Statement of Senator Dianne Feinstein
at Oversight Hearing on Gas Prices and Energy Trading

- Feinstein calls for transparency in oil and gas markets -

May 8, 2006

Washington, DC – At an oversight hearing on gasoline prices and energy trading, U.S. Senator Dianne Feinstein (D-Calif.) today called for the passage of legislation that would bring oversight of energy markets.

The hearing, *"Lessons from Enron: An Oversight Hearing on Gas Prices and Energy Trading,"* explored similarities between activity in today's energy markets and energy markets during the summer of 2001, a time when Enron was manipulating markets to reap billions in windfall profits.

Senator Feinstein's legislation would increase transparency and accountability in the energy markets so that federal government can determine if speculation, manipulation, or hoarding is occurring in the oil, gas, and electricity markets. It would:

- Require traders on exempt electronic trading facilities (e.g., InterContinental Exchange, Houston Street) to keep records and report large positions carried by their market participants in energy commodities for five years or longer. These are the same requirements that apply to traders that do business on NYMEX;
- Require traders to provide such records to the CFTC or the Justice Department upon request; and
- Require persons in the United States, who are trading energy commodities that are delivered in this country on foreign futures exchanges, to keep similar records and report large trades.

These provisions will give the CFTC the means to effectively exercise its existing anti-fraud and anti-manipulation authority over energy commodities traded on U.S. exchanges.

Following is Senator Feinstein's opening statement:

"Thank you, Senator Dorgan, for holding this hearing on transparency in the energy markets. I would like to welcome the witnesses, particularly Erik Saltmarsh of the California Electricity Oversight Board.

The Western Energy Crisis in 2000-2001 was a wake-up call about the extent to which energy traders can impact demand and drive up prices.

California faced rolling blackouts and skyrocketing electricity costs, while companies like Enron, Duke, Williams, AES and Reliant enjoyed record revenues and profits.

Californians, on the other hand, were left holding the bill – in 1999 it was $8 billion, in 2000 it was $27 billion, and in 2001 it was $27.5 billion. Then it dropped back to $12 billion in 2002.

There was no way demand could go up 400 percent.

As my colleagues and I looked into this matter, we realized that a loophole was added to the Commodity Futures Modernization Act of 2000.

Energy and metals were the only industry left out of oversight and regulation by the Commodity Futures Trading Commission (CFTC).

That loophole allows for energy commodities -- natural gas, electricity, oil, gasoline -- to be traded on over the counter markets with NO federal oversight.

Enron's demise did not sound the death knell for electronic trading of energy commodities.

Instead, it allowed for a new enterprise to develop -- called the Intercontinental Exchange, known as ICE, to take its place as the energy trading platform of choice.

ICE is an exempt electronic trading facility. That means that the CFTC cannot require traders on ICE to keep records or report trades in energy commodities. As a result, the CFTC does not have a whole picture as to what occurs in the energy markets.

The one thing we learned from Enron is that traders are after one thing. There is no sense of consumer loyalty.

Remember, "Stick it to Grandma Millie." I will never forget. It spoke volumes about the entire energy trading community.

We learned the hard way that if there is no oversight of these markets, they are subject to manipulation. Yet we haven't fixed the problem.

As we will hear from some of the witnesses, natural gas prices have been extremely volatile, and oil prices have gone through the roof.

In fact, the *New York Times* reported on April 29, 2006 that crude oil "…has become a valuable financial asset, bought and sold in electronic exchanges by traders around the

world." No record of the trade. No audit trail. No ability for an oversight agency like the CFTC to look at records and see if trades are bogus.

The article continued: "And they, too, have helped push prices higher…trading has also increased outside official exchanges, including swaps or over-the-counter trades…and that comes on top of the normal trading long conducted by oil companies, commercial oil brokers or funds held by investment banks."

It is not just the *New York Times* that is reporting that trading pushes up profits.

Testifying at the Enron trial, the former Chief Executive Officer of Enron North America and Enron Energy Services, David Delainey was asked:

"Is volatility a good thing for a speculative trader?"

His response: "Yes."

When asked to explain his answer, he said:

"The higher the volatility that you have, the better – the higher the potential profit you can make from an open position you might have in the marketplace…if the price change is only a couple cents either way, you can't make a whole lot of money in trading. And if you have, you know, 50, 60 cents, dollar moves in price you're going to make a lot more money for -- for every position you might have…"

With gas prices reaching $3 per gallon across the country, and well over $3 in my State, our constituents deserve to know why those prices are so high.

Looking at the figures from the Energy Information Administration, we know that crude oil reserves are higher than average, yet prices have more than doubled over the past five years. High gas prices cannot simply be explained by supply and demand.

In fact, BP's chief executive Lord Browne has been quoted as saying, "It is the case that the price of oil has gone up while nothing has changed physically."

Without a complete picture of our energy markets, we do not know why gas prices are as high as they are.

That is why I introduced the Oil and Gas Traders Oversight Act (S 2642) with Senators Snowe, Levin, Cantwell, Mikulski, and Boxer. The bill would:

- **require traders on exempt electronic trading facilities to keep records and report large positions carried by their market participants in energy commodities for five years or longer. These are the same requirements that apply to traders that do business on NYMEX;**

- **Requires traders to provide such records to the CFTC or the Justice Department upon request, the same requirements for NYMEX traders; and**

- **Requires persons in the United States, who are trading energy commodities that are delivered in this country on foreign futures exchanges, to keep similar records and report large trades.**

These provisions are simple, but they will give the CFTC the means to effectively exercise its existing anti-manipulation authority over energy commodities traded on U.S. exchanges.

My colleagues and I have been working on this issue for five years. We see these trading platforms lobby furiously against these provisions. They want to be able to trade in the dark. They want to be able to have wash trades. They want to keep no records. They want to have no audit trail. And now we see the results.

In the west coast, we saw it with electricity. We've seen it in natural gas. The consumer at the pump sees it with gasoline. It's really time for things to change.

If the standard exchanges can keep records, why shouldn't an electronic trading platform.

We're going to fight this fight again and again and again until we get this job done."

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