

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA)
)
)
)
) No. _____
) Violation: Title 18, United
KEVIN STOFFER,) States Code, Sections 2, 1343
ANDREW JOHNSON,) and 1346
JOHN FRINGER, and)
MICHAEL MUNSON)

COUNT ONE

The SPECIAL SEPTEMBER 2002 GRAND JURY charges:

1. At times material to this indictment:

a. Nicor Energy L.L.C. ("Nicor Energy" and "the company"), a limited liability company established as a 50/50 joint venture by Nicor Inc. and Dynegy Inc. ("Dynegy"), had its headquarters in Lisle, Illinois. Nicor Energy was in the business of buying and selling electricity and natural gas to retail and residential customers. Nicor Energy began doing business in 1997. The governing body of Nicor Energy was an executive committee composed of equal numbers of representatives of Nicor Inc. and Dynegy. From time to time, employees of Nicor Energy provided to members of the executive committee certain financial statements including balance sheets and cash flow and profit statements for Nicor Energy.

b. Nicor Energy had bonus and profit sharing programs (collectively, "bonuses") for its employees. In 2002, whether bonuses were paid to Nicor Energy employees and the amount

of any such bonuses was directly dependent upon Nicor Energy meeting or exceeding a set profit at year end 2001. Nicor Energy's financial performance also affected the financial condition of its parents. Because the stocks of Nicor Inc. and Dynegy were publicly traded and were registered with the Securities and Exchange Commission ("SEC"), Nicor Inc. and Dynegy were required to file with the SEC quarterly and annual reports that, among other things, fairly and accurately reflected their financial conditions. Investors and potential investors relied on the accuracy of these reports in deciding whether to buy or sell stock of Nicor Inc. and Dynegy.

c. Defendant KEVIN STOFFER was the President and Chief Executive Officer of Nicor Energy, and as such had responsibility for overseeing the day-to-day operations of Nicor Energy and reporting to Nicor Energy's executive committee. As the President and Chief Executive Officer of Nicor Energy, defendant KEVIN STOFFER had a fiduciary duty to provide honest services to Nicor Energy.

d. Defendant ANDREW JOHNSON was Director of Financial Services at Nicor Energy, and as such had responsibility for overseeing the company's accounting, finances, and back office functions, including billing and accounts receivable. Defendant ANDREW JOHNSON had primary responsibility for overseeing the preparation of company financial statements. As the Director of

Financial Services of Nicor Energy, defendant ANDREW JOHNSON had a fiduciary duty to provide honest services to Nicor Energy.

e. Defendant JOHN FRINGER was Nicor Energy's Vice-President of Major Markets and Power Services, and as such had responsibility for the company's electric power business, including the development of electric power products and the obtaining of that power to deliver to existing customers. As the Vice-President of Major Markets and Power Services of Nicor Energy, defendant JOHN FRINGER had a fiduciary duty to provide honest services to Nicor Energy.

f. Defendant MICHAEL MUNSON was an attorney licensed to practice law in Illinois. Defendant MICHAEL MUNSON had offices in Chicago, Illinois, and, for a fee, represented Nicor Energy in a legal dispute with Commonwealth Edison. Defendant MICHAEL MUNSON had an incentive to please Nicor Energy's managers so that he would receive additional legal work from Nicor Energy, and also because he wanted to be hired as general counsel of Nicor Energy. As an attorney representing Nicor Energy, defendant MICHAEL MUNSON had a fiduciary duty to provide honest services to his client, Nicor Energy.

g. Commonwealth Edison Company ("ComEd") was an energy company that delivered electric and other types of power to wholesale and retail customers throughout Illinois. Nicor Energy purchased electric energy from ComEd for certain of its customers.

During 2000 and the first six months of 2001, ComEd offered a program called full requirements profile, or FRP. Under the FRP program, ComEd sold electricity to Nicor Energy at a price that tended to be lower than then-existing market rates. To receive this lower rate, Nicor Energy had to provide ComEd with the identities of its customers that it wanted to be switched into the FRP program during the specified time periods in which such switching was permitted.

h. Individual A was an employee of Dynegy and a member of the executive committee of Nicor Energy.

i. Nicor Energy estimated the revenue that it expected to receive for energy products that it had delivered to customers but for which those customers had not yet been billed, due to lags in billing and meter-reading. Estimates of this unbilled revenue were included on Nicor Energy's financial statements.

2. Between in or about March 2001 and continuing to at least July 2002, at Lisle, in the Northern District of Illinois, Eastern Division, and elsewhere,

KEVIN STOFFER,
ANDREW JOHNSON,
JOHN FRINGER, and
MICHAEL MUNSON,

defendants herein, together and with persons known and unknown to the Grand Jury (collectively the "co-schemers"), knowingly devised, intended to devise, and participated in a scheme to defraud Nicor Energy of money and property and of the intangible right to the

honest services of its employees and attorneys, and to obtain money and property from Nicor Energy by means of materially false and fraudulent pretenses, representations, promises and material omissions, which scheme is further described below.

3. It was part of the scheme that defendants KEVIN STOFFER, ANDREW JOHNSON, JOHN FRINGER and MICHAEL MUNSON attempted to make Nicor Energy appear to be more profitable in 2001 than it actually was, by causing revenues to be inflated and expenses to be understated. By so doing, defendants STOFFER, JOHNSON and FRINGER fraudulently sought to obtain approximately \$400,000 from Nicor Energy, in the form of bonuses and other compensation. Defendant MUNSON sought to please a client --Nicor Energy-- from whom he hoped to obtain additional legal business and eventual employment. As a result of the fraud, all defendants fraudulently deprived Nicor Energy of its right to receive honest services from its employees and attorneys, and caused a risk of substantial loss to investors in Nicor Inc. and Dynegy.

4. It was further part of the scheme that defendants KEVIN STOFFER, ANDREW JOHNSON, JOHN FRINGER and MICHAEL MUNSON caused to be reported false and fraudulent financial figures on Nicor Energy's 2001 financial statements, including balance sheets and income statements, to make it appear that Nicor Energy had greater income and lower expenses than in fact the company had.

5. It was further part of this scheme that defendants KEVIN STOFFER, ANDREW JOHNSON, JOHN FRINGER and MICHAEL MUNSON caused false information concerning Nicor Energy's revenue and expenses for 2001 to be provided to representatives of Nicor Energy's parent companies and Nicor Energy's outside auditors.

6. It was further part of the scheme that defendants KEVIN STOFFER and ANDREW JOHNSON caused to be reported on Nicor Energy's financial statements false amounts of unbilled revenue, which figures defendants STOFFER and JOHNSON well knew were inflated by millions of dollars to make it appear that Nicor Energy had greater income than in fact the company had. At times during 2001, this fraudulent reporting caused Nicor Energy's unbilled revenue figures to be inflated by as much as approximately \$6 million.

7. It was further part of this scheme that, to make it appear that Nicor Energy had lower expenses in 2001 than in fact the company had that year, defendants KEVIN STOFFER, ANDREW JOHNSON, JOHN FRINGER, and MICHAEL MUNSON caused false information about a settlement with ComEd to be provided to representatives of Nicor Energy's parent companies and Nicor Energy's outside auditor. Specifically, in or about late 2001, Nicor Energy settled a 2001 billing dispute with ComEd relating to the FRP program and agreed to pay ComEd approximately \$1.25 million. Pursuant to this settlement, Nicor Energy paid ComEd approximately \$1.25 million in 2002. Although the settlement was paid in 2002, it related to a

2001 expense, and therefore, Nicor Energy was required to treat all of the money paid to settle this dispute as a 2001 expense. Although they well-knew the true settlement figure, defendants STOFFER, JOHNSON, FRINGER, and MUNSON caused to be reported, on Nicor Energy's 2001 financial statements, a fraudulently reduced settlement expense figure of approximately \$740,000. Defendants caused the remainder of the true settlement amount, approximately \$510,000, to be treated as a 2002 expense. The effect of this was to understate Nicor Energy's expenses for 2001, and thus overstate Nicor Energy's profits for 2001.

8. It was further part of the scheme that defendants KEVIN STOFFER, ANDREW JOHNSON, JOHN FRINGER, and MICHAEL MUNSON caused the written settlement agreement relating to the \$1.25 million settlement with ComEd to refer only to the \$740,000 amount that defendants intended to treat as a 2001 expense; the settlement agreement did not refer to the \$510,000 amount that the defendants fraudulently caused to be treated as a 2002 expense. Defendants also caused to be created certain false and misleading documents, including an altered ComEd invoice, to make it appear that the \$510,000 expense related to energy delivered in 2002 rather than 2001. Defendants also caused the \$740,000 amount and the \$510,000 amount to be paid separately. Nicor Energy paid the \$740,000 by company check dated on or about April 5, 2002. On or about the

same date, Nicor Energy paid approximately \$515,000 --the original approximate \$510,000 plus interest-- by means of a wire transfer.

9. It was further part of the scheme that defendants KEVIN STOFFER, ANDREW JOHNSON, JOHN FRINGER and MICHAEL MUNSON caused to be transmitted materially false and fraudulent financial statements to members of the executive committee of Nicor Energy, who were employees of Nicor Energy's parent companies, Nicor Inc. and Dynegy. This materially false and fraudulent financial information regarding Nicor Energy was incorporated into financial reports that Nicor Inc. and Dynegy filed with the SEC. As a result, investors and potential investors in Nicor Inc. and Dynegy were deprived of accurate financial information regarding these companies and risked substantial losses.

10. It was further part of the scheme that defendants KEVIN STOFFER, ANDREW JOHNSON, JOHN FRINGER, and MICHAEL MUNSON and their co-schemers misrepresented, concealed and hid and caused others to misrepresent, conceal, and hide, and to attempt to misrepresent, conceal, and hide, acts done in furtherance of the scheme and the purposes of those acts.

11. On or about April 5, 2002, at Lisle, in the Northern District of Illinois, Eastern Division, and elsewhere,

KEVIN STOFFER,
ANDREW JOHNSON,
JOHN FRINGER, and
MICHAEL MUNSON

defendants herein, for the purpose of executing the above-described scheme and attempting to do so, transmitted and caused to be transmitted by means of wire communication in interstate commerce certain writings, signs, signals and sounds, namely a wire transfer of \$515,987.49 from Nicor Energy's bank account at The Northern Trust Company (account number 83771) in Chicago, Illinois, through the Footwear System in East Rutherford, New Jersey, to ComEd's bank account at First National Bank of Chicago (now known as Bank One) (account number 5540364) in Chicago, Illinois;

In violation of Title 18, United States Code, Sections 1343, 1346 and 2.

COUNT TWO

The SPECIAL SEPTEMBER 2002 GRAND JURY further charges:

1. Paragraphs 1 through 10 of Count One of this indictment are relegate and incorporated here.

2. On or about February 20, 2002, at Lisle, in the Northern District of Illinois, Eastern Division, and elsewhere,

KEVIN STOFFER,
ANDREW JOHNSON,
JOHN FRINGER, and
MICHAEL MUNSON,

defendants herein, for the purpose of executing the above-described scheme and attempting to do so, transmitted and caused to be transmitted by means of wire communication in interstate commerce certain writings, signs, signals and sounds, namely an electronic mail message with attached financial statements from Nicor Energy, Lisle, Illinois, to Individual A at Dynegey Inc., Houston, Texas;

In violation of Title 18, United States Code, Sections 1343, 1346 and 2.

COUNT THREE

The SPECIAL SEPTEMBER 2002 GRAND JURY further charges:

1. Paragraphs 1 through 10 of Count One of this indictment are relegate and incorporated here.

2. On or about March 12, 2002, at Chicago, in the Northern District of Illinois, Eastern Division, and elsewhere,

KEVIN STOFFER,
ANDREW JOHNSON,
JOHN FRINGER, and
MICHAEL MUNSON

defendants herein, for the purpose of executing the above-described scheme and attempting to do so, transmitted and caused to be transmitted by means of wire communication in interstate commerce certain writings, signs, signals and sounds, namely an electronic mail message from defendant MICHAEL MUNSON in Chicago, Illinois, through the AOL electronic mail system in Virginia, to ComEd's attorney in Chicago, Illinois, and defendant JOHN FRINGER in Lisle, Illinois;

In violation of Title 18, United States Code, Sections 1343, 1346 and 2.

COUNT FOUR

The SPECIAL SEPTEMBER 2002 GRAND JURY further charges:

1. Paragraphs 1 through 10 of Count One of this indictment are relegate and incorporated here.

2. On or about April 5, 2002, at Chicago, in the Northern District of Illinois, Eastern Division, and elsewhere,

KEVIN STOFFER,
ANDREW JOHNSON,
JOHN FRINGER, and
MICHAEL MUNSON

defendants herein, for the purpose of executing the above-described scheme and attempting to do so, transmitted and caused to be transmitted by means of wire communication in interstate commerce certain writings, signs, signals and sounds, namely an electronic mail message and attachments from defendant MICHAEL MUNSON in Chicago, Illinois, through the AOL electronic mail system in Virginia, to defendant JOHN FRINGER in Lisle, Illinois;

In violation of Title 18, United States Code, Sections 1343, 1346 and 2.

COUNT FIVE

The SPECIAL SEPTEMBER 2002 GRAND JURY further charges:

1. Paragraphs 1 through 10 of Count One of this indictment are relegate and incorporated here.

2. On or about November 4, 2001, at Lisle, in the Northern District of Illinois, Eastern Division, and elsewhere,

KEVIN STOFFER and
ANDREW JOHNSON,

defendants herein, for the purpose of executing the above-described scheme and attempting to do so, transmitted and caused to be transmitted by means of wire communication in interstate commerce certain writings, signs, signals and sounds, namely an electronic mail message with attached financial statements from Nicor Energy, Lisle, Illinois, to Individual A at Dynegy Inc., Houston, Texas;

In violation of Title 18, United States Code, Sections 1343, 1346 and 2.

A TRUE BILL:

FOREPERSON

UNITED STATES ATTORNEY