

possession that are the property of Enron Corp. and affiliated entities and that Enron Corp. be given the opportunity to review and designate such documents and information as confidential.¹

V&E was one of the many law firms that provided legal services to Enron Corp. and affiliated entities (hereafter “Enron”). V&E’s clients provided it with documents and information that fall within the categories of documents Enron now seeks to make subject to its proposed Order.² These documents and information included, among other things, (1) “personnel files and documents related to Enron employees who are not defendants in this litigation;” Enron Motion at 2; (2) “claims analyses or factual and legal positions concerning active claims or disputes;” *id.*; and (3) “information pertaining to certain asset sales and bids that could impact Enron’s reorganization plan;” and (4) “competitively sensitive and/or privileged information related to contracts and trading relationships with various counterparties.” *Id.* at 2-3.

V&E is a co-defendant of Enron in these matters and is currently in the process of responding to document requests from the plaintiffs. V&E’s initial production will largely consist of those documents it has already produced to date to the staff of the Securities and Exchange Commission (“SEC”), the Department of Labor (“DOL”), the Bankruptcy Examiner, and the Committee of Unsecured Creditors. These documents have all been previously produced under the regulations governing the confidentiality of SEC or DOL investigations or confidentiality orders entered in the bankruptcy case which provide that the documents produced may only be

¹ Along with this response, V&E submits a proposed Confidentiality Order which has been amended to include documents in the possession of former counsel to Enron and to provide Enron with an opportunity to review such documents. Attached at tab A is a version of the proposed order in which changes from Enron Corp.’s proposed order have been underlined. Attached at tab B is the proposed order for signing.

² V&E will shortly be filing a motion for a protective order to seek protection for these same types of documents from V&E’s other clients and V&E’s own private files. V&E may also seek protection for additional categories of documents to the extent they are not covered by Enron’s requested Order.

used for the purpose of those proceedings. Documents in V&E's possession which have been turned over to these parties and which are responsive to plaintiffs' requests may include documents that fall within the four categories of documents which Enron asks the court to allow it to designate as confidential.

V&E supports Enron's motion for a Confidentiality Order for the reasons set forth in that motion. First, an Order would protect sensitive, private information of individuals who are not parties to this lawsuit. Such information regarding present and former employees of Enron is also in V&E's possession and should be protected against public disclosure. Second, an Order would protect Enron's ability to rely on work product created in the course of evaluating and litigating various claims relating to Enron's assets. Such information is also currently in V&E's possession and should be protected against public disclosure. Finally, the Order would protect two other categories of documents that may be central to Enron's attempts to emerge from bankruptcy as a going concern: (1) information regarding asset sales and bidding for Enron's assets, such as information relating to the value of Portland General; and (2) trade secret information about Enron's contractual terms and rate information, market analysis, and trading and risk management strategy for several of Enron's divisions. Public disclosure of this information would harm not only Enron but also its trading partners.

To the extent the Court protects the confidentiality of the categories of documents outlined in Enron's motion, V&E asks that such confidentiality protection extend to the Enron documents in V&E's possession. Enron should be given an opportunity to designate Enron documents and information in V&E's possession as confidential to maintain the expectations of the parties who consented to V&E's production of documents in the first place under the confidentiality protection afforded by the SEC and the bankruptcy court. Where Enron has reviewed and designated documents in V&E's possession which fall into the four delineated

categories as confidential, those documents should be subject to the same protections as the documents in Enron's possession.

For these reasons, V&E respectfully asks that this Court grant Enron's motion for a confidentiality order and extend the order to address Enron documents and information in the possession of V&E.

Respectfully submitted,

By: John K. Villa / NSF
by permission
John K. Villa
Attorney-in-Charge
D.C. Bar No. 220392
(admitted *pro hac vice*)
WILLIAMS & CONNOLLY LLP
725 Twelfth Street, N.W.
Washington, D.C. 20005
(202) 434-5000

ATTORNEYS FOR VINSON & ELKINS L.L.P.

CERTIFICATE OF SERVICE

I certify that on January 10, 2003, I caused the foregoing to be served via electronic mail or first class mail in accordance with the Court's orders and the Federal Rules of Civil Procedure.

Gilbert O. Greenman
Gilbert O. Greenman
NEF by permission

1086556_2.DOC

CHANGES FROM ENRON CORP.'S PROPOSED ORDER ARE UNDERLINED

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

**In re ENRON CORPORATION
SECURITIES, DERIVATIVE &
"ERISA" LITIGATION**

§
§ MDL 1446
§
§
§
§

**MARK NEWBY, Individually and On
Behalf of All Others Similarly Situated, et al,**

Plaintiffs,

vs.

ENRON CORP., et al.,

Defendants.

§
§ Civil Action No. H-01-3624
§ (Consolidated)
§
§
§
§
§
§

**PAMELA M. TITTLE, Individually and On
Behalf of All Others Similarly Situated, et al,**

Plaintiffs,

vs.

**ENRON CORP., an Oregon Corporation
et al.,**

Defendants.

§
§ Civil Action No. H-013913
§ (Consolidated)
§
§
§
§
§
§

[AMENDED PROPOSED] CONFIDENTIALITY ORDER

IT IS HEREBY ORDERED as follows:

1. This Order governs the pleadings, motions, memoranda, affidavits, exhibits, produced documents, responses to interrogatories, requests for admissions, deposition transcripts, and any other information, documents, objects or things which have been or will be filed with the

Court or produced or received by Enron Corp. (“Enron”) or its former counsel, which include Vinson & Elkins L.L.P. (“V&E”), in this action (“the Action”), as well as any and all copies, abstracts, digests, summaries and by-products thereof. The term “documents” as used in this Confidentiality Order is intended to encompass both documents (including any form of magnetic or electronic storage media) and physical things. Nothing in this Order shall prohibit the use of or reference to any information in Court or at trial, or prohibit the submission of any information to the Court.

2. This Order shall govern the use of Confidential Information, as defined in paragraph 3, in all proceedings conducted in the above-captioned case.

3. “Confidential Information” shall mean all information designated as “Confidential” which is or has been produced or otherwise disclosed in connection with this action, as well as all personnel files and documents related to Enron past, present, and future employees who are not defendants in this litigation or otherwise known targets of various investigations.

4. Enron may designate the following categories of documents as “Confidential”:

a. Claims analyses or discussions of factual and/or legal positions relative to active claims or disputes, the disclosure of which would jeopardize Enron’s ability to litigate claims against those counterparties;

b. Information pertaining to certain asset sales and bids that could impact Enron’s reorganization plan; and

c. Competitively sensitive and/or privileged information related to contracts and trading relationships with various counterparties.

5. Confidential information in documentary or written form shall be designated as confidential by stamping the original or copies of the document produced to Plaintiffs with the legend “Confidential” or otherwise notifying Plaintiffs, in writing or on the record, of the

confidentiality of such document . Stamping the legend “CONFIDENTIAL” on the cover of any multi-page document shall designate all pages of the document as confidential, unless otherwise indicated by Enron or its former counsel. In lieu of marking this notation on the originals of documents, Enron may mark the copies that are produced.

6. Subject to the provisions of this Order, Confidential information maybe given, shown, disclosed, made available or communicated to Plaintiffs’ attorneys and their designated experts only, and shall not be disclosed to any third party.

7. The provisions of this Order with respect to Confidential Information shall not apply to information that was, is, or became accessible to the public, nor to any information that is obtained by Plaintiffs through independent means.

8. In order to safeguard to the extent practicable all Confidential Information, all such Confidential Information shall be afforded the following protection by every party:

- a. Access to information designated pursuant to paragraph 4 herein shall be limited to:
 - (1) the litigation counsel of record for the parties and the employees of such litigation counsel;
 - (2) expert witnesses, or consultants of the parties as may be necessary to provide assistance in this action;
 - (3) the Court and any employee of the Court;
 - (4) any person scheduled to appear as a witness at trial or at a deposition when disclosure is reasonably necessary in connection with said appearance; and
 - (5) any other person to whom the parties agree in writing.
- b. Any person who is permitted access to Confidential Information pursuant to this subparagraph shall be bound by the terms of this Confidentiality Order. Any such person, other

than the Court, any employee of the Court, counsel of record, and their employees, shall first execute a Confidentiality Agreement in the form attached hereto as Exhibit A.

c. Counsel subject to the Confidentiality Order shall take all steps reasonably necessary to advise any person to whom Confidential Information is disclosed, or by whom it may be used, of the terms of the Order and to ensure that persons required to execute the Confidentiality Agreement in the form attached hereto as Exhibit A, in accordance with subparagraph b above, do so. Counsel shall be responsible for maintaining copies of all acknowledgments signed by persons receiving Confidential Information. Such acknowledgements shall be available for inspection by counsel for all parties after the final termination of this Action.

d. Litigation counsel and the other persons allowed access to Confidential Information pursuant to paragraph 8 shall not in any manner, directly or indirectly, transfer or otherwise disclose any such Confidential information to any person not authorized by paragraph 8 to receive it.

e. All documents containing Confidential Information shall be retained in the custody of the litigation counsel and their employees and, to the extent filed, by the Court and its employees during the pendency of the litigation, except that such Confidential Information may be entrusted to any other person described in paragraph 8.

f. Following a period of thirty (30) days after completion of the litigation (including all appeals), the litigation counsel and their employees who have custody of documents containing Confidential Information, upon request of Enron, shall return to Enron all such documents, or certify in writing that such documents have been destroyed, except that counsel may retain documents reflecting any work product, copies of Court filings and official transcripts and exhibits, provided said retained documents and the Confidential Information contained therein will continue to be treated as provided in his Order.

9. Material designated as Confidential under this Order, the information contained therein, and any summaries, copies, abstracts, or other documents derived in whole or in part from material so designated (hereinafter "Confidential Material") shall be used only for the purpose of the prosecution, defense, settlement, or appeal of the above-captioned case and for no other purpose. Furthermore, no person, firm, corporation, or other entity subject to this Order shall give, show, disclose, make available, or communicate Confidential Information to any person, firm, corporation or other entity not expressly authorized by this Order to receive, respectively, such Confidential Information.

10. Plaintiffs have the right to challenge the designation of particular information as Confidential for the purpose of having the Court determine whether or not the information should be designated as Confidential.

11. In the event Enron inadvertently fails to designate, or inaccurately designates, information "CONFIDENTIAL," Enron may correct the error by notifying counsel for all receiving parties within ten (10) days of discovering the error or within ten (10) days of the entry of this Order that it wishes to designate the information "CONFIDENTIAL." Any party receiving notice that information has been inadvertently produced with an inaccurate or omitted "CONFIDENTIAL" designation shall return all such information (including all copies thereof within its custody and control) to Enron or its former counsel within five (5) working days of receipt of such notice so that the information may be designated "CONFIDENTIAL."

12. With respect to Confidential Information already produced to Plaintiffs as a result of their access to the document depository, Enron must designate such documents as "Confidential" on or before ninety (90) days after this Order is entered. None of the documents in the depository shall be released to any third parties until after this ninety documents in the depository shall be released to any third parties until after this ninety (90) day period.

13. With respect to Confidential Information contained within documents in the possession of Enron's former counsel, Enron shall have the opportunity to review and designate documents as Confidential Information within ninety (90) days from the date of production to the document depository. No such document shall be released from the depository until after the this ninety (90) day period.

14. If counsel for any party to this action decides to file with or submit to the Court any documents or papers containing or referring to Confidential Information, such documents or papers shall plainly state on the first page of any bound or stapled set, "CONFIDENTIAL -- FILED UNDER SEAL," and shall be filed only in sealed envelopes on which shall be endorsed the caption of this action, and a statement substantially in the following form:

CONFIDENTIAL

This envelope contains documents that are subject to an Order Governing Confidential Material entered by the Court in this action. The contents of this envelope shall not be revealed except to the Court and employees of the Court except by order of the Court.

15. Enron may designate any deposition testimony as Confidential by any one of the following means:

- a. designating orally on the record of a deposition that all or a portion of the deposition transcript is Confidential; or
- b. sending written notice within thirty (30) days of receipt of the deposition transcript designating all or a portion of the transcript as Confidential.

16. Plaintiffs may challenge the propriety of the designation of documents or information as Confidential at any time. If Plaintiffs challenge such designation, Plaintiffs shall provide notice to Enron (and its former counsel if the documents designated are being produced by former counsel), and the parties shall attempt to resolve any challenge in good faith on an expedited and informal basis. If the challenge cannot be expeditiously resolved by agreement, either Enron or

Plaintiffs may apply for appropriate ruling(s) from the Court. In any Court proceeding regarding Confidential information, the burden shall be on Enron to demonstrate that any document or information is Confidential. The designated information shall continue to be treated as Confidential until the Court orders otherwise.

17. Nothing herein shall restrict use or disclosure of Confidential Information by Enron or its former counsel.

18. Nothing herein shall preclude any party from applying to the Court for an order modifying this Confidential Order, or shall preclude any modification of this Order with the consent of all parties hereto.

19. The proprietary nature of the Confidential Information makes any breach of this Order unable to be remedied solely by damages. Therefore, if there is a breach or threatened breach of this Order, the parties hereto acknowledge that the non-breaching party shall be entitled to a temporary restraining order and/or injunction; however, this shall not be construed as prohibiting the non-breaching party from pursuing any other remedies for any breach or threatened breach.

SO ORDERED:

MELINDA HARMON
UNITED STATES DISTRICT JUDGE
SOUTHERN DISTRICT OF TEXAS

Dated: _____

((

filed with the Court or produced or received by Enron Corp. (“Enron”) or its former counsel, which include Vinson & Elkins L.L.P. (“V&E”), in this action (“the Action”), as well as any and all copies, abstracts, digests, summaries and by-products thereof. The term “documents” as used in this Confidentiality Order is intended to encompass both documents (including any form of magnetic or electronic storage media) and physical things. Nothing in this Order shall prohibit the use of or reference to any information in Court or at trial, or prohibit the submission of any information to the Court.

2. This Order shall govern the use of Confidential Information, as defined in paragraph 3, in all proceedings conducted in the above-captioned case.

3. “Confidential Information” shall mean all information designated as “Confidential” which is or has been produced or otherwise disclosed in connection with this action, as well as all personnel files and documents related to Enron past, present, and future employees who are not defendants in this litigation or otherwise known targets of various investigations.

4. Enron may designate the following categories of documents as “Confidential”:

a. Claims analyses or discussions of factual and/or legal positions relative to active claims or disputes, the disclosure of which would jeopardize Enron’s ability to litigate claims against those counterparties;

b. Information pertaining to certain asset sales and bids that could impact Enron’s reorganization plan; and

c. Competitively sensitive and/or privileged information related to contracts and trading relationships with various counterparties.

5. Confidential information in documentary or written form shall be designated as confidential by stamping the original or copies of the document produced to Plaintiffs with the legend "Confidential" or otherwise notifying Plaintiffs, in writing or on the record, of the confidentiality of such document . Stamping the legend "CONFIDENTIAL" on the cover of any multi-page document shall designate all pages of the document as confidential, unless otherwise indicated by Enron or its former counsel. In lieu of marking this notation on the originals of documents, Enron may mark the copies that are produced.

6. Subject to the provisions of this Order, Confidential information maybe given, shown, disclosed, made available or communicated to Plaintiffs' attorneys and their designated experts only, and shall not be disclosed to any third party.

7. The provisions of this Order with respect to Confidential Information shall not apply to information that was, is, or became accessible to the public, nor to any information that is obtained by Plaintiffs through independent means.

8. In order to safeguard to the extent practicable all Confidential Information, all such Confidential Information shall be afforded the following protection by every party:

a. Access to information designated pursuant to paragraph 4 herein shall be limited to:

(1) the litigation counsel of record for the parties and the employees of such litigation counsel;

(2) expert witnesses, or consultants of the parties as may be necessary to provide assistance in this action;

(3) the Court and any employee of the Court;

(4) any person scheduled to appear as a witness at trial or at a deposition when disclosure is reasonably necessary in connection with said appearance; and

(5) any other person to whom the parties agree in writing.

b. Any person who is permitted access to Confidential Information pursuant to this subparagraph shall be bound by the terms of this Confidentiality Order. Any such person, other than the Court, any employee of the Court, counsel of record, and their employees, shall first execute a Confidentiality Agreement in the form attached hereto as Exhibit A.

c. Counsel subject to the Confidentiality Order shall take all steps reasonably necessary to advise any person to whom Confidential Information is disclosed, or by whom it may be used, of the terms of the Order and to ensure that persons required to execute the Confidentiality Agreement in the form attached hereto as Exhibit A, in accordance with subparagraph b above, do so. Counsel shall be responsible for maintaining copies of all acknowledgments signed by persons receiving Confidential Information. Such acknowledgements shall be available for inspection by counsel for all parties after the final termination of this Action.

d. Litigation counsel and the other persons allowed access to Confidential Information pursuant to paragraph 8 shall not in any manner, directly or indirectly, transfer or otherwise disclose any such Confidential information to any person not authorized by paragraph 8 to receive it.

e. All documents containing Confidential Information shall be retained in the custody of the litigation counsel and their employees and, to the extent filed, by the Court and its employees during the pendency of the litigation, except that such Confidential Information may be entrusted to any other person described in paragraph 8.

f. Following a period of thirty (30) days after completion of the litigation (including all appeals), the litigation counsel and their employees who have custody of documents containing Confidential Information, upon request of Enron, shall return to Enron all such documents, or certify in writing that such documents have been destroyed, except that counsel may retain documents reflecting any work product, copies of Court filings and official transcripts and exhibits, provided said retained documents and the Confidential Information contained therein will continue to be treated as provided in his Order.

9. Material designated as Confidential under this Order, the information contained therein, and any summaries, copies, abstracts, or other documents derived in whole or in part from material so designated (hereinafter "Confidential Material") shall be used only for the purpose of the prosecution, defense, settlement, or appeal of the above-captioned case and for no other purpose. Furthermore, no person, firm, corporation, or other entity subject to this Order shall give, show, disclose, make available, or communicate Confidential Information to any person, firm, corporation or other entity not expressly authorized by this Order to receive, respectively, such Confidential Information.

10. Plaintiffs have the right to challenge the designation of particular information as Confidential for the purpose of having the Court determine whether or not the information should be designated as Confidential.

11. In the event Enron inadvertently fails to designate, or inaccurately designates, information "CONFIDENTIAL," Enron may correct the error by notifying counsel for all receiving parties within ten (10) days of discovering the error or within ten (10) days of the entry of this Order that it wishes to designate the information "CONFIDENTIAL." Any party receiving notice that information has been inadvertently produced with an inaccurate or omitted

“CONFIDENTIAL” designation shall return all such information (including all copies thereof within its custody and control) to Enron or its former counsel within five (5) working days of receipt of such notice so that the information may be designated “CONFIDENTIAL.”

12. With respect to Confidential Information already produced to Plaintiffs as a result of their access to the document depository, Enron must designate such documents as “Confidential” on or before ninety (90) days after this Order is entered. None of the documents in the depository shall be released to any third parties until after this ninety documents in the depository shall be released to any third parties until after this ninety (90) day period.

13. With respect to Confidential Information contained within documents in the possession of Enron’s former counsel, Enron shall have the opportunity to review and designate documents as Confidential Information within ninety (90) days from the date of production to the document depository. No such document shall be released from the depository until after the this ninety (90) day period.

14. If counsel for any party to this action decides to file with or submit t the Court any documents or papers containing or referring to Confidential Information, such documents or papers shall plainly state on the first page of any bound or stapled set, “CONFIDENTIAL -- FILED UNDER SEAL,” and shall be filed only in sealed envelopes on which shall be endorsed the caption of this action, and a statement substantially in the following form:

CONFIDENTIAL

This envelope contains documents that are subject to an Order Governing Confidential Material entered by the Court in this action. The contents of this envelope shall not be revealed except to the Court and employees of the Court except by order of the Court.

15. Enron may designate any deposition testimony as Confidential by any one of the following means:

a. designating orally on the record of a deposition that all or a portion of the deposition transcript is Confidential; or

b. sending written notice within thirty (30) days of receipt of the deposition transcript designating all or a portion of the transcript as Confidential.

16. Plaintiffs may challenge the propriety of the designation of documents or information as Confidential at any time. If Plaintiffs challenge such designation, Plaintiffs shall provide notice to Enron (and its former counsel if the documents designated are being produced by former counsel), and the parties shall attempt to resolve any challenge in good faith on an expedited and informal basis. If the challenge cannot be expeditiously resolved by agreement, either Enron or Plaintiffs may apply for appropriate ruling(s) from the Court. In any Court proceeding regarding Confidential information, the burden shall be on Enron to demonstrate that any document or information is Confidential. The designated information shall continue to be treated as Confidential until the Court orders otherwise.

17. Nothing herein shall restrict use or disclosure of Confidential Information by Enron or its former counsel.

18. Nothing herein shall preclude any party from applying to the Court for an order modifying this Confidential Order, or shall preclude any modification of this Order with the consent of all parties hereto.

19. The proprietary nature of the Confidential Information makes any breach of this Order unable to be remedied solely by damages. Therefore, if there is a breach or threatened breach of this Order, the parties hereto acknowledge that the non-breaching party shall be entitled to a temporary restraining order and/or injunction; however, this shall not be construed

as prohibiting the non-breaching party from pursuing any other remedies for any breach or threatened breach.

SO ORDERED:

MELINDA HARMON
UNITED STATES DISTRICT JUDGE
SOUTHERN DISTRICT OF TEXAS

Dated: _____

1086567_1.DOC