television, and online media associations and outlets. And yesterday was national Freedom of Information Day—celebrated every year at a national conference held at the Freedom Forum's World Center in Arlington, VA, on James Madison's birthday.

As we celebrate National Sunshine Week, it is an appropriate time to evaluate the significant progress of the past year toward reforming the Freedom of Information Act. But we must also recognize that we can—and should—certainly do more to preserve the open-government principles on which our great country was founded.

At a time when Americans reportedly know more about the television show ''The Simpsons'' than they do about the five provisions of the first amendment—freedom of press, speech, religion, assembly, and petition for redress of grievances—or can name the three ''American Idol'' judges more readily than three first amendment provisions, Congress must do its utmost to preserve these protections while also educating the public about reform efforts.

The Declaration of Independence makes clear that our inalienable rights to life, liberty, and the pursuit of happiness may be secured only where ''Governments are instituted among Men, deriving their just powers from the consent of the governed.'' And James Madison, the father of our Constitution, wrote that consent of the governed means informed consent—that ''a people who mean to be their own Governors, must arm themselves with the power which knowledge gives.''

As attorney general of Texas, I was responsible for enforcing Texas's open government laws. I have always been proud that Texas is known for having one of the strongest, most robust freedom of information laws in the country, and I have enjoyed working with my colleagues here in Washington to spread a little of that ''Texas Sunshine''.

I would specifically like to express my gratitude to Senator LEAHY and to his staff for all their hard work on these issues of mutual interest and national interest. And I would like to thank and to commend Senator LEAHY for his decades-long commitment to freedom of information. He has been a strong ally and valuable advocate in this process, and he and I have both noted that openness in government is not a Republican or a Democratic issue. Any party in power is always reluctant to share information, out of an understandable—albeit ultimately unpersuasive—fear of arming its enemies and critics. But regardless of our differences on various policy controversies of the day, we should all agree that those policy differences deserve a full debate before the American people.

While much of the FOIA reform efforts, to date, have focused on providing access generally, more can be done to improve the process specifically. Access to information is certainly essential, but so is accelerating the rate at which these requests are fulfilled. Access is of little value when requests for information are subjected to lengthy delay.

Open government is one of the most basic requirements of a healthy democracy. The default position of our Government must be one of openness. If records can be open, they should be open. If good reason exists to keep something closed, it is the Government that should bear the burden to prove that need—not the other way around.

Back in December, President Bush signed an Executive order that enhances current FOIA policies. That move was just one important step toward more sunshine in government.

But the President's directive moves the country forward toward strengthening open government laws and reinforcing a national commitment to freedom of information in several important ways that I will discuss here just briefly:

It affirms that FOIA has provided citizens with important information about the functioning of government;

It directs FOIA officials to reduce agency backlogs, create a process for everyday citizens to track the status of their request, and establishes a protocol for requestors to resolve FOIA disputes short of filing litigation;

It creates a FOIA service center where people seeking information can track the status of their requests;

And one very good step is that it creates a FOIA public liaison who acts as a supervisor of FOIA personnel. This person will be available to resolve any disagreements that might arise between people seeking information and the Government. It also requires each chief FOIA officer to review his or her agency's practices, including ways that technology is used, in order to set concrete milestones and timetables to reduce backlogs and carry out its FOIA responsibilities.

Other important progress was made throughout 2005. In June, the Senate passed the legislation Senator PAT LEAHY and I authored, and hopefully the House of Representatives will quickly pass this important legislation. This particular reform creates additional legislative transparency by requiring that any future legislation containing exemptions to requirements be ''stated explicitly within the text of the bill.

In addition, we introduced the Openness Promotes Effectiveness in our National Government Act of 2005—OPEN Government Act, S. 394—in February and a separate bill in March to establish an advisory Commission on Freedom of Information Act Processing Delays. A hearing held in March examined the OPEN Government Act. And I urge Congress to pass this law as quickly as is possible.

But, as I said, more remains to be done to ensure that American citizens have access to the information they need. One way we could do that, and something I believe would be a positive and welcome step in this area, would be to provide additional, dedicated funding for FOIA resources, to address request backlogs. I believe this could be accomplished much in the same way Congress offered assistance to local law enforcement through providing additional funds so they could address their DNA backlogs or the assistance it provided to the FBI to address its backlog of untranslated intercepts of terrorists' telephone calls. Additional funding dedicated to this problem will speed the rate information is given to the requestors. Working toward these goals means that we continue to ensure the public's access to information.

Our Founders understood that a free society could not exist without informed citizens and open, accessible government. And as our country celebrates National Sunshine Week, Congress must continue its work to restore and strengthen its commitment to open government and freedom of information.

RAIL CAPACITY PROBLEMS

Mr. THUNE. Mr. President, I rise today to highlight an Issue that has great importance, not just to my home state of South Dakota, but to our entire Nation. On the front page of yesterday's Wall Street Journal, a copy of which I will ask to have printed in the CONGRESSIONAL RECORD, there was an extensive article that highlighted the significant rail capacity problems that exist in the Powder River Basin coal fields of Wyoming.

These rail capacity problems are starting to have a negative impact on electric utilities and rate payers around the country. The Wall Street Journal article highlighted an Arkansas power plant that ''can't get enough coal to run its power plants because the trains that serve as its supply line aren't running on time'' and went on to note: ''Snags in railroad service are fueling fears that railroads won't be able to meet the growing demand for coal, casting a cloud over a goal set by President Bush and key members of Congress to make America energy independent.''

I bring this article to the attention of my colleagues as a reminder that we need to be doing more to address the significant rail capacity problems that exist, not just in the Powder River Basin of Wyoming, but across the country. My colleagues will be interested to know that the U.S. Department of Transportation projects that there will be a 55-percent increase in freight rail transportation demand by 2020.

While major railroads such as Union Pacific, Burlington Northern and Santa Fe, and Norfolk Southern are making significant improvements to their rail systems, these investments can't keep up with the demand they face—even though U.S. railroads are slated to invest a record $8 billion in capital expenditures this year. Just to show how expensive rail infrastructure is, it costs private railroads anywhere from $1 million to $3 million per mile to lay new track, not to mention the costs associated with ongoing maintenance.

While the larger Class I railroads are in a much better financial position to make infrastructure investments, the smaller Class II and III railroads are not as capable of making large-scale infrastructure improvements—even though they are responsible for roughly 30 percent of the 140,000 miles of rail that exist in our country.

In an effort to assist the smaller Class II and III railroads as they work to make much needed improvements to their rail infrastructure, Congress passed the short line railroad tax credit as part of the 2004 FSC/ETI tax bill. This tax credit has started to bolster rail improvements among smaller railroads across the country. However, it is slated to expire in 2007.

There is also an additional Federal rail program that seeks to improve the overall condition of our Nation's rail system. In the 1970s, Congress created a loan program to spur rail improvements among Class I, II, and III railroads. This loan program, the Railroad Rehabilitation Improvement Financing Program, commonly referred to as RRIF, was dramatically improved as part of the Transportation Reauthorization bill, SAFETEA–LU, that was signed into law last year. These RRIF improvements not only increased the program's overall lending authority from $3.5 billion to $35 billion, but a number of much needed improvements were made to ensure that the RRIF Program functions as Congress originally intended it to.

The RRIF Program is unique because it allows a railroad to receive a loan for infrastructure improvements at the Government lending rate. This assists small railroads in particular because they don't have the financial wherewithal that their large Class I counterparts have. RRIF loans must be paid back with interest by qualifying applicants who are also required to provide full collateral to protect the Federal Government and the American taxpayer against the risk of default. Since the program's creation in 1976, there has been only one default, which underscores the overall success of the program.

The Wall Street Journal article I am submitting for the RECORD went on to describe the fact that a railroad based in my home State of South Dakota, the Dakota, Minnesota and Eastern Railroad, DM&E, has recently received approval from the Surface Transportation Board for their expansion project that would add much needed rail capacity to the Powder River Basin of Wyoming. When completed, this project will not only add rail capacity, but it will dramatically reduce shipping costs for agricultural products, ethanol, coal, and other commodities.

As a result of the RRIF improvements in last year's Transportation Bill, this is just one example of how smaller railroads across the country are working to address a serious need that if left unmet will drive utility rates up and hamstring our Nation's ability to efficiently move finished goods and raw materials across the country and in the global marketplace.

I ask unanimous consent to have printed in the RECORD the article to which I referred.

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

TAKING LUMPS: AS UTILITIES SEEK MORE COAL, RAILROADS STRUGGLE TO DELIVER

(By Rebecca Smith and Daniel Machalaba)

During the past 10 months, Arkansas Electric Cooperative Corp. has been forced to do things that power generators hate to do: It cut electricity production at plants that are the cheapest to operate and ran its costliest units harder than ever. At times, it even bought electricity on the open market at top prices.

The electricity co-op made these moves because it is afraid of running out of coal. That's surprising in a country with such vast domestic reserves that some dub it the "Saudi Arabia of coal." But Arkansas Electric has a problem that is a growing concern for many U.S. utilities: It can't get enough coal to run its power plants because the trains that serve as its supply line aren't running on time. Delays in coal shipments to the Arkansas generator began last May with rail disruptions in Wyoming and forced the utility to burn more natural gas, lifting its 2005 power-generation costs by 21%, or $100 million.

Nearly a year after problems began, "coal deliveries still aren't back to normal," says Steve Sharp, head of fuel procurement for Arkansas Electric, which furnishes power to 17 utilities. That, in turn, inflated power bills by about $20 a month for residential electricity consumers across much of Arkansas. For big industrial energy users, the hit was even greater. Matt Szymanski, general manager of Green Bay Packaging Inc., which operates a paper mill in Morrilton, Ark., says he "freaked out when I saw the power bill for December," which was double that from a year ago.

At a time of surging prices for petroleum and natural gas and rising anxiety about U.S. reliance on overseas energy sources, coal more than ever is seen as the U.S.'s dirty, but reliable, ace in the hole. With 27% of the world's proven reserves, the U.S. in recent years has seen stable coal prices relative to other fuels used for power generation. But the ability of railroads to get coal to power plants when it's needed is suddenly no sure thing.

Consolidation has left the rail industry with just a half-dozen major operators, which have been cutting rail routes and costs since the industry was deregulated in 1980. That can cause paralyzing bottlenecks when something goes wrong. Last year, a series of derailments dramatically delayed coal shipments from the Powder River Basin in Wyoming, one of the nation's most important coal-producing regions. The delays have cut into fuel supplies at many coal-fired power plants around the country. In some cases, supplies are perilously low.

Now, the utilities are pouncing on the delays and a longstanding beef over concentrated ownership of rail routes, which crimps competition. Major utilities are asking members of Congress to hold hearings on the coal-delivery problems. They may ask Congress to direct the federal regulator, the Surface Transportation Board, to establish reliability standards for railroad deliveries and enforce them if necessary. In the past, Congress hasn't shown much interest in imposing new regulations on the railroads. But the fact that coal-delivery problems in some cases could threaten the reliability of power supplies pushes the contest to a new level. Meanwhile, the railroads are seeking a 25% federal tax credit on investments that expand railroad capacity.

For decades, coal was the No.1 commodity moved over the rails. Lately it has been displaced in the rankings by consumer goods, with much of that cargo pouring into West Coast ports from Asia. The utilities recently have been required to pay sharply higher rail rates. As their old negotiated contracts expire, the utilities are forced to pay the railroads' standard rates, pushing up fees by 20% to 100%.

Railroads are strained by a surge in freight of all types—from coal to containers—and rail rates are going up across the board. But the utility industry is complaining loudest. Snags in railroad service are fueling fears that railroads won't be able to meet the growing demand for coal, casting a cloud over a goal set by President Bush and key members of Congress to make America "energy independent."

The big rail carriers stress that the industry, after years of overcapacity and dismal profits, finally is in good enough shape to invest heavily. Meddling by the government now, says Chris Jenkins, a vice president of CSX Corp.'s railroad subsidiary, is "the surest way to wreck the railroad system and prevent us from making the types of investments that are necessary."

Matthew Rose, chairman, president and chief executive of Burlington Northern Santa Fe Corp., estimates that the railroad has spent about $2.7 billion since 1994 to maintain and expand capacity for moving Powder River Basin coal. He says that when the Clean Air Act of 1990 kicked off the demand for low-sulfur Western coal, the railroads stepped up. They have increased the amount of coal hauled from the Basin, including a section in Montana, to about 400 million tons a year from half that in 1990. The area now accounts for about 40% of the U.S. coal mined.

"We have provided just incredibly reliable transportation and have allowed tremendous growth of the basin since 1990," he says, calling the problems in Wyoming last year an "episodic event" that's unlikely to be repeated.

Big utilities, until recently, have shied away from a public confrontation. But Michael Morris, chief executive of American Electric Power Co., Columbus, Ohio, warned Congress in mid-February that "railroads have put the electric industry in a potential crisis situation this winter and next summer."

Bringing the matter to Congress, rather than trying to work things out quietly, shows how much the level of frustration has grown. Some utilities, backed by state regulators, are clamoring for more federal review of rail rates and the creation of national service-quality standards, backed by penalties for infractions.

One reason for hope in the long term: Rail regulators this year approved an application of the Dakota, Minnesota & Eastern Railroad Corp. to build a new line out of the Powder River Basin. Although it would take three years or more to construct, a new line could shake up the dominance of Union Pacific Corp. and Burlington Northern by adding 25%, or 100 million tons, of new capacity. The railroad is seeking a $2.5 billion loan from the Federal Government and commitments from utilities to use the new route.

In the short run, utilities are worried that a shortage of coal this summer, when air-conditioning use pushes electricity demand to its peak, could force them to buy power on the expensive spot market. The utility industry estimates that the cost of substituting more expensive fuels for the 20 million tons of Powder River Basin coal held up in Wyoming and Montana last year topped $3 billion.

''We're going to have a really huge problem if railroads aren't held accountable for reliable deliveries and reasonable prices,'' says Sandra Hochstetter, chairwoman of the Arkansas Public Service Commission, who wants the Federal Government to exercise more forceful control.

The deteriorating relationship comes as the power sector heads for greater reliance on coal, which long has been used to create about half the nation's electricity. For the last 10 years, the industry has been building natural-gas-fired plants almost exclusively because the fuel is cleaner and the price was attractive. As natural-gas supplies and prices have become a problem, the power industry is shifting to coal in a big way, with plans to build more than 100 coal-fired power plants in coming years at a potential cost of more than $100 billion. The federal Energy Information Administration forecasts that the electric-power industry will produce 3% more electricity from coal in 2007 than in 2005. Production from natural gas is projected to drop by 2% over the same period.

Unlike natural gas, which flows smoothly and silently through thousands of miles of underground pipelines, coal must be loaded onto trains of 100 cars or more and hauled across hundreds or thousands of miles of prairie, towns and farmland to where it's burned.

Although one unit of gas is nearly indistinguishable from another, coal types vary greatly and utilities have incentives to acquire it from more sources than in the past. One big reason is tighter air-pollution rules. Many Midwestern and Eastern utilities want more of the Western coal in their mix because it's ''low sulfur'' and therefore less polluting. But Eastern coal burns hotter, which means a given volume will make more electricity. The various types also carry different prices: A survey Feb. 17 by the EIA found Powder River coal selling for $16.85 a short ton versus $58.25 for Central Appalachian coal and $45 for Northern Appalachian coal. The trade-offs complicate railroad logistics since many utilities want to burn a mix of coals now.

Railroads say the power industry's sudden interest in coal over natural gas caught them by surprise. Now, the railroads are spending hundreds of millions of dollars to build new double- and triple-track stretches and buy additional locomotives.

Wall Street investors, for the most part, want railroads to keep their capacity tight, so as not to erode their newfound pricing power.

The recent coal-delivery problem has its roots in something fairly mundane. Last spring, an accumulation of coal dust that had fallen or blown from moving cars in Wyoming prevented track beds from draining properly. Amid the spring thaw and heavy rain, the poor drainage left the water with no place to go. That resulted in derailments and track damage along stretches of the major railroad line that takes coal trains that are more than a mile long out of the Powder River Basin. As a result, the railroads sharing the line—Union Pacific and Burlington Northern—failed to meet their coal-delivery commitments. Shipments picked up late last year, but it takes a long time to make up for lost loads, given how taxed the rail system is already.

The consolidation has left little backup capacity and fewer options to reroute freight when there are floods, derailments or other service breakdowns. Some of the biggest bottlenecks are in major rail hubs such as Chicago. When trains get backed up in one place, the effects ripple through the system.

Consider Laramie River Station, a big power plant in southeastern Wyoming that is owned by six utilities and furnishes power to consumers in nine states. At this time of year, the plant would normally have 700,000 tons of coal on hand. But it's now down to 140,000 tons even though the plant is only 170 miles from the Powder River Basin. At 125,000 tons, which it may reach in the next few days, the plant likely will cut production. ''Already, the bulldozers are scraping up dirt with the coal,'' says Shelly Sahling-Zart, assistant counsel of the Lincoln Electric System, a member of the consortium.

Representatives of the Laramie River consortium say the delivery problems began soon after a long-term contract with Burlington Northern—the railroad serving the plant—expired in late 2004 and have gotten progressively worse. Adding to the sense of injury was the fact that rates were doubled. Burlington Northern spokesman Richard Russack says the railroad committed a train of its own in February, supplementing the three trains owned by the utilities. Trains used in the area tend to have 125 to 135 coal-carrying hopper cars. But, given that the facility is short the equivalent of 5,833 hopper cars, it's doubtful the plant can catch up in its reserves very fast. The utilities say they're paying $70,000 a month for the extra train.

For utilities, the problem is that the road to relief—either for service-quality problems or high rates—runs through the Surface Transportation Board, the federal agency that reviews railroad mergers, rates and service. Utilities generally feel the board favors railroads over their customers. Board Chairman W. Douglas Buttrey says his tiny agency, created in 1995 to replace the once-huge Interstate Commerce Commission, has an obligation to ''balance the interests.'' But the board's power over railroads is limited. The industry is exempt from some aspects of antitrust law and the board can only rule on whether its prices are reasonable.

Otter Tail Power Co., a small Minnesota utility, recently concluded it had had enough of rising rail rates at the hands of Burlington Northern, which provides the only rail service to Otter Tail's power plant in Big Stone City, S.D. The first step in filing its protest with the Surface Transportation Board: paying the board's $102,000 filing fee.

Under an arcane procedure required to make its case, Otter Tail created a virtual railroad on paper—complete with hypothetical routes, equipment, freight and customers—to show that even a brand-new rail line would be able to serve Otter Tail's coal needs at a lower cost than Burlington Northern. But in February, after a four-year case that ultimately cost $4.5 million, the board told Otter Tail that its arguments came up short and the higher rates would stand.

A growing group of members of Congress is worried about deteriorating rail service and the high cost to consumers. Sen. Conrad Burns, a Montana Republican, introduced a bill that would slash fees for rate challenges to $150, require faster action by the board and eliminate the ''virtual railroad'' economic modeling. Others are looking at a host of remedies, including reimposing some antitrust rules.

U.N. HUMAN RIGHTS COUNCIL

Mr. ENSIGN. Mr. President, I rise today to decry the failure of the United Nations to create a human rights body that deserves U.S. support. I regret that the United Nations, tasked with the solemn duty to craft a Human Rights council that would be beyond reproach, has failed in its mission. It has created a council that in its essential components has the same failings as its predecessor, the U.N. Commission on Human Rights.

The U.N. Commission on Human Rights is an embarrassment. The U.N. Secretary General admitted as much in March 2005 when he said that, ''the Commission on Human Rights suffers from declininq credlibility and professionalism, and is in major need of reform'' and that a fundamental problem is that, ''States have sought membership . . . not to strengthen human rights but to protect themselves against criticism or to criticize others.''

Just look at the current Members of the Commission on Human Rights, the U.N.'s primary human rights body. They include some of the world's worst human rights violators, such as China, Cuba, Saudi Arabia, Sudan, Venezuela, and Zimbabwe.

The United States and other countries quite rightly called for the abolition of the U.N. Commission on Human Rights and its replacement with a new Human Rights Council. The Secretary General endorsed the need for a smaller body that would be less likely to include countries found complicit in massive and sustained human rights abuses would be able to serve.

Unfortunately, true reform was not embraced by the U.N. The Council will have 47 members instead of 53. That's far above the 20 member level proposed by the United States. And members will not be selected primarily on the basis of their commitment to human rights. In fact, there are no real criteria for membership. Even countries under Security Council sanctions for human rights violations or terrorism are not categorically excluded from membership on the Council.

The protection of human rights is of fundamental value to the United States. The United States has become used to having a presence on the U.N.'s primary human rights body. The US has been a member of the commission every term since 1947, with one exception. That will no longer be the case. Due to a rotating membership on the new council, the United States would be ineligible for Human Rights Council membership every six years. So our country, which has been at the forefront of promoting human rights would periodically lose its seat but still be required to cover 22 percent of the Human Rights Council's costs. Mr. President, in my book this makes this new U.N. Council worse than the discredited U.N. Commission on Human Rights.

President Bush noted in his remarks before the U.N. General Assembly in