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May 17, 2004

VIA HAND-DELIVERY

The Honorable Magalie Roman Salas
Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426

Re: Enron Power Marketing, Inc., *et al.*, Docket No. EL03-180-000; Colorado River Commission, Docket No. EL03-184-000; Public Service Company of New Mexico, Docket No. EL03-200-000; Enron Power Marketing, Inc., *et al.*, Docket No. EL03-154-000; Portland General Electric Company, Docket No. EL02-114-007; and Enron Power Marketing, Inc., Docket No. EL02-115-008

Dear Secretary Salas:

Enclosed for filing in the above-captioned proceedings please find one (1) original and fourteen (14) copies of the public version of the: (1) Motion of Public Utility District No. 1 of Snohomish County, Washington for Leave to File Limited Supplemental Testimony and Exhibits Related To Audio Recordings of Enron Phone Conversations; and (2) Supplemental Testimony of Dr. Carl Pechman and accompanying exhibits, which consists of Exhibit No. SNO-163 through Exhibit No. SNO-246. We also have enclosed two (2) additional copies of this filing that we ask you to please date/time stamp and return to our messenger.

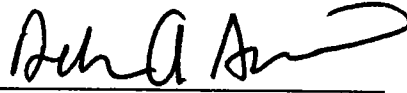
Out of an abundance of caution, the CD-ROM submitted herewith as Exhibit No. SNO-245 has been redacted because certain audio recordings on the CD-ROM may contain sensitive personal information about Enron's employees, such as sensitive information relating to their spouses or children. Personal information such as this has also been redacted from the transcripts submitted as Exhibit Nos. SNO-163 through SNO-244.

We are filing, under separate cover, the protected version of this filing. The only difference between the public and protected versions of this filing is that Exhibit No. SNO-245, the CD-ROM, is provided with the protected version and is excluded from the public version.

PUBLIC DOCUMENT – PROTECTED MATERIALS HAVE BEEN REDACTED

Thank you for your assistance.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Deborah A. Swanstrom', written over a horizontal line.

Deborah A. Swanstrom
*Attorney for Public Utility District No. 1
of Snohomish County, Washington*

Enclosures

cc: Presiding Judge Benkin (via hand-delivery)
Counsel for Enron (via hand-delivery)
FERC Staff (via hand-delivery)

**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. EL02-114-007
Enron Power Marketing, Inc.	)	Docket No. EL02-115-008

(Consolidated)

**MOTION OF PUBLIC UTILITY DISTRICT NO. 1 OF SNOHOMISH
COUNTY, WASHINGTON FOR LEAVE TO FILE LIMITED
SUPPLEMENTAL TESTIMONY AND EXHIBITS RELATED TO AUDIO
RECORDINGS OF ENRON PHONE CONVERSATIONS**

**To: The Honorable Isaac D. Benkin,
Presiding Administrative Law Judge**

Pursuant to Rule 212 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission ("FERC" or "Commission"), 18 C.F.R. § 385.212, Public Utility District No. 1 of Snohomish County, Washington ("Snohomish") respectfully submits this Motion for Leave to File Limited Supplemental Testimony and Exhibits Related to Audio Recordings of Enron Phone Conversations. As reported to Your Honor, Enron and all other participants on multiple occasions,¹ Snohomish has pursued diligently the production of audio tapes of phone conversations of Enron's Western electricity traders seized by the Department of Justice ("DOJ") and Federal Bureau of

¹ See Answer of Public Utility District No. 1 of Snohomish County, Washington to Enron Motion for Extension of Time, at p. 3 (filed April 12, 2004); Status Report on Enron Audio Tapes (filed Feb. 12, 2004); Status Report on Enron Audio Tapes (filed Jan. 7, 2004); and Status Report on Enron Audio Tapes (filed Dec. 16, 2003).

Investigation ("FBI"). Working cooperatively with the FERC Trial Staff, the Assistant U.S. Attorney for the Northern District of California and Aspen Systems Corporation, under the guidance of Your Honor,² Snohomish ultimately obtained access to Enron audio recordings for a portion of the period January 1, 2000 to June 20, 2001 at issue in these show cause proceedings.³

In these audio recordings, Enron's traders brazenly discuss games -- such as ricochet, death star and paper trading -- and the profits reaped from their games.⁴ Illustrating the need for forceful monetary and non-monetary remedies against Enron in these proceedings, the recordings show a reckless disregard by Enron of consumers and the reliability of the Western electric power grid. For example, the recordings reveal a conversation where Enron employees gleefully discuss stealing money from grandmothers in California and ripping the heads off customers.⁵ The recordings also reveal a conversation where an Enron employee cheers on the burning of a core transmission line in the West by repeatedly stating the refrain "burn baby burn," from the song Disco Inferno, upon learning the line had to be derated due to a fire.⁶ Moreover, these recordings are just the tip of the iceberg in what has now become a mammoth evidentiary record of misconduct by Enron that has disgraced the electric industry.

² See Prehearing Conference Transcript at 151-153 (Dec. 10, 2003) (hereinafter "Tr."). Snohomish respectfully renews its request for Your Honor to grant Snohomish's motion to correct the December 10, 2003, transcript. Snohomish filed its motion to correct the transcript on February 12, 2004.

³ Snohomish obtained access to Enron audio recordings for portions of August, September, and December of 2000, as well as portions of January 2001.

⁴ See, e.g., Ex. SNO-167; Ex. SNO-168; Ex. SNO-180; Ex. SNO-185; Ex. SNO-188; Ex. SNO-214; Ex. SNO-236.

⁵ See Ex. SNO-224.

⁶ See Ex. SNO-203.

I. GOOD CAUSE EXISTS TO GRANT SNOHOMISH'S MOTION

For many reasons, good cause exists to grant Snohomish's motion for leave to file limited supplemental testimony and exhibits related to audio recordings of phone conversations by Enron's Western electricity traders. As explained further below, the recordings prove unequivocally that Enron engaged in gaming and anomalous market behavior, and the presentation of this evidence is necessary for a true and full disclosure of the facts. Acceptance of this evidence after the filing of direct testimony is warranted, and consistent with Your Honor's prior rulings, because the evidence was not produced to Snohomish in time to submit it as part of Snohomish's case-in-chief filing on February 27, 2004. Production of this evidence was delayed because of the criminal misconduct of Enron's Western electricity traders that led to the seizure of the audio recordings, not through the fault of Snohomish.⁷

A. Presentation Of The Audio Recordings Obtained By Snohomish, With The Support Of FERC Trial Staff, Is Necessary For A True And Full Disclosure Of The Facts

Often, the most blatant evidence of market manipulation during the Western power crisis of 2000-2001 can be found in audio tapes of trader calls recorded contemporaneously with the acts of market manipulation. As Judge Young noted in the context of the 100-days discovery proceeding in Docket Nos. EL00-95, *et al.*, "there is nothing more relevant to the kind of issues we are considering here than trader tapes would be."⁸ As the Commission's order approving a stipulation and consent agreement

⁷ Enron finally provided Snohomish with copies of certain search warrants on May 14, 2004. Exhibit No. SNO-246 contains two search warrants that appear to be relevant to the seized Enron audio recordings.

⁸ See *Transcript of Prehearing Conference*, Docket Nos. EL00-95-069 and EL00-95-058, Tr. at 352 (Dec. 17, 2002).

with Reliant in Docket No. PA02-2-001 further demonstrates, during the Western power crisis, some traders discussed not only the price and terms of their transactions on recorded lines, but also their intent to manipulate the market and exercise market power.⁹

Some of Enron's traders were careful not to explicitly discuss their trading strategies on recorded lines and used cell phones, non-taped lines and instant messaging to avoid their conversations being caught on tape.¹⁰ Other traders, however, failed to cover their tracks. In several calls, the gaming practices of ricochet, death star and paper trading are discussed openly.¹¹ Enron's traders also discussed, point blankly, the fact that Enron intentionally congested transmission lines.¹²

The recordings confirm that Enron engaged in a pattern and practice of deception, including "lies" to Snohomish.¹³ The recordings also confirm the integrated nature of the Western electricity market and that Enron's misconduct did not end at the California border. Enron's gaming and anomalous market behavior enabled Enron to profit unjustly not simply in the short-term market in California, but also from sales in the Western forward market. As the recordings reveal, Enron used price volatility -- which had been created in part by Enron's own acts of market manipulation -- as a tool to lock customers into contracts.¹⁴ As the recordings also reveal, Enron reaped large profits from a long-term sale to Snohomish in the forward market because Enron knew Snohomish was "cornered" as a result of the high prices in the near term market and a

⁹ *Fact Finding Investigation into Possible Manipulation of Electric and Natural Gas Prices*, 102 FERC ¶ 61,108, at P13 (2003).

¹⁰ See, e.g., Ex. SNO-200; Ex. SNO-216; Ex. SNO-225; Ex. SNO-231; Ex. SNO-237.

¹¹ See, e.g., Ex. SNO-167; Ex. SNO-168; Ex. SNO-180; Ex. SNO-185; Ex. SNO-188; Ex. SNO-214.

¹² See, e.g., Ex. SNO-204.

¹³ See Ex. SNO-194.

¹⁴ See Ex. SNO-209.

lack of supply options.¹⁵ The havoc stirred up in the near term market in California made customers, in the words of Enron's own employee, "desperate" to enter into longer-term contracts.¹⁶

Rule 505 of FERC's Rules of Practice and Procedure grants participants the right to present such evidence "as may be necessary to assure true and full disclosure of the facts."¹⁷ In accordance with that Rule, Snohomish presents the Enron audio recordings for consideration by Your Honor and the Commission, and Snohomish respectfully submits that acceptance of this filing is necessary for a true and full disclosure of the facts. As Your Honor noted recently in an order denying a motion by FERC Staff to strike testimony, these proceedings may represent the "last clear chance" for evidence regarding Enron's acts of market manipulation to come before the Commission.¹⁸ In that order, Your Honor decided the wisest course to follow is to allow participants to proffer evidence, rather than exclude evidence summarily prior to the hearing and briefing. Snohomish agrees with Your Honor. These proceedings ultimately will be delayed, rather than expedited, if the exclusion of evidence results in a remand on appeal. The full truth must come out now if the Commission truly wants these proceedings to end.

¹⁵ See Ex. SNO-228; Ex. SNO-194.

¹⁶ *Id.*

¹⁷ 18 C.F.R. § 385.505.

¹⁸ Presiding Administrative Law Judge's Order Denying Staff Motion To Strike Testimony, Docket Nos. EL03-180-000, *et al.*, at P 19 (May 11, 2004).

B. Snohomish Pursued Production Of The Audio Recordings Vigorously

Recognizing the evidentiary value of tape recordings, Paragraph 47 of the Commission's partnership show cause order required all partnership entities in these proceedings, including Enron, to submit tapes as part of their show responses.¹⁹ When Enron failed to produce tapes as part of its show cause response, Snohomish pursued the tapes in discovery.²⁰ Enron failed to produce any relevant tapes in discovery and expressed uncertainty regarding the physical location of its tapes following a search and seizure by the DOJ and FBI in connection with criminal investigations of Enron's Western electricity traders.²¹

In late November of 2003, with the help of FERC Trial Staff, Snohomish finally identified the location of Enron audio tapes seized by the DOJ and FBI. Snohomish learned that audio tapes were in the possession of Aspen Systems Corporation, a contractor hired by DOJ, FERC and the attorney generals of several states investigating Enron's misconduct. Immediately thereafter, Snohomish requested Your Honor to issue a subpoena ordering Mr. Daniel Waintroob of Aspen Systems Corporation to produce copies of relevant Enron audio tapes for the period January 1, 2000 through June 20, 2001.²² Your Honor duly issued that subpoena on December 3, 2003.²³ However, on December 9, 2003, at the request of the Assistant U.S. Attorney, FERC Trial Staff filed

¹⁹ *Enron Power Marketing, Inc., et al.*, 103 FERC ¶ 61,346, at P 47 (2003).

²⁰ Relevant data requests submitted by Snohomish to Enron in the partnership proceeding include, for example, SNO-ENR-23, SNO-ENR-24 and SNO-ENR-25, and relevant data requests submitted by Snohomish to Enron in the gaming proceeding include, for example, SNO-ENR-88.

²¹ Even at the prehearing conference held on December 10, 2003, counsel for Enron continued to express uncertainty regarding the location of the tapes. See Tr. at 121-124.

²² *Application of Public Utility District No. 1 of Snohomish County, Washington for the Issuance of a Subpoena Duces Tecum for Daniel Waintroob to Provide Audio Tapes* (filed Nov. 26, 2003).

²³ *Order Confirming Issuance of Subpoena* (issued Dec. 3, 2003).

a motion to quash the subpoena.²⁴ The motion to quash was granted by Your Honor to preserve DOJ's investigative privilege, but Your Honor conditioned the grant of the motion on FERC Trial Staff cooperating with Snohomish "in seeking a waiver by the U.S. Department of Justice of its privilege with respect to disclosure of the contents of Enron audio tapes in the possession of Mr. Waintroob's employer [Aspen Systems Corporation] to [Snohomish's] counsel."²⁵

In accordance with Your Honor's ruling, FERC Trial Staff facilitated numerous conference calls between Snohomish, the Assistant U.S. Attorney and representatives of Aspen Systems Corporation. Following lengthy negotiations, throughout which Snohomish continually updated Your Honor, Enron, and all other participants in these proceedings by filing status reports,²⁶ Snohomish ultimately obtained a total of 52 DVDs containing audio recordings of Enron calls on March 4, 2004.²⁷ Snohomish is grateful for the support and cooperation of FERC Trial Staff, the Assistant U.S. Attorney and Aspen Systems Corporation that enabled Snohomish to obtain access to these recordings.

Under the supervision of Dr. Carl Pechman, a team of over a dozen listeners was assembled quickly by Snohomish to screen the DVDs and identify relevant calls. Over a thousand hours of calls were screened and transcripts of relevant calls were prepared

²⁴ *Motion to Quash Issuance of Subpoena* (filed Dec. 9, 2003).

²⁵ See *Presiding Administrative Law Judge's Order Amending Procedural Schedule and Resolving Other Disputes*, at P 4 (issued Dec. 11, 2003).

²⁶ See *Status Report on Enron Audio Tapes* (filed Feb. 12, 2004); *Status Report on Enron Audio Tapes* (filed Jan. 7, 2004); and *Status Report on Enron Audio Tapes* (filed Dec. 16, 2003).

²⁷ In late February 2004, Aspen Systems Corporation began sending copies of the audio recordings in batches to Snohomish's counsel in D.C., who forwarded copies to Dr. Pechman in California. On March 4, 2004, Aspen Systems Corporation completed their delivery of all 52 DVDs to Snohomish's counsel.

by an independent transcriber.²⁸ The Supplemental Testimony of Dr. Pechman, accompanying this Motion, explains these basic facts and Dr. Pechman sponsors a series of exhibits comprised of relevant audio recordings and transcripts of those recordings.

C. Acceptance Of This Supplemental Evidence Is Consistent With Your Honor's Prior Rulings

Acceptance of this supplemental evidence is consistent with Your Honor's prior rulings. When Snohomish apprised Your Honor previously of the unique barriers and delays it faced in accessing Enron data, including the Enron audio recordings,²⁹ Your Honor ruled that "if you come across either a smoking gun or a gun with just a whiff of smoke, you can file supplemental testimony limited to that specific material."³⁰ The Enron audio recordings presented here contain multiple smoking guns, and should therefore be accepted in accordance with Your Honor's prior rulings. Your Honor similarly has granted other parties the opportunity to file supplemental testimony when delays in the production of evidence occurred.³¹

²⁸ Due to the unavailability of recordings covering the entire time period of January 1, 2000 to June 20, 2001 at issue in these proceedings, delays in the identification and production of recordings, the voluminous nature of the recordings, and the large expense associated with obtaining and reviewing recordings of Enron phone conversations, Snohomish has been unable to obtain and review all Enron recordings. Snohomish made a good faith effort, in the short period available, to identify relevant calls.

²⁹ See Tr. at 161-163. See also *Motion of Public Utility District No. 1 of Snohomish County, Washington to Extend Deadline for Discovery with Respect to Enron, Request for Expeditious Treatment, and Request for Adoption of FERC Trial Staff's Proposal to Extend Deadline for Filing Staff and Intervenor Testimony* at pp. 5-7 (filed Nov. 26, 2003).

³⁰ Tr. at 163.

³¹ See *Presiding Administrative Law Judge's Order Granting Motion for Leave to File Supplemental Testimony* (issued April 27, 2004). Accord Tr. at 100 (expressing a willingness to entertain a motion by the Nevada Utilities to file supplemental testimony related to information produced late in discovery).

D. Snohomish Is Providing Enron And All Other Participants The Opportunity To Confirm The Accuracy Of This Supplemental Evidence

In addition to providing transcripts of relevant audio recordings, Snohomish is providing copies of the actual recordings transcribed so that Enron or any other participant, which desires to do so, can easily check the accuracy of the transcripts.³² Enron has known about Snohomish's quest for the production of these audio recordings since November of 2003, and Enron was apprised previously that Snohomish expected to obtain audio recordings from Aspen Systems Corporation starting in late February of 2004 and did in fact receive the last shipment of audio recordings on March 4, 2004.³³ Despite this knowledge, Enron has never asked counsel for Snohomish to grant it access to the audio recordings nor has Enron served any data requests on Snohomish to obtain access to the recordings. Nevertheless, Snohomish is willing to make all 52 DVDs available for inspection between now and the start date of the hearing, if Enron or any other participant so chooses to inspect the DVDs.³⁴

Notably, the audio recordings refute positions taken by Enron's witness, Dr. Acton, and conflict starkly with Dr. Acton's conclusions that Enron engaged in little to no gaming practices, caused little to no economic harm, and earned little to no unjust

³² Ex. SNO-245 contains the .wav audio files that were transcribed, by an independent transcriber, and submitted as Exs. SNO-163 through SNO-244.

³³ See *Answer of Public Utility District No. 1 of Snohomish County, Washington to Enron Motion for Extension of Time* at p. 3 (filed April 12, 2004) (where Snohomish, in no ambiguous terms, states it "finally received its last shipment of DVDs of Enron calls from Aspen Systems on March 4, 2004"). Snohomish also notes that its February 2004 status report regarding Enron audio tapes states "it appears access to copies of certain Enron audio tapes in Aspen System's possession will in fact be granted to Snohomish . . . Snohomish is hopeful it will be able to access copies of these audio tapes later [in February of 2004]." See *Status Report on Enron Audio Tapes* (filed Feb. 12, 2004).

³⁴ Participants who certify they have executed the applicable protective order certificates may inspect the audio recordings at the office of Snohomish's counsel, located at 2550 M Street, NW, Washington, DC, by contacting Adam Moniz at (202) 457-6056 or amoniz@pattonboggs.com.

profits.³⁵ Indeed, the recordings show that in just one week in August of 2000 alone, Enron made \$6-8 million from the ISO for games Enron played,³⁶ and Enron's profits were so large that Enron was "scooping money into buckets."³⁷ The recordings make unmistakably clear that Enron's traders had no remorse about causing the economic downfall of the State of California by continuously pulling megawatts out of the State, even during system emergencies.³⁸ Contrary to the conclusion reached by Dr. Acton, the recordings also make unmistakably clear that Enron's traders engaged in the gaming practice of ricochet, which is also known as false import,³⁹ within the period May 1, 2000 and October 1, 2000,⁴⁰ and that they played this game with the intent of evading the price cap.⁴¹

Therefore, even if Enron objects to the acceptance of this evidence in the form of supplemental direct testimony and exhibits, Your Honor can accept the evidence as early-filed rebuttal testimony and exhibits. As a courtesy to Enron, Snohomish is filing this evidence prior to the deadline for rebuttal testimony, rather than waiting to submit the evidence, so that Enron is afforded an opportunity to respond to the evidence in Enron's rebuttal testimony.

³⁵ The audio recordings also refute positions taken by FERC Trial Staff that are, alarmingly, aligned with Enron.

³⁶ See Ex. SNO-237.

³⁷ See Ex. SNO-236; See also Ex. SNO-222; Ex. SNO-217.

³⁸ See, e.g., Ex. SNO-233; Ex. SNO-230.

³⁹ *American Electric Power Corp., et al.*, 103 FERC ¶ 61,345, at P 37 (2003).

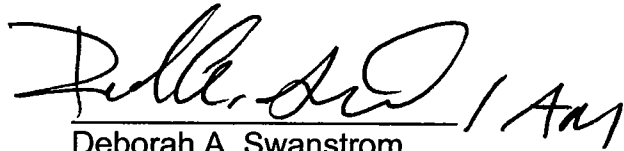
⁴⁰ See, e.g., Ex. SNO-167; Ex. SNO-214.

⁴¹ See Ex. SNO-221.

II. CONCLUSION

WHEREFORE, Snohomish respectfully requests that Your Honor grant Snohomish's motion for leave to file limited supplemental testimony and exhibits related to audio recordings of Enron phone conversations for good cause shown.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Deborah A. Swanstrom", with a horizontal line underneath it.

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Dated: May 17, 2004