UNITED STATES OF AMERICA
BEFORE THE
SECURITIES AND EXCHANGE COMMISSION

In the Matter of	:	
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Applications of Enron Corp. for Exemptions Under the Public Utility Holding Company Act of 1935, (Nos. 70-9661 and 70-10056).	:	Administrative Proceeding
	:	File No. 3-10909
	:	
	:	

REPLY OF ENRON CORP. TO THE DIVISION OF INVESTMENT MANAGEMENT'S OPPOSITION TO ENRON'S MOTION FOR LEAVE TO ADDUCE ADDITIONAL EVIDENCE

Under rule 452 of the Commission's Rules of Practice (17 C.F.R. § 201.452), "a party may file a motion for leave to adduce additional evidence at any time prior to the issuance of a decision by the Commission. Such motion shall show with particularity that such additional evidence is material and that there were reasonable grounds for failure to adduce such evidence previously."

In its motion for leave to adduce additional evidence, Enron Corp. ("Enron") clearly identifies the evidence that it seeks to add to the record.

> Enron seeks leave to adduce evidence concerning (a) the joint chapter 11 plan filed by Enron on July 11, 2003 ("Plan"), (b) the timing and process for implementation of the Plan, (c) the constituencies protected through the Plan, and (d) the effect of the Plan on Enron's status as a holding company.[1]

[1] *Motion of Enron Corp. for leave to adduce additional evidence*, July 15, 2003 ("Motion to Adduce") at 1. Beginning on December 2, 2001, Enron and certain of its subsidiaries (collectively, the "Debtors") filed voluntary petitions for reorganization under the chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Southern District of New York ("Bankruptcy Court"). Additional Enron subsidiaries have continued to file since that time. The Debtors continue to manage their businesses as debtors-in-possession in the ordinary course of business.

Because the Plan was only filed with the Bankruptcy Court on July 11, 2003, this evidence was not made a part of the record before the Commission and was not considered or rejected by Judge Murray.[2]

The proposed additional evidence is material principally for two reasons: (1) the evidence would provide important information necessary for the Commission to administer the Public Utility Holding Company Act of 1935 ("Act") in accordance with the interests of the public, investors and consumers; and (2) the evidence is a persuasive indication of Enron's commitment to divest its only public utility subsidiary, Portland General Electric Company ("PGE").

Under Section 1(c), it is the policy of the Act that all its provisions should be interpreted to prevent injury to investors, consumers and the public. Enron's motion describes how a denial of the applications would be injurious to the protected interests and why it is important to take into account the reorganization process in arriving at a solution in this matter. Indeed, a recent order of the Commission authorizing the reorganization plan of a nonutility subsidiary of a registered holding company states: "Congress recognized that the efforts of the Commission should be coordinated with the work of the courts in reorganization cases."[3] Enron's objective in adducing additional evidence is to set the factual background for the coordination necessary to carry out the Plan most efficiently.

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[2] Enron's *Brief in Support of Petition for Review* (July 21, 2003) at 40 and 43 challenges Judge Murray's decision to exclude testimony previously offered by Enron on the subject of the bankruptcy process, its goals and expected outcome, as well as testimony describing the adverse effects of the loss of the intrastate exemption under Section 3(a)(1). Enron respectfully requests that the Commission consider such excluded evidence in addition to the evidence that Enron seeks to add to the record by the Motion to Adduce. Under Rule 460(c), evidence excluded by the hearing officer is not considered a part of the record before the Commission upon appeal , but it shall be transmitted to the Commission by the Secretary if so requested by the Commission.

[3] *The Southern Company, et al.*, Holding Co. Act Release No 27698 (July 18, 2003) (approving a plan of reorganization under Section 11(f) of the Act and issuing a report under Section 11(g)). It is premature at this time to discuss whether the Commission would have jurisdiction to approve the Debtors' Plan under Section 11(f) of the Act if Enron's applications are denied. As Enron indicated in the Motion to Adduce, the Commission nevertheless has the ability to participate in the Bankruptcy Court plan approval process under Section 1109 of the Bankruptcy Code. Motion to Adduce at 12.

It is also material to the applications at issue in this proceeding that under the Plan Enron has committed to divest PGE as soon as possible. The elimination of Enron as a holding company, and the protective ring fencing of PGE during the Plan's implementation, are the ultimate remedies under the Act. The Division's attempt to put blinders on the Commission and keep these important facts from the record is contrary to Commission precedent. In 2001, the Commission granted an exemption under Section 3(a)(5) of the Act in part based on the holding company applicant's representation that it would divest a previously-acquired public utility subsidiary within two years.[4] It is certainly material, therefore, to Enron's exemption applications that a Bankruptcy Court process is well underway that will cause Enron to cease to be a holding company within the foreseeable future.[5]

Lastly, there are sufficient grounds for Enron's failure to adduce the proposed evidence previously. The Plan has been developed through discussions with Enron's creditors, examiners, advisors and others contemporaneously with the proceeding in this matter. It simply was not available as an integrated product that Enron could put forth to all interested persons in a formal Bankruptcy Court filing until July 11, 2003. Enron's motion to adduce evidence concerning the Plan was filed on July 15, 2003. Enron has not delayed in bringing this evidence before the Commission.

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[4] *AES Corp.*, Holding Co. Act Release No. 27363 (March 23, 2001).

[5] That Enron or a special purpose entity formed to distribute the stock of PGE to creditors under the Plan also would qualify for exemption under Section 3(a)(4) of the Act is indicative of the fact that Enron, in its current posture as a company in reorganization, should be exempt under the Act. Although Enron has not yet applied for exemption under Section 3(a)(4), Enron's application will demonstrate why the exemption is justified under a plain reading of the statutory text and the Commission's precedent.

For the foregoing reasons, and for the reasons stated more fully in the Motion to Adduce, Enron respectfully requests that the Commission grant the motion and permit Enron to adduce such additional evidence specified therein.

Respectfully submitted,

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William S. Lamb
Charles A. Moore
Sonia Mendonca
LeBoeuf, Lamb, Greene & MacRae, L.L.P.
125 West 55th Street,
New York, New York 10019-5389

Attorneys for Enron Corp.

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