

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.

Involved & possible services

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.

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Senate Finance Committee

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- 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.

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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 strengthened, 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.