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U.S. COURTS
SOUTHERN DISTRICT
OF TEXAS

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

MARK NEWBY, individually and on behalf of all others similarly situated, Plaintiff, vs. ENRON CORPORATION, et al., Defendants.	CIVIL ACTION NO. H-01-3624 (Securities Suits) <u>CLASS ACTION</u>

MEMORANDUM OF LAW IN SUPPORT OF MOTION OF THE STATE RETIREMENT SYSTEMS GROUP FOR THE APPOINTMENT OF LEAD PLAINTIFF AND FOR APPROVAL OF ITS SELECTION OF COUNSEL

PRELIMINARY STATEMENT

The State Retirement Systems Group (the "State Group"), comprised of the retirement systems of Georgia, Ohio, Washington, and Alabama, hereby respectfully moves for the appointment of Lead Plaintiff pursuant to Section 21D(a)(3)(B) of the Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. § 78u-4(a)(3)(B), and Section 27(a) of the Securities Act of 1933 ("Securities Act"), 15 U.S.C. § 77z-1(a), as amended by Section 101(a) of the Private Securities Litigation Reform Act of 1995 (the "PSLRA").[1] The Teachers Retirement System of Georgia, the Employees' Retirement System of Georgia, the Teachers Retirement System of Ohio, the Employees' Retirement System of Ohio, and the Washington State Investment Board seek appointment as Lead Plaintiff and the Retirement Systems of Alabama seeks appointment as an

[1] These amendments are contained in Public Law 107-67, 109 Stat. 737, 15 U.S.C. §§ 77z, 78u-4.

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Advisory Plaintiff. The State Group further moves for approval of its selection of Martin D. Chitwood of the law firm of Chitwood & Harley and Jay W. Eisenhofer of the law firm of Grant & Eisenhofer, P.A. as Co-Lead Counsel, and Tom A. Cunningham of the law firm of Cunningham, Darlow, Zook, & Chapoton, LLP as Liaison Counsel.

The relief sought herein is precisely what the framers of the PSLRA hoped to accomplish, i.e., the appointment of institutional investors to serve as lead plaintiff in class actions arising under the federal securities laws. As Congress noted in the Statement of Managers, the PSLRA was intended "to increase the likelihood that institutional investors will serve as lead plaintiffs" because, among other reasons, institutional investors and other class members with large amounts at stake "will represent the interests of the plaintiff class more effectively than class members with small amounts at stake." H.R. Rep. No. 104-369, at 34 (1995).

During the Class Period (as defined below), the State Group purchased millions of shares of common stock of Enron Corporation ("Enron" or the "Company") and Enron bonds with par values exceeding $130 million.[2] The State Group has suffered estimated losses of approximately $330.7 million.[3] As discussed herein, the State Group has satisfied each of the requirements of the PSLRA, has a significant financial interest in the outcome of this case and should be appointed Lead Plaintiff.

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[2] These Class Period purchases are broken down as follows:

Georgia:	2,546,200 shares of common stock
Ohio:	2,565,119 shares of common stock
Washington:	$52 million in bonds (par value)
Alabama:	131,800 shares of common stock and $82 million in bonds (par value)

See Cunningham Aff., Exs. A-D.

[3] As reflected in Cunningham Aff., Exs. A-D, these Class Period losses are broken down approximately as follows:

Georgia:	$ 127 million
Ohio:	$ 114 million
Washington:	$ 42 million
Alabama:	$ 47.7 million

Similarly, the State Group's motion for approval of its selection of Martin D. Chitwood of the law firm of Chitwood & Harley and Jay W. Eisenhofer of the law firm of Grant & Eisenhofer, P.A. as Co-Lead Counsel and Tom A. Cunningham of the law firm Cunningham, Darlow, Zook, & Chapoton, LLP as Liaison Counsel for the proposed Class (as defined below) should be granted pursuant to 15 U.S.C. § 78u-4(a)(3)(B)(v) and 15 U.S.C. § 77z-1(a)(3)(B)(v).

PROCEDURAL BACKGROUND AND SUMMARY OF THE ACTIONS

By order filed December 13, 2001, this Court consolidated, inter alia, the related actions[4] brought on behalf of persons and entities who purchased or otherwise acquired the publicly-traded securities of Enron between October 19, 1998 and November 7, 2001, inclusive (the "Class Period"),[5] excluding Defendants and certain of their affiliates (the "Class"). Plaintiffs in these actions allege that, during the Class Period, Defendants[6] engaged in a scheme and course of conduct in violation of Sections 10(b), 20(a), and 20A of the Exchange Act and Sections 11, 12(a)(2), and 15 of the Securities Act, pursuant to which they artificially inflated the price of Enron securities through a series of materially false and misleading statements and omissions concerning the Company's financial condition and results of operations. In addition, many of the complaints allege that the Individual Defendants sold more than 7 million of their personally-held Enron shares during the

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[4] More than twenty complaints naming overlapping defendants and stating overlapping class periods have been filed in this Court.

[5] This is the class period for purposes of this motion, although other actions have stated different class periods. Such differences will be resolved when the Lead Plaintiff files a consolidated complaint.

[6] Defendants include Enron, the Company's outside auditors, and certain of Enron's former and current officers and directors (the "Individual Defendants"). The actions against Enron have

Class Period at artificially inflated prices, reaping hundreds of millions of dollars in illicit proceeds.

After issuing a series of misstatements concerning the Company's financial health, the Company subsequently revealed that it would be incurring losses in excess of $1 billion for certain of its divisions. Then, on November 8, 2001, before the markets opened, Enron announced it was restating its results for 1997, 1998, 1999, 2000 and the first two quarters of 2001 and further stated that audit reports for 1997-2000 should not be relied upon. The Company was forced to issue this restatement to correct years of false financial reporting that had grossly inflated Enron's reported net income and shareholders' equity and materially understated the Company's actual debt.

Specifically, the restatement reduced reported net income by $96 million in 1997, $113 million in 1998, $250 million in 1999 and $132 million in 2000. The impact of the restatement on shareholders' equity was even more dramatic, reducing such equity by $313 million in 1997, $448 million in 1998, $834 million in 1999 and an incredible $1.164 billion in 2000. The Company's restatement also increased Enron's reported debt by $711 million in 1997, $561 million in 1998, $685 million in 1999 and $628 million in 2000.

Upon these disclosures, the value of Enron's stock and bonds plummeted, with the stock falling to as low as $8.20 on November 8, 2001 before closing at $8.41, approximately 91% below the Class Period high of $90.75. Subsequently, on November 28, 2001, it was revealed that Dynegy Inc. ("Dynegy") was terminating its planned acquisition of Enron. Enron's credit rating was thereafter downgraded to below-investment grade, or "junk." The Company's bonds collapsed, and the price of its stock dropped as low as $0.25 per share. Ultimately, on December 2, 2001, Enron

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been stayed, however, by virtue of the Company's bankruptcy filing on December 2, 2001.

filed for bankruptcy protection under Chapter 11 of the U. S. Bankruptcy Code.

Each of the related actions was filed following the above-described disclosures by Enron and has been consolidated by order of this Court filed December 13, 2001. According to the PSLRA and the Manual for Complex Litigation 3d ("MCL 3d"), consolidation is the first step in organizing complex cases such as the related actions. The Court must rule on consolidation before it appoints a lead plaintiff pursuant to the PSLRA, 15 U.S.C. § 78a-4(a)(3)(B). Because consolidation of the related actions has been ordered, the State Group's application for appointment of lead plaintiff is ripe for decision at this time.

ARGUMENT

A. The State Group Should Be Appointed Lead Plaintiff.

1. The Procedure Required By The PSLRA For The Appointment of Lead Plaintiff

The PSLRA, which became law on December 22, 1995, applies to this case. The PSLRA, inter alia, amended the Exchange Act and the Securities Act by adding new sections addressing various matters relating to private lawsuits brought thereunder. Specifically, the PSLRA added a new Section 21D to the Exchange Act, which is codified as 15 U.S.C. § 78u-4, and a new Section 27 to the Securities Act, which is codified as 15 U.S.C. § 77z-1. These sections establish a procedure for the appointment of "Lead Plaintiff" in "each private action arising under the [Exchange Act or Securities Act] that is brought as a plaintiff class action pursuant to the Federal Rules of Civil Procedure." § 21D(a)(1), § 27(a)(1).

First, the plaintiff who files the initial action must, within 20 days of filing the action, publish a notice to the class informing class members of: (1) the pendency of the action; (2) the

claims asserted in the complaint; (3) the purported class period; and (4) the fact that, no later than 60 days from the date the notice was published, any member of the purported class could move the Court to serve as lead plaintiff. PSLRA § 21D(a)(3)(A)(i), 15 U.S.C. § 78u-4(a)(3)(A)(i).[7]

The PSLRA further provides that within 90 days after the publication of the notice of pendency, or as soon as practicable after the consolidation of multiple related cases, the Court shall consider any motion made by a Class member and "shall appoint as lead plaintiff the member or members of the purported plaintiff class that the court determines to be most capable of adequately representing the interests of class members." § 21D(a)(3)(B)(i), 15 U.S.C. § 78u-4(a)(3)(B)(i). The PSLRA provides the following standard for determining who is the "most adequate plaintiff":

> [T]he court shall adopt a presumption that the most adequate plaintiff in any private action arising under this title is the person or group of persons that –
>
> > (aa) has either filed the complaint or made a motion in response to a notice. . . [within 60 days of publication of the notice];
> >
> > (bb) in the determination of the court, has the largest financial interest in the relief sought by the class; and
> >
> > (cc) otherwise satisfies the requirements of Rule 23 of the Federal Rules of Civil Procedure.

PSLRA § 21D(a)(3)(B)(iii)(I), 15 U.S.C. § 78u-4(a)(3)(B)(iii)(I). As set forth below, the State Group is the "most adequate plaintiff."

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[7] The first such notice in this case was published on or about October 22, 2001, making December 21, 2001 the deadline for filing an application to serve as lead plaintiff. See Cunningham Aff., Ex. E.

2. The State Group Has Complied With The Procedural Requirements of the Act.

The sixty-day time period provided by the PSLRA in which applications for appointment as lead plaintiff must be filed expires on December 21, 2001. The State Group has moved within this statutory time period, submitting sworn certifications setting forth its transactions in Enron securities during the Class Period and confirming its intention to serve as a representative party on behalf of the Class. See Cunningham Aff., Exs. A-D.

3. The State Group Believes It Has The Largest Financial Interest In The Relief Sought.

The PSLRA provides that this Court:

> [S]hall appoint as lead plaintiff the member or members of the purported plaintiff class that the Court determines to be most capable of adequately representing the interests of class members (hereinafter this paragraph referred to as the "most adequate plaintiff") in accordance with this subparagraph.

15 U.S.C. § 78u-4(a)(3)(B)(i). In addition, the statute requires the Court to adopt a rebuttable presumption:

> [T]hat the most adequate plaintiff in any private action arising under this chapter is the person or group of persons that –
>
> * * *
>
> (bb) in the determination of the Court, has the largest financial interest in the relief sought by the class . . .

15 U.S.C. § 78u-4(a)(3)(B)(iii)(I).

The State Group is presumptively the most adequate plaintiff because it has the largest financial interest in the relief sought by the Class of any plaintiff or other investor that has appeared

or moved for appointment as lead plaintiff. Courts, in applying the PSLRA, have noted that the "largest financial interest" standard should be viewed broadly in terms of (1) the number of shares purchased, (2) the number of net shares purchased, (3) the total net funds expended by the plaintiff during the class period, and (4) the approximate losses suffered by the plaintiff. In re Waste Management, Inc. Sec. Litig., 128 F. Supp. 2d 401, 409 (S.D. Tex. 2000); In re Olsten Corp. Sec. Litig., 3 F. Supp. 2d 286, 295 (E.D.N.Y. 1998); In re Milestone Scientific Sec. Litig., 183 F.R.D. 404, 412 (D.N.J. 1998) (same); Gluck v. Cellstar Corp, 976 F. Supp. 542, 546 (N.D. Tex. 1997) (court considered the number of shares purchased during the class period, overall dollar investment and estimate of probable losses).

As noted above, the motion papers include sworn certifications setting forth the State Group's transactions in Enron securities during the Class Period.[8] In that time, Georgia purchased 2,546,200 shares of Enron common stock for $166,058,164.76 and suffered net losses of $127,077,353.49; Ohio purchased 2,565,119 shares of Enron common stock and suffered net losses of $114,451,314.62; Washington purchased $52 million in Enron bonds (par value) and suffered net losses of approximately $42,312,320; and Alabama purchased 131,800 shares of Enron common stock in addition to $82 million in Enron bonds (par value), suffering net losses of approximately $47.7 million. As of this filing, the State Group is not aware of any lead plaintiff movant who has sustained greater financial losses in connection with the purchase and sale of Enron securities during the Class Period.

The legislative history of the PSLRA demonstrates that it was intended to encourage

[8] See Cunningham Aff., Exs. A-D.

institutional investors, like the members of the State Group, to serve as Lead Plaintiffs. As Congress noted in the Statement of Managers:

> The Conference Committee seeks to increase the likelihood that institutional investors will serve as lead plaintiffs by requiring courts to presume that the member of the purported class with the largest financial stake in the relief sought is the "most adequate plaintiff."
>
> The Conference Committee believes that . . . in many cases the beneficiaries of pension funds – small investors – ultimately have the greatest stake in the outcome of the lawsuit. Cumulatively, these small investors represent a single large investor interest. Institutional investors and other class members with large amounts at stake will represent the interests of the plaintiff class more effectively than class members with small amounts at stake.

House Conference Report No. 104-369, 104th Cong. 1st Sess. at 34 (1995).

Similarly, the Senate Report on the PSLRA states in pertinent part:

> The Committee believes that increasing the role of institutional investors in class actions will ultimately benefit the class and assist the courts.
>
> Institutions with large stakes in class actions have much the same interests as the plaintiff class generally . . .

Senate Report No. 104-89 104th Cong. 1st Sess. at 11 (1995). See also Greebel v. FTP Software Inc., 939 F. Supp. 57, 63 (D. Mass. 1996) (provisions of the PSLRA "suggest a presumption that institutional investors be appointed lead plaintiff"); Gluck, 976 F. Supp. at 548 ("through the PSLRA, Congress has unequivocally expressed its preference for securities fraud litigation to be directed by large institutional investors").

4. The State Group Otherwise Satisfies the Requirements of Rule 23.

In addition to satisfying the requirements set forth above, a lead plaintiff must fulfill the

requirements of Rule 23 of the Federal Rules of Civil Procedure. Rule 23(a) provides that a party may serve as a class representative only if the following four prerequisites are met:

> (1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (4) the representative parties will fairly and adequately protect the interests of the class.

Fed. R. Civ. P. 23(a). In addition, Rule 23(b)(3) requires that

> the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

Fed. R. Civ. P. 23(b)(3).

Only two of these prerequisites for class certification – typicality and adequacy – directly address individual characteristics of class representatives. Consequently, in deciding a motion to serve as lead plaintiff, the Court should focus its inquiries on the typicality and adequacy prongs of Rule 23(a) and defer examination of the remaining requirements until the lead plaintiffs move for class certification. In re Waste Management, Inc. Sec. Litig., 128 F. Supp. 2d at 411.[9]

The typicality requirement of Rule 23(a)(3) is satisfied "when each class member's claim arises from the same course of events, and each class member makes similar legal arguments to prove the defendants' liability." In re Drexel Burnham Lambert Group, Inc., 960 F.2d 285, 291 (2d

[9] This interpretation is supported by § 21D(a)(3)(B)(iii)(II) of the Exchange Act, which provides that the most adequate plaintiff presumption may be rebutted only by proof that a plaintiff "(aa) will not fairly and adequately protect the interests of the class; or (bb) is subject to unique defenses that render such plaintiff incapable of adequately representing the class." 15 U.S.C. § 78u-4(a)(3)(B)(iii)(II).

Cir. 1992). "Thus, courts have found that a strong similarity of legal theories will satisfy the typicality requirement despite substantial factual differences." Appleyard v. Wallace, 754 F.2d 955, 958 (11th Cir. 1985) (citations omitted). See also Longden v. Sunderman, 123 F.R.D. 547, 556 (N.D. Tex. 1988); Gibb v. Delta Drilling Co., 104 F.R.D. 59, 74 (N.D. Tex. 1984).

Here, the State Group's claims are typical of the claims of the other Class members in that they all arise from the same allegedly unlawful course of conduct and are based on the same legal theories. The State Group claims that it was damaged by the same misrepresentations and omissions that affected the other Class members and by the same course of conduct. Defendants violated applicable securities laws by publicly disseminating a series of false and misleading statements. Like all other members of the proposed Class, the State Group purchased Enron securities during the Class Period at prices alleged to have been artificially inflated by Defendants' false and misleading statements, and was damaged thereby. Its claims meet the typicality requirement, because questions of liability are common to all class members. Thus, the State Group will invoke the same legal theories to establish liability and damages under the federal securities laws that all other Class Members would if they sued separately.

Similarly, there can be no question that the State Group is an adequate representative of the Class. It is well established that the "adequacy" requirement of Rule 23 is measured by a two-prong test. The moving party must show (1) that the plaintiff does not have interests antagonistic to that of the Class, and (2) that the plaintiff's attorneys have the experience and ability to conduct the litigation. Rubenstein v. Collins, 162 F.R.D. 534, 538-39 (S.D. Tex. 1995). As set forth above, the State Group's interests are aligned with those of other Class members. The State Group shares the

interests of the other members of the Class in recovering the damages suffered as a result of Defendants' alleged violations of the securities laws identified above. Its members have indicated that they will protect the interests of the Class, as reflected in the certifications affirming their interest in participating in these actions. The State Group has also retained well-qualified counsel with considerable experience in the prosecution of class action and federal securities law claims to conduct this litigation.[10] Because the State Group has no interests that are antagonistic to the other members of the Class and has retained qualified experienced counsel, it is a fair and adequate representative of the Class.

B. <u>The Court Should Approve the State Group's Choice of Counsel.</u>

The selection of lead counsel is also appropriate at this time. Lead counsel is:

> charged with major responsibility for formulating (after consultation with other counsel) and presenting positions on the substantive and procedural issues during the litigation. Typically they act for the group – either personally or by coordinating the efforts of others – in presenting written and oral arguments and suggestions to the court, working with opposing counsel in developing and implementing a litigation plan, initiating and organizing discovery requests and responses, conducting the principal examination of deponents, employing experts, arranging for support services, and seeing that schedules are met.
>
> * * *
>
> The types of appointments and assignments of responsibilities will depend on many factors, the most important of which is achieving efficiency and economy without jeopardizing fairness to parties in the litigation . . . . The functions of lead counsel may be divided among several attorneys, but the number should not be so large as to defeat the purpose of making such appointments.

<u>MCL 3d</u>, § 20.221.

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[10] <u>See</u> Cunningham Aff., Exs. F-H.

Pursuant to PSLRA § 21D(a)(3)(B)(v), 15 U.S.C. § 78u-4(a)(3)(B)(v) and PSLRA § 27(a)(3)(B)(v), 15 U.S.C. § 77z-1(a)(3)(B)(v), the State Group is to select and retain counsel to represent the Class, subject to Court approval. This Court should not disturb the lead plaintiff's choice of counsel unless it is necessary to "protect the interests of the class." 15 U.S.C. § 78u-4(a)(3)(B)(iii)(II)(aa). In that regard, the State Group has selected and retained Martin D. Chitwood of the law firm of Chitwood & Harley and Jay W. Eisenhofer of the law firm of Grant & Eisenhofer, P.A. as Co-Lead Counsel for the Class and Tom A. Cunningham of the law firm of Cunningham, Darlow, Zook, & Chapoton, LLP as Liaison Counsel for the Class. Chitwood & Harley and Grant & Eisenhofer, P.A. are among the preeminent securities class action law firms, having been appointed as lead/co-lead counsel in numerous important actions pending around the country.[11] Similarly, Cunningham, Darlow, Zook, & Chapoton, LLP has significant experience in securities and other complex litigation. Accordingly, the Court should approve the State Group's selection of Martin D. Chitwood of Chitwood & Harley and Jay W. Eisenhofer of Grant & Eisenhofer, P.A. as Co-Lead Counsel for the Class, and Tom A. Cunningham of Cunningham, Darlow, Zook, & Chapoton, LLP as Liaison Counsel for the Class.

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[11] For example, Chitwood & Harley presently serves as co-lead counsel in In re Oxford Health Plans, Inc. Sec. Litig., MDL Dkt. No. 1222 (CLB) (S.D.N.Y.) and in In re BankAmerica Corp. Sec. Litig. MDL No. 1264 (E.D. Mo.) (Nangle, J.) and was appointed sole lead counsel in In re JDN Realty Corp. Sec. Litig., 1:00-CV-0396-RWS (N.D. Ga.). See Cunningham Aff., Ex. F. Similarly, Grant & Eisenhofer, P.A. presently serves as lead counsel in In re Stone & Webster, Inc. Sec. Litig., Civ. A. No. 00-CV-10874-RCL (D. Mass); and as co-lead counsel in In re Oxford Health Plans, Inc. Sec. Litig., MDL Dkt. No. 1222 (CLB) (S.D.N.Y.); In re Safety-Kleen Corp. Bondholders Litigation, Consol. Case No. 3-00-1145-17 (D.S.C.), and in In re Daimler Chrysler Sec. Litig., (D. Del.).

CONCLUSION

In light of the foregoing, the State Group respectfully requests that the Court; (i) appoint it to serve as Lead Plaintiff in this consolidated action; and (ii) approve its selection of Lead Counsel and Liaison Counsel for the Class.

Dated: December 21, 2001

Respectfully submitted,

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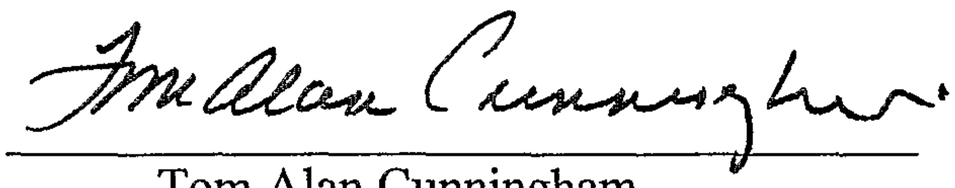
CERTIFICATE OF SERVICE

I hereby certifiy that a true and correct copy of the foregoing instrument was served by U. S. Mail upon the persons and counsel of record listed below pursuant to Rule 5 of the Federal Rules of Civil Procedure on December 21, 2001.



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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

FILED
2001 DEC 21 PM 5:55
U.S. COURTS
SOUTHERN DISTRICT
OF TEXAS

MARK NEWBY, individually and on behalf of all others similarly situated, Plaintiff, vs. ENRON CORP., et al., Defendants.	CIVIL ACTION NO. H-01-3624 (Securities Suits) <u>CLASS ACTION</u>

<u>AFFIDAVIT OF TOM A. CUNNINGHAM</u>

Tom A. Cunningham, being duly sworn, deposes and says:

1. I am a partner in the law firm of Cunningham, Darlow, Zook, & Chapoton, counsel for the State Retirement Systems Group, a movant to be appointed lead plaintiff in this matter. I am <u>sui juris</u> and make this affidavit based upon personal knowledge, unless otherwise stated.

2. Attached hereto as Exhibit A is a true and correct copy of the sworn certification for the Teachers Retirement System of Georgia and the Employees' Retirement System of Georgia.

3. Attached hereto as Exhibit B is a true and correct copy of the sworn certification for the Teachers Retirement System of Ohio and the Employees' Retirement System of Ohio.

4. Attached hereto as Exhibit C is a true and correct copy of the sworn certification

for the Washington State Investment Board.

5. Attached hereto as Exhibit D is a true and correct copy of the sworn certification for the Retirement Systems of Alabama.

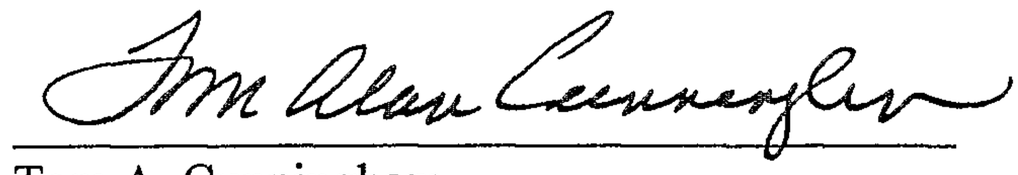
6. Attached hereto as Exhibit E is a true and correct copy of the first-published notice of pendency of this action, which was issued on October 22, 2001 over the PR Newswire, pursuant to the Private Securities Litigation Reform Act of 1995, 15 U.S.C. §§ 77z-1, 78u-4.

7. Attached hereto as Exhibit F is a true and correct copy of the firm resume of Chitwood & Harley.

8. Attached hereto as Exhibit G is a true and correct copy of the firm resume of Grant & Eisenhofer, PA.

9. Attached hereto as Exhibit H is a true and correct copy of the firm resume of Cunningham, Darlow, Zook, & Chapoton, LLP.

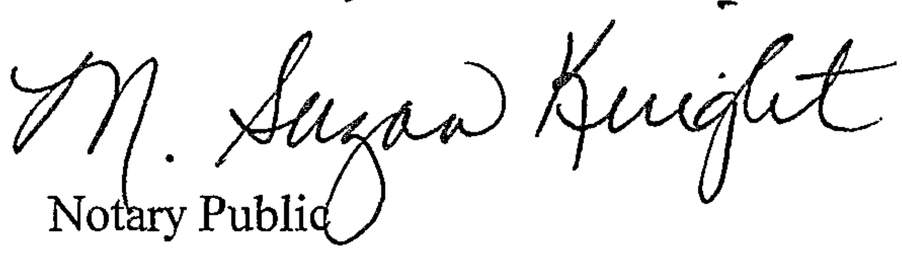
FURTHER AFFIANT SAYETH NOT.



Tom A. Cunningham
CUNNINGHAM, DARLOW,
ZOOK & CHAPOTON, LLP
1700 Chase Tower
600 Travis
Houston, Texas 77002
(713) 255-5500

Proposed Liaison Counsel

Sworn and Subscribed before
me this 21st day of December, 2001.



Notary Public

My commission expires: 08-05-04

CERTIFICATION PURSUANT TO FEDERAL SECURITIES LAWS

Charles W. Cary, Jr., an authorized representative of the Teachers Retirement System of Georgia ("Teachers") and Employees' Retirement System of Georgia ("Employees'") (collectively "Plaintiff" or "Georgia"), being duly sworn, declares as to the claims asserted under the federal securities laws against ENRON CORP., et al. that:

1. Plaintiff has reviewed one of the complaints filed in this action.

2. Plaintiff did not purchase the security that is the subject of this action at the direction of Plaintiff's counsel or in order to participate in this private action.

3. Plaintiff is willing to serve as a representative party on behalf of the class, including providing testimony at deposition and trial, if necessary.

4. Plaintiff's transactions in the securities that are the subject of this action since the beginning of the Class Period are set forth in Schedule A.

5. Plaintiff has sought to serve as a representative party in the following securities class actions within the last 3 years:

None

6. Plaintiff will not accept any payment for serving as a representative party on behalf of the class beyond Plaintiff's pro rata share of any recovery, except such reasonable costs and expenses (including lost wages) directly relating to the representation of the class as ordered or approved by the court.

I declare under penalty of perjury that the foregoing is true and correct. Executed

this 20th day of December 2001, in Atlanta, Georgia.

For Georgia

The Exhibit(s) May

Be Viewed in the

Office of the Clerk