I want to thank, in particular, the Democratic members of the Judiciary Committee for their hard work in this regard. These achievements have not been easy. The Senate is making some progress. More has been achieved than Republicans are willing to acknowledge.

So, as we repeat our vote on this nomination today and Republicans continue their drumbeat of unfair political recriminations, we should all acknowledge how far we have come from the 110 vacancies that Democrats inherited from the Republican majority in the summer of 2001. In addition to more confirmations and fewer vacancies, we have more Federal judges serving than ever before.

Under a Republican majority, circuit vacancies more than doubled and overall vacancies increased dramatically. Despite the fact that close to 90 additional vacancies have arisen since the summer of 2001, we have worked hard and cut those vacancies from 110 to less than 60. Earlier this year, until new judgeships were authorized, the vacancy rate on the Federal courts was at the lowest number in 13 years. Even with the 15 new judgeships effective this month, the vacancy rate is now well-below where Senator HATCH inherited it, and well-below the rate Senator HATCH called ''full-employment.'' There are more full-time Federal judges on the bench today than at any time in U.S. history, in the last 214 years. And, if you add in the senior judges, there are more than 1,000 Federal judges sitting on the Federal courts.

With a modicum of cooperation from the other end of Pennsylvania Avenue and the other side of the aisle we could achieve so much more. As it is, we have worked hard to repair the damage to the confirmation process and achieved significant results. Republicans seem intent on inflicting more damage, to the process, to the Senate, and to the independence of the Federal courts.

Unfortunately, the nomination of Justice Owen is a nomination that should never have been remade. It was rejected by the Judiciary Committee last year after a fair hearing and extensive and thoughtful substantive consideration. The White House would rather play politics with judicial nominations than solve problems. This unprecedented renomination of a person voted down by the Senate Judiciary Committee is proof of that. That Senate Republicans are continuing to press this matter knowing the outcome of this vote shows what a charade this has become.

This nomination is extreme. This nominee has shown herself to be a judicial activist and an extremist even on the very conservative Texas Supreme Court where her conservative colleagues have criticized her judging as activist again and again.

The nomination process starts with the President. It is high time for the White House to stop the partisanship and campaign rhetoric and work with us to ensure the independence and impartiality of the Federal judiciary so that the American people, all of the American people, can go into every Federal courtroom across the country and know that they will receive a fair hearing and justice under the law. It is time for Senate Republicans to stand up for the Senate's role as a check on the unfettered power of the President to pack the courts and for fairness.

CLOTURE MOTION

The PRESIDING OFFICER. Under the previous order and pursuant to rule XXII, the Chair lays before the Senate the pending cloture motion.

The clerk will report the motion to invoke cloture.

The assistant legislative clerk read as follows:

CLOTURE MOTION

We the undersigned Senators, in accordance with the provisions of Rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on Executive Calendar No. 86, the nomination of Priscilla R. Owen of Texas to be United States Circuit Judge for the Fifth Circuit.

Bill Frist, Orrin Hatch, John Cornyn, Michael B. Enzi, Jim Talent, Judd Gregg, Jeff Sessions, Ben Nighthorse Campbell, Craig Thomas, Chuck Grassley, Chuck Hagel, Thad Cochran, Richard Shelby, Wayne Allard, Elizabeth Dole, Conrad Burns, and Larry E. Craig.

The PRESIDING OFFICER. By unanimous consent, the mandatory quorum call has been waived. The question is, Is it the sense of the Senate that debate on the nomination of Priscilla Richmond Owen, of Texas, to be United States Circuit Judge for the Fifth Circuit shall be brought to a close? The yeas and nays are mandatory under the rule.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. REID. I announce that the Senator from North Carolina (Mr. EDWARDS), the Senator from Florida (Mr. GRAHAM) the Senator from Massachusetts (Mr. KERRY), and the Senator from Connecticut (Mr. LIEBERMAN) are necessarily absent.

I further announce that, if present and voting, the Senator from Massachusetts (Mr. KERRY) would vote ''nay.''

The yeas and nays resulted—yeas 53, nays 43, as follows:

[Rollcall Vote No. 308 Ex.]

YEAS—53

Alexander	Crapo	Lott
Allard	DeWine	Lugar
Allen	Dole	McCain
Bennett	Domenici	McConnell
Bond	Ensign	Miller
Brownback	Enzi	Murkowski
Bunning	Fitzgerald	Nelson (NE)
Burns	Frist	Nickles
Campbell	Graham (SC)	Roberts
Chafee	Grassley	Santorum
Chambliss	Gregg	Sessions
Cochran	Hagel	Shelby
Coleman	Hatch	Smith
Collins	Hutchison	Snowe
Cornyn	Inhofe	Specter
Craig	Kyl	
Stevens	Talent	Voinovich
Sununu	Thomas	Warner

NAYS—43

Akaka	Dodd	Levin
Baucus	Dorgan	Lincoln
Bayh	Durbin	Mikulski
Biden	Feingold	Murray
Bingaman	Feinstein	Nelson (FL)
Boxer	Harkin	Pryor
Breaux	Hollings	Reed
Byrd	Inouye	Reid
Cantwell	Jeffords	Rockefeller
Carper	Johnson	Sarbanes
Clinton	Kennedy	Schumer
Conrad	Kohl	Stabenow
Corzine	Landrieu	Wyden
Daschle	Lautenberg	
Dayton	Leahy	

NOT VOTING—4

Edwards	Kerry
Graham (FL)	Lieberman

The PRESIDING OFFICER. On this vote, the yeas are 53, the nays are 43. Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is rejected.

RECESS

The PRESIDING OFFICER. Under the previous order, the hour of 12:15 p.m. having arrived, the Senate stands in recess until the hour of 2:15 p.m.

Thereupon, the Senate, at 12:52 p.m., recessed until 2:15 p.m. and reassembled when called to order by the Presiding Officer (Mr. VOINOVICH).

ENERGY POLICY ACT OF 2003—Continued

Mr. CRAIG. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. FEINGOLD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. FEINGOLD. Mr. President, I ask unanimous consent to speak as if in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Wisconsin is recognized.

Mr. FEINGOLD. I thank the Chair.

(The remarks of Mr. FEINGOLD pertaining to the introduction of S. 1480 are located in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

Mr. FEINGOLD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. REID. Mr. President, I ask unanimous consent the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. REID. Mr. President, there is an order floating around here on the floor that sets forth about 7 hours of debate on these two trade agreements, the

Singapore and Chilean trade agreements. Is that true?

The PRESIDING OFFICER. The order has been obtained.

Mr. REID. It has been obtained?

The PRESIDING OFFICER. That is correct.

Mr. REID. It is my understanding the Senator from California, Senator FEINSTEIN, has an hour under that agreement. Is that true?

The PRESIDING OFFICER. That is correct.

Mr. REID. I ask unanimous consent that Senator FEINSTEIN be allowed to use her hour on the trade agreements at this time.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from California.

THE CHILEAN AND SINGAPOREAN FREE TRADE AGREEMENTS

Mrs. FEINSTEIN. Mr. President, I thank the Senator from Nevada for the courtesy of allowing me to move ahead with some additional remarks on the Chilean and Singaporean free-trade agreements and on the immigration policy that is attached to those agreements. I have expressed my deep concern about the temporary entry provisions of the free-trade agreements on which we are about to vote. I was prepared to support the trade agreements. However, I believe the USTR has made a terrible mistake in negotiating immigration provisions in these trade agreements, and, thus, delving into areas of authority that should have been left to the Congress.

I spoke to this to some extent on Friday, and I would like to speak again today because I think this is like peeling an onion. The more you look at it, if you look at immigration law, the more you see the major loophole this agreement is creating.

This agreement would create new categories for nonimmigrant visas for free-trade professionals. It would permit the admission, on its face, of up to 5,400 professionals from Singapore and up to 1,400 from Chile each year. That is on its face.

It would require the entry for their spouses and children, so they could join foreign workers in the United States. That, of course, makes it less of a temporary visa program. Those visas can be extended indefinitely. They can be renewed year after year after year ad infinitum. The bill would require without a numerical limit the entry of business persons under categories that parallel three other current visa categories: The B–1 visitor visa, the E–1 trader or investor visa, and the L–1 intercompany transfer visa.

In fiscal year 2002, the State Department issued more than a total of 5,232,492 visas to foreign nationals under the current temporary visa category that parallels those in the free-trade agreement—5.2 million individuals from foreign countries who come here each year and replace American workers in various pursuits.

How many more do we need? This legislation requires the entry of foreign workers in a new way on L–1 visas regardless of whether they are nationals of Singapore or Chile.

I don't think most Members realize that. You can get an L–1 visa now under this trade agreement just if you have been employed by a Chilean or Singaporian country. You don't have to be a citizen of that country. This is particularly egregious, and I will explain why a little later.

The bill would permit but not require the United States to deny the entry of a free-trade professional if his or her entry would adversely affect the settlement of a labor dispute. It would require the United States to submit the dispute about whether it should grant certain individuals entry to an international tribunal. An international tribunal for the first time that I can recall would determine now under this treaty a sovereign right which belongs to the United States of America.

In enacting the Trade Promotion Act, the Congress did not provide the USTR authority to negotiate new visa categories or immigration programs or to impose new requirements on the existing temporary entry system. In fact, the USTR has taken that upon itself.

In negotiating these agreements, the USTR has negotiated a perpetual visa category that we as Members will not be able to modify no matter what the circumstances or the economic consequences may be. Employers can renew these new employee visas each and every year under the agreement with no limit while also bringing in every year an additional crop of new entrants to fill up the annual numerical limits for new visas.

This makes it possible for foreign employees entering the country on a supposedly temporary basis at the age of 22 to remain until he or she is ready to retire at the age of 70.

That is not what temporary visas aim to do.

In effect, by voting for these provisions we are adding to the U.S. labor market a continuous supply of 6,800 guest workers a year in addition to the more than 40,000 from Chile and the 30,000 from Singapore who came in last year under the existing temporary work categories.

In other words, this is in addition to the 50,000 workers who have already come in from these two countries. I don't believe Members realize that.

These workers come in without taking into account the potential impact on U.S. workers.

By voting on this agreement, we as Members of Congress are effectively ceding our authority to limit the duration of these visas when it is in the national interest to do so because we can't change a thing. We can't change a comma. We can't dot an ''i''. We can't cross a ''t''. That is fast track.

Another problematic provision—and we should be very concerned about this—is that the unlimited L–1 visa category included in the Chile and Singapore agreement does not require that these workers be citizens of either Chile or Singapore. They can be from anywhere as long as they are working for a company right now located either in Chile or Singapore.

This means under the agreement, a Chinese or Indian or any other country's multinational corporation with offices in Singapore, for example, can transfer an unlimited number of Chinese or Indian employees to the United States.

What happens if the corporation also has offices in countries hostile to the United States or are state sponsors of terrorism?

Under these agreements, the corporation may send an unlimited number of such nationals to the United States under the E–1 trader visa and the L–1 intercompany transferee visa category.

In other words, these trade agreements create a major loophole through which thousands of foreign workers can come into the country with little scrutiny.

I don't believe there is anybody virtually in this Senate who understands that.

This is the problem of having the USTR negotiate an immigration agreement. They don't understand it either. And I don't think they really understand what has been accomplished here.

Effectively, these agreements permit unlimited entry through Singapore and Chile under the L–1 visa category for any worker anywhere.

In negotiating these agreements, the USTR has eviscerated existing requirements that U.S. corporations first demonstrate that there is a shortage of domestic workers in an industry seeking foreign workers. Every one of us knows that unemployment rates are on the rise. In professional and technical services, it is over 6 percent. In computer and mathematical occupations, it is 5 percent. In architecture and engineering occupations, it is 4 percent. In informational technology, it is 7 percent. In financial services, it is about 4 percent. In business and professional services, it is almost 9 percent.

When there are all of these vacancies, why are we allowing new sources of low-wage labor into this country when we are not facing a labor shortage in any of these industries today? There is no public interest in keeping Americans unemployed in order to accommodate new guest worker programs that would be established by these trade agreements. Quite the contrary. We face the highest unemployment rate in almost a decade, and I can tell you it is high among these worker categories as well.

I think these agreements are going to do no more than foster a race to the bottom where American workers are forced to compete with whatever foreign workers will accept in the lowest wage categories. That is wrong. This trend should be stopped, not exacerbated.

In negotiating these agreements, the USTR has expanded the types of occupations currently covered under the H–

1B visa to include management consultants, disaster relief claims adjusters, physical therapists, and agricultural managers—professions that do not require a bachelors degree. This a weakening of what are supposed to be highly qualified and highly skilled workers. Now they are amending this to permit a whole host of unskilled categories. You don't even have to have a higher education to qualify to come in as a skilled worker in a technical field.

These agreements lower the skill level in another way, too. In negotiating the agreements, the USTR has lowered the standards for which foreign professionals could enter the United States to work. Under current law, H–1B professionals must exhibit—and this is a term of art—highly specialized knowledge in the occupation for which he or she is seeking a visa. This agreement would require the applicant only to possess specialized knowledge. In other words, they are weakening the requirement. You don't need to be highly specialized, just specialized. And then for some, you don't even need to have a higher education.

This distinction is critical because the highly specialized knowledge criteria used under the H–1B program was designed to ensure that employers don't abuse the program to undercut American workers in occupations where there is no skill shortage. I assume that this is a crucial point.

To back that up, neither the trade agreement nor the implementing language would enable the Department of Labor to have the authority to investigate or conduct spot checks at worker sites, as they do now with H–1B visas, to uncover instances of U.S. worker displacement and other labor violations pertaining to the entry of foreign workers. So what this agreement is doing is handcuffing the Labor Department and removing from it specific authority that it has now to go out to investigate and to see whether the law is being abused and domestic workers are being replaced purposefully with foreign workers.

You would say: Well, is this really necessary for them to have this authority? The answer is absolutely. There have been labor violations involving H–1B visas, and not a few but a lot. These violations have jumped more than fivefold since 1998, according to the Labor Department. Back pay awards for such employees who have been replaced have soared by more than 10 times, jumping from about $365,000 in 1998 to over $4 million in 2002. So we know there is fraud going on. What this bill does is just simply eliminate the regulations to eliminate any investigation as to whether the fraud exists or not.

In response to what I have just said about the soaring awards because of fraudulent uses of visas, Labor Department officials have stepped up H–1B investigations. They say there really could be thousands of H–1B workers today who don't file complaints because they fear the loss of their visa.

In the last 5 years, Labor investigated 656 complaints involving H–1B visas. What did they find? They found that out of 308 cases that have become final, the Labor Department found 261 H–1B violations. That is almost a two-thirds rate of violation. Of that number, 227 employers owed 1,413 domestic workers who were replaced by foreign workers almost $8 million in back wages.

This temporary work visa system gives employers tremendous power over immigrants. More than 1 million people already are employed in the United States under visas for skilled workers. The growing trend in H–1B violations is proof that some companies will, in fact, violate and have violated the worker protection laws to protect their bottom line. This is happening now, and in a tough economy it is going to happen more often. Those of us who are elected by workers to protect them, if we vote for this agreement, fail to do our job because this agreement weakens protections. The most offensive aspect of these provisions is that the USTR has bargained away our sovereign right to set the criteria for admitting foreign visitors and workers to our country. Under the agreement, if Congress determines that the visa categories in this agreement should be subject to numerical limits or labor certification, we could well be subject to defending that decision before an international tribunal. So an international tribunal would decide the sovereignty of the United States of America to make these decisions.

During a time when our country is preoccupied with the threat of terrorism on our soil, what protection do we have to prevent individuals from purposely utilizing and abusing this visa process?

In essence, control over employment-based visas will effectively be taken out of the hands of Congress and placed in the hands of corporate executives, the USTR, and countries that are parties to these types of agreements. That is, frankly, unacceptable to me, and such proposals should be rejected by Congress.

I don't think this Congress should relinquish its plenary authority over immigration to any administration, whether it be Democratic or Republican, nor to any country that is party to a trade agreement. It is hard to imagine that against the backdrop of the highest unemployment rate in almost a decade, this administration has negotiated what, in essence, is a permanent guest worker program. That is the hard fact of what is in this bill.

Today in our Nation, 15 million people are unemployed, underemployed in part-time jobs out of economic necessity, or have given up looking for work altogether; 9.4 million are considered officially unemployed. In California, 1.1 million are out of jobs. The average person has been out of work for 20 weeks, a phenomenon this country has not seen since 1948, in over 50 years.

Yet while we are faced with unprecedented unemployment, we are negotiating and accepting a permanent guest worker program.

Beneath the aggregate unemployment numbers is an even more disturbing trend. Unlike past instances of high unemployment, the ranks of the jobless are increasingly populated by highly skilled, college-educated workers. Workers who typically had little difficulty finding a new job are becoming discouraged by their lengthy stay on the unemployment roll.

A recent CBS news segment on the Nation's unemployed captured so poignantly the lives behind the numbers. The Presiding Officer should know that this CBS clip was actually done in his State. The news footage shows a line of cars stretching out of sight down a flat two-lane road in Logan, OH, where the jobless and struggling families were waiting for the twice-a-month distribution of free food by the local office of America's Second Harvest. The head of the agency said: We are now seeing a new phenomenon. Last year's food bank donors are now this year's food bank clients.

CBS reporter Cynthia Bowers observed:

> You could call it a line of the times, because in a growing number of American communities these days, making ends meet means waiting for a handout.

There are many reasons for the persistent weakness in the labor market. But I think we are making the situation worse by agreeing to the immigration provisions set out in these trade agreements. Increasingly, American workers have expressed fears of losing their positions to foreign workers who are paid considerably less and whose ability to remain in the United States is often contingent upon their not making trouble from their employer. I must tell you, I didn't believe this 5 or 6 years ago because I was importuned by one CEO after another to vote to increase the quota on H–1B visas.

They all supported me, that there was no abuse. It was only when we began to look deeply into it that we found there was abuse.

Today, more and more out-of-work technology workers are filing complaints with the Government or going to court to protest perceived abuses of temporary visa programs. We cannot simply blame the foreign workers for causing Americans to lose their jobs. It is shortsighted, behind-the-scenes policies such as these visa provisions, negotiated in secret, without any meaningful public hearing, included in trade agreements in small print, that invite a dependence on cheaper, more pliable foreign labor, and thus threaten American jobs.

The scarcity of jobs has left many skilled immigrants more dependent on their employer and less willing to quit if trouble starts. The abuses have been particularly widespread in the high-tech industry, which used H–1B visas to bring in tens of thousands of programmers and other professionals. Remember, it is not just these workers; there are another 5.2 million coming in each and every year. They come in and companies seize upon them.

Let me give you an example of testimony that is going on right now in the Judiciary Committee in the Immigration Subcommittee. A woman named Pat Fluno, a computer programmer and former Siemens employee, is testifying that she and 14 of her colleagues were required to train their foreign worker replacements before U.S. workers were laid off. Their replacements were foreign nationals on L–1 visas. That is exactly the visa program we are establishing in this trade agreement. They were paid one-third the salary the U.S. workers were making. There is no requirement that L–1 visa employers pay the prevailing wage. Ms. Fluno was making $98,000 a year. Her replacement is making $32,000 a year. This is Siemens, and that is what it did to 15 workers.

Unlike U.S. workers, foreign workers on L–1 visas don't pay income tax. Ms. Fluno, before the Immigration Subcommittee of Judiciary right now, estimates that the Federal Government and the State of Florida would lose over $1.1 million in income taxes as a result of layoffs of the 15 employees.

The international consulting firm that Siemens used to obtain the foreign workers knew that the U.S. workers would be laid off, so they did not use the H–1B visas to bring the workers in; they used the underregulated L–1 visa to get around the existing employer protection of the H–1B visa program. That is what we are creating more of in this bill.

This type of abuse really should stop because if we don't stop it, it is going to go on. Look, if you pay an American worker $98,000 and you can bring in a technical worker and pay them $32,000, and it is OK, how would any of our workers ever be able to own a home and raise their kids?

Temporary professional workers are often paid less than American workers despite requirements that they be paid prevailing wage rates. Employers seeking to hire H–1B workers can base their prevailing wage rates on third party salary surveys up to 2 years old. An H–1B worker in a job since the beginning of 2003 might still be getting the 2001 prevailing rate.

I only use this because H–1B is a much more regulated program than the L–1 visa program that is in this bill. You see how they can kind of gerrymander this program by using out-of-date prevailing wage rates.

In December of last year, a New Jersey-based company, Pegasus Consulting Group, was ordered to pay $231,279 in back wages to 19 former employees. Most of them were Indian nationals. The judge also required the company to pay $40,000 in civil money penalties for violating the prevailing wage provisions of the H–1B visa rules. The judge found that some of the employees had gone several months without being paid. So this is happening today.

Our Nation's growing dependence on foreign workers is not—and I originally thought it was—spurred by a lack of skills or education in the United States. In June of this year, an estimated 1.286 million bachelor's degrees were conferred all across the United States, along with 436,000 master's degrees, 80,400 professional degrees, and 46,700 doctoral degrees. In addition, an estimated 633,000 associate's degrees were awarded. We have told, and continue to tell, our young people to acquire more education, to get a skill, to remain competitive in the job market, and they are doing so.

If an advanced degree, years of experience, and a good work ethic are not enough to land a job and to keep a job, what does the future hold for the American worker? Now, for some, the answer to that question is really pretty tragic.

Just in April of this year, Kevin Flanagan, a 41-year-old software programmer, took his life in the parking lot of Bank of America's Concord Technology Center on the afternoon he was told he lost his job. His father said it was the ''straw that broke the camel's back.'' Flanagan knew that his employer, Bank of America Corporation, as other corporations weathering the economic storm, was cutting high-tech jobs and sending them overseas. He applied for other jobs at the bank but didn't receive responses. His father said: ''He felt like he was fighting a large corporation that pretty much didn't care.''

Kevin Flanagan's death, which is a suicide, underscores the anxiety that has swelled among technology workers throughout this land, at the Bank of America in particular, and elsewhere, as more businesses shift high-tech jobs to foreign workers, even as they cut those jobs in the United States. To add insult to injury, some employers are requiring U.S. workers to train their replacements before they are laid off, and then they see where their replacement worker earns one-third the salary.

So I don't think we should gamble with the lives and livelihoods of American workers with an agreement the consequences of which are so problematic. I really find expanding the least regulated of all the visa categories at a time of economic distress in the United States, at a time when we have so many of our own highly skilled domestic workers out of work and looking for a job, somewhat cynical.

To do this in secret, not do it by virtue of lawmakers who are elected, who know their States, who hold hearings, and then make adjustments to visas is really stealth and very ill advised.

We should never use immigration law as a bargaining chip to negotiate bad trade deals. We should never have offered visas to Chile and Singapore as part of these trade deals, and we should not trade American jobs as part of a free-trade agreement. That is what we are doing in this trade agreement.

Bear in mind, we already have tens of thousands of workers, highly skilled workers, coming in from Chile and Singapore every year under the H–1B visa. What is cynical here is that the L–1 visa does not have the protections the H–1B visa has, and the Labor Department cannot go out and do an investigation and, therefore, cannot certify that no American worker is being replaced in his or her job. So I have to accept that the reason they are doing the L–1 visa is because they want to do just that: replace American workers with foreign workers. Remember, you can have a Chilean-owned company or Singaporean-owned company, I believe, not necessarily in Singapore, that can qualify under this agreement.

The fast-track process should not undermine Congress's authority under the Constitution, and that is what this agreement does. This is a bad trade bill, a bad precedent, and if this Congress does not stand up for its right to protect the American people, who will?

We asked in the Judiciary Committee for more time. We were denied more time. We asked to send this bill back to the administration and ask them to sever the immigration provisions from the trade provisions, and we were refused in our request. I do not think because immigration law is complicated and every visa program has with it a different set of rules, regulations, procedures, and protocols and that creating more of one of the weakest, in terms of protecting American workers at a time when American workers need the most protection because of rampant unemployment—the highest unemployment in the 10 years I certainly have been in the Senate—seems to me it is not timely, it is not economically productive except for the bottom line of some companies.

I believe in these remarks I have shown where many of these visas are being misused. I have shown where there is fraud, where there have been back payments made. And I have shown where already without this program, year in, year out, 5.2 million technical foreign workers come into this country without this addition.

I conclude by saying that I think the real angst, if I may use that word, of this bill is for us to accept the abdication of our constitutional authority and power over immigration law. I cannot do that because I represent a very large State that is going to be affected by this trade agreement, and a State where we have 1,100,000 people out of work, a State where the unemployment insurance trust fund is going to be in deficit at the end of next year and workers will not get anything when unemployed.

I think it is not good public policy at a time of economic deprivation for millions of Americans to be bringing in workers who will take a third of the salary of their American counterpart, displace that counterpart, not complain and to, by law, say to the Department of Labor of the United States of America: You cannot investigate any one of these complaints, and you cannot make a determination whether, in fact, an American worker has been replaced unfairly by a foreign worker. We should not do that.

I thank the Chair. I yield the floor.

AMENDMENT NO. 1386, AS MODIFIED

Mr. ALLEN. Mr. President, I ask unanimous consent to speak for 5 minutes in support of the Bond-Levin amendment.

Mr. REID. Mr. President, under the order now in effect, we have to take somebody's time.

The PRESIDING OFFICER. The Senator is asking consent.

Mr. REID. To take whose time?

The PRESIDING OFFICER. To have his own time.

Mr. REID. I have no objection.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ALLEN. Mr. President, I thank the Senator from Nevada.

I rise today to join my colleagues in support of the Bond-Levin fuel economy amendment that reasonably improves safety, fuel economy, and environmental conservation as mutual goals. I am pleased to join with a bipartisan list of Senators as a sponsor of this amendment that will ensure that our public policy in America does not compromise common sense, the free market, consumer choice, safety, or American workers. I wish to touch on some of these key issues.

Insofar as safety is concerned, estimates from the Harvard Center for Risk Analysis, Journal of Law and Economics, and Regulation Magazine have shown that between 2,000 and 4,500 deaths occur each year as a result of our current CAFE standards.

The reality is very logical: With smaller, lighter cars there is a higher risk of injury when an accident occurs. The issue of vehicle cost also affects consumers. The National Academy of Sciences concluded that CAFE standards have raised prices by as much as $2,500 for cars and $2,750 for pickup trucks and SUVs.

Clearly, if the opposition's amendments are adopted rather than the commonsense, reasonable approach that is proposed by Senator BOND and Senator LEVIN, we would have higher prices. With higher prices, what do we get? Obviously, if fewer people can afford to purchase new vehicles, sales are reduced, which translates into fewer jobs in the automobile industry.

The job loss issue is not theoretical. I have met with United Auto Workers in Virginia and learned that even a 1-mile-per-gallon increase in CAFE standards would result in the loss of approximately 10 percent of auto manufacturing jobs. The last thing I want to do is go down to the Ford F–150 assembly plant in Norfolk, Virginia and have the 2,000-plus employees line up and say to them: One out of every 10 of you is going to lose a job because of what some officious people in Congress want to impose on America's auto industry and consumers.

I do not want to do the same thing with the GM Powertrain facility in Fredericksburg-Spotsylvania County and tell those employees: One out of 10 of you will lose your job because certain elected officials in Washington are taking away your ability to put food on the table for your families.

The employment of over 116,000 Virginians is dependent on the automobile industry, and congressionally mandated unreasonable increases in CAFE standards will put these jobs in jeopardy.

The great success of America as a world economic leader is based on freedom and the ability of the free market and consumer choice to prevail in the marketplace.

Recently, my friend and fellow colleague from Missouri, Senator BOND, used a clever reference to a recent movie to describe the other side's approach to CAFE mandates, calling the approach ''too fast, too furious.''

I also want to draw on Hollywood and the recent success of Arnold Schwarzenegger's latest ''Terminator'' movie and point out that the other side's unreasonable and unscientific approach terminates jobs, terminates safety, terminates consumer choice and terminates common sense.

American's already have the choice of what vehicles they wish to drive. There are already vehicles available that get 40, 45, 50-plus miles a gallon. If Americans want smaller, lighter vehicles, they are available. It is important that we use sound science and common sense and trust free people to make the right choices for themselves, their families, and the environment.

The Bond-Levin amendment states that auto experts at the National Highway Transportation Safety Administration and the auto and safety industry ought to have the ability to determine the best methods of achieving these goals. The CAFE numbers used by the other side, in our view, are arbitrary and truly based on political science as opposed to sound science.

The Bond-Levin amendment increases the use of incentives to industry and consumers alike rather than punitive market distorting mandates that would decimate an industry responsible for approximately 3 percent of our gross domestic product and employs about 2½ percent of all Americans.

Also, it is a very forward looking approach in that it provides tax incentives for research and development of advanced technological innovation in fuel cells, hybrids, and electric vehicles.

It is my view that Congress should be in the business of providing incentives to people and manufacturers for innovation that do not compromise safety, do not cause the loss of American jobs, and do not preclude individual choice in the marketplace so that people can make their own decisions for themselves and their families.

I ask my colleagues to support the Bond-Levin amendment. We should trust free people to make decisions for the health, safety, comfort, and well-being of their families. Most importantly, we ought to make sure that America stays strong and competitive.

When we look at our auto industry, our strongest market base is in SUVs, minivans, and pickup trucks, which would be harmed by the opposition's amendments. So let us stand strong for American workers, as well as our families and free market, and support the Bond-Levin amendment.

I ask unanimous consent that the text of a letter from the American International Automobile Dealers Association in support of the Bond-Levin amendment be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

AMERICAN INTERNATIONAL AUTOMOBILE DEALERS ASSOCIATION,
Alexandria, VA, July 25, 2003.

Hon. GEORGE ALLEN,
U.S. Senate, Russell Senate Office Building, Washington, DC.

DEAR SENATOR ALLEN: On behalf of the American International Automobile Dealers Association (AIADA), I am writing to urge your support of the proposed amendment by Senators BOND (R–MO) and LEVIN (D–MI) to allow a regulatory approach to the raising of CAFE standards. AIADA is the national trade association representing over 10,000 American international nameplate automobile dealers and the 500,000 American workers who sell and service some of the finest automobiles and trucks available in the world.

The National Highway Traffic Administration (NHTSA) recently issued a final rule on April 1, 2003 aggressively increasing CAFE standards for light-duty trucks. NHTSA increased the light-truck CAFE standard from the current standard of 20.7 mpg to 21.0 mpg in model year (MY) 2005, 21.6 mpg for MY 2006, and 22.2 for MY 2007, the biggest increase in over twenty years. The standard applies to pickup trucks, mini-vans, and sport utility vehicles. NHTSA's charge was to set the light-truck CAFE standard at the ''maximum technologically feasible level'' while weighing the impact of increasing CAFE standards against a host of criteria, including vehicle safety, employment, and consumer choice, among other factors. NHTSA allows a process to increase CAFE standards that is based on sound science.

AIADA believes the regulatory process is the best way to increase standards in light of changing technology and market conditions. The Bond-Levin amendment establishes new standards through the regulatory process therefore ensuring the consideration of key factors when increasing CAFE standards.

Lastly, consumer choice should not be jeopardized to meet new federal standards. Consumer demand drives the automobile retailing market. A dramatic increase in CAFE standards could eliminate some of the most popular vehicles from the marketplace.

AIADA believes the Bond-Levin amendment is the best solution to achieving increased fuel economy without jeopardizing consumer choice and safety. AIADA opposes any other CAFE amendments that propose to legislatively increase current CAFE standards. We ask you to support the Bond-Levin amendment as part of a national comprehensive energy policy.

Sincerely,

MARIANNE MCINERNEY,
President.

Mr. ALLEN. I yield the floor.

Mr. VOINOVICH. Mr. President, as cochairman of the Senate Auto Caucus, I am pleased to join with my colleagues, Senator BOND and Senator LEVIN, as a cosponsor of this CAFE standards amendment to the energy bill. This is truly an important issue; one that impacts upon our Nation's economy, our environment, and the safety of the traveling public.

There is no doubt that each of us wants the automobile industry to make cars, trucks, SUVs, and minivans that are as energy efficient as possible. Not only is it good for the environment, it also means more money in the pocket of the American consumer because they will spend less at the gas pump.

However, I am deeply concerned that the extreme Corporate Average Fuel Economy standard supported by some of my colleagues will have a devastating effect on public safety, as well as put a severe crimp in the manufacturing base of my State of Ohio which is already under duress because of high natural gas costs, litigation, health care costs, and competition from overseas.

Two years ago, new vehicle sales of trucks, SUVs and minivans outpaced the sale of automobiles for the first time in American history. This remarkable result can be attributed to a number of factors, but one reason that is often cited is the fact that these vehicles are seen as safer.

Another concern is that an arbitrary standard would have a devastating effect on jobs. Ohio is the No. two automotive manufacturing State in America, employing more than 630,000 people either directly or indirectly. I have heard from a number of these men and women whose livelihood depends on the auto industry and who are frankly very worried about their future.

There is genuine concern that a provision mandating an arbitrary standard could cause a serious disruption and shifting in the auto industry resulting in the loss of tens of thousands of jobs across the Nation.

For example, DaimlerChrysler's fleet of light trucks makes up more than 50 percent of their entire fleet. The company manufactures the Jeep Liberty and the Jeep Wrangler in Toledo, OH and employs approximately 5,200 workers at this plant. If an arbitrary CAFE provision is mandated that requires a shifting of vehicles manufactured, this plant could close because Chrysler would be forced to redistribute their manufacturing base to build more small, high-mileage cars.

The Bond-Levin amendment is a rational proposal that will keep workers both in Ohio and nationwide working, allowing these men and women to continue to take care of their families and educate their children while also encouraging greater fuel efficiency and safer vehicles.

This amendment calls for the Department of Transportation to increase fuel economy standards based on several factors including the following: technological feasibility; economic practicability; the need to conserve energy; the desirability of reducing U.S. dependence on foreign oil; the effect on motor vehicle safety; the effects of increased fuel economy on air quality; and the effect on U.S. employment.

I believe this is a much more responsible approach that will improve the fuel efficiency of our Nation's vehicles while also protecting public safety and our nation's economic security.

This amendment also requires that the Department of Transportation complete the rulemaking process that would increase fuel efficiency standards within 2½ years. If the administration doesn't act within the required timeframe, Congress will act, under expedited procedures, to pass legislation mandating an increase in fuel economy standards consistent with the same criteria that the administration must consider.

The amendment will also increase the market for alternative powered and hybrid vehicles by mandating that the Federal Government, where feasible, purchase alternative powered and hybrid vehicles.

I believe that this guaranteed market will encourage the auto industry to continue to increase their investment in research and development with an eye towards making alternative fuel and hybrid vehicles more affordable, available and commercially appealing to the average consumer.

As a matter of fact, I have ridden in a hybrid manufactured by DaimlerChrysler, and I have driven a fuel cell automobile manufactured by General Motors. I firmly believe that my children and grandchildren will one day be driving automobiles that run on hydrogen and give off only water. However, it will take time for the technology that makes these vehicles possible to be cost-effective and for these vehicles to be marketable.

Until then, truck, SUV, and minivan demand is not expected to decrease anytime soon. Automakers that are meeting this demand will have to manufacture and sell a high-gas mileage vehicle that likely does not exist now. This will only increase prices for the safe vehicles America wants.

I urge my colleagues to support the Bond-Levin amendment. It meets our environmental, safety and economic needs in a balanced and responsible way, contributing to the continued and needed harmonization of our energy and environmental policies.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, pending are the Durbin amendment, the Levin amendment, another Durbin amendment, and the Campbell amendment. I ask unanimous consent that the Feinstein CAFE amendment be the next Democratic amendment in order. I recognize that the right of first recognition comes on the other side. I want there to be an agreement though that the next amendment we would offer would be that of Senator FEINSTEIN dealing with CAFE.

The PRESIDING OFFICER. Is there objection?

Mr. LEVIN. Reserving the right to object.

Mr. ALLEN. Objection.

Mr. LEVIN. We object.

The PRESIDING OFFICER. Objection is heard.

The Senator from Michigan.

Mr. LEVIN. Mr. President, I rise in support of the Bond-Levin amendment. I ask that Senator MIKULSKI be added as a cosponsor to my amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. LEVIN. Mr. President, I rise in support of the Bond-Levin amendment and in opposition to the Durbin amendment. I will take about 8 or 9 minutes to lay out some of the differences between the two amendments. There are some very key differences.

First, our amendment, the Bond-Levin amendment, employs positive incentives to promote the leap-ahead technologies which are so critical if we are going to make significant improvements in fuel economy. We do this in a number of ways right in this amendment, including the research and development part of this amendment where we authorize a significant increase in the funds for the Department of Energy to develop advanced hybrid vehicles, where we provide significant funds for the Department of Energy to work collaboratively with industry to research and develop clean diesel technologies, and a number of other ways.

In a separate amendment, dealing with the tax side, there will be an effort made to provide some additional incentives in that area as well.

In the body of the Bond-Levin amendment, we will be promoting the leap-ahead technology development by using the purchasing power of the Government to buy the hybrids which are going to be made available in the next few years. Since Government purchases a significant number of vehicles, it is essential that we use that purchasing power to acquire those new vehicles which will create a demand for those vehicles and help to commercialize them as well.

We require the Government purchase of hybrid trucks for our fleet of light trucks that are not covered by the Energy Policy Act. So there is no conflict between what we do in this bill and the Energy Policy Act itself.

There is another major difference between our approach and the approach in the Durbin amendment. What we do is we direct NHTSA, the Department of Transportation, to raise the fuel economy standards but we do not pick an arbitrary number to be reached. Instead, we set forth a series of factors which we want NHTSA, the Department of Transportation, the agency that has the expertise to do this and has done this and has been given that responsibility historically to set these standards, we lay out a number of criteria which we want them to consider, including what technologies might be available, which are emerging, what will be the cost of those technologies, what are the safety considerations, what are the job considerations, what are the air quality considerations, what will be the savings in terms of fuel, including imported oil. A whole host of criteria are set out which they should consider but which are not at all considered by selecting an arbitrary number and simply plugging that into a law.

To pick one factor which is real, and that is the safety factor, the National Academy of Sciences, in its report, found that in just the 1-year study, which was 1993, the effect of CAFE, which was already in law, was the death of between 1,300 and 2,600 people. They also found that between 13,000 and 26,000 additional moderate to critical injuries occurred because the CAFE standard which had been put in law resulted in down weighting and downsizing of vehicles.

Should we consider safety? Should someone consider safety? I would hope so. Should that be a factor which should be looked at in the rulemaking process? I would hope so, among all the other factors.

Saving fuel is important, and our amendment does that. It will lead to fuel savings but we do it in a very different way. Instead of selecting an arbitrary number, a very high number in the Durbin amendment, 40 miles per gallon, we direct NHTSA to use the various relevant factors to reach a conclusion, not just what is technologically achievable regardless of cost but what is the cost, what is the cost benefit, and all the other factors, including safety and impact on jobs.

There is another major difference between our approach and the Durbin amendment. It is not just that the Durbin amendment picks a number, a very high number, for this new CAFE standard, but in doing so, it uses the current structure. That so-called CAFE structure limits the production and sale of domestic SUVs of the same efficiency as imported SUVs, on which it has far less impact.

This is a critical issue. It is an issue which is not adequately understood by colleagues because it is very complicated. The very fundamental CAFE structure, because it was designed to look at the entire fleet instead of dividing the fleet into different classifications by weight, has an inherently discriminatory impact on those companies which have traditionally produced the larger vehicle. It has favored the imports because those companies have tended to produce the lighter weight vehicles, the vehicles at the lighter end of the continuum.

I quote the National Academy of Sciences because they have made a statement which I hope all of our colleagues would pause to consider before voting for the Durbin amendment. This is what they said in a January 2002 report:

. . . one concept of equity among manufacturers requires equal treatment of equivalent vehicles made by different manufacturers.

Now the key words:

The current CAFE standards fail this test.

This is something which is so fundamental to American jobs that it is critical all of us take some time to read that portion of the National Academy of Sciences study and to fully soak in its impact as to what it is saying. Equal treatment of equivalent vehicles made by different manufacturers is not achieved by CAFE.

By piling an arbitrary number on that CAFE structure, as the Durbin amendment does, it worsens the situation. The equivalent vehicles of equal efficiency are treated differently depending on the manufacturer, and the difference works against the domestic manufacturer; that is, jobs which are lost with no benefit to the air at all.

There is no reason I can conceive as to why we would want to say it is OK to drive a 17-miles-per-gallon imported SUV, but it is not OK to drive a 17-miles-per-gallon domestic SUV. It does nothing for the air to reach that result. Yet that is what the current CAFE structure leads to.

I have one other quote from the National Academy of Sciences report.

A policy decision to simply increase the standard for light-duty trucks to the same level as for passenger cars would operate in this inequitable manner. Some manufacturers have concentrated their production in light-duty trucks while others have concentrated production in passenger cars. But since trucks tend to be heavier than cars and are more likely to have attributes, such as four-wheel drive, that reduce fuel economy, those manufacturers whose production was concentrated in light-duty trucks would be financially penalized relative to those manufacturers whose production was concentrated in cars. Such a policy decision would impose unequal costs on otherwise similarly situated manufacturers.

I don't understand why we would even think about treating similar vehicles of similar fuel efficiency in a different way, particularly when that works against the domestic manufacturers.

The Durbin amendment compounds this problem by raising the SUV level, at least in the case of the minivans and SUVs themselves, to the same requirement as standard vehicles. In doing so, it compounds the problem, the discriminatory effect, of the CAFE structure. I hope for that reason and the other reasons I have mentioned that we will defeat the Durbin amendment and adopt an alternative approach which focuses more on positive incentives to achieve fuel economy, which is what the Bond-Levin approach does and which also focuses more on the rulemaking authority, the efficiency, the experience, and the fairness of the Department of Transportation that would look at all of the factors which should go into the rulemaking rather than picking an arbitrary number.

I yield the floor.

Mr. BOND. Mr. President, I have conferred with the minority whip. Some of our colleagues are in a meeting of the Energy and Natural Resources Committee. I urge those who have time who are not on the Energy and Natural Resources Committee to follow the distinguished Senators from Michigan and take their time and express their views so we may get on with this debate. We hope to have votes on these very important amendments.

Mr. REID. Mr. President, I will yield in a brief minute to the junior Senator from Michigan. While the acting leader is here, I want the record to reflect we are doing everything we can to cooperate in the consideration of this Energy bill. There was an hour we could have done nothing because there was no one here to do anything because they are meeting at the White House. In an effort to expedite matters, there was an order pending on the Singapore and Chile trade agreements. There are 7 hours of debate in an order here before we vote on that; we used an hour of that time even though that was not anything we had to do.

If we were trying to ''slow walk,'' as was said here today, that would have been an easy way to slow walk. The Senator from California came to the floor and used her hour.

The record should reflect this Energy bill is a very complex bill. People in good faith have different views on the legislation. As I said this morning, there is not a single Democratic Senator who does not want an Energy bill.

Mr. BOND. I thank the minority whip for his words. Obviously, there are times when other discussions have to go forward on the floor, and it was clear that the Senator from California had time. There will be many other areas of accommodation, setting aside amendments, to move on to the electricity amendment, for example.

We appreciate the cooperation of both sides of the aisle. I simply urge those who are not committed to the energy meeting to bring their positions to the floor and let us hear them.

The PRESIDING OFFICER (Mr. CHAFEE). The Senator from Michigan.

Ms. STABENOW. Mr. President, I rise today to support the Bond-Levin amendment and I am very pleased to be a cosponsor. I commend both my colleague from Missouri and my senior Senator from Michigan for their work on this issue, and I certainly commend the Senator from Michigan for his statement. He presented the argument very well.

I also rise to oppose the Durbin amendment. I begin by saying this debate is not about whether we should increase vehicle fuel efficiency. That is not what this is about. I agree with Senator DURBIN about the importance of creating more fuel-efficient cars and SUVs, not only because it decreases our consumption of oil and our dependence on foreign oil but because of the important benefits it has to our environment.

This debate is about what is the best way to increase fuel efficiency without punishing U.S. manufacturers and American jobs. We have made significant progress since last year's debate. NHTSA is moving forward with increasing CAFE standards. This past April, it announced its final rulemaking for light trucks for model years 2005 through 2007. This will be the largest CAFE increase in 20 years and

NHTSA has already announced plans to continue with rulemaking for the 2008 model year and beyond, later this year.

While this progress is extremely important, there are significant problems with the current CAFE standards and the way they are calculated. For example, the regulations continue to ignore such basic factors as the adverse competitive impacts of CAFE on our U.S. automakers, impacts on U.S. employment, and technology costs and necessary lead-time—which is very important.

The Bond-Levin amendment addresses these problems and builds on Senator LANDRIEU's amendment to reduce our dependence on foreign oil by 1 million barrels a day, an amendment I supported.

However, the Durbin amendment not only fails to fix the problems with the current CAFE system, but it makes them significantly worse.

Despite producing vehicles that are as fuel efficient, and often more fuel efficient than their foreign counterparts, our U.S. automakers continue to have a lower CAFE average then their foreign competitors. Why? That doesn't make any sense. Because the CAFE system does not reflect the real fuel economy of the cars and trucks in an automaker's fleet; instead it really reflects what vehicles consumers buy.

Therefore, an automaker can increase the fuel efficiency of all of its vehicles but still have a decline CAFE average depending on what models sell the most.

For example, over the past 4 years, GM has introduced new car and light truck models that are more fuel efficient than the models that they replaced, but GM's light truck CAFE has actually gone down.

In model year 2001, GM's combined car and truck CAFE average was 24.2 miles per gallon. For model year 2002, GM made fuel economy improvements to 18 different vehicles in its fleet, including SUVs and pickup trucks.

Some of these vehicles had 18 percent, 17 percent, 10 percent improvements in fuel economy over the previous year's models. The Chevrolet Silverado, a full size pickup truck, had over a 7 percent improvement on fuel economy.

But do you know what GM's combined car and truck CAFE average was for model year 2002? It was 23.4 miles per gallon, a 0.8 mile per gallon decrease from 2001. GM improved the fuel economy of 18 vehicles and their CAFE actually went down.

How does a system that does not reflect actual improvements in vehicle fuel economy and penalizes automakers for doing the right thing make sense? That is what this debate is about.

During last year's debate on this issue, we discussed in great depth the need for building a real federal partnership with our automakers to develop cleaner, advanced technologies, over arbitrarily picking higher CAFE numbers. The Senate resoundingly supported the first approach with a vote of 62–38 for last year's Levin-Bond amendment which I was pleased to cosponsor.

The Durbin amendment, however, would increase the CAFE standard for passenger cars from 27.5 miles per gallon to 40 miles per gallon—a 45 percent increase—in only 10 years. Incidentally, excluding hybrid and diesel vehicles, there are no cars on the market today that would meet this requirement.

It would also shift SUVs into the passenger car category, requiring SUVs that currently have a 20.7 mile per gallon CAFE standard, to double their fuel efficiency and meet a 40 mile per gallon standard. That would require an almost 100 percent CAFE increase for SUVs in just 10 years.

This amendment will have a disproportionately negative impact on our Big Three automakers, since they make a higher proportion of SUVs and pick up trucks than passenger cars. Furthermore, this CAFE proposal will not guarantee a more fuel efficient SUV, but it will guarantee that the SUV will not be made by an American auto company. How does that make sense?

It is also important to remember that the 40 miles per gallon number in this amendment is not anywhere in the National Academy of Science's 2001 report on CAFE.

Even under the most optimistic scenarios in the NAS report, which assume that consumers are willing to recover the higher costs of the technology over a 14 year period instead of a 3 year period and assume ''low'' technology costs, the highest projected level for any car within the 10–15 year timeframe, is 38.9 miles per gallon and that is for subcompact passenger cars.

And that is less than 40.

So if you assume that everyone gives up the SUV, gives up the truck, gives up the midsize car even, and goes to a subcompact passenger car, even if we all did that, we would not be able to reach the number in the Durbin amendment.

This amendment sets a CAFE number that according to the experts at NAS, not even the smallest passenger car could meet today.

The Bond-Levin amendment increases vehicle fuel efficiency without placing anticompetitive restrictions on our U.S. automakers. The amendment looks to the future, and provides the market incentives and investment in developing technologies that will really revolutionize the automobile industry.

The amendment directs the NHTSA to complete a rulemaking to increase fuel efficiency for passenger cars within the next 30 months, and standards for model year 2008 and beyond for light trucks within the next 32 months, but it also requires NHTSA to consider the flaws in the current CAFE system for this rulemaking.

We need to let the experts at NHTSA continue to do their job. And NHTSA has already moved forward by announcing the recent regulations for light trucks, the largest CAFE increase in 20 years.

Congress also needs to help automakers move in the right direction, instead of pulling them in the wrong one. Our automakers have already invested millions of dollars in developing cleaner, better technologies, and these investments are starting to pay off for the American consumer.

For example, a hybrid electric version of the GM Sierra full size pickup truck is going into production next year. Ford is currently developing a hybrid Ford Escape SUV which will be capable of being driven more than 500 miles on a single tank of gasoline.

In addition to these great technological developments, automakers have been working on fuel cell vehicles which could revolutionize the automobile sector within the next 15 years.

The Durbin amendment will force automakers to divert funding and research away from these important technological advancements and make meeting these incremental CAFE increases a funding and research priority. The Durbin amendment also locks the automakers into a rigid fuel efficiency plan for the next 10 years, setting back the progress they should be making on these important technologies.

Instead of placing restrictions on what our automakers produce, we should be looking for ways to help them introduce these better, cleaner technologies.

The Bond-Levin amendment includes incentives such as federal fleet purchase and alternative fuels requirements and a real federal investment in hybrid and clean diesel research and development.

These incentives will help create and build market demand for the more fuel efficient hybrid, electric or fuel cell vehicles, instead of locking automakers into costly incremental CAFE increases.

I urge my colleagues to vote for Bond-Levin-Domenici-Stabenow amendment and support increased fuel efficiency and a vibrant, economically healthy U.S. auto industry.

I yield the floor.

The PRESIDING OFFICER. The Senator from New Jersey.

Mr. LAUTENBERG. Mr. President, I rise to support the Durbin amendment to raise the fuel economy standard and close the SUV loophole. I consider this truly bipartisan because I disagree with Democrats as well as our Republican friends. But I feel compelled to bring a problem to the public with which we have to deal.

I think it is fair to say that this amendment strikes a reasonable note in what is too often a contentious debate.

Today, 18 years after the first Corporate Average Fuel Economy standards were implemented, the standards for cars, trucks, and SUVs remain unchanged.

We are running in place and a major reason is that when CAFE standards were first required in 1975, light trucks made up just 20 percent of the market and were used mostly for work, not for negotiating congested urban streets.

But that was a quarter century ago. Today, light trucks—a category that includes SUVs and minivans—represent half of all vehicles sold.

SUVs produce 48 percent more smogforming exhaust and 44 percent more greenhouse gases than cars.

Today's SUVs are not light trucks. They are passenger vehicles and we should regulate them as such.

The impact of regulating SUVs as passenger vehicles, instead of trucks, would be impressive: we would save more than 40 billion gallons of gasoline by 2010—an average of 6 to 7 billion gallons a year.

By updating our regulations to reflect today's driving realities consumers would also save $7 billion at the pump during that same period, according to the Union of Concerned Scientists.

Another reason to raise CAFE standards is global warming.

The U.S. transportation sector is responsible for nearly one-third of all U.S. greenhouse gas emissions.

Since 1975, the miles traveled by vehicles have skyrocketed by 150 percent.

Higher CAFE standards are essential to cleaning up the air of our Nation's metropolitan areas and in protecting the health of Americans—especially the health of our young and our elderly who are most vulnerable.

The Durbin amendment provides until 2015 to set the CAFE standard to 40 miles per gallon.

So this amendment is reasonable, it is doable, and it is the right step toward reducing our dependence on foreign oil.

But there are a few standard myths invoked by opponents of better fuel economy standards that could prevent some of our colleagues from supporting this amendment. I would like to try to straighten that out.

For example, we usually hear that jobs will be lost. Detroit worries that requiring better mileage standards will hurt car sales and lead to job losses.

But I submit that by their insistence on maintaining a decades-old status quo, American car manufacturers are stuck in reverse.

Instead of improving fuel economy, we have just hit a 22-year low.

The Big Three have demonstrated considerable skill in improving everything about American vehicles—except for their fuel economy.

It is that backward thinking that will actually hurt their businesses and lead to job losses.

EPA's Green Vehicle Guide for 2003 models revealed that out of the top 75 most fuel efficient vehicles, there were only four American models—only four! We can do better than that!

Another claim often heard is that lighter cars will lead to more highway deaths.

I submit this is a disingenuous and specious scare tactic.

In fact, a University of Michigan study found that based on deaths per million vehicles sold, SUVs are more dangerous than most types of cars on the road.

Contrary to conventional wisdom, the study went on to say that many small cars have lower total mortality rates than SUVs.

In other words, vehicle weight does not necessarily determine a vehicle's overall safety performance.

The Big Three insist that they are victims of ''consumer choice,'' that they only give American car buyers what they demand.

But while Americans like the convenience of an SUV, they certainly don't like to spend $45 or $50 filling the tank once or twice a week.

Americans want fuel-efficient automobiles which save them money at the pump.

The facts are clear. For the health of Americans, for environmental protection, for our energy security and for our pocketbooks, I urge my colleagues to close the SUV loophole and raise the bar for CAFE standards by voting for the Durbin amendment.

I also not once again the fact that there is a sufficient period of time put out there for these standards to be met.

I yield the floor.

Mr. FEINGOLD. Mr. President, I am voting in favor of the Bond-Levin Amendment, and I want to explain my views in detail. Fuel efficiency is a critically important issue for our country, for my home State of Wisconsin, and for our future. I remain committed to the goal that significant improvements in automobile and light truck fuel efficiency can be achieved over an appropriate time frame. Some will argue that my vote for Levin-Bond is a vote against increasing Corporate Average Fuel Economy, CAFE, standards; I do not share that view. The Bond-Levin amendment seeks to renew the Department of Transportation's role in setting CAFE standards acting through the National Highway Traffic Safety Administration, NHTSA. It requires NHTSA to set new standards by a time certain. If Congress does not act today to try to restore normalcy to the NHTSA process, Congress will always either block or act to set CAFE standards, every 20 years or so, when the political will is sufficient to do so. It will never become part of the normal process of reviewing and incrementally improving fuel efficiency for automobiles, as Congress originally intended when it passed the CAFE law in the 1970s.

As I did in the debate on last year's energy bill, I am committing myself to a consistent position on CAFE. Other interests have not done so. With my vote, I am affirming my past position, and I want to explain the evolution of that position.

Months prior to the midterm elections in 1994, NHTSA published a notice of possible adjustment to the fuel economy standards for trucks before the end of the decade. The following year, however, the House-passed version of the fiscal year 1996 Department of Transportation Appropriations bill prohibited the use of authorized funds to promulgate any CAFE rules. The Senate version did not include the language, but it was restored in conference. Much the same scenario occurred in the second session of the 104th and the first session of the 105th Congresses. In both those sessions, a similar rider was passed by the House and not by the Senate, but included by the conferees and enacted. However, the growth in gasoline consumption and the size of the light-duty truck fleet were concerns cited behind introduction in the Senate of an amendment to the bill expressing the Sense of the Senate that the conferees should not agree to the House-passed rider for fiscal year 2000. The amendment, sponsored by the former Senator from Washington, Mr. Gorton, and the Senator from California, Mrs. FEINSTEIN, was defeated in the Senate on September 15, 1999 by a vote of 55–40 and the rider was once again enacted into law.

As I stated on the Senate floor in the debates on the CAFE rider on June 15, 2000, my vote was about ''Congress getting out of the way and letting a federal agency meet the requirements of federal law originally imposed by Congress.'' I supported removing the rider because I was concerned that Congress had blocked NHTSA from meeting its legal duty to evaluate whether there is a need to modify fuel economy standards by legislative rider.

As I made clear then, I have made no determination about what fuel economy standards should be, though I do think that additional increases are possible, and that the recent rulemaking affirms that view. NHTSA has the authority to set new standards for a given model year taking into account several factors: technological feasibility, economic practicability, other vehicle standards such as those for safety and environmental performance, the need to conserve energy, and the recommendations of the National Academy of Sciences. I want NHTSA to fully and fairly evaluate all the criteria, and then make an objective recommendation on the basis of those facts. I expect NHTSA to consult with all interested parties—unions, environmental interests, auto manufacturers, and interested citizens—in developing this rule. And, I expect NHTSA to act, and if it does not, this amendment requires Congress to act on a standard.

Voting against the Bond-Levin amendment would mean that I subscribe to the view that the rulemaking process cannot work. I do not support that view, just as I could not support retaining the CAFE rider in law.

The NHTSA should be allowed to set this standard. Congress is not the best forum for understanding whether or not improvements in fuel economy can and should be made using existing technologies or whether emerging technologies may have the potential to improve fuel economy. Changes in fuel economy standards could have a variety of consequences. I seek to understand those consequences and to balance the concerns of those interested in seeing improvements to fuel economy as a means of reducing gasoline consumption, dependence upon foreign oil, and associated pollution.

In the end, I would like to see that Wisconsin consumers, indeed all consumers, have a wide range of new automobiles, SUVs, and trucks available to them that are as fuel efficient as can be achieved while balancing energy concerns with technological and economic impacts. That balancing is required by the law. I fully expect NHTSA to proceed expeditiously with the intent to fully consider all those factors, and this amendment ensures they do so.

In supporting this amendment, I maintain the position that it is my job to ensure that the agency responsible for setting fuel economy be allowed to do its job. I expect them to be fair and neutral in that process and I will work with interested Wisconsinites to ensure that their views are represented and the regulatory process proceeds in a fair and reasonable manner toward whatever conclusions the merits will support.

Ms. MIKULSKI. Mr. President, I rise as a cosponsor of the Bond-Levin amendment to provide a reasonable compromise on CAFE standards. Our amendment provides a strategy for energy conservation while safeguarding American jobs. I strongly believe in energy conservation, and I support the effort to build more fuel efficient cars. Yet I also believe in job conservation. I believe we can improve the fuel efficiency of our cars without making it even harder for American workers to compete.

In considering any fuel efficiency standard proposal, I apply four criteria. Any proposal must achieve real savings in oil consumption. Secondly, it must preserve U.S. jobs. The goals for increased CAFE standards must be realizable and achievable by giving companies a reasonable lead time to adjust their production. And finally, it must create incentives to enable companies to achieve these goals. The Bond-Levin amendment meets this criteria.

I strongly agree with the underlying goals of greater fuel efficiency and energy conservation associated with increases in CAFE standards. We desperately need to reduce our dependence on foreign oil. We use about 20 million barrels of oil a day. About 40 percent of that goes to fuel cars and light trucks. Half of our oil is imported, a quarter of which from the Persian Gulf. It is imported from countries like Saudi Arabia, which sits on roughly two-thirds of all the oil reserves in the world. A reduction in our dependency on foreign oil would also greatly increase our flexibility in the war against terrorism. That's why I supported the Landrieu amendment. This amendment requires the President to submit to Congress a yearly report on the progress made toward reducing our dependency on foreign petroleum imports by 2013. This amendment also requires the Administration to develop and implement strategies to reduce our dependency by 1 million barrels of oil per day by 2015.

I support the key provisions in the energy bill that will help us conserve fuel. We need to build on these innovative provisions that encourage better fuel economy. And we must do it in a way that doesn't cost American jobs. That's why I oppose legislating arbitrary increases on CAFE.

Arbitrary Increases in CAFE would be counterproductive. Any increase should be a question of science, not the result of legislative compromise. The NAS study said the most efficient small car could achieve 35.1 mpg within 15 years and the most efficient small truck could achieve 30 mpg within 15 years. One standard for small cars, one for small trucks. The study said nothing about a combined calculation for cars and trucks. There was no recommendation for an entire vehicle fleet.

Other proposals which call for an arbitrary increase in CAFE would have a devastating effect on our Nation's biggest industry—the automobile industry. It is unfair to the American auto worker. In my State of Maryland, 1,500 people work at the GM plant at Broening Highway in Baltimore building mini-vans. The workforce at the Broening Highway plant is down from 2,700 workers in the mid 1980's. Arbitrary increases would give an unfair advantage to foreign car manufactures and penalize U.S. automakers and auto workers, like the hard-working men and women at the Broening Highway plant, for selling vehicles that Americans are actually buying.

Large vehicles represent a small portion of the total fleet of European and Japanese auto companies. These companies produce so many smaller cars because that's what their customers buy. Most of their markets are in Europe and Asia where the landscape is much different. Consumers pay as much as $4 or $5 per gallon of gas. They have narrower roads and a limited highway infrastructure. Bringing a small fleet into the U.S. allows them to easily comply with our fuel economy standards. Even when you include their SUV's and light trucks, the average fuel efficiency standard for their fleet is still low.

When a foreign auto maker exceeds our fuel efficiency standards they also earn CAFE ''credits'' to buffer them in future years. These credits can be shifted to offset shortfalls for up to three model years. This means that if companies have a banner year selling smaller, more efficient vehicles, they can buffer future sales of larger trucks and SUVs. But this does not mean that foreign manufacturers sell more fuel efficient trucks and SUVs. In fact, the difference is usually 3–4 mpg. Their dependence on a smaller fleet allows them to enter the truck and SUV market without worrying about the CAFE standards of the larger vehicles.

Over the past decade, U.S. manufacturers struggled to meet CAFE requirements across a full-line of vehicles—both cars and trucks. Because a higher proportion of the U.S. automakers' fleets are trucks, raising CAFE standards will have more severe adverse effects on GM, Ford, and DaimlerChrysler than on other manufacturers.

Proposals to increase CAFE standards are also unattainable. They set aggressive standards on too short a timeline. This is in direct contrast to the NAS panel, which states ''Technology changes require very long times to be introduced into the manufacturers' product lines.''

Within any argument on CAFE, we must not forget to take into account the demands of consumers. A drastic increase in fuel efficiency standards causes a drastic change in the types of cars, which causes a limited choice of available cars and trucks for consumers. Alternate proposals set a default level for light trucks that is not achieved by ANY light truck on the road today. This would effectively cap the sales of light trucks—it would curb consumer choice.

I believe we can find other ways to achieve fuel conservation that won't cost American jobs. Our domestic automakers have already been weakened by the current recession, and we can't rely on foreign manufacturers to provide American jobs.

The numbers don't lie. The NAS reports that the United Auto Workers has seen its membership drop from 1.4 million members to 670,000 from 1980 through 2000. This loss was countered by the creation of only 35,000 jobs in assembly plants built in the U.S. by foreign automakers although imports have risen by 9 percent over the past 8 years. Our domestic auto share is falling. Only 64 percent of cars bought in

America today are built in America compared to 73.9 percent in 1994. 1,000 workers were recently laid off at the GM plant in Baltimore, and the plant went through another shutdown after slow sales. In fact, GM shut down 14 of its 29 North American assembly plants for at least a week last year.

Today, all manufacturers have advanced technology programs to improve vehicle fuel efficiency, lower emissions and increase occupant protection. A return to a flawed regulatory program of higher CAFE standards would divert resources from these efforts. Raising CAFE standards to levels that effectively squash the American auto industry is not the only solution. Senators BOND and LEVIN have an alternative that is reasonable and fair. It brings together two common goals of Increasing fuel efficiency and protecting jobs and the American economy.

The Bond-Levin amendment directs the Department of Transportation to increase CAFE standards for cars and light duty trucks based on several factors. These include the desirability of reducing our dependence on foreign oil; the effect on U.S. employment; impacts on motor vehicle safety; cost and lead time required for introduction of new technologies; and the effects of increased fuel economy on air quality.

It also directs the Department of Transportation to complete two rulemakings. First, they must complete a rulemaking within 30 months to increase standards for passenger cars. Second, they must complete a rulemaking to increase standards for light trucks no later than April 2006. This will go into effect for model year 2008. Each rulemaking is to be given on a muliti-year basis, but cannot exceed 15 model years. This amendment also directs Congress to take action on CAFE should the DOT not take action in the required timeframe.

This bi-partisan amendment also includes expanded research and development into the production of hybrid electric vehicles and to improve diesel combustion. It authorizes $50 million per year over the next three years to conduct the hybrid electric technology research, and $75 million per year over the next three years for advanced combustion engine research and development.

Finally, the Bond-Levin amendment requires the Federal Government to purchase advanced technology vehicles, beginning in 2005. Hybrid vehicles must be purchased or leased for light duty truck fleets and alternative fuel vehicles must be purchased or leased for passenger car fleets.

We can have both energy conservation and job conservation. But it cannot be done by changing a number. It will take innovative solutions, improved technology, and the setting of realistic, achievable goals. The Bond-Levin amendment accomplishes these goals.

I urge my colleagues to join me in supporting the Bond-Levin amendment.

Thank you.

Mr. DOMENICI. Mr. President, parliamentary inquiry: I just returned, and I apologize. Where are we now? As I understand it, some time was used on a matter other than this bill charged to other matters. How much time is left now, and who has the time?

The PRESIDING OFFICER. The Senator from New Jersey has 4 minutes remaining. The Senator from Illinois has 15 minutes. The junior Senator from New Mexico has 5 minutes. The senior Senator has 5 minutes. The Senator from Mississippi has 1½ minutes.

Mr. DOMENICI. I note the distinguished minority whip is here.

The PRESIDING OFFICER. Does the Senator from New Jersey yield his time?

Mr. REID. No. He is not yielding back his time.

Mr. DOMENICI. He did. Yes.

Mr. LAUTENBERG. I am reserving the rest of my time.

Mr. REID. Mr. President, now that the manager of the bill is here, I renew a unanimous consent request that I made a short time ago. I ask unanimous consent that the Feinstein CAFE amendment be the next Democratic amendment in order. In addition to the unanimous consent request, I know the Republican manager has first right of recognition, but there is going to come a time when we offer our next amendment. I am alerting everyone that it will be the Feinstein CAFE amendment.

Mr. DOMENICI. We object to granting you that privilege at this point. We understand the time will come, but it isn't certain that she will have the next amendment. That is the point.

Mr. REID. Mr. President, I have the floor.

The PRESIDING OFFICER. The Senator does not have time under the agreement.

Mr. REID. I ask unanimous consent to have the Lautenberg time.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. REID. Mr. President, all day we have heard that we are slow-walking this bill. In an effort to help manage what goes on here, we have asked the Senator from California who has a CAFE amendment to be the next in order. We have 382 amendments. We have about half of them over here. Any one of the Senators can call up any one of their amendments. I think it would be in the best interest of the Senate if we have an orderly process for offering these amendments. This does not disadvantage the majority in any way. We have done what we can to help move this bill forward. Senator FEINSTEIN spoke. She came over to offer this amendment and couldn't do it.

Mr. DOMENICI. We have no objection. I misunderstood. I apologize. If you want the RECORD to reflect that the next Democratic amendment will be Senator FEINSTEIN's amendment on CAFE, we have no objection.

Mr. REID. Mr. President, so there is no misunderstanding. I ask unanimous consent—this is for the Democratic Senators—that next Democratic amendment that we offer, whenever that might be, will be the Feinstein CAFE amendment.

Mr. DOMENICI. That is correct; whenever you do.

Mr. REID. That is right.

Mr. DOMENICI. So you don't have any misunderstanding either, we will be finished with the debate and, as we understand it, we will then vote.

Mr. REID. We will vote. Following that vote we have two amendments to dispose of—another Durbin amendment which may work out very easily, and the second is the Campbell amendment. Following that, we have been advised on several occasions that the majority who has first right of recognition wants to offer the new electricity section.

Mr. DOMENICI. That is correct.

Mr. REID. That is fine. Whenever we offer our next amendment, Senator FEINSTEIN will offer her amendment on CAFE.

Mr. DOMENICI. We want to accommodate. If there was any misunderstanding, it perhaps was on my part. I have no objection.

I yield the floor and suggest the absence of a quorum, and I ask unanimous consent that the time be charged equally to the remaining three Senators.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. BINGAMAN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BINGAMAN. Mr. President, how much time remains for me to discuss the Levin-Bond amendment and the Durbin amendment under the unanimous consent agreement?

The PRESIDING OFFICER. The Senator has 4 minutes remaining.

Mr. BINGAMAN. Mr. President, let me speak for that 4 minutes to indicate my opposition to the Levin-Bond amendment. As I see that amendment, by adopting it, we would do two things. First, we would be erecting new barriers to the development of meaningful fuel economy standards. Secondly, we would be effectively walking away from an opportunity to do something right about decreasing our growing oil consumption. In both cases, we would be making a mistake.

The Bond-Levin amendment establishes additional criteria that would impose unnecessary hurdles to any significant increase in fuel efficiency standards. There are multiple new factors such as the effect of CAFE standards on the relative competitiveness of manufacturers and levels of U.S. employment. Those kinds of criteria are being added to the current rulemaking process. In my view, adding those kinds of criteria will only cause the courts to revisit the careful balance that is already struck in the present statute.

NHTSA already considers in-depth evaluations of the impact of a standard on safety, on the environment, and on American jobs. And the Levin-Bond amendment complicates the agency's task by providing a lengthy list of 13 items which, in my view, are unnecessary and deliberately vague new statutory provisions that have to be considered.

This is not progress. We need to be honest with the American people and ourselves and recognize that if Alan Greenspan cannot even tell us the effect of a small drop in interest rates on the economy in the near future—as it is clear that he cannot and has not been able to, and he readily admits has not been able to—how can we expect the National Highway Transportation Safety Administration to possibly determine with accuracy the effect of any change in CAFE standards on employment levels or on relative competitiveness?

Passenger vehicles today already use more petroleum than is currently produced in the United States. The Energy Information Agency projects consumption to increase an additional 2 million barrels per day before the end of this decade. Consumer preference has switched to light trucks and sport utility vehicles in recent years, and this has caused the average fuel economy in the U.S. passenger fleet to actually drop rather than improve. We are going backward with regard to fuel efficiency in vehicles.

Today, we have the lowest fuel efficiency we have had since the early 1980s in our entire fleet of vehicles. A decision not to increase CAFE standards significantly is a decision to become more and more dependent on foreign energy sources.

I just returned from a meeting in the White House, where the President met with many of us, including my colleague from New Mexico, myself, the majority leader, the Democratic leader, and all of us were talking about how important it is that we move ahead with progressive energy legislation, and that we do so in order to reduce our dependence on foreign oil. The biggest factor causing an increased dependence on foreign oil is the increase in the use of oil and gasoline in motor vehicles. Instead of increasing the efficiency with which we reduce the efficiency of our motor vehicles, we are moving in just the opposite direction.

Despite what automakers are saying, new engines, transmission, and hybrid technologies are now available to give automakers the means to increase gas mileage over the next 10 years without reducing either vehicle size or weight. Mr. President, we drove to the White House a few minutes ago in a new Honda Civic that is a hybrid. The average miles per gallon of that vehicle is between 45 and 50 miles.

It is very unfortunate, in my view, that the only hybrid vehicles available to a U.S. consumer today are Japanese vehicles. They are the hybrid that is produced by Honda and the hybrid produced by Toyota.

I see that my time is up. I urge my colleagues to oppose the Levin-Bond amendment. I do support Senator DURBIN's amendment. I hope we can adopt that amendment and make some significant progress toward increasing vehicle fuel efficiency.

I yield the floor.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. Mr. President, would you tell me how much time there is before the votes on the Durbin and Bond-Levin amendments?

The PRESIDING OFFICER. The Senator from Illinois has 12 minutes; the Senator from New Jersey has 1 minute 40 seconds; the Senator from New Mexico has 3 minutes 45 seconds; the Senator from Mississippi has 1 minute 8 seconds.

Mr. REID. Will the Senator yield?

Mr. DURBIN. Not on my time.

Mr. REID. This will be off of Senator LAUTENBERG's time. The Senator from Missouri, Mr. BOND, has asked that the proponents of these amendments have some time to speak before the votes take place. Senator DURBIN should be able to speak last, which is normal; it is his amendment. I want to make sure everybody has ample time to speak. The Senator from Missouri said he wants 2 or 3 minutes. Is that OK if Senator BOND has 2 minutes?

Mr. DOMENICI. That is fine. I was going to make sure he got it by giving him some of mine. I appreciate that very much. It is hard to say who should speak last because the first amendment to be voted on is Senator BOND's amendment. Maybe he should be speaking last. If that is the way we are going to do it——

Mr. BOND. Mr. President, to clarify, is there time after the vote on the Durbin amendment for debate on the Bond-Levin amendment?

Mr. REID. The Senator said you are going to be first.

Mr. BOND. Is there time for debate after that on the Bond-Levin amendment?

Mr. REID. Mr. President, I ask unanimous consent that there be 4 minutes equally divided.

Mr. DURBIN. Mr. President, what is the regular order of the votes on the amendments?

The PRESIDING OFFICER. The vote will occur first on the Durbin amendment, followed by the Bond amendment.

Mr. DURBIN. If I understand the unanimous consent request by the Senator from Nevada, there will be 4 minutes before the vote on the amendment of the Senator from Missouri.

Mr. REID. I modify my request to that effect.

Mr. BOND. There will be time allotted for those of us on the other side prior to the Durbin amendment—who has the last minutes on that, I ask the managers?

Mr. DOMENICI. Well, look, Senator DURBIN has 15 minutes. We don't need to give him any more time. He can save 2 of that for just before the vote. We need to save Senator BOND 2 minutes. We need to give Senator BOND 2 minutes to speak in opposition. Senator DURBIN doesn't need any additional minutes beyond the 15.

Mr. DURBIN. I probably have all I need.

Mr. DOMENICI. I thought you had been speaking all afternoon—but it is eloquent.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. DURBIN. Mr. President, please alert me when I have 3 minutes remaining.

The PRESIDING OFFICER. The Chair will do so.

Mr. DURBIN. Mr. President, before us is the most important single amendment on the question of energy security of the United States. That is quite a bold assertion but I stand by that because we understand how dependent we are on foreign oil. We understand that as long as the cars and trucks that we use in America are not fuel efficient, we will continue to have this dependence on foreign oil. So if we want to secure the Nation from an energy point of view, we have to show leadership on the floor of the Senate. We did that in 1975; 28 years ago, we established standards that said to those producing cars for sale in America: You are not doing a good enough job. Fourteen miles a gallon is unacceptable. You have to do better and we will give you 10 years to improve that. And they did.

At the end of 10 years, 27 and a half miles per gallon was the average fleet economy average across America. It was done because this Congress had the will. This Congress stood up to the special interest groups and said it is more important for the energy future of America and for families and businesses for us to have fuel efficiency. Look what we got for it: safe, fuel-efficient vehicles by 1985—double the fuel efficiency of just 10 years before.

Now I come to the floor and say, why haven't we done anything since 1985? Eighteen years of inaction. Isn't it time for us to show leadership again? You would think I was proposing the end of the automobile industry in America. Listen to the arguments we hear from the other side. A Senator came on the floor today and said: If DURBIN has his way, we are all going to be driving golf carts.

Get real. The technology is there. Don't take my word for it. I am a liberal arts lawyer. What do I know about engineering?

In 2001, the National Research Council came out with a report specifying all the technologies currently available that could increase fuel efficiency in cars and trucks. Why aren't they being put on those vehicles? Because Detroit doesn't have the will to do it. And because they don't, we continue to be sold heavier, more cumbersome, and, in many respects, more dangerous vehicles, with even worse fuel economy; we continue to import oil from overseas and be dependent on the Middle East; we continue to burn that oil, polluting the environment, creating greenhouse gases, resulting in public health problems and a degradation of the environment and, frankly, endangering species on Earth that could live, because they are God's creation, but will be destroyed because we are ignoring our responsibility today.

There are those who said: We cannot do this. We must understand that when it comes to this technology war between the United States and other countries, those who oppose this amendment say: Don't you understand, Senator DURBIN, we are not up to this fight; we cannot win this fight; we have to find a way to avoid this battle. And I will say to them: That is not my point of view. I believe America can compete. We have proven it in the past. We proved it in 1975.

These people who are so afraid that we will be forced to put a more fuel efficient car on the road that is also safe have told us it is impossible, and leading that chorus is none other than the big three in Detroit, once again falling behind when it comes to a global challenge to do the right thing. That is sad.

For those of us who want to encourage American automobile manufacture, for those of us who want to stand behind those workers, I ask them the simple question: Why are they afraid to lead? Why are they afraid of a challenge to their creativity, to their innovation, to their leadership? Why must we always take second place when it comes to automobile technology? I think America is capable of much more. But those doubters, those who do not believe America is up to the challenge, say: Defeat the Durbin amendment. If you establish a standard of 40 miles a gallon, America is throwing in the towel; we are giving up; no way we can compete on that kind of a standard.

They also say—and this is the saddest part of their argument—we also know foreign countries can compete and will compete successfully against us. What a sad commentary on American industry for the critics of this amendment to come up with that argument. I do not stand by it. I think if we show our leadership, they will show theirs. They did it in 1975; they can do it again today.

There is an old story—and it is probably anecdotal—that after we passed the CAFE standards in 1975 and said we wanted better fuel efficiency in our cars, in Japan they got the message of the passage of this new law and they said: Go out and hire an army of engineers; we have to be ready to compete. When they got the news of the passage of this new law in Detroit, they called all their leaders together and said: Go out and hire an army of lawyers to fight this law. That is sadly reflective of the mentality that comes to the floor today.

Instead of saying American industry can do better, that American families can expect more, that the next generation will have more safe and fuel-efficient cars, the opponents of this amendment say it is impossible, it cannot be done, and it can only be achieved at the expense of the American automobile industry.

That is a sad commentary. Frankly, it is one we should reject. I say to my colleagues in the Senate: If this Energy bill that involves so much work by so many people, S. 14, is to have any value, aren't we going to address the most important single use of energy by American families and businesses today—our transportation sector and its utilization of the imports of oil? If we do not do that, this bill is just window dressing. It is nice.

There are some aspects of the bill I actually like, but it does not get to the heart of the issue. It fears the heart of the issue because there are people who are afraid of it, and I think they are just plain wrong.

Let me mention a couple of other arguments brought up by my opponents. They said the Durbin amendment achieving 40 miles a gallon by 2015 is too fast and too furious. I remind them, the Durbin amendment is an increase of less than 1 mile per gallon per year for the first 6 years. That is hardly fast and furious.

They say my amendment is going to terminate jobs, safety, and consumer choice. The same weak arguments were made in 1975, and they should be rejected today as they were in 1975.

They say my CAFE levels are arbitrary. Listen, we use a standard, not political argument. The National Academy of Sciences already identified the technologies that can be put in cars and trucks effectively. They also say the Bond-Levin amendment is a great leap forward, but it is a great leap forward for litigation.

The Bond-Levin amendment is not an invitation to innovation; it is an invitation to litigation. Let me tell my colleagues why I say that. They establish the standards by which we can improve fuel efficiency in America through the National Highway Traffic Safety Administration. On one side of this chart are the existing standards. There are a handful of them. The opponents of my amendment decided to add all of these items to the standards that have to be followed by NHTSA before they can improve fuel economy.

What does this mean? It means that if they ever muster the courage to say we can have more fuel efficient vehicles, they will be challenged in court on each and every one of these elements. They will be tied up in court for years. That is exactly what the opponents of the Durbin amendment want. They do not want to see more fuel efficiency. They want this delayed indefinitely. And that delay means more dependence on foreign oil. It means more pollution. It means less energy security for America.

To come up with all of these new categories that have to be met is just a guarantee that, in our lifetime, we will never see a change. For 18 years we have not. NHTSA, left on its own for the last 18 years, has nominally improved MPG, miles per gallon, in America by 1.5 miles per gallon—in 18 years. How long will it take us to reach 32 miles a gallon by that standard? We would not see it this century. That is how slow they are today.

In comes the Bond-Levin amendment and it says: Let's throw some other categories in here and obstacles to increasing fuel efficiency.

The American people get this. American businesses do, too. They understand that more fuel efficient vehicles are going to make a more productive economy, make certain that America is more competitive, make certain there are more and good paying jobs. We are not going to throw in the towel. With the Durbin amendment, we accept the challenge that we can keep our love affair with the automobile alive but do it in a responsible way. It is the kind of situation our Nation has responded to time and again, and I think we should today.

The PRESIDING OFFICER. The Senator has 3 minutes remaining.

The Senator from Missouri.

Mr. BOND. Mr. President, obviously, I do not have the time the Senator from Illinois has, but I do want to point out that the National Academy of Sciences says:

> The committee cannot emphasize strongly enough that cost efficient fuel economy levels are not recommended CAFE goals.

The National Academy of Sciences also said that when the politically driven fuel economy numbers were imposed in the seventies and eighties, somewhere roughly approximating 2,000 deaths a year occurred on the highways due to smaller cars. Talk about the production of automobiles in auto-related industries in Missouri and Illinois, even in New Mexico: 21,000 in New Mexico; 16,000 in Rhode Island; 221,000 in Missouri; 331,000 jobs in Illinois.

I previously submitted for the RECORD a letter from the United Auto Workers saying it would endanger the jobs of their members.

Furthermore, we also know it does not relate to consumer choice. Thirty cars on the road today get more than 30 miles per gallon, and they represent only 2 percent of the sales. Consumers do not want them. Unless we have to tell people what they have to drive, we are not going to get them to drive around in these cars unless and until we get the technology to produce more fuel efficient cars.

We have seen NHTSA, the National Highway Traffic Safety Administration, make the most significant increase in fuel economy with their light truck standards which are going into effect. We mandate in the Bond-Levin amendment that the maximum feasible technology be utilized to increase standards in the future.

Let's get real. Let's talk about what is technologically feasible, what will continue jobs, get better fuel economy, not risk the lives of the drivers on the road and their families, and also not throw out of work the very wonderful American men and women who are making these automobiles in my State and others.

I urge my colleagues to reject the Durbin amendment and support the Bond-Levin amendment.

The PRESIDING OFFICER. Who yields time?

The Senator from New Mexico.

Mr. DOMENICI. Mr. President, I have how many minutes?

The PRESIDING OFFICER. Two minutes 53 seconds.

Mr. DOMENICI. Mr. President, I will try to do it in that period of time. I ask unanimous consent for 3 minutes instead of the 2 minutes and something.

The PRESIDING OFFICER. Is there objection?

Mr. REID. Reserving the right to object, the Senator from New Mexico, the manager of this bill, can have whatever time he wants.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DOMENICI. Mr. President, I think I am going to do it in 2 minutes and whatever few seconds.

First, I have been looking forward to this debate all day because it is a very mature debate. The Senate spent a good deal of time last year discussing these two amendments, as well as others. The Feinstein amendment we agreed to and that we will be talking about, I think we discussed it heretofore also, but in any event, a lot of time has been spent discussing these amendments.

In addition to these amendments, I remind Senators that we have already adopted an amendment, that came as quite a surprise, by Senator LANDRIEU that would require the President to develop a plan to reduce domestic petroleum consumption by 1 million barrels a day by 2013. Since major reductions in oil consumption are most likely going to be achieved through reductions in the use of transport fuels, the President, as a result of the Landrieu amendment, will probably have to focus on measures to increase fuel economy.

I suggest to Senators that the Landrieu amendment may obviate the need for further debate. Nonetheless, we are debating and we will continue to debate. It seems to me the Landrieu amendment gives the President the kind of authority and flexibility needed in this country if, in fact, this issue is as important as it is being alluded to.

Keeping that in mind, if the Senate must choose among the offered CAFE amendments, I must lend my support to the amendment offered by Senator BOND and Senator LEVIN. Under Bond-Levin, standards will be based upon sound science and solid technical advice. Their amendment mandates that NHTSA experts set a new CAFE number considering jobs, safety, technology, and other key factors.

The Bond-Levin amendment passed overwhelmingly last year. I do not think much has changed. As a matter of fact, we are a little bit more secure in terms of energy now. We are still using a lot, maybe more, but the world is a little more secure in terms of oil dependence. The amendment they have offered is what I would call a commonsense amendment. It would not adversely affect employment, safety, or consumer choice, but it would do the job.

Incidentally, the amendment is supported by the United Auto Workers, the National Chamber of Commerce, the AFL–CIO, the Association of Manufacturers, the Farm Bureau of America, and over 30 additional associations.

When combined with the considerable tax incentives for advanced vehicle technology in the Finance Committee package, the Bond-Levin amendment offers a sensible way to achieve fuel efficiency gains and to reduce our dependence on foreign oil. It does so in a way that would not hurt the United States economy, increase vehicle cost to consumers, and cost American jobs or endanger lives.

I understand the distinguished Senator from Illinois has about 3 minutes, after which time we will start a vote.

The PRESIDING OFFICER (Mr. COLEMAN). The Senator from Illinois.

Mr. DURBIN. Mr. President, I understand I have 3 minutes to close the debate, is that right?

The PRESIDING OFFICER. Two minutes and 45 seconds.

Mr. DURBIN. I ask unanimous consent that a list of organizations supporting the Durbin amendment, as well as a letter from Mr. Chuck Frank of Z. Frank, the world's largest Chevrolet dealer, who supports my amendment, be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

NATIONAL SUPPORT FOR THE DURBIN CAFE AMENDMENT

Cosponsors: Nelson (FL), Jeffords, Reed (RI), Reid (NV), Kennedy, Boxer, Lautenberg.

Supporting Organizations: Sierra Club, Union of Concerned Scientists, Natural Resources Defense Council, U.S. PIRG, National Environmental Trust, Friends of the Earth, Public Citizen, The Wilderness Society, Citizen Action Illinois.

Coalition on the Environment and Jewish Life, National Council of Churches, Hadassah, the Women's Zionist Organization of America, American Jewish Committee, Jewish Council for Public Affairs, Union of American Hebrew Congregations, Central Conference of American Rabbis, MoveOn, Chesapeake Climate Action Network.

JULY 24, 2003.

Hon. RICHARD DURBIN,
U.S. Senate,
Washington, DC.

DEAR SENATOR DURBIN: I am writing in support of raising fuel economy standards. I am the President of ''Z'' Frank Chevrolet. I've sold well over 1,000,000 vehicles. My family has been selling and leasing cars and trucks in Chicago since 1936. Before entering the family business in 1976, I graduated from George Washington University and then the University of Chicago Graduate School of Business. I have been a Chevrolet dealer since 1982 and since then have also held franchises from Oldsmobile, Hyundai, Mazda, Subaru and Volkswagen.

I know the car business, and I know that car companies can, and must, do better for the sake of our country.

I call on you to support the three CAFE related amendments that are expected to be offered—the Durbin amendment, the Kerry/McCain amendment and the Feinstein/Snowe amendment.

I support these amendments because I know that cars, SUVs and other light trucks consume 8 million barrels of oil every day and account for 20 percent of U.S. global warming emissions. At a time when energy security is a national priority, raising fuel economy standards will cut the country's dangerous dependence on oil, curb global warming, and save consumers money at the gas pump. Raising fuel economy standards is the best way to manage our energy future and encourage automakers to implement technologies that already exist.

How do I know that the auto companies can make vehicles that go further on a gallon of gas? Because they're already doing it with a small number of vehicles!

Existing fuel-saving technologies like more efficient engines, smarter transmissions, and sleeker aerodynamics are being put in some vehicles, but they could be in all. Already this year, we have seen a host of announcements showing that all kinds of vehicles can get better fuel economy using existing technology. For instance:

General Motors announced that it will be putting Displacement on Demand technology in 100,000 Chevy Trailblazers and GMC Envoys, helping improve the fuel economy of these large SUVs. Continuously Variable Transmissions are also gaining in popularity.

Hybrid-electric drivetrains are also becoming available in a range of vehicles. At this year's Detroit Auto Show, Ford, General Motors, and Toyota all announced that they will have hybrid gasoline-electric SUVs on the road within two years that will get close to 40 miles per gallon.

Toyota already has a hybrid gasoline-electric car on the road, the Prius, and plans on having SUVs and more hybrid cars as well. The Chevrolet Malibu will have a hybrid version by 2005.

J.D. Power and Associates has forecasted that sales of hybrid-electric vehicles will reach 500,000 within five years.

It is not easy for me to be at odds with the manufacturer I represent. Selling Chevrolets has been very financially beneficial for me and my family. But the fact is, they can and must do better. They can build cars, trucks and SUVs that are safe, affordable, and exciting to drive, while still going further on a gallon of gas. It's in the best interest of our country to raise the fuel economy standards of our cars and light trucks. Please feel free to share this letter with others. I hope it helps.

Sincerely,

CHARLES E. FRANK,
President, ''Z'' Frank Chevrolet.

Mr. DURBIN. Mr. President, when one lists all of the groups that oppose this, on business and labor, frankly, we would have found the same opposition in 1975. Those are the same groups that were arguing it is physically impossible for us to have more fuel-efficient cars. If they would have had their way, we would still all be driving cars at 14 miles a gallon or worse.

This Congress rejected those same groups and their positions 28 years ago, but we have not done a thing since. As a result, the fuel efficiency of our cars and trucks has gone down. Is that in the best interest of America? Is that as good as Congress can do, to abdicate our leadership and responsibility on something this essential?

I look at these automobile manufacturers—many of them are my friends and I have worked with them. Certainly, United Auto Workers has been one of my strongest supporting organizations since I have been involved in politics, but I just disagree with them. I believe America can do better. I think if we challenge American business and labor to work together for more fuel-efficient vehicles, they can rise to the challenge. But if we throw in the towel, as the Bond-Levin amendment does, then we know what is going to happen. We are going to continue to see this situation get worse.

The Senator from New Mexico talks about the Landrieu amendment, and I voted for it because it was a wonderful little message to include in this bill, but it does not have any teeth. It has no enforcement. What it basically says to the President is we hope he will see the light, we hope he will lead the way, and if he does, we would sure like to help him.

If that is the case, if that is all Congress is about, why do we have this bill? Why do we not say to the President of the United States, why doesn't he take care of the energy needs of America, and if he needs us, call us? Well, we do not say that. We say we accept our part of the responsibility to pass reasonable laws based on sound science to make America more energy secure.

I say to my colleagues, if we have an energy bill that does not address the fuel efficiency of vehicles, we have ignored the most important energy and environmental issue that should be debated under this bill. The special interests will have won the day again, as they failed in 1975, and as a result we will continue to see dependence on foreign oil, more air pollution, and less energy security for America.

That is not what we should promise to further generations, and I urge my colleagues to support my amendment.

The PRESIDING OFFICER. All time has expired. The question is on agreeing to amendment No. 1384.

The Senator from New Mexico.

Mr. DOMENICI. Have the yeas and nays been ordered?

The PRESIDING OFFICER. They have not.

Mr. DOMENICI. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The Senator from New Mexico.

Mr. DOMENICI. Mr. President, we are going to vote on this amendment, and then immediately following that, the next amendment will be the Bond-Levin amendment, which will be preceded by 2 minutes of debate on the part of Senator DURBIN in opposition and Senator BOND in favor. So Senators should know we have one vote, with 4 minutes of debate followed by another vote. I ask unanimous consent that the second vote be a 10-minute vote.

The PRESIDING OFFICER. Without objection, it is so ordered.

The question is on agreeing to amendment No. 1384.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. REID. I announce that the Senator from Florida (Mr. GRAHAM), the Senator from Massachusetts (Mr. KERRY), and the Senator from Connecticut (Mr. LIEBERMAN) are necessarily absent.

I further announce that, if present and voting, the Senator from Massachusetts (Mr. KERRY) would vote "yea".

The PRESIDING OFFICER (Mrs. DOLE). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 32, nays 65, as follows:

[Rollcall Vote No. 309 Leg.]

YEAS—32

Akaka	Dodd	Leahy
Bingaman	Durbin	Murray
Boxer	Edwards	Nelson (FL)
Cantwell	Feinstein	Reed
Carper	Gregg	Reid
Chafee	Harkin	Rockefeller
Clinton	Hollings	Sarbanes
Collins	Inouye	Schumer
Corzine	Jeffords	Snowe
Daschle	Kennedy	Wyden
Dayton	Lautenberg	

NAYS—65

Alexander	Dole	McCain
Allard	Domenici	McConnell
Allen	Dorgan	Mikulski
Baucus	Ensign	Miller
Bayh	Enzi	Murkowski
Bennett	Feingold	Nelson (NE)
Biden	Fitzgerald	Nickles
Bond	Frist	Pryor
Breaux	Graham (SC)	Roberts
Brownback	Grassley	Santorum
Bunning	Hagel	Sessions
Burns	Hatch	Shelby
Byrd	Hutchison	Smith
Campbell	Inhofe	Specter
Chambliss	Johnson	Stabenow
Cochran	Kohl	Stevens
Coleman	Kyl	Sununu
Conrad	Landrieu	Talent
Cornyn	Levin	Thomas
Craig	Lincoln	Voinovich
Crapo	Lott	Warner
DeWine	Lugar	

NOT VOTING—3

Graham (FL)	Kerry	Lieberman

The amendment (No. 1384) was rejected.

Mr. DOMENICI. Madam President, I move to reconsider the vote.

Mr. CRAIG. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 1386 AS AMENDED AND MODIFIED

Mr. DOMENICI. Madam President, fellow Senators, if you will not leave, we will vote again very shortly. There are 4 minutes with 2 minutes on each side, and then we will vote on the Bond-Levin amendment. The Senator from Illinois has the first 2 minutes and Senator BOND wraps it up. Then we will vote.

The PRESIDING OFFICER. Who yields time?

Mr. DURBIN. Madam President, under the unanimous consent agreement, I have 2 minutes to speak in opposition to this amendment.

I understand some of my colleagues have offered this amendment in good faith in an effort to address the issue. The amendment which was just defeated addressed the issue. It would have increased fuel efficiency of cars. This Bond-Levin amendment establishes additional criteria for the National Highway Traffic Safety Administration to meet before they recommend and implement any increase in fuel efficiency.

What does this mean? Here are the existing standards that have to be met with the passage of this amendment. We add all of these new standards that have to be met. There are more hurdles to be cleared. It is an invitation for litigation because as the rules are announced those who oppose them will be able to step forward and say: you didn't meet this Bond-Levin criteria or you didn't meet this one. It just means further delay.

We know what NHTSA has done on its own. It has increased fuel efficiency by 1.5 miles per gallon in a span of 18 years. This is false hope. This is a figleaf for those who just voted no and say they want to vote yes. I encourage my colleagues to oppose this amendment.

Mr. BOND. Madam President, I yield to the Senator from Michigan.

The PRESIDING OFFICER. The Senator from Michigan is recognized.

Mr. LEVIN. Madam President, our amendment will increase full efficiency but in positive ways by giving incentives to purchase vehicles, by having the Government buy the vehicles which are leaps ahead in technology, and by having the Government be more involved in joint research and development. By the way, we don't add criteria which must be met. We add criteria which we want the Department of Transportation to consider.

Is there anyone who doesn't want the Department of Transportation to consider—consider—technological feasibility or safety or economic practicability or the effect on jobs?

These are not hurdles which must be jumped. These are simply relevant facts which we want NHTSA to consider. For the life of me, I cannot understand why all of us would not want NHTSA to consider those relevant facts.

Mr. BOND. Madam President, I ask unanimous consent that Senators

BUNNING, VOINOVICH, and NICKLES be added as cosponsors.

I thank my colleagues for a very strong vote. With the Senator from Michigan and other cosponsors, we ask for your support of this measure.

As I indicated in my earlier remarks, there is strong support by the United Auto Workers which believes, as I do, and which I hope a vast majority of this body does, that we can move forward to make progress that is economically feasible to assure better fuel economy while not sacrificing safety and not sacrificing jobs but making it clear that we are going to use the technology to build on the most significant advance in fuel economy in 20 years that the National Highway Traffic Safety Administration has just promulgated for light trucks.

Let us continue to move forward with CAFE based on sound science and not political numbers. I urge my colleagues to support the Bond-Levin amendment.

The PRESIDING OFFICER. The time of the Senator from Missouri has expired.

Mr. DOMENICI. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The question is on agreeing to the amendment. The clerk will call the roll.

The legislative clerk called the roll.

Mr. REID. I announce that the Senator from North Carolina (Mr. EDWARDS), the Senator from Florida (Mr. GRAHAM), the Senator from Massachusetts (Mr. KERRY), and the Senator from Connecticut (Mr. LEBERMAN) are necessarily absent.

I further announce that, if present and voting, the Senator from Massachusetts (Mr. KERRY) would vote ''nay''.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 66, nays 30, as follows:

[Rollcall Vote No. 310 Leg.]

YEAS—66

Alexander	Dayton	Lott
Allard	DeWine	Lugar
Allen	Dodd	McConnell
Baucus	Dole	Mikulski
Bayh	Domenici	Miller
Bennett	Dorgan	Murkowski
Bond	Ensign	Nelson (NE)
Breaux	Enzi	Nickles
Brownback	Feingold	Pryor
Bunning	Fitzgerald	Roberts
Burns	Frist	Santorum
Byrd	Graham (SC)	Sessions
Campbell	Grassley	Shelby
Carper	Hagel	Smith
Chambliss	Hatch	Specter
Clinton	Hutchison	Stabenow
Cochran	Inhofe	Stevens
Coleman	Johnson	Sununu
Conrad	Kohl	Talent
Cornyn	Landrieu	Thomas
Craig	Levin	Voinovich
Crapo	Lincoln	Warner

NAYS—30

Akaka	Bingaman	Cantwell
Biden	Boxer	Chafee
Collins	Inouye	Nelson (FL)
Corzine	Jeffords	Reed
Daschle	Kennedy	Reid
Durbin	Kyl	Rockefeller
Feinstein	Lautenberg	Sarbanes
Gregg	Leahy	Schumer
Harkin	McCain	Snowe
Hollings	Murray	Wyden

NOT VOTING—4

Edwards	Kerry
Graham (FL)	Lieberman

The amendment (No. 1386), as modified and amended, was agreed to.

Mr. DOMENICI. Madam President, I move to reconsider the vote.

Mr. CRAIG. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from New Mexico is recognized.

Mr. DOMENICI. Madam President, if I may have the attention of Senators, please, there are two amendments. One is a Durbin amendment, which Senator DURBIN indicated when he sent it to the desk was sent up by mistake. It is a so-called Durbin No. 2 tax amendment. He said, then, that he would like to withdraw it.

I ask unanimous consent that he be permitted to withdraw that amendment.

The PRESIDING OFFICER. Is there objection?

Mr. REID. Objection. Madam President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The Senator from New Mexico retains the floor.

Mr. DOMENICI. Madam President, I move to table the Durbin amendment.

Mr. REID. Madam President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll to ascertain the presence of a quorum.

The legislative clerk proceeded to call the roll.

Mr. DOMENICI. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

The motion to table has been made.

Mr. DOMENICI. Parliamentary inquiry: Is a motion to set aside the Durbin tax amendment the pending business?

The PRESIDING OFFICER. The Senator has made a motion to table the Durbin amendment.

Mr. DOMENICI. A motion to table.

The PRESIDING OFFICER. That motion is not debatable.

Mr. DOMENICI. Let's go.

Mr. DASCHLE. Madam President, I ask unanimous consent that the motion be withdrawn.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. DOMENICI. That having been done, I move to set the amendment aside.

The PRESIDING OFFICER. Is there objection?

Mr. DOMENICI. The amendment is withdrawn?

The PRESIDING OFFICER. The motion to table has been withdrawn.

Mr. DOMENICI. The amendment is still pending. I move to set the amendment of Senator DURBIN aside.

The PRESIDING OFFICER. Without objection, it is so ordered.

The PRESIDING OFFICER. The Senator from New Mexico has the floor.

Mr. DOMENICI. I want to set both amendments aside so that I can proceed with another amendment. I ask unanimous consent that the Durbin amendment be set aside and that the Campbell amendment be set aside so that we may proceed with the electricity amendment.

The PRESIDING OFFICER. Is there objection?

Mr. DASCHLE. Reserving the right to object, and I will not object, but I publicly express my appreciation to the Senator from Washington, Ms. CANTWELL, who has some very strong concerns that she hopes to express once we get on the electricity title. She has several amendments. I have asked the distinguished manager if it would be his intention to allow the Senator from Washington to offer some of these amendments tonight. It is my understanding—and he can confirm this—that he is prepared to allow the Senator from Washington to offer these amendments tonight. I know that the distinguished ranking member, the Senator from New Mexico, also has an amendment he is prepared to offer. So it is with that understanding that the ranking member and the Senator from Washington will have amendments, and that the Senator from Washington will be recognized to offer those amendments. We do not object now to moving to the electricity title and setting aside the amendments that have been pending.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. DOMENICI. I thank Senator CANTWELL for her cooperation. First, I assure her that what we have just done in no way jeopardizes her rights to offer amendments. She has not only one but maybe a number of amendments she wants to offer to the so-called electricity provisions. That will be offered next, and clearly we are going to be on it until Senators have no more amendments. So we are going to be here long enough for the amendments of Senator CANTWELL to be offered, whatever they are and however many there are.

AMENDMENT NO. 1412

Mr. DOMENICI. I send the electricity amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from New Mexico [Mr. DOMENICI], for himself, Ms. LANDRIEU, Mr. THOMAS, Ms. MURKOWSKI, Mr. CAMPBELL, Mr. SMITH, Mr. ALEXANDER, Mr. KYL, Mr. NELSON of Nebraska, Mr. HAGEL, Mr. TALENT, Mr. BUNNING, and Mr. COLEMAN, proposes an amendment numbered 1412.

Mr. DOMENICI. Madam President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

(The text of the amendment is printed in today's RECORD under ''Text of Amendments.'')

Mr. DOMENICI. The electricity amendment pending at the desk has 13 cosponsors. I thank the cosponsors, Senator LANDRIEU, Senator THOMAS, Senator MURKOWSKI, Senator CAMPBELL, Senator SMITH, Senator ALEXANDER, Senator KYL, Senator NELSON of Nebraska, Senator HAGEL, Senator TALENT, Senator BUNNING, and Senator COLEMAN.

I have a very brief statement, and I trust Senators will listen. It is to the point. We will be on this until there are no more amendments to offer to this title.

Mr. DORGAN. Will the Senator from New Mexico yield for a question?

Mr. DOMENICI. I will be pleased to yield.

Mr. DORGAN. Madam President, I wanted to make the point and ask the question on the electricity title. The Senator from New Mexico indicated that all amendments would be available to be offered, and I appreciate that. This title, of course, is somewhat controversial.

Mr. DOMENICI. Yes.

Mr. DORGAN. The question of protection for consumers is very important. It is a very complicated title. I hope everyone in the Senate wants to plug the holes that existed with respect to some of the previous price manipulations that went on, on the west coast. My hope is that it is not just a case of allowing people to offer amendments but to have the staffs on both sides to actively work together so that we understand these provisions and actually plug the holes that exist that failed to protect consumers on the west coast in the last couple of years.

I know that is what the Senator would like to have happen. I know we have people on this side who want that to happen. I hope we can work together to make sure we understand it and then fix it.

Mr. DOMENICI. Madam President, I can guarantee Senators that the Senator from New Mexico has worked for the last 7 months on this bill. The electricity amendment is a compromise supported by a broad array of stakeholders, much broader than I ever would have thought when I assumed the chairmanship of this committee. I believe that, per se, assumes that this amendment plugs all the so-called loopholes so there will not be any Enron end runs.

I repledge that I will work with any Senator who has an amendment that they think improves upon this bill. That does not mean, however, that every amendment that comes along, that says it makes this bill better, is going to be one that this Senator accepts. I do not want to return to the regulation of PUHCA as a way of protecting the consumers. Quite to the contrary. I believe its day has come. It has served its purpose.

There are a number of letters of support for this electricity amendment which I am offering. Let me start with the administration. They say they support the substitute electricity amendment and believe it will effectively modernize our Nation's antiquated electricity laws.

The National Rural Electric Cooperative Association:

> Supports passage of the carefully crafted Domenici amendment without modification.

The American Public Power Association:

> Strongly supports the compromise in its totality without modification.

The Large Public Power Council:

> Supports the electricity substitute without modification.

Electric utility companies such as Mid-America, Allegheny, and Xcel, have offered their support for the Domenici electricity amendment, and I have now told my colleagues that it is supported by 13 Senators.

Because it is bipartisan, we might call it the Domenici-Landrieu amendment. For those who claim we need a balanced energy policy, here is a balanced electric title with wide support that needs to be included in our final bill. Some would add changes to it, and we are willing to look at them, but those who understand the complexities of the issues known as the Domenici electricity amendment know it represents a fair common ground. That is why there is support for this amendment without modification.

I know there will be a number of second-degree amendments, and I am willing to look at them. I have already said I am willing to look specifically at amendments from the distinguished Senator from Washington, Ms. CANTWELL. I will look at them carefully. I understand the significance of the problem she confronts. I do not support any amendments yet, and obviously if they disturb the delicate and sometimes gentle balance in this bill, I will have to oppose them. I will look with genuine interest, with the best talent I have, at amendments that Senators have if they think they really address the issues that have beset this country over the past 25, 26 months in terms of natural gas, utility prices, and utility companies and their shenanigans, such as at Enron.

The amendment is now pending. I am very proud of it, and I am pleased to be at this point. I thank the Chair for recognition, and I thank the Senate for paying attention. We are going to be open to amendments, and I understand my friend and colleague from New Mexico, Senator BINGAMAN, will probably have an amendment shortly.

I yield the floor.

The PRESIDING OFFICER. The junior Senator from New Mexico.

AMENDMENT NO. 1413 TO AMENDMENT NO. 1412

Mr. BINGAMAN. Madam President, I send the amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

> The Senator from New Mexico [Mr. BINGAMAN] proposes an amendment numbered 1413.

Mr. BINGAMAN. Madam President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

(Purpose: To strengthen the Federal Energy Regulatory Commission's authority to review public utility mergers)

On page 41, after line 17, strike all that follows through page 43 line 10, and insert the following:

SEC. . ELECTRIC UTILITY MERGERS.

Section 203(a) of the Federal Power Act (16 U.S.C. 824b) is amended to read as follows:

''(a)(1) No public utility shall, without first having secured an order of the Commission authorizing it to do so—

''(A) sell, lease, or otherwise dispose of the whole of its facilities subject to the jurisdiction of the Commission, or any part thereof of a value excess of $10,000,000,

''(B) merge or consolidate, directly or indirectly, such facilities or any part thereof with the facilities of any other person, by any means whatsoever,

''(C) purchase, acquire, or take any security of any other public utility, or

''(D) purchase, lease, or otherwise acquire existing facilities for the generation of electric energy unless such facilities will be used exclusively for the sale of electric energy at retail.

''(2) No holding company in a holding company system that includes a transmitting utility or an electric utility company shall purchase, acquire, or take any security of, or, by any means whatsoever, directly or indirectly, merge or consolidate with a transmitting utility, an electric utility company, a gas utility company, or a holding company in a holding company system that includes a transmitting utility, an electric utility company, or a gas utility company, without first having secured an order of the Commission authorizing it to do so.

''(3) Upon application for such approval the Commission shall give reasonable notice in writing to the Governor and State commission of each of the States in which the physical property affected, or any part thereof, is situated, and to such other persons as it may deem advisable.

''(4) After notice and opportunity for hearing, the Commission shall approve the proposed disposition, consolidation, acquisition, or control, if it finds that the proposed transaction—

''(A) will be consistent with the public interest;

''(B) will not adversely affect the interests of consumers of electric energy of any public utility that is a party to the transaction or is an associate company of any party to the transaction;

''(C) will not impair the ability of the Commission or any State commission having jurisdiction over any public utility that is a party to the transaction or an associate company of any party to the transaction to protect the interests of consumers or the public; and

''(D) will not lead to cross-subsidization of associate companies or encumber any utility assets for the benefit of an associate company.

"(5) The Commission shall, by rule, adopt procedures for the expeditious consideration of applications for the approval of dispositions, consolidations, or acquisitions under this section. Such rules shall identify classes of transactions, or specify criteria for transactions, that normally meet the standards established in paragraph (4), and shall require the Commission to grant or deny an application for approval of a transaction of such type within 90 days after the conclusion of the hearing or opportunity to comment under paragraph (4). If the Commission does not act within 90 days, such application shall be deemed granted unless the Commission finds that the proposed transaction does not meet the standards of paragraph (4) and issues one or more orders tolling the time for acting on the application for an additional 90 days.

"(6) For purposes of this subsection, the terms 'associate company', 'electric utility company', 'gas utility company', 'holding company', and 'holding company system' have the meaning given those terms in section 1151 of the Energy Policy Act of 2003.".

Mr. BINGAMAN. The amendment Senator DOMENICI has now offered is a substitute for the entire electricity title of the Energy bill. It purports to contain consumer protections in order to compensate for the fact that in this bill we are also proposing to repeal PUHCA. What is PUHCA? That is the Public Utility Holding Company Act.

I have to agree the substitute amendment Senator DOMENICI has provided does contain some increase in the authority the Federal Energy Regulatory Commission will have to review mergers and dispositions; that is, some increase in the authority of FERC to review mergers and acquisitions compared to the previous bill. I also concluded the substitute does not do enough to solve the problem.

The amendment I am offering contains the language we passed in last year's Senate Energy bill, language we believe fills this inadequacy, solves this problem in the underlying provision. Not only did the amendment pass the Senate last year, there was an amendment that would have removed this language. That amendment lost in the Senate by a vote of 67–29. Forty Senators voted for much stronger merger review authority than the provision contains.

FERC's merger review authority is essential in this industry which has been based on a system of local and regional monopolies. It is essential that authority be vested in FERC. The industry we are talking about historically has been based on local and regional monopolies and is moving toward depending much more on a competitive wholesale market for electricity generation. The industry is highly concentrated. Consolidation of generation and distribution transmission can prevent the development of a genuinely competitive market.

There are two big problems in the substitute provision Senator DOMENICI has provided with relation to merger and acquisition authority. Let me try to explain those.

First, this proposal does not cover the generation of energy. Everyone understands there are various parts to the energy industry. There are generation companies involved in generation, there are those involved in transmission, those that are involved in distribution, and some that are involved in all. However, generation is not covered under this language.

The second big problem is there are no real protections against cross-subsidies or encumbrance of assets owned by utilities. That raises a real prospect that people who pay utility bills will wind up subsidizing nonprofitable, unprofitable ventures that companies get into, particularly in the case where there are holding companies involved.

Let me talk about each of these issues. The first key failure I have talked about in the Domenici substitute is it does not make generation acquisitions or dispositions jurisdictional under the law. That means it does not give FERC authority over those. There is no requirement anyone oversee it at the Federal level and sign off on it.

For generation mergers, while it is true most activities in this area are divestiture of generation by vertically integrated utilities at this time, that may not always be the case. Utilities getting rid of generation do tend toward deconcentration of the market but not if they sell to large and growing generation companies. Instead of leading to less concentration, it can lead to more concentration, depending upon who is buying these generation facilities.

Without the authority provided in my amendment, FERC, which is charged with making sure the competitive market produces just and reasonable rates, would have to stand by and watch while the industry reconcentrates rather than deconcentrates. A single company could acquire every generator in this country and FERC could do nothing about it under the Domenici substitute. This is not compatible with the development of a competitive market. Even when the transaction is only the sale of generation facilities, there are serious issues at stake.

Many of the utilities in the headlines lately because they are either facing bankruptcy or have deep financial troubles have come as a result of the utility spinning off its generation to an affiliate who then gets into the unregulated electricity market. As a result, there are companies such as Xcel and Allegany that are experiencing serious financial distress because of the activities of their generation and marketing affiliates, but these affiliates are not under the jurisdiction of the FERC, so there will be no Federal oversight.

The second failure in the Domenici substitute is it does not require the FERC to create real protection against cross-subsidy or against encumbrance of assets in the new merged company. My amendment strengthens the standards under which FERC reviews mergers. Our provision requires the transactions can be shown to do no harm, either to competition, to consumers, or to the capacity of regulators to regulate. Further, it requires that FERC determine there will not be any cross-subsidy of affiliate companies and there will not be any encumbrance of assets for the benefits of the affiliate. This is essential if we are going to protect ratepayers. We did not allow that cross-subsidy to exist. The underlying Domenici amendment does not require that of the Federal Regulatory Commission.

Essentially, our provision requires that FERC create some way to determine the goals of the requirement be met. Perhaps the only way to accomplish this is to create real corporate insulation between the utility affiliate of a holding company and its unregulated affiliates. That could be done by creating firewalls around the utility affiliate, by enacting rules about transactions between affiliates or in a combination of the two.

The purposes behind the Public Utility Holding Company Act which we are ready to repeal as part of this overall Energy bill are to ensure consumers are not harmed by the complexity of corporate structure, that regulation not be made too difficult by that complexity, and that utility affiliates not be allowed to benefit from cross-subsidization or to cross-subsidize non-utility affiliates so that resources of the utility wind up being drained away from service to the customers. This is exactly what the bill requires FERC to do before approving a merger. That is what our amendment requires FERC to ensure before approving a merger.

I have three charts that will try to make this clearer. This is complex. Frankly, one of the difficulties of trying to begin in the evening at 6 p.m. with this very difficult, complex subject, there is an awful lot of knowledge Senators need to have in order to vote intelligently on these issues. Let me try to go through it with the charts.

The first chart is FERC jurisdiction at the present time. The Federal Energy Regulatory Commission, FERC, has jurisdiction over mergers of two different utilities. We are talking about, under the Federal Power Act, utilities that are vertically integrated. That is the traditional utility, the utility that provides electricity to my home in New Mexico, provides electricity to my home in Washington, DC, and to homes all around this country. Utilities own the generation capacity, own the transmission, and own the distribution. If two utilities want to merge, they have to present their proposal to merge to the Federal Energy Regulatory Commission, and the Federal Energy Regulatory Commission looks at that and says this is OK or this is not OK because we have determined it is not going to adversely affect the ratepayers. The people at home who are being served by one or the other of these utilities will not have to pay more if we approve this merger. That is what FERC has to determine at this point.

In the past, all generation was owned by jurisdictional utility companies. This is the way the system was operated. If you had a plant to generate power, almost certainly that plant was owned by a utility company. There were no independent companies out there saying all we want to do is generate power and then we will sell it to utilities. It was all owned by utilities. If a utility merged with another utility, the merger was jurisdictional at FERC under the Federal Power Act. That means that FERC had to sign off on the deal, essentially, and that was the protection that was built into the law for consumers.

Since all generation except for small renewable generators and cogenerators under the Public Utility Regulatory Policy Act was owned by utilities that were, in fact, under FERC jurisdiction, all mergers involving generation came under the jurisdiction of FERC.

That was a good system as far as it went, but that was the system which made sense when the Federal Power Act was enacted because then we were dealing with vertically integrated utilities.

The world has changed, so let me go to chart No. 2.

Before I talk about the changed world, let me describe this second chart. The title of this chart is ''PUHCA Jurisdiction.'' I said before, PUHCA is the Public Utility Holding Company Act, and the Public Utility Holding Company Act provides essentially a set of restrictions on what holding companies are able to do, and particularly what holding companies are able to do with regard to purchase or acquisition of utilities. If a holding company acquired a utility company, then the Securities and Exchange Commission under PUHCA, the Public Utility Holding Company Act, had jurisdiction and authority to review that acquisition. The relationships between the utility and all of its new affiliates were governed by the Public Utility Holding Company Act.

The proposal we have here before us in the Senate is let's repeal this entire thing. All of the restrictions under which holding companies operate today would no longer apply. The question is, If we do that, what are we going to substitute for that jurisdiction or for that oversight to ensure that consumers are not adversely affected? This shows the holding company over here on the right, and under it you see it owns a utility, it owns other affiliates, it owns perhaps another utility, generation and marketing affiliate—it has a variety of companies it holds as a holding company. The question is, Who is going to have the responsibility to be sure there will not be cross-subsidy so that ratepayers of utilities are not adversely affected if we eliminate the Public Utility Holding Company Act?

Let me move to the third chart to try to explain this. In the new world in which we now find ourselves, we no longer have as many vertically integrated utility companies. More and more we are seeing generation of electric power done by other companies which are not vertically integrated utilities. In this new world, generation is separated from the utility company, and it is either sold to a stand-alone generation company or spun off as an affiliate of a holding company that owns a utility. The sales or the spinoff would not be under FERC jurisdiction under the Federal Power Act, since generation facilities were not specifically put under FERC's authority. Generation facilities wound up under FERC's authority because they were part of integrated utilities. Now we are saying: OK, what do we put in place to live with this new world?

We are saying we need to specify that generation facilities are under FERC authority. They clearly would not be covered—there is no jurisdiction under FERC for the generation affiliate down below, or the generation affiliate of this utility. If those generation affiliates decide to merge, there is no prohibition against that. There is no requirement that any Federal agency review that to see whether it helps or hurts utility payers, ratepayers.

We get back to the point I was trying to make at the very beginning of my comments, which is you could see a company come along and buy up this generation affiliate, that generation affiliate, buy up all the generation affiliates in a region of the country, and do whatever it wished with regard to their rates for electricity, and nobody at the Federal level has oversight to review that.

I do not think that is in the best interests of consumers. I do not think that is in the best interests of ratepayers. Accordingly, I think we should fix it.

There are some horror stories that should make the point that what I am talking about is not just academic. This isn't something we dreamed up in some ivory tower somewhere. These are horror stories that can be read about in the mainstream press, in the trade press; in fact, it is hard to pick up a news publication that does not tell a new story about how some utility or other is in trouble because of its investments in and involvement in nonutility businesses. That is a very common problem that has arisen.

This is a quote from the December Wall Street Journal.

> Energy companies burned by disastrous forays into commodities trading and other unregulated businesses are increasingly seeking to pass some of the financial burden onto their utility units. This could lead to higher electricity rates for consumers in coming years.

That is the Wall Street Journal, which is not a left-wing publication. According to the Journal:

> Utilities are being nudged to buy assets from affiliates, to make loans to down-at-the-heels siblings, or to pass more money to their parent companies.

Then the story goes on to say:

> In many cases, regulators can do little to prevent energy holding companies from milking their utility units.

What my amendment is trying to do is put in place some protections against this milking of utility units. When you talk about milking a utility unit, that is easily translated into raising electricity rates, raising the rates of the ratepayers in order to compensate for bad business judgments, unprofitable investments in other areas.

It is not enough for us to have in place some vague idea that we want to be helpful to consumers. What we want to say is the Federal Energy Regulatory Commission needs to make a finding when it approves one of these acquisitions or mergers. It needs to make a finding that there is not going to be a cross-subsidy, that we are not going to see the assets of the utility encumbered in order to help some other part of this business, some other part of this holding company. That is what we are saying.

All of these stories result in negative effects on ratepayers and consumers.

When the utility is downgraded, its consumers pay increased costs of capital. Where the utility itself is facing bankruptcy, the effects on consumers can be even worse than that.

Wesstar is one example. Wesstar's regulators have been left with the unpleasant alternative of saddling the utility's ratepayers with $100 million per year, which is the cost that is required to pay down the debt the company caused by its investment in unregulated ventures.

It is clear that utility customers need to be protected against these excesses; that firewalls need to be built between the utility affiliates of a holding company and its unregulated affiliates.

These are not stories from the distant past. These are stories from today's headlines. Let me go into a little more detail on a few of them. Let me mention Wesstar. Wesstar I just mentioned. Let me go into a little more detail about the problem.

Wesstar is the largest utility in the State of Kansas. It is owned by a holding company, WRI, that also owns KP&L, the other large utility in the State. It owns a variety of nonutility companies and holdings. All of these together used to be the Kansas City Power and Light and Kansas Gas and Electric.

Wesstar came under scrutiny last year because of its problems caused by nonutility affiliates. Wesstar had invested in a number of unregulated ventures, including a home security company. That investment did not turn out well. The holding company shifted $1.5 billion of debt from the unregulated companies to the utility.

The Kansas Corporation Commission began an investigation. The Justice Department began an investigation last summer. The Federal investigation resulted in the indictment of the CEO of the company for bank fraud. The Kansas Corporation Commission investigation resulted in a dramatic restructuring of the company to separate the utility from the unregulated companies of the holding company.

The utility customers, in spite of all that has since happened—these investigations occurred after the fact—are still left with an obligation to reduce the debt of the utility by $100 million a year because of the activities of the unregulated affiliates. Ratings agencies have reduced the debt rating of the company to below investment grade at this time. That is one example.

Let me mention another. AES is a holding company that owns generation assets and marketing assets around the world. In 2000, AES acquired Indiana Power and Light, which is a regulated utility in Indiana. Because of the difficulties in wholesale electricity markets, the utility has been propping up the debt of the parent company over the last 2 years. For the 2 years of 2000 and 2001, the utility's dividend payments to the parent exceeded its earnings by over $100 million. The parent company's rating has dropped from AA minus to double B since 2001. The utility's IPL is at the lowest investment grade. The Indiana Utility Regulatory Commission had no jurisdiction to review the acquisition of the utility by the holding company.

Let me give one more example. That is Portland General Electric. Portland General Electric is a regulated utility in Oregon. PG&E in the late 1990s was acquired by Enron Corporation. The Oregon Public Utility Commission required a number of conditions before it agreed to approve that acquisition. As a result of the corporate separation required by the public utility commission, the effect of Enron's bankruptcy has been less than other similar acquisitions in other States. But even so, PG&E is now a parentless company. It is in danger of being taken over by another company. The fate of the parent company has also had an effect on the ability of the company to gain access to capital markets.

I think the Senators from Oregon are probably better qualified than I to talk in detail about the frustration and dissatisfaction that utility ratepayers in Oregon have felt as a result of their unfortunate circumstance after being purchased by Enron.

The amendment I have offered is straightforward. In my view, it closes a very significant loophole that still exists in the electricity title and substitute electricity title Senator DOMENICI has presented to the Senate. It will help us head off the kinds of crises and the kinds of inflation or dramatic increase in utility rates that unfortunately have been seen in some parts of the country.

This is one of these issues where I think 2, 3, or 5 years from now people may look back and say, I wonder why I didn't vote for that amendment when we had a chance to plug that loophole. Those of us on the Energy Committee, quite frankly, will be saying, OK, who do we call before the Senate Energy Committee to hold accountable when these problems arise? The reality is it is going to be very hard to call anyone before the Senate Energy Committee unless we strengthen this legislation and put in there some very clear, bright-line tests that ensure we don't have crossover, to ensure the Federal Energy Regulatory Commission is held responsible for overseeing the acquisition, sale, or purchase of generation facilities. If we make a decision here to not vest that responsibility somewhere in the Federal Government—and obviously the place to do it would be the Federal Energy Regulatory Commission—then I think we will rue the day we stopped short of doing that.

I hope my colleagues will support this amendment. It goes to the very heart of the electricity title of this bill. It would correct a very major deficiency in the electricity title of the bill as it now comes before the Senate.

I yield the floor. I urge my colleagues to support the amendment.

The PRESIDING OFFICER (Mr. SANTORUM). The Senator from Wyoming is recognized.

Mr. THOMAS. Mr. President, let me say, first of all, I am happy we are moving forward with this amendment. This, of course, is a total effort to take last year's activities with relation to the electric title in the Energy bill and to redo it. Actually, we have been through this same argument before and we came up with a different recommendation.

What we are seeking to do is cause our electric industry to be in a more modern status; to make changes in law and policy that reflect changes that have taken place and are taking place now in the energy industry.

What we are trying to do here is deal with the Public Utility Regulatory Policy Act of 1935. We have, of course, a Federal policy that has been in place for almost 65 years. The Public Utility Regulatory Policy Act is an outdated statute that imposes barriers to competition and discourages investment in transmission.

This is key. What we are seeking to do here is to modernize this system so that because of the changes that have already taken place, for instance, 30 percent now the power being generated by merchant generators who do not do their distribution, then there has to be an opportunity to have transmission lines. The investment in those is very high, and we have to make some changes in terms of how capital is created to be able to do that.

PUHCA limits geographic and product diversification and imposes many burdensome filing requirements. We are seeking, again, to see if we can't make these rules and these laws more simplified without having the expense of going through all these things. PUHCA is also a barrier to the formation of regional energy markets because arguably it could apply to the RTOs, the regional transmission organizations. This is again where we are moving. This is where we need to be.

What we are seeking to do with this amendment is have the rules that applied since 1935 to an electric industry that is here in 2005, almost. So we are moving backward in a situation which we are seeking to modernize. That is really what it is all about. Repealing PUHCA would not preclude State and Federal regulators from protecting ratepayers. We have an apparatus in place in Government to do that.

Access to books and records as well as rules regarding debt acquisition and accounting will protect investments on behalf of ratepayers. Also the Department of Justice and the Federal Trade Commission will continue to protect against antitrust violations.

The Securities and Exchange Commission, which currently overseas PUHCA, has recommended on a number of occasions that PUHCA be repealed with certain consumer protections transferred to FERC and State regulatory commissions, as noted.

Certainly there will be market transparency. There will be antimanipulation and enforcement in place. There will be rules issued to establish a system to do that. It prohibits the filing of false information regarding the price of wholesale electricity and availability of transmission capacity. It prohibits round-trip trading which was mentioned as the reason for making this change. It prohibits round-trip trading. It expands who can file complaints and who is subject to FERC investigation. It increases the penalties.

I guess the point is that there is substantial consumer protection in place. That is basically what we are seeking to do.

I rise in opposition to the pending amendment which proposes to expand the FERC's merger review authority to include acquisition of generating facilities. Under the current law, electric utility mergers are already heavily regulated. In addition, FERC, the Department of Justice, and the Federal Trade Commission must review proposed mergers for their impact on competition. State regulators in affected States also review proposed mergers. Expanding FERC's authority to cover acquisition of generation facilities is unnecessary. Furthermore, this amendment preempts the States' ability to protect consumers.

The Bingaman amendment requires FERC to review and approve any utility acquisition of a generation asset in excess of $10 million. Every time a utility wants to replace a major boil or steam turbine or install a new switchyard, they have to get approval. What does that have to do with protecting competition which is the reason why FERC needs the authority? Absolutely nothing.

Let me explain why this amendment is unnecessary to protect consumers.

Under existing law, FERC has jurisdiction over wholesale power rates and States have jurisdiction over retail electric rates. That means that an electric utility cannot pass through to consumers, either in wholesale electric rates or in retail electric rates, any cost without first having obtained FERC or other State public utility commission authorization to do so. So a utility that purchases a new boiler—whether it is $1 million or $100 million—cannot pass through these costs without having to prove to the relevant regulator that the expenditure was prudent.

If the regulator decides the expenditure is not prudent, then the utility cannot pass through the costs, and they are borne by the utility's stockholders and not its customers. That is good consumer protection practice.

Let me explain why the pending amendment would actually interfere with State protection of consumers. Under existing Supreme Court doctrine, States may not deny the pass through of federally approved costs. The Supreme Court recently reiterated this principle just this summer in a June 2, 2003, decision, Entergy Louisiana versus Louisiana Public Service Commission. The Supreme Court held that FERC approved rates could not be second-guessed by State regulators. Accordingly, if, as the pending amendment proposes, we require FERC to approve and review utility acquisitions of powerplant utilities used for system supply to make retail sales, we are preempting the ability of a State public utility commission to review and approve—or deny—the utility's incurrence of those costs.

I ask, why should we deny the State public utility commissions the ability to review utility costs that are being passed through in retail rates? How does that protect consumers? Will the FERC do a better job than our State commissions?

This amendment is both unnecessary and unproductive. FERC will continue to review utility mergers to ensure that it is consistent with the public interest and will review proposed rates for the merged companies to ensure they are just and reasonable. That is FERC's appropriate role and we do not need to change it.

Increasing FERC's merger authority to include generation-only facilities will only serve to impede efficient transactions without gaining consumer benefits.

For these reasons, I think we should oppose the amendment, and I urge that we oppose the amendment.

Again, in general terms, what we have done is packaged in this whole title, this electric title, the idea of what is happening in the electric system, where we want to be over time, a policy that will work in what is currently going on and what we hope to have happen in the future. To maintain and continue to go backward does not seem what we are appropriately here to do.

We have gone through this whole thing. We have gone through witnesses in our committee. It has been approved. Certainly we ought to move forward with this package as it is conceived and dedicated, and we can improve the way we provide electric energy to everyone. But we have to continue to look forward and do things differently than we have done them in the past.

I yield the floor.

The PRESIDING OFFICER (Mr. CHAMBLISS). The Senator from New Mexico.

Mr. BINGAMAN. Mr. President, let me make a few comments in response to my colleague, my good friend from Wyoming. I do think that he is in an awkward position because he was cosponsor with me of this exact language in the consideration of the Energy bill in the last Congress—the exact language that I am now proposing by way of amendment. I thought it was the right policy then. I still think it is the right policy. I hope very much we can persuade Senators to adopt it as part of this bill.

His statement was that we are preempting State authority if we adopt the language that I have offered by way of amendment. The National Association of Regulatory Utility Commissioners—those are the State commissioners—characterized the bill we had last year that had this provision in it, the provision I am now offering, as ''an admirable compromise between Federal and State jurisdictional issues.''

That does not sound like the words of an entity that believes it has been preempted to the point that it is unable to do its job. While it is true that States have some ability to deal with some of these problems, it is almost always the case that their statutes do not reflect the degree of protection that is currently in the law in the Public Utility Holding Company Act. They have not needed to have laws to provide those protections because PUHCA was in place. It has been Federal law for many years.

It is also true that many States that have found their customers to be victims of such abuse have not had the ability to deal with the problems. I gave you a couple of examples before where the States came along after the fact and tried to investigate, tried to find some way to make their consumers or their ratepayers whole, and found that they are not really able to do that. Some are trying. Some are trying in the face of tremendous opposition from their utilities to get the necessary authority from their State legislatures.

Do we have to wait for every State in the country to realize that their protections are inadequate once we repeal the Public Utility Holding Company Act or should we not here in the Congress provide at least some minimum protection at the Federal level to replace the protections we are eliminating as we repeal the Public Utility Holding Company Act?

I think we owe it to those who sent us here to provide this minimal protection. PUHCA broke up the industry into manageable chunks and focused on its core business—that is, the provision of a monopoly electric provision service by requiring that utilities either operate primarily in a single State or be regulated stringently at the Federal level by the Securities and Exchange Commission.

Utilities were also forbidden to engage in businesses that were not directly related to their monopoly electric service without explicit approval from the SEC. Large utilities were forbidden from such activities completely. A holding could not acquire more than one utility company in more than one State without coming under these very severe bans.

So the sprawling empires of interconnected corporations owning electricity utilities were broken up. Companies were required to choose between their other businesses—staying in those other businesses or staying in the electric industry.

If we are going to repeal the Public Utility Holding Company Act, as we are proposing to do in this bill, then it is essential that we lodge the consumer protections that are so important to all Americans in a meaningful place. We have seen, over the last few years, how far astray from the goals of providing electricity to consumers at affordable prices our industry can wander. As we move forward, we must be sure that consumers are protected.

Let me make a comparison between the language that I proposed by way of amendment and the underlying language. The reason I am offering my amendment is that the Domenici substitute has in it, in my view, very inadequate language to ensure that consumers are protected. It says:

> After notice and opportunity for a hearing, the Commission shall approve the proposed disposition, consolidation, acquisition, or change of control—

That is any merger or acquisition anyone proposes and brings before the commission—

> if it finds that the proposed transaction will be consistent with the public interest.

Well, that is fine. I certainly want everything to be consistent with the public interest. But that is somewhat in the eye of the beholder as to what is meant by that phrase. It goes on to say:

> In evaluating whether a transaction will be consistent with the public interest, the Commission shall consider whether the proposed transaction will adequately protect consumers, will be consistent with the competitive wholesale markets, will not impair the ability of the Commission or State commission from having jurisdiction following the completion of their transaction over any public utility, and will not impair the financial integrity of any public utility that is a party to the transaction, or an associate company or any part of the transaction, and satisfies such other criteria as they think is consistent with the public interest.

Essentially, it is going back and saying the Commission has tremendous authority to decide what is consistent with the public interest and what is not consistent with public interest. Whatever they decide pretty much controls.

What I have proposed in the amendment that I have sent to the desk, and what we had in our bill last year, which my good friend from Wyoming supported last year, was much more specific. It said:

After notice and opportunity for a hearing, the Commission shall approve the disposition, or consolidation, or acquisition of control if it finds that the proposed transaction, No. 1, will be consistent with the public interest; second, will not adversely affect interests of consumers of electric energy; third, will not impair the ability of the Commission or the State Commission; and, finally, will not lead to cross subsidization of associate companies or encumber any utility assets for the benefit of an associate company.

It seems clear to me that we should want to be sure that cross-subsidy will not occur. That is a bedrock requirement, as I see it, if FERC is going to sign off on these acquisitions and mergers. That is why we proposed this amendment.

The other thing we propose in this amendment, which I think is also bedrock, is that companies involved with generation—the purchase and sale of those companies should also be under the jurisdiction of the Federal Energy Regulatory Commission. The FERC has not had to have that authority up until now because we have had the Public Utility Holding Company Act, which ensured there was oversight. There was regulation of those generation companies. That will no longer be the case once the Public Utility Holding Company Act is repealed.

The question is, Who is going to oversee the purchase and sale of generation companies? Who is going to try to ensure that electric utility rates in a region, in a State, in a particular area do not go up because of the noncompetitive merger, or acquisition, or purchase of various generation facilities?

So, clearly, our amendment tries to plug some major loopholes. It is exactly the language we offered in the debate last year. It was adopted at that time by a substantial majority of Senators. It was supported by my good friend from Wyoming last year. It is good policy. It was good policy then, it is good policy now, and it is the kind of test which, if we don't adopt it, we will regret that we did not. It is another one of these circumstances where at some future date we will be giving speeches on the Senate floor saying let's tighten up the regulation, strengthen the regulation; we don't want to see somewhere around the country any more of those problems like we just saw.

I think the opportunity is here today. We know enough about the problem of cross-subsidization. We know enough about the economic difficulties, the financial difficulties that lead to cross-subsidization to anticipate this problem and to get ahead of it and deal with it. That is what my amendment does. I urge adoption of my amendment.

I yield the floor.

The PRESIDING OFFICER. The Senator from New Mexico, Mr. DOMENICI, is recognized.

Mr. DOMENICI. Mr. President, first, I congratulate my colleague from New Mexico on his superb argument and presentation. I regret that I have to disagree. But before I state a few remarks, because I believe my friend from Wyoming has done a very good job of telling the Senate why we don't need this amendment, I would like to ask the Senate and all the Senators and their staffs, who were paying attention on their behalf, to remember now that we are on that very important part of this legislation—the electricity section—which we understood many Senators were worried about, and we understood a number of Senators had amendments.

I have known from the beginning that my friend, Senator BINGAMAN, had one or two amendments. But I heard other people saying: We don't want to hurry along here because this is a very important piece of legislation and we want to have a chance to offer amendments.

Well, the time is now. I am very hopeful, and the majority leader has told me it is up to me. I look at my distinguished friend, who is very much on top of things in the Senate, the Senator from Nevada, and say that he told me and our leader to stay here as late as we can tonight to get all the amendments we possibly can on this subject.

We know a lot of Senators are busy, but we know they were told we were going to be in session every day this week. We are going to work day and evening. Every evening we work, it takes away an extra day at the end of the week that will detract from our recess. So if Senators have amendments, get them ready. We want them after this amendment.

When I am finished, and after my friend from Wyoming has another chance to speak, if he wishes, I am going to ask the minority side what they would like to do next.

Mr. President, I say to Senator REID, my desire is that we not vote immediately on the Bingaman amendment, although I am perfectly willing. It is 20 minutes of 7. There is nobody on our side saying we should not. Maybe Senator REID knows some reasons. I much prefer Senators keep doing what they are doing but that somebody come down and offer another amendment. Then I prefer not to vote on that amendment. I prefer another amendment until we have as many amendments as we can get in by late tonight.

Why do I want to work late tonight? Besides it being Tuesday and we want to finish this bill by Friday, it is the unspoken word that the other side of the aisle, more so than we do, wants to offer some clean-air type amendments that really do not belong on this bill but have historically or traditionally found their way on it because they do not have any other place to go. They want to offer some amendments.

There are apparently two amendments on that side, at least, plus a couple of other amendments in the same vein. They wanted to offer them tomorrow, which can be nicknamed ''environmental day.'' We want to cooperate. To the extent we have to use more of the day for electricity amendments, we use less time for other amendments.

I will in a very few words state my case. In 1935, I was 3 years old. I am not a student of what happened in the world during the Great Depression, but PUHCA was passed. It is funny sounding. It is terrible it had to have such an acronym, PUHCA, Public Utility Holding Company Act. It is almost one of those acronyms that cries out to never be called by an acronym, and it is better to be called the Public Utility Holding Company Act than PUHCA.

Over the years, I have heard that funny word, and I did not even want to find out what it meant, but Public Utility Holding Company was a protective mechanism to make sure that during an era of pyramiding, where big money would buy up utilities, there was somebody watching. As an example, if one very rich bank out of Chicago, IL, started buying up companies all over the country and became a holding company—thus the title.

Nobody is crying for the retention of PUHCA because there are so many other protections for that which it was invented. It is time for that funny name to disappear, and then it will not be used so much. We can then just say ''used to be PUHCA,'' and we will not have to talk about it.

The truth is, as Senator THOMAS said—and I agree—expanding FERC's authority to cover acquisition of generating facilities, which is part of Senator BINGAMAN's amendment, is unnecessary. Furthermore, this amendment preempts States' abilities to protect consumers. Repealing PUHCA will not preclude State and Federal regulators from protecting ratepayers. Access to books and records, as well as rules, regarding debt acquisition will protect investment made on behalf of ratepayers.

Also, the Department of Justice and the Federal Trade Commission will continue to protect against antitrust violations, and the Securities and Exchange Commission, which currently oversees PUHCA, has recommended on a number of occasions that it be repealed with certain consumer protections transferred to FERC and State regulatory commissions, as noted above.

What we are doing is getting rid of PUHCA, the 1935 antiquated law. In place of it, we clarify the jobs FERC does today and expand it only in a limited fashion. Our amendment let's PUHCA review utility transactions. The new authority is granted over gas acquisitions of utility companies by an electric utility company. This protects consumers and promotes investment in that regard.

Clearly, if ever there was a case where we are overprotecting, it is the utility companies. I mentioned how many protections already exist. PUHCA started disappearing into the woodwork and became subservient and almost consumed by the SEC—they run it. SEC said they do not need PUHCA anymore.

Believe it or not, it is pretty certain, when we finally vote, we are going to get rid of PUHCA. It is like certain past Presidents recommended getting rid of PUHCA and 40 years later something happens. That reminds me of something interesting and funny. About 8 years ago, I was heralded as one who had passed the largest single sale of public property, and all I had done was to take the U.S. Government's ownership of converting highly enriched uranium for use by nuclear powerplants, which is owned by the public, which had been recommended 30 years before to be privatized, and I privatized it. I was heralded for having passed the first multibillion-dollar sale of property of the Federal Government. It is nothing new. It sure did not take any ingenuity, just like it takes no ingenuity to know that PUHCA ought to get out of here.

In getting rid of PUHCA, the test that FERC applies is:

> Consistent with the public interest, we do not add new tests.

Senator BINGAMAN's amendment does. I do not think we need to add new tests. I believe what is in the bill is adequate for the governance of FERC in that regard.

When I introduced the bill, I told the Senate all the groups that liked this bill—the public-private ownership, all of them. And it is most interesting, they all think we adequately protect against whatever the evils might have been that PUHCA might have covered: Municipalities, the APRAs, the large public power companies. They think there is a pretty good balance just like it is.

At some point in time I hope when we vote on this that Senator BINGAMAN will understand there are those of us who think what we put in the bill is perfectly adequate and well balanced with reference to protection in this area.

I ask Senator BINGAMAN and Senator REID if they are finished? Are we ready for another amendment?

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. If I could ask the Senator from New Mexico a question?

Mr. DOMENICI. Yes.

Mr. REID. As I understand it, the Senator indicated what he would like to do tonight on the electricity title is have people come and offer amendments on the electricity title.

Mr. DOMENICI. Yes.

Mr. REID. Senator BINGAMAN has an amendment. Senator CANTWELL perhaps has an amendment. There are a number of other Senators who wish to maybe offer amendments. The question I have to ask the Senator from New Mexico is, there are people who have amendments on other issues, separate and apart from the electricity title, and at least two Senators have asked if the Senator from New Mexico would allow the electricity title to be set aside and go to other areas.

Mr. DOMENICI. I say to the Senator truthfully, it is not understood how hard I worked and how much I worried and sweated to get to where we are, which is the pending matter. I want Senators to understand we have to get rid of it.

Mr. REID. I understand.

Mr. DOMENICI. So I do not want to do that. I want Senators to get their amendments, even if it takes us a little while longer. The Senator is implying there may be four, maybe five. I do not know.

Might I ask Senator BINGAMAN if he has another amendment?

Mr. REID. If I could respond, the manager of the bill on our side does have another amendment he could offer tonight. I would like to continue my colloquy with the Senator from New Mexico, through the Chair. We have people wondering, are we going to vote on the first Bingaman amendment now, the second Bingaman amendment; are we are going to have two votes? What is the pleasure of the Senator from New Mexico?

Mr. DOMENICI. My pleasure is that we have votes tonight, unless the Senate sends word, in its inimicable way, that we are going to get all the amendments on electricity in due course this evening, in which event I would say we will not have any votes.

Mr. REID. I respond to my friend from New Mexico, I do not think that is going to happen. Senator CANTWELL, for example, has amendments she wants to offer. She wants to take a little time on the first amendment. It is going to be more than a few minutes. She has asked for some time on that. If we cannot agree on a time, I assume she would talk for a little while and then offer the amendment.

Mr. DOMENICI. When does the Senator think she might know?

Mr. REID. Well, she is ready to offer her first amendment but that is going to take some time. I do not know if she is willing to finish the debate on it tonight. I could call and ask her.

Mr. DOMENICI. Could the Senator inquire? What we could do then, while the Senator is inquiring, we could go with the second Bingaman amendment and we will stack them with a clear understanding that when we are ready, we will proceed in the same order they have been offered to vote on them.

Mr. REID. I say to my friend from New Mexico, I think realistically if Senator CANTWELL's is going to be the next amendment, it will be very difficult to finish all of the electricity amendments tonight. There are other people who want to offer amendments.

Mr. DOMENICI. To the extent the Senator from Nevada desires and can be helpful—and that is strictly up to him—I would rather we get other Senators to offer amendments. Senator BINGAMAN has one. Are there any others?

We know Senator CANTWELL wants a lot of time and we would say to her she could be last tonight and take as long as she wants. We could then come in in the morning and take some more. I do not think we ought to have her come up and then say the only thing we did tonight was the Bingaman No. 1 and Cantwell all evening. I think we ought to be doing a little more than that.

Mr. REID. I say to my friend from New Mexico, as I said earlier today, I know how hard he has worked to get the bill here and how important this bill is to him personally, and how important he believes this is for the country, but I say as sincerely as I can we are not going to be able to offer all the amendments on electricity tonight. I just do not think it will happen. I will go to the cloakroom and make some calls while the second Bingaman amendment is offered, but I think if the Senator's statement is that we are going to have to vote on the two Bingaman amendments unless we finish offering amendments tonight, we are going to have to vote on the two Bingaman amendments because I do not think we can get through all the amendments tonight.

Mr. DOMENICI. Let's try to do this: Let us assume that we had Bingaman No. 2 and the Senator from Nevada went off and tried to discern how many other amendments on this subject we have, and that he return and say what they are. I am perfectly willing then to try to set in motion an agreement that some of them would be taken up in the morning.

Mr. REID. I will be happy to respond to the Senator in the next little bit.

Mr. DOMENICI. If we do not know, we are going to stay here and see how many we can flush out.

Does Senator BINGAMAN want to proceed?

Mr. BINGAMAN. Mr. President, I would like to say a few more things about the pending amendment.

Mr. DOMENICI. Sure.

Mr. BINGAMAN. Then I do have a second amendment which I am glad to offer this evening as well.

I indicated there are several organizations that have supported the amendment I have sent to the desk, the American Association for Retired Persons, AARP, the Air Conditioning Contractors of America, Consumers for Fair Competition, the Consumers Union, the National Association of State Utility Consumer Advocates, National Electrical Contractors Association, Plumbing, Heating and Cooling Contractors, National Association of Public Citizens, U.S. PIRG. All of those groups support the amendment I have offered.

In addition to that, we have a statement from the Bush administration which was from last year supporting FERC review of transfers of generation assets, which is part of what the amendment does that I have sent to the desk. I ask unanimous consent that this letter be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

BUSH ADMINISTRATION SUPPORTS FERC REVIEW OF TRANSFERS OF GENERATION ASSETS

09/14/01 ADMINISTRATION INCLUDES LANGUAGE IN ITS DRAFT ''ELECTRIC RELIABILITY TRANSMISSION ACT''

''Clarify the commission's authority over holding company mergers and mergers and asset sales involving generation facilities.''

10/16/01 ADMINISTRATION COMMENTS ON DRAFT SENATE BILL ''ELECTRICITY RESTRUCTURING ACT'' (BINGAMAN BILL)

Mergers and Asset Dispositions. ''FERC has the authority to review mergers of 'public utilities' under section 203 of the Federal Power Act, and has asserted jurisdiction over mergers of public utility parent companies. This assertion has not been challenged, and holding companies have submitted their mergers to FERC for its review. This language also clarifies FERC authority over public utility mergers and asset dispositions involving generation facilities. Under current law, FERC has authority over only those generation facilities associated with a wholesale power contract. If it is going to prevent accumulation of market power, *it should have jurisdiction over generation facilities owned by public utilities*'' (emphasis added).

10/9/01 ''MAJOR PRINCIPLES IN ADMINISTRATION POSITION ON ELECTRICITY LEGISLATION'' (DEPARTMENT OF ENERGY)

Mergers and Asset Dispositions: ''Clarify FERC authority over holding company mergers and mergers and asset dispositions involving generation facilities.''

10/24/01 LETTER FROM FERC CHAIRMAN PAT WOOD TO REP. JOHN DINGELL (D–MI)

Review of Mergers: ''It may be a good idea to clarify the Commission's authority to review mergers involving only generation facilities and mergers of holding companies with electric utility subsidiaries. The increasing amount of competition in power generation markets makes this more than an academic question.''

Mr. BINGAMAN. The administration includes language in its draft Electric Reliability Transmission Act to clarify the commission's authority over holding company mergers, and mergers and asset sales involving generation facilities. In another place in the administration's statement it says they support clarifying FERC authority over holding company mergers and mergers and asset dispositions involving generation facilities.

What I am proposing is not a radical policy proposal. It is exactly what we adopted last Congress. It was adopted by a substantial majority of the Senate. It was supported by the Bush administration. Now we are backing away from that.

I am told the Senator from New Mexico, my good friend Mr. DOMENICI, says this is agreed to by the Public Power Association and by the Rural Electric Cooperative Association. That is fine. I can understand that there are other things in the bill, in the overall electricity title, which cause them to believe this is something they should be quiet about or be willing to support—swallow hard and support, I would add—but the reality is, it is not good policy for us to leave this issue unaddressed, this issue of adequate authority of the Federal Energy Regulatory Commission to oversee the acquisition or sale of generation facilities. That ought to be covered if we are going to pass an electricity title.

Clearly, there should be authority and an enforceable responsibility on the part of FERC to ensure cross-subsidy does not occur. Those are the two primary things my amendment tries to deal with. I think they are very important.

I have a letter from MBIA, Richard L. Weill, who is the vice chairman of MBIA Insurance Corporation. I will read portions of that for my colleagues, because I think it is instructive. He says:

I am writing on behalf of the MBIA Insurance Corporation in support of your proposed amendment to the Energy Policy Act of 2003 that would strengthen the regulatory framework of utility mergers.

MBIA Insurance Corporation is the largest financial guaranty insurance company in the world. We have guaranteed the timely payment of principal and interest on more than $14 billion of electric utility debt. Our guarantee is unconditional and irrevocable, even in the event of fraud. In that context, we are profoundly concerned about the strength and integrity of the regulatory scheme of electric utilities.

We are, in a sense, a gatekeeper to the capital markets for these utilities. We provide investors with our unconditional and irrevocable guarantee and, as a result, provide the utilities with the lowest possible cost of access to the capital markets. Our Triple-A rating by all major rating agencies enables the utilities to sell debt at the lowest interest rate. We can continue to serve these investors and this industry only if we can be assured of the probity, comprehensiveness and fairness of the regulatory framework.

Your amendment would require that proposed mergers promote the public interest that is defined as encompassing the effects on competition, economic efficiency and regulatory oversight. It would also close loopholes that enable certain corporate combinations to avoid being characterized as mergers.

We believe that this amendment will be viewed favorably by the capital markets.

We are trying to close loopholes that enable certain corporate combinations to avoid being characterized as mergers. That is exactly the problem with the substitute proposal Senator DOMENICI has laid before the Senate.

By adopting the language in my amendment—that was in the bill last year—we close those loopholes, we guarantee consumers will be protected, we guarantee these utilities will get the lowest possible interest rates and that this insurance arrangement can remain in effect.

This is a very good amendment. I hope my colleagues will support it. It will strengthen this bill. This is not an amendment offered with the intent of undermining the electricity title. This is an amendment offered with the intent of strengthening the electricity title. It is very well crafted, in my view, to accomplish that.

I yield the floor, and at the appropriate time I will offer another amendment on a different aspect of the electricity title.

Mr. REID. Mr. President, I need to confer with the Democratic leader about the question asked by the Senator from New Mexico. In the interim, I ask unanimous consent that the Senator from Illinois, Mr. DURBIN, be recognized to speak for up to 5 minutes as in morning business regarding an unfortunate death of one of his close friends.

Mr. THOMAS. Reserving the right to object, I would like to make some more comments on this particular amendment following the remarks of Senator DURBIN.

The PRESIDING OFFICER (Mr. TALENT). Without objection, it is so ordered.

(The remarks of Mr. DURBIN are printed in today's RECORD under ''Morning Business.'')

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. THOMAS. Mr. President, I take a moment to comment again on the pending amendment. It has been mentioned several times this was in our bill last year; that is true. I supported it; that is true. But we have to understand how we got in that situation.

First of all, we had come to the floor without having the committee work on the bill at all last year. This is quite a different situation where we quietly and completely have gone through the bill.

I also have to say my friend from New Mexico had quite a stronger statement and I had a less strong statement than what is in here. We agreed to a compromise. So it is not the way I would have done it had I had my way, but we wanted to move something. In any event, that is the way we came to have that language.

We are talking about consumer protection. We get all tied up in some of these terms, but the fact is we are seeking to put authority there for someone to oversee. What we want to do, of course, is to have FERC do it without an expansion of authority.

So we are saying in the language of the bill, no public utility shall, without first securing the order of the commission authorizing it to do so, sell, lease, or otherwise dispose of facilities; to merge or consolidate, directly or indirectly, such facilities or any part thereof; purchase, acquire, take any security over $10 million.

It is very clear. That is what we do under the bill as it now is drafted.

Then we go on to say in evaluating the transaction on the applications and so on, the Commission will adequately protect consumer interests, will be consistent with competitive wholesale markets

. . . will not impair the ability of the Commission or the ability of a State commission having jurisdiction following the completion of the transaction over any public utility that is a party to the transaction or an associate company of any party to the transaction . . .

That is what we say in the bill.

. . . will not impair the financial integrity of any public utility that is a party to the transaction or an associate company of any party to the transaction, and

Finally:

. . . satisfies such other criteria as the Commission considers consistent with the public interest.

So what we do is give the direction to the Commission to do the very thing that we are talking about, and that is to ensure that mergers are fair to consumers. That is what this whole area is about. It has been drafted carefully to be in that form.

I think it would be a mistake for us to adopt any changes in that when we have what we need for the protection of consumers, something we have agreed to, something that is part of a modernization effort. We should not change that by an amendment.

I yield the floor.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. I indicated to my friend, the distinguished senior Senator from New Mexico, and Senator BINGAMAN, the manager on our side, that I would check to find out what we have in the way of amendments.

This is certainly an incomplete list. We have not hot-lined this, but we have had people call the cloakroom. We have five Senators who wish to offer amendments at this stage. We have at least one of those Senators who is going to offer multiple amendments—multiple means maybe three, maybe four amendments.

To make a long story short and not take undue time, we would be agreeable to having the second Bingaman amendment debated tonight. We would lay down the first Cantwell amendment with the understanding that she will lay that amendment down tonight and debate it for an hour tonight. She wants 2 hours on it tomorrow.

If the Senator from New Mexico, the chairman of the committee, does not want to agree to this, then we should have the two votes on Bingaman, and likely we will not offer any more amendments tonight.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. First, I thank the Senator for the hard work he is doing, trying to ascertain from Senators at this hour—although we have all been telling them we are working, and this is the work part of the day, it is not hard to find out what they want to do. I thank you for the obviously successful effort you made so far.

Mr. REID. If my friend will yield for one other thing I should have said before?

Mr. DOMENICI. Yes.

Mr. REID. As the Senator from New Mexico knows, this electricity title is very important to some Members of the Senate. None of these amendments, I want the record to reflect, are done in any way to slow up, slow walk, or stop this bill. These amendments, as has been seen by the amendments of the Senator from New Mexico, are amendments offered in good faith to try to improve this bill.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. Might I say to the distinguished Senator from Nevada, all I want to try to do is move this bill along, as you know, and to do that in a way that is consistent with Senators having ample time to prepare and to present their amendments properly. You indicated to me, without certainty but relatively close, that you probably—we are probably looking at eight amendments, five Senators, with one of them who has three.

I might ask, Is Senator BINGAMAN's No. 2 included in that?

Mr. REID. No.

Mr. DOMENICI. No. So it is the possibility of nine amendments. I want to tell the Senator from the start that, as far as the distinguished Senator MARIA CANTWELL, I certainly do not have any objection to 1 hour tonight and 2 hours tomorrow morning. We can start with that. But what I do have some concern about is trying to determine when we would be finished with amendments to the electricity title. I tell you that as much because I have been hearing from your side of the aisle of the great desire to take up two amendments that have to do with climate change. I have been told the only way that can be done, and done right, is tomorrow because everybody will be here. That is two.

I have been told that—and I know—Senator BINGAMAN wants to offer his amendment with reference to a 10 percent mandatory renewable portfolio, and that belongs in the same package.

I have been told the distinguished Senator has a new source performance review; is that correct? Is that what it is called?

Mr. REID. That is true. New source review.

Mr. DOMENICI. I remember that when I was on the committee—new source review. He had that up once. A couple of Senators came back who were not here then. That may well be why. But that is another one we have to look at.

I guess what I am wondering is, if it would be asking you too much to suggest the following; that Senator BINGAMAN offer his amendment—I am not suggesting, I am not proposing this officially—he offer his second amendment here, and that Senator CANTWELL offer her amendment tonight and debate it for an hour; that you try to find one more amendment to be offered tonight, and then that we reach agreement, come back tomorrow, reconvene at 9 o'clock in the morning, at which time Senator CANTWELL would have her time, and all the remaining amendments—that is 9, 10, 11—remaining amendments in this area would be finished by 1 o'clock in the afternoon.

Mr. REID. We couldn't agree to that.

Mr. DOMENICI. What time would you think?

Mr. REID. If Senator CANTWELL debates for 2 hours, that is 11 o'clock.

Mr. DOMENICI. Yes.

Mr. REID. And we have three votes, that takes us to about 12 or 12:15. That would be almost humanly impossible.

Mr. DOMENICI. What would you like, 2:30; 3?

Mr. REID. I say to my friend, I have no authority. I am dealing with five Senators who are all Senators in their own right. I am here just trying to help a little and take phone calls from them, things of that nature. Some of them, frankly, are out doing other things tonight. We could not agree to that.

The Democratic leader, with whom I spoke just a few minutes ago, indicates he thinks, and I would acknowledge he is probably right in this regard, about as far as we can go tonight is lay Cantwell down, get a time agreement on hers. Maybe during—not maybe, but during the morning hours when she is debating hers, we would be able to try to come up with a list of amendments.

But any one of these Senators can object to a finite list. I just don't see anything happening in the next few hours.

Mr. DOMENICI. I would like to do this, with your concurrence. Why don't we proceed with the Bingaman amendment, tell Senator MARIA CANTWELL she will be next for an hour tonight. In the meantime, would you let us work on the unanimous consent request proposal so your staff and ours——

Mr. REID. I say to my friend, I am very happy to do that. One thing that people on my side—and, frankly, I have gotten a call from somebody on your side. Are there going to be any votes tonight?

Mr. DOMENICI. Unless an agreement is worked out, Senator, we are going to have a vote tonight.

Mr. REID. Then there will be no Cantwell amendment offered tonight. As soon as Bingaman is offered, we can vote on that, and there will be no Cantwell amendments tonight.

Mr. DOMENICI. Would the Senator like to work on a unanimous consent request that includes Senator MARIA CANTWELL?

Mr. REID. I say, Senator BINGAMAN is going to take a little bit of time. He said he wouldn't take very long. But if he takes a half hour and there is response to that, we are not going to finish what we are doing now until 8:30, quarter to 9. Senator CANTWELL is not going to offer an amendment at that time.

If you want to finish Bingaman, have Cantwell laid down tonight, and have Cantwell come in in the morning, that is fine. Have votes whenever you want them, but if we are going to have votes on Bingaman, we are not going to offer any more amendments tonight.

Mr. DOMENICI. Let us make this effort: That Senator BINGAMAN would proceed for as long as it takes, Senator CANTWELL will offer her amendment and take an hour tonight, and that we work on a UC request together while that is occurring. She will get her 2 hours tomorrow, and we will try to get a consent as to when we might finish. If not, I will go along and say we won't have any votes tonight.

Mr. REID. I say through the Chair to my dear friend, the senior Senator from New Mexico, that I don't think it is possible to get an agreement locking in these amendments. I just do not think it is possible. I don't want to act in bad faith. I would like to do that. I believe in an orderly body. But I just don't think I can get that done. We have people off the Hill and people just automatically object to things at this time of night. I don't think we can get it done.

Mr. DOMENICI. I want to say now—and I will say it three more times tonight before we finish—to Senators wherever they are that we are not quitting tomorrow night at 7:20. If there are Senators who want to be off the Hill, they can be off. We are going to be here tomorrow night voting on amendments that your side wants. We are just about out of amendments on our side of the aisle. I am not sure of any really important ones left. Your side has been telling me they want these very important amendments that they claim are related to this bill. A whole bunch of amendments that are left don't even belong on this Energy bill and are not even within this committee's jurisdiction. This Senator stands up and argues against them but, as a matter of fact, they ought to be argued by another committee chairman. I am not even the one who takes care of them. But I will have to do that.

As long as everybody understands, Senator CANTWELL will be taking 2 hours tomorrow. We are going to start at 9 o'clock. We are still going to be on these amendments to this bill. We need Senators to get ready tomorrow morning with additional amendments in this arena. Then we will proceed quickly to the amendments such as the one Senator FEINSTEIN has and all the others. But we will be here tomorrow evening. We will be here plenty late as we take those amendments, as long as we understand we are ready to do what you recommend.

Mr. REID. If I could through the Chair, is the Senator from New Mexico saying that tomorrow we are going to move off of the electricity title into other areas?

Mr. DOMENICI. We will stay right on electricity in the morning and try to finish it as soon as we can. I am hoping that it doesn't take all day so we can go to the other issues. But at this point, could we just, so as to protect you, agree that if you will move as follows tonight, we will set aside the current Bingaman amendment so that the second Bingaman amendment can be taken up. Then it will be set aside so we can take up first the Cantwell. She will use 1 hour tonight. We will answer, if we see fit. If not, we will debate it tomorrow. Nonetheless, we will come in tomorrow at 9 o'clock, and when we get on this bill, Senator CANTWELL will be up and she will have an additional 2 hours on her amendment. I am merely adding as a matter of discussion that further amendments on this section of the bill will be in order at that time.

Mr. REID. I understand very clearly the chairman of the committee.

Mr. DOMENICI. Is that fair enough?

Mr. REID. Very fair.

Mr. DOMENICI. Senators understand that means we are not going to vote tonight. But you certainly can look to a late night tomorrow night with votes.

I yield the floor and thank the distinguished Senator.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. BINGAMAN. Mr. President, I ask unanimous consent to set aside the amendment that I just sent to the desk.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 1418 TO AMENDMENT NO. 1412

(Purpose: To preserve the Federal Energy Regulatory Commission's authority to protect the public interest prior to July 1, 2005)

Mr. BINGAMAN. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from New Mexico [Mr. BINGAMAN] proposes an amendment numbered 1418 to amendment No. 1412:

On page 9, lines 23 through 24, strike ''including any rule or order of general applicability within the scope of the proposed rulemaking,'' and insert: ''nor any final rule or order of general applicability establishing a standard market design,''.

Mr. BINGAMAN. Mr. President, my colleague from Wyoming is here. I mentioned to him that this is an issue which I would like us to try to find some way to resolve. This is something that we may well be able to avoid having a vote on tomorrow, if we can find a way to resolve it.

The amendment I have sent to the desk tries to clarify something in the bill that I think is very important. Senator DOMENICI's substitute contains a delay in the issuance of the Federal Energy Regulatory Commission's standard market design rulemaking until July 2005. I understand that. That is fine. I am not trying to disturb that. I believe the rule goes too far and should be dramatically modified or completely abrogated.

I know there are Members of the Senate who think 2005 is the wrong date, that we ought to go to 2008 or some other date. Others believe FERC should be permitted to go ahead, and as quickly as they would like. I am not taking a position on that issue with my amendment. I, frankly, can see both sides of the argument.

My amendment leaves the delay of the standard market design rule that Senator DOMENICI has included in his substitute in place. However, in an effort to prevent the Federal Energy Regulatory Commission from renaming the rule and issuing it under a new title, the bill also goes on to prohibit ''any rule or order of general applicability on matters within the scope of the rule.''

That means the Federal Energy Regulatory Commission cannot issue a rule or order of general applicability on any issue that is dealt with in the proposed rule during the 2 years of the delay.

What kind of actions would this prevent? That is the obvious question.

I think it would prevent the Commission from doing its job. The Federal Energy Regulatory Commission currently has a rule in the process on interconnections to the transmission grid. No matter what that rule says, the Federal Energy Regulatory Commission would be prohibited from issuing it under this language that we have in the Domenici substitute.

Other matters dealt with in the rule that the Federal Energy Regulatory Commission would be prevented from dealing with in a generic manner are such issues as market oversight, market litigation, transmission pricing, the scope of regional transmission organizations—RTOs—the adequacy of rules or transactions across RTO boundaries, and, in short, just about anything that the Commission does about transmission or markets because the proposed rule touches on all of those issues.

There are even rules that the Commission is required to issue by other provisions in this Domenici substitute that they would be prohibited from issuing because of this provision that I am here trying to change. There are a number of rules necessary to get the reliability section to work. The bill requires rules on mergers, on transmission access by public power entities, on participant funding, and other matters.

The provision that I am here trying to modify or change would prohibit the issuance of those rules whereas in another place in the same title we are saying the Commission is directed to issue.

It would be ironic, indeed, if the rule's opponents who want stronger participant funding language in the rule were to have prevented the Federal Energy Regulatory Commission from issuing this rule related to participant funding that they want to see issued because of their zeal to prevent the standard market design from being issued.

I also believe that some of the orders that the Federal Energy Regulatory Commission issued in the Western market crises would be defined as orders of general applicability and would have been prohibited.

If we have another crisis which occurs during these upcoming 2 years, would we not want the Federal Energy Regulatory Commission to bring order to those markets the way they finally did in the West 2 years ago in the summer?

Everybody, both the opponents and the supporters of the standard market design, should support the amendment I am offering. It is an amendment to clarify that the Federal Energy Regulatory Commission is not banned from issuing any orders or rules that deal with any matter in the proposed rule; that they should only, instead, be prohibited from issuing a standard market design rule by any other name.

So I believe what I am proposing is something that all colleagues who have looked at this issue would agree with. We are just trying to clarify the language so we do not wind up prohibiting the Federal Energy Regulatory Commission from doing the very things we are going to be calling upon them to get done, and that is the effect of the language that is in the Domenici substitute at this time.

So that is the thrust of my amendment. As I say, this is an issue which, frankly, we should not have to be dealing with by amendment on the Senate floor. I would hope we could just get this resolved at a staff level. We have not been able to. I hope that can still happen and that we can avoid having to go to a vote on this question because I think in the final analysis, if anybody will spend a little bit of time trying to understand this issue, they will agree with this change in language that I am proposing. And they will agree that is, in fact, what the Senate would like to see done.

So, Mr. President, with that, let me yield the floor. My colleague may want to speak on this same amendment.

The PRESIDING OFFICER. The Senator from Wyoming is recognized.

Mr. THOMAS. Mr. President, I think the Senator raises an issue that we should discuss, but I have to tell you, it has been discussed, and there is a certain amount of balance that goes into this entire project. In other words, there are other parts of the bill which indicate that FERC should work with RTOs, for example, or should do some of the other things.

Market design is a rather broad concept, and I think this amendment is not necessary. It is illogical to read this SMD delay to tell FERC it cannot do its duty. So when you broaden the whole thing to say you can't do anything, as this amendment implies in establishing a general market design, I suppose you might pick up some things that might be a market design and say you can't do that, when in the bill that is what we are seeking to cause them to do.

I do agree perhaps there ought to be an effort made to clarify this language, as I think the Senator wants to do. And perhaps there is a way where we could do a colloquy, or do something to make it certain that it is not there to interfere with the other things we would want FERC to be doing; for instance, to issue rulemaking on market transparency or participant funding.

We have a balance. And it is a little difficult to achieve that balance if we go with this very broad change. So I think, as it stands, we would have to oppose the amendment. But we encourage the Senator—perhaps we could get together with our staffs and figure out a colloquy that would make it clear in some other fashion.

I yield the floor.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. BINGAMAN. Mr. President, I appreciate the comments of my friend from Wyoming. Now that we know the procedure—that this will not be voted on until tomorrow at some point—therefore, there will be an opportunity, perhaps this evening or early tomorrow, when our staffs can get together to see if there is any way to accommodate this concern I am trying to deal with in this amendment. As I say, it is a concern which I think many Senators will share if they will focus on what we are trying to deal with.

So the amendment is pending. If we have to, we can have a vote on it, but I would hope we could find another way to deal with this issue that will be acceptable to the chairman of the committee and to my colleague from Wyoming and to all Senators.

Mr. President, that is the only other amendment I intended to offer this evening.

With that, I yield the floor.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. I say to my friend, Senator BINGAMAN, perhaps, with a little bit of time, we can work on it and see if there is some way we can avoid an amendment. If not, clearly, you understand yours, and we understand our reasoning why we do not need it; that it should not be an amendment; that it should not be raised to that level; that it is not needed in terms of the full amendment. But we will work on it.

Now, I understand the time has arrived when I would make a request because I don't think I did the other in the form of a unanimous consent request.

I ask unanimous consent that the second Bingaman amendment be set aside so that the distinguished Senator, MARIA CANTWELL, can offer her amendment, and that she would use up to 1 hour tonight and have up to 2 hours tomorrow on that same amendment.

I ask Senator CANTWELL, that is correct, is it not, that you would like up to an hour tonight and up to 2 hours tomorrow on this amendment?

Ms. CANTWELL. That is correct.

My colleagues from throughout the West are very concerned that they have ample time to express their opinion about the electricity title and this particular amendment. So if you want to limit it to an hour tonight, we will use the 2 hours tomorrow to give my colleagues a chance to speak.

Mr. DOMENICI. I just wanted to make it clear we are not trying to deny you anything. We just have to have some idea what comes next so other people can be ready. And if it looks as if we come in at 9, you would still have up to 2 hours for further discussion by you and others regarding that amendment.

The PRESIDING OFFICER. Is there objection to the unanimous consent request?

Mr. REID. Mr. President, reserving the right to object, it is my understanding, then, that the request is that Senator CANTWELL would be able to lay down her amendment tonight, that she would have up to 1 hour tonight, 2 hours tomorrow, and there would be no tabling motion before that 2 hours is up in the morning.

Mr. DOMENICI. The Senator is correct, except, might I say, I think it is fair, just for the Senate's sake, that we say on both of those up to 2 hours. And I do not intend to amend. But we don't have to wait here if she is finished.

Mr. REID. No question about that.

Mr. DOMENICI. I yield the floor.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Ms. CANTWELL. If I could clarify, I don't know whether we will actually physically lay down the amendment tonight or the first thing at 9 a.m., but we will talk about the amendment, use that 1 hour tonight, and use the 2 hours according to the agreement.

Mr. REID. Mr. President, if I could respond to the Senator from Washington, that is your choice. You have 3 hours on this amendment. You can either offer it tonight or in the morning. But if you offer it in the morning, the time you are taking tonight would run against your time. So if you take more than an hour tonight, you will lose it in the morning.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. Mr. President, I don't have any objection, but we have been talking for about an hour about that amendment and you, I say to the distinguished minority whip, have been saying the important thing is that she would have an hour tonight on her amendment. But we are not going to have her amendment. We thought it was going to be laid down so we would know what it is about.

Mr. REID. Mr. President, I say to my friend from New Mexico, the Senator from Washington—as long as she knows she has a total of 3 hours on her amendment—would have no problem sharing that with you tonight.

Mr. DOMENICI. Can we have the amendment? That is all we want.

Ms. CANTWELL. Absolutely.

Mr. DOMENICI. Thank you.

I yield the floor.

The PRESIDING OFFICER. Who seeks recognition?

The Senator from Washington.

Ms. CANTWELL. Mr. President, I thank my colleagues for their cooperation. We want all Members to understand the amendment I will be offering tomorrow, and we certainly want the American public to understand it. I have a few comments on the Domenici underlying amendment and on the Bingaman amendment as well. They are related to our overall effort.

Let me step back for a moment. The debate we have been having involves important issues about how America moves forward on an energy bill, how we diversify our energy away from foreign dependence, and how we make the right investments. I have a lot of concerns about this bill, that it is not on target making the right investments. I am sure I will have a chance to get to that point later as this bill continues to be debated. But what I feel is most important tonight is that my colleagues and the American people understand this bill has significant changes in it as it relates to consumer protections and the failure we have had as a government in protecting consumers from the energy crisis that has damaged the west coast economy.

When I think of this debate we have had for the last hour or two—actually for the last day or so—about how much time we should give to the Energy bill, I find it amazing. Because the west coast economy got hit basically to the tune of about $6 billion. That is the cost for manipulated contracts that we in the west paid for in our economies. So when you say, let's debate these amendments and let's get them off the table, let's give 6 hours to debating these amendments, we are basically saying to the west coast ratepayers: We are giving you 1 hour for every billion dollars you were gouged by Enron and market manipulators.

We can do better than that. We ought to be willing to give the American public at least an hour for every million dollars they paid in high energy costs that were part of manipulated contracts. I feel very fortunate that I have an hour tonight and that my colleagues from the west and I have 2 hours tomorrow to talk about this important issue. Frankly, the American people need to have their day in this body to debate fully whether we want to have changes to our consumer protection laws, whether this body, the Senate, is taking adequate measures to protect them from having another Enron crisis happen again, and whether our own regulators, the Federal Energy Regulatory Commission, are doing their job in protecting consumers.

This debate we just had about the underlying Domenici substitute and the Bingaman amendment is about that, about whether we should allow for more of the free market or whether we should have more controls.

My point to the American people is that we have a Federal Energy Regulatory Commission that has not done its job. The Federal Energy Regulatory Commission deserves an ''F'' when it comes to protecting consumers.

Let me show what has happened in my home State of Washington, how consumers have been gouged by high electricity prices. Yes, we were the unfortunate State that got caught with the second worst drought on record which meant our hydro system wasn't producing as much power as we needed it to produce. Consequently, what happened? Well, we had to go out on the spot market and buy electricity. When we went out to buy that electricity, we bought it at a time when California had gone through their deregulation and there were exorbitant prices, sometimes 300 times the price of electricity. Our utilities were forced to buy that power. Our consumers were forced to pay that price.

You say: Well, that is an unfortunate circumstance of that time period and the fact that your State had a drought. I can tell you it wasn't all related to our State having a drought. What we have found since this time is these contracts were manipulated. Enron has said they were manipulated. The Department of Justice has said they have been manipulated. We have a Federal Energy Regulatory Commission report—that report is so voluminous, many pages—that basically documents all the different ways in which these contracts were manipulated.

What is the result? The result of that has been in my home State of Washington we have had utilities that have ended up having increases in their rates. Down in southwest Washington, in the Vancouver area, there has been an 88 percent rate increase; in parts of King County, a 61 percent rate increase; in Snohomish County, a 54 percent rate increase; over in eastern Washington, in Okanogan, one of the areas that is most economically hard pressed in our State, a 71 percent rate increase; over on the Olympic peninsula, a 43 percent rate increase.

I ask my colleagues: Which States would be willing to put up with those kinds of rate increases, from an energy crisis where contracts have been manipulated, and say it is OK?

The kicker in this situation is these aren't just rates for 1999. Because of this crisis and the manipulated contracts Enron has put forth, we are stuck with those high energy costs for the length of those Enron contracts. In fact, even though this report from a Federal agency says these contracts have been manipulated, and unjustly so, these utilities, particularly the one here in Snohomish County, have to pay this 54 percent rate increase for another 5 years. They are stuck paying these Enron contracts for 5 years.

When the utility said: Why should we be paying this price? Why should we pay a contract that has been knowingly manipulated? Enron is suing them. Can you imagine that? Enron, who has admitted guilt in manipulating contracts, has the audacity to sue utilities in my State, forcing them to continue to pay these high rates.

This debate is about whether we are going to get some relief. Somehow people think maybe there is a way this rate increase of 54 percent doesn't really impact people. If you think somehow this really isn't causing harm, I want to submit for the RECORD a New York Times article from December of 2002, just last December, where it showed we had more than 14,000 customers from that local utility in Snohomish County basically disconnected from their energy source because they couldn't pay.

We saw a 44 percent increase in actual disconnections in Snohomish County because people could not afford to pay that 54 percent rate increase.

I ask unanimous consent to print the article I referred to in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the New York Times, Dec. 22, 2002]

LEGACY OF POWER COST MANIPULATION

(By Timothy Egan)

EVERETT, WA., Dec. 19.—Two years ago this month, a record was set at the height of the West Coast energy crunch: an hour of electric power was sold for $3,250—more than a hundred times what the same small block had cost a year earlier.

Now, power supplies are abundant and wholesale prices have plummeted. But the fallout from what state officials say was the largest manipulation of the energy market in modern times has continued to hit West Coast communities hard.

Here in Snohomish County, which has the highest energy rates in the state, more than 14,000 customers have had their electricity shut off for lack of payment this year—a 44 percent increase over 2001. They have seen electric rate increases of 50 percent, as the Snohomish County Public Utility District struggles to pay for long-term power contracts it signed with companies like Enron at the height of the price run-up.

Aided by charities, most customers have had their power returned within a day of being shut off, but others are forced to make choices about which necessities they can live without. ''It's a pretty tough thing trying to explain to your 5-year-old kid why the lights won't come on anymore,'' said Crystal Faye of Everett. ''I didn't pay much attention to all that stuff about California and Enron, but it's certainly come home to hurt us now.''

Ms. Faye and her husband, Rick, who are unemployed, have had their power shut off twice this year. Brianne Dorsey, a single mother, said she removed the baseboard heater in her home here and has had to rely on a small wood stove for heat, because she is $1,000 behind in paying her electric bills.

Faced with such tales tied to rate increases along the West Coast, states are trying to get back some of what they lost during 18 months when energy prices seemed to have no ceiling. The decision this month by a federal regulatory judge that California utilities had been overcharged by $1.8 billion bolstered the case of Northwest utilities seeking refunds, officials of those utilities said. It also angered California officials, who say they will continue to press for a total of nearly $9 billion in refunds. The Federal Energy Regulatory Commission is expected to decide on Northwest refunds in the spring.

No matter what the federal government decides, officials say their best hope for compensation is from a number of criminal investigations being pursued by Nevada and the three West Coast states—Washington, Oregon and California. They liken their cause to state lawsuits against tobacco companies, which started as long shots but resulted in enormous settlements.

Aided by a guilty plea in October from a former trader for Enron, and by newly discovered internal documents describing how companies manipulated the energy market in 2000 and 2001, the West Coast states are hoping to get settlement money from more than a dozen energy trading companies. The companies say they acted legally in taking advantage of a unique market condition, but state officials say the companies created a fake energy crisis.

At the height of the rise in energy costs in early 2001, the Bush administration said the West Coast's troubles were a precursor of what would happen if the nation did not build 1,900 power plants over the next 20 years. But state officials in the hardest-hit areas say the crisis was never about energy shortages so much as it was about an epic transfer of wealth. They want payback—in some cases for immediate relief to consumers who cannot pay their bills this winter.

Last month, the Williams Company, in Tulsa, Okla., agreed to a $417 million settlement with Washington, Oregon and California. While admitting no wrongdoing, Williams agreed to pay refunds and other restitution to the three states; in return, the states dropped an antitrust investigation. Among large energy companies, the states are seeking refunds from the Mirant Corporation, Reliant Resources Inc., Dynegy Inc., Duke Energy and Enron.

''All of us on the West Coast have been hard hit by these rate increases, but the poor in this county have just been hammered,'' said Bill Beuscher, who runs the energy assistance program in Snohomish County. Mr. Beuscher said that in the first two weeks the winter energy assistance program was open this year, requests for financial aid were up 55 percent from the same period last year.

The power trading companies named in criminal investigations and refund cases did not want to comment publicly while the cases were pending. But several of the companies that are fighting refunds have said in their public filings that the utilities, particularly in the Northwest, are trying to renege on legitimate long-term contracts. They said they did not act in collusion and explained that the highest prices were a result of severe market shifts brought in part by the Northwest drought.

In some cases, the power trading companies said, the utilities resisted buying shorter contracts, which would have cost them less. They also said that some Northwest utilities took advantage of the price spikes and sold power into the market themselves, only to come up short later. The companies said they expected to be vindicated when the government finishes its refund cases next spring.

Mr. Beuscher said he would like to see money from the Williams settlement be used to help people who cannot afford the rate increase. Consumers in Oregon and California have made similar pleas. But officials in all three states say that until there are larger settlements with the energy companies, consumers are unlikely to see relief.

''We hope that the Williams case serves as a template,'' said Tom Dresslar, a spokesman for the California attorney general's office, ''because California was monumentally ripped off by these energy traders.''

About seven million consumers in California, who were initially shielded from having to pay for runaway energy costs during the worst part of the state's deregulation debacle, are paying rate increases averaging 30 percent more than the pre-deregulation prices of 1996. The state has the highest energy rates in the nation, consumer advocates say, although the structure of the rate increase allows poor people and low energy users to escape the recent increases.

''I don't hold out a lot of hope that we will ever get significant refunds,'' said Doug Heller of the Foundation for Taxpayer and Consumer Rights, a nonprofit group based in Los Angeles. The group calculates that California power customers overpaid a total of $70 billion.

At the height of the energy troubles, the trading companies boasted of record profits in their quarterly reports. But many of those companies are now near bankruptcy as they cope with a downturn that has caused the energy trading sector to lose 80 percent of its value, according to Wall Street analysts. ''It's like the highwayman robbed us and then spent all the money on booze,'' Mr. Heller said.

The companies themselves blame the states. In one case that was heard this month, William A. Wise, chief executive of the El Paso Corporation, which is based in Houston, denied manipulating the market and blamed the officials who set up California's deregulated energy market for causing the price run-ups with ''one bad policy after another.''

Under a New Deal-era law, power companies can be forced to pay refunds if they have charged an ''unreasonable and unjust'' amount for electricity. The Federal Energy Regulatory Commission, which West Coast governors say did very little to restrain power traders during the height of the run-ups, will determine the exact refund amount, if any.

In the meantime, electric rates throughout the Pacific Northwest, once among the cheapest in the nation, have climbed as much as 50 percent.

California's problems stem from its chaotic attempt at energy deregulation, approved in 1996 and put in effect in 1998. The Northwest, with its tradition of publicly owned utilities, was drawn into the California crisis by a convergence of dry weather and freewheeling trading of its own.

Usually, the Northwest avoids price fluctuations by providing a steady stream of hydroelectric power, aided by abundant winter rainfall. But in late 2000, a drought in the Northwest forced utilities to buy power on the open market. Some utilities had also tried to sell power into the California market but were pinched by the drought.

At the same time, major energy traders were withholding blocks of power to create the appearance of further shortages, according to Enron memorandums discovered this year.

Refunds were once thought to be unlikely. But then came the memorandums—many of them detailing schemes to manipulate the market under names like Death Star—and the agreement in October by Timothy N. Belden, a former senior trader for Enron, to plead guilty to conspiring with others to manipulate the West Coast energy market.

Prosecutors say Mr. Belden is cooperating with investigations of the power trading companies.

''What really started the ball rolling were the smoking-gun memos, and then the guilty plea has helped as well,'' said Kevin Neely, a spokesman for the Oregon Department of Justice.

There is also continued bitterness among West Coast officials toward the Bush administration for waiting until June 2001 before putting price controls on the market, which immediately ended the large price spikes and rolling blackouts and brought stability.

Since then, power use has fallen and prices on the short-term market are about where they were before the energy run-up of 2000 and 2001.

''It was a fallacy to blame this crisis on a lack of new power plants,'' said Steven Klein, superintendent of Tacoma, Wash.'s public utility, Tacoma Power. ''But it's a shame what came of this. It put a dent in a lot of family budgets, and forced some businesses to close.''

Ms. CANTWELL. It is impacting people in my State. One of the largest employers in the State, the Boeing Company, has their major manufacturing base located in that particular county. In that county, they have made it clear they planned to build the next generation plane. They are not sure whether they are going to build that plane there or even in Washington State. What is on the list of issues about which they are concerned? The cost of energy, the high cost of energy. So again, individual ratepayers are suffering. Businesses are suffering. Businesses may decide the long-term investment in Washington State isn't worth it just because Enron manipulated contracts at a time my consumers and my businesses needed affordable electricity.

We are here tonight to talk about this situation and what the Senate is going to do about it. It is clear we are not doing enough.

I think there are newspapers all over the country who basically have said we are not doing enough about it. The New York Times said, ''This energy crisis dims small business hopes.'' This is an administration that wants to get the economy on the right track. How can you get the economy on the right track if you won't do anything about manipulated energy contracts? Basically, they say the ''perfect storm is creating a return of the energy crisis,'' and ''power cuts in the cold winter ahead for those struggling to pay for electricity.''

Just like I said, in Snohomish County, with a 44 percent increase in disconnect notices and an energy crunch, the Northwest might face another power crisis. ''Costs hit home for the energy crisis'' is in the San Francisco Chronicle. Believe me, we are going to hear from my colleagues from California tomorrow about how this crisis has impacted them.

Again, my colleagues on the other side of the aisle can spend as much time as they want talking about the need for future energy supply, which I am all for. About the fact that we should have been building more supply. That is fine. But you have to address the issue. The issue is these contracts were manipulated. They were schemed. The American people will come to know them by name—Get Shorty, Fat Boy, and a variety of others. That might seem humorous to some people, but it is not humorous when real people suffer the consequences. We are not doing enough about it.

So what else have newspapers said? The shocking thing is they basically are saying what I think some of my colleagues, particularly on the other side of the aisle, want to deny. I am not sure exactly why they don't want to address it. But they say, ''Enron met with energy regulators during the crisis.'' ''Enron monitor failed to do the job.'' ''Federal energy regulators inept,'' this says. ''Enron execs often called the FERC brass during crisis.''

What is going on here is we have had this incredible lobbying effort by Enron in getting FERC commissioners and doing nothing about this crisis, and playing an overexcessive role. Now we have the choice as Members of the Senate as to whether we are going to stand up and do something about this.

I am outraged and I have been outraged about this issue for some time, because I go home almost every weekend and I see the real consequences of this problem. But even that pales in comparison to the steps I think this body is going to mistakenly take if it passes the Domenici electricity title as it is.

Mr. President, the Domenici electricity title as it is does nothing to protect consumers on power generation. The Domenici electricity title basically takes the only consumer protection law on the books—the Public Utility Holding Company Act—and repeals it. The good Senator from New Mexico, Senator BINGAMAN, tried to say: ''Are you sure we want to do that because I don't think we should?''

If you are going to change the oversight of these utilities, you ought to put some protections in place. When they do these mergers, maybe we ought to figure out a way that we have some oversight of this and protect it. We will have some other amendments—Senator DAYTON's and some of mine—that say, listen, we cannot go far enough in protecting consumers. How could you go too far in protecting consumers when we have had one of the biggest energy schemes in our country's history just unfold in the last couple of years?

I applaud this body for passing new accounting requirements. I applaud giving the SEC more to do on accountability, making sure that books are not cooked, that schemes are not put into place. I applaud the Attorney General from New York for his aggressive action in making sure that those who have been participating from the financial side in helping to portray to the American people that somehow these companies were healthy, when in fact all they were deploying were buying-and-selling schemes with inflated pricing. I applaud all of that. But what this bill fails to do is take a similar step. It fails to take a similar step because it is repealing the only consumer protection bill we have for electricity.

So how did we get there? Some of my colleagues mentioned the Federal Power Act and the Public Utility Holding Company Act of 1935. During the Roosevelt era, guess what? We saw the same thing. No surprise. A bunch of energy companies had total control of the market, created a pyramid scheme, jacked up the price on consumers. Guess what? The Roosevelt administration said: We cannot tolerate this. Consumers need to be protected.

So 1935 might seem like a long time ago to some of my colleagues, but I know one thing—too much concentration of power by a free market does not deliver affordable energy.

My State is a big believer in cost-based pricing. We have a lot of public power. That public power provides us with affordable energy. I am not opposed to market-based rates. I am not opposed to the free enterprise system. As a former businesswoman, I like the marketplace where businesses can compete and where competition exists, where anybody gets nervous when there is too much consolidation and when there is no oversight.

So, basically, what we have here in the last 2 years is more of a move toward market-based pricing, without the regulatory oversight. I would love to hear from my colleagues on the other side of the aisle who think State utility commissions don't have a responsible role in making sure that utility rates are not too high and too expensive. I would love to hear from my colleagues that somehow they don't think the Federal Government should play a role in wholesale rates and in assuring consumers that wholesale rates are just and reasonable. But I can tell you this. There is nothing just and reasonable about manipulating contracts. Even Patrick Wood, chairman of the Federal Energy Regulatory Commission, said so before the Energy Committee:

> ''Yes, that is right, Senator Cantwell, contracts that have been manipulated cannot be just and reasonable.''

So why don't we do something about taking the Federal Energy Regulatory Commission and strengthening it? Why don't we smack them on the hand and say actually you have not done your job, because if you want to go through the sequencing—the issue is that in this timeframe of the explosion of the California market and the crisis and the problem, what happened is prices rose to that exorbitant 300 percent increase. We all started saying we need to do something about this; we need to have some sort of price cap or price mitigation.

In fact, my predecessor, Slade Gorton, and several other Senators, actually wrote letters saying we need to do something about this energy crisis. The former Energy Secretary, now the Governor of New Mexico, also said we have to do something to stop this manipulation of pricing.

The prices actually started unfolding in May of 2000 even though a variety of people said there is important business to do here. Secretary Richardson, in December of 2000, 4 or 5 months later, said this is an emergency and we need to do something about it.

The next day FERC basically decides they are going to deny a request to do anything about capping the prices. They are not going to do anything! It took the outrage of many Members of Congress, and almost a year later when a bipartisan group of Senators introduced a bill to put on price caps that in April of 2001 the Federal Energy Regulatory Commission finally responded and said: Oh, yes, these prices are outrageous, and we should do something about them.

Mind you, all of us were saying during that time period that these contracts have been manipulated. They have been manipulated, and it is not fair. Our ratepayers should not have to pay these exorbitant prices. At that time, people were saying: This is just about supply, and if you guys built more supply, you would not have a problem. We have come to find out that it is not all about supply. It is about those manipulated contracts.

What happened is we finally heard from the source itself: Enron declaring bankruptcy, an investigation of potential energy market manipulations, and then finally, in March of 2003, FERC issuing this report saying the prices have been manipulated.

We had to drag that Federal entity kicking and screaming into the realization that, one, the prices were too high; two, that consumers in the West absolutely needed relief; and three, that these prices have been manipulated. Now we are trying to drag them into the realization that manipulated contracts that cost ratepayers 54-, 77-, 80-percent increases over the next 5 or 6 years are hardly just and reasonable or hardly in the public's interest.

The underlying Domenici amendment says: Go ahead and trust these FERC people; they are doing a good job; and let's take away any of those basic tools they have to regulate this industry.

I am surprised that some of my colleagues have not said: Let's just do away with FERC and deal with the Power Act. We would be better going to court and having the courts decide in our favor than having a regulatory entity that fails to do its job. But I know this: tonight and tomorrow we should not be talking about repealing the Public Utility Holding Company Act. We should not be doing that.

PUHCA really does hold companies accountable for their business service to retail customers. It gives the SEC the authority to review these mergers and put a prohibition on acquisitions if they do not think there is evidence that we are going to have efficient rates. It makes sure they review the complex corporate structures. It makes sure that these companies do not exploit the consumer. It really did give the SEC the ability to regulate pyramid schemes that were based on fictitious or unsound value assets that had no relationship to fair sums of what was being invested and how much the company was worth. It is amazing, that was a 1935 act. I guess history really does repeat itself because these are the same abuses we have seen in the Enron situation.

Remember the maze of affiliates and offshore partnerships that were part of the Enron scheme? Remember Enron's diversification into businesses as far afield as trading of weather derivatives and water supply? Remember how Enron inflated their stock price and then it collapsed? It created such a gaping hole for individuals that they ended up losing their entire investment for retirement because of the collapse.

I can tell you this: We do not want to repeal PUHCA. What we want to do is have some further securities put in place. Some of those securities need to respond to these various schemes that have been perpetrated on the American consumer.

If we could see some of those schemes, I think the American public would be shocked to know that someone actually spent their time thinking up schemes in which the market could be manipulated.

I even have an article that Enron's Ken Lay admitted that he had gone to the then-current FERC Commissioner and said: If you continue to help us on this scheme, then we will continue to support you for the renomination of FERC. I guess Mr. Hebert was not quite so supportive because he was not renominated to that post. I ask unanimous consent that this article be printed in the RECORD.

The being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the New York Times, May 25, 2001]

POWER TRADER TIED TO BUSH FINDS WASHINGTON ALL EARS

(By Lowell Bergman and Jeff Gerth)

Curtis Hebert Jr., Washington's top electricity regulator, said he had barely settled into his new job this year when he had an unsettling telephone conversion with Kenneth L. Lay, the head of the nation's largest electricity trader, the Enron Corporation.

Mr. Hebert, chairman of the Federal Energy Regulatory Commission, said that Mr. Lay, a close friend of President Bush's, offered him a deal: If he changed his views on electricity deregulation, Enron would continue to support him in his new job.

Mr. Hebert (pronounced A-bear) recalled that Mr. Lay prodded him to back a national push for retail competition in the energy business and a faster pace in opening up access to the electricity transmission grid to companies like Enron.

Mr. Hebert said he refused the offer. ''I was offended,'' he recalled, though he said he knew of Mr. Lay's influence in Washington and thought the refusal could put his job in jeopardy.

Asked about the conversation, Mr. Lay praised Mr. Hebert, but recalled it differently. ''I remember him requesting'' Enron's support at the White House, he said of Mr. Hebert. Mr. Lay said he had ''very possibly'' discussed issues relating to the commission's authority over access to the grid.

As to Mr. Hebert's job, Mr. Lay said he told the chairman that ''the final decision on this was going to be the president's, certainly not ours.''

Though the accounts of the discussion differ, that it took place at all illustrates Enron's considerable influence in Washington, especially at the commission, the agency authorized to ensure fair prices in the nation's wholesale electricity and natural gas markets, Enron's main business.

Mr. Lay has been one of Mr. Bush's largest campaign contributors, and no other energy company gave more money to Republican causes last year than Enron.

And it appears that Mr. Hebert may soon be replaced as the commission's chairman, according to Vice President Dick Cheney, the Bush administration's point man on energy policy.

Mr. Lay has weighed in on candidates for other commission posts, supplying President Bush's chief personnel adviser with a list of preferred candidates. One Florida utility regulator who hoped for but did not receive an appointment as a commissioner said he had been ''interviewed'' by Mr. Lay.

Mr. Lay also had access to the team writing the White House's energy report, which embraces several initiatives and issues dear to Enron.

The report's recommendations include finding ways to give the federal government more power over electricity transmission networks, a longtime goal of the company that was spelled out in a memorandum Mr. Lay discussed during a 30-minute meeting earlier this spring with Mr. Cheney.

Mr. Cheney's report includes much of what Mr. Lay advocated during their meeting, documents show. Both men deny discussing commission personnel issues during their talk. But Mr. Lay had an unusual opportunity to make his case about candidates in writing and in person to Mr. Bush's personnel adviser, Clay Johnson. And when Mr. Bush picked nominees to fill two vacant Republican slots on the five-member commission, they both had the backing of Enron, as well as other companies.

Mr. Lay is not shy about voicing his opinion or flexing his political muscle. He has transformed the Houston-based Enron from a sleepy natural-gas company into a $100 billion energy giant with global reach, trading electricity in all corners of the world and owning a multibillion-dollar power project in India. He has also led the push to deregulate the nation's electricity markets.

Senior Bush administration officials said they welcomed Mr. Lay's input but did not always embrace it: President Bush backed away from curbing carbon-dioxide emissions, an effort supported by Enron, which had looked to trade emission rights as part of its energy business.

''We'll make decisions based on what we think makes sound public policy,'' Mr. Cheney said in an interview, not what ''Enron thinks.''

The Bush-Lay bond traces back to Mr. Bush's father and involves a personal and philosophical affinity. Moreover, Enron and its executives gave $2.4 million to federal candidates in the last election, more than any other energy company. While some of that went to Democrats, 72 percent went to Republicans, according to an analysis of election records by the Center for Responsive Politics, a nonprofit group.

''He's for a lot of things we're for,'' said Mr. Johnson.

But when it came to deciding on nominees for the commission, Mr. Johnson said that Mr. Lay's views were not that crucial. The two most important advisers, he said, were Andrew Lundquist, the director of Mr. Cheney's energy task force, and Pat Wood 3rd, the head of the Texas public utility commission.

As governor, Mr. Bush named Mr. Wood to the utility commission. This year, when the White House filled the two Republican slots on the federal agency, Mr. Wood was the first choice, Mr. Johnson said.

Consumer advocates and business executives praise Mr. Wood. But Mr. Lay also had a role in promoting him. Shortly after Mr. Bush was elected governor in 1994, Mr. Lay sent him a letter endorsing Mr. Wood as the ''best qualified'' person for the Texas commission.

In all, there are five seats on the commission, two held by Republicans, two by Democrats and one held by a chairman who serves at the pleasure of the president. Mr. Hebert, who became a commissioner in 1997, was named chairman by Mr. Bush in January.

The Federal Energy Regulatory Commission's mandate to ensure fair prices in wholesale electricity and natural gas markets makes it crucial to sellers like Enron as well as consumers.

The movement toward deregulation sometimes leaves the commission caught in a tug of war: power marketers like Enron are trying to break into markets and grids controlled by old-line utilities, which operate under state regulation. The commission's chairman has considerable latitude in setting its agenda.

As part of its oversight of the wholesale electricity markets, the commission ordered several companies to refund what it considered excessively high prices this year in California. One lesser offender named in the commission's public filings—$3.2 million, of a total of $125 million—was an Enron subsidiary in Oregon.

Enron owns few generating assets, but buys and sells electricity in the market. Many of those transactions resemble the complicated risk-shifting techniques used by Wall Street for financial instruments.

Mr. Hebert, after he became chairman, initiated an examination into the effects those techniques have on the electricity markets. ''One of our problems is that we do not have the expertise to truly unravel the complex arbitrage activities of a company like Enron,'' he said, adding, ''we're trying to do it now, and we may have some results soon.''

William L. Massey, one of the agency's two democratic commissioners, said he supported the inquiry but had not been aware of it—an indication of the chairman's ability to set the commission's agenda.

Finally, the commission is trying to speed the pace of electricity deregulation by opening up the nation's transmission grid, much of which is owned by privately owned utilities that enjoy retail monopolies. Some Enron officials say the commission has been moving too slowly to open the grid. They attribute some of the problem to utilities. But they also fault Mr. Hebert.

''Hebert still has undeserved confidence in some of the vertically integrated companies coming to the table and dealing openly'' with transmission access issues, said Richard S. Shapiro, an Enron senior vice president.

The utilities, however, maintain that they provide cheap and reliable service for their customers. Washington lobbyists for one Southern utility said that Enron was really interested in focusing on the utility's big-business clients, which under state regulation pay higher rates than residential customers.

Since 1996, about half the states have moved to open their retail markets to competition, and the commission has begun to make it easier for outsiders to use the nation's transmission grid. But the promise of cheaper rates has been largely unfulfilled. So the push for more deregulation, in which Enron has been a leader, has slowed, especially when California's flawed program led to skyrocketing rates and chaotic markets.

Mr. Hebert is a free-market conservative who favors deregulation but also recognizes the importance of state's rights. A former Mississippi regulator, he is a protege of Trent Lott, the Senate Republican leader from Mississippi. Mr. Hebert said Mr. Lott was instrumental in his nomination to the commission in 1997 by President Clinton.

President Bush elevated Mr. Hebert to chairman on Inauguration Day, a move Mr. Lay said he told the White House he supported.

Mr. Johnson, the White House personnel chief, said that Mr. Lott and Mr. Hebert had both been told that Mr. Hebert could remain chairman at least until the administration's nominees—Mr. Wood and Nora Brownell, a Pennsylvania utility regulator—are confirmed by the full Senate. The Senate energy committee voted earlier this week to approve the two nominees, after a hearing last week indicated strong support.

It is widely expected that President Bush will name Mr. Wood to replace Mr. Hebert as chairman after the Senate acts.

In an interview for a forthcoming episode of ''Frontline,'' the PBS series, Mr. Cheney suggested as much. ''Pat Wood's got to be the new chairman of the F.E.R.C., and he'll have to address'' various problems in the electricity markets, he said.

Mr. Hebert said that no one had told him he was being replaced. If someone else is named chairman, Mr. Hebert can remain a commissioner until the end of his term, which expires in 2004.

It was a few weeks after President Bush made him chairman Mr. Hebert said he spoke by telephone with Mr. Lay.

Mr. Lay told him that ''he and Enron would like to support me as chairman, but we would have to agree on principles'' involving the commission's role in expanding electricity competition, Mr. Hebert said of the conversation.

A senior commission official who was in Hebert's office during the conversation said Mr. Hebert rebuffed Mr. Lay's offer of a quid pro quo. The official said that he heard Mr. Hebert's side of the conversation and then, after the call ended, learned the rest from him.

Mr. Hebert said that he, too, backed competition but did not think the commission had the legal authority to tell states what to do in this area. Concerning the issue of opening transmission access through the creation of regional networks, Mr. Hebert supports a voluntary process while Enron seeks a faster and more compulsory system.

Mr. Lay said that while he might have discussed issues relating to the commission's authority concerning access to the grid, ''there was never any intent'' to link that or any other issue to Mr. Hebert's job status.

The commission is a quasijudicial agency, so decision-makers like Mr. Hebert must avoid private discussions about specific matters pending before the commission. Mr. Hebert and Mr. Lay both said that line was not crossed, but Mr. Hebert said he had never had such a blunt talk with an energy-industry executive.

Mr. Lay added that his few recent conversations with Mr. Hebert were nothing special. ''We had a lot of access during the Clinton administration,'' he said.

And he said that while making political contributions ''probably helps'' to gain access to an official, he made them ''because I'm supporting candidates I strongly believe in.''

Last June, Enron executives were asked to make voluntary donations to the company's political action committee. The solicitation letter noted that the company faced a range of governmental issues, including electricity deregulation.

This year, some people who sought but did not get nominations to the commission said that Mr. Lay and Enron had had a role in the process.

One was Joe Garcia, a former Florida utilities regulator and prominent Cuban-American activist. He said he had been ''interviewed'' by a few Enron officials, including Mr. Lay, who he said had not been as ''forceful or insistent'' as the other Enron officials.

But in their conversation, Mr. Garcia said, Mr. Lay made clear that he would be visiting the White House, adding that ''everyone knew of his relationship and his importance.''

Mr. Johnson, the White House personnel chief, could not cite another company besides Enron that sent him a list of preferred candidates for the commission, but he remembered hearing the views of Tom Kuhn, who heads the utility industry trade group, the Edison Electric Institute. Mr. Kuhn was a classmate of Mr. Johnson and Mr. Bush at Yale.

As for his conversation with Mr. Garcia, Mr. Lay said he was comfortable with his candidacy but ''I'm not sure what I told him about my friends at the White House.''

This article is part of a joint reporting project with the PBS series ''Frontline,'' which will broadcast a documentary about California's energy crisis on June 5.

Ms. CANTWELL. Mr. President, what are these schemes that were perpetrated on ratepayers in the West?

Get Shorty is a scheme that individuals may have read about in the paper, or maybe some individuals know from being in California or hearing parts of what happened in Washington State or Oregon. I thought it was the title of a movie. I did not know it was a clever marketing tool presented by a bunch of executives at an energy company to manipulate the prices so my ratepayers might pay more. I could not believe something like that would happen.

Another scheme that was part of the process is Load Shift, another way in which the individual consumer did not understand that some trading was going on with the price, and yet prices could be inflated and because, again, we had a shortage and had to go out and buy on the spot market, we were trapped at buying at that high rate.

There is another attempt to defraud consumers known as the Silver Peak Incident. Silver Peak refers to a major transmission line in California but is outlined in an internal Enron e-mail that was made public by the FERC investigation. It is also synonymous with a scheme that was concocted by the Enron chief trader of the West who has since pled guilty to charges of conspiracy to commit fraud, Mr. Tim Belden, and on May 25, 1999, Mr. Belden filed 2,900 megawatts of an offer to sell within the California PX, the transmission line that could carry only 17 megawatts of power.

So the California PX and ISO did, in fact, detect that there was an anomaly. They ended up raising the price 71 percent that day, and eventually Enron and the PX reached a settlement in which the company paid a $25,000 fine. It shows the kinds of problems that are in these various schemes, Fat Boy, also known as Icing Load, basically into realtime power markets. According to a smoking gun memo that Enron had issued on December 6 and December 8, Fat Boy was one of the most fundamental strategies used by traders. According to one trader, it is one of the oldest tricks in the book. It is now being used by other market participants.

I want to read to my colleagues how Enron's own attorney described Fat Boy, but first remember how the market worked. It was the job of the California system to balance the supply and demand within California's transmission, and that required market participants to submit schedules of how much power they planned ahead of time. Given that there are various fluctuations because of weather and the demand that consumers have, it was simply a fact of life that marketers and utilities were not able to forecast to the exact megawatt the precise amount that would be needed.

Thus, in order to ensure that the lights stayed on, the ISO would offer payments to utilities that would increase their generation in realtime in order to make sure that supply and demand matched up. So to take advantage of the situation, Enron would anticipate when the market was going to be short on supply. It would then submit a false day-ahead schedule loading the lines with generation it knew it had no intention of really using. That way, when it accessed the portion of power it put on the realtime grid, it would receive extra payments from the ISOs in keeping the lights on. That is right. By falsifying its day-ahead schedules, Enron received untold millions for pretending to keep the lights on in the West. I can assure my colleagues that is a very cruel joke to play on consumers in the West.

So what we have before us in the Domenici amendment is a failure to protect consumers in the repeal of PUHCA and in the continuation of not outlawing these very practices that Enron has deployed. What we want to do is take all these schemes and include them in an amendment that I will lay down tomorrow that basically bans market manipulation. Yes, I would like to see us adopt the Dayton amendment that keeps the 1935 law on the books. Because, yes, left alone, energy marketers have shown that even after 70-plus years, they can recreate the same types of market manipulation. So we need to have protections in place.

Round-trip trading is not the only thing that needs to be addressed in this bill in addition to PUHCA. What needs to be addressed, besides protecting the Public Utility Holding Company Act and keeping that on the books, and besides saying that round-trip trading is a problem, we also need to make sure these various other schemes, the Wheel Out scheme—I do not know who the marketing person was who thought of these themes. I am amazed—the Black Widow scheme, the Cuddly Bear scheme, the Red Congo scheme—people can see we are having a tough time getting all of these charts up here because there were so many schemes of manipulation, basically undertaken by a variety of individuals who thought this was a great idea to make money—the INC-ing scheme and the Non-Firm Export scheme.

The amendment I will lay down tomorrow says all of these manipulations, not just on day-trip trading but all of these practices are illegal; that the Senate will not put up with market manipulation; that the Senate has seen, not just on the Democratic side of the aisle but the Republican side of the aisle—I want my Republican colleagues to join with us tomorrow and say that market manipulation is wrong—that it is wrong and we believe we need stronger consumer protections; that we think the Federal Energy Regulatory Commission should be given the powers to make sure we are protected from these schemes; that we have done our job from the Enron crisis, where we have learned that we need to do a better job on accounting practices; that we have learned that we need to do a better job on requirements of the SEC and, yes, we in the Senate understand that energy prices can be manipulated and we are going to do a better job of making sure the tools stay in place to protect consumers. That new enhancements to those tools prohibit these kinds of schemes from ever happening again.

As painful as this crisis has been for Washington State and for the West, this particular amendment I am offering is really about our next steps moving forward. It is about natural gas pricing. It is about the future manipulation that could happen if we do not put protections in place. It is about saying that we want to make sure, as we continue towards a diversified energy plan for our country, getting more natural gas from Alaska with a new pipeline, looking at renewable energy, looking at conservation, looking at all sorts of alternative fuels, planning for the hydrogen fuel economy, that while we are doing all of those things, we are going to make sure market manipulation does not take place. That is what is at stake with the amendments we are going to be voting on tomorrow.

Mine will not be the only amendment. As I have mentioned several times, Senator DAYTON has a great amendment in which he says we should leave the Public Utility Holding Company Act in place. I am trying to stop these marketing schemes from being foiled on other States and other economies. I am trying to say the billion-plus that was lost in Washington State and the over $3 billion that was lost in California is economic havoc that should never happen again to another State in this country.

To do that, we have to pass the Cantwell amendment that says these market manipulations are outlawed. That is what we are going to try to do tomorrow. I hope my colleagues will take the time tonight to understand this.

I point out my colleagues have talked about this Energy bill and the various aspects of that Energy bill in a way that would leave most thinking these are simple issues and we should basically dispense with them quickly. As I said, $6 billion to the west coast economy—and that is just the costs of additional power that we have had to buy at higher rates; that is not the ancillary costs of other businesses who have had to shut down.

We have had a paper company in Everett, WA, threaten if we have one additional rate increase of even a couple percentages, they will probably have to shut down that facility. We have had aluminum plants throughout the State of Washington that had to shut down for periods of time. If we have another rate increase they could be shut down permanently. We are talking thousands of jobs. We have had other industries say they do not think they could survive another rate increase.

It is hard when we have challenges to not say we should have a rate increase. My response is, why can't we get out of these long-term contracts by Enron? Why can't we renegotiate what have been manipulated costs we in Washington have had to pay for? When I think of what has happened to Washington State, we are talking about more than $6 billion. We owe it to people to have a debate about these issues.

I plan to offer several other amendments. It is incredible we allow big companies such as Enron to lobby for and to support the nomination of these FERC commissioners. Why should a big company like Enron get to influence the administration on who should chair a regulatory entity whose job is to regulate that very entity that is pushing their nomination? I will have an amendment about that.

I think the Federal Energy Regulatory Commission which engages in 15 calls with Wall Street to tell them when and how they are going to make decisions on these contracts and whether they are just and reasonable. I don't see why we should have a Federal Energy Regulatory Commission that spends its time telling Wall Street in advance whether they should try to settle manipulated contracts out of court with clients. I don't think that is their job.

We ought to have more protection on cost-based pricing than we have. We will have other amendments that try to address this issue about what we do about the fact that this voluminous report by the Federal Energy Regulatory Commission says all these contracts have been manipulated. Yet they fail to do nothing about it when the Federal Power Act says it is the commission's job to do something about unjust and unreasonable rates. That is what the Federal statute gave the authority to FERC to do, to make sure on wholesale rates the consumer was not gouged with unjust and unreasonable rates.

Now we have a Federal entity saying, yes, they certainly are manipulated contracts. These schemes are unbelievable, but we are not going to do anything as regulators to help the ratepayers out of this situation. We will have an amendment addressing the failure of FERC to do anything about these manipulated contracts.

Some of my other colleagues will have amendments dealing with this section. I don't know whether Senator FEINSTEIN will offer her amendment on derivatives but, again, that is another loophole Enron walked itself through by coming to Congress and lobbying for an exemption to the Futures Commodities Trading Act. They said online trades ought to be exempt. That was very smart of them to get that loophole. Why? Because then all online trading, that some of these schemes are the names for, was completed online where prices were manipulated in trades, inflated, and consumers ended up paying the higher price.

They get the derivatives loophole in the futures commodity. We say in America you can trade futures on corn and a variety of other agriculture products but you have to have open books. You have to have transparency. You have to show what you are actually doing so that if there is some sort of manipulation of the market you can come in and see what that manipulation is, a regulator can investigate.

But no, this body, several years ago, probably unknowing as to the unbelievable impact, said, let's go ahead and give them this exemption.

We found that a loophole big enough to drive a truck through—I should say big enough to drive billions of dollars through; that gouged consumers. I hope Senator FEINSTEIN will offer her derivatives amendment, which I cosponsor, to close that loophole.

Some of my colleagues say, we voted on that already; it failed. I ask my colleagues, we voted on that amendment before we knew of all these schemes about manipulation. Now we know these schemes and manipulation have happened and we are not going to try to do something to close those loopholes? It is something we need to bring front and center to the American people, demonstrating we here are doing our job. We are doing enough to get something done.

I have letters from various constituents through the West who chronicled events that have happened to them, individuals who have either sent E-mails, letters or various documentations about the problems they have seen in the energy market. The various costs they have endured paying for additional electricity, which then meant they had to make other choices. I know people that not only were part of that 44 percent increase in disconnect rates. People who had to make other choices about education, about vacations, including a sad story from a woman who could not even send her daughter to the prom because she could not afford to buy a dress because that money went to their energy bill instead.

What it comes down to tomorrow is whether we are going to allow this manipulation of Fat Boy, Get Shorty, Ricochet, Death Star, which the Domenici amendment is silent on. Whether we are going to take a vote to say that market manipulation is wrong.

What are we going to say to ratepayers who had to pay 88 percent increases, 61 percent increases, 54 percent increases, 71 percent increases, 43 percent increases? Again, these aren't increases for 1 year, these are increases that my ratepayers are stuck with. They are stuck with them because they signed an Enron contract and because we have a Federal Energy Regulatory Commission that basically says: Yes, they have been manipulated, but we don't care, you still have to pay that rate.

I do not want this to happen to other parts of the country. I don't want to see economies like the Northwest economy, or the west coast economy, which is a critical part of our Nation's economy, suffer the consequences of manipulation of energy prices. The American people, to whom I have to answer when I go home to Washington State, or in other parts of the country if I travel, say to me: How come I am stuck with an 88 percent rate increase? How come I am stuck with a 61 percent rate increase? How come I am losing my job because our company can't afford the high electricity costs? or, How come my school district is paying high electricity rates and we have to pay a higher tuition? How come our school district is asking for a levy because we have higher electricity rates? People are not even taking action on giving us relief.

We will come back at this body on what we should do about past bad actions. But what we need to do tomorrow on the Cantwell market manipulation amendment is say that market manipulation of energy prices is wrong and that an energy title that fails to address these issues is not satisfactory.

I could take the last few minutes I have tonight, of my 1 hour, and tell you six or seven things that are also wrong with the Domenici electricity title. There are lots of schemes in there that run towards a market-based system on regional transmission organization and standard market design that I know my colleagues from the South and parts of the West probably are not too anxious to hear about, aren't too excited that I put in play. The Domenici amendment is a step closer to that.

Why do they want more of a free market? Because they want to see having that free market without the regulatory aspects of the Public Utility Holding Company Act, or having oversight of mergers, or having these kinds of hammers making sure no manipulation takes place. They want to see how much further prices can be manipulated. They want to see how they can have a free rein on what really is a needed utility for the American people.

I think, regarding those RTO and standard market design schemes that are also part of the Domenici underlying amendment, it is the absolutely wrong time to be talking about moving towards more change. We have just had this crisis. My State is still paying for this crisis. We are going to still be paying for it for years.

I understand the President is coming to the Northwest in August. I hope the President has an answer for why his administration, and the Federal Energy Regulatory Commission, have not dealt with this issue. I hope he has an answer, to say to ratepayers why we should continue to be gouged on this issue; why we in the West, even though contracts have been manipulated, still have to pay those prices.

I would say to him: Mr. President, Washington State has a bright future. It still has a software economy. It still has an aerospace industry. Yes, it has been challenged, but it is still strong. We have a burgeoning biotech industry. We have a huge trade community. We have a vibrant, diverse agricultural economy throughout our State. But none of those can continue to exist with exorbitant energy prices that have been manipulated.

I hope when he comes to Washington State, he has an answer. I can tell you right now, that answer will not be well received if it is about just creating more supply. We are all for creating more supply in Washington State, and we are all for diversifying, but we are not for market manipulation.

We have to think through these other aspects of the Domenici amendment on RTOs, regional transmission organizations, standard market design and the other elements that really do call into question our ability to regulate the cost of electricity, for which the American people count on us. I hate to think, after 70 years of having a similar pyramid scheme push us into having the Public Utility Holding Company Act, that somehow this body will not get the message. Instead of just dealing with this crisis that we have dealt with in electricity—maybe not next year, maybe not in 5 years, but 7 years down the road—we end up having a similar crisis with natural gas, and, instead of just affecting the west coast and Washington ratepayers, it impacts the whole country.

Fair energy prices are part of having a healthy economy. Affordable energy prices help to continue to stimulate economic growth. But manipulated energy prices are not just. They are not reasonable. They are not in the public interest. This body ought to take strong action against them.

I know my colleagues all care about this issue. We wanted to do the right thing on securities law. We wanted to do the right thing on accounting law. It is time, with the Cantwell amendment tomorrow, to do the right thing on making sure that energy market manipulation is prevented and does not happen again.

I yield the floor.

Mr. MCCONNELL. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. MCCONNELL. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

UNANIMOUS CONSENT REQUEST—Executive Calendar

Mr. MCCONNELL. Mr. President, as in executive session I ask unanimous consent that at a time to be determined by the majority leader, after consultation with the Democratic leader, the Senate proceed to executive session for the consideration of Executive Calendar No. 310, the nomination of William H. Pryor, Jr., to be United States Circuit Judge for the Eleventh Circuit; provided further that there then be 4 hours for debate equally divided in the usual form; and that following that debate the Senate proceed to a vote on the confirmation of the nomination with no intervening action or debate; further, that the President then be immediately notified of the Senate's action and the Senate then resume legislative session.

Ms. CANTWELL. Mr. President, I object.

The PRESIDING OFFICER. Objection is heard.

Mr. MCCONNELL. Mr. President, I modify my request to allow for 8 hours of debate.

Ms. CANTWELL. Mr. President, I object.

The PRESIDING OFFICER. Objection is heard.

Mr. MCCONNELL. Mr. President, I modify that to ask for 10 hours of debate.

The PRESIDING OFFICER. Is there objection?

Ms. CANTWELL. I object, Mr. President.

The PRESIDING OFFICER. Objection is heard.

EXECUTIVE SESSION

NOMINATION OF WILLIAM H. PRYOR, JR., OF ALABAMA, TO BE UNITED STATES CIRCUIT JUDGE FOR THE ELEVENTH CIRCUIT

Mr. MCCONNELL. Mr. President, I now ask unanimous consent that the Senate proceed to executive session for the consideration of calendar No. 310, and I send a cloture motion to the desk.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

The clerk will report.

The assistant legislative clerk read the nomination of William H. Pryor, Jr., of Alabama, to be United States Circuit Judge for the Eleventh Circuit.

Mr. MCCONNELL. Mr. President, I further ask unanimous consent that the live quorum under Rule XXII be waived.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will report the cloture motion.

The legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of Rule XXII of the