

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 Electrificación (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 Wit, trans.) (Jan. 13, 1992)) (July 1992) (Exhibit 8).

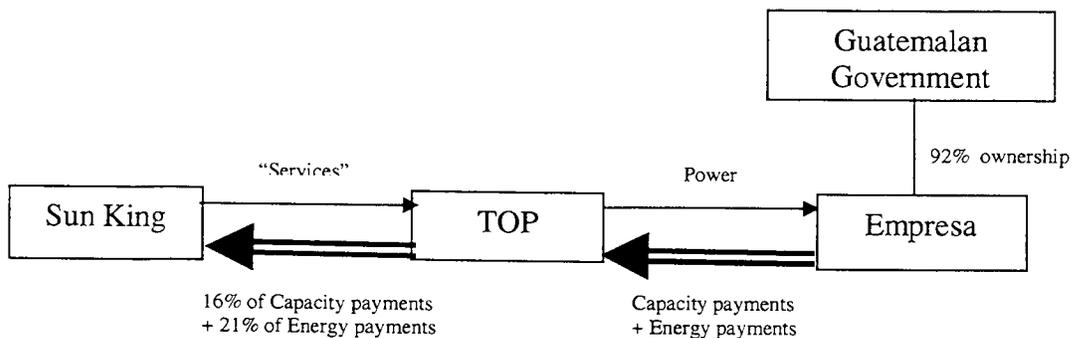
15 Memorandum from Enron Power Corp., to the Overseas Private Investment Corporation for use by prospective lenders, Sections I and IV (Executive Summary of Proposed Transaction and Project Participants) (July 1992) (Exhibit 9) [hereinafter *Enron Memo to OPIC*].

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

million¹⁷ 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 Bili Coy 2 (Feb. 26, 1993) (EC2 000036550 – EC2 000036553, Exhibit 13) [hereinafter Asensio Memo I].

Enron, King Ranch Power Corporation (King Ranch), and Wartsilä 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

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].

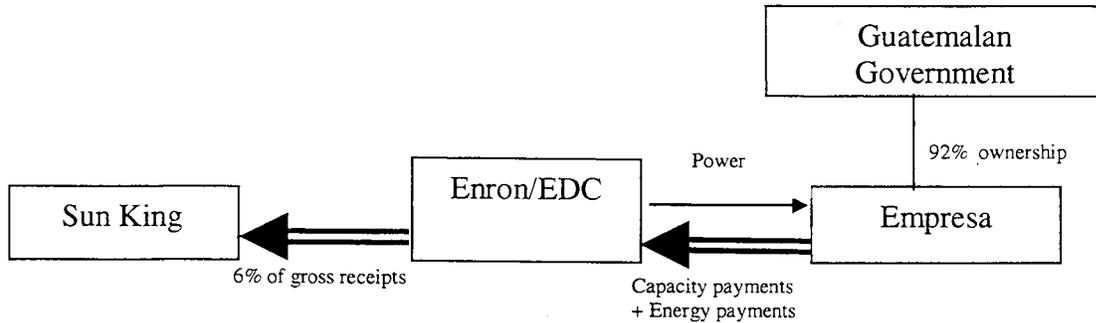
²³ Agreement, Texas-Ohio Power, Inc. and Enron Power Development Corp. (Mar. 12, 1992) (EC2 000034376 – EC2 000034378, Exhibit 14).

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



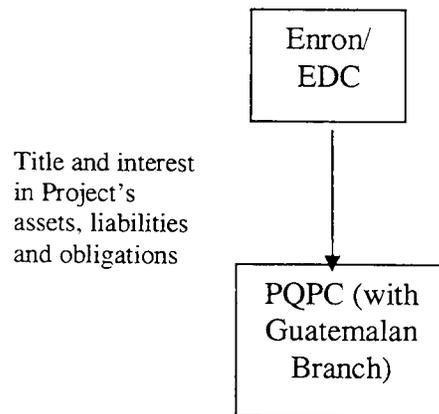
The payments Enron agreed to make would at least represent some compensation for the value TOP created in securing the PPA, and would serve to reimburse TOP for some of its out-of-pocket expenses. Patrick LaStrapes, TOP's President, claimed that he signed the three documents because it was clear to him 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.

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.

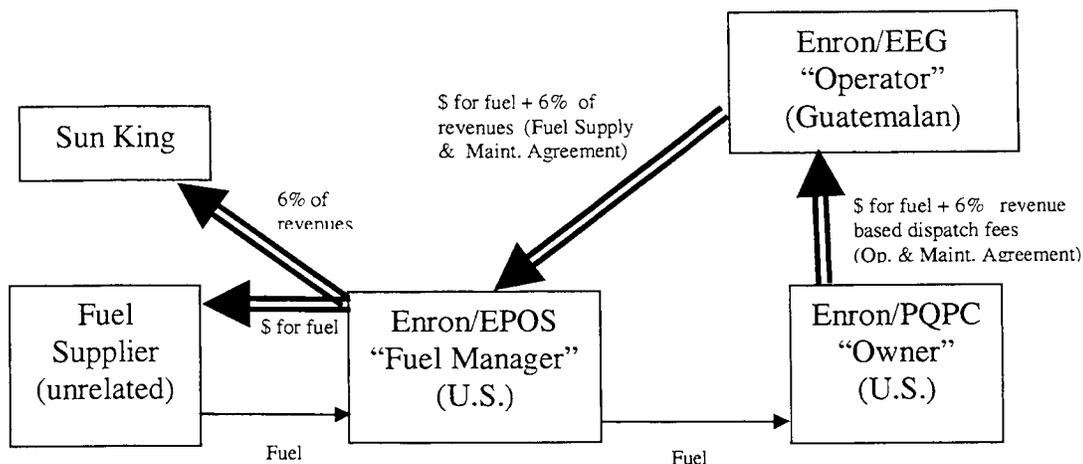
34 *Cerigua Weekly Briefs April 25 – May 1, 1993: Power Rate Hike Sparks Protests*, Cerigua, May 3, 1993.

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

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, Sun King's [sic] political influence is fairly low, and in practical terms Sun King [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.

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

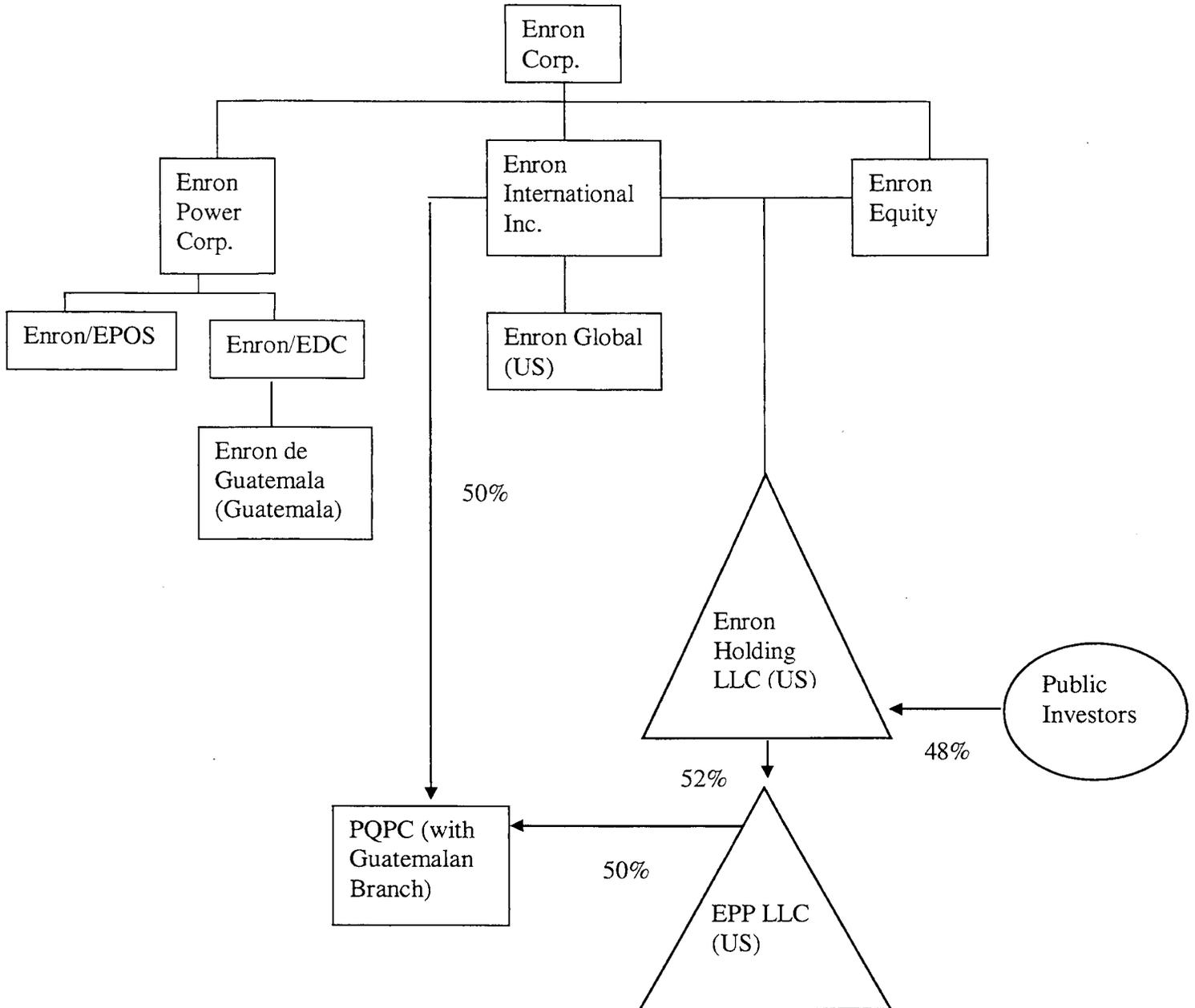
68 Electricidad Enron de Guatemala, S.A., B&H Charges Vs. Commission Payments, Enron response to Senate Finance Committee (September 18, 2002) (EC001911596, Exhibit 35) ("Reconciliation of Payments made to Sun King vs B&H Chg Received from EEG").

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 Centrants) 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 Centrants International Sociedad Anonima (Centrants),⁷⁶ and \$12 million was wire transferred for credit to Centrants 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 Centrants;
2. Enron/EDC would pay Centrants \$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 Centrants 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

⁷² Wire Transfer Request, Enron Global Power & Pipeline L.L.C., to Centrants 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.

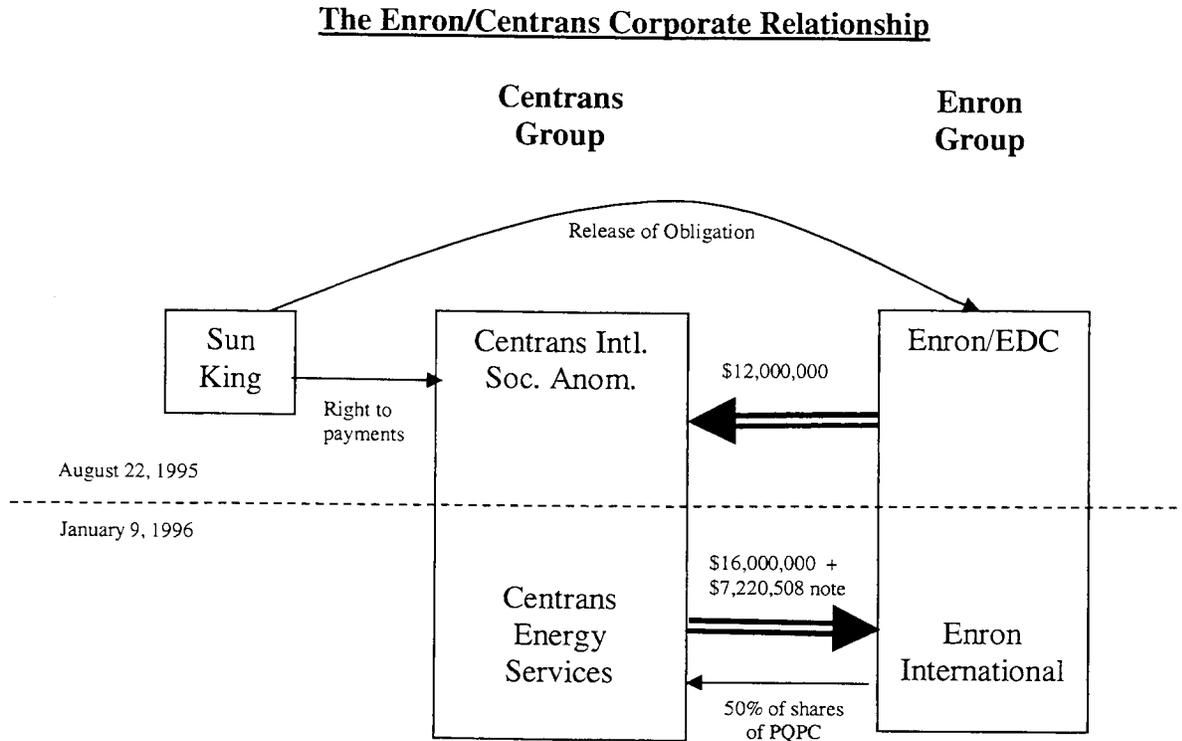
⁷⁶ Termination and Release Agreement, Enron Development Corp., Sun King Trading Company, Inc., and Centrants Internacional, S.A. (Aug. 20, 1995) (EC2 000034382-EC2 000034386, Exhibit 38).

⁷⁷ Wire Transfer, *supra* note 72. See also Arrondo Interview, *supra* note 62; Rojas Interview, *supra* note 22; Interview with David Haug, Principal, 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 Centrants Energy Services, Inc. (Jan. 9, 1996) (Exhibit 39). See also Presentation of the: Centrants Group, Provided to the Overseas Private Investment Corporation (not dated) (Exhibit 40 is on file with the Senate Finance Committee) (Centrants Energy Services, Inc. was profiled as a Centrants group affiliate and the Centrants 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 Centrants 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 Centrants (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:



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.