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Joan Claybrook, President

March 25, 2003

Emily J. Reynolds
Secretary of the Senate
S-312 The Capitol

Jeff Trandahl
Office of the Clerk of the House of Representatives
H-154 The Capitol

This letter requests that the Secretary of the Senate (Secretary) and the Clerk of the House of Representatives (Clerk) investigate a probable violation of the Lobbying Disclosure Act of 1995, Public Law 104-65 (Act). Documents obtained by Public Citizen through the Freedom of Information Act (FOIA) suggest that Cadwalader, Wickersham & Taft (Cadwalader) lobbied federal officials covered by the Act on behalf of Enron. A search of Lobbying Reports filed by both Enron and Cadwalader under the Act show no record that Cadwalader or its employees registered as lobbyists for Enron. Public Citizen requests that the Secretary and Clerk investigate whether these lobbyists have failed to comply with the Act and, if so, send Cadwalader a notice requiring full compliance with the Act.

The Act requires that lobbyists register with the Secretary and the Clerk within 45 days of their first lobbying contact, or employment to make a lobbying contact. 2 U.S.C. 1603(a). Lobbying activity includes oral or written communication to covered executive branch officials with regard to the formulation, modification or adoption of Federal legislation, including preparation and planning activities, research and other background work that is intended, at the time it is performed, for use in such communications. 2 U.S.C. 1602(7), (8). The federal officials and employees whom Cadwalader and Enron lobbied were members of the President's Working Group on Financial Markets. This Working Group consists of the Secretary of the Treasury and the Chairmen of the Federal Reserve, the Securities and Exchange Commission, and the Commodity Futures Trading Commission. These officials and their employees fall under the definition of "covered executive branch officials." 2 U.S.C. 1602(3).

Although Enron registered as a lobbyist for itself, and Cadwalader's registrations list numerous non-Enron clients on behalf of whom the firm lobbied, Cadwalader's registrations do not disclose that it lobbied for Enron. In addition, Cadwalader representatives who contacted Treasury officials on behalf of Enron — namely, Ellen Levinson, David Mitchell, and Lech Kalembka—are not registered individually as lobbyists for Enron.

Enclosed are copies of documents reflecting Cadwalader's lobbying activities on behalf of Enron. All of these documents were released by the Department of the Treasury under the FOIA. These documents

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indicate that Enron and Cadwalader proposed amendments to the Bankruptcy Reform Act (H.R. 833 and S. 625) of 1999 and 2000 that expanded the definitions of retail swaps and over-the-counter derivatives in the energy market, and allowed them to be “netted” in case of financial insolvency. Though the Bankruptcy Bill ultimately failed to pass Congress, the swaps provisions were included in an amendment to the Commodity Futures Modernization Act of 2000, despite the Working Group’s objections, and signed into law in late December 2000. This law allowed energy trading to occur without the oversight of government authorities, enabling Enron to withhold supply and drive up the cost of wholesale electricity, which led to the West Coast energy crisis and cost citizens billions of dollars.

Following is a timeline of events Public Citizen has pieced together from documentation released by the Department of Treasury:

- May 26, 1999: Treasury circulates a memo regarding Cadwalader’s proposed amendments to bankruptcy legislation, calling them “Statutory changes proposed by Cadwalader/Enron.”
- Late May-early June 1999: Treasury staff, mostly employees working with the President's Working Group on Financial Markets, discuss proposals using e-mail. (The Department of the Treasury has heavily redacted the e-mails from this period).
- June 15, 1999: Tom McGivern, Treasury’s Deputy Associate General Counsel, circulates an e-mail that reads, “Enron and its outside counsel, Cadwalader, have proposed some changes to the Working Group’s proposed financial netting legislation. The proposed changes were mentioned briefly in the last Working Group meeting. Since that time Enron/Cadwalader have asked to meet with some part of the Working Group staff to discuss their proposals which, as Norman [Carleton, Treasury’s Director of Finance Policy Analysis] mentioned in another e-mail, generally are not supported by Working Group staff who have reviewed them.”
- June 16, 1999: Carleton writes a response to the Enron/Cadwalader changes, calling the proposed amendments “too broad”: “We do not support the major provisions in the Enron/Cadwalader proposal because they undo a difficult balancing of competing objectives that the Working Group worked hard over two years to achieve.” He also circulates another email saying, “I forgot to mention that Enron has been *lobbying for expansion of the netting provisions with the help of the Cadwalader law firm*” [emphasis added].
- June 18, 1999: Enron/Cadwalader and Treasury staffs hold a conference call. Carleton sends around an email, which has been redacted in the FOIA release process, presumably detailing the meeting discussion.
- September 10, 1999: Cadwalader faxes revisions of the proposed amendments to Treasury. More e-mail discussions (mostly redacted) follow.
- November 10, 1999: Cadwalader submits another round of revisions on the amendments for Treasury review.
- March 1, 2000: Cadwalader submits another round of revisions for Treasury review. Treasury staff members discuss in redacted e-mails.

Clearly, Cadwalader lobbied for Enron on a number of levels, from making contact with Treasury and Working Group officials on the company’s behalf, to planning and preparing materials for Treasury’s review and collaborating with Enron on its proposals for changes to the Bankruptcy Reform Act. These records do not reveal whether any exemptions from the registration requirement excused Cadwalader from registering and filing reports that disclose its lobbying on behalf of Enron. 2 U.S.C. 1603(a)(3). If noncompliance is found and not cured, we urge you to ask the U.S. Attorney to seek the maximum fine, \$50,000.

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Considering the extensive documentation of lobbying by Cadwalader and Enron for inclusion in the Bankruptcy Reform Act of these special interest provisions, which were subsequently tacked on to the Commodity Futures Modernization Act, Public Citizen urges the Secretary and Clerk to exercise its authority under 2 U.S.C. 1605, to investigate whether Cadwalader has violated the Lobbying Registration Act by failing to register and file reports disclosing its lobbying for Enron. We also request that the Secretary and the Clerk seek full compliance from the firm.

Sincerely,

Tyson Slocum
Research Director
Critical Mass Energy & Environment Program
Public Citizen

Enclosures

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