

UNITED STATES TAX COURT

FILED

PUERTO QUETZAL  
POWER CORP.

Petitioner,

vs.

COMMISSIONER OF INTERNAL  
REVENUE,

Respondent

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UNITED STATES  
TAX COURT

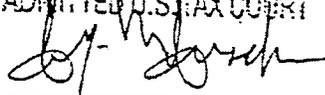
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DESIGNATION OF PLACE OF TRIAL

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

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(713) 758-1056

Counsel of Record for Petitioner,  
Puerto Quetzal Power Corp.

November 11, 1999

Senate Finance Committee  
**EXHIBIT 6**



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 I.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

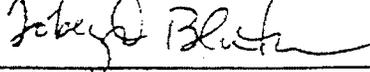



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ADMITTED U.S. TAX COURT




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Dated: November , 1999