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

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

SECTION 1. SHORT TITLE.
This Act may be cited as the “Updating Purchase Obligations to Deploy Affordable Resources to Energy Markets Under PURPA Act” or the “UPDATE PURPA Act”.

SEC. 2. AMENDMENTS TO PURPA.
(a) COGENERATION AND SMALL POWER PRODUCTION RULES.—Section 210 of the Public Utility Regu-
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ulatory Policies Act of 1978 (16 U.S.C. 824a–3) is amend-
ed by striking subsection (a) and inserting the following:

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

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

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

“(A) shall require electric utilities to
offer—

“(i) to sell electric energy to qual-
ifying cogeneration facilities and qualifying
small power production facilities; and

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

“(B) shall be prescribed after consultation
with representatives of Federal and State regu-
latory agencies having ratemaking authority for
electric utilities, and after public notice and a
reasonable opportunity for interested persons
(including Federal and State agencies) to sub-
mit oral as well as written data, views, and ar-
guments;

“(C) shall include provisions requiring—

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

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

“(iii) curtailment of qualifying facili-
ties as the Commission determines nec-
ecessary to ensure resource adequacy; and
“(iv) reliability of electric energy service to be available to facilities described in clause (i) from electric utilities during emergencies; and

“(D) may not authorize a qualifying cogeneration facility or qualifying small power production facility to make any sale for purposes other than resale.”.

(b) Rates for Purchases by Electric Utilities.—Section 210(b) of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 824a–3(b)) is amended—

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

(2) by redesignating paragraphs (1) and (2) as subparagraphs (A) and (B), respectively, and indenting the subparagraphs appropriately;

(3) in the matter preceding subparagraph (A) (as so redesignated), by striking “The rules prescribed under subsection (a) shall insure” and inserting the following:

“(1) In general.—Subject to paragraph (2), the rules prescribed under subsection (a) shall ensure”; and

(4) in the undesignated matter following subparagraph (B) of paragraph (1) (as so redesig-
nated), by striking “No such rule” and inserting the following:

“(2) LIMITATION.—No rule”.

(c) TERMINATION OF MANDATORY PURCHASE REQUIREMENTS.—Section 210(m)(1) of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 824a–3(m)(1)) is amended—

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

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

“(C) any independently administered, voluntary, auction-based energy market (including an energy imbalance market), regardless of whether—

“(i) an applicable electric utility participating in such a market is a member of a regional transmission organization or an independent system operator; or

“(ii) such a market has a governance structure and operation that is wholly separate and autonomous from a regional transmission organization or an independent system operator; or
“(D) wholesale markets that are of comparable competitive quality to markets described in subparagraph (A), (B), or (C).”.

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

“(8) NONDISCRIMINATORY ACCESS.—

“(A) IN GENERAL.—For purposes of this subsection, a qualifying small power production facility with an installed generation capacity of 2.5 megawatts or greater is presumed to have nondiscriminatory access to the transmission and interconnection services and wholesale markets described in subparagraphs (A), (B), (C), and (D) of paragraph (1).

“(B) EXCEPTION.—Subparagraph (A) shall not apply with respect to a qualifying small power production facility that, as of the date of enactment of this paragraph—

“(i) produces both electric energy and useful thermal energy; and

“(ii) on a million-British-thermal-unit basis, uses not less than 80 percent of the total annual aggregate net output of elec-
tric energy and useful thermal energy of
the qualifying small power production facil-
ity for onsite industrial, commercial, or in-
istitutional purposes, rather than for sale.”.

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

“(9) STATE OR LOCAL DETERMINATION.—Ef-
fective beginning on the date of enactment of this
paragraph, no electric utility shall be required to
enter into a new contract or obligation to purchase
electric energy under this section from a qualifying
small power production facility that is not a qual-
ifying small power production facility described in
paragraph (8)(B), if the appropriate State regu-
lar agency or non-regulated electric utility deter-
mines that—

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

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

(f) TECHNICAL CORRECTIONS.—Section 210 of the
824a–3) is amended—

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

(2) in subsection (k), by adding a period at the
end.
SEC. 3. FEDERAL ENERGY REGULATORY COMMISSION REGULATIONS.

(a) Required Amendments Relating to Location of Small Power Production Facilities.—

(1) In general.—Not later than 180 days after the date of enactment of this Act, the Federal Energy Regulatory Commission (referred to in this section as the “Commission”) shall publish in the Federal Register a final rule to amend, in accordance with this section, the regulations of the Commission promulgated to carry out section 3(17)(A)(ii) of the Federal Power Act (16 U.S.C. 796(17)(A)(ii)) relating to the method used by the Commission to determine whether a facility is considered to be located at the same site as a facility for which qualification is sought for the purpose of calculating power production capacity.

(2) Rebuttable presumption.—

(A) In general.—The amendments to regulations required by paragraph (1) shall establish a rebuttable presumption that—

(i) facilities separated by a distance of 1 mile or more shall not be considered to be located at the same site; and
(ii) facilities separated by a distance
of less than 1 mile shall be considered to
be located at the same site.

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

(3) Factors for consideration.—

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

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

(I) affiliates or associate compa-
nies (as those terms are defined in
section 1262 of the Public Utility
Holding Company Act of 2005 (42
U.S.C. 16451)); or
(II) under the control of the same person, subject to subparagraph (B).

(ii) The extent to which the facilities have been treated as a single project for purposes of other regulatory filings or applications.

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

(iv) Whether the facilities—

(I) have a common generator lead line; or

(II) connect at the same or nearby interconnection points or substations.

(v) The extent to which the owners or operators of the facilities have a common land lease or land rights with respect to land on which the facilities are located.

(vi) The extent to which there is common financing with respect to the facilities.

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

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

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

(ii) the Commission determines, after
notice and opportunity for hearing, that
the person exercises, directly or indirectly
(alone or pursuant to an arrangement or
understanding with 1 or more persons), a
controlling influence over the management
of the owner or operator.

(4) EXCEPTION.—Paragraphs (2) and (3) shall
not apply with respect to a facility that, as of the
date of enactment of this Act—

(A) produces both electric energy and use-
ful thermal energy; and

(B) on a million-British-thermal-unit basis,
uses not less than 80 percent of the total an-
annual aggregate net output of electric energy and
useful thermal energy of the facility for onsite
industrial, commercial, or institutional pur-
poses, rather than for sale.

(b) Prohibition on Requiring Minimum Term
for Certain Contracts.—The Commission shall not
issue any regulation, guidance, or order that requires a
minimum contract term for any power purchase contract
between—

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

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

(c) Required Amendment Relating to Legally
Enforceable Obligations.—Not later than 180 days
after the date of enactment of this Act, the Commission
shall publish in the Federal Register a final rule to amend
the regulation contained in section 292.304(d)(2) of title
18, Code of Federal Regulations (as in effect on the date
of enactment of this Act), to provide that a legally enforce-
able obligation for the delivery of electric energy or capac-
ity from a qualifying small power production facility to
an electric utility shall not require any electric utility to
purchase electric energy or capacity from a qualifying small power production facility at a rate that exceeds the incremental cost to the electric utility of alternative electric energy or capacity, as calculated at the time of delivery of the electric energy or capacity.