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To: Bob Caldwell
From: Robert McCullough
Subject: In My Opinion

Opening the Books

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

The collapse of the nation's utilities during the great depression brought the structure of modern regulation into being. Major federal agencies like 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, the system worked fairly well. The basic ground rules specified a high degree of openness. Companies involved in this basic infrastructure of our society were required to provide detailed information on their operations and transactions. These laws are still in effect and any sufficiently concerned citizen can track down details of operations at PGE and PacifiCorp on the webs 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

crisis we learned that the muggers were more resourceful than that. They simply exchanged information in spite of the rules. The reduction of market information they had advocated simply made detection of schemes more difficult and exposed consumers to market manipulation.

Investigations into Enron at both Federal agencies are public. However, even though FERC's investigations have been explicitly ruled as 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 for Federal felony charges in connection with this scheme. In order to avoid discovery by California authorities, Death Stars required a host to launder the energy in Oregon. The host stood ready to explain to California authorities, if asked, that the Death Star both originated and ended in Oregon.

After years of litigation with Enron, the accounting at Enron is now public. The two hosts in Oregon, in different venues and at different times, have argued that their relationship with Enron constitutes a trade secret and that their business interests could be affected if the data was made available to audiences outside the electric industry. One irony of their argument is that the data 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 transactions from 2000 and 2001 with a company now bankrupt and banned from doing business by FERC could possibly constitute a trade secret.

Enron, in spite of recent evidence, will eventually fade away. The issue that lawyers and economists call transparency -- openness -- will not. The basic protections for 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 Oregon with open information on the operations of the electric infrastructure that is critical for their lives.

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