

MEMORANDUM

TO: Michael M. Mackles, NEPOOL Independent Financial Advisor
FROM: Cheryl Arnold, Controller, ISO New England Inc.
Paul N. Belval and Anthony J. Gray, NEPOOL Counsel
DATE: May 7, 2008
RE: ISO New England Bankruptcy Claims Against Enron Entities

At its February 11, 2008 teleconference, the New England Power Pool (“NEPOOL”) Budget and Finance Subcommittee (the “Subcommittee”) asked us to provide you with information regarding the current status of the bankruptcy proceedings for Enron Corporation (“Enron”) and its subsidiaries (the “Enron Entities”) in order for you to make an independent assessment of whether ISO New England Inc. (“ISO-NE”), acting on behalf of the NEPOOL Participants, should accept one of the offers it has received for its claims against the Enron Entities in those proceedings. This memorandum provides that information. We understand that you intend to provide the Subcommittee with your assessment at its May 12 teleconference.

Background on the Enron Bankruptcy

The Enron Entities filed for Chapter 11 bankruptcy protection in December 2001 in the United States Bankruptcy Court for the Southern District of New York. In July 2003, Enron filed a Plan of Reorganization (as amended and supplemented from time to time, the “Plan”) with the Court that was approved in January 2004. In conjunction with that Plan, a new Board of Directors for Enron was appointed, and that new Board of Directors changed Enron Corporation’s name to Enron Creditor’s Recovery Corporation (“ECRC”).¹ Despite the name change, ECRC is the same legal entity as Enron and exists for the sole purpose of reorganizing and liquidating certain operations and assets of the “pre-bankruptcy” Enron for the benefit of its creditors.² In accordance with the Supplemental Modified Fifth Amended Joint Plan of Affiliated Debtors Pursuant to Chapter 11 of the U.S. Bankruptcy Code (the “Plan”), ECRC is the reorganized debtor.³

ECRC is also the successor organization to Enron Power Marketing, Inc. (“EPMI”), Enron Energy Services, Inc. (“EESI”), and Enron Energy Marketing Corp. (“EEMC”), the three Enron Entities against which ISO-NE has filed claims in the bankruptcy proceeding. EPMI, EESI and EEMC initially filed independent voluntary petitions for relief, but shortly after those filings Enron filed a Motion for Joint Administration of Cases to consolidate the cases of the affiliated entities and to have

¹ http://www.enron.com/index.php?option=com_content&task=view&id=17&Itemid=27

² Id.

³ See Supplemental Modified Fifth Amended Joint Plan of Affiliated Debtors Pursuant to Chapter 11 of the U.S. Bankruptcy Code.

them administered as one case under Enron.⁴ Claims against EPMI, EESI, EEMC and the other Enron Entities are treated, for purposes of distributions, as if their assets and liabilities were pooled together.⁵

ISO-NE Claims

In June 2004, ISO-NE filed in the Bankruptcy Court amended claims for \$1,553,243 against EPMI, for \$1,283,691 against EEMC, and for \$904,728 against EESI, for a total claim of \$3,741,663 in the Enron bankruptcy. All of these claims were for general unsecured indebtedness arising out of these Enron Entities' Installed Capacity obligations arising before their bankruptcy filings. To date, ISO-NE has received \$1,610,130 in cash and 4,673 shares of the stock of Portland General Electric ("PGE"), a former subsidiary of Enron, in partial satisfaction of those claims. The remaining unpaid balance of these claims, after applying the cash and PGE stock received by the ISO, is \$1,966,288. Two entities – Longacre Fund Management, LLC and Primeshares -- have expressed interest in purchasing ISO-NE's claims against the Enron Entities. In its most recent correspondence, Longacre Fund Management has offered ISO-NE a payment equal to 6.25 percent of its remaining unpaid balance of the claim against EPMI and 2.60 percent of its remaining unpaid balance of the claim against EESI. Longacre has not provided a recent offer for the claim against EEMC. Primeshares has not provided a recent offer for the ISO's claims against the Enron Entities.

Enron Distributions to Date

ECRC has focused its efforts on (1) monetizing all of the Enron Entities' assets and (2) recovering any funds fraudulently paid before and immediately after the bankruptcy filings. The funds recovered from these two activities, as well as the PGE stock held by Enron at the time of the bankruptcy filing, have been used to repay outstanding creditors by the means of distribution payments.⁶ These distributions commenced in November 2004 and, in accordance with the Plan, are now made twice a year, in April and in October, if ECRC has recovered assets either by way of a sale of property or through a lawsuit, such as a preference action. The most recent distribution occurred on April 1, 2008.⁷ ECRC likewise distributes "catch-up" distributions on newly allowed claims on an interim basis every two months. The total amount returned to creditors of the Enron Entities thus far is approximately \$14.5 billion⁸ on approximately \$36.6 billion of allowed claims filed against the Enron Entities.⁹ When there is no additional monies to be distributed, ECRC will file a Motion for Final Distribution and a final accounting will be filed thereafter.¹⁰

⁴ See Motion of the Debtor Pursuant to Rule 1015(B) of the Federal Rules of Bankruptcy Procedure for Joint Administration of Cases.

⁵ See Supplemental Modified Fifth Amended Joint Plan of Affiliated Debtors Pursuant to Chapter 11 of the U.S. Bankruptcy Code, Section 2.2.

⁶ http://www.enron.com/index.php?option=com_content&task=view&id=17&Itemid=27

⁷ Id.

⁸ Id.

⁹ Notice of Distributions, Case No. 01-16034 (April 1, 2008).

¹⁰ http://www.enron.com/index.php?option=com_content&task=view&id=17&Itemid=27

From the April 2006 distribution through the June 2007 distribution, shares of PGE were included in the amounts provided to Enron's general unsecured creditors.¹¹ Under the Plan, the Court determined the per share value of the PGE stock as of the Plan Confirmation Date of July 15, 2004 to be \$21.008 per share.¹² While this valuation of PGE for the purposes of the Plan is static, the shares are publicly traded and thus true market value varies in accordance with market conditions.

All distributions of PGE stock subsequent to April 2006 were made by the Disputed Claims Reserve Trust ("DCRT"). In June 2007, the DCRT sold all of its remaining PGE shares, and no further distributions of PGE stock will be made.¹³ Instead the cash equivalent¹⁴ of the shares that would have been distributed had the sales not occurred are included in cash distributions. These cash equivalents are determined by the proceeds from the sale after netting out any related expenses and taxes.¹⁵

Proceeds from Litigation

ECRC has recovered approximately \$2.4 billion in litigation against institutions believed to have contributed to or profited from the conduct underlying Enron's bankruptcy since its bankruptcy filing.¹⁶ ECRC's litigation efforts in this regard fall into three broad categories: (1) Equity Transactions Litigation; (2) Commercial Paper Litigation; and (3) "MegaClaims" Litigation. ECRC has collected approximately \$97.6 million (excluding the Citigroup settlement described below) in this litigation. The vast majority of the \$97.6 million has been recovered since October 1, 2007.

The Equity Transactions Litigation were lawsuits filed against Lehman Brother Holdings, Inc., UBS AG, Credit Suisse and Bear Stearns to recover a series of payments made to the four investment banks for transactions involving Enron stock. These transactions included derivatives, forwards and swaps. ECRC argued successfully that these payments were "fraudulent transfers" because Enron was either insolvent or inadequately capitalized at the time they were made or that the payment was made with the intent to hinder, delay or defraud creditors. ECRC settled in April 2007 with Lehman Brothers for \$69.9 million, in June 2007 with UBS and Credit Suisse for \$115 million

¹¹ See § 32.1(c) of the Plan for a detailed description of the distribution of PGE stock.

¹² http://www.enron.com/index.php?option=com_content&task=view&id=17&Itemid=27

¹³ Id.

¹⁴ Section 1.45 of the Plan. "Equivalents of Cash in the form of readily marketable securities or instruments issued by a person other than the Debtors, including, without limitation, readily marketable direct obligations of, or obligations guaranteed by, the United States of America, commercial paper of domestic corporations carrying a Moody's Rating of "A" or better, or equivalent rating of any other nationally recognized rating service, or interest-bearing certificates of deposit or other similar obligations of domestic banks or other financial institutions having a shareholders' equity or equivalent capital of not less than One Hundred Million Dollars (\$100,000,000.00), having maturities of not more than one (1) year, at the then best generally available rates of interest for like amounts and like periods."

¹⁵ http://www.enron.com/index.php?option=com_content&task=view&id=17&Itemid=27

¹⁶ Id.

and \$61.5 million respectively, and in October 2007 with Bear Stearns for \$1 million along with a waiver of any claims held by Bear Stearns.¹⁷

The Commercial Paper Litigation was commenced to recover prepayments made by the Enron Entities on commercial paper debt in the months immediately preceding Enron's filing for Chapter 11 protection. Suit was filed against approximately 180 defendants including J.P. Morgan Securities, Goldman Sachs & Co., Mass Mutual and Lehman Commercial Paper, Inc. To date, cash settlements of more than \$172 million¹⁸ have been secured. As of April 1, 2008, \$420 million in face value transfers to the defendants remain subject to this litigation.¹⁹

The MegaClaims Litigation was filed by ECRC against 11 major banks²⁰ arguing that those banks engaged in fraud, civil conspiracy and breaches of fiduciary duties. The cumulative loss claimed under these suits was greater than \$18 billion. When Deutsche Bank AG settled in December 2007, ECRC had reached a settlement with ten of the eleven banks and brokerages named in the MegaClaims Litigation. The cumulative recovery from those first ten is approximately \$1,760,000,000.²¹

ECRC recently settled the last and largest component of the "MegaClaims" litigation against Citigroup. ECRC secured a settlement from Citigroup of approximately \$1.66 billion cash (and \$4.25 billion in waived indemnification claims). This cash, along with another \$1.7 billion in cash that ECRC anticipates being able to release from the DCRT as a result of the waiver of the indemnification claims, were not included in the April 1, 2008 semiannual distribution. Those amounts will be included in a future distribution to creditors of the Enron Entities.²² In addition, the DCRT currently contains approximately \$4.8 billion which will be distributed if and to the extent it is not used to satisfy claims against the Enron Entities.²³

cc: Ira H. Goldman, Esq.

¹⁷ See Enron Corp. v. Credit Suisse First Boston International, Enron Corp. v. UBS AG, Enron Corp. v. Lehman Brothers Finance, and Enron Corp. v. Bear Stearns International, LTD.

¹⁸ This number includes a \$150 million dollar settlement paid by JPMorgan Chase in connection with its MegaClaims settlement.

¹⁹ See Enron Corp. v. Goldman, Sachs & Co., et al., and Enron Corp. v. Massmutual Life Insurance Co., J.P. Morgan Securities Inc.; et al.

²⁰ These banks are: Merrill Lynch; Deutsche Bank AG; Canadian Imperial Bank of Commerce; Royal Bank of Scotland; Royal Bank of Canada; JPMorgan Chase; Toronto-Dominion Bank; Credit Suisse; Fleet Bank; Barclays; Citigroup.

²¹ Deutsche Bank AG's settlement, which includes \$25 million cash and giving up \$416 million in unsecured claims, was arrived at recently. As such it has not yet been approved by the Bankruptcy Court.

²² http://www.enron.com/index.php?option=com_content&task=view&id=17&Itemid=27

²³ Id.