	\$174.29	\$110.00
<b>Variable Capacity Sales</b>				
MW .....	905	—	—	—
Price per MW-day.....	\$ 56.56(1)	—	—	—

(1) Actual contract price is a function of NYISO capacity auction clearing prices in January through April 2009 and forward over-the-counter NYISO capacity prices on December 31, 2008 for May 2009.

Revenues from the sale of capacity from EME Homer City beyond the periods set forth above will depend upon the amount of capacity available and future market prices either in PJM or nearby markets if EME Homer City has an opportunity to capture a higher value associated with those markets. Under PJM's RPM system, the market price for capacity is generally determined by aggregate market-based supply conditions and an administratively set aggregate demand curve. Among the factors influencing the supply of capacity in any particular market are plant forced outage rates, plant closings, plant delistings (due to plants being removed as capacity resources and/or to export capacity to other markets), capacity imports from other markets, and the CONE.

Prior to the RPM auctions for the relevant delivery periods, EME Homer City sold a portion of its capacity to an unrelated third party for the delivery period of June 1, 2008 through May 31, 2009. EME Homer City is not receiving the RPM auction clearing price for this previously sold capacity. The price EME Homer City is receiving for these capacity sales is a function of NYISO capacity clearing prices resulting from separate NYISO capacity auctions.

### ***Basis Risk***

Sales made from the Homer City facilities in the real-time or day-ahead market receive the actual spot prices or day-ahead prices, as the case may be, at the Homer City busbar. In order to mitigate price risk from changes in spot prices at the Homer City busbar, EME Homer City may enter into cash settled futures contracts as well as forward contracts with counterparties for energy to be delivered in future periods. Currently, a liquid market for entering into these contracts at the Homer City busbar does not exist. A liquid market does exist at the PJM West Hub. EME Homer City's hedging activities use this settlement point to enter into hedging contracts. EME Homer City's revenues with respect to such forward contracts include:

- sales of actual generation in the amounts covered by the forward contracts with reference to PJM spot prices at the Homer City busbar, plus,
- sales to third parties at the price under such hedging contracts at designated settlement points (generally the PJM West Hub) less the cost of power at spot prices at the same designated settlement points.

Under PJM's market design, locational marginal pricing, which establishes market prices at specific locations throughout PJM by considering factors including generator bids, load requirements, transmission congestion and losses, can cause the price of a specific delivery point to be higher or lower

relative to other locations depending on how the point is affected by transmission constraints. Effective June 1, 2007, PJM implemented marginal losses which adjust the algorithm that calculates locational marginal prices to include a component for marginal transmission losses in addition to the component included for congestion. To the extent that, on the settlement date of a hedge contract, spot prices at the relevant busbar are lower than spot prices at the settlement point, the proceeds actually realized from the related hedge contract are effectively reduced by the difference. This is referred to as “basis risk.” During 2008, transmission congestion in PJM has resulted in prices at the Homer City busbar being lower than those at the PJM West Hub by an average of 16%, compared to 15% during 2007 and 12% during 2006. The monthly average difference during 2008 ranged from 7% to 21%.

By entering into cash settled futures contracts and forward contracts using the PJM West Hub as the settlement point, EME Homer City is exposed to basis risk as described above. In order to mitigate basis risk, EME Homer City may purchase financial transmission rights and basis swaps in PJM for EME Homer City. A financial transmission right is a financial instrument that entitles the holder to receive the difference of actual spot prices for two delivery points in exchange for a fixed amount. Accordingly, EME Homer City’s hedging activities include using financial transmission rights alone or in combination with forward contracts and basis swap contracts to manage basis risk.

**Coal Price Risk**

The Homer City facilities purchase coal primarily obtained from mines located near the facilities in Pennsylvania. Coal purchases are made under a variety of supply agreements extending through 2012. The following table summarizes the amount of coal under contract at December 31, 2008 for the next four years:

	<u>2009</u>	<u>2010</u>	<u>2011</u>	<u>2012</u>
Amount of coal under contract in millions of equivalent tons(1)(2) .....	5.1	0.6	0.3	0.1

- (1) The amount of coal under contract in tons is calculated based on contracted tons and applying a 13,000 Btu equivalent.
- (2) At December 31, 2008, there are options to purchase additional coal of 0.7 million tons in 2010 and 0.6 million tons in 2011, 0.5 million tons in 2012 and 0.1 million tons in 2013. Options to purchase 1.2 million tons in 2010 and 2011 are the subject of a dispute with the supplier. Pending dispute resolution, EME Homer City is exposed to price risk related to these volumes at December 31, 2008.

EME Homer City is subject to price risk for purchases of coal that are not under contract. Prices of NAPP coal, which are related to the price of coal purchased for the Homer City facilities, increased substantially during 2008 and increased steadily during 2007 from 2006. The price of NAPP coal (with 13,000 Btu per pound heat content and <3.0 pounds of SO<sub>2</sub> per MMBtu sulfur content) ranged from \$61.75 per ton to \$150 per ton during 2008 and decreased to a price of \$76 per ton at January 9, 2009, as reported by the EIA. The 2008 increase in NAPP coal prices was primarily attributable to increased international and Atlantic basin coal demand resulting from a variety of factors in several countries consuming this coal. The current global economic conditions have tempered this demand and prices moderated as 2008 came to a close. In 2007, the price of NAPP coal fluctuated between \$44.00 per ton to \$55.25 per ton, which was the price per ton at December 21, 2007, as reported by the EIA. In 2006, the price of NAPP coal fluctuated between \$37.50 per ton and \$45.00 per ton, with a price of \$43.00 per ton at December 15, 2006, as reported by the EIA. The 2007 increase in the NAPP coal price was in line with normal market price volatility.

### ***Emission Allowances Price Risk***

The federal Acid Rain Program requires electric generating stations to hold SO<sub>2</sub> allowances sufficient to cover their annual emissions. Pennsylvania regulations implemented the federal NO<sub>x</sub> SIP Call which required, through 2008, the holding of NO<sub>x</sub> allowances to cover ozone season NO<sub>x</sub> emissions. In addition, pursuant to Pennsylvania's implementation of the CAIR, electric generating stations are required to hold seasonal and annual NO<sub>x</sub> allowances beginning January 1, 2009. As part of the acquisition of the Homer City facilities, EME Homer City obtained the rights to the emission allowances that have been or are allocated to these facilities. EME Homer City purchases (or sells) emission allowances based on the amounts required for actual generation in excess of (or less than) the amounts allocated under these programs. See "EME Homer City Generation L.P. Notes to Financial Statements—Note 9. Commitments and Contingencies—Environmental Matters and Regulations—Air Quality Regulation—Clean Air Interstate Rule" for further discussion of the CAIR.

EME Homer City is subject to price risk for purchases of emission allowances required for actual emissions greater than allowances held. The market price for emission allowances may vary significantly. For example, the average purchase price of SO<sub>2</sub> allowances was \$315 per ton in 2008, \$512 per ton in 2007 and \$664 per ton in 2006. Based on broker's quotes and information from public sources, the spot price for SO<sub>2</sub> allowances was \$210 per ton at December 31, 2008. EME Homer City does not anticipate any requirements to purchase SO<sub>2</sub> emission allowances for 2009.

Based on EME Homer City's anticipated annual and seasonal NO<sub>x</sub> requirements for 2009 beyond those allowances already purchased, EME Homer City expects that a 10% change in the price of annual and seasonal NO<sub>x</sub> emission allowances at December 31, 2008 would increase or decrease pre-tax income in 2009 by approximately \$0.1 million.

See "EME Homer City Generation L.P. Notes to Financial Statements—Note 9. Commitments and Contingencies—Environmental Matters and Regulations" for a discussion of environmental regulations related to emissions.

### **Accounting for Energy Contracts**

EME Homer City uses a number of energy contracts to manage exposure from changes in the price of electricity, including forward sales and purchases of physical power and forward price swaps which settle only on a financial basis (including futures contracts). EME Homer City follows SFAS No. 133, and under this Standard these energy contracts are generally defined as derivative financial instruments. Importantly, SFAS No. 133 requires changes in the fair value of each derivative financial instrument to be recognized in earnings at the end of each accounting period unless the instrument qualifies for hedge accounting under the terms of SFAS No. 133. For derivatives that do qualify for cash flow hedge accounting, changes in their fair value are recognized in other comprehensive income until the hedged item settles and is recognized in earnings. However, the ineffective portion of a derivative that qualifies for cash flow hedge accounting is recognized currently in earnings. For further discussion of derivative financial instruments, see "Management's Overview; Critical Accounting Policies and Estimates—Critical Accounting Policies and Estimates—Derivative Financial Instruments and Hedging Activities."

SFAS No. 133 affects the timing of income recognition, but has no effect on cash flow. To the extent that income varies under SFAS No. 133 from accrual accounting (i.e., revenue recognition based on

settlement of transactions), EME Homer City records unrealized gains or losses. Unrealized SFAS No. 133 gains or losses result from:

- energy contracts that do not qualify for hedge accounting under SFAS No. 133 (which are sometimes referred to as economic hedges). Unrealized gains and losses include:
  - the change in fair value (sometimes called mark-to-market) of economic hedges that relate to subsequent periods, and
  - offsetting amounts to the realized gains and losses in the period non-qualifying hedges are settled.
- the ineffective portion of qualifying hedges which generally relate to changes in the expected basis between the sale point and the hedge point. Unrealized gains or losses include:
  - the current period ineffectiveness on the hedge program for subsequent periods. This occurs because the ineffective gains or losses are recorded in the current period, whereby the energy revenues related to generation being hedged will be recorded in the subsequent period along with the effective portion of the related hedge transaction, and
  - offsetting amounts to the realized ineffective gains and losses in the period cash flow hedges are settled.

EME Homer City classifies unrealized gains and losses from energy contracts as part of operating revenues. The results of derivative activities are recorded as part of cash flows from operating activities in the statements of cash flows. The following table summarizes unrealized gains (losses) for the three-year period ended December 31, 2008:

	<u>Years Ended December 31,</u>		
	<u>2008</u>	<u>2007</u>	<u>2006</u>
	(in millions)		
Non-qualifying hedges .....	\$ 1	\$ (1)	\$ 2
Ineffective portion of cash flow hedges.....	20	(9)	33
Total unrealized gains (losses).....	<u>\$ 21</u>	<u>\$ (10)</u>	<u>\$ 35</u>

At December 31, 2008, unrealized losses of \$0.1 million were recognized from non-qualifying hedge contracts or the ineffective portion of cash flow hedges related to subsequent periods (unrealized gains (losses) of \$(1.6) million for 2009, \$1 million for 2010, \$0.3 million for 2011, and \$0.2 million for 2012).

### **Fair Value of Financial Instruments**

EME Homer City adopted SFAS No. 157 effective January 1, 2008. The standard established a hierarchy for fair value measurements. See “EME Homer City Generation L.P. Notes to Financial Statements—Note 2. Fair Value Measurements,” for further discussion of EME Homer City’s adoption of SFAS No. 157.

The following table summarizes the fair values for outstanding financial instruments used for hedging activities:

	<u>December 31,</u> <u>2008</u>	<u>December 31,</u> <u>2007</u>
	(in millions)	
Commodity price:		
Electricity contracts.....	<u>\$ 130</u>	<u>\$ (46)</u>

In assessing the fair value of EME Homer City's derivative financial instruments, EMMT uses quoted market prices and forward market prices adjusted for credit risk. The fair value of commodity price contracts takes into account quoted market prices, time value of money, volatility of the underlying commodities and other factors. The increase in fair value of electricity contracts at December 31, 2008 as compared to December 31, 2007 is attributable to a decline in the average market prices for power as compared to contracted prices at December 31, 2008, which is the valuation date. A 10% change in the market price at December 31, 2008 would increase or decrease the fair value of outstanding derivative commodity price contracts by approximately \$47 million. The following table summarizes the maturities and the related fair value of EME Homer City's commodity derivative assets and liabilities as of December 31, 2008:

	<u>Total Fair</u> <u>Value</u>	<u>Maturity</u> <u>&lt;1 year</u>	<u>Maturity</u> <u>1 to 3</u> <u>years</u>	<u>Maturity</u> <u>4 to 5</u> <u>years</u>	<u>Maturity</u> <u>&gt;5 years</u>
	(in millions)				
Prices provided by external sources ..	<u>\$ 130</u>	<u>\$ 77</u>	<u>\$ 53</u>	<u>\$ —</u>	<u>\$ —</u>

Prices provided by external sources in the preceding table include derivatives whose fair value is based on forward market prices in active markets adjusted for non-performance risks which would be considered Level 2 derivative positions when there are no unobservable inputs that are significant to the valuation. EMMT obtains forward market prices from traded exchanges (ICE Futures U.S. or New York Mercantile Exchange) and available broker quotes. Then, EMMT selects a primary source that best represents traded activity for each market to develop observable forward market prices in determining the fair value of these positions. Broker quotes or prices from exchanges are used to validate and corroborate the primary source. These price quotations reflect mid-market prices (average of bid and ask) and are obtained from sources that EMMT believes to provide the most liquid market for the commodity. EMMT considers broker quotes to be observable when corroborated with other information which may include a combination of prices from exchanges, other brokers, and comparison to executed trades.

### Credit Risk

In conducting EME Homer City's hedging activities, EMMT contracts with a number of utilities, energy companies, financial institutions, and other companies, collectively referred to as counterparties. In the event a counterparty were to default on its trade obligation, EME Homer City would be exposed to the risk of possible loss associated with re-contracting the product at a price different from the original contracted price if the non-performing counterparty were unable to pay the resulting damages owed to EME Homer City. Further, EME Homer City would be exposed to the risk of non-payment of accounts receivable accrued for products delivered prior to the time a counterparty defaulted.

To manage credit risk, EMMT looks at the risk of a potential default by counterparties. Credit risk is measured by the loss that EMMT would expect to incur if a counterparty failed to perform pursuant to

the terms of its contractual obligations. EMMT measures, monitors and mitigates credit risk to the extent possible. To mitigate credit risk from counterparties, master netting agreements are used whenever possible and counterparties may be required to pledge collateral when deemed necessary. EMMT also takes other appropriate steps to limit or lower credit exposure.

EMMT has established processes to determine and monitor the creditworthiness of counterparties. EMMT manages the credit risk of its counterparties based on credit ratings using published ratings of counterparties and other publicly disclosed information, such as financial statements, regulatory filings, and press releases, to guide it in the process of setting credit levels, risk limits and contractual arrangements, including master netting agreements. A risk management committee regularly reviews the credit quality of EMMT's counterparties. Despite this, there can be no assurance that these efforts will be wholly successful in mitigating credit risk or that collateral pledged will be adequate.

In addition, coal for the Homer City facilities is purchased from suppliers under contracts which may be for multiple years. A number of the coal suppliers to the Homer City facilities do not currently have an investment grade credit rating and, accordingly, EME Homer City may have limited recourse to collect damages in the event of default by a supplier. EME Homer City seeks to mitigate this risk through diversification of its coal suppliers and through guarantees and other collateral arrangements when available. Despite this, there can be no assurance that these efforts will be successful in mitigating credit risk from coal suppliers.

EME Homer City derives a significant source of its operating revenues from electric power sold into the PJM market by EMMT. Sales into PJM accounted for approximately 54% of EME Homer City's operating revenues for the year ended December 31, 2008. Moody's rates PJM's debt Aa3. PJM, an ISO with over 300 member companies, maintains its own credit risk policies and does not extend unsecured credit to non-investment grade companies. Any losses due to a PJM member default are shared by all other members based upon a predetermined formula.

For 2008, a second customer, Constellation Energy Commodities Group, Inc., accounted for 24% of EME Homer City's operating revenues. Sales to Constellation largely consist of energy sales under forward contracts. The contract with Constellation is guaranteed by Constellation Energy Group, Inc., which has a senior unsecured debt rating of BBB by S&P and Baa3 by Moody's.

### **Interest Rate Risk**

EME Homer City has mitigated the risk of interest rate fluctuations by obtaining fixed rate financing on its subordinated revolving loan with Edison Mission Finance. EME Homer City does not believe that interest rate fluctuations will have a material adverse effect on its financial position or results of operations.

### **ITEM 7A. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK**

Information responding to Item 7A is filed with this report under "Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations."

## **ITEM 8. FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA**

### Financial Statements:

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## **ITEM 9. CHANGES IN AND DISAGREEMENTS WITH ACCOUNTANTS ON ACCOUNTING AND FINANCIAL DISCLOSURE**

None.

## **ITEM 9A. CONTROLS AND PROCEDURES**

### **Disclosure Controls and Procedures**

EME Homer City's management, under the supervision and with the participation of the partnership's principal executive officer and principal financial officer, has evaluated the effectiveness of EME Homer City's disclosure controls and procedures (as that term is defined in Rules 13a-15(e) or 15d-15(e) under the Securities Exchange Act of 1934, as amended (the "Exchange Act")) as of the end of the period covered by this report. Based on that evaluation, the principal executive officer and principal financial officer have concluded that, as of the end of the period, EME Homer City's disclosure controls and procedures are effective.

### **Management's Report on Internal Control Over Financial Reporting**

EME Homer City's management is responsible for establishing and maintaining adequate internal controls over financial reporting, as defined in Exchange Act Rule 13a-15(f), for EME Homer City. Under the supervision and with the participation of the partnership's principal executive officer and principal financial officer, EME Homer City's management conducted an evaluation of the effectiveness of EME Homer City's internal controls over financial reporting based on the framework set forth in *Internal Control—Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO). Based on its evaluation under the COSO framework, EME Homer City's management concluded that EME Homer City's internal controls over financial reporting were effective as of December 31, 2008.

### **Internal Control Over Financial Reporting**

There were changes as described below in EME Homer City's internal controls over financial reporting (as that term is defined in Rules 13a-15(f) or 15d-15(f) under the Exchange Act) during the period to which this report relates that have materially affected, or are reasonably likely to materially affect, EME Homer City's internal controls over financial reporting.

Effective July 1, 2008, the human resources module was implemented as part of the Edison International enterprise-wide project. The implementation of this module and the related workflow capabilities resulted in a material change to EME Homer City's financial reporting controls and procedures. Therefore, EME Homer City has modified the design and documentation of the internal control process and procedures relating to the new timekeeping system to replace and supplement existing internal controls over financial reporting, as appropriate. The system changes were undertaken to integrate systems and consolidate information, and were not undertaken in response to any actual or perceived deficiencies in EME Homer City's internal controls over financial reporting.

#### **ITEM 9A(T). CONTROLS AND PROCEDURES**

This annual report does not include an attestation report of EME Homer City's independent registered public accounting firm regarding internal control over financial reporting. Management's report was not subject to attestation by EME Homer City's independent registered public accounting firm pursuant to temporary rules of the Securities and Exchange Commission that permit EME Homer City to provide only management's report in this annual report.

#### **ITEM 9B. OTHER INFORMATION**

None.

**EME HOMER CITY GENERATION L.P.**  
**REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

To the General Partner of EME Homer City Generation, L.P.:

In our opinion, the financial statements listed in the accompanying index present fairly, in all material respects, the financial position of EME Homer City Generation L.P. at December 31, 2008 and 2007, and the results of its operations and its cash flows for each of the three years in the period ended December 31, 2008 in conformity with accounting principles generally accepted in the United States of America. These financial statements are the responsibility of the Partnership's management. Our responsibility is to express an opinion on these financial statements based on our audits. We conducted our audits of these statements in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements, assessing the accounting principles used and significant estimates made by management, and evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

As discussed in Notes 1, 2, 7 and 8 to the financial statements, the Partnership changed the manner in which it accounts for defined benefit pension and other postretirement plans as of December 31, 2006, uncertain tax positions as of January 1, 2007, and fair value measurement and disclosure accounting principles as of January 1, 2008.

/s/ PricewaterhouseCoopers LLP  
Los Angeles, California  
March 2, 2009

**EME HOMER CITY GENERATION L.P.**  
**STATEMENTS OF INCOME**  
(In millions)

	<u>Years Ended December 31,</u>		
	<u>2008</u>	<u>2007</u>	<u>2006</u>
<b>Operating Revenues from Marketing Affiliate</b> .....	\$ 717	\$ 764	\$ 642
<b>Operating Expenses</b>			
Fuel.....	270	306	283
Loss (gain) on sale of emission allowances .....	—	1	(2)
Plant operations .....	126	119	106
Depreciation and amortization.....	64	61	60
Administrative and general.....	4	4	5
Total operating expenses.....	<u>464</u>	<u>491</u>	<u>452</u>
Operating income .....	<u>253</u>	<u>273</u>	<u>190</u>
<b>Other Income (Expense)</b>			
Interest and other income .....	5	8	20
Interest expense .....	<u>(124)</u>	<u>(139)</u>	<u>(145)</u>
Total other expense.....	<u>(119)</u>	<u>(131)</u>	<u>(125)</u>
Income before income taxes.....	134	142	65
Provision for income taxes .....	<u>49</u>	<u>54</u>	<u>26</u>
<b>Net Income</b> .....	<u>\$ 85</u>	<u>\$ 88</u>	<u>\$ 39</u>

The accompanying notes are an integral part of these financial statements.

**EME HOMER CITY GENERATION L.P.**  
**BALANCE SHEETS**  
(In millions)

	December 31,	
	2008	2007
<b>Assets</b>		
<b>Current Assets</b>		
Cash and cash equivalents .....	\$ 59	\$ 142
Due from affiliates .....	—	1
Fuel inventory .....	51	30
Spare parts inventory .....	28	26
Derivative assets .....	78	—
Deferred taxes .....	—	6
Intangible assets .....	36	45
Other current assets .....	15	4
Total current assets .....	267	254
<b>Property, Plant and Equipment</b> .....	2,199	2,155
Less accumulated depreciation and amortization .....	476	411
Net property, plant and equipment .....	1,723	1,744
<b>Deferred taxes</b> .....	80	96
<b>Long-term derivative assets</b> .....	54	—
<b>Restricted cash</b> .....	37	37
<b>Long-term intangible assets</b> .....	25	4
<b>Total Assets</b> .....	\$ 2,186	\$ 2,135
<b>Liabilities and Partners' Equity</b>		
<b>Current Liabilities</b>		
Accounts payable .....	\$ 20	\$ 17
Accrued liabilities .....	10	16
Due to affiliates .....	152	169
Interest payable .....	27	31
Interest payable to affiliates .....	7	8
Derivative liabilities .....	1	15
Deferred taxes .....	35	—
Current portion of lease financing .....	57	53
Total current liabilities .....	309	309
<b>Long-term debt to affiliate</b> .....	358	394
<b>Lease financing, net of current portion</b> .....	1,150	1,207
<b>Benefit plans and other</b> .....	43	39
<b>Long-term derivative liabilities</b> .....	1	31
<b>Total Liabilities</b> .....	1,861	1,980
<b>Commitments and Contingencies (Note 9)</b>		
<b>Partners' Equity</b> .....	325	155
<b>Total Liabilities and Partners' Equity</b> .....	\$ 2,186	\$ 2,135

The accompanying notes are an integral part of these financial statements.

**EME HOMER CITY GENERATION L.P.**  
**STATEMENTS OF PARTNERS' EQUITY**  
(In millions)

	Chestnut Ridge Energy Company	Mission Energy Westside Inc.	Total Partners' Equity
<b>Balance at December 31, 2005</b> .....	\$ (66)	\$ 1	\$ (65)
Net income .....	39	—	39
Adjustment to initially apply SFAS No. 158, net of income tax benefit of \$1 .....	(2)	—	(2)
Other comprehensive income .....	165	—	165
<b>Balance at December 31, 2006</b> .....	136	1	137
Net income .....	88	—	88
Other comprehensive loss .....	(70)	—	(70)
<b>Balance at December 31, 2007</b> .....	154	1	155
Net income .....	85	—	85
Other comprehensive income .....	85	—	85
<b>Balance at December 31, 2008</b> .....	\$ 324	\$ 1	\$ 325

The accompanying notes are an integral part of these financial statements.

**EME HOMER CITY GENERATION L.P.**  
**STATEMENTS OF COMPREHENSIVE INCOME**  
(In millions)

	<u>Years Ended December 31,</u>		
	<u>2008</u>	<u>2007</u>	<u>2006</u>
<b>Net Income</b> .....	\$ 85	\$ 88	\$ 39
Other comprehensive income (loss), net of tax:			
Pension and postretirement benefits other than pensions:			
Prior service adjustment, net of tax.....	2	—	—
Net gain (loss) adjustment, net of tax expense (benefit) of \$(4) and \$1 for 2008 and 2007, respectively.....	(7)	2	—
Unrealized gains (losses) on derivatives qualified as cash flow hedges:			
Unrealized holding gains (losses) arising during period, net of income tax expense (benefit) of \$46, \$(85) and \$118 for 2008, 2007 and 2006, respectively.....	64	(116)	161
Reclassification adjustments included in net income, net of income tax benefit of \$18, \$32 and \$3 for 2008, 2007 and 2006, respectively.....	26	44	4
Other comprehensive income (loss).....	<u>85</u>	<u>(70)</u>	<u>165</u>
<b>Comprehensive Income</b> .....	<u>\$ 170</u>	<u>\$ 18</u>	<u>\$ 204</u>

The accompanying notes are an integral part of these financial statements.

**EME HOMER CITY GENERATION L.P.**  
**STATEMENTS OF CASH FLOWS**  
(In millions)

	Years Ended December 31,		
	<u>2008</u>	<u>2007</u>	<u>2006</u>
<b>Cash Flows From Operating Activities</b>			
Net income.....	\$ 85	\$ 88	\$ 39
Adjustments to reconcile net income to net cash provided by operating activities:			
Depreciation and amortization .....	62	62	60
Deferred taxes .....	(4)	(18)	(2)
Loss (gain) on sale of emission allowances.....	—	1	(2)
Increase in due to/from affiliates.....	(16)	50	28
Decrease (increase) in inventory.....	(23)	16	(11)
Decrease (increase) in other current assets.....	(11)	16	(17)
Decrease (increase) in intangible assets.....	(12)	(44)	1
Increase (decrease) in accounts payable and other current liabilities ..	(3)	5	(7)
Increase (decrease) in interest payable.....	(5)	(33)	30
Increase (decrease) in other liabilities.....	(2)	(1)	4
Decrease (increase) in derivative assets and liabilities.....	(21)	10	(34)
Net cash provided by operating activities.....	<u>50</u>	<u>152</u>	<u>89</u>
<b>Cash Flows From Financing Activities</b>			
Refund of deposit under lease swap agreement.....	—	45	—
Advances under lease swap agreement.....	—	—	61
Payments under lease swap agreement .....	—	—	(62)
Borrowings on long-term obligations from affiliates.....	—	—	14
Repayments to affiliates.....	(36)	(118)	—
Repayments of lease financing .....	(53)	(49)	(47)
Net cash used in financing activities.....	<u>(89)</u>	<u>(122)</u>	<u>(34)</u>
<b>Cash Flows From Investing Activities</b>			
Capital expenditures.....	(44)	(12)	(11)
Proceeds from sale of emission allowances.....	—	—	6
Proceeds from settlement claim.....	—	—	4
Restricted cash .....	—	10	—
Net cash used in investing activities.....	<u>(44)</u>	<u>(2)</u>	<u>(1)</u>
<b>Net increase (decrease) in cash and cash equivalents.....</b>	<b>(83)</b>	<b>28</b>	<b>54</b>
<b>Cash and cash equivalents at beginning of period .....</b>	<b>142</b>	<b>114</b>	<b>60</b>
<b>Cash and cash equivalents at end of period.....</b>	<b><u>\$ 59</u></b>	<b><u>\$ 142</u></b>	<b><u>\$ 114</u></b>

The accompanying notes are an integral part of these financial statements.

**EME HOMER CITY GENERATION L.P.**  
**NOTES TO FINANCIAL STATEMENTS**

**Note 1. Summary of Significant Accounting Policies**

EME Homer City is a Pennsylvania limited partnership between Chestnut Ridge Energy Company, as a limited partner with a 99.9 percent interest, and Mission Energy Westside Inc., as a general partner with a 0.1 percent interest. Both Chestnut Ridge Energy and Mission Energy Westside are wholly owned subsidiaries of Edison Mission Holdings Co., a wholly owned subsidiary of EME. EME is an indirect wholly owned subsidiary of Edison International. The partnership was formed on October 31, 1998 for the purpose of acquiring, owning and operating three coal-fired electric generating units, and related facilities, which are referred to as the “Homer City facilities,” located near Pittsburgh, Pennsylvania for the purpose of producing electric energy.

EME Homer City derives revenue from the sale of energy, capacity and ancillary services into PJM and from bilateral contracts with power marketers and load-serving entities within PJM. EME Homer City has entered into a contract with a marketing affiliate, EMMT, for the sale of energy, capacity and ancillary services from the Homer City facilities, which enables this marketing affiliate to engage in forward sales and hedging transactions to manage electricity price exposure.

On December 7, 2001, EME Homer City completed a sale-leaseback of the Homer City facilities to third-party lessors for an aggregate purchase price of \$1.591 billion, made up of \$782 million in cash and assumption of debt (the fair value of which was \$809 million). This transaction has been accounted for as a lease financing for accounting purposes.

***Basis of Presentation***

The preparation of financial statements in conformity with GAAP requires EME Homer City to make estimates and assumptions that affect reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenue and expenses during the reporting period. Actual results could differ from those estimates.

***Cash Equivalents***

Cash equivalents include money market funds totaling \$38 million and \$37 million at December 31, 2008 and 2007, respectively. The carrying value of cash equivalents approximates fair value due to maturities of less than three months. For further discussion of money market funds, see Note 2—Fair Value Measurements.

***Derivative Instruments***

SFAS No. 133 as amended and interpreted by other related accounting literature, establishes accounting and reporting standards for derivative instruments (including certain derivative instruments embedded in other contracts). SFAS No. 133 requires companies to record derivatives on their balance sheets as either assets or liabilities measured at their fair value unless exempted from derivative treatment as a normal sale and purchase. EME Homer City’s physical coal contracts did not qualify as derivatives under SFAS No. 133. All changes in the fair value of derivatives are recognized currently in earnings unless specific hedge criteria are met, which requires that a company must formally document, designate, and assess the effectiveness of transactions that receive hedge accounting. The results of derivative activities are recorded as part of cash flows from operating activities in the accompanying statements of cash flows.

SFAS No. 133 sets forth the accounting requirements for cash flow hedges. SFAS No. 133 provides that the effective portion of the gain or loss on a derivative instrument designated and qualifying as a cash flow hedging instrument be reported as a component of other comprehensive income and be reclassified into earnings in the same period during which the hedged forecasted transaction affects earnings. The remaining gain or loss on the derivative instrument, if any, must be recognized currently in earnings.

### ***Impairment of Long-Lived Assets***

EME Homer City evaluates the impairment of its long-lived assets based on a review of estimated future cash flows expected to be generated whenever events or changes in circumstances indicate that the carrying amount of such assets may not be recoverable. If the carrying amount of the asset exceeds the amount of the expected future cash flows, undiscounted and without interest charges, then an impairment loss for EME Homer City's long-lived assets is recognized in accordance with SFAS No. 144.

### ***Income Taxes***

EME Homer City has made an election to be taxed as a corporation for federal and California state tax purposes. EME Homer City is included in the consolidated federal and state income tax returns of Edison International and is party to a tax-allocation agreement with its indirect parent, Edison Mission Holdings Co. As long as Edison International continues to own, directly or indirectly, at least 80% of the voting power of the stock of EME and its existing subsidiaries and at least 80% of the value of such stock, EME Homer City will be included in the consolidated federal and state income tax returns of Edison International. In accordance with the agreement and the tax-allocation procedures in effect since EME Homer City's formation, its current tax liability or benefit is generally determined on a separate return basis, except for calculating consolidated state income taxes, for which EME Homer City uses the state tax apportionment factors of the Edison International group. Also, while EME Homer City is generally subject to separate return limitations for net losses, under the tax-allocation agreement EME Homer City is permitted to transfer to Edison Mission Holdings, or its subsidiaries, net operating loss benefits which would not yet be realized in a separate return in exchange for a reduction in its intercompany account balances (including the subordinated revolving loan). EME Homer City also files a separate state income tax return in Pennsylvania. Amounts included in due to affiliates on the balance sheet associated with this tax-allocation agreement totaled \$85 million and \$91 million at December 31, 2008 and 2007, respectively.

EME Homer City accounts for deferred income taxes using the asset-and-liability method, wherein deferred tax assets and liabilities are recognized for future tax consequences of temporary differences between the carrying amounts and the tax bases of assets and liabilities using enacted income tax rates. At December 31, 2008, EME Homer City had net federal and state deferred tax assets of \$45 million. In assessing the realization of EME Homer City's deferred tax assets, management considered whether it is more likely than not the deferred tax assets will be realized. The ultimate realization of EME Homer City's deferred income tax assets depends upon its ability to generate taxable income in the future or utilize losses through a reduction in the loan with Edison Mission Finance. On a quarterly basis, management evaluates the recoverability of its deferred tax assets to ensure there is adequate support for the realization of the deferred tax assets. In the event management were to determine that EME Homer City would not be able to realize all or part of its net deferred tax assets in the future, an adjustment to the deferred tax assets would be charged as a reduction to income in the period such determination was made. Because EME Homer City is expected to realize deferred tax assets through future taxable income or by reduction of intercompany loans, no valuation allowance has been recorded.

Interest expense and penalties associated with income taxes are reflected in provision (benefit) for income taxes on the statements of income. For further discussion, see Note 7—Income Taxes.

### ***Intangible Assets***

Intangible assets consist of emission allowances purchased by EME Homer City. These emission allowances are stated at weighted average cost. Emission allowances do not have a pre-determined contractual term or expiration date.

### ***Inventory***

Inventory consists of spare parts, coal, fuel oil, and other raw materials and is stated at the lower of weighted average cost or market.

### ***New Accounting Pronouncements***

#### ***Accounting Principles Adopted***

FASB Staff Position FIN No. 39-1—

In April 2007, the FASB issued FIN No. 39-1. This pronouncement permits companies to offset fair value amounts recognized for the right to reclaim cash collateral (a receivable) or the obligation to return cash collateral (a payable) against fair value amounts recognized for derivative instruments executed with the same counterparty under a master netting arrangement. In addition, upon the adoption, companies were permitted to change their accounting policy to offset or not offset fair value amounts recognized for derivative instruments under master netting agreements. EME Homer City adopted FIN No. 39-1 effective January 1, 2008. EME Homer City does not currently have margining agreements and accordingly, adoption of FIN No. 39-1 did not have an impact on its financial statements.

Statement of Financial Accounting Standards No. 159—

In February 2007, the FASB issued SFAS No. 159, “Fair Value Option for Financial Assets and Liabilities, Including an Amendment of FASB Statement No. 115,” which provides an option to report eligible financial assets and liabilities at fair value, with changes in fair value recognized in earnings. EME Homer City adopted this pronouncement effective January 1, 2008. The adoption of this standard had no impact because EME Homer City did not make an optional election to report additional financial assets and liabilities at fair value.

Statement of Financial Accounting Standards No. 157—

In September 2006, the FASB issued SFAS No. 157, which clarifies the definition of fair value, establishes a framework for measuring fair value and expands the disclosures on fair value measurements. EME Homer City adopted SFAS No. 157 effective January 1, 2008. The adoption did not result in any retrospective adjustment to its financial statements. The accounting requirements for employers’ pension and other postretirement benefit plans were effective at the end of 2008, which was the next measurement date for these benefit plans. EME Homer City will adopt this standard for nonrecurring nonfinancial assets and liabilities measured at fair value during the first quarter of 2009. Since this standard is applied prospectively, AROs existing before the adoption of the standard will not be adjusted for nonperformance risk. For further discussion, see Note 2—Fair Value Measurements.

#### FSP SFAS No. 157-3—

In October 2008, the FASB issued FSP SFAS No. 157-3, “Determining the Fair Value of a Financial Asset When the Market for That Asset Is Not Active.” This position clarifies the application of SFAS No. 157 in a market that is not active and provides an example to illustrate key considerations in determining the fair value of a financial asset when the market for that financial asset is not active. It also reaffirms the notion of fair value as an exit price as of the measurement date. This position was effective upon issuance, including prior periods for which financial statements have not been issued. The adoption had no impact on EME Homer City’s financial statements.

#### Statement of Financial Accounting Standards No. 162—

In May 2008, the FASB issued SFAS No. 162, “The Hierarchy of Generally Accepted Accounting Principles,” which identifies the sources of accounting principles and the framework for selecting the principles to be used in the preparation of financial statements for nongovernmental entities that are presented in conformity with GAAP. This statement transfers the GAAP hierarchy from the American Institute of Certified Public Accountants Statement on Auditing Standards No. 69, “The Meaning of Present Fairly in Conformity With Generally Accepted Accounting Principles” to the FASB. SFAS No. 162 was effective on November 15, 2008. The adoption of this standard did not have an impact on EME Homer City’s results of operations, financial position or cash flows.

#### *Accounting Principles Not Yet Adopted*

#### Statement of Financial Accounting Standards No. 161—

In March 2008, the FASB issued SFAS No. 161, which requires additional disclosures related to derivative instruments, including how and why an entity uses derivative instruments, how derivative instruments and related hedged items are accounted for and how derivative instruments and related hedged items affect an entity’s financial position, financial performance, and cash flows. SFAS No. 161 was effective for fiscal years beginning after November 15, 2008, with early adoption permitted. EME Homer City will adopt SFAS No. 161 in the first quarter of 2009. Since SFAS No. 161 impacts disclosures only, the adoption of this standard will not have an impact on EME Homer City’s results of operations, financial position or cash flows.

#### FSP SFAS No. 142-3—

In April 2008, the FASB issued FSP SFAS No. 142-3 which amends the factors that should be considered in developing renewal or extension assumptions used to determine the useful life of a recognized intangible asset under SFAS No. 142, “Goodwill and Other Intangible Assets.” The intent of the position is to improve the consistency between the useful life of a recognized intangible asset under SFAS No. 142 and the period of expected cash flows used to measure the fair value of the asset under SFAS No. 141(R) and other GAAP. EME Homer City will adopt FSP SFAS No. 142-3 in the first quarter of 2009. The adoption of this position will not have an impact on EME Homer City’s results of operations, financial position or cash flows.

#### FSP SFAS No. 132(R)-1—

In December 2008, the FASB issued FSP SFAS No. 132(R)-1, “Employers’ Disclosures about Postretirement Benefit Plan Assets.” This position requires additional plan asset disclosures about the major categories of assets, the inputs and valuation techniques used to measure fair value, the level within the fair value hierarchy, the effect of using significant unobservable inputs (Level 3) and

significant concentrations of risk. This position is effective for years ending after December 15, 2009 and therefore, EME Homer City will adopt FSP SFAS No. 132(R)-1 at year-end 2009. FSP SFAS No. 132(R)-1 will impact disclosures only and will not have an impact on EME Homer City's results of operations, financial position or cash flows.

***Property, Plant and Equipment***

Property, plant and equipment are stated at cost. Depreciation and amortization is computed on a straight-line basis over the following estimated useful lives:

Plant and equipment under lease financing .....	33.67 years
Leasehold improvements .....	Shorter of life of lease or estimated useful life
Emission allowances .....	33.67 years
Equipment, furniture and fixtures.....	3 to 7 years
Capitalized leased equipment.....	5 years

As part of the acquisition of the Homer City facilities, EME Homer City acquired emission allowances under the US EPA's Acid Rain Program. Although the emission allowances granted under this program are freely transferable, EME Homer City intends to use substantially all the emission allowances in the normal course of its business to generate electricity. Accordingly, EME Homer City has classified emission allowances expected to be used to generate power as part of property, plant and equipment.

***Repairs and Maintenance***

Certain major pieces of equipment require repairs and maintenance on a periodic basis. These costs, including major maintenance costs, are expensed as incurred.

***Restricted Cash***

Certain cash balances are restricted to pay amounts required for lease payments and provide collateral. Included in restricted cash were \$30 million at each of December 31, 2008 and 2007 related to lease payments, and \$7 million at each of December 31, 2008 and 2007 for collateral related to an environmental bond. See Note 9—Commitments and Contingencies—Lease Commitments—Facilities Sale Leaseback, for additional information regarding the lease payments.

***Revenue Recognition***

EME Homer City records revenue and related costs as electricity is generated or services are provided unless EME Homer City is subject to SFAS No. 133 and does not qualify for the normal sales and purchases exception. EME Homer City enters into power and fuel hedging and optimization transactions under a contract with EMMT. These transactions are executed primarily through the use of physical forward commodity purchases and sales and financial commodity swaps and options. With respect to its physical forward contracts, EME Homer City takes title to the commodities, and assumes the risks and rewards of ownership. Therefore, EME Homer City records settlement of non-trading physical forward contracts on a gross basis. Consistent with Emerging Issues Task Force No. 03-11, "Reporting Realized Gains and Losses on Derivative Instruments that are Subject to FASB Statement No. 133, Accounting for Derivative Instruments and Hedging Activities, and Not Held for Trading Purposes," EME Homer City nets the cost of purchased power against related third-party sales in markets. Financial swap and option transactions are settled net and, accordingly, EME Homer City does not take title to the underlying commodity. Therefore, gains and losses from settlement of financial

swaps and options are recorded net in operating revenues in the accompanying income statements. Managed risks typically include commodity price risk associated with fuel purchases and power sales.

## **Note 2. Fair Value Measurements**

SFAS No. 157 defines fair value as the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date (referred to as an “exit price” in SFAS No. 157). SFAS No. 157 clarifies that a fair value measurement for a liability should reflect the entity’s nonperformance risk. In addition, SFAS No. 157 establishes a fair value hierarchy that prioritizes the inputs to valuation techniques used to measure fair value. The hierarchy gives the highest priority to unadjusted quoted market prices in active markets for identical assets and liabilities (Level 1 measurements) and the lowest priority to unobservable inputs (Level 3 measurements). The three levels of the fair value hierarchy under SFAS No. 157 are:

- Level 1—Unadjusted quoted prices in active markets that are accessible at the measurement date for identical assets and liabilities;
- Level 2—Pricing inputs include quoted prices for similar assets and liabilities in active markets and inputs that are observable for the asset or liability, either directly or indirectly, for substantially the full term of the financial instrument; and
- Level 3—Prices or valuations that require inputs that are both significant to the fair value measurements and unobservable.

EME Homer City’s assets and liabilities carried at fair value primarily consist of derivative contracts and money market funds. Derivative contracts primarily relate to power and include contracts for forward physical sales and purchases, options and forward price swaps which settle only on a financial basis (including futures contracts). Derivative contracts can be exchange traded or over-the-counter traded.

The fair value of derivative contracts takes into account quoted market prices, time value of money, volatility of the underlying commodities and other factors. Derivatives that are exchange traded in active markets for identical assets or liabilities are classified as Level 1. The majority of derivative contracts used for hedging purposes are based on forward market prices in active markets (PJM West Hub) adjusted for non-performance risks. EMMT obtains forward market prices from traded exchanges (ICE Futures U.S. or New York Mercantile Exchange) and available broker quotes. Then, EMMT selects a primary source that best represents traded activity for each market to develop observable forward market prices in determining the fair value of these positions. Broker quotes or prices from exchanges are used to validate and corroborate the primary source. These price quotations reflect mid-market prices (average of bid and ask) and are obtained from sources that EMMT believes to provide the most liquid market for the commodity. EMMT considers broker quotes to be observable when corroborated with other information which may include a combination of prices from exchanges, other brokers, and comparison to executed trades. The majority of the fair value of EME Homer City’s derivative contracts determined in this manner are classified as Level 2.

Derivatives that trade infrequently (such as financial transmission rights and over-the-counter derivatives at illiquid locations) and derivatives with counterparties that have significant non-performance risks, as discussed below, are classified as Level 3. For illiquid financial transmission rights, EME Homer City reviews objective criteria related to system congestion on a quarterly basis and other underlying drivers and adjusts fair value when EME Homer City concludes a change in objective criteria would result in a new valuation that better reflects the fair value. Changes in fair values are based on the hypothetical sale of illiquid positions. In circumstances where EME Homer City cannot verify fair value with observable market transactions, it is possible that a different valuation model could produce a

materially different estimate of fair value. As markets continue to develop and more pricing information becomes available, EME Homer City continues to assess valuation methodologies used to determine fair value.

In assessing non-performance risks, EME Homer City reviews credit ratings of counterparties (and related default rates based on such credit ratings) and prices of credit default swaps. The market price (or premium) for credit default swaps represents the price that a counterparty would pay to transfer the risk of default, typically bankruptcy, to another party. A credit default swap is not directly comparable to the credit risks of derivative contracts, but provides market information of the related risk of non-performance. In light of recent market events, EME Homer City utilized market prices for credit default swaps in reducing the fair value of derivative assets by \$1 million at December 31, 2008.

Investments in money market funds are generally classified as Level 1 as fair value is determined by observable market prices (unadjusted) in active markets.

The following table sets forth EME Homer City's financial assets that were accounted for at fair value as of December 31, 2008 by level within the fair value hierarchy:

	<u>Level 1</u>	<u>Level 2</u>	<u>Level 3</u>	<u>Total at December 31, 2008</u>
	(in millions)			
Assets at Fair Value				
Money market funds(1) .....	\$ 38	\$ —	\$ —	\$ 38
Derivative contracts .....	—	131	—	131
Liabilities at Fair Value				
Derivative contracts .....	\$ —	\$ (1)	\$ —	\$ (1)

(1) Included in cash and cash equivalents on EME Homer City's balance sheet.

The following table sets forth a summary of changes in the fair value of EME Homer City's Level 3 derivative contracts, net for the periods ended December 31, 2008:

	<u>2008</u>
	(in millions)
Fair value of derivative contracts, net at January 1, 2008 .....	\$ (2)
Total realized/unrealized gains (losses):	
Included in earnings(1) .....	36
Included in accumulated other comprehensive income (loss).....	—
Purchases and settlements, net.....	(36)
Transfers in or out of Level 3.....	2
Fair value of derivative contracts, net at December 31, 2008 .....	<u>\$ —</u>

(1) Reported in operating revenues on EME Homer City's statements of income.

The change in unrealized gains (losses) related to derivative contracts, net held at December 31, 2008 for the year-ended December 31, 2008 was immaterial.

The carrying amount and fair value for outstanding derivative contracts at December 31, 2007 was a liability of \$46 million.

### **Note 3. Risk Management**

#### ***Commodity Price Risk Management***

EME Homer City's risk management policy allows for the use of derivative financial instruments through EMMT to limit financial exposure from fluctuations in electricity, capacity, fuel prices, emission allowances and transmission rights for non-trading purposes. Use of these instruments exposes EME Homer City to commodity price risk, which represents the potential loss that can be caused by a change in the market value of a particular commodity. Commodity price risks are actively monitored by a risk management committee to ensure compliance with EME Homer City's risk management policies, through EMMT. Policies are in place which define risk management processes, and procedures exist which allow for monitoring of all commitments and positions with regular reviews by a risk management committee. EMMT uses "gross margin at risk" to identify, measure, monitor and control EME Homer City's overall market risk exposure with respect to hedge positions at the Homer City facilities. The use of this measure allows management to aggregate overall commodity risk, compare risk on a consistent basis and identify the risk factors. Gross margin at risk measures the potential change in value of an asset or position, in each case over a given time interval, under normal market conditions, at a given confidence level. Given the inherent limitations of this measure and reliance on a single type of risk measurement tool, EMMT supplements this approach with the use of stress testing and worst-case scenario analysis for key risk factors, as well as stop-loss triggers and counterparty credit exposure limits.

#### ***Credit Risk***

In conducting EME Homer City's hedging activities, EMMT contracts with a number of utilities, energy companies, financial institutions, and other companies, collectively referred to as counterparties. In the event a counterparty were to default on its trade obligation, EME Homer City would be exposed to the risk of possible loss associated with re-contracting the product at a price different from the original contracted price if the non-performing counterparty were unable to pay the resulting damages owed to EME Homer City. Further, EME Homer City would be exposed to the risk of non-payment of accounts receivable accrued for products delivered prior to the time a counterparty defaulted.

To manage credit risk, EMMT looks at the risk of a potential default by counterparties. Credit risk is measured by the loss that EMMT would expect to incur if a counterparty failed to perform pursuant to the terms of its contractual obligations. EMMT measures, monitors and mitigates credit risk to the extent possible. To mitigate credit risk from counterparties, master netting agreements are used whenever possible and counterparties may be required to pledge collateral when deemed necessary. EMMT also takes other appropriate steps to limit or lower credit exposure.

EMMT has established processes to determine and monitor the creditworthiness of counterparties. EMMT manages the credit risk of its counterparties based on credit ratings using published ratings of counterparties and other publicly disclosed information, such as financial statements, regulatory filings, and press releases, to guide it in the process of setting credit levels, risk limits and contractual arrangements, including master netting agreements. A risk management committee regularly reviews the credit quality of EMMT's counterparties.

In addition, coal for the Homer City facilities is purchased from suppliers under contracts which may be for multiple years. A number of the coal suppliers to the Homer City facilities do not currently have an investment grade credit rating and, accordingly, EME Homer City may have limited recourse to collect damages in the event of default by a supplier. EME Homer City seeks to mitigate this risk

through diversification of its coal suppliers and through guarantees and other collateral arrangements when available.

EME Homer City derives a significant source of its operating revenues from electric power sold into the PJM market by EMMT. Sales into PJM accounted for approximately 54%, 70% and 58% of EME Homer City's operating revenues for the years ended December 31, 2008, 2007 and 2006, respectively. Moody's rates PJM's debt Aa3. PJM, an ISO with over 300 member companies, maintains its own credit risk policies and does not extend unsecured credit to non-investment grade companies. Any losses due to a PJM member default are shared by all other members based upon a predetermined formula.

For the year ended December 31, 2008, EMMT made sales to Constellation Energy Commodities Group, Inc. that accounted for approximately 24% of EME Homer City's operating revenues. Sales to Constellation largely consisted of energy sales under forward contracts. The contract with Constellation is guaranteed by Constellation Energy Group, Inc., which has a senior unsecured debt rating of BBB by S&P and Baa3 by Moody's. For the year ended December 31, 2007, EMMT made sales to American Electric Power Service Corporation that accounted for approximately 11% of EME Homer City's operating revenues. For the year ended December 31, 2006, EMMT made sales to Coral Power, LLC that accounted for approximately 21% of EME Homer City's operating revenues.

#### Note 4. Accumulated Other Comprehensive Income (Loss)

Accumulated other comprehensive gain (loss) consisted of the following:

	Unrealized Gains (Losses) on Cash Flow Hedges	Unrecognized Gains (Losses) and Prior Service Adjustments, Net(1)	Accumulated Other Comprehensive Income (Loss)
		(in millions)	
Balance at December 31, 2006.....	\$ 58	\$ (2)	\$ 56
Change for 2007 .....	<u>(72)</u>	<u>2</u>	<u>(70)</u>
Balance at December 31, 2007.....	(14)	—	(14)
Change for 2008 .....	<u>90</u>	<u>(5)</u>	<u>85</u>
Balance at December 31, 2008.....	<u>\$ 76</u>	<u>\$ (5)</u>	<u>\$ 71</u>

(1) For further detail, see Note 8—Compensation and Benefit Plans.

Unrealized gains on cash flow hedges, net of tax, at December 31, 2008, included unrealized gains on commodity hedges related to futures and forward electricity contracts that qualify for hedge accounting. These gains arise because current forecasts of future electricity prices are lower than EME Homer City's contract prices. As EME Homer City's hedged positions are realized, \$45 million, after tax, of the net unrealized gains on cash flow hedges at December 31, 2008 are expected to be reclassified into earnings during the next 12 months. Management expects that reclassification of net unrealized gains will increase energy revenue recognized at market prices. Actual amounts ultimately reclassified into earnings over the next 12 months could vary materially from this estimated amount as a result of changes in market conditions. The maximum period over which a cash flow hedge is designated is through December 31, 2010.

Under SFAS No. 133, the portion of a cash flow hedge that does not offset the change in value of the transaction being hedged, which is commonly referred to as the ineffective portion, is immediately recognized in earnings. EME Homer City recorded net gain (losses) of \$6 million, \$(28) million and \$(4) million during the years ended December 31, 2008, 2007 and 2006, respectively, representing the amount of cash flow hedges' ineffectiveness, reflected in operating revenues on EME Homer City's income statements.

## Note 5. Property, Plant and Equipment

At December 31, 2008 and 2007, property, plant and equipment consisted of the following:

	<u>2008</u>	<u>2007</u>
	(in millions)	
Land .....	\$ 7	\$ 7
Power plant facilities .....	3	3
Plant and equipment under lease financing .....	1,591	1,591
Leasehold improvements .....	127	105
Emission allowances.....	434	434
Construction in progress .....	26	5
Equipment, furniture and fixtures.....	10	9
Capitalized leased equipment.....	<u>1</u>	<u>1</u>
	2,199	2,155
Less accumulated depreciation and amortization.....	<u>476</u>	<u>411</u>
Property, plant and equipment, net.....	<u>\$ 1,723</u>	<u>\$ 1,744</u>

As a result of the sale-leaseback transaction on December 7, 2001, a majority of the generating facilities and equipment were classified as power plant and equipment under lease financing. EME Homer City recorded amortization expense related to the leased facilities of \$47 million for all three years ended December 31, 2008, 2007 and 2006. Accumulated amortization related to the leased facilities was \$335 million and \$287 million at December 31, 2008 and 2007, respectively.

### *Asset Retirement Obligations*

EME Homer City applies SFAS No. 143, "Accounting for Asset Retirement Obligations" as interpreted by FIN No. 47, "Accounting for Conditional Asset Retirement Obligations." SFAS No. 143 as interpreted requires entities to record the fair value of a liability for an ARO in the period in which it is incurred, including a liability for the fair value of a conditional ARO if the fair value can be reasonably estimated even though uncertainty exists about the timing and/or method of settlement. When an ARO liability is initially recorded, the entity capitalizes the cost by increasing the carrying amount of the related long-lived asset. Over time, the liability is increased to its present value each period, and the capitalized cost is depreciated over the useful life of the related asset. Upon settlement of the liability, an entity either settles the obligation for its recorded amount or incurs a gain or loss upon settlement.

EME Homer City recorded a liability representing expected future costs associated with site reclamation, facilities dismantlement and removal of environmental hazards as follows:

	<u>2008</u>	<u>2007</u>	<u>2006</u>
	(in millions)		
Beginning balance .....	\$ 6	\$ 6	\$ 5
Accretion expense .....	—	—	1
Change in estimates .....	<u>(3)</u>	<u>—</u>	<u>—</u>
Ending balance.....	<u>\$ 3</u>	<u>\$ 6</u>	<u>\$ 6</u>

## Note 6. Long-Term Debt

EME Homer City entered into a subordinated revolving loan agreement during 1999 with Edison Mission Finance Co. This loan agreement bears interest at a fixed rate of 8.0% on outstanding amounts and terminates on March 18, 2014. On December 8, 2003, EME Homer City amended and restated the loan agreement with Edison Mission Finance and issued a note evidencing its repayment obligations under the loan agreement. The amended and restated loan agreement had no effect on the financial terms of the agreement. EME Homer City owed approximately \$358 million and \$394 million under the loan agreement at December 31, 2008 and 2007, respectively. EME Homer City is restricted under the participation agreements entered into as a part of the sale-leaseback transaction from making any payments under this facility unless specified conditions are met.

EME Homer City incurred interest costs related to its affiliate debt of \$29 million, \$38 million and \$40 million for the years ended December 31, 2008, 2007 and 2006, respectively.

## Note 7. Income Taxes

Income tax provision includes the current tax provision from operating income and the change in deferred income taxes during the year. The components of the net accumulated deferred income tax asset were:

	<u>Years Ended December 31,</u>	
	<u>2008</u>	<u>2007</u>
	(in millions)	
<b>Deferred tax assets</b>		
Lease financing .....	\$ 116	\$ 109
Derivative instruments .....	—	19
Accrued expenses and liabilities .....	5	3
State taxes .....	3	5
Other .....	1	1
Total .....	<u>125</u>	<u>137</u>
<b>Deferred tax liabilities</b>		
Property, plant and equipment—basis differences .....	\$ 29	\$ 35
Derivative instruments .....	51	—
Total .....	<u>80</u>	<u>35</u>
Deferred tax asset, net .....	<u>\$ 45</u>	<u>\$ 102</u>
Classification of accumulated deferred income taxes:		
Included in current assets .....	\$ —	\$ 6
Included in non-current assets .....	80	96
Included in current liabilities .....	35	—

The provision for income taxes is comprised of the following:

	<u>Years Ended December 31,</u>		
	<u>2008</u>	<u>2007</u>	<u>2006</u>
	(in millions)		
<b>Current</b>			
Federal .....	\$ 43	\$ 56	\$ 22
State .....	<u>12</u>	<u>19</u>	<u>6</u>
Total current.....	<u>55</u>	<u>75</u>	<u>28</u>
<b>Deferred</b>			
Federal .....	(3)	(18)	(2)
State .....	<u>(3)</u>	<u>(3)</u>	<u>—</u>
Total deferred.....	<u>(6)</u>	<u>(21)</u>	<u>(2)</u>
Provision for income taxes .....	<u>\$ 49</u>	<u>\$ 54</u>	<u>\$ 26</u>

Variations from the 35% federal statutory rate are as follows:

	<u>Years Ended December 31,</u>		
	<u>2008</u>	<u>2007</u>	<u>2006</u>
	(in millions)		
Provision for federal income taxes at statutory rate.....	\$ 47	\$ 50	\$ 23
Increase (decrease) in taxes from:			
State tax, net of federal benefit.....	5	10	4
Qualified production deduction .....	(3)	(3)	(1)
Changes in uncertain tax positions.....	<u>—</u>	<u>(3)</u>	<u>—</u>
Total provision for income taxes.....	<u>\$ 49</u>	<u>\$ 54</u>	<u>\$ 26</u>
Effective tax rate.....	<u>37%</u>	<u>38%</u>	<u>40%</u>

### *Accounting for Uncertainty in Income Taxes*

The following table provides a reconciliation of unrecognized tax benefits:

	<u>December 31,</u>	
	<u>2008</u>	<u>2007</u>
	(in millions)	
Beginning balance .....	\$ —	\$ 4
Tax positions taken during current year		
Increases .....	—	—
Decreases .....	—	2
Tax positions taken during a prior year		
Increases .....	—	—
Decreases .....	—	2
Decreases for settlements during the period.....	—	2
Decreases resulting from a lapse in statute of limitations.....	<u>—</u>	<u>—</u>
Ending balance .....	<u>\$ —</u>	<u>\$ —</u>

The total amount of accrued interest and penalties was \$0.4 million as of December 31, 2008 and 2007. The total amount of interest income and penalties recognized in income tax expense was none and \$1 million for 2008 and 2007, respectively. EME Homer City remains subject to examination by the Internal Revenue Service, the California Franchise Tax Board, and other state authorities from 1994 to present. EME Homer City is included in the federal consolidated income tax return filed by Edison International. During 2008, the Internal Revenue Service commenced an examination of Edison International's consolidated federal income tax return for the tax years 2003 through 2006.

On March 31, 2006, EME Homer City entered into an amendment of its tax-allocation agreement with Edison Mission Holdings to provide for the option, at EME Homer City's discretion, to settle federal and state income tax liabilities under the tax-allocation agreement through an increase in indebtedness under the subordinated revolving loan agreement with Edison Mission Finance. In 2008 and 2006, pursuant to this amendment, EME Homer City elected this option to settle \$42 million and \$60 million, respectively, of intercompany tax liabilities through a loan under the subordinated revolving loan agreement with Edison Mission Finance.

#### **Note 8. Compensation and Benefit Plans**

Employees of EME Homer City are eligible for various benefit plans of Edison International.

##### ***Employee Savings Plan***

A 401(k) plan is maintained to supplement eligible employees' retirement income. EME Homer City matches 100% of non-union employee contributions up to 6% of such employees' base annual compensation. EME Homer City also matches 70% of contributions made by union employees, up to 4% of base annual compensation. Employer contributions vest 20% per year. Contribution expense was approximately \$1 million for each year ended December 31, 2008, 2007 and 2006.

##### ***Pension Plans and Postretirement Benefits Other Than Pensions***

SFAS No. 158 requires companies to recognize the overfunded or underfunded status of a defined benefit pension plan and other postretirement plans as assets or liabilities in their balance sheet; the assets or liabilities are normally offset through other comprehensive income. EME Homer City adopted SFAS No. 158 prospectively on December 31, 2006.

##### ***Pension Plans***

EME Homer City maintains a pension plan specifically for the benefit of its union employees. A portion of EME Homer City's non-union employees participate in the Edison International pension plan. Eligibility depends on a number of factors, including the employee's hire date. Both plans are noncontributory, defined benefit pension plans and cover employees who fulfill minimum service requirements. The Edison International plan has a cash balance feature. The expected contributions (all by employer) for the plans are approximately \$1 million for the year ended December 31, 2009. The fair value of plan assets is determined primarily by quoted market prices.

Volatile market conditions have affected the value of the trusts established to fund its future long-term pension benefits. The market value of the investments (reflecting investment returns, contributions and benefit payments) within the plan trusts declined significantly during 2008. This reduction in the value of plan assets will result in increased future pension expense and contributions. Changes in the plan's funded status affect the assets and liabilities recorded on the balance sheet in accordance with SFAS No. 158. The Pension Protection Act of 2006 establishes new minimum funding

standards and restricts plans underfunded by more than 20% from providing lump sum distributions and adopting amendments that increase plan liabilities.

Information on plan assets and benefits obligations is shown below:

	<u>Years Ended December 31,</u>	
	<u>2008</u>	<u>2007</u>
	(in millions)	
Change in projected benefit obligation		
Projected benefit obligation at beginning of year .....	\$ 25	\$ 24
Service cost .....	1	1
Interest cost .....	2	1
Actuarial gain .....	(1)	(1)
Projected benefit obligation at end of year .....	<u>\$ 27</u>	<u>\$ 25</u>
Change in plan assets		
Fair value of plan assets at beginning of year.....	\$ 19	\$ 16
Actual return (loss) on plan assets .....	(6)	1
Employer contributions.....	2	2
Fair value of plan assets at end of year.....	<u>\$ 15</u>	<u>\$ 19</u>
Funded status at end of year .....	<u>\$ (12)</u>	<u>\$ (6)</u>
<b>Amounts recognized in balance sheets:</b>		
Long-term liabilities .....	\$ (12)	\$ (6)
<b>Amounts recognized in accumulated other comprehensive income (loss):</b>		
Net loss (gain) .....	\$ 5	\$ (2)
<b>Accumulated benefit obligation at end of year .....</b>	<b>\$ 23</b>	<b>\$ 21</b>
<b>Pension plan with an accumulated benefit obligation in excess of plan assets:</b>		
Projected benefit obligation.....	\$ 27	\$ 25
Accumulated benefit obligation.....	23	21
Fair value of plan assets.....	15	19
<b>Weighted-average assumptions used to determine obligations at end of year:</b>		
Discount rate .....	6.25%	6.25%
Rate of compensation increase .....	5.0%	4.5% to 5.0%

**Expense components and other amounts recognized in other comprehensive income (loss)**

Expense components:

	<u>Years Ended December 31,</u>		
	<u>2008</u>	<u>2007</u>	<u>2006</u>
	(in millions)		
Service cost .....	\$ 1	\$ 2	\$ 2
Interest cost .....	2	1	1
Expected return on plan assets.....	(2)	(1)	(1)
Total expense.....	<u>\$ 1</u>	<u>\$ 2</u>	<u>\$ 2</u>

Other changes in plan assets and benefit obligations recognized in other comprehensive loss:

	<u>Years Ended December 31,</u>	
	<u>2008</u>	<u>2007</u>
	(in millions)	
Net loss (gain) .....	\$ 5	\$ (2)
Total in other comprehensive (income) loss .....	<u>\$ 5</u>	<u>\$ (2)</u>
Total in expense and other comprehensive loss .....	<u>\$ 6</u>	<u>\$ —</u>

The estimated amortization amounts reclassified from other comprehensive loss for 2009 are \$0.4 million for net gain.

	<u>Years Ended December 31,</u>		
	<u>2008</u>	<u>2007</u>	<u>2006</u>
<b>Weighted-average assumptions:</b>			
Discount rate .....	6.25%	5.75%	5.5%
Rate of compensation increase .....	5.0%	4.5% to 5.0%	5.0%
Expected long-term return on plan assets .....	7.5%	7.5%	7.5%

The following benefit payments, which reflect expected future service, are expected to be paid:

<u>Years Ending December 31,</u>	<u>(in millions)</u>
2009 .....	\$1
2010 .....	1
2011 .....	2
2012 .....	2
2013 .....	2
2014-2018 .....	9

Asset allocations are:

	<u>Target for</u>	<u>December 31,</u>	
	<u>2009</u>	<u>2008</u>	<u>2007</u>
United States equity .....	39%	41%	47%
Non-United States equity .....	17%	22%	25%
Private equity .....	4%	4%	2%
Fixed income .....	40%	33%	26%

#### *Postretirement Benefits Other Than Pensions*

A portion of EME Homer City's non-union employees retiring at or after age 55 with at least ten years of service are eligible for postretirement health care, dental, life insurance and other benefits paid in part by EME Homer City. Eligibility depends on a number of factors, including the employee's hire date. Employees in union-represented positions who were eligible to retire prior to May 14, 2002 are covered under the postretirement benefit plans of GPU, Inc., their employer prior to EME Homer City's acquisition of the facilities in 1999. Commencing in 2009, union-represented employees who retire at age 55 with ten years of service are eligible for subsidized health care, dental and vision benefits. The

expected contributions (all by the employer) for the postretirement benefits other than pensions trust are \$1 million for the year ended December 31, 2009.

Information on plan assets and benefit obligations is shown below:

	<u>Years Ended December 31,</u>	
	<u>2008</u>	<u>2007</u>
	(in millions)	
Change in benefit obligation		
Benefit obligation at beginning of year.....	\$ 25	\$ 23
Service cost .....	1	1
Interest cost .....	1	1
Actuarial loss.....	3	—
Amendments.....	(2)	—
Benefits paid .....	(1)	—
Benefit obligation at end of year.....	<u>\$ 27</u>	<u>\$ 25</u>
Change in plan assets		
Fair value of plan assets at beginning of year.....	\$ —	\$ —
Employer contributions.....	1	—
Benefits paid .....	(1)	—
Fair value of plan assets at end of year.....	<u>\$ —</u>	<u>\$ —</u>
Funded status at end of year .....	<u>\$ (27)</u>	<u>\$ (25)</u>
<b>Amounts recognized in balance sheets:</b>		
Long-term liabilities.....	\$ (27)	\$ (25)
<b>Amounts recognized in accumulated other comprehensive (income) loss:</b>		
Prior service credit.....	\$ (2)	\$ —
Net loss .....	5	2
<b>Weighted-average assumptions used to determine obligations at end of year:</b>		
Discount rate.....	6.25%	6.25%
<b>Assumed health care cost trend rates:</b>		
Rate assumed for following year.....	8.75%	9.25%
Ultimate rate.....	5.5%	5.0%
Year ultimate rate reached.....	2016	2015

**Expense components and other amounts recognized in other comprehensive income**

Expense components:

	<u>Years Ended December 31,</u>		
	<u>2008</u>	<u>2007</u>	<u>2006</u>
	(in thousands)		
Service cost .....	\$ 1	\$ 1	\$ 1
Interest cost .....	1	1	1
Total expense.....	<u>\$ 2</u>	<u>\$ 2</u>	<u>\$ 2</u>

Other changes in plan assets and benefit obligations recognized in other comprehensive loss:

	<u>Years Ended December 31,</u>	
	<u>2008</u>	<u>2007</u>
	(in millions)	
Net loss (gain).....	\$ 6	\$ (1)
Prior service credit .....	(3)	—
Total in other comprehensive (income) loss.....	<u>\$ 3</u>	<u>\$ (1)</u>
Total in expense and other comprehensive loss .....	<u>\$ 5</u>	<u>\$ 1</u>

The estimated amortization amounts reclassified from other comprehensive loss for 2009 are \$0.3 million for net loss and \$(0.3) million for prior service credit.

	<u>Years Ended December 31,</u>		
	<u>2008</u>	<u>2007</u>	<u>2006</u>
<b>Weighted-average assumptions used to determine expense:</b>			
Discount rate .....	6.25%	5.75%	5.5%
<b>Assumed health care cost trend rates:</b>			
Current year .....	9.25%	9.25%	10.25%
Ultimate rate .....	5.0%	5.0%	5.0%
Year ultimate rate reached.....	2015	2015	2011

Increasing the health care cost trend rate by one percentage point would increase the accumulated benefit obligation as of December 31, 2008, by \$4 million and annual aggregate service and interest costs by \$0.3 million. Decreasing the health care cost trend rate by one percentage point would decrease the accumulated benefit obligation as of December 31, 2008, by \$4 million and annual aggregate service and interest costs by \$0.3 million.

The following benefit payments are expected to be paid:

<u>Year ended December 31,</u>	<u>Before</u>	<u>Net</u>
	<u>Subsidy(1)</u>	<u>Net</u>
	(in millions)	
2009 .....	\$ 1	\$ 1
2010 .....	1	1
2011 .....	1	1
2012 .....	1	1
2013 .....	2	2
2014-2018 .....	10	10

(1) Medicare Part D prescription drug benefits.

### **Discount Rate**

The discount rate enables EME Homer City to state expected future cash flows at a present value on the measurement date. EME Homer City selects its discount rate by performing a yield curve analysis. This analysis determines the equivalent discount rate on projected cash flows, matching the timing and amount of expected benefit payments. Two corporate yield curves were considered, Citigroup and AON.

## ***Description of Pension Investment Strategies***

The investment of plan assets is overseen by a fiduciary investment committee. Plan assets are invested using a combination of asset classes, and may have active and passive investment strategies within asset classes. As a result of the significant increase in global financial markets volatility, during 2008 and in early 2009, the trusts' investment committee approved interim changes in target asset allocations. EME Homer City employs multiple investment management firms. Investment managers within each asset class cover a range of investment styles and approaches. Risk is managed through diversification among multiple asset classes, managers, styles, and securities. Plan, asset class and individual manager performance is measured against targets. EME Homer City also monitors the stability of its investments managers' organizations.

Allowable investment types include:

- *United States Equity*: Common and preferred stocks of large, medium, and small companies which are predominantly United States-based.
- *Non-United States Equity*: Equity securities issued by companies domiciled outside the United States and in depository receipts which represent ownership of securities of non-United States companies.
- *Private Equity*: Limited partnerships that invest in non-publicly traded entities.
- *Fixed Income*: Fixed income securities issued or guaranteed by the United States government, non-United States governments, government agencies and instrumentalities, mortgage backed securities and corporate debt obligations. A small portion of the fixed income position may be held in debt securities that are below investment grade.

Permitted ranges around asset class portfolio weights are plus or minus 3%. Where approved by the fiduciary investment committee, futures contracts are used for portfolio rebalancing and to approach fully invested portfolio positions. Where authorized, a few of the plan's investment managers employ limited use of derivatives, including futures contracts, options, options on futures and interest rate swaps in place of direct investment in securities to gain efficient exposure to markets. Derivatives are not used to leverage the plans or any portfolios.

## ***Determination of the Expected Long-Term Rate of Return on Assets***

The overall expected long-term rate of return on assets assumption is based on the long-term target asset allocation for plan assets and capital markets return forecasts for asset classes employed. A portion of postretirement benefits other than pensions trust asset returns are subject to taxation, so the expected long-term rate of return for these assets is determined on an after-tax basis.

## ***Capital Markets Return Forecasts***

Capital markets return forecasts are based on a long-term equilibrium forecast from an independent firm, as well as a separate analysis of expected equilibrium returns. The independent firm uses its research and judgment to determine long-term equilibrium forecasts. A core set of macroeconomic variables is used including real GDP growth, personal consumption expenditures, the federal funds target rate, dividend yield, and the treasury yield curve. Fixed income, equity and private equity returns are determined from these factors. In addition, a separate analysis of equilibrium returns is made. The estimated total return for fixed income is based on an equilibrium yield for intermediate United States government bonds plus a premium for exposure to non-government bonds in the broad fixed income market. The equilibrium yield is based on analysis of historic and projected data and is consistent with

experience over various economic environments. The premium of the broad market over United States government bonds is an historic average premium. The estimated rate of return for equity includes a 3% premium over the estimated total return of intermediate United States government bonds. The rate of return for private equity is estimated to be a 5% premium over public equity, reflecting a premium for higher volatility and illiquidity.

## Note 9. Commitments and Contingencies

### *Lease Commitments*

EME Homer City had operating leases in place relating mainly to tractors and trucks. EME Homer City also has a lease financing with respect to its facilities, which is described in more detail below. At December 31, 2008, the future minimum payments over the next five years were as follows:

<u>Years Ending December 31,</u>	<u>Operating Leases</u>	<u>Lease Financing</u>
	(in millions)	
2009 .....	\$ 1	\$ 151
2010 .....	1	155
2011 .....	—	160
2012 .....	—	160
2013 .....	—	149
Thereafter .....	—	1,505
Total future commitments .....	<u>\$ 2</u>	2,280
Amount representing interest .....		<u>1,073</u>
Net commitments .....		<u>\$ 1,207</u>

Operating lease expense amounted to \$2 million, \$2 million and \$1 million in 2008, 2007 and 2006, respectively.

### *Facilities Sale-Leaseback*

On December 7, 2001, EME Homer City completed the sale-leaseback of its Homer City facilities to third-party lessors for an aggregate purchase price of \$1.591 billion, comprised of \$782 million in cash and assumption of debt (the fair value of which was \$809 million). The leases EME Homer City entered into as part of this transaction are referred to as facility leases. The transaction has been accounted for as a lease financing for accounting purposes, which means that EME Homer City reflects the Homer City facilities as an asset on its balance sheet, although EME Homer City has no legal ownership, and records the net present value of the future minimum lease payments as lease debt. Under the terms of the 33.67 year leases, EME Homer City is obligated to make semi-annual lease payments on each April 1 and October 1. The gain on the sale of the Homer City facilities has been deferred and is being amortized over the term of the lease.

Under the participation agreements entered into as part of the sale-leaseback transaction, EME Homer City's ability to enter into specified transactions and to engage in specified business activities, including financing and investment activities, is subject to significant restrictions. These restrictions could affect, and in some cases significantly limit or prohibit, its ability to, among other things, merge, consolidate or sell its assets, create liens on its properties or assets, enter into non-permitted trading activities, enter into transactions with its affiliates, incur indebtedness, create, incur, assume or suffer to exist guarantees or contingent obligations, make restricted payments to its partners, make capital

expenditures, own subsidiaries, liquidate or dissolve, engage in non-permitted business activities, sublease its leasehold interests in the facilities or make improvements to the facilities. Accordingly, EME Homer City's liquidity is substantially based on its ability to generate cash flow from operations. If EME Homer City is unable to generate cash flow from operations necessary to meet its obligations, EME Homer City will have limited ability to obtain additional capital unless its partners provide additional funding, which they are under no legal obligation to do.

The rent payments that EME Homer City owes under the sale-leaseback transaction are comprised of two components, a senior rent portion and an equity rent portion. The senior rent is used exclusively for debt service to the holders of the senior secured bonds, while the equity rent is paid to the owner lessors. If EME Homer City does not meet specified debt service coverage ratios while the lease debt is outstanding, it will not pay the equity portion of the rent to the owner lessors. Accordingly, the sale-leaseback documentation does not permit the lessor to terminate the lease in the event of non-payment of the equity portion of the rent while the lease debt is outstanding.

In order to pay the equity portion of the rent, EME Homer City is required to meet historical and projected senior rent service coverage ratios of 1.7 to 1, subject to reduction to 1.3 to 1 under circumstances specified in the participation agreements. During the 12 months ended December 31, 2008, the senior rent service coverage ratio was 2.05 to 1. The senior rent service coverage ratio is determined by dividing net cash flow as defined in the participation agreements by the senior rent due in that period. If all accrued rent, including both the senior portion and the equity portion of the rent, has been paid and all other required conditions have been met, amounts remaining in the distribution account will be available for distribution to the partners in EME Homer City or available to prepay principal under the intercompany loan agreement with Edison Mission Finance, subject to certain restrictions in the sale-leaseback documentation, including restrictions on distributions.

EME Homer City's use of cash in its bank accounts is limited to specific operating and capital expenditures as set forth in the Security Deposit Agreement executed as part of the sale-leaseback transaction. The amount in certain reserve accounts will be available for payments due on the equity portion of lease rent during specified periods, and in accordance with the sale-leaseback documents, unless there is a default in the payment of the senior portion of lease rent, in which case the amount will be available to pay such senior portion of the lease rent. The release of funds from these restricted cash accounts is permitted, provided EME Homer City maintains specified reserve balances in accordance with the sale-leaseback documents, no event of default shall have occurred or be continuing and no two failed rent payments shall have occurred. EME Homer City had \$30 million included in restricted cash at each December 31, 2008 and 2007 related to these reserve accounts.

### ***Termination of Lease Swap Agreement***

In connection with the sale-leaseback transaction, EME Homer City had entered into a swap agreement with a bank in order to more effectively match its cash flow, which generally is higher during the summer months when energy prices are higher, with its lease payments. On March 30, 2007, EME Homer City terminated the lease swap agreement and received a refund of the net deposit and the accrued interest totaling \$46 million.

### ***Other Commitments***

#### ***Capital Improvements***

At December 31, 2008, EME Homer City had firm commitments to spend approximately \$17 million on capital expenditures in 2009 primarily related to non-environmental improvements such as

upgrades to boiler and turbine controls, replacement of major boiler components and main power transformer replacement. These capital expenditures are planned to be financed by cash generated from operations.

#### *Fuel Supply Contracts*

At December 31, 2008, EME Homer City had fuel purchase commitments with various third-party suppliers for the purchase of bituminous steam coal and fuel oil. The contracts require EME Homer City to purchase a minimum quantity over the term of the contracts, with an option at EME Homer City's discretion to purchase additional amounts as stated in the agreements. Based on the contract provisions that consist of fixed prices, subject to adjustment clauses in certain cases, these minimum commitments are currently estimated to be \$280 million in the next four years summarized as follows: 2009—\$233 million; 2010—\$29 million; 2011—\$14 million; and 2012—\$4 million.

#### *Coal Cleaning Agreement*

Effective January 1, 2006, EME Homer City entered into a coal cleaning agreement with Homer City Coal Processing Corporation to operate and maintain a coal cleaning plant owned by EME Homer City. The agreement expires on December 31, 2010. Based on the contract provisions, the minimum commitments are currently estimated to be \$11 million in the next two years summarized as follows: 2009—\$6 million and 2010—\$5 million.

#### *Other Contractual Obligations*

At December 31, 2008, EME Homer City had contractual commitments for the purchase of limestone, ammonia and materials for environmental controls equipment. The minimum commitments are currently estimated to be \$40 million in the next five years summarized as follows: 2009—\$7 million; 2010—\$12 million; 2011—\$12 million; 2012—\$5 million; and 2013—\$4 million.

#### *Interconnection Agreement*

EME Homer City's general partner, Mission Energy Westside, is a party to an interconnection agreement with NYSEG and Penelec to provide interconnection services necessary to interconnect the Homer City facilities with NYSEG's and Penelec's transmission systems. Unless terminated earlier in accordance with specified terms, the interconnection agreement will terminate on a date mutually agreed to by Mission Energy Westside, NYSEG and Penelec. This date will not exceed the retirement date of the Homer City units. NYSEG and Penelec have agreed to extend the interconnection services (but not the expiration of the agreement) to modifications, additions or upgrades to, or repowering of the Homer City units. Mission Energy Westside is required to compensate NYSEG and Penelec for all reasonable costs associated with any modifications, additions or replacements made to NYSEG's or Penelec's interconnection facilities or transmission systems in connection with any modification, addition or upgrade to, or repowering of the Homer City units.

#### *Guarantees and Indemnities*

##### *Tax Indemnity Agreements*

In connection with the sale-leaseback transaction related to the Homer City facilities, EME Homer City and its indirect parent, EME, entered into tax indemnity agreements. Under these tax indemnity agreements, EME Homer City and EME agreed to indemnify the equity investors in the sale-leaseback transaction for specified adverse tax consequences that could result in certain situations set forth in the tax indemnity agreements, including specified defaults under the respective leases. The potential

indemnity obligation under these tax indemnity agreements could be significant. Due to the nature of the obligations under these tax indemnity agreements, EME Homer City cannot determine a maximum potential liability which would be triggered by a valid claim from the lessors. EME Homer City has not recorded a liability related to these indemnities.

#### *Indemnity Provided as Part of the Acquisition of the Homer City Facilities*

In connection with the acquisition of the Homer City facilities, EME Homer City agreed to indemnify the sellers with respect to specific environmental liabilities before and after the date of sale. Payments would be triggered under this indemnity by a valid claim from the sellers. EME guaranteed the obligations of EME Homer City. Due to the nature of the obligation under this indemnity provision, it is not subject to a maximum potential liability and does not have an expiration date. See “—Contingencies—New Source Review Notice of Violation” for discussion of the NOV received by EME Homer City and associated indemnity claims. EME Homer City has not recorded a liability related to this indemnity.

#### ***Contingencies***

##### *RPM Buyers’ Complaint*

On May 30, 2008, a group of entities referring to themselves as the “RPM Buyers” filed a complaint at the FERC asking that PJM’s RPM, as implemented through the transitional base residual auctions establishing capacity payments for the period from June 1, 2008 through May 31, 2011, be found to have produced unjust and unreasonable capacity prices. On September 19, 2008, the FERC dismissed the RPM Buyers’ complaint, finding that the RPM Buyers had failed to allege or prove that any party violated PJM’s tariff and market rules, and that the prices determined during the transition period were determined in accordance with PJM’s FERC-approved tariff. On October 20, 2008, the RPM Buyers requested rehearing of the FERC’s order dismissing their complaint. This matter is currently pending before the FERC. EME Homer City cannot predict the outcome of this matter.

##### *New Source Review Notice of Violation*

On June 12, 2008, EME Homer City received an NOV from the US EPA alleging that, beginning in 1988, EME Homer City (or former owners of the Homer City facilities) performed repair or replacement projects at Homer City Units 1 and 2 without first obtaining construction permits as required by the Prevention of Significant Deterioration requirements of the CAA. The US EPA also alleges that EME Homer City has failed to file timely and complete Title V permits. The NOV does not specify the penalties or other relief that the US EPA seeks for the alleged violations. EME Homer City has met with the US EPA and has expressed its intent to explore the possibility of a settlement. If no settlement is reached and the United States Department of Justice files suit, litigation could take many years to resolve the issues alleged in the NOV. EME Homer City cannot predict at this time what effect this matter may have on its facilities, its results of operations, financial position or cash flows.

EME Homer City has sought indemnification for liability and defense costs associated with the NOV from the sellers under the asset purchase agreement pursuant to which EME Homer City acquired the Homer City facilities. The sellers responded by denying the indemnity obligation, but accepting the defense of the claims.

EME Homer City notified the sale-leaseback owner participants of the Homer City facilities of the NOV under the operative indemnity provisions of the sale-leaseback documents. The owner participants of the Homer City facilities, in turn, have sought indemnification and defense from EME Homer City for

costs and liability associated with the EME Homer City NOV. EME Homer City responded by undertaking the indemnity obligation and defense of the claims.

### *Ash Disposal Site*

EME Homer City's ash disposal site is a permitted Class I Residual Waste Landfill, the most stringently regulated of the three categories of residual waste landfills authorized by the regulations of the PADEP. EME Homer City's permit allows it to dispose of coal combustion by-products, including fly ash, bottom ash and pyrites, and miscellaneous plant wastes at the landfill. The wastes are deposited in compacted layers within lifts, or sections. Each lift where coal ash is disposed must be capped and covered when it reaches final grade. EME Homer City must also monitor groundwater quality at and adjacent to the ash disposal site through a network of monitoring wells and report the results to the PADEP on a periodic basis. In the event that a disposal facility's groundwater monitoring identifies degradation in any of its wells, the PADEP's regulations require the facility to first confirm the existence and nature of the degradation by conducting a groundwater assessment. If the assessment confirms groundwater degradation in excess of the applicable regulatory standards, the facility is then required to prepare and implement an abatement plan that could include measures such as installing a liner in a previously unlined area. To date, no degradation has been found in the groundwater monitoring system at EME Homer City that would require the development of an assessment or abatement plan. EME Homer City also provides financial assurance in the form of a surety bond to guarantee its closure and post-closure obligations at the landfill. The estimated closure date is 2018. Based on the remaining capacity of the landfill and the estimated material requiring future disposal, EME Homer City has begun permitting additional areas for expansion of the landfill. Management does not believe that the costs of maintaining and closing the ash disposal site will have a material impact on EME Homer City's financial statements.

### *Insurance*

EME Homer City maintains insurance policies that it believes are comparable to those carried by other electric generating facilities of a similar size. The insurance program includes all-risk real and personal property insurance, including coverage for losses from boiler and machinery breakdowns, and the perils of earthquake and flood, subject to certain sublimits. The property insurance program currently covers losses up to \$1.325 billion. Under the terms of the participation agreements entered into as part of EME Homer City's sale-leaseback transaction, EME Homer City is required to maintain specified minimum insurance coverages if and to the extent that such insurance is available on a commercially reasonable basis. Although the insurance covering the Homer City facilities is comparable to insurance coverages normally carried by companies engaged in similar businesses, and owning similar properties, the insurance coverages that are in place do not meet the minimum insurance coverages required under the participation agreements. Due to the current market environment, the minimum insurance coverage is not commercially available at reasonable prices. EME Homer City has obtained a waiver under the participation agreements which permits it to maintain its current insurance coverage through June 1, 2009.

EME Homer City also carries general liability insurance covering liabilities to third parties for bodily injury or property damage resulting from operations, automobile liability insurance and excess liability insurance. Limits and deductibles in respect of these insurance policies are consistent with the requirements of the participation agreements.

At December 31, 2007, EME Homer City had a \$1 million receivable recorded related to an insurance claim related to a main transformer failure on Unit 3 in 2006. During 2007 and 2006, \$3 million and \$11 million, respectively, related to business interruption insurance coverage were

recorded and have been reflected in other income (expense) on EME Homer City's statements of income. EME Homer City received \$1 million and \$18 million in cash payments related to insurance claims during 2008 and 2007, respectively.

## **Environmental Matters and Regulations**

### ***Introduction***

The construction and operation of power plants are subject to environmental regulation by federal, state and local authorities. EME Homer City believes that it is in substantial compliance with existing environmental regulatory requirements. However, possible future developments, such as the promulgation of more stringent environmental laws and regulations, future proceedings that may be initiated by environmental and other regulatory authorities, cases in which new theories of liability are recognized, and settlements agreed to by other companies that establish precedent or expectations for the power industry, could affect the costs and the manner in which EME Homer City conducts its business and could require substantial additional capital or operational expenditures or the ceasing of operations at certain of its facilities. There is no assurance that EME Homer City's financial position and results of operations would not be materially adversely affected. EME Homer City is unable to predict the precise extent to which additional laws and regulations may affect its future operations and capital expenditure requirements.

Typically, environmental laws and regulations require a lengthy and complex process for obtaining licenses, permits and approvals prior to construction, operation or modification of a project or generating facility. Meeting all the necessary requirements can delay or sometimes prevent the completion of a proposed project, as well as require extensive modifications to existing projects, which may involve significant capital or operational expenditures. If EME Homer City fails to comply with applicable environmental laws, it may be subject to injunctive relief or penalties and fines imposed by federal and state regulatory authorities.

### ***Air Quality Regulation***

The federal CAA, state clean air acts, and federal and state regulations implementing such statutes have substantial impacts on power generation facilities, particularly coal-fired plants. Federal environmental regulations require reductions in emissions and require states to adopt implementation plans that are equal to or more stringent than the federal requirements. Compliance with these regulations and SIPs will affect the costs and the manner in which EME Homer City conducts its business, and will likely require EME Homer City to make substantial additional capital expenditures. There is no assurance that EME Homer City would be able to recover these increased costs from its customers or that EME Homer City's financial position and results of operations would not be materially adversely affected as a result.

### ***Clean Air Interstate Rule***

The CAIR, issued by the US EPA on March 10, 2005, applies to 28 eastern states and the District of Columbia and is intended to address ozone and fine particulate matter attainment issues by reducing regional NO<sub>x</sub> and SO<sub>2</sub> emissions. The CAIR reduces the current CAA Title IV Phase II SO<sub>2</sub> emission allowance cap for 2010 and 2015 by 50% and 65%, respectively. The CAIR also requires reductions in regional NO<sub>x</sub> emissions in 2009 and 2015 by 53% and 61%, respectively, from 2003 levels. Pennsylvania has developed SIPs to meet CAIR requirements. The Pennsylvania SIPs for the CAIR substantively matched the federal CAIR requirements.

The CAIR was challenged in court by state, environmental and industry groups, and in July 2008 a three-judge panel of the District of Columbia Circuit Court of Appeals issued a decision to vacate the CAIR in its entirety and remand to the US EPA to issue a new rule consistent with the decision once the Court issued its mandate. The decision raised significant questions as to whether the US EPA would be able to design cap-and-trade programs for NO<sub>x</sub> and SO<sub>2</sub> that are authorized and consistent with the CAA provisions that address upwind contributions to downwind states' noncompliance with national ambient air quality standards for ozone and fine particulate matter. Following the decision, the US EPA requested that states reinstate the existing "SIP Call" ozone season NO<sub>x</sub> cap-and-trade program, which was due to be replaced by the CAIR.

In September 2008, the US EPA and other parties requested a rehearing of the decision by the same three-judge panel or by the full District of Columbia Circuit Court. In December 2008, the Court remanded the CAIR to the US EPA without vacating the rule, "so that the US EPA may remedy CAIR's flaws in accordance with the Court's July 11, 2008 opinion in the case." The practical impact of the remand is that CAIR requirements became effective January 1, 2009 and are to remain in place until the US EPA promulgates a revised rule. The timing and substance of the revised rule are not yet clear. The Court did not set a date by which the US EPA must act on the remand, but the judges noted that they did not intend to grant an indefinite stay of their decision and that the petitioners could bring a petition to the Court if US EPA fails to act in a timely manner. There is substantial uncertainty as to how the US EPA will address the deficiencies identified by the Court and the impact revised regulations will have on SIPs promulgated to implement the CAIR. In addition, the US EPA has allowed states to rely on compliance with the CAIR to satisfy obligations under other CAA programs, including regional haze regulations and reasonably available control technology requirements. Depending on what happens with respect to the CAIR, the Homer City facilities may be subject to additional requirements pursuant to these programs.

EME Homer City expects that compliance with the CAIR, and revised or additional state regulations promulgated to comply with a revised CAIR and/or other air regulatory requirements, could result in increased capital expenditures and operating expenses.

On December 18, 2007, the Pennsylvania Environmental Quality Board approved the Pennsylvania CAIR. This rule has been submitted to the US EPA for approval as part of the Pennsylvania SIP. The Pennsylvania CAIR is substantively similar to the CAIR. EME Homer City will be subject to the federal CAIR rule during 2009 and expects to be able to comply with the NO<sub>x</sub> requirement using its existing SCR system. The Pennsylvania CAIR, including both NO<sub>x</sub> and SO<sub>2</sub> limits, is expected to become effective in 2010. EME Homer City expects to comply with Pennsylvania CAIR through the continued operation of its scrubber on Unit 3 to reduce SO<sub>2</sub> emissions and the purchase of SO<sub>2</sub> allowances.

#### *Clean Air Mercury Rule*

By means of a rule published in May 2005, the US EPA established the CAMR, which created the framework for a national, market-based cap-and-trade program to reduce mercury emissions from existing coal-fired power plants to a national cap of 38 tons by 2010 and to 15 tons by 2018, primarily through reductions in mercury achieved by lowering SO<sub>2</sub> and NO<sub>x</sub> emissions under the CAIR. States were allowed, but not required, to join the trading program by adopting the CAMR model trading rules. States retained the right to promulgate alternative regulations equivalent to or more stringent than the CAMR cap-and-trade program, as long as the regulations were approved by the US EPA.

At the time that it published the CAMR, the US EPA also published a second rule, formally rescinding its previous finding that mercury emissions from electrical generating facilities had to be

regulated as a hazardous air pollutant pursuant to Section 112 of the CAA, which would have imposed technology-based standards on emission sources. Both the CAMR and US EPA's decision to remove oil and coal-fired plants from the list of sources to be regulated under Section 112 of the CAA were challenged in the U.S. Court of Appeals for the D.C. Circuit by various environmental groups and state attorneys general.

On February 8, 2008, the U.S. Court of Appeals for the D.C. Circuit vacated both rules and remanded the matter to the US EPA. The United States and the Utility Air Regulatory Group had petitioned the Supreme Court to review the D.C. Circuit's decision, but the United States subsequently filed a motion to withdraw its petition based on a determination by the US EPA to develop a new mercury regulation pursuant to Section 112 of the CAA. On February 23, 2009, the U.S. Supreme Court declined to review the D.C. Circuit's decision.

Until CAMR is replaced by a new mercury rule, mercury regulation will come from state regulatory bodies. As described below, the Homer City facilities are already subject to significant unit-specific mercury emission reduction requirements under Pennsylvania law (although, as noted below, a Pennsylvania court has recently invalidated Pennsylvania's mercury regulations). Until new federal standards are developed, EME Homer City will not be able to determine whether it will be necessary to undertake measures beyond those required by state regulations.

On February 17, 2007, the PADEP published in the Pennsylvania Bulletin regulations that would require coal-fired power plants to reduce mercury emissions by 80% by 2010 and 90% by 2015. The rule does not allow the use of emissions trading to achieve compliance. The rule became final upon publication. The Pennsylvania CAMR SIP, which embodies PADEP's mercury regulation, was pending approval by the US EPA prior to the February 8, 2008 Court of Appeals decision vacating the federal CAMR. On September 15, 2008, PPL Generation filed a Petition for Review with the Commonwealth Court seeking relief from Pennsylvania's mercury rule for coal-fired power plants, alleging that the PADEP cannot regulate power plant emission sources under Section 111 of the CAA, but must instead consider emission controls on a case-by-case basis as required by Section 112. On January 30, 2009, the Court issued an opinion declaring Pennsylvania's mercury rule unlawful, invalid and unenforceable, and enjoining Pennsylvania from continued implementation and enforcement of the rule. The PADEP has appealed this matter to the Pennsylvania Supreme Court.

If the Homer City facilities are required to meet the 2010 deadline for mercury emissions reductions, EME Homer City would plan to achieve compliance by operating an existing FGD system on one generating unit and utilizing an appropriate combination of sorbent injection and coal washing on the other two units. In order to meet reductions in emissions by the 2015 deadline, it is likely that additional environmental control equipment will need to be installed. If additional environmental equipment is required in the form of FGD equipment, EME Homer City would need to make commitments during 2011 or 2012. EME Homer City continues to study available environmental control technologies and estimated costs to reduce SO<sub>2</sub> and mercury and to monitor developments related to mercury and other environmental regulations.

#### *Ambient Air Quality Standards*

The US EPA designated non-attainment areas for its 8-hour ozone standard on April 30, 2004, and for its fine particulate matter standard on January 5, 2005. Indiana County, the location of the Homer City facilities, is in a non-attainment area for both standards.

On September 22, 2006 the US EPA issued a final rule that implements the revisions to its fine particulate standard originally proposed on January 17, 2006. Under the new rule, the annual standard remains the same as originally proposed but the 24-hour fine particulate standard is significantly more stringent. On February 24, 2009, the U.S. Court of Appeals for the D.C. Circuit remanded the annual fine particulate matter standard to the US EPA for review. The more stringent 24-hour fine particulate standard (and depending on the course of the remand, a further revised annual standard) may require states to impose further emission reductions beyond those necessary to meet the existing standards. EME Homer City anticipates that any such further emissions reduction obligations would not be imposed under this standard until 2015 at the earliest, and intends to consider such rules as part of its overall plan for environmental compliance.

On March 12, 2008, the US EPA issued a final rule to make revisions to the primary and secondary national ambient air quality standards for ozone. With regard to the primary and standards for ozone, the US EPA reduced the level of the 8-hour standard to 0.075 parts per million (ppm). The US EPA solicited comment on alternative levels down to 0.060 ppm and up to and including retaining the current 8-hour standard of 0.08 ppm (effectively 0.084 ppm using current data rounding conventions). The rule may require states to impose further emission reductions beyond those necessary to meet the existing standards. EME Homer City anticipates that any such further emission reduction obligations would not be imposed under this standard until 2015 at the earliest, and intends to consider such rules as part of its overall plan for environmental compliance.

In March 2007, the PADEP requested a redesignation of Clearfield and Indiana counties to attainment with respect to the 8-hour ozone standard. The PADEP also submitted a maintenance plan indicating that the existing (and upcoming) regulations controlling emissions of volatile organic compounds and NO<sub>x</sub> will result in continued compliance with the 8-hour ozone standard. The US EPA accepted the plan on August 1, 2007. Accordingly, EME Homer City believes that the Homer City facilities will likely not need to install additional pollution control as a result of the 8-hour ozone standard.

With respect to fine particulates, Pennsylvania submitted the SIP to the US EPA on December 7, 2007. EME Homer City does not believe at this time that it will impose more stringent requirements than those already applicable to the Homer City Facilities.

### *Regional Haze*

In July 1999, the US EPA published the “Regional Haze Rule” to reduce haze and protect visibility in designated federal areas. The goal of the 1999 rule is to restore visibility in mandatory federal Class I areas, such as national parks and wilderness areas, to natural background conditions by 2064. Sources such as power plants that are reasonably anticipated to contribute to visibility impairment in Class I areas may be required to install best available retrofit technology (BART) or implement other control strategies to meet regional haze control requirements. The US EPA issued a final rulemaking on regional haze on June 15, 2005.

States were required to revise their SIPs by December 2007 to demonstrate reasonable further progress towards meeting regional haze goals. On January 9, 2009, the US EPA found that 37 states, including Pennsylvania, had failed to submit all or a portion of their regional haze SIPs. For those states that have yet to make a submission, or that have made a submission that does not include particular SIP elements, the US EPA is making a “finding of failure to submit.” The US EPA finding initiates a two-year deadline for issuance of a Federal Implementation Plan which would provide the basic program requirements for each state that has not completed an approved plan of its own by January 15, 2011.

Emission reductions achieved through other ongoing control programs may be sufficient to demonstrate reasonable progress toward the long-term goal, particularly for the first 10 to 15 year phase of the program. It is possible that sources subject to the CAIR will be able to satisfy their obligations under the regional haze regulations through compliance with the CAIR although, as previously noted, the D.C. Circuit Court's decision to remand the CAIR to the US EPA means that there is substantial uncertainty as to the future of the federal and state CAIR programs. However, until the SIPs are revised, EME Homer City cannot predict whether it will be required to install BART or implement other control strategies, and cannot identify the financial impacts of any additional control requirements.

In Pennsylvania, the PADEP considers the CAIR to meet the BART requirements, and the Homer City facilities are only required to consider reductions in emissions of suspended particulate matter (PM10), which at this time are being evaluated by the state.

#### *New Source Review Requirements*

Since 1999, the US EPA has pursued a coordinated compliance and enforcement strategy to address CAA NSR compliance issues at the nation's coal-fired power plants. The NSR regulations impose certain requirements on facilities, such as electric generating stations, if modifications are made to air emissions sources at a facility. The US EPA's strategy has included both the filing of suits against a number of power plant owners, and the issuance of administrative notices of violation to a number of power plant owners alleging NSR violations.

Prior to EME Homer City's purchase of the Homer City facilities, the US EPA requested information under Section 114 of the CAA from the prior owners of the plant concerning physical changes at the plant. This request was part of the US EPA's industry-wide investigation of compliance by coal-fired plants with the CAA NSR requirements.

On June 12, 2008, EME Homer City Generation LP received an NOV from the US EPA alleging that certain construction projects, all completed before EME Homer City acquired the Homer City facilities, violated various provisions of the NSR rules and Title V permit requirements. Discussions with the US EPA, the U.S. Department of Justice as well as state enforcement officials and environmental groups are under way. See “—Commitments and Contingencies—Contingencies—New Source Review Notice of Violation” for further discussion.

#### *Water Quality Regulation*

Regulations under the federal Clean Water Act require permits for the discharge of pollutants into United States waters and permits for the discharge of storm water flows from certain facilities. The Clean Water Act also regulates the thermal component (heat) of effluent discharges and the location, design, and construction of cooling water intake structures at generating facilities.

#### *Clean Water Act—Cooling Water Intake Structures*

On July 9, 2004, the US EPA published the final Phase II rule implementing Section 316(b) of the Clean Water Act establishing standards for cooling water intake structures at existing large power plants. The purpose of the regulation was to reduce substantially the number of aquatic organisms that are pinned against cooling water intake structures or drawn into cooling water systems. Depending on the findings of the demonstration studies contemplated by the rule to demonstrate the costs and benefits of compliance, cooling towers and/or other mechanical means of reducing impingement and entrainment of aquatic organisms could have been required.

On January 27, 2007, the Second Circuit rejected the US EPA rule and remanded it to the US EPA. Among the key provisions remanded by the court were the use of cost benefit and restoration to achieve compliance with the rule. On July 9, 2007, the US EPA suspended the requirements for cooling water intake structures, pending further rulemaking. On December 2, 2008 the Supreme Court heard oral arguments on this case. A decision is expected during the first half of 2009. The US EPA has delayed rulemaking pending the decision of the court. Although the rule to be generated in the new rulemaking process could have a material impact on EME Homer City's operations, until the final compliance criteria have been published, EME Homer City cannot reasonably determine the financial impact.

The discharge from the treatment plant receiving the wastewater stream from EME Homer City's Unit 3 FGD system has exceeded the stringent water-quality based limits for selenium in the station's NPDES permit. As a result, EME Homer City was notified in April 2002 by the PADEP that it was included in the Quarterly Noncompliance Report submitted to the US EPA. EME Homer City and the PADEP have entered into a consent order and agreement related to selenium discharge, which was entered by the Pennsylvania state court on July 17, 2007. Under the consent order and agreement, EME Homer City paid a civil penalty of \$200,000 and agreed to install modifications to its wastewater system to achieve consistent compliance with discharge limits. EME Homer City has experienced very few exceedances since entering into the consent order and agreement.

### ***Hazardous Substances and Hazardous Waste Laws***

Under various federal, state and local environmental laws and regulations, a current or previous owner or operator of any facility, including an electric generating facility, may be required to investigate and remediate releases or threatened releases of hazardous or toxic substances or petroleum products located at that facility, and may be held liable to a governmental entity or to third parties for property damage, personal injury, natural resource damages, and investigation and remediation costs incurred by these parties in connection with these releases or threatened releases. Many of these laws, including the Comprehensive Environmental Response, Compensation and Liability Act of 1980, commonly referred to as CERCLA, as amended by the Superfund Amendments and Reauthorization Act of 1986, impose liability without regard to whether the owner knew of or caused the presence of the hazardous substances, and courts have interpreted liability under these laws to be strict and joint and several.

### ***Coal Combustion Wastes***

US EPA regulations currently classify coal combustion wastes as solid wastes that are exempt from hazardous waste requirements under what is known as the Bevill Amendment. The exemption applies to fly ash, bottom, slag, and flue gas emission control wastes generated from the combustion of coal or other fossil fuels. The US EPA has studied coal combustion wastes extensively and in 2000 concluded that fossil fuel combustions wastes do not warrant regulation as a hazardous waste under Subtitle C of the Resource Conservation and Recovery Act. However, the US EPA also concluded, in 2000 and again in a 2007 Notice of Data Availability and request for public comment, that coal combustion wastes disposed of in surface impoundments and landfills, or used for minefill, do require regulation under Subtitle D (as solid wastes) under the Resource Conservation and Recovery Act. The current classification of coal combustion wastes as exempt from hazardous waste requirements enables beneficial uses of coal combustion wastes, such as for cement production and fill materials.

Legislation has been introduced in the U.S. House of Representatives and the US EPA is reviewing options for regulation of coal ash. The US EPA and many state regulatory agencies, including the PADEP, are reviewing existing ash storage and disposal units and the adequacy of existing regulatory

standards. EME Homer City is monitoring state legislative and regulatory activity, but cannot predict the outcome of this activity.

Additional regulation of the storage, disposal, and beneficial uses of coal combustion wastes would affect the costs and the manner in which EME Homer City conducts its business, and would likely require EME Homer City to make additional capital expenditures with no assurance that the increased costs could be recovered from customers.

## ***Climate Change***

### *Federal Legislative Initiatives*

To date, the United States has pursued a voluntary GHG emissions reduction program to meet its obligations as a signatory to the United Nations Framework Convention on Climate Change. As a result of increased attention to climate change in the U.S., however, numerous bills have been introduced in recent sessions of the U.S. Congress that would reduce GHG emissions in the U.S. Enactment of climate change legislation within the next several years now seems likely. However, there is still significant uncertainty about the cost of complying with any future GHG emission requirements. These costs will depend upon many factors, including the required levels of GHG emission reductions, the timing of those reductions, the impact on fuel prices, whether emission allowances will be allocated with or without cost to existing generators, and whether flexible compliance mechanisms, such as a GHG offset program similar to those sanctioned under the CAA for conventional pollutants, will be part of the policy.

While debate continues at the national level over domestic climate policy and the appropriate scope and terms of any federal legislation, many states are developing state-specific measures or participating in regional legislative initiatives to reduce GHG emissions. At this point, EME Homer City is unable to determine whether any of these proposals will be enacted into law or to estimate their potential effect on EME Homer City.

### *Regional Legislative Initiatives*

On December 20, 2005, seven northeastern states entered into a Memorandum of Understanding to create a regional initiative to establish a cap-and-trade GHG program for electric generators, referred to as the Regional Greenhouse Gas Initiative (RGGI). In August 2006, the participating states issued a model rule to be used as a basis for individual state legislative and regulatory action to implement the program. The RGGI states (now numbering ten states) have passed laws and/or regulations to implement the RGGI program, which commenced in 2009. Pennsylvania is not a signatory to the RGGI, although it participated as an observer of the process.

Implementing regulations for such regional initiatives may be more stringent and costly than federal legislative proposals currently being debated in the U.S. Congress. It cannot yet be determined whether or to what extent any federal legislative system would preempt regional or state initiatives, although such preemption would greatly simplify compliance and eliminate regulatory duplication. If state and/or regional initiatives are allowed to stand together with federal legislation, generators could be required to purchase allowances to satisfy their state and federal compliance obligations.

### *Litigation Developments*

Climate change regulation may be affected by litigation in federal and state courts. For example, on April 2, 2007, the United States Supreme Court issued an opinion in *Massachusetts et al. v.*

*Environmental Protection Agency, et al.*, ruling that the US EPA has the authority to regulate GHG emissions of new motor vehicles under the CAA and that it has a duty to determine whether GHG emissions of new motor vehicles contribute to climate change or offer a reasoned explanation for its failure to make such a determination when presented with a request for a rulemaking on the issue by the state claimants. The Court ruled that the US EPA's failure to make the necessary determination or offer a reasonable explanation for its refusal to do so was impermissible. While this case hinged on a provision of the CAA related to emissions of motor vehicles, a parallel provision of the CAA applies to stationary sources such as electric generators, and there is litigation pending in the D.C. Circuit Court of Appeals, *Coke Oven Task Force v. Environmental Protection Agency*, in which the holding in *Massachusetts v. Environmental Protection Agency, et al.*, may be applied to stationary sources such as power plants. In July 2008, the US EPA issued an advanced notice of proposed rulemaking that presented relevant information and solicited public comment as to how the US EPA should respond to the Massachusetts case, but the US EPA did not take further action on this rulemaking prior to the end of President Bush's term in office.

In 2004, several states and environmental organizations brought a complaint in federal court in New York, alleging that several electric utility corporations are jointly and severally liable under a theory of public nuisance for damages caused by the alleged contribution to global warming resulting from carbon dioxide emissions from coal-fired power plants owned and operated by these companies or their subsidiaries. EME Homer City was not named as a defendant in the complaint. The case was dismissed and is currently on appeal with the United States Court of Appeals for the Second Circuit. In another case brought in April 2006, private citizens filed a complaint in the federal court in Mississippi against numerous defendants, including several electric utilities, arguing that emissions from the defendants' facilities contributed to climate change and seeking monetary damages related to the 2005 hurricane season. In August 2007, the court dismissed the case entirely. The plaintiffs have appealed this dismissal in the Fifth Circuit Court of Appeals.

On October 18, 2007, the Kansas Department of Health and Environment rejected a permit to construct two proposed coal-fired electrical generators based on the impact to health and the environment arising from the proposed units' emissions of carbon dioxide. This was the first reported rejection of a proposed coal plant permit based on a clean air statute. This decision has been appealed. In addition, there are a number of pending cases in which environmental groups are arguing that air permits for the construction of major coal-fired generating facilities cannot be issued unless the permits include best available control technology to control carbon dioxide emissions. The US EPA has taken the position that such controls are not required until it finalizes regulations relating to carbon dioxide emissions.

The ultimate outcome of the climate change debate could have a significant economic effect on EME Homer City. Any legal obligation that would require EME Homer City to reduce substantially its emissions of carbon dioxide or that would impose additional costs or charges for the emission of carbon dioxide could have a materially adverse effect on EME Homer City. EME Homer City will continue to monitor the federal, regional and state developments relating to regulation of GHG emissions to determine their impact on its operations. Requirements to reduce emissions of carbon dioxide and other GHG emissions could significantly increase the cost of generating electricity from fossil fuels, especially coal, as well as the cost of purchased power.

## **Note 10. Related Party Transactions**

### ***EMMT Agreements***

EME Homer City has entered into a master purchase, sale and services agreement with EMMT, pursuant to which EMMT arranges for purchases and sales of the following products, including related services: (i) electric energy and capacity; (ii) fuel oil; and (iii) emission allowances.

EME Homer City compensates EMMT in accordance with the following table with respect to these transactions and reimburses EMMT for brokers fees, taxes, and other reasonably incurred direct out-of-pocket expenses. Payment for these services is due within 30 days of billing.

<u>Service</u>	<u>Compensation</u>
Energy and/or capacity .....	\$.02/MWh (\$.02/MW-day for capacity)
Fuel oil.....	\$.05/bbl
Emission allowances .....	\$.25/SO <sub>2</sub> allowance; and \$25/NO <sub>x</sub> allowance

The net fees earned by EMMT were \$1 million for each of the years ended December 31, 2008, 2007 and 2006. Beginning in the second quarter of 2003, EMMT began prepaying in full for the following month's expected power generation. As a result of the accelerated payments, EME Homer City had payables due to EMMT of \$65 million and \$73 million at December 31, 2008 and 2007, respectively.

EME Homer City entered into several transactions through EMMT for the purchase or sale of SO<sub>2</sub> and NO<sub>x</sub> allowances. All transactions were completed at market price on the date of the transaction. Net consideration paid by EME Homer City was \$33 million, \$74 million and \$27 million during 2008, 2007 and 2006, respectively.

### ***Affiliate Financing***

EME Homer City obtained financing from Edison Mission Finance in connection with its acquisition of the Homer City facilities. For further discussion, see Note 6—Long-Term Debt.

### ***Services Agreements with EME and Edison International***

Certain administrative services such as payroll, employee benefit programs, insurance, and information technology are shared among all affiliates of Edison International and the costs of these corporate support services are allocated to all affiliates. The cost of services provided by Edison International and EME, including those related to EME Homer City, are allocated based on one of the following formulas: percentage of the time worked, equity in investment and advances, number of employees, or multi-factor (operating revenues, operating expenses, total assets and total employees). EME Homer City participates in a common payroll and benefit program with all Edison International employees. In addition, EME Homer City is billed for any direct labor and out-of-pocket expenses for services directly requested for the benefit of the partnership. EME Homer City believes the allocation methodologies are reasonable. EME Homer City made reimbursements for the cost of these programs and other services totaling \$8 million for each of the years ended December 31, 2008, 2007 and 2006. EME Homer City had a net payable of \$1 million and \$0.3 million at December 31, 2008 and 2007, respectively, due to Edison International.

EME Homer City participates in the insurance program of Edison International, including property, general liability, workers compensation and various other specialty policies. EME Homer City's insurance premiums are generally based on its share of risk related to each policy. In connection with the property insurance program, a portion of the risk is reinsured by a captive insurance subsidiary of Edison International.

***Management and Administration Agreement with Midwest Generation EME, LLC***

EME Homer City and Midwest Generation EME entered into a management and administration agreement pursuant to which Midwest Generation EME charges EME Homer City for management and administrative services. Actual costs billable under this agreement for the years ended December 31, 2008, 2007 and 2006 were \$3 million, \$2 million and \$3 million, respectively. EME Homer City had a payable of \$0.1 million at both December 31, 2008 and 2007 due to Midwest Generation EME related to this agreement.

**Note 11. Supplemental Cash Flows Information**

	<u>Years Ended December 31,</u>		
	<u>2008</u>	<u>2007</u>	<u>2006</u>
	(in millions)		
Cash paid			
Interest .....	\$ 130	\$ 172	\$ 115
Income taxes .....	22	4	2
Non-cash investing and financing activities			
Non-cash settlement of intercompany tax liabilities through an increase in the subordinated revolving loan agreement .....	\$ 42	\$ —	\$ 60

**Note 12. Quarterly Financial Data (unaudited)**

<u>2008</u>	<u>First</u>	<u>Second</u>	<u>Third(i)</u>	<u>Fourth</u>	<u>Total</u>
	(in millions)				
Operating revenues .....	\$ 185	\$ 127	\$ 236	\$ 169	\$ 717
Operating income .....	67	1	119	66	253
Provision (benefit) for income taxes .....	14	(12)	36	11	49
Net income (loss) .....	22	(18)	55	26	85
 <u>2007</u>	 <u>First</u>	 <u>Second</u>	 <u>Third(i)</u>	 <u>Fourth</u>	 <u>Total</u>
	(in millions)				
Operating revenues .....	\$ 198	\$ 176	\$ 199	\$ 191	\$ 764
Operating income .....	76	50	80	67	273
Provision for income taxes .....	17	6	21	10	54
Net income .....	25	10	29	24	88

(i) Reflects EME Homer City's seasonal pattern, in which earnings are generally higher in the third quarter of each year.

**PART III**

**ITEM 10. DIRECTORS, EXECUTIVE OFFICERS AND CORPORATE GOVERNANCE**

Omitted pursuant to General Instruction I.(2)(c).

**Code of Business Conduct and Ethics for Principal Officers**

The Edison International Ethics and Compliance Code is applicable to all directors, officers and employees of Edison International and its majority-owned subsidiaries, including EME Homer City. The Code is available on the Internet website maintained by EME Homer City's ultimate parent, Edison International, at [www.edisonethics.com](http://www.edisonethics.com) and is available in print without charge upon request from Edison International's Corporate Secretary. Any amendments or waivers of Code provisions for EME Homer City's principal executive officer, principal financial officer, principal accounting officer or controller, or persons performing similar functions, will be posted on Edison International's Internet website at [www.edisonethics.com](http://www.edisonethics.com).

**ITEM 11. EXECUTIVE COMPENSATION**

Omitted pursuant to General Instruction I.(2)(c).

**ITEM 12. SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT AND RELATED STOCKHOLDER MATTERS**

Omitted pursuant to General Instruction I.(2)(c).

**ITEM 13. CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS, AND DIRECTOR INDEPENDENCE**

Omitted pursuant to General Instruction I.(2)(c).

**ITEM 14. PRINCIPAL ACCOUNTANT FEES AND SERVICES**

**INDEPENDENT ACCOUNTANT FEES**

The following table sets forth the aggregate fees billed to EME Homer City for the fiscal years ended December 31, 2008 and December 31, 2007, by PricewaterhouseCoopers LLP:

	<b>EME Homer City Generation L.P. (\$000)</b>	
	<b>2008</b>	<b>2007</b>
Audit Fees .....	\$ 407	\$ 456
Audit Related Fees .....	—	—
Tax Fees .....	—	—
All Other Fees .....	—	—

The Edison International Audit Committee reviews with management and pre-approves all audit services to be performed by the independent accountants and all non-audit services that are not prohibited and that require pre-approval under the Securities Exchange Act. The Edison International

Audit Committee's pre-approval responsibilities may be delegated to one or more Edison International Audit Committee members, provided that such delegate(s) presents any pre-approval decisions to the Edison International Audit Committee at its next meeting. The Committee has delegated such pre-approval responsibilities to the Committee Chair. The independent auditors must assure that all audit and non-audit services provided to EME Homer City have been approved by the Edison International Audit Committee.

During the fiscal year ended December 31, 2008, all services performed by the independent accountants were pre-approved by the Edison International Audit Committee, regardless of whether the services required pre-approval under the Securities Exchange Act.

## PART IV

### ITEM 15. EXHIBITS AND FINANCIAL STATEMENT SCHEDULES

#### (a) (1) List of Financial Statements

See Index to Financial Statements at Item 8 of this report.

#### (2) List of Financial Statement Schedules

Schedules have been omitted because they are not applicable or because the required information is included on the financial statements or notes thereto.

#### (3) List of Exhibits

<u>Exhibit No.</u>	<u>Description</u>
3.1	Amended and Restated Agreement of Limited Partnership of EME Homer City Generation L.P., dated as of December 7, 2001, incorporated by reference to Exhibit 3.2 to EME Homer City Generation L.P.'s Form 10-K for the year ended December 31, 2001.
4.1	First Amended and Restated Indenture, dated as of December 7, 2001 among Homer City Funding LLC and The Bank of New York, as successor trustee to United States Trust Company of New York, incorporated by reference to Exhibit 4.1.1 to EME Homer City Generation L.P.'s Form 10-K for the year ended December 31, 2001.
4.1.1	Form of 8.137% Senior Secured Bond due 2019 (included in Exhibit 4.1.1), incorporated by reference to Exhibit 4.1.2 to EME Homer City Generation L.P.'s Form 10-K for the year ended December 31, 2001.
4.1.2	Form of 8.734% Senior Secured Bond due 2026 (included in Exhibit 4.1.1), incorporated by reference to Exhibit 4.1.3 to EME Homer City Generation L.P.'s Form 10-K for the year ended December 31, 2001.
4.1.3	Assumption Agreement, dated as of December 7, 2001, among EME Homer City Generation, L.P., Homer City OL1 LLC, Homer City OL2 LLC, Homer City OL3 LLC, Homer City OL4 LLC, Homer City OL5 LLC, Homer City OL6 LLC, Homer City OL7 LLC, Homer City OL8 LLC, Homer City Funding LLC and The Bank of New York as successor to United States Trust Company of New York, incorporated by reference to Exhibit 4.1.4 to EME Homer City Generation L.P.'s Form 10-K for the year ended December 31, 2001.
4.2	Indenture of Trust and Security Agreement, dated as of December 7, 2001, between Homer City OL1 LLC, The Bank of New York, as Lease Indenture Trustee and Security Agent, incorporated by reference to Exhibit 4.2 to EME Homer City Generation L.P.'s Form 10-K for the year ended December 31, 2001.
4.2.1	Schedule identifying substantially identical agreements to Indenture of Trust and Security Agreement constituting Exhibit 4.2 hereto, incorporated by reference to Exhibit 4.2.1 to EME Homer City Generation L.P.'s Form 10-K for the year ended December 31, 2001.

<u>Exhibit No.</u>	<u>Description</u>
4.2.2	Form of Initial Lessor Note (included in Exhibit 4.2), incorporated by reference to Exhibit 4.2.2 to EME Homer City Generation L.P.'s Form 10-K for the year ended December 31, 2001.
4.3	Facility Lease Agreement, dated as of December 7, 2001, between Homer City OL1 LLC and EME Homer City Generation L.P., incorporated by reference to Exhibit 4.3 to EME Homer City Generation L.P.'s Form 10-K for the year ended December 31, 2001.
4.3.1	Schedule identifying substantially identical agreements to Facility Lease Agreement constituting Exhibit 4.3 hereto, incorporated by reference to Exhibit 4.3.1 to EME Homer City Generation L.P.'s Form 10-K for the year ended December 31, 2001.
4.4	Participation Agreement, dated as of December 7, 2001, among EME Homer City Generation L.P., Homer City OL1 LLC, as Facility Lessor and Ground Lessee, Wells Fargo Bank Northwest National Association, General Electric Capital Corporation, The Bank of New York as the Security Agent, The Bank of New York as Lease Indenture Trustee, Homer City Funding LLC and The Bank of New York as Bondholder Trustee, incorporated by reference to Exhibit 4.4 to EME Homer City Generation L.P.'s Form 10-K for the year ended December 31, 2001.
4.4.1	Schedule identifying substantially identical agreements to Participation Agreement constituting Exhibit 4.4 hereto, incorporated by reference to Exhibit 4.4.1 to EME Homer City Generation L.P.'s Form 10-K for the year ended December 31, 2001.
4.4.2	Appendix A (Definitions) to the Participation Agreement constituting Exhibit 4.4 hereto, incorporated by reference to Exhibit 4.4.2 to EME Homer City Generation L.P.'s Form 10-K for the year ended December 31, 2004.
4.5	Owner Lessor Subordination Agreement, dated as of December 7, 2001, by and among Homer City OL1 LLC as the Owner Lessor, General Electric Capital Corporation as the Owner Participant and The Bank of New York, as the Lease Indenture Trustee, incorporated by reference to Exhibit 4.5 to EME Homer City Generation L.P.'s Form 10-K for the year ended December 31, 2001.
4.5.1	Schedule identifying substantially identical agreements to Owner Lessor Subordination Agreement constituting Exhibit 4.5 hereto, incorporated by reference to Exhibit 4.5.1 to EME Homer City Generation L.P.'s Form 10-K for the year ended December 31, 2001.
4.6	Lease Subordination Agreement, dated as of December 7, 2001, by and among Homer City OL1 LLC, as the Owner Lessor, GE Capital Corporation as the Owner Participant, EME Homer City Generation L.P. as Facility Lessee and The Bank of New York as Security Agent, incorporated by reference to Exhibit 4.6 to EME Homer City Generation L.P.'s Form 10-K for the year ended December 31, 2001.
4.6.1	Schedule identifying substantially identical agreements to Lease Subordination Agreement constituting Exhibit 4.6 hereto, incorporated by reference to Exhibit 4.6.1 to EME Homer City Generation L.P.'s Form 10-K for the year ended December 31, 2001.
4.7	Pledge and Collateral Agreement made by Edison Mission Holdings Co. in favor of The Bank of New York, as successor to United States Trust Company of New York, as Collateral Agent, dated as of December 7, 2001, incorporated by reference to Exhibit 4.7 to EME Homer City Generation L.P.'s Form 10-K for the year ended December 31, 2001.

<u>Exhibit No.</u>	<u>Description</u>
4.8	Assumption and Release Agreement, dated as of December 7, 2001, among Edison Mission Holdings Co., Edison Mission Finance Co., EME Homer City Generation L.P. and The Bank of New York (as successor in interest to United States Trust Company of New York), as Bondholder Trustee and Collateral Agent, incorporated by reference to Exhibit 4.8 to EME Homer City Generation L.P.'s Form 10-K for the year ended December 31, 2001.
4.9	Open-End Mortgage, Security Agreement and Assignment of Rents, dated as of December 7, 2001, among Homer City OLI LLC, as the Owner Lessor to The Bank of New York, as Security Agent and Mortgagee, incorporated by reference to Exhibit 4.9 to EME Homer City Generation L.P.'s Form 10-K for the year ended December 31, 2001.
4.9.1	Schedule identifying substantially identical agreements to Open-End Mortgage, Security Agreement and Assignment of Rents constituting Exhibit 4.9 hereto, incorporated by reference to Exhibit 4.9.1 to EME Homer City Generation L.P.'s Form 10-K for the year ended December 31, 2003.
10.1	Guarantee, dated August 1, 1998, between Edison Mission Energy, Pennsylvania Electric Company, NGE Generation, Inc. and New York State Electric & Gas Corporation, incorporated by reference to Exhibit 10.54 to Edison Mission Energy's Form 10-K for the year ended December 31, 1998.
10.2	Amended and Restated Guarantee and Collateral Agreement, dated as of December 7, 2001, made by EME Homer City Generation L.P. in favor of The Bank of New York as successor to United States Trust Company of New York, as Collateral Agent, incorporated by reference to Exhibit 10.16.4 to EME Homer City Generation L.P.'s Form 10-K for the year ended December 31, 2001.
10.3	Amended and Restated Security Deposit Agreement, dated as of December 7, 2001, among EME Homer City Generation L.P. and The Bank of New York as Collateral Agent, incorporated by reference to Exhibit 10.18.2 to EME Homer City Generation L.P.'s Form 10-K for the year ended December 31, 2001.
10.4	Asset Purchase Agreement, dated August 1, 1998, between Pennsylvania Electric Company, NGE Generation, Inc., New York State Electric & Gas Corporation and Mission Energy Westside, Inc., incorporated by reference to Exhibit 2.4 to Edison Mission Energy's Form 10-K for the year ended December 31, 1998.
10.5	Intercompany Loan Subordination Agreement, dated March 18, 1999, among Edison Mission Holdings Co., Edison Mission Finance Co., Homer City Property Holdings, Inc., Chestnut Ridge Energy Co., Mission Energy Westside Inc., EME Homer City Generation L.P. and United States Trust Company of New York, incorporated by reference to Exhibit 10.60.3 to Amendment No. 2 of Edison Mission Holdings Co.'s registration statement on Form S-4 filed with the Securities and Exchange Commission on February 29, 2000 (File No. 333-92047).
10.5.1	Amended and Restated Intercompany Loan Subordination Agreement, dated as of December 7, 2001, among Edison Mission Holdings Co., Edison Mission Finance Co., Homer City Property Holdings, Inc., Chestnut Ridge Energy Co., Mission Energy Westside, Inc., EME Homer City Generation L.P. and The Bank of New York, as successor to United States Trust Company of New York, incorporated by reference to Exhibit 10.23.1 to EME Homer City Generation L.P.'s Form 10-K for the year ended December 31, 2001.

<u>Exhibit No.</u>	<u>Description</u>
10.6	Amended and Restated Subordinated Revolving Loan Agreement, dated as of December 8, 2003, by and between EME Homer City Generation L.P., as Borrower and Edison Mission Finance Co., as Lender, incorporated by reference to Exhibit 10.1 to EME Homer City Generation L.P.'s Form 8-K filed December 12, 2003.
10.7	Designated Account Representative Agreement Relating to the NO <sub>x</sub> Allowance Program, entered into as of December 7, 2001, by and between EME Homer City Generation L.P., Homer City OL1 LLC, Homer City OL2 LLC, Homer City OL3 LLC, Homer City OL4 LLC, Homer City OL5 LLC, Homer City OL6 LLC, Homer City OL7 LLC and Homer City OL8 LLC, incorporated by reference to Exhibit 10.27 to EME Homer City Generation L.P.'s Form 10-K for the year ended December 31, 2001.
10.8	Designated Account Representative Agreement Relating to the Acid Rain Program, entered into as of December 7, 2001, by and between EME Homer City Generation L.P., Homer City OL1 LLC, Homer City OL2 LLC, Homer City OL3 LLC, Homer City OL4 LLC, Homer City OL5 LLC, Homer City OL6 LLC, Homer City OL7 LLC and Homer City OL8 LLC, incorporated by reference to Exhibit 10.28 to EME Homer City Generation L.P.'s Form 10-K for the year ended December 31, 2001.
10.9	Assignment Agreement, dated December 7, 2001, between The Bank of New York, EME Homer City Generation L.P., Edison Mission Marketing & Trading, Inc. and Edison Mission Energy Fuel Services, Inc., incorporated by reference to Exhibit 10.29 to EME Homer City Generation L.P.'s Form 10-K for the year ended December 31, 2001.
10.10	Sub-Assignment Agreement, dated as of December 7, 2001, between The Bank of New York, EME Homer City Generation L.P., Edison Mission Marketing & Trading, Inc., and Edison Mission Energy Fuel Services, Inc., incorporated by reference to Exhibit 10.31 to EME Homer City Generation L.P.'s Form 10-K for the year ended December 31, 2001.
10.11	Amended and Restated Debt Service Reserve Letter of Credit and Reimbursement Agreement, dated as of April 1, 2005, by and among Homer City OL1 LLC and Union Bank of California, N.A., as issuing bank and as agent, incorporated by reference to Exhibit 10.1 to EME Homer City Generation L.P.'s Form 10-Q for the quarter ended March 31, 2005.
10.11.1	Schedule identifying substantially identical agreements to the Amended and Restated Debt Service Reserve Letter of Credit and Reimbursement Agreement constituting Exhibit 10.11 hereto, incorporated by reference to Exhibit 10.1.1 to EME Homer City Generation L.P.'s Form 10-Q for the quarter ended March 31, 2005.
10.12	Tax-Allocation Agreement, effective January 1, 2002, by and between EME Homer City Generation L.P. and Edison Mission Holdings Co., incorporated by reference to Exhibit 10.32 to EME Homer City Generation L.P.'s Form 10-Q for the quarter ended September 30, 2002.
10.12.1	Amendment No. 1 to Tax-Allocation Agreement, effective March 31, 2006, by and between EME Homer City Generation L.P. and Edison Mission Holdings Co., incorporated by reference to Exhibit 10.1 to EME Homer City Generation L.P.'s Form 10-Q for the quarter ended March 31, 2006.

<u>Exhibit No.</u>	<u>Description</u>
10.13	Master Purchase, Sale and Services Agreement, dated October 31, 2002, between EME Homer City Generation L.P. and Edison Mission Marketing & Trading, Inc., incorporated by reference to Exhibit 10.33 to EME Homer City Generation L.P.'s Form 10-K for the year ended December 31, 2002.
10.14	Master Emissions Allowance Purchase and Sale Agreement, dated October 31, 2002, between EME Homer City Generation L.P. and Edison Mission Marketing & Trading, Inc., incorporated by reference to Exhibit 10.34 to EME Homer City Generation L.P.'s Form 10-K for the year ended December 31, 2002.
10.15	Power Purchase and Sale Agreement, dated October 31, 2002, between EME Homer City Generation L.P. and Edison Mission Marketing & Trading, Inc., incorporated by reference to Exhibit 10.35 to EME Homer City Generation L.P.'s Form 10-K for the year ended December 31, 2002.
10.16	Management and Administration Agreement, effective as of April 27, 2004, between EME Homer City Generation L.P. and Midwest Generation EME, LLC, incorporated by reference to Exhibit 10.1 to EME Homer City Generation L.P.'s Form 10-Q for the quarter ended March 31, 2004.
31.1*	Certification of the Chief Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act.
31.2*	Certification of the Chief Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act.
32*	Statement Pursuant to 18 U.S.C. Section 1350.

\* Filed herewith.

## SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

### EME HOMER CITY GENERATION L.P. (REGISTRANT)

By: **Mission Energy Westside Inc., as General Partner**

By: /s/ John P. Finneran, Jr.

John P. Finneran, Jr.

*Director and Vice President*

Date: March 2, 2009

Pursuant to the requirements of the Securities Exchange Act of 1934, this report has been signed below by the following persons on behalf of the registrant and in the capacities and on the dates indicated.

<u>Signature</u>	<u>Title</u>	<u>Date</u>
<u>/s/ Guy F. Gorney</u> Guy F. Gorney	Director and President (Principal Executive Officer)	March 2, 2009
<u>/s/ John P. Finneran, Jr.</u> John P. Finneran, Jr.	Director and Vice President (Principal Financial Officer)	March 2, 2009
<u>/s/ Mark C. Clarke</u> Mark C. Clarke	Vice President and Controller (Controller or Principal Accounting Officer)	March 2, 2009
<u>/s/ Steven D. Eisenberg</u> Steven D. Eisenberg	Director and Vice President	March 2, 2009