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

the power that they create at a price that is agreed to at the utility's avoided cost. Also, they have the ability to purchase electricity power as it is needed at a reasonable rate and without discrimination. That is current law. They would lose that ability under the language of the bill that is before us. We do not want them to lose that ability.

Section 244 of the bill would terminate the obligation of electric utilities, under PURPA, to enter into new contracts to either purchase electric energy from these qualifying facilities or to sell electricity to new qualifying facilities.

Some would argue that these PURPA requirements are no longer needed because electricity markets are competitive. In many cases, however, electricity markets are not competitive. I realize in a number of markets they are. Delaware is among them. But in a number of other markets, electricity is not competitive, and these qualifying facilities do not have access to competitive options for buying or selling electricity.

The existing PURPA protections should not be lifted, in my judgment, and that of Senator COLLINS' and our other cosponsors' judgment, until competitive electricity markets are found to render these protections no longer necessary.

The amendment that Senator COLLINS and I offer today would modify section 244 of the bill before us by conditioning the termination of the PURPA obligation for utilities to buy electricity from these qualifying facilities on a finding by the Federal Energy Regulatory Commission, FERC, that the qualifying facility has access to an independent, competitive, wholesale market for the sale of electricity. A FERC finding of a competitive wholesale market assures that there will be real opportunities for a qualifying facility to sell its electrical output, including intermittent power, at a competitive price.

This amendment would also modify section 244 in this bill to clarify that the termination of a utility's obligation to sell backup power to a qualifying facility under PURPA is conditioned on the qualifying facility having the ability to purchase backup power from competing retail electricity suppliers. Until a cogenerator can shop for backup power from competing suppliers, it is critical to maintain the current PURPA obligation for the local utility to sell backup power at just and reasonable rates and without discrimination.

Let me say, in conclusion, I support reform of PURPA, but I do not think we should do it in a way that runs contrary to our other goals of generating efficient electricity and developing competitive markets. This amendment does just that. I urge my colleagues to join us in support of the amendment.

I reserve the remainder of my time.

The PRESIDING OFFICER. The Senator from Maine.

Ms. COLLINS. Mr. President, I am pleased to join with my distinguished colleague from Delaware, Senator CARPER, in offering an amendment to the energy bill that would keep in place, for a limited time, incentives for the generation of clean, efficient energy using a technology known as combined heat and power, or cogeneration.

Such cogeneration plants use a variety of fuels, from biomass to natural gas, to produce both electricity and steam. Combined heat and power currently produces about 9 percent of our Nation's electricity. According to the U.S. Energy Information Administration, there are more than 1,000 facilities operating combined heat and power units in the United States, including hospitals, universities, and industries. There are 95 cogeneration facilities in my home State of Maine alone.

By capturing the heat that would be rejected by traditional power generators, combined heat and power is extremely efficient. While a typical coal-fired powerplant only achieves about 34 percent efficiency, cogeneration facilities achieve 70 to 85 percent efficiency. On average, combined heat and power facilities are twice as fuel efficient as conventional utility plants.

By keeping in place incentives for using combined heat and power, the Carper-Collins amendment adds to the competitiveness of our domestic manufacturing. Because cogeneration is so efficient, it reduces cost. The President's national energy policy makes clear that combined heat and power offers energy efficiency and cost savings important to many manufacturers that compete in the international marketplace.

Our amendment also increases energy security and electric reliability. Dispersing power generation at manufacturing sites is an important tool to reduce the risk to the electricity supply. Generating electricity close to where it will be used reduces the load on existing transmission infrastructure. It reduces the amount of energy lost in transmission while eliminating the need to construct expensive power lines to transmit power from large central station powerplants.

In addition, cogeneration reduces the U.S. dependency on foreign sources of energy by encouraging energy efficiency and fuel diversity in electric power generation.

Also, our amendment is good for the environment. Because combined heat and power facilities are twice as efficient as conventional plants, they have fewer emissions. They reduce emissions of the chemicals that cause smog and acid rain and cut greenhouse gas emissions in half. For this reason, cogeneration is an important component of any plan to reduce greenhouse gas emissions and is included in the President's climate initiative.

The U.S. Department of Energy and the EPA have set the goal of doubling U.S. cogeneration capacity by 2010. At industrial facilities alone, cogeneration could reduce annual greenhouse gas emissions by 44 million metric tons. They could also reduce emissions of smog-forming nitrogen oxides by 614,000 tons per year.

Let me now add to the comments made by Senator CARPER on why this amendment is necessary. The Public Utility Regulatory Policy Act, known as PURPA, requires utilities to sell backup power to qualifying nonutility power facilities at just and reasonable rates. It also obligates utilities to purchase excess power from cogeneration facilities at prices equal to that utility's own cost of production, known as the avoided cost. The Senate energy bill, however, repeals PURPA. Repealing PURPA would be a good idea if competitive electricity markets existed all across this Nation. Unfortunately, the legislation before us repeals PURPA even if competitive markets are not achieved.

Our amendment would keep certain PURPA provisions in place until competitive electricity markets were established. For a limited time our amendment would keep in place the PURPA provisions requiring utilities to provide backup power and buy electricity from qualifying cogeneration facilities. As soon as competitive electricity markets were established, these requirements would be repealed.

Without competition, there is no incentive for utilities to provide backup power or purchase electricity from combined heat and power facilities even though that electricity is cleaner and more efficient than most other electricity generation. Until a combined cogeneration facility can shop for backup power from competing suppliers and sell power at a competitive price, PURPA should not be unconditionally repealed.

The amendment Senator CARPER and I are offering today will keep in place incentives that continue to operate combined heat and power facilities until true competition exists in electricity markets.

This amendment is good for the economy, good for the environment, good for our energy policy, and good for the competitiveness of American manufacturing.

I thank my colleague from Delaware for involving me in this amendment. I urge our colleagues to support our proposal.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. BINGAMAN. Mr. President, I know the Senator from Alaska is planning to come to the floor to speak against the amendment. At this point, unless the proponents of the amendment would like to do initial debate, 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. REID. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

The Senator from Nevada is recognized.

Mr. REID. For Members of the Senate, within the next 15 minutes there will be a rollcall vote, so everybody who is off the Hill should start heading back. The vote will occur probably around 1:05.

The PRESIDING OFFICER. The Senator from Alaska is recognized.

Mr. MURKOWSKI. Mr. President, the amendment pending, as I understand it, would extend PURPA's mandatory purchase obligation until such time as FERC determined that a PURPA ''qualifying facility'' had access to ''independently administered, auction-based day ahead and real time wholesale markets for sale of electric energy.''

The amendment would also require purchasing utilities to continue to sell backup power to qualified facilities unless competing retail electric suppliers were able to provide electric energy to the qualified facility.

This basically means that FERC is in charge of certain retail sales of electricity—preempting State public utility commissioners on backup retail sales, at least for the foreseeable future. As a consequence, with all due respect, I believe the amendment is flawed. It would continue PURPA's mandatory purchase obligation indefinitely into the future by conditioning repeal on an affirmative FERC finding on a powerplant-by-powerplant basis that the statutory test is met.

There are no requirements in the amendment regarding the process or timing for FERC action. Satisfying this test could take virtually forever, including numerous court challenges. Nor is there any guidance as to how FERC is to define the existence of an ''independently administered, auction-based day ahead and real time wholesale market'' for electricity.

I guess the question is, Who knows really what it means? It is not a term of art in the Federal Power Act. Moreover, many areas of the country likely do not now meet—and may never meet—this test.

So I suggest that we not be fooled by claims that the only thing the qualifying facilities want is access to the transmission grid. They have that now under FERC order No. 888. It is the law of the land, and it has been upheld by the Supreme Court.

What do the supporters of this amendment really want? In my opinion, they really want to continue PURPA's mandatory purchases at above-market rates. Who pays the cost above market rates? Obviously, the consumer—to have their power purchased at the ''avoided cost'' rate, even if that rate is far above the market rate.

Well, I think this is wrong policy. The language in the underlying Daschle-Bingaman bill leaves existing contracts in place; but there should be no new PURPA contracts. I think most Members agree with that. Since its enactment—and we have had this debate previously on the bill—in 1978, PURPA has forced customers to pay lots of money. It is estimated that they have paid tens of billions of dollars more for electricity than would have been the case had it not been enacted.

PURPA is incompatible with competitive wholesale markets. It has been used by the qualifying facilities that are cogenerators—producing both power and steam for industrial uses—in name only.

Further, the last three administrations have proposed the repeal of PURPA's mandatory purchase obligation, and almost every comprehensive electric bill introduced over the past two Congresses has contained nearly identical language to the bipartisan consensus PURPA language contained in the Daschle-Bingaman amendment.

Keeping PURPA is contrary to protecting consumers. Thus, in my opinion, the amendment should be rejected. I propose that we table the amendment and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

At this time, there is not a sufficient second.

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

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

Mr. MURKOWSKI. Mr. President, I have no objection if Senator CARPER wants to speak, even though the motion was made. I would certainly defer to my friend.

The PRESIDING OFFICER (Mr. KOHL). The Senator from Delaware is recognized.

Mr. CARPER. Mr. President, I thank the Senator.

With the combined heat and power facilities, we have the ability to generate energy almost twice as efficiently as we generate it from traditional utilities, traditional generating plants. With combined heat and power facilities, we see emissions that are roughly half those of traditional powerplants.

The administration's national energy plan envisions a doubling and relies on combined heat and power facilities in this country because they are so energy efficient and also environmentally friendly.

The downside, unfortunately, is that, inadvertently, the language of this bill before us takes away the ability for FERC to help ensure that these combined heat and power facilities have the opportunity to sell power at reasonable prices into the grid and to buy power, if and when they need to buy it, at reasonable prices.

I think all of us would agree that to have the ability to create more facilities that are twice as energy efficient as traditional generating facilities and produce half the emissions is a good thing. That is why the administration has offered doubling these facilities in their plan.

Unfortunately, if we leave the language as it is in the bill, we are going to find that the potential that is embodied in the generating capability of the combined heat and power facilities will not be realized. Nobody is interested in utilities having to sell electricity at rates that are above market. We want to simply make sure that a combined heat and power facility, which is twice as energy efficient, and twice as environmentally friendly, has the opportunity to expand. That is what we seek to do here.

With that in mind, I ask our colleagues to oppose the motion to table.

Again, I express my thanks to the Senator from Maine, Ms. COLLINS, for joining me and a number of colleagues in offering this amendment today.

I yield the floor.

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

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

The Senator from Alaska.

Mr. MURKOWSKI. Mr. President, I move to table the pending amendment, and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The question is on agreeing to the motion to table amendment No. 3197. 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. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 37, nays 60, as follows:

[Rollcall Vote No. 82 Leg.]

YEAS—37

Allard	Ensign	Lugar
Allen	Enzi	McCain
Bennett	Graham	McConnell
Bingaman	Gramm	Miller
Bunning	Grassley	Murkowski
Burns	Hagel	Murray
Cantwell	Hatch	Nelson (FL)
Cochran	Hutchison	Nickles
Craig	Inhofe	Roberts
Crapo	Kyl	
Domenici	Lott	

Sessions	Stevens	Thurmond
Shelby	Thomas	Warner

NAYS—60

Akaka	Dodd	Lieberman
Baucus	Dorgan	Lincoln
Bayh	Durbin	Mikulski
Biden	Edwards	Nelson (NE)
Bond	Feingold	Reed
Boxer	Feinstein	Reid
Breaux	Fitzgerald	Rockefeller
Brownback	Frist	Santorum
Byrd	Gregg	Sarbanes
Campbell	Harkin	Schumer
Carnahan	Hollings	Smith (NH)
Carper	Hutchinson	Smith (OR)
Chafee	Inouye	Snowe
Cleland	Jeffords	Specter
Clinton	Kennedy	Stabenow
Collins	Kerry	Thompson
Conrad	Kohl	Torricelli
Corzine	Landrieu	Voinovich
Dayton	Leahy	Wellstone
DeWine	Levin	Wyden

NOT VOTING—3

Daschle	Helms	Johnson

The motion was rejected.

Mr. REID. I move to reconsider the vote, and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. REID. Is there further debate on the amendment?

The PRESIDING OFFICER. The question is on agreeing to amendment No. 3197.

The amendment (No. 3197) was agreed to.

Mr. REID. I move to reconsider the vote, and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. REID. Mr. President, I ask unanimous consent that the Senator from Georgia, Mr. CLELAND, be recognized for up to 15 minutes to speak as in morning business, and the time be counted against the postcloture 30 hours.

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

(The remarks of Mr. CLELAND are printed in today's RECORD under ''Morning Business.'')

Mr. BROWNBACK. Mr. President, I have an amendment I would like to send forward, modify, and set aside.

The PRESIDING OFFICER. The Senator from Kansas.

MODIFICATION OF SUBMITTED AMENDMENTS NOS. 3239 AND 3146

Mr. BROWNBACK. I call up amendment No. 3239 and ask for its immediate consideration, and I ask unanimous consent to modify amendment No. 3239.

Mr. REID. Mr. President, reserving the right to object, I do not think we have had a chance to see that modification. I have spoken to the Senator from Kansas in the Chamber this morning. I spoke also with Senator HAGEL. We have to do both at the same time. We cannot do them separately.

Mr. BROWNBACK. I spoke with Senator HAGEL and told him I would send it forward, then ask for the modification, and then set it aside. If we want to do those at the same time, that is fine. I just wanted to get the amendment and its modifications forward. It is not to get ahead of anybody. If they want to do the modifications at the same time, I will yield to the distinguished floor leader from Nevada.

Mr. REID. Mr. President, I withdraw my reservation.

The PRESIDING OFFICER. The clerk will report the amendment.

Mr. BROWNBACK. Mr. President, to remove the confusion, I withdraw my request at this time.

The PRESIDING OFFICER. The request is withdrawn.

Mr. REID. Mr. President, I say to my friend, it is my understanding what he wants to do is modify his amendment.

Mr. BROWNBACK. That is correct.

Mr. REID. I also want to modify Senator HAGEL's amendment.

I ask unanimous consent, notwithstanding rule XXII, that it be in order to modify amendments Nos. 3239 and 3146. I think that accomplishes what we want to accomplish.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Submitted amendments Nos. 3239 and 3146, as modified, are as follows:

SUBMITTED AMENDMENT NO. 3239, AS MODIFIED

Strike all after the title heading and insert the following:

SEC. 1101. PURPOSE.

The purpose of this title is to establish a greenhouse gas inventory, reductions registry, and information system that—

(1) are complete, consistent, transparent, and accurate;

(2) will create reliable and accurate data that can be used by public and private entities to design efficient and effective greenhouse gas emission reduction strategies; and

(3) will acknowledge and encourage greenhouse gas emission reductions.

SEC. 1102. DEFINITIONS.

In this title:

(1) ADMINISTRATOR.—The term ''Administrator'' means the Administrator of the Environmental Protection Agency.

(2) BASELINE.—The term ''baseline'' means the historic greenhouse gas emission levels of an entity, as adjusted upward by the designated agency to reflect actual reductions that are verified in accordance with—

(A) regulations promulgated under section 1104(c)(1); and

(B) relevant standards and methods developed under this title.

(3) DATABASE.—The term ''database'' means the National Greenhouse Gas Database established under section 1104.

(4) DESIGNATED AGENCY.—The term ''designated agency'' means a department or agency to which responsibility for a function or program is assigned under the memorandum of agreement entered into under section 1103(a).

(5) DIRECT EMISSIONS.—The term ''direct emissions'' means greenhouse gas emissions by an entity from a facility that is owned or controlled by that entity.

(6) ENTITY.—The term ''entity'' means—

(A) a person located in the United States; or

(B) a public or private entity, to the extent that the entity operates in the United States.

(7) FACILITY.—The term ''facility'' means—

(A) all buildings, structures, or installations located on any 1 or more contiguous or adjacent properties of an entity in the United States; and

(B) a fleet of 20 or more motor vehicles under the common control of an entity.

(8) GREENHOUSE GAS.—The term ''greenhouse gas'' means—

(A) carbon dioxide;

(B) methane;

(C) nitrous oxide;

(D) hydrofluorocarbons;

(E) perfluorocarbons;

(F) sulfur hexafluoride; and

(G) any other anthropogenic climate-forcing emissions with significant ascertainable global warming potential, as—

(i) recommended by the National Academy of Sciences under section 1107(b)(3); and

(ii) determined in regulations promulgated under section 1104(c)(1) (or revisions to the regulations) to be appropriate and practicable for coverage under this title.

(9) INDIRECT EMISSIONS.—The term ''indirect emissions'' means greenhouse gas emissions that—

(A) are a result of the activities of an entity; but

(B)(i) are emitted from a facility owned or controlled by another entity; and

(ii) are not reported as direct emissions by the entity the activities of which resulted in the emissions.

(10) REGISTRY.—The term ''registry'' means the registry of greenhouse gas emission reductions established as a component of the database under section 1104(b)(2).

(11) SEQUESTRATION.—

(A) IN GENERAL.—The term ''sequestration'' means the capture, long-term separation, isolation, or removal of greenhouse gases from the atmosphere.

(B) INCLUSIONS.—The term ''sequestration'' includes—

(i) soil carbon sequestration;

(ii) agricultural and conservation practices;

(iii) reforestation;

(iv) forest preservation;

(v) maintenance of an underground reservoir; and

(vi) any other appropriate biological or geological method of capture, isolation, or removal of greenhouse gases from the atmosphere, as determined by the Administrator.

SEC. 1103. ESTABLISHMENT OF MEMORANDUM OF AGREEMENT.

(a) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the President, acting through the Director of the Office of National Climate Change Policy, shall direct the Secretary of Energy, the Secretary of Commerce, the Secretary of Agriculture, the Secretary of Transportation, and the Administrator to enter into a memorandum of agreement under which those heads of Federal agencies will—

(1) recognize and maintain statutory and regulatory authorities, functions, and programs that—

(A) are established as of the date of enactment of this Act under other law;

(B) provide for the collection of data relating to greenhouse gas emissions and effects; and

(C) are necessary for the operation of the database;

(2)(A) distribute additional responsibilities and activities identified under this title to Federal departments or agencies in accordance with the missions and expertise of those departments and agencies; and

(B) maximize the use of available resources of those departments and agencies; and

(3) provide for the comprehensive collection and analysis of data on greenhouse gas emissions relating to product use (including the use of fossil fuels and energy-consuming appliances and vehicles).

(b) MINIMUM REQUIREMENTS.—The memorandum of agreement entered into under subsection (a) shall, at a minimum, retain the

following functions for the designated agencies:

(1) DEPARTMENT OF ENERGY.—The Secretary of Energy shall be primarily responsible for developing, maintaining, and verifying the registry and the emission reductions reported under section 1605(b) of the Energy Policy Act of 1992 (42 U.S.C. 13385(b)).

(2) DEPARTMENT OF COMMERCE.—The Secretary of Commerce shall be primarily responsible for the development of—

(A) measurement standards for the monitoring of emissions; and

(B) verification technologies and methods to ensure the maintenance of a consistent and technically accurate record of emissions, emission reductions, and atmospheric concentrations of greenhouse gases for the database.

(3) ENVIRONMENTAL PROTECTION AGENCY.—The Administrator shall be primarily responsible for—

(A) emissions monitoring, measurement, verification, and data collection under this title and title IV (relating to acid deposition control) and title VIII of the Clean Air Act (42 U.S.C. 7651 et seq.), including mobile source emissions information from implementation of the corporate average fuel economy program under chapter 329 of title 49, United States Code; and

(B) responsibilities of the Environmental Protection Agency relating to completion of the national inventory for compliance with the United Nations Framework Convention on Climate Change, done at New York on May 9, 1992.

(4) DEPARTMENT OF AGRICULTURE.—The Secretary of Agriculture shall be primarily responsible for—

(A) developing measurement techniques for—

(i) soil carbon sequestration; and

(ii) forest preservation and reforestation activities; and

(B) providing technical advice relating to biological carbon sequestration measurement and verification standards for measuring greenhouse gas emission reductions or offsets.

(c) DRAFT MEMORANDUM OF AGREEMENT.—Not later than 15 months after the date of enactment of this Act, the President, acting through the Director of the Office of National Climate Change Policy, shall publish in the Federal Register, and solicit comments on, a draft version of the memorandum of agreement described in subsection (a).

(d) NO JUDICIAL REVIEW.—The final version of the memorandum of agreement shall not be subject to judicial review.

SEC. 1104. NATIONAL GREENHOUSE GAS DATABASE.

(a) ESTABLISHMENT.—As soon as practicable after the date of enactment of this Act, the designated agencies, in consultation with the private sector and nongovernmental organizations, shall jointly establish, operate, and maintain a database, to be known as the ''National Greenhouse Gas Database'', to collect, verify, and analyze information on greenhouse gas emissions by entities.

(b) NATIONAL GREENHOUSE GAS DATABASE COMPONENTS.—The database shall consist of—

(1) an inventory of greenhouse gas emissions; and

(2) a registry of greenhouse gas emission reductions.

(c) COMPREHENSIVE SYSTEM.—

(1) IN GENERAL.—Not later than 2 years after the date of enactment of this Act, the designated agencies shall jointly promulgate regulations to implement a comprehensive system for greenhouse gas emissions reporting, inventorying, and reductions registration.

(2) REQUIREMENTS.—The designated agencies shall ensure, to the maximum extent practicable, that—

(A) the comprehensive system described in paragraph (1) is designed to—

(i) maximize completeness, transparency, and accuracy of information reported; and

(ii) minimize costs incurred by entities in measuring and reporting greenhouse gas emissions; and

(B) the regulations promulgated under paragraph (1) establish procedures and protocols necessary—

(i) to prevent the reporting of some or all of the same greenhouse gas emissions or emission reductions by more than 1 reporting entity;

(ii) to provide for corrections to errors in data submitted to the database;

(iii) to provide for adjustment to data by reporting entities that have had a significant organizational change (including mergers, acquisitions, and divestiture), in order to maintain comparability among data in the database over time;

(iv) to provide for adjustments to reflect new technologies or methods for measuring or calculating greenhouse gas emissions; and

(v) to account for changes in registration of ownership of emission reductions resulting from a voluntary private transaction between reporting entities.

(3) BASELINE IDENTIFICATION AND PROTECTION.—Through regulations promulgated under paragraph (1), the designated agencies shall develop and implement a system that provides—

(A) for the provision of unique serial numbers to identify the verified emission reductions made by an entity relative to the baseline of the entity;

(B) for the tracking of the reductions associated with the serial numbers; and

(C) that the reductions may be applied, as determined to be appropriate by any Act of Congress enacted after the date of enactment of this Act, toward a Federal requirement under such an Act that is imposed on the entity for the purpose of reducing greenhouse gas emissions.

SEC. 1105. GREENHOUSE GAS REDUCTION REPORTING.

(a) IN GENERAL.—An entity that participates in the registry shall meet the requirements described in subsection (b).

(b) REQUIREMENTS.—

(1) IN GENERAL.—The requirements referred to in subsection (a) are that an entity (other than an entity described in paragraph (2)) shall—

(A) establish a baseline (including all of the entity's greenhouse gas emissions on an entity-wide basis); and

(B) submit the report described in subsection (c)(1).

(2) REQUIREMENTS APPLICABLE TO ENTITIES ENTERING INTO CERTAIN AGREEMENTS.—An entity that enters into an agreement with a participant in the registry for the purpose of a carbon sequestration project shall not be required to comply with the requirements specified in paragraph (1) unless that entity is required to comply with the requirements by reason of an activity other than the agreement.

(c) REPORTS.—

(1) REQUIRED REPORT.—Not later than April 1 of the third calendar year that begins after the date of enactment of this Act, and not later than April 1 of each calendar year thereafter, subject to paragraph (3), an entity described in subsection (a) shall submit to each appropriate designated agency a report that describes, for the preceding calendar year, the entity-wide greenhouse gas emissions (as reported at the facility level), including—

(A) the total quantity of each greenhouse gas emitted, expressed in terms of mass and in terms of the quantity of carbon dioxide equivalent;

(B) an estimate of the greenhouse gas emissions from fossil fuel combusted by products manufactured and sold by the entity in the previous calendar year, determined over the average lifetime of those products; and

(C) such other categories of emissions as the designated agency determines in the regulations promulgated under section 1104(c)(1) may be practicable and useful for the purposes of this title, such as—

(i) direct emissions from stationary sources;

(ii) indirect emissions from imported electricity, heat, and steam;

(iii) process and fugitive emissions; and

(iv) production or importation of greenhouse gases.

(2) VOLUNTARY REPORTING.—An entity described in subsection (a) may (along with establishing a baseline and reporting reductions under this section)—

(A) submit a report described in paragraph (1) before the date specified in that paragraph for the purposes of achieving and commoditizing greenhouse gas reductions through use of the registry; and

(B) submit to any designated agency, for inclusion in the registry, information that has been verified in accordance with regulations promulgated under section 1104(c)(1) and that relates to—

(i) with respect to the calendar year preceding the calendar year in which the information is submitted, and with respect to any greenhouse gas emitted by the entity—

(I) project reductions from facilities owned or controlled by the reporting entity in the United States;

(II) transfers of project reductions to and from any other entity;

(III) project reductions and transfers of project reductions outside the United States;

(IV) other indirect emissions that are not required to be reported under paragraph (1); and

(V) product use phase emissions;

(ii) with respect to greenhouse gas emission reductions activities of the entity that have been carried out during or after 1990, verified in accordance with regulations promulgated under section 1104(c)(1), and submitted to 1 or more designated agencies before the date that is 4 years after the date of enactment of this Act, any greenhouse gas emission reductions that have been reported or submitted by an entity under—

(I) section 1605(b) of the Energy Policy Act of 1992 (42 U.S.C. 13385(b)); or

(II) any other Federal or State voluntary greenhouse gas reduction program; and

(iii) any project or activity for the reduction of greenhouse gas emissions or sequestration of a greenhouse gas that is carried out by the entity, including a project or activity relating to—

(I) fuel switching;

(II) energy efficiency improvements;

(III) use of renewable energy;

(IV) use of combined heat and power systems;

(V) management of cropland, grassland, or grazing land;

(VI) a forestry activity that increases forest carbon stocks or reduces forest carbon emissions;

(VII) carbon capture and storage;

(VIII) methane recovery;

(IX) greenhouse gas offset investment; and

(X) any other practice for achieving greenhouse gas reductions as recognized by 1 or more designated agencies.

(3) EXEMPTIONS FROM REPORTING.—

(A) IN GENERAL.—If the Director of the Office of National Climate Change Policy determines under section 1108(b) that the reporting requirements under paragraph (1) shall apply to all entities (other than entities exempted by this paragraph), regardless of participation or nonparticipation in the registry, an entity shall be required to submit reports under paragraph (1) only if, in any calendar year after the date of enactment of this Act—

(i) the total greenhouse gas emissions of at least 1 facility owned by the entity exceeds 10,000 metric tons of carbon dioxide equivalent (or such greater quantity as may be established by a designated agency by regulation); or

(ii)(I) the total quantity of greenhouse gases produced, distributed, or imported by the entity exceeds 10,000 metric tons of carbon dioxide equivalent (or such greater quantity as may be established by a designated agency by regulation); and

(II) the entity is not a feedlot or other farming operation (as defined in section 101 of title 11, United States Code).

(B) ENTITIES ALREADY REPORTING.—

(i) IN GENERAL.—An entity that, as of the date of enactment of this Act, is required to report carbon dioxide emissions data to a Federal agency shall not be required to re-report that data for the purposes of this title.

(ii) REVIEW OF PARTICIPATION.—For the purpose of section 1108, emissions reported under clause (i) shall be considered to be reported by the entity to the registry.

(4) PROVISION OF VERIFICATION INFORMATION BY REPORTING ENTITIES.—Each entity that submits a report under this subsection shall provide information sufficient for each designated agency to which the report is submitted to verify, in accordance with measurement and verification methods and standards developed under section 1106, that the greenhouse gas report of the reporting entity—

(A) has been accurately reported; and

(B) in the case of each voluntary report under paragraph (2), represents—

(i) actual reductions in direct greenhouse gas emissions—

(I) relative to historic emission levels of the entity; and

(II) net of any increases in—

(aa) direct emissions; and

(bb) indirect emissions described in paragraph (1)(C)(ii); or

(ii) actual increases in net sequestration.

(5) FAILURE TO SUBMIT REPORT.—An entity that participates or has participated in the registry and that fails to submit a report required under this subsection shall be prohibited from including emission reductions reported to the registry in the calculation of the baseline of the entity in future years.

(6) INDEPENDENT THIRD-PARTY VERIFICATION.—To meet the requirements of this section and section 1106, a entity that is required to submit a report under this section may—

(A) obtain independent third-party verification; and

(B) present the results of the third-party verification to each appropriate designated agency.

(7) AVAILABILITY OF DATA.—

(A) IN GENERAL.—The designated agencies shall ensure, to the maximum extent practicable, that information in the database is—

(i) published;

(ii) accessible to the public; and

(iii) made available in electronic format on the Internet.

(B) EXCEPTION.—Subparagraph (A) shall not apply in any case in which the designated agencies determine that publishing or otherwise making available information described in that subparagraph poses a risk to national security.

(8) DATA INFRASTRUCTURE.—The designated agencies shall ensure, to the maximum extent practicable, that the database uses, and is integrated with, Federal, State, and regional greenhouse gas data collection and reporting systems in effect as of the date of enactment of this Act.

(9) ADDITIONAL ISSUES TO BE CONSIDERED.—In promulgating the regulations under section 1104(c)(1) and implementing the database, the designated agencies shall take into consideration a broad range of issues involved in establishing an effective database, including—

(A) the appropriate units for reporting each greenhouse gas;

(B) the data and information systems and measures necessary to identify, track, and verify greenhouse gas emission reductions in a manner that will encourage the development of private sector trading and exchanges;

(C) the greenhouse gas reduction and sequestration methods and standards applied in other countries, as applicable or relevant;

(D) the extent to which available fossil fuels, greenhouse gas emissions, and greenhouse gas production and importation data are adequate to implement the database;

(E) the differences in, and potential uniqueness of, the facilities, operations, and business and other relevant practices of persons and entities in the private and public sectors that may be expected to participate in the registry; and

(F) the need of the registry to maintain valid and reliable information on baselines of entities so that, in the event of any future action by Congress to require entities, individually or collectively, to reduce greenhouse gas emissions, Congress will be able—

(i) to take into account that information; and

(ii) to avoid enacting legislation that penalizes entities for achieving and reporting reductions.

(d) ANNUAL REPORT.—The designated agencies shall jointly publish an annual report that—

(1) describes the total greenhouse gas emissions and emission reductions reported to the database during the year covered by the report;

(2) provides entity-by-entity and sector-by-sector analyses of the emissions and emission reductions reported;

(3) describes the atmospheric concentrations of greenhouse gases; and

(4) provides a comparison of current and past atmospheric concentrations of greenhouse gases.

SEC. 1106. MEASUREMENT AND VERIFICATION.

(a) STANDARDS.—

(1) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the designated agencies shall jointly develop comprehensive measurement and verification methods and standards to ensure a consistent and technically accurate record of greenhouse gas emissions, emission reductions, sequestration, and atmospheric concentrations for use in the registry.

(2) REQUIREMENTS.—The methods and standards developed under paragraph (1) shall address the need for—

(A) standardized measurement and verification practices for reports made by all entities participating in the registry, taking into account—

(i) protocols and standards in use by entities desiring to participate in the registry as of the date of development of the methods and standards under paragraph (1);

(ii) boundary issues, such as leakage and shifted use;

(iii) avoidance of double counting of greenhouse gas emissions and emission reductions; and

(iv) such other factors as the designated agencies determine to be appropriate;

(B) measurement and verification of actions taken to reduce, avoid, or sequester greenhouse gas emissions;

(C) in coordination with the Secretary of Agriculture, measurement of the results of the use of carbon sequestration and carbon recapture technologies, including—

(i) organic soil carbon sequestration practices; and

(ii) forest preservation and reforestation activities that adequately address the issues of permanence, leakage, and verification;

(D) such other measurement and verification standards as the Secretary of Commerce, the Secretary of Agriculture, the Administrator, and the Secretary of Energy determine to be appropriate; and

(E) other factors that, as determined by the designated agencies, will allow entities to adequately establish a fair and reliable measurement and reporting system.

(b) REVIEW AND REVISION.—The designated agencies shall periodically review, and revise as necessary, the methods and standards developed under subsection (a).

(c) PUBLIC PARTICIPATION.—The Secretary of Commerce shall—

(1) make available to the public for comment, in draft form and for a period of at least 90 days, the methods and standards developed under subsection (a); and

(2) after the 90-day period referred to in paragraph (1), in coordination with the Secretary of Energy, the Secretary of Agriculture, and the Administrator, adopt the methods and standards developed under subsection (a) for use in implementing the database.

(d) EXPERTS AND CONSULTANTS.—

(1) IN GENERAL.—The designated agencies may obtain the services of experts and consultants in the private and nonprofit sectors in accordance with section 3109 of title 5, United States Code, in the areas of greenhouse gas measurement, certification, and emission trading.

(2) AVAILABLE ARRANGEMENTS.—In obtaining any service described in paragraph (1), the designated agencies may use any available grant, contract, cooperative agreement, or other arrangement authorized by law.

SEC. 1107. INDEPENDENT REVIEWS.

(a) IN GENERAL.—Not later than 5 years after the date of enactment of this Act, and every 3 years thereafter, the Comptroller General of the United States shall submit to Congress a report that—

(1) describes the efficacy of the implementation and operation of the database; and

(2) includes any recommendations for improvements to this title and programs carried out under this title—

(A) to achieve a consistent and technically accurate record of greenhouse gas emissions, emission reductions, and atmospheric concentrations; and

(B) to achieve the purposes of this title.

(b) REVIEW OF SCIENTIFIC METHODS.—The designated agencies shall enter into an agreement with the National Academy of Sciences under which the National Academy of Sciences shall—

(1) review the scientific methods, assumptions, and standards used by the designated agencies in implementing this title;

(2) not later than 4 years after the date of enactment of this Act, submit to Congress a report that describes any recommendations for improving—

(A) those methods and standards; and

(B) related elements of the programs, and structure of the database, established by this title; and

(3) regularly review and update as appropriate the list of anthropogenic climate-forcing emissions with significant global warming potential described in section 1102(8)(G).

SEC. 1108. REVIEW OF PARTICIPATION.

(a) IN GENERAL.—Not later than 5 years after the date of enactment of this Act, the Director of the Office of National Climate Change Policy shall determine whether the reports submitted to the registry under section 1105(c)(1) represent less than 60 percent of the national aggregate anthropogenic greenhouse gas emissions.

(b) INCREASED APPLICABILITY OF REQUIREMENTS.—If the Director of the Office of National Climate Change Policy determines under subsection (a) that less than 60 percent of the aggregate national anthropogenic greenhouse gas emissions are being reported to the registry—

(1) the reporting requirements under section 1105(c)(1) shall apply to all entities (except entities exempted under section 1105(c)(3)), regardless of any participation or nonparticipation by the entities in the registry; and

(2) each entity shall submit a report described in section 1105(c)(1)—

(A) not later than the earlier of—

(i) April 30 of the calendar year immediately following the year in which the Director of the Office of National Climate Change Policy makes the determination under subsection (a); or

(ii) the date that is 1 year after the date on which the Director of the Office of National Climate Change Policy makes the determination under subsection (a); and

(B) annually thereafter.

(c) RESOLUTION OF DISAPPROVAL.—For the purposes of this section, the determination of the Director of the Office of National Climate Change Policy under subsection (a) shall be considered to be a major rule (as defined in section 804(2) of title 5, United States Code) subject to the congressional disapproval procedure under section 802 of title 5, United States Code.

SEC. 1109. ENFORCEMENT.

If an entity that is required to report greenhouse gas emissions under section 1105(c)(1) or 1108 fails to comply with that requirement, the Attorney General may, at the request of the designated agencies, bring a civil action in United States district court against the entity to impose on the entity a civil penalty of not more than $25,000 for each day for which the entity fails to comply with that requirement.

SEC. 1110. REPORT ON STATUTORY CHANGES AND HARMONIZATION.

Not later than 3 years after the date of enactment of this Act, the President shall submit to Congress a report that describes any modifications to this title or any other provision of law that are necessary to improve the accuracy or operation of the database and related programs under this title.

SEC. 1111. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as are necessary to carry out this title.

SUBMITTED AMENDMENT NO. 3146

(Purpose: To establish a national registry for accurate and reliable reports of greenhouse gas emissions, and to further encourage voluntary reductions in such emissions)

Strike Title XI and insert the following:

TITLE XI—NATIONAL GREENHOUSE GAS REGISTRY

SEC. 1101. SHORT TITLE.

This amendment may be cited as the ''National Climate Registry Initiative.''

SEC. 1102. PURPOSE.

The purpose of this title is to establish a new national greenhouse gas registry—

(1) to further encourage voluntary efforts, by persons and entities conducting business and other operations in the United States, to implement actions, projects and measures that reduce greenhouse gas emissions;

(2) to encourage such persons and entities to monitor and voluntarily report greenhouse gas emissions, direct or indirect, from their facilities, and to the extent practicable, from other types of sources;

(3) to adopt a procedure and uniform format for such persons and entities to establish and report voluntarily greenhouse gas emission baselines in connection with, and furtherance of, such reductions;

(4) to provide verification mechanisms to ensure for participants and the public a high level of confidence in accuracy and verifiability of reports made to the national registry;

(5) to encourage persons and entities, through voluntary agreement with the Secretary, to report annually greenhouse gas emissions from their facilities;

(6) to provide to persons or entities that engage in such voluntary agreements and reduce their emissions transferable credits which, inter alia, shall be available for use by such persons or entities for any incentive, market-based, or regulatory programs determined by the Congress in a future enactment to be necessary and feasible to reduce the risk of climate change and its impacts; and

(7) to provide for the registration, transfer and tracking of the ownership or holding of such credits for purposes of facilitating voluntary trading among persons and entities.

SEC. 1103. DEFINITIONS.

In this title—

(1) ''person'' means an individual, corporation, association, joint venture, cooperative, or partnership;

(2) ''entity'' means a public person, a Federal, interstate, State, or local governmental agency, department, corporation, or other publicly owned organization;

(3) ''facility'' means those buildings, structures, installations, or plants (including units thereof) that are on contiguous or adjacent land, are under common control of the same person or entity and are a source of emissions of greenhouse gases in excess for emission purposes of a threshold as recognized by the guidelines issued under this title;

(4) ''reductions'' means actions, projects or measures taken, whether in the United States or internationally, by a person or entity to reduce, avoid or sequester, directly or indirectly, emissions of one or more greenhouse gases;

(5) ''greenhouse gas'' means—

(A) an anthropogenic gaseous constituent of the atmosphere (including carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride) that absorbs and re-emits infrared radiation and influences climate; and

(B) an anthropogenic aerosol (such as black soot) that absorbs solar radiation and influences climate;

(6) ''Secretary'' means the Secretary of Energy;

(7) ''Administrator'' means the Administrator of the Energy Information Administration; and

(8) ''Interagency Task Force'' means the Interagency Task Force established under title X of this Act.

SEC. 1104. ESTABLISHMENT.

(a) IN GENERAL.—Not later than 1 year after the enactment of this title, the President shall, in consultation with the Interagency Task Force, establish a National Greenhouse Gas Registry to be administered by the Secretary through the Administrator in accordance with the applicable provisions of this title, section 205 of the Department of Energy Act (42 U.S.C. 7135) and other applicable provisions of that Act (42 U.S.C. 7101, et seq.).

(b) DESIGNATION.—Upon establishment of the registry and issuance of the guidelines pursuant to this title, such registry shall thereafter be the depository for the United States of data on greenhouse gas emissions and emissions reductions collected from and reported by persons or entities with facilities or operations in the United States, pursuant to the guidelines issued under this title.

(c) PARTICIPATION.—Any person or entity conducting business or activities in the United States may, in accordance with the guidelines established pursuant to this title, voluntarily report its total emissions levels and register its certified emissions reductions with such registry, provided that such reports—

(1) represent a complete and accurate inventory of emissions from facilities and operations within the United States and any domestic or international reduction activities; and

(2) have been verified as accurate by an independent person certified pursuant to guidelines developed pursuant to this title, or other means.

SEC. 1105. IMPLEMENTATION.

(a) GUIDELINES.—Not later than 1 year after the date of establishment of the registry pursuant to this title, the Secretary shall, in consultation with the Interagency Task Force, issue guidelines establishing procedures for the administration of the national registry. Such guidelines shall include—

(1) means and methods for persons or entities to determine, quantify, and report by appropriate and credible means their baseline emissions levels on an annual basis, taking into consideration any reports made by such participants under past Federal programs;

(2) procedures for the use of an independent third-party or other effective verification process for reports on emissions levels and emissions reductions, using the authorities available to the Secretary under this and other provisions of law and taking into account, to the extent possible, costs, risks, the voluntary nature of the registry, and other relevant factors;

(3) a range of reference cases for reporting of project-based reductions in various sectors, and the inclusion of benchmark and default methodologies and practices for use as reference cases for eligible projects;

(4) safeguards to prevent and address reporting, inadvertently or otherwise, of some or all of the same greenhouse gas emissions or reductions by more than one reporting person or entity and to make corrections and adjustments in data where necessary;

(5) procedures and criteria for the review and registration of ownership or holding of all or part of any reported and independently verified emission reduction projects, actions and measures relative to such reported baseline emissions level;

(6) measures or a process for providing to such persons or entities transferable credits with unique serial numbers for such verified emissions reductions; and

(7) accounting provisions needed to allow for changes in registration and transfer of ownership of such credits resulting from a voluntary private transaction between persons or entities, provided that the Secretary is notified of any such transfer within 30 days of the transfer having been effected either by private contract or market mechanism.

(b) CONSIDERATION.—In developing such guidelines, the Secretary shall take into consideration—

(1) the existing guidelines for voluntary emissions reporting issued under section 1605(b) of the Energy Policy Act of 1992 (42 U.S.C. 13385(b)), experience in applying such guidelines, and any revisions thereof initiated by the Secretary pursuant to direction of the President issued prior to the enactment of this title;

(2) protocols and guidelines developed under any Federal, State, local, or private voluntary greenhouse gas emissions reporting or reduction programs;

(3) the various differences and potential uniqueness of the facilities, operations and business and other relevant practices of persons and entities in the private and public sectors that may be expected to participate in the registry;

(4) issues, such as comparability, that are associated with the reporting of both emissions baselines and reductions from activities and projects; and

(5) the appropriate level or threshold emissions applicable to a facility or activity of a person or entity that may be reasonably and cost effectively identified, measured and reported voluntarily, taking into consideration different types of facilities and activities and the de minimis nature of some emissions and their sources; and

(6) any other consideration the Secretary may deem appropriate.

(c) EXPERTS AND CONSULTANTS.—The Secretary, and any member of the Interagency Task Force, may secure the services of experts and consultants in the private and nonprofit sectors in accordance with the provisions of section 3109 of title 5, United Sates Code, in the areas of greenhouse gas measurement, certification, and emissions trading. In securing such services, any grant, contract, cooperative agreement, or other arrangement authorized by law and already available to the Secretary or the member of the Interagency Task Force securing such services may be used.

(d) TRANSFERABILITY OF PRIOR REPORTS.—Emissions reports and reductions that have been made by a person or entity pursuant to section 1605(b) of the Energy Policy Act of 1992 (42 U.S.C. 13385(b)) or under other Federal or State voluntary greenhouse gas reduction programs may be independently verified and registered with the registry using the same guidelines developed by the Secretary pursuant to this section.

(e) PUBLIC COMMENT.—The Secretary shall make such guidelines available in draft form for public notice and opportunity for comment for a period of at least 90 days, and thereafter shall adopt them for use in implementation of the registry established pursuant to this title.

(f) REVIEW AND REVISION.—The Secretary, through the Interagency Task Force, shall periodically thereafter review the guidelines and, as needed, revise them in the same manner as provided for in this section.

SEC. 1106. VOLUNTARY AGREEMENTS.

(a) IN GENERAL.—In furtherance of the purposes of this title, any person or entity, and the Secretary, may voluntarily enter into an agreement to provide that—

(1) such person or entity (and successors thereto) shall report annually to the registry on emissions and sources of greenhouse gases from applicable facilities and operations which generate net emissions above any de minimis thresholds specified in the guidelines issued by the Secretary pursuant to this title;

(2) such person or entity (and successors thereto) shall commit to report and participate in the registry for a period of at least 5 calendar years, provided that such agreements may be renewed by mutual consent;

(3) for purposes of measuring performance under the agreement, such person or entity (and successors thereto) shall determine, by mutual agreement with the Secretary—

(A) pursuant to the guidelines issued under this title, a baseline emissions level for a representative period preceding the effective date of the agreement; and

(B) emissions reduction goals, taking into consideration the baseline emissions level determined under subparagraph (A) and any relevant economic and operational factors that may affect such baseline emissions level over the duration of the agreement; and

(4) for certified emissions reductions made relative to the baseline emissions level, the Secretary shall provide, at the request of the person or entity, transferable credits (with unique assigned serial numbers) to the person or entity which, inter alia—

(A) can be used by such person or entity towards meeting emissions reductions goals set forth under the agreement;

(B) can be transferred to other parties or entities through a voluntary private transaction between persons or entities; or

(C) shall be applicable towards any incentive, market-based, or regulatory programs determined by the Congress in a future enactment to be necessary and feasible to reduce the risk of climate change and its impacts.

(b) PUBLIC NOTICE AND COMMENT.—At least 30 days before any agreement is final, the Secretary shall give notice thereof in the Federal Register and provide an opportunity for public written comment. After reviewing such comments, the Secretary may withdraw the agreement or the parties thereto may mutually agree to revise it to finalize it without substantive change. Such agreement shall be retained in the national registry and be available to the public.

(c) EMISSIONS IN EXCESS.—In the event that a person or entity fails to certify that emissions from applicable facilities are less than the emissions reduction goals contained in the agreement, such person or entity shall take actions as necessary to reduce such excess emissions, including—

(1) redemption of transferable credits acquired in previous years if owned by the person or entity;

(2) acquisition of transferable credits from other persons or entities participating in the registry through their own agreements; or

(3) the undertaking of additional emissions reductions activities in subsequent years as may be determined by agreement with the Secretary.

(d) NO NEW AUTHORITY.—This section shall not be construed as providing any regulatory or mandate authority regarding reporting of such emissions or reductions.

SEC. 1107. MEASUREMENT AND VERIFICATION.

(a) IN GENERAL.—The Secretary of Commerce, through the National Institute of Standards and Technology and in consultation with the Secretary of Energy, shall develop and propose standards and practices for accurate measurement and verification of greenhouse gas emissions and emissions reductions. Such standards and best practices shall address the need for—

(1) standardized measurement and verification practices for reports made by all persons or entities participating in the registry, taking into account—

(A) existing protocols and standards already in use by persons or entities desiring to participate in the registry;

(B) boundary issues such as leakage and shifted utilization;

(C) avoidance of double-counting of greenhouse gas emissions and emissions reductions; and

(D) such other factors as the panel determines to be appropriate;

(2) measurement and verification of actions taken to reduce, avoid or sequester greenhouse gas emissions;

(3) in coordination with the Secretary of Agriculture, measurement of the results of the use of carbon sequestration and carbon recapture technologies, including—

(A) organic soil carbon sequestration practices;

(B) forest preservation and re-forestration activities which adequately address the issues of permanence, leakage and verification; and

(4) such other measurement and verification standards as the Secretary of Commerce, the Secretary of Agriculture, and the Secretary of Energy shall determine to be appropriate.

(b) PUBLIC COMMENT.—The Secretary of Commerce shall make such standards and practices available in draft form for public notice and opportunity for comment for a period of at least 90 days, and thereafter shall adopt them, in coordination with the Secretary of Energy, for use in the guidelines for implementation of the registry as issued pursuant to this title.

SEC. 1108. CERTIFIED INDEPENDENT THIRD PARTIES.

(a) CERTIFICATION.—The Secretary of Commerce shall, through the Director of the National Institute of Standards and Technology and the Administrator, develop standards for certification of independent persons to act as certified parties to be employed in verifying the accuracy and reliability of reports made under this title, including standards that—

(1) prohibit a certified party from themselves participating in the registry through the ownership or transaction of transferable credits recorded in the registry;

(2) prohibit the receipt by a certified party of compensation in the form of a commission where such party receives payment based on the amount of emissions reductions verified; and

(3) authorize such certified parties to enter into agreements with persons engaged in trading of transferable credits recorded in the registry.

(b) LIST OF CERTIFIED PARTIES.—The Secretary shall maintain and make available to persons or entities making reports under this title and to the public upon request a list of such certified parties and their clients making reports under this title.

SEC. 1109. REPORT TO CONGRESS.

Not later than 1 year after guidelines are issued for the registry pursuant to this title, and biennially thereafter, the President, through the Interagency Task Force, shall report to the Congress on the status of the registry established by this title. The report shall include—

(a) an assessment of the level of participation in the registry (both by sector and in terms of national emissions represented);

(b) effectiveness of voluntary reporting agreements in enhancing participation in the registry;

(c) use of the registry for emissions trading and other purposes;

(d) assessment of progress towards individual and national emissions reduction goals; and

(e) an inventory of administrative actions taken or planned to improve the national registry or the guidelines, or both, and such recommendations for legislative changes to this title or section 1605 of the Energy Policy Act of 1992 (42 U.S.C. 13385) as the President believes necessary to better carry out the purposes of this title.

SEC. 1110. REVIEW OF PARTICIPATION.

(a) IN GENERAL.—Not later than 5 years after the date of enactment of this title, the Director of the Office of National Climate Change Policy shall determine whether the reports submitted to the registry represent less than 60 percent of the national aggregate greenhouse gas emissions as inventoried

in the official U.S. Inventory of Greenhouse Gas Emissions and Sinks published by the Environmental Protection Agency for the previous calendar year.

(b) MANDATORY REPORTING.—If the Director of the Office of National Climate Change Policy determines under subsection (a) that less than 60 percent of such aggregate greenhouse gas emissions are being reported to the registry—

(1) all persons or entities, regardless of their participation in the registry, shall submit to the Secretary a report that describes, for the preceding calendar year, a complete inventory of greenhouse gas emissions (as reported at the facility level), including—

(A) the total quantity of each greenhouse gas emitted by such person or entity, expressed in terms of mass and in terms of the quantity of carbon dioxide equivalent;

(B) an estimate of the emissions from products manufactured and sold by such person or entity in the previous calendar year, determined over the average lifetime of those products; and

(C) such other categories of emissions as the Secretary determines by regulation to be practicable and useful for the purposes of this title, such as—

(i) direct emissions from stationary sources;

(ii) indirect emissions from imported electricity, heat, and steam;

(iii) process and fugitive emissions; and

(iv) production or importation of greenhouse gases; and

(2) each person or entity shall submit a report described in this section—

(A) not later than the earlier of—

(i) April 30 of the calendar year immediately following the year in which the Director of the Office of National Climate Change Policy makes the determination under subsection (a); or

(ii) the date that is 1 year after the date on which the Director of the Office of National Climate Change Policy makes the determination under subsection (a); and

(B) annually thereafter.

(c) EXEMPTIONS FROM REPORTING.—

(1) IN GENERAL.—A person or entity shall be required to submit reports under subsection (b) only if, in any calendar year after the date of enactment of this title—

(A) the total greenhouse gas emissions of at least 1 facility owned by the person or entity exceeds 10,000 metric tons of carbon dioxide equivalent greenhouse gas (or such greater quantity as may be established by a designated agency by regulation);

(B) the total quantity of greenhouse gas produced, distributed, or imported by the person or entity exceeds 10,000 metric tons of carbon dioxide equivalent greenhouse gas (or such greater quantity as may be established by a designated agency by regulation); or

(C) the person or entity is not a feedlot or other farming operation (as defined in section 101 of title 11, United States Code).

(2) ENTITIES ALREADY REPORTING.—A person or entity that, as of the date of enactment of this title, is required to report carbon dioxide emissions data to a Federal agency shall not be required to report that data again for the purposes of this title. Such emissions data shall be considered to be reported by the entity to the registry for the purpose of this title and included in the determination of the Director of the Office of National Climate Change Policy made under subsection (a).

(d) ENFORCEMENT.—If a person or entity that is required to report greenhouse gas emissions under this section fails to comply with that requirement, the Attorney General may, at the request of the Secretary, bring a civil action in United States district court against the person or entity to impose on the person or entity a civil penalty of not more than $25,000 for each day for which the entity fails to comply with that requirement.

(e) RESOLUTION OF DISAPPROVAL.—If made, the determination of the Director of the Office of National Climate Change Policy made under subsection (a) shall be considered to be a major rule (as defined in section 804(2) of title 5, United States Code) subject to the congressional disapproval procedure under section 802 of title 5, United States Code.

SEC. 1111. NATIONAL ACADEMY REVIEW.

Not later than 1 year after guidelines are issued for the registry pursuant to this title, the Secretary, in consultation with the Interagency Task Force, shall enter into an agreement with the National Academy of Sciences to review the scientific and technological methods, assumptions, and standards used by the Secretary and the Secretary of Commerce for such guidelines and report to the President and the Congress on the results of that review, together with such recommendations as may be appropriate, within 6 months after the effective date of that agreement.

Mr. REID. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. DAYTON. Mr. President, I ask unanimous consent that I may be permitted to speak as in morning business for a period of up to 5 minutes.

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

(The remarks of Mr. DAYTON are printed in today's RECORD under ''Morning Business.'')

Mr. DAYTON. Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, I ask unanimous consent the time that was used by the Senator from Minnesota be counted against the 30 hours.

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

Mr. REID. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

AMENDMENT NO. 3256 TO AMENDMENT NO. 2917

Mr. NICKLES. Mr. President, I ask that amendment No. 3256 be considered.

The PRESIDING OFFICER. Without objection, the pending amendment is set aside. The clerk will report.

The legislative clerk read as follows:

The Senator from Oklahoma [Mr. NICKLES], for himself, Mr. BREAUX, and Mr. MILLER, proposes an amendment numbered 3256.

Mr. NICKLES. Mr. 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:

At the appropriate place in Title II, insert the following:

SEC. . Not withstanding any other provision in this Act, ''3 cents'' shall be considered by law to be ''1.5 cents'' in any place ''3 cents'' appears in Title II of this Act.

Mr. NICKLES. The amendment I called up, sponsored by Senator BREAUX, Senator MILLER, Senator VOINOVICH, and myself, will reduce the penalty if a utility doesn't achieve the renewable standard that is set in the legislation.

The legislation says that 10 percent of the electricity produced has to be from renewable sources. Renewable sources are defined as wind and solar, biomass—interestingly enough, not hydro. That is a very difficult standard to achieve. I am not sure any State can achieve it now or any State will be able to achieve it in the future. We will have to see.

Varying States have different renewable standards. I am all in favor of that, whatever States want to decide. We are getting ready to have a Federal mandate that says: 10 percent of your power has to be from renewable sources. Most people think renewables is nonfossil fuel, but that is not the case here. We are talking about primarily wind, solar, and biomass. Nuclear fuel is not included. Hydro, or at least old hydro, is not included. But if you don't achieve that 10 percent standard, there is a penalty.

How do you get to the 10 percent? Let's say you do everything you can, but primarily most of the production in your State is fossil fuel. You run off coal or natural gas generators. And if you are short of the 10 percent, what do you do? Under the bill, you can buy it from other utilities, if they have surplus credits, or you can pay the Federal Government. You can pay the Government for the credits. You could call them credits. You could call them a tax. You could call them a penalty. But you have to pay, if you don't meet this 10 percent standard. Actually, the standard starts at 1 percent and it is phased up to 10 percent in the year 2019.

If you don't make the standard, you have to pay something. It is a tax. Your utility has to write a check to the Federal Government, a large check. In many cases, it could be hundreds of millions of dollars. In many cases, the cost to the utilities—and I will enter into the RECORD some statements from different utilities—could be billions of dollars, because they have to pay 3 cents per kilowatt hour for whatever they are short of this target we are getting ready to mandate.

How much is 3 cents per kilowatt hour? Most of us don't know. When we pay our utility bill, we don't know how much utilities really cost. The wholesale price of electricity right now, nationwide, is about 3 cents. If you don't meet the target, basically you have to

pay 100 percent of whatever you are short on renewables in electricity cost. That is a lot, for 10 percent of your power.

If you produce no electricity from the renewables, this bill is the equivalent of a 5-percent surcharge because you are paying in effect a 100-percent increase for that last 10 percent. If you average that over your entire cost, it is about a 5-percent increase in your utility bill.

I will tell you, few if any utilities will meet this standard in this bill, even those utilities that are very progressive and aggressive in trying to meet renewable standards and have renewable energy sources such as wind, solar, and biomass. Few are able to meet this standard that is in this bill. So you are going to have to buy these credits and pay a lot of money.

The essence of this amendment is, let's reduce that 3-cent penalty to a penny and a half. You might say, where did you get the penny and a half? It happens to be half of what is in the underlying bill, and it also happens to be half of what the Clinton administration proposed.

President Clinton, in 1999, proposed that we have a renewable standard. Incidentally, he didn't go up to 10 percent; he only went to 7.5 percent of your electricity would have to be renewable. He also said: If you don't meet that objective, the penalty will be a penny and a half. That is the cost of the credits.

Secretary Bill Richardson—many of us got to know him over the years and enjoyed working with him in Congress—when he was Secretary of Energy, that was the penalty, a penny and a half, not 3 cents.

So the amendment Senator BREAUX, Senator MILLER, Senator VOINOVICH, and I have is to reduce the penalty from 3 cents to a penny and a half. That sounds as if we are talking about pennies. We are talking about billions of dollars, because we are talking about, 10 percent of all the electricity that is produced in the United States must come from renewables, and if you don't make it, you have to pay this 3 cents per kilowatt hour.

What does that mean? I will cite a couple of letters. I have them from different companies and different States.

I will start with my State. Oklahoma Gas and Electric said the penalty under the bill, as written right now—their estimate is it would cost $794 million through the year 2020. We would cut that in half. We have almost every utility in the country supporting of this amendment. This is a rather large utility called Southern Company. I mentioned the largest one in my State, Oklahoma Gas and Electric. Southern Company, which is in several Southern States, said it would cost them from $676 million to $1.014 billion annually by the year 2020.

I hope my colleagues understand this. I have a letter I will also have printed in the RECORD from the president of Southern Company, one of the largest utilities in America that says the total cost across several states could be over a billion dollars—from $676 million up to over a billion dollars a year—if the 3-cent penalty stays in the bill. We would cut that in half under our amendment.

I could go on and on. Is it going to cost the utilities ultimately? Probably not. They are going to pass it, if they can; and I expect that they can. Residential consumers and industrial consumers will pay for it. Frankly, if industrial consumers are paying for it, they are going to pass that on, too.

If you want to set about an inflationary spiral, we are doing that. We are increasing utility costs if we allow the Daschle-Bingaman 3-cent penalty per kilowatt hour to stay in the bill. I think it should be zero. Senator KYL had an amendment to strike out the renewable section, but I am coming up with half a loaf. I am saying cut it in half. I am a legislator. If we can pass a bill half as damaging, I am willing to do it. If we can reduce the numbers by half, I think we will have made a big step in the right direction. Why in the world would we have a cap or a penalty higher than the Clinton administration proposed?

Incidentally, it didn't pass. Some people said we should not pass it because it costs too much.

Look at some of the other States that are involved. Kansas City Power and Light said it would cost over $300 million, and that is the current cap. We would cut that in half.

Different companies have used different ways of stating the costs. Pinnacle West in Arizona talks about it costing billions of dollars to comply. They even said it may have a residential rate increase of 28 percent.

In Pennsylvania, PP&L, which has facilities in Pennsylvania and Montana, estimates penalties at $178 million per year in 2006, growing to $260 million by 2020. The reason they start out low is the renewable section starts out low, at 1 percent, but it grows every year, up to the very expensive 10 percent by 2019.

Let me mention a couple letters, which I will enter into the RECORD, so that this won't just be little excerpts from my floor speech. This is a note from Allegany Energy. It says:

> The rates under the restructuring initiative to lower consumer costs may restrict Allegany Energy, a conservative—1 percent requirement would cost $13 million annually, and a 10 percent requirement would cost $135 million annually, assuming no growth in customer electricity consumption.

I think most people would assume the consumption would go up over that period of time. That is a very conservative estimate.

Exelon: I will read various segments of this:

> Meeting the Bingaman RPS amendment will cost our customers between $2.3 billion and $4.6 billion more than they would otherwise pay for electricity between 2005 and 2020.

I hope my colleagues have a chance to absorb some of these numbers. This is a very large utility, and they are primarily in Illinois and Pennsylvania. They said it could cost $4.6 billion if we don't change the Bingaman amendment. Our amendment says we will cut it in half. I hope the Senators from Pennsylvania, the Senators from Illinois, and others will stop and say, wait a minute, who pays for that? Are we really passing something where we know what we are doing? Are we going to mandate those cost increases on consumers?

Wait a minute, we are giving people a chance to cut it in half. That is what this amendment does. Listen to this comment made from Bill Richardson before a House committee in June 17 of 1999:

> To hold program costs down, the administration's proposal would allow electricity sellers to purchase credits from the Department of Energy at a cost of 1.5 cents per kilowatt hour. As a result, sellers would not be forced to pay excessive amounts for credits that are sold by other electricity providers that exceed the 7.5 percent RPS requirement.

This bill has a 10-percent requirement, and if you don't meet it, it says you have to pay 3 cents per kilowatt hour. As I have mentioned by a few examples, the cost is absolutely enormous.

I want to mention a couple others. This is a the Public Service Commission for the State of Florida:

> However, in order to mitigate the ''tax impact'' of this poorly conceived national program, we support the Nickles amendment to lower the amount of penalty from 3 cents to 1.5 cents per KWH. This would reduce the potential cost of this federal mandate on Florida ratepayers.

That is a copy of a letter to Senator GRAMM.

This is a note from American Electric Power. It says:

> AEP is joining in this effort with Allegany Energy, Console Energy, Peabody Energy, and the U.S. Mineworkers of America. AEP and Allegany are the two largest utilities in West Virginia and are responsible for all the electricity distributed in the State.

I will enter into the RECORD a letter from Southern Company. This is signed by Allen Franklin, chairman and president and CEO:

> The cumulative cost of the RPS mandate to Southern Company through the year 2020 will be from $3 billion to $6.5 billion. This does not include substantial transmission and interconnection costs for remote wind turbines located in the upper Midwest. . . .

I will enter this into the RECORD. That is a major company, covering several States, saying this will cost billions of dollars over the next 15 years. I just tell my colleagues that when we talk about a penalty of a penny and a half and 3 cents per kilowatt, that doesn't sound like much. When you multiply it times all the electricity and mandate that 10 percent of the electricity meet the standard and, if it doesn't, they have to pay this 3 cents—basically a 100-percent tax on electricity, equal to the value of 100 percent of wholesale cost of electricity—

you are talking about an enormous utility increase. We have a chance to mitigate that; we have a chance to reduce it by basically agreeing to the same standard that was proposed by the Clinton administration in 1999. I urge my colleagues to do so.

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

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

SOUTHERN COMPANY,
Atlanta, Georgia, April 16, 2002.

Hon. DON NICKLES,
U.S. Senate, Hart Senate Office Building, Washington, DC.

DEAR SENATOR NICKLES: As the Senate continues its consideration of S. 517, the Daschle/Bingaman energy bill, I wanted to thank you for your continued efforts to improve the Renewable Portfolio Standard (RPS) mandate in the bill. This ill-advised policy will mandate the use of un-economic generation and is not practical in several regions of the nation.

In many parts of the country, the RPS mandate can not be achieved due to the lack of wind resources and the intermittent nature of solar energy. The requirement to purchase penalty credits under such circumstances equates to a tax on consumers in those regions with no resulting benefit for those same consumers. The cumulative cost of the RPS mandate to Southern Company through the year 2020 will be from 3 billion dollars to 6.5 billion dollars. This does NOT include substantial transmission and interconnection costs for remote wind turbines located in the upper Midwest, which is the likely location for such an option. Obviously these dramatic costs would increase the price of electricity to our customers and threaten their lifestyles and the economic health of their communities.

One way to reduce these costs would be to lower the 3-cents per kilowatt-hour penalty contained in the Bingaman RPS language. This penalty is double the 1.5-cents per kilowatt-hour renewable credit cost in a renewable portfolio standard proposed by the Clinton Administration. I understand you intend to offer an amendment to lower the RPS penalty to 1.5-cents per kilowatt-hour, and we will support you in that regard. This will not remove the negative impacts on our customers of an ill-advised RPS mandate, but it will at least lessen those costs significantly.

We appreciate your continued efforts to improve energy legislation as it moves through Congress.

Sincerely,

ALLEN FRANKLIN

OGE ENERGY CORP.,
Oklahoma City, OK, April 16, 2002.

Hon. BLANCHE L. LINCOLN,
Dirksen Senate Office Building, Washington, DC.

DEAR SENATOR LINCOLN: On behalf of Oklahoma Gas & Electric (OG&E) I strongly urge your support of an amendment to be offered by Senator Don Nickles to reduce by half the cost to Arkansas consumers of the mandatory Renewable Portfolio Standard provision in the pending energy bill, S. 517. The Nickles amendment would reduce the cost of the renewable energy credit from 3 cents per kilowatt-hour to 1.5 cents per kw/hour.

Based on the year 2001 actual total retail sales and full implementation of the 10% RPS requirement, we calculate that it would cost our customers an additional $73 million per year, suggesting an increase of 5% in our retail rates. OG&E opposes such federal mandate on investor-owned utilities since it will skew the competitive playing field toward cooperatives and public power that have been unfairly exempted from the federal RPS mandate. The exemption of the coops and public power utilities is equivalent to a 5% penalty for our Company and a 5% windfall for coops and public power. Although we are opposed to renewable mandates, OG&E is willing to purchase power generated by renewable sources if customers desire to purchase it. But thus far, our customers in Arkansas and Oklahoma have not evidenced a willingness to purchase higher priced renewable power to justify our investment in these sources. Instead, our customers clearly prefer the highly reliable and much less expensive range of generation options that we currently offer. The RPS provision in the energy bill will force our Arkansas customers to pay more for a renewable product they do not yet want enough to pay for. In so doing, the RPS will raise costs to residential and business customers without countervailing benefit either to them or to the Fort Smith regional economy.

Senator Nickles' amendment would at least reduce the economic impact of the RPS provision by half. It makes real sense to me. I hope you will support Senator Nickles' effort. If you have any questions, please let me know.

Sincerely,

STEVEN E. MOORE,
Chairman, President and Chief Executive Officer.

PROGRESS ENERGY SERVICE COMPANY, LLC,
Raleigh, NC, April 22, 2002.

Senator DON NICKLES,
Senate Hart Building, U.S. Senate, Washington, DC.

DEAR SENATOR NICKLES: As the Senate continues debate on the energy bill (S. 517), I must share with you my company's strong conviction that this legislation is poor energy policy for our customers and the country. The bill represents an enormous policy reversal that gives important state jurisdiction directly to the federal government.

Progress Energy was formed in 2000 when Carolina Power & Light merged with Florida Progress. Through two subsidiaries, the company provides electricity to nearly three [2.8] million customers in the Carolinas and Florida by employing a diverse generation portfolio of more than 20,000 megawatts. Our service territory has enjoyed substantial growth based, in part, on our ability to produce reliable low-cost energy. We use the market to select the best fuel mix for energy production, a process that is grossly jeopardized by the mandated renewable portfolio standards (RPS).

Under the RPS cap of 3 c/kWh, between 2005 and 2020, Progress Energy's customers would be forced to absorb $3.5 billion in extra costs. This RPS mandate would eventually sidetrack economic growth. Additionally, the RPS could limit the benefits of emissions-free energy our customers currently enjoy since we use a large percentage of electricity generated with nuclear and hydropower.

Thank you for your interest and concern regarding the RPS amendment and please know that we would be very supportive of any relief you could give on this mandate.

Sincerely,

DAVID G. ROBERTS,
Director Federal Affairs.

STATE OF FLORIDA,
PUBLIC SERVICE COMMISSION,
Tallahassee, FL, April 22, 2002.

RE: S. 517, the Energy Bill

Hon. BOB GRAHAM,
U.S. Senator, Hart Senate Office Building, Washington, DC.

DEAR SENATOR GRAHAM: The Florida Public Service Commission (FPSC) appreciates the opportunity to provide comments on three areas of amendments to S. 517, the energy bill. These areas are: (1) The Renewable Portfolio Standards; (2) the Landrieu amendment on participant-funded transmission expansion; and (3) the amendments referred to as the consumer protection package.

(1) NICKLES AMENDMENT TO THE RENEWABLE PORTFOLIO STANDARDS SECTION

The FPSC continues to oppose the Federal Renewable Portfolio Standards. Florida utilities will have difficulty meeting the federal standards. We believe that state legislatures are best suited to set policies on renewable standards for their state. In fact, during the current legislative session, the Florida legislature directed the FPSC to complete a study on renewables by February 2003. A strict one-size-fits-all standard could put companies in the position of having to purchase credits from elsewhere or of being in noncompliance. The impact will ultimately be on the retail ratepayer. Again, we oppose the Federal Renewable Portfolio Standard. However, in order to mitigate the ''tax impact'' of this poorly-conceived national program, we support the Nickles amendment to lower the amount of the penalty from 3 cents to 1.5 cents per KWH. This would reduce the potential cost of this federal mandate on Florida ratepayers.

(2) LANDRIEU AMENDMENT ON ''PARTICIPANT-FUNDED TRANSMISSION EXPANSION''

We believe this amendment to place the costs of transmission expansion on the cost causer has merit, but we do have some concerns about the provisions included in the amendment. For example, there is a provision on market monitoring that possibly could be interpreted to view the Regional Transmission Organization as the primary market monitor. Surely, that is not the intention of the amendment. Moreover, the FPSC has initiated its own RTO proceeding to address a Florida-specific RTO. That proceeding may also address the entity appropriate to cover market monitoring. The language within that provision is positive regarding the RTO publicizing: (1) Projects that increase capacity or transfer capability of the transmission system, and (2) the tradeable transmission rights and costs associated with the project. Thus, perhaps the section could be revised to address only the ''RTO Publication of Information'' instead of ''Market Monitoring,'' or the section could be deleted. Thus, we believe the amendment has merit, but should be revised.

(3) CONSUMER PROTECTION PACKAGE

In general, the amendments, referred to as ''the Consumer Protection Package'' look superior to the language in S. 517, as amended by Senator Thomas. They create a standard on proposed mergers that they must ''advance the public interest'' which is a higher standard than ''consistent with the public interest.'' Also, the package expands the list of factors to be considered by FERC in reviewing mergers.

In addition, the amendments require public disclosure of transactions, and establish clear standards on affiliate transactions. Also, there would be access to utility holding company books and records. We see benefit to these provisions, and they are consistent with this Commission's Bedrock Principles on National Energy Policy.

We do want to raise a concern, however, that States not be preempted. In particular, there is the provision on market based rates which directs FERC to remedy market flaws

and abuses. To the extent that one of those remedies might be to require divestiture of a utility's assets, we believe the FERC should be required to consult with those state commissions that have statutory authority prior to ordering such a remedy. Thus, in general we commend the ''consumer protection'' package of amendments, but urge that any potentially preemptive language be closely scrutinized.

We appreciate your staff staying in close contact with FPSC staff, and hope this information is useful.

Sincerely,

LILA A. JABER,
Chairman.

GREAT PLAINS ENERGY,
Kansas City, MO, April 17, 2001.

Hon. DON NICKLES,
U.S. Senate, Washington, DC.

DEAR SENATOR NICKLES: On behalf of the employees of Great Plains Energy, including our regulated subsidiary Kansas City Power & Light, I am writing to express my appreciation for your leadership and support on an issue of great concern.

During the Senate's recent consideration of S. 517, the energy bill, you spoke about the adverse effect a renewable portfolio standard (RPS) would have on utilities and cited information from the Energy Information Administration (EIA) that the cost of purchasing credits in lieu of complying with a renewable mandate would cost KCPL $16 million—in your words, ''a pretty good hit.''

Unfortunately, EIA grossly understated the costs of a 10 percent mandate to KCPL, and ''the hit'' is much worse than that. We project the total costs of purchasing the credit to be more than $300 million over the 15-year period between 2005 and 2020, when the RPS would ramp up to the full 10 percent. For a company of our size, these costs are intolerable.

While we appreciate the need to diversify our energy mix, doing so by imposing a federal mandate that ignores the availability and cost-effectiveness of renewable resources is not sound public policy. In our area, wind energy, for example, certainly would not be competitive with fuels such as coal, oil, natural gas, or nuclear. That is why we strongly support your efforts to amend the RPS by reducing the credit cost from $0.03 per kWh to $0.015 per kWh. Even with the credit cut in half, we would still be saddled with extraordinary costs.

We pride ourselves on providing reliable and affordable electric service, yet the hidden tax imposed by the RPS may be felt by many who can ill afford higher electricity prices.

We appreciate your efforts to reduce the burden of the renewable energy mandate, and offer our assistance to enact a more reasonable approach.

Sincerely,

BERNIE BEAUDOIN.

AMERICAN CORN GROWERS ASSOCIATION,
Washington, DC, April 16, 2002.

Hon. JOHN B. BREAUX,
U.S. Senate, Washington, DC.

DEAR SENATOR BREAUX: I am writing to urge your support for the amendment that Senator Nickles plans to offer to the renewable portfolio standard of the energy bill, S. 517. Wind energy is fast becoming a major new ''crop'' for the farming and ranching community in many areas of the nation. The American Corn Growers Association (ACGA), has developed its Wealth From the Wind Program for farmers, and has strongly supported wind energy tax credits in the Energy Bill as well as other favorable legislative initiatives in the Energy Title of the Farm Bill. ACGA also supports a fair and equitable renewable portfolio standard (RPS) requiring a portion of the nation's energy to come from renewable sources. However, while we want to do everything we can to promote renewable production by farmers we must oppose undue mandates that will impose additional fuel costs on all rural consumers.

Senator Nickles' amendment will significantly reduce the cost of complying with the standard, and in turn protect rural America from excessive price increases for electricity, by cutting the energy credits from 3 cents per kilowatt-hour to 1.5 cents per kilowatt-hour.

As you know fuel prices have fluctuated wildly over the last two years and some regions have seen shortages of electricity. With the price of gasoline and diesel rising steadily now is not the time to add to these uncertainties.

We urge you to support the amendment offered by Senator Nickles.

Sincerely,

LARRY MITCHELL,
Chief Executive Officer.

MIDAMERICAN ENERGY HOLDINGS COMPANY,
Omaha Nebraska, April 11, 2002.

Hon. DON NICKLES,
Assistant Republican Leader, The Capitol, Washington, DC.

DEAR SENATOR NICKLES: Thank you for your continued support of the inclusion of electricity modernization provisions in the Senate energy bill. The bipartisan vote yesterday by the Senate to maintain the bill's electricity title was a great step forward.

With regard to your concerns about the renewable portfolio standard (RPS) in the Daschle/Bingaman energy bill, MidAmerican Energy Company has analyzed this proposal and developed estimates of the increase in costs that will result from enactment of the RPS. According to our preliminary calculations, implementing the RPS in S. 517 will begin increasing electricity costs for MidAmerican's regulated and competitive customers in 2007 by almost $600,000, with costs rising to more than $40 million in 2019.

Because of the comparatively high availability of affordable renewables in the region served by MidAmerican, we based our calculations on an estimated additional cost of 1.5 cents/kilowatt hour for qualifying sources. As a major developer of renewable electricity through our CE Generation subsidiary, MidAmerican believes that renewables can and should play an increasing role in the nation's electric generation mix, and the Company has expressed its support for Senator Bingaman's overall efforts to promote increased use of these resources. At the same time, MidAmerican has long believed that applying a reasonable cap on the cost of renewable credits would ensure that consumer costs do not escalate beyond those anticipated by RPS proponents.

I understand that you are holding ongoing discussions with Chairman Bingaman about the possibility of adjusting the cost cap in the underlying legislation to address some of your concerns about the RPS. We have contacted Chairman Bingaman's staff to express our hope that a mutually acceptable compromise can be reached on this issue. Thanks again for your inquiry and continued support for PUHCA repeal and other important industry modernizations.

Sincerely,

DAVID L. SOKL,
Chairman and Chief Executive Officer.

ELECTRIC CONSUMERS' ALLIANCE,
Indianapolis, IN, April 16, 2002.

Re: Consumer support for Sen. Nickles' Amendment to S. 517 regarding Renewable Portfolio Standards

DEAR SENATOR: On behalf of Electric Consumers' Alliance, its more than 300 member organizations representing all 50 states, and its tens of millions of residential and small business constituents, I am writing to indicate our strong support for Senator Nickles' proposed amendment to S. 517, the pending energy bill. Simply put, Sen. Nickles seeks to implement the mandatory Renewable Portfolio Standard in a way that is more equitable and cost effective for consumers across the nation by reducing the renewable energy credit from 3 cents to 1.5 cents per kilowatt-hour.

Renewable energy resources can and will play an important role in America's future energy infrastructure. As such, ECA supports their development, including the creation of subsidies to accelerate their deployment. At the same time, however, we are cognizant that our members will continue to expect a reliable, affordable supply of electricity over the next decade, and this will come predominantly from traditional resources. It is important to encourage the development of new resources, but this must be tempered against the more important goals of maintaining service that is reliable and affordable. There is a danger in transferring too much of the cost burden for development of these resources to consumers, rather than encouraging the market to work.

The mandated RPS requirement will not necessarily lessen the need for or reliance on traditional generation in the short-term. This is because of the intermittent nature of renewable resources. Consumers won't wait for the sun to shine or wind to blow to turn on appliances or flip the lights. The renewable credits that are to be paid under S. 517 will likely be an adder to the cost of electricity for consumers. As a result, these credits—while well-intentioned—will almost certainly have a direct impact on raising the price of electricity for many Americas (assuming reliability is not compromised, which we certainly do not advocate).

The Nickles proposal is a reasonable attempt to mitigate the impact of the almost certain consumer price hike that will be caused by mandated RPS. At a time when energy affordability is an issue for a growing number of residential and small business consumers, it is an appropriate balancing of the interests at stake. If consumers are to shoulder the burden for development of renewable resources through credits, which S. 517 requires, then that cost burden should be mitigated to more reasonable levels. Sen. Nickles' proposal to reduce this impact by reducing the credit from 3 cents to 1.5 cents per kilowatt hour is a reasonable compromise. It deserves your support.

Thank you for your kind consideration.

ROBERT K. JOHNSON,
Executive Director.

April 18, 2002.

Hon. DON NICKLES,
Hon. JOHN B. BREAUX,
U.S. Senate, Washington, DC.

DEAR SENATOR NICKLES AND SENATOR BREAUX: The undersigned associations thank you for your leadership in offering your amendment to reduce the costs of the renewable portfolio standard (RPS) contained in the pending Daschle/Bingaman amendment to the Energy Policy Act of 2002 (S. 517).

Your amendment would make a modest, but economically critical, change to the cost cap aspect of the RPS program. The current RPS provisions mandate that an increasing

percentage of electricity sold be generated from renewable resources. The RPS program further provides that those electricity generators that cannot economically achieve the required level of generation using renewable energy sources can purchase ''credits'' from the Department of Energy to meet their shortfall. The bill price for these credits is three cents per kilowatt hour. This credit price is intended to act as a cap on the cost increases that will result as demand for renewable power increases in response to the RPS requirement.

Unfortunately, this three-cent credit price is simply set too high. Current wholesale electricity prices are only slightly above three cents per kilowatt hour in most areas of the country. With a three-cent credit, the result will be that in most areas of the country the cost of electricity mandated by the RPS provision could be almost double the current wholesale cost of electricity. These higher costs will be passed on to businesses and homeowners across the country.

Your amendment would halve the credit price to one and one-half cents per kilowatt hour. This is the same price set by the Clinton Administration in its RPS proposals made in 1999. Consumers will still pay more for electricity, but the cost to consumers will be only half as much as it would be with a three cent cost cap. Thus, the Nickles/Breaux amendment would reduce the overall cost of the RPS provision.

Your amendment will ensure that businesses and homeowners alike will have more affordable electricity supplies in the future; reduce the economic costs of the federal renewable portfolio standard program in the energy bill; and to promote economic growth and prosperity for all Americans.

Sincerely,

Alliance for Competitive Electricity, American Chemistry Council, American Gas Association, American Iron and Steel Institute, American Petroleum Institute.

American Portland Cement Association, Associated Petroleum Industries of Pennsylvania, Association of American Railroads, Carpet and Rug Institute, Coalition for Affordable and Reliable Energy.

Edison Electric Institute, Electric Consumers Alliance, Electricity Consumers Resource Council, Greater Raleigh [NC] Chamber of Commerce, Indian River [FL] Chamber of Commerce.

International Association of Drilling Contractors, Manhattan [NY] Chamber of Commerce, Massachusetts Petroleum Council, Metropolitan Evansville [IN] Chamber of Commerce, Missouri Oil Council.

Naperville [IL] Chamber of Commerce, National Association of Manufacturers, National Electrical Manufacturers Association, National Federation of Independent Business, National Lime Association.

National Mining Association, National Ocean Industries Association, Natural Gas Supply Association, Nebraska Restaurant Association, Nevada Hotel & Lodging Association.

Nevada Restaurant Association, Nuclear Energy Institute, Oklahoma State Chamber of Commerce & Industry, Stowe [VT] Area Association, Tacoma-Pierce County [WA] Chamber of Commerce, U.S. Chamber of Commerce.

The PRESIDING OFFICER. The Senator from Louisiana.

Mr. BREAUX. Mr. President, I did not want to speak if the chairman wanted to speak at this time, but in the absence of his desire to speak at this particular moment, I will make a few comments on the Nickles-Breaux amendment.

I have joined the Senator from Oklahoma in cosponsoring this amendment. This is a good amendment. It is good for consumers, certainly, it is good for the renewable energy industry in this country, and it is also good for the traditional suppliers of energy in this country.

Let me state at the very beginning that I support the so-called renewable portfolio standard. If I were in Louisiana, I would try to explain it by saying it is a requirement of the Federal Government that power companies have to look for renewable sources of energy in producing energy in this country.

What do we mean by that? Windmill power, for instance, biomass power, renewable alternative forms of energy that should be encouraged in this country. I am for that. I am from a traditional oil-and-gas-producing State, but I found out that we also have one of the largest manufacturers of windmills in Louisiana for the production of energy through wind power. That makes sense. It is not going to solve all of our problems, but it can contribute to a proper mix of renewable energy, as well as traditional forms of energy.

We have a substantial number of tax credits in this energy bill coming from our Finance Committee to encourage these alternative sources of energy. As an example, there is already in the legislation a 1.7 cent production tax credit to be received by wind and biomass producers. Mr. President, 1.7 cents per kilowatt is a lot when one considers that the wholesale price of energy is about 3 cents a kilowatt. When we are giving people who produce alternative sources of energy a 1.7 cent per kilowatt subsidy, that is significant. The person who produces those windmills in Louisiana are going to say: Wow, look, if I get a 1.7 cent per kilowatt tax credit, this is a good deal. People are going to want to buy power from windmill producers if it means 1.7 cents less per kilowatt than the ordinary regular 3 cent per kilowatt wholesale price of energy in this country. The legislation, as it is, encourages these alternative sources of energy through the Tax Code.

This is the second issue we are talking about right now. The legislation also requires energy producers to reach a certain standard, a percentage, required by Congress using these alternative sources of energy by the year 2019. The legislation currently says 10 percent of a power company's production in the year 2019 shall come from these alternative sources of energy. Some people wanted it at 20 percent. It is down to 10 percent. I support that. That is an achievable goal that power companies can reach, especially if we give them a 1.7 cent per kilowatt subsidy to encourage them to do it. That is good public policy.

The concern is there is an additional subsidy that is proposed in the legislation, and this is what the Nickles-Breaux amendment addresses. The legislation says, if you do not reach that 10-percent goal of using alternative sources of renewable energy, we are going to, in essence, penalize you 3 cents per kilowatt; that you are going to have to make up that 10-percent goal by purchasing power from other producers that have met that goal or purchasing power from the Department of Energy through tax credits, and you are going to have to pay up to 3 cents per kilowatt for that extra energy you will be required to buy from other companies that have met that standard.

What does that mean in the real world, to the person in their home who turns on the light switch every day and is concerned about the cost of electricity? What it means is if you add the 3 cents plus the 1.7 cent tax credit, you are talking about a huge subsidy which I think is far more than it needs to be.

The problem is that if they are required to purchase that tax credit from the Department of Energy at 1.5 cents per kilowatt hour, they could be looking at doubling the cost of electricity per kilowatt hour.

The concern I have is, who is going to pay for this? It is not going to be the power companies. If they have to purchase additional electric tax credits at 3 cents a kilowatt, they are just going to pass the cost on to the consumer, back to the person in the house who flicks the switch. That person is going to pay not 3 cents but double that price per kilowatt for the electricity they use.

Power companies are going to pass it through, and in a deregulated market they are going to add it to their bill at the end of the month. In a regulated market, they are going to go to the public service commission and say: Look, we are having to pay 3 cents more per kilowatt and we want it to be passed on to our rate base; we are just going to charge you 3 cents a kilowatt more than you are paying now. You are already paying 3 cents, so we are going to pay 3 cents more.

That is too much. We do not need more incentives than are necessary.

The tax credit of 1.7 cents per kilowatt hour and the Nickles-Breaux amendment with a penalty, in essence, of another 1.5 cents is a substantial incentive to encourage the development of what we call the renewable portfolio standard on the use of alternative sources of energy.

It is interesting. I have a letter from the Electric Consumers' Alliance which says:

On behalf of Electric Consumers' Alliance, its more than 300 member organizations representing all 50 states, and its tens of millions of residential and small business constituents, I am writing to indicate our strong support for Senator NICKLES' proposed amendment to S. 517, the pending energy bill.

The only disagreement now is the Nickles-Breaux amendment. But the support from consumers is clear. Support from people who provide electricity is very clear. They support it.

The simple fact is that, when put together, the credit price of 1.5 cents, coupled with the tax credit of 1.7 cents, means consumers and taxpayers will be providing a subsidy to wind power and to these biomass producers at a level of 3.2 cents. That is currently above the wholesale cost of power. That is a huge subsidy and incentive to developing sources of power.

With the Nickles-Breaux amendment, we will still have a substantial subsidy, but it will be at a less cost to taxpayers and consumers of electric power. Bear in mind, every time we add 1 cent or half a cent, it is going to be passed on to the consumers of electricity in this country.

The Nickles-Breaux amendment is a good approach and one that should be supported.

I ask unanimous consent to have printed in the RECORD the letter from the Electric Consumers' Alliance, to which I referred.

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

ELECTRIC CONSUMERS' ALLIANCE,
Indianapolis, IN, April 16, 2002.

Re Consumer support for Sen. Nickles' Amendment to S. 517 regarding Renewable Portfolio Standards.

DEAR SENATOR: On behalf of Electric Consumers' Alliance, its more than 300 member organizations representing all 50 states, and its tens of millions of residential and small business constituents, I am writing to indicate our strong support for Senator Nickles' proposed amendment to S. 517, the pending energy bill. Simply put, Sen. Nickles seeks to implement the mandatory Renewable Portfolio Standard in a way that is more equitable and cost effective for consumers across the Nation by reducing the renewable energy credit from 3 cents to 1.l5 cents per kilowatt-hour.

Renewable energy resources can and will play an important role in America's future energy infrastructure. As such, ECA supports their development, including the creation of subsidies to accelerate their deployment. At the same time, however, we are cognizant that our members will continue to expect a reliable, affordable supply of electricity over the next decade, and this will come predominantly from traditional resources. It is important to encourage the development of new resources, but this must be tempered against the more important goals of maintaining service that is reliable and affordable. There is a danger in transferring too much of the cost burden for development of these resources to consumers, rather than encouraging the market to work.

The mandated RPS requirement will not necessarily lessen the need for or reliance on traditional generation in the short-term. This is because of the intermittent nature of renewable resources. Consumers won't wait for the sun to shine or wind to blow to turn on appliances or flip on lights. The renewable credits that are to be paid under S. 517 will likely be an adder to the cost of electricity for consumers. As a result, these credits—while well-intentioned—will almost certainly have a direct impact on raising the price of electricity for many Americans (assuming reliability is not compromised, which we certainly do not advocate).

The Nickles proposal is a reasonable attempt to mitigate the impact of the almost certain consumer price hike that will be caused by mandated RPS. At a time when energy affordability is an issue for a growing number of residential and small business consumers, it is an appropriate balancing of the interests at stake. If consumers are to shoulder the burden for development of renewable resources through credits, which S. 517 requires, then that cost burden should be mitigated to more reasonable levels. Sen. Nickles' proposal to reduce this impact by reducing the credit from 3 cents to 1.5 cents per kilowatt hour is a reasonable compromise. It deserves your support.

Thank you for your kind consideration.

ROBERT K. JOHNSON,
Executive Director.

The PRESIDING OFFICER. The Senator from Alaska.

Mr. MURKOWSKI. I will be very brief. I wish to recognize the effort by Senator NICKLES to remind us all of the obligation we have with regard to the cost of renewables. We have had an extended debate previously. This amendment obviously would change the fee and the renewable portfolio standard from 3 cents to 1.5 cents.

We have already seen the estimate by the Energy Information Administration, from the Department of Energy, relative to the calculation of what a 3-cent renewable would cost the economy and the consequence to the ratepayers, $88 billion over the next 20 years. Changing the credit from 3 cents to 1.5 cents will save about $44 billion through the year 2020.

I urge my colleagues to support the amendment.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. BINGAMAN. Mr. President, I will take a few minutes to respond to the comments that have been made and to oppose the amendment that my colleague from Oklahoma has offered.

First, to put this in perspective for Senators, this is the fourth amendment we have seen that is designed to either eliminate or dramatically weaken the renewable portfolio standard we have in the bill. There were three others we voted on earlier that were not successful. A majority of Senators did not favor weakening the standard, and accordingly those amendments were not successful.

I think the structure we have in the bill is important if we are going to actually accomplish the purpose of bringing renewable technologies into use in this country, and that is the purpose of the renewable portfolio standard. What we are saying in the renewable portfolio standard is each utility is directed to begin, starting in the year 2005, to produce or obtain some of the power that it sells from renewable sources. They do not have to produce it from those sources, but they have to obtain it from those sources.

We are saying you do not have to do anything this year, you do not have to do anything next year, you do not have to do anything the next year, but in the year 2005 you have to achieve 1 percent. One percent of the power you sell must come from renewable sources.

There are obvious ways that one can go about this. First, one can add some renewable power generation capability to the mix of sources for generating power. That is one option. That is, of course, what we are intending to facilitate and to incentivize with this provision.

A second thing that can be done is if one does not want to add it themselves, they can contract with someone who has that power or who is willing to provide that power from renewable sources. That is a second option.

A third option, under the bill, the way we have it drafted, is one can buy a credit from somebody who does have more than the 1 percent—and there are a lot of utilities today that are in a position, beginning in the year 2005, to try to sell their credits. That is good. We are providing for that. We are saying, OK, if a particular utility does not want to either produce the power from renewable sources or buy the power, someone who is producing it from renewable sources can then go buy a credit.

The provision we have in the bill is patterned after the provision in the Texas renewable portfolio standard legislation that President Bush signed into law, and that has been acclaimed by all as a model kind of a bill. It has had great success in Texas in encouraging more use of renewables and diversifying the supplies of energy upon which they depend.

What that Texas provision said was we would not charge 3 cents per credit. What we charge in Texas is 5 cents per credit. That is what President Bush signed into law, in Texas, when he was Governor of Texas. It would either be 5 cents per credit or 200 percent of the average price of traded credits, whichever is less, so that if one could not go ahead and buy the credit from someone who is producing power, who has an extra credit, then as sort of a last option, they could go to the State of Texas and say, OK, I will pay 5 cents per credit or I will pay 200 percent of the tradable price of credits at this time.

What has the tradable price of credits turned out to be in Texas? It is five-tenths of 1 cent. Half of a cent is the tradable price of credits today in Texas.

So essentially what the Texas provision says is that one would have to pay 200 percent of the trading price for credits, which would be a full cent, so 200 percent of the half cent would be a full cent, and that would be the price that would have to be paid to the State of Texas to get a credit; not the 5 cents but the 1 cent. That is under their provision.

Mr. NICKLES. Will the Senator yield?

Mr. BINGAMAN. Let me finish my comments and then I will be glad to yield for a question.

We took that provision and we said, let's do the same thing at the Federal level and try to say we do not need to have a 5-cent credit; let us have a 3-cent credit, but let us also put that

provision in 3 cents or 200 percent of the average price of traded credit, whichever is less.

So if, in fact, the same thing happens nationally that has happened in Texas, which I think it likely would—credits would be trading for substantially less than the 3 cents—then it is very likely the credits that would be purchased from the Government, if a utility decided to go that step and purchase credits from the Government, would be substantially cheaper.

All of this, to some extent, is estimating where we think things will be once this legislation becomes law, if it does become law. I am glad to join with my colleague from Oklahoma or any other Senator in urging the Energy Information Agency to update their models, update their studies, and give us good information about what the right amount of credit ought to be. I am not certain 3 cents is the right amount, but it seems like the right amount based on what we know today.

Based on the review of the numbers of different economic analyses, we have determined that 5 cents is too much. We have also determined that the 1.5 cents is probably too little. So our estimate is the 3 cents is about where it ought to be.

The reason we think it ought to be at 3 cents is because we believe all of the different types of renewable energy ought to be encouraged to be developed under this proposal.

We have a chart, which I would like to put up, to make the point. The renewable portfolio standard requirement can be met; renewable energy can be generated from any of a variety of sources. The main ones we think about are biomass and biofuels resources, solar insulation resources, geothermal resources, and wind resources. Those are the four logical areas.

The concern is that if we lower the cost of this credit too much, the price of this credit too much, that this will skew away from the use of several of these and wind up favoring one over the others. In that regard, let me cite a letter to my colleagues. This is a letter directed to all Senators, I believe. This was dated April 18 and it is from a large group of organizations. It is from the Alliance for Affordable Energy, Louisiana; American Bioenergy Association; Citizen Action Coalition of Indiana; Citizen Action/Illinois; Dakota Resource Council; Hoosier Environmental Council, Iowa Citizen Action Network; Iowa SEED Coalition; I-Renew, Iowa; Michigan Environmental Council; Minnesotans for an Energy-Efficient Economy; North Dakota SEED. There are a whole range of organizations that have signed on to this letter.

Their letter says:

The undersigned environmental, consumer, and industry groups urge you to oppose an amendment that would be offered by Senator NICKLES to further weaken the renewable portfolio standard contained in Senate bill S. 517. The Nickels amendment is the latest in a sustained attempt by power companies to undermine efforts to diversify America's energy supply with clean renewable energy.

Then they go on to say further down in the letter:

Under a lower priced cap—

And that is what Senator NICKLES is recommending here, 1.5 cents—

only the very lowest-cost renewable energy technologies can benefit from the RPS—primarily wind power at the very best sites. Biomass, geothermal, and solar would be at a significant disadvantage to meet this standard.

That is three of the four on this chart.

They say biomass would be a substantial disadvantage; solar, geothermal. The Nickles amendment would reduce benefits to Western States with good geothermal resources, to the Midwest, Southeast, and Northeast that have good biomass resources, and reduce benefits to all other States with good solar resources.

I ask unanimous consent this letter be printed in the RECORD.

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

APRIL 18, 2002.

DEAR SENATOR: The undersigned environmental, consumer, and industry groups urge you to oppose an amendment that may be offered by Senator Don Nickles to further weaken the renewable portfolio standard (RPS) contained in Senate Energy Bill (S. 517).

The Nickles amendment is the latest in a sustained attempt by power companies to undermine efforts to diversify America's energy supply with clean renewable energy. The Nickles amendment would reduce the cost cap for procuring renewable energy credits under the RPS from 3 cents per kilowatt-hour to 1.5 cents per kilowatt-hour. This provision would:

Reduce the number of technologies and states that would benefit from the RPS—states with biomass, geothermal and solar resources would be especially disadvantaged;

Reduce the amount of renewable energy developed by encouraging companies to pay a penalty rather than developing or procuring more renewable energy; and

Undermine the RPS competitive mechanism and potentially even increase costs to consumers.

The Nickles amendment would reduce diversity of technologies and states that benefit from the RPS.—Under a lower price cap, only the very lowest-cost renewable energy technologies can benefit from the RPS—primarily wind power at the very best sites. Biomass, geothermal and solar would be at a significant disadvantage to meet the standard. The Nickles amendment would therefore reduce benefits to Western states with good geothermal resources; reduce benefits to the Midwest, Southeast and Northeast states which have good biomass resources, and reduce benefits to all other states with good solar resources.

The Nickles amendment would reduce the amount of renewable energy developed.—An Energy Information Administration (EIA) study of a 1.5-cent price cap (in a stronger RPS than the Bingaman proposal) found that it could reduce the amount of new renewable energy generated by the RPS by 84%. (AEO 2000)

As Governor of Texas, President Bush signed a RPS law that included a 5-cent per kWh price cap for renewable energy credits. That law is working well and is one of the most successful examples of a state RPS in existence today. The Bingaman 3-cent price cap represents a reasonable compromise between the 1.5 cent price cap proposed in the 1999 Clinton RPS and the 5 cent price cap signed by President Bush as Governor of Texas.

The Nickles amendment would undermine the RPS competitive mechanism and potentially even increase costs to consumers.—The RPS is designed to create competition among many renewable energy technologies to reduce their costs. EIA also found that it would create new competition for fossil fuels—reducing fossil fuel prices for electricity generators and consumers. According to the most recent EIA analysis, these reduced prices will save energy consumers over $13 billion through 2020.

By setting the price cap too low, the Nickles amendment would reduce competition among many types of renewable energy. It would reduce the total amount of renewable energy developed, undermining the potential of renewable energy to restrain fossil fuel price increases. Electric companies would have to buy credits from DOE for 1.5 cents, but without new renewables necessarily being developed. Therefore, the Nickles amendment could actually increase electricity prices.

Please don't believe the industry's claim that the RPS will cost too much. The Bush Administration's EIA found that a 10% RPS would save consumers money. Please reject the Nickles amendment and any other weakening amendments, and preserve the diversity, environmental and consumer benefits of the Daschle/Bingaman RPS.

Sincerely,

Alliance for Affordable Energy, Louisiana.
American Bioenergy Association.
Citizen Action Coalition of Indiana.
Citizen Action/Illinois.
Dakota Resource Council.
Environmental & Energy Study Institute.
Environmental Law & Policy Center of the Midwest.
Hoosier Environmental Council.
Iowa Citizen Action Network.
Iowa SEED Coalition.
I-Renew, Iowa.
Michigan Environmental Council.
Minnesota Project.
Minnesotans for an Energy-Efficient Economy.
National Environmental Trust.
Natural Resources Defense Council.
North Dakota SEED.
Renewable Northwest Project.
Sierra Club.
Solar Energy Industry Association.
Southern Alliance for Clean Energy.
Union of Concerned Scientists.
U.S. Public Interest Research Group.

Mr. NICKLES. Will the Senator yield?

Mr. BINGAMAN. I am happy to yield.

Mr. NICKLES. Did we have a hearing on any proposal to have this penalty?

Mr. BINGAMAN. I don't believe there was a specific hearing on it, and that is why I have suggested we request the Energy Information Agency to update their studies and recommend whether they think this is the appropriate level or not. We certainly would have time to do that between now and any conference with the House of Representatives on this bill. If there is a need to make an adjustment to come in line with what the Energy Information Agency recommends, I would be glad to work with my colleagues to try to do that in the conference.

Mr. NICKLES. Will the Senator yield?

Mr. BINGAMAN. I am happy to yield.

Mr. NICKLES. Did we have a hearing on the renewable portfolio standards as proposed by the Senator in this bill, period?

Mr. BINGAMAN. Mr. President, we have had a hearing on the subject of renewable energy and renewable portfolio standards, not on the specific language in the bill.

Mr. NICKLES. In the last 2 years, did we have a hearing on a mandate of 10 percent and a cost of 3 cents?

Mr. BINGAMAN. Mr. President, I don't know that we had a hearing on a specific level of required mandate or specific level of cost of credit. I don't believe we did.

Mr. NICKLES. I know the House had a hearing in 1999. The Clinton administration proposed a 1.5-cent credit penalty per kilowatt hour. Why did the chairman come up with a 3-cent penalty, double what the Clinton administration proposed a couple of years ago?

Mr. BINGAMAN. What we did, in response to my friend's question, we modeled our proposal on the successful program legislated into effect in Texas. That is the basis upon which we came up with our estimate. It was very different from the Clinton administration recommendation, not just with the credits but in various other aspects. We did not follow the Clinton administration proposal with regard to renewable portfolio standards in fashioning ours.

Mr. NICKLES. Correct me if I am wrong; Texas has a requirement that has a goal of 2,000 megawatts of new renewable energy by the year 2009. That represents 2.6 percent of their present generating capacity. Also correct me if I am wrong, but Texas has their whole basis on capacity, not on electricity produced. So that Texas mandate is a whole lot less than the 10 percent mandate as proposed by the Senator from New Mexico.

Mr. BINGAMAN. Mr. President, my understanding is that is inaccurate; that, in fact, although the Texas language does talk about capacity, the calculation as put in place by their utility commission was on the basis of actual power produced. My information is that through the period that is covered by the Texas law, the percentage requirement for renewable energy is higher than the one we require.

Mr. NICKLES. If the Senator will require the Texas utility code section 39.904, goals for renewable energy is 2,000 megawatts of generating capacity. I mention this because capacity is one thing, to generate electricity is another. For wind, you need three times the facilities to actually generate because they don't operate 24 hours a day. The wind does not always blow. Capacity is less intrusive and less expensive. And factually, the amount of megawatts produced equals right now 2.6 percent of the Texas generating capacity and less than 2 percent anticipated by the year 2009.

I heard my colleague say this is modeled after Texas. But it is not modeled after Texas. It did not follow Texas in any way, shape, or form. That is an editorial comment.

Mr. BINGAMAN. Mr. President, let me once again try to put this in perspective for my colleagues. As I indicated, this is an effort, another effort, to weaken the renewable portfolio standards we have in the bill. We put the renewable portfolio standards in here because we believe strongly it is in our national interest that we diversify the sources from which we obtain energy and that we encourage the development and improvement of the new technologies which we know can be sources of energy as we move into the future. That is why we have a renewable portfolio standard in the bill.

The requirement we have is not that onerous. When we require 1 percent of the power sold by a utility by the year 2005 to be generated from renewable sources, that is not an unduly onerous requirement. All of the numbers we have been hearing about how it will cost such enormous amounts for the utilities to comply, assuming they are going to do nothing to meet excess demand in the future—the truth is, they are going to be adding generating capacity in the future to meet increased consumer demand. That is as it should be.

All we are saying is, as they make those decisions about adding new generating capacity in the future, they should be encouraged, they should be incentivized, to look at renewable energy as the source for some of that power. That is, to my mind, a responsible course to follow. We are way behind other industrial allies, the countries in Europe, in beginning to use renewable energy in our country. It is time we began to use these new technologies, began to improve these technologies. They have proven themselves to be effective. It would be extremely unfortunate, in my view, if we further weakened the renewable portfolio standard at this time.

Mr. NICKLES. Mr. President, I know my colleague from Ohio desires to speak, but I wish to make a couple of rebuttals to the comments made by the Senator from New Mexico. Then I am delighted to have my friend from Ohio speak.

We didn't reduce the renewable portfolio standard. It is still 10 percent. I don't think it should be there, but my decision was to minimize the damage under the Bingaman proposal, and we decided to cut the penalty in half, the same amount the Clinton administration proposed—the only proposal that had a hearing before Congress, and that happened to be a hearing not before this Congress but the last Congress in 1999. To think we would even have a proposal that has an indirect tax on utility users and consumers of billions of dollars, estimated by the Energy Information Agency of $88 billion, without even having a hearing, I find ridiculous.

I hear colleagues say it was based on Texas, and it was not; there is a world of difference between capacity and generated electricity, especially when you talk about renewables. Texas has a standard that would equal 2 percent of their generation, and we are talking about a 10 percent mandate. There is a lot of difference. There is a lot of difference when the cost impact is in the millions and billions of dollars for utilities all across the country. And I will put in more estimates.

When I made this speech earlier, trying to strike the provision, I said something about a chart we got from the Department of Energy that said Kansas City Power and Light said it would cost $16 million—that is per year—when fully implemented. I mentioned that was pretty good for the consumers of Kansas City Power and Light.

They said, in a letter: Unfortunately, EIA grossly understated the cost of 10 percent mandate to Kansas City Power and Light. The hit is much worse than that. We project total costs being more than $300 million over the 15-year period between 2005 and 2020 for the full 10 percent. For a company of our size, these costs are intolerable.

So for people to say we don't think it will be very much, Senator BREAUX, Senator VOINOVICH, Senator MILLER, and I are at least trying to reduce the cost and trying to keep the cost at somewhat more affordable levels as proposed by the previous administration.

I yield the floor.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. VOINOVICH. Mr. President, I rise to support the Nickles-Breaux amendment on renewable portfolio standards.

Last month, the Senate debated the renewable portfolio standard included in the legislation before us today. I want to make it clear that I applaud the efforts of my colleagues to encourage the use of renewable electricity generation.

I agree that renewable energy is an important part of the future and should be developed. I also strongly believe renewable sources are vital as this country seeks to diversify energy supplies and decrease our dependence on foreign sources to meet our energy needs.

As my colleagues know, the Bingaman amendment that was accepted last month stipulates that we must develop a mandatory minimum standard for renewable energy of 10 percent by the year 2019. At the time, I opposed the requirement because I believed it mandated an unrealistic level of renewable usage in a short period of time, at the virtual expense of other sources of electricity generation.

I think one point that seems to get lost over the use of renewables in America is that, right now, very little of our power in this Nation is generated by renewables. As a matter of fact, it is 1.6 of 1 percent. My colleagues should understand when we are talking renewables in this bill, we are

talking solar, we are talking wind, we are talking geothermal and we are talking biomass; that is it.

When I stood to oppose the original mandate, I pointed out that in my home State of Ohio, our use of renewable energy is much lower than the national average. Renewables, including hydropower, generate 1 percent of our electricity.

I also pointed out there are many other States which rely on renewable sources for electricity generation. According to the 1998 data from the Energy Information Administration—and this is really important because it gets at the regionalism and how unfair this mandate is, as it is written, to certain regions of the country—at least 10 percent of the electricity generated in 16 States comes from renewable power. Of these 16, 5 States receive more than 50 percent of their electricity from renewable sources, and the primary source is hydroelectric power. Four of the five States—Idaho, Oregon, South Dakota, Washington—rely on hydroelectric power for more than 60 percent of their electricity. Maine is the only State east of the Mississippi to rely on renewables for more than 50 percent of its electricity, 30 percent coming from hydro and 30 percent from other renewables.

Regions and even individual States that currently have a high percentage of renewable energy sources would be less impacted by the underlying provisions. However, forcing a mandatory minimum would unduly burden States such as Ohio.

Let me tell you a little about my State and States in the Midwest. We rely heavily on coal. Mr. President, 86 percent of our energy comes from coal. As Members of this Senate know, there are bills that have been introduced that will increase and require us to reduce NO_X, SO_X, mercury, and some are even talking about carbon. In our State, we are putting our money into clean coal technology, not into switching to renewables.

What this underlying bill requires is that, in a place such as Cleveland, OH, my kilowatt—maybe some of my colleagues are not aware of this—my cost per kilowatt hour in Cleveland is 4.7 cents. This bill is talking about increasing that by 3 cents per kilowatt hour. That is a tremendous increase we are going to have to bear in States such as Ohio.

AEP, which has its home office in Ohio, American Electric Power, estimates that they would have to install an additional cumulative total of 2,100 megawatts of renewables by 2011, a total of 4,100 megawatts by 2015, and a total of 7,000 megawatts by 2020 under this requirement. This should be compared with their total generation, which is 38,000 megawatts. That is in 11 States. And this calculation does not include a safety valve or cost cap. The cost impact on AEP alone would range from $100 million to $400 million net present value.

One of the things that bothers me when we debate these things in the Senate is, we are talking about the utilities. The utilities are the ratepayers.

In my State, our manufacturers are taking it in the back of the neck. We are losing manufacturing jobs in the Midwest. One of the things that triggered this was a year ago we had a spike in gas prices, which put most of the small businesses in a negative position. Then, with the high cost of the dollar, they are in deep trouble, especially if they export.

So we are talking about adding costs on a specific segment of our economy, which happens to fall heavily in my State. We use a lot of electricity. It also puts a negative burden on the people who live in my inner cities.

People just talk about these things as if it didn't matter. But the people who make less than $10,000 a year pay about 30 percent of whatever they have for energy costs. This kind of legislation, as it is written, is going to drive those costs up. Let's talk about those people who are going to pay the cost.

What I am saying today, to my colleagues, is give me a break. Give us a break. Some of you are from regions that do not have the problems we have. We have 23 percent of the manufacturing jobs in this country in the Midwest. In my State alone, we have more manufacturing jobs than they have in the entire northeastern part of the country.

What we are trying to do today is come up with a reasonable number in terms of this mandate. It may not mean a lot to some people who live in some of the other States that do not have manufacturing, but it does mean a great deal in States like my State. I think of Paul's Letter to the Romans, Chapter 12: We are all part of one body. We have different functions.

It would be really nice if on the floor of this Senate we would start to give a little more consideration to some of the specific problems some of us have in our States so we could continue to survive and prosper and have reasonable energy costs, continue our manufacturing, and not drive up the cost for the least of our brethren.

I urge my colleagues to really give serious consideration to this. This is a reasonable proposal we are making today. It does not eliminate the mandate. It just says, if we have to comply with it, we comply with it in a way that is less oppressive than what is contained in the underlying bill.

Mr. REID. Under the previous order, the Senate is going to stand in recess so we can all listen to our Secretary of State in room 407. I ask, however, that the recess be extended until the hour of 4:15. I cleared this with my colleague, Senator NICKLES. I ask that that time count against the 30 hours.

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

RECESS

Mr. REID. I ask unanimous consent the Senate now stand in recess.

There being no objection, the Senate, at 2:59 p.m., recessed until 4:15 p.m. and reassembled when called to order by the Presiding Officer (Mr. NELSON of Florida).

NATIONAL LABORATORIES PARTNERSHIP IMPROVEMENT ACT OF 2001—Continued

Mr. REID. Mr. President, for the information of all Senators, we hope to be able to have a vote on the Nickles amendment within the next half hour. We do not know for sure how long people will speak. We have had a number of Members indicate they wanted to speak on the Nickles amendment. We have several of them in the Chamber right now. We will proceed on that. There should be a vote within the next half hour.

The PRESIDING OFFICER. The Senator from Arizona.

AMENDMENT NO. 3256

Mr. KYL. Mr. President, if none of my colleagues are prepared to take the floor, let me spend a couple of minutes in support of the Nickles amendment.

As you know, the Nickles amendment, which is the pending business, would reduce the amount of penalty in effect that a public utility would bear if it did not produce the required amount of electricity for retail sales with so-called renewable energy resources. This has to do, again, with the portfolio that we call the renewable resources that would be required to account for 10 percent of the retail sales of all the investor-owned utilities in the country.

Bear in mind that the publicly owned utilities are exempted only because a point of order would have been effective against the inclusion of the public utilities in the amendment due to the unfunded mandate nature of the underlying provision. Ultimately, this probably will apply both to investor-owned and public utilities, but for the moment it applies only to the investor-owned utilities.

When I talk about a penalty on the utilities, of course, I am really talking about a penalty on the utility customers because utilities are not in the business of losing money—at least not very long. As a result, their expenses are charged back to their customers.

What we are really talking about in the underlying bill is a requirement that these utilities produce 10 percent of their retail power from so-called renewable resources, such as wind, solar, or biomass energy. Then, if they don't do so, they have to buy that amount from other available resources or, if they can't do that, pay an amount equal to 3 cents per kilowatt hour to make up the difference.

Let us say that the requirement when the bill is fully effective is 10 percent and they are able to generate 1