

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 declining credibility 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

September 2005, “When this great institution’s member states choose notorious abusers of human rights to sit on the U.N. Human Rights Commission, they discredit a noble effort, and undermine the credibility of the whole organization. If member countries want the United Nations to be respected—respected and effective, they should begin by making sure it is worthy of respect.”

Mr. President, I am proud that the United States stood firm and opposed the creation of this fatally flawed Human Rights Council. Our country understood that to affirm this new council with our vote would have granted it legitimacy. The United States should be consistent. We should decline to participate on the council and fund the council for the very same reason we voted against it. Our country should not support a U.N. Human Rights Council which permits countries found complicit in sustained human rights abuses to be eligible for membership.

Mr. President, I am embarrassed to say that some in the State Department are suggesting that even though we voted against the creation of the council we should take a wait-and-see approach and support it in the interim. That makes no sense. If this council had a chance to work, then the U.S. should have voted for it.

Mr. President, other nations may not like what we stand for—but they know where we stand. U.S. human rights policy needs to be consistent and clear. We need to take a different wait-and-see approach. No participation and no funding until the U.N. proves that member states will not elect human rights violators.

#### THE PROBLEM WITH KITCHEN-TABLE GUN DEALERS

Mr. LEVIN. Mr. President, last week, the Violence Policy Center, VPC, released a report which analyzes statistics related to basic Federal Firearms License, FFL, holders in the United States since 1992. The report warns of a large group of current FFL holders it calls “kitchen-table dealers.” The VPC defines this group as “individuals who conduct business out of their homes and offices and do not operate actual gun or sporting goods stores” and estimates that more than half of current FFL holders fit into this group. Disturbingly, the Bureau of Alcohol, Tobacco, Firearms, and Explosives, ATF, found in 2000 that 23 percent of its illegal gun trafficking investigations involved “kitchen-table dealers” who were responsible for the illegal trafficking of more than 40,000 guns.

According to the VPC, many “kitchen-table dealers” have no interest in actually selling firearms, but they obtain an FFL because of the exemptions it provides from Federal requirements including background checks, waiting periods, and limits on the number of guns that can be purchased. Under cur-

rent law, an FFL holder must be a person who “devotes time, attention, and labor to dealing in firearms as a regular course of trade or business with the principal objective of livelihood and profit through the repetitive purchase and resale of firearms.” However, a February 2000 ATF report found that 31 percent of FFL holders had not reported selling a single firearm in the previous year. Unfortunately, rather than allowing the ATF to work within the law to revoke illegitimate FFLs and help to eliminate a source of illegally trafficked firearms, opponents of commonsense gun safety laws inserted a provision in the fiscal year 2006 Department of Justice Appropriations bill which prevents the ATF from denying the application or renewal of a FFL due to a lack of business activity.

In its report, the VPC calls on Congress to rescind this provision and proposes a number of other ideas to help eliminate the abuse of FFLs. Among other things, the VPC proposes that all FFL holders be required to operate from a storefront business devoted primarily to the sale of firearms, rather than a residence, and securely store inventories of firearms. Additionally, the VPC suggests an expansion of ATF’s ability to inspect FFL businesses for compliance with record keeping and safety requirements.

We must do more to eliminate the abuse of FFLs in order to reduce the number of guns that are illegally bought and sold in our communities.

#### KENYA

Mr. FEINGOLD. Mr. President, I wish to bring attention to troubling political developments in Kenya. Earlier this week, Kenyans witnessed the most aggressive assault on media since the country’s independence in 1963, when elite police and paramilitary commandos armed with AK-47s stormed the offices of the Standard Group’s TV station, Kenya Television Network and the Standard newspaper. Internal Security Minister John Michuki ordered the event in an apparent attempt to prevent the newspaper from publishing a story on a sensitive political matter. Saying little more than “when you rattle a snake you must prepare to be bitten,” President Kibaki has failed to take swift and sufficient action to condemn this event.

Unfortunately, this event, while deeply troubling in itself, is but the latest manifestation of a larger problem in Kenya today. Over the last year, President Kibaki and senior members of his government have presided over a growing level of turmoil concerning corruption charges, mismanagement of public funds, insufficient anti-corruption efforts, and political favoritism. Particularly troubling are allegations that senior members of Kibaki’s government have been involved in a number of large, illegal business dealings with public money. The most visible of these allegations—which Mr. Kibaki

apparently knew about more than a year ago—came to light in a report written by the man who was appointed by the president himself to help expose corruption. He is now in London in exile after receiving death threats.

I am concerned that Kenya may be backsliding. Just 4 years ago, the Kenyan people went to the polls and marked an historic event in the country’s political history. Kenyans unambiguously rejected years of mismanagement, corruption, and declining economic growth experienced under previous regimes. The opposition National Rainbow Coalition, NARC, was overwhelmingly elected to power, ending more than 40 years of rule by the Kenya African National Union, KANU. Now, only 4 years after these elections, President Kibaki’s government is beginning to revert to strong-man tactics as evidenced in this week’s raid. It also apparently unwilling to take seriously the significant corruption present throughout senior levels of Kenya’s government and in the president’s own cabinet.

While these are discouraging developments, I am heartened that the Kenyan people have responded with such passion. Kenyans are rightfully outraged. Thousands of demonstrators filled the streets of Nairobi on Tuesday, and a range of media sources denounced the raid as “thuggish” and “corrupt.” Radio programs, TV shows, and newspapers are devoting significant attention to the government’s inept management of corruption charges and the recent raid. Resignations of key ministers, new court cases, and active opposition parties are all testaments to the positive political developments Kenya has made. It is essential that Kenyans do not lose this progress.

We have an opportunity to send a firm message to President Kibaki that this type of behavior does not benefit his government or the Kenyan people. Kenya is a critical partner in a particularly important region. It has served as a leader in the region and in Africa, and will continue to be a friend to the United States. But if Kenya’s government wants to maintain its credibility as a government representative of the Kenyan people and a leader in the region, it must take immediate actions to address recent developments and renew its pledge to fight corruption.

In conclusion, the international community must condemn in the strongest manner possible the Kenyan government’s use of security forces to limit political discussion and the freedom of the press. The international community must also support efforts of Kenyan citizens to hold their government accountable for weeding out corruption and political favoritism. As the country turns its attention toward the 2007 general elections, the international community must help Kenyans strengthen democratic processes, advance political freedoms, and fight corruption—and perhaps most importantly, signal to President Kibaki that