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UTILITIES AND TRADE SECRETS

Retain the openness in utility regulation

Wednesday, February 15, 2006

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Over the next few months, both of Portland's investor-owned utilities -- PGE and PacifiCorp -- will be waging legal battles to keep details of their involvement in Enron's market-manipulation schemes from the public eye. While the degree to which the two utilities were drawn into Enron's web is important, the issue of whether such information constitutes a trade secret is vastly more important to consumers and investors in Oregon.

The collapse of many of the nation's utilities during the Great Depression brought the structure of modern energy regulation into being. Major federal agencies such as the Securities and Exchange Commission and the Federal Power Commission (now known as the Federal Energy Regulatory Commission) were created to protect consumers and investors from Enron-style schemes. Until a decade ago, this system worked fairly well. Companies involved in the basic infrastructure of our society were required to provide detailed information on their operations and transactions. These laws are still in effect, and any concerned citizen can track down details of operations at Portland General Electric and PacifiCorp on the Web sites of the SEC and FERC.

In the late '90s and continuing until today, advocates for energy marketers have argued that the availability of this information is anti-competitive. In effect, they have advocated removing streetlights as an approach to discouraging muggers. During the California energy crisis, we learned that the muggers were more resourceful than that. They simply exchanged information in spite of the rules.

Investigations into Enron's activities at both federal agencies are public. However, even though FERC's investigations have been explicitly ruled to be public, both PGE and PacifiCorp have argued in Oregon -- and continue to do so -- that their transactions with Enron during the dark days of 2000 and 2001 should remain secret.

The basic issue concerns a set of schemes known as "Death Stars" -- complex financial frauds invented by a convicted Enron executive named John Forney, now awaiting sentencing on federal felony charges in connection with the schemes. In order to avoid discovery by California authorities, a Death Star scheme required a host to launder energy in Oregon.

After years of litigation, Enron's accounting is now public. The company's two hosts in Oregon, in different venues and at different times, have argued that their relationships with Enron constitute trade secrets and that their business interests could be adversely affected if the information were made available to audiences outside the electric industry.

One irony of their argument is that the information is available within the industry. The groups affected by their arguments are not the parties to litigation at FERC or the Oregon Public Utilities Commission. The only parties affected by the utilities' desire to avoid scrutiny are the press, the public and elected officials. It is difficult to see how these utilities' transactions from 2000 and 2001 with a company now bankrupt and banned from doing business by FERC could possibly constitute trade secrets.

Enron, in spite of recent evidence, will eventually fade away. The issue that lawyers and economists call transparency -- openness -- will not. The most basic protection that consumers and investors have against fraud is information. Enron and its fellow conspirators literally lurked in the shadows -- even the blackouts, in Enron's case -- where light could not be shed on their dealings.

The best way to avoid a repetition of such schemes is to make sure that public policy in Oregon continues to provide the citizens of the state with open information on the operation of the electric infrastructure that is critical for their lives.

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