

It's more elusive. We're not dealing with nuclear silos and coordinated structures necessary for an effective assault on American security, structures that we could begin to decipher and also technologically seek to undermine or in the event of warfare paralyze. We were really remarkably well informed and in some respects prepared for a central nuclear war to a degree to which we certainly are not today in dealing with the new challenges of security.

These can only be addressed if we have what we do not have, a really effective intelligence service. I find it appalling that when we went into Iraq we did not know if they had weapons of mass destruction. We thought they had weapons of mass destruction based largely on extrapolation. But that also means that our commanders in the field went into battle without any knowledge of the Iraqi WMD order of battle.

They did not know what units, brigades or divisions in the Iraqi armed forces were equipped with what kind, allegedly, of weapons of mass destruction. Were there chemical weapons on the battalion level or on the brigade level or were there special units in the different divisions that were supposed to use chemical weapons?

What about the alleged existence of bacteriological weapons? Who had them? Who had the right to dispose of them? What about the allegedly reconstituted nuclear program? At what level of development was it? Where were these weapons to be deployed? The fact is none of that was known regarding a country that was permeable, that was not as isolated as the Soviet Union.

All of that cumulatively testifies to a fundamental shortcoming in our national security policy. If we want to lead we have to have other countries trust us. When we speak that have to think it is the truth. This is why DeGaulle said what he did. This is why others believed us. This is why they believed us prior to the war in Iraq.

It isn't that the Norwegians or the Germans or whoever else had their own independent intelligence services. They believed us, and they no longer do. To correct that we have to have an intelligence that speaks with authority, that can be trusted, and if preemption becomes necessary can truly tell us that as a last resort preemption is necessary. Right now there's no way of knowing.

Ultimately at issue, and I end on this, is the relationship between the new requirements of security and the traditions of American idealism. We have for decades and decades played a unique role in the world because we were viewed as a society that was generally committed to certain ideals and that we were prepared to practice them at home and to defend them abroad.

Today for the first time our commitment to idealism worldwide is challenged by a sense of security vulnerability. We have to be very careful in that setting not to become self-centered, preoccupied only with ourselves and subordinate everything else in the world to an exaggerated sense of insecurity.

We are going to live in an insecure world. It cannot be avoided. We have to learn to live in it with dignity, with idealism, with steadfastness. Thank you.

#### FAIR AND ACCURATE CREDIT TRANSACTIONS ACT

Mr. BENNETT. Mr. President, this past Saturday, November 22, 2003, the Senate passed the Fair and Accurate Credit Transactions Act of 2003. Section 214 of the conference report, entitled "Affiliate Sharing," adds a new requirement for a notice and an oppor-

tunity for a consumer to opt-out of receiving solicitations from a person based on information that has been shared from an affiliate of that person.

Several exceptions to the notice and opt-out requirement are included in the bill. The first, and most logical one, is an exception for a business sending solicitations to its own customers. The conference report defines this as a "pre-existing business relationship."

The conference report further defines categories of relationships that qualify as a "pre-existing business relationship" and directs the regulators, including the Federal Trade Commission, to use their regulatory discretion to deem any "any other pre-existing customer relationship" as qualifying for the definition that may be appropriate but not clear from the statute.

The first category of relationships that the conference report definition of "pre-existing business relationship" lists is a relationship based on "a financial contract between a person and a consumer which is in force." "Financial contract," however, is not defined and it is not clear on its face what the term describes. In any case, I believe the operative concern is that it must be a contract in force.

As a conference, I believe the conference report intends that the term "pre-existing business relationship" includes a contractual relationship between a consumer and a person, where the consumer has requested the provision of a good or service, or affirmatively registered to receive a service, whether or not a fee is assessed.

Certain business models, such as those in the online world, do not follow the traditional fee for services model that characterizes the brick and mortar world. Financial consideration may not exchange up front with a customer, or at all for that matter. Accordingly, I urge the regulators to factor in new and innovative business models when issuing the regulations implementing section 214 of the Fair and Accurate Credit Transactions Act of 2003, particularly with regard to the definition of "pre-existing business relationship."

#### ENERGY POLICY ACT OF 2003

Mr. JEFFORDS. Mr. President, I have raised concerns about the troubling environmental provisions contained in the energy bill conference report several times during the course of debate on the measure, but I also wanted to share my concerns regarding the energy provisions of the bill. Energy policy is an important issue for America and one which my Vermont constituents take very seriously. The bill before us seeks to address important issues, such as the role of domestic production of energy resources versus foreign imports, the tradeoffs between the need for energy and the need to protect the quality of our environment, and the need for additional domestic efforts to support improvements in our energy

efficiency, and the wisest use of our energy resources. Given the importance of energy policy, this bill is a very serious matter and I do not take a decision to oppose such a bill lightly. In my view, this conference report does not achieve the correct balance on several important energy issues, as well as on a number of environmental issues.

In my work on this legislation, I have heard from large numbers of my constituents. They generally regard the bill as legislation written by a handful of people with the purpose of rolling back environmental protections and providing big corporations with giveaways at the expense of average Americans. Wally Elton from Springfield, VT called my office last Tuesday to voice his many concerns about the bill. Mr. Elton is skeptical about many facets of this legislation. "It makes energy the top priority for public lands, it relaxes clean air and clean water standards, which will have bad effects on public health. There is nothing for conservation—it is all about giving companies subsidies and granting them everything on their 'wish list'. In a time of deficit, we should not be doing this."

In short, Mr. Elton has deep concern regarding all aspects of this bill, right down to the way it was produced. "The bill is not a reconciliation of two bills, and was not the product of bipartisan effort," he said. "They just started over."

Many people echo Mr. Elton's concern about this bill being written behind closed doors, in "secret." My constituents tell me that a bill written without the valid contributions of a wide range of people will not reflect the feelings of the majority of Americans. It is widely known as "Cheney's bill."

Carol Groom of Warren said "They are rolling back our environmental protections and cleanup of MBTE will be put on the taxpayers." Mary Lou Treat of Putney, VT is worried about respiratory diseases caused from pollutants from coal-burning factories, while Catherine Audetter, also of Putney, said "wary of this legislation's unusual support of oil" and lack of focus on renewables. Susanna Liepmann of South Strafford is concerned about wildlife protection.

An energy expert in my State likened this bill to a horror movie: "My strong recommendation is to oppose this bill in any way you can. This bill should have been released on Halloween—it's a Frankenstein monster of mismatched body parts, most of them bad in and of themselves, and even worse when patched together."

For example, in the electricity title, it strengthens the hand of FERC by permitting mandatory reliability standards, which is fine, but not as big an improvement as some claim. But it weakens the hand of FERC to require transmission companies to join RTOs, and blocks FERC's hand on moving to better market structures. In New England, this means that transmission

companies now rule the roost, and can essentially dictate terms to the ISO—because their participation in the regional pool is voluntary. These are the regional monopolists—why is our ability to regulate them on a regional basis made subject to their voluntary agreement?

For another example, this bill is deferring to States by holding back FERC from mandating regional markets; but it harms States by repealing PUHCA without any meaningful replacement. Two years after the Enron disaster, and associated revelations and bankruptcies of many other major players, why are we repealing PUHCA without any serious look at what would be needed instead?

Of course, at a more fundamental level, a bill that gives enormous benefits to fossil extraction industries and does not improve CAFE standards is an embarrassment. The failure is mirrored on the electricity side, where it gives incentives for supply side electricity production and delivery with merely face-saving measures to advance efficiency and renewables. The list could go on.

My recommendation to the Senate is to put the Frankenstein bill out of its misery. Stop it any way you can. A filibuster is in order—and it should be about a lot more than MBTE.

These examples serve to express my constituents' frustration with this legislation. And their concern is reflected by communication that I have had with other energy sector experts as well. Ralph Nader, long regarded as an expert in vehicle fuel economy, is deeply concerned that this bill does nothing to increase the average fuel efficiency of our passenger cars, which is the worst in 20 years.

Steven M. Nadel, executive director of the American Council for an Energy-Efficient Economy, said in the *New York Times* on November 21, 2003, that the vehicle and energy efficiency provisions of the current energy bill "are only a Band-Aid." The 3-month investigation released by a joint U.S.-Canada government task force on the blackout documents a significant and overriding reason for the cascading outage that knocked out electricity from New York to Toronto to Detroit: No one was in charge of the sprawling, heavily loaded and trouble-prone part of the transmission grid running around Lake Erie. The portion of the midwestern grid centered in Ohio has long worried industry regulators, and the energy bill does create operating rules to lessen the risk of blackouts. But this conference report could do much more for reliability such as establishing uniform net metering requirements, promoting the upgrade of existing infrastructure rather than creating a frenzy over the construction of new lines, and investing in the deployment of new transmission technologies.

Finally, I have heard from Norman Milleron, former member of Berkeley's Energy Commission in the 1970s, that

the country could be doing much more to capture natural gas that is lost or inefficiently combusted at centrally located powerplants, promote the use of distributed generation, and advance research to promote energy efficiency and more effectively generate electricity from biomass.

This bill should have contained a renewable portfolio standard requiring electric utilities to generate or purchase a percentage of the electricity they sell from renewable sources. Fifty-three Senators support such a requirement, more than a majority of this body. We can and should do better on renewable energy sources. This bill should have set a serious target, we should have had a floor debate on this issue, and it should have been in the conference report.

In addition, this bill repeals the pro-consumer Public Utility Holding Company Act, among the Federal Government's most important mechanisms to protect electricity consumers. The conference report fails to protect electricity consumers, investors, and small businesses from abusive transactions between utilities and affiliate companies within the same corporate family. It also failed to include an amendment that I cosponsored, offered by the Senator from Washington, Ms. CANTWELL, to the fiscal year 2004 Agriculture Appropriations bill, which banned all of the Enron-like trading schemes. The Cantwell amendment passed with the support of 57 Senators, and should have been added to this bill.

As I have said before, the American people deserve better than this bill, and I cannot vote in favor of it as currently drafted. Both the environmental and the energy provisions of this measure will need to be greatly improved when we return next year to get my vote.

Mr. ROCKEFELLER. Mr. President, this past Friday I voted against the Energy bill conference report that was before the Senate. I did this despite having worked for many years on some of the bill's components that I believe will be good for West Virginia and the Nation, such as tax incentives and related research and development of clean coal technologies, incentives to increase domestic energy production through an expansion of existing credits for production from non-conventional sources, and incentives to promote greater use of alternative fuel vehicles. However, presented with the complete package under consideration, I had no qualms about voting to continue debate and to stop a vote on final passage.

As a Senator from a State where coal is not merely a home state industry, but a part of the spirit of the place, I did not come to this conclusion easily. Many parts of this bill will have little or no direct impact on my State, while parts of the bill could help West Virginia. My first concern when looking at any bill is how it will affect West Virginians. Only then do I look at the

broader scope of legislation. In this instance, these concerns coincide. Balancing all that is good against all that is bad in a large and complex bill, I believe this energy bill will do more harm than good to my state, especially to its coal industry, and to the nation as a whole.

The failure to produce a bill the Senate could pass is especially frustrating to me because I have argued for my entire Senate career that the country desperately needs a comprehensive and responsible energy policy. Recently this need has become obvious even to the casual observer. Huge portions of the population suffer blackouts, high natural gas prices threaten our manufacturing base, and highly volatile gasoline prices hurt so many of our citizens. Factors like these compel Congress to make prudent energy policy decisions for our nation. These include developing our domestic energy resources where it can be done without harming the environment, such as is the case with natural gas exploration in the Appalachian Basin that I have promoted by working to extend tax incentives for the types of non-conventional terrain common there. It should include funding advancements in technology, as I have advocated with my support for clean coal tax incentives and related R&D, to preserve the long-term viability of our coal industry. It should include common-sense programs to protect miners and other energy industry workers who do the dangerous work that allows our economy to grow. An energy policy we can all support would do more than pay lip service to improving the reliability of our electrical grid, or to the efficiency and conservation measures that must be part of an effective national energy strategy.

I am sad to say that the Energy conference report misses the mark. We would have done better to simply pass the much more balanced bill the Senate passed in 2002, and again this year. I encourage my Republican colleagues in the strongest terms possible to use that bill as a guide, and to move quickly, with active bipartisan cooperation, on this important issue early next year. This will produce a bill that will enjoy support on both sides of the aisle. I will not hesitate to oppose another flawed bill, like the one we rejected last week that I believe would hurt my State of West Virginia, no matter how many times the majority seeks to shut off debate.

This is a bill I had hoped would help sustain the long-term health of the coal industry. I recognize that the bill contains some clean coal tax incentives, which I have worked hard for years to enact into law, and related research and development. Unfortunately, an Energy conference closedout to Democrats made damaging cuts of 20 percent or more to Senate provisions designed to move the utility industry toward emission-free coal-fired power plants in the foreseeable future. The

R&D goal of \$2 billion over 10 years was cut, and then further diluted by including earmarked loan guarantees, including one to strip clean coal technology out of an Alaska demonstration project and reconfigure it as a conventional coal plant. The tax provisions, already reduced from a level coal and utility industry experts project as necessary to truly drive technological development, were cut further. That money was shifted to allow the oil and gas industries to receive almost 49 percent of all tax incentives, while coal, which produces more than 50 percent of the nation's electricity, has to be satisfied with only about 10 percent of the benefit of the bill.

What is probably most troubling for my State of West Virginia is that this bill would tilt a playing field that is far from level already dramatically in the direction of western coal. Under this legislation, companies out west that mine coal on public lands will be required to conduct much less stringent environmental analysis, and then be reimbursed by taxpayers for any costs incurred. At the same time, these companies will be able to mine this coal the taxpayers' coal—and pay lower royalties than have been required until now. Coal from the Powder River Basin is already cost-competitive in parts of the eastern United States with coal mined in Appalachia. Finally, this bill includes a completely unjustified repeal of a 4.3 cent per gallon excise tax railroads pay on diesel fuel, which will make it even cheaper for western coal companies to flood the eastern United States with their product.

Further, I am simply astonished that in a bill that gives an unprecedented amount of taxpayer money to special interests, and which purports to support coal, that House conferees not from coal states demanded that a small but critical provision of mine from last year's Senate bill be removed. This provision, which would have added no additional cost to the bill, called upon the Secretary of Labor to hire, train, and deploy as many Mine Safety Inspectors as she is currently authorized to have. This was meant to overcome a decline in the number of mine inspectors, and therefore, in mine inspections, that predates this administration. This situation, where mine inspectors spend far more time on the road traveling between mines than they ever spend inspecting them for compliance with federal health and safety rules, will become untenable if the nearly 25 percent of inspectors scheduled to retire in the next three to five years actually leave the already-depleted workforce. Let me reiterate: No new authorization; no demand for additional personnel to make sure the coal mines in this country are safe for the miners producing the fuel that generates more than half our electricity. Just hire and train them now so that planned retirements do not leave our miners unprotected by qualified Mine Safety Inspectors. Secretary Chao

signed off on the provision last year, and in 2003, Senator DOMENICI included it in his version of the bill. But it's not in the conference report. I wonder how, in an energy bill that is supposed to be about maximizing our domestic production, we can look the other way at miners' safety.

I would be remiss, if I did not give credit where credit is due. I have worked for many years on incentives to promote natural gas development from non-conventional sources. These so-called section 29 credits, including incentives for the capture of coalmine methane and the production of coke, would, respectively, reinvigorate natural gas drilling in the Appalachian Basin, lower the production costs and increase the safety of coal mining, and help the struggling American steel industry get back on its feet. I have advocated for these incentives during my entire career because I understand how much they would help my State of West Virginia. I was proud, both last year and in 2003, to lead a broad bipartisan coalition in the Senate pushing for extension and expansion of section 29. With regard to these provisions I commend the conferees. Unlike many pieces of our bill that went into conference with the House, I believe the section 29 provisions in the conference report have been greatly improved.

I trust that few Senators cast many votes that are decided purely on the numbers. How much something costs, or how much are we willing to give to this industry or that one play into our decisions, to be sure. But for this Senator, at least, figures tend to be obliterated by the people our actions are helping. We had a chance in this conference report to help a group of people I have taken into my heart, and for whom I probably have spent more hours working than any other. I am speaking of retired coal miners and their surviving spouses.

The Coal Act was created to protect the promise of lifetime health benefits for coal miners, who fueled the nation's post World War II economic growth, and who made salary and pension concessions in exchange for those health benefits. The Coal Act fulfilled a promise first made by President Truman in his 1946 agreement with legendary UMWA President John L. Lewis. In response to a coal strike in the late 1980s and a looming crisis in the miners' health funds, the first Bush administration created the Coal Commission to find a long term solution. Those recommendations became the basis for the Coal Act, which protected the health benefits of more than 100,000 retired miners. Today, there are almost 50,000 retired miners and widows who depend on the Coal Act for their health care security—their average age is about 78. Since enactment, the Coal Act has faced many challenges, but the combination of sharply escalating drug costs and a series of negative court decisions have resulted in a serious deficit in the Funds. That deficit will

mean a cut in health benefits next year if Congress does not act to stop it.

We had a chance, in the Energy conference, to shore up the Combined Benefit Fund while also helping make states whole with regard to what was owed them in outstanding Abandoned Mine Land contributions. I have heard promises that both Senate and House Chairmen have made to deal with this issue next year, when the AML Fund is up for reauthorization. For the 80-year old miners' widows who are facing a benefit cut next February, they have heard promises before, but in their behalf I must say that I sincerely hope that next year is not too late.

I am not happy that I must vote against this bill. I am sorry for my State of West Virginia, because it deserves better than this bill gives it. I'm sorry that our balanced bill of 2002 has been replaced with this lopsided monstrosity. I will continue to push my colleagues for a balanced and responsible energy policy for this nation, and I look forward to a time, hopefully soon, when I can vote for such a bill.

#### AGROTERRORISM: THE THREAT TO AMERICA'S BREADBASKET

Mr. AKAKA. Mr. President, I rise today to discuss how to prepare our Nation against a terrorist attack on our agriculture. Senator COLLINS, chairman of the Governmental Affairs Committee, is to be commended for holding a hearing last week on a critical issue which has received little congressional attention. I am deeply concerned about our agricultural security. In July and October 2001, I held two hearings on the Nation's preparedness for a bioterror attack. The threat to our agricultural industry by potential terrorists is not imagined; it is very real.

One expert likened the American agricultural industry to a large bulls-eye stamped across the United States. Dr. Peter Chalk, a RAND policy analyst, testified that an attack on American livestock could be extremely attractive to a terrorist for the following four reasons: (1) a low level of technology is needed to do considerable damage, (2) at least 15 pathogens have the capability of severely harming the agriculture industry, (3) a terrorist would not need to be at great personal risk in order to carry out a successful attack, and (4) a disease could spread quickly throughout a city, state, or even the country.

In Afghanistan, hundreds of pages of U.S. agricultural documents were discovered in al-Qaeda's possession. A recent unclassified CIA report confirmed that the September 11th hijackers were attempting to gain knowledge and access to crop-dusting aircraft which could be used to easily contaminate America's food supply.

An agroterrorism attack would have severe economic costs to agricultural producers, State and Federal Governments, and exporters of U.S. food products. The widespread contamination of