United States of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE 107th CONGRESS, SECOND SESSION

Vol. 148 WASHINGTON, WEDNESDAY, APRIL 24, 2002 *No. 47*

Senate

The Senate met at 9:30 a.m. and was called to order by the Honorable EDWARD M. KENNEDY, a Senator from the State of Massachusetts.

PRAYER

The guest Chaplain, Father Daniel P. Coughlin, Chaplain of the House of Representatives, offered the following prayer:

Lord God, we ask that your Holy Spirit will fill the hearts and minds of our Nation's leadership on this day. Bless them with sacred wisdom that they may truly lead us through the complex issues that confront our people. Give them the courage to hold to what they believe to be right, and the humility to receive more truth than they possess.

Most of all, O God, we ask that You will give these leaders Your own great dreams for our life together, dreams that are greater than party allegiances, and certainly greater than the ambition any individual would carry into this Chamber. By Your Holy Spirit accommodate Your will to our political process that it may be used to lead this Nation to a future which is filled with hope.

And when the day is done and the Chamber is again empty, may all who have come here to serve the Republic know that their work has not been in vain. Encourage them in the certain conviction that You will use this day to build Your own great kingdom on Earth. This we ask in the name of the Lord, whose way we prepare. Amen.

PLEDGE OF ALLEGIANCE

The Honorable EDWARD M. KENNEDY led the Pledge of Allegiance, as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. BYRD).

The assistant legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, April 24, 2002.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable EDWARD M. KENNEDY, a Senator from the State of Massachusetts, to perform the duties of the Chair.

ROBERT C. BYRD,
President pro tempore.

Mr. KENNEDY thereupon assumed the chair as Acting President pro tempore.

RESERVATION OF LEADER TIME

The ACTING PRESIDENT pro tempore. Under the previous order, the leadership time is reserved.

NATIONAL LABORATORIES PARTNERSHIP IMPROVEMENT ACT OF 2001

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will now resume consideration of S. 517, which the clerk will report.

The legislative clerk read as follows:

A bill (S. 517) to authorize funding for the Department of Energy to enhance its mission areas through technology transfer and partnerships for fiscal years 2002 through 2006 and for other purposes.

Pending:

Daschle/Bingaman further modified amendment No. 2917, in the nature of a substitute.

Landrieu/Kyl amendment No. 3050 (to amendment No. 2917), to increase the transfer capability of electric energy transmission systems through participant-funded investment.

Schumer/Clinton amendment No. 3093 (to amendment No. 2917), to prohibit oil and gas drilling activity in Finger Lakes National Forest, New York.

Dayton amendment No. 3097 (to amendment No. 2917), to require additional findings for FERC approval of an electric utility merger.

Murkowski/Breaux/Stevens amendment No. 3132 (to amendment No. 2917), to create jobs for Americans, to reduce dependence on foreign sources of crude oil and energy, to strengthen the economic self determination of the Inupiat Eskimos and to promote national security.

Feinstein amendment No. 3225 (to amendment No. 2917), to modify the provision relating to the renewable content of motor vehicle fuel to eliminate the required volume of renewable fuel for calendar year 2004.

Feinstein amendment No. 3170 (to amendment No. 2917), to reduce the period of time in which the Administrator may act on a petition by 1 or more States to waive the renewable fuel content requirement.

Fitzgerald amendment No. 3124 (to amendment No. 2917), to modify the definitions of biomass and renewable energy to exclude municipal solid waste.

Cantwell amendment No. 3234 (to amendment No. 2917), to protect electricity consumers.

Amendment No. 3231, as modified, which was to have been printed in yesterday's RECORD, is as follows:

(Purpose: To clarify the structure for, and improve the focus of, global climate change science research)

On page 470, beginning with line 10, strike through line 7 on page 532 and insert the following:

TITLE XIII—CLIMATE CHANGE SCIENCE AND TECHNOLOGY

Subtitle A—Department of Energy Programs

SEC. 1301. DEPARTMENT OF ENERGY GLOBAL CHANGE RESEARCH.

(a) PROGRAM DIRECTION.—The Secretary, acting through the Office of Science, shall conduct a comprehensive research program to understand and address the effects of energy production and use on the global climate system.

(b) PROGRAM ELEMENTS.—

(1) CLIMATE MODELING.—The Secretary shall—

(A) conduct observational and analytical research to acquire and interpret the data needed to describe the radiation balance from the surface of the Earth to the top of the atmosphere;

(B) determine the factors responsible for the Earth's radiation balance and incorporate improved understanding of such factors in climate models;

(C) improve the treatment of aerosols and clouds in climate models;

(D) reduce the uncertainty in decade-to-century model-based projections of climate change; and

(E) increase the availability and utility of climate change simulations to researchers and policy makers interested in assessing the relationship between energy and climate change.

(2) CARBON CYCLE.—The Secretary shall—

(A) carry out field research and modeling activities—

(i) to understand and document the net exchange of carbon dioxide between major terrestrial ecosystems and the atmosphere; or

(ii) to evaluate the potential of proposed methods of carbon sequestration;

(B) develop and test carbon cycle models; and

(C) acquire data and develop and test models to simulate and predict the transport, transformation, and fate of energy-related emissions in the atmosphere.

(3) ECOLOGICAL PROCESSES.—The Secretary shall carry out long-term experiments of the response of intact terrestrial ecosystems to—

(A) alterations in climate and atmospheric composition; or

(B) land-use changes that affect ecosystem extent and function.

(4) INTEGRATED ASSESSMENT.—The Secretary shall develop and improve methods and tools for integrated analyses of the climate change system from emissions of aerosols and greenhouse gases to the consequences of these emissions on climate and the resulting effects of human-induced climate change on economic and social systems, with emphasis on critical gaps in integrated assessment modeling, including modeling of technology innovation and diffusion and the development of metrics of economic costs of climate change and policies for mitigating or adapting to climate change.

(c) AUTHORIZATION OF APPROPRIATIONS.—From amounts authorized under section 1251(b), there are authorized to be appropriated to the Secretary for carrying out activities under this section—

(1) $150,000,000 for fiscal year 2003;

(2) $175,000,000 for fiscal year 2004;

(3) $200,000,000 for fiscal year 2005; and

(4) $230,000,000 for fiscal year 2006.

(d) LIMITATION ON FUNDS.—Funds authorized to be appropriated under this section shall not be used for the development, demonstration, or deployment of technology to reduce, avoid, or sequester greenhouse gas emissions.

SEC. 1302. AMENDMENTS TO THE FEDERAL NONNUCLEAR RESEARCH AND DEVELOPMENT ACT OF 1974.

Section 6 of the Federal Nonnuclear Energy Research and Development Act of 1974 (42 U.S.C. 5905) is amended—

(1) in subsection (a)—

(A) in paragraph (2), by striking ''and'' at the end;

(B) in paragraph (3) by striking the period at the end and inserting '', and''; and

(C) by adding at the end the following:

''(4) solutions to the effective management of greenhouse gas emissions in the long term by the development of technologies and practices designed to—

''(A) reduce or avoid anthropogenic emissions of greenhouse gases;

''(B) remove and sequester greenhouse gases from emissions streams; and

''(C) remove and sequester greenhouse gases from the atmosphere;'' and

(2) in subsection (b)—

(A) in paragraph (2), by striking ''subsection (a)(1) through (3)'' and inserting ''paragraphs (1) through (4) of subsection (a)''; and

(B) in paragraph (3)—

(i) in subparagraph (R), by striking ''and'' at the end;

(ii) in subparagraph (S), by striking the period at the end and inserting ''; and''; and

(iii) by adding at the end the following:

''(T) to pursue a long-term climate technology strategy designed to demonstrate a variety of technologies by which stabilization of greenhouse gases might be best achieved, including accelerated research, development, demonstration and deployment of—

''(i) renewable energy systems;

''(ii) advanced fossil energy technology;

''(iii) advanced nuclear power plant design;

''(iv) fuel cell technology for residential, industrial and transportation applications;

''(v) carbon sequestration practices and technologies, including agricultural and forestry practices that store and sequester carbon;

''(vi) efficient electrical generation, transmission and distribution technologies; and

''(vii) efficient end use energy technologies.''.

Subtitle B—Department of Agriculture Programs

SEC. 1311. CARBON SEQUESTRATION BASIC AND APPLIED RESEARCH.

(a) BASIC RESEARCH.—

(1) IN GENERAL.—The Secretary of Agriculture shall carry out research in the areas of soil science that promote understanding of—

(A) the net sequestration of organic carbon in soil; and

(B) net emissions of other greenhouse gases from agriculture.

(2) AGRICULTURAL RESEARCH SERVICE.—The Secretary of Agriculture, acting through the Agricultural Research Service, shall collaborate with other Federal agencies in developing data and carrying out research addressing soil carbon fluxes (losses and gains) and net emissions of methane and nitrous oxide from cultivation and animal management activities.

(3) COOPRERATIVE STATE RESEARCH, EXTENSION, AND EDUCATION SERVICE.—

(A) IN GENERAL.—The Secretary of Agriculture, acting through the Cooperative State Research, Extension, and Education Service, shall establish a competitive grant program to carry out research on the matters described in paragraph (1) in land grant universities and other research institutions.

(B) CONSULTATION ON RESEARCH TOPICS.—Before issuing a request for proposals for basic research under paragraph (1), the Cooperative State Research, Extension, and Education Service shall consult with the Agricultural Research Service to ensure that proposed research areas are complementary with and do not duplicate research projects underway at the Agricultural Research Service or other Federal agencies.

(b) APPLIED RESEARCH.—

(1) IN GENERAL.—The Secretary of Agriculture shall carry out applied research in the areas of soil science, agronomy, agricultural economics and other agricultural sciences to—

(A) promote understanding of—

(i) how agricultural and forestry practices affect the sequestration of organic and inorganic carbon in soil and net emissions of other greenhouse gases;

(ii) how changes in soil carbon pools are cost-effectively measured, monitored, and verified; and

(iii) how public programs and private market approaches can be devised to incorporate carbon sequestration in a broader societal greenhouse gas emission reduction effort;

(B) develop methods for establishing baselines for measuring the quantities of carbon and other greenhouse gased sequestered; and

(C) evaluate leakage and performance issues.

(2) REQUIREMENTS.—To the maximum extent practicable, applied research under paragraph (1) shall—

(A) draw on existing technologies and methods; and

(B) strive to provide methodologies that are accessible to a nontechnical audience.

(3) MINIMIZATION OF ADVERSE ENVIRONMENTAL IMPACTS.—All applied research under paragraph (1) shall be conducted with an emphasis on minimizing adverse environmental impacts.

(4) NATURAL RESOURCES CONSERVATION SERVICES.—The Secretary of Agriculture, acting through the Natural Resources Conservation Service, shall collaborate with other Federal agencies, including the National Institute of Standards and Technology, in developing new measuring techniques and equipment or adapting existing techniques and equipment to enable cost-effective and accurate monitoring and verification, for a wide range of agricultural and forestry practices, of—

(A) changes in soil carbon content in agricultural soils, plants, and trees; and

(B) net emissions of other greenhouse gases.

(5) COOPERATIVE STATE RESEARCH, EXTENSION, AND EDUCATION SERVICE.—

(A) IN GENERAL.—The Secretary of Agriculture, acting through the Cooperative State Research, Extension, and Education Service, shall establish a competitive grant program to encourage research on the matters described in paragraph (1) by land grant universities and other research institutions.

(B) CONSULTATION ON RESEARCH TOPICS.—Before issuing a request for proposals for applied research under paragraph (1), the Cooperative State Research, Extension, and Education Service shall consult with the National Resources Conservation Service and the Agricultural Research Service to ensure that proposed research areas are complementary with and do not duplicate research projects underway at the Agricultural Research Service or other Federal agencies.

(c) RESEARCH CONSORTIA.—

(1) IN GENERAL.—The Secretary of Agriculture may designate not more than two research consortia to carry out research projects under this section, with the requirement that the consortia propose to conduct basic research under subsection (a) and applied research under subsection (b).

(2) SELECTION.—The consortia shall be selected in a competitive manner by the Cooperative State Research, Extension, and Education Service.

(3) ELIGIBLE CONSORTIUM PARTICIPANTS.—Entities eligible to participate in a consortium include—

(A) land grant colleges and universities;

(B) private research institutions;

(C) State geological surveys;

(D) agencies of the Department of Agriculture;

(E) research centers of the National Aeronautics and Space Administration and the Department of Energy;

(F) other Federal agencies;

(G) representatives of agricultural businesses and organizations with demonstrated expertise in these areas; and

(H) representatives of the private sector with demonstrated expertise in these areas.

(4) RESERVATION OF FUNDING.—If the Secretary of Agriculture designates one or two consortia, the Secretary of Agriculture shall reserve for research projects carried out by

the consortium or consortia not more than 25 percent of the amounts made available to carry out this section for a fiscal year.

(d) STANDARDS OF PRECISION.—

(1) CONFERENCE.—Not later than 3 years after the date of enactment of this subtitle, the Secretary of Agriculture, acting through the Agricultural Research Service and in consultation with the Natural Resources Conservation Service, shall convene a conference of key scientific experts on carbon sequestration and measurement techniques from various sectors (including the Government, academic, and private sectors) to—

(A) discuss benchmark standards of precision for measuring soil carbon content and net emissions of other greenhouse gases;

(B) designate packages of measurement techniques and modeling approaches to achieve a level of precision agreed on by the participants in the conference; and

(C) evaluate results of analyses on baseline, permanence, and leakage issues.

(2) DEVELOPMENT OF BENCHMARK STANDARDS.—

(A) IN GENERAL.—The Secretary shall develop benchmark standards for measuring the carbon content of soils and plants (including trees) based on—

(i) information from the conference under paragraph (1);

(ii) research conducted under this section; and

(iii) other information available to the Secretary.

(B) OPPORTUNITY FOR PUBLIC COMMENT.—The Secretary shall provide an opportunity for the public to comment on benchmark standards developed under subparagraph (A).

(3) REPORT.—Not later than 180 days after the conclusion of the conference under paragraph (1), the Secretary of Agriculture shall submit to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry, of the Senate a report on the results of the conference.

(e) AUTHORIZATION OF APPROPRIATIONS.—

(1) IN GENERAL.—There are authorized to be appropriated to carry out this section $25,000,000 for each of fiscal years 2003 through 2006.

(2) ALLOCATION.—Of the amounts made available to carry out this section for a fiscal year, at least 50 percent shall be allocated for competitive grants by the Cooperative State Research, Extension, and Education Service.

SEC. 1312. CARBON SEQUESTRATION DEMONSTRATION PROJECTS AND OUTREACH.

(a) DEMONSTRATION PROJECTS.—

(1) DEVELOPMENT OF MONITORING PROGRAMS.—

(A) IN GENERAL.—The Secretary of Agriculture, acting through the Natural Resources Conservation Service and in cooperation with local extension agents, experts from land grant universities, and other local agricultural or conservation organizations, shall develop user-friendly, programs that combine measurement tools and modeling techniques into integrated packages to monitor the carbon sequestering benefits of conservation practices and net changes in greenhouse gas emissions.

(B) BENCHMARK LEVELS OF PRECISION.—The programs developed under subparagraph (A) shall strive to achieve benchmark levels of precision in measurement in a cost-effective manner.

(2) PROJECTS.—

(A) IN GENERAL.—The Secretary of Agriculture, acting through the Farm Service Agency, shall establish a program under which projects use the monitoring programs developed under paragraph (1) to demonstrate the feasibility of methods of measuring, verifying, and monitoring—

(i) changes in organic carbon content and other carbon pools in agricultural soils, plants, and trees; and

(ii) net changes in emissions of other greenhouse gases.

(B) EVALUATION OF IMPLICATIONS.—The projects under subparagraph (A) shall include evaluation of the implications for reassessed baselines, carbon or other greenhouse gas leakage, and permanence of sequestration.

(C) SUBMISSION OF PROPOSALS.—Proposals for projects under subparagraph (A) shall be submitted by the appropriate agency of each State, in cooperation with interested local jurisdictions and State agricultural and conservation organizations.

(D) LIMITATION.—Not more than 10 projects under subparagraph (A) may be approved in conjunction with applied research projects under section 1311(b) until benchmark measurement and assessment standards are established under section 1311(d).

(E) NATIONAL FOREST SYSTEM LAND.—The Secretary of Agriculture shall consider the use of National Forest System land as sites to demonstrate the feasibility of monitoring programs developed under paragraph (1).

(b) OUTREACH.—

(1) IN GENERAL.—The Cooperative State Research, Extension, and Education Service shall widely disseminate information about the economic and environmental benefits that can be generated by adoption of conservation practices (including benefits from increased sequestration of carbon and reduced emission of other greenhouses gases).

(2) PROJECT RESULTS.—The Cooperative State Research, Extension, and Education Service shall inform farmers, ranchers, and State agricultural and energy offices in each State of—

(A) the results of demonstration projects under subsection (a)(2) in the State; and

(B) the ways in which the methods demonstrated in the projects might be applicable to the operations of those farmers and ranchers.

(3) POLICY OUTREACH.—On a periodic basis, the Cooperative State Research, Extension, and Education Service shall disseminate information on the policy nexus between global climate change mitigation strategies and agriculture, so that farmers and ranchers may better understand the global implications of the activities of farmers and ranchers.

(c) AUTHORIZATION OF APPROPRIATIONS.—

(1) IN GENERAL.—There are authorized to be appropriated to carry out this section $10,000,000 for each of fiscal years 2003 through 2006.

(2) ALLOCATION.—Of the amounts made available to carry out this section for a fiscal year, at least 50 percent shall be allocated for demonstration projects under subsection (a)(2).

Subtitle C—International Energy Technology Transfer

SEC. 1321. CLEAN ENERGY TECHNOLOGY EXPORTS PROGRAM.

(a) DEFINITIONS.—In this section:

(1) CLEAN ENERGY TECHNOLOGY.—The term ''clean energy technology'' means an energy supply or end-use technology that, over its lifecycle and compared to a similar technology already in commercial use in developing countries, countries in transition, and other partner countries—

(A) emits substantially lower levels of pollutants or greenhouse gases; and

(B) may generate substantially smaller or less toxic volumes of solid or liquid waste.

(2) INTERAGENCY WORKING GROUP.—The term ''interagency working group'' means the Interagency Working Group on Clean Energy Technology Exports established under subsection (b).

(b) INTERAGENCY WORKING GROUP.—

(1) ESTABLISHMENT.—Not later than 90 days after the date of enactment of this section, the Secretary of Energy, the Secretary of Commerce, and the Administrator of the U.S. Agency for International Development shall jointly establish a Interagency Working Group on Clean Energy Technology Exports. The interagency working group will focus on opening and expanding energy markets and transferring clean energy technology to the developing countries, countries in transition, and other partner countries that are expected to experience, over the next 20 years, the most significant growth in energy production and associated greenhouse gas emissions, including through technology transfer programs under the Framework Convention on Climate Change, other international agreements, and relevant Federal efforts.

(2) MEMBERSHIP.—The interagency working group shall be jointly chaired by representatives appointed by the agency heads under paragraph (1) and shall also include representatives from the Department of State, the Department of Treasury, the Environmental Protection Agency, the Export-Import Bank, the Overseas Private Investment Corporation, the Trade and Development Agency, and other Federal agencies as deemed appropriate by all three agency heads under paragraph (1).

(3) DUTIES.—The interagency working group shall—

(A) analyze technology, policy, and market opportunities for international development, demonstration, and development of clean energy technology;

(B) investigate issues associated with building capacity to deploy clean energy technology in developing countries, countries in transition, and other partner countries, including—

(i) energy-sector reform;

(ii) creation of open, transparent, and competitive markets for energy technologies,

(iii) availability of trained personnel to deploy and maintain the technology; and

(iv) demonstration and cost-buydown mechanisms to promote first adoption of the technology;

(C) examine relevant trade, tax, international, and other policy issues to asses what policies would help open markets and improve U.S. clean energy technology exports in support of the following areas—

(i) enhancing energy innovation and cooperation, including energy sector and market reform, capacity building, and financing measures;

(ii) improving energy end-use efficiency technologies, including buildings and facilities, vehicle, industrial, and co-generation technology initiatives; and

(iii) promoting energy supply technologies, including fossil, nuclear, and renewable technology initiatives;

(D) establish an advisory committee involving the private sector and other interested groups on the export and deployment of clean energy technology;

(E) monitor each agency's progress towards meeting goals in the 5-year strategic plan submitted to Congress pursuant to the Energy and Water Development Appropriations Act, 2001, and the Energy and Water Development Appropriations Act, 2002;

(F) make recommendations to heads of appropriate Federal agencies on ways to streamline Federal programs and policies to improve each agency's role in the international development, demonstration, and deployment of clean energy technology;

(G) make assessments and recommendations regarding the distinct technological, market, regional, and stakeholder challenges necessary to carry out the program; and

(H) recommend conditions and criteria that will help ensure that United States funds promote sound energy policies in participating countries while simultaneously opening their markets and exporting United States energy technology.

(c) FEDERAL SUPPORT FOR CLEAN ENERGY TECHNOLOGY TRANSFER.—Notwithstanding any other provision of law, each Federal agency or Government corporation carrying out an assistance program in support of the activities of United States persons in the environment or energy sector of a developing country, country in transition, or other partner country shall support, to the maximum extent practicable, the transfer of United States clear energy technology as part of that program.

(d) ANNUAL REPORT.—Not later than 90 days after the date of the enactment of this Act, and on the April 1st of each year thereafter, 2002, and each year thereafter, the Interagency Working Group shall submit a report to Congress on its activities during the preceding calendar year. The report shall include a description of the technology, policy, and market opportunities for international development, demonstration, and deployment of clean energy technology investigated by the Interagency Working Group in that year, as well as any policy recommendations to improve the expansion of clean energy markets and U.S. clean energy technology exports.

(e) REPORT ON USE OF FUNDS.—Not later than October 1, 2002, and each year thereafter, the Secretary of State, in consultation with other Federal agencies, shall submit a report to Congress indicating how United States funds appropriated for clean energy technology exports and other relevant Federal programs are being directed in a manner that promotes sound energy policy commitments in developing countries, countries in transition, and other partner countries, including efforts pursuant to multilateral environmental agreements.

(f) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the departments, agencies, and entities of the United States described in subsection (b) such sums as may be necessary to support the transfer of clean energy technology, consistent with the subsidy codes of the World Trade Organization, as part of assistance programs carried out by those departments, agencies, and entities in support of activities of United States persons in the energy sector of a developing country, country in transition, or other partner country.

SEC. 1322. INTERNATIONAL ENERGY TECHNOLOGY DEPLOYMENT PROGRAM.

Section 1608 of the Energy Policy Act of 1992 (42 U.S.C. 13387) is amended by striking subsection (1) and inserting the following:

''(l) INTERNATIONAL ENERGY TECHNOLOGY DEPLOYMENT PROGRAM.—

''(1) DEFINITIONS.—In this subsection:

''(A) INTERNATIONAL ENERGY DEPLOYMENT PROJECT.—The term 'international energy deployment project' means a project to construct an energy production facility outside the United States—

''(i) the output of which will be consumed outside the United States; and

''(ii) the deployment of which will result in a greenhouse gas reduction per unit of energy produced when compared to the technology that would otherwise be implemented—

''(I) 10 percentage points or more, in the case of a unit placed in service before January 1, 2010;

''(II) 20 percentage points or more, in the case of a unit placed in service after December 31, 2009, and before January 1, 2020; or

''(III) 30 percentage points or more, in the case of a unit placed in service after December 31, 2019, and before January 1, 2030.

''(B) QUALIFYING INTERNATIONAL ENERGY DEPLOYMENT PROJECT.—The term 'qualifying international energy deployment project' means an international energy deployment project that—

''(i) is submitted by a United States firm to the Secretary in accordance with procedures established by the Secretary by regulation;

''(ii) uses technology that has been successfully developed or deployed in the United States;

''(iii) meets the criteria of subsection (k);

''(iv) is approved by the Secretary, with notice of the approval being published in the Federal Register; and

''(v) complies with such terms and conditions as the Secretary establishes by regulation.

''(C) UNITED STATES.—For purposes of this paragraph, the term 'United States', when used in a geographical sense, means the 50 States, the District of Columbia, Puerto Rico, Guam, the Virgin Islands, American Samoa, and the Commonwealth of the Northern Mariana Islands.

''(2) PILOT PROGRAM FOR FINANCIAL ASSISTANCE.—

''(A) IN GENERAL.—Not later than 180 days after the date of enactment of this subsection, the Secretary shall, by regulation, provide for a pilot program for financial assistance for qualifying international energy deployment projects.

''(B) SELECTION CRITERIA.—After consultation with the Secretary of State, the Secretary of Commerce, and the United States Trade Representative, the Secretary shall select projects for participation in the program based solely on the criteria under this title and without regard to the country in which the project is located.

''(C) FINANCIAL ASSISTANCE.—

''(i) IN GENERAL.—A United States firm that undertakes a qualifying international energy deployment project that is selected to participate in the pilot program shall be eligible to receive a loan or a loan guarantee from the Secretary.

''(ii) RATE OF INTEREST.—The rate of interest of any loan made under clause (i) shall be equal to the rate for Treasury obligations then issued for periods of comparable maturities.

''(iii) AMOUNT.—The amount of a loan or loan guarantee under clause (i) shall not exceed 50 percent of the total cost of the qualified international energy deployment project.

''(iv) DEVELOPED COUNTRIES.—Loans or loan guarantees made for projects to be located in a developed country, as listed in Annex I of the United Nations Framework Convention on Climate Change, shall require at least a 50 percent contribution towards the total cost of the loan or loan guarantee by the host country.

''(v) DEVELOPING COUNTRIES.—Loans or loan guarantees made for projects to be located in a developing country (those countries not listed in Annex I of the United Nations Framework Convention on Climate Change) shall require at least a 50 percent contribution towards the total cost of the loan or loan guarantee by the host country.

''(vi) CAPACITY BUILDING RESEARCH.—Proposals made for projects to be located in a developing country may include a research component intended to build technological capacity within the host country. Such research must be related to the technologies being deployed and must involve both an institution in the host country and an industry, university or national laboratory participant from the United States. The host institution shall contribute at least 50 percent of funds provided for the capacity building research.

''(D) COORDINATION WITH OTHER PROGRAMS.—A qualifying international energy deployment project funded under this section shall not be eligible as a qualifying clean coal technology under section 415 of the Clean Air Act (42 U.S.C. 7651n).

''(E) REPORT.—Not later than 5 years after the date of enactment of this subsection, the Secretary shall submit to the President a report on the results of the pilot projects.

''(F) RECOMMENDATION.—Not later than 60 days after receiving the report under subparagraph (E), the President shall submit to Congress a recommendation, based on the results of the pilot projects as reported by the Secretary of Energy, concerning whether the financial assistance program under this section should be continued, expanded, reduced, or eliminated.

''(3) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary to carry out this section $100,000,000 for each of fiscal years 2003 through 2011, to remain available until expended.''.

Subtitle D—Climate Change Science and Information

PART I—AMENDMENTS TO THE GLOBAL CHANGE RESEARCH ACT OF 1990

SEC. 1331. AMENDMENT OF GLOBAL CHANGE RESEARCH ACT OF 1990.

Except as otherwise expressly provided, whenever in this subtitle an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Global Change Research Act of 1990 (15 U.S.C. 2921 et seq.).

SEC. 1332. CHANGES IN DEFINITIONS.

Paragraph (1) of section 2 (15 U.S.C. 2921) is amended by striking ''Earth and Environmental Sciences'' inserting ''Global Change Research''.

SEC. 1333. CHANGE IN COMMITTEE NAME AND STRUCTURE.

Section 102 (15 U.S.C. 2932) is amended—

(1) by striking ''**EARTH AND ENVIRONMENT SCIENCES**'' in section heading and inserting ''**GLOBAL CHANGE RESEARCH**'';

(2) by striking ''Earth and Environmental Sciences'' in subsection (a) and inserting ''Global Change Research'';

(3) by striking the last sentence of subsection (b) and inserting ''The representatives shall be the Deputy Secretary or the Deputy Secretary's designee (or, in the case of an agency other than a department, the deputy head of that agency or the deputy's designee).'';

(4) by striking ''Chairman of the Council,'' in subsection (c) and inserting ''Director of the Office of National Climate Change Policy with advice from the Chairman of the Council, and'';

(5) by redesignating subsection (d) and (e) as subsections (e) and (f), respectively; and

(6) by inserting after subsection (c) the following:

''(d) SUBCOMMITTEES AND WORKING GROUPS.—

''(1) IN GENERAL.—There shall be a Subcommittee on Global Change Research, which shall carry out such functions of the Committee as the Committee may assign to it.

''(2) MEMBERSHIP.—The membership of the Subcommittee shall consist of—

''(A) the membership of the Subcommittee on Global Change Research of the Committee on Environment and Natural Resources (the functions of which are transferred to the Subcommittee established by this subsection) established by the National Science and Technology Council; and

''(B) such additional members as the Chair of the Committee may, from time to time, appoint.

''(3) CHAIR.—A high ranking official of one of departments or agencies described in subsection (b), appointed by the Chair of the Committee with advice from the Chairman of the Council, shall chair the subcommittee. The Chairperson shall be knowledgeable and experienced with regard to the administration of the scientific research programs, and shall be a representative of an agency that contributes substantially, in terms of scientific research capability and budget, to the Program.''.

''(4) OTHER SUBCOMMITTEES AND WORKING GROUPS.—The Committee may establish such additional subcommittees and working groups as it sees fit.''.

SEC. 1334. CHANGE IN NATIONAL GLOBAL CHANGE RESEARCH PLAN.

Section 104 (15 U.S.C. 2934) is amended—

(1) by inserting ''short-term and long-term'' before ''goals'' in subsection (b)(1);

(2) by striking ''usable information on which to base policy decisions related to'' in subsection (b)(1) and inserting ''information relevant and readily usable by local, State, and Federal decision-makers, as well as other end-users, for the formulation of effective decisions and strategies for measuring, predicting, preventing, mitigation, and adapting to'';

(3) by adding at the end of subsection (c) the following:

''(6) Methods for integration information to provide predictive and other tools for planning and decision making by governments, communities and the private sector.'';

(4) by striking subsection (d)(3) and inserting the following:

''(3) combine and interpret data from various sources to produce information readily usable by local, State, and Federal policy makers, and other end-users, attempting to formulate effective decisions and strategies for preventing, mitigating, and adapting to the effects of global change.'';

(5) by striking ''and'' in subsection (d)(2);

(6) by striking ''change.'' in subsection (d)(3) and inserting ''change; and'';

(7) by adding at the end of subsection (d) the following:

''(4) establish a common assessment and modeling framework that may be used in both research and operations to predict and assess the vulnerability of natural and managed ecosystems and of human society in the context of other environmental and social changes.''; and

(8) by adding at the end the following:

''(g) STRATEGIC PLAN; REVISED IMPLEMENTATION PLAN.—The Chairman of the Council, through the Committee, shall develop a strategic plan for the United States Global Climate Change Research Program for the 10-year period beginning in 2002 and submit the plan to the Congress within 180 days after the date of enactment of the Global Climate Change Act of 2002. The Chairman, through the Committee, shall also submit revised implementation plans as required under subsection (a).''.

SEC. 1335. INTEGRATED PROGRAM OFFICE.

Section 105 (15 U.S.C. 2935) is amended—

(1) by redesignating subsections (a), (b), and (c) as subsections (b), (c), and (d), respectively; and

(2) inserting before subsection (b), as redesignated, the following:

''(a) INTEGRATED PROGRAM OFFICE.—

''(1) ESTABLISHMENT.—There is established in the Office of Science and Technology Policy an integrated program office for the global change research program.

''(2) ORGANIZATION.—The integrated program office established under paragraph (1) shall be headed by the associate director with responsibility for climate change science and technology and shall include, to the maximum extent feasible, a representative from each Federal agency participating in the global change research program.

''(3) FUNCTION.—The integrated program office shall—

''(A) manage, working in conjunction with the Committee, interagency coordination and program integration of global change research activities and budget requests;

''(B) ensure that the activities and programs of each Federal agency or department participating in the program address the goals and objectives identified in the strategic research plan and interagency implementation plans;

''(C) ensure program and budget recommendations of the Committee are communicated to the President and are integrated into the climate change action strategy;

''(D) review, solicit, and identify, and allocate funds for, partnership projects that address critical research objectives or operational goals of the program, including projects that would fill research gaps identified by the program, and for which project resources are shared among at least two agencies participating in the program; and

''(E) review and provide recommendations on, in conjunction with the Committee, all annual appropriations requests from Federal agencies or departments participating in the program.'';

(3) by striking ''Committee.'' in paragraph (2) of subsection (c), as redesignated, and inserting ''Committee and the Integrated Program Office.''; and

(4) by inserting ''and the Integrated Program Office'' after ''Committee'' in paragraph (1) of subsection (d), as redesignated.

SEC. 1336. RESEARCH GRANTS.

Section 105 (15 U.S.C. 2935) is amended—

(1) by redesignating subsection (c) as (d); and

(2) by inserting after subsection (b) the following:

''(c) RESEARCH GRANTS.—

''(1) COMMITTEE TO DEVELOP LIST OF PRIORITY RESEARCH AREAS.—The Committee shall develop a list of priority areas for research and development on climate change that are not being addressed by Federal agencies.

''(2) DIRECTOR OF OSTP TO TRANSMIT LIST TO NSF.—The Director of the Office of Science and Technology Policy shall transmit the list to the National Science Foundation.

''(3) FUNDING THROUGH NSF.—

''(A) BUDGET REQUEST.—The National Science Foundation shall include, as part of the annual request for appropriations for the Science and Technology Policy Institute, a request for appropriations to fund research in the priority areas on the list developed under paragraph (1).

''(B) AUTHORIZATION.—For fiscal year 2003 and each fiscal year thereafter, there are authorized to be appropriated to the National Science Foundation not less than $17,000,000, to be made available through the Science and Technology Policy Institute, for research in those priority areas.''.

SEC. 1337. EVALUATION OF INFORMATION.

Section 106 (15 U.S.C. 2936) is amended—

(1) by striking ''**Scientific**'' in the section heading;

(2) by striking ''and'' after the semicolon in paragraph (2); and

(3) by striking ''years.'' in paragraph (3) and inserting ''years; and''; and

(4) by adding at the end the following:

''(4) evaluates the information being developed under this title, considering in particular its usefulness to local, State, and national decisionmakers, as well as to other stakeholders such as the private sector, after providing a meaningful opportunity for the consideration of the views of such stakeholders on the effectiveness of the Program and the usefulness of the information.''.

PART II—NATIONAL CLIMATE SERVICES AND MONITORING

SEC. 1341. AMENDMENT OF NATIONAL CLIMATE PROGRAM ACT.

Except as otherwise expressly provided, whenever in this subtitle an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the National Climate Program Act (15 U.S.C. 2901 et seq.).

SEC. 1342. CHANGES IN FINDINGS.

Section 2 (15 U.S.C. 2901) is amended—

(1) by striking ''Weather and climate change affect'' in paragraph (1) and inserting ''Weather, climate change, and climate variability affect public safety, environmental security, human health,'';

(2) by striking ''climate'' in paragraph (2) and inserting ''climate, including seasonal and decadal fluctuations,'';

(3) by striking ''changes.'' in paragraph (5) and inserting ''changes and providing free exchange of meteorological data.''; and

(4) by adding at the end the following:

''(7) The present rate of advance in research and development and application of such advances is inadequate and new developments must be incorporated rapidly into services for the benefit of the public.

''(8) The United States lacks adequate infrastructure and research to meet national climate monitoring and prediction needs.''.

SEC. 1343. TOOLS FOR REGIONAL PLANNING.

Section 5(d) (15 U.S.C. 2904(d)) is amended—

(1) by redesignating paragraphs (4) through (9) as paragraphs (5) through (10), respectively;

(2) by inserting after paragraph (3) the following:

''(4) methods for improving modeling and predictive capabilities and developing assessment methods to guide national, regional, and local planning and decision-making on land use, water hazards, and related issues;'';

(3) by inserting ''sharing,'' after ''collection,'' in paragraph (5), as redesignated;

(4) by striking ''experimental'' each place it appears in paragraph (9), as redesignated;

(5) by striking ''preliminary'' in paragraph (10), as redesignated;

(6) by striking ''this Act,'' the first place it appears in paragraph (10), as redesignated, and inserting ''the Global Climate Change Act of 2002,''; and

(7) by striking ''this Act,'' the second place it appears in paragraph (10), as redesignated, and inserting ''that Act,''.

SEC. 1344. AUTHORIZATION OF APPROPRIATIONS.

Section 9 (15 U.S.C. 2908) is amended—

(1) by striking ''1979,'' and inserting ''2002,'';

(2) by striking ''1980,'' and inserting ''2003,'';

(3) by striking ''1981,'' and inserting ''2004,''; and

(4) by striking ''$25,500,000'' and inserting ''$75,500,000''.

SEC. 1345. NATIONAL CLIMATE SERVICE PLAN.

The Act (15 U.S.C. 2901 et seq.) is amended by inserting after section 5 the following:

SEC. 6. NATIONAL CLIMATE SERVICE PLAN.

''Within 1 year after the date of enactment of the Global Climate Change Act of 2002, the Secretary of Commerce shall submit to the Senate Committee on Commerce, Science, and Transportation and the House Science Committee a plan of action for a National Climate Service under the National Climate Program. The plan shall set forth recommendations and funding estimates for—

''(1) a national center for operational climate monitoring and predicting with the

functional capacity to monitor and adjust observing systems as necessary to reduce bias;

''(2) the design, deployment, and operation of an adequate national climate observing system that builds upon existing environmental monitoring systems and closes gaps in coverage by existing systems;

''(3) the establishment of a national coordinated modeling strategy, including a national climate modeling center to provide a dedicated capability for climate modeling and a regular schedule of projections on a long and short term time schedule and at a range of spatial scales;

''(4) improvements in modeling and assessment capabilities needed to integrate information to predict regional and local climate changes and impacts;

''(5) in coordination with the private sector, improving the capacity to assess the impacts of predicted and projected climate changes and variations;

''(6) a program for long term stewardship, quality control, development of relevant climate products, and efficient access to all relevant climate data, products, and critical model simulations; and

''(7) mechanisms to coordinate among Federal agencies, State, and local government entities and the academic community to ensure timely and full sharing and dissemination of climate information and services, both domestically and internationally.''.

SEC. 1346. INTERNATIONAL PACIFIC RESEARCH AND COOPERATION.

The Secretary of Commerce, in cooperation with the Administrator of the National Aeronautics and Space Administration, shall conduct international research in the Pacific region that will increase understanding of the nature and predictability of climate variability in the Asia-Pacific sector, including regional aspects of global environmental change. Such research activities shall be conducted in cooperation with other nations of the region. There are authorized to be appropriated for purposes of this section $1,500,000 to the National Oceanic and Atmospheric Administration, $1,500,000 to the National Aeronautics and Space Administration, and $500,000 for the Pacific ENSO Applications Center.

SEC. 1347. REPORTING ON TRENDS.

(a) ATMOSPHERIC MONITORING AND VERIFICATION PROGRAM.—The Secretary of Commerce, in coordination with relevant Federal agencies, shall, as part of the National Climate Service, establish an atmospheric monitoring and verification program utilizing aircraft, satellite, ground sensors, and modeling capabilities to monitor, measure, and verify atmospheric greenhouse gas levels, dates, and emissions. Where feasible, the program shall measure emissions from identified sources participating in the reporting system for verification purposes. The program shall use measurements and standards that are consistent with those utilized in the greenhouse gas measurement and reporting system established under subsection (a) and the registry established under section 1102.

(b) ANNUAL REPORTING.—The Secretary of Commerce shall issue an annual report that identifies greenhouse emissions and trends on a local, regional, and national level. The report shall also identify emissions or reductions attributable to individual or multiple sources covered by the greenhouse gas measurement and reporting system established under section 1102.

SEC. 1348. ARCTIC RESEARCH AND POLICY.

(a) ARCTIC RESEARCH COMMISSION.—Section 103(d) of the Arctic Research and Policy Act of 1984 (15 U.S.C. 4102(d)) is amended—

(1) by striking ''exceed 90 days'' in the second sentence of paragraph (1) and inserting ''exceed, in the case of the chairperson of the Commission, 120 days, and, in the case of any other member of the Commission, 90 days,'';

(2) by striking ''Chairman'' in paragraph (2) and inserting ''chairperson''.

(b) GRANTS.—Section 104 of the Arctic Research and Policy Act of 1984 (15 U.S.C. 4103) is amended by adding at the end the following:

''(c) FUNDING FOR ARCTIC RESEARCH.—

''(1) IN GENERAL.—With the prior approval of the commission, or under authority delegated by the Commission, and subject to such conditions as the Commission may specify, the Executive Director appointed under section 106(a) may—

''(A) make grants to persons to conduct research concerning the Arctic; and

''(B) make funds available to the National Science Foundation or to Federal agencies for the conduct of research concerning the Arctic.

''(2) EFFECT OF ACTION BY EXECUTIVE DIRECTOR.—An action taken by the executive director under paragraph (1) shall be final and binding on the Commission.

''(3) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Commission such sums as are necessary to carry out this section.''.

SEC. 1349. ABRUPT CLIMATE CHANGE RESEARCH.

(a) IN GENERAL.—The Secretary of Commerce, through the National Oceanic and Atmospheric Administration, shall carry out a program of scientific research on potential abrupt climate change designed—

(1) to develop a global array of terrestrial and oceanographic indicators of paleoclimate in order sufficiently to identify and describe past instances of abrupt climate change;

(2) to improve understanding of thresholds and nonlinearities in geophysical systems related to the mechanisms of abrupt climate change;

(3) to incorporate these mechanisms into advanced geophysical models of climate change; and

(4) to test the output of these models against an improved global array of records of past abrupt climate changes.

(b) ABRUPT CLIMATE CHANGE DEFINED.—In this section, the term ''abrupt climate change'' means a change in climate that occurs so rapidly or unexpectedly that human or natural systems may have difficulty adapting to it.

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary of Commerce $10,000,000 for each of the fiscal years 2003 through 2008, and such sums as may be necessary for fiscal years after fiscal year 2008, to carry out subsection (a).

PART III—OCEAN AND COASTAL OBSERVING SYSTEM

SEC. 1351. OCEAN AND COASTAL OBSERVING SYSTEM.

(a) ESTABLISHMENT.—The President, through the National Ocean Research Leadership Council, established by section 7902(a) of title 10, United States Code, shall establish and maintain an integrated ocean and coastal observing system that provides for long-term, continuous, and real-time observations of the oceans and coasts for the purposes of—

(1) understanding, assessing and responding to human-induced and natural processes of global change;

(2) improving weather forecasts and public warnings;

(3) strengthening national security and military preparedness;

(4) enhancing the safety and efficiency of marine operations;

(5) supporting efforts to restore the health of and manage coastal and marine ecosystems and living resources;

(6) monitoring and evaluating the effectiveness of ocean and coastal environmental policies;

(7) reducing and mitigating ocean and coastal pollution; and

(8) providing information that contributes to public awareness of the Sate and importance of the oceans.

(b) COUNCIL FUNCTIONS.—In addition to its responsibilities under section 7902(a) of such title, the Council shall be responsible for planning and coordinating the observing system and in carrying out this responsibility shall—

(1) develop and submit to the Congress, within 6 months after the date of enactment of this Act, a plan for implementing a national ocean and coastal observing system that—

(A) uses an end-to-end engineering and development approach to develop a system design and schedule for operational implementation;

(B) determines how current and planned observing activities can be integrated in a cost-effective manner;

(C) provides for regional and concept demonstration projects;

(D) describes the role and estimated budget of each Federal agency in implementing the plan;

(E) contributes, to the extent practicable, to the National Global Change Research Plan under section 104 of the Global Change Research Act of 1990 (15 U.S.C. 2934); and

(F) makes recommendations for coordination of ocean observing activities of the United States with those of other nations and international organizations;

(2) serve as the mechanism for coordinating Federal ocean observing requirements and activities;

(3) work with academic, State, industry and other actual and potential users of the observing system to make effective use of existing capabilities and incorporate new technologies;

(4) approve standards and protocols for the administration of the system, including—

(A) a common set of measurements to be collected and distributed routinely and by uniform methods;

(B) standards for quality control and assessment of data;

(C) design, testing and employment of forecast models for ocean conditions;

(D) data management, including data transfer protocols and archiving; and

(E) designation of coastal ocean observing regions; and

(5) in consultation with the Secretary of State, provide representation at international meetings on ocean observing programs and coordinate relevant Federal activities with those of other nations.

(c) SYSTEM ELEMENTS.—The integrated ocean and coastal observing system shall include the following elements:

(1) A nationally coordinated network of regional coastal ocean observing systems that measure and disseminate a common set of ocean observations and related products in a uniform manner and according to sound scientific practice, but that are adapted to local and regional needs.

(2) Ocean sensors for climate observations, including the Arctic Ocean and sub-polar seas.

(3) Coastal, relocatable, and cabled sea floor observatories.

(4) Broad bandwidth communications that are capable of transmitting high volumes of data from open ocean locations at low cost and in real time.

(5) Ocean data management and assimilation systems that ensure full use of new sources of data from space-borne and in situ sensors.

(6) Focused research programs.

(7) Technology development program to develop new observing technologies and techniques, including data management and dissemination.

(8) Public outreach and education.

SEC. 1352. AUTHORIZATION OF APPROPRIATIONS.

For development and implementation of an integrated ocean and coastal observation system under this title, including financial assistance to regional coastal ocean observing systems, there are authorized to be appropriated $235,000,000 in fiscal year 2003, $315,000,000 in fiscal year 2004, $390,000,000 in fiscal year 2005, and $445,000,000 in fiscal year 2006.

Subtitle E—Climate Change Technology

SEC. 1361. NIST GREENHOUSE GAS FUNCTIONS.

Section 2(c) of the National Institute of Standards and Technology Act (15 U.S.C. 272(c)) is amended—

(1) striking ''and'' after the semicolon in paragraph (21);

(2) by redesignating paragraph (22) as paragraph (23); and

(3) by inserting after paragraph (21) the following:

''(22) perform research to develop enhanced measurements, calibrations, standards, and technologies which will enable the reduced production in the United States of greenhouse gases associated with global warming, including carbon dioxide, methane, nitrous oxide, ozone, perfluorocarbons, hydrofluorocarbons, and sulfur hexafluoride; and''.

SEC. 1362. DEVELOPMENT OF NEW MEASUREMENT TECHNOLOGIES.

(a) IN GENERAL.—The Secretary of Commerce shall initiate a program to develop, with technical assistance from appropriate Federal agencies, innovative standards and measurement technologies (including technologies to measure carbon changes due to changes in land use cover) to calculate—

(1) greenhouse gas emissions and reductions from agriculture, forestry, and other land use practices;

(2) non-carbon dioxide greenhouse gas emissions from transportation;

(3) greenhouse gas emissions from facilities or sources using remote sensing technology; and

(4) any other greenhouse gas emission or reductions for which no accurate or reliable measurement technology exists.

SEC. 1363. ENHANCED ENVIRONMENTAL MEASUREMENTS AND STANDARDS

The National Institute of Standards and Technology Act (15 U.S.C. 271 et seq.) is amended—

(1) by redesignating sections 17 through 32 as sections 18 through 33, respectively; and

(2) by inserting after section 16 the following:

''SEC. 17. CLIMATE CHANGE STANDARDS AND PROCESSES.

''(a) IN GENERAL.—The Director shall establish within the Institute a program to perform and support research on global climate change standards and processes, with the goal of providing scientific and technical knowledge applicable to the reduction of greenhouse gases (as defined in section 4 of the Global Climate Change Act of 2002).

''(b) RESEARCH PROGRAM.—

''(1) IN GENERAL.—The Director is authorized to conduct, directly or through contracts or grants, a global climate change standards and processes research program.

''(2) RESEARCH PROJECTS.—The specific contents and priorities of the research program shall be determined in consultation with appropriate Federal agencies, including the Environmental Protection Agency, the National Oceanic and Atmospheric Administration, and the National Aeronautics and Space Administration. The program generally shall include basic and applied research—

''(A) to develop and provide the enhanced measurements, calibrations, data, models, and reference material standards which will enable the monitoring of greenhouse gases;

''(B) to assist in establishing of a baseline reference point for future trading in greenhouse gases and the measurement of progress in emissions reduction;

''(C) that will be exchanged internationally as scientific or technical information which has the stated purpose of developing mutually recognized measurements, standards, and procedures for reducing greenhouses gases; and

''(D) to assist in developing improved industrial processes designed to reduce or eliminate greenhouse gases.

''(c) NATIONAL MEASUREMENT LABORATORIES.—

''(1) IN GENERAL.—In carrying out this section, the Director shall utilize the collective skills of the National Measurement Laboratories of the National Institute of Standards and Technology to improve the accuracy of measurements that will permit better understanding and control of these industrial chemical processes and result in the reduction or elimination of greenhouse gases.

''(2) MATERIAL, PROCESS, AND BUILDING RESEARCH.—The National Measurement Laboratories shall conduct research under this subsection that includes—

''(A) developing material and manufacturing processes which are designed for energy efficiency and reduced greenhouse gas emissions into the environment;

''(B) developing environmentally-friendly, 'green' chemical processes to be used by industry; and

''(C) enhancing building performance with a focus in developing standards or tools which will help incorporate low or no-emission technologies into building designs.

''(3) STANDARDS AND TOOLS.—The National Measurement Laboratories shall develop standards and tools under this subsection that include software to assist designers in selecting alternate building materials, performance data on materials, artificial intelligence-aided design procedures for building sub-systems and 'smart buildings', and improve test methods and rating procedures for evaluating the energy performance of residential and commercial appliances and products.

''(d) NATIONAL VOLUNTARY LABORATORY ACCREDITATION PROGRAM.—The Director shall utilize the National Voluntary Laboratory Accreditation Program under this section to establish a program to include specific calibration or test standards and related methods and protocols assembled to satisfy the unique needs for accreditation in measuring the production of greenhouse gases. In carrying out this subsection the Director may cooperate with other departments and agencies of the Federal Government, State and local governments, and private organizations.''.

SEC. 1364. TECHNOLOGY DEVELOPMENT AND DIFFUSION.

The Director of the National Institute of Standards and Technology, through the Manufacturing Extension Partnership Program, may develop a program to support the implementation of new ''green'' manufacturing technologies and techniques by the more than 380,000 small manufacturers.

SEC. 1365. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Director to carry out functions pursuant to sections 1345, 1351, and 1361 through 1363, $10,000,000 for fiscal years 2002 through 2006.

Subtitle F—Climate Adaptation and Hazards Prevention

PART I—ASSESSMENT AND ADAPTATION

SEC. 1371. REGIONAL CLIMATE ASSESSMENT AND ADAPTATION PROGRAM.

(a) IN GENERAL.—The President shall establish within the Department of Commerce a National Climate Change Vulnerability and Adaptation Program for regional impacts related to increasing concentrations of greenhouse gases in the atmosphere and climate variability.

(b) COORDINATION.—In designing such program the Secretary shall consult with the Federal Emergency Management Agency, the environmental Protection Agency, the Army Corps of Engineers, the Department of Transportation, and other appropriate Federal, State, and local government entities.

(c) VULNERABILITY ASSESSMENTS.—The program shall—

(1) evaluate, based on predictions and other information developed under this Act and the National Climate Program Act (15 U.S.C. 2901 et seq.), regional vulnerability to phenomena associated with climate change and climate variability, including—

(A) increases in severe weather events;

(B) sea level rise and shifts in the hydrological cycle;

(C) natural hazards, including tsunami, drought, flood and fire; and

(D) alteration of ecological communities including at the ecosystem or watershed levels; and

(2) build upon predictions and other information developed in the National Assessments prepared under the Global Change Research Act of 1990 (15 U.S.C. 2921 et seq.).

(d) PREPAREDNESS RECOMMENDATIONS.—The program shall submit a report to Congress within 2 years after the date of enactment of this Act that identifies and recommends implementation and funding strategies for short- and long-term actions that may be taken at the national, regional, State, and local level—

(1) to reduce vulnerability of human life and property;

(2) to improve resilience to hazards;

(3) to minimize economic impacts; and

(4) to reduce threats to critical biological ecological processes.

(e) INFORMATION AND TECHNOLOGY.—The Secretary shall make available appropriate information and other technologies and products that will assist national, regional, State, and local efforts, as well as efforts by other end-users, to reduce loss of life and property, and coordinate dissemination of such technologies and products.

(f) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary of Commerce $4,500,000 to implement the requirements of this section.

SEC. 1372. COASTAL VULNERABILITY AND ADAPTATION.

(a) COASTAL VULNERABILITY.—Within 2 years after the date of enactment of this Act, the Secretary shall, in consultation with the appropriate Federal, State, and local governmental entities, conduct regional assessments of the vulnerability of coastal areas to hazards associated with climate change, climate variability, sea level rise, and fluctuation of Great Lakes water levels. The Secretary may also establish, as warranted, longer term regional assessment programs. The Secretary may also consult with the governments of Canada and Mexico as appropriate in developing such regional assessments. In preparing the regional assessments, the Secretary shall collect and compile current information on climate change, sea level rise, natural hazards, and coastal erosion and mapping, and specifically address impacts on Arctic regions and

the Central, Western, and South Pacific regions. The regional assessments shall include an evaluation of—

(1) social impacts associated with threats to and potential losses of housing, communities, and infrastructure;

(2) physical impacts such as coastal erosion, flooding and loss of estuarine habitat, saltwater intrusion of aquifers and saltwater encroachment, and species migration; and

(3) economic impact on local, State, and regional economics, including the impact on abundance or distribution of economically important living marine resources.

(b) COASTAL ADAPTATION PLAN.—The Secretary shall, within 3 years after the date of enactment of this Act, submit to the Congress a national coastal adaptation plan, composed of individual regional adaption plans that recommend targets and strategies to address coastal impacts. associated with climate change, sea level rise, or climate variability. The plan shall be developed with the participation of other Federal, State, and local government agencies that will be critical in the implementation of the plan at the State and local levels. The regional plans that will make up the national coastal adaptation plan shall be based on the information contained in the regional assessments and shall identify special needs associated with Arctic areas and the Central, Western, and South Pacific regions. The Plan shall recommend both short- and long-term adaptation strategies and shall include recommendations regarding—

(1) Federal flood insurance program modifications;

(2) areas that have been identified as high risk through mapping and assessment;

(3) mitigation incentives such as rolling easements, strategic retreat, State or Federal acquisition in fee simple or other interest in land, construction standards, and zoning;

(4) land and property owner education;

(5) economic planning for small communities dependent upon affected coastal resources, including fisheries; and

(6) funding requirements and mechanisms.

(c) TECHNICAL PLANNING ASSISTANCE.—The Secretary, through the National Ocean Service, shall establish a coordinated program to provide technical planning assistance and products to coastal States and local governments as they develop and implement adaptation or mitigation strategies and plans. Products, information, tools and technical expertise generated from the development of the regional assessments and the regional adaptation plans will be made available to coastal States for the purposes of developing their own State and local plans.

(d) COASTAL ADAPTATION GRANTS.—The Secretary shall provide grants of financial assistance to coastal States with federally approved coastal zone management programs to develop and begin implementing coastal adaptation programs if the State provides a Federal-to-State match of 4 to 1 in the first fiscal year, 2.3 to 1 in the second fiscal year, 2 to 1 in the third fiscal year, and 1 to 1 thereafter. Distribution of these funds to coastal States shall be based upon the formula established under section 306(c) of the Coastal Zone Management Act of 1972 (16 U.S.C. 1455(c)), adjusted in consultation with the States as necessary to provide assistance to particularly vulnerable coastlines.

(e) COASTAL RESPONSE PILOT PROGRAM.—

(1) IN GENERAL.—The Secretary shall establish a 4-year pilot program to provide financial assistance to coastal communities most adversely affected by the impact of climate change or climate variability that are located in States with federally approved coastal zone management programs.

(2) ELIGIBLE PROJECTS.—A project is eligible for financial assistance under the pilot program if it—

(A) will restore or strengthen coastal resources, facilities, or infrastructure that have been damaged by such an impact, as determined by the Secretary;

(B) meets the requirements of the Coastal Zone Management Act (16 U.S.C. 1451 et seq.) and is consistent with the coastal zone management plan of the State in which it is located; and

(C) will not cost more than $100,000.

(3) FUNDING SHARE.—The Federal funding share of any project under this subsection may not exceed 75 percent of the total cost of the project. In the administration of this paragraph—

(A) the Secretary may take into account in-kind contributions and other non-cash support or any project to determine the Federal funding share for that project; and

(B) the Secretary may waive the requirements of this paragraph for a project in a community if—

(i) the Secretary determines that the project is important; and

(ii) the economy and available resources of the community in which the project is to be conducted are insufficient to meet the non-Federal share of the project's costs.

(f) DEFINITIONS.—Any term used in this section that is defined in section 304 of the Coastal Zone Management Act of 1972 (16 U.S.C. 1453) has the meaning given it by that section.

(g) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $3,000,000 annually for regional assessments under subsection (a), and $3,000,000 annually for coastal adaptation grants under subsection (d).

SEC. 1373. ARCTIC RESEARCH CENTER.

(a) ESTABLISHMENT.—The Secretary of Commerce, in consultation with the Secretaries of Energy and the Interior, the Director of the National Science Foundation, and the Administrator of the Environmental Protection Agency, shall establish a joint research facility, to be known as the Barrow Arctic Research Center, to support climate change and other scientific research activities in the Arctic.

(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretaries of Commerce, Energy, and the Interior, the Director of the National Science Foundation, and the Administrator of the Environmental Protection Agency, $35,000,000 for the planning, design, construction, and support of the Barrow Arctic Research Center.

PART II—FORECASTING AND PLANNING PILOT PROGRAMS

SEC. 1381. REMOTE SENSING PILOT PROJECTS.

(a) IN GENERAL.—The Administrator of the National Aeronautics and Space Administration may establish, through the National Oceanic and Atmospheric Administration's Coastal Services Center, a program of grants for competitively awarded pilot projects to explore the integrated use of sources of remote sensing and other geospatial information to address State, local, regional, and tribal agency needs to forecast a plan for adaptation to coastal zone and land use changes that may result as a consequence of global climate change or climate variability.

(B) PREFERRED PROJECTS.—In awarding grants under this section, the Center shall give preference to projects that—

(1) focus on areas that are most sensitive to the consequences of global climate change or climate variability;

(2) make use of existing public or commercial data sets;

(3) integrate multiple sources of geospatial information, such as geographic information system data, satellite-provided positioning data, and remotely sensed data, in innovative ways;

(4) offer diverse, innovative approaches that may serve as models for establishing a future coordinated framework for planning strategies for adaptation to coastal zone and land use changes related to global climate change or climate variability;

(5) include funds or in-kind contributions from non-Federal sources;

(6) involve the participation of commercial entities that process raw or lightly processed data, often merging that data with other geospatial information, to create data products that have significant value added to the original data; and

(7) taken together demonstrate as diverse a set of public sector applications as possible.

(c) OPPORTUNITIES.—In carrying out this section, the Center shall seek opportunities to assist—

(1) in the development of commercial applications potentially available from the remote sensing industry; and

(2) State, local, regional, and tribal agencies in applying remote sensing and other geospatial information technologies for management and adaption to coastal and land use consequences of global climate change or climate variability.

(d) DURATION.—Assistance for a pilot project under subsection (a) shall be provided for a period of not more than 3 years.

(e) RESPONSIBILITIES OF GRANTEES.—Within 180 days after completion of a grant project, each recipient of a grant under subsection (a) shall transmit a report to the Center on the results of the pilot project and conduct at least one workshop for potential users to disseminate the lessons learned from the pilot project as widely as feasible.

(f) REGULATIONS.—The Center shall issue regulations establishing application, selection, and implementation procedures for pilot projects, and guidelines for reports and workshops require by this section.

SEC. 1382. DATABASE ESTABLISHMENT.

The Center shall establish and maintain an electronic, Internet-accessible database of the results of each pilot project completed under section 1381.

SEC. 1383. DEFINITIONS.

In this subtitle:

(1) CENTER.—The term ''Center'' means the Coastal Services Center of the National Oceanic and Atmospheric Administration.

(2) GEOSPATIAL INFORMATION.—The term ''geospatial information'' means knowledge of the nature and distribution of physical and cultural features on the landscape based on analysis of data from airborne or spaceborne platforms or other types and sources of data.

(3) INSTITUTION OF HIGHER EDUCATION.—The term ''institution of higher education'' has the meaning given that term in section 101(a) of the Higher Education Act of 1965 (20 U.S.C. 1001(a)).

SEC. 1384. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Administrator to carry out the provisions of this subtitle—

(1) $17,500,000 for fiscal year 2003;

(2) $20,000,000 for fiscal year 2004;

(3) $22,500,000 for fiscal year 2005; and

(4) $25,000,000 for fiscal year 2006.

SEC. 1385. AIR QUALITY RESEARCH, FORECASTS AND WARNINGS.

(a) REGIONAL STUDIES.—The Secretary of Commerce, through the Administration of the National Oceanographic and Atmospheric Administration, shall, in order of priority as listed in section (c), conduct regional studies of the air quality within specific regions of the United States. Such studies should assess the effect of in-situ emissions of air pollutants and their precursors, transport of such emissions and precursors from outside the region, and production of

air pollutants with region via chemical reactions.

(b) FORECASTS AND WARNINGS.—The Secretary of Commerce, through the Administrator of the National Oceanographic and Atmospheric Administration, shall, in order of priority as listed in section (c), establish a program to provide operational air quality forecasts and warnings for specific regions of the United States.

(c) DEFINITION.—For the purposes of this section, the term ''specific regions of the United States'' means the following geographical areas:

(1) the Northeast, composed of Main, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Maryland, Delaware, the District of Columbia, and West Virginia;

(2) the Southeast, composed of Virginia, North Carolina, South Carolina, Georgia, Alabama, and Florida;

(3) the Midwest, composed of Minnesota, Wisconsin, Iowa, Missouri, Illinois, Kentucky, Indiana, Ohio, and Michigan;

(4) the South, composed of Tennessee, Mississippi, Louisiana, Arkansas, Oklahoma, and Texas;

(5) the High Plains, composed of North Dakota, South Dakota, Nebraska, and Kansas;

(6) the Northwest, composed of Washington, Oregon, Idaho, Montana, and Wyoming;

(7) the Southwest, composed of California, Nevada, Utah, Colorado, Arizona, and New Mexico;

(8) Alaska; and

(9) Hawaii.

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary of Commerce $3,000,000 for each of fiscal years 2003 through 2006 for studies pursuant to subsection (b) of this section, and $5,000,000 for fiscal year 2003 and such sums as may be necessary for subsequent fiscal years for the forecast and warning program pursuant to subsection (c) of this section.

The text of submitted amendment No. 3274, as modified, which was to have been printed in yesterday's RECORD, is as follows:

(Purpose: To increase the transfer capability of electric energy transmission systems through participant-funded investment)

At the appropriate place, insert the following:

SEC. . TRANSMISSION EXPANSION.

Section 205 of the Federal Power Act is amended by inserting after subsection (h) the following:

''(i) RULEMAKING.—Within six months of Enactment of this Act, the Commission shall issue final rules governing the pricing of transmission services.

''(1) TRANSMISSION PRICING PRINCIPLES.—Rules for transmission pricing issued by the Commission under this subsection shall adhere to the following principles:

''(A) transmission pricing must provide accurate and proper price signals for the efficient and reliable use and expansion of the transmission system; and

''(B) new transmission facilities should be funded by those parties who benefit from such facilities.

''(2) FUNDING OF CERTAIN FACILITIES.—The rules established pursuant to this subsection shall, among other things, provide that, upon request of a regional transmission organization or other Commission-approved transmission organization, certain new transmission facilities that increase the transfer capability of the transmission system may be Participant Funded. In such rules, the Commission shall also provide guidance as to what types of facilities may be participant funded.

''(3) PARTICIPANT-FUNDING.—The term 'participant-funding' means an investment in the transmission system controlled by a RTO, made after the date that the RTO or other transmission organization is approved by the Commission, that—

''(A) increases the transfer capability of the transmission system; and

''(B) is funded by the entities that, in return for payment, receives the tradable transmission rights created by the investment.

''(4) TRADABLE TRANSMISSION RIGHT.—The term 'tradable transmission right' means the right of the holder of such right to avoid payment of, or have rebated, transmission congestion charges on the transmission system of a regional transmission organization, the right to use a specified capacity of such transmission system without payment of transmission congestion charges, or other rights as determined by the Commission.''.

The ACTING PRESIDENT pro tempore. The Senator from Nevada.

Mr. REID. Mr. President, as the Chair has announced, we have resumed consideration of the energy reform bill. Members know there are 18 hours remaining postcloture, after the cloture vote that took place yesterday. There will be rollcall votes in relation to amendments to the bill throughout the day. First-degree amendments to the Baucus language in the energy reform bill must be filed prior to 1 p.m. today.

Mr. President, the Senator from Washington was next in order. Her amendment is pending.

I ask, with the consent of the managers, that that amendment be set aside and that we proceed to the Nelson-Craig amendment dealing with hydro.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The Senator from Nebraska.

Mr. NELSON of Nebraska. Mr. President, I rise today in support of my amendment to title III dealing with hydroelectric license improvement. This is an issue of vital importance to the electricity consumers of Nebraska and I ask unanimous consent to call up amendment No. 3140.

The ACTING PRESIDENT pro tempore. The clerk will report the amendment.

Mr. REID. Mr. President, that requires unanimous consent, does it not?

The ACTING PRESIDENT pro tempore. It does require that we set aside the current amendment. Does the Senator request we temporarily set aside the current amendment?

Mr. NELSON of Nebraska. I request that we set aside the pending amendment.

Mr. REID. Mr. President, reserving right to object, I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. REID. Mr. President, I ask unanimous consent that the Senate now return to the consideration of the Cantwell amendment which is the matter that was pending when we started this morning.

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

The Senator from Washington.

AMENDMENT NO. 3234

Ms. CANTWELL. Mr. President, I rise today to speak about my electricity consumer protection amendment to improve what I believe is a flawed deregulation provision in the underlying energy bill.

It is not widely known that the electricity title of this bill includes a new provision to further deregulate our energy markets. Indeed, many of these provisions were included, I believe, without adequate consideration and review by this body.

For the first time this bill gives the Federal Energy Regulatory Commission the statutory authority to allow market-based rates, a key component of deregulation. It also lowers the standard by which mergers of utilities can take place, and it repeals a current law that has been the cornerstone of consumer protection.

Given the sweeping changes in this bill, I think it is important that we proceed cautiously on this path, and that we put safeguards in place, which my amendment does, to protect consumers as FERC is given this new responsibility.

After last year's energy crisis, we should be asking ourselves, how do we better protect consumers, not how do we loosen the rules for utility companies so that they can have better controls in the marketplace.

My amendment is written to protect consumers basically across the country from the same mishaps that happened in the western markets that have caused consumers in the West so much harm. After all we learned from the energy crisis and the collapse of Enron, it is plain that we need to move forward and set a clear set of rules to ensure that, in deregulated markets, consumers are protected. The fact is that consumers deserve efficient electricity markets with adequate protections and efficient oversight.

As the bill now stands, we are giving the Enrons of the world more power to manipulate markets. In fact, without this consumer protection amendment this bill sends some of those people the opportunity, I believe, to actually end up overcharging consumers.

These are commonsense ideas and that is why this amendment has gained support from a wide range of consumer, industry, local government and environmental groups. They are united behind the idea that consumers should be protected as this bill moves towards deregulation.

I am pleased to be joined by Senators DAYTON, WELLSTONE, FEINGOLD, BOXER,

WYDEN, MURRAY, and STABENOW in this effort.

Groups ranging from AARP to the American Public Power Association, to the Consumers Union and the Sierra Club, to the U.S. Conference of Mayors stand behind the consumer protection measures in this amendment.

I ask unanimous consent that a full list of the organizations which support this legislation be printed in the RECORD.

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

SUPPORT THE CONSUMER PROTECTION PACKAGE

Amendment No. 3097, offered by Senators Dayton, Wellstone, Feingold, Cantwell, Boxer and Wyden, would add crucial consumer protections to the electricity title of the Senate energy bill, incorporating lessons learned from the Western electricity crisis and Enron's collapse.

Air Conditioning Contractors of America.
American Association of Retired Persons.
American Public Power Association.
Consumer Federation of America.
Consumers for Fair Competition.
Consumers Union.
Electricity Consumers Resource Council.
National Association of State Utility Consumer Advocates.
National Environmental Trust.
National League of Cities.
National Rural Electric Cooperatives Association.
Natural Resources Defense Council.
Physicians for Social Responsibility.
Public Citizen.
Sierra Club.
Transmission Access Policy Study Group.
U.S. Conference of Mayors.
Union of Concerned Scientists.
U.S. Public Interest Research Group.

Vote ''yes'' on the Consumer Protection Package.

Ms. CANTWELL. Mr. President, their voice is loud and clear. After last year's energy crisis, it is unacceptable to launch a new round of deregulation without first putting in place adequate consumer protections.

I would like to read from a letter signed by the Consumers Union, Sierra Club, NRDC, Consumer Federation of America, and others. It reads:

This amendment would add important and much-needed protections to legislation that actually repeals already weak consumer protections in current law. S. 517 repeals most of the Public Utility Holding Company Act (PUHCA), including provisions that have been in place for over six decades, and does almost nothing to ensure that consumer protections will be maintained. Now, with the exposure of Enron's questionable trading deals, we need these protections more than ever to prevent energy companies from manipulating prices and supply. We need to strengthen consumer protections, not weaken them.

Consumers for Fair Competition wrote:

In the wake of the West Coast electricity crisis and Enron collapse, Congress should only pass electricity legislation if it takes needed steps to protect consumers and prevent a repetition of these crises.

I ask unanimous consent to have printed in the RECORD letters of support that I have received from these organizations.

There being no objection, the letters were ordered to be printed in the RECORD, as follows:

APRIL 15, 2002.

DEFEND ELECTRICITY CONSUMERS' RIGHTS—SUPPORT THE CONSUMER PROTECTION PACKAGE: S.A. 3097 TO S. 517

DEAR SENATOR: We are writing to urge you to support S.A. 3097, the consumer protection amendment to the Senate energy bill (S. 517), offered by Senators Dayton, Wellstone, Feingold, Cantwell, Boxer, and Wyden. This amendment would add important and much-needed protections to legislation that actually repeals already weak consumer protections in current law. S. 517 repeals most of the Public Utility Holding Company Act (PUHCA), including provisions that have been in place for over six decades, and does almost nothing to ensure that consumer protections will be maintained. Now, with the exposure of Enron's questionable trading deals, we need these protections more than ever to prevent energy companies from manipulating prices and supply. We need to strengthen consumer protections, not weaken them.

This consumer protection package would:

Ensure that mergers in the energy sector ''advance the public interest,'' based on objective criteria that would be evaluated by the Federal Energy Regulatory Commission (FERC). In repealing the higher merger standards of PUHCA, S. 517 would simply require a determination for a merger approval 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 is necessary to adequately protect consumers from abuse. FERC must hold the public interest paramount in evaluating any potential energy company mergers. The amendment would: establish criteria for FERC to consider in order to determine that a merger would ''advance 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.

Direct FERC to precisely define a competitive market and establish rules for when market-based rates will be permitted. In addition, it 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 they did in the western electricity market in 2000–2001.

Require that transactions between utilities and their affiliates be transparent, and it would shield consumers from the costs and risks of these transactions. It provides for FERC review of utility diversification efforts so that consumers are not victims of abusive affiliate transactions.

Require that state and federal regulators have enhanced access to books and records. It would require FERC, in consultation with state commissions, to conduct triennial audits of the books and records of holding companies. Regulators could initiate proceedings based upon their reviews and violations could be corrected earlier, minimizing the damage done to consumers. Since holding companies would be responsible for paying the cost of the audits, regulators would have adequate resources to do their job. Enhanced access to books and records is critical to avoid further Enron-like collapses.

Help ensure fair and functional markets, increasing the likelihood that energy companies will invest in new, innovative, and clean technologies such as solar and wind power.

Consumers have been grossly and unacceptably short-changed in the Senate energy bill. S.A. 3097 will begin to rectify the problems this bill creates for consumers. Federal energy legislation should increase, not decrease, consumers' economic and energy security. Please adopt this basic consumer protection package to address these serious consumer concerns.

Sincerely,

Adam J. Goldberg, Policy Analyst, Consumers Union.

Mark N. Cooper, Director of Research, Consumer Federation of America.

Alyssondra Campaigne, Legislative Director, Natural Resources Defense Council.

Kevin S. Curtis, Vice President, Government Affairs, National Environmental Trust.

Susan West Marmagas, Director, Environment and Health Programs, Physicians for Social Responsibility.

Debbie Boger, Senior Washington Representative, Sierra Club.

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

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

Wenonah Hauter, Director, Public Citizen's Critical Mass Energy and Environment Program.

NATIONAL ALLIANCE
FOR FAIR COMPETITION,
Washington, DC, April 12, 2002.

DEAR SENATOR: The National Alliance for Fair Competition (NAFC), a coalition of national trade associations representing over 25,000 individual firms, mostly family owned and operated small businesses, is deeply concerned about the present direction of energy legislation, S. 517, in light of recent West Coast power problems and the collapse of Enron. As it now stands, the electricity portion (Title II) of this bill fails to adequately address issues of market power and abusive affiliate transactions.

NAFC is also concerned about lack of opportunity to thoroughly explore the implications and consequences of Title II through the full committee process. Had the committee process not been circumvented, there would have been ample opportunity to craft language to protect consumers and preserve true competition. Regrettably, Title II of S. 517 increases the potential for abuses in these areas—by, among other things, repealing the Public Utility Holding Company Act (PUHCA)—without providing needed offsetting protections.

Senators Cantwell, Wellstone, Dayton, Feingold and Boxer will offer a package of provisions to protect electricity consumers and ensure fair and effective oversight of electricity markets. The package will:

Require that proposed utility mergers promote the public interest in order to be approved;

Establish clear rules—and enforcement—for when market rates can be charged to prevent a repeat of soaring electricity rates when markets are not truly competitive;

Protect consumers from assuming the cost and risks of utility diversifications into non-utility businesses;

Prevent utilities from subsidizing affiliate ventures and competing unfairly with independent businesses;

Provide effective review of utility books and records.

Amendment #3097, the Dayton-Wellstone-Feingold amendment, and the second degree

offered by Sen. Cantwell and others would add crucial protections to the electricity title of the Senate energy bill, incorporating lessons learned from the Western electricity crisis and Enron's collapse.

We urge you to support these amendments when they are offered.

Respectfully,

TONY PONTICELLI,
Executive Director.

WASHINGTON PUBLIC UTILITY
DISTRICTS ASSOCIATION,
Seattle, WA, April 15, 2002.

Hon. MARIA CANTWELL,
U.S. Senate,
Washington, DC.

DEAR SENATOR CANTWELL: On behalf of the Washington Public Utility Districts Association (WPUDA), I would like to express our strong support for the amendment you are cosponsoring, the Consumer Protection Package (#3097). This amendment adds crucial consumer protections to the electricity title of the Senate energy bill, incorporating lessons learned from the Western electricity crisis and Enron's collapse.

As you correctly stated on the Senate floor on April 10th, the electricity title in S. 517 is of primary significance to the citizens of Washington, and the Northwest region—we have already suffered huge rate increases and cannot bear the consequences of another ''failed experiment.'' Because the underlying bill repeals the Public Utility Holding Company Act (PUHCA) without including adequate consumer protections, your package of amendments is essential to ensure that the consumer is not overlooked and adversely affected. For example, your amendment requires clear, upfront rules on market-based rates. In doing so, it reduces the instances in which corrective actions will be needed by the Federal Energy Regulatory Commission (FERC).

Once again, WPUDA thanks you for your leadership and supports this critical amendment that seeks to protect the public interest.

Sincerely,

STEVE JOHNSON,
Executive Director.

Ms. CANTWELL. Mr. President, my constituents and the constituents of my colleagues from the West, particularly California, Oregon, and Idaho, have seen first hand the devastation caused by the Western energy crisis: wholesales rate spikes of more than 1,000 percent; aluminum workers put of out of work because electricity costs were too high for their companies to operate; and an economic slump in California, Oregon, and Washington directly related to last year's high energy prices.

In my home state of Washington we are still paying the price for the lack of consumer protections during the energy crisis. Ratepayers in my home of Edmonds, WA are paying almost 60 percent more than they did before the crisis, with no relief in sight.

Nowhere do consumers know the importance of proper safeguards more acutely than in the West. In the wake of what happened there, why would we even consider reducing consumer protections and lowering legal standards? Why would we promote further deregulation and at the same time abandon consumer protections?

Ask anyone from California whether they want more deregulation without consumer protection. They will all tell you the same answer: After Enron and the western energy crisis we should strengthen consumer protection laws, not weaken them. They know that without adequate consumer protections, electricity markets may not work to protect consumers.

One need look no further than a February 2001 poll in which California residents were asked if they supported the legislature's decision to deregulate the electricity market. By nearly 40 percent, Californians opposed the deregulation plan.

There are many other public opinion polls across this country that show consumers are very concerned about any move toward more deregulation without sufficient consumer protection. A July 2001 survey by the Mellman Group revealed that North Carolinians opposed deregulation by a 14 percent margin and by a 40 percent margin thought that deregulation would cause rate increases. In March of this year, a different Mellman survey showed that 60 percent of Montanans thought that deregulation had caused higher electricity rates.

The public voice is clear.

I think it is important to review how we got to this point, beginning with the first major piece of legislation to protect ratepayers, passed during the first term of Franklin Delano Roosevelt's Presidency.

In the 1920s our system of utility regulation began to fail consumers. Complex corporate structures made it impossible to offer adequate consumers protections. By 1932, 45 percent of all electricity was controlled by three groups. Because of their market power and complex and misleading corporate structure, the utilities owned by these holding companies were able to charge excessive rates, which were passed directly to consumers.

In response to this situation, this body passed into law the Public Utilities Act of 1935 to help bring the system under control and offer consumers adequate safeguards. The two key titles of the Public Utilities Act—PUHCA and the Federal Power Act—put in place important consumer protection regulations. PUHCA required utilities to either largely operate within a single state, or be subject to strict federal regulation by the SEC. The Federal Power Act created a consumer protection framework for the transmission of electricity in interstate commerce and wholesale rates for electricity.

Today, we are faced with an energy bill that repeals key consumer protections from these pieces of legislation.

Albeit, I know the chairman of our committee wants those laws to be more effective, and to be more effective under FERC, while I agree there can be authorities new at FERC, I want to make sure that, while we change from the SEC to FERC, we don't repeal the legal standards or the framework for consumer protection.

Just think about the energy crises of the past. In the 1920s, when corporate structures got out of control and retail consumers suffered the consequences, we responded with the Public Utilities Act. During the 1970s energy crisis, we responded with the Public Utility Regulatory Policies Act.

But today we are faced with the prospect of responding to the Western energy crisis of 2001 with more of the same that helped cause the crisis in the first place. I believe the Western energy crisis was really precipitated by two factors: obviously, California adopted a restructuring plan without adequate thought and deliberation, and the fact that FERC, the Federal Energy Regulatory Commission, signed off on it. That is right, they signed off on the California plan. Then FERC allowed generators in the West to charge market-based rates without first ensuring that those markets were sufficient in their competition and that they were adequately monitoring those markets over time.

The definition of insanity is watching something fail and then doing it again. And that is what we are headed towards doing. It would be insane for us to enact further flawed deregulation without at least addressing the importance of providing consumer protections.

Consumers know that they are ultimately the ones who will get stuck holding the check. And they are right. It is wrong policy to deregulate without protecting consumers. And ultimately, it hurts them where it hurts most: in their pocketbooks.

This amendment addresses the need for consumer protection from deregulation by creating safeguards from potential market failures and abuses.

The amendment would prevent a repeat of soaring electricity rates in deregulated markets by directing FERC to establish rules and enforcement procedures for market monitoring to protect electricity consumers.

The market rate provisions of this amendment are actually quite simple in concept.

As I said earlier, for the first time in this legislation, the underlying authority is given to FERC instead of to the SEC. While giving this new power to FERC, we need to make sure consumers are protected by making sure they do not lower the standard.

I believe it is critical that within this legislation we not lower the legal standard by which these mergers were held in the past. FERC can have new responsibility, but we must make sure we are not lowering the legal standard by which we allow these companies to merge. FERC needs statutory guidance on just what factors it should consider before it allows market-based rates to be charged. That is, before FERC opens up the energy market, it should have to ensure that those markets are going to operate efficiently and not gouge consumers.

The bill currently does not adequately offer consumer protection, especially in view of the House of Representatives' electricity bill, which I think goes too far in giving a wish list to the big energy companies. The electricity provisions of this bill right now actually lower the overall merger standard.

This amendment would maintain current law with regard to that merger standard. It is a very important point—that current law be the standard for FERC.

In fact, there have been something like 30 major utility mergers and acquisitions over the past few years alone. That is a testament to the need for laws to protect consumers from consolidation which is happening in the utility sector.

It is also a powerful reminder that current law is in no way too prescriptive. Maintaining the legal merger standard currently on the books—I think it is important to do this—is a critical part of the amendment.

The electricity provisions in this bill also fall short, in my view, on the issue of insulating consumers from the economically devastating effects of the energy markets which have gone horribly awry.

The primary difference between the Senate energy bill as it is currently written and what we are trying to accomplish with this amendment is simple. It is the difference between preventing dysfunctional markets from happening in the first place, and post hoc investigations that are unlikely to provide better relief for consumers harmed by skyrocketing energy prices.

What I mean by that is, without these specific requirements in place, and new mergers and market-based rates happening, and without the oversight, it is very hard, once consumers are gouged, to then come back and ask for records and information that show what kind of protections should have been on the books.

I do not think many of my colleagues realize that, for the very first time, this legislation, the underlying bill, gives FERC explicit statutory authority to allow companies to charge market-based rates. So nowhere had FERC ever been given that statutory authority. They had always been cost-based rates. But this legislation will, for the first time, give FERC statutory authority to allow companies to charge market-based rates that they decided administratively to start allowing in the mid-1980s.

While the Energy Policy Act of 1992 affirmed the direction FERC was moving in regard to opening of the Nation's transmission system, it did not contain this explicit authority for FERC to grant market-based rates.

I believe this is a very important point because if we are going to move forward in saying that market-based rates should be there, then we must make sure those consumer protections are in place as well.

In sifting through the ashes of the California experiment, it is now obvious that FERC did not pause to consider the constraints—whether real or manipulated—on natural gas transportation into the State, which, in turn, drove up the price of electrical generation. FERC approved a system without assessing the market power of what became known as the big five energy companies in the California crisis, including Enron, and the impact they had.

It is also clear that FERC approved the California proposal without assurances that the State's independent system operator could effectively monitor market conditions. I have heard from numerous utilities involved in the California market that the ISO began declaring emergencies purely subjectively because its mechanisms for assessing where physical megawatts actually existed—and whether these shortages were real or imagined—were so incredibly flawed.

In addition, it has been repeatedly alleged that the ISO declared these emergencies for political reasons because utilities, as such in those States, were obligated to sell into the California market, first under a Department of Energy order, and later under an order from FERC itself, when emergencies were declared. FERC did not have the market monitoring practices in place that would have been the protections the consumers needed.

So why give them more authority now to do market-based rates without making sure the legal standards are in place and making sure that consumer protections are in place?

In summary, I want it to be clear to my colleagues that this amendment today should do its job to prevent a flawed deregulation bill and to help protect consumers.

This legislation specifically does several things: It helps maintain the competitive markets, it effectively monitors markets, it prevents the abuse of market power and manipulation, and it ensures the maintenance of just and reasonable rates.

The amendment would also require utility mergers to serve the public interest and for utility books to be fully open. It would protect consumers from absorbing the costs of utility diversifications and prevent them from being basically subject to the various tactics in which consumers are held to higher costs when the markets are consolidated or market-based rates are charged and things can actually go awry.

This amendment does not take away any of FERC's authority to allow market-based rates. It does not stop the move toward deregulation. In fact, it is consistent with the concept of deregulation. It simply says we need a roadmap for consumers. We need protections for this new market-oriented approach.

I am reminded by something that FERC Chairman Pat Wood said on March 11:

> I'm probably the world's biggest believer in markets.

But Mr. Wood also said:

> But I'm also the world's biggest believer that people will take advantage of it if they don't have a cop walking down the street.

This amendment provides the ''cop walking down the street'' for our electricity markets in protecting consumers. With all that we have read and seen of what happened during the Western energy crisis and the role that Enron and other power companies played in it, how can we even consider further deregulation without putting in place real consumer protections? It is practically malpractice for us to think about these new deregulations without thinking about how to protect consumers.

That is why we are offering this amendment today. We need to say to the people of this country, we are going to protect you from the crisis that has happened in California and in Washington and in Oregon. And we are going to make sure the markets operate in a way in which consumers are protected.

This is a critical amendment and should be adopted as a part of this bill. We need to say to the consumers that we are thinking about their needs, their protections, and the high price of electricity throughout the country.

I yield back the floor.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. DAYTON. Mr. President, I rise to say that I welcome the amendment by Senator CANTWELL and others that greatly strengthens the amendment that I previously brought to the floor. I compliment the Senator from Washington, who has done an extraordinary amount of work on this measure, for her leadership in bringing together Senators, consumer groups, and others who would be affected by this legislation.

I think her work has been extraordinary. I know from my own observation that her work behind the scenes over the last days and weeks has been phenomenal. She has put countless hours into bringing this coalition together, bringing these amendments together, and bringing them to the floor for our consideration today.

Again, I want the RECORD to show that the Senator from Washington has been extraordinary in her efforts to bring this to the floor.

I yield the floor.

The PRESIDING OFFICER (Mrs. CLINTON). The Senator from New Mexico.

Mr. BINGAMAN. Madam President, I rise to speak against the amendment that my colleague from Washington and the Senator from Minnesota have offered. This is an issue on which I think we need to refresh people's memory because it has been a few weeks since we had votes on this portion of the energy bill.

But let me recall for Senators and their staffs exactly with what we are dealing. This is the electricity title of

the energy bill. We have worked hard on that title, those of us who have been involved on the issue for a long time. Senator THOMAS, in particular, and myself have worked hard to come up with language which we believe ensures that consumers are protected and which ensures that mergers and acquisitions are properly reviewed before they are permitted to go forward or are turned down if they do not meet strict criteria. We have put together language we believe is very favorable to consumers.

Part of what we are proposing is that the Public Utility Holding Company Act be repealed. That is an issue that continues to be the subject of controversy. I understand that. And I understand the amendment, of course, that we are now presented with would try to eliminate the repeal of the Public Utility Holding Company Act and keep that current law.

This is a legitimate issue. In the Energy Committee, in the most recent hearing we had on energy-related issues, we had a hearing on this issue. I am trying to get the whole list of witnesses so that I can inform people about that. But we had one of the Commissioners from the Securities and Exchange Commission, the SEC, which currently has authority and responsibility to enforce the Public Utility Holding Company Act. The testimony of that Commissioner was very clear. Their testimony was that they do not support keeping that authority at the SEC. They do not support keeping the Public Utility Holding Company Act on the books. They have taken that position for the last 20 years. They continue to take that position. That was the position under the Clinton administration and that was the position under the Bush administration. And there was unanimous testimony to our committee that, in fact, we should shift this responsibility over to the Federal Energy Regulatory Commission, as we are proposing to do in this legislation.

Let me clarify that the problems the Senator from Washington refers to are very genuine problems.

I am sympathetic to those problems. I do think there were some shortcomings on the part of the Federal regulators as well as others in the way the crisis on the west coast was dealt with, but I point out that all of that happened under current law. All of that happened with PUHCA in force—with the Public Utility Holding Company Act in force—and we are proposing the repeal of that and a change in the authority so that it can be done much more effectively.

Our bill does nothing to deregulate electricity markets. It recognizes that the market depends on competition. It gives the Federal Energy Regulatory Commission the tools to be sure that competition does in fact work for consumers. We have enhanced FERC's authority over mergers and market-based rates. We have required new disclosure rules. We have required the Federal Trade Commission to issue rules to protect consumers.

We take authority away from the SEC, as I mentioned, because the SEC has never enforced this law. We take the authority away from them and give it to FERC, which does understand the industry. It is the agency with the appropriate expertise to actually look out for consumers in this regard.

The bill we have brought to the Senate floor and on which Senator THOMAS and I have worked very hard requires four things before any disposition or consolidation or acquisition of utility assets is possible.

It requires, first, that the Federal Energy Regulatory Commission determine that the proposed disposition or acquisition be consistent with the public interest. That is a pretty good indication.

A second would be that they make a determination it will not adversely affect the interests of consumers of the electricity utility. That again is an important safeguard.

Third, it requires that any acquisition, any consolidation that is approved by FERC be determined by FERC not to impair the ability of regulators to regulate the utility.

The final thing we have required FERC to determine is that any acquisition that might be approved would not lead to cross-subsidization of associated companies. We believe that is also important. If in fact we are going to permit companies to purchase utilities, to acquire utilities, to acquire utility assets, we do not want to see the ratepayers of the utility having their rates go to cross-subsidize other companies. We require that FERC make that determination.

We believe the provisions we have in the bill are not only adequate but strengthening provisions. There are requirements in the amendment proposed here that go substantially further. There is a requirement that there be a determination that the transaction enhanced competition in wholesale markets. We do not believe it is an appropriate role for us to be blocking an acquisition unless it can be proven that it enhances competition. We believe a ''do no harm'' standard is the right standard for a regulatory agency. Clearly, that is where we come out.

The one other provision which is in their amendment which we believe goes too far is it requires that the transaction produce significant gains in operational and economic efficiency. I hope very much that any time there is an acquisition of a utility asset or a merger or a consolidation of any kind, it does produce significant gains in operational and economic efficiency. That would be a wonderful thing. I don't think it is reasonable to say all acquisitions, consolidations, and mergers should be blocked unless they can demonstrate that they will in fact demonstrate or produce significant gains in operational and economic efficiency.

We believe the provisions we have in the bill are the appropriate ones. For that reason, I will have to resist the amendment and hope Senators will oppose it.

I know Senator THOMAS has worked very hard on this issue as well. I know he is anxious to speak about it at some point.

I yield the floor.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. THOMAS. Madam President, I rise to speak on the amendment now before the Senate. As the Senator from New Mexico mentioned, he and I and others have worked very long and hard on this electricity portion of the energy bill. When the Daschle-Bingaman bill was brought to the floor, we went into it and tried to work at it to make it more workable and, indeed, more simple, to give the States more authority but continue to have the protection, of course, for consumers. So that is what we sought to do.

I believe this amendment is not necessary. Certainly it does not add to but, in fact, detracts from that goal of protecting consumers and making the system more simple.

It seems we have heard an awful lot about the California problem, and it was a difficult one. It affected the rest of the west coast States, of course. Senator BINGAMAN held two hearings to examine the California collapse and the Enron collapse and its impact on the energy markets. The result of these hearings was a clear consensus that Enron had little, if any, impact on wholesale or retail electric markets. So this continued effort to do something with FERC because of that simply doesn't connect. I hope we can deal with it as it is in reality.

I rise in strong opposition to the pending amendment. The amendment proposes a major change in the standard FERC would use to review asset sales, mergers, and acquisitions. Under the proposed standard, in order to approve an asset sale, merger, or acquisition, FERC would have to affirmatively find that the action would, at a minimum, enhance competition in the wholesale markets, produce significant gains in operational and economic efficiency, and result in a corporate and capital structure that facilitates effective regulatory oversight.

This proposed change in the review standard, when coupled with an earlier amendment adopted by the Senate, expands the type of actions FERC must review and puts industry restructuring into gridlock. We are always talking about the overamount of regulation and so on, and we have sought a balance here between States and FERC. This adds back to the problem that we sought to resolve. It will take FERC forever to go through the procedural steps necessary to allow even the most mundane asset sale.

Slowing restructuring and competition would be bad for both competition and consumers. The amendment also

establishes a full new set of rules and procedures for FERC to follow in regulating the wholesale power market. It gives FERC sweeping authority to do just about anything it wants to do—the very provisions that the bipartisan Thomas amendments adopted by the Senate struck from the underlying Daschle-Bingaman bill. That is what we voted on before. Now we are seeking to go back to what we tried to eliminate and did eliminate.

The amendment also modifies the Banking Committee PUHCA repeal provisions. For example, the pending amendment takes away the provisions dealing with State access to utility books and records. That is a part of the Banking-reported bill. The amendment also imposes a host of new transaction approval requirements under the guise of so-called transaction transparency. The transaction transparency provisions of the amendment do not just require the disclosure of information, they require FERC preapproval of all interaffiliated purchases, sales, leases, or transfer of assets, goods or services, and financial transactions.

Talk about creating a regulatory nightmare—Federal bureaucratic redtape—this is it.

Madam President, it is not clear what problems this amendment is intended to address that are not already addressed by other provisions or existing law.

It cannot be aimed at curbing market power since it makes it more difficult for utilities to sell assets, such as generation and transmission.

It cannot be aimed at protecting consumers from undue price increases because, under existing law, FERC has jurisdiction over wholesale rates and the State public utility commissions have jurisdiction over retail rates.

With or without this amendment, the retail/wholesale electric rates have been and will continue to be subject to State and Federal review. Moreover, this issue is already addressed in the bipartisan electricity amendments adopted by the Senate on March 13.

For the benefit of the Senate, let me read some of the language from the amendment adopted by the Senate.

Section 203 of the Federal Power Act, as amended by the bipartisan amendment, will read:

No public utility shall, without first having secured an order of the Commission authorizing it to do so . . . merge or consolidate, directly or indirectly . . . by any means whatsoever.

The Commission shall approve the proposed disposition, consolidation, acquisition or control, if it finds that the proposed transaction—

(A) will be consistent with the public interest;

(B) will not adversely affect the interest of consumers; and

(C) will not impair the ability of FERC or any State commission . . . to protect the interests of consumers or the public.

Exactly. It is already there. Frankly, we are wasting our time with this.

In addition, there are other consumer protection provisions already in the underlying bill.

For example, in the PUHCA title there are provisions which specifically give FERC and State public utility commission access to books and records so that they can do their job to protect consumers. In the PUHCA title there is a Federal task force to review the status of competition. In the PUHCA title there is a provision requiring a GAO study and report on competition. And in another amendment, the Senate has already adopted an office of Consumer Advocacy in the Department of Justice.

Mr. President, in today's rapidly changing electric marketplace, utilities need to be able to buy and sell generation and other assets in order to be able to respond quickly to market conditions. This amendment will tie FERC and industry restructuring up in red tape.

I ask: How does slowing industry restructuring and handicapping competition benefit consumers?

We know the answer. It doesn't.

Requiring utilities to wait months—possibly years—for FERC to review and approve even relatively routine transactions simply does not make sense. It satisfies no public purpose, and it threatens to bury an already overburdened FERC staff in a blizzard of needless paper shuffling.

In sum, the proposed amendment appears to be a heavy-handed solution in search of a non-existent problem to solve. It is an extreme amendment that is intended to overturn a bipartisan, Senate-adopted amendment. It appears to be a thinly-disguised attempt to throw sand in the gears of competition, not to improve the legislation.

The amendment should be rejected.

The PRESIDING OFFICER. The Senator from Michigan is recognized.

Ms. STABENOW. Madam President, I rise today to proudly support the Cantwell amendment which I am very pleased to be cosponsoring.

I thank the Senator from New Mexico for all of his leadership, overall, on this important energy package. He has had a thankless job. There has been a tremendous amount of work. While I respectfully disagree with his position on this amendment, I commend him for his incredible leadership in this effort.

I am very pleased to support this amendment which would add important and much-needed consumer protection to the Senate energy bill. The Senate energy bill repeals most of what is called PUHCA. Many people are not aware of what that is and how important it is in terms of protecting consumer prices as it relates to electricity. It is the Public Utility Holding Company Act. This would repeal it without putting in place any protections to ensure that consumers are in fact protected.

Now, in light of what happened with Enron, what happened on the west coast with the electricity crisis, we need to be strengthening consumer protections, not weakening them. Last spring, when the Senate Banking Committee took up PUHCA repeal, I in fact was the only member of the committee who voted against that because I believed we should not be doing that independently of a larger focus to guarantee that if the bill were repealed—the statute—we in fact would keep the consumer protections in the act which are so critical. So I voted against that bill.

I believe we should be including this in the context of a broad bill, such as the Senate energy plan, that would include consumer and competitive protections. I believe this amendment puts into place those important consumer protections and competition protections.

This amendment would ensure that utility company mergers ''advance the public interest'' in order to be approved by FERC. That is a very important principle. FERC would assess the impact on the public interest by examining such criteria as the merger's effects on competition, economic efficiency, and regulatory oversight. We need to ensure that utility mergers promote, and not undermine, competition. That is what this amendment would do.

This amendment would also establish clear rules and enforcement procedures to prevent a repeat of soaring electricity rates in deregulated markets that are not really competitive. This amendment would also protect consumers from unjustified rate hikes and help ensure fair and competitive markets.

The amendment also would provide more transparency in the utility market to protect consumers from situations like Enron. The amendment would require public disclosure of financial transactions between holding companies, utilities, and their affiliates, as well as FERC preapproval of transactions that are not publicly disclosed.

This has been a real issue for small businesses in Michigan. The amendment would protect consumers from the costs and risks of utility diversification and prevent utilities from unfairly subsidizing their affiliates that compete with small businesses, with independent businesses—those that sell the furnaces, air-conditioners, and so on. This has been an important issue in Michigan where many of my small businesses have been concerned about competing against utility companies that are able to have their prices subsidized.

Finally, the amendment would give State and Federal regulators enhanced access to books and records. If we are going to move to a truly competitive utility market, we need to reshape FERC's role in the market. We need to increase the market transparency and make certain that consumer protections are maintained.

I strongly urge my colleagues to support this amendment. I believe it is absolutely necessary as we move into this deregulated marketplace to make sure

there really is competition to lower prices, there is accountability, transparency, and in fact in the end all of our consumers, the citizens of the country, are protected.

I thank the Chair.

Mr. FEINGOLD. Madam President, I rise in support of amendment 3234 offered by my colleague from Washington, Ms. CANTWELL, and I am pleased to be a cosponsor.

I support and have been actively involved in the drafting of this amendment, which includes provisions from the sponsors of amendment 3097, Mr. WELLSTONE and Mr. DAYTON, on mergers as well as provisions from the Senator from California, Mrs. BOXER, and the Senator from Oregon, Mr. WYDEN.

These amendments would improve on the bill by making clear the actions that the Federal Energy Regulatory Commission, or FERC, must take in determining that proposed mergers in the electric power sector advance the public interest in order to secure Federal regulatory approval. Those of us who have worked on this package are deeply concerned about the effects of deregulation of the electric power sector.

The underlying bill says that FERC would have to determine that mergers be ''consistent with'' the public interest, a more typical standard used by other agencies reviewing other mergers, like the Federal Trade Commission.

My concern is that electricity is not just like other commodities. Electricity is essential to public well-being. When this bill is enacted and the Public Utility Holding Company Act is repealed, a strong incentive will exist for large utilities with the financial resources and the potential to exercise market power to get larger. Already, the electric utility industry is undergoing rapid consolidation. As my colleague from Minnesota, Mr. WELLSTONE, noted earlier in the debate on this bill, in the last past 3 years alone, there have been more than 30 major utility mergers and acquisitions, including several in my own home State and with utilities in Minnesota that serve Wisconsin. Many merchant generating companies have seen their stock prices plunge and credit ratings downgraded, and these companies are now prime buy-out targets.

I acknowledge that utility mergers are not inherently bad and should not be prevented. Such mergers can produce efficiencies, economies of scale and cost savings for electrical consumers. A merger can, however, also reduce competition, increase costs, and frustrate effective regulatory oversight.

In Wisconsin, we have been concerned about efforts to aggressively push electricity deregulation, because we are served in my state by a diverse number of local utilities: municipal utilities, electric cooperatives and investor-owned utilities. This diversity of electrical suppliers, about which my colleagues from Minnesota have eloquently spoken, are absolutely critical parts of our small rural communities.

In many cases, Wisconsin's rural coops and rural municipal utilities are the only entities interested in serving the electrical needs of the rural parts of my State. If we deregulate, we shouldn't create an environment that leaves these communities behind.

Federal electricity merger review policy should distinguish between those mergers that promote the public interest and protect our local sources of electrical power and those that don't. In proposing to amend the Federal Power Act to change FERC's merger review standard we are seeking to require merger applicants to show that the merger, which eliminates a competitor in a marketplace, provides affirmative benefits to the public that are not achievable without merger. Thus, the utility seeking the merger approval would need to show that the merger provides tangible public benefits by increasing competition or lowering prices through increased efficiency.

The amendment would improve on the language in the underlying energy bill in several ways. First, the language requires that proposed mergers promote the public interest in order to secure Federal regulatory approval. Second, the amendment spells out specific standards for assessing the impact on the public interest, including effects on competition, operational and economic efficiency, and regulatory oversight. Finally, this amendment prevents utilities from skirting Federal review by using partnerships or other corporate forms to avoid classification as a ''merger.''

I want to address concerns that some of my colleagues may have about the scope of this amendment. This amendment does not impose new regulatory requirements on proposed utility mergers. Rather, the standards contained in the amendment mirror those contained in the Public Utility Holding Company Act, or PUHCA, which the bill before us would repeal. While the standards are comparable, the amendment provides greater flexibility than exists under PUHCA. PUHCA requires that utilities be physically integrated in order to merge; the amendment waives that requirement. PUHCA also prevents the merger of multi-State electric and gas utilities; the amendment waives that requirement while providing for FERC review of such mergers.

I also want to speak in favor of language that my colleague from Oregon, Mr. WYDEN, and I developed on transactions between utility company affiliates. This amendment protects consumers from assuming the costs and risks of utility diversification into non-utility businesses and prevents utilities from subsidizing affiliate ventures and competing unfairly with independent businesses.

The language that the Senator from Oregon, Mr. WYDEN, and I worked to include in this package does three things. First, it extends to electricity suppliers the requirements we placed upon telecommunications companies when we repealed PUHCA in the telecommunications sector in 1996 in the Telecommunications Act. Second, it requires utilities to disclose all transactions with affiliates, including those that are off the books or with overseas affiliates. Finally, it establishes safeguards regarding the purchase of goods and services between the utility and their affiliates.

These provisions are needed, because we are already experiencing concerns about utilities expanding into electricity related services and out competing small businesses in my State. Small contractors can't compete against big utilities in areas like energy efficiency upgrades to private homes, when big utilities can use existing assets like personnel, equipment, and vehicles to perform those services. When PUHCA is repealed, utilities will be able to expand into other business areas, and we should make certain that we protect small businesses.

This amendment is good public policy, and it will strengthen the Senate's position in conference with the House of Representatives. I urge my colleagues concerned about ensuring a diversity of energy supply and fairness in a deregulated system to support this amendment.

Mrs. MURRAY. Madam President, I want to speak for a moment about the Consumer Protection Amendments being offered by Senator DAYTON and a number of co-sponsors, including myself. I want to thank all of my colleagues who have been working hard to improve this bill, particularly, my colleague from Washington, Senator CANTWELL, who has pushed to bring this amendment to a vote today.

This consumer protection amendment improves this bill by providing a number of much needed consumer protections for electricity customers. I have spoken a number of times expressing my concern regarding enacting broad, far-reaching electricity de-regulation in these turbulent times. California's attempts to deregulate electricity markets were disastrous. We are all still trying to figure out what happened to Enron and thousands of retirement and saving accounts. Consumers in the Pacific Northwest are still paying for some of the aftereffects of these events.

Repealing the Public Utility Holding Company Act, which was enacted in 1935, without adding strong consumer protections would be irresponsible. In this energy bill, we are also contemplating major changes to the Publicly Utility Regulatory Policies Act and the Federal Power Act.

When making these changes, it is essential that we make sure consumers do not suffer. A number of people have indicated that appropriate consumer protections are already in place in the underlying bill.

I disagree. I think that additional consumer protections are necessary.

This amendment strengthens the consumer protections by: ensuring electric holding company mergers advance the public interest; requiring FERC monitor and prevent market power abuses; ensuring market abuses are remedied; ensuring open access to utility holding company records by State Regulatory Commissions; and, requiring transparency in market transactions.

These provisions will greatly improve the electricity title of this bill and I am proud to be a co-sponsor. I encourage my colleagues to also lend their support.

Energy is very important to our quality of life, particularly in the Pacific Northwest. The electricity title of this bill continues to concern me and many in the Northwest. However, it is important that we all work together to develop an energy bill that will benefit the entire country.

The PRESIDING OFFICER. The Senator from Washington is recognized.

Ms. CANTWELL. Madam President, I want to take an opportunity to respond to a few points my colleagues made about this amendment, which I think is necessary in protecting consumers.

It does repeal PUHCA and takes that measure off the books. What is important about that is, while we can say our current law didn't protect us from the mishaps in the California market and the Western energy crisis, it certainly means we should not be lowering the standard and taking away more consumer protections.

I applaud the chairman of the committee for trying to focus more attention in a particular area of energy expertise, to say let's look at these problems. But what we are doing by also saying let's have the energy expertise within FERC look at these problems, we are also saying, look at these problems within a framework that is less onerous on the energy companies; let's lower the legal standard by which they have to come before the Commission. And, basically, instead of saying they have to serve the public interest, they go for a lower standard by which those mergers can be completed.

It gives FERC the ability, with market-based rates, something they have never statutorily had. So instead of the consumers being able to have cost-based rates on electricity, we are saying, for the first time in statutory authority, they can charge market-based rates.

But we are saying charge market based-rates, and we are saying you don't have to consider some of the same things that ought to be considered, given that we are repealing PUHCA; and that is: What is in the public interest, and how is it advancing the public interest, how is it preventing unjust and unreasonable rates?

If we have learned anything from the California experience, it is that there has not been enough clout within a singular agency in the Federal Government to adequately protect consumers from unjust and unreasonable rates. They have not had enough protection.

That is why the AARP, the American Public Power Association, the Consumers Union, the Sierra Club, the U.S. Conference of Mayors, the Air Condition Contractors of America, the Consumer Federation of America, the Consumers for Fair Competition—all these organizations support this amendment, including the Electricity Consumers Resource Council, the National Association of State Utility Consumer Advocates, the National Environmental Trust, the National League of Cities, the National Rural Electric Co-op Association, the National Resources Defense Council, the Transmission Access Policy Study Group, the Union of Concerned Scientists, and U.S. Public Interest Research Group.

All these organizations are warning us, telling us, there are not enough consumer protections as this bill moves from having the PUHCA law on the books and having the SEC involved to FERC authority, which albeit could play a more responsible role and one with larger oversight, but we are not giving them the direction to do so in this bill. We are repealing those statutes that would give them specific standards by which to measure both these issues of market-based rates and mergers. We are giving new responsibility to an organization and taking away the consumer protections.

It does not make sense, in this time and era of an energy crisis in the West, where consumers have been gouged, where FERC has not been able to protect consumers before the incident in reviewing statistics and after the incident, to now say, Let's lessen the standard by which FERC should be involved, let's give them more authority to allow the energy companies to move more quickly, to move more aggressively without oversight on increasing electricity rates.

We cannot say to the consumers of America that we learned nothing from the Western energy crisis. We cannot say that to them. We have to adopt this amendment and say we know that, while we are repealing some laws and putting more responsibility on FERC, we are going to make sure consumers are protected.

I urge my colleagues to adopt this very needed consumer protection amendment.

The PRESIDING OFFICER. The Senator from California.

Mr. REID. Madam President, will the Senator yield for a brief announcement?

Mrs. BOXER. Yes, I will be glad to yield.

Mr. REID. Madam President, we expect a vote on this matter within the next 15 or 20 minutes. All Senators should be aware there will be an effort to vote in the near future. All Senators should be aware of that.

The PRESIDING OFFICER. The Senator from California.

Mrs. BOXER. I thank the Chair.

Madam President, I thank my friend and colleague, Senator MARIA CANTWELL, and Senator DAYTON for bringing this amendment to the floor. I am a strong cosponsor of it.

Senator CANTWELL made a point that we need to learn what happened to those of us on the west coast who went through a terrible crisis in electricity and runaway price hikes. We all know if we do not look at history and the mistakes that were made, we are going to repeat those mistakes.

What the Senator from Washington is trying to do—and some of us are strongly behind her—is to tell the rest of our colleagues that we hope they prepare against what happened to us and make sure consumers are not forgotten.

I am stunned that there would even be objection to this amendment. All we are doing is ensuring that since PUHCA was repealed, we want to make sure the standard is not lowered. We want to make sure consumers are protected.

I can guarantee that those who vote for this bill, if this amendment goes down, are going to be back here complaining that they really did not understand what we were doing when we did not protect consumers. How do I know this? Because it is clear. What did we learn from Enron? Remember Enron? We learned that they did everything in secret. They did everything in secret. They sold the same electricity 15 times over. This is according to testimony from the people in California who suffered the consequences.

I guess, I say to my colleague, if the rest of this Senate wants to see an energy crisis happen in their States, all we can do is offer up this amendment as a way to stop it. But in the underlying bill, there is very little transparency. We need to make sure the books and records of these companies are open and they are clear so that my colleagues in their States can see why their prices are going up 100 percent, 200 percent, 300 percent. In our case, it was over a 500-percent increase in the price of electricity. By the way, demand was going down.

It is extraordinary. One year ago, April 2001, wholesale electricity was selling for $201 per megawatt. A year earlier before the crisis began, it was $32 per megawatt. It went up $32 to $201. That is a 528-percent increase.

Why did it happen? Because of deregulation. The problem is, there was no transparency. Everyone was paying more. We had rolling blackouts. We had horrible problems. Believe me when I tell you, Madam President—you know this because you have visited California often—this is a State that, if it was a nation, according to our gross domestic product, would be the fifth largest nation in the world. When I started in politics, we were ninth. It shows you how long I have been in politics, but it also shows the incredible growth of our agricultural sector and

Silicon Valley and their need to have electricity.

Mind you, it is not wasted. California now is the No. 1 State in energy efficiency per capita. During the crisis, our demand went down. No one can tell us our prices went up because demand went up, which is what the Vice President said. Our demand went down. We have been amazing at saving.

Someone has to look out for the consumer, and that is why I support what Senator CANTWELL is doing.

I, frankly, believed repealing PUHCA in the underlying bill was not the way to go. That was my opinion. But since we have taken the matter of PUHCA and transferred those responsibilities to FERC, let's at least make sure FERC has the same opportunity to learn the facts as the SEC did under PUHCA. That is why this amendment is so important.

This is what Loretta Lynch, the president of the California Public Utilities Commission, testified last week before the Commerce Committee about FERC and the weakening of its reporting requirements. Ms. Lynch testified:

> FERC has over the past few years at the urging of Enron and others diluted the reporting requirements, loosened the accounting rules and exempted large classes of energy sellers from making required disclosures.

This is not from me. This is from someone on the ground, the head of our public utilities commission. Then she goes on to say:

> FERC does not even require the same data to be filed in its quarterly reports, allowing companies like Enron to hide the true nature and extent of activities through skeletal public reporting and not be called to account by FERC.

The bottom line is, with this amendment, we are trying to restore some transparency. We need to see what these companies are doing.

As I say, it is stunning to me that we do not have support for this amendment, which is very modest in what it tries to do. The Senator from Washington has taken the critiques of this amendment and has answered one point at a time. The critiques we have heard in this debate simply are not right.

One of the claims is that we keep PUHCA on the books. How ridiculous. PUHCA is repealed. We do not bring it back. All we are saying is now that the underlying bill gives the responsibility of PUHCA to FERC, there ought to be some rules that show we care about the consumer and that the consumer will not be forgotten.

In closing, I think the Senator from Washington knows her stuff on this. She is on the Energy Committee. She gets it. She is taking the lessons of the west coast, what happened to our consumers, which was devastating, and saying to everyone: Please listen to us. We want to avoid this in the rest of the country. That is why she has the support of the AARP. Older Americans are the ones who get caught. They live on fixed incomes. When those electricity prices go up, it is not fun and games. This is real people suffering. They suffered in Oregon, they suffered in Washington, and they suffered in California.

So what are we doing in this bill? Nothing to really help them. We are ensuring this cannot happen elsewhere, and that is why we have so many others supporting this amendment, such as the Consumer Federation of America, the Consumers for Fair Competition, the Consumers Union, the Electricity Consumers Resource Council, the National Alliance for Fair Competition, the National Association of State Utility Consumer Advocates, the National Environmental Trust, the National League of Cities, the National Rural Electric Cooperatives Association, the Natural Resources Defense Council, the Physicians for Social Responsibility.

This is a health issue when people cannot turn on the air-conditioning. If we do not protect the consumers, we have problems. Public Citizens supports this amendment, the Sierra Club, the U.S. Conference of Mayors, the Union of Concerned Scientists, and the U.S. Public Interest Research Group. This is the consumer protection package.

My colleague from Washington did a good job. She took amendments from those of us who were looking at different areas where we thought the bill did not reach the level of consumer protection it should and put them into an omnibus amendment. I congratulate her.

I yield the floor.

The PRESIDING OFFICER. The Senator from Washington.

Ms. CANTWELL. Madam President, I appreciate the comments of the Senator from California on the amendment. I also appreciate her support for it and her articulation of the problem.

I ask the Senator from California—obviously, both of our States are being greatly impacted from this crisis. I think we have had numerous, thousands, of constituents who ask us how we got into this situation and ask us exactly how this situation occurred to this degree and why there were not more Federal protections in place.

Given the impact to both Washington and California, consumers want to know how is it this kind of deregulation went through at the State level and then certain protections were not in place at the Federal level.

Before the Senator from California leaves the Chamber, I ask if she would answer this question about her constituents' desires to see a safeguard at the Federal level to make sure that further deregulation, and the incurring investigation of high energy prices, are adequately dealt with and whether consumers believe these protections have been adequately up to date, because in my State people have said repeatedly, where is the Federal role and responsibility in making sure these consumers were not gouged?

In California, a new system was put in place. The Federal Energy Regulatory Commission was supposed to oversee that and to judge whether it was going to work as far as market-based rates, and clearly it did not work. Not only did FERC approve it, it did not monitor it after it went into place. It did not stop and say that unjust and unreasonable rates are gouging consumers in California, until the lights went out.

So why would we now say—and I am curious as to the Senator's experience in hearing from constituents about this Federal role—to them, we are going to consolidate and make it even easier; put authority under FERC and weaken the standard? Not only are we going to give them direction, but we are going to say we are going to give them less tools to play that role; we are going to give them a lower legal standard by which to review these; we are going to allow them to make market-based decisions without the criteria of respecting the consumers and protecting and advancing their interests as they look at mergers.

I am curious as to the California experience. I know the experience has been clear in my State. They wanted unjust and unreasonable rates to be looked at when they were being charged 85 percent more. They thought it was very clear that was unjust and unreasonable. In my State, these people have to live with 8- and 9-year Enron contracts.

As my California colleague said, they sold power 15 times to different people. They are literally buying power at a cheap rate and within my State selling it at an increase, double, triple the increase, to other consumers in my State. They are getting away with it, and FERC is doing nothing to make sure those rates are being investigated as unjust and unreasonable, and they are not letting my constituents out of those long-term contracts in the next maybe 8 or 9 years of 85-percent increases in energy prices.

So why would States that have been impacted want to give FERC the direction but say, here are the legal standards, they are less than they were before, so go at this business? So if my colleague from California could comment on her experience in that Federal role and what it is that safeguards constituents who have been harmed in personal situations and in economic businesses.

States' economies have been ruined over this situation, and now we are saying to them that our colleagues are going to provide less protections for them.

Mrs. BOXER. That is the key. The fact is, in our States—I will just talk to my State—the only agency we had to protect us was FERC. FERC, under the Clinton administration, found that the prices were unjust and unreasonable. Then there was a switch in administrations and they never repealed that. They admitted they were unjust

and unreasonable, but they did absolutely nothing to help us—for 1 year. We were talking about billions of dollars of costs. The long-term contracts were signed under duress by our Governor because the spot market was so impossible he tried to get some of the demand away from the spot market, went into these long-term contracts. Fortunately, he has begun to renegotiate those.

We have asked FERC to help us renegotiate most of them. It is stunning to me that this underlying bill gives so much more power to FERC when under the law as it existed they did nothing to help our people for 1 year. They finally put in place the market-based pricing and, by the way, it cured our problem.

After this administration saying for a year that it would not cure our problem, it cured our problem. Those market-based prices are set to expire in September, and already the new Chairman of FERC has hinted that he is not going to reimpose those price caps.

So I say to my colleague, the only agency—because we had deregulated in our State, and believe me there was enough blame to go around. It was a bipartisan deregulation recommended by Pete Wilson, our then-Governor, and it went through. Enron and others had absolutely no one looking over their shoulder, and the only agency that could have done anything to help us against unjust and unreasonable prices was FERC. The bottom line is: They did nothing for a year. It was a disaster.

In this underlying bill, we are giving FERC even more work by repealing PUHCA, which was administered by the SEC, and giving it over to FERC, and having very few requirements on the open books and records.

So a company such as Enron—Enron is gone. They said California would sink, but they sank. We are OK. They sank. But there is going to be Enron II and Enron III and Enron IV because, unfortunately, they showed how it could be dealt with, at least in the short term. When that happens under the underlying bill, there is very little that FERC will be able to get at in terms of the transparency of the records.

The one thing we learned was there was a lot of secrecy going on. The sale of electricity—Enron was a broker, in between the generators and the consumers, so Enron would go buy electricity from a generator at a pretty good price for the generator but then they would sell it to themselves, 14 times to subsidiaries. Each time they showed a profit on the books to make Enron look more successful, more profitable, and each time they jacked up the rates until it got to the final sale at 520 percent—sometimes higher—than it was the year before, and that became the benchmark price. All this was secret.

We have an opportunity in an energy bill to make sure this experience does not happen again. What do we do? We step back. That is why the consumer groups in this country are absolutely upset about this bill and why they have come together in an unprecedented number. I ask unanimous consent to have the list of organizations supporting this amendment printed in the RECORD.

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

SUPPORT THE CONSUMER PROTECTION PACKAGE

Amendment #3097, offered by Senators Dayton, Wellstone, Feingold, Cantwell, Boxer and Wyden, would add crucial consumer protections to the electricity title of the Senate energy bill, incorporating lessons learned from the Western electricity crisis and Enron's collapse.

AARP.
Air Conditioning Contractors of America.
Alliance for Affordable Energy.
American Public Power Association.
Consumers Federation of America.
Consumers for Fair Competition.
Consumers Union.
Electricity Consumers Resource Council.
National Alliance for Fair Competition.
National Association of State Utility Consumer Advocates.
National Environmental Trust.
National League of Cities.
National Rural Electric Cooperatives Association.
Natural Resources Defense Council.
Physicians for Social Responsibility.
Public Citizen.
Sierra Club.
Transmission Access Policy Study Group.
U.S. Conference of Mayors.
Union of Concerned Scientists.
US Public Interest Research Group.
Vote ''Yes'' on the Consumer Protection Package.

Mrs. BOXER. They have come together behind Senators CANTWELL and DAYTON to say: Please, fix this bill. Do not do what California did.

Just because something is changing does not mean it is changing in a right way. We have to be very careful. Did we learn anything in California, Washington, and Oregon? The word ''deregulation'' is a beautiful word. I love it. I wish we didn't need regulations, and I wish everyone did everything right. However, in a society where you must have your heat and you must have your air because you must run a business, you must make sure an elderly person in summer does not suffer from the dangers of heat exhaustion, you have to have a way to make sure this important need is not forgone.

I thank my friend. The California experience is forever seared in my mind and heart. I don't want other States to go through the same thing. This amendment will help in that regard. I hope the Senator wins this amendment. The way things are going, we may not make it. But we are on the right side. We are not going to give up. Just as we learned in California, we can vote a lot of things in, but when the people say, What are you doing, we come back here pretty darn quick. From my experience in California, this is not the way to go. This underlying bill is not the way to go. My friend has pinpointed the need for consumer protections.

I thank the Senator.

Ms. CANTWELL. I thank my colleague from California for her articulate rendering of what has happened in the California market and the complexity of this issue. She is right, the consumers have asked, Where have the Federal role and responsibility been? People in our States did not think FERC responded quickly enough and do not believe FERC has all the tools now necessary to protect other States from this same thing happening again or to conduct the investigation that needs to take place to make sure consumers are not gouged after September when the expiration of this current FERC order occurs.

We are saying: If you are going to give FERC the responsibilities and repeal PUHCA, and also change from SEC to FERC authority, we are giving FERC real responsibility with no statutory guidance. But then we are essentially saying—wink, wink—we are not giving you any of the tools to enforce these authorities; we want you to just be part of the equation but not have any statutory authority to make the investigations. Let's say instead: You can proceed with market-based rates instead of cost-based rates. But if you are going to proceed with market-based rates, you must make sure there are competitive markets. You must make sure you effectively monitor those markets. You must make sure you prevent the abuse of those market powers. You must make sure you are protecting the consumer interests, and you must ensure that there are just and reasonable rates. That seems to me to be very fair, that these consumer issues are protected in legislation. That is all we are asking.

If we are going to give responsibility to FERC, let's make sure we tell them to protect the consumer interests, not the big business interests that have caused so much economic devastation in the West.

I yield the floor.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. BINGAMAN. I will speak briefly in response to some of the comments made, and then I will move to table the amendment.

We have had a good debate about it. I will speak about three aspects: First, the argument, the allegation, that we are, in the underlying bill before the Senate, agreed to on a bipartisan basis, lowering the legal standard. That is one of the arguments that has been made. It is simply wrong. We are not lowering the legal standard. The legal standard is, and always has been, that determinations be consistent with the public interest; that acquisitions, mergers, consolidations, be consistent with the public interest.

What we are doing is saying that, for mergers, we have enhanced the authority and responsibility of the Federal Energy Regulatory Commission by saying that not only must they determine

it is consistent with the public interest, which has been the standard in the past, we are requiring them to determine that consumers will not be harmed—that is, consumers, ratepayers of existing utilities, will not be harmed. We are requiring them to make a determination that regulation, either Federal or State regulation, will not in any way be impaired. And we are requiring FERC to make a determination that there will be no cross-subsidy to any other company than the company being acquired or merged.

What we are doing is increasing the responsibilities we are imposing on FERC. A lot of criticism has been leveled against FERC in the way they responded on the west coast. I agree with much of that. I think they were very slow to respond to the spike in prices in California and the Northwest. I was critical at the time, and I continue to be critical that they were slow to respond. We are putting an affirmative duty on FERC to step in anytime there is evidence that a market-based rate is not just and reasonable. It is FERC's responsibility under the language we have to withdraw those market-based rates and to require just and reasonable rates.

That is a new responsibility we are imposing. It is an appropriate responsibility. The argument that, because they did not move quickly enough under current law, we should now go ahead and change the law to give them this new responsibility does not make sense to me.

With regard to the provisions the Senator from California was raising about the transparency of books and records, I agree entirely that the books and records of any and all of these companies that are subject to regulation should be open for inspection. The provisions we have in the bill require each of these companies to maintain and make available to FERC the books, accounts, the memoranda, the records, that the Commission deems relevant to the costs that are incurred by that public utility. Each affiliate company is also required to do the same.

There is a provision saying that the right of States to request books, records, accounts, memoranda, and other records they identify in writing as needed by the State commissioner—that right for them to obtain those is also protected.

We have in this underlying bill the protections that are required for consumers. I am persuaded that the enactment of this legislation, this title 2, this electricity provision, will cure many of the problems the Senators from Washington and California have been concerned with—and very rightly concerned with this last year.

I think the argument that we are not dealing with these issues is wrong. I urge my colleagues to join us in tabling this amendment which would undermine the bipartisan agreement we made on this provision some weeks ago.

I move to table the amendment, and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The question is on agreeing to the motion to table the amendment No. 3234. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. REID. I announce that the Senator from South Dakota (Mr. DASCHLE) and the Senator from South Dakota (Mr. JOHNSON) are necessarily absent.

Mr. NICKLES. I announce that the Senator from North Carolina (Mr. HELMS) is necessarily absent.

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

The result was announced—yeas 58, nays 39, as follows:

[Rollcall Vote No. 80 Leg.]

YEAS—58

Akaka	Ensign	Miller
Allard	Enzi	Murkowski
Allen	Fitzgerald	Nelson (NE)
Bayh	Frist	Nickles
Bennett	Gramm	Roberts
Biden	Grassley	Rockefeller
Bingaman	Gregg	Santorum
Bond	Hagel	Sessions
Breaux	Hatch	Shelby
Brownback	Hutchinson	Smith (NH)
Bunning	Hutchison	Specter
Burns	Inhofe	Stevens
Campbell	Kyl	Thomas
Carper	Landrieu	Thompson
Cleland	Lincoln	Thurmond
Cochran	Lott	Torricelli
Craig	Lugar	Voinovich
Crapo	McCain	Warner
DeWine	McConnell	
Domenici	Mikulski	

NAYS—39

Baucus	Durbin	Levin
Boxer	Edwards	Lieberman
Byrd	Feingold	Murray
Cantwell	Feinstein	Nelson (FL)
Carnahan	Graham	Reed
Chafee	Harkin	Reid
Clinton	Hollings	Sarbanes
Collins	Inouye	Schumer
Conrad	Jeffords	Smith (OR)
Corzine	Kennedy	Snowe
Dayton	Kerry	Stabenow
Dodd	Kohl	Wellstone
Dorgan	Leahy	Wyden

NOT VOTING—3

Daschle	Helms	Johnson

The motion was agreed to.

Mr. BINGAMAN. Madam President, I move to reconsider the vote.

Mr. REID. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. BINGAMAN. Madam President, I believe the clerk was going to report the amendment by the Senator from Nebraska.

AMENDMENT NO. 3140 TO AMENDMENT NO. 2917

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from Nebraska [Mr. NELSON], for himself, Mr. SMITH of Oregon, and Mr. CRAIG, proposes an amendment numbered 3140 to amendment No. 2917.

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

Mr. BINGAMAN. Mr. President, I call up amendment No. 3316 and ask for its immediate consideration.

The PRESIDING OFFICER. Is the Senator objecting to terminating the reading?

Mr. BINGAMAN. I do not object to terminating the reading. I do call up amendment No. 3316 and ask for its immediate consideration.

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

The amendment is as follows:

Strike Title III and insert the following:

SEC. 301. ALTERNATIVE CONDITIONS AND FISHWAYS.

(a) ALTERNATIVE MANDATORY CONDITIONS.—Section 4 of the Federal Power Act (16 U.S.C. 797) is amended by adding at the end the following:

''(h)(1) Whenever any person applies for a license for any project works within any reservation of the United States under subsection (e), and the Secretary of the department under whose supervision such reservation falls (in this subsection referred to as the Secretary) shall deem a condition to such license to be necessary under the first proviso of such section, the license applicant may propose an alternative condition.

''(2) Notwithstanding the first proviso of subsection (e), the Secretary of the department under whose supervision the reservation falls shall accept the proposed alternative condition referred to in paragraph (1), and the Commission shall include in the license such alternative condition, if the Secretary of the appropriate department determines, based on substantial evidence provided by the license applicant, that the alternative condition—

''(A) provides for the adequate protection and utilization of the reservation, and

''(B) will either—

''(i) cost less to implement or

''(ii) result in improved operation of the project works for electricity production as compared to the condition initially deemed necessary by the Secretary.

''(3) The Secretary shall submit into the public record of the Commission proceeding with any condition under subsection (e) or alternative condition it accepts under this subsection a written statement explaining the basis for such condition, and reason for not accepting any alternative condition under this subsection, including the efforts of the condition accepted and alternative not accepted on energy supply, distribution, cost, and use, air quality, flood control, navigation and drinking, irrigation, and recreation water supply, based on such information as may be available to the Secretary, including information voluntarily provided in a timely manner by the applicant and others.

''(4) Nothing in this subsection shall prohibit other interested parties from proposing alternative conditions.

''(b) ALTERNATIVE FISHWAYS.—Section 18 of the Federal Power Act (16 U.S.C. 811) is amended by—

''(1) inserting ''(a)'' before the first sentence; and

''(2) adding at the end the following:

''(b)(1) Whenever the Secretary of the Interior or the Secretary of Commerce prescribes a fishway under this section, the license applicant or the licensee may propose an alternative to such prescription to construct, maintain, or operate a fishway.

''(2) Notwithstanding subsection (a), the Secretary of the Interior or the Secretary of

Commerce, as appropriate, shall accept and prescribe, and the Commission shall require the proposed alternative referred to in paragraph (1), if the Secretary of the appropriate department determines, based on substantial evidence provided by the license, that the alternative—

''(A) will be no less protective of the fishery than the fishway initially prescribed by the Secretary; and.

''(B) will either—

''(i) cost less to implement, or

''(ii) result in improved operation of the project works for electricity production as compared to the fishway initially prescribed by the Secretary.

''(3) The Secretary shall submit into the public record of the Commission proceeding with any prescription under subsection (a) or alternative prescription it accepts under this subsection a written statement explaining the basis for such prescription, and reason for not accepting any alternative prescription under this subsection, including the effects of the prescription accepted or alternative not accepted on energy supply, distribution, cost, and use, air quality, flood control, navigation, and drinking, irrigation, and recreation water supply, based on such information as may be available to the Secretary, including information voluntarily provided in a timely manner by the applicant and others.

''(4) Nothing in this subsection shall prohibit other interested parties from proposing alternative prescriptions. ''

AMENDMENT NO. 3316 TO AMENDMENT NO. 3140

The PRESIDING OFFICER. The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from New Mexico [Mr. BINGAMAN] proposes an amendment numbered 3316 to amendment No. 3140.

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

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

The amendment is as follows:

In lieu of the matter proposed to be inserted, insert the following:

TITLE III—HYDROELECTRIC ENERGY

SEC. 301. ALTERNATIVE MANDATORY CONDITIONS.

(a) REVIEW OF ALTERNATIVE MANDATORY CONDITIONS.—The Federal Energy Regulatory Commission, the Secretary of the Interior, the Secretary of Commerce, and the Secretary of Agriculture, in consultation with the affected states and tribes, shall undertake a review of: (1) options for a process whereby license applicants and third parties to a relicensing proceeding being undertaken pursuant to Part I of the Federal Power Act could propose alternative mandatory conditions and alternative mandatory fishway prescriptions to be included in the license in lieu of conditions and prescriptions initially deemed necessary or required pursuant to section 4(e) and section 18, respectively, of the Federal Power Act; (2) the standards which should be applicable in evaluating and accepting such conditions and prescriptions; (3) the nature of participation of parties other than the license applicants in such a process; (4) the advantages and disadvantages of providing for such a process, including the impact of such a process on the length of time needed to complete the relicensing proceedings and the potential economic and operational improvement benefits of providing for such a process; and (5) the level of interest among parties to relicensing proceedings in proposing such alternative conditions and prescriptions and participating in such a process.

(b) REPORT.—Within twelve months after the date of enactment of this Act, the Federal Energy Regulatory Commission and the Secretaries of the Interior, Commerce, and Agriculture, shall jointly submit a report to the Committee on Energy and Natural Resources of the Senate and the appropriate committees of the House of Representatives addressing the issues specified in subsection (a) of this section. The report shall contain any legislative or administrative recommendations relating to implementation of the process described in subsection (a).

SEC. 302. STREAMLINING HYDROELECTRIC RELICENSING PROCEDURES.

(a) REVIEW OF LICENSING PROCESS.—The Federal Energy Regulatory Commission, the Secretary of the Interior, the Secretary of Commerce, and the Secretary of Agriculture, in consultation with the affected states and tribes, shall undertake a review of the process for issuance of a license under Part I of the Federal Power Act in order to: (1) improve coordination of their respective responsibilities; (2) coordinate the schedule for all major actions by the applicant, the Commission, affected Federal and State agencies, Indian Tribes, and other affected parties; (3) ensure resolution at an early stage of the process of the scope and type of reasonable and necessary information, studies, data, and analysis to be provided by the license applicant; (4) facilitate coordination between the Commission and the resource agencies of analysis under the National Environmental Policy Act; and (5) provide for streamlined procedures.

(b) REPORT.—Within twelve months after the date of enactment of this Act, the Federal Energy Regulatory Commission and the Secretaries of the Interior, Commerce, and Agriculture, shall jointly submit a report to the Committee on Energy and Natural Resources of the Senate and the appropriate committees of the House of Representatives addressing the issues specified in subsection (a) of this section and reviewing the responsibilities and procedures of each agency involved in the licensing process. The report shall contain any legislative or administrative recommendations relating to improve coordination and streamline procedures for the issuance of licenses under Part I of the Federal Power Act. The Commission and each Secretary shall set forth a plan and schedule to implement any administrative recommendations contained in the report, which shall also be contained in the report.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. CRAIG. Madam President, was the amendment offered by the Senator from New Mexico in the spirit of a second degree to the Nelson amendment?

The PRESIDING OFFICER. The amendment is drafted as a substitute for the first-degree amendment.

Mr. CRAIG. I thank the Chair.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. BINGAMAN. Madam President, this issue, of course, relates to hydroelectric power. This is a subject on which we have been working for several months with interested Members, with the Senator from Idaho, the Senator from Oregon, the Senator from Nebraska, and their staffs, in an effort to achieve consensus on a very difficult issue. I very much thank them for all the work they have put into this effort and their efforts to come to agreement as to how we should proceed. Unfortunately, we have not been able to resolve the issues.

I know hydropower plays a very significant role in providing needed energy to the entire Nation and particularly to the Northwest. It is a very important energy source in other parts of the country as well, particularly New England.

There are now five first-degree amendments and three second-degree amendments that have been filed to this bill with regard to the topic of hydroelectric relicensing. So the proliferation of amendments reflects the fact that, in spite of a lot of good work that has been done, there is no consensus about how to proceed. Unfortunately, I cannot support the amendment the Senators from Nebraska and Idaho are offering today. In my view, it does not reflect a consensus.

At this juncture, given the procedural posture of the bill, I believe the best course is to adopt the amendment I have offered which provides that there be a review undertaken by the relevant agencies with respect to two aspects of the hydroelectric relicensing process. Let me recount what those are.

First, whether provisions for alternative mandatory conditions such as those included in the Nelson-Craig amendment would work to improve the process and, secondly, methods that should be adopted to streamline the process.

The hydroelectric relicensing process has come under criticism. Much of that criticism is justified due to its complexity and the length of time it takes to issue a renewal license. These delays are not good for government, and they are of great concern to my colleagues and to me as well.

There are interagency efforts in place to try to improve that process. We need to encourage those efforts. We need to try to let those efforts play out.

My amendment would do this by requiring all the involved agencies—that includes the Secretary of the Interior, Federal Energy Regulatory Commission, the Secretary of Commerce, Secretary of Agriculture—to report on whether the alternative would require all the agencies to work together to make recommendations to the Congress on how we can improve the process.

The second thing the amendment does is require the agencies to report on whether the alternative mandatory conditioning authority provisions included in the underlying amendment would work. My amendment would require recommendations as to what standard should apply with respect to alternative mandatory conditions and the nature of participation of interested parties.

In addition, the amendment I have offered would require an assessment of whether this new authority would delay an already complex and slow process, which is a very real concern I have.

The Nelson-Craig amendment would adopt alternative mandatory conditioning authority while doing nothing to streamline the process. I am concerned that the amendment, rather than improving the process, will inadvertently add complexity and delay to an already overly complex and slow relicensing process.

I am also concerned that the Craig amendment undermines protections for Federal lands and resources provided for in the Federal Power Act. Under that act, mandatory conditions and prescriptions are developed by the Federal land management or resource agency for inclusion in the license to protect wildlife refuges, national parks, other Federal lands, and Indian reservations. This conditioning authority and these standards have been in place for over 80 years.

The Senate energy bill provides new flexibility relating to this conditioning authority by including alternative mandatory conditioning authority. But the bill does this in a way that we believe is environmentally protective in an appropriate way.

The amendment by the Senators from Nebraska and Idaho would change this alternative mandatory conditioning authority to make it less protective of Federal lands and resources by modifying the standard for alternative mandatory conditions from that included in the bill.

Finally, the Craig amendment would give greater weight to the views of the license applicants over the views of States and tribes and the public. This is another change we believe is inappropriate and causes me to propose the amendment I have called up for consideration.

I acknowledge these are difficult issues. Consensus has been difficult to achieve. Rather than proceeding with either the Craig amendment or the language in the Senate bill, the one before the Senate now, I believe the sound approach is to learn more about the implications of these provisions and seek expert input from the agencies involved, and that is what the amendment I have called up would do.

I urge my colleagues to support the amendment I offer as an alternative to the Nelson-Craig amendment.

The PRESIDING OFFICER. The Senator from Nebraska.

Mr. NELSON of Nebraska. Madam President, I commend my colleague from New Mexico for his very able work on bringing forth an energy bill. It is with some sadness I find myself opposing his substitute amendment.

The substitute amendment is essentially requesting a study in an area where we already know the results. I support studies when we don't know what the study will tell us and we don't know the results and we need to find out what the situation is. But in this case, we know what the situation is.

We have a system that suffers from dispersed decisionmaking authority and an inability to balance competing values and a system that is certainly jeopardizing the relicensing of many of our hydropower facilities across the Nation.

Nearly every State will have one or more and as much as 99.9 percent of its hydroelectric power facilities come up for the licensing review within the next 15 years. If they have the experience I have had in Nebraska, they won't have to have a study. They can simply look to see what has happened in Nebraska to tell them what the future holds for them.

The future of Nebraska is dimmed because of the past experience we have had with the relicensing process.

We spent $40 million for one hydroelectric powerplant in 14 years to realize this project—a project built in the 1930s. That experience can tell you that the system is lengthy, expensive, and it doesn't require any of that $40 million that was spent to go into the environment, habitat, wildlife retainment, or anything of that sort. It was money spent on application fees, filing of papers, lawyer's fees—$40 million to realize this one project in the State of Nebraska, taking 14 years.

That was when we had both Senators from Nebraska, the congressional Representatives, and I, as Governor, supporting the effort to get it done in an expeditious fashion. That is expedition in reverse.

The truth is, this system is not expedited; it is expensive, costly, and slow. We even had in our situation, nearly at the end of the process, after we had gone through the process with as many alphabet agencies in the Federal Government that I thought we would ever find, another agency that came in and said: All the work you have done is for naught, and we have a requirement we would like to impose at the tail end of the process.

They could have done it at the beginning of the process. This will help alleviate and obviate that need. In the State of Washington alone, you are going to be facing the relicensing of 80 percent of your hydroelectric power in the next 15 years—21 projects. If you multiply that times $40 million, you can see what the cost really is. Multiply that times the number of staff years, in terms of what it is going to take, and you will see what the internal cost truly is to your power authorities.

I would ordinarily support a study. But in this case, we don't need one. We have had the study, and the study is experience which tells us that we need to make this kind of correction, and we need to make it now, not wait until the study tells us what we already know.

I yield the floor.

The PRESIDING OFFICER. The Senator from Oregon is recognized.

Mr. SMITH of Oregon. Madam President, I rise in opposition to the second-degree amendment being offered by Senator BINGAMAN. Truly, another study of this issue will do nothing more than run out the clock on license holders who must get 53 percent of the nonfederal hydropower capacity in this Nation relicensed within the next 15 years.

To give you an example of just how grave a situation this is, there are 307 projects under the category, including 49 projects in California, 21 projects in Washington, 23 projects in Wisconsin, 30 projects in New York, 23 projects in Maine, 14 projects in Oregon, and 14 projects in Michigan. This amounts to over 29,000 megawatts of capacity. To put this into context, it takes 1,000 megawatts daily to run the City of Seattle. So when you figure that 29,000 megawatts are at stake, and you figure what it takes to run Seattle, you can imagine how much economic difficulty will ensue if we do not figure out a more reasonable way to bring on hydropower relicensing.

There have been extensive hearings already during the last two Congresses, in the Senate Energy Committee, on the need for hydro relicensing reform. I have attended them all, and there has been a committee that was chartered under the Federal Advisory Committee Act. That committee has concluded that legislative reforms are absolutely critical if we are to make progress and meet the deadlines that are looming over the energy capacity of this country.

There have been administrative attempts to reform the process already. Having the same agencies that have, so far, been able to institute meaningful reforms further study this issue will provide us with no benefit at all. I urge my colleagues from all parts of this country, who have hydroelectric power, to please support the Nelson amendment. It provides modest reforms of a narrow portion of the relicensing process.

The time for study is done. The time to ensure that hydropower remains an important part of our electricity mix is now. Madam President, no one knows better than you and I, from the Pacific Northwest, how critical an issue this is for our neck of the woods. I also say that, while all energy production has an environmental tradeoff, truly, hydropower puts out no global warming and provides our people with the most renewable, inexpensive, and reliable sources of electricity there are, frankly, on the Earth.

I believe if we are serious about reemploying our people, getting our economy moving, we have to be serious about hydro relicensing reform.

Madam President, I know a number of environmental groups have opposed the Nelson amendment. I want to also say we have, for those who are concerned about the environmental issue, as we all are, that there is a second degree that I will be offering that does enjoy the support of many environmental groups, such as Trout Unlimited. I quote their news release today:

Senator Smith's amendment improves the Craig-Nelson amendment by reducing the loss in fishery protection from SA 3140.

While we support Senator Smith's amendment, we still urge opposing an amended SA 3140.

The point I am trying to make is we have improved the underlying amendment, and we have given the environmental community something that will significantly help them in their advocacy. To demonstrate what we are trying to do with the second degree, should the Bingaman study be defeated, this amendment does two important things. While it substantially, like Senator NELSON's, makes the changes I think provide value to all of the stakeholders who follow the relicensing process, the first would substitute the words ''fish resources'' for ''fishery'' in the underlying text. We want to make it clear that we are trying to protect all fish resources, not just those fish species that are harvested either commercially already or with sport fishery.

Secondly, the amendment would begin this process in 2008. It would require license applicants to file their applications for a new license with the Federal Energy Regulatory Commission 3 years before the current license has expired. During the hearings before the Energy Committee, it was clear to me that there was frustration with the current statutory requirement to file only 2 years before the expiration of the current licenses. In most instances, this is insufficient time for FERC to review the adequacy of the application and to determine any additional studies that might be needed. The result is a string of annual licenses which do not provide certainty for consumers or the utility and results in delays in environmental mitigation and enhancement.

Licensed applicants are reluctant to spend such funds until they know what will, in fact, be required of them under any new license. So I say to those who care about the environment, the Nelson-Craig amendment will be improved with the second degree that will follow. Truly, what we need, last of all, is another study on a problem that we know only too well through experience.

If you want a study, the study is Senator NELSON, who was Governor Nelson. His experience is all the study we need that we have a broken system and we need to repair it. I remind my colleagues that none of us has a job in any industry unless electricity is produced first. Hydropower is crucial in the mix of America's energy. It is absolutely the backbone of the Pacific Northwest. This is needed, and then we have a way to protect the environment and a way to improve this process.

I yield the floor.

Ms. CANTWELL. Mr. President, over the last 6 weeks, while we have debated essential elements of the energy bill, from ANWR and CAFE to electricity deregulation and ethanol, I have joined the sponsors of this amendment, the chairman and ranking member of the Energy Committee and others in trying to forge a consensus on how best to reform the hydroelectric relicensing process.

Let me state at the outset, that I share the sponsor's deep sense of frustration and concern with how the existing hydro relicensing process works for all participants.

With more than 9,300 megawatts of nonfederal hydropower capacity, Washington State is the single most hydro dependent state in the Nation. The power of the great rivers of the Pacific Northwest has contributed to our economy, created industries and even helped to win the Second World War. There is no area of the country where hydropower generation has greater importance.

At the same time, Washington State also relies on the natural abundance of these spectacular rivers. Washington's rivers provide year-round recreation opportunities, including fishing and boating, these features contribute enormously to our economy as well as our environment. Our rivers are also home to salmon and steelhead runs, the cultural soul of the Pacific Northwest.

The rivers serve as an important economic and cultural resource to several Northwest Indian tribes that entered into treaties with the U.S. based on the promise to protect and honor their rights and resources.

Our reliance on hydropower and on the recreational and environmental benefits of our rivers requires us to employ a balanced approach to their use. Utility operators have shared with me horror stories about how the rising costs, loss of operational flexibility, and lost generation due to new operating constraints imposed during relicensing are impacting their ability to bring power to Washington's consumers. At the same time, 12 runs of Washington State salmon are now included on the endangered species list.

We can and must find the right balance to ensure continued survival of these species while maintaining hydropower production.

Many hydropower projects, including some in the Northwest, were built without adequate consideration of impacts on the environment. Most were built prior to the enactment of essential environmental laws like the Clean Water Act and Endangered Species Act. Relicensing offers a unique opportunity to reassess the licenses of these hydropower dams, bring them up to modern standards, and ensure the long-term health of our rivers.

The current process for licensing hydropower projects has had mixed results. On the one hand, we have examples of great successes. The Cowlitz was once home to some of the most bountiful salmon and steelhead runs in the Pacific Northwest. In August 2000, a landmark relicensing settlement was signed that will open up more than 200 miles of renewed habitat. The settlement is supported by Federal and State agencies, conservation groups, and the hydro utility. On the other hand, the Cushman project has been operating under annual licenses due to disputes over appropriate environmental measures. While Tacoma Power has continued operating the project for over 20 years, there remain a number of serious environmental challenges.

And on all sides we have parties pointing the finger at one another claiming that the other is always to blame. I do not believe that any of the parties to relicensing, Federal resources agencies, FERC, tribes, States, the industry or advocacy groups, are to blame for problems in relicensing. In fact, I believe most parties are good actors caught up in an outdated, bureaucratic process desperately in need of reform.

There is no question that the existing licensing process can be improved. We can make it faster and cheaper without sacrificing environmental quality. Quicker licensing would improve the efficiency of these projects and improve the environment. This is a goal that I would strongly support, if we were debating such measures today.

Unfortunately, that is not what the amendment before us today accomplishes. Instead, the amendment creates a new appeals process, another step, to this flawed process without requiring FERC and the resource agencies to address the fundamental problems contributing to the delays and skyrocketing costs.

I agree with the supporters of this amendment that one part of the solution is to allow participants to propose creative solutions in balancing energy and environmental priorities. While I can't fully agree with the approach taken in this amendment, I do agree that parties should be rewarded for coming together and proposing innovative new solutions. But more importantly, there will be no real improvement until Congress requires or FERC and the resource agencies agree to significant structural reform. This amendment falls far short.

Section 306 of the underlying bill provides an opportunity to streamline the licensing process by requiring agencies to work together with FERC in a more cooperative manner. It also requires the coordination of environmental reviews and places a number of requirements on FERC to maintain a better, more transparent schedule for relicensing proceedings.

But the amendment before us today deletes section 306, the only hope for real fundamental reform of an obviously flawed process.

It is important for the people of Washington State to get this right, and soon. We will have to relicense 19 hydropower projects over the next several years. The resulting licenses will set the terms for hydro projects to operate on our rivers for another 30 years. We need a process that will issue licenses promptly, with full environmental protection, bringing these projects into compliance with modern laws. It is disappointing that this amendment will not do the job.

I reluctantly oppose the Craig amendment because I believe we are missing an opportunity to accomplish real reform. But regardless where the votes are on this amendment, this is not the end of the discussion about hydropower licensing reform, but rather a beginning. I look forward to working with my colleagues in the Senate and those in industry, the environmental community, tribes, States, and other interests in order to maintain the tremendous hydropower assets of our State while protecting and restoring our environmental future.

The PRESIDING OFFICER. The Senator from Nebraska is recognized.

Mr. NELSON of Nebraska. Madam President, I want to say that a study should ordinarily tell us something we don't know, bring us to conclusions that we have not yet reached, or provide facts that are not otherwise evidence.

But there are no facts that are absent here. There are no conclusions that we cannot draw on the basis of what we know, and there certainly isn't an experience yet to be determined. So a study is unnecessary. It is very clear, though, action is necessary.

Respectfully, I move to table the substitute second-degree amendment offered by the Senator from New Mexico.

The PRESIDING OFFICER. The question is on agreeing to the motion.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Madam President, I thought the Senator from Nebraska asked for the yeas and nays.

The PRESIDING OFFICER. The motion to table has been made.

Mr. NELSON of Nebraska. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The Chair reminds Senators that the motion to table is not debatable. It will take unanimous consent at this time for further debate.

The question is on agreeing to the motion to table amendment No. 3316. The clerk will call the roll.

The legislative clerk called the roll.

Mr. REID. I announce that the Senator from South Dakota (Mr. DASCHLE) and the Senator from South Dakota (Mr. JOHNSON) are necessarily absent.

Mr. NICKLES. I announce that the Senator from North Carolina (Mr. HELMS) is necessarily absent.

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

The result was announced—yeas 54, nays 43, as follows:

[Rollcall Vote No. 81 Leg.]

YEAS—54

Allard	Burns	Craig
Allen	Campbell	Crapo
Bennett	Carper	DeWine
Bond	Cleland	Dodd
Breaux	Cochran	Domenici
Brownback	Collins	Ensign
Bunning	Conrad	Enzi
Fitzgerald	Landrieu	Santorum
Frist	Lincoln	Sessions
Gramm	Lott	Shelby
Grassley	Lugar	Smith (NH)
Hagel	McCain	Smith (OR)
Hatch	McConnell	Stevens
Hollings	Miller	Thomas
Hutchinson	Murkowski	Thompson
Hutchison	Nelson (NE)	Thurmond
Inhofe	Nickles	Voinovich
Kyl	Roberts	Warner

NAYS—43

Akaka	Edwards	Murray
Baucus	Feingold	Nelson (FL)
Bayh	Feinstein	Reed
Biden	Graham	Reid
Bingaman	Gregg	Rockefeller
Boxer	Harkin	Sarbanes
Byrd	Inouye	Schumer
Cantwell	Jeffords	Snowe
Carnahan	Kennedy	Specter
Chafee	Kerry	Stabenow
Clinton	Kohl	Torricelli
Corzine	Leahy	Wellstone
Dayton	Levin	Wyden
Dorgan	Lieberman	
Durbin	Mikulski	

NOT VOTING—3

Daschle	Helms	Johnson

The motion was agreed to.

Mr. CRAIG. Mr. President, I move to reconsider the vote.

Mr. REID. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

ORDER FOR RECESS

Mr. REID. Mr. President, for the information of all Members, I have checked with the minority, and I ask unanimous consent that between the hours of 3 and 4 o'clock this afternoon, the Senate be in recess to listen to Secretary Powell in S–407. I ask that that time count against the postcloture hours under this measure now before the Senate.

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

AMENDMENT NO. 3306 TO AMENDMENT NO. 3140

Mr. SMITH of Oregon. Mr. President, I call up amendment No. 3306, the Smith second-degree amendment to the Nelson of Nebraska amendment No. 3140, and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The senior assistant bill clerk read as follows:

The Senator from Oregon [Mr. SMITH] proposes an amendment numbered 3306 to amendment No. 3140.

Mr. SMITH of Oregon. I ask unanimous consent the reading of the amendment be dispensed with.

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

The amendment is as follows:

(Purpose: To clarify the definition of renewable energy)

Strike Title III and insert the following:

"SEC. 301. ALTERNATIVE CONDITIONS AND FISHWAYS.

''(a) ALTERNATIVE MANDATORY CONDITIONS.—Section 4 of the Federal Power Act (16 U.S.C. 797) is amended by adding at the end the following:

'(h)(1) Whenever any person applied for a license for any project works within any reservation of the United States under subsection (e), and the Secretary of the department under whose supervision such reservation falls (in this subsection referred to as the 'Secretary') shall deem a condition to such license to be necessary under the first proviso of such section, the license applicant may propose an alternative condition.

'(2) Notwithstanding the first proviso of subsection (e), the Secretary of the department under whose supervision the reservation falls shall accept the proposed alternative condition referred to in paragraph (1), and the Commission shall include in the license such alternative condition, if the Secretary of the appropriate department determines, based on substantial evidence provided by the license applicant, that the alternative condition—

'(A) provides for the adequate protection and utilization of the reservation; and

'(B) will either—

'(i) cost less to implement, or

''(ii) result in improved operation of the project works for electricity production as compared to the condition initially deemed necessary by the Secretary.

'(3) The Secretary shall submit into the public record of the Commission proceeding with any condition under subsection (e) or alternative condition it accepts under this subsection a written statement explaining the basis for such condition, and reason for not accepting any alternative condition under this subsection, including the effects of the condition accepted and alternatives not accepted on energy supply, distribution, cost, and use, air quality, flood control, navigation, and drinking, irrigation, and recreation water supply, based on such information as may be available to the Secretary, including information voluntarily provided in a timely manner by the applicant and others.

'(4) Nothing in this subsection shall prohibit other interested parties from proposing alternative conditions.'

''(b) ALTERNATIVE FISHWAYS.—Section 18 of the Federal Power Act (16 U.S.C. 811) is amended by—

''(1) inserting ''(a)'' before the first sentence; and

''(2) adding at the end the following:

'(b)(1) Whenever the Secretary of the Interior or the Secretary of Commerce prescribes a fishway under this section, the license applicant or the licensee may propose an alternative to such prescription to construct, maintain, or operate a fishway.

'(2) Notwithstanding subsection (a), the Secretary of the Interior or the Secretary of Commerce, as appropriate, shall accept and prescribe, and the Commission shall require, the proposed alternative referred to in paragraph (1), if the Secretary of the appropriate department determines, based on substantial evidence provided by the licensee, that the alternative—

'(A) will be no less protective of the fish resources than the fishway initially prescribed by the Secretary; and

'(B) will either—

'(i) cost less to implement, or

'(ii) result in improved operation of the project works for electricity production as compared to the fishway initially prescribed by the Secretary.

(3) The Secretary shall submit into the public record of the Commission proceeding with any prescription under subsection (a) or alternative prescription it accepts under this subsection a written statement explaining the basis for such prescription, and reason for not accepting any alternative prescription under this subsection, including the effects of the prescription accepted or alternative not accepted on energy supply, distribution, cost, and use, air quality, flood control, navigation, and drinking, irrigation, and recreation water supply, based on such

information as may be available to the Secretary, including information voluntarily provided in a timely manner by the applicant and others.

'(4) Nothing in this subsection shall prohibit other interested parties from proposing alternative prescriptions.' ''

''(c) TIME OF FILING APPLICATION.—Section 15(c)(1) of the Federal Power Act (16 U.S.C. 808(c)(1)) is amended by striking the first sentence and inserting the following:

'(1) Each application for a new license pursuant to this section shall be filed with the Commission—

'(A) at least 24 months before the expiration of the term of the existing license in the case of licenses that expire prior to 2008; and

'(B) at least 36 months before the expiration of the term of the existing license in the case of licenses that expire in 2008 or any year thereafter.' ''

Mr. SMITH of Oregon. Mr. President, I yield my time for commentary to the Senator from Idaho.

The PRESIDING OFFICER. The Senator has no such right. The Senator from Idaho can seek recognition at any time.

Mr. CRAIG addressed the Chair.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. CRAIG. Mr. President, we just took a very critical and, I believe, important vote in the Senate pertaining to the Nelson-Craig amendment, and now second-degreed by the Senator from Oregon. While I know the Senator from New Mexico and I have worked long and hard on the issue of hydro relicensing, I think the will of the Senate has spoken as it relates to moving this issue to the forefront and making a legislative determination on what the public policy ought to be as it relates to the relicensing of hydro facilities around this country.

We have now for well over a decade and a half spent a great deal of time looking at the hydro relicensing process. Many of the licensees have spent millions and millions of dollars trying to shape it and determine it. Study after study—and here are about 7 of them, some 1,400 pages of studies over the last decade—have said there is a problem that can only be determined by a legislative fix. That is exactly what the Nelson-Craig amendment, now second-degreed by the Senator from Oregon, does. It maintains the amendment, and the second degree maintains the current standard in section 4(e).

The Secretary of the Interior can determine whether an alternative condition offered by the licensee ensures the adequate protection and utilization of the ''Federal reservation.''

''Federal reservation'' is a term of art in the Federal licensing of projects as it relates to protecting the resources, protecting the land.

The reason this amendment is important is when we go to conference with this bill, the House has said something very different. The House said, in their version of the hydroelectric relicense reform, that they would change the standard in 4(e), requiring the Secretary of the Interior to ensure an alternative condition provides no less protection for the reservation than provided by the conditions deemed initially necessary by a midlevel staff person at the Interior. That is a higher threshold than is currently required under licensing.

What is so important is that we take the right language to the conference to make sure if we advance or change the relicensing projects of hydro—and the Senator from Nebraska has spoken eloquently about the problems of Nebraska, the Senator from Oregon has talked about the multitude of projects to be relicensed over the next decade; we know that hydro is about 19 to 20 percent of the electrical base of this country—while we want to modernize these facilities, bring them into compliance under better environmental standards, what we cannot have is a multi-multimillion-dollar process that doesn't get us anywhere and, in the end, actually reduces the ability of these facilities to produce power.

The Senator from Nebraska spoke of a process in his State that cost $40 million to relicense a hydro project. My guess is that the project, when it was initially built some 30 years prior, cost a fourth of that amount—$8 million, $10 million. And now just to relicense it, just to go through the legal hoops and hurdles and timelines involved it costs $40 million? That doesn't talk about the retrofits. That doesn't talk about new concrete poured or concrete taken away or fish ladders or rescheduling and reprogramming the flows of waters to accommodate fish and habitat downstream. None of that was spoken to—nor the loss of generating capacity. Just the process costs that amount of money.

That is why these studies have shown, time and time again, this is a problem that has to get fixed legislatively. Yes, we have had working groups inside the departments of our Federal Government over the last number of years.

When I first began to examine the hydro relicensing problem 5 years ago, to the Clinton administration's credit, they began to get all their agencies together to try to streamline the process. That is in the eye of the beholder, and they did work. But there was nothing in the law that required it. What we were hoping to do is to do that.

What we have done instead as an alternative is provide, when the licensee comes up with an approach, and a stakeholder comes up with an different approach, that the licensee can say: We can arrive at the standards and meet the needs of the stakeholder for less money in a different approach, and the Secretary of the Interior, in this instance, can arbitrate that and make those determinations they can now not make.

It ensures a balance and accountability to Federal resource agencies that I think is critically important. Isn't it fascinating that a third level bureaucrat can make a demand that even the Secretary cannot act on, that may cost millions and millions of dollars? It may even take down a hydro facility because it can no longer operate in an economically effective way and the licensee would simply walk away and the facility would come down and it would be no longer productive because someone downline in an agency determined they needed something that could not in any way be arbitrated, that could not in any way be accommodated by different approaches, or an alternative review.

That is what we offer in the Nelson amendment. That is why it is critical. The Smith amendment, then, gives a little flexibility in time that we think is important. Trout Unlimited has said it is important.

We are certainly willing to accommodate this. This in no way is an anti-environmental vote. The process itself is still intact. All of the players get to the table. All of the players' viewpoints are heard.

We said, when the licensee comes forward and says I can meet those new standards for less money in a different way, that is a consideration which becomes part of the process that does not now exist. We think that is right. We think it is reasonable. That is the way government ought to work.

If we lose our hydro base in this country—and we could—how do we replace it? Coal-fired plants? A new nuclear plant? It can never be made up by wind and solar because it can never produce that amount of power. It would have to be replaced. It is replaced, at least in volume, by the current alternatives I have mentioned. In most instances, and in most States, those alternatives today are somewhat unacceptable.

That is why it is so critically important that the Nelson-Craig-Smith amendment move forward as a part of this energy bill and into the conference where we can work out our differences and hopefully resolve a problem that has plagued this process now since it was created nearly two decades ago.

I thank my colleagues and yield the floor.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. BINGAMAN. Mr. President, what is the pending business?

The PRESIDING OFFICER. The pending question is the Smith of Oregon substitute to the Nelson first-degree amendment.

Mr. BINGAMAN. Mr. President, I do not object to going a ahead with the vote. I don't believe a rollcall is required at this point.

The PRESIDING OFFICER. If there is no further debate, the question is on agreeing to the substitute.

The amendment (No. 3306) was agreed to.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. CRAIG. Mr. President, that vote was on the Nelson-Craig amendment in the second degree by the Senator from Oregon?

The PRESIDING OFFICER. The Nelson-Craig amendment is now pending, as amended.

Is there further debate on that amendment? If not, the question is on agreeing to the amendment.

The amendment (No. 3140), as amended, is agreed to.

Mr. BINGAMAN. Mr. President, I move to reconsider the vote.

Mr. SMITH of Oregon. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, I ask unanimous consent that the leader time which I am going to take be counted against the 30 hours on this bill.

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

REAL REPUBLICAN SLOGANS

Mr. REID. Mr. President, this morning my counterpart in the House, the Republican whip, TOM DELAY, led a press conference. In that press conference, he talked about the fact that he thought the Democrats have stolen the theme of the Republicans. I do not know anything about that, but I do have some suggestions that I would like to give my friend, my counterpart in the House, Representative DELAY, for a theme. That would be Securing America's Future, the Republican Way.

We came up with what we think is a very apt way to describe what we are trying to do by securing America's future for all our families. I would like to suggest this to Representative DELAY: The Real List of Republican Slogans.

One would be securing a $254 million tax break for Enron; and securing secret Caribbean tax havens for billionaires.

Another that should go on the list would be securing skyrocketing prices and huge profit margins for large pharmaceutical companies.

The list wouldn't be complete unless we recognize that the prescription drug benefit being talked about is for 6 percent of American seniors leaving out 94 percent of American seniors.

Also on the list we have securing limited well drilling rights in wildlife refuges and national parks.

Also on the list we have securing crowded classrooms and crumbling schools, and leaving those the way they are.

Part of the list also, I suggest to my friend, Representative DELAY, is securing higher levels of arsenic in drinking water, and, of course, securing permanent tax breaks for the wealthy paid for by raiding Social Security, and also having deep Social Security benefit cuts.

Also on that list would have to be the Vice President's records of giveaways to big energy companies.

Also, we could have on the list securing a future with 100,000 shipments of deadly radioactive waste crossing America's highways, railways, and waterways.

Finally, I would make a suggestion—I have some others, but I know time is short—that we have on that list securing the rights of toxic polluters to pass cleanup costs on to the taxpayers.

I ask that Representative DELAY and others in that press conference with him to go back and look at his own list of slogans and add to that some of these which I have noted.

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

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

NATIONAL LABORATORIES PARTNERSHIP IMPROVEMENT ACT OF 2001—Continued

Mr. CARPER. Mr. President, I ask unanimous consent the pending amendment be laid aside.

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

AMENDMENT NO. 3197 TO AMENDMENT NO. 2917

Mr. CARPER. Mr. President, amendment No. 3197 is at the desk. I ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Delaware [Mr. CARPER], for himself, Ms. COLLINS, Mr. LEVIN, Ms. LANDRIEU, Ms. STABENOW, and Mr. JEFFORDS, proposes an amendment numbered 3197 to amendment No. 2917.

Mr. CARPER. Mr. President, I ask unanimous consent reading of the amendment be dispensed with.

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

The amendment is as follows:

(Purpose: To encourage the efficient generation of electricity through combined heat and power and to modify the provision relating to termination of mandatory purchase and sale requirements under PURPA)

Beginning on page 47, strike line 23 and all that follows through page 48, line 20, and insert the following:

''(m) TERMINATION OF MANDATORY PURCHASE AND SALE REQUIREMENTS.—

''(1) OBLIGATION TO PURCHASE.— After the date of enactment of this subsection, no electric utility shall be required to enter into a new contract or obligation to purchase electric energy from a qualifying cogeneration facility or a qualifying small power production facility under this section if the Commission finds that the qualifying cogeneration facility or qualifying small power production facility has access to independently administered, auction-based day ahead and real time wholesale markets for the sale of electric energy.

''(2) OBLIGATION TO SELL.—After the date of enactment of this subsection, no electric utility shall be required to enter into a new contract or obligation to sell electric energy to a qualifying cogeneration facility or a qualifying small power production facility under this section if competing retail electric suppliers are able to provide electric energy to the qualifying cogeneration facility or qualifying small power production facility.

''(3) NO EFFECT ON EXISTING RIGHTS AND REMEDIES.—Nothing in this subsection affects the rights or remedies of any party under any contract or obligation, in effect on the date of enactment of this subsection, to purchase electric energy or capacity from or to sell electric energy or capacity to a facility under this Act (including the right to recover costs of purchasing electric energy or capacity).

Mr. CARPER. Mr. President, I ask unanimous consent that Senator SNOWE be added as a cosponsor.

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

Mr. CARPER. Senator COLLINS of Maine joins me in offering this amendment.

Mr. President, the issue that is before us involves cogenerating facilities which create both heat and power. They are highly efficient and environmentally attractive. They exist in almost all of our States. Unfortunately, section 244 of the Senate energy bill before us would eliminate the provisions in current law which support both existing combined heat and power generating systems and new ones that are being developed. I believe that until competitive conditions in electricity markets make these existing requirements unnecessary, the changes that are incorporated in this bill are premature.

Today, combined heat and power plants, which typically produce electricity and deliver steam used for manufacturing purposes, produce about 7 percent of our Nation's electricity. Combined heat and power facilities are, on average, twice as fuel efficient as conventional utility plants and thus produce about half the emissions of conventional utility plants.

The U.S. Department of Energy and our Environmental Protection Agency have set the goal of doubling the Nation's capacity from combined heat and power facilities by 2010. Section 244 of the Senate energy bill runs counter to this goal by repealing, perhaps inadvertently, statutory support for existing and new combined heat and power generating facilities.

Under existing law, section 210 of PURPA, the Public Utility Regulatory Policies Act, has, since 1978, required electric utilities to purchase electricity generated by so-called qualifying facilities—which includes cogenerators and renewable energy facilities—at the utility's ''avoided cost.'' ''Avoided cost'' is the cost the utility would have paid to generate the same electricity itself or to purchase it elsewhere. PURPA also requires electric utilities to sell qualifying facilities backup power at just and reasonable rates and without discrimination.

So under current law, under PURPA, these qualifying facilities, cogenerating facilities, are permitted to sell