

116TH CONGRESS  
1ST SESSION

# H. R. 1502

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

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## IN THE HOUSE OF REPRESENTATIVES

MARCH 5, 2019

Mr. WALBERG (for himself, Mr. GIANFORTE, and Mr. MITCHELL) introduced the following bill; which was referred to the Committee on Energy and Commerce

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## 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 “PURPA Modernization  
5 Act of 2019”.

6 **SEC. 2. LOCATION OF SMALL POWER PRODUCTION FACILI-**  
7 **TIES.**

8 (a) REBUTTABLE PRESUMPTION.—The Federal En-  
9 ergy Regulatory Commission shall, not later than 180  
10 days after the date of enactment of this Act, publish in

1 the Federal Register a final rule amending its regulations  
2 implementing section 3(17)(A)(ii) of the Federal Power  
3 Act (16 U.S.C. 796(17)(A)(ii)), regarding the method for  
4 determining whether facilities are considered to be located  
5 at the same site as the facility for which qualification is  
6 sought for the purpose of calculating power production ca-  
7 pacity, to provide a rebuttable presumption that—

8 (1) facilities located one mile or more away  
9 from each other are not located at the same site;  
10 and

11 (2) facilities located within one mile of each  
12 other are located at the same site.

13 (b) OVERCOMING THE PRESUMPTION.—

14 (1) IN GENERAL.—Except as provided in para-  
15 graph (3), the Commission shall allow any person  
16 (as defined in section 385.102 of title 18, Code of  
17 Federal Regulations, as in effect on the date of en-  
18 actment of this Act) to rebut the presumption de-  
19 scribed in subsection (a).

20 (2) FACTORS TO BE CONSIDERED.—In deter-  
21 mining whether a facility is considered to be located  
22 at the same site as the facility for which qualifica-  
23 tion is sought, the Commission shall take into ac-  
24 count, to the extent practicable, the following fac-  
25 tors:

1           (A) The extent to which the owners or op-  
2           erators of the facilities are affiliated or associ-  
3           ated with each other, or are under the control  
4           of the same company or person.

5           (B) The extent to which the owners or op-  
6           erators of the facilities have treated the facili-  
7           ties as a single project for purposes of other  
8           regulatory filings or applications.

9           (C) Whether the facilities use the same en-  
10          ergy resource.

11          (D) Whether the facilities have a common  
12          generator lead line or connect at the same or  
13          nearby interconnection points or substations.

14          (E) The extent to which the owners or op-  
15          erators of the facilities have a common land  
16          lease or land rights with respect to land on  
17          which the facilities are located.

18          (F) The extent to which the owners or op-  
19          erators of the facilities have common financing  
20          with respect to the facilities.

21          (G) The extent to which the facilities are  
22          part of a common development plan or permit-  
23          ting effort, even if the interconnection of the fa-  
24          cilities occurs at separate points.

1           (3) EXCEPTION.—Paragraphs (1) and (2) shall  
2 not apply with respect to a facility that, as of the  
3 date of enactment of this Act—

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

6           (B) on a million British thermal unit basis,  
7 uses at least 80 percent of its total annual ag-  
8 gregate net output of electric energy and useful  
9 thermal energy for onsite industrial, commer-  
10 cial, or institutional purposes, rather than for  
11 sale.

12       (c) AFFILIATION AND ASSOCIATION.—The Commis-  
13 sion shall consider the owners or operators of facilities to  
14 be affiliated or associated for purposes of this section if  
15 they are affiliates or associate companies within the mean-  
16 ing of those terms as defined in section 1262 of the Public  
17 Utility Holding Company Act of 2005 (42 U.S.C. 16451).

18       (d) CONTROL.—The Commission shall consider the  
19 owner or operator of a facility to be under the control of  
20 a company or person for purposes of this section if—

21           (1) the company or person directly or indirectly  
22 owns, controls, or holds, with power to vote, 10 per-  
23 cent or more of the outstanding voting securities of  
24 the owner or operator; or

1           (2) the Commission determines, after notice  
2           and opportunity for hearing, that the company or  
3           person exercises, directly or indirectly (either alone  
4           or pursuant to an arrangement or understanding  
5           with one or more companies or persons), a control-  
6           ling influence over the management of the owner or  
7           operator.

8   **SEC. 3. NONDISCRIMINATORY ACCESS.**

9           Section 210(m) of the Public Utility Regulatory Poli-  
10          cies Act of 1978 (16 U.S.C. 824a–3(m)) is amended by  
11          adding at the end the following:

12                 “(8) NONDISCRIMINATORY ACCESS.—

13                         “(A) IN GENERAL.—For purposes of this  
14                         subsection, except as provided in subparagraph  
15                         (B), a qualifying small power production facility  
16                         with an installed generation capacity of 2.5  
17                         megawatts or greater is presumed to have non-  
18                         discriminatory access to transmission and inter-  
19                         connection services and wholesale markets de-  
20                         scribed in subparagraphs (A), (B), or (C) of  
21                         paragraph (1).

22                         “(B) EXCEPTION.—Subparagraph (A)  
23                         does not apply to a qualifying small power pro-  
24                         duction facility that, as of the date of enact-  
25                         ment of this paragraph—

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

3                   “(ii) on a million British thermal unit  
4                   basis, uses at least 80 percent of its total  
5                   annual aggregate net output of electric en-  
6                   ergy and useful thermal energy for onsite  
7                   industrial, commercial, or institutional pur-  
8                   poses, rather than for sale.”.

9   **SEC. 4. RECOGNITION OF STATE OR LOCAL DETERMINA-**  
10                   **TIONS.**

11           Section 210(m) of the Public Utility Regulatory Poli-  
12   cies Act of 1978 (16 U.S.C. 824a-3(m)), as amended by  
13   section 3, is further amended by adding at the end the  
14   following:

15                   “(9) STATE OR LOCAL DETERMINATION.—After  
16           the date of enactment of this paragraph, no electric  
17           utility shall be required to enter into a new contract  
18           or obligation to purchase electric energy under this  
19           section from a qualifying small power production fa-  
20           cility that is not a qualifying small power production  
21           facility described in paragraph (8)(B) if the appro-  
22           priate State regulatory agency or non-regulated elec-  
23           tric utility finds, and submits to the Commission a  
24           written determination, that—

1           “(A) the electric utility has no need to pur-  
2           chase electric energy from such qualifying small  
3           power production facility in the amounts to be  
4           offered within the timeframe proposed by the  
5           qualifying small power production facility, con-  
6           sistent with the needs for electric energy and  
7           the timeframe for those needs as specified in an  
8           electric utility’s integrated resource plan, in  
9           order to meet its obligation to serve customers;  
10          or

11          “(B) the electric utility employs integrated  
12          resource planning and conducts a competitive  
13          resource procurement process for long-term en-  
14          ergy resources that provides an opportunity for  
15          qualifying small power production facilities to  
16          supply electric energy to the electric utility in  
17          accordance with the integrated resource plan of  
18          the electric utility.”.

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