

Let me point out that the Finance Committee amendment contains provisions that enhance the tax incentives for ethanol production. Ethanol is a clean burning fuel that will continue to be a key element in our transportation fuels policy. We reshaped the ethanol excise tax exemption. Under the Finance Committee change, ethanol-blended fuels will make the same contribution to the highway trust fund as regular gasoline while also retaining an important incentive to promote the use of domestic, renewable fuels.

It makes common sense for ethanol taxes to contribute just as much to building highways as traditional gasoline taxes. It isn't logical for a smaller portion of ethanol taxes to contribute to highways than the taxes from traditional gasoline. All types of vehicle fuel taxes should contribute equally to highway construction and maintenance.

Our highway needs are great. Our dependence on imported fuel should decrease. This restructuring of ethanol excise taxes contributes to both of those priorities. At the same time, it preserves all incentives to use the clean-burning, renewable, domestically produced ethanol, the fuel of the future.

Renewable fuels like ethanol and biodiesel will improve air quality, strengthen national security, reduce the trade deficit, decrease dependence on the Middle East for oil, and expand markets for agricultural products.

The Energy Tax Incentives Act amendment is a balanced package. I would like to note, with some satisfaction, that today we have the opportunity to do the people's business in the way they want us to do business. This Energy Tax Incentive amendment was crafted in a bipartisan way on an important initiative in a way that reflects the diversity of our views and the diversity of our nation. In this wartime climate, this is what the people want.

I have only taken a few minutes to review a portion of the amendment. The electricity tax credits and the alternative fuel incentives in the amendment are good for agriculture, good for the environment, good for energy consumers and good for national security interests. But this entire tax incentive amendment is equally important to a sound energy policy and I hope that my colleagues will join with me to advance these important legislative objectives.

Let me turn to the peculiar procedural situation that we find ourselves in. I want to enter conference with a clear understanding of the bipartisan intent of the Senate.

Today, the Senate will pass the text of last year's energy bill. Read literally, the unanimous consent agreement, states that the text of last year's Finance Committee amendment, which was adopted unanimously at the time, passes the Senate.

Folks in my home state of Iowa or my friend, Senator BAUCUS' home

State of Montana, might reasonably ask a question. That question would be if you have improved the Finance Committee amendment from last year's bill, why not last year's tax title with this year's tax title? That's a good question. That was my position and that of Senator BAUCUS.

From a technical standpoint, you'd have to scratch your head, looking at effective dates for a bill that is now over a year old. There are other details in the official Senate-passed bill that will appear odd simply because the text has not been updated in over a year.

The answer to the question is simple. The answer is that this procedural agreement would not hold together unless last year's bill text stayed exactly the same. That reflects the agreement of the leaders on both sides. It has nothing to do with the substance of this year's Finance Committee amendment which is non-controversial. It has to do with the all or nothing, simplistic nature of the offer made by Senators DASCHLE and REID. The problem is that, if tax matters are opened up, no matter how non-controversial, then other matters would be open. In that situation, then the agreement of the leaders could not be consummated expeditiously.

Our majority leader, Senator FRIST, assured me that the position of the Senate Republican Caucus would be this year's Finance Committee amendment. As the senior Finance Committee conferee, let me assure the Senate, that will be our conference position. Just as importantly, let me make sure the other body understands the letter and spirit of our position. Let me repeat that, loudly and clearly.

The Senate position for conference purposes will be this year's Finance Committee amendment. Everyone here knows, that in regular order, this year's Finance Committee would have been adopted by the Senate. That is the substantive position and the intellectually honest position. I expect my House counterparts to recognize and respect that intellectually honest position.

Before I finish I would like to comment on a few tax incentive proposals I intended to offer to the Finance Committee amendment. Because of the procedural situation we are in, these matters will not be in the Senate-passed bill. That is unfortunate, but, if we are to get a bill out of the Senate, these proposals became casualties for the cause.

The first proposal deals with dividend allocation rules for cooperatives. This proposal would allow the payments of dividends on the stock of cooperatives without reducing patronage dividends. This measure is very important for energy production and agriculture and, I expect, would have easily cleared the Senate.

The second proposal deals with an expansion of the qualified zone academy bond program to cover certain "green" teaching facilities recognized by the

Department of Energy. This is an important matter for one such facility in my home State of Iowa. Like the first proposal, I expect this provision would have easily cleared the Senate.

The third proposal deals with publicly-traded partnerships. This proposal would permit mutual funds to acquire interests in publicly-traded partnerships. Publicly-traded partnerships are a key source of financing for energy production projects such as pipelines.

I regret the procedural situation we find ourselves in. Unfortunately, these important priorities will not be directly addressed in the Senate bill. I intend to raise them in conference in the spirit of this bill. If not successful, I will pursue them on future tax vehicles.

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#### ENERGY POLICY ACT OF 2003— Continued

The PRESIDING OFFICER. The Senator from Mississippi.

Mr. LOTT. Mr. President, what is the regular order?

The PRESIDING OFFICER. There is an order to proceed to the House Energy bill and substitute last year's Senate language.

Mr. LOTT. Mr. President, are we ready to proceed?

The PRESIDING OFFICER. The Senate is ready to proceed.

Mr. LOTT. Reluctantly and temporarily, 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. LOTT. 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. LOTT. Mr. President, I believe we are ready to proceed to the regular order.

The PRESIDING OFFICER. The clerk will report H.R. 6.

The legislative clerk read as follows:

A bill (H.R. 6) to enhance energy conservation and research and development, to provide for security and diversity in the energy supply for the American people, and for other purposes.

The PRESIDING OFFICER. Under the previous order, the text of the Senate amendment to H.R. 4 from the 107th Congress is inserted in lieu of the House language.

The amendment (No. 1537) is printed in today's RECORD under "Text of Amendments."

The question is on the engrossment of the amendment and third reading of the bill.

The amendment was ordered to be engrossed, and the bill to be read a third time.

The bill was read a third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall the bill pass?

Mr. CRAIG. Mr. President, have the yeas and nays been ordered?

The PRESIDING OFFICER. They have not been ordered.

Mr. CRAIG. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. REID. I announce that the Senator from Massachusetts (Mr. KERRY) and the Senator from Connecticut (Mr. LIEBERMAN) are necessarily absent.

I further announce that if present and voting, the Senator from Massachusetts (Mr. KERRY), would vote "nay."

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

The result was announced—yeas 84, nays 14, as follows:

[Rollcall Vote No. 317 Leg.]

YEAS—84

Akaka	Dayton	Levin
Alexander	DeWine	Lincoln
Allard	Dodd	Lott
Allen	Dole	Lugar
Baucus	Domenici	McConnell
Bayh	Dorgan	Mikulski
Bennett	Durbin	Miller
Biden	Edwards	Murkowski
Bingaman	Ensign	Nelson (FL)
Bond	Enzi	Nelson (NE)
Breaux	Fitzgerald	Nickles
Brownback	Frist	Pryor
Bunning	Graham (FL)	Reid
Burns	Graham (SC)	Roberts
Byrd	Grassley	Rockefeller
Campbell	Gregg	Santorum
Carper	Hagel	Sarbanes
Chafee	Harkin	Sessions
Chambliss	Hatch	Shelby
Cochran	Hollings	Smith
Coleman	Hutchison	Snowe
Collins	Inhofe	Specter
Conrad	Inouye	Stabenow
Cornyn	Jeffords	Stevens
Corzine	Johnson	Talent
Craig	Kohl	Thomas
Crapo	Landrieu	Voivovich
Daschle	Leahy	Warner

NAYS—14

Boxer	Kennedy	Reed
Cantwell	Kyl	Schumer
Clinton	Lautenberg	Sununu
Feingold	McCain	Wyden
Feinstein	Murray	

NOT VOTING—2

Kerry Lieberman

The bill (H.R. 6), as amended, was passed.

Mr. DASCHLE. Mr. President, I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. Under the previous order, the Senate insists on its amendment, requests a conference with the House on the disagreeing votes of the two Houses, and the Chair is authorized to appoint conferees on the part of the Senate in a ratio of 7 to 6.

COLLOQUY ON AMENDMENT 1473

Mr. SMITH. Mr. President, today I have joined with my colleague from Alaska to sponsor an amendment to S.14, the Energy bill, which would strengthen the commitment of the

United States to supply oil to Israel and other nations pursuant to the International Emergency Oil Sharing Plan of the International Energy Agency.

The United States is currently party to two agreements to ensure that in the event Israel was unable to independently acquire its own supply of oil, the United States Government would procure the necessary oil to meet Israel's needs.

Ms. MURKOWSKI. Mr. President, this amendment would make both agreements part of the United States law, rather than subject to continued renewal agreements. Further, the amendment also authorizes the President to export oil to, or secure oil for, Israel pursuant to these agreements, or to any country that is part of the International Emergency Oil Sharing Plan.

This language also ensures that should legislation reinstating a ban on the exportation of domestic oil be implemented in the future, the United States would still be able to meet its obligations to Israel.

Mr. SMITH. I believe it is important to ensure that the United States can fulfill its commitment to this vital ally. I want to clarify, however, that nothing in this language would authorize the President to permit oil exploration and drilling in areas currently not legally open to development. Is that also your understanding of the language?

Ms. MURKOWSKI. That is correct. No areas where drilling is prohibited could be developed under this language.

Mr. SMITH. I thank my colleague for that clarification.

LANDFILL GAS TAX CREDITS

Mrs. LINCOLN. Mr. President, I want to congratulate Chairman GRASSLEY and Ranking Member BAUCUS on this package of energy tax incentives. But also I would like to raise two concerns with the bill, which I request they address in the House-Senate conference on the energy bill.

On February 11 of this year, I introduced S. 358, the Capturing Landfill Gas for Energy Act of 2003. My bill is cosponsored by Senators SANTORUM and HATCH and would provide a credit under either Section 29 or 45 of the Tax Code for the production of energy from landfill gas, or LFG.

In the past, Congress has recognized the importance of LFG for energy diversity and national security by providing a Section 29 credit in 1980 and extending it for nearly two decades. However, the bill before us provides no Section 45 credit for LFG, and it severely limits the Section 29 credit by applying a volume cap of 200,000 cubic feet per day. In contrast, the President proposed a Section 29 credit for LFG with no volume cap, and the House has passed a Section 45 credit for LFG. Both of these proposals would provide meaningful tax incentives to encourage the collection and use of LFG. Thus, the Senate bill falls well short of rec-

ognizing the importance of dealing with LFG, and I urge the Chairman to address this shortfall in the House-Senate conference.

My second concern deals with a provision included in the Senate energy tax bill which would clarify the definition of "landfill gas facility" for purposes of Section 29. I am grateful to have worked with the chairman and ranking member of this provision, but I am concerned that we have not yet found the proper solution.

Typically, a landfill is comprised of a number of "cells." A cell is filled with trash, closed up, and then a new cell is filled. Over time, cells within the landfill begin to generate methane gas as the garbage decomposes. So a landfill produces methane gas in stages as the individual cells produce LFG, and new "wells, pipes, and related components" are run from the landfill gas facility to collect the gas.

The Tax Code is unclear whether the new components run to cells in the landfill over time are considered part of the landfill gas facility, and thus, the question is raised whether gas from these cells are eligible for the Section 29 tax credit. Under S. 358, a landfill gas facility would include additional "wells, pipes, and related components" used to collect landfill gas. Further, the new components of the expansion would share the facility's placed in service date for purposes of Section 29. For example, the wells, pipes, and related components added to an eligible facility placed in service in 1997 would share the eligible facility's 1997 placed in service date and gas produced from the facility would receive the credit for the duration of the facility's credit pay out period.

In contrast, the provision in the Senate Energy bill would include all wells, pipes, and related components added to the eligible facility, but for all expansions placed in service after date of enactment, the components would be treated as a new facility with a new placed in service date. The difference is critical since other provisions of the Senate Energy bill subject new LFG facilities to a new volume cap of 200,000 cubic feet per day. As I mentioned, this new volume cap will seriously curtail the use of Section 29 for LFG under the bill, and it was never my intention to deny payment of the full credit for gas produced from expansions of the original facility during the 10-year payout period.

The potential energy and environmental benefits of future LFG projects are substantial, but they will be lost if we do not provide adequate provisions to support project development. I request that Chairman GRASSLEY and Senator BAUCUS continue to work with me to make sure Americans garner all of these benefits.

Mr. GRASSLEY. Mr. President, I want to assure Senator LINCOLN that I will continue to work with her to make sure adequate incentives for LFG are included in any final package from the

upcoming House-Senate conference. Her concerns are my concerns as well. She has started them well and I will devote my best efforts to resolving them as we move forward on discussions and deliberations with the House of Representatives.

## LABOR LAW COLLOQUY

Mr. NICKLES. Mr. President, I would like to ask my colleague from New Hampshire, the chairman of the Committee on Health, Education, Labor and Pensions, if he shares my understanding that the sense of Congress contained title 7, section 714, of the Energy bill, H.R. 6, dealing with project labor agreements, is exclusive to the natural gas transportation construction project in the State of Alaska under this title?

Mr. GREGG. I would say to my colleague that he is correct. Further, the provision is neither legally binding nor should it be construed to undermine or conflict with Executive Order 13202.

Mr. NICKLES. Mr. President, to further clarify, I ask my colleague, should the inclusion of this provision be seen as a break from the longstanding tradition of Federal Government neutrality in labor-management relations?

Mr. GREGG. No. The sense-of-Congress provision should not be interpreted to encourage the sponsors of the Alaska natural gas transportation project to engage in discriminatory hiring or contracting practices on the basis of a person's labor affiliation or lack of labor affiliation.

Mr. NICKLES. Mr. President, I thank my colleague from New Hampshire for his view on this important labor law clarification.

## ENERGY TAX INCENTIVES

Mr. VOINOVICH. Mr. President, I would like to take this opportunity to express my support for States that provide tax incentives for ethanol or for electricity produced from clean coal technology or renewable in their State. For example, in my home State, the Ohio coal tax credit provides \$3 per ton of Ohio coal burned using clean coal technology. This tax credit encourages use of clean coal technology and holds down electricity costs in Ohio. With Ohio's large manufacturing base, affordable energy costs keep costs down to these companies and keep jobs in the State.

I believe that States should have the opportunity to provide tax incentives for energy production and am hopeful that this is something we can address in conference on this bill.

Mr. INHOFE. I agree with my colleague. States should be able to provide incentives for energy production, much like the Federal Government does including incentives in this bill. I believe that this issue is something that should be addressed by the conference committee on this bill.

Mr. DOMINICI. I understand the concerns raised by the Senators from Ohio and Oklahoma and would like to work with them to ensure that States maintain the right to provide these incentives.

## CREDIT FOR INSTALLATION OF QUALIFIED FUEL CELLS

Mr. BAUCUS. The Energy Tax Incentives Act provides an incentive for new business installations of qualified fuel cells. For those in the future who might be interested in ascertaining the intent of the authors of this provision, the Finance Committee in drafting this language did so with the knowledge that there are various types of fuel cells that convert the chemical energy in fuels, such as hydrogen or methanol, into electrical energy by means of electrochemical reactions. Rechargeable fuel cells can convert electricity into chemical energy that can be stored, and then reconvert that chemical energy into electrical energy when it is needed. Rechargeable fuel cells can provide the capability for storing electricity during periods of low demand and releasing it at periods of high demand. This feature can help stabilize the output from renewable resources, including wind generation, electricity generated from swine and bovine waste nutrients, geothermal power, solar power, and biomass facilities. This language is intended to encourage the provision of electricity through non-polluting means, and to assist in the development of alternate, renewable resources. Our policy is to help develop these and other alternative, renewable resources.

As the chairman of the Finance Committee who has worked diligently to develop appropriate incentives for renewable resources, is it also your view that the proposed credit for qualified fuel cells should include rechargeable fuel cells, such as those that store electricity generated from these renewable resources?

Mr. GRASSLEY. As my friend from Montana pointed out, I am pleased that the tax title of the pending energy conference report includes several such incentives on which we have dedicated much effort and attention. Fuel cell power plants represent a promising means for providing electricity that is generated in environmentally friendly means and from nonconventional sources. They also provide important load-leveling capabilities that will reduce the stress and reliance on our Nation's electricity grid. I am pleased to assure my friend from Montana that I will work to make sure that rechargeable fuel cell power plants, such as those he described, would be eligible for this tax credit.

Mr. BAUCUS. I thank my friend from Iowa for his cooperation on this issue, and I look forward to continue our efforts to enact this important energy security legislation.

## NUCLEAR WASTE

Mr. REID. I want to confirm that acceptance of this still does not create any opportunity to discuss nuclear waste issues in conference.

Mr. DOMINICI. I agree with the Senator's view. I will be a conferee on this bill. I assure the Senator that I will resist any attempt to open the con-

ference to discussion of waste issues. I would also like to note that there are provisions in this bill that will allow the national labs to play a strong role. From our positions on the Energy and Water Development Subcommittee, let's work together to ensure their participation.

## CRIMINAL LIABILITY

Mr. INHOFE. I would like to engage the Senator in a colloquy and draw the Senate's attention to several statutes which have been, through litigation, expanded beyond what are believed was the intent of Congress.

Mr. DOMENICI. Is the Senator referring to the criminal negligence provision of the Clean Water Act and the strict criminal liability provision of the Migratory Bird Act and the Refuse Act which can be triggered by a simple accident?

Mr. INHOFE. Precisely. Now, I want to be clear that I do not want to suggest for a minute that we should make it easier for polluters to damage the environment or put the public at risk.

Mr. DOMENICI. But the situation the Senator is talking about refers to clear accidents involving ordinary people, correct?

Mr. INHOFE. Yes. Recent court decisions have made it clear that employees, at any level, who are involved in environmental accidents, can be prosecuted criminally, and potentially imprisoned. These are non-deliberate environmental accidents that do not threaten or harm others.

Mr. BREAU. I am also concerned about criminal liability as it applies to oil spills. In fact, during the 106th Congress, I introduced legislation to address a long-standing problem which adversely affects the safe and reliable maritime transport of oil products. The legislation was aimed at eliminating the application and use of strict criminal liability statutes, statutes that do not require a showing of criminal intent or even the slightest degree of negligence, for maritime transportation-related oil spill incidents.

As stated in the Coast Guard's environmental enforcement directive of 1997, a company, its officers, employees, and mariners, in the event of an oil spill "could be convicted and sentenced to a criminal fine even where [they] took all reasonable precautions to avoid the discharge." Accordingly, responsible operators in my home State of Louisiana and elsewhere in the United States who transport oil are unavoidably exposed to potentially immeasurable criminal fines and, in the worst case scenario, jail time. Not only is this situation unfairly targeting an industry that plays an extremely important role in our national economy, but it also works contrary to the public welfare.

To preserve the environment, safeguard the public welfare, and promote the safe transportation of oil, we need to eliminate inappropriate criminal liability that otherwise undermines spill prevention and response activities. I

pledge my support to work with my colleagues to address these environmental liability issues.

Mr. INHOFE. The American Waterways Operators have devoted a great deal of time to training mariners and vessel operators. Clearly, the Coast Guard goes to great lengths to ensure its officers and staff are well trained. However, unfortunately, accidents—true accidents—happen.

Mr. DOMENICI. My colleagues are clearly describing a legal minefield where employees involved in an accident become less likely to cooperate with accident investigations because they are being advised by counsel not to potentially incriminate themselves.

Mr. INHOFE. That is absolutely correct.

Mr. DOMENICI. And as chairman of the Environment and Public Works Committee, is it the Senator from Oklahoma's position that this leads to less environmental safety instead of more?

Mr. INHOFE. Indeed. I also wish to draw the Senator's attention to the Clean Air Act, which has a different, and I suggest, more appropriate provision of negligent endangerment.

Mr. DOMENICI. I am familiar with the provisions—it requires risk of physical harm to the public for an accident to trigger criminal prosecution.

Mr. INHOFE. Yes. That is the type of activity for which we should reserve criminal prosecution. I also remind my colleague that the Clean Water Act clearly allows prosecution for deceitful or purposeful environmental damage, or for fraudulent efforts to conceal such damage—a provision we would not change.

Mr. DOMENICI. I agree with the Senators' assessment, share their concern, and look forward to working with them to address this important issue.

#### CANTWELL AMENDMENT

Mr. DASCHLE. Mr. President, Senator CANTWELL has a market manipulation amendment that she was seeking a vote on. It is my understanding that the agriculture appropriations bill or the energy water appropriations bill is where she would like to offer her amendment. I would inquire of the majority leader that should she offer her amendment to either of those bills would she be assured of a vote on, or in relation to, her amendment with no second degree amendments prior to such vote?

Mr. FRIST. The Democratic leader is correct if Senator CANTWELL offers her amendment to that bill she will get a vote on, or in relation, to it.

#### FEINSTEIN AMENDMENT

Mr. DASCHLE. Mr. President, Senator FEINSTEIN has a market manipulation amendment that she was seeking a vote on. It is my understanding that the Agriculture appropriations bill would be the appropriate bill for that amendment. I would inquire of the majority leader that should she offer her amendment to that bill would she be assured of a vote on, or in relation to,

her amendment with no second degree amendments prior to such vote?

Mr. FRIST. The Democratic leader is correct if Senator FEINSTEIN offers her amendment to that bill she will get a vote on or in relation to it.

Mr. FEINGOLD. Mr. President, energy policy is an important issue for America and one which my Wisconsin constituents take very seriously. The bill before us seeks to address important issues, such as the role of domestic production of energy resources versus foreign imports, the tradeoffs between the need for energy and the need to protect the quality of our environment, and the need for additional domestic efforts to support improvements in our energy efficiency, and the wisest use of our energy resources. Given the importance of energy policy, an Energy bill is a very serious matter and I do not take a decision to oppose such a bill lightly. In my view, this bill does not achieve the correct balance on several important issues, which is why I will oppose it. In addition, I am deeply troubled by the process that has led us to abandon efforts to develop meaningful energy legislation, and instead simply stop our work, take up last year's bill, and pass it.

In my work on this legislation I have heard from large numbers of my constituents. Of the many pieces of correspondence I received on the matter of a national energy policy was a detailed paper prepared by a group of students at Marquette University. The students wrote, as part of their interdisciplinary minor in environmental ethics, a comprehensive analysis and a series of recommendations regarding energy usage and efficiency. I commend and compliment these students on their hard work, and I am very pleased to see young people becoming so involved in our political process.

In conducting their analysis and crafting their recommendations, the students underscored that it is imperative that our focus in developing energy policy remains resolutely long term. I share this belief, and I agree with the students' assessment that sensitivity is required in working to craft an energy policy because of its effect on consumers, on our society, and on the environment. During my time in the Senate I have consistently worked to ensure that energy policy is both environmentally and fiscally responsible. Unfortunately, I cannot assure these students, or any of my other constituents, that this bill meets those goals.

This bill now contains a renewable portfolio standard requiring electric utilities to generate or purchase 10 percent of the electricity they sell from renewable sources by 2020. I supported an amendment offered by the Senator from Vermont, Mr. JEFFORDS, last year to increase this percentage to 20 percent, but it was watered down to 8 percent. Additional exemptions in this bill make this target actually a target of 4-5 percent of new generation from renewable sources by 2010. We can and

should do better on renewable energy sources. This bill should have set a serious target, and we should have had a floor debate on this issue.

In addition, this bill repeals the pro-consumer Public Utility Holding Company Act, the Federal Government's most important mechanism to protect electricity consumers. The Senate failed to adopt my amendment to protect electricity consumers, investors, and small businesses from abusive transactions between utilities and affiliate companies within the same corporate family. It also failed to pass a proposal by my colleague from Washington, Ms. CANTWELL, banning Enron-like trading schemes. The bill should have given the Federal Government more oversight of utility mergers and tried to prevent utilities from passing on the costs of bad investments to consumers and from using affiliate companies to out-compete small businesses. Also, the electricity provisions of the bill do not provide additional oversight of energy markets. This would have been addressed by an amendment by the Senator from California, Mrs. FEINSTEIN, that passed and which I supported, that would have fostered a more stable market with transparent transactions and helped to prevent another Enron.

Finally, I am also concerned that we included \$14 billion in tax breaks without paying for them on this bill. Our budget position has deteriorated significantly over the last year, in large part because of the massive tax cut that was enacted. We now face years of projected budget deficits. The only way we will climb out of this deficit hole is to return to some sense of fiscal responsibility, and first and foremost that means making sure the bills we pass are offset. Without offsetting the cost of the tax package, we are digging our deficit hole even deeper and adding to the massive debt already facing our children and grandchildren.

The American people deserve better than this bill, and I cannot vote in favor of it. This measure will need to be greatly improved in conference to get my vote.

Mr. COCHRAN. Mr. President, I am concerned about the recent efforts by the Federal Electric Regulatory Commission, commonly known as FERC, to make RTOs mandatory. Recently, FERC released a white paper describing their intentions to mandate Regional Transmission Organization participation by utility companies.

A Regional Transmission Organization, or RTO, would act as a third party which sets the rules for power companies about pricing and delivering power in a given region. These RTOs are being formed around the country. There may eventually be one in the South. But, that should not give FERC the authority to strip State Public Utility Commissions of their right to decide whether their states enter into these types of arrangements.

I understand that entering into an RTO may be a good choice for some

companies and Public Utility Commissions to make. I believe that is who should be deciding these issues—not the FERC.

I have a letter from the Mississippi Public Service Commission which I would like to submit for the RECORD. It clearly states the problems which would beset my state if it were forced into an RTO.

Currently, the FERC is attempting to force utilities to enter into RTOs. There was a federal court case in Atlantic City about this. Some groups point to that case and say that since the utility won its right to withdraw from the RTO, that every other utility can simply file a suit if they are mandated into an RTO. This is not a sensible way to make policy.

We should not equate the right to file a lawsuit with the voluntary ability to join one of these organizations.

I am pleased that an agreement has been reached to amend the Federal Power Act, not just this Energy Bill, to make it clear that FERC cannot mandate participation in an RTO. Unfortunately, this language expires on December 31, 2006. While I wish that there was no expiration to this provision, I am glad that the bill includes language to clarify that when this provision expires the FERC does not have authority to mandate participation into RTOs.

I am hopeful that the FERC will follow Congressional intent and allow states and utilities to decide when and if they wish to enter into an RTO. I thank Senator DOMENICI and his staff for their work on this provision and I am glad to have a commitment that this provision will be included in the final bill during the energy bill conference.

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

MISSISSIPPI PUBLIC SERVICE  
COMMISSION,  
July 28, 2003.

Senator THAD COCHRAN,  
Washington, DC

As a Mississippi State Utility Regulator, I appreciate the opportunity to submit for the record my comments and observations pertaining to the Federal Energy Regulatory Commission (FERC) and its efforts to restructure the electrical industry. Federalizing the delivery of electricity for Mississippi consumers would have a negative impact on our state.

In April of this year, the FERC released its white paper on Wholesale Power Markets and Standard Market Design. They continue to insist that Regional Transmission Organizations (RTO) will be mandatory and FERC will exert jurisdiction over retail service. If FERC has the authority to exercise jurisdiction over the Terms and Conditions of bundled retail service, this clearly suggest they will have a direct influence in the rates for such service. Bundled retail transactions are subject to State jurisdiction and the Terms and Conditions should not come under Federal control.

I personally question the legal authority, based on existing law, which would allow FERC to mandate Mississippi public utilities to join an RTO and ISO. To do so would require our electrical utility compa-

nies to turn over their transmission assets to third parties.

Even though our transmission facilities were built to serve local retail customers and paid for in their rates, FERC now claims everyone is entitled to the same priority and emphasizes that Terms and Conditions of the RTO or ISO tariff will apply equally to all users. If utilities are required to take service under the Terms and Conditions of a wholesale tariff, it is difficult to see how the transmission component of retail rates will not become FERC jurisdictional.

In May of 2000, we issued formal document to the Legislature after three years of Public Hearings pertaining to retail access transmission, in which we clearly indicated that restructuring the electrical industry in our state would not benefit all Mississippi consumers. The principle impact of wholesale competition in our state is in providing an additional option for meeting incremental generation needs via competitive procurement under long-term contracts and through short-term economic and reliability purchases. We do not depend on the wholesale market to the same extent, or in the same manner, as is the case with states that have chosen a different regulatory scheme.

Our electric supplies are among the least costly and most reliable in the nation. We have sufficient generation, for the foreseeable future, and are aware of no major transmission bottlenecks that are resulting in cost or reliability problems for our consumers. We have an electric system that is serving the consumers of Mississippi in helping our state meet its economic development potential, therefore, in my opinion, allowing FERC to mandate RTO's and exert their jurisdiction over retail transmission is not only not necessary but will be financially harmful to our citizens.

Senator Cochran, I appreciate this opportunity to provide you and the Senate with my comments regarding this critical issue and I strongly urge the Senate to preserve our authority to manage and regulate our electrical industry in Mississippi.

Sincerely,

NIELSEN COCHRAN,  
Commissioner.

Mr. LEAHY. Mr. President, while I recognize the Nation needs a sound and balanced national energy plan emphasizing a clean, reliable, sustainable, and affordable energy policy, unfortunately this bill fails to do that. In my home State of Vermont we are proud of an environmental ethic that supports the increased use of clean and sustainable energy. Vermonters have a long history of taking good care of our natural resources, which has served our economy and ecosystems well. It is important to strike a balance when working to resolve environmental and energy problems. That is why I will continue to strongly support programs such as Low-Income Home Energy Assistance Program.

While the Senate has been debating the energy bill on-and-off for the past few months, the debate has been fairly limited compared with the debate on the energy bill during the 107th Congress. During the 107th Congress, when the Democrats were in the majority, we debated the bill for 24 days over an 11-week span. During that time, the Senate adopted 126 amendments and rejected 18 others. At no time during the consideration of that bill, did the Senate try to limit debate by entering into

a unanimous consent agreement to limit amendments. In comparison, we have had very limited debate on this bill and avoided critical issues.

Many of my colleagues offered common sense amendments that would have greatly improved the bill. This includes conservation measures offered by Senate DURBIN that would have required cars, SUVs, minivans and cross-over utility vehicles to achieve a new fuel standard of 40 mpg by 2015 and would require pickup trucks and vans to achieve a CAFE standard of 27.5 mpg by 2015. Senators CANTWELL and BINGAMAN offered several amendments to the electricity title to improve consumer protections. Senators FEINSTEIN and SCHUMER offered amendments to reduce the impact of ethanol mandates on consumers in the Northeast. I am disappointed that all of these amendments failed.

Further, it should be noted this bill is fiscally irresponsible. Senators WYDEN and SUNUNU proposed an amendment that would have struck from the energy bill a provision to make available Federal subsidies for nuclear power plants. This amendment was not against nuclear power but an amendment for Congress to be fiscally responsible to the American taxpayer. Unfortunately, this amendment failed earlier in the summer. Now the American public will have to subsidize an estimated \$14-\$16 billion for a source of energy that leaves many citizens concerned over their safety. Lastly, many other amendments that attempted to hold the administration accountable to environmental laws were rejected by my colleagues that will result in further degradation to the American public's natural resources.

If these amendments had passed, they would have reduced our dependence on foreign oil imports, maintain air quality protections, and conserve energy. Instead this bill forces the American people to pay for the construction of new nuclear power plants and increased oil and gas drilling.

The Senate had a real opportunity to put together a sensible energy policy that shifted the focus from nuclear power and offshore drilling to a clean, renewable, and affordable energy plan. Unfortunately, we failed to do this, and that is why I cannot support S. 14.

Ms. MURKOWSKI. Mr. President, I come to the floor at this late hour to express my strong support for Senate passage of a comprehensive energy bill. This bill is an important first step in increasing the energy security of the United States. It has been a long time in coming, but we welcome this action by the Senate tonight.

From the jaws of defeat come some of the sweetest victories, and I want to commend our leadership for getting this done, really to the surprise of many pundits and experts around DC who said it could never get done this week, much less by the end of this year. We should also acknowledge the willingness of the other side to reach accommodation on this important bill.

Every where I go people talk to me about natural gas—back home in Alaska, in Seattle, or here in Washington, DC. Everyone, from the President of the United States to Federal Reserve Chairman Alan Greenspan to the farmers of Iowa, know that we face serious problems in our natural gas supply.

With passage of this bill the Senate is telling consumers, farmers and natural gas dependent industries that help is on the way. That is good for American jobs, good for our families and their pocket books and good for the economy. The provisions contained in this bill will truly help us get the all important Alaska natural gas pipeline moving forward.

Experts predict that the U.S. will face a 20 billion cubic foot per day shortage of gas by the year 2020. In Alaska we have 35 trillion cubic feet of gas in Prudhoe Bay that has already been found, and we expect more than 100 trillion additional cubic feet to be found on the North Slope with relatively little effort. Alaska's natural gas can help close more than 25 percent of the expected 2020 gap, but we need to assure the markets that some of the risk associated with this project can be mitigated. If we can get it built it will be one of the largest privately financed projects in the history of the planet. It will employ over 400,000 people nationwide, with thousands of new jobs being created in my State of Alaska. Nationally the creation of 400,000 new jobs could reduce our unemployment rate by a whopping 1/2 of a percentage point. That is a huge shift from just one project. And it will mean a stable supply of gas for America for years to come. No other project I know can have that kind of positive impact on America—from either a gas supply, energy security or job creation perspective. It is imperative that we get this project moving now.

I would note that the Senate bill reported by the Energy Committee this year, and the accompanying tax provisions reported out of the Finance Committee this year, called for a marginal well credit that would have capped tax credits for the production of Alaska gas at 52 cents per thousand cubic feet of gas, should the price fall below \$1.35 at the wellhead.

It also contained a loan guarantee for up to \$18 billion of the project's cost and an accelerated depreciation provision.

The bill we are passing tonight reverts to last year's proposal that provides a gas line tax incentive to producers if the price of natural gas falls below \$3.25 per thousand cubic feet delivered to the AECO hub in Canada. Producers, however, will have to pay the credit back in full whenever the price of gas exceeds \$4.85 per unit.

The provision accepted by the Senate also includes a loan guarantee where the government helps to underwrite some \$8 billion of the first \$10 billion of the cost of the line, in the event that unexpected energy price drops occur.

It includes all the other provisions that passed the Senate last year, including: a prohibition against a northern route, guaranteeing the gas line will follow the Alaska Highway south through the Railbelt and Yukon to reach the Lower 48 States; a streamlined permitting and expedited court review process to speed construction; Provisions that allow Alaska to control gas to facilitate use for heating or construction of petrochemical plants in State; a guarantee that the gas line will accommodate an LNG plant to be developed at tidewater in Alaska whenever exports markets for the gas appear; provisions to guarantee that new gas producers in Alaska will be able to get their gas to market; and a provision that authorizes \$20 million for worker job training and promotes Alaska-hire provisions in State.

The bill also includes a proposal that will provide up to \$120 million in grant aid yearly for rural electric improvements in high-cost areas. These grants can go for power plants or to reduce power demands by other utilities.

The bill also includes a \$35 million grant (\$5 million per year for seven years) to Alaska to help fund its Rural Power Cost Equalization (PCE) program that subsidizes the high cost of electricity in rural Alaska.

The bill authorizes the Department of Energy to make a loan of up to \$125 million to retrofit the Healy clean coal plant with new technology so it can produce power economically without causing air pollution problems. The loan should make the plant economic, provide vitally needed power to the Fairbanks area at reasonable cost and aid the Usibelli coal mine and its workers.

The bill includes a tax incentive equal to \$3 per barrel to produce heavy oil from northern Alaska or to produce low-pollutant synthetic fuels from coal. The same provision also provides a tax credit to fuels produced before 2007 from biomass, tar sands, or brine. For heavy oil, Alaska's West Sak field contains 15 billion barrels of known heavy oil. The incentive should help make an additional 200 million barrels of production economic over the next decade.

This legislation reauthorizes the Arctic Science Research Act of 1984 and expands its power to make grants for scientific research.

Thankfully the bill also makes it a federal crime to damage any intrastate energy pipeline. The amendment specifically provides extra legal protection to the trans-Alaska oil pipeline.

This package contains language originally proposed by Senator TED STEVENS with Senator BYRD for the Barrow Arctic Research Center to support climate change research and scientific activities. The amendment includes \$35 million for planning, design, support and construction of the Barrow facility. The goal is to develop technologies needed to reduce greenhouse gas emissions.

I am pleased the bill also contains the following important provisions: Tax credits for hybrid and fuel-cell vehicles; tax credits for alternative and renewable fuels use and development; tax credits for marginal oil producers to protect oil production from stripper wells; extra funding for the Low Income Home Heating Program (LIHEAP) and for low-income weatherization grants; funding for an Advanced Clean Coal Technology program; funding for a hydrogen energy act; provisions to increase the use of ethanol in clean burning gasoline; reauthorization of hydroelectric dam licensing provisions; reauthorization of the Price Anderson Act to permit nuclear power to continue; provisions on electricity restructuring; and provisions to require a sensible increase in automobile fuel efficiency standards.

Using last year's bill was the quickest way to get the bill off the Senate floor so that details of a final package could be worked out in a conference committee with the House. Without this action today it was unlikely we would have seen positive movement until the late fall. Now we can move forward quickly for America and Alaska.

I want to assure Alaskans that I will work to include in the conference report on this bill the provisions I secured during this year's debate in the Energy Committee. With those changes this bill will help us to address our energy problems even more.

I thank the fine Chairman of the Energy Committee for his effort and leadership and I applaud the work of both Leaders to get this bill done before the August recess.

The PRESIDING OFFICER. The Senator from Connecticut is recognized.

#### FREE TRADE AGREEMENTS

Mr. DODD. Mr. President, I rise to speak about the Chile and Singapore free-trade agreements that are currently before this body. If these agreements were similar to earlier free-trade agreements voted on by this body—NAFTA, Israel, Jordan—I would have absolutely no difficulty whatsoever casting votes in favor of both. That, however, is not the case. These agreements are not your garden-variety free-trade agreements. In fact, these two agreements break new ground with the inclusion of specialized immigration provisions which weaken existing legal safeguards against U.S. employers displacing American workers with lower wage nonimmigrant visa holders.

I thank immensely the Presiding Officer who held a very worthwhile hearing just a day or so ago in the Judiciary Committee on one of these visa provisions, the L-1 visa issue. I thank him immensely for giving me an opportunity to address my concerns about some of the loopholes in that particular agreement.

I want to draw my colleagues' attention that I have rarely, if ever, voted