

Testimony of S. David Freeman

**Before the Subcommittee on Consumer Affairs, Foreign Commerce and Tourism
of the Senate Committee on Commerce, Science and Transportation**

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It is a pleasure to be back to testify before this committee today. Two weeks ago, I was only able to speculate as to Enron's invisible role in the rip-off of California consumers.

Now we have a confession by Enron that it did in fact game the system.

A fundamental point I would like to repeat from my previous testimony is that Enron was the leading advocate for the most extreme deregulation in California at every step in the Road and thus helped create the loopholes to manipulate the market. Enron successfully lobbied for the loosest rules and then stretched them to create a volatile market that helped to bring them profits while gouging the consumers of California to the tune of billions of dollars.

Allow me to share from my previous testimony the recollection of a long phone argument I had with Ken Lay in 2000 on the subject of price caps. I rejected his arguments and he said to me gleefully that no matter what we "crazy people in California" did that he had people working for him at Enron that could figure out a way to make money. I now realize just how true he was. Fat Boy, Death Star and the others were strategies that made Enron a whole lot of money.

For a long time last year we in California felt that Governor Davis and our delegation were not being heard in claiming that Enron and the generators were manipulating the market and cheating us out of billions of dollars. But now that Enron has confessed, we repeat that claim in a voice that I trust will now be heard:

We want our money back!

Now that the whole world, and that must include the FERC, realizes we were overcharged as no one in the history of electricity has been overcharged, we insist on the simple justice required under the law. To be specific, the FERC must:

- (1) Order refunds of \$9 billion or more
- (2) Fix just and reasonable rates for our long-term contracts
- (3) Continue to mitigate the Western market
- (4) Investigate all the gougers

(1) Refunds

Fortunately a process is underway at FERC which has acknowledged that California consumers are entitled to refunds. But the process is moving at a snail's pace. In light of the recent evidence that confirms California's claims, all the prior rulings need to be reviewed. The Commission needs to take charge and order the refunds at once.

(2) Long-term contracts

The long-term contracts California entered into of necessity under a manipulated, dysfunctional market need to be reformed to a just and reasonable level, and done so promptly. The process is, to FERC's credit, underway. The Commission needs to let

the generators know that FERC will insist on the just and reasonable rate standard. It is the law and needs to be enforced. FERC needs to assure that the process does not just drag on because every day that is delayed means more dollars of overcharge.

(3) Market mitigation

Continuing the mitigation measures to assure the continuous flow of power from the generators at controlled prices is absolutely essential. The present plan to cease those measures on September 30, 2002, cannot be reconciled with the FERC's duty to assure just and reasonable rates at wholesale. The Federal Power Act does not cease in September, nor is there a California exemption from its mandate that the rates shall be just and reasonable.

(4) Price gouging investigation

Of course the FERC must now investigate all the generators with renewed vigor. There is every reason to believe that the practices so colorfully described by Enron were and are widespread. They need to be exposed.

Let me say that we hope and expect FERC to do their duty. Governor Davis and the rest of us have been favorably impressed by FERC President Pat Wood, Nora Brownell, and Bill Massey. They instituted the mitigation measures last summer that helped California tame the market. But it happened only after a horrible year before the new majority was appointed and in which the State suffered the largest transfer of money out of consumers' pockets in utility history.

There is one fundamental lesson we must learn from this experience: electricity is really different from everything else. It cannot be stored, it cannot be seen, and we cannot do without it, which makes opportunities to take advantage of a deregulated market endless. It is a public good that must be protected from private abuse.

If Murphy's Law were written for a market approach to electricity, then the law would state "any system that can be gamed, will be gamed, and at the worst possible time." And a market approach for electricity is inherently gameable.

Never again can we allow private interests to create artificial or even real shortages and to be in control. Enron stood for secrecy and a lack of responsibility. In electric power, we must have openness and companies that are responsible for keeping the lights on.

We need to go back to companies that own power plants with clear responsibilities for selling real power under long-term contracts. There is no place for companies like Enron that own the equivalent of an electronic telephone book and game the system to extract an unnecessary middleman's profits. Companies with power plants can compete for contracts to provide the bulk of our power at reasonable prices that reflect costs.

People say that Governor Davis has been vindicated by the Enron confession. But

real vindication will only come if those that manipulated us are made to pay back the overcharges and trim back the contracts signed when they had us over a barrel. We deserve no less, and the whole world will now be watching whose side FERC is on.

Now let the refunds, contract reforms and investigations begin.