the vote and not spend a lot of time discussing the issue.

Second, let me reinforce a point I made this morning; that is, we are being required by the other side of the aisle to use a lot of our valuable time, time that is increasingly valuable as we get closer and closer to the recess, to rollcall votes on district judges. That has not been done in the past. Once again, I ask and, in fact, plead with the other side to change this request they have made that we spend so much time on rollcall votes which historically have been unnecessary.

On the issues of Chile and Singapore, I have made it very clear that we will move those to a time after energy unless we are not dealing with an issue on energy. I will talk to the other side of the aisle. If there is debate on Chile and Singapore, we will probably do it after we have the final energy votes this week. Then we will take up Chile and Singapore trade issues at that point.

The same issue will come up tomorrow because we will be voting on Judge Pryor. I am sure the same issues will come up about spending time and people will come to the floor and spend time.

I make it clear, our request last night was to set aside time, some time in the future—not necessarily this week—to debate and discuss Pryor and have an up-or-down vote on Pryor. That was refused. Again, it would not have been this week—it could be sometime during September—but there was an objection to that unanimous consent request. Thus, we will proceed with a vote tomorrow.

Again, I make it clear my initial request is not to use a lot of time simply to be able to go to Pryor but that we proceed aggressively on energy. The American people deserve it. We will do it in an orderly way as we go forward today. I am confident we can complete this Energy bill if we stay focused, work together. The American people deserve it. I am confident we can do that.

I yield the floor.

CLOTURE MOTION

The PRESIDING OFFICER. Under the previous order, the clerk will report the motion to invoke cloture.

The bill 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. 21, the nomination of Miguel A. Estrada to be United States Circuit Judge for the District of Columbia Circuit.

Bill Frist, Orrin G. Hatch, Judd Gregg, Norm Coleman, John E. Sununu, John Cornyn, Larry E. Craig, Saxby Chambliss, Lisa Murkowski, Jim Talent, Olympia Snowe, Mike DeWine, Michael B. Enzi, Lindsey Graham of South Carolina, Jeff Sessions, Lincoln Chafee, Wayne Allard.

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 Miguel A. Estrada to be United States Circuit Judge for the District of Columbia Circuit shall be brought to a close?

The yeas and nays are mandatory under the rule. The clerk will call the roll.

The legislative clerk called the roll.

Mr. REID. I announce that the Senator from Massachusetts (Mr. KENNEDY) and the Senator from Massachusetts (Mr. KERRY) are necessarily absent.

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

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

The yeas and nays resulted—yeas 55, nays 43, as follows:

[Rollcall Vote No. 312 Ex.]

YEAS—55

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

NAYS—43

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

NOT VOTING—2

Kennedy	Kerry

The PRESIDING OFFICER. On this vote, the yeas are 55, the nays are 43. Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is rejected.

LEGISLATIVE SESSION

The PRESIDING OFFICER. The Senate will now return to legislative session.

ENERGY POLICY ACT OF 2003—Continued

The PRESIDING OFFICER. The Senator from Wisconsin.

Mr. FEINGOLD. Madam President, I ask unanimous consent that the pending amendment be set aside.

The PRESIDING OFFICER. Is there objection?

Mr. DOMENICI. I object.

The PRESIDING OFFICER. Objection is heard.

Mr. DOMENICI. Does the Senator want to offer a second-degree amendment to the electricity amendment?

Mr. FEINGOLD. Yes.

Mr. DOMENICI. I did not know that. I did not understand that.

Mr. FEINGOLD. My attempt was to set aside what I thought was a pending amendment to your amendment and then to offer a different amendment to your amendment. And I make that request again.

Madam President, I ask that in the form of a unanimous consent request, that the pending amendment to the Domenici amendment be set aside.

Mr. DOMENICI. Well, they have all been currently set aside for amendments to the electricity amendment, Madam President. That is why I wondered, what is the need for the unanimous consent request?

The PRESIDING OFFICER. There are currently pending second-degree amendments which would have to be set aside.

Mr. DOMENICI. I have no objection to the request.

Mr. REID. Will the Senator from Wisconsin yield?

Mr. FEINGOLD. I yield to the Senator from Nevada.

Mr. REID. Madam President, I direct this question through you to the distinguished manager of the bill for the majority. I have had a number of inquiries during the vote as to whether or not, when the Secretary of Defense comes here at 4 o'clock this afternoon, we are going to take a recess. We have a number of Democrats who are going to attend. I assume there will be members of the majority attending that briefing also.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. Madam President, if somebody is discussing an amendment, and there is business on the floor of the Senate, we will not recess; we will work.

The PRESIDING OFFICER. Without objection, the request of the Senator from Wisconsin is granted.

Mr. FEINGOLD. Thank you, Madam President.

AMENDMENT NO. 1416 TO AMENDMENT NO. 1412

Madam President, I have an amendment at the desk.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Wisconsin [Mr. FEINGOLD], for himself and Mr. BROWNBACK, proposes an amendment numbered 1416.

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

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

The amendment is as follows:

(Purpose: To protect the public and investors from abusive affiliate, associate company, and subsidiary company transactions)

Beginning on page 35, strike line 10 and all that follows through page 35, line 15, and insert the following:

SEC. 1156. AFFILIATE, ASSOCIATE COMPANY, AND SUBSIDIARY COMPANY TRANSACTIONS.

Section 204 of the Federal Power Act (16 U.S.C. 824c) is amended by adding at the end the following:

''(i) TRANSACTIONS WITH AFFILIATES AND ASSOCIATED COMPANIES.—

''(1) DEFINITIONS.—In this subsection, the terms 'affiliate', 'associate company', 'public utility', and 'subsidiary company' have the meanings given the terms in section 1151 of the Energy Policy Act of 2003.

''(2) REGULATIONS.—

''(A) IN GENERAL.—The Commission shall promulgate regulations that shall apply in the case of a transaction between a public utility and an affiliate, associate company, or subsidiary company of the public utility.

''(B) CONTENTS.—At a minimum, the regulations under subparagraph (A) shall require, with respect to a transaction between a public utility and an affiliate, associate company, or subsidiary company of the public utility, that—

''(i) the affiliate, associate company, or subsidiary company shall be an independent, separate, and distinct entity from the public utility;

''(ii) the affiliate, associate company, or subsidiary company shall maintain separate books, accounts, memoranda, and other records and shall prepare separate financial statements;

''(iii)(I) the public utility shall conduct the transaction in a manner that is consistent with transactions among nonaffiliated and nonassociated companies; and

''(II) shall not use its status as a monopoly franchise to confer on the affiliate, associate company, or subsidiary company any unfair competitive advantage;

''(iv) the public utility shall not declare or pay any dividend on any security of the public utility in contravention of such rules as the Commission considers appropriate to protect the financial integrity of the public utility;

''(v) the public utility shall have at least 1 independent director on its board of directors;

''(vi) the affiliate, associate company, or subsidiary company shall not acquire any loan, loan guarantee, or other indebtedness, and shall not structure its governance, in a manner that would permit creditors to have recourse against the assets of the public utility; and

''(vii) the public utility shall not—

''(I) commingle any assets or liabilities of the public utility with any assets or liabilities of the affiliate, associate company, or subsidiary company; or

''(II) pledge or encumber any assets of the public utility on behalf of the affiliate, associate company, or subsidiary company;

''(viii)(I) the public utility shall not cross-subsidize or shift costs from the affiliate, associate company, or subsidiary company to the public utility; and

''(II) the public utility shall disclose and fully value, at the market value or other value specified by the Commission, any assets or services by the public utility that, directly or indirectly, are transferred to, or otherwise provided for the benefit of, the affiliate, associate company, or subsidiary company, in a manner that is consistent with transfers among nonaffiliated and nonassociated companies; and

''(ix) electricity and natural gas consumers and investors shall be protected against the financial risks of public utility diversification and transactions with and among affiliates and associate companies.

''(3) NO PREEMPTION.—This subsection does not preclude or deny the right of any State or political subdivision of a State to adopt and enforce standards for the corporate and financial separation of public utilities that are more stringent that those provided under the regulations under paragraph (2).

''(4) PROHIBITION.—It shall be unlawful for a public utility to enter into or take any step in the performance of any transaction with any affiliate, associate company, or subsidiary company in violation of the regulations under paragraph (2).''.

Mr. FEINGOLD. Madam President, I rise today to offer an amendment on behalf of myself and the Senator from Kansas, Mr. BROWNBACK. I am pleased that the Senator from Kansas is joining me in this effort, and he has done so because I know he shares my view that the repeal of the Public Utility Holding Company Act in the underlying bill creates a serious regulatory void and market flaw that Congress should correct.

I am so pleased this is a bipartisan effort. I believe we have broad support in this body and beyond for these amendments.

These amendments would improve on the bill by making clear the actions that the Federal Energy Regulatory Commission—or FERC—must take to ensure that deregulated holding companies do not outcompete our small businesses, damage their financial standing, and then pass the costs of bad investments to consumers.

Our amendment is supported by a wide and impressive coalition of business, labor, financial, and consumer groups which include: the Independent Electrical Contractors, Air Conditioning Contractors of America, Plumbing-Heating-Cooling Contractors, Associated Builders and Contractors, National Electrical Contractors Association, Mechanical Contractors, Sheet Metal Air Conditioning Contractors, the International Brotherhood of Electrical Workers, the National Alliance for Fair Competition, the Small Business Legislative Council, Consumers for Fair Competition, and the Association of Financial Guaranty Insurors.

The Senator from Kansas and I are concerned because electricity is not like other commodities. Electricity is essential to public well-being. When this bill is enacted and the Public Utility Holding Company Act is repealed, a strong incentive will exist for large utilities with the financial resources and the potential to exercise market power to get larger. Already, the electric utility industry is undergoing rapid consolidation. In the past 3 years alone, there have been more than 30 major utility mergers and acquisitions, creating large multistate holding companies, including several in my own home State and with utilities in Minnesota that serve Wisconsin. Many companies have seen their stock plunge and credit ratings downgraded, and these companies are now prime buy-out targets.

I acknowledge that deregulation is not inherently bad and should not always be prevented. It can produce efficiencies, economies of scale and cost savings for electrical consumers. However, it can also reduce competition, increase costs, and frustrate effective regulator oversight. This amendment protects consumers from assuming the costs and risks of utility diversification into non-utility businesses, prevents utilities from subsidizing affiliate ventures and competing unfairly with independent businesses, and protects utility investors. It does so by requiring FERC to issue regulations that require affiliate, associate, and subsidiary companies to be independent, separate, and distinct entities from public utilities; maintain separate books and records; structure their governance in a manner that would prevent creditors from having recourse against the assets of public utilities; and prohibit cross-subsidizing, or shifting costs from affiliate, associate, or subsidiary companies to the public utilities.

The Public Utility Holding Company Act was enacted in 1935 to rein in the pervasive economic and political sway that holding companies held over the Nation's public utilities at that time. Studies conducted by the Federal Trade Commission and the U.S. House of Representatives at the time demonstrated that the holding companies, which controlled approximately 80 percent of the Nation's gas and electric utilities, were exploiting both consumers and investors. At the time PUHCA was passed, 16 major holding companies and their utility subsidiaries produced more than three-quarters of the electric energy in this country.

Individual States and localities enacted their own laws, but were unable to control these multi-State holding companies—many of which also held investments in foreign countries—and their utility subsidiaries. Holding companies created organizational structures that extended across State lines, specifically to place the holding companies beyond the regulatory reach of the individual State commissions. In fact, registered holding companies were formed specifically for the purpose of avoiding regulation. Holding companies leveraged their utility assets to gain financing for risky investment ventures and engaged in anticompetitive behavior.

PUHCA requires that proposed investments benefit the utility system, and not harm ratepayers, shareholders or the public interest.

PUHCA requires that holding companies seeking to acquire utilities obtain preapproval from the Securities and Exchange Commission. In addition, a particular class of holding companies, known as ''registered holding companies,'' those holding companies with utility subsidiaries in more than one State, must obtain SEC approval also for acquisitions of nonutility businesses. The SEC has authority to oversee and provide advance approval for the complicated financial transactions of the registered holding companies,

including intrasystem transactions and diversification into unregulated businesses.

PUHCA does these things, but the bill before us repeals PUHCA. As a result, registered holding companies will be able to freely diversity into unregulated businesses, and to engage in interaffiliate transactions in which the holding company and nonutility businesses drain financial resources and key assets from the utility businesses.

In California, for example, holding company maneuvers have left California utilities in a weakened financial condition. Billions of dollars have been moved out of their utility companies into the holding company and then into their unregulated affiliates which are protected by laws that now put this cash beyond the reach of even the holding company. As a result, the utilities have had too little cash to carry out their utility obligations.

In addition, even with PUHCA, we are already experiencing concerns about utilities expanding into electricity-related services and outcompeting small businesses in my State. Small contractors can't compete against big utilities in areas like energy efficiency upgrades to private homes, when big utilities can use existing assets like personnel, equipment, and vehicles to perform those services. When PUCHA is repealed, utilities will be able to expand into other business areas, and we should make certain that we protect small businesses.

This amendment is good public policy, and it will strengthen the Senate's position in Conference with the House of Representatives. I urge my colleagues concerned about ensuring fairness in a deregulated system to support this amendment.

Let me say how delighted I am to be working with the Senator from Kansas who I know has a deep and abiding commitment to small businesses as well.

The PRESIDING OFFICER. The Senator from Kansas.

Mr. BROWNBACK. Madam President, I thank my colleague from Wisconsin for offering this amendment. I join him on it.

The amendment my colleague from Wisconsin has described first came to my attention by a constituent and a friend of mine, D.L. Smith, Topeka, KS. D.L. is a great K-Stater, loves his country, has a medium size contracting business. He employs between 57 and 100 Kansans. Founded in 1972, the DL Smith companies provide commercial, institutional, and industrial electrical services and, in recent years, even a little bit of telecommunications. They have been expanding slightly. D.L.'s service trucks can be seen as far west as Salina and as far south as Pittsburg, KS.

DL's is a successful medium size business by Kansas standards. It might grow and could become more successful. But it might not be able to grow and could falter. The success or failure of this business will in great part be dependent upon the dispensation of this amendment.

This is what he brought to my attention. D.L. said: Look, what is taking place is we are having to compete with these large utility companies that he asserts are using their regulated business to subsidize the unregulated business and drive the small contractors out of business. That is my 15-minute speech, what he said and the examples he gave.

What he does now is help in the contracting of electrical services into homes. He is having to compete now with very large utility companies that are looking at other areas they can expand into to be able to do contracting work and, in the process, are driving these small to mid-size businesses out of business.

Such diversification on the part of the utility companies has been the cause of significant and continuing harm to many small private sector firms. Utility-owned subsidies and affiliates now operate in almost every imaginable type of business, from auto salvaging to resort management to real estate brokerage to, more frequently, electric and mechanical contracting. Utilities now routinely sell appliances, provide plumbing, heating and cooling, and service contracts, engage in insulation work, sell and install storm windows and doors, provide outdoor lighting and interior lighting fixtures.

Normally as a free market Republican, I wouldn't have much problem with that. This is a free country. People can compete the way they want to, the way they choose. The problem with this is, you have a regulated utility that has a clear income source that is dependent upon ratepayers that is set by the Government, and they have a flow of resources that is established by the public sector. And it is a rate of return based upon cost plus.

The challenge—and what the D.L. Smiths of the world are feeling—is the subsidization of that regulated business going into the unregulated field and driving small to mid-size contractors out of business. Too many companies are doing a very natural thing—trying to grow, get a little more business here and there for their shareholders to try to be able to hold down the cost of electrical rates to their customers. That is understandable. The problem is, you are using that regulated utility where they don't have competition coming in there to compete against an unregulated field and, in many cases, driving out small to mid-size contractors like the D.L. Smiths of Topeka, KS, and others.

Private sector businesses both small and large welcome competition. Unfortunately, there have been numerous instances where utilities have engaged, in some cases, in unfair and abusive competitive behavior which undermines true competition in these impacted markets.

The primary obstacle to free, fair, and open competition in these markets is the ability of a utility to provide its affiliates and subsidiaries with artificially lower costs of operation through cross-subsidization and the failure to properly recover the true costs of equipment and services provided by the utility to such unregulated operations. These advantages arise neither from size, nor efficiency, but rather from the corporate relationship such operations have with its related utility.

The utility companies are doing, by and large, a great job in serving the public, providing utility rates at as low a cost as possible. That is a good thing. They work conscientiously to do that. We have a number of very good utility companies in the State of Kansas. When they use the cross-subsidization, which is what we are trying to prevent in this bill, to run out small and midsize businesses, that is when we have a problem, particularly when denying access to newly emerging markets, a key to future expansion, job growth, and profitability for this country.

For those reasons, I support this amendment. I also recognize my colleagues who wrote the bill, the Senators from New Mexico, particularly Senator DOMENICI. They are trying to address this issue. We put forward an amendment that we hope will strengthen the bill, help it out, one that doesn't negatively impact the electrical utility businesses, other than to say here is the area in which you can operate. Outside of that, this should be left to other businesses, particularly small and midsize ones, to allow them to grow.

The amendment we put forward has broad support from the contracting community, electrical contractors, plumbing, heating, and mechanical contractors because they are feeling this onslaught. Most of my colleagues, I guess, have been contacted by the contractors, most of which are small to midsize businesses operating in communities throughout the country, that want this Feingold-Brownback amendment to be added to the Energy Policy Act of 2003.

I recognize the work that the chairman and ranking member have put on this particular topic. We hope this amendment can be accepted because we think it strengthens the bill.

With that, I yield the floor.

The PRESIDING OFFICER. The Senator from Wisconsin is recognized.

Mr. FEINGOLD. Madam President, I thank the Senator from Kansas for his excellent work. It is an excellent example of why this is so important. I appreciate his support in working with me on it.

I ask unanimous consent that the Senator from Oregon, Mr. WYDEN, be added as a cosponsor of the amendment.

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

Mr. FEINGOLD. Madam President, I ask unanimous consent that a list of organizations in support of the amendment be printed in the RECORD at this time.

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

SUPPORT FOR FEINGOLD-BROWNBACK AMENDMENT ON AFFILIATE TRANSACTIONS

The following organizations support this amendment:

American Association of Retired People.

AFGI: Association of Financial Guaranty Insurors; ACE Guaranty Corp.; Ambac Assurance Corp.; CDC IXIS Financial Guaranty North America, Inc.; Financial Guaranty Insurance Company; Financial Security Assurance; MBIA Insurance Corp.; Radian Reinsurance Inc.; RAM Reinsurance Company; XL Capital Assurance.

American Iron and Steel Institute.

Consumers for Fair Competition.

Consumers Union.

Electricity Consumers Resource Council (ELCON): A.E. Staley Manufacturing Company; Air Liquide; Alcan Aluminum Corporation; Anheuser-Busch Companies, Inc.; BOC Gases; BP; Central Soya Company, Inc.; Chevron Texaco; Delphi Automotive Systems; Eastman Chemical Company; E.I. du Pont de Nemours & Co.; ExxonMobil; FMC Corporation; Ford Motor Company; General Motors Corporation; Honda; Intel Corporation; International Paper; Lafarge; MG Industries; Monsanto Company; Occidental Chemical Corporation; Praxair, Inc.; Rockwell Automation; Shell Oil Products; Smurfit-Stone Container Corporation; Solutia Inc.; Weyerhaeuser.

IBEW.

MBIA Insurance Corporation.

Municipal Electric Utilities of Wisconsin.

National Alliance for Fair Competition, which includes: Independent Electrical Contractors; Mechanical Contractors Association of America; National Electrical Contractors Association; Plumbing-Heating-Cooling Contractors-National Association; Sheet Metal and Air Conditioning Contractors' National Association; Air Conditioning Contractors of America; Associated Builders and Contractors.

National Association of State Consumer Advocates.

Public Citizen.

Small Business Legislative Council (90 small business trade associations).

U.S. Public Interest Research Group.

Wisconsin Public Power, Inc.

Sierra Club.

Mr. FEINGOLD. Madam President, I am pleased that the ranking member of the committee, Senator BINGAMAN, is indicating positive remarks about this amendment as well. I wonder if he may wish to make some remarks in support at this time.

Mr. BINGAMAN. Yes. Madam President, first, I ask unanimous consent that I be added as a cosponsor, if I am not already one, on the amendment.

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

Mr. BINGAMAN. Madam President, I compliment the Senator from Wisconsin and the Senator from Kansas for proposing this amendment. In my view, it is offered in the same spirit in which the earlier amendment I offered related to mergers was offered, and also the amendment by Senator CANTWELL related to market manipulation.

I think all three of those amendments have somewhat the same purpose, which is to strengthen this bill, to ensure there are necessary protections for consumers, ratepayers, and for others who, in the case of the Senator from Kansas, pointed out there are many contractors in the private sector who feel an amendment such as this is essential if they are going to be able to compete and not face some type of unfair competition from companies that are part of holding companies that are owned by utilities or that also own utilities.

Let me back up here and talk a little about the Public Holding Utility Company Act, because that is the basic issue that causes this amendment to come to the floor. As part of this bill, the proposal is that we repeal the Public Utility Holding Company Act. That was in the bill passed in the previous Congress—the repeal of that. I have supported that but I have only supported it if it were clear that we were replacing those authorities and those responsibilities for regulation and oversight at the Federal level with other effective authorities for oversight and regulation.

My conclusion is that the Domenici substitute, as it now stands, does not put in place effective regulatory tools to ensure that at the Federal level we can prevent the abuses that caused the Public Utility Holding Company Act to come into existence in the first place.

There is a very useful article that I commend to all of the Senate in today's business section of the Washington Post, written by Peter Behr. It is called ''Energy Monoliths Could Return; Law Limiting Companies' Reach Faces Repeal.''

Well, the law that limits a company's reach that this article is talking about is the Public Utility Holding Company Act. As I say, there is general agreement that the act has become an anachronism; it is way too complex; that we need to modernize the Federal regulatory scheme in regard to utilities. So the Public Utility Holding Company Act should be repealed but it needs to be replaced with something that also constitutes effective regulation. Let me refer to the chart. I don't know if anybody can see it.

This tries to rapidly describe what is involved with the Public Utility Holding Company Act, or PUHCA, jurisdiction. It basically says that for a company which owns, as the chart shows, other affiliates—a utility generating and marketing affiliate—there are real restrictions on what that holding company can do with regard to any other acquisitions of utilities. Essentially, you can acquire one more utility, or you can own one utility, and then if you own any more than that, you come under a very strict set of requirements that are presently in the Public Utility Holding Company Act. Those requirements should be repealed but we need something that is effective.

This amendment tries to do that and would do it in an effective way. It accomplishes the same goal that I was trying to accomplish as part of—or one of the two goals I was trying to accomplish in the merger amendment I offered earlier yesterday, by requiring FERC to establish real firewalls around the utility affiliate of a holding company to prevent the assets of the utility from being used to prop up risky diversification ventures. That is, you cannot use the assets of the utility to support a contracting company, as an example, which is the kind of thing that the Senator from Kansas was talking about having to compete with.

I think the language of the amendment is extremely clear. It makes it very clear that the Federal Energy Regulatory Commission shall promulgate regulations, shall apply in the case of a transaction between a public utility and an affiliate or associate company of the public utility—and that is what the chart shows—where you have a utility and another affiliate. It basically builds a firewall and gets at the issue I was talking about when I offered my amendment yesterday evening; that is, the public utility shall not cross-subsidize or shift costs from the affiliate or associate company to the public utility. It cannot encumber the assets of the public utility in order to prop up some other business. That is only fair as far as the ability of the other business to compete in the marketplace, but it is particularly important as security for the ratepayers of that public utility.

There are an enormous number of examples. I went through several of them yesterday. Let me refresh people's memories. There are many examples in the last year—in recent months, in fact—where utilities have been getting into other activities and have encumbered the assets of the utility, and the ratepayers of the utility have been adversely affected.

One example I mentioned yesterday, and I will mention it again because it does relate to Kansas, is West Star. It is the largest utility in the State of Kansas. It is owned by a holding company. West Star came under scrutiny last year because of problems that it encountered with nonutility affiliates.

West Star had invested in a number of unregulated ventures, including a home security company, and the home security company did not do well. So the holding company, which owned both the utility and the security company, shifted $1.6 billion of debt from its unregulated companies to the utility. It loaded these debts onto the utility, and then you have essentially the ratepayers of that utility left having to pay $100 million per year because of the activities of unregulated affiliates that had nothing to do with the utility itself.

Some would say this is something the States should handle. The Kansas Corporation Commission began an investigation this last summer into this situation. The Justice Department began an investigation. The Federal investigation resulted in the indictment of the CEO of the company for bank fraud, and the investigation of the Kansas Corporation Commission, which

is the State regulatory agency, resulted in a dramatic restructuring of the company to separate the utility from the unregulated companies of the holding company.

Some would say: They solved it at the State level. Why should we be having any authority at the Federal level? They solved it at the State level for the period going forward, but they did not solve it prior to this arrangement being put in place and, accordingly, the ratepayers are paying $100 million a year to repay the debt that the utility has acquired because of this activity.

One other example I mentioned yesterday that I will mention again is Portland General Electric. Portland General Electric was in the unfortunate position of having been acquired by Enron, and the Oregon Public Utility Commission required that a number of conditions be met before it approved that acquisition. That was helpful.

Frankly, they acted wisely in requiring those conditions. But even that was not adequate to fully insulate that utility from the collapse of Enron and from the collapse of the other many businesses in which Enron was engaged. The fate of the parent company has had a very adverse effect on the ability of Portland General to gain access to capital markets. As I say, that is just one of many other examples that can be cited.

This amendment Senator FEINGOLD and Senator BROWNBACK are offering is extremely meritorious. It is an essential part of what we ought to be doing if we are going to avoid getting back into a situation where cross-subsidy is permitted. We ought to have a bright line requirement that the Federal Energy Regulatory Commission ensure that cross-subsidy will not occur in these acquisitions and mergers. We owe that to ratepayers. We owe it to the public generally.

I hope very much we will adopt this amendment. I commend the authors of the amendment for their proposal today.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. Madam President, before I start, I ask the distinguished sponsor of the amendment how much additional time does he think he needs on his amendment. I am not pressing the Senator.

Mr. FEINGOLD. Madam President, I do not expect a great deal of time at all. I would like the opportunity to respond to any comments the chairman of the committee might make.

Mr. DOMENICI. Since it looks as if we will not be very long, does the Senator from New Mexico know if there is another amendment ready on his side since we are close to completing the debate on this amendment?

Mr. BINGAMAN. Madam President, let me check with the Democratic floor leader. I will get an answer back on that question.

Mr. DOMENICI. I thank the Senator very much.

Madam President, I say to the author of the legislation, I very much appreciate the fact that during these difficult times when we are trying very hard to get so much done in a short period of time the Senator came to the floor, put an amendment down, and, in his typical manner, got to the point, and in short order is going to let the Senate vote.

Frankly, what he is asking us to do is exactly the wrong thing for the situation that exists today in the energy markets. There is an article that was quoted from which is on all our desks:

Energy Monoliths Could Return.

It was quoted from, excepting on the second page there is an absolutely succinct paragraph that this Senator believes is totally, unequivocally correct. I quote three-quarters of the way down the paragraph starting with the word ''repeal'':

Repeal could restore confidence in energy companies shunned by shareholders after the Enron scandal and encourage badly needed expansion of power transmission networks.

From the financial market standpoint, repeal—

And let me add ''of PUHCA,'' repeal of PUHCA—

would be the single most important part of the energy bill. It certainly is what investors are looking for.

The problem with the amendment is that it probably will take the intent in that paragraph, the indication of what most probably will happen when PUHCA is repealed, and it will probably destroy it, wilt it, make it very vulnerable, and we will not get the result. The result is the need for huge injections of capital into the energy companies because of what has happened to them in the past 18 months.

That is why it is good news that PUHCA is being repealed. That is why it is bad news when an amendment comes along and says: This is just a little 'ole amendment to make sure the electric companies keep their money where it ought to be, that they ought not invest it anyplace else, and that their boards of directors be governed by this statute, the kinds of issues that tie up the potential of a company that is involved in the utility business.

We have already given FERC in this carefully balanced bill the enforcement power to make sure that the companies are properly invested, to make sure they are taking care of their business and of the stockholders' money and of the electrical business.

We have actually said that is a power FERC has. This title already includes enhanced books and records authority for both State and Federal regulators to ensure that ratemaking bodies have all the information necessary they need for retail ratemaking, to ensure there is no cross-subsidization or improper commingling of utility and affiliate assets. That is what the authors of the amendment are worried about, that if PUHCA is not there—and remember, everybody has said so far, including my friend Senator BINGAMAN, we ought to get rid of PUHCA. It is an unfair holding down of these companies by an old law. Everyone wants to get rid of it except these two Senators want to say now if we do, let's go back and put some more handcuffs on these companies because we are scared, we are frightened, that they will do wrong.

We are saying, if that is done, the very pluses, the positives, that come from the repeal are going to be negated because what is being done is not needed, and investment is going to be scared off.

The Domenici underlying bill says that when we get rid of PUHCA we better put in something, although this job is principally the job of States. When Senator BINGAMAN read about the two cases, in both cases State commissions were involved in cleaning up the matter, but nonetheless, we have put in here the Federal Government, FERC, is given this authority in this particular area, because of PUHCA going away, to make sure there is no improper commingling of utility and affiliate assets.

There is more. In fact, the underlying amendment also says, with reference to merger, acquisitions and dispositions, leasing, or other transactions:

Will not impair the ability of the Commission or the ability of the State commission having jurisdiction . . . to protect the interests of consumers or the public.

And:

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.

So it even says when PUHCA is gone, we have all of these entities that will be worried about mergers and the like, but we put new language in that I just read, which says, nonetheless, if we are talking about merger, acquisition, or disposition, there are these additional powers.

Frankly, I understand that an amendment which is, in fact, a bill—that is the Domenici amendment—it is that big. I understand Senators and their staff could read it and they could say, well, yes, we get rid of PUHCA, and then somebody back home might tell them if you are getting rid of PUHCA you better be sure you do so and so, and this amendment could be given birth.

If one looks at this carefully, they will find it did not come to the floor without the staff which worked on it helping the Senator make sure we know, when we get rid of PUHCA, we have to do something to be sure we have taken care of some problem children that might arise along the way.

I want to repeat, this is not a little proposition. If it was, I would accept it because these are very good Senators. But I know if I took it, I would be sending the wrong signal to all of those companies across this land that have reviewed this bill very closely, some small, some large, some of them municipal, some of them co-ops. They have looked at it carefully and they know we are through with PUHCA. I do

not want them to say, well, we got rid of one and they turn right around and make it difficult for us to do what we ought to do, what we can do, what we should do, to make sure we got all the assets invested in our companies in these faltering days in terms of resources.

So I say to the two Senators, I wish that were not the case so I could thank them and accept it, but I honestly do not believe those who analyzed it did a careful job. No aspersions.

A better way might be that we looked at it carefully, we watched out, and we were certain we protected the public and the consumers, those who will take electricity, and indeed the stockholders, so the kinds of things they are worried about will not happen.

I do not know what it means, but the horror cases they are speaking of occurred while PUHCA existed. That is interesting, just as an observation.

I yield the floor.

The PRESIDING OFFICER. The Senator from Wisconsin.

Mr. FEINGOLD. First, I thank the Senator for the kind remarks. I do not believe we disagree with the goals with regard to the underlying amendment. In fact, I regard this, and I think Senator BROWNBACK regards this, as a friendly amendment; that is, an attempt to make sure this dramatic change, the repeal of PUHCA, gets off the ground properly and does not, in effect, throw out the baby with the bathwater.

My amendment does not attempt to repeal the repeal. I think if one was listening to the remarks of the Senator from New Mexico they might have gotten the impression we were sort of pretending we were repealing PUHCA and then putting it back in effect. That is not in any way, shape, or form what we are trying to do.

We are trying to address a very specific problem the Senator from Kansas laid out very well, the cross-subsidization problem, when a utility holding company owns other affiliated entities and the problems that occur when those assets are moving back and forth in a way I and many people think threatens ratepayers as well as investors.

Specifically, the Senator from New Mexico talks about the fact that there are those who are poised and ready to invest in the utility industry if changes are made, presumably such as the repeal of PUHCA. It is my belief that is exactly what our amendment helps do. I think it helps create a scenario that will make investors more positive rather than less positive.

The Senator's argument about somehow our amendment will scare off investors is really a 5-year-old argument. PUHCA repeal, without the bottom-up regulation these ring-fencing provisions of this amendment provide, will continue to keep capital away. We do not have some kind of insurance for investors in utilities that the resources of those utilities will not be spirited away to these affiliates. Then they will not have the confidence in investing, and I want that investment to happen.

Regulatory insulation, and that is what the Feingold-Brownback amendment does, will help restore investor confidence. It will actually help achieve the chairman's goal. Our belief, and our hope, is our amendment will help bring order to what is a beleaguered sector, not that it will wreak havoc.

Utilities provide an essential public service. Our amendment insulates these utilities wherever they are in a corporate family. So what we are doing is providing a clear distinction of what entities are regulated or not.

Now, if we are looking at investments, that is what we want to see. We want to know exactly what we are getting into. We want to know what our dollars are going to be used for and it helps restore investor confidence and consumer confidence, not the reverse.

This is a good amendment. It has strong bipartisan support. There have not been a lot of Feingold-Brownback amendments over the years, even though I thoroughly enjoy working with the Senator. I think what it represents is a powerful commitment on the part of those of us who are working on this to protect small businesses in our State.

I will not read again the list of the contractors and small business organizations that support this effort, but it is the kind of mainstream people that made my State. It is the kind of mainstream people that made the Chair's State. It is the kind of mainstream people that made the Senator from Kansas's State. They do not want to be driven out of business by utilities able to somehow move these assets back and forth through affiliates that are not properly regulated. That is a reasonable request.

Even more importantly and in response to the Senator from New Mexico, we are trying to make sure investors feel comfortable so it will help the utility industry. The worst thing we can do is raise the specter of another Enron. The phrase ''cooking the books'' dominated our headlines a year ago, and our amendment is about making sure there will not be any accusations or reality of cooking the books when it comes to a utility and its affiliates, that they will have two separate sets of books.

Yes, the Senator's underlying amendment is good. It allows FERC to look at the books. If they look at the books and there are no standards or rules about keeping the entities separate, what is the good? There need to be some teeth in it. That is what our amendment does.

I suggest this is a reasonable, fairly modest amendment that will make the Domenici substitute even better. I urge my colleagues to support it.

I yield the floor.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. CRAIG. Madam President, I will speak briefly to the Feingold-Brownback amendment.

There is the illusion, or at least the concern, on the part of some of our colleagues that the title we have before the Senate in S. 14 somehow creates a type of regulatory gap that I don't believe exists. The chairman of the committee, in his thoughtful processes that brought us to this amendment and the time he has spent working on it with staff, would agree it does not exist.

Certainly Senator FEINGOLD and others have reason to be concerned, as do I. My constituency, my ratepayers of Idaho, for a period of time spent a good deal more than they should have on their electrical costs because of the dysfunctional markets in the State of California. Those dysfunctional markets occurred with all of these laws in place that we are talking about now changing. What is most important to recognize is, those who misused the market are now suffering. Those who misused the market are now being prosecuted. Those who misused the market to line their pockets, I trust, are having their pockets stripped of ill-gotten gold.

Why? Because our President has a Corporate Fraud Task Force, we have a little organization called the FBI, we have the Federal Energy Regulatory Commission, the Securities and Exchange Commission, the Commodity Futures Trading Commission, and, yes, even the U.S. Postal Service and the U.S. Attorney's Office that seek to look at and have found what they allegedly suggest is postal fraud.

Whether it is Enron, whether it is Dynegy, whether it is Reliant or whether it is El Paso Corporation, time and time again, and currently, many of the major operatives within those organizational structures are being brought before the Federal justice system and will be or are being prosecuted because of what they are now alleged to have done or are accused of having done as it relates to wire fraud, conspiracy, manipulation, round-trip trading, all of those things we suggest ought not happen.

What we have done in this title appropriately protects the consumers of this country, but, as important, we protect the capital that comes to this market to be invested, to create the generational capabilities, the transmission capabilities, the pipeline capabilities, all the things we need to interlock an energy system in our country and to continue to make it as reliable as it has been in the past and as reliable and abundant as it should be, hopefully at the least cost to the consumer.

Clearly, the consumer got gouged. My consumers got gouged. There was ill-gotten gold. We darned well ought to strip it from the pockets of those who were out to steal it from the consumer. Tragically enough, that stealing was going on long before this

amendment, under the current laws that some argue we ought to keep in place, 1930 laws that have rendered themselves relatively obsolete in a modern-day energy system.

We are asking that we have the right enforcement in place. We have given FERC the authority it ought to have within the confines and the limitations in which we believe it ought to operate. There is no regulatory gap. Any reason to add to what we have done simply frustrates the multibillion-dollar market, the revenues that will come, the investment that will be created, toward once again creating the finest electrical and energy market in the history of the world. That is what we ought to have. That is what we need. Without that, our investors and our economies look elsewhere, beyond the bounds of our country where they can find stability of economy, stability of resource and, most importantly, an abundant supply of energy.

In the absence of energy, in the absence of an abundant, least cost supply of energy, our economy is in trouble. If our economy is in trouble, most assuredly our men and women who want to find work in that economy are oftentimes without work. We believe this is a full employment bill that will create literally hundreds of thousands of new jobs because of the stability it will bring.

I yield the floor.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. Madam President, I was informed a while ago by my good friend, the whip, Senator REID, that as soon as we finish this amendment—and I think we are finished; I am not quite sure whether the proponents have finished—Senator BYRD wanted to speak. I ask Senator BYRD, since he is here, if that is the case. And then I ask if I could speak following Senator BYRD, if he has no objection. I ask that after the distinguished Senator BYRD completes his remarks, the Senator from New Mexico be recognized.

Mr. REID. Reserving the right to object—and I shall not object—the Senator has that right. We are in the process of winding down debate on the Feingold amendment. After Senator BYRD and the Senator from New Mexico, the manager of the bill, we would be ready to vote on not only the Feingold amendment but the two amendments that have been offered by the Democratic manager of this bill.

I suggest, because these were debated yesterday, we should have 10 minutes equally divided prior to a vote on each of the Bingaman amendments. While Senator BYRD is speaking, maybe the staff could prepare a unanimous consent agreement to meet these steps that we need to take to complete votes on these three amendments. We would at that time be ready to offer another amendment.

Also, if Senator BYRD speaks for half an hour or 45 minutes, then we will have these votes occur at the same time as Mr. Rumsfeld is here. I don't know if that is what people want. At least half of the Senate will be going to the Rumsfeld meeting—maybe even more. It is up to the Republican leader, of course, what he wants to do with the Secretary of Defense. But whatever the wish of the leader is, we will certainly go along.

We are ready to vote on these three amendments.

Mr. DOMENICI. Madam President, if we could reduce the debate time before each amendment. We don't need 10 minutes; 5 minutes would do.

Mr. REID. I would be happy to do that, although I have conferred with Senator BINGAMAN. On one amendment he needs 5 minutes, and on the other amendment he could use 2½ minutes.

Mr. BINGAMAN. In response, I don't believe I will use 5 minutes; I will probably use closer to 3 minutes, but I would like to have the ability to go on if I get warmed up.

Mr. DOMENICI. Let's prepare the unanimous consent request on all three, with 5 minutes each, 10 minutes equally divided.

The PRESIDING OFFICER. The Senator from Wisconsin.

Mr. FEINGOLD. Madam President, I want to bring this debate to a close, but I want to quickly respond to a couple of comments from the Senators from New Mexico and Idaho.

When the Senator from New Mexico was making his comments he talked about the fact the State commissions, public service commissions, and others would be able to sort of take care of these kinds of problems that would exist in a post-PUHCA repeal era. I don't think that is an adequate answer.

The fact is, as I mentioned in my opening remarks, in many cases these are interstate utility entities, and it is that very fact that has made it so difficult, prior to PUHCA, for there to be any appropriate regulation at all. So we do need some kind of appropriate law that homes in on this problem of utility holding companies and affiliates and the cross-subsidization problem that exists. That is the first point I want to make, that the State level is simply not going to do it.

The second point relates to the comments of the Senator from Idaho. The premise of the remarks of the Senator is that somehow my amendment undoes the repeal of PUHCA. It does not do that. Our amendment is necessary and helpful and good for investors and consumers and ratepayers and small business, whether PUHCA is repealed or not. The argument is a red herring. The argument has no relationship to the issue of whether these provisions are needed.

Maybe we could put it this way: The Senator from Idaho believes that a 1933 law known as PUHCA is no longer the right law for this time. We are proposing what we believe to be the appropriate, measured, consumer confidence and investor confidence provision for 2003, not 1935. So we are accepting in the amendment the repeal of PUHCA, but we are adding this provision that is necessary in 2003, not 1935.

The only other alternative, if we do not do at least our amendment, is we are going to be returning to the environment that we are just coming out of, the environment that everyone admits was a disaster for consumers and that it destroyed consumer confidence and investor confidence because of the recklessness and the cooking of the books that went on all over this country, particularly in the utility industry.

We have to make sure what we do here does not undercut the confidence we want to increase for consumers and for investors. That is the purpose of our amendment. We are not trying to undo the chairman's primary purpose of his amendment.

I yield the floor. Assuming that is the end of the debate, I yield the floor.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. BYRD. Madam President, I thank the distinguished Senator from New Mexico. I thank him for the knowledge he brings to the Senate on many matters. For these several years I have worked with him on the Appropriations Committee, he has shown himself to be one of the most knowledgeable persons on that committee and, with respect to energy, he has shown time and again that he is well equipped to enter into debate and to help to form good legislation, better legislation, or the best legislation.

I have always found him to be one who is easy to work with. I enjoy working with him and I compliment him for the time he has put in on this matter that is before the Senate. He arrives at his conclusions after due and deliberate examination, and he is a first-class legislator.

Mr. DOMENICI. Madam President, I say thank you very much, Senator BYRD. I greatly appreciate your remarks. It is always my pleasure to be serving with you.

Mr. BYRD. I thank the distinguished Senator. He has distinguished himself in many fields.

Mr. DOMENICI. Thank you.

Mr. BYRD. Madam President, on pleasant summer days, such as these, I doubt that the average person worries too much about the intricacies of energy policy. However, energy is the life's blood of our economy. Obviously, a comprehensive energy policy is a critical underpinning for a viable, strong nation.

And, there are real and growing concerns about the Nation's energy security—about our teetering economy and about our growing dependence on foreign oil. Coupled with these is an increasing need to protect the environment and address global climate change. But instead of looking for balanced and comprehensive solutions to our critical energy problems, this administration drags its feet and deals with our energy challenges by meeting

behind closed doors with select corporate contributors.

As is often the case, this White House offers shortsighted, silver bullet solutions. But, in fact, there are just no silver bullet solutions to a sound and comprehensive energy policy for the future. There is no Lone Ranger approach to energy. There is no John Wayne approach to energy. We have to consider the worldwide energy supply and demand. We must be ready to invest in a range of policies, technologies, resources, and institutional structures that can prepare us for the future.

During the 2000 election cycle, the Bush campaign claimed that the creation of a national energy strategy was one of its most important priorities. But what they meant by that may not be what many people thought they meant. Even as candidate Bush traveled the Presidential campaign trail, the issue of energy often shared the stage with George W. Bush and DICK CHENEY, in part because both candidates were formerly business executives with ties to the energy industry. My own home State of West Virginia, where energy issues are very important, played a critical role in pushing the Bush-Cheney team over the top in the electoral college and handing the current administration the White House.

But, after his election, the President seemed more interested in seeking the advice of his corporate friends than developing a balanced, comprehensive, far-reaching energy policy. It may be illustrative here to review the background of some Bush administration officials. Vice President CHENEY served as the CEO of Halliburton. Secretary Norton has lobbied for the oil, gas, and auto industries. The President's Chief of Staff has served as the president and CEO of the American Automobile Manufacturers Association. The U.S. Trade Representative, Robert Zoellick, has served on Enron's Advisory Council. Even National Security Adviser, Condoleezza Rice, was honored by Chevron with a supertanker named after her. With such close connections to big corporate donors, one has to wonder about who really influences the energy agenda of this administration.

Upon taking office, the Vice President led a task force that hammered out the new administration's energy strategy for the Nation. After months of work, the National Energy Policy Development Group issued its report in May 2001. It was praised in some camps, criticized in others. The criticism arose because executives from Enron and other big corporate contributors played a major role in the recommendations of that task force. To many, the task force recommendations for a national energy policy appeared to be little more than an industry wish list.

When the General Accounting Office and outside groups requested basic information about the Vice President's task force, the White House claimed executive privilege. Throughout the court battle which ensued, the Bush Administration repeatedly claimed that the separation of powers and executive privilege prevented them from releasing pertinent documents. As a result, the credibility of the White House energy strategy development is certainly strained, to say the least, especially with regard to the oil industry.

I have been particularly concerned about our continued reliance on foreign oil and our lack of commitment to developing domestic fuel diversity. Tackling that growing problem requires a serious and multi-faceted commitment, involving cooperation and coordination among many players. But what the President seems to be proposing can be pretty much boiled down to drilling for oil in the Arctic National Wildlife Refuge, and exploiting the oil reserves under the hot sands near the Tigris and Euphrates Rivers, in the Fertile Crescent—modern day Iraq.

U.S. domestic oil production peaked in the early 1970's, and, since that time, our oil demands have far outstripped our supplies. But instead of figuring out how to disentangle ourselves from foreign oil dependence, the Bush administration seems to be intent on sinking our energy fortunes deeper and deeper into the hot sands of old Mesopotania—the hot sands of the Middle East. What is this administration's total energy agenda? Is oil the only card in the energy deck which the administration will play?

It certainly appears so. And one has to wonder just how that card is being played. As the world witnessed in the war in Iraq, the administration was much more interested in protecting, defending, and developing Iraq's oil resources than it was in protecting Iraq's cultural or social resources. Early on in the war, coalition forces were ordered to make it a priority to protect the oil fields. Upon their entry into Baghdad U.S. troops were ordered to surround and protect Iraq's oil ministry. Despite clear warnings, coalition forces left Iraq's priceless museums and other government institutions defenseless. On top of that, U.S. forces failed to protect nuclear test facilities. This is especially puzzling in light of the administration's often stated concerns about dirty bombs and the pilfering of nuclear material by terrorists. So where are our priorities? What is the United States really up to in Iraq?

If the United States were really intent on developing a smart, commonsense oil policy, we would be taking additional measures to better balance our supplies from other nations; we would be carefully using our strategic reserves to hedge against future foreign manipulation; we would be promoting industrial energy efficiency, and we would be nurturing all forms of alternative sources for our energy and transportation needs, including coal, renewable, and biomass-based sources.

I have proposed my own commonsense proposal to help mitigate the growing global dependence on oil supplies from volatile regions. The United States encourage the transfer of our own clean energy technologies to other nations, especially developing countries who will increasingly be buying into the same finite oil markets that we are purchasing from. Such efforts are critical in order to satisfy our energy security needs as well as to address related economic, job creation, trade, and environmental objectives. The demand for oil from other countries will be increasingly fierce, and we have only a narrow window of opportunity ahead. Last year, the administration, at my urging, released a plan for just such an initiative intended to help open international markets and export U.S. clean energy technologies. However, little, if anything, has been done to implement it. Where have we seen this strategy before? The answer is, we have seen it virtually everywhere with this administration—from homeland security to No Child Left Behind.

Furthermore, the administration's Fiscal Year 2004 budget confirms some of my worst fears. When it comes to domestic issues, the plan of administration officials these days is about outsourcing, downsizing, reorganizing, reducing, cutting, slashing, slicing, dicing, and carving up the Federal Government. It is a tailor-made infomercial for the benefit of all-too-receptive corporate donors.

The administration's energy budget is a sham, and its energy program requests are no different. The Department of Energy cut $20 million for the Clean Coal Power Initiative. The Department of Energy's oil and gas research program was cut by more than 50 percent. In order to squeeze enough dollars out of the budget for the President's new hydrogen initiative, other critical energy programs were severely cut. Yet the administration's hydrogen program is years away and cannot serve as a substitute for conservation, energy diversification, or other key energy programs. Moreover, a proliferation of ''new'' initiatives have been announced by this administration that are purported to solve our energy needs, especially for fossil fuels. We have the hydrogen initiative, a carbon sequester program, FutureGen, a national climate change technology initiative, and more. My question is: Can anyone explain how these ''new'' initiatives will work together? Where is the money to provide for all of this without compromising other important efforts? The fact remains that there is no major increase in real funding or commitment for energy programs, just a proliferation of empty words from this administration. I do not believe we can treat our energy illnesses with the administration's current budget prescription.

In the 107th Congress, both the House and Senate actually passed comprehensive energy policy bills. After lengthy

debate in conference, important progress was made. A number of compromises were struck, but in the end the conferees could not reach a final agreement. This should come as no surprise.

In fact, this administration made no real effort to help get a comprehensive, national energy strategy passed. President Bush suggested that energy was a cornerstone of his administration's agenda, but what did he do during the energy conference in the 107th Congress? Nothing. Oh, his rhetoric may have sounded good on the campaign trail. He tried to talk a good game, but when it counted, the administration took a decidedly hands off approach.

This new Senate Energy bill, S. 14, the House Energy bill, H.R. 6, and the White House's interest overall are intended to cater to the administration's friends in industry. That is it. That is all. In its present form, these energy bills are no victory for our country. They are a victory for special interests and a text-book example of our inability to set a long-term energy policy course. Now, we are on the brink of another important opportunity squandered. While there are some solid trees planted in the bill, this legislation will not produce the diverse energy orchard we must have to meet our needs down the road. The President and the Republican-controlled Congress are simply not prepared to make the tough choices that the Nation needs for a viable, long-term energy policy. How long will we wait?

The President would love a one-day Rose Garden ceremony and a 2004 campaign press release. But, given this administration's track record, an energy bill would simply be another empty soapbox for this President to stand on, as he has already demonstrated with the education soapbox, the farm legislation soapbox, Afghanistan soapbox, and the Homeland Security soapbox, and other soapboxes. The Congress has passed bills and supported the administration's rhetoric, but then the necessary resources to carry them out never materialize. This is the same fate that awaits an energy bill this session.

It takes leadership and it takes hard work to move forward in a responsible, balanced, and intelligent way on energy policy. Yet this administration makes do with a cheap knockoff. It looks like the real thing, but it is a fraud and a fake. It is much like cotton candy. At first glance, it may look good, but there is just no nutrition. In reality, it is just puffed air.

In the last 5 years, I have worked hard to help develop a balanced and bipartisan package of provisions to advance our national energy policy goals—provisions that could go a long way toward addressing both the near- and long-term energy needs of our Nation, while also providing numerous benefits both at home and abroad. These provisions garnered bipartisan support in the Senate Energy bill in the 107th Congress, including clean coal, climate change, international technology transfer, and other important provisions. Together, these initiatives represent a bold new enterprise—stepping stones along a 21st century energy pathway.

Yet the administration seems intent on just blocking many of these bipartisan ideas. For example, in a May 8, 2003, statement on the Senate Energy bill, the White House stated, in part:

> The Administration is not convinced of the need for additional legislation that would attempt to limit or direct U.S. global climate change, and will oppose any climate change amendments that are inconsistent with the President's climate change strategy . . . we urge the Senate to allow . . . the President's strategy to go forward unimpeded.

Well, I continue to ask, just what is the President's strategy—cotton candy?

Last session I introduced legislation with Senator TED STEVENS of Alaska that would allow the United States to deal more easily with the complex issues involved in climate change. The amendment to be offered by Senator BINGAMAN is based on last year's Senate-passed provisions. It would create a comprehensive strategy based on credible science and economics to guide American efforts to address climate change issues in our own backyard and around the world. This amendment also would establish a major research effort to invent the advanced technologies that we will need to effectively reduce greenhouse gas emissions that contribute to global warming. We must develop a commonsense package of technology, science, policy and other market-based measures to address this growing global problem. And it is growing. The question is what are we waiting for?

Specifically, the Bingaman amendment includes provisions that would commit more than $4 billion during the next decade to vastly expand U.S. research into technology that could help to address the problem of global climate change. The amendment provides for the creation of a more focused administrative structure within the Federal Government, including an office in the White House to coordinate and implement a national climate change strategy. We cannot continue to just ignore this problem.

This amendment does not mandate a reduction of emissions by American companies. Instead, this package places the Nation on a commonsense glidepath that is both achievable and sustainable. It provides the framework to address the long-term goal of stabilizing atmospheric greenhouse gas concentrations by working with other nations, while leaving the actual technology and policy decisions to energy experts and the marketplace.

China, Brazil, and India, among other states, will soon surpass the industrialized world in emissions of greenhouse gases. It is important that we work in coordination with these nations to reduce their emissions at an early stage. American know-how, technology, and ideas can help to lead to the implementation of a range of marketable clean energy technologies, not just in the United States, but also around the world.

It is time for real action. A cherry-picked energy plan based on soliciting big industry campaign contributions is a bankrupt policy. It takes this Nation nowhere, and it puts our future at risk.

We cannot continue energy programs and budgets if we ever hope to meet our long-term needs. We cannot continue forestalling the development of a long-term energy strategy with a phantom plan. The Nation is at a turning point. Our energy policy needs must stop being dominated by a crisis management policy. We must work to enact appropriate energy legislation so that we avoid the consequences of our long failure to respond. We cannot wait for the next energy crisis or the next spike in natural gas prices—or the next California electricity debacle. We cannot just go out and seize another oil rich country in order to solve our energy problems. We must enact bipartisan energy legislation that will deliver a thoughtful and reasoned energy package.

Madam President, I yield the floor.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. THOMAS. Madam President, I hope we are moving toward the opportunity to vote shortly. But, in the meantime, I cannot resist making a few comments.

I don't see it at all the way the Senator from West Virginia has described it. Over the last couple of years, I have worked very hard to bring an Energy bill before the Senate. I believe we have an Energy bill before us that is very broad, that is very encompassing, and that is very balanced. That is what we have needed to do.

We have been working now for 2½ years, and we generally have not been able to get over the obstacles to be able to get it completed, and I think I understand why. But it is time for us to decide: How important is it for us to have an energy policy?

The first thing this administration came up with when it came into office was an energy policy with a direction, and we have been fooling around with it ever since.

Last year, we couldn't even get it through the committee. We had to go right to the floor. We went to the conference committee and worked very hard. We did not succeed.

But this is a balanced approach. We are talking about an opportunity to have conservation, which is one of the things we need to do in energy. We are talking about the opportunity to have alternative sources of energy, which we will come to over a period of time.

I remember very much a number of years ago somebody coming to Casper, WY, talking about energy, saying: We have never run out of energy because we have always found a new source.

Well, we probably will, but we need to be doing that in research.

The bill involves research in a variety of different areas that relate to energy. What else could you do besides research? There is a very great emphasis on hydrogen in this administration and doing something that will move us to a different kind of energy opportunity. Coal might be the basis for that opportunity. It would be much more economical to move.

Lots can happen in the future. What we are faced with doing in this bill relates to the fact that the energy industry has moved faster than we have moved. This is not a matter entirely of setting a future; it is a matter of catching up with what has already been done. And much of that is evidenced in the electrical industry.

Years ago everything we did was designed to have an energy company and an electric company that had their own distribution. They did their own generating. It was all in one area. That is not the case anymore. Thirty percent of electrical energy is generated by merchant generators. That energy has to be moved from the generator to the market. It is quite a different situation. It is already there, yet we seem to resist talking about it. We seem to resist accepting it. We seem to resist making that an advantage for us rather than a problem, and we have an opportunity to do that.

One of the other issues that is emphasized is domestic production, of course. It has already been pointed out that some 60 percent of oil comes from overseas. We are talking about the possibility of shortages of natural gas. I can tell you something: We have a lot of natural gas right here in this country, much of it in the west where I am from. We could be producing a great deal more if we had the policy to go ahead and do that, if we had the opportunity to have multiple use of lands to protect the environment and produce at the same time, to be able to have the transportation to move it to the market. These are the things that are there and available. That is what this bill is about.

To suggest that this bill does not have any substance to it is simply not right. It is a good excuse if you don't want to vote for it. But the fact is, there is substance. The fact is, it does move us forward. The fact is, we need to move it on.

We are talking now about an electric title, which I think is crucial. We were just upstairs talking about what energy does for jobs. Remember the economy started to turn down in the year 2000. We have been working at all kinds of things ever since. Here is one that has probably more of an immediate impact to jobs than anything else we could do, not only in production but, of course, it has an impact on all business activities.

How important is electricity to us? Everything we do—travel, gasoline, natural gas, all these things. So I guess it is sort of frustrating to hear there is no basis to this, that we don't need to hurry doing this. Yet the fact is, it is probably one of the most needed things we have had for a number of years. And yet we continue to find excuses for not going forward.

I hope we can move. We can complete this bill this week. We have already discussed almost all these items for a long time. It is time to move, and I hope we do.

I yield the floor.

The PRESIDING OFFICER. The Democratic whip.

Mr. REID. Madam President, I commend Senators CANTWELL and BINGAMAN for their amendments to the electricity title that will, in effect, ban all forms of market manipulation and add important merger provisions. I am terribly disappointed that the Cantwell amendment failed by a vote of 48 to 50. She did an extremely fine job of laying out this program. I am sorry it didn't pass. It should have. I think there will be some Senators who voted against her amendment who will regret having done so.

We know that the energy crisis in California in 2001 resulted from market manipulation and price fixing. People of the State of Nevada were severely hurt by this manipulated electricity market, as were consumers all over Western States.

The State of Nevada has just completed the most contentious legislative session in the history of the State. The Governor of the State, after the regular session ended, had to continually call special sessions. I don't really know how many he called—two, three, four, five—but they were there for a long time. Finally, because nothing could be completed, the Governor filed a legal action with the Nevada Supreme Court. After the Supreme Court acted, action was taken. The provision in question that went before the supreme court is whether the Nevada Legislature had to pass tax increases by a two-thirds vote. The Nevada Supreme Court said no and they said yes, but regardless of that, I spoke to the majority leader from Nevada, Bill Raggio, today. He said he made the determination that it was going to pass by two-thirds, and both the assembly and the house ultimately did that.

The reason I mention the difficulty they had is because of the tremendous burden the State of Nevada had in not having enough revenues to meet the projected deficit, $1 billion in the State of Nevada, much of which was caused by the problems that developed in California with manipulating the energy prices there.

The State of Nevada had other problems: unfunded mandates that we have passed on to them with homeland security and Leave No Child Behind, which has left a lot of kids behind. The fact is, the electricity rates had a lot to do with that very difficult legislative session. That session took a long, long time to complete. Since 1999, electricity rates in the Las Vegas area have increased by more than 60 percent. Over the same period, natural gas prices across Nevada have doubled. It is a sad state of affairs that some seniors, especially, and low-income families in Nevada are being forced to go without prescription drugs or cut back on food in order to pay their electricity rates. That is a fact.

The bills that come from these increased electricity rates are a real burden, as the Senator from Washington, Ms. CANTWELL, mentioned today. She read specific letters from people in the State of Washington where these prices were preventing them from getting proper medical care and having the ability to pay their rent. The same applies, of course, in Nevada.

These wild price increases in electricity were painful to homeowners. They also made it hard for businesses to expand or make long-term plans. Nevada consumers were being asked to pay for the same very expensive long-term contracts negotiated by utilities in 2001 at the time of the California energy crisis. It cost Nevada ratepayers hundreds of millions of dollars.

Nevada Power, the power company that serves the Las Vegas area and southern Nevada, has flirted with bankruptcy. It is rated at junk bond status where in the past it was one of the strongest utilities in America. What does this junk bond status mean? It means the cost of money for the utility to purchase power for Nevada is very high.

The weakened financial condition of our utility is a burden to our ratepayers. I can remember during some of this time that I had to call the Governor of California to see if there could be some arrangement made so the power that the people of the State needed coming from California could be provided. I had to have a signoff from the Governor of California. This was difficult. They were in deep distress but their distress was passed on to Nevada.

The weakened financial condition of our utility is a burden to our ratepayers and the taxpayers of the State of Nevada. After Enron was exposed for its unfair and unethical practices, whether it was Fat Boy or Get Shorty, all these practices had an impact in Nevada. After these unfair practices were exposed, a subsidiary of Enron stopped delivering electricity to Nevada Power because of its weakened financial condition. Then adding insult to injury, this Enron subsidy sued Nevada Power for the losses it might incur if it couldn't sell the power at the contract price.

In a recent ruling, FERC upheld the contract the utility signed at these exorbitantly high prices. Again, our ratepayers were not protected from abuses during the California energy crisis. It is not consistent with rational thought that FERC could do this but they did it.

As the western energy crisis and Enron's collapse made clear, electricity markets are ripe for manipulation unless clear safeguards are put in place and companies are held accountable. The electricity title should ban all forms of market manipulation and contain concrete penalties for those that break the rules. The electricity title should strengthen FERC's authority to review public utility mergers for electric and gas—there will be an amendment that will focus just on gas in this regard—holding company mergers and generation assets, and ensure any consolidations are in the public interest.

I extend the appreciation of the entire Democratic caucus for the work done by the manager on our side, Senator BINGAMAN. Senator BINGAMAN is an intelligent Senator. He is experienced. He has done everything he can to help this bill be a bill that is a good bill which is indicated by the tremendous amendments he has filed that we will vote on in the next few hours.

Last year Democrats worked with Republicans to pass energy legislation by a vote of 88 to 11. This vote was to strengthen our national energy security, safeguard consumers and taxpayers, and protect the environment. The heavy vote is an indication that we were able to accomplish that.

That vote came after 24 hours of debate over the course of 8 weeks, and only after the Senate dispensed with 144 amendments.

Madam President, the distinguished Senator from Tennessee, the majority leader, has said we have been on this for 16 days. He has to say that with tongue in cheek. Many of those days have been Fridays and Mondays, when everyone knows when you turn to a bill for a day or two and it is a Friday or Monday, that is like turning to nothing. It is filler. Nothing happens. Most of those days the managers weren't even here. They said we are going to energy on short notice. The 16 days the distinguished Senator from Tennessee talked about really is more like 7 or 8 days.

As we know from past experience, the effort to craft comprehensive energy policy involves working through a series of complex issues. We are currently working through one of the most complex issues right now, electricity policy. These issues take time to debate, and we have a duty to the American consumer to ensure that we carefully consider what our energy policy will look like in the future. We have spent significantly less time debating the Energy bill this year. We have considered 42 amendments and held 15 rollcall votes. We have spent less than 7 days on this bill, considered 102 less amendments, and conducted 20 less rollcall votes than last year. There are a number of issues outstanding: Electricity; global warming; renewable portfolio standard; CAFE standards, on which we have debated two amendments but others need to be considered; hydroelectric dam relicensing; nuclear energy; natural gas; energy efficiency incentives; wind energy; carbon sequestration; exploration of the Outer Continental Shelf, and the energy tax package, just to name a few.

These amendments offered on this Energy bill dealing with electricity are not specious amendments, they are substantive amendments. The Cantwell amendment vote was 48 to 50. Without arm-twisting on the other side, Senator CANTWELL would have won. These are serious amendments people wish to offer. They are not single amendment issues. I expect there will be several amendments on each subject. We ended with a good product last year when we let the Senate work its will on the legislation. We need to spend adequate time this year to get a similar result.

I see the Senator from Florida on the floor. My understanding is that he wishes to speak.

Mr. THOMAS. I wonder if it would be possible to propound this unanimous consent request.

Mr. REID. Madam President, the Senator has been here all day. It is my understanding that the Senator wishes to speak; is that right?

Mr. NELSON of Florida. Yes, for perhaps only 3 or 4 minutes.

Mr. REID. I thought the Senator had longer to speak.

Mr. NELSON of Florida. I will accommodate the leadership. Whatever is the pleasure of the leadership.

Mr. DOMENICI. Madam President, the Senator has no right to decide who speaks. They have to seek recognition.

Mr. REID. Madam President, as I have said several times during the day, and yesterday and the day before, I have the greatest respect for the Senator from New Mexico. But the Senator from Florida, who is gracious and said he would take just a few minutes, has a right to speak as long as he wants to before we have votes on this.

Mr. THOMAS. The Senator from Wyoming was on the floor before he was, however.

Mr. REID. I have the floor.

Mr. DOMENICI. The Senator cannot dole out the time. He has no right to dole the time out to other Senators, Madam President.

Mr. REID. Madam President, I have the floor, and I have the right to speak about anything I want to speak about. The fact is, the Senator from Florida has been here several times today.

Mr. DOMENICI. Madam President——

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

The PRESIDING OFFICER. The Senator is correct.

Mr. REID. The Senator from Florida has been here several times during the day. He has a right, prior to our entering into this unanimous consent agreement, to speak for as long as he wants. He said he chooses not to do that, and that is in keeping with the courtesy that this junior Senator from Florida extends to everybody. I want to make sure he doesn't have hurt feelings and that he has the opportunity to speak. He knows the rules of the Senate and he has a right to speak if he wishes.

Having said that, I am willing now to have this unanimous consent agreement proffered.

Mr. THOMAS. Madam President, I ask unanimous consent that there now be the following debate in relation to the listed amendments: Bingaman No. 1413, 10 minutes equally divided in the usual form; Bingaman No. 1418, 10 minutes equally divided in the usual form. I further ask consent that following the debate, the Senate proceed to a vote in relation to amendment No. 1413, to be followed by a vote on amendment No. 1418, to be followed by a vote in relation to the Feingold-Brownback amendment No. 1416, provided there be 2 minutes of debate equally divided prior to each vote.

Mr. REID. Madam President, reserving the right to object, I ask if my friend, the distinguished Senator from Wyoming, would modify his unanimous consent request to allow the Senator from Florida, prior to this kicking in, to speak for up to 5 minutes.

Mr. THOMAS. I have no objection to that.

The PRESIDING OFFICER. Is there objection?

Mr. BINGAMAN. Madam President, not wishing to object, I just indicate that I did not intend to ask for 10 minutes of debate on each of my two amendments, and then in addition ask for 2 minutes equally divided. I just intended to have some time to refresh people's memories of what the two amendments were, since they were proposed and debated yesterday.

As far as I am concerned, once I have had a chance to describe my amendment, and there has been any discussion in opposition, we can vote on the first of the Bingaman amendments.

Mr. REID. Madam President, I ask the Senator to further modify the request to eliminate the 2 minutes of debate prior to the vote.

Mr. THOMAS. That will be fine.

The PRESIDING OFFICER. Is there objection to the request as modified?

Without objection, it is so ordered.

The Senator from Florida is recognized.

(The statement of the Senator from Florida, Mr. NELSON, is printed in the RECORD under ''Morning Business.'')

AMENDMENT NO. 1413

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. BINGAMAN. Madam President, as I understand it, I now have 5 minutes to describe the first of the two amendments I have offered to the electricity title of the bill.

Let me make the obvious point at the beginning of my description, and that is that the amendment tries to do two basic things. It proposes language which would ensure that someone at the Federal level—in this case, the Federal Energy Regulatory Commission—has jurisdiction to review purchase and sale of generation companies

and generation assets, the companies that actually produce the electricity about which we are talking and which we have all come to expect to get when we turn on the switch and see the room light up.

We ought to have someone with authority over that because under the Domenici substitute as it now is, nobody has authority at the Federal level. It is not realistic to suggest the States can handle that problem. They cannot. There is no prohibition in law, and there will be none under this proposal, to one company acquiring all the generation in one particular region or one company acquiring all the generation in one part of the country. We should have someone reviewing the acquisitions of that generation capacity to be sure that ratepayers are looked out after. That is the first thing the amendment does.

The second thing the amendment does is to prohibit cross-subsidy between utility companies and affiliated companies that may be in the same general holding company. We are eliminating the Public Utility Holding Company Act, so there is going to be no restriction as provided under that act. We need to be sure that cross-subsidy does not occur.

I have an article dated December 26 of last year in the Wall Street Journal which does a very good job of pointing out the problem that needs to be fixed. It says:

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

Then it goes on to say:

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

The article goes through a series of examples of how this is happening.

One example I thought was particularly constructive was Duke Energy. In July of 2001, a Duke accountant contacted regulators complaining that expenses generated by unregulated parts of the company were being transferred to the books of Duke's utilities.

We need a capability at the Federal level to protect the ratepayers and to ensure that does not happen. We do not have that in the underlying Domenici substitute. The underlying substitute does say that the Commission shall look out to be sure the public interest is served, and that is useful. That, unfortunately, is very general.

What we need in the law, I firmly believe, is a bright line requirement that in order for these kinds of acquisitions and sales to occur and to be approved, the Federal Energy Regulatory Commission ought to determine that there is not going to be a cross-subsidy as a result, that utilities will not be loaded down with debt from nonutility companies held by the same company. We need to keep the protection in the bill.

Utilities are a different kind of business. It is important that the lights turn on when we flick a switch. It is important that other utilities function. In this case, in this electricity title, we need to be sure that ratepayers are adequately protected.

I am persuaded that this amendment will strengthen the bill. I hope very much my colleagues will support it. It is exactly the same language we had in the bill last year, and last year there was an effort to delete the language which I am offering as a second-degree amendment, and that effort lost in a vote of 67 to 29. So a majority of the Senate is on record supporting the language I have proposed as an amendment to the underlying Domenici substitute. I hope Members will support the amendment. It will strengthen the electricity title. I very much believe it is good public policy and will serve us well in the years ahead when some of these problems recur, as I fear they will.

Madam President, I yield the floor.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. Madam President, how much time do I have?

The PRESIDING OFFICER. Five minutes.

Mr. DOMENICI. Madam President, I wish to make a point in case there are people observing the Senate. Senator NELSON from Florida indicated he had been waiting a long time—maybe all day—to be heard. There are a lot of Senators all day long who would like to come to the floor and be heard. The Senate is not the place where we just come down to the floor and automatically, if we come here, we ought to be heard. We have business, and we have rules. I am glad the Senator found time and we allowed 5 minutes and we allowed Senator BYRD 30 minutes, but we are engaged in a bill we are trying to pass.

I had a lengthy discussion with my friend from Nevada, and I have no doubt he wants to get this bill finished. I thank him for his willingness to move along. We will have another amendment ready pretty soon.

My objection to the Bingaman amendment is very simple. He alludes to last year and what happened with amendments such as his last year. There was no alternative last year. There is an alternative this year. It is the underlying electricity bill, which clearly protects the citizens, the users, and all of those concerns about mergers.

The merger review in our section is supported by groups such as the National Rural Co-ops, the rural power people, and many others. If, in fact, we did not have protection in this area with reference to gobbling by merger, obviously they would not be for this underlying bill. So I oppose this amendment because we do not have to expand FERC's merger authority. They have merger authority.

Under current law, electric merger departments are heavily regulated. FERC, the Department of Justice, and the Federal Trade Commission must review proposed mergers for their impact on competition. States also review proposed mergers. Expanding FERC's authority to cover the acquisition of generation facilities is unnecessary. We have plenty of merger authority if that is what we are worried about. We are getting rid of undue regulation. There is no need to impose more.

Further, changing FERC's review standards will impede efficient transactions, and we do not need that today, either.

So while I have great respect and admiration for my friend, I believe the electricity bill that is pending before us, which has been carefully put together, has broad support all based on the fact that it fits all the pieces together properly. It should be left alone. We do not have to add more merger review layers.

I yield back the remainder of my time.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. BINGAMAN. Madam President, my understanding is that at this point, under the unanimous consent agreement, I am allotted 5 minutes to talk about my second amendment. Is that accurate?

The PRESIDING OFFICER. The Senator is correct.

AMENDMENT NO. 1418

Mr. BINGAMAN. Madam President, I will describe this second Bingaman amendment which was offered last evening. It was offered at a time when very few Senators or their staffs were in their offices and were not following this issue, I am afraid. The amendment tries to clarify a point in the bill that I think is very important.

Senator DOMENICI's substitute contains a delay in the issuance of FERC's standard market design rulemaking and it delays it until July of 2005, and that is not of concern. I accept that. Many believe the rule goes too far, should be dramatically modified, changed or completely abrogated, but others think we should go ahead right away. He has decided to put it off until July of 2005. So I am not involved in that in my amendment.

My amendment leaves the delay of the standard market design rule in place so it will still be delayed until July of 2005. However, in an effort to prevent FERC from renaming its rule, I believe that was the purpose that Senator DOMENICI and his staff had in an effort to keep FERC from renaming its rule and issuing that same rule, or something very close to it, under a different title, the bill would prohibit any rule or order of general applicability on matters within the scope of the rule. I think the clear meaning of that

language is that FERC could not issue a rule or order a general applicability on any issue that is dealt with in the proposed standard market design for 2 years from now.

Standard market design covers a world of issues. One example, FERC currently has a rule in process related to interconnections to the transmission grid. No matter what that rule said, FERC would be prohibited from issuing that rule, as I read this language. I do not think that was the intent of my colleague from New Mexico or others who worked on this bill.

There are even rules that the Commission is required to issue by provisions in the bill. We have various provisions in other parts of this bill that say the Federal Energy Regulatory Commission shall issue an order on this issue, the Federal Energy Regulatory Commission shall issue an order on this subject. The bill requires rules on mergers, on transmission access by public power entities, on participant funding, and on other matters.

We are in the ironic position of having this one provision which says an order cannot be issued, a general applicability, on any subject that is covered by standard marketing design and at the same time we are saying you have to go ahead and issue orders of general applicability in these other areas.

So I am trying to get that clarified. I do not believe we are in disagreement on the substance but I do think it is important that we provide clear language or else we will be shooting ourselves in the foot.

The amendment I am offering says we would not want FERC issuing any final rule or order of general applicability establishing a standard market design. I think that is what we are trying to do. That is all my amendment does is to clarify that is what we are trying to do. I hope everybody will support it. I think it will make very clear that FERC will be able to go ahead and do the work that it is required to do in the next couple of years, between now and July of 2005. If we have another crisis such as we have had out in California or out in the west coast, we are going to be expecting FERC to issue orders of general applicability. They should be doing that. They should not be issuing a standard market design, and I am not suggesting they should, but they should have the authority to issue orders of general applicability and that is exactly what my amendment would give them.

I hope very much my colleagues will support the amendment and we can improve the bill by doing so.

I yield the floor.

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

Mr. DOMENICI. Mr. President, one of the most difficult negotiations in this bill was getting the language that prohibited the finalization of SMDs until July 1, 2005. The occupant of the chair knows that. That is what we have been talking about. Other Senators wanted a longer time. Some wanted a shorter time. Well, Senator BINGAMAN changes the language surrounding that July 2005 agreement. Frankly, I would be letting down all of those different groups that worked together to negotiate the language that said the finalization of SMDs will be delayed until July 1, 2005; by changing the words around it, all kinds of groups will be saying we have let them down; we changed what we agreed to.

In other words, I regret to say that the exact words surrounding this 2005 letter expansion are binding. Senator BINGAMAN wants to clarify it one way. There will be a whole group of people who worked on it saying, well, I did not want it clarified that way. I wanted it clarified another way.

The point is, it will work like it is. It might work like he wants it to work but the problem is we agreed to these words. Believe me, I am not agreeing to words just for words. They will work. It is just that the distinguished Senator would like to be more precise, more specific, his way. In doing that, he puts this Senator, who has worked this out with all of these other people, in a bind that if I say, yes, let's change it, then we are going to have telephone calls besieging Senators all over saying vote no; the senior Senator from New Mexico is not doing what he told us he would do.

Now, I regret that but that is just the result of the way we do things. I am very proud of the words, the date, and the negotiation. I do not lose a lot of Senators on that language and that date. Maybe six or eight wanted more time but we got a pretty good deal for almost everybody. So I just cannot take the risk. I am sorry.

With that, I do not need any more time. I yield back any time I have remaining.

VOTE ON AMENDMENT NO. 1413

Mr. DOMENICI. I move to table the first Bingaman amendment, which is the pending subject matter, and ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second. The question is on agreeing to the motion.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. REID. I announce that the Senator from Delaware (Mr. BIDEN), the Senator from Massachusetts (Mr. KENNEDY), and the Senator from Massachusetts (Mr. KERRY) are necessarily absent.

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

The result was announced—yeas 53, nays 44, as follows:

[Rollcall Vote No. 313 Leg.]

YEAS—53

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

NAYS—44

Akaka	Dodd	Levin
Baucus	Dorgan	Lieberman
Bayh	Durbin	Mikulski
Bingaman	Edwards	Murray
Boxer	Feingold	Nelson (FL)
Byrd	Feinstein	Pryor
Cantwell	Graham (FL)	Reed
Carper	Harkin	Reid
Chafee	Hollings	Rockefeller
Clinton	Inouye	Sarbanes
Collins	Jeffords	Schumer
Conrad	Johnson	Snowe
Corzine	Kohl	Stabenow
Daschle	Lautenberg	Wyden
Dayton	Leahy	

NOT VOTING—3

Biden	Kennedy	Kerry

The motion was agreed to.

Mr. THOMAS. Mr. 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.

Mr. FRIST. Mr. President, I ask unanimous consent that the next two votes in this series be limited to 10 minutes each.

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

Mr. FRIST. Mr. President, there will be additional votes this evening. We are going to stack these two rollcall votes at 10 minutes. The chairman and ranking member have been here since 9 o'clock this morning. They have been working hard. We will continue tonight. We will finish the electricity amendment today. Therefore, Members can expect votes into the evening.

VOTE ON AMENDMENT NO. 1418

The PRESIDING OFFICER. The question occurs to the amendment of the Senator from New Mexico.

Mr. THOMAS. Mr. President, I move to table the amendment and 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 motion. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. REID. I announce that the Senator from Massachusetts (Mr. KENNEDY) and the Senator from Massachusetts (Mr. KERRY) 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 54, nays 44, as follows:

[Rollcall Vote No. 314 Leg.]

YEAS—54

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

NAYS—44

Akaka	Dodd	Levin
Baucus	Dorgan	Lieberman
Bayh	Durbin	Lincoln
Biden	Edwards	Mikulski
Bingaman	Feingold	Nelson (FL)
Boxer	Feinstein	Pryor
Byrd	Graham (FL)	Reed
Carper	Gregg	Reid
Chafee	Harkin	Rockefeller
Clinton	Inouye	Sarbanes
Collins	Jeffords	Schumer
Conrad	Johnson	Snowe
Corzine	Kohl	Stabenow
Daschle	Lautenberg	Wyden
Dayton	Leahy	

NOT VOTING—2

Kennedy	Kerry

The motion was agreed to.

Mr. CRAIG. Mr. President, I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

AMENDMENT NO. 1416

The PRESIDING OFFICER. The question now occurs on the Feingold amendment No. 1416.

Mr. DOMENICI. Mr. President, parliamentary inquiry. Is there any time to speak on this amendment?

The PRESIDING OFFICER. There is no time to speak on the amendment.

Mr. DOMENICI. I move to table the Feingold amendment and ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

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

The legislative clerk called the roll.

Mr. MCCONNELL. I announce that the Senator from Mississippi (Mr. LOTT) is necessarily absent.

Mr. REID. I announce that the Senator from Massachusetts (Mr. KERRY) is necessarily absent.

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

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

The result was announced—yeas 50, nays 48, as follows:

[Rollcall Vote No. 315 Leg.]

YEAS—50

Alexander	DeWine	Lugar
Allard	Dole	McConnell
Allen	Domenici	Miller
Bayh	Ensign	Murkowski
Bennett	Enzi	Nelson (NE)
Bond	Fitzgerald	Nickles
Breaux	Frist	Pryor
Bunning	Graham (SC)	Santorum
Burns	Grassley	Sessions
Campbell	Gregg	Shelby
Carper	Hagel	Smith
Chambliss	Hatch	Stevens
Cochran	Hutchison	Sununu
Coleman	Inhofe	Thomas
Cornyn	Kyl	Voinovich
Craig	Landrieu	Warner
Crapo	Lincoln	

NAYS—48

Akaka	Dorgan	Lieberman
Baucus	Durbin	McCain
Biden	Edwards	Mikulski
Bingaman	Feingold	Murray
Boxer	Feinstein	Nelson (FL)
Brownback	Graham (FL)	Reed
Byrd	Harkin	Reid
Cantwell	Hollings	Roberts
Chafee	Inouye	Rockefeller
Clinton	Jeffords	Sarbanes
Collins	Johnson	Schumer
Conrad	Kennedy	Snowe
Corzine	Kohl	Specter
Daschle	Lautenberg	Stabenow
Dayton	Leahy	Talent
Dodd	Levin	Wyden

NOT VOTING—2

Kerry	Lott

The motion was agreed to.

Mr. DOMENICI. 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.

Mr. DOMENICI. Madam President, I wonder if the minority whip will advise me—we are on the electricity title—are we ready to vote on passage of the electricity title or do you have additional amendments?

The PRESIDING OFFICER. The Democratic whip.

Mr. REID. Madam President, as I indicated last night, we have Senator DAYTON who still wishes to offer amendments. Senator CANTWELL has at least two more amendments. Senator FEINSTEIN has an amendment. Those are the ones I know of at this time. And Senator BOXER has an amendment. Senator CANTWELL is here. She has a very important amendment to offer.

I relate to my distinguished friend, the manager of this bill, that Senator KENNEDY is here and wishes to speak also. We are in a position where we are ready to move forward on the electricity title with a number of amendments.

Mr. DOMENICI. Does Senator KENNEDY have an amendment?

Mr. REID. The Senator from New Mexico will have to ask Senator KENNEDY.

Mr. KENNEDY. No. It has been the decision of the leadership to have a vote on Judge Pryor tomorrow. Under the agreement, we will have 1 hour for debate. This is an important nomination. I wish to address the Senate on that matter since we are going to be under very strict time limitations on the morrow.

We had that series of votes. I want to accommodate the managers of the bill. If there is an amendment that needs to be disposed of, I will be glad to wait; otherwise, at some point, I wish to address the Senate because this is an extremely important nominee. The nomination was just reported out of committee, and we will be voting in a very short period of time on the nominee. It is an extremely important nomination. If the decision was to not have that vote on the morrow, I am glad to withhold my statement and make my statement at the time the Senate addresses the nomination. I will certainly work with the floor managers to work out a time that is suitable, but I am ready to speak. If there is a pending amendment, and it is the desire of the floor manager to move ahead, I will accommodate him.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. Madam President, I say to the distinguished Senator from Massachusetts, I will speak to the majority leader, as soon as an amendment is laid down, with reference to the issue Senator KENNEDY just raised. I understand if we proceed on an amendment, we will have an hour or so, at which time I will talk with the majority leader and tell him of your desire and others to speak, and see what his wishes are in that regard.

Mr. SCHUMER. Will my colleague yield?

Mr. DOMENICI. Without losing my right to the floor.

Mr. SCHUMER. There are others who wish to speak in addition to the Senator from Massachusetts.

Mr. DOMENICI. I will mention the Senator's name.

Mr. REID. I know the Senator from New Mexico has the floor.

Mr. DOMENICI. Yes.

Mr. REID. Madam President, earlier today I alerted the Senate that we would have members of the Judiciary Committee come to the floor, and we have members of the Judiciary Committee here today. We have the Senator from Massachusetts, who is a three-decade member of that committee. We have Senator SCHUMER, who is a relatively new member of that committee. Sometime tonight they are going to speak on the Pryor nomination. I indicated that would happen, and that is going to happen. They have an absolute right to speak. I know the Senator from Massachusetts is being kind and generous, but he has a right to speak. It can either be done now or 5 minutes from now or 10 minutes from now, but the Senator from Massachusetts is going to get the floor, and he is going to speak on the Pryor nomination, as I alerted the Senate today that would happen.

We did not make the choice that we would vote for the seventh time on Estrada today. The votes have not changed. We did not make the decision

we would vote on Priscilla Owen. We have voted three times, and the votes have not changed. We did not make the decision that the Pryor nomination would be voted on without a single bit of debate on the Senate floor, but just move it forward for cloture. This is not as if it is a surprise.

We telegraphed our intentions today that there would be members of the Judiciary Committee who would come to the Chamber and speak, and that is going to happen tonight.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. Madam President, I cannot do anything more than that, and I think the distinguished Senator from Massachusetts accepts my statement as an honest statement.

Mr. KENNEDY. Yes.

Mr. DOMENICI. I will leave the floor. I will find the leader, and I will tell him what is going to happen. I will seek his advice and give him my advice. I very much appreciate the Senator from Massachusetts letting me know. We have a number of amendments left. We have important legislation before us. It is absolutely impossible to do the people's business if, in fact, during the next 12 hours we have 6 or 8 hours taken up by speeches with reference to a judge. We will get it done, but we will be here Sunday, which is all right with this Senator. I do not think I want to let that happen under my watch as manager, but I guarantee my colleagues, for those who insist they are going to speak, I can assure them we are going to be here.

Sooner or later the speeches will run out, and we will be here, and we will take up the pending amendments on this bill. I have been told that by the leader unequivocally. I assume that is true if only 60 Senators stick around. So long as we do not lose a quorum, I presume we are going to be here on Friday, on Saturday, and on Monday to finish this bill. Senators have their rights, but we have an obligation to do this work.

I say to the distinguished whip, if he will call up the next amendment, I will leave the floor and find out what the leader will do about this, and perhaps we can come up with some accommodation with reference to this issue. I thank Senator KENNEDY for his willingness to let me do that.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Madam President, I will proceed then. I just wish to indicate, as someone who also has been a bill manager, I understand completely the frustration the Senator from New Mexico has and his desire to move along. As Senator REID mentioned, we did not anticipate at the time this nominee was reported out that we would have a vote so early in the consideration.

Then last week, the chairman of the committee made a very extensive statement about the nominee and also the procedures of the committee itself, and I want to attempt to correct that record.

We are on the eve of a vote on the nominee, and that has been established by not the Senator from New Mexico but by the majority leader. We are just trying to meet our responsibilities as members of that committee who have strong views and want to share those views with the membership and we also feel a responsibility to tell, to the extent the American people are interested, what our reservations are in terms of the merits and the process.

I say to the Senator from New Mexico, I plan to be here this evening, and if it is the desire of the floor managers to consider another amendment, I am glad to take my turn, although I do think we ought to have at least an opportunity to speak in the next few hours.

I will begin my statement on this nominee. If it so works out and the Senator from New Mexico wants to intercede, I will be glad to try to accommodate him.

Mr. DOMENICI. Will the Senator yield?

Mr. KENNEDY. Yes.

Mr. DOMENICI. How long does the Senator intend to speak?

Mr. KENNEDY. I expect to talk probably 30 minutes.

Mr. DOMENICI. Does the Senator from New Mexico have the floor or the Senator from Massachusetts?

The PRESIDING OFFICER. The Senator from Massachusetts has the floor.

Mr. KENNEDY. I would rather not get caught into a precise time limit at this time but my general sense is about 30 minutes.

Mr. DOMENICI. Will the Senator yield? I will get right back to him.

Mr. KENNEDY. That is fine.

Mr. DOMENICI. Madam President, let me repeat——

Mr. KENNEDY. Madam President, I think I have the floor but I will yield to the Senator from New Mexico for whatever comment he wants to make.

Mr. DOMENICI. I ask for a couple of minutes, and it will not take any longer.

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator from New Mexico.

Mr. DOMENICI. I thank the Senator. First, I say judges are important, and speaking on behalf of or against judges is very important. I say that not only to the Senators but to our majority leader. It is also very important that we pass an Energy bill. We have been waiting for weeks and weeks. This committee was asked to put a bill together. The Senator from New Mexico wants to get the Energy bill finished. Clearly, I find nothing in the rules that says the Senator from Massachusetts is not entitled to make his speech of 30 minutes or up to an hour. I do believe it is important, nonetheless, that somewhere along the line there be some accommodation and that we proceed to get the Energy bill finished. I understand there are four or five amendments. I wish I could see them sooner or later so I will know what they are about but nobody owes me that, either. We will take it as it comes.

I will ask the distinguished majority leader to be accommodating so we can get this bill finished, but I am doing that with great trepidation, not as to Senator KENNEDY but as to whether there is a willingness to pursue this bill with vigor if that accommodation is made. I am not sure about that based on some things that have been happening but I hope it is. It is with that in mind that I will talk to the leader, hoping it does mean that if accommodation is made, we will proceed with dispatch on the Energy bill.

I thank the Senator for yielding to me.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. SARBANES. Will the Senator yield for a question?

Mr. KENNEDY. I will be glad to yield for a question.

Mr. SARBANES. I have been listening to this discussion. Am I correct in saying that the Senator would not be seeking to speak now if the other side had not indicated that they were intending to try to bring the nomination of Mr. Pryor to the Senate on tomorrow? Is that right?

Mr. KENNEDY. The Senator is exactly correct.

Mr. SARBANES. The Senator is not inserting himself into the debate on the Energy bill seeking to slow the Energy bill down; he is prompted to do this by the fact that the other side is scheduling this nominee for a vote, I understand, with no debate whatsoever. Is that correct?

Mr. KENNEDY. Well, that is correct. It is not the members of the Judiciary Committee who are holding up the consideration of the Energy bill. It is the decision to put before the Senate, under the legitimate procedures of the Senate, a cloture petition to have a vote on this nominee, effectively shutting off all the debate.

Quite clearly, my own belief is if we had the time, and also had the time during the August recess, to complete the investigation which needs to be done on this nominee, the Senate would be much better informed, the American people would be much better informed, and the judiciary would be much better served. That is not the decision of the leadership and, therefore, we believed that as the day wore on, after 5, we would at least have an opportunity, since this is an enormously serious nominee for a very serious position and there are very serious charges, to address the Senate.

Mr. SARBANES. Will the Senator yield for a further question?

Mr. KENNEDY. Yes.

Mr. SARBANES. It is my understanding that twice this week, if I am not mistaken, we have had to go off of the Energy bill, which we are being told we must move forward, in order to

address other judgeship nominees who had previously been voted on a number of times. So we have been diverted off the track of the Energy bill by these judicial nominees, not of our doing but because of the scheduling which the other side has undertaken.

I know our assistant leader has been concerned about that as well, if I am not mistaken, in that regard. Is that not correct?

Mr. KENNEDY. The Senator is correct. As the Senator remembers, I think those votes were in the late morning and even interrupted committee work at that time, which many of us were involved in, let alone the consideration of the Energy bill.

Mr. SARBANES. I thank the Senator.

Mr. KENNEDY. I thank the Senator from Maryland.

The PRESIDING OFFICER. The Senator from Massachusetts.

NOMINATIONS

Mr. KENNEDY. Mr. President, contrary to the widespread impression of a partisan breakdown in the judicial nomination process, Democrats in this closely divided Senate have, in fact, tried our best to cooperate with the President on judicial nominations. We have largely succeeded, even though there are a handful of nominees who we believe are too extreme.

Since President Bush's inauguration, the Senate has confirmed 140 of his nominees and so far blocked only 2. We have said ''no'' in those cases partly because these few nominees were too extreme for lifetime judicial appointments and partly because the White House and the Senate majority have tried to jam the nominations through the Senate without respect for the Senate's advice and consent role under the Constitution and without respect for the Senate rules and traditions.

The nomination of Mr. Pryor illustrates all of these issues. Even his advocates concede that his attitudes and beliefs are the very extreme of legal thinking. I am confident that when the Members of the Senate and the public fully understand and consider his prejudices and attitudes, a majority of the Senate, with the strong support of the public, will agree that he does not merit confirmation to a lifetime seat on an appellate court that often has the last word on vital issues, not only for the 4½ million people of Alabama but also for the 8 million people of Georgia and the 15 million people of Florida. In fact, this nomination does not belong on the Senate floor at this time.

The Pryor nomination was reported out of the committee as a result of a gross violation of the same committee rule of procedure which caused the Cook and Roberts nominations to be held up in the Senate floor earlier this year. The Judiciary Committee has a rule which clearly prevents the termination of debate on a nominee unless a majority of the committee, including at least one member of the minority, is ready to vote on the nominee.

This rule, Rule 4, was adopted at the insistence of Senator HATCH, Senator Thurmond, and other Republicans in 1979, when I was chairman of the Judiciary Committee, as a reasonable protection for the minority. After the rule was ignored in the Cook and Roberts case, we thought we had resolved this matter amicably and equitably. Both nominees were later confirmed based on a clear understanding that Democrats would not in the future be deprived of their rule 4 rights.

After all, these rules were put in place at the start of this Congress, with the support of the Republican chairman of the committee, and now we have seen a blatant and flagrant disregard, which is not just an issue of procedure but affects the substance of this issue in a very important way.

Just as important is the reason why Democrats were unwilling to vote on this nomination in the committee. The reporting of this nomination was totally premature because the committee was forced to move to a vote in the midst of a serious investigation of substantive questions of candor and ethics raised at the hearing by the nominee's own testimony, by his answers and non-answers to the committee's followup questions.

On Friday, Chairman HATCH presented a version of the history of this nomination and this investigation which does not comport with the facts. I want to go through that history so the Senate can fully understand that Democrats have proceeded expeditiously and responsibly and that the rush to judgment in the committee last week was an effort to cut off an important investigation. The full Senate deserves to know its result before it considers this nomination.

The basic facts on this issue are straightforward. Democrats did not invent the issue. Years before this nomination, lengthy articles in Texas and DC newspapers raised the question of the propriety of the activities of the Republican Attorneys General Association.

It was reported that the organization sought campaign contributions to support the election of Republican attorneys general because they would be less aggressive than Democratic attorneys general in challenging business interests for violations of the law. Some descriptions of this effort characterize it as a shakedown scheme. The leaders of the association denied the allegation but refused to disclose its contributors. They were able to maintain secrecy by funneling the contributions through an account at the Republican National Committee that aggregated various kinds of State campaign contributions, thus avoiding separate public reporting of the contributions or the amount of these gifts. The issue received significant press coverage during the 2002 U.S. Senate campaign in Texas especially since several Republican attorneys general have denounced the association as fraught with ethical problems.

Since Mr. Pryor had been identified publicly as a leader of the association's efforts and the ethical issues raised by it, these issues are obviously relevant to his qualifications. Senator FEINGOLD asked the nominee about it at the June 11 hearing. Until this point in the hearing, Mr. Pryor was, in Senator HATCH's own words, ''no shrinking violet.'' He had been open and honest about his personal beliefs and ideological views. He did not retreat a single step or hedge his opinions. Nor were there any ''confirmation conversions'' taking new views, contradicting old ones. Mr. PRYOR was a model of outspokenness, with clear recollections of the details of briefs, legal opinions, speeches, and other complex legal issues.

Only on the issue of the Republicans Attorney General Association were his statements cramped and fudged, his recollections virtually nil. His answers were unresponsive and incomplete. They raise serious questions about his candor and truthfulness. He was asked a broad question reciting the allegations against the association. He was asked whether, if the allegations of soliciting contributions from potential target corporations are true, his own role in the association would present at least an appearance of conflict of interest. His answer was what would have been called a ''nondenial denial'' in the Watergate days. He said the contributions were made to the Republican National Committee, not to the association. He said that ''every one of these contributions, every penny, was disclosed [by the Republican National Committee] every month.''

The association's own materials show that its contributions were being given to the association and that the writing of checks to an aggregated account of the Republican National Committee was merely a way to use a reporting loophole to mask the association's contributions and the amounts of their gifts.

Even more startling, Mr. Pryor's assertion that every penny of the contributions was disclosed by the Republican National Committee was a clear misrepresentation. The fact is, the association and its members have explicitly refused to disclose the contributions. Republican National Committee reports did not mention any association funds, let alone every penny. Mr. Pryor's statement raised a giant red flag.

Senator FEINGOLD immediately told the nominee there would be followup on this issue in written questions. On June 17, Senator FEINGOLD and I both asked the followup questions. We gave him an opportunity to review the previous answers and make them more responsive. He refused. He said: ''I stand by them.'' We asked about other details of the association's operation and his specific role in it. Once again, his