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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

TIMOTHY N. BELDEN,

Defendant.

_____ No. CR 02-0313 MJJ

PLEA AGREEMENT

I, TIMOTHY N. BELDEN, and the United States Department of Justice, by the United States Attorney's Office for the Northern District of California and the Enron Task Force (hereafter "the government") enter into this written plea agreement (the "Agreement") pursuant to Rule 11(e)(1)(B) of the Federal Rules of Criminal Procedure:

The Defendant's Promises

1. I agree to waive indictment and plead guilty to an information charging me with conspiracy to commit wire fraud, in violation of 18 U.S.C. § 371. I agree that the elements of the offense and the maximum penalties are as follows: (1) there was an agreement between two or more persons to commit the crime of wire fraud in violation of 18 U.S.C. § 1343; (2) I became a member of the conspiracy knowing of at least one of its objects and intending to help accomplish it; and (3) one of the members of the conspiracy performed at least one overt act for the purpose of carrying out the conspiracy. The parties agree that the offense did not affect a financial institution within the meaning of 18 U.S.C. § 1343.

- a. Maximum prison sentence 5 years
- b. Maximum fine \$250,000
- c. Maximum supervised release term 3 years
- d. Mandatory special assessment \$100
- e. Restitution Up to the amount of the loss

2. I agree that I am guilty of the offense to which I will plead guilty, and I agree that the following facts are true:

Between 1997 and 2002, I was employed by Enron Corporation. Specifically, I was the Director of Enron's California energy trading desk, and later Vice President and Managing Director in charge of Enron's West Power Trading Division (West Power) in Portland, Oregon. West Power marketed and supplied electricity to California wholesale customers through a number of energy and energy services markets run by the California Power Exchange (the California PX) and the California Independent System Operator (the California ISO). With limited exceptions, these entities were responsible for scheduling, managing, and arranging the payment for, all the electricity supplied to the State of California.

The markets run by the PX and ISO included the day-ahead, the day-of, the hour-ahead, and the real-time energy markets, into which energy marketers like Enron scheduled fixed amounts of electricity for delivery to wholesale and retail customers (known as retail “load”). Enron also sold stand-by electricity generation capacity, known as ancillary services, to the ISO, which was charged with ensuring that a fixed percentage of such capacity was available to prevent a collapse of the system in the event of an emergency. The ISO managed transmission capacity into, within, and out of the State, and paid fees to suppliers like Enron to alter electricity schedules in order to relieve “congestion” on particular transmission lines. The ISO also purchased energy from Enron and other suppliers “out-of-market” to address power emergencies, when the State had to address sudden increases in demand or inadequate scheduled supplies.

Beginning in approximately 1998, and ending in approximately 2001, I and other individuals at Enron agreed to devise and implement a series of fraudulent schemes through these markets. We designed the schemes to obtain increased revenue for Enron from wholesale electricity customers and other market participants in the State of California. The schemes required us to submit false information to the PX and ISO in the electricity and ancillary services markets described above. Among other things, we knowingly and intentionally filed energy schedules that misrepresented the nature of electricity we proposed to supply, as well as the load we intended to serve. We intentionally filed schedules designed to artificially increase congestion on California transmission lines. We were paid to “relieve” congestion when, in fact, we did not relieve it. We exported and then imported amounts of electricity generated within California in order to receive higher, out-of-state prices from the ISO when it purchased “out-of-market.” We scheduled energy that we did not have, or did not intend to supply.

As a result of these false schedules, we were able to manipulate prices in certain markets, arbitrage price differences between the markets, obtain “congestion management” payments in

excess of what we would have received with accurate schedules, and receive prices for electricity above price caps set by the ISO and the Federal Energy Regulatory Commission. We received the revenues from the above-described schemes through the ISO, which on a monthly basis billed all customers for wholesale electricity in California, and paid all suppliers, like Enron. I acknowledge that the ISO made these payments to Enron by interstate wire transmission through the Bank of America in San Francisco, California. For the purpose of carrying out the conspiracy, I and others involved in the schemes caused the ISO to transmit these payments to Enron monthly during the course of the conspiracy, from 1998 through 2001.

3. I agree to give up all rights that I would have if I chose to proceed to trial, including the rights to a jury trial with the assistance of an attorney; to confront and cross-examine government witnesses; to remain silent or testify; to move to suppress evidence or raise any other Fourth or Fifth Amendment claims; to any further discovery from the government; and to pursue any affirmative defenses and present evidence.

4. I agree to give up my right to appeal my conviction, the judgment, and orders of the Court. I also agree to waive any right I may have to appeal my sentence, except that I reserve the right to appeal any upward departure.

5. I agree not to file any collateral attack on my conviction or sentence, including a petition under 28 U.S.C. § 2255, at any time in the future after I am sentenced, except for a claim that my constitutional right to the effective assistance of counsel was violated.

6. I agree not to ask the Court to withdraw my guilty plea at any time after it is entered.

7. I agree that the court may order and I will pay restitution in an amount to be determined based upon the amount of loss caused by my conduct, and I agree that the amount of restitution will not be limited to the loss attributable to the count to which I am pleading guilty,

pursuant to 18 U.S.C. § 3663(a)(3). I agree that I will make a good faith effort to pay any fine, forfeiture or restitution I am ordered to pay. Before or after sentencing, I will, upon request of the Court, the government, or the U.S. Probation Office, provide accurate and complete financial information, submit sworn statements and give depositions under oath concerning my assets and my ability to pay, surrender assets I obtained as a result of my crimes, and release any of my funds and my property under my control in order to pay any fine, forfeiture, or restitution. I agree to pay the special assessment at the time of sentencing. I agree as part of my sentencing that the Court may enter an order prohibiting me from trading on, or trading subject to the rules of, any “registered entity,” as that term is defined by the Commodities Exchange Act, 7 U.S.C. § 1a(29), during my term of supervised release.

8. I agree to waive all right, title, and interest I have in \$2.1 million I received from Enron, which funds I acknowledge the government contends represents the proportional amount of compensation paid to me by Enron attributable to the scheme to defraud to which I am pleading guilty, and which is therefore criminally derived property, or traceable to and derived from proceeds of criminally derived property, and thus subject to forfeiture. I stipulate that the \$2.1 million is forfeitable on that basis. The \$2.1 million received by me was placed in account nos 14703085 and 71096915 at Charles Schwab. I agree not to contest any civil forfeiture proceeding against those funds or bring any claim of interest to those funds in such action. I further agree to relinquish any and all right, title and interest I may have in these funds, and agree that such right, title and interest can be forfeited to the United States, without further notice to me. I also agree to execute and record any and all documents necessary to transfer the funds to the United States as part of a forfeiture judgment. In the event that I am subject to a monetary judgment arising from a successful claim by any third-party claimant in the Enron Corp. bankruptcy proceeding (In re: Enron Corp., et al., No. 01-16034 (AJG), S.D.N.Y.), the

government agrees to dismiss its forfeiture action in the amount of any judgment. If no judgment is entered prior to the conclusion of the bankruptcy proceeding, the government shall be entitled to pursue a final judgment of forfeiture in the full amount of \$2.1 million. The parties agree that the \$2.1 million shall be applied against my obligation to pay restitution.

9. I agree to cooperate with the U.S. Attorney's Office before and after I am sentenced. My cooperation will include, but will not be limited to, the following:

- a. I will respond truthfully and completely to any and all questions put to me, whether in interviews, before a grand jury or at any trial or other proceeding;
- b. I will provide all documents and other material asked for by the government;
- c. I will testify truthfully at any grand jury, court or other proceeding as requested by the government, including in any non-criminal federal proceeding or any state proceeding pursuant to paragraph 17, below;
- d. I will surrender any and all assets acquired or obtained directly or indirectly as a result of my illegal conduct, as defined in paragraph 8;
- e. I will request continuances of my sentencing date, as necessary, until my cooperation is completed;
- f. I will tell the government about any contacts I may have personally with any co-defendants or subjects of investigation, or their attorneys or individuals employed by their attorneys.

10. I agree that the government's decision whether to file a motion pursuant to U.S.S.G. §5K1.1, as described in the government promises section below, is based on its sole and exclusive decision of whether I have provided substantial assistance and that decision will be binding on me. I understand that the government's decision whether to file such a motion, or the extent of the departure recommended by any motion, will not depend on whether convictions are obtained in any case. I also understand that the Court will not be bound by any recommendation made by the government.

11. I agree not to commit or attempt to commit any crimes before sentence is imposed

or before I surrender to serve my sentence; violate the terms of my pretrial release (if any); intentionally provide false information or testimony to the Court, the Probation Office, Pretrial Services, or the government; or fail to comply with any of the other promises I have made in this Agreement. I agree that, if I fail to comply with any promises I have made in this Agreement, then the government will be released from all of its promises, but I will not be released from my guilty plea.

12. If I am prosecuted after failing to comply with any promises I made in this Agreement, then (a) I agree that any statements I made to any law enforcement or other government agency or in Court, whether or not made pursuant to the cooperation provisions of this Agreement, may be used in any way; (b) I waive any and all claims under the United States Constitution, Rule 11(e)(6) of the Federal Rules of Criminal Procedure, Rule 410 of the Federal Rules of Evidence, or any other federal statute or rule, to suppress or restrict the use of my statements, or any leads derived from those statements; and (c) I waive any defense to any prosecution that it is barred by a statute of limitations, if the limitations period has run between the date of this Agreement and the date I am indicted.

13. I agree that this Agreement contains all of the promises and agreements between the government and me, and I will not claim otherwise in the future.

14. I agree that this Agreement binds the U.S. Department of Justice only, and does not bind any other federal, state, or local agency.

The Government's Promises

15. The government agrees to move to dismiss any open charges pending against the defendant in the captioned indictment at the time of sentencing.

16. The government agrees not to file or seek any additional charges against the defendant that could be filed as a result of the investigation that led to the pending indictment.

17. The government agrees not to use any statements made by the defendant pursuant to this Agreement against him, unless the defendant fails to comply with any promises in this agreement. The government may, however, provide the defendant's statements to or require the defendant to submit to an interview by any federal or state agency, or require him to provide testimony in any federal or state proceeding, so long as his statements may not be used against him. The government may also tell the Court and the U.S. Probation Department about the full extent of the defendant's criminal activities in connection with the calculation of the Sentencing Guidelines.

18. If, in its sole and exclusive judgment, the government decides that the defendant has cooperated fully and truthfully, provided substantial assistance to law enforcement authorities within the meaning of U.S.S.G. §5K1.1, and otherwise complied fully with this Agreement, it will file with the Court a motion under §5K1.1 and/or 18 U.S.C. §3553 that explains the nature and extent of the defendant's cooperation and recommends a downward departure.

19. Based on the information now known to it, the government will not oppose a downward adjustment of three levels for acceptance of responsibility under U.S.S.G. § 3E1.1.

The Defendant's Affirmations

20. I confirm that I have had adequate time to discuss this case, the evidence, and this Agreement with my attorney, and that she has provided me with all the legal advice that I requested.

21. I confirm that while I considered signing this Agreement and, at the time I signed it, I was not under the influence of any alcohol, drug, or medicine.

22. I confirm that my decision to enter a guilty plea is made knowing the charges that have been brought against me, any possible defenses, and the benefits and possible detriments of

proceeding to trial. I also confirm that my decision to plead guilty is made voluntarily, and no one coerced or threatened me to enter into this agreement.

Dated: _____

TIMOTHY N. BELDEN
Defendant

KEVIN V. RYAN
United States Attorney

Dated: _____

PATRICK D. ROBBINS
MATTHEW J. JACOBS
Assistant United States Attorneys
LISA V. TENORIO-KUTZKEY
Special Assistant United States Attorney

LESLIE R. CALDWELL
Director, Enron Task Force

I have fully explained to my client all the rights that a criminal defendant has and all the terms of this Agreement. In my opinion, my client understands all the terms of this Agreement and all the rights he is giving up by pleading guilty, and, based on the information now known to me, his decision to plead guilty is knowing and voluntary.

Dated: _____

CRISTINA ARGUEDAS
Attorneys for Defendant