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RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

AO 91 (Rev. 5/85) Criminal Complaint

United States District Court

NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA
v.
John Forney
1834 West Lane Ave.
Upper Arlington, Ohio 43221

(Name and Address of Defendant)

CRIMINAL COMPLAINT EDL

CASE NUMBER: 3 03 30210

I, the undersigned complainant being duly sworn state the following is true and correct to the best of my knowledge and belief. On or about June 1999-January 2001 in San Francisco county, in the Northern District of California defendant(s) did, (Track Statutory Language of Offense)

devise and intented to devise a scheme and artifice to defraud, and to obtain money by means of false and fraudulent pretenses, representations and promises, by use of wire communications; and did conspire with one or more persons to commit wire fraud

in violation of Title 18 United States Code, Section(s) 1343 & 371

I further state that I am a(n) Special Agent of the FBI (Official Title) and that this complaint is based on the following facts:

See Attached Affidavit of SA Steven C. Coffin

BAIL REQUESTED: $500,000, secured by real property.

Continued on the attached sheet and made a part hereof: ☒ Yes ☐ No

Approved As To Form: [signature] for
AUSA: Matthew J. Jacobs

[signature]
Name/Signature of Complainant:

Sworn to before me and subscribed in my presence,

May 30, 2003
Date

at San Francisco, California
City and State

Elizabeth D. Laporte
United States Magistrate Judge
Name & Title of Judicial Officer

[signature]
Signature of Judicial Officer

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UNITED STATES DISTRICT COURT)
NORTHERN DISTRICT OF CALIFORNIA) AFFIDAVIT

I, STEVEN C. COFFIN, being duly sworn, state as follows:

I. BACKGROUND

1. I am a Special Agent with the Federal Bureau of Investigation (FBI) and have been so employed since June 21, 1998. Since October 31, 1998, I have investigated financial crimes out of the FBI's San Francisco office. In this capacity, I have investigated a wide variety of fraudulent schemes including wire fraud, securities fraud, investment fraud, and money laundering offenses.

2. During my initial training at the FBI Academy, I received instruction regarding fraudulent schemes and the laws used to investigate them. During my career, I have received additional training in asset forfeiture; high-tech and Internet fraud; financial institution fraud; and securities fraud.

3. Before joining the FBI, I served for over four years as an officer in the U.S. Air Force. I was a Judge Advocate (a military lawyer) and acted, at different times, as a prosecutor and a defense attorney. I have a Juris Doctor from the University of Virginia.

II. SUBJECT OF THE COMPLAINT

4. This affidavit is submitted in support of an application for a criminal complaint and arrest warrant for John M. Forney, born July 14, 1962, possessing Social Security account number 464-25-4903, and residing at 1834 West Lane Avenue, Upper Arlington, Ohio. Forney is currently employed by American Electric Power in Columbus, Ohio. Forney was formerly employed as an energy trader by Enron Corporation (Enron).

III. LAWS VIOLATED

5. Based on the facts contained in this affidavit, I believe that there is probable cause to conclude that, between approximately June 1999 and January 2001 (relevant time period), Forney unlawfully conspired to commit and committed acts in violation of federal law. As set

forth more fully below, there is probable cause to conclude that Forney committed the offense of wire fraud in violation of Title 18, United States Code Section 1343, and conspired to commit the offense of wire fraud in violation of Title 18, United States Code Section 371, in the Northern District of California and elsewhere.

IV. SOURCES OF INFORMATION

6. In preparing this affidavit, I have consulted with and/or reviewed documents prepared and/or produced by the following entities or sources:

(a) The U.S. Department of Justice's Enron Task Force. The Task Force is investigating Enron, its subsidiaries and employees for potential violations of U.S. criminal laws. The Task Force is working in conjunction with the U.S. Attorney's Office for the Northern District of California, the Antitrust Division of the Department of Justice, and the San Francisco division of the FBI in an ongoing investigation of the unlawful manipulation of the California energy markets;

(b) The Federal Energy Regulatory Commission (FERC) and the Commodities Futures Trading Commission (CFTC), which are conducting civil investigations into unlawful manipulation of the Western energy markets;

(c) The California Independent System Operator (ISO), which was one of the California entities responsible for operating the California energy markets and maintaining reliability of the power grid;

(d) The Attorney General's Office for the States of California, Oregon and Washington which are conducting an investigation into the unlawful manipulation of the California energy markets;

(e) Two cooperating witnesses (CW1 and CW2); who have consistently provided the FBI with accurate and reliable information, and whose identity is being withheld at their request; and

(f) Enron, its subsidiaries, affiliates, attorneys, and former employees of Enron, some of whom have been designated as Unidentified Sources (US1 and US2), whose identities are also being withheld.

7. FBI Special Agents Brian Cook and John Schachnovsky, who have been employed by the FBI for seven and three years, respectively, have assisted me with this investigation. Together, we have reviewed documents and interviewed numerous witnesses for this investigation. In this affidavit, I rely on our mutual investigative work. Other FBI Special Agents have provided information for this affidavit as well.

8. I have included in this affidavit only those facts that are relevant in determining whether probable cause exists to believe that Forney is guilty of violating the statutes listed in this affidavit. Thus, I have not included all the facts known to me concerning criminal activity that I have discovered in this investigation. Also, to the extent that this affidavit contains statements by others, those statements are paraphrased where not quoted.

V. FACTUAL BACKGROUND

A. California Electricity Markets

9. According to interviews I and other Special Agents of the FBI have conducted with officials of the ISO and FERC, I learned the information set forth in paragraphs 9 through 15. The California wholesale electricity industry was organized around three regulated utilities, Pacific Gas & Electric Co., Southern California Edison, and San Diego Gas & Electric, prior to 1996. 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.

10. 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 much of their electricity generation plants to private companies. The legislation also created two new institutions, the Power Exchange (PX) and the 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.

11. Through the markets operated by the PX and ISO, electricity generators and 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. In theory, 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. In practice, increasing amounts of power were bid in the real time market as the PX markets slid into bankruptcy and it collapsed during the California energy crisis.

12. 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.

13. 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 the companies that appeared to relieve congestion by either reducing the amount of scheduled energy or scheduling energy in the opposite direction of the congestion.

14. When there was an insufficient amount of supply to meet demand, the ISO was forced to solicit additional, emergency electricity, 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, if the electricity was generated outside of California. The price cap was designed to prevent price gouging, but the ISO was allowed to waive the cap when in-state power could not be found. The ISO obtained this electricity by making telephonic out of market calls (known as "OOM calls") to power marketers and generators. During some of the time relevant to this affidavit, the price cap in California authorized with FERC was $250 per megawatt hour.

15. 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 and congestion fees by wire transmission through the Bank of America in the Northern District of California.

B. Enron

16. According to interviews I've conducted with officials from FERC, Enron was a publicly traded corporation with its headquarters in Houston, Texas. Among other operations, Enron was at one time the nation's largest natural gas and electricity marketer with reported annual revenues of more than $100 billion. In December 2001, Enron filed for bankruptcy.

17. Enron's offices in Portland, Oregon, contained the West Power Trading Division. The West Power Trading Division was responsible for buying and selling wholesale power in the western United States and Canada.

18. According to interviews I've conducted with officials from FERC, much of the energy bought and sold on behalf of Enron was delivered over California's electric power grid. To send energy across these lines, Enron energy traders submitted, by computer, electronic schedules to the ISO in Folsom, California. The schedules identified, among other things, the amount and type of electricity to be sent, where the electricity was coming from, and where the

electricity was going. Enron energy traders also conducted telephonic discussions about deals from their offices in Portland, Oregon, with ISO representatives located in California.

C. Progress of the Investigation

19. Since approximately June 2000, myself and other FBI Special Agents and federal prosecutors from the Northern District of California have investigated Enron and other market participants for manipulative conduct related to the California energy market. In conducting this investigation, we have relied on the information provided to us by the sources listed in paragraph 6 above. As a result of our investigation, Timothy Belden and Jeffrey Richter, who were formerly managers at Enron's West Power Trading Division, pled guilty to charges of conspiracy to commit wire fraud and, in the case of Richter, to a count of making false statements to a federal agent. After pleading guilty, both Belden and Richter assisted me in the preparation of this affidavit by providing information about the conduct of Forney.

D. John Forney and the Real Time Desk

20. According to Belden, Richter and ~~to~~ Enron documents that I have reviewed, John Forney was employed by Enron from approximately 1993 until 2002. Near the end of 1997, Enron transferred Forney to Enron's West Power Trading office in Portland. In June 1999, Forney became the manager of the West Power Real Time trading desk. Forney remained the manager of the Real Time desk until he moved to Houston at the end of 2000.

21. Forney's Real Time desk was responsible for creating schedules and making trades in the ISO's real time electricity market. While other trading desks sought to make profit by anticipating long-term trends in the supply and demand of electricity, the Real Time traders typically tried to profit from selling power to cover shortages that suddenly developed on the electric grid. Before Forney assumed control of this desk, it had a reputation among traders for producing paltry revenues. It was frequently staffed by employees completely inexperienced in energy trading.

22. According to the cooperating witnesses and to Belden and Richter, Forney was fully involved with the Real Time trading desk's activities. Forney reviewed all trades. He

created spreadsheet templates for Real Time employees to record all trades and schedules. He was the principal trainer of new employees on the desk. All trading strategies employed by Real Time desk employees were created, fine-tuned, or approved, by Forney. Besides his management duties, Forney was himself a very active trader.

VI. ENRON'S TRADING SCHEMES

A. In General

23. On October 17, 2002, Timothy Belden, the former Managing Director for Enron's West Power Trading Division, appeared before U.S. District Judge Martin J. Jenkins in the Northern District of California. Belden pled guilty to a one count Information charging him with conspiracy to commit wire fraud, in violation of 18 U.S.C. § 371. I have reviewed the Information and Belden's Plea Agreement with the United States, and it contains the following information:

(a) Belden was employed by Enron in its West Power Trading Division in Portland, Oregon, from approximately 1997 to February 2002. In 1997 and 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 Trading. Belden oversaw the marketing and supply of electricity and related services by Enron to consumers of wholesale electricity in the western United States. During the time that Forney was manager of the Real Time desk, Belden was Forney's direct supervisor.

(b) Belden pled guilty to the crime of conspiracy to commit wire fraud, and admitted that the following facts were true:

> 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 [the ISO and PX electricity 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 . . . .

> 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.

24. During a series of interviews with Belden conducted by Special Agents Cook, Schachnovsky, and myself, Belden and other former Enron energy traders, including the cooperating witnesses, stated that many of the schemes were originated and implemented by Forney's Real Time desk at Enron's West Power office. Enron traders on the Real Time desk gave many of these schemes names so that they could easily refer to them on Enron's trading floor. These names included "Ricochet," "Death Star," "Black Widow," "Red Congo," and "Get Shorty."

B. <u>The Ricochet Scheme (a.k.a. Megawatt Laundering, a.k.a. Ping Pong)</u>

25. According to the sources described below, the Ricochet scheme was designed to evade federally approved price caps on California energy. Ricochet involved buying energy generated in California in a forward market, and then selling it back to the ISO in the real time market shortly before the power was actually generated. When selling the power to the ISO, Enron's traders fraudulently misled the ISO about the energy in order to avoid the price caps and reap huge profits.

26. On August 20, 2002, Special Agent Schachnovsky and Cook interviewed Richard B. Sanders, a Vice President and Assistant General Counsel for Enron. Sanders provided the following information:

(a) In late August or early September 2000, Enron began an investigation into its energy trading entity in Portland. Among the people that assisted Sanders were attorneys Christian Yoder and Stephen Hall. Over several months, Sanders, Yoder, Hall, and others interviewed energy traders and others from Enron's Portland office.

(b) As part of the investigation, Yoder and Hall prepared a memorandum to Sanders dated December 8, 2000 entitled "Traders' Strategies in the California Wholesale Power Markets/ISO Sanctions."

27. I reviewed the above described December 8, 2000 memorandum from Yoder and Hall to Sanders. In the Hall/Yoder memorandum described herein, the Enron attorneys interviewed Enron's traders at length. Then they analyzed and explained the mechanics of several strategies, including Ricochet:

> (B)(7) "Ricochet"
>
> Enron buys energy from the PX in the Day Of market, and schedules it for export. The energy is sent out of California to another party, which charges a small fee per MW, and then Enron buys it back to sell the energy to the ISO real-time market . . .

28. Except in one special circumstance, the price that the ISO would pay for energy was capped by an order of the FERC. This cap applied to all energy generated in California. Energy generated outside of California was also subject to the price cap in most instances. There was one exception to this cap. According to the ISO, energy generated outside of California had no price limitation if the ISO had been unable to find sufficient energy supplies in the real time market. In these dire circumstances, representatives of the ISO made "out of market" phone calls to power companies trying to acquire new energy supplies. When trying to buy energy during an OOM call, ISO representatives could accept bids above the price cap, but only for energy generated outside of California. If the ISO knew the energy was generated inside California, then the price cap still applied.

29. CW1 was a trader on Forney's Real Time desk. CW1 worked on the Real Time desk from 2000 until 2001. CW1's first supervisor on the Real Time desk was John Forney. CW1 told me that Enron traders engaged in Ricochet when they forecast that the price of power

would be at its highest in the real time market. The general idea was to buy energy in an earlier market, "park it" with a power company outside of California, buy it back for a small fee in the hour ahead market, and then sell it to the ISO inside California. When a trader "parked" energy, he was making a fictional trade. With a parking deal, it was understood that no electrons would actually move because of the deal. For example, a day before the power was to be generated in California, Enron sold it to another power company out of state. Such parking deals were completed with New Mexico Power, among others. Then, a few hours before the power was to be generated, Enron bought back the same amount of energy from New Mexico Power. Enron then sold the electricity to the ISO, and the power was used in California. In reality, the electrons were generated in California, used in California, and never left the state. Nevertheless, CW1 and other traders on the Real Time desk maintained the fiction that the power came from New Mexico. Maintaining this fiction was important when the ISO was making emergency OOM, or out of market, calls to try to find power because the ISO paid uncapped prices for out of state energy during OOM calls.

30. CW1 said that Ricochet was usually most profitable when Enron received an OOM call from the ISO. On those occasions, Enron could sell its energy to the ISO without a limit on its selling price, if Enron identified the energy as being generated outside of California. CW1 and other Enron traders routinely told the ISO that California energy that was parked out of state, and then imported back into the state, was not California energy.

31. After one particular OOM call in 2000, the ISO representative noticed that Enron had purchased electricity generated in California, exported it outside of the state in a forward market, and now seemed to be importing the same energy to sell to the ISO. The ISO representative consequently thought that the energy should be subject to the price cap. The ISO representative called the Real Time trader who had sold the energy to the ISO in the OOM call. The trader assured the representative that the electricity had been generated out of state. Immediately after the call, CW1 recalled that the trader described his conversation to Forney to see if Forney approved. CW1 was present when Forney told the trader that he had done the right

thing in misleading the ISO about the origin of the energy, or words to that effect.

32. After Forney expressly sanctioned this behavior, CW1 recalled receiving several similar calls from ISO representatives. During those calls, CW1 misled the ISO about the in-state origination of the energy he had sold during OOM calls. CW1 told me that he felt comfortable in making those misrepresentations to the ISO because Forney had already blessed this scheme.

33. Timothy Belden informed me that Forney's Real Time traders were the most active users of the Ricochet strategy, which Belden also called Megawatt Laundering. Of the Real Time traders, only Forney had the authority to schedule large amounts of energy in the Day Ahead (forward) market. Since this authority was useful in parking energy, Belden believed that Forney himself was one of the principal participants in the Ricochet scheme.

34. On May 20, 2003, I conducted a review of certain computer files created by Enron employees in 2000. These files included records of the energy schedules devised by Real Time employees, deals they submitted to Enron's own billing department, and scheduling instructions they transmitted to the ISO. I reviewed files showing that a Real Time trader for Enron created a Ricochet schedule on December 8, 2000. The computer files demonstrate that Enron took power from the California energy market, scheduled it to flow out of California, and then sold it back to the ISO during an OOM call. Enron purchased the power at the capped price of $250 per megawatt and sold it for $300 per megawatt, above the price cap of $250. According to the records, Enron bought and then resold 17 megawatts in this transaction. One of the records created by the trader included a spreadsheet entry in which he listed the trading parties, the paths of the power, and the profit he obtained for Forney's trading desk. In the margins, the computer file for this transaction is labeled as a "Ping Pong". According to CW1, the template for this spreadsheet was constructed by Forney, and Forney reviewed its contents daily. I reviewed wire instructions indicating that Enron submitted this fraudulent schedule to the ISO, seeking payment from the ISO for the fraudulent transaction.

C. **The Death Star Scheme (a.k.a. the Forney Loop)**

35. According to the sources described below, the Death Star scheme was a strategy designed to earn revenue for Enron by exploiting the ISO's congestion management system. Enron's traders scheduled firm energy to flow in a looping pattern. According to the ISO, this allowed Enron to schedule energy flows without actually putting any new energy onto the transmission lines. In other words, Enron submitted schedules to the ISO that pretended to move electrons owned by Enron, but in reality did not. Because the scheduled energy appeared to relieve congestion, the ISO awarded Enron congestion relief payments. The ISO was deceived because part of the looping schedule was outside of California, and it therefore could not detect the looping path of the energy schedule.

36. In the Hall/Yoder memorandum, the Enron attorneys described the Death Star strategy as follows:

> (B)(2) "Death Star"
>
> This strategy earns money by scheduling transmission in the opposite direction of congestion; i.e. schedule transmission north in the summertime and south in the winter; and then collecting the congestion payments. No energy, however, is actually put onto the grid. or taken off . . .
>
> The ISO probably cannot readily detect this practice because the ISO only sees what is happening inside its control area, so it only sees half the picture.
>
> The net effect of these transactions is that Enron gets paid for moving energy to relieve congestion without actually moving any energy or relieving any congestion.

37. I interviewed CW2 regarding Death Star. CW2 was an Enron employee who was supervised by Forney at the Real Time desk in 1999 and 2000. According to CW2, Forney instructed the Real Time traders to schedule the energy in a loop using the transmission capabilities of a variety of other energy companies. Although the Death Star strategy required Enron traders to arrange many energy schedules, in reality, Death Star did not directly cause electrons to flow because the electrons were scheduled to flow in a loop. As a consequence, CW2 stated that no congestion on the transmission lines was actually relieved by Death Star,

although Enron received congestion relief payments. CW2 expressed misgivings about the strategy to Forney, who claimed that the ISO's rules permitted Death Star. Nonetheless, Forney was worried that details of the strategy would be leaked to the ISO, other power companies, or the public. One consequence of his concern was that he instructed his traders to refrain from calling the strategy Death Star and instead called it "Cuddly Bear." Another name used by Enron traders to refer to the strategy was "The Forney Loop." CW2 implemented this strategy at least one time in 2000.

38. According to CW2, Forney devised the Death Star scheme. The Real Time desk had previously implemented another strategy, called Black Widow, that involved traders setting up a complex energy schedule to relieve congestion. Unlike Death Star, Black Widow was not a loop, so energy had to be purchased by Enron to send on the transmission path created by the traders. The Black Widow strategy resulted in real congestion relief, thereby providing a service to the ISO, and Enron usually made a profit by implementing the strategy. Forney, however, had misgivings about Black Widow because Enron had incurred costs buying and selling the power. Forney devised Death Star with the idea that Enron would not need to buy power, thereby eliminating the costs inherent in Black Widow. Consequently, Death Star did not actually relieve congestion, unlike Black Widow. Nevertheless, the ISO was misled by the Death Star schedules and paid Enron for congestion relief.

39. CW2 and I reviewed the transcripts of telephone conversations between Forney and representatives of Portland General Electric. Forney placed these telephone calls, which were made in the spring and early summer of 2000, to set up energy schedules that formed segments of Death Star loops. During some of the transcripts of the telephone calls, Forney, who identifies himself, makes arrangements for the purported transfer of energy to and from Portland General Electric. These transactions were part of fraudulent Death Star schedules submitted by Enron.

40. According to representatives of Portland General Electric, whom Special Agent Cook and I interviewed in August 2002, Portland General Electric was unaware that many of the

energy schedules of Forney and his subordinates were part of Death Star loops. As far as they knew, Enron was actually providing the energy that Forney and his traders scheduled to flow through the Portland General Electric transmission system.

41. I also interviewed CW1 regarding this trading strategy. CW1 said that the Death Star scheme was originally devised by Forney. Largely because different transmission lines were congested at different times, the mechanics of the scheme changed repeatedly. Likewise, the pathways used by the Enron traders changed as traders found more profitable ways to schedule the loop. CW1 recalled working with US1 when US1 created a new variation of the scheme. US1 was an energy trader on Forney Real Time desk from August 1999 through October 2000. Nevertheless, it was understood among the Real Time traders that Forney had created the template for the strategy, and that he needed to be aware of all modifications to it. CW1 said that the first iteration of the strategy was known as "Forney's Perpetual Loop."

42. According to CW1, Death Star deceived the ISO. The schedules did not actually move any electrons owned by Enron, did not require Enron to buy any power, did not serve any energy customers, and did not relieve congestion on the transmission lines. CW1 frequently implemented the scheme.

43. The ISO required power marketers to identify imports and exports to the ISO with names. When an import and export were parts of a Death Star schedule, CW1 and other traders frequently used names that allowed the traders to recognize that the imports and exports were not actually moving power. For instance, CW1 named imports and exports "Death" and "Star". The ISO provided me with a sampling of 50 identified Death Star schedules submitted by Enron, many of which used the names "Death" and "Star" in July and August 2000.

44. I have reviewed a document that came from Enron's West Power Trading department with the bates stamp "EC 071233688" with the heading "Forney Perpetual Loop - J Forney". The document is handwritten, and has a large map of California in the center. Arrows, which apparently represent energy schedules, move in a loop into and out of California. In the top left corner of the document are words stating, "NO MW's (megawatts) flow, just call in

schedules".

45. On August 15, 2002, Special Agent John Schachnovsky interviewed US2. US2 was a former Enron West Power Trading manager. US2 recounted that around the end of 1999, he had a conversation with Forney. US2 told Forney that US2 noticed the Real Time desk was producing larger profits than in the past. Forney attributed the windfall to a scheme called Death Star, in which the Real Time traders scheduled power to flow in a loop.

46. On May 20, 2003, I conducted a review of certain computer files created by Enron employees in 2000. These files included records of the energy schedules devised by Real Time employees, deals they submitted to Enron's own billing department, and scheduling instructions they transmitted to the ISO. I reviewed files showing that numerous Real Time traders created Death Star schedules, particularly during the middle of 2000. The records indicated that Enron was not purchasing power to put on the electric grid for these schedules. In fact, on the internal Enron spreadsheets used to record electricity schedules, Real Time traders typically typed in "Death Star" when asked to name the generation source of the power, instead of listing the name of a power company as with normal schedules. By July 2000, the spreadsheet provided a separate subheading, labeled "Death Star", under which traders recorded details of their transactions. According to CW1, the template for this spreadsheet was constructed by Forney, and Forney reviewed its contents daily. I also discovered records indicating that the Real Time traders transmitted schedules to the ISO that permitted Enron to reap congestion relief payments for the Death Star transactions. I reviewed wire instructions indicating that Enron submitted these fraudulent schedules to the ISO and seeking payment from the ISO for the fraudulent transaction.

D. The Off-Line Hubs and Lines Scheme

47. On or about May 27-28, 2000, the large transmission hub, or "intertie," known as Four Corners was off-line due to maintenance. In the parlance of the energy business, Four Corners was completely "derated." As such, no energy could flow through Four Corners. According to ISO records, the ISO notified power marketers and generators by e-mail that Four

Corners could not be used by them to schedule energy. In addition, the ISO posted notice of the incapacity on the OASIS website, which is a widely used industry news source.

48. At certain times while Four Corners was off-line, transmission lines into southern California experienced congestion. The ISO informed me that Enron filed new electricity schedules that appeared to relieve the congestion on the lines into southern California, thereby automatically entitling Enron to congestion relief payments. This congestion relief was illusory, however, since Enron's energy was scheduled to pass through the Four Corners intertie after relieving the congestion on the transmission lines. Since Four Corners was off-line immediatley before real time, the ISO cut the entire energy schedule submitted by Enron. Nevertheless, ISO paid Enron for appearing to relieve congestion. According to ISO records, the publicly owned utility Southern California Edison was the victim of this scheme and was charged for the congestion relief fee paid to Enron.

49. US1 was an energy trader on Forney's Real Time desk from August 1999 through October 2000. I interviewed US1 on March 19, 2003. US1 was working in the evening of May 27-28, 2000 and acknowledged being the principal Enron trader involved in scheduling power through Four Corners. US1 scheduled the power into the Four Corners intertie expecting that the schedule would be cut by the ISO. US1 took this action in order to collect congestion relief payments from the ISO. Although the Four Corners incident around May 27 - 28, 2000 was one of the most successful episodes of scheduling power through an off-line intertie in order to collect congestion relief payments, it was not the only time US1 did this. On the occasions in which US1 scheduled electricity through off-line interties, US1 normally did not have power available to meet the schedules, since US1 anticipated that the ISO would cut the schedule.

50. US1 said that Forney approved of US1's actions. US1 never implemented any trading strategies without first speaking to Forney.

51. I interviewed CW1 regarding this strategy. CW1 informed me that he also occasionally scheduled power to flow across transmission lines or hubs that were partially or completely off-line. When CW1 implemented this strategy and submitted energy schedules to

the ISO, he had no expectation of actually supplying the energy. The purpose of scheduling this power was to receive payments for relieving congestion on these off-line transmission lines and hubs. Nevertheless, since CW1 expected the ISO to cut the schedules, CW1 knew that no real congestion relief would result.

52. CW1 recalled that Forney encouraged this type of behavior by his traders. Forney was especially pleased by the fact that Enron did not need to actually purchase or sell generation for these transactions, since Enron sometimes lost money when it had to resell energy. In this case, the Real Time employees under Forney scheduled power flows with no intention of actually providing the energy. According to the traders, this type of transaction resulted in pure profit with no market risk.

53. On May 20, 2003, I conducted a review of certain computer files created by Enron employees in 2000. These files included records of the energy schedules devised by Real Time employees, deals they submitted to Enron's own billing department, and scheduling instructions they wired to the ISO. I reviewed files showing that US1 created three schedules, spanning May 27 to May 28, 2000, that were designed to take advantage of Four Corners going off-line. The records indicated that Enron was not purchasing power to put on the electric grid for these schedules. In fact, on the internal Enron spreadsheets used to record electricity schedules, US1 typed in the word "problems" when asked to name both the generation source of the power and the buyer of the power, instead of listing the names of power companies as with normal schedules. According to CW1, the template for this spreadsheet was constructed by Forney, and Forney reviewed its contents daily. I also discovered records indicating that the Enron wired these schedules to the ISO, which permitted Enron to reap congestion relief payments for these transactions.

E. <u>The Non-Firm Export Scheme</u>

54. The Non-Firm Export scheme was similar to the Off-Line Hubs and Lines scheme in that Enron's traders never intended to supply the energy that it scheduled with the ISO. Likewise, this strategy was designed to take advantage of a flaw in the ISO's congestion

management system. Non-firm energy is not supported by back-up power, also known as "ancillary services," so its transmission can be canceled. According to ISO records, Enron's traders filed fraudulent schedules purporting to export non-firm energy out of California along transmission lines that were congested in the opposite (import) direction. This falsely appeared to relieve congestion, and it allowed Enron to collect a congestion relief fee for taking no action and without really relieving congestion. After the ISO had authorized the payment, but before the energy had actually been generated, Enron cancelled the export schedule. Since it was non-firm energy being cut, there was no back-up power to replace it. No actual congestion relief occurred. Nevertheless, Enron still collected the congestion relief fee.

55. In the Hall/Yoder memorandum, the Enron attorneys analyzed the Non-Firm Export strategy. The memorandum states, in part, the following:

> The goal is to get paid for sending energy in the opposite direction as the constrained path . . . (traders) that schedule energy in the opposite direction of the congestion on a constrained path get paid congestion charges . . . (a)t times, the value of the congestion payments can be greater than the value of the energy itself . . .
>
> This energy must be scheduled three hours before delivery. After two hours, Enron gets paid the counterflow charges. A trader then cuts the non-firm power. Once the non-firm power is cut, the congestion resumes . . .

56. According to Timothy Belden, Forney approached him around May or June of 2000 with the idea of the Non-Firm Export strategy. After Forney described his idea, Belden had concerns that the ISO would object, but he authorized Forney to proceed if the ISO's rules did not expressly prohibit the strategy. Forney also reassured Belden by informing him that an employee from West Power Trading's Settlements department had spoken with a representative from the ISO about the strategy.

57. On March 25, 2003, I interviewed the Enron settlement's employee (US3). US3 recalled contacting an ISO representative regarding the financial effect of cutting a non-firm energy schedule. US3 asked whether the ISO's congestion management system would still pay congestion relief to Enron for a non-firm energy schedule that was cut. US3 did not divulge that

Enron was considering a systematic cutting of non-firm power to obtain a series of congestion relief payments. The ISO representative indicated that the ISO knew there was a flaw in their congestion management system that allowed payments for cut schedules, but fixing it was not a high priority.

58. US1 and CW1 both recalled implementing this scheme. Neither could remember who devised the strategy. Nevertheless, CW1 recalled that Forney told his subordinates during a meeting that this was a good strategy for creating profit.

59. On May 20, 2003, I conducted a review of certain computer files created by Enron employees in 2000. These files included records of the energy schedules devised by Real Time employees, deals they submitted to Enron's own billing department, and scheduling instructions they transmitted to the ISO. I reviewed files showing that Enron traders created schedules, spanning July 19-20, 2000, designed to implement the Non-Firm Export strategy. The records showed that Real Time traders created some schedules without having any supply of power waiting to be delivered. Instead, on the internal Enron spreadsheets used to record electricity schedules, Real Time traders left a blank space when asked to name both the generation source of the power and the buyer of the power. The spreadsheets also showed that Enron's Real Time traders cut the schedule just before it went into effect. According to CW1, the template for this spreadsheet was constructed by Forney, and Forney reviewed its contents daily. I also discovered records indicating that the Enron transmitted these schedules to the ISO, which permitted Enron to reap congestion relief payments for these transactions.

60. After the Real Time traders began implementing the strategy in earnest, it caught the attention of the ISO. On July 21, 2000, the ISO sent a notice to Enron ordering it to desist from practicing this scheme. US1 and others stated that Enron traders stopped the Non-Firm Export scheme after the ISO detected the scheme. The ISO notice stated, in part:

> Several market participants have been engaged in a practice of scheduling large amounts of non-firm counter flows on congested branch groups in order to earn hour-ahead congestion revenues and then not providing those counter flows in real time. This occurred during a Stage 1 emergency on 7-20-00. This practice creates a

> significant reliability problem for the ISO and is to the detriment of market efficiency.
>
> This notice is intended to inform Market Participants that the ISO Department of Market Analysis considers this a potentially serious "gaming" practice . . .

F. The Selling Non-Firm as Firm Scheme

61. Enron's Real Time traders employed two strategies involving non-firm power. Besides the strategy described above, Enron traders also misrepresented non-firm energy as firm energy when selling it to the ISO. In the Hall/Yoder memorandum, the attorneys for Enron described the strategy as follows:

> (B)(8) "Selling Non-firm Energy as Firm Energy"
>
> The traders commonly sell non-firm energy to the PX as "firm." "Firm energy," in this context, means that the energy includes ancillary services. The result is that the ISO pays EPMI (Enron) for ancillary services that Enron claims it is providing, but does not in fact provide.
>
> The traders claim that "everybody does this" . . .

62. According to the ISO, when it bought energy, it required the seller to provide firm energy in almost every instance. Firm energy is energy that has guaranteed reliability because, even if the generation falls off, it is backed by another generation source. The ISO has system requirements that mandate all power sold to it be made firm, that is, backed by reserve power. Therefore, it was incumbent on the seller to notify the ISO if it was trying to sell non-firm power so that the ISO, before accepting the bid, had the option to make the seller purchase backup power. Enron's traders were supposed to do this by making a notation on the electronic schedules sent to the ISO. If the sale happened during an OOM call, it was understood that traders needed to verbally inform the ISO of the non-firm nature of the energy. In addition, the company generating the electricity, which was bought by Enron and then re-sold to the ISO, was supposed to notify the ISO that it was non-firm energy. As noted above, when Real Time traders transmitted electricity schedules to the ISO, the message had an established format. As part of the format, it was mandatory for Enron to include language in the message informing the ISO of

the firmness of the power.

63. I interviewed Timothy Belden, the former Managing Director of Enron's West Power Trading office, concerning this scheme. Belden recalled having at least one conversation with Forney about the strategy, probably in the summer of 2000. Forney approached Belden with the idea, and Belden did not object to it. According to Belden, only Forney's Real Time traders used the strategy.

64. I also interviewed CW1, a former trader on Enron's Real Time desk, about this strategy. According to CW1, the strategy developed after traders experienced difficulties in finding firm power to buy outside of California. When they found no economical firm energy to buy, the traders resorted to buying non-firm energy. CW1 and other Real Time traders would buy non-firm power outside of California and then, in a separate transaction, would try to purchase ancillary services to make the energy firm. Occasionally, however, ancillary services could not be found at an economical price, either. In those circumstances, CW1 and other Real Time traders sold the non-firm power to the ISO without making it firm. They knew that they were supposed to inform the ISO that it was non-firm power. Nevertheless, they intentionally withheld this information from the ISO.

65. Infrequently, the generator of the non-firm energy failed to deliver it. The generator of the non-firm power informed Enron that it was cutting the delivery. Since there was no reserve power behind the electricity sold to the ISO, Enron's traders had to try to find replacement power at the last minute. Sometimes, Enron could not find any replacement power to supply to the ISO. CW1 remembered getting phone calls from ISO representatives who were angry about Enron failing to deliver the power. The Real Time traders' strategy forced the ISO to struggle to cover the energy shortage with other reserves that it had available on the power grid, thereby increasing the risk of emergency black-outs.

66. Forney was aware that his subordinates were implementing this strategy of misleading the ISO about the quality of the power sold to it by Enron. On at least one occasion, CW1, who sat near Forney on the Enron trading floor, informed Forney that CW1 was

implementing this scheme. Forney concurred with his actions.

67. On May 20, 2003, I conducted a review of certain computer files created by Enron employees in 2000. These files included records of the energy schedules devised by Real Time employees, deals they submitted to Enron's own billing department, and scheduling instructions they transmitted to the ISO. I reviewed files showing that a Real Time trader attempted to purchase 50 megawatts of electricity from Arizona Public Service (APS) on March 21, 2000 to sell to the ISO. According to internal Enron records, the APS schedule was non-firm. During the first hour that the APS was supposed to deliver the power, APS cut its delivery to 13 megawatts. According to the internal Enron records, the Real Time trader scrambled to buy replacement power, and successfully purchased another 37 megawatts, this time from El Paso Power. Although the records show El Paso Power's electricity was also non-firm, there is no indication that it was cut. Meanwhile, the Real Time trader was wiring messages to the ISO offering to sell it the 50 megawatts. The message to the ISO stated that the power was firm, although it was not. According to the internal Enron files, the ISO bought Enron's power.

VII. CONCLUSION

68. Based on the foregoing, I respectfully submit that there is probable cause to believe that John Forney committed the following violations:

(a) Wire fraud, in violation of 18 U.S.C. § 1343, namely, having devised a scheme or artifice to defraud and to obtain money or property by means of false or fraudulent pretenses, representations or promises, John Forney did cause interstate wire communications to be transmitted for the purpose of executing the scheme or artifice to defraud; and

(b) Conspiracy with other employees of Enron's West Power Trading office to commit the above-mentioned wire fraud in violation of 18 U.S.C. §§ 371 .

STEVEN C. COFFIN
Special Agent
Federal Bureau of Investigation

Sworn to before me this
30 day of May 2003.

HONORABLE ELIZABETH D. LAPORTE
United States Magistrate Judge