The PRESIDING OFFICER. The Senator has 2 minutes remaining.

Ms. LANDRIEU. I would like to have 1 minute to close and then turn to one of the original cosponsors, the Senator from Tennessee, who may want to add. Let me again thank the chairman and ranking member for their able help because without their support, this amendment would not have been possible. We worked on many different approaches, several different drafts. Finally, we did come upon a way that sets a very clear goal.

I would agree with Senator SPECTER, it is somewhat modest, but it is a compromise. It is a clear goal. It is an attainable goal. It is a reachable goal. It gives the President and the administration the flexibility they need to do it in a way that is most helpful to this economy. It will create jobs, reduce taxes that people pay because of the price of oil and energy, and it gives the flexibility necessary to come up with a smart approach to this very serious problem.

I yield to my friend from Tennessee.

The PRESIDING OFFICER. The Senator from Tennessee.

Mr. ALEXANDER. Mr. President, I thank the Senator from Louisiana. We should not pass an Energy bill that does not put conservation up on the platform along with our encouragement of nuclear power, oil exploration, and hydrogen fuel cell; all of that is important. And this amendment by the Senator and various cosponsors makes it clear to the country that commonsense ways to conserve oil are equally important in our arsenal of having an economy that is less dependent on foreign oil and in a better position to produce clean air.

I am proud to join as a cosponsor. I congratulate the Senator and congratulate our chairman for being able to move this bill forward with such a bipartisan consensus.

Ms. LANDRIEU. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The Senator from New Mexico has 3 minutes remaining.

Mr. DOMENICI. Mr. President, I yield back the time I have. I might say to Senators, we tried very hard to get the vote within 15 minutes last time. I was asked by a number of Senators to please try to do that on the votes. I have no authority to say that will be the rule, but as the floor manager, we have a 15-minute rollcall vote on this amendment. It is a simple one. It is not too hard to find your way to the floor. I trust that in 15 minutes we will have disposed of this.

In the meantime, before that occurs, I ask unanimous consent that when the Senate convenes at 2:15, the pending amendment be set aside and that Senator WYDEN be recognized to offer the nuclear commercial plant amendment under the debate limitation which was agreed to last week.

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

The question is agreeing to amendment No. 871.

The yeas and nays have been ordered. The clerk will call the roll.

The assistant legislative clerk called the roll.

The result was announced—yeas 99, nays 1, as follows:

[Rollcall Vote No. 213 Leg.]

YEAS—99

Akaka	Dodd	Lincoln
Alexander	Dole	Lott
Allard	Domenici	Lugar
Allen	Dorgan	McCain
Baucus	Durbin	McConnell
Bayh	Edwards	Mikulski
Bennett	Ensign	Miller
Biden	Enzi	Murkowski
Bingaman	Feingold	Murray
Bond	Feinstein	Nelson (FL)
Boxer	Fitzgerald	Nelson (NE)
Breaux	Frist	Nickles
Brownback	Graham (FL)	Pryor
Bunning	Graham (SC)	Reed
Burns	Grassley	Reid
Byrd	Gregg	Roberts
Campbell	Hagel	Rockefeller
Cantwell	Harkin	Santorum
Carper	Hatch	Sarbanes
Chafee	Hollings	Schumer
Chambliss	Hutchison	Sessions
Clinton	Inhofe	Shelby
Cochran	Inouye	Smith
Coleman	Jeffords	Snowe
Collins	Johnson	Specter
Conrad	Kennedy	Stabenow
Cornyn	Kerry	Stevens
Corzine	Kohl	Sununu
Craig	Landrieu	Talent
Crapo	Lautenberg	Thomas
Daschle	Leahy	Voinovich
Dayton	Levin	Warner
DeWine	Lieberman	Wyden

NAYS—1

Kyl

The amendment (No. 871) was agreed to.

RECESS

The PRESIDING OFFICER. Under the previous order, the hour of 12:30 having arrived and passed, the Senate will stand in recess until 2:15.

Thereupon, the Senate, at 12:56 p.m., recessed until 2:15 p.m. and reassembled when called to order by the Presiding Officer (Mr. THOMAS).

The PRESIDING OFFICER. The Senator from Alabama.

CHANGE OF VOTE

Mr. SHELBY. Mr. President, on Thursday, June 5, on rollcall vote No. 209, I voted yea. It was my intention then to vote nay. Therefore, I ask unanimous consent that I be permitted to change my vote since it will not affect the outcome.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The PRESIDING OFFICER. Under the previous order, the Senator from Oregon is recognized.

AMENDMENT NO. 875

(Purpose: To strike the provision relating to deployment of new nuclear power plants)

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

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Oregon [Mr. WYDEN], for himself, Mr. SUNUNU, Mr. BINGAMAN, Mr. ENSIGN, Mr. REID, Mr. FEINGOLD, Mr. JEFFORDS, and Ms. SNOWE, proposes an amendment numbered 875.

Strike subtitle B of title IV.

Mr. WYDEN. Mr. President and colleagues, this amendment is sponsored by three Democrats, three Republicans, and one Independent. I hope this afternoon that it will have the support of Senators with varying degrees of views about the advisability of nuclear power. I am particularly pleased that the lead cosponsor, Senator SUNUNU, is with us today.

I will make a few brief remarks to begin the debate and then I am anxious to have plenty of time for colleagues.

The reason three Democrats and three Republicans and one Independent are sponsoring this amendment is that I think many of us in the Senate are neither pronuclear nor antinuclear but we are definitely protaxpayer. That is why we are on the floor this afternoon, because the loan guarantees that are in this legislation to construct nuclear power facilities are unprecedented and represent, in my view, particularly onerous and troublesome risks to the taxpayers of this country.

Frankly, people in my part of the country know a bit about this. It is not an abstraction for the people of the Pacific Northwest where we had the WPPSS debacle and 4 out of 5 facilities were never built. It was the biggest municipal bond failure in history, and it has certainly colored my thinking with respect to why we are on the floor today.

The loan guarantees—we did some research into this—are unprecedented with respect even to nuclear power. As far as I can tell, in the early days of nuclear power, there were subsidies for nuclear power but never before were the taxpayers on the hook from the get-go. That is what the Senate is confronted with now.

When it comes to the question of risk, I hope the Senate will focus on what the nonpartisan Congressional Budget Office has said on this topic. I will quote. It is at page 9 of the Congressional Budget Office analysis that we have made available to Senators. The Congressional Budget Office considered:

The risks of default on such loan guarantees to be very high, well above 50 percent.

Colleagues, first, when we are talking about risk—because nothing in life is foolproof and there are no guarantees of anything—I hope in looking at these guarantees you will first focus on the fact that the Congressional Budget Office has specifically said in their analysis that the risk of default on the

guarantees is very high. If those plants default, the exposure to taxpayers is enormous.

I will quote from the Congressional Research Service report they did with respect to these subsidies. They said:

> . . . the potential cost to the federal government of the nuclear power plant subsidies that would be provided by [this title] would be in the range of $14–$16 billion in 2002 dollars.

I think it is worth noting that the Senate spent a great deal of time on the child tax credit last week. There we were focusing on something involving $3 billion. If one or two of these plants go down, taxpayers are on the hook for a sum greater than that child tax credit.

Now, in the course of today's discussion, we will hear a number of arguments against the Wyden-Sununu amendment. One of the first will be: There are tax credits for a variety of energy sources in this legislation, for wind and solar and a variety of energy alternatives. That is correct. But those tax incentives are fundamentally different than the loan guarantees because in those instances the producer faces substantial risk.

With respect to, say, a wind facility, if the producer takes the initial risk and later on produces some wind power, they would get a credit in order to defray some of their costs. With respect to the loan guarantees for nuclear power, the producer faces no such risk. The producer has the Government, in effect, guaranteeing, right at the outset, much of the risk.

So with respect to these nuclear loan guarantees, unlike the incentives for wind or solar, what we are talking about is that the Government will socialize the losses but will let private investors pick up the gains. The losses will be socialized; the gains will be privatized. And that is unique in this legislation.

I also say to my colleagues in the Senate, the White House has never asked for these loan guarantees. These loan guarantees are not in the House bill. Senators' phones are not ringing off the hook from the Secretary of Energy or others clamoring that this must be done. This is something that, in my view, is far out of the mainstream in terms of energy policy, not because I am antinuclear—and I don't intend to talk about safety issues—but because it is such a large exposure to taxpayers.

For example, a number of reports have come out already with respect to how nuclear power stands up with respect to other costs such as natural gas or coal. One of the reasons, in my view, the Congressional Budget Office believes there is such a high risk of default is that the objective analyses show that nuclear has not been competitive with other sources such as coal.

I hope Senators will look at those two reports: a report done by the Congressional Budget Office documenting a high likelihood of default, and a report done by the Congressional Research Service talking about exposure to taxpayers.

I would finally say to the Senate, it did not have to be this way. I know the distinguished chairman of the Energy Committee feels very strongly about this subject. He is a longtime family friend. I was very willing, and I think other Senators were as well, to have had a modest program. We had been talking, for example, about one experimental initiative to look at advanced technologies of one sort or another. I think that would have been acceptable. But here we are talking about guarantees for up to seven plants.

I will make reference to the legislation. The bill authorizes DOE to provide loan guarantees for up to 50 percent of the construction costs of new nuclear plants and, on top of that, would authorize the Department of Energy to enter into long-term contracts for the purchase of power from those plants. The Secretary could provide loan guarantees for up to seven plants.

That is not a modest experiment that would have been acceptable to this Member of the Senate, but it is a very significant exposure to the taxpayers of this country at a time when every Senator is concerned about deficits.

Mr. President, I intend to allow time for my colleagues. I see Senator SUNUNU is on the floor. Senator REID has strong views on this.

I also express my appreciation to the distinguished ranking minority member of the Energy Committee. He has worked very closely with me. He embodies the philosophy of a lot of our colleagues in that he has been supportive of nuclear power in the past but believes these subsidies are too rich.

I am hopeful that today Senators with varying degrees of views on the nuclear power issue will agree with the Congressional Budget Office, will agree with the Congressional Research Service on these issues with respect to the taxpayers, and support the Wyden-Sununu amendment.

Mr. President, I yield at this time so other colleagues who have time constraints may speak. I will have the opportunity to speak later in the debate.

The PRESIDING OFFICER. Who yields time?

The Senator from New Hampshire.

Mr. SUNUNU. Mr. President, I begin by thanking my colleague from Oregon for his work on this amendment. I am pleased to join as a cosponsor. As he pointed out, this is ultimately about what kind of an energy policy we want, what kind of an economic policy makes sense, and whether we can do the right thing and protect taxpayers from being exposed to the potential liability and cost that Senator WYDEN described.

This provision we are trying to strike in this bill guarantees 50 percent of the construction costs of up to six nuclear powerplants. Those plants could cost anywhere from $2 to $4 billion. And any taxpayer out there can simply do the math as to what kind of exposure this would provide.

It has been a pleasure to work with the Senator from Oregon. We are going to get into the substance of this debate and the details of this debate over the next couple of hours, but at this time I yield the floor to the Senator from Nevada, who has been a very strong voice on this and other matters having to do with energy.

The PRESIDING OFFICER (Mr. DOMENICI). The Senator from Nevada.

Mr. REID. Mr. President, I express my appreciation to the Senator from New Hampshire for allowing me to speak. I have to speak at a memorial service in just a short time, and but for his kindness and generosity I would have had to either miss the ability to debate this matter or be late to debate this matter. So I appreciate very much the comity of my friend from New Hampshire.

I express my appreciation to my longtime friend and colleague, Senator WYDEN, for this legislation. I also say the way this legislation has been approached is the way to approach legislation. This is a bipartisan amendment. This is a good debate we are having on the Senate floor.

My friend from New Mexico, the manager of this bill, believes very deeply in the renewal of nuclear power. I understand how he feels about this.

As I say, this is the way legislation should be handled. This is a good, fair, open debate. I approach this more from an environmental perspective than my friend from New Hampshire does. Even though he has been here just a short period of time, the Senator from New Hampshire is always focused on numbers, taxpayer dollars.

I rise in support of this amendment offered by my colleagues, the Senator from Oregon and the Senator from New Hampshire. I really do appreciate their efforts to bring to light the tremendous financial risks this Energy bill places on the backs of American working men and women and their families.

Let me underline and underscore, my opposition to this amendment has nothing to do with the longstanding, seemingly never-ending debate on nuclear waste. This has nothing to do with nuclear waste.

This Energy bill contains a provision, which this amendment would strike, that would make the Federal Government the guarantor of the costs of building new nuclear powerplants.

The Energy bill would allow the Secretary of Energy to enter into agreements with nuclear powerplant owners to give Federal loan guarantees for loans to construct new reactors or to enter into new contracts for guaranteed purchases of power from these reactors.

According to the Congressional Budget Office, what we refer to as CBO, this is an extremely risky financial endeavor. In fact, the CBO considers ''the risk of default on such a loan guarantee to be very high—well above 50 percent.''

That means the American taxpayer will be footing the bill for construction of these nuclear powerplants, the way the Senator from Oregon indicated we would have really a socialization of the costs and the nonbenefits of this legislation. If this provision remains in the bill, the Federal Government will be entering into loan guarantees and power purchase agreements that could cost at least $14 billion.

CBO is not alone in its assessment of the financial risk of backing the new reactor construction.

We have from Standard & Poor's a document I ask unanimous consent to print in the RECORD.

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

TIME FOR A NEW START FOR U.S. NUCLEAR ENERGY?

(By Peter Rigby)

Since its beginnings, commercial nuclear energy has offered the tantalizing promise of clean, reliable, secure, safe, and cheap energy for a modern world dependent upon electricity. No one did more than Lewis Strauss, chairman of the U.S. Atomic Energy Commission, to define expectations for the industry when he declared in 1954 that nuclear energy would one day be ''too cheap to meter.'' But the record proved far different. Nuclear energy became the most expensive form of generating electricity and the most controversial following accidents at Three Mile Island and Chernobyl. And today's electricity industry's credit problems of too much debt and too many power plants will do little to invite new interest in an advanced design nuclear power plant. Yet energy bills circulating through the U.S. Senate and House of Representatives hope to change that perception and perhaps lower the credit risk sufficient enough to attract new capital. Will Washington, D.C.'s new energy initiatives lower the barriers to new nuclear construction? Many would like to think so, but it will be an uphill battle.

The House version of the Energy Bill modestly ''. . . sets the stage for building new nuclear reactors by reauthorizing Price-Anderson. . . .'' Since 1957, the Price-Anderson Act has indemnified the private sector's liability if a major nuclear accident happens on the premise that no private insurance carriers could provide such coverage on commercial terms. Without Price-Anderson, it is difficult to envision how nuclear plants could operate commercially, now or in the future. The more ambitious Senate version of the Energy Bill seeks to jump-start new nuclear plants in the U.S. by providing measurable financial resources for new projects. According to the latest version of the Senate Energy Bill, the Secretary of Energy could provide financial assistance to supplement private sector financing if the proposed new nuclear plant contributes to energy security, fuel, or technology diversity or clean air attainment goals. The bill would limit financial assistance to 50% of the project costs with financial assistance being defined as a line of credit, secured loan, loan guarantee, purchase agreement, or some combination of these assistance plans.

In light of how well U.S. nuclear plants have generally been operating recently and with promising new technology on the horizon, nuclear energy would seem to have a future. Currently, about 20% of the nation's electricity comes from nuclear power plants. The introduction of competition and deregulation in the U.S. has helped drive the nuclear fleet into achieving record availabilities and load factors, as independent owners have taken ownership from utilities that divested generation. Even utilities that did not divest their nuclear plants have experienced greatly improved performance across the board. Today's nuclear power plant operation and maintenance and fuel costs are remarkably low compared with many fossil fuel plants—as low as 1.68 cents per kWh according to the Nuclear Energy Institute. Although the high-profile accidents at Three Mile Island and Chernobyl greatly raised the threshold for safer operations, operating success stories may overstate what may be achievable with new designs. Nuclear operators in the U.S. have had a few decades to work out operationsl problems, and with original debt paid off, more cash resources have been dedicated to improving performance. Providers of new capital for advanced, nuclear energy will want some comfort that credit and operating risks are covered. But the industry's legacy of cost growth, technolgy problems, cumbersome political and regulatory oversight, and the newer risks brought about by competition and terrorism concerns may keep credit risk too high for even the Senate bill to overcome.

HISTORIC RISKS WILL PERSIST

A nuclear power plant's life cycle exposes capital providers to four distinct periods of credit risk that history has shown will persist. These periods are pre-construction, construction, operations, and decommissioning. The risks tend to be asymmetrical with an enormous downside bias against credit providers and little or no upside benefits. To attrack new capital, future developers will have to demonstrate that the risks no longer exist or that the provisions of the Energy Bill can effectively mitigate the risks.

During a nuclear plant's pre-construction, phase, lenders, as they do with other projects, face the risks of cost growth and delay. When nuclear engineers encountered technology problems during the planning stages in the 1960s and 1970s, solutions inevitably resulted in scope changes or re-designs, or both. A 1979 Rand Corp. study for the U.S. Dept. of Energy still serves as a warning to investors in new, untested nuclear technology. The study found that cost budget estimates grew on average 114% over first estimates and that final actual costs exceeded those estimates by 141%. Half of the plants in the study never reached commercial operations. An extreme example of delays and cost overruns, which remains fresh in investors' minds, is Long Island Lighting Co.'s Shoreham nuclear power station. Begun in 1965 at an initial cost estimate of $65 million–$75 million, Shoreham endured 20 years of construction delays and design changes due to legal battles, local opposition, regulatory and political intervention, and technical problems that pushed the final cost to almost $6 billion. In the end, a complete and fully licensed power plant never went operational, and ratepayers, investors, and taxpayers are still footing the bill. Another example is TXU Corp.'s 2,300 MW Comanche Peak Units 1 and 2, which took longer than any nuclear plant to build and saw costs mushroom to nearly $12 billion by the time full operations began in 1993.

That no new nuclear plant construction has begun in the U.S. for over 2 years suggests that a new one would be susceptible to cost growth risk as engineers incorporate advances in control and power systems, fuel systems, safety and regulatory requirements (which could become more onerous during the years of design and construction), material sciences and information technology. Even promising new designs, such as the pebble bed reactor (PBR) design that Eskom Holdings Ltd. of South Africa plans to build soon, would likely risk design changes and attendant cost growth if built in the U.S. Cost growth and delay can also arise from design and scope changes due to the efforts of effective interveners, such as the anti-nuclear citizen activist groups that successfully delayed Shoreham and ultimately prevented it from going commercial.

History also suggests that the construction and start-up phases of new nuclear power will likely encounter problems that will result in increased costs and delays. Licensing delays, construction management problem procurement holdups, troubles with new technologies and construction defects, among other problems extended construction beyond 10 years for some U.S. nuclear power plants. It would be overly heroic to assume that the first nuclear plant to be built in more than two decades would escape the industry's legacy of construction problems. For a debt-financed construction endeavor, likely to cost hundreds of millions of dollars (possibly into the billion dollar plus range), these problems, or even the possibility of such problems, will likely drive risk-averse lender to demand a significant risk premium unless a third party assumes completion and delay risks. In the world of cost-of-service, rate-of-return environments, utilities could, and did, pass these costs onto ratepayers to a certain extent. The bankruptcies of El Paso Electric Co. and Public Service Company of New Hampshire in the 1980s, however, attest to the limits of ratepayers' capacity to absorb construction risk.

Today, no utility or independent power producer or their capital provide will want to take unmitigated construction risk, particularly if it is difficult to quantify. In addition, given the possibility that much of the construction risk of a new nuclear plant may lay outside of the engineering, procurement, and construction contractor's control, no contractor will want to risk its balance sheet to provide the fixed-price, date-certain, turnkey construction contracts that have given great certainty to the cost of today's new fossil-fueled power plants. Because of the long lead-time historically associated with nuclear power, securing 100% financing upfront, as the industry has become accustomed to, may be difficult. That could introduce financing risks if projects encounter problems during construction; delays in securing final financing would, among other problems, drive up capitalized interest costs during construction and ultimately the project's cost.

While U.S. nuclear power plants have operated without major mishap for over 20 years, unexpected costs during the operational phase of a nuclear plant can be substantial. And it is unclear whether and if proposed government programs will be able, or willing, to offset the risk of these costs. Still, today's operators have demonstrated that they can safely operate older nuclear power plants. Yet the potential that incidents,such as last year's wholly unanticipated corrosion problem at FirstEnergy Corp's Davis Besse 900 MW plant, are not unique, one-time affairs will keep credit risk high for nuclear plant owners. In addition, investors will remember that the Davis Besse repair costs of about $400 million, not including replacement power, are unrecoverable from ratepayers, leaving investors to shoulder the costs, incidentally, had the outage occurred during a period of high power prices and tight supply, as was the case two years ago, the cost to investors would have been much higher.

Decommissioning costs, which entail the considerable expense of tearing down a plant and safely disposing or storing the radioactive waste, remain uncertain at best given

how few U.S. nuclear plants have undergone decommissioning. Progress toward creating a permanent disposal site for nuclear waste at the government's Yucca Mountain site in Nevada will help mitigate decommissioning risk, as well as spent fuel disposal costs. Again, it is not clear who will bear decommissioning costs, but if lenders foresee any lender liability risk, they will steer clear of new nuclear investments or require steep compensation. That, as a point aside, may be one of the reasons so many plants have been granted license extensions. Refurbishing a depreciated nuclear power plant costs far less than decommissioning one.

Finally, for many of the reasons described above and all else being equal, Standard & Poor's Ratings Services has found that an electric utility with a nuclear exposure has weaker credit than one without and can expect to pay more on the margin for credit. Federal support of construction costs will do little to change that reality. Therefore, were a utility to embark on a new or expanded nuclear endeavor, Standard & Poor's would likely revisit its rating on the utility.

COMPETITION INTRODUCES NEW RISKS FOR NUCLEAR ENERGY

As electricity deregulation and industry reform have progressed, capital providers to the nuclear power sector face some of the same risks as capital providers to other power generation technologies. Again, if policymakers want to attract capital to the industry, lenders in particular will likely have to be convinced that at least some of the risks are covered or mitigated. The sheer size of most new nuclear investments suggests that downside risk for lenders could be considerable indeed.

Clearly, buying and selling electricity in a competitive environment comes with its risks, both market and political. The wake of California's electricity reform problems forced one utility into bankruptcy and brought another to the brink of bankruptcy. Independent power producers are resisting efforts by California and its Department of Water Resources to abrogate or renegotiate recently executed power sales agreements. These events, combined with the credit crunch that has hit many other utilities and energy merchants, have understandably moved public utility commissioners and capital providers into more risk-averse postures. Absent these problems, nuclear power would still be challenged to attract new capital; in this environment, however, the task is all the more difficult. Competition has dramatically shifted risks from ratepayers to lenders and other investors; that is not likely to change.

In a competitive wholesale power environment, nuclear plants would likely sell power as a base load generator behind hydroelectric and ahead of coal and gas. Capital costs would be higher than coal plants and much higher than natural gas plants, but marginal operating costs would be very low, as they are now. Nonetheless, an owner of a new nuclear plant would likely want a long-term—20 years or more—power contract with a creditworthy utility to ensure that fixed and variable cost are covered in order to attract the massive amount of capital needed for construction. Alternatively, a utility that wants to add a new nuclear plant to its portfolio would need regulatory assurances from its public utility commission that the entire cost of the plant would be recoverable from its rate base. In the first instance, few utilities, or their regulators, want such long-term contract obligations, especially in an environment of excess generation that can be purchased on the cheap. That gas costs and clean-air compliance costs could be on the rise might offset some of those concerns. For some of the same reasons, public utility commissioners may not be so forthcoming with their authority to grant rate-based treatment of a new nuclear plant, especially in the preconstruction period if cost growth risk remains uncovered. For many commissioners, the all-in costs of alternative generation will likely seem more predictable and cheaper than a new nuclear plant.

The current backlash against regulatory reform and open markets in parts of the country could also put a new nuclear plant at risk. A large, new nuclear plant will typically need access to a large electrical network with a geographically dispersed customer group—the network that a structured regional transmission organization, as envisioned by FERC, could provide. However, if transmission access is limited or if states have chosen to maintain barriers to electricity trading and marketing, physical or otherwise, as many have, a new nuclear power plant may find itself operating within a much smaller system, a situation that could raise its credit risk, all else being equal. One obvious mitigant to this rise would be to build much smaller nuclear plants, such as the 100–MW modular PBR designs.

Whether a new nuclear plant is financed directly from the wallets of captive ratepayers or with long-term contracts, a large nuclear plant's size relative to its market raises outage-cost risk. A nuclear plant with a long-term power contract will likely contain provisions to provide replacement power, or the financial equivalent, if the plant becomes temporarily unavailable. Given nuclear power's vulnerability to rare, but extended forced outages, replacement power costs for 1,000–2,000 MW of base load power could be considerable, which would factor into credit risk. Similarly, a utility that owns a large nuclear station could find itself spending hundreds of millions of dollars to cover its short position while its station was down without assurances of recovery from ratepayers. Again, smaller PBRs would mitigate this risk.

Some the preliminary provisions of the Senate Energy Bill contemplate some of these risks. A long-term power contract, for example, with the federal government that covers 50% of the plant's costs might mitigate some of concerns of operating in a competitive environment. Similarly, loan guarantees or lines of credit could also offset the costs. However, if gas- and coal-fired plants can be built for much less (e.g., 50% less) and the operational risk of extended nuclear plant outages remains uncovered, a government program could fall short of relieving investors' credit concerns. Moreover, as with any government subsidy program, offenders would invariably factor U.S. government counterparty risk in the form of subsidy reauthorization uncertainty. Would the programs envisioned by the Senate bill last through the capital recovery period? Maybe. Maybe not.

A new risk for nuclear energy that has caught everyone's attention is terrorism. Because of the dangers that nuclear energy brings, security and insurance costs for nuclear facilities—new and old—are much higher than for fossil or renewable power plants. Therefore, in a competitive power environment, stakeholders in power generation may be reluctant to assume new risks that cost more to mitigate. Again, if a government subsidy can put security costs for new nuclear plants on an even playing field with conventional power generation, the industry could attract new capital. However, most new programs envisioned by Washington only address the construction risk.

As a note aside, some power generators and utilities may oppose efforts to support new U.S. nuclear generation capacity beyond existing subsidies, such as Price-Andersen, if they are heavily invested in coal and gas. New nuclear energy's low variable operating costs would likely displace existing coal-fired and gas-fired generation units in today's environment. It will do little, however, to displace oil-fired generation or lower U.S. oil imports because so little electricity, about 2% of the U.S. load, is actually generated by oil and much of that is for peak load, which nuclear energy would not serve anyway. But for stakeholders—investors, state politicians and regulators, lenders, customers—the risk that new nuclear generation could strand investment in conventional fossil-fuel-fired generation may be unacceptable unless the government provides financial compensation. And for a government trying to contain federal spending, those costs could be prohibitively expensive.

AN ENERGY BILL COULD MITIGATE THE RISKS

To attract new capital to build the next generation of nuclear power plants in the U.S., developers will need to convince capital providers that the following risks are not materially greater than for fossil fuel power plants:

The expense of cost growth, scope change, technology risk and start-up delay.

The costs of unforeseen design problems that manifest themselves well after commercial operations begin.

The costs resulting from the activities of effective interveners.

The costs resulting from regulatory changes, including growth in oversight and compliance costs.

The cost arising from forced outages in a competitive wholesale environment.

The costs of replacing credit counterparties who are unwilling or unable to honor obligations or commitments upon which a nuclear plant's financing decisions were made.

The added and uncertain expense of providing insurance and terrorism protection that nuclear plants need and that would disadvantage a nuclear plant operating in a competitive wholesale market.

The versions of the Energy Bill circulating around Capital Hill may indeed mitigate enough of the risks that would otherwise dissuade investors from financing new nuclear capacity. The key drivers will be not so much in the broad generalities of the authorizing legislation, but the details of the enabling regulations promulgated by the Department of Energy. That could take some time to draft. However, the Senate markup of the bill appears to recognize the issues. Absent an affordable alternative, if Price-Anderson is not re-authorized, existing nuclear power plants could be forced to close because of the potential liability of an accident that could run into the billions of dollars. Beyond Price-Anderson, however, considerable government financial support will like be needed to attract capital, given the perceived credit risks.

The proposed Energy Act's subtitle section, the ''Nuclear Energy Finance Act of 2003.'' provides support for ''advanced reactor designs'' that covers reactors that enhance safety, efficiency, proliferation resistance, or waste reduction compared with existing commercial nuclear reactors in the U.S. In addition, financial support would consider ''eligible costs'' that would cover costs incurred by a project developer to develop and construct a nuclear plant, including costs arising from regulatory and licensing delays. Financial assistance may take the form of a loan guarantee of principal and interest, a power purchase agreement, or some combination of both.

The government's proposed support of new nuclear construction will come with limits.

The objective is to cover the risks of new nuclear general technology and construction until capital providers gain confidence that a new generation of nuclear power plants is commercially sustainable. The act would limit support to 50% of eligible project costs and to the first 8,400 MW of new nuclear generation. The 50% limit would certainly control the government's exposure, as well as mitigate the risks of moral hazard that a complete guarantee would invite. However, as the industry has learned, some of the costs that could undermine new nuclear power are not those of construction and design, but are the operational ones that could arise after government assistance has ended. In addition, given the risk of cost growth and the likely high capital costs of a new nuclear plant, a 50% level of financial assistance may not be enough to entice a developer comparing uncertain estimates of $1,500–$2,000 per kW capital cost of a new generation nuclear plant with more certain $500 per kW combined-cycle gas turbine or $1,000 per kW coal capital costs.

Whether or not the nuclear energy provisions of the Senate's version of the Energy Bill are good ecomonic or energy policy is beyond the scope or intent of this article. New nuclear energy has compelling attributes, such as supporting energy diversity, replacing an aging U.S. nuclear fleet, offsetting rising natural gas prices, and reducing greenhouse gases and NO_X, SO_X, and particulate airborne pollutants. Once the capital costs are sunk, the variable operating cost can indeed be quite low. However, nuclear power tends to raise credit risk concerns during construction and well after construction. Investors, particularly lenders who rarely see any upside potential in cutting-edge technology investments, including energy, will likely find the potential downside credit risk of an advanced, nuclear power plan too much to bear unless a third party can cover some of the risks. An Energy Bill that covers advanced design nuclear plant construction risk may go a long way toward allaying those concerns, but if operational and decommissioning risks remain uncovered, look for lenders to sit this opportunity out.

Mr. REID. I will only read one sentence:

But the industry's legacy of cost growth, technology problems, cumbersome political and regulatory oversight, and the newer risks brought about by competition and terrorism concerns may keep credit risk too high for even the Senate to overcome.

In addition, we have the Economist magazine of May 19 which says, among other things:

That is why the real argument over nuclear's future should rest on economics. Given the industry's history of cost overruns and wasted billions, the claim of dramatically improved economics would, if true, support a revival. Alas, as our special report makes clear . . . the claim is dubious.

Why in the world should a mature, well-capitalized industry receive subsidies, such as government liability insurance or help the costs of waste disposal and decommissioning?

The article closes by saying:

If the private sector wishes to build new nuclear plants in an open and competitive energy market, more power to it. As subsidies are withdrawn, however, that possibility will become ever less likely. Nuclear power, which early advocates thought would be ''too cheap to meter'', is more likely to be remembered as too costly to matter.

These statements hardly sound like a sound investment for the Federal Government to make at this time. The simple truth is if investors on Wall Street won't invest in new nuclear powerplants, we should not force the families on Main Street to back them with their hard-earned income. We have an obligation to protect the American taxpayer from having his or her money guarantee investments by the Federal Government in these risky programs. This amendment is not about whether you support or oppose nuclear power; it is about keeping the Federal Government from making risky investments.

A wide range of national taxpayer, environmental, and public interest groups understand these risks. That is why more than a dozen of these groups signed a letter supporting the Wyden-Sununu amendment. The groups include the National Taxpayers Union, Taxpayers for Common Sense, Council for Citizens Against Government Waste, the U.S. Public Interest Research Group, and the National Resources Defense Counsel.

I ask unanimous consent that a letter from these organizations be printed in the RECORD.

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

SUPPORT WYDEN-SUNUNU-BINGAMAN-ENSIGN AMENDMENT TO STRIKE TAXPAYER FINANCING FOR NEW NUCLEAR REACTORS

June 5, 2003.

DEAR SENATOR: As national taxpayer, public interest, and environmental organizations, we are writing in support of the Wyden-Sununu-Bingaman-Ensign amendment to strike Title IV, Subtitle B from S. 14, the ''Energy Policy Act of 2003.'' This irresponsible provision makes taxpayers liable for up to half the cost of constructing new reactors, a new and unprecedented extreme in the long history of subsidizing the mature nuclear industry. We urge you to support the Wyden-Sununu-Bingaman-Ensign amendment to strike Title IV, Subtitle B of S. 14.

Subtitle B authorizes the Department of Energy to provide federal loan guarantees to finance half the cost of bringing on line an additional 8,400 megawatts of nuclear energy) amounting to an estimated taxpayer subsidy of $14 to $16 billion. There are no guidelines regarding interest rates and repayment for the loan guarantees, and the Congressional Budget Office considers the risk of default on such a loan guarantee to be ''very high—well above 50 percent.''

Additionally, this provision authorizes the federal government to enter into purchase agreements to buy power back from these new reactors. The legislation does not state how much energy the federal government will purchase and at what rate, but Department of Energy documents recommend that the federal government contract to purchase nuclear power at above market rates. Offering these subsidies to a mature industry would further distort electricity markets by granting nuclear power an unfair and undesirable advantage over other energy alternatives.

Even the first nuclear reactors did not require this level of taxpayer financing. Since then, federal taxpayers have already provided $66 billion in research and development subsidies to the nuclear power industry. Nearly five decades and more than 100 reactors later, it is time for the industry to support itself. If proposed new reactors are as economical as the industry claims, they should be able to finance them privately.

There is no justification for providing the mature nuclear industry with these massive subsidies. Again, we strongly urge you to vote for the Wyden-Sununu-Bingaman-Ensign amendment to strike Title IV Subtitle B of S. 14.

Sincerely,

Anna Aurillio, Legislative Director, U.S. Public Interest Research Group.

Alden Meyer, Director of Government Relations, Union of Concerned Scientists.

Jill Lancelot, President, Taxpayers for Common Sense.

Debbie Boger, Senior Washington DC Representative, Sierra Club.

Wenonah Hauter, Director, Public Citizen's Critical Mass.

Michael Mariotte, Executive Director, Nuclear Information and Resource Service.

Alyssondra Campaigne, Legislative Director, Natural Resources Defense Council.

Pete Sepp, Vice President of Communications, National Taxpayers Union.

Betsy Loyless, Political director, League of Conservation Voters.

Leslie Seff, Esq., Project Director, Sustainable Energy, GRACE Public Fund.

Erich Pica, Green Scissors Director, Friends of the Earth.

Tom Schatz, President, Council for Citizens Against Government Waste.

Susan Gordon, Director, Alliance for Nuclear Accountability.

Mr. REID. Mr. President, I also have a letter signed by the League of Conservation Voters indicating they will consider including the vote on this amendment in their yearly environmental scorecard. I ask unanimous consent that that letter be printed in the RECORD.

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

LEAGUE OF CONSERVATION VOTERS,

June 10, 2003.

Re Wyden-Sununu-Bingaman-Engsign Amendment To Strike Taxpayer Financing For New Nuclear Reactors.

Hon. HARRY REID,
U.S. Senate,
Washington, DC.

DEAR SENATOR REID: In response to an inquiry from your staff, this letter will confirm that the League of Conservation Voters (LCV) supports an amendment that will be offered by Senators WYDEN (D-OR), SUNUNU (R-NH), BINGAMAN (D-NM) and ENSIGN (R-NV) to the Senate Energy bill (S. 14) striking a provision that would make taxpayers liable for up to half the costs of constructing new reactors, a new and unprecedented extreme in the long history of subsidizing the mature nuclear industry.

S. 14 would provide federal loan guarantees to finance half the cost of bringing on line an additional 8,400 megawatts of nuclear energy, and estimated taxpayer subsidy of $14 to $16 billion. There are no guidelines regarding interest rates and repayment for the loan guarantees. In addition, this provision authorizes the federal government to enter into purchase agreements to buy power back from these new reactors. The legislation does not state how much energy the federal government will purchase and at what rate, but Department of Energy documents recommend that the federal government contract to purchase nuclear power at above market rates. Offering these subsidies to a mature industry would further distort electricity markets by granting nuclear power an unfair and undesirable advantage over other energy alternatives.

Even the first nuclear reactors did not require this level of taxpayer financing. Since then, federal taxpayers have already provided $66 billion in research and development subsidies to the nuclear power industry. Nearly five decades and more than 100 reactors later, it is time for the industry to support itself. If proposed new reactors are as economical as the industry claims, they should be able to finance them privately.

There is no justification for providing the mature nuclear industry with these massive subsidies. For this reason, we strongly support the Wyden-Sununu-Bingaman-Ensign amendment to strike the nuclear construction subsidy from S. 14. LCV's Political Advisory Committee will strongly consider including votes on this issue in compiling LVC's 2003 Scorecard. If you need more information, please call me or Mary Minette, LVC's legislative director, at (202) 785–8683.

Sincerely,

BETSY LOYLESS,
Vice President, Policy & Lobbying.

Mr. REID. The nuclear power industry is a mature, developed industry. It has had more than 30 years to convince the wizards on Wall Street of its financial merit. The truth is Wall Street is not convinced, and until Wall Street is convinced, Congress should stay out of the risky financial deals.

The New York Times today had an article about the empty energy bill. One of the paragraphs from the New York Times article reads:

The biggest addition to this dreary lineup [of matters in this bill] is a huge $30 billion subsidy for nuclear power.

It goes on to say that this is simply bad. Even pronuclear allies regard this package as being excessive.

The Washington Post today says:

. . . taxpayers should not be asked to provide subsidies for new nuclear power plants either. As it stands, Senate legislation would provide loan guarantees for up to half of the construction costs of new nuclear plants.

If the Senate wants to encourage nuclear power plant construction, it should find means to do so that don't risk such a high price to the [American] taxpayer.

I don't believe my colleagues should guarantee these loans, and that is what we are doing. They wouldn't do it with their own money, so we should not allow the Federal Government to do it with taxpayer money.

I commend and applaud the sponsors of the amendment, the Senator from Oregon and the Senator from New Hampshire. I hope their amendment will pass.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. BINGAMAN. Mr. President, let me speak briefly also in support of the amendment by Senator WYDEN and Senator SUNUNU. This is an amendment I offered in the committee markup with Senator WYDEN. We were not successful at that time, obviously. I congratulate both sponsors of the amendment for offering it again here.

Clearly, I am not opposed to the building of new nuclear powerplants. I believe nuclear power makes a very major contribution to our energy needs. It supplies about 20 percent of our Nation's electricity today. It does so safely. It does so reliably. It does not generate greenhouse gases. And it does so at prices that are competitive with coal and natural gas.

I hope in the future we will see additional nuclear power production in this country and worldwide. I think it is a technology that provides many benefits to us.

There are provisions in the bill that are strongly in support of the nuclear power industry and its future: The renewal of the Price-Anderson Act, for example, that protects the nuclear industry against liability from accidents. There are provisions in there to carry out research and development to help with the training of a workforce. There are many provisions in this bill that are very strongly in support of the nuclear power industry.

The provision this amendment goes to would authorize the Secretary of Energy to guarantee up to half the cost of 8,400 megawatts of nuclear capacity. That translates into at least six large nuclear powerplants. We do not know with any precision how much these loan guarantees would wind up costing taxpayers. That depends on many variables, such as how many plants are actually built under the program, how much they cost, whether in fact there is a default, what the interest rates might be on the defaulted loans, whether the plants would still be able to operate if there were default.

There is a lot of uncertainty in the provision that is the subject of this debate. The Congressional Budget Office has made a number of assumptions that are favorable to the industry in coming up with its estimate. It assumes, for example, that the Government would only guarantee one, not six, plants during the next 10 years. It also assumes that it would cost about half as much as Seabrook and Shoreham did two decades ago and that it would still be able to operate after a default. Under these assumptions, CBO has concluded that the loan guarantees would cost in the range of $275 million for the one plant.

The Nuclear Energy Institute takes strong exception to these Congressional Budget Office conclusions. NEI doubts the industry will default on its loans. It believes CBO's estimate is based on noncredible, illogical assumptions and that the CBO estimate is unrealistically high.

So we have experts on all sides of this issue. The debate is important, but I do think it glosses over some of the fundamental questions: Does this nuclear power industry need these loan guarantees at this point? Is guaranteeing the nuclear power industry's loans sound public policy? On both of those issues, I believe the preponderance of the argument is on the side of the Wyden-Sununu amendment. I do not believe loan guarantees are necessary in this magnitude at this time.

This is a mature industry. We have been building nuclear powerplants in this country for nearly half a century. We have over 100 nuclear powerplants now operating. The nuclear industry did not need loan guarantees to get off the ground 50 years ago, and I do not believe those guarantees are required at this point.

Moreover, the companies that are most likely to build these new nuclear powerplants are the ones that have built them before and the ones that are operating them now. These are not small businesses.

As a result of the recent wave of mergers and acquisitions, there are a dozen utilities that now own 75 percent of the Nation's nuclear capacity and two-thirds of its nuclear reactors. Each of these utilities generates billions of dollars in revenues each year. Many generate tens of billions of dollars in revenue each year. Collectively, these 12 utilities had nearly $12 billion in revenues in 2001.

There is no evidence of which I am aware in the record before us that the nuclear industry needs loan guarantees of this magnitude to build new nuclear powerplants. The Energy and Natural Resources Committee held hearings on the state of the nuclear industry in the past Congress. We heard from both the utility industry and the financial community, and neither one suggested that loan guarantees were appropriate or required.

The utility representative said that the state of the nuclear industry is ''very sound'' and that new plants would be ''economically competitive'' and acceptable to investors. The Wall Street representative at our committee hearing testified that a large successful utility could finance the construction of a new nuclear powerplant, and nobody mentioned the need for a Federal loan program of this type or a loan guarantee program of this type.

Second, I do not believe that shifting the financial risk of constructing these plants from industry to the Federal Government or to the taxpayers is sound public policy.

For most of the last century, utilities built powerplants in this country, whether nuclear or non-nuclear plants, under what is called the regulatory compact. Utilities were State-regulated monopolies. They accepted an obligation to serve everyone in their service territories at State-set rates. In return, they were shielded from competition. They were guaranteed recovery of their prudently incurred costs plus a reasonable profit.

The regulatory compact has largely been abandoned in this country during the last couple of decades. It has been replaced by deregulated, competitive, wholesale electricity markets. So instead of wholesale electricity prices being set based on the utility's cost of production, they are now being set more by the market, and title XI of the bill before us is intended to further these developments.

Giving Government loan guarantees of this magnitude to one segment of the utility industry—indeed one of the better financed segments of the industry—I think unduly interferes with the

free market. It runs counter to efforts to establish competitive electricity markets in this country.

In a competitive market, utilities are supposed to decide whether to build new powerplants by weighing the economic risk involved against the economic reward they might receive. Loan guarantees skew the market by shifting the risk to the taxpayers while keeping the rewards for the utility shareholders.

We have had this debate before, 50 years ago, at the dawn of the nuclear era. The House and Senate debated whether nuclear powerplants should be built and operated by the private sector or by the Government. The decision was made to leave the construction and operation of nuclear powerplants to the utilities, to the private sector.

The Federal Government encouraged support of the utilities through nuclear research programs, through fuel subsidies, and through indemnification against accidents. It did not use loans or grants or loan guarantees.

The Federal Government's faith in the utilities 50 years ago was justified as the more than 100 nuclear powerplants operating today attest, and we should continue to have faith in the free market today and not subsidize the next generation of nuclear powerplants to this extent by shifting economic risks from utility shareholders to the taxpayers.

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

The PRESIDING OFFICER (Mr. VOINOVICH). Who yields time? The Senator from New Hampshire.

Mr. SUNUNU. Mr. President, I thank my colleague, the Senator from New Mexico, Mr. BINGAMAN, for his comments and his very well-reasoned argument on behalf of our amendment.

As I indicated in my earlier comments, this is part and parcel of a debate as to what an energy policy really should be in our country. I support a number of initiatives that I think would help ensure access to stable, reliable sources of energy for our country's economy so it can continue to grow. That means conservation, and we just had an amendment that sets a target of conserving some 1 billion gallons of gasoline in our automotive industries over the next decade.

We also need to make sure we have good, sound infrastructure for transporting electricity or natural gas across State lines and around the country. We want a good strong electricity title. That has been the effort and the work of the Energy Committee. We need to make sure we streamline and reduce unnecessary regulations. I will come back to this point shortly, but that is one of the real problems the nuclear industry faces right now: uncertainty due to complexity in the regulatory environment where the process of building or licensing a plant can be halted multiple times throughout the licensing process.

Of course, I believe, as I hope most Americans do, that we need access to new energy sources and new energy reserves, and that is why I supported exploration in the northern slope of Alaska.

At the same time, we need to be careful that our energy policy is not about trying to pick winners and losers in the energy markets; that we not digress toward a subsidy ''arms race.'' We heard people argue if we give a subsidy to this industry, we should give it to another, tax credits there or how about a subsidy here. We should not have a subsidy ''arms race'' where we burden the taxpayers because that is who is paying for all of this policy, giving out subsidies to industries that are favored at a particular point in time. And we certainly should not single out an industry, as unfortunately a portion of this bill does, for an unprecedented loan guarantee, unprecedented taxpayer guarantees for the construction of new powerplants. Whether this is targeted at the coal-fired electricity industry or natural gas-fired plants or, as in this case, nuclear plants, I think it is questionable public policy to provide such loan guarantees.

We are putting the taxpayer at risk, and we can call five different economists to try to estimate the size and scope of that risk, but the provision of the bill we seek to strike allows the Secretary of Energy to provide loan guarantees for up to half the cost of up to six plants. That is 50 percent of the cost for six plants, each perhaps costing between $2 billion and $4 billion. That is a $10 billion to $15 billion subsidy.

The Congressional Research Service, which is about as nonpartisan as you can get, states that the maximum Federal cost will be in the range of $14 billion to $16 billion in 2002 dollars. The Congressional Budget Office states that the risk of default on these guarantees would be quite high, well above 50 percent.

It is difficult to forecast risk. It is difficult to forecast cost. Whether these were guarantees for 25 percent of the cost or 50 or 100 percent or for one plant or for 71 plants, my concerns and I think the concerns of the Senator from Oregon would still be the same: this sets a bad precedent in singling out one industry for this type of a construction loan guarantee. It sets a bad precedent because in all likelihood other areas of private industry would, in the long run, seek to be treated in the same way. Of course, it sets a bad precedent in that it is an unprecedented sum, an unprecedented guarantee.

I would very much like to see a strong and revitalized nuclear industry, and I credit the chairman of the Energy Committee for focusing on this issue in his bill, extending Price-Anderson, investing in basic research, physics and nuclear technologies, and pushing forward scientific and research initiatives that he has included in the bill.

I disagree on some of the slight nuances of those provisions, whether they are exactly the right size or targeted to the right areas, but I give him a lot of credit for focusing on strengthening our nuclear power industry. I simply do not believe this kind of a guarantee is right for any industry. Equally important, perhaps more important, I do not believe this kind of a taxpayer subsidy is right for the men and women of our nation who are working long and hard, sending their taxes to Washington, and expecting them to be used fairly and equitably.

There is a lot of uncertainty in the energy markets and in the nuclear power industry in particular, and we can ask the question why are not more plants being built, why have we not had a new plant licensed in over 20 years? I think the answer can be found in the uncertainty and the risk created by the regulatory markets, created by the litigious society that we live in and the fact that the licensing process can be brought to a dead halt time and again. Whether or not we have the technology that would allow us to build a nuclear powerplant for $100 million or $500 million versus $2 billion, this uncertainty is enough to discourage capital markets from lending to the large private companies that are engaged in the nuclear power industry.

I think we will not find private resources being attracted to the nuclear industry, and we should not find taxpayer resources subsidizing the industry, until something is done about that uncertainty and that regulatory complexity.

We have an interest rate environment right now that benefits anyone building anything just about anywhere in our country, the lowest interest rates in 40 years. That is about as big as an incentive as one could possibly have for undertaking new construction projects. I certainly do not believe we need to put the taxpayers on the hook in order to provide even more incentive.

We are reaching out trying to protect the taxpayers, trying to do the right thing, I think trying to make this bill better and trying to set a good precedent. Again, I thank RON WYDEN, the Senator from Oregon, for his work. We have bipartisan support for this amendment, three Republican and three Democrat cosponsors. As we move toward a vote, I think we will see bipartisan support for the amendment.

Again, I thank the chairman of the committee for being thoughtful enough to work with us so we could get a consent agreement to bring this amendment up today, to have a fair and thoughtful debate, and to be able to have a straight up-or-down vote on the amendment at the conclusion of the debate. I reserve the remainder of our time.

I yield the floor.

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

Mr. DOMENICI. Mr. President, I wonder if I might speak with the distinguished Senator from Oregon about the

final vote. We are wondering, from our side, for no reasons other than time—the more time we have left, the more we might get done—whether we might be able to vote at 3:45 instead of 4:15, saving half an hour. We would be delighted to not ask the Senator to give up very much of that time but I wonder if he would consider a consent agreement for 3:45, which will give us, instead of our hour, 40 minutes, and what is left would belong to the Senator, or 35 minutes. Would that be fair enough for the Senator?

Mr. WYDEN. I want to be accommodating to the distinguished chairman of the committee. Let me spend a couple of minutes looking into it.

Mr. DOMENICI. Sure.

Mr. WYDEN. I will try to ascertain how many Senators on our side of the proposition would like to speak, but the Senator has always been fair.

Mr. DOMENICI. Let's not agree. Let's put that before them as a possibility. Right now we are exploring the notion of voting at 3:45 instead of 4:15. If we did that, we would allocate the time away from each hour in order to get there. In the meantime, we will both ask our cloakrooms if there is any problems with any Senators. The Senator from Oregon will do it on his side and I will do it on mine.

Mr. President, I assume I can speak at this point; I have the floor?

The PRESIDING OFFICER. That is correct.

Mr. WYDEN. Would the distinguished Senator yield?

Mr. DOMENICI. I would be pleased to yield.

Mr. WYDEN. I think we may need to go to 4 rather than 3:45, but I will try to accommodate the distinguished chairman. We will spend some time checking his desire to move the legislation, which has transcended any particular amendment, and we are anxious to accommodate.

Mr. DOMENICI. For the benefit of the Senators who would like to speak, Senator ALEXANDER has indicated a desire to speak for a few moments. He is here. Senator VOINOVICH, who occupies the chair, desires to speak; Senator LANDRIEU, from the other side of the aisle, desires to speak. Senator INHOFE and Senator LARRY CRAIG.

I say to all of them, if they would let us know through the cloakroom, we will try to put some times opposite their names. We will be using 4 as kind of our scheduling time to see what we can do about setting up a time.

Would the Senator from Tennessee like to speak at this time or would he rather that the Senator from New Mexico speak for a few moments?

Mr. ALEXANDER. I will listen to the Senator from New Mexico.

Mr. DOMENICI. I thank the Senator. I will try to be brief.

My colleagues know I have been in the Senate 31 years and that for the better part of that time I spent my time on energy matters but principally, from the standpoint of the floor of the Senate, I was known as the person who handled the budget for the Senate. That is where I had the luxury and privilege of meeting the distinguished Senator, who opposes me on the floor, Mr. WYDEN, and many others who serve with me. In fact, that is where I became a very good friend of the distinguished majority leader of the Senate, who served, as the Senator might recall, on that Budget Committee way down at the end of the Republican side. One of the Senators who served for most of that time, that the Senator from Oregon will recognize and remember, was probably one of the most astute and knowledgeable Senators who we have both had the luxury of knowing. We might both put some other attributes along with those but he was that, and that was Senator Gramm of Texas.

One day I was exploring a matter with the Senator from Texas. I said: Senator, you know I have been on this Budget Committee for so long, and I am thinking about moving over to the Energy Committee where I have been in the second position for all of these years. You are from Texas and I noticed you never did bother to even get on the Energy Committee.

He said: Yes, that is right.

I said: Why is that?

Listen carefully. He said: Senator PETE, energy is one of the most difficult things to do anything about, nigh on impossible to effect by law any real policy regarding energy, if you are talking about advanced policy that has any impact.

I said: Well, Senator Gramm, I might agree with you but—and before I could finish he said: However, I would like to correct that and say one thing to you.

Now, this was 5 years ago.

Senator DOMENICI, there is indeed a probability that you can do something if you take over the Energy Committee, and I tell you for sure there is only one thing and that is to reestablish nuclear power as an option for these United States and the world.

I wish he were here. I am not quoting him exactly so do not put it in quotes, but he would remember that.

When I decided to take this job and give up the Budget Committee, I remembered that and I even told my wife, when discussing at home my next few years in the Senate, that some pretty good people think I am taking on a committee that does not have a lot of potential because energy is too tough to legislate and make policy about. It just sort of happens, except for that rascal nuclear power.

Well, he said it. He may not be right but I am trying to prove him right in this debate today and in this Energy bill that we are going to try to finish this week, perhaps with 1 additional week.

On May 21 of this year, Alan Greenspan, speaking to the House Energy Committee, said: If we're going to continue to expand our energy base, we're going to have to be starting to look at nuclear power as a potential reservoir of new sources of energy which are not available by other means.

He continues: I think that we ought to be spending more money and more time looking and contemplating the issue of nuclear power since natural gas is a serious problem.

This morning I happened to hear a talk show with typical Americans calling talking about energy. It was rather nice to hear people from Oklahoma City, from somewhere in Tennessee, California, Oregon, obviously average citizens who were calling in on a radio show asking questions. Most questions had to do with, why don't we have more natural gas? Finally someone asked, aren't there other things we can use? What about nuclear power? Of course, as one might suspect, the answers were rather muddled.

The real question now before this institution is, can nuclear power, held in abeyance for about 14 to 16 years in the United States while Japan built new facilities, the country of France is 80 percent dependent upon nuclear power, a little country like Taiwan, which is booming, is currently constructing two facilities with General Electric engineering and design—I cannot recall the name of the contractor. And the United States sits with everybody saying it is almost impossible. With the exponential growth in electricity needs, where we all expect to use natural gas in the burners, to create the heat and electricity, it is nearly impossible that we will have enough natural gas. It is not a question of whether we have a lot of it. It is a question that we do not use anything else because we are frightened to death of using anything else.

Some in this country, a small group, have scared us to death about nuclear power. When we add up all the energy produced by nuclear power in the world, including the terrible accident in Russia, which was attributable to a very old-fashioned nuclear powerplant that we would not dare license in America, add these together and nuclear power has been safer than any of the other power sources combined—be it coal or any other—save and except for energy produced by dams. I am speaking of large quantities. Certainly, if we speak of windmills, we speak of solar, we can produce clean energy.

Having said that, the issue before the Senate today is, do we want to support a committee that put together a bill that said, fellow Americans, the time has come to quit playing around with energy and do something about a myriad of sources. And to say, wherever you can, we are going to produce more energy.

We have tried to produce or cause to be produced every natural gas source we know of that had impediments. If it was too deep, we gave it a benefit of some sort so it could get taken out, anyway. If it was too far away in the ice lands of Alaska, we gave those companies something so they could get it down here. If it is coal, we said subsidize.

They are talking that we should not be granting a loan guarantee, presumably at market value, to a first-class company that might want to take a risk at building a powerplant. They are saying we should not do that. But when it comes to coal, we are going to spend over $2 billion on pure research to try to get to that miracle place of clean coal.

We did not say, my, you just should not put your tax dollars in a big waste.

Last but not least, while our opponents will find this is not relevant, we already have a subsidy for wind energy, those 50-foot-tall windmills. Without the new one contemplated to be added to this bill, that has the potential of producing 245,000 windmills, equivalent source of energy. The powerplants we contemplate lending money to, or offering a loan guarantee, the same amount. Guess how much the taxpayer will have given if that occurs. Thirty-one billion is the direct source for those windmills.

Now, the opposition to ours might say, but you are going to get windmills. When you say to the American power industry, if you want to come along and try to build a new nuclear powerplant, modern type, you have to go get your money, you have to take all the risks, and we will underwrite half of it with a loan, they would have us say that is a terrible risk even if it is only $2 billion to $5 billion. But that $31 billion that might occur for windmills is not? Of course, the windmill is not a risk, but it certainly is throwing your money at something that most Americans would wonder seriously about.

Having said that, this Senator is not against any of the sources. I think we will win today. When we win, we will go to conference eventually and come out with a major new impetus for nuclear power in this country. For the first time somebody is going to say, let us build one or two new nuclear powerplants. And the greenhouse gas issue that has been raised will not be there because there is no pollution from those two plants that I have just described, if they come into being—none. Zero. Absolutely clean.

We are going to have to find some way to take care of the waste someday. If we want to have a debate here today, or next week, on the waste, suffice it to say that the United States has scared herself silly about waste. Waste is nothing but a technical problem. If you want to go see all the waste in France, get a ticket and go to a city, ask them where it is, and they will take you to a building, and you can go see it all.

You might say: Who would want to see it?

They will just take you to a building that looks like a schoolhouse. You walk in and say: Can I see the waste? And they will say: You are walking on it. They will say: Just take a look down.

You look down. It looks like glass, and there sits the waste, encapsulated, and it will be there for as long as 50 years, if that is what is needed by the French scientists to find out how to put it away or how to reuse it.

Here we sit fooling around because somebody convinced us we ought to become immobilized, when it comes to an alternative, until we have a hole in the ground so deep, so big, in such hard rock that we can figure out, way in advance, a way to put the waste in it and monitor it with calculators and say to America and the world: We just monitored it, and we can tell you there will be no radiation for 10,000 years.

That is the test because we want to be so careful we don't hurt anybody ever. The test of the technology that is going to have to monitor that—and you can hardly draw the plans, it is such an absurdity—is 10,000 years.

Having said all that, we are back to a simple proposition: Do you or do you not want to let the Energy Committee go to a conference with the House and to take with it a bill that says: All the rest of these energies get their help: Biomass gets its assistance, coal gets its help, the renewables are helped immeasurably with tax assistance, every single thing we know how to do to produce more oil and gas is done—right?

Ms. LANDRIEU. Right.

Mr. DOMENICI. I could go on and on. That is all going to be there. But also in the event—and I am looking for the language in the statute as to when the Secretary can issue these—we have statutory language that says, very simply—and I will read it and close:

> Subject to the requirements of the Federal Credit Reform Act [et cetera, et cetera, et cetera], the Secretary may, subject to appropriations, make available to project developers for eligible project costs such financial assistance as the Secretary determines is necessary to supplement private-sector financing for projects if he determines that such projects are needed to contribute to energy security, fuel or technology diversity, or clean air attainment goals. The Secretary shall prescribe such terms or conditions for financial assistance as the Secretary deems necessary. . . .

That then is provided as up to 50 percent of the cost, by way of a loan.

Frankly, it is all a question of risks. It is not a question of philosophy. It is not a question of whose party wants to get on what slope, a slope of entrepreneurship or a slope of guaranteeship. All of that is meaningless. What this is about is: Is it worth this little risk we are speaking of—to get what I just described going again for America?

I say, overwhelmingly, absolutely, positively, yes. I do hope, come that vote time, there will not be 50 Senators, or half of those who vote today, who will say we want to strike this and kill this opportunity for America.

With that, I will yield the floor to Senator ALEXANDER for his time.

Senator LANDRIEU, are you on some time frame that is urgent?

Ms. LANDRIEU. I can yield to the Senator from Tennessee. He was here, of course, prior to my arrival. How much time would he like?

Mr. DOMENICI. I yield to him and then to the Senator from Louisiana.

Mr. ALEXANDER. I would like about 5 minutes.

Ms. LANDRIEU. Fine.

The PRESIDING OFFICER. The Senator from Tennessee.

Mr. ALEXANDER. Mr. President, I rise in support of the chairman in opposition to the amendment.

In 1987 our family, which included three teenagers and a 7-year-old, visited the Peace Park in Hiroshima, Japan. We thought twice before we took our children there because it is such a staggering experience to see what happened on that August day in World War II when the atomic bomb was dropped.

I marvel even more that today Japan, because it knows of the importance of energy, now relies on nuclear energy—the same process that wiped out half the lives in Hiroshima—for peace, for the peaceful production of electricity for homes and jobs for about 80 percent of their electric needs. They are producing about one new reactor a year.

In France, as the chairman said, about 80 percent of the electricity, I believe, is produced by nuclear power. We have about 100 ships in our Navy that operate with little nuclear reactors. Yet, for some reason, over the last 30 years we became afraid to start a new nuclear powerplant. I guess we became so accustomed to abundant supplies of coal and oil and relatively cheap gasoline that we thought it would last forever. But I think we have gotten over that. At least it is time for us to get over that and to break away from this national attitude that, since the 1970s, has kept us from starting a new nuclear powerplant.

Why not nuclear? That is the question we should be asking. We have heard the testimony of the terrible price increases in natural gas and the projections that we have a really serious problem with continuing natural gas prices.

This Senate voted not to go explore for more oil in Alaska.

Windmills are promising, but the promise of 245,000 of them to produce 2 percent of our energy and to see them all over our deserts and ridgetops—there is some limit to what windmills will be able to do for us. Coal produces half of our electricity, but it produces carbon and it produces pollution and we have not yet quite developed the clean coal technology we all want.

Nuclear power more and more seems to be imperative. So what are we doing about it in this bill? We are basically adding nuclear to the arsenal of weapons we want to use to make ourselves less dependent on foreign oil and more likely to have clean air and a cheap and abundant supply of electricity.

It is said that we are subsidizing the idea of nuclear power. In a way we are: A new type of advanced nuclear powerplant that has the promise of building plants for $1.5 billion—much cheaper,

much more efficient, safer, to start up that industry, to stimulate it. But we are doing exactly the same thing as the chairman said with wind power. We are doing exactly the same kind of thing with clean coal technology to the tune of $2.2 billion. We are doing exactly the same thing with oil and gas, and $2.5 billion is in the bill for that.

This morning, we talked about putting a Presidential emphasis, thanks to the Senator from Louisiana, on conservation. We need to add nuclear to our list. The larger question would be, Why would we keep it out? Why would we encourage every other form of energy and not nuclear energy?

I strongly urge that we keep in this bill nuclear power as an option for our future. There will be great discussions in this body about carbon and the concern of greenhouse gases. Nuclear power is carbon free. It is carbon free. There will be a lot of talk about our dependence on oil. The most reliable and largest opportunity to replace oil in the next 20 years is nuclear power.

There is a lot of talk about the worry of natural gas prices. The best way to keep natural gas prices under control is to have an alternative. That would be nuclear power. I strongly urge my colleagues to vote no on the amendment.

I yield the floor.

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

Mr. DOMENICI. Mr. President, I ask unanimous consent that the vote in relation to the pending amendment occur at 3:50 with the remaining time to be divided with 20 minutes for the proponents and 10 minutes under the control of the opponents.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The Senator from Louisiana.

Ms. LANDRIEU. Mr. President, I thank the Senator from New Mexico. I will take 3 or 4 minutes. I understand that the Senator from Alabama would like to speak in opposition to the amendment as well.

In all due respect to my colleagues who are offering this amendment to strike this very important provision from the bill, I wanted to come to the floor to strongly disagree and to add my voice at the outset of the debate and on the points which the chairman of the committee brought to the fore on this very important part of the Energy bill.

I wish to begin by saying that our Nation has 103 nuclear powerplants. The nuclear industry provides 20 percent of our electricity. I don't believe we will strip the Energy bill of this provision, but if we did, we would jeopardize the reliable and affordable source of electricity that this Nation needs to stay competitive in this world economy.

It will cost jobs and cause hardship. People would lose their jobs with this amendment.

I am not sure my colleagues are aware that over the next 20 years the United States doesn't need to move backwards as this amendment would suggest. We need to move very quickly in the other direction. We need to build 1,300 new powerplants in this Nation, which is the equivalent of 60 to 90 new powerplants per year to keep up with the increased demand of electricity. Why? Because our economy is more productive; because technology is demanding it; because good, old Yankee know-how makes it crucial that we provide our businesses with electricity and with power. If we don't give them power, they can't operate. If we don't give them power that is reliable and affordable, then we will lose jobs to our international competitors. It is as simple as that. We need everything and more, everything we thought of and more than we thought of.

Nuclear is a very important component of that. The amendment's authors argue that this is a subsidy. It is not a subsidy. It is a loan guarantee. It is our intention that these loans be fully paid with interest. We do this. There are 100 examples in the Federal rule book where we do this. We want to encourage the development and movement in a certain way. We can give loan guarantees, and we have done it time and again. It is time we do it for the nuclear industry to keep them moving in the right direction.

Let me say to the chairman that I went down to Louisiana. We have two nuclear powerplants. Seventeen percent of Louisiana's fuel is nuclear. As the chairman knows, one out of five has the clean benefit of nuclear power.

My producers of natural gas said to me, Senator, please go and fight for nuclear energy. If we don't get more energy into the marketplace, the demands on natural gas will become so high that we cannot pay our gas bills, and it is driving our industry to its knees. They said, Senator, please go and fight for an increase in all sources, including nuclear.

Nuclear energy currently generates electricity for one in every five homes and businesses.

It is important not only in Louisiana, where two nuclear plants produce nearly 17 percent of my State's electricity, but also in States such as Connecticut, Illinois, New Hampshire, New Jersey, South Carolina, and Vermont where nuclear generates more electricity than any other source.

Nationwide, 103 reactors provide 20 percent of our electricity—the largest source of U.S. emission-free power provided 24–7.

Nuclear energy is one of the most competitive sources of energy on an operational cost basis.

While I strongly support the use of natural gas for our energy needs, we cannot rely, as we have in recent years, on any one source of energy to meet our Nation's increasing electricity demand.

Over the next 20 years, U.S. natural gas consumption is projected to grow by over 50 percent while U.S. natural gas production will grow by only 14 percent.

The CEO of Dow Chemical recently wrote that the chemical industry—the Nation's largest industrial user of natural gas—is particularly vulnerable to high natural gas prices.

To remain an economic leader we must promote a diversified and robust energy mix, including the full range of traditional and alternative energy sources.

Nuclear energy is also vitally important for our environment and our Nation's clean air goals.

Nuclear energy is the Nation's largest clean air source of electricity, generating three-fourths of all emission-free electricity.

Nuclear energy will be an essential partner for future generations of Americans, whose reliance on electricity will increase and who rightfully will demand a cleaner environment.

Just this past Sunday, the Washington Post highlighted the problems that the Shenandoah National Forest now faces with pollution. Think how much worse our Nation's air pollution would be if nuclear energy did not generate one fifth of our electricity.

To preserve our current levels of emission-free electricity generation, we must build 50,000 megawatts of new nuclear energy production by 2020.

In addition to providing the largest source of emission-free electricity, nuclear energy possesses the most viable solution to our over reliance on foreign oil, i.e., the potential to someday cogenerate hydrogen as a clean transportation substitute to oil.

The Wyden amendment will hurt our Nation's long-term economic, environmental and security goals if passed.

Building a windmill that has a generating capacity of 2 megawatts should not be compared to building a nuclear power plant that produces 1,000 megawatts or more.

I agree with my ranking member that the nuclear industry is mature in the sense that it has been safely, efficiently, and effectively producing electricity for several decades. But we have not brought a new nuclear plant on line in this country for over a decade and a new project will face some uncertainties.

The costs of the first few plants will be higher than those that are built later. Because the business risks will be greater for the initial few projects, financing will be more difficult to obtain. That is why the Federal Government needs to step in and provide an incentive to allow the industry to get over that hurdle.

Some rather large numbers have been thrown around as to the costs of this provision. Were theses numbers accurate, I would share the concerns voiced by my colleagues.

The construction costs as derived by CBO would be $2,300 per kilowatt of capacity is inconsistent with current cost incurred by other nations building similar types of advanced nuclear reactors.

According to a detailed cost analysis developed by industry the first few plants will cost less than $1,400 per kilowatt hour and will later fall to less than $1,000 per kilowatt hour, making nuclear plants very competitive with the costs of other technologies.

My colleagues who are opposed to these loan guarantees are assuming that a new nuclear plant could rise to costs over $3,800 per killowatt, based on questionable CBO projections.

In addition my colleagues also fail to mention that the Secretary of Energy will be required to use stringent criteria to provide loan guarantees.

I concede that we probably don't know what the exact cost will be, but the economic, environmental, and security benefits of investing in new nuclear plants for our future generations are many and great while the financial risk to the public sector is by comparison rather small. Let's give this idea a chance.

In conclusion, I urge my colleagues to vote against the Wyden amendment. And I thank the chairman for all his efforts in helping to promote a vital source of energy and for helping to pave the way towards improving our Nation's energy security.

I strongly oppose the amendment on the floor to strip the provision in this bill, and I support the chairman's mark.

Mr. DOMENICI. Mr. President, how much time does the Senator from New Mexico have?

The PRESIDING OFFICER. Six minutes.

Mr. DOMENICI. I yield 3 minutes to the Senator from Alabama.

The PRESIDING OFFICER. The Senator from Alabama is recognized for 3 minutes.

Mr. SESSIONS. Mr. President, I wish to express my deep appreciation to Senator DOMENICI. He, more than any other person in this body, understands what role nuclear power must play in America and in the world if we are to maintain a clean environment and a healthy energy source. In nations that have readily available electricity in the world, compared to those that do not, the lifespan is twice as long.

This is a matter of extreme importance. We are trying to simultaneously increase our power sources in America and improve the cleanliness of our air and protect our environment. The only way that can be done is with nuclear power.

I feel very strongly about this. It is important for America's economy. Alan Greenspan testified at the Joint Economic Committee last week and raised again the crisis that we are facing in natural gas. Natural gas is a source for all new electric plants in America today. We are driving up this tremendous demand on natural gas. If we drive up the cost for natural gas, as we certainly will at the rate we are going, homeowners are going to pay so much more for their heating. Businesses that use natural gas are going to have to pay twice as much. We can meet that demand without any air pollution by expanding nuclear power.

There are 29 nuclear plants being built around the world. France gets 80 percent of its power from nuclear power. Nearly 50 percent of Japan's power comes from nuclear power.

We have not built a nuclear plant in America in 20 years. It is time for that to change. Twenty percent of our electricity comes from nuclear power producing no adverse environmental impacts to the atmosphere.

I would like to read what we save for the atmosphere by having nuclear power. A recent study showed that nuclear energy has prevented the release of 219 million tons of sulfur dioxide, 98 million tons of nitrogen oxide polluted in the atmosphere, and prevented the emission into the air of 2 billion tons of carbon dioxide. That is considered by some to be a global-warming gas. We can stop that. We may have offset the effects of carbon dioxide already by producing 20 percent of our energy with nuclear power.

We have to include a provision like this in the bill. Last year, I introduced a bill that would provide a tax credit, similar to that for renewable energy, for the production of nuclear energy. The tax credit would have cost only one-fifth the amount of tax credits that other forms of clean energy receive, and it would have encouraged the production of a steady, reliable source of energy. The provision in this bill likewise encourages nuclear energy, and I support it. I reject the notion that there would be a high rate of default on these loans. I have studied nuclear energy and I have visited plants. These loans are needed to provide the nuclear industry a small incentive to take a big step towards constructing a plant. We need to go to conference with it. If we do, I would be willing to work with Senators who oppose this. But I think we have to have something in this bill that will allow us to encourage nuclear power. Not to do so would be a failure of incredible proportions.

I thank the chairman. I feel very strongly about it. I thank Senator DOMENICI again for his historic leadership that can lead us into a new way to produce large sources of energy without pollution costs to the environment.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. SUNUNU. Mr. President, I ask if the Senator from Oregon would yield 2 minutes to the distinguished Senator from Arizona.

Mr. WYDEN. Yes.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. KYL. Mr. President, first, I agree with the comments of the Senator from Alabama that we ought to be promoting nuclear power. I am a strong advocate of that. I compliment the chairman of committee, Senator DOMENICI, for being very strong in his support for nuclear energy and for being totally consistent in the positions he has taken.

I want to argue against hypocrisy. An environmental group handed me a sheet of paper a while ago. They are very much against subsidies. As it turns out, a subsidy for nuclear energy would be very bad. They are right about arguing against subsidies. That is why I am going to support this amendment.

But all of the environmental arguments I have seen have been for subsidies when it comes to ethanol, solar power, biomass, wind energy, and you name it. The point here is that we ought to be consistent. If you think subsidies are a wonderful idea for these other things, then maybe you ought to support the loan guarantee for this additional method of producing power. But if you think subsidies are wrong, then you shouldn't support them for anything.

As the chairman of the committee knows, I opposed all of these subsidies in the Finance Committee. I will offer amendments again to try to strip them out of the finance part of the bill when it is added to the Energy bill on the floor.

I wish to make the point that if you want to be hypocritical—I am talking about these organizations and not Members of the Senate—then fine. Oppose this subsidy for nuclear and continue to support it for all of the rest. But if you want to be honest about it, like the chairman and I, though we have come to a different conclusion, but at least the chairman has been consistent and I hope I have been consistent.

I oppose these subsidies, even for those sources of energy which I think are critical for this country to continue to develop, and that includes nuclear energy.

I support the amendment in order to remain consistent in opposing subsidies.

The PRESIDING OFFICER. Who yields time?

Mr. SUNUNU. Mr. President, I thank the Senator from Arizona for his support for our amendment. I will pick up a little bit where he left off talking about the issue of subsidies across a range of areas.

The distinguished chairman of the committee spoke earlier about the clean coal subsidy, the $2 billion in clean coal subsidy. He suggested that supporters of this amendment also supported that subsidy.

I just want to be clear. I do not support $2 billion for clean coal. I have, in my service in the House of Representatives, opposed the clean coal technology program. In addition to that, I oppose the fossil fuel research and development fund that is in this bill because they effectively provide a subsidy for research and development in the areas of fossil fuel, areas where private companies operate in a very profitable and successful way.

It is not to hold anything against those fossil fuel firms or those coal firms, but it is to stand up for some of the concerns expressed by the Senator from Arizona that we should try to be as consistent as possible in striking these unnecessary subsidies.

The suggestion was made earlier on the floor—in fact, the statement was made specifically—that this loan guarantee program is ''not a subsidy.'' I reject that out of hand. If this was not a subsidy, then it would convey no benefit to those who sought the loan guarantee. And if there were no benefit, then people should have no objection to removing it from the bill. But, of course, there is a lot of objection to removing this from the bill because there is a big benefit to be gained by having a federally subsidized loan guarantee for the construction of new nuclear plants.

It was also suggested that perhaps this is an attack on nuclear power. Let me close by reemphasizing that is simply not the case. I support the Price-Anderson provisions in the bill. I supported the effort to establish a long-term storage facility for nuclear waste at Yucca Mountain that could be operated for the long-term, safely for our utilities and energy industries.

In an effort to suggest this is an attack on nuclear power, the big guns have also been rolled out: there's been a suggestion that Alan Greenspan, of all people, might somehow harbor some support for this loan guarantee program. Let me say, clearly, like Alan Greenspan, I am a proponent and supporter of the concept of using nuclear power to help meet our energy needs, but I do not believe, for a moment, that means Alan Greenspan is a supporter of federally guaranteed loans to private industry. And if someone can produce testimony from Alan Greenspan supporting a Federal loan guarantee program for private industry to build nuclear powerplants, I will quite literally eat my hat. I simply do not believe that to be the case.

I join with the Senator from Oregon in support of this amendment to strike one provision from this very large Energy bill; and that will protect taxpayers by preventing them from being exposed to $14 or $16 billion in loan guarantees to private industry. I do not think we need it.

I look forward to a vote on this amendment. I certainly ask my colleagues to support the amendment.

I yield the floor.

Mr. INHOFE. Mr. President, I rise to oppose this amendment. Nuclear power is a clean, reliable, stable, affordable, and domestic source of energy. It is an essential part of this Nation's energy mix. And if we care about energy stability and the environment, then nuclear power must play an important role in our energy future.

I am a strong supporter of nuclear power and I want to commend Senator DOMENICI for his commitment to nuclear energy in this bill. His legislation provides incentives to enhance and expand our energy base and usher new advanced-design nuclear power technologies. It has been nearly 20 years since a new nuclear plant has been built. The safety and efficiency record of the industry over that time has been astounding. Through increased efficiency, nuclear plants have increased their clean generation of energy. The increased electricity generation from nuclear powerplants in the past 10 years was the equivalent of adding 22 new 1,000-megawatt plants in our Nation's electricity grid. But with energy demand increasing by at least 30 percent over the next 15 years, more generation will be necessary to meet our needs. As we look to the future, if we are to meet those needs, provide stability in the marketplace, and ensure clean air, then we will have to continue to expand our nuclear base load. Nuclear energy is America's only expandable large-scale source of emission-free electricity.

The Environment & Public Works Committee—the committee of which I have the honor to serve as chairman—has jurisdiction over the Nuclear Regulatory Agency and I have been active in overseeing that agency, both as the nuclear subcommittee chairman, and now as chairman of the full committee. In 1998 I began a series of NRC oversight hearings. I did so with the goal of changing the bureaucratic atmosphere that had infected the NRC. By 1998, the NRC had become an agency of process, not results. I knew that if we were to have a robust nuclear energy sector, we needed a regulatory body that was both efficient and effective—and one in which the public could be sure that safety is the top priority. If the agency was to improve it had to employ a more results-oriented approach—one that was risk-based and science-based, not one mired in unnecessary process and paperwork. I am pleased that in the last 5 years, we have seen tremendous strides at the NRC. It has become a lean and more effective regulatory agency. I have the utmost confidence in the NRC ability to ensure that nuclear energy in this country is safe and reliable.

We have all of the pieces in place to move to the next generation of nuclear power. If we are to meet the energy demands of the future and we are serious about reducing utility emissions, then we should get serious about the zero emissions energy production that nuclear power provides. And that means that we should not be discouraging the development of new, safe nuclear technologies. Quite the opposite, we should provide the incentives and the assurances in order to meet the energy needs of this country.

The bill before us provides a sensible incentive for future nuclear power projects. Unfortunately, the Wyden/Sununu amendment will remove those incentives—it is a step backward—away from long-term stable and clean energy supplies.

Mr. FEINGOLD. Mr. President, I am pleased to be a cosponsor of this amendment and want to detail the reasons for my support. The amendment strikes subtitle B of title IV of the bill, the section on deployment of new nuclear plants. This section would provide new loan guarantees for the construction of new nuclear plants. In addition to providing the nuclear industry loan guarantees, the Senate Energy Bill appears to also authorize the Federal Government to enter into power purchase agreements to buy power back from new reactors—potentially at rates above market prices.

I think subtitle B goes too far and the amendment to strike is necessary for several reasons. First, the bill places no ceiling on these loans, making the Federal Government liable, according to the Congressional Research Service, for between $14–$16 billion in loan guarantees.

Second, I feel strongly that if private investors are not willing to put their own money on the line to support new nuclear plants, then the Federal Government should not put taxpayers' money at risk either. Yet, under the provisions currently included in the Senate bill, taxpayers would be required to subsidize up to 50 percent of the cost of constructing and operating 8,400 megawatts of power. The Congressional Budget Office has estimated the risk of default would be ''well above 50 percent.'' I feel that $14–$16 billion is a lot of money to gamble on an investment that has a 50/50 risk of failure.

Finally, as I have expressed in the past, I am concerned that our current nuclear waste storage program is of insufficient size to handle our current nuclear waste problem. I do not think it is wise to build more plants, when we do not have enough storage for our current waste. Yucca Mountain is not authorized at a size that is big enough to take all of the current nuclear waste. Among the reasons that I opposed the Yucca Mountain resolution was its insufficient size. I was concerned that my home state of Wisconsin would go back on the list as a possible site for a large-scale nuclear repository. Constructing new nuclear plants does nothing to relieve those concerns, and instead makes it more likely that we will have a growing nuclear waste problem for which we will need a permanent storage solution, putting Wisconsin back at risk.

I think this amendment makes fiscal and policy sense, and deserves the support of the Senate.

Mr. VOINOVICH. Mr. President, I rise in support of nuclear energy and in support of the provisions in S. 14 that promote the use of this vital component of our energy portfolio.

Nuclear energy accounts for 20 percent of our electricity generation—one in five American homes and businesses are powered by nuclear energy. It is an important energy source now, and will

become even more important in the future—as we strive to meet growing energy demands while protecting our environment.

As many of my colleagues know, nuclear energy provides emissions-free electricity—no emission of airborne pollutants, no emission of carbon dioxide or other greenhouse gases. In fact, nuclear energy provides three-fourths of the emissions-free electricity generated in the United States—more than hydro, wind, solar and geothermal energy combined.

President Bush has said many times that energy security is a cornerstone of national security. He is right—and nuclear energy is a vital component of our energy supply.

Uranium—the fuel for our nuclear fleet—is mined domestically and by many of our allies.

Unlike oil, nuclear energy is not subject to foreign manipulation.

Unlike natural gas, nuclear energy does not have domestic shortages and importation problems.

Unlike wind, solar and geothermal energy, nuclear energy provides highly affordable and reliable power.

Production costs of nuclear energy were 1.76 cents per kilowatt-hour versus 1.79 cents for coal and 5.69 cents for natural gas in 2000.

Plant capacity utilization exceeded 90 percent in 2002—the fourth year in a row that the industry set a record for output without building any new plants.

Nuclear energy is safe. Our nuclear plants are the most hardened of any commercial structures in the country and have a superb safety record and few, if any, industries have oversight comparable to that provided by the NRC for nuclear plants.

Our nuclear Navy is a great example of the safety of nuclear energy—

The U.S. Navy has safely traveled over 126 million miles without a single reactor incident and with no measurable impact on the world's environment.

Sailors on a nuclear submarine, working within yards of a reactor, receive less radiation while on active duty than they would at home from natural radiation background.

However, we must act now if we want to preserve the benefits of nuclear energy.

The last license for a domestic reactor was issued in 1978—and the technologies used to power our nuclear plants are over 30 years old.

Our industry has developed advanced nuclear technologies—and the NRC has licensed them—but new plants have only been built overseas, not in America.

Our nuclear plants were built in a highly regulated market—where returns on these investments were guaranteed—not in today's highly competitive energy markets.

Nuclear plants present unusual risks to the financial community due to the significant up-front capital investments that are required years before they generate any returns—as opposed to natural gas generators that are relatively inexpensive and easy to build.

Without new interest in nuclear power, our pool of qualified nuclear workers is drying up.

From 1990–95, the number of students in nuclear engineering dropped by 30 percent.

In 1975, there were 76 research reactors on American college campuses—today there are 32.

Current estimates project that domestic energy demand will increase by almost 50 percent by 2030. Without a significant effort to increase our nuclear capacity—which must include construction of new nuclear facilities—we will have no other choice than reliance on natural gas to meet that demand, which will drive up the costs for both electricity and natural gas through the roof.

The nuclear energy provisions in S. 14 are essential to assure that nuclear energy continues to thrive and provide its benefits to our Nation:

Price-Anderson reauthorization: The bill permanently reauthorizes the Price-Anderson liability protection that is so crucial to all nuclear facilities.

Advanced reactor construction: The bill will authorize construction of a new advanced reactor as a research test-bed using the very latest ideas developed in the Generation IV reactor program.

Advanced fuel cycle initiative: Authorizes funding for development of technologies to reduce the volume and toxicity of final waste projects, simplify siting for future repositories and recover fuel from spent fuel.

Federal loan guarantees: The bill provides loan guarantees for new plant construction in order to offset the problems with new development that I mentioned earlier.

I want to spend just a minute on the Federal loan guarantees that are the subject of an amendment by Senator WYDEN and Senator SUNUNU.

These loan guarantees are necessary to jumpstart construction on new nuclear plants. In order to begin construction of a new facility, the nuclear industry needs to move into uncharted waters—they need to go to investment bankers and say ''I know that this is a huge capital outlay, and that we haven't built one of these facilities in 30 years, but we need to do this.'' These loan guarantees will ensure that private-sector financing will be available for utilities that make the decision to move forward.

My distinguished colleague from Oregon has stated that we are throwing away good money on these ''subsidies.'' I must respectfully disagree. As Chairman DOMENICI pointed out earlier, this is not a handout program.

These are loan guarantees—for up to 50 percent of the construction costs for a new facility—which means that the utilities will have to make payments on the loans, and that there will likely be no expenses to the Government.

I applaud the work that Chairman DOMENICI has done on these provisions—all of these provisions—and I will oppose any efforts to strip them from the energy bill.

I urge my colleagues to oppose the Wyden-Sununu amendment.

Mrs. FEINSTEIN. Mr. President, I rise to support the amendment offered by Senators WYDEN, BINGAMAN, SUNUNU, and ENZI to strike the section of the energy bill providing Federal subsidies for the construction of new nuclear plants.

Title IV of the energy bill includes loans, loan guarantees, and other forms of financial assistance to subsidize the construction of new nuclear powerplants.

In the past 50 years, California has built 5 commercial nuclear powerplants and one experimental reactor. Today, just two of these nuclear powerplants are still operating in the State. The plants at San Onofre and Diablo Canyon are running at diminished capacity but still provide 4,400 megawatts of power in California—close to a fifth of California's energy supply.

Impressive as these numbers may be in terms of the power-generating capacity of nuclear energy, they tell only part of the story of California's experiment with nuclear power. Of six nuclear powerplants built in California, four have been decommissioned due to high operating costs and excessive risk.

In the late 1950s, an experimental reactor at the Rocketdyne site in Ventura County was shut down after a severe meltdown.

In 1967, the Vallecitos plant closed its doors after 20 years of operating because its owner, General Electric, was unable to obtain accident insurance due to the high risk of operating a nuclear power plant.

In 1976, the Plant at Humboldt Bay shut its doors after 13 years of operation as a result of the discovery of a fault line near the plant that would have required millions of dollars in seismic retrofits.

And in 1989, the Rancho Seco plant near Sacramento was closed by public referendum after 14 years of operation plagued by mismanagement that resulted in cost overruns.

Nuclear power is expensive and risky. Yet I believe that if private investors are not willing to put their own money on the line to support new nuclear plants, then the Federal Government should not put taxpayers' money at risk either. However, under the nuclear subsidy provision in this energy bill, taxpayers would be required to subsidize up to 50 percent of construction costs of new nuclear plants—costs that CRS estimates to be in the range of $14–16 billion. CRS also estimates the risk of default on these loan guarantees to be ''very high—well above 50 percent.''

I strongly believe it is not in the public interest for our Nation to subsidize

costly nuclear plants. Instead we should devote more resources to the development of renewable energy.

I strongly believe we should be doing more to encourage the development of renewable power such as, wind, geothermal, and biomass, instead of providing subsidies to an industry that has not built a new powerplant since the 1970s.

Unfortunately, this Energy bill currently has an over-reliance on promoting traditional energy resources, such as nuclear power.

The U.S. nuclear power industry, while currently generating about 20 percent of the Nation's electricity, faces an uncertain long-term future. No nuclear plants have been ordered since 1978 and more than 100 reactors have been canceled, including all those ordered after 1973. No units are currently under construction.

The nuclear power industry's troubles include high nuclear powerplant construction costs, public concern about nuclear safety and waste disposal, and regulatory compliance costs.

Controversies over safety have dogged nuclear power throughout its development, particularly following the March 1979 Three Mile Island accident in Pennsylvania and the April 1986 Chernobyl disaster in the former Soviet Union. These events shaped much of our opinions about nuclear power.

Safety continues to raise concerns today. In a recent example, it was discovered in March 2002 that leaking boric acid had eaten a large cavity in the top of the reactor vessel in Ohio's Davis-Besse nuclear plant. The corrosion left only the vessel's quarter-inch-thick stainless steel inner liner to prevent a potentially catastrophic release of reactor cooling water.

Furthermore, nuclear powerplants have long been recognized as potential targets of terrorist attacks, and I remain skeptical that there are enough safeguards in place to defend against potential terrorist attacks on our nuclear plants.

Concern about nuclear safety and waste disposal makes Californians apprehensive about nuclear power. California has shifted away from nuclear power over the years and activists in the communities surrounding the Diablo Canyon and San Onofre plants continue to express concerns about the safety of the remaining reactors in California.

The construction of new nuclear reactors would also exacerbate the nuclear waste problem. Since the volume of nuclear waste in the United States is expected to exceed capacity at the controversial Yucca Mountain repository by 2010, any new plants will create even more waste storage problems.

I voted with Senator BINGAMAN to strike these nuclear subsidies in committee and today I will vote with Senator WYDEN to do the same.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. WYDEN. Mr. President, how much time remains for each side?

The PRESIDING OFFICER. The proponents of the amendment have 14 minutes 18 seconds; the opponents of the amendment have 2 minutes 35 seconds.

Mr. WYDEN. Mr. President, if I could engage the distinguished chairman of the committee, I would like to close the debate. At this point, I believe the Presiding Officer said I have in the vicinity of 14 minutes. I say to the Senator, you have in the vicinity of 2 minutes. Would you like to speak now?

Mr. DOMENICI. No, I would not.

Mr. WYDEN. Then I will take 5 minutes of our time at this point.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. WYDEN. Mr. President, at that point we have 9 minutes remaining?

The PRESIDING OFFICER. About 8½.

Mr. WYDEN. Thank you, Mr. President.

Mr. President, a couple of arguments need to be addressed at this point. The Senator from Louisiana, Ms. LANDRIEU, just recently said the Wyden-Sununu provision would, in some way, jeopardize the reliability of power and cost jobs today. That is simply not correct. No plant that is operating today—not one—would be affected by this amendment, and not a single job in America would be lost. Now, with respect to jobs of the future—and I think this is important to note—if you look at the official figures of the Federal Government—these are supplied by the Energy Information Agency—the fact is, you can build four or five gas-fired plants for the cost of one nuclear facility. That is, again, not something just made up. Those are the official figures of the Federal Government with respect to the comparative costs of this amendment.

I think we ought to note, for example, just how unprecedented this is. When people began to debate nuclear power decades ago—50 years ago—when the commercial nuclear industry was first getting started, there were not any loan guarantees. In fact, even during the early days, there was no subsidy along these lines. People would say, let's support research, let's support various opportunities to assist with the nuclear reactors but not even in the early days was there a construction subsidy. In fact, in the Atomic Energy Act of 1954 there was an explicit prohibition on subsidizing any of these facilities.

So what we are talking about is something where a nonpartisan analysis from the Congressional Budget Office has made it clear it is risky. They said there is upwards of a 50-percent likelihood of default. The Congressional Research Service has said it is going to be costly. Mr. President, $14 to $16 billion is the appraisal of the Congressional Research Service.

I have made it clear it is unprecedented both with respect to this bill and the history. Finally, it is simply unfair when you compare it to other sources of power.

I wrap up this part of the discussion by making sure Senators are clear on the distinction between nuclear power and various other sources of power under this proposal.

Under the way the Domenici legislation is written, if you do not produce any wind, you get no direct subsidy. But under the legislation as it stands today, if you do not produce any nuclear power, you get a subsidy. That is as clear a distinction as we could possibly make. For all the other sources of power, if you produce nothing, no subsidy; for nuclear, if you produce nothing, you get a big subsidy. The difference—what it all comes down to—is whether Senators believe that one particular source of power deserves cash up front and, in effect, putting taxpayers on the hook at the outset before anything is produced.

On a bipartisan basis—three Democratic Senators, three Republican Senators, and an Independent—we think that is unwise.

Mr. President, I reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time?

Mr. DOMENICI. Mr. President, I have been asked because of other people—not me—that we commence this vote at 3:45. I ask unanimous consent that be the case.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The unanimous consent request has been made. Is there objection?

Mr. WYDEN. Mr. President, reserving the right to object.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. WYDEN. Mr. President, if we could just take a second to make sure we are fair, I note that the Senator from Nevada would like to have several minutes, and we would like the opportunity to close. So if we can work out the opportunity——

Mr. DOMENICI. I say to the Senator, they want a vote at 3:45, so we don't need any time. He can have 3 minutes and you can close.

Mr. WYDEN. I withdraw my reservation.

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

The Senator from Nevada is recognized for 3 minutes.

Mr. ENSIGN. Mr. President, I just want to make a couple points and keep it fairly brief.

The nuclear power industry has been around for a long time. We hear about other new sources of energy that this country is trying to develop, and it seems to make sense we would subsidize some of that new research. It is basic research that the Government is involved in. Whether it is health care, whether it is energy, that seems to be an appropriate role for the Federal Government.

But nuclear energy has been around for a long time, and it is commercially viable in many other countries in the

world. To this Senator, it does not seem to be the right thing to do to be subsidizing nuclear power because it should have already proven its merit in the marketplace and been able to stand on its own.

Unfortunately, we have a situation where we had a vote last year on the Yucca Mountain project, which is the Nation's nuclear waste repository, and this Senate decided to continue to build Yucca Mountain. What that indicates is that the Senate is already subsidizing nuclear power. People say, no, Yucca Mountain is being built by the ratepayers, the people who receive the benefits of nuclear energy. They pay a tax on that or a rate on that and, therefore, they pay into the nuclear fund that will build on Yucca Mountain.

According to the General Accounting Office, that is not going to be enough. So we are going to be subsidizing nuclear power as it is. To add another subsidy would be wrong at this time. Whether you look at Japan or Germany, these other countries, they are building them commercially; they are operating them viably.

If nuclear power is so good commercially, then it should stand on its own. We have several other provisions in the bill that Senators SUNUNU and WYDEN have not touched on nuclear power. But to actually have Federal loan guarantees that will leave the taxpayer holding the bill would be wrong at this time. If nuclear power is going to stand, let it stand on its own.

I yield the floor.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. DOMENICI. Mr. President, I wonder if the Senator could do me one favor. Let Senator GRAHAM have 1 minute. Then you wind up with the time you have, the same time you have.

Mr. WYDEN. I am happy to accommodate the Senator from South Carolina. How much additional time do I have?

The PRESIDING OFFICER. Under the unanimous consent agreement, the vote was to occur at a quarter to 4. You have the time between now and then.

Mr. DOMENICI. We don't need to have the Senator speak. Go ahead.

Mr. WYDEN. Mr. President, I ask unanimous consent that the Senator from South Carolina have 2 additional minutes and if I could have 3 additional minutes after he is done speaking.

Mr. DOMENICI. We cannot do that.

The PRESIDING OFFICER. Objection is heard.

Mr. DOMENICI. It is not me. I have just been told, after instructions from the leadership.

Mr. WYDEN. Mr. President, then I would like to accommodate the Senator from South Carolina. I have a couple of minutes to go.

Mr. DOMENICI. You don't have a couple minutes.

The PRESIDING OFFICER. You have 2 minutes at this point. The Senator from Oregon.

Mr. WYDEN. Mr. President, as we move to the vote, basically all the arguments made against the Wyden-Sununu-Snowe-Ensign-Bingaman amendment, all of the arguments made against us were made for the WPPSS facilities which resulted in the biggest municipal bond failure in history. Back then they said it wouldn't be unduly risky. They said there wouldn't be any questions with respect to exposure to those who were financing it. Look at what happened. Four out of those five facilities did not get built.

I say to my colleagues, those who are pronuclear, those who are antinuclear, this is not about your position with respect to nuclear power pro or con. It is about whether or not you are going to be protaxpayer. The Congressional Research Service says the taxpayers are on the hook for $14 to $16 billion. The Congressional Budget Office says there is upwards of a 50-percent likelihood of default. Under this provision, the loan guarantees provide opportunities to construct nuclear facilities that no one else is getting. Other people don't get the break unless they produce something. Here you get the break even if you produce no nuclear power whatsoever and you get it directly out of the taxpayer's pocket.

It is unwise. I hope my colleagues will vote with three Democratic Senators, three Republican Senators, and an Independent for this amendment.

I yield the floor.

The PRESIDING OFFICER. The question is on agreeing to amendment No. 875.

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

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second. The clerk will call the roll.

The legislative clerk called the roll.

Mr. ALLEN (when his name was called). Present.

Mr. REID. I announce that the Senator from Connecticut (Mr. LIEBERMAN) is necessarily absent.

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

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

[Rollcall Vote No. 214 Leg.]

YEAS—49

Akaka	Dodd	Lautenberg
Baucus	Dorgan	Leahy
Bayh	Durbin	Levin
Biden	Edwards	McCain
Bingaman	Ensign	Mikulski
Boxer	Feingold	Murray
Byrd	Feinstein	Reed
Campbell	Graham (FL)	Reid
Cantwell	Gregg	Rockefeller
Chafee	Harkin	Sarbanes
Clinton	Jeffords	Schumer
Collins	Johnson	Smith
Conrad	Kennedy	Snowe
Corzine	Kerry	Stabenow
Daschle	Kohl	Sununu
Dayton	Kyl	Wyden

NAYS—50

Alexander	Bennett	Breaux
Allard	Bond	Brownback
Bunning	Graham (SC)	Nelson (FL)
Burns	Grassley	Nelson (NE)
Carper	Hagel	Nickles
Chambliss	Hatch	Pryor
Cochran	Hollings	Roberts
Coleman	Hutchison	Santorum
Cornyn	Inhofe	Sessions
Craig	Inouye	Shelby
Crapo	Landrieu	Specter
DeWine	Lincoln	Stevens
Dole	Lott	Talent
Domenici	Lugar	Thomas
Enzi	McConnell	Voinovich
Fitzgerald	Miller	Warner
Frist	Murkowski	

ANSWERED ''Present''—1

Allen

NOT VOTING—1

Lieberman

The amendment (No. 875) was rejected.

Mr. CARPER. 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. DOMENICI. I thank all Members for debate and votes.

I believe the Indian amendment of the Senator from Colorado is next.

AMENDMENT NO. 864 WITHDRAWN

Mr. CAMPBELL. Mr. President, as the author of amendment No. 864, the Indian provision to the Energy Bill, I ask unanimous consent to withdraw the amendment.

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

The Senator from California.

Mrs. FEINSTEIN. Mr. President, I inquire as to what the order is.

The PRESIDING OFFICER. There is no unanimous consent agreement at this time.

AMENDMENT NO. 876

(Purpose: To Tighten Oversight of Energy Markets)

Mrs. FEINSTEIN. Mr. President, I send an amendment to the desk on behalf of Senators FITZGERALD, HARKIN, LUGAR, CANTWELL, WYDEN, BOXER, and LEAHY.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from California [Mrs. FEINSTEIN], for herself, Mr. FITZGERALD, Mr. HARKIN, Mr. LUGAR, Ms. CANTWELL, Mr. WYDEN, Mrs. BOXER, and Mr. LEAHY, proposes an amendment numbered 876.

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

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

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

Mrs. FEINSTEIN. Mr. President, I heard the comments of the distinguished ranking member that they had not had an opportunity to see the amendment. Of course, we will allow that opportunity to take place. This amendment closes a major loophole which allows energy trades to take place electronically, in private, with no transparency, no record, no audit trail, or any oversight to guard against fraud and manipulation.

This amendment will close a loophole created in 2000 when Congress passed the Commodity Futures Modernization Act which exempted energy and metals trading from regulatory oversight and excluded them completely if the trade was done electronically.

This amendment was presented by me before. Senator FITZGERALD spoke, Senator WYDEN spoke, Senator CANTWELL spoke. We got just about a majority. Senator Gramm of Texas argued against it. It did go back to the Agriculture Committee. The Agriculture Committee held hearings and both Senators HARKIN and LUGAR participated in making changes, which I think has made this a better amendment.

We were hoping for a markup, but the Congress ended without that markup having taken place. Now the Energy bill is before us, and it seems to me this is the time to present this.

This bill has had floor discussion. It has had a committee hearing. It has been modified by the chairman and the ranking member of the Agriculture Committee and is now before us.

Today, if there is no delivery of physical energy, there is no price transparency. By that I mean, if I buy natural gas from you and you deliver it to me, the Federal Energy Regulatory Commission has the authority to ensure that the transaction is transparent—meaning it is available to look at—and that it is reasonably priced. However, many energy transactions no longer result in delivery. In other words, if I sell to you and you sell to Senator CRAIG who sells to Senator DOMENICI who sells to somebody else who then delivers it, none of these trades is covered if done electronically. That means there is no record; there is no audit trail; there are no capital requirements; there is no transparency; there is no antifraud or antimanipulation oversight today. It is a huge loophole permitted in the Commodity Futures Modernization Act of 2000.

This lack of transparency and oversight applies to energy and metals trading. It does not apply if you are selling wheat or pork bellies or any other tangible commodity. Why do we include metals? Fraud and manipulation have not been confined to the energy trading sector. For example, in 1996 U.S. consumers were overcharged $2.5 billion from Sumitomo's manipulation of the copper markets.

Furthermore, in 1999 the President's Working Group on Financial Markets recommended excluding only financial derivatives, not energy and metals derivatives, from the CFTC's jurisdiction.

After intense lobbying by, of all people, Enron, a change was made to the Commodity Futures Modernization Act to exempt energy and metals trading from CFTC oversight in 2000. It did not take long for EnronOnline and others in the energy sector to take advantage of this new freedom by trading energy derivatives absent any transparency and regulatory oversight. In other words, a whole new niche was found where you could avoid any scrutiny and do this trading.

After the 2000 legislation was enacted, EnronOnline began to trade energy derivatives bilaterally, without being subject to proper regulatory oversight. It should not surprise anyone that without the transparency, prices soared and games were played.

Three years ago this summer, California's energy market began to spiral out of control. In May of 2000, families and businesses in San Diego saw their energy bills soar. The western energy crisis forced every family and business in California and many of the other States to pay more for energy. The crisis forced the State of California into a severe budget shortfall. It forced the State's largest utility into bankruptcy and nearly bankrupted the second largest publicly owned utility.

Now, 3 years and $45 billion in costs later, we have learned how the energy markets in California were gamed and abused. Originally everyone around here said: Oh, it's the problem of the 1996 deregulation law. I will admit that law is a faulty law. However, you cannot have the price of energy 1 year being $7 billion throughout the whole State and the next year it is $28 billion and say that is supply and demand. You cannot have a 400 percent increase just based on supply and demand. Clearly, you do not have a 400 percent increase in demand in a 1-year period of time. Nor did that happen in a 1-year period of time.

In March of this year, the Federal Energy Regulatory Commission issued a report titled ''Price Manipulation In Western Markets,'' which confirmed that there was widespread and pervasive fraud and manipulation during the western energy crisis. According to the FERC report, the abuse in our energy markets was pervasive and unlawful. Yet this Energy bill does not prevent another energy crisis from occurring nor does it curb illegal Enron-type manipulation.

Just last week, the FBI arrested former Enron trader John M. Forney, saying he was a key architect of Enron's well-known trading schemes blamed for worsening California's energy crisis in 2000 and 2001.

Mr. Forney was charged with a single count each of wire fraud and conspiracy. He is the third Enron trader accused by the Justice Department of criminal manipulation of western energy markets but the first who did not reach a plea agreement, leading to his arrest last Tuesday. According to the criminal complaint, Forney is allegedly the architect of the Enron trading strategies with the now infamous names of Ricochet, Death Star, Get Shorty, Fat Boy, and others.

These Enron strategies were first revealed on Monday, May 6, 2002, when the Federal Energy Regulatory Commission posted a series of documents on their Web site that revealed Enron manipulated the western energy market by engaging in these suspect trading strategies.

Under one such trading strategy called Death Star, which was also called Forney's Perpetual Loop, for John Forney, Enron would ''get paid for moving energy to relieve congestion without actually moving energy or relieving any congestion,'' according to an internal memo. It was a fraud.

It was a fraud. A was a trading strategy which was clearly and simply fraudulent and manipulative.

In another strategy detailed in these memos, Enron would ''create the appearance of congestion through the deliberate overstatement of loads'' to drive up prices.

The above-mentioned strategies reveal an intentional and coordinated attempt to manipulate the Western energy market for profit.

This is an important piece of the puzzle that has been uncovered. Some former Enron traders helped fill in the blanks.

CBS News reported in May 2002 that former Enron traders admitted the company was directly responsible for local blackouts in California. Yet, interestingly enough, no one has followed up on this report.

According to CBS News reporter Jason Leopold, the traders said Enron's former president Jeff Skilling pushed them to trade aggressively in California and told them, ''If you can't do that, then you need to find a job at another company or go trade pork bellies.''

The CBS article mentions that Enron traders played a disturbing role in blackouts that hit California. The report mentions specific manipulative behavior by Enron on June 14 and 15 in the summer of 2000 when traders said they intentionally clogged Path 26—a key transmission path connecting Northern and Central California.

Here is what one trader said about the event:

> What we did was overbook the line we had the rights on during a shortage or in a heat wave. We did this in June 2000 when the Bay Area was going through a heat wave and the ISO couldn't send power to the North. The ISO has to pay Enron to free up the line in order to send power to San Francisco to keep the lights on. But by the time they agreed to pay us, rolling blackouts had already hit California and the price for electricity went through the roof.

In other words, they waited for the weather. They calculatedly overbooked the line to clog the lines so that power could not be transmitted to the north. Therefore, what power was transmitted went sky high in terms of price. Second, a blackout resulted.

California lost billions. Yet according to the traders, Enron made millions of dollars by employing this strategy alone.

On top of all this, traders disclosed that Enron's manipulative trading strategies helped force California to sign expensive long-term contracts. It is no surprise that Enron and others were able to profit so handsomely during the crisis.

Now, after 3 years, the FBI and the Justice Department are beginning to

bring these traders to justice. In February, Jeffrey Richter, the former head of Enron's Short-Term California energy trading desk, pled guilty to conspiracy to commit fraud as part of Enron's well known schemes to manipulate Western energy markets.

Richter's plea followed that of head Enron trader Tim Belden in the fall of 2002. Belden admitted that he schemed to defraud California during the Western energy crisis and also plead guilty to conspiracy to commit wire fraud.

Nobody can believe this didn't happen, because it did. Two people have pled guilty, and a third was just arrested for doing just what we hope to prevent happening with this amendment.

The plea by Jeff Richter came on the heels of FERC's release of transcripts from Reliant Energy in January of this year that reveal how their traders intentionally withheld power from the California market in an attempt to increase prices. This is one of the most egregious examples of manipulation and it is clear and convincing evidence of coordinated schemes to defraud consumers.

Let me read just one part of the transcript to demonstrate the greed behind the market abuse by Reliant and its traders.

On June 20, 2000 two Reliant employees had the following conversation that reveals the company withheld power from the California market to drive prices up:

RELIANT OPERATIONS MANAGER 1. I don't necessarily foresee those units being run the remainder of this week. In fact you will probably see, in fact I know, tomorrow we have all the units at Coolwater off.

The Coolwater plant is a 526 Megawatt plant.

RELIANT PLANT OPERATOR 2. Really?

RELIANT OPERATIONS MANAGER 1. Potentially. Even number four. More due to some market manipulation attempts on our part. And so, on number four it probably wouldn't last long. It would probably be back on the next day, if not the day after that. Trying to uh . . .

RELIANT PLANT OPERATOR 2. Trying to shorten supply, uh? That way the price on demand goes up.

RELIANT OPERATIONS MANAGER 1. Well, we'll see.

RELIANT PLANT OPERATOR 2. I can understand. That's cool.

RELIANT OPERATIONS MANAGER 1. ''We've got some term positions that, you know, that would benefit.

That is what existed. That is the kind of thing that went on, and it has to stop. It has to be made illegal and it has to have heavy penalties.

Let's turn to some other examples.

On January 27, 2003, Michelle Marie Valencia, a 32-year-old former senior energy trader for Dynegy, was arrested on charges that she reported fictitious natural gas transactions to an industry publication.

On December 5, 2002, Todd Geiger, a former vice president on the Canadian natural gas trading desk for El Paso Merchant Energy, was charged with wire fraud and filing a false report after allegedly telling a trade publication about the prices for 48 natural gas trades that he never made in an effort to boost prices and company profit.

In other words, he is telling an energy trade publication about 48 gas trades that were never made. It was bogus information which was given out. Why? Simply to boost the market.

These indictments are just a few examples of how energy firms reported inaccurate prices to trade publications to drive energy prices higher.

Industry publications claimed they could not be fooled by false prices because deviant prices are rejected, but this claim was predicated on the fact that everyone was reporting honestly which we now know they weren't doing.

CMS Energy, Williams, American Electric Power Company, and Dynegy have each acknowledged that its employees gave inaccurate price data to industry participants. On December 19 Dynegy agreed to pay a $5 million fine for its actions.

Let us turn to other types of fraudulent trades that many energy firms have admitted to.

Dynegy, Duke Energy, El Paso, Reliant Resources Inc., CMS Energy Corp., and Williams Cos. all admitted engaging in false ''round-trip'' or ''wash trades.''

What is a ''round-trip'' trade, one might ask?

''Round-trip'' trades occur when one firm sells energy to another and then the second firm simultaneously sells the same amount of energy back to the first company at exactly the same price. No commodity ever actually changes hands, but when done on an exchange, these transactions send a price signal to the market and they artificially boost revenue for the company.

How widespread are ''round-trip'' trades? Well, the Congressional Research Service looked at trading patterns in the energy sector over the last few years and reported, ''this pattern of trading suggests a market environment in which a significant volume of fictitious trading could have taken place.''

Yet since most of the energy trading market is unregulated by the government, we have only a slim idea of the illusions being perpetrated in the energy sector.

Consider the following confessions from energy firms about ''round-trip'' trades:

Reliant admitted 10 percent of its trading revenues came from ''round-trip'' trades. The announcement forced the company's President and head of wholesale trading to both step down.

These are bogus traders.

CMS Energy announced 80 percent of its trades in 2001 were ''round-trip'' trades.

Eighty percent of all of the trading this company did was bogus.

Remember, these trades are sham deals where nothing was exchanged, yet the company booked revenues from the trades. This is exactly what our legislation aims to stop.

Duke Energy disclosed that $1.1 billion worth of trades were ''round-trip'' since 1999. Roughly two-thirds of these were done on the InterContinental Exchange owned by banks that oppose this legislation.

Let me repeat that. Duke Energy disclosed that $1.1 billion worth of trades were bogus ''round-trip'' trades since 1991. And two-thirds of those were done on the InterContinental Exchange, which is an electronic exchange. That means that thousands of subscribers would have seen false price signals.

A lawyer for J.P. Morgan Chase admitted the bank engineered a series of ''round-trip'' trades with Enron. Dynegy and Williams have also admitted to this ''round-trip'' trading. And although those trades mostly occurred with electricity, there is evidence to suggest that ''round-trip'' trades were made in natural gas and even broadband.

By exchanging the same amount of a commodity at the same price, these companies have not engaged in meaningful transactions but in deceptive practices to fool investors and drive up energy prices for consumers. It is, therefore, imperative that the Department of Justice, the Federal Energy Regulatory Commission, the Securities and Exchange Commission, the Commodity Futures Trading Commission, and every other oversight agency conduct an aggressive and vigorous investigation into all of the energy companies that may have committed fraud and abuse in the western energy market.

Beyond that, I believe strongly that Congress must reexamine what tools the Government needs to keep a better watch over these volatile markets that, frankly, are little understood. In the absence of vigilant Government oversight of the energy sector, firms have the incentive to create the appearance of a mature liquid and well functioning market, but it is unclear whether such a market exists. And I don't believe, for a minute, that such a market exists.

The ''round-trip'' trades, the Enron memos, the FERC report on ''Price Manipulation in the Western Markets'' raise questions about the energy markets of our country. To this end, I believe it is critical for the Senate to approve this amendment, which would provide more regulatory oversight of online energy trading.

When the Senate Energy Committee marked up the Energy bill in April, there was a consensus to include some provisions of the Energy Market Oversight Act, S. 509, I introduced earlier this year. The Energy bill, S. 14, does include higher criminal and civil penalties for violations of the Federal Power Act and the Natural Gas Act.

Under section 1173 of the bill now on the floor, fines will be $1 million instead of the current $5,000 for a one-time violation of the statutes. I thank

the chairman of the committee for this. Jail time will be raised to 5 years instead of the current 2 years. And I thank the chairman of the committee for this. Fines will be $50,000 per violation per day instead of the current $500 per violation per day for violations of the statutes. And I thank the chairman of the committee for this.

Furthermore, section 1174 of the Energy bill will eliminate the unnecessary 60-day waiting period for FERC to grant refunds. I thank both Senator DOMENICI and Senator BINGAMAN, the chairman and the ranking member of the Energy Committee, for their efforts to include provisions of S. 509, the Energy Market Oversight Act, in this Energy bill.

Now let me turn to the specifics of the amendment.

I am offering this amendment—and I am hopeful that Senator FITZGERALD will come to the floor; I know he intends to speak on this amendment, and I hope he does—I am offering this amendment to subject electronic exchanges, such as EnronOnline, the InterContinental Exchange, and any other electronic exchange, to the same oversight, reporting, and capital requirements of other commodity exchanges, such as the Chicago Mercantile Exchange, the New York Mercantile Exchange, and the Chicago Board of Trade.

Why should there be one secret trading venue where fraud and manipulation can take place abbondanza? I do not think there should be. I do not think it is in the interests of our citizens to have that happen. And the western energy market should be a major case in point.

I am very pleased that Senators FITZGERALD, HARKIN, LUGAR, CANTWELL, WYDEN, LEAHY, DURBIN, and BOXER have again signed on to this amendment. I was very proud of the work we did in the 107th Congress, and I hope we can adopt this amendment on this Energy bill because without this type of legislation, there is insufficient authority to investigate and prevent fraud and price manipulation since parties making the trades are not required to keep a record. That is the problem.

The CFTC will say: Oh, we are already doing that. But in the law there is no requirement to keep a record. There is a specific exemption in the law. So I do not see how the CFTC has the adequate tools to do what they need to do without this amendment because this amendment closes that loophole which exists just for energy and just for metals and, because of its existence, has allowed EnronOnline and a number of other exchanges—Dynegy had one; InterContinental Exchange had one as well—to do all these things in secret with no audit trail, no record, no capital requirements. Nobody has a responsibility to set any capital requirements. There is no audit trail and no antifraud and antimanipulation oversight. Clear and simple, it is a travesty.

Right now, energy transactions are regulated by FERC. When there is actual delivery, that is taken care of. If Senator REID sells me energy and I deliver it, that is covered by FERC. But interim trades are not covered by anybody. They are on their own in secret.

Many energy transactions no longer result in delivery, so this giant loophole where there is no government oversight—when these transactions are done on electronic exchanges—is major. I think it is mega. I think a number of companies have jumped into this void simply because they thought they could make a quick buck by gaming the system, and in fact they have done just that.

As I mentioned, in 2000 Congress passed the Commodity Futures Modernization Act, which exempted energy and metals from regulatory oversight, and excluded it completely if the trade was done electronically. So today, as long as there is no delivery, there is no price transparency, there is no record, there is no audit trail, there is no capital requirement, there is no antifraud, antimanipulation oversight.

This lack of transparency and oversight only applies to energy. It does not apply if you are selling wheat or pork bellies or any other tangible commodity. And financial derivatives are not included in this amendment.

It did not take long for Enron and others to take advantage of this new freedom by trading derivatives absent any regulatory oversight. Thus, after the 2000 legislation was enacted, EnronOnline, as I said, began to trade energy derivatives bilaterally without being subject to regulatory oversight. It should not be a surprise to anyone that prices soared.

In March, Warren Buffett published a warning in Fortune magazine saying:

> Derivatives are financial weapons of mass destruction.

In his annual warning letter to shareholders about what worries him about the financial markets, Warren Buffett called derivatives and the trading activities that go with them ''time bombs.''

In the letter, Mr. Buffett states:

> In recent years some huge-scale frauds and near-frauds have been facilitated by derivatives trades. In the energy and electric utility sectors, for example, companies used derivatives and trading activities to report great ''earnings''—until the roof fell in when they actually tried to convert the derivatives-related receivables on their balance sheets into cash.

We clearly saw this with Enron. Was Enron and its energy derivative trading arm, Enron Online, the sole reason California and the West had an energy crisis? No. Was it a contributing factor to the crisis? I believe it was.

Unfortunately, because of the energy exemptions in the 2000 Commodities Futures Modernization Act, which took away the CFTC's authority to investigate, we may never know for sure. In the 107th Congress, this legislation was debated during consideration of the Senate Energy bill, and it was a subject of a hearing in the Senate Agriculture Committee. As I said, time ran out before it could be marked up and passed. Since that time, both Senators LUGAR and HARKIN have made significant improvements to the legislation.

So today I am pleased to note that the following companies and organizations are supporting this legislation: the National Rural Electric Cooperative Association; the Derivatives Study Center; the American Public Gas Association; the American Public Power Association; the California Municipal Utilities Association; Southern California Public Power Authority; the Transmission Access Policy Study Group; U.S. Public Interest Research Group; the Consumers Union; the Consumers Federation of America; Calpine; Southern California Edison; Pacific Gas and Electric; and the FERC Chairman Pat Wood.

Here is a quick explanation of what this amendment does. It applies antifraud and antimanipulation authority to all exempt commodity transactions. An exempt commodity is a commodity which is not financial and not agricultural and mainly includes energy and metals. The bill sets up two classes of swaps for those made between sophisticated persons, basically institutions and wealthy individuals, that are not entered into on a trading facility, for example, an exchange. Antifraud and antimanipulation provisions apply and wash trades are prohibited. The following regulations would apply to all swaps made on an electronic trading facility and a ''dealer market'' which includes dealers who buy and sell swaps in exempt commodities and the entity on which the swap takes place. Antifraud and antimanipulation provisions and the prohibition of wash trades apply.

If the entity on which the swap takes place serves a pricing or price discovery function, increased notice, reporting, bookkeeping, and other transparency requirements are provided. The requirement to maintain sufficient capital is commensurate with the risk associated with the swap. We don't determine that in this legislation. The Commodities Futures Trading Commission would determine that. In other words, they would determine what kind of net capital requirement there will be, and that would be commensurate with the degree of risk involved in the transaction.

Except for the antifraud and antimanipulation provisions, the CFTC has the discretion to tailor the above requirements to fit the character and financial risk involved with the swap or entity. While the CFTC could require daily public disclosure of trading data, such as opening and closing prices, similar to the requirement of futures exchanges, it could not require real-time publication of proprietary trading information or prohibit an entity from selling their data. So proprietary information is protected.

The CFTC may allow entities to meet certain self-regulatory responsibilities as provided in a list of core principles. If an entity chooses to become a self regulator, these core principles would obligate the entity to monitor trading to prevent fraud and manipulation, as well as assure that its other regulatory obligations are met.

The penalties for manipulation are greatly increased. The civil monetary penalty for manipulation is increased from $100,000 to $1 million. Wash trades are subject to the monetary civil penalty for each violation and imprisonment of up to 10 years.

The FERC is required to improve communications with other Federal regulatory agencies. A shortcoming in the main antifraud provision of the CEA is also corrected by allowing CFTC enforcement of fraud to apply to instances of either defrauding a person for oneself or on behalf of others.

This would also require the FERC and the CFTC to meet quarterly and discuss how energy derivative markets are functioning and affecting energy deliveries. So they are required to look at this, to monitor it closely, and to sit quarterly and see how these markets are, in fact, functioning.

This would grant the FERC the authority to use monetary penalties on companies that don't comply with requests for information. This is essentially the same authority the SEC has today.

It would make it easier for FERC to hire the necessary outside help they need, including accountants, lawyers, and investigators for investigative purposes. And it would eliminate the requirement that FERC receive approval from the Office of Management and Budget before launching an investigation or price discovery of electricity or natural gas markets involving more than 10 companies.

This amendment is not going to do anything to change what happened in California and the West. But it does provide the necessary authority for the CFTC and the FERC which will help protect against another energy crisis. No one is immune from this kind of thing. The gaming, the fraud, the manipulation has been extraordinary.

Just the chutzpah to do Death Star, Get Shorty, Ricochet, just the chutzpah to do these kinds of trades in secret, it is a bunco operation. It is nothing else but. And who is buncoed? The consumer is buncoed. That is why consumer organizations feel strongly about this.

When regulatory agencies have the will but not the authority to regulate, Congress must step in and ensure that our regulators have the necessary tools. Unfortunately, sometimes an agency has neither. In this case, I am glad to have the support of FERC, and I hope the CFTC will reconsider its position and support this amendment.

I note that Senator FITZGERALD is on the floor. I would like to yield to him. But before I do, may I just say one quick thing.

Mr. REID. You are not yielding to Senator FITZGERALD.

Mrs. FEINSTEIN. Pardon me?

Mr. REID. You are not yielding to Senator FITZGERALD.

Mrs. FEINSTEIN. I am not?

The PRESIDING OFFICER (Mrs. DOLE). Senators are not permitted to yield the floor to one another.

Mrs. FEINSTEIN. I thank the Chair for the clarification.

I wish to make one comment about this amendment. This amendment has been in the Agriculture Committee. It has had a hearing. It has been reviewed by both staffs, Republican and Democratic. The Democratic chairman of the committee, Senator HARKIN, worked on this. The ranking member at the time, Senator LUGAR, worked on this. They have both concurred. They are supporting this legislation. The staffs have reviewed it.

We believe it is bona fide, that it is solid, and that it will stand the test of time.

I thank the Chair. I yield the floor.

The PRESIDING OFFICER. The Senator from Nevada.

AMENDMENT NO. 877 TO AMENDMENT NO. 876

Mr. REID. Madam President, I send an amendment to the desk.

The PRESIDING OFFICER. The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from Nevada [Mr. REID] proposes an amendment numbered 877 to amendment No. 876.

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

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

The amendment is as follows:

(Purpose: To exclude metals from regulatory oversight by the Commodity Futures Trading Commission)

On page 17 after line 25:

''(10) APPLICABILITY.—This subsection does not apply to any agreement, contract, or transaction in metals.''

Mr. REID. Madam President, first, I commend the senior Senator from California and her cosponsor, the junior Senator from Illinois, for their amendment and their work on this very difficult issue dealing with derivatives and how to regulate them.

To critics of the amendment, I suggest you put yourself in Senator FEINSTEIN's shoes. She represents the largest State in the United States and one of the largest governments in the world. The State of California's GDP is larger than most countries' of the world.

In the West, we are still feeling shock waves from the energy crisis that threatened California's and Nevada's prosperity and brought home to all of us that we are in uncharted territory with energy deregulation.

Senator FEINSTEIN inadvertently included metal derivatives with the energy derivatives that are the intended target of her amendment. Unlike energy derivatives which raise questions because of the recent energy crisis, metal derivatives have been sold over the counter for decades. The amendments in 2000 to the Commodities Exchange Act did not change this, and that was proper. They only clarified and confirmed the legality of these markets.

Lumping metal derivatives together with energy derivatives would impose regulatory burdens that never existed even before the 2000 amendments and, of course, without justification; therefore, I offer this second-degree amendment to restore metal derivatives trading to exempt commodity status. Metals would be treated as if they were under the Commodity Futures Modernization Act of 2000.

Like other derivatives, metal derivatives markets help companies manage the risk of sudden and large price changes.

In recent years, derivatives and so-called hedging transactions helped the mining companies in the State of Nevada, which is the third largest producer of gold in the world, second only to Australia and South Africa, with a steadily declining gold price by selling mining production forward.

A large mining company in Nevada, Barrick Gold, had no layoffs during this period of time as a result of these forward selling programs. The last couple of years illustrate the function and value in the marketplace of such transactions. Some companies decided not to hedge, betting the gold price would rise and hedging contracts would lock them into below-market prices. Most of those companies are no longer around because the gold price has stayed relatively low.

In contrast, other companies hedged some or most of their production. These companies have survived or even thrived, for the most part. By choosing to manage their risk, they accepted the risk that the gold price could rise, but they stabilized company performance, continued to provide jobs and contribute to communities in rural Nevada where they are so important.

The gold mining business in America is so important. It is important because it is one of the few areas where we are a net exporter, and that is the way it has always been. The Feinstein amendment includes metal derivatives citing fraud in the metals markets, but there is no example of fraud on any occasion regarding the metals markets in the past decade.

Examples of such fraud that did take place a long time ago are cases such as the Hunt brothers in silver and Sumitomo in copper. These were regulated markets and over the counter trades did not exist at that time. The Hunt brothers just went out and bought silver on the free market. Neither of these fraud cases are addressed by the Feinstein amendment.

The attempt, as I indicated, by the Hunt brothers in 1979 to ''corner the silver market'' involved manipulation of the physical silver market. The

Hunt silver scandal involved trading on regulated exchanges, not in the over-the-counter derivatives markets. The trading abuses involved the physical accumulation of 200 million ounces of silver. It did not involve over-the-counter derivatives.

I say in passing, I had a great friend. His name was Forrest Mars, one of the richest men in the world. He lived in Las Vegas in a very small apartment above his candy store. But as you know, this giant of commerce was a multi-multibillionaire. After the Hunt brothers had manipulated the market, he told me: These guys are so dumb. They should have come to me. I could have told them you cannot have monopolies. They do not work. I tried it a couple times.

He said: For example, once I went out and tried to corner the market on black pepper. Black pepper has been part of commerce for so many centuries, and he figured he could corner the market on all black pepper, and he did. He owned every producing facility, farm, and manufacturing facilities related to black pepper in the world. But he said: They outfoxed me because all they did was dye white pepper and ruined my monopoly.

I say this because the Hunt brothers fiasco in 1979 was an effort to have a monopoly, and it did not work for a lot of reasons.

The Sumitomo situation involved the alleged manipulation of the copper market by a Japanese company acting through a rogue trader acting in London and Tokyo. The trading abuses occurred on a fully regulated exchange, not in the over-the-counter derivatives market. The trading abuses involved manipulation of the price of copper on the London Metal Exchange, a futures exchange which is fully regulated by the UK's Financial Services Authority. Further, the manipulation took place overseas, not in United States markets.

I repeat, we owe Senator FEINSTEIN and Senator FITZGERALD a debt of gratitude for their interest in this issue and their work in proposing changes to the Commodity Exchange Act that will ensure trading in energy derivatives when it is done over the counter with transparency, in a way that inspires public confidence in the markets.

I urge my colleagues to eliminate metals from this amendment. I think it would help the adoption of their amendment. If they decide not to do that, I urge my colleagues to support my amendment which strikes metal derivatives from the Feinstein amendment. My amendment would not allow metal derivatives markets and participants to trade derivatives without accountability and transparency. Adequate recordkeeping needs to be in place. The Commodity Exchange Act already requires some recordkeeping for these otherwise ''exempt'' transactions.

Derivatives are essential to the health of the metals market, and fraud in metals markets did not involve over-the-counter derivatives.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. FITZGERALD. Madam President, I rise today to support my colleague from California, Senator FEINSTEIN, and her amendment, which I have cosponsored, which would very simply close the so-called Enron loophole in the commodity futures trading laws of this country.

This really is not that complex an issue. A few years ago, we passed a reauthorization of the Commodity Futures Trading Commission. I am very familiar with the commodities industry because we are the heart of it in my State of Illinois, particularly the city of Chicago, where they have the largest derivative exchanges in the country in the Board of Trade, in the Mercantile Exchange in Chicago. Those exchanges trade all sorts of commodities from pork bellies to Treasury bonds. They trade financial commodities as well as agricultural commodities, corn and soybeans.

The Board of Trade and the Mercantile Exchange, like the NYMEX, the New York Mercantile Exchange in New York, or the New York Board of Trade, are fully regulated exchanges. The reauthorization of the Commodity Futures Trading Commission, which we passed a few years ago, continued that regulation that we have had in this country over our boards of trades and our other derivatives or futures transaction trading facilities in this country.

Somehow, when we were working on that legislation in the House and the Senate—it is funny how little codicils, little paragraphs and sentences get added when the bills go to conference committees between the House and the Senate. I believe what happened is when that bill was over in the House, a couple of congressmen added some language that exempted from all regulation by the CFTC—and there is no regulation by the SEC in this area—online facilities that trade energy, metals, and broadband derivatives contracts or futures contracts. Online exchanges that trade those kinds of contracts are completely exempt from regulation. This is the so-called Enron loophole.

At the time, Enron owned EnronOnline and they had an online platform for trading energy contracts, which when Enron went bankrupt later they sold.

Now that EnronOnline was totally exempted from regulation—as Senator FEINSTEIN very eloquently and very thoroughly described for us all of the bogus trades that were done on online derivative exchanges that trade metals and energy contracts, and she described the wash trades that were discovered when Enron fell apart. In fact, many energy companies were simply engaging in round trip trades with trading partners. A round trip trade, as Senator FEINSTEIN noted, is when one party sells a commodity to another party at a certain price, and the other party sells that same commodity back at the very same price. Nothing really transpired in that transaction except that the other party books revenue from a sale and this party books revenue from a sale, but nothing really happened from an economic point of view.

If party A sells a barrel of oil to party B for $30, and party B simultaneously sells a barrel of oil back to party A for $30, nothing has really happened. Everybody is still the same. What we saw in the energy industry with a whole bunch of energy companies, not just Enron, is they were artificially boosting their revenues by engaging in wash trades, round trip trades with other energy partners.

I recall one energy company after this came to light had to restate its revenues downward by $7 billion when new auditors came in and made them cancel out all these wash trades.

Senator FEINSTEIN's amendment simply closes this Enron loophole. It says the CFTC will be able to ban wash trades on these online derivatives transaction facilities. That is all we are trying to do. She does not impose full-scale regulation by the CFTC like we have at the Board of Trade or Mercantile Exchange in Illinois or the New York Mercantile Exchange in New York. They have far more regulation. However, we will put a light level of regulation on online derivative transactions facilities that trade energy, metals, and broadband online. Do not forget, Enron was a big trader of broadband, as well. In fact, that is why the Enron loophole as it got written in the House created a special carve-out for energy, metals, broadband, and also weather contracts.

The question is—why are we picking out energy, metal, broadband, and weather contracts and saying these contracts when traded online cannot be regulated by anyone? What is the public policy rationale for this special carve-out? Why didn't they also include corn and soybeans in this carve-out? Or other commodities? The fact is, this was a special interest carve-out for a hand full of companies.

Now, there is a company owned by a number of banks and energy companies called the InterContinental Exchange. I believe it is opposed to our amendment. Why they are opposed—I gather some of their owners are, in fact, for this—but the majority of the owners of this exchange are opposed. They do not want to be regulated. Our obligation is not to those banks that own the InterContinental Exchange or to the energy companies that own the InterContinental Exchange. Our obligations here

are to investors around the country and to consumers around the country.

We saw what kind of wool can be pulled over people's eyes when online exchanges are allowed to go on without any regulation. Not only were a bunch of energy companies such as Enron doing round-trip trades to artificially boost their own revenues but they were also doing fictitious round-trip trades to set artificial prices.

Indeed, although I was very skeptical at first whether that was happening in California but, in fact, it was. The online exchanges would tell California that this is the price that has been trading on our online exchange, so that is the price you have to pay for the energy. But, in fact, it was a fictitious market and most of the trades were fictitious and no one could regulate it.

All we are trying to do is have a light level of regulation to ban wash trades, round-trip trades, ban fraud and abuse, and protect consumers and investors, have some price discovery so people can know what the prices are for the commodities that are traded on these online exchanges, a very light level of regulation to protect the integrity of our derivatives market.

My good friend and colleague from the State of Nevada, the senior Senator from Nevada, Mr. REID, has proposed exempting metals contracts from the amendment Senator FEINSTEIN and I have put together. In other words, he would go along with closing the Enron loophole with respect to energy and broadband but he wants to keep a carve-out for metals. I don't think that is a good idea. We should not have to wait until we have fraudulent transactions involving a metals contract, say, of gold, silver, or platinum, before we act. We have already had fraudulent transactions in energy markets on the online exchanges and we need to stop that. But certainly we can foresee the same problem could occur in an online contract of metals that is traded on one of these online exchanges. All commodities of which there is a finite supply should be treated equally. We should not have a special carve-out either for energy or for metals or for broadband.

In 1999, a working group was put together on the financial markets and the working group was put together ahead of our rewrite of the Commodity Futures Modernization Act. The panel comprised in the working group was made up of Federal Reserve Chairman Alan Greenspan, the Treasury Secretary, the Chairman of the SEC, and the Chairman of the CFTC at the time. In their report, the President's Working Group on Financial Markets, as it was called, that group concluded:

> Due to the characteristics of markets for nonfinancial commodities with finite supplies [energy, metals broadband all fit that category; they are nonfinancial commodities and there are finite supplies of energy and of metals] the working group is unanimously recommending that the exclusion not be extended to agreements involving such commodities. The exclusion should not extend to any swap agreement that involves a nonfinancial commodity with a finite supply.

In other words, the President's working group was saying there should be oversight, there should be regulation of swap agreements, of futures contracts, of derivatives contracts, involving nonfinancial commodities with finite supplies. They separated that category of commodities from financial commodities that have an infinite supply, say, interest rates futures, or futures contracts or derivative contracts based on currencies. With those types of financial commodities, it is very difficult for someone to corner the market in interest rates, for example. I don't think it is possible. There is not a finite supply of interest rates. No one could corner the market there. So they wanted to provide legal certainty for derivatives involving financial commodities with infinite supplies and they have done that. We did not touch financial derivatives. We allow that legal certainty to remain for the financial commodities. We do not upset that. Instead, we simply treat energy, metals, and broadband, as the other finite commodities such as corn and soybeans and other agricultural commodities are treated.

The President's working group made this recommendation that all nonfinancial commodities with finite supplies be treated the same. I have to ask my colleagues, what possible public policy rationale could explain the carve-out in the commodity futures reauthorization bill for energy and metals transactions? If it is proper to exempt these finite physical commodities from CFTC regulation, why not exempt agricultural commodities such as corn, soybeans, and pork bellies? It does not make any sense and we should close this loophole.

Some have argued that we shouldn't have regulation in this area. I know, particularly on my side of the aisle, there are a lot of conservative Republicans, and I am certainly a conservative Republican, and very pro-free markets. I am always reluctant to see Government regulation and I always question the need for it. However, I point out that a light level of Government regulation can actually be healthy in promoting markets.

There is no finer example than our security markets in the United States. Prior to the adoption of the Securities and Exchange Commission Act in the early 1930s, average people remained very leery of ever investing in the stock market. They thought it was a fool's game that was rigged for the insiders on Wall Street and it was very risky. In fact, by regulating the securities markets and making it safe for average people to invest in the markets by having some laws against the insider dealing and so forth, and requiring a thorough dissemination of information so it could be widely shared, we have gotten to the point where over 50 percent of Americans in this country invest in the stock market.

I point to that example as an area where we have pretty light regulations in our security laws. They are simply disclosure laws. Publicly traded companies have to file disclosure and there is not much more regulation than that, but that disclosure is very important in maintaining the integrity of our markets.

I believe Senator FEINSTEIN and I have an amendment that is very light regulation, that simply will help restore the faith of people who may want to trade, of institutions that may want to trade in an online derivatives facility. It will restore their faith in that market, give them more trust in that market and make them more likely to use that market.

Since we have had this scandal in the energy industry, the InterContinental Exchange's volume has just plummeted and people who wanted to hedge their positions in energy and metals have been flocking back to the fully regulated exchange in New York, the New York Mercantile Exchange.

So the point here, the moral of this story, I think, is by opposing this regulation, the InterContinental Exchange has, in fact, hurt their own cause because people are staying away from their market. They do not trust it, they know there is no price discovery, they know there is no regulator there who is going to prevent them from being defrauded. There is no cop there so nobody wants to trade there.

So if the InterContinental Exchange and the banks that own it want to encourage all the Senators here to vote against this, I think they are actually working against their own self-interest in the long run, just as Wall Street would have been working against its own self-interest back in the 1930s if they had come to Washington and tried to block the implementation of the Securities Exchange Commission Act.

All the bill does, and Senator FEINSTEIN has gone through it very thoroughly—but specifically it requires reporting, notification, and recordkeeping. In addition, it requires these energy and metal trading venues to keep books and records and maintain sufficient capital to operate soundly. Those are just commonsense requirements. Why anybody would be against this, I don't know.

Finally, on a somewhat more parochial basis, as someone who represents the exchanges in Chicago, the Board of Trade and the Mercantile Exchange, they have a much heavier degree of regulation than we are asking of these online exchanges that trade in energy and metals. I, frankly, think it is unfair to impose super-regulations on one type of trading facility and then no regulation at all on another type of facility. I think that unfairness in the disparate treatment between different derivatives transaction facilities is a disparity and disparate treatment that should be eliminated in the name of fairness.

The bottom line is, while there has been a lot of hype surrounding this

issue, I think those who study it closely will realize, will recognize it is good public policy. It is in the public's interest.

I urge my colleagues to support this amendment. It is very well drafted. Senator LUGAR and Senator HARKIN have both signed on as cosponsors. It was the subject of a hearing in the Agriculture Committee, as Senator FEINSTEIN pointed out, and the Agriculture Committee, of course, is where legislation dealing with the Commodity Futures Trading Commission goes. The Agriculture Committee has worked on this, and they produced very good legislation that will prevent, if we adopt it, the kind of abuses we have seen in online derivatives transactions in the last couple of years. It is a commonsense amendment. It simply will make it easier to act against fraudulent or bogus energy or metals or broadband trades. It is common sense. I urge my colleagues to adopt it.

Unless anyone further wishes to talk, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mrs. FEINSTEIN. Madam President, I rise to thank the Senator from Illinois. We have worked on this now through two Congresses. It was very clear to me that he has a great deal of knowledge in this area. His advice, his support, his efforts have been very helpful. I think he has very clearly stated the facts of this legislation.

There are those who, for purposes I do not understand, want to make this legislation out to be much more than it is, some heavy requirement of Government. Really, all we are saying is, if you are going to trade online, energy and metals and broadband, those trades are subject to recordkeeping, to an audit trail, and to antifraud and antimanipulation oversight.

That is the same as any other finite commodity. Anywhere else does this same thing. But this loophole, at the request, as the Senator from Illinois said, of Enron—by the House, and then in a conference in 2000 they dropped the requirement for coverage from the Commodity Futures Modernization Act. Therefore, this loophole was created into which these companies jumped and began to set up these online trading exchanges.

I couldn't believe my eyes when I saw that one company announced that 80 percent of the trades they did in 2001 were round trip or wash trades.

Senator FITZGERALD just explained that very clearly, what a round trip or a wash trade is.

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

Mrs. FEINSTEIN. I certainly will.

Mr. FITZGERALD. I ask Senator FEINSTEIN, I was wondering, you said one company said 80 percent of its trades had been wash trades, just round trip trades. Was that an energy firm?

Mrs. FEINSTEIN. Yes, it was CMS Energy. The year was 2001. They announced that.

Additionally, Duke Energy disclosed that $1.1 billion worth of trades were round trip, wash trades, since 1999; roughly two-thirds of these were done on the InterContinental Exchange, which means that thousands of subscribers would have seen these false price signals.

I could finish this, if you like? A class action suit accused the El Paso Corporation of engaging in dozens of round trip energy wash trades that artificially bolstered its revenues and trading volumes over the last 2 years.

CMS Energy Corp. has admitted conducting wash energy trades that artificially inflated its revenue by more than $4.4 billion.

So this is important. I have a hard time, I think, as you do, that if I sell something to you and you just sell it back to me and we both boost sales and yet nothing is really sold, that that is a legitimate way of doing business.

Mr. FITZGERALD. Madam President, I ask Senator FEINSTEIN if it is true that under the current law no one can do anything about these wash trades because of this Enron loophole that is in the law. We are trying to take that out, so somebody could actually ban this kind of fraudulent trading practice. Isn't that correct?

Mrs. FEINSTEIN. That is absolutely correct. That is what we are trying to do. For the life of me, I don't understand why people are against it.

Mr. FITZGERALD. Does the Senator know why people would oppose the authority of regulators to ban wash trades? Has anybody explained that to the Senator?

Mrs. FEINSTEIN. The only thing I can figure is they want to do it. They want the unabashed ability to conduct the bogus trades. That would be the only reason they would want this little, dark, hidden place through electronic trading because there is no oversight for fraud or manipulation. There is no record kept. There is no audit trail.

Mr. FITZGERALD. And no one can find out what prices they were trading at, either. There is no price discovered.

Mrs. FEINSTEIN. That is right.

Mr. FITZGERALD. They do not do these wash trades at the exchange in New York because all of that would be transparent to the public.

Mrs. FEINSTEIN. That is exactly right. That is why we suspect it. It is hard to prove.

Again, there have been three arrests of Enron traders who devised these schemes. Actually two were plea-bargained. There was a recent arrest last week of this fellow who apparently set these trading schemes up for Enron.

To have a transparent marketplace, I think, gives confidence to the 50 percent of the people who are small investors who would want to participate in the market. You have to show there is oversight. You have to show it is up and up, that it is a legitimate bona fide marketplace with trades that mean something.

In my heart of hearts, I believe that a lot of this kind of activity is what amounted to a 400-percent increase in the cost of power in 1 year in California alone.

Mr. FITZGERALD. Because they were simply trading back and forth amongst themselves at a price that really was not determined on an arms' length basis. They were just engaging in bogus trades back and forth to artificially set a price or to artificially increase revenues for the companies on both sides of the trade. Some of these transactions were done on the InterContinental Exchange.

As I recall, when we had the hearing before the Senate Agriculture Committee, either early this winter or maybe even last fall, some shareholder on the InterContinental Exchange came before the committee and testified that notwithstanding the official position of the exchange they, as an owner of the exchange, disagreed with the policy of the InterContinental Exchange on this, and they favored our elimination of this Enron online loophole in the commodities laws; they thought that the company in which they were a shareholder would be better off if there were some regulation of their business.

Does the Senator recall that?

Mrs. FEINSTEIN. I was not at the hearing. I do not recall that. But I think whomever that was, they are certainly correct because that would give confidence to their company and to people to invest in that company which is on the up and up, which is regulated and which has transparency.

I think particularly now after what we know has transpired over the past that this is one of the reasons why our economy has had problems in that people have lost confidence. They have seen these companies go down.

The Senator mentioned some of the big companies that have gone down that have done just this kind of thing. At some point, Peter has to pay Paul. If they don't have the capital to handle it, there is a problem.

Mr. FITZGERALD. If we had the same problem somewhere in the stock market and people couldn't figure out the price of a stock by looking in the newspaper or looking on the Internet to see what the published price of a stock was on the exchange, if instead you had a similar situation with a stock as you have with these online energy derivatives exchanges, and a customer had to call the exchange and ask what the price of oil is trading at, but you just had somebody telling you the price of oil is such and such but you had no way of verifying that, I think no one would want to invest in the stock market if you couldn't discover the price, or if there was no price discovery.

Why does the Senator think anybody would even want to trade on an online exchange in which there is no price discovery, or where there is no regulator protecting the customers from fraud, manipulation, or abuse? Why is it that someone would even want to trade on such an exchange? Isn't it true that, in fact, the InterContinental Exchange volume, the last I heard, was dropping and their legitimate customers were going back to trading on a fully regulated exchange in New York, the NYNEX?

Mrs. FEINSTEIN. The Senator is asking me to hypothesize. I sure wouldn't do it. I can only assume that some sophisticated trader has worked out some scheme and was utilizing it in this venue and knew that he or she was safe because there was no way to pin it on them. There were no records kept.

Mr. FITZGERALD. If someone is operating a corrupt exchange and there is no price discovery and no regulation, isn't it true that a customer could call into that exchange and say, I want to trade oil at $30 a barrel, and the broker could tell them he could get some oil at $35 a barrel and just require the customer to pay more than that customer really should have had to pay because the market wasn't that high, there is no way for the customer to know what the real market price is? The broker could make up a price and then keep the difference for himself or for the exchange. Isn't that correct, if there is no price discovery?

Mrs. FEINSTEIN. That is correct.

Mr. FITZGERALD. It seems to me that this is an absolute no-brainer to close this indefensible loophole. I can't imagine that anybody is going to want to defend the concept that we can have an online exchange that is open for business with the public, although not retail customers, I gather, but institutional customers, where it is just a black hole which no one can regulate and can't ban wash trades where there is no price discovery. What in the world would be the objection to closing this loophole and having some modicum of oversight to protect the people who may want to use this exchange and to protect the integrity of the market?

Mrs. FEINSTEIN. The Senator is absolutely correct. When we had this vote in the last Congress, if I recall correctly, we got 48 votes. It wasn't really crystal clear what the excesses were at that time. Now we have documentation of the excesses. We have literally billions of dollars of fraudulent trades, wash trades, round-trip trades, whatever you call them, but fraudulent trades. So we know. We also know that Mr. Fortney was arrested and two others have plead guilty to creating these schemes. To continue to allow that kind of thing to exist would be a real dereliction of this Congress.

Mr. FITZGERALD. There really is a difference between this year's vote and last year's. Last year when the Senator and I had this amendment on the floor, it was in the immediate aftermath of all those energy companies collapsing. There were some initial reports out there about possibly bogus trades but we didn't have that proof yet. We had 48 votes, 2 votes shy of passing it.

Since that time, and in the intervening year, we have had all the hard evidence come out proving everything the Senator and I were saying last year on the floor of this body—that there were, in fact, bogus wash trades not only in the millions of dollars but in the billions of dollars. How big were some of those?

Mrs. FEINSTEIN. CMS Energy admitted to conducting wash energy trades that artificially inflated its revenue by $4.4 billion.

Mr. FITZGERALD. That was probably a huge percentage of their revenues—all fictitious—from doing wash trades on an online exchange with no economic purpose. But that fictitious revenue was fooling the investing public, making people think that company had more revenue than it actually did. They were all just ''wash'' trades.

Mrs. FEINSTEIN. Right. May I ask the Senator a question? Some, I understand, may come to the floor and want a study. The study has already been done, and it is the ''Final Report On Price Manipulation in Western Energy Markets, Fact-Finding Investigation of Potential Manipulation of Electric and Natural Gas Prices.'' It was prepared by the staff of the Federal Energy Regulatory Commission. It was put out in March of this year.

I would like to read one section of it to the Senator and see if he is aware of this. It reads:

> Recommend that Congress consider giving direct authority to a Federal agency to ensure that electronic trading platforms for wholesale sales of electric energy and natural gas in interstate commerce are monitored and provide market information that is necessary for price discovery in competitive energy markets.

Mr. FITZGERALD. So you are saying the FERC has done a study in which they have already concluded that we basically need to close this loophole so there can be some price discovery and some monitoring of these energy markets?

Mrs. FEINSTEIN. That is correct. This is the report. It is a final report. It was done in March 2003, so it has been circulated for a few months.

Additionally, our legislation has the support of the chairman of the Federal Energy Regulatory Commission. We have kept in touch with him so he is aware of what is in the report, and, of course, the former chairman of the Agriculture Committee, Senator HARKIN, and former ranking member of the Agriculture Committee, Senator LUGAR.

Mr. FITZGERALD. Madam President, and my dear colleague from California, I think this is simply commonsense legislation and long overdue. I think it is unfortunate that we made the mistake when passing the Commodity Futures Modernization Act back a few years ago, which created that special carve-out for energy and metals and broadband contracts that were traded in an online exchange, that they could be exempt from regulation by anybody. Because had we not made that mistake, had Congress not made that mistake, it might have prevented the manipulation and fraud and abuse that was done at the hands of a whole bunch of energy companies. We might have prevented that, if we had not allowed this loophole to be included in that Commodity Futures Modernization Act. And I think it is high time we simply close that loophole.

Madam President, I will be interested to see who comes to the floor to make an argument that we should still have this loophole so that energy and metals contracts can be traded without any oversight by any regulator, so no one can discover the price, so that there is no protection for the customers of these exchanges.

I will be interested to see who comes to the floor and what their argument is in favor of this because, I have to tell you, on most pieces of legislation that come before this body, it is pretty easy to see what the arguments will be on the other side. There is normally at least a plausible public policy rationale on both sides of the issue. But in this case, I have to say that, looked at very objectively, it is hard to understand how anybody could oppose this commonsense measure to protect the integrity of our energy and metals trading markets in this country. It seems like a very commonsense piece of legislation.

I compliment Senator FEINSTEIN. She has been tenacious in bringing this up, and she has been persistent to make sure that we had the opportunity to offer the amendment on the floor.

Madam President, I yield the floor.

The PRESIDING OFFICER. The Senator from California.

Mrs. FEINSTEIN. Madam President, I would also like to point out another study that has been done in a CRS report for Congress, and that was dated January 28 of this year, pointing out that this bill was presented in the last Congress and probably would be presented in this Congress. One of the points it makes is that if over-the-counter derivatives dealers were required to keep and make available for inspection records of all trades and to disclose information about trading volume and prices, abuses like the ones we have been talking about would be easier to detect and, thus, presumably less likely to occur.

That is really the purpose of this: not to allow sort of a secret niche in the trading arena where people could go to hide and trade, but to bring the sunshine into that niche and to provide—and it is very conservative—regulation of what they must do.

I know my friend and senior Senator from Nevada has proposed an amendment. Regrettably, I have to vote against the amendment. This bill had been worked out with Senator HARKIN

and Senator LUGAR. My understanding is they believe we should close the loophole entirely, not leave one area sort of in the dark, so to speak.

I am troubled by the amendment because our reading of the amendment indicates that it effectively exempts metals entirely without any oversight or regulation by the CFTC, even less than under current law. In good conscience, I cannot do that.

So I think we made the arguments, Madam President. And with what has happened—and now that we know the extent of the fraud that has taken place online—not to close that loophole, I think, would be a terrible blot on this Congress.

So I am hopeful we will have a positive vote.

I thank the Chair for your indulgence and yield the floor.

Mr. REID. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. REID. Mr. President, I have been working with the two sponsors of this legislation. They have agreed to take my amendment. I have spoken with the majority and they say, no, they didn't want it to be done tonight, maybe tomorrow. I would simply say that we in good faith have worked, as I told the majority leader I would do, to try to move this bill along. Moving this bill along does not mean they are only going to be happy if we offer amendments that they like. The Senator from California in good faith offered this amendment. Whether people like it or not, if we are going to move this Energy bill along, we have to vote on it in some way. But it is my understanding that tonight nothing is going to happen.

It is pretty obvious nothing is going to happen. There has been nobody here. There has been nobody here to oppose her amendment. Of course, no other amendments can be offered until this one is set aside.

I just want the record to so reflect at a later time, when people come and say, we should try to move this bill along, and there have been statements on the floor made by the manager and the majority leader that they wanted to finish this bill this week.

I was asked at lunchtime, how did I feel about finishing the bill this week. I said to the reporters asking me: When you step back a little bit, there is about as much chance of our finishing this bill this week as my turning a back flip here in front of the two of you.

The record should reflect, I can't turn a back flip and never have been able to.

My point, I repeat, is that I am doing my very best to cooperate as I have been advised by the Democratic leader we should do everything we can to help with this bill. But help is a two-way street. When an amendment is offered that people don't like, you just can't have them leave rather than a single word being spoken against the amendment of the Senator from California other than my amendment which they have agreed to accept.

Having said that, wanting to continue to move this important piece of legislation, I note the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. EDWARDS. Mr. President, I was unavoidably absent for rollcall vote No. 212 on the Dorgan amendment. Were I present for that vote, I would have voted in favor of the amendment.

MORNING BUSINESS

Mr. REID. Mr. President, I ask unanimous consent that the Senate now proceed to a period of morning business with Senators allowed to speak for a period not to exceed 10 minutes each.

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

Mr. REID. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. BROWNBACK. Mr. President, I ask unanimous consent to speak in morning business for up to 10 minutes.

The PRESIDING OFFICER. The Senator has that right.

IRAN

Mr. BROWNBACK. Mr. President, I don't want to overly belabor the point but there is a very important thing happening on the other side of the world, in Iran, at this very time. My office has been receiving, now, numerous reports of a growing protest in Iran taking place right now. This is within the past couple of hours. It is dawn in Tehran, as I speak. It is estimated that this past evening between 5,000 to 8,000 students are joining protests against the Government's crackdown on student democracy dissidents.

Recently, five student leaders were arrested in advance of the July 9 anniversary of the original mass student protest in 1999. Even though it is now almost dawn in Tehran, the protest has continued.

I understand during the night there was a dissipation of the protest. A number of the student protesters—this was outside Tehran University—who were protesting dissipated. Rather than going back to their dorm rooms, they have gone and dispersed to other places because, after the 1999 protest, a number of the Iranian military guard went to the dormitories and arrested en masse a number of students and they were roundly punished.

We have also received reports that Iranian Government forces are beating up on the protesters, firing warning shots at them. I do not have that verified but we have received these reports.

I call this to the attention of Members of this body because there has been a lot of discussion going on at the present time of U.S. policy towards Iran. I think it is clear the United States should clearly stand with those who stand for democracy.

We don't know if the student protest is going to go ahead and mature further or not, or if it is going to further brutally be put down.

This is in a buildup to a July 9 protest that had been planned for a number of months, to recognize the July 9, 1999, student protest that was brutally put down by the regime. This has been building. In anticipation of that, the regime in Tehran—and this is a dictatorial regime that has never been elected, the rulers have never been selected by the people in Iran—arrested these student leaders in advance of July 9 in an effort to put it down before it gets started.

This is deplorable. This is not democracy. The United States should stand with those who stand for democracy. We should have a clear official policy that our position toward Iran is to support those who support democracy and we support democracy in Iran. We stand for that with the Iranian people.

There has been a growing, burgeoning movement in Iran of young people who do not want anything to do with this dictatorial regime. They have lived, now, some 25 years, over 25 years under this militant, dictatorial regime that supposedly has put Islamic law in place and they are tired of it and they want no more of it. They want no more of it and they are willing to put forward their lives in this gallant effort, this brave push for democracy. That is their desire.

I call on the Iranian Government to stop beating and harassing their own people. The students are shouting: Khatami, Khatami, go away.

These are the same students who gave President Khatami his start 7 years ago. He was elected as a reformer, which he has not produced on. Instead, he has continued with the same totalitarian way.

I believe he was one of seven candidates at the time selected by the ruling mullahs to be able to run in front of the people, and the people selected the most reformist, most hope minded.