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The Texas PUC Has Acted Aggressively, Exercising its Statutory Authority Why Hasn't FERC? "The Fox Is Guarding The Henhouse"

June 5, 2002

Dear Colleague:

In a letter dated May 29, 2002, to Enron Power Marketing, Inc., the Public Utility Commission (PUC) of Texas advised that its staff was seeking to exercise its policy and regulatory authority and it was recommending that Enron be fined a $7,080,000 penalty. The Texas PUC recommended the $7,080,000 penalty "for EPMI's illegal and anti-competitive conduct ... The amount of the penalty is based on the egregiousness and repetition of the violations, the seriousness of the violations in terms of the impact on the integrity of the ERCOT market, the resulting economic harm, previous history of violations, and efforts to correct the violations." In short, the Texas PUC has taken aggressive, appropriate action in this matter.

On February 13, 2002, the FERC ordered that a staff fact-finding investigation be conducted, but declined to initiate a Section 206 investigation. On May 6, 2002, the FERC obtained the so-called "smoking gun" memos, the likes of which would have made Woodward and Bernstein green with envy. These memos reflect egregious, serious violations of the Federal Power Act by Enron. Chairman Wood, one of the two members of the FERC hand picked by Enron's own Ken Lay, acknowledges that these memos are "very serious." However, notwithstanding these memos and the totality of the circumstances surrounding Enron, the FERC has refused to take aggressive action, like that of the Texas PUC. Among other things, the FERC has refused to:

- Initiate a Section 206 investigation
- Revoke market-based pricing authority
- Refund California's consumers the $8.9 billion overcharged by energy companies

The pervasive and unethical and illegal behavior admitted by Enron should have triggered much more aggressive action by FERC and hasn't. The influence Enron and Ken Lay had over the appointments of both Chairman Wood and Commissioner Brownell is disturbing on its face. The refusal of Chairman Wood and FERC to aggressively pursue Enron's misdeeds only compounds this debacle. Just yesterday FERC issued an Order to Show Cause why market-based rate authority should not be revoked to four energy traders, including an Enron subsidiary. Issuing the Order to Show Cause simply provides the companies the opportunity to provide better, more self-serving responses to FERC. In fact, Commissioner Brownell stated that "she expected that the four companies would most likely provide satisfactory explanations and ultimately avert a formal order revoking their authority." This latest failure is eerily similar to the May-August 2001 FERC investigation into Enron. At that time, the FERC concluded that there was "no reason for concern and no cause for action." Really??

Sincerely,

Bill Pascrell, Jr.

Bill Pascrell, Jr.
Member of Congress