

111TH CONGRESS
2D SESSION

H. R. 5696

To amend the Public Utility Regulatory Policies Act of 1978 to provide electric consumers the right to access certain electric energy information.

IN THE HOUSE OF REPRESENTATIVES

JULY 1, 2010

Mr. MARKEY of Massachusetts (for himself, Mrs. CAPPS, Mr. POLIS of Colorado, Mr. INSLEE, and Ms. DEGETTE) introduced the following bill; which was referred to the Committee on Energy and Commerce

A BILL

To amend the Public Utility Regulatory Policies Act of 1978 to provide electric consumers the right to access certain electric energy information.

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 Consumer
5 Right to Know Act” or the “e-KNOW Act”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

8 (1) According to the Energy Information Ad-
9 ministration, United States consumers spent over

1 \$360,000,000,000 each year on electricity as of
2 2008 and an estimated 250 gigawatts of new gener-
3 ating capacity will need to be added in the United
4 States over the next 25 years to maintain grid integ-
5 rity in the face of increasing electricity demand.

6 (2) Recent studies demonstrate that consumers
7 change their energy consumption behavior in re-
8 sponse to feedback regarding prices and patterns of
9 use and that improved access to usage and price in-
10 formation can result in dramatic reductions in elec-
11 tricity demand and billions of dollars in cost savings.

12 (3) Across the United States, utilities are de-
13 ploying millions of “smart” electricity meters, which
14 record more detailed electricity usage information
15 than conventional meters and in most cases have the
16 capacity to communicate such information to utility
17 or on-site networks, as a means of improving the ef-
18 ficiency and reliability of the electric grid.

19 (4) The full benefit of “smart” meters will be
20 realized only if the consumers served by such meters
21 have secure access to the enhanced information re-
22 corded by such meters, on a near real-time basis
23 wherever feasible.

24 (5) Whether a consumer is served by a “smart”
25 meter or a conventional meter, secure access to

1 usage and price information on past electricity con-
2 sumption, in a machine-readable format, can play a
3 critical role in enabling consumers and energy serv-
4 ice companies to identify opportunities for greater
5 efficiency and cost savings in electricity usage.

6 (6) Although Congress, in the Energy Inde-
7 pendence and Security Act of 2007, amended the
8 Public Utility Regulatory Policies Act of 1978 to re-
9 quire State public utility commissions and nonregu-
10 lated utilities to consider providing consumers with
11 increased access to electricity usage and price infor-
12 mation, only a handful of States have adopted poli-
13 cies to require such access.

14 (7) Consumers should have the right to timely
15 access to the information that utilities record and
16 collect from them regarding their electricity usage,
17 and to information on the prices applied to that
18 usage.

19 (8) Improved access to information will em-
20 power consumers to better manage their electricity
21 use and to reduce costs and will foster the develop-
22 ment of a vibrant, innovative market for products
23 and services to assist consumers in doing so.

24 (9) In providing consumers access to electricity
25 usage information, whether directly or through an

1 authorized third party, it is imperative that the pri-
 2 vacy of consumers and the security of their usage in-
 3 formation be fully protected.

4 **SEC. 3. ELECTRIC CONSUMER RIGHT TO ACCESS ELECTRIC**
 5 **ENERGY INFORMATION.**

6 (a) ELECTRIC CONSUMER RIGHT OF ACCESS.—Title
 7 II of the Public Utility Regulatory Policies Act of 1978
 8 is amended by adding after section 214 the following new
 9 section:

10 **“SEC. 215. ELECTRIC CONSUMER RIGHT TO ACCESS ELEC-**
 11 **TRIC ENERGY INFORMATION.**

12 “(a) DEFINITIONS.—For purposes of this section:

13 “(1) FEDERAL SMART GRID SUPPORT.—The
 14 term ‘Federal smart grid support’ means any grant
 15 provided under section 1306 of the Energy Inde-
 16 pendence and Security Act of 2007 or any grant,
 17 contract, loan, loan guarantee, or other financial as-
 18 sistance provided to any smart grid project under
 19 any other program administered by the Secretary.

20 “(2) FREE OF CHARGE.—The term ‘free of
 21 charge’ means, with respect to electric consumer or
 22 authorized third party access to retail electric energy
 23 information, that no fee is charged for such access.
 24 Such term shall not be construed to imply that any

1 costs of providing such access are not recovered or
2 recoverable through generally applicable rates.

3 “(3) NATIONALLY RECOGNIZED STANDARD.—
4 The term ‘nationally recognized standard’ means a
5 standard that is recognized under the process coordi-
6 nated by the Director of the National Institute of
7 Standards and Technology under section 1305 of the
8 Energy Independence and Security Act of 2007.

9 “(4) NEAR REAL-TIME.—The term ‘near real-
10 time’ means, with respect to communication of elec-
11 tric energy usage information by a smart meter,
12 within 1 minute of the time at which such informa-
13 tion is recorded by the meter.

14 “(5) RETAIL ELECTRIC UTILITY.—The term
15 ‘retail electric utility’ means the electric utility that
16 measures, records, and collects information on an
17 electric consumer’s electric energy usage for billing
18 purposes.

19 “(6) RETAIL ELECTRIC ENERGY INFORMA-
20 TION.—The term ‘retail electric energy information’
21 means the following:

22 “(A) USAGE INFORMATION.—An electric
23 consumer’s electric energy consumption, meas-
24 ured in kilowatt-hours.

1 “(B) PRICING INFORMATION.—The rate
2 applied to electric energy consumed by the elec-
3 tric consumer.

4 “(7) SMART GRID FUNCTIONS.—The term
5 ‘smart grid functions’ has the meaning given such
6 term in section 1306(d) of the Energy Independence
7 and Security Act of 2007.

8 “(8) SMART GRID PROJECT.—The term ‘smart
9 grid project’ means a project that includes imple-
10 mentation, by a retail electric utility, of smart grid
11 functions.

12 “(9) SMART METER.—The term ‘smart meter’
13 means a device used by a retail electric utility at the
14 residence or facility of an electric consumer that is
15 capable of measuring electric energy usage in inter-
16 vals of 1 hour or shorter and of communicating elec-
17 tric energy usage information by means of an elec-
18 tronic machine-readable signal in near real-time.

19 “(10) THIRD PARTY.—The term ‘third party’
20 means, with respect to any transaction involving re-
21 tail electric energy information, a person or entity
22 other than—

23 “(A) the electric consumer to which such
24 retail electric energy information pertains; or

1 “(B) the retail electric utility providing
2 electric service to such electric consumer.

3 “(b) CONSUMER RIGHT OF ACCESS.—

4 “(1) IN GENERAL.—Each electric consumer in
5 the United States shall have the right to access (and
6 to authorize 1 or more third parties to access), from
7 such consumer’s retail electric utility, the retail elec-
8 tric energy information of such electric consumer in
9 electronic machine-readable form, in conformity with
10 applicable nationally recognized standards, free of
11 charge, and in a manner that is timely and that pro-
12 vides adequate protections for the security of such
13 information and the privacy of such electric con-
14 sumer.

15 “(2) GRANULARITY OF INFORMATION.—The
16 right to access retail electric energy information
17 under paragraph (1) shall include the right to access
18 retail electric energy information—

19 “(A) in the case of an electric consumer
20 served by a smart meter, measured at intervals
21 not less frequent than the intervals at which
22 usage information is recorded by such smart
23 meter; and

24 “(B) in the case of an electric consumer
25 not served by a smart meter, measured at inter-

1 vals of a frequency prescribed by the State reg-
2 ulatory authority or other entity with authority
3 to set retail rates for the relevant retail electric
4 utility, provided that in no event shall such fre-
5 quency be less than monthly.

6 “(3) TIMELINESS AND MODE OF ACCESS.—

7 “(A) WEB PRESENTMENT.—The right to
8 access retail electric energy information under
9 paragraph (1) shall include—

10 “(i) in the case of an electric con-
11 sumer served by a smart meter, the right
12 to access retail electric energy information
13 not more than 24 hours after electric en-
14 ergy consumption is recorded, through an
15 Internet Web site operated by the retail
16 electric utility or by such other entity as
17 the retail electric utility or the relevant
18 State regulatory authority may designate;
19 and

20 “(ii) in the case of an electric con-
21 sumer not served by a smart meter, the
22 right to access retail electric energy infor-
23 mation as expeditiously as possible after
24 the time electric energy consumption is re-
25 corded, through an Internet Web site oper-

1 ated by the retail electric utility or by such
2 other entity as the retail electric utility or
3 the relevant State regulatory authority
4 may designate.

5 “(B) DATA EXPORT.—Where requested by
6 the electric consumer, the right to access retail
7 electric energy information under paragraph (1)
8 shall include the right to receive, or to authorize
9 a third party to receive, such electric con-
10 sumer’s retail electric energy information—

11 “(i) through electronic mail or other
12 appropriate means of export from the re-
13 tail electric utility’s data storage system;

14 “(ii) in a machine-readable electronic
15 format consistent with any applicable na-
16 tionally recognized standard; and

17 “(iii) on a 1-time or recurring basis.

18 “(C) DIRECT METER ACCESS.—In the case
19 of an electric consumer served by a smart
20 meter, the right of access to retail electric en-
21 ergy information under paragraph (1) shall in-
22 clude the right to access retail electric energy
23 usage information and such other electric en-
24 ergy usage information as the smart meter is
25 capable of recording (such as demand measured

1 in kilowatts, voltage, frequency, current, and
2 power factor)—

3 “(i) directly from the smart meter at
4 any time; and

5 “(ii) using 1 or more smart meter-
6 compatible devices that conform with na-
7 tionally recognized standards.

8 This subparagraph shall not apply in the case
9 of an electric consumer served by a smart meter
10 installed prior to the date that is 2 years after
11 the date of enactment of this section that is not
12 capable of such on-site communication.

13 “(4) HISTORICAL INFORMATION.—The right to
14 access retail electric energy information under para-
15 graph (1) shall include the right to access—

16 “(A) at minimum, monthly aggregate in-
17 formation for at least the most recent 13
18 months; and

19 “(B) such other retail electric energy infor-
20 mation as the retail electric utility retains, in
21 accordance with any applicable requirements
22 under State law.

23 The requirements under this paragraph shall not
24 apply to direct access to electric energy usage infor-
25 mation from a smart meter.

1 “(5) THIRD PARTY USE OF INFORMATION.—A
2 third party authorized by an electric consumer to ac-
3 cess such consumer’s retail electric energy informa-
4 tion shall not use such information for any purpose
5 other than the provision of services by such third
6 party to the electric consumer, and shall not disclose
7 such information to any other party, unless such au-
8 thorized third party has received the informed, writ-
9 ten consent of the electric consumer for such use or
10 disclosure.

11 “(c) MODEL RULE.—

12 “(1) IN GENERAL.—Not later than 1 year after
13 the date of the enactment of this section, the Com-
14 mission shall, after consultation with State regu-
15 latory authorities, national organizations rep-
16 resenting nonregulated utilities, the Secretary of En-
17 ergy, the Director of the National Institute for
18 Standards and Technology, and other appropriate
19 Federal agencies, and after notice and opportunity
20 for comment, issue a model rule prescribing min-
21 imum standards for implementation of the electric
22 consumer right to access retail electric energy infor-
23 mation under subsection (b)(1).

24 “(2) PRIOR STATE ACTION.—In formulating the
25 model rule under paragraph (1), the Commission

1 shall, to the extent practicable, preserve the integrity
2 of and be guided by actions already taken by State
3 regulatory authorities to ensure electric consumer
4 access to retail electric energy information, including
5 actions taken after consideration of the standard
6 under section 111(d)(19).

7 “(3) STATE CONSIDERATION.—Each State reg-
8 ulatory authority and each nonregulated utility shall
9 consider adoption and implementation of the na-
10 tional model rule issued under paragraph (1) (or a
11 comparable rule or policy), as provided under section
12 111(d)(20).

13 “(d) FEDERAL SMART GRID SUPPORT PROGRAMS.—

14 “(1) CONSIDERATION AS A FACTOR.—Begin-
15 ning on the date that is 1 year after the model rule
16 under subsection (c) is issued, the Secretary, in de-
17 termining whether to award Federal smart grid sup-
18 port to a retail electric utility, shall give preference
19 to any applicant that has implemented policies for
20 electric consumer access to retail electric energy in-
21 formation at least as stringent as those prescribed
22 by the model rule issued under subsection (c).

23 “(2) REQUIREMENT.—Notwithstanding any
24 other provision of law, beginning on the date that is
25 2 years after the date the model rule under sub-

1 section (c) is issued, no retail electric utility shall be
2 eligible to receive Federal smart grid support unless
3 such utility has implemented policies for electric con-
4 sumer access to retail electric energy information at
5 least as stringent as those prescribed by the model
6 rule issued under subsection (c).

7 “(e) BACKSTOP STATE ENFORCEMENT.—

8 “(1) IN GENERAL.—Beginning on the date that
9 is 3 years after the date the model rule under sub-
10 section (c) is issued, if the attorney general of a
11 State, or another official or agency of a State with
12 competent authority under State law, has reason to
13 believe that any retail electric utility in the relevant
14 State is not complying with the minimum standards
15 set forth in the model rule issued under subsection
16 (c) (or standards of comparable or greater strin-
17 gency with respect to consumer access to retail elec-
18 tric energy information), the attorney general, offi-
19 cial, or agency of the State, as *parens patriae*, may
20 bring a civil action against such retail electric utility,
21 on behalf of the electric consumers receiving retail
22 service from such retail electric utility, in a district
23 court of the United States of appropriate jurisdic-
24 tion, to compel compliance with such standards.

1 “(2) COSTS AND FEES.—In any civil action
2 under paragraph (1), if the party bringing the action
3 is successful in enforcing the standards identified by
4 the model rule issued under subsection (c), the court
5 may award to such party the costs of the action to-
6 gether with reasonable attorney’s fees, as determined
7 by the court.

8 “(3) SAFE HARBOR.—

9 “(A) IN GENERAL.—No civil action may be
10 brought against a retail electric utility under
11 paragraph (1) if the Commission has deter-
12 mined that such retail electric utility, or the
13 State regulatory authority that regulates such
14 electric utility, has adopted a policy that is at
15 least as stringent, with respect to electric con-
16 sumer access to retail electric energy informa-
17 tion, as the model rule issued under subsection
18 (c).

19 “(B) COMMISSION REVIEW.—Not later
20 than 1 year after the date of enactment of this
21 section, the Commission shall, after notice and
22 opportunity for comment, issue an order estab-
23 lishing procedures for making determinations
24 under subparagraph (A). Such order shall pro-
25 vide that, where a State regulatory authority or

1 a retail electric utility certifies and adequately
 2 documents to the Commission that it has adopt-
 3 ed a policy that is at least as stringent, with re-
 4 spect to electric consumer access to retail elec-
 5 tric energy information, as the model rule
 6 issued under subsection (c), the Commission
 7 shall make a determination under subparagraph
 8 (A) within 90 days of receipt of such certifi-
 9 cation.

10 “(4) RULE OF CONSTRUCTION.—Except as pro-
 11 vided in paragraph (1) of this subsection, nothing in
 12 this section shall be construed to create a private
 13 right of action.

14 “(f) COST RECOVERY.—A retail electric utility shall
 15 not be denied the opportunity to recover prudently in-
 16 curred incremental costs of complying with the require-
 17 ments of this section, in accordance with any applicable
 18 State or Federal law.”.

19 (b) STATE CONSIDERATION OF MODEL RULE.—

20 (1) CONSIDERATION.—Section 111(d) of the
 21 Public Utility Regulatory Policies Act of 1978 (16
 22 U.S.C. 2621(d)) is amended by adding at the end
 23 the following:

24 “(20) CONSUMER ACCESS TO RETAIL ELECTRIC
 25 ENERGY INFORMATION.—Each electric utility pro-

1 viding retail electric service to an electric consumer
2 shall provide such consumer with access to informa-
3 tion regarding such consumers electric energy usage,
4 and prices applicable to such usage, in accordance
5 with the model rule issued by the Commission under
6 section 215(c).”.

7 (2) TIMING.—Section 112(b) of the Public Util-
8 ity Regulatory Policies Act of 1978 (16 U.S.C.
9 2622(b)) is amended by adding at the end the fol-
10 lowing:

11 “(7)(A) As soon as practicable after the
12 issuance by the Commission of the model rule under
13 section 215(c), each State regulatory authority (with
14 respect to each electric utility for which it has rate-
15 making authority) and each nonregulated utility
16 shall commence the consideration referred to in sec-
17 tion 111, or set a hearing date for consideration,
18 with respect to the standard established by para-
19 graph (20) of section 111(d).

20 “(B) Not later than 1 year after the date of the
21 issuance by the Commission of the model rule under
22 section 215(c), each State regulatory authority (with
23 respect to each electric utility for which it has rate-
24 making authority) and each nonregulated utility
25 shall make the determination, referred to in section

1 111 with respect to the standard established by
2 paragraph (20) of section 111(d).”.

3 (3) FAILURE TO COMPLY.—Section 112(c) of
4 the Public Utility Regulatory Policies Act of 1978
5 (16 U.S.C. 2622(c)) is amended by striking “(19)”
6 and inserting “(20)”.

7 (4) PRIOR STATE ACTIONS.—Section 112 of the
8 Public Utility Regulatory Policies Act of 1978 (16
9 U.S.C. 2622) is amended by adding at the end the
10 following:

11 “(g) PRIOR STATE ACTIONS.—Subsections (b) and
12 (c) of this section shall not apply to the standard estab-
13 lished by paragraph (20) of section 111(d) in the case of
14 any electric utility in a State if, before the issuance of
15 the model rule under section 215(c)—

16 “(1) the State has implemented for such utility
17 the standard concerned (or a comparable standard);

18 “(2) the State regulatory authority for such
19 State or relevant nonregulated electric utility has
20 conducted a proceeding to consider implementation
21 of the standard concerned (or a comparable stand-
22 ard) for such utility; or

23 “(3) the State legislature has voted on imple-
24 mentation of such standard (or a comparable stand-
25 ard) for such utility.”.

1 (c) CONFORMING AMENDMENT.—The table of con-
2 tents for the Public Utility Regulatory Policies Act of
3 1978 is amended by adding after the item relating to sec-
4 tion 214 the following new item:

“Sec. 215. Electric consumer right to access electric energy information.”.

○