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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. JOHN M. FORNEY, Defendant.	No.: CR 03-0178 MJJ VIOLATIONS: 18 U.S.C. § 371 – Conspiracy to Commit Wire Fraud; 18 U.S.C. § 1343 – Wire Fraud; 18 U.S.C. § 2 –Aiding & Abetting SAN FRANCISCO VENUE

SUPERSEDING INDICTMENT

The Grand Jury charges:

1. At all relevant times, Enron Corp. ("Enron") was a publicly traded Oregon corporation with its headquarters in Houston, Texas. Through its subsidiaries, Enron was engaged in the purchase and sale of natural gas and electricity, construction and ownership of pipelines and power facilities, provision of telecommunications services, and trading in contracts to buy and sell various commodities. Before December 2, 2001, Enron was the seventh largest corporation in the United States.

2. From approximately 1997 to near the end of 2000, the defendant JOHN M. FORNEY was employed by Enron in its West Power Trading Division ("West Power") in Portland, Oregon. From June 1999 to the end of 2000, FORNEY was the Manager of the West

Power Real Time trading desk and was responsible for creating schedules and making trades in the real time electricity market in the State of California. FORNEY was responsible for reviewing trades of the Real Time desk, creating spreadsheet templates for Real Time employees to record all trades and schedules, and training new employees on the Real Time desk. All trading strategies employed by Real Time desk employees were created, reviewed or approved by FORNEY.

CALIFORNIA'S ENERGY MARKETS

3. Prior to 1996, the California wholesale electricity industry was organized around three regulated utilities, Pacific Gas & Electric Co., Southern California Edison, and San Diego Gas & Electric. The utilities provided electricity to retail customers, managed system reliability and the electric transmission system, and owned and operated the electricity generating plants. During this time, the price of electricity was set by the California Public Utilities Commission.

4. In 1996, California enacted legislation to restructure the State's electricity market. The legislation was intended to reconfigure the market from one dominated by monopoly utilities to one subject to market forces. While the utilities remained responsible for serving the needs of their electricity customers, the legislation required them to sell most of their electricity generation plants to private companies. The legislation also created two new institutions, the California Power Exchange ("PX") and the California Independent System Operator ("ISO"). The PX was intended to be the primary marketplace for wholesale electricity in California. The ISO was charged with managing the state's electricity transmission grid, which included maintaining a balanced energy market, purchasing "ancillary services" (readily available emergency stand-by power), and managing transmission flow over the electric power lines.

5. Through the markets operated by the PX and ISO, generators and energy marketers (including Enron) bid for and scheduled fixed amounts of electricity for delivery to their wholesale and retail customers (known as "load"). From 1998 to 2001, the PX operated two electricity markets, the "day-ahead market," for energy delivery the following day, and the "day-of market," for energy delivery the same day. The ISO operated the "real-time" electricity market. Through the "real-time" market, the ISO bought and sold power to account for and

correct any imbalances between supply and demand during each operating hour.

6. The ISO was also responsible for managing California's electricity transmission system. The transmission system is a set of interconnecting power lines that carry electricity into, through, and out of California. These power lines vary in both distance covered and electricity capacity. In part to ensure that electricity supplies did not exceed transmission capacity, the ISO required the schedules submitted by energy marketers and generators to identify the amount and type of electricity to be sent, where the electricity was coming from, and where it was going.

7. Depending upon the total amount of electricity scheduled and the net direction of the electricity flow, a power line could become "congested." When congestion occurred, an ISO computer program calculated a "congestion management fee." The fee was essentially a toll for using an overcrowded power line. The proceeds of that toll were paid to two groups: (1) the owners of the congested line; and (2) the entities who "relieved" congestion by either reducing the amount of scheduled energy or scheduling energy in the opposite direction of the congestion.

8. When there was an insufficient amount of supply to meet demand, the ISO was forced to solicit additional electricity from outside California, known as "out of market" electricity. The purchase of "out of market" electricity was unlike any other electricity purchase, in that it was not subject to the federally-approved price cap for energy within the State of California.

9. On a monthly basis, the ISO calculated the total amount of electricity and ancillary services supplied by each energy marketer and generator, the associated congestion management fees, and the total amount of electricity consumed by each wholesale customer. The ISO then issued a net payment to the suppliers and billed the customers for the appropriate amounts due. The ISO sent payments to generators and electricity marketers (including Enron) for electricity, ancillary services, and congestion fees by wire transmission through the Bank of America in the Northern District of California.

11. Beginning on or about May 22, 2000, the California energy market began experiencing problems that became a crisis which continued for more than a year. Electricity

supply declined. Generators frequently failed to operate their plants at full capacity and shut down plants. Due to this shortage of energy supply, the ISO repeatedly purchased "out of market" electricity at prices above the price cap. By late 2000, the rate of and price paid for "out of market" electricity rapidly accelerated. The price paid for "ancillary services" also increased dramatically during the crisis. From November 2000 to December 2000, prices for all "ancillary services" increased between 127 percent and 650 percent. Finally, the prices for wholesale electricity in the PX and ISO markets also skyrocketed. Prior to May 2000, electricity prices consistently averaged $24 to $40 per megawatt hour (a megawatt hour is an amount of electricity sufficient to serve the needs of approximately 750 homes for a one-hour period). By December 2000, prices reached $1,500 per megawatt hour.

COUNT ONE: (18 U.S.C. § 371 – Conspiracy to Commit Wire Fraud)

12. The allegations contained in paragraphs 1-11 are realleged and incorporated by reference as if set forth herein.

13. In or about and between June 1999 and January 2001, both dates being both approximate and inclusive, in the Northern District of California and elsewhere, the defendant

JOHN M. FORNEY

and others known and unknown, did knowingly and intentionally combine, conspire and agree to commit wire fraud by devising a scheme and artifice to defraud and to obtain money by false and fraudulent pretenses, representations, and promises, and for the purpose of executing such scheme and artifice, transmitted and caused to be transmitted wire communications in interstate commerce, all in violation of Title 18, United States Code, Section 1343.

MEANS AND METHODS OF CONSPIRACY AND FRAUDULENT SCHEME

14. It was part of the scheme and artifice that defendant FORNEY and others, directly and indirectly, submitted and caused to be submitted false and fraudulent schedules, bids, and information in order to obtain money for Enron from the PX, ISO and other participants in the California energy markets.

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TRADING SCHEME ONE: NON-FIRM AS FIRM

15. It was part of the scheme and artifice that defendant FORNEY and others attempted to and did sell non-firm energy as firm energy. Firm energy has guaranteed reliability because it is backed by another generation source. The ISO or PX bought firm energy to maintain the reliability of the California grid. FORNEY and others submitted and caused to be submitted false and fraudulent schedules, bids and information in which they sold firm energy, and collected payments for selling firm energy, while in fact the energy they sold was non-firm. This was known within Enron as the Non-Firm As Firm trading scheme.

TRADING SCHEME TWO: NON-FIRM EXPORT

16. It was part of the scheme and artifice that defendant FORNEY and others attempted to and did collect congestion payments without actually relieving congestion or intending to relieve congestion. FORNEY and others submitted and caused to be submitted false and fraudulent bids, schedules and information in which they purported to export non-firm energy out of California to relieve congestion on the California electricity grid, while in fact they did not intend to and did not export the energy. This was known within Enron as the Non-Firm Export trading scheme.

TRADING SCHEME THREE: GET SHORTY

17. It was part of the scheme and artifice that defendant FORNEY and others sold Ancillary Services that they did not intend to provide in a forward market. Ancillary Services is reserve power that the ISO depends on to ensure the reliability of the California electricity grid. FORNEY and others submitted and caused to be submitted false and fraudulent bids, schedules and information, in which they sold Ancillary Services in a forward market and collected payments for doing so, while in fact they did not provide the Ancillary Services but cancelled the sale in the real time market. This was known within Enron as the Get Shorty trading scheme.

TRADING SCHEME FOUR: DEATH STAR A/K/A FORNEY LOOP

18. It was part of the scheme and artifice that defendant FORNEY and others attempted to and did collect congestion payments without actually relieving congestion or intending to relieve congestion. Forney and others submitted and caused to be submitted false

and fraudulent schedules, bids and information, in which they purported to move energy in directions that would relieve congestion, while in fact the energy was scheduled to flow in a looping pattern that the ISO could not detect because part of the schedules involved out-of-state transmission lines. This was known within Enron as the Death Star, Forney Loop and Forney Perpetual Loop trading scheme.

TRADING SCHEME FIVE: RICOCHET

19. It was part of the scheme and artifice that defendant FORNEY and others thwarted the ISO's price caps on California energy. The price caps were designed to avoid gouging by energy companies in times of crisis. In the event of a shortage, the ISO was authorized to buy non-California energy at prices above the caps by making out of market calls. FORNEY and others submitted and caused to be submitted false and fraudulent schedules, bids and information, in that the schedules they submitted showed energy from California moving out of state, thus permitting them to sell the very same energy back to the ISO above the price cap. This was known within Enron as the Ricochet trading scheme.

TRADING SCHEME SIX: OFF-LINE HUB

20. It was part of the scheme and artifice that defendant FORNEY and others attempted to and did collect congestion payments without actually relieving congestion or intending to relieve congestion. FORNEY and others submitted and caused to be submitted false and fraudulent schedules, bids and information, in which they scheduled electricity to flow to the Four Corners Intertie, while in fact they knew that Four Corners was off-line due to maintenance and that no energy would or could be provided. This was known within Enron as the Off-Line Hub trading scheme.

TRADING SCHEME SEVEN: LOAD SHIFT

21. It was part of the scheme and artifice that defendant FORNEY and others attempted to and did create congestion for the purpose of collecting payments. Enron owned Firm Transmission Rights to Path 26, a major transmission line between Northern and Southern California, which gave Enron the right to collect revenues for use of Path 26 by other energy companies only if the line was congested. FORNEY and others submitted and caused to be

submitted false and fraudulent schedules, bids and information, in which they misstated their load for the express purpose of creating the illusion of congestion across Path 26 in order to collect revenue based on Enron's Firm Transmission Rights. This was known within Enron as the Load Shift trading scheme.

FURTHER MEANS AND METHODS

22. It was part of the scheme and artifice that defendant FORNEY and others attempted to and did misrepresent the nature and amount of electricity Enron proposed to supply and the load it intended to serve.

23. It was part of the scheme and artifice that defendant FORNEY and others attempted to and did falsely "relieve" congestion on California's transmission lines and otherwise manipulate the ISO's calculation of congestion management fees.

24. It was part of the scheme and artifice that defendant FORNEY and others attempted to and did misrepresent the origin of energy.

25. It was part of the scheme and artifice that defendant FORNEY and others attempted to and did falsely represent that Enron intended to supply energy or types of energy it did not in fact have, and did not intend to supply.

26. The purpose of the scheme and artifice was to artificially increase the price Enron received, to receive payments for services Enron did not in fact provide, and to manipulate the market price in certain markets.

OVERT ACTS

27. In furtherance of the conspiracy and to effect the objects thereof, in the Northern District of California, and elsewhere, FORNEY and others committed the following overt acts, among others:

a. On or about March 21, 2000, Enron submitted a schedule to sell 50 megawatts of Non-Firm energy as Firm energy.

b. On or about July 20, 2000, Enron submitted a schedule purporting to export 50 megawatts of Non-Firm power to Oregon.

c. On or about June 28, 2000, Enron submitted a bid to sell 400 megawatts of

Ancillary Services.

d. On or about July 21, 2000, Enron submitted a schedule to send 10 megawatts to Oregon.

e. On or about December 8, 2000, Enron submitted a schedule to export 17 megawatts of energy below the price cap and import and sell 17 megawatts of energy above the price cap.

f. On or about May 27, 2000, Enron submitted a schedule to supply 35 megawatts of energy to the Four Corners intertie.

g. On or about June 20, 2000, a wire was transmitted from the California ISO's bank in Concord, California to an account for the benefit of Enron Power Marketing Group, Inc.'s bank in Dallas, Texas.

h. On or about July 20, 2000, a wire was transmitted from the California ISO's bank in Concord, California to an account for the benefit of Enron Power Marketing Group, Inc.'s bank in Dallas, Texas.

i. On or about August 18, 2000, a wire was transmitted from the California ISO's bank in Concord, California to an account for the benefit of Enron Power Marketing Group, Inc.'s bank in Dallas, Texas.

j. On or about September 21, 2000, a wire was transmitted from Enron Power Marketing Group, Inc.'s bank in New York, New York to the California ISO's bank in Concord, California.

k. On or about October 17, 2000, a wire was transmitted from Enron Power Marketing Group, Inc.'s bank in New York, New York to the California ISO's bank in Concord, California.

l. On or about November 21, 2000, a wire was transmitted from Enron Power Marketing Group, Inc.'s bank in New York, New York to the California ISO's bank in Concord, California.

m. On or about December 21, 2000, a wire was transmitted from Enron Power Marketing Group, Inc.'s bank in New York, New York to the California ISO's bank in

Concord, California.

n. On or about January 25, 2001, a wire was transmitted from Enron Power Marketing Group, Inc.'s bank in New York, New York to the California ISO's bank in Concord, California.

o. On or about February 22, 2001, a wire was transmitted from the California ISO's bank in Concord, California to an account for the benefit of Enron Power Marketing Group, Inc.'s bank in Dallas, Texas.

p. On or about March 23, 2001, a wire was transmitted from Enron Power Marketing Group, Inc.'s bank in New York, New York to the California ISO's bank in Concord, California.

All in violation of Title 18 United States Code Section 371.

COUNTS TWO THROUGH ELEVEN: 18 U.S.C. §§ 1343 & 2 (Wire Fraud and Aiding & Abetting)

28. The allegations contained in paragraphs 1-26 are realleged and incorporated by reference as if set forth herein.

29. On or about the dates indicated below, in the Northern District of California and elsewhere, the defendant

JOHN M. FORNEY

devised and intended to devise a scheme and artifice to defraud, and to obtain money and property by means of false and fraudulent pretenses, representations and promises, well knowing that the pretenses, representations and promises were false when made, and for the purposes of executing the scheme and artifice to defraud, knowingly caused to be transmitted by wire communication in interstate commerce, signs, signals and sounds, as follows:

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Count	Date of Wire Communication	From	To	Description of Wire Communication
2	June 20, 2000	Concord, California	Dallas, Texas	Wire from California ISO's bank to account for the benefit of Enron Power Marketing Group, Inc.
3	July 20, 2000	Concord, California	Dallas, Texas	Wire from California ISO's bank to account for the benefit of Enron Power Marketing Group, Inc.
4	August 18, 2000	Concord, California	Dallas, Texas	Wire from California ISO's bank to account for the benefit of Enron Power Marketing Group, Inc.
5	September 21, 2000	New York, New York	Concord, California	Wire from Enron Power Marketing Group, Inc.'s account at Citibank to California ISO's bank
6	October 17, 2000	New York, New York	Concord, California	Wire from Enron Power Marketing Group, Inc.'s account at Citibank to California ISO's bank
7	November 21, 2000	New York, New York	Concord, California	Wire from Enron Power Marketing Group, Inc.'s account at Citibank to California ISO's bank
8	December 21, 2000	New York, New York	Concord, California	Wire from Enron Power Marketing Group, Inc.'s account at Citibank to California ISO's bank
9	January 25, 2001	New York, New York	Concord, California	Wire from Enron Power Marketing Group, Inc.'s account at Citibank to California ISO's bank
10	February 22, 2001	Concord, California	Dallas, Texas	Wire from California ISO's bank to account for the benefit of Enron Power Marketing Group, Inc.
11	March 23, 2001	New York, New York	Concord, California	Wire from Enron Power Marketing Group, Inc.'s account at Citibank to California ISO's bank

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All in violation of Title 18, United States Code, Sections 1343 and 2.

DATED: A TRUE BILL.

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FOREPERSON

KEVIN V. RYAN
United States Attorney

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ROSS W. NADEL
Chief, Criminal Division

(Approved as to form: _____)
AUSAs JACOBS AND TENORIO-KUTZKEY