

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

Enron Power Marketing, Inc.	)	Docket No. EL03-180-000
and Enron Energy Services, Inc.	)	
Colorado River Commission	)	Docket No. EL03-184-000
Public Service Company of New Mexico	)	Docket No. EL03-200-000
Enron Power Marketing, Inc.	)	Docket No. EL03-154-000
and Enron Energy Services, Inc.	)	
Portland General Electric Company	)	Docket No. EL02-114-000
Enron Power Marketing, Inc.	)	Docket No. EL02-115-000

**SUPPLEMENTAL TESTIMONY OF
DR. CARL PECHMAN
ON BEHALF OF PUBLIC UTILITY DISTRICT NO. 1 OF
SNOHOMISH COUNTY, WASHINGTON**

Q. ARE YOU THE SAME DR. CARL PECHMAN THAT SUBMITTED DIRECT TESTIMONY (EXHIBIT NO. SNO-11) ON BEHALF OF SNOHOMISH?

A. Yes.

Q. WHAT IS THE PURPOSE OF YOUR SUPPLEMENTAL TESTIMONY?

A. The purpose of my supplemental testimony is to provide evidence that was not available to me at the time that my direct testimony was prepared.

Q. WHAT EVIDENCE DO YOU PROVIDE?

A. I provide transcripts and copies of audio recordings of phone calls by Enron's Western electricity traders. These audio recordings were seized by the Department of Justice and Federal Bureau of Investigation in the course of criminal investigations involving Enron's Western electricity traders. I have attached, as Exhibit No. SNO-246, a copy of two search warrants that appear to cover the seizure of certain Enron audio recordings. Enron provided Snohomish with copies of these search warrants on May 14, 2004, as a supplemental response to data request SNO-ENR-96. Copies of seized Enron audio recordings ultimately were made available to Snohomish through the cooperation of the Assistant U.S. Attorney for the Northern District of California, FERC Trial Staff and Aspen Systems Corporation. The recordings evidence Enron's pattern and practice of:

- 1) engaging in gaming and anomalous market behavior;
- 2) recklessly disregarding the harm its trading practices posed to consumers, system reliability and the economic efficiency of the Western power market;
- 3) concealing information from regulatory review and engaging in fraud, deception and misrepresentation;
- 4) gaining control over resources, colluding, and entering into partnership arrangements with other entities in the Western power market;
- 5) profiting unjustly in the Western power market; and
- 6) advocating market designs enabling Enron to play games in the Western power market.

Q. HOW WAS THIS EVIDENCE CONVEYED TO YOU?

A. The recordings were conveyed digitally on 52 DVDs obtained from Aspen Systems Corporation in .wav format. Each DVD contained one or more days of calls for a total of eighty-eight days during August, September, and December of 2000, and January of 2001. The files on the DVDs were sorted in folders by day and channel. Each file had a code number that provided information about the channel, date and time of day on which the call occurred.

Q. WHEN DID YOU RECEIVE THIS EVIDENCE?

A. I received the first set of DVDs on February 27, 2004, which was the same date my direct testimony was filed. I did not receive all 52 DVDs until March 9, 2004.

Q. HOW DID YOU LISTEN TO THE .WAV FILES?

A. I assembled, supervised and relied on a team of listeners. The team used individual laptops networked into an isolated server that acted as a tape repository to listen to the .wav files. When relevant recordings were identified, an independent transcriber transcribed the recordings.

Q. HOW WERE YOU ABLE TO IDENTIFY WHO WAS TALKING ON THE .WAV FILES?

A. Frequently, the traders identified themselves and the same traders tended to appear regularly on the same channels. In a few instances, we were not able to identify the names of the Enron employees. Exhibit No. SNO-161 provides a list of the trader channels and the names of Enron employees that appeared frequently on those channels.

1 **Q. PLEASE EXPLAIN WHAT YOU ARE SUBMITTING TO THE COMMISSION**
2 **AS EVIDENCE?**

3 A. I am submitting the .wav files and transcripts of calls that in my expert judgment are
4 relevant to the Commission's determinations regarding Enron's gaming and anomalous
5 market behavior and the remedies -- including both monetary and non-monetary remedies
6 -- warranted in these proceedings. For ease of identification and the convenience of the
7 Presiding Judge and other participants in these proceedings, attached as Exhibit No.
8 SNO-162, is a table summarizing the transcripts of the .wav files. The table identifies the
9 transcript exhibit number, the .wav file number (including the date of the call), and the
10 general nature of the evidence. The general nature of the evidence is summarized by
11 seven major categories:

- 12 1) Gaming -- gaming and anomalous market behavior;
- 13 2) Hiding Info -- hiding information;
- 14 3) Market Design -- advocating changes in market design that facilitate gaming;
- 15 4) Partnerships -- partnerships, collusion and control of resources;
- 16 5) Profits -- unjust profits gained in the Western power market;
- 17 6) Customer Harm -- harm to customers in the Western power market; and
- 18 7) Reliability -- disregard for the reliability of the Western power system and adverse
19 reliability impacts.

20 In several instances, the evidence falls in multiple categories.

21 **Q. PLEASE IDENTIFY THE EXHIBITS CONTAINING THE .WAV FILES AND**
22 **TRANSCRIPTS.**

23 A. Exhibit No. SNO-245 is a CD-ROM of the .wav files that were transcribed and included
24 as Exhibit Nos. SNO-163 through SNO-244. Some of the .wav files contain sensitive,

1 personnel information about Enron's employees and their families that is unrelated, in
2 any way, to business activities. Out of an abundance of caution, the entire Exhibit No.
3 SNO-245 is currently marked as protected materials. Transcripts of the calls contained in
4 the .wav files are attached as Exhibit Nos. SNO-163 through SNO-244. The irrelevant
5 personal information about Enron's employees and their families has been redacted from
6 the transcripts by deleting the particular text and inserting "[REDACTED]".

7 **Q. WERE YOU ABLE TO OBTAIN ACCESS TO, AND LISTEN TO, ALL ENRON**
8 **TRADER CALLS DURING THE PERIOD JANUARY 1, 2000 TO JUNE 20, 2001?**

9 A. No. Recordings were not available for the entire crisis period and Snohomish did not
10 receive the DVDs in sufficient time to listen to every call in the .wav files. Moreover,
11 Enron's traders used cell phones, non-taped lines, instant messaging, and chat rooms to
12 avoid recorded lines, as evidenced in numerous calls, including those examples attached
13 as Exhibit Nos. SNO-191, SNO-200, SNO-215, SNO-216, SNO-225, SNO-229, and
14 SNO-231.

15 **Q. DOES THE EVIDENCE IN THE RECORDINGS REFUTE DR. ACTON'S**
16 **TESTIMONY ON BEHALF OF ENRON?**

17 A. Yes. For example, the recordings demonstrate that Enron engaged in a larger pattern of
18 gaming and anomalous behavior than acknowledged in Dr. Acton's testimony and that
19 Dr. Acton under-estimated the level of Enron's unjust profits. Among other things, the
20 recordings prove that, within the period May 1, 2000 and October 1, 2000, Enron
21 engaged in the gaming practice of ricochet -- or, in other words, false import -- and that
22 Enron did so with the intent of evading the price cap. The recordings further prove that
23 Enron controlled generation and formed business alliances with other market participants
24 in the West to facilitate its gaming practices.

1 **Q. DO THE RECORDINGS WARRANT A CHANGE IN POSITIONS ADVOCATED**
2 **IN THE TESTIMONY OF MS. TINGLE-STEWART AND DR. BONER ON**
3 **BEHALF OF FERC TRIAL STAFF?**

4 **A.** Yes. Ms. Tingle-Stewart's analysis of the remedy of revoking Enron's market-based
5 rate authority relies on reporting what the Commission has already done with evidence it
6 had as of June 23, 2003. The evidence I now present has never before been analyzed by
7 the Commission or FERC Trial Staff's witnesses. The recordings demonstrate an
8 extremely callous abuse of consumers, large pattern of misconduct, and reckless
9 disregard of government authority by Enron, warranting rescission of Enron's market-
10 based rate authority on the earliest date within the scope of these proceedings. As
11 revealed in the recordings, Enron knowingly gamed the Western power market and took
12 steps to hide its actions from regulatory review. Not only were Enron's traders in
13 Portland, Oregon well aware of Enron's games, but the recordings show that high level
14 executives at Enron's Houston headquarters -- such as Ken Lay and Jeff Skilling -- were
15 kept apprised of Enron's gaming strategies and the profits reaped by the traders in
16 Portland.

17 As also revealed in the recordings, the mechanisms Enron used for gaming were
18 not isolated to California, but involved both market participants and physical infra-
19 structure outside of California. While Dr. Boner appropriately acknowledges economic
20 efficiency within the borders of California was harmed by Enron's gaming practices, she
21 omits from her narrow analysis the harm caused by Enron to economic efficiency outside
22 the borders of California. The West operates as a single, integrated electric market and,
23 therefore, Enron's games harmed economic efficiency throughout the market. In fact, the
24 recordings show Enron itself believed trading activities within California had a material
25 affect on the availability and price of generation outside of California.

26 **Q. DOES THIS COMPLETE YOUR TESTIMONY?**

27 **A.** Yes.