IT IS ORDERED as set forth below:

Date: June 25, 2007

W. H. Drake
U.S. Bankruptcy Court Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
NEWNAN DIVISION

IN THE MATTER OF:	:	**CASE NUMBERS**
	:	
THE NEW POWER COMPANY,	:	02-10835-WHD
a/k/a EMW MARKETING CORP.,	:	through
a/k/a COLUMBIA ENERGY SERVICES	:	02-10837-WHD
NEW POWER HOLDINGS, INC.,	:	
a/k/a EMW ENERGY SERVICES CORP	:	
a/k/a TNPC, INC.,	:	
TNPC HOLDINGS, INC.,	:	JOINTLY ADMINISTERED
a/k/a EMW HOLDINGS CORP.,	:	
	:	
	:	IN PROCEEDINGS UNDER
	:	CHAPTER 11 OF THE
DEBTORS.	:	BANKRUPTCY CODE

O R D E R

Before the Court is the Supplemental Application for Payment of Legal Fees and Costs Pursuant to Sections 503(b)(3)(D) and 503(b)(4), filed by Riverside Contracting, LLC (hereinafter "Riverside"). Objections to the Application have been filed by New Power Holdings, Inc. and TNPC Holdings, Inc. (collectively referred to herein as the

"Debtors"), Enron North America Corp., Enron Power Marketing, Inc., and Enron Energy Services, Inc. (collectively referred to as "Enron"), and Bill Wong. Contrarian Capital and Kellogg Capital Group, LLC have filed statements in support of the Application. This matter constitutes a core proceeding over which this Court has subject matter jurisdiction. *See* 28 U.S.C §§ 157(b)(2)(B); 1334.

BACKGROUND

On June 11, 2002, the Debtors filed voluntary petitions under Chapter 11 of the Bankruptcy Code. These cases were administratively consolidated on June 12, 2002, and an Official Committee of Unsecured Creditors (hereinafter the "Committee") was appointed for the New Power Company (hereinafter "New Power") on June 18, 2002. New Power was the operating entity through which the Debtors provided gas and electric service to customers. New Power was a wholly owned subsidiary of TNPC Holdings, Inc. (hereinafter "TNPC"), which, in turn, was a wholly owned subsidiary of New Power Holdings, Inc. (hereinafter "Holdings"), a publicly traded corporation.

As of October 2006, Enron held 31,666,800 shares of the outstanding common stock of Holdings and warrants exercisable for an additional 24,117,800 shares, which represents approximately 43% of the total outstanding equity ownership of Holdings. At the time the cases were filed, Enron also held a $28 million secured claim (hereinafter the "Enron Lien"), which arose from the settlement of a series of commodity purchases and swap transactions between Enron and the Debtors. This settlement was approved by the United

States Bankruptcy Court for the Southern District of New York (hereinafter the "Enron Bankruptcy Court") on March 28, 2002. Although the Committee originally reserved the right to investigate and contest the validity of the Enron Lien, the Debtors subsequently paid Enron's claim in full.

Early in this case, the Debtors liquidated substantially all of the assets of the company to produce funds sufficient to pay all creditors in full with interest. The Debtors filed a disclosure statement and proposed Chapter 11 plan on October 8, 2002. While this original plan provided for the full payment of all debts with interest and a distribution to the equity holders, it did not provide for interim distributions to be made to equity holders. On January 31, 2003, Riverside, a minority shareholder of Holdings, objected to confirmation of the Debtors' plan on the basis that it did not provide for interim distributions to equity.

In response, the Debtors acknowledged "that the Plan, as originally drafted, did not allow for interim distribution to holders of Interests." Debtors' Response to Riverside's Objection to Confirmation, Docket No. 648 at 10. The Debtors explained that the "Plan was drafted in that manner because Section 510(b) of the Bankruptcy Code makes it difficult, if not impossible, to allow for interim distributions until the Class 8 securities claims are resolved" and that the Debtors believed interim distributions would "probably not be feasible" because "an interim distribution . . . would require a calculation of many other variables such as the number of warrants and options that may be exercised and the treatment to be afforded to those shareholders who have interests in Class 9 as well as claims in Class 8." *Id*. Nonetheless, in order to address Riverside's objection and to

accomplish the goal of distributing "cash to their valid stakeholders as promptly as possible," the Debtors amended their plan to authorize interim distributions to equity in the event a mechanism could be created to enable such a distribution. *Id*. at 11; *see also* Section 5.20 of Debtors' Second Amended Plan, Docket No. 653.

In October 2002, Riverside asked the United States Trustee (hereinafter the "UST") to appoint a committee of equity securities holders. The UST declined to appoint an equity committee, but informed Riverside of his intent to seek the appointment of an examiner to investigate the substantial number of insider claims that had been filed in the Debtors' cases. In response, Riverside filed a motion for appointment of an equity committee. The Debtors and the Committee supported the appointment of an examiner, but were opposed to the appointment of an equity committee. Enron also objected to Riverside's motion and filed a limited objection to the UST's motion, objecting to the appointment of an examiner to the extent that the examiner would be authorized to further investigate either the Enron Lien or Enron's equity interests in Holdings.

After notice and a hearing, the Court denied Riverside's motion and granted the UST's motion to appoint an examiner, but reserved ruling on the extent of the examiner's duties and powers. The Court's subsequent order authorized the examiner to "investigate, file reports, and take any appropriate action with respect to": 1) "[w]hether any claim asserted by [Enron] should be recharacterized as equity"; 2) "[w]hether the [equity interests] of [Enron] are valid"; 3) whether the claims or interests of insiders (other than Enron) or non-insiders who are or were officers, directors, or employees of the Debtors should be

allowed; and 4) whether claims in Class 8 should be allowed.[1]

In accordance with the Examiner Order, the UST appointed Rufus T. Dorsey (hereinafter the "Examiner") as examiner in the TNPC and Holdings cases. The Examiner engaged in several negotiations with regard to insider claims. Those negotiations resulted in various settlements, which were approved by the Court and reduced the allowed claims in this case by approximately $19 million.

The Examiner also conducted an investigation of Enron and eventually pursued litigation against Enron in the Enron Bankruptcy Court. *See Dorsey v. Enron Corp.*, et al., 04-04303. The purpose of the investigation and litigation was to recharacterize from debt to equity the Enron secured debt and to equitably subordinate Enron's equity interests to those of the remaining equity holders.

On September 30, 2003, Riverside filed an application for payment of its fees and expenses pursuant to section 503(b)(3)(D) and (b)(4). The application was opposed by the Debtors and Enron and supported by Carlson Capital. Riverside sought payment of approximately $139,000 of fees and expenses, asserting that it had made a substantial contribution to the Debtors' reorganization by pressing for the appointment of the Examiner and for the expansion of the Examiner's duties to include the investigation of Enron's claims and interests, and by insisting that the Debtors' plan language be amended to protect the Examiner's ability to continue his investigation. On May 24, 2004, the Court entered an

[1] The parties submitted for the Court's consideration different versions of proposed orders and filed statements in support of their respective orders.

order granting the application, in part. The Court awarded Riverside $10,884 in fees and denied the remainder of the request without prejudice to Riverside's right to file a second application at such time as additional information became available regarding the outcome of the Examiner's investigation of Enron's claims and interests.

The Court recognized the fact that the Examiner brought significant value to the Debtors' estates by investigating insider claims and negotiating the return of at least $15 million for the benefit of the equity holders, but noted that the ultimate result of the examination of Enron's claims and interest remained to be seen. After reviewing the record, the Court acknowledged that Riverside had participated extensively in the case, but concluded that the Examiner would have been appointed for the purpose of examining insider claims without Riverside's involvement. Absent Riverside's participation, however, neither the Debtors, the Committee, nor the UST would have pushed to have the Examiner's investigation expanded to include Enron's claims and interests. At the time of the first order, the Court could not determine whether this aspect of the investigation would produce a benefit that would outweigh the time and money spent. Accordingly, the Court denied in part the request for fees and expenses without prejudice to Riverside's right to file a second application "at such time as additional information becomes available regarding the Examiner's investigation of the claims and interests held by Enron."

On March 9, 2004, the Court held a hearing on a motion to compromise and settle certain litigation involving a securities class action. At the hearing, counsel for Riverside appeared and requested that the Debtors make an interim distribution pursuant to Section

5.20 of the Plan in view of the fact that the Debtors had successfully resolved the issues with regard to the Class 8 claims that had previously made interim distributions logistically impracticable. On May 7, 2004, the Debtors filed a motion seeking authorization to make an interim distribution of 40 cents per share and to establish an appropriate reserve. Riverside filed a limited objection to the Debtors' motion in which it asserted that the distribution amount was too low and that the Debtors' proposal would reserve more funds than necessary. According to Riverside, the Debtors could afford to increase the distribution by at least 50% to 62 cents per share. Riverside was joined in this objection by Contrarian Capital Management, LLC and Kellogg Capital Group, LLC.

The Court held a hearing on the Debtors' motion on June 11, 2004, at which time the Court determined that an independent party should be appointed for the purpose of studying and recommending to the Court the appropriate amount of the distribution. On June 18, 2004, the Court entered an order appointing Morton Levine for this purpose and directing him to file a report with his recommendation. Levine filed his status report on August 27, 2004, in which he noted that "[a] significant factor in [his] determination as to the recommendation proposed by the Debtors for an interim distribution is the outcome of that certain class action law suit filed" against Holdings and parties that have been referred to throughout this case as the "Underwriters." Levine Report, Docket No. 1316 at 4. In short, a final settlement between the class action plaintiffs and the Underwriters would allow the Debtors to quantify, with previously unavailable certainty, the amount necessary for the Debtors to indemnify the Underwriters. Levine recommended an immediate distribution

45 cents per share, with a second interim distribution of 14 cents per share once the order approving the settlement of the class action securities litigation became final and non-appealable.

Three days after the filing of Levine's report, the Debtors filed a supplemental motion to permit interim distributions in which the Debtors sought authority to make one interim distribution of 59 cents per share once the order approving the settlement became final. The Debtors acknowledged that it arrived at this figure by taking into consideration the views of the Examiner, Levine, and certain shareholders.

On September 17, 2004, the Court entered an order authorizing an interim distribution of 59 cents to be made prior to the approval of the settlement. This was made possible by the fact that the Underwriters consented to the Debtors' making the distribution prior to the entry of a final order regarding the settlement. The settlement was the last remaining matter that the Debtors had to resolve prior to being in a position to make a final distribution to shareholders, and, if the Examiner's investigation had not been pending, the Debtors would have been prepared to do so in mid-January 2005. *See* Declaration of M. Patricia Foster, Docket No. 1410.

On January 26, 2005, the Enron Bankruptcy Court found that the Examiner's recharacterization claim was foreclosed by that court's previous approval of a settlement between New Power and Enron and dismissed that portion of the Examiner's complaint, leaving only the equitable subordination count. In February 2005, the Examiner filed in this Court an objection to the Enron Interests on the ground that the interests were invalid under

Delaware law. In response, Enron accused the Examiner of violating the automatic stay in its bankruptcy case and sought sanctions against the Examiner and his counsel. On March 24, 2005, this Court and the Enron Bankruptcy Court entered a joint order staying the proceedings with regard to the Examiner's objection to the Enron Interests and directing that the parties submit to a confidential non-binding mediation. On October 4, 2006, New Power and the Examiner filed a joint motion to approve a settlement between New Power, the Examiner, and Enron. Pursuant to the settlement agreement, the Enron Interests would be fully allowed, the first $5,725,000 of Enron's distribution on account of the Enron Interests would be retained by Holdings for pro rata distribution to the remaining shareholders (hereinafter the "Non-Enron Shareholders), Holdings would make a distribution to equity no later than December 14, 2006, the Examiner would dismiss the adversary proceeding against Enron, and Enron would withdraw its request for sanctions. The Court approved the proposed settlement on October 20, 2006.

Subsequent to the Court's order on Riverside's initial application, the Examiner also began an investigation of equity interests previously held and sold by Lou Pai, an insider of New Power, and an investigation of at least 1,032,000 shares of stock held by Lanna Lee, Pai's former spouse. On January 29, 2007, the Examiner filed a motion to approve a settlement between the Examiner and Lou Pai, under which Pai agreed to pay $400,000 to the estate in settlement of the Examiner's claims against Pai. The Court approved the settlement by order dated February 6, 2007. On October 13, 2006, the Examiner objected to equity interests held by Lanna Lee. This objection was withdrawn pursuant to a

settlement agreement between the Examiner and Lee, under which Holdings would distribute $500,000 to Lee in full payment of Lee's claims against or interests in New Power. As of the end of February 2007, the parties estimated that Lee's equity interests would have entitled her to a distribution of approximately $820,000. *See* Transcript of Hearing Held on February 28, 2007 at 4.

Shortly before the Examiner filed his objection to the equity interests held by Lanna Lee, the Debtors filed a motion for authority to make a final distribution under the Plan and to permit the abandonment of any and all objections and causes of action relating to the equity interests held by Pai and Lee. In the alternative, the Debtors suggested that a litigating trust be established that would enable the Examiner to continue pursuing his objections to these equity interests. Riverside opposed any relief that would preclude the Examiner from objecting to the equity interests held by Pai and Lee, and, at the hearing, the Examiner stated that he believed that his claims against Pai and Lee had merit. In support of their position, the Debtors asserted that the Examiner's remaining work with regard to these claims would not produce a sufficient benefit to justify the costs of leaving the Debtors' bankruptcy cases open.

On November 3, 2006, Riverside filed a second application for fees and expenses incurred in connection with this case. Riverside now seeks a total of $270,591.42, which does not include the $10,884 in fees awarded Riverside earlier in the case. In opposition to the requested fees, Enron and the Debtors assert that Riverside did not make a substantial contribution to the Debtors' cases beyond that recognized by the Court in its first order.

CONCLUSIONS OF LAW

As a general rule, each party to litigation must pay its own fees and expenses. However, in the bankruptcy context, if a creditor or other party makes a substantial contribution to a bankruptcy case, the Code provides for payment of the party's fees and expenses as an administrative expense by the estate. *See* 11 U.S.C. 503(b)(3)(D); (b)(4); *Matter of D'Lites of America, Inc.*, 108 B.R. 352 (Bankr. N.D. Ga. 1989) (Drake, J.). The party seeking payment of an administrative expense claim bears the burden of proving that the "expenses resulted in a significant and tangible benefit to the estate." *D'Lites,* 108 B.R. at 356; *see also In re Villa Luisa, LLC*, 354 B.R. 345 (Bankr. S.D.N.Y. 2006) (burden of proving substantial contribution is on the party seeking payment); *In re U.S. Lines, Inc*., 103 B.R. 427 (Bankr. S.D.N.Y. 1989) (claimant must prove entitlement to fees by a preponderance of the evidence). The simple fact that the fees and expenses were incurred, without proof of a "concrete benefit to the estate" is insufficient to satisfy this burden. *Id*. The Court will not allow the payment of expenses if it concludes that the claimant's participation in the case "as a whole was detrimental to the estate," or "caused an adverse impact on the estate rather than a 'substantial contribution.'" *Id*. For example, notwithstanding a finding of extensive involvement in a case, the Court is unlikely to find a substantial contribution when the movant's participation has retarded or interrupted the debtor's reorganization. *See In re DP Partnership,* 106 F.3d 667, 672 (5th Cir. 1997); *In re Communications Management & Information, Inc*., 172 B.R. 136, 141 (Bankr. N.D. Ga.1994) (Murphy, J.); *see also In re Big Rivers Elec. Corp.*, 233 B.R. 739 (W.D. Ky. 1998)

(denying application for payment of expenses after finding that, although some of the applicant's activities may have benefitted the estate, any benefit was outweighed by the costs associated with the applicant's attempts to interrupt and delay the bankruptcy proceedings); *In re American Plumbing & Mechanical, Inc*., 327 B.R. 273 (Bankr. W.D. Tex. 2005) (employing a cost-benefit analysis to determine whether to grant a substantial contribution request).

"[T]he motive of the petitioner should not be a factor in determining whether a substantial contribution has been made in the bankruptcy proceeding." *In re Celotex Corp*., 227 F.3d 1336, 1339 (11th Cir. 2000). Accordingly, the fact that the movant performed services or incurred expenses primarily to benefit its own interest rather than that of the estate or the creditors at large is irrelevant to the question of whether the movant has made a substantial contribution to the case. Nonetheless, when a creditor acts primarily for its own benefit, the evidence may show that the movant's participation resulted in a primary benefit to the creditor and only an incidental benefit to the estate. In such a case, the contribution made is not "substantial" within the meaning of the statute. *In re Kidron, Inc*., 278 B.R. 626 (Bankr. M.D. Fla. 2002).

The fact that the contribution made by the movant does not result in an overall enhancement of the estate, but rather the "proper allocation" of the value of the estate, is not a *per se* bar to a finding that the movant made a substantial contribution in the case. *See In re Mirant*, 354 B.R. 113 (Bankr. N.D. Tex. 2006) ("Moreover, as this court noted above, where, as here, the issue is less one of the sufficiency of the estate than the proper allocation

of its value, ensuring fair return to a class benefits the case and the estate.").

A. *The Parties' Contentions*

In its application, Riverside asserts that its efforts with regard to three aspects of the Debtors' cases have resulted in a substantial contribution, and these include: 1) its efforts to expand the scope of the Examiner's investigation to include Enron's claims and interests and the assistance it rendered to the Examiner with regard to the litigation against Enron; 2) its efforts to ensure that the plan included interim distributions to the Non-Enron Shareholders, to prompt the Debtors to utilize the interim distribution provisions, and to effect an increase in the amount of the interim distribution above the amount originally proposed by the Debtors; and 3) its efforts to ensure that the Examiner's claims against Pai and Lee were not abandoned at the request of the Debtors. Riverside contends that it should be compensated for all fees and expenses incurred because it would not have been able to produce these results if it had not participated throughout the entire case and monitored the Examiner's progress.

The Debtors oppose the application on the basis that Riverside's efforts did not produce the results for which Riverside has taken credit; even if they did, these results cannot be considered to have benefitted the estates because the Debtors expended significant funds as a result of Riverside's efforts that would outweigh the gains to the Non-Enron Shareholders; and Riverside's time records are not detailed enough to permit the Court to conduct a proper review of the services rendered by Riverside's counsel.

According to the Debtors' calculation, the costs incurred by the estates as a result of the expansion of the Examiner's investigation total in excess of $3.07 million, which include: 1) the Examiner's fees, attorney's fees, and expenses related to the Enron examination; 2) the Debtors' attorney's fees and expenses related to the Enron examination; and 3) the operating expenses incurred by the Debtors due to the ongoing investigation. The Debtors also would reduce from any alleged benefit achieved by the Enron examination the lost opportunity cost incurred by the shareholders because they were forced to wait two years to receive their final distribution while the Examiner's investigation of Enron continued. The Debtors assert that this delay cost the shareholders $1.15 million under the assumption that the shareholders could have reinvested these funds into equity investments upon their receipt in January 2005.

As to Riverside's contention that its efforts with regard to the interim distribution resulted in a substantial contribution, the Debtors argue that Riverside was not responsible for the increase in the amount of the distribution because the Debtors would have consented to the distribution of 59 cents per share regardless of the involvement of Riverside or the appointment of Levine. The Debtors contend that they finally agreed to increase the distribution only because the Class Action Securities Litigation was settled. The Debtors also suggest that much of Riverside's participation was duplicative of the work conducted by the Examiner and Levine and should, therefore, not be compensated. In other words, once Riverside succeeded in having the Examiner and Levine appointed, Riverside should have stepped back and permitted these court-appointed professionals to do their jobs so that

the estate would not bear the burden of paying two sets of fees to achieve the exact same result.

In the event the Court determines that Riverside has made a substantial contribution, the Debtors object to the payment of fees for services rendered prior to Riverside's first application on the theory that the Court has already considered and denied the bulk of these fees. The Debtors also object to compensation for fees and expenses to the extent that they are related to case administration, monitoring, and education or were incurred for the preparation of its application for compensation. Finally, the Debtors believe that Riverside has made a profit on its investment in Holdings stock of at least $2.6 million and that it would be inequitable to permit Riverside to benefit further at the expense of those shareholders who realized a loss on their original investment.

Enron raises similar objections to the application. First, Enron asserts that Riverside's efforts did not result in a substantial contribution to the case because: 1) Riverside's efforts did not expand the overall size of the estate and, in fact, actually diminished the size of the distribution to equity; and 2) Riverside is attempting to appropriate the work performed by the Examiner in order to justify its fee request. Enron also echoes the Debtors' objection to Riverside's application on the basis that the time records are too vague to permit the Court to conduct a thorough review and that the time entries include: 1) services that were previously denied by the Court; and 2) services rendered for case administration and monitoring, attorney education, and preparation of fee applications. Enron contends that many of the services for which Riverside is seeking

compensation appear to have been rendered by both law firms representing Riverside. Finally, in the event the Court were to determine that Riverside's fees are entitled to administrative expense priority, Enron argues that it would be inequitable to permit payment of those fees from Enron's share of the remaining distribution because Enron was the target of the Examiner's investigation and obviously did not benefit from it.

B. *The Court's Findings*

First, the Court rejects Riverside's contention that its efforts to ensure that the Non-Enron Shareholders received interim distributions resulted in a substantial contribution to the case. Although Riverside's involvement in this case and its objection to the Debtors' original plan resulted in the inclusion of the interim distribution mechanism into the Debtors' confirmed plan, it is more than likely that there would have been no need for an interim distribution mechanism had Riverside not pressed to have the Examiner's investigation expanded. The Debtors were only in a position to make an interim distribution in this case because the Class Action Securities Litigation was settled. If Riverside had not pressed to have the Examiner's investigation expanded to include Enron, it is very likely that the Debtors would have been in a position at that time to make a final distribution and close these cases. Riverside created the need for interim distributions and now seeks to be rewarded for its efforts in procuring them. The Court will not compensate Riverside directly for this effort. That being said, the Court will consider the fact that Riverside worked to ensure that the largest interim distribution possible was made to the Non-Enron

Shareholders when determining whether the total cost of continuing the case to permit the Enron investigation exceeded the benefit of the examination.

Second, the Court concludes that Riverside's efforts with regard to the preservation of the Examiner's settlements with Pai and Lee resulted in a substantial contribution to the case. The record supports the conclusion that, but for Riverside, the Court would have granted the Debtors' motion to compel the Examiner to abandon these objections. Upon the filing of the Debtors' motion, Riverside filed a written objection and advocated that objection at the hearing. Riverside's actions resulted in the denial of the Debtors' motion to compel the abandonment of these claims.

Finally, the Court has previously found that the expansion of the Examiner's duties and powers to include an examination of Enron's claim and interests would not have occurred without Riverside's participation in this case. To the extent that this investigation resulted in a benefit to the estate, Riverside deserves "credit" for this benefit. By the same token, the additional expenses incurred as a result of this expansion must also lie at Riverside's door. If the benefit netted against the expenses does not result in a "significant and tangible benefit to the estate," the Court cannot conclude that Riverside's efforts to expand the Examiner's investigation constitutes a substantial contribution to the case.

Having considered the record, the parties' arguments, the declarations and affidavits filed, the statements made by the Examiner, and the Court's direct experience with this case, the Court has concluded that Riverside's efforts to have the examination expanded resulted in a substantial contribution to the case. Based on the totality of the circumstances, the

Court finds that the Examiner's investigation of Enron's claims and interests was worth pursuing for the benefit of the Non-Enron Shareholders. The Examiner's efforts resulted in an additional $5,725,000 being distributed to these shareholders that simply would not have been distributed without Riverside's involvement, which included its efforts to expand the examination to include Enron and the assistance it provided to the Examiner by providing him with research and litigation support. These efforts were not duplicative of the Examiner's work. Considering the totality of the circumstances, the Court agrees with Riverside that the costs associated with the Enron investigation do not exceed the benefit rendered. A finding of a substantial contribution does not necessarily require that the overall size of the estate be enhanced. Riverside's contribution to this case resulted in the fair allocation of the Debtors' remaining value to the shareholders.

The Court further rejects the contention of the Debtors and Enron that fees incurred prior to this Court's earlier order have been expressly denied. The Court specifically stated that, because the results of the examination were not yet known, the Court could not determine whether fees should be denied or granted. Accordingly, the Court may now review any of the fees previously considered to determine whether there is a causal connection between the services rendered and the result achieved. *See, e.g., In re Granite Partners*, 213 B.R. 440 (Bankr. S.D.N.Y. 1997) (applicant must show a causal connection between the service and the contribution; creditor not entitled to compensation for "virtually every service that it performed" in the case). In that regard, the Court disagrees with Riverside's position that all fees incurred by Riverside were necessary to produce this

result.[2] *See* COLLIER ON BANKRUPTCY, 503.11[3] ("If the entity incurred professional fees both for [the activity that qualified the entity for administrative expense treatment] and for other activity in the case, only the former is compensable as an administrative expense."). The Court has carefully reviewed the time records submitted, as well as the Declaration of Rob Williamson, and has determined that the fees and expenses incurred by Riverside in making a substantial contribution to the case are those reflected in the table attached below as Exhibit 1. The Court has also determined that these fees and expenses are entitled to be paid as an administrative expense.

CONCLUSION

Having carefully considered the Supplemental Application by Riverside Contracting, LLC in Support of Entry of an Order Awarding Legal Fees and Costs Pursuant to Bankruptcy Code Sections 503(b)(3)(D) and 503(b)(4) Based on Substantial Contribution, the Court hereby holds that the application should be, and hereby is, **GRANTED** in part and **DENIED** in part. Riverside shall be entitled to payment of **$56,003.58** as an allowed administrative expense from the Debtors' bankruptcy estates.

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[2] Services rendered in preparing and defending the fee application are compensable to the extent that the Court has found that the underlying services resulted in a substantial contribution. *See In re Catalina Spa & R.V. Resort, Ltd.*, 97 B.R. 13 (Bankr. S.D. Cal. 1989). As the Court has not found that all services for which Riverside seeks compensation were necessary to Riverside's substantial contribution, the Court will grant compensation for approximately one third of the time spent in preparing and defending the applications.

EXHIBIT 1

Time Period	Firm	Work Performed	Fees/Expenses
Nov-Dec 2002	Herrick, Feinstein	Motion to Appoint Examiner and scope of Examiner's duties	13.5 hours[3] x $375= **$5062.50** Expenses= **$39.92**
Nov-Dec 2002	Scroggins and Williamson	Motion to Appoint Examiner and scope of Examiner's duties	25.3 hours[4] x $285= **$7210.50** Expenses= **$294.40**
May-Aug 2003	Scroggins and Williamson	Monitor Examiner's work	7.7 hours x $285= **$2194.50**
Sept- Dec 2003	Herrick, Feinstein	Review of Examiner's Report	4.3 hours x $410= **$1763**
Jan-June 2004	Herrick, Feinstein	Equitable subordination of Enron interests	8.6 hours x $435= **$3741** Expenses= **$116.02**
Jan-Oct 2004	Scroggins and Williamson	Equitable subordination of Enron interests	6.6 hours x $285= **$1881** 4.1 hours x $290= **$1189**
Sept-Dec. 2004	Herrick, Feinstein	Monitoring Enron litigation in NY	9.9 hours x $435= **$4306.50** Expenses= **$80.50**

[3] This amount of time does not include 1.3 hours billed on December 9, 2002, as the Court reimbursed Riverside for these services in its earlier order.

[4] This amount of time does not include 1.4 hours billed on December 9, 2002, as the Court reimbursed Riverside for these services in its earlier order.

Jan 2005 - Apr 2006	Herrick, Feinstein	Research on equitable subord. and communications with Examiner	8.3 hours x $485= **$4025.50** 17.8 hours x $410= **$7298** Expenses= **$1743.25**
Jan-Apr 2005	Scroggins and Williamson	Research on equitable subord. and communications	3.6 hours x $305= **$1098** Expenses= **$30.10**
October 2006	Herrick, Feinstein	Objecting to Debtor's Motion to Compel Abandonment of Examiner's claims	11.5 hours x $500= **$5750**
October 2006	Scroggins and Williamson	Objecting to Debtor's Motion to Compel Abandonment of Examiner's claims	10 hours x $325= **$3250**
Fees allowed for preparation and defense of Fee Application			**$5,500.00**
Expenses allowed for preparation and defense of Fee Application			**$618.89**
TOTAL FEES			**$53,080.50**
TOTAL EXPENSES			**$ 2,923.08**

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