

I yield the floor.

#### CUBAN BIOLOGICAL WEAPONS

Mr. NELSON of Florida. Madam President, I call to the attention of the Senate a shocking Associated Press story that was filed yesterday afternoon. I have not had a chance to read the papers today, so I don't know in which papers it was printed. This is a headline:

U.S. Official Says Cuba May Be Helping Rogue States With Biological Weapons.

I am going to read the first two paragraphs of this AP story:

The Bush administration said yesterday it believes Cuba has at least a limited offensive biological warfare program and may be transferring its expertise to other countries hostile to the United States.

We are concerned that such could support biological warfare programs in those States, said U.S. Under Secretary of State, John Bolton.

This is of grave concern to the Nation. If the Bush administration has hard evidence that Cuba is exporting biological weapons to our enemies, then the Bush administration should not just be making speeches about it. They ought to be planning an action in consultation with the Congress under the War Powers Act as to what to do about exporting biological agents to our enemies in this war on terrorism.

This would be absolutely unacceptable. What will the action be? That is where the consultation ought to be going on with Congress as to what the administration is planning. Don't make a speech that the AP story says was made to the Heritage Foundation. But, instead, let us talk about what the means are of stopping the exports of biological weapons and biological agents that would be going from Cuba to other terrorist states which are clearly out to do ill will to the interests of the United States.

Could it involve something more other than stopping the exports of biological weapons? Yes, it could. But that is what the planning ought to be about instead of just making speeches to think tank foundations.

I think this is a matter of gravest concern. Certainly, we have suspected, since Cuba is on our list of terrorist states, that this kind of activity might be going on. But, if it is, under the Constitution there ought to be consultation with the appropriate committees about any plans to protect the interests of the United States and not the Assistant Secretary of State making a speech to the Heritage Foundation.

I wanted to call this to the attention of the Senate. It has apparently not gotten much attention up to this point. I think it is of grave concern to the United States. It is clearly in the interest of the United States, if these weapons of mass destruction through biological agents are being produced or researched in Cuba, that it be stopped forthwith, and certainly any export to

other countries that would do us harm should be stopped dead in its tracks.

I yield the floor.

Mr. LUGAR. Madam President, I commend the distinguished Senator from Florida for his statement. The whole area of weapons of mass destruction is one of interest to me and to many Senators. Very clearly, the war against terrorism contemplates that we will be vigorous in trying to find the al-Qaida and other associates. But at the minimum, we must make certain they do not have access to materials, laboratories, or weapons of mass destruction, which would be catastrophic, whether it be from Cuba or countries in the Middle East, the Far East, Africa, or wherever.

Many of us have commented—including the distinguished Senator from Florida—about the worldwide extent of their war effort. The President has commented that it may be a long war for that very reason. I commend him for his statement.

I am hopeful the relevant committees have been informed. Perhaps the leadership of the Senate has been informed. But if not, that should occur quickly.

#### MANIPULATION OF ENERGY MARKETS

Ms. CANTWELL. Madam President, I rise today to discuss the documents that were released yesterday, which illustrate how Enron has manipulated energy markets in California and in many Western States. Based on yesterday's revelations, I believe ratepayers deserve prompt relief from Enron's trading practices. I think these documents show Washington State electricity consumers what they have suspected all along, that prices have been manipulated and they have, as a result, paid higher energy prices, many up to double-digit rate increases.

Many of you may have seen the articles. I want to have several of these printed in the CONGRESSIONAL RECORD. They emphasize the information that is being provided in documents I think my colleagues from California had printed in the RECORD.

The New York Times, the headline was:

Enron Forced Up California Energy Prices, Documents Show.

Another article that was printed in the LA times:

Memo Shows Enron's Role in Power Crisis. Energy: "Smoking gun" document by company lawyers reveals tactics used to create electricity shortage in California, then drive up prices.

Another in the Washington Post:

Papers Show That Enron Manipulated California Crisis.

I ask unanimous consent these be printed in the RECORD.

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

[From the New York Times, May 7, 2002]

ENRON FORCED UP CALIFORNIA ENERGY PRICES, DOCUMENTS SHOW

(By Richard A. Opiel Jr. and Jeff Gerth)

WASHINGTON, May 6.—Electricity traders at Enron drove up prices during the California power crisis through questionable techniques that company lawyers said "may have contributed" to severe power shortages, according to internal Enron documents released today by federal regulators.

Within Enron, the documents show, traders used strategies code-named Fat Boy, Ricochet, Get Shorty, Load Shift and Death Star to increase Enron's profits from trading power in the state—techniques that added to electricity costs and congestion on transmission lines.

The documents—memorandums written in December 2000 by lawyers at Enron to another lawyer at the company—also describe "dummied-up" power-delivery schedules, the submission of "false information" to the state, and the effective increasing of costs to all market participants by "knowingly increasing the congestion costs."

The memos, which provide the first inside look at the complex trading strategies Enron used in California, give strong ammunition to state officials who have long argued that Enron and other power marketers manipulated the state's market and played a crucial role in the crisis that cost California consumers and utilities tens of billions of dollars in 2000 and 2001. The documents state that other power companies used similar techniques.

Tonight, Senator Dianne Feinstein, Democrat of California, said she would ask Attorney General John Ashcroft "to pursue a criminal investigation to determine whether in fact federal fraud statutes or any other laws were violated" by Enron's energy-trading activities. Federal prosecutors are already conducting an inquiry into Enron's accounting, which falsely increased reported profits but ultimately led to the company's filing for bankruptcy protection in December.

Enron agreed to sell its energy-trading unit earlier this year to UBS Warburg, a division of UBS, Switzerland's largest bank. Nearly all of Enron's senior executives, and most of its board members, have departed in the last nine months.

Enron's senior management learned of the documents in late April, and the company's board decided during a meeting on Sunday to waive attorney-client privilege and turn the memos over to investigators at the Federal Energy Regulatory Commission, a person close to the company said. The company has also informed the Justice Department, the Securities and Exchange Commission and the attorney general of California about the documents.

At a noon meeting today, lawyers for Enron gave the memos to investigators from the regulatory commission, which is examining whether Enron manipulated energy markets in the West. The agency released the documents a few hours later. Officials at the commission declined to comment, but they are continuing their investigation into Enron's effect on power prices and asked the company today to provide additional documents on its electricity and natural-gas trading activities.

In a letter sent by officials at the commission today to Enron, investigators at the agency said the documents described how Enron traders were "creating, and then 'relieving,' phantom congestion" on California's electricity grid. The documents also detail what investigators described as "megawatt laundering," in which Enron bought power in California, resold the power out of

the state and then bought the power back and resold it back into California—allowing Enron to circumvent price caps meant to clamp down on costs.

"These documents prove that these companies can manipulate the market," said Loretta Lynch, the president of the California Public Utilities Commission, "Enron prevented California from seeing these documents for years, and now we know why."

Ms. Lynch said the documents supported her argument that FERC should leave in place temporary electricity price restraints, introduced last June, which state officials say have played a large role in reining in prices. "I don't see how FERC can remove the boundaries they put in place on our market last June."

An outside lawyer for Enron, Robert S. Bennett, said he could not comment on the trading strategies described in the documents. "Because we have sold the trading unit and the people with the knowledge of trading practices are no longer with the company, we do not know what the true facts are, and we do not know which parts of the memoranda are correct and which parts are incorrect," Mr. Bennett said tonight.

But he emphasized that the company had agreed to waive that attorney-client privilege because it was trying to cooperate with the various investigations into Enron's business practices. "These memoranda came to the attention of the board and current management in late April, and the board instructed its counsel to not assert the attorney-client privilege and produce these documents to the appropriate government entities," Mr. Bennett said.

Another memo written by a separate group of lawyers for Enron in 2001—apparently in January or February, after soaring wholesale power prices in California pushed the state's largest utilities to the brink of insolvency—tried to play down the strategies described in the December 2000 memos.

In this later memo, which was written to prepare Enron for the "various investigations and litigation" it faced because of the California power crisis, the lawyers repeatedly tried to play down or cast doubt on the conclusions drawn by Enron's own lawyers in the earlier memos.

"Some of the information" in the earlier memos "which resulted in some erroneous assumptions and conclusions, cannot be supported by the facts and evidence which are now known," the later memo stated.

In one strategy described in the December 2000 memos, Enron would buy power from a state-run exchange for \$250 a megawatt-hour—the maximum under the price caps—and resell it outside California for almost five times as much.

"Thus, traders could buy power at \$250 and sell it for \$1,200," according to one memo. In that document, the Enron lawyers acknowledged that such activity could be playing a big role in causing electricity shortages in the state, but they suggested that was not a significant concern.

"This strategy appears not to present any problems," the memo stated, "other than a public relations risk arising from the fact that such exports may have contributed to California's declaration of a State 2 Emergency yesterday."

The Death Star strategy, as described in the memos, allowed Enron to be paid "for moving energy to relieve congestion without actually moving any energy or relieving any congestion."

And the Load Shift strategy allowed Enron to generate about \$30 million in profits in 2000 using techniques that, according to the documents, included creating "the appearance of congestion through the deliberate overstatement" of power to be delivered.

In the past, Enron officials said the California power crisis was caused by the state's deeply flawed electricity deregulation plan, the lack of new power-generation capacity and by temporary factors, like a drought that drastically reduced available hydro-power. Even some economists who think price manipulation was widespread say these other factors contributed to soaring prices.

But Enron executives always insisted that absolutely nothing their traders had done contributed to the crisis. In an interview last year, Enron's former chairman, Kenneth L. Lay, dismissed accusations that manipulation was even partly to blame for California's troubles.

"Every time there's a shortage or a little bit of a price spike, it's always collusion or conspiracy or something," Mr. Lay said in the interview, which was also taped for "Frontline" on PBS. "I mean, it always makes people feel better that way."

[From the Los Angeles Times, May 7, 2002]

#### MEMO SHOWS ENRON ROLE IN POWER CRISIS

(By Nancy Rivera Brooks, Thomas S. Mulligan and Tim Reiterman)

Enron documents released Monday show the company sought to manipulate power prices in California, creating artificial shortages through the use of aggressive trading tactics during the energy crisis.

The disclosure by federal energy regulators marks the first time that a company's own documents have provided clear evidence of market manipulation, critics said, which contribute to soaring prices and blackouts.

"What we have here is a blueprint of . . . manipulation," said Robert McCullough, a Portland energy consultant and economist. "It's one thing for economists to state that these things are happening. . . . It's another thing for there to be internal documents on the table stating these things are happening."

The documents, uncovered as part of investigation by the Federal Energy Regulatory Commission into possible manipulation of California's electricity market, are seen as strengthening the state's hand in renegotiating costly long-term contracts with electricity sellers that were reached during the worst of California's energy crisis in 2001.

California Democratic Sens. Barbara Boxer and Dianne Feinstein both called for a Justice Department investigation, with Boxer saying the documents "confirm what I've been saying for months, that Enron manipulated the California energy market and needs to be held accountable. It is high time we see some indictments handed down in this case."

Although Feinstein said the trading practices may violate federal fraud statutes, energy experts saw the strategies as infractions of market rules that are punishable by fines or suspensions rather than criminal prosecution.

The state's grid operator has sought a variety of remedies from FERC for such practices and received some relief in June in the form of price caps throughout the West and other mitigation measures.

Enron Lawyer Robert Bennett said company executives, under new leadership after Enron's Dec. 2 bankruptcy filing, gave the documents to the Government and waived attorney-client privilege because "they thought it was the right thing to do. The truth of the matter is, we don't know what the truth of the underlying facts are" in the memos.

Power shortages sent prices skyrocketing in May 2000, which pushed California's two largest privately held electricity utilities to the edge of ruin, caused six days of statewide blackouts and forced the state to buy power for more than 10 million utility customers.

Enron and other power sellers have denied that they manipulated prices or power supplies, contending that the energy crisis was caused by a shortage of power plants and hydroelectricity.

"These documents make it clear that Enron was trying to squeeze every dime it could out of the market. It's not surprising that they violated [California Independent System Operator] rules because the ISO don't provide much punishment for violators," said Severin Borenstein, a UC Berkeley professor and director of the UC Energy Institute.

One memo, dated Dec. 6, 2000, and prepared by an Enron staff attorney and an outside lawyer in anticipation of investigations and lawsuits, explained how Enron traders exploited loopholes or market limitations to boost prices or to wring special payments out of the agencies that operated California's electricity markets.

Enron traders used such price-hiking techniques as sham congestion on electricity lines or selling electricity to out-of-state affiliates only to re-import it at higher prices, the memo said.

One strategy, code-named Death Star, "earns money by scheduling transmission in the opposite direction of congestion," the Dec. 6 memo said. "No energy, however, is actually put onto the grid or taken off."

A second undated memo, written by a different law firm, sought to cast a more favorable light on the strategies discussed in the first memo.

The second memo defended the Death Star strategy, saying it actually reduced congestion on electricity lines at times and increased supply along underused electricity lines.

The Dec. 6 memo also claimed that other traders had begun copying Enron's techniques, many of which have been identified by California officials, although without documented evidence.

"These are the smoking guns we always alleged," said Public Utilities Commission President Loretta M. Lynch. "These documents show their business plan was to game the California market so they could suck every dollar out of California."

Department of Water Resources spokesman Oscar Hidalgo said the department hopes the release of the Enron documents will spur more companies to renegotiate dozens of long-term contracts that DWR signed after it became the power buyer of customers of financially troubled utilities.

The California Independent System Operator, which runs California's last remaining official energy market, has asked FERC to grant the state \$9 billion in refunds because prices charged in 2000 and 2001 were unreasonable, although the regulators now are considering a lower payment.

The quirks of the California energy market presented Enron and other market participants with myriad opportunities to take profitable advantage.

California had two markets: a "day-ahead" auction market through the California Power Exchange—"The PX," in trader lingo—and the "real-time" market run by Cal-ISO.

Traders quickly found ways to play the two markets off each other.

The day-ahead market was supposed to handle the bulk of the electricity requirements, and the real-time market was meant only to correct occasional imbalances.

When the crisis hit, the real-time market grew in importance and was the locus of wild price swings.

Buyers and sellers who wanted to participate in the real-time market were required to submit to Cal-ISO daily schedules of their production and their "load," or the amount

of power they intended to use. The two were supposed to be in balance.

But sometimes when power supply was tight, Cal-ISO paid participants a premium when they happened to provide more power than Cal-ISO required.

One of Enron's basic strategies, according to the memo, involved deliberately overstating its load. It would deliver as much power as promised but then use less than scheduled and get a premium for the difference.

Another Enron stratagem was to take advantage of congestion in the real-time market that Enron had helped create in the day-ahead market, the memo said.

During the energy crisis, the amount of power scheduled for delivery into the California market sometimes exceeded the capacity of the system's transmission lines.

At such times, Cal-ISO would make "congestion payments" to market participants that either schedule transmission in the opposite direction or reduce their generation/load schedule.

"Because the congestion charges have been as high as \$750/MW [per megawatt], it can often be profitable to sell power at a loss simply to collect the congestion payment," the memo said.

Enron traders, acknowledged as among the industry's most creative, worked a number of variations on these two themes. In addition to Death Star, other colorful nicknames for trading methods included Get Shorty, Ricochet and Fat Boy to identify them in discussions with traders from other firms.

California imposed price caps to cope with the emergency, but even these offered an opportunity for clever traders who realized that prices weren't capped in neighboring areas that were affected by the crisis.

On Dec. 5, 2000, for example, prices soared to \$1,200 per megawatt-hour in the Pacific Northwest, while a \$250 cap was in place in California.

Enron traders saw that they could lock in an instant \$950 profit for each megawatt-hour of electricity by buying power on the California PX and selling it up north, according to the memo.

"This strategy appears not to present any problems, other than a public relations risk from the fact that such exports may have contributed to California's declaration of a Stage 2 emergency yesterday," the memo said.

Cal-ISO spokeswoman Stephanie McCorkle said some of the behaviors probably caused prices to rise, but the grid operator does not believe they contributed to the six days of blackouts in early 2001. The reason, she said, is that the blackouts were caused by a severe shortage of power, not by phantom congestion.

Cal-ISO has asked FERC to extend market protections that are due to expire Sept. 30, including a price cap on electricity in the West.

[From the Washington Post, May 7, 2002]

PAPERS SHOW THAT ENRON MANIPULATED CALIF. CRISIS

(By Peter Behr)

Enron Corp. manipulated the California electricity market with such maneuvers as transferring energy outside the state to evade price caps and creating phony "congestion" on power lines, according to internal Enron documents released yesterday.

The techniques described in two memos written by lawyers for Enron in December 2000 were given names such as "Fat Boy," "Death Star," "Get Shorty" and "Ricochet." The company turned the documents over to federal regulators, who made them public.

The evidence of their use contradicts denials Enron made at the time and provides im-

petus to several investigations of the bankrupt energy giant's role in the California crisis.

Operators of California's power system ordered rotating blackouts on six days early in 2001. That followed a tenfold surge in power prices that began the previous summer, hitting the state's utilities with billions of dollars in excess electricity charges.

Details of Enron's financial problems came to light months after the California crisis. "These documents confirm what we have known for some time, through circumstantial evidence: They show internal corporate strategies for manipulating the market," said California state Sen. Joseph Dunn (D), who heads a legislative committee investigation into the power crisis the state suffered a year ago.

U.S. Sen. Dianne Feinstein (D-Calif.) said she will ask the Justice Department to launch a criminal investigation of power sales in California.

The "ricochet" strategy was used to evade wholesale price controls on California electricity by transferring power out of the state and then back in.

Another maneuver took advantage of dramatically higher prices that California energy officials were willing to pay to get emergency supplies during shortages, the Enron documents say.

The "Death Star" strategy is described as permitting Enron to be paid "for moving energy to relieve congestion without actually moving any energy or relieving any congestion."

The reports were sent to Richard Sanders, Enron's vice president and assistant general counsel, in preparation for lawsuits arising from the California crisis. Sanders, who is still with Enron, could not be reached for comment yesterday.

A third, undated memo, prepared by different lawyers in consultation with a senior Enron trading executive, took issue with the first two reports, concluding that some of the trading strategies "may have increased" power supplies.

Energy analyst Robert McCullough said the memos indicate that Enron traders deliberately tried to create the appearance of shortages and congestion, prompting declarations of power blackouts that need not have been ordered in some cases.

State officials complained during the crisis that electricity suppliers were manipulating the state's deregulated power markets. Under political pressure last spring, the Federal Energy Regulatory Commission imposed temporary electricity price ceilings on California and neighboring western States.

That action, coupled with favorable weather and an economic slowdown, sent electricity prices plummeting last summer, ending the power crisis.

FERC officials and energy companies are still locked in a battle over the amount of refunds owed to California because of overcharging.

Enron said the documents released yesterday were spotted recently by company officials who took office after Enron's Dec. 2 bankruptcy filing, the largest such filing in U.S. history.

As correspondence between Enron and its attorneys, the documents has previously been marked confidential and had not been given to Federal and State investigators.

Enron attorney Robert Bennett said Enron managers concluded that the documents should be turned over, and in a telephone conference call Sunday, Enron's board agreed.

"This board and the current management wants to be fully candid with Congress and other Government entities and to do the honorable and responsible thing," Bennett said.

Ms. CANTWELL. Madam President, these articles show what consumers in my State have thought all along, that these prices were being manipulated. That is why in January of this year I asked the Federal Energy Regulatory Commission to investigate these high prices that have literally cost people jobs, made consumers pay as much as 60-percent rate increases, and have made it tough for our economy in Washington State to continue to thrive with these high energy prices in some industries such as aluminum and other intensive energy businesses.

Yet what has happened—I do not know if other people in the country realize this—is our consumers may end up paying these high rates for many years, even though Enron has gone bankrupt. The reason is that the contracts these companies have had with Enron are as many as 5-year to 7-year—in some cases 8-year—contracts which were negotiated at the time of this crisis and very high prices. In fact, energy prices—the rates were as much as 1,000 times higher during this crisis.

Consumers hear there were memos with names such as Fat Boy or Death Star or Get Shorty or Ricochet that were really plans by this company to manipulate prices. The Federal Energy Regulatory Commission should act upon these memos and basically find that these rates have, in fact, been manipulated. That is right, on the west coast, both in California and in Washington and in Oregon, prices were manipulated and because of those unjust and unreasonable rates these Northwest entities should be let out of these long-term Enron contracts.

I believe that is critically important for us in the Northwest, who may face even further rate increases in the future because of these high energy costs, and the fact that the Bonneville Power Administration, for example, would be let out of these contracts, it might save as much as \$250 million to \$300 million just in the costs that BPA has to pay. Instead, they would be able to go out on the market, not paying the high Enron prices, but go out on the market today and get cheaper electricity prices.

I cannot tell you how important it is for us. My colleague from Washington, Senator MURRAY, and Senator FEINSTEIN, Senator BOXER, Senator WYDEN, and Senator SMITH—we have all spoken on this issue and how it impacts the whole west coast. It is critically important that the Federal Energy Regulatory Commission take the information they have discovered in their investigation and make this decision on unjust and unreasonable rates as soon as possible.

I believe the Federal Energy Regulatory Commission ought to use its power to void long-term contracts with unjust and unreasonable rates. I also believe we need new Senate hearings to review these findings and to explore all available options for ratepayer relief under federal law.

I would also like to add my voice to that of my colleague from California, Senator FEINSTEIN, and my colleague from Washington, Senator MURRAY, in calling for a criminal investigation by the Department of Justice into allegations that Enron has manipulated prices in the Western electricity markets.

As my colleagues are aware, the Western electricity crisis of 2000 and 2001 has taken a tremendous toll on the economy of my state, and of Oregon and California. As a result of electricity prices that spiraled to as much as 1000 times the normal rates, consumers throughout the West have paid dearly. They have paid in their utility bills—which have been raised as much as 60 percent—and they have paid with job loss in communities that have seen entire industries shut down.

Madam President, throughout the Western electricity crisis, I joined with many of my Western colleagues in asking the Federal Energy Regulatory Commission (FERC) to step in and do its job—to ensure just and reasonable rates. For many months, FERC refused and assured many of us that the Western power crisis was simply the result of drought and a shortage of electricity—a shortage that many of us raised questions about, given that it seemed to materialize over night.

FERC and this administration repeatedly denied what many of the impacted citizens in Washington state knew intuitively to be true—that our Western markets were being manipulated by a handful of companies that drew enormous profits directly from their pockets and from the coffers of their businesses.

With the collapse of Enron, Senator BINGAMAN, chairman of the Senate Energy and Natural Resources Committee, wisely called a hearing to assess the bankruptcy's impacts on the energy markets. At this hearing, on January 29, I asked FERC Chairman Pat Wood to take a close look at allegations that Enron have been manipulating markets. In a letter sent that same day, I wrote:

Congress and our nation's consumers—particularly those of the Pacific Northwest, who have suffered through retail rate increases of up to 50 percent over the past year—deserve to know whether Enron was manipulating Western power markets at their expense. After Enron collapsed, prices in the West's forward energy markets plummeted by 20 to 30 percent. Where there's smoke there's often fire, and we must investigate whether we have a simple coincidence here, or something more. The public deserves answers and, if appropriate, corrective action.

In response to my request, FERC opened a staff investigation on these allegations. And late yesterday, this investigation revealed the first real smoking gun. Now posted on the Commission's Website, you will find memos in which attorneys from Enron outline their strategies for manipulating prices in Western markets.

This has real, direct impacts on consumers in my state. During the height

of the crisis, many utilities in my state signed long-term contracts with Enron at prices that looked like deals at the time—in a severely dysfunctional market—but today, are two to three times current market rates. The Bonneville Power Administration, for example, which provides 60 percent of all the power consumed in my state, is on the hook for \$700 million worth of Enron contracts over the next few years. In today's market, these contracts would be half as costly. Nevertheless, Bonneville and the consumers of the Northwest continue to be held hostage. They continue to pay Enron. At the conclusion of this investigation, I hope that FERC will see to it that justice is done. If markets were manipulated—as the evidence now suggests—Washington State consumers should be given relief from these contracts.

In addition to these ongoing FERC proceedings, I do hope the Justice Department will open a criminal investigation into Enron's actions to manipulate electricity prices and defraud consumer-ratepayers.

But I also look forward to this body exercising what I believe is necessary continued oversight. This morning, at an Energy and Natural Resources Committee hearing, Senator BINGAMAN and I discussed the possibility of a hearing on these issues. I also believe that the Judiciary Committee may be an appropriate forum for discussing the anti-trust component of these allegations.

But in addition, I hope my colleagues—and particularly those who will serve on the Energy bill conference committee—will pay close attention to what this means for our nation's electricity markets. During the debate on that bill, I offered a consumer protection amendment to the electricity title that I believe would have prevented a recurrence of the Western energy crisis and incorporated many of the lessons we have learned—and continue to learn—from Enron's collapse. My amendment suggested that before FERC was allowed to open up markets like California to deregulation, it should have to establish clear market rules, have in place the mechanisms necessary to monitor markets to detect manipulation. It would have directed FERC to take decisive, corrective action to protect consumers when abuses do occur. And it would have given FERC and state utility commissions the access to books and records they would need to discover evidence like the memos we have now found in this Enron investigation, almost two years after the energy crisis began and after months of business closures and rate hikes across the West.

I hope Attorney General Ashcroft will heed our call today. I look forward to continuing our oversight of this issue in the Energy Committee, and I hope our conferees will consider this new evidence—that Enron has been manipulating power markets—as they consider the energy bill.

I yield the floor.

## THE BUSH ADMINISTRATION DECISION TO "UNSIGN" THE ROME STATUTE

Mr. DASCHLE. Madam President, I come to the floor to express my disappointment with the Bush Administration's decision to unsign the Rome Statute, and withdraw the United States from the process of creating an international criminal court.

We are told this decision was made in order to protect American troops and American sovereignty from a faceless international bureaucracy. Unfortunately, it does the opposite. In fact, this decision vastly decreases our ability to shape the ICC, ignores the fact that the ICC will come into existence regardless of whether we are involved or not, and raises the specter of unilateralism just as we will be turning to our allies for help in a series of crucial policy, diplomatic—and perhaps military—undertakings.

Administrations since President Truman have supported the establishment of a criminal court to try the worst crimes against humanity. Reasonable people can disagree about the merits of the Rome Statute. Like many of my colleagues, I have some concerns about its jurisdiction and potential impact on U.S. forces deployed overseas.

I do not, however, think the consequences of simply walking away from the Statute should be ignored. Instead of asserting our leadership, we are abdicating it. Instead of shaping the court to serve our interests, we have relinquished our seat at the table and removed ourselves from a position to shape it at all.

This is especially disappointing, Madam President, when you consider the simple fact that the ICC will still come into existence in July. That was made clear in New York on April 11, when the 60th nation ratified the Rome Statute, putting it into effect. To date, 64 nations have ratified the statute. Only one—the United States—has withdrawn.

When it comes time to pick prosecutors and judges, which it will do, we will not be at the table. And when it comes time to consider rules of evidence, which it will do, our voices will be absent.

But let's consider also exactly who some of those 60 are—Britain, Canada, France, Italy and Spain, all NATO allies, all currently fighting side-by-side with our troops in Afghanistan and the Balkans. And all whom we hope to count on in future conflicts in our war on terrorism.

Yesterday afternoon, our Ambassador-at-Large for War Crimes Issues said that America had "washed our hands [of the ICC]. It's over." If it were only so, Madam President. We did not put the ICC out of business. But we did take ourselves out of the action—and out of a position to influence the ICC. The decision to unsign was the wrong decision at the wrong time and, most troubling of all, not in keeping with the American national interest.