

## B. Overview of Enron's Qualified Retirement Plans

This part provides an overview of qualified retirement plans maintained by Enron during the period covered by the Joint Committee review: the Enron Corp. Retirement Plan ("Enron Retirement Plan"), which was modified and is now the Enron Corp. Cash Balance Plan ("Enron Cash Balance Plan"); the Enron Corp. ESOP ("Enron ESOP"); and the Enron Corp. Savings Plan ("Enron Savings Plan").<sup>1259</sup> The plans collectively are referred to as the Enron qualified plans. The Enron Retirement Plan and the Enron Cash Balance Plan are referred to collectively as the Enron Retirement Plan/Cash Balance Plan. Additionally, this part describes matters common to all of Enron's qualified retirement plans, plan administration, and pending legal matters involving the plans.

### 1. In general

Over time, the Enron Qualified Plans have been amended and restated to comply with legal requirements and, in some instances, to implement design changes. Because of changes in plan design, Enron employees may have earned benefits under more than one retirement formula within the same plan. Additionally, Enron employees may earn benefits under more than one plan.

The Enron Retirement Plan, a defined benefit plan was initially established effective July 1, 1986, as an amendment and restatement of the InterNorth, Inc. Retirement Income Plan II. At the same time, the Houston Natural Gas Corporation Retirement Plan, maintained by the Houston Natural Gas Corporation, an Enron subsidiary ("HNG"), was merged into the Enron Retirement Plan. The Enron Retirement Plan was amended and restated and renamed the Enron Corp. Cash Balance Plan effective January 1, 1996.

Enron established the Enron ESOP effective November 1, 1986.<sup>1260</sup> During 1986, Enron loaned the Enron ESOP \$335 million to purchase shares of Enron Corp. common stock that had previously been held as treasury stock. As a result of this purchase, the Enron ESOP held approximately 19 percent of Enron's outstanding common stock. During 1987, \$230 million of the principal amount of the loan was repaid with proceeds received from the terminating InterNorth, Inc. Pension Plan I.<sup>1261</sup> The final payment on the Enron ESOP loan was made in March 1993.

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<sup>1259</sup> Other qualified retirement plans were maintained by other members of Enron's controlled group. For example, PGE maintained a separate defined benefit plan. This report focuses on the retirement plans of Enron Corp. which were the largest plans within the Enron controlled group, and generally available to employees of Enron Corp. and related entities.

<sup>1260</sup> Materials reviewed by the Joint Committee staff indicate that Enron also sponsored a "tax-credit ESOP" which was effective in 1975 and terminated in 1988. Joint Committee staff did not review this plan.

<sup>1261</sup> Notes to Financial Statements, 1990 Form 5500 for the Enron Savings Plan, at 5. Descriptions of the mechanics of the repayment vary. Other sources explain that a block of Enron stock was purchased by the Enron ESOP in February 1987 with \$230 million received by

Enron established a floor-offset arrangement, involving the Enron Retirement Plan and the Enron ESOP effective January 1987. The Enron Retirement Plan was amended effective January 1, 1995, to eliminate the offset arrangement between the Enron Retirement Plan and the Enron ESOP for benefits accruing after 1994 and to freeze the amount of the offset over the period 1996 to 2000. The amendment of the floor-offset arrangement is discussed in detail in Part II.C.1., below.

The Enron Savings Plan began as a plan originally effective June 1, 1956.<sup>1262</sup> The Enron Savings Plan is a defined contribution plan which includes a qualified cash or deferred arrangement (i.e., it is a so-called “section 401(k)” plan). Participants may make elective deferrals and after-tax contributions to the Enron Savings Plan, and have a range of investment choices available for their contributions. In addition, Enron made matching contributions based on employee elective deferrals. The matching contributions were invested in Enron stock pursuant to the plan terms; participants could elect to invest the matching contributions in another investment only after attaining age 50. The Enron ESOP was amended and merged into the Enron Savings Plan effective August 30, 2002, with the result that the provisions of the Enron Savings Plan generally replace the provisions of the Enron ESOP in their entirety.<sup>1263</sup>

## **2. Recent and pending legal matters involving the Enron qualified plans**

### **IRS audit**<sup>1264</sup>

The IRS has performed only one audit with respect to the Enron qualified plans.<sup>1265</sup> In 1998, the Tax Exempt and Government Entities Division of the IRS (“TE/GE”) audited the plans with respect to 1995 and 1996. IRS personnel informed the Joint Committee staff that the audit came about due to a request made by the Large and Mid-Size Business division of the IRS (“LMSB”), which was conducting an audit of Enron tax’s return. LMSB did not identify any issues for audit, but asked TE/GE if they could perform what the IRS refers to as a “support audit.” TE/GE personnel said that they determined they had the time and the resources and agreed to perform the audit.

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Enron as the reversion. See Enron’s July 21, 1994, request for an advisory opinion from the Department of Labor.

<sup>1262</sup> Forms 5500 for the Enron Savings Plan.

<sup>1263</sup> “Merger of Enron Corp. Employee Stock Ownership Plan with and into Enron Corp. Savings Plan,” EC 000899959-000899961. Pursuant to the merger, the assets held under the ESOP were transferred to the Enron Savings Plan to be held under the trust maintained thereunder.

<sup>1264</sup> This information was obtained primarily through interviews conducted by the Joint Committee staff of IRS personnel.

<sup>1265</sup> The IRS noted that Enron has qualified plans other than the Enron Savings Plan, Enron ESOP, and Enron Retirement Plan/Cash Balance Plan. In conducting the audit, they focused on these three plans because they are the largest.

IRS personnel said the audit was a long, labor intensive process. Among other things, the IRS reviewed Forms 5500 for the Enron qualified plans and checked Enron's deductions for qualified plan contributions. They had a computer audit specialist make an examination to determine if the Enron qualified plans were qualified in form, but spent the bulk of the time looking at plan operations.

### **PBGC actions**

In connection with Enron's filing for bankruptcy protection on December 2, 2001, the PBGC filed claims against Enron in October 2002.<sup>1266</sup> The PBGC's claim for unfunded benefit liabilities of the Enron Cash Balance Plan was approximately \$270 million. The PBGC's estimate of the underfunding may increase if the IRS rules adversely on the amendment to phase out the floor-offset arrangement<sup>1267</sup> and the benefits attributable to offset amounts become liabilities of the Enron Cash Balance Plan.<sup>1268</sup>

### **Department of Labor actions**

Following Enron's filing of voluntary petitions for Chapter 11 bankruptcy organization protection on December 2, 2001, the Department of Labor and Enron agreed in February 2002 to replace the Administrative Committee with an independent fiduciary to administer the Enron Qualified Plans. On March 14, 2002, the Department of Labor announced that a team of experts from State Street Bank and Trust had been selected to act in that capacity.<sup>1269</sup>

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<sup>1266</sup> See, e.g., Statement of the Pension Benefit Guaranty Corporation in Support of Its Claim for Unfunded Benefit Liabilities of the Enron Corp. Cash Balance Plan, at ¶ 8, filed in *In re Enron Corp., et al*, Case No. 01-16034, U.S. Bankruptcy Court, Southern District of New York.

<sup>1267</sup> This issue is discussed in detail in Part II.C.1., below.

<sup>1268</sup> The PBGC estimates that could increase by as much as 100 percent or more. if the phasing out of Enron's floor-offset arrangement (Part II.C.1, below) is determined by the IRS to fail the qualification requirements and the benefits attributable to offset amounts again become liabilities of the Enron Cash Balance Plan. Statement of the Pension Benefit Guaranty Corporation in Support of Its Claim for Unfunded Benefit Liabilities of the Enron Corp. Cash Balance Plan, at paragraph 8, filed in *In re Enron Corp., et al*, Case No. 01-16034, U.S. Bankruptcy Court, Southern District of New York.

<sup>1269</sup> First Amendment to Enron Corp. Cash Balance Plan, EC01747538-EC01747541. See Department of Labor news release, *Department Of Labor Announces Enron Independent Fiduciary State Street To Replace Enron's Retirement Administrative Committee*, [www.dol.gov/opa/media/press/opa/OPA2002145](http://www.dol.gov/opa/media/press/opa/OPA2002145).

The Department of Labor is investigating Enron's qualified retirement plans.<sup>1270</sup> The investigation is ongoing and comprehensive. The Department of Labor has been deposing "scores of witness and review[ing] literally millions of documents."<sup>1271</sup>

### **Private lawsuits**

Additionally, several lawsuits involving the Enron qualified plans have been filed. The lead case involving the plans is *Tittle v. Enron Corp.*, pending in U.S. District Court in the Southern District of Texas.<sup>1272</sup> *Tittle* was filed on behalf of an estimated 24,000 current and former participants in the Enron Savings Plan, the Enron ESOP, and the Enron Cash Balance Plan. A consolidated and amended complaint in the case was filed April 8, 2002.<sup>1273</sup> The case was brought by Enron workers who allege that their retirement accounts lost millions of dollars when Enron collapsed.<sup>1274</sup> They allege that the defendants were fiduciaries of the Enron retirement plans and that, rather than act prudently and solely in the interests of the Enron retirement plans and their participants and beneficiaries, the fiduciaries did nothing to protect the participants and beneficiaries from suffering huge losses even though the defendants knew or should have known that the plans were paying too much for Enron stock and that financial misstatements threatened the integrity of the retirement benefits.

The complaint seeks to recover losses incurred by participants or beneficiaries of the Enron Savings Plan, the Enron ESOP and the Enron Cash Balance Plan who were affected by a variety of alleged misconduct by the various defendants relating to the Enron stock in the Enron Plans. The complaint is framed to recover on behalf of the Enron Qualified Plans as a whole

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<sup>1270</sup> Speech by Assistant Secretary of Labor Ann L. Combs to the Annual Conference of the Society of American Business Editors and Writers (delivered Nov. 4, 2002), [www.dol.gov/pwba](http://www.dol.gov/pwba).

<sup>1271</sup> *Id.*

<sup>1272</sup> The plaintiffs in *Tittle* seek class action status.

<sup>1273</sup> The following cases were consolidated by orders of the U.S. District Court for the Southern District of Texas, dated December 12, 2001, and January 18, 2002: *Tittle v. Enron Corp.*, No. H-01-3913; *Rinard v. Enron Corp.*, No. H-01-4060; *Harney v. Enron Corp.*, No. H-01-4063; *Kemper v. Enron Corp.*, No. H-01-4089; *Clark v. Enron Corp.*, No. H-01-4125; *Ricketts v. Enron Corp.*, No. H-01-4128; *Pottratz v. Enron Corp.*, No. H-01-4150; *Stevens v. Enron Corp.*, No. H-01-4208; *Prestwood v. Gathman*, No. H-01-4209; *Walt v. Lay*, No. H-01-4299; *Moore v. Enron Corp.*, No. H-01-4236.

<sup>1274</sup> The plaintiffs in *Tittle* are Pamela M. Tittle, Thomas O. Padgett, Gary S. Dreadin, Janice Farmer, Linda Bryan, John L. Moore, Betty J. Clark, Shelly Farias, Patrick Campbell, Fanette Perry, Charles Prestwood, Roy Rinard, Steve Lacey, Catherine Stevens, Roger W. Boyce, Wayne M. Stevens, Norman L. and Paula H. Young, Michael L. McCown, Dan Shultz, on behalf of themselves and a class of persons similarly situated, and on behalf of the Enron Corp. Enron Savings Plan, the Enron Corp. Employee Stock Ownership Plan and the Enron Corp. Cash Balance Plan.

whether or not a class or classes are certified. The complaint covers alleged misconduct during January 20, 1998, through December 2, 2001.

Among the defendants named in *Tittle*, in addition to Enron itself, are certain current and former Enron directors and officers and the members of the Administrative Committee for the Plans, who were all Enron employees appointed by Enron.<sup>1275</sup> Defendants in the case moved to dismiss the action on May 8, 2002, generally arguing that there is no set of facts that the plaintiffs have alleged that would make them liable for the losses suffered by the Enron plans and the retirement accounts of these workers.

The Department of Labor filed a brief as *amicus curiae* opposing the defendants' motion to dismiss. According to the brief, based on the allegations in the complaint, ERISA required the fiduciaries to take action to protect the interests of the Enron plans, their participants and beneficiaries, and ERISA provides remedies for the failure to have done so. The Department of Labor argues that the allegations of the complaint are sufficient to withstand motions to dismiss and that the plaintiffs should be allowed to conduct discovery to prove the allegations.

In its brief, the Department of Labor makes a number of points. First, it argues that the fiduciaries responsible for monitoring the Administrative Committee that directly manages the Enron Savings Plan (the "appointing fiduciaries") have a duty under ERISA to ensure that the Committee is properly performing its duties, and that it has the tools and the information necessary to do its job. Initially, the Department of Labor concludes that because the appointing fiduciaries had the power to appoint, retain, and remove the members of the Administrative Committee, the Appointing Fiduciaries have discretionary authority over the management and administration of the plan and are thus plan fiduciaries under ERISA.

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<sup>1275</sup> The parties named as defendants in *Tittle* are: Enron Corp., Enron Corp. Savings Plan Administrative Committee, Enron Employee Stock Ownership Plan Administrative Committee, Cindy K. Olson, Mikie Rath, James S. Prentice, Mary K. Joyce, Sheila Knudsen, Rod Hayslett, Paula Rieker, William D. Gathmann, Tod A. Lindholm, Philip J. Bazelides, James G. Barnhart, Keith Crane, William J. Gulyassy, David Shields, John Does Nos. 1-100 Unknown Fiduciaries of the Enron Corp. Savings Plan or the ESOP, the Northern Trust Company, Kenneth L. Lay, Jeffrey K. Skilling, Andrew S. Fastow, Michael Kopper, Richard A. Causey, James V. Derrick, Jr., The Estate of J. Clifford Baxter, Mark A. Frevert, Stanley C. Horton, Kenneth D. Rice, Richard B. Buy, Lou L. Pai, Robert A. Belfer, Norman P. Blake, Jr., Ronnie C. Chan, John H. Duncan, Wendy L. Gramm, Robert K. Jaedicke, Charles A. Lemaistre, Joe H. Foy, Joseph M. Hirko, Ken L. Harrison, Mark E. Koenig, Steven J. Kean, Rebecca P. Mark-Jusbasche, Michael S. McConnell, Jeffrey McMahon, J. Mark Metts, Joseph W. Sutton, Arthur Andersen & Co. Worldwide Societe Cooperative, Arthur Andersen, LLP, UK Arthur Andersen, David B. Duncan, Thomas H. Bauer, Debra A. Cash, Roger D. Willard, D. Stephen Goddard, Jr., Michael M. Lowther, Gary B. Goolsby, Michael C. Odom, Michael D. Jones, William Swanson, John Stewart, Nancy A. Temple, Don Dreyfus, James Friedlieb, Joseph F. Berardino, Does 2 Through 1800 Unknown Partners in Andersen LLP, Merrill Lynch & Co., Inc., J.P. Morgan Chase & Co., Credit Suisse First Boston Corporation, Citigroup, Inc., Salomon Smith Barney Inc., Vinson & Elkins, LLP, Ronald T. Astin, Joseph Dilg, Michael Finch, and Max Hendrick III.

The Department of Labor also argues that fiduciaries may not deceive plan participants or allow others to do so. Rather, fiduciaries are obligated to take appropriate actions to carry out their responsibilities. This may include investigating allegations of fraud, disclosing facts to participants, other fiduciaries, or the public, and stopping further investment in company stock, as required by a standard of prudence.

Additionally, the Department of Labor asserts, fiduciaries have an obligation to ensure that investments in employer securities in a defined contribution plan are prudent, notwithstanding plan provisions that favor such investments. Further, the Department of Labor states that even if fiduciaries have “insider information” about the value of employer securities, Federal securities law does not prevent the fiduciaries from taking some action to protect the Enron qualified plans, such as public disclosure or temporarily suspending further purchase of employer securities. Finally, the Department of Labor argues that directed trustees cannot follow directions that they know or should know are imprudent or violate ERISA.

Defendants’ motion to dismiss *Tittle* is pending.

### **3. Administration of the Enron qualified retirement plans**

#### **In general**

##### The Administrative Committee

The Enron Cash Balance Plan, the Enron Savings Plan, and the Enron ESOP generally vest responsibility for plan administration in an administrative committee consisting of one or more individuals appointed by Enron.<sup>1276</sup> Each Plan provides for a separate administrative committee for that Plan. In practice, however, the same individuals (typically senior Enron officials appointed by the Chairman of the Board of Enron), served on all three Committees and issues with respect to all three Plans were addressed in a single Committee meeting. This document uses the term “Administrative Committee” to refer to the all three committees provided for under the Enron qualified plans. The members of the Administrative Committee are fiduciaries under ERISA.

The duties of each Plan Administrative Committee are specified in detail in each Plan document. Many of these duties are similar for all three Plans. There are, however, responsibilities which are specific to each Plan. An overview of the Administrative Committee’s duties and activities is provided here; a detailed discussion follows.

According to interviews with former Administrative Committee members, there was no formal process for the selection of Administrative Committee members; suggestions for new members were typically made by the Enron Benefits Department to the Office of the Chairman. The Chairman would then make an appointment.

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<sup>1276</sup> Under the Enron ESOP, the Administrative Committee is also the “named fiduciary” with respect to general administration of the Enron ESOP. Under the Enron Cash Balance Plan and the Enron Savings Plan, however, Enron is the “named fiduciary” with respect to general administration.

The Joint Committee staff interviewed former members of the Administrative Committee, including two former chairmen, and reviewed minutes of Administrative Committee meetings. The view presented of the activities of the Administrative Committee is similar. The interviews confirm that the members of the Administrative Committee viewed their role as relatively narrow. In practice, the main activities of the Administrative Committee were: (1) review of the investment performance under the Enron Cash Balance Plan; (2) review of the performance of the various investment options under the Enron Savings Plan (other than Enron stock)<sup>1277</sup>; and (3) participant appeals with respect to all three plans. These appeals generally related to the denial or calculation of benefits. One former member of the Administrative Committee said that the two main issues addressed during his five-year tenure on the Administrative Committee involved a change in a family of investment funds offered under the Enron Savings Plan and the merging of a PGE plan and the Enron Savings Plan.

The Administrative Committee generally did not evaluate Enron stock as an appropriate investment under either the Enron ESOP or the Enron Savings Plan. As described by one Administrative Committee member, the Enron ESOP plan terms provided for investment of plan assets in Enron stock, so there was no need to review that investment. The Administrative Committee questioned for the first time whether it should be examining Enron stock as an investment under the Enron qualified plans on November 1, 2001.<sup>1278</sup>

Administrative Committee meetings were generally attended by a member of the Enron Benefits Department and the Enron Treasury Department (who focused on investment matters, particularly with respect to the Enron Cash Balance Plan). Others also attended on an as needed basis, including in-house counsel, Enron counsel, and the Administrative Committee's counsel. The Committee received advice on numerous occasions from outside Enron ERISA counsel. The role of these parties may not always have been clear to Committee members; one former member indicated he was not sure whether the Enron ERISA counsel lawyer represented the Committee or Enron.

The Administrative Committee was briefed on occasion regarding their duties by Enron's ERISA counsel. In once such briefing, the Committee members were counseled to think of their fiduciary role as a "parable of hats." They were advised that each member has four hats, an Enron hat, an Enron Cash Balance Plan hat, an Enron Savings Plan hat, and an Enron ESOP hat; the member could wear only one hat at a time. Interviews with Administrative Committee members indicated that they generally understood that they were plan fiduciaries and that they were to act in the best interests of plan participants. It is not clear whether the members understood the special nature of ERISA fiduciary duties; one member told the Joint Committee staff that he missed a briefing on ERISA fiduciary duties, but that he had experience in fiduciary matters and therefore understood his obligations.

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<sup>1277</sup> In reviewing investment performance under the Enron Cash Balance Plan and the Enron Savings Plan, the Administrative Committee relied on the advice of third parties, as well as in-house personnel.

<sup>1278</sup> Minutes of the Meeting of the Administrative Committee (Nov. 1, 2001). EC000001847.

The Enron qualified plans provide that Enron will indemnify Administrative Committee members against expenses and liabilities arising out of their administrative functions or fiduciary duties (other than expenses and liabilities arising out of gross negligence or willful misconduct).

There was no set schedule for Administrative Committee meetings, although there appeared to be a general intent to meet at least quarterly. There may be some lapse in the recordkeeping with respect to such meetings; Enron informed the Joint Committee staff that the Administrative Committee did not meet during the one-year period from October 19, 1998, to October 26, 1999. However, documents provided by Enron and interviews with former Administrative Committee members indicate that during this period the Administrative Committee was actively involved in issues relating to the merging of the Enron and PGE Plans.

The Administrative Committee started having weekly, then daily meetings near the end of 2001 as the stock price of Enron was falling rapidly. These frequent meetings focused at first on the change of recordkeepers and the blackout under the Enron Savings Plan, and later on the questions involving Enron stock as a suitable investment and pending law suits.

As described above, on March 14, 2002, the Department of Labor announced that a team of experts from State Street Bank and Trust had been selected to administer the Enron qualified plans.<sup>1279</sup>

#### Role of Enron

The day-to-day operations of the Enron qualified plans were generally performed by the Enron Benefits Department.<sup>1280</sup> According to interviews with current and former Enron personnel, the Benefits Department processed distributions, prepared retirement packages, provided customer service, and answered telephone calls. The Benefits Department was generally responsible for employee communications with respect to Enron's retirement plans. Additionally, Benefits Department employees interviewed by Joint Committee staff reported varying levels of discretion and involvement in amendments to the plans. The Administrative Committee generally did not oversee the activities of the Enron Benefits Department.

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<sup>1279</sup> First Amendment to Enron Corp. Cash Balance Plan (Jan. 1, 2001, restatement), EC01747538-EC01747541. According to the Department of Labor announcement of the selection of State Street Bank and Trust, State Street is responsible for, among other things, the investment of Enron qualified plan assets, the selection and monitoring of investment managers, the investment of Enron qualified plan assets in employer securities, representation of the interests of the Enron qualified plans in litigation. This includes representation of the plans' interests in the Enron bankruptcy and the selection and monitoring of funds and investment options offered under the Enron Savings Plan. Department of Labor news release, *Department Of Labor Announces Enron Independent Fiduciary State Street To Replace Enron's Retirement Administrative Committee*, [www.dol.gov/opa/media/press/opa/OPA2002145](http://www.dol.gov/opa/media/press/opa/OPA2002145).

<sup>1280</sup> Third-parties, such as recordkeepers, also had responsibilities with respect to some plan activities. The appointment of State Street Bank and Trust to administer the Enron qualified plans does not appear to affect these responsibilities.



Enron, not the Administrative Committee was responsible for plan design and plan amendments. The Administrative Committee would receive briefings regarding proposed Plan changes, but typically was not involved in the decision-making process.

#### Role of the Compensation Committee

The Compensation Committee of the Board also had a role with respect to Enron Plans. The Committee approved Plan amendments; in some cases this approval was final, in other cases amendments were approved for action by the full Board of Directors. The extent to which the members of the Compensation Committee understood their role with respect to the Enron qualified plans is unclear; one former member of the Compensation Committee interviewed by the Joint Committee staff indicated he did not remember having any responsibilities with respect to such plans.

#### Membership of the Administrative Committee

During the period reviewed by Joint Committee staff, there appears to have been no formal, written process for the selection of members to the Administrative Committee. Rather, membership on the Administrative Committee was generally subject to the discretion of the Chairman of Enron. Individuals in Enron's Benefits Department would typically recommend individuals for Committee membership to the Chairman's office. If the Chairman agreed with the recommendation of the Benefits Department, he would send a letter to the individuals requesting that they volunteer for the Administrative Committee. A former chair of the Administrative Committee indicated to the Joint Committee staff that, in looking for Administrative Committee members, the general approach was to look for someone at the officer level who would be interested in serving on the Administrative Committee and who would be qualified either by background or interest. He also indicated that changes to the Administrative Committee were not made very often, so the issue did not arise very much. Another former chair of the Administrative Committee stated that he believed people within Enron viewed serving on the Administrative Committee as an honor.

The Enron qualified plans provide that Administrative Committee members served until they resigned, died, or were removed by Enron. The Enron qualified plans provide that Administrative Committee members are not compensated for their Administrative Committee service.

There was no established number of persons on the Administrative Committee. Former Administrative Committee members told the Joint Committee staff that typically, there were four to eight individuals on the Administrative Committee at various points in time.

#### Meetings of the Administrative Committee

The Administrative Committee did not have a regular meeting schedule. Meetings of the Administrative Committee were generally held at the discretion of the Administrative Committee chair.

During the period of the Joint Committee staff review, the frequency of Administrative Committee meetings varied. Minutes of Administrative Committee meetings<sup>1281</sup> as well as interviews with former Administrative Committee members demonstrate a general intent to meet quarterly. However, this did not always happen, and attendance was sometimes an issue.<sup>1282</sup>

A major gap in meetings appears to have occurred for slightly more than one year, from the October 19, 1998, meeting until the October 26, 1999, meeting. Enron informed the Joint Committee staff that the Committee did not meet during this period. However, documents provided by Enron, as well as interviews with former Administrative Committee members indicate that the Administrative Committee conducted business during this time. These sources indicate that the Enron and PGE plans were being merged, and that the Administrative Committee was involved in this merger. One member of the Administrative Committee at this time said the merger of these plans was one of the two major issues addressed during his tenure on the Administrative Committee. There are briefing materials prepared for the Administrative Committee regarding the merger dated November 1998. There are no other indications of what the Administrative Committee did during this time period. It may be that there is a gap in recordkeeping for this period.

In 2001, the Administrative Committee met quarterly until October/November, when they started meeting as frequently as weekly. In late 2001, the Administrative Committee met on a daily basis. The reason for more frequent meetings was, at first, primarily to address the issue of the change in recordkeepers and blackout period under the Enron Savings Plan.<sup>1283</sup> Later, the meetings addresses issued related to Enron's financial problems, including the possibility of obtaining an investment advisor to assess the suitability of Enron stock as an investment and pending lawsuits.

In addition to Administrative Committee members, meetings were attended by others. An Enron benefits department representative and an Enron Treasury Department representative would usually attend. The Enron Treasury Department representative generally addressed issues relating to investments under the Enron Cash Balance Plan. Others also attended on an as-needed basis, including legal counsel for Enron (in-house as well as outside counsel) and legal counsel for the Administrative Committee. The sources of legal advice for the Administrative Committee are discussed further, below.

### **Plan provisions regarding the Administrative Committee**

Under the Enron qualified plans, the Administrative Committee is to "supervise the administration and enforcement of the Plan[s] according to the terms and provisions [t]hereof and shall have all powers necessary to accomplish these purposes." Under all of the Plans, the Administrative Committee's powers include, but not by way of limitation, the right, power, authority, and duty:

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<sup>1281</sup> Minutes of the Administrative Committee Meeting (Sept. 26, 2000).

<sup>1282</sup> *Id.*

<sup>1283</sup> This issue is discussed in detail in Part II.C.4., below.

- to make rules, regulations, and bylaws for the administration of the Plan that are not inconsistent with the terms and provisions of the Plan, provided such rules, regulations, and bylaws are evidenced in writing, and to enforce the terms of the Plan and the rules and regulations promulgated thereunder by the Administrative Committee;
- to construe in its discretion all terms, provisions, conditions, and limitations of the Plan, and, in all cases, the construction necessary for the Plan to qualify under the applicable provisions of the Code shall control;
- to correct any defect or to supply any omission or to reconcile any inconsistency that may appear in the Plan in such manner and to such extent as the Administrative Committee deems expedient in its discretion to effectuate the purposes of the Plan;
- to employ and compensate such accountants, attorneys, investment advisors, and other agents, employees, and independent contractors that the Administrative Committee may deem necessary or advisable for the proper and efficient administration of the Plan;
- to determine in its discretion all questions relating to eligibility;
- to make a determination in its discretion as to the right of any person to a benefit under the Plan and to prescribe procedures to be followed by distributees in obtaining benefits;
- to prepare, file, and distribute, in such manner as the Administrative Committee determines to be appropriate, such information and material as is required by the reporting and disclosure requirements of ERISA;

With respect to the Enron Savings Plan only, the Administrative Committee also has the power:

- to require and obtain from Enron and the Plan and their beneficiaries any information or data that the Administrative Committee determines is necessary for the proper administration of the Plan;
- to instruct the trustee as to the loans to participants;
- to direct the Trustee as to the investment of the trust fund in Enron stock or Enron Oil & Gas stock as the Administrative Committee may deem to be appropriate and in accordance with the provisions of the Enron Savings Plan;
- to appoint investment managers; and
- to direct the trustee as to the exercise of rights or privileges to acquire, convert, or exchange Enron stock or Enron Oil & Gas stock.

With respect to the Enron ESOP only, the Administrative Committee has the power:

- to make a determination as to the right of any person to a benefit under the Enron ESOP;
- to receive and review reports from the Plan trustee as to the financial condition of the trust fund established under the Plan, including its receipts and disbursements;
- to instruct the trustee in the voting of Enron stock, provided, that the Administrative Committee shall follow the directions of the members to the extent required by the Plan and further provided that the Administrative Committee may in its discretion

appoint a voting fiduciary to receive voting directions from the participants and direct the trustee with respect thereto;

- to select an appraiser to value Enron stock held by the Plan;
- to direct the trustee as to the purchase and sale of Enron stock, including, but not limited to, tender or exchange decisions in accordance with Members' decisions...and decisions as to the purchase of Company Stock pursuant to the option granted to the trustee...and to cause the trustee to enter into an Exempt Loan and to purchase Enron stock for the Trust Fund with the proceeds of such Exempt loan;
- to instruct the trustee as to the loans to participants; and
- to instruct the trustee as to the management, investment and reinvestment of the trust fund generally.

With respect to the Enron Cash Balance Plan only, the Administrative Committee has the power:

- to issue directions to the trustee concerning all benefits that are to be paid from the trust fund according to the plan; and
- to receive and review reports from the trustee as to the financial condition of the trust fund, including its receipts and disbursements.

No supplemental written guidelines specifying the Administrative Committee's responsibilities were provided to Administrative Committee members.

Review of the minutes of Administrative Committee meetings and interviews with former Administrative Committee members provide a picture of the specific issues addressed by the Administrative Committee with respect to each Plan in practice. The Administrative Committee would oversee and review the performance of investments of Enron Retirement Plan/Cash Balance Plan assets made by the professional investment managers. One former Administrative Committee member described this process as follows: typically, the Administrative Committee reviewed investment performance of plan assets for the previous quarter. However, the Administrative Committee would normally not act based on a single quarter's performance. Rather, it tended to take a long-term view. If an investment manager was not performing in at least the fiftieth percentile for their family of managers, the Administrative Committee would instruct the Enron Finance or Treasury Department to analyze the performance. If the investment manager was consistently underperforming, the Administrative Committee was authorized to change investment managers. Experts would appear before the Administrative Committee and recommend investments.

The Administrative Committee would also oversee the investment options under the Enron Savings Plan. The Administrative Committee would review the investments and consider whether they were adequate and whether the participants had adequate choices. The Administrative Committee would also periodically change investment options available to Enron Savings Plan participants.

The Administrative Committee also handled participant appeals with respect to benefit determinations and other issues under all three Plans. Pursuant to Plan terms, the Enron ESOP was invested primarily in Enron stock. As a result, the Administrative Committee generally did

not review Enron ESOP Plan investments. The primary activity of the Administrative Committee with respect to the Enron ESOP was participant appeals.

### **Sources of legal advice for the Administrative Committee**

Legal counsel was available to the Administrative Committee from Enron's in-house lawyers and also from legal advisors outside Enron. The Administrative Committee had counsel that represented the Committee. In addition, the Committee received advice from outside counsel for Enron. This individual was referred to by former Administrative Committee members and Enron employees as the "ERISA counsel." Here, he is referred to as Enron's ERISA counsel. While the Enron ERISA counsel represented Enron, not the Committee, he provided advice to the Committee, as well as Enron benefits personnel, regarding a variety of matters. For example, as discussed below, the Enron ERISA counsel briefed the members of the Committee regarding their fiduciary duties.

Some Committee members may not have fully understood the precise relationship between the various legal counsel and the Committee. For example, one former Committee member indicated he was not sure whether the Enron ERISA counsel represented the Committee or Enron, but that he was consulted periodically by the Committee.

### **Overview of briefings provided to Administrative Committee members regarding their duties**

Members of the Administrative Committee received periodic briefings regarding their obligations under ERISA. During the period 1996 through 2001,<sup>1284</sup> the Administrative Committee received two briefings regarding their duties and fiduciary responsibilities. These briefings occurred at the Administrative Committee meetings of December 6, 1996, and March 9, 2000. In addition, as described below, selected issues with respect to the Administrative Committee's duties were addressed at other meetings.<sup>1285</sup>

In the meeting on December 5, 1996, the Administrative Committee was advised in a presentation by Enron's ERISA counsel that each Plan sponsored by Enron had a separate Administrative Committee, and that each Administrative Committee is a fiduciary with respect to the Plan it administers. The Administrative Committee was also advised that Enron Corp. is a fiduciary with respect to each Plan, and that the individual committee members are plan fiduciaries.

The briefing materials provided to the Committee include a summary of the basic ERISA fiduciary standards,<sup>1286</sup> including the exclusive purpose rule, the prudent man rule, the rule

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<sup>1284</sup> The first year for which the Joint Committee staff reviewed Administrative Committee minutes was 1996.

<sup>1285</sup> The materials describing the duties of the Administrative Committee presented at these meetings are included in Appendix D to this Report.

<sup>1286</sup> ERISA's fiduciary rules are described in Part II.A.3., above.

relating to diversification of investments, and the duty to act in accordance with plan documents and the “reasonable person” standard. The materials note the existence of the prohibited transaction rules, as well as rules regarding investment duties. The materials also discuss the Committee’s responsibilities with respect to appeals by plan participants.

Minutes for the March 9, 2000, Administrative Committee meeting indicate that the meeting had been called for the purpose of reviewing of the members’ duties and responsibilities. Enron’s ERISA counsel made a presentation to the members describing the members and Enron’s respective Administrative, trustee, and fiduciary duties as defined in the Enron qualified plans. The minutes state that the information was presented as documented. Unlike the December 1996, briefing, this briefing did not focus on fiduciary issues, but also addressed issues such as the role of Enron, the specific powers and duties of the Administrative Committee under the terms of the Plans, and the role of third parties. There were follow-up items that were to be researched by Enron’s ERISA counsel, including the appointing of a voting fiduciary, differentiation between “power to” versus “responsibility” and whether the Administrative Committee has shared or sole responsibility for the administration of the Enron qualified plans.

Minutes for the meeting of September 26, 2000, state that the Chair stressed the need to have Administrative Committee meetings quarterly and emphasized the importance of attendance. The minutes state that the Administrative Committee revisited the responsibilities of the Administrative Committee and referenced the March 9, 2000, meeting. The representatives from the Enron Finance and Benefits Departments were charged to list their duties and responsibilities for supporting the Administrative Committee.

In response to this last item, the September 26, 2000, minutes include the following list of duties of the Administrative Committee secretary:

- Record and hold minute records,
- Facilitate addition and removal of Committee members,
- Type agenda items as determined by the Committee,
- facilitate meeting location and time,
- distribute agenda to committee members as well as review materials provided by presenters or members themselves.

This list also indicates that the Enron Service Director of Benefits brings appeals requiring an Administrative Committee vote to the question of the Administrative Committee and that the Administrative Committee determines meeting times and agendas.<sup>1287</sup>

At the November 2, 2000, Administrative Committee meeting, there was a discussion of the Administrative Committee’s responsibilities with respect to the decision of the outsourcing of the Enron qualified plans and whether the Administrative Committee was responsible for reviewing the expenses of outsourcing. The Committee Secretary advised the Administrative Committee that, based on the presentation made by ERISA counsel at the March 9, 2000,

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<sup>1287</sup> The materials presented at this meeting are included in Appendix D to this Report.

meeting, this issue was specifically addressed and determined to be the role of Enron and not the Administrative Committee. The Committee Secretary was directed to obtain written documentation of this from Enron ERISA counsel.

#### **4. The Enron Corp. Retirement Plan (“Enron Retirement Plan”)**

##### **Historical background**

Enron established the Enron Corp. Retirement Plan, a defined benefit plan, effective July 1, 1986, as an amendment and restatement of the InterNorth, Inc. Retirement Income Plan II. At the same time, the Houston Natural Gas Corporation Retirement Plan, maintained by HNG, was merged into the Enron Retirement Plan. For the period preceding July 1, 1986, participants in the Enron Retirement Plan were generally credited with their service in amounts equal to all service credited under predecessor plans as such plans existed on June 30, 1986.

The Enron Retirement Plan was amended and restated and renamed the Enron Corp. Cash Balance Plan effective January 1, 1996.

##### **Plan features**

###### **Participation**

Individuals employed by Enron, one of its subsidiaries, or affiliated companies on its domestic payroll who were age 21 or older generally were eligible to participate in the Enron Retirement Plan. In general, such employees could participate in the Enron Retirement Plan beginning on the first day of the month of their first anniversary of employment, as long as they had worked at least 1,000 hours during that year. Collective bargaining unit employees were generally not eligible to participate in the Enron Retirement Plan.

###### **Benefits**

Participants in the Enron Retirement Plan accrued benefits under a final average pay formula. Under the formula, participants were generally entitled to benefits based upon the sum of different percentages of their final average pay multiplied by years of accrued service.<sup>1288</sup> Contributions to the Enron Retirement Plan by participants were not permitted.<sup>1289</sup>

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<sup>1288</sup> For example, the January 1, 1989, restatement of the Enron Retirement Plan, provided that participants who retire on or after their normal retirement date are entitled to receive a benefit that is the actuarial equivalent of a pension beginning on the first day of the month coinciding with or next following the date of their retirement, each monthly payment is equal to: (1) 1.45 percent of participant’s final average pay multiplied by years of accrual service not in excess of 25 years; plus (2) 0.45 percent of the participant’s final average pay multiplied by years of accrual service in excess of 25 years, up to a maximum of 10 years; plus (3) 0.45 percent of final average pay in excess of a factor related to Social Security integration; plus (4) 1 percent of final average pay multiplied by years of accrual service in excess of 35 years; plus (5) one-twelfth of an amount equal to 25 percent of the aggregate contributions (without interest) made by the participant to the Houston Natural Gas Corporation Retirement

Effective January 1987, Enron established a floor-offset arrangement, involving the Enron Retirement Plan and the Enron ESOP.<sup>1290</sup> Under the floor-offset arrangement, a participant's accrued benefit in the Enron Retirement Plan is offset by the annual annuity value<sup>1291</sup> of Enron stock held in the participant's Retirement Subaccount as of certain determination dates, generally the date that benefit payments from the Enron Retirement Plan commence. However, distributions from the Enron ESOP before the determination date were also taken into account.

Depending on the value of Enron stock, the amount of the offset might be greater than the value of a participant's benefit under the Enron Retirement Plan at any given time. If so, the excess in the Enron ESOP Retirement Subaccount would have been used to offset the participant's future benefits under the final average pay formula. If the offset amount was less than the benefit under the Enron Retirement Plan, the Enron Retirement Plan would pay the portion of the benefit that is not offset by the Enron ESOP Retirement Subaccount. In 1994, the Enron Retirement Plan was amended to provide that the offset would not apply with respect to benefits accrued after 1994 and the amount of the offset for prior years would be set over the period 1996-2000. These amendments are discussed in detail in Part II.C.2., below.

### Vesting

Participants were fully vested in their benefits under the Enron Retirement Plan after five years of service with Enron.

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Plan before February 1, 1980, excluding any contributions refunded to the participant; minus (6)(a) the monthly benefit payable from the normal retirement date under the life annuity form used to determine the value of assets transferred from the InterNorth, Inc. Retirement Income Plan, or a lump sum amount paid with respect to a period of employment include in accrual service otherwise factored in and (b) the monthly benefit commencing at age 65 the participant has received or is entitled to receive under any other qualified defined benefit plan to the extent attributable to a period of service or employment for which the participant is credited with accrual service under the plan. Sec. 5.1, Enron Retirement Plan (Jan. 1, 1989, restatement). (Items (1) through (4) of the computation appears to describe annual benefit amounts, and so must be divided by 12 for a monthly amount.)

<sup>1289</sup> However, according to sec. 11.1 of the Enron Retirement Plan (Jan. 1, 1989, restatement), contributions were made to the Plan by participants through prior plans.

<sup>1290</sup> The floor-offset arrangement does not affect benefits earned before 1987. See the discussion of the Enron ESOP in Part II.B.5.

<sup>1291</sup> The annual annuity value is the dollar amount available each year if the account balance at retirement were used to purchase an annuity, using standard assumptions for life expectancy and interest. The value of the ESOP offset was based on the amount of a monthly single life annuity that could be purchased by the value of an individual's ESOP offset as of certain determination dates. For purposes of this calculation, Enron assumed annuity returns of 8.5 percent annually.



## Distributions

Benefits under the Enron Retirement Plan were generally payable in the case of retirement, disability, or death and were paid in the form of an annuity. The automatic form of benefit was a single life annuity or a joint and survivor annuity in the case of married participants. Participants could also choose certain other optional forms of benefit, including a term certain annuity and a lump sum, in certain cases.

## Compliance

The IRS issued favorable determination letters with respect to the tax-qualified status of the Enron Retirement Plan on June 2, 1988, and December 20, 1995. The Plan was amended and restated effective as of January 1, 1989.<sup>1292</sup>

On July 24, 1994, Enron requested an advisory opinion from the Department of Labor<sup>1293</sup> concerning the Enron Retirement Plan and Enron ESOP as to whether a proposed restructuring of the plans and dismantling of the floor-offset arrangement with respect to future benefit accruals would cause it to be newly “established” such that it would lose its grandfathered status under ERISA.<sup>1294</sup> Enron proposed to split the Enron ESOP from the defined benefit plan and

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<sup>1292</sup> Certain documents provided to Joint Committee staff indicate that Enron entered into a closing agreement for 1989 and 1990 in order for the Enron Retirement Plan to remain qualified.

<sup>1293</sup> An advisory opinion is an opinion of the Department of Labor as to the application of one or more sections of ERISA, regulations promulgated under ERISA, ERISA interpretive bulletins, or exemptions from certain ERISA provisions issued by the Department of Labor to a specific factual situation. ERISA Procedure 76-1, 41 Fed. Reg. 36281 (Aug. 27, 1976). The advisory opinion is a written statement issued to an individual or organization, or to the authorized representative of such individual or organization, and typically applies only to the situation described in the request and provides reliance only to the parties described in the request for the opinion. *Id.*

<sup>1294</sup> Previously, in December 1992, Enron requested an advisory opinion from Department of Labor for the Enron ESOP and for the Enron Retirement Plan. Letter from Vinson & Elkins to Department of Labor, (Dec. 8, 1992). Pursuant to a series of intercorporate transactions, Enron intended to transfer certain of its affiliates’ assets and liabilities to Enron Oil Trading & Transportation Company (“EOTT”), a wholly-owned subsidiary of Enron. *Id.* After completion of such transfers, the Enron ESOP was to receive EOTT shares incident to the spinoff in the same manner as any other shareholder of Enron. *Id.* EOTT shares received by the Enron ESOP were to be credited to participants’ accounts in the ESOP with reference to the shares of Enron Stock credited to such accounts. *Id.* Enron sought the Department of Labor’s opinion (1) that the grandfather provision of sec. 9345(a)(3) of OBRA 1987 would not be rendered inapplicable by the Enron ESOP’s retention of the EOTT shares; (2) that the sale by the Enron ESOP of the EOTT shares pursuant to the spinoff and the investment of the proceeds of such sale in Enron stock would not render the grandfather provision of sec. 9345(a)(3) of OBRA 1987 inapplicable; and (3) that the sale by the Enron ESOP of the EOTT shares pursuant to the

allocate no additional shares of Enron stock to the offset account as of December 31, 1994. Enron proposed to permanently fix the value of one-fifth of the shares of Enron stock allocated to each participant's offset account each January 1 during the period 1996-2000. In connection with the restructuring, the Enron Board of Directors adopted an amendment to the Enron Retirement Plan to temporarily suspend accruals. If the Department of Labor had not issued favorable opinions regarding the restructuring, the suspension of accruals under the Enron Retirement Plan would have been retroactively rescinded as though the suspensions had never been made.<sup>1295</sup>

Advisory Opinion 94-42A was issued to Enron by the Department of Labor on December 9, 1994. According to the Advisory Opinion, Enron's dismantling of the floor-offset arrangement over a five-year period would not adversely affect the application of the special provision.

## **5. The Enron Corp. Employee Stock Ownership Plan ("Enron ESOP")**

### **Historical background**

Enron Corp. established the Enron ESOP effective November 1, 1986. The Plan document and summary plan description state that the primary purpose of the Plan was to enable plan participants to acquire stock ownership interests in Enron. The Enron ESOP also provided that it could be used to meet Enron's general financing requirements, including capital growth and transfer in the ownership of Enron stock. The Plan document also provides that the Enron ESOP may receive loans (or other extensions of credit) to finance the acquisition of Enron stock, secured primarily by a commitment by Enron to make contributions to the plan sufficient to repay principal and interest on the loan and employer securities acquired with the loan. The Enron ESOP was funded from two transactions, the proceeds of an exempt loan transaction and a reversion from a terminating pension plan within the Enron controlled group.

During 1986, Enron loaned the Enron ESOP \$335 million to purchase shares of Enron Corp. common stock that had previously been held as treasury stock. As a result of this purchase, the Enron ESOP held approximately 19 percent of Enron's outstanding common stock. During 1987, \$230 million of the principal amount of the loan was repaid with proceeds received from the terminating InterNorth, Inc. Pension Plan I.<sup>1296</sup> Stock acquired with the loan proceeds

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spinoff and the investment of the proceeds of such sale in assets other than Enron stock would not render the grandfather provision of sec. 9345(a)(3) of OBRA 1987 inapplicable. *Id.* By letter dated January 18, 1994, Enron withdrew its request for an advisory opinion.

<sup>1295</sup> Notice of Temporary Suspension of Accruals under the Enron Corp. Retirement Plan, EC000020212.

<sup>1296</sup> Notes to Financial Statements, 1990 Form 5500 for the Enron Savings Plan, at 5. The mechanics of this repayment are described variously in different sources. Enron's July 21, 1994, request for an advisory opinion from the Department of Labor explains that a block of Enron stock was purchased by the Enron ESOP in February 1987 with \$230 million received by Enron as the reversion.

and the reversion were held in suspense accounts in the Plan and allocated to participants over the period required under applicable law (in the case of the reversion) and the terms of the exempt loan (in the case of the exempt loan amount). Cumulative cash dividends paid on Enron stock held by the trustee were used to make the periodic payments of principal and interest necessary to retire the loan.<sup>1297</sup> The final payment on the Enron ESOP loan was made in March 1993.<sup>1298</sup>

The Enron ESOP was amended and merged into the Enron Savings Plan effective August 30, 2002, with the result that the provisions of the Enron Savings Plan generally replace the provisions of the Enron ESOP in their entirety.<sup>1299</sup> Pursuant to the merger, the assets held under the Enron ESOP would be transferred to the Enron Savings Plan to be held under the trust maintained thereunder. Participants in the Enron Savings Plan who participated in the Enron ESOP are entitled to benefits at least equal to the benefit they would have been entitled to receive immediately before the merger if the Enron ESOP was then terminated. Enron ESOP participants who did not otherwise participate in the Enron Savings Plan as of the date of the merger became participants in the Enron Savings Plan as of that date.

## **Plan features**

### Participation

As originally adopted, the Enron ESOP covered most full-time employees and certain part-time employees of Enron and other entities adopting the Enron ESOP. Full-time employees could begin participating in the Enron ESOP on the date they began working for Enron. Part-time or temporary employees could generally begin participating in the Enron ESOP on the January 1 following their one-year anniversary of working for Enron. Employees generally excluded from Enron ESOP participation were: employees whose terms and conditions of employment were governed by a collective bargaining agreement, nonresident aliens receiving no earned income from U.S. sources, and leased employees. Beginning January 1, 1995, new Enron employees were no longer allowed to participate in the Enron ESOP.

### Contributions/allocations

The Enron ESOP provided that contributions by Enron were to be made in amounts authorized by the Board of Directors and were payable in cash or in shares of Enron stock, as determined by the Board of Directors. Although the Enron ESOP provided for discretionary employer contributions, Enron has never made any direct contributions to it (i.e., account balances are attributable to the shares purchased with the 1986 loan and the 1987 reversion).<sup>1300</sup>

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<sup>1297</sup> 1993 Form 5500, Notes to Financial Statements.

<sup>1298</sup> *Id.*

<sup>1299</sup> “Merger of Enron Corp. Employee Stock Ownership Plan with and into Enron Corp. Savings Plan,” EC 000899959-000899961, <http://www.enron.com/corp/proofsofclaim/plans.html>.

<sup>1300</sup> Form 5300 Attachment I, Item 11b.

Participants in the Enron ESOP were neither required nor permitted to make contributions to the plan. Rollovers from amounts received from an IRA or annuity or from another qualified plan were accepted.

Each participant's account in the Enron ESOP was comprised of separate subaccounts: a Savings Subaccount and a Retirement Subaccount. In general, at the end of each year, shares of Enron common stock were allocated (1) to each participant's Savings Subaccount in an amount equal to 10 percent of the participant's compensation for the year and (2) to each participant's Retirement Subaccount based on the participant's length of service with Enron, age, and compensation. Additionally, Enron made a five percent allocation to a Special Allocation Subaccount for participants who were actively employed by Enron on December 31, 1994.<sup>1301</sup> This five percent allocation was made in lieu of an accrual for 1995 to the Enron Retirement Plan.<sup>1302</sup>

The initial loan made in 1986 to fund the Enron ESOP was held in a Suspense Account, which was credited with Enron stock acquired with the proceeds of the exempt loan. The Enron ESOP provided that as of the last day of each plan year, a certain number of shares of financed stock held in a stock suspense account would be allocated to participants' accounts. Allocations to participants from the suspense account were made over periods required (1) under applicable law (in the case of the reversion amount) and (2) by the terms of the exempt loan (in the case of the exempt loan amount). All payments on the exempt loan were made out of dividends on the stock held in the suspense account as well as out of allocated stock held by the Enron ESOP.

Beginning January 1, 1987, the Enron ESOP was integrated with the Enron Retirement Plan as part of the floor-offset arrangement. Significant changes were made to the operation of the offset in 1994.<sup>1303</sup>

The Enron ESOP was amended to provide final allocations to participants' Retirement Subaccounts and Savings Subaccounts for 1994. Although the Enron ESOP was ongoing, no further allocations were made to participants' accounts.

### Vesting

Participants were vested in their Enron ESOP accounts at a rate of 25 percent for each year they worked for Enron. Any amounts forfeited by participants who were not fully vested

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<sup>1301</sup> Questions and answers for use by Enron human resources personnel in responding to questions from employees (Jan. 1995), included in Appendix D. The allocations made under the Enron ESOP are discussed in Part II.C.1.

<sup>1302</sup> *Id.* Enron estimated that the shares actually allocated to participants' accounts would be approximately 4.4 to 4.6 percent of base pay, net of dividends. *Id.* Questions and answers for use by Enron human resources personnel in responding to questions from employees state that the difference would be made up in the allocation under the Enron Cash Balance Plan for 1996. *Id.*

<sup>1303</sup> The floor-offset arrangement is discussed in detail in Part II.C.1., below.

upon termination of employment were available, after a five-year holding period, for allocation to a Special Allocation Subaccount for participants who are eligible to receive them. Participants terminating employment with Enron for reasons other than retirement, total or permanent disability, or death were entitled to their vested interest in their account. Participants who attained normal retirement age under the Plan or terminated employment with Enron due to business circumstances, layoff, or corporate reorganization were 100 percent vested in amounts allocated to their accounts.

An Enron ESOP participant who was actively employed by Enron as of December 31, 1994, the date the plan was frozen, was 100 percent vested in his or her Retirement Subaccount, as required by law.

### Loans

Under the 1989 restatement of the Enron ESOP, loans to participants were permitted. The amount of any loan could not exceed the lesser of 50 percent of the total value of a participant's vested interest in the participant's Savings Subaccount and \$50,000. Loans are not permitted under the 1999 restatement of the Enron ESOP.

### Distributions and withdrawals

In general, the Enron ESOP provided that participants were entitled to a benefit based on the total value of their accounts as of the date they turn age 65 or terminate employment with Enron. Participants are generally required to begin receiving distributions by the April 1 following the calendar year in which they turn age 70½. If participants left Enron before turning age 65, they generally were entitled to receive the vested portion of their Retirement Subaccount balance upon turning age 55<sup>1304</sup> and the vested portion of their Savings Subaccount 90 days after leaving Enron.<sup>1305</sup>

Initially, participants in the Enron ESOP could elect to receive their benefits in a lump sum or periodic installment payments for a term not longer than fifteen years.<sup>1306</sup> In general, participants could elect to receive their distributions from the Enron ESOP in shares of Enron stock.<sup>1307</sup> Beginning in 1989, participants could elect to receive benefits in the form of an annuity purchased from an insurance company, but could no longer elect installment payments.<sup>1308</sup> Effective November 1, 1996, the Enron ESOP was amended to provide that the

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<sup>1304</sup> This rule also applied to the Special Allocation Account which held a special allocation made to participants' accounts in 1994. *See* Part II.C.1., below.

<sup>1305</sup> Sec. 12.1(a)(iii), Enron ESOP (Jan. 1, 1999, restatement).

<sup>1306</sup> Sec. 11.02(a), Enron ESOP (effective Nov. 1, 1986).

<sup>1307</sup> Sec. 11.02(c), Enron ESOP (effective Nov. 1, 1986), Sec. 12.2, Enron ESOP (Jan. 1, 1989, restatement), and Sec. 12.2(c), Enron ESOP (Jan. 1, 1999, restatement).

standard benefit generally was a joint and survivor annuity for married participants and a single life annuity for unmarried participants.<sup>1309</sup> However, the 1999 restatement of the Enron ESOP provided that an annuity was an alternative form of benefit to the standard lump sum. As described below, effective August 15, 2001, the Enron ESOP was amended to eliminate all forms of benefit other than lump sums.

In connection with the phasing out of the floor-offset arrangement, the Enron ESOP was amended effective March 1, 1994, to provide eligible participants access to the shares of Enron stock allocated to their Savings Subaccount.<sup>1310</sup>

Beginning in 1996, dividends from shares of Enron stock in all of participants' subaccounts, including those to which they had not yet gained access, began to be paid directly to them each quarter.<sup>1311</sup>

Under the version of the Enron ESOP effective in 1989, participants could withdraw (1) from his or her Enron ESOP Savings Subaccounts amounts held for 24 months or more which were not in excess of the greater of 100 shares of Enron stock or 25 percent of the vested balance of his or her account or (2) allocations of company contributions, financed stock, or reversion amounts credited to his or her Enron ESOP Savings Subaccount for at least 60 cumulative months, but any case not more than the greater of 100 shares of Enron stock or 25 percent of the value of the vested interest in his or her ESOP Savings Subaccount.<sup>1312</sup> Under the 1999 restatement of the Enron ESOP, the limits were changed to the vested interests of participants' ESOP Savings Subaccount.

### Compliance

The IRS issued a favorable determination letter for the Enron ESOP on June 2, 1988. The Enron ESOP was amended and restated effective January 1, 1989.

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<sup>1308</sup> Sec. 12.2, Enron Corp. ESOP (Jan. 1, 1989, restatement). The annuity distribution option was initially added by Enron effective January 1, 1990, under the Fifth Amendment to the Enron Corp. ESOP (effective Nov. 1, 1986).

<sup>1309</sup> Twelfth Amendment to the Enron ESOP (Jan. 1, 1989, restatement), effective Nov. 1, 1996. Under the amendment, the Enron ESOP provided that the annuity was the standard form of benefit with respect to the portion of participants' accounts not subject sec. 409(h). Sec. 409(h) provides that a participant who is entitled to a distribution from the plan has the right to demand that his or her benefit be distributed in the form of employer securities or if the employer securities are not readily tradeable on an established market has a right to require that the employer repurchase employer securities under a fair valuation formula.

<sup>1310</sup> The details of this process are discussed in Part II.C.1., below.

<sup>1311</sup> *Enron - Benefit Plans and Related Programs, Policies and Practices--Employee Stock Ownership Plan* (Dec. 14, 2001), EC000021272-EC000021280.

<sup>1312</sup> Enron ESOP section 13.2 (Jan. 1, 1989, restatement).

By letter dated January 6, 1993, Enron submitted to the IRS requests for rulings with respect to the Federal income tax consequences of proposed transactions involving the Enron ESOP. Enron intended to transfer certain assets and liabilities to Enron Oil Trading & Transportation Company ("EOTT"), a wholly-owned subsidiary of Enron. After completing such transfers, Enron would distribute all of its EOTT shares to its shareholders in a spinoff transaction. After the spinoff, Enron would no longer own any EOTT shares, EOTT would not own any equity interest in Enron and EOTT would not maintain or sponsor the Enron ESOP for its employees. As a holder of Enron stock, the Enron ESOP would receive EOTT shares incident to the spinoff in the same manner as any other shareholder of Enron. EOTT shares received by the Enron ESOP would be credited to participants' accounts in the Enron ESOP. Enron requested rulings with respect to the applicability of certain excise taxes relating to prohibited transactions and employer reversions from qualified plans.<sup>1313</sup>

In general, in a letter dated December 20, 1993,<sup>1314</sup> the IRS ruled that, for purposes of the section 4975(a) excise tax on prohibited transactions, it would not be a violation of the requirement that an ESOP invest primarily in qualifying employer securities if shares of EOTT stock or assets other than Enron stock purchased with the proceeds from the sale of such shares are allocated to participants accounts on the same basis as are Enron shares. As such, the excise tax on prohibited transactions would not apply.<sup>1315</sup>

Additionally, the IRS ruled that the spinoff transaction would satisfy an exception to the section 4980(a) excise tax on the amount of an employer reversion from a qualified plan.<sup>1316</sup> Specifically, the IRS ruled that the retention by the Enron ESOP of the shares of EOTT stock which are allocated to a reversion suspense account under the Enron ESOP until distribution to participants would not be treated as a disposition of Enron shares.<sup>1317</sup> The IRS also ruled favorably on the sale by the Enron ESOP of the shares of EOTT stock which are allocated to the reversion suspense account and the use of the proceeds from such sale to acquire Enron stock.<sup>1318</sup> However, the IRS ruled that the sale of EOTT shares and the use of the proceeds from such sale to acquire assets other than Enron stock would violate the requirement that employer securities purchased with a reversion amount remain in the Enron ESOP until distribution to participants in accordance with the plan terms.<sup>1319</sup>

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<sup>1313</sup> Specifically, Enron requested rulings as to the applicability of secs. 4975(a) and 4980(a).

<sup>1314</sup> Priv. Ltr. Rul. 9411038 (Dec. 20, 1993).

<sup>1315</sup> *Id.*

<sup>1316</sup> *Id.*

<sup>1317</sup> *Id.*

<sup>1318</sup> *Id.*

<sup>1319</sup> *Id.*

The IRS issued favorable determination letters for the Enron ESOP on August 20, 1993, and March 6, 1996. The Plan was amended and restated effective January 1, 1999.

In late February or early March 2000, the Enron ESOP was referred to the IRS National Office for technical advice in connection with the issue of whether the Enron ESOP was at all times required to offer a joint and survivor spouse annuity as the standard form of benefit rather than as an alternative form of benefit to the Enron ESOP's standard lump sum distribution form.<sup>1320</sup> The IRS is currently reviewing this issue.

An application for determination of the tax-qualified status of the Enron ESOP was submitted to the IRS on February 15, 2002. The application requested that the IRS take into account all of the plan qualification requirements of the Uruguay Round Agreements Act, the Small Business Job Protection Act of 1986, the Uniformed Services Employment and Reemployment Rights Act of 1994, the Taxpayer Relief Act of 1997, the Restructuring and Reform Act of 1998, and the Community Renewal Tax Relief Act of 2000.

### **Plan provisions in effect in 2001 and 2002**

Effective January 1, 2001, the Enron ESOP was amended to preclude that Enron would make any contributions to the Enron ESOP.<sup>1321</sup>

Beginning August 15, 2001, all forms of distribution from the Enron ESOP except lump sums were eliminated.<sup>1322</sup> Additionally, the Enron ESOP was amended effective November 1, 2001, to provide that regular withdrawals from the Enron ESOP would be paid in company stock unless the participant elected to receive a withdrawal in cash.

As described above, the Enron ESOP was amended and merged into the Enron Savings Plan effective August 30, 2002.<sup>1323</sup> The assets held under the Enron ESOP were transferred to the Enron Savings Plan. Participants in the Enron Savings Plan who participated in the Enron ESOP are entitled to benefits at least equal to the benefit they would have been entitled to receive immediately before the merger if the Enron ESOP was then terminated. Enron ESOP participants who did not otherwise participate in the Enron Savings Plan as of the date of the merger became participants in the Enron Savings Plan as of that date.

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<sup>1320</sup> Attachment I to Form 5300 for Enron ESOP, submitted to the IRS on February 15, 2002.

<sup>1321</sup> Adoption of Administrative Procedures Relative to the Suspension of Contributions to the Enron Corp. Employee Stock Ownership Plan (executed Feb. 12, 2002), EC2000008923.

<sup>1322</sup> As described below, the IRS is currently reviewing this issue.

<sup>1323</sup> "Merger of Enron Corp. Employee Stock Ownership Plan with and into Enron Corp. Savings Plan", EC 000899959-000899961, <http://www.enron.com/corp/proofsofclaim/plans.html>.



## **6. The Enron Corp. Cash Balance Plan (“Enron Cash Balance Plan”)**

### **Historical background**

Effective January 1, 1996, the benefit formula under the Enron Retirement Plan was changed from the traditional defined benefit formula to a cash balance formula.<sup>1324</sup> Additionally, the Plan was amended, restated, and renamed “the Enron Corp. Cash Balance Plan.”

### **Plan features**

#### **Participation**

Employees of Enron who were age 21 or older were generally eligible to participate in the Enron Cash Balance Plan, except nonresident aliens who receive no earned income from sources within the United States, leased employees, individuals who are designated, compensated, or otherwise classified or treated by Enron as an independent contractor or other non-common law employee, and any employees whose terms and conditions of employment are governed by a collective bargaining agreement unless such agreement provides for coverage under the Plan.

#### **Benefits**

On conversion to the cash balance formula, each participant under the Enron Retirement Plan retained the benefit of their final average pay formula benefit based on their compensation and service as of December 31, 1994, which was the last day prior to the 1995 plan year during which all accruals under the Enron Retirement Plan were suspended. Thus, the benefit under the Enron Cash Balance Plan is equal to this preserved benefit plus amounts earned under the cash balance formula.

Hypothetical accounts are maintained for the participants in the Enron Cash Balance Plan. Such accounts are generally credited with five percent of participants’ monthly base pay.<sup>1325</sup> Additionally, at the end of each calendar month for which participants have cash balance accounts, their accounts are credited interest based on 10-year Treasury bond yields.

The Enron Cash Balance Plan does not accept rollover contributions from other qualified plans or IRAs.

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<sup>1324</sup> For a general description of the characteristics of cash balance plans, see Part II.A.2., above.

<sup>1325</sup> A special accrual was credited to the accounts of participants hired on or before Dec. 31, 1995. Their accounts were credited with 1.223 percent of their annualized base pay for each calendar month in 1994, EC000020097. Second Amendment to Enron Corp. Cash Balance Plan (effective Jan. 1, 1996) (executed May 6, 1997).

### Vesting

Participants in the Enron Cash Balance Plan are fully vested in their benefit under the plan on the earlier of completing five years of service or attaining the normal retirement age under the plan, which is age 65. If an Enron Cash Balance Plan participant accrued benefits under the Enron Retirement Plan under the final average pay formula, they are 100 percent vested in those benefits at all times.

### Distributions

The standard form of benefit for a participant who is married on his or her annuity starting date is a joint and survivor annuity. The standard form of benefit for a participant who is not married is an annuity payable for the life of the participant. Participants in the Enron Cash Balance Plan could also elect one of the following optional forms of benefit:

- (1) A single life annuity for the participant's life;
- (2) An annuity for the joint lives of the participant and any joint annuitant designated by the participant providing 50 percent or 100 percent benefits to the surviving joint annuitant;
- (3) For the portion of the participant's benefit consisting of a final average pay benefit, an annuity for a term certain of five, ten, or fifteen years and continuous for the life of the participant if the participant survives such term certain or continuing to the end of such term certain to the beneficiary or beneficiaries designated by the participant in the event of the participant's death before the end of such term certain; or
- (4) A single lump sum cash payment for the portion of the participant's benefit under the cash balance formula.

Participants in the Enron Cash Balance Plan can receive their benefits upon normal and early retirement, disability, termination, and on an employee's death. Payment of benefits generally begins after a participant reaches the Plan's normal retirement age of 65. However, participants may withdraw the vested portion of their benefit that accrued after 1995 if they leave Enron for any reason. The Enron Cash Balance Plan also provides for an early retirement benefit.

### Compliance

The IRS issued favorable determination letters to the Enron Cash Balance Plan on December 20, 1995, November 14, 1996, and January 22, 1997.

An IRS examination of the Enron Cash Balance Plan resulted in a request by IRS examiners for technical advice from the IRS National Office during 2000. The request arrived in National Office of the IRS on March 17, 2000, and is currently under review.

On April 12, 2000, Enron submitted to the IRS a request for a determination of the tax-qualified status of the Enron Cash Balance Plan.

On September 5, 2000, the Enron Cash Balance Plan was submitted to the National Office for review, in accordance with a September 15, 1999, directive from the National Office of the IRS that all qualification determination filings and field audits with respect to defined benefit plans which have been or are being converted from one formula into a cash balance formula be referred to the National Office of the IRS in connection with its ongoing review of technical issues relating to such conversions.<sup>1326</sup> The IRS notified Enron that its request for a determination letter would be associated with the 2000 request for technical advice from IRS examiners.

An application for determination of the tax-qualified status of the Enron Cash Balance Plan was submitted to the IRS on February 15, 2002. The application requested that the IRS take into account all of the plan qualification requirements of the Uruguay Round Agreements Act, the Small Business Job Protection Act of 1986, the Uniformed Services Employment and Reemployment Rights Act of 1994), the Taxpayer Relief Act of 1997, the Restructuring and Reform Act of 1998, and the Community Renewal Tax Relief Act of 2000.

#### **Plan provisions in effect in 2001 and 2002**

The Enron Cash Balance Plan was amended and restated effective January 1, 2001.

In general, participation in the 2001 version of the Enron Cash Balance Plan was open to the same Enron employees as under the January 1, 1996, version of the Plan.

Participants in the Enron Cash Balance Plan are generally credited with a cash balance accrual equal to five percent of their compensation for each month during which they are employed by Enron and otherwise qualify to participate in the Plan. Enron Cash Balance Plan participants are at all times 100 percent vested in their final average pay benefit under the Enron Retirement Plan benefit formula.

In general, the normal retirement benefit under the Enron Cash Balance Plan is equal to the sum of participants' monthly final average pay benefit under the Enron Retirement Plan benefit formula and the monthly amount derived by converting their cash balance benefit as of their annuity starting date into a single life annuity. A portion of the final average pay benefit otherwise payable under the Enron Cash Balance Plan will be offset by the equivalent annuity value of a participant's interest in the Enron ESOP as determined over the period 1996-2000. The normal form of retirement benefit for a participant who is married on their annuity starting date will be a joint and survivor annuity. For a participant who is not married on their annuity starting date, the normal form of benefit will be an annuity payable for the life of the participant.

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<sup>1326</sup> Announcement 2003-1, 2003-2 I.R.B. 281, <http://www.irs.gov/pub/irs-drop/a-03-1.pdf>.

In October 2002, the PBGC filed claims against Enron in its bankruptcy proceeding.<sup>1327</sup> The PBGC's claim for unfunded benefit liabilities of the Enron Cash Balance Plan was approximately \$270 million.<sup>1328</sup> The PBGC's estimate of the underfunding may increase if the IRS rules adversely on the phasing out of the floor-offset arrangement<sup>1329</sup> and the benefits attributable to offset amounts become liabilities of the Enron Cash Balance Plan.<sup>1330</sup>

Accruals under the Enron Cash Balance Plan were frozen as of December 31, 2002.

## **7. The Enron Corp. Savings Plan ("Enron Savings Plan")**

### **Historical background**

The Enron Savings Plan began as a plan originally effective June 1, 1956.<sup>1331</sup> The Enron Savings Plan is a defined contribution plan which provides for elective deferrals pursuant to section 401(k),<sup>1332</sup> and after-tax contributions. Additionally, Enron contributed as matching contributions to the Enron Savings Plan amounts equal to a percentage of participants' contributions. Enron's matching contributions were discontinued effective November 28, 2001.<sup>1333</sup>

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<sup>1327</sup> See, e.g., Statement of the Pension Benefit Guaranty Corporation in Support of Its Claim for Unfunded Benefit Liabilities of the Enron Corp. Cash Balance Plan, at paragraph 8, filed in *In re Enron Corp., et al*, Case No. 01-16034, U.S. Bankruptcy Court, Southern District of New York.

<sup>1328</sup> This represents the PBGC's estimate of the Plan's underfunding.

<sup>1329</sup> The phasing out of the floor-offset arrangement is discussed in detail in Part II.C.1., below.

<sup>1330</sup> The PBGC estimates that the unfunded benefit liabilities could increase by as much as 100 percent or more if the phasing out of the floor-offset arrangement is deemed to have been illegal and the benefits attributable to offset amounts again become liabilities of the Enron Cash Balance Plan. See, e.g., Statement of the Pension Benefit Guaranty Corporation in Support of Its Claim for Unfunded Benefit Liabilities of the Enron Corp. Cash Balance Plan, at paragraph 8, filed in *In re Enron Corp., et al*, Case No. 01-16034, U.S. Bankruptcy Court, Southern District of New York, discussed in Part II.B.2., below.

<sup>1331</sup> Forms 5500 for the Enron Savings Plan.

<sup>1332</sup> The Enron Savings Plan refers to elective deferrals as "Before-Tax Contributions." See discussion in Part II.A.2., above.

<sup>1333</sup> First Amendment to Enron Corp. Savings Plan (As Amended and Restated Effective July 1, 1999), DOL020351-DOL020354.

## Plan features

### Participation

In general, all employees of Enron are eligible to participate in the Enron Savings Plan. Exceptions include nonresident aliens with no U.S. source income, leased employees, and employees whose terms and conditions of employment are governed by a collective bargaining agreement. Participation is voluntary and generally begins on the first day of the first month coincident with or next following the date on which an employee first works for Enron.<sup>1334</sup>

The HNG Savings Plan was merged into the Enron Savings Plan effective July 1, 1986. Participants in the HNG Savings Plan were immediately covered by the provisions of the Enron Savings Plan. The Enron Savings Plan was amended and restated effective January 1, 1989, January 1, 1994, and July 1, 1999. From time to time, other plans were merged into the Enron Savings Plan as a result of corporate events.<sup>1335</sup>

### Contributions

Participants may contribute to the Enron Savings Plan from one percent to 15 percent of their base pay<sup>1336</sup> in any combination of elective deferrals or after-tax contributions, subject to certain limits prescribed by the Code.<sup>1337</sup> The Enron Savings Plan also accepts certain qualifying

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<sup>1334</sup> Additionally, a number of participants in the Enron ESOP who did not otherwise participate in the Enron Savings Plan as of the August 30, 2002, merger of the plans may have become participants in the Enron Savings Plan as of that date.

<sup>1335</sup> Effective June 1, 1999, the portion of the Koch General Holdings, Inc. Retirement Savings Plan consisting of the accounts of those individuals who became employed by EOTT Energy Corp. as a result of that entity's acquisition in 1998 of certain assets of Koch Industries, Inc. were merged into the Enron Plan. The OmniComp Inc., Salary Savings Plan, Bentley Engineering Co. Savings Plan, and Portland General Holdings, Inc. Retirement Savings Plan were also merged into the Enron Savings Plan as of June 1, 1999. Effective September 1, 1999, a portion of the Cogen Technologies 401(k) Savings Plan, consisting of accounts attributable to Cogen participants who became employed by Enron were merged into the Enron Savings Plan. Effective February 1, 2001, the WarpSpeed Communications 401(k) Plan was merged into the Enron Savings Plan. Source: Form 5300 Application for Determination for Employee Benefit Plan, Attachment I, Item IX (February 12, 2002).

<sup>1336</sup> The Enron Savings Plan generally defines "base pay" as a participant's basic rate of compensation for a payroll period (or other period established by the Administrative Committee) based on the hourly pay rate, weekly salary, established benefit rate, or similar unit of base compensation applicable to the participant under regular payroll accounting as of the last day of the period. The plan provides that the base pay of any participant taken into account for purposes of the plan is limited to the applicable limit under sec. 401(a)(17).

<sup>1337</sup> The maximum amount of the permitted employee contribution as a percentage of based pay varied historically.

contributions rolled over from individual retirement accounts and annuities and other qualified plans (“rollover contributions”).

Additionally, Enron contributed as matching contributions to the Enron Savings Plan amounts equal to a percentage of participants’ contributions. Enron’s matching contributions were credited to a separate account called the “company contribution account.” The amount of the matching contribution made by Enron varied over time.<sup>1338</sup> As described above, Enron’s matching contributions were discontinued effective November 28, 2001.<sup>1339</sup>

On at least one occasion, Enron also made a special cash contribution to the Enron Savings Plan on behalf of active, regular full-time Enron employees.<sup>1340</sup>

### Investments

Investments under the Enron Savings Plan are discussed in detail in Part II.C.5., below. A general overview is provided here.

The Enron Savings Plan permits participants to direct the investment of their elective deferrals, after-tax contributions, and rollover contributions to the Enron Savings Plan. Participants have approximately 20 investment options to choose from, including Enron stock and a self-directed brokerage account subject to certain restrictions defined by the Plan.<sup>1341</sup> Plan participants can change their investment mix on a daily basis.<sup>1342</sup>

The Enron Savings Plan provides that all Enron matching contributions are invested in the common stock of Enron corp. Only upon attaining age 50, participants can elect to reallocate their company contribution account balances to other investment options offered under the Enron Savings Plan.

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<sup>1338</sup> The amount of the matching contribution made by Enron is discussed in detail in Part II.C.5.

<sup>1339</sup> Third Amendment to Enron Corp. Savings Plan (July 1, 1999, restatement).

<sup>1340</sup> *EnSight* (Nov. 1996), EC000020134-EC000020137.

<sup>1341</sup> *Enron Explains Basic Facts About Its 401k Savings Plan*, <http://www.enron.com/corp/pressroom/releases/2001/ene/100-121401ReleaseLtr.html>; *Retirement Insecurity: 401(k) Crisis at Enron*, Hearing before the Committee on Governmental Affairs, United States Senate, S.Hrg. 107-378, at 32 (Feb. 5, 2002). Beginning July 1, 1999, participants could also begin choosing to invest their contributions through a Schwab self-directed brokerage account, subject to certain restrictions, as defined by the plan. 1999 SEC Form 11-K.

<sup>1342</sup> *Enron - Benefit Plans and Related Programs, Policies and Practices--Savings Plan* (May 31, 2002), <http://www.enron.com/corp/proofsofclaim/plan/SavingsPlanSPD.pdf>.

### Vesting

Under the Enron Savings Plan, participants are fully vested at all times in their elective deferrals, after-tax contributions and rollover contributions. Participants vest in their company contribution accounts at a rate of 25 percent per year of service but are automatically 100 percent vested in such accounts upon attaining age 65. For plan years 1998 and later, the Plan was amended to provide that participants are fully vested in their company contribution accounts.<sup>1343</sup> In connection with the July 1, 1999, restatement of the Enron Savings Plan, the plan was amended to provide that participants hired by Enron prior to July 1, 1999, were 100 percent vested in their company contribution accounts and the actual earnings thereon. Participants hired on or after July 1, 1999, would become vested in the company contribution account after completing one year of service (or, prior to one year of service, upon reaching age 65, becoming totally and permanently disabled, involuntary termination, or upon death while an employee).

### Loans

Additionally, participants can borrow a minimum of \$1,000, up to a maximum amount equal to the lesser of \$50,000 or 50 percent of their vested balance under the Enron Savings Plan but cannot have more than one loan outstanding at a time. Loan terms cannot exceed five years, except for loans used to purchase a primary residence. Additionally, the Enron Savings Plan provides that effective January 1, 1998, participants can withdraw from their company contribution account amounts that were allocated prior to such date if held for 24 months or more, but not in excess of their vested interest in such amounts.<sup>1344</sup>

### Distributions and withdrawals

The Enron Savings Plan provides that participants may receive a distribution of the vested balance under the Plan due to termination of service, death, disability, or retirement. Distributions must begin no later than April 1 following the calendar year in which they attain age 70½. Normal retirement date under the Enron Savings Plan is the date a participant turns age 65.

Historically, such distributions could be paid out in the form of a joint and survivor annuity for married persons, a single life annuity for unmarried persons, or in the form of a single lump sum payment. As discussed at below, effective August 15, 2001, all forms of benefit payable from the Enron Savings Plan except lump sum distributions were eliminated.

Participants who choose to leave Enron and whose vested balance is greater than \$5,000 can leave their balance in the Plan or receive it as an annuity or lump sum. Balances of \$5,000 or less are automatically distributed in a lump sum.

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<sup>1343</sup> Sixth Amendment to Enron Corp. Savings Plan (Jan. 1, 1999, restatement).  
DOL020424-DOL020425.

<sup>1344</sup> *Id.*

Participants in the Enron Savings Plan can make certain withdrawals from the Enron Savings Plan while they are still employed by Enron.<sup>1345</sup>

### Compliance

The IRS issued favorable determination letters to the Enron Savings Plan on June 22, 1988, and March 5, 1996. The Plan was amended and restated effective January 1, 1989, January 1, 1994, and January 1, 1999.

An application for determination of the tax-qualified status of the Enron Savings Plan was submitted to the IRS on February 15, 2002. The application requested that the IRS take into account all of the plan qualification requirements of the Uruguay Round Agreements Act, the Small Business Job Protection Act of 1986, the Uniformed Services Employment and Reemployment Rights Act of 1994, the Taxpayer Relief Act of 1997, the Restructuring and Reform Act of 1998, and the Community Renewal Tax Relief Act of 2000.

### **Plan provisions in effect in 2001 and 2002**

Effective August 15, 2001, all forms of benefits payable from the Enron Savings Plan except lump sum distributions were eliminated. Any individual who had a right to receive a distribution from the Enron Savings Plan and had elected payment or commencement of payment before August 15, 2001, had the right to elect any form of payment as provided under the then current terms of the plan.

The Enron Savings Plan was amended effective November 28, 2001, to eliminate Enron's matching contributions unless they were required to continue the tax-qualified status of the Enron Savings Plan. Any matching contributions made after November 28, 2001, (other than contributions attributable to periods before such date) were made in cash. At the same time, the Enron Savings Plan was amended to provide that participants may invest the amounts in their company contribution account among the investment alternatives offered under the Plan.

Effective February 15, 2002, the Plan was amended to provide that the portion of a rollover contribution including Enron stock or other "employer securities" will continue to be so invested until the participant elects to convert it into another investment under the Plan. Effective March, 15, 2002, the Enron Savings Plan was amended to provide that participants may not elect to convert any investment of any portion of their account into an investment in Enron stock or any other "employer security."

As described above, the Enron ESOP was amended and merged into the Enron Savings Plan effective August 30, 2002, with the result that the provisions of the Enron Savings Plan

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<sup>1345</sup> In general, participants can withdraw any amount not in excess of the value of the after-tax contributions or rollover contributions in their account. Withdrawals can be made from the company contribution account so long as the amount is attributable to contributions allocated thereto prior to 1987 and in certain other limited cases. Participants aged 59½ or older may withdraw an amount not in excess of the value of the elective deferrals in their account. Enron Savings Plan sec. 11.1 (July 1, 1999, restatement).



generally replace the provisions of the Enron ESOP in their entirety.<sup>1346</sup> Pursuant to the merger, the assets held under the Enron ESOP were transferred to the Enron Savings Plan to be held under the trust maintained thereunder. Participants in the Enron Savings Plan who participated in the Enron ESOP are entitled to benefits at least equal to the benefit they would have been entitled to receive immediately before the merger if the Enron ESOP was then terminated. Enron ESOP participants who did not otherwise participate in the Enron Savings Plan as of the date of the merger became participants in the Enron Savings Plan as of that date.

Coincident with the August 30, 2002, merger of the Enron ESOP with and into the Enron Savings Plan, participants' Enron ESOP accounts were initially invested in Enron stock, notwithstanding any pre-existing investment direction of an Enron Savings Plan participant. After the initial transfer of Enron ESOP accounts to the Enron Savings Plan, the plan amendment provided that participants would be permitted to direct the investment of their Enron ESOP plan accounts in accordance with the Enron Savings Plan. Upon investment by a participant of any portion of their Enron ESOP plan account in any investment other than Enron stock, the amount would no longer be part of the Enron ESOP and would become part of the Enron Savings Plan.<sup>1347</sup>

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<sup>1346</sup> “Merger of Enron Corp. Employee Stock Ownership Plan with and into Enron Corp. Savings Plan”, EC 000899959-000899961, <http://www.enron.com/corp/proofsofclaim/plans.html>.

<sup>1347</sup> *Id.*