

SECURITIES & EXCHANGE COMMISSION
MAILED FOR SERVICE

ADMINISTRATIVE PROCEEDING
FILE NO. 3-10909

DEC 15 2002

UNITED STATES OF AMERICA

Before the

SECURITIES AND EXCHANGE COMMISSION

December 5, 2002

~~CTFD NO.~~ 19c class only

In the Matter of	:	
	:	ORDER ON MOTION TO
APPLICATIONS OF ENRON CORP.	:	EXCLUDE DIRECT TESTIMONY
	:	
	:	

In 2000, Enron Corp. ("Enron") was exempt from most provisions of the Public Utility Holding Company Act of 1935 ("PUHCA") administered by the Securities and Exchange Commission ("Commission"). The Section 3(a)(1) exemption occurred because Enron represented to the Commission on Form U-3A-2 pursuant to Rule 2 under PUHCA that it and a wholly owned public utility subsidiary from which it derived a material part of its income were predominantly intrastate in character and that they carried on business substantially in the single state in which they were organized. (17 C.F.R. § 250.2)

On April 12, 2000, Enron filed an application on Form U-1 with the Commission for an exemption under PUHCA Sections 3(a)(3) or 3(a)(5) ("2000 Application"). Enron filed the 2000 Application because an exemption under Sections 3(a)(3) or 3(a)(5), unlike an exemption under Section 3(a)(1), provide relief from the restrictions under the Public Utility Regulatory Policies Act of 1987 ("PURPA") and Federal Energy Regulatory Commission rules applicable to "qualifying facilities or QF," nonutility generating facilities. (Commission Order, October 7, 2002, n.2.)

On December 2, 2001, Enron filed a voluntary petition for reorganization under Chapter 11 of the bankruptcy code in the United States Bankruptcy Court for the Southern District of New York.

On February 28, 2002, Enron filed Form U-1 requesting an order under Section 3(a)(1) of PUHCA for exemption from all PUHCA provisions except Section 9(a)(2). Enron amended the application on May 31, 2002. Enron filed for the exemption because it could no longer produce the data called for by Form U-3A-2. (Commission Order, October 7, 2002, n.1.)

A hearing on the applications will begin on December 5, 2002, at 9:00 a.m. EST in the ALJ Hearing Room, Room C150, at the Commission's Headquarters Building, 450 Fifth Street, NW, Washington, DC.

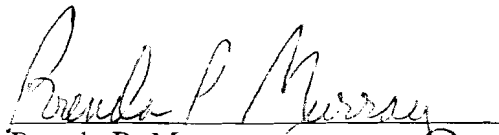
Pending Motion

Pending before me is the Division of Investment Management's Evidentiary Objections and Motion in Limine to Exclude Testimony Submitted by Enron ("Motion") filed on November 26, 2002. I have considered Enron's Memorandum of Law On The Scope Of Phase 1 Of The Hearing, and Enron's Response to Division of Investment Management's Evidentiary Objections and Opposition to Motion in Limine to Exclude Testimony Submitted by Enron ("Response") filed on November 26, and December 4, 2002, respectively.

Ruling

Phase 1 of the hearing will address "whether Enron satisfies any of the particular statutory criteria for an exemption under section 3(a)(1), section 3(a)(3), or section 3(a)(5)" of the PUHCA. (Commission Order, October 7, 2002.) The testimony of Martin A. Sosland and Michael Hoffman relates to "(i) the bankruptcy procedures, (ii) the ramifications for Enron's creditors of a denial of the exemptions, and (iii) the potential diminution of value of Portland General that Enron would suffer if the Commission were to find that Portland General is not predominantly intrastate." (Response, 9.)

I grant the Motion in part and I will exclude the testimony of Mr. Sosland and Mr. Hoffman. I recognize Enron's concerns that the elimination of all public interest considerations from Phase 1 of the hearing may deny it due process under the law. However, the testimony at issue is irrelevant because it is totally focused on subjects unrelated to the statutory provisions governing the applications. (17 C.F.R. § 201.320.) I will rule on the Division of Investment Management's objections to exclude portions of the testimony of Enron's other witnesses when the testimony is offered at the hearing.


Brenda P. Murray
Chief Administrative Law Judge