

116TH CONGRESS
1ST SESSION

S. 1760

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

IN THE SENATE OF THE UNITED STATES

JUNE 10, 2019

Mr. BARRASSO (for himself, Mr. RISCH, Mr. CRAMER, and Mr. DAINES) 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 redesign-

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.—

9 “(A) IN GENERAL.—For purposes of this
 10 subsection, a qualifying small power production
 11 facility with an installed generation capacity of
 12 2.5 megawatts or greater is presumed to have
 13 nondiscriminatory access to the transmission
 14 and interconnection services and wholesale mar-
 15 kets described in subparagraphs (A), (B), (C),
 16 and (D) of paragraph (1).

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

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

23 “(ii) on a million-British-thermal-unit
 24 basis, uses not less than 80 percent of the
 25 total annual aggregate net output of elec-

1 tric energy and useful thermal energy of
 2 the qualifying small power production facil-
 3 ity for onsite industrial, commercial, or in-
 4 stitutional purposes, rather than for sale.”.

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

10 “(9) STATE OR LOCAL DETERMINATION.—Ef-
 11 fective beginning on the date of enactment of this
 12 paragraph, no electric utility shall be required to
 13 enter into a new contract or obligation to purchase
 14 electric energy under this section from a qualifying
 15 small power production facility that is not a quali-
 16 fying small power production facility described in
 17 paragraph (8)(B), if the appropriate State regu-
 18 latory agency or non-regulated electric utility deter-
 19 mines that—

20 “(A) the electric utility has no need to pur-
 21 chase electric energy from the qualifying small
 22 power production facility in the quantities of-
 23 fered within the timeframe proposed by the
 24 qualifying small power production facility to
 25 meet any obligation to serve a customer, con-

1 sistent with the needs for electric energy and
2 the timeframe for those needs, as specified in
3 the integrated resource plan of, or other appli-
4 cable demonstration of need by, the electric util-
5 ity; or

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

16 (f) TECHNICAL CORRECTIONS.—Section 210 of the
17 Public Utility Regulatory Policies Act of 1978 (16 U.S.C.
18 824a–3) is amended—

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

22 (2) in subsection (k), by adding a period at the
23 end.

1 **SEC. 3. FEDERAL ENERGY REGULATORY COMMISSION REG-**
2 **ULATIONS.**

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

5 (1) IN GENERAL.—Not later than 180 days
6 after the date of enactment of this Act, the Federal
7 Energy Regulatory Commission (referred to in this
8 section as the “Commission”) shall publish in the
9 Federal Register a final rule to amend, in accord-
10 ance with this section, the regulations of the Com-
11 mission promulgated to carry out section
12 3(17)(A)(ii) of the Federal Power Act (16 U.S.C.
13 796(17)(A)(ii)) relating to the method used by the
14 Commission to determine whether a facility is con-
15 sidered to be located at the same site as a facility
16 for which qualification is sought for the purpose of
17 calculating power production capacity.

18 (2) REBUTTABLE PRESUMPTION.—

19 (A) IN GENERAL.—The amendments to
20 regulations required by paragraph (1) shall es-
21 tablish a rebuttable presumption that—

22 (i) facilities separated by a distance of
23 1 mile or more shall not be considered to
24 be located at the same site; and

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

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

10 (3) FACTORS FOR CONSIDERATION.—

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

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

21 (I) affiliates or associate compa-
22 nies (as those terms are defined in
23 section 1262 of the Public Utility
24 Holding Company Act of 2005 (42
25 U.S.C. 16451)); or

1 (II) under the control of the
2 same person, subject to subparagraph
3 (B).

4 (ii) The extent to which the facilities
5 have been treated as a single project for
6 purposes of other regulatory filings or ap-
7 plications.

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

10 (iv) Whether the facilities—

11 (I) have a common generator
12 lead line; or

13 (II) connect at the same or near-
14 by interconnection points or sub-
15 stations.

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

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

22 (vii) The extent to which the facilities
23 are part of a common development plan or
24 permitting effort, regardless of whether the

1 interconnection of the facilities occurs at
2 separate points.

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

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

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

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

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

24 (B) on a million-British-thermal-unit basis,
25 uses not less than 80 percent of the total an-

1 nual aggregate net output of electric energy and
2 useful thermal energy of the facility for onsite
3 industrial, commercial, or institutional pur-
4 poses, rather than for sale.

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

10 (1) an electric utility (as defined in section 3 of
11 the Public Utility Regulatory Policies Act of 1978
12 (16 U.S.C. 2602)); and

13 (2) a qualifying small power production facility
14 (as defined in section 3 of the Federal Power Act
15 (16 U.S.C. 796)).

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

1 purchase electric energy or capacity from a qualifying
2 small power production facility at a rate that exceeds the
3 incremental cost to the electric utility of alternative elec-
4 tric energy or capacity, as calculated at the time of deliv-
5 ery of the electric energy or capacity.

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