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United States Attorney

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9 UNITED STATES DISTRICT COURT  
10 NORTHERN DISTRICT OF CALIFORNIA  
11 SAN FRANCISCO DIVISION  
12

13 UNITED STATES OF AMERICA, )  
14 Plaintiff, )  
15 v. )  
16 RELIANT ENERGY SERVICES, INC., )  
17 JACKIE R. THOMAS, )  
18 V. REGINALD HOWARD II, )  
LISA L. FLOWERS, and )  
19 J. KEVIN FRANKENY, )  
Defendants. )

No.  
VIOLATIONS: 18 U.S.C. § 371 –  
Conspiracy to Commit Wire Fraud and  
Commit Commodities Manipulation;  
18 U.S.C. § 1343 – Wire Fraud; 7 U.S.C.  
§ 13(a)(2) – Commodities Manipulation; 18  
U.S.C. § 2 – Aiding and Abetting  
SAN FRANCISCO VENUE

20  
21  
22 INDICTMENT

23 The Grand Jury charges:

24 A. The Defendants

25 1. At all times relevant, Reliant Energy, Inc. was a publicly-traded Texas corporation  
26 with its headquarters in Houston, Texas. Through its subsidiaries, Reliant Energy, Inc. provided  
27 electricity and energy services to wholesale and retail customers throughout the United States. In  
28 1997 and 1998, it purchased five electric power generation plants in the State of California:

INDICTMENT

1 Coolwater, Ellwood, Etiwanda, Mandalay, and Ormond Beach. The operation of the California  
2 plants and the marketing (or buying and selling) of its energy was directed by its wholly-owned  
3 subsidiary, defendant RELIANT ENERGY SERVICES, INC. (“RELIANT”), a Delaware  
4 corporation with its headquarters in Houston, Texas.

5 2. Defendant JACKIE R. THOMAS was the Vice President of Power Trading for  
6 defendant RELIANT. He supervised its nationwide electricity trading business, including its  
7 activities in California. Defendant THOMAS reported to defendant RELIANT’s President.

8 3. Defendant V. REGINALD HOWARD II was the Director of defendant  
9 RELIANT’s West Power Trading Division. He managed all electricity trading for the California  
10 markets and the five California power plants. Defendant HOWARD reported to defendant  
11 THOMAS.

12 4. Defendant LISA L. FLOWERS was the only “term” trader at defendant  
13 RELIANT’s West Power Trading Division. As a term trader, she bought and sold electricity  
14 contracts for profit in markets in and around California. Defendant FLOWERS reported to  
15 defendant HOWARD.

16 5. Defendant J. KEVIN FRANKENY was the Manager of defendant RELIANT’s  
17 Western Operations and directed the operation of the California plants. Defendant FRANKENY  
18 also reported to defendant HOWARD.

19 B. The California Electricity Markets

20 6. Prior to 1996, the California electricity industry was organized around three  
21 regulated utilities: Pacific Gas & Electric Co., Southern California Edison Co., and San Diego  
22 Gas & Electric Co. The utilities provided electricity to retail customers, managed system  
23 reliability, and operated power plants. At this time, the price of electricity was set by the  
24 California Public Utilities Commission.

25 7. In 1996, California enacted legislation to fundamentally restructure its wholesale  
26 electricity market, with the intent to facilitate competition in the generation and sale of energy.  
27 While the utilities remained responsible for serving the needs of their retail customers, they were  
28 forced to divest a number of their power plants to private firms. Between 1997 and 1999, the

1 utilities sold all of their natural gas-fired plants in California to five different companies, including  
2 Reliant Energy, Inc., at that time known as Houston Industries Power Generation, Inc. Through  
3 these sales, each of the five companies assumed control of approximately 20% of all gas-fired  
4 power generation in the State of California.

5 8. The California legislature also created two new institutions, the California Power  
6 Exchange (“PX”) and the California Independent System Operator (“ISO”). The PX acted as the  
7 primary marketplace for wholesale electricity in California. The ISO managed the State’s  
8 electricity grid by maintaining a balanced energy market, controlling the transmission of  
9 electricity, and purchasing certain energy services in order to ensure system reliability.

10 9. In 2000, the PX operated the “day-ahead” market for energy delivery the following  
11 day. Through this market, purchasers (such as the utilities) submitted bids to buy electricity, and  
12 suppliers (such as defendant RELIANT) submitted offers to sell electricity. After examining these  
13 bids and offers to determine the demand for and supply of electricity, the PX calculated the  
14 “market clearing price” for all energy deliveries the next day.

15 10. The ISO operated the “real-time” market, where it bought and sold power to  
16 account for and correct any imbalances between supply and demand during each operating hour.  
17 In this market, energy suppliers submitted bids to sell real-time electricity at a predetermined  
18 price. The ISO then “stacked” the bids, ordering them from the least-expensive to the most-  
19 expensive bid. Depending on the amount of electricity needed for the hour, the ISO would move  
20 up the bid stack until it had accepted enough bids to supply the requisite amount of real-time  
21 electricity. The last (and most expensive) bid taken by the ISO set the market clearing price for  
22 all purchases and sales of real-time energy for that hour.

23 11. The ISO also operated a market for energy services to support and maintain  
24 system reliability. These services consisted of different types of stand-by power generation  
25 capacity that the ISO could call upon in the event of a supply shortage. One type of stand-by  
26 power was “replacement reserves,” which the ISO needed when it expected a heightened demand  
27 for real-time electricity. Generally, a high demand for real-time energy translated into a high price  
28 for replacement reserves.

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2 12. In times of a perceived supply shortage (or when suppliers failed to submit  
3 sufficient offers to sell electricity to the market), the ISO was forced to purchase additional  
4 electricity “out-of-market.” Out-of-market electricity was critical to grid reliability. If the ISO  
5 could not procure enough energy out-of-market to meet consumer demand for a given operating  
6 hour, then it risked the possibility of rolling blackouts and even a system failure. All out-of-  
7 market sales from in-state generators (including from defendant RELIANT) were subject to a  
8 federally-approved price cap. In June 2000, the price cap was \$750 per megawatt hour.

9 13. The PX and ISO markets described above were often referred to as the “spot”  
10 markets for electricity in California.

11 14. Outside of the PX and ISO markets, California electricity was also traded in  
12 “term” markets. Through these markets, traders bought and sold standardized contracts which  
13 called for the delivery of electricity at a particular location beyond the then-current month. If a  
14 trader expected the price of electricity to increase at some point in the future, he/she would  
15 purchase an electricity term contract and go “long.” If a trader expected the price to fall, he/she  
16 would sell an electricity term contract and go “short.” Prior to the date of actual delivery,  
17 speculative trades could be extinguished by an opposite and offsetting trade. Depending on the  
18 buy and sell price, the trades could produce a net profit (buy low, sell high) or a net loss (buy  
19 high, sell low).

20 15. Electricity was a commodity that traveled in interstate commerce through a vast  
21 network of power lines in and out of the State of California and elsewhere.

22 C. Defendants’ Conspiracy and Scheme to Defraud and Manipulate the Price of Electricity

23 16. In approximately June 2000, defendant FLOWERS acquired a long trading  
24 position for electricity delivery at the Palo Verde, Arizona trading hub, near the California-  
25 Arizona border. Over a period of weeks, she had bought electricity term contracts for delivery at  
26 Palo Verde in the third quarter of 2000 and the third quarter of 2001, expecting that prices would  
27 increase. On Monday morning, June 19, 2000, however, the California spot and term prices  
28 unexpectedly fell. Based on defendant FLOWERS’ trading position and then-current market

1 prices, defendant RELIANT determined that it was facing a multi-million dollar loss.

2 17. Beginning on or about June 19, 2000, and continuing through on or about August  
3 31, 2000, in the Northern District of California and elsewhere, defendants RELIANT, THOMAS,  
4 HOWARD, FLOWERS and FRANKENY, and others: (a) conspired to and did knowingly devise  
5 a scheme and artifice to defraud and to obtain money by means of false and fraudulent pretenses,  
6 representations, and promises from electricity purchasers in California and other participants in  
7 the California spot and term electricity markets; and (b) conspired to and did knowingly  
8 manipulate and attempt to manipulate the price of electricity in the California spot and term  
9 electricity markets.

10 18. The object and purpose of the conspiracy and scheme to defraud and manipulate  
11 was to artificially increase the price of electricity in the spot and term markets and to reverse the  
12 defendants' losing financial position so that defendant RELIANT could enrich itself by profiting in  
13 those markets following the increase in prices caused by the defendants' fraudulent and  
14 manipulative conduct.

15 19. It was part of the conspiracy, scheme to defraud, and manipulation that defendants  
16 RELIANT, THOMAS, HOWARD, FLOWERS, and FRANKENY, and others, agreed to and  
17 did, directly and indirectly, engage in conduct that was designed to create and did create the false  
18 and misleading appearance of an electricity supply shortage to the market and its participants for  
19 the purpose of artificially inflating the spot and term prices of California electricity. Among other  
20 things, the defendants and others did knowingly and intentionally commit, and cause to be  
21 committed, the following:

- 22 (a) the shut down of certain of defendant RELIANT's power plants in  
23 California;
- 24 (b) the physical and economic withholding of electricity from the California  
25 spot markets, by declining to submit supply bids and by submitting false  
26 and misleading supply bids at prices designed to ensure that the bids were  
27 not accepted;
- 28 (c) the exacerbation of the supply shortage through the purchase of additional

1 electricity from the PX and other markets to cover RELIANT's pre-  
2 existing delivery commitments; and

- 3 (d) the dissemination of false and misleading rumors and information to the  
4 ISO, brokers, and other traders regarding the availability and maintenance  
5 status of, and environmental limitations on, defendant RELIANT's power  
6 plants.

7 20. It was a further part of the conspiracy, scheme to defraud, and manipulation that  
8 defendants RELIANT, THOMAS, HOWARD, FLOWERS, and FRANKENY, and others, having  
9 successfully achieved an artificially inflated price for electricity in the spot and term markets  
10 agreed to and did, directly and indirectly, the following:

- 11 (a) the selling of day-ahead electricity generated by defendant RELIANT's  
12 power plants in the PX at artificially inflated prices;  
13 (b) the selling of real-time electricity generated by defendant RELIANT's  
14 power plants to the ISO at artificially inflated prices;  
15 (c) the selling of out-of-market electricity generated by defendant RELIANT's  
16 power plants to the ISO at or near the federally-approved price cap of  
17 \$750;  
18 (d) the selling of ancillary services and replacement reserves associated with  
19 RELIANT's power plants to the ISO at artificially inflated prices; and  
20 (e) the unwinding (or selling) of defendant RELIANT's long trading position  
21 in the Palo Verde term markets at artificially inflated prices.

22 21. As a result of the defendants' conspiracy, scheme to defraud, and manipulation, the  
23 PX and the ISO published artificially inflated spot prices for electricity in California, which were  
24 accessed by market participants located throughout the State of California (including within the  
25 Northern District of California) and elsewhere. The PX and the ISO also paid net suppliers  
26 (including out-of-state generators and defendant RELIANT) and charged net purchasers  
27 artificially high prices for day-ahead, real-time, and out-of-market electricity, and for ancillary  
28 services, including replacement reserves. The inflated payments and charges were processed and

1 sent via wire transmission, separately by the PX and the ISO, through their respective bank  
2 accounts at the Bank of America in San Francisco, California.

3 22. As a result of the defendants' conspiracy, scheme to defraud, and manipulation,  
4 Pacific Gas & Electric Co. ("PG&E"), a utility and net purchaser of California electricity based in  
5 San Francisco, California, submitted higher-priced demand bids and paid artificially high prices for  
6 California spot electricity and ancillary services. PG&E sent payments for its spot market  
7 purchases in California to the PX's bank account in San Francisco, California via wire  
8 transmission from PG&E's bank in Boston, Massachusetts.

9 23. As a result of the defendants' conspiracy, scheme to defraud, and manipulation,  
10 California electricity purchasers overpaid by as much as \$32 million for day-ahead, real-time, and  
11 out-of-market electricity and energy services, in addition to overpayments by participants in the  
12 California term markets caused by the defendants' artificial inflation of prices.

13 COUNT ONE: (18 U.S.C. § 371 – Conspiracy to Commit Wire Fraud and to Commit  
14 Commodities Manipulation)

15 24. Paragraphs 1 through 23 of this Indictment are realleged and incorporated as if  
16 fully set forth here.

17 25. Beginning on or about June 19, 2000, and continuing through on or about August  
18 31, 2000, within the Northern District of California and elsewhere, the defendants

19 RELIANT ENERGY SERVICES, INC.,  
20 JACKIE R. THOMAS,  
21 V. REGINALD HOWARD II,  
LISA L. FLOWERS, and  
J. KEVIN FRANKENY

22 and others known and unknown to the Grand Jury, knowingly and wilfully conspired to commit  
23 offenses against the United States, namely: (a) wire fraud, in violation of Title 18, United States  
24 Code, Section 1343; and (b) manipulation and attempted manipulation of the price of electricity, a  
25 commodity in interstate commerce, in violation of Title 7, United States Code, Section 13(a)(2).

26 26. Among the means and methods by which the defendants would and did carry out  
27 the conspiracy were those described in Paragraphs 19 through 20 of this Indictment, as well as  
28 others.

1           27.    In furtherance of the conspiracy and to effect the objects thereof, the defendants  
2 committed the following overt acts, as well as others, in the Northern District of California and  
3 elsewhere:

- 4           (a)    Telephone call between defendant THOMAS and defendant HOWARD on  
5                    June 20, 2000 at 06:30:42 (CST);
- 6           (b)    Telephone call between defendant HOWARD and a Reliant manager on  
7                    June 21, 2000 at 15:29:48 (CST);
- 8           (c)    Telephone call between defendant FLOWERS and an electricity broker on  
9                    June 20, 2000 at 06:56:44 (CST); and
- 10          (d)    Telephone call between defendant FRANKENY and a Reliant plant  
11                    operator on June 20, 2000 at 08:25:33 (CST).

12           28.    In furtherance of the conspiracy and to effect the objects thereof, the defendants  
13 caused to be committed the following overt acts, as well as others, in the Northern District of  
14 California and elsewhere:

- 15          (a)    Publication by the PX of artificially inflated spot prices on June 20, 2000;
- 16          (b)    Publication by the PX of artificially inflated spot prices on June 21, 2000;
- 17          (c)    Publication by the PX of artificially inflated spot prices on June 22, 2000;
- 18          (d)    Publication by the PX of artificially inflated spot prices on June 23, 2000;
- 19          (e)    Submission by PG&E of higher-priced demand bids for spot electricity on  
20                    June 21, 2000;
- 21          (f)    Submission by PG&E of higher-priced demand bids for spot electricity on  
22                    June 22, 2000;
- 23          (g)    Submission by PG&E of higher-priced demand bids for spot electricity on  
24                    June 23, 2000;
- 25          (h)    Payment by PG&E to the PX on July 17, 2000;
- 26          (i)    Payment by PG&E to the ISO on August 30, 2000;
- 27          (j)    Payment by the PX to defendant RELIANT on July 19, 2000; and
- 28          (k)    Payment by the ISO to defendant RELIANT on August 31, 2000.



1 All in violation of Title 18, United States Code, Section 371.

2 COUNTS TWO THROUGH FIVE: (18 U.S.C. §§ 1343 and 2 – Wire Fraud)

3 29. Paragraphs 1 though 23 of this Indictment are realleged and incorporated as if fully  
4 set forth here.

5 30. On or about the dates identified below, within the Northern District of California  
6 and elsewhere, the defendants

7 RELIANT ENERGY SERVICES, INC.,  
8 JACKIE R. THOMAS,  
9 V. REGINALD HOWARD II,  
LISA L. FLOWERS, and  
J. KEVIN FRANKENY

10 and others, did knowingly and intentionally devise a scheme and artifice to defraud and to obtain  
11 money by false and fraudulent pretenses, representations, and promises, and for the purpose of  
12 executing such scheme and artifice, did transmit and cause to be transmitted by means of wire  
13 communication in interstate commerce the following:

Count:	Approx. Date:	Point of Origin:	Interim Point of Reception:	Final Point of Reception:	Wire Communication:
TWO	7/17/00	PG&E SF, CA	Mellon Bank Boston, MA	Bank of America SF, CA (PX)	Payment by PG&E to PX for artificially inflated electricity and energy services
THREE	8/30/00	PG&E SF, CA	Mellon Bank Boston, MA Bank of America SF, CA (PX)	Bank of America SF, CA (ISO)	Payment by PG&E to ISO for artificially inflated electricity and energy services
FOUR	7/19/00	PX Alhambra, CA	Bank of America SF, CA (PX)	Reliant Houston, TX	Payment by PX to Reliant for artificially inflated electricity and energy services
FIVE	8/31/00	ISO Folsom, CA	Bank of America SF, CA (ISO)	Reliant Houston, TX	Payment by ISO to Reliant for artificially inflated electricity and energy services

28 All in violation of Title 18, United States Code, Sections 1343 and 2.

1 COUNT SIX (7 U.S.C. § 13(a)(2); 18 U.S.C. § 2 – Commodities Manipulation)

2 31. Paragraphs 1 though 23 of this Indictment are realleged and incorporated as if fully  
3 set forth here.

4 32. Beginning on or about June 19, 2000, and continuing through on or about August  
5 31, 2000, within the Northern District of California and elsewhere, the defendants

6 RELIANT ENERGY SERVICES, INC.,  
7 JACKIE R. THOMAS,  
8 V. REGINALD HOWARD II,  
LISA L. FLOWERS, and  
J. KEVIN FRANKENY

9 and others, did knowingly and intentionally manipulate and attempt to manipulate the price of  
10 electricity, a commodity in interstate commerce.

11 All in violation of Title 7, United States Code, Section 13(a)(2), and Title 18, United  
12 States Code, Section 2.

13

14 DATED:

A TRUE BILL.

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\_\_\_\_\_  
FOREPERSON

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KEVIN V. RYAN  
United States Attorney

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ROSS W. NADEL  
Chief, Criminal Division

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(Approved as to form: \_\_\_\_\_)  
AUSA Robbins and SAUSAs Tenorio-Kutzkey & Banar

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