

KEVIN V. RYAN (CSBN 118321)
United States Attorney

LESLIE R. CALDWELL (NYSB 1950591)
Director, Enron Task Force

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

TIMOTHY N. BELDEN,

Defendant.

No.:

VIOLATION: 18 U.S.C. § 371

– Conspiracy to Commit Wire Fraud

SAN FRANCISCO VENUE

I N F O R M A T I O N

The United States Attorney 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 February 2002, the defendant TIMOTHY N. BELDEN was employed by Enron in its West Power Trading Division (“West Power”) in Portland, Oregon. From 1997 to 1998, BELDEN was the Director of West Power’s California

energy desk and was responsible for buying and selling wholesale electricity in the State of California. In 1999, BELDEN was promoted to Vice President, and later Managing Director, of West Power. BELDEN oversaw the marketing and supply of electricity and related services by Enron to consumers of wholesale electricity in the Western United States.

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. At ten minute intervals, the ISO also set the “ex-post” price for “real-time” supplies of electricity. Suppliers to the ISO typically received the highest price paid during the relevant interval.

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. As noted above, the ISO also operated a market for “ancillary services.” Through this market, the ISO bought stand-by electricity generation capacity that it could draw upon in the event of a sudden loss of electricity supply. By regulation, the ISO was required to have an amount of generation capacity on stand-by equal to 7 percent of the total amount of scheduled demand for the State. If the ISO anticipated that it would not have enough stand-by capacity available, it was forced to declare an Emergency. The ISO rated Emergencies as Stage 1, Stage 2, or Stage 3. A Stage 3 Emergency was the most severe Stage and indicated that, without

significant ISO intervention, the supply of electricity to the ISO's control area (the vast majority of the State of California) was in danger of imminent collapse. Depending on the extent of the Emergency, the ISO ordered certain industrial customers to curtail their consumption of electricity, or ordered regional power blackouts.

9. 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.

10. 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 San Francisco, California.

11. The newly deregulated electricity market performed fairly well during its first two years of operation. However, on May 22, 2000, the California energy market fell into a crisis that continued for more than a year. Electricity supply declined. Generators often failed to operate their plants at full capacity and shut down plants at rates well-above historical averages. 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 jumped during the crisis. From November 2000 to December 2000, prices for all "ancillary services" increased

between 127% and 650%. 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, the height of the crisis, prices reached \$1,500 per megawatt hour.

12. The California energy crisis impacted more than the price of electricity. The crisis threatened the reliability of California's entire electric system. From 1998 to 1999, the ISO declared 17 Emergencies, none of which were rated as a Stage 3. From 2000 to 2001, the ISO declared 265 Emergencies, 39 of which were Stage 3 Emergencies. Between November 1, 2000 and May 31, 2001, the ISO ordered power blackouts and service interruptions on 38 days. These blackouts and service interruptions disrupted commerce and compromised public safety, affecting roughly one-third of all Californians.

13. The ISO estimates that during the one year period between May 2000 and May 2001, purchasers of electricity in the State of California paid approximately \$8.9 billion more than they would have under competitive market conditions. In 1999, Enron's electricity trading arm, West Power, generated approximately \$50 million in revenues. In 2000, West Power generated approximately \$500 million in revenue. In 2001, West Power generated approximately \$800 million in revenue. This increase in Enron's revenue was attributable to the dramatic rise in electricity prices during the California energy crisis in 2000 and 2001 and to the execution of the schemes described below .

SCHEME TO DEFRAUD

14. Beginning in 1998 and continuing through 2001, within the Northern District of California and elsewhere, the defendant TIMOTHY N. BELDEN and others did knowingly devise and attempt to devise a scheme and artifice to defraud and to obtain money and property

by means of false and fraudulent pretenses, representations, and promises from electricity customers in California and other participants in the California wholesale electricity markets.

15. It was part of the scheme and artifice that defendant BELDEN and other Enron officers and employees, directly and indirectly, engaged in trading strategies that involved the submission of false and fraudulent schedules, bids, and information to the PX and the ISO. Among other things, defendant BELDEN and others did knowingly file, and cause to be filed, energy schedules and bids that:

- (a) misrepresented the nature and amount of electricity Enron proposed to supply, as well as the load it intended to serve;
- (b) created false congestion and falsely “relieved” congestion on California transmission lines, and otherwise manipulated the ISO’s calculation of congestion management fees;
- (c) misrepresented that energy was from out-of-state, when in fact the energy was from the State of California, exported and then imported back; and
- (d) falsely represented that Enron intended to supply energy and ancillary services it did not in fact have, and did not intend to supply.

16. The purpose of the scheme and artifice to defraud 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.

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

17. Paragraphs 1 through 16 of this Information are realleged and incorporated as if fully set forth here.

18. In or about and between 1998 and 2001, both dates being both approximate and inclusive, within the Northern District of California and elsewhere, the defendant

TIMOTHY N. BELDEN

and others known and unknown, conspired to and did devise 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.

19. Among the means and methods by which the defendant TIMOTHY N. BELDEN and his co-conspirators would and did carry out the conspiracy were those described in Paragraph 15 of this Information, as well as others.

20. In furtherance of the conspiracy and to effect the objects thereof, the defendant TIMOTHY N. BELDEN and his co-conspirators committed and caused to be committed the following overt acts in the Northern District of California and elsewhere: the monthly transmission by the ISO of payments to Enron for electricity, congestion fees, and ancillary services, sent by wire transmission through the Bank of America in San Francisco, California.

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

DATED:

KEVIN V. RYAN
United States Attorney

CHARLES B. BURCH
Chief, Criminal Division

(Approved as to form: _____)
AUSAs: Robbins, Jacobs, Tenorio-Kutzkey