



September 21, 2006

A nonprofit organization devoted to discovering, developing, and promoting free-market solutions to social and economic problems.

Honorable Sim Lake, USDJ
United States Court House
515 Rusk Avenue, Room 9535
Houston, Texas 77002

Dear Judge Lake:

We are a couple of people who have no connection to the Enron case. However, we have some economic experience which we think may be helpful in reaching a decision on the sentencing of Jeffrey Skilling.

It seems to us that the decision you face is how to balance the contributions of Ken Lay and Jeffrey Skilling to society against the harm that might have been done. We could be wrong about the formulation of the question. We appreciate that the economic considerations alone are not controlling but we believe they are necessary to application of the sentencing under the law. Given that, please indulge us in our attempt to be helpful.

PUBLISHER OF
Budget & Tax News
Environment & Climate News
Health Care News
School Reform News

IT&T News
Lawsuit Abuse Fortnightly

THE ENRON CONTRIBUTIONS


We would argue that the biggest contribution by Enron under the leadership of Ken Lay and Jeffrey Skilling was to provide risk management of natural gas prices for producers and industrial consumers. Enron operated the over-the-counter market for a year until the exchange-traded futures and options contracts were offered on the New York Mercantile Exchange in 1990. Those futures contracts are now among the most liquid in the world.

ILLINOIS SCHOOL CHOICE INITIATIVE
AT THE HEARTLAND INSTITUTE

The electricity markets established for California are no longer traded. However, there is an auction market in the PJM (Pennsylvania, New Jersey, Maryland) region and an auction was just held in Illinois. In the meantime, natural gas contracts serve as an important hedging vehicle because gas is the fuel used at the margin to generate electricity.

THE NEW COALITION
AT THE HEARTLAND INSTITUTE

Enron's failed broadband joint venture with Blockbuster was intended to bring video on demand. This now exists on cable and is similar to the iPod offered by Apple Computer. This latter system is a masterful accommodation to copyrighted music and video programming where artists are compensated.

POLICYBOT® 
The national clearinghouse for the best available research and commentary on today's vital issues.

19 South LaSalle
Suite 903
Chicago, Illinois 60603
phone: 312.377.4000
fax: 312.377.5000
think@heartland.org
www.heartland.org

Honorable Sim Lake, USDJ
September 21, 2006

Weather derivatives started by Enron and Koch Industries in 1996 for a swap in the following year have evolved into an exchange-traded contract offered by the Chicago Mercantile Exchange. Futures and options contracts based on temperatures in 18 U.S., nine European, and two Asia-Pacific cities are now traded in this market.

Finally, the establishment of a robust water market by Enron failed. However, much was learned from the effort and it is possible that another attempt will be successful.

THE HARM FROM THE ALLEGED FRAUD

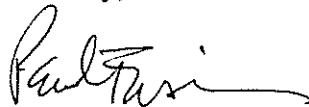
From an economic perspective, the harm is difficult to calculate. For sure, the collapse caused a huge notional loss to investors and employees in the form of pension and savings plans. However, Ken Lay and Jeffrey Skilling were not convicted of causing the collapse. They were convicted of lying about Enron's financial condition (and one count of insider trading). If the misrepresentation of Enron's financial condition in 2001 as alleged in the indictment had not occurred, presumably the bad news would have been known earlier. That in turn would have caused the Enron share price to collapse sooner and even less time would have been available for investors and employees to liquidate their holdings.

The implication of this reality is that there was no additional harm done to the investors and employees from the alleged hiding of Enron's profits and losses. While it may have changed the identity of the losers it did not increase the totality of the losses.

CONCLUSION

On balance, the benefits created by Ken Lay and Jeffrey Skilling in building Enron seem to us to far outweigh any incremental harm done to investors from the alleged fraud. The economists we know who have carefully studied the risk management practices and techniques developed by Enron, agree that they were beneficial and will continue to be so. Not giving this reasonable weight will send a potentially harmful message. That is not to excuse any fraud, but rather to recognize the context of the decision.

Sincerely,



Paul Fisher



Jim Johnston

Paul Fisher is partner at the law firm of McGuire Woods LLC and Jim Johnston is an economist retired from the Amoco Corporation. Both are unpaid directors of The Heartland Institute, and neither has any connection with the Enron case.