

1 KEVIN V. RYAN (CSBN 118321)  
United States Attorney

2 ROSS W. NADEL (CSBN 87940)  
3 Chief, Criminal Division

4 MATTHEW J. JACOBS (CSBN 171149)  
LAUREL BEELER (CSBN 187656)  
5 Assistant United States Attorney

6 450 Golden Gate Avenue, Box 36055  
San Francisco, California 94102  
7 Telephone: 415.436.7181

8 ANDREW WEISSMANN (NYSB 6972)  
Director, Enron Task Force

9 Bond Building  
10 1400 New York Ave., NW  
Washington, D.C. 20530  
11 Telephone: 202.514.0666

12 Attorneys for Plaintiff

13  
14 UNITED STATES DISTRICT COURT  
15 NORTHERN DISTRICT OF CALIFORNIA  
16 SAN FRANCISCO DIVISION

17 UNITED STATES OF AMERICA,  
18  
19 Plaintiff,

20 vs.

21 JOHN M. FORNEY,  
22 Defendant.

Case No. CR 03-0178 MJJ

**PLEA AGREEMENT**

23 I, John M. Forney, and the United States Attorney's Office for the Northern  
24 District of California (hereafter "the government") enter into this written plea agreement (the  
25 "Agreement") pursuant to Rules 11(c)(1)(A) and 11(c)(1)(B) of the Federal Rules of Criminal  
26 Procedure:

27 ///  
28

1 **The Defendant's Promises**

2 1. I agree to plead guilty to count one of the captioned Superseding  
3 Indictment charging me with conspiracy to commit wire fraud, in violation of 18 U.S.C.  
4 § 371. I agree that the elements of the offense of conspiracy and the maximum penalties are  
5 as follows: (1) There was an agreement between two or more persons to commit the crime of  
6 wire fraud in violation of 18 U.S.C. § 1343; (2) I became a member of the conspiracy  
7 knowing of at least one of its objects and intending to help accomplish it; and (3) One of the  
8 members of the conspiracy performed at least one overt act for the purpose of carrying out the  
9 conspiracy.

- |    |    |                                 |  |
|----|----|---------------------------------|--|
| 10 | a. | Maximum prison sentence         | 5 years  |
| 11 | b. | Maximum fine                    | \$250,000 or twice the gross<br>12 gain or loss, whichever is<br>greater |
| 13 | c. | Maximum supervised release term | 3 years  |
| 14 | d. | Mandatory special assessment    | \$100  |
| 15 | e. | Restitution                     | As ordered by the Court  |

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

18 From approximately 1997 to 2000, I was employed by Enron Corporation in its  
19 West Power Trading Division (West Power) in Portland, Oregon. West Power marketed and  
20 supplied electricity to California wholesale customers through a number of energy and energy  
21 service markets run by the California Power Exchange and the California Independent  
22 System Operator (the California ISO). With limited exceptions, these entities were  
23 responsible for scheduling, managing, and arranging the payment for, all the electricity  
24 supplied to California.

25 From June 1999 to December 2000, I was the Manager of the West Power Real  
26 Time Trading Desk. In such position, I reported to Tim Belden, Vice President and later  
27 Managing Director of West Power. Although I did not report directly to Jeff Richter,  
28 Manager of the Short-Term California Trading Desk, the West Power Real Time Trading

1 Desk worked under Richter's supervision and control.

2 The Real Time Trading Desk consisted of real time (or hourly) traders who  
3 worked on a twenty-four hour rotating shift. These traders were supposed to be primarily  
4 responsible for insuring the reliability of the forward schedules as created by both long-term  
5 and short-term energy traders, such as Tim Belden and Jeff Richter. Additionally, the real  
6 time traders were directed to recognize opportunities in the energy market and to trade  
7 electricity profitably in the hourly market. Real time traders operated under my supervision  
8 and, among other tasks, I was responsible for reviewing the trades made by these traders. I  
9 also trained new real time traders. The activities of the real time traders were my  
10 responsibility.

11 I knowingly and intentionally combined, conspired and agreed with others to  
12 commit wire fraud. Specifically, I submitted, caused to be submitted, and/or supervised the  
13 submission by others of, false and fraudulent schedules, bids and other information in order to  
14 maximize Enron's trading profits. In the course of doing so, I engaged in various trading  
15 strategies intended to maximize Enron's profits as an energy marketer in the California  
16 energy market.

#### 17 Non-Firm as Firm

18 Enron sold non-firm as firm energy. Firm energy has guaranteed reliability  
19 because it is backed by another generation source. Purchasers bought firm energy in  
20 situations where the reliability of non-firm sources was or could be in question. I submitted,  
21 caused to be submitted, and/or supervised the submission of others of, false and fraudulent  
22 schedules, bids and other information in which Enron purported to sell firm energy, and  
23 collected payments for selling firm energy, while in fact the energy was not firm.

#### 24 Non-Firm Export

25 Enron collected congestion payments without actually relieving congestion or  
26 intending to relieve congestion. Enron employees submitted false and fraudulent schedules,  
27 bids and other information in which Enron purported to export non-firm energy out of  
28 California to relieve congestion in California, while in fact Enron did not intend to and did

1 not export the electricity.

2 Get Shorty

3 Enron sold ancillary services in a forward market that Enron did not possess.  
4 These services consisted of reserve power on which the California ISO depended upon to  
5 ensure the reliability of the California energy grid. I was aware that other Enron employees,  
6 including those traders under my supervision, submitted false and fraudulent schedules, bids  
7 and other information purporting to sell ancillary services in a forward market. Enron  
8 collected payments for the sale of ancillary services when in fact Enron did not provide these  
9 services and never intended to provide these services. Enron subsequently cancelled the  
10 forward sale in the real time market. Enron employees including myself called this trading  
11 strategy "Get Shorty."

12 Death Star

13 Enron improperly collected congestion relief payments as a result of false and  
14 misleading schedules submitted to the California ISO. Enron misrepresented that the export  
15 from California and the import into California were two unique transactions. I submitted,  
16 caused to be submitted, and/or supervised the submission by others of, false and fraudulent  
17 schedules, bids and other information, in which Enron purported to move electricity in  
18 directions that would relieve congestion, when in fact the electricity was scheduled to flow in  
19 a circular pattern. The California ISO could not detect, and Enron purposefully did not tell  
20 the California ISO, that the schedules involved out-of-state transmission lines and that no  
21 power provided by Enron would flow. I devised this strategy that was known within Enron  
22 as "Death Star."

23 Ricochet

24 On at least one occasion, Enron improperly sold electricity for a price above  
25 the California ISO's price cap on California energy. I caused to be submitted and/or  
26 supervised the submission by others of, false and fraudulent schedules, bids and other  
27 information in that Enron purchased electricity from the California energy market subject to  
28 the price cap and resold the same energy back to the California market for a price above the

1 cap. Enron purposefully did not reveal that the electricity was subject to the California price  
2 cap in order to avoid the cap. This was known within Enron as “Ricochet.”

3 Off-Line Hub

4 Enron collected congestion relief payments where Enron did not actually  
5 relieve congestion or intend to relieve congestion. Enron employees under my supervision  
6 submitted false and fraudulent schedules, bids and other information, in which Enron  
7 scheduled electricity to flow through the Four Corners Intertie, while they in fact knew that  
8 Four Corners was off-line due to maintenance and that no energy could flow through the  
9 intertie.

10 It was part of the conspiracy to defraud that I and/or others at Enron fictitiously  
11 relieved congestion on California transmission lines and otherwise improperly collected  
12 congestion management fees; misrepresented the origin of energy; misrepresented that Enron  
13 intended to supply types of energy it did not have; and did so for the purpose of maximizing  
14 the profit Enron would receive from its energy trading operations. The acts of Enron energy  
15 traders affected the price of electricity.

16 Enron received the revenues from its energy trading operations, including the  
17 above trading strategies, through the California ISO. I acknowledge that the California ISO  
18 paid Enron by interstate wire transmission through the Bank of America in San Francisco,  
19 California. In furtherance of the conspiracy and to affect the objects thereof in the Northern  
20 District of California, my co-conspirators and/or I caused payments to be wired from the  
21 California ISO’s bank in Concord, California, to an account for the benefit of Enron, in  
22 Dallas, Texas, and committed the following overt acts, all of which included the knowing  
23 transmission by wire communication in interstate commerce through signs, signals and  
24 sounds:

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

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

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

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

5           e.     On or about December 8, 2000, Enron submitted a schedule to export  
6 17 megawatts of energy below the price cap and import and sell 17 megawatts of energy  
7 above the price cap.

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

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

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

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

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

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

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

28          m.     On or about December 21, 2000, a wire was transmitted from Enron

1 Power Marketing Group, Inc.'s bank in New York, New York to the California ISO's bank in  
2 Concord, California.

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

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

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

12 3. I agree to give up all rights that I would have if I chose to proceed to  
13 trial, including the rights to a jury trial with the assistance of an attorney; to confront and  
14 cross-examine government witnesses; to remain silent or testify; to move to suppress  
15 evidence or raise any other Fourth or Fifth Amendment claims; to any further discovery from  
16 the government; and to pursue any affirmative defenses and present evidence. To the extent  
17 that I have a right to have facts that are used to determine the sentence (including any  
18 Sentencing Guideline factors and any departure grounds) charged in the indictment by the  
19 grand jury and found by a jury beyond a reasonable doubt (see Blakely v. Washington, 124 S.  
20 Ct. 2531 (2004)), I waive those rights and agree that the Court will find the facts that  
21 determine my sentence under the applicable lesser standard of proof determined by the  
22 guidelines and case law prior to Blakely.

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

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

1 violated.

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

4 7. I agree that the court may order and I will pay restitution in an amount  
5 to be determined based upon the amount of loss caused by my conduct, and I agree that the  
6 amount of restitution will not be limited to the loss attributable to the count to which I am  
7 pleading guilty, pursuant to 18 U.S.C. § 3663(a)(3). I agree that I will make a good faith  
8 effort to pay any fine, forfeiture or restitution I am ordered to pay. Before or after sentencing,  
9 I will, upon request of the Court, the government, or the U.S. Probation Office, provide  
10 accurate and complete financial information, submit sworn statements and give depositions  
11 under oath concerning my assets and my ability to pay, surrender assets I obtained as a result  
12 of my crimes, and release any of my funds and my property under my control in order to pay  
13 any fine, forfeiture, or restitution. I agree to pay the special assessment at the time of  
14 sentencing.

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

17 a. I will respond truthfully and completely to any and all questions put to  
18 me, whether in interviews, before a grand jury or at any trial or other proceeding;

19 b. I will provide all documents and other material asked for by the  
20 government;

21 c. I will testify truthfully at any grand jury, court or other proceeding as  
22 requested by the government, including in any non-criminal federal proceeding or any state  
23 proceeding, and I will assist the government's ongoing investigation into Enron's activities as  
24 well as the activities of any other company or individual with regard to California energy and  
25 gas markets;

26 d. I will request continuances of my sentencing date, as necessary, until  
27 my cooperation is completed;

28 e. 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; and

f. At the direction of or with approval from the Department of Justice, I  
will attempt to help the victims of the crimes I have committed, energy consumers in  
California and other Western states, recover money they have lost by assisting federal and  
state investigators, and by providing full and truthful information in civil and criminal  
proceedings as requested by the government.



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

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

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

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

26           14. I agree that this Agreement binds the U.S. Attorney's Office for the  
27 Northern District of California and U.S. Department of Justice only, and does not bind any  
28 other federal, state, or local agency.

1 **The Government's Promises**

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

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

7 17. The government agrees not to use any statements made by the defendant  
8 pursuant to this Agreement against him other than as set forth in Paragraph 17, unless the  
9 defendant fails to comply with any promises in this agreement.

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

18 19. If, in its sole and exclusive judgment, the government decides that the  
19 defendant has cooperated fully and truthfully, provided substantial assistance to law  
20 enforcement authorities within the meaning of U.S.S.G. § 5K1.1, and otherwise complied  
21 fully with this Agreement, it will file with the Court a motion under § 5K1.1 and/or 18 U.S.C.  
22 § 3553 that explains the nature and extent of the defendant's cooperation and recommends a  
23 downward departure.

24 20. Based on the information now known to it, the government will not  
25 oppose a downward adjustment for acceptance of responsibility.

26 **The Defendant's Affirmations**

27 21. I confirm that I have had adequate time to discuss this case, the  
28 evidence, and this Agreement with my attorney, and that he has provided me with all the legal

1 advice that I requested.

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

4 23. I confirm that my decision to enter a guilty plea is made knowing the  
5 charges that have been brought against me, any possible defenses, and the benefits and  
6 possible detriments of proceeding to trial. I also confirm that my decision to plead guilty is  
7 made voluntarily, and no one coerced or threatened me to enter into this agreement.

8  
9 Dated: \_\_\_\_\_, 2004

\_\_\_\_\_  
10 JOHN M. FORNEY  
Defendant

11  
12 Dated: \_\_\_\_\_, 2004

\_\_\_\_\_  
13 KEVIN V. RYAN  
United States Attorney

14  
15 Dated: \_\_\_\_\_, 2004

\_\_\_\_\_  
16 MATTHEW J. JACOBS  
LAUREL BEELER  
Assistant United States Attorneys

17  
18 I have fully explained to my client all the rights that a criminal defendant has  
19 and all the terms of this Agreement. In my opinion, my client understands all the terms of  
20 this Agreement and all the rights he is giving up by pleading guilty, and, based on the  
21 information now known to me, his decision to plead guilty is knowing and voluntary.

22  
23 Dated: \_\_\_\_\_, 2004

\_\_\_\_\_  
24 ROBERT J. BREAKSTONE  
EDWIN K. PRATHER  
Attorneys for Defendant