

105TH CONGRESS  
2D SESSION

# H. R. 4511

To amend the Public Utility Regulatory Policies Act of 1978 to protect the Nation's electricity ratepayers by ensuring 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.

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## IN THE HOUSE OF REPRESENTATIVES

AUGUST 6, 1998

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

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## A BILL

To amend the Public Utility Regulatory Policies Act of 1978 to protect the Nation's electricity ratepayers by ensuring 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 “Electric Power Con-  
5 sumer Rate Relief 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 from engaging in certain ratepayer  
6 protection activities critical to ensuring reasonable  
7 rates for in-State ratepayers;

8 (2) those 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 to local electric utilities, that  
12 such States thereafter are preempted by that Act  
13 from ensuring over time that rates—

14 (A) are just and reasonable to the retail  
15 electric consumers of purchasing electric utili-  
16 ties and are in the public interest; and

17 (B) do not exceed the incremental cost to  
18 such purchasing electric utilities of alternative  
19 electric energy at the time of delivery;

20 (3) other courts have found that States are pre-  
21 empted 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 quali-  
26 fying cogenerators; and

1 (4) that Act should be amended to clarify the  
2 intent of Congress that States have the authority—

3 (A) to ensure that rates charged by quali-  
4 fying small power producers and qualifying co-  
5 generators to purchasing electric utilities—

6 (i) are just and reasonable to the elec-  
7 tric consumers of such purchasing electric  
8 utilities and in the public interest; and

9 (ii) do not exceed the incremental cost  
10 to such purchasing electric utilities of al-  
11 ternative electric energy at the time of de-  
12 livery; and

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

20 **SEC. 3. IMPLEMENTATION OF RULES.**

21 Section 210(f)(1) of the Public Utility Regulatory  
22 Policies Act of 1978 (16 U.S.C. 824a–3(f)(1)) is amend-  
23 ed—

24 (1) by striking “(1) Beginning” and inserting  
25 the following:

1 “(1) BY STATE REGULATORY AUTHORITIES.—

2 “(A) IN GENERAL.—Beginning”; and

3 (2) by adding at the end the following:

4 “(B) REQUIREMENTS.—Notwithstanding  
5 any other provision of this section, a State reg-  
6 ulatory authority may ensure that rates charged  
7 by qualifying small power producers and quali-  
8 fying cogenerators—

9 “(i) are just and reasonable to the  
10 electric consumers of the purchasing elec-  
11 tric utility and in the public interest; and

12 “(ii) do not exceed the incremental  
13 cost at the time of delivery to the purchas-  
14 ing utility of alternative electric energy and  
15 capacity.

16 “(C) MONITORING.—A State regulatory  
17 authority may establish programs for monitor-  
18 ing the operating and efficiency performance of  
19 in-State cogeneration and small power produc-  
20 tion facilities for the purpose of determining  
21 whether the facilities meet standards estab-  
22 lished by the Commission for qualifying facili-  
23 ties.

24 “(D) AMENDMENT OF CONTRACT.—A  
25 State regulatory authority may require that any

1 contract entered into before the date of enact-  
2 ment of this paragraph be amended to conform  
3 to any requirements imposed under subpara-  
4 graph (B).”.

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