Former Enron CEO Jeffrey Skilling indicted

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Former Enron chief executive officer Jeffrey Skilling was indicted February 19 on 35 counts of fraud, conspiracy and insider trading. He is the latest and most prominent former Enron executive to face charges since the energy giant collapsed in a wave of accounting and corruption scandals in December 2001.

If convicted on all counts, Skilling faces a maximum sentence of 325 years in prison and millions of dollars in fines, as well as the forfeiture of $66 million in earnings allegedly received through insider trading. He pleaded not guilty to all charges.

The indictment was filed by the Enron Task Force, a joint unit of the Justice Department, the FBI and the Internal Revenue Service (IRS), in cooperation with the Securities and Exchange Commission (SEC). The SEC separately announced civil charges of securities fraud and insider trading against Skilling.

Former chief accounting officer Richard Causey, who was indicted in January on six counts of fraud, was charged concurrently with Skilling in the new indictment. Causey also pleaded not guilty.

The indictment of Skilling comes five weeks after Andrew Fastow, Enron's former chief financial officer, pleaded guilty to two counts of fraud in a plea bargain with prosecutors. Fastow agreed to cooperate in future investigations and received a 10-year prison sentence. Fastow was one of Skilling's closest associates, allegedly working with him in engineering off-the-book partnerships to hide debt and artificially inflate Enron's earnings in 1999, 2000 and 2001.

Fastow is expected to implicate Skilling, who more than any other Enron executive was responsible for the practical measures by which Enron was transformed from a traditional oil and gas pipeline firm into a giant trader on the wholesale energy market. The rise of Skilling was bound up with the rise of Enron as the paradigmatic example of the "new economy" company, touted by analysts and rewarded by Wall Street.

Skilling joined Enron in the early 1990s and rose through the corporate hierarchy until Kenneth Lay, who was chairman of Enron's board of directors and long-time CEO of the company, named Skilling CEO in 2001. Skilling and Lay exploited opportunities for corporate and personal gain that arose out of the deregulation of the energy industry begun under the Reagan administration in the 1980s. As a consequence of this deregulation, there emerged a breed of "market makers" that mediated, for a profit, between energy producers and consumers. Skilling and Lay sought to place Enron in a position where it could profit through the buying and selling of wholesale contracts in a new market largely of its own creation.

In 1995, Skilling was named CEO and managing director of Enron Capital & Trade Resources—a branch of the company that dealt with energy trading. In the same year, Enron was named the "most innovative company" by *Forbes* magazine, an honor that it was accorded in each of the subsequent six years. In 1997, Skilling became president and chief operating officer of Enron.

The *Houston Chronicle* notes that Skilling "had little use for anything that smacked of a traditional energy company—calling companies like Exxon Mobil 'dinosaurs'—or even Enron's own projects, which included power plants and pipelines. 'We are doing great things,' he later said. 'We are creating markets where markets didn't exist.'"

Like many of the "new economy" companies that relied heavily on financial speculation and market manipulation, Enron's success depended largely on its rising stock price, which allowed it to finance loans and increase its market leverage. When the company's operations failed to be as successful as they were touted to be, Enron resorted to accounting sleight-of-hand and other fraudulent activities to hide debt and inflate earnings.

According to the indictment, Skilling, Causey and other executives manipulated finances so that "financial results would falsely appear to meet or exceed analysts' expectations," and made public statements that misrepresented the health of the company. Meeting analysts' expectations was necessary to avoid a sharp drop in share prices.

Much of the fraud focused on Enron's telecommunications division, known as Enron Broadband Services (EBS). "Skilling and others sought artificially to support and inflate Enron's stock price by falsely characterizing Enron as a company whose earnings and future prospects were determined to a substantial extent by...EBS. At that time, stocks of technology sector companies...generally traded at a significant premium on public securities markets." Enron stock soared 25 percent after the announcement of the formation of EBS.

At an analysts' conference in January 2000, Skilling and other Enron executives claimed that EBS was nearly fully functional, when in fact it "remained only unproved concepts and laboratory demonstrations that Skilling was advised would take years to complete and might never be realized," according to the indictment.

It was to conceal losses at EBS that Enron used its now infamous off-balance-sheet partnerships. The so-called LJM partnerships were controlled by Enron chief financial officer Fastow, but were falsely treated in Enron's accounts as independent entities. Skilling and Fastow allegedly shifted Enron debt to these entities to remove this debt from Enron's books.

Another aspect of Enron's fraudulent activities involved the California energy crisis. According to the indictment: "During 2000 and 2001, the profitability of Enron's wholesale energy trading business...dramatically increased for reasons including rapidly rising energy prices in the western United States, especially California. This sudden and large increase in trading profits, which exceeded $1 billion, if disclosed to the public, would have made it apparent that Enron Wholesale's revenues were closely tied to the market price for energy, and that Enron therefore was exposed to the risk of a decline in such prices." Skilling, Causey and other executives concealed these profits by placing them in reserve accounts.

The indictment does not mention the fact that the high energy prices in California and other western states were themselves a result of market manipulation by Enron and other energy giants.

According to the indictment, Skilling used these reserves to boost profits in other sections of the company, particularly Enron Energy Services (EES), which, like EBS, had been touted as a major growth sector for the company. "Enron hid [EES's severe business failure] from the investigating public by moving large portions of EES's business...into Enron Wholesale," the indictment reads.

In the course of these actions, Skilling, Fastow, Causey and other executives benefited personally from Enron's soaring stock value. Skilling initiated a program in the latter part of his career at Enron to sell a set amount of the company's stock monthly. According to the indictment, "Between 1998 and 2001, Skilling received approximately $300 million from the sale of Enron stock options and restricted stock, netting over $89 million in profit, and was paid more than $14 million in salary and bonuses."

The indictment alleges that these sales were made with insider knowledge of the true health of the company. Also selling large amounts of stock—even as he encouraged employees to buy—was Kenneth Lay, though he is not mentioned in the indictment.

The collapse of the telecom bubble and the stock market as a whole in late 2001 eventually undid Enron's elaborate schemes to hide the struggling performance of many of its key components. The various off-balance-sheet partnerships were financed by Enron stock, and could not be sustained as the share price dropped.

Skilling unexpectedly resigned in August 2001. In December 2001, Enron filed for bankruptcy, and its stock—once valued at over $90 billion—was now practically worthless. Thousands of workers lost their jobs and thousands more saw their retirement savings—largely invested in Enron stock—wiped out. Enron was the first in a series of corporate scandals and shared many of the features common to all: accounting fraud, heavy reliance on debt and share value, enormous executive compensation and complete disregard for the employees.

While Skilling was one of the principal architects of the massive fraud carried out by Enron, his prosecution is designed more to conceal than to reveal the underlying issues.

First, the close connections between Enron and the Bush administration are being ignored by government prosecutors, and have been largely dropped by the media. Kenneth Lay was, for most of George W. Bush's political career, his biggest corporate financial backer.

Thomas White, who recently stepped down as Bush's secretary of the army, was second in command at Enron Energy Services, which occupies a prominent place in the indictment. If the charges in the indictment about the inflation of EES's profits are true, then one must assume White was aware of the fraud. Yet White is nowhere named in the indictment, and his role has not been broached at all in connection with the corruption at Enron.

Moreover, Enron was able to fleece California through market manipulation and price gouging because it had the support of the Bush administration. Despite repeated requests from California officials, Bush refused to consider putting price caps on energy rates being charged by companies like Enron.

Lay, in a private meeting with Vice President Dick Cheney in April 2001, lobbied hard for the administration to take a position against price caps. In subsequent weeks, both Bush and Cheney announced their positions, which coincided with that of Lay and Enron. While caps were eventually put in place several months later, in the intervening period Enron was able to amass over $1 billion in revenue.

As is well known, Enron played a critical role in the formulation of the Bush administration's energy policy, having direct input into Cheney's energy task force (the National Energy Policy Development Group). Cheney has refused to release information on meetings between the task force and energy company executives, including Enron's Lay. A case against Cheney on this issue is currently before the Supreme Court.

Cheney's task force ended up making many recommendations in line with Enron's wishes, including the formation of a national energy grid that would expand the wholesale energy market in which Enron specialized.

Nowhere in the Skilling indictment is there any mention of Kenneth Lay, by name or title. This is extraordinary, given the fact that Lay was CEO for the entire period under question, except for the six months when the position was occupied by Skilling, and was the chairman of the board of directors for the entire period. Lay was as well the leading public spokesman for the company.

When Deputy Attorney General James Comey announced the charges in Washington on February 19, he referred to Skilling as "*the* guy at Enron." Journalists asked Comey whether this implied that prosecutors would not go after Lay. He responded by saying that he did not "mean to suggest one way or another." He added, "What I wanted to do was...make sure folks appreciate the indictment's allegations about Mr. Skilling's role at Enron, that he was the CEO, that he was the person who ran Enron, that he was its public face."

This characterization of Skilling is actually a distortion of his role, and has the effect of downplaying both the significance and culpability of Lay. Given that there is an ongoing federal investigation of Lay, the prosecution's characterization of Skilling as "*the* man at Enron" is extraordinary. It could presumably be used by Lay's defense attorneys to argue against any charges, or at least the most serious charges, in a future criminal or civil action against the former Enron boss.

More broadly, the prosecution of Skilling, Fastow and top executives at a handful of other companies is being used to obscure the broader issues behind the wave of corporate scandals. The accounting manipulations and fraud at companies such as Enron, WorldCom and Tyco have been presented by both Democratic and Republican politicians and the media as a matter simply of corrupt individuals, rather than an expression of deeper, systemic problems and contradictions.

The *Wall Street Journal*, in a January 15 editorial on the Fastow indictment, summed up this common line of defense of the profit system. It declared: "But the larger lesson here is about individual accountability under the law. When the news about Enron and other corporate scandals first broke, the political and media instinct was to indict business as a class and fret about the immorality of capitalism." This, according to the *Journal* was entirely mistaken.

The newspaper concluded with a pat on the back to a corporate-dominated economic system that had been caught defrauding millions of workers, pensioners and small investors. "All in all the system seems to be working, even for the once high and mighty," wrote the *Journal* editors.

In fact, the responsibility for the Enron collapse extends far beyond Skilling and the other top executives. It was not just the Enron executives who benefited from the company's soaring stock, but the entire ruling elite, which enriched itself in the stock market boom of the 1990s. The presentation of analysts, banks, politicians and big investors as mere victims of a scheme concocted by Skilling is a gross distortion of reality. All of these forces played an active role in promoting the conditions of speculation and criminality that gave rise to Enron.