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Consumer Federation of America



U.S. Public Interest Research Group

February 28, 2002

Dear Senator:

As the Senate begins consideration of S. 517, the comprehensive energy bill, we urge you to support several amendments that would protect consumers, especially as electricity markets continue to be deregulated.

First, **Senator Wyden** will likely be introducing an amendment to create an Office of Consumer Advocacy to handle energy issues within the Department of Justice (DOJ). This new office will represent the interests of consumers within the Federal Energy Regulatory Commission (FERC), before the courts and in front of Congress. Having an independent energy ombudsman within DOJ will provide important protections for consumers as FERC continues to deregulate the electricity market. Nothing demonstrates the need for this office more than the price spikes and blackouts in the western electricity market in 2000-2001. Moreover, the office will serve to protect consumers as FERC performs its general day-to-day energy sector oversight functions, which will become ever more crucial as the growing Enron scandal unfolds and efforts are made to provide greater oversight of energy trading markets.

With regard to the energy trading markets, **Senator Feinstein** is planning to address regulatory shortcomings made evident by Enron's collapse through an amendment that would provide for regulatory oversight by the Commodity Futures Trading Commission (CFTC) of derivative transactions on energy commodities. This would ensure that energy traders cannot operate without appropriate federal oversight that makes market transactions transparent. Given that it was the CFTC that initially allowed these types of transactions to escape scrutiny, it is important that Congress be explicitly clear in this legislation regarding what it expects of the CFTC in closing this loophole. In addition, we believe that it would be appropriate for FERC to have a greater role in this area as its primary concern should be the stability of the nation's energy markets, while the CFTC is set up to protect investors.

To further address the market problems that have become clear in the wake of the western electricity crisis, **Senator Cantwell** is planning to offer an amendment that would direct FERC to define precisely what a competitive market is and establish rules for when market-based rates will be permitted. In addition, the amendment would put in place market monitoring procedures so that FERC can better detect problems, before they lead to a complete breakdown in the market, and give FERC more authority to take action to protect consumers when the market is failing. This change is necessary to ensure that electricity suppliers do not continue to manipulate the market to the detriment of consumers, as was seen in the western market in 2000-2001.

S. 517 would simply repeal the Public Utility Holding Company Act (PUHCA) in its entirety, including consumer protections that have been in place for decades. Now, more than ever, it is clear that these protections are absolutely necessary. We believe that regulators could have used their authority under PUHCA to prevent some of the abuses that have come to light in the Enron debacle. If there are going to be amendments to PUHCA to make it more relevant to today's situation, then

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Congress must take affirmative steps to ensure that PUHCA's consumer protection provisions remain in force, and where necessary are strengthened. For example, **Senator Wyden** will likely offer an amendment, which we support, to require that transactions between utilities and their affiliates be transparent, and to shield consumers from the costs and risks of interaffiliate transactions. The amendment would provide for:

- streamlined FERC review of utility diversification efforts to ensure that there is appropriate regulatory oversight so that consumers are not the victims of abusive affiliate transactions; and
- structural limits on affiliate transactions to protect not only consumers, but unaffiliated competitors as well.

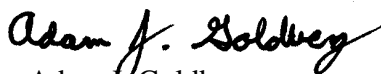
Finally, **Senators Dayton and Conrad** are planning to offer an amendment that would ensure that mergers in the energy sector "*promote* the public interest," based on objective criteria that would be evaluated by FERC. Under current law, all that is necessary for merger approval is a determination that the merger is "*consistent* with the public interest." Given the wave of mergers sweeping through the electric industry, and the collapse of meaningful competition in California and other states, we believe that a more protective standard than the current one is necessary to adequately protect consumers from abuse. FERC must hold the public interest paramount in evaluating any potential energy company mergers. The Dayton/Conrad amendment would:

- establish criteria for FERC to consider in order to determine that a merger would "promote the public interest," including efficiency gains, impact on competition, and its ability to effectively regulate the industry;
- clarify that these provisions would apply to *all* potential financial arrangements (not just stock acquisitions) which could lead to exertion of control over the entity, including partnerships; and
- clarify that FERC review applies to all electric and gas combinations.

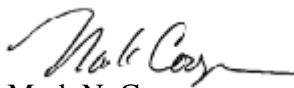
We would also like to reiterate our organizations' support for **Senator Jeffords'** efforts to include a national renewable portfolio standard in the legislation, which would help diversify our energy mix and avoid future energy shortages and price spikes. We also support the **Kerry/Hollings** provision in the legislation to raise the national corporate average fuel economy (CAFE) standards, which will likewise help to provide energy security and protect the environment. In addition, we urge you to oppose efforts that will damage a pristine Alaskan ecosystem, supposedly in the name of energy security – the supply is too limited, the environment too fragile, and the costs too high.

Thank you for considering the needs and concerns of consumers while moving forward with this legislation. Please do not hesitate to contact us if you have any questions or need any information regarding how this comprehensive energy package will affect consumers.

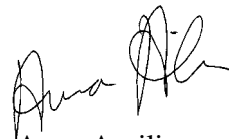
Sincerely,



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