To amend the Public Utility Regulatory Policies Act of 1978 to establish a renewable electricity standard, and for other purposes.

IN THE SENATE OF THE UNITED STATES

Mr. UDALL introduced the following bill; which was read twice and referred to the Committee on __________

A BILL

To amend the Public Utility Regulatory Policies Act of 1978 to establish a renewable electricity standard, and for other purposes.

1 Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

3 SECTION 1. SHORT TITLE.

4 This Act may be cited as the “Renewable Electricity Standard Act”.

6 SEC. 2. FINDINGS.

7 Congress finds that—

8 (1) renewable energy is the cheapest new form of electricity in many regions of the United States;
(2) to meet the climate goals of the United States, every State must transition to carbon-free electricity by 2050;

(3) renewable energy is a virtually unlimited resource that can help avoid pollution of the air, water, and land of the United States;

(4) States without high levels of renewable energy should not be penalized for past inaction, but should comply with an annual percentage increase of renewable electricity; and

(5) States should be encouraged to create their own renewable electricity standards or clean energy standards above the Federal renewable electricity standard.

SEC. 3. RENEWABLE ELECTRICITY STANDARD.

(a) In general.—Title VI of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2601 et seq.) is amended by adding at the end the following:

“SEC. 610. RENEWABLE ELECTRICITY STANDARD.

“(a) Definitions.—In this section:

“(1) Base quantity of electricity.—

“(A) In general.—Except as provided in subparagraph (B), the term ‘base quantity of electricity’ means the total quantity of electric energy sold by a retail electric supplier, ex-
pressed in terms of kilowatt hours, to electric customers for purposes other than resale during the most recent calendar year for which information is available.

"(B) EXCEPTION.—The term ‘base quantity of electricity’ does not include any quantity of renewable energy delivered by a retail electric supplier to an electric customer pursuant to a voluntarily transaction entered into by the customer to meet the demand of the customer for renewable energy.

"(2) ELIGIBLE FACILITY.—The term ‘eligible facility’ means a facility for the generation of electric energy that—

"(A) generates electric energy from a new renewable energy resource using equipment that comes online during calendar year 2020 or thereafter;

"(B) generates additional electric energy during a calendar year from increased efficiency of, or additions of capacity to, existing equipment for the generation of electric energy from a renewable energy resource, as compared to the quantity of electric energy generated from
renewable energy resources during the preceding calendar year;

"(C) generates electric energy from a renewable energy resource using repowered equipment that was placed in service before calendar year 2020, even though that repowered equipment contains some used property, if the cost of the new property is not less than 4 times the fair market value of the used property contained in the repowered equipment; or

"(D) generates electric energy from a renewable energy resource using equipment that comes online after calendar year 2005 and before calendar year 2020, and that electric energy—

"(i) is not under a contract for the sale of renewable energy credits or physical power to—

"(I) a retail electric supplier for use in complying with a State renewable portfolio standard; or

"(II) meet voluntary market demand; and

"(ii)(I) is delivered for end-use consumption in the regional reliability entity
(as recognized by the North American Electric Reliability Corporation) in which the retail electric supplier is located; and

“(II) the end-use consumption within that region can be tracked and verified.

“(3) IMPACTED COMMUNITY.—The term ‘impacted community’ means—

“(A) an economically distressed area affected by environmental pollution or other hazards that can lead to—

“(i) exposure to the pollution or hazard, including negative public health effects resulting from that exposure; or

“(ii) environmental degradation; and

“(B) an economically distressed area affected by high unemployment due to—

“(i) a significant decline in coal mining activity; or

“(ii) the closure of a coal-fired power plant.

“(4) INCREMENTAL HYDROPOWER.—The term ‘incremental hydropower’ means additional generation that is achieved from increased efficiency of, or additions of capacity to, existing hydroelectric facili-
ties that are made on or after the date of enactment of this section.

"(5) INDIAN LAND.—The term ‘Indian land’ means—

"(A) any land within the limits of any Indian reservation, pueblo, or rancheria;

"(B) any land not within the limits of any Indian reservation, pueblo, or rancheria title to which on the date of enactment of this section was held by—

"(i) the United States for the benefit of any Indian Tribe or individual; or

"(ii) any Indian Tribe or individual subject to restriction by the United States against alienation;

"(C) any dependent Indian community; and

"(D) any land conveyed to any Alaska Native Corporation under the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.).

"(6) INDIAN TRIBE.—The term ‘Indian Tribe’ means any Indian Tribe, band, nation, or other organized group or community, including any Alaskan Native village or regional or village corporation (as
defined in, or established pursuant to, the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.), that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

"(7) RENEWABLE BIOMASS.—

"(A) IN GENERAL.—The term 'renewable biomass' means—

"(i) crop byproducts or crop residues that—

"(I) are harvested from actively managed or fallow agricultural land that is cleared prior to January 1, 2019; and

"(II) are procured at a rate that adequately maintains soil carbon and prevents erosion;

"(ii) closed-loop biomass (as defined in section 45(e)(2) of the Internal Revenue Code of 1986) that is harvested from land cleared prior to January 1, 2019;

"(iii) byproducts of wood or paper mill operations, including lignin in spent pulping liquors;
(iv) small diameter thinned trees (as defined in a regulation promulgated by the Secretary, in consultation with the Administrator of the Environmental Protection Agency and Secretary of the Interior, pursuant to a negotiated rulemaking), logging residues (as defined by the Forest Service), or tops and limbs (as defined by the Forest Service);

(v) trees removed for purposes of ecological restoration, to be determined by the Secretary, in consultation with the Chief of the Forest Service and the Director of the United States Fish and Wildlife Service, taking into consideration climate impacts;

(vi) algae;

(vii) nonhazardous plant matter derived from waste—

(I) including separated yard waste, landscape right-of-way trimmings, and food waste; but

(II) not including municipal solid waste, recyclable waste paper, painted, treated or pressurized wood,
or wood contaminated with plastic or metals; and

"(viii) vegetative matter removed from within 200 yards of any man-made structure or campground for the purposes of hazardous fuels thinning.

"(B) EXCLUSION OF INVASIVE SPECIES.—

"(i) IN GENERAL.—Notwithstanding subparagraph (A), except as provided in clause (ii), the term 'renewable biomass' does not include any matter derived from a plant that is invasive or noxious, or from a species or variety of plants that credible risk assessment tools or other credible sources determine is potentially invasive, as determined by the Secretary, in consultation with other appropriate Federal or State departments and agencies.

"(ii) EXCEPTION.—The term 'renewable biomass' includes matter derived from a plant that is invasive or noxious, or from a species or variety of plants that credible risk assessment tools or other credible sources determine is potentially invasive,
“(I) the matter was removed for purposes of control or eradication of the invasive, noxious, or potentially invasive plant; and

“(II) the invasive, noxious, or potentially invasive plant was not planted for the purpose of using the plant as an energy crop.

“(8) RENEWABLE ENERGY.—The term ‘renewable energy’ means electric energy generated by a renewable energy resource.

“(9) RENEWABLE ENERGY RESOURCE.—The term ‘renewable energy resource’ means—

(A) solar;
(B) wind;
(C) ocean;
(D) tidal;
(E) geothermal energy;
(F) renewable biomass;
(G) landfill gas;
(H) incremental hydropower; or
(I) hydrokinetic energy.

“(10) RETAIL ELECTRIC SUPPLIER.—

(A) IN GENERAL.—The term ‘retail electric supplier’ means a person that sells electric
energy to electric consumers for purposes other
than resale during the preceding calendar year.

"(B) SALES TO PARENT COMPANIES OR
AFFILIATES.—For purposes of this paragraph,
sales by any person to a parent company or to
other affiliates of the person shall not be treat-
ed as sales to electric consumers.

"(b) COMPLIANCE.—For calendar year 2020 and
each calendar year thereafter, each retail electric supplier
shall meet the requirements of subsection (c) by submit-
ting to the Secretary, not later than April 1 of the fol-
lowing calendar year, 1 or more of the following:

"(1) Federal renewable energy credits issued
under subsection (e).

"(2) Certification of the renewable energy gen-
erated and electricity savings pursuant to the funds
associated with State compliance payments as speci-
fied in subsection (e)(4)(F).

"(3) Alternative compliance payments pursuant
to subsection (h).

"(c) REQUIRED ANNUAL PERCENTAGE INCREASE.—

"(1) IN GENERAL.—Except as provided in para-
graph (2), for each of calendar years 2020 through
2035, the required annual percentage increase of the
base quantity of electricity of a retail electric sup-
plier that shall be generated from renewable energy resources, or otherwise credited toward the percentage requirement pursuant to subsection (d), shall be the applicable percentage specified in the following table:

<table>
<thead>
<tr>
<th>Calendar Year</th>
<th>Required Amount Percentage</th>
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<tbody>
<tr>
<td>2020</td>
<td>1.5</td>
</tr>
<tr>
<td>2021</td>
<td>2.0</td>
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<tr>
<td>2022</td>
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<td>2023</td>
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<td>2034</td>
<td>2.5</td>
</tr>
<tr>
<td>2035</td>
<td>2.5</td>
</tr>
</tbody>
</table>

"(2) APPLICATION TO CERTAIN RETAIL ELECTRIC SUPPLIERS.—In the case of a retail electric supplier that sells less than 1,000,000 megawatt hours of electric energy to electric consumers for purposes other than resale during the preceding calendar year, for each of calendar years 2020 through 2035, the required annual percentage increase of the base quantity of electricity of the retail electric supplier that shall be generated from renewable energy resources, or otherwise credited toward the percentage requirement pursuant to subsection (d), shall be
½ of the percentage specified for the calendar year in the table in paragraph (1).

“(d) RENEWABLE ENERGY CREDITS.—

“(1) IN GENERAL.—A retail electric supplier may satisfy the requirements of subsection (b)(1) through the submission of Federal renewable energy credits—

“(A) issued to the retail electric supplier under subsection (c);

“(B) obtained by purchase or exchange under subsection (f); or

“(C) borrowed under subsection (g).

“(2) FEDERAL RENEWABLE ENERGY CREDITS.—A Federal renewable energy credit may be counted toward compliance with subsection (b)(1) only once.

“(e) ISSUANCE OF FEDERAL RENEWABLE ENERGY CREDITS.—

“(1) IN GENERAL.—Not later than 1 year after the date of enactment of this section, the Secretary shall establish by rule a program—

“(A) to verify and issue Federal renewable energy credits to generators of renewable en-
"(B) to track the sale, exchange, and re-
tirement of the credits; and

"(C) to enforce the requirements of this
section.

"(2) EXISTING NON-FEDERAL TRACKING SYS-
tems.—To the maximum extent practicable, in es-
tablishing the program, the Secretary shall rely on
existing and emerging State or regional tracking
systems that issue and track non-Federal renewable
energy credits.

"(3) APPLICATION.—

"(A) IN GENERAL.—An entity that gen-
erates electric energy through the use of a re-
newable energy resource may apply to the Sec-
retary for the issuance of renewable energy
credits.

"(B) ELIGIBILITY.—To be eligible for the
issuance of the credits, the applicant shall dem-
strate to the Secretary that—

"(i)(I) the electric energy will be
transmitted onto the grid; or

"(II) in the case of a generation off-
set, the electric energy offset would have
otherwise been consumed onsite; and
"(ii) in the case of electric energy generated from a renewable energy resource using equipment that comes online after calendar year 2005 and before calendar year 2020, each new kilowatt hour of electric energy generated by that equipment satisfies the criteria set forth in clauses (i) and (ii) of subsection (a)(2)(D).

"(C) CONTENTS.—The application shall indicate—

"(i) the type of renewable energy resource that is used to produce the electricity;

"(ii) the location at which the electric energy will be produced; and

"(iii) any other information the Secretary determines appropriate.

"(4) QUANTITY OF FEDERAL RENEWABLE ENERGY CREDITS.—

"(A) IN GENERAL.—Except as otherwise provided in this paragraph, the Secretary shall issue to a generator of electric energy 1 Federal renewable energy credit for each new kilowatt hour of electric energy generated by the use of
a renewable energy resource at an eligible facility each year.

"(B) INCREMENTAL HYDROPOWER.—

"(i) IN GENERAL.—For purpose of compliance with this section, Federal renewable energy credits for incremental hydropower shall be based on the increase in average annual generation resulting from the efficiency improvements or capacity additions.

"(ii) WATER FLOW INFORMATION.—
The incremental generation shall be calculated using the same water flow information that is—

"(I) used to determine a historic average annual generation baseline for the hydroelectric facility; and

"(II) certified by the Secretary or the Commission.

"(iii) OPERATIONAL CHANGES.—The calculation of the Federal renewable energy credits for incremental hydropower shall not be based on any operational change at the hydroelectric facility that is not di-
rectly associated with the efficiency improvements or capacity additions.

"(C) INDIAN LAND.—The Secretary shall issue 2 renewable energy credits for each new kilowatt hour of electric energy generated and supplied to the grid in a calendar year through the use of a renewable energy resource at an eligible facility located on Indian land.

"(D) IMPACTED COMMUNITIES.—The Secretary shall issue 2 renewable energy credits for each new kilowatt hour of electric energy generated and supplied to the grid in a calendar year through the use of a renewable energy resource at an eligible facility located in an impacted community.

"(E) COMBINATION OF RENEWABLE AND NONRENEWABLE ENERGY RESOURCES.—If both a renewable energy resource and a nonrenewable energy resource are used to generate the electric energy, the Secretary shall issue the Federal renewable energy credits based on the proportion of the renewable energy resources used.

"(F) COMPLIANCE WITH STATE RENEWABLE PORTFOLIO STANDARD PROGRAMS.—Pay-
ments made by a retail electric supplier, directly
or indirectly, to a State for compliance with a
State renewable portfolio standard program, or
for an alternative compliance mechanism, shall
be valued at 1 credit per kilowatt hour for the
purpose of subsection (b)(2) based on the quan-
tity of electric energy generation from renew-
able resources that results from the payments.

"(f) RENEWABLE ENERGY CREDIT TRADING.—

"(1) IN GENERAL.—Except as provided in para-
graph (2), a Federal renewable energy credit may be
sold, transferred, or exchanged by the entity to
whom the credit is issued or by any other entity that
acquires the Federal renewable energy credit.

"(2) LIMITATION.—A Federal renewable energy
credit may not be sold, transferred, or exchanged
under paragraph (1) if the credit was issued to an
eligible facility as a result of that facility having
complied with a State program the requirements of
which exceed the requirements of this section with
respect to the quantity of renewable energy.

"(3) CARRYOVER.—A Federal renewable energy
credit for any year that is not submitted to satisfy
the minimum required increase in renewable genera-
tion under subsection (e) for that year may be car-
rived forward for use pursuant to subsection (b)(1)
within the next 3 years.

“(4) DELEGATION.—The Secretary may dele-
gate to an appropriate market-making entity the ad-
ministration of a national tradeable renewable en-
ergy credit market for purposes of creating a trans-
parent national market for the sale or trade of re-
newable energy credits.

“(g) RENEWABLE ENERGY CREDIT BORROWING.—

“(1) IN GENERAL.—Not later than December
31, 2020, a retail electric supplier that has reason
to believe the retail electric supplier will not be able
to fully comply with subsection (b) may—

“(A) submit a plan to the Secretary dem-
onstrating that the retail electric supplier will
cash sufficient Federal renewable energy credits
within the next 3 calendar years that, when
taken into account, will enable the retail electric
supplier to meet the requirements of subsection
(b) for calendar year 2020 and the subsequent
calendar years involved; and

“(B) on the approval of the plan by the
Secretary, apply Federal renewable energy cred-
its that the plan demonstrates will be earned
within the next 3 calendar years to meet the re-
requirements of subsection (b) for each calendar year involved.

“(2) REPAYMENT.—The retail electric supplier shall repay all of the borrowed Federal renewable energy credits by submitting an equivalent number of Federal renewable energy credits, in addition to the credits otherwise required under subsection (b), by calendar year 2023 or any earlier deadlines specified in the approved plan.

“(h) ALTERNATIVE COMPLIANCE PAYMENTS.—As a means of compliance under subsection (b)(3), the Secretary shall accept payment equal to the lesser of—

“(1) 200 percent of the average market value of Federal renewable energy credits for the applicable compliance period; or

“(2) 3 cents per kilowatt hour (as adjusted on January 1 of each year following calendar year 2020 based on the implicit price deflator for the gross national product).

“(i) INFORMATION COLLECTION.—The Secretary may collect the information necessary to verify and audit—

“(1)(A) the annual renewable energy generation of any retail electric supplier; and
“(B) Federal renewable energy credits submitted by a retail electric supplier pursuant to subsection (b)(1);

“(2) the validity of Federal renewable energy credits submitted for compliance by a retail electric supplier to the Secretary; and

“(3) the quantity of electricity sales of all retail electric suppliers.

“(j) ENVIRONMENTAL SAVINGS CLAUSE.—Incorporation of hydropower shall be subject to all applicable environmental laws and licensing and regulatory requirements.

“(k) STATE PROGRAMS.—

“(1) IN GENERAL.—Nothing in this section preempts or affects any authority of a State, political subdivision of a State, or interstate compact—

“(A) to adopt or enforce any law or rule respecting renewable energy, including by establishing and enforcing a renewable energy program that is separate from the program established under this section, that does not conflict with the requirements of this section; or

“(B) to regulate the acquisition and disposition of Federal renewable energy credits by retail electric suppliers.
“(2) Compliance with section.—No law or regulation referred to in paragraph (1)(A) shall relieve any person of any requirement otherwise applicable under this section.

“(3) Coordination with state program.—The Secretary, in consultation with States that have in effect renewable energy programs, shall—

“(A) preserve the integrity of the State programs, including programs the requirements of which exceed the requirements of this section with respect to quantity of renewable energy; and

“(B) facilitate coordination between the Federal program and State programs.

“(4) State infrastructure investment.—The Federal Energy Regulatory Commission shall seek to ensure that each transmission provider (as defined in section 37.3 of title 18, Code of Federal Regulations (or a successor regulation))—

“(A) identifies the electric transmission infrastructure needs driven by the requirements of this section; and

“(B) fully evaluates, in the transmission planning process, potential transmission solutions to meet those identified needs.
“(5) EXISTING RENEWABLE ENERGY PROGRAMS.—In the regulations establishing the program under this section, the Secretary shall incorporate common elements of existing renewable energy programs, including State programs, to ensure administrative case, market transparency, and effective enforcement.

“(6) MINIMIZATION OF ADMINISTRATIVE BURDENS AND COSTS.—In carrying out this section, the Secretary shall work with the States to minimize administrative burdens and costs to retail electric suppliers.

“(7) OPT-OUT.—

“(A) IN GENERAL.—Subject to the requirements of this paragraph, the Secretary shall allow a State to elect not to participate in this section, including any program established by the Secretary under this section.

“(B) ELIGIBILITY.—A State may elect not to participate in this section if the Secretary determines that—

“(i) more than 60 percent of the electricity sold in the State each year is generated from new or existing renewable energy resources; or
"(ii) the State—

"(I) has in effect a program the
requirements of which exceed the require-
ments of this section with respect
to quantity of new renewable energy;
and

"(II) has in effect a system of
enforcing compliance with that State
program, including any penalty, that
is at least as effective as the system
of enforcement under this section.

"(C) Application.—

"(i) Submission.—A State electing
not to participate in this section shall sub-
mit to the Secretary an application at such
time, in such manner, and containing such
information as the Secretary may require.

"(ii) Approval.—The Secretary shall
approve an application submitted under
clause (i) if the Secretary determines that
the State meets the requirements described
in subparagraph (B).

"(D) Waiver.—

"(i) In general.—On approval of an
application under subparagraph (C), the
Secretary shall issue to the State a waiver from the requirements of this section.

"(ii) DURATION.—A waiver issued by the Secretary under clause (i) shall be for a period of 3 years.

"(E) EFFECT OF OPT-OUT.—

"(i) IN GENERAL.—On receipt of a waiver under subparagraph (D), a State, including any retail electric supplier within the State, shall be exempt from the requirements of this section, including any program established by the Secretary under this section, for the duration of the waiver.

"(ii) ISSUANCE OF FEDERAL RENEWABLE ENERGY CREDITS.—

"(I) IN GENERAL.—Subject to subclause (II), the Secretary shall not issue Federal renewable energy credits for electricity generated in a State that has been issued a waiver under subparagraph (D).

"(II) ENERGY CONSUMED IN ANOTHER STATE.—On request of an eligible facility located in a State that
has been issued a waiver under subparagraph (D), the Secretary may issue to the eligible facility Federal renewable energy credits for electric energy generated by the eligible facility through the use of a renewable energy resource if that electric energy was consumed in a State that has not been issued a waiver under subparagraph (D).

"(iii) GRANTS.—A State that has received a waiver under subparagraph (D) shall not be eligible for a grant under subsection (n).

"(l) RECOVERY OF COSTS.—An electric utility that has sales of electric energy that are subject to rate regulation (including any utility with rates that are regulated by the Commission and any State regulated electric utility) shall not be denied the opportunity to recover the full amount of the prudently incurred incremental cost of renewable energy obtained to comply with the requirements of subsection (b).

"(m) PROGRAM REVIEW.—

"(1) IN GENERAL.—The Secretary shall enter into an arrangement with the National Academy of
Sciences under which the Academy shall conduct a comprehensive evaluation of all aspects of the program established under this section.

"(2) EVALUATION.—The study under paragraph (1) shall include an evaluation of—

"(A) the effectiveness of the program in increasing the market penetration and lowering the cost of the eligible renewable energy technologies;

"(B) the opportunities for any additional technologies and sources of renewable energy emerging since the date of enactment of this section;

"(C) the impact on the regional diversity and reliability of supply sources, including the power quality benefits of distributed generation;

"(D) the regional resource development relative to renewable potential and reasons for any investment in renewable resources;

"(E) the net cost or benefit of the renewable electricity standard to the national and State economies, including—

"(i) retail power costs;

"(ii) the economic development benefits of investment;
“(iii) avoided costs related to environmental and congestion mitigation investments that would otherwise have been required;

“(iv) the impact on natural gas demand and price; and

“(v) the effectiveness of green marketing programs at reducing the cost of renewable resources; and

“(F) the impact of any attrition of existing renewable energy:

“(3) REPORT.—Not later than January 1, 2025, and every 5 years thereafter, the Secretary shall submit to Congress a report describing the results of the evaluation and any recommendations for modifications and improvements to the program.

“(4) PLAN.—Not later than December 31, 2033, the Secretary shall submit to Congress a plan to amend and extend, through regulation, the program and standards established under this section in a manner that will decarbonize the power sector before 2050.

“(n) STATE RENEWABLE ENERGY ACCOUNT.—

“(1) IN GENERAL.—There is established in the Treasury a State renewable energy account.
“(2) DEPOSITS.—All money collected by the Secretary from the alternative compliance payments under subsection (h) shall be deposited into the State renewable energy account established under paragraph (1).

“(3) GRANTS.—

“(A) IN GENERAL.—Proceeds deposited in the State renewable energy account shall be used by the Secretary, subject to annual appropriations, for a program to provide grants—

“(i) to the State agency responsible for administering a fund to promote renewable energy generation for customers of the State or an alternative agency designated by the State; or

“(ii) if no agency described in clause (i), to the State agency developing State energy conservation plans under section 362 of the Energy Policy and Conservation Act (42 U.S.C. 6322).

“(B) USE.—A grant under this paragraph shall be used for the purpose of—

“(i) promoting renewable energy produc-
"(ii) providing energy assistance and weatherization services to low-income consumers.

"(C) CRITERIA.—The Secretary may issue guidelines and criteria for any grant awarded under this paragraph.

"(D) STATE-APPROVED FUNDING MECHANISMS.—At least 75 percent of the funds provided to each State for each fiscal year shall be used to promote renewable energy production through grants, production incentives, or other State-approved funding mechanisms.

"(E) ALLOCATION.—The funds shall be allocated to the States on the basis of retail electric sales subject to the renewable electricity standard under this section or through voluntary participation.

"(F) RECORDS.—A State agency receiving a grant under this paragraph shall maintain such records and evidence of compliance as the Secretary may require."

(b) CLERICAL AMENDMENT.—The table of contents for the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. prev. 2601) is amended by adding at the end of the items relating to title VI the following:

"Sec. 609. Rural and remote communities electrification grants."
"Sec. 610. Renewable electricity standard."