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**Congress of the United States**  
**House of Representatives**  
**Washington, DC 20515-0529**

HENRY A. WAXMAN  
29TH DISTRICT, CALIFORNIA

March 1, 2002

Mr. Jeffrey McMahon  
President and Chief Operating Officer  
Enron Corporation  
1400 Smith Street  
Houston, TX 77002

Dear Mr. McMahon:

When you testified before the Subcommittee on Oversight and Investigations on February 7, 2002, I asked you about several business and accounting practices that occurred at Enron. When I raised these issues with you at the hearing, you indicated that you did not have direct information about them, but that others at Enron, including the human resources department, would have such information.

As Enron's president and chief operating officer, you are clearly in a position to direct the appropriate Enron departments or employees to gather information necessary for Congress' investigation of the company's financial collapse. Accordingly, I request that Enron provide information on the following issues.

**I. Mark-to-Market Accounting**

Press accounts have suggested that Enron pushed the limits of mark-to-market accounting, which allows a company to recognize all revenues upfront on a long-term contract. In order to determine the profitability of a contract, Enron had great leeway to make assumptions about future energy prices, energy use, and other factors. The *New York Times* has reported that Enron Energy Services deliberately used questionable revenue assumptions to inflate its profits and create "illusory earnings."<sup>1</sup> A former Enron manager has called Enron's use of this accounting practice a "license to print money."<sup>2</sup>

I believe it is important for Congress to examine whether Enron's accounting practices were abused in order to mislead shareholders. I request that Enron provide the following

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<sup>1</sup>*Ex-Workers Say Unit's Earning Were "Illusory,"* New York Times (Jan. 25, 2002).

<sup>2</sup>*Fuzzy Rules of Accounting and Enron,* New York Times (Jan. 30, 2002) (quoting Glenn Dickson, a former manager of Enron Energy Services).

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information:

- (1) A copy of any Enron documents or manuals detailing how to use mark-to-marketing accounting, including how to evaluate the value of long-term contracts.
- (2) A copy of any Arthur Andersen documents or manuals detailing how to use mark-to-marketing accounting, including how to evaluate the value of long-term contracts.

## **II. Deferred Compensation Plans**

According to press accounts and information gathered by investigators on my staff, many Enron executives cashed in their deferred compensation plans last November after Dynegy made a \$1.5 billion cash infusion into Enron.<sup>3</sup> The allegation is that Enron executives cashed out because they would have lost all their deferred compensation money if and when the company went into bankruptcy. Apparently, current Enron executives were given preferential treatment in withdrawing their deferred compensation money, while many former employees were prohibited from doing so.<sup>4</sup>

Because I believe it is important to examine whether current executives were given preference in withdrawing deferred compensation money, I request that Enron provide the following:

- (1) A list of all employees, whether current or former, who requested to withdraw money from Enron deferred compensation plans from October 2001 through December 2001, along with the amounts that they requested to withdraw.
- (2) A list of all employees, whether current or former, who in fact withdrew money from Enron deferred compensation plans from October 2001 through December 2001, along with the amounts that they withdrew.

## **III. Stock Options**

As I understand it, all companies keep track of the stock options owned and exercised by its employees. While Enron is required by the SEC to report all stock transactions involving officers, directors, and major shareholders, it is not required to report transactions of other senior executives. Because I believe it is important to examine whether senior executives profited from insider knowledge about Enron's financial situation, I request that Enron provide the following:

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<sup>3</sup>*Enron Paid Some, Not All, Deferred Compensation*, N.Y. Times (Feb. 13, 2002).

<sup>4</sup>*Id.*

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- (1) A list of all Enron employees, whether current or former, who owned 1,000 or more shares of Enron stock options during 2000 and 2001.
- (2) A list of all Enron employees, whether current or former, who exercised stock options of 1,000 or more shares during 2000 and 2001, including the date of the exercise.

#### **IV. Retention Payments and Other Bonuses**

Last fall, as Enron was unraveling, Enron reportedly made millions of dollars in retention payments to a number of Enron executives. It has been reported that \$55 million was given to senior executives on November 30, 2001. While *Salon* magazine has published a list of what it purports to be the recipients of these payments,<sup>5</sup> my staff has determined that this list is incomplete and does not account for almost \$5 million of the \$55 million that was supposedly paid out.

Moreover, according to press accounts, there were other payments made to senior executives as Enron was collapsing. It has been reported that another \$50 million was paid to 75 executives who worked on the proposed merger with Dynegy, which ultimately fell apart.<sup>6</sup> A list of executives receiving these Dynegy-related bonuses has not been released.

And today's *New York Times* has reported that Enron paid over \$300 million to its executives in 2001 to reward them for meeting a series of stock price targets.<sup>7</sup> At the same time, these same executives were apparently inflating the company's profits by almost \$1 billion through off-balance-sheet partnerships.<sup>8</sup> A complete list of executives receiving these bonuses has not been released.

Because I believe it is important to examine whether senior executives were enriching themselves at the same time that ordinary workers were being laid off, I request that Enron provide the following:

- (1) A list of all Enron employees who received payments on or around November 30, 2001, as part of a reported \$55 million payout, and the amount of each employee's payment.

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<sup>5</sup>*Enron's Last-Minute Bonus Orgy*, Salon (Feb. 8, 2002).

<sup>6</sup>*Id.*

<sup>7</sup>*Enron Paid Huge Bonuses in '01; Experts See a Motive for Cheating*, New York Times (Mar. 1, 2002).

<sup>8</sup>*Id.*

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- (2) A list of all Enron employees who received payments for working on the proposed merger between Enron and Dynegy, and the amount of each employee's payment.
- (3) A list of all Enron employees who received payments during 2000 and 2001 as a result of Enron's stock meeting price targets, and the amount of each employee's payment.
- (4) All documents explaining the criteria by which Enron employees were selected for bonuses or retention payments that were made from 2000 to the present.

V. **Enron Trading Its Own Stock**

According to the *Wall Street Journal*, government investigators are examining whether Enron may have earned between \$80 million and \$100 million in January 2000 from trading its own stock.<sup>9</sup> The *Wall Street Journal* notes that an off-balance-sheet partnership removed a hedge on Enron stock shortly before Enron announced a new broadband venture on January 20, 2000. Because hedges can protect against a decline in the stock's price, the removal of the hedge allowed the partnership to profit from any subsequent rise in Enron's stock price.

On January 20, 2000, then-Enron President Jeffrey Skilling announced a purchase of 18,000 computer servers from Sun Microsystems. Mr. Skilling said that "[t]his alliance with Sun, along with Enron's initiatives in bandwidth trading and intermediation, will bring fundamental changes to the Internet."<sup>10</sup> The announcement that both companies "expected explosive growth in the broadband business" caused Enron's stock price to increase nearly 26% in one day.<sup>11</sup>

If this allegation is true, it suggests that an Enron partnership may have been engaging in a form of insider trading. Moreover, because these stock transactions were not publicly disclosed, Enron may have used profits from trading its own stock to cover up losses in unprofitable areas of its business, thus misleading shareholders about the true nature of Enron's earnings.

This allegation was not published until after you appeared before the Oversight and Investigations Subcommittee, and thus I was not able to ask you about it. Nevertheless, I request

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<sup>9</sup>*Enron's Actions before News Event May Have Had Multimillion Payoff*, Wall Street Journal (Feb. 15, 2002).

<sup>10</sup>Enron Press Release, *Enron and Sun Microsystems, Inc. Team to Accelerate Adoption of Broadband Internet Services* (Jan. 20, 2000).

<sup>11</sup>*Enron's Actions before News Event May Have Had Multimillion Payoff*.

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that Enron provide the following:

- (1) All records of transactions during 2000 and 2001 in which Enron or a special purpose entity (SPE) traded Enron stock, either directly or indirectly, including through the use of hedges.
- (2) All documents or manuals setting forth policies or guidelines on when or how Enron or a SPE could trade Enron stock, either directly or indirectly.
- (3) All documents or manuals setting forth policies or guidelines on how Enron or a SPE would account for profits or losses from the trading of Enron stock, either directly or indirectly, including any documents or manuals prepared by Arthur Andersen.
- (4) A list of all employees whose approval was required in order to engage in the transactions referenced in request (1).

#### **VI. Role of Political Activity in Enron Collapse**

During the House Energy and Commerce Committee's February 6 hearing on Enron, Chairman Tauzin noted that "some of the most important policy issues that related to . . . Enron's collapse" include "proper governance, accounting and governance of the auditing profession, and, very importantly, the health of our energy interests in markets."<sup>12</sup> The Energy and Commerce Committee and others in Congress are working to ensure that appropriate oversight policies are in place to help prevent the types of problems that led to Enron's demise.

A critical component of this effort is gaining an understanding of the extent to which Enron was able to influence federal oversight and regulation concerning the problems relating to Enron's fall. Over the past several years, Enron became one of the most influential voices in Washington with both the Republican and Democratic parties, and benefitted from actions by the Bush and Clinton Administrations, as well as Congress.

Accordingly, I request that Enron provide a list of all contacts by Enron's employees or outside representatives with the Executive Office of the President and all federal departments and agencies from 1993 to the present regarding the following: regulation of accounting practices; regulation of energy derivatives and any other form of derivatives, including swaps; regulation of Enron's off-balance-sheet partnerships; Enron's financial position and prospects, including any potential federal action to assist Enron in improving its financial position and averting

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<sup>12</sup>Statement of Rep. W.J. (Billy) Tauzin, House Committee on Energy and Commerce, *Hearing on the Financial Collapse of Enron Corp.* (Feb. 6, 2002) (Federal Document Clearinghouse Political Transcripts).

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bankruptcy; regulation of Enron or any of its subsidiaries under the Public Utilities Holding Company Act; federal energy policy, including but not limited to regulation of energy facilities and energy markets, North American power markets, oil and gas pipeline issues, and policies related to siting, construction, and operation of transmission lines, generation plants, hydro-electric projects, and other electricity-related facilities; and environmental issues related to electricity generation, including air emissions, pipeline safety issues, and gasoline formulations and additives. For each contact, describe the date it occurred, the Enron employee(s) or outside representative(s) involved, the government official(s) involved, and the substance of the contact, and provide a copy of any written materials or electronic communications provided by any Enron employee or outside representative to any government official.

## **VII. Conclusion**

At the February 7 hearing, Chairman Tauzin noted that the purpose of the Committee's investigation is "to not only unravel what went wrong here, but try to make sure again that it doesn't happen again to any other American company or to its employees."<sup>13</sup> The information I have requested will further both Congress' investigation of Enron's collapse and Congress' effort to formulate corrective legislation.

I hope you will provide the information I am seeking by the close of business on March 7, 2002. Thank you.

Sincerely,



Henry A. Waxman  
Member of Congress

cc: The Honorable James C. Greenwood  
The Honorable Peter Deutsch

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<sup>13</sup>Statement of Rep. W.J. (Billy) Tauzin, Subcommittee on Investigations and Oversight of the House Committee on Energy and Commerce, *Hearing on the Financial Collapse of Enron Corp.* (Feb. 7, 2002) (Federal News Service Transcripts).