

For immediate release: Jan. 23, 2008

Legislation Would Leave Enron Loophole Wide Open
Legislation Approved by Senate Leaves the Door Open for Energy Speculators;
Oil and Gasoline Trades Remain Unregulated, Despite Senators' Claims

January 23, 2008 (Boston, MA) — Congressional legislation aimed at closing the “Enron Loophole” instead leaves the door wide open for oil and gasoline speculators, according to an analysis of the measure by the New England Fuel Institute.

Yet, despite deficiencies in this legislation, and despite that fact that relevant legislation is yet to be made law, some Senators are already claiming victory, claiming the Enron Loophole has been “closed.”

“Close, but no cigar,” Shane Sweet, the Executive Vice President & CEO of the New England Fuel Institute, a fuel marketer trade group said of the legislation. “If they’re claiming victory based on this piece of legislation alone, they are mistaken. If this measure passed today, people would be paying as much — if not more — for gasoline and heating oil tomorrow, because speculators will still have a free hand to drive these still unregulated markets.”

The Close the Enron Loophole Act, sponsored by Sen. Carl Levin (D-MI) was aimed at closing a loophole put in place by lobbyists for Enron during a lame-duck session of Congress in December 2000. The Enron Loophole provided blanket regulatory exemptions for energy trading on electronic trading mechanisms. Electronic trading platforms have become the primary means by which energy commodities futures contracts are bought and sold.

By exempting oil trades, Sweet said, American families will continue to pay higher costs for oil and gasoline.

Legislation now moving on Capitol Hill would not close the Enron loophole and regulate all U.S. energy trading, according to James Collura, who tracks legislative issues for NEFI.

“This legislation, as it stands now, would basically put a ‘traffic cop’ in front of the loophole to direct people in and out rather than close it,” Collura said. “The legislation would establish a new criteria for regulation that would instantly apply to most natural gas trading, but for all other electronic energy trades, they would have to meet new criteria, and this is a problem.”

Collura said that the regulatory burden may lie on federal bureaucrats, industry retailers and energy consumers to prove whether or not certain energy contracts offered on an exempt exchange need be regulated.

“They did not get to the source of the loophole,” Collura said. “The word ‘exempt’ is still written over federal laws that govern energy trades, thanks to Enron.”

Lawmakers already acknowledge that the legislation would also not address the so-called “Foreign Markets Loophole,” which allows U.S.-based traders to circumvent federal regulation by trading American energy commodities overseas. NEFI says the Atlanta-based InterContinental Exchange operates under this loophole by trading West Texas Intermediate Crude Oil contracts out of London.

“The Senate has to go back and finish the job, and until then, there’s no way they can claim that these loopholes have really been closed,” Sweet said. “Congress needs to make sure that the job is done right; because right now, it’s less than half done.”

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