UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	:	**Chapter 11**
ENRON CORP., et al.,	:	**Case No. 01-16034 (AJG)**
	:	**Jointly Administered**
Reorganized Debtors.	:	

ORDER APPROVING THE MOTION OF STEPHEN FORBES COOPER, LLC FOR ALLOWANCE FOR PAYMENT OF SUCCESS FEE

Upon consideration of the motion, dated September 2, 2004 (the "Motion"), of Stephen Forbes Cooper, LLC ("LLC") for allowance and payment of a success fee; and due and adequate notice of the Motion and the relief requested therein having been given pursuant to the Federal Rules of Bankruptcy Procedure and the fee procedures order of this Court; and the Court having jurisdiction to consider and determine the Motion and the relief requested therein; and the Court having held a hearing to consider, among other motions and applications, the Motion on November 16, 2005 (the "Hearing"); and after due consideration of the objections thereto filed by Upstream Energy, the Maharashtra Foundation, certain Enron Corp. creditors who were employees of CrossCounty Energy and an unknown individual (collectively, the "Objections"); and the Court having entered that certain Stipulation and Order Approving Settlement Between the United States Trustee and Stephen Forbes Cooper, LLC for Entry of an Order Authorizing and Approving the Payment of Success Fee, dated March 24, 2006 (the "Stipulation"), wherein (a) LLC amended its request for a success fee to the amount of $12.5 million and (b) the United States Trustee for Region 2 agreed, among

other things, not to object to the Motion and the relief requested therein, as amended; and the Court having overruled certain of the Objections at the Hearing; and upon the testimony provided and the arguments presented at the Hearing and the record of all the proceedings in these chapter 11 cases; and based upon the findings of fact and conclusions of law set forth in the Court's Opinion, annexed hereto as Exhibit "A"; it is hereby

ORDERED that the Objections, to the extent not overruled at the Hearing, withdrawn or otherwise rendered moot or incorporated into the Court's determination, are hereby overruled in their entirety; and it is further

ORDERED that the Motion, as amended pursuant to the Stipulation, is hereby granted to the extent set forth herein; and it is further

ORDERED that LLC is hereby awarded, and has hereby earned, the total sum of $ 12.5 million dollars as a success fee (the "Success Fee"); and it is further

ORDERED that the Reorganized Debtors are authorized and directed to pay the Success Fee to LLC.

Dated: New York, New York
April 12, 2006

s/ Arthur J. Gonzalez
HONORABLE ARTHUR J. GONZALEZ
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT A

Opinion

EXHIBIT A

On September 2, 2004, Stephen Forbes Cooper, LLC ("LLC") filed a motion (the "Motion") seeking a success fee ("Success Fee") in accordance with section 4(c) of the April 4, 2002 agreement (the "Agreement") among LLC, Stephen Forbes Cooper ("Cooper") and Enron Corp. which was effective, nunc pro tunc, to January 28, 2002. A hearing on the Motion was scheduled for September 27, 2004, and the deadline for filing objections was set for the same day. Thereafter, the hearing was adjourned by the Court, *sua sponte*, to November 15, 2005. (The Court adjourned the hearing to November 15, 2005 to coincide with the Section 330 applicants' final fee hearing.)

A number of objections were filed prior to the originally-set September 27, 2004 deadline and, subsequently, additional objections were filed prior to the amended deadline. By agreement between LLC and the US Trustee, the objection deadline for the US Trustee was adjourned to various dates after the November 15, 2005 hearing, and ultimately to March 24, 2005. On March 24, 2005, a stipulation (the "Stipulation") was filed and entered by the Court resolving any issues the US Trustee would have asserted.

On April 4, 2002, the Court entered an Order, pursuant to 11 U.S.C. §363, authorizing the Debtors to employ Stephen Forbes Cooper, LLC as an Independent Contractor to Provide Management Services for the Debtors Nunc Pro Tunc, to January 28, 2002 (the "Original Order"). As stated above, pursuant to the Agreement, the Debtors employed Cooper and LLC to provide and perform management services on the terms and conditions set forth in the Agreement. Under the Agreement, the Debtors engaged Cooper as Acting Chief Executive Officer and chief Restructuring Officer. Subsequently, the Board of Directors of Enron named Cooper the President of Enron.

The Agreement further authorized LLC to designate up to fifteen (15) individuals provided by LLC to serve as Associate Directors of Restructuring (the "Associate Directors") to work for the Debtors. These fifteen Associate Directors served as integral members of the Debtors' senior management team and provided the following management services:

> a) Overseeing and directing the liquidation of the Debtors' wholesale and retail trading book;
> b) Overseeing and directing the sale of Enron's non-core assets by the Debtors;
> c) Overseeing and directing the business planning and section 363 sales efforts related to the Debtors' core power generation, transportation and exploration production businesses;
> d) Overseeing, directing and performing chapter 11 related activities of the Debtors, including, but not limited to cash management, claims mapping, special purpose vehicle analysis, chapter 11 reporting and fulfilling information requests from the Official Committee of Unsecured Creditors ("Creditors' Committee"), investigatory agencies and the Enron Examiner; and
> e) Overseeing, directing and performing litigation support activities for the Debtors.
>
> With respect to compensation, the relevant language in the Agreement references
>
> a fee to be requested by Cooper and LLC, subject to Bankruptcy Court approval for reasonableness, to be fixed and paid promptly after the earlier of either (i) termination of this Agreement, (ii) disposition of substantially all Enron's material assets or (iii) confirmation of a chapter 11 plan for Enron or separate plans or a joint plan for two or more of Enron's major subsidiaries, in an amount to take into account, among other things, Cooper's dedication of himself and LLC to Enron, on short notice, to the exclusion of other business, comparable fees, results achieved, value maximization, and diligent progress and efforts.

Agreement, at 4(c). The foregoing fee shall hereinafter be referred to as the "Success Fee."

Over the course of the restructuring effort, LLC deployed 34 Associate Directors, plus Cooper, to perform services for Enron, as well as 4 employees from Kroll, Inc., through a separate retention order.

By the Motion, Cooper and LLC request the entry of an order authorizing and approving payment of a Success Fee in the amount of $25 million, in accordance with a certain payment schedule attached to the Motion. In reaching the proposed amount, the Debtors' then-board of directors, LLC and the Creditors' Committee engaged in extensive negotiation regarding (i) the results achieved by LLC, (ii) the appropriate amount of a Success Fee, in light of those results, and (iii) the timing of payment of such Success Fee. The Success Fee as proposed reflected the results of that negotiation and the acquiescence of the Creditors' Committee.

The relief sought by the Motion was to be paid according to the following schedule:

AMOUNT	THRESHOLD	DATE
25% or $6.25m	Plan Effective Date	11/17/04
25% or $6.25m	Initial Distribution	04/01/05
25% or $6.25m	Cumulative Distributions-$1B	10/01/05
25% or $6.25m	Cumulative Distributions-$2B	04/03/06

Although each of the referenced events has occurred, no payments have been made awaiting the Court's ruling on this Motion as to the amount, if any, of the Success Fee request that would be approved by the Court.

Although a comparison of the Success Fee to the plan total enterprise value is merely one of the factors the Court considers in evaluating the Motion, the Court notes that the Success Fee of $25 million sought by LLC equates to approximately 20 basis points of the plan total enterprise value. *See*, Debtor's Exhibit 3 (comparing success fees according to basis points). As a point of comparison, LLC presented as evidence a chart setting forth the success fees paid to other CEO's or restructuring officers (fiduciaries) in comparable bankruptcy cases. Those fees ranged from 8 basis points, on the low end, to

more than 300 basis points, on the high end, with the median being 54 basis points, and the mean 95 basis points of the plan total enterprise value.

As set forth in the Motion, Enron has reviewed the results achieved and Success Fee as requested, and supports its allowance and payment. Additionally, the Creditors' Committee supports approval and payment of the Success Fee, as sought, pursuant to the payment schedule. Finally, Enron's present board of directors, who took office after the Motion was filed, do not oppose the relief sought.

In the Motion, for discussion purposes, Cooper and LLC classified their efforts into a number of major headings. Cooper alleges that his and LLC's efforts and accomplishments warrant the award as sought. The headings mentioned in the Motion are as follows:

- maximizing value
- distributing value
- preserving jobs and pro-actively managing transition

Evidence was presented at the Hearing further refining these accomplishments into several sub-headings allegedly achieved by LLC. They are

- overall stability of company
- the development of a litigation strategy for the Mega complaint
- management of wholesale/retail trading book resolution process
- crafting of a largely consensual plan
- realizing value of Portland General Electric
- formation and stabilization of Prisma Energy
- resolution and estimation of contingent and unliquidated claims
- resolution of complex litigation

There was no challenge to the evidence presented at the hearing concerning LLC's accomplishments, or the alleged added value resulting therefrom. Nor was there any challenge to LLC's characterization of the creditors' general expectations at the

outset of these cases for a meaningful distribution of assets.

Regarding the objections filed, only one of the objectors, Upstream Energy Services ("Upstream") participated in the November 15, 2005 hearing. Counsel for Upstream cross-examined the witnesses testifying in support of the Success Fee and argued in opposition to the Motion. However, neither Upstream, nor any other objector presented any witnesses or other evidence to support their opposition to the Success Fee.

Certain other objectors (identified as a group of current and former employees) have argued that the results achieved, specifically regarding CrossCounty Energy, should not be attributed to LLC but, rather, to that entities' employees. As a general statement, their objections are that LLC essentially received what it bargained for and that is enough.

An objection was also filed by the Maharashtra Foundation of New York on behalf of the Dabhol-Niramaya Hospital community project. This objector argues that LLC did not "deliver the significant and unique expertise" as it claims. The objection also seeks an order requiring that a portion of any success fee that may be awarded be used to fund the building of a hospital that Enron previously funded under an agreement regarding the Dabhol Power Company.

Still another objecting creditor has argued that LLC performed no better here than any other trustee from any other firm would have performed. Further, this objector has argued that:

- $25 million results from greed;
- the amount already paid is excessive;
- a 19¢ on the dollar recovery is not a success; and
- a trustee would have been less costly.

In sum, this objector's position is that the Enron bankruptcy, as it currently stands, should be viewed as a complete failure of the bankruptcy process. Also, this objector takes issue with the allegation that $840 billion of claims were resolved and contends that LLC's claim to have saved jobs is a complete fiction.

The objection by Upstream (the "Upstream Objection"), while taking issue with whether LLC's contribution to the alleged achievement warrants the amount requested, also seeks to preclude payment of any Success Fee from ENA. Upstream argues that:

> - a success fee was not payable for a liquidating plan under the terms of the original employment contract reached in January 2002, attached to the original motion (the "Original Agreement")
> - no amount should be paid because ENA creditors have yet to receive a significant payment

In addition, Upstream raises certain intercompany conflict of interest and related issues. Regarding these assertions, this Court ruled on those issues previously at the Confirmation Hearing and at an earlier hearing concerning a request for separate counsel for ENA. Furthermore, at the November 15, 2005 hearing, the Court recalls that it overruled that portion of the Upstream Objection as it applied to Debtors' counsel and to Cooper and LLC, based upon the rationale expressed in the above rulings. However, to the extent there is any doubt as to the Court's ruling on these issues, that portion of the objection is overruled for the reasons set forth previously in the aforementioned rulings.

As to that portion of the Upstream Objection in which it is argued that no Success Fee is due because the Confirmed Plan is a liquidating plan as opposed to a rehabilitation/restructuring plan, this objection fails for a number of reasons. The Original Agreement provided for a minimum guaranteed success payment of $5 million if there were a successful rehabilitation or reorganization, an award that could be

increased with the agreement of the Debtors and the approval of the Creditors' Committee. The Original Agreement further provided that if a plan other than a rehabilitation/restructuring plan was confirmed, the parties could agree upon a success fee. Upstream infers, therefore, that the award for a liquidating plan should be less than the award for a rehabilitation or reorganization plan. However, this argument ignores the possibility that even under the Original Agreement, the award for a successful liquidation could have been greater than the minimum guaranteed success payment, if the liquidation realized substantial value. Moreover, while the Original Agreement thus linked the minimum guaranteed success award to a successful rehabilitation or restructuring plan, the Agreement as modified and finally approved by the Court eliminated that element. Instead, the Agreement set forth a reasonableness standard, not tied to any specific minimum amounts, but which also required Court approval for whatever award was sought. It is the modified Agreement that is before the Court and it provides for a Success Fee, subject to the Court's approval. The Upstream Objection on this ground is, therefore, without merit.

Insofar as Upstream now asserts that the modification to the Agreement was not adequately noticed, such objection is overruled as untimely. In sum, the request for a Success Fee is timely and in accordance with the Agreement.

Upstream and, in essence, most of the other objectors raise the issue that many of the tasks performed by LLC were done with the assistance of an advisor or broker, and others. Related to this point, the objections focus on the issue of who should receive credit for any success. It may be appropriate to put the term "success"in its proper context.

Both sections 363 and 330 as paid under section 503 reflect congressional intent that ordinary and reasonable expenses be based upon marketplace criteria for the services provided during the administration of the case. Thus, under both 363 and 330, through 503, the Court looks to the marketplace to determine the reasonableness of any payment. However, the standard applied to awarding these two types of fees in the marketplace is fundamentally different.

In a request for section 330 compensation, the rate charged by the professional is set by the marketplace, which incorporates the professional's high level of skill and expertise into the rate. When such a professional seeks a fee enhancement, premium or bonus, it is necessary to determine whether the professional exceeded the high level of skill and expertise built into the market price, and whether any extraordinary success was achieved that was unanticipated. Although a professional may be retained under section 330 based upon a contingency fee or rate plus contingency arrangement, as at least one professional was retained in these cases, nevertheless, as a general matter, section 330 professionals are retained on an hourly basis and any bonus, etc., is reviewed as set forth above.

The term "success" is referenced in the Agreement but not defined. The determination is left to the Debtor, Creditor's Committee and LLC to agree upon a reasonable amount, if any, for an award subject to Court approval. A success fee, as referenced in the Agreement, is not a "bonus," "premium" or "fee enhancement" as such terms are often used to describe a request by a section 330 professional based upon extraordinary results, inter alia, not otherwise compensated for in the hourly rates, etc. of the professional. *See* Transcript of hearing held on December 21, 2004 in *WorldCom*

Inc. et al., attached to Order entered in *In re WorldCom, Inc, et al.*, Docket No. 02-13533 (Banrk. S.D.N.Y. Dec. 28, 2004) (Order Denying Request by Akin Gump Strauss Hauer & Feld, LLP Counsel for the Official Committee of Unsecured Creditors for Award of a Premium).

However, when retaining a CEO or top management, the marketplace ordinarily includes a salary component as well as a success fee based upon performance. The success component operates as an incentive to enhance value for the benefit of the enterprise. Here the enterprise stakeholders are the pre-petition creditors. Thus, regarding the Success Fee, the Court is asked to rule under a section 363 analysis consistent with the standard used to approve the Agreement. As noted, the concept of additional consideration is built into the Agreement to incentivize performance and was part of the original fee structure from the outset of these cases. The role of LLC was to provide management to the Debtors. In conjunction with the size and complexity of Enron, the CEO was retained with certain incentives built into the relevant employment contract. As previously indicated, the Agreement is reviewed under the section 363 standard as applied to an employment agreement with a corporate officer. Ultimately, the standard is a reasonable amount as established by the relevant marketplace.

The measure of success is certainly not precise and often subject to much debate. Nevertheless, the initial measuring point, or in other words the time at which one must assess the debtor's status as a reference point to measure progress, is more precise. A number of objectants have, in effect, argued that success should be measured based upon a comparison of Enron's status at confirmation with what "Enron once was." Although it is understandable that some creditors, employees, and equity holders may well measure

the success factor by a comparison with what Enron once meant to them - economic stability and growth - it is not a true measure of success in the context of the bankruptcy process.

On December 2, 2001, the bankruptcy process began and soon thereafter it was readily apparent that any effort to stabilize these cases to achieve value was not a task that could be accomplished by its then top management. Each day brought further erosion of their ability to lead the Debtors in a meaningful way. The Creditors' Committee took the lead, in many respects, to find a stabilizing force. Although a motion for a Chapter 11 trustee was filed with respect to Enron Corp., and a similar motion was also filed, among other types of fiduciary relief sought, in the ENA case, it was apparent to the Creditors' Committee, the Debtors, and to many other constituents, that retaining a restructuring professional and an Enron Corp. Examiner would resolve the Enron Corp. trustee motion without engaging in disruptive litigation. Apparently, this view was shared by the Enron's parties in interest, as evidenced by the fact that after the retention of LLC and the appointment of the Enron Corp. Examiner, no party, including state and federal government officials, commissions, agencies or departments, and equity holders sought to prosecute the Enron Corp. trustee motion. In addition, this resolution and the appointment of the ENA Examiner virtually eliminated innumerable motions that would have ensued as creditors rushed to file motions in the other Enron-debtor cases.

Although it is uncertain how much litigation would have ensued, it is certain that embarking on that course of action would have been extremely disruptive, and the efforts to preserve value greatly undermined. This conclusion was fully supported by the record

of the November 15, 2005 hearing and the Confirmation hearing. In terms of the costs of a chapter 11 trustee, even assuming that there were only one such trustee, the fee structure of section 326 does not support the conclusion that a fee sought under that section would have been less than any of the amounts paid, to be paid or requested by LLC. Moreover, any such compensation still would be subject to the same "reasonableness standard" as would be applied to a fiduciary such as a CEO or other management staff.

Therefore, regarding the general issue of stabilizing the Debtor, LLC must be given substantial credit for those efforts. It was under its leadership that numerous governmental agencies, departments and commissions found sufficient confidence in LLC's management not to take action, which may well have been within their power and authority, but which would have had a negative impact on efforts to stabilize the Debtors.

Regarding the Portland General and the Mega Complaint achievements, the argument that many highly compensated advisors and brokers aided the process in varying degrees warrants consideration. These matters have employed highly qualified professionals whose skills, whether they be in investment banking and related issues or in litigation strategies, have played a greater role in the decision process by management than in other areas where management may rely more on its own expertise than outside advisors.

Regarding the largely consensual plan and energy trading settlements and preservation of value, the same analysis is appropriate - in essence, how much of the achievement it these areas is attributable to LLC in such a manner as to warrant a portion of the Success Fee. The record of the November 15, 2005 hearing and the confirmation

hearing fully support the conclusion that the economic attributes of rehibilitation were achieved through the overall preservation of value, including the orderly and timely sale of business units, during the administration of these and cases and under the plan as confirmed in July 2004.

Cooper and LLC provided substantial value to the estates from the perspective of what would have happened to these cases. The key to the success of this bankruptcy proceeding, from the prospects foreseeable in January 2002 to the confirmation, is due largely to the stabilization of the Debtors with its concomitant benefits. For that effort, as well as the confidence that was restored in the operational ability of the Debtors, in addition to the other areas of success in varying degrees, the credit belongs in substantial measure to LLC.

The other professionals, Creditors' Committee, and employees of the Debtors brought about the results achieved as well. But, just as the failure of the cases would have been, in large measure, placed upon the shoulders of LLC, so too should much of the success be placed there.

Regarding the US Trustee's Office, the objection deadline, as mentioned, was extended because the US Trustee needed additional time to receive certain records it had requested from LLC.

As the time neared for the US Trustee to file its objection, the Court had a conference in February 2006, with the Debtor, LLC and the US Trustee in which the Court encouraged the parties to reach an economic settlement if one were possible to avoid a protracted litigation.

As the Court has done on a number of occasions, it sought assistance of another

judge to act as mediator in an attempt to resolve any and all issues that might have been raised regarding LLC's compensation, or any matter related thereto.

Judge Lifland thereafter conducted a mediation with the parties as set forth above. Ultimately, his efforts resulted in the Stipulation entered into by LLC and the US Trustee, whereby LLC agreed to reduce its Success Fee request to $12.5 million and the US Trustee agreed to accept such as a resolution of any issue it might have raised concerning Cooper's compensation. Further, in consideration of the terms of the Stipulation, the US Trustee does not object to the payment to LLC of the $12.5 million Success Fee. Thus, as mediator, Judge Lifland assisted the parties in achieving an economic resolution reflecting a Success Fee that falls within a range of reasonableness taking into consideration all the facts and circumstances.

Under congressional mandate, marketplace-based rates are paid to those who provide services during the administration of a bankruptcy proceeding. Often in large, complex chapter 11 cases, the administrative services are provided by highly skilled, highly paid professionals. The payment of market-based rates ensures that an estate receives the level of expertise necessary in order to preserve value and, ultimately, to return the maximum amount of value possible to the prepetition constituencies. Needless to say, the extraordinary complexity of these cases with respect to the corporate financial structure and unique legal issues all required the retention of professionals with a comparable level of expertise and the concomitant associated costs.

As previously noted, this policy, by which the actual and necessary costs of administration are measured and paid under a reasonableness standard as referenced by the marketplace, prevails the relevant Code sections and the case law. Recently, by

amendment, Congress has limited the amount that may be paid to induce an insider to remain with the debtor during the administration of the case. 11 U.S.C. § 503(c)(1) This restriction, however, neither by language nor intent, alters the marketplace compensation policy underlying section 503 and related sections regarding the post-petition retention of professionals or management who provide services to debtors.

In sum, the Court has considered the record of the November 15, 2005 hearing and the entire record of these cases, including the Stipulation, and the issues resolved therein, and the objections. The Court finds that based upon a comparison of the prospects envisioned at the time of the commencement of these cases with the results actually achieved, the relevant standard in the marketplace and other evidence in support of the Success Fee, none of which was challenged by the submission of any evidence to the contrary, the Success Fee in the reduced amount of $12.5 million (10 basis points under Debtors' Exhibit 3) is within the range of reasonableness in the context of the Debtors' size, corporate structure and financial complexities.

Therefore, the Court will enter an order directing and authorizing the Reorganized Debtors to pay a $12.5 million Success Fee to LLC.