

am confident and hopeful that the Senators offering the amendments will agree to time agreements.

I also note—and I say this as respectfully as I can to the distinguished majority leader, who I know has such a difficult job—the electricity title is very complicated. I think we are approaching this in the right way, to move through it as quickly as possible. We are cooperating in that regard. It makes it really difficult, as somebody trying to help move this along and help the two managers, to have these stops and starts. We just get going on something and then we have votes on judges.

I want everybody to understand I know how important Senator HATCH and others believe it is about these judges. For example, on Estrada, this will be the seventh vote. The votes are not going to change. We will take an hour of debate on that and get off the Energy bill, and then we will go back on it. It makes it extremely difficult. Senator DOMENICI told all his committee members during the committee markup that we know the bill isn't perfect, but we will have an opportunity on the floor to amend that. The leader has stuck by that. I think that is important.

Just as an effort to help, because you have to move this bill along, for example, the two Bingaman amendments—Senator DAYTON cannot offer his amendments until those are disposed of. That is another procedural matter we have to deal with here.

We recognize we have a lot of work to do. We squeezed in yesterday an hour on trade while everybody was at the White House. I know the leader wants these two bills done, and the White House talked about how important they are. I think it is good we have time down as low as we do on a bill people feel so strongly about. From what I know, it should pass fairly easily—both of those trade agreements.

In short, I want the Senator from Tennessee, who, I repeat, has a tremendously difficult job, to understand we are doing everything we can to cooperate. I stated yesterday twice, and I will start the day off today saying, I don't know of a single Senate Democrat who doesn't want an Energy bill. The time line you have given us makes it really tough. We will cooperate in any way we can to move the schedule along despite the difficulties I see.

Mr. FRIST. Mr. President, first of all, I appreciate the assistance of the distinguished assistant leader on the other side of the aisle in moving the Energy bill forward. We had the opportunity yesterday to have a bipartisan meeting with the President of the United States, who once again called for this body to address energy as expeditiously as possible, allowing appropriate time for debate and amendment.

The President set out his energy policy 2 years and 2 or 3 months ago and has called upon this body to work its will. The House has done that and

passed a bill. We have not done that and the American people deserve it. That is why we brought this bill to the floor on May 6. That is why we have spent 17 days on the bill. That is why we are working as hard as we can to complete this bill in the next 3 days. I think we are working well together. It is a complex bill. We debated days and days last year. It has been taken through committee this year and marked up and brought to the floor appropriately. We are making real progress there.

The issue of judges, though, bothers me. It has been brought up every time I say we have to keep moving forward and that we owe it to the American people on this Energy bill, and then we have a few votes on judges. That is brought up as if that is slowing down progress on the Energy bill. It disturbs me.

First of all, all we are saying is let's give Miguel Estrada an up-or-down vote. That is all we want. If you don't like him and you want to vote against him, do it. We think that when judicial nominees come from the White House to us under advice and consent, we deserve the opportunity to express that advice and consent, and the only way we can do that is by voting. Each seat here has one vote. Let people express their will and, if the nominees are successful, fine. If not, we will move on. That is what we are saying.

I also want to make it clear on what we are having to do this week. Clotures filed on our side of the aisle don't require any debate. They require a vote and that is all we ask. Again, we want to keep things moving. We have been willing, as I said time and time again, to stack the votes among the other energy amendment votes. We don't require the debate or time. It is the other side that is requiring the time.

Another issue we have not really talked about, at least on the floor, is these votes on district judges, which is essentially unprecedented, which is being required of us today, if we look to the past, if we compare it to the past. The whole issue on both sides of the aisle is that many, if not most, of these could be approved by unanimous consent. Many, if not all, confirmations have to be by rollcall votes. Because there is this call from the other side of the aisle for rollcall votes, which traditionally in this body have been handled, for the most part, through voice votes, we are having to factor those rollcall votes, which take time, into the Senate schedule if we are going to demand justice around the country. If we do not get these judges confirmed, justice is, in effect, delayed. So they put a huge demand on us—really me as majority leader—demanding what has not been done in the past, rollcall votes, which take time and we have to factor them into the schedule, which does delay our schedule unnecessarily, and it means later hours at night and starting 30 minutes earlier in the day to accommodate the demands they are putting on us.

That, to me, is challenging. It is challenging that we work on this important Energy bill and, for the most part, these rollcall votes on the district judges are challenging.

To make that point, if we go back to the 105th Congress, there were 100 judges—20 circuit and 80 district judges. In that Congress, there were 25 rollcall votes—7 circuit, 18 district. So on about 25 percent of the 100 judges, rollcall votes were required.

If we move to the 106th Congress, there were 72 judges confirmed, and 18 of those were rollcall votes.

If we go to the 107th Congress, there were 100 confirmed and 59 rollcall votes.

And if we go to the 108th Congress, the present Congress, 37 judges have been confirmed. We have had to have 28 rollcall votes.

What is interesting is that of those 28 rollcall votes, 23 were unanimous. So we had rollcall votes, and all 100 Senators, or everybody present and voting, voted to confirm. Eighty-two percent of them were unanimous.

We can see this trend going back to the 104th Congress when there were 73 judges confirmed, and there were zero rollcall votes. What has happened in this Congress, because of the request from the other side of the aisle, is this demand that all of these judges, not just the circuit judges, but the district judges, have rollcall votes. Therefore, it has made it very difficult.

When it is brought up that our voting on judicial nominees is slowing the work of the Senate down, I ask the other side to at least consider what happened in the 103rd, 104th, and 105th Congresses in terms of the number of rollcall votes required.

#### ANNIVERSARY OF THE MEDICARE ACT

Mr. FRIST. Mr. President, I am going to come back later today and comment on the fact that today is the anniversary of Medicare. I know we want to move on to the pending bill. It was a historic day in 1965. On this day, President Johnson took the historic and bold action of signing Medicare into law.

Since that time, Medicare has helped millions of seniors cover their health care needs, but Medicare, in 1965, was designed to treat episodic illness and did not include the most powerful tool in medicine today—prescription drugs.

I mention this only because we have an opportunity before us, this body already having spoken its will in passing a comprehensive Medicare reform bill that strengthens and improves Medicare and includes prescription drugs. The House has done likewise. We are currently in conference. By working in conference, we will greatly strengthen and improve Medicare. Over the course of the day, I know there will be other statements, but there will also be a service and a statement about Medicare at the White House later today.

We have a great opportunity before us. I wish to share with my colleagues that the conference is going well and sometime after we come back from the recess, we will have a bill to bring back to this body.

Mr. REID. Will the Senator yield?

Mr. FRIST. Yes.

Mr. REID. Mr. President, I say not only did President Johnson sign that extraordinary bill—38 years ago?

Mr. FRIST. Yes, 1965; 38 years ago.

Mr. REID. As soon as he signed the bill, Congress went out of session. That was a good example.

Mr. FRIST. Well said.

#### RESERVATION OF LEADER TIME

The ACTING PRESIDENT pro tempore. Under the previous order, the leadership time is reserved.

#### ENERGY POLICY ACT OF 2003

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will now resume consideration of S. 14, which the clerk will report.

The legislative clerk read as follows:

A bill (S. 14) to enhance the energy security of the United States, and for other purposes.

Pending:

Campbell amendment No. 886, to replace "tribal consortia" with "tribal energy resource development organizations".

Durbin modified amendment No. 1385, to amend the Internal Revenue Code of 1986 to provide additional tax incentives for enhancing motor vehicle fuel efficiency.

Domenici amendment No. 1412, to reform certain electricity laws.

Bingaman amendment No. 1413 (to amendment No. 1412), to strengthen the Federal Energy Regulatory Commission's authority to review public utility mergers.

Bingaman amendment No. 1418 (to amendment No. 1412), to preserve the Federal Energy Regulatory Commission's authority to protect the public interest prior to July 1, 2005.

The ACTING PRESIDENT pro tempore. Under the previous order, there shall be up to 2½ hours of debate on the amendment to be offered by the Senator from Washington, Ms. CANTWELL, with 30 minutes under the control of the chairman, and 2 hours under the control of the Senator from Washington. The Senator from Washington.

AMENDMENT NO. 1419 TO AMENDMENT NO. 1412

(Purpose: To prohibit market manipulation)

Ms. CANTWELL. Mr. President, I call up amendment No. 1419.

The ACTING PRESIDENT pro tempore. The clerk will report.

The legislative clerk read as follows:

The Senator from Washington [Ms. CANTWELL], for herself, Mr. BINGAMAN, Mrs. FEINSTEIN, Mr. HOLLINGS, Mr. WYDEN, Mrs. BOXER, and Mrs. MURRAY, proposes an amendment numbered 1419 to amendment No. 1412:

Strike section 1172 and insert the following:

#### SEC. 1172. MARKET MANIPULATION.

(a) PROHIBITION.—Part II of the Federal Power Act (as amended by section 1171) is amended by adding at the end the following:

#### "SEC. 219. PROHIBITION ON MARKET MANIPULATION.

"It shall be unlawful for any person, directly or indirectly, to use or employ, in connection with the purchase or sale of electric energy or the purchase or sale of transmission services subject to the jurisdiction of the Commission, any manipulative or deceptive device or contrivance in contravention of such regulations as the Commission may promulgate as appropriate in the public interest or for the protection of electric ratepayers."

(b) RATES RESULTING FROM MARKET MANIPULATION.—Section 205(a) of the Federal Power Act (16 U.S.C. 824d(a)) is amended by inserting after "not just and reasonable" the following: "or that result from a manipulative or deceptive device or contrivance in violation of a regulation promulgated under section 219".

(c) ADDITIONAL REMEDY FOR MARKET MANIPULATION.—Section 206 of the Federal Power Act (16 U.S.C. 824e) is amended by adding at the end the following:

"(e) REMEDY FOR MARKET MANIPULATION.—If the Commission finds that a public utility has knowingly employed any manipulative or deceptive device or contrivance in violation of a regulation promulgated under section 219, the Commission shall, in addition to any other remedy available under this Act, revoke the authority of the public utility to charge market-based rates."

Ms. CANTWELL. Mr. President, I thank the clerk for reading this amendment, particularly at such an early hour of the morning. The reading of the amendment by the clerk shows exactly what we are up to this morning; that this is a simple amendment and a simple action we are asking the Senate to take. We are simply saying market manipulation under the Federal Power Act cannot be just and reasonable, and market manipulation should be found, under the Federal Power Act, by the Federal Energy Regulatory Commission, to be a wrongful act.

It did not take long to read that amendment but, as I said to this body last night, the fact that such law is not currently on the books has caused the ratepayers in my State great harm. It has caused ratepayers in Snohomish County, where I happen to live, a 54-percent rate increase. It has caused ratepayers in King County a 61-percent rate increase. It has caused ratepayers in Vancouver, WA, and businesses in Vancouver, WA, that can easily move to other parts of the country, an 88-percent increase. In eastern Washington, the part of the State hardest hit economically, where jobs are few and farmers struggle, it has caused ratepayers a 71-percent rate increase.

We are not talking about a rate increase that is just for 1 year. We are talking about long-term Enron contracts that were manipulated—knowingly manipulated—and my ratepayers are stuck paying those contracts for the next 5, 6, and 7 years without relief.

We are here today to say one thing and be clear about it: This kind of manipulation that gouges ratepayers should be prohibited. This body should be clear. We should be unequivocal. We should say, as other entities have said, that this kind of manipulation is wrong and needs to be corrected.

I have a lot to say on this amendment this morning, but I know I am going to be joined by many of my colleagues from the West who have had their economies wrecked by gouging and illegal practices. I want to give them an opportunity to say something, too, because I think the face of the west coast economy and what it has meant for ratepayers needs to be clear.

We are trying to say with the Cantwell-Bingaman amendment that we do not want to see this kind of action happen on natural gas prices in other parts of the country. We do not want to see this take place 4 months from now, or 2 years from now.

Let's be really clear. These kinds of practices that were deployed by Enron, the various schemes of Fat Boy, Ricochet, Megawatt Laundering, and Load Shift are illegal.

I will yield 10 minutes to my colleague from Washington State, Mrs. MURRAY, who knows all too well that this crisis has caused real hardship in our State. She has been outspoken on this issue as well and sent many letters to various entities, including the Federal Regulatory Energy Commission, talking about how we need to make changes.

I yield her 10 minutes this morning to talk about some of the impacts she has seen firsthand.

The ACTING PRESIDENT pro tempore. The Senator from Washington, Mrs. MURRAY.

Mrs. MURRAY. Mr. President, I rise today to support the amendment that has been offered by my colleague from Washington State, Ms. CANTWELL, that will help protect our consumers from this electricity market manipulation.

I begin by thanking Senator CANTWELL for her tremendous work on the energy commitment and her long-time work on trying to make sure consumers in my home State of Washington finally receive the attention and the help they need from us at the Federal level because of the gouging that has gone on in this market manipulation. We have seen the dramatic impacts that she has so eloquently talked about.

I thank her for speaking out on behalf of our Pacific Northwest consumers who are hurting. We have had the first, second, or the third highest unemployment rate for almost 2½ years, much of that precipitated by the fact of the energy spike costs that have hit the west coast, causing many of our cold storage companies, the aluminum industry, to shut down. They are laying people off. The effects of that reverberated throughout our economy, as other industries were hurt. Even our schools were hurt as they had to lay off teachers in order to pay energy bills.

It has had a tremendous impact on our economy and continues to do so. Bringing this amendment to the Senate floor today is absolutely critical. If we are going to have an electricity title, and if we do not deal with what happened in market manipulation, we are only going to see this continue.