

111TH CONGRESS
1ST SESSION

S. 989

To amend the Public Utility Regulatory Policies Act of 1978 to promote energy independence, increase competition, democratize energy generation, and provide for the connection of certain small electric energy generation systems, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 6, 2009

Mr. MENENDEZ (for himself, Mr. LIEBERMAN, and Mr. SANDERS) introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

A BILL

To amend the Public Utility Regulatory Policies Act of 1978 to promote energy independence, increase competition, democratize energy generation, and provide for the connection of certain small electric energy generation systems, 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 “Grid Access Act of
5 2009”.

1 **SEC. 2. DEFINITION OF COMBINED HEAT AND POWER FA-**
2 **CILITY.**

3 Section 3 of the Public Utility Regulatory Policies
4 Act of 1978 (16 U.S.C. 2602) is amended by adding at
5 the end the following:

6 “(22) COMBINED HEAT AND POWER FACIL-
7 ITY.—

8 “(A) IN GENERAL.—The term ‘combined
9 heat and power facility’ means a facility that—

10 “(i) uses the same energy source for
11 the simultaneous or sequential generation
12 of electrical power or mechanical shaft
13 power, or both, in combination with the
14 generation of steam or other forms of use-
15 ful thermal energy (including heating and
16 cooling applications);

17 “(ii) has—

18 “(I) an electrical capacity of not
19 more than 10 megawatts;

20 “(II) a mechanical energy capac-
21 ity of not more than 7,000 horse-
22 power; or

23 “(III) an equivalent combination
24 of electrical and mechanical energy
25 capacities;

1 “(iii) produces at least 20 percent of
2 the total useful energy of the facility in the
3 form of thermal energy that is not used to
4 produce electrical or mechanical power, or
5 both; and

6 “(iv) achieves an energy efficiency of
7 not less than 60 percent.

8 “(B) INCLUSIONS.—The term ‘combined
9 heat and power facility’ includes—

10 “(i) a recovered waste energy system
11 that produces electricity from—

12 “(I) exhaust heat or flared gas
13 from any industrial process;

14 “(II) waste gas or industrial tail
15 gas that would otherwise be flared, in-
16 cinerated, or vented; or

17 “(III) a pressure drop in any
18 gas, other than any pressure drop to
19 a condenser that subsequently vents
20 the resulting heat; and

21 “(ii) a facility that produces electricity
22 from such other forms of waste energy, as
23 are determined by the Secretary.”.

1 **SEC. 3. NET METERING AND INTERCONNECTION STAND-**
2 **ARDS.**

3 (a) IN GENERAL.—Section 113 of the Public Utility
4 Regulatory Policies Act of 1978 (16 U.S.C. 2623) is
5 amended by adding at the end the following:

6 “(d) NET METERING.—

7 “(1) DEFINITIONS.—In this subsection and
8 subsection (e):

9 “(A) CUSTOMER-GENERATOR.—The term
10 ‘customer-generator’ means the owner or oper-
11 ator of a qualified generation unit.

12 “(B) ELECTRIC GENERATION UNIT.—The
13 term ‘electric generation unit’ means—

14 “(i) a qualified generation unit; and

15 “(ii) any electric generation unit that
16 qualifies for net metering under a net me-
17 tering tariff or rule approved by a State.

18 “(C) LOCAL DISTRIBUTION SYSTEM.—The
19 term ‘local distribution system’ means any sys-
20 tem for the distribution of electric energy to the
21 ultimate consumer of the electricity, whether or
22 not the owner or operator of the system is a re-
23 tail electric supplier.

24 “(D) NET METERING.—The term ‘net me-
25 tering’ means the process of—

1 “(i) measuring the difference between
2 the electricity supplied to a customer-gen-
3 erator and the electricity generated by the
4 customer-generator that is delivered to a
5 local distribution system at the same point
6 of interconnection during an applicable
7 billing period; and

8 “(ii) providing an energy credit to the
9 customer-generator based on the electricity
10 produced by the customer-generator from a
11 qualified generation unit.

12 “(E) QUALIFIED GENERATION UNIT.—The
13 term ‘qualified generation unit’ means an elec-
14 tric energy generation unit that—

15 “(i) is a fuel cell or microturbine or
16 uses as the energy source of the unit solar
17 energy, wind, biomass, geothermal energy,
18 anaerobic digestion, or landfill gas, or a
19 combination of the any of those sources;

20 “(ii) has a generating capacity of not
21 more than 10 megawatts;

22 “(iii) is located on premises that are
23 owned, operated, leased, or otherwise con-
24 trolled by the customer-generator; and

1 “(iv) is intended to offset all or part
2 of the requirements of the customer-gener-
3 ator for electric energy.

4 “(F) RETAIL ELECTRIC SUPPLIER.—The
5 term ‘retail electric supplier’ means any electric
6 utility that sells electric energy to the ultimate
7 consumer of the energy.

8 “(2) ADOPTION.—Not later than 1 year after
9 the date of enactment of this subsection, each State
10 regulatory authority (with respect to each electric
11 utility for which the State regulatory authority has
12 ratemaking authority), and each nonregulated elec-
13 tric utility, shall—

14 “(A) provide public notice and conduct a
15 hearing with respect to the standards estab-
16 lished under paragraph (3); and

17 “(B) on the basis of the hearing, adopt the
18 net metering standard.

19 “(3) ESTABLISHMENT OF NET METERING
20 STANDARD.—

21 “(A) IN GENERAL.—Each retail electric
22 supplier shall offer to arrange (either directly or
23 through a local distribution company or other
24 third party) to make net metering available, on
25 a first-come, first-served basis, to each of the

1 retail customers of the retail electric supplier in
2 accordance with the requirements described in
3 subparagraph (B) and other provisions of this
4 subsection.

5 “(B) REQUIREMENTS.—The requirements
6 referred to in subparagraph (A) are, with re-
7 spect to a retail electric supplier, that—

8 “(i) rates and charges and contract
9 terms and conditions for the sale of electric
10 energy to customer-generators shall be the
11 same as the rates and charges and con-
12 tract terms and conditions that would be
13 applicable if the customer-generator did
14 not own or operate a qualified generation
15 unit and use a net metering system; and

16 “(ii) each retail electric supplier shall
17 notify all of the retail customers of the re-
18 tail electric supplier of the standard estab-
19 lished under this paragraph as soon as
20 practicable after the adoption of the stand-
21 ard.

22 “(C) MODIFICATIONS.—Nothing in this
23 subsection prevents a retail electric supplier
24 from petitioning the Commission for modifica-
25 tions to a standard established under this sub-

1 section to ensure that the equipment, services,
2 and system of the supplier function in a safe
3 and efficient manner.

4 “(4) NET ENERGY MEASUREMENT.—

5 “(A) IN GENERAL.—Each retail electric
6 supplier shall arrange to provide to customer-
7 generators who qualify for net metering under
8 subsection (b) an electrical energy meter capa-
9 ble of net metering and measuring, to the max-
10 imum extent practicable, the flow of electricity
11 to or from the customer, using a single meter
12 and single register.

13 “(B) IMPRACTICABILITY.—In a case in
14 which it is not practicable to provide a meter to
15 a customer-generator under subparagraph (A),
16 a retail electric supplier (either directly or
17 through a local distribution company or other
18 third party) shall, at the expense of the retail
19 electric supplier, install 1 or more of those elec-
20 tric energy meters for the customer-generators
21 concerned that accomplishes what the single
22 meter described in subparagraph (A) would ac-
23 complish.

24 “(5) BILLING.—

1 “(A) IN GENERAL.—Each retail electric
2 supplier subject to subsection (b) shall calculate
3 the electric energy consumption for a customer
4 using a net metering system in accordance with
5 subparagraphs (B) through (D).

6 “(B) MEASUREMENT OF ELECTRICITY.—
7 The retail electric supplier shall measure the
8 net electricity produced or consumed during the
9 billing period using the metering installed in ac-
10 cordance with paragraph (4).

11 “(C) BILLING AND CREDITING.—

12 “(i) BILLING.—If the electricity sup-
13 plied by the retail electric supplier exceeds
14 the electricity generated by the customer-
15 generator during the billing period, the
16 customer-generator shall be billed for the
17 net electric energy supplied by the retail
18 electric supplier in accordance with normal
19 billing practices.

20 “(ii) CREDITING.—

21 “(I) IN GENERAL.—If electric en-
22 ergy generated by the customer-gener-
23 ator exceeds the electric energy sup-
24 plied by the retail electric supplier
25 during the billing period, the cus-

1 tomer-generator shall be billed for the
2 appropriate customer charges for that
3 billing period and credited for the ex-
4 cess electric energy generated during
5 the billing period, with the credit ap-
6 pearing as a kilowatt-hour credit on
7 the bill for the following billing period.

8 “(II) APPLICATION OF CRED-
9 ITS.—Any kilowatt-hour credits pro-
10 vided to a customer-generator under
11 this clause shall be applied to cus-
12 tomer-generator electric energy con-
13 sumption on the following billing pe-
14 riod bill (except for a billing period
15 that ends in the next calendar year).

16 “(III) CARRYOVER OF UNUSED
17 CREDITS.—Not later than 180 days
18 after the date of enactment of this
19 subsection, the Commission shall pro-
20 mulgate a rule establishing procedures
21 for carrying over unused credits from
22 the preceding year.

23 “(D) USE OF TIME-DIFFERENTIATED
24 RATES.—

1 “(i) IN GENERAL.—Except as pro-
2 vided in clause (ii), if a customer-generator
3 is using a meter and retail billing arrange-
4 ment that has time-differentiated rates—

5 “(I) the kilowatt-hour credit shall
6 be based on the ratio representing the
7 difference in retail rates for each
8 time-of-use rate; or

9 “(II) the credits shall be reflected
10 on the bill of the customer-generator
11 as a monetary credit reflecting retail
12 rates at the time of generation of the
13 electric energy by the customer-gener-
14 ator.

15 “(ii) DIFFERENT TARIFFS OR SERV-
16 ICES.—A retail electric supplier shall offer
17 a customer-generator the choice of a time-
18 differentiated energy tariff rate or a
19 nontime-differentiated energy tariff rate, if
20 the retail electric supplier offers the choice
21 to customers in the same rate class as the
22 customer-generator.

23 “(6) PERCENT LIMITATION.—

24 “(A) IN GENERAL.—The standard estab-
25 lished under this subsection shall not apply for

1 a calendar year in the case of a customer-gener-
2 ator served by a local distribution company if
3 the total generating capacity of all customer-
4 generators with net metering systems served by
5 the local distribution company in the calendar
6 year is equal to or more than 4 percent of the
7 capacity necessary to meet the average fore-
8 casted aggregate customer peak demand of the
9 company for the calendar year.

10 “(B) RECORDS AND NOTICE.—

11 “(i) RECORDS.—Each retail electric
12 supplier shall maintain, and make available
13 to the public, records of—

14 “(I) the total generating capacity
15 of customer-generators of the system
16 of the retail electric supplier that are
17 using net metering; and

18 “(II) the type of generating sys-
19 tems and energy source used by the
20 electric generating systems used by
21 the customer-generators.

22 “(ii) NOTICE.—Each such retail elec-
23 tric supplier shall notify the State regu-
24 latory authority and the Commission at
25 each time at which the total generating ca-

1 capacity of the customer-generators of the
2 retail electric supplier reaches a level that
3 equals or exceeds—

4 “(I) 75 percent of the limitation
5 specified in subparagraph (A); or

6 “(II) the limitation specified in
7 subparagraph (A).

8 “(7) OWNERSHIP OF CREDITS.—

9 “(A) IN GENERAL.—For purposes of Fed-
10 eral and State laws providing renewable energy
11 credits or greenhouse gas credits, a customer-
12 generator with a qualified generation unit and
13 net metering shall be treated as owning and
14 having title to the renewable energy attributes,
15 renewable energy credits and greenhouse gas
16 emission credits relating to any electricity pro-
17 duced by the qualified generation unit.

18 “(B) RETAIL ELECTRIC SUPPLIERS.—No
19 retail electric supplier shall claim title to or
20 ownership of any renewable energy attributes,
21 renewable energy credits, or greenhouse gas
22 emission credits of a customer-generator as a
23 result of interconnecting the customer-generator
24 or providing or offering the customer-generator
25 net metering.

1 “(8) SAFETY AND PERFORMANCE STAND-
2 ARDS.—

3 “(A) IN GENERAL.—A qualified generation
4 unit and net metering system used by a cus-
5 tomer-generator shall meet all applicable safety
6 and performance and reliability standards es-
7 tablished under the interconnection standards
8 required under subsection (e).

9 “(B) ADDITIONAL CHARGES.—After con-
10 sultation with State regulatory authorities and
11 nonregulated local distribution systems and no-
12 tice and opportunity for comment, the Commis-
13 sion shall prohibit by regulation the imposition
14 of additional charges by retail electric suppliers
15 and local distribution systems for equipment or
16 services for safety or performance that are in
17 addition to the charges required under sub-
18 section (e).

19 “(9) DETERMINATION OF COMPLIANCE.—

20 “(A) IN GENERAL.—Any State regulatory
21 authority (with respect to each electric utility
22 for which the authority has ratemaking author-
23 ity), and each nonregulated electric utility, may
24 apply to the Commission for a determination

1 that any State net metering requirement or reg-
2 ulations complies with this subsection.

3 “(B) ORDERS.—In the absence of a deter-
4 mination under subparagraph (A), the Commis-
5 sion, on the motion of the Commission or pur-
6 suant to the petition of any interested person,
7 may, after notice and opportunity for a hearing
8 on the record, issue an order requiring against
9 any retail electric supplier or local distribution
10 company to require compliance with this sub-
11 section.

12 “(e) INTERCONNECTION STANDARDS.—

13 “(1) MODEL STANDARDS.—

14 “(A) IN GENERAL.—Not later than 1 year
15 after the date of enactment of this subsection,
16 the Commission shall publish model standards
17 for the physical connection between local dis-
18 tribution systems and qualified generation units
19 and electric generation units that are—

20 “(i) qualified generation units (as de-
21 fined in subsection (d)(1)(E) (other than
22 clause (ii) of subsection (d)(1)(E)); or

23 “(ii) combined heat and power facili-
24 ties.

1 “(B) PURPOSES.—The model standards
2 shall be designed to—

3 “(i) encourage the use of qualified
4 generation units and combined heat and
5 power facilities; and

6 “(ii) ensure the safety and reliability
7 of the qualified generation units and the
8 local distribution systems interconnected
9 with the qualified generation units.

10 “(C) EXPEDITED PROCEDURES.—

11 “(i) IN GENERAL.—The model stand-
12 ards shall have separate expedited proce-
13 dures, including—

14 “(I) a standard for inter-
15 connecting qualified generation units,
16 and combined heat and power facili-
17 ties, of not more than 15 kilowatts;

18 “(II) a separate standard that
19 expedites interconnection for qualified
20 generation units, and combined heat
21 and power facilities, of more than 15
22 kilowatts but not more than 10
23 megawatts; and

24 “(III) a separate standard that
25 expedites interconnection for qualified

1 generation units, and combined heat
2 and power facilities, of more than 15
3 kilowatts but not more than 10
4 megawatts that do not export energy
5 past the point of interconnection.

6 “(ii) BEST PRACTICES.—The expe-
7 dited procedures shall be based on the best
8 practices that have been used in States
9 that have adopted interconnection stand-
10 ards.

11 “(iii) MODEL RULE.—

12 “(I) IN GENERAL.—In designing
13 the expedited procedures, the Com-
14 mission shall consider Interstate Re-
15 newable Energy Council Model Rule
16 MR–I2005.

17 “(II) OTHER GENERATORS.—
18 Nothing in this subsection precludes
19 the Commission from adopting or en-
20 forcing interconnection requirements
21 for generators that are not qualified
22 generation units.

23 “(D) ADOPTION OF STANDARDS.—

1 “(i) IN GENERAL.—Not later than 2
2 years after the date of enactment of this
3 subsection, each State shall—

4 “(I) adopt the model standards
5 established under this paragraph, with
6 or without modification; and

7 “(II) submit the standards to the
8 Commission for approval.

9 “(ii) APPROVAL OF MODIFICATION.—
10 The Commission shall approve a modifica-
11 tion of the model standards only if the
12 Commission determines that the modifica-
13 tion is—

14 “(I) consistent with or superior
15 to the purpose of the standards; and

16 “(II) required by reason of local
17 conditions.

18 “(E) NONAPPROVAL OF STANDARDS FOR A
19 STATE.—If standards have not been approved
20 under this paragraph by the Commission for
21 any State during the 2-year period beginning
22 on the date of enactment of this subsection, the
23 Commission shall, by rule or order, enforce the
24 model standards of the Commission in the State

1 until such time as State standards are approved
2 by the Commission.

3 “(F) UPDATES.—

4 “(i) IN GENERAL.—Not later than 2
5 years after the date of enactment of this
6 subsection and after notice and oppor-
7 tunity for comment, the Commission shall
8 publish an update of the model standards,
9 after considering changes in the underlying
10 standards and technologies.

11 “(ii) AVAILABILITY.—The updates
12 shall be made available to State regulatory
13 authorities for the consideration of the au-
14 thorities.

15 “(2) SAFETY, RELIABILITY, PERFORMANCE,
16 AND COST.—

17 “(A) IN GENERAL.—The standards under
18 this subsection shall establish such measures
19 for the safety and reliability of the affected
20 equipment and local distribution systems as are
21 appropriate.

22 “(B) ADMINISTRATION.—The standards
23 shall—

1 “(i) be consistent with all applicable
2 safety and performance standards estab-
3 lished by—

4 “(I) the national electrical code;

5 “(II) the Institute of Electrical
6 and Electronics Engineers;

7 “(III) Underwriters Laboratories;

8 and

9 “(IV) the American National
10 Standards Institute; and

11 “(ii) impose not more than such min-
12 imum cost and technical burdens to the
13 interconnecting customer generator as the
14 Commission determines, by rule, are prac-
15 ticable.

16 “(3) ADDITIONAL CHARGES.—The model stand-
17 ards under this subsection shall prohibit the imposi-
18 tion of additional charges by local distribution sys-
19 tems for equipment or services for interconnection
20 that are in excess of—

21 “(A) the charges necessary to meet the
22 standards; and

23 “(B) the charges and equipment require-
24 ments identified in the best practices of States
25 with interconnection standards.

1 “(4) RELATIONSHIP TO EXISTING LAW REGARD-
2 ING INTERCONNECTION.—Nothing in this subsection
3 affects the application of section 111(d)(15) relating
4 to interconnection.

5 “(5) CONSUMER-FRIENDLY CONTRACTS.—

6 “(A) IN GENERAL.—The Commission
7 shall—

8 “(i) promulgate regulations that en-
9 sure that simplified contracts will be used
10 for the interconnection of electric energy
11 by electric energy transmission or local dis-
12 tribution systems and generating facilities
13 that have a power production capacity of
14 not greater than 10 megawatts; and

15 “(ii) consider the best practices for
16 consumer-friendly contracts that are used
17 by States or national associations of State
18 regulators.

19 “(B) LIABILITY OR INSURANCE.—The con-
20 tracts shall not require liability or other insur-
21 ance in excess of the liability or insurance that
22 is typically carried by customer-generators for
23 general liability.”.

24 (b) CONFORMING AMENDMENT.—Section 1262 of the
25 Public Utility Holding Company Act of 2005 (42 U.S.C.

1 16451) is amended by striking paragraph (5) and insert-
 2 ing the following:

3 “(5) ELECTRIC UTILITY COMPANY.—

4 “(A) IN GENERAL.—The term ‘electric
 5 utility company’ means any company that owns
 6 or operates facilities used for the generation,
 7 transmission, or distribution of electric energy
 8 for sale.

9 “(B) EXCLUSION.—The term ‘electric util-
 10 ity company’ does not include an electric gen-
 11 eration unit (as defined in section 113(d) of the
 12 Public Utility Regulatory Policies Act of
 13 1978).”.

14 **SEC. 4. IMPROVED SITING FOR COMBINED HEAT AND**
 15 **POWER FACILITIES.**

16 (a) IN GENERAL.—Section 111(d) of the Public Util-
 17 ity Regulatory Policies Act of 1978 (16 U.S.C. 2621(d))
 18 is amended by adding at the end the following:

19 “(20) IMPROVED SITING FOR COMBINED HEAT
 20 AND POWER FACILITIES.—

21 “(A) DISTRIBUTION LINES.—Notwith-
 22 standing any State or local law (including regu-
 23 lations) that restrict independent power pro-
 24 ducers from siting private power lines (includ-
 25 ing a law that allows only a regulated electric

1 utility company to site electric power lines
 2 across public rights-of-way), each electric utility
 3 shall allow a combined heat and power facility
 4 to site distribution lines on and across public
 5 rights-of-way for the purpose of interconnecting
 6 with contiguous end use customers.

7 “(B) CONTIGUOUS END USE CUS-
 8 TOMERS.—For purposes of this paragraph, an
 9 end use customer shall be considered to be con-
 10 tiguous to a combined heat and power facility
 11 if the end use customer—

12 “(i) is located on—

13 “(I) the same property as the
 14 combined heat and power facility; or

15 “(II) property immediately adja-
 16 cent to the combined heat and power
 17 facility; or

18 “(ii) in the case of an end-use cus-
 19 tomer that purchases useful thermal out-
 20 put from the combined heat and power fa-
 21 cility, is otherwise separated by an ease-
 22 ment, public thoroughfare, or transpor-
 23 tation or utility-owned right-of-way.”.

24 (b) COMPLIANCE.—

1 (1) TIME LIMITATIONS.—Section 112(b) of the
2 Public Utility Regulatory Policies Act of 1978 (16
3 U.S.C. 2622(b)) is amended by adding at the end
4 the following:

5 “(7) IMPROVED SITING FOR COMBINED HEAT
6 AND POWER FACILITIES.—

7 “(A) COMMENCEMENT.—Not later than 1
8 year after the date of enactment of this para-
9 graph, each State regulatory authority (with re-
10 spect to each electric utility for which the State
11 regulatory authority has ratemaking authority)
12 and each nonregulated electric utility shall com-
13 mence the consideration referred to in section
14 111, or set a hearing date for the consideration,
15 with respect to each standard established by
16 paragraph (20) of section 111(d).

17 “(B) COMPLETION.—Not later than 2
18 years after the date of enactment of this para-
19 graph, each State regulatory authority (with re-
20 spect to each electric utility for which the State
21 regulatory authority has ratemaking authority)
22 and each nonregulated electric utility shall com-
23 plete the consideration, and shall make the de-
24 termination, referred to in section 111 with re-

1 spect to each standard established by paragraph
2 (20) of section 111(d).”.

3 (2) FAILURE TO COMPLY.—

4 (A) IN GENERAL.—Section 112(c) of the
5 Public Utility Regulatory Policies Act of 1978
6 (16 U.S.C. 2622(c)) is amended—

7 (i) by designating the first through
8 fifth sentences as paragraphs (1) through
9 (5), respectively; and

10 (ii) by adding at the end the fol-
11 lowing:

12 “(6) IMPROVED SITING FOR COMBINED HEAT
13 AND POWER FACILITIES.—In the case of each stand-
14 ard established by paragraph (20) of section 111(d),
15 the reference in paragraph (1) to the date of enact-
16 ment of this Act shall be considered to be a ref-
17 erence to the date of enactment of that paragraph
18 (20).”.

19 (B) TECHNICAL CORRECTION.—

20 (i) IN GENERAL.—Section 1254(b)(2)
21 of the Energy Policy Act of 2005 (Public
22 Law 109–58; 119 Stat. 971) is amended
23 by striking “Section 112(d)” and inserting
24 “Section 112(c)”.

1 (ii) EFFECTIVE DATE.—The amend-
2 ment made by clause (i) takes effect on
3 August 8, 2005.

4 (3) PRIOR STATE ACTIONS.—

5 (A) IN GENERAL.—Section 112 of the
6 Public Utility Regulatory Policies Act of 1978
7 (16 U.S.C. 2622) is amended by adding at the
8 end the following:

9 “(g) PRIOR STATE ACTIONS FOR IMPROVED SITING
10 FOR COMBINED HEAT AND POWER FACILITIES.—Sub-
11 sections (b) and (c) shall not apply to the standards estab-
12 lished by paragraph (20) of section 111(d) in the case of
13 any electric utility in a State if, before the date of enact-
14 ment of this subsection—

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

18 “(2) the State regulatory authority for the
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 the electric utility; or

23 “(3) the State legislature has voted on the im-
24 plementation of the standard (or a comparable
25 standard) for the electric utility.”.

1 (B) CROSS-REFERENCE.—Section 124 of
 2 the Public Utility Regulatory Policies Act of
 3 1978 (16 U.S.C. 2634) is amended—

4 (i) by designating the first through
 5 fifth sentences as subsections (a) through
 6 (e), respectively; and

7 (ii) by adding at the end the fol-
 8 lowing:

9 “(f) IMPROVED SITING FOR COMBINED HEAT AND
 10 POWER FACILITIES.—In the case of each standard estab-
 11 lished by paragraph (20) of section 111(d), each reference
 12 in subsections (a) and (b) to the date of enactment of this
 13 Act shall be considered to be a reference to the date of
 14 enactment of that paragraph (20).”.

15 **SEC. 5. ENERGY TARIFFS.**

16 (a) IN GENERAL.—Subtitle B of title I of the Public
 17 Utility Regulatory Policies Act of 1978 (16 U.S.C. 2621
 18 et seq.) is amended by adding at the end the following:

19 **“SEC. 118. ENERGY TARIFFS.**

20 “(a) DEFINITIONS.—In this section:

21 “(1) CLEAN DISTRIBUTED ENERGY RE-
 22 SOURCE.—

23 “(A) IN GENERAL.—The term ‘clean dis-
 24 tributed energy resource’ means a combined
 25 heat and power facility or a qualified generation

1 unit (as defined in section 113(d)(1)) that is
2 used by a facility to generate electricity.

3 “(B) INCLUSIONS.—The term ‘clean dis-
4 tributed energy resource’ includes a renewable
5 energy system that is not eligible for net meter-
6 ing under section 113.

7 “(2) COVERED FACILITY.—The term ‘covered
8 facility’ means a customer facility that uses elec-
9 tricity produced from a clean distributed energy re-
10 source.

11 “(3) ELECTRIC UTILITY REGULATORY ENTI-
12 TY.—

13 “(A) IN GENERAL.—The term ‘electric
14 utility regulatory entity’ means a State or local
15 governing body that is responsible for the regu-
16 lation of electric utilities that provide retail
17 electrical power.

18 “(B) INCLUSIONS.—The term ‘electric util-
19 ity regulatory entity’ includes—

20 “(i) an investor-owned utility;

21 “(ii) a municipal utility;

22 “(iii) an electric membership coopera-
23 tive; and

24 “(iv) a State power authority.

1 “(4) EXCESS POWER.—The term ‘excess power’
2 means the quantity of electricity produced by a clean
3 distributed energy resource that is in excess of the
4 electrical requirements of a covered facility.

5 “(5) SUPPLEMENTAL POWER.—The term ‘sup-
6 plemental power’ mean the quantity of electricity re-
7 quired by a covered facility that exceeds the quantity
8 of electricity produced by clean distributed energy
9 resources that is available to the covered facility.

10 “(b) ESTABLISHMENT OF TARIFFS.—Not later than
11 2 years after the date of enactment of this section, each
12 electric utility regulatory entity shall establish a tariff for
13 electricity produced by clean distributed energy resources
14 that provides for the efficient and effective use of clean
15 distributed energy resources by covered facilities in ac-
16 cordance with this section.

17 “(c) TARIFF REQUIREMENTS.—

18 “(1) SUPPLEMENTAL POWER.—The tariffs shall
19 establish rates for supplemental power provided to
20 covered facilities that are consistent with the rates
21 charged for supplemental power by customer facili-
22 ties that do not use clean distributed energy re-
23 sources.

24 “(2) BACKUP POWER.—

1 “(A) IN GENERAL.—The tariffs shall es-
2 tablish rates for backup power provided to cov-
3 ered facilities that reflect the actual cost of pro-
4 viding backup power to the covered facilities.

5 “(B) APPLICABILITY.—Subparagraph (A)
6 shall not apply to a case in which backup power
7 is available through a wholesale market tariff.

8 “(3) STANDBY POWER.—

9 “(A) IN GENERAL.—The tariffs shall es-
10 tablish rates for standby power provided to cov-
11 ered facilities that reflect the actual cost of pro-
12 viding standby power to the covered facilities.

13 “(B) EXISTING STANDBY POWER RULES.—
14 If a Regional Transmission Organization or
15 Independent System Operator has standby
16 power rules in effect on the date of enactment
17 of this section and the clean distributed energy
18 resource has access to standby power, the rules
19 shall apply in the event of a conflict with this
20 section.

21 “(C) FIRM BACKUP SERVICE.—Standby
22 power provided under this paragraph shall re-
23 serve capacity on transmission and distribution
24 systems for the delivery of firm backup service
25 to covered facilities.

1 “(4) FIRM BACKUP SERVICE.—The tariffs shall
2 ensure that covered facilities are provided with a
3 right to purchase a firm supply of electrical power
4 and energy if the generating facilities of the covered
5 facilities are not in operation or are operating at less
6 than full capacity.

7 “(5) EXCESS POWER.—

8 “(A) IN GENERAL.—The tariffs shall re-
9 quire electric utilities to purchase excess power
10 produced by covered facilities at a rate that is
11 equal to at least 85 percent of the cost of elec-
12 trical power to the electric utilities from the
13 most efficient electric-only power plants.

14 “(B) EXISTING EXCESS POWER RULES.—If
15 a Regional Transmission Organization or Inde-
16 pendent System Operators has excess power
17 rules in effect on the date of enactment of this
18 section, the rules shall apply in the event of a
19 conflict with this section.

20 “(6) PUBLIC AVAILABILITY.—An electric utility
21 shall make the tariffs available to the customers of
22 the utility and the public.

23 “(d) BILATERAL TARIFF AGREEMENTS.—Nothing in
24 this section—

1 “(1) restricts an electric utility from entering
2 into a bilateral tariff agreement with a customer; or

3 “(2) requires that any tariffs provided under
4 the agreement be made public.

5 “(e) REPORTS.—Each electric utility regulatory enti-
6 ty shall submit to the Secretary—

7 “(1) a report on the establishment of tariffs in
8 accordance with this section; and

9 “(2) annual reports that include a description
10 of—

11 “(A) the number of customers that make
12 use of the tariffs; and

13 “(B) the quantity of excess power that is
14 sold to electric utilities under the tariffs.

15 “(f) REGULATIONS.—Not later than 120 days after
16 the date of enactment of this section, the Secretary shall
17 promulgate such regulations as are necessary to carry out
18 this section.”.

19 **SEC. 6. RELATIONSHIP TO STATE LAW.**

20 Section 117(b) of the Public Utility Regulatory Poli-
21 cies Act of 1978 (16 U.S.C. 2627(b)) is amended—

22 (1) by striking “Nothing” and inserting the fol-
23 lowing:

24 “(1) IN GENERAL.—Except as provided in para-
25 graph (2), nothing”; and

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

2 “(2) NET METERING AND INTERCONNECTION
3 STANDARDS.—

4 “(A) IN GENERAL.—Subject to subpara-
5 graph (B), no State or nonregulated utility may
6 adopt or enforce any standard or requirement
7 concerning net metering or interconnection that
8 restricts access to the electric power trans-
9 mission or local distribution system by qualified
10 generators beyond those standards and require-
11 ments established under section 113.

12 “(B) EQUIVALENT OR GREATER ACCESS.—
13 Nothing in this Act precludes a State from
14 adopting or enforcing incentives or require-
15 ments to encourage qualified generation and net
16 metering that—

17 “(i) are in addition to or equivalent to
18 incentives or requirements under section
19 113; or

20 “(ii) afford greater access to the elec-
21 tric power transmission and local distribu-
22 tion systems by qualified generation units
23 (as defined in section 113(d)(1)) or afford
24 greater compensation or credit for elec-

1 tricity generated by the qualified genera-
2 tion units.”.

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