

105TH CONGRESS
2D SESSION

H. R. 4183

To protect the Nation's electricity ratepayers by amending the Public Utility Regulatory Policies Act of 1978 to ensure that rates charged by qualifying small power producers and qualifying cogenerators do not exceed the incremental cost to the purchasing utility of alternative electric energy at the time of delivery, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JUNE 25, 1998

Mr. SOLOMON (for himself, Mr. HOUGHTON, and Mr. TOWNS) introduced the following bill; which was referred to the Committee on Commerce

A BILL

To protect the Nation's electricity ratepayers by amending the Public Utility Regulatory Policies Act of 1978 to ensure that rates charged by qualifying small power producers and qualifying cogenerators do not exceed the incremental cost to the purchasing utility of alternative electric energy at the time of delivery, 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 “State Electric and
5 Consumer Empowerment Act of 1998”.

1 **SEC. 2. FINDINGS.**

2 Congress finds that:

3 (1) Certain courts have found that States are
4 preempted under the Public Utility Regulatory Poli-
5 cies Act of 1978 (“PURPA”) from engaging in cer-
6 tain ratepayer protection activities critical to ensur-
7 ing reasonable rates for in-State ratepayers.

8 (2) These courts have found that, although
9 States have the authority initially to establish rates
10 charged by qualifying small power producers and
11 qualifying cogenerators (collectively, “QFs”) to local
12 electric utilities, that such States thereafter are pre-
13 empted by PURPA from ensuring over time that
14 rates charged by QFs (A) are just and reasonable to
15 the retail electric consumers of purchasing electric
16 utilities and are in the public interest; and (B) do
17 not exceed the incremental cost to such purchasing
18 electric utilities of alternative electric energy at the
19 time of delivery.

20 (3) Other courts have found that States are
21 preempted from monitoring effectively the operating
22 and efficiency performance of in-State cogeneration
23 and small power production facilities for the purpose
24 of determining whether such facilities meet Federal
25 Energy Regulatory Commission standards for QFs.

1 (4) PURPA should be amended to clarify Con-
2 gress' intent that States have the authority—

3 (A) to ensure that rates charged by QFs to
4 purchasing electric utilities (i) are just and rea-
5 sonable to the electric consumers of such pur-
6 chasing electric utilities and in the public inter-
7 est; and (ii) do not exceed the incremental cost
8 to such purchasing electric utilities of alter-
9 native electric energy at the time of delivery;
10 and

11 (B) to establish effective programs for
12 monitoring the operating and efficiency per-
13 formance of in-State cogeneration and small
14 power production facilities for the purpose of
15 determining whether such facilities meet Fed-
16 eral Energy Regulatory Commission standards
17 for QFs.

18 **SEC. 3. AMENDMENT OF PURPA.**

19 Section 210(f)(1) of the Public Utility Regulatory
20 Policies Act of 1978 (16 U.S.C. 824a–3(f)(1)) is amended
21 by adding the following at the end: “Notwithstanding any
22 other provision of this section, each State regulatory au-
23 thority may ensure that rates charged by qualifying small
24 power producers and qualifying cogenerators (A) are just
25 and reasonable to the electric consumers of the purchasing

1 electric utility and in the public interest; and (B) do not
 2 exceed the incremental cost at the time of delivery to the
 3 purchasing utility of alternative electric energy and capac-
 4 ity. Each State regulatory authority may also establish
 5 programs for monitoring the operating and efficiency per-
 6 formance of in-State cogeneration and small power pro-
 7 duction facilities for the purpose of determining whether
 8 such facilities meet Federal Energy Regulatory Commis-
 9 sion standards for qualifying facilities. Each State regu-
 10 latory authority may require that any contract entered
 11 into before the date of the enactment of the preceding sen-
 12 tence be amended to conform to the requirements set forth
 13 in subparagraphs (A) and (B).”.

14 **SEC. 4. COST RECOVERY.**

15 Section 210 of the Public Utility Regulatory Policies
 16 Act of 1978 (16 U.S.C. 824a–3) is amended by adding
 17 the following new subsection after subsection (l):

18 “(m) COST RECOVERY.—Nothing in this Act or any
 19 other provision of law, shall prohibit a State or the Com-
 20 mission from ensuring that all costs associated with the
 21 purchase of electric energy from qualifying cogenerators
 22 or qualifying small power producers pursuant to this Act
 23 are recovered by the purchaser.”.

○