

Some thoughts on options Load two

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 - *Subject:* Some thoughts on options Load two
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Richard,

After today's discussion here are our brainstorming ideas on options:

1. WAIT FOR A BETTER PROTECTIVE ORDER

Ask Harvey Morris where they are on fixing the protective order that is being litigated by others. If the protective order has not changed, then unilaterally postpone production until it is. Pro: Better protection and more time; Con: Even with a more stringent protective order Enron still questions whether the PUC is entitled to financial performance data. Thus, this option does not fully disclose all of Enron's positions and the company may be accused later of simply engaging in delaying tactics. Under this option we file our formal objections as well.

2. TURN OVER THE TRANSACTION DATA AS IS

Continue on our present course of turning over transaction data for electricity that was delivered. Pro: PUC will get the data anyway either through FERC, unfair competition, antitrust or price gouging litigation. By turning over the data that will show profits, PUC might slow down investigation there as opposed to interrupting the business by seeking to depose witnesses etc. Con: This would be waiving the legitimate question that Enron has as to the PUC's ability to discovery this information through a subpoena. There is also a question of how confidential this data would be given the current political agenda. It might also serve to whet the appetite of the PUC for more Enron information and discovery. This option would also provide confidential proprietary information to the PUC about how Enron gets its competitive advantage.

3. TURN OVER DATA FOR OUTSIDE OF CALIFORNIA AND LET PUC GET REST OF DATA FROM ISO AND PX.

We have told the PUC we do not want to duplicate the efforts of ISO

and PX so the way to relieve the burden on us is to give only missing data. PRO: It would be easier and quicker to just give the outside of California data and would sidestep for the moment the ongoing jurisdictional question. Con: Without Enron cost data for the California ISO and PX transactions, the PUC would not be able to arrive at what they want -- a profit and loss picture. We would have a hard time representing to the PUC that the combination of the PUC data and the Enron data would be all that they need to calculate the answers to Request Nos. 7-10.

4. TURN OVER EVERYTHING BUT PRICE

This option would simply omit the price data. Pro: It would not reveal the profit and loss information. Con: It would not reveal the profit and loss information. In other words, the PUC is clear that this is what they are after. By giving them everything else, we would in effect be telling them we will not turn over profit and loss. Moreover, by piecing some of it together with the ISO and PX data, the PUC might be able to put together a revenue picture which will be quite large, but just not the cost or expense side.

5. DECLINE TO PRODUCE THE DATA

We would tell Harvey Morris that Enron has reconsidered its position for the following reasons: (1) Our firm belief that the PUC is not entitled to the profit and loss data they are seeking; (2) in his latest email, Harvey has made it clear that the PUC wants more data (1999) than we discussed earlier; (3) continued threat that if they do not like the transaction data they will come back and ask for profit and loss information that we do not believe they are entitled to; (4) Commissioner Wood's statement that the purpose of this investigation is to get money from market participants in the hands of consumers; (5) investigation by the AG into activities of other market participants and the notice that other governmental agencies are cooperating -- who are we producing this information to and for what purpose; (6) Enron favors public disclosure of trading data but only if all participants are required to do so; (7) Enron is a small player in this market and many other market participants are not involved in the process BPA etc. PRO: This may be the only way to preserve Enron's challenge to the jurisdiction of the PUC to get this data. Moreover, in the current political environment there is no assurance where this information will be leaked. It also makes sense to see what FERC will do with their published 11/1/00 report on investigation date. Under this option, we file our formal objections and sit back and wait.

6. ME TOO

Upon reflection, we agree with the approach taken by the other market participants. We will not produce until the protective order is modified and then only data that is within the PUC jurisdiction. PRO: This makes it look like all the market participants are acting in concert and really is no different than option 1 above. Moreover, if you read Reliant's responses, they appear ready to turn over financial data if

the protective order is modified. (Terry and Mike Day are both out of their offices today.) Note that Williams is adopting a strategy that says the PUC needs to go to Superior Court to enforce its subpoena. This may be met with strong opposition by the PUC given their California constitutional contempt authority.

7. MOVE TO QUASH BEFORE THE ALJ

Here we would raise all of the arguments that we have about why the PUC does not have jurisdiction and fight it out on the merits before the ALJ. PRO: The ALJ is a forum to raise the jurisdictional questions. It has the least procedural risks of being dismissed. CON: Reading the tea leaves, we believe it unlikely that the ALJ will determine that the PUC has no jurisdiction.

Moreover, because the PUC has its own constitutionally granted contempt power, the PUC will take the view (according to Mike Day) that they need not go to the Superior Court for enforcement. They will also take the view that the Superior Court has no jurisdiction to hear our appeal. Appeals have to go to the PUC and those orders are appealable at the Court of Appeal level. Thus, the only de novo review of our objections might be at the ALJ level.

8. FILE DECLARATORY RELIEF ACTION IN FEDERAL COURT IN CALIFORNIA

We would claim federal question jurisdiction under the Federal Power Act and in particular the provisions of 824(g) under which the PUC issued its subpoena in part. The dispute to be decided is whether the PUC has the jurisdiction to seek the profit and loss information from the wholesale market. The authority for this would be *Mississippi Power & Light v. Mississippi* 487 US 354 (bright line between wholesale market regulated by FERC and the retail market regulated by states); *Bristol Energy Corp v. New Hampshire* 13 F.3d 471 (1st Cir. 1994)(federal question whether state agency can inquire into business and financial data in the wholesale market but found no cognizable claim.) PRO: The federal forum may be more even handed than the ALJ, but the question is whether we can state a cognizable claim. There may be greater protections from disclosure of the information as well. CON: The PUC may continue on a parallel track unless we are able to obtain injunctive relief. The PUC might seek discovery of the same information in the Federal court proceeding. We should assume that this action will trigger the strongest response from the PUC and/or the AG in form of further investigations or alternative forums for getting the same information (e.g unfair business practice suit, price gouging, anti-trust etc.). We should anticipate deposition requests for traders etc. By taking this position, we will clearly be conceding that if FERC asks for the data it is germane to their authority.

9. SEPARATE RESPONSES/STRATEGIES FOR DIFFERENT ENRON ENTITIES

It may make some sense to chart a different course for Portland General, EES and EEMC and continue to produce some data from those entities. PRO: The information provided for these entities is not likely to generate profit and loss information that would be germane to the fight we are about to engage in (e.g. EES's description of % off tariff rates for

example.) For Portland General, Dave Aamodt is out of the office and not able to participate in any change of direction discussions.

Hope this is helpful.

Thanks

Gary

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