The White House Energy Plan Reflects Seven of Eight Recommendations in Enron Memo

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FACT SHEET

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On January 30, 2002, the *San Francisco Chronicle* released a memo given by former Enron Chairman Ken Lay to Vice President Cheney when the two met on April 17, 2001, to discuss energy policy. This fact sheet compares the energy policies laid out in the memo that Mr. Lay urged the administration to adopt with the energy policies that the White House incorporated in its national energy plan.

Upon the release of Enron's memo, Mary Matalin, the Vice President's political advisor stated: "Ken Lay advocated eleven different positions in that memo. Nine of those positions did not end up in the energy report. Two of those positions were passed with bipartisan and, in one case, unanimous consent."[1]

The analysis below describes Enron's positions outlined in Mr. Lay's memo. Contrary to the White House claim, the White House energy plan incorporates the vast majority of Mr. Lay's policy recommendations. These include recommendations to increase federal control over transmission lines, to exercise federal eminent domain authority to override state decisions on siting of transmission lines, to reject price controls on electricity as a way to mitigate the California energy crisis, and to speed permitting of new energy facilities.

Enron's memo contains recommendations in eight areas. In total, the White House energy plan adopts all or significant portions of Enron's recommendations in seven of these eight areas. The only one of these eight Enron policy priorities that is not reflected in the energy plan is the recommendation that the Administration establish a demand reduction program to allow large electricity consumers to sell avoided electricity use. Last year, however, the chairman of the Federal Energy Regulatory Commission (FERC) testified that the Commission is favorably considering this recommendation.

Enron representatives had six meetings with the White House energy task force, including four meetings that occurred before release of the final report.[2] The White House has consistently refused to disclose what Enron requested during these meetings. On January 16, 2002, Rep.

[1]Interview with Mary Matalin, Vice Presidential Advisor, CBS Evening News (Jan. 30, 2002).

[2]Letter from David Addington, Counsel to the Vice President, to Rep. Henry A. Waxman (Jan. 3, 2002).

Waxman released a report that identified 17 policies in the White House energy plan that were advocated by Enron or that benefitted Enron.[3] The White House has not responded to Mr. Waxman's letter seeking information about Enron's role in these 17 policies.

1. Fair Transmission Access

The first category of policies in the Enron memo addresses Enron's hallmark issue of electricity deregulation and, specifically, policies that would give Enron more access to transmission lines. In this section, Enron advocated for expanded jurisdiction of the Federal Energy Regulatory Commission (FERC) over transmission facilities. Enron also called for FERC's jurisdiction to be expanded to cover entities currently not subject to FERC, such as federal power marketing associations and state and municipal utilities.

Enron Position: The Enron memo's first point is the need for FERC to "actively exercise jurisdiction over all aspects of electricity transmission in interstate commerce" to ensure that all users of the grid have the same rates, terms, and conditions.[4]

White House Energy Plan: The White House energy plan adopted the Enron position. The plan supports using federal authority over the transmission grid to increase access to transmission systems. Indeed, the energy plan refers to "assuring open access to the interstate and international transmission system" as a "core federal issue."[5] The White House energy plan states:

- "The NEPD Group recommends that the President direct the appropriate federal agencies to take actions to remove constraints on the interstate transmission grid and allow our nation's electricity supply to meet the growing needs of our economy."[6]

- "The NEPD Group recommends that the President encourage FERC to use its existing statutory authority to promote competition . . . in transmission facilities."[7]

Enron Position: The Enron memo states that "FERC jurisdiction must extend to the terms of access applicable to transmission systems owned and operated by non-FERC jurisdictional

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[3]Minority Staff, Committee on Government Reform, *How the White House Energy Plan Benefitted Enron* (Jan. 16, 2002).

[4]Enron memo, National Energy Policies: Priorities at 1 (Apr. 2001).

[5]Report of the White House National Energy Policy Development Group, 5-12.

[6]Report of the White House National Energy Policy Development Group, 7-7,8.

[7]Report of the White House National Energy Policy Development Group, 5-12.

entities including . . . states and municipalities."[8]

White House Energy Plan: The White House energy plan's support for open access is consistent with Enron's position. In a subsequent letter to members of Congress that "details the Administration's position regarding electricity legislation," the Administration explicitly endorses the position that Enron advocated.[9] With regard to open access, the Administration recommended that Congress "[g]rant FERC authority to require State and municipal utilities and rural electric cooperatives to provide open access to their transmission systems."[10]

Enron Position: Enron also stated that FERC jurisdiction should extend to federal power marketing agencies (PMAs), which should be incorporated in regional transmission organizations (RTOs).[11]

White House Energy Plan: The White House energy plan adopted the Enron position on access to transmission facilities owned by federal PMAs, stating that "reforming the role of federal electric utilities in competitive markets"[12] is a key issue for congressional action. Moreover, the Bonneville Power Administration (BPA) is one of five power marketing agencies and is specifically addressed in the White House energy plan. The energy plan makes recommendations to ensure that BPA has the funding necessary to participate in an RTO, which would ensure that power marketers like Enron would have access to BPA's transmission lines.[13]

In subsequent correspondence that details the Administration's electricity policy, the Administration elaborates on this issue, requesting Congress to:

- "Grant FERC jurisdiction over PMA transmission systems to the same extent as public utilities. Authorize PMAs to participate in RTOs."[14]

- "Remove the TVA "fence" in current law that prevents electricity suppliers other than TVA from selling into the region, and prevents TVA from selling outside the region. . . . Grant FERC jurisdiction over TVA wholesale power sales outside the region to the same

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[8] Enron memo, National Energy Policies: Priorities at 1 (Apr. 2001).

[9] Letter from Dan R. Brouillette, Department of Energy, to Rep. Henry A. Waxman (Oct. 9, 2001).

[10] Letter from Dan R. Brouillette, Department of Energy, to Rep. Henry A. Waxman (Oct. 9, 2001). FERC issued Order 888 to open access to transmission lines of FERC-jurisdictional entities.

[11] Enron memo, National Energy Policies: Priorities at 1 (Apr. 2001).

[12] Report of the White House National Energy Policy Development Group, 5-12.

[13] Report of the White House National Energy Policy Development Group, 7-8.

[14] Letter from Dan R. Brouillette, Department of Energy, to Rep. Henry A. Waxman, 5 (Oct. 9, 2001).

extent and in the same manner as it regulates sales by public utilities."[15]

- "Grant FERC jurisdiction over the BPA transmission system to the same extent as public utilities."[16]

2. Independent Energy Reliability Organizations

Enron Position. Enron's memo also called for legislation to establish a new "Independent Reliability Organization" to oversee the transmission grid to maintain its reliability.[17] This is a key policy for Enron's goal of building and dominating a national market for electricity. Enron urges that the legislation establishing this reliability organization should allow FERC to "delegate authority to develop reliability standards and enforce those standards."[18]

White House Energy Plan: The White House energy plan reflects these recommendations. It endorses the idea that mandatory reliability standards should be developed by a "self-regulating organization overseen by FERC."[19] The energy plan also recommends that this organization enforce those standards:

> The NEPD Group recommends that the President direct the Secretary of Energy to work with FERC to improve the reliability of the interstate transmission system and to develop legislation providing for enforcement by a self-regulatory organization subject to FERC oversight.[20]

3. Wholesale Market Price Caps or Cost-Based Wholesale Rates

Enron Position: Enron's memo strongly urged the White House to reject any attempt to adopt price caps or use the costs of generation to set prices for wholesale power. The Enron memo states that "[t]he Administration should reject any attempt to re-regulate wholesale power markets by adopting price caps or returning to archaic methods of determining the cost-base of wholesale power."[21]

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[15] Letter from Dan R. Brouillette, Department of Energy, to Rep. Henry A. Waxman, 4 (Oct. 9, 2001).

[16] Letter from Dan R. Brouillette, Department of Energy, to Rep. Henry A. Waxman, 5 (Oct. 9, 2001).

[17] Enron memo, National Energy Policies: Priorities at 2 (Apr. 2001).

[18] Enron memo, National Energy Policies: Priorities at 2 (Apr. 2001).

[19] *Id.*

[20] Report of the White House National Energy Policy Development Group, 7-6.

[21] Enron memo, National Energy Policies: Priorities at 2 (Apr. 2001).

White House Energy Plan: The White House energy plan was consistent with this position and did not include any recommendation to address the California energy crisis by taking any federal action to constrain skyrocketing prices. Instead, the White House energy plan blamed the California energy crisis on insufficient electricity supplies and advocated policies to increase supplies.[22] Moreover, in discussing the California energy crisis and promoting the White House energy plan, the Administration denounced price caps, in line with Enron's position. The day after Mr. Lay presented Enron's memo to the Vice President, Mr. Cheney gave a telephone interview with the *Los Angeles Times* in which he stated emphatically that the Administration would not support price caps: "I don't see that as a possibility."[23] Again, on May 20, 2001, Vice President Cheney opposed price controls stating: "Caps don't help because they don't increase supply or reduce demand."[24]

4. Interconnection Policy

Enron Position: The Enron memo states: "Competitive generation (including Distributed Generation 'DG') and wholesale markets have been hindered by grid interconnection policies and procedures that restrict new entry. . . . FERC must develop and enforce standardized, non-discriminatory interconnection policies."[25]

White House Energy Plan: The White House energy plan supported the Enron position. The White House energy plan agrees that the absence of uniform interconnection standards is a problem, stating: "The lack of interconnection standards or guidelines for electricity supply and loads impedes the use of distributed energy technologies. . . . Although a few states have established interconnection standards, there is no national standard to facilitate development of distributed energy."[26] In the subsequent letter to Congress detailing the White House energy policy, the Administration advocated that Congress require FERC to establish interconnection standards and grant FERC additional authority to order interconnection:

> Interconnection Standard: Direct FERC to establish uniform rules governing interconnection with both local distribution facilities and transmission facilities. Require local distribution companies to interconnect with generation facilities if the owner complies with this rule and pays the direct costs of interconnection. . . . Direct FERC to address procedures for interconnection with transmission facilities that address cost.

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[22]Report of the White House National Energy Policy Development Group, 5-12.

[23]*California and the West Price Caps Don't Fit in Cheney's Head for Figures*, Los Angeles Times (Apr. 19, 2001).

[24]*Face the Nation*, CBS News (May 20, 2001).

[25]Enron memo, National Energy Policies: Priorities at 2 (Apr. 2001).

[26]Report of the White House National Energy Policy Development Group, 6-15.

Interconnection Orders: FERC has authority under current law to order interconnection. Four changes are made to current law: (1) FERC is allowed to initiate orders on its own motion, (2) FERC is allowed to issue an order after informal hearings, rather than adjudicatory hearings, (3) FERC is authorized to order interconnection to promote competition (rather than the limited bases in current law), and (4) the universe of applicants for such orders is expanded.[27]

5. Federal Transmission and Generation Siting Policy

Enron's memo also called for several actions to promote construction of new generation and transmission facilities. Enron argued that permitting problems have impeded new facilities and that using federal authority to override opposition (i.e., invoking the power of eminent domain to trump state siting decisions) would help address these problems.

Enron Position: The Enron memo calls for "granting condemnation rights to private parties that have obtained federal authorization to construct facilities."[28]

White House Energy Plan: The White House energy plan endorsed the Enron position, despite the Bush Administration's stated support for states' rights.[29] The White House energy plan directly reflects Enron's recommendation that the federal government should be able to override states in this instance, stating that "[t]he siting process must be changed to reflect the interstate nature of the transmission system."[30] According to the plan:

> The NEPD Group recommends that the President . . . [d]irect the Secretary of Energy, in consultation with appropriate federal agencies and state and local government officials, to develop legislation to grant authority to obtain rights-of-way for electricity transmission lines, with the goal of creating a reliable national transmission grid.[31]

Enron Position: The Enron memo also says that federal agencies "should streamline the regulatory processes to enable expedited construction" of energy infrastructure.

White House Energy Plan: The White House energy plan adopted this recommendation. It

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[27] Letter from Dan R. Brouillette, Department of Energy, to Rep. Henry A. Waxman, 3 (Oct. 9, 2001).

[28] Enron memo, National Energy Policies: Priorities at 2 (Apr. 2001).

[29] *E.g., Leavitt and Bush Talk Turkey in Texas,* Deseret News (Jan. 7, 2001) ("Bush also pledged a new federal respect for states' rights").

[30] Report of the White House National Energy Policy Development Group, 7-7.

[31] Report of the White House National Energy Policy Development Group, 7-8.

recommends that the President issue an executive order to expedite permitting for energy projects:

> The NEPD Group recommends the President issue an Executive Order to rationalize permitting for energy production in an environmentally sound manner by directing federal agencies to expedite permits and other federal actions necessary for energy-related project approvals on a national basis. This order would establish an interagency task force chaired by the Council on Environmental Quality to ensure that federal agencies responsible for permitting energy-related facilities are coordinating their efforts. The task force will ensure that federal agencies set up appropriate mechanisms to coordinate federal, state, tribal, and local permitting activity in particular regions where increased activity is expected.[32]

6. Demand Reduction Incentives

Enron Position: Enron's memo advocated creation of a regional demand exchange to allow large electricity consumers to sell electricity generated by reducing their own demand.[33]

White House Energy Plan: The White House energy plan did not address this recommendation. However, after the plan was issued, President Bush appointed Mr. Pat Wood to be the Chairman of FERC. Since Mr. Wood's appointment, this Enron recommendation has received favorable consideration before FERC. In the words of Mr. Wood:

> We must facilitate the development of more market-based demand reduction programs. FERC and the state commissions have taken steps to foster such programs, and must work together to elicit the full potential of demand reduction efficiencies.[34]

7. California Power Crisis

Enron Position: Enron's memo stated that California's "political leadership" had made "limited progress in solving its power crisis."[35] Enron recommended as a solution adopting all of the policies it had advocated in its memo.

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[32]Report of the White House National Energy Policy Development Group, 3-14.

[33]Enron memo, National Energy Policies: Priorities at 2 (Apr. 2001).

[34]Testimony of Pat Wood, III, Chairman, Federal Energy Regulatory Commission before the Subcommittee on Energy and Air Quality of the Committee on Energy and Commerce (Dec. 12, 2001).

[35]Enron memo, National Energy Policies: Priorities at 3 (Apr. 2001).

White House Energy Plan: The White House energy plan adopted almost all of the policies Enron advocated. In addition, Vice President Cheney echoed Enron's criticism of California leaders' actions on the crisis. In May he stated: "When the problem became obvious last year, over a year ago, they didn't respond."[36] He noted the rolling blackouts and the bankruptcy of California's largest utility, and added, "I don't think that's a sterling record of leadership, I would guess, on their part."[37]

8. Natural Gas Supply Outlook

Enron Position: Enron's memo argued that there are ample supplies of natural gas in North America and that "these supplies can be further supplemented by imported liquified natural gas.[38] Enron further stated that "[t]his will allow natural gas to continue to provide an increasing share of the total energy needs to the U.S."[39]

White House Energy Plan: The White House energy plan agreed. It states that U.S. demand for natural gas will continue to rise, increasing by more than 50% by 2020.[40] The energy plan also states that "[n]atural gas electricity generation is projected to increase from about 16 to 36 percent of total generation, which would require the tripling of natural gas used for electricity generation."[41] The energy plan also adopts Enron's position that imports of liquefied natural gas (LNG) can be increased, stating "[w]ith increasing demand for natural gas for electricity generation, there is a potential for substantial growth in the demand for LNG imports."[42]

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[36]*The Enron Collapse*, San Francisco Chronicle (Jan. 30, 2002).

[37]*Id.*

[38]Enron memo, National Energy Policies: Priorities at 3 (Apr. 2001).

[39]Enron memo, National Energy Policies: Priorities at 3 (Apr. 2001).

[40]Report of the White House National Energy Policy Development Group, 5-3.

[41]Report of the White House National Energy Policy Development Group, 5-14.

[42]Report of the White House National Energy Policy Development Group, 7-15.