BILL PASCRELL, JR.
8TH DISTRICT, NEW JERSEY

WASHINGTON OFFICE:
1722 LONGWORTH HOUSE OFFICE BUILDING
WASHINGTON, DC 20515
(202) 225-5751
(202) 225-5782 FAX

PATERSON OFFICE:
ROBERT A. ROE FEDERAL BUILDING
200 FEDERAL PLAZA, SUITE 500
PATERSON, NJ 07505
(973) 523-5152
(973) 523-0637 FAX

Congress of the United States
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"The Fox is Guarding the Henhouse"

May 17, 2002

Dear Colleague:

The following are excerpts from articles which appeared in *The New York Times* and *Boston Globe* on May 10, 2002. The articles pointedly make the case that the public has no reason to have faith in FERC. FERC is supposed to be the energy industry's watchdog, yet two current Commission members, Chairman Pat Wood and Nora Mead Brownell, were literally hand picked by Enron.

In testimony before the Senate Commerce, Science and Transportation Committee on May 15, FERC Chairman Wood indicated that Enron had 367 meetings with FERC staff between May, 2000 and June, 2001. Interestingly, Chairman Wood neglected to provide information about his own contacts with Enron, despite several requests made to him, including that of Rep. Henry Waxman on February 28. Notwithstanding these contacts, Chairman Wood testified that he "did not believe that Enron's scope of contacts with our employees or managers have been inappropriate ... nor that Enron or any of its affiliates has had any undue influence on the decision-making process at the Commission." I am not persuaded.

Keep in mind that FERC turned a blind eye to the power catastrophe that occurred last year, until relentless Congressional urging finally prompted action. Perhaps FERC believed that displaying the "smoking gun" memos on its website would assuage the many concerns surrounding FERC's failure to act and the very real appearance of a conflict of interest. Put simply, this is insufficient.

When California's PUC President, Loretta Lynch testified before the Senate Commerce, Science and Transportation Committee on May 15, she made the following statement: "FERC has done its best to put off in depth investigations, refused to work with the state on investigating these problems jointly and by manipulating their own administrative processes, has refused to allow California to present its case to a neutral judge in federal court." In short, the fox continues to guard the henhouse.

Very truly yours,

Bill Pascrell Jr

Bill Pascrell, Jr.

Smoking Fat Boy –*New York Times* May 10, 2002

By PAUL KRUGMAN

An old joke: A farmer hears suspicious noises in his henhouse. "Who's there?" he calls out. "Nobody here but us chickens," replies the thief. Satisfied, the farmer goes back to bed.
That about sums up the behavior of federal regulators during California's electricity crisis. As I've been pointing out for more than a year, there is powerful circumstantial evidence that market manipulation played a key role in that crisis. Energy companies had the motive, the means and the opportunity to drive prices sky-high. And the crisis exhibited exactly the features you would expect if market manipulation was playing a big role: much of the state's generating capacity stood idle even as wholesale electricity prices went to 50 times normal levels.

Yet federal officials, from George W. Bush on down, offered California nothing but sermons on the virtues of the free market. The Federal Energy Regulatory Commission, which is supposed to police these things, found no evidence of foul play. Essentially, FERC asked energy companies whether they were manipulating the market. "Who, us?" they replied — and that was that. My favorite FERC study found that power companies had the ability to exercise "market power," and that it would have been profitable for them to do so, but that there was no evidence that they actually had. Those power executives must be swell guys!

The significance of the "smoking gun" Enron memos that came to light a few days ago is that they show exactly how swell those power executives really were. It turns out that Enron was indeed rigging the markets, with schemes that had smart-alecky nicknames like Fat Boy, Death Star and Get Shorty. Who said business isn't fun?

These memos came to light despite FERC's evident determination to see no evil. (We now know that the Bush administration in effect allowed Enron to choose the commission's members.) As one California official put it: "FERC is like a parent who doesn't want to believe their teenager has gone bad. The memos are significant because they are like finding a diary in the kid's backpack saying, 'I robbed the liquor store.'"

A BOSTON GLOBE EDITORIAL

An indictment of Enron-May 10, 2002

Since no contributor was more generous to President Bush than Enron's former CEO, Kenneth Lay, the administration has acted promptly to minimize fallout from the disclosure. A Bush spokesman said federal energy regulators would "vigorously" investigate.

Throughout the crisis, the energy industry said the root causes were California's failure to build new generating capacity and a deregulation system that capped electric rates for consumers but not for electric distribution companies. For its part, the Bush administration dismissed allegations of market manipulations even while it was putting together an energy policy that on 17 points reflected Enron's interests, according to US Representative Henry Waxman of California.

While the new chairman of the Federal Energy Regulatory Commission, Patrick Wood III, deserves credit for promptly posting the Enron memos on FERC's Web site, the agency itself made two investigations during the crisis and came up with nothing. Consumers will have little faith that their interests are being protected during energy deregulation if the public's watchdogs aren't up to the job. Thorough inquiries by FERC and the Justice Department can restore that faith and, perhaps, help Californians get some money back.