



Bipartisan Group of Western Senators Objects to One-Sided Enron Settlement

Energy regulators' proposal would prevent Enron evidence from seeing the light of day, potentially cripple Western businesses' efforts to defend against Enron lawsuits

April 19, 2006

WASHINGTON, DC – Wednesday, U.S. Senators Maria Cantwell (D-WA) and Dianne Feinstein (D-CA) led a bipartisan coalition of all ten senators from Washington, Oregon, California, Idaho, and Montana calling on federal energy regulators to abandon a proposed settlement with bankrupt energy trader Enron. The proposal would commit the Federal Energy Regulatory Commission (FERC) to keeping evidence against Enron under wraps. It would also seal off one avenue of relief for the Western businesses and utilities still trying to avoid paying Enron more—for power the bankrupt energy trader never even delivered.

“The many businesses and utilities damaged by Enron’s deceit and corruption deserve justice and a fair trial,” said Cantwell, a member of the Senate Energy Committee. **“This settlement could keep audiotapes, emails, and other incriminating evidence against Enron under permanent lock and key. With Enron still demanding millions in payment from businesses and ratepayers for electricity it never delivered, we need to keep this evidence available to make absolutely certain that Enron’s victims get a fair chance at justice.”**

“The proposed settlement with Enron falls short,” Senator Feinstein said. **“I am particularly concerned about the provision that would prevent public access to audiotapes and emails collected by the Federal Energy Regulatory Commission during the investigation of the company’s manipulation of Western energy markets. We have spent hundreds of thousands of public funds transcribing the Enron tapes. The time has come for these tapes to be released to the public. American taxpayers deserve to know the truth.”**

In a letter sent Wednesday to FERC Chairman Joseph Kelliher, Senators Cantwell, Feinstein, Larry Craig (R-ID), Max Baucus (D-MT), Mike Crapo (R-ID), Ron Wyden (D-OR), Conrad Burns (R-MT), Patty Murray (D-WA), Gordon Smith (R-OR), and Barbara Boxer (D-CA) made clear their objections to the March 10 proposal by Enron and FERC’s trial staff.

“We...believe terms of the proposed settlement may jeopardize the ability of a number of Western businesses and utilities to get relief...,” the senators wrote. **“As such, we ask that you reject the settlement proposal in favor of a solution more equitable to consumers, as well as the American public—which deserves to know the facts about the depths to which Enron stooped to pick the pockets of energy ratepayers.**

“...we see no justification for the provision included in the joint settlement proposal that requires FERC to withdraw from the record evidence the Commission has accumulated... It is unclear how the public interest is served by preventing public inspection of this evidence.”

Despite overwhelming evidence against Enron, the proposed joint settlement would return less than \$3 million to Northwest parties who have not yet settled their claims with the bankrupt energy giant. This compares to the more than half a billion dollars paid to Enron’s lawyers and executives throughout the company’s bankruptcy proceedings. Another condition of the proposed settlement would require FERC staff to work to prevent the public release of Enron evidence that remains sealed.

It would also release Enron from pending and future claims under the energy bill’s Cantwell Amendment (Sec. 1290). A product of bipartisan consensus adopted during the Senate Energy Committee’s mark-up of the Energy Policy Act of 2005, this law established that FERC should be the final arbiter in deciding whether Enron should get to collect “termination payments” for power it never delivered to utilities and businesses in the West. Enron has sought to collect these payments—totaling millions of dollars—through the Bankruptcy Court, side-stepping federal energy regulators. Businesses and utilities with claims for relief under the Cantwell Amendment include: Washington state’s Snohomish Public Utility District, for an estimated \$120 million; Ash Grove Cement Company, headquartered in the Midwest but with western operations in Oregon, Washington, Montana, and Idaho, for \$4.2 million; Luzenac America, with western operations in Montana, for approximately \$6.8 million; the City of Vernon, California, for \$14 million; and the Metropolitan Water District of Southern California, for approximately \$1.2 million. The settlement is not yet final, and must still be approved by FERC commissioners.

Last week, Cantwell joined businesses and utilities in Seattle to highlight the settlement’s vast shortcomings, and sent a letter to FERC outlining her objections to the proposal. Today’s letter from a bipartisan group of all ten Western senators highlights additional shortcomings and urges a solution more equitable to ratepayers.

[The text of the senators’ letter to FERC follows below]

April 19, 2006

The Honorable Joseph Kelliher
Chairman
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426

Dear Chairman Kelliher,

We write to express our objections to a number of elements of the settlement proposed March 10 by Enron and the Trial Staff of the Federal Energy Regulatory Commission (FERC), which would complicate efforts to get the whole truth about Enron’s market manipulation schemes. We also believe terms of the proposed settlement may jeopardize the ability of a number of Western businesses and utilities to get relief from Enron’s attempts to collect profits associated with power the bankrupt energy company never even delivered. As such, we ask that you reject the settlement proposal in favor of a

solution more equitable to consumers, as well as the American public—which deserves to know the facts about the depths to which Enron stooped to pick the pockets of energy ratepayers.

As policymakers, we see no justification for the provision included in the joint settlement proposal that requires FERC to withdraw from the record evidence the Commission has accumulated to date, in building the case about Enron's market manipulation schemes. FERC's existing Enron audiotape evidence was obtained after substantial efforts and transcribed at public expense. In fact, just a little over a year ago, FERC staff found "sufficient public benefit to be garnered from further review" of this evidence. In addition, we note that unknown amounts of Enron-related audiotapes and email remain under seal at the Commission. It is unclear how the public interest is served by preventing public inspection of this evidence.

In addition, the Enron/FERC settlement proposal contains one more provision that may jeopardize the ability of utilities and businesses that continue to pursue claims against Enron, to get their fair day before the Commission. As a condition of this settlement, Enron would be released from "all existing and future claims for monetary or non-monetary remedies before FERC and/or under the Federal Power Act ("FPA"), the Natural Gas Act ("NGA"), and/or including the Cantwell Amendment and any amendments to the FPA or NGA pursuant to the Energy Policy Act of 2005;" it further requires that FERC staff would "take no position" in ongoing proceedings.

The product of bipartisan consensus, Section 1290 of the Energy Policy Act of 2005 (the Cantwell Amendment) clarified that the Commission's exclusive jurisdiction for purposes of determining whether a seller such as Enron should be entitled to collect termination payments associated with power contracts cannot be usurped or limited by the Bankruptcy Court.

As you know, a number of claims filed pursuant to the Cantwell Amendment are currently pending at the Commission. As such, we are deeply troubled by FERC staff's willingness to abandon the stakeholders who are simply trying to avoid having to pay Enron more money within the Gaming and Partnership proceeding—for power the bankrupt company never even delivered. While Congress has clarified and vested the Commission with the responsibility of ensuring justice is done in these cases after a full and fair hearing, approval of the Enron settlement proposal as written would essentially equate to FERC Trial Staff washing its hands of the matter. While we welcomed FERC's April 11, 2006, order, suggesting the full Commission intends to take up claims under the Cantwell Amendment in the "near future," we remain concerned that the existing Enron settlement, as written, would close off one important procedural avenue for injured parties to achieve a result equitable for Western ratepayers and businesses.

While all of us wish to bring to a close this scandalous chapter in the history of our nation's energy industry—brought about by the Western energy crisis and Enron's bankruptcy of unprecedented proportions—we ask that you take our views into consideration. While it is a travesty that the parties injured by Enron's massive fraud will receive nowhere near the compensation they truly deserve, we hope you will keep in mind both the core function of the Federal Energy Regulatory Commission—to protect our nation's energy consumers—and the fact that real dollars remain at stake for American consumers and businesses.

We request that you make these comments part of the public record in Docket No. EL03-180 and its consolidated proceedings. Thank you for your attention to this matter, which is of great importance to our constituents.

Sincerely,

Senator Maria Cantwell
Senator Larry Craig
Senator Dianne Feinstein
Senator Conrad Burns

Senator Max Baucus
Senator Patty Murray
Senator Barbara Boxer
Senator Gordon Smith
Senator Mike Crapo
Senator Ron Wyden

Cc: Commissioner Nora Mead Brownell, Commissioner Suedeen Kelly

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