

115TH CONGRESS
2D SESSION

S. 2776

To modernize the Public Utility Regulatory Policies Act of 1978, and for other purposes.

IN THE SENATE OF THE UNITED STATES

APRIL 26, 2018

Mr. BARRASSO (for himself and Mr. RISCH) introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

A BILL

To modernize the Public Utility Regulatory Policies Act of 1978, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Updating Purchase
5 Obligations to Deploy Affordable Resources to Energy
6 Markets Under PURPA Act” or the “UPDATE PURPA
7 Act”.

8 **SEC. 2. AMENDMENTS TO PURPA.**

9 (a) COGENERATION AND SMALL POWER PRODUC-
10 TION RULES.—Section 210 of the Public Utility Regu-

1 latory Policies Act of 1978 (16 U.S.C. 824a-3) is amend-
2 ed by striking subsection (a) and inserting the following:

3 “(a) COGENERATION AND SMALL POWER PRODUC-
4 TION RULES.—

5 “(1) IN GENERAL.—Not later than 1 year after
6 the date of enactment of this Act, the Commission
7 shall prescribe, and from time to time thereafter re-
8 vise, rules as the Commission determines necessary
9 to encourage cogeneration and small power produc-
10 tion, and to encourage geothermal small power pro-
11 duction facilities of not more than 80 megawatts ca-
12 pacity.

13 “(2) REQUIREMENTS.—The rules under para-
14 graph (1)—

15 “(A) shall require electric utilities to
16 offer—

17 “(i) to sell electric energy to quali-
18 fying cogeneration facilities and qualifying
19 small power production facilities; and

20 “(ii) to purchase electric energy from
21 facilities described in clause (i);

22 “(B) shall be prescribed after consultation
23 with representatives of Federal and State regu-
24 latory agencies having ratemaking authority for
25 electric utilities, and after public notice and a

1 reasonable opportunity for interested persons
2 (including Federal and State agencies) to sub-
3 mit oral as well as written data, views, and ar-
4 guments;

5 “(C) shall include provisions requiring—

6 “(i) minimum reliability of qualifying
7 cogeneration facilities and qualifying small
8 power production facilities (including reli-
9 ability of those facilities during emer-
10 gencies);

11 “(ii) qualifying facilities to be respon-
12 sible for any costs needed to hold electric
13 utility customers financially indifferent to
14 the cost of enabling the firm delivery capa-
15 bility of the qualifying facility, including
16 the cost of any facilities or network up-
17 grades associated with the interconnection
18 service of the qualifying facility and trans-
19 mission service arrangements of the quali-
20 fying facility to deliver the power of the
21 qualifying facility to electric utility cus-
22 tomers;

23 “(iii) curtailment of qualifying facili-
24 ties as the Commission determines nec-
25 essary to ensure resource adequacy; and

1 “(iv) reliability of electric energy serv-
2 ice to be available to facilities described in
3 clause (i) from electric utilities during
4 emergencies; and

5 “(D) may not authorize a qualifying cogen-
6 eration facility or qualifying small power pro-
7 duction facility to make any sale for purposes
8 other than resale.”.

9 (b) RATES FOR PURCHASES BY ELECTRIC UTILI-
10 TIES.—Section 210(b) of the Public Utility Regulatory
11 Policies Act of 1978 (16 U.S.C. 824a–3(b)) is amended—

12 (1) in paragraph (1), by striking “, and” and
13 inserting “; and”;

14 (2) by redesignating paragraphs (1) and (2) as
15 subparagraphs (A) and (B), respectively, and indent-
16 ing the subparagraphs appropriately;

17 (3) in the matter preceding subparagraph (A)
18 (as so redesignated), by striking “The rules pre-
19 scribed under subsection (a) shall insure” and in-
20 serting the following:

21 “(1) IN GENERAL.—Subject to paragraph (2),
22 the rules prescribed under subsection (a) shall en-
23 sure”; and

24 (4) in the undesignated matter following sub-
25 paragraph (B) of paragraph (1) (as so redesi-

1 nated), by striking “No such rule” and inserting the
2 following:

3 “(2) LIMITATION.—No rule”.

4 (c) TERMINATION OF MANDATORY PURCHASE RE-
5 QUIREMENTS.—Section 210(m)(1) of the Public Utility
6 Regulatory Policies Act of 1978 (16 U.S.C. 824a-
7 3(m)(1)) is amended—

8 (1) in subparagraph (B)(ii), by striking “or” at
9 the end; and

10 (2) by striking subparagraph (C) and inserting
11 the following:

12 “(C) any independently administered, vol-
13 untary, auction-based energy market (including
14 an energy imbalance market), regardless of
15 whether—

16 “(i) an applicable electric utility par-
17 ticipating in such a market is a member of
18 a regional transmission organization or an
19 independent system operator; or

20 “(ii) such a market has a governance
21 structure and operation that is wholly sep-
22 arate and autonomous from a regional
23 transmission organization or an inde-
24 pendent system operator; or

1 “(D) wholesale markets that are of com-
2 parable competitive quality to markets de-
3 scribed in subparagraph (A), (B), or (C).”.

4 (d) NONDISCRIMINATORY ACCESS.—Section 210(m)
5 of the Public Utility Regulatory Policies Act of 1978 (16
6 U.S.C. 824a–3(m)) is amended by adding at the end the
7 following:

8 “(8) NONDISCRIMINATORY ACCESS.—For pur-
9 poses of this subsection, a qualifying small power
10 production facility with an installed generation ca-
11 pacity of 2.5 megawatts or greater is presumed to
12 have nondiscriminatory access to the transmission
13 and interconnection services and wholesale markets
14 described in subparagraphs (A), (B), (C), and (D) of
15 paragraph (1).”.

16 (e) RECOGNITION OF STATE OR LOCAL DETERMINA-
17 TIONS.—Section 210(m) of the Public Utility Regulatory
18 Policies Act of 1978 (16 U.S.C. 824a–3(m)) (as amended
19 by subsection (d)) is amended by adding at the end the
20 following:

21 “(9) STATE OR LOCAL DETERMINATION.—Ef-
22 fective beginning on the date of enactment of this
23 paragraph, no electric utility shall be required to
24 enter into a new contract or obligation to purchase
25 electric energy from a qualifying small power pro-

1 duction facility under this section, if the appropriate
2 State regulatory agency or non-regulated electric
3 utility determines that—

4 “(A) the electric utility has no need to pur-
5 chase electric energy from the qualifying small
6 power production facility in the quantities of-
7 fered within the timeframe proposed by the
8 qualifying small power production facility to
9 meet any obligation to serve a customer, con-
10 sistent with the needs for electric energy and
11 the timeframe for those needs, as specified in
12 the integrated resource plan of, or other appli-
13 cable demonstration of need by, the electric util-
14 ity; or

15 “(B) the electric utility employs integrated
16 resource planning or another applicable dem-
17 onstration of need and conducts a competitive
18 resource procurement process for long-term en-
19 ergy resources that provides an opportunity for
20 qualifying small power production facilities to
21 supply electric energy to the electric utility in
22 accordance with the integrated resource plan of,
23 or other applicable demonstration of need by,
24 the electric utility.”.

1 (f) TECHNICAL CORRECTIONS.—Section 210 of the
2 Public Utility Regulatory Policies Act of 1978 (16 U.S.C.
3 824a-3) is amended—

4 (1) in subsection (h)(2)(A)(i), by striking “sub-
5 section (f) or” and inserting “subsection (f); or”;
6 and

7 (2) in subsection (k), by adding a period at the
8 end.

9 **SEC. 3. FEDERAL ENERGY REGULATORY COMMISSION REG-**
10 **ULATIONS.**

11 (a) REQUIRED AMENDMENTS RELATING TO LOCA-
12 TION OF SMALL POWER PRODUCTION FACILITIES.—

13 (1) IN GENERAL.—Not later than 180 days
14 after the date of enactment of this Act, the Federal
15 Energy Regulatory Commission (referred to in this
16 section as the “Commission”) shall publish in the
17 Federal Register a final rule to amend, in accord-
18 ance with this section, the regulations of the Com-
19 mission promulgated to carry out section
20 3(17)(A)(ii) of the Federal Power Act (16 U.S.C.
21 796(17)(A)(ii)) relating to the method used by the
22 Commission to determine whether a facility is con-
23 sidered to be located at the same site as a facility
24 for which qualification is sought for the purpose of
25 calculating power production capacity.

1 (2) REBUTTABLE PRESUMPTION.—

2 (A) IN GENERAL.—The amendments to
3 regulations required by paragraph (1) shall es-
4 tablish a rebuttable presumption that—

5 (i) facilities separated by a distance of
6 1 mile or more shall not be considered to
7 be located at the same site; and

8 (ii) facilities separated by a distance
9 of less than 1 mile shall be considered to
10 be located at the same site.

11 (B) REBUTTING PRESUMPTION.—The
12 Commission shall allow any person (as defined
13 in section 385.102 of title 18, Code of Federal
14 Regulations (as in effect on the date of enact-
15 ment of this Act)) to rebut the presumption de-
16 scribed in subparagraph (A).

17 (3) FACTORS FOR CONSIDERATION.—

18 (A) IN GENERAL.—The amendments to
19 regulations required by paragraph (1) shall re-
20 quire that, in determining whether a facility is
21 considered to be located at the same site as a
22 facility for which qualification is sought, the
23 Commission shall take into consideration, to the
24 maximum extent practicable, the following fac-
25 tors:

1 (i) The extent to which the owners or
2 operators of the facilities are—

3 (I) affiliates or associate compa-
4 nies (as those terms are defined in
5 section 1262 of the Public Utility
6 Holding Company Act of 2005 (42
7 U.S.C. 16451)); or

8 (II) under the control of the
9 same person, subject to subparagraph
10 (B).

11 (ii) The extent to which the facilities
12 have been treated as a single project for
13 purposes of other regulatory filings or ap-
14 plications.

15 (iii) Whether the facilities use the
16 same energy resource.

17 (iv) Whether the facilities—

18 (I) have a common generator
19 lead line; or

20 (II) connect at the same or near-
21 by interconnection points or sub-
22 stations.

23 (v) The extent to which the owners or
24 operators of the facilities have a common

1 land lease or land rights with respect to
2 land on which the facilities are located.

3 (vi) The extent to which there is com-
4 mon financing with respect to the facilities.

5 (vii) The extent to which the facilities
6 are part of a common development plan or
7 permitting effort, regardless of whether the
8 interconnection of the facilities occurs at
9 separate points.

10 (B) CONTROL.—For purposes of subpara-
11 graph (A)(i)(II), the Commission shall consider
12 the owner or operator of a facility to be under
13 the control of a person if—

14 (i) the person directly or indirectly
15 owns, controls, or holds, with power to
16 vote, 10 percent or more of the out-
17 standing voting securities of the owner or
18 operator; or

19 (ii) the Commission determines, after
20 notice and opportunity for hearing, that
21 the person exercises, directly or indirectly
22 (alone or pursuant to an arrangement or
23 understanding with one or more persons),
24 a controlling influence over the manage-
25 ment of the owner or operator.

1 (b) PROHIBITION ON REQUIRING MINIMUM TERM
2 FOR CERTAIN CONTRACTS.—The Commission shall not
3 issue any regulation, guidance, or order that requires a
4 minimum contract term for any power purchase contract
5 between—

6 (1) an electric utility (as defined in section 3 of
7 the Public Utility Regulatory Policies Act of 1978
8 (16 U.S.C. 2602)); and

9 (2) a qualifying small power production facility
10 (as defined in section 3 of the Federal Power Act
11 (16 U.S.C. 796)).

12 (c) REQUIRED AMENDMENT RELATING TO LEGALLY
13 ENFORCEABLE OBLIGATIONS.—Not later than 180 days
14 after the date of enactment of this Act, the Commission
15 shall publish in the Federal Register a final rule to amend
16 the regulation contained in section 292.304(d)(2) of title
17 18, Code of Federal Regulations (as in effect on the date
18 of enactment of this Act), to provide that a legally enforce-
19 able obligation for the delivery of electric energy or capac-
20 ity from a qualifying small power production facility to
21 an electric utility shall not require any electric utility to
22 purchase electric energy or capacity from a qualifying
23 small power production facility at a rate that exceeds the
24 incremental cost to the electric utility of alternative elec-

- 1 tric energy or capacity, as calculated at the time of deliv-
- 2 ery of the electric energy or capacity.

