

FEDERAL ENERGY REGULATORY COMMISSION

WASHINGTON, DC 20426

June 4, 2004

OFFICE OF THE CHAIRMAN

The Honorable Jay Inslee
United States House of Representatives
Washington D.C. 20515

Re: Enron Power Marketing, Inc., et al., Docket Nos. EL03-77 and RP03-311, and
Fact-Finding Investigation of Potential Manipulation of Electric and Natural Gas
Prices, Docket No. PA02-2

Dear Congressman Inslee:

Thank you for your May 19, 2004 letter with regard to the Commission's decision to revoke the market-based rate authority of Enron's power trading arm effective as of June 25, 2003. You believe that Enron's trading operations were probably defunct as of June 25, 2003, and that the tapes of Enron trader conversations recently submitted to the Commission show that the fraudulent and manipulative activities at Enron occurred prior to June 25, 2003. For these reasons, you state that the revocation of market-based authority of the Enron power trading arm by the Commission no earlier than June 25, 2003, fails to relieve customers of the burdens of these companies' fraudulent practices or to ensure that electricity markets function free from fraud and manipulation. You urge the Commission to impose stringent penalties on companies found responsible for market manipulation and set an earlier revocation date to send a message to companies that such behavior will not be tolerated.

The Commission takes very seriously your concerns about market manipulation. Unfortunately, the Commission has no authority under the Federal Power Act (FPA) to levy civil penalties for the market manipulation that occurred in the Northwest. Thus, as I have stated in my testimony before Congress, I support strong civil penalty authority for the Commission to address and prevent market abuses.

Next, you ask the Commission to set back the date of revocation to when it became clear that Enron was manipulating energy prices. On March 26, 2003, the Commission issued a show cause order finding that several Enron entities apparently violated Section 205(a) of the FPA by engaging in gaming; and acted inconsistently with their market-based rate authority, not only by engaging in gaming, but also by failing to inform the Commission in a timely manner of changes in their market shares by gaining influence/control over others' facilities in violation of their market-based rate authority.

Enron Power Marketing, Inc., et al., 102 FERC ¶ 61,316 (2003). The Commission directed the Enron entities to show cause why their authority to sell power at market-based rates should not be revoked by the Commission. Id. Thereafter, on June 25, 2003, the Commission revoked the market-based rate authorities of these Enron entities. Enron Power Marketing, Inc., et al., 103 FERC ¶ 61,343 (2003), reh'g denied, 106 FERC ¶ 61,024 (2004). This remedy taken against Enron marks the first time the Commission has taken such broad action against a company and its affiliates. I understand the need for strong and effective enforcement actions to serve as a deterrent for unlawful market behavior, and believe that the revocation of market-based rate authority of the Enron entities is such an action.

However, the Commission's authority to take such action under Section 206 of the FPA is prospective only; thus if we find that rates no longer meet the just and reasonable standard, we are authorized only to fix a new rate or to fix practices "to be thereafter observed." 16 U.S.C. § 824e (a) (2000). Additionally, FPA Section 206 provides the Commission with limited refund authority. Section 206 of the FPA requires the establishment of a refund effective date no earlier than 60 days after the date a complaint is filed or the Commission initiates an investigation on its own motion. See San Diego Gas & Electric Co. v. Sellers of Energy and Ancillary Services, et al., 96 FERC ¶ 61,120 at 61,504-5 and 61,508, order on reh'g, 97 FERC ¶ 61,275 at 62,198-99 (2001). Therefore, FPA Section 206 does not permit retroactive refund relief for rates covering periods prior to the refund effective date established on complaint or the initiation of a Commission investigation, even if the Commission determines that such past rates were unjust and unreasonable.

Your letter and this response will be placed in the public file in the above-captioned docket, which serves to alert the Commission to the concerns of interested individuals and groups. If I can be of further assistance to you, please do not hesitate to contact me.

Best regards,

A handwritten signature in black ink, appearing to read "Pat Wood, III". The signature is stylized and cursive.

Pat Wood, III
Chairman