TESTIMONY OF CALIFORNIA STATE SENATOR JOSEPH DUNN
BEFORE THE COMMERCE, SCIENCE & TRANSPORTATION COMMITTEE
May 15, 2002
Washington, D.C.

Good morning, Subcommittee Chairman Dorgan, Senator Boxer and members of the Committee on Commerce, Science and Transportation.

I am Joseph Dunn, a California state senator and chair of the state Senate Select Committee to Investigate Price Manipulation of the Wholesale Energy Market. I testified before your committee last month, and at that time I detailed my familiarity with the California market and the ongoing crisis in our energy markets. My committee's investigation has provided me with unique insight into Enron's role in the market's dysfunction and its arrogance toward California consumers, as well as that of other market participants. The committee is continuing its extensive investigation into all aspects of the energy crisis. We have held numerous hearings, taken countless depositions, conducted various interviews and meetings with experts and interested parties and reviewed millions of documents throughout the United States.

In light of the most recent disclosure of Enron's trading strategies in the California market, I appreciate the opportunity to testify again before this committee. The three memoranda released by Enron last week are the products of a dogged determination to get to the truth and to employ the powers of government – in this case the power of the California state legislature – to seek justice. The content however is no surprise. We and the FERC have known about the behavior for some time. Justice will not be fully served until the unlawful behavior outlined in the memoranda is stopped, is punished and measures are taken to ensure that the misconduct does not occur again.

Most significantly, these memoranda allow us to finally put aside the "evolution of excuses" we have faced since the opening bell of the energy crisis. Prices skyrocket and consumers are told they are suffering the short-term "pain" of deregulation. Prices remain high and generators falsely explain that California is a victim of its own demand – despite ranking 48th of the 50 states in per capita energy usage and a demand growth of just four percent year after year. Then we are told there is an outright shortage – a myth that persists today. Next they tell us that the crisis is the result of "bad market rules," the generators' and traders' way of justifying manipulative behavior. When Enron declared bankruptcy, we heard the refrain from other market participants that these were the acts of a "rogue company." It's time to stop listening to the excuses. The Enron memoranda and the recent admissions by other market participants reveal the truth about the cause of the energy crisis: certain market participants gamed the system to reap excess profits on the backs of Californians.

You should be aware that these documents were obtained due to the relentless pressure of our investigation, and others', and specifically because of the subpoena power invoked by, among others, our state legislature. I believe our committee stands alone in the duration and tenacity of our search for the truth. Although I have hope for the Federal Energy Regulatory Commission (FERC) under Chairman Wood's direction, Californians are deeply skeptical of the FERC's intentions. Despite protestations to the contrary, the FERC has known of the manipulative strategies since at least the beginning of 2000, if not earlier. This knowledge should buoy your resolve to investigate other market participants where warranted. Enron's admission about one aspect of its manipulation, "Inc-ing," is ample reason for alarm: "Although Enron may have been the first to use this strategy, others have picked up on it too." The evidence seems to show this is true for *all* of its strategies outlined in the memoranda.

Why did all that has happened occur? A likely answer lies in Enron's (and probably others') approach to risk management. As told to Congress in January 2002, by Professor Frank Partnoy:

> Enron's risk management manual stated the following: "Reported earnings follow the rules and principles of accounting. The results do not always create measures consistent with underlying economics. However, *corporate management's performance is generally measured by accounting income, not underlying economics. Risk management strategies are therefore directed at accounting rather than economic performance*." This alarming statement is representative of the accounting-driven focus of U.S. managers generally, who all too frequently have little interest in maintaining controls to monitor their firm's economic realities.

I focus my testimony today on a specific discussion of the unlawful behavior I believe is demonstrated in these memoranda and a broader narrative of what makes them so troubling. I attempt to put these memoranda in context, for it is no coincidence that two of these memoranda are dated in early December 2000. You need to understand and question more than the content of the memoranda; you need to understand the timing of their creation and the timing of their release to the public. As of December 7, 2000, it appears from market participant documents that some of the market participants were experimenting with scenarios that could push the post cap price past *$3,000* per MWh.

I also admonish you not to be duped by the conveniently undated third memorandum released by Enron. After reading the damning laundry list of offenses contained in the first two memoranda, dated December 6, 2000 and December 8, 2000, counsel for Enron made a feeble attempt to put a positive spin on the manipulative strategies, presumably for the very occasion of their future discovery. They did so by attaching tempering monikers like "draft" and "preliminary" to the first two memoranda. Neither memorandum was identified as such and should not be considered as such. Do not fall for this attempt to diminish the adverse impact, prevalence or intention of these strategies. The undated memorandum was damage control. It should offend you that acts of plunder could be so glibly given names as they were so cavalierly given life.

UNLAWFUL CONDUCT

Let me address the one question on everyone's mind: Do I believe the market participants engaged in illegal conduct? While reasonable attorneys may disagree on interpretations of the law, I believe the answer is an unequivocal "yes."

Antitrust Violations

These memoranda take us another step forward in making a case that Enron and others engaged in antitrust behavior in the California electricity market. This claim is not made lightly – our committee has focused on a "subset" of antitrust law, an anti-competitive market condition called market power, which I discussed with you last month. Market power is illegal in this market, and I believe many market participants have exercised it. Professor Wolak, testifying before you today, has also testified before our committee on this very point. I agree with him that the market is broken. These memoranda, however, may indicate why. Certainly, the memoranda seem to provide direct evidence that Enron and others were engaged in better-understood antitrust behavior – collusion.

The most direct evidence of collusion from the memoranda is: "In some cases, i.e, 'Fat Boy' Enron's traders have used these nicknames with traders from other companies to identify these strategies." In other words, the traders' collusive manipulation and coordination was so pervasive and advanced the parties actually developed signals in the form of nicknames to communicate among themselves about their unlawful acts.

In addition to the direct evidence of collusion, there is ample evidence the market participants violated antitrust laws through conscious parallelism. Conscious parallelism is a legal concept defined as the coordination of collusion without an actual (or explicit) agreement in which each party signals the others by their conscious parallel behavior. The above reference to the "Fat Boy" strategy is not only evidence of collusion, but is also an example of conscious parallelism.

Violations of California State Laws

California Business & Professions Code section 17200 prohibits unfair competition, which means and includes any unlawful, unfair or fraudulent business act or practice.

I believe there is little doubt that the strategies outlined in the memoranda constitute at a minimum, unfair business practices and acts. For example, one of the strategies called "Get Shorty," and characterized as "paper trading," requires that "false information" be submitted to the California Independent System Operator (CAISO).

Enron's "Ricochet" strategy, known more commonly as megawatt laundering, is another example of potentially illegal conduct. "Enron buys energy from the PX in the Day Of market, and schedules it for export. The energy is sent out of California to another party, which charges a small fee per MW, and then Enron bought it back to sell the energy to the ISO real-time market."

This strategy requires complicity from the out-of-state party purchasing the energy – the entity "scheduled for export." In this case, Enron uses the out-of-state party as a virtual escrow account as a way to avoid price caps in the in-state market. This behavior implicates other companies and provides evidence that Enron's behavior rises to the level of fraudulent and anti-competitive behavior.

California Penal Code Section 395 also prohibits the conduct described in the memoranda. California Penal Code section 395 provides:

> Frauds Practiced To Affect The Market Price. Every person who willfully makes or publishes *any false statement, spreads any false rumor, or employs any other false or fraudulent means or device, with the intent to affect the market price* of any kind of property, is guilty of a misdemeanor. (Emphasis added).

The memoranda describe the "Load Shift" trading strategy in which Enron creates the appearance of artificial congestion by deliberately overstating its loads. Enron then reverts back to its true load and is paid congestion charges from the CAISO. The memoranda state: "One concern here is that by knowingly increasing the congestion costs, Enron is effectively increasing the costs to all market participants in the real time market." This amounts to an admission that Enron knows that it is affecting the price in the congestion market and that it deliberately overstated its load in order to drive up the congestion price. This load shift trading is an example of a violation of Penal Code section 395.

Enron's misbehavior in the market may also be a violation of Penal Code section 396, which prohibits excessive and unjustified price increases in essential goods and services during a declared state of emergency. On January 17, 2001, California Governor Gray Davis declared a state of emergency due to the energy crisis and electricity is clearly an "essential good." The memoranda acknowledge that the strategies Enron employed resulted in lower energy supplies in California and caused higher energy prices. The memoranda further admit that the strategies may have contributed to Stage 2 emergencies. Violations of Penal Code section 396 are also deemed violations of Business & Professions Code section 17200.

Finally, Penal Code section 182 provides that it is a felony to conspire to commit any crime. These memoranda indicate that persons from separate corporations may have conspired to commit fraud on the regulators, consumers and managers of the state's energy markets.

Commodities and RICO Violations

In addition to these instances of violations of California law, I believe that Enron and others broke federal law as well. As James Newsome, chairman of the Commodities Future Trading Commission, has testified before the Senate, while the bilateral and multilateral trading markets maintained by the energy traders were exempt from the registration provisions of federal law, they are not exempt from its anti-fraud and anti-manipulation provisions.

I am troubled by recent admissions by Reliant that it engaged in phantom trading practices intended to create false stock valuation, a violation for which Dynegy also stands accused. Reliant announced on Monday that it had engaged in transactions involving simultaneous purchases and sales with the same counterparty and the same price—so-called "round trip" trades. These transactions, involving more than 100 million megawatt hours and 45 billion cubic feet of gas over the last three years, increased Reliant's revenues by about 10 percent during that period. The company's CEO has blamed these violations on "misguided employees," but the problem is much more deeply rooted—industry players have admitted that "round-tripping" was a common practice among the major players. Though Dynegy has not admitted guilt, we believe its argument that the trades were intended to test a computer system is specious. To the extent that this practice falsely inflated corporate earnings, these companies are in violation of federal securities disclosure laws.

Put together, the evidence suggests that Enron and other market participants used the mail and wires to defraud the State of California and its consumers. Given this, I believe they may have violated the Racketeering Influence Corrupt Organizations Act, commonly referred to as RICO.

THE CAISO COMPLICITY

I have talked about the unlawful conduct we believe Enron and others engaged in. Now I address a troubling aspect of the memoranda. The date, December 6, 2000, of the first memorandum is not, in my mind, coincidental. It implicates the CAISO as a willing or, or at best, unwitting participant in the process.

I have previously detailed to the committee how Enron successfully lobbied for the market rules that allowed for later exploitation. What is important for you to understand, and to act upon, is that by the time these memoranda were written Enron was the market. It was the market regulator, a key market participant, a market speculator and, as the memoranda reveal beyond any doubt, a market manipulator.

Committee members and staff have struggled for months with the question of regulatory oversight during the energy crisis. We have asked many times, "Who was watching the store?" Others have recounted the shortcomings of our federal regulatory bodies, including the FERC, but I will focus on one of FERC's charges, the CAISO. I contend that CAISO management knew, or should have known, about the games Enron and others perpetrated on the market. Further, I believe CAISO management was either co-opted by Enron and the marketers participating in the California market, or it was incompetent in the handling of the manipulative strategies. Either way, CAISO failed in its duty to regulate the market.

I call CAISO a regulator very much against its will. CAISO officials object to the label – they argue that their duty is simply to "keep the lights on." By way of background, CAISO is a non-profit, public-benefit corporation charged with the neutral management of the state's electricity grid. In lay terms, CAISO was responsible for sending the proper amount of megawatts across the state's electric wires.

Inherent to this responsibility is the management of "load," or the demand of consumers. CAISO has the real-time duty of figuring out *exactly* how much electricity is needed, minute-to-minute. By design, the balancing of real-time load was CAISO's job – maybe shedding 50 megawatts in San Francisco when demand was less than anticipated, or finding 150 megawatts for San Diego when the load turned out to be greater than expected. The shedding and acquisition of load took place in a neutral auction market, called the imbalance energy market, run by CAISO. The auction was supposed to represent a small share of the state's overall need – somewhere in the neighborhood of five percent on a bad day.

But managing load made CAISO a de facto regulator, and despite its protests, it is impossible to deny. Its duty to regulate is the reason why it sought the ability to employ price caps, and it is the reason why it employs a staff of economists for its Department of Market Analysis (DMA), which is charged with monitoring the market to ensure there is no manipulation of load or of its neutral auction.

Given that CAISO was supposed to regulate the market, one might reasonably expect that it had been granted certain regulatory powers -- perhaps to mete out discipline to participants it found guilty of market manipulation, or something more banal, like failing to fill out a form or failing to provide notification in a timely fashion.

Instead, its behavior is governed by a voluminous, complicated tariff subject to varied interpretations, which even the CEO, Terry Winter, testified he has never read. Penalizing bad behavior is apparently not part of the tariff, if not in theory, then certainly in practice. The tariff is a lengthy, complex legal document whose enforcement provisions are rarely used by the CAISO to protect consumers and ratepayers. It appears to me that the legal teams composed by every single market participant understand the nuances and use the tariff more adeptly, albeit in more self-interested ways, than CAISO. This should not be surprising in light of the fact that Mr. Winter reportedly views the market participants as CAISO's constituency as opposed to consumers and ratepayers.

The tariff, like speed limit signs, was intended to manage behavior. In both cases, behavior is only modified when there are penalties for violations. Radar guns make costly speeding tickets more likely, turning the decision to speed into a calculation of expense in a risk-reward equation. This is exactly the model that should have been employed by CAISO, only the radar gun, in this case a host of DMA reports of the exercise of market power, was consistently ignored by the "officer," CAISO management.

How did it get this bad? The energy crisis in California can be divided into two discrete periods, before and after December 8, 2000. Intending no disrespect, this is a date that will live in infamy for California consumers.

What Lead to the Crisis?

As noted in my prior testimony, symptoms of a pending crisis were noticed as early as May 1999, when Enron deliberately overscheduled hundreds of megawatts of electricity through a line equipped to handle a tiny fraction of that. It was an admitted "test" of the system, Enron said, a loophole that exposed problems in one of the markets. But it was more than another strategy put to the test and given a Hollywood nickname – it was a watershed event that proved how ill equipped, or unwilling, the markets' protectors were to remedy market flaws and to punish bad actors.

I use this term, "protectors," quite intentionally. I use it to underscore the faith that consumers, small business owners, taxpayers and especially the poor, placed in the regulators' stewardship of a deregulated electricity market. This was no small task. It remains a job of extraordinary importance, one that requires untiring vigilance and unerring, unbending discipline. I can say without equivocation that not a single protector – no regulator, no market manager, no market monitor – did right by the California consumer or ratepayer. The energy crisis was not only a failure of the market participants to behave legally and ethically, but was also a failure of oversight and a failure of protection.

Not the least of these failures was that of CAISO. Though May 1999's "test" of the market took place on the watch of its sister market manager, the California Power Exchange (CalPX), CAISO was aware of the event and did little to protect consumers from similar practices to which it would later fall victim. Instead, both CalPX and CAISO kept their respective markets in check with price caps, the bane of free marketeers and a major taboo to the energy industry.

Caps had been in place almost since the beginning of the market. The first cap was quickly put in place in 1998 in a move that illustrates the *re*active nature of CAISO. Shortly after the market opened, an "unnamed" generator submitted a $9,999.99/MWh bid, an anomalous event that rightfully raised red flags within CAISO. What is interesting about the bid is that its rather curious amount was limited only by a generator's misunderstanding of the CAISO computer system's capabilities – in other words, the generator did not believe the computer could handle a bid higher than $10,000. Caps remained through the end of 1999 and into 2000, when the issue became politicized.

The CAISO "stakeholder board," as it was then known, was a microcosm of differing viewpoints, as any stakeholder board would be. We have been told during numerous depositions that, despite these differences, the board was cohesive and "acted in the best interest" of the state.

Price cap votes (there were six in 2000) were always privately contentious. At first, the votes represented consensus opinions, and however acrimonious the behind-the-scenes discussions may have been, the board usually presented a united front on the issue. By summer 2000 this began to change as San Diego Gas & Electric (SDG&E) was the first to cross the still-deregulating market's expected finish line, as the utility became eligible to charge its customers the "true" price of electricity.

SDG&E's wholesale costs were passed on to an unsuspecting public that summer, inspiring a well-documented political firestorm that fractured the CAISO board. Coupled with the state's first rolling blackout in Northern California on June 14, the board's price cap decisions helped usher "CAISO" into the vernacular of the rate-paying public. Imagine how strange it must have seemed to the volunteer stakeholder appointee: their once-obscure board of an unknown corporation, which functioned to monitor something everyone took for granted, was suddenly a topic for watercooler discussions.

The board was the public face of CAISO, but not where its power was centered. Price cap decisions framed CAISO's public persona, and not surprisingly, the board voted with a shaky certitude to ratchet down price caps each time the issue was decided. Generators represented on the board, including an Enron representative and the president of the generators' trade association, who acted as Chair of the CAISO board, railed at their inability to win a majority and keep the caps from being lowered.

The generators argued throughout the summer and fall of 2000 that price caps limited future investment in the state and that the caps were fast approaching (and surpassing) the break-even point of generators. To drive this point home, each time the cap was lowered, power mysteriously grew more scarce. The relationship between availability and price was impressed upon fellow board member, CAISO CEO Terry Winter.

The price cap issue reached a fever pitch in October 2000, when a consumer-representative to the board introduced a proposal referred to as "load-differentiated price caps." Put simply, CAISO would set a fluctuating, maximum price for electricity as it related to demand, with a maximum price of $150; as demand fell, the price for each megawatt would fall in concert, and as load grew, the maximum price grew with it. The board tabled a vote on the proposal when it was first introduced, to allow CAISO's staff to run a full work-up on the idea. On October 26, the CAISO board gave the nod to the proposal by the narrowest of margins.

Enter CAISO management and its self-proclaimed "constituents," Enron and the market participants. Like any corporation, CAISO was run by a board to which management was supposed to report. It was the custom that management would carry out the orders of the board after any change in direction or policy. This might require management to prepare legal filings, put in motion tariff amendments for review by the FERC or institute upgrades in software to accommodate such changes as load-differentiated price caps.

Not so this time – CAISO management declared mutiny. Not a single effort was undertaken to implement the board's load-differentiated price cap decision after it was made. No memorandum was written, no phone call made, no software ordered.

Instead, Enron, including Ken Lay himself, and every generator, appealed to the FERC in writing to intervene and to do away with the most recent price cap. Each and every letter was dated October 31, 2000. The very next day, November 1, 2000, in a now-infamous missive that revealed its allegiance, the FERC overturned the CAISO board's decision, reinstated a previous price cap threshold of $250 and ordered the stakeholder board reconstituted.

It was an unmitigated victory for Ken Lay, Enron and other market participants. But it only solved part of the problem – they next set their sights on price caps of any kind.

We asked Mr. Winter if he heard rumblings of the October 31 letters. He told us he had not. We asked him if he recognized that the generators seemed to be withholding supply because of a disagreement with their compensation. Sort of, he said. He said he had asked the generators to bid more capacity into the market, but the requests got no results. The only solution, he felt, was to increase the compensation for each megawatt.

The problem grew worse between the FERC ruling on November 1 and early December. The market grew thinner. Fewer megawatts were available to light the state's lights. Outages soared. Did Mr. Winter form a task force to determine why supply was not being bid into the market? No. Did CAISO investigate the outages? No. Mr. Winter had reached the conclusion that the only way to increase supply was to pay more for each megawatt. Not coincidentally, this was also the opinion of Enron and the generators.

Where were the megawatts? The memoranda disclosed last week by Enron prove what many have long known – they were being intentionally laundered out of state to avoid the caps. We asked Mr. Winter about this laundering, and he told us he had only heard rumors of the practice, and said, "Well, I don't like to use that term." Enron also preferred not to be so crass, which is why it gave the practice a nickname – "Ricochet." He knew the megawatts were being withheld, but instead of punishing the traders and generators who withheld them, he decided to reward them with more money.

The December Crisis

As stated above, other documents suggest market participants were preparing for the removal of price caps prior to the CAISO's December 8, 2000 emergency petition.

On December 6, CAISO declared a Stage 2 emergency, a public declaration that electric reserves had fallen below five percent. Enron claims its manipulation of the market may have caused this shortage, though that was never investigated by CAISO. Instead, Mr. Winter instructed lawyers at Swidler Berlin Sheriff & Friedman, LLP, CAISO's outside counsel, to begin preparing a FERC filing that would eliminate the $250 price cap. He did so in direct contravention of the known will of the board and without consulting the board or the governor. He told our committee that the governor "had no concept" of the problems faced by CAISO staff, but more troubling was his unilateral decision to go against the board. His rationale for not seeking approval from the board was based on his understanding that the board would not grant approval for such a filing. "I had already made up my mind what I was going to do, so if [the board] said no…I would have gone ahead…"

According to Mr. Winter, the "decision to make the filing" began on December 7. Just a few hours later, a draft was given to CAISO management, and less than 24 hours later, a 48-page filing was delivered to the FERC at 4:20 p.m. on Friday, December 8, 2000, in Washington, D.C. The state was in the midst of another Stage 2 emergency and rumored to be headed for blackouts that weekend. The Enron memoranda states that one of the trading strategies "may have contributed to California's declaration of a Stage 2 emergency." Mr. Winter claims he had a very brief conversation on Friday with FERC Chairman James Hoecker, alerting him of a forthcoming filing, but that his conversation was the *only* preparation CAISO undertook to make the FERC aware of its filing. Despite the lack of preparation, approximately two hours after the filing, the FERC issued a ruling granting CAISO's request to remove price caps. The December 8 palace coup was complete.

This explanation of events is incredible. It is difficult to believe that such a long, detailed filing was not already underway prior to December 7, that FERC would or could act so quickly and that this was the only solution to a patently artificial crisis. At no time has FERC acted as quickly on any request that would negatively impact the industry.

We have heard every manner of explanation for the price of electricity during December 2000, most notably the price of natural gas during this time and the price of NOx credits. We have found these explanations to lack merit for a host of reasons, including a spike in the price of electricity during January 2001, subsequent to the leveling of natural gas prices. Moreover, Enron's short-term exposure in the natural gas market leads us, and others, to believe that it was positioning itself to manipulate the shortages it was helping to create.

In a two-day period in the week following the November 1 FERC ruling, Enron's open position in the U.S. natural gas market went from a short position of more than 33 Bcf to a long position of more than 168 Bcf. By December 4, Enron was long almost twice that amount, 304 Bcf, a staggering amount that most certainly contributed to the price of natural gas so far above national averages. This data demonstrates Enron's motive and ability to pressure regulators for the removal of price caps, while the protectors stood by and let it happen.

The Lawyers Involvement

Our committee has asked the familiar question of each of the participants in the December 8 filing: "What did you know and when did you know it?" We believe that the answer to this may be found in the relationship between CAISO and the Swidler Berlin law firm. Swidler Berlin is an influential law firm that has been described, among other things, as a "FERC law firm." It is easy to understand why, since the firm has employed a number of former FERC commissioners, including former Commissioner Hoecker. My committee does not have the power to make Swidler Berlin cooperate in any meaningful way, but your committee does. I believe there are a number of questions you should ask of Swidler Berlin.

When did CAISO first request Swidler Berlin to begin work on the December 8, 2000 FERC filing? We have been told the first time Swidler was informed of the intent to make such a filing was December 7. FERC's absurd *ex parte* rules allow energy companies, and their law firms, to contact FERC staff and commissioners before filings are "officially" handed over the desk. This practice is rightfully prohibited in the criminal and civil justice system as potentially prejudicial – it is tantamount to influencing a judge about the character of a witness prior to the witness being called to the stand. If Mr. Winter is to be believed, however, the FERC was prepared to rule on a 50-page filing in a matter of minutes, with only a brief and unspecific phone conversation.

Additionally, the firm represents former Enron executives subpoenaed by our committee. We have also learned that Swidler Berlin is counsel to a trade association that represents a substantial number of the market participants in California. Despite this, CAISO maintains an employee in the Swidler Berlin office in Washington, D.C. – an employee who answers the phone, "Hello, California ISO…" This relationship raises serious concerns of conflict of interest.

This brings us to the question of the timing of Enron's first two memoranda. It is our belief that these memoranda were prepared in anticipation of the actions by CAISO management and the FERC to eliminate price caps in the California market. I believe that Enron's legal counsel commissioned a "study" of Enron's trading practices. With an expected "deadline" on or near December 8 to blow out the price caps, Enron counsel needed to become more familiar with these practices, if for none other than the "public relations" reasons cited in the December 6 and 8 memoranda. Whether or not Mr. Winter knew that this was the goal of such strategies is unimportant. Neither he nor anyone else on his management team took the necessary steps to prevent this from happening, or for that matter, to investigate its likelihood. Nor did he take any steps to implement the October 26 load-differentiated price cap. We consider this a failure of CAISO and of the FERC to ferret out, punish and prevent these practices. Enron used the market to siphon money from consumers and it used CAISO management to ensure that the market operated to allow this to continue to happen.

Just as Enron's current board of directors has waived its privilege for these documents, I believe the current CAISO board should waive any claims of privilege over many documents, including all documents relevant to the December 8 filing. If it can be demonstrated that there was a plan to have caps removed, I believe Enron will not be the lone company implicated.

CONCLUSION

Does the market participants' conduct suggest unlawful behavior? Were the strategies outlined in the Enron memoranda used not only for the purpose of generating huge profits, but also to impact critical policy decisions? We believe the answer to these questions is "yes."

We suspect other market participants have knowledge of Enron's strategies, even if they themselves did not participate in such a manner. This committee has the power to discover the truth. I urge you to subpoena the executives and CEOs, the company presidents, the board chairmen, march them before your committee, and require them to testify under oath. Many companies serve California, but you could begin your queries with only a handful: Duke, Dynegy, Williams, and Reliant. Ask them to swear that their companies did not engage in these or other manipulative strategies and that they knew nothing of such practices. I am reminded of tobacco company executives raising their right hands in front of a similar congressional body. Getting these statements on the record in such a setting will go a long way to finding the truth.

My wish is that FERC's requests for admission are not a carefully crafted ploy for market participants to avoid such charges, but an earnest attempt to bring more light to the market, past and present.

Without it, we are forced to wait for the next bankruptcy, the next scandal. Regulators should not passively observe the next scar upon the national economy. Rather, we strongly urge the United States Senate and the FERC to leave in place the June 19, 2001 price cap order, to revoke market-based rate authority until a functioning competitive market is established and to focus vigorously your investigations on the privilege logs of each of the market participants and the role of legal counsel in the market participants' conduct.