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

UNITED STATES COURTS
SOUTHERN DISTRICT OF TEXAS
FILED
BL APR 2 2 2004
Michael N. Milby, Clerk of Court

In Re ENRON CORPORATION SECURITIES, DERIVATIVE & "ERISA" LITIGATION	§ § §	MDL 1446
MARK NEWBY, ET AL., Plaintiffs VS. ENRON CORPORATION, ET AL., Defendants	§ § § § § § § § §	CIVIL ACTION NO. H-01-3624 CONSOLIDATED CASES
PAMELA M. TITTLE, on behalf of herself and a class of persons similarly situated, ET AL., Plaintiffs VS. ENRON CORP., an Oregon Corporation, ET AL., Defendants	§ § § § § § § § § § § § §	CIVIL ACTION NO. H-01-3913 CONSOLIDATED CASES

MOTION TO SET PROTOCOL FOR HANDLING "PRESUMPTIVELY CONFIDENTIAL" DOCUMENTS

Defendant Enron Corp. ("Enron"), in light of the Court's March 28, 2003 Order (MDL 1446 Docket Entry No. 83), moves the Court for an order setting forth a protocol for handling "presumptively confidential" documents, and shows as follows:

I. Preliminary Statement

In ruling on several motions for protective order in this case, this Court has balanced its concern for protecting the parties' proprietary, sensitive, and trade secret information against its

2104

desire to allow public access to the discovery materials exchanged among the parties. In the process, the Court has made clear its unwillingness to enter "blanket" protective orders. Thus, pursuant to the Court's existing orders, to overcome a challenge to a confidentiality designation, a party must file a motion, with affidavit support, demonstrating good cause for protecting documents as confidential. Such affidavit support cannot be provided without reviewing each document individually.

As the Court is aware, the volume of documents produced in this case is nearly beyond comprehension. Enron has now produced approximately 82,000,000 pages of documents to the Depository, consisting of approximately 16,400,000 individual documents. *See* Affidavit of Bonnie J. White in Support of Motion to Set Protocol for Handling "Presumptively Confidential" Documents ("White Aff."), a copy of which is attached, ¶3. Document production is ongoing.

Because a page-by-page, manual review of each of Enron's 16,400,000 documents to determine confidentiality would take literally hundreds of person-years,[1] Enron has implemented a computerized review of the documents it has produced to the Depository. Enron created a list of words and phrases that are likely to appear in a document containing confidential information, and using a computerized query, the Depository Administrator has screened each of the documents produced to the Depository for those key words and phrases. (White Aff. ¶ 10.) That query process has generated a population of documents that Enron has thus far described as "presumptively confidential."

Enron acknowledges that a computer cannot replace an attorney or paralegal in making

---

[1] Based on actual historical data gathered during the document production in this case, Enron's average document reviewer can review for confidentiality 171 documents in an eight hour day. Assuming 250 workdays per year, it would take a person 383 years to review for confidentiality *all* of the documents Enron has thus far produced to the depository. Stated another way, it would take a team of 20 document reviewers approximately 19 years to review for confidentiality all of the documents Enron has thus far produced to the Depository. (White Aff. ¶ 4.) The task is daunting however you look at it.

confidentiality decisions. However, because "presumptively confidential" documents contain, by definition, words and phrases that Enron expects to appear in confidential documents, there is a reasonable likelihood that "presumptively confidential" documents contain information that should be maintained in confidence. Accordingly, publication of a "presumptively confidential" document carries with it the substantial risk that legitimately confidential information will be disclosed. (White Aff. ¶ 11.)

To date, Enron has identified 1,836,442 "presumptively confidential" documents, and has produced an index of those documents to the Depository. Enron began the process of electronically screening for confidentiality with the understanding that parties desiring to use a "presumptively confidential" document in a public way would notify Enron, and request that Enron de-designate the document. Enron would then make a good faith determination about whether the document should be protected as confidential. In general, Enron is only interested in maintaining the confidentiality of documents that fall into certain narrow categories relating to Enron's current and future business activities, Enron's reorganization, and Enron's employees' personnel information.[2] If Enron were to determine that the document should remain confidential, it would then be required to produce affidavit support demonstrating good cause for keeping the document confidential. Otherwise, Enron would de-designate the document as confidential, and the requesting party would be free to use the document publicly.

---

[2] More specifically, Enron is only interested in maintaining the confidentiality of the following four categories of documents: (1) personnel files and documents related to Enron employees who are not defendants in this litigation or otherwise targets of any investigations; (2) claims analyses or inclusions of factual and/or legal positions concerning active claims or disputes, the disclosure of which would compromise Enron's ability to litigate claims against those counterparties; (3) information pertaining to certain ongoing asset sales, including information relating to negotiations or bidding procedures, that could impact Enron's reorganization; and (4) competitively sensitive and/or privileged information related to contracts and trading relationships between Enron, its affiliates, and various counterparties.

Without a reasonable basis, the Bank Defendants[3] have objected to Enron's designation of documents as "presumptively confidential." The Bank Defendants seek to have Enron manually review the more than 1.8 million "presumptively confidential" documents, and present affidavit testimony to verify the accuracy of the computerized query—a task that would take a team of more than 20 document reviewers about two years to complete. (White Aff. ¶ 9.)[4] The Bank Defendants have not asserted that they, or any other party for that matter, actually intend to use any "presumptively confidential" document in a public way. Nor have the Bank Defendants stated that they will be prejudiced in any way by Enron's use of the "presumptively confidential" designation.[5] The Bank Defendants either have failed to consider the massive, time consuming task that a manual review of millions of documents would entail, or have ignored the wastefulness of the task. The Bank Defendants have warned Enron that they do not believe Enron's designations should be respected, and insist that the Court's orders require Enron to review tens of millions of pages of documents, at a massive expense to Enron's bankruptcy estate, to prepare for the eventuality that at some undetermined point in the future a party may want to publish a few of Enron's documents.

---

[3] The "Bank Defendants" are Citigroup, Inc., Citibank N.A., Citigroup Global Markets Inc., Salomon Brothers International Limited, J.P. Morgan Chase & Co., J.P. Morgan Securities Inc., JPMorgan Chase Bank, Credit Suisse First Boston LLC, Credit Suisse First Boston (USA), Inc., Pershing LLC, Canadian Imperial Bank of Commerce, CIBC World Markets Corp., Bank of America Corporation, Banc of America Securities LLC, Merrill Lynch & Co., Inc., Merrill Lynch, Pierce Fenner & Smith Incorporated, Barclays PLC, Barclays Bank PLC, Barclays Capital Inc., Lehman Brothers Inc., and Lehman Brothers Holdings Inc.

[4] The task of manually reviewing the "presumptively confidential" documents will continue to grow as the Depository Administrator continues to process Enron's documents and run the computerized confidentiality screens on the documents.

[5] Because "presumptively confidential" documents can be accessed by any party with authorization to access them in the Depository, and because such documents can be shown to deponent witnesses, it is difficult to determine how the Bank Defendants are prejudiced by Enron's use of the "presumptively confidential" designation.

Enron disagrees with the Bank Defendants' analysis of the Court's orders. Rather than argue about the interpretation of existing orders, however, Enron requests that the Court set forth a protocol for dealing with the "presumptively confidential" documents. Importantly, this Motion does not seek to have the Court label those documents as "confidential." Instead, Enron requests that the Court strike a balance between the logistical realities of this case, and the public's right to monitor the proceedings before this Court. As always, Enron remains committed to protecting as confidential only those documents truly deserving of such status, and will not refuse any reasonable request to de-designate as "presumptively confidential" individual documents.

II. The "Presumptively Confidential" Documents, and Why Enron Designated Them as Such

In an order entered on March 28, 2003 (MDL 1446 Docket Entry No. 83) ("March 28, 2003 Order"), the Court denied Enron's motion for protective order, and ordered Enron to review all documents previously produced to the Depository, and provide within 60 days a log of documents it desired to keep confidential. At the time, approximately 3,000,000 of Enron's documents, or approximately 15,000,000 pages, had already been made available for review in the Depository, with tens of millions more expected to follow. (White Aff. ¶ 6.) Given the volume of the production, the timing considerations of pressing forward with discovery, Enron's debtor status, and the fact that such a review would have taken a small army, Enron did not understand the Court's order to mean that it was required to undertake a page-by-page, manual review of those documents. In fact, based on the history of the document review in this case, Enron estimates that a manual review of the documents produced to the depository as of March 28, 2003 would have taken over 70 person-years, or 420 people for two months, to complete. (White Aff. ¶ 7.) Because the Court ordered Enron to complete its review in 60 days (two

months), and because Enron was unable to hire hundreds of document reviewers even had that been required (White Aff. ¶ 8), Enron had to find a way to move forward with document production without delaying the progress of the case.[6] Therefore, Enron's in-house counsel, along with technical and commercial support, designed and implemented a computerized confidentiality screen of all the documents produced to the Depository.

In setting up the confidentiality screen, Enron's in-house counsel surveyed each of its business groups to evaluate the risk that there might be documents produced to the Depository pursuant to the Court's August 2002 discovery order, which, if disclosed, would damage Enron or one of its affiliates. (White Aff. ¶ 10.) With the assistance of counsel, each business group that believed such a risk was present was then asked to make a list of words, phrases, or combinations thereof that, if present in a document, would indicate that the document reasonably may contain confidential information. (White Aff. ¶ 10.) Enron's counsel then asked the Depository Administrator to create a query to search each of the documents Enron had thus far produced to the Depository for the words on the lists. The documents identified in that search were designated "presumptively confidential." (White Aff. ¶ 10.) Pursuant to the March 28, 2003 Order, Enron provided a log of the "presumptively confidential" documents identified up to that point to the Lead Plaintiffs, and to the media intervenors. The Depository Administrator has continued to query each of the documents posted for review to the Depository in the same manner, and has identified them as "presumptively confidential" in a field in the Depository created for that purpose.

---

[6] Not only would employing hundreds of document reviewers be inconvenient and potentially very wasteful, it might also be quite impossible. The human resources (hiring, supervising, training) and technology (computers, communications, infrastructure) issues would, in all likelihood, present insurmountable hurdles. (White Aff. ¶ 8.)

The Depository Administrator has made good progress—progress that could not have been made any other way. To date, Enron has produced approximately 82,000,000 pages of documents to the Depository, of which 30,800,000 pages have been electronically queried for confidentiality. (White Aff. ¶ 9.) That query process has generated 1,836,442 "presumptively confidential" documents. For Enron to have performed this review manually would have taken over a hundred document reviewers well over a year.[7] It is simply incomprehensible how the Bank Defendants expect Enron to perform this type of manual review without significantly delaying the other discovery going on in this case. Moreover, there remain nearly 50,000,000 documents waiting at the Depository Administrator to be screened, which would take years for Enron to review manually. (White Aff. ¶ 9.)

Not only did the sheer volume of documents involved in this case indicate to Enron that the Court did not contemplate a page-by-page, manual confidentiality review, so did the March 28, 2003 Order itself. Paragraph 3 of the March 28, 2003 Order states that Enron was to produce a "privilege log" identifying those documents it wished to "keep confidential" with supporting affidavits setting forth facts to establish good cause to issue a protective order. Separately, in paragraph 4 of the March 28, 2003 Order, the Court ordered Enron to produce a "document log" to Lead Plaintiff's counsel, as well as to the media intervenors' counsel, who then had the option to "challenge any designation of documents as confidential, if appropriate." Enron interpreted paragraph 4 of the March 28, 2003 Order as permitting it to generate a list of documents it wished to keep confidential, which would then be subject to challenge. Upon such

[7] Based on an average document length of five pages (White Aff. ¶ 3), and a 250 day work year, at Enron's actual historical review pace of 171 documents per day per reviewer (White Aff. ¶ 4), it would have taken Enron over 144 person-years to review for confidentiality the documents it has thus far electronically queried. Stated another way, it would have taken a team of 144 document reviewers a full year to review the documents that the Depository Administrator has reviewed electronically since May of 2003.

a challenge, Enron would then have the burden of demonstrating with affidavit evidence that particular documents or sets of documents should remain confidential. In other words, Enron interpreted paragraph 4 of the March 28, 2003 Order as requiring affidavit support on a document-by-document basis only in the event of a challenge. Given the volume of documents at issue, no other procedure would be workable. Because the March 28, 2003 Order allowed Lead Plaintiffs and the media intervenors to raise a challenge to Enron's confidentiality designation, Enron assumed it was permitted first to make such a designation. If a challenge were made, and Enron sought to "keep confidential" the challenged documents, Enron would then have the burden of providing affidavit support for its designation. The Bank Defendants do not challenge whether Enron has appropriately designated documents as "presumptively confidential." Instead they challenge Enron's right to make such a designation in the first instance.[8]

Additionally, the course of document discovery in this case up to the entry of the March 28, 2003 Order indicated to Enron that it did not have the luxury of halting the case to spend time on a manual document review. For example, the Court ordered on August 16, 2002 (*Newby* Docket Entry No. 1008) ("August Order") that Enron immediately produce all documents it had thus far produced to the government, under the assumption that Enron had "already found, reviewed, and organized the documents." (August Order at p. 3.) In reality, however, in many cases, teams of government agents came to Enron's offices and left with documents before Enron had a chance to review any of them. Moreover, the government was more interested in the speed with which Enron could produce broad categories of documents than it was in the accuracy with which Enron could select relevant documents. For example,

[8] No other party, including the *Newby* plaintiffs and the media intervenors, has challenged Enron's right to make such a designation. Nor has any other party challenged any of Enron's "presumptively confidential" designations.

rather than permit Enron to review the e-mail files of an employee to locate relevant e-mails, the government preferred that Enron simply produce the entire electronic mailbox. (White Aff. ¶ 12.) This was obviously faster, and allowed the government to select what it believed were the relevant documents, rather than relying on Enron to make relevance decisions.[9] The Court's August Order, which required Enron to produce to the Depository everything it had produced to the government, thus required Enron to produce to the Depository many documents that had never been reviewed or otherwise filtered for relevance. The August Order also required Enron to produce many documents that were selected not because of their relevance to this case, but because they were included in a broad category of documents that the government requested.

During the latter part of 2002 and through March of 2003, Enron was under immense pressure to produce huge quantities of materials, and Enron put all of its energies into cooperating with the government. The government kept requesting, and Enron kept producing. That was the prevailing environment when the Court entered the March 28, 2003 Order giving Enron only 60 days to review for confidentiality the documents it had up to that point produced to the Depository. Enron could not put on the brakes, delay the progress of discovery, and start a massive, manual confidentiality review.

The Bank Defendants ignore the massive quantity of documents involved in this case, as well as the logistical and practical realities of this case, and construe the Court's orders as requiring Enron to amass affidavit support covering millions of pages of documents before Enron is even permitted to give notice to the parties of the risk that certain documents may contain confidential information, before any party has determined whether a dispute over the confidentiality designation even exists, and without regard to whether any party even wants to

[9] Because Enron was not afforded an opportunity to review many of the documents produced to the government, Enron generally requested that the government treat the documents produced as confidential. (White Aff. ¶ 12.)

publish a particular document. This point is critical. As mentioned above, many of the documents now in the Depository wound up there, not because of their relevance, but because they happened to be included in files or electronic databases along with other documents that the government believed were relevant. Because, for example, the government took entire electronic mailboxes, instead of only relevant, responsive e-mails, the Depository very likely has in it many e-mails that relate to subjects having no conceivable bearing on this or any other case, such as personal e-mails, purely administrative or personnel related matters, and perhaps even jokes or announcements that birthday cake was soon to be served. As a result, many of the documents now in the depository will never be selected for use in this case, much less publication. Thus, the cost of reviewing those documents significantly outweighs any potential benefit to be derived.

The Bank Defendants' reading of the Court's order might be plausible on the face of the order considered in a vacuum. Because of the tremendous number of documents involved in this unique case, and the posture of the case when the Court entered the March 28, 2003 Order, however, Enron did not, and does not, believe that the Court envisioned a procedure that would require Enron to expend years and millions of dollars to review manually all of its documents before producing them to the Depository.

Enron is unable to provide a document-specific affidavit without performing a manual review of the documents. Without good reason, the Bank Defendants simply refuse to accept anything less. In fact, the mere act of preparing the potentially thousands of affidavits to cover the millions of "presumptively confidential" documents might prove to be an impossible task. At a minimum, such a task would occupy Enron—a debtor—and its counsel for many months, if not years.

III. The Proposed Protocol

Enron fully appreciates, and willingly shoulders, its burden to demonstrate, with affidavit support, that certain of its documents should be treated as confidential. At the same time, however, Enron notes that it has produced, and continues to produce, a mind-boggling number of pages of documents in this case—so far 82,000,000. Instead of reviewing page-by-page all of the "presumptively confidential" documents, Enron proposes that the Court recognize that, because of the way they are designated by the computerized screening process, the documents designated "presumptively confidential" are reasonably likely to contain confidential information. "Presumptively confidential" documents have been so designated, not out of an irrational fear that they might be confidential, but by selecting them with an electronic process designed by persons having a generalized knowledge of the contents of the documents.

As set forth more fully in the attached proposed order, Enron requests that "presumptively confidential" documents be protected from disclosure or publication to persons not having authorization to access the documents unless and until a person or party with such authorization notifies Enron of its desire to use a "presumptively confidential" document in a public way.[10] If such notice is given, Enron would then be given an opportunity to move for a protective order on a document-specific basis. To prevent abuse or over-use of this procedure, Enron requests that the Court require that notice be given only in the good faith belief that the party actually intends to publish the document.[11] Under this proposed protocol, Enron would have ten days from the day it is notified of a party's desire to publish the document to file a

---

[10] Enron does not intend to restrict any party's access to its documents. Nor does Enron intend to restrict the parties' right to review any of its documents with a deponent witness, pursuant to the Court's Deposition Protocol Order.

[11] If the procedure were otherwise, a party could simply put Enron on notice that it intends to publish all of the documents, which, of course, would vitiate the procedure entirely.

motion for protective order pursuant to the Court's orders. If Enron does not file such a motion, waives its right to file such a motion, or if the motion is denied, the party objecting to confidentiality would then be free to use the document for any legal purpose. This procedure would keep the burden squarely on Enron to demonstrate good cause for issuance of a protective order, once a party concludes it needs or wants to publish the document. It would also be reasonable given the discovery volume in this case.

The Bank Defendants' alternative to Enron's proposed procedure is unreasonable, expensive, time consuming, and carries with it a significant possibility that legitimately confidential information will be disclosed. Without the requested protocol, Enron will be forced to review tens of millions of pages of documents, which may take years, and might actually be impossible. (White Aff. ¶¶ 8, 9.) There is no guarantee that Enron will be able to complete its review any time in the near future, and without implementation of the proposed protocol, it is likely that legitimately confidential documents will be disclosed publicly to the detriment of Enron's estate, as well as to the detriment of affiliated parties, whose documents have been included in the massive document productions to the government, and thus, by virtue of the Court's August Order, to the Depository. By definition, public disclosure of confidential documents will cause economic and competitive harm to Enron's bankruptcy estate.

The vast majority of documents will likely never be the subject of a dispute over confidentiality, because no one will ever desire to disclose them publicly, and because the public will not have a legitimate interest in seeing them. Moreover, as a matter of logistics, Enron simply cannot accomplish this Herculean task while it also complies with all of its other discovery obligations. There are practical, mathematical limitations to the number of documents Enron can produce and review. Enron believes that the proposed protocol is a fair compromise

in a case involving so many documents. Enron also believes that the proposed protocol will preserve the public's right to see documents relevant to the issues in this matter, and for which there is no good cause to keep confidential, and that the proposed protocol will reduce the risk that truly confidential, valuable business information is disclosed.

IV. Conclusion

Because (1) there is a reasonable likelihood that "presumptively confidential" documents contain legitimately confidential information, (2) Enron cannot, without the expenditure of massive resources over many months, if not years, manually review every document now in the Depository, and (3) many of the documents now residing in the Depository are not relevant to the issues in this case and will therefore not be the subject of a confidentiality dispute, Enron requests that the Court enter an order for handling "presumptively confidential" documents. The order Enron seeks will not shift from Enron the burden of showing good cause that a protective order should issue. Instead, the order will prevent disclosure of the documents designated "presumptively confidential" to persons not having authorized access to them in the document Depository until Enron is given notice that a party wishes to publish a document, and Enron is given an opportunity to file a motion for a protective order, if appropriate.

Dated: April 22, 2004

Respectfully submitted,

Scott D. Lassetter w/permission pjb

Scott D. Lassetter
TBN 11969800
SDID 7505
700 Louisiana Street, Suite 1600
Houston, TX 77002
Telephone: 713-546-5000
Facsimile: 713-224-9511

Attorney-in-Charge for
Defendant Enron Corp.

OF COUNSEL:

WEIL, GOTSHAL & MANGES LLP

John B. Strasburger
TBN 19358335
SDID 11580
700 Louisiana Street, Suite 1600
Houston, TX. 77002
Telephone: 713-546-5000
Facsimile: 713-224-9511

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been served upon all known counsel of record by sending a copy via electronic mail to serve@ESL3624.com, pursuant to the Court's Order dated August 7, 2002 (Docket No. 984), on this 22nd day of April, 2004.

John B. Strasburger w/permission pjb

John B. Strasburger

CERTIFICATE OF CONFERENCE

Pursuant to correspondence Enron received from the Bank Defendants, dated March 16, 2004, and April 6, 2004, the parties have conferred, but are not able to resolve their discovery dispute. Therefore, the foregoing Motion is necessary.

John B. Strasburger w/permission pjb

John B. Strasburger

AFFIDAVIT OF BONNIE J. WHITE
IN SUPPORT OF MOTION TO SET PROTOCOL FOR HANDLING
"PRESUMPTIVELY CONFIDENTIAL" DOCUMENTS

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, ET AL., Plaintiffs VS. ENRON CORPORATION, ET AL., Defendants	§ § § § § § § § §	CIVIL ACTION NO. H-01-3624 CONSOLIDATED CASES
PAMELA M. TITTLE, on behalf of herself and a class of persons similarly situated, ET AL., Plaintiffs VS. ENRON CORP., an Oregon Corporation, ET AL., Defendants	§ § § § § § § § § § § § §	CIVIL ACTION NO. H-01-3913 CONSOLIDATED CASES

AFFIDAVIT OF BONNIE J. WHITE
IN SUPPORT OF MOTION TO SET PROTOCOL FOR HANDLING
"PRESUMPTIVELY CONFIDENTIAL" DOCUMENTS

Bonnie J. White, being duly sworn, states as follows:

1. My name is Bonnie J. White, I am over the age of 18 years, and I am competent to make this affidavit.

2. I am Managing Director and General Counsel, Litigation for Enron Corp. ("Enron"). My job responsibilities include, among other duties, oversight of Enron's internal efforts to gather, review, and produce documents in the *Tittle* and *Newby* litigation. In that regard, I supervise a team of Enron employees and contractors who carry out the tasks necessary for the production of documents in these cases.

3. As of the date of this Affidavit, Enron has produced pursuant to the Court's August 16, 2002 Order approximately 82,000,000 pages of documents to the Depository. Although there is considerable variation from document to document, Enron's experience in this case demonstrates that the average page count per document produced to the Depository is approximately five pages. Thus, Enron estimates it has produced approximately 16,400,000 documents to the Depository. Enron continues to produce documents to the Depository, and foresees producing even more documents as the government investigations and document requests continue.

4. Based upon my experience and discussions with the attorneys and other personnel that report to me, I have knowledge that Enron's document review team reviews for confidentiality on average 171 documents per reviewer per eight hour workday. This review rate includes the time it takes to access the document, review the document, and catalog the confidentiality designation, if any. As a result, performing a confidentiality review on all of the documents now in the Depository would take approximately 95,906 person-days, or, assuming 250 work days per year, 383 person-years. Stated another way, it would take 383 document reviewers one year to perform a confidentiality review on all of the documents now in the Depository, or 20 document reviewers approximately 19 years to review these documents.

5. The figures set forth in the preceding paragraph are not simply hypothetical estimates—they are conservative projections. Over the past year, Enron has employed a staff of full-time document reviewers ranging between 4 and 21 people, and has been able to review for confidentiality 337,566 documents. At that pace, it would take over 48 years for Enron to review for confidentiality all of the documents now in the Depository. Based upon this data, and the data set forth in paragraph 5, above, Enron would need to hire, train, and provide computer equipment and internet access for nearly 400 people in order to complete a review of the documents now in the Depository in a year.

6. On March 28, 2003, when the Court issued its order denying Enron's motion for a protective order, there were already over 3,000,000 documents produced by Enron available for review in the depository, with millions more in the pipeline to be processed. It is somewhat difficult for Enron to reconstruct historical statistics showing how many documents were posted or available in the Depository at any given time, especially during the first half of 2003, when so much activity was underway with respect to document production. At that time, Enron was concerned primarily with producing documents, not counting them. I have knowledge, however, that as of July 9, 2003, there were 3,985,528 documents posted and available for review in the Depository. I also have knowledge that, although Enron produced millions of documents to the Depository between March 2003 and July 2003, the Depository actually posted for review very few additional documents during that time frame. Thus, it is a very conservative estimate to say that as of March 28, 2003, there were at least 3,000,000 documents posted and available for review in the depository.

7. Based upon the facts set forth in the preceding paragraphs, had Enron begun reviewing for confidentiality all of the documents available for review in the Depository as of March 28, 2003, it would have taken approximately 17,543 person-days, or over 70 person-years to complete. Enron would have had to hire, train, and employ 420 reviewers to complete the confidentiality review within the 60 day time period ordered by the Court in the March 28, 2003 Order.

8. Enron did not interpret the March 2003 Order as requiring that Enron employ hundreds of full-time personnel to perform a confidentiality review. From my experience with massive document reviews and productions, it is my opinion that, while employing hundreds of attorneys, paralegals, or other personnel for many months to do a document review is theoretically possible, it is impossible as a practical matter. The hiring, management, and facilitation of such a review would not have been possible within the allotted time. Moreover, constructing the computerized infrastructure to facilitate such a review would be a monumental, cumbersome task that would likely take many months or years to complete. Thus, because the Court gave Enron only 60 days to complete its review of the documents produced to the Depository, it would have been impossible as a practical matter for Enron to review manually every document produced to the depository as of March 28, 2003. Moreover, Enron anticipated as of March 28, 2003 that it would be producing tens of millions more pages of documents, and thus realized that a manual, page-by-page document review would simply not be possible given the time and resource constraints existing here.

9. Realizing the massive task at hand, beginning before March 2003, Enron began formulating a computerized review of the documents it had produced to the depository. Using a computerized query, described below, the Depository Administrator has searched on behalf of Enron each of the documents produced to the Depository for key words and phrases to determine whether the document contains confidential information. The documents identified in conjunction with the computerized search have been demarcated as "presumptively confidential." So far, 1,836,442 "presumptively confidential" documents have been identified. Using the same calculation as above, for Enron manually to review for confidentiality all of the documents now designated as "presumptively confidential" would take approximately 10,739 person-days, or 42 person-years. This means that Enron would have to employ 42 document reviewers for a year to review those documents now identified as "presumptively confidential." Because, of the 82,000,000 pages of documents provided to the depository so far, only 30,800,000 have been queried, and assuming that "presumptively confidential" documents are identified at the same rate, Enron expects that at least 3,000,000 more "presumptively confidential" documents will be identified once all of the queries are completed.

10. To construct the computerized search, my department contacted each of Enron's business groups that it believed might be concerned that documents being produced to the depository might contain confidential information, which, if disclosed, would cause damage to Enron or one of its affiliates. Those business groups voicing a concern about confidentiality were asked, with assistance of

counsel, to make a list of words and phrases that, if present in a document, would indicate that the document contained confidential information. From the words and phrases provided by Enron, the Depository Administrator constructed a query to search the pages of documents produced to the Depository for the words and phrases on the lists provided by the business groups. Again, the results of the search are the "presumptively confidential" documents.

11. By definition, documents designated "presumptively confidential" contain words or phrases that, according to Enron's business groups, counsel, and consultants, indicate the document may contain confidential information. Thus, publication of a "presumptively confidential" document presents a substantial risk that confidential information will be published to the detriment of the Enron estate.

12. From December 2001 through March 2003, and continuing through today, Enron has not conducted a review either for substance or confidentiality of the great majority of the documents it has produced to government investigators. In some cases, particularly in early 2002, Enron did not conduct such a review because government agents and investigators came to Enron's offices and took the documents without any opportunity for review. In most other instances, Enron produced documents from electronic sources without any substantive review (although in some instances a key word-and-date automated privilege screen was applied), because Enron understood that to conduct such a review would have caused unacceptable delay to the government's investigations. For example, Enron routinely has produced upon request by the government the entire e-mailboxes of specified employees either with no review at all or with only an automated privilege screen, even though much of the contents of the e-mailboxes may not have any relevance to the investigations. Because Enron did not have the opportunity to make any individualized confidentiality determinations prior to the productions to the various government investigators, Enron has generally requested that documents produced be treated as confidential.

Further Affiant sayeth not.

Dated: Houston, Texas
April 22, 2004

Bonnie J. White

Sworn to before me this 22nd day
of April, 2004

Lori Parnizari McDowell
Notary Public
Commission Expires: 10/12/05

LORI PARNIZARI MCDOWELL
Notary Public, State of Texas
My Commission Expires
October 12, 2005