

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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JPMORGAN CHASE BANK, :
 :
 Plaintiff, :
 :
 - against - : COMPLAINT
 : Case No. _____
 ENRON EQUIPMENT PROCUREMENT COMPANY, :
 :
 Defendant. :
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Plaintiff JPMorgan Chase Bank (“JPMCB”), by its attorneys, Moses & Singer LLP, for its Complaint, alleges:

1. This is an action to recover damages based upon statutory reimbursement for the payment of a letter of credit and unjust enrichment.

THE PARTIES

2. Plaintiff JPMCB is a banking corporation organized and existing under the laws of the State of New York, with its principal place of business at 270 Park Avenue, New York, New York.

3. Defendant Enron Equipment Procurement Company (“EEPC”) is a corporation organized under the laws of the State of Delaware, having its principal place of business in Houston, Texas.

JURISDICTION AND VENUE

4. This Court has diversity jurisdiction over this action under 28 U.S.C. § 1332 because all defendants are citizens of different states from plaintiff and the amount in controversy exceeds \$75,000, exclusive of costs and interest.

5. Venue is proper in this District pursuant to 28 U.S.C. § 1391(a).

BACKGROUND

6. The Chase Manhattan Bank, N.A., predecessor in interest to JPMCB, and Enron Corp. (“Enron”) entered into a Master Letter of Credit and Reimbursement Agreement dated as of June 16, 1995 (the “LC Agreement”).

7. Under the LC Agreement, JPMCB agreed to issue one or more letters of credit for Enron, and Enron agreed to reimburse JPMCB in the event of any draw upon any such letter of credit.

8. EPC Estate Services, Inc., formerly known as National Energy Production Corporation (“NEPCO”), is a corporation organized under the laws of the State of Delaware, which, at all relevant times, had its principal place of business in Bothell, Washington. NEPCO is and was at all relevant times a wholly-owned subsidiary of Enron.

9. NEPCO Procurement Company (“NEPCO Procurement”) is a division of EEPC and, at all relevant times, had offices in Redmond, Washington. EEPC is and was at all relevant times an indirect, wholly-owned subsidiary of Enron.

10. Green Country Energy, LLC (“Green Country”), is a limited liability company organized under the laws of the State of Delaware, having its principal place of business in Charlotte, North Carolina.

11. On or about November 1, 1999, Green Country and NEPCO entered into an Engineering and Construction Agreement (the “Green Country EC Contract”) under which NEPCO agreed to construct a combined cycle power plant for Green Country in or near Jenks, Oklahoma. The Green Country EC Contract required NEPCO to provide a guarantee from NEPCO’s parent company, Enron, and to obtain a letter of credit of which Green Country was to

be the beneficiary to secure the performance of certain of NEPCO's obligations under the Green Country EC Contract.

12. On or about November 1, 1999, Green Country and NEPCO Procurement entered into an Equipment Procurement Agreement (the "Procurement Contract"), under which NEPCO Procurement agreed to procure equipment specified by NEPCO for the construction of the power plant in Jenks, Oklahoma. The Procurement Contract required NEPCO Procurement to obtain a letter of credit of which Green Country was to be the beneficiary to secure the performance of certain of NEPCO Procurement's obligations under the Procurement Contract.

13. On or about November 1, 1999, Green Country, NEPCO and NEPCO Procurement entered into a Coordination Agreement (the "Coordination Agreement") (the Green Country EC Contract, the Procurement Contract and the Coordination Agreement, collectively, referred to as the "GC Contracts"), under which the parties agreed to amend and make certain provisions for the coordination and administration of the Green Country EC Contract and the Procurement Contract. The Coordination Agreement required NEPCO and NEPCO Procurement to provide a guarantee from NEPCO's parent company, Enron, and to obtain a single letter of credit of which Green Country was to be the beneficiary to secure the performance of certain obligations of NEPCO and NEPCO Procurement under the Green Country EC Contract and the Procurement Contract.

14. Upon information and belief, the total contract price payable by Green Country to NEPCO and NEPCO Procurement under the GC Contracts was approximately \$280 million. The contract price was to be paid in installments called milestone payments as the work progressed.

15. The purpose of the letter of credit required by the GC Contracts was to secure NEPCO's performance under the GC Contracts.

16. On or about May 9, 2001, pursuant to the LC Agreement, JPMCB established its irrevocable Standby Letter of Credit No. P-213225, dated May 9, 2001, for \$14,020,000 (the "Green Country Letter of Credit"). The Green Country Letter of Credit named Green Country, as Beneficiary, and NEPCO, as Applicant. The Green Country Letter of Credit was to expire on December 31, 2001.

17. Effective as of May 25, 2001, the Green Country Letter of Credit was amended to name Enron as applicant and to state that the letter of credit was authorized by order of JPMCB's client, Enron, for the account of NEPCO and NEPCO Procurement.

18. NEPCO Procurement is and was an applicant within the meaning of Article 5 of the New York Uniform Commercial Code for the Green Country Letter of Credit.

19. On or about December 2, 2001, Enron filed a petition for relief under Chapter 11 of the United States Bankruptcy Code.

20. On or about December 4, 2001, Green Country drew on the letter of credit issued by JPMCB, in its full amount. The total amount paid by JPMCB and received by Green Country on the draw was \$14,020,000.00.

21. On or about May 20, 2002, NEPCO filed a petition for relief under Chapter 11 of the United States Bankruptcy Code.

22. JPMCB has not been reimbursed by Enron, NEPCO or NEPCO Procurement for the amount of the letter of credit drawn on by Green Country and paid by JPMCB.

FIRST CLAIM
(Statutory Reimbursement)

23. JPMCB repeats and realleges each and every allegation contained in paragraphs 1 through 22, inclusive, as if fully set forth herein.

24. EEPC, acting through its division, NEPCO Procurement, is an applicant within the meaning of Article 5 of the New York Uniform Commercial Code for the Green Country Letter of Credit.

25. JPMCB honored Green Country's presentation of documents for payment under the Green Country Letter of Credit as JPMCB was permitted or required to do under the Green Country Letter of Credit and New York Uniform Commercial Code Article 5.

26. Pursuant to Section 5-108 of the New York Uniform Commercial Code, JPMCB is entitled to be reimbursed by EEPC as an applicant for the Green Country Letter of Credit.

SECOND CLAIM
(Unjust Enrichment)

27. JPMCB repeats and realleges each and every allegation contained in paragraphs 1 through 26, inclusive, as if fully set forth herein.

28. JPMCB conferred a benefit upon EEPC by paying on the Green Country Letter of Credit.

29. EEPC's retention of the benefit conferred upon it by JPMCB would be unjust.

30. EEPC has been unjustly enriched by retaining the benefit conferred on it by JPMCB in the amount of \$14,020,000.00.

WHEREFORE, JPMCB demands judgment against EEPC in the amount of \$14,020,000.00, together with interest from December 5, 2001, for the costs and disbursements of this action, and for such other and further relief as may be just and proper.

Dated: New York, New York
December 26, 2002

MOSES & SINGER LLP

By: _____
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