How the White House Energy Plan Benefitted Enron

Prepared for Rep. Henry A. Waxman

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EXECUTIVE SUMMARY

This report, which was prepared at the request of Rep. Henry A. Waxman, examines the White House energy plan prepared by the White House energy task force under the direction of Vice President Cheney and compares the policies in the White House energy plan to those advocated by Enron. The analysis in the report is based on testimony of Enron officials before Congress, other public statements by Enron officials, Enron lobbying materials distributed to Congress, lobbying disclosure reports filed by Enron lobbyists, and news accounts of Enron positions.

The White House energy task force was formed on January 29, 2001, under the name the White House National Energy Policy Development Group (NEPD Group). The President released the White House energy plan that the task force developed on May 17, 2001. According to the Office of the Vice President, the task force met six times with Enron executives. The first meeting took place on February 22, 2001, about three weeks after the formation of the task force. On April 17, 2001, the Vice President met personally with Enron CEO Kenneth Lay to discuss the energy policy. The last meeting between task force officials and Enron executives apparently took place on October 10, 2001, less than one week before Enron announced the $1.2 billion reduction in shareholder value that precipitated Enron's collapse.[1]

The analysis in this report reveals that numerous policies in the White House energy plan are virtually identical to the positions Enron advocated. In total, there are at least 17 policies in the White House energy plan that were advocated by Enron or that benefitted Enron financially. These policies fall into four general categories: (1) policies that promote the deregulation of the electricity market; (2) policies that promote energy derivatives and commodities markets; (3) policies that expand natural gas and oil production; and (4) other policies that benefitted Enron.

In the area of electricity deregulation, the White House energy plan supports an expansive form of the controversial policy of "open access," which guarantees energy traders like Enron access to the transmission lines of electric utilities. In 1999, Enron told members of Congress that this policy was Enron's "single most important initiative." The White House plan also supports the repeal of the Public Utility Holding Company Act (PUHCA), an action that would have enabled Enron to increase its ownership of electric utility companies. In February 2000, Enron lobbied Congress for "a provision granting FERC-certified transmission projects the power of eminent domain" so that power lines could be constructed more expeditiously. The White House energy plan endorses this policy, even though it conflicts with traditional state authority over transmission siting decisions. In addition, the plan includes several other deregulation initiatives supported by Enron, including one provision that would help energy traders like Enron gain new rights of access to the power lines maintained by the Bonneville Power Administration.

In the area of energy derivatives, the plan endorses trading in energy derivatives, one of

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[1]Letter from David S. Addington, Counsel to the Vice President, to Rep. Henry A. Waxman (Jan. 3, 2002).

Enron's core businesses. The plan calls unregulated over-the-counter derivatives -- the kind sold by Enron -- "sophisticated and customizable." And it recommends that "the U.S. government should continue to support the development of efficient derivatives markets."

Other provisions of the White House plan would facilitate Enron's ability to expand its existing natural gas pipelines in the United States or build new ones. The energy plan even offers U.S. backing for natural gas development in India, where Enron has a major natural gas fueled power plant that has been embroiled in financial difficulties.

Even in areas where Enron did not get every policy it advocated, the White House energy plan is helpful to the company. In the area of global warming, for example, the plan does not support the mandatory controls on carbon dioxide emissions sought by Enron. But the plan does direct federal agencies to identify "market mechanisms" to address global warming, which would help develop the type of market in carbon credits sought by Enron.

The policies in the White House energy plan did not benefit Enron exclusively. And some of the policies may have independent merit. Nevertheless, it is unlikely that any other corporation in America stood to gain as much from the White House energy plan as Enron.

I. RECOMMENDATIONS RELATING TO DEREGULATION OF THE ELECTRIC UTILITY INDUSTRY

Deregulation of the electric utility industry is Enron's hallmark issue. Historically, the electric utility industry has operated through regulated monopolies that supply electricity in well-defined service territories. Enron has persistently worked to reshape the industry through legislation and administrative action at the state and federal level. Enron claimed that allowing consumers to choose their electricity providers would reduce consumer costs, save the government money, promote innovation, and even reduce inflation.[2] This section describes nine policies advocated by Enron to deregulate the electric utility industry and increase access to transmission lines which were adopted in the White House energy plan.

A. "Open Access" to Electricity Transmission Facilities

Enron Position. Expansion of federal control over the transmission network has been a longtime goal of Enron. Federal control over the transmission network would allow for "open access" and "equal access" to transmission lines -- both of which were critical to Enron's vision of electricity trading and a top priority for them in Congress.[3] In 1999, Enron wrote members of Congress: "We believe the single most important initiative for Congress to address is a legislative directive to require all uses of our nation's transmission lines, whether used by the

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[2]Enron, *Customer Choice in Electricity and You* (1997) (brochure provided by Enron to members of Congress).

[3]*See, e.g.*, Enron, *Comments on H.R. 2944, "Electricity Competition and Reliability Act"* (Feb. 1, 2000).

transmission owners or by third parties, to be allowed the same tariff choices."[4] With regard to electricity, Enron viewed this as the "most critical" issue.[5]

White House Energy Plan. The White House energy plan adopted the Enron position. The plan supports using federal authority over the transmission grid to increase access to transmission systems:

- The NEPD Group recommends that the President direct the appropriate federal agencies to take actions to remove constraints on the interstate transmission grid and allow our nation' electricity supply to meet the growing needs of our economy.[6]

- The NEPD Group recommends that the President encourage FERC to use its existing statutory authority to promote competition . . . in transmission facilities.[7]

The energy plan refers to "assuring open access to the interstate and international transmission system" as a "core federal issue."[8] In a subsequent letter to members of Congress which "details the Administration's position regarding electricity legislation," the Administration spelled this out more plainly.[9] With regard to open access, the Administration recommended:

> Open Access: Clarify FERC authority to issue Order 888 (a challenge is pending before the Supreme Court). Grant FERC authority to require State and municipal utilities and rural electric cooperatives to provide open access to their transmission systems.[10]

The White House decision to support Enron's proposed expansion of access to transmission facilities was controversial. Many publicly owned utilities and small rural utilities which are cooperatively owned oppose these provisions. For example, the National Rural

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[4]Letter from Cynthia C. Sandherr, Enron Corporation, to Rep. Henry A. Waxman (Sept. 20, 1999).

[5]Letter from Cynthia C. Sandherr, Enron Corporation, to Rep. Tom Bliley, House Commerce Committee (Mar. 3, 2000).

[6]Report of the White House National Energy Policy Development Group, 7-7,8.

[7]Report of the White House National Energy Policy Development Group, 5-12.

[8]Report of the White House National Energy Policy Development Group, 5-12.

[9]Letter from Dan R. Brouillette, Department of Energy, to Rep. Henry A. Waxman (Oct. 9, 2001).

[10]Letter from Dan R. Brouillette, Department of Energy, to Rep. Henry A. Waxman (Oct. 9, 2001). FERC issued Order 888 to open access to transmission lines of FERC-jurisdictional entities.

Electric Cooperative Association recently testified before Congress that it "opposes efforts to subject electric cooperatives to the jurisdiction of FERC. That expansion of jurisdiction would unnecessarily impose heavy financial burdens on electric cooperatives and their consumer-owners."[11]

B. Repeal of the Public Utility Holding Company Act of 1935

Enron Position. Enron has lobbied Congress to repeal the Public Utility Holding Company Act of 1935 (PUHCA).[12] This law limits the types of business activities that a "public utility holding company" can engage in. Enron owns one electric utility, Portland General Electric. Under PUHCA, Enron could have been considered a "public utility holding company" if it had acquired additional electric utilities, and it would then have been required to divest from its other business interests, such as its trading business. In contrast, if PUHCA were repealed, Enron would have been free to acquire additional public utilities.

White House Position. The White House energy plan supported PUHCA repeal. The White House energy plan states:

> The NEPD Group recommends that the President direct the Secretary of Energy to propose comprehensive electricity legislation that . . . repeals the Public Utility Holding Company Act.[13]

The White House decision to support PUHCA repeal was controversial. Many consumer groups, for example, believe that PUHCA protects consumers by ensuring that a holding company does not purchase a public utility only to siphon off its resources into other investments. The National Association of State Consumer Advocates (NASUCA) testified regarding PUHCA repeal:

> NASUCA . . . has repeatedly testified in opposition to PUHCA repeal – at least until new systematic protections against affiliate abuse and cost shifting within holding companies are in place. Competition in wholesale markets is too powerful a force to operate without the structural restraints that PUHCA has imposed since 1935.[14]

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[11]Testimony of Mr. Glenn English, CEO, National Rural Electric Cooperative Association, before the House Subcommittee on Energy and Air Quality, hearing on H.R. 3406, "The Electric Supply and Transmission Act of 2001" (Dec. 13, 2001).

[12]*Enron Corp. Comments on Chairman Barton's August 4, 1999 - Discussion Draft "Electricity Competition and Reliability Act"* (Sept. 20, 1999). Enron, *Comments on H.R. 2944, "Electricity Competition and Reliability Act"* (Feb. 1, 2000).

[13]Report of the White House National Energy Policy Development Group, 5-12.

[14]Testimony of Stephen Ward, Public Advocate, State of Maine, and President, The National Association of State Utility Consumer Advocates, before the Senate Committee on

The Administration correspondence detailing the Administration's energy plan calls on Congress to repeal PUHCA, but does not include provisions to address affiliate abuse or cost-shifting within holding companies, which consumer groups have identified as necessary.[15]

C. Federal Eminent Domain for Siting of Transmission Facilities

Enron Position. To help achieve Enron's goal of an expanded electricity grid, Enron has long lobbied for legislation to authorize the federal government to exercise the power of eminent domain to override state opposition in siting of transmission facilities.[16] In 2000, Enron wrote to members of Congress, "Enron recommends that the legislation also include a provision granting FERC-certified transmission projects the power of eminent domain, so as to enable such projects to proceed more expeditiously."[17] Enron testified before Congress to emphasize the importance of this issue as recently as October 10, 2001.[18]

The White House Energy Plan. The White House energy plan endorsed the Enron position, despite the Bush Administration's stated support for states' rights.[19] The White House energy plan directly reflects Enron's recommendation that the federal government should be able to override states in this instance, stating that "[t]he siting process must be changed to reflect the interstate nature of the transmission system."[20] According to the plan:

> The NEPD Group recommends that the President . . . [d]irect the Secretary of Energy, in consultation with appropriate federal agencies and state and local government officials, to develop legislation to grant authority to obtain rights-of-way for electricity transmission lines, with the goal of creating a reliable national transmission grid.[21]

Energy and Natural Resources (July 25, 2001).

[15]Letter from Dan R. Brouillette, Department of Energy, to Rep. Henry A. Waxman (Oct. 9, 2001).

[16]Enron, *Comments on Chairman Barton's August 4, 1999 - Discussion Draft "Electricity Competition and Reliability Act"* (Sept. 20, 1999).

[17]Enron, *Comments on H.R. 2944, "Electricity Competition and Reliability Act,"* 10 (Feb. 1, 2000).

[18]Testimony of Mr. James Steffes, Vice President of Government Affairs, Enron Corporation, before the House Subcommittee on Energy and Air Quality (Oct. 10, 2001).

[19]*E.g., Leavitt and Bush Talk Turkey in Texas,* Deseret News (Jan. 7, 2001) ("Bush also pledged a new federal respect for states' rights").

[20]Report of the White House National Energy Policy Development Group, 7-7.

[21]Report of the White House National Energy Policy Development Group, 7-8.

The White House decision to support federal eminent domain was controversial. States have always had authority to site transmission facilities, and they oppose this intrusion into their traditional authority. The Western Governor's Association recently wrote members of Congress:

> We oppose granting FERC the authority to preempt state authority to site transmission lines. FERC does not have the expertise, resources or local knowledge to successfully undertake these tasks. Western states have an excellent record in balancing the competing land use demands while enabling the siting and permitting of interstate transmission.[22]

D. Expansion of Transmission Facilities

Enron Position. In communications to Congress, Enron has called for expansion of electricity transmission facilities to support the national electricity markets they envision.[23]

White House Energy Plan. The White House energy plan adopted the Enron position on the necessity of expanding the physical transmission grid. The White House energy plan states: "America needs more . . . energy projects to connect supply sources to growing markets and to deliver energy to homes and businesses."[24] It continues, "we must greatly enhance our ability to transmit electric power between geographic regions, that is, sending power to where it is needed from where it is produced. . . . The system is simply unequipped for large-scale swapping of power in the highly competitive market of the 21st century."[25]

The White House energy plan has several specific recommendations relating to expanding the transmission system:

- The NEPD Group recommends that the President [d]irect the Secretary of Energy, by December 31, 2001, to . . . identify transmission bottle necks, and identify measures to remove transmission bottlenecks.[26]

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[22]Letter from the Govs. Jane Dee Hull, Jim Geringer, and John Kitzhaber, Western Governors' Association, to Reps. Billy Tauzin, John Dingell, Joe Barton, and Rick Boucher (Oct. 24, 2001).

[23]Enron, *Enron Corp. Comments on H.R. 2944, "Electricity Competition and Reliability Act," as reported from the Subcommittee on Energy and Power on October 27, 1999* at 10 (Feb. 1, 2000) (memorandum) attachment to Letter from Cynthia C. Sandherr, Enron Corp. to Rep. Tom Bliley (Mar. 3, 2000).

[24]Report of the White House National Energy Policy Development Group, xii.

[25]Report of the White House National Energy Policy Development Group, xii.

[26]Report of the White House National Energy Policy Development Group, 7-7.

- The NEPD Group recommends that the President [d]irect the federal utilities to determine whether transmission expansions are necessary to remove constraints.[27]

- The NEPD Group recommends that the President direct the Secretary of Energy to authorize the Western Area Power Administration to explore relieving the "Path 15" bottleneck through transmission expansion financed by nonfederal contributions."[28]

In the subsequent letter to members elaborating on the White House energy policy, the Administration requested that Congress grant FERC additional authority to order new transmission facilities to be built under a relaxed administrative procedure:

> Transmission Expansion: Under current law, FERC can issue wheeling orders that require transmitting utilities to enlarge their transmission systems, but these orders are terminated if the State does not approve siting. The proposal authorizes FERC to issue wheeling orders on its own motion, and allows FERC to issue an order based on an informal hearing rather than an adjudicatory hearing.[29]

The White House decision to support extensive construction of new transmission facilities was controversial. Experts in the electricity field, as well as some state regulators, argue that enhanced investments in efficiency or distributed generation is often more cost-effective and secure than expansion of transmission lines.[30] Additionally, the head of an independent system operator that serves several Eastern states, recently testified:

> Congress should provide deference to decisions reached through balanced regional planning processes that are open and which do not favor transmission solutions over generation solutions or one technology over another.[31]

E. Federally Owned Transmission Facilities

Enron Position. Enron has lobbied to gain access to the transmission assets of federal facilities, such as those owned by the Bonneville Power Administration in the Northwest or those

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[27]Report of the White House National Energy Policy Development Group, 7-7, 8.

[28]Report of the White House National Energy Policy Development Group, 7-6.

[29]Letter from Dan R. Brouillette, Department of Energy, to Rep. Henry A. Waxman (Oct. 9, 2001).

[30]*See* Richard Cowart, Regulatory Assistance Project, *Efficient Reliability: The Critical Role of Demand-Side Resources in Power Systems and Markets*, 11-22 (June 2001) (report prepared for the National Association of Regulatory Utility Commissioners).

[31]Testimony of Mr. Phillip G. Harris, President and CEO, PJM Interconnection, before the House Subcommittee on Energy and Air Quality, hearing on Electricity Transmission Policy (Oct. 10, 2001).

owned by the Tennessee Valley Authority in the Southeast. Enron has written to members of Congress: "Enron supports putting all transmission under FERC's jurisdiction in order to further the goals of open access and competition. This should apply equally to all Federal facilities, including the Bonneville Power Administration (BPA), the Tennessee Valley Authority (TVA), and other power marketing administrations (PMAs)."[32]

White House Energy Plan. The White House energy plan adopted the Enron position on access to federally owned transmission facilities, stating that "reforming the role of federal electric utilities in competitive markets"[33] is a key issue for congressional action. The energy plan makes recommendations to ensure that the Bonneville Power Administration has the funding necessary to participate in a regional transmission organization (RTO), which would ensure that power marketers like Enron would have access to BPA's transmission lines.[34]

In subsequent correspondence that details the Administration's electricity policy, the Administration elaborates on this issue, requesting Congress to:

- Remove the TVA "fence" in current law that prevents electricity suppliers other than TVA from selling into the region, and prevents TVA from selling outside the region. . . . Grant FERC jurisdiction over TVA wholesale power sales outside the region to the same extent and in the same manner as is it regulates sales by public utilities.[35]

- Grant FERC jurisdiction over the BPA transmission system to the same extent as public utilities.[36]

- Grant FERC jurisdiction over [PMA] transmission systems to the same extent as public utilities. Authorize PMAs to participate in RTOs.[37]

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[32]Enron, *Comments on Chairman Barton's August 4, 1999 - Discussion Draft "Electricity Competition and Reliability Act"* (Sept. 20, 1999); Enron, *Comments on H.R. 2944, "Electricity Competition and Reliability Act"* (Feb. 1, 2000).

[33]Report of the White House National Energy Policy Development Group, 5-12.

[34]Report of the White House National Energy Policy Development Group, 7-8.

[35]Letter from Dan R. Brouillette, Department of Energy, to Rep. Henry A. Waxman, 4 (Oct. 9, 2001).

[36]Letter from Dan R. Brouillette, Department of Energy, to Rep. Henry A. Waxman, 5 (Oct. 9, 2001).

[37] Letter from Dan R. Brouillette, Department of Energy, to Rep. Henry A. Waxman, 5 (Oct. 9, 2001).

F. Uniform Interconnection Procedures and Standards

Enron Position. Enron has strongly advocated that FERC should establish interconnection procedures and standards for new power plants to facilitate their connection to the electrical grid.[38] As an energy trader, such standards would benefit Enron by ensuring that independently produced power has easier access to transmission facilities.

White House Energy Plan. The White House energy plan supported the Enron position. The White House energy plan agrees that the absence of uniform interconnection standards is a problem, stating: "The lack of interconnection standards or guidelines for electricity supply and loads impedes the use of distributed energy technologies. . . . Although a few states have established interconnection standards, there is no national standard to facilitate development of distributed energy."[39] In the subsequent letter to Congress detailing the White House energy policy, the Administration advocated that Congress require FERC to establish interconnection standards and grant FERC additional authority to order interconnection:

> Interconnection Standard: Direct FERC to establish uniform rules governing interconnection with both local distribution facilities and transmission facilities. Require local distribution companies to interconnect with generation facilities if the owner complies with this rule and pays the direct costs of interconnection. . . . Direct FERC to address procedures for interconnection with transmission facilities that address cost.
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> Interconnection Orders: FERC has authority under current law to order interconnection. Four changes are made to current law: (1) FERC is allowed to initiate orders on its own motion, (2) FERC is allowed to issue an order after informal hearings, rather than adjudicatory hearings, (3) FERC is authorized to order interconnection to promote competition (rather than the limited bases in current law), and (4) the universe of applicants for such orders is expanded.[40]

G. "Incentive Rates" for Transmission Facilities

Enron Position. In communications to Congress, Enron has recommended that FERC establish "incentive rates" for transmission facilities.[41] These incentive rates would allow

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[38]Enron, *Enron Corp. Comments on H.R. 2944, "Electricity Competition and Reliability Act," as reported from the Subcommittee on Energy and Power on October 27, 1999*, 13 (Feb. 1, 2000) (memorandum) attachment to Letter from Cynthia C. Sandherr, Enron Corp. to Rep. Tom Bliley (Mar. 3, 2000).

[39]Report of the White House National Energy Policy Development Group, 6-15.

[40]Letter from Dan R. Brouillette, Department of Energy, to Rep. Henry A. Waxman, 3 (Oct. 9, 2001).

[41]Enron, *Comments on Chairman Barton's August 4, 1999 - Discussion Draft "Electricity Competition and Reliability Act,"* 4 (Sept. 20, 1999).

transmission facility owners to collect additional profits above a normal rate of return on investment for investments in transmission systems.

White House Energy Plan. The White House energy plan adopted the Enron position, stating: "There is a need to ensure that transmission rates create incentives for adequate investment in the transmission system."[42] The following recommendations from the plan would help or directly establish incentive rates for electricity transmission:

- The NEPD Group recommends that the President . . . [d]irect the Secretary of Energy to work with FERC to relieve transmission constraints by encouraging the use of incentive rate-making proposals[43]

- The NEPD Group recommends that the President encourage FERC to use its existing statutory authority to promote competition and encourage investment in transmission facilities.[44]

The White House decision to support FERC adoption of incentive rates for new transmission facilities was controversial. Some powerful interests have argued for Congress to enact legislation to establish incentive rates.[45] Other industry experts have opposed incentive rates as an unjustified subsidy. For example, according to the American Public Power Association, "incentive rates for transmission service . . . are unnecessary, inconsistent with the Commission's responsibilities to ensure only just and reasonable rates for transmission, and will certainly lead to higher costs for consumers."[46]

H. Comprehensive Electricity Restructuring Legislation

Enron Position. Enron has recognized that many of the deregulation proposals it promotes are most likely be achieved through legislation to restructure the electric utility industry. As a result, Enron has lobbied heavily to promote comprehensive electricity restructuring legislation. Enron wrote to members of Congress in 1999: "Enron urges this Congress to pass comprehensive electric restructuring legislation. . . . [W]e thank you for your

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[42]Report of the White House National Energy Policy Development Group, 7-7.

[43]Report of the White House National Energy Policy Development Group, 7-7.

[44]Report of the White House National Energy Policy Development Group, 5-12.

[45]Testimony of Mr. Stanley F. Szwed, Vice President, Transmission, FirstEnergy Corp., before the House Subcommittee on Energy and Air Quality (Oct. 10, 2001) (testifying on behalf of the Edison Electric Institute in favor of legislation to establish incentive pricing).

[46]Testimony of Mr. Alan Richardson, American Public Power Association, before the House Subcommittee on Energy and Air Quality (Dec. 13, 2001).

support of this badly needed federal legislation."[47] Both Mr. Lay and Jeffrey Skilling, the former Enron CEO, have testified personally to Congress in favor of comprehensive electricity restructuring legislation.[48]

White House Energy Plan. The White House energy plan reflected Enron's position in favor of comprehensive restructuring legislation. The energy plan approvingly describes a move toward electricity restructuring as "the most recent step in a long transition from reliance on regulation to reliance on competitive forces."[49] Development and enactment of comprehensive electricity restructuring legislation is a key recommendation, with the plan stating: "the President direct[s] the Secretary of Energy to propose comprehensive electricity legislation."[50] Among other goals, such legislation should "promote competition."[51] When the Administration wrote to members of Congress to provide further details about the White House energy plan, the Administration letter reiterated the President's support for congressional enactment of comprehensive electricity legislation.[52]

The White House decision to promote restructuring legislation was controversial. Consumer groups such as the Consumer Federation of America recommend a moratorium on further restructuring until a workable wholesale electricity market is brought into existence.[53] According to the Consumer Federation:

> While the near meltdown in California and its miraculous escape from a summer of impending blackouts attracted a great deal of national attention, other restructured electricity markets across the country have been struggling with rising prices and service problems. New York and Massachusetts have suffered double digit price increases and have scrambled to keep the lights on. Industrial consumers in Montana have suffered a quadrupling in price while residential

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[47]Letter from Cynthia C. Sandherr, Enron Corporation, to Rep. Henry A. Waxman (Sept. 20, 1999).

[48]Testimony of Kenneth Lay, CEO of Enron Corporation, before the House Commerce Committee's Subcommittee on Energy and Power (May 15, 1996); Testimony of Jeffrey Skilling, President of Enron Corporation, before the Senate Energy and Natural Resources Committee (Mar. 6, 1997).

[49]Report of the White House National Energy Policy Development Group, 5-11.

[50]Report of the White House National Energy Policy Development Group, xiii, 5-12.

[51]Report of the White House National Energy Policy Development Group, xiii, 5-12.

[52]Letter from Dan R. Brouillette, Department of Energy, to Rep. Henry A. Waxman (Oct. 9, 2001).

[53]Consumer Federation of America, *Electricity Deregulation and Consumers: Lessons from a Hot Spring and a Cool Summer* (Aug. 30, 2001).

> consumers are facing a 50 percent increase. Competition has suffered a dramatic reversal in Pennsylvania and prices have [been] rising with the end of regulated-mandatory price cuts. In most other states where "customer choice" has been offered, few competitors have entered the market and almost no residential consumers have switched companies.[54]

I. Establishment of a National Transmission Grid

Enron Position. One of Enron's ultimate goals has been the establishment of a nationwide electricity grid. Mr. Lay has referred to this as a "highway for interstate energy in electricity."[55]

White House Energy Plan. The White House energy plan echoed Mr. Lay's views on the importance of a national transmission grid. According to the plan, "[t]he transmission system is the highway system for interstate commerce in electricity."[56] The plan further stated:

> The NEPD Group recommends that the President [d]irect the Secretary of Energy, by December 31, 2001, to examine the benefits of establishing a national grid, identify transmission bottle necks, and identify measures to remove transmission bottlenecks.[57]

The White House support for the concept of a national transmission grid was controversial. The establishment of a national grid is a concept with strong opposition and substantial technical barriers. The Southern Company recently testified before Congress:

> The desire to move towards a "national grid" or very large RTOs in this country must be tempered with economic and technical realities. The term "national grid" itself is a misnomer. Some who use the term use it as a rationale for socializing interconnection and transmission costs among all consumers, regardless of the benefits they receive. It does not make sense -- from either an economic or reliability standpoint to "nationalize" the transmission grid.[58]

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[54]Consumer Federation of America, *Electricity Deregulation and Consumers: Lessons from a Hot Spring and a Cool Summer* (Aug. 30, 2001).

[55]*Energy Plan Transfers Power to Washington*, San Diego Union-Tribune (May 24, 2001).

[56]Report of the White House National Energy Policy Development Group, 7-5, 7-7.

[57]Report of the White House National Energy Policy Development Group, 7-7.

[58]Testimony of Mr. Allen H. Franklin, President & CEO, Southern Company, before the House Subcommittee on Energy and Air Quality, hearing on Electricity Transmission Policy (Oct. 10, 2001).

II. RECOMMENDATIONS RELATING TO ENERGY DERIVATIVES AND COMMODITIES MARKETS

A. Energy Derivatives Markets

Enron Position. The development and promotion of energy commodities markets, and particularly energy derivatives, was at the heart of Enron's business.[59] Approximately 90% of Enron's revenues were generated by its trading business, and derivatives were a major element in Enron's trades.[60] Not surprisingly, Enron has been a fervent advocate for policies to promote energy derivatives markets.[61] In particular, Enron lobbied very heavily to exempt their derivatives trading from federal oversight.[62]

White House Energy Plan. The White House energy plan extolled the benefits of using derivatives markets in the energy sector and recommended that the U.S. government promote the development of these markets. The energy plan states:

> For businesses that seek to mitigate energy price volatility, an important factor is access to derivatives markets. Both exchange-traded futures and over-the-counter derivative contracts allow firms to substantially reduce their exposure to changes in energy prices. A wide variety of highly liquid futures contracts on energy products such as oil, natural gas, and electricity allow energy users and market participants to reduce or add financial exposure to energy prices. More sophisticated and customizable products are available in the over-the-counter derivative markets. As these markets become increasingly liquid and efficient, more firms will take advantage of these products, reducing the economy's sensitivity to shifts in energy prices. However, most small businesses currently lack the resources or sophistication to take advantage of these products, and will therefore remain vulnerable to rising energy costs. ***The U.S. government should***

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[59]*See Out of Reach: The Enron Debacle Spotlights Huge Void In Financial Regulation*, Wall Street Journal (Dec. 13, 2001).

[60]*See Enron to Get Share of Profit After It Sells Trading Unit*, New York Times (Jan. 14, 2001); *Out of Reach: The Enron Debacle Spotlights Huge Void In Financial Regulation*, Wall Street Journal (Dec. 13, 2001) (reporting that Enron had amassed a $19 billion portfolio of derivatives).

[61]*Out of Reach: The Enron Debacle Spotlights Huge Void In Financial Regulation*, Wall Street Journal (Dec. 13, 2001).

[62]*See, e.g.*, Letter to Congressman John J. LaFalce from Kenneth L. Lay (Sept. 14, 2000) (urging enactment of H.R. 4541, the Commodity Futures Modernization Act of 2000); Enron Lobbying Reports for 2000 (reporting Enron lobbying the Administration and Congress on nine bills related to commodities and derivatives regulation). *See also Out of Reach: The Enron Debacle Spotlights Huge Void In Financial Regulation*, Wall Street Journal (Dec. 13, 2001).

continue to support the development of efficient derivatives markets.[63]

B. <u>Emissions Credits</u>

<u>Enron Position.</u> Enron has promoted commodities trading markets in a wide number of areas, from weather derivatives to forest products and from electricity to metals. In particular, Enron has lobbied extensively for government policies that would support new or expanded markets in areas such as carbon and air emissions credits, which are bought and sold by Enron Global Markets.[64] For example, Enron supported development of an international market in carbon dioxide emissions under a climate change agreement.

<u>White House Energy Plan.</u> The White House energy plan recommended policies that would expand and develop several new markets for emissions credits. The White House energy plan does not endorse the Kyoto Protocol on climate change or mandatory controls on carbon dioxide, but it does recommend use of market mechanisms to address climate change. The plan states:

> The NEPD Group recommends that the President direct federal agencies . . . to identify environmentally and cost-effective ways to use market mechanisms and incentives . . . and cooperate with allies, including through international processes, to develop technologies, market-based incentives, and other innovative approaches to address the issue of global climate change."[65]

As part of a proposal supporting legislation to reduce emissions from electric power generators, the energy plan recommended establishing "mandatory reduction targets for emissions of three main pollutants: sulfur dioxide, nitrogen oxides, and mercury," and measures to "[p]rovide market-based incentives, such as emissions trading credits to help achieve the required reductions."[66]

The recommendation for emission trading credits is one of only three recommendations in the White House energy plan chapter on the environment, and it is the only one of the three

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[63]Report of the White House National Energy Policy Development Group, 2-5 (emphasis added).

[64]*See e.g.*, Enron Lobbying Reports for 2000 (reporting Enron lobbying activities on nitrogen oxides credits trading and legislation that would provide emissions credits for reductions of carbon dioxide).

[65]Report of the White House National Energy Policy Development Group, 8-16.

[66]Report of the White House National Energy Policy Development Group, 3-3.

that pertains to pollution from energy production.[67]

III. RECOMMENDATIONS RELATING TO EXPANDED NATURAL GAS AND OIL PRODUCTION

A. Expedited Permits for Energy Projects

Enron Position. Enron has advocated expedited permitting for power projects.[68] Enron owns numerous energy-related facilities such as pipelines, coal power plants, hydroelectric projects, and natural gas power plants.[69] Enron also has numerous energy facilities projects under development.[70] These types of major energy projects must generally obtain a permit to ensure that the project will not cause unacceptable environmental damage and that the damage that does occur is limited. Environmental agencies' review of projects and addition of protections in permits can slow down projects and cost project developers time and money.

White House Energy Plan. The White House energy plan recommended that the President issue an executive order to expedite permitting for energy projects:

> The NEPD Group recommends the President issue an Executive Order to rationalize permitting for energy production in an environmentally sound manner

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[67]*See* Report of the White House National Energy Policy Development Group, 3-14. The other two recommendations are to use royalties from drilling in the Arctic National Wildlife Refuge for land conservation and to expedite permits for energy projects. *Id.*

[68]*See, e.g.*, Enron, *Comprehensive Solution for California* (undated memorandum).

[69]*See* Enron, *Enron Transportation Services* (fact sheet), (listing four natural gas pipelines in the U.S.) (available on line at: http://www.enron.com/corp/pressroom/factsheets/egs/ets); Enron, *Portland General* (fact sheet) (listing four thermal plants and eight hydroelectric plants in the U.S.) (available on line at: http://www.enron.com/corp/pressroom/factsheets/egs/pge); Enron, *Enron Wind* (fact sheet) (listing six wind generation facilities in the U.S.) (available on line at: http://www.enron.com/corp/pressroom/factsheets/egs/wind); and Enron, *Enron Global Services* (fact sheet) (listing the following facilities owned by EOTT Energy Partners, L.P., which has as its general partner EOTT Energy Corp., a wholly owned subsidiary of Enron: pipeline and gathering systems, a hydrocarbon processing plant, a natural gas liquids storage facility; and a 240-mile liquid pipeline grid system) (available on line at: http://www.enron.com/corp/pressroom/factsheets).

[70]Enron Annual Report 2000, 4 ("Demand for natural gas is at a high in the United States, and we're adding capacity to take advantage of expansion opportunities in all markets. New capacity is supported by long-term contracts"); *id.* at 9 ("We continually assess the necessity of adding or owning assets in a region. . . .We are developing generation plants to sell merchant power to high-demand markets, including proposed facilities in California, Florida, Texas, Louisiana, and Georgia").

> by directing federal agencies to expedite permits and other federal actions necessary for energy-related project approvals on a national basis. This order would establish an interagency task force chaired by the Council on Environmental Quality to ensure that federal agencies responsible for permitting energy-related facilities are coordinating their efforts. The task force will ensure that federal agencies set up appropriate mechanisms to coordinate federal, state, tribal, and local permitting activity in particular regions where increased activity is expected.[71]

The White House decision to support expedited permitting was controversial. Environmental organizations argue that such proposals can weaken the permitting process and deny agencies with responsibility for protecting the environment sufficient time and resources to adequately evaluate the environmental impacts of a particular project.[72]

B. Expanded Natural Gas and Oil Drilling

Enron Position. Enron has been an advocate for additional drilling and has lobbied on numerous issues related to natural gas and oil production. For example, Mr. Lay stated in a television interview: "I think certainly we've got to get access to more land on which to drill for natural gas."[73] In the year 2000 alone, Enron reported lobbying on: three bills addressing royalties from oil and gas production on federal lands and other issues related to leasing federal lands for oil and gas production; one bill directing the federal government to accept in-kind oil royalties; and one bill addressing a tax break for oil refineries.[74] Enron has extensive interests in natural gas and oil. Most prominently, much of Enron's revenue derives from buying and selling natural gas.[75] In addition, Enron Global Markets operates commodity businesses in crude oil and related products, and petrochemicals and plastics.[76] Enron entity EOTT owns pipeline and

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[71]Report of the White House National Energy Policy Development Group, 3-14.

[72]*See, e.g.*, Friends of the Earth, *Analysis of the Bush Energy Plan*, 2 (May 18, 2001); Natural Resources Defense Council, Slower, Costlier and Dirtier: A Critique of the Bush Energy Plan, 32 (May 2001)."

[73]Kenneth Lay, interview by Maria Bartiromo, CNBC/Dow Jones Business Video (Dec. 13, 2000).

[74]Enron Lobbying Reports for 2000 (reporting Enron lobbying on: S. 924; H.R. 1269; S. 1049; H.R. 1985; H.R. 498; and S. 162). Enron also reported lobbying on several oil and gas royalties issues in the first half of 2001. Enron Lobbying Reports for 2001.

[75]For example, in the year 2000 in North America, Enron delivered 24.7 billion cubic feet of gas per day, and Enron delivers "more than two times the natural gas and power volumes as does its nearest energy marketing competitor." Enron Annual Report 2000, 9.

[76]"Fact Sheet: Enron Wholesale Services," Enron (available online at http://www.enron.com/corp/pressroom/factsheets/wholesale). Enron averages crude oil

gathering systems, a hydrocarbon processing plant, a natural gas liquids storage facility, and a 240-mile liquid pipeline grid system.[77] Enron also derives substantial revenues from transporting natural gas through its interests in four major North American pipelines.[78]

White House Energy Plan. The White House energy plan included at least seven specific recommendations for federal government actions to promote additional drilling and production of natural gas and oil.[79] Three of these policies recommend opening additional federal lands for leasing.[80] Another recommendation supports royalty reductions to encourage drilling.[81] The White House energy plan also includes recommendations to facilitate leasing of public lands for natural gas and oil development:

> The NEPD Group recommends that the President direct the Secretary of the Interior to examine land status and lease stipulation impediments to federal oil and gas leasing, and review and modify those where opportunities exist.[82]

The White House decision to press for expanded natural gas and oil development on public lands was controversial. Environmental organizations point to the environmental destruction caused by oil and gas drilling.[83] They also argue that energy independence for the United States is impossible until federal policy emphasizes alternative energy sources, conservation, and efficiency over increased production of energy from fossil fuels.[84]

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deliveries of 7.5 TBtue/d, and also supplies jet fuel. Enron Annual Report 2000, 12.

[77]"Enron Global Services," Enron (fact sheet) (available on line at: http://www.enron.com/corp/pressroom/factsheets).

[78]*See* Enron Annual Report 2000, 21.

[79]In addition to those recommendations described below, the White House energy plan also recommends promotion of new technology to enhance oil and gas recovery. NEP 5-6.

[80]Report of the White House National Energy Policy Development Group, 5-8, 5-9, 5-10.

[81]Report of the White House National Energy Policy Development Group, 5-7.

[82]Report of the White House National Energy Policy Development Group, 5-7.

[83]Natural Resources Defense Council, *Slower, Costlier and Dirtier: A Critique of the Bush Energy Plan*, 32 (May 2001).

[84]*See, e.g.*, Natural Resources Defense Council, *Taking No Refuge: Arctic Refuge Oil and Energy Security Don't Mix* (October 2001) (fact sheet). The United States has only 3% of the world's oil reserves, but consumes 25% of the world's oil supply, making it impossible for the U.S. to "drill its way to self-sufficiency or to affect oil prices." *Id.*

IV. OTHER RECOMMENDATIONS THAT BENEFITTED ENRON

A. Support for Energy Projects in India

Enron Position. Enron owns the majority interest in a huge $2.9 billion natural gas fueled power station in Maharashtra, India, which has become embroiled in a bitter high-stakes contract dispute.[85] In late 2000, the plant's sole customer, the state of Maharashta, stopped paying for the power generated by the plant, and Enron launched arbitration proceedings on April 12, 2001.[86] As recently as August 2001, Mr. Lay warned India that it could face new U.S. sanctions if it failed to repay Enron's full investment, stating: "There are U.S. laws that could prevent the U.S. government from providing any aid or assistance to India going forward, if, in fact, they expropriate property of U.S. companies."[87] Mr. Lay also discussed Enron's concerns about this situation with the Secretary of Commerce, Don Evans, on October 15, 2001.[88]

White House Energy Plan. The White House energy plan specifically recommended an action that would appear to help Enron with its investment in India. The plan states:

> The NEPD Group recommends that the President direct the Secretaries of State and Energy to work with India's Ministry of Petroleum and Natural Gas to help India maximize its domestic oil and gas production.[89]

B. Increased Support for U.S. Energy Firms Abroad

Enron Position. Enron Global Services International has numerous operations in South

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[85]*High-Stakes Showdown; Enron's Fight Over Power Plant Reverberates Beyond India*, New York Times (Mar. 20, 2001); *Enron's Collapse: The Holdings; Questions Surround Assets Abroad*, New York Times (Nov. 30, 2001).

[86]*Enron Rocks India's Flagship Investors*, Financial Times (May 29, 2001).

[87]*Enron Issues Veiled Sanction Threat to India*, Financial Times (Aug. 24, 2001). Mr. Lay also stated: "If they try to squeeze us down to something less than cost then it basically becomes an expropriation by the Indian government." *Id. See also New Doubts on Enron's India Investment*, New York Times (Nov. 21, 2001).

[88]NBC News' Meet the Press (Jan. 13, 2002) (transcript). Secretary Evans stated: "So when Ken calls me up and wants to talk about the power plant in India, do I return his call and listen to him and look for ways to help? Not Ken, the shareholders, the employees, the people that you've talked about at the top of the show that have lost their life savings. You bet I'll call him."

[89]Report of the White House National Energy Policy Development Group, 8-20.

America, the Caribbean, Asia, Europe, and the Middle East.[90] As a result, Enron has lobbied the Administration and Congress extensively on policies that would support its international activities. For example, in the year 2000 and the first half of 2001, Enron lobbied on more than 50 issues related to trade.[91]

White House Energy Plan. The White House energy plan recommended increased Administration efforts to help companies like Enron with energy investments in other countries. Specifically, the plan states that three cabinet Secretaries should act to support American energy firms abroad:

> The NEPD Group recommends that the President direct the Secretaries of State, Commerce, and Energy to continue supporting American energy firms competing in markets abroad and use our membership in multilateral organizations, such as the Asia-Pacific Economic Cooperation (APEC) forum, the Organization for Economic Cooperation and Development (OECD), the World Trade Organization (WTO) Energy Services Negotiations, the Free Trade Area of the Americas (FTAA), and our bilateral relationships to implement a system of clear, open, and transparent rules and procedures governing foreign investment; to level the playing field for U.S. companies overseas; and to reduce barriers to trade and investment.[92]

C. Promotion of Wind Power

Enron Position. Enron Wind designs and manufactures wind turbines, and Enron owns six wind power generation plants.[93] Enron has lobbied aggressively for extension of the wind and biomass tax credit. For example, in the first six months of 2001, Enron paid outside lobbyists over $200,000 for work on wind power issues, in addition to conducting its own lobbying on these issues.[94]

White House Energy Plan. Consistent with Enron's position, the White House energy plan recommended extending the wind and biomass tax credit and taking other actions that would promote the wind turbine business. The plan states:

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[90]Enron, *Enron Global Services - International* (fact sheet) (available on line at: http://www.enron.com./corp/pressroom/factsheets/egs/egsi).

[91]Enron Lobbying Disclosure Forms for 2000 and 2001.

[92]Report of the White House National Energy Policy Development Group, 8-18.

[93]Enron, *Enron Wind* (fact sheet) (available on line at: http://www.enron.com/corp/pressroom/factsheets/egs/wind).

[94]Enron Lobbying Disclosure Reports for 2001.

- The NEPD Group recommends that the President direct the Secretary of the Treasury to work with Congress on legislation to extend and expand tax credits for electricity produced using renewable technology, such as wind and biomass. The President's budget request extends the present 1.7 cents per kilowatt hour tax credit for electricity produced from wind and biomass.[95]

- The NEPD Group recommends that the President direct the Secretaries of the Interior and Energy to work with Congress on legislation to use an estimated $1.2 billion of bid bonuses from the environmentally responsible leasing of ANWR for funding research into alternative and renewable energy resources, including wind, solar, geothermal, and biomass.[96]

D. Hydropower Relicensing

Enron Position. Through its wholly owned subsidiary, Portland General, Enron owns four hydroelectric plants subject to federal licenses that expire in the next five years.[97] In 2000, Enron lobbied on two bills addressing relicensing of hydroelectric plants.[98]

White House Energy Plan. The White House energy plan recommended actions to reduce the time and cost of hydropower relicensing to plant owners:

> The NEPD Group recognizes there is a need to reduce the time and cost of the hydropower licensing process. The NEPD Group recommends that the President encourage the Federal Energy Regulatory Commission (FERC) and direct federal resource agencies to make the licensing process more clear and efficient, while preserving environmental goals. In addition, the NEPD Group recognizes the importance of optimizing the efficiency and reliability of existing hydropower facilities, and will encourage the Administration to adopt efforts toward that end.[99]

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[95]Report of the White House National Energy Policy Development Group, 6-7.

[96]Report of the White House National Energy Policy Development Group, 6-7.

[97]The projects and dates are: North Fork 8/31/2006; Willamette Falls 12/31/2004; Oak Grove 8/31/2006; Bull Run 11/16/2004. FERC, Hydroelectric Projects Under Commission License (Feb. 2001) (available on line at: www.ferc.fed.us/hydro/hydro2.htm).

[98]Enron Lobbying Reports, 2000 (reporting Enron lobbying on H.R. 2335 and S. 740).

[99]NEP 5-18.

V. CONCLUSION

The White House energy plan is intended to be "a national energy policy designed to help the private sector, and as necessary and appropriate, State and local governments, promote dependable, affordable, and environmentally sound production and distribution of energy for the future."[100] In large part, however, the plan contains policies recommended by Enron. There are at least 17 separate policies in the White House energy plan track policies that were supported by and would benefit Enron. These policies include a large number of proposals to deregulate the electric utility industry, as well as proposals that promote trading in energy derivatives and open federal lands to natural gas drilling. The White House energy plan even contains proposals that would assist Enron operations in foreign countries such as India.

[100]Report of the White House National Energy Policy Development Group, viii.