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1st Session

COMMITTEE PRINT

CP 108–15

REPORT OF STAFF INVESTIGATION OF ENRON CORP. AND RELATED ENTITIES REGARDING THE GUATEMALAN POWER PROJECT

Prepared by the Staff of the

COMMITTEE ON FINANCE
UNITED STATES SENATE

CHARLES E. GRASSLEY, *Chairman*
MAX BAUCUS, *Ranking Member*

MARCH 2003

Printed for the use of the Committee on Finance

VerDate 11-MAY-2000 12:52 Mar 04, 2003 Jkt 000000 PO 00000 Frm 00001 Fmt 6015 Sfmt 6015 ENRON SFINANC2 PsN: SFINANC2

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VerDate 11-MAY-2000 12:52 Mar 04, 2003 Jkt 000000 PO 00000 Frm 00003 Fmt 6019 Sfmt 6019 ENRON SFINANC2 PsN: SFINANC2

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U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON : 2003

85–318—PDF

VerDate 11-MAY-2000 12:52 Mar 04, 2003 Jkt 000000 PO 00000 Frm 00005 Fmt 5005 Sfmt 5005 ENRON SFINANC2 PsN: SFINANC2

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INTRODUCTION

On February 15, 2002, Chairman Max Baucus (D-MT) and Ranking Member Charles Grassley (R-IA) announced that the Senate Finance Committee would conduct an investigation into the tax returns of Enron Corp. with the assistance of the Joint Committee on Taxation. (Appendix A). The purpose of the investigation was to review the activities and transactions related to Enron's tax returns and pension and executive compensation programs in order to inform the Finance Committee, the United States Senate, and the American public of the tax policy and administration issues arising out of Enron's circumstances.

The Finance Committee and Joint Committee on Taxation (the Committees) entered into negotiations with Enron and Enron's counsel, Skadden, Arps, Slate, Meagher & Flom LLP, regarding the disclosure of information from the Internal Revenue Service relating to Enron Corp. and related entities. The Disclosure Agreement was signed on March 6 and 7, 2002. (Appendix B). Pursuant to the Disclosure Agreement, Enron agreed to provide copies of all Federal income tax returns and related information to the Committees[1] and consented to the disclosure of such materials through official actions of either committee, including reports, meetings, or hearings of either committee. On April 5, 2002, Enron delivered to the Committees the consolidated tax returns for Enron Corp. and its affiliates for the tax years 1985 through 1995. Additionally, the agreement provided that the IRS could make available the tax returns and return information for Enron Corp. and its affiliates for the tax years 1996 through the present. The IRS has made this information available to the Committees.

On March 25 and 26, 2002, staff of the Committees were briefed by IRS personnel involved with the Enron tax return and pension plan audits in Houston, Texas. During these presentations, members from the IRS Enron audit team described several international projects, including one involving a Guatemalan power plant. The Senate Finance Committee staff report examines this specific Enron project – the Guatemalan power plant project (the Guatemala Project). As directed by the Senate Finance Committee, the Joint Committee on Taxation conducted a broader investigation into Enron's pension and executive compensation arrangements and its structured transactions.

The Finance Committee staff reviewed the Guatemalan power project specifically because of the serious allegations raised by the IRS audit team. The allegations resulted in referrals of possible violations of the Foreign Corrupt Practices Act to the Securities and Exchange Commission and the Department of Justice. Thus, the Guatemala Project provided an opportunity to review the coordination between the IRS and the Federal agencies charged with enforcement of the laws governing corporate misfeasors and corruption. Moreover, documents provided to the IRS by a confidential informant provided a strong indication that improper expenses were claimed on Enron's tax returns, and that company officials had knowledge that such items were inappropriate, but were nevertheless used to reduce Enron's U.S. income taxes.

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[1] The Senate Finance Committee requested numerous documents from Enron Corp. Documents provided pursuant to these requests were Bates-stamped with the prefix "EC." Citations to Enron provided documents include the Bates-stamp reference. Additionally, certain footnote sources are reproduced as Exhibits and the Exhibit number is indicated in the footnote.

EXECUTIVE SUMMARY

In 1993, Enron[2] built a barge-mounted electricity generation plant near Puerto Quetzal, on Guatemala's southern coast, and sold the electricity to a government-sponsored utility. The Guatemalan power project (the Guatemala Project) was Enron's first major Latin American operation and served as a model for future Enron infrastructure projects.[3] Enron's initial plan was to focus on power plants, but the plan was later expanded to include gas pipelines and related energy projects.

Enron used U.S. taxpayer support and multilateral organization support to finance the Guatemala Project. The Overseas Private Investment Corporation (OPIC) issued a $50 million investment guarantee in 2000 to expand the capacity of the plant from 110 megawatts to 234 megawatts.[4] The World Bank, through its International Finance Corporation (IFC), approved loans of $71 million.[5] The U.S. Department of Transportation Maritime Administration (MARAD), financed guarantees on the power barge construction for $25 million in 1994 and $73 million in 2000.[6]

After examining this project, IRS international auditors raised a number of questions regarding the proper tax treatment of various project expenses. Specifically, as part of its corporate group, Enron claimed tax deductions attributable to questionable payments made through a subsidiary (Puerto Quetzal Power Corporation (Enron/PQPC)) to a Panamanian corporation known as Sun King Trading Company, Inc. (Sun King) which is owned by four Guatemalans and one U.S. citizen. The payments are not associated with any legitimate service or product associated with the Guatemala Project. Rather, in an effort to conceal taxable income from the Guatemalan tax authorities, the payments were disguised by Enron as add-on fuel charges, and the monies paid to Sun King were routed to a specified bank account in Miami.

The payments in question also reduced Enron/PQPC's tax liability. Enron classified these payments as an intangible asset and claimed amortization expenses (Internal Revenue Code section 197) of $333,000 and $800,000 for tax years 1995 and 1996 respectively.[7] In 1995,

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2 Enron Corp.'s subsidiary, Enron Power Development Corp., took the lead on the Guatemala Project. Enron Power Development Corp. was later succeeded by Enron Development Corp. Throughout the report, "Enron/EDC" is used to refer to Enron Power Development Corp. and Enron Development Corp. *See* Letter from Thomas E. White to The Honorable Max Baucus and The Honorable Charles E. Grassley (Oct. 8, 2002) (Exhibit 1) [hereinafter Tom White Letter]; Interview of Rebecca P. Mark, in Houston, TX (Oct. 4, 2002); Letter from Richard A. Lammers, Vice President, Enron Power Development Corp. to International Finance Corporation 4 (Feb. 23, 1993 and March 30, 1993 modification letter) (EC2 000036644 through EC2 000036650, Exhibit 2).

3 Officers of Enron/EDC included Thomas E. White, Chairman & Chief Executive Officer, and Rebecca Mark, President. Kenneth Lay, Chairman and Chief Executive Officer, Enron Corp.; Richard Kinder, Chief Operating Officer, Enron Corp.; and the Enron Board of Directors would have approved the capital commitment for the Guatemala Project. *Id.*

4 Sustainable Energy & Economy Network, Institute for Policy Studies, Enron's Pawns: How Public Institutions Bankrolled Enron's Globalization Game 30-31 (March 22, 2002) [hereinafter Enron's Pawns]. *See also* Letter from Peter S. Watson, President and Chief Executive Officer, Overseas Private Investment Corporation, to The Honorable Max Baucus, Chairman of the Senate Committee on Finance and to The Honorable Charles E. Grassley, Ranking Member of the Senate Committee on Finance 2, Appendix 2B (Feb. 19, 2002) (Exhibit 3) [hereinafter OPIC Letter (Feb.)] (OPIC acknowledged active political risk insurance with Enron equity involvement but did not disclose the amount involved.).

5 Investment Agreement, Puerto Quetzal Power Corp. and International Finance Corporation (Mar. 31, 1993) (EC 000036651 - EC 000036700, Exhibit 4) [hereinafter IFC Investment Agreement].

6 Letter from Bruce J. Carlton, Acting Deputy Maritime Administrator, U.S. Department of Transportation Maritime Administration, to The Honorable Max Baucus, Chairman of the Senate Committee on Finance at 1, 3 (May 22, 2002) (Exhibit 5) [hereinafter MARAD Letter]. *See also* Enron's Pawns, *supra* note 4, at 30-31.

7 Puerto Quetzal Power Corp. v. Commissioner, Docket No. 17311-99 (Nov. 11, 1999) (Exhibit 6) [hereinafter Tax Court Petition].

Enron also claimed $1,534,539 (for the monthly payments of 6 percent from Enron/PQPC to Electricidad Enron de Guatemala, S.A. (Enron/EEG) for eventual payment to Sun King) as a cost of goods sold (Internal Revenue Code section 162).[8] The IRS also found, and Enron agreed, that the $192,681 short-term capital loss claimed on the 1996 sale of Enron/PQPC to Centrans Energy Services (a Cayman Islands company) was a $1,827,828 short-term capital gain.[9]

8 Tax Court Petition, *supra* note 7.

9 Department of Treasury - Internal Revenue Service, Notice of Proposed Adjustment To Taxpayer During Examination, Enron Corp. & Subsidiaries 1995 & 1996, Entity: Enron International Inc., Issue No. 127 (May 5, 1999) (The Notice of Proposed Adjustment was signed as "Agreed" by Edward R. Coats, Enron Vice President – Tax, Audits. The agreed to adjustment was for $2,020,509.) (Exhibit 7) [hereinafter IRS Notice of Proposed Adjustment].

INVESTIGATION SUMMARY

The Guatemalan power project (the Guatemala Project) investigation included interviews of or responses to questions from 15 individuals involved in the Guatemala Project (Appendix C), review of thousands of documents from Enron, the Internal Revenue Service, Department of Justice, Securities and Exchange Commission, Export-Import Bank, U.S. Trade and Development Agency, Overseas Private Investment Corporation, Department of Transportation Maritime Administration, and the World Bank/International Finance Corporation. The investigation also included interviews of officials from the above agencies and organizations.

Based on a review the information provided, the Senate Finance Committee staff has concluded the following with respect to the Guatemala Project:

1. *Payments made by Enron to a Panamanian corporation were disguised as add-on fuel charges in order to conceal them from U.S. and Guatemalan tax authorities. Enron officials had knowledge that the payments made to the Panamanian corporation exposed it to potential tax liability and penalties. An audit report prepared by Arthur Andersen and internal Enron memoranda confirms that senior Enron officials were aware of the payments and their questionable legality.*

2. *The U.S. agencies charged with enforcing non-tax criminal laws (the Department of Justice and the Securities and Exchange Commission) failed to act on the non-tax criminal referral made by the Internal Revenue Service (IRS).*

3. *Enron used World Bank funds and funds from U.S. taxpayer supported agencies and lending organizations to finance the Guatemalan power project as well as the questionable payments to Sun King. The World Bank and the U.S. Department of Transportation Maritime Administration provided financing and the Overseas Private Investment Corporation (OPIC) provided political risk insurance.*

4. *Bonuses and stock options were awarded when project financing was obtained, rather than upon successful completion of a project.*

STAFF RECOMMENDATION

Federal law enforcement agencies should establish clear procedures for handling Internal Revenue Service referrals of possible non-tax violations.

Federal law enforcement agencies should establish procedures for open communication between the agencies and the IRS to ensure coordinated and comprehensive investigations of cases referred from the IRS. For example, law enforcement agencies should establish written procedures for enforcement personnel to follow to ensure follow-through for proper investigation of IRS referrals. The referral agency should prepare and include within the IRS case file, written confirmation regarding the conclusion or declination of its investigation.

Internal Revenue Code (IRC) section 6103 should not deter the IRS or the referral agency from requesting or receiving relevant information in order for the referral agency to timely, efficiently, and effectively investigate the IRS referral. IRC section 6103 is a complicated and lengthy provision of the tax code that deals with the confidentiality of taxpayer information. The statute provides safeguards and procedures that allow the IRS to share information with a law enforcement agency, and vice versa. Because referrals from the IRS involve taxpayer information, employees of the agency are subject to the criminal and civil sanctions imposed by IRC section 6103. Therefore, the procedures should include a discussion of section 6103 and the ability within such section to access the taxpayer information needed in order to conduct a thorough investigation of possible non-tax violations of Federal law.

STAFF INVESTIGATION FINDINGS

The Finance Committee staff has concluded the following with respect to Enron's Guatemalan power plant project (the Guatemala Project):

I. Disguising Payments for Tax Reporting Purposes

Payments made by Enron to a Panamanian corporation were disguised as add-on fuel charges in order to conceal them from U.S. and Guatemalan tax authorities. Enron officials had knowledge that the payments made to the Panamanian corporation exposed it to potential tax liability and penalties. An audit report prepared by Arthur Andersen and internal Enron memoranda confirms that senior Enron officials were aware of the payments and their questionable legality.

Original Power Contract

The Guatemalan national utility is Instituto Nacional de Electrificacion (INDE). INDE owned 91.7 percent of Empresa,[10] the primary supplier of thermoelectric power to three of the most heavily populated of Guatemala's departments (Guatemala, Sacatepéquez, and Escuintla).[11] INDE sold electricity to Empresa and regulated the generation, distribution, and transmission of electricity in all areas of the country where Empresa did not.[12] Legally, Empresa was a private company and INDE was heavily subsidized by the Guatemalan government.[13]

On January 13, 1992, Texas Ohio Power Co. (TOP), a unit of a Houston-based gas pipeline operator and marketer (unrelated to Enron), signed a 15-year power purchase agreement (PPA)[14] to provide electricity to Empresa Electrica de Guatemala (Empresa). Under the contract, the electricity would come from a 110-megawatt oil-powered, barge-mounted power plant to be built and then sited on two barges at Puerto Quetzal, on Guatemala's southern coast.[15] Empresa was obligated to pay for 110 megawatts of capacity and "to purchase at least 50% of the Guatemala Project's available energy output."[16]

On February 24, 1992, TOP signed an Agency Agreement to make substantial payments (16 percent of the capacity payments and 21 percent of the energy payments) worth over $200

10 McCleary, Rachel M., DICTATING DEMOCRACY: GUATEMALA AND THE END OF VIOLENT REVOLUTION 98 (University Press of Florida 1999) [hereinafter DICTATING DEMOCRACY].

11 DICTATING DEMOCRACY, *supra* note 10, at 99.

12 DICTATING DEMOCRACY, *supra* note 10, at 98-99.

13 DICTATING DEMOCRACY, *supra* note 10, at 98.

14 Memorandum from Enron Power Corp., to the Overseas Private Investment Corporation for use by prospective lenders, Appendix A (Power Purchase Agreement, Empresa Electrica De Guatemala, Sociedad Anonima and Texas-Ohio Power, Inc. (Barbara de de Wit, trans.) (Jan. 13, 1992)) (July 1992) (Exhibit 8).

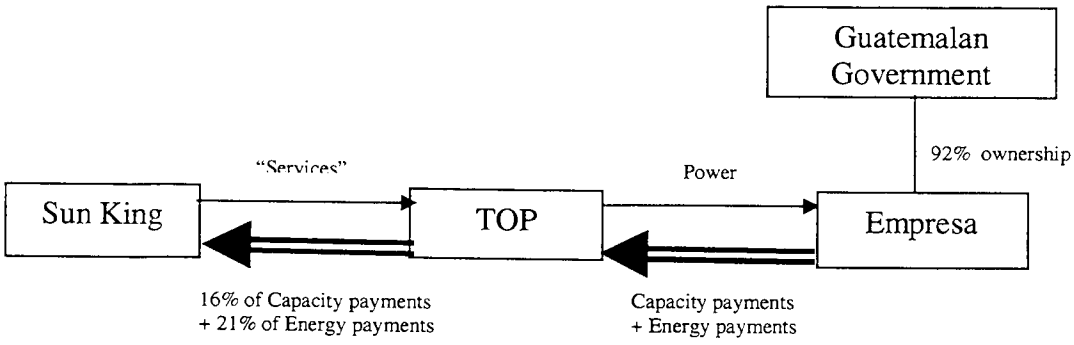
15 Memorandum from Enron Power Corp., to the Overseas Private Investment Corporation for use by prospective lenders, Sections I and IV (Executive Summary of Proposed Transaction and Project Participants) (July 1992) (Exhibit 9) [hereinafter Enron Memo to OPIC].

16 Enron Memo to OPIC, *supra* note 15, at 6.

million[17] to a group of individuals operating under the business name Sun King Trading Company, Inc. (Sun King).[18] In exchange, the Agency Agreement provided that Sun King "shall make all necessary and other reasonably requested introductions, shall assist in facilitating communications" with Empresa and "shall facilitate negotiations and timely execution of the Power Generation Facility Purchase and Sale Agreement."[19] Sun King also agreed to make available all information about the purchase and sale agreement, and to "provide all necessary initial and ongoing permits and consents of the Government of Guatemala."[20]

The power purchase agreement by and between the Guatemalan national utility (INDE) and a private sector merchant power company (TOP) also involved the third party agent, Sun King. Although Sun King agreed to certain obligations under the Agency Agreement, this did not necessarily translate into actual obligations. A memorandum prepared by Enron's Guatemalan attorney, Jorge Asensio, stated that "the Sun King payments do not represent any REAL service to Puerto Quetzal Power Corp."[21]

Power Purchase Agreement



Intermediate Structure of the Transaction

TOP had a 60-day window to arrange commitments for financing the Guatemala Project. In the final days before TOP's 60-day window was set to expire, developers employed by TOP,

17 Memorandum from Enron Power Corp., to the Overseas Private Investment Corporation for use by prospective lenders, Appendix G, 2 (Cash Flow Puerto Quetzal Power Project) (July 1992) (Exhibit 10) [hereinafter Enron Memo to OPIC Cash Flow].

18 Agency Agreement, Texas-Ohio Power, Inc. and Sun King Trading Company, Inc. (Feb. 24, 1992) (EC2 000034349 – EC2 000034351, Exhibit 11) [hereinafter Agency Agreement]. *See also* IRS Appellate Transmittal Memorandum and Case Memo 7 (November 03, 2000) (signed Lawrence M. Fagan, Appeals Officer (Sept. 5, 2000); approved James M. Stryker, Associate Chief (Sept. 5, 2000)) (Exhibit 12) [hereinafter Appeals Memo and Case Memo] (Sun King was formed by five prominent Guatemalan businessmen (Oswaldo Mendez Herbruger, Roberto Lopez, Henrik Preuss, Marco Antonio Lara, and Raul E. Arrondo). Sun King was possibly formed to locate independent power companies to participate in privatization of the electric power business in Guatemala. (i.e., the first privately-owned power venture in Guatemala)). *See also Cerigua Weekly Briefs May 2 - 8, 1993: Government Retreats on Rate Hike*, CERIGUA, May 10, 1993, at 4 (After the 1992 negotiations, a brother to Oswaldo Mendez Herbruger (an owner of Sun King) was appointed Assistant Finance Minister for Privatization, and had announced in May 1993, an eighteen month plan to sell the majority of state-owned enterprises.); *Cerigua Weekly Briefs June 13 - 19, 1993: Herbruger Voted Vice President*, CERIGUA, JUNE 21, 1993 (Additionally, on June 18 1993, Mr. Herbruger's great-uncle was selected as Guatemala's new vice president.).

19 Agency Agreement, *supra* note 18.

20 Agency Agreement, *supra* note 18, at 2.

21 Memorandum from Jorge Asensio A., to James J. Steele and Bill Coy 2 (Feb. 26, 1993) (EC2 000036550 – EC2 000036553, Exhibit 13) [hereinafter Asensio Memo I].

Enron, King Ranch Power Corporation (King Ranch), and Wärtsilä Diesel were in Guatemala negotiating with Sun King. The night before TOP's contract rights were set to expire, Enron developer David Haug, accompanied by Sun King owners, informed the competing parties that Enron would agree to start construction of the power barge and seek non-recourse financing while the Guatemala Project proceeded to commercial start-up. Additionally, Enron agreed to pay Sun King a compensation package based on Project gross revenues.[22]

On March 12, 1992, Mr. Haug presented TOP with the following three documents for signature:

1. Agreement by and between TOP and Enron Power Development Corp. (Enron/EDC) to transfer the Power Purchase Agreement to Enron/EDC for the following consideration:
   - $100,000 within three business days;
   - $100,000 by December 1, 1992;
   - $100,000 reimbursement for expenses;
   - 6 percent of the monthly gross revenues generated under the PPA;
   - $700,000 on the date of first commercial operation under the PPA; and
   - $700,000 180 days after the date of first commercial operation.[23]

2. Amendment to the TOP/Sun King Agency Agreement dated February 24, 1992, stating that (1) Sun King (Agent) is no longer empowered to act on behalf of TOP (Principal) and (2) TOP is to pay Sun King an amount monthly equal to 6 percent of the gross revenues generated by sales of electricity and payments for capacity under the PPA dated January 13, 1992.[24]

3. Letter addressed to Enron stating that TOP transfers its right to receive a monthly payment of 6 percent to Sun King.[25]

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22 *See* Interview of Jude Patrick LaStrapes, in Winnebago, Wis. (July 17, 2002) (Former President of Texas-Ohio Power) [hereinafter LaStrapes Interview]; *See also* Interview Diego (Dean) C. Rojas, in Houston, Tex. 12 (August 7, 2002) (Mr. Rojas was the Manager of Acquisitions, King Ranch) (According to Mr. Rojas, the Enron concessions "blew-away" the competing bids.) [hereinafter Rojas Interview].

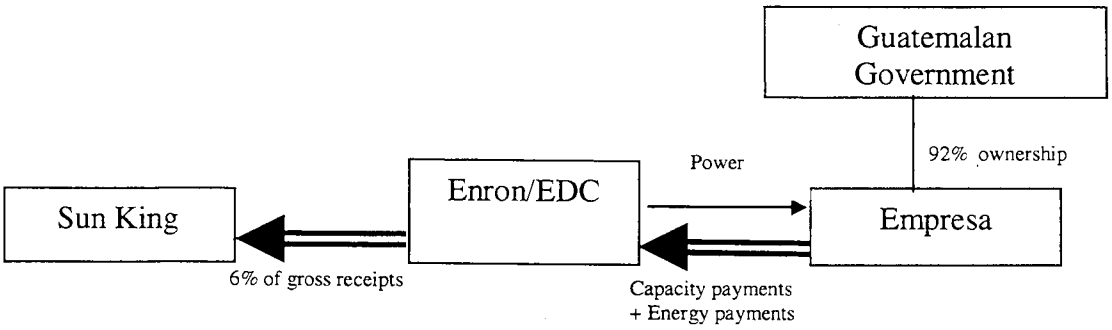
23 Agreement, Texas-Ohio Power, Inc. and Enron Power Development Corp. (Mar. 12, 1992) (EC2 000034376 – EC2 000034378, Exhibit 14).

24 Amendment to That Agency Agreement Dated February 24, 1992, Texas-Ohio Power, Inc. and Sun King Trading Company, Inc. (Mar. 12, 1992) (EC2 000034347 – EC2 000034348, Exhibit 15).

25 Letter from Patrick LaStrapes, President, Texas-Ohio Power, Inc., to David L. Haug, (Mar. 12, 1992) (EC2 000034379, Exhibit 16) [hereinafter TOP Transfer Letter]. *See also* Letter from David Haug, Managing Director, Enron Power Development, Corp., to Patrick LaStrapes, President, Texas-Ohio Power, Inc. (Mar. 12, 1992) (EC2 000034380, Exhibit 16); Letter from David Haug, Managing Director, Enron Power Development, Corp., to Sun King Trading Company, Inc. (Mar. 12, 1992) (EC2 000034381, Exhibit 16).

Thus, the PPA by and between the Guatemalan national utility and TOP was amended as follows:

Amended Power Purchase Agreement



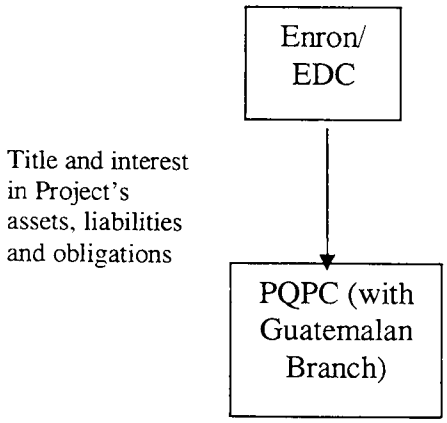
The payments Enron agreed to make would at least represent some compensation for the value TOP created in securing the PPA, and would serve to reimburse TOP for some of its out-of-pocket expenses. Patrick LaStrapes, TOP's President, claimed that he signed the three documents because it was clear to him that the PPA would be awarded to Enron. However, Mr. LaStrapes could not explain why the three documents were drawn to give the appearance that 6 percent of the Guatemala Project's monthly gross revenue was due to TOP, and that TOP had agreed to assign its rights to this 6 percent revenue stream to Sun King. Mr. LaStrapes maintains that Enron had engaged in unilateral negotiations with Sun King and reached a separate agreement to compensate Sun King with 6 percent of the Guatemala Project's gross revenues.[26] Nonetheless, the uncertainty surrounding Sun King's role in the deal raises the issue of the legitimacy of the 6 percent payments.

26 LaStrapes Interview, *supra* note 22.

Final Structure of the Transaction

Enron used its subsidiaries and a public limited partnership to transfer money and ownership interests in the Guatemala Project.

To build, own, and operate the power barge at Puerto Quetzal, Enron Development Corp. (Enron/EDC) formed a U.S. subsidiary with a Guatemalan branch known as Puerto Quetzal Power Corp. (Enron/PQPC).[27] The ownership structure was designed to retain U.S. flag registry on the two power barges.[28] On November 13, 1992, Enron/EDC transferred to Enron/PQPC all of Enron/EDC's title and interest in the Guatemala Project's assets, and all of Enron/EDC's liabilities and obligations attaching to the Guatemala Project's assets.[29]



27 Enron Memo to OPIC Cash Flow, *supra* note 17.

28 Interview of Ron Teitelbaum, in Houston, Tex. (September 17, 2002) (Mr. Teitelbaum was the Tax Manager, Enron Corp.) (Furthermore, subsequent international power projects were structured through tax haven ownership.).

29 Assignment and Assumption Agreement, Enron Power Development Corp. and Puerto Quetzal Power Corp., Guatemala Branch (Nov. 13, 1992) (EC2 000034409 – EC2 000034412, Exhibit 17).

After the Puerto Quetzal power plant project began commercial operations in February 1993, Enron received a letter (dated March 1, 1993) from Sun King.[30] Sun King requested that "monthly payments of 6.0 percent of the gross revenues generated by the sale of electricity and payment of contract capacity . . . be sent/transferred to our banks: Deutsch-Suedamerikanische Bank AG, Miami Agency."[31] On March 3, 1993, Sun King represented its right to receive 6 percent of the Guatemala Project gross revenues as "inherited" by Enron from TOP.[32] Sun King also objected to any of the monthly payments made net of Guatemalan taxes.[33]

In the same month, Guatemala's President Serrano proposed a very controversial increase in electrical rates, with disastrous consequences. On top of a 47 percent rate increase in August 1991, and another 20 percent rate increase in September 1992, President Serrano proposed, in February 1993, to raise rates again. The rate increase was another 47 percent on average, but as much as 400 percent for some customers, according to the Guatemalan human rights ombudsman.[34]

The President of Congress recommended that Guatemalans not pay their electric bills, and the human rights ombudsman filed an injunction to block the rate increase due to its effects on the poor in Guatemala. Riots ensued throughout the spring of 1993. Those riots, along with political differences over the rate increases, led to President Serrano's failed attempt to take over the government in May 1993, and his subsequent ouster.[35] It was in this environment that Enron apparently worked to conceal its deal with Sun King from the public.

On March 31, 1993, Section 1.29 of the original agreement (November 13, 1992) Project Operation and Maintenance Agreement between Enron/PQPC (Project owner) and Electricidad Enron de Guatemala (Enron/EEG) (Project operator) was deleted in its entirety and replaced with a provision that included fuel oil as a reimbursable expense.[36] The next day, Enron/EEG and Enron Power Oil Supply Corp. (Enron/EPOS) entered into a Fuel Supply and Maintenance Agreement. The fuel supply agreement provided that Enron/EEG would pay or cause to be paid to Enron/EPOS "an amount equal to six percent of the gross monthly revenue of Puerto Quetzal ('the monthly fee')" in addition to the amounts necessary to reimburse Enron/EPOS for its payments to its supplier for fuel.[37] Thus, the 6 percent payments flowed from Enron/PQPC, to Enron/EEG, to Enron/EPOS, and finally to Sun King.

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30 Oswaldo Mendez Herbruger, President, Sun King Trading, Inc., to David Haug, (Mar. 1, 1993) (EC2 000036565, Exhibit 18) [hereinafter Herbruger Memo Mar. 1].

31 Herbruger Memo Mar. 1.

32 Oswaldo Mendez Herbruger, President, Sun King Trading, Inc., to David Haug, (Mar. 3, 1993) (EC2 000036566 – EC2 000036567, Exhibit 19) [hereinafter Herbruger Memo Mar. 3].

33 Herbruger Memo Mar. 3, *supra* note 32.

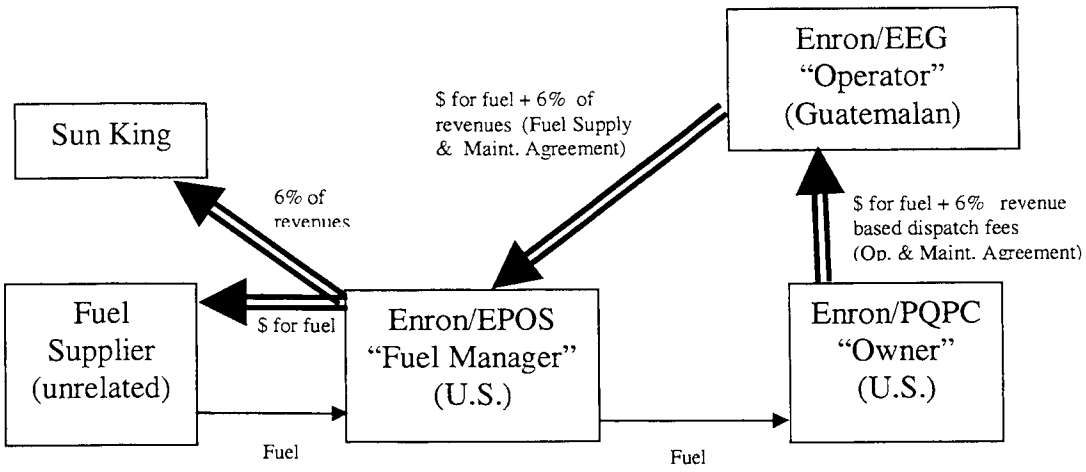
34 *Cerigua Weekly Briefs April 25 – May 1, 1993: Power Rate Hike Sparks Protests*, Cerigua, May 3, 1993.

35 DICTATING DEMOCRACY, *supra* note 11, at 97-149.

36 Operation and Maintenance Agreement and Amendments, Puerto Quetzal Power Corp., Guatemala Branch and Electricidad Enron De Guatemala, S.A. (Nov. 13, 1992; amended Mar. 31, 1993; Aug. 22, 1995; and Dec. 31, 1995) (EC2 000034527 – EC2 000034575, Exhibit 20) (Puerto Quetzal Power Corp., Guatemala Branch was the Owner and Electricidad Enron De Guatemala, S.A. was the Operator).

37 Fuel Supply and Maintenance Agreement, Electricidad Enron De Guatemala, S.A. and Enron Power Oil Supply Corp., (Apr. 1, 1993) (EC2 000034352 – EC2 000034357, Exhibit 21) (Electricidad Enron De Guatemala, S.A. was the Operator).

Fuel/Supply Agreement



Questionable Legality of the Payments

On April 12, 1993 and May 13, 1993, $219,330.27 and $256,696.09, respectively, were wire transferred from Enron/EPOS to Sun King's designated Miami bank.[38] Enron knew that this arrangement presented problems. An Enron memo stated, "this 6% amount is still a separate item of payment and, as described in the contract, is subject to a 1% limitation (as well as a 25% withholding tax and the 3% stamp tax)."[39] The memorandum also described the enormous markup that would be required if the 6 percent were billed as part of the fuel price and not as a separate fee.[40]

Apparently, Enron struggled to meet the demands of Sun King. Sun King insisted on payment in U.S. dollars outside of Guatemala and free of Guatemalan taxes.[41] Enron was not obligated by its contract to pay as Sun King requested.[42] Several Enron memoranda document the many questions of how to pay Sun King, including whether or not the Sun King obligation was a liability of Enron/EDC or of Enron/PQPC, how to make the payments (in dollars or Guatemalan quetzales), to what bank (Guatemalan or foreign), and how to represent the payments (e.g., as a commission or a royalty, and for what type of services). Enron's

38 Enron Power Corp. Memorandum from Carl Waldo, to David Odorizzi 4 (May 26, 1993) (EC2 000036574–EC2 000036577, Exhibit 22) [hereinafter Enron/Waldo Memo]; *See also* Accounting Documents relating to payments tendered by EEG to EPOS, Enron response to Senate Finance Committee (September 18, 2002) (EC 001911594-EC 001911595, Exhibit 23). *Cf.* Interview with Richard A. Lammers, President, Global Energy Advisors, in Houston, Tex. (August 8, 2002) (Mr. Lammers was the Treasurer of Puerto Quetzal Power Corp.) [hereinafter Lammers Interview] (Mr. Lammers denied any knowledge of authorizing payments to Sun King.).

39 Enron/Waldo Memo, *supra* note 38, at 3.

40 Enron/Waldo Memo, *supra* note 38, at 3.

41 *See* Enron/Waldo Memo, *supra* note 38; Memorandum from Jorge Asensio A., to David Odorizzi 2 (Dec. 13, 1993) (Exhibit 24) [hereinafter Asensio Memo II]; Herbruger Memo Mar.3, *supra* note 32; Enron Corp. Memorandum from Ron Teitelbaum, to David Haug, Rick Lammers, David Shields, Eric Wycoff, and Rob Walls (March 12, 1993) (EC2 000036568-EC2 000036569, Exhibit 25).

42 *See* Asensio Memo I, *supra* note 21; Enron/Waldo Memo, *supra* note 38; Asensio Memo II, *supra* note 41; Memorandum from Bill Leggatt, to Roberto Figueroa, Bill Votaw, Vinicio Urdaneta, Chuck Emrich, and Ron Teitelbaum, (Feb. 6, 1995) (Exhibit 26) (*See* List of Interviews, Appendix C, regarding positions held at Enron Corp. or its affiliates.).

Guatemalan attorney, Jorge Asensio, described the difficulties of making such payments legally, and advised not to cede to Sun King's demands.

The memoranda also show that Enron officials knew there were legal problems in describing the payments in any legitimate way. Mr. Asensio stated, "the Sun King payments do not represent any REAL service to Puerto Quetzal Power Corp."[43] The only real service that Sun King performed was to "introduce Texas Ohio to President Serrano, and talked him into signing the contract. It is the typical 'finder fee' arrangement, with the only difference that the fee was – for that service – completely out of hand."[44] Mr. Asensio advised Enron that the payments could not be listed as a commission because, legally, a commission must be one-time rather than on-going, and must be justified by the nature of the transaction.[45] Another Enron memorandum showed that Enron knew the payments could not be considered a royalty, because under Guatemalan law a royalty can not exceed 5 percent and is limited to payment for certain purposes.[46]

An internal Enron memorandum, dated May 26, 1993, detailed a number of potential alternative methods of payment, each of which was acknowledged to have legal, tax, or other problems, and noted that the payments "could not qualify as a 'royalty' as defined in the law."[47] Another internal Enron memorandum, dated November 17, 1993, stated that "the system of making dispatch payments to our Guatemalan O&M company ('EEG') and then EEG making a brokerage and handling payment for fuel delivered from other Enron affiliates was adopted in order to find a way to make the Sun King payment fully deductible in Guatemala and avoid having to gross-up the 25% Guatemalan withholding tax on such payments."[48]

By December 1993, however, another memorandum from Mr. Asensio indicated that Enron was still searching for alternatives for the Sun King payments and was considering a buy-out of the obligation based on its net present value,[49] an approach that had been raised but not pursued in the May 26 Enron memorandum.[50] Mr. Asensio stated in his December 1993 memorandum that "Sun King did not deliver all the offerings, representations or promises made during the negotiations."[51] Thus, both Mr. Asensio and Mr. Waldo advised Enron not to agree to Sun King's after-the-fact insistence on receiving dollars, outside of Guatemala, not subject to withholding.[52] Nonetheless, Enron used an arrangement to move funds in a way that complied with Sun King's request to be paid in U.S. dollars and to hide them from Guatemalan tax authorities.[53]

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43 Asensio Memo I, *supra* note 21, at 2.

44 Asensio Memo II, *supra* note 41, at 2.

45 Asensio Memo I, *supra* note 21, at 3.

46 Enron/Waldo Memo, *supra* note 38, at 2.

47 Enron/Waldo Memo, *supra* note 38, at 2-4.

48 Enron Corp. Memorandum from Ron Teitelbaum, to David Odorizzi 2 (Nov. 17, 1993) (EC2 000036586-EC2 000036589, Exhibit 27).

49 *See* Asensio Memo II, *supra* note 41. *Cf.* Interview David H. Odorizzi, Executive Vice President and Chief Financial Officer, EnLink Geoenergy, in Houston, Tex. (August 8, 2002) (Mr. Odorizzi could not recall details of the buy-out offers made Sun King group.).

50 Enron/Waldo Memo, *supra* note 38.

51 Asensio Memo II , *supra* note 41, at 2.

52 *See* Asensio Memo I, *supra* note 21, at 2; Enron/Waldo Memo, *supra* note 38, at 2-3.

53 Enron/Waldo Memo, *supra* note 38, at 2.

A March 10, 1995 internal audit prepared by Arthur Andersen for Enron/PQPC found that:

> [the] practice of paying Sun King's fee through the fuel payment to EPOS on a tax free basis exposes EEG (Electricidad Enron de Guatemala) to a potential tax liability, including penalties. The price paid for fuel by EEG to EPOS is more than the price charged by EEG to PQPC as a reimbursable expense. The difference would be evident and would warrant an explanation to Guatemalan officials if exposed.[54]

The Arthur Andersen audit report further states that:

> the payment to Sun King represents a commission payment to a corporation not domiciled in Guatemala. As such, there are specific taxes required by Guatemalan law to be withheld, and significant penalties (including criminal) for failure to do so. Based on total fees made to Sun King to date, a potential liability of approximately $1.6 million (not including compensatory interest) exists for 1994. This liability could approach $2.9 million by 1995 year end.[55]

Finally, on March 31, 1993, Enron/EDC sold 50 percent of its shares of Enron/PQPC to King Ranch Power for $14.9 million.[56]

54 Arthur Andersen LLP, Puerto Quetzal Power Corp. Summary of Audit Findings 12 (March 10, 1995) (EC 001918781-EC 001918794, Exhibit 28) [hereinafter Andersen Audit].

55 Andersen Audit, *supra* note 54, at 12.

56 Project Participation Agreement, King Ranch Power Corp. and Enron Development Corp. (Mar. 31, 1993) (EC2 000034460-EC2 000034507, Exhibit 29); *See also* Felton McL Johnston, Vice President for Insurance, Overseas Private Investment Corporation, to Paul E. Parrish, Risk Management Analyst, Enron Corp. 1 (April 28, 1993) (Exhibit 30); Rojas Interview, *supra* note 22. (The 15-year Project net income stream was still attractive and within targets set by the King Ranch Power's Board of Directors for asset acquisitions. Thus, King Ranch Power bought back into the Project once it was in commercial operation.).

The $12 Million Buy-Out

It was in the May 1993 timeframe when Enron/EDC opened formal discussions with Sun King regarding a buy-out of their gross profits interest in the Guatemala Project. Enron/EDC dispatched James J. Steele (one of the three initial Enron/EDC developers involved in the 1992 negotiations) to meet with Sun King. Sun King dismissed Mr. Steele's counter offer as too low.[57] Instead, on September 27, 1993, Sun King proposed buy-out offers ranging between $17 million and $34 million.[58] The buy-out was calculated "based on the present value of our [Sun King's] contract with Enron Power Development Corp."[59] Sun King stated, "we would like to remind you that our payments were negotiated from the beginning of the project so that they are net figures not subject to withholding of any taxes."[60] Furthermore, Sun King suggested that Mr. Steele reconsider his offer "to more closely reflect a fair compensation for our group in return for forfeiting payments on the present contract between PQPC and Empresa Electrica de Guatemala, S.A."[61]

Sun King did not want to deal further with Mr. Steele.[62] The next Enron/EDC employee sent to negotiate with Sun King was David Odorizzi. In a January 28, 1994 memorandum, David Odorizzi stated "some good strategic reasons" for attempting another buy-out of Sun King, including that "[t]he relationship between Sun King and the former regime could prove embarrassing."[63] Another reason was that "[a]t this time, Sunking's [sic] political influence is fairly low, and in practical terms Sunking [sic] seems reluctant to flex any political muscle they have left to help the project."[64] Mr. Odorizzi proposed a buy-out offer of $10 million, "conditional on Enron Board approval and acceptable financing," and capped by a $15 million ceiling.[65] On March 16, 1994, Mr. Odorizzi presented Sun King with a written buy-out offer of $10 million "effective date 1 January 1994."[66] Although Sun King considered Mr. Odorizzi's approach more low key than that of Mr. Steele, they rejected Mr. Odorizzi's buy-out offer, and presented Enron Power Corp. (the direct parent of Enron/EDC) with a $15 million counter offer.[67] By December 31, 1994, an agreement to buy-out Sun King had still not been reached.

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57 Interview with William A. Coy, Engineer, in Manassas, Va. (July 24, 2002) (Former developer of Enron Power Development Corporation) [hereinafter Coy Interview].

58 Letter from Oswaldo Mendez Herbruger, President, Sun King Trading Inc., to James Steel [sic], Enron Power Corp. (Sept. 27, 1993) (EC2 000036580-EC2 000036581, Exhibit 31) [hereinafter Herbruger Letter Sept.].

59 Herbruger Letter Sept., *supra* note 58, at 1.

60 Herbruger Letter Sept., *supra* note 58, at 2.

61 Herbruger Letter Sept., *supra* note 58, at 2.

62 According to a former Enron executive, Sun King was irritated with Mr. Steele's demand to be treated as a dignitary. Mr. Steele requested limousine service and the Presidential suite. Mr. Steele was informed that the only limousine in Guatemala was used only for weddings and funerals. *See* Coy Interview, *supra* note 57; Interview with Raul E. Arrondo, President, Grove Energy Systems, L.L.C., in Miami, Fla. (August 6, 2002) [hereinafter Arrondo Interview]. *Cf.* Interview James J. Steele, President and CEO, TM Power Ventures L.L.C., in The Woodlands, Tex. (July 18, 2002) (Mr. Steele was a principal/developer of Enron Power Development Corporation.) (Mr. Steele could not recall any details of any of the 1993 meetings and offers to Sun King.).

63 Memorandum from David Odorizzi, to Rod Gray 1 (Jan. 28, 1994) (EC2 000036593, Exhibit 32) [hereinafter Odorizzi/Gray Memo].

64 Odorizzi/Gray Memo, *supra* note 63, at 1.

65 Odorizzi/Gray Memo, *supra* note 63, at 2.

66 Enron International Inc. Letter from David H. Odorizzi, President International Business Ventures, to Messrs. Sun King Trading Company, Inc. (Mar. 16, 1994) (EC 001918602-EC 001918603, Exhibit 33).

67 Letter from Oswaldo Mendez Herbruger, President, Sun King Trading Inc., to Messrs. Enron International Inc. (Mar. 16, 1994) (EC 001918604-EC 001918606, Exhibit 34) [hereinafter Herbruger Letter March]; *See also* Arrondo Interview, *supra* note 62, Coy Interview, *supra* note 57.

Sun King received monthly payments totaling $4.8 million since April 1993. Sun King received another $750,000 in payments from January 1995 through March 1995.[68]

Two significant events transpired prior to Enron's August 1995 buy-out of Sun King. First, Enron sold a 50 percent equity interest in Enron/PQPC as an asset in the initial public offering of Enron Global Power & Pipelines L.L.C. (Enron/EPP), a public limited partnership.[69] Second, Enron reacquired the 50 percent equity interest in Enron/PQPC held by King Ranch Power.[70]

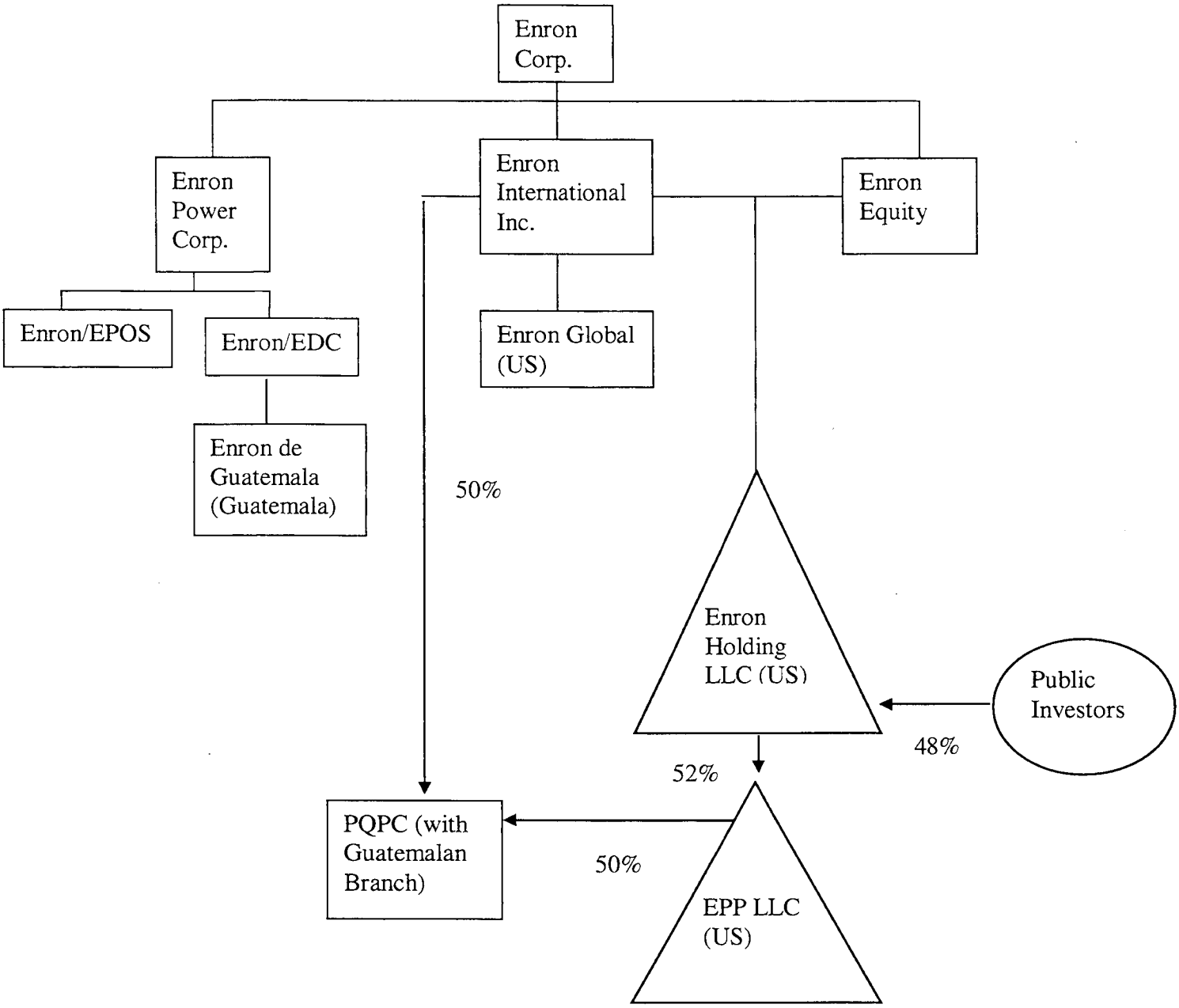
68 Electricidad Enron de Guatemala, S.A., B& H Charges Vs. Commission Payments, Enron response to Senate Finance Committee (September 18, 2002) (EC001911596, Exhibit 35) ("Reconciliation of Payments made to Sun King vs B&H Chg Received from EEG").

69 Enron Global Power & Pipelines L.L.C. (EPP) was formed in November 1994, to own some of Enron's power and pipeline assets in developing countries. At formation, Enron included 50% of the outstanding stock of Puerto Quetzal Power Corporation as one of the Projects vended into EPP. *See* Form 10-K, Annual Report, Enron Corp. and Subsidiary Companies (fiscal years ended Dec. 31, 1994 and Dec. 31, 1995) (At August 22, 1995, Enron remained a 52% partner in EPP.), at http://www.sec.gov/Archives/edgar/data/72859/0000072859-95-000014.txt [hereinafter Form 10k].

70 On December 16, 1994, King Ranch Power exercised an option under an existing agreement with Enron/EDC, and sold its 50 percent common stock interest in Enron/PQPC to Enron/EDC's designee Enron International, Inc. (Enron/EII) for cash of $15.2 million. *See* Stock Purchase and Related Transactions Agreement, King Ranch Power Corp., King Ranch Oil and Gas, Inc., Enron Corp., Enron Development Corp., Enron International Inc., Enron Global Power & Pipelines L.L.C., Electricidad Enron De Guatemala S.A. (Dec. 16, 1994) (EC2 000034508-EC2 000034513, Exhibit 36); *See also* Rojas Interview, *supra* note 22 (The King Ranch Board had taken exception to the economic performance of assets recommended and purchased by Mr. Rojas and his immediate supervisor. Thus, the decision was made to liquidate the interest King Ranch Power held in these assets.).

As a result, by August 1995, Enron and its affiliates appeared to hold the common stock interest in Enron/PQPC, as depicted in the following chart:[71]

Enron Corporate Structure



71 IRS Notice of Proposed Adjustment, *supra* note 9; *See also* Form 10-K, *supra* note 69.

With Enron/PQPC now owned partially by the public, Enron utilized $6 million of funds from Enron/EPP (the public partnership) to fund 50 percent of the Sun King buy-out.[72] This was apparently not Enron's only use of public partnership monies.[73] Enron used Enron/EPP to fund Enron Corp. obligations.[74] Additionally, Henrik Preuss (one of the owners of Sun King and owner of Centrans) was given a preferential right of first refusal to negotiate the purchase of a 50 percent equity interest in Enron/PQPC.[75]

On August 22, 1995, a "Termination and Release Agreement" was executed by and between Enron/EDC, Sun King, and Centrans International Sociedad Anomina (Centrans),[76] and $12 million was wire transferred for credit to Centrans at Deutsch-Suedamerikanische Bank Ag., Miami Agency.[77] The Termination agreement provided, in part, that:

1. Sun King would transfer its right to receive monthly payments to Centrans;
2. Enron/EDC would pay Centrans $12 million; and
3. Sun King would release Enron/EDC and its affiliates from any and all obligations to make monthly payments that accrue on or after August 1, 1995.

On January 9, 1996, Enron International Inc. (domestic brother-sister to EDC) (Enron/EII) sold its 50 percent interest in the outstanding stock of Enron/PQPC (reacquired from King Ranch Power) to Centrans for $16 million cash and a promissory note for $7,220,508.[78] The promissory note reflected that $16 million in cash was all that could be raised by January 9, 1996.[79]

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72 Wire Transfer Request, Enron Global Power & Pipeline L.L.C. , to Centrans Internacional, S.A. (Aug. 22, 1995) (EC2 000034600-EC2 000034602, Exhibit 37) [hereinafter Wire Transfer]. *See also*; Form 10-K, *supra* note 69.

73 Telephone Interview with James Alexander, (October 17, 2002) (Former Senior Vice President and Chief Financial Officer of Enron Power & Pipeline L.L.C.) [hereinafter Alexander Interview].

74 Alexander Interview, *supra* note 73; *See also* Loren Steffy & Adam Levy, *Enron's Original Sin*, BLOOMBERG, April 2002, at 34.

75 Rojas Interview, *supra* note 22.

76 Termination and Release Agreement, Enron Development Corp., Sun King Trading Company, Inc., and Centrans Internacional, S.A. (Aug. 20, 1995) (EC2 000034382-EC2 000034386, Exhibit 38).

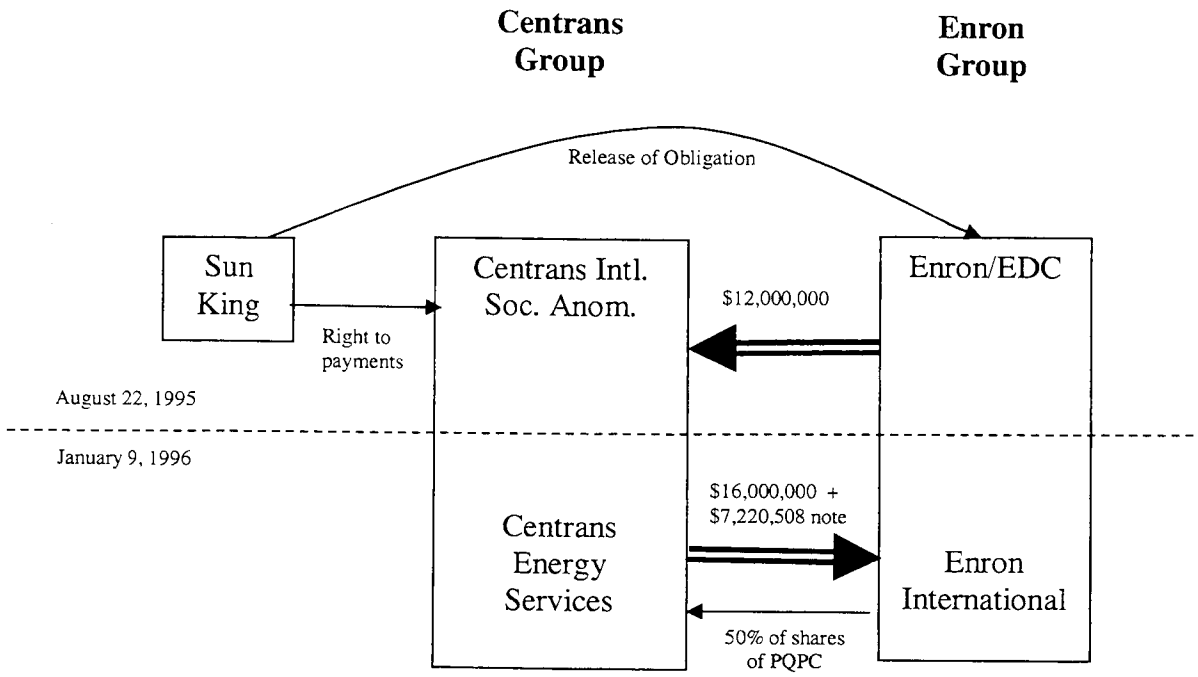
77 Wire Transfer, *supra* note 72. *See also* Arrondo Interview, *supra* note 62; Rojas Interview, *supra* note 22; Interview with David Haug, Prinicipal, The Haug Group, in Houston, Tex. (July 18, 2002) (Mr. Haug was the Managing Director, Enron Development Corporation.) [hereinafter Haug Interview] (Neither Mr. Arrondo nor Mr. Haug could recall how the $12 million figure was derived, or provide any details regarding how resolution progressed from Sun King's 1993 $30 million initial asking price.).

78 Stock Sale Agreement, Enron International Inc. and Centrans Energy Services, Inc. (Jan. 9, 1996) (Exhibit 39). *See also* Presentation of the: Centrans Group, Provided to the Overseas Private Investment Corporation (not dated) (Exhibit 40 is on file with the Senate Finance Committee) (Centrans Energy Services. Inc. was profiled as a Centrans group affiliate and the Centrans Group was noted as playing a vital role in the installation of the Enron/PQPC power project.).

79 Rojas Interview, *supra* note 22 (Following Diego Rojas's employment with King Ranch Power he was hired by Henri Preuss (the owner of Centrans and one of the Sun King owners) to negotiate the purchase of the 50 percent equity interest in Enron/PQPC. Mr. Rojas believed that the purchase price was a good deal for Centrans (i.e., 50 percent of Enron/PQPC's book value). Mr. Rojas was unaware of the source of the $16 million.).

The Sun King termination payment and the subsequent purchase of a 50 percent equity interest in Enron/PQPC by Centrans Energy Services resulted in the following corporate relationship:

The Enron/Centrans Corporate Relationship



Thus, the buy-out of the obligation to Sun King appears to have been orchestrated through a series of transactions involving Enron subsidiaries, interconnected corporations via common owners, and the use of public partnership monies. Enron went to great lengths, using numerous entities, to disguise the periodic payments made to Sun King and the buy-out payments made to Sun King in order to characterize the payments as a corporate tax deduction.

II. Lack of Coordination Among U.S. Federal Agencies

The U.S. agencies charged with enforcing non-tax criminal laws (the Department of Justice and the Securities and Exchange Commission) apparently failed to act on the non-tax criminal referral made by the Internal Revenue Service (IRS).

Under the Foreign Corrupt Practices Act (FCPA), it is illegal for a U.S. company to pay foreign officials for the purpose of obtaining or keeping business. It is also illegal to make payments to a third party, while knowing that all or a portion of the payment will go directly or indirectly to a foreign official. U.S. companies are expected to exercise due diligence and take precautions in developing business relationships to avoid being held liable for corrupt third-party payments.[80]

The Department of Justice (DOJ) is responsible for enforcement of these provisions of FCPA. The Securities and Exchange Commission (SEC) plays a coordinating role, enforcing other provisions that require companies to keep accurate records and to maintain accounting systems that assure management's control over assets and taking certain actions against individuals or firms charged or convicted of FCPA violations.

Internal Revenue Service Actions

The IRS is an organization with 100,000 employees worldwide. If a taxpayer is under IRS audit, he typically deals with a Revenue Agent from the IRS Examination division. If the taxpayer disputes the decision of the Revenue Agent, the taxpayer may file a petition with the U.S. Tax Court or ask for the IRS Appeals division to review the case. The IRS Criminal Investigation Division (CID) investigates violations of the tax laws.

The size and complexity of the IRS organization and mission may have contributed to the apparent delay in investigating Enron's questionable payments to Sun King. Specifically, Enron/PQPC's classification of the payments to Sun King occurred four years before the IRS investigation and referral to the DOJ and SEC.

On March 31, 1995, the Houston, Texas division of the IRS CID interviewed a confidential informant, who provided four Enron memoranda.[81] Houston CID forwarded their findings to the Houston Examination division on December 12, 1995.[82] The following timeline tracks IRS actions regarding the audit of Enron's questionable payments to Sun King:

June 17, 1997	Examination team leader evaluates the informant's information
July 8, 1998	Enron/PQPC's 1996 tax return is pulled from "unopened" inventory

80 U.S. DEP'T OF JUSTICE, FOREIGN CORRUPT PRACTICES ACT ANTI-BRIBERY PROVISIONS (Mar. 15, 2002), at http://www.usdoj.gov/criminal/fraud/fcpa/dojdocb.htm; *See also* Michael V. Seitzinger, Congressional Research Service, American Law Division, *Foreign Corrupt Practices Act*, RL30079 (Mar. 3, 1999) (This report includes the history and analysis of the 1977 Foreign Corrupt Practices Act (FCPA) and the 1988 amendments to FCPA.).

81 Gerald A. Richards, International Examiner, Internal Revenue Service (September 23, 2002) [hereinafter IRS Timeline].

82 IRS Timeline, *supra* note 81.

July 16, 1998	International Examiner interviews informant
July 30, 1998	Tentative decision to open 1995 Enron/PQPC tax return for separate audit
August 10, 1998	Decision to delay opening; consent given to develop facts as an issue surrounding the Enron Corp. 1995 and 1996 tax returns but not as a separate audit, thus limiting the type of information requested.
March 16, 1999	Request to Houston District Disclosure Office to make referrals to DOJ and SEC regarding potential violation of FCPA
March 16, 1999	Houston District Counsel authorizes further development of issues
May 5, 1999	Notice of Proposed Adjustments presented to Enron Corp.[83]
May 1999	IRS makes referrals to DOJ and SEC

On examination of Enron's tax returns, the IRS identified the transactions related to Sun King and Centrans as questionable with respect to their tax treatment. The IRS disallowed the $333,000 and $800,000 amortization expenses (under IRC section 197) that Enron claimed in 1995 and 1996 for the $12 million payment to Centrans.[84] The IRS also disallowed the deduction of the $1,534,539 as cost of goods sold (under IRC section 162) in 1995 (the monthly payments of 6 percent from Enron/PQPC for eventual payment to Sun King), arguing that the expense was not an ordinary and necessary business expense.[85] The IRS also argued, and Enron agreed, that the $192,681 short-term capital loss claimed on the 1996 sale of Enron/PQPC to Centrans was a $1,827,828 short-term capital gain.[86]

On November 12, 1999, Enron's counsel, Vinson & Elkins, filed a petition with the United States Tax Court for 1995 and 1996 tax deficiencies determined by the IRS for Enron/PQPC in the amounts of $375,368 and $160,000, respectively.[87] On December 21, 1999, the IRS's Houston District Examination Division responded in writing to Enron's Tax Court Petition.[88] The IRS's Houston District Counsel referred the case docket to the IRS's Houston District Appeals division. The Appeals division decided not to pursue the deficiencies. In light of the fact that Appeals determined the IRS could not use the four memoranda from Enron in court, thus presenting "insurmountable hazards in pursing" the IRS's basis for its deficiency assessment.[89] No further attempt to address the $800,000 annual amortization expense into 1997 and subsequent tax periods are indicated.

83 IRS Timeline, *supra* note 81.

84 Tax Court Petition, *supra* note 7. In general, the purchase price allocated to intangible assets acquired in connection with the acquisition of a trade or business must be capitalized and amortized over a 15-year period under Internal Revenue Code section 197.

85 Tax Court Petition, *supra* note 7.

86 IRS Notice of Proposed Adjustment, *supra* note 9.

87 Tax Court Petition, *supra* note 7.

88 Memorandum from Gerald A. Richards, International Examiner, Internal Revenue Service, to Bill Bissell, Houston District Counsel, Internal Revenue Service (Dec. 21, 1999) (Exhibit 41).

89 Appeals Memo and Case Memo, *supra* note 18; *See also* Internal Revenue Service, Case Decision Data, IRS Appeals, Schedule of Adjustments 10 (Oct. 10, 2000) (Exhibit 42); Puerto Quetzal Power Corp. v. Commissioner, Docket No. 17311-99 (Nov. 11, 1999) (Exhibit 43) (On September 28, 2000, the U.S. Tax Court ordered and decided no deficiencies or overpayment based on an agreement of the parties.).

Internal Revenue Service Referral Procedures

In May 1999, the IRS referred its concerns about potential violations of FCPA to the DOJ[90] and the SEC[91] as provided in section 6103 of the Internal Revenue Code (IRC). The IRS specifically requested further communication in the referral letter, stating:

> In order for us to properly assess the usefulness of the information we are providing, we would appreciate knowing the final disposition of any action taken as a result of this referral. Our need for feedback on matters such as this is not diminished or affected by the passage of time. [92]

Both agencies promptly acknowledged the referral,[93] but it does not appear that either agency took any further action. Perhaps this inaction is exacerbated by Section 6103, the provision in the IRC that protects taxpayer confidentiality. Specifically, Section 6103 requires additional steps in the information gathering process to ensure taxpayer privacy protection.

Prior to 1976, tax returns were considered public records, subject to disclosure by executive order. In 1976, following the actions of the Nixon White House, IRC section 6103 was amended in the Tax Reform Act of 1976[94] to protect tax returns and tax return information from misuse. [95]

> Section 6103 embodies the policy that returns are confidential, and provides that returns and return information may not be disclosed by the IRS, other Federal employees, State employees, and certain others having access to the information except as provided in section 6103. Section 6103 also contains a number of exceptions to this general rule of nondisclosure which authorize disclosure in particular circumstances. Section 6103 imposes recordkeeping and safeguard requirements to protect the confidentiality of returns and return information. Criminal and civil sanctions apply under the Code to the unauthorized disclosure or inspection of returns and return information.[96]

There are exceptions to the general rules of nondisclosure. One exception permits disclosure of returns and return information to officers and employees of Federal agencies for the administration of Federal non-tax criminal laws subject to the restrictions imposed by section 6103(i)(1) through (i)(7). Section 6103(i)(3)(A) permits the IRS to disclose in writing, return information (other than taxpayer return information) which may constitute evidence of a

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90 Letter from Paul Cordova, District Director, Department of Treasury, Internal Revenue Service, to The Honorable Janet Reno, Attorney General (May 21, 1999) (Exhibit 44) [hereinafter IRS Letter to DOJ].

91 Letter from Paul Cordova, District Director, Department of Treasury, Internal Revenue Service, to The Honorable Arthur Levitt, Chairman, Securities and Exchange Commission (undated) (Exhibit 45) [hereinafter IRS Letter to SEC].

92 *See* IRS Letter to DOJ, *supra* note 90; IRS Letter to SEC., *supra* note 91.

93 *See* Letter from Peter Clark, Deputy Chief, Fraud Section, United States Department of Justice, to Paul Cordova, District Director, Internal Revenue Service (undated but stamped received by the IRS June 29, 1999) (Exhibit 44); Letter from Kevin J. Horn, Attorney, Division of Enforcement, United States Securities and Exchange Commission, to Paul Cordova, District Director, Internal Revenue Service (June 9, 1999) (Exhibit 45).

94 Pub. L. No. 94-455 (1976).

95 JOINT COMMITTEE ON TAXATION, STUDY OF PRESENT-LAW TAXPAYER CONFIDENTIALITY AND DISCLOSURE PROVISIONS AS REQUIRED BY SECTION 3802 OF THE INTERNAL REVENUE SERVICE RESTRUCTURING AND REFORM ACT OF 1998, VOLUME I: STUDY OF GENERAL DISCLOSURE PROVISIONS, 3-4 (Jan. 28, 2000) [hereinafter JOINT COMMITTEE 6103 STUDY].

96 JOINT COMMITTEE 6103 STUDY, *supra* note 95, at 3-4.

violation of a Federal non-tax criminal statute to the extent necessary to apprise the head of the appropriate Federal agency charged with enforcement responsibility.

Based on the above provisions, the IRS established specific procedures and guidelines for referrals to other Federal agencies. The IRS procedure in effect when the Enron referral was made to DOJ and the SEC was set forth in Order No. 156 (Rev. 15) Chief Counsel Directives Manual (30)30 and Internal Revenue Manual Handbook 1.3.28.7 Service Initiated Disclosures of Return Information Concerning Nontax Criminal Violations.

Conversely, if a Federal agency seeks information from the IRS, section 6103(i)(1) authorizes disclosure of return or return information. The Federal agency must be enforcing a non-tax criminal law and must obtain an ex parte court order. The Attorney General, Deputy Attorney General, Assistant Attorney Generals, any U.S. attorney, Independent Counsels, or an attorney in charge of an organized crime strike force may authorize an application to a Federal district court judge or magistrate for such an order. The judge or magistrate may grant the order if he determines on the basis of the facts submitted in the application that:

(1) there is reasonable cause to believe, based upon information believed to be reliable, that a specific criminal act has been committed;
(2) there is reasonable cause to believe that the return or return information is or may be relevant to a matter relating to the commission of such act; and
(3) the return or return information is sought exclusively for use in a Federal criminal investigation or proceeding concerning such act, and the information sought cannot be reasonably obtained, under the circumstances, from another source.[97]

Thus, in order for agencies to obtain additional information from the IRS, they must comply with section 6103 (i)(1), and obtain court approval. Disclosures under section 6103(i)(1) included the following:[98]

Federal Agency	**Number of Disclosures in 2000**	**Number of Disclosures in 2001**
U.S. Attorneys	39,760	1,313
Drug Enforcement Agency	767	668
Federal Bureau of Investigation	2,845	2,300
Other	4,175	2,140
Total	**47,547**	**6,421**

97 IRC section 6103(i)(1)(B).

98 Internal Revenue Service, Disclosure Report for Public Inspection for Calendar Year 2000 and 2001.

Additionally, as a condition for receiving returns and return information under section 6103(i), recipients (e.g., referral agencies) are required, among other things:

> [to] restrict, to the satisfaction of the Secretary [of the Treasury], access to returns and return information only to persons whose duties and responsibilities require access and to whom disclosure may be made under the provisions of this title [Title 26].

Finally, IRC section 6103(b)(8) defines disclosure as the "making known" of a return or return information. Therefore, when tax returns and tax information originate with the IRS, there is no "disclosure" (within the meaning of IRC section 6103(b)(8)), in returning information to the IRS. Thus, it is within the law for an agency receiving information from the IRS to discuss such information with IRS personnel.

Department of Justice Procedures For Handling Referrals from the IRS

The DOJ does not have procedures or timelines for handling criminal referrals from the IRS or any other agency.[99] Nonetheless, the DOJ's Criminal Resource Manual 1015 provides that:

> Allegations of criminal violations of the Foreign Corrupt Practices Act (FCPA) are generally investigated by the Federal Bureau of Investigation (FBI), under the supervision of the Fraud Section of the Criminal Division. Investigations of allegations of civil violations of the record keeping and antibribery provisions by issuers may be investigated by the United States Securities and Exchange Commission (SEC). These civil investigations may result in a criminal referral to the Criminal Division.
>
> It is important to realize that although the FBI is the primary investigative agency authorized to conduct investigations of FCPA allegations and is required by its internal regulations to bring any allegation of a violation of the FCPA to the Criminal Division, FCPA allegations may arise in a number of contexts, including agency audits, such as those conducted by the Department of Defense and the inspectors general of other agencies. When such allegations are brought to the attention of any Department of Justice attorney, including Assistant U.S. Attorneys, they must immediately be referred to the Fraud Section of the Criminal Division.[100]

Securities and Exchange Commission Procedures For Handling Referrals from the IRS

While the SEC does have the authority to "investigate past, ongoing, or prospective violations of the Federal securities laws, SEC rules or regulations, and self-regulatory organizations,"[101] the SEC could not provide any procedure for handling IRS referrals.

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99 Telephone Interview with Faith Burton, Special Counsel, Office of Legislative Affairs, Department of Justice (Sept. 12, 2002).

100 U.S. Department of Justice, Criminal Resource Manual, at http://www.usdoj.gov:80/usao/eousa/foia_reading_room/usam/title9/crm01015.htm.

101 Securities and Exchange Commission, Enforcement Training Program I (2001) *reprinted within* William McLucas et al., *A Practitioner's Guide to the SEC's Investigative and Enforcement Process*, 70 TEMP. L. REV. 53 (1997) [hereinafter SEC Enforcement, Law Review].

The staff of the SEC Enforcement Division conducts SEC investigations. At the beginning of an investigation, they will:

- Obtain information about the individuals or entities connected with the investigation from public and internal sources including: public filings, such as registration statements, annual and quarterly reports and Forms 3, 4, and 5; SEC and national stock exchange computer surveillance systems; news stories; Who's Who; Standard & Poor's; and the Internet
- Gather and analyze relevant facts
- Analyze applicable legal theories
- Develop a plan of investigation[102]

The SEC conducts financial fraud and financial statement investigations. "These investigations focus on frauds accomplished through the use of false financial information and the failure to disclose material facts relating to a public company's financial condition."[103] The investigation generally includes gathering the independent public accountants' relevant workpapers, and the company's relevant documents. Additionally, investigators subpoena documents from banks, creditors, customers, and others with a business relationship with the issuer. After analysis of such documents, the staff takes testimony from appropriate personnel of the issuer and the independent public accountants.[104]

The law contemplates communication between the SEC and the DOJ. Federal securities laws allow parallel proceedings for both civil and criminal enforcement. In practice, SEC investigations and proceedings occur simultaneously with DOJ or other Federal and State agency enforcement activity.[105]

Possible Explanations for Apparent Failure to Act

The Department of Justice and the Securities and Exchange Commission apparently failed to act on the IRS referral and failed to reply to the IRS's request for information regarding the final disposition of the referral. The DOJ and the SEC may not have investigated the IRS referrals because of: (1) a lack of specified procedure and (2) a possible lack of understanding of IRC section 6103. As previously stated, section 6103 enables an agency responding to an IRS referral to gather more information from the IRS, with minimal obstacle, while still protecting taxpayer privacy.

102 SEC Enforcement, Law Review, *supra* note 101, at 62.

103 SEC Enforcement, Law Review, *supra* note 101, at 64.

104 SEC Enforcement, Law Review, *supra* note 101, at 65.

105 SEC Enforcement, Law Review, *supra* note 101, at 100.

III. Multilateral Financing and Insurance

Enron used World Bank funds and funds from U.S. taxpayer supported agencies and lending organizations to finance the Guatemalan power project as well as the questionable payments to Sun King. The World Bank and the U.S. Department of Transportation Maritime Administration provided financing and the Overseas Private Investment Corporation (OPIC) provided political risk insurance.

World Bank

The World Bank, formally known as the World Bank Group, is one of the world's largest sources of development assistance. The World Bank is comprised of five institutions and each institution plays a role in the overall organization's mission to fight poverty and improve living standards for the people in the developing world. In Fiscal Year 2002, the World Bank provided $19.5 billion in loans to its client countries and worked in more than 100 developing economies.[106]

Enron received financing through one of the five World Bank institutions. The World Bank, through its International Finance Corporation (IFC), provided approximately $761 million in financing for Enron's overseas operations.[107] In March 1993, IFC approved $71 million to finance the Guatemala Project.[108]

U.S. Department of Transportation, Maritime Administration

The Federal Ship Financing Program (Title XI of the Merchant Marine Act of 1936) provides for a full faith and credit guarantee by the U.S. Government of debt obligations issued by (1) U.S. citizen shipowners for the purpose of financing or refinancing U.S. flag vessels constructed or reconstructed in U.S. shipyards; (2) non-U.S. citizen shipowners for the purpose of financing or refinancing foreign flag vessels constructed or reconstructed in U.S. shipyards; or (3) U.S. shipyards for the modernization and improvement of their facilities.[109]

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106 World Bank Group, http://www.worldbank.org (2002).

107 Enron's Pawns, *supra* note 4, at 15.

108 IFC Investment Agreement, *supra* note 5.

109 MARAD Letter, *supra* note 6.

The Maritime Administration (MARAD) approved $198 million in financing for four separate Enron affiliates, including $98 million for the Guatemala Project as follows:[110]

Project	Financing	Date	Comment
Puerto Quetzal Power Corporation	Approved $25 million	May 16, 1994	• Joint venture with King Ranch Oil and Gas, Inc. • Enron chose not to close the transaction and used alternative financing
Smith/Enron Cogeneration Limited Partnership	Approved $50 million Outstanding $27.2 million	Dec. 22, 1995	• Total cost of project $204.3 million • Co-financed with World Bank (International Finance Corporation), Commonwealth Development Corporation, and DEG-Deutsche Investitions-Und-Entwicklunggesellschaft mbH
Empresa Energetica Corinto, Ltd	Approved $50 million Outstanding $41.34 million	Dec. 28, 1998	• Joint venture between a wholly owned subsidiary of Enron and the Centrans Group
Puerto Quetzal Power LLC	Approved $73 million Outstanding $66.7 million	Sept. 21, 2000	• Financed the construction of one barge mounted power plant operating off the coast of Guatemala and two additional power barges and onshore facilities • Co-financed with OPIC providing $50 million

Overseas Private Investment Corporation

The mission of the Overseas Private Investment Corporation (OPIC) is to facilitate the investment of private capital from the United States to emerging markets (less developed countries/areas and countries in transition from non-market to market economies).[111]

110 MARAD Letter, *supra* note 6.

111 22 U.S.C. § 2191.

OPIC accomplishes this mission by selling political risk insurance and providing long-term financing to U.S. businesses investing in over 140 developing countries.[112] Although OPIC is an agency of the U.S. Government, it operates on a self-sustaining basis from fees paid on its insurance products and premiums received on its financing products, with no net cost to the U.S. taxpayer. Excess collections are maintained as reserves, which are composed entirely of non-tax dollars.[113]

OPIC political risk insurance provides coverage against three hazards: inconvertibility, expropriation, and political violence. In the event OPIC makes a claim payment, the payment comes from OPIC reserves. Once OPIC makes a payment to an insured, it makes every effort to secure reimbursement from the foreign government in question. Historically, OPIC has recovered 94 percent of claims settled.[114]

Enron, as with any insured, would have had to demonstrate that it was entitled to compensation in the amount claimed. While Enron purchased more than one insurance contract, OPIC had limited its loss exposure to less than the sum of all of these contracts. Enron's insurance contracts were subject to an overall stop loss agreement, which reduced the aggregate amount OPIC could be required to pay on the ten[115] Enron contracts to $204 million, an amount that is less than the sum of the individual contract amounts.[116]

With respect to OPIC financing, it is important to recognize that OPIC loans are generally made to a project company located in a developing country, with loan repayments coming from the revenues of that company rather than from the sponsors. Thus, project sponsors such as Enron are *not* OPIC borrowers and OPIC is *not* ordinarily a creditor of a project sponsor. Nevertheless, as of September 30, 2001, Enron was the largest OPIC project sponsor, with $464 million in outstanding loan balances guaranteed by OPIC.[117]

OPIC's programs are backed by the full faith and credit of the U.S. Government. As such, mechanisms are in place that would allow OPIC to get funding from the U.S. Treasury should OPIC reserves be inadequate to pay claims (section 235(d) of the Foreign Assistance Act).[118] OPIC has never had to call on the U.S. Treasury to cover a loss. With $4.5 billion in reserves to cover any future losses OPIC may incur in its insurance or financing programs, and with its history of recovery on insurance claims, according to OPIC president, "it is unlikely OPIC will ever have to."[119]

Federal law authorizes criminal penalties for fraud with respect to OPIC.[120] As such, anyone who knowingly makes any false statement or report . . . for the purpose of influencing in any

112 Letter from Peter S. Watson, President and Chief Executive Officer, Overseas Private Investment Corporation, to The Honorable Charles E. Grassley, Ranking Member of the Senate Committee on Finance 1 (March 15, 2002) (Exhibit 46) [hereinafter OPIC Letter (March)] (Currently, OPIC has reserves of $4.5 billion.).

113 OPIC Letter (March), *supra* note 112, at 1.

114 OPIC Letter (March), *supra* note 112, at 4.

115 OPIC Letter (Feb.), *supra* note 4, at Appendix 2B.

116 OPIC Letter (March), *supra* note 112, at 4.

117 OPIC Letter (March), *supra* note 112, at 8.

118 OPIC Letter (March), *supra* note 112, at 5.

119 OPIC Letter (March), *supra* note 112, at 6.

120 22 U.S.C. § 2197(n).

way the action of OPIC with respect to any insurance, reinsurance, guarantee, loan, equity investment, or other activity of the Corporation is subject to the penalty.[121]

Under 18 U.S.C. § 1001, criminal liability may flow from knowingly and willfully falsifying, concealing, or covering up by any trick, scheme, or device a material fact; making any materially false, fictitious or fraudulent statement or representation; or making or using any false writing or document, knowing that it contains a materially false, fictitious, or fraudulent statement or entry.[122]

Political Risk Representations Made by Enron

In its 1992 preliminary information memorandum provided to potential creditors and investors, Enron represented the electricity market in Guatemala as one in which demand for electricity was relatively unaffected by price increases. Enron also represented that the political environment was one in which government policy is "designed to limit inflation, encourage foreign investment, and privatize public sector companies in a manner that does not cause major de-stabilization." Enron stated that Empresa's "financial data, as audited by Arthur Anderson & Co., reflects strong leadership and responsible decision-making"[123] and described Empresa's history and relationship to INDE (the government agency that owned 91.7 percent of Empresa).[124] The memoranda, however, do not mention the severe criticisms of INDE by a blue ribbon commission on privatization established by Guatemalan President Jorge Serrano.[125]

In contrast to this rosy description, the Guatemalan political environment was deteriorating rapidly and the price of electricity was a very important factor. In August 1991, in preparation for privatization, President Serrano wanted to reduce government subsidies for electricity, and raised electricity prices by 47 percent. In July 1992, President Serrano's blue-ribbon commission drafted a bill to reform and restructure INDE. The bill restructured INDE's Board of Directors and gave the Board, instead of President Serrano, the authority to name the President of INDE. The legislature passed the bill, but President Serrano vetoed it. Instead, Serrano instituted his own privatization plan by executive decree.[126]

Enron's Representations to OPIC Regarding Questionable Payments.

In 1992, Enron applied for political risk insurance from OPIC. In a preliminary information memorandum, Enron valued the cost of the 6 percent Sun King obligation at more than $63 million over the 15-year life of the contract in the Guatemala Project. Those payments

121 Maximum penalties include a fine of not more than $1 million, or imprisonment for not more than 30 years, or both. *See* Memorandum Congressional Research Service, Elizabeth B. Bazan, Legislative Attorney American Law Division, to Senate Finance Committee (April 22, 2002) (Exhibit 47) [hereinafter CRS Penalties Memo].

122 Maximum penalties include a fine under 18 U.S.C. § 3571 or imprisonment for not more than 5 years, or both. *See* CRS Penalties Memo, *supra* note 121.

123 Enron Memo to OPIC, *supra* note 15, at 46-50.

124 DICTATING DEMOCRACY, *supra* note 10, at 98.

125 Enron Memo to OPIC, *supra* note 15.

126 DICTATING DEMOCRACY, *supra* note 10, at 99. (As noted *supra* note 43, President Serrano's appointee in that position, Alfonso Rodriguez Anker, who also served as the Chairman and CEO of Empresa, was the subject of congressional investigations.)

constituted 46.45 percent of the estimated Project cash flow.[127]

Based on the same Enron Project projected financial statements, the value of the original Texas-Ohio Power (TOP) agreement with Sun King (16 percent of capacity payments and 21 percent of energy payments) was estimated to be worth over $200 million. Thus, the percentage of Project revenues TOP committed to Sun King did not allow the Guatemala Project to achieve an economic rate of return.[128] As a result, the renegotiated 6 percent Sun King commitment allowed the Guatemala Project to achieve a rate of return acceptable to Enron, to the World Bank, and to the Guatemala Project creditors.[129]

In 1992, in its preliminary information memorandum,[130] Enron described Sun King, under the section for "Royalty Participants," as the originators of the Guatemala Project, and as:

> [A] small group of Guatemalan businessmen representing sugar, coffee and shipping interests, attempting to enhance Guatemala's economic growth prospects by solving its acute power shortages. This group ("Sun King"), together with a local electro-mechanical engineering firm, located Texas-Ohio Power . . . and assisted them in negotiations with EEGSA [Enron/Empresa], Puerto Quetzal, and with engineering and financial entities.[131]

The payments from TOP to Sun King were described as:

> [A] monthly royalty payment in lieu of an equity interest in the Project in return for [Sun King's] role in developing the Project, negotiating the PPA with EEGSA [Empresa], and ongoing assistance with permitting and port arrangements. Sun King originated, and, helped persuade convinced [sic] the Guatemalan government and EEGSA [Empresa] of the role and viability of privatized power in Guatemala, and provided initial development capital and services to TOP.[132]

The preliminary information memorandum further stated that TOP had assigned the 6 percent royalty to Sun King, and "Sun King has continued to play an instrumental advisory role to Enron, particularly with respect to permitting and port relations."[133]

Thus, Enron benefited from taxpayer support and multilateral organization support to extend its international reach, including the Guatemalan power project with its questionable payments.

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127 Enron Memo to OPIC Cash Flow, *supra* note 17; *See also* Enron Memo to OPIC, *supra* note 15.

128 Haug Interview, *supra* note 77.

129 Enron Memo to OPIC, *supra* note 15, at 81.

130 Enron Memo to OPIC, *supra* note 15, at 81.

131 Enron Memo to OPIC, *supra* note 15, at 81.

132 Enron Memo to OPIC, *supra* note 15, at 81.

133 Enron Memo to OPIC, *supra* note 15, at 51; *See also* Overseas Private Investment Corporation, Questions for Enron Power Development Corp.'s Richard A. Lammers 1, question 4 (June 9, 1992) (Exhibit 48) (OPIC submitted questions for response by Richard A. Lammer's of Enron Power Development Corp. OPIC asked about Sun King and the 6 percent payments, specifically whether it was 6 percent of net or gross returns. In response, "6% of gross" was circled.); OPIC Questions to Lammers, at 2, question 13 (A hand-written response also included the following statements: "They are local Guatemalans with a stake in the Project. Still acceptable returns." and "in contract before it was purchased." Calculations based on the information provided to OPIC show that the 6 percent payments, shown as "Guatemalan share of revenue.").

IV. Compensation Through Bonuses and Stock Options Based on Financing

Bonuses and stock options were awarded when project financing was obtained, rather than upon successful completion of a project.

One of the motivating factors overlaying Enron's foreign project development was the incentives (bonuses) awarded to its developers (employees and officers) for project successes. Enron's definition of project success may account for why Enron developers negotiated with an in-country group such as Sun King and dealt later with problems resulting from such sponsorship.[134]

Enron/EDC adopted the Enron Development Corp. Project Participation Plan (the Plan).[135] The stated purpose of the Plan was:

> [T]o provide a means whereby certain selected Employees . . . may develop a sense of proprietorship and personal involvement in the development and financial success of Enron Development Corp. (the "Company"), to attract and retain Employees of outstanding competence and ability, to encourage them to devote their best efforts to the business of the Company, and to reward them for outstanding performance benefiting the Company and its stockholders.[136]

The "Plan Payment Date" refers to four potential payment dates:

(1) the date upon which the construction of, improvements to, or refurbishment of such Project is complete ("construction date");
(2) the closing of permanent limited recourse financing ("financial closure date");
(3) the date that is six months after the commencement of commercial operations ("operation commencement date"); or
(4) the date upon which occurs a transfer resulting, directly or indirectly, a decrease in Enron's aggregate direct or indirect ownership interest in such Project or assets ("transfer date").[137]

Thus, success for the Guatemala Project was met by obtaining the $71 million project funding from the International Finance Corporation (a division of World Bank).[138]

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134 Interview Rodney L. Gray, Consultant, in Houston, Tex. (September 17, 2002) (Mr. Gray was formerly the Vice President and Treasurer, Enron Corporation, and Chairman and Chief Executive Officer of Enron International) (Mr. Gray stated that he was not in favor of Enron International, Inc. awarding its developer bonuses at project (limited recourse) financial closure. Instead, he felt the bonuses should have some link to the eventual commercial success of a given project.).

135 Enron Development Corp. Project Participation Plan (effective Jan. 1, 1993 to Dec. 31, 1995) (EC 001936341-EC 001936371, Exhibit 49) [hereinafter Enron/EDC 1993 Participation Plan] (Effective January 1, 1996, the Plan was amended and restated, extending the term of the Plan until December 31, 2000..

136 Enron/EDC 1993 Participation Plan, *supra* note 135, at 1 (EC 001936347).

137 Enron/EDC 1993 Participation Plan, *supra* note 135, at 2-6 (EC 001936350 through EC 001936352).

138 Investment Agreement, Puerto Quetzal Power Corp. and International Finance Corporation (March 31, 1993) (EC2 000036651 – EC2 000036700) [hereinafter IFC Loan]; *See also* Form 10K, *supra* note 69.

"Incentive Compensation" was payable under the Plan and, once awarded, the form of payment could be either cash, shares of common stock or a combination thereof.[139] "Fixed Participation Interests" awards applied to each project arising during the period an Award Agreement was in effect.[140] Recipients received these awards based on their supervisory role over Enron/EDC projects.[141] In contrast, "Specific Participation Interests" awards applied to one or more specific projects.[142]

Enron was unable to locate documentation for compensation, bonuses, and stock option awards for the Guatemala Project. However, an example of awards at Plan Payment Dates for Enron power project successes in Italy and Puerto Rico are summarized in the following table.[143]

Project Name	Project Value	Project Value	Pool	Comments
Sarlux (Italy)	$105.7 million	$246.8 million	$20 mil. (10% of NPV capped at $20 mil.)	• Plan Payouts capped at $20 million • Payouts total $14.5 million for developers; $5.5 million paid at financial close to other staff
EcoElectrica (Puerto Rico)	$231.7			• First Milestone Financial Closure Jan. 1998 • Developers with fixed interests paid $5,116,387 (does not include developer awarded a 1.5% interest); developers with variable interests paid $5,108,874
EcoElectrica (Puerto Rico)		$268.3 million		• Second milestone payment approved for Feb. 2001 • Developers with fixed interests paid $4,272,923; developers with variable interests paid $7,661,160
Note: Participants can elect to (1) receive payment, in the form of cash and options, based on the current project net Project value, or (2) receive payments based on NPV at the time the project has been in operation for six months, or (3) upon a transfer date.				

Enron's compensation for specific projects focused on the attainment of financing rather than developing and completing a successful project. Thus, through cash and stock option bonuses, Enron executives received compensation at the beginning of a project, regardless of the success or failure of the project.

139 Enron/EDC 1993 Participation Plan, *supra* note 135, at 10 and 13 (EC 001936356 and EC 001936359).

140 Enron/EDC 1993 Participation Plan, *supra* note 135, at 8 (EC 001936354).

141 Interview of Rebecca P. Mark, in Houston, TX (Oct. 4, 2002).

142 Enron/EDC 1993 Participation Plan, *supra* note 135, at 8-9 (EC 001936354 - EC 001936355).

143 Compensation and Management Development Committee Meeting, Enron Corp. (August 9, 1999) (EC000101088; EC000102380; EC000102381; EC2000032349, on file with Senate Finance Committee).

MAX BAUCUS, MONTANA, CHAIRMAN

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TOM DASCHLE, SOUTH DAKOTA
JOHN BREAUX, LOUISIANA
KENT CONRAD, NORTH DAKOTA
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JOHN ANGELL, STAFF DIRECTOR
KOLAN DAVIS, REPUBLICAN STAFF DIRECTOR AND CHIEF COUNSEL

United States Senate

COMMITTEE ON FINANCE

WASHINGTON, DC 20510–6200

February 15, 2002

Lindy L. Paull, Esq.
Chief of Staff
Joint Committee on Taxation
1015 Longworth House Office Building
Washington, DC 20515

Dear Ms. Paull

Recent press reports have raised troubling questions about Enron Corp. and related entities' ("Enron") compliance with the Federal income tax laws, including the use of entities in tax haven countries, other special purpose entities, and questionable tax shelter arrangements. According to some press reports, Enron may have used such arrangements to improperly avoid paying corporate income taxes.

We are also concerned by reports that thousands of Enron employees have suffered pension losses in recent months while corporate insiders appear to have reaped substantial profit during that same period. Qualified pension plans and many other compensation arrangements receive considerable tax benefits and are otherwise facilitated by the Federal tax laws. Recent reports about Enron raise concerns that the objectives behind these tax law provisions are not being fulfilled.

Accordingly, pursuant to Internal Revenue Code section 8022, we direct the staff of the Joint Committee on Taxation to undertake a review of Enron's Federal tax returns, tax information, and any other relevant information as you deem necessary, from 1985 to the present to assist us in evaluating if the Federal tax laws facilitated any of the events or transactions that preceded Enron's bankruptcy. The review should examine the adequacy of present tax law, particularly in the areas of tax shelters and offshore entities. It should also include a review of the compensation arrangements of Enron employees, including tax-qualified retirement plans, nonqualified deferred compensation arrangements, and other arrangements, and an analysis of th factors that may have contributed to any loss of benefits and the extent to which losses were experienced by different categories of employees.

We ask that you transmit your findings, and recommendations for reform, to the Senate Committee on Finance as soon as practicable. We also request that you keep the Committee updated on the progress on your study and advise us on any problems you may have in securin timely access to the information needed to perform this review.

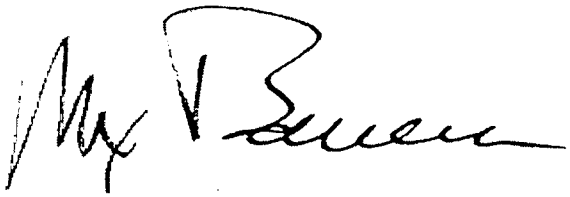
Senate Finance Committee

APPENDIX A

We want to thank you and your staff for undertaking this important review and look forward to receiving your report.

Sincerely yours,

Charles E. Grassley
Ranking Member



Max Baucus
Chairman

DISCLOSURE AGREEMENT

Whereas, by letter dated February 15, 2002, the Senate Committee on Finance ("the Finance Committee") has directed the Chief of Staff of the Joint Committee on Taxation ("the Joint Committee") to assist the Finance Committee by conducting a review of the tax returns and related information and employee benefit and compensation programs of Enron Corp. ("Enron") and related entities; and

Whereas, the goal of this review is to conduct an orderly, efficient, professional examination of the activities and transactions related to Enron's tax returns and employee benefit and compensation programs in order to inform the Finance Committee, the Senate, and the public of tax policy and administration issues arising out of Enron's circumstances that may lead to recommendations for reform of the federal tax and pension laws; and

Whereas, to further the goal of this review, the Finance Committee has requested that Enron provide to the Finance Committee and the Joint Committee written consent to the public disclosure of its tax return and return information; and

Whereas, Enron has advised the Finance Committee that it wishes to cooperate fully with this review, while at the same time assuring respect for its legitimate interests in taxpayer confidentiality; and

Whereas, the Finance Committee and the Joint Committee share an understanding of the significant benefit that the principle of taxpayer confidentiality contributes to furthering values of proper tax administration:

It is, accordingly, hereby agreed by and among the Finance Committee, the Joint Committee, and Enron as follows:

1. Enron agrees to provide to the Finance Committee and the Joint Committee, promptly and upon request from the Chairman of the Finance Committee or from the Joint Committee, respectively, copies of all federal income tax returns and related information of Enron and affiliated or related entities that are not included in Enron's consolidated tax returns, and that are within Enron's possession, custody, or control, for all years from 1985 through 2001, except for any documents for which Enron elects to assert any applicable privilege or legal objection, any assertion of which shall be accompanied by a document-by-document index sufficiently detailed to enable the Finance Committee and/or the Joint Committee to evaluate Enron's assertion. Enron further agrees to use its reasonable efforts to provide any tax return or related information not in its possession, custody or control related to affiliated or related entities. Enron may also submit to the

Senate Finance Committee

APPENDIX B

Finance Committee or the Joint Committee, in the course of the review described in this agreement, any additional information that Enron believes will be helpful to either Committee.

2. The Finance Committee and the Joint Committee agree to seek tax returns and return information for years after 1995 in the first instance from the Secretary of the Treasury pursuant to 26 U.S.C. § 6103(f) and to request such information from Enron pursuant to paragraph one of this agreement only to the extent either Committee is unable to obtain this information expeditiously from the Secretary of the Treasury.

3. Enron consents to the disclosure by the Finance Committee or the Joint Committee of tax returns and return information, obtained by either Committee from the Secretary of the Treasury pursuant to 26 U.S.C. § 6103, through official reports, meetings, or hearings of either Committee, provided that, with respect to tax returns and return information for years after 1995, Enron consents to such public disclosure no earlier than June 10, 2002, in accordance with the executed consent waiver attached hereto. Enron further agrees to use its reasonable efforts to obtain similar consent waivers from its affiliated or related entities that are not included in Enron's consolidated federal tax returns.

4. The Finance Committee and the Joint Committee agree that they will not publicly disclose nonpublic documents or information obtained pursuant to paragraphs one and two of this agreement, except through official reports, meetings, or hearings of either Committee, as either Committee deems appropriate to fulfill the goal of the review described above in this agreement, and that neither Committee will publicly disclose any such information that would be return information if it were in the possession of the Internal Revenue Service, for years after 1995 earlier than June 10, 2002.

5. The Finance Committee or the Joint Committee may inform Enron, in the course of the review described in this agreement, about the topics of the review and their priorities, to the extent the Committees believe it will be helpful to Enron's ability to respond expeditiously to the Committees' requests for information and in order to relieve unnecessary burden on Enron in complying with the Committees' requests for information.

In witness whereof, each of the parties hereto has caused this agreement to be executed effective as of this 7th day of March, 2002:

Senator Max Baucus
Chairman
Senate Committee on Finance
Dated: March 7, 2002

Raymond M. Bowen, Jr.
Executive Vice President &
Chief Financial Officer
Enron Corp.
Dated: March 6, 2002

Senator Charles E. Grassley
Ranking Member
Senate Committee on Finance
Dated: March 7, 2002

Lindy L. Paull
Chief of Staff
Joint Committee on Taxation
Dated: March 7, 2002

CONSENT TO DISCLOSURE OF TAX INFORMATION

Pursuant to 26 U.S.C. § 6103, I hereby authorize the Internal Revenue Service, the Senate Committee on Finance, and the Chief of Staff of the Joint Committee on Taxation to disclose the returns and return information, as those terms are defined in 26 U.S.C. § 6103(b), of Enron Corp., as common parent of all the members of the affiliated group with which it files a consolidated income tax return for the tax years below, in the course of the official business of the Senate Committee on Finance and the Joint Committee on Taxation regarding the events and transactions preceding and surrounding the bankruptcy of Enron Corp., to be limited to disclosures in official reports, hearings, and meetings of either the Senate Committee on Finance or the Joint Committee on Taxation, and, with respect to the returns and return information for years after 1995, such disclosure may be made no earlier than June 10, 2002. I realize that these disclosures may be made during the course of public proceedings and that any report may be made publicly available.

Except to the extent disclosure is authorized herein, the returns and return information of the taxpayer named below are confidential and are protected by law under the Internal Revenue Code.

I certify that I have authority to execute this consent to disclose on behalf of the taxpayer named below.

Name of Taxpayer:	Enron Corp.
Employer Identification Number:	47-0255140
Address of Taxpayer:	1400 Smith Street Houston, Texas 77002
Type of Matters:	Income tax, employment tax, excise tax, and qualified and nonqualified employee benefit plans and trusts and any other compensation plans, agreements, trusts or other arrangements whether or not deferred
Tax Years:	1985 through 2001
Name and Title of Individual Executing Consent:	Raymond M. Bowen, Jr. Executive Vice President & Chief Financial Officer
Signature:	Raymond M. Bowen, Jr.
Date:	March 6, 2002

Individuals Interviewed or Questioned

Senate Finance Committee investigators interviewed the following individuals connected with the Enron/Puerto Quetzal Power Corporation (Enron/PQPC) Guatemalan power project:

- James Alexander, Telephone Interview (October 17, 2002) (Former Senior Vice President and Chief Financial Officer of Enron Power & Pipeline L.L.C.)
- Raul E. Arrondo, President, Grove Energy Systems, L.L.C., in Miami, Fla. (August 6, 2002).
- William A. Coy, Engineer, in Manassas, Va. (July 24, 2002) (Former developer of Enron Power Development Corporation).
- Jeffrey A. Dease, in Houston, Tex. (Oct. 4, 2002) (Former Manager of Internal Audit Enron Power Corp. and Director of Internal Control/Business Risk Manager of Enron International).
- Rodney L. Gray, Consultant, in Houston, Tex. (September 17, 2002) (Former Vice President and Treasurer, Enron Corporation, and Chairman and Chief Executive Officer of Enron International).
- David Haug, Principal, The Haug Group, in Houston, Tex. (July 18, 2002) (Former Managing Director, Enron Development Corporation).
- Richard A. Lammers, President, Global Energy Advisors, in Houston, Tex. (August 8, 2002) (Former Treasurer of Puerto Quetzal Power Corp.).
- Jude Patrick LaStrapes, in Winnebago, Wis. (July 17, 2002) (Former President of Texas-Ohio Power).
- Rebecca Mark, in Houston, Tex. (Oct. 4, 2002) (Former President of Enron Power Development Corp.).
- David H. Odorizzi, Executive Vice President and Chief Financial Officer, EnLink Geoenergy, in Houston, Tex. (August 8, 2002) (Former Chief Financial Officer of Enron Power Corp. and President of International Business Ventures, a division of Enron International).
- Diego C. Rojas, in Houston, Tex. (August 7, 2002) (Former Manager of Acquisitions, King Ranch Inc.).

- James Steele, President and CEO, TM Power Ventures L.L.C., in The Woodlands, Tex. (July 18, 2002) (Former principal/developer of Enron Power Development Corporation).

- Ronald Teitelbaum, Retired, in Houston, Tex. (September 17, 2002) (Former Tax Manager, Enron Corporation)

- Carl Waldo, Retired, in Houston, Tex. (August 7, 2002) (Former Manager of Foreign Operations (Finance & Accounting), Enron Power Corp.; Former Manager of Debt Compliance and Administration, Enron International, Inc.; and Former Manager of International Project Risk Management, Enron International, Inc.)

- Letter from Thomas E. White to The Honorable Max Baucus and The Honorable Charles E. Grassley (Oct. 8, 2002).

THOMAS E. WHITE
3030 K STREET, #215
WASHINGTON, DC 20007

October 8, 2002

Honorable Max Baucus
Chairman
Senate Committee on Finance
United States Senate
SD-219 Dirksen Senate Office Building
Washington, DC 20510-6200

Honorable Charles E. Grassley
Ranking Member
Senate Committee on Finance
United States Senate
SD-219 Dirksen Senate Office Building
Washington, DC 20510-6200

Dear Chairman Baucus and Senator Grassley:

This letter will respond to your letter of September 23, 2002.

1-2. The Puerto Quetzal Power Project was initiated in the early 1990s by Enron Power Development Corporation, which was a subsidiary of Enron Power Corporation. I was Chief Executive Officer of Enron Power Corporation from approximately August 1991 to July 1993. During the same period, Rebecca Mark ran Enron Power Development Corp. and reported to me.

In approximately July 1993, Enron was reorganized and I became Chairman and CEO of Enron Operations Corporation. Rebecca Mark became Vice Chairman of Enron International. From that time forward, Enron International had responsibility for the commercial operations of the Puerto Quetzal Project, and my division was responsible for the day-to-day running of the plant, particularly including its engineering functions and mechanical issues.

3. Between August 1991 and the summer of 1993, Rebecca Mark reported to me; I reported to Rich Kinder (who was then the Chief Operating Officer of Enron); Mr. Kinder in turn reported to Kenneth Lay, the Chief Executive Officer of the corporation. Mr. Kinder, Mr. Lay and the Enron Board of Directors also would have approved the capital commitment for the Guatemala Project.

Senate Finance Committee

EXHIBIT 1

4-5. As indicated above, other than my involvement with mechanical/engineering issues relating to the Guatemala Project, my involvement in the project ended in the summer of 1993. I do not presently recall any specific meetings or specific written guidance I received regarding the contract for the project or related issues. As you know, I left Enron in the spring of 2001 and I do not possess, nor do I have access to, any materials relating to this project, which might help to refresh my recollection. At the time, of course, I would have been briefed on the project including the contents of the contract by Rebecca Mark, and I would in turn have briefed Mr. Kinder.

Respectfully,

Thomas E. White

ENRON
Power Development Corp.

Richard A. Lammers
Vice President

Direct Dial:
(713) 646-6530
FAX (713) 646-6565

INFORMATION LETTER

February 23, 1993

INTERNATIONAL FINANCE CORPORATION
1818 H Street, N.W.
Washington, D.C. 20433

Gentlemen:

For the purpose of your consideration of our application for an investment comprising:

(i) Loans totalling **$71.00** Million US Dollars consisting of **$13.4** million in IFC "A" Loans, **$51.00** million in IFC "B" Loans and $6.6 million in IFC Subordinated "C" Loans.

in Puerto Quetzal Power Corp. (the "Company") to assist in financing the project described in paragraph 3 below (the "Project"), the following information is provided:

1. The Company is a corporation duly organized and existing under the laws of the state of Delaware, United States, and has full powers to own the properties and to carry out business which it proposes to own and carry on for the purpose of the Project and to borrow and provide security for any borrowing. Two copies of the company's Articles of Incorporation and all documents evidencing the registration of the Guatemalan branch of the Company are attached as Annex 1.

2. The capital of the Company as proposed for the purpose of the Project is expected to be as follows:

Item	Present	Proposed
Loan Capital Debt	0	$71,000,000
Share Capital		
– Authorized	$10,000	$10,000
– Subscribed	$1,000	$1,000
– Paid-up		$20,999,000

Attached (Annex 2) is a list of the present and proposed shareholders and share holdings of the company.

333 Clay Street Suite 1800 Houston, Texas 77002 (713) 646-6100

Part of the Enron Group of Energy Companies

EC2 000036644

Senate Finance Committee

EXHIBIT 2

3. The Project, which is more fully described in the attached Information Memorandum (Annex 3), consists of the construction and operation of two 55 megawatt fuel oil-fired barge mounted power generating plants (hereinafter referred to as the Project) located in Puerto Quetzal, Guatemala. The Project is expected to provide annually 870 gigawatt-hours of energy. The Project began commercial operation on February 18, 1993.

4. The Company has applied for and received the following tax holidays and concessions:

   a. An exemption on all major fuel import taxes.
   b. Temporary duty-free importation of power generating sets
   c. Temporary duty-free importation of spare parts

   A copy of the fuel import tax approval is included as Appendix E to Annex 3.

Cost increases resulting from any changes in these exemptions would be passed through to Empresa Electrica de Guatemala, Sociedad Anonima ("EEGSA").

5. The Company will have no subsidiary company *i.e.*, any company over fifty percent (50%) of whose capital will be owned, directly or indirectly, by the Company or which will be effectively controlled by the Company other than two single purpose subsidiaries, Comelectric, S. A. and Electricidad del Pacifico, S. A., established for additional foreign exchange flexibility.

6. The Company is not a party to, or committed to enter into, any material contract (*i.e.*, a contract other than in the ordinary course of business, which might affect the judgement of a prospective lender) other than:

   (i) The Contract, dated January 13, 1992, between Texas-Ohio Power, Inc. and EEGSA which was assigned to Enron Power Development Corp. on March 12, 1992 and further assigned to the Company on November 13, 1992. Appendix A of Annex 3.

   (ii) Operation and Maintenance Agreement dated as of November 13, 1992 between Electricidad Enron de Guatemala, S.A. and the Company (Annex 4).

   (iii) Fuel Agreement, dated October 27, 1992, between Texaco International Trader Inc. and the Company.

(iv) Turnkey Contract dated April 10, 1992, entered into between Wärtsilä Diesel, Inc. ("Wärtsilä"), and Enron Power Corp. (the "Construction Contract") (Annex 6).

(v) Port Lease Contract, dated December 3, 1992, between Electricidad Enron de Guatemala, Sociedad Anonima and Empresa Portuaria Quetzal to lease certain property located at the Puerto Quetzal port facilities. (Annex 7).

(vi) Fuel Oil Term Sheet, dated October 16, 1992, entered into between Enron Power Corp. and Enron Products Marketing company, which was assigned to the Company on November 13, 1992. (Annex 8).

7. The Company does not have any outstanding mortgage, or lien on its property, except for liens created pursuant to the Construction Contract. The Company proposes that the IFC loans be secured by a first preferred mortgage.

8. All tax returns and reports of the Company required by law to be filed have been duly filed and all taxes, fees, and other governmental charges upon the Company or its properties, income, or assets which are due and payable have been paid.

9. There is no action, suit or proceeding by or before any governmental or regulatory authority, court, arbitral tribunal or other body now pending (or, to the actual knowledge of the Company, threatened) against the Company which could reasonably be expected to materially and adversely affect the business, financial condition or results of operations of the Company. To its knowledge, the Company is not in violation of any statute or regulation of any governmental authority and no judgment or order has been issued which has or is likely to have a material adverse effect on the Company's business, financial condition, or results of operations.

10. The Company has good and unencumbered title to or rights to use all of the properties at which its business is carried on or is proposed to be carried on for the purposes of the Project except for the rights of Wärtsilä under the Construction Contract.

11. The Company has the right to all concessions, trade names, patents, and license agreements necessary for the conduct of its business as now conducted and as proposed to be conducted without any known conflict of the rights of others.

12. No person, firm or company or other entity (other than as a shareholder) has any right to participate in the profits of the Company, other than: Enron Power Development Corp.

13. The Directors and Officers of the Company are as follows:

Directors	Officers	
James V. Derrick, Jr.	Thomas E. White	Chairman & CEO
Lincoln Jones, III	Lincoln Jones, III	President & COO
Thomas E. White	James V. Derrick, Jr.	Sr. VP, Law & Asst. Secretary
	Lawrence E. Reynolds	Sr. VP, Chief Engineer
	Richard A. Lammers	Vice President, Administration
	Rodney L. Gray	Vice President and Treasurer
	DeWayne W. Roberts	Vice President, Operations
	David W. Shields	VP, Chief Financial Officer

14. Procurement of significant goods and services for the Project will be from the following sources:

- Wärtsilä Diesel, Inc., Chestertown, Maryland (part of Wärtsilä Group of Finland) under Construction Contract
- McDermott
- Texaco International Trader Inc.
- Enron Products Marketing Company
- Electricidad Enron de Guatemala, S.A.

15. Copies of the most recent audited financial statements of Enron Corp. are attached as Annex 10.

16. Since the date of its incorporation, the Company has not suffered any material adverse change in its business or financial condition or incurred any substantial or unusual loss or liability.

In making any loan to the Company, you may have reliance upon the above information which has been approved by the Board of Directors of the Company.

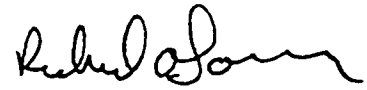
We have no knowledge of any additional material facts or matters which would reasonably be expected to materially adversely affect the judgement of a prospective lender.

The documents which are annexed to this letter are true and correct copies of the documents which they purport to be and the statements set out therein are all true and correct.

We understand that, in accordance with the expressed intention of the IFC to interest private participants in its investments, all or any of the information which we have supplied to you, or which we may supply to you in the future, may be given on a confidential basis to prospective participants.

The Company shall undertake to send IFC (i) within ninety (90) days after the end of each quarter of each fiscal year, copies of the Company's financial statements together with a report on the progress of the Project and on factors, if any, materially adversely affecting, or likely to materially adversely affect, the Company's business or financial condition; and (ii) as soon as available, but in any case, within one hundred twenty (120) days after the end of each fiscal year, two copies of its audited accounts for such year in form satisfactory to IFC; and shall also undertake promptly to inform the IFC of any event or condition which is likely to materially and adversely affect the carrying out of the Project or the carrying on of the Company's business.

Yours truly,



Richard A. Lammers
Vice President

RAL:gg

Attachments

ENRON
Development Corp.

March 30, 1993

International Finance Corporation
1818 H Street, N.W.
Washington, D.C. 20433

Re: Modification of Information Letter

Gentlemen:

The following information is provided to modify and supplement our Information Letter sent to you dated February 23, 1993.

1. Under Paragraph 6 of the Information Letter, the Company is not a party to the following agreements: item (iii), the Fuel Agreement, dated October 27, 1992, executed by Texaco International Trader, Inc. and Enron Power Corp. (the "Texaco Fuel Contract"), item (v) the Port Lease Contract, dated December 3, 1992, between Electricidad Enron de Guatemala, S. A. ("the Operator") and Empresa Portuaria Quetzal to lease certain property located at the Puerto Quetzal port facilities; and item (vi), the Fuel Oil Term Sheet, dated October 16, 1992, between Enron Power Corp. and Enron Products Marketing Company (the "Enron Fuel Contract"). The Operator has assumed the obligation to supply fuel to the Project on substantially similar terms and conditions as those included in the Texaco Fuel Contract and the Enron Fuel Contract pursuant to Amendament No. 1 dated March 31, 1993, to the Operation and Maintenance agreement between the Operator and Puerto Quetzal Power Corp. dated November 13, 1992. The Port Lease Contract will be pledged to the International Finance Corporation ("IFC") directly by the Operator.

2. Under Paragraph 12 of the Information Letter, Enron Development Corp. (formerly Enron Power Development Corp.) expects to sell 50 percent of its interest in the Company to King Ranch Power Corp., a Delaware corporation.

3. Under Paragraph 14 of the Information Letter, the Company will procure significant goods and services for the Project from Wärtsilä Diesel, Inc., Electricidad Enron de Guatemala, S.A., and other subsidiaries of Enron Power Corp.

333 Clay Street Suite 1800 Houston, Texas 77002 (713) 646-6100

Part of the Enron Group of Energy Companies

4. Under Paragraph 5 of the Information Letter, Enron Development Corp. hereby notifies the IFC that two single purpose subsidiaries of the Company, Comelectric, S.A. and Electricidad del Pacifico, S.A., and perhaps other subsidiaries of Enron Power Corp., will from time to time be used to engage in foreign exchange and other financial transactions through currency exchange procedures in Guatemala established by the Ministry of Finance or the Bank of Guatemala. The Company does not expect these transactions to exceed in any year the sum of annual revenues and capital expenditures for the project and in each case would be without additional liability or recourse to the Company.

Please do not hesitate to call if you have any questions regarding the foregoing.

Yours truly,

Richard A. Lammers
Vice President-Finance

OVERSEAS PRIVATE INVESTMENT CORPORATION

WASHINGTON, D.C. 20527, USA

OFFICE OF THE
PRESIDENT

February 19, 2002

The Honorable Max Baucus
Chairman
Committee on Finance
United States Senate
Washington, D.C. 20510

The Honorable Charles E. Grassley
Ranking Member
Committee on Finance
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman and Senator Grassley:

We are in receipt of your letter of January 31, 2002, requesting documents and background materials on projects approved by the Overseas Private Investment Corporation (OPIC) involving the Enron Corporation. At the outset, please be assured we will be pleased to work with you and your staffs to provide access to the items needed for your inquiry.

Our staffs had a very productive meeting on February 11, and have held subsequent telephone conversations to discuss your request and coordinate necessary arrangements. The meeting was held with Patrick Heck and Dean Zerbe of the Committee staff and OPIC's representatives were led by Christopher Coughlin, Vice President for External Affairs, and Mark Garfinkel, Vice President and General Counsel. As indicated at that meeting, because of the potential volume of documents and the fact that a substantial amount of the material requested may include business confidential items, it was agreed OPIC would provide an overview of the active Enron-related projects and additional documents would be made available for review at OPIC's offices. Throughout this process, we would have frequent and open communications to be certain the Committee's requirements are fulfilled.

As you know, OPIC is a self-sustaining federal agency that provides political risk insurance and loans to help U.S. businesses of all sizes invest and compete in 140 emerging markets and developing nations worldwide. By charging user-fees, OPIC, a U.S. government agency, operates at no net cost to U.S. taxpayers. OPIC has earned a net profit in each year of operations -- $215 million in FY 2001 - and its reserves currently stand at more than $4 billion. Over the agency's 30-year history, OPIC has supported $138 billion worth of

Senate Finance Committee

EXHIBIT 3

1100 NEW YORK AVE. N. W. W

2) 408-5133 (202) 336-8401

investments that have helped developing countries to generate over $10 billion in host-government revenues and create nearly 668,000 host-country jobs. OPIC projects have also generated $64 billion in U.S. exports and created nearly 250,000 American jobs.

Since 1971, OPIC has accomplished its mission by supporting more than 3,000 projects throughout the developing world. Cumulatively, these projects have supported over one-half million host country jobs and have contributed to the host country tax base and infrastructure.

As of September 30, 2001, OPIC is managing a portfolio of 133 active finance projects and 253 active insurance contracts. OPIC products support developmental investments in locations that range from Algeria to Zimbabwe. OPIC plays an important role in regions that are strategically important to the United States. In addition to on-going activities in support of private investment in regions such as Africa, the Newly Independent States, Central America, and the Balkans. OPIC is also working extensively to provide investment support in Pakistan, Afghanistan, Indonesia, and other strategic countries desperately in need of the development benefits of private investment.

In regard to projects supported by OPIC involving the Enron Corporation, OPIC is currently supporting 10 international projects with Enron involvement in Argentina, Colombia, Gaza, Guatemala, India, Philippines, Turkey and Venezuela.

In reviewing the information provided below, it is important to note the enclosed opinion of OPIC's Vice President and General Counsel (Appendix 1) stating that "...when providing finance support, OPIC lends only to the independent project company, not the shareholders or sponsors of the project company. These project companies are separate legal entities organized outside the United States (generally in the project country). OPIC looks solely to the operating cash flows of the project companies for repayment of its credits. Thus, OPIC has no credit exposure directly to Enron itself or to any of the other Enron entities that have filed for U.S. bankruptcy protection. OPIC's exposure is solely to foreign project companies of which Enron is a shareholder/partial shareholder, not to Enron itself. On the insurance side, OPIC's exposure to Enron financial risk is limited to Enron's ability to continue to pay its political risk insurance premiums. OPIC's insurance exposure represents its potential liability to Enron in the event the conditions for payment of a political risk insurance claim should be realized. However, OPIC's exposure in this regard is limited to only a portion of the total amount of insurance coverage."

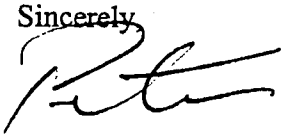
I attach charts showing, respectively, OPIC's current political risk insurance and finance projects with Enron involvement. (See Appendix 2.) Ten projects with Enron involvement are being supported with political risk insurance with a combined maximum coverage of $204 million which were approved under OPIC's normal project approval process. (See Appendix 3 for a description of the approval process for political risk and finance projects.)

OPIC political risk insurance does not include commercial risk and is payable only for valid claims based on inconvertibility, expropriation or political violence related to international events which are beyond the control of the investor. OPIC's historical recovery rate of total claims settled is 94 percent.

In addition, OPIC is supporting finance projects in which Enron is a shareholder. As indicated above, because of the nature of OPIC's support to project companies, OPIC is not a direct creditor of Enron. The projects are structured as limited-recourse project financings, the borrower in each case is the project company, rather than Enron. As such, OPIC's Enron-sponsored borrower entities are not directly affected by the U.S. Enron-related proceedings. OPIC has financing outstanding to five projects involving Enron as a shareholder. OPIC entered into commitments for these five projects during FY1993-FY2000. Several of the projects are co-sponsored by other, credit-worthy sponsors. One of these projects is expected to complete repayment of its OPIC financing in 2003.

I trust this information is responsive and helpful. Please be assured OPIC will work with the Committee to meet your legislative responsibilities. If I can be of assistance at any time, please do not hesitate to call on me.

Sincerely,



Peter S. Watson
President and
Chief Executive Officer

cc: Patrick G. Heck
Dean A. Zerbe

Appendix
1. OPIC Legal Opinion on relationship between OPIC and Enron and projects having Enron shareholding
2. List of OPIC active projects having Enron shareholding
3. Overview of OPIC Approval Process for Finance and Insurance Projects

APPENDIX 1

1100 New York Avenue, N.W.
Washington, D.C. 20527-0001
(202) 336-8400
FAX (202) 408-9859

February 19, 2002

Patrick G. Heck
Democratic Tax Counsel
U.S. Senate Committee on Finance
254 Dirksen Building
Washington, DC 20510

Dean A. Zerbe
Chief Investigative Counsel
Republican Staff
U.S. Senate Committee on Finance
254 Dirksen Building
Washington, DC 20510

Re: Legal aspects of relationship between OPIC and Enron and Enron-related projects.

Gentlemen:

This opinion clarifies certain issues pertaining to the information provided by OPIC to the Senate Finance Committee pursuant to its January 31, 2002, request for information regarding OPIC's support provided to Enron-related projects. Please note that when providing finance support, OPIC lends only to the independent project company, not the shareholders or sponsors of the project company. These project companies are separate legal entities organized outside the United States (generally in the project country). OPIC looks solely to the operating cash flows of the project companies for repayment of its credits. Thus, OPIC has no credit exposure directly to Enron itself or to any of the other Enron entities that have filed for U.S. bankruptcy protection. OPIC's exposure is to foreign project companies of which Enron is a sponsor, not to Enron itself. On the insurance side, OPIC's exposure to Enron financial risk is limited to Enron's ability to continue to pay its political risk insurance premiums. OPIC's insurance exposure represents its potential liability to Enron in the event the conditions for payment of a political risk insurance claim should be realized. However, OPIC's exposure in this regard is limited to only a portion of the total amount of insurance coverage.

Sincerely,

Mark Gaffinkel
VP and General Counsel

Overseas Private Investment Corporation

Active Finance Projects with Enron Equity Involvement - as of 2/1/02

Note: In reviewing the information provided below, it is important to note the opinion of OPIC's VP and General Counsel stating that "...when providing finance support, OPIC lends only to the independent project company, not the shareholders or sponsors of the project company. These project companies are separate legal entities organized outside the United States (generally in the project country). OPIC looks solely to the operating cash flows of the project companies for repayment of its credits. Thus, OPIC has no credit exposure directly to Enron itself or to any of the other Enron entities that have filed for U.S. bankruptcy protection. OPIC's exposure is solely to foreign project companies of which Enron is a shareholder/partial shareholder, not to Enron itself. On the insurance side, OPIC's exposure to Enron financial risk is limited to Enron's ability to continue to pay its political risk insurance premiums. OPIC's insurance exposure represents its potential liability to Enron in the event the conditions for payment of a political risk insurance claim should be realized. However, OPIC's exposure in this regard is limited to only a portion of the total amount of insurance coverage."

Year Project Approved	Country	Project Name/Foreign Enterprise	Project Description	Sector	Total Current Project Loan Outstanding
FY1993	PHILIPPINES	Batangas Power Corporation	Establishment of a diesel-fired generator power plant	Energy - Power	
FY1994 + FY1998	INDIA	Dabhol Power Corp	Power plant	Energy - Power	
FY1994	TURKEY	Trakya Elektrik Uretim ve Ticaret A.S.	Power project	Energy - Power	
FY1998	VENEZUELA	Accroven SRL	Gas processing facility	Energy - Oil and Gas	
FY2000	GUATEMALA	Puerto Quetzal Power LLC	Power generation	Energy - Power	
					$453,690,377

Overseas Private Investment Corporation

Active Political Risk Insurance Projects with Enron Equity Involvement - as of 2/1/02

Note: In reviewing the information provided below, it is important to note the opinion of OPIC's VP and General Counsel stating that "...when providing finance support, OPIC lends only to the independent project company, not the shareholders or sponsors of the project company. These project companies are separate legal entities organized outside the United States (generally in the project country). OPIC looks solely to the operating cash flows of the project companies for repayment of its credits. Thus, OPIC has no credit exposure directly to Enron itself or to any of the other Enron entities that have filed for U.S. bankruptcy protection. OPIC's exposure is solely to foreign project companies of which Enron is a shareholder/partial shareholder, not to Enron itself. On the insurance side, OPIC's exposure to Enron financial risk is limited to Enron's ability to continue to pay its political risk insurance premiums. OPIC's insurance exposure represents its potential liability to Enron in the event the conditions for payment of a political risk insurance claim should be realized. However, OPIC's exposure in this regard is limited to only a portion of the total amount of insurance coverage."

Year Project Approved	Country	US Sponsor/Insured Investor	Project Name/Foreign Enterprise	Project Description	Sector	TOTAL CURRENT EXPOSURE
FY1992	GUATEMALA	Enron Power Corp.	Puerto Quetzal Power Corp.	Electric services	Energy - Power	
FY1993	PHILIPPINES	Enron Power Corp.	Batangas Power Corporation	Establishment of a diesel-fired generator power plant	Energy - Power	
FY1993	ARGENTINA	Enron Corp.	Enron Pipeline Company-Argentina, S.A.	Gas pipeline/compressor stations	Energy - Oil and Gas	
FY1994	INDIA	Enron Corp.	Dabhol Power Corp	Electric services	Energy - Power	
FY1994	COLOMBIA	Enron Corp.	Transportadora de Gas de la Region Central	Natural gas pipeline	Energy - Oil and Gas	
FY1995	TURKEY	Enron Corp.	Trakya Elektrik Uretim ve Ticaret A.S.	Electric services	Energy - Power	
FY1996	INDIA	Enron Oil & Gas India Ltd.	(no foreign enterprise)	Oil & gas	Energy - Oil and Gas	
FY1998	VENEZUELA	Enron Corp.	Accroven SRL	Natural gas liquids	Energy - Oil and Gas	
FY1998	PHILIPPINES	Enron Corp.	Subic Power Corp.	Electric services	Energy - Power	
FY1999	GAZA	Enron Corp.	Gaza Power Generating Private Limited Company	Power plant	Energy - Power	
						$204,135,072

APPENDIX 3

OPIC Approval Process for Finance and Insurance Projects

Background

OPIC is a U.S. government agency. Its mission is to mobilize and facilitate investment of U.S. private capital in the economic development of developing countries. OPIC accomplishes its mission through the following activities: insuring investments overseas against a broad range of political risks (the political risk insurance program), financing businesses overseas through direct loans and loan guaranties (the finance program), and financing private investment funds[1] that provide equity to businesses overseas. OPIC's programs are open in 140 countries. The predominate type of financing provided by OPIC's finance program is limited recourse project financing, which means that OPIC is looking to the project for repayment and the recourse to the equity investor is limited.

The Finance Program Approval Process[2]

A. The sponsor(s) of a project (the project equity investor(s)) or the prospective borrower submits an application for financing to OPIC. The U.S. project equity investor is considered to be the U.S. sponsor of the project. Financial statements of the sponsor(s) are required to be provided with the application. If the sponsor is a public corporation, audited financial statements for the most recent three years and the most recent 10K and 10Q are required to be provided with the application.

B. The U.S. sponsor must complete a sponsor disclosure report providing information regarding the background of the sponsor. Information included on the sponsor disclosure report includes the personal credit history of significant shareholders, officers and directors as well as whether the sponsor or any affiliate is in default of any payment obligation to the U.S. Government or is debarred, suspended or voluntarily excluded from procurement or non-procurement dealings with the U.S. Government.

C. Upon receipt of an application, a preliminary review is undertaken by OPIC's Office of Investment Policy and the project team for indications that the project will meet OPIC's statutory guidelines, including no negative U.S., environmental, worker or human rights effects and OPIC's need to be self-sustaining. The project team generally consists of a Finance Department manager, an investment officer and a project attorney.

D. Assuming no negative indications, the project is brought forward to a screening meeting. A screening memorandum is prepared outlining the key issues. The Vice President for Finance, the Director of Credit Policy, the Associate General Counsel for Finance, members of the Office of Investment Policy and the project team review the screening memorandum to determine if the project warrants further consideration.

---

[1] The investment funds department does not have any Enron projects.

[2] The procedure described below applies to loans over a certain size. All loans to Enron-sponsored projects are over this size.

E. If the screening committee determines that the project warrants further consideration, a retainer letter is sent to the customer. The retainer letter outlines OPIC's process and criteria, including the requirement for payment of a retainer fee.

F. The project team undertakes due diligence in order to assess whether the project meets OPIC's credit underwriting criteria. OPIC's underwriting requirements are outlined in the Finance Department's underwriting guidelines. The credit underwriting process primarily includes an assessment of (1) the financial structure of the transaction, (2) the ability of all project participants to perform their respective obligations, and (3) the transaction's key risks and mitigants. This assessment is completed by reviewing and analyzing the project documents, the project participants' financial statements, public information on the project participants including filings with the Securities Exchange Commission, analyst reports, and rating agency reports. In addition, periodical searches and credit checks, including, Internal Revenue Service, trade, supplier and bank checks, are done, and the project team contacts other government agencies, including the U.S. embassy in the host country.

G. The financial statements for the key project participants are spread and analyzed. Financial statement analysis includes historical and projected income statement, balance sheet, cashflow, ratio and trend analysis, financial flexibility and wherewithal analysis, review of other liabilities including terms and covenants thereof, and, review of auditor's opinions.

H. The financial model of the project is analyzed and sensitivity analyses are prepared. The overall risks and potential mitigants of providing financing to the project are examined. To assist with risk identification and mitigation, consultants with special expertise are sometimes engaged to analyze the technical aspects of the project and also to perform work in verifying and determining the adequacy of assumptions with respect to financial modeling, project economics, insurance (availability and adequacy), contractual soundness and adequacy, and management and project participants' operating capabilities. Site visits conducted by the project teams and OPIC's Office of Investment Policy include meetings with key project participants, host government officials, local counsel and U.S. embassy personnel. While much of the credit due diligence is done before the meeting of the credit committee, the credit evaluation process continues until disbursement.

I. When the project team has completed sufficient due diligence, the Finance Department convenes a credit committee to determine if the project meets credit underwriting and other requirements. A credit committee due diligence package is prepared summarizing the key project information. The members of the credit committee include the Vice President for Finance, the Director of Credit Policy, the Associate General Counsel for Finance, the Director of Project Management, two

Finance managers, and members of the Office of Investment Policy[3]. The project teams are in attendance.

J If the project passes the credit committee, it goes to the Investment Committee. The Investment Committee is comprised of the following voting members: the President and CEO, the Executive Vice President and COO, the Vice Presidents for finance, insurance, and investment policy, the Vice President for Investment Funds; the General Counsel and the Director of Credit Policy are in attendance but do not vote. During the meeting, the Director of Credit Policy is required to present an independent view of the credit risks. The project team makes an oral presentation at the Investment Committee.

K. All projects in excess of $30 million require board approval[4].

L The Board is presented with a paper that outlines the project, its risks and their mitigants, and the policy issues including developmental considerations. The project team gives an oral presentation and answers questions from members of the Board. The Board's focus is on policy aspects of the transaction.

M. Once the Board approves the project, a commitment letter is negotiated with the sponsor(s) and/or a finance or loan agreement is negotiated with the borrower. The commitment letter is normally between the sponsor(s), the project company and OPIC. The commitment letter sets forth the broad terms under which OPIC is willing to provide financing. The finance agreement is between OPIC and the borrower and sets forth the terms of the financing, representations and warranties of the borrower, conditions to disbursement, covenants, events of defaults and collateral. If sponsor financial support for the project is required, that requirement will also be included in the finance agreement.

N. The terms of the sponsor financial support for the project, if any, are set forth in a project completion agreement or a sponsor support agreement. Such support is normally capped and is usually of a limited duration. These agreements may impose financial and reporting requirements on the sponsor(s).

O. Before any disbursement may be made, conditions precedent set forth in the loan agreement must be satisfied or waived. These conditions include execution and delivery of promissory notes and security documents (including project completion or sponsor support agreements, if any), consents of governmental authorities and other third parties, legal opinions, and Borrower's officers' certificates that the representations and warranties are true and correct in all material respects and that no default or event of default has occurred and is continuing.

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[3] Since 1985, the year that Enron was formed, the OPIC approval process has evolved. The credit approval has always rested with the Finance Department. There were periods when voting members also included representatives from the Investment Development and Investment Funds Departments.

[4] The dollar criteria for submission to the board may have changed over the years.

NOTE:

Effect of filing under Chapter 11 of the Bankruptcy Code by Shareholders of Projects Financed by OPIC

OPIC is not a creditor of shareholders/sponsors of projects financed by OPIC. For example, OPIC is not a creditor of Enron Corporation ("Enron"), which, directly or through intermediate entities, is a shareholder in five active OPIC finance projects. Nonetheless, projects in which Enron is a direct or indirect shareholder are often incorrectly portrayed as Enron credit exposure. Because OPIC is not a creditor of the shareholders of project companies that borrow from OPIC, the bankruptcy of a project company shareholder (or its parent) does not generally have a significant effect on the project itself.

In the case of Enron, the OPIC financings to projects in which Enron is a direct or indirect shareholder are structured as limited recourse project finance transactions that depend on the successful operations of the special purpose project company for repayment of the OPIC debt, not on the financial performance of Enron. These special purpose project companies to which OPIC lent funds are all entities located outside the United States. None of these entities are included in Enron's bankruptcy filing.

Four of the five active Enron-related projects that are financed by OPIC are completely built and operating successfully. Enron's bankruptcy is not expected to affect any of them. The remaining active finance project is the Dabhol project. While Enron's bankruptcy was not the cause of the project's problems, it does result in certain additional complications.

The OPIC Political Risk Insurance ("PRI") Program

Three kinds of PRI are authorized by OPIC's governing statute (the Foreign Assistance Act of 1961, as amended (herein, the "Act")):

A *Expropriation, including, impairment, repudiation, and abrogation of a contract between an investor and the foreign government.*

B *Inconvertibility of local currency, including inability to transfer U.S. $ from the host country*

C. *Political violence*, including sabotage and terrorism and loss of business income due to damage or destruction of property by political violence

Value of lost property

2 Lost business income

II. The process for issuance of PRI

A. Informal conversations between OPIC insurance officer and U.S. company(s) proposing to invest in developmental projects in under-developed countries and emerging economies.

Determine whether prospective investor will likely be eligible for PRI

(a) Insured(s) must be an "eligible investor", as defined in the Act

(b) Insured (s) cannot be persons or entities affiliated with persons not entitled to benefit from USG assistance (violators of Foreign Corrupt Practices Act, designees under Drug Kingpin Act, etc.);

2 Determine whether project likely to be eligible for PRI

B. Prospective insured files Registration for PRI

1. Fixes date after which investment to be insured may be made
2. Generally, OPIC insures only new investments

(a) Exceptions for highly developmental projects
(b) Post-9/11 needs of U.S. businesses

C. Prospective insured files Application for PRI

Detailed questions regarding the prospective insured, its ownership, the project, the other project participants, the amount to be invested by all

participants, the amount of U.S. procurement or other possible U.S. benefit, and related relevant questions

D. Insurance officer reviews application, discusses project with applicant, and decides which project and project related documents appear relevant for review

1. Determines if prospective insured project likely to be eligible for PRI
2. Reviews relevant project and project related documents, e.g.,

   (a) Article of Incorporation of foreign enterprise in which investment to be insured is to be made; Shareholder Agreements; Loan Agreements (for institutional lender PRI); Licenses from host country government; Concession Agreements; Supply Agreements; Power Purchase Agreements

   (b) Since late 2001, Project company financial statements and prospective insured financial statements

      (1) Previously, financial statements were not considered relevant to PRI, since OPIC is not engaged in credit insurance. Some PRI carriers, for example, the Multilateral Insurance Guarantee Agency ("MIGA"), the World Bank counterpart of OPIC, consider the financial strength of the project and its sponsors relevant to determining the degree of risk in providing PRI, especially expropriation coverage, as host governments sometimes expropriate weak projects considered necessary for the host country to maintain. In late 2001, OPIC Insurance adopted a similar risk analysis

   (c) Whether OPIC participation will meet the required tests of additionality to justify, in whole or in part, OPIC PRI rather than or together with private market PRI

3. Obtains required clearances

   (a) Foreign Government Approval, if required by Investment Incentive Agreement between USG and host country government
   (b) Human rights clearance from DOS
   (c) Embassy comments
   (d) Foreign Policy clearance from DOS
   (e) Worker Rights clearance and requirements from OPIC Office of Investment Policy
   (f) Environmental clearance and requirements from OPIC Office of Investment Policy

4. Prepares Action Memorandum, describing the project, the sponsor and other participants, the project documents, the risks involved, the additionality analysis, and a country risk analysis

E. Policy Review

The Insurance VP, Insurance regional managers, attorney for the project, and Associate General Counsel, Insurance, convene as a group to review the Action Memorandum and raise any issue or concerns not covered in Action Memorandum

2 Insurance officer explains the project and responds to issues and concerns raised

F. Insurance up to $25,000,000. Insurance Officer

Resolves issues and concerns raised at policy review

2 Prepares draft commitment letter or contract and forwards same to prospective insured

(a) Commitment Letter

(1) Used when capacity limits exist or project needs priority attention
(2) 3/6 months
(3) Partially refundable fee if contract issued
(4) Sets forth terms on which insurance will be issued, subject to mutual agreement

(b) Contract

(a) Standard form, with blanks
(b) Blanks completed to reflect specific investment and project
(c) Investment/project specific amendments as required

3. Responds to comments and concerns of prospective insured
4. Prepares final commitment letter or insurance contract and Action Memorandum
5. Action Memorandum and commitment letter or contract reviewed and approved by project attorney, Insurance Regional Manager, and VP Insurance
6. Commitment letter or contract sent to client for signature and, when returned, signed, signed for OPIC by Insurance VP.

G. Insurance over $25,000,000, but not over $50,000,000

Same as insurance up to $25,000,000, except that prior to preparation of draft commitment letter or contract,

(a) Insurance officer prepares analysis for Investment Committee (composed of CEO, EVP, and VPs)
(b) Investment Committee reviews project and rejects, approves, or approves with conditions

(1) If approved with conditions, conditions must be satisfied before commitment letter or contract is sent to prospective insured for signature.

H. Insurance over $50,000,000

1 Same as insurance over $25,000,000, but not over $50,000,000, except that prior to preparation of commitment letter or contract,

(a) Project is presented to OPIC Board of Directors
(b) Board approves or disapproves based on overall OPIC policy and DOS foreign policy considerations

2 Contract signed by OPIC CEO

INVESTMENT NUMBER 3535

Investment Agreement

between

PUERTO QUETZAL POWER CORP.

and

INTERNATIONAL FINANCE CORPORATION

Dated as of March 31, 1993

EC2 000036651

Senate Finance Committee

EXHIBIT 4

INVESTMENT AGREEMENT

AGREEMENT, dated as of March 31, 1993, between PUERTO QUETZAL POWER CORP., a corporation organized and existing under the laws of the State of Delaware, in the United States of America and registered in Guatemala as a foreign corporation under Chapter IX, Book I, Title I of the Code of Commerce of the Republic of Guatemala, with inscription number 30, folio 30, Book I of Foreign Corporations at the Mercantile Registry (herein called the "Company") and INTERNATIONAL FINANCE CORPORATION (herein called "IFC").

ARTICLE I

Definitions

Section 1.01. Wherever used in this Agreement, unless the context otherwise requires, the following terms have the following meanings:

"A Loan" and "IFC A Loan"	means the loan specified in Section 3.01 (a) or, as the context may require, the principal amount thereof from time to time outstanding;
"A Loan Disbursement"	means any amount of the A Loan which is disbursed from time to time pursuant to Section 3.02;
"A Loan Interest Rate"	means the rate of interest payable on the A Loan from time to time, determined in accordance with Section 3.10;
"Average Availability"	has the meaning set forth in the Project Funds Agreement;
"Auditors"	means Arthur Andersen & Co., or such other firm of independent public accountants as the Company may, with IFC's consent, from time to time appoint as auditors of the Company;
"B Loan" and "IFC B Loan"	means the loan specified in Section 3.01 (b) or, as the context may require, the principal amount thereof from time to time outstanding;

"B Loan Disbursement"	means any amount of the B Loan which is disbursed from time to time pursuant to Section 3.02;
"B Loan Interest Determination Date"	means the second Business Day before the beginning of each B Loan Interest Period;
"B Loan Interest Period"	means each period of three (3) months commencing on an Interest Payment Date and ending on the day immediately before the next following Interest Payment Date, except in the case of the first period for each B Loan Disbursement immediately following the disbursement thereof when it shall mean the period commencing with the date of disbursement of the relevant B Loan Disbursement and ending on the day immediately before the next following Interest Payment Date;
"B Loan Interest Rate"	means the rate of interest payable on the B Loan from time to time, determined in accordance with Section 3.13;
"Business Day"	means a day on which banks are open for business in the City of New York and, for the purpose of the definition of "Interest Determination Date", for the transaction of business in the Eurodollar Interbank Market in London, England, as well;
"C Loan" and "IFC C Loan"	means the loan specified in Section 3.01 (c) or, as the context may require, the principal amount thereof from time to time outstanding;
"C Loan Disbursement"	means any amount of the C Loan which is disbursed from time to time pursuant to Section 3.02;
"C Loan Interest Rate"	means the rate of interest payable on the C Loan from time to time, determined in accordance with Section 3.19;

"CONAMA"	means the Comisión Nacional del Medio Ambiente, the environmental agency of the Government of Guatemala;
"Disbursement"	means and includes the A Loan Disbursement, the B Loan Disbursement and the C Loan Disbursement;
"Dollars" and the sign "$"	means the lawful currency of the United States of America;
"EEGSA"	means Empresa Eléctrica de Guatemala S.A., a sociedad anónima organized and existing under the laws of Guatemala over ninety per cent (90%) of the share capital of which is owned by INDE;
"EEGSA Deposit"	means the reimbursable, non-interest bearing deposit equal to seven million two hundred fifty thousand Dollars ($7,250,000) provided to the Company by EEGSA pursuant to clause "Tenth" of the PPA;
"Enron"	means Enron Corp., a corporation organized and existing under the laws of the State of Delaware, in the United States of America;
"Enron Power"	means Enron Power Corp., a corporation organized and existing under the laws of the State of Delaware, in the United States of America;
"EDC"	means Enron Development Corp., a corporation organized and existing under the laws of the State of Delaware, in the United States of America whose name formerly was Enron Power Development Corp.;
"Event of Default"	means any one of the events specified in Section 7.01;
"Financial Plan"	means the financial plan set out in Section 2.02;
"First Preferred Fleet Mortgage"	means a First Preferred Fleet Mortgage under United States law on the two Project Barges, effective not later than the first disbursement of any of the IFC Loans, by the Company to

Shawmut Bank Connecticut, N.A., as trustee for IFC;

"Fiscal Year" and "Financial Year" means the accounting year of the Company commencing each year on January 1 and ending on the following December 31, or such other accounting period of the Company as the Company may, with IFC's consent, from time to time designate as the accounting year of the Company;

"INDE" means Instituto Nacional de Electrificación, the national electric utility of the Government of Guatemala;

"Interest Payment Date" means any day which is March 15, June 15, September 15 or December 15 in any year; provided, however, that if any Interest Payment Date would fall on a day which is not a Business Day, the relevant Interest Payment Date shall be changed to the next succeeding Business Day;

"Interest Period" means each period of three (3) months commencing on an Interest Payment Date and ending on the day immediately before the next following Interest Payment Date, except in the case of the first period applicable to each Disbursement when it shall mean the period commencing with the date on which the relevant Disbursement is made and ending on the day immediately before the next following Interest Payment Date;

"Letter of Information" means the letter, dated February 23, 1993, addressed by EDC to IFC and containing EDC's representations with regard to all material relevant facts concerning the Project, the Financial Plan, the organization, status, operations, affiliations, liabilities and assets of the Company and other matters incident to the transactions contemplated by this Agreement, as amended by letter dated March 30, 1993 and any further amendment or supplement to such letter which is acceptable to IFC;

"Loan", "IFC Loan" and "IFC Loans"	means, collectively the A Loan, the B Loan and the C Loan or, as the context may require, the aggregate of the principal amounts thereof from time to time outstanding;
"Maintenance Amount"	has the meaning given to it in Section 3.15;
"Mandate Letter"	means the Mandate Letter dated January 26, 1993 from IFC to Enron Power describing certain services to be provided by IFC in connection with the Project and certain fees to be paid to IFC;
"Maximum Debt Service Deficiency Amount"	has the meaning set forth in the Sponsor Support Agreement;
"Maximum Funding Amount"	has the meaning set forth in the Project Funds Agreement;
"Operation and Maintenance Agreement"	means the Operation and Maintenance Agreement, dated as of November 13, 1992, as amended, between the Company and the Operator providing for the operation and maintenance of the Plant;
"Operator"	means Electricidad Enron de Guatemala, S.A., a corporation organized and existing under the laws of Guatemala;
"Other Loans"	means the loan or loans which may be extended to the Company in connection with the Project by one or more financial institutions (other than IFC) and which may be substituted for a portion of the B Loan;
"Other Loan Agreements"	means the agreement or agreements providing for the Other Loans;
"Participant"	means a Person designated by IFC from whom IFC shall have received a formal commitment to acquire a Participation in the B Loan or, as the case may be, any successor or assignee of such person;

"Participation"	means the investment of a Participant in the B Loan; or, as the context may require, in the B Loan Disbursement;
"Participation Agreement"	means the agreement or agreements providing for a Participation;
"Person"	means an individual, corporation, partnership, joint venture, trust or unincorporated organization, or a government or any agency or political subdivision thereof;
"Plant"	means the electricity generation plant contemplated in the Project;
"PPA"	means the contract, dated January 13, 1992, between EEGSA and TOP as amended and assigned to EDC on March 12, 1992, as further assigned by EDC to the Company on November 13, 1992 and as clarified by a letter executed between EDC and EEGSA on April 19, 1992 and as further amended or clarified from time to time;
"Project"	means the project described in Section 2.01;
"Project Barges"	means the two barges contemplated in the Project on which the diesel electric engines referred to in the Project description are to be placed;
"Project Completion" and "Project Completion Date"	have the meanings set forth in the Project Funds Agreement;
"Project Funds Agreement"	means the agreement among the Company, IFC and the Operator, whereby the Operator shall provide to the Company such additional funds as may be needed by the Company, up to a maximum amount equal to $15,000,000 as more fully described therein, in the form of subordinated loans or repayment of a portion of the Loan, for the purposes set forth therein; the obligation to provide such additional funds to be guaranteed by Enron pursuant to the Sponsor Support Agreement;

"Project Site"	means the port of Puerto Quetzal, on the Pacific coast of Guatemala;
"Quetzal" and the sign "Q"	means the lawful currency of Guatemala;
"Reuters Screen LIBO Page"	means the display of London interbank offered rates (commonly know as LIBOR) of major banks for Eurodollar Deposits designated as page "LIBO" on the Reuters Monitor Money Rates Service (or such other page as may replace the LIBO page for the purpose of displaying such London interbank offered rates for Eurodollar Deposits);
"Security"	means the security created by the Company to secure all amounts owing by the Company to IFC under this Agreement and all amounts owing by the Company to any party to a Swap Agreement as fully described in Section 5.01 (e);
"Senior Indebtedness"	means the indebtedness resulting from the Senior Loans;
"Senior Lenders"	means IFC (as lender of the A Loan and the B Loan) and the lenders of the Other Loans, if any;
"Senior Loans"	means the IFC A Loan, the IFC B Loan and the Other Loans, if any;
"Shareholder"	means EDC and any other Person admitted as a shareholder of the Company, subject only to the restrictions on transfer of shares of the Company set forth in the Share Retention Agreement;
"Share Retention Agreement"	means the agreement between, EDC and IFC whereby EDC agrees to own, directly or indirectly, at all times until the IFC Loans have been repaid not less than fifty per cent (50%) of the share capital of the Company;
"Site Lease"	means the contract to lease certain property located at the Puerto Quetzal port facilities outside San José, Guatemala, dated December 3,

1992, among Empresa Portuaria Quetzal and Electricidad Enron de Guatemala S.A.;

"Sponsor Support Agreement" means the Sponsor Support Agreement among Enron, the Company and IFC, under which Enron agrees to provide credit support to the Company respecting the Company's obligation to repay the EEGSA Deposit, the Company's obligation to pay Cyclical Maintenance Costs, the Company's obligation to pay debt service on the Senior Loans and the Operator's obligation to pay the Maximum Funding Amount under the Project Funds Agreement;

"Subsidiary" means any entity over fifty per cent (50%) of whose capital is owned, directly or indirectly, by the Company or which is otherwise effectively controlled by the Company;

"TOP" means Texas-Ohio Power, Inc.;

"Turnkey Construction Contract" means the Turnkey Contract, dated as of April 10, 1992 by and between Wartsila and Enron Power as assigned by Enron Power to the Company on November 13, 1992; and

"Wartsila" means Wartsila Diesel, Inc., a company organized and existing under the laws of the State of Louisiana, in the United States of America.

Section 1.02. In addition, unless the context otherwise requires, the following financial terms have the following meanings wherever used in this Agreement:

"Cyclical Maintenance Cost" has the meaning set forth in the Sponsor Support Agreement;

"Debt Service" means, for any period of determination thereof, the sum of all principal payments required to be made during such period and all interest, fees and other financing costs accrued for payment during such period in respect of the IFC Loans or other debt permitted under Section 6.02(d)(iii); provided that, in determining Debt Service for any period, interest payable during such period shall be increased or

decreased, as the case may be, by the net amount payable or receivable during such period under all Swap Agreements;

"Debt Service Coverage Ratio" means, for any period of determination thereof, the ratio of Operating Cash Flow for such period to Debt Service for such period;

"Economic Dispatch Incentive Fee" has the meaning set forth in the Operation and Maintenance Agreement;

"Fixed Fee" has the meaning set forth in the Operation and Maintenance Agreement;

"O&M Fees" means, collectively, the Fixed Fee and the Economic Dispatch Incentive Fee, but specifically excluding any amount that is a Reimbursable Expense;

"Operating Cash Flow" means, for any period of determination thereof, the excess (or shortfall) of Revenues for such period over Operating Expenses for such period;

"Operating Expenses" means all fuel costs, any Reimbursable Expense, all amounts payable under the Site Lease, all operation and maintenance costs, all Cyclical Maintenance Costs, and all taxes other than income taxes but excluding (a) mandatory Debt Service, (b) depreciation and amortization, (c) extraordinary expenses (including, without limitation, losses on sale of assets other than in the ordinary course of business and losses on the extinguishment of debt), and (d) the O&M Fees;

"Reimbursable Expense" has the meaning set forth in the Operation and Maintenance Agreement;

"Revenues" means, for any period of determination thereof, all operating and nonoperating receipts, revenues, rentals, fees, income and other moneys of the Company, including, without limitation, liquidated, performance and other damage payments, contingency guarantee payments or other amounts payable to the Company, all investment

earnings on the accounts of the Company, amounts earned on indebtedness permitted under Section 6.02(d), the proceeds of business interruption insurance, the proceeds of any payment to the Company under the Swap Agreements and the proceeds of any payments, subordinated loans or drawings under the letter of credit made under the Sponsor Support Agreement or under the Project Funds Agreement for the calendar year in respect of which such payments, loans or drawings were made; and

"Swap" and "Swap Agreement" means any interest rate exchange, collar, cap or similar agreement providing interest rate protection into which the Company may enter with the prior written consent of IFC.

Section 1.03. In this Agreement, unless the context otherwise requires, words denoting the singular include the plural and vice versa, words denoting persons include corporations and partnerships, and references to a specified Article, Section or Schedule shall be construed as a reference to that specified Article, Section or Schedule of this Agreement.

ARTICLE II

Description of Project and Financial Plan

Section 2.01. The Project to be financed consists of the construction, equipment and placing into operation of, and the provision of working capital for, an electric generating plant consisting of twenty diesel electric engines, as more fully described in the Turnkey Construction Contract, mounted on two United States-flagged barges moored in Puerto Quetzal, on the Pacific Coast of Guatemala. Details of the Project are described in the Letter of Information, which is incorporated in this Agreement by reference.

Section 2.02.[1/] (a) The total cost of the Project, including working capital of $2,000,000 and all financing fees associated with the Financial Plan is $92,000,000.

1/ For purposes of this Section, an exchange rate of Quetzal 5.3 = $1 has been assumed.

(b) Under the Financial Plan, the proposed sources of financing are as follows:

Item	$ Million	% of Total
Equity/Quasi-Equity		
EDC	13.75	14.9
EEGSA Deposit	7.25	7.9
Total Equity/Quasi Equity	21.00	22.8
Subordinated Debt		
IFC C Loan	6.6	7.2
Senior Loans		
IFC A Loan	13.4	14.6
IFC B Loan and/or Other Loans	51.0	55.4
Total Senior Debt	64.4	70.0
Total Financing	92.0	100.0

ARTICLE III

Agreement for the Loan

Part 1: The Loan

Section 3.01. Subject to the terms and conditions of this Agreement, IFC agrees to lend to the Company and the Company agrees to borrow from IFC the Loan, that is, the amount of seventy one million Dollars ($71,000,000), made up of:

(a) the A Loan, being the amount of thirteen million four hundred thousand Dollars ($13,400,000);

(b) the B Loan, being the amount of fifty one million Dollars ($51,000,000); and

(c) the C Loan, being the amount of six million six hundred thousand Dollars ($6,600,000).

Section 3.02. Disbursements of the Loan shall be made by IFC from time to time for credit to the account of the Company at such bank in such place as IFC and the Company shall agree in immediately available funds and in amounts (except with respect to the final disbursement) of not less than $10,000,000 (in the case of the A Loan and the B Loan). Disbursements shall be made upon the Company's request in writing, substantially in the form of Exhibit A hereto delivered to IFC (except with respect to the first disbursement which shall be made as soon as possible after all the relevant conditions of disbursement are fulfilled) at least ten (10) Business Days prior to the proposed date of the disbursement, and against each such disbursement the Company shall deliver to IFC such receipt therefor as IFC may reasonably request.

Section 3.03 The Loan shall be repaid as follows:

(a) The A Loan shall be repaid on the following dates and in the following amounts:

Date Payment Due	Principal Amount Due
December 15, 1993	$ 372,000
March 15, 1994	$ 372,000
June 15, 1994	$ 372,000
September 15, 1994	$ 372,000
December 15, 1994	$ 372,000
March 15, 1995	$ 372,000
June 15, 1995	$ 372,000
September 15, 1995	$ 372,000
December 15, 1995	$ 372,000
March 15, 1996	$ 372,000
June 15, 1996	$ 372,000
September 15, 1996	$ 372,000
December 15, 1996	$ 372,000
March 15, 1997	$ 372,000
June 15, 1997	$ 372,000
September 15, 1997	$ 372,000
December 15, 1997	$ 372,000
March 15, 1998	$ 372,000
June 15, 1998	$ 372,000
September 15, 1998	$ 372,000
December 15, 1998	$ 372,000
March 15, 1999	$ 372,000
June 15, 1999	$ 372,000
September 15, 1999	$ 372,000
December 15, 1999	$ 372,000

Date Payment Due	Principal Amount Due
March 15, 2000	$ 372,000
June 15, 2000	$ 372,000
September 15, 2000	$ 372,000
December 15, 2000	$ 372,000
March 15, 2001	$ 372,000
June 15, 2001	$ 372,000
September 15, 2001	$ 372,000
December 15, 2001	$ 372,000
March 15, 2002	$ 372,000
June 15, 2002	$ 372,000
September 15, 2002	$ 380,000
	$13,400,000

(b) The B Loan shall be repaid on the following dates and in the following amounts:

Date Payment Due	Principal Amount Due
December 15, 1993	$ 1,594,000
March 15, 1994	$ 1,594,000
June 15, 1994	$ 1,594,000
September 15, 1994	$ 1,594,000
December 15, 1994	$ 1,594,000
March 15, 1995	$ 1,594,000
June 15, 1995	$ 1,594,000
September 15, 1995	$ 1,594,000
December 15, 1995	$ 1,594,000
March 15, 1996	$ 1,594,000
June 15, 1996	$ 1,594,000
September 15, 1996	$ 1,594,000
December 15, 1996	$ 1,594,000
March 15, 1997	$ 1,594,000
June 15, 1997	$ 1,594,000
September 15, 1997	$ 1,594,000
December 15, 1997	$ 1,594,000
March 15, 1998	$ 1,594,000
June 15, 1998	$ 1,594,000
September 15, 1998	$ 1,594,000
December 15, 1998	$ 1,594,000
March 15, 1999	$ 1,594,000
June 15, 1999	$ 1,594,000
September 15, 1999	$ 1,594,000
December 15, 1999	$ 1,594,000

Date Payment Due	Principal Amount Due
March 15, 2000	$ 1,594,000
June 15, 2000	$ 1,594,000
September 15, 2000	$ 1,594,000
December 15, 2000	$ 1,594,000
March 15, 2001	$ 1,594,000
June 15, 2001	$ 1,594,000
September 15, 2001	$ 1,586,000
	$51,000,000

(c) The C Loan shall be repaid on the following dates and in the following amounts:

Dates Payments Due	Principal Amount Due
March 15, 1994	$ 165,000
June 15, 1994	$ 165,000
September 15, 1994	$ 165,000
December 15, 1994	$ 165,000
March 15, 1995	$ 165,000
June 15, 1995	$ 165,000
September 15, 1995	$ 165,000
December 15, 1995	$ 165,000
March 15, 1996	$ 165,000
June 15, 1996	$ 165,000
September 15, 1996	$ 165,000
December 15, 1996	$ 165,000
March 15, 1997	$ 165,000
June 15, 1997	$ 165,000
September 15, 1997	$ 165,000
December 15, 1997	$ 165,000
March 15, 1998	$ 165,000
June 15, 1998	$ 165,000
September 15, 1998	$ 165,000
December 15, 1998	$ 165,000
March 15, 1999	$ 165,000
June 15, 1999	$ 165,000
September 15, 1999	$ 165,000
December 15, 1999	$ 165,000
March 15, 2000	$ 165,000
June 15, 2000	$ 165,000
September 15, 2000	$ 165,000
December 15, 2000	$ 165,000

Dates Payments Due	Principal Amount Due
March 15, 2001	$ 165,000
June 15, 2001	$ 165,000
September 15, 2001	$ 165,000
December 15, 2001	$ 165,000
March 15, 2002	$ 165,000
June 15, 2002	$ 165,000
September 15, 2002	$ 165,000
December 15, 2002	$ 165,000
March 15, 2003	$ 165,000
June 15, 2003	$ 165,000
September 15, 2003	$ 165,000
December 15, 2003	$ 165,000
	$6,600,000

(d) The dates for payment of principal on the Loan are intended to coincide with the relevant Interest Payment Dates. If in any case the relevant Interest Payment Date is affected by the proviso to the definition of "Interest Payment Date," then the corresponding date for payment of principal set out in the tables in subsections (a), (b) and (c) above shall be changed to coincide with the relevant Interest Payment Date. If less than the full amount of any of the IFC Loans is disbursed to the Company, the amount of each repayment installment in the relevant subsection above shall be reduced proportionately, taking into account the amount of such loan not disbursed.

Section 3.04. (a) The Company shall pay to IFC a commitment charge at the rate of one-half per cent (1/2%) per annum in the case of the B Loan and one per cent (1%) per annum in the case of the A Loan and the C Loan, on so much of each such Loans as shall not, from time to time, have been cancelled by IFC or disbursed to the Company. The commitment charge shall begin to accrue (i) as to the A Loan and the C Loan, on a date which is thirty (30) days after the date of approval of such Loans by IFC's Board of Directors, and (ii) as to the B Loan, on the amounts thereof which are committed as described below, on the dates which IFC informs the Company are the dates on which the Participants execute their respective Participation Agreements. The commitment charge shall be payable in Dollars quarterly on March 15, June 15, September 15 and December 15 in each year, the first such payment to be due on June 15, 1993. If any such day is not a Business Day then the payment shall be due on the next succeeding Business Day. The commitment charge shall accrue and be prorated on the basis of a 360-day year for the actual number of days elapsed.

(b) The Company shall pay to IFC in Dollars a front-end fee equal to the aggregate of one per cent (1%) of the A Loan and one per cent (1%) of the C Loan, to be paid within thirty (30) days after the date of this Agreement (but not later than first disbursement of the Loan in any event).

(c) Unless otherwise provided in the relevant Participation Agreement, the Company shall pay to IFC in Dollars a front-end fee equal to one per cent (1%) of the B Loan to be paid, in respect of each Participation, within thirty (30) days from the date of the relevant Participation Agreement.

(d) The Company shall pay to IFC on each June 15 a B Loan administration fee of $5,000 per year, the first such payment to be due on June 15, 1993.

Section 3.05. Payments of principal, interest, commitment charge, fees or any other payment due to IFC under this Agreement shall be made in Dollars, in immediately available funds, at such bank or banks in New York, New York, as IFC shall from time to time designate.

Section 3.06. If IFC shall at any time receive less than the full amount then due and payable to it under this Agreement, IFC shall have the right to allocate and apply such payment in any way or manner and for such purpose or purposes under this Agreement as IFC in its sole discretion shall determine, notwithstanding any instruction that the Company may give to the contrary.

Section 3.07. The obligation of the Company to pay in Dollars the aggregate amount of the principal of, and interest, fees and other charges on, the Loan and any other amounts payable in Dollars under this Agreement shall not be deemed to have been novated, discharged or satisfied by any tender of (or recovery under judgment expressed in) any currency other than Dollars, except to the extent to which such tender (or recovery) shall result in the effective payment of the said aggregate amount in Dollars at the place where such payment is to be made and, accordingly, the amount (if any) by which any such tender (or recovery) shall fall short of such aggregate amount shall be and remain due to IFC as a separate obligation, unaffected by judgment having been obtained (if such is the case) for any other amounts due under or in respect of this Agreement.

Section 3.08. The Company shall pay or cause to be paid all present and future taxes, duties, fees and other charges of whatsoever nature, if any, now or at any time hereafter levied or imposed by the Government of Guatemala or by any department, agency, political subdivision or taxing or other authority thereof or therein or by any organization of which Guatemala is a member on or in connection with the payment of any and all amounts due under this Agree-

ment, and all payments of principal, interest and other amounts due under this Agreement shall be made without deduction for or on account of any such taxes, duties, fees and other charges; provided, however, that in the event the Company is prevented by operation of law or otherwise from paying or causing to be paid such taxes, duties, fees or other charges as aforesaid, the principal, or (as the case may be), interest or other amounts due under this Agreement shall be increased to such amount as may be necessary to yield and remit to IFC the full amount it would have received had such payments been made without deduction of such taxes, duties, fees or other charges. The foregoing provisions shall not be applicable to taxes, duties, fees and other charges which are a direct consequence of a Participant (or, as the case may be, a participant with a comparable participation in the A Loan or in the C Loan) or a successor or assignee thereof having its principal office in Guatemala or having or maintaining a permanent office or establishment in Guatemala if and to the extent that the relevant Participation (or comparable participation in the A Loan or the C Loan) is acquired by such permanent office or establishment.

Section 3.09. IFC may, by notice to the Company, suspend or cancel the right of the Company to request disbursements of the Loan, in whole or in part, as follows:

(a) if the first such disbursement shall not have been made by July 1, 1993, or such other date as may be agreed by the parties hereto;

(b) if any Event of Default or any event which, with lapse of time or notice and lapse of time as specified in Section 7.01, would become an Event of Default shall have happened and be continuing, or if the Event of Default specified in subsection (e) of Section 7.01 shall, in the reasonable opinion of IFC, be imminent;

(c) if, at any time in the reasonable opinion of IFC, there shall exist any situation which indicates that performance by the Company of any of its obligations under this Agreement cannot be expected; or

(d) on or after December 31, 1993

Upon the giving of such notice, any part of the Loan covered by the notice which has not theretofore been disbursed shall be suspended or cancelled as the case may be. The exercise by IFC of the right of suspension shall not preclude IFC from exercising its right of cancellation as provided herein, either for the same or another reason, and shall not limit any other provision of this Agreement.

Part 2: Provisions Peculiar to the A Loan

Section 3.10. The Company shall pay interest at the A Loan Interest Rate, namely the rate of 9.9375 per cent per annum, on the principal amount of the A Loan disbursed and outstanding from time to time and such interest shall be paid in Dollars quarterly on March 15, June 15, September 15 and December 15 in each year. Interest shall accrue from day to day and be prorated on the basis of a 360-day year for the actual number of days in the relevant interest period.

Section 3.11. (a) The Company shall have the right at any time, on not less than thirty (30) days' written notice to IFC and subject to payment of the prepayment premium referred to in subsection (b) below and all accrued interest on the principal amount of the A Loan to be prepaid, to prepay all or a part of the principal amount then outstanding of the A Loan; provided that, in the case of partial prepayment, such prepayment (i) shall be in an amount of not less than one million Dollars ($1,000,000), and (ii) shall be applied to prepay all the outstanding repayment installments of the A Loan on a pro rata basis. Upon delivery of such notice, the Company shall be obligated to effect prepayment in accordance with the terms thereof.

(b) The prepayment premium shall be an amount in Dollars equal to the difference (or in the case of a partial prepayment, the same portion of such difference as the proportion which the amount of the A Loan to be prepaid bears to the principal amount of the A Loan then outstanding) between the Net Present Value of the Anticipated Income Stream and the Net Present Value of the Available Income Stream, all as more particularly described below.

The Anticipated Income Stream means the interest payments which would have been due on the A Loan at the interest rate specified in Section 3.10 for the period from the prepayment date until the final scheduled maturity date assuming that no prepayment had taken place and further assuming that the schedule of maturity dates had been adhered to and that all payments had been made on their due dates.

The Available Income Stream means the interest payments which would have been due on the A Loan at a rate equal to the aggregate of the Spread and the Current Swap Market Fixed Rate for the period from the prepayment date until the final scheduled maturity date assuming that no prepayment had taken place and further assuming that the schedule of maturity dates had been adhered to and that all payments had been made on their due dates.

(c) For the purposes of subsection (b) above

(i) the "Current Swap Market Fixed Rate" means the fixed rate quoted in the relevant swap market (for an amount of the A Loan currency equal to the principal amount of the A Loan then outstanding) as the equivalent of the U.S. dollar 6 month London Interbank Offered Rate (LIBOR) for a period equal to the scheduled remaining period of the A Loan, calculated by IFC as of the prepayment date on the basis of quotations from two major dealers in the relevant swap market for value that date;

(ii) the "Net Present Value" means the value of the relevant Income Stream discounted (with stops on the same dates as would have been interest payment dates) back to the prepayment date from each of the relevant interest payment dates at a discount rate equal to the Current Swap Market Fixed Rate; and

(iii) the "Spread" means three and one-quarter per cent (3-1/4%) per annum.

(d) The determination by IFC of the prepayment premium shall be final and conclusive unless shown by the Company that such determination has involved clerical error.

(e) Despite the above provisions of this Section, no prepayment of the A Loan may be made unless the Company makes a proportionate prepayment of the B Loan at the same time.

Section 3.12. Without prejudice to the remedies available to IFC under this Agreement or otherwise:

(a) if the Company fails to make any payment of interest or any other payment (except principal or the commitment charge or front-end fee provided for in Sections 3.04 (a) and (b)) on or in respect of the A Loan on or before its due date as specified in this Agreement (or, if not so specified, as notified to the Company), then, to the extent permitted by law, the Company shall pay in Dollars, by way of liquidated damages, in respect of the amount of such payment due and unpaid, interest at a rate equal to one per cent (1%) per annum above the A Loan Interest Rate from the date any such amount became due until the date of actual payment (as well after as before judgment) and such interest shall be payable on the next Interest Payment Date thereafter unless demanded or paid beforehand; and

(b) if the Company fails to make any payment of the principal of the A Loan on or before its due date as specified in this Agreement (whether at stated maturity or upon pre-

maturing), then, to the extent permitted by law, the Company shall pay, in Dollars, by way of liquidated damages, in respect of the amount of such payment due and unpaid, interest at a rate equal to one per cent (1%) per annum over and above the A Loan Interest Rate from the date any such amount became due until the date of actual payment (as well after as before judgment) and such interest shall be payable on the next Interest Payment Date thereafter unless demanded or paid beforehand.

Part 3: Provisions Peculiar to the B Loan

Section 3.13. Interest on the B Loan shall be determined, and the Company shall pay interest on the B Loan, as follows:

(a) The principal amount of the B Loan from time to time outstanding (or, in the case of the first B Loan Interest Period in respect of each B Loan Disbursement, the principal amount of such B Loan Disbursement from time to time outstanding) shall bear interest during the relevant B Loan Interest Period at the relevant B Loan Interest Rate calculated in accordance with the provisions of this Section.

(b) Interest shall accrue from day to day, be pro-rated on the basis of a 360-day year for the actual number of days in the relevant B Loan Interest Period and be due and payable in Dollars on the B Loan Interest Payment Date immediately following the end of the relevant B Loan Interest Period.

(c) The B Loan Interest Rate shall be three and one-quarter of one per cent (3.25%) per annum above the rate which appears on the Reuters Screen LIBO Page as of 11:00 a.m., London time, on the relevant B Loan Interest Determination Date for one month, two months or three months, whichever period is closest to the duration of the relevant B Loan Interest Period (or, if two periods are equally close to the duration of the relevant B Loan Interest Period, the longer one). If more than one such offered rate appears on the Reuters Screen LIBO Page, the B Loan Interest Rate shall be the arithmetical average (rounded upward, if necessary, to the nearest one-sixteenth of one per cent (1/16%)) of such offered rates.

(d) If, for any reason, the B Loan Interest Rate cannot be determined by reference to the Reuters Screen LIBO Page on any Interest Determination Date, IFC shall notify the Company and the Participants forthwith and shall determine the B Loan Interest Rate on that B Loan Interest Determination Date, in accordance with subsection (c) above mutatis mutandis, using rates advised to IFC by

any two (2) of the banks (or by the bank if only one is available) whose rate(s) were last quoted on the Reuters Screen LIBO Page. If the services of the Reuters Screen LIBO Page cease to be available as a result of discontinuation of such service, IFC shall notify the Company and the Participants forthwith and shall determine the B Loan Interest Rate on any relevant B Loan Interest Determination Date, in accordance with subsection (c) above mutatis mutandis, using rates advised to IFC by three (3) major banks active in the Eurodollar Interbank Market in London selected by IFC after consultation with the Company and the Participants.

(e) The determination by IFC, from time to time, of the B Loan Interest Rate shall be final and conclusive and shall be binding upon the Company unless shown by the Company to the satisfaction of IFC that any such determination has involved clerical error.

Section 3.14. In addition to the prepayment rights with respect to the B Loan set out in Section 3.15 (c), the Company shall have the right at any time on not less than thirty (30) days' written notice to IFC, to prepay on any Interest Payment Date all or a part of the principal amount then outstanding of the B Loan without any prepayment penalty; provided that, in either case, all accrued interest and Maintenance Amount (if any) on the amount to be prepaid is paid at the same time; and provided further that, in the case of partial prepayment, such prepayment (i) shall be in an amount of not less than one million Dollars ($1,000,000) and (ii) shall be applied so as to prepay all the outstanding repayment installments of the B Loan on a pro rata basis. Upon delivery of such notice, the Company shall be obligated to effect prepayment in accordance with the terms thereof.

Section 3.15. (a) On each Interest Payment Date, the Company shall pay in Dollars, with respect to the B Loan, in addition to interest at the B Loan Interest Rate, the amount which IFC shall from time to time notify (the "Maintenance Amount Notice") to the Company as being the aggregate of each Participant's Maintenance Amount (as defined in subsection (b) below) accrued and unpaid prior to such B Loan Interest Payment Date, provided that, the Company will not be obligated to compensate any Participant for all or a portion of the Maintenance Amount to the extent that the Participant incurs costs associated with the Maintenance Amount prior to ninety (90) days before IFC gives the Maintenance Amount Notice to the Company. The Maintenance Amount Notice shall include a copy of the Participant's Certification provided to IFC by the Participant.

(b) In connection with subsection (a) above the following terms shall have the following meanings:

(i) the term "Maintenance Amount" means the amount, if any, certified in the Participant's Certification to

be such Participant's net incremental costs of making or maintaining its Participation which result from (A) any change in applicable law or regulations or in the interpretation thereof by any governmental or regulatory authority charged with the administration thereof and/or (B) any compliance with any request from, or requirement of, any central bank or other monetary or other authority, which in either case, subsequent to the date of the relevant Participation Agreement, shall:

(1) impose, modify or deem applicable any reserve, special deposit or similar requirements against assets held by, or deposits with or for the account of, or loans by, the Participant;

(2) impose a cost on the Participant as a result of its having acquired its Participation or reduce the rate of return on the Participant's overall capital which it would have been able to achieve if it had not acquired its Participation;

(3) change the basis of taxation on payments received by the Participant in respect of its Participation (other than by a change in taxation of the overall net income of the Participant); or

(4) impose on the Participant any other condition regarding the making or maintaining of its Participation; but

(ii) the term "Maintenance Amount" shall not include any incremental costs of making or maintaining a Participation which are a direct consequence of a Participant having its principal office in, or maintaining a permanent office or establishment in, Guatemala; and

(iii) the term "Participant's Certification" means a certification furnished from time to time to IFC by a Participant (such certification to be furnished as soon as the relevant Maintenance Amount is known) certifying:

(A) the circumstances giving rise to the Maintenance Amount;

that such Participant's net costs have been increased;

(C) that it has exercised reasonable efforts to minimize or eliminate such increase; and

the Maintenance Amount together with reasonable detail showing how the Maintenance Amount was calculated.

(c) Notwithstanding anything in Section 3.14, the Company shall have the right on any B Loan Interest Payment Date, upon not less than thirty (30) days' written notice to IFC (which notice shall be irrevocable and shall bind the Company to make the prepayment specified below) and upon payment of all accrued interest and Maintenance Amount (if any) on the amount to be prepaid, to prepay, without any prepayment premium, that portion of the B Loan which IFC informs the Company is subject to a Participation on which a Maintenance Amount is then being charged.

Section 3.16. Notwithstanding anything to the contrary contained in this Agreement, if, subsequent to the date of this Agreement, any change made in any applicable law or regulation or the interpretation or application thereof by any governmental authority charged with the administration thereof shall make it unlawful for any Participant to continue to maintain or to fund its Participation, the Company shall, within three Business Days of receipt of a request by IFC, prepay in full that part of the principal amount of the B Loan which IFC advises is subject to such Participation, together with all accrued interest and Maintenance Amount (if any) thereon and/or, as the case may be, the right of the Company to disbursement of that part of the B Loan subject to such Participation which shall not theretofore have been disbursed, shall terminate immediately.

Section 3.17. Without prejudice to the remedies available to IFC under this Agreement or otherwise:

(a) if the Company fails to make any payment of interest or any other payment (except principal or the commitment charge and front-end fee provided for in Sections 3.04 (a) and (b)) on or in respect of the B Loan on or before its due date as specified in this Agreement (or, if not so specified, as notified to the Company), then, to the extent permitted by law, the Company shall pay, in Dollars, in respect of the amount of such payment due and unpaid, interest at a rate which shall equal one per cent (1%) per annum above the relevant B Loan Interest Rate then in force from the date any such amount became due until the date of actual payment (as well after as before judgment) and such interest shall be payable on the

next Interest Payment Date thereafter unless demanded or paid beforehand; and

(b) if the Company fails to make any payment of the principal of the B Loan on or before its due date as specified in this Agreement (whether at stated maturity or upon prematuring), then, to the extent permitted by law, the Company shall pay, in Dollars, in respect of the amount of such payment due and unpaid, interest at the rate of one per cent (1%) per annum above the relevant B Loan Interest Rate then in force from the date any such amount became due until the date of actual payment (as well after as before judgment) and such interest shall be payable on the next Interest Payment Date thereafter unless demanded or paid beforehand.

Section 3.18. If, as a result of (i) any failure by the Company to pay any sums due in respect of the B Loan under this Agreement on the due date therefor, to borrow in accordance with a request for a B Loan Disbursement made pursuant to Section 3.02 or to make any prepayment of the B Loan in accordance with a notice of prepayment pursuant to Sections 3.14 or 3.15 (c) or (ii) any prepayment of all or any portion of the B Loan on a date other than an Interest Payment Date, any Participant shall incur costs, expenses or losses, the Company shall pay, in Dollars, upon request by IFC, the amount which IFC shall notify to the Company as being the aggregate of such costs, expenses and losses. For the purposes of the preceding sentence, "costs, expenses or losses" shall include, without limitation, any interest paid or payable to carry any unpaid amount and any loss, premium, penalty or expense which may be incurred in liquidating or employing deposits of or borrowings from third parties in order to make, maintain or fund the B Loan or any portion thereof.

Part 4: Provisions Peculiar to the C Loan

Section 3.19. The Company shall pay interest at the C Loan Interest Rate, namely the rate of fourteen per cent (14%) per annum, on the principal amount of the C Loan disbursed and outstanding from time to time and such interest shall be paid in Dollars quarterly on March 15, June 15, September 15 and December 15 in each year. Interest shall accrue from day to day and be prorated on the basis of a 360-day year for the actual number of days in the relevant interest period.

Section 3.20. (a) The Company shall have the right at any time, on not less than thirty (30) days' written notice to IFC and subject to payment of the prepayment premium referred to in subsection (b) below and all accrued interest on the principal amount of the C Loan to be prepaid, to prepay all or a part of the principal amount then

outstanding of the C Loan; provided that, in the case of partial prepayment, such prepayment (i) shall be in an amount of not less than five hundred thousand Dollars ($500,000), and (ii) shall be applied to prepay all the outstanding repayment installments of the C Loan on a pro rata basis. Upon delivery of such notice, the Company shall be obligated to effect prepayment in accordance with the terms thereof.

(b) The prepayment premium shall be an amount of Dollars equal to a percentage of the amount of the C Loan to be prepaid, such percentage being calculated by multiplying (i) the number of years from the proposed prepayment date to the scheduled final maturity date of the C Loan (as shown in the table in Section 3.03 (c) by (ii) a factor of five and one-half (5-1/2); provided that in the case of an incomplete year, there shall be counted only a fraction of a year whose numerator shall be the number of days in the relevant period and whose denominator shall be 360.

(c) The determination by IFC of the prepayment premium shall be final and conclusive unless shown by the Company that such determination has involved clerical error.

Section 3.21. Without prejudice to the remedies available to IFC under this Agreement or otherwise:

(a) if the Company fails to make any payment of interest or any other payment (except principal or the commitment charge or front-end fee provided for in Sections 3.04 (a) and (b)) on or in respect of the C Loan on or before its due date as specified in this Agreement (or, if not so specified, as notified to the Company), then, to the extent permitted by law, the Company shall pay in Dollars, by way of liquidated damages, in respect of the amount of such payment due and unpaid, interest at a rate equal to one per cent (1%) per annum above the C Loan Interest Rate from the date any such amount became due until the date of actual payment (as well after as before judgement) and such interest shall be payable on the next Interest Payment Date thereafter unless demanded or paid beforehand; and

(b) if the Company fails to make any payment of the principal of the C Loan on or before its due date as specified in this Agreement (whether at stated maturity or upon prematuring), then, to the extent permitted by law, the Company shall pay, in Dollars, by way of liquidated damages, in respect of the amount of such payment due and unpaid, interest at a rate equal to one per cent (1%) per annum over and above the C Loan Interest Rate from the date of actual payment (as well after as before judgement)

and such interest shall be payable on the next Interest Payment Date thereafter unless demanded or paid beforehand.

Section 3.22. (a) Notwithstanding anything herein provided, IFC and the Company hereby agree, for the exclusive benefit of the Senior Lenders, that the C Loan that may at any time be outstanding shall, in the events, in the manner, to the extent and upon all the terms and conditions hereinafter in this Section set forth, be subordinate and junior in right of payment to the prior payment in full (whether at stated maturity or by acceleration) of all Senior Indebtedness then due and payable. The provisions of this Section are solely for the purpose of defining the relative rights of the Senior Lenders on the one hand, and IFC (as holder of the C Loan) on the other hand, and nothing herein shall impair, as between the Company and IFC (as holder of the C Loan) the obligation of the Company to pay to IFC the C Loan principal, interest, and any other amounts due in accordance with the terms thereof, nor shall anything herein prevent IFC (as holder of the C Loan) from exercising all remedies otherwise permitted by applicable law or under this Agreement upon the occurrence of any Event of Default;

(b) In the event of any insolvency or bankruptcy proceedings, and any receivership, liquidation, or other similar proceedings in connection therewith, relative to the Company, as such, or to its property, and in the event of any proceedings for voluntary liquidation, dissolution or other winding up of the Company, the Senior Lenders shall be entitled to receive payment in full of all principal and interest on all Senior Indebtedness before IFC (as holder of the C Loan) is entitled to receive any payment on account of the C Loan; and to that end (but subject to the power of a court of competent jurisdiction to make other equitable provision, reflecting the rights conferred by this Agreement upon the Senior Indebtedness and the Senior Lenders with respect to the C Loan, and the holder thereof, in connection with the adoption of a lawful plan of reorganization under applicable bankruptcy law) the Senior Lenders shall be entitled to receive for application in payment of the Senior Indebtedness any payment or distribution of any kind or character, whether in cash or property or securities, which may be payable or deliverable in any such proceedings to IFC (as holder of the C Loan) in respect of the C Loan; and

(c) Subject to the payment in full of all Senior Indebtedness, IFC (as holder of the C Loan) shall be subrogated to the rights of the Senior Lenders to receive payments or distributions of assets of the Company or other payments applicable to the Senior Indebtedness, to the extent of the application thereto of monies or other assets which would have been received by IFC (as holder of the C Loan) but for the provisions of this Section, until all monies payable under this Agreement in respect of the C Loan shall have been fully paid

in accordance with its terms; and for the purposes of such subrogation, no payments or distributions to the Senior Lenders of cash, property or securities to which IFC (as holder of the C Loan) would be entitled except for the provisions of this Section shall, as between the Company, its creditors (other than Senior Lenders) and IFC (as holder of the C Loan) be deemed a payment by the Company on account of the Senior Indebtedness.

ARTICLE IV

Representations and Warranties

Section 4.01. The Company confirms the representations contained in the Letter of Information as if they had been made by it and set out in extenso in, and as of the date of, this Agreement.

Section 4.02. The Company also represents as follows:

(a) that it is a corporation duly incorporated under the laws of Delaware and has the corporate power to conduct its business as presently conducted and to enter into this Agreement;

(b) that this Agreement has been duly authorized and executed by the Company and constitutes a valid and legally binding obligation of the Company, enforceable in accordance with its terms; and

(c) that neither the making of this Agreement nor the compliance with its terms will conflict with or result in a breach of any of the terms, conditions or provisions of, or constitute a default or require any consent under, any indenture, mortgage, agreement or other instrument or arrangement to which the Company is a party or by which it is bound, or violate any of the terms or provisions of the Company's Certificate of Incorporation or any judgment, decree or order or any statute, rule or regulation applicable to the Company.

Section 4.03. The Company acknowledges that it has made the representations referred to in Sections 4.01 and 4.02 with the intention of persuading IFC to enter into this Agreement and that IFC has entered into this Agreement on the basis of, and in full reliance on, each of such representations. The Company warrants to IFC that each of such representations is true and correct in all material respects as of the date of this Agreement and that none of them omits any material facts the omission of which makes any of such representations misleading.

Section 4.04. The rights and remedies of IFC in relation to any misrepresentations or breach of warranty on the part of the Company shall not be prejudiced by any investigation by or on behalf of IFC into the affairs of the Company, by the execution or the performance of this Agreement or by any other act or thing which may be done by or on behalf of IFC in connection with this Agreement and which might, apart from this Section, prejudice such rights or remedies.

ARTICLE V

Conditions of Disbursement

Section 5.01. The obligation of IFC to make the first disbursement of the Loan shall be subject to the performance by the Company of all its obligations theretofore to be performed under this Agreement and to the fulfillment, in a manner satisfactory to IFC, prior to or concurrently with the making of such first disbursement, of the following further conditions:

(a) arrangements satisfactory to IFC shall have been made with respect to the installation and operation of an accounting and cost control system and a management information system and for the appointment as Auditors of a firm of independent public accountants acceptable to IFC;

(b) the Company shall have its properties and business insured with financially sound and reputable insurers against loss or damage in such manner and to the same extent as shall be no less than that generally accepted as customary in regard to property and business of like character and shall have furnished IFC a certificate from the Company's insurers or insurance brokers, indicating the properties insured, amounts and risks covered, naming the Senior Lenders and the Company as loss payees, names of the insurers and special features of the insurance policies in effect on the date of the relevant certificate, provided that, with respect to the two Project Barges, the Company shall have the insurance described in the First Preferred Fleet Mortgage in the exact form therein described;

(c) the following agreements, each in form and substance satisfactory to IFC, shall have been entered into between the respective parties thereto, shall have become (or, as the case may be, shall remain) unconditional and fully effective in accordance with their respective terms:

(i) the Operation and Maintenance Agreement;
(ii) the Other Loan Agreements, if any;
(iii) the Sponsor Support Agreement;

(iv) the Project Funds Agreement;
(v) the Share Retention Agreement; and
(vi) the PPA;

(d) the Certificate of Incorporation of the Company shall be in form and substance satisfactory to IFC;

(e) the following Security shall have been created and perfected:

(i) the First Preferred Fleet Mortgage;

(ii) a collateral assignment by the Company to IFC for the benefit of IFC and any counterparty to a Swap Agreement of all its rights under the PPA, including the right of IFC to acquire the PPA in the event of foreclosure, and the ninety-day letter of credit issued under clause Tenth thereunder;

(iii) to the extent permitted by law, a collateral assignment to IFC for the benefit of IFC and any counterparty to a Swap Agreement of all concessions, agreements, licenses and permits associated with the Project (including the Site Lease and the Turnkey Construction Contract);

(iv) a designation of IFC and the Company as loss payees on all insurance policies (other than insurance policies obtained from Overseas Private Investment Corporation under which the Company will be sole loss payee) issued in connection with the Project assets and business; and

(v) a mortgage under Guatemalan law on the Company's land based assets located in Guatemala (such assets being herein called the "Guatemalan Assets" and such mortgage being herein called the "Guatemalan Mortgage") provided, however, that the Company shall not be required to create the Guatemalan Mortgage if, prior to the first disbursement of the Loan, EDC shall have entered into an agreement with IFC under which EDC shall agree that if an Event of Default exists and IFC exercises its foreclosure rights under the First Preferred Fleet Mortgage then EDC, at the request of IFC, will pay to IFC within thirty days of such request an amount in Dollars equal to the lesser of (i) $10 million (less the proceeds of any sale of the Guatemalan Assets received by IFC), and (ii) all amounts owed to IFC under the Investment Agreement following the sale of the

Company's assets under the First Preferred Fleet Mortgage;

(f) there shall have been obtained, or there shall have been made arrangements satisfactory to IFC for obtaining, all material governmental, corporate, creditors', shareholders' and other necessary licenses, approvals or consents for: (i) the financing by IFC under this Agreement; (ii) the carrying on of the business of the Company as it is contemplated to be carried on; (iii) the carrying out of the Project and the Financial Plan; (iv) the due execution and delivery of, and performance under, this Agreement, the Security and the other agreements referred to in Section 5.01 (c), and any documents in implementation of any thereof; and (v) the remittance to IFC or its assigns of all monies payable in respect of this Agreement and the Security;

(g) IFC shall have received a legal opinion or opinions, in form and substance satisfactory to it, of Guatemalan, New York and U.S. maritime counsel acceptable to IFC, with respect to: (i) the organization and existence of the Company; (ii) the matters referred to in subsections (c), (d), (e) and (f) above; (iii) the title of the Company to, or other interest of the Company in, its assets, movable and immovable; (iv) the authorization, execution, validity and enforceability of this Agreement, the Security, the agreements referred to in Section 5.01 (c) and any documents in implementation of any thereof; (v) the compliance with all obligations referred to in Sections 3.08 and 6.03; (vi) the priorities or privileges, if any, that creditors of the Company, other than IFC, may have by reason of law; and (vii) such other matters incident to the transactions contemplated by this Agreement as IFC shall reasonably request;

(h) the entire equity and quasi-equity contemplated in the Financial Plan consisting of $13.75 million from EDC and the EEGSA Deposit, shall have been paid in;

(i) arrangements satisfactory to IFC shall have been made to insure that the Project will operate within the environmental and occupational health and safety guidelines, set out in Section 6.01 (l);

(j) the letter of credit or cash collateral in an amount equal to the Maximum Debt Service Deficiency shall have been established in a manner satisfactory to IFC;

(k) arrangements satisfactory to IFC shall have been made for appointment of an agent for service of process pursuant to Section 8.07 (b);

(l) a copy of the authorization to the Auditors referred to in Section 6.01 (e) shall have been furnished to IFC;

(m) the evidence of signature authority and specimen signatures referred to in Section 8.02 shall have been supplied to IFC;

(n) the Project Barges shall have been duly documented in the name of the Company under the laws of the United States; and

(o) all fees payable to IFC under the Mandate Letter shall have been paid in full to the satisfaction of IFC.

Section 5.02. The obligation of IFC to make any disbursement of the Loan shall also be subject to the conditions that:

(a) no Event of Default and no event which, with lapse of time or notice and lapse of time as specified in Section 7.01, would become an Event of Default shall have occurred and be continuing;

(b) there shall not have occurred any default by any party in the performance of any provision of the Security or of any of the agreements listed in Section 5.01 (c);

(c) the proceeds of such disbursement shall, at the time of request therefor, be needed by the Company for the purposes of the Project;

(d) nothing shall have occurred which might materially and adversely affect the carrying out of the Project or the Company's business prospects or financial condition, or which shall make it improbable that the Company will be able to fulfill any of its obligations under this Agreement nor shall the Company have incurred any material loss or liability (except such liabilities as may be incurred by the Company in accordance with the provisions of Section 6.02);

(e) the representations and warranties confirmed or made in Article IV shall be true on and as of the date of the disbursement or subscription with the same effect as though such representations and warranties had been made on and as of the date of such disbursement or subscription; and

(f) the proceeds of such disbursement shall not be in reimbursement of, or used for, expenditures in the territories of any country which is not a member of IFC (other than any country which is a member of the International Bank for Reconstruction and Development) or for goods produced in or services supplied from such territories; and the Company shall have delivered to IFC a certification, in form and substance satisfactory to IFC, with respect to the foregoing conditions, signed by an authorized representative of

the Company and expressed to be effective as of the date of the relevant disbursement or subscription, together with: (i) such evidence as to the proposed utilization of the proceeds of the relevant disbursement and the utilization of the proceeds of any prior disbursement as IFC shall reasonably require; and (ii) if IFC shall so request, a legal opinion or opinions, in form and substance satisfactory to it, of counsel acceptable to IFC, and concurred in by counsel for the Company, with respect to any matters incident to the disbursement or subscription.

Section 5.03. The obligation of IFC to make any disbursement of the Loan shall also be subject to the conditions that:

(a) the Company shall have the corporate authority to borrow the amount requested to be disbursed;

(b) the amount requested to be disbursed shall be within the Company's available borrowing power; and

(c) after giving effect to such disbursement the Company shall not be in violation of its Certificate of Incorporation, any provision contained in any document to which the Company is a party (including this Agreement) or by which the Company is bound, or any law, rule or regulation directly or indirectly limiting or otherwise restricting the Company's borrowing power or authority or its ability to borrow; and the Company shall have delivered to IFC a certification, in form and substance satisfactory to IFC, with respect to the foregoing conditions, signed by an authorized representative of the Company and expressed to be effective as of the date of such disbursement.

Section 5.04. Notwithstanding anything provided in this Agreement:

(a) IFC shall not be obligated to make any disbursement of the A Loan or of the B Loan except after all of the C Loan shall have been disbursed;

(b) IFC shall not be obligated to make any disbursement of the A Loan until one or more Participation Agreements in the full amount of the B Loan shall been executed by Participants; and

(c) IFC shall not be obligated to make any disbursement of the B Loan except to the extent that funds shall be provided therefor by the Participants under the Participations.

Section 5.05. (a) No course of dealing or waiver by IFC in connection with any condition of disbursement under this Agreement shall impair any right, power or remedy of IFC with respect to any other condition of disbursement, or be construed to be a waiver

thereof; nor shall the action of IFC in respect of any disbursement affect or impair any right, power or remedy of IFC in respect of any other disbursement.

(b) Unless otherwise notified to the Company by IFC and without prejudice to the generality of subsection (a) above, the right of IFC to require compliance with any condition under this Agreement which may be waived by IFC in respect of any disbursement is expressly preserved for the purposes of any subsequent disbursement.

ARTICLE VI

Particular Covenants

Section 6.01. Unless IFC shall otherwise agree, the Company shall:

(a) carry out the Project and conduct its business with due diligence and efficiency and in accordance with sound engineering, financial and business practices; carry out the Project in accordance with the description thereof which is referred to in the Letter of Information (subject to any modifications to which IFC may agree in writing); and cause the financing specified in the Financial Plan to be applied exclusively to the Project;

(b) keep its properties (including the Project Barges, as required in the First Preferred Fleet Mortgage) and business insured with financially sound and reputable insurers against loss or damage in such manner and to the same extent as shall be no less than that generally accepted as customary in regard to property and business of like character and shall, within ninety (90) days after the end of each Fiscal Year, submit to IFC a certificate from the Company's insurers or insurance brokers, indicating the properties insured, names of the insurers, amounts and risks covered, naming the Senior Lenders and the Company as loss payees, and any special features of the insurance policies in effect on the date of the relevant certificate;

(c) promptly and diligently install, and thereafter maintain, the accounting and cost control system and management information system referred to in Section 5.01 (a), and maintain books of account and other records adequate to reflect truly and fairly the financial condition of the Company and the results of its operations in conformity with United States generally accepted accounting principles consistently applied;

(d) as soon as available, but, in any event, within ninety (90) days after the end of each quarter of each Financial Year, furnish to IFC: (i) two copies of the Company's complete financial statements for such quarter in form satisfactory to IFC and, if requested by IFC, certified by an officer of the Company; (ii) a report on any factors materially and adversely affecting or which might materially and adversely affect the Company's business and operations or its financial condition; and (iii) a statement of all financial transactions between the Company and each of its Subsidiaries and affiliated companies (with the term "affiliated companies" meaning for the purposes of this subsection or subsection (e) below, any corporate entity in whose share capital the Company or its parent company or any of their respective subsidiaries has a direct or indirect interest exceeding fifty per cent (50%) of its share capital);

(e) as soon as available but, in any event, within one hundred and twenty (120) days after the end of each Fiscal Year, furnish to IFC: (i) two (2) copies of its complete financial statements for such Fiscal Year (which are in agreement with its books of account and prepared in accordance with United States generally accepted accounting principles and consistently applied), together with an audit report thereon, all in form satisfactory to IFC; (ii) a copy of any management letter or other written communication sent by the Auditors to the Company or to its management in relation to the Company's financial, accounting and other systems, management and accounts; (iii) a report by the Auditors certifying that, based on its said financial statements, the Company was in compliance with the financial covenants contained in Section 6.02 as of the end of the relevant Financial Year or, as the case may be, detailing any non-compliance; and (iv) a statement of all financial transactions between the Company and each of its Subsidiaries and affiliated companies (as defined in subsection (d) above); and the Company shall authorize the Auditors (whose fees and expenses shall be for the account of the Company) to communicate directly with IFC at any time regarding the Company's accounts and operations and shall furnish to IFC a copy of such authorization;

(f) notwithstanding anything herein provided for, for a period of one year from the date hereof the Company shall furnish to IFC monthly reports within thirty (30) days from the end of each month on the implementation and progress of the Project, including any factors materially affecting or which might materially affect the carrying out of the Project or the implementation of the Financial Plan (such reports being herein called the "Progress Reports"); and after the expiration of the one year term referred to above furnish IFC Progress Reports at the end of each quarter of each Fiscal Year within thirty (30) days from the end of the relevant quarter;

(g) give to IFC reasonable advance notice of the calling of any meeting of its stockholders indicating the agenda thereof and furnish promptly to IFC two (2) copies of: (i) all notices, reports and other communications of the Company to its shareholders; and (ii) the minutes of all such shareholders' meetings;

(h) furnish promptly to IFC such information as IFC may from time to time reasonably request regarding the Project and permit representatives of IFC upon reasonable advance notice and during normal business hours to visit any of the premises where the business of the Company is conducted and to have access to its books of account and records;

(i) promptly inform IFC of any proposed change in the nature or scope of the Project or the business or operations of the Company and of any event or condition which might materially and adversely affect the carrying out of the Project or the carrying on of the Company's business or operations;

(j) in the event that the firm of auditors chosen pursuant to Section 5.01 (a) should cease to be the Auditors of the Company for any reason, appoint and maintain as the Auditors of the Company another firm of independent public accountants approved by IFC;

(k) obtain and maintain in force (or where appropriate, promptly renew) all licenses, approvals or consents necessary for the carrying out of the Project and the Company's business and operations generally, except where the failure to obtain or maintain such licenses, approvals or consents will not have a material adverse effect on the Company, the Project or the Security; and perform and observe all the conditions and restrictions contained in, or imposed on the Company by, any such licenses, approvals or consents except where the failure to perform or observe such conditions and restrictions will not have a material adverse effect on the Company, the Project or the Security;

(l) comply with the World Bank's Occupational Health and Safety Guidelines and Environmental Guidelines, both dated September 1988 (not including any amendment or supplement thereto enacted after the date of this Agreement) and applicable Guatemalan environmental statutes, rules and regulations, and give IFC within sixty (60) days from the end of each Fiscal Year annual reports required to be submitted to CONAMA with respect to environmental, safety and occupational health aspects of the Project;

(m) within thirty (30) days from the date on which they become available furnish to IFC copies of the Annual Operating Plan and the Annual Budget as such terms are defined in Operation and Maintenance Agreement;

(n) upon the occurrence and continuance of an Event of Default, if requested by IFC in writing to do so, (i) transfer to IFC within ten (10) days of such request the right to use all of the Project land based assets located in Guatemala and (ii) if any of such assets is sold or in any other manner disposed of by the Company, transfer to IFC the proceeds of such sale immediately upon receipt thereof; and

(o) maintain at all times an adequate supply of fuel, including valid and enforceable fuel supply agreements.

Section 6.02. Unless IFC shall otherwise agree, the Company shall not:

(a) declare or pay any dividend or make any distribution on its share capital, or purchase, redeem or otherwise acquire any shares of the Company or any option over the same, if there shall have occurred and there shall be continuing an Event of Default under this Agreement, the Sponsor Support Agreement, the First Preferred Fleet Mortgage, the Operation and Maintenance Agreement or the Project Funds Agreement;

(b) declare or pay any dividend or make any distribution on its share capital (other than dividends or distributions payable in shares of the Company), or purchase, redeem or otherwise acquire any shares of the Company or any option over the same, except out of moneys earned after the Project Completion Date and then only if:

(i) immediately after each such dividend payment the Company has a minimum cash balance of not less than five hundred thousand Dollars ($500,000); and

(ii) the Debt Service Coverage Ratio for the twelve month period immediately preceding each such dividend payment is at least 1.2:1.0;

(c) incur expenditures or commitments for expenditures for fixed and other non-current assets in excess of an aggregate amount equivalent to $100,000 in any Fiscal Year, other than those required for carrying out the Project or necessary for maintenance, repairs or replacements incurred in the ordinary course of the Company's business or operations;

(d) incur, assume or permit to exist any indebtedness except:

(i) indebtedness contemplated in the Financial Plan;

(ii) subordinated loans under the Project Funds Agreement and/or the Sponsor Support Agreement;

(iii) indebtedness which is incurred for money borrowed in the ordinary course of business, that is repayable within one year from the date of borrowing and which does not exceed fifty per cent (50%) of the aggregate of the Company's inventories, receivables, cash and short-term deposits;

(iv) indebtedness incurred in the ordinary course of business other than for money borrowed;

(v) any obligations arising under a Swap;

(vi) any indebtedness of the Company that, by its terms, is payable only out of amounts that would otherwise be paid or payable as dividends under the provisions of this Agreement;

(vii) indebtedness to EEGSA under the PPA; and

(viii) any other indebtedness of the Company subordinated to the obligations of the Company under this Agreement on terms and conditions satisfactory to IFC;

(e) enter into any agreement or arrangement to guarantee or, in any way or under any condition, to become obligated for all or any part of any financial or other obligation of another person in excess of an aggregate amount of $50,000 at any one time outstanding;

(f) create or permit to exist any lien on any property, revenues or other assets, present or future, of the Company, except:

(i) the Security;

(ii) any tax or other statutory lien, provided that such lien shall be discharged within thirty (30) days after the date it is created or arises (unless contested in good faith by the Company, in which case it shall be discharged within thirty (30) days after final adjudication);

(iii) purchase money security interests in respect of debt not exceeding in the aggregate $50,000 at any time outstanding and arising out of equipment purchases; and

(iv) liens created pursuant to the Swap Agreements

for the purposes of this subsection, the term "lien" shall include any mortgage, pledge, charge, privilege or priority of any kind, including, without limitation, any designation of loss payees or beneficiaries or any similar arrangement under any insurance policy;

(g) enter into any transaction other than the Operation and Maintenance Agreement with any person except in the ordinary course of business, on commercial terms and on the basis of arm's-length arrangements, or establish any sole and exclusive purchasing or sales agency, or enter into any transaction whereby the Company might pay more than the ordinary commercial price for any purchase or might receive less than the full commercial price (subject to normal trade discounts) for its products;

(h) except for the Operation and Maintenance Agreement, enter into any partnership, profit-sharing or royalty agreement or other similar arrangement whereby the Company's income or profits are, or might be, shared with any other person; or enter into any management contract or similar arrangement whereby its business or operations are managed by any other person;

(i) form or have any Subsidiary (other than Comelectric, S.A. and Electricidad del Pacifico, S.A.); make or permit to exist loans or advances to, or deposits (except commercial bank deposits in the ordinary course of business) with other persons or investments in any person or enterprise, provided, however, that the Company shall be at liberty to invest in short-term marketable securities acquired solely to give temporary employment to its idle resources;

(j) change its Certificate of Incorporation in any manner which would be inconsistent with the provisions of this Agreement, the Security, the Project Funds Agreement and the Share Retention Agreement; change its Fiscal Year; change the nature of its contemplated business or operations or change the nature of the Project; sell, transfer, lease or otherwise dispose of all or a substantial part of its capital assets (whether in a single transaction or in a series of transactions, related or otherwise); or undertake or permit any merger, consolidation or reorganization;

(k) terminate, amend, assign or grant any waiver in respect of any material provision of any of the agreements referred to in Section 5.01 (c);

(l) except for any prepayment, repurchase or repayment of indebtedness to the Operator or Enron as evidenced by subordinated loans made by the Operator to the Company pursuant to the Project Funds Agreement, or by subordinated loans made by Enron to the Company pursuant to the Sponsor Support Agreement or otherwise, make any prepayment (whether voluntarily or involuntarily) or repurchase of any long-term indebtedness (other than the Loan), or make any

repayment of any such indebtedness pursuant to any provision of any agreement or note which provides directly or indirectly for acceleration of repayment in time or amount, unless in any such case it shall, if IFC so requires, contemporaneously make a proportionate prepayment or repayment of the principal amount then outstanding of the Loan;

(m) except for the Site Lease, enter into any agreement or arrangement to acquire by lease the use of any property or equipment of any kind in excess of an aggregate of $100,000 of lease rental payments per year;

(n) make any repayment of the EEGSA Deposit except out of funds that would otherwise have been available for the payment of dividends under Section 6.02 (b); or

(o) pay any O&M Fees until payment in full of all Operating Expenses and Debt Service then due and payable.

Section 6.03. The Company shall pay all taxes (including stamp taxes), duties, fees or other charges payable on or in connection with the execution, issue, delivery, registration or notarization of this Agreement, the Security, the Project Funds Agreement, the Share Retention Agreement and any other documents related to this Agreement, and shall, upon notice from IFC, reimburse IFC or its assigns for any such taxes, duties, fees or other charges paid by IFC or its assigns thereon.

ARTICLE VII

Events of Default

Section 7.01. If one or more of the events specified in this Section ("Events of Default") shall have happened and be continuing, then IFC, by notice to the Company, may declare the principal of, and all accrued interest on, the A Loan and/or the B Loan and/or the C Loan or any part of any of them (together with any other amounts accrued or payable under this Agreement) to be, and the same shall thereupon become, immediately due and payable (anything in this Agreement to the contrary notwithstanding) without any further notice and without any presentment, demand or protest of any kind, all of which are hereby expressly waived by the Company:

(a) default shall have occurred in the payment of any principal of the Loan;

(b) default shall have occurred in the payment of any interest on the Loan, and such default shall have continued for a period of fifteen (15) days;

(c) default shall have occurred in the performance of any obligation of the Company under this Agreement (other than any obligation for the payment of principal or interest under this Agreement) or under any other agreement between the Company and IFC or the Security, or in the performance of any obligation by any party under any of the agreements listed in Section 5.01 (c), or in the payment of any fees owed IFC under the Mandate Letter, and any such default shall have continued for a period of thirty (30) days after notice thereof shall have been given to the Company by IFC;

(d) any representation or warranty made in the Letter of Information, Article IV or in connection with the execution and delivery of this Agreement, or in connection with any request for disbursement under this Agreement, shall be found to have been incorrect in any material respect as of the time made and shall continue to be incorrect for a period of thirty (30) days after notice thereof shall have been given to the Company by IFC provided that, if the circumstances that made any such representation or warranty incorrect at the time when made shall no longer be continuing and if the existence of such circumstances has not had an adverse effect on the interest of IFC or the ability of the Company to perform its obligations under this Agreement, then the Event of Default created under this clause (d) in respect of such circumstances shall no longer be deemed continuing;

(e) any government or governmental authority shall have condemned, nationalized, seized, or otherwise expropriated all or any substantial part of the property or other assets of the Company or of its share capital, or shall have assumed custody or control of such property or other assets or of the business or operations of the Company or of its share capital, or shall have taken any action for the dissolution or disestablishment of the Company or any action that would prevent the Company or its officers from carrying on its business or operations or a substantial part thereof;

(f) there shall have been entered against the Company a decree or order by a court adjudging the Company bankrupt or insolvent, or approving as properly filed a petition seeking reorganization, arrangement, adjustment or composition of or in respect of the Company under any applicable law, or appointing a receiver, liquidator, assignee, trustee, sequestrator (or other similar official) of the Company or of any substantial part of its property or other assets, or ordering the winding up or liquidation of its affairs; or the institution by the Company of proceedings to be adjudicated bankrupt or insolvent, or the consent by it to the institution of bankruptcy or insolvency proceedings against it, or the filing by it of a

petition or answer or consent seeking reorganization or relief under any applicable law, or the consent by it to the filing of any such petition or to the appointment of a receiver, liquidator, assignee, trustee, sequestrator (or other similar official) of the Company or of any substantial part of its property, or the making by it of an assignment for the benefit of creditors, or the admission by it in writing of its inability to pay its debts generally as they become due; or any other event shall have occurred which under any applicable law would have an effect analogous to any of those events listed above in this subsection;

(g) a default shall have occurred with respect to any indebtedness of the Company in excess of fifty thousand Dollars ($50,000) (other than the Loan) or under any agreement pursuant to which there is outstanding any such indebtedness of the Company, and any such default shall have continued for more than any applicable period of grace;

(h) either of the Project Barges is removed from the Project Site without IFC's prior consent; or

(i) the annual Average Availability, calculated for any calendar year, of the Plant shall fall below sixty-three per cent (63%), provided that such event shall, in IFC's reasonable opinion, materially and adversely affect the Company's ability to perform its obligations under this Agreement.

Section 7.02. If the Company shall have become voluntarily or involuntarily dissolved, or become bankrupt or insolvent (however such bankruptcy or insolvency may be evidenced), the principal of, and all accrued interest on, the Loan (together with any other amounts accrued or payable under this Agreement) shall thereupon become immediately due and payable (anything in this Agreement to the contrary notwithstanding) without any presentment, demand, protest or notice of any kind, all of which are hereby expressly waived by the Company.

Section 7.03. If any Event of Default or any event which, with lapse of time or notice and lapse of time, would become an Event of Default shall have happened, the Company shall immediately give IFC notice thereof by cable or telex or facsimile specifying the nature of such Event of Default or such event and any steps the Company is taking to remedy the same.

Section 7.04. No course of dealing and no delay in exercising, or omission to exercise, any right, power or remedy accruing to IFC upon any default under this Agreement or any other agreement shall impair any such right, power or remedy or be construed to be a waiver thereof or an acquiescence therein; nor shall the action of IFC in respect of any such default, or any acquiescence by it

therein, affect or impair any right, power or remedy of IFC in respect of any other default.

ARTICLE VIII

Miscellaneous

Section 8.01. Any notice, request or other communication to be given or made under this Agreement to IFC or to the Company shall be in writing. Subject to the provisions of Section 6.01 (g) and Section 7.03, such notice, request or other communication shall be deemed to have been duly given or made when it shall be delivered by hand, mail, facsimile, cable or telex to the party to which it is required or permitted to be given or made at such party's address specified below or at such other address as such party shall have designated by notice to the party giving or making such notice, request or other communication.

For the Company:

Puerto Quetzal Power Corporation, Sucursal
c/o Puerto Quetzal Power Corp.
Three Allen Center
333 Clay Street, Suite 1800
Houston, Texas 77002

Attention: Executive Vice President and
Chief Financial Officer

Alternative address for communications by facsimile:

(713) 646-6022

For IFC:

International Finance Corporation
1818 H Street, N.W.
Washington, D.C. 20433
United States of America

Alternative address for communications by facsimile:

(202) 477-6391
(202) 477-8164
(202) 477-8451

Alternative address for communications by telex:

248423 - World Bank (RCA)
64145 - World Bank (WUI)
197688 - World Bank (TRT)
82987 - World Bank (FTCC)

Section 8.02. The Company shall furnish or cause to be furnished to IFC evidence, in form and substance satisfactory to IFC, of the authority of the person or persons who will, on behalf of the Company, sign the requests and certifications provided for in this Agreement, or take any other action or execute any other document required or permitted to be taken or executed by the Company under this Agreement, and the authenticated specimen signature of each such person.

Section 8.03. All documents to be furnished or communications to be given or made under this Agreement shall be in the English language or, if in another language, shall be accompanied by a translation into English certified by a representative of the Company, which translation shall be the governing version between the Company and IFC.

Section 8.04. (a) The Company shall pay to IFC or as IFC may direct: the fees and expenses of IFC's Guatemalan, New York and U.S. maritime counsel incurred in connection with: (A) the preparation of the investment by IFC, (B) the preparation and/or review, execution and, where appropriate, registration of this Agreement, the Security and any other documents related to this Agreement; (C) the giving of any legal opinions required by IFC hereunder; (D) any amendment or modification to, or waiver under, this Agreement or any such other document; and (E) the registration (where appropriate) and the delivery of the evidences of indebtedness relating to the Loan and the disbursements thereof.

(b) If any amount owing to IFC under this Agreement shall be collected through any process of law or shall be placed in the hands of attorneys for collection, the Company shall pay (in addition to all monies then due in respect of the Loan or otherwise payable under this Agreement) reasonable attorneys' and other fees and expenses incurred in respect of such collection.

Section 8.05. All financial calculations to be made under, or for the purposes of, this Agreement shall be determined in accordance with generally accepted accounting principles in the United States applied on a consistent basis and, except as otherwise required to conform to the provisions of this Agreement, shall be calculated from the then most recently issued quarterly financial statements which the Company is obligated to furnish to IFC from

time to time, as provided in Section 6.01 (d); provided, however, that if the relevant quarterly financial statements should be in respect of the last quarter of a Fiscal Year then, at IFC's option, such calculations may instead be made from the audited financial statements for the relevant Fiscal Year.

Section 8.06. This Agreement shall continue in force until all monies payable hereunder shall have been fully paid in accordance with the provisions hereof.

Section 8.07. (a) This Agreement shall be governed by and construed in accordance with the laws of the State of New York, United States of America.

(b) The Company hereby irrevocably agrees that any legal action, suit or proceeding arising out of or relating to this Agreement may be brought in the courts of the State of New York or of the United States of America located in the Southern District of New York. By the execution and delivery of this Agreement, the Company hereby irrevocably submits to the non exclusive jurisdiction of any such court in any such action, suit or proceeding and agrees to designate, appoint and empower CT Corporation System, 1633 Broadway, New York, New York as its authorized agent solely to receive for and on its behalf service of summons or other legal process in any such action, suit or proceeding in the State of New York. Final judgement against the Company in any such action, suit or proceeding shall be conclusive and may be enforced in any other jurisdiction including Guatemala by suit on the judgement. Nothing herein shall affect the right of IFC to commence legal proceedings or otherwise sue the Company in Guatemala or any other appropriate jurisdiction or to serve process upon the Company in any manner authorized by the laws of any such jurisdiction.

(c) The Company further covenants and agrees that, for so long as it shall be bound to IFC under this Agreement, it shall maintain a duly appointed agent for the service of summons and other legal process in New York, New York, United States of America, for purposes of any legal action, suit or proceeding brought by IFC in respect of this Agreement and shall keep IFC advised of the identity and location of such agent. The Company further irrevocably consents, if for any reason there is no authorized agent for service of process in New York, New York, to the service of process out of the said courts by mailing copies thereof by registered United States air mail, postage prepaid, to the Company at its address specified herein; and in such a case IFC shall also send by telex or confirmed facsimile, or shall undertake that there is also sent by telex or confirmed facsimile, a copy of such process to the Company.

(d) The mailing, telexing or telefaxing of process in the manner provided in subsection (c) above in any such action, suit or

proceeding shall, be deemed personal service and accepted by the Company as such and shall be valid and binding upon the Company for all the purposes of any such action, suit or proceeding.

(e) In addition, the Company irrevocably waives, to the fullest extent permitted by applicable law, any objection which it may now or hereafter have to the laying of venue of any action, suit or proceeding arising out of the State of New York or in the United States District Court for the Southern District of New York, and any claim that any such action, suit or proceeding brought in any such court has been brought in an inconvenient forum. Further, the Company, to the fullest extent permitted by applicable law, irrevocably waives any right it may now or hereafter have to the removal to a United States Federal Court of any action brought hereunder in a state court of the State of New York.

Section 8.08. This Agreement shall bind and inure to the benefit of the respective successors and assigns of the parties hereto, except that the Company may not assign or otherwise transfer all or any part of its rights or obligations under this Agreement without the prior written consent of IFC.

Section 8.09. This Agreement may be executed in several counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement.

IN WITNESS WHEREOF, the parties hereto, acting through their duly authorized representatives, have caused this Agreement to be signed in their respective names as of the date first above written.

PUERTO QUETZAL POWER CORP.

By
Authorized Representative

INTERNATIONAL FINANCE CORPORATION

By
Authorized Representative

Exhibit A
Page 1 of 3

Form of Disbursement Request

[Letterhead of the Company]

[Address]
[Date]

International Finance Corporation
1818 H Street, N.W.
Washington, D.C. 20433
United States of America

Gentlemen:

Investment No. 3535
Request for Loan Disbursement No.[ ]

1. Please refer to the Investment Agreement (the Investment Agreement) dated as of March 31, 1993 between Puerto Quetzal Power Corp. (the "Company") and International Finance Corporation (IFC).

2. Expressions defined in the Investment Agreement shall bear the same meanings herein.

3. The Company hereby requests the disbursement, on or before _____, 199_, of the amount _____ of the [A, B, or C] Loan in accordance with the provisions of Section 3.02 of the Investment Agreement. You are requested to pay such amount to the Company's account No. _____ at [Bank] [address].

4. We undertake to deliver to IFC a signed, stamped, but undated receipt for the amount hereby requested to be disbursed and hereby authorize IFC to date such receipt with the date of actual disbursement by IFC of the funds hereby requested to be disbursed.

5. For the purposes of Section 5.02 of the Investment Agreement the Company hereby certifies as follows:

(a) no Event of Default, and no event which, with the lapse of time or notice and lapse of time as specified in Section 7.01 of the Investment Agreement would become an Event of Default has happened and is continuing;

Exhibit A
Page 2 of 3

(b) there has not occurred any default by any party in the performance of any provision of any of the agreements referred to in Section 5.01 (c) of the Investment Agreement;

(c) the proceeds of the disbursement hereby requested are needed by the Company for the purposes of the Project.

(d) nothing has occurred which might materially and adversely affect the carrying out of the Project or the Company's business prospects or financial condition, or has made it improbable that the Company will be able to fulfill any of its obligations under the Investment Agreement; nor has the Company incurred any material loss or liability (except such liabilities as may be incurred by the Company under Section 6.02 of the Investment Agreement);

(e) the representations and warranties confirmed or made in Article IV of the Investment Agreement are true on the date hereof with the same effect as though such representations and warranties had been made on today's date; and

(f) the proceeds of the disbursement hereby requested will not be in reimbursement of, or used for, expenditures in the territories of any country which is not a member of IFC (other than any country which is a member of the International Bank for Reconstruction and Development) or for goods produced in or services supplied from such territories.

6. For the purposes of Section 5.03 of the Investment Agreement the Company hereby certifies as follows:

(a) the Company has the corporate authority to borrow the amount requested to be disbursed;

(b) the amount requested to be disbursed is within the Company's available borrowing power; and

Exhibit A
Page 3 of 3

(c) after giving effect to this disbursement the Company shall not be in violation of its Certificate of Incorporation, any provision contained in any document to which the Company is a party (including the Investment Agreement) or by which the Company is bound, or any law, rule or regulation directly or indirectly limiting or otherwise restricting the Company's borrowing power or authority or its ability to borrow.

7. The certifications in paragraphs 5 and 6 above are effective as of the date of this request for disbursement and will continue to be effective as of the date of disbursement.

If any of these certifications is no longer valid as of or prior to the date of the disbursement hereby requested, the Company will immediately notify IFC and will repay the amount disbursed upon demand by IFC if disbursement is made prior to the receipt of such notice.

Very truly yours

PUERTO QUETZAL POWER CORP

By

Authorized Representative

G:\DOCS\PROJ\GUA\PUEQUE01\AGR\BEM0103 (March 31, 1993 2:05pm)

PUERTO QUETZAL POWER CORP

Officer's Certificate

The undersigned, a duly authorized representative of Puerto Quetzal Power Corp., a Delaware corporation (the "Company"), DOES HEREBY CERTIFY AS FOLLOWS:

1. This certificate is being delivered pursuant to Section 5.01(a) of that certain Investment Agreement, dated as of March 31, 1993, by and between the Company and International Finance Corporation (the "Investment Agreement"). Capitalized terms used herein and not otherwise defined herein shall have the respective meanings assigned to those terms in the Investment Agreement.

2. The Company has made arrangements for the installation and operation of an accounting and cost control system and a management information system as more fully described on Schedule 1 attached hereto.

3. The Company has appointed Arthur Andersen & Co. as auditors of the Company.

IN WITNESS WHEREOF, the undersigned has caused this certificate to be executed and delivered this 1st day of April, 1993.

Puerto Quetzal Power Corp.

By: _____
Richard A. Lammers
Vice President - Finance

U.S. Department
of Transportation

**Maritime
Administration**

400 Seventh Street, S.W.
Washington, D.C. 20590

MAY 22 2002

The Honorable Max Baucus
Chairman, United States Senate
Committee on Finance
Washington, D.C. 20510-6200

Dear Senator Baucus:

This is in response to your letter dated April 25, 2002, regarding the Maritime Administration's (MARAD) support of Enron Corp. (Enron). Since 1985, MARAD has approved Title XI [1] financing for four separate Enron affiliates operating in the Dominican Republic or Central America: Puerto Quetzal Power Corporation; Smith/Enron Cogeneration Limited Partnership; Empresa Energetica Corinto, Ltd; and Puerto Quetzal Power LLC.

The following is a brief overview of each of the four transactions that resulted in MARAD's approval of Title XI guaranteed obligations and responses keyed to each of the questions contained in your letter.

Puerto Quetzal Power Corporation (PQPC), a Delaware corporation.

On November 13, 1992, PQPC submitted a Title XI application for refinancing a portion of the existing obligations relating to the construction of two U.S. flag barge mounted power plants operating off the coast of Guatemala. On May 16, 1994, MARAD approved the issuance by the company of guarantees in an amount not to exceed $25 million as part of a co-financing with the International Finance Corporation. MARAD required that PQPC collaterally assign a power purchase agreement and a mortgage on the barges to MARAD and that Enron enter into certain guarantees and undertakings in the event of a default by PQPC. At the time of the commitment, the company was a joint venture between a wholly owned subsidiary of Enron and a wholly owned subsidiary of King Ranch Oil and Gas, Inc. Although Enron chose not to close this transaction and used an alternative source of funding, MARAD established a policy for these types of transactions, which it applied in the three subsequent transactions, of requiring Enron guarantees as credit enhancements and requiring that MARAD receive independent mortgagee status even in co-financed transactions.

[1] The Federal Ship Financing Program (Title XI of the Merchant Marine Act of 1936) provides for a full faith and credit guarantee by the U.S. Government of debt obligations issued by 1) U.S. citizen shipowners for the purpose of financing or refinancing U.S. flag vessels constructed or reconstructed in U.S. shipyards, 2) non U.S. citizen shipowners for the purpose of financing or refinancing foreign flag vessels constructed or reconstructed in U.S. shipyards or 3) U.S. shipyards for the modernization and improvement of their facilities.

Senate Finance Committee

EXHIBIT 5

A. The total amount of the loan guarantees approved for issuance was up to $25,000,000, but no guarantees were issued.
B. The decision to approve the financing was made by former Maritime Administrator, A.J. Herberger.
C. To the knowledge of the current staff, no communications were received from Congress, the Administration or the private sector in support or opposition to the project, other than from PQPC, co-lenders to the project, Enron, other Enron affiliates, and their respective attorneys.
D. Copies of the application and related material provided by Enron to the Maritime Administration are available for your review and duplication, if desired, at a mutually convenient time and place.

2. Smith Enron Cogeneration Limited Partnership (Smith Enron), a Turks and Caicos Islands limited partnership.

On March 22, 1995, Smith Enron submitted a Title XI application for assistance relating to the construction of two Panamanian flag barge mounted power plants operating near Puerto Plata in the Dominican Republic. On December 22, 1995, MARAD issued a commitment to guarantee obligations in the amount of $50,000,000 to Smith Enron. At the time of the commitment, the partnership was composed of Smith Cogeneration Group and wholly owned subsidiaries of Enron. The total cost of the project, including shoreside facilities was $204.3 million and the project was co-financed with the International Finance Corporation (IFC) (the major participant in the project financing) together with Commonwealth Development Corporation and DEG-Deutsche Investitions-Und-Entwicklunggesellschaft mbH. Enron and its affiliates provided a $10 million vessel removal guarantee for the project and an agreement concerning compliance with environmental standards for the project. On February 28, 1996, MARAD issued the guarantees to Smith Enron. The obligations require repayment on a level principal (straight line) basis over 10.5 years beginning on June 15, 1996 and ending December 15, 2006. The total debt outstanding is currently $27.2 million.

After the closing, this project suffered from power plant defects and from an unreliable payment history with its customer, the Dominican government-owned utility. In turn, these circumstances led to near constant surveillance by the creditors (including MARAD) and to frequent requests from Enron that MARAD grant it lenient treatment by delaying action in the event of a payment default. MARAD has uniformly and firmly rejected these requests.

A The total amount of the loan guarantees was $50,000,000
B The decision to approve the financing was made by former Maritime Administrator, A.J. Herberger.
C. To the knowledge of the current staff, no communications were received from Congress, the Administration or the private sector in support or opposition to the project, other than from Smith/Enron, co-lenders to the project, Enron and its affiliates, and their respective attorneys.

D. Copies of the application and related material provided by Enron to the Maritime Administration are available for your review and duplication, if desired, at a mutually convenient time and place.

3. Empresa Energetica Corinto Limitada (EECL), a Cayman Islands corporation.

On July 22, 1998, EECL submitted a Title XI application for financing the construction of one barge mounted power plant operating in Corinto, Nicaragua. On December 28, 1998, MARAD issued a commitment to EECL to guarantee obligations in the amount of $50,000,000. At the time of the Commitment, EECL was a joint venture between a wholly owned subsidiary of Enron and the Centrans Group. On May 3, 1999, EECL issued the guaranteed obligations, which are payable semi-annually on a level debt basis over 11.5 years. The total debt outstanding is currently $41.34 million.

As additional collateral for the transaction, MARAD required Enron to enter into a purchase agreement which obligated Enron to make certain mandatory deposits into a collateral account in favor of MARAD if Enron's credit rating dropped to a BBB- and to buy out MARAD's position if Enron's credit rating dropped to BB+. When Enron's credit standing began to worsen in late November, 2001, MARAD sent a notice to EECL and Enron stating that mandatory deposits of $6.3 million were required under the purchase agreement which Enron thereafter paid. A couple of weeks later, when Enron's credit rating dropped to BB+, MARAD sent a demand notice to Enron to purchase MARAD's Note. Shortly thereafter, Enron filed for bankruptcy protection and did not respond to MARAD's demand under the MARAD Note. As a result of Enron's failure to buy out MARAD's position, EECL is being held to certain applicable financial restrictions.

A. The total amount of the loan guarantees was $50,000,000.
B. The decision to approve the financing was made by former Maritime Administrator Clyde J. Hart, Jr.
C. To the knowledge of the current staff, no communications were received from Congress, the Administration or the private sector in support or opposition to the project, other than from EECL, Enron and its affiliates, and their respective attorneys.
D. Copies of the application and related material provided by Enron to the Maritime Administration are available for your review and duplication, if desired, at a mutually convenient time and place.

4. Puerto Quetzal Power LLC (PQP), a Delaware limited liability company.

On April 8, 1999, PQP submitted a Title XI application for financing the construction of one barge mounted power plant operating off the coast of Guatemala. The financing included two additional power barges and onshore facilities and was co-financed with the Overseas Private Investment Corporation (OPIC), with OPIC providing $50 million for refinancing the existing facility and MARAD providing $73 million for a new vessel. On September 21, 2000, MARAD issued a commitment to PQP to guarantee obligations and on December 15, 2000, PQP issued the guaranteed obligations, which are payable semi-annually on a level principal basis over approximately 12 years. At the time of the

commitment, PQP was a joint venture between various wholly owned subsidiaries of Enron and the Centrans Group. The total debt outstanding is currently $66.7 million.

As part of this financing, MARAD required a guarantee from Enron for $28 million of the guaranteed debt. When Enron filed for bankruptcy, MARAD informed PQP that it was in default because the Enron Guarantee was unenforceable. MARAD has informed PQP that until a satisfactory substitute guarantee arrangement is put in place, MARAD will hold more than $7.5 million of PQP's funds in a collateral account and continue to subject PQP to certain applicable financial restrictions.

A. The total amount of the loan guarantees was $73,000,000.
B. The decision to approve the financing was made by former Acting Maritime Administrator, John E. Graykowski.
C. To the knowledge of the current staff, no communications were received from Congress, the Administration or the private sector in support or opposition to the project, other than from PQP, co-lenders to the project, Enron and its affiliates, and their respective attorneys.
D. Copies of the application and related material provided by Enron to the Maritime Administration are available for your review and duplication, if desired, at a mutually convenient time and place.

The following is in response to your request for overall guidance on how Title XI financings are approved, and the criteria for such approval. When a Title XI application is received, it is circulated among various MARAD offices for an in-depth review. Based on the overall completeness and acceptability of the application, a letter is sent to the applicant notifying them of the additional information needed to complete the application and other issues affecting MARAD's review. MARAD reviews the application to insure among many other things, that (1) the company has demonstrated that it has sufficient equity and working capital to consummate the transaction, (2) the business plan and project is economically sound, (3) all appropriate parties entering into the transaction such as the shipowner, charterer, guarantor, shipyard etc. as appropriate, are financially sound, (4) the project is environmentally sound, (5) the vessel design or shipyard modernization (as appropriate), actual cost, and shipyard construction contract are acceptable, (6) the vessel operator's capabilities are acceptable, (7) the collateral package offered by the applicant is acceptable, (8) the terms and conditions of the financing are acceptable, and (9) the project, transaction and all documents are legally sound and sufficient and in compliance with all applicable statutes, regulations and MARAD policy. If it is determined that the project meets MARAD's requirements, and adequate funds are available, a report is prepared and reviewed by all of the offices involved, and a recommendation to issue a Letter Commitment is submitted to the Maritime Administrator. The Maritime Administrator has the sole authority to approve a project, regardless of the dollar amount or type of project. If the Maritime Administrator approves the project, a Letter Commitment is issued and forwarded to the applicant.

In conducting financial viability determinations, MARAD relies in part on audited financial statements prepared in accordance with U.S. Generally Accepted Accounting

Principles (GAAP), or reconciled to GAAP if the business entity is operating under foreign accounting standards. Generally, audited financial statements (with complete footnote disclosures) are required for all significant participants in the transaction for the three most recent years. MARAD also reviews the company's cash flow projections, interim financial statements, past history with Title XI, banking arrangements (including current credit facilities, lines of credit, and existing loan agreements) pro forma balance sheet, marketing studies, business plan and credit reports and ratings, as necessary. In the case of export transactions, such as the three closed Enron financings described above, MARAD also determines whether the countries in which the shipowner has its chief executive office or a substantial portion of its assets present acceptable financial and legal risks to MARAD. In this respect, MARAD's determination is based on confidential risk assessments provided by the Inter-Agency Country Risk Assessment System. After reviewing all of this information, as well as the overall collateral package (charter, letters of credit, guarantees, special reserve accounts, outside sponsor support, etc), and conducting additional due-diligence as necessary, a decision is made as to the financial soundness of the applicant and the project as a whole.

Finally, with respect to your question regarding the impact of Enron's bankruptcy on MARAD, it is noted that all three projects which closed are currently meeting their debt service obligations. Both the PQP and EECL project appear to be in good financial health from a debt perspective, but are in technical default because of the bankruptcy of Enron and the inability of their guarantors to perform. Smith Enron has had and is currently experiencing significant operational, profitability and debt service problems and it too is in technical default. The total liability faced by MARAD for all three projects combined is approximately $135 million in outstanding principal, none of which is a direct debt of an Enron entity in bankruptcy. This liability would be offset by any recoveries MARAD receives from disposition of its collateral and demands made under the credit enhancements provided by Enron. As a result of the bankruptcies, it is unlikely that MARAD will realize any significant collections in the event it becomes necessary to make demands on the Enron credit enhancements (approximately $73 million).

I hope that this information is responsive to your request. If you need any additional information, or would like to make arrangements for the review of all application and related material, please contact Ms. Jean McKeever, Associate Administrator for Shipbuilding at 202-366-5737.

An identical letter has been sent to Senator Grassley

Sincerely,

Bruce J. Carlton
Acting Deputy Maritime Administrator

UNITED STATES TAX COURT

FILED

'99 NOV 12 P12:20

PUERTO QUETZAL POWER CORP.	§	
	§	
Petitioner,	§	DOCKET NO. 17311-99
	§	
vs.	§	
	§	
COMMISSIONER OF INTERNAL REVENUE,	§	
	§	
Respondent	§	

DESIGNATION OF PLACE OF TRIAL

Petitioner hereby designates Washington, D.C. as the place of trial in this case.

Respectfully submitted,

ADMITTED U.S. TAX COURT

George M. Gerachis
Tax Court No. GG0267

Vinson and Elkins, L.L.P.
1001 Fannin, Suite 1900
Houston, Texas 77002
(713) 758-1056

Counsel of Record for Petitioner,
Puerto Quetzal Power Corp.

November 11, 1999

GG0612:2304:113099
Houston:39617.1

Senate Finance Committee

EXHIBIT 6

RECEIVED IN
FIELD OPERATIONS DIVISION

UNITED STATES TAX COURT

99 NOV 15 PM 3:50

FILE

PUERTO QUETZAL POWER CORP.,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

DOCKET NO. 173 -99

POSTMARK DATE

POSTMETER DATE

HAND-DELIVERED ✓

PDS

PETITION

Puerto Quetzal Power Corp. ("Petitioner") hereby petitions for a redetermination of the deficiencies set forth by the Commissioner of Internal Revenue (the "Commissioner") in his Notice of Deficiency dated August 16, 1999 ("Notice") and as the basis for its case alleges as follows:

1. The Petitioner is a corporation with its principal place of business and mailing address now at P.O. Box 1188, Houston, Texas 77251-1188. Petitioner's employer identification number is 76-0381261. The return for the period at issue was filed with the Office of the Internal Revenue Service at Austin, Texas.

ADDRESS USED BY COURT

2. The Notice (a copy of which, including so much of the statement and schedules accompanying the notice as is material, is attached and marked Exhibit A) is dated and was presumably mailed to Petitioner on August 16, 1999, and was issued by the District Director of the Internal Revenue Service for Houston, Texas.

3. The deficiencies as determined by the Commissioner are in income taxes, in the amount of $375,368 for the calendar year 1995 and $160,000 for the calendar year 1996, all of which

is in dispute. In addition, Petitioner has overpaid its tax liability by $16,600 in 1995 and $4,000 in 1996 as a result of the claims described herein.

4. The determination of the tax set forth in the Notice is based upon the following errors:

(a) *Cost of Goods Sold Fuel & Power Expenses.* The Commissioner erred in decreasing Petitioner's deduction for reimbursable expenses paid to Electricidad Enron de Guatemala, S.A. in the amount of $1,534,539 for the taxable year 1995. See Notice, Form 5278, Issue 1(a). This determination was based on the Commissioner's further, erroneous determinations that such amount was not an ordinary and necessary business expense, that it was not expended by Electricidad Enron de Guatemala, S.A. or for the purpose designated, and that Petitioner is not entitled to the deduction under I.R.C. § 162.

(b) *Other Deductions Amortization.*

(i) The Commissioner erred in decreasing Petitioner's amortization deduction by $333,333 and $800,000 for the taxable years 1995 and 1996, respectively. See Notice, Form 5278, Issue 1(b). This determination is based on the Commissioner's further, erroneous determination that the $12,000,000 lump sum payment to Sun King Trading Company and/or Centrans Internacional, S.A. is not an amortizable I.R.C. § 197 intangible asset and is not amortizable under any other provision of the Internal Revenue Code.

(ii) In addition, Petitioner is entitled to additional amortization deductions of $83,333 in 1995 and $200,000 in 1996 on the basis that the aforementioned $12,000,000 payment constitutes additional basis in an amortizable asset having a remaining life of less than fifteen years.

Environmental Tax and Environmental Tax Deduction. The Commissioner erred in increasing Petitioner's environmental tax and Petitioner's environmental tax deduction by $2,242 for the 1995 taxable year. See Notice, Form 5278, Issues 10(b) and 1(c).

(d) *Foreign Tax Credit.* The Commissioner erred in increasing Petitioner's foreign tax credit by $381,505 and $272,008 in 1995 and 1996, respectively. See Notice, Form 5278, Issue 8(b). This determination is based on the Commissioner's further, erroneous determinations referenced in paragraphs 4(a) and 4(b), above.

(e) *Alternative Minimum Tax.* The Commissioner erred in increasing Petitioner's alternative minimum tax liability by $120,317 and $160,088 for the 1995 and 1996 taxable years, respectively. See Notice, Form 5278, Issue 10(a). This determination is based on all of the Commissioner's erroneous determinations as set forth herein.

5. The facts on which Petitioner relies in support of the foregoing are as follows:

Cost of Goods Sold – Fuel & Power Expenses.

(i) Petitioner is a corporation organized under the laws of Delaware. During its taxable year ended December 31, 1995, Petitioner was an indirect, wholly-owned subsidiary of Enron Corp. A branch of Petitioner operates an oil-fired, barge-mounted power plant in Guatemala that produces and sells electricity to Empresa Electrica de Guatemala, an entity owned and controlled by the Government of Guatemala ("Empresa"), pursuant to a power purchase agreement ("PPA"). Hereinafter, this commercial arrangement is referred to as the "Project"

(ii) On November 13, 1992, Petitioner entered into an Operation and Maintenance Agreement ("O&M Agreement") with Electricidad Enron de Guatemala, S.A. ("EEG"),

a Guatemalan company wholly owned by Enron Development Corp. ("EDC"), formerly known as Enron Power Development Corp. EDC was an indirect, wholly-owned subsidiary of Enron Corp. Pursuant to the O&M Agreement, Petitioner agreed to pay EEG, the Operator, all "reimbursable expenses" on a monthly basis. Fuel oil expenses constituted "reimbursable expenses" under the O&M Agreement.

On March 13, 1993, Petitioner and EEG amended the O&M Agreement to provide that the Project's fuel oil requirements would be supplied by Enron Power Oil Supply Corporation ("EPOS"), a domestic sister company of EDC. EEG also agreed to make certain payments to Sun King Trading Company ("Sun King"), an unrelated party, on behalf of Petitioner. The payments to EEG as well as the payments to Sun King were ordinary and necessary expenses deductible under I.R.C. § 162.

During the taxable year ended December 31, 1995, Petitioner paid a total of $18,437,704 to EEG for operating and maintenance services actually performed for the Project by EEG, payments actually made to Sun King on PQPC's behalf, and fuel oil actually supplied to the Project by or through EPOS, all pursuant to the O&M Agreement. The $1,534,539 at issue was part of such payment to EEG and constitutes an ordinary and necessary expense of Petitioner that is fully deductible in Petitioner's 1995 taxable year under .R.C. § 162

(b) *Other Deductions – Amortization.*

(i) The PPA was originally entered into by Texas-Ohio Power ("TOP"), an entity wholly unrelated to Enron. TOP had entered into an agreement with Sun King pursuant to which TOP agreed to pay certain fees to Sun King in consideration of Sun King's services in assisting TOP in developing and negotiating the PPA (the "Sun King Commission").

(ii) EDC acquired the PPA from TOP and then transferred the PPA to Petitioner as a contribution to capital. In addition to a payment of cash on purchase of the PPA from TOP, EDC agreed to assume TOP's obligations to pay the Sun King Commission. Petitioner subsequently assumed the liability to pay the Sun King Commission when EPC transferred the PPA to PQPC.

(iii) On or before March 1, 1995, Sun King assigned its right to receive the Sun King Commission to Centrans Internacional S.A., a Guatemalan corporation ("Centrans Internacional"). On August 22, 1995, Petitioner, EDC, Sun King and Centrans Internacional entered into several agreements (the "Release") pursuant to which Centrans Internacional received $12 million in cash from Petitioner in full and final settlement of the Sun King Commission.

(iv) The PPA is an intangible asset. The term of the PPA commenced on commercial operation of the power plant, which occurred in 1993, and was to terminate 15 years later, in 2008. The PPA had a remaining useful life of approximately twelve years in late 1995, when Petitioner extinguished its liability for the Sun King Commission. The Sun King Commission is a liability incurred by EDC to acquire the PPA and assumed by Petitioner when EDC contributed

the PPA to Petitioner. Petitioner incurred $12 million to extinguish the liability, which $12 million must be added to Petitioner's basis in the PPA.

(v) The PPA is not an "amortizable section 197 intangible" because Petitioner acquired the PPA before August 10, 1993, the general effective date of I.R.C. § 197. Accordingly, the additional $12 million basis in the PPA is amortizable on a straight-line basis over the remainder of the PPA's useful life at the time the $12 million was paid, beginning in the month of payment. Petitioner deducted $333,333 in 1995 and $800,000 in 1996 for amortization of the PPA related to the $12 million payment. Petitioner should have deducted $416,667 in 1995 and $1,000,000 in 1996 for amortization of the $12 million additional basis in the PPA. Thus, Petitioner is entitled to additional amortization deductions of $83,333 in 1995 and $200,000 in 1996.

(vi) In the alternative, if it is determined that the PPA is an "amortizable section 197 intangible," no reduction should be made to Petitioner's amortization deductions in 1995 or 1996.

(c) ***Environmental Tax and Environmental Tax Deduction.*** The Commissioner increased Petitioner's environmental tax deduction in 1995 as a consequence of the adjustments to which errors were assigned in paragraphs 4(a) and 4(b) above. Because such adjustments were erroneous, as set forth herein, the Commissioner's adjustment to Petitioner's environmental tax deduction is not valid.

(d) ***Foreign Tax Credit.*** The Commissioner increased Petitioner's foreign tax credit limitations for 1995 and 1996 as a consequence of the adjustments to which errors were

assigned in paragraphs 4(a) and 4(b) above. Because such adjustments were erroneous, as set forth herein, the Commissioner's adjustment to Petitioner's foreign tax credits is not valid.

(e) *Alternative Minimum Tax.* The Commissioner's determinations with respect to Petitioner's alternative minimum tax liability are based on all the other determinations in the Notice. Because such determinations are erroneous, the Commissioner's adjustment to Petitioner's alternative minimum tax is not valid.

WHEREFORE, Petitioner prays that the Court will determine that there are no deficiencies in Petitioner's federal income tax liability for the calendar years 1995 and 1996, allow the refunds claimed herein, and order such other and further relief to which it may be entitled.

Respectfully submitted,

ADMITTED U.S. TAX COURT

George M. Gerachis
Tax Court No. GG0267
Vinson & Elkins, L.L.P.
1001 Fannin, Suite 1909
Houston, Texas 77002
(713) 758-1056

Counsel of Record for Petitioner,
Puerto Quetzal Power Corp.

ADMITTED U.S. TAX COURT

Tobey D. Blanton
Tax Court No. BT0395

Vinson & Elkins, L.L.P.
1001 Fannin, Suite 1921
Houston, Texas 77002
(713) 758-3365

Dated: November , 1999

DEPARTMENT OF THE TREASURY - INTERNAL REVENUE SERVICE
NOTICE OF PROPOSED ADJUSTMENT TO TAXPAYER DURING EXAMINATION
ENRON CORP. & SUBSIDIARIES 1995 & 1996

Entity: Enron International Inc EIN 76-0395191

SAIN: 710-07 ISSUE: Gain on Sale Puerto Quetzal Power Corp. Common Stock

Amount of adjustment for Issue No. ~~[illegible]~~ 127

1995: _____ 1996: 2,020,509

Based on the information made available and discussions with the designated taxpayer representative listed iin the Communication Disclosure Agreement, the attached proposed "Explanation of Adjustment" will be included in the Revenue Agent Report. If additional information is available that would alter or reverse this proposal, please furnish such immediately. Taxpayer representative(s) with whom the issue was discussed prior to this written "Notice of Proposed Adjustment":

Name: Ed Coates Title: Tax Manager

Name: _____ Title _____

Date the above representative was notified this Notice with attached "Explanation of Adjustment" would be prepared:

Thie notice and attached "Explanation of Adjustment" has been reviewed by the following IRS personnel.

Team Member: Gerald Richards Date: 5 May 1999

Team coordinator: Jack Rotter Date: 5/6/99

Specialty Manager: Nieves Narvaez Date: 5-5-99

Case Manager: Glenn Gray Date: 5/6/99

Receipt acknowledged and indication of position by taxpayer representative to whom this notice, with attached "Explanation of Adjustment" is delivered:

X Agreed _____ Unagreed _____ No Decision

Name: Edward R. Coats Title: Vice President-Tax Audits

Subsequent "Explanation of Adjustments" revision(s) were provided as

Rev. 1 Date: _____ Rev. 3 Date: _____

Rev. 2 Date: _____ Rev. 4 Date: _____

Date taxpayer's position on adjustment and written explanation received (if Unagreed and not provided at time of original notice of this adjustment):

_____ Agreed _____ Unagreed _____ No Decision

Written position provided? Yes ___ No _____ Date provided

Senate Finance Committee

EXHIBIT 7

DEPARTMENT OF THE TREASURY - INTERNAL REVENUE SERVICE
NOTICE OF PROPOSED ADJUSTMENT TO TAXPAYER DURING EXAMINATION
ENRON CORP. & SUBSIDIARIES 1995 & 1996

Entity: Puerto Quetzal Power Corporation EIN: 76-0381261

SAIN 710-07 ISSUE: Fuel & Power Expenses IRC 162 and Amortization Expense IRC 197

Amount of adjustment for Issue No.

1995: 1,867,872 1996: 800,000

Based on the information made available and discussions with the designated taxpayer representative listed iin the Communication Disclosure Agreement, the attached proposed "Explanation of Adjustment" will be included in the Revenue Agent Report. If additional information is available that would alter or reverse this proposal, please furnish such immediately. Taxpayer representative(s) with whom the issue was discussed prior to this written "Notice of Proposed Adjustment":

Name Ed Coates Title Tax Manager

Name Title:

Date the above representative was notified this Notice with attached "Explanation of Adjustment" would be prepared:

Thie notice and attached "Explanation of Adjustment" has been reviewed by the following IRS personnel.

Team Member: Gerald Richards Date: 5 May 1999

Team coordinator: Jack Notter Date:

Specialty Manager: Nieves Narvaez Date: 5-5-99

Case Manager: Glenn Gray Date:

Receipt acknowledged and indication of position by taxpayer representative to whom this notice, with attached "Explanation of Adjustment" is delivered:

____ Agreed ____ Unagreed ____ No Decision

Name: Title:

Subsequent "Explanation of Adjustments" revision(s) were provided as

Rev. 1 Date: Rev. 3 Date:

Rev. 2 Date: Rev. 4 Date:

Date taxpayer's position on adjustment and written explanation received (if Unagreed and not provided at time of original notice of this adjustment):

____ Agreed __ _ Unagreed ____ No Decision

Written position provided? Yes No ____ Date provided

ISSUES:

	1995		1996
	COST OF GOODS SOLD -- Fuel & Power Expenses	OTHER DEDUCTIONS -- Amortization Expense	OTHER DEDUCTIONS - Amortization Expense
Per Return	18,437,704	1,547,933	2,014,600
Per Audit	16,903,165	1,214,600	1,214,600
Adjustment	1,534,539	333,333	800,000

Issue 1: Allowance as ordinary and necessary business expenses of Puerto Quetzal Power Corporation (IRC section 162) expenditures incurred to fund payment obligations to Panamanian Corporation, Sun King Trading Company.

Issue 2: $12,000,000 Termination payment to Sun King Trading -- allowance of amortization expense (IRC section 197).

FACTS

Events Prior to Tax Period 1995 [1]

On 13 January 1992, Texas Ohio Power (TOP), (unrelated to Enron) signed a 15-year Power Sales Agreement with Empresa de Energia de Guatemala (EMPRESA) for power from a 160-MW, oil-fired barge mounted power plant to be built and then sited at Puerto Quetzal on Guatemala's Pacific Coast. EMPRESA is the primary supplier of thermoelectric power to Guatemala, and is 92% owned by the Guatemalan Government.

Under terms of this Power Sales Agreement:

> TOP was required to provide EMPRESA 90 to 110 MW of capacity and the corresponding energy from the Puerto Quetzal power plant.
>
> EMPRESA is obligated to pay for the capacity (not in excess of 10 MW) and to pay for at least 50% of the available energy output.
>
> EMPRESA makes weekly fixed capacity payments (covering a portion of the total capacity payments due for the current month). -and-

[1] Please note, the organizational chart -- **EXHIBIT "A"** should be referenced contemporaneously with any further reading.

4. EMPRESA makes weekly energy payments (covering a portion of the total energy payments due for the previous month).

On 24 February 1992, an Agreement was signed by and between TOP and a Panamanian entity -- Sun King Trading Company (SUN KING) requiring TOP to pay SUN KING 16% of the capacity payments and 21% of the energy payments tendered by EMPRESA.

On 12 March 1992, TOP and SUN KING executed an amendment to the 24 February (Original) Agreement changing the payment to 6% of all revenues.

On the same date -- 12 March 1992, Enron Development Corporation (EDC) -- *formerly: Enron Power Development Corporation* -- entered into an Agreement with TOP whereby in consideration for TOP transferring the Power Sales Agreement to EDC, EDC agreed to pay (among other sums) *"an amount each month equal to 6% of the gross revenues generated by the sales of electricity and payment for contract capacity under the Power Contract"*.

In two (2) letters dated 12 March 1992:

1 TOP notified EDC that the *"right of a monthly payment of 6% of the gross revenues generated by the sales of electricity and payment for contract capacity under the Power Contract..., has been legally and effectively assigned in favor of SUN KING TRADING COMPANY, INC."* Furthermore, the letter set out that monthly payments be directed to Sun King Trading Company, Inc. at 6a avenida 20-25 zona 10, 8th floor, Guatemala City, Guatemala. -AND-

2. EDC informed SUN KING of receipt of the TOP letter and acknowledged that EDC would make the required monthly payments to SUN KING.

On 22 September 1992, Enron Development Corporation (EDC) -- domestic subsidiary of the Enron Corporation --formed a U.S. subsidiary -- PUERTO QUETZAL POWER CORP. (PQPC) -- to build, own and operate a power plant at Puerto Quetzal, Guatemala (through its Guatemalan branch).

On 13 November 1992, <u>two</u> Agreements were signed:

> "Assignment and Assumption Agreement" -- Which sets out that EDC transfers and PQPC assumes, all EDC's title and interest in the "Assets" <u>and</u> all of EDC's liabilities and obligations with respect to the "Assets". The Assets were set out as (a) the Power Contract and (b) any and all other assets owned or held by EDC with respect to the Project.
>
> "Operation and Maintenance Agreement" -- Pursuant to which PQPC ("Owner") appoints Electricidad Enron de Guatemala S.A. (EEG), a related affiliate organized under the laws of Guatemala, as "Operator" of the barge-mounted power plant (the "Project"). Article IV of this "O&M" Agreement sets out that Operator will submit to Owner a <u>monthly invoice for all reimbursable expenses</u>.

In February 1993, the Puerto Quetzal Plant commenced commercial operations. On March 1, 1993, EDC received a letter from SUN KING requesting that moneys be paid into either one of two named bank accounts in Miami for credit to Deutsch - Suedamerikanische Bank A.G. Miami

Agency. This meant Sun King opted to receive payment in U.S. dollars. Additionally, it was also revealed that SUN KING was a Panamanian Corporation not a corporation registered in Guatemala.

On 31 March 1993, three (3) events took place:

1. The "O&M" Agreement was amended to state the Project's fuel oil requirements will be supplied from two (2) contracts held by Assignee -- Enron Power Oil Supply Corporation (EPOS).

2. A "Fuel Supply and Management Agreement" was entered into by and between EEG and EPOS (setting forth that EPOS will supply, or cause to be supplied, fuel oil to the Project in such quantities requested by EEG (as Operator). The term of the Agreement was set at fifteen (15) years. The price for the fuel oil supply and management services provided by EPOS was set at a monthly amount (to be paid by EEG computed as the sum of: (a) an amount equal to six percent (6%) of the gross monthly revenues of Puerto Quetzal ("Monthly Fee"), and (b) the invoice amounts actually paid by EPOS to its fuel oil suppliers.

3. EDC sold 50% of all issued and outstanding stock of PQPC to King Ranch Power Corporation, a U.S. Corporation. Sales Price was $15,500,000, and EDC reported a short-term capital gain of $7,225,000.

In November 1994, Enron Corporation completed a public offering of 48% of Enron Global Power & Pipelines L.L.C. (EPP). [2] EDC transferred it's remaining 50% interest in the issued and outstanding stock of PQPC for an interest in EPP.

On 16 December 1994, King Ranch Power Corporation exercised a option under an existing Agreement, by and between EDC and King Ranch Power Corporation, and sold its 50% interest in PQPC to EDC's designee -- Enron International Inc. -- for cash $15,200,000.

As a result, at 12/31/94, the stockholders of PQPC are Enron's domestic subsidiary -- Enron International, Inc. and Enron Global Power & Pipelines L.L.C.

Events Occurring During 1995 & 1996 Tax Periods

Information Document Request #12-084 (issued 9 February 1999) requested taxpayer to provide a summary of all payments tendered SUN KING during the period 1/1/95 to 8/8/95, by Enron and its consolidated worldwide affiliates. The response to IDR #12-084 (received 15 April 1999) detailed the following payments to SUN KING:

[2] EPP was formed to own and operate most of Enron Corporation's power and pipeline assets in developing countries.

PUERTO QUETZAL POWER CORP (EIN: 76-0381261) 1995 & 1996, Form 1120

Date SUN KING Payment	Amount SUN KING Payment	Payor	Payor's Accounting SUN KING Payment
2/3/95	249,539	EPFC -- Enron Power Fuels Corp	Acct. Rec. -- EEG
3/6/95	7,000	EEG (Operator)	EEG -- Cost of Goods Sold
4/5/95	7,000	EEG	EEG -- Cost of Goods Sold
5/3/95	7,000	EEG	EEG -- Cost of Goods Sold
5/26/95	500,000	EEG	EEG -- Cost of Goods Sold
6/26/95	250,000	EEG	EEG -- Cost of Goods Sold
7/4/95	257,000	EEG	EEG -- Cost of Goods Sold
8/4/95	257,000	EEG	EEG -- Cost of Goods Sold
	1,534,539		

Additionally, Taxpayer's response reconciled the 1995 SUN KING payments to the monthly gross receipts of PQPC as follows: [3]

Month/Yr.	PQPC's Monthly Gross Receipts
Jan. 95	4,291,811
Feb. 95	4,188,890
Mar/Apr. 9	8,368,244
May 95	4,419,503
June 95	4,499,406
	25,767,854
	6%
	1,546,071

Note #2 of the PQPC consolidated financial statements for quarter ended 30 September .995, set out:

> "The prepaid asset of $12 million represents the cost of the buyout of Sun King Trading Company, Inc. and Centrans International, Sociedad Anonima ("Centrans") per the Termination and Release Agreement dated August 22, 1995. The cost is being amortized on a straight -line basis over the remaining life of the project".

[3] Taxpayer noted difference between 1995 payments tendered SUN KING and 6% of the monthly gross receipt: paid PQPC by EMPRESA is due to month-to-month timing differences.

Taxpayer, responding to Information Document Request #12-074, provided the "Termination and Release Agreement". Review of this Agreement, by and between EDC, SUN KING, and CENTRANS, details the following:

Sun King has assigned Centrans its right to receive "Monthly Payments" pursuant to Paragraph 1.D of the EDC/TOP Agreement dated March 12, 1992.

2 Sun King owes EDC a Note Payable (dated 3/11/93) in the amount of $435,000.

3 If EDC pays Centrans (or causes to be paid) U.S. $12,000,000, and cancels the Sun King Note Payable, then Sun King is willing to release EDC and its affiliates from any and all obligations to make the Monthly Payments that have accrued or would accrue on or after 1 August 1995.

4. Sun King nominates the following bank accounts to receive EDC's $12,000,000 payment:

BARNETT BANK OF SOUTH FLORIDA, Miam	FEDERAL RESERVE BANK, Miami
For credit to: Duetsch-Suedamerikanische Bank Ag, Miami Agency	For credit to: Duetsch-Suedamerikanische Bank Ag, Miami Agency
Acct. no. 137 694 2752	Acct. no. 0660 10856
For further credit to	For further credit to
Acct. no. 02-693574	Acct. no. 02-693574
Name: Centrans Internacional, S.A.	Name: Centrans Internacional, S.A

PQPC's 1995 and 1996, Form 1120 reports the $12,000,000 payment to Sun King on the Schedule L (Balance Sheet) as an Intangible Asset. For 1995 and 1996, PQPC has taken amortization expense deductions (per IRC section 197) of $333,333 and $800,000, respectively

AT ISSUE:

Since for 1995

a EEG (Operator) has assumed the obligation to make SUN KING payments.

b. EEG collects monthly, from PQPC, the funds required to make SUN KING payments by charging PQPC its fuel cost as a reimbursable item under the Puerto Quetzal O&M Agreement.

EEG pays EPOS (supplier) an monthly expense equal to 6% of the gross receipts of the Puerto Quetzal power plant.

Then, the first question is: Whether or not the 1995 deductions taken by PQPC for funds transferred to EEG to satisfy the SUN KING obligation are ordinary and necessary business expenses?

2. The second question is in reality two (2) questions:

a. Whether the lump sum ($12,000,000) debt termination payment tendered SUN KING creates an identifiable intangible asset -- a Capital Asset -- for which IRC section 197 allows an amortization deduction? -AND-

b. Whether the 1995 monthly payments tendered SUN KING (if not ordinary and necessary business expenses) constitute an identifiable intangible asset -- a Capital Asset -- for which IRC section 197 allows an amortization deduction?

LAW & ARGUMENT:

IRC SECTION 162

IRC section 162(a) allows a deduction for all ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business.

In Lincoln Savings 403 U.S. 352, the Supreme Court determined that, to qualify for deduction under @ 162(a), "an item must (1) be 'paid or incurred during the taxable year,' (2) be for 'carrying on any trade or business,' (3) be an 'expense,' (4) be a 'necessary' expense, and (5) be an 'ordinary' expense." -- see *Indopco v. Commissioner*, 503 U.S. 79.

The words "ordinary and necessary" have been in the law since 1913, but have still not been precisely defined. The cases and rulings fall into six categories:

1. unusual and extraordinary payments;
2. payments against public policy;
3. fines and penalties;
4. bribes, kickbacks, etc.;
5. treble damages under antitrust law, and
6. lobbying expenses. -- see Bittker & Lokken, Federal Taxation of Income, Estates, and Gifts, 1, 20.3 (2d Ed. 1989).

In *A. Giurlani & Bro. v. Commissioner*, 119 F.2d 852, 41-1 USTC 428, (USCA 9, 1941) the Circuit Court stated:

> It is not sufficient compliance with the statute that the expense sought to be deducted is an ordinary or a necessary expense. "in order that such payments may meet the requirements of the statute, they must be both an ordinary expense and necessary expense." *Lloyd v. Commissioner*, 7 Cir., 55 F. 2d 842, 844 3 USTC 873).

In *Belser v. Commissioner*, 10 TC 1031, the United States Tax Court stated:

> To support the right to a deduction of expenses, the taxpayer should furnish proof as full and definite as is reasonably possible. His mere estimate of amounts claimed and opinion testimony that such amounts are proper business expenses fall short of the full disclosure of facts which is normally requisite to warrant a finding in his favor.

The significance of ordinary is to distinguish between capital expenditures which must be amortized if deductible at all and expenditures for current operations of the business. see *Commissioner v. Teller*, 383 U.S. at 689, 86 S.Ct. 1120 (1966), quoting *Welch v. Helvering*,290 U.S. 111, 113, 54 S. Ct. 8,9, 78 L. Ed. 212 (1933).

IRC SECTION 263

IRC section 263 of the Code allows no deduction for a capital expenditure -- an "amount paid out for new buildings or for permanent improvements or betterments made to increase the value of any property or estate." @ 263(a)(1).

The primary effect of characterizing a payment as either a business expense or a capital expenditure concerns the timing of the taxpayer's cost recovery: While business expenses are currently deductible, a capital expenditure usually is amortized and depreciated over the life of the relevant asset, or, where no specific asset or useful life can be ascertained, is deducted upon dissolution of the enterprise. See *Indopco v. Commissioner 503 U.S. 79*.

Courts more frequently have characterized an expenditure as capital in nature because "the purpose for which the expenditure is made has to do with the corporation's operations and betterment, sometimes with a continuing capital asset, for the duration of its existence or for the indefinite future or for a time somewhat longer than the current taxable year." *General Bancshares Corp. v. Commissioner*, 326 F.2d at 715. See also *Mills Estate, Inc. v. Commissioner*, 206 F.2d 244, 246 (CA2 1953).

IRC SECTION 197

Section 197 was added to the Code by the Omnibus Budget Reconciliation Act of 1993 and affects taxpayers that acquired intangible property after August 10, 1993, or made a retroactive election to apply the 1993 law to intangibles acquired after July 25, 1991. Section 197(a) permits an amortization deduction with respect to the capitalized costs of a "section 197 intangible" that is acquired by the taxpayer and held in connection with the conduct of a trade or business or for the production of income. The amount of the deduction is determined by amortizing the adjusted basis of the intangible ratably over a 15-year period. Section 197(g) of the Code grants authority to the Secretary of the Treasury to prescribe appropriate regulations.

A "section 197 intangible" includes goodwill, going concern value, workforce in place, information base, know-how, customer-and supplier-based intangibles, governmental licenses, permits, covenants not to compete and other similar arrangements, franchises, trademarks, trade

names, and contracts for the use of the foregoing assets --defined in Prop. Reg. [sections] 1.197-2(b). [4]

CONCLUSION:

IRC Section 162

Taxpayer has presented documentation to establish that it purchased a Power Sales Agreement from Texas Ohio Power Co., a unit of Houston-based gas pipeline operator and marketer Texas Ohio Gas. As the front-end developer, TOP assigned its rights in the 15-year Power Sales Agreement to EDC. The Agreement by and between EDC (assignee) and TOP (assignor) did not address the existence of a separate contract by and between TOP and the Panamanian corporation -- Sun King Trading.

As a result of the EDC/TOP Agreement dated 12 March 1992, EDC assumed TOP's previous obligation to SUN KING.

Therefore, the question turns on the nature of the services performed by SUN KING for and on behalf of TOP. Information has been developed that:

1. The services performed by the SUN KING group can be characterized as a " finder fee" arrangement.

2. SUN KING is not a formal business group, but instead a group of individuals which individually, or as a group, represented certain interests of TOP leading up to EMPRESA's signature on the 15-year power sales agreement.

As a result, as to the first question before the Government: *Whether it is "ordinary" for PQPC to pay a "finders fee", and take such payment as a current period expense for carrying on the business of operating an electrical power plant?*. The Government takes the position:

> While PQPC did not directly pay the 1995 monthly obligation to SUN KING, it directly provided the funds, and took a current period deductions for all funds so transferred to payor -- EEG. (billed by EEG to PQPC as reimbursable fees)

- Nothing has been presented which suggests this "finders fee" is an "ordinary" expenditure benefiting only the current (1995) period operations of PQPC's power plant.

  Any benefit attaching to the 1995 monthly SUN KING payments benefits more than just the current tax period.

---

[4] The proposed regulations were published in the FEDERAL REGISTER on January 16. 1997 (62 Fed. Reg. 2336) and in the INTERNAL REVENUE BULLETIN on March 31, 1997 (1997-13 I.R.B. 12).(1) A public hearing was held on the regulations on May 15, 1997.

Taxpayer can argue inheritance of the SUN KING obligation was "necessary" for EDC to secure the Power Sales Agreement from TOP.

- But, in order for the SUN KING payments to meet the requirements of IRC section 162, they must be both an ordinary and a necessary expense.

  Therefore, any expenditure incurred by PQPC (period 1/1/95 to 8/22/95), to fund the "finders fee" obligation to SUN KING is disallowed under the authority of IRC section 162.

IRC Section 197:

Given the position that PQPC's monthly expenses incurred to fund SUN KING payments are disallowed under IRC 162, the inquiry shifts to taxpayer's position that the $12,000,000 lump sum payment releasing EDC (and assignee PQPC) from its obligation to SUN KING is a capital expenditure creating a "section 197 intangible".

IRC section 197 and the proposed regulations thereunder do not provide an asset classification for the expenditure in question. IRC section 197(d)(1)(D) provides "section 197 intangible" status for any license, permit or right granted by a governmental unit, agency or instrumentality thereof.

Finder's fees <u>are</u> <u>not</u> <u>enumerated</u> as capital expenditures qualifying as a "section 197 intangible", so a provision for amortization is not provided by IRC section 197(a) for either:

(a) the $12,000,000 lump sum payment, or

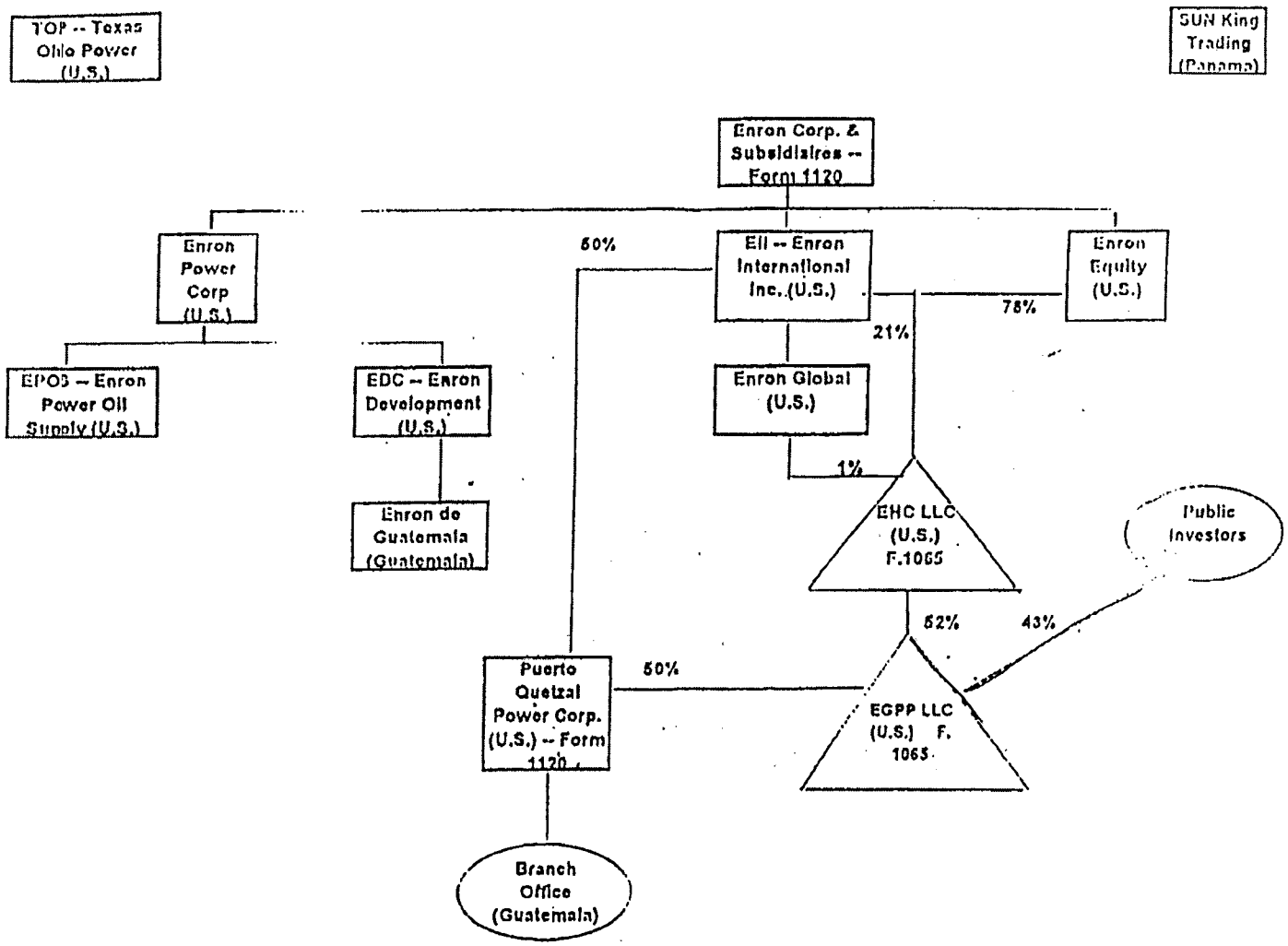
(b) the total $1,534,539 in monthly payments tendered SUN KING.

In Summary:

Under the authority of IRC sections 162, 263, and 197, the deductions claimed by PQPC, in tax years 1995 and 1996, are adjusted, and the disallowed amounts set out on page #1.

EXHIBIT A

EXHIBIT A"



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3/29/00

Business Confidential Information

Senate Finance Committee

EXHIBIT 8

REPUBLIC OF GUATEMALA
CITY AND DEPARTMENT OF GUATEMALA

I, BARBARA DE DE WIT, officially authorized Public Translator, in accordance with the laws of the Republic of Guatemala, do hereby CERTIFY: to having had before me a document written in Spanish which, translated into English to the best of my knowledge and ability, reads as follows:

NUMBER ONE (1). -In the City of Guatemala, on the thirteenth day of the month of January, nineteen hundred and ninety-two, before me, ALEJANDRO ARENALES FARNER, Notary Public, personally appeared, as party of the first part, Mr. ALFONSO RODRIGUEZ ANKER, 47 years of age, married, a citizen of Guatemala, Electrical Engineer, of this domicile, known to me, who acts on behalf and in representation of the entity EMPRESA ELECTRICA DE GUATEMALA, SOCIEDAD ANONIMA, hereinafter simply 'the PURCHASER', in his capacity as Chairman of the Board of Directors thereof, which legal status is proven by his appointment as such, authorized in this City on April 1, 1991 by Notary Max Jiménez Oliva and recorded in the General Commercial Registry of the Republic of Guatemala under number 83,065, folio 59 of Book 62 of Auxiliaries of Commerce and duly authorized to execute this document by resolution of the Board of Directors of Empresa Eléctrica de Guatemala, Sociedad Anonima under point number Four of the Minutes of Meeting Number 1712 dated January 12, 1992; and, as party of the second part, Mr. JUDE PATRICK LA STRAPES (no further surname), 47 years of age, married, a citizen of the United States of America, an Executive, domiciled in the County of Harris, State of Texas, United States of America and in transit in this City, who identifies himself with his United States Passport number P-728,135, appearing on behalf and in representation of the entity TEXAS-OHIO POWER, INC., hereinafter called 'the SELLER', in his capacity as President of the same, authorized to appear in this action pursuant to his legal status proven with the first official copy of public deed number 196, authorized in Guatemala City on December 20, 1991 by Notary Alvaro Rodrigo Castellanos Howell containing the notarial record of the certificate of resolution approved by the Board of Directors of TEXAS-OHIO POWER, INC. held on December 13, 1991, issued by Mr. Terry L. Moore, Vice-President of said entity under equal date, with all proceedings taken according to law and its pertinent sworn translation. -- Also, there appears Mr. ALVARO RODRIGO CASTELLANOS HOWELL, 30 years of age, married, a citizen of Guatemala, Attorney at Law and Notary, of this domicile, who perfectly speaks, reads and understands Spanish and English, known to me and who intervenes hereunder appointed as Intepreter by Mr. Jude Patrick La Strapes (no further

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surname) as he does not speak the Spanish language and only expresses himself in English. --- I attest that the first and last of the appearing parties are known to me but not so the second, who identified himself with the above-mentioned document; to having had before me the documentation that certifies the representation being exercised that, in my opinion and according to law, are sufficient for the execution of this action, that the appearing parties declare to be of the general circumstances set forth above, and that both the appearing parties and their principal are in full possession of their civil rights and grant the agreement contained under the following clauses:

FIRST: BACKGROUND: Messrs. Alfonso Rodriguez Anker and Jude Patrick La Strapes (no further surname) declare that in view of the fact that on the one hand the Seller wishes and is in a position to construct, own, operate, maintain, and control a facility for the Generaration of Electric Power to be situated on a barge to be berthed in Puerto Quetzal, Department of Escuintla, Guatemala with an approximate nominal generation capacity of one hundred thousand (100,000) kilowatts with the purpose of selling Power and Electric Energy to the Purchaser; and, on the other hand, the Purchaser wishes to acquire the Power and Electric Energy produced by the Seller to then sell it to third parties, and the appearing parties now wish to formalize the agreement contained under the following clauses:

SECOND: DEFINITIONS: The terms defined hereunder, be they singular or plural, will have the meaning given hereunder, when the first letters are expressed in capital letters, to wit:

a) "Agreement" shall mean the purchase sale agreement contained hereunder, its amendments, changes and additions, together with its annexes, appendixes, and other documents referred according to the agreement hereunder.

b) "Facility" shall mean the facilities that make up the power generation facility itself and other facilities up to the Point of Delivery, including all transformers, all according to specifications and shall be constructed and operated by the Seller.

c) "Commercial Operation" shall mean the moment the Facility shall generate Power and Electric Energy according to the terms hereunder, once the initial test and been made and the 24-hour power test has been established referred to in Clause Three hereof, of which a joint written record will be drawn up signed by a representative of each Party.

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d) "Contract Electric Capacity or Capacity or Contract Power or Power" shall mean electric capacity or power that the Seller shall supply and make available to the Purchaser and that the Purchaser shall acquire pursuant to this Agreement.

e) "Electric Energy" shall mean and refer to electric energy generated by the Facility and sold to the purchaser according to the terms hereunder.

f) "Excess Power or Excess Electric Capacity" shall mean and refer to power or electric capacity generated by the Facility that is delivered and sold to the Purchaser in accordance with this Agreement and that is in excess of the Contract Electric Capacity or Power.

g) "Financier" shall mean and refer to any individual or entity lending money or providing equity for the construction or operation of the Facility, or any individual or entity providing funds to refinance or acquire such credits or equity

h) "kW, Kw or KW" shall mean one kilowatt or one thousand watts (1000 watts) of electricity, power measuring unit.

i) "kWh, KWH or kwh" shall mean one kilowatt-hour of electricity, electric energy measuring unit.

j) "Month" shall mean one calendar month.

k) "Off-site Facilities" shall mean and refer to the equipment to be supplied and installed by the Seller outside its own barge holding the Facility and to be used in connection with the Facility, this equipment including, without limitations, the following: connections for a water treatment plant, electricity, steam, waste water, potable water, sanitary sewer and oily water, the water plants themselves and others.

l) "Party or Parties" shall mean the entities directly connected with this Agreement, to wit: Empresa Electrica de Guatemala, Sociedad Anonima, Texas-Ohio Power, Inc.

m) "Power" shall mean the Contract Capacity and Electric Energy available to the Purchaser hereunder and for an availability program during a specified period of time.

n) "Project" shall mean and refer to the entire works contemplated hereunder, including, without limitation, design, acquisition, engineering and construction of the barge, the Off-site and power generation facilities, as well as its transport and berthing in Puerto Quetzal, Department of Escuintla, and its connection to the Delivery Point, being fit for operation pursuant to this Agreement.

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Unofficial Translation

ñ) "Delivery Point" shall mean and refer to the point in the proximity of the Facility, located at a distance of no less than one hundred meters of the same nor more than one thousand meters, in which the Seller shall install and maintain one or more transformers acceptable to the Purchaser, to connect the 230 KV busbar from the substation to the Purchaser's net to receive the Power to be sold at 230 Kv, 60 Hz. by means of a delta-wye connection or any other established by mutual agreement.

o) "Place or Site" shall mean and refer to the berth in which the barge shall lie, together with all easements and complementary appurtenances necessary for the establishment and localization of the Facility and the Off-site Facilities, including the required land area.

p) The expression "Make Available" shall mean and refer to the fact that the Facility will be in capacity to deliver Power at the Delivery Point.

q) "Year" shall mean calendar year.

r) "Capacity Factor" is the index resulting from dividing the measured power in one month by the Contract Power, multiplied by the number of hours in that month.

s) "Operation Commission" are the Parties' representatives engaged in carrying out the operation under contract.

Business Confidential Information

THIRD: SALE DECLARATION AND POWER AND ELECTRIC ENERGY DETERMINATION OBJECT OF THE SALE. Mr. Jude Patric LaStrapes (no further surname) declares that the Seller hereby sells to the Purchaser Contract Power within the range of 90,000 to 110,000 KW and the corresponding Electric Energy to be supplied from the Facility. The Seller shall make available and deliver to the Purchaser at the Delivery Point the indicated Capacity and Electric Energy, no later than December 1, 1992. The Seller may advance the date of delivery of Capacity and Electric Energy, but shall in any case notify the Purchaser in writing with no less than 60 days in advance regarding the estimated delivery date. In no event will it be required that the Seller delivers or makes available capacity and energy above the contract range mentioned above unless both Parties agree on the subject; however, the Purchaser shall have preferential right of acquisition on any availability in excess. Both actual Capacity and Electric Energy available per year, within the established range, shall be previously determined at the beginning of each year of the term hereof by means of a

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continuous 24-hour operation test, the performance of which will be measured at the Delivery Point. Both Parties clearly agree that the Purchaser shall be obligated to accept and pay the entire Power delivered by the Seller during the mentioned 24 hour test. The Capacity and Excess Capacity generated during such test will not be billed by the Seller, and the Electric Energy delivered by the Seller during this 24-hour test period will be charged by the Seller and paid by the Purchaser at a price of FIVE POINT FIVE DOLLAR CENTS OF THE UNITED STATES OF AMERICA (US$0.055) per KWH. The payment obligation of Excess Capacity fixed for the event of the mentioned annual test is established as an exception, as in no case shall there be an obligation to supply or to acquire Capacity in Excess at 110,000 KW. The KW Capacity level rendered by the test shall be the KW Capacity level that monthly the Purchaser shall pay to the Seller during the next following year of life of the contract at the rate fixed for the purpose by the Price Clause hereunder, with the variations set forth in Clause Eight hereof in connection with Penalties; the KW Capacity level referred to shall be understood as the result of dividing the Electric Energy measured in the 24-hour test period by 24 hours.

FOURTH: PRICE. The price hereunder includes a charge for Contract Power and a charge for Electric Energy. Exceptionally, when allowed hereunder, there shall be a charge of Excess Capacity, the price of which will be equal to the Contract Electric Capacity or Power. The price payable for Contract Power is fixed in DOLLARS OF THE UNITED SATES OF AMERICA per KW per month and is earned by the Seller and owed by the Purchaser as of the first day of the term hereof. The prices in effect for each year of operation during the fifteen years of the term hereof are, respectively:

US $17.00 per kw per month for the first year;
US $17.51 per kw per month for the second year;
US $18.04 per kw per month for the third year;
US $18.59 per kw per month for the fourth year;
US $19.15 per kw per month for the fifth year;
US $19.73 per kw per month for the sixth year;
US $20.32 per kw per month for the seventh year;
US $20.94 per kw per month for the eighth year;
US $21.57 per kw per month for the ninth year;
US $22.22 per kw per month for the tenth year;
US $22.89 per kw per month for the eleventh year;
US $23.58 per kw per month for the twelfth year; and
US $22.78 per kw per month for each of the three last years of the term of this agreement.

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The rate for Electric Energy will be US$0.035 per KWH for the entire term hereof; however, it shall be subject to variations in the following conditions:

a) Said price will increase or decrease one percent (1%) for each one percent (1%) variation in the average medium monthly fuel price used as reference for this agreement with respect to its base price. Said fuel is called "Low Sulphur Residual Fuel Oil" in its species New York cargo, one percent (1%) max as reported in Platt's Oilgram Price Report published by MacGraw-Hill Inc., and the base price mentioned above is the "Five-Day Rolling Average" (five-day continuous average) which appeared in said publication on December 1, 1991 as reference for the above mentioned fuel oil.

b) The price variation will be adjusted on the first day of each calendar month and will be applicable for the month in which the adjustment is made. The Parties agree that although the price payable for Contract Power and Electric Energy has been established in Dollars of the United States of America, the Purchaser may pay the equivalent in Quetzales at the rate of exchange prevailing in the market on the day the pertinent invoice is paid, according to the rule or system of currency exchange agreed upon by both Parties hereunder. As no taxes or custom duties resulting from the consumption and/or importation of said fluid have been included in any of the sale prices for Contract Power and Electric Energy referred to hereunder, it is expressly agreed between the contracting Parties that the Purchaser shall be exclusively obligated to pay any tax, contribution and/or custom duties or import custom duties caused exclusively and solely as a consequence of the consumption and/or entering the Electric Energy object hereof into the territory of the Republic of Guatemala. As this obligation of the Purchaser will be in effect during the entire term hereof, it is understood that any increase in taxes, contributions or custom duties that are in effect today for the consumption and/or importation of Electric Energy in Guatemala, or the creation of any new tax, contribution or import custom duty for the same generating facts, shall also be covered and paid for by the Purchasing entity. Therefore, it is understood and so agreed that the Seller, in determining the prices established hereunder, has

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Purchaser pays import taxes?

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taken into account that it is the Seller that shall pay any tax, duty, contribution or assessment directly or indirectly originating from this purchase and sale agreement, which includes those of its own operation and functioning, as well as fuel consumption, except, as mentioned above, those appertaining to the consumption and/or importation of Electric Energy itself. Consequently, no surcharges derived from taxes, duties, contributions or assessments, or its increases, can be transferred to the Purchaser, alleging not having taken them into account.

FIFTH: MEASUREMENTS. - The Seller shall install, operate and maintain at its expense and be in charge of the measurement devices as appropriate to accurately measure the Contract Power and Energy delivered to the Purchaser. Said devices shall measure as accurately as to be in agreement with generally accepted principles and standards for this type of service, and its measurements shall be the basis for determining the Purchaser's payments to the Seller hereunder. Each measurement device provided for under this Agreement shall be of standard manufacture acceptable to the Purchaser and shall be located as near as practicable to the Point of Delivery on the high voltage side. The Purchaser reserves the right to install for its account duplicates of the measurment devices that it deems necessary at the Delivery Point. Said measurement devices shall continuously record the variables measured. In any case, the Purchaser shall have free access at all reasonable hours to inspect the measurement devices, and also may inspect charts, graphs, measurement logs and reports and test data during normal business hours.

SIXTH: CALIBRATION AND ADJUSTMENT. The Seller shall periordically, at intervals of six months, calibrate and adjust all measurement devices using methods with an accuracy of one percent (1%). This calibrating shall be effected with the attendance of at least one representative of the Operation Commission of the Purchaser. In the event that a period of inaccurate registry can be determined, the readings of such device shall be corrected, and the corrected readings shall be used as a basis for determining the deliveries of Power and the difference of Electric Energy used during the period of inaccurate registry. When the period of inaccurate registry cannot be determined it shall be assumed to equal one-half of the period between the correction date of the device that was registering inaccurately and the next prior calibration or adjustment made to such device. If the measurement device shall be found to have registered inaccurately less than the above specified percentages, then there shall be no new billing for the difference.

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SEVENTH: BILLING AND PAYMENT. The Seller shall submit monthly invoices for Contract Power and Electric Energy sold during the month prior to that of the invoice, based on monthly amounts delivered and agreed upon prices. The invoice shall express separately the amount of Electric Energy and Contract Power being invoiced. The Purchaser shall review the invoice, and once accepted it shall be paid as follows:

> the last day of the first week of the Month, 10% of the amount for Capacity and 5% of the amount for Electric Energy;
> the last day of the second week of the Month, 25% of the amount for Capacity and 15% of the amount for Electric Energy;
> the last day of the third week of the month, 40% of the amount for Capacity and 30% of the amount for Electric Energy; and
> the last day of the fourth week of the month, 25% of the amount for Capacity and 50% of the amount for Electric Energy.

Any default in payment beyond the payment days established hereunder shall earn interest on the amount not paid on time at an annual rate of 2.5% above the prime rate in the UNITED STATES OF AMERICA as published in the Wall Street Journal from time to time but never in excess of that allowed by law. It is understood that Capacity is paid in advance and Electric Energy in arrears; therefore, during the first month of operation there shall only be advance payment for Capacity of that month payable weekly, as mentioned, and then the method of full payment set forth shall start to operate in the second month, thus the portion corresponding to Capacity will refer to the month being billed, and that of Electric Energy will refer to the consumption in the immediately preceding month.

EIGHTH: PENALTY. - If for any cause other than that of force majeure, the Seller stops the supply of Contract Power in the ranges established hereunder and supplies the same under 75% of the capacity resulting from the test, in the understanding that said capacity shall not be considered in excess of one hundred and ten thousand KW (110,000 KW), then the Contract Power shall be affected by the Capacity Factor to determine a billing capacity. If the condition of supplying power below seventy-five percent (75%) of capacity resulting from the test continues for three consecutive months, a new 24-hour measurement test will be made in order

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to establish a new amount of Contract Power, which will regulate the next following billing until a new measurement is requested, which cannot be before a Month has elapsed since the prior measurement test. Moreover, if the Seller should supply energy below 50% capacity, the same understood as the result upon dividing the energy measured in the monthly period by the product of the number of monthly hours and the Contract Power, then the Seller shall discount the difference between the average fuel cost incurred into by the Purchaser to operate its plants and the cost of purchasing from the Seller the KW that the Seller has not supplied below the 50% established hereinabove. This discounted differential may be reimbursed if the Seller in the subsequent months supplies power to the Purchaser above the 75% of the continuous average of power consumption in the prior 12 months, provided the power used to reach such average does not exceed 110,000 KW for the number of hours in that month, if and when this method does not represent for the Purchaser a cost increase in the purchase or production of energy in its other plants. In the event that the Purchaser should no longer require power for the 50% and should do so below that capacity percentage, this being understood as explained above, then the Purchaser shall always pay the difference between what it actually used and that 50% fixed as parameter. This penalty amount can be returned to the Purchaser if it later consumes power in excess of 75% of the average fixed for the recovery in the case of the Seller.

NINTH: TERM. The term of this agreement that incorporates the reciprocal obligation in effect to sell and purchase Contract Power in the terms agreed upon is of FIFTEEN years as of the date that both Parties sign the pertinent record certifying the inception of the Commercial Operation of the Facility.

TENTH: BOND AND REIMBURSABLE ADVANCE. The Purchaser shall furnish a bond to cover its commitment to purchase the Contract Capacity for the amount of US$51,043,200 on behalf of the Seller as of the date hereof until December 1, 1992. The amount of the bond was established in said amount as partial counterpart of the investments the Seller will make in this project. The Purchaser shall do every reasonable efforts to obtain said bond before January 31, 1992, which shall be issued by an institution acceptable to the Seller. Therefore, the Seller shall do what is reasonably possible to cooperate with the Purchaser to obtain said bond. It is clearly agreed that the obtention of this guarantee is

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subject to that stipulated hereinafter in Clause Thirty-Two, and that it is a bond that does not imply the direct encumbrance of the Purchaser's assets. The cost of the premium of the bond will initially be paid by the Purchaser for the account and to the cost of the Seller. Once the Commercial Operation has started, after the following three days, the Purchaser shall deliver to the Seller the additional amount of money that added to the premium and other expenses of furnishing the bond are in the aggregate of US 7,250,000, which aggregate amount shall be of the nature of a reimbursable deposit that shall be returned by the Seller to the Purchaser by means of ten semestral and consecutive amortizations, of US$725,000 each, to be commenced on the last work day of the seventh year of the term hereof and the last payment to be made on the first semester of the twelfth contract year. In addition, within those three days of initiation of the Commercial Operation, the Purchaser shall have open an irrevocable Letter of Credit, effective for 90 days and automatically renewable at the end of each 90 additional days until the end of the contract, confirmed by a local Guatemalan bank acceptable to the Seller, for the estimated monthly billing amount in Quetzales to be invoiced by the Seller according to Power Dispatch Schedule prepared by the Purchaser. The letter of credit shall be enforceable as of the fifth day following the expiry of the last day on which the Purchaser must make its monthly payments for the purchase of Contract Power and Electric Energy. The bond established hereunder furnished by the Purchaser shall be cancelled upon completion of the delivery of the US $7,250,000 reimbursable deposit and upon the Letter of Credit being open covering the above mentioned monthly consumption.

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ELEVENTH: OBLIGATION OF THE PARTIES. OBLIGATIONS OF THE SELLER. Among those mentioned hereunder and those established by law, the Seller shall:

a) Construct and operate the Facility, the Off-site Facilities and the Point of Delivery according the necessary specifications for the adequate performance hereunder.

b) Make available to the Purchaser Contract Capacity in the range of 90,000 to 110,000 KW and Electric Energy at 230 KV and 60 Hertz.

c) Make the delivery of the Power and Capacity mentioned on or before December 1, 1992.

d) Maintain permanent supply of Power and Capacity mentioned other than interruptions for maintenance

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or repairs previously agreed upon with the Purchaser and subject to a coordinated dispatch schedule between the Empresa Electrica, S.A. and the Instituto Nacional de Electricación -INDE-.

e) Install, operate and maintain the measurement devices with the features indicated hereunder, which will be installed at the side of the high voltage output of the transformers to be installed.

f) Allow the officers and appointed personnel of the Purchaser to make checks and inspections deemed convenient to the mentioned measurement devices, as well as of the charts, tables, logs and measurement records kept by the Seller.

g) Notify in writing at least 60 days in advance of the date of inception of the commercial operation, and of the first delivery of Capacity and Power under contract.

h) Return the advance received by the Purchaser in the manner set forth hereunder, or before, if for any reason the supply of Contract Capacity and Power would be discontinued. In this last case, the reimbursement shall be effected in one payment to be made within the three months after the supply of Contract Capacity and Power have stopped, and while said reimbursement has not been effected, the Seller cannot withdraw the Facilities from Site.

i) Furnish the insurance coverages mentioned hereunder.

OBLIGATIONS OF THE PURSHASER. In addition to the other obligations that according to this agreement and the law may appertain to it, the Purchaser shall

a) Purchase and pay for the Contract Capacity and Power as set forth hereunder.

b) Take its energy transmission lines to the interconnection point at the Delivery Point, property of the Seller, and interconnect the same in coordination with the Seller, in order to allow the same to comply with its delivery obligation.

c) Provide all consents, certificates, opinions or similar reports, that may be reasonably required by any entity providing financing for the Seller's project.

d) Give to the Seller a monthly report containing:

i the energy requirements for the following two months in the detail reasonably requested by the Seller; and

ii) information regarding any important factor that might affect the facilities' operations.

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e Open an irrevocable Letter of Credit for the estimated amount or the average of the monthly consumption of Capacity and Energy, automatically renewable month by month during the entire term hereof to guarantee payment for said consumption.

f) Furnish the insurance coverages mentioned hereunder.

TWELFTH: INSURANCE. During the term hereof and from the time the Facility is in place, each of the Parties will obtain and maintain in effect a general civil liability insurance, including a contractual liability coverage. The coverage shall include the Parties' directors, their officers, agents and employees that at any time might be involved in the operation of the Facility, the Off-site Facilities or the Delivery Point, or that at any time are to be presente in the place where the Facility is to operate, with a combined single limit of not less than TEN MILLION UNITED STATES OF AMERICA DOLLARS (US$10,000,000) for each accident or occurrence. Each Party shall provide that the other Party be named as an additional insured under any insurance coverage related to this project. The parties shall also maintain in force an all-risk property insurance, naming the Seller and the Purchaser as additionally insured where their respective interests may appear. This insurance will cover the total replacement cost of all real and personal property forming part of the Facility, Off-site Facilities and the Delivery Point in the case of the Seller, and of the Purchaser, its properties. In the event the Facility, the Off-site Facilities or the Delivery Point should sustain any damage that might hinder the Seller to comply with its obligations hereunder, and that the reasonable cost, in the opinion of the Seller, to repair such damage to a point of reconditioning the damaged assets for the Seller to continue its performance hereunder should not be in excess of US $10,000,000, and should there be no Financier to claim the benefits of an insurance indemnity, then the Seller shall apply the insurance benefits received to make the repair. Otherwise, the Seller at its discretion may decide to terminate this Agreement by notifying the Purchaser, in which case it shall return the advance received as indicated hereunder, and after that it may apply or dispose of the benefits paid by the insurance as deemed convenient. Other than in the conditions established above, it will not necessarily be required of the Seller to repair, rehabilitate, demolish, reconstruct or replace the Facility, Off-site Facilities, or the Delivery Point when one or more of them have been damaged. In addition, each Party shall:

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a) furnish a certificate of insurance to the other Party, which certificate shall provide that such insurance shall not be terminated nor expire except on 30 days prior written notice to the other Party; and b) maintain such insurance in effect for the term of this Agreement. -- All insurance shall provide that the insurer waives all right to mutual subrogation.

THIRTEENTH: LIABILITY AND INDEMNIFICATION. Subject to the limitations established in the next clause hereunder and to the provisions of this Agreement specifying damages hereunder, to the maximum extent permitted by law, each Party shall cross defend, cross indemnify, and hold harmless the other Party, its parent and affiliated companies, and those with whom it may be associated as a joint venturer or co-lessee, and the directors, employees and agents of any of the foregoing, from and against any loss, damage, claim, suit, fine, liability, judgement and expense including attorneys' fees and other costs of litigations arising out of injury, death or disease of persons, including, but not limited to, employees of those entities mentioned above and their respective subsidiaries or their subcontractors, or damage to or loss of property, including, but not limited to property of the entities mentioned above and their respective subsidiaries or their subcontractors, or pollution resulting therefrom, incidental to or in connection with the operation or the performance of this Agreement, except to the extent that the injury, disease, death or damage is caused by the gross negligence of the entity otherwise indemnified. The other Party shall have the right, but not the duty, to participate in the defense of any such claim or suit with any obligations hereunder. Any Party shall, as soon as practicable after receiving notice of any suit brought against it, deliver to the other Party full particulars within its knowledge thereof and shall render all reasonable assistance requested by any Party in the defense of such suit. - The obligations, indemnities and liabilities assumed by the Parties hereunder shall not be limited by any limits on insurance contained within this Agreement.

FOURTEENTH: LIMITATION OF LIABILITY. Notwithstanding any other provisions of this Agreement to the contrary, in no event shall the aggregate liability of the Seller to the purchaser and vice versa on all claims of any kind, except to the extent that any claims are paid by insurance and the insurance carrier is not required to be reimbursed by the Seller, whether based on contract, indemnity, warranty, guarantee, tort, strict liability or otherwise, and whether

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arising prior to, during, or after the term of this Agreement for all losses and damages connected with, incident to or arising out of this Agreement, or from any other cause whatsoever, exceed the total of US$10,000,000.

FIFTEENTH: FORCE MAJEURE. Neither Party shall be considered to be in default in the performance of any of its obligations under this Agreement, when and to the extend failure of performance shall be due to Force Majeure. for the purpose, the term force majeure shall be understood as any cause beyond the reasonable control of the Party failing to perform, including, but not limited, causes such as flood, earthquake, storm, dust storm, lightning, fire, epidemic, war, explosion, riot, pestilence, holocaust, act of public enemy, act of civil or military authority, civil disturbance or disobedience, labor or material shortage, sabotage, restraint by court order or order of public authority, action or non-action by or inability to obtain the necessary authorizations or approvals from any governmental agency or authority, equipment or electricity, failure or breakdown of facilities and/or equipment from any other cause not listed above, provided failure or breakdown of the facilities and/or equipment is not caused by the failure to operate and maintain such facilities and/or equipment in accordance with good engineering and operating practices. The Party rendered unable to fulfill its obligations under this Agreement by reason of a force majeure shall give prompt written notice of such fact to the other party and shall exercise due diligence to remove such inability. Provided, however, that nothing contained herein shall be construed so as to require a Party to settle any strike or labor dispute in which it may be involved. In the event of a suspension of a Party's obligation for the above mentioned causes, the term shall be extended for the period of suspension. Such extensions shall, however, be limited to two months per year in the aggregate.

SIXTEENTH: MODIFICATION. - The Seller's construction of the Facility and performance under this Agreement in connection with the delivery of Capacity and Power, is contingent upon the Seller obtaining the necessary financing acceptable to Seller. The mentioned financing, as well as the permits to be obtained by the Seller, may require some changes to the provisions of this Agreement and, therefore, the Parties agree and as of now accept to carry out said changes to the extent that the same be reasonably acceptable to both Parties. The same principle will be applicable to any requirements imposed by the government of the United States

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in relation to obtaining financing, and as otherwise required by the project object of this Agreement. Notwithstanding the above, such changes cannot be made for the above mentioned reasons affecting the Term of this Agreement and the Capacity and Power to be delivered by the Seller and acquired by the Purchaser.

SEVENTEENTH: NON-DEDICATION TO PUBLIC USE OF FACILITIES. The Parties acknowledge and certify that the Seller has no intention of being or acting as a regulated public service entity and that the execution hereof does not compromise the Facilities in this sense, thus the relation between the Parties shall be framed as a commercial relation between the same, conditioned to private commercial law. In this sense, the Purchaser accepts that its rights to acquire Power from the Seller, according to the provisions hereof, are only under the terms set forth in the same. Consequently, it is set forth that the Seller shall not dedicate, nor dedicates hereunder, any part of its facilities or services rendered pursuant to this Agreement to public use, and therefore, such service shall cease upon the same reasons of termination of this Agreement. Notwithstanding the above, it is a relevant matter in the performance hereof that the Seller supplies Contract Capacity and Power permanently and reliably, subjecting itself to operate according to power dispatch schedules to be prepared or submitted by the Purchaser.

EIGHTEENTH: OPTION TO PURCHASE ADDITIONAL CAPACITY AND ENERGY. At any time, during the term hereof, the Purchaser shall have preferential right to acquire any excess Capacity and Energy that the Seller is in a position to deliver, which will be paid at established prices hereunder for Contract Capacity.

NINETEENTH: PUBLICITY. Neither Party shall publish any material of promotional nature or press releases, written, broadcasted or televised in connection with this Agreement or the Facilities without the prior written approval of the other Party. However, this does not include the Parties' right to report truthfully on the subject in the event of interviews or press reports that make it reasonably convenient or necessary.

TWENTIETH: LIABILITIES AND OBLIGATIONS OF FINANCIERS. Except as provided herein, the Purchaser shall only see to it that the Seller complies with all of its contractual obligations according to the same, demanding it directly of the Seller, unless, in the event of default of payment by

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the Seller to its financiers, one or several financiers have taken possession of the Facilities. In no case shall the financiers be liable before the Purchaser for unincured amounts, except to be within the limits of such financiers' interest and rights. The Seller shall notify the Purchaser forthwith of the names and addresses of all financiers. The Purchaser shall not terminate this Agreement in the event of breach until three days of advance notice have been given of said breach to each Financier, and the Purchaser accepts to immediately notify all Financiers of said breach. Should the Purchaser not give notice, the Purchaser shall not be liable for damages and losses to no Financier as a result of not giving such notice, but the termination hereof with respect to said Financiers shall not be effective until said notice has been given. Once notice is given to the Financiers, the Purchaser shall not terminate this Agreement as a consequence of said breach if within a period of ten working days each Financier has either

a) cured the default if it can be corrected with the payment or disbursement of money; or
b) if the Financier does not elect to cure it by the payment or expenditure of money, or if the breach cannot thereby be cured, caused the initiation of and is diligently pursuing foreclosure proceedings or proceedings to give the Financier possession of the Facility.

If a Financier is prohibited by any process or injunction issued by any Court or by reason of any action by any court having jurisdiction of any bankruptcy or insolvency proceeding involving the Seller or by an automatic stay thereunder from commencing or prosecuting action to give the Financier possession of the Facility, the time specified above for commencing or prosecuting such action shall be extended for the period of such prohibition. - In any case, if the proceedings initiated by the Financiers or third party against the Seller would result in or implicated that during prosecution the Facilities suspend operation, the Purchaser, with the approval of the Seller, may operate itself the Facility withholding payments that would have to be made for purchase of Capacity and Power payable as per award of the judicial authorities, deducting operation expenses therefrom. In order to carry out operation under said conditions, the Seller shall train the Purchaser's personnel at no cost to Purchaser.

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TWENTY-FIRST: FACILITY RELOCATION AND REFITTED TECHNOLOGY. At any time following the first two years of Commercial Operation, and upon ninety days written notice by the Purchaser, the Purchaser may request the Seller to relocate the Facility to another location meeting the adequate requirements for the purpose. If reasonable economic benefit to both the Purchaser and the Seller can be demostrated by the Purchaser and upon the written consent of the Seller, such consent not to be unreasonably withheld, the Seller shall provide all reasonable assistance to the Purchaser in relocating the Facility, provided, however, the Purchaser shall assume all liabilities and obligations including, but not limited to liabilities arising out of damage to equipment and property during such relocation. All costs of said relocation shall be borne by the Purchaser. - Should the authority of the Purchaser to purchase Power from the Facility be terminated, or should the Purchaser be prevented from continuing said purchases for any reason whatsoever, the Purchaser shall have the first purchase option of the facilities, if the seller would wish to sell the same at that time. -- At any time during the term hereof, should the Seller in its sole judgement determine that the refitting of new or enhanced technology to the Facility would provide increased economic benefit to both the Purchaser and the Seller, the Seller shall have the right, but not the obligation, to refit said technoloty upon sixty days written notice to the Purchaser.

TWENTY-SECOND: SUBCONTRACTS AND AGREEMENT ASSIGNMENT. Neither Party may partially or totally assign its rights contained in or derived from this agreement without the prior written consent of the other Party. Neither Party may refuse said consent without just cause. Once the assignment is approved, this Agreement shall be binding upon and benefit the assignee as of the moment the assignee assumes his obligations in writing and so informs the other Party. In any case, assigners and assignees shall be jointly liable during for one year term for obligations derived hereunder entered into before the assignment acceptance date by the assignee. The Party of whom the authorization is requested to assign this Agreement may, at its discretion, require that the assignment be made maintaining full solidarity between the assigner and assignee for the full term or part term hereof, and in such case, the assignment shall thus be effected. The prior authorizatin in writing of the other Party will also be required to subcontract totally or partially the obligations appertaining to each Party hereunder. For the purpose of obtaining financing for the

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project, the Purchaser authorizes the Seller to encumber its rights hereunder in favor of any Financier. The Seller shall notify the Purchaser with at least 10 days in advance of any pledge or transfer by the Seller of all or any interest in the Facility, or any part thereof, including, but not limited to, any such pledge or transfer to provide security for fianancing purposes. The Seller shall also furnish as promptly as possible complete copies of any documentation for financing secured by an interest in the Facility. The Seller shall need the prior approval of the Purchaser regarding any subcontractor for any local subcontracting the Seller may wish to make.

TWENTY-THIRD: ARBITRATION. Any difference or controversy between the parties regarding the interpretation, performance or execution hereof, both during its effectiveness and termination, will be settled by Private Equity Arbitration in Guatemala City, Republic of Guatemala according to the regulations of the Private Center of Opinion, Conciliation and Arbitration (Centro Privado de Dictamen, Conciliación y Arbitraje (CDCA)), which the parties accept irrevocably as of this moment. The arbitrators shall have no authority to grant precautionary measures or of guarantee as means of provisional guarantee of the Parties' rights, and the fact that the Parties initiate actions of this nature before the courts of the Republic, to which they are entitled, does not mean they have waived their right to request the arbitration established hereunder.

This Agreement

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ENRON
POWER CORP

Senate Finance Committee

EXHIBIT 9

CONFIDENTIAL

Electricidad Enron de Guatemala, S.A.

$71,250,000 Term Loan Facility
Descriptive Memorandum

Business Confidential Information

July 1992

Confidential Descriptive Memorandum

$71,250,000

Term Loan Facility

for

ELECTRICIDAD ENRON de GUATEMALA, S.A.

Business Confidential Information

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July 1992

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ELECTRICIDAD ENRON de GUATEMALA, S.A.

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I. EXECUTIVE SUMMARY

Enron Power Corp ("Enron Power") is seeking project financing for a 10 megawatt ("MW"), $95 million power plant to be located along Guatemala's Pacific coast (the "Project"). Using fuel-oil-fired reciprocating diesel engines, the Project is slated to begin commercial operations December 1, 1992 under a 15-year power purchase agreement ("PPA"). The generating equipment will be mounted on two movable barges, flagged as U.S. vessels, which will be moored in a protected slip for the duration of the Project.

The Project will be the first privately owned, project-financed power plant in Central America. Funding will take place at the start of commercial operation, and lenders are therefore not required to take any development, construction, siting, delay or cost overrun risks. The capacity payment/energy payment structure of the PPA provides safe coverages of the Project's fixed and variable costs over the life of the Project, with pre-tax debt coverages significantly above levels customary in comparable international financings. The transportability of the barges, in addition to the strong project cash flows, give lenders a second level of security uncommon for power plant lending.

The power purchaser, Empresa Electrica de Guatemala, S.A. ("EEGSA"), has been operating profitably as a private generation and distribution company in Guatemala for over seventy years, first as a subsidiary of U.S.-based EBASCO until 1972, and thereafter as a 92% owned subsidiary of INDE, the principal government utility.

Enron Power is developing and managing construction of the Project, and will operate and manage it, and intends to own at least 50% of the equity. A subsidiary of U.S.-based Enron

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Corp ("Enron"), Enron Power is one of the worlds largest independent power producers.

The Project offers the following features:

- No funding of non-recourse debt until construction is completed and PPA performance tests passed
- Project will be EEGSA's lowest cost thermal plant
- All in power cost 20% below current retail prices
- Power shortages and aging existing generation facilities ensure high Project dispatch
- Above average pre-tax debt coverage levels even (1.52x average, 1.41x minimum) at contractual minimum dispatch levels
- U.S.-style capacity and energy payment provisions in the PPA

  Proven technology in use world-wide from reputable supplier

  Readily available fuel with pass-through of market pricing

  Enron Power is experienced owner and operator

  Project is OPIC-insured for expropriation, political violence and currency inconvertibility
-
-
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expanding economy, and in providing basic service to a greater percentage of the population. The country has a recent history of power shortages, a situation the Government has publicly committed will be corrected. The Project, which will represent approximately 14% of the country's nominal electric generation capacity and 33% of its actual output, will play a key role in achieving that goal. The all-in price (capacity and energy) to EEGSA of 6.24¢/Kwh projected

for December, 1992 is expected to be below the cost of EEGSA's other generation plants. The Project's operation will significantly improve the reliability of the overall EEGSA system, a system characterized by aging generating equipment in need of major refurbishment or retirement.

Project Background

The opportunity for a privatized power generation project in Guatemala became possible with the election in January 1991 of a new government headed by President Jorge Serrano, and the concurrent appointment of a new chairman for both the national utility, Instituto Nacional de Electrificacion ("INDE") and for EEGSA who strongly favors the privatization of new electric power generation. This policy is consistent with the Government's overall free-market economic platform, a key element of which is to privatize key public sectors, including the railroad, airline, and communications segments, as well as new electric generation. This policy is made easier to implement due to the support of all major political parties, and the relatively minor historic role of the government in Guatemala's economy. From a regional perspective, the Project's success will likely be the impetus to similar projects throughout Latin America.

The Government's economic policy stimulated a small group of Guatemalan businessmen concerned about growing power shortages in this country to take the initiative to attract and develop a private power generation project. These businessmen began efforts to attract U.S. firms to Guatemala and to convince both the government and EEGSA of the timeliness of such a plan. They located a company, Texas-Ohio Power of Houston, Texas ("TOP"), with experience in power plant development willing to develop a barge-mounted plant at Puerto

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Quetzal. In October 1991, the Serrano Government approved a plan to provide additional generating capacity through power purchase arrangements with private companies. EEGSA, which is responsible for the distribution of electricity to over 70% of the existing electricity consumers in Guatemala, was the vehicle selected for this plan. Because it is legally structured as a private company, EEGSA was able to solicit proposals and negotiate a contract with private power suppliers on an urgent basis without any requirement to change existing procurement

EEGSA began negotiations with TOP for a private barge-mounted project in late 1991, and executed the PPA in January 1992. TOP and Enron Power began discussions in February, 1992 regarding Enron Power's potential assumption of development of the Project, and TOP agreed, with EEGSA's consent, to sell and assign the contract to Enron Power on March 12,

Enron and Wärtsilä executed a turnkey construction contract on April 10, 1992 and by mid-July all required approvals had been obtained and OPIC insurance approved.

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<u>Power Plant Description</u>

The power barges are currently being constructed by McDermott in Morgan City, Louisiana by Wärtsilä Diesel, Inc. ("Wärtsilä") under a fixed price turnkey construction contract. Construction financing is included in the turnkey price; no further payments are required until the plant passes certain performance tests that demonstrate its ability to perform under the power contract, including delivery and interconnection to the Project site. (Passage of these tests is a condition to non-recourse funding under the proposed credit facility.)

The Project includes two barges each containing ten Wärtsilä VASA 18V32D 5.5 MW diesel engines designed to burn heavy fuel oil in power plants. The technology is similar to that

used to power large ships. The barges will be located in the existing Puerto Quetzal port facility 75 kilometers south of Guatemala City under a long term lease of dockage space. Sea water will be used to cool the engines and then discharged into the sea outside the port area. The shore facilities will include a 200,000 barrel heavy fuel oil tank farm, a 230 Kv substation, a fuel oil pumping facility, a utility/pipe corridor, a 13.8 Kv cable trench, a fuel unloading facility, temporary laydown areas for construction, a parking area, space for a hot water discharge line, and office space.

The Project is being designed to meet or exceed all applicable local and World Bank environmental standards, including standards for air emissions , cooling water discharge and noise.

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Enron Power

Enron Power is one of the largest independent power production companies in the world, with proven experience in power plant development including design, engineering, financing, construction, procurement, operation and fuel management and supply. Enron Power has direct and indirect ownership interests in over 3400 MW of electric generating capacity. This includes interests in five operating power plants located in the U.S. and four under construction throughout the world, including the 1725 MW gas facility in Teesside, England, the largest privately owned gas-fired combined cycle cogeneration plant in the world.

Enron Power is a wholly-owned subsidiary of Enron, which operates the largest natural gas transmission system in the U.S.Enron is one of the world's largest marketers of liquid fuels and has extensive activities in oil and gas exploration, gas supply and production and sale of

natural gas liquids.

Enron Power intends to retain 50% of the Project equity as a long-term investment, and to bring in an industry or financial partner for the remaining 50% Enron Power believes its world-wide expertise in the development, construction and operation of electric power plants will greatly assist Guatemala in its endeavor to modernize the country's electric generating capacity while providing Enron and its partners the opportunity to achieve reasonable financial returns.

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Power Purchase Agreement ("PPA")

The 15-year U.S.-style PPA is denominated in dollars and obligates EEGSA to provide the Project: i) weekly fixed capacity payments; ii) weekly variable energy payments; and iii) additional collateral and documentary support to secure EEGSA's obligations during the term of the PPA.

Capacity payments are fixed and escalate annually at contractually specified rates. Energy payments are variable and are linked to expected fuel costs; energy payments are indexed to No. 6 (1% sulfur) Fuel Oil (NY Cargo-Platts Oilgram) EEGSA is obligated to pay for 110 MW of capacity (subject to a performance test) and to purchase at least 50% of the Project's available energy output. Capacity and energy payments are to be made in U.S. dollars or Quetzales (the Guatemalan local currency) at prevailing market exchange rates.

PPA further provides the following measures to secure EEGSA's payment performance: (i) a letter of credit by a bank acceptable to Enron Power that is renewed each ninety days for the amount equal to 30 days of energy and capacity payments ($4.4 million in 1993); (ii) a $7.25 million interest free cash advance paid by EEGSA at commercial operation

which represents a portion of capacity payments otherwise due in 1998 - 2003 ; and (iii) written assurances from INDE that it recognizes EEGSA's obligations, and to the extent legally possible, will cause EEGSA to fulfill its obligations under the PPA. The Project also expects to receive from the U.S. Ex-Im Bank a letter of credit guaranteeing approximately two months of payments ($8.8 million) if the PPA remains in default for ninety days.

Fuel Arrangements

Each barge will consume approximately 2,500 barrels of fuel per day for a total of 4,000 barrels of fuel per day of Bunker C (No. 6) Fuel Oil assuming dispatch at full capacity. The energy pricing in the PPA changes monthly in accordance with market changes of the price of 1% No. 6 fuel oil. This will enable the Project to purchase fuel at spot market prices without subjecting itself to adverse price risk. An affiliate of Enron, which is one of the world's largest marketers of liquid fuels, will agree to supply fuel to the Project site under a 15-year contract at prices linked to those under the PPA, plus transportation costs.

In order to mitigate supply disruptions and take advantage of competitive fuel oil pricing, the Project's turnkey construction contract includes two land-based storage tanks, each with 100,000 barrels of capacity, and a one day storage tank on each barge. These tanks will store approximately 35 days supply of fuel oil. While the PPA provides for changes in the energy pricing tied to No. 6 fuel oil with 1% sulfur content, the Project's design will enable it to burn No. 6 fuel oil with up to 3% sulfur content and still satisfy both local and World Bank standards.

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Project Financing

Project costs, including start-up training, working capital, development costs, financing costs and approximately 6% of contingency, total approximately $95 million. (Construction financing is included in the turnkey price.[5] The Project has been structured so that lenders are not required to assume risks associated with Project construction, development, siting, permitting, delay, cost overruns, electric price/fuel cost linkage, or shortages in working capital. Due to the comprehensive turnkey contract, construction management by Enron Power and contingencies in the Project budget, cost overruns are unlikely. However, if any occur they will be funded by Enron Power and not the lenders. Two million dollars of initial working capital is included in the Project cost. Additional working capital will be made available as required through a working capital facility provided by Enron Power.

The Project's sources and uses of funds, key financing assumptions, and projected debt cover ratios, are set out below:

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SOURCES	$ MM	%
Long-term debt	$71.25	75.0%
Equity	23.77	25.0%
TOTAL	$95.00	100.0%
USES		
Turnkey Construction & IDC	$77.40	81.5%
Start-up, Development & Miscellaneous	8.22	8.7%
Financing Costs	1.78	.9%
Working Capital	2.00	2 %
Contingency	5.60	5.8%
TOTAL	$95.00	100.0%

Debt Assumptions:

12 year term, 1 year grace, 10.5% all-in fixed rate

Debt Cover Ratios (pre tax)	50% Minimum Dispatch	85% Expected Dispatch
Minimum	1.41%	1.69%
Average	1.52%	1.88%

As depicted below, during the operating period, the Project has been structured to hedge its fixed and variable costs against minimum PPA revenues. Profits resulting from dispatching above the 50% minimum enhance equity returns but are not required to cover costs or debt service.

REVENUE SOURCE	COSTS COVERED	% OF REVENUE SOURCE
PPA Capacity Payments	Debt Service	48.6%
	Project and O&C Insurance	11.5%
	Local Taxes/Rent	3.3%
	Equipment maintenance costs	16.9%
	Operating costs (fees, labor & administration)	12.0%
	Operating contingency	3.4%
	Contribution to profits	4.3%
Total		100.0%
PPA Energy Payments (50% minimum dispatch)	Fuel for 50% operations	68.3%
	Income Taxes	3.3%
	Contribution to profits	28.4%
Total		100.0%
PPA Energy Payments (additional 35% expected dispatch)	Fuel for 35% operations	68.3%
	Taxes on additional income	6.2%
	Contribution to profits	25.4%
Total		100.0%

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* based on 1994 data, the year in which debt repayment commences.

Enron Power is seeking a twelve year non-recourse term loan equivalent to at least 75% of the $95 million project cost, or approximately $71.25 million. Senior lenders will rank *pari passu* and will share *pro rata* in a common security package which will include security interests in all real and personal property and on assignment of the borrower's rights under all material contracts. If the Project elects to hedge its exposure to rising interest rates with interest rate swaps, the swap counterparties will share *pro rata* in the Project's collateral. The Project intends to hedge at least 50% of its interest costs to mitigate the risk of increasing interest rates to the Project.

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Turnkey Construction Contract

The Project is being built by Wärtsilä Diesel Inc. of Chestertown, Maryland ("Wärtsilä"), under the terms of $77.4 million turnkey construction contract. Wärtsilä is a subsidiary of Wärtsilä Diesel Group of Finland, the world's largest medium-speed diesel engine manufacturer. The turnkey construction contract contains a date certain and significant liquidated damages tied to guaranteed Project output, heat rate, and delays in construction. These guaranteed heat rate and output levels are believed to be conservative and are the basis for the projections provided in Section VII. The contractor will provide a one year warranty on its work. Construction of the barges is currently underway and on schedule for an arrival of the barges in Guatemala during October and November 1992.

Environment

The key environmental issues for the Project are air emissions, cooling water effluent

temperature and noise. The Project has obtained all necessary Guatemalan environmental approvals and has also been designed to comply with all applicable local and World Bank standards. Third party consultants and environmental engineers have been retained to assure compliance with these standards.

<u>Permits and Land Rights</u>

The Project will have a long term lease from the Puerto Quetzal Port Authority for approximately 40,000 square meters of land and dock space to locate the substation, fuel tanks, parking, and (during construction) space for temporary staging and laydown. A utility corridor and cable trench will be required to install fuel and water lines as well as cables to transfer power from the barges to the substation. All permits required to begin on-site construction have been received.

The Project has received permission from EEGSA to use its import license to acquire fuel for the Project. This permission to use EEGSA's license has been approved by the Ministry of Energy and Mines as a temporary measure until the Project's own import license is approved. This final approval normally requires several months to process once fuel storage facilities have been constructed.

Minor permits will be acquired when needed during construction and prior to commercial operations in the ordinary course of business. No obstacles are anticipated in the acquisition of these remaining permits.

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Risk Factors

Enron Power has analyzed the Project risks and concluded that they are reasonable, can be mitigated through available contractual means and do not significantly threaten the viability of the Project. Pre-completion risks are being borne by the developers, as project completion is a condition precedent to non-recourse funding. Enron's view of the major post-completion risk factors are summarized below:

- Electricity Market. Increasing electric capacity is necessary for Guatemala's economy to continue to expand, as is improved reliability and modernization of electric capacity sources. Increasing electric capacity is also a political objective, following power shortages and blackouts in 1991 and as a result of the Government's emphasis on infrastructure and economic development. The Project is integral to those objectives being achieved as highlighted by Figure I.I below showing projected Guatemalan electrical demand vs. capacity. Even if electric demand growth is below the current utility estimate of 6.7% per year, the Project's capacity is expected to be dispatched at baseload. The Project will be the most efficient plant among any of the generating facilities currently owned by EEGSA, and one of the most reliable sources of electricity in the country. While the projected electric demand is on a long term up-trend, the PPA mitigates the risk of downturns in demand through (i) fixed capacity payments, which fully amortize the Project's fixed costs and debt service, whether or not the associated energy is actually dispatched, and (ii) the 50% minimum energy purchase requirement.

  Currency Conversion. EEGSA will provide payment under the PPA in U.S. dollars or Quetzales at the existing rate of exchange. The Project will need a maximum of $400,000 per week to cover debt service and expected equity distributions, and up to another $400,000 per week to cover dollar-based fuel and operating costs. The foreign exchange market in Guatemala is administered primarily by the Central Bank of Guatemala ("CBG"). Under the CBG's daily auction system, U.S. dollars are made available to the highest bidders, subject to CBG availability and a single day trading limit of up to $250,000 per bidder. The current availability of U.S. dollars committed and confirmed by CBG, range between $4 - $8 million per day, which is more than adequate to meet the $800,000 per week Project requirements. Weekly payments from EEGSA to the Project will help mitigate large single day currency conversions. As supply and demand for dollars fluctuate, the CBG injects or extracts currency. The CBG currently has a dollar reserve of approximately $600 million. In addition, the Project expects to purchase OPIC insurance to cover currency

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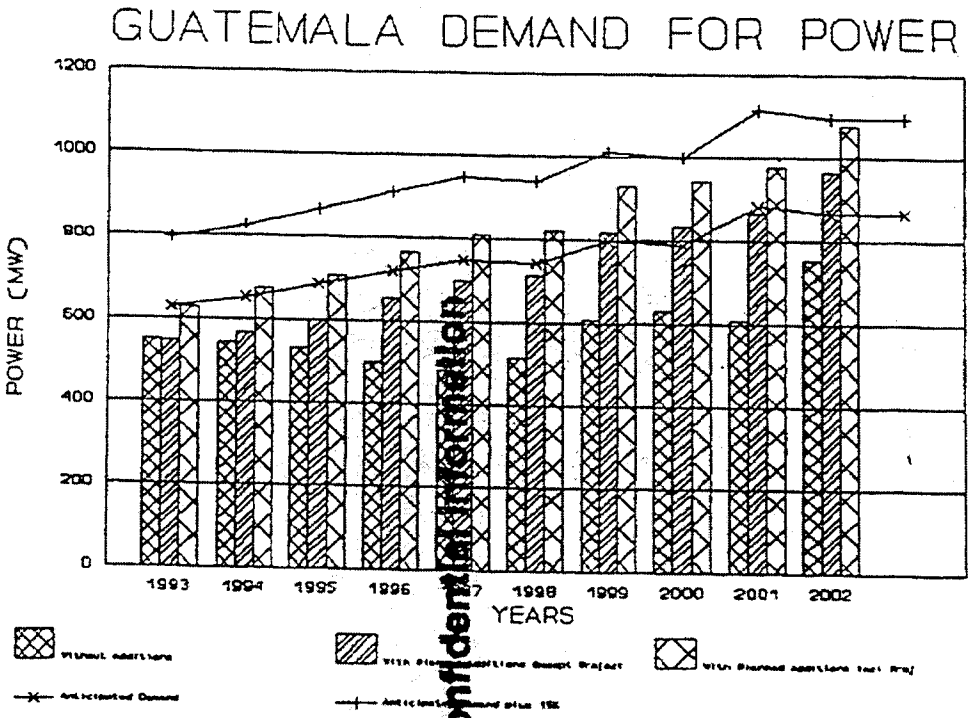
inconvertibility exposure. Taken collectively, these measures should adequately mitigate the currency conversion risk.

Figure I.



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Fuel Supply and Pricing. The PPA links the Project's energy revenues to its expected fuel expenses. Energy revenues received by the Project are indexed to the monthly price of low sulfur (1%) residual fuel oil. An affiliate of Enron will agree to supply fuel at this price for the term of the PPA. In addition, the Project has sufficient fuel storage for 35 days of operation. This mitigates any anticipated delivery or supply disruptions and provides an upside opportunity to purchase fuel at optimal prices and volumes.

Political Violence and Expropriation. OPIC has agreed to insure the Project against political violence and expropriation for the term of the financing. OPIC coverage provides for the repayment of debt in the event of confiscation of or damage to assets resulting from political violence or expropriation. Similar commercial insurance will be applied for if necessary.

- Project Operations. The Project is using highly efficient, reliable, low-technology equipment that is in use in power generation plants throughout the world. The track record of this equipment package, coupled with the warranty provided by Wärtsilä and its commitment to pay liquidated damages if performance tests are not satisfied, provide assurances that the Project will be able to meet the operating requirements of the PPA. Enron Power's experience in the successful operation of much larger and more complex plants will be utilized at this plant to properly maintain and operate the Project at a high availability level. Enron Power will provide comprehensive training for the local laborers and Wärtsilä has agreed to assist the Project in establishing these programs. Backstopping all of these measures is the Force Majeure language in the PPA which excuses the Project from performance during periods of equipment outages not resulting from improper maintenance. Normal project insurance, such as general liability, workmen's compensation and physical loss or damage will be in place prior to commercial operations.

  Transmission. The 230 Kv line that links the Project to the national grid is presently under construction and scheduled for completion in November 1992. The financing for this $4.5 million project was arranged for EEGSA and guaranteed by Enron Power, which has provided a full-time, on-site project manager to advise and monitor this effort. All equipment and supplies necessary for construction have either been obtained or identified. Construction contractors have the necessary equipment and experience to complete the transmission line on schedule. However, if for some unforeseen reason the transmission line is not completed prior to the scheduled commercial operation date, EEGSA is nevertheless obligated under the PPA to commence capacity payments to the Project and has provided a separate letter to the Project confirming this obligation. The commencement of such payments is a condition precedent to non-recourse funding of the Project.

- Security of Payment. EEGSA is responsible for providing electric service to 73% of Guatemala's electrical customers. EEGSA has a sound performance record, both operationally and financially, during its long history of service in Guatemala. This Project will enhance EEGSA's self sufficiency and will provide it energy below its current cost of production. It also will provide EEGSA with the ability to serve a 45 MW steel plant coming on line in October 1992 and to fulfill the government's commitment to eliminate power shortages in Guatemala and, to the extent possible, use marginal generating equipment to sell excess energy to El Salvador. As discussed earlier, the PPA provides significant measures designed to ensure the repayment obligations of EEGSA including the letter of credit, the cash advance of capacity payments, and the INDE support letter. In addition, as a creditor the Project would have recourse under Guatemalan law to garnish EEGSA's revenues to obtain payments should it become necessary, and as a last resort could relocate the transportable, U.S.-flag barges to another jurisdiction.

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IV. PROJECT PARTICIPANTS

A Enron Corp.

Enron Corp, a Delaware corporation established in 1930, listed on the New York Stock Exchange and headquartered in Houston, Texas, is one of North America's leading independent natural gas companies. Through its subsidiaries, Enron:

- operates the largest natural gas transmission network in the U.S.;
- explores for and produces natural gas and crude oil in the United States and internationally through its 84% ownership of Enron Oil and Gas Company ("Enron Oil & Gas") which is one of the largest independent non-integrated producers of oil and gas in the U.S. in terms of both domestic proved reserves and production;
- extracts, processes, transports and markets natural gas liquids, crude oil, and refined petroleum products worldwide; and
- purchases and markets long-term natural gas supplies
- produces and sells steam and electricity through its wholly-owned subsidiary, Enron Power.

Enron and its subsidiaries had $10 billion of total assets as of December 31, 1991, had 1991 revenues of $13.5 billion and net income of $242 million Enron employs approximately 7,400 people. For the first quarter of 1992, Enron had net income of $115.8 million and revenues of $3.3 billion.

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Gas Transmission

Enron and its subsidiaries operate four U.S. interstate pipelines - Northern Natural Gas, Transwestern Pipeline, Florida Gas Transmission and Northern Border Pipeline. The pipeline network handles about 18% of the natural gas consumed in the U.S. and covers over 38,000 miles traveling from Texas to the Canadian border and across the southern United States from

Florida to the Arizona/California border, representing the largest natural gas transmission network in the U.S.

Oil and Gas Exploration

Enron's natural gas and crude oil exploration and production operations are conducted through Enron Oil & Gas, on New York Stock Exchange listed company 84%-owned by Enron. Enron Oil & Gas is engaged in the exploration for, and development and production of, natural gas and crude oil reserves primarily in the United States and, to a lesser extent, in Canada and other countries.

As of December 31, 1991, Enron Oil & Gas had the following reserves of natural gas and crude oil, condensate and NGLs:

	Net Proved
Natural Gas (MMcf)	1,585,000
Liquids (thousand barrels)	20,300

Natural gas made up approximately 9[illegible]% of net proved reserves (on a natural gas equivalent basis). Approximately 90% of net proved reserves (on a natural gas equivalent basis) were located in the United States and 10% in Canada. Domestic natural gas and crude oil producing properties are located primarily in Wyoming, onshore and off-shore Texas, New Mexico and Utah.

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Liquid Fuels

Enron subsidiaries are engaged in the U.S. in the extraction of NGL's from natural gas in Enron's pipelines, and the processing, transportation, and wholesale marketing of natural gas

liquids (ethane, propane, butane and isobutane, and natural gasoline). Enron is among the five largest natural gas processors in the U.S. Enron also markets liquified petroleum gas (propane and butane) in Europe, Asia, Puerto Rico, Jamaica, and Central and South America, making Enron one of the largest non-government marketers of these liquid fuels in the world. In addition, Enron acquires, transports and markets crude oil for resale and among the largest independent companies in the U.S. involved in that business.

Enron's liquid fuels businesses have interests in 23 hydrocarbon extraction and fractionation facilities, 21 of which are operated by Enron, which generally are located along Enron's natural gas pipeline systems. Two of Enron's facilities, in Bushton, Kansas and Eunice, Louisiana, are among the five largest processing facilities in the U.S. Excluding ethane production, Enron's facilities are capable of producing approximately 1.5 billion gallons per year of natural gas liquids. Enron marketed approximately 3.9 billion gallons of natural gas liquids domestically and internationally during 1991. Enron also owns and operates a 1,600 mile interstate common carrier natural gas liquids pipeline in the Mid-Western U.S., which transported approximately 23 million barrels of liquid fuels in 1991.

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Gas Marketing Group

Formed to compete for the merchant function relinquished by the regulated pipeline industry, Enron Gas Services ("EGS") is one of the largest non-price regulated merchants of medium and long-term supplies of natural gas. EGS, also owns Enron's intrastate pipeline, Houston Pipeline Company. In 1991, EGS's volume, excluding Houston Pipeline Company averaged about 2.2 billion cubic feet per day.

B. Enron Power

Enron's power generation business is conducted through Enron Power. Enron Power is a wholly-owned subsidiary of Enron and is one of the largest independent power production companies in the world with extensive experience in all aspects of power plant development (including design, engineering, financing, construction, procurement, operation, management and fuel supply arrangements).

Enron Power has extensive operations in the United States and is rapidly expanding its operation and development efforts internationally. In addition to the projects described below Enron Power is actively pursuing power generation and related projects in North and South America, Europe, the Pacific Rim, Eastern Europe and Russia.

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Projects in Operation

Through a joint venture company owned 50% by Enron Power and 50% by a subsidiary of Dominion Resources, Inc. of Virginia, Enron Power has interests in four operating power plants. These are set out on the next page:

Enron/Dominion Power Plants

Project	Nominal Capacity	Average Availability*	Net Enron Ownership	Electricity Customers	Steam Customer
Texas City Texas City, TX	450 MW	94.4%	50%	Texas Utilities Electric Company Union Carbide	Union Carbide
Clear Lake Pasadena, TX	377 MW	95.4%	50%	Texas-New Mexico Power Co., Houston Lighting and Power Co.	Celanese Corp.
Bayou Pasadena, TX	300 MW	96.1%	17%	Houston Lighting and Power Co.	Big Three Industries
Bayonne Bayonne, New Jersey	165 MW	93.9%	75%	Jersey Central Power and Light	International Matex Tank Terminals, Exxon, others

* Calculated based on the power contracts in each project; calculation base varies between Projects.

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Enron Power subsidiaries operate the Texas City and Clear Lake Plants.

Texas City

The Texas City project, in service since May , 1987, is a 450 MW gas-fired cogeneration plant located on land leased from Union Carbide Corporation ("UCC"), adjacent to UCC's industrial solvents and coatings plant in Texas City, Texas. The plant is operated by a subsidiary of Enron Power. The electricity produced by the project is sold to Texas Utilities Electric Company ("TUEC"), and the steam produced (plus a small amount of electricity) is sold to UCC. The Texas-New Mexico Power Company and Houston Lighting & Power Company transmit the power produced from the plant to TUEC service areas in the central and northern parts of Texas. Enron subsidiaries provide the

natural gas supply requirements to the project under contracts running for a long-term matching the term of the power sales agreements. The plant was brought into service in May 1987, under budget, two months ahead of schedule and 15 months after site preparation began Enron Power believes that the plant has the lowest installed cost per kilowatt of capacity of any similar plant installed in the United States since 1987.

Clear Lake

The Clear Lake project is a 377 MW gas-fired cogeneration project located in Pasadena, Texas, adjacent to a chemical plant owned by the Celanese Corp. ("Celanese"), a subsidiary of Hoechst AG. The plant has been in operation since 1984 and was acquired by Enron Power in May 1988. Since acquiring this project and taking over its operations and maintenance, Enron Power has upgraded the plant to achieve an operational standard equivalent to the Texas City Project. An Enron subsidiary currently supplies the natural gas supply requirements for the Plant. Electricity output is sold to Texas-New Mexico Power under the terms of a contract with an initial 11 year term. Steam is sold to Celanese, under the terms of a 10 year contract with steam prices tied to the project's fuel costs.

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Bayou

The Bayou project is a 300 MW gas-fired cogeneration project located in Pasadena,

The plant has been in operation since December 1984 and has consistently achieved an availability factor greater than 96%. Enron Power holds a 34% ownership interest in

the project through a limited partnership. A subsidiary of Enron currently supplies a portion of the natural gas requirements to the plant. Power from the plant is sold to Houston Lighting & Power Company while the steam is sold to an adjacent industrial project.

Bayonne

The Bayonne project is a 165 MW gas-fired cogeneration project located in Bayonne, New Jersey. The plant has been in operation since October 1988. A New Jersey utility, Public Service Electric & Gas, provides the project's natural gas requirements. Power from the project is sold to Jersey Central & Light while the bulk of the steam is sold to International-Matex Tank Terminals, Exxon and others.

Richmond

Enron Power recently acquired a 90% general and limited partner interest in a 250 MW gas-fired combined cycle plant in Richmond, Virginia. The project sells all of its output to Virginia Electric and Power Company under a long-term contract. Steam is sold under a long-term contract to Sonoco Products, Inc. Enron Power will operate and manage the plant while affiliates manage fuel supply and transportation arrangements.

Projects under Construction

In additional to the Puerto Quetzal Project, Enron Power has three other projects currently under construction.

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Milford

The first of these, the Milford project, is a 149 MW gas-fired combined cycle power plant under construction in Milford, Massachusetts. Companies formed by Enron Power will act as the general partner, have a 50% limited partnership interest in the project and will also act as construction contractor, operator and manager. Approximately 56% of the power has been sold under a 15-year contract to New England Power Company ("NEP"), an affiliate of New England Electric System. Gas will be supplied under a 15-year contract with NEP. The remaining power will be marketed to other utilities in the New England area. Construction began on April 9, 1992 and commercial operation is expected to commence in July 1993.

Teesside

The second project under construction, the Teesside project is a 1725 MW gas-fired combined cycle power cogeneration plant located adjacent to the Wilton Works chemical plant of Imperial Chemicals Polymers Limited ("ICI") in Teesside, United Kingdom. The project will sell to four of England's regional electric distribution companies a total of 1300 MW of power, will sell 257 MW and an average of 689,000 thousand tonnes/hr of steam to ICI, and the remaining 168 MW to a power marketing affiliate of Enron Power. Through subsidiaries, Enron Power currently owns 50% of the Teesside project, is the turnkey construction contractor and will manage the plant operations As part of the Teesside Project, Enron will construct a natural gas liquids extraction facility and will market the output of the plant. Enron Power also owns capacity rights in the pipeline being built to

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deliver gas from the North Sea to Teesside. The Project is currently on budget and on schedule and is expected to be in commercial operation by April of 1993

Luzon

The third project is a 105 MW, oil-fired diesel engine power plant to be located south of Manila on the Philippines island of Luzon. Site preparation and equipment manufacture commenced in July 1992. Although land-based, it will be similar in conceptual design and configuration to the Puerto Quetzal project. The project will be constructed by Enron Power and Fluor-Daniel, with 8 large medium speed diesel engines being supplied by Wärtsilä. All of the project's power will be sold under a long-term contract to the Philippine's National Power Corp., which is also responsible for supplying fuel. The project is scheduled to begin commercial operation in April 1993.

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Projects under Development

Enron Power currently has several projects in various stages of development throughout the world The company intends to pursue both development and acquisition opportunities, and generally only consider projects where it has operating and management control, long-term ownership, and acts as turnkey contractor or construction manager. Enron Power expects to actively pursue development and acquisition activities to maintain its position as a world leader in independent power.

C. Empresa Eléctrica de Guatemala, S.A. ("EEGSA")

EEGSA is a private enterprise owned 92% by INDE, the Guatemalan national electric company. EEGSA has a well-deserved reputation as a professionally managed, efficient organization. The company provides service to 371,332 customers in Guatemala City and the neighboring provinces of Escuintla and Sacatepequez. These geographic areas include approximately 8% of Guatemala's geographic area but approximately 73% of the country's electricity customers. In addition to its distribution and transmission responsibilities, EEGSA operates oil-fired thermal generation equipment with a nominal capacity of 100 MW but very low availability levels due to age.

The history of EEGSA dates back to 1887 when the Government of Guatemala granted the first concession for electrical service to a German enterprise. By 1896, Empresa Eléctrica del Sud was in operation. By 1915, Empresa Eléctrica de Escuintla was also created. Three years later, during WWI, the German companies were confiscated. The following year the Guatemalan government transferred the shares of those companies to an American company, Electric Bond and Share Co. (EBASCO) as a war indemnification. The new company, called Empresa Guatemala de Electricidad Inc, was given a 50 year operating concession. In 1939, the name of the enterprise was changed to Empresa Eléctrica de Guatemala, S.A.

In 1947, EEGSA began construction of two steam units at its Laguna plant. By 1950 EEGSA had initiated construction of a series of hydroelectric projects. In 1972, after the fifty year concession had expired, the Government of Guatemala purchased 92% of the shares of EEGSA from EBASCO and transferred them to INDE. INDE had been created

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in 1959 by Congressional decree to plan, execute and control all aspects of electricity service in Guatemala.

Both INDE's and EEGSA's board are appointed by various government entities; despite it's ownership position, INDE does not have the right to appoint any members of EEGSA's board. The chairman and CEO of EEGSA, Alfonso Rodriguez Anker, is also the Chairman of INDE.

his cabinet-level rank and influence to support the Project before Congress, other government agencies and permitting authorities.

EEGSA is currently playing a lead role in the Government's privatization program. Because of its unique historic and legal structure as a private company, it provides an excellent vehicle for demonstrating the benefits of private sector participation without the potential de-stabilization and uncertainties that a full privatization of a major public sector company like INDE could cause. The Guatemalan Government believes that EEGSA's success with the Project will set the stage for a major shift toward the private sector in solving Guatemala's power needs.

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EEGSA's financial data, as audited by Arthur Andersen & Co., reflects strong leadership and responsible decision making. With total assets of Q538 million ($107 million at the prevailing exchange rate of Q5 = $1) and total revenues for 1991 of Q465 million ($93 million), EEGSA has been growing rapidly for several years. Since 1986, revenues in Quetzales have grown over 300%. This revenue increase is partly due to price increases from 1986-91; partly to a 28% increase in the number of customers; and partly to

a 17% increase in the average annual electric use per customer.

EEGSA's electricity sales are weighted heavily by commercial and industrial customers. When combined they account for 60% of the power sold and 68% of revenues. Residential consumption accounts for 31% of power sold with municipal and government entities accounting for 9%. EEGSA has enjoyed high collection rates from its customers. During 1991, over 95% of its receivables were collected within 60 days. A detailed breakout of these and other financial data are contained in EEGSA's Annual Report for 1991 at Appendix D.

Total electric volume sold by EEGSA increased 50% from 1986-91, to approximately 1.8 billion Kwh. About 84% of the volume of electricity sold in 1991 by EEGSA was purchased from INDE, with the remainder generated by EEGSA's own plants. INDE is, and thus INDE's sales to EEGSA are, subsidized by the government. However, the price of electricity sold to EEGSA by INDE has steadily risen from 2.7 ¢/Kwh in 1990 to 4.3 ¢/Kwh today. Since 1990 the prices charged to consumers have continued to rise, including a 47% average increase on August 1991 to 7.1¢/Kwh. A similar increase is planned for later this year. This approach appears consistent with the World Bank's recommendations on the subject. If the Project had been operational at 85% capacity levels throughout 1991, it would have supplied 50% of EEGSA's Kwh, enabling EEGSA to respondingly decrease purchases from INDE or production from its own generation, or sell additional power at high per Kwh rates to El Salvador. INDE has informed EEGSA due to shortages in its own service territory, it cannot continue to supply power to EEGSA at 1991-92 levels. Purchases from INDE are expected to fall below 50% of EEGSA's total

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sales after the Project becomes operational.

In addition to a growth in sales, EEGSA has been rapidly expanding its capital base, with a total net fixed capital in 1991 of Q223 million, with Q54 million invested in new plant and equipment in 1991 alone. At Q11.1 million, long-term bank debt represents only 2.2% of total capital Since the next increase in generating capability will come from the Project, no associated debt will appear on EEGSA's balance sheet.

As EEGSA retires outdated generation units its average cost of generation will drop. This drop in average cost of production, coupled with increasing demand and rates, should lead to increasing operating margins for EEGSA.

Overall, EEGSA's service area has a strong demand for electricity, with little or no impact on demand from price increases. Average electric use per customer is increasing, as well as EEGSA's total customer base. A new steel plant will come on line in Escuintla in October 1992, with an expected steady demand of up to 45 MW. Guatemala is seeking to increase electricity exports to El Salvador to assist in that country's rebuilding process; El Salvador is currently purchasing all of which little excess power EEGSA can supply at rates significantly higher than EEGSA's domestic tariffs. The increasing demand, and the relatively low cost of the Project's electricity and reduced availability of electricity from INDE, will work together to ensure that the Project is dispatched at a high level. A more detailed discussion of the Guatemalan generating capacity is included in Appendix F.

The Guatemalan Government is expected to continue to implement its plan to completely eliminate subsidies to INDE through rate increases EEGSA has informed the Borrower that by the end of 1993 it expects to implement rate increases effectively indexing

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rates to changes in the dollar/quetzal exchange rate, as has been done already for telecommunications rates. This policy enables infrastructure industries which rely heavily on dollar-based capital goods and spare parts (and in EEGSA's case, fuel) to be insulated against major exchange rate fluctuations.

D. Royalty Participants

As described in the Executive Summary, the Project originated with a small group of Guatemalan businessmen representing sugar, coffee, and shipping interests, attempting to enhance Guatemala's economic growth prospects by solving its acute power shortages. This group ("Sun King"), together with a local electro-mechanical engineering firm, located Texas-Ohio Power, a small Houston based oil and gas company with some experience in power plant development, and assisted them in negotiations with EEGSA, Puerto Quetzal, and with engineering and financial entities.

Prior to the assignment of the PPA to Enron Power, TOP agreed to provide Sun King a monthly royalty payment in lieu of an equity interest in the Project in return for its role in developing the Project, negotiating the PPA with EEGSA, and ongoing assistance with permitting and port arrangements. Sun King originated, and, helped persuade convinced the Guatemalan government and EEGSA of the role and viability of privatized power in Guatemala, and provided initial development capital and services to TOP. Sun King is involved in other privatization activities in Guatemala, including power, ports, and telecommunications. In connection with the assignment of the PPA from TOP to Enron Power Corp, Enron Power Corp agreed to pay a total of $1.7 million to TOP in cash and

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expense reimbursements, and a monthly royalty equivalent to 6% of gross revenues to TOP. To satisfy its obligations to Sun King, TOP assigned the 6% royalty to Sun King. Sun King has continued to play an instrumental advisory role to Enron, particularly with respect to permitting and port relations.

E. Guatemala Overview

Background

Guatemala is the northernmost and most populous of the Central American countries. With approximately 10 million inhabitants in 1991, the population of Guatemala is growing by over 3% annually, and will reach about 13 million by the year 2000. The country is mountainous and consists of two main areas on the Caribbean and the Pacific. Guatemala has the largest economy in Central America, and is dominated by its private sector which generates nearly 90% of Gross Domestic Product ("GDP"). Government expenditures are less than 10% of GDP ([illegible]4 billion in 1990), and the public sector owns only a small share of the factors of production.

Agriculture accounts for 26% of GDP, employs 60% of the labor force, and generates two-thirds of exports. The principal exports are coffee, sugar, bananas, cotton, manufactured wearing apparel, cardamon, fruits and vegetables. Manufacturing accounts for 16% of GDP and centers on food processing and the production of beverages, tobacco, textiles leather goods. The United States is by far Guatemala's largest trading partner, supplying about 39% of Guatemala's imports and purchasing 29% of its exports in 1990. Guatemala's drive to diversify export production has led the country to increase sales to Western Europe

and Canada, while imports from Asia (notably Japan and South Korea) and Latin America (principally Mexico and Venezuela) have increased. Traditional markets in El Salvador and Costa Rica remained strong in 1990. Fast growing, non-traditional exports -- textiles, chemicals, pharmaceuticals, cut flowers, winter fruits and vegetables are sold to other Central American nations and the United States.

Political Overview

In January 1991, Guatemala peacefully passed from one civilian democratically elected government to another. The new government, headed by President Jorge Serrano Elias, has marshalled a strong technical team to confront the challenges of economic stabilization and to improve public sector investment programs and social services. Economic development within a free market framework, promotion of democratic institutions and a negotiated end to the country's long-standing guerrilla insurgency are objectives of the Serrano administration. Guatemala has had a civilian government since January 1986, following 20 years of military rule. The transfer of power to President Serrano from one civilian government to another was the first in over 40 years.

President Serrano and his administration have undertaken reforms to bring the military more completely under civilian control and to boost economic growth. President Serrano is continuing strenuous efforts to end the 30 year-old guerrilla insurgency. March of 1991, the Commission of National Reconciliation has met on several occasions, bringing together at one table members of the various sectors of Guatemalan society, including the military and the umbrella organization of the guerrillas, the URNG.

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government emphasizes that although the URNG occupies no territory, and with under 2,000 men at arms, poses only a minimal military threat, a negotiated settlement is a priority.

Economic Overview

The Serrano administration inherited a deeply indebted government and an economy facing accelerating inflation. By cutting government spending and increasing revenue through a number of emergency revenue measures, it reduced the overall deficit from 5% of GDP in 1990 to virtual equilibrium in 1991. Through the pursuit of a very tight monetary policy, inflation has been reduced from 60% in 1990 to an estimated 10% in 1991. As private sector confidence has improved, capital flight has been reversed, and dollar holdings of the Bank of Guatemala increased to over $550 million. According to the Bank of Guatemala, these policies resulted in real economic growth of 3.2%, up slightly form in 1990, and is expected to exceed 4% in 1992. The trade and investment outlook is positive, and continuation of the uptrend begun with the return of democratic civilian rule, is expected.

The Serrano government is a staunch proponent of free market economic policies, and includes privatization as a cornerstone of its platform The best measure of the confidence generated by the Serrano government is the significant increase in private capital inflow which more than tripled in 1991 to $987 million. Linked to capital inflows, interest rates dropped dramatically in 1991 Interest on short-term government bonds denominated in local currency dropped from 33% at the end of 1990 to 14% at the end of 1991

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bank lending rates on loans were down to 22% on average in 1991, versus 28% the prior year. Lower interest rates are intended to further promote private sector investment.

Guatemala has no history of socialist policies or experimentation. Guatemala's economy has historically been principally composed of the private sector, with government playing a role only in major infrastructure such as roads, water, electricity, telecommunications and ports. The economy generates significant foreign exchange via its diverse base of exports.

Guatemala has traditionally welcomed foreign investment, and few legal impediments confront foreign investors. There are no legal restrictions on repatriation of profits, and taxes and labor costs remain relatively low. Through the U.S.Caribbean Basin Initiative, Guatemala receives preferential access for exports to the U.S. market.

The exchange rate has stabilized at approximately five Quetzales per U.S. dollar. Foreign exchange is sold through an auction on a daily basis, currently between $4 - $8 million each day. There are no restrictions on the purchase, use or removal of foreign exchange available through the auction. Government policy is to keep exchange rate fluctuations within a plus or minus 5% range.

As the economy continues to grow, the demand for electric power for the next three to four years is estimated by INDE to increase by 6.7% per year, as described in Section VI.A. below. The Government has highlighted the Project as the first major step and cornerstone to meeting the country's present and future power needs.

The economic data in this section has been compiled from information compiled and published by the World Bank, the U.S. Commerce Department, U.S. Agency for International Development, INDE, EEGSA and the Central Bank of Guatemala.

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G

Senate Finance Committee

EXHIBIT 10

ASSUMPTIONS
Base Case – 85% Capacity Factor

PUERTO QUETZAL POWER PROJECT

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SALES		
Plant Capacity	110 MW	
Empresa Sales	110 MW	

PRICING Empresa		Escalation
Capacity Charge (1992)	$17.00 /kw/mo	3.00%
Capacity Charge (2005-07)	$22.78 /kw/mo	0.00%
Energy Payments	$0.035 /kwh	5.00%

FUEL PURCHASES		
NO. 6 Purchase Terms (1992)	1.0% Sulfur	Escalation
Commodity Price	$2.26 /MMBTU	5.00%
Import Tax	$0.00 /MMBTU	0.00%
Transport Charge	$0.33 /MMBTU	5.00%

TAX ASSUMPTIONS	
Book Earnings Tax Rate	41.00%
Income Tax Rate (Guatemala only)	25.0%
Stamp Tax Rate	
Book Depreciation (Straight Line)	20 Years
Tax Depreciation	12 Years

Pre-Tax Debt Coverage:	
Average:	1.88
Minimum:	1.69

OPERATING EXPENSES (1992)		Escalation
Misc O&M	$2.12 MM	10.00%
General & Admin.	$0.15 MM	10.00%
Maintenance Expense	$1.50 MM	5.00%
Payroll	$1.38 MM	10.00%
Insurance	$0.75 MM	5.00%
OPIC Insurance	2.2% of Financing	
Local Taxes / Rents	$0.70 MM	10.00%
Contingency	$0.75 MM	5.00%
O & M Fee	2.0% of Revenue	

OTHER PLANT DATA		
Plant Capacity Factor	85.00%	
Heat Rate Combined Cycle	9,225	Btu/kwh
Project Life	15	Years
Startup	12/01/92	
Mos. of Operations 1992	1	month
Mos. of Operations 1993–2007	12	months
Construction Period	7	months

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CAPITAL STRUCTURE	
Long-Term Debt	75.00%
Equity	25.00%
Total	100.00%
EPC'S % of Equity / Cash Flow	50.00%

FINANCING ASSUMPTIONS		
Principal Amount	$71.25	MM
Interest Rate (Term)	10.50%	(Fixed)
Grace Period	1.0	Year
Term of Loan	12	Years
Royalty Payment	6.00%	

CAPITAL COSTS (1992)		
Direct Plant Cost	77.40	MM
Total Direct Cost	77.40	MM
Const. Mang. & Dev. Costs	5.82	MM
Startup Costs	0.65	MM
Legal Fees	0.75	MM
Working Capital	2.00	MM
Texas Ohio Payment	1.00	MM
Financing Fees	1.78	MM
Contingency/Allow. for Change	5.60	MM
Total Project Cost	$95.00	MM

CASH FLOW — PUERTO QUETZAL ... WER PROJECT

16-Jul-92
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REVENUES ($000s)	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007
Capacity Payments	$1,870	$22,440	$23,113	$23,807	$24,521	$25,256	$26,014	$26,795	$27,598	$28,426	$29,279	$30,157	$31,062	$30,070	$30,070	$30,070
Energy Payments	2,389	30,100	31,605	33,186	34,845	36,587	38,417	40,337	42,354	44,472	46,696	49,030	51,482	54,056	56,759	59,597
Total Capacity and Energy Payments	4,259	52,540	54,719	56,992	59,366	61,844	64,431	67,132	69,953	72,898	75,975	79,188	82,544	84,126	86,828	89,666
Revenues (cents/kwh)	6.24	6.41	6.68	6.96	7.25	7.55	7.87	8.20	8.54	8.90	9.28	9.67	10.08	10.27	10.60	10.95
Guatemalan Share of Revenues – 6%	(256)	(3,152)	(3,283)	(3,420)	(3,562)	(3,711)	(3,866)	(4,028)	(4,197)	(4,374)	(4,558)	(4,751)	(4,953)	(5,048)	(5,210)	(5,380)
Net Revenues	4,003	49,388	51,436	53,573	55,804	58,133	60,565	63,104	65,756	68,524	71,416	74,437	77,592	79,078	81,619	84,286
EXPENSES																
Fuel Costs: (#6 Oil)																
Transportation	208	2,618	2,749	2,886	3,031	3,182	3,341	3,508	3,684	3,868	4,062	4,265	4,478	4,702	4,937	5,184
Commodity Charge	1,423	17,930	18,826	19,768	20,756	21,794	22,884	24,028	25,229	26,491	27,815	29,206	30,666	32,200	33,810	35,500
Import Duties / Taxes	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Total Fuel Cost	1,631	20,548	21,575	22,654	23,787	24,976	26,225	27,536	28,913	30,359	31,877	33,471	35,144	36,901	38,746	40,684
Operations & Maintenance:																
O & M Fee	85	1,051	1,094	1,140	1,187	1,237	1,289	1,343	1,399	1,458	1,519	1,584	1,651	1,683	1,737	1,793
Maintenance Reserve	125	1,500	1,575	1,654	1,736	1,823	1,914	2,010	2,111	2,216	2,327	2,443	2,566	2,694	2,828	2,970
Miscellaneous O&M	177	2,120	2,332	2,565	2,822	3,104	3,414	3,756	4,131	4,544	4,999	5,499	6,049	6,653	7,319	8,051
Texas Ohio Power Payment	0	700	0	0	0	0	0	0	0	0	0	0	0	0	0	0
General & Admin.	13	152	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	269	296	326	358	394	434	477	525	577
Local Taxes / Rent	58	700	770	847	932	[illegible]	[illegible]	[illegible]	[illegible]	1,501	1,651	1,816	1,997	2,197	2,417	2,658
Insurance (Liability/Business Interup.)	63	750	788	827	868	912	957	1,005	1,055	1,108	1,163	1,222	1,283	1,347	1,414	1,485
OPIC Insurance	170	2,038	1,879	1,617	1,402	1,294	1,183	1,060	924	774	609	426	0	0	0	0
Payroll	115	1,381	1,519	1,671	1,838	2,022	2,224	2,447	2,691	2,960	3,256	3,582	3,940	4,334	4,768	5,244
Contingency	63	750	788	827	868	912	957	1,005	1,055	1,108	1,163	1,222	1,283	1,347	1,414	1,485
Total O&M	868	11,142	10,911	11,331	11,856	12,550	13,311	14,134	15,027	15,996	17,046	18,187	19,202	20,732	22,421	24,264
Total Operating Expenses	2,499	31,690	32,487	33,986	35,643	37,527	39,536	41,671	43,941	46,355	48,923	51,657	54,346	57,633	61,168	64,947
Net Operating Cash Flow	1,505	17,698	18,949	19,587	20,161	20,606	21,029	21,433	21,815	22,170	22,493	22,779	23,246	21,445	20,451	19,339
DEBT SERVICE																
Interest Expense	623	7,481	7,481	7,088	6,654	6,174	5,644	5,058	4,411	3,696	2,905	2,032	1,066	0	0	0
Principal Payment	0	0	3,742	4,135	4,570	5,049	5,580	6,165	6,813	7,528	8,319	9,192	10,157	(0)	(0)	(0)
Total Debt Service	623	7,481	11,224	11,224	11,224	11,224	11,224	11,224	11,224	11,224	11,224	11,224	11,224	0	0	
Pre Tax Cash Flow	881	10,217	7,725	8,363	8,938	9,383	9,806	10,210	10,591	10,946	11,270	11,556	12,022	21,445	20,451	19,339
Tax Effect	104	1,153	1,443	1,647	1,858	2,075	2,299	2,529	2,766	3,011	3,263	3,522	3,965	5,698	5,434	5,138
Capacity Rebate	7,250	0	0	0	0	0	0	(1,450)	(1,450)	(1,450)	(1,450)	(1,450)	0	0	0	0
PROJECT AT CASH FLOW (23,750)	$8,027	$9,064	$6,282	$6,716	$7,080	$7,308	$7,507	$6,231	$6,375	$6,485	$6,557	$6,583	$8,057	$15,747	$15,017	$14,201
Pre Tax Debt Coverage Ratio	N/A	2.37	1.69	1.75	1.80	1.84	1.87	1.78	1.81	1.85	1.87	1.90	2.07			

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Depreciation:	Total	1992					1997	1998	1999	2000	2001						2007
Capital Cost & IDC	$95,000																
Undepreciated Balance-Book		$95,000	$94,604	$89,854	$85,104	$80,354	$75,604	$70,854	$66,104	$61,354	$56,604	$51,854	$47,104	$42,354	$37,604	$32,854	$28,104
Annual Tax Depr 8.3%		660	7,917	7,917	7,917	7,917	7,917	7,917	7,917	7,917	7,917	7,917	7,917	7,917	0	0	0
Straight Line Depr 5.0%		396	4,750	4,750	4,750	4,750	4,750	4,750	4,750	4,750	4,750	4,750	4,750	4,750	4,750	4,750	4,750
Deferred Taxes 34.0%		90	1,077	1,077	1,077	1,077	1,077	1,077	1,077	1,077	1,077	1,077	1,077	1,077	(1,615)	(1,615)	(1,615)
Amortization:																	
Non-Depreciable Property	0																
Development Fees	0	0	0	0	0	0	0	0	0	0							
Financing Costs (Strt Line)	0	0	0	0	0	0	0	0	0	0							
Total Book Depr & Amort		396	4,750	4,750	4,750	4,750	4,750	4,750	4,750	4,750	4,750	4,750	4,750	4,750	4,750	4,750	4,750
Taxes:																	
Pre Tax Cash Flow		881	10,217	7,725	8,363	8,938	9,383	9,806	10,210	10,591	10,946	11,270	11,556	12,022	21,445	20,451	19,339
Add: Principal Payment		0	0	3,742	4,135	4,570	5,049	5,580	6,165	6,813	7,528	8,319	9,192	10,157	(0)	(0)	(0)
Less: Depreciation & Amortization		396	4,750	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	4,750	4,750	4,750	4,750	4,750	4,750	4,750	4,750
Pre Tax Book Income		486	5,467	6,717	7,749	8,757	9,682	10,635	11,625	12,654	13,724	14,838	15,998	17,429	6,695	15,701	14,589
Income Taxes (Book)		170	1,944	2,234	2,439	2,649	2,867	3,090	3,321	3,558	3,803	4,054	4,314	4,592	4,510	4,246	3,951
Book Income		316	3,523	4,483	5,310	6,108	6,816	7,545	8,304	9,096	9,922	10,784	11,684	12,838	2,185	11,455	10,638

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AGENCY AGREEMENT

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S
COUNTY OF HARRIS

THIS LETTER AGREEMENT (hereinafter the "Agreement") is made and entered into this 24 day of February, 1992, by and between TEXAS-OHIO POWER, INCORPORATED, a Texas Corporation, as Principal and SUN KING TRADING COMPANY, INC., a Guatemalan Corporation, as Agent.

WITNESSETH:

WHEREAS, the Principal desires to develop, construct and operate power generation facilities for the purposes of selling contract electrical capacity and electrical energy to EMPRESA ELECTRICA de GUATEMALA, S.A., a Guatemalan corporation ("E.E.G.") and/or to the Instituto Nacional de Electrificacion (I.N.D.E.) a Guatemalan government entity and

WHEREAS, the Agent is the propriator of certain documents, other information, and knowledge relevant to E.E.G.'s electrical energy requirements and

WHEREAS, the Agent represents that the Agent has sufficient knowledge, expertise and contacts to facilitate execution of the attached contract between Principal and E.E.G. for the purchase and sale of contract electrical capacity and electrical energy. The attached contract is a part of this agreement.

NOW, THEREFORE, the Principal hereby retains and empowers the Agent to perform the following described duties, including, without limitation, any and all additional acts necessary and desirable to be performed in relation to the following described duties, and the Agent accepts such retainer and power and agrees to faithfully perform all such duties and acts on behalf of the Principal for the following recited considerations.

1. Principal agrees to compensate Agent with payments in sums equal to sixteen percent (16%) of all refundable advance payments for contract electrical capacity and twenty-one (21%) of all contract electrical capacity payments thereafter. All such compensation shall be paid promptly to Agent upon Principal's receipt of collected funds from Empresa Electrica de Guatemala (E.E.G.). Any bank charges, taxes or expenses incurred in transferring funds to Agent, are to be borne by the Principal.

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EC2 000034349

2. Agent shall make all necessary and other reasonably requested introductions, shall assist in facilitating communications between Principal and key personnel of E.E.G., and shall facilitate negotiations and timely execution of the Power Generation Facility Purchase and Sale Agreement.

3. Agent shall make available to Principal all information in Agent's possession which is pertinent to the Power Generation Facility Purchase and Sale Agreement between Principal and E.E.G.

4. Agent shall provide all necessary initial and ongoing permits and consents of the Government of Guatemala, including, without limitation, all regulatory bodies thereof, necessary to Principal's fulfillment of the Power Generation Facility Purchase and Sale Agreement, including, without limitation, all reasonable exemptions from all tariffs and import duties for all equipment and supplies reasonably necessary to Principal's continued operation.

5. During the term of the Power Generation Facility Purchase and Sale Agreement, as per the attached contract Agent shall continue to make Principal aware of any significant factors which may affect operations of the Facility and Off-Site Facilities and shall continue to maintain Agent's contacts in furtherance of Principal's operation of those facilities.

6. Neither Principal nor Agent shall use any information or contacts provided between the parties hereof:

A. for the purpose of circumventing or competing against the other party, whether by counter-proposal or competitive bid, or

B. in any manner to divert to the party acquiring such knowledge or contacts, the rightful competitive advantage of the other party.

7. This Agreement constitutes the entire agreement and understanding between the parties hereto and supersedes all prior and contemporaneous agreements and undertakings of said parties in connection herewith. No statements, agreements or understandings, representations, warranties or conditions expressed or implied, not expressly set forth in this Agreement shall be binding upon the parties, or shall be effective to interpret, change or restrict the provisions of this Agreement unless such is in writing signed by all parties and by reference be made a part hereof.

8. This Agreement may not be modified or amended except by a subsequent agreement in writing signed by all of the parties hereto. Any party may waive any of the conditions contained herein or any of the obligations of any other party hereunder,

but any such waiver shall be effective only if in writing and signed by the party waiving such condition or obligation, except as otherwise herein provided.

9. This Agreement shall be construed and interpreted in accordance with the laws of the State of Texas and shall be deemed to be performable in Harris County, Texas.

10. Any notice to be given by either party to this Contract shall be given in writing and may be effected by personal delivery or mailed by deposit of such into the care and custody of the United States Postal Service, certified, return receipt requested, and postage prepaid, as follows:

If to Pricipal: TEXAS-OHIO POWER, INCORPORATED
ONE MEMORIAL CITY
PLAZA 800 GESSNER
HOUSTON, TEXAS 77024

If to Agent: SUN KING TRADING COMPANY, INC.
251 CRANDOM BLVD., SUITE 606
KEY BISCAYNE, FLORIDA 33149

However, the parties hereto shall have the right from time to time to change their respective address, and each shall have the right to specify as its address any other address by at least five (5) days written notice to the other party as herein provided. All Notices shall be effective and deemed given upon actual receipt or upon deposit in the care and custody of the United States Postal Service and specified above, whichever is earlier.

11. This Agreement shall be binding upon and inure to the benefit of the parties hereto and to their heirs, administrators, successors, assigns, joint venture partners, and legal representatives.

In witness whereof, the parties hereto have caused this agreement to be executed and effective as of the date first set forth above.

TEXAS-OHIO POWER, INC.

Patrick K Mapes
President

SUN KING TRADING COMPANY, INC

PRESIDENT

Appeals Transmittal Memorandum and Case Memo

Date: NOV 0 3 2000

1. Routing To:
D.O. APS

Copy To:

From: Appeal Code:
Houston Appeals
MS:HOU:AP:LMF
(281) 721-7244

2. Features:

- ☐ Examination or EP/EO Follow-up
- ☐ Closing Agreement
- ☐ Fraud Penalty Removal
- ☐ Transferee Assessment
- ☐ Form(s) 5479 Attached
- ☐ Restricted Interest
- ☐ Trust Fund Recovery Penalty (TFRP)
- ☐ Joint Committee
- ☐ Audit Statement Attached
- ☐ Offers in Compromise
- ☐ EP/EO Determination
- ☐ Form(s) 885-F/4668 Attached
- ☐ International Issue
- ☐ Potential Competent Authority Case
- ☐ Other

3. Taxpayer(s)
Puerto Quetzal Power Corp
P. O. Box 1188
Houston, TX 77251

TIN: 76-0381261
Work Unit No.: 5299337007

4. Related Taxpayers:
Name:
Workunit No: TIN/SSN No:
Year(s):

Name:
Workunit No: TIN/SSN No:
Year(s):

Name:
Workunit No: TIN/SSN No:
Years(s):

Workunit No: TIN/SSN No
Year(s)

5. Tax Years: (*KTY)
199512 & 199612

6. Type of Case:
Income

7. Prior Findings:		8. Revised Findings:	
Tax	Penalty	Tax	
$535,368.00	$0.00	$0.00	$0.00

9. Disposal Information:

- ☒ Agreed, Form No. Decision Doc.
- ☐ Unagreed
- ☐ Review of Counsel Settlement
- ☐ Foundation Classification
- ☐ SND To Be Issued - Copy Attached
- ☐ Premature Referral Requested *(See Remarks)*
- ☐ Trial Preparation
- ☒ Other *(See Remarks)*

10. Other Information:

No. Of Conferences	Taxpayer's Rep.	District Counsel Att.	Docket No.	Examiner:
	George M. Gerachis		17311-99	J. Notter /1107

11. Remarks and/or Supporting Statement: SEE ATTACHED APPEALS CASE MEMO
Penalty Reason Code(s):
N/C Reasons Code:
ARDI Code(s): 7
Closing Code: 08
Conference Reason Code:

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Signature/Date:	AO's Grade:	Time:	# Forms 5403:	14. Earliest Statute Date:
Lawrence M. Fagen 9-5-00 Lawrence M. Fagen, Appeals Officer	14	3 45 hrs.	2	~~Docket~~ 2-23-01
15. Approved ☒ Associate Chief James M. Stryker, Associate Chief	Date: 9-5-00		District Counsel	Date: MS

Form 5402-c

Internal Revenue Service - Department of the Treasury

Schedule of Adjustments

	Description	Tax Period	Examiner's Adjustment	Appeals Change to Adjustment	Appeals Adjustment	Reason Code
	CGS - Fuel and Power	1995	1,534,539	(1,534,539)	0	
2	Other Deductions -	1995	333,333	(333,333)	0	
	(Amortiztion)	1996	800,000	(800,000)	0	
3	Environmental Tax Deduction	1995	(2,242)	2,242	0	

Reason Codes (no narrative):

A taxpayer now agrees
B accepted by examiner
C taxpayer substantiated
D computational adjustment

ISSUE # 1 & 2

SUMMARY AND RECOMMENDATION

Should $1,534,539 be disallowed in 1995 because the amount hasn't been proved to be an IRC §162 item and that it was a reimbursable or amortizable expense. No, the non- IRC §162 position taken by the District wasn't sustainable as the examiner didn't develop the case beyond reliance on an informant's report which couldn't be used in Tax Court.

BRIEF BACKGROUND

Puerto Quetzal Power Corp. is owned 50% by Enron Global Power & Pipelines L.L.C. and 50% by Centrans Energy Services, Inc. A branch of the TP operates an oil-fired, barge-mounted power plant in Guatemala that produces and sells electricity to Empresa Electrica de Guatemala (owned by Guatemalan government). In 1992 TP entered into an Operation and Maintenance Agreement (O & M) with Electricidad Enron de Guatemala, S.A. (EEG) which is wholly owned by Enron Development Corp. (EDC). EEG is the operator and TP agreed to pay EEG all reimbursable expenses under the O & M Agreement.

In 1993, TP and EEG amended the O & M to provide that the Project's fuel oil requirements would be supplied by Enron Power Oil Supply Corp. (EPOS), a domestic sister of EDC. EEG also agreed to make certain payments to Sun King Trading Co. (Sun King), an unrelated party, on behalf of TP. The District position is that Sun King payments don't represent an IRC §162 expense.

DISCUSSION AND ANALYSIS

What is the International Examiner's position?

As a result of the EDC/Texas Ohio Power Co. (TOP) Agreement dated 03/12/92, EDC assumed TOP's previous obligation to Sun King. The services performed by Sun King group can be characterized as a "finder fee" arrangement. Sun King is not a formal business group, but instead a group of individuals which individually, or as a group, represented certain interest of TOP leading up to Empresa's signature on the 15-year power sales agreement. The government took the following position:

- While PQPC did not directly pay the 1995 monthly obligation to Sun King, it directly provided the funds, and took a current period deduction for all funds transferred to the payor, EEG (billed by EEG to PQPC as reimbursable fees);
  nothing has been presented which suggests this "finder's fee" is an "ordinary" expenditure benefiting only the current (1995) period operations of PQPC's power plant.
  any benefit attaching to the 1995 monthly Sun King payments benefits more than just the current tax period.

The taxpayer can argue inheritance of the Sun King obligation was "necessary" for EDC to secure the Power Sales Agreement from TOP. But in order for the Sun King payments to meet the requirements of IRC §162, they must be both an ordinary and a necessary expense. Therefore, any expenditure incurred by PQPC (period 01/01/95 to 08/22/95), to fund the "finders fee" obligation to Sun King is disallowed under IRC §162.

What is the petitioner's position (along with applicable IE counter points)?

Pursuant to the O & M Agreement, petitioner agreed to pay EEG, the operator, all "reimbursable expenses" on a monthly basis. Fuel oil expenses constituted "reimbursable expenses" under the O & M Agreement. Furthermore, the petitioner argues that payments made to Sun King are legitimate obligations under IRC §162.

Why does the IE disagree with fuel oil being included in the O & M Agreement?

According to the IE the O & M Agreement specifically defines "reimbursable expenses" and fuel oil is specifically omitted.

> §1.29, Reimbursable Expense: Subject to §4.1, any reasonable expense or expenditure incurred by Operator in the performance of the work, including, without limitation, (i) purchases of spare parts, tools, equipment, consumables, materials and supplies **(other than fuel)**, (ii) Labor Costs, (iii) the direct cost of subcontract labor or services needed to perform services otherwise covered by this agreement, (iv) insurance premiums and (v) any other item covered in an approved Annual Budget.

It appears from the above that Puerto Quetzal Power Corp. (PQPC) would not need to reimburse the operator Electricidad Enron de Guatemala, S.A. (EEG) for fuel costs. **Note: this fuel exception will be deleted in a subsequent revision to the O & M Agreement on 03/31/93.**

What is PQPC's position on payments made to Sun King Trading Company (Sun King)?

On March 13, 1993 PQPC and EEG amended the O & M Agreement to provide that the Project's fuel oil requirements would be supplied by Enron Power Oil Supply Corp. (EPOS), a domestic sister company of EDC. EEG also agreed to make certain payments to Sun King, an unrelated party, on behalf of PQPC. The payments to EEG as well as the payments to Sun King were ordinary and necessary expenses deductible under IRC §162.

Main TP argument is if PQ (Enron) did due diligence when they (EDC) entered into an agreement with TOP the payments to Sun King are good. In other words EDC wasn't obligated to do an investigation into the operations of Sun King to assure the moneys flowing to Sun King were for completely legitiment purposes and never would be construed as anything otherwise. They felt they were paying for the service of obtaining and maintaining a contract with EEG. Sun King provided that service and was being paid. Enron decided it was better to make the lump sum payment of $12,000,000 as it was more attractive for investors not to see the long-term obligation on the books.

How does the IE view the Sun King payments, in view of the O & M Agreement and it's subsequent amendment and a new fuel agreement?

Basically, the IE says that Sun King is eliminated from the arrangement as a result of modifications and a new fuel contract. The following is argued:

Amendment #1 to the O & M Agreement dated 03/31/93 is between PQPC and EEG. §1.13 of the O & M Agreement dated 11/13/92, is deleted in its entirety and the following provision substituted:

> §1.13 Fuel Agreements: The fuel supply and transportation agreements for the Project's fuel oil requirements, entered into
>
> (i) on 10/06/92, between Enron Power Marketing Co. (EPMC) and Enron Power Corp. (EPC), as modified by that certain Modification of Agreement dated 03/30/93 between EPC and EPMC and as assigned by EPC to Enron Power Oil Supply Corp. (EPOS) pursuant to that Assignment and Assumption Agreement dated as of 03/31/93, and
>
> (ii) on 10/27/92, between Texaco International Traders, Inc. (Texaco) and EPC, as modified y that certain Modification of Agreement dated 03/30/93 between EPC and Texaco as assigned by EPC to EPOS pursuant to that Assignment and Assumption Agreement dated as of 03/1/93...

§1.29 of the O & M Agreement is hereby deleted in its entirety and the following provision substituted:

§1.29 Reimbursable Expense: Subject to §4.1, any reasonable expense or expenditure incurred by Operator in the performance of the work, including, without limitation, (i) purchases of spare parts, tools, equipment, consumables, materials and supplies, **including fuel oil which Operator supplies or causes to be supplied to Owner hereunder...**

On 04/01/93, a Fuel Supply and Management Agreement was entered into by and between EEG (operator) and EPOS. §5 of this Agreement provides in part:

Price; Payments: In exchange for the fuel supply and management services to be provided by EPOS hereunder, Operator agrees to pay, or cause to be paid, to SPOS an amount each month equal to the sum of

(i) an amount equal to 6% of the gross monthly revenues of PQPC in such month (monthly fee), and

(ii) the invoice amounts actually paid y EPOS to its fuel oil suppliers to procure the supplies that are delivered in such month pursuant to this Agreement...

The IE maintains that as a result of Amendment #1 to the O & M Agreement dated 03/31/93, and the Fuel Supply & Management Agreement dated 04/01/93, nothing is mentioned regarding EEG's (operator) agreement to make certain payments to Sun King, on behalf of PQPC (owner).

(Appeals) I infer that the IE is saying there's no business purpose in PQPC's payments to Sun King.

Note:. According to the IE Sun King is a Panamanian corporation. The nature of the payments is that of a finder's fee according to the IE, not to be expensed or amortized

How does petitioner attempt to justify the Sun King payments?

During 1995 PQPC paid a total of $18,437,704 to EEG for operating and maintenance services actually performed for the Project by EEG, payments actually made to Sun King in PQPC's behalf, and fuel oil actually supplied to the Project by or through EPOS, all pursuant to the O & M Agreement. The $1,534,539 at issue was part of such payment to EEG and constitutes an ordinary and necessary expense of PQPC that is fully deductible in 1995.

MY EVALUATION

What is Sun King doing and in what capacity?

The TP provided a copy of an Agency Agreement between TOP and Sun King (a Guatemalan Corporation), in which Sun King is to act as an agent for TOP. As an agent, Sun King purports to:

- be the proprietor of certain documents, information and knowledge relevant to E.E.G.'s electrical energy requirements;
  have sufficient knowledge, expertise and contacts to facilitate execution of a contract between TOP and E.E.G.;
- be able to make all necessary and other reasonably requested introductions;
- assist in facilitating communications between TOP and key personnel of E.E.G.
- be a facilitator for negotiations and timely execution of the Power Generation Facility Purchase and Sale Agreement;
- make available all information which is pertinent to the Power Generation Facility Purchase and Sale Agreement between TOP and E.E.G.
  be able to provide all necessary initial and ongoing permits and consents of the Government of Guatemala, including without limitation, all regulatory bodies;
  be able to obtain reasonable exemptions form all tariffs and import duties for all equipment and supplies reasonably necessary for TOP's continued operation.

Some of the above benefits resemble those that a government could grant if TOP were to negotiate directly with Guatemala. Some observations about Sun King's unusual nature to have the ability to provide the benefits and privileges so broad in scope are who are these people in Sun King that have this power and how did they acquire the expertise? Are the Sun King principals:

- agents of the Guatemala government;
  members of TOP's staff or board of directors;
- providing this service to other companies;
  have a history of providing similar services before the agreement and after?

The case file is devoid of any details on the above, other than to say that the District believes the people involved with Sun King were friends and appeared to be no more than brokers between the Guatemalan government and TOP (part of 3rd party information). There was no investigative work done in this area by the government to prove or disprove the business relationships or abilities of those associated with Sun King.

In conference, the TP was asked to provide information as to how they knew if the money they were paying was being used for the items outlined in the agreement. They said they were going to contact a former Enron employee to see if he could shed more light on the subject. They adamantly argued that the contract was taken over by Enron and they were not required to do a complete investigation into Sun King before following the contract which was already in existence. In other words, Enron is purchasing a package that included the Sun King obligation; is it their responsibility to challenge the propriety of the contract before signing up because in the future someone may say the Sun King group was bogus as far as providing services is concerned?

The District states that the fees to Sun King aren't IRC §162 because they represent a finder's fee. Furthermore, the IE states that:

- Sun King is not a formal business group, but instead a group of individuals which individually, or as a group represented certain interest of TOP leading up to EMPRESA's signature on the 15-year power sales agreement.
- Nothing has been presented which suggests this "finders fee" is an "ordinary" expenditure benefiting only the current (1995) period operations of PQPC's power plant.

  Any benefit attaching to the 1995 monthly Sun King payments benefits more than just the current tax period.

The IE further argues that since the "finders Fees" are not enumerated as capital expenditures qualifying as an IRC §197 Intangible, amortization is the provided by IRC §197(a) for either:

(a) the $12,000,000 lump sum payment, or
(b) the total $1,534,539 in monthly payments tended Sun King

How does the District back-up the above contention that Sun King is a finder fee arrangement?

There is no investigative work in the case file by the IE to back-up the contention; the agent didn't do further work on Sun King to either question or affirm that Sun King does or doesn't do the items listed in the agreement (performance of duties listed above in this Evaluation). The IE's main premise is that the TP hasn't proven that the fee is nothing more than a finders fee.

When I asked the questions about the agreement in conference and referred back to the duties listed for Sun King to perform, the POA said I was the first to make this detailed inquiry and wanted to know if the IE had a supplemental report with more evidence to support his position.

There is information from a third party that speculates to the above allegation. However, the IE didn't pursue an investigation based on the third party information to either disprove it or prove it (perhaps this was due to the TP's reluctance to extend the statute). Instead the IE stands on the premise that the TP can't prove the amounts paid are nothing more than a finders fee.

The third party can't be called as a witness as the privacy protection would be violated. The government, at this point without a Sun King investigation, can only rely on the IE's contention that the TP can't prove the payments aren't a finders fee.

What has the TP done to defend the deduction as a legitiment expense?

The TP offers the following regarding Sun King:

Sun King Trading was an entity formed by a small group of businessmen, including several wealthy Guatemalans, possibly to participate in the privatization of the electric power business in Guatemala. Enron is not aware of any reason for its formation.

The principals of Sun King included the following, all of whom were prominent businessmen in Guatemala:

Raul Arrondo– Mr. Arrondo was a Miami-based Cuban who sold small engines that generated electricity. He had a business relationship with Patrick La Strapes, the President of TOP. They met when TOP was involved in small power projects. Mr. Arrondo's engines were not the kind used to generate electricity in large power plants, however. They were more suitable as back-up electric power sources for sugar plantations, farms, offices, etc. Mr. Arrondo also was active in Guatemala, which was an excellent market for his generators because of the frequent power failures in Guatemala. Several of the other principals of Sun King were his customers.

Oswaldo Mendez Herbruger– Mr. Herbruger, a former Olympic athlete (and subsequently Guatemala's Minister of Sports and Culture), was a businessman. His family had built some of the first merchant power plants in Central America.

Marco Antonio Lara–Mr. Lara was a plantation owner and a customer of Mr. Arrondo.

Roberto Lopez–Mr. Lopez was a business agent, primarily representing foreigners who wanted to invest in Guatemala.

Henrik Preuss–was a wealthy businessman, with interests in sugar, coffee, textiles and shipping.

Mr. Arrondo knew first hand about the acute power shortages in Guatemala. His friend, Mr. La Strapes, persuaded him that the time was ripe for Guatemala to re-privatize the electric power industry. Mr. La Strapes represented to Mr. Arrondo that with the combination of Mr. Arrondo's understanding of generators, TOP's power project development experience, and some engineers and others, Mr. La Strapes had all the skills necessary to bring private power to Guatemala. All that was missing were some high profile Guatemalan business people as investors and partners. Mr. Arrondo's customers appeared to fit the bill.

None of the Sun King principals were agents of the Guatemalan government, nor were they members of TOP's staff or board of directors. Both Sun King and TOP were entities wholly unrelated to Enron.

Although the Sun King principals were experienced business people, they had never constructed or operated a power plant. Thus, they also had no way to evaluate the economic risks or potential returns of the deal. They looked to TOP to handle the construction and operation, and to assume the financial risk, of the Guatemala Project. They were reluctant to risk capital in the project. Originally, Sun King wanted a lump sum fee for the services it rendered. TOP was not well capitalized, however, and negotiated a contingent payment. Sun King insisted on receiving a royalty, rather than a profit interest, wanting to be paid regardless of whether the project was profitable or not.

After the PPA and the Agreement had been executed, it became increasingly apparent that TOP did not have the financial capacity or the experience to make the Guatemala Project successful. With Sun King's encouragement, TOP began contacting potential partners. After being approached by TOP in February 1992, Enron became interested in the project. Enron had been looking for potential privatization opportunities in Central America. At the time Guatemala was not on the radar screen of many foreign investors, so Enron assumed it might not face much competition. It was mistaken. A potential supplier of generating equipment, Wartsila Diesel, Inc. ("Wartsila") was also interested in becoming a partner in the project. After intense negotiations, Enron won the right to be the new investor.[1]

Enron did extensive due diligence before agreeing to take on the project. Enron's model for international power project development was to obtain as much limited recourse financing as possible so as not to take on too much financial risk. In order to obtain such financing, the PPA would have to be valid and enforceable. Satisfied with its due diligence, Enron insisted on taking over the project from TOP. Enron agreed to pay certain amounts to TOP and to assume TOP's rights and obligations under the Agreement and the PPA. Enron also tried to renegotiate

[1] Ultimately, an agreement was reached among the parties by which Enron would be awarded the bid for the Guatemala Project but Wartsila would be awarded the turnkey construction contract on the project.

the Sun King royalty to shift more risk to Sun King. Sun King resisted, so Enron assumed the royalty obligation.

While it was negotiating with Sun King and TOP, Enron began looking for other equity investors and a lender. It ultimately persuaded King Ranch Oil & Gas, Inc. ("King Ranch") to acquire a 50-percent interest in the project. It also persuaded the International Finance Corporation ("IFC"), a unit of the World Bank, to lend $71 million of the approximately $95 million required for the project.

Not surprisingly, each of King Ranch and IFC did their own extensive due diligence into the validity of the contracts, including the PPA and the Agreement. In a March 8, 1993 letter to Enron Power Corp., King Ranch made clear that its purchase of an interest in PQPC would be subject to (a) its review and approval of all material agreements and documents affecting its equity interest and the project and the business, prospects, and liabilities related thereto, and (b) its review and approval of past and present compliance with local and U.S. law in connection with the project, including, but not limited to, compliance by Enron Power Corp. and its agents with the Foreign Corrupt Practices Act. King Ranch ultimately consummated its purchase of a 50-percent equity stake in the Guatemala Project.

Thus, it clearly was satisfied by the results of its independent review of the foregoing items. IFC also did extensive due diligence, including interviews of representatives of both EEGSA and Sun King. IFC was satisfied there were no improper relations between the two entities, and it proceeded with its $71 million limited recourse loan, requiring only the standard representations and warranties.[2]

What is the Enron / SunKing Relationship?

Enron is not aware of any agreement between Sun King and EEGSA pursuant to which Sun King agreed to represent EEGSA in negotiations. To the contrary, Enron always observed Sun King on the opposite side of the negotiating table from EEGSA.

2 Enron believes Sun King is not still in existence. Enron's last transaction with Sun King was the payment to Sun King that is at issue in this case.

3. Enron was not involved with the Guatemala Project before February of 1992, and was not involved with the negotiations leading up to the Agreement or the execution of the Agreement. Thus, Enron does not know why Sun King was referred to in the Agreement as a Guatemalan corporation. Enron has since confirmed that Sun King was a

[2] Wartsila ultimately became the turnkey construction contractor for the project and did its own due diligence

Panamanian corporation. It may be that Sun King operated in Guatemala as a branch of the Panamanian corporation.

4. The principals of Sun King included the following five individuals: Raul Arrondo, Oswaldo Mendez Herbruger, Marco Antonio Lara, Roberto Lopez and Henrik Preuss.

5. Sun King approached TOP about development of the Guatemala Project. Sun King learned of TOP through R.B. Grove, a Miami company owned by Raul Arrondo that sold power generators. R.B. Grove had connections with Waller Marine in Houston, who referred Sun King to TOP.

6. Enron dealt with the principals of Sun King, specifically Oswaldo Mendez Herbruger and Henrik Preuss, with respect to the royalty payments under the Agreement. Henrik Preuss did most of the negotiating on behalf of Sun King, although all were involved. Mr. Preuss currently is the president of Centrans Energy, an unrelated third party. Centrans Energy ultimately became Enron's partner in the Guatemala Project, purchasing a 50-percent interest on January 8, 1996.

7. The $12 million lump-sum payoff amount made by Enron to Sun King was a result of arm's-length negotiations between Enron and Sun King, two unrelated entities. Enron calculated the buyout amount it was willing to offer by comparing a lump sum payment with the projected royalty payments it otherwise would have made, discounted to reflect the project's risk.

   Based on such assumptions and calculations, Enron first offered approximately $10 million to Sun King in satisfaction of the royalty obligation. Sun King countered with a demand for $15 million. The parties obviously had differing views of the riskiness of the future cash flows from the Guatemala Project. The parties' extensive negotiations ultimately led to a termination payment of $12 million.

Conclusion:

The government cannot refute any of the above without an investigation into Sun King activities. Appeals is not the venue for this type of activity. I asked the questions that led to the majority of the above information. As an appeals officer I was becoming the developer of the issue, as these areas were not touched during the examination. Since the basis of the District's argument is data that cannot be used in court, the government has insurmountable hazards in pursing the premise that Sun King is nothing more than friends getting together and charging a finders fee.
Therefore, I recommend full concession of both issues, as the contention that Sun King is not an IRC §162 expense cannot be sustained.

MEMORANDUM

TO: James J. Steele / Bill Coy

FROM: Jorge Asensio A.

DATE: February 26, 1993

REF: Payments to the Sun King group.

To comply with the Sun King Group we basically have two options. One is to pay in Guatemala with local currency, and the other is to pay in dollars abroad. Both alternatives however, have local tax implications that have to be met in order to be able to account for these payments legally, and be able to deduct such a substantial expense for tax purposes in Guatemala.

I have very little information on the Sun King contract, but I do know that they can select their bank of preference. Please be aware that this does not mean that if they select a bank in the U.S. or in England we have to pay in Dollars or in Pounds. Above all, I understand that this provision means that we can not force that group over the use of one bank.

The commitment to pay such commission that was inherited from the Texas-Ohio contract should be seen as an obligation that arises out of the Guatemalan operation. It should not be taken as an obligation by Enron Power Development Corp. just for the fact that this was the company that originally took the contract. Whatever contract was accepted by Enron, it had as a main goal to develop a project in Guatemala, so the commission should always be linked to that project, and as such to its local earnings.

Of course, any company in Guatemala may have expenses and obligations payable abroad, and have the obligation to get the dollars to meet those obligations. Foreign contractual obligations are also tax deductible.

So, in order to establish a frame work of references I recommend the following:

a) Not to obligate Puerto Quetzal Power Corp to pay in dollars;

b) To allow payment in dollars provided that Puerto Quetzal Power Corp. can get dollars without limiting its own access to hard currency. In other words, Puerto Quetzal Power Corp. will leave any dollar obligation in last place, so if we are able to comply by getting the dollars we will, but if no sufficient dollars are available we will pay in Quetzales. This is strongly supported by two things: - We are paid in Quetzales and not in dollars; - The exchange mechanisms do not allow a free conversion to dollars, so it is obvious that Puerto Quetzal Power Corp. will apply its few dollars to pay for the

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EXIBIT 13

elements that are needed to maintain the operation running. By the way, in David Haug's letter to the Sun King group dated march 12, 1992 he indicates that payments will be made to them at 6 av. 20-25 zona 10 in Guatemala City. There is no indication of payments abroad. The actual agreement between Enron and Texas-Ohio does not indicate anything with respect to form or place of payment.

c) All payments are gross, including any taxes levied in Guatemala to either local or foreign obligations. Puerto Quetzal Power Corp. will not pay any taxes on behalf of Sun King. You must understand that guatemalan tax legislation levies withholding taxes on payments abroad where the payee is the taxpayer, even if the payor has the obligation to pay the withholding.

d) Any charges or expenses, present or future that are charged in the exchange mechanism, and all fees involved in the Quetzal-Dollar conversion will also be discounted to the payee.

e) Payments only cover the revenue obtained from the sale of electricity derived from the two barges. Any other revenue derived from future production is not part of the deal. By now Enron can promote itself in Guatemala.

f) The term of the obligation in the original Texas-Ohio - Empresa Eléctrica de Guatemala, S.A. contract is 15 years. If the Sun King contract does not refer to any term, we should try to negotiate a more convenient term. I suggest 5 years. I understand that the 15 year term of the original contract was something requested by Empresa Eléctrica de Guatemala S.A. to Texas-Ohio and not a product of Sun King as a group pushing for that term.

g) Given the fact that the Sun King payments do not represent any REAL service to Puerto Quetzal Power Corp. it is always possible that our tax authorities could disallow that deduction in the future. In this regard, I strongly recommend that we condition payments on the basis of their deductibility: payments will be made provided that they are deductible. I also recommend that the contract as such, and the invoicing be carefully drafted in order to avoid these problems. We should be very credible at the time of invoicing.

h) It is also important to try to "lock-in" today's charges in the Empresa Eléctrica de Guatemala S.A. - Puerto Quetzal Power Corp. contract in order to avoid and endless increase in the 6% commission. If any increases for electricity charge have to be made to Empresa Eléctrica de Guatemala S.A. due to oil prices or otherwise, we should be able to invoice these increments as "overcharges" or "overcosts" in order to keep current prices permanently charged as our basic contractual stipulation, and only pay the 6% based on this basic price. Otherwise, any increment in cost is directly favorable to Sun King, an aspect of our relationship with Empresa Eléctrica de Guatemala, S.A. that doesn't help much.

After giving you these ideas, I now want to explain the difference between local and foreign payments regarding the tax issue.

I will use and example of a monthly gross income of Q20,00,000.00

LOCAL PAYMENTS:

Q20,000,000.00 = 6% = Q1,800,000.00 which should be INVOICED as follows:

Sun King invoice for	Q1,682,242.99
+ VAT tax of 7%	Q 117,757.01
TOTAL INVOICED AMOUNT	Q1,800,000.00
This is paid as follows:	Q1,682,242.99
VAT tax	Q 117,757.01
	Q1,800,000.00
4% withholding on fees and commissions:	Q 67,289.72-
Actual payment:	Q1,732,710.28

The withholding tax is paid by us to the tax department on account of Sun King's income tax.

FOREIGN PAYMENTS:

Q20,000,000.00 6% =	Q1,800,000.00
Withholding of 25% =	Q 432,000.00
Balance due =	Q1,368,000.00

If we pay dollars at 5.30 x 1US$ = US$ 258,113.21 and this will be the amount paid.

If Sun King is an American company it should pay income tax in the US if they receive payment this way. In the event of local payments in Guatemala they will also be subject to income tax of 25% after expenses are deducted.

Another warning which I find very important in this case, is the one related to the definition of "Commissions", as we are considering periodical payments of commissions to Sun King. The Guatemalan Tax Authorities have always considered that a "commission" is a one shot deal, payable upon termination of a single transaction. A commission payable periodically is understood by them as being a "royalty". I recommend to define our payments to Sun King correctly as "royalties" in order to withhold 25% but, in the event of any adjustments or tax modifications, Sun King could petition Government for recognition of commission status and and thus pay a 12.5% withholding due on commissions. The advantage of paying royalties is the

fact that these are basically justified by the contract. Commissions though, have to be justified by the nature of the transaction involved.

GROSSING UP ALL THE COMMISSION:

If it is preferred that Puerto Quetzal Power Corp. pay the "periodic commissions" rather than "Royalties", the following concept could accomplish that.

Another possibility, provided we maintain a 15 year contract with Sun King, is to determine a ceiling on the overall value of the 6% commission payable to SUN KING during the fifteen years of the contract, and establish a fixed amount to be paid every month for fifteen years. This payment would be attached to a provision that considers every monthly payment as a maximum, and that if a lesser amount is invoiced to Empresa Eléctrica de Guatemala, S.A. in a given month, the corresponding deduction would be applied.

This alternative has the following advantages:

a) We put a ceiling to the overall commission payments;

b) If any costs go up in the future, the commission will stay the same. It would be variable in the sense that being subject to a lesser monthly charge, we still pay the commission for the amount invoiced, but never beyond current charges.

c) The concept of a "commission" payable periodically, which is preferred to a "Royalty" for withholding purposes is much better founded this way, than an independent monthly payment of commissions.

The main disadvantage:

a) A grossed up amount may be seen as very attractive, making future negotiations for a buy out more difficult and expensive.

If you need further information I will be delighted to extend this memo.

Jorge Asensio A.

AGREEMENT

The parties to this agreement are Texas-Ohio Power, Inc., ("TOP") a Texas corporation, and Enron Power Development Corp. a Delaware Corporation ("EPC").

The parties agree to the following arrangements to effect the transfer of the contract dated January 13, 1992 between TOP and Empresa Electrica de Guatemala, S.A. ("Empresa") ("The Power Contract").

1. In consideration for the assignment described in paragraph 2 below, EPC agrees to make or cause the Project to make the following payments to TOP or its designee to the bank account designated by it:

A. $100,000, within 3 business days from the date the assignment is effective in accordance with the laws of Guatemala.

B. $100,000 on December 1, 1992.

C. Up to $100,000 in reimbursement of reasonably evidenced engineering, legal or other expenses incurred by TOP; and

D. An amount each month equal to 6.0% of the gross revenues generated by the sales of electricity and payment for contract capacity under the Power Contract.

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E. $700,000, on the date of first commercial operations under the Power Contract; and

F. $700,000, 180 days after the date in (E) above.

2. TOP agrees to assign the Power Contract to EPC or designated affiliate or subsidiary promptly upon the request of EPC, in accordance with Guatemalan law.

3. TOP agrees to indemnify EPC and its affiliates for any claims arising prior to the date of the assignment made by any person as to any rights in the Power Contract, or the revenues of the Project, other than those amounts set out in paragraph 1 (a) through 1 (f) to the extent EPC fails to perform its obligations under these paragraphs.

4. As used herein, "Project" means the entity that owns the power plant contemplated in the Power Contract.

5. This agreement shall be governed by U.S. law.

6. All obligations under this agreement are conditioned on final approval of the assignment by Empresa and the unconditionality of the assignment and release by Empresa of TOP from all obligations under the Power Contract.

7. If the Project is expanded to include additional megawatts of installed capacity ("MW") to those initially installed, EPC will pay TOP a pro rata amount based on the new MW divided by 110 MW to the amounts in A,B,C,E and F herein.

8. This agreement supercedes any and all prior agreements between the parties hereto.

Dated: As of March 12, 1992

TEXAS-OHIO POWER, INC.

By: J. Patrick La Strapes
President

ENRON POWER DEVELOPMENT CORP.

By: David L. Haug
Managing Director

AMENDMENT TO THAT AGENCY
AGREEMENT DATED FEBRUARY 24, 1992
BY AND BETWEEN TEXAS-OHIO POWER, INC.
AND SUN KING TRADING COMPANY, INC.

Whereas Principal no longer desires to retain the services of Agent:

Now therefore:

(1) Paragraphs 1 through 6 of that agreement are hereby revoked and are of no further force and effect, as of the date hereof.

(2) Agent, as of the date hereof is no longer empowered to act, in any manner, on behalf of Principal, and shall indemnify, save and hold harmless Principal against any claims against Agent or Principal arising from any acts or omissions of Agent in connection with that Agreement to which this amendment is made a part..

(3) Principal shall pay Agent each month an amount equal to 6.0% of the gross revenues generated by the sales of electricity and payment for contract capacity under the contract dated January 13, 1992, by and between Texas-Ohio Power, Inc. and Empresa Electrica de Guatemala, S.A. and assigned to Enron Power Development Corporation, a Delaware Corporation, and incorporated herein by reference as if fully set forth herein. Principal does hereby assign to Agent the right to receive the payment set forth

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EXHIBIT 15

in paragraph 1 (d) of Exhibit "A", directly from Enron Power Development Corporation for which the obligation of payment is subject to that Agreement attached hereto as Exhibit "A" and incorporated herein by reference, and such assignment shall relieve Principal of the obligation in the first sentence of this paragraph.

SUN KING TRADING COMPANY, INC

Oswaldo Méndez Herbruger
President

Dated March 12, 1992

TEXAS-OHIO POWER,

J. Patrick La Strapes
President

Dated March 12, 1992

Guatemala,
March 12, 1992

Mr. DAVID L. HAUG
Managing Director
ENRON POWER DEVELOPMENT CORP.

Dear Mr. Haug:

Referring to our agreement dated March 12, 1992, where we agreed on certain arrangements to effect the transfer of the contract (the "POWER CONTRACT") dated January 13, 1992, between TEXAS-OHIO POWER, INC. and EMPRESA ELECTRICA DE GUATEMALA, S.A., I would like to notify you, that the right of a monthly payment of a 6.0% of the gross revenues generated by the sales of electricity and payment for contract capacity under the Power Contract (paragraph 1 (d) of our cited agreement), <u>has been legally and effectively assigned in favor of SUN KING TRADING COMPANY, INC.</u>

Consequently, please be fully advised that any monthly payment under paragraph 1 (d) of our agreement dated March 12, 1992, must be paid directly to the assignee, SUN KING TRADING COMPANY, INC., 6a. avenida 20-25 zona 10, 8th floor, Guatemala city, Guatemala.
Please, notify SUN KING TRADING COMPANY, INC. of your receipt of this letter.

Best regards:

Patrick LaStrapes
President
TEXAS-OHIO POWER, INC

Senate Finance Committee

EXHIBIT 16

EC2 000034379

C.B.W.

FEB 24 1993

Guatemala,
March 12, 1992

SUN KING TRADING COMPANY, INC.
6a. avenida 20-25 zona 10, 8th. floor.

Gentlemen:

We would like to inform you that on this day, we have been officially notified by TEXAS-OHIO POWER, INC. that SUN KING TRADING COMPANY, INC. has been designated the assignee of all rights derived from paragraph 1 (d) of the agreement signed between TEXAS-OHIO POWER, INC. and ENRON POWER DEVELOPMENT, CORP dated March 12, 1992, which refers to the transfer of rights of a Power Contract.

Therefore, we will be paying directly to SUN KING TRADING COMPANY, INC. the monthly payments related in paragarph 1 (d) of the previously mentioned agreement.

Best wishes:

David Haug
Managing Director
ENRON POWER DEVELOPMENT, CORP

EC2 000034381

S.H TEL:502-2-370162 FEB 24'93 10:15 NUM016 P.03
☎502 2

C.B.W.
FEB 24 1993

Guatemala,
March 12, 1992

Mr. Patrick LaStrapes
President
TEXAS-OHIO POWER, INC

Dear Mr. LaStrapes:

We hereby aknowledge receipt of your letter dated March 12, 1992, where you notify us of the assignment of rights contained in paragraph 1 (d) of our agreement dated March 12, 1992, in favor of SUN KING TRADING COMPANY, INC.

Consequently, and following your notification, we will pay directly to SUN KING TRADING COMPANY, INC, 6a. avenida 20-25 zona 10, 8th. floor, the monthly payments contained in paragraph 1 (d) of our previously mentioned agreement.

Best wishes:

DAVID HAUG
Managing Director
ENRON POWER DEVELOPMENT, CORP.

ASSIGNMENT AND ASSUMPTION AGREEMENT

This Assignment and Assumption Agreement ("Assignment") is entered into by and between Enron Power Development Corp., a Delaware corporation ("EPDC") and Puerto Quetzal Power Corp., Guatemala branch, a Delaware corporation ("PQPC"), as of the 13th day of November, 1992.

WITNESSETH

WHEREAS, EPDC and its affiliates have been developing a 110 megawatt barge-mounted power generation facility to be located at Puerto Quetzal, Guatemala (the "Project"); and

WHEREAS, EPDC has acquired, in accordance with an agreement dated March 12, 1992 between EPDC and Texas-Ohio Power, Inc. (the "Texas-Ohio Agreement"), a contract to sell electric power generated by the Project to Empresa Electrica de Guatemala, S.A. ("Empresa") (such contract, as amended by the agreement dated March 12, 1992 between Empresa, EPDC and Texas-Ohio Power, Inc. and as amended by the letter agreement dated April 10, 1992 between EPDC and Empresa, the "Power Contract"); and

WHEREAS, PQPC has been formed for the purpose of owning and providing for the construction, operation and maintenance of the Project; and

WHEREAS, EPDC now wishes to assign to PQPC and PQPC wishes to assume and accept the assignment of the Power Contract and any and all other assets owned or held by EPDC with respect to the Project (collectively, with the Power Contract, the "Assets");

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Assignment by EPDC and Assumption by PQPC. EPDC hereby assigns, transfers, conveys and sets over to PQPC all of EPDC's right, title, interest, liabilities and obligations in, to and under the Assets. PQPC hereby assumes all of EPDC's title and interest in the Assets and all of EPDC's liabilities and obligations with respect to the Assets. PQPC hereby expressly agrees to

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perform all of EPDC's liabilities and obligations with respect to the Assets and to pay, satisfy or discharge all such liabilities and obligations.

2. Representations and Warranties. (a) EPDC hereby represents and warrants to PQPC that (i) the Power Contract has been validly assigned to EPDC by Texas-Ohio Power, Inc., is in full force and effect and is the legal, valid and binding obligation of EPDC enforceable against EPDC in accordance with its terms; (ii) EPDC is not in material default under the Power Contract; (iii) the assignment of EPDC's interest in the Power Contract and the other Assets pursuant to this Assignment has been duly authorized by all necessary corporate action on behalf of EPDC; (iv) the Power Contract is free and clear of all pledges, security interests, liens, charges, encumbrances, equities, claims, options or limitations of whatever nature that it has either created or suffered to be placed on the Power Contract and (v) no governmental authorization or other authorization or consent including, without limitation, the authorization or consent of Empresa, is required to be obtained in connection with this Assignment.

(b) PQPC hereby represents and warrants that the assumption of the Power Contract and the other Assets by it pursuant to this assignment has been duly authorized by all necessary corporate action on behalf of PQPC.

3. Power of Attorney. EPDC hereby appoints PQPC as the true and lawful agent and attorney of EPDC, with full power of substitution, in the name of EPDC, to ask, require, demand, receive, compound and give acquittance for any and all obligations under the Assets or pursuant to any other rights assigned hereunder due and to become due to EPDC or for the benefit of EPDC, to endorse any checks or other instruments or orders in connection therewith, to file any claims or take any action or institute any proceedings in connection herewith that PQPC in its sole discretion may deem to be necessary or advisable and to give consents, approvals, waivers, notices and the like and to make demands and the like in connection with the Assets as PQPC in its sole discretion may deem necessary or advisable.

4. Successors and Assigns. This Assignment shall be binding upon, inure to the benefit of and be enforceable by the parties hereto and their respective successors and assigns.

5. Indemnification by PQPC. PQPC hereby agrees to indemnify EPDC and hold it harmless for any losses, claims, damages or liabilities that might be made against or incurred by it, including the payment of reasonable attorneys' fees, arising from PQPC's default or failure to perform any obligation under the Assets from and after the date of this Assignment, including, without limitation, any failure by PQPC to pay, satisfy or discharge any liability or obligation of EPDC assumed by PQPC pursuant hereto.

6. Completed Assignment. EPDC acknowledges, as stated above, that the consideration to it has been made, and accordingly, that this is a present, irrevocable and fully executed assignment by EPDC and that the title of PQPC is in no way subject to defeasance or forfeiture by reason of any alleged failure of consideration to be received by EPDC hereunder.

7. Notices. All notices or other communications required or permitted by this Assignment or by law to be served upon or given to any party hereto shall be in writing and shall be deemed duly served and given when received after being delivered by hand or sent by registered or certified mail, return receipt requested, postage prepaid, addressed as follows:

If to EPDC:

Enron Power Development Corp.
3 Allen Center, 18th Floor
333 Clay Street
Houston, Texas 77002
Attn: James J. Steele

If to PQPC:

Puerto Quetzal Power Corp.
3 Allen Center, 18th Floor
333 Clay Street
Houston, Texas 77002
Attn: James J. Steele

Any party may change its address for the purpose of this Section 7 by giving written notice of such change to the other parties in the manner provided in this Section.

8. Further Assurances. Each party will at any time and from time to time, upon the written request of the other party, promptly execute and deliver all such

further instruments and documents and take all further action as the other party may reasonably request in order to effectuate more fully the purposes of this Assignment.

9. Governing Law. This Assignment shall be governed by and construed in accordance with the laws of the State of Texas, without reference to its conflicts of laws principles.

IN WITNESS WHEREOF, each of the undersigned has duly executed this Assignment as of the date first above written.

ENRON POWER DEVELOPMENT CORP.

By: _____
Its: Principal

PUERTO QUETZAL POWER CORP.,
GUATEMALA BRANCH

By: _____
Its: Senior Vice President

SUN KING
TRADING INC

Guatemala,
March 1st 1993

Mr. David Haug
Managing Director
ENRON POWER CORP.
Houston, Texas
U.S.A.

Dear Sir:

We hereby request you that the monthly payments of 6.0 percent of the gross revenues generated by the sale of electricity and payment of contract capacity, under the contract between Empresa Eléctrica de Guatemala S.A. and Enron Power Development Corporation, a Delaware Corporation, be sent/transfered to our bankers below:

BARNETT BANK OF SOUTH FLORIDA, Miami
For credit to DEUTSCH-SUEDAMERIKANISCHE BANK AG, Miami Agency
Acct. No. 137 694 2752
For further credit to
Acct. No. 2-636876
Name of SUN KING TRADING CO., INC.

OR

FEDERAL RESERVE BANK, Miami
Eor credit to DEUTSCH-SUEDAMERIKANISCHE BANK AG, Miami Agency
Routing NO.0660 10856
For further credit to
Acct. No.2-636876
Name of SUN KING TRADING CO., INC.

Yours truly,

Oswaldo Méndez Herdruger
President

cc: Mr. Jim Steele, Principal Enron Power Corp.
Mr. William Coy, Principal Enron Power Corp.

Senate Finance Committee

EXHIBIT 18

EC2 000036565

SUN KING
TRADING

Guatemala,
March 3rd 1993

Mr. David Haug
Managing Director
ENRON POWER CORP.
Houston, Texas
U.S.A.

Dear David:

We hereby confirm our request contained in our previous letter, dated March 1st, 1993, related with payments in favor of SUN KING TRADING INC.

EMPRESA ELECTRICA DE GUATEMALA, S.A. (EEGSA) already made payments for electric capacity and energy, under the Power Purchase Agreement related with the Puerto Quetzal operation.

As stated in your letter of June 10th, 1992, each time capacity and/or energy payments are received from EEGSA, SUN KING RECEIVERS 6% of the plant's gross revenues. Such letter further clarifies that ENRON is obligated to pay this percentage of gross revenues each month into whatever account is designated by SUN KING, and that there are no conditions or remaining obligations to be performed by SUN KING to entitle them to these payments.

As one can say, the commitment for ENRON to honor such payments was "inherited" from the Texas-Ohio contract with SUN KING. This, as you know, was fully discussed and agreed upon during our working sessions in the month of March, 1992: days prior to the signature of the assignment of the main Power Purchase Agreement.

Under the agreement between SUN KING and Texas-Ohio (now, "inherited" by ENRON), it is clearly stated that the monies payable to SUN KING, either for refundable advance payments or contractual payments made by EEGSA, are free of any bank charges, taxes or expenses incurred in transfering funds to the bank account designated by SUN KING.

Such agreement also recognizes the right of SUN KING to receive the same percentage of payments on gross revenues, in case the project is expanded to

...Cont -2-

Senate Finance Committee

EXHIBIT 19

SUN KING
TRADING

include additional MW to those initially installed, an obligation that is duly ratified in the March 12 agreement between TOP and ENRON, as is also mentioned in the hand-written agreement between Texas-Ohio and ENRON, dated March 13th, 1992.

Payments, therefore, are to be made by ENRON POWER DEVELOPMENT CORP. directly (not any of its Guatemalan subsidiaries or branches), to SUN KING.

All this terms and conditions were restated and ratified again during the meeting of February 18th, 1993, where Mr. Bill Coy and Lic. Paz Fernandez from ENRON were present with the SUN KING GROUP, at the request of Mr. James Steel.

As ENRON has expressed before, there are no conditions or remaining obligations to be performed by SUN KING to entitle it to the payments herein referred.

Nevertheless, SUN KING has continued providing valuable assistance to ENRON and its Guatemalan projects, based purely on good faith efforts and on a sense of cooperation, a fact that has been verified by you in many occasions.

Because all these terms and conditions are part of our agreement, and they have been ratified verbally and in writing in many occasions, SUN KING is requesting your kind assistance in order to obtain a favorable response and action to our request of payment contained in our letter dated March 1st, 1993.

Please, do not hesitate to contact us for any further clarification.

Sincerely yours,

SUN KING TRADING INC.

Oswaldo Mendez Herbruger
President

mldeď.

cc: Mr. James Steele - Enron Power
Mr. William Coy - Enron Power

Senate Finance Committee

EXHIBIT 20

13

OPERATION AND MAINTENANCE AGREEMENT

This Operation and Maintenance Agreement (the "Agreement") dated as of November 13, 1992, is between Puerto Quetzal Power Corp., Guatemala Branch, a Delaware corporation with its principal place of business at 6 a. Avenida 20-25 Zona 10, Edificio Plaza Maritima, Guatemala City, Guatemala C.A. ("Owner"), and Electricidad Enron de Guatemala, S.A., a company organized under the laws of Guatemala with its principal place of business at 6 a. Avenida 20-25 Zona 10, Edificio Plaza Maritima, Guatemala City, Guatemala C.A. ("Operator").

PRELIMINARY STATEMENT

WHEREAS, Owner is developing a 110 MW, fuel oil fired, dispatchable, barge-mounted power plant for the generation and sale of electricity to be located outside San Jose, Guatemala in the Puerto Quetzal port facilities (the "Project"); and

WHEREAS, Owner desires to utilize the services of Operator in the mobilization, start-up activities, performance testing and operation and maintenance of the Project; and

WHEREAS, Owner and Operator now desire to set forth the terms pursuant to which Operator shall provide such services for the Project;

NOW, THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE I

DEFINITIONS

As used in this Agreement, the following capitalized terms shall have the meanings set forth below. All references herein to national or regional laws shall include such laws as amended and in effect from time to time, including successor legislation thereof, and references to agreements and other contractual instruments shall be deemed to include all exhibits and appendices attached thereto and all amendments and other modifications to such agreements and instruments.

1.1 Affiliate: With respect to any party hereto, any entity which is a direct or indirect parent or subsidiary of such party or which directly or indirectly (i) owns or controls such party, (ii) is owned or controlled by such party, or (iii) is under common ownership or control with such party; for purposes of this definition, "control" shall mean the power to direct the management or policies of such entity, whether through the ownership of voting securities, by contract or otherwise.

1.2 Annual Budget. The budget prepared by Operator, subject to approval by Owner, setting forth all anticipated expenses for the operation and maintenance of the Project for any Year and setting forth, to the extent practicable, a breakdown of such costs on a monthly basis.

1.3 Annual Operating Plan: The annual operating plan prepared by Operator, subject to approval by Owner, setting forth, among other things, anticipated maintenance and overhaul schedules, staffing plans, equipment acquisitions and spare parts, schedules of services to be provided by subcontractors, plant performance data regarding required environmental performance, projected fuel usage and the target average annual Heat Rate and target Capacity Factor for the Project.

1.4 Bankruptcy: With respect to a party (a) a failure by such party within sixty (60) days to lift or otherwise satisfy any execution, garnishment or attachment lawfully imposed on it; (b) an adjudication of bankruptcy or insolvency, or the entry of an order for relief under any applicable bankruptcy or insolvency statute ("Bankruptcy Law"); (c) the making by such party of an assignment for the benefit of its creditors; (d) the filing by such party of a petition in bankruptcy or for relief under any Bankruptcy Law or an answer or a pleading admitting or failing to contest the material allegations of any such petition (unless such proceeding is dismissed within ninety (90) days after the commencement thereof); (e) the filing against such party of any such petition (unless such petition is dismissed within ninety (90) days from the date of filing thereof); or (f) the appointment of a trustee, conservator or receiver for such party or for all or substantially all of its properties (unless such appointment is vacated or stayed within ninety (90) days of such appointment).

1.5 Capacity Factor: The fraction, expressed as a percent (not exceeding 100%), calculated in

accordance with the following formula for each month:

$$\frac{\text{Electric Energy}}{\text{Contract Electric Capacity} \times (\text{H} - \text{Downtime} - \text{FMH})}$$

where:

Electric Energy represents the actual net kilowatt hours produced by the Project and sold to Power Purchaser;

Contract Electric Capacity represents the aggregate capacity contracted for under the Power Purchase Agreement.

H represents the total hours in any month, calculated by multiplying 24 hours times the number of days in such month.

Downtime represents the number of hours during which the Project is not selling power or is in reduced operation due to scheduled inspection, maintenance, repair or overhaul or is in reduced operation due to a failure of the Power Purchaser to perform its obligations under the Power Purchase Agreement plus the number of hours the project is available to sell power but is not dispatched.

FMH (Force Majeure Hours) represents the number of hours in the month during the duration of any Force Majeure event that prevents or reduces operation of the Project.

If any month is a partial month, the amount of hours (H) set forth in the denominator of the above formula will be reduced to the number of hours in such month.

1.6 Commercial Operation: The date of Commercial Operation under the Power Purchase Agreement.

1.7 Construction Contract: The turnkey contract for design, engineering, procurement and construction services for the Project between Contractor and an Affiliate of Owner.

1.8 Contractor: Wartsila Diesel, Inc., a Louisiana corporation, in its capacity as contractor under the Construction Contract.

1.9 Credit Agreement: The agreement between Owner and Lender pursuant to which long-term financing for the Project will be made.

accordance with the following formula for each month:

$$\frac{\text{Electric Energy}}{\text{Contract Electric Capacity} \times (\text{H} - \text{Downtime} - \text{FMH})}$$

where:

Electric Energy represents the actual net kilowatt hours produced by the Project and sold to Power Purchaser;

Contract Electric Capacity represents the aggregate capacity contracted for under the Power Purchase Agreement.

H represents the total hours in any month, calculated by multiplying 24 hours times the number of days in such month.

Downtime represents the number of hours during which the Project is not selling power or is in reduced operation due to scheduled inspection, maintenance, repair or overhaul or is in reduced operation due to a failure of the Power Purchaser to perform its obligations under the Power Purchase Agreement plus the number of hours the project is available to sell power but is not dispatched.

FMH (Force Majeure Hours) represents the number of hours in the month during the duration of any Force Majeure event that prevents or reduces operation of the Project.

If any month is a partial month, the amount of hours (H) set forth in the denominator of the above formula will be reduced to the number of hours in such month.

1.6 Commercial Operation: The date of Commercial Operation under the Power Purchase Agreement.

1.7 Construction Contract: The turnkey contract for design, engineering, procurement and construction services for the Project between Contractor and an Affiliate of Owner.

1.8 Contractor: Wartsila Diesel, Inc., a Louisiana corporation, in its capacity as contractor under the Construction Contract.

1.9 Credit Agreement: The agreement between Owner and Lender pursuant to which long-term financing for the Project will be made.

1.10 Economic Dispatch Incentive Fee: The incentive fee which Owner shall pay to Operator as provided in Section 4.2(b).

1.11 Fixed Fee: The annual fee which Owner shall pay to Operator as provided in Section 4.2(a).

1.12 Force Majeure: The meaning provided in Section 5.1.

1.13 Fuel Agreements: The fuel supply and transportation agreements for the Project's fuel oil requirements, entered into (i) on October 16, 1992, between Enron Products Marketing Company and Enron Power Corp. and (ii) on October 15, 1992, between Texaco International Traders, Inc. and Enron Power Corp., both agreements to be assigned by Enron Power Corp. to Owner, as further amended, modified and supplemented from time to time.

1.14 Gross Revenues: All revenues received by Owner for the sale of capacity and energy from the Project.

1.15 Heat Rate: The measure of plant thermal efficiency expressed in British Thermal Units (BTU) per net kilowatt hour. The Heat Rate shall be based upon the higher heating value (HHV) of the fuel.

1.16 Labor Costs: All direct labor costs of Operator incurred in the performance of the Work hereunder, including wages; salaries; overtime charges; reasonable and customary bonuses; payroll insurance and taxes; and holidays, vacations, group medical and life insurance and other employee benefits.

1.17 Lender: The entity providing financing for the Project or, in the event that there shall be multiple entities providing such financing, the agent thereof.

1.18 Mobilization Loan: The loan made to Operator by Owner as provided in Section 4.6.

1.19 Operator's Invoice: A written document provided by Operator to Owner on a monthly basis requesting the amount due to Operator for Reimbursable Expenses, Fixed Fees and Economic Dispatch Incentive Fees for the preceding month, accompanied by any substantiating documentation required herein.

1.20 Owner's Representative: A representative

of Owner who will be available (or whose delegate will be available) for consultation from time to time with Operator and who is authorized to act on behalf of Owner with respect to this Agreement.

1.21 Phase I (Mobilization, Start-up and Performance Testing Period): The period from the date of this Agreement and ending on the date of Commercial Operation.

1.22 Phase II (Operating Period): The period from the date of Commercial Operation through the remaining term of this Agreement.

1.23 Plant Manager: Operator's representative at the Project Site, appointed with the approval of Owner, who shall have the requisite level of skill to supervise the performance of Operator's services hereunder and is authorized to direct the performance of the Work by Operator during Phase II.

1.24 Power Purchase Agreement: The agreement for the purchase and sale of electric energy from the Project, dated January 13, 1992, by and between Texas-Ohio Power, Inc. and Empresa Electrica de Guatemala, S.A., a private utility company organized under the laws of Guatemala ("EEGSA"), which was assigned to an Affiliate of Owner pursuant to an agreement dated March 12, 1992, and which was further assigned to Owner pursuant to an agreement dated November 13, 1992, as further amended, modified and supplemented from time to time.

1.25 Power Purchaser: EEGSA, its successors or permitted assigns.

1.26 Prime Rate: The interest rate per annum announced from time to time by Citibank, N.A. at its principal office in New York City as its prime or base lending rate for United States commercial loans.

1.27 Project Manager: Operator's representative, appointed with the approval of Owner, who shall have the requisite level of skill to supervise the performance of Operator's services hereunder and is authorized to direct the performance of the Work by Operator during Phase I.

1.28 Project Site: The real property and the berth located outside San Jose, Guatemala in the Puerto Quetzal port facility at which the on shore facilities of

the Project and the barge-mounted power generation facility will be located.

1.29 Reimbursable Expense: Subject to Section 4.1, any reasonable expense or expenditure incurred by Operator in the performance of the Work, including, without limitation, (i) purchases of spare parts, tools, equipment, consumables, materials and supplies (other than fuel), (ii) Labor Costs, (iii) the direct cost of subcontract labor or services needed to perform services otherwise covered by this agreement, (iv) insurance premiums and (v) any other item covered in an approved Annual Budget.

1.30 Work: During Phase I, the tasks set forth in Section 2.2 and during Phase II, the tasks set forth in Section 2.3.

1.31 Year: The period from January 1 to December 31 inclusive.

ARTICLE II

WORK SCOPE

2.1 Generally. Operator shall provide all day-to-day operation and maintenance services for the Project as set forth in Sections 2.2 and 2.3, except for the responsibilities of Owner as set forth in Article III. Operator shall perform its services hereunder in accordance with prudent electric utility practices and approved Annual Budgets and in accordance with the Power Purchase Agreement, the Fuel Agreements, the Credit Agreement, all other material Project agreements the terms of which Operator is informed of by Owner, all Project permits, all applicable national and regional laws, rules and regulations and insurance policies pertaining to the Project.

2.2 Phase I (Mobilization Start-up and Performance Testing). During Phase I, Operator shall assist Owner in an orderly transition from construction through start-up, testing and acceptance of the Project, and shall perform, as a Reimbursable Expense, the following tasks:

(a) Designate, subject to Owner's approval, a Project Manager for Phase I.

(b) Obtain all governmental permits, licenses and approvals required to be held by Operator

and its employees in order to perform its Work hereunder.

(c) Prepare, and submit to Owner for its approval, an operation and maintenance manual describing the policies and procedures for operating and maintaining the Project (the "O&M Manual").

(d) Prepare, and submit to Owner for its approval, the initial Annual Operating Plan.

(e) Prepare, and submit to Owner for its approval, a proposed Annual Budget for the first year of operation consistent with the Annual Operating Plan.

(f) Prepare, and submit to Owner for its approval, a list of initial spare parts, supplies and tools.

(g) Establish or procure, to the extent not provided under the Construction Contract, adequate operation, maintenance and storage facilities; tools, equipment, supplies and spare parts inventories; security and safety systems and plans; any necessary or desirable special clothing or safety gear for personnel; and such other facilities and systems as may be necessary or desirable for operating and maintaining the Project or to fulfill Operator's ongoing responsibilities under this Agreement.

(h) Establish a system for maintaining an inventory of spare parts, tools, equipment, consumables and supplies.

(i) Provide sufficient numbers of qualified (and, if required, licensed) personnel that meet minimum criteria established by Contractor to perform the Work and train, in conjunction with training sessions provided by Owner and/or Contractor, such personnel in the proper operation and maintenance of the Project.

(j) Provide trained personnel to conduct, under the supervision and direct control of Contractor, start-up and performance testing of the Project.

(k) Assist Owner in monitoring performance testing and advise Owner as to the progress of the performance testing and as to whether or not the Project has successfully passed the Performance Tests as defined under the Construction Contract.

(l Assist Owner in preparing a

construction deficiency list (the "punchlist") and advise Owner as to whether or not such deficiencies have been corrected by Contractor.

(m) Obtain, prior to the performance of any on-site activities, the policies of Operator . insurance required pursuant to Article IX.

(n) Designate, subject to Owner's approvals, a Plant Manager for Phase II.

(o) Provide and maintain insurance in accordance with Sections 9.2 and 9.3(b).

Operator acknowledges that during Phase I, the Contractor shall be in control of the Project under the terms of the Construction Contract.

2.3 Phase II (Operating Period). During Phase II, Operator shall be responsible for the operation and maintenance of all components of the Project and shall perform, as a Reimbursable Expense, all necessary services to meet these requirements, including, but not limited to, the following tasks:

(a) Provide all operations and maintenance services necessary to efficiently operate and maintain the Project, including all associated and appurtenant mechanical, electrical, auxiliary fuel handling, pollution control and water treatment equipment and facilities and utility connections in good operating condition with the objective of minimizing costs, minimizing Heat Rate and maximizing Capacity Factor.

(b) Coordinate Project outages and power deliveries with the Power Purchaser, subject to the policy directives of the Owner.

(c) Coordinate all Project contracts, subject to the policy directives of the Owner.

(d) Prepare, and submit to Owner for its approval, the Annual Operating Plan at least sixty (30) days prior to the beginning of each Year following the first year of operation.

(e) Prepare, and submit to Owner for its approval, the Annual Budget at least sixty (30) days prior to the beginning of each Year following the first year of operation.

(f) Provide, train and supervise

sufficient numbers of qualified (and, if required, licensed) personnel to perform the Work.

(g) Prepare and maintain operating logs records and monthly reports regarding the finances, operation and maintenance of the Project, which monthly reports shall detail, among other things, financial status, fuel use, power output, other operating data, inventories of spare parts and supplies, repairs performed and status of equipment.

(h) Prepare such technical evaluations of the Project as may be reasonably requested by Owner.

(i) Perform or contract for and oversee the performance of periodic overhauls or unscheduled maintenance required for the Project.

(j) Regularly update and implement an equipment repair and preventive maintenance program that meets equipment manufacturers' specifications and recommendations of the Contractor.

(k) Provide technical engineering support for solving operation and maintenance problems.

(l) Monitor the inventory of and purchase, as agent of Owner, all materials necessary for the operation and maintenance of the Project, required spare parts, tools, equipment, consumables and supplies (other than fuel).

(m) Maintain all roads, yards, walkways and utilities on the Project Site which service the Project.

(n) Maintain Project tool room equipment and instruments.

(o) Maintain Project fire protection and safety equipment.

(p) Recommend Project modifications, capital repairs, replacements and improvements and, at Owner's request, implement the same.

(q) Maintain accounting records regarding the Work in accordance with Guatamalan generally acceptable accounting principles.

(r) Cooperate in the provision of information to authorized representatives of Owner

including, without limitation, Owner's Representative, the Lender and its representatives, accountants, attorneys and fuel suppliers.

(s) Read meters and furnish to Owner all information required to bill Power Purchaser.

(t) Provide adequate security for the Project and respond to emergency situations.

(u) Assist Owner in the enforcement of Contractor, subcontractor and vendor warranties and guaranties.

(v) Nominate fuel requirements and schedule deliveries of fuel and water pursuant to the Fuel Agreements and water supply agreements arranged by Owner for the Project; monitor the sufficiency of such fuel in terms of quantity and quality and provide forecasts of fuel requirements, all subject to the policy directives of the Owner.

(w) Assist Owner in the preparation of periodic reporting to governmental authorities and cooperate with Owner in obtaining, maintaining and renewing governmental permits, licenses and approvals (other than such permits, licenses and approvals referred to in clause (x)).

(x) Obtain and maintain all governmental permits, licenses and approvals required to be held by Operator in order to perform its Work hereunder.

(y) Pay all income, payroll, unemployment and gross receipt taxes incurred or resulting from its performance hereunder.

(z) Schedule, hire and supervise subcontractors and vendors as may be necessary for the performance of the services hereunder.

(aa) Update the O&M manual as appropriate, subject to Owner's approval.

(ab) Provide and maintain insurance in accordance with Sections 9.2 and 9.3(b).

2.4 Liens. Operator shall not permit any laborers', materialmen's, mechanic's or other similar lien to be filed or otherwise imposed on any part of the Project or the Project Site. If any such lien is filed and if Operator does not within ninety (90) days of a

request by Owner cause such lien to be released and discharged, or file a bond satisfactory to Owner and Lender in lieu thereof, Owner shall have the right to pay all sums necessary to obtain such release and discharge and deduct all amounts so paid (plus reasonable attorneys' fees) from any amount then or thereafter due Operator.

2.5 Right to Perform upon Operator's Default. If at any time Operator fails to perform any material obligation hereunder and such failure is likely to cause injury to any person or damage to the Project, Owner may, but shall have no obligation to, perform any such obligation not performed by Operator. Such performance by Owner shall reduce any compensation payable to Operator hereunder in any Year by an amount equal to the cost to Owner of effecting such performance.

ARTICLE III

RESPONSIBILITIES AND RIGHTS OF OWNER

3.1 Owner Responsibilities. Owner shall be responsible for the following activities, each to be at Owner's expense unless otherwise expressly provided herein.

(a) Make payments to Operator in accordance with Article IV of this Agreement.

(b) Provide Operator with policy directives with respect to Sections 2.3(b), (c) and (v) hereof.

(c) Arrange for the sale of power generated by the Project and for the billing and collection of revenues therefrom.

(d) Contract for all fuel supplies, water, wastewater services and other utilities required for the Project.

(e) Provide reasonable access to the Project Site and furnish suitable offices, storage and maintenance facilities and other accommodations Operator may reasonably require.

(f) Provide drawings, specifications, diagrams and other information regarding the Project that are required for the operation and maintenance of the Project and that are furnished to Owner by Contractor

pursuant to the Construction Contract.

(g) Obtain and maintain in effect all government licenses, permits and approvals necessary to operate and maintain the Project other than permits required to be held by Operator to permit it to perform its obligations hereunder.

(h) Make available, in coordination with Contractor, training sessions for Operator's personnel in the operation and maintenance of Project systems and sub-systems.

(i) Pay all taxes and lease expenses related to the Project, including, without limitation, national and regional, sales, use, excise, stamp, fuel and value added taxes, as well as import and customs duties, if any, and port lease expenses, except for any taxes imposed on Operator's income.

(j) Maintain communications and relations with the community and public agencies.

(k) Designate Owner's Representative.

(l) Arrange for electrical interconnection with the Power Purchaser.

(m) Make available start-up and back-up power when required for the Project.

(n) Review in a timely fashion and not unreasonably withhold its approval of all items submitted by Operator to Owner for its approval.

(o) Provide and maintain insurance in accordance with Sections 9.1 and 9.3(a).

3.2 Owner Right to Approve Project and Plant Managers. Owner shall have the right to approve the Project Manager designated by Operator for Phase I and the Plant Manager designated by Operator for Phase II. Owner shall have the right to require Operator to replace the Project Manager or Plant Manager, upon reasonable notice and for justifiable cause.

3.3 Operators for Start-Up and Testing. If, during training sessions conducted pursuant to Section 3.1(g) hereof, the Contractor, in the exercise of its reasonable judgment, determines that any of Operator's operation and maintenance trainees are not capable of mastering the skills necessary to safely and effectively

operate the Facility and so notifies Owner, Owner shall have the right to direct Operator to remove such person from the training program. If, upon completion of such training sessions, Contractor, in the exercise of its reasonable judgment, determines that any of Operator's operation and maintenance personnel are not ready tq effectively participate in start-up and testing operations of the Project and so notifies Owner, Owner shall have the right to direct Operator to replace such person(s) with adequately trained person(s). In the event that Operator is unable to supply such replacement person(s) and Contractor furnishes such replacement operations and maintenance personnel, Owner shall be liable for the cost thereof.

ARTICLE IV

PAYMENTS

4.1 Reimbursement. Operator shall submit to Owner an Operator's Invoice by the fifteenth (15th) day of each month for all Reimbursable Expenses incurred during the prior month and Owner shall reimburse Operator for all such Reimbursable Expenses on or before the last day of such month; provided, however, that expenditures that exceed the approved Annual Budget for such Year by the greater of five hundred thousand dollars ($500,000) (in the aggregate) or ten percent (10%) of any line item of the approved Annual Budget for such Year must receive the prior approval of Owner in order to qualify for reimbursement, unless such expenditure is required in Operator's reasonable judgment to respond to an emergency. If Owner disputes any portion of Operator's Invoice, Owner shall pay the undisputed portion within the time stated above, and concurrently advise Operator in writing of the particulars of such dispute. In the event that any portion of the disputed amounts are determined to be due and owing to Operator, Owner shall pay to Operator, in addition to such disputed amounts, interest at the Prime Rate plus two percent (2%) per annum from the date such disputed amounts were due until paid in full.

4.2 Compensation. In addition to the reimbursement payments provided for in Section 4.1, as compensation for services performed by Operator during Phase II, Operator shall be entitled to receive:

(a) beginning on the twenty-fifth (25th) day of the first full month following Commercial Operation, and on or before the twenty-fifth (25th) of each month thereafter, a monthly base fee (the "Fixed

Fee") in an amount equal to 3.75% of the Project's Gross Revenues for the preceding month. The Fixed Fee for the preceding month shall be included in the Operator's Invoice and Owner shall pay such Fixed Fee on or before the twenty-fifth (25th) of such month. As soon as practicable after the end of each Year (including any partial Year), or upon termination of this Agreement, as appropriate, Owner shall determine the difference, if any, between the Fixed Fee actually paid in such Year or partial Year and the amount actually due to Operator during such Year or partial Year. If the actual payment exceeds the amount due, Operator shall promptly remit the difference to Owner. If the amount due exceeds the amount actually paid, Owner shall promptly remit the difference to Operator; and

(b) beginning on the twenty-fifth (25th) day of the first full month following Commercial Operation, an Economic Dispatch Incentive Fee in an amount equal to the sum of (i) eighteen percent (18%) of the Project's Gross Revenues for the preceding month which are derived from the sale of electricity produced and sold between a fifty percent (50%) and a ninety percent (90%) Capacity Factor and (ii) thirty percent (30%) of the Project's Gross Revenues for the preceding month which are derived from the sale of electricity produced and sold above a ninety percent (90%) Capacity Factor. The Economic Dispatch Incentive Fee is not paid unless the Project is dispatched by the Power Purchaser above a fifty percent (50%) Capacity Factor, even if its availability is higher. The Economic Dispatch Incentive Fee, if any, shall be included on the Operator's Invoice and shall be paid by Owner to Operator on or before the twenty-fifth (25th) of such month. As soon as practicable after the end of each Year (including any partial Year), or upon termination of this Agreement, as appropriate, Owner shall determine the difference, if any, between the Economic Dispatch Incentive Fee actually paid in such Year or partial Year and the amount actually due to Operator during such Year or partial Year. If the actual payment exceeds the amount due, Operator shall promptly remit the difference to Owner. If the amount due exceeds the amount actually paid, Owner shall promptly remit the difference to Operator.

4.3 Bonus and Penalty Payments. In addition to the reimbursement and compensation payments provided for in Sections 4.1 and 4.2, respectively, Operator shall be eligible or liable, as the case may be, for the bonuses and penalties set forth in Sections 4.4 and 4.5. Bonuses, if any, will be assessed as soon as practicable at the end of each Year by Operator (subject to verification by

Owner) and shall be paid by Owner to Operator within seventy (90) days after the end of each Year. Penalties, if any, will be assessed as soon as practicable at the end of each Year by Operator (subject to verification by Owner) and will be deducted from the monthly installments of the Fixed Fee due to Operator during the next Year until paid in full. Subject to Section 6.4, any penalties or bonuses not paid in full at the time of termination of this Agreement shall be due on the date of termination.

4.4 Heat Rate. To determine the Heat Rate bonus/penalty, if any, the actual annual average Heat Rate of the Project during the Year just ended (the "Actual Rate") will be compared to the target annual average Heat Rate as set forth in the Annual Operating Plan for such Year (the "Target Rate"). Operator shall be subject to and liable for a penalty equal to five percent (5%) of such Year's Fixed Fee for each one percent (1%) that the Actual Rate exceeds one hundred two percent (102%) of the Target Rate. Operator shall be entitled to and Owner shall be obligated to pay to Operator a bonus equal to five percent (5%) of such Year's Fixed Fee for each one percent (1%) that the Actual Rate is less than ninety-eight percent (98%) of the Target Rate.

4.5 Availability. Operator shall (i) be subject to and liable for a penalty in an amount equal to one-half of any capacity payment otherwise payable pursuant to the Power Purchase Agreement which was not paid due to the Project's non-availability between a fifty percent (50%) Capacity Factor and a seventy-five percent (75%) Capacity Factor at any given time and (ii) be subject to and liable for a penalty in an amount equal to any monetary penalty incurred by the Project pursuant to the Power Purchase Agreement and due to the Project's performance at less than a fifty percent (50%) Capacity Factor at any given time.

4.6 Mobilization Loan. On or before the date which is five (5) days after the execution of this Agreement, Owner shall make (or cause to be made) to Operator (or for the benefit of Operator) an interest-free loan in an amount equal to five hundred thousand dollars ($500,000) for the purpose of funding activities necessary or desirable for the Operator to begin performance (or cause performance to begin) under this Agreement. Operator shall repay the Mobilization Loan to the Owner as follows: (1) one hundred thousand dollars ($100,000) on each of July 1, 1993, August 1, 1993 and September 1, 1993; and (2) two hundred thousand dollars ($200,000) on December 1, 1994. Operator agrees that in the event such payments have not been made in full on or

before the dates specified above, then Owner shall be entitled to deduct from the next payment (or payments, as necessary) due to Operator under this Agreement an amount equal to (i) the unpaid amount then due and owing (the "Unpaid Principal Amount"), plus (ii) a late fee equal to five percent (5%) of the Unpaid Principal Amount. In the event this Agreement is terminated for any reason, all outstanding principal amounts shall immediately become due and owing.

4.7 All amounts in any Operator's Invoice shall be stated in U.S. dollars. Although stated in U.S. dollars, payment of amounts due hereunder may be made in either U.S. dollars or the equivalent in Quetzales at the rate of exchange prevailing in the market on the day the pertinent invoice is paid, according to the rule or system of currency exchange agreed upon by the parties hereto, provided, however, that all commissions, fees or other charges associated with converting Quetzales to U.S. Dollars shall be for the account of the Owner.

ARTICLE V

FORCE MAJEURE

5.1 Force Majeure Defined. With the exception of the payment of amounts due and payable under Article IV, neither party shall be considered to be in default in the performance of any of its obligations under this Agreement, when and to the extent failure of performance shall be due to Force Majeure. The term Force Majeure shall be understood as any cause beyond the reasonable control of the party failing to perform, including, but not limited to, causes such as flood, earthquake, storm, dust storm, lightning, fire, epidemic, war, explosion, riot, pestilence, holocaust, act of public enemy, act of civil or military authority, civil disturbance or disobedience, labor or material shortage, sabotage, restraint by court order or order of public authority, action or non-action by or inability to obtain the necessary authorizations or approvals from any governmental agency or authority, failure or breakdown of facilities and/or equipment from any other cause not listed above; provided, however, that in addition to the above, and not in limitation thereof, Owner's inability or failure to supply the Project with fuel of sufficient quality and quantity shall operate as Force Majeure with respect to the Operator; and further provided, however, that no event or condition directly caused by or resulting from Operator's failure to operate and maintain the Project in accordance with prudent electric utility

practices shall be deemed to be an event of Force Majeure.

5.2 Obligation to Diligently Cure Force Majeure. If either party shall rely on the occurrence of an event of Force Majeure as a basis for being excused from performance of its obligations under this Agreement, then the party relying on the event or condition shall:

(a) provide prompt notice to the other party of the occurrence of the event or condition giving an estimation of its expected duration and the probable impact on the performance of its obligations hereunder,

(b) exercise all reasonable efforts to continue to perform its obligations hereunder,

(c) expeditiously take action to correct or cure the event or condition excusing performance,

(d) exercise all reasonable efforts to mitigate or limit damages to the other party to the extent such action will not adversely affect its own interests, and

(e) provide prompt notice to the other party of the cessation of the event or condition giving rise to its excusal from performance.

5.3 Effect of Continued Event of Force Majeure. Notwithstanding anything herein to the contrary:

(a) If an event of Force Majeure continues for a period of more than thirty (30) days, Operator shall take all reasonable measures to mitigate or limit the amount of Reimbursable Expenses (including reducing its work force within permitted statutory time periods) for the duration of the Force Majeure event. Operator shall consult with Owner with respect to its plans to mitigate or limit such Reimbursable Expenses and shall take such actions as are reasonably directed by Owner. Owner shall continue to pay Operator the Fixed Fee and such reduced Reimbursable Expenses as provided herein.

(b) If an event of Force Majeure continues for a period of more than one hundred eighty (180) days, Owner may terminate this Agreement by providing thirty (30) days written notice of such termination to Operator; provided that such thirty (30) day notice period may run concurrently with such one hundred eighty (180) day period.

ARTICLE VI

TERM AND TERMINATION

6.1 Term. This Agreement will be effective on the date first written above and shall remain in effect for fifteen (15) Years from the date of Commercial Operation and shall be renewed automatically thereafter for successive one (1) Year terms unless and until a party hereto gives the other party written notice of its decision not to renew this Agreement at least one hundred eighty (180) days prior to the expiration of the then effective term or unless earlier terminated pursuant to the provisions hereof.

6.2 Termination by Owner. Owner may terminate this Agreement:

(a) upon the Bankruptcy, insolvency or dissolution of Operator;

(b) upon thirty (30) days written notice to Operator if there is a material failure by Operator to perform its obligations hereunder due to its incompetence or willful misconduct (including, without limitation, operating the Project in material violation of Project permit requirements), unless Operator has cured such breach during the notice period or has initiated and is diligently pursuing the cure of such breach and thereafter continues to diligently pursue such cure; provided that such cure is effected within ninety (90) days from the receipt of such notice by Operator (or such shorter period of time as may be necessary to avoid the imposition of penalties or loss of a permit);

(c) upon thirty (30) days written notice if the Capacity Factor falls below seventy-five percent (75%) for a period of twelve (12) consecutive months;

(d) upon thirty (30) days written notice, if an event of Force Majeure continues for more than one hundred eighty (180) days; provided that such thirty (30) day notice period may run concurrently with such one hundred eighty (180) day period;

(e) for Owner's convenience, upon ninety (90) days written notice to Operator, provided that Owner shall pay to Operator on the effective date of termination, an amount equal to one-half (1/2) of the annual Fixed Fee so long as Operator has continued to perform the Work without material deterioration in the

levels of performance of the Project during the ninety (90) day notice period.

6.3 Termination by Operator. Operator may terminate this Agreement:

(a) upon the Bankruptcy, insolvency or dissolution of Owner;

(b) upon the failure by Owner to pay within ninety (90) days of when due all amounts owed to Operator and not disputed in good faith by Owner; or

(c) upon sixty (60) days notice to Owner if there is a material failure by Owner to perform its obligations hereunder, unless Owner has cured such breach during the notice period or has initiated and is diligently pursuing the cure of such breach and thereafter continues to diligently pursue such cure; provided that such cure is effected within one hundred eighty (180) days from the receipt of such notice by Owner.

6.4 Payments Upon Termination. In the event of termination, Operator shall be entitled to (i) payment for all Reimbursable Expenses properly incurred prior to the date of termination, which amounts shall be paid within fifteen (15) days of receipt of a final Operator's Invoice, (ii) payment of a pro rata portion of the Fixed Fee up to the date of termination, which amount shall be paid to Operator within thirty (30) days of the date of termination, and (iii), if termination is pursuant to Section 6.2(e), the sum provided for in that Section. In the event of termination by Owner under Section 6.2(a),(b) or (c), Operator shall be liable for any penalties for which Operator would be liable if the date of termination were treated as the date on which the calculation of penalties were to be made; however, Operator shall not be entitled to any bonus for such Year in which termination occurs. In the event of termination by Owner under Section 6.2(d), no penalties or bonuses shall be payable for the Year in which termination occurs. In the event of termination by Owner under Section 6.2(e) or by Operator under Section 6.3, Operator shall be entitled to payment of any bonuses to which Operator would be entitled if the date of termination were treated as the date on which the calculation of bonuses were to be made; however, Operator shall not be liable for any penalties for such Year in which termination occurs. The payment obligations set forth in this Section 6.4 shall survive termination of this Agreement.

6.5 Duties by Operator Upon Termination. If requested by Owner, Operator shall continue to perform the Work or any portion thereof directed by Owner for ninety (90) days following termination to provide for the transition to a replacement operator and shall receive for its services payment of Reimbursable Expenses and a pro rata portion of the Fixed Fee. Operator shall cooperate fully with Owner in training, at Owner's expense, a replacement operator, and Operator shall assign to Owner at Owner's request all contracts it has entered into with third parties in connection with the Work. The obligations set forth in this Section 6.5 shall survive termination of this Agreement.

ARTICLE VII

INDEMNIFICATION

7.1 Indemnification by Operator. Subject to the provisions of Article VIII, Operator hereby agrees to indemnify, defend and hold harmless Owner and the Lender, and the agents, servants, partners, officers, directors and employees of each, from and against any and all losses, claims, damages or liabilities to third parties (including reasonable attorney's fees and including, without limitation, penalties or fines imposed by governmental authorities) arising from the negligence or willful misconduct of Operator or its servants, agents or employees in connection with the performance of the Work including, without limitation, claims for injury to or death of persons, including Operator's employees, or for loss or claims for loss of or damage to property.

7.2 Indemnification by Owner. Owner shall indemnify, defend and hold harmless Operator, its agents, servants, officers, directors and employees from and against any and all losses, claims, damages or liabilities to third parties (including reasonable attorney's fees) arising from the negligence or willful misconduct of Owner, its servants, agents (except Operator and its subcontractors, vendors or agents) or employees including, without limitation, claims for injury to or death of persons, including Operator's employees, or for loss or claims for loss of or damage to property.

ARTICLE VIII

LIMITATIONS OF LIABILITY

8.1 Limitation of Liability. Operator's total liability to Owner on all claims of any kind whatsoever whether based on contract, indemnity, warranty, tort, strict liability or otherwise, for all losses or damages (other than losses or damages covered by insurance proceeds) arising out of, connected with, or resulting from this Agreement or from the performance or breach thereof, or from any services covered by or furnished during the term of this Agreement, shall in no case exceed the total actual Fixed Fee paid by Owner to Operator in the twelve (12) months immediately prior to the month in which such liability first arose. This limitation of liability shall not apply to penalties or fines imposed by governmental authorities due to Operator's negligence or willful misconduct.

8.2 Disclaimers of Warranties. All of the warranties and guarantees made in this Agreement by Operator are in lieu of all other warranties and guarantees, whether written or oral or implied in fact or in law, and whether or not based on statute.

8.3 Consequential Damages. Other than to the extent expressly provided in Article VII hereof, in no event shall Operator or Owner be liable for any consequential, incidental or special damages or any other liabilities not expressly set forth herein, regardless of legal theory or negligence.

ARTICLE IX

INSURANCE

9.1 Owner's Coverage.

(a) Owner shall provide or obtain and maintain in force throughout the term of this Agreement the following insurance coverage:

(i) All Risk Property Policy. All Risk Property insurance providing coverage for the Facility in an amount not less than replacement value per incident and which shall cover, among other things, earthquake and flood damage;

(ii) Boiler and Machinery Insurance. Boiler and Machinery Insurance covering breakdown of all air conditioning equipment, pressure vessels, systems and machinery;

(iii) Business Interruption. Business Interruption insurance, including, if economically available, contingent business interruption, with a deductible of not more than sixty (60) days and in an amount equal to at least one (1) year of debt service as provided in the Credit Agreement; and

(iv) Protection and Indemnity. Protection and indemnity (vessel liability) insurance, including liability for members of crew, excluding liability for cargo and pollution, in an amount equal to two million dollars ($2,000,000).

(b) Operator shall be listed as an additional insured on all policies listed in (a) above. Owner shall provide Operator with certificates of insurance. Additionally, the policy provisions shall provide that Operator be given sixty (60) days written notice from the insurance company of policy cancellation(s). Owner shall not modify or terminate any insurance coverage listed in this Section 9.1 without giving sixty (60) days' prior written notice to Operator.

9.2 Operator's Coverage.

(a) Operator shall provide or obtain and maintain in force throughout the term of this Agreement, as a Reimbursable Expense, the following insurance coverage:

(i) Workmen's Compensation. Workmen's Compensation insurance, disability benefit and other similar employee benefit acts in amounts required by applicable law. All subcontractors of Operator shall be required by Operator to maintain the above described insurance coverage and to comply with qualification requirements of all applicable Workmen's Compensation, disability benefit and other similar employee benefit acts.

(ii) Employer's Liability. Employer's Liability insurance with a minimum limit of $1,000,000 per incident and a limit of $1,000,000 in the aggregate.

(iii) Business Automobile Liability. Automobile Liability insurance in an amount not less than a combined bodily injury and property damage limit of $2,000,000 per

accident, in comprehensive form and covering hired, owned and non-owned vehicles.

(iv) Commercial General Liability. Commercial General Liability on a broad form, including operations, premises, completed operations, contractual liability, independent contractors and the hazards of x, c, u coverage on an occurrence basis with a combined single limit of $1,000,000 for bodily injury and property damage and a limit of $2,000,000 in the aggregate.

(v) Excess Liability. Excess liability above the policies in (ii), (iii) and (iv) above with a combined single limit of $100,000,000 for each occurrence for bodily injury and property damage, and with no "sunset limitation" in respect of Employer's Liability.

(b) The obligation to carry the insurance required by this Section 9.2 shall not limit or modify in any way other obligations assumed by Operator under this Agreement. Owner shall not be under any duty to examine policies, certificates or other evidence of Operator's insurance, or to advise Operator in the event that Operator's insurance is not in compliance with this Agreement.

(c) Owner and Power Purchaser shall be listed as an additional insured on all policies listed in (a)(ii), (iii), (iv) and (v) above. Operator shall provide Owner with certificates of insurance. Additionally, the policy provisions shall provide that Owner be given sixty (60) days written notice from the insurance company of policy cancellation(s). Operator shall not materially modify or terminate any insurance coverage listed in this Section 9.2 without giving sixty (60) days prior written notice to Owner.

(d) At the time of a loss, Operator shall provide Owner with a written report of the loss.

(e) If the coverages and limits in (a)(iv) and (v) above cease to be available on commercially reasonable terms, Operator shall advise Owner and Operator and Owner shall mutually agree on the available alternative terms and limits.

9.3 Independent Contractor's Coverage.

(a) Owner shall require all of Owner's

independent contractors and subcontractors (other than Operator) to obtain, maintain and keep in force during the time in which they are engaged in performing services in connection with the Project reasonable adequate coverage in accordance with Owner's normal practice and reasonably acceptable to Operator and to furnish Operator with acceptable evidence of such insurance upon its request. Operator shall have no responsibility for the payment of premiums and claims for such insurance.

(b) Operator shall require all of Operator's independent contractors and subcontractors to obtain, maintain and keep in force during the time in which they are engaged in performing services in connection with the Project reasonable adequate coverage in accordance with Operator's normal practice and reasonably acceptable to Owner and furnish Owner with acceptable evidence of such insurance upon its request. Owner shall have no responsibility for payment of premiums and claims with respect to such insurance.

9.4 Waiver of Subrogation. Owner and Operator each shall obtain waivers of any right of subrogation against Owner, Operator and the Lender that their insurers may have under any insurance provided for herein.

9.5 Rights to Insure. Should Operator or Owner fail to provide or maintain any of the insurance coverage referred to in this Article IX, Operator or Owner, as the case may be, shall have the right, but not the obligation, to provide or maintain such coverage.

ARTICLE X

ASSIGNMENT

10.1 Assignment by Operator. This Agreement may not be assigned by Operator without the prior written consent of Owner.

10.2 Assignment by Owner. This Agreement may not be assigned by Owner without the prior written consent of Operator, which consent shall not be unreasonably withheld; provided, however, that Owner may collaterally assign its rights under this Agreement to Lender without Operator's consent. Operator agrees to execute a consent to such assignment and such other documents as may reasonably be requested by Owner and Lender in connection with such assignment.

ARTICLE XI

REPRESENTATIONS AND WARRANTIES AND FURTHER COVENANTS OF OPERATOR

11.1 Representations. Operator represents and warrants to Owner as follows:

(a) Organization. Operator is a corporation in good standing under the laws of the Republic of Guatemala, and the execution, delivery and performance of this Agreement have been duly authorized by all necessary corporate action and will not violate any provisions of any applicable laws, its by-laws or charter, or any indenture, agreement or instrument to which it is party or by which it or its property may be bound or affected.

(b) No Violation of Law. Operator is not in violation of any applicable law or judgment entered by any governmental authority, which violations, individually or in the aggregate, would affect Operator's performance of its obligations under this Agreement.

(c) Litigation. Operator is not a party to any legal, administrative, arbitral, investigatorial or other proceeding or controversy pending, or, to the best of Operator's knowledge, threatened, that would adversely affect Operator's ability to perform under this Agreement.

(d) Qualifications. Operator has: (i) examined this Agreement thoroughly and become familiar with its terms; (ii) full experience and proper qualifications to perform the services hereunder; (iii) reviewed and examined all applicable laws, codes and standards (including all safety, environmental and security requirements of the Project); and (iv) carefully reviewed all documents, plans, drawings and other information that it deems necessary regarding the Project and its performance of the services hereunder that are available as of the date hereof.

11.2 Further Covenants. Operator warrants that prior to the performance of any services hereunder it shall be authorized to do business in Guatemala and shall obtain all national and regional and other governmental consents, licenses, permits and other authorizations required to conduct its business and all such consents, licenses, permits and other authorizations required for the performance of Operator's obligations hereunder.

11.3 Survival. The provisions of Section 11.1 shall survive the execution and delivery of this Agreement and the consummation of the transactions contemplated herein.

ARTICLE XII

MISCELLANEOUS

12.1 Arbitration. All claims, disputes and other matters in question relating to this Agreement shall be decided by arbitration in accordance with the Arbitration Rules of the American Arbitration Association unless the parties mutually agree otherwise. Said arbitration shall be before a panel of three (3) arbitrators and shall be held in Houston, Texas. This agreement to arbitrate shall be specifically enforceable under applicable law in any court of competent jurisdiction. Notice of the demand for arbitration shall be filed in writing with the other party to this Agreement and with the American Arbitration Association. The demand for arbitration shall be made within a reasonable time after the claim, dispute or other matter in question has arisen. The award rendered by the arbitrators shall be final, and judgment may be entered in any court having jurisdiction thereof. Attorneys' fees and expenses may be payable to the prevailing party in such arbitration in the discretion of the arbitrators. The parties shall be obligated to continue performance under this Agreement during the pendency of any claim, dispute or other matter in question relating to this Agreement and any resulting arbitration proceeding.

12.2 Independent Contractor. Operator shall at all times be deemed an independent contractor and none of its employees or the employees of its subcontractors shall be considered employees of Owner.

12.3 Severability. The invalidity, in whole or in part, of any of the foregoing sections or paragraphs of this Agreement will not affect the validity of the remainder of such sections or paragraphs.

12.4 Entire Agreement. This Agreement, including any Schedules and Exhibits and all amendments thereto contain the complete agreement between Owner and Operator with respect to the matters contained herein and supersedes all other agreements, whether written or oral, with respect to the matters contained herein.

12.5 Amendment. No modification, amendment, or

other change will be binding on any party unless consented to in writing by both parties.

12.6 GOVERNING LAW. THIS AGREEMENT SHALL BE INTERPRETED AND CONSTRUED ACCORDING TO THE LAWS OF DELAWARE, EXCLUSIVE OF ITS CONFLICT OF LAWS PRINCIPLES.

12.7 Audit Rights. Owner may, at reasonable times and upon reasonable notice (but no more frequently than one (1) time per calendar quarter), inspect, copy and audit any of Operator's books, records, accounts, ledgers, time cards or other documents related to Operator's performance of the Work hereunder. Operator shall retain all such records for a minimum of five (5) years.

12.8 Notices. All notices required or provided for in this Agreement shall be in writing and shall be delivered by hand or sent by registered or certified mail, return receipt requested, or facsimile transmission as follows:

If to Owner:

Puerto Quetzal Power Corp.,
Guatemala Branch
6 a. Avenida 20-25 Zona 10
Edificio Plaza Maritima
Guatemala City, Guatemala C.A.

Attn: Project Manager
Facsimile number: (502) 237 0162

If to Operator

Electricidad Enron de Guatemala, S.A
6 a. Avenida 20-25 Zona 10
Edificio Plaza Maritima
Guatemala City, Guatemala C.A.

Attn: Plant Manager
Facsimile number: (502) 237 0162

12.9 Additional Documents and Actions. Each party agrees to execute and deliver to the other such additional documents, and take such additional actions, as may be reasonably required by the other to effect the interest of this Agreement.

12.10 Waiver. Failure by either party to exercise any of its rights under this Agreement shall not constitute a waiver of such rights. Neither party shall

be deemed to have waived any right resulting from any failure to perform by the other unless it has made such waiver specifically in writing.

12.11 Captions. The captions contained in this Agreement are for convenience and reference only and in no way define, describe, extend or limit the scope or intent of this Agreement or the intent of any provision contained herein.

12.12 Limited Recourse. Any claim against Owner that may arise under this Agreement shall be made only against, and shall be limited to the assets of, Owner, and no judgment, order or execution entered in any suit, action or proceeding thereon shall be obtained or enforced against any partner of Owner or to assets of such partner of any incorporator, shareholder, officer or director thereof (or, in the case of such partners that are partnerships, of any partner thereof) or against any direct or indirect parent corporation or any incorporator, shareholder, officer or director of any thereof for the purpose of obtaining satisfaction and payment of any amount owing under this Agreement. Nothing contained in this Section 12.12 shall be construed so as to prevent Operator from commencing any action, suit or proceeding with respect to, or causing legal papers to be served upon, any such partner for the purpose of obtaining jurisdiction over Owner or otherwise to limit the exercise of enforcement, in accordance with the terms of this Agreement, of Operator's rights and remedies against Owner or against the assets thereof.

12.13 Counterparts. This Agreement may be executed in one or more counterparts each of which shall be deemed an original and all of which shall be deemed one and the same Agreement.

12.14 Confidentiality of Information

(a) Each party agrees, for itself and its Affiliates and their directors, officers, employees and representatives, to keep confidential and not make any unauthorized use of any confidential or proprietary information of the other party disclosed to such party in and during the performance of this Agreement, including documents, specifications, formulae, evaluations, methods, processes, technical descriptions, reports and other data, records and information (hereinafter the "Confidential Information").

(b) Confidential Information shall be identified in writing by the disclosing party, or if it is orally disclosed, the confidentiality thereof shall be

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confirmed in writing by the disclosing party promptly after such oral disclosure. In any event, no disclosure shall be deemed to be Confidential Information if such information:

(i) was known by the recipient prior to the disclosure thereof by the disclosing party;

(ii) is, or shall become, other than by an act of the recipient, generally available to the public;

(iii) if lawfully made available to the recipient by a third party in good faith; or

(iv) was developed by the recipient without reference to or reliance upon Confidential Information received from the disclosing party.

(c) Each party agrees that it will make available the other party's Confidential Information only on a "need to know" basis and that all persons to whom such Confidential Information is made available will be made aware of the strictly confidential nature of such Confidential Information.

(d) Notwithstanding the foregoing, Confidential Information may be disclosed to any Lender or potential Lender in connection with financing, refinancing, proposed financing or proposed refinancing for the Project as long as such Lender or potential Lender executes a confidentiality agreement similar in form and substance to Section 12.14 prior to such disclosure.

IN WITNESS WHEREOF the parties have executed this Agreement as of this 13th day of November, 1992.

PUERTO QUETZAL POWER CORP.
GUATEMALA BRANCH

By: _____
Name: James J Steele
Its: _____

ELECTRICIDAD ENRON DE GUATEMALA, S.A.

By: _____
Name: James J. Steele
Its: Vice President Principal

March 31, 1993

Puerto Quetzal Power Corp.
Guatemala Branch
6 a. Avenida 20-25 Zona 10
Edificio Plaza Maritima
Guatemala City, Guatemala C.A.
Attention: Project Manager

Re: Waiver Regarding Operation and Maintenance Agreement

Dear Sir:

Puerto Quetzal Power Corp., Guatemala Branch, a Delaware corporation ("PQPC") and Electricidad Enron de Guatemala, S.A., a company organized under the laws of Guatemala ("Operator") entered into an Operation and Maintenance Agreement, dated as of November 13, 1992 (the "Operation and Maintenance Agreement"). Pursuant to Section 4.6 of the Operation and Maintenance Agreement, PQPC made certain undertakings to Operator regarding the provision of a $500,000 loan. By this letter, Operator agrees to waive irrevocably compliance with those undertakings set forth in Section 4.6 of the Operation and Maintenance Agreement. Operator is not hereby waiving compliance with any provisions of the Operation and Maintenance Agreement other than Section 4.6.

Puerto Quetzal Power Corp.

March 31, 1993
Page 2

Your countersignature below shall evidence your receipt and acknowledgement of this waiver letter.

ELECTRICIDAD ENRON DE GUATEMALA, S.A.

By: _____
Name: David L. Haug
Title: Chairman

AGREED TO AND ACCEPTED BY:

PUERTO QUETZAL POWER CORP.

By: _____
Name: David Shields
Title: Vice President and Chief Financial Officer

AMENDMENT NO. 1

TO

OPERATION AND MAINTENANCE AGREEMENT

This AMENDMENT NO. 1 TO OPERATION AND MAINTENANCE AGREEMENT ("Amendment") dated as of March 31, 1993, is between PUERTO QUETZAL POWER CORP., Guatemala Branch, a Delaware corporation, with its principal place of business at 6a. Avenida 20-25 Zona 10, Edificio Plaza Maritima, Guatemala City, Guatemala C.A. ("Owner") and ELECTRICIDAD ENRON DE GUATEMALA, S.A., a company organized under the laws of Guatemala with its principal place of business at 6a. Avenida 20-25 Zona 10, Edificio Plaza Maritima, Guatemala City, Guatemala C.A. ("Operator").

PRELIMINARY STATEMENT

WHEREAS, Owner and Operator are parties to that certain Operation and Maintenance Agreement dated as of November 13, 1992 (the "O&M Agreement"); and

WHEREAS, Owner and Operator desire to modify the O&M Agreement as further set forth in this Amendment;

NOW, THEREFORE, in consideration of the premises and of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

Section 1. Definitions. As used in this Amendment, each capitalized term not defined herein shall have the meaning set forth in the O&M Agreement.

Section 2. Amendments.

(a) Section 1.13 of the O&M Agreement is hereby deleted in its entirety and the following provision substituted therefor:

1.13 Fuel Agreements: The fuel supply and transportation agreements for the Project's fuel oil requirements, entered into (i) on October 16, 1992, between Enron Products Marketing Company ("EPMC") and Enron Power Corp. ("EPC"), as modified by that certain Modification of Agreement dated March 30, 1993 between EPC and EPMC and as assigned by EPC to Enron Power Oil Supply Corp. ("EPOS") pursuant to that Assignment and Assumption Agreement dated as of March 31, 1993 and (ii) on October 27, 1992, between Texaco International Traders, Inc. ("Texaco") and EPC, as modified by that certain Modification of Agreement dated March 30, 1993 between EPC and Texaco as assigned by EPC to EPOS pursuant to that Assignment and Assumption Agreement dated as of March 31, 1993 and EPC, as either fuel supply agreement may be further amended, modified and supplemented from time to time.

(b) Section 1.29 of the O&M Agreement is hereby deleted in its entirety and the following provision substituted therefor:

1.29 Reimbursable Expense: Subject to Section 4.1, any reasonable expense or expenditure incurred by Operator in the performance of the Work, including, without limitation, (i) purchases of spare parts, tools, equipment, consumable, materials and supplies, including fuel oil which Operator supplies or causes to be supplied to Owner hereunder, (ii) Labor Costs, (iii) the direct cost of subcontract labor or services needed to perform services otherwise covered by this agreement, (iv) insurance premiums and (v) any other item covered in an approved Annual Budget.

(c) Section 2.3(l) is hereby deleted in its entirety and the following provision substituted therefor:

(l) Monitor the inventory and purchase, as agent of Owner, of all materials necessary for the operation and maintenance of the Project, required spare parts, tools, equipment, consumables and supplies, including, without limitation, fuel.

(d) Section 2.3(v) of the O&M Agreement is hereby deleted in its entirety and the following provision substituted therefor:

(v) During the term of the Fuel Agreements nominate and provide or cause to be provided, to the extent fuel is made available pursuant to the Fuel Agreements, Owner's fuel requirements and schedule and effect or cause to be effected, deliveries of fuel to the Project in such quantity and of such quality as Owner may specify and at market prices for such quantity and quality of fuel; to the extent fuel is not made available pursuant to the Fuel Agreements, use reasonable business efforts to replace such fuel supplies on the best terms which are commercially available; monitor the sufficiency of such fuel in terms of quantity and quality and provide forecasts of fuel requirements, all subject to the policy objectives of Owner; and schedule deliveries of water pursuant to the water supply agreements arranged by Owner for the Project.

(e) A new Section 2.3(ac) is hereby added to the O&M Agreement as follows:

(ac) At the request of Owner, (i) assign to Owner the Fuel Supply and Management Agreement between Operator and EPOS (the "Supply and Management Agreement"), dated March 31, 1993, and/or (ii) pursuant to Section 6 of the Supply and Management Agreement, cause EPOS to assign to Owner the Fuel Agreements or any fuel oil supply agreements entered into by Enron or Operator in replacement thereof.

(f) Section 3.1(d) of the O&M Agreement is hereby deleted in its entirety and the following provision substituted therefor:

(d) Contract for all water services, wastewater services and other utilities required for the Project; assist Operator with the procurement of fuel supplies.

(g) Section 5.1(d) of the O&M Agreement is hereby amended by deleting the phrase beginning with "provided, however," and ending with "the Operator;" and substituting in its place "provided, however, that in addition to the above, and not in limitation thereof, Operator's inability or failure to supply the Project with fuel of sufficient quality and quantity shall not operate as Force Majeure with respect to Owner."

Section 3. Reference To And Effect On the Documents.

(a) Upon the effectiveness of this Amendment, each reference in the O&M Agreement to "this Agreement", "hereunder" "hereof", or "herein" shall mean and be a reference to the O&M Agreement as amended by this Amendment.

(b) Except as the O&M Agreement is specifically amended by this Amendment, the O&M Agreement shall remain in full force and effect and is hereby ratified and confirmed.

Section 4. Execution In Counterparts. This Amendment may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed to be an original and all of which taken together shall constitute but one and the same instrument.

Section 5. Successors and Assigns. The O&M Agreement as amended by this Amendment shall be binding upon each of Owner and Operator and on their permitted successors and assigns, and shall inure to the benefit of such parties and their respective permitted successors and assigns.

Section 6. Headings Descriptive. The headings of the several sections of this Amendment are inserted for convenience only and shall not in any way affect the meaning or construction of any provisions of this Amendment.

Section 7. Governing Law. THIS AMENDMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL BE CONSTRUED IN ACCORDANCE WITH AND BE GOVERNED BY THE LAWS OF THE STATE OF DELAWARE (WITHOUT GIVING EFFECT TO THE PRINCIPLES THEREOF RELATING TO CONFLICTS OF LAW).

IN WITNESS WHEREOF the parties have executed this Amendment No. 1 to Operation and Maintenance Agreement as of the date first above written.

PUERTO QUETZAL POWER CORP.,
GUATEMALA BRANCH

By: David Shields
Name: David Shields
Its: Vice President and Chief Financial Officer

ELECTRICIDAD ENRON DE GUATEMALA, S.A.

By: D. L. Haug
Name: David L. Haug
Its: Chairman

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Hoja No. [illegible]

C.B.W.
JUN 27 1995

AMENDMENT NO. 1

TO

OPERATION AND MAINTENANCE AGREEMENT

This AMENDMENT NO. 1 TO OPERATION AND MAINTENANCE AGREEMENT ("Amendment") dated as of March 31, 1993, is between PUERTO QUETZAL POWER CORP., Guatemala Branch, a Delaware corporation, with its principal place of business at 6a. Avenida 20-25 Zona 10, Edificio Plaza Maritima, Guatemala City, Guatemala C.A. ("Owner") and ELECTRICIDAD ENRON DE GUATEMALA, S.A., a company organized under the laws of Guatemala with its principal place of business at 6a. Avenida 20-25 Zona 10, Edificio Plaza Maritima, Guatemala City, Guatemala C.A. ("Operator").

PRELIMINARY STATEMENT

WHEREAS, Owner and Operator are parties to that certain Operation and Maintenance Agreement dated as of November 13, 1992 (the "O&M Agreement); and

WHEREAS, Owner and Operator desire to modify the O&M Agreement as further set forth in this Amendment;

NOW, THEREFORE, in consideration of the premises and of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

Section 1. Definitions. As used in this Amendment, each capitalized term not defined herein shall have the meaning set forth in the O&M Agreement.

Section 2. Amendments.

(a) Section 1.13 of the O&M Agreement is hereby deleted in its entirety and the following provision substituted therefor:

1.13 Fuel Agreements: The fuel supply and transportation agreements for the Project's fuel oil requirements, entered into (i) on October 16, 1992, between Enron Products Marketing Company ("EPMC") and Enron Power Corp. ("EPC"), as modified by that certain Modification of Agreement dated March 30, 1993 between EPC and EPMC and as assigned by EPC to Enron Power Oil Supply Corp. ("EPOS") pursuant to that Assignment and Assumption Agreement dated as of March 31, 1993 and (ii) on October 27, 1992, between Texaco International Traders, Inc. ("Texaco") and EPC, as modified by

Jorge Asensio Aguirre
Abogado y Notario

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that certain Modification of Agreement dated March 30, 1993 between EPC and Texaco as assigned by EPC to EPOS pursuant to that Assignment and Assumption Agreement dated as of March 31, 1993 and EPC, as either fuel supply agreement may be further amended, modified and supplemented from time to time.

(b) Section 1.29 of the O&M Agreement is hereby deleted in its entirety and the following provision substituted therefor:

1.29 Reimbursable Expense: Subject to Section 4.1, any reasonable expense or expenditure incurred by Operator in the performance of the Work, including, without limitation, (i) purchases of spare parts, tools, equipment, consumable, materials and supplies, including fuel oil which Operator supplies or causes to be supplied to Owner hereunder, (ii) Labor Costs, (iii) the direct cost of subcontract labor or services needed to perform services otherwise covered by this agreement, (iv) insurance premiums and (v) any other item covered in an approved Annual Budget.

(c) Section 2.3(1) is hereby deleted in its entirety and the following provision substituted therefor:

(1) Monitor the inventory and purchase, as agent of Owner, of all materials necessary for the operation and maintenance of the Project, required spare parts, tools, equipment, consumables and supplies, including, without limitation, fuel.

(d) Section 2.3(v) of the O&M Agreement is hereby deleted in its entirety and the following provision substituted therefor:

(v) During the term of the Fuel Agreements nominate and provide or cause to be provided, to the extent fuel is made available pursuant to the Fuel Agreements, Owner's fuel requirements and schedule and effect or cause to be effected, deliveries of fuel to the Project in such quantity and of such quality as Owner may specify and at market prices for such quantity and quality of fuel; to the extent fuel is not made available pursuant to the Fuel Agreements, use reasonable business efforts to replace such fuel supplies on the best terms which are commercially available; monitor the sufficiency of such fuel in terms of quantity and quality and provide forecasts of fuel requirements all subject to the policy objectives of Owner; and schedule deliveries of water pursuant to the water supply agreements arranged by Owner for the Project.

(e) A new Section 2.3(ac) is hereby added to the O&M Agreement as follows:

(ac) At the request of Owner, (i) assign to Owner the Fuel Supply and Management Agreement between Operator and EPOS (the "Supply and Management Agreement"), dated March 31, 1993, and/or (ii) pursuant to Section 6 of the Supply and Management Agreement, cause EPOS to assign to Owner the Fuel Agreements or any fuel oil

Jorge Ascasio Abogado y Notario

supply agreements entered into by Enron or Operator in replacement thereof.

(f) Section 3.l(d)of the O&M Agreement is hereby deleted in its entirety and the following Provision substituted therefor:

(d) Contract for all water services, waste water services and other utilities required for the Project; assist Operator with the procurement of fuel supplies.

(g) Section 5.l(d) of the O&M Agreement is hereby amended by deleting the phrase beginning with "provided, however," and ending with "the Operator;" and substituting in its place "provided, however, that in addition to the above, and not in limitation thereof, Operator's inability or failure to supply the Project with fuel of sufficient quality and quantity shall not operate as Force Majeure with respect to Owner."

Section 3. Reference To And Effect On the Documents.

(a) Upon the effectiveness of this Amendment, each reference in the O&M Agreement to "this Agreement", "hereunder", "hereof", or "herein" shall mean and be a reference to the O&M Agreement as amended by this Amendment.

(b) Except as the O&M Agreement is specifically amended by this Amendment, the O&M Agreement shall remain in full force and effect and is hereby ratified and confirmed.

Section 4. Execution In Counterparts. This Amendment may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed to be an original and all of which taken together shall constitute but one and the same instrument.

Section 5. Successors and Assigns. The O&M Agreement as amended by this Amendment shall be binding upon each of Owner and Operator and on their permitted successors and assigns, and shall inure to the benefit of such parties and their respective permitted successors and assigns.

Section 6. Headings Descriptive. The headings of the several sections of this Amendment are inserted for convenience only and shall not in any way affect the meaning or construction of any provisions of this Amendment.

Section 7. Governing Law. THIS AMENDMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL BE CONSTRUED IN ACCORDANCE WITH AND BE GOVERNED BY THE LAWS OF THE STATE OF DELAWARE (WITHOUT GIVING EFFECT TO THE PRINCIPLES THEREOF RELATING TO CONFLICTS OF LAW).

Jorge Ascasio Aguirre Abogado Y Notario

En [illegible] Hojas
Hoja No. [illegible]

IN WITNESS WHEREOF the parties have executed this Amendment No. 1 to Operation and Maintenance Agreement as of the date first above written.

PUERTO QUETZAL POWER CORP.
GUATEMALA BRANCH

By: [signature]
Name: Jorge Asensio Aguirre
Its: Legal Representative

ELECTRICIDAD ENRON DE GUATEMALA, S.A.

By: [signature]
Name: Guillermo A. Paz Fernández
Its: General Manager

State of Texas §
§
County of Harris §

This instrument was acknowledged before me on the 13 th day of April, 1994 by Mr. Jorge Asensio Aguirre and Mr. Guillermo A. Paz Fernández.

[illegible]

Elizabeth R. Beights
Notary Public in and for
The State of Texas

ELIZABETH R. BEIGHTS
Notary Public, State of Texas
My Commission Expires
JULY 19, 1997

Jorge Asensio Aguirre
Abogado
- Y -
Notario

EC2 000034567

AMENDMENT NO. 2
TO
OPERATION AND MAINTENANCE AGREEMENT

This Amendment No. 2 to Operation and Maintenance Agreement (*"Amendment"*), dated August 22, 1995, is by and between **PUERTO QUETZAL POWER CORP.**, Guatemalan Branch, a Delaware corporation, with its principal place of business at 6a. Avenida 20-25 Zona 10, Edificio Plaza Marítima, Guatemala City, Guatemala, C.A. (*"Owner"*), and **ELECTRICIDAD ENRON DE GUATEMALA, S.A.**, a company organized under the laws of Guatemala, with its principal place of business at 6a. Avenida 20-25 Zona 10, Edificio Plaza Marítima, Guatemala City, Guatemala, C.A. (*"Operator"*).

PRELIMINARY STATEMENT

WHEREAS, Owner and Operator are parties to that certain Operation and Maintenance Agreement dated as of November 13, 1992, as amended (the *"O&M Agreement"*); and

WHEREAS, Owner and Operator desire to modify the O&M Agreement as further set forth in this Amendment;

NOW, THEREFORE, in consideration of the premises, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

Section 1. Amendments.

(a) Section 4.02(a) is hereby amended by reducing the amount of the monthly Fixed Fee described in such Section from 3.75% of the Project's Gross Revenues (as defined in the O&M Agreement) to 1.8% of the amount derived at by deducting total fuel costs from the Project's Gross Revenues

(b) Section 4.02(b) is hereby deleted in its entirety.

Section 2. Effectiveness. The amendments described in Section 1 above shall be effective as of August 1, 1995.

Section 3. Reference To And Effect On the Documents.

(a) Upon the effectiveness of this Amendment, each reference in the O&M Agreement to "this Agreement", "hereunder", "hereof", or "herein" shall mean and be a reference to the O&M Agreement as amended by this Amendment.

(b) Except as the O&M Agreement is specifically amended by this Amendment, the O&M Agreement shall remain in full force and effect and is hereby ratified and confirmed.

Section 4. Execution In Counterparts. This Amendment may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed to be an original and all of which taken together shall be deemed to be an original and all of which taken together shall constitute but one and the same instrument.

Section 5. Successors and Assigns. The O&M Agreement as amended by this Amendment shall be binding upon each of Owner and Operator and on their permitted successors and assigns, and shall inure to the benefit of such parties and their respective permitted successors and assigns.

Section 6. Governing Law. THIS AMENDMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL BE CONSTRUED IN ACCORDANCE WITH AND BE GOVERNED BY THE LAWS OF THE STATE OF DELAWARE (WITHOUT GIVING EFFECT TO THE PRINCIPLES THEREOF RELATING TO CONFLICTS OF LAW).

IN WITNESS WHEREOF, the parties have executed this Amendment No. 2 to the Operation and Maintenance Agreement as of the date first written above.

PUERTO QUETZAL POWER CORP.,
GUATEMALA BRANCH

By: _____
Name: Roberto Figueroa
Title: General Manager

ELECTRICIDAD ENRON DE GUATEMALA, S.A.

By: _____
Name: DAVID L HAUG
Title: Chairman

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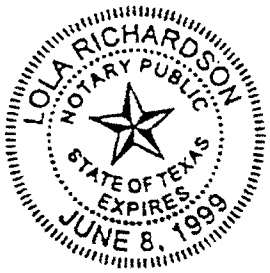
State of Texas §
§
County of Harris §

Before me, Lola Richardson, a notary public, on this day personally appeared DAVID L. HAUG, Chairman of Electricidad Enron de Guatemala, S.A., known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purpose and consideration therein expressed.

Given under my hand and seal of office this 22nd day of August, 1995.



Lola Richardson
Notary Public in and for
the State of Texas
My commission expires: June 8, 1999

AMENDMENT NO. 3

TO

OPERATION AND MAINTENANCE AGREEMENT

This Amendment No. 3 to Operation and Maintenance Agreement ("*Amendment*"), dated December 31, 1995, is by and between PUERTO QUETZAL POWER CORP., Guatemalan Branch, a Delaware corporation, with its principal place of business at 6a. Avenida 20-25 Zona 10, Edificio Plaza Maritima, Guatemala City, Guatemala, C.A. ("*Owner*"), and ELECTRICIDAD ENRON DE GUATEMALA, S.A., a company organized under the laws of Guatemala, with its principal place of business at 6a. Avenida 20-25 Zona 10, Edificio Plaza Maritima, Guatemala City, Guatemala, C.A. ("*Operator*").

PRELIMINARY STATEMENT

WHEREAS, Owner and Operator are parties to that certain Operation and Maintenance Agreement dated as of November 13, 1992, as amended (the "*O&M Agreement*"); and

WHEREAS, Owner and Operator desire to modify the O&M Agreement as further set forth in this Amendment;

NOW, THEREFORE, in consideration of the premises, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

Section 1 Amendments. The O&M Agreement is hereby amended as follows:

(a) Section 1.10 is amended by deleting all text after the numeral "1.10" and substituting the following language therefor: "This section intentionally left blank."

(b) Section 1.13 is deleted in its entirety and the following language is substituted therefor:

1.13 Fuel Agreement: The fuel agreement for the Project's fuel oil requirements, entered into on December 31, 1995 between Enron Power Oil Supply Corp. and Puerto Quetzal Power Corp. as amended and modified from time to time.

(c) Section 1.19 is hereby amended to (i) delete the phrase "Reimbursable Expenses," in lines 3 and 4, and (ii) delete the phrase "and Economic Dispatch Incentive Fees" in line 4.

(d) A new Section 19(a) is added as follows:

1.19(a) Operator's Reimbursement Statement: A written document provided by Operator to Owner on a monthly basis requesting the amount due to Operator for Reimbursable Expenses, accompanied by any substantiating documentation required herein.

(e) A new Section 1.32 is added as follows

1.32 Administrative and Commercial Support Agreement: the Administrative and Commercial Support Agreement between Enron Global de Guatemala, S.A. and Puerto Quetzal Power Corp.effective December 31, 1995.

(f) Section 2.1 is amended by deleting the phrase "the Fuel Agreements," in line 8.

(g) Section 2.3 is amended by deleting the word "During" at the beginning of the first sentence and substituting the following therefor: "Except for the services provided under the Administrative and Commercial Support Agreement and the service provided under the Fuel Agreement, during"

(h) Section 2.3(d) is amended by changing the bracketed numeral "(30)" to "(60)" to correctly reflect the sixty day time period referenced in the section.

(i) Section 2.3(e) is amended by changing the bracketed numeral "(30)" to "(60)" to correctly reflect the sixty day time period referenced in the section.

(j) Section 2.3(v) is amended by deleting the term "Fuel Agreements" in line 3 and substituting therefor the term "Fuel Agreement".

(k) Section 4.1, lines 2 and 14-15 are amended by deleting the term "Operator's Invoice" and substituting therefor the term "Operator's Reimbursement Statement". The following sentence is added to the end of Section 4.1: "Each Operator's Reimbursement Statement shall comply with Section 1.8 of the Agreement Regarding O&M Agreement dated as of March 31, 1993 among King Ranch Power Corp., Enron Development Corp., and Electricidad De Guatemala, S.A."

(l) Section 4.3, line 9 is amended by changing the word "seventy" to "ninety" to correctly reflect the ninety day time period referenced in the section.

(m) Section 4.7 is amended (i) by adding the phrase "or Operator's Reimbursement Statement" after the term "Operator's Invoice" in line 1 and

(ii) by adding the phrase "or statement is reimbursed" after the phrase "pertinent invoice is paid" in line 6.

Section 6.4, lines 5-6 are amended by deleting the term "Operator's Invoice" and substituting therefor the term "Operator's Reimbursement Statement".

Section 2. Effectiveness. The amendments described in Section above shall be effective as of January 1, 1996.

Section 3 Reference To and Effect On the Documents.

Upon the effectiveness of this Amendment, each reference in the O&M Agreement to "this Agreement", "hereunder", "hereof", or "herein" shall mean and be a reference to the O&M Agreement as amended by this Amendment.

Except as the O&M Agreement is specifically amended by this Amendment, the O&M Agreement shall remain in full force and effect and is hereby ratified and confirmed.

Section 4. Execution in Counterparts. This Amendment may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed to be an original and all of which taken together shall be deemed to be an original and all of which taken together shall constitute but one and the same instrument.

Section 5. Successors and Assigns. The O&M Agreement as amended by this Amendment shall be binding upon each of Owner and Operator and on their permitted successors and assigns, and shall inure to the benefit of such parties and their respective permitted successors and assigns.

Section 6. Governing Law. THIS AMENDMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL BE CONSTRUED IN ACCORDANCE WITH AND BE GOVERNED BY THE LAWS OF THE STATE OF DELAWARE (WITHOUT GIVING EFFECT TO THE PRINCIPLES THEREOF RELATING TO CONFLICTS OF LAW).

IN WITNESS WHEREOF, the parties have executed this Amendment No. 3 to the Operation and Maintenance Agreement as of the date first above written.

PUERTO QUETZAL POWER CORP.,
GUATEMALA BRANCH

By: _____
Name: William C. Horwitz
Title: Chairman of the Board

ELECTRICIDAD ENRON DE
GUATEMALA, S.A.

By: _____
Name: William C. Horwitz
Title: Vice President, Vocal

I:\PAXTON\PAXTON\WP61\AMEND3-0.WP6

STATE OF TEXAS §
§
COUNTY OF HARRIS §

Before me, Kathryn M Tunstall, a notary public, on this day personally appeared William C. [illegible], Vice President, Vocal of Electricidad Enron de Guatemala, S.A., known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purpose and consideration therein expressed.

Given under my hand and seal of office this 31st day of December, 1995

KATHRYN M. TUNSTALL
MY COMMISSION EXPIRES
January 22, 1998

Kathryn M Tunstall
Notary Public in and for the State of Texas
My Commission expires: 1-22-98

EC2 000034575

FUEL SUPPLY AND MANAGEMENT AGREEMENT

This Fuel Supply and Management Agreement (this "Agreement") is dated as of this 1st day of April, 1993 by and between Electricidad Enron de Guatemala, S.A., a company organized under the laws of Guatemala with its principal place of business at 6 a. Avenida 20-25 Zona 10, Edificio Plaza Maritima, Guatemala City, Guatemala C.A. ("Operator") and Enron Power Oil Supply Corp., a Delaware corporation with its principal place of business at Three Allen Center, 333 Clay Street, Houston, Texas 77251-1188 ("EPOS").

PRELIMINARY STATEMENT

WHEREAS, Operator has entered into an Operation and Maintenance Agreement dated November 13, 1992 with Puerto Quetzal Power Corp. ("Puerto Quetzal"), as amended by Amendment No. 1 to Operation and Maintenance Agreement dated as of March 31, 1993, which provides, inter alia, for Operator, at the request of Puerto Quetzal, to obtain and supply to Puerto Quetzal certain quantities of fuel oil for use by Puerto Quetzal in electric power generating facilities to be owned and operated by Puerto Quetzal; and

WHEREAS, Operator desires to utilize the services of Enron in the procurement and supply of fuel oil; and

WHEREAS, EPOS has access to fuel oil supplies pursuant to those two fuel oil supply agreements (jointly, the "Supply Agreements") entered into (i) on October 16, 1992 between Enron Products Marketing Company and Enron Power Corp. ("EPC"), as modified by a Modification of Agreement dated March 30, 1993; and (ii) on October 27, 1992 between Texaco International Traders, Inc. and EPC, as modified by a Modification of Agreement dated March 30, 1993; and

WHEREAS, the Supply Agreements have been assigned by EPC to EPOS pursuant to those two certain Assignment and Assumption Agreements dated as of March 31, 1993, between EPC and EPOS; and

WHEREAS, Operator and EPOS now desire to set forth the terms pursuant to which EPOS will provide such services to Operator;

NOW, THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

Senate Finance Committee

EXHIBIT 21

Section 1. Fuel Supply. During the Term (as defined below) of this Agreement, EPOS shall, at the request of Operator upon reasonable prior notice, supply or cause to be supplied, to the extent fuel oil is made available pursuant to the Supply Agreements, to Operator or a designee of Operator at the Delivery Point such quantities of fuel oil as are requested by Operator; provided, however, to the extent fuel oil is not made available pursuant to the Supply Agreements, EPOS shall use its reasonable business efforts to replace such fuel supplies on the best terms which are commercially available. During the term of the Supply Agreements, EPOS shall cause fuel oil procured pursuant to such agreements to be supplied to Operator or a designee of Operator pursuant to this Agreement.

Section 2. Term. The term of this Agreement (the "Term") shall commence as of the date of this Agreement and shall terminate on the fifteenth (15th) anniversary of the date of this Agreement, unless extended by mutual agreement of the parties.

Section 3. Quality. The quality of the fuel oil shall be as specified in the written request of Operator, provided that fuel oil of such quality is reasonably available in the commercial market.

Section 4. Delivery Point. The point at which fuel oil shall be delivered to Operator or Operator's designee (the "Delivery Point") shall be the electric power generating facilities of Puerto Quetzal located in Puerto Quetzal, Department of Escuintla, Guatemala.

Section 5. Price; Payments. In exchange for the fuel supply and management services to be provided by EPOS hereunder, Operator agrees to pay, or cause to be paid, to EPOS an amount each month equal to the sum of (i) an amount equal to six percent (6%) of the gross monthly revenues of Puerto Quetzal in such month (the "Monthly Fee"), and (ii) the invoice amounts actually paid by EPOS to its fuel oil suppliers to procure the supplies that are delivered in such month pursuant to this Agreement; provided, however, that in lieu of EPOS receiving payment of such invoice amounts from Operator, EPOS shall have the option to require that Operator pay, or cause to be paid, directly to EPOS's fuel suppliers the amounts invoiced by such suppliers to EPOS. In such event, EPOS shall cause copies of the suppliers' invoices to be forwarded to Operator promptly upon EPOS's receipt of such invoices. Operator will cause the payment of such amounts to be made in the manner set forth in this Section 5 within the time specified in the supplier's invoice.

Section 6. Assignment of Supply Agreements. EPOS agrees that, upon the written request of Operator, EPOS shall assign to Operator or to Operator's designee the Supply Agreements or any replacement fuel oil supply agreements that EPOS has entered into

for the purpose of supplying fuel oil to Operator and Puerto Quetzal. Following any such assignment, (i) EPOS shall be relieved of its obligation to supply fuel oil hereunder to the extent that Operator or its designee is procuring fuel oil directly from such fuel suppliers and (ii) Operator shall remain obligated to pay the Monthly Fee to EPOS as provided in Section 5 of this Agreement.

Section 7. Execution In Counterparts. This Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed to be an original and all of which taken together shall constitute but one and the same instrument.

Section 8. Assignment, Successors and Assigns. This Agreement may not be assigned by either party without the prior written consent of the other party; provided, however, that EPOS hereby grants its consent to (i) the assignment by Operator to Puerto Quetzal of this Agreement, and/or (ii) the collateral assignment by Operator of this Agreement to any party in connection with any financing arrangements related to Puerto Quetzal's electric power generating facilities. This Agreement shall be binding upon each of the Operator and EPOS and on their permitted successors and assigns, and shall inure to the benefit of such parties and their respective permitted successors and assigns.

Section 9. Headings Descriptive. The headings of the several sections of this Agreement are inserted for convenience only and shall not in any way affect the meaning or construction of any provisions of this Agreement.

Section 10. Governing Law. THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL BE CONSTRUED IN ACCORDANCE WITH AND BE GOVERNED BY THE LAWS OF THE STATE OF DELAWARE (WITHOUT GIVING EFFECT TO THE PRINCIPLES THEREOF RELATING TO CONFLICTS OF LAW).

Section 11. Prior Agreement. This Agreement shall supersede that certain Fuel Supply and Management Agreement between Operator and EPOS dated March 31, 1993.

IN WITNESS WHEREOF the parties have executed this Fuel Supply and Management Agreement as of the date first above written.

ELECTRICIDAD ENRON DE GUATEMALA, S.A.

By: _____
Name: David L. Haug
Its: Chairman

ENRON POWER OIL SUPPLY CORP.

By: _____
Name: Robert H. Walls, Jr.
Its: Vice President and General Counsel

AMENDMENT NO. 1
TO
FUEL SUPPLY AND MANAGEMENT AGREEMENT

This Amendment No. 1 to Fuel Supply and Management Agreement (this *"Amendment"*), dated effective as of March 1, 1995, is by and between ELECTRICIDAD ENRON DE GUATEMALA, S.A., a company organized under the laws of the Republic of Guatemala (*"Operator"*), and ENRON POWER OIL SUPPLY CORP., a Delaware corporation (*"EPOS"*).

PRELIMINARY STATEMENT

WHEREAS, Operator and EPOS are parties to that certain Fuel Supply and Management Agreement dated as of March 31, 1993 (the *"Agreement"*);

WHEREAS, pursuant to an Assignment and Assumption Agreement of even date herewith, Operator has assumed certain obligations of EPOS; and

WHEREAS, in consideration of the foregoing, Operator and EPOS desire to amend the Agreement as further set forth in this Amendment;

NOW, THEREFORE, in consideration of the premises, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

Section 1 Amendments.

(a) Section 5(i) of the Agreement is hereby deleted in its entirety.

(b) Section 6(ii) of the Agreement is hereby deleted in its entirety.

Section 2. Execution In Counterparts. This Amendment may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed to be an original and all of which taken together shall constitute but one and the same instrument.

Section 3. Governing Law. This Amendment and the rights and obligations of the parties hereunder shall be construed in accordance with and be governed by the laws of the State of Delaware, without giving effect to the principles thereof relating to conflicts of laws.

IN WITNESS WHEREOF, the parties have executed this Amendment No. 1 to Fuel Supply and Management Agreement as of the date first written above.

ELECTRICIDAD ENRON DE GUATEMALA, S.A.

By: _____
David L. Haug
Chairman

ENRON POWER OIL SUPPLY CORP.

By: _____
Kurt S. Huneke
Vice President, Finance and Treasurer

ENRON
Power Corp.

Interoffice
Memorandum

To: David Odorizzi

From: Carl Waldo

Department: Operations

Subject: Payment and Tax Problems Re 6% Sun King Obligation - Guatemala Operations

Date: May 26, 1993

This is in response to your request for details on the subject made at Monday's staff meeting.

BACKGROUND

Enron Development Corp. entered into an agreement with Texas-Ohio Power, Inc. (the "TOP agreement") on March 12, 1992 whereby in consideration for TOP transferring the Power Contract with Empresa to EDC, EDC agreed to pay (among other sums) "an amount each month equal to 6% of the gross revenues generated by the sales of electricity and payment for contract capacity under the Power Contract."

EDC pays 6% of Gross Rev to TOP Texas Ohio Pow assigned to Sunking Trading Co.

In a letter dated March 12, 1992, TOP notified EDC that the "right of a monthly payment of a 6.0% of the gross revenues...has been legally and effectively assigned in favor of SUN KING TRADING COMPANY, INC." The letter further stated that "any monthly payment...must be paid directly to the assignee, SUN KING TRADING COMPANY, INC., 6a. Avenida 20-25 zona 10, 8th floor, Guatemala City, Guatemala," and further requested that EDC notify Sun King of the receipt of this letter.

David Haug, by letters dated March 13, 1992 acknowledged receipt of the letter to TOP and informed Sun King of receipt of the TOP letter and acknowledged that EDC would make the required monthly payments directly to Sun King per that letter.

Thus, it was established that the Sun King group would receive a monthly payment equal to 6% of the gross revenues of Puerto Quetzal. This has been shown in various projections and budgets as "Guatemalan share of revenue." *

You will note that the TOP agreement (as quoted above) gave a local address for the payment and was silent as to the denomination of the currency of payment.

Since Empresa Electrica pays us in Quetzals for the Capacity and Energy - although the rates are quoted in U.S. dollars in the Power Purchase Agreement - PQ must go through the auction process to acquire the dollars it needs to operate - the initial assumptions were that this Sun King payment would be a) made locally and b) in Quetzales. Under such circumstances the payment would be subject to VAT of 7% and a Withholding Tax of 4%.

4% WITHHOLDING TAX
7% VAT TAX

Sun King then announced through Oswal Herbruger, a member of the Group, that Sun King is entitled to receive payment in either Quetzales or dollars and disputes the withholding or deduction of any tax.

was this in writing

EC2 000036574

Senate Finance Committee

EXHIBIT 22

EDC agreed to the option of dollars or Quetzales which was tied to which bank account Sun King instructed us to pay into.

On March 1, 1993 David Haug received a letter requesting that the monies be paid into either one of two named bank accounts in Miami for credit to Deutsch - Suedamerikanische Bank A.G., Miami Agency. This meant that they had opted to receive the payment in dollars.

It was also revealed that Sun King Trading Company, Inc. was a Panamanian Corporation not registered in Guatemala.

Payments of this nature by a Guatemalan entity to a person or company abroad is subject to a 25% Withholding Tax and a 3% Stamp Tax.

Procedures had been written by Eric Wycoff outlining the treatment, including withholdings, to be applied to both Quetzal and USD payments to Sun King. This further provided for deducting any costs of conversion to dollars from the payment as well as providing that we could pay in Quetzales in such case as the currency exchange market could not provide adequate dollars or if government restrictions prevented PQPC from obtaining dollars.

These procedures were under discussion when we discovered that the tax law contained the following limitations on such payments.

ROYALTIES

Payments made for the use of trade marks and patents registered in the Industrial Property Register, formulas, manufacturing rights. However, these payments may in no case exceed 5% of gross income. (If paid abroad will require 25% withholding tax and 3% stamp tax)

COMMISSIONS

Payments representing commissions on sales or fees for technical, financial, scientific services are limited to 1% of gross income or 15% of Guatemalan worker payroll, whichever is greater. (If paid abroad will require 12 1/2% withholding tax and 3% stamp tax)

These restrictions "threw a spanner" into the entire matter:

A. The payment to Sun King could not qualify as a "royalty" as defined in the law and, of course, exceeds the 5% limitation.

B. The payment also did not fit the definition of commission or fee - the 1% limit notwithstanding.

In addition, Sun King continued objecting to the withholding of any taxes whatsoever.

In an attempt to overcome these problems the Fuel Supply and Management Agreement was drawn up between EPOS and Electricidad Enron ("EE") which provided that EPOS would sell the fuel oil to EE acquired under the current contract with Texaco and such other additional fuel that may be required. EE would pay EPOS an amount each month equal to 6% of Puerto Quetzal's gross revenue in exchange for "fuel supply and management services." In addition, EPOS could opt to have EE pay the fuel supplier direct rather than through EPOS. (In the case of the first Texaco invoice to come through EPOS, the payment was made to Texaco out of EPOC. I prepared an EPOS invoice to EE, which PQPC paid out of the USD account at NationsBank.)

The problem with this new procedure is that this 6% amount is still a separate item of payment and, as described in the contract, is subject to a 1% limitation (as well as a 25% withholding tax and the 3% stamp tax)

Based on the current estimate for the period April 1 through December 31, 1993, the 6% payments to EPOS would aggregate $2,217,000 of which only $28,800 would be deductible in EE. (EE's estimated gross rev. April - Dec. being $2,876,590 X 1%)

Roberto Garcia, whom everyone claims opined that this arrangement avoided any tax problems, maintains that his understanding was that the 6% was to be billed as part of the fuel price and not as a separate "fee." This too should have been recognized as a nonstarter, however, since a markup of that magnitude cannot possibly be acceptable since it results in an entry price for above "going market price."

I made a study of the markup necessary to the fuel price in order to include the 6% factor (ignoring the timing problem arising out of a monthly payment obligation to Sun King vs. an estimated total of 7 - 8 cargoes of fuel per year!). Based on barrels projected to be consumed over the nine months to December 31st and the 6% payments projected over that period, the fuel would have to be marked up by $2.36 per barrel. The May 1st cargo of fuel cost $14.825 per barrel including transportation and insurance etc., the markup would raise this to $17.185. This is grossly above market and it is all but assured that the authorities would not allow it as a tax cost in Guatemala. (Roberto Garcia is preparing an opinion on this point.)

Solution

The most obvious solution would be for PQPC to assume the obligation, splitting the payment between a royalty agreement with Enron for the use of Enron's trademark/logo in Guatemala providing for a 5% royalty (nebulous since PQPC does not use the logo) and a 1% fee for services to be supported by a credible contract with (EPOC?). These payments would be subject to the withholding tax of 25% and 12.5% respectively, plus stamp tax of 3%. Enron would then pay the net amount to Sun King via the Miami bank.

This, however, is NOT ALLOWED under our agreement with IFC!

Although Roberto suggested the same scenario through EE, it can't work since EE's gross revenues are only $2.9 MM/year and the 5% and 1% limitations would result in most of the payments becoming nondeductible

Pump this up by including fuel, O&M etc?

Turnover? + fuel etc

Eric Wycoff had a scheme several months ago which involved buying the Sun King "royalty" out on a NPV basis and then setting up a Royalty Trust in Guatemala, selling this publicly and recouping our buy out. The payments would then be local, in Quetzales, subject to local taxes without argument, and possibly gain some valuable goodwill and recognition for Enron/PQPC.

Although this idea generated some enthusiasm at one point, it apparently never progressed beyond the concept stage.

This problem, therefore, remains with us and I do not see a workable solution.

Part of the problem are the tax law limitations. Another facet is Sun King's insistence on receiving dollars, outside of Guatemala, not subject to withholdings of any kind.

Since our formal agreement with TOP did not specify any of the conditions later imposed by Sun King and since the letter of assignment by TOP to Sun King specified payment to a local Guatemala City address thus implying payment in Quetzales, and since Guatemalan tax laws require withholdings on such payments, I suggest we ignore these after-the-fact demands by Sun King. We should pay locally, in Quetzales, net of taxes. This removes one segment of influence on our solution attempts, i.e. the desire to accommodate Sun King beyond the scope of the signed agreements. → OK!

The only problem then remaining is for some structure that would fit the percentage limitations in the tax law. The solution to this latter point escapes me at the moment!! → SK would not pay tax, pay the net amount

An outstanding issue remains concerning 6% payments already made to Sun King:

-April 12th $219,330.27 wire transferred from EPOC to Miami bank per R. Lammers.

-May 13th $256,696.09 wire transferred from EPOC to Miami bank per R. Lammers.

These payments were made covering the gross 6% without any withholdings for taxes. When PQPC repays EPOC/EPOS we will have to pay the withholding and stamp tax. Either PQPC will have to "eat" this or Sun King will have to bear an adjustment on subsequent payments. The decision has to be made! (Jim Steele and/or David Haug are the original deal-makers on this.)

There are other problems outstanding in our Guatemalan business which should be focussed upon.

Per the information requested in the letter from the United States Senate to Mr. Raymond P. Bowen, Jr. dated June 27, 2002, the responses by item number are as follows:

(5a) For the service months from 1993 through September 1994, the receivable entries (or debit entries) from EEG for the payments due for the B&H fee (or reimbursement of the Sun King payments) were recorded to Co. 482-Enron Power Oil Supply Corp (EPOS), Acct. 1460-452 A/R from EEG. The balance transferred into this account of $1,733,197.32, from the MSA system (prior accounting system used, until the Sun System was adopted), represents the entire 1993 receivable excluding August 1993. The August 1993 amount of $247,003.35 was recorded to this account in January 1994.

For the service months from October 1994 through December 1994, the receivable entries (or debit entries) from EEG for the payments due for the B&H fees (or reimbursement of the Sun King payments) were recorded to Co. 494 Enron Power Fuel Corp., Acct. 1460-452 A/R from EEG.

For the service months from 1993 through July 1994, the cash received (or credit entries) from EEG, were initially recorded to Co. 494-Enron Power Fuel Corp, Acct. 1460-482, which is the intercompany account with Co. 482-Enron Power Oil Supply Corp. (EPOS), since Co. 494 was the recipient of the cash. During this period, Co. 482 reflects the receivable from Co. 494, with the credit to Co. 482-Enron Power Oil Supply Corp. (EPOS), Acct. 1460-452 A/R from EEG.

For the service months from August 1994 through December 1994, the cash received (or credit entries) from EEG, were recorded to Co. 494 Enron Power Fuel Corp, Acct. 1460-452 A/R from EEG.

(5b) Any supporting journal entries are attached with the account listings. This support does not cover any requested information other than the journal entries.

(6a) and (6b) The payments made to Sun King were debited to the A/R from EEG accounts, as mentioned above. The credits were to the Sun King Trading Co. vendor account (No. 2322027899) on the following companies for the referenced time periods: a) during the service months of 1993 through February 1994, the payments (credits) were recorded on Co. 412 Enron Development Corp, b) during March 1994 through September 1994, the payments (credits) were recorded on Co. 472 Enron International Holdings Corp., and c) during October 1994 through February 1995, the payments (credits) were recorded on Co. 494 Enron Power Fuel Corp. Any supporting wiring transfer requests are included behind the applicable journal entry support.

Please note that any payments made by Co. 412 and Co. 472, were funded by Enron Corp. Any payments made through Co. 494 were funded by that entity with the associated credit to Acct. 1310-085 Cash-Nations Bank.

(6c) Attached please find a summary previously prepared, which itemizes the Sun King payments and the amounts received from EEG for Brokerage & Handling Charge

EC 001911594

Senate Finance Committee

EXHIBIT 23

(B&H Charge). Please note the reference to the side of the applicable amounts, which corresponds to the applicable amounts in Acct. 1460-452 A/R from EEG accounts on Co. 482 and Co. 494.

Misc. Notes:

(a) The support is organized first by company number, and second by general ledger account number. Each new account has a downloaded activity report, which looks very similar to an Excel spreadsheet as well as the Sun System generated report of the same activity. Behind each account activity report, are the individual journal entries referenced on the account activity.

(b) Reports titled "Account Listing" are Sun System generated reports of all the postings to a specified account. On these reports, any reference of "D" after the amount represents a debit and any reference of "C" represents a credit.

(c) Reports titled "Journal Listing" are the specific journal entry for the referenced journal number. On these reports, any reference of "DR" represents a debit and any reference of "CR" represents a credit.

M E M O R A N D U M

TO: DAVID ODORIZZI

FROM: JORGE ASENSIO A

REF.: SUN KING BUY OUT APPROACH

DATE: DECEMBER 13, 1993

The Sun King issue is one that has captured the attention of everyone involved in the Guatemalan project. We have all expressed a number of opinions in respect of all aspects of this association. This memo is my contribution to help you in the formation of alternatives for an eventual negotiation. It is very clear to me that we have to come to grips with this issue, in order not to jeopardize the whole project, neither in it's local reputation nor in the internal fiscal aspects of such payments.

These opinions are very personal, and derive of what I know of the group, of what I feel ought to be a good solution for Enron, and of my personal experience as a professional in Guatemala. This is not a legal opinion, nor should it be taken as a legal guideline to solve the problem.

1) The group is formed by friends (pal's) who have in common being well off. They are not formal partners in any other endeavors but Sun King. This is not a formal business group like you find in other cases: sugar, coffee, banking, etc. As wealthy individuals that they are, they have the capacity to establish contacts, make pressure, and represent your interests. One of the guys seems to be closer to the army than others, this can be of some benefit if in a given situation if we need to approach the army, but as a group, Sun King is meaningless. In other words, we could be much better off by sustaining individual relationships with one or the other guy, than by having them as a group.

Individual Possibilities

As relatively powerful as they are, we definitely don't want them against our interests if something goes wrong. On the other hand, I feel that Enron has overplayed their influence, and power. Our project is pretty well consolidated now, and the only thing that can go wrong is that the same Sun King group be made public.

Senate Finance Committee

EXHIBIT 24

2) In my view, the whole affair with Sun King has been approached with some fear, with an excess of preponderance, too complacent. This has lead the company to give-in in almost all respects, but more specifically in the way the payments have to be made. Other aspects of our association with S.K. prove this: =we picked office space in a building where one member of S.K. is a partner in order to show our gratitude; =we hired the wife of another S.K. member to decorate the office, etc.

As a consequence of this generous treatment, they have felt a certain dependance of Enron on Sun King. If not dependance, they have felt that Enron can't find its way around Guatemala without them, both things which are not true.

If you give any credibility to these aspects, you have to agree with me that negotiating a buy out is a complicated task. If you negotiate under this atmosphere, they will be calling the shots, not us.

3) I always argued that Enron had to level its position vis-a-vis Sun King. In a certain way I felt that Enron wanted to be more "business like" with Sun King, but didn't dare due in great measure to what I describe above.

I personally feel that Sun King did not deliver all the offerings, representations or promises made during the negotiations. Indeed: I understand that they manifested that imports didn't have to pay import duty, that there would be no problem with the Port Authority, that the project would be well taken by everyone in Guatemala, etc.

If any of the above is true, I sincerely believe that Enron has a valid case in presenting a claim, a formal complaint, a dissatisfaction. In doing so, Enron has to stress that it's association with Sun King brought very little benefits, that sharing all that investment with them is too much for the benefits that were NOT there. Personally I feel that what S. K. did, was introduce Texas Ohio to President Serrano, and talked him into signing the contract. It is the typical "finder fee" arrangement, with the only difference that the fee was -for that service- completely out of hand.

This possible claim, could put Enron in a much better position for a buy out. It's simple: Sun King would know, that if they dare sue you for not complying our contract, Enron's defense would also be powerful. If you convey the idea that Enron in many respects is not happy, you'll be sending the correct message to induce a buy out.

4) Now come the fiscal considerations. Let's face it, the correct way to pay the 6% is by all means through a Quetzal payment in Guatemala, with VAT tax, withholding and all. The stress that we have gone through in trying to pay abroad, to pay tax free, and to pay in dollars, has put this company against the wall, and such payments could severally injure the company in the future.

As a matter of negotiating, we have to come to S.K. and explain what should be evident to them: that we can only pay in quetzales, in Guatemala and complying with all fiscal laws. This overwhelming reality, established by so many opinions, is by all means supportable by Enron, a crude reality, and a business decision that has to be taken now, in order not to mess our first tax return.

Guatemala tax return

If we do this, again our negotiating position will be strengthen, due in great deal to a lesser interest by S.K. to accumulate local currency. In fact, I would start (or continue) the negotiations with S.K. with a concrete manifestation on our part, that we can only pay in Quetzales, that we can not violate the law, that the S.K. agreement can not force us to brake the law. After stating this, I would wait for their reaction, and not touch the possibility of a buy out any more. I would even allow some time to have this system work, in order for them to feel the pressure. Here, the only risk is that they can come to us and say that such payments are risky, that the local community may find out what happened. We have to be strait from the beginning, and respond that we don't care about that problem, and that in any event, this is a much lesser problem that what the other payments can represent in the future.

Paying in quetzales is by no means a violation of our agreement. The agreement only states that they can select a bank to receive deposits. This does not mean that all payments have to be made in dollars. This also means that they can not force us to break the law. These are very important bargaining positions.

5) If these arguments are properly presented, I hope to see a more consolidated position by Enron. The important thing, above all, is that Enron should not be worried as to the consequences of a negotiation of this type. Please don't take the position that if you start a negotiation of this kind, S.K. will get angry, upset, or that it might sue, or that it will harm us in Guatemala. We have to take a strong stand, and have them feel that they are no longer dealing with Development.

MAR 12 '93 16:12 FROM ENRON TO 96466022 PAGE.002
MAR 12 '93 13:54 PAGE.002

ENRON CORP

Interoffice Memorandum

To: Distribution

From: Ron Teitelbaum RT

Department: Corporate Tax

Subject: Sun King Commission

Date: March 12, 1993

As part of their original contract negotiations Texas Ohio Power ("TOP") agreed to pay a commission to Sun King ("SK") equal to 6% of gross revenues from electricity sales at Puerto Questale. The commission was assumed by EDC when the TOP contract was acquired, later assumed by PQPC as part of the transfer of the PPA, and finally assumed by EEG as part of the management fee arrangement.

The IFC has objections to PQPC paying the commission to SK as this payment has the potential to interfere with PQPC's ability to service the debt owed to the IFC. At any time that plant capacity fell below a certain level, there would not be enough cash flow to pay both SK and the IFC. The management fee arrangement between PQPC and EEG included two components. The first was a regular management fee. The second component was a fee based on the capacity of the PQPC plant. This second component is intended to provide EEG with enough cash to satisfy the liability to SK. The capacity based fee is only payable when capacity is above a certain threshold. The IFC accepted the second component of the management fee contract because it was only payable when PQPC was profitable enough to pay its debt service also.

KPMG has informed Enron that the commission to SK is not deductible in Guatemala, except to the extent that it does not exceed 1% of the gross receipts of the payor. The restriction on deductibility is because SK is not a resident of Guatemala. If the commission is paid out of EEG, the result will be an additional income tax burden equal to 1.5% of the gross receipts of the project for its entire period of operations. This totals about $14 million for the entire 15 year contract. The deductibility of 1% of gross receipts is lost because EEG's gross receipts are much less than PQPC's.

It is possible to improve this situation if the liability to pay the commission is moved back to PQPC under terms that should be acceptable to the IFC. This has the benefit of being able to use the 1% of gross receipts deduction in Guatemala. The U.S. tax rate will be 36%, which works out to be more than the effective Guatemalan tax rate. Absorption of most of the additional Guatemalan taxes through the U.S. foreign tax credit is possible. This minimizes the impact of the additional Guatemalan taxes on earnings.

Senate Finance Committee

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To satisfy the IFC Enron could agree to make cash advances to PQPC whenever the 6% commission due to SK exceeds a formula amount. The formula amount will be similar to the second component of the management fee as it will be payable only when plant capacity is above a certain threshold. Whenever the formula amount is more than the 6% commission, PQPC will pay back the advances to Enron. This leaves the parties in about the same position they would have been in before, because Enron would have had to fund any deficit that occurred at EEG.

The mechanics of moving the liability to pay SK back to PQPC are minimal. PQPC and EEG mutually rescind their management fee contract and enter into a new contract where only a management fee is paid.

RT/acb:skcomm.gua

Distribution:
David Haug
Rick Lammers
David Shields
Eric Wykoff
Rob Walls

TOTAL PAGE.003 **

To: Bill Horwitz

CC Roberto Figueroa
Bill Votaw
Vinicio Urdaneta
Chuck Emrich
Ron Teitelbaum

Re Tax Liability on Royalty Payments

From: Bill Leggatt

Date: 6 February 1995

Today Roberto Figueroa, Bill Votaw and myself met with Alvaro Castellanos, Sunking's Counsel, to discuss the issue of withholding tax associated with payments to the Sunking group. He showed us the following documents:

1) The original agreement of Feb 24 1992, between Sunking and Texas Ohio that allowed for 16% of capacity payments, 21% of energy payments, and specifically absolved Sunking from payment of any tax.

2) The transfer of this contract from Texas Ohio to EDC on March 12.1992

3) The letter from Haug, dated June 10 1992, to Sunking agreeing that payments could be made to any account of Sunking's choice.

We subsequently showed him the amendment of (1) above, executed by Texas Ohio and Sunking dated March 12 1992, changing the payment to 6% of all revenues, and withdrawing the tax benefit. Alvaro was obviously aware of the existence of this document, and made it plain that it had been the topic of discussion at group meetings on many occasions.

Alvaro told us that there was a split in Sunking regarding the tax issue. This was between those who realised there was no legal basis to claim the payment on a grossed up basis, which comprises Alvaro and Henrik, at a minimum. The other side claims that, on the basis of precedent and a very optimistic interpretation of the agreements, the payments should be grossed up.

We told Alvaro that as far as Enron was concerned there was certainly no precedent either way (since there has been no tax so far), and that we could not see any justification in the documents we had that would give Sunking this security.

We reiterated that the intent of all this was to get the Sunking payment on a more legitimate basis, for the benefit of all; Sunking, PQPC and Enron. However, before we could meet to discuss alternative methods of payment, a formal resolution would have to be made on the tax issue. Therefore, on the

Senate Finance Committee

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basis of this discussion, Alvaro promised to come back to us with a formal Sunking position. Only then will we know whether we will have to dispute this issue, or whether the Group will accept the benefit of the situation so far, and accede the future liability gracefully. Alvaro promised this response only within a 10 day time frame, since at least one of the group is out of the country.

However, it is apparent that should the response be unfavorable, then this issue can only be resolved at a management level, since Alvaro, from a legal basis, did not contradict our own position/interpretation in any way, nor did he produce any new documentation that would cause our analysis of the situation to alter.

ENRON CORP

Interoffice Memorandum

David Odorizzi

Ron Teitelbaum RT

Guatemala Tax Issues

Department: Corporate Tax

Date: November 17, 1993

Confidential and Privileged

Creditable Taxes

Subject to certain limitations, both the Guatemala corporate income tax and the Guatemala profits remittance tax (effectively a branch profits tax) are creditable taxes for U.S. income tax purposes. Any Guatemalan tax that is not creditable against U.S. income taxes will be deductible from U.S. taxable income.

The creditability of the Guatemalan stamp tax presents a difficult question because it has the attributes of both creditable and non-creditable taxes. In its application to profit distributions it resembles a withholding tax which would ordinarily be creditable. But, the stamp tax is imposed as a documentary tax on other transactions where there are no earnings. It is most likely that the stamp tax would not be treated as creditable.

Limitations on the Foreign Tax Credit

In order to realize a credit for Guatemalan income or remittance taxes, there must be a U.S. tax liability to credit the Guatemalan taxes against. It is possible to carry back excess foreign taxes three years and to carry them forward five years. Any transaction by PQPC that is deductible in the U.S. but not in Guatemala has the potential to reduce U.S. tax liability so that excess Guatemalan taxes accrue. In other words, such a transaction would produce no tax benefit or only a partial tax benefit that could be recorded in the earnings of PQPC. An example of this is discontinuing the B & H charge on fuel in favor of paying Sun King from the U.S. home office.

One of the requirements of the foreign tax credit is that the payment made to a foreign taxing authority is not a voluntary payment. A U.S. taxpayer is under a duty to minimize his foreign income tax liability when it is possible to do so. As Jorge has advised, it will be possible to establish additional Guatemalan tax basis for the plant without incurring stamp tax. Under these circumstances, failure to deduct the additional basis in Guatemala would result in the additional Guatemalan tax liability being non-creditable. A taxpayer may adopt a longer depreciation life for his foreign assets without making the tax payment voluntary because it does not increase his tax liability over time. Increased tax liability due to inability to pay Sun King in Guatemala does not run afoul of this concept either.

Deductible Taxes

My understanding is that the Guatemalan income tax is deductible in Guatemala only for the purpose of determining the Guatemalan profit remittance tax. The remittance tax is not deductible in Guatemala. Most of the other Guatemalan taxes, including the stamp tax, are deductible there. Withholding taxes on payments to foreigners are deductible from Guatemalan taxable income when the Guatemalan payor bears the economic cost of the tax through a gross-up and the underlying payment is deductible.

Fuel Payments

The system of making dispatch payments to our Guatemalan O & M company ("EEG") and then EEG making a brokerage and handling payment for fuel delivered from other Enron affiliates was adopted in order to find a way to make the Sun King payment fully deductible in Guatemala and avoid having to gross-up the 25% Guatemalan withholding tax on such payments. The gross-up would convert the 6% payment to an 8% payment.

When an Enron company in the U.S. makes a payment to Sun King, our reporting position for not deducting U.S. withholding taxes is that Sun King earned the income outside the U.S. If the payment comes from an Enron affiliate that has no connection with the B & H payment, it may be difficult to establish that Sun King is being paid for services performed outside the U.S.

There are several problems with this method. First, Guatemalan tax authorities could disallow PQPC the deduction for the dispatch payment. Second, a 10% tax has been imposed on the import of fuel which is effectively a non-creditable tax on the B & H. Third, our business people have stated that the B & H is creating problems with PQPC's fuel sales activities. Finally, the dispatch payments have been smaller than anticipated, leaving EEG with a loss. EEG can carry its losses forward for only four years, making it possible that some of the Sun King payments will not produce any tax benefit in Guatemala or the U.S.

Continuing Payments to Sun King

The U.S. based alternative for continuing payments to Sun King is to end the dispatch and B & H payments. The additional cash flow for the branch would result in higher Guatemalan income and profits remittance taxes compared to what we are doing now. The cash would be paid from PQPC's home office to Sun King. This gives a deduction in the U.S., but not in Guatemala. It is likely to result no tax benefit or only a partial tax benefit for PQPC's

earnings. Bill Leggatt has told me that to satisfy the IFC, the payments to Sun King would be subordinated to the debt.

Lump Sum Payment to Sun King

If the decision to buy out Sun King is adopted, the U.S. based alternative uses a new parent company owned by Enron and King Ranch. The new parent owns 100% of PQPC and files a consolidated U.S. income tax return with PQPC. This reorganization can be accomplished without adverse U.S. tax consequences. The new parent will borrow the funds for the buy out and will make the lump sum payment to Sun King. Its use is intended to satisfy IFC restrictions on additional borrowing by PQPC. The consolidated U.S. return allows any interest on the loan, or deductible amounts of the settlement, to be offset against PQPC's income from power sales. This plan may be affected by limits the IFC places on PQPC's ability to pay dividends. Based on work being done by Leesa White, there are two possible U.S. tax results. One outcome is that a lump sum buy out payment would be deductible from U.S. taxable income. The other is that the payment would have to be capitalized and amortized over the remaining life of the PPA. Leesa will be completing a memo on this issue in a few days. The buy out payment would not produce any Guatemalan tax deduction which making it likely that the transaction will not realize a full tax benefit for PQPC's earnings.

Bill Leggatt has requested that I wait to provide comments on the Guatemala based alternatives for dealing with Sun King until after our local advisors have completed their work on the issue.

Capitalization of PQPC

It has been determined that repatriation of cash can be accelerated if the PQPC branch has subordinated debt substituted for most of its equity. Because payments between the branch and its home office will be treated by Guatemala as dividends that are subject to withholding tax, our local advisors have told us to route the loan from the home office to the branch through a separate entity.

I recommend that a limited partnership be established under the Uniform Limited Partnership Act, as adopted by any State in the U.S. I leave the actual selection of jurisdiction to our legal department. PQPC will be the general partner. King Ranch and Enron may each have a 1% limited partnership interest. Under the limited partnership agreement the partnership will dissolve if any partner becomes bankrupt. The PQPC home office will contribute its receivable due from the branch to the partnership. A promissory note will be signed by the Branch in favor of the limited partnership. The limited partners will make a de minimis capital

contribution. All of the interest income and distributions due to principal payments will be specially allocated to PQPC. The limited partnership will have no other business activities. This should produce an entity that appears separate for Guatemalan purposes (according to our local advisors), but can be disregarded for U.S. tax purposes. The partnership should not have Enron or Puerto Questale in its name. It must have the word "finance" in its name. Use the name "Caribbean Finance Limited Partnership" if no one objects.

cc: Bill Leggatt
Avery Barnebey
Rob Walls

rt/credtxus.gua

ARTHUR ANDERSEN LLP
CONTRACT AUDIT SERVICES

ENRON POWER AND PIPELINES
GUATEMALA OPERATIONS
MARCH 10, 1995

AGENDA

1. INTRODUCTION	DEASE
2. SUMMARY OF FINDINGS	PREPARER
3. QUESTIONS - COMMENTS	
4 AUDIT PROCESS	DEASE

Senate Finance Committee

EXHIBIT 28

SUMMARY OF AUDIT FINDINGS

1. Fuel Handling (P)

   a Fuel analyses are supplied with the tanker shipment No pre-unloading analyses are performed to screen incoming shipment and no independent analyses are performed to verify the supplier's analysis.

   Pre-unloading tests should be conducted in the plant laboratory before fuel is released for unloading to ensure that incoming fuels are within specification. In addition, fuel shipments should be analyzed by an outside laboratory to verify that the actual fuel content agrees with the supplier's shipping analyses

   b The quantities of sludge removed from the plant have been erratic and unpredictable. Volumes removed during 1994 ranged from 23,375 to 130,000 gallons per month. No sludge content analyses have been performed nor is information available pertaining to the amount of sludge which can normally be expected to be present in fuel oil. As a result, the plant has no effective means of evaluating the reasonableness of the sludge quantities being generated and removed.

   Detailed sludge analyses should be conducted to establish logical ranges of sludge content in fuel oil

   c From experience, it is known that engine valve and cylinder liner damage will result from high sludge content in fuel oil. Based on the characteristics of some of the other contaminates known to be present in fuel oil, it is conceivable that their presence in sufficient quantities could also cause engine damage.

   An investigation into the effects of fuel contaminants on engine performance and maintenance should be initiated with Wartsila. Depending on the results of this effort, consideration may have to be given to changing fuel oil specifications.

   d. Fuel leakage around the engines has been significantly reduced since the previous audit in 1993. However, leakage is still a serious problem.

   Efforts should continue to reduce the existing leakage problem to reduce oil losses, reduce safety and fire hazards, and improve housekeeping. Procedures to identify leaks such as the current walk around program should be strengthened.

PQPC SUMMARY OF AUDIT FINDINGS - Page

2. Environmental & Safety (P)

a. Sludge is being hauled away at no cost by a local contractor. In exchange for the sludge, the contractor is providing environmental services. According to plant management, these services have not always been satisfactory.

Alternative methods of sludge disposal should be pursued. The fuel supplier should be contacted to determine the approximate value of the sludge. The economics of selling sludge to local companies to generate revenue should be weighed against the cost of plant personnel performing the necessary environmental and pollution control activities.

b. Rags used to wipe up oil are being burned at the site causing an air pollution problem. A contractor should be found to dispose of the oil rags.

c. Several valves and sample points were omitted from the Dissolved Air Floatation (DAF) unit during its construction. These omissions plus the lack of removing any accumulated sludge from the unit since the plant became operational, have made it extremely difficult to meet oil limits specified in the Environmental Impact Assessment submitted to CONAMA for the operation of the unit.

The DAF system was mechanically completed during our visit. Appropriate operating procedures should be developed with the support of Envirex and BETZ.

d. The operation of the plant with the maintenance doors open results in noise levels outside the plant in excess of the limitations set out in the Environmental Impact Assessment. In addition, complaints of excessive noise have been voiced by both CONAMA and the Port Quetzal Commander.

Management and supervision should ensure that the barge maintenance doors remain closed at all times.

e The plant has no program to monitor the hearing capabilities of plant employees. This is contrary to the standard practices in all other Enron plants.

A hearing testing program should be implemented for all employees.

3. Wartsila Diesel Engine Operation (P)

a. Intake air and cooling water temperatures are experiencing above optimum levels and are occasionally exceed specifications. Such conditions will increase engine part wear and reduce the life of the engines.

Management should concentrate on reducing engine temperatures by pursuing methods of maintaining cool temperatures in the charge air and cooling water systems. In addition, management should investigate the use of alternate air filtration systems. Finally, because the use of chemical treatment to inhibit sea water fouling is very expensive, other fouling control mechanisms should be investigated.

b. Crankcase breather vents are not high enough to allow disbursement of the exhaust. As a result, the oil saturated air that is vented is circulating back into the engine air intakes.

The solution to the crankcase breather vent problem should be implemented as a high priority item.

c. The seventeen operations, maintenance, and installation manuals provided by Wartsila are too voluminous and cumbersome for efficient use by floor personnel. The Wartsila operating procedures should be reviewed, and simplified floor level procedures and checklists established.

d. The lube oil supplier provides an analysis of oil supplied. An independent analysis should be performed periodically to ensure the accuracy of the supplier's analysis.

e The plant has experienced ongoing problems getting adequate support in resolving technical issues and problems. Wartsila has not been totally cooperative in this area and EOC does not coordinate any exchange of information among its operating plants. Plant management attempted to satisfy this need through the establishment of a Wartsila users group. However, efforts to establish such a group have not been successful to date.

A program should be instituted to establish a closer coordination with Wartsila and other engine users. In addition, EOC should establish a program to coordinate the exchange of information among Enron plants to resolve common technical issues and problems.

4. Water Treatment (P)

   a. The water management programs provided by the water treatment companies used to date have been erratic, resulting in corrosion and fouling problems in all plant water systems. In addition, corrosion has been observed on the system side of steam heated fuel heaters and in condensate systems.

      BETZ Water Treatment Company has been contracted to provide service and chemicals to establish an appropriate water management system. Management should monitor their performance to ensure all expected support activities are provided.

   b. The desalination units which provide boiler makeup water must be shut down periodically for mechanical descaling.

      Management, in conjunction with BETZ Water Treatment Company should investigate the possibility of using anti scaling methods to eliminate these shut downs.

   c. Closed loop cooling systems have not been monitored for corrosion and scaling. This could lead to reduced system flow resulting in higher engine operating temperatures.

      Management attention needs to be given toward monitoring corrosion and scaling in closed loop cooling systems. Consideration should be given to obtaining BETZ assistance in controlling the corrosion and scaling.

5. Communications with EEGSA (P)

   External Communications between the plant and EEGSA is by voice communication only. With the exception of operator logs, there is no written documentation to verify power requests received from EEGSA or availability reporting to EEGSA by the plant. (Prior Audit Finding)

   A more formal communication system, such as a telex system should be installed to support and document communications between the plant and EEGSA.

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6. Training (P)

a. Wartsila provided an initial training program for plant employees, and several specialized training programs have been held since the plant became operational. However, an ongoing training program needs to be implemented to provide continuous proficiency and upgrade training for all employees. (Prior Audit Finding)

This recommendation has not been implemented. An ongoing training program is still needed and should be implemented.

b. Based on the multitude of maintenance problems encountered by the plant since it became operational, the current skill levels of plant personnel can be considered to be below that required for successful operations. The probable cause for these conditions lies in the fact that the labor force has minimal to no experience in operating diesel engines. There is an obvious need for hands on training by qualified, expert personnel.

To combat this situation, more expatriate technical support is needed. An operations engineer and a maintenance engineer should be brought in from Wartsila to assist the plant staff in day to day plant operations. In addition, the program of temporarily assigning a qualified, experienced individual from other EOC plants to act as Chief Engineer should be continued.

7 Communication & Coordination (P)

There is a serious lack of communication and coordination of activities between operations and maintenance personnel. Many instances have been observed where one group has taken unilateral actions having consequential effects on the other, without coordinating the action or communicating its occurrence.

Management should concentrate on a program to impress upon decision making individuals the importance of communications and the consequences of unilateral, uncoordinated actions.

8. Instrumentation Maintenance (P)

The instrument maintenance program is significantly flawed. Equipment indicator lights are not being maintained. Instruments were noted to be giving false readings. Lamp testing procedures, if in existence are not being followed.

Management needs to implement an effective instrumentation maintenance program.

9. Maintenance Work Orders (W)

An effective maintenance work order system is not in place at the plant. Repairs of equipment malfunctions and breakdowns are initiated through a verbal reporting system. (Prior Audit Finding)

Maintenance and repair work could be better managed, controlled, and costed with the implementation of a comprehensive work order system. A system is currently in place to prepare written requests for maintenance and repair work, but it is ancillary to the verbal system and is used only for low priority work.

10. Accuracy of Monthly Operations Reports W)

There is evidence the Monthly Reports are being issued without adequate verification of the accuracy or reliability of the data presented. Examples of inconsistencies in the 1994 reports include:

a Gross heat rate values appear as "Net Heat Rate" for the first five months of the year.

b. Heat rates reported in one month are changed in subsequent months with no explanation given.

c. The method of calculating the heat rate for June through December cannot be reconciled.

d. The reported amount of fuel oil consumed and electricity generated varies within monthly reports

11. Establishment of Target Heat Rate (W)

In the Turnkey Contract, Wartsila guaranteed a plant heat rate of 9225 BTU/kWH. This rate was achieved during their performance test, although the calculation of the rate was based on theoretical considerations.

a. The plant accepted 9225 BTU/kWH as the Target Rate for 1993. The actual average Net Heat Rate for 1993 was 9667 BTU/kWH.

b. The plant continued to use 9225 BTU/kWH as the Target Net Heat Rate in 1994. The reported average Net Heat Rate for 1994 was 9683 BTU/kWH.

c. The Annual Operating Plan for 1995 does not specify a Target Heat Rate as required by the O & M Agreement. The plan does present a Net Heat Rate in the Assumptions Section of 9582 BTU/kWH. However, the January 1995 Monthly Report presents the Target Rate as 9225 BTU/kWH.

12. Nonconformance of Semaelectro with Labor Contract (W)

a. The contract requires the Contractor to provide the Operator with certificates of insurance. Semaelectro has not complied with this requirement.

b. The contract requires the Contractor to submit its Drug Free Workplace and Testing Plan to the Operator. Semaelectro has not complied with this requirement.

13. Control of Scrap and Other Disposable Materials (W)

a. No accounting or physical controls have been maintained over scrap metal and used lube oil inventories. Materials accumulated over periods of time were occasionally removed from the plant and sold based solely on the verbal orders of the Plant Manager. No supporting documentation such as the preparation of disposition forms was accomplished to record and justify the transactions. Since the first sale, which occurred in September 1993, there have been a total of 17 sales of oil and two sales of scrap metal totaling approximately $38,300.

b. Until October 1994, all transactions were handled entirely at the plant level. Beginning in October, the Guatemala City office became involved to the extent of preparing and submitting invoices to the local vendors. However, the transactions were not booked and, upon receipt of payments from the vendors, the proceeds were forwarded on to the plant for their disposal.

c. Monies received from the sales were deposited in a non-company bank account maintained under the name of two individual plant employees. This account was established at the direction of the Plant Manager who while not a signatory on the account, utilized the funds at his discretion for the sponsorship or underwriting of employee activities and benefits. Since 1993, approximately $32,000 were expended as follows:

Soccer Team Equipment & Activities	$ 9,709
Diving Equip. & Training	4,511
English Language Course	19,573
Safety Shoes	2,403
Tennis Shoes	2,968
Plant Supplies	328
Special Occasion Parties	535
Total	$32,083

During the time of our audit, this account was closed and the balance of approximately $6,200 deposited to the plant field operations account. This sum needs to be transferred to PQPC as it represents the proceeds from the sale of liquidated owner assets.

14. Expiration of Plant Office & Warehouse Facility Lease W)

EEG leases an office and warehouse facility from the Puerto Quetzal Port Authority. The lease was executed in 1993 for a period of five years, with provisions for extension of the lease period contingent on the approval of both parties.

With the expiration of the lease approaching in 1998, the Port Authority has verbally indicated to plant management that the lease will not be extended and that EEG will be required to vacate the building. EEG has made no plans to acquire or build replacement facilities should the Port Authority take this action.

15. Consolidation of PQPC Offices (W)

The Guatemala City offices actually consist of two separate office areas. One office area is occupied by the Country Manager, his secretary, and a receptionist. Three vacant offices are maintained in this area for the occasional use of PQPC's legal counsel, public relations advisor, and out of country visitors.

The second set of five offices is devoted to accounting support personnel. One office will soon become vacant with the departure of the Financial Manager and the relocation of many plant accounting functions and responsibilities to the Plant Controller at the plant site.

With the departure of the Financial Manager, consideration should be given to the possibility of consolidating the Guatemala City office staff into one of the two existing areas. This would reduce the lease and maintenance costs by 50%, for a potential savings of $16,182 in the third year of the lease.

16. Board Approval of Budget Overruns (W)

The O & M Agreement states that without prior approval of the Owner, expenditures are not qualified for reimbursement if a line item exceeds 10% of its budgeted amount, or if the entire budget for the year is exceeded by $500,000.

Severe overruns in the O & M Budget occurred during 1994. These overruns were of the magnitude to require Owner Board of Director involvement in approving the expenditures to permit their submission as qualified reimbursements.

There is no evidence in the Minutes of the Board Meetings held in 1994 that Board approval was requested as required by the O & M Agreement.

17. O & M Expense Budgets & Variances (W)

In 1994, sixteen major Miscellaneous O & M accounts exceeded their budget by over 10%. The excesses, which amounted to $3,443,392, ranged from 19.2% to 204.8%, and average 80.5%. There is no documentation on file to explain these overruns or permit an analysis of the cause

There are no policies or procedures to ensure that a regular monthly analysis of significant budget variances is accomplished, and that causes are documented and reported. Additionally, in the absence of a routine investigative process, there is no mechanism to ensure that potential corrective actions are identified and taken.

The institution of variance analysis and documentation procedures should significantly improve management control over budgetary expenditures. In addition, the annual budgetary process would be simplified as the causes of variances from previous budgets would be known at all levels of management.

Plant Assets (W)

The generating plant and associated production support facilities is carried as a one line item asset with a depreciation term of 25 years. Many items included in the turnkey amount could be depreciated at a faster rate if listed as separate line item assets. In addition, there are no positive means to control asset inventories in the absence of a detailed listing. Periodic inventories cannot be performed to ensure assets are in place and have not been removed from the plant.

A detailed listing of all plant capital assets should be constructed, realistic depreciation terms should be applied to individual assets as permitted by law, and regular inventories of plant assets should be performed.

Inventories of Assets (W)

PQPC maintains a detailed asset listing for Computer equipment, furniture and fixtures, and emergency power generating equipment. The original value of the items listed was $140,652; current value is $94,993.

Periodic inventories are not taken to ensure assets are in place and have not been removed from the premises. In addition the individual assets are not tagged to permit easy identification.

20. Sun System Training

The Sun System is not being fully utilized. The plant does not use the system for inventory control. Further the accounting group has not been adequately trained in the use of many features, including financial tables, period cleardown, generation of payments, and time allocation and spread ratios.

Additional training is needed to fully realize the capabilities of the Sun System.

21. Employee Automobile Use Reimbursement (T)

Employees are being reimbursed $0.42 per mile when using their personal vehicle for company business. Enron Corp policy calls for a reimbursement of $0.29 per mile. During 1994, eight employees were reimbursed a total of approximately $28,000. One of the eight employees was reimbursed over $17,000 for driving 41,290 miles, the equivalent of a round trip between the port and Guatemala City five days a week for 50 weeks.

22. Direct Invoicing (T)

It was initially agreed between EEG and PQPC that EEG would pay all invoices because EEG was registered as a Guatemala corporation, and possessed import licenses and import duty exoneration. The O & M Agreement was subsequently amended to allow the PQPC to pay invoices directly.

Out of a sample of 32 invoices paid by EEG, 17 or 53% could have been paid directly by PQPC, thereby avoiding unnecessary and inefficient intercompany invoicing and recording.

23. Fuel Payment to Sun King (T)

In 1992, EDC purchased the PPA from Texas Ohio Power. As part of the transaction, EDC assumed the contractual responsibility for the payment to Sun King of a commission equal to 6% of PQPC's gross revenues for the 15 year life of the contract. Sun King subsequently claimed that these payments were to be tax free, and requested that the monies be deposited into a specific U.S. bank account.

Sun King is being accommodated through the cooperation of EPOS. In its invoices to EEG for fuel, EPOS adds on a Brokerage and Handling fee equivalent to the amount owed to Sun King for commissions. Upon receipt of payment, EPOS in turn deposits the commission payment into the Sun King account.

The practice of paying Sun King's fee through the fuel payment to EPOS on a tax free basis exposes EEG to a potential tax liability, including penalties. The price paid for fuel by EEG to EPOS is more than the price charged by EEG to PQPC as a reimbursable expense. The difference would be evident and would warrant an explanation to Guatemalan officials if exposed.

Furthermore, the payment to Sun King represents a commission payment to a corporation not domiciled in Guatemala. As such, there are specific taxes required by Guatemalan law to be withheld, and significant penalties (including criminal) for failure to do so. Based on total fees made to Sun King to date, a potential liability of approximately $1.6 million (not including compensatory interest) exists for 1994. This liability could approach $2.9 million by 1995 year end.

24. Allocation of Guatemala Office Overhead Expenses (T

Labor costs and other office expenses were not allocated to PQPC for 1993. Instead, the actual allocatable cost for 1993 was charged to PQPC at 1994 year end, together with the estimated allocation of 1994 expenses.

While EEG allocated labor and other office expenses of $524,852 in 1993 and $631,398 in 1994, PQPC booked $262,425 and $315,699 respectively. The amounts were reduced as a result of a PQPC management decision to forgive PQPC of its labor and office cost for 1993. This position was taken to allow PQPC to maintain a minimum debt service ratio necessary to declare a dividend per the IFC loan agreement.

Labor and Guatemala City office expenses were not included in PQPC's 1994 budget, resulting in a negative line item variance of $578,371.

EDC Cost Related to Guatemala City Office (T

The EEG General Manager spent approximately 4% of his chargeable time on EDC related activities per 1994 time sheets. This time, which was not charged to EDC amounted to approximately $6,000.

Customs Duties Levied on Imported Capital Assets T)

The generating plants were imported under an importation exemption which, while not in writing, was considered at that time by the project owners to be a permanent exemption. As a result of this action, neither import duties nor VAT were paid by PQPC to the Guatemalan government.

Since that time, there has been a change in government, which has interpreted the exemption to have been a temporary exoneration. Recognizing the differing opinions in the case, the Minister of Finance has allowed continuing, renewable temporary exemptions until a permanent solution is found.

The current plan is for PQPC officials to lobby the government for change in the current law, or to obtain a presidential decree to exonerate these obligations. At the present time, there are several scenarios being considered within the government which would reduce, delay, or eliminate the import duties. In the meantime, the Minister of Finance has taken the position that the 7% VAT totaling $6,349,000 will not be exonerated.

PROJECT PARTICIPATION AGREEMENT

This PROJECT PARTICIPATION AGREEMENT ("Agreement"), dated as of March 31, 1993, between KING RANCH POWER CORP., a Delaware corporation ("Participant") and ENRON DEVELOPMENT CORP., a Delaware corporation ("EDC") (Participant and EDC being sometimes hereafter referred to individually as a "Party" and collectively as the "Parties"), provides as follows:

WHEREAS, Texas-Ohio Power, Inc. ("TOP") and Empresa Electrica de Guatemala, S.A. ("EEGSA") executed a power purchase agreement, dated January 13, 1992, which was assigned by TOP to EDC pursuant to an agreement dated March 12, 1992 (the "First PPA Assignment"), and which was further assigned to Puerto Quetzal Power Corp., a Delaware corporation ("PQP") pursuant to an agreement (the "Assignment Agreement") dated November 13, 1992 (as further amended, modified and supplemented from time to time, the "Power Purchase Agreement"); and

WHEREAS, Enron Corp. ("Enron"), the ultimate parent of EDC, by letter, dated April 14, 1992 (the "EEGSA Guarantee"), agreed to guarantee the performance by EDC of its obligation to supply electric power to EEGSA or pay liquidated damages under specified circumstances, all subject to the terms and conditions of the Power Purchase Agreement; and

WHEREAS, EDC owns 100 percent of the issued and outstanding shares of common stock of PQP; and

WHEREAS, subsequent to the First PPA Assignment PQP, with the assistance of EDC, has developed and constructed a 110 megawatt oil-fired, barge mounted power project described as the Facility in Section 1.16 of that certain Turnkey Contract between Enron Power Corp. ("EPC") and Wartsila Diesel, Inc. ("Wartsila"), dated as of April 10, 1992, as assigned by EPC to PQP (as so assigned, the "Turnkey Contract", and such project, the "Project") located outside San Jose, Guatemala at the Puerto Quetzal port facilities on the premises leased from Empresa Porturia Quetzal (the "Site"); and

Senate Finance Committee

EXHIBIT 29

WHEREAS, in order to assist EEGSA obtain financing for the construction of an electrical power transmission line from a substation located adjacent to the Project to the principal transmission relay station in the Department of Esquintla, Guatemala, Enron has entered into a Guaranty Agreement (the "Transmission Line Guarantee"), dated as of December 18, 1992, with The First National Bank of Boston ("First National") under which Enron agreed to guarantee the obligations of EEGSA under a Loan Agreement, dated as of December 18, 1992, between EEGSA and First National; and

WHEREAS, PQP has arranged for the permanent financing of the Project (the "Financing") with the International Finance Corporation (the "IFC"); and

WHEREAS, as a condition to the Financing, the IFC requires credit support in the form of a letter of credit or cash collateral in an amount equal to six months debt service on the A Loan and B Loan portion of the Financing (the "Debt Service Guarantee"); and

WHEREAS, Participant has agreed to acquire from EDC, and EDC has agreed to sell to Participant 500 shares of common stock of PQP, which represents 50 percent of the issued and outstanding shares of common stock of PQP, upon the terms and subject to the conditions set forth herein; and

WHEREAS, Participant has agreed to cause King Ranch Oil and Gas, Inc., a Delaware corporation ("Parent"), the parent company of Participant, to assume a pro rata responsibility for the EEGSA Guarantee, the Transmission Line Guarantee, and the Debt Service Guarantee, as such terms are defined herein.

NOW, THEREFORE, in consideration of the mutual promises of the Parties, the warranties and covenants contained herein and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties hereby agree as follows:

ARTICLE I

Sale and Purchase of Corporation Shares

1.01 Ownership of Common Stock. As of the date hereof, EDC is the owner of 1,000 shares of common stock of PQP, which represents 100 percent of the issued and outstanding shares of common stock (the "Shares") of PQP.

1.02 Sale and Purchase of Shares. At the Closing, as defined in Article III of this Agreement, EDC shall transfer 500 Shares (the "Transferred Shares"), which represent 50 percent of the issued and outstanding shares of common stock of PQP, to Participant by delivering or causing to be delivered to Participant one or more certificates representing the Transferred Shares, duly registered in the name of Participant. As consideration for the transfer of the Transferred Shares, and subject to the terms and conditions hereof, the Participant shall pay to EDC U.S. $14,900,000 (the "Purchase Price") by wire or other electronic transfer of immediately available funds to an account designated by EDC.

1.03 Closing Deliveries. At the Closing, each of the documents set forth in Section 3.01 hereof shall be delivered by the Parties hereto, each such document to be fully executed or otherwise effective in accordance with its terms.

ARTICLE II

Special Transaction Agreements

2.01 Guarantees. In connection with the development and Financing of the Project, Enron has provided or agreed to provide the EEGSA Guarantee, the Transmission Line Guarantee and the Debt Service Guarantee. At the Closing, (a) each of Parent and Participant shall execute and deliver in favor of Enron and EDC, respectively, a Reimbursement Agreement of even date herewith (the "Reimbursement Agreement"), (b) Participant shall deliver an irrevocable standby letter of credit in favor of Enron, in form and substance identical to Exhibit 2.01(b) hereto or otherwise

reasonably satisfactory to EDC, backing up Parent's and Participant's reimbursement obligations under the Reimbursement Agreement (the "Reimbursement Agreement Letter of Credit") and (c) Participant shall deliver an irrevocable standby letter of credit in favor IFC, in form and substance identical to Exhibit 2.01(c) hereto or otherwise reasonably satisfactory to EDC, constituting 50 percent of the Debt Service Guarantee (the "IFC Letter of Credit").

2.02 TOP Contingent Payments. EDC has entered into an agreement with TOP requiring EDC to pay a commission based on a percentage of the gross revenues of the Project (the "TOP Payments"). Under the Assignment and Assumption Agreement dated November 13, 1992, among PQP, EDC and Electricidad Enron de Guatemala, S.A. (the "Operator"), EDC assigned the Power Purchase Agreement to PQP and the Operator assumed the obligation to make the TOP Payments from the fees it receives from PQP. Because under certain unexpected contingencies this arrangement could result in a windfall to the equity owners of PQP, EDC remained obligated to make the TOP Payments upon the occurrence of these contingencies to the extent the amount of such TOP Payments exceeds in any period the aggregate of the Base Fee and the Economic Dispatch Incentive Fee payable under the Operation and Maintenance Agreement dated as of November 13, 1992 as amended by Amendment No. 1 to Operation and Maintenance Agreement dated as of March 31, 1993 (the "TOP Backup Payment"). The Parties agree that, in the event EDC is required to make a TOP Backup Payment, the Parties shall put in place arrangements to achieve the same economic effect as if the payments were made by PQP before any distributions or dividends are paid.

2.03 Participant Puts. (a) The occurrence of any of the following shall constitute a Put Event and give to Participant the right to exercise a Put Election (as hereinafter defined):

(i) The failure of the funding of the Financing to occur on or before June 30, 1993 on terms no less favorable to PQP than the Financing Terms (as defined in Exhibit A hereto).

(ii) The funding of the Financing by EPC or an Affiliate (here and hereinafter used as defined in the

Stockholders' Agreement dated as of March 31, 1993 between the Parties (the "Stockholders' Agreement")) of EDC on terms less favorable than the Financing Terms and the subsequent acceleration of the debt for non-payment of debt service and receipt by Participant of notice of such acceleration.

(iii) The receipt by PQP of (x) the bill of sale or other instrument evidencing passage of title from Wartsila to PQP for the Project and (y) a Certificate of Ownership (CG Form 1330) for each of El Enron I and El Enron II ("Title Acquisition") shall not have occurred on or before June 30, 1993.

(iv) (A) The failure of Title Acquisition to occur shall have a material adverse effect on the receipt by PQP of revenues under the Power Purchase Agreement, and (B) PQP (or, at its sole discretion, EDC or an affiliate of EDC) shall not have cured such material adverse effect on or before June 30, 1993.

(v) (A) The total remaining Project capital costs as of the date of this Agreement that have not been paid and are necessarily incurred or to be incurred (I) to close the Financing in accordance with the Financing Terms and (II) to complete the Project in a manner which triggers the obligation of EEGSA to commence payments under the Power Purchase Agreement with respect to 110 MW of capacity and associated energy, and fulfills the representations and warranties hereunder, including the payment of a $2,000,000 development fee to EDC and the reimbursement to EDC and its Affiliates of any and all associated development, construction management or financing expenses, exceed $500,000, and (B) EDC does not at such time pay or cause to be paid, or contribute or cause to be contributed to PQP in order for PQP to pay, such portions thereof which may then be due or become due and owing to third parties, all without imposing any debt or other obligation therefor upon PQP or the Project.

(vi) The failure of the Operator to transfer to PQP Good Title (as hereinafter defined) to the Port Lease (as hereinafter defined) (or other legal, valid, binding and enforceable arrangements reasonably satisfactory to Participant vesting in PQP substantially the same economic and legal benefit with respect to the Port Lease and the property covered thereby) on or before

June 30, 1993, or the inability of EDC to make with respect to the Port Lease as of the date of acquisition thereof each and every representation and warranty contained in Section 4.08 hereof (with respect to Assets (as hereinafter defined) of PQP on the date hereof) or Section 4.11 (with respect to contracts to which PQP is a party on the date hereof).

(vii) The occurrence, on or before June 30, 1993, of a demand for reimbursement under the Reimbursement Agreement, a draw under the Reimbursement Agreement Letter of Credit or the IFC Letter of Credit, or any request for or requirement of any additional material investment, or the incurrence of any additional material obligation, by Participant or Parent with respect to the Project or PQP (including but not limited to Subordinated Stockholder Loans and Parent Guarantees under the Stockholders' Agreement, the purchase of additional capital stock or other form of capital contribution).

(b) A Put Election is constituted and exercised as follows:

(i) Participant may elect, in its sole discretion, by written notice which must be received by EDC within 10 days following the occurrence of the event(s) giving rise to Participant's right to a Put Election, to sell the Transferred Shares to EDC. In such event, Participant shall state in its notice a date (the "Put Date") that is between 10 and 20 days following the date upon which EDC receives such notice.

(ii) Upon delivery by Participant to EDC on the Put Date of the stock certificate(s) representing the Transferred Shares, each endorsed to EDC (or accompanied by a stock power endorsed in blank), EDC shall (A) pay to Participant by wire transfer in U.S. dollars in immediately available funds to an account notified in writing to EDC an amount equal to (x) (I) the Purchase Price plus (II) $600,000 plus (III) from March 31, 1993 to the Put Date (the "Income Period"), Participant's pro rata share (in accordance with its ownership of Ordinary Shares (as defined in the Stockholders' Agreement)) of (alpha) the sum of all revenues of PQP (accrued and cash under U.S. generally accepted accounting principles ("GAAP")) less (beta) the

sum of (1) all expenses of PQP (accrued and cash under GAAP, excluding non-cash expenses), (2) accrued income taxes for PQP net income, and (3) debt service of PQP less (y) the sum of all dividends and distributions made to Participant by PQP during the Income Period (including such dividends and distributions as were allocable to Participant but paid to EDC or an affiliate of EDC pursuant to the Reimbursement Agreement), and (B) terminate the Reimbursement Agreement and return to Participant (x) the Reimbursement Agreement Letter of Credit and (y) the IFC Letter of Credit; provided, that, if EDC is unable to secure the return of the IFC Letter of Credit from IFC on reasonable terms, EDC shall deliver to Participant a guarantee or indemnification by EDC of Participant in form and substance reasonably satisfactory to Participant with respect to all draws which may at any time be made under the IFC Letter of Credit or any amendment, modification or extension thereof or replacement therefor. Participant shall have the right of specific performance with respect to the enforcement of Participant's rights under this Section 2.03(b)(ii).

2.04 Put Out. If a Put Event occurs under Sections 2.03(i), (ii), (iii), (iv), (v) or (vi) hereof, Participant shall have no remedies under this Agreement save those set forth in Section 2.03(b) hereof, and all of Participant's rights in and obligations under this Agreement, the Stockholders' Agreement and the Reimbursement Agreement shall terminate as of the date of such transfer, except where such rights or obligations are otherwise expressly provided herein or therein as surviving such termination.

ARTICLE III

Closing

3.01 Closing. The closing (the "Closing") shall take place at 9:00 a.m. local time on March 31, 1993 at the offices of EDC in Houston, Texas, or at such other time or place as the Parties mutually agree (the "Closing Date"). At the Closing, the following events shall occur:

(a) Participant shall pay the Purchase Price in U.S. dollars and in immediately available funds to EDC by wire or other electronic transfer of funds to

such account as EDC shall have designated to Participant as provided in Section 1.02;

(b) EDC shall deliver to Participant one or more stock certificates evidencing the Transferred Shares, as provided in Section 1.03;

(c) The Parties shall execute and deliver a Stockholders' Agreement with respect to PQP;

(d) The Parties shall hold such stockholders' and Board of Directors' meetings necessary to elect new directors and officers as required by the Stockholders' Agreement;

(e) Parent shall deliver the Reimbursement Agreement, the Reimbursement Agreement Letter of Credit and the IFC Letter of Credit, as provided in Article II; and

(f) Each of the documents set forth on Exhibit 3.01(f) hereto shall have been delivered by the Party indicated thereon in form and substance satisfactory to each of the Parties.

3.02 General Conditions. The obligation of either Party to take any of the actions set forth in Section 3.01 hereof shall be subject to the following condition precedent that no injunction or restraining order, issued by a court of competent jurisdiction, which prohibits the consummation of any of the transactions contemplated by this Agreement shall be in effect.

ARTICLE IV

Representations and Warranties as to EDC and PQP

EDC hereby represents and warrants to Participant that as of the date hereof:

4.01 Corporate Organization and Qualification. Each of EDC and PQP is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware. Copies of the Certificate of Incorporation (certified by the Secretary of State of

Delaware) and the Bylaws (certified by the Secretary of PQP) of PQP, heretofore delivered to the Participant, are true, correct and complete and reflect all amendments thereto as of the date hereof. PQP is duly qualified under Guatemalan law to conduct business in Guatemala and has all necessary governmental licenses, permits, qualifications and authorizations to maintain, operate and sell power from the Project, the absence of which would have a Material Adverse Effect (as defined in Section 4.08).

4.02 Corporate Authority. Except as set forth on Exhibit 4.02, the execution, delivery and performance by EDC at Closing of each of this Agreement and of each EDC Closing Document set forth on Exhibit 3.01(f) hereto have been authorized by all necessary corporate action, and do not and will not: (a) require any consent or approval of the stockholders of EDC or any third party not already obtained, (b) violate any law, rule, regulation, order, or decree presently in effect and having applicability to EDC or PQP or any of the Assets (as hereinafter defined), (c) violate the Certificate of Incorporation or By-Laws of EDC or PQP, (d) violate any contract, agreement, security agreement, mortgage, deed of trust, financing agreement, or other contract to which either of EDC or PQP is a party or by which either of them may be bound, or (e) give rise to any lien, charge or other encumbrance on the Assets.

4.03 Enforceability. Each of this Agreement and each EDC Closing Document is the legal, valid and binding obligation of EDC, enforceable in accordance with its terms, except as the enforceability thereof may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditor's rights generally and by general principles of equity, regardless of whether the issue of enforceability is considered in a proceeding at law or in equity.

4.04 No Litigation. Except for matters as to which Participant has a right of indemnification pursuant to Section 4.17 hereof, there is no litigation or administrative or regulatory proceeding pending or, to the best knowledge of EDC, threatened, to which EDC or PQP or any of their respective affiliates is a party and which,

if adversely determined, would have a material adverse effect on (a) PQP, the Project, their operation or prospects, or (b) the ability of EDC to consummate the transactions contemplated herein or to comply with the provisions of the EDC Closing Documents.

4.05 Compliance With Law. Other than those violations which on and after the date hereof will have no material adverse effect on Participant, PQP, the Assets or the Project, (a) to the best of EDC's knowledge and belief, there are not now and have not been any violations of any federal, state, county or municipal law in Guatemala ("Guatemalan Law") or any U.S. federal or state law, rule or regulation in connection with the construction or operation of the Project, and (b) neither EDC nor PQP nor any person or entity acting on their behalf and under their guidance or direction have committed any violations of Guatemalan Law or U.S. law, including, but limited to, the Foreign Corrupt Practices Act, in connection with the Project, the procurement of the Power Purchase Agreement, parts or equipment for the Project, permits or licenses for the Project or any other agreement to which PQP is or may be a party or from which it may benefit. EDC shall, and hereby does, indemnify and hold harmless Participant and the directors, officers, employees, agents, representatives and shareholders of Participant from and against any and all costs, losses, claims, damages and liabilities, including reasonable attorney's fees, incurred by any of them, arising out of any breach or violation prior to the date hereof of the Foreign Corrupt Practices Act of 1977, as amended, by PQP, EDC, or any predecessor in interest of PQP or EDC with respect to the Project, or any affiliate, employee, agent or representative of PQP, EDC or any predecessor in interest of PQP or EDC with respect to the Project, all without regard to any deduction provided for in Article VI; this indemnity shall survive the termination of this Agreement whether pursuant to Section 2.03 hereof or otherwise.

4.06 Authorized Capital. The authorized capital stock of PQP consists of 10,000 shares of common stock, of which 1,000 shares are issued and outstanding on the date hereof. All of such issued and outstanding shares of common stock have been duly authorized and are validly issued, fully paid and nonassessable and are owned beneficially and of record by EDC. There are no

preemptive rights and no outstanding subscriptions, options, warrants, rights, convertible securities or other agreements or commitments of any character relating to the issued or unissued capital stock of PQP.

4.07 Ownership by EDC of Transferred Shares. EDC's ownership of the Transferred Shares consists of good, valid and indefeasible title to the Transferred Shares, free and clear of all security interests, liens, encumbrances, options, calls, pledges, trusts, voting trusts and other shareholders' agreements, covenants, restrictions, reservations and other burdens of any type whatsoever, save and except only (a) the terms of the Stockholders' Agreement, and (b) any pledge of stock of PQP that may be required under the Financing or by the Overseas Private Investment Corporation (the "Stock Pledge"). The certificates representing the Transferred Shares to be delivered to the Participant at the Closing, and the signatures on the endorsements thereof or stock powers delivered therewith, will be valid and genuine. The stock certificates, endorsements, stock powers and other documents to be delivered to the Participant on the Closing Date will transfer to and vest in the Participant good, valid and indefeasible title to the Transferred shares, free and clear of all security interests, liens, encumbrances, options, calls, pledges, trusts, voting trusts and other shareholders' agreements, covenants, restrictions, reservations and other burdens of any type whatsoever, arising from any claim or act of EDC or its affiliates, save and except only the Stockholders' Agreement and the Stock Pledge. No stock transfer taxes or other similar taxes are required to be paid with respect to the transfer of the Transferred Shares as provided herein.

4.08 Ownership; Title to Properties and Related Matters. Upon the completion of the transfer of title thereto from Wartsila to PQP, except as set forth on Exhibit 4.08 hereto, PQP will have good and indefeasible title to all of the assets set forth on Exhibit 4.08 hereto (the "Assets") and none of the Assets of PQP will be subject to any (i) material lien, mortgage, pledge, security interest, lease, option, call, charge, joint ownership, or other encumbrance (except in connection with the Financing or arising in the ordinary course of business) or (ii) material right of way, building, use or zoning restriction, exception, variance,

reservation, limitation or burden of any nature whatsoever, which, in the case of either (i) or (ii) above, would have a material adverse effect upon the condition (financial or otherwise), business, operations, revenues, assets or liabilities (whether direct, indirect, accrued, absolute, contingent or otherwise) of PQP, whether or not covered by insurance (a "Material Adverse Effect"), except (a) as disclosed in writing to the Participant prior to the date hereof, (b) for liens for taxes, assessments or governmental charges or levies which are not delinquent, (c) with respect to those Assets that are described on Exhibit 4.11, for any obligation arising pursuant to the terms and provisions thereof, (d) with respect to the lease of dock/harbour space in Puerto Quetzal, Guatemala, dated December 17, 1992, between Empresa Porturia Quetzal and Operator (the "Port Lease") or those Assets that PQP is leasing from a third party, for any and all matters that did not arise by, through or under PQP, or its Affiliates and (e) with respect to matters respecting import duties as to which Participant is indemnified pursuant to Section 4.17 hereof ("Good Title"). If PQP does not have Good Title, then PQP shall have the right for 60 days after receipt of written notice of such defect from Participant to attempt to cure such defect if it is curable. All personal property material to the financial condition, operations, business or prospects of PQP and all buildings, structures and fixtures used by PQP in the conduct of its business are in good operating condition and repair, except for ordinary wear and tear and except for the punchlist items set forth on Exhibit 4.08(X) ("Punchlist Items"). To the knowledge of EDC, there is no pending or threatened condemnation, nationalization, expropriation or other similar proceeding or assessment affecting any of the assets of PQP, nor is any such proceeding or assessment contemplated by any governmental authority. There has not been any sale, assignment, lease, transfer, license, abandonment or other disposition by PQP of any interest in its properties which would have a Material Adverse Effect.

4.09 Permits and Land Use Rights. PQP has obtained all permits, authorizations and land use rights necessary to construct and operate the Project at the Site, except those the absence of which would not have a Material Adverse Effect.

4.10 [Wilfully Omitted]

4.11 Material Contracts and Liabilities. Exhibit 4.11(A) sets forth all of the material contracts and agreements, including material modifications and clarifications thereof by parties thereto and material written interpretations between the parties thereto (such modifications, clarifications and interpretations, "Clarifications") in EDC's or PQP's possession, or known to EDC or PQP, to which PQP is a party or of which PQP is a named recipient or beneficiary (separately identifying those with EDC or any affiliate thereof), and, to PQP's best knowledge, sets forth all of the material contracts and agreements, including Clarifications, but excluding statutes, rulings, regulations and orders of any governmental entity, by which PQP or any of its property or the Project may be bound, and Exhibit 4.11(B) sets forth all material liabilities of PQP or the Project in excess of $50,000. EDC has delivered to Participant true and complete copies of all the contracts and agreements set forth on Exhibit 4.11(A), all of which are in full force and effect.

Except (a) as disclosed in Exhibit 4.11(A) hereto, or (b) as may relate to an Expansion Project, but not the Project (as defined in the Stockholders' Agreement), PQP is not a party to and is not bound by: (i) any sales, agency, distributorship or brokerage agreement or franchise; (ii) any collective bargaining, union, employment, noncompetition or secrecy agreement (other than any confidentiality provision contained in any purchase order); (iii) any loan or credit agreement, security agreement, guaranty, indenture, mortgage, pledge, conditional sale or title retention agreement, equipment obligation, lease purchase agreement or other instrument evidencing indebtedness; (iv) any partnership, joint venture, joint operating or similar agreement; (v) any contract, agreement, arrangement or commitment presently in effect or entered into by EDC or PQP prior to the date hereof, whether or not fully performed, in connection with the issuance of capital stock, bonds or other securities or PQP; (vi) any contract, agreement, arrangement or commitment with any affiliate of EDC; or any contract, agreement or commitment which requires the expenditure by PQP of amounts in excess of (x) $100,000 per annum or (y) $500,000 over the life of the agreement,

or which otherwise materially affects the condition (financial or otherwise), properties, assets, business or prospects of PQP.

Each contract, agreement and commitment set forth on Exhibit 4.11(A) to which PQP is a party (a "4.11(A) Contract") constitutes the legal and binding agreement of PQP enforceable in accordance with its terms. Except as disclosed in writing to Participant, neither PQP nor any person that has assigned a 4.11(A) Contract has breached (which breach is continuing and has not been remedied or waived) any material provision of, or is in default in any material respect under the terms of, any such 4.11(A) Contract to PQP or a predecessor, and no event has occurred which, after notice or lapse of time or both, would constitute such a material default under the terms of any such 4.11(A) Contract. No other party to any such 4.11(A) Contract has failed to make to PQP any payment that is now due to PQP (after giving effect to customary grace periods), and, to the actual knowledge of EDC, no other party to any such 4.11(A) Contract to which PQP is a party or by which PQP is bound is in default thereunder or in breach of any term or provision thereof, except for Punchlist Items. To the knowledge of EDC, applying the standards of a reasonably prudent operator, there exist no conditions or events which, after notice or lapse of time or both, would constitute a default by any party to any such 4.11(A) Contract, except for Punchlist Items. To the actual knowledge of EDC, the Project has been constructed and is operated in accordance with such 4.11(A) Contracts and applicable law, except for Punchlist Items and for any matters disclosed under the heading in item 60 on Exhibit 4.11(A).

4.12 Equity Contribution. EDC has made or will make all equity contributions to PQP required under the Financing.

4.13 Power Purchase Agreement. The requirements of the Power Purchase Agreement necessary to trigger the obligation of EEGSA to commence payments thereunder with respect to 110MW of capacity and associated energy have been satisfied.

4.14 Guarantees. Neither EDC nor Enron Corp. have received notice of any claim or threatened claim

under the terms of the EEGSA Guarantee or the Transmission Line Guarantee (collectively, the "Guarantees") or with respect to any TOP Backup Payment, nor, to the knowledge of EDC, has any event occurred which constitutes or may constitute an event of default which gives rise to any obligation under any of the Guarantees or to make a TOP Backup Payment.

4.15 Absence of Undisclosed Liabilities. Except as and to the extent disclosed in writing to the Participant in this Agreement or prior to the date hereof, PQP does not have any material liabilities or obligations of any nature (whether absolute, accrued, contingent or otherwise), including, without limitation, any liabilities resulting from failure to comply with any law applicable to PQP or any tax liabilities due or to become due or arising out of any transaction entered into on the date hereof. To the knowledge of EDC, there is no basis for any assertion against PQP of any material liabilities not disclosed to the Participant in writing in this Agreement or prior to the date hereof.

4.16 Consents and Approvals; No Violation. No filing or registration with, and no permit, authorization, consent or approval of, any public body or authority is necessary for the consummation of the transaction contemplated by this Agreement.

4.17 Tax Matters. Except for value added tax and Import Taxes (as defined below), all Guatemalan, federal, state, county and local income and other taxes, including interest and penalties thereon due from PQP based on its activities prior to the date hereof, have been fully paid, or adequate reserves have been established for them that are reflected on the books of PQP. The term "Import Taxes" shall include any governmental charge that may be imposed or assessed as a result of the importation of property into Guatemala and includes, without limitation, import duties, stamp taxes and documentary taxes.

1 Duly authorized exemptions and waivers from the appropriate authorities in Guatemala with respect to the import duty, consumption tax and compensatory fee imposed by such authorities on the import, transfer and consumption of Bunker C fuel

oil for use by the Project have been obtained and are in full force and effect

2) The appropriate authorities in Guatemala have granted temporary import status to the barge and power generating systems affixed to the barges that are utilized by the Project. This temporary import status may terminate after January 1, 1994.

EDC shall indemnify Participant for any losses suffered by Participant arising from, and to the extent of, (a) any existing tax liability that PQP or EDC should have known about which has not been disclosed in writing to Participant, (b) any import duties and unrecoverable value-added tax incurred to date on the Assets, and (c) any import duties on barges and power generating equipment systems affixed to the barges or incorporated into the Project in Puerto Quetzal or Guatemala as of the date hereof (the "Barges and Systems") by virtue of the arrival or presence of the Barges and Systems in Guatemala or at Puerto Quetzal, in each case without regard to the $250,000 threshold set forth in Article VI hereof.

4.18 Minute Books. The minute books of PQP, true, correct and complete copies of which have been previously delivered to the Participant, contain complete and accurate records of any and all meetings of the directors of PQP and of any material action taken by such directors.

4.19 Testing, Completion and Engineering. Wartsila has delivered and PQP has accepted the Substantial Completion Certificate by letter dated February 15, 1993, a true and correct copy of which has been delivered to Participant. Subject to and in accordance with the terms and provisions of that certain letter dated February 26, 1993, from Wartsila to EPC, a copy of which has been delivered to Participant, Wartsila has delivered and PQP has accepted each of the Operational Completion Certificate (as defined in the Turnkey Contract) in accordance with Section 10.5 of the Turnkey Contract and the Availability Test Completion Certificate (also as defined in the Turnkey Contract) in accordance with Section 10.6(b) of the Turnkey Contract. Wartsila also delivered its Pre-Final Completion

Certificate by letter dated March 23, 1993, a true and correct copy of each of which has been delivered to Participant; EDC has rejected Wartsila's Pre-Final Completion Certificate for, among other things, failure to list all of the Punchlist Items as required by Section 10.8(b) of the Turnkey Contract. The Project achieved Commercial Operation (as defined in the Power Purchase Agreement) on February 18, 1993.

4.20 Environmental Compliance. PQP has been informed by the IFC that as part of the approval process undertaken by the IFC in connection with the Financing, the IFC is satisfied that the construction, installation and operation of the Project comply with the World Bank's Occupational Health and Safety Guidelines and Environmental Guidelines, both dated September, 1988. The construction, installation and operation of the Project comply with all applicable Guatemalan environmental statutes, rules and regulations.

ARTICLE V

Representations and Warranties of Participant

Participant represents and warrants to EDC that as of the date hereof:

5.01 Corporate Organization and Qualification Each of Participant and Parent is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware.

5.02 Corporate Authority. The execution, delivery and performance by Participant at Closing of each of this Agreement and of each Participant Closing Document set forth on Exhibit 3.01(f) hereto, and by Parent of the Reimbursement Agreement, and the delivery by Parent of the Reimbursement Agreement Letter of Credit and the IFC Letter of Credit have been authorized by all necessary corporate action, and do not and will not: (a) require any consent or approval of the stockholders of Participant or Parent or any third party not already obtained, (b) violate any law, rule, regulation, order, or decree presently in effect and having applicability to Participant or Parent, (c) violate the Certificate of Incorporation or By-Laws of Participant or Parent, or (d)

violate any contract, agreement, security agreement, mortgage, deed of trust, financing agreement, or other contract to which either of Participant or Parent is a party or by which either of them may be bound.

5.03 Enforceability. Each of this Agreement and each Participant Closing Document is the legal, valid and binding obligation of Participant, and the Reimbursement Agreement is the legal, valid and binding obligation of Parent, each enforceable in accordance with its terms, except as the enforceability thereof may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditor's rights generally and by general principles of equity, regardless of whether the issue of enforceability is considered in a proceeding at law or in equity.

5.04 No Litigation. There is no litigation or administrative or regulatory proceeding pending or, to the best knowledge of Participant, threatened, to which Participant or any of its affiliates is a party and which, if adversely determined, would have a material adverse effect on the ability of Participant or Parent to consummate the transactions contemplated herein or to comply with the provisions of each Participant Closing Document.

5.05 Investment Representations. None of Participant, Parent or any affiliate of either is (a) an investment company or a company controlled by an investment company within the meaning of the Investment Company Act of 1940, or (b) subject to, or not exempt from, regulation under the Public Utility Holding Company Act of 1935, as amended (the "Act"), or the Federal Power Act, as amended. Neither King Ranch, Inc. nor any affiliate (as defined under the Act) is a public utility company (as defined under the Act) over which a State commission has jurisdiction with respect to its retail electric or gas rates. Participant is acquiring the Transferred Shares for investment for its own account and not with a view toward any resale or distribution thereof. The statements set forth in the Affidavit of U.S. Citizenship delivered by Participant in connection with the Closing are complete, true and accurate statements of the ownership and status of Participant and any relevant affiliate as U.S. citizens.

ARTICLE VI

Indemnities

6.01 EDC Indemnity. EDC shall, and hereby does indemnify and hold harmless Participant and the directors, officers, employees, agents and representatives of Participant from and against any and all costs, losses, claims, damages and liabilities, including reasonable attorney's fees, incurred by it, arising out of any one or more breaches by EDC of any representation, warranty or covenant in this Agreement, to the extent that such damages exceed $250,000 in the aggregate for all occurrences.

6.02 Participant Indemnity. Participant shall, and hereby does indemnify and hold harmless EDC and the directors, officers, employees, agents and representatives of EDC from and against any and all costs, losses, claims, damages and liabilities, including reasonable attorney's fees, incurred by it, arising out of any one or more breaches by Participant of a representation, warranty or covenant in this Agreement, to the extent that such damages exceed $250,000 in the aggregate for all occurrences.

ARTICLE VII

General Provisions

7.01 Independent Investigation. Participant acknowledges that it has had access to the officers, employees, assets, operations, books, records and files of PQP and those of the EDC relating to PQP. In entering into the transactions contemplated by this Agreement, Participant is relying solely on its own investigation of the Project and on its own expertise in the independent power industry. Except for the representations, warranties and covenants contained herein, Participant is not relying on any other statement, document, or information provided by PQP or EDC or their affiliates, employees or agents, including without limitation any financial or operating projections. Without diminishing the scope of the express representations, warranties and covenants of EDC in this Agreement and without affecting

or impairing Participant's right to rely thereon, Participant acknowledges that EDC has not made, and EDC HEREBY EXPRESSLY DISCLAIMS AND NEGATES ANY OTHER REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, RELATING TO THE CONDITION OF THE ASSETS AND OPERATIONS OF PQP (INCLUDING, WITHOUT LIMITATION, ANY IMPLIED OR EXPRESS WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR CONFORMITY TO MODELS OR SAMPLES OF MATERIALS).

7.02 Entire Agreement. This Agreement, together with the EDC Closing Documents, the Participant Closing Documents, Stockholders' Agreement, and any other document executed or delivered between the Parties as of the date hereof, sets forth the entire agreement and understanding of the Parties relating to the subject matter set forth herein and supersedes any and all other understandings, contracts or agreements, oral or written, between the Parties hereto with respect of the subject matter of this Agreement.

7.03 Expenses. Each Party shall pay its own expenses related to this Agreement and the transactions contemplated hereby; provided however that on the Closing Date, Participant shall pay to EDC as reimbursement of the expenses of EDC in effecting this transaction the sum of $600,000. .

7.04 Governing Law. THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF TEXAS WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW.

7.05 DTPA Waiver. PARTICIPANT REPRESENTS AND WARRANTS TO EDC THAT PARTICIPANT SEEKS TO ACQUIRE THE GOODS AND/OR SERVICES WHICH ARE THE SUBJECT OF THIS AGREEMENT FOR COMMERCIAL AND BUSINESS USE AND THAT IT HAS ASSETS OF $25 MILLION OR MORE OR IS OWNED OR CONTROLLED BY A CORPORATION OR OTHER ENTITY WITH ASSETS OF $25 MILLION OR MORE. PARTICIPANT FURTHER REPRESENTS AND WARRANTS THAT, AT ALL TIMES PERTINENT OR RELATED TO THIS AGREEMENT AND THE TRANSACTION, ACTS OR PRACTICES THAT CONSTITUTE THE SALE OF THE GOODS AND/OR SERVICES UNDER THIS AGREEMENT, PARTICIPANT HAS AND WILL MAINTAIN TOTAL ASSETS OF AT LEAST $25 MILLION OR MORE OR BE OWNED OR CONTROLLED BY A CORPORATION OR ENTITY WITH ASSETS OF $25 MILLION OR MORE. ACCORDINGLY, PARTICIPANT ACKNOWLEDGES,

REPRESENTS AND WARRANTS THAT IT IS A "BUSINESS CONSUMER" AS THAT TERM IS DEFINED BY THE TEXAS DECEPTIVE TRADE PRACTICES--CONSUMER PROTECTION ACT, TEX. BUS. & COM. CODE ANN. §17.41 ET SEQ. (VERNON 1987) (THE "DTPA") AND AGREES THAT THE DTPA OTHER THAN SECTION 17.555 IS NOT IN ANY WAY APPLICABLE TO THIS TRANSACTION.

7.06 Confidentiality. The terms of this Agreement shall be kept confidential, except to the extent any information is reasonably required to be disclosed (a) to any person or entity for the purpose of evaluating whether to provide insurance or financing or other credit support for the Project or PQP or the Parties or their Affiliates or to any actual or proposed assignee of all or any part of the interest of the Participant or EDC in PQP, (b) to the legal, accounting, regulatory or other advisers of EDC, Participant or PQP, or their affiliates, (c) as required by any governmental authority or otherwise by law, (d) in connection with any litigation to which the Participant or any of its affiliates may become a party, or (e) to the extent reasonably required in connection with the exercise of any remedy hereunder; provided that any party to which disclosure is made under the foregoing Sections 7.06(a)-(b) has entered into an appropriate confidentiality undertaking; and further provided that if an appropriate confidentiality undertaking is not obtainable for disclosures under Sections 7.06 (c), (d) or (e), that a suitable protective order has been obtained (if obtainable); and further provided that the terms of this Agreement may be disclosed under the circumstances set forth in Section 6.01(b) of the Stockholders' Agreement. The provisions of this Section 7.06 shall survive any termination of this Agreement, including without limitation a termination pursuant to Section 2.03 hereof.

7.07 Severability. If any provision hereof is invalid and unenforceable in any jurisdiction, then, to the fullest extent permitted by law, (a) the other provisions hereof shall remain in full force and effect in such jurisdiction and shall be liberally construed in order to carry out the intentions of the parties hereto as nearly as may be possible, and (b) the invalidity or unenforceability of any provision hereof in any jurisdiction shall not affect the validity or enforceability of such provision in any other jurisdiction. If any provision or provisions of this

Agreement shall be held to be invalid, illegal or unenforceable, the validity, illegality or unenforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby.

7.08 Succession; No Third Party Beneficiaries. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns. Except as otherwise set forth herein, this Agreement is solely for the benefit of the Parties hereto and their respective successors and permitted assigns, and this Agreement shall not otherwise be deemed to confer upon or give to any other third Party any remedy, claim, liability, reimbursement, cause of action or other right.

7.09 Counterparts. This Agreement may be executed in any number of counterparts and by different parties hereto on separate counterparts, each complete set of which when so executed and delivered by all Parties, shall be original, but all such counterparts shall constitute but one and the same instrument.

7.10 Notices. Any notice to be given hereunder shall be in writing and may be delivered by hand (including without limitation by express courier) against written receipt or sent by first class mail postage prepaid or by facsimile copy with telephone confirmation thereof, promptly followed by a written notice sent by first class mail postage prepaid to the persons and addresses specified below (or such other person or address as any party may previously have notified in writing for the purpose). A notice shall be deemed to have been served when delivered by hand at that address or received by facsimile copy, or, if sent by first class mail as aforesaid, five days after it was posted. In proving service by first class mail, it shall be sufficient to prove that the letter containing the notice was properly addressed and stamped and posted. The names and addresses for the service of notices referred to in this Section are:

TO Participant at:

King Ranch Power Corp.
c/o King Ranch, Inc.
Two Greenspoint Plaza, Suite 1450

16825 Northchase
Houston, Texas 77060
Attention: Roger Jarvis
Fax No.: 713-873-4411

with a copy to:

Larry Worden
King Ranch Power Corp.
c/o King Ranch, Inc.
Two Greenspoint Plaza, Suite 1450
16825 Northchase
Houston, Texas 77060
Fax No.: 713-872-7209

TO EDC at:

Enron Development Corp.
c/o Enron Power Corp. - U.S.
Three Allen Center
333 Clay Street, Suite 400
Houston, Texas 77002

Attention: Jude Rolfes
Fax No.: 713-646-6022

with a copy to:

Robert H. Walls, Jr.
General Counsel
Enron Power Corp.
Three Allen Center
333 Clay Street, Suite 400
Houston, Texas 77002
Fax No.: 713-646-6022

7.11 Headings. Headings used in this Agreement are for convenience of reference only and do not constitute part of this Agreement for any purpose.

7.12 Nature and Survival of Representations and Warranties. All representations, warranties and covenants, including covenants of indemnification (unless otherwise provided herein), made by the parties and contained in this Agreement shall survive the Closing and all inspections, examinations, or audits on behalf of the parties hereto, and shall terminate on the second anniversary of the Closing Date.

7.13 Waiver of Compliance. Any failure of the Participant, on the one hand, or EDC, on the other hand, to comply with any obligation, covenant, agreement or condition herein may be waived by EDC or the Participant, respectively, only by a written instrument signed by the party granting such waiver, but such waiver or failure to insist upon strict compliance with such obligation, covenant, agreement or condition shall not operate as a waiver of, or estoppel with respect to, any subsequent or other failure.

7.14 Jurisdiction and Venue. Any process against the Participant or EDC in, or in connection with, any suit, action or proceeding arising out of or relating to this Agreement or any of the transactions contemplated by this Agreement may be served personally or by certified mail at the address set forth in Section 7.10 with the same effect as though served on it personally. The Participant and EDC hereby irrevocably submit in any suit, action or proceeding arising out of or relating to this Agreement or any of the transactions contemplated by this Agreement to the jurisdiction and venue of the United States District Court for the Southern District of Texas and the jurisdiction and venue of any court of the State of Texas located in Harris County and waive any and all objections to jurisdiction and review or venue that it may have under the laws of Texas or the United States.

IN WITNESS WHEREOF, the undersigned have executed and delivered this Project Participation Agreement as of the date above set forth.

KING RANCH POWER CORP.

By: _____
Name: Roger Jarvis
Title: President and Chief Executive Officer

ENRON DEVELOPMENT CORP.

By: _____
Name: Rebecca P. Mark
Title: President and Chief Executive Officer

Exhibit A
to the
Project Participation
Agreement

FINANCING TERMS

1. If Financing is provided by the IFC (and any other institution participating with the IFC in such Financing), "Financing Terms" shall mean terms and conditions better than, or substantially the same as, those terms and conditions set forth in the following draft documents:

(a) Investment Agreement between IFC and PQP (draft of March 28, 1993)

(b) Project Funds Agreement between IFC and PQP (draft of March 29, 1993)

(c) Sponsor Support Agreement among Enron Corp., PQP and IFC (draft of March 29, 1993)

(d) Share Retention Agreement between EDC and IFC (draft of February 25, 1993)

EDC has provided true and correct copies of the foregoing draft documents to Participant.

2. If Financing is provided by Enron or an affiliate thereof, "Financing Terms" shall mean those set forth on Attachment A-1 hereto.

V. Summary Of Preliminary Financing Terms and Conditions

A. DRAFT TERM SHEET FOR IFC INVESTMENT

This draft term sheet is for discussion purposes only and subject to change. It does not constitute an offer or commitment by the International Finance Corp. ("IFC") nor does it contain any representation or warranty of any kind on IFC's part. Any investment by IFC is contingent upon the negotiation of mutually satisfactory terms and conditions, review by local counsel, approval of the transactions contemplated herein by IFC's management and Board of Directors and execution of satisfactory documentation.

1. Certain Definitions:

Borrower:	Puerto Quetzal Power Corp. ("Borrower")
Closing:	Upon execution of the Investment Agreement. Closing is targeted to occur on or before March 15, 1993.
Commitment:	The aggregate amount made available by the Lenders to provide loans to the Borrower.
Investment Agreement:	The agreement among the Borrower, the Agent and the Lenders, pursuant to which the Lenders will commit to make available to the Borrower the Commitment.
Lenders:	Financial institutions participating in the Investment Agreement.
Project:	A 110 megawatt (net), fuel oil-fired, dispatchable, barge mounted power plant located in Puerto Quetzal, Guatemala together with ancillary onshore equipment.

2. Project Company: The Project will be implemented by the Puerto Quetzal Power Corp., ("Borrower" or "the Company"), a corporation established under the laws of the State of Delaware, U.S.A. The shareholders of the Company will include (1) Enron Power Development Corporation ("EPDC") or an affiliate thereof, a wholly owned subsidiary of Enron Power Corp. ("Enron Power"), itself a wholly owned subsidiary of Enron Corp. (the "Sponsor"), and incorporated in the State of Delaware, and (2) any other investors to whom EPDC sells its equity up to a

maximum of 50% ownership interest in the Company after consultation with IFC, with any further sale to be approved by IFC, such approval not to be unreasonably withheld.

3. Project Cost: Project Costs will include (i) all construction costs of the Project, including all amounts payable under the Project construction contract; (ii) initial spares, start-up and operator mobilization costs, and working capital requirements; (iii) Project development fees, construction management fees and development cost recoveries,(iv) related legal and other transaction and financing costs; (v) costs of site and; (vi) all other Project-related costs and expenses for the acquisition, construction and financing of the Project. Costs in excess of the facility amount will be funded by the sponsors. The total cost of the Project is estimated to be US$92 million for the complete Project package, including working capital and contingencies. The major components of this turnkey package are identified below:

Item	$ in Million
Turnkey Equipment Contract	77.40
Construction Management	2.80
Goodwill Purchase	1.70
Start-up Fees, Legal, etc.	1.70
Legal Fees	0.75
Working Capital	2.00
Financing Costs	2.40
Contingency/Development Fee	3.25
Total Project Cost	92.00

4. Financial Plan: The Project is expected to be financed as follows:

	US$ Million Total	% of Total
Equity/Quasi-Equity		
EPDC	13.75	14.9%
Deposit from EEGSA	7.25	7.9%
	21.0	22.8%
Subordinated Debt		
IFC Subordinated "C" Loan	6.6	7.2%
Senior Loans		
IFC "A" Loan	13.4	14.6%
IFC "B" Loan and or Co-Financing	51.0	55.4%
Total Senior Debt	64.4	70.0%
Total Financing	92.0	100.0%

The deposit from EEGSA would be repaid by the Project Company in ten semi-annual installments of US$725,000 each, commencing on the last day of year 7. These repayments will be the obligation of the Sponsor, except to the extent that they can be met out of net income otherwise available for dividends. The IFC "B" Loans, to the amount required to complete the Financial Plan, will be guaranteed by the Sponsor until taken by participants on a non-recourse basis.

5. IFC Investment: In accordance with the Financial Plan, the IFC Investment is proposed to be:

(a) Up to US$13.4 million "A" Loan for its own account.

(b) Up to US$6.6 million Subordinated "C" Loan for its own account.

(c) Up to US$51 million "B" Loan for the account of participants.

6. Letter of Information: A Letter of Information, providing all material facts relating to the company, the Project the Sponsor and the Financial Plan, the award of fuel tax exemption status to the Project, actions taken or to be taken by the company and the Sponsor regarding the environmental and socio-economic impact of the Project and certain representations and warranties concerning the Company and the sponsor, shall be submitted to IFC by the Company and the Sponsor before presentation of the Project to IFC's Board of Directors for final approval.

7. Principal Documentation:

(a) Investment Agreement between IFC and the Company providing for the IFC "A", "B" and "C" Loans (collectively "the Loans").

(b) Participation Agreements between IFC and each of the participants in the "B" Loan.

(c) Loan Agreements providing for Co-financing, where such financing is substituted for some part of the "B" Loan.[1]

(d) Documentation providing for the Security described in paragraph 34.

(e) A Share Retention Agreement between IFC and the sponsor or any affiliate thereof providing that the Sponsor or any affiliate thereof shall not sell more than 50% of its shared (or otherwise cease to have control) of the Company until the IFC Loans have been fully repaid, without the approval in writing of IFC which shall not be unreasonably withheld

(f) An Operation and Maintenance Agreement, reasonably satisfactory to IFC, between the Company and Electricidad Enron de Guatemala or some other wholly owned subsidiary of Enron Power to operate and maintain the plant. Payment under this Operation and Maintenance Agreement, i.e., the O&M Base Fee and the Economic Dispatch

[1] If there is no co-financing, i.e., if the entire loan package is provided for by IFC and the "B" Loan Participants, all references herein to "Senior Lenders", "lenders", "other lenders", etc. should be interpreted to mean "IFC".

Fee (but excluding those costs incurred by the Operator which are directly reimbursable by the Project Company) must be subordinated to the payment of interest and principal on the IFC "A" and "B" Loans, any loans from co-financiers (hereinafter the "Senior Loans" and the lenders thereof the "Senior Lenders"), to the payment of interest and principal on IFC Subordinated "C" Loan and to the maintenance of the Retention Account and the Overhaul Reserve Account described in (g) and (j) below.

(g) An Overhaul Reserve Agreement between the Sponsor, the Company, the Lenders and the Overhaul Account agent, whereby the Sponsor will provide a cash reserve which may be substituted by a Letter of Credit or corporate guarantee. The size of the reserve and the mechanism for release of unutilized funds subject to a Sponsor guarantee are currently being negotiated.

(h) A Fuel Supply Agreement reasonably acceptable to IFC, between the Company and fuel suppliers with a term at least equal to the duration of the Senior Loans and consistent with the terms established in the Power Purchase Agreement (PPA).

(i) Title documents reflecting assignment of right of use of the Project site pursuant to the lease with the Puerto Quetzal Port Authority.

(j) A Retention Account Agreement among the Sponsor, the Company, the Lenders and the retention account agent whereby the Sponsor will provide for a cash reserve, a Sponsor Guarantee or a Letter of Credit from a bank acceptable to IFC, in US dollars, equal to six months debt service on the Senior Loans, to be put in place before disbursement of the loan. The amount will be set each six months, in line with the debt service requirements of the following six months. After the initial establishment of the fund by the Sponsor, any additional sums required will be funded from the project's cash flow after all Project Operating

expenses.

(k) A Project Funds Agreement among the Company, IFC and the Sponsor providing completion support for the Project.

(l) a duly executed Power Purchase Agreement between PQPC and EEGSA (the "PPA").

I. IFC "A" LOAN

8.	BORROWER:	The Company.
9.	LOAN AMOUNT:	US$13.4 million.
	INTEREST RATE:	Fixed rate. The interest rate will be determined on the day the Project is presented to the IFC Board, based on the fixed rate swap equivalent of LIBOR plus 325 basis points. As an indicator, the current fixed rate would be 10.1875%.
11.	FRONT-END FEE:	1% of the loan amount, payable on the earlier of 30 days after the date of signing of the Investment Agreement or the date of the first disbursement of any of the IFC "A" Loans.
	COMMITMENT FEE:	1% p.a. on the undisbursed portion of the IFC "A" Loan payable quarterly in arrears, commencing to accrue 30 days after the investment is approved by IFC's Board of Directors.
13.	REPAYMENT:	Repayable in 36 equal quarterly repayments of principal, commencing no earlier than six months after signature of the Investment Agreement.
	INTEREST PAYMENT DATES:	October 1, January 1, April 1 and July 1
	DEFAULT RATE:	1% p.a. above the regular interest rate.
16.	PREPAYMENT OF A LOAN:	(a) Voluntary: Prepayment of the IFC "A" Loan will be permitted but subject to payment of either (i) a

prepayment fee of 1.5% of the prepaid amount multiplied by the number of years remaining (including part years expressed as a fraction) to final scheduled maturity or (ii) a prepayment fee based on IFC's redeployment costs at the time of prepayment (formula to be provided at a later date), plus accrued interest and other amounts due. The prepayment fee option is to be chosen during negotiation of the Investment Agreement. Prepayment is permitted only upon payment of all accrued interest and other amounts then payable. Partial prepayments will be applied pro-rata to all repayment installments.

(b) Mandatory: Prepayment is mandatory upon (i) any prepayment by the Company of any other loan other than permitted indebtedness in which event prepayment shall be pro-rata; (ii) the end of the initial 15-year term provided for in the PPA.

II. IFC "B" LOAN

19. BORROWER: The Company.

20. LOAN AMOUNT: US$51 million

21. INTEREST RATE: No more then LIBOR + 325 b.p. Variable rate.

OTHER TERMS: Terms to be negotiated; (For loan preparation purposes at this stage, assumed to be repayment over 8 years, after 6 months grace). The Commitment Fee will be 0.5% p.a. No prepayment penalty will apply to a variable rate loan.

III. IFC SUBORDINATED "C" LOAN

LOAN AMOUNT: US$6.6 million

24. INTEREST RATE: Fixed rate, based on the fixed rate swap equivalent of

LIBOR plus 725 basis points. As an indicator the current rate would be around 14.0%.

25. FRONT-END FEE: 1% of the loan amount, payable on the earlier of 30 days after the date of signing of the Investment Agreement or the date of the first disbursement.

26. COMMITMENT FEE: 1% p.a. on the undisbursed portion of the IFC Subordinated "C" Loan, payable quarterly in arrears, commencing to accrue 30 days after the investment is approved by IFC's Board of Directors or Management.

27. REPAYMENT: Repayable in 40 equal quarterly installments commencing no earlier then six months after signature of Investment Agreement.

28. INTEREST RATE: October 1, January 1, April 1 and July 1

29. DEFAULT RATE: 1% p.a. above the regular interest rate.

30. SUBORDINATION: IFC Subordinated "C" Loan shall be subordinated to interest and principal repayments of the IFC "A" and "B" Loans and other Senior Loans as contemplated in the Financial Plan.

31. DEFERMENT: Payment of interest, fees and principal on the IFC Subordinated "C" Loan will be deferred if any payment due on account of the IFC "A and "B" Loans or other Senior Loans is not made when due. Any amount deferred will continue to accrue interest and will be repaid as soon as cash generation would allow.

32. PREPAYMENT OF IFC SUBORDINATED C LOAN:

(a) Voluntary: Prepayment of the IFC Subordinated "C" Loan will be permitted but subject to payment of (i) a prepayment fee of 5-1/2% of the prepaid amount multiplied by the number of years remaining (including part years expressed as a fraction) to final scheduled maturity. Prepayment is permitted only upon payment of all accrued interest and other amounts then payable. Partial prepayment will be applied pro-rata to all repayment installments.

(b) Mandatory: Prepayment, at IFC's option, of the IFC Subordinated "C" Loan, plus accrued interest and other amounts due, is mandatory by the end of the initial 15-year term provided for in the PPA.

33. ESTIMATED DATE FOR SIGNATURE OF LOAN AGREEMENT: February 28, 1993 (assuming Board approval has been obtained by then).

34. CUT-OFF DATES FOR DISBURSEMENTS: First Disbursement: July 31, 1993.
Last Disbursement: December 31, 1993.

35. SECURITY:

(a) All Senior Lenders will rank pari passu and share in the security package. Subordinated lenders will rank pari passu behind Senior Lenders and share on a junior basis, also in the common security package. The principal security will include: An assignment to IFC by the Company of its rights under the PPA (which shall include an agreement to transfer the PPA in the event that the lenders foreclose on the security). This assignment shall include the right to attach the irrevocable 90-day letter of credit, accounting for one month's revenues, renewable every 90 days, which may be called on by the Company in the event of a default by EEGSA.

(b) A first mortgage and pledge over immovable and movable assets of the Company, including the Project barges.

(c) An assignment of all concessions, agreements, licenses, permits etc., associated with the Project (including the PPA, the long-term lease from the Puerto Quetzal Port Authority and other port permits and any performance bond issued thereunder, including the one-year warranty from the turnkey contractor).

(d) A designation of the Senior Lenders as co-loss payees of all Project insurance policies, (excluding insurances provided by Overseas Private Investment

Corporation) relating to the Project.

(e) A Security Sharing Agreement between IFC and the other Senior Lenders.

36. PRINCIPAL CONDITIONS PRECEDENT FOR FIRST DISBURSEMENT OF ANY OF THE IFC LOANS:

The Company shall be legally incorporated and its By-Laws and Articles of Incorporation shall be satisfactory to IFC.

Arrangements satisfactory to IFC shall have been implemented for (i)accounting, management information and cost control systems and (ii) appointment of auditors.

(c) The agreements specified in paragraph 7 above, each in form and substance reasonably satisfactory to IFC, shall have been entered into by al the relevant parties and shall ·have become fully effective.

(d) IFC shall have received satisfactory confirmation from the relevant government authority that the Project is eligible for the incentives and concessions pertaining to electricity generating projects under the laws of Guatemala including, without limiting the foregoing, authority to establish a foreign exchange account and to import fuel. All governmental, corporate, creditors' and shareholders' consents legally required or reasonably deemed necessary by IFC shall have been obtained, including approvals of repatriation and remittance rights reasonably satisfactory to IFC. IFC shall have received copies of documentation from appropriate authorities satisfactory to IFC, granting the authority to the port space to the Project. Arrangements satisfactory to IFC shall have been reasonably satisfactory to IFC shall have been made concerning the acquisition of all necessary rights to the Project site (including water

rights).

(e) The common equity and the EEGSA deposit shall be fully paid pursuant to the Financial Plan.

(f) The Security shall have been created and perfected.

(g) Legal opinions satisfactory to IFC shall have been obtained from counsel acceptable to IFC at the Company's expense.

(h) The Senior Lenders shall have been named as co-loss payees in respect of the Company's Project insurance policies, shall have received insurance certificates verifying coverage and such policies shall be in form and substance reasonably satisfactory to IFC. The Company will provide the details of the proposed insurance coverage to the Senior Lenders for their approval.

(i) The transmission line linking the Project to the national grid shall be complete and ready to receive 110MW.

(j) Arrangements satisfactory to IFC shall have been made for the Project to meet and to continue to operate within IBRD and Guatemala guidelines on the environment and occupational health and safety, including those set out in paragraph 39(q) below.

(k) The Retention Account described in 7(j) above shall have been established in a manner satisfactory to IFC.

(l) All corporate guarantees and/or letters of credit required under the Investment Agreement.

37. <u>FURTHER CONDITIONS PRECEDENT FOR ALL DISBURSEMENTS:</u>

(a) No Material default (actual or pending) under the Investment Agreement shall have occurred and be continuing.

(b) No material default under any of the other agreements referred to in paragraph 7 shall have occurred and be continuing.

(c) There shall have occurred no material adverse change in the projection since the date of execution of the Investment Agreement, the Company or the Sponsor.

(d) Representations and warranties shall have been confirmed as of the disbursement date.

(e) The proceeds of disbursement shall not be spent in countries which are not members of the World Bank.

38. DISBURSEMENT:

(a) Disbursement of the IFC "A" and "B" Loans shall be pari passu with the loans from other Senior Lenders, and after the IFC Subordinated "C" Loan has been fully disbursed.

(b) The minimum disbursement of the IFC "A" and "B" loans (other than the last disbursement) will be, in aggregate, US$10,000,000.

39. PRINCIPAL FINANCIAL COVENANTS:

Unless otherwise agreed by the IFC, the Company shall:

(a) Use proceeds of all funds provided under the Financial Plan exclusively for the Project.

(b) Maintain agreed upon insurance to the extent commercially available during the construction and operating periods with reputable insurers and provide IFC with insurance certificates from insurers or brokers upon extension, renewal, modification or purchase of new or additional insurance. IFC and other Senior Lenders shall be named co-loss payees in respect of the insurance policies.

(c) Maintain accounting, management information and cost control systems satisfactory to IFC, maintain a

firm of independent auditors, reasonably satisfactory to IFC; and authorize IFC to contact its auditors directly.

(d) Provide monthly progress reports in form and substance satisfactory to IFC during the first year of the project, quarterly reports thereafter within 60 days of the end of the period covered.

(e) Provide monthly financial statements in the first year (unaudited) with quarterly no default certification by the chief financial officer within 60 days after the end of each quarter and provide, within 120 days after the end of financial year, annual (audited) financial statements, annual auditors' "no default" certifications, the auditors' management letters to the Company and such other information as IFC may reasonably request.

(f) Permit IFC representatives to visit the premises upon reasonable advance notice during normal business hours of the Company and to have access to its books.

(g) Maintain in full force and effect all licenses, consents and approvals required to implement the Project and operate the plant.

(h) Not pay cash dividends until after Project completion as defined in paragraph 44 below, and then only out of cash flow available for dividends and if:

(i) The IFC "A" and "B" Loans are current and all deferred payments on the IFC "C" Loan (if any) have been repaid;

the minimum balance has been accumulated and maintained in the Retention Account described in paragraph 7 j above;

the minimum balance has been accumulated and maintained in the overhaul reserve, or a sponsor guarantee or letter of credit is in

place to cover it;

(iv) fees due under the Operation and Maintenance Agreement have been paid.

the Company is not in default under the IFC Loans or any other loan; Comment: You mean co-financing?

The Project has a minimum cash balance of $500,000.

the Debt Service Coverage Ration based on the most recent 12 rolling months figures for cash flow is not be less than 1.2 The hierarchy of claims over the project cash flow, defined as net income [before] tax plus depreciation and amortization plus Operation and Maintenance Fees plus provision for overhauls plus any transfers to Retention Account is:

1. service of senior debt;
2. service of subordinated debt;
3. provision for overhauls;
4. any transfer required to Retention Account;
5. Operation and Maintenance fees; and
6. dividends.

(i) Not to incur or commit to incur, expenditures for fixed and other non-current assets exceeding [$100,000] per fiscal year, excluding expenditure for maintenance and capital expenditure deemed necessary for operations.

(j) Not to incur or permit to incur any indebtedness other than:

(i) indebtedness under the Financial Plan;

short-term debt, not to exceed in total 50% of the aggregate amount of inventories,

receivables, cash and short-term deposits; and

indebtedness incurred in the ordinary course of business other than for money borrowed.

(k) Not to guarantee the debt of others (with the exception of guarantees in the ordinary course of business not exceeding in the aggregate US$50,00 equivalent at any time).

(l) Not to create or permit to exist any liens or charges on any of its property other than:

(i) the Security in favor of the secured lenders; and

any tax or other statutory liens.

Permitted liens (to be agreed)

(m) Not engage in transactions with affiliates which are not less favorable than the Borrower could obtain in an arm's length transaction with a person that is not an affiliate, it being agreed that the agreements in Section 7 above constitute arms length transactions

(n) Not to enter into any agreement whereby the company's income or profits are shared with any other party.

(o) Not to make any investments in other companies except investments in short term marketable securities.

(p) Not enter into leases (as lessee), except for the site lease, leases of transportation equipment, office equipment, computers and similar equipment, under which the aggregate rental payments do not exceed the equivalent of [$100,000] per year.

(q) Comply with Guatemalan occupational health and safety standards; environmental statues, rules and regulations and world Bank and IFC standards; maintain levels of emissions levels to be agreed

with IFC, and give IFC annual compliance reports within 60 days from the end of each fiscal year, and allow for monitoring verification of these reports, at least twice a year, at the Company's expense.

(r) Not to issue or undertake to issue any shares of capital stock or securities convertible into or exchangeable for capital stock other than in accordance with the Financial Plan.

(s) Not to remove the barges without IFC's consent.

OTHER COVENANTS: (a) The Company shall promptly notify the IFC of any existing or imminent defaults under any of the agreements listed in paragraph 7 above.

(b) Payment or reimbursement to IFC of any stamp duties and taxes, if any.

(c) Reimbursement of costs of IFC's outside Guatemala, New York and U.S. maritime legal counsel.

(d) No assignment or other transfer of, or termination of, nor waiver or amendment of, any of the agreements listed in paragraph 7 unless consented to by IFC.

(e) Standard provisions, including no changes in Project, and articles of incorporation or by-laws, no substantial disposal of assets and no merger, consolidation, etc.

EVENTS OF DEFAULT: Full provisions after expiration of applicable cure periods relating to Company and any others Sponsor, including (a) payment default; (b) performance default under Investment Agreement or agreements listed in paragraph 7; (c) cross-default provisions; (d) express provision for default if any of the agreements listed in paragraph 7 is assigned, terminated or materially amended by the Company or the Sponsor without IFC's consent; (e) falsity of representations and warranties by the Company in the Investment Agreement and related financing documents; (f) bankruptcy, insolvency of the Company; (g) nationalization and confiscation; (h) abandonment of the Project by the Company; (i) express provision for default if the barges are

removed from Guatemalan waters by the Company; and (j) express provision for default if at any time the average annual availability of the generating units is less than [110000] hours (i.e. 5500*20), net of any curtailment and which, would materially adversely affect the Company's ability to perform its obligations. Lenders reserve the right to cure any de'ault on any material contracts by the Company.

42. FINANCIAL CALCULATIONS

Shall be based on financial statements which have been prepared in accordance with generally accepted U.S. accounting principles consistently applied and shall be calculated from the Company's most recent quarterly or annual financial statements. Financial statements shall include certified data on appropriate dollar exchange rates which is applicable to the financial information provided.

43. CHOICE OF LAW: New York

44. PROVISIONAL ACCEPTANCE:

The date of Provisional Acceptance shall be the day on which all of the following requirements shall have been satisfied:

(a) Physical Completion. The Company shall have delivered to IFC and the other lenders, a written notice (together with the relevant supporting data) in form and substance reasonably satisfactory to IFC, and signed by an authorized representative of the Company, certifying that:

(i) The Project has satisfactorily passed the mechanical and electrical performance tests, reliability tests, and performance tests, reliability tests, and performance guarantee tests as specified in the Wärtsilä/Enron Turnkey Construction Contract.

(ii) The Project has performed continuously for a 15-day period, while meeting World Bank and Government of the Guatemala environmental standards, and those emission

limits specified in 37 (q) above Procedures for a twice yearly test to monitor and record the level of emissions have been agreed. The procedures will include a provision to notify the Senior Lenders of the emission levels and the plant's compliance with the specifications.

Each complete generating unit has performed continuously for a 15-day period, with all systems operating and under the conditions specified in the Wärtsilä/Enron turnkey contract including use of fuel within the specifications set out there unless otherwise agreed by Wärtsilä. The test shall be deemed satisfactory if during such operating period the unit operates continuously or intermittently in commercial service as may be convenient for, and meets the requirements of EEGSA. A period of continuous operation at full load for 48 hours may be included during the reliability trial, subject to system availability.

All payments for contractors' work and equipment having a material impact on the operability of the Project have been settled in full, other than change order amounts in dispute and which are being contested i good faith and loans required to be made by the Turnkey Contractors under the Completion Support Agreement, and there exist no liens relating to such work or equipment except in respect of such amounts in dispute or financing contemplated under the Financial Plan.

The plant has (a) a net capacity of 110MW and (b) a net heat rate which shall not be greater than 9,225 Btu/kwh. (higher heating value).

(b) Turnkey Contract Completion. The Company has certified that to its knowledge all substantive work

under the terms of the Turnkey Construction Contract is complete and in compliance with the Turnkey Construction Contract, including any authorized amendments (minor items which do not affect normal full load operation are excluded from this requirement), completion, reliability, and performance testing has been successfully concluded, reviewed, and approved, and all guarantees on performance other than Wärtsilä's one-year warranty have been satisfied.

(c) Financial Completion. The company's auditors shall have delivered to IFC and other long term lenders a certificate confirming that the working capital of the Company is at least US$2.0 million equivalent, and that the Retention Account described in paragraph 7(j) above and the Overhaul Reserve described in paragraph 7(g), has been established or fully funded in accordance with the terms hereof.

(d) The Company shall have delivered certification satisfactory to IFC confirming the matters in paragraph (a)-(b) above.

45. PROJECT COMPLETION DATE: Project Completion shall be deemed to have occurred when the condition of Provisional Acceptance outlined in paragraph 44 (a)-(d) have been met and in addition:

(i) the plant shall have demonstrated an average availability of [7300] hours per unit in any consecutive 12-month period. Average unit availability will be that recorded on unit operating history records.

(ii) IFC shall have delivered to the Company a certificate (Project Completion Certificate) accepting that the conditions as outlined in this Paragraph have been met and that Project completion has been achieved. IFC shall endeavor to provide this certificate within thirty (30) days of receiving satisfactory documentation that the other conditions of Project Completion

have been met.

46. PROJECT FUNDS AGREEMENT:

A. Obligations

The Sponsor shall enter into an agreement with the company and IFC whereby the Sponsor agrees that, in the event that the IFC shall determine prior to the Project completion Date that the funds available to the Company are not sufficient to (i) achieve the Project Completion Date (as defined in paragraph 44 above,) or (ii) carry on its day-to-day operations, or (iii) permit the Company to satisfy its obligations under the Investment Agreement, or Where the Company is unable to satisfy its debt service obligations to the IFC and other Senior Lenders, if any and/or to meet the debt service coverage covenant set out in paragraph 39(h) (vii), the sponsor will provide to the Company such funds as required or at the Sponsor's option, the Sponsor will retire debt from the Senior Lenders on a pro-rata basis, to the point where the Company's obligations can be respected. The provisions of prepayment, as set out in paragraphs 16 and 32 would apply to such debt deductions.

B. Type of Funds

All the funds to be provided under the Project Funds Agreement shall be in the form of equity or loans subordinated in payment and liquidation to the IFC Loans ("A", "B" and "C") and other Senior Loans on terms and conditions reasonably satisfactory to IFC, or in the form of prepayment of senior debt, at the option of the Sponsor. The repayment of any such debt under the Project Funds Agreement would be allowed only if (i) the company is current on all payments due under the IFC "A" and "B" Loans, other Senior Loans and the IFC Subordinated "C" Loan, and (iii) if after such repayment the debt service coverage covenants set out in 39(h) (vii) are respected.

C. Call Amount

The obligations of the Sponsor to provide funds under the Project Funds and Support Agreement shall be limited to an aggregate amount of US$15,000,000, which amount is additional to any amounts recovered or claimed from the Turnkey Contractors. This amount shall be reduced to US$10,000,000 once the plant has demonstrated an average availability of [3700] hours during the previous 6 months.

B. Security of Repayment

Funding by Lenders for the Project is not required until minimum performance tests have been passed and commercial operations have commenced. Therefore, typical project financing risks associated with construction, development, permitting and siting are not borne by Lenders. From an operating standpoint, the Project has been structured to provide adequate debt service coverage ratios from operating margins which are contractually secure. At the expected 85% plant dispatch level, projected pre-tax coverage ratios are an average 2.71 times Project cash flow and a minimum of 1.57 times Project cash flow; at the contractual 50% minimum take levels, coverage ratios are an average of 2.23 times Project cash flow and a minimum of 1.31 times Project cash flow. The capacity payments from EEGSA are expected to cover all fixed costs, including debt service and return on equity. The energy payment is indexed to a market index for the same grade of fuel oil to be burned in the Project, thereby allowing increases in fuel costs to be fully passed through to the power Purchaser.

As in all project-financed power projects, maintenance of the Project debt service and coverage ratios are based on performance by EEGSA as the power purchaser under the PPA. EEGSA is a financially stable private utility with a long history of operations. It has enjoyed

an extremely high collection rate from its customers which has remained unchanged through recent rate increases. This is largely due to demographic makeup of its customer base, which is made up of large commercial and industrial customers, higher net worth residential customers and other government/municipal customers. Although the payments under the PPA will initially approach 50% of EEGSA's total cash outflows, this percent should decrease over time as demand, supplies and EEGSA deliveries increase, and because customer rate increases that match inflation will likely exceed the 3% escalation in capacity payments.

As additional security measures, EEGSA will make a $7.25 million prepayment of capacity payments at the commencement of commercial operations, as its front-end commitment to the Project. These funds will be retained in the Project as part of the Project equity. The PPA also requires EEGSA to provide a Letter of Credit for the equivalent of 30 days of capacity and energy payments (approximately $4.4 million). INDE has further agreed to cause EEGSA to comply with all its obligations under the PPA.

As a final security measure, in the event that insurmountable difficulties occurred in Guatemala and utilizing OPIC insurance coverage was not deemed feasible or desirable, the barge mounted power station can be readily removed from the port thereby providing the opportunity for the plant to seek alternative locations to fulfill its economic potential. Electric rates prevailing in most other Central and South American countries significantly exceed the 6.24¢ all-in electric price being charged under the power contract. As a final backstop, an independent U.S. marine appraiser, Noble, Denton & Associates,Inc. has estimated the market value of the barges alone at $62 million, based on the resale value of the equipment.

1100 New York Avenue, N.W.
Washington, D.C. 20527
(202) 336-8400
FAX (202) 408-9659

April 28, 1993

Mr. Paul E. Parrish
Risk Management Analyst
Enron Corp.
333 Clay Street
Houston, TX 77002

Amendment No. 1 to OPIC Contract of Insurance No. D693
(the "Contract") - Guatemala

Dear Mr. Parrish:

Thank you for your letter dated April 5, 1993, in which you advised OPIC that as of March 31, 1993, Enron Development Corp. sold 50 percent of the stock of Puerto Quetzal Power Corp. to King Ranch Power Corp. In order to bring King Ranch under OPIC coverage, we propose to amend the above-referenced Contract.

By deleting the reference to Enron Corp. and its subsidiaries as the named Investor on the cover page and substituting therefor the following:

"Puerto Quetzal Power Corp.
333 Clay Street, Suite 180
Houston, Texas 77002

a corporation organized and existing under
the laws of the State of Delaware, which as of
the date hereof is 50 percent owned by
Enron Development Corp. and
50 percent owned by King Ranch Power Corp.

(the "Investor")."

other provisions of the Contract shall remain unchanged

Business Confidential Information

EARLY - DESCRIPTIVE MEMORANDUM

Senate Finance Committee

EXHIBIT 30

If the foregoing is acceptable, please have an authorized officer of Puerto Quetzal Power Corp. countersign and date the enclosed two copies of this letter and return one to OPIC. This Amendment will be effective as of March 31, 1993, provided we receive one copy of the letter duly signed within 15 days of the date of this letter.

If you have any questions, please feel free to call Britt Doughtie at (202) 336-8579.

Sincerely,

Felton McL Johnston
Vice President for Insurance

AGREED AND ACCEPTED:

By:

Date: _____

cc:

tia Information

F03

Senate Finance Committee

EXHIBIT 31

SUN KING
TRADING INC.

Messrs.
ENRON POWER CORP.
333 Clay Street
Houston, Texas 77002

Attn: Mr. James Steel

Dear Jim,

In response to your initial offer to buy our interest in the Puerto Quetzal power project and after conversations with our financial analysts, we have arrived at a set of approximated buyout amounsts based on the present value of our contract with Enron Power Development Corp. (EPDC) for payments based on the present 110 Megawatt project in Puerto Quetzal for 15 years. This does not include any future additions to the generating capacity of that contract or any term extensions after the initial 15 years, both of which should be prorated accordingly.

Assuming the minimum energy sale of 50% of the installed capacity which Empresa Electrica de Guatemala, S.A. is obligated to purchase from Puerto Quetzal Power Corporation (PQPC) under contract, SUN KING TRADING COMPANY, INC. ("SUN KING") is paid a gross monthly payment of $140,415.00 (1,684,980.00 / 12 months) during the first year, taking into consideration the automatic 3% annual increase on the demand capacity but not the projected increases in the cost of fuel, would yield a present value according to the assumed discount rate shown below:

7% 7.10% $17,075,849.35

Assuming an energy sale of 75% of the installed capacity, a gross monthly payment of $210,622.50 ($2,527,470.00 / 12 months) during the first year, taking into consideration the automatic 3% annual increases on the demandcapacity but not the projected increases in the cost of fuel, would yield a present value according to the assumed discount rate shown below:

7% $25,613,774.02

Assuming an energy sale of 100% of the installed capacity, a gross monthly payment of $280,830.00 ($3,369.960.00 / 12 months) during the first year, taking into consideration the automatic 3% annual increase in the costof fuel, would yield a present value according to the assumed discount rate shown below:

$ 34,151,689.69

SUNKING
TRADING INC.

Please keep in mind that none of these figures account for the increases in the price of Bunker C fuel over the first 15 years which would be reflected in the 6% payment stream based on the total invoicing by PQPC. This additional revenue should be negotiated separately, probably based on yearly payments based on the actual fuel usage or a lump sum based on a mutually agreed projection.

Regarding the assumption of using after-tax figures in your preliminary proposal to us, we would like to remind you that our payments were negotiated from the beginning of the project so that they are net figures not subject to withholding of any taxes. This is especially important in the case of our partner R.B. Grove, Inc. a Florida company, which pays U.S. taxes directly on their portion of the payment and would be subject to the double taxationif we were to use your after-tax figures.

BFD

We would suggest you reconsider your offer to more closely reflect a fair compensation forour group in return for forfeiting payments on the present contract between PQPC and Empresa Electrica de Guatemala, S.A. Otherwise, there would be no point in pursuing such a forfeiture by our group.

Please feel free to contact us if you want to further discuss this issue.

Best regards

Oswaldo Méndez Herbruger
President

/mcgv

Senate Finance Committee

EXHIBIT 32

To: Rod Gray

From: David Odorizzi

Date: 28 January 1994

Re: Guatemala Buyout of Sunking

==========

As you know, I have recently met with our local partners in Guatemala to discuss with them the possibility of buying out their royalty interest in our project. I found that their attitude was generally receptive to such an idea, given that they realised that Enron is sensitive to various issues which could affect Sunking over the long term. I told them that Enron would be prepared to make an offer, subject to certain conditions, by the end of February. This memo is designed to gain approval for making such an offer.

As we discussed before, there are some good strategic reasons for attempting this transaction, aside from any financial gain that must accrue:

1 Tax liability issues have only just been raised with Sunking, these would be avoided under a buyout scenario.

2 At this time, Sunking's political influence is fairly low, and in practical terms Sunking seems reluctant to flex any political muscle they have left to help the project.

3 The relationship between Sunking and the former regime could prove embarrassing

4 Enron may have a foreign tax problem, that would be ameliorated under a buyout.

5 Sunking are nervous at the prospect of any renegotiations between the project and EEGSA which would have an adverse affect on gross revenues.

However, the main justification has to be in the buyout's financial attraction. I feel that a range of values has been identified that may be mutually agreeable to both parties, and could from the basis of an immediate negotiation.

In identifying this range , the following macro economic assumptions were used to calculate the economic impact of the transaction on Enron:

Revenue Stream:	6% of project revenues.
Projected and actual dispatch:	70% of project capacity.
Real escalation rate:	3% per annum.
Interest rate:	9%.
Tax:	Full deductibility of interest and amortization
Location:	Offshore, dollar denominated.

Book Depreciation:	14 years
Enron participation	50%

Utilising these assumptions, the following table has been calculated assessing the economic impact for Enron:

Equity (%)	Buyout Valuation ($mm)	Minimum post tax ROE (%)	Enron NPV @ 15% discount ($'000)	Enron 1994 Net Income ($'000)
100%	10.0	13	4,064	663
50%	10.0	25	4,709	516
20%	10.0	52	5,111	429
50%	15.0	13	2,849	327
20%	15.0	25	3,310	196

It can be seen from this that at a buyout valuation of $10,000,000, high returns are gained with, dependent on the gearing, significant near term earnings. If a valuation of $15,000,000 is used, adequate returns are realised, although it would not be possible to fund such an acquisition with 100% equity.

I feel that this represents a good opportunity for Enron to increase our investment in Guatemala at no additional risk.

I would propose that I submit a written bid to Sunking immediately, at a value of $10 mm, conditional on Enron Board approval and acceptable financing (essential for anything above $13mm). I also feel that a ceiling of $15mm should be set to complete the negotiations, if required and given suitable financing. Obviously every endeavor will be used to avoid such additional expenditures.

ENRON
International Inc.

David H. Odorizzi
President
International Business Ventures

333 Clay Street
Houston, Texas 77002
(713) 646-7608
Fax (713) 646-7468

March 16, 1994

Messrs.
SUN KING TRADING COMPANY, INC
Guatemala, Guatemala

Dear Sirs:

Enclosed herewith please find our offer to purchase your existing rights arising out of the Puerto Quetzal Power Corp power barge facility.

We appreciate the opportunity to present this offer which we believe represents a fair and reasonable exchange. We look forward to working with you to conclude this transaction and to continue our personal relationship with members of the Sun King group.

Sincerely,

David H. Odorizzi
President
International Business Ventures

DHO/edec

Senate Finance Committee

EXHIBIT 33

EC 001918602

16 March 1994

SUN KING BUYOUT TERM SHEET

Parties:

Enron International Inc or an affiliate ("Enron

Sun King Trading Company, Inc. (STCI)

Rights and Obligations:

From the Payor:

Amount $10,000,000 U. S. dollars less all amounts paid to STC related to Puerto Quetzal Power Corp. 1994 revenues.

Effective Date: January 1994

From the Payee

Voluntary termination, as well as the corresponding release of all rights transferred to Sun King by Texas Ohio Power, which are detailed in the assignment agreement dated 12 March 1992 between Texas Ohio Power and Enron Power Development Corp. and any other rights which could arise directly or indirectly, which relate to the 110MW diesel power project currently owned and operated by Puerto Quetzal Power Corp, in Puerto Quetzal or out of any other Guatemalan projects Enron may participate in.

Terms and Conditions:

Penalty clauses: To be discussed

Including, but not limited to: Execution of all required documents, acceptable financing, Enron board approval and a repayment or offset of all outstanding sums and penalties due to Enron or its affiliates under such agreements and promissory notes entered into between Enron, STCI and Enersol, S. A.

SUNKING
TRADING INC.

March 16, 1994

Messrs.
ENRON INTERNATIONAL INC.
Guatemala, Guatemala

Dear Sirs:

Following your letter dated March 16, 1994, we hereby enclose our proposal to sell our existing rights arising out of the Puerto Quetzal Power Corp. power barge facility.

In our view, this proposal represents a fair and reasonable exchange, and therefore departs from some conditions and terms included in Enron's today proposal.

We also look forward to conclude this transaction, and we thank you your interest in this matter.

Sincerely

Oswaldo Mendez Herbruger
President

Senate Finance Committee

EXHIBIT 34

SUN KING
TRADING

SUN KING BUYOUT TERM SHEET

Parties:

Payor:	Enron Power Corp. or an affiliate ("Enron")
Payee:	Sun King Trading Company, Inc. (SKTC

Rights and Obligations:

From Payor:

Amount:	U.S.$15,000,000(no amounts paid to SKTC during 1994 to be deducted to the amount)
Effective Date	Date of the execution of the agreement
From the Payee	Idem to your proposal

Terms and Conditions:

Liquidated Damages:	To be discussed
Other Conditions	Execution of all required documents; repayment or offset of all outstanding sums and interests due to Enron or its affiliates under such agreements and promissory notes entered into between Enron and Enersol, S.A., and between Enersol. S.A. and SKTC. Term for payment of the amount: nine (9) weeks after the execution of the corresponding agreement. No interest accrued

EC 001918605

SUNKING
TRADING INC

during the nine (9) week period. During this nine week period, SKTC shall receive its corresponding monthly payments from the gross revenues received by Puerto Quetzal Power Corp., from its sales of capacity and energy to Empresa Electrica de Guatemala, S.A.

No condition precedent will be accepted on acceptable financing.

This proposal is effective only during March 16 and March 17 1994.

- Board Approval / Financing

EC 001918606

Reconciliation of payments made to Sun King vs B+H Chg received from EEG.

Electricidad Enron de Guatemala, S.A.
B&H Charges Vs. Commission Payments

	Commission* 6% / gross rev.	Ref	B&H Charge** Vessel	Date	$ per barrel	Total $	Ref	Difference
1993								
April	219,330.27		No Delivery			509,524.04		
May	256,696.09		Esmeraldas	1/5/93	3.225	460,539.68		$1,459,976.70 A
June	267,416.85		NAPO	7/6/93	3.225	489,912.98		
July	247,010.16		Congo River	07/30/93	3.225			
August	247,003.35		No Delivery					
September	205,086.84		No Delivery					
October	188,103.89		No Delivery					
November	165,385.92		Pastaza	1/11/93	1.40	214,413.28	B	
December	184,167.30		NAPO	12/15/93	1.40	209,008.80	C	
Total 1993	**1,980,200.67**	1				**1,883,398.78**		**96,801.89**
1994								
January	219,608.73	2	Esmeraldas	01/20/94	2.00	228,457.34	D	
February	205,817.94	3	No Delivery					
March	222,985.62	4	Vitoria	03/16/94	2.00	213,842.00	E	
April	269,785.69	5	NAPO	10/4/94	2.00	301,104.00	F	
May	223,106.78	6	NAPO	05/31/94	2.00	90,282.00	H	
June	213,884.85	7	Esmeraldas	11/6/94	2.00	300,718.00	G	
July	227,567.81	8	Pastaza	07/24/94	3.50	210,140.00		$819,588 J
August	250,688.31	9	Pastaza	08/14/94	3.50	609,448.00		
September	257,510.38	10	No Delivery					
October	250,924.36	11	NAPO	7/10/94	3.50	554,501.50	I	
November	225,225.05	12	OHIO	11/20/94	3.50	568,519.00		
December	233,781.66	13	No Delivery					
			07/94 Dividend Adj			212,950.00		
Total 1994	**2,800,887.18**					**3,289,961.84**		**(489,074.66)**
1995								
January	245,702.22		OHIO	6/1/95	2.75	426,984.25		
February	249,539.06	14	No Delivery					
March	254,612.57							
Total 1995	**749,853.85**					**426,984.25**		**322,869.60**
Grand Total	**5,530,941.70**					**5,600,344.87**		**(69,403.17)**

* Represents the commission payments made to Sun King Trading Co. Inc.

** Represents the brokerage + handling charges (or Sun King chg reimbursements) from Electricidad Enron de Guatemala, S.A. (EEG).

EC 001911596

Senate Finance Committee

EXHIBIT 35

STOCK PURCHASE AND RELATED TRANSACTIONS AGREEMENT

THIS STOCK PURCHASE AND RELATED TRANSACTIONS AGREEMENT (this "Agreement") is entered into as of December 16, 1994, by and among King Ranch Power Corp. ("KRPC"), King Ranch Oil and Gas, Inc. ("KROG"), Enron Corp. ("Enron"), Enron Development Corp. ("EDC"), Enron International Inc. ("EII"), Enron Global Power & Pipelines L.L.C. ("EGPP") and Electricidad Enron de Guatemala S.A. ("Electricidad Enron").

Recitals

A. EGPP and KRPC are the sole shareholders of Puerto Quetzal Power Corp. ("PQPC"), each such party owning 500 shares of common stock of PQPC.

B. KRPC and EDC are parties to that certain Generator Performance Remedy Agreement dated March 31, 1993 (the "Generator Performance Remedy Agreement"), pursuant to which KRPC was given the right ("Put Right"), exercisable upon the occurrence of certain circumstances, to require that EDC purchase from KRPC the shares of common stock of PQPC owned by KRPC in accordance with the provisions of Section 2.03 of that certain Project Participation Agreement dated as of March 31, 1993, between KRPC and EDC (the "Project Participation Agreement").

C. KRPC has notified EDC that it has exercised its Put Right, and EII, an affiliate of EDC, as EDC's designee and without acknowledging the continuing existence of the Put Right, is willing to purchase the shares of common stock of PQPC owned by KRPC in accordance with the provisions of this Agreement (the parties hereby waiving or agreeing to amend any contrary provision of the Project Participation Agreement and the Generator Performance Remedy Agreement).

Agreement

NOW, THEREFORE, for and in consideration of the transfers and covenants hereinafter set forth, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1 *Transfers.*

(a) KRPC hereby sells, assigns, and transfers unto EII 500 shares of common stock of PQPC, such shares of stock standing in KRPC's name on the books of PQPC and represented by Certificate No. 4, and does hereby irrevocably constitute and appoint the secretary of PQPC attorney to transfer said shares of stock on the books of PQPC with full power of substitution in the premises.

(b) KRPC hereby sells, assigns, and transfers unto EII, KRPC's entire partnership interest in Western Caribbean Finance L.P. (the "Partnership"), being a 1% partnership interest as a limited partner in the Partnership

2. *Purchase Price.* EII and KRPC hereby agree that the purchase price for the aforementioned transfers is $15,200,000, payable by EII in cash on January 3, 1995, by wire transfer of immediately available funds to an account of KRPC designated by KRPC on or before December 30, 1994.

3. *Representations and Warranties.*

(a) KRPC hereby represents and warrants to the other parties as follows:

(i) KRPC is a corporation duly organized, validly existing, and in good standing under the laws of the State of Delaware, and has all requisite corporate power, including approval of its board of directors, to enter into this Agreement and to perform its obligations under this Agreement;

(ii) This Agreement has been duly executed and delivered by KRPC, and assuming the due execution and delivery of this Agreement by the other parties hereto, this Agreement constitutes the legal, valid and binding obligation of KRPC, enforceable against KRPC in accordance with its terms, subject to bankruptcy, insolvency, reorganization, moratorium and other laws of general applicability relating to or affecting creditors' rights and to general principals of equity; and

(iii) Immediately prior to the transfers described in Paragraph 1 above, KRPC owned 500 shares of common stock of PQPC and a 1% partnership interest in the Partnership free and clear of any and all liens, encumbrances or adverse claims of any kind.

(b) EII hereby represents and warrants to the other parties as follows:

(i) EII is a corporation duly organized, validly existing, and in good standing under the laws of the jurisdiction of its formation, and has all requisite power to enter into this Agreement and to perform its obligations under this Agreement;

(ii) This Agreement has been duly executed and delivered by EII, and assuming the due execution and delivery of this Agreement by the other parties hereto, this Agreement constitutes the legal, valid and binding obligation of EII, enforceable against EII in accordance with its terms, subject to bankruptcy, insolvency, reorganization, moratorium and other laws of general applicability relating to or affecting creditors' rights and to general principals of equity;

(iii) EII is acquiring all property transferred under this Agreement for investment for its own account and not with a view toward any resale or distribution thereof in violation of any United States federal or state securities

laws; is an "accredited investor" meeting the standards of sophistication normally expected of an investor in a transaction exempt from the registration provisions of the Securities Act of 1933, as amended, under Section 4(2) thereof or as defined in Regulation D thereunder; is not relying on any statement, document or information provided by KRPC or KROG or their respective affiliates, employees or agents, except those expressly set forth herein; and understands and acknowledges that the property transferred under this Agreement has not been and will not be registered under applicable United States federal or state securities laws; and

(iv) EII is a wholly-owned subsidiary of Enron.

(c) The parties hereto (other than KRPC and EII) hereby represent and warrant (each only with respect to itself) to each other and to KRPC and EII as follows:

(i) Such party is a corporation (or in the case of EGPP, a limited liability company) duly organized, validly existing, and in good standing under the laws of the jurisdiction of its formation, and has all requisite corporate (or in the case of EGPP, all requisite company) power to enter into this Agreement and to perform its obligations under this Agreement; and

(ii) This Agreement has been duly executed and delivered by such party, and assuming the due execution and delivery of this Agreement by the other parties hereto, this Agreement constitutes the legal, valid and binding obligation of such party, enforceable against such party in accordance with its terms, subject to bankruptcy, insolvency, reorganization, moratorium and other laws of general applicability relating to or affecting creditors' rights and to general principals of equity.

4. *Mutual Release and Waiver.*

(a) Enron, EDC, EGPP and Electricidad Enron (collectively, the "Enron Parties") hereby release and discharge KRPC and KROG (and their respective affiliates) from all obligations, duties, liabilities and debts, known or unknown, owed by such parties to the Enron Parties under the Terminated Agreements (hereinafter defined) or relating to the business or affairs of PQPC, except for any obligations of the Terminated Agreements expressly stated to survive the termination of any such Terminated Agreement. The Enron Parties hereby waive any and all claims they have or might have against KRPC or KROG (or their respective affiliates) under the Terminated Agreements or relating to the business or affairs of PQPC, except for any claim hereafter arising for breach of any obligation of any Terminated Agreement expressly stated to survive the termination of such Terminated Agreement.

(b) KRPC and KROG hereby release and discharge the Enron Parties (and their respective affiliates) from all obligations, duties, liabilities and debts, known or unknown, owed by the Enron Parties to KRPC or KROG under the Terminated Agreements or relating to the business or affairs of PQPC, except for any obligations of the Terminated Agreements expressly stated to survive the termination of any such Terminated Agreement. KRPC and KROG hereby waive any and all claims they have or might have against the Enron Parties (or their respective affiliates) under the Terminated Agreements or relating to the business or affairs of PQPC, except for any claim hereafter arising for breach of any obligation of any Terminated Agreement expressly stated to survive the termination of such Terminated Agreement.

5. *Mutual Indemnity.*

(a) KRPC shall reimburse, indemnify, protect, defend, release and hold harmless (collectively, "Indemnify") EII from and against (i) all sums paid, losses, liabilities, claims, demands, damages, actions, suits, causes of action, remedies, judgments, awards, fines, fees, penalties, costs and expenses (including reasonable attorneys' fees and expenses and court costs) ("Losses") incurred by EII to unaffiliated third parties and arising out of any actions taken solely by KRPC or any of its affiliates (other than PQPC) relating to the activities, operations, business or affairs of PQPC prior to the date hereof, and (ii) all Losses incurred by EII and arising out of KRPC's breach of this Agreement.

(b) EII shall Indemnify KRPC from and against (i) all Losses incurred by KRPC and arising out of the activities, operations, business or affairs of PQPC on or after the date hereof, and (ii) all Losses incurred by KRPC and arising out of EII's breach of this Agreement.

6. *Termination of Agreements.* The parties hereby terminate (or consent to the termination of) the following agreements (collectively, the "Terminated Agreements"):

(a) The Generator Performance Remedy Agreement;

(b) The Project Participation Agreement (except for the provisions thereof that are expressly stated to survive the termination thereof);

(c) That certain Stockholders' Agreement (the "Stockholders Agreement") dated as of March 31, 1993 between EDC and KRPC (EDC's right, title, interest, duties and obligations under which have been assigned to and assumed by EGPP);

(d) That certain Agreement Regarding O&M Agreement dated as of March 31, 1993, among KRPC, EDC and Electricidad Enron; and

(e) That certain Reimbursement Agreement dated as of March 31, 1993, among KROG, KRPC, Enron and EDC.

7. *New Stockholders' Agreement.* EGPP and EII intend to negotiate in good faith and enter into a new stockholders' agreement containing terms substantially similar to those in the Stockholders Agreement to govern their relationship as stockholders of PQPC and the management of the business and affairs of PQPC.

8. *Cancellation of Letter of Credit.* On or before the date hereof, Enron has caused that certain letter of credit arranged by KROG for the benefit of Enron in the amount of $2.25 million to be cancelled and returned to KROG. KROG hereby acknowledges such cancellation and return.

9. *Reimbursement Undertaking of EII.* EII hereby agrees to reimburse EDC for 50% of any amounts EDC is required to pay to Electricidad Enron pursuant to paragraph 4 of that certain Assignment and Assumption Agreement dated as of November 13, 1992, among PQPC, EDC and Electricidad Enron.

10. *Further Assurances.* The parties agree to take all such further actions and to execute, acknowledge and deliver all such further documents as are necessary to carry out the purposes and intent of this Agreement.

11. *Successors and Assigns.* This Agreement shall be binding on and shall inure to the benefit of the parties hereto and their respective successors and assigns. Nothing in this Agreement is intended to confer upon any person or entity, other than the parties, any benefits, rights or remedies.

12. *Governing Law.* This Agreement and the legal relations among the parties hereto shall be governed by, and construed in accordance with, the laws of the State of Texas, without regard to the principles of conflicts of laws.

13. *Amendment or Modification.* This Agreement may be amended or modified from time to time only by the written agreement of all of the parties hereto intended to be bound by such amendment or modification.

14. *Counterparts.* This Agreement may be executed in any number of counterparts, and each counterpart hereof shall be deemed to be an original instrument, but all such counterparts shall constitute but one instrument.

EXECUTED as of the date first above written.

KING RANCH POWER CORP.

By: _____
Name: MARK E. KENT
Title: VICE PRESIDENT AND TREASURER

KING RANCH OIL AND GAS, INC.

By: _____
Name: MARK E. KENT
Title: VICE PRESIDENT AND TREASURER

ENRON CORP.

By: _____
Name: Jack T. Tompkins
Title: Senior Vice President, Chief Information, Administrative & Accounting Officer

ENRON DEVELOPMENT CORP.

By: _____
Name: David W. Shields
Title: Principal

ENRON INTERNATIONAL INC.

By: _____
Name: Rodney L. Gray
Title: President and Chief Executive Officer

ENRON GLOBAL POWER & PIPELINES L.L.C.

By: _____
Name: President and Chief Executive Officer
Title: Rodney L. Gray

ELECTRICIDAD ENRON DE GUATEMALA S.A.

By: _____
Name James J. Steele
Title: President

0983:5425
P:\KB0983\ENR100\20000\K-RANCH3.AGT

2322212799

VSU in 678

Priority

Wire Transfer Request

Wire before 11:00

Date 22-Aug-95	Time
	Contact
To: Treasury Department, Room 4350 Bank Federal Reserve Bank, Miami	Reference Number

This will be your authority to make the following transfer of funds:

From:	To:
Company/Payee 678 Enron Global Power & Pipelines L.L.C.	Company Centrans Internacional, S.A.
Account Number 4065-9002	
Amount $6,000,000	

WT Instructions:

Bank, City, State	Federal Reserve Bank, Miami
ABA Number	
Credit	DEUTSCH-SUEDAMERIKANISCHE BANK AG, MI
Routing no.	0660 10858
Further Credit	
Account	
Final Credit	Centrans Internacional, S.A.
Account	02-693574
Reference	Prepayment for Royalty Interest

Purpose or Account Codes:

Investment in PGPC

Acct. 1243451

Approved By

Requested by Glenn E. Matthys	
Department Number EGPP Finance	Phone Number (713)-646-6121

John 8-22-95

458 Kg 4/15

P

Senate Finance Committee

EXHIBIT 37

EC2 000034600

AUG 21'95 16:31 FR ENRON CORP-43RD FLOOR 13 546 2375 TO 95467204 P.01/04

>20143,20066

TRANSFER INQUIRY - REQUESTS PAGE 1

TRANSFER REQUEST #: 20143 08/21/95 17:15

FED/CHP/BOOK REF #: TRANSFER TYPE: FREE-FORM

DATE REQUESTED: 08/21/95 17:02 PROCESS DATE: 08/22/95

BY: LAURIE EVANS SUPERVISOR: GREG ECKHOFF

ENRON CORP

STATUS ACKNOWLEDGED 17:12

TRANSFER AMOUNT 6,000,000.00 DEBIT

TRANSFER ID

ACCOUNT # TO DEBIT 40689002 CITIBANK, N.A.

NAME OF PARTY TO DEBIT ENRON GLOBAL POWER & PIPELINE

METHOD OF PAYMENT FED SAME DAY

CREDIT BANK ABA # 06601085 ABA #

NAME OF BANK TO CREDIT DEUTSCH SUDAMERICANI SHE BK

NAME OF PARTY TO CREDIT CENTRANS INTERNACIONAL SA

ACCOUNT # TO CREDIT 02693574 ACCOUNT

ADVICE TYPE CABLE

DETAILS: PREPAYMENT OF ROYALTY INTEREST

F

F

ENTER PAGING COMMAND, OR (1) HISTORICAL (2) TODAY (3) FUTURE

(4) BATCH STATUS

>

TRANSFER INQUIRY - REQUESTS LAST PAGE 2

TRANSFER REQUEST #: 20066 08/21/95 17:15

FED/CHP/BOOK REF #: TRANSFER TYPE: FREE-FORM

NONE: 6000000.00

TERMINATION AND RELEASE AGREEMENT

This **TERMINATION AND RELEASE AGREEMENT** ("Agreement"), dated as of August 22, 1995, is among **ENRON DEVELOPMENT CORP.**, a Delaware corporation ("EDC"), **SUN KING TRADING COMPANY, INC.**, a Panamanian company ("Sun King"), and **CENTRANS INTERNACIONAL, SOCIEDAD ANONIMA**, a Guatemalan company ("Centrans") (collectively, EDC, Sun King and Centrans are referred to as the "Parties").

RECITALS

WHEREAS, Texas Ohio Power, Inc. ("TOP") has assigned to Sun King its right to receive, from EDC (formerly known as Enron Power Development Corp.), monthly payments equal to 6% of certain gross revenues of Puerto Quetzal Power Corp., a Delaware corporation, pursuant to Paragraph 1.D. of that certain agreement between TOP and Enron Power Development Corp. dated March 12, 1992 (the "Monthly Payments");

WHEREAS, Sun King has assigned to Centrans its right to receive the Monthly Payments;

WHEREAS, Sun King has issued to EDC a Note Payable in the amount of $435,000 dated March 11, 1993 (the "Note Payable");

WHEREAS, Sun King is willing to agree to the release set forth in this Agreement in exchange for the cancellation of the Note Payable; and

WHEREAS, Centrans desires to terminate its right to receive the Monthly Payments in exchange for a cash payment.

NOW, THEREFORE, in consideration of the premises, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, EDC, Sun King and Centrans hereby agree as follows:

Section 1. Payment. EDC agrees to pay or cause to be paid, on the date hereof, to Centrans the amount of U.S. $12,000,000 by wire transfer of immediately available funds to either of Centrans' accounts as set forth on Exhibit A hereto, in full and final settlement of EDC's obligation to make the Monthly Payments.

Section 2. Centrans Release. Upon receipt of the payment set forth in Section 1, Centrans hereby unconditionally releases, cancels and forever discharges EDC and its subsidiaries and affiliates from any and all obligations to make the Monthly Payments that have accrued or would accrue on or after August 1, 1995; and further unconditionally releases, waives and forever discharges EDC and its subsidiaries and affiliates from any and all past, present

or future claims, demands, losses, damages, causes of action, rights of action, suits in equity or other liabilities of any type or character ("Claims"), if any, whether or not now known to the Parties, in any way resulting from or arising out of any contract, agreement or arrangement entered into or arising prior to the date of this Agreement, whether written or oral, between Centrans and EDC.

Section 3. Cancellation of Note Payable. EDC hereby unconditionally releases, cancels and forever discharges Centrans and its affiliates from any and all obligations arising under the Note Payable.

Section 4. Sun King Release. Sun King hereby unconditionally releases, waives and forever discharges EDC and its subsidiaries and affiliates from any and all past, present or future Claims, if any, whether or not now known to the Parties, in any way resulting from or arising out of any contract, agreement or arrangement entered into or arising prior to the date hereof, whether written or oral, between Sun King and EDC.

Section 5. EDC Release. EDC hereby unconditionally releases, waives and forever discharges Sun King and Centrans and each of their subsidiaries and affiliates from any and all past, present or future claims, if any, whether or not known to the Parties, in any way resulting from or arising out of any contract, agreement or arrangement entered into or arising prior to the date hereof, whether written or oral, between EDC and either Sun King or Centrans.

Section 6. Representations and Warranties. Each of the Parties represents and warrants to each of the other Parties as follows:

(a) that the party is a company duly organized and validly existing under the laws of its jurisdiction of formation and has the requisite power and authority to conduct its business as presently conducted and to enter into and perform its obligations under this Agreement;

(b) that this Agreement has been duly authorized and executed by the party and constitutes a valid and legally binding obligation of the party; and

(c) that neither the making of this Agreement nor the compliance with its terms will conflict with or result in a breach of any of the terms, conditions or provisions of, or constitute a default or require any consent under, any indenture, mortgage, agreement or other instrument or arrangement to which the party is a party or by which it is bound, or violate any of the terms or provisions of the party's organizational documents.

Section 7. Miscellaneous.

7.1 Governing Law. This Agreement and the rights and obligations of the parties hereunder shall be construed in accordance with and be governed by the laws of the state of Texas (without giving effect to the principles thereof relating to conflicts of law).

7.2 Counterparts. This Agreement may be signed in any number of counterparts, each of which shall be an original, with the same effect as if the signatures thereto were upon the same instrument.

7.3 Severability. In case any provision in or obligation under this Agreement shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

7.4 Successors and Assigns. This Agreement shall be binding upon the Parties and their permitted successors and assigns and shall inure to the benefit of the Parties and their respective successors and assigns.

7.5 Expenses. Each of the Parties shall be responsible for the expenses incurred by it in connection with the negotiation and execution of and the performance of its obligations under this Agreement. Further, each of the Parties shall be responsible for any and all taxes, of any nature, incurred by such Party relating to or arising out of this Agreement.

IN WITNESS WHEREOF, each of the parties hereto has caused this Agreement to be duly executed and delivered by its respective officer thereunder duly authorized as of the date first written above.

ENRON DEVELOPMENT CORP.

By: _____
Name: David Shields
Title: Chief Financial Officer

SUN KING TRADING COMPANY, INC.

By: _____
Name: OSWALDO MENDEZ HERBRUGER
Title: President

CENTRANS INTERNACIONAL, S.A.

By: _____
Name: Henri K Preuss
Title: President.

H:\ULV\WP61\Guatema\term.rel.agt

Exhibit A

1) Transferencias a DSB Miami

BARNETT BANK OF SOUTH FLORIDA, Miami
For credit to DEUTSCH-SUEDAMERIKANISCHE BANK AG, Miami Agency
Acct. no. 137 694 2752
For further credit to
Acct. no. 02-693574
Name of CENTRANS INTERNACIONAL, S.A.

FEDERAL RESERVE BANK, Miami
For credit to DEUTSCH-SUEDAMERIKANISCHE BANK AG, Miami Agency
Routing no. 0660 10856
For further credit to
Acct. no. 02-693574
Name of CENTRANS INTERNACIONAL, S.A.

STOCK SALE AGREEMENT

This Stock Sale Agreement is made and entered into as of January ~~8~~ 9, 1996, by and between Enron International, Inc., a Delaware corporation ("Seller") and Centrans Energy Services Inc, a Cayman Islands company ("Buyer").

WHEREAS, Seller is the Owner and the holder of five hundred (500) shares representing fifty percent (50%) of the outstanding stock of Puerto Quetzal Power Corp. (the "Shares"). Puerto Quetzal Power Corp. is a Delaware corporation, hereinafter referred to as "PQPC", which owns a 110 megawatt barge-mounted electric power generating plant berthed in Puerto Quetzal, Department of Escuintla, Guatemala (the "Project").

WHEREAS, Seller wishes to sell, and Buyer wishes to purchase, all of Sellers' shares of PQPC, upon the terms and conditions contained herein.

NOW, THEREFORE, in consideration of their respective promises and undertakings hereunder, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

ARTICLE 1. Sale and Purchase of PQPC Shares; Closing.

1.01. Agreement to Sell Stock. Subject to the terms and conditions set forth in this Agreement, on the Closing Date (as hereinafter defined), Seller shall sell and convey to Buyer the Shares.

1.02. Agreement to Purchase; Consideration. Subject to the terms and conditions set forth in this Agreement, on the Closing Date (as hereinafter defined), Buyer shall purchase the Shares and in consideration thereof shall deliver to Seller the purchase price for the Shares of an amount equal to Twenty Two Million Four Hundred Ninety-Three Thousand Three Hundred Three U.S. Dollars (U.S. $22,493,303.00) (the "Purchase Price"), as adjusted by the Adjustment Amount (as defined in Section 1.04 hereof) after the Closing Date in accordance with the provisions of Section 1.04 hereof. The Purchase Price shall be paid to Seller by:

(i) the confirmed wire transfer of Sixteen Million U.S. Dollars (U.S. $16,000,000) (the "Cash Portion") in immediately available funds to an account designated by Seller; and

(ii) delivery of a promissory note (the "Promissory Note") payable to Seller in an original principal amount equal to the difference between the Cash Portion and the Purchase Price, in substantially the form attached hereto as Exhibit I; provided, the principal amount of the principal amount of the Promissory Note shall be adjusted in accordance with the provisions of Section 1.04 hereof.

Senate Finance Committee

EXHIBIT 39

1.03. The Closing. The consummation of the transactions contemplated by Sections 1.01 and 1.02 shall constitute the Closing. The Closing shall take place at the offices of Seller and/or PQPC at 2:00 o'clock p.m. on January 8, 1996, or at such other time or place or on such other date as shall be mutually agreed upon by Seller and Buyer which date shall constitute the Closing Date. At the Closing, the following events shall occur:

(a) Buyer shall pay to Seller the Cash Portion of the Purchase Price in U.S. dollars by federal funds wire transfer of immediately available funds to the account designated as provided in Section 1.02;

(b) Buyer shall execute and deliver the Promissory Note as provided in Section 1.02;

(c) Seller shall deliver to Buyer one or more stock certificates representing the Shares, duly endorsed or accompanied by stock powers duly executed, in proper form for transfer to Buyer;

(d) Buyer shall execute and deliver a Stockholders Agreement with respect to PQPC, substantially in the form of Exhibit II, and a letter agreement addressed to Buyer and dated as of the date of Closing captioned "Agreement to Make Loans" (the "VAT Loan Letter"); and

(e) Buyer shall execute and deliver to Seller a Security Agreement substantially in the form of Exhibit III, whereby Buyer pledges the Shares to Seller as security for all of Buyer's obligations under the Promissory Note.

(f) Seller shall cause (i) Enron Global Power & Pipelines L.L.C. ("EGPP") to execute and deliver to Buyer (1) a Stockholders Agreement in the form of Exhibit II, and (2) the letter agreement addressed to Buyer and dated as of the date of Closing captioned "Sharing of Development Activities," and (ii) Enron Operations Corp. ("EOP") to execute and deliver to PQP that certain Guaranty, dated effective January 8, 1996, between EOP and PQP. (The VAT Loan Letter and the agreements referred to in the immediately preceding sentence, ~~other than the Stockholders Agreement~~, are herein referred to as the "Related Agreements.").

(g) Buyer shall execute and deliver to PQPC a letter directing PQPC to pay dividends attributable to the Shares to Seller until full payment of Buyer's obligations under the Promissory Note and this Agreement.

1.04. Post Closing Determination of Changes in Retained Earnings. The increase (or decrease), if any, in retained earnings of PQPC between August 31, 1995 and the Closing Date (the "Adjusted Amount") shall be calculated from the unaudited balance sheets of PQPC as of such dates. Such balance sheets shall be prepared by Seller in accordance with United States generally accepted accounting principles and delivered by Seller to Buyer within 45 days after the Closing Date. Promptly after calculation of the Adjusted Amount, the Purchase Price and the principal amount of the Promissory Note shall be increased or decreased by the Adjustment Amount. At the request of Seller and in conjunction with the delivery by Seller to Buyer of the Promissory Note marked "canceled", Buyer will execute and deliver a replacement promissory note which reflects

the adjusted principal amount. After delivery to Seller of the replacement promissory note and cancellation of the original Promissory Note, the replacement promissory note shall become the "Promissory Note" under this Agreement.

1.05. No Claims for Prior Activities. Notwithstanding anything in this Agreement to the contrary, in no event shall Buyer be entitled to raise, and Buyer accepts the agreements listed on Schedule 1.05(a), and hereby waives any claim or cause of action regarding the acceptability, validity or enforceability of any of the terms of any of the agreements listed on Schedule 1.05(a) or the performance prior to the date of the Closing of any such agreement by any such affiliate. This acceptance and waiver also extends to (i) the contracts currently being restructured in contemplation of closing hereunder [the principal terms of which are substantially described in Schedule 1.05(b)], and (ii) PQPC receipts and payments of receivables and payables, respectively, from various Enron Corp. subsidiaries and affiliates as listed in Schedule 1.05(c).

ARTICLE II. **Representations and Warranties of Seller.**

Seller represents and warrants to Buyer that the representations and warranties set forth in Sections 2.01 and 2.02 are true and correct on and as of the date of this Agreement and all of the representations and warranties set forth in this Article II will be true and correct on the Closing Date as if made on and as of the Closing Date:

2.01. Corporate Organization and Qualification. Each of Seller and PQPC is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware. Copies of the Certificate of Incorporation (certified by the Secretary of State of Delaware) and the Bylaws of PQPC, minutes of the meetings of the Board of Directors and stockholders and stockholders of record of PQPC (each certified by the Secretary of PQPC), heretofore delivered to Buyer, are true, correct and complete and reflect all amendments thereto as of the date hereof. PQPC is duly qualified and, to the actual knowledge of the executive officers of Seller, holds all permits and licenses necessary under Guatemalan law to conduct business in Guatemala and has all necessary governmental licenses, permits, qualifications and authorizations to own, maintain, operate the Project and to perform the Project Documents (as hereinafter defined) to which it is a party.

2.02. Corporate Authority. Seller has full power and authority and has taken all necessary corporate action to execute, deliver and consummate this Agreement, and to perform all the obligations to be performed by Seller. This Agreement and the Related Agreements (when duly executed and delivered by the parties hereto) will be valid, legal and binding obligations of Seller or its affiliates (as the case may be), enforceable against Seller or its affiliates (as the case may be) in accordance with their terms, subject to bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditor's rights generally and by general principles of equity.

2.03. Capitalization. The authorized capital stock of PQPC consists of ten thousand (10,000) shares of common stock, of which one thousand (1,000) shares are issued and outstanding on the date hereof. As of the date hereof, Seller is the owner of five hundred (500) shares of common stock of PQPC, which represent fifty percent (50%) of the issued and outstanding shares of common stock of PQPC. The Shares have been duly authorized, validly issued, and are fully paid and non-assessable. Seller is now and at Closing will be the lawful owner of the Shares, free and clear of all liens, charges, restrictions, pledges, claims, rights of third parties and other encumbrances of every kind. There are no outstanding or authorized subscriptions, options, warrants, calls, rights, commitments or any other agreements of any character obligating PQPC to issue any additional capital stock or any other securities convertible into or evidencing the right to subscribe for any such stock.

2.04. Title to Shares. Seller now has and at Closing will have full legal power and authority to sell, assign and transfer the Shares and the delivery of the Shares will transfer to Buyer valid legal title thereto, free and clear of all liens, charges, restrictions, pledges, claims, rights of third parties and other encumbrances of every kind and nature except for the restrictions on transfer and other obligations set forth in that certain Stockholders Agreement of even date herewith, between Buyer and EGPP.

2.05. Project Documents. To the actual knowledge of Seller, (i) the Project Documents (as hereinafter defined) were duly authorized, executed and delivered by the parties thereto, (ii) Seller or its representatives have delivered to Buyer true, accurate and complete copies of the Project Documents, (iii) the Project Documents continue in full force and effect in accordance with their terms, and (iv) except as listed on Schedule 2.05 hereto, there exists no breach of any of the Project Documents which would have a material adverse effect on PQPC. As used in this Section 2.05, the "Project Documents" shall mean those documents identified on Exhibit V. Except as to the Project Documents, PQPC is not a party to any (i) contract that is material to PQPC which is terminable by the other party thereto upon a change of control of PQPC, or (ii) other contract, agreement or arrangement, entered into other than in the ordinary course of business, involving an estimated total future payment or payments on behalf of or to PQPC in excess of $100,000, except those in progress of being restructured in contemplation of closing, as referenced in Section 1.05 hereof.

2.06. Balance Sheet. As of the date thereof, the unaudited financial statements of PQPC for the period ending September 30, 1995 attached hereto as Schedule 2.06 (the "September 30 Financials") presents fairly the financial position of PQPC in accordance with U.S. generally accepted accounting principles. To the actual knowledge of Seller, (i) as of September 30, 1995, PQPC had no liabilities (including intercompany loans) that should have been disclosed on the financial statements of PQPC in accordance with U.S. generally accepted accounting principles other than those liabilities disclosed on the September 30 Financials, (ii) except for the liens granted in connection with any of the liabilities reflected in the September 30 Financials, the assets of PQPC are free and clear of all liens, charges, restrictions, pledges, claims, rights of third parties and other

encumbrances except for the restrictions set forth in the Stockholders Agreement, and (iii) there has not been any material adverse change from the September 30 Financials which would be reflected on financial statements of PQPC if such financial statements were prepared in accordance with U.S. generally accepted accounting principles for the period ending on the date hereof.

2.07. Compliance With Laws. To the actual knowledge of Seller, (i) PQPC has received no notices of the Project's violation of any applicable law, including, without limitation, environmental laws, and (ii) there exists no actual or any threatened litigation, administrative or arbitration or other proceeding or governmental investigation or labor dispute relating to the Project.

ARTICLE III. **Representations and Warranties of Buyer.**

Buyer represents and warrants to Seller that the following are true and correct on and as of the date of this Agreement and will be true and correct on the Closing Date as if made on and as of the Closing Date:

3.01. Corporate Organization and Qualification. Buyer is a corporation duly organized, validly existing and in good standing under the laws of the Cayman Islands.

3.02. Corporate Authority. Buyer has full power and authority and has taken all necessary corporate action to execute, deliver and consummate this Agreement, and to perform all the obligations to be performed by Buyer. This Agreement and all other agreements executed and delivered by Buyer in connection with the Closing (when duly executed and delivered by the parties hereto) will be valid, legal and binding obligations of Buyer, enforceable against Buyer in accordance with their terms, subject to bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditor's rights generally, and by general principles of equity.

3.03. Investment Intent. Buyer acknowledges that the Shares have not been registered under the Securities Act of 1933, and Buyer represents that it is acquiring the shares for its own account for investment and without any present intention to sell or otherwise dispose of the Shares.

3.04. Financial Capacity. Buyer has the financial resources and capacity to comply with all of its obligations under this Agreement, including but not limited to (a) the payment of the Cash Portion and (b) the execution and delivery of the Security Agreement. There are no bankruptcy, reorganization, or similar proceedings pending with respect to, being contemplated by, or threatened against Buyer.

ARTICLE IV. **Indemnities**

4.01. Seller's Indemnity. Seller shall, and hereby does indemnify and hold harmless Buyer and the directors, officers, employees, agents and representatives of Buyer from and against any and all costs, losses, claims, damages, actions, judgments, penalties, and liabilities, including reasonable attorney's fees ("Losses") incurred by Buyer arising out of Seller's breach of a representation, warranty or covenant of this Agreement unless Buyer was aware of any such breach as of the Closing Date.

4.02. Buyer's Indemnity. Buyer shall, and hereby does indemnify and hold harmless Seller and the directors, officers, employees, agents, and representatives of Seller and its affiliates from and against any Losses incurred by Seller arising out of Buyer's breach of a representation, warranty, or covenant of this Agreement unless Seller was aware of any such breach as of the Closing Date.

ARTICLE V. **Conduct Prior to Closing; Conditions of Closing.**

5.01 Hart-Scott-Rodino Filings. Buyer has determined, and hereby represents, that no Hart-Scott-Rodino filing is necessary to consummate the purchase and sale under this Agreement.

5.02. Conditions of Closing. The respective obligations of each party hereto to consummate the purchase and sale under this Agreement are subject to the condition that the representations and warranties made by the other party shall be true and correct as of the Closing Date.

ARTICLE VI. **Agreement Regarding the IFC Letter of Credit.**

6.01 Obligation to Maintain IFC Letter of Credit. Buyer agrees that it shall pay Seller, or its designee, fifty per cent (50%) of any fees or costs payable to the issuer of the letter of credit incurred to renew or maintain that certain letter of credit (the "IFC Letter of Credit") issued by ABN-AMRO Banks, N.V. and International Trade Bank (B of A) in favor of the International Finance Corporation (the "IFC") or replacements, as required by the IFC as part of its debt service guarantees for the Project. Currently, it is estimated that fifty percent (50%) of such costs will be approximately Twenty-Two Thousand Five Hundred U.S. Dollars ($22,500.00) per year. Seller shall deliver to Buyer those certain documents between PQPC and the issuer which describe the fees and costs payable in connection with the IFC Letter of Credit.

6.02 IFC Letter of Credit Draws. Buyer and Seller agree that in the event that the IFC Letter of Credit is drawn upon between the Closing Date and January 1, 2003, then Buyer shall reimburse Seller, or its designee, in cash, for fifty per cent (50%) of any amounts drawn under the IFC Letter of Credit. These reimbursement payments shall be made by Buyer in up to five (5) annual installments of no less than Two Hundred Fifty Thousand U.S. Dollars (U.S. $250,000.00) each due on January 1st of each year beginning on January 1, 2000, except that (a) the final installment shall be equal to the remaining

unreimbursed amount even though it is less than Two Hundred Fifty Thousand U.S. Dollars (U.S. $250,000), and (b) if the IFC Letter of Credit is drawn upon after January 1, 2000, reimbursement payments shall begin on the next following January 1st and each January 1 thereafter through January 1, 2004. Furthermore, in the event that the amounts drawn under the IFC Letter of Credit are less than Five Hundred Thousand U.S. Dollars (U.S. $500,000) in the aggregate, then the reimbursement payment by Buyer shall be a lump sum equal to fifty per cent (50%) of the amount so drawn, and shall be payable on or before January 1, 2000 except that if the IFC Letter of Credit is drawn upon after January 1, 2000, then the reimbursement payment by Buyer shall be a lump sum equal to fifty percent (50%) of the amount so drawn, and shall be payable on or before the next succeeding January 1st.

ARTICLE VII. **General Provisions.**

7.01. Independent Investigation. Buyer acknowledges that it has had access to the officers, employees, assets, operations, books, records and files of PQPC and those of the Seller relating to PQPC. In entering into the transaction contemplated in this Agreement, Buyer is relying solely on its own investigation of PQPC and the business of PQPC, and on its own expertise in the independent power industry. Except for the representation, warranties, and covenants contained herein, Buyer is not relying on any other statement, document, or information provided by PQPC or Seller or their affiliates, employees or agents, including without limitation any financial or operating projections. Without diminishing the scope of the express representations, warranties and covenants of Seller in this Agreement and without first affecting or impairing Buyer's right to rely thereon, Buyer acknowledges that Seller has not made, and Seller HEREBY EXPRESSLY DISCLAIMS AND NEGATES ANY OTHER REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, RELATING TO THE SHARES, THE CONDITION OF THE ASSETS OR THE OPERATIONS OF PQPC (INCLUDING WITHOUT LIMITATION, AN IMPLIED OR EXPRESS WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR CONFORMITY TO MODELS OR SAMPLES OF MATERIALS).

7.02. Entire Agreement. This Agreement, together with any other document executed or delivered between the parties hereto between the date hereof and the date of the Closing pursuant to this Agreement, sets forth the entire agreement and understanding of the parties relating to the subject matter set forth herein and supersedes any and all other understandings, contracts or agreements, oral or written, between the parties hereto with respect to the subject matter of this Agreement.

7.03. Survival. The representations, warranties and covenants of the parties in Articles II and III of this Agreement shall survive the Closing for a period of eighteen (18) months and shall thereafter terminate and be of no further force or effect. Any action for breach of any of the representations, warranties and covenants of the parties in Articles II and III of this Agreement must be brought, if at all, on or before the earlier to occur of (i) eighteen (18) months after the Closing, and (ii) one (1) year after discovery of the breach.

7.04. Expense. Each party shall pay its own expenses related to this Agreement and the transactions contemplated hereby.

7.05. Further Assurances. The parties agree to take all such further actions and to execute, acknowledge and deliver all such further documents as are necessary to carry out the purposes and intent of this Agreement.

7.06. Governing Law. This Agreement shall be governed by, and construed in accordance with the laws of The State of Texas without regard to principles and conflicts of law.

7.07. Confidentiality. This Agreement shall be kept confidential, except to the extent any information is reasonably required to be disclosed (a) to any person or entity for the purpose of evaluating whether to provide insurance or financing or other credit support for PQPC, or the parties or their affiliates, or to any actual or proposed assignee of all or part of the interest of Buyer or Seller in PQPC; (b) to the legal, accounting, regulatory or other advisers of Seller, Buyer, or PQPC, or their affiliates; (c) as required by any governmental authority or otherwise by law; or (d) to the extent reasonably required in connection with the exercise of any remedy hereunder, provided, however, that any party to which disclosure is made under clauses (a) or (b) of this Section 7.07 has entered into an appropriate confidentiality undertaking; and further provided that if an appropriate confidentiality undertaking is not obtainable for disclosures under clauses (c) and (d) of this Section, that a suitable protective order has been obtained (if obtainable). The provisions of this Section 7.07 shall survive any termination of this Agreement.

7.08. Severability. If any provision or provisions of this Agreement shall be held to be invalid, illegal or unenforceable, the validity, illegality or unenforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby.

7.09. Assignment. This Agreement shall not be assignable by any party hereto.

7.10. Counterparts. This Agreement may be executed in any number of counterparts and by different parties hereto on separate counterparts, each complete set of which when so executed and delivered by all parties, shall be original, but all such counterparts shall constitute but one and the same instrument.

7.11. Notices. Any notice to be given hereunder shall be in writing and may be delivered by hand (including without limitation by express courier) against written receipt or sent by first class mail postage prepaid or by facsimile copy with telephone confirmation thereof, promptly followed by a written notice sent by first class mail postage prepaid to the persons and addresses specified below (or such other person or address as any party may previously have notified in writing for that purpose). A notice shall be deemed to have been served when delivered by hand at that address or received by facsimile copy, or if sent by first class mail as aforesaid, five days after it was posted. In proving service

by first class mail, it shall be sufficient to prove that the letter containing the notice was properly addressed and stamped and posted. The names and addresses for the service of notices referred to in this Section are:

To Seller:

Enron International Inc.
1400 Smith
Houston, Texas 77002
Attention: Vice President and Secretary
Fax No. (713) 853-3920

To Buyer:

Centrans Energy Services Inc
c/o DAG Management and Trading Ltd.
P.O. Box 2002
Grand Cayman, Cayman Islands, B.W.I.
Fax No.: (809) 949-8899

with copies to:

Henrik Preuss
c/o Centrans Internacional S.A.
6 a. Av. 20-25, Zona 10
P.O. Box 1249
Guatemala City, Guatemala Central America

and

Constantine Boden
Old City Hall
45 School Street
Boston, MA 02108

7.12. Termination. This Agreement may be terminated by either party upon written notice to the other party at any time after the 31st day of December, 1995 if the Closing has not occurred.

7.13. Waiver of Compliance. Any failure of the Seller, on the one hand, or the Buyer, on the other hand, to comply with any obligation, covenant, agreement or condition herein may be waived by Seller or the Buyer, respectively, only by a written instrument signed by the party granting such waiver, but such waiver or failure to insist upon strict compliance with such obligation, covenant, agreement or condition shall not operate as a waiver of, or estoppel with respect to, any subsequent or other failure.

WITNESS, the undersigned have executed and delivered this Stock Sale Agreement as of the date set forth above.

BUYER:	SELLER:
Centrans Energy Services Inc	Enron International, Inc.
By: Henrik Preuss	By:_____
Name: HENRIK PREUSS	Name:_____
Title: President	Title:_____

[h:\ma-cont\stocksal.doc]

WITNESS, the undersigned have executed and delivered this Stock Sale Agreement as of the date set forth above.

BUYER:

Centrans Energy Services Inc

By:_____
Name:_____
Title:_____

SELLER:

Enron International, Inc.

By:_____
Name: Rodney L. Gray
Title: Chairman, President + CEO

[h:\ma-cont\stocksal.doc]

INTERNAL REVENUE SERVICE

MEMORANDUM

Senate Finance Committee

EXHIBIT 41

21 December 1999

to: Bill Bissell, Houston District Counsel, Stop #8000-HAL

Gerald A. Richards, International Examiner, Group #1408, Houston District

---

subject: Puerto Quetzal Power Corporation (EIN: 76-0381261) -- Tax Court Petition filed 12 Nov. 1999

I have been requested, by Janet Balboni, to respond in detail to the above Petition. As a result, the following responses are submitted.

PETITION, Page #4, last sentence, Item #5 (a)(ii) -- *"Pursuant to the O&M Agreement, Petitioner agreed to pay EEG, the Operator, all "reimbursable expenses" on a monthly basis. Fuel Oil expenses constituted "reimbursable expenses" under the O&M Agreement."*

The Operation and Maintenance Agreement signed November 13, 1992, by and between Puerto Quetzal Power Corp (PQPC) -- OWNER -- and Electricidad Enron de Guatemala, S.A. (EEG) -- OPERATOR, defines "Reimbursable Expense" in section 1.29 as follows:

> Reimbursable Expense: Subject to Section 4.1, any reasonable expense or expenditure incurred by Operator in the performance of the work, including, without limitation, (i) purchases of spare parts, tools, equipment, consumables, materials and supplies (**other than fuel**), (ii) Labor Costs, (iii) the direct cost of subcontract labor or services needed to perform services otherwise covered by this agreement, (iv) insurance premiums and (v) any other item covered in an approved Annual Budget.

PETITION, Page #4, Item #5 (a)(iii) -- *"On March 13, 1993, Petitioner and EEG amended the O&M Agreement to provide that the Project's fuel oil requirements would be supplied by Enron Power Oil Supply Corporation ("EPOS"), a domestic sister company of EDC. EEG also agreed to make certain payments to Sun King Trading Company ("Sun King"), an unrelated party, on behalf of Petitioner."*

Amendment #1 to Operation and Maintenance Agreement dated as of **March 31, 1993**, is between PQPC (OWNER) and EEG (OPERATOR). Section 1.13 of the O&M Agreement dated 13 November 1992, is deleted in its entirety and the following provision substituted:

> "1.13 Fuel Agreements: The fuel supply and transportation agreements for the Project's fuel oil requirements, entered into
>
> (i) on October 16, 1992, between Enron Marketing Company ("EPMC") and Enron Power Corp. ("EPC"), as modified by that certain Modification of Agreement dated March 30, 1993 between EPC and EPMC and as assigned by EPC to Enron Power Oil Supply Corp. ("EPOS") pursuant to that Assignment and Assumption Agreement dated as of March 31, 1993, and
>
> (ii) on October 27, 1992, between Texaco International Traders, Inc. ("Texaco") and EPC, as modified by that certain Modification of Agreement dated March 30, 1993 between EPC and Texaco as assigned by EPC to EPOS pursuant to that Assignment and Assumption Agreement dated as of March 31, 1993 ..."

Section 1.29 of the O&M Agreement is hereby deleted in its entirety and the following provision substituted:

> "1.29 Reimbursable Expense: Subject to Section 4.1, any reasonable expense or expenditure incurred by Operator in the performance of the work, including without limitation, (i) purchases of spare parts, tools, equipment, consumable, materials and supplies, **including fuel oil which Operator supplies of causes to be supplied to Owner hereunder** ..."

On 1 April 1993, a Fuel Supply and Management Agreement was entered into by and between EEG (Operator) and EPOS Section 5 of this Agreement provides in part:

> "Price; Payments. In exchange for the fuel supply and management services to be provided by EPOS hereunder, Operator agrees to pay, or cause to be paid, to EPOS an amount each month equal to the sum of
>
> (i) an amount equal to six percent (6%) of the gross monthly revenues of Puerto Quetzal in such month ("the Monthly Fee"), and
>
> (ii) the invoice amounts actually paid by EPOS to its fuel oil suppliers to procure the supplies that are delivered in such month pursuant to this Agreement..."

As a result of Amendment #1 to the O&M Agreement dated 31 March 1993, and the Fuel Supply and Management Agreement dated 1 April 1993, nothing is mentioned regarding EEG's (Operator) agreement to make certain payments to Sun King Trading Company ("Sun King"), on behalf of PQPC (Owner). Please, see CONFIDENTIAL memorandum dated 26 May 1993, (pages 2 and 3) which addresses why the Fuel Supply and Management Agreement was drawn up between EPOS and EEG. In other words, to set up a mechanism to move funds from PQPC (Owner) to EEG (Operator) to EPOS (Fuel Manager) to satisfy the Sun King "finders fee".

PETITION, Page #5, Item 5 (b)(i) – *"TOP had entered into an agreement with Sun King pursuant to which TOP agreed to pay certain fees to Sun King in consideration of Sun King's services in assisting TOP in developing and negotiating the PPA (the "Sun King Commission")."*

refer to Memorandum dated 13 December 1993, and the following quotes:

> "The group is formed by friends (pal's) who have in common being well off. They are not formal partners in any other endeavors but Sun King. This is not a formal business group like you find in other cases: sugar, coffee, banking, etc. As wealthy individuals that they are, they have the capacity to establish contacts, make pressure, and represent your interests. One of the guys seems to be closer to the army than others, this can be of some benefit if in a given situation if we need to approach the army, but as a group, Sun King is meaningless. In other words, we could be much better off by sustaining individual relationships with one or the other guy, than by having them as a group."
>
> "If any of the above is true, I sincerely believe that Enron has a valid case in presenting a claim, a formal complaint, a dissatisfaction. I doing so, Enron has to stress that it's association with Sun King brought very little benefits, that sharing all that investment with them is too much for the benefits that were NOT there. Personally, I feel that what S.K. did, was introduce Texas Ohio to President Serrano, and talk him into signing the contract. It is the typical "finder fee" arrangement, with the only difference that the fee was -for that service- completely out of hand".
>
> "This possible claim, could put Enron in a much better position for a buy out. It's simple: Sun King would know, that if they dare sue you for not complying our contract, Enron's defense would also be powerful. If you convey the idea that Enron' in many respects is not happy, you'll be sending the correct message to induce a buy out."

PETITION, Page #5, Item 5(b)(iv) – "The Sun King Commission is a liability incurred by EDC to acquire the PPA."

Again, the Sun King obligation existed by and between Texas Ohio Power and the Sun King group prior to EDC's purchase of the Power Sales Agreement (PPA) from TOP. The central question is the nature of this liability, and I think the four memorandums address clearly (1) the origins of and (2) the substance of the Sun King obligation. The periodic (1995) payments tendered to Sun King, and deducted by PQPC -- "reimbursable (fuel oil) expenses" -- are not ordinary and necessary business expenditures of PQPC. The $12,000,000 payment tendered as a component of the Sun King "Buy-Out" is a lump-sum installment on prospective "finders fees" due the Sun King group.

Both the 1995 "reimbursable expenses" and the 1995 "buy-out" payment are capital expenditures. The only asset classification to place such expenditures is "Goodwill Sun King Group". Since the Sun King group is not a formal Guatemalan business entity or association, "Goodwill Sun King Group" can only be deemed to have an indefinite useful life, and hence deductible upon dissolution of PQPC.

JR

cc: Janet Balboni

CASE NUM: 17311-99 TYPE: REGULAR SUBTYPE:
OPENING DATE: 11/17/1999 STATUS: DEC'N-SETTLEMENT STATUS DATE: 10/02/2000
NAME: PUERTO QUETZAL POWER CORP ATTY: JRB BALBONI JANET R

	IN DISPUTE	ON DECISION
AMOUNT OF TAX:	535368	0
AMOUNT OF PENALTY:	0	0
AMOUNT OF OVERPAYMENT:	20600	0

DECISION ENTERED DATE: 09/28/2000 DECISION RESULT L FAV'BLE T/P
IS THIS A SETTLEMENT? Y
IF YES ENTER DECISION RECEIPT DATE: 10/02/2000
DATE ASSESSMENT MUST BE MADE: 02/23/2001 DATE NOTIF TO ASSESS:

BOND FILED BY PETITIONER? DATE OF NOTIF BY JUSTICE OF DECISION:
CASE REMARKS: N

(XMIT

PROCESSING COMPLETE - CONTINUE

4I » 0 1,59

CLOSED CASES

7 days = 10-10-00

100 days = _____

(tried ____ dismissed ____ settled/no waiver

CTRS/ATTY INFO
grade 14 hrs

BOD CODE (Please check appropriately

PRIMARY	SECONDARY
✓ LM-Large-Mid Size Bus.	___ LM2
___ SB-Small Business	___ SB2
___ TE-Tax Exempt & Gov't Ent	___ TE2
I-Wage & Investment Inc	___ WT2
	___ CT2

FOR CLOSING

DATE TO APPEALS OCT 10 2000

ATTACHMENTS:
admin file. . . yes ✓ no ___
2 cc entered decision ✓ OR order of dismissal

5402 5278 OR 0 + 2cc counsel settlement memo ____

audit statement schedule of asjustments ✓ statement of account

Senate Finance Committee

EXHIBIT 42

TRANSMITTAL MEMORANDUM

Date OCT 10 2000

To: Chief, Appeals Office | Office

From: District Counsel | Office

Subject: Docket No. TL-17311-99

There are transmitted herewith for: check applicable boxes

[ ] Consideration
[ ] Settlement computation
[ ] Obtaining adm. file and for forwarding to this office
[ ] Rule 155 computation
[X] Closing
[ ] Other (Specify)

[X] Adm. file
[ ] Copy of petition
[ ] Settlements documents
[ ] Court's opinion dated
[ ] DJ Settlement offer
[ ] Other (Specify
[ ] Criminal Investigation file
[ ] Copy of answer
[ ] Legal file
[ ] Decision dated
[ ] Counsel Settlement Memorandum

The following action has been taken on this case:
[ ] Case has been settled by Counsel Settlement Memorandum
[ ] Case has been settled pursuant to Tax Court's decision
[ ] Settlement by Appeals has been processed
[ ] See attached memorandum

Pre-90-day memorandum
[ ] Other (Specify)
Elimination of penalty

Remarks

ERIS Information:

1. TEFRA, S corp. etc, (non-taxable cases only) Counsel adjustment amount (Item 22) $_____

2. Tax Court cases where claims for refund have been filed: (this item applies only if the case is settled or tried by Counsel, not Appeals
   A. The total amount of Exam's unagreed claims that is disallowed by both Appeals and District Counsel (Item 25) $_____
   B. Claims filed direct with Appeals and/or District Counsel:
      1) amount of claim (Item 26) $_____
      2) The total amount disallowed by both Appeals and District Counsel (Item 27) $_____

3. Average employee grade (Item 23): 14

4. Total Counsel hours worked (Item 24): 28

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HOUSTON
OCT 02 2000
DISTRICT COUNSEL
INTERNAL REVENUE SERVICE

UNITED STATES TAX COURT

PUERTO QUETZAL POWER CORP.,

Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

Docket No. 17311-99

JRP
GP
10-2-00

DECISION

Pursuant to agreement of the parties in this case, it is

ORDERED and DECIDED: That there are no deficiencies in income tax due from, nor overpayment due to, the petitioner for the taxable years 1995 and 1996.

(Signed) Thomas B. Wells
Judge.

Entered: SEP 28 2000

Senate Finance Committee

EXHIBIT 43

It is hereby stipulated that the Court may enter the foregoing decision in this case.

GEORGE M. GERACHIS
Counsel for Petitioner
Tax Court Bar No. GG0267
Vinson & Elkins, L.L.P.
1001 Fannin, Suite 1909
Houston, TX 77002
Telephone: (713) 758-1056

Date: 9-1-00

Stuart L. Brown
Chief Counsel
Internal Revenue Service

By: Janet R. Balboni
JANET R. BALBONI
Attorney
Tax Court Bar No. KJ0199
8701 South Gessner
Suite 710
Houston, Texas 77074
Telephone: (281) 721-7300

Date: 9/27/00

RECEIVED
DISTRICT DIRECTOR
JUN 29 1999
Houston District

U.S. Department of Justice

Criminal Division

Washington, D.C.

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JUN 23 1999
RETURN TO:

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JUN 30 1999
EXAMINATION DIVISION
HOUSTON, TEXAS

Mr. Paul Cordova
District Director
Department of the Treasury
Internal Revenue Service
1919 Smith Street
Houston, TX 77002

RECEIVED
JUL 06 1999
EXAM BRANCH

Re Enron Corporation & Subsidiaries

Dear Mr Cordova:

Your letter dated May 21, 1999 to the Attorney Janet Reno has been forwarded to this office, which has responsibility for prosecutions under the Foreign Corrupt Practices Act of 1977 [FCPA], 15 U.S.C. § 78dd-1, et seq.. We appreciate the receipt of information concerning potential violations of the FCPA and would like to discuss this matter with the Internal Revenue Service personnel most familiar with the documents you have furnished. I may be contacted at (202) 616-0437.

Sincerely,

Peter B. Clark
Deputy Chief, Fraud Section

RECEIVED
IRS
EXAM GROUP 1107
JUL 06 1999
HOUSTON

Senate Finance Committee
EXHIBIT 44

70-700

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
1919 SMITH STREET
HOUSTON, TEXAS 77002

DISTRICT DIRECTOR

MAY 21 1999

The Honorable Janet Reno
Attorney General
Washington, DC 20530

In re Enron Corporation & Subsidiaries
1400 Smith Street, Enron Building
Houston, TX 77002

Dear Madam Attorney General:

We have received information in the Houston District Disclosure Office that indicates that the above-captioned business may have violated the Foreign Corrupt Practices Act (15 USC 78dd-1, 78dd-2).

This potential violation involves the negotiations conducted and the payments made pursuant to the acquisition of a Power Sales Agreement by and between Enron and Empresa--the state-owned, primary supplier of thermoelectric power to Guatemala. Enclosed are copies of four internal memorandums from the files of Enron Corporation and Subsidiaries regarding these transactions.

This information is provided pursuant to 26 USC 6103(i)(3)(A) with the understanding that it will be used strictly in accordance with the disclosure provisions of the Internal Revenue Code. It may be disclosed to personnel within your agency only to the extent necessary to enforce the above-cited or other relevant criminal statutes within the purview of your agency.

Any employees having access to this information should be aware of the penalties for the unauthorized disclosure of confidential information as delineated under 18 USC 1905 and 26 USC 7213 and 7431. The information provided herewith must also be safeguarded as mandated by 26 USC 6103(p)(4).

In order for us to properly assess the usefulness of the information we are providing, we would appreciate knowing the final disposition of any action taken as a result of this referral. Our need for feedback on matters such as this is not

diminished or affected by the passage of time. We realize that your own disclosure laws may limit what you can provide us. Any information that you can provide us should be address to:

Internal Revenue Service
1919 Smith Street, Stop 7000 HOU
Houston, TX 77002

If you need further assistance with this matter, please contact Disclosure Officer, Linda Sisson, at (713) 209-4010.

Sincerely,

Paul Cordova
District Director

ORIGINAL

CC. Roberto Figueroa
Bill Votaw
Vinicio Urdaneta
Chuck Emrich
Ron Teitelbaum

Re: Tax Liability on Royalty Payments

From Bill Leggatt

Date. 6 February 1995

Today Roberto Figueroa, Bill Votaw and myself met with Alvaro Castellanos, Sunking's Counsel, to discuss the issue of withholding tax associated with payments to the Sunking group. He showed us the following documents:

1) The original agreement of Feb 24 1992, between Sunking and Texas Ohio that allowed for 16% of capacity payments, 21% of energy payments, and specifically absolved Sunking from payment of any tax.

2) The transfer of this contract from Texas Ohio to EDC on March 12 1992

3) The letter from Haug, dated June 10 1992, to Sunking agreeing that payments could be made to any account of Sunking's choice.

We subsequently showed him the amendment of (1) above, executed by Texas Ohio and Sunking dated March 12 1992, changing the payment to 6% of all revenues, and withdrawing the tax benefit. Alvaro was obviously aware of the existence of this document, and made it plain that it had been the topic of discussion at group meetings on many occasions.

Alvaro told us that there was a split in Sunking regarding the tax issue. This was between those who realised there was no legal basis to claim the payment on a grossed up basis, which comprises Alvaro and Henrik, at a minimum. The other side claims that, on the basis of precedent and a very optimistic interpretation of the agreements, the payments should be grossed up.

We told Alvaro that as far as Enron was concerned there was certainly no precedent either way (since there has been no tax so far), and that we could not see any justification in the documents we had that would give Sunking this security.

We reiterated that the intent of all this was to get the Sunking payment on a more legitimate basis, for the benefit of all; Sunking, PQPC and Enron. However, before we could meet to discuss alternative methods of payment, a formal resolution would have to be made on the tax issue. Therefore, on the

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basis of this discussion, Alvaro promised to come back to us with a formal Sunking position. Only then will we know whether we will have to dispute this issue, or whether the Group will accept the benefit of the situation so far, and accede the future liability gracefully. Alvaro promised this response only within a 10 day time frame, since at least one of the group is out of the country.

However, it is apparent that should the response be unfavorable, then this issue can only be resolved at a management level, since Alvaro, from a legal basis, did not contradict our own position/interpretation in any way, nor did he produce any new documentation that would cause our analysis of the situation to alter.

M E M O R A N D U M

TO DAVID ODORIZZI

FROM: JORGE ASENSIO A

REF.: SUN KING BUY OUT APPROACH

DATE: DECEMBER 13, 1993

The Sun King issue is one that has captured the attention of everyone involved in the Guatemalan project. We have all expressed a number of opinions in respect of all aspects of this association. This memo is my contribution to help you in the formation of alternatives for an eventual negotiation. It is very clear to me that we have to come to grips with this issue, in order not to jeopardize the whole project, neither in it's local reputation nor in the internal fiscal aspects of such payments.

These opinions are very personal. and derive of what I know of the group, of what I feel ought to be a good solution for Enron, and of my personal experience as a professional in Guatemala. This is not a legal opinion, nor should it be taken as a legal guideline to solve the problem.

1) The group is formed by friends (pal'o) who have in common being well off. They are not formal partners in any other endeavors but Sun King. This is not a formal business group like you find in other cases: sugar, coffee, banking, etc. As wealthy individuals that they are, they have the capacity to establish contacts, make pressure, and represent your interests. One of the guys seems to be closer to the army than others, this can be of some benefit if in a given situation if we need to approach the army, but as a group, Sun King is meaningless. In other words, we could be much better off by sustaining individual relationships with one or the other guy, than by having them as a group.

As relatively powerful as they are, we definitely don't want them against our interests if something goes wrong. On the other hand, I feel that Enron has overplayed their influence, and power. Our project is pretty well consolidated now, and the only thing that can go wrong is that the same Sun King group be made public.

Exhibit

2) In my view, the whole affair with Sun King has been approached with some fear, with an excess of preponderance, too complacent. This has lead the company to give-in in almost all respects, but more specifically in the way the payments have to be made. Other aspects of our association with S.K. prove this: =we picked office space in a building where one member of S.K. is a partner in order to show our gratitude; =we hired the wife of another S.K. member to decorate the office, etc.

As a consequence of this generous treatment, they have felt a certain dependance of Enron on Sun King. If not dependance, they have felt that Enron can't find its way around Guatemala without them, both things which are not true.

If you give any credibility to these aspects, you have to agree with me that negotiating a buy out is a complicated task. If you negotiate under this atmosphere, they will be calling the shots, not us.

3) I always argued that Enron had to level its position vis-a-vis Sun King. In a certain way I felt that Enron wanted to be more "business like" with Sun King, but didn't dare due in great measure to what I describe above.

I personally feel that Sun King did not deliver all the offerings, representations or promises made during the negotiations. Indeed: I understand that they manifested that imports didn't have to pay import duty, that there would be no problem with the Port Authority, that the project would be well taken by everyone in Guatemala, etc.

If any of the above is true, I sincerely believe that Enron has a valid case in presenting a claim, a formal complaint, a dissatisfaction. In doing so, Enron has to stress that it's association with Sun King brought very little benefits, that sharing all that investment with them is too much for the benefits that were NOT there. Personally I feel that what S. K. did, was introduce Texas Ohio to President Serrano, and talked him into signing the contract. It is the typical "finder fee" arrangement, with the only difference that the fee was -for that service- completely out of hand.

This possible claim, could put Enron in a much better position for a buy out. It's simple: Sun King would know, that if they dare sue you for not complying our contract, Enron's defense would also be powerful. If you convey the idea that Enron in many respects is not happy, you'll be sending the correct message to induce a buy out.

4) Now come the fiscal considerations. Let's face it, the correct way to pay the 6% is by all means through a Quetzal payment in Guatemala, with VAT tax, withholding and all. The stress that we have gone through in trying to pay abroad, to pay tax free, and to pay in dollars, has put this company against the wall, and such payments could severally injure the company in the future.

As a matter of negotiating, we have to come to S.K. and explain what should be evident to them: that we can only pay in quetzales, in Guatemala and complying with all fiscal laws. This overwhelming reality, established by so many opinions, is by all means supportable by Enron, a crude reality, and a business decision that has to be taken now, in order not to mess our first tax return.

Guatemala Tax Return

If we do this, again our negotiating position will be strengthen, due in great deal to a lesser interest by S.K. to accumulate local currency. In fact, I would start (or continue) the negotiations with S.K. with a concrete manifestation on our part, that we can only pay in Quetzales, that we can not violate the law, that the S.K. agreement can not force us to brake the law. After stating this, I would wait for their reaction, and not touch the possibility of a buy out any more. I would even allow some time to have this system work, in order for them to feel the pressure. Here, the only risk is that they can come to us and say that such payments are risky, that the local community may find out what happened. We have to be straight from the beginning, and respond that we don't care about that problem, and that in any event, this is a much lesser problem that what the other payments can represent in the future.

Paying in quetzales is by no means a violation of our agreement. The agreement only states that they can select a bank to receive deposits. This does not mean that all payments have to be made in dollars. This also means that they can not force us to break the law. These are very important bargaining positions.

5) If these arguments are properly presented, I hope to see a more consolidated position by Enron. The important thing, above all, is that Enron should not be worried as to the consequences of a negotiation of this type. Please don't take the position that if you start a negotiation of this kind, S.K. will get angry, upset, or that it might sue, or that it will harm us in Guatemala. We have to take a strong stand, and have them feel that they are no longer dealing with Development.

ENRON
Power Corp.

CONFIDENTIAL

Interoffice Memorandum

To: David Odorizzi

From: Carl Waldo

Department: Operations

Payment and Tax Problems Re 6% Sun King Obligation - Guatemala Operations

Date: May 26, 1993

This is in response to your request for details on the subject made at Monday's staff meeting

BACKGROUND

Enron Development Corp. entered into an agreement with Texas-Ohio Power, Inc. (the "TOP agreement") on March 12, 1992 whereby in consideration for TOP transferring the Power Contract with Empresa to EDC, EDC agreed to pay (among other sums) "an amount each month equal to 6% of the gross revenues generated by the sales of electricity and payment for contract capacity under the Power Contract."

In a letter dated March 12, 1992, TOP notified EDC that the "right of a monthly payment of a 6.0% of the gross revenues...has been legally and effectively assigned in favor of SUN KING TRADING COMPANY, INC." The letter further stated that "any monthly payment...must be paid directly to the assignee, SUN KING TRADING COMPANY, INC., 6a. Avenida 20-25 zona 10, 8th floor, Guatemala City, Guatemala," and further requested that EDC notify Sun King of the receipt of this letter.

David Haug, by letters dated March 13, 1992 acknowledged receipt of the letter to TOP and informed Sun King of receipt of the TOP letter and acknowledged that EDC would make the required monthly payments directly to Sun King per that letter.

Thus, it was established that the Sun King group would receive a monthly payment equal to 6% of the gross revenues of Puerto Quetzal. This has been shown in various projections and budgets as "Guatemalan share of revenue."

You will note that the TOP agreement (as quoted above) gave a local address for the payment and was silent as to the denomination of the currency of payment.

Since Empresa Electrica pays us in Quetzals for the Capacity and Energy - although the rates are quoted in U.S. dollars in the Power Purchase Agreement - PQ must go through the auction process to acquire the dollars it needs to operate - the initial assumptions were that this Sun King payment would be a) made locally and b) in Quetzales. Under such circumstances the payment would be subject to VAT of 7% and a Withholding Tax of 4%.

Sun King then announced through Oswal Herbruger, a member of the Group, that Sun King is entitled to receive payment in either Quetzales or dollars and disputes the withholding or deduction of any tax.

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EDC agreed to the option of dollars or Quetzales which was tied to which bank account Sun King instructed us to pay into.

On March 1, 1993 David Haug received a letter requesting that the monies be paid into either one of two named bank accounts in Miami for credit to Deutsch - Suedamerikanische Bank A.G., Miami Agency. This meant that they had opted to receive the payment in dollars.

It was also revealed that Sun King Trading Company, Inc. was a Panamanian Corporation not registered in Guatemala.

Payments of this nature by a Guatemalan entity to a person or company abroad is subject to a 25% Withholding Tax and a 3% Stamp Tax.

Procedures had been written by Eric Wycoff outlining the treatment, including withholdings, to be applied to both Quetzal and USD payments to Sun King. This further provided for deducting any costs of conversion to dollars from the payment as well as providing that we could pay in Quetzales in such case as the currency exchange market could not provide adequate dollars or if government restrictions prevented PQPC from obtaining dollars.

These procedures were under discussion when we discovered that the tax law contained the following limitations on such payments.

ROYALTIES

Payments made for the use of trade marks and patents registered in the Industrial Property Register, formulas, manufacturing rights. However, these payments may in no case exceed 5% of gross income. (If paid abroad will require 25% withholding tax and 3% stamp tax)

COMMISSIONS

Payments representing commissions on sales or fees for technical, financial, scientific services are limited to 1% of gross income or 15% of Guatemalan worker payroll, whichever is greater. (If paid abroad will require 12 1/2% withholding tax and 3% stamp tax)

These restrictions "threw a spanner" into the entire matter:

A. The payment to Sun King could not qualify as a "royalty" as defined in the law and, of course, exceeds the 5% limitation.

B. The payment also did not fit the definition of commission or fee - the 1% limit notwithstanding.

In addition, Sun King continued objecting to the withholding of any taxes whatsoever.

In an attempt to overcome these problems the Fuel Supply and Management Agreement was drawn up between EPOS and Electricidad Enron ("EE") which provided that EPOS would sell the fuel oil to EE acquired under the current contract with Texaco and such other additional fuel that may be required. EE would pay EPOS an amount each month equal to 6% of Puerto Quetzal's gross revenue in exchange for "fuel supply and management services." In addition, EPOS could opt to have EE pay the fuel supplier direct rather than through EPOS. (In the case of the first Texaco invoice to come through EPOS, the payment was made to Texaco out of EPOC. I prepared an EPOS invoice to EE, which PQPC paid out of the USD account at NationsBank.)

The problem with this new procedure is that this 6% amount is still a separate item of payment and, as described in the contract, is subject to a 1% limitation (as well as a 25% withholding tax and the 3% stamp tax)

Based on the current estimate for the period April 1 through December 31, 1993, the 6% payments to EPOS would aggregate $2,217,000 of which only $28,800 would be deductible in EE. (EE's estimated gross rev. April - Dec. being $2,876,590 X 1%)

Roberto Garcia, whom everyone claims opined that this arrangement avoided any tax problems, maintains that his understanding was that the 6% was to be billed as part of the fuel price and not as a separate "fee." This too should have been recognized as a nonstarter, however, since a markup of that magnitude cannot possibly be acceptable since it results in an entry price for above "going market price."

I made a study of the markup necessary to the fuel price in order to include the 6% factor (ignoring the timing problem arising out of a monthly payment obligation to Sun King vs. an estimated total of 7 - 8 cargoes of fuel per year!). Based on barrels projected to be consumed over the nine months to December 31st and the 6% payments projected over that period, the fuel would have to be marked up by $2.36 per barrel. The May 1st cargo of fuel cost $14.825 per barrel including transportation and insurance etc., the markup would raise this to $17.185. This is grossly above market and it is all but assured that the authorities would not allow it as a tax cost in Guatemala. (Roberto Garcia is preparing an opinion on this point.)

The most obvious solution would be for PQPC to assume the obligation, splitting the payment between a royalty agreement with Enron for the use of Enron's trademark/logo in Guatemala providing for a 5% royalty (nebulous since PQPC does not use the logo) and a 1% fee for services to be supported by a credible contract with (EPOC?). These payments would be subject to the withholding tax of 25% and 12.5% respectively, plus stamp tax of 3%. Enron would then pay the net amount to Sun King via the Miami bank.

This, however, is NOT ALLOWED under our agreement with IFC!

IFC PROVIDED PERMANENT (NON-RECOURSE) FINANCING

Although Roberto suggested the same scenario through EE, it can't work since EE's gross revenues are only $2.9 MM/year and the 5% and 1% limitations would result in most of the payments becoming nondeductible.

Eric Wycoff had a scheme several months ago which involved buying the Sun King "royalty" out on a NPV basis and then setting up a Royalty Trust in Guatemala, selling this publicly and recouping our buy out. The payments would then be local, in Quetzales, subject to local taxes without argument, and possibly gain some valuable goodwill and recognition for Enron/PQPC.

THIS IS WHAT HAPPENED SO SUN KING BOUGHT OUT ON A NPV BASIS

Although this idea generated some enthusiasm at one point, it apparently never progressed beyond the concept stage.

This problem, therefore, remains with us and I do not see a workable solution.

Part of the problem are the tax law limitations. Another facet is Sun King's insistence on receiving dollars, outside of Guatemala, not subject to withholdings of any kind.

Since our formal agreement with TOP did not specify any of the conditions later imposed by Sun King and since the letter of assignment by TOP to Sun King specified payment to a local Guatemala City address thus implying payment in Quetzales, and since Guatemalan tax laws require withholdings on such payments, I suggest we ignore these after-the-fact demands by Sun King. We should pay locally, in Quetzales, net of taxes. This removes one segment of influence on our solution attempts, i.e. the desire to accommodate Sun King beyond the scope of the signed agreements.

The only problem then remaining is for some structure that would fit the percentage limitations in the tax law. The solution to this latter point escapes me at the moment!!

An outstanding issue remains concerning 6% payments already made to Sun King:

-April 12th $219,330.27 wire transferred from EPOC to Miami bank per R. Lammers

-May 13th $256,696.09 wire transferred from EPOC to Miami bank per R. Lammers.

These payments were made covering the gross 6% without any withholdings for taxes. When PQPC repays EPOC/EPOS we will have to pay the withholding and stamp tax. Either PQPC will have to "eat" this or Sun King will have to bear an adjustment on subsequent payments. The decision has to be made! (Jim Steele and/or David Haug are the original deal-makers on this.)

STEELE ONLY ONE REAL MAKER

There are other problems outstanding in our Guatemalan business which should be focussed upon.

Import Permit - Fuel Oil

EE currently has the permit to import fuel free of duty and exempt from distribution tax based on the declaration that EE was the consumer of the fuel. It is not the consumer - it sells the fuel to PQPC. PQPC has neither an exemption on fuel oil duties, distribution tax or import permission. Nonetheless, the contract with Texaco is with PQPC and all billings for fuel have been made naming PQPC as a buyer. This is a festering situation involving customs, the Ministry of Energy, Empresa Electrica and the tax authorities. Steele, Coy and Paz have been attempting to solve this for months without apparent effect. The political situation, influenced by the unpopularity of Empresa, the attempts to settle with the rebels in the north - now no doubt further influenced by the disbanding of Congress by President Serrano - has made negotiation fruitless to date.

Solution? Transfer the Import Permit to PQPC and let PQPC buy fuel direct? (Would make EE as "operator" virtually unnecessary, however!).

Advance Tax Payments

Under guatemalan tax law, every business has to pay 1.5% of its gross quarterly revenues as an advance income tax. These advances are then incorporated into the tax return after year end and any excess refunded. In the present situation where EE is buying fuel oil and reselling it to PQPC, EE is creating gross revenues upon which it must pay this advance tax. There is no "income" inherent in these "wash" transactions so that all of the advance taxes would be refunded, but the tax, which would aggregate 1.5% on approximately $18MM of fuel purchases in a year or $270,000 would be tied up for a period ranging from a full year to three months minimum - not allowing for the time it might take to receive the refund! This same feature applies to the O&M payments made by EE in its role as Operator and billed to PQPC for reimbursement. This, for 1993, adds another $7.3 MM of gross revenues subject to the 1.5% advance tax. ($109,500)

This comprises another argument against our Guatemalan structure. Solution? (Eliminate EE as "operator" of PQPC.)

These problems cannot be solved by any one individual. It will require concerted senior discussion and action concerning both the basic structure of the Guatemalan Organization and on-the-scene senior negotiations with Sun King, Empresa, the Ministry of Energy and Customs. Such action should be implemented ASAP.

MEMORANDUM

TO: James J. Steele / Bill

FROM: Jorge Asensio A.

DATE: February 26, 1993

REF: Payments to the Sun King group.

To comply with the Sun King Group we basically have two options. One is to pay in Guatemala with local currency, and the other is to pay in dollars abroad. Both alternatives however, have local tax implications that have to be met in order to be able to account for these payments legally, and be able to deduct such a substantial expense for tax purposes in Guatemala.

I have very little information on the Sun King contract, but I do know that they can select their bank of preference. Please be aware that this does not mean that if they select a bank in the U.S. or in England we have to pay in Dollars or in Pounds. Above all, I understand that this provision means that we can not force that group over the use of one bank.

The commitment to pay such commission that was inherited from the Texas-Ohio contract should be seen as an obligation that arises out of the Guatemalan operation. It should not be taken as an obligation by Enron Power Development Corp. just for the fact that this was the company that originally took the contract. Whatever contract was accepted by Enron, it had as a main goal to develop a project in Guatemala, so the commission should always be linked to that project, and as such to its local earnings.

Of course, any company in Guatemala may have expenses and obligations payable abroad, and have the obligation to get the dollars to meet those obligations. Foreign contractual obligations are also tax deductible.

So, in order to establish a frame work of references recommend the following

a) Not to obligate Puerto Quetzal Power Corp to pay in dollars;

b) To allow payment in dollars provided that Puerto Quetzal Power Corp. can get dollars without limiting its own access to hard currency. In other words, Puerto Quetzal Power Corp. will leave any dollar obligation in last place, so if we are able to comply by getting the dollars we will, but if no sufficient dollars are available we will pay in Quetzales. This is strongly supported by two things: - We are paid in Quetzales and not in dollars; - The exchange mechanisms do not allow a free conversion to dollars, so it is obvious that Puerto Quetzal Power Corp. will apply its few dollars to pay for the elements that are needed to maintain the operation running. By the way, in David

Haug's letter to the Sun King group dated march 12, 1992 he indicates that payments will be made to them at 6 av. 20-25 zona 10 in Guatemala City. There is no indication of payments abroad. The actual agreement between Enron and Texas-Ohio does not indicate anything with respect to form or place of payment.

c) All payments are gross, including any taxes levied in Guatemala to either local or foreign obligations. Puerto Quetzal Power Corp. will not pay any taxes on behalf of Sun King. You must understand that guatemalan tax legislation levies withholding taxes on payments abroad where the payee is the taxpayer, even if the payor has the obligation to pay the withholding.

d) Any charges or expenses, present or future that are charged in the exchange mechanism, and all fees involved in the Quetzal-Dollar conversion will also be discounted to the payee.

e) Payments only cover the revenue obtained from the sale of electricity derived from the two barges. Any other revenue derived from future production is not part of the deal. By now Enron can promote itself in Guatemala.

f) The term of the obligation in the original Texas-Ohio - Empresa Eléctrica de Guatemala, S.A. contract is 15 years. If the Sun King contract does not refer to any term, we should try to negotiate a more convenient term. I suggest 5 years. I understand that the 15 year term of the original contract was something requested by Empresa Eléctrica de Guatemala S.A. to Texas-Ohio and not a product of Sun King as a group pushing for that term.

g) Given the fact that the Sun King payments do not represent any REAL service to Puerto Quetzal Power Corp. it is always possible that our tax authorities could disallow that deduction in the future. In this regard, I strongly recommend that we condition payments on the basis of their deductibility: payments will be made provided that they are deductible. I also recommend that the contract as such, and the invoicing be carefully drafted in order to avoid these problems. We should be very credible at the time of invoicing.

Good service

h) It is also important to try to "lock-in" today's charges in the Empresa Eléctrica de Guatemala S.A. - Puerto Quetzal Power Corp. contract in order to avoid and endless increase in the 6% commission. If any increases for electricity charge have to be made to Empresa Eléctrica de Guatemala S.A. due to oil prices or otherwise, we should be able to invoice these increments as "overcharges" or "overcosts" in order to keep current prices permanently charged as our basic contractual stipulation, and only pay the 6% based on this basic price. Otherwise, any increment in cost is directly favorable to Sun King, an aspect of our relationship with Empresa Eléctrica de Guatemala, S.A. that doesn't help much.

After giving you these ideas, I now want to explain the difference between local and foreign payments regarding the tax issue.

I will use and example of a monthly gross income of Q20,00,000.00

LOCAL PAYMENTS

Q20,000,000.00 = 6% = Q1,800,000.00 which should be INVOICED as follows:

Sun King invoice for	Q1,682,242.99
+ VAT tax of 7%	Q 117,757.01
TOTAL INVOICED AMOUNT	Q1,800,000.00
This is paid as follows:	Q1,682,242.99
VAT tax	Q 117,757.01
	Q1,800,000.00
4% withholding on fees and commissions:	Q 67,289.72-
Actual payment:	Q1,732,710.28

The withholding tax is paid by us to the tax department on account of Sun King's income tax.

FOREIGN PAYMENTS:

Q20,000,000.00 6% =	Q1,800,000.00
Withholding of 25% =	Q 432,000.00
Balance due =	Q1,368,000.00

If we pay dollars at 5.30 x US$ = US$ 258,113.21 and this will be the amount paid.

If Sun King is an American company it should pay income tax in the US if they receive payment this way. In the event of local payments in Guatemala they will also be subject to income tax of 25% after expenses are deducted.

Another warning which I find very important in this case, is the one related to the definition of "Commissions", as we are considering periodical payments of commissions to Sun King. The Guatemalan Tax Authorities have always considered that a "commission" is a one shot deal, payable upon termination of a single transaction. A commission payable periodically is understood by them as being a "royalty". I recommend to define our payments to Sun King correctly as "royalties" in order to withhold 25% but, in the event of any adjustments or tax modifications, Sun King could petition Government for recognition of commission status and and thus pay a 12.5% withholding due on commissions. The advantage of paying royalties is the fact that these are basically justified by the contract. Commissions though, have to be justified by the nature of the transaction involved.

If you need further information will be delighted to extend this memo.

DIVISION OF
ENFORCEMENT

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

June 9, 1999

Internal Revenue Service
Paul Cordova, District Director
1919 Smith Street, Stop 7000 HOU
Houston, TX 77002

Re: Enron Corporation & Subsidiaries

Dear Mr. Cordova:

Your letter to Chairman Levitt regarding possible violations of the Foreign Corrupt Practices Act by Enron Corporation and its subsidiaries has been referred to this office.

In your letter, you stated that the potential violations center around the negotiations conducted and the payments made pursuant to the acquisition of a Power Sales Agreement by and between Enron and Empresa, a state-owned Guatemalan power company. You also provided copies of four internal memoranda relating to the transaction between Enron and Empresa. It is my understanding, based on a recent telephone conversation with Liz Kuffel in your office, that the Internal Revenue Service generally is not permitted to provide additional information in matters such as these.

I write to assure you that violations of the Foreign Corrupt Practices Act are matters of great importance to the Commission and to express appreciation to you for bringing this matter to our attention. As a matter of policy, however, the Commission does not comment on whether it is conducting or will conduct an investigation. Notwithstanding the above, the Commission would welcome any additional information that you may be able to provide in the future. In the event that you have any additional information or questions relating to this matter, including the identity of the non-taxpayer who provided the IRS with the memoranda included with your referral, please contact the undersigned at 202-942-4882.

Once again, the Commission appreciates you bringing this matter to our attention.

Very truly yours,

Kevin J. Horn
Attorney, Division of Enforcement

cc: Office of the Chairman

Senate Finance Committee

EXHIBIT 45

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
1919 SMITH STREET
HOUSTON, TEXAS 77002

DISTRICT DIRECTOR

The Honorable Arthur Levitt
Chairman, Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, DC 20549

In re: Enron Corporation & Subsidiaries
1400 Smith Street, Enron Building
Houston, TX 77002

Dear Mr. Chairman:

We have received information in the Houston District Disclosure Office that indicates that the above-captioned business may have violated the Foreign Corrupt Practices Act (15 USC 78dd-1, 78dd-2).

This potential violation involves the negotiations conducted and the payments made pursuant to the acquisition of a Power Sales Agreement by and between Enron and Empresa--the state-owned. primary supplier of thermoelectric power to Guatemala. Enclosed are copies of four internal memorandums from the files of Enron Corporation and Subsidiaries regarding these transactions.

This information is provided pursuant to 26 USC 6103(i)(3)(A) with the understanding that it will be used strictly in accordance with the disclosure provisions of the Internal Revenue Code. It may be disclosed to personnel within your agency only to the extent necessary to enforce the above-cited or other relevant criminal statutes within the purview of your agency.

Any employees having access to this information should be aware of the penalties for the unauthorized disclosure of confidential information as delineated under 18 USC 1905 and 26 USC 7213 and 7431. The information provided herewith must also be safeguarded as mandated by 26 USC 6103(p)(4).

In order for us to properly assess the usefulness of the information we are providing. we would appreciate knowing the final disposition of any action taken

as a result of this referral. Our need for feedback on matters such as this is not diminished or affected by the passage of time. We realize that your own disclosure laws may limit what you can provide us. Any information that you can provide us should be address to:

Internal Revenue Service
1919 Smith Street, Stop 7000 HOU
Houston, TX 77002

If you need further assistance with this matter, please contact Disclosure Officer, Linda Sisson, at (713) 209-4010.

Sincerely,

Paul Cordova

Paul Cordova
District Director

MEMORANDUM

James J. Steele / Bill

FROM: Jorge Asensio A.

DATE: February 26, 1993

Payments to the Sun King group

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So, in order to establish a frame work of references recommend the following:

a) Not to obligate Puerto Quetzal Power Corp to pay in dollars;

b) To allow payment in dollars provided that Puerto Quetzal Power Corp. can get dollars without limiting its own access to hard currency. In other words, Puerto Quetzal Power Corp. will leave any dollar obligation in last place, so if we are able to comply by getting the dollars we will, but if no sufficient dollars are available we will pay in Quetzales. This is strongly supported by two things: - We are paid in Quetzales and not in dollars; - The exchange mechanisms do not allow a free conversion to dollars, so it is obvious that Puerto Quetzal Power Corp. will apply its few dollars to pay for the elements that are needed to maintain the operation running. By the way, in David

Haug's letter to the Sun King group dated march 12, 1992 he indicates that payments will be made to them at 6 av. 20-25 zona 10 in Guatemala City. There is no indication of payments abroad. The actual agreement between Enron and Texas-Ohio does not indicate anything with respect to form or place of payment.

c) All payments are gross, including any taxes levied in Guatemala to either local or foreign obligations. Puerto Quetzal Power Corp. will not pay any taxes on behalf of Sun King. You must understand that guatemalan tax legislation levies withholding taxes on payments abroad where the payee is the taxpayer, even if the payor has the obligation to pay the withholding.

d) Any charges or expenses, present or future that are charged in the exchange mechanism, and all fees involved in the Quetzal-Dollar conversion will also be discounted to the payee.

e) Payments only cover the revenue obtained from the sale of electricity derived from the two barges. Any other revenue derived from future production is not part of the deal. By now Enron can promote itself in Guatemala.

f) The term of the obligation in the original Texas-Ohio - Empresa Eléctrica de Guatemala, S.A. contract is 15 years. If the Sun King contract does not refer to any term, we should try to negotiate a more convenient term. I suggest 5 years. I understand that the 15 year term of the original contract was something requested by Empresa Eléctrica de Guatemala S.A. to Texas-Ohio and not a product of Sun King as a group pushing for that term.

g) Given the fact that the Sun King payments do not represent any REAL service to Puerto Quetzal Power Corp. it is always possible that our tax authorities could disallow that deduction in the future. In this regard, I strongly recommend that we condition payments on the basis of their deductibility: payments will be made provided that they are deductible. I also recommend that the contract as such, and the invoicing be carefully drafted in order to avoid these problems. We should be very credible at the time of invoicing.

h) It is also important to try to "lock-in" today's charges in the Empresa Eléctrica de Guatemala S.A. - Puerto Quetzal Power Corp. contract in order to avoid and endless increase in the 6% commission. If any increases for electricity charge have to be made to Empresa Eléctrica de Guatemala S.A. due to oil prices or otherwise, we should be able to invoice these increments as "overcharges" or "overcosts" in order to keep current prices permanently charged as our basic contractual stipulation, and only pay the 6% based on this basic price. Otherwise, any increment in cost is directly favorable to Sun King, an aspect of our relationship with Empresa Eléctrica de Guatemala, S.A. that doesn't help much.

After giving you these ideas, I now want to explain the difference between local and foreign payments regarding the tax issue.

I will use and example of a monthly gross income of Q20,00,000.00

LOCAL PAYMENTS

Q20,000,000.00 = 6% = Q1,800,000.00 which should be INVOICED as follows:

Sun King invoice for	Q1,682,242.99
+ VAT tax of 7%	Q 117,757.01
TOTAL INVOICED AMOUNT	Q1,800,000.00
This is paid as follows:	Q1,682,242.99
VAT tax	Q 117,757.01
	Q1,800,000.00
4% withholding on fees and commissions:	Q 67,289.72-
Actual payment:	Q1,732,710.28

The withholding tax is paid by us to the tax department on account of Sun King's income tax.

FOREIGN PAYMENTS

Q20,000,000.00 6% =	Q1,800,000.00
Withholding of 25% =	Q 432,000.00
Balance due =	Q1,368,000.00

If we pay dollars at 5.30 x USS = USS 258,113.21 and this will be the amount paid.

If Sun King is an American company it should pay income tax in the US if they receive payment this way. In the event of local payments in Guatemala they will also be subject to income tax of 25% after expenses are deducted.

Another warning which I find very important in this case, is the one related to the definition of "Commissions", as we are considering periodical payments of commissions to Sun King. The Guatemalan Tax Authorities have always considered that a "commission" is a one shot deal, payable upon termination of a single transaction. A commission payable periodically is understood by them as being a "royalty". I recommend to define our payments to Sun King correctly as "royalties" in order to withhold 25% but, in the event of any adjustments or tax modifications, Sun King could petition Government for recognition of commission status and and thus pay a 12.5% withholding due on commissions. The advantage of paying royalties is the fact that these are basically justified by the contract. Commissions though, have to be justified by the nature of the transaction involved.

If you need further information will be delighted to extend this memo

ENRON
Power Corp.

CONFIDENTIAL

Interoffice Memorandum

David Odorizzi

From: Carl Waldo

Department: Operations

Subject: Payment and Tax Problems Re 6% Sun King Obligation - Guatemala Operations

Date: May 26, 1993

This is in response to your request for details on the subject made at Monday's staff meeting.

BACKGROUND

Enron Development Corp. entered into an agreement with Texas-Ohio Power, Inc. (the "TOP agreement") on March 12, 1992 whereby in consideration for TOP transferring the Power Contract with Empresa to EDC, EDC agreed to pay (among other sums) "an amount each month equal to 6% of the gross revenues generated by the sales of electricity and payment for contract capacity under the Power Contract."

In a letter dated March 12, 1992, TOP notified EDC that the "right of a monthly payment of a 6.0% of the gross revenues...has been legally and effectively assigned in favor of SUN KING TRADING COMPANY, INC." The letter further stated that "any monthly payment...must be paid directly to the assignee, SUN KING TRADING COMPANY, INC., 6a. Avenida 20-25 zona 10, 8th floor, Guatemala City, Guatemala," and further requested that EDC notify Sun King of the receipt of this letter.

David Haug, by letters dated March 13, 1992 acknowledged receipt of the letter to TOP and informed Sun King of receipt of the TOP letter and acknowledged that EDC would make the required monthly payments directly to Sun King per that letter.

Thus, it was established that the Sun King group would receive a monthly payment equal to 6% of the gross revenues of Puerto Quetzal. This has been shown in various projections and budgets as "Guatemalan share of revenue."

You will note that the TOP agreement (as quoted above) gave a local address for the payment and was silent as to the denomination of the currency of payment.

Since Empresa Electrica pays us in Quetzals for the Capacity and Energy - although the rates are quoted in U.S. dollars in the Power Purchase Agreement - PQ must go through the auction process to acquire the dollars it needs to operate - the initial assumptions were that this Sun King payment would be a) made locally and b) in Quetzales. Under such circumstances the payment would be subject to VAT of 7% and a Withholding Tax of 4%.

Sun King then announced through Oswal Herbruger, a member of the Group, that Sun King is entitled to receive payment in either Quetzales or dollars and disputes the withholding or deduction of any tax.

EDC agreed to the option of dollars or Quetzales which was tied to which bank account Sun King instructed us to pay into.

On March 1, 1993 David Haug received a letter requesting that the monies be paid into either one of two named bank accounts in Miami for credit to Deutsch - Suedamerikanische Bank A.G., Miami Agency. This meant that they had opted to receive the payment in dollars.

It was also revealed that Sun King Trading Company, Inc. was a Panamanian Corporation not registered in Guatemala.

Payments of this nature by a Guatemalan entity to a person or company abroad is subject to a 25% Withholding Tax and a 3% Stamp Tax.

Procedures had been written by Eric Wycoff outlining the treatment, including withholdings, to be applied to both Quetzal and USD payments to Sun King. This further provided for deducting any costs of conversion to dollars from the payment as well as providing that we could pay in Quetzales in such case as the currency exchange market could not provide adequate dollars or if government restrictions prevented PQPC from obtaining dollars.

These procedures were under discussion when we discovered that the tax law contained the following limitations on such payments.

ROYALTIES

Payments made for the use of trade marks and patents registered in the Industrial Property Register, formulas, manufacturing rights. However, these payments may in no case exceed 5% of gross income. (If paid abroad will require 25% withholding tax and 3% stamp tax)

COMMISSIONS

Payments representing commissions on sales or fees for technical, financial, scientific services are limited to 1% of gross income or 15% of Guatemalan worker payroll, whichever is greater. (If paid abroad will require 12 1/2% withholding tax and 3% stamp tax)

These restrictions "threw a spanner" into the entire matter:

A. The payment to Sun King could not qualify as a "royalty" as defined in the law and, of course, exceeds the 5% limitation.

B The payment also did not fit the definition of commission or fee - the 1% limit notwithstanding.

In addition, Sun King continued objecting to the withholding of any taxes whatsoever.

In an attempt to overcome these problems the Fuel Supply and Management Agreement was drawn up between EPOS and Electricidad Enron ("EE") which provided that EPOS would sell the fuel oil to EE acquired under the current contract with Texaco and such other additional fuel that may be required. EE would pay EPOS an amount each month equal to 6% of Puerto Quetzal's gross revenue in exchange for "fuel supply and management services." In addition, EPOS could opt to have EE pay the fuel supplier direct rather than through EPOS. (In the case of the first Texaco invoice to come through EPOS, the payment was made to Texaco out of EPOC. I prepared an EPOS invoice to EE, which PQPC paid out of the USD account at NationsBank.)

The problem with this new procedure is that this 6% amount is still a separate item of payment and, as described in the contract, is subject to a 1% limitation (as well as a 25% withholding tax and the 3% stamp tax)

Based on the current estimate for the period April 1 through December 31, 1993, the 6% payments to EPOS would aggregate $2,217,000 of which only $28,800 would be deductible in EE. (EE's estimated gross rev. April - Dec. being $2,876,590 X 1%)

Roberto Garcia, whom everyone claims opined that this arrangement avoided any tax problems, maintains that his understanding was that the 6% was to be billed as part of the fuel price and not as a separate "fee." This too should have been recognized as a nonstarter, however, since a markup of that magnitude cannot possibly be acceptable since it results in an entry price for above "going market price."

I made a study of the markup necessary to the fuel price in order to include the 6% factor (ignoring the timing problem arising out of a monthly payment obligation to Sun King vs. an estimated total of 7 - 8 cargoes of fuel per year!). Based on barrels projected to be consumed over the nine months to December 31st and the 6% payments projected over that period, the fuel would have to be marked up by $2.36 per barrel. The May 1st cargo of fuel cost $14.825 per barrel including transportation and insurance etc., the markup would raise this to $17.185. This is grossly above market and it is all but assured that the authorities would not allow it as a tax cost in Guatemala. (Roberto Garcia is preparing an opinion on this point.)

The most obvious solution would be for PQPC to assume the obligation, splitting the paymen. between a royalty agreement with Enron for the use of Enron's trademark/logo in Guatemala providing for a 5% royalty (nebulous since PQPC does not use the logo) and a 1% fee for services to be supported by a credible contract with (EPOC?). These payments would be subject to the withholding tax of 25% and 12.5% respectively, plus stamp tax of 3%. Enron would then pay the net amount to Sun King via the Miami bank.

This, however, is NOT ALLOWED under our agreement with IFC!

Although Roberto suggested the same scenario through EE, it can't work since EE's gross revenues are only $2.9 MM/year and the 5% and 1% limitations would result in most of the payments becoming nondeductible.

Eric Wycoff had a scheme several months ago which involved buying the Sun King "royalty" out on a NPV basis and then setting up a Royalty Trust in Guatemala, selling this publicly and recouping our buy out. The payments would then be local, in Quetzales, subject to local taxes without argument, and possibly gain some valuable goodwill and recognition for Enron/PQPC.

Although this idea generated some enthusiasm at one point, it apparently never progressed beyond the concept stage.

This problem, therefore, remains with us and I do not see a workable solution.

Part of the problem are the tax law limitations. Another facet is Sun King's insistence on receiving dollars, outside of Guatemala, not subject to withholdings of any kind.

Since our formal agreement with TOP did not specify any of the conditions later imposed by Sun King and since the letter of assignment by TOP to Sun King specified payment to a local Guatemala City address thus implying payment in Quetzales, and since Guatemalan tax laws require withholdings on such payments, I suggest we ignore these after-the-fact demands by Sun King. We should pay locally, in Quetzales, net of taxes. This removes one segment of influence on our solution attempts, i.e. the desire to accommodate Sun King beyond the scope of the signed agreements.

The only problem then remaining is for some structure that would fit the percentage limitations in the tax law. The solution to this latter point escapes me at the moment!!

An outstanding issue remains concerning 6% payments already made to Sun King:

-April 12th $219,330.27 wire transferred from EPOC to Miami bank per R. Lammers

-May 13th $256,696.09 wire transferred from EPOC to Miami bank per R. Lammers.

These payments were made covering the gross 6% without any withholdings for taxes. When PQPC repays EPOC/EPOS we will have to pay the withholding and stamp tax. Either PQPC will have to "eat" this or Sun King will have to bear an adjustment on subsequent payments. The decision has to be made! (Jim Steele and/or David Haug are the original deal-makers on this.)

There are other problems outstanding in our Guatemalan business which should be focussed upon.

Import Permit - Fuel Oil

EE currently has the permit to import fuel free of duty and exempt from distribution tax based on the declaration that EE was the consumer of the fuel. It is not the consumer - it sells the fuel to PQPC. PQPC has neither an exemption on fuel oil duties, distribution tax or import permission. Nonetheless, the contract with Texaco is with PQPC and all billings for fuel have been made naming PQPC as a buyer. This is a festering situation involving customs, the Ministry of Energy, Empresa Electrica and the tax authorities. Steele, Coy and Paz have been attempting to solve this for months without apparent effect. The political situation, influenced by the unpopularity of Empresa, the attempts to settle with the rebels in the north - now no doubt further influenced by the disbanding of Congress by President Serrano - has made negotiation fruitless to date.

Solution? Transfer the Import Permit to PQPC and let PQPC buy fuel direct? (Would make EE as "operator" virtually unnecessary, however!).

Advance Tax Payments

Under guatemalan tax law, every business has to pay 1.5% of its gross quarterly revenues as an advance income tax. These advances are then incorporated into the tax return after year end and any excess refunded. In the present situation where EE is buying fuel oil and reselling it to PQPC, EE is creating gross revenues upon which it must pay this advance tax. There is no "income" inherent in these "wash" transactions so that all of the advance taxes would be refunded, but the tax, which would aggregate 1.5% on approximately $18MM of fuel purchases in a year or $270,000 would be tied up for a period ranging from a full year to three months minimum - not allowing for the time it might take to receive the refund! This same feature applies to the O&M payments made by EE in its role as Operator and billed to PQPC for reimbursement. This, for 1993, adds another $7.3 MM of gross revenues subject to the 1.5% advance tax. ($109,500)

This comprises another argument against our Guatemalan structure. Solution? (Eliminate EE as "operator" of PQPC.)

These problems cannot be solved by any one individual. It will require concerted senior discussion and action concerning both the basic structure of the Guatemalan Organization and on-the-scene senior negotiations with Sun King, Empresa, the Ministry of Energy and Customs. Such action should be implemented ASAP.

M E M O R A N D U M

TO: DAVID ODORIZZI

FROM: JORGE ASENSIO A.

REF.: SUN KING BUY OUT APPROACH

DATE: DECEMBER 13, 1993

The Sun King issue is one that has captured the attention of everyone involved in the Guatemalan project. We have all expressed a number of opinions in respect of all aspects of this association. This memo is my contribution to help you in the formation of alternatives for an eventual negotiation. It is very clear to me that we have to come to grips with this issue, in order not to jeopardize the whole project, neither in it's local reputation nor in the internal fiscal aspects of such payments.

These opinions are very personal, and derive of what I know of the group, of what I feel ought to be a good solution for Enron, and of my personal experience as a professional in Guatemala. This is not a legal opinion, nor should it be taken as a legal guideline to solve the problem.

1) The group is formed by friends (pal'c) who have in common being well off. They are not formal partners in any other endeavors but Sun King. This is not a formal business group like you find in other cases: sugar, coffee, banking, etc. As wealthy individuals that they are, they have the capacity to establish contacts, make pressure, and represent your interests. One of the guys seems to be closer to the army than others, this can be of some benefit if in a given situation if we need to approach the army, but as a group, Sun King is meaningless. In other words, we could be much better off by sustaining individual relationships with one or the other guy, than by having them as a group.

As relatively powerful as they are, we definitely don't want them against our interests if something goes wrong. On the other hand, I feel that Enron has overplayed their influence, and power. Our project is pretty well consolidated now, and the only thing that can go wrong is that the same Sun King group be made public.

2) In my view, the whole affair with Sun King has been approached with some fear, with an excess of preponderance, too complacent. This has lead the company to give-in in almost all respects, but more specifically in the way the payments have to be made. Other aspects of our association with S.K. prove this: -we picked office space in a building where one member of S.K. is a partner in order to show our gratitude; -we hired the wife of another S.K. member to decorate the office, etc.

As a consequence of this generous treatment, they have felt a certain dependance of Enron on Sun King. If not dependance, they have felt that Enron can't find its way around Guatemala without them, both things which are not true.

If you give any credibility to these aspects, you have to agree with me that negotiating a buy out is a complicated task. If you negotiate under this atmosphere, they will be calling the shots, not us.

3) I always argued that Enron had to level its position vis-a-vis Sun King. In a certain way I felt that Enron wanted to be more "business like" with Sun King, but didn't dare due in great measure to what I describe above.

I personally feel that Sun King did not deliver all the offerings, representations or promises made during the negotiations. Indeed; I understand that they manifested that imports didn't have to pay import duty, that there would be no problem with the Port Authority, that the project would be well taken by everyone in Guatemala, etc.

If any of the above is true, I sincerely believe that Enron has a valid case in presenting a claim, a formal complaint, a dissatisfaction. In doing so, Enron has to stress that it's association with Sun King brought very little benefits, that sharing all that investment with them is too much for the benefits that were NOT there. Personally I feel that what S. K. did, was introduce Texas Ohio to President Serrano, and talked him into signing the contract. It is the typical "finder fee" arrangement, with the only difference that the fee was -for that service- completely out of hand.

This possible claim, could put Enron in a much better position for a buy out. It's simple: Sun King would know, that if they dare sue you for not complying our contract, Enron's defense would also be powerful. If you convey the idea that Enron in many respects is not happy, you'll be sending the correct message to induce a buy out.

4) Now come the fiscal considerations. Let's face it, the correct way to pay the 6% is by all means through a Quetzal payment in Guatemala, with VAT tax, withholding and all. The stress that we have gone through in trying to pay abroad, to pay tax free, and to pay in dollars, has put this company against the wall, and such payments could severally injure the company in the future.

As a matter of negotiating, we have to come to S.K. and explain what should be evident to them: that we can only pay in quetzales, in Guatemala and complying with all fiscal laws. This overwhelming reality, established by so many opinions, is by all means supportable by Enron, a crude reality, and a business decision that has to be taken now, in order not to mess our first tax return.

If we do this, again our negotiating position will be strengthen, due in great deal to a lesser interest by S.K. to accumulate local currency. In fact, I would start (or continue) the negotiations with S.K. with a concrete manifestation on our part, that we can only pay in Quetzales, that we can not violate the law, that the S.K. agreement can not force us to brake the law. After stating this, I would wait for their reaction, and not touch the possibility of a buy out any more. I would even allow some time to have this system work, in order for them to feel the pressure. Here, the only risk is that they can come to us and say that such payments are risky, that the local community may find out what happened. We have to be strait from the beginning, and respond that we don't care about that problem, and that in any event, this is a much lesser problem that what the other payments can represent in the future.

Paying in quetzales is by no means a violation of our agreement. The agreement only states that they can select a bank to receive deposits. This does not mean that all payments have to be made in dollars. This also means that they can not force us to break the law. These are very important bargaining positions.

5) If these arguments are properly presented, I hope to see a more consolidated position by Enron. The important thing, above all, is that Enron should not be worried as to the consequences of a negotiation of this type. Please don't take the position that if you start a negotiation of this kind, S.K. will get angry, upset, or that it might sue, or that it will harm us in Guatemala. We have to take a strong stand, and have then feel that they are no longer dealing with Development.

Roberto Figueroa
Bill Votaw
Vinicio Urdaneta
Chuck Emrich
Ron Teitelbaum

Tax Liability on Royalty Payments

Bill Leggatt

Date: 6 February 1995

Today Roberto Figueroa, Bill Votaw and myself met with Alvaro Castellanos, Sunking's Counsel, to discuss the issue of withholding tax associated with payments to the Sunking group. He showed us the following documents:

1) The original agreement of Feb 24 1992, between Sunking and Texas Ohio that allowed for 16% of capacity payments, 21% of energy payments, and specifically absolved Sunking from payment of any tax.

2) The transfer of this contract from Texas Ohio to EDC on March 12 1992.

3) The letter from Haug, dated June 10 1992, to Sunking agreeing that payments could be made to any account of Sunking's choice.

We subsequently showed him the amendment of (1) above, executed by Texas Ohio and Sunking dated March 12 1992, changing the payment to 6% of all revenues, and withdrawing the tax benefit. Alvaro was obviously aware of the existence of this document, and made it plain that it had been the topic of discussion at group meetings on many occasions.

Alvaro told us that there was a split in Sunking regarding the tax issue. This was between those who realised there was no legal basis to claim the payment on a grossed up basis, which comprises Alvaro and Henrik, at a minimum. The other side claims that, on the basis of precedent and a very optimistic interpretation of the agreements, the payments should be grossed up.

We told Alvaro that as far as Enron was concerned there was certainly no precedent either way (since there has been no tax so far), and that we could not see any justification in the documents we had that would give Sunking this security.

We reiterated that the intent of all this was to get the Sunking payment on a more legitimate basis, for the benefit of all: Sunking, PQPC and Enron. However, before we could meet to discuss alternative methods of payment, a formal resolution would have to be made on the tax issue. Therefore, on the

basis of this discussion, Alvaro promised to come back to us with a formal Sunking position. Only then will we know whether we will have to dispute this issue, or whether the Group will accept the benefit of the situation so far, and accede the future liability gracefully. Alvaro promised this response only within a 10 day time frame, since at least one of the group is out of the country.

However, it is apparent that should the response be unfavorable, then this issue can only be resolved at a management level, since Alvaro, from a legal basis, did not contradict our own position/interpretation in any way, nor did he produce any new documentation that would cause our analysis of the situation to alter.

OVERSEAS PRIVATE INVESTMENT CORPORATION

WASHINGTON, D.C. 20527, USA

March 15, 2002

OFFICE OF THE PRESIDENT

The Honorable Charles E. Grassley
Ranking Member
Committee on Finance
United States Senate
Washington, D.C. 20510

Dear Senator Grassley

I am pleased to respond to your letter of February 25, 2002, requesting answers to questions in follow-up to the materials and briefings the Overseas Private Investment Corporation (OPIC) has provided in the Committee on Finance as part of its review of projects involving the Enron Corporation.

As previously indicated, we are pleased to work with you and your staff to help your understanding of OPIC and the safeguards it has in place to do its work of mobilizing private investment in developing countries and contributing in a meaningful way to the foreign policy goals of the United States. OPIC operates in more than 140 developing countries — financing economic development projects, large and small, and mitigating economic and political risks.

OPIC accomplishes its mission at no cost to American taxpayers. Over its history, OPIC has built up reserves of $4.5 billion and has recovered over 94 percent of total insurance claims settled.

Enclosed are the answers to your questions. If can be of further assistance, please let me know

Sincerely,

Peter S. Watson
President and
Chief Executive Officer

Enclosures

cc The Honorable Max Baucus, Chairman
Patrick G. Heck, Tax Counsel
Dean A. Zerbe, Chief Investigative/Tax Counsel

Senate Finance Committee

EXHIBIT 46

1100 NEW YORK AVE. N. W. WASHINGTON, D. C. 20527 FAX (202) 408-5133 (202) 336-8401

Senate Finance Committee Questions
to
Overseas Private Investment Corporation

March 15, 2002

Please provide the total amount of tax dollars from any source that contribute to OPIC's budget each year, with a comparison to the non-tax dollars that contribute to OPIC's budget each year, and the source of those non-tax dollars.

Answer: OPIC's annual budget is not funded by tax dollars.

OPIC is a government corporation required to operate on a self-sustaining basis. OPIC's annual budget is funded from two sources of non-tax dollars: (1) premiums and fees received from OPIC's clients; and (2) interest OPIC earns on investments in U.S. Treasury securities. Non-tax dollars OPIC collects that exceed annual budgetary authority are maintained by OPIC as reserves.

Every year since its inception, OPIC has been able to deposit excess collections into its reserves, which is why those reserves have grown to $4.5 billion in the past 31 years. OPIC's reserves are available to cover future losses OPIC may incur in its insurance and finance programs. In short, OPIC covers all its expenses through non-tax dollars.

2. **What was the dollar amount of the initial Congressional appropriation creating OPIC?**

Answer: OPIC was provided start-up funds of $106 million from appropriations during fiscal years 1970 to 1974, all of which has since been returned to the U.S. Treasury.

OPIC repaid its initial appropriations pursuant to then Section 240B. of the Foreign Assistance Act of 1961, as amended. In FY 1982, OPIC paid a dividend of $50 million to the General Fund of the U.S. Treasury, and in FY 1983, OPIC paid a final dividend of $56 million. With these two payments, all start-up appropriations were returned to the U.S. Treasury.

3. **Did OPIC become an independent agency or has it always been an independent agency? If it became an independent agency, did its level of taxpayer funding change? If so, how did it change?**

Answer: OPIC operates as an agency of the United States within the Executive Branch of the U.S. Government, and, pursuant to Title IV of the Foreign Assistance Act of 1961, does so under the policy guidance of the Secretary of State. In 1971, OPIC began operations as a wholly-owned government corporation separate from any other department or agency of the U.S. Government. OPIC is governed by a Board of Directors made up of 15 members with eight private sector members appointed by the President of the United States and confirmed by the Senate, and seven Directors designated by the President of the United States who are U.S. Government officials, including the President of OPIC, the Administrator of the Agency for International Development, the United States Trade Representative, an official of the Department of Labor, and three other public officials, traditionally representing the Department of State, the Department of Treasury, and the Department of Commerce.

Before 1971, the programs currently administered by OPIC had been administered by U.S. Agency for International Development (USAID). Title IV (Public Law 91-175) of the Foreign Assistance Act of 1961, as amended in 1969 and Executive Order 11579, dated January 19, 1971, transferred to OPIC all obligations, assets, and related rights and responsibilities arising out of, or related to, the predecessor programs that had been administered by USAID.

The funding transferred from USAID was used in the course of management of the portfolio of projects acquired from USAID. In developing its new book of business, OPIC initially relied on the capital that had been appropriated for the start-up of the new OPIC program. As OPIC's business grew and generated earnings, OPIC was able to cover its expenses and accumulate reserves and was able by the mid-1980s to repay its start-up appropriations in full.

Since all the funding appropriated for OPIC's programs has been fully repaid from earnings, it is correct to say that OPIC's programs are funded entirely out of non-tax dollars.

4. **Have any other statutory changes in recent years changed OPIC's financial operations? If so, please explain.**

Answer: Since it began operations in 1971, OPIC has operated as a self-sustaining agency.

The means by which OPIC meets this statutory requirement was modified in 1990 with passage of the Federal Credit Reform Act of 1990 (FCRA) which made changes to all U.S. Government credit-related agencies, including OPIC's financial operations.

Today, OPIC's annual appropriations provides authority for OPIC to pay its annual credit budget authority from its earnings and, unlike other agencies, OPIC is not funded by taxpayer dollars. In instances where the FCRA requires that funding come from the U.S. Treasury General Fund, OPIC continues to reimburse the Treasury by paying a dividend from its earnings. Through the dividend process, OPIC has maintained its self-sustaining status.

In the early years of implementing Credit Reform, OPIC was required to take money appropriated from the General Fund of the Treasury to fund certain credit costs, even though OPIC had sufficient resources of its own to fund those costs. In each year in which such appropriations occurred, OPIC chose to pay to the Treasury a dividend from its non-tax dollar earnings in the amount of the appropriated funds. By paying this dividend, OPIC demonstrated its ability and desire to maintain its status as a self-sustaining agency that operates only on non-tax resources.

5. **Does OPIC's reserve fund of more than $4 billion contain tax dollars? If so, what proportion of the reserve fund is tax dollars?**

   Answer: OPIC has $4.5 billion of reserves made up entirely of non-tax dollars.

6. **You say in one of the charts accompanying your letter that "OPIC's insurance exposure represents its potential liability to Enron in the event the conditions for payment of a political risk insurance claim should be realized. However, OPIC's exposure in this regard is limited to only a portion of the total amount of insurance coverage." Please explain the circumstances under which a "political risk insurance claim should be realized" and provide the dollar amount of insurance coverage to which OPIC would be exposed. If so, please elaborate on the dollar amount involved.**

   Answer: OPIC insurance claim payments come from its own reserves, not appropriated funds.

   Under OPIC insurance contracts, the burden of proof rests with the insured, which must demonstrate that it is entitled to compensation in the amount claimed. Enron would have to demonstrate that the conditions for payment that are established in its contract have been satisfied and that, pursuant to the compensation provisions of the contract, it is entitled to the amount that it claimed; i.e., $142,860,000, which is the maximum amount for which OPIC could be liable to Enron.

Enron's OPIC insurance contracts are subject to an overall stop loss agreement, which reduces the aggregate amount OPIC could be required to pay on all its Enron contracts to, $204,135,072, an amount that is less than the sum of the individual contract amounts. OPIC has entered into such agreements with investors who have insured a number of investments with OPIC and are willing to accept the possibility of lower compensation in the unlikely event of claims on multiple contracts, in consideration of premium discounts.

As noted in question 7 below, even assuming OPIC makes a payment to an insured, OPIC may have its payment reimbursed in part or full. Accordingly, historically, OPIC has recovered 94 percent of claims settled. OPIC's record of claims paid and denied is only part of a much larger record of OPIC's collaboration with insured investors and foreign governments to resolve incipient investment disputes, thereby preserving worthwhile projects while averting OPIC insurance claims. OPIC monitors potential claim situations, even when the investor has not given formal notice under the insurance contract. Working with the American Embassy, other U.S. Government agencies, and the responsible agencies of the foreign government, OPIC acts as an intermediary, advocate, or honest broker, depending on the circumstances, and often succeeds in improving the general investment climate, as well as avoiding insurance claims. At any given time, most of the claims matters on OPIC's agenda are attributable to this more general problem solving role.

7. **Since 1985, please list all political risk insurance claims filed with OPIC, and which of those were paid by OPIC. Please note the amount and year of each claim, and whether the amount of the payment for a claim was different than the amount of the claim filed with OPIC. Also, please provide a brief explanation for why each claim was either paid or denied, and a brief explanation of the original project and companies involved.**

   Answer: (See Attachment A.)

   Of the claims paid by OPIC, how much was recovered from third parties, and how much was paid for either by money OPIC received in congressional appropriations, or through OPIC fees?

   Answer: OPIC claim payments are made from OPIC's own reserves, not appropriated funds.

The success of OPIC's insurance program has been grounded upon its proven record of paying valid claims and, having paid the claims, its record of achieving recoveries as assignee of the investor's claims.

In the case of inconvertibility claims, OPIC recovers its claim payments when the local currency that OPIC accepts in connection with the claim payment is purchased for USG use in the project country. Unless the local currency devalues significantly while held by OPIC, the prospects of recovery are excellent. Overall, OPIC's recoveries on inconvertibility claims are approximately 90 percent of the compensation paid.

In the case of expropriation claims, OPIC succeeds to the investor's claim for compensation against the foreign government. Typically, OPIC has negotiated settlements with the foreign government providing for payment over time. Taking into account these anticipated payments, OPIC's recoveries on expropriation claims will provide full repayment of all compensation paid. In connection with political violence claims, there is generally no right to recover claims paid.

OPIC's historical recovery rate of total claims settled is 94 percent. The total amount of claims paid and settled from the beginning of Fiscal Year 1971 through September 30, 2001 is $783 million, while the total amount of claims recovered (cash and receivables) by OPIC for the same period is $736 million. Accordingly, OPIC total net expense for this period has been limited to $47 million, which is paid from OPIC's own reserves which currently stand at $4.5 billion.

8. If OPIC pays a claim on political risk insurance, how is that money replenished? Does OPIC seek that amount in congressional appropriations?

Answer: When OPIC pays a political risk insurance claim, the amount to cover the claim comes from OPIC's reserves, which consist of non-tax dollars. OPIC then makes every effort possible to replenish OPIC's reserves by recovering the amount of money paid out on the claim through a variety of mechanisms available to it. OPIC has never sought to replenish its reserves from congressional appropriations.

Historically, the recovery rate on total insurance claims OPIC has settled is an impressive 94 percent. This recovery rate has allowed OPIC not only to maintain reserves but also to increase them to the current level of $4.5 billion. However, because OPIC's programs are backed by the full faith and credit of the U.S. Government, there are mechanisms OPIC can use to get funding from the U.S. Treasury if OPIC reserves are insufficient to pay claims.

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These mechanisms are laid out in Section 235(d) of the Foreign Assistance Act. This section provides for OPIC to draw on the U.S. Treasury to pay claims, if necessary, if OPIC's Insurance Reserve is reduced to less than $25 million. This section also gives OPIC the authority to borrow up to $100 million from the Treasury, but such borrowings must be repaid within one year of issue.

It is important to note that in OPIC's 31-year history, it has never had to call on the Treasury to cover a loss. With $4.5 billion in reserves, it is unlikely OPIC will ever have to.

9. **Is it accurate that Enron and two other companies have asked OPIC to pay them $200 million to settle a "political risk insurance" claim over the Dabhol, India, power plant? If so, please describe the claims review process, including the timeframe for the review.**

Answer: In December 2001, Enron, Bechtel and GE sent OPIC letters asserting claims under their OPIC expropriation coverage for the full active amounts of coverage, which totals $200,000,000. OPIC responded to each of the investors, indicating what information would be required to complete an application for compensation. To date, none of the investors has begun to provide the additional information that is required for a formal claim consideration.

OPIC insurance contracts require the insured to demonstrate that is entitled to compensation in the amount claimed. Typically, the claims process requires several exchanges of information requests and documentation before the application is complete. OPIC then reviews the completed application and prepares a written determination as to whether compensation is payable and in what amount.

Enron and the other two companies would have to demonstrate that the acts of which they complain fall within the scope of coverage, that the amount of compensation claimed is justified under the provisions of their insurance contracts and that they have and will fulfill their duties under the contract; e.g., as to continuing eligibility and cooperation in assignment of rights to OPIC.

OPIC's final decision on a claim would be made by its President and CEO, upon the recommendation of its Vice President and General Counsel, with the concurrence of its Vice President for Insurance.

The process cannot begin until the insured investors take steps to substantiate their claims. Once a completed application is received, depending on the complexity of

the matter, OPIC may require several months to complete its analysis and render a determination. Historically, OPIC has recovered 94 percent of claims settled.

10. **Have taxpayers borne the cost of other OPIC-supported projects involving other bankrupt companies? If so, please provide an accounting of those incidents**

Answer: Taxpayers have not borne the cost of any OPIC-supported project involving bankrupt companies. As previously explained, any costs associated with OPIC's activities are fully covered by OPIC's $4.5 billion in reserves.

11. **How many companies with OPIC or OPIC-backed loans or insurance have declared bankruptcy since 1985? Did OPIC recover any of its funds expended on loans or insurance guarantees for the bankrupt companies? If so, provide the amount, including any breakdown of taxpayer funds (money from congressional appropriations) versus OPIC funds (money from fees).**

Answer: OPIC does not separately track the bankruptcies of companies with OPIC loans, guaranties or insurance, and thus cannot quantify the number of companies with OPIC support that have declared bankruptcy since 1985. The impact of such bankruptcies on OPIC varies depending on the relationship of the bankrupt entity to OPIC, as discussed below.

Finance projects

(a) Bankruptcy of project sponsor. Because OPIC loans are generally made to a project company located in a developing country, with loan repayments coming from the revenues of that company rather than from the sponsors, OPIC is not ordinarily a creditor of a project's sponsors. The bankruptcy of a sponsor could have some effect on a project company during the period prior to completion of the project when the sponsor had responsibility for completing the project. However, post-completion the sponsor's bankruptcy would not directly affect OPIC's credit. We are aware of only a very few instances in which a project sponsor has declared bankruptcy pre-completion. In any such case in which OPIC ultimately suffered any loss, as noted above the loss would be paid entirely from OPIC's resources, and not from taxpayer funds.

(b) Bankruptcy of project company. The bankruptcy of a project company to which OPIC had lent funds would have a direct impact on OPIC as a creditor, but we have identified no instances in which a project company has declared bankruptcy. Of course, over the history of OPIC's finance program, some borrowers have experienced financial difficulties, and not all have been able to repay their loans

in full. In such cases, OPIC has pursued its rights as a creditor to recover against collateral (such as liens on local assets), and any ultimate loss has come from OPIC's resources, not taxpayer funds.

Insurance Projects

If a company with OPIC political risk insurance declared bankruptcy, the only likely effect on OPIC would be that the company might cease to pay premiums for its OPIC insurance coverage. In that case, the OPIC insurance coverage would terminate and OPIC would have no further exposure for political risk insurance claims by that company. If OPIC had already paid a claim to a company that subsequently declared bankruptcy, the bankruptcy would likely have no effect on OPIC's recovery in respect of such a claim, since generally OPIC has no right to recover its claim payment from the insured party in any case. Instead, recoveries generally come from the government of the country where the project is located. The bankruptcy of the insured company would have no effect on the host government's or any other party's liability to compensate OPIC in respect of the claim. Thus, the bankruptcy of the insured would have no effect on recovery of funds paid out on insurance claims.

12. An OPIC spokesman was quoted by the Associated Press today as saying Enron was among the agency's "top 10 borrowers." Please provide a list of the other top nine corporate borrowers and the amount of their outstanding balance with the agency. Please also describe the level of taxpayer liability for the outstanding loan balance held by each company.

Answer: As explained in the response to question 11 above, pursuant to its finance programs OPIC lends to project companies in developing countries. Project sponsors such as Enron are not OPIC borrowers and OPIC is not ordinarily a creditor of a project's sponsor. OPIC has $4.5 billion in reserves which available to cover any future losses that OPIC may incur in its insurance and finance programs, and so there is no anticipated taxpayer liability for any outstanding loan balance. The top sponsors based on outstanding exposure to project company borrowings associated with each sponsor as of 9/30/2001 are as follows: Enron Corporation, $464,601,290; Edison Mission Energy, $278,316,497; InterGen, $216,000,000, AIG Millennium G.P., LLC, $201,146,410, NCH Advisors, $187,425,000; The Williams Companies, Inc., $145,384,615; GEF Management Group, $130,000,000; CMS Generation Company, $124,433,514; Energy Initiatives, Inc., $112,500,000, GTE Service Corporation, $109,000,000.

ATTACHMENT A.

RESPONSE TO QUESTION 7.

Claims Paid by OPIC* (January 1, 1985 through September 30, 2001)

Claim #	Date Paid	Investor	Project Description	Country	Claim Type	Claim Amount (Filed)	Claim Amount (Paid by OPIC)*	Comments
1	1/2/85	Morgan Guaranty	Branch Banking	Philippines	Inconvertibility	$412,867	$363,598	Central Bank restrictions on foreign exchange prevented the Foreign Enterprise transfer of its earnings to Morgan Guaranty.
2	1/10/85	Armco	Mfg Steel Grinding Balls	Philippines	Inconvertibility	$112,640	$112,640	Inconvertibility claim from Armco caused by the Philippine Central Bank's Moratorium on foreign debt transfers.
3	1/25/85	Armco	Mfg Steel Grinding Balls	Philippines	Inconvertibility	$300,000	$297,000	Second inconvertibility claim filed by Armco under the same circumstances as the first claim in the Philippines.
4	1/25/85	Bank of America	Development of a Loan Company	Dominican Republic	Inconvertibility	$1,569,765	$1,680,000	Central Bank placed restrictions on foreign exchange, so that the Foreign Enterprise was unable to transfer its earnings to Bank of America.
5	1/26/85	Kimberly Clark	Manufacture Paper Products	Philippines	Inconvertibility	$101,278	$100,265	Inconvertibility claim from Kimberly Clark caused by the Philippine Central Bank's Moratorium on foreign debt transfers.
6	2/12/85	Atitlan	Mfg. Metal Culverts & Metal Products	Guatemala	Inconvertibility	$198,180	$198,180	Due to currency shortages in Guatemala, the Foreign Enterprise was unable to transfer funds to Atitlan.
7	2/12/85	Philip Morris	Mfg Cigarettes	Dominican Republic	Inconvertibility	$1,333,583	$498,000	The Investor could not transfer its earnings at the official exchange rate and could only use the parallel rate, which was a lower exchange rate. Inconvertibility coverage does not cover devaluation, and so OPIC paid the claim at the rate available to the investor.
8	3/14/85	Equator Bank	Fertilizer Plants	Sudan	Inconvertibility	$2,571,252	$2,545,540	The foreign government guaranteed project debt but was unable to honor its obligations. Under the unusual contract issued to Equator Bank, because the default led to an obligation to fund a security account with local currency, the default was covered under inconvertibility coverage.
9	3/29/85	Bank of America	Development of a Loan Company	Dominican Republic	Inconvertibility	$869,900	$1,000,000	Second inconvertibility claim filed by Bank of America under the same circumstances as the first claim in the Dominican Republic.
10	4/23/85	Kimberly Clark	Expand Facility For Crepe Paper Products	Philippines	Inconvertibility	$178,200	$178,200	Second inconvertibility claim filed by Kimberly Clark under the same circumstances as the first claim in the Philippines.

Historically, OPIC has recovered 94 percent of total claims settled. OPIC claim payments are made from OPIC's $4.5 billion reserves, not appropriated funds. The success of OPIC's insurance program has been grounded upon its proven record of paying valid claims and, having paid the claims, its record of achieving recoveries as assignee of the investor's claims. The total amount of claims paid and settled from the beginning of Fiscal Year 1971 through September 30, 2001 is $783 million, while the total amount of claims recovered (cash and receivables) by OPIC for the same period is $736 million. Accordingly, OPIC total net expense for this period has been limited to $47 million, this amount being covered by OPIC reserves.

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Claim #	Date Paid	Investor	Project Description	Country	Claim Type	Claim Amount (Filed)	Claim Amount (Paid by OPIC)*	Comments
11	4/23/85	Kimberly Clark	Expand Facility For Crepe Paper Products	Philippines	Inconvertibility	$343,888	$343,888	Third inconvertibility claim filed by Kimberly Clark under the same circumstances as the first claim in the Philippines.
12	5/23/85	Atitlan	Mfg. Metal Culverts & Metal Products	Guatemala	Inconvertibility	$161,000	$159,748	Second inconvertibility claim filed by Atitlan under the same circumstances as the first claim.
13	7/10/85	Kimberly Clark	Expand Facility For Crepe Paper Products	Philippines	Inconvertibility	$82,796	$82,253	Fourth inconvertibility claim filed by Kimberly Clark under the same circumstances as the first claim in the Philippines.
14	8/7/85	General Foods	Packaging of Beverages	Philippines	Inconvertibility	$205,578	$163,858	Central Bank restrictions on foreign exchange prevented the Foreign Enterprise from transferring its earnings to General Foods.
15	9/4/85	Equator Bank	Fertilizer Plants	Sudan	Inconvertibility	$2,340,025	$2,339,791	Second inconvertibility claim filed by Equator Bank under the same circumstances as the first claim.
16	9/4/85	Seaboard	Flour Mill	Sierra Leone	Inconvertibility	$633,250	$645,581	Seaboard was unable to repatriate its earnings due to a shortage of dollars in Sierra Leone.
17	9/25/85	Atitlan	Mfg. Metal Culverts & Metal Products	Guatemala	Inconvertibility	$452,072	$452,072	Third inconvertibility claim filed by Atitlan under the same circumstances as the first claim.
18	11/1/85	Equator Bank	Fertilizer Plants	Sudan	Inconvertibility	$1,412,182	$1,398,060	Third inconvertibility claim filed by Equator Bank under the same circumstances as the first claim.
19	11/22/85	Kimberly Clark	Expand Facility For Crepe Paper Products	Philippines	Inconvertibility			Fifth inconvertibility claim filed by Kimberly Clark under the same circumstances as the first claim in the Philippines.
20	12/27/85	Kimberly Clark	Expand Facility For Crepe Paper Products	El Salvador	Inconvertibility	$769,518	$769,518	El Salvador Central Bank had a chronic shortage of foreign exchange and could not effect transfers to Kimberly Clark.
21	1/17/86	Kimberly Clark	Expand Facility For Crepe Paper Products	Philippines	Inconvertibility	$138,356	$138,356	Sixth inconvertibility claim filed by Kimberly Clark under the same circumstances as the first claim in the Philippines.
22	2/13/86	Phelps Dodge Corp.	Mfg Electrical Bldg. Wires & Cables	El Salvador	Inconvertibility	$236,000	$136,558	The Foreign Enterprise was unable to make payment in U.S. dollars of dividends and technical assistance fees to Phelps Dodge as a result of the inaction by the El Salvador Central Bank, which resulted in passive blockage of foreign currency transfers.
23	3/27/86	Bernard Sal.	Commercial Fishing Operation	St. Kitts	Expropriation	$257,400	$180,000	The claim involved possible expropriation of the investor's fishing license.
24	4/2/86	Seaboard	Flour Mill	Sierra Leone	Inconvertibility	$200,384	$207,584	Second inconvertibility claim filed by Seaboard under the same circumstances as the first claim in Sierra Leone.
25	4/7/86	Kimberly Clark	Expand Facility For Crepe Paper Products	Philippines	Inconvertibility	$178,200	$178,200	Seventh inconvertibility claim filed by Kimberly Clark under the same circumstances as the first claim in the Philippines.

Historically, OPIC has recovered 94 percent of total claims settled. OPIC claim payments are made from OPIC's $4.5 billion reserves, not appropriated funds. The success of OPIC's insurance program has been grounded upon its proven record of paying valid claims and, having paid the claims, its record of achieving recoveries as assignee of the investor's claims. The total amount of claims paid and settled from the beginning of Fiscal Year 1971 through September 30, 2001 is $783 million, while the total amount of claims recovered (cash and receivables) by OPIC for the same period is $736 million. Accordingly, OPIC total net expense for this period has been limited to $47 million, this amount being covered by OPIC reserves.

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26	4/7/86	Kimberly Clark	Expand Facility For Crepe Paper Products	Philippines	Inconvertibility	$117,285	$117,285	Eighth inconvertibility claim filed by Kimberly Clark under the same circumstances as the first claim in the Philippines.
27	6/23/86	Seaboard	Flour Mill	Sierra Leone	Inconvertibility	$42,416	$42,416	Third inconvertibility claim filed by Seaboard under the same circumstances as the first claim in Sierra Leone.
28	10/24/86	Freeport McMoran	Mine Copper	Indonesia	Political Violence	$337,868	$201,128	Damage to the mine site by dissident political elements.
29	11/26/86	Kimberly Clark	Expand Facility For Crepe Paper Products	Philippines		$104,291	$104,291	Ninth inconvertibility claim filed by Kimberly Clark under the same circumstances as the first claim in the Philippines.
			Paper Products					same circumstances as the first claim in the Philippines.
31	5/19/87	Standard Fruit	Banana Plantation	Nicaragua	Expropriation	$3,000,000	$2,000,000	The investor filed an expropriation claim in 1983 based on alleged government responsibility for loss of banana export project. OPIC made an advance payment of $2,000,000, while the investor engaged in arbitration and litigation against the foreign government. This dispute was settled, and the determination was made final.
32	7/9/87	Gillette Corp.	Mfg Razor Blades	Iran	Expropriation	$1,129,699	$920,700	As in other claims arising out of the Iranian Revolution of 1979, OPIC determined that the investor had been deprived of the substantial rights of a shareholder as a result of creeping expropriation.
33	8/21/87	Caribe Crown	Agribusiness	Haiti	Political Violence	$24,210	$24,210	Goods in process were lost as a result of disruptions caused by political violence.
34	6/6/88	Philippine Geothermal	Electric Power Generation	Philippines	Political Violence	$1,321,467	$1,321,467	Project payment flows were disrupted due to damage caused by political violence.
35	9/13/88	Seaboard	Flour Mill	Guyana		$989,306	$980,854	Inconvertibility claim caused by the shortage of foreign exchange in Guyana.
36	12/30/88	Phelps Dodge Corp.	Mfg Electrical Bldg Wires & Cables	Honduras	Inconvertibility	$366,511	$326,561	Phelps Dodge applied to the Honduras Central Bank for foreign exchange and the Bank approved the requests. However, due to the shortage of U.S. dollars, Phelps Dodge was unable to convert the local currency.
37	4/14/89	Ralph Mathieu	Jojoba Bean Plantation	Haiti	Expropriation	$66,000	$30,000	Investor alleged that foreign government refused to enforce investor's rights to use of project land.
38	8/30/89	Philip Morris	Mfg Cigarettes	Dominican Republic	Inconvertibility	$2,080,565	$2,080,565	Central Bank placed restrictions on foreign exchange, so that the Foreign Enterprise was unable to transfer its earnings to Philip Morris.
					Political Violence		$45,534	Shipment of raw material damaged as a result of political violence.

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40	9/30/89	Phelps Dodge Corp.	Mfg Electrical Bldg Wires & Cables	Honduras	Inconvertibility	$400,908	$357,209	Second inconvertibility claim filed by Phelps Dodge because of the same circumstances as the first claim in Honduras.
41	4/11/90	Citibank, N.A.	Branch Banking	Dominican Republic	Inconvertibility	$1,130,061	$1,495,186	Dominican Republic Central Bank placed restrictions on foreign exchange, so that the Foreign Enterprise was unable to transfer its earnings to Citibank.
42	4/11/90	Phelps Dodge Corp.	Mfg Electrical Bldg Wires & Cables	Honduras	Inconvertibility	$528,367	$470,775	Third inconvertibility claim filed by Phelps Dodge because of the same circumstances as the first claim in Honduras.
43	5/30/90	Kimberly Clark	Manufacture Paper Products	Honduras	Inconvertibility	$300,960	$300,960	Inconvertibility claim due to the enactment of restrictive regulations that prevented the Foreign Enterprise from converting the Local Currency to dollars.
44	8/8/90	Philip Morris	Mfg Cigarettes	Dominican Republic	Inconvertibility	$1,885,735	$1,640,331	Second inconvertibility claim filed by the Philip Morris under the same circumstances as the 1989 claim.
45	8/31/90	Chase Manhattan Bank	Branch Banking	Dominican Republic	Inconvertibility	$2,139,546	$799,762	Dominican Republic Central Bank placed restrictions on foreign exchange, so that the Foreign Enterprise was unable to transfer its earnings to Chase Manhattan.
46	8/31/90	Chase Manhattan Bank	Branch Banking	Dominican Republic	Inconvertibility	$1,958,519	$799,762	Second inconvertibility claim filed by Chase Manhattan under the same circumstances as the first claim in the Dominican Republic.
47	3/31/91	Keene Industries	Rubber Plantation	Liberia	Political Violence	$2,429,352	$2,429,352	Rubber plantation was overrun, damaged and looted extensively by rebel group.
48	5/16/91	Tea Importers	Tea Processing Factory	Rwanda	Political Violence	$29,167	$6,169	Vehicle owned by project company taken by government troops, lost in fighting against rebels.
49	8/31/91	Kimberly Clark	Manufacture Paper Products	Panama	Political Violence	$46,519	$55,911	Project assets were damaged or looted during U.S. military intervention in Panama
50	9/27/91	Zachry & Dillingham	Construct Irrigation Canals & Structures	Sri Lanka	Expropriation	$8,100,000	See comment	Investors won a $55 million arbitral award against the foreign government based on disputes arising out of a construction contract. OPIC was obliged to pay if any part of the award remained unpaid. Instead, OPIC provided a $30,000,000 guaranty that enabled the government to borrow funds to pay the investor. With other funding from AID and the foreign government, OPIC's guaranty brought about a global settlement. OPIC has made no out-of-pocket payments and has received guaranty fees from the foreign government in the amount $3,278,373.
51	11/7/91	Carter Day	Seed Processing Plant	Egypt	Expropriation	$87,500	$43,750	Foreign government called bid bond during contract negotiations.

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52	1/10/92	Continental Grain	Soybean Processing	Brazil	Inconvertibility	$1,620,000	$2,009,894	The insured investor guaranteed bank loans to its Brazilian subsidiary that were rescheduled. Having paid under the guaranty, the parent company was obliged to accept the Brady Bonds that the international banks had agreed to take in lieu of payment. OPIC paid this claim for inability to transfer nominal dollar deposits with the central bank.
53	3/18/92	Henry R. Jahn	Bucket Excavators	Syria	Expropriation	$45,416	$20,371	Government called an on-demand performance guaranty that was provided under the insured contract to satisfy its claim under an unrelated contract. Claim was paid for wrongful calling.
54	6/24/92	Hoyt & Worthen	Leather Tanning	Haiti	Political Violence	$159,079	$155,897	Inventory and raw materials were damaged as a result of political violence.
55	11/23/92	Haitian Tropical	Agribusiness	Haiti	Political Violence	$534,094	$434,110	Crop was lost because it could not be shipped due to international economic sanctions against the government.
56	1/21/93	Continental Grain	Soybean Processing	Brazil	Inconvertibility	$72,288	$72,288	Same situation as 52 – a final payment.
57	3/11/93	Keene Industries	Rubber Plantation	Liberia	Political Violence	$1,112,390	$1,110,894	Rubber plantation assets were destroyed in bombing raid by peacekeeping force.
58	5/13/93	Keene Industries	Rubber Plantation	Liberia	Political Violence	$1,895,581	$1,674,843	Rubber plantation facilities and assets were destroyed or taken in fighting between factions contending for power in Liberia.
59	9/20/93	Schwartz/Jacobowitz	Jewelry	Yugoslavia	Political Violence	$386,000	$155,644	Investors claimed loss of their jewelry manufacturing project as a result of conditions caused by fighting among factions in Yugoslavia. No covered damage to project assets; investors abandoned project, in part, because political violence may have increased cost of doing business. Arbitrator awarded partial compensation.
60	11/22/93	Agronom	Poultry, Cattle Feeding & Meat	Zaire	Political Violence	$216,813	$185,885	Damaged was incurred and royalty contract payments were missed as a result of a mutiny by government troops, and the resulting damage to the business climate.
61	12/29/93	Tea Importers	Tea Processing Factory	Rwanda	Political Violence	$107,300	$53,966	Plantation facilities were damaged during fighting between government and rebel forces.
62	7/18/94	Haitian Tropical	Agribusiness	Haiti	Political Violence	$305,900	$305,900	Crop was lost because it could not be shipped due to international economic sanctions against the government.
63	6/19/95	Charles Hoyt	Leather Tanning	Haiti	Political Violence	$420,000	$319,091	Damage was incurred as a result of disruption to project operations due to political violence.

Historically, OPIC has recovered 94 percent of total claims settled. OPIC claim payments are made from OPIC's $4.5 billion reserves, not appropriated funds. The success of OPIC's insurance program has been grounded upon its proven record of paying valid claims and, having paid the claims, its record of achieving recoveries as assignee of the investor's claims. The total amount of claims paid and settled from the beginning of Fiscal Year 1971 through September 30, 2001 is $783 million, while the total amount of claims recovered (cash and receivables) by OPIC for the same period is $736 million. Accordingly, OPIC total net expense for this period has been limited to $47 million, this amount being covered by OPIC reserves.

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64	8/29/95	Tea Importers	Tea Processing Factory	Rwanda	Political Violence	$1,131,046	$178,429	The plantation facilities were damaged or looted during fighting between government and rebel forces.
65	3/29/96	Andre Greenhouses Inc.	Construct + Oper Of Greenhouses	Dominican Republic	Political Violence	$43,986	$21,000	Mob seized small part of project land.
66	9/30/96	Nord Resources Corp	Rutile Mining	Sierra Leone	Political Violence	$2,000,000	$1,500,000	Advance payment to restart project shut down by damage caused by rebel forces. See 71.
67	10/15/96	C & W Trading Co.	Tea Processing Factory	Rwanda	Political Violence	$20,276	$1,561	Project vehicle was seized in government action suppressing rebellion.
68	10/15/96	Tea Importers	Tea Processing Factory	Rwanda	Political	$20,276	$8,317	Joint investor in project described in 67.
69	3/31/97	Alliant Techsystems, Inc.	Munition Systems Reclamation	Belarus	Expropriation	$5,900,000	$5,900,000	Government breached terms of, and frustrated performance of, essential project agreements with the investor.
70	2/10/98	African Holding Company	Mfg and Sell Tires and Rubber Products	Zaire	Political Violence	$4,467,154	$3,950,000	Project assets were looted or destroyed during mutiny by government troops. OPIC found that events causing loss did not constitute insurrection or revolution. Arbitrators disagreed. Amount of compensation was negotiated.
71	5/19/98	Nord Resources Corp	Rutile Mining	Sierra Leone	Political Violence	$15,700,000	$14,204,500	Project was heavily damaged and shut down by action of rebel groups.
72	8/25/99	Joseph Companies Inc.	Vegetable Oil Processing	Jamaica	Expropriation	$1,494,000	$1,494,000	Government breached terms of investment agreement, behaved arbitrarily and unreasonably.
73	9/19/99	Alliant Techsystems, Inc.	Munition Systems Reclamation	Ukraine	Expropriation	$20,997,569	$17,700,000	Government breached terms of and frustrated performance of essential project agreements with the investor.
74	11/15/99	MidAmerican Energy Holdings Company	Geothermal Power Services	Indonesia	Expropriation	$217,500,000	$217,500,000	Government canceled project, failed to comply with and actively interfered with international arbitration.
75	6/6/00	F.C. Schaffer & Associates	Construct Sugar Factory	Ethiopia	Political Violence	$9,563	$9,563	Shipment of parts lost as a result of war between Ethiopia and Eritrea.
76	8/28/00	Citibank, N.A.	Branch Banking	Sudan		$1,055,607	$1,055,607	Foreign government exercised regulatory authority arbitrarily.
77	5/24/01	Citibank, N.A.	Branch Banking	Sudan	Expropriation	$3,750,000	$3,750,000	Foreign government failed to return hard currency deposits upon closing of branch operation.

Historically, OPIC has recovered 94 percent of total claims settled. OPIC claim payments are made from OPIC's $4.5 billion reserves, not appropriated funds. The success of OPIC's insurance program has been grounded upon its proven record of paying valid claims and, having paid the claims, its record of achieving recoveries as assignee of the investor's claims. The total amount of claims paid and settled from the beginning of Fiscal Year 1971 through September 30, 2001 is $783 million, while the total amount of claims recovered (cash and receivables) by OPIC for the same period is $736 million. Accordingly, OPIC total net expense for this period has been limited to $47 million, this amount being covered by OPIC reserves.

Total Claims Denied** (January 1, 1985 through September 30, 2001)

Date	Investor	Project Description	Country	Claim Type	Claim Amount (Filed)**	Comments
4/22/85	Caribe Crown	Agribusiness	Haiti	Political Violence	$67,190	Losses arose from failure of joint venture partner to make contract payments, not political violence. Arbitrator dismissed claim as time-barred.
9/14/93	Marine Shipping Corporation	Grain Handling	Egypt	Expropriation	$3,030,746	Negotiated sale of the Insured project that was the subject of the expropriation claim. Arbitrators agreed that claim was properly rejected and awarded OPIC attorney fees and costs. OPIC has sued for collection.
2/3/94	Green Mining Export Services Inc	Bauxite Mining	Guyana	Expropriation	$11,675,300	Conditions for coverage and compensation under OPIC insurance were not satisfied. OPIC prevailed in arbitration and litigation and eventually facilitated a settlement between investors and foreign government.
1/30/96	Bank of Boston	Project Loan to Third Party	Venezuela	Inconvertibility	$334,904	Borrower had repaid the insured lender with dollars obtained through legal parallel market. OPIC declined to compensate borrower for its exchange loss. (No arbitration.)
1/21/99	Hoyt & Worthen	Leather Tanning	Haiti	Expropriation	$121,271	Investor experienced one-time increase in operating costs due to road construction, not compensable under OPIC expropriation coverage. (No arbitration.)
11/17/98	Great American Life Corporation	Life Insurance Company	Russia	Expropriation	$351,000	Investor experienced losses on investments in government bonds and general decline in business after August 1998 financial crisis. OPIC found these circumstances outside scope of expropriation coverage. (No arbitration.)

** Represents situations where formal claims have actually been lodged with OPIC. OPIC does not collect data in instances where informal dialogue with insureds does not result in a claim made. OPIC's record of claims paid and denied is only part of a much larger record of OPIC's collaboration with insured investors and foreign governments to resolve incipient investment disputes, thereby preserving worthwhile projects while averting OPIC insurance claims.

Memorandum April 22, 2002

TO: Senate Finance Committee
Attention: Dean Zerbe

FROM: Elizabeth B. Bazan
Legislative Attorney
American Law Division

SUBJECT: Potential civil and criminal consequences of a corporation providing false or misleading information to OPIC or the Export-Import Bank of the United States to obtain loans from them

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This memorandum is in response to the request from Senator Grassley, Ranking Member of the Senate Committee on Finance, asking for an examination of potential civil and criminal liability of a corporation providing false, misleading or incorrect information to the Overseas Private Investment Corporation (OPIC) or to the Export-Import Bank of the United States (Ex-Im Bank) in order to obtain loans from such organizations. The Senator has asked for information with respect to both organizational and personal liability of those providing such false, misleading, or incorrect information. Our examination is limited, of necessity, by time constraints.

The examination of these issues will be separated into the following sections. First, we will briefly touch upon the statutory underpinnings of OPIC and the Export-Import Bank of the United States relevant to the basis of criminal and civil penalties or remedies which may be applicable. Second, we will note a number of criminal law provisions that may be of interest in connection with the issues you have raised. Third, we will note possible civil penalties or civil remedies that may be available as a result of such conduct in some circumstances.

Brief Summary of Pertinent Statutory Underpinnings of OPIC and the Export-Import Bank of the United States

Both OPIC and the Export-Import Bank of the United States are wholly-owned government corporations.[1] Under 12 U.S.C. § 635(a)(1), the Ex-Im Bank is created and denominated "an agency of the United States of America."

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[1] 31 U.S.C. §§ (3)(C) (Export-Import Bank of the United States) and (3)(H) (Overseas Private Investment Corporation).

> The objects and purpose of the [Export-Import Bank of the United States are] to aid in financing and to facilitate export of goods and services and imports and the exchange of commodities and services between the United States or any of its territories or insular possessions and any foreign country or the agencies or nationals thereof. In connection with and in furtherance of its objects and purposes, the bank is authorized and empowered to do a general banking business except that of circulation; to receive deposits; to purchase, discount, rediscount, sell, and negotiate, with or without its endorsement or guarantee, and to guarantee notes, drafts, checks, bills of exchange, acceptances, including bankers' acceptances, cable transfers, and other evidences of indebtedness; to guarantee, insure, coinsure, and reinsure against political and credit risks of loss; to purchase, sell, and guarantee securities but not to purchase with its funds any stock in any other corporation except that it may acquire any such stock through the enforcement of any lien or pledge or otherwise to satisfy a previously contracted indebtedness to it; to accept bills and drafts drawn upon it; to issue letters of credit; to purchase and sell coin, bullion, and exchange; to borrow and to lend money; to perform any act herein authorized in participation with any other person, including any individual, partnership, corporation, or association; to adopt, alter, and use a corporate seal, which shall be judicially noticed; to sue and to be sued, to complain and to defend in any court of competent jurisdiction; to represent itself or to contract for representation in all legal and arbitral proceedings outside the United States; and the enumeration of the foregoing powers shall not be deemed to exclude other powers necessary to the achievement of the objects and purposes of the bank. . . . [2]

Under 22 U.S.C. § 2191, OPIC is created as "an agency of the United States under the policy guidance of the Secretary of State." OPIC's purpose is to "mobilize and facilitate the participation of United States private capital and skills in the economic and social development of less developed countries and areas, and countries in transition from nonmarket to market economies."[3] In so doing, OPIC may provide insurance, guarantee, financing, or reinsurance for a project consistent with specified criteria.[4]

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[2] 12 U.S.C. § 635(a)(1).

[3] 22 U.S.C. § 2191.

[4] 22 U.S.C. § 2191 indicates that the Corporation, in making such determinations, must especially:

> (1) be guided by the economic and social development impact and benefits of such a project and the ways in which such a project complements, or is compatible with, other development assistance programs or projects of the United States or other donors;
> (2) give preferential consideration to investment projects in less developed countries that have per capita incomes of $984 or less in 1986 United States dollars, and restrict its activities with respect to investment projects in less developed countries that have per capita incomes of $4,269 or more in 1986 United States dollars (other than countries designated as beneficiary countries under section 212 of the Caribbean Basin Economic Recovery Act (19 U.S.C. 2702), Ireland, and Northern Ireland); and
> (3) ensure that the project is consistent with the provisions of section 117 (as so redesignated by the Special Foreign Assistance Act of 1986), section 118, and section 119 of this Act [22 U.S.C. §§ 2151p, 2151p-1, and 2151q] relating to the environment and natural resources of, and tropical forests and endangered species in, developing countries, and consistent with the intent of regulations issued pursuant to section 117 (as

(continued...)

[4] (...continued)

so redesignated by the Special Foreign Assistance Act of 1986), section 118, and section 119 of this Act [22 U.S.C. §§ 2151p, 2151p-1, and 2151q].

In carrying out its purpose, the Corporation, utilizing broad criteria, shall undertake--

(a) to conduct financing, insurance, and reinsurance operations on a self-sustaining basis, taking into account in its financing operations the economic and financial soundness of projects;
(b) to utilize private credit and investment institutions and the Corporation's guaranty authority as the principal means of mobilizing capital investment funds;
(c) to broaden private participation and revolve its funds through selling its direct investments to private investors whenever it can appropriately do so on satisfactory terms;
(d) to conduct its insurance operations with due regard to principles of risk management including efforts to share its insurance and reinsurance risks;
(e) to the maximum degree possible consistent with its purposes--
(1) to give preferential consideration in its investment insurance, reinsurance, and guaranty activities to investment projects sponsored by or involving United States small business; and
(2) to increase the proportion of projects sponsored by or significantly involving United States small business to at least 30 percent of all projects insured, reinsured, or guaranteed by the Corporation;
(f) to consider in the conduct of its operations the extent to which less developed country governments are receptive to private enterprise, domestic and foreign, and their willingness and ability to maintain conditions which enable private enterprise to make its full contribution to the development process;
(g) to foster private initiative and competition and discourage monopolistic practices;
(h) to further to the greatest degree possible, in a manner consistent with its goals, the balance-of-payments and employment objectives of the United States;
(i) to conduct its activities in consonance with the activities of the agency primarily responsible for administering part I and the international trade, investment, and financial policies of the United States Government, and to seek to support those developmental projects having positive trade benefits for the United States;
(j) to advise and assist, within its field of competence, interested agencies of the United States and other organizations, both public and private, national and international, with respect to projects and programs relating to the development of private enterprise in less developed countries and areas;
(k) (1) to decline to issue any contract of insurance or reinsurance, or any guaranty, or to enter into any agreement to provide financing for an eligible investor's proposed investment if the Corporation determines that such investment is likely to cause such investor (or the sponsor of an investment project in which such investor is involved) significantly to reduce the number of his employees in the United States because he is replacing his United States production with production from such investment which involves substantially the same product for substantially the same market as his United States production; and (2) to monitor conformance with the representations of the investor on which the Corporation relied in making the determination required by clause (1);
(l) to decline to issue any contract of insurance or reinsurance, or any guaranty, or to enter into any agreement to provide financing for an eligible investor's proposed investment if the Corporation determines that such investment is likely to cause a significant reduction in the number of employees in the United States;

(continued.

Possible Criminal Provisions Which May Be Implicated

Whether particular circumstances give rise to criminal or civil liability turns upon the specific facts of a given case. The following list of criminal law provisions may be of interest in considering whether, in a given situation, criminal liability may flow from the provision of false, misleading, or incorrect information by a corporation to OPIC or to the Ex-Im Bank in order to obtain a loan from such organizations. Depending upon how the facts in a given situation may develop, some of those provisions listed below might not apply, while other provisions not listed below might become pertinent.

- 18 U.S.C. § 641 (theft of public money, property, or records)–Among other things, this covers embezzling, stealing, purloining, or knowingly converting to one's own use or the use of another, or, without authority, selling, conveying, or disposing of any record, voucher, money, or thing of value of the United States or of any department or agency thereof. It also covers whoever receives, conceals, or retains such record, voucher, money, or thing of value of the United States or of any federal department or agency with intent to convert it to his, her, or their own use or gain, knowing it to have been embezzled, stolen, purloined, or converted. Conviction under this section may result in imprisonment for up to 10 years, a fine under Title 18, U.S.C., or both.[5]

- 18 U.S.C. § 1001 (false statements)–Among other things, this covers, in any matter within the jurisdiction of the federal Executive, Legislative or Judicial Branches, knowingly and willfully falsifying, concealing, or covering up by any trick, scheme, or device a material fact; making any materially false, fictitious, or fraudulent statement or representation; or making or using any false writing or document, knowing that it contains a materially false, fictitious, or fraudulent statement or entry. Maximum

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.continued)

(m) to refuse to insure, reinsure, or finance any investment subject to performance requirements which would reduce substantially the positive trade benefits likely to accrue to the United States from the investment; and

(n) to refuse to insure, reinsure, guarantee, or finance any investment in connection with a project which the Corporation determines will pose an unreasonable or major environmental, health, or safety hazard, or will result in the significant degradation of national parks or similar protected areas.

See also, 22 U.S.C. §§ 2191a, 2194, 2194a, and 2197 for other authorities and requirements.

[5] Under 18 U.S.C. § 3571, individuals convicted of a felony may be fined the greater of either the amount set forth in the offense statute or an amount not more than $250,000, while the maximum fine for an organization convicted of a felony would be the greater of the amount set forth in the offense statute or an amount of not more than $500,000. This section also provides for an alternative fine based on pecuniary gain or loss. If anyone has derived pecuniary gain from the offense or if the offense results in pecuniary loss to any person, the defendant may be fined not more than the greater of twice the gross gain or twice the gross loss, unless the imposition of a fine under this subsection would unduly complicate or prolong the sentencing process.

penalties include imprisonment of not more than 5 years, a fine under Title 18, U.S.C.,[6] or both.

- 18 U.S.C. § 1341 (mail fraud)–Among other things, Section 1341 applies to use of the mail for the purpose of executing, or attempting to execute, a scheme or artifice to defraud[7] or for obtaining money or property by false or fraudulent pretenses, representations, or promises. The maximum penalties include a fine under Title 18, U.S.C.,[8] or imprisonment of not more than 5 years, or both.[9]

- 18 U.S.C. § 1343 (wire fraud)–Section 1343 covers use of wire, radio, or television communication in interstate or foreign commerce to transmit or to cause to be transmitted any writings, signs, signals, pictures, or sounds, for the purpose of executing a scheme or artifice to defraud or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises. Maximum penalties include a fine under Title 18, U.S.C.,[10] imprisonment of up to 5 years, or both.[11]

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[6] *Id.*

[7] For purposes of 18 U.S.C. §§ 1341-1347, the term "scheme or artifice to defraud" includes "a scheme or artifice to deprive another of the intangible right of honest services." 18 U.S.C. § 1346.

[8] *See* discussion of fine options under 18 U.S.C. § 3571 in fn. 5, *supra.*

[9] If the violation affects a financial institution, the defendant, if convicted, may be fined not more than $1 million or imprisoned for not more than 30 years, or both. Under 18 U.S.C. § 20, a "financial institution" is defined to include:

> (1) an insured depository institution (as defined in section 3(c)(2) of the Federal Deposit Insurance Act);
> (2) a credit union with accounts insured by the National Credit Union Share Insurance Fund;
> (3) a Federal home loan bank or a member, as defined in section 2 of the Federal Home Loan Bank Act (12 U.S.C. 1422), of the Federal home loan bank system;
> (4) a System institution of the Farm Credit System, as defined in section 5.35(3) of the Farm Credit Act of 1971;
> (5) a small business investment company, as defined in section 103 of the Small Business Investment Act of 1958 (15 U.S.C. 662);
> (6) a depository institution holding company (as defined in section 3(w)(1) of the Federal Deposit Insurance Act[)] [the closing parentheses is missing from this subsection as published in the 2000 edition of the United States Code];
> (7) a Federal Reserve bank or a member bank of the Federal Reserve System;
> (8) an organization operating under section 25 or section25(a) of the Federal Reserve Act; or
> (9) a branch or agency of a foreign bank (as such terms are defined in paragraphs (1) and (3) or section 1(b) of the International Banking Act of 1978).

This term, so defined, does not appear to cover OPIC or the Export-Import Bank of the United States.

[10] For the possible criminal fines provided under Title 18, U.S.C., for a felony conviction, see the discussion at fn. 5, *supra.*

[11] If the offense affects a financial institution, conviction exposes a perpetrator to a fine of up to $1

(continued...)

- 18 U.S.C. § 1956(a)(3)(A) (money laundering)–Among other things, this provision covers those who, with intent to promote the carrying on of specified unlawful activity (as defined in 18 U.S.C. § 1956(c)(7)), conduct or attempt to conduct a financial transaction involving property used to conduct or facilitate specified unlawful activity. It carries a maximum penalty of 20 years imprisonment and a fine under Title 18, U.S.C.[12] The term "specified unlawful activity" means, among other things, any act or activity constituting an offense listed in 18 U.S.C. § 1961(1) except an act indictable under 31 U.S.C., ch. 52, subchapter II. Both mail fraud under Section 1341 and wire fraud under Section 1343 are among the offenses listed in Section 1961(1).

- 18 U.S.C. § 1962 (racketeering)–Among other things, this section makes it unlawful for any person who had received income derived, directly or indirectly, from a pattern of racketeering activity to use or invest, directly or indirectly, any part of that income, or the proceeds of such income, in acquisition of any interest in, or establishment or operation of, any enterprise engaged in interstate or foreign commerce or in activities affecting interstate or foreign commerce. "Racketeering activity" is defined under 18 U.S.C. § 1961 to mean, among other things, any act indictable as mail fraud under 18 U.S.C. § 1341 or wire fraud under 18 U.S.C. § 1343. Section 1962 also prohibits any person, through a pattern of racketeering activity, to acquire or maintain, directly or indirectly, any interest or control of any enterprise engaged in interstate or foreign commerce, or whose activities affect interstate or foreign commerce. In addition, this section prohibits any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate in the conduct of that enterprise's affairs through a pattern of racketeering activity. Finally, Section 1962 makes it unlawful to conspire to engage in any of the activities prohibited in the section. Under 18 U.S.C. § 1963, a person convicted of an offense under Section 1962 faces maximum criminal penalties including imprisonment of not more than 20 years, a fine under Title 18, U.S.C.,[13] or both, plus forfeiture to the United States of (1) any interest acquired or maintained in violation of Section

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[11] (...continued)
million, imprisonment of up to 30 years, or both. See discussion of definition of "financial institution" in fn. 9, *supra.*

[12] *Id.* In addition, 18 U.S.C. § 1956(b) provides for a civil penalty of the greater of the value of the property, funds, or monetary instruments involved in the transaction or $10,000, for those who conduct or attempt to conduct such a transaction.

[13] Under 18 U.S.C. § 3571, individuals convicted of a felony may be fined the greater of either the amount set forth in the offense statute or an amount not more than $250,000, while the maximum fine for an organization convicted of a felony would be the greater of the amount set forth in the offense statute or an amount of not more than $500,000. This section also provides for an alternative fine based on pecuniary gain or loss. If anyone has derived pecuniary gain from the offense or if the offense results in pecuniary loss to any person, the defendant may be fined not more than the greater of twice the gross gain or twice the gross loss, unless the imposition of a fine under this subsection would unduly complicate or prolong the sentencing process.

1962; (2) any interest in, security of, claim against, or property or contractual right of any kind affording a source of influence over any enterprise which the person has established, operated, controlled, conducted, or participated in, in violation of 18 U.S.C. § 1962; or (3) any proceeds of or derived from racketeering activity in violation of Section 1962.[14]

- 22 U.S.C. 2197(n) (penalties for fraud with respect to OPIC)–This provision makes criminal penalties available with respect to anyone who knowingly makes any false statement or report, or willfully overvalues any land, property, or security, for the purpose of influencing in any way the action of OPIC with respect to any insurance, reinsurance, guarantee, loan, equity investment, or other activity of the Corporation under section 2194 of this title or any change or extension of any such insurance, reinsurance, guarantee, loan, equity investment, or activity, by renewal, deferment of action or otherwise, or the acceptance, release or substitution of security therefor. Maximum penalties include a fine of not more than $1,000,000, imprisonment for not more than 30 years, or both.

Possible Civil Penalties Or Civil Remedies That May Be Available

In some circumstances, civil penalties or remedies may be available where a corporation uses false, misleading, or incorrect information to obtain a loan from OPIC or the Export-Import Bank of the United States. As with the criminal provisions discussed above, the question of whether these provisions apply is a very fact-specific inquiry. Listed below are some provisions which may be of interest in this context, depending upon the facts of a given situation as they develop.

- 18 U.S.C. § 1956(b) (money laundering)–As noted in the discussion of criminal penalties above, 18 U.S.C. § 1956(a)(3)(A) covers those who, with intent to promote the carrying on of specified unlawful activity (as defined in 18 U.S.C. § 1956(c)(7)), conduct or attempt to conduct a financial transaction involving property used to conduct or facilitate specified unlawful activity. The term "specified unlawful activity" means, among other things, any act or activity constituting an offense listed in 18 U.S.C. § 1961(1) except an act indictable under 31 U.S.C., ch. 52, subchapter II. Both mail fraud under Section 1341 and wire fraud under Section 1343 are among the offenses listed in Section 1961(1). In addition to the criminal penalties discussed above, 18 U.S.C. § 1956(b) provides for a civil penalty of the greater of the value of the property, funds, or monetary instruments involved in the transaction or $10,000, for those who conduct or attempt to conduct such a transaction.

- 18 U.S.C. § 1964 (racketeering–civil remedies)–This section gives the United States district courts jurisdiction to "prevent and restrain violations" of 18 U.S.C. § 1962, discussed above under the criminal provisions section of this memorandum. In so doing, the district court may issue orders

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18 U.S.C. § 1964 also provides for civil remedies in specified circumstances.

including, but not limited to "ordering any person to divest himself of any interest, direct or indirect, in any enterprise; imposing reasonable restrictions on the future activities or investments of any person, including, but not limited to, prohibiting any person from engaging int the same type of endeavor as the enterprise engaged in, the activities of which affect interstate or foreign commerce; or ordering dissolution or reorganization of any enterprise, making due provision for the rights of innocent persons."[15] Such actions may be instituted by the Attorney General. In addition any person injured in his business or property by reason of a Section 1962 violation may sue to recover three times the damages sustained plus the cost of the suit including a reasonable attorney's fee. To establish a violation of Section 1962 in a private right of action, reliance may not be placed upon any conduct that would have been actionable as fraud in the purchase or sale of securities, except as against a person who has been convicted in a criminal case for such fraud. A criminal conviction has the effect of estopping the person convicted from denying the essential allegations of the criminal offense in a subsequent civil proceeding brought by the United States.

18 U.S.C. § 1345 (injunctions against fraud)–Among other things, if a person is violating or is about to violate the mail fraud (18 U.S.C. § 1341), wire fraud (18 U.S.C. § 1343) or false statements (18 U.S.C. § 1001) provisions, the Attorney General may bring a civil action in a federal court to enjoin the violation. The court shall grant a temporary restraining order, temporary injunction, or permanent injunction without bond under these circumstances.

Conclusion

As the provisions noted above suggest, if a corporation or its officers or employees knowingly and intentionally submit false, misleading, or incorrect information to OPIC or the Export-Import Bank to obtain a loan from one of those federal agencies, criminal liability may attach to such actions. Whether a given situation will give rise to potential criminal liability, either for the corporation or for the individuals involved, depends upon the specific factual circumstances involved. It does not appear that provision of incorrect information because of a simple mistake, rather than a knowing and intentional act, would be sufficient to trigger criminal liability. If the underlying facts include money laundering, racketeering, or false statements in any matter within the jurisdiction of the Executive, Legislative, or Judicial Branches of the United States, civil penalties or certain other civil remedies may also apply.

We hope that this memorandum will be of assistance to you

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18 U.S.C § 1964(a).

June 9,

QUESTIONS FOR ENRON POWER DEVELOPMENT CORP.'S RICHARD A. LAMMERS:

Questions relating to the EPDC's preliminary draft of the Descriptive Memorandum for the Puerto Quetzal project:

1. What is the date for the commencement of commercial operations (is it 12/1/92, or some other date)? pg 2 tested Nov 15

2. If 92% of Empresa is owned by INDE, who ownes the other 8%? pg 4
private local investors - Privately held.
Broken down between 12 individuals

How exactly does Empresa fit in with INDE? Empresa is servicing approximately 70% of the electricity consumers in Guatemala. Does INDE provide the electricity to Empresa to provide to the consumers, or what? pg 4 Empresa buys 50% of power from INDE, and produces the other 50%. Will retire most of its own production when plant comes on line

Is Sun King to receive 6% of gross or net revenues from the project? pg 6

5. Page 12 mentions OPIC in an improper manner.

6. Page 13 mentions an environmental assessment. Please provide this assessment, along with all other environmental studies in Enron's possession for our analysis of project.

7. The project will lease land and dock space from the Port Authority. Who ownes and runs the Port Authority (Guatemalan gov't, local gov't, private entity, etc.)? pg 15 thinks it is ~~local~~. No

Is Port Author

Guatema Government

Senate Finance Committee

EXHIBIT 48

Business Confidential Information

5. Page 4, question 12: These amounts need to be discussed and clarified.

6. Page 4, question 13: This amount needs to equal ($91.4 million or some other number). Are these numbers correct?

Louisiana

Barges 2/3 27 million

tanks 1/2 13.5 million

fabrication at [illegible]

12 million [illegible] cost costs

7. Page 5, question 14: Are these numbers part of initial procurement, annual procurement, or what?

26 million per year

22 million of fuel > per year at 85% capacity

8. Page 5, question 22: Which numbers are the most likely ones to be correct?

use pro-forma as guide

9. Page 6, question 23: Will host government taxes be the same regardless of how much electricity is sold and regardless of Electricidad Enron de Guatemala's profits?

[illegible] taxes [illegible] pro-forma

approximately 1.3 million ~~tax~~ is there no matter what. Fuel oil duty was eliminated. Not signed by president yet. Local duties

10. Page 6, question 24: Are there any taxes on the import of electricity from a private supplier into the system? What does the answer mean?

May be eliminated

11. Page 7, question 32: This answer needs clarification.

12. On page 4, question 13, subsequent operational procurement from the U.S. is listed as $25 million, while on page 5, question 14 lists U.S. procurement as $26 million. If these are related, why the discrepancy?

Business Confidential Information

8. Language must be changed on page 17 to remove statement that "OPIC will insure the Project against political violence and expropriation".

9. What does it mean on page 19 when it says "INDE has given its assurances in writing to overwatch EMPRESA's performance..." What responsiblity does INDE actually have?

Could not get gov't guarantee, so this is in the place of a government guarantee.

10. Page 36 states that a drawing is attached that shows the locations of the various components of the Project. We would like a copy of the drawing (which was not included in paper).

Will send

11. What is the status of the Port Permits, as discussed on page 37?

May not required till start of operation

12. Page 41 states that Empresa is obligated to purchase 50% of the project's output. If Empresa is only purchasing 50% of the project's output, can EEG sell its additional electricity to other entities? What is EEG's break-even point relating to the amount of power that Empresa is purchasing? Can EEG make all of its debt payments if Empresa only purchases 50% capacity?

Empresa owns sole power line

still acceptable returns

100% of capacity payments

50% of energy payments

13. Page 45 mentions dispute resolution using the Private Equity Arbitrators in Guatemala. What does Enron know about the arbitration group?

Sun King owning 6% of project (in the form of 6% of gross revenues) in contract before it was purch

They are local guatemalans with a stake in project.

14. Page 66 discusses price increases in energy costs for consumers. How much of a rise in energy costs (if any) has taken place since the 4% price increase of August 1, 1991? How much is electricity currently subsidized?

Possible May

The rate that Empresa sells to its customers is set by Empresa Board of Directors, a President sits on the B of Dis. ↑ in price set on

is increasing rates

increased from 6 cents to 8 cents currently.

EEG will sell at 6 cents per KW hour

5.92 cents.

Business Confidential Information

15 Aside from the transmission line to connect EEG with the Guatemalan energy transmission line network, are there any other improvements or additions necessary for the integration? pg 67

No

16. Page 91 lists two plants being taken off line in December of 1992, and one plant being taken off line in January of 1993. Are any of these plant closings as a result of the EEG Puerto Quetzal plant coming on line in December of 1992?

Should be neutral as concerns # of employment

10% loan growth already in 1992.

Already talking about another 100 MW

17. Page 4 of the Electricity Market Background Report discusses World Bank recommendations for how the Guatemalan energy sector should be developed. Would it be possible to get a copy of this world bank report?

Business Confidential Information

Questions from Enron's Formal Application:

1. Page 2, question 6: Equity is listed as $11.34 million for Enron and $11.34 million for one other entity. Who is the other entity going to be? Is the $11.34 million figure correct? Should the $72.55 million debt figure be lowered by $4.5 million as it will no longer include the transmission line cost? $11.34+$11.34+68.05=$90.73. Is this the proper total project cost, or is it $91.4 million? If the later, where is the difference?

Equity cover for $22.68 Million

11.45 Equity rather than 11.34.

2. Page 2, question 6G mentions possible financing from host country sources. Is this still a possibility?

Not very likely, but possible

US banks in Guatemala C.Y.L.

Chap BUPB.

3. Page 3, question 7A needs review and clarification.

4. Page 3, question 8: Should ~~this be deleted~~ in its entirety?

[illegible]

Additional Questions:

1. Can EEG sell to purchasers other than Empresa?

2. Tell us more about the King Ranch

3. Will EEG burn 1% sulfur fuel, or 3% sulfer fuel? 25% difference in price
Depends on permit requirement specifics, Has high (100 ft.) stack

4. What kind of security measures will be taken at the project?
probably security guards and high fence
New Port - Exxon's biggest thing in town.

5 What's in it for the Texas-Ohio Power Company?
a payment up front and 6 months before the start of commercial operations & 6 months after commercial operations: $700,000 payment each time

6. We would like to request map of project and drawing of project organization.

E.P.C. E.P.O.C.

King Ranch a large privately held Texas located a and C owns lot of land Texas big in cattle

Ebasco large hot l construction company were owner of Empresa (until 1934?)

Ibadrola largest utility, [illegible] led on different bidding situations Exxon

Business Confidential Information

SUMMARY OF ENRON DEVLOPMENT CORP. PROJECT PARTICIPATION PLAN

94 - 6.0%
95 - 8.5%

The attached document is a summary of the principal terms and conditions of the Enron Development Corp. Project Participation Plan. In the event there is a conflict between the terms and provisions of this summary and the plan document, the terms and provisions of the plan document will control. Accordingly, you should read and review the plan document in its entirety.

Senate Finance Committee

EXHIBIT 49

EC 001936341

ENRON DEVELOPMENT CORP.
PROJECT PARTICIPATION PLAN

PLAN SUMMARY

Administration

- Plan administered by a Committee.
- Board of Directors (the "Board") of Enron Development Corp. (the "Company") acts as the Committee (or it may appoint another group of individuals to serve as the Committee).
- Committee makes all determinations required under Plan, except (a) Board determines whether Participant terminated for cause and (b) valuation determinations are subject to a dispute resolution procedure.

Participation

- All full-time, salaried employees of the Company, Enron Corp. ("Enron") and their subsidiaries are eligible.
- Committee selects Participants and determines the size of each Participant's interest in a Project ("Participation Interest").
- Participation Interests are of two types:

  Fixed — Applies to each Project that arises during the period such interest is in effect. Committee may increase a Fixed Participation Interest at any time and may reduce or terminate a Fixed Participation Interest as of any subsequent January 1.

  Specific - Applies only to the Project(s) specified by Committee.

Projects Subject to Plan

- A power, pipeline, liquids, gas storage, gas processing or other energy project or system is a "Project" subject to Plan if:

  an AFE is issued by the Company for such project or system or the Committee designates such project or system as a "Project"; and

  such project or system is developed, co-developed or acquired by the Company.

Incentive Compensation Payable under Plan

- Payments with respect to a Project are triggered by (a) completion of construction, (b) commencement of commercial operations, (c) closing of permanent, limited recourse financing, and (d) transfer or disposition of Project (or portion thereof). The incentive payment generated upon the occurrence of such an event is allocated among the Participants who have a Participation Interest in the Project at such time based upon the relative size of their Participation Interests.

- Construction payment = a percent, to be determined by the Committee on a case-by-case basis, of Enron's direct and indirect share of net cash-flow generated from construction of Project.

- Commercial operation payment = 8% of Net Project Value (reduced by any prior financial closure payment paid or payable with respect to Project).

- Financial closure payment = 8% of Net Project Value (reduced by any prior commercial operation payment paid or payable with respect to Project).

- Transfer payment = 8% of Enron's direct and indirect share of the net proceeds received in connection with the transfer (reduced by any prior commercial operation and financial closure payments paid or payable with respect to Project).

- 8% is increased to 9% for any payment that arises during a year in which the Company's net income equals or exceeds the Company's net income target established by Enron.

- Payments are reduced by amount Company uses to pay bonuses with respect to Project to employees and consultants who are not Participants.

- All payments that arise during a given year are reduced proportionately by amount in "Closed Project Account" at end of such year.

- Before payments for a given year are computed, Closed Project Account is increased by 8% of Enron's direct and indirect share of unrecovered losses for such year associated with closed Projects and other expenditures that the Committee determines will not result in a Project. After payments for a given year are computed, the Closed Project Account is reduced to the extent that it has been used to reduce payments under Plan.

- Aggregate payments with respect to any Project cannot exceed $20 million. If a Project would have generated payments greater than $20 million but for the application of this cap, then the excess is used to increase the payments for other Projects for which payments have been reduced in order to offset amounts in the Closed Project Account.

- Incentive payments are paid in three annual installments - 70% by April 15 following the plan year in which the right to receive the payment arose, 20% (plus interest at the

Enron mid-term cost of capital) by March 31 of the following year, and 100% (plus interest at the Enron mid-term cost of capital) by March 31 of the next year.

- Company may pay incentive payments in cash, shares of Enron's common stock, or in a combination of cash and stock. Enron must consent to any stock payments and register the issuance of stock.

- Participation Interests in a Project are terminated upon the earlier of (a) disposition of Project or (b) 18 months after the commencement of commercial operations.

Net Project Value

- "Net Project Value" means, with respect to a particular Project and as of a given date, the sum of (a) Enron's direct and indirect share of the net cash-flow from or attributable to such Project received prior to such date and (b) the net present value as of such date of Enron's direct and indirect share of the projected net cash-flow from or attributable to such Project.

- Net Project Value is determined without regard to net cash-flow generated in connection with construction of Project.

- Committee makes initial determination of Net Project Value.

Valuation Disputes

- A dispute resolution procedure is available to Participants if Participants owning at least 50% of the affected interests object to Committee's determination of (a) the Net Project Value for a Project, (b) Enron's share of the net proceeds received in connection with the transfer of a Project (or portion thereof), or (c) Enron's share of the net cash-flow generated in connection with the construction of a Project.

- Pursuant to dispute resolution procedure, Participants (acting as a group) and Committee each appoint a valuation expert and submit to such experts their opinion of the correct value. Valuation experts must choose one of the two valuations as correct. If they are unable to agree, a third valuation expert is appointed and a determination of the majority of the three valuation experts is final.

- Losing side pays all costs and expenses of dispute resolution process.

- All incentive payments are delayed until relevant valuation is final and binding.

Effect of Termination of Employment

EC 001936344

- Termination for cause (or resignation by Participant at any time within six months after the Board could have terminated Participant for cause) results in the total forfeiture of the Participant's Participation Interests and rights to deferred Plan payments.

- Involuntary termination by the Company, death, disability or retirement does not result in forfeiture. In such circumstances, Participant will be paid all deferred Plan payments and will keep his Participation Interest in all projects that become "Projects" prior to such termination of employment.

- Performance-based termination or voluntary termination by Participant (which excludes resignations within six months after the Board could have terminated Participant for cause) results in the forfeiture of all or a portion of the Participant's Participation Interests at the discretion of the Committee. The Committee's determinations with respect to such forfeitures can vary among individual Participants and among Participation Interests held by a Participant. However, the Committee cannot cause the forfeiture of more than 50% of a Participant's Participation Interest with respect to a particular Project if the performance-based termination or voluntary termination occurs after the key contracts relating to such Project are executed. Further, such a termination does not result in the forfeiture of Plan payments that have already been earned but not paid as of the termination date.

- Company has right to change terms and conditions of Participant's employment and/or Participant's duties and responsibilities. If Participant fails or refuses to accept such a change, then a subsequent termination is considered a performance-based termination unless Participant resigns, in which case it is considered a voluntary termination.

- Committee may, on an individual Participant basis, modify the forfeiture provisions described above and/or impose additional forfeiture rules.

Reduction in Geographic Scope of Company's Development Activities

- Participants with Fixed Participation Interests receive an aggregate cash payment equal to 8% (or 9% if the Company meets its net income target established by Enron) of the net value to Enron created by the Company's development activities in a particular country (the "Country Valuation") if Enron (a) prohibits the Company from further pursuing development activities in such country and (b) assigns such development activities to another Enron subsidiary.

- The value of any Projects located in the affected country is disregarded for purposes of determining the Country Valuation.

- Although the Committee makes initial determination of Country Valuation, a dispute resolution procedure substantially similar to the one described above is available to Participants.

Amendment and Termination of Plan

- Term of Plan = January 1, 1993 to December 31, 1995.

- Plan may be amended by Board at any time, but Plan may not be terminated prior to December 31, 1995.

c:\wp51\rwjr\misc\ppp1220.sum
12/20/93

ENRON DEVELOPMENT CORP.
PROJECT PARTICIPATION PLAN

I. Purpose of the Plan

This Enron Development Corp. Project Participation Plan is intended to provide a means whereby certain selected Employees (as such term is hereinafter defined) may develop a sense of proprietorship and personal involvement in the development and financial success of Enron Development Corp. (the "Company"), to attract and retain Employees of outstanding competence and ability, to encourage them to devote their best efforts to the business of the Company, and to reward them for outstanding performance benefiting the Company and its stockholders.

II. Definitions

As used in the Plan, the following capitalized words and phrases shall have the meanings indicated below except where the context may otherwise require:

(a) "Affected Participant" means, with respect to a Valuation Determination, each Participant who has an outstanding Participation Interest in the Project relating to such Valuation Determination; provided, however, that for purposes of Section XIV hereof, the term "Affected Participant" shall have the meaning assigned to such term in Section XIV(e) hereof.

(b) "Award Agreement" means the written agreement between a Participant and the Company evidencing the award of a Participation Interest and specifying certain terms and conditions with respect thereto.

"Board" means the Board of Directors of the Company.

(d) "Closed Project" means a Project that the Committee has determined cannot reasonably be expected to commence commercial operations and for which one or more Project AFEs has been issued.

(e) "Closed Project Account" means an account established and maintained in the manner described in Section VI(b) hereof.

(f) "Committee" means the Board acting as a committee of the whole or another committee (the members of which need not be members of the Board and may or may not be Participants or eligible to participate in the Plan) appointed from time to time by the Board to administer the Plan.

"Common Stock" means the common stock of Enron.

"Company" means Enron Development Corp., a Delaware corporation.

(i) "Construction Percentage" means, with respect to a particular Fully Constructed Project, the "Construction Percentage" (which may be 0%) for such Project determined by the Committee in its sole discretion.

(j) "Construction Date" means, with respect to a particular Project, the date upon which the construction of, improvements to or refurbishment of such Project is complete and the Net Construction Value attributable to the construction of, improvements to or refurbishment of such Project may be determined. There shall be no more than one Construction Date with respect to any particular Project, and there shall be no Construction Date with respect to (i) a Project that does not require the physical construction of, or improvements or refurbishments to, a facility or (ii) a Project in which no Enron Entity has an interest in the Net Construction Value relating to any such construction.

(k) "Employee" means any individual, including an officer (whether or not also a director), who, at the time of an award of a Participation Interest, is employed by the Company, Enron or any of their respective Subsidiaries on a full-time salaried basis.

(l) "Enron" means Enron Corp, a Delaware corporation.

(m) "Enron Entity" means Enron or any entity in which Enron owns a direct or indirect equity interest.

(n) "Financed Project" means a Project in which an Enron Entity owns an interest on the Financial Closure Date for such Project.

(o) "Financial Closure Date" means, with respect to a particular Project, the first date on which there is a closing between an Enron Entity and one or more third parties with respect to permanent project financing on a limited recourse basis for such Project. There shall be no more than one Financial Closure Date with respect to any particular Project. Further, there shall be no Financial Closure Date with respect to a Project if the closing of such financing does not occur on or before the date which is 12 months after the Operation Commencement Date relating to such Project.

(p) "Fully Constructed Project" means a Project in which an Enron Entity has an interest in the Net Construction Value relating to such Project on the Construction Date for such Project.

(q) "General AFE" means the authorization of an expenditure of Company funds given in accordance with normal Company procedures, but excluding any Project AFE.

(r) "Interest Credit Rate" means the Enron mid-term cost of capital as determined by the Committee. The Committee shall determine the Interest Credit Rate as of the first day of January of each year.

(s) "Net Construction Value" means, with respect to a particular Project and as of a given date, Enron's share of the net cash flow generated in connection with the construction

of, improvements to or refurbishment of such Project by one or more Enron Entities. Enron's share of such net cash flow shall be determined based upon Enron's direct and indirect ownership in the Enron Entities entitled to participate in such net cash flow.

(t) "Net Project Value" means, with respect to a particular Project and as of a given date, the sum of (i) Enron's share of the net cash flow from or attributable to such Project that has been received on or before such date and (ii) the net present value as of such date of Enron's share of the projected net cash flow from or attributable to such Project; provided, however, that the Net Construction Value with respect to such Project shall be disregarded for purposes of determining the Net Project Value of such Project. For purposes of the preceding sentence, (1) the net cash flow from or attributable to a Project shall be determined based upon (A) all costs and expenses under Project AFEs applicable to such Project, and (B) all sources of revenue relating to such Project (excluding the Net Construction Value with respect to such Project but including, without limitation, the net cash flow attributable to construction management fees that are not included in determining Net Construction Value, fuel management fees, development fees, operating and maintenance fees, and interest rate and currency hedging activities in respect of the financing or earnings of such Project (with any losses relating to such hedging activities to also be considered) and any other transactions, additions, expansions or improvements directly related to such activities) and (2) Enron's share of net cash flow shall be determined based upon Enron's direct and indirect ownership in the Enron Entities entitled to participate in such net cash flow. Net Project Value shall be determined based on such factors and information as the Committee deems relevant, which may include the information and assumptions utilized in obtaining approval of Project AFEs with respect to the subject Project, valuations prepared by the Company or other parties in connection with obtaining financing for such Project, the actual performance of such Project, current market conditions and the Company's current valuation methodology for evaluating proposed projects that are comparable to such Project.

(u) "Net Transfer Proceeds" shall have the meaning assigned to such term in Section II(af) hereof.

(v) "Operating Project" means a Project in which an Enron Entity owns an interest on the Operation Commencement Date for such Project.

(w) "Operation Commencement Date" means, with respect to a particular Project, the later of (i) the date on which commercial operations commence with respect to substantially all of such Project, and (ii) the date on which start-up and testing of such Project have been successfully completed. There shall be only one Operation Commencement Date with respect to any particular Project.

(x) "Participant" means an Employee who has been awarded a Participation Interest under the Plan.

(y) "Participation Interest" means an interest awarded under the Plan pursuant to an Award Agreement with respect to a Project for the purpose of measuring and defining the incentive compensation payable under the Plan. A Participation Interest shall be expressed as a percentage.

(z) "Plan" means this Enron Development Corp. Project Participation Plan, as amended from time to time.

(aa) "Plan Payment" shall have the meaning assigned to such term in Section VII(b) hereof.

(ab) "Plan Payment Date" means, with respect to a particular Project, a Construction Date, Financial Closure Date, Operation Commencement Date or Transfer Date relating to such Project.

(ac) "Plan Year" means the twelve-consecutive month period commencing January 1 of each year.

(ad) "Project" means any power, pipeline, liquids, gas storage, gas processing or other energy project or system (i) developed, co-developed with a non-Enron Entity or acquired by the Company, and (ii) for which a Project AFE is issued or which is designated as a Project by the Committee for purposes of the Plan. For the period preceding the date the Plan is adopted by the Board, the projects listed on Exhibit A attached hereto shall constitute Projects subject to the Plan.

(ae) "Project AFE" means the authorization of an expenditure of Company funds, given in accordance with normal Company procedures, with respect to a power, pipeline, liquids, gas storage, gas processing or other energy project or system (i) acquired or developed by the Company, (ii) co-developed by the Company with a non-Enron Entity or (iii) to be developed by the Company or co-developed with a non-Enron Entity by the Company.

(af) "Project Incentive Amount" means:

(i) with respect to a Financed Project, the Project Percentage for such Project multiplied by the Net Project Value of such Project as of the Financial Closure Date relating to such Project (but such amount shall be reduced (but not below zero) by the amount determined pursuant to clause (ii) below if the Operation Commencement Date relating to such Project occurred on or before such Financial Closure Date);

(ii) with respect to an Operating Project, the Project Percentage for such Project multiplied by the Net Project Value of such Project as of the Operation Commencement Date relating to such Project (but such amount shall be reduced (but not below zero) by the amount determined pursuant to clause (i) above if the Financial Closure Date relating to such Project occurred prior to such Operation Commencement Date);

(iii) with respect to a Fully Constructed Project, the Construction Percentage for such Project multiplied by the Net Construction Value for such Project as of the Construction Date relating to such Project; and

(iv) with respect to a Project (or portion thereof or assets relating thereto) for which a Transfer Date occurs, the Project Percentage for such Project as of such Transfer Date multiplied by an amount (the "Net Transfer Proceeds") equal to the difference, if any, between (1) the fair market value (with the fair market value of any assets received in a form other than cash to be determined by the Committee) of Enron's direct or indirect share of the net proceeds received in connection with the transaction giving rise to such Transfer Date that are attributable to the decrease in Enron's aggregate direct and indirect ownership interest in such Project (or portion thereof or assets relating thereto), and (2) Enron's direct or indirect share of the investment in, and costs and expenses associated with, the transferred Project (or portion thereof or assets relating thereto) as reflected in the Project AFEs applicable to such Project; provided, however, that the amount determined pursuant to this clause (iv) shall be reduced (but not below zero) by the amounts determined pursuant to clauses (i) and (ii) above if the Financial Closure Date and/or Operation Commencement Date, as applicable, relating to such Project occurred on or before such Transfer Date.

Notwithstanding the preceding provisions of this paragraph (af), any amount determined pursuant to clause (i), (ii), (iii) and/or (iv) above shall be reduced by the amount, if any, that the Company determines, in its sole discretion, shall be used to pay bonuses with respect to the subject Project to employees and consultants who are not Participants. Except as otherwise expressly provided herein, there may be more than one Project Incentive Amount determined pursuant to the preceding provisions of this paragraph (af) with respect to each Project.

(ag) "Project Percentage" means 8% with respect to each Project; provided, however, that if an event occurs with respect to a Project that gives rise to a Plan Payment (other than a Plan Payment based on Net Construction Value) and such event occurs during a Plan Year for which the Company's net income for such year equals or exceeds the Company's net income target for such year, as established by Enron, then the Project Percentage shall mean 9% for purposes of determining the amount of such Plan Payment.

(ah) "Quoted Price" means, for any given day, the last reported per share sale price (or, if no sale price is reported, the average of the bid and ask prices or, if more than one in either case, the average of the average bid and average ask prices) on such day of the Common Stock on the New York Stock Exchange composite tape or, if the Common Stock is not listed on the New York Stock Exchange, in the composite transactions quotations for such other national or regional securities exchange upon which the Common Stock is listed or, if the Common Stock is not listed on a national or regional securities exchange, as quoted on The National Association of Securities Dealers Automated Quotation Stock Market. In the absence of such quotations, Enron shall be entitled to determine the Quoted Price on the basis of such quotations as it considers appropriate.

(ai) "Sharing Ratio" means, with respect to each Participant with an outstanding Participation Interest in a particular Project as of a given date, the ratio (expressed as a percentage) of such Participant's outstanding Participation Interest in such Project as of such date to the aggregate outstanding Participation Interests in such Project awarded to all Participants as of such date.

(aj) "Subsidiary" means any corporation in which a given corporation owns, directly or indirectly, stock possessing more than 50% of the total combined voting power of all classes of stock.

(ak) "Trading Day" means a day during which trading in securities generally occurs on the New York Stock Exchange or, if the Common Stock is not listed on the New York Stock Exchange, on the principal or other national or regional securities exchange on which the Common Stock has been listed or, if the Common Stock is not listed on a national or regional securities exchange, on the National Association of Securities Dealers Automated Quotation Stock Market or, if the Common Stock is not quoted thereon, on the principal other market on which the Common Stock is then traded.

(al) "Transfer Date" means, with respect to a particular Project (or portion thereof or assets relating thereto), the date upon which occurs a transfer of such Project (or portion thereof or assets relating thereto) to an entity (including an Enron Entity) resulting, directly or indirectly, in a decrease in Enron's aggregate direct and indirect ownership interest in such Project or assets. The transfer of any Project or the assets relating thereto to an Enron Entity that does not result in a decrease in Enron's aggregate direct and indirect ownership interest in such Project or assets shall not give rise to a Transfer Date, shall not affect any Participant's Participation Interest in such Project and such Participation Interest shall continue to apply to such transferred Project (or such transferred assets as if they remained a part of such Project).

(am) "Valuation Determination" means a determination by the Committee of the Net Construction Value, Net Project Value or Net Transfer Proceeds for a particular Project as of a particular date.

(an) "Valuation Expert" means, with respect to a particular Valuation Determination, an independent, third-party evaluator or appraiser (whether an individual or a firm) experienced in the valuation of projects or activities similar to those that are the subject of such Valuation Determination; provided, however, that for purposes of Section XIV hereof, the term "Valuation Expert" shall mean an independent, third-party evaluator or appraiser (whether an individual or a firm) experienced in the valuation of entities engaged ~~in the~~ same or a similar business to that of the Company.

(ao) "Valuation Notice" means the notice described in Section VII(c) hereof.

III. Administration of the Plan

(a) General. The Plan shall be administered by the Committee. The Committee shall have all of the powers and duties specified for it under the Plan, including, but without limiting the generality of the foregoing, the selection of Participants and, subject to the limitation set forth in Section V(c) hereof, the determination of Participation Interests to be awarded each Participant. The Committee may from time to time establish rules and procedures for the administration of the Plan which are not inconsistent with the provisions of the Plan (except as hereinafter permitted), and any such rules and procedures shall be effective as if included in the Plan. Although the Plan contemplates that more than one Plan Payment Date can occur with

respect to a Project and, accordingly, more than one series of Plan Payments can be made with respect to a Project, it is intended that Participants be paid not more than once with respect to any increment of a Project's value. Therefore, the Committee shall administer and interpret the Plan and take any other actions it deems necessary or advisable (including, without limitation, establishing rules and procedures designed to eliminate, modify or clarify any provision of the Plan that may be inconsistent with the intention expressed in the preceding sentence) to ensure that no such "double-dip" occurs.

(b) Meetings. A majority of the members of the Committee shall constitute a quorum for the transaction of business. All action taken by the Committee at a meeting shall be by the vote of a majority of those present at such meeting, but any action may be taken by the Committee without a meeting upon written consent signed by all of the members of the Committee. Members of the Committee may participate in a meeting by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other. No member of the Committee shall vote on any matter directly affecting the amounts payable under the Plan to such member.

(c) Committee Determinations. All determinations of the Committee as to which Employees shall be awarded Participation Interests and, subject to the limitation set forth in Section V(c) hereof, the amount or size of such Participation Interests shall be final, binding and conclusive upon all persons. The Committee shall make all other determinations necessary or advisable for the administration of the Plan, including, without limitation, determinations as to whether and when a Project has become a Closed Project, determinations as to whether a Construction Date, Financial Closure Date, Operation Commencement Date or a Transfer Date has occurred with respect to a Project, determinations as to the right of any person to a payment under the Plan and the amount of such payment and as to the construction or interpretation of any provision of the Plan and of any Award Agreement, and any determination made by the Committee shall be final, binding, and conclusive upon all persons except as expressly provided in Sections VII(c), VII(d) and XIV(c) hereof.

(d) Delegation of Decision Making Authority to Board and Committee; Board and Committee Decisions Conclusive; Standard of Care. All decisions, determinations and actions to be made or taken by the Board or the Committee pertaining to the Plan, an Award Agreement, or a Participant's employment or termination of employment are hereby delegated to the Board or Committee by Enron, the Company, other Enron Entities, the Participants and Employees; the Board or the Committee shall, in its sole discretion exercised in good faith, make such decisions or determinations and take such actions; and all such decisions, determinations and actions by the Board or the Committee, as the case may be, shall be final, binding and conclusive upon all persons except as expressly provided in Sections VII(c), VII(d) and XIV(c) hereof. The Board and the Committee shall not be liable for any decision, determination or action taken in good faith in connection with any Participant's or Employee's employment by the Company, Enron, or any of their respective Subsidiaries, or the administration of the Plan. Without limiting the generality of the foregoing, any such decision, determination or action taken by the Board or the Committee in reliance upon any information supplied to them by an officer of the Company, Enron, or any of their respective Subsidiaries, legal counsel for the Company, Enron, or any of their respective Subsidiaries, or by independent

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accountants in connection with such employment issues or the administration of the Plan shall be deemed to have been taken in good faith.

IV. Eligibility and Participation

(a) Eligible Individuals. All Employees are eligible to be selected by the Committee for participation in the Plan. Participation in the Plan and the award of Participation Interests to Employees shall be in the discretion of the Committee, and the Committee may from time to time establish further eligibility requirements for participation in the Plan. Subject to the limitation set forth in Section V(c) hereof, the Participation Interest of each Employee selected by the Committee to be a Participant shall be determined in the discretion of the Committee.

(b) Award Agreements. The terms and provisions of each award or grant of a Participation Interest, as determined by the Committee in its sole discretion, shall be set forth in an Award Agreement, which shall incorporate by reference, and be subject to, the terms and provisions of the Plan. Each Award Agreement shall contain such provisions not inconsistent with the Plan as the Committee deems appropriate. The terms and provisions set forth in Award Agreements may vary among Participants and may vary among the Award Agreements of an individual Participant.

V Participation Interests

(a) Fixed Participation Interests. In an Award Agreement, the Committee may award to an Employee a Participation Interest that constitutes a fixed Participation Interest that, unless and to the extent otherwise specified by the Committee in such Award Agreement, applies to each Project that arises during the period for which such fixed Participation Interest is in effect; provided, however, that each such Award Agreement that is effective as of January 1, 1993 shall apply to each Project listed on Exhibit A attached hereto and to each Project that arises on or after the date the Plan is adopted by the Board and during the term that such fixed Participation Interest remains in effect. Such fixed Participation Interest shall remain in effect, unless and to the extent otherwise specified by the Committee in such Award Agreement, until and unless the Committee changes such fixed Participation Interest in accordance with the following provisions. The Committee may increase such fixed Participation Interest at any time. Effective as of the first day of any Plan Year, the Committee may reduce or eliminate entirely such fixed Participation Interest. Any such change in such fixed Participation Interest shall be applicable, and the new fixed Participation Interest, if any, shall be substituted for the former fixed Participation Interest, but only with respect to Projects that arise during the period beginning on the first day as of which such change is effective and ending on the day immediately preceding the effective date of any subsequent change of such fixed Participation Interest. All changes in fixed Participation Interests shall be communicated in writing to the affected Participant prior to the effective date of such change and may, in the discretion of the Committee, be documented in a new Award Agreement (which may be executed before or after such effective date).

(b) Specific Participation Interests. In an Award Agreement, the Committee may award to an Employee a Participation Interest that applies to one or more Projects specified by the Committee in such Award Agreement. Such Participation Interests may be awarded at the

beginning, during, or upon completion of a Project. It is expected that such Participation Interests will be awarded based upon the selected individual's level of involvement and responsibility in the development of a particular Project.

(c) Limit on Participation Interests. In no event may the aggregate of all Participation Interests (fixed and otherwise) as applied to any given Project exceed the Project Percentage applicable to such Project.

(d) Cancellation of Participation Interests. Subject to the Company's payment of the Plan Payments relating to Plan Payment Dates for a particular Project that occur on or before a Transfer Date for such Project, the Participation Interest of each Participant in such Project shall be cancelled as of such Transfer Date (but such cancellation shall only apply to the Participation Interest in the portion of such Project involved in such transfer). If not sooner terminated pursuant to the provisions of the preceding sentence, subject to the Company's payment of the Plan Payments relating to Plan Payment Dates for a particular Project that occur on or before the date as of which the Participation Interests in such Project are cancelled, the Participation Interest of each Participant in such Project shall be cancelled in its entirety as of the date which is 18 months after the Operation Commencement Date relating to such Project.

VI. Books and Records, Closed Project Account and Limitations on Plan Payment Amounts

(a) Books and Records; General and Project AFEs. The Company shall maintain accounting books and records regarding each Project, General AFE and Project AFE that are appropriate for making the determinations required under the Plan. Except as otherwise specifically required, the normal books, records, and statements maintained or prepared by the Company shall be conclusively utilized for purposes of the Plan. For the period preceding the date the Plan is adopted by the Board, the General AFEs and Project AFEs listed on Exhibit B attached hereto shall be considered for purposes of the Plan. With respect to each such General AFE and Project AFE, Exhibit B also sets forth the amount of funds actually expended for purposes of the Plan as of the date set forth in Exhibit B according to the Company's accounting books and records.

(b) Closed Project Account. The Company shall establish and maintain a Closed Project Account in its records pertaining to the Plan. As soon as practicable after a Project becomes a Closed Project, the Committee shall determine the aggregate amount of Enron's share of the unrecovered costs and expenses associated with such Project (the "Closed Project Loss"). Enron's share of such unrecovered costs and expenses shall be determined based upon Enron's direct and indirect ownership in the Enron Entities that incurred such costs and expenses under the Project AFEs applicable to such Closed Project. As of the date a Project becomes a Closed Project, the Closed Project Account shall be increased by an amount equal to 8% of the Closed Project Loss for such Project. Except as provided in Section XIV(b) hereof, as of the date the Committee determines that a General AFE cannot reasonably be expected to result in a Project, the Closed Project Account shall be increased by an amount equal to 8% of Enron's share of the unrecovered funds expended under such General AFE. Enron's share of such funds shall be determined based upon Enron's direct and indirect ownership in the Enron Entities that expended such funds. After the Closed Project Account has been adjusted for a Plan Year pursuant to the

preceding provisions of this paragraph (b), the amount in the Closed Project Account shall be applied to reduce the incentive compensation payable under the Plan for such Plan Year in the manner described in Section VII(a) hereof. Immediately after the last day of each Plan Year and the computation of the incentive compensation payable pursuant to Section VII hereof for such Plan Year, the Closed Project Account shall be reduced (but not below zero) by an amount equal to the APIA (as such term is defined in Section VII(a) hereof) for such Plan Year.

(c) Limitations on Plan Payment Amounts. Notwithstanding any provision in the Plan to the contrary, the aggregate sum of all Plan Payment Amounts (as such term is defined in Section VII(a) hereof) relating to a Project shall not exceed A minus B, where A equals $20 million and B equals the amount that the Company determines, in its sole discretion, shall be used to pay bonuses with respect to such Project to employees and consultants who are not Participants. This limit shall be applied by allowing the maximum Plan Payment Amount relating to such Project to be considered for purposes of the Plan based upon the earliest Plan Payment Date as of which such amount is determined pursuant to the terms of the Plan. For example, if a Construction Date relating to such Project occurs prior to a Financial Closure Date for such Project, then the limit shall be applied by, first, computing the maximum amount payable under this limit pursuant to Section VII hereof with respect to such Construction Date, and, then, computing the maximum amount payable under this limit pursuant to Section VII hereof with respect to such Financial Closure Date. The application of this limit shall not affect amounts paid to Participants with respect to such Project prior to reaching the limit; rather, once the limit is reached, there shall be no further amounts payable with respect to such Project and such Project shall no longer be subject to the Plan.

VII. Incentive Compensation Payable under the Plan

(a) Plan Payment Amounts. With respect to each Plan Payment Date relating to a Project, the Company shall pay, as incentive compensation to each Participant with an outstanding Participation Interest in such Project as of such Plan Payment Date, an amount equal to (i) such Participant's Sharing Ratio with respect to such Project as of such Plan Payment Date, multiplied by (ii) the "Plan Payment Amount" relating to such Project and such Plan Payment Date. The "Plan Payment Amount" relating to ~~a~~ particular Project and Plan Payment Date shall be an amount equal to:

PIA - Allocable Share of Closed Project Account; where

PIA = the Project Incentive Amount relating to such Project and such Plan Payment Date;

Allocable Share of Closed Project Account = an amount (but not to exceed PIA) equal to (PIA ÷ APIA) x CPA;

APIA = the aggregate sum of all Project Incentive Amounts for all Projects (including such Project) that have a Plan Payment Date during the Plan Year in which such Plan Payment Date occurs; and

CPA = the balance of the Closed Project Account as of the last day of the Plan Year in which such Plan Payment Date occurs.

If a Plan Payment Amount (as determined above and without regard to the limit described in Section VI(c) hereof) exceeds the limit described in Section VI(c) hereof, then (1) such Plan Payment Amount shall be reduced by an amount (the "Excess Amount") necessary to cause such Plan Payment Amount to satisfy such limit, and (2) such Excess Amount shall be applied in the manner hereinafter described to increase the Plan Payment Amount, if any, payable with respect to each other Project not yet subject to the limit set forth in Section VI(c) hereof (an "Affected Project") that had a Plan Payment Date (an "Affected Payment Date") during the Plan Year in which occurred the Plan Payment Date that gave rise to such Excess Amount. Each such Plan Payment Amount relating to a particular Affected Project and Affected Payment Date shall be increased by an amount equal to:

EA x (AS ÷ Aggregate AS); where

EA = such Excess Amount;

AS = an amount equal to the Allocable Share of Closed Project Account (as determined above) applicable to such Affected Project and such Affected Payment Date; and

Aggregate AS = the aggregate sum of all Allocable Shares of Closed Project Account (as determined above) applicable to all Affected Projects and Affected Payment Dates.

Notwithstanding the preceding provisions of this paragraph (a), (A) any such increase in a Plan Payment Amount shall be limited so that such adjusted Plan Payment Amount does not exceed the Project Incentive Amount relating to such Affected Project and such Affected Payment Date, and (B) if any such increase in a Plan Payment Amount causes such adjusted Plan Payment Amount to exceed the limit described in Section VI(c) hereof, then such adjusted Plan Payment Amount shall be reduced by the amount of such excess, such excess shall be treated as an Excess Amount and such Excess Amount shall be reallocated in a manner similar to that described above to further increase the Plan Payment Amounts for such Plan Year that relate to Affected Projects not yet subject to the limit set forth in Section VI(c) hereof. Set forth on Exhibit C attached hereto is an example of Plan Payment Amount computations.

(b) Plan Payments. The portion of each Plan Payment Amount, if any, to be paid to a Participant pursuant to paragraph (a) above shall be paid in three installments (the "Plan Payments"). The first such Plan Payment shall be in an amount equal to 70% of such portion of such Plan Payment Amount and shall be paid on or before the date which is 105 days after the last day of the Plan Year in which the related Plan Payment Date occurred. The second such Plan Payment shall be in an amount equal to 20% of such portion of such Plan Payment Amount (plus interest thereon at the Interest Credit Rate for the period beginning on the date which is 105 days after the close of the Plan Year in which such Plan Payment Date occurred and ending on the date of payment of the second Plan Payment) and shall be paid on or before the date

which is 90 days after the first anniversary of the last day of the Plan Year in which such Plan Payment Date occurred. The third such Plan Payment shall be in an amount equal to 10% of such portion of such Plan Payment Amount (plus interest thereon at the Interest Credit Rate for the period beginning on the date which is 105 days after the close of the Plan Year in which such Plan Payment Date occurred and ending on the date of payment of the third Plan Payment) and shall be paid on or before the date which is 90 days after the second anniversary of the last day of the Plan Year in which such Plan Payment Date occurred. Notwithstanding the preceding provisions of this paragraph (b), no Plan Payment shall be paid prior to the date upon which there is a final and binding determination (pursuant to the procedures set forth in paragraphs (c), (d) and (e) below) of the Net Construction Value, Net Project Value or Net Transfer Proceeds, as applicable, for the Project to which such Plan Payment relates. In the event a Plan Payment is delayed because such a final and binding determination has not been made as of the date such Plan Payment would otherwise have been paid, such Plan Payment (plus interest thereon at the Interest Credit Rate for the period beginning on the date which is 105 days after the close of the Plan Year in which the Plan Payment Date occurred and ending on the date of payment of such delayed Plan Payment) shall be paid as soon as practicable after such determination has been made. Further, each Plan Payment to a Participant shall be deferred beyond the dates set forth in the preceding provisions of this paragraph (b) if and to the extent that such Plan Payment, when added to any other remuneration provided to such Participant by the Company, Enron or any of their respective Subsidiaries, would result in any such amounts being nondeductible pursuant to section 162(m) (or any successor provision) of the Internal Revenue Code of 1986, as amended. In the event all or any portion of a Plan Payment is deferred beyond the date such amount would otherwise have been paid for the reason stated in the preceding sentence, such amount (plus interest thereon at the Interest Credit Rate for the period beginning on the date which is 105 days after the close of the Plan Year in which the related Plan Payment Date occurred and ending on the date of payment of such delayed amount) shall be paid as soon as practicable after the date upon which such amount can be paid on a deductible basis under such section. Any payment under this Section VII shall be subject to the provisions of Sections VIII and IX hereof.

(c) Valuation Notices and Acceptance or Rejection of Valuation Determinations. Within 90 days after each Plan Payment Date relating to a Project, the Company shall deliver to each Participant who holds a Participation Interest with respect to such Project a written notice (the "Valuation Notice") setting forth the Plan Payment Date and the Committee's determination of the Net Construction Value, Net Project Value or Net Transfer Proceeds, as applicable, relating to such Project as of such date. On or before the date which is 15 days after the delivery of the Valuation Notice, each Participant who has received a Valuation Notice shall deliver to the Committee the form attached to such notice indicating whether such Participant accepts or rejects the Committee's Valuation Determination which is the subject of such Valuation Notice. A Participant who fails to timely return such form shall be conclusively deemed to have accepted such Valuation Determination. If Affected Participants with an aggregate Sharing Ratio pertaining to such Valuation Determination of 50% or more reject such Valuation Determination, then no Plan Payments that are dependent on such Valuation Determination shall be made to any Participant until such time as a final determination of such Net Construction Value, Net Project Value or Net Transfer Proceeds, as applicable, is made pursuant to the procedures set forth in paragraphs (d) and (e) below, which final determination

shall be binding on all Participants who received such Valuation Notice. If such Valuation Determination is not rejected by Affected Participants with an aggregate Sharing Ratio pertaining to such Valuation Determination of 50% or more, then such determination shall be final and binding on all Participants who received such Valuation Notice (including those who timely rejected such determination).

(d) Review of Valuation Determinations. If Affected Participants with an aggregate Sharing Ratio pertaining to a Valuation Determination of 50% or more elect to reject such Valuation Determination (with such election to be made in a written notice filed with the Committee within 15 days after delivery of the Valuation Notice setting forth such Valuation Determination), then such Affected Participants (acting as a single group) and the Committee shall each appoint and pay the costs and expenses of one Valuation Expert and each submit to such two Valuation Experts their opinion of what the exact Net Construction Value, Net Project Value or Net Transfer Proceeds, as applicable, which is the subject of such Valuation Determination should be, and the reasons therefor. Such Valuation Experts must select one of those two valuations and no other as the valuation that will be used for purposes of the Plan. If the two representatives so appointed cannot agree on one of the two valuations within 30 days after their appointment, then such two representatives shall agree by the end of such period on the appointment of a third Valuation Expert, and the determination of the majority of the three Valuation Experts as to which valuation is correct shall be final and binding.

(e) Costs and Expenses of Review. If a determination by the Committee which is reviewed pursuant to paragraph (d) above is upheld on such review, then the Affected Participants who requested such review shall be jointly and severally liable to reimburse or otherwise bear all costs and expenses of the Company and the Committee incurred during the dispute resolution process with respect to the Committee's retention of its Valuation Expert (and, if utilized, the third Valuation Expert). If such a determination is not upheld on such review, then the Company shall reimburse or otherwise bear all costs and expenses of the Affected Participants incurred during the dispute resolution process with respect to their retention of their appointed Valuation Expert (and, if utilized, the third Valuation Expert).

VIII. Form of Plan Payments

(a) Cash or Common Stock. Subject to paragraph (b) below, all Plan Payments to be made under the Plan to a Participant shall, in the sole discretion of the Company, be paid either (i) in cash, (ii) in shares of Common Stock or (iii) in a combination of cash and shares of Common Stock; provided, however, that the payment of all or any portion of a Plan Payment in shares of Common Stock shall be subject to the consent and approval of Enron. If the Company, with the consent and approval of Enron, elects to pay all or a portion of a Plan Payment in shares of Common Stock, the number of shares of Common Stock shall be determined by dividing the amount of the Plan Payment to be paid in shares of Common Stock by the average of the Quoted Prices of a share of Common Stock on the five consecutive Trading Days immediately preceding the payment date for such Plan Payment, and rounding such number to the nearest whole share.

(b) Participant Elections Regarding Payments in Common Stock. If the Company, with the consent and approval of Enron, elects to pay all or a portion of a Participant's Plan Payment in shares of Common Stock, then the Company shall, nevertheless, pay at least 25% of such Plan Payment in cash to such Participant, unless such Participant elects, by executing Attachment I to the Award Agreement and delivering it to the Company at least 10 days prior to the payment date for such Plan Payment, to have such Plan Payment payable in Common Stock to the fullest extent so elected by the Company.

(c) Registration Requirements. Prior to any payment date relating to a Plan Payment all or a portion of which is to be paid in shares of Common Stock, Enron shall file and cause to become effective with the Securities and Exchange Commission (the "SEC"), and Enron shall use its reasonable best efforts to maintain such effectiveness until such shares of Common Stock are issued, one or more Registration Statements on Form S-8 (or such other equivalent forms as may be adopted from time to time by the SEC) registering the issuance of such shares of Common Stock under the Securities Act of 1933, as amended. The Company or Enron will bear all expenses incurred by Enron in connection with the filing of the registration statements pursuant to this Section VIII (other than underwriting discounts and commissions and brokerage commissions and fees and expenses, if any, payable with respect to shares of Common Stock sold by Participants and fees and expenses of counsel for any Participant).

IX. Effect of Participant's Termination of Employment

(a) For purposes of this Section IX, the following capitalized words and phrases shall have the meanings indicated below:

(i) "Cause" means a determination by the Board that a Participant (1) has engaged in gross negligence or willful misconduct in the performance of his or her duties with respect to the Company, Enron or any of their respective Subsidiaries, (2) has been convicted of a felony (which, through lapse of time or otherwise, is not subject to appeal), (3) has willfully refused without proper legal reason to perform his or her duties and responsibilities to the Company, Enron or any of their respective Subsidiaries, (4) has materially breached any material provision of a written employment agreement or corporate policy or code of conduct established by Enron, the Company and/or any of their respective Subsidiaries, or (5) has willfully engaged in conduct which he or she knows or should know is materially injurious to the Company, Enron or any of their respective Subsidiaries.

(ii) "Disability" means, with respect to a Participant, such Participant's disability entitling him or her to benefits under Enron's long-term disability plan; provided, however, that if such Participant is not eligible to participate in such plan, then such Participant shall be considered to have incurred a "Disability" if he or she is permanently and totally unable to perform his or her duties for the Company, Enron or any of their respective Subsidiaries as a result of any medically determinable physical or mental impairment as supported by a written medical opinion to the foregoing effect by a physician selected by the Committee.

(iii) "Involuntary Termination" means the termination by the Company, Enron or any of their respective Subsidiaries of a Participant's employment with the Company on any grounds whatsoever other than for Cause or by reason of such Participant's death, Disability, Retirement, or Performance Based Termination. No action (other than the actual termination of a Participant's employment by the Company, Enron or any of their respective Subsidiaries) with respect to the terms and conditions of a Participant's employment (including, without limitation, changing such Participant's principal place of employment to any location in the world) or with respect to such Participant's duties and responsibilities shall be construed or interpreted as giving rise to an Involuntary Termination. If, following any such action, a Participant's employment with the Company is terminated as a result of such Participant's failure or refusal to accept such new terms and conditions of employment and/or such new duties and responsibilities, then such termination of employment shall be considered a Performance Based Termination unless such termination occurs by reason of such Participant's resignation, in which case it shall be considered a Voluntary Termination.

(iv) "Performance Based Termination" means either (1) the delivery by the Company to a Participant of a notice informing such Participant that he or she will no longer be working on Company business based upon a determination by the Board that such Participant has failed to perform his or her duties and responsibilities to the Company, Enron or any of their respective Subsidiaries in a satisfactory manner, or (2) the termination by the Company, Enron or any of their respective Subsidiaries of a Participant's employment with the Company based upon a determination by the Board that such Participant has failed to perform his or her duties and responsibilities to the Company, Enron or any of their respective Subsidiaries in a satisfactory manner; provided, however, that a termination for Cause shall not constitute a Performance Based Termination.

(v) "Retirement" means termination of employment with the Company after the earlier of (1) attaining age 65 or (2) both attaining age 55 and completing five years of accrual service under the Enron Corp Retirement Plan as in effect on the date this Plan is adopted by the Board.

(vi) "Voluntary Termination" means the termination of the employment of a Participant with the Company that is not an Involuntary Termination, a termination for Cause, a Performance Based Termination, or the result of death, Disability or Retirement. Notwithstanding the preceding provisions of this paragraph (a)(vi), such a termination of employment shall not be considered a Voluntary Termination if, at any time during the six-month period ending on the date of such termination, such Participant's employment with the Company could have been terminated for Cause.

(b) Terminations for Cause and Certain Other Terminations. If a Participant's employment with the Company is terminated (i) for Cause or (ii) for any other reason whatsoever other than Involuntary Termination or such Participant's death, Disability, Retirement, Performance Based Termination, or Voluntary Termination, then such Participant shall forfeit all Participation Interests then held by such Participant, such Participation Interests

shall be cancelled, and no amounts (including, without limitation, deferred Plan Payments payable under Section VII hereof) shall be payable under the Plan to such Participant from and after the date of such termination of employment.

(c) Involuntary Termination, Death, Disability or Retirement. If a Participant's employment with the Company is terminated in an Involuntary Termination or by reason of such Participant's death, Disability, or Retirement, the Participation Interests of such Participant shall remain intact and not be forfeited and such Participant (or his or her estate in the case of death) shall continue to be entitled to receive incentive compensation, if any, as provided in the Plan with respect to such Participation Interests.

(d) Performance Based or Voluntary Termination. If a Participant's employment with the Company is subject to a Performance Based Termination or is terminated by reason of such Participant's Voluntary Termination, the Committee shall determine the portion (which may be 100%) of such Participant's Participation Interest relating to each Project that shall be forfeited and cancelled and with respect to which no amounts shall be payable under the Plan to such Participant from and after the date of such termination of employment. The portion of such Participant's Participation Interest relating to a particular Project that is not so forfeited and cancelled shall remain intact and such Participant (or his or her estate in the case of death) shall continue to be entitled to receive incentive compensation, if any, as provided in the Plan with respect to such portion of such Participation Interest. The Committee's determinations with respect to forfeitures of Participation Interests (or portions thereof) upon a Performance Based Termination or Voluntary Termination may vary among individual Participants and may vary among the Participation Interests held by a Participant. The Committee shall consider such factors as it deems relevant in determining the portion of a Participant's Participation Interest relating to a particular Project that shall be forfeited upon his or her Performance Based Termination or Voluntary Termination. Such factors may include the Participant's contributions towards the success of such Project and the time spent by such Participant working on such Project. Notwithstanding the preceding provisions of this paragraph (d), but subject to the provisions set forth in an Award Agreement, in no event shall the Committee cause the forfeiture of, and a Participant (or his or her estate in the case of death) shall continue to be entitled to receive, all deferred Plan Payments payable to such Participant under Section VII hereof that relate to a Plan Payment Date that has occurred prior to the date of such Participant's Performance Based Termination or Voluntary Termination. Further, in no event shall the Committee cause the forfeiture of more than 50% of a Participant's Participation Interest relating to a particular Project upon such Participant's Performance Based Termination or Voluntary Termination if such termination occurs after the date upon which the key contractual agreements with respect to such Project are finalized and executed.

(e) Award Agreement Provisions and No New Project Interests. Notwithstanding the provisions of paragraphs (b), (c) and (d) above, a Participant's Participation Interest relating to a Project (and his or her rights to any amounts, including deferred amounts, payable with respect thereto) shall also be forfeitable in accordance with the provisions of such Participant's Award Agreement relating to such Participation Interest, including a post-employment confidentiality and/or noncompetition covenant. Further, the Committee may include provisions in a Participant's Award Agreement that override the provisions of paragraph (d) above. Finally,

upon a Participant's termination of employment with the Company for any reason whatsoever, such Participant shall not have or obtain a Participation Interest (including but not limited to a fixed Participation Interest within the meaning of Section V(a) hereof) with respect to any Project that arises on or after the date of such termination.

X. Interests Nontransferable

No Participation Interest or any other right, title, interest, or benefit under the Plan shall ever be assignable or transferable or liable for or charged with any of the torts or obligations of any Participant or any person claiming under a Participant. No Participant or any person claiming under a Participant shall have any power to anticipate or dispose of any right, title, interest, or benefit hereunder in any manner until the same shall have actually been distributed free and clear of the terms of the Plan.

Term, Amendment and Termination of Plan

(a) Term. The Plan will have a term of three years beginning on January 1, 1993. Except with respect to Projects then subject to the Plan, the Plan shall terminate on December 31, 1995, and no Projects that arise after such date shall become subject to the Plan or any Participation Interest awarded pursuant to the Plan. Termination of the Plan shall not affect or cause a termination of any Participation Interest theretofore awarded pursuant to the Plan; provided, however, that the provisions of Section XIV hereof shall no longer apply and shall be of no further force or effect upon termination of the Plan. Upon termination of the Plan, the Committee shall remain in existence and all other provisions of the Plan (other than the provisions of Section XIV hereof) that are necessary, in the opinion of the Committee, for equitable operation of the Plan as it applies to Projects subject to the Plan and outstanding Participation Interests shall remain in force. Further, the Committee may, at any time and from time to time after the termination of the Plan, grant a specific Participation Interest (within the meaning of Section V(b) hereof) to an Employee with respect to one or more Projects then subject to the Plan.

(b) Amendment and Termination. The Board may not terminate the Plan prior to December 31, 1995. The Board may alter or amend the Plan or any part thereof from time to time; provided, however, that (i) no change in the Plan may be made that would affect the rights or obligations of Enron without the consent of Enron and (ii) no change in the Plan with respect to Participation Interests theretofore awarded may be made that would impair the rights of Participants with respect to existing Projects covered by such Participation Interests as of the effective date of such change without the consent of affected Participants.

Nature of Plan

The Plan shall constitute an unfunded, unsecured obligation of the Company to make payments of incentive compensation to certain individuals from its general assets in accordance with the Plan. Participation Interests awarded under the Plan and the Closed Project Account maintained by the Company merely constitute mechanisms for measuring such incentive compensation and do not constitute a property right or interest in any Project or Enron Entity

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asset. Neither the establishment of the Plan, the awarding of Participation Interests nor the creation or maintenance of the Closed Project Account shall be deemed to create an escrow or trust fund of any kind. No Participant shall have any security or other interest in any assets of an Enron Entity, in Common Stock, or otherwise. The Participant and any person claiming under Participant shall rely solely on the unsecured promise of the Company set forth herein, and nothing in the Plan or Award Agreement shall be construed to give the Participant or anyone claiming under the Participant any right, title, interest or claim in or to any specific asset, fund, entity, reserve, account, or property of any kind whatsoever owned by an Enron Entity or in which an Enron Entity may have an interest now or in the future; but the Participant shall have the right to enforce any claim hereunder in the same manner as a general creditor.

Employment Relationship

For all purposes of the Plan, a Participant shall be considered to be in the employment of the Company as long as he or she remains employed on a full-time basis by the Company, Enron, or any of their respective Subsidiaries. Nothing in the adoption of the Plan nor the award of Participation Interests or crediting of amounts with respect thereto shall confer on any person the right to continued employment by the Company or affect in any way the right of the Company to terminate such employment at any time. The employment of each Participant shall be on an at-will basis, and the employment relationship may be terminated at any time by either the Participant or the Participant's employer for any reason whatsoever, with or without cause. Any question as to whether and when there has been a termination of a Participant's employment, and the reason for such termination, shall be determined solely by the Committee, and its determination shall be final and conclusive.

Reductions in Geographic Scope of Company's Development Activities

(a) Relevant Reductions. As of the date the Plan is adopted by the Board, the Company is authorized by Enron to develop power, pipeline, liquids, gas storage, gas processing and other energy projects or systems throughout the world, excluding, however, Canada, the United Kingdom, and the United States of America. If Enron shall cause a reduction in the geographic scope of the Company's development activities other than in Mexico and/or Argentina, then the provisions set forth in this Section XIV shall apply. This Section XIV shall not apply to a reduction in the Company's development activities in Mexico and/or Argentina. Enron shall be considered to have caused a reduction in the geographic scope of the Company's development activities only if Enron (i) prohibits the Company and its Subsidiaries from pursuing development activities in a country in which a Project has been developed or is being developed or with respect to which a General AFE has been issued for purposes of identifying projects to be developed by the Company, and (ii) assigns the development activities with respect to such country to another Subsidiary of Enron (other than a Subsidiary of the Company) within 6 months after the effective date of the action described in clause (i) above. For purposes of this Section XIV, the term "Affected Country" shall mean a country with respect to which Enron has caused a reduction in the geographic scope of the Company's development activities as described in this paragraph.

(b) Reduction Notices. If a reduction in the geographic scope of the Company's development activities occurs as described in paragraph (a) above with respect to a particular country, then the Committee shall determine the net value to Enron created by the Company's development activities in such Affected Country prior to the effective date of such reduction (the "Reduction Date"). Such net value (the "Country Valuation") shall be determined based on such factors and information as the Committee deems relevant; provided, however, that (i) the value of any Projects subject to the Plan that are located in the Affected Country shall be completely disregarded for purposes of determining the Country Valuation, and (ii) all amounts spent and committed to be spent as of the Reduction Date pursuant to General AFEs issued with respect to development activities of the Company in such Affected Country shall be considered in determining the Country Valuation. Any amount relating to a General AFE that is considered pursuant to clause (ii) of the preceding sentence shall be disregarded for purposes of Section VI(b) hereof. Within 90 days after each Reduction Date, the Company shall deliver to each Affected Participant a written notice (the "Reduction Notice") setting forth the Reduction Date, the Affected Country or Countries relating to such Reduction Date and the Committee's determination of the Country Valuation for each Affected Country relating to such Reduction Date. On or before the date which is 15 days after the delivery of the Reduction Notice, each Affected Participant shall deliver to the Committee the form attached to such notice indicating whether such Affected Participant accepts or rejects the Committee's determination of the Country Valuation for each Affected Country. An Affected Participant who fails to timely return such form shall be conclusively deemed to have accepted the Committee's determinations. If the Committee's determination of a Country Valuation is not rejected by Affected Participants with an aggregate Proportionate Interest (as such term is defined in paragraph (e) below) of 50% or more, then such determination shall be final and binding on all Affected Participants who received such Reduction Notice (including those who timely rejected such determination).

(c) Review of Country Valuations. If Affected Participants with an aggregate Proportionate Interest pertaining to a Country Valuation of 50% or more elect to reject such Country Valuation (with such election to be made in a written notice filed with the Committee within 15 days after delivery of the Reduction Notice setting forth such Country Valuation), then such Affected Participants (acting as a single group) and the Committee shall each appoint and pay the costs and expenses of one Valuation Expert and each submit to such two Valuation Experts their opinion of what the Country Valuation should be, and the reasons therefor. Such Valuation Experts must select one of those two valuations and no other as the valuation that will be final and binding and used for purposes of the Plan. If the two representatives so appointed cannot agree on one of the two valuations within 30 days after their appointment, then such two representatives shall agree by the end of such period on the appointment of a third Valuation Expert, and the determination of the majority of the three Valuation Experts as to which valuation is correct shall be final and binding. If a determination by the Committee which is reviewed pursuant to this paragraph (c) is upheld on such review, then the Affected Participants who requested such review shall be jointly and severally liable to reimburse or otherwise bear all costs and expenses of the Company and the Committee incurred during the dispute resolution process with respect to the Committee's retention of its Valuation Expert (and, if utilized, the third Valuation Expert). If such a determination is not upheld on such review, then the Company shall reimburse or otherwise bear all costs and expenses of the Affected Participants

incurred during the dispute resolution process with respect to their retention of their appointed Valuation Expert (and, if utilized, the third Valuation Expert).

(d) Reduction Payments. On or before the date which is 105 days after the last day of the Plan Year in which there has been a final and binding determination (pursuant to either paragraph (b) or (c) above) of a Country Valuation, the Company shall pay, as incentive compensation to each Affected Participant, an amount equal to (i) such Affected Participant's Proportionate Interest with respect to the Affected Country to which such Country Valuation relates, multiplied by (ii) an amount equal to the difference, if any, between (1) 8% of the amount of such Country Valuation, and (2) the amount that the Company determines, in its sole discretion, shall be used to pay bonuses to employees and consultants who are not Affected Participants with respect to the Company's cessation of development activities in such Affected Country. Notwithstanding the foregoing, the preceding sentence shall be applied by substituting "9%" for "8%" if the Reduction Date relating to such Affected Country occurs during a Plan Year for which the Company's net income for such year equals or exceeds the Company's net income target for such year, as established by Enron.

(e) Additional Section XIV Definitions. For purposes of this Section XIV, an "Affected Participant" means, with respect to a particular Affected Country, each Participant who is employed by the Company on the Reduction Date relating to such Affected Country and who has a fixed Participation Interest (within the meaning of Section V(a) hereof) in effect on such Reduction Date. For purposes of this Section XIV, "Proportionate Interest" means, with respect to each Affected Participant for an Affected Country, the ratio (expressed as a percentage) of such Affected Participant's outstanding fixed Participation Interest in effect as of the Reduction Date relating to such Affected Country to the aggregate outstanding fixed Participation Interests of all such Affected Participants in effect as of such date.

XV. Withholding and Headings

(a) Withholding. Any payment provided for hereunder shall be made by the Company as provided herein and shall be reduced by any amount required to be withheld by the Company under applicable local, state or federal withholding requirements.

(b) Headings. The headings of Sections and paragraphs herein are included solely for convenience and if there is any conflict between such headings and the text of the Plan, the text shall control.

XVI. Applicable Law

The Plan shall be governed in all respects by the laws of the State of Texas.

EXHIBIT A
TO
ENRON DEVELOPMENT CORP.
PROJECT PARTICIPATION PLAN

[PROJECTS SUBJECT TO THE PLAN FOR THE PERIOD PRIOR TO THE DATE THE PLAN IS ADOPTED BY THE BOARD.]

CANADA

Toronto District Heating

ASIA/MIDDLE EAST

Subic Bay Power Plant
Thailand - Bangpakong
East Kalamantan
East Java
Dabhol India - Phase I
Dabhol India - Phase II

EUROPE

Yemen LNG
Ansaldo Italy
Bitterfeld
Latvian Storage
Plock Poland

LATIN AMERICA

Mexico - Yucatan - Merida
Mexico - ALFA
Mexico - Mineras De Mexico
Mexico - Pemex Cogeneration
Guatemala II
Puerto Barrios - Guatemala
El Salvador - RFP
Honduras - RFP
Argentina - La Rioja
Brazil/Bolivia Pipeline Integrated
Motto Grosso Do Sul
Brazil - CVRD
Ecuador - Electroquil
Colombia - TERMO
Colombia - INDUSTRIAL

CARIBBEAN

Trinidad - Acquisition
Puerto Rico - Penuelas
Puerto Rico - Repowering
Dominican Republic - Smith CoGen

EXHIBIT B
EDC COMPENSATION PLAN PROJECTS
ACTIVE DEFERRED DEVELOPMENT COSTS
EXPENDITURES FOR THE PERIOD JANUARY - AUGUST 31, 1993

AFE NAME		EDC ACTIVITY	EPC ACTIVITY	TOTAL 1993
CANADA				
Toronto District Heat		346,000	67,358	413,358
LATIN AMERICA				
Mexico - General		39,000	30,751	69,751
Yucatan		247,000	141,818	388,818
Alpha Mexico	C	31,000	56,063	87,063
Mineras De Mexico		79,000	60,323	139,323
Pemex Cogeneration	C	34,000	50,376	84,376
Guatemala II		112,000	319,058	431,058
Puerto Barrios - Guatemala	C	131,000	147,662	278,662
Central America		0	0	0
El Salvador		19,000	809	19,809
Honduras		74,000	9,790	83,790
Puerto Plata, D.R.		94,000	26,445	120,445
Argentina - La Rioja		6,500	989	7,489
Bolivia/Brazil Integrated		171,000	20,928	191,928
Motto Grosso Do Sul		17,624	0	17,624
Cubatao, Brazil		1,442	0	1,442
Belo Horizonte, Brazil		2,866	0	2,866
Brazil - CVRD		35,000	5,011	40,011
Maraven, Venezuela		4,896	0	4,896
Trinidad		52,000	28,324	80,324
Ecuador		275,000	24,920	299,920
South America - Hale		2,314	0	2,314
Latin America - Steele		39,000	6,791	45,791
Peru		27,414	0	27,414
Colombia - Pipeline		63,000	18,971	81,971
Colombia - TERMO		195,000	79,916	274,916
Colombia - INDUSTRIAL		94,000	78,950	172,950
TOTAL LATIN AMERICA		1,847,056	1,107,895	2,954,951
ASIA/MIDDLE EAST				
Subic Bay Operating Lease		0	0	0
Subic Bay Power Plant		0	0	0
Indonesia - Office		435,000	19,027	454,027
Asia - Sutton		36,195	0	36,195
Vietnam		104,593	0	104,593
Thailand - Bangpakong		80,000	57,437	137,437
Taiwan		1,000	867	1,867
East Kalamantan		32,000	19,523	51,523
East Java		78,000	110,929	188,929
India (Net)		2,286,000	385,173	2,671,173
Wilt - South East Asia		16,698	0	16,698
China		238,000	32,361	270,361
New Zealand		21,545	0	21,545
TOTAL ASIA/MIDDLE EAST*		3,329,031	625,317	3,954,348
SUBTOTAL		5,522,087	1,800,570	7,322,657
EUROPE	Expenditures for plan purposes begin September 1, 1993			
Yemen				0
Spain				0
Italy				0
Bitterfeld				0
Latvian Storage				0
Plock Poland				0
TOTAL EUROPE COSTS		0	0	0
TOTAL PLAN DEVELOPMENT COSTS		5,522,087	1,800,570	7,322,675

*Turkey & Kuwait are omitted because of unique treatment in the EDC comp pl

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EXHIBIT C
TO
ENRON DEVELOPMENT CORP.
PROJECT PARTICIPATION PLAN

[EXAMPLE OF PLAN PAYMENT AMOUNT COMPUTATION.]

Assumptions

All dollar figures are in millions. The Closed Project Account begins at $0. Pursuant to Section VI(b), $10 is added to such account during Year 1 and $20 is added to such account during Year 2 due to the closing of various Projects during such Years.

The following Project Incentive Amounts are generated for Projects A, B and C during Years 1 and 2:

	Project Incentive Amount	
	Year 1	Year 2
Project A	$ 9	$19
Project B	$ 6	$ 5
Project C	$13	$24

The Project Incentive Amounts set forth above were determined after reduction for the following bonuses to be paid to employees and consultants who are not Participants:

	Bonus Amounts	
	Year 1	Year 2
Project A	$1	$1
Project B	$0	$1
Project C	$2	$1

Computation of Plan Payment Amounts

Year 1

APIA = $9 + $6 + $13 = $28 CPA = $10

Plan Payment Amount for Project A = 9 - (9/28 x 10) = $5.786
Plan Payment Amount for Project B = 6 - (6/28 x 10) = $3.857
Plan Payment Amount for Project C = 13 - (13/28 x 10) = $8.357

Pursuant to Section VI(b), immediately after the last day of Year 1, the Closed Project Account is reduced to $0 ($10 - $28; but not less than $0).

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Year 2

APIA = $19 + $5 + $24 = $48 CPA = $20

Preliminary Plan Payment Amount Calculations for:

Project A = 19 - (19/48 x 20) = $11.083
Project B = 5 - (5/48 x 20) = $ 2.917
Project C = 24 - (24/48 x 20) = $14.000

However, the Section VI(c) limit applicable to Project C equals $17 ($20 - $3 (the sum of the Project C non-Participant bonuses for Years 1 and 2)). Since $8.357 is payable with respect to Project C for Year 1, only $8.643 ($17 - $8.357) can be paid with respect to Project C for Year 2. Thus, Project C has an Excess Amount equal to $5.357 ($14 - $8.643). This Excess Amount is then reallocated to Projects A and B.

Reallocation of Project C Excess Amount:

Project A's Allocable Share of the Closed Project Account for Year 2 =

19/48 x 20 = $7.917

Project B's Allocable Share of the Closed Project Account for Year 2

5/48 x 20 = $2.083

Project A's Share of the Project C Excess Amount =

$5.357 x (7.917 ÷ (7.917 + 2.083)) = $4.241

Project B's Share of the Project C Excess Amount =

$5.357 x (2.083 ÷ (7.917 + 2.083)) = $1.116

However, the Section VI(c) limit applicable to Project A equals $18 ($20 - $2 (the sum of the Project A non-Participant bonuses for Years 1 and 2)). Since $5.786 is payable with respect to Project A for Year 1, only $12.214 ($18 - $5.786) can be paid with respect to Project A for Year 2. Thus, Project A now has an Excess Amount equal to $3.11 ($11.083 + $4.241 - $12.214). This Excess Amount can then be entirely reallocated to Project B. However, only $0.967 ($5 - $2.917 - $1.116) of the Project A Excess Amount can be used with respect to Project B because the Plan Payment Amount for Project B cannot exceed the Project Incentive Amount for Project B for Year 2.

Pursuant to Section VI(b), immediately after the last day of Year 2, the Closed Project Account is reduced to $0 ($20 - $48; but not less than $0).

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Summary

	YEAR 1		YEAR 2		
	Plan Payment Amount	Bonuses to Non-Participants	Plan Payment Amount	Bonuses to Non-Participants	TOTAL
Project A	$5.786	$1	$12.214	$1	$20.000
Project B	$3.857	$0	$ 5.000	$1	$ 9.857
Project C	$8.357	$2	$ 8.643	$1	$20.000

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