

DESPAIN STATEMENT

I was an Assistant Treasurer of Enron Corporation from approximately January, 1999, until May, 2002. As an Assistant Treasurer at Enron, I coordinated interactions between Enron senior management and the national credit rating agencies who rated Enron's corporate debt. I also regularly communicated directly with the credit rating agencies. During my tenure, I reported directly to and was supervised directly by the people who served as Enron's Treasurer. From 1999 through the fall of 2001, in my capacity as an Assistant Treasurer, I was directed by my superiors to engage in, and I did engage in, conduct that I recognized was intended to manipulate fraudulently Enron's credit rating, which rating I knew was relied on by the holders and prospective purchasers of Enron's publicly traded stocks and bonds.

Enron's credit rating was important to Enron in a number of respects. As I and others knew, Enron's credit rating was directly related to the cost of capital Enron borrowed in the marketplace. In other words, the more favorable Enron's credit rating the less it cost Enron to borrow money. Moreover, I and others knew that maintaining an investment-grade credit rating for Enron debt was critical to Enron's ongoing business operations. An investment grade rating was essential to Enron's ability to enter into favorable or unsecured trading contracts with its counterparties. A decline in Enron's credit rating to below investment grade would also have triggered calls for significant amounts of cash to be posted under Enron's existing trading contracts and accelerated payments due under some of Enron's financing structures. Such a drop would also have severely impacted Enron's ability to continue accessing bank credit facilities and borrowing money in the public marketplace.

I understood that in rating Enron's debt, the credit rating agencies relied on, among other things, Enron's public filings, including its financial statements filed with the Securities and Exchange Commission. In addition, I and members of Enron's senior management spoke regularly with, and provided financial information to, representatives of the credit rating agencies. I and members of Enron's senior management who interacted with the credit rating agencies understood that two primary factors influencing Enron's credit rating were the total amount of Enron's debt and other debt-like obligations, as well as the cash and funds flow Enron generated from operations to satisfy those obligations (hereinafter collectively referred to as "cash flow").

In communicating with representatives of the rating agencies, I and others at Enron did not truthfully present the financial position and cash flow of the company and omitted to disclose facts necessary to make the disclosures and statements that were made to the rating agencies truthful and not misleading.

Among other things, I and others at Enron falsely represented to credit rating agencies that Enron's cash flows from its non-regulated businesses were stable and predictable. In fact, the annual cash flow targets that Enron set for itself and reported to the rating agencies were arbitrarily based on what I and others believed was necessary to maintain Enron's investment-

grade credit rating, rather than on the amount of cash flow Enron's non-regulated businesses were expected to achieve. Because of this difference between the actual cash flows from business operations and the cash flow targets arbitrarily set by senior management, Enron consistently struggled to achieve the cash flow targets it had set for itself. While I served as an Assistant Treasurer, Enron only achieved its cash flow target numbers by engaging in complex transactions designed primarily and at times exclusively to achieve specific cash flow results. In my view, because of the financial cost associated with engaging in them, various transactions actually were to Enron's financial detriment, apart from their use to achieve cash flow and other targets that could improve Enron's apparent performance. Often these transactions were completed in haste at or near the close of a financial reporting period.

By way of example, in late 1999, Enron was at least \$500 million short of the cash flow target it had artificially set and then told the national rating agencies it intended to achieve for 1999. In order to make up this \$500 million shortfall in Enron's targeted cash flow for 1999, Enron entered into a transaction referred to internally as Project Nahanni. The Project Nahanni transaction resulted in Enron reporting the sale of \$500 million of Treasury securities as cash flow from operations. I and others knew that there was no business purpose to the Project Nahanni transaction, other than to achieve Enron's desired cash flow results. Moreover, the sale of Treasury securities should not have been characterized as a sale of a merchant asset and therefore should not have been included in the cash flow from operations figures presented to the rating agencies. In addition, in my view, the Nahanni transaction was actually to Enron's financial detriment, apart from its usefulness in misleadingly portraying Enron to the credit rating agencies, because the bank that structured the transaction charged Enron several million dollars to facilitate the transaction. This transaction occurred during a time in which Enron was actively pursuing a credit rating upgrade from one of the national credit rating agencies. I and others knew at the time of the Project Nahanni transaction that if the rating agencies understood at the time that \$500 million of the reported cash flow from operations for 1999 was from the sale of Treasury securities, Enron's credit rating would have been negatively affected, and Enron would not likely have received the desired upgrade in its credit rating. Nevertheless, neither I nor others revealed the true nature of the transaction or its purpose to the credit rating agencies.

Another mechanism by which Enron achieved the artificial cash flow targets it set for itself was through transactions commonly referred to within the company as "prepays." The reporting of the cash received from these transactions was a means of demonstrating to the rating agencies Enron's ability to recognize cash from its mark-to-market trading book. Although the prepay transactions were accounted for as commodity transactions and reflected on Enron's books as a trading liability, the transactions in substance created debt-like obligations to the financial institutions that advanced funds to Enron through the transactions. I and others told the rating agencies that the cash generated from Enron's trading operations was from the sale or "monetization" of trading contracts or the future cash flow streams from those contracts. Fundamentally, the agencies were led to believe that Enron was generating cash by selling an asset, when in fact Enron was generating cash by incurring a future obligation that operated as debt. Over the course of my time as Assistant Treasurer, Enron's obligations under the "prepay"

transactions grew to approximately \$5 billion. I was directed by Enron's Treasurers not to reveal to, or discuss with, the credit rating agencies, the nature and extent of the prepay transactions entered into by Enron, and I complied with this direction. I and the Treasurers recognized that if the rating agencies knew about the nature and extent of Enron's prepay transactions, such information would have had a materially negative effect on Enron's credit rating.

I and others at Enron also falsely represented to the rating agencies that Enron's communications with the rating agencies were direct and candid, and that there was a "no secrets policy" with the rating agencies. In fact, as I knew, Enron's communications with the rating agencies were not direct and candid. To the contrary, I and others intentionally withheld relevant information from the rating agencies about the true financial performance of Enron, and the way in which Enron achieved its cash flow numbers. I believed that if the rating agencies were aware of the true nature of Enron's cash flows, such information would likely have had a materially negative effect on Enron's credit rating.

As part of the charged conspiracy, I understood that the use of the interstate wires and mails – in the form of payments and filings with regulators, and calls with the credit rating agencies, among others - would be made. In furtherance of the charged conspiracy, I met with and spoke with national credit rating agencies from my office in Houston, Texas.