

114TH CONGRESS
1ST SESSION

S. 1213

To amend the Public Utility Regulatory Policies Act of 1978 and the Federal Power Act to facilitate the free market for distributed energy resources.

IN THE SENATE OF THE UNITED STATES

MAY 6, 2015

Mr. KING 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 and the Federal Power Act to facilitate the free market for distributed energy resources.

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 “Free Market Energy
5 Act of 2015”.

6 **SEC. 2. FINDINGS.**

7 Congress finds that it is in the public interest—

8 (1) to enhance personal freedom and national
9 security by reinforcing the right to sovereignty over
10 personal energy choices; and

1 (2) to enhance the diversity of the electricity
 2 supply and energy independence of the United
 3 States by ensuring that there is a free market for
 4 distributed energy resources by providing for the
 5 nondiscriminatory interconnection of distributed en-
 6 ergy resources.

7 **SEC. 3. DEFINITION OF DISTRIBUTED ENERGY RESOURCE.**

8 Section 3 of the Federal Power Act (16 U.S.C. 796)
 9 is amended by adding at the end the following:

10 “(30) DISTRIBUTED ENERGY RESOURCE.—The
 11 term ‘distributed energy resource’ is a resource on
 12 the electricity distribution system that includes—

13 “(A) distributed fossil generation;

14 “(B) renewable generation (including bio-
 15 mass, solar photovoltaics, geothermal, and hy-
 16 dropower);

17 “(C) fuel cells;

18 “(D) combined heat and power systems;

19 “(E) energy storage;

20 “(F) demand response;

21 “(G) efficiency resources;

22 “(H) microgrids; and

23 “(I) any combination of the resources de-
 24 scribed in this paragraph.”.

1 **SEC. 4. GENERAL RIGHT TO NEUTRALITY OF INTER-**
 2 **CONNECTION.**

3 The Public Utility Regulatory Policies Act of 1978
 4 is amended by inserting after section 4 (16 U.S.C. 2603)
 5 the following:

6 **“SEC. 5. GENERAL RIGHT TO NEUTRALITY OF INTER-**
 7 **CONNECTION.**

8 “(a) IN GENERAL.—Distributed energy resources (as
 9 defined in section 3 of the Federal Power Act (16 U.S.C.
 10 796)) shall have a general right of interconnection under
 11 this Act.

12 “(b) RATES AND FEES.—All rates and fees for inter-
 13 connection of distributed energy resources under this Act,
 14 regardless of whether the distributed energy resource is
 15 a qualifying facility, shall—

16 “(1) be just and reasonable;

17 “(2) provide for the 2-way benefit for the dis-
 18 tributed energy resource and the electricity grid;

19 “(3) shall not exceed the actual cost of service;

20 and

21 “(4) shall not be punitive.

22 “(c) TIMEFRAMES.—Timeframes for interconnection
 23 of distributed energy resources under this Act, regardless
 24 of whether the distributed energy resource is a qualifying
 25 facility, shall be well-defined, expeditious, and not unduly
 26 protracted.”.

1 **SEC. 5. ENERGY AND RATE TREATMENTS FOR DISTRIB-**
 2 **UTED ENERGY RESOURCES.**

3 Section 111(d) of the Public Utility Regulatory Poli-
 4 cies Act of 1978 (16 U.S.C. 2621(d)) is amended by add-
 5 ing at the end the following:

6 “(20) DISTRIBUTED ENERGY RESOURCES.—

7 Each State regulatory authority shall consider re-
 8 quiring that distributed energy resources (as defined
 9 in section 3 of the Federal Power Act (16 U.S.C.
 10 796)) be eligible to receive just and reasonable en-
 11 ergy and rate treatment for—

12 “(A) time-of-use pricing, which may ac-
 13 count for locational benefit, to be provided on
 14 an unbundled basis, after accounting for the 2-
 15 way valuation of time-of-use rates, and pro-
 16 gressing to real-time pricing, for—

17 “(i) energy sold to an electric utility;
 18 and

19 “(ii) energy purchased from an elec-
 20 tric utility;

21 “(B) capacity;

22 “(C) energy conservation;

23 “(D) demand-side management or demand
 24 response;

25 “(E) peak monthly demand;

26 “(F) the provision of ancillary services;

1 “(G) the societal value of distributed en-
 2 ergy resources; and

3 “(H) any other benefits that the State reg-
 4 ulatory authority considers to be appropriate.”.

5 **SEC. 6. QUALIFYING FACILITY; IMPROVED INTERCONNEC-**
 6 **TION STANDARDS FOR DISTRIBUTED ENERGY**
 7 **RESOURCES.**

8 (a) DEFINITION OF QUALIFYING FACILITIES.—Sec-
 9 tion 3 of the Federal Power Act (16 U.S.C. 796) is
 10 amended—

11 (1) in paragraph (17)(C)—

12 (A) by indenting appropriately; and

13 (B) by inserting “(including a distributed
 14 energy resource in any State in which a State
 15 regulatory authority or nonregulated electric
 16 utility determines not to establish standards in
 17 accordance with paragraph (20) of section
 18 111(d) of the Public Utility Regulatory Policies
 19 Act of 1978 (16 U.S.C. 2621(d)))” before “that
 20 the Commission determines”; and

21 (2) in paragraph (18)(B)—

22 (A) by indenting appropriately; and

23 (B) by inserting “(including a distributed
 24 energy resource in any State in which a State
 25 regulatory authority or nonregulated electric

1 utility determines not to establish standards in
 2 accordance with paragraph (20) of section
 3 111(d) of the Public Utility Regulatory Policies
 4 Act of 1978 (16 U.S.C. 2621(d)))” before “that
 5 the Commission determines”.

6 (b) IMPROVED INTERCONNECTION STANDARDS FOR
 7 DISTRIBUTED ENERGY RESOURCES.—Section 111(d) of
 8 the Public Utility Regulatory Policies Act of 1978 (16
 9 U.S.C. 2621(d)) (as amended by section 5) is amended
 10 by adding at the end the following:

11 “(21) IMPROVED INTERCONNECTIONS STAND-
 12 ARDS FOR DISTRIBUTED ENERGY RESOURCES.—
 13 Each State regulatory authority or nonregulated
 14 electric utility, acting under State authority in a
 15 State that has determined not to establish standards
 16 under paragraph (20), shall consider—

17 “(A) setting rates that exceed the incre-
 18 mental cost of alternative electric energy for
 19 purchases from any distributed energy resource
 20 (as defined in section 3 of the Federal Power
 21 Act (16 U.S.C. 796)) that is a qualifying facil-
 22 ity for electricity generated, demand reduced, or
 23 service provided by the qualifying facility inter-
 24 connected under this Act, with—

1 “(i) the rates to be established at the
2 full retail rate; and

3 “(ii) fixed monthly charges for resi-
4 dential electricity bills to be established at
5 a charge of not more than 10 dollars per
6 month, with optional reevaluations of the
7 amount of charge to be considered on a
8 periodic basis;

9 “(B) making any distributed energy re-
10 source project exempt from filing requirements
11 with the Commission;

12 “(C) ensuring that any requirements con-
13 sidered under this paragraph would not affect
14 the purchase obligation under section 210 for
15 distributed energy resource facilities; and

16 “(D) requiring that all rates and fees for
17 interconnection of distributed generation facili-
18 ties—

19 “(i) shall be just and reasonable;

20 “(ii) shall provide for the benefit of
21 the distributed energy resource to the elec-
22 tricity grid and benefit of the electricity
23 grid to the distributed energy resource;
24 and

1 “(iii) not exceed the actual cost of
2 service.”.

3 **SEC. 7. DESIGNATION OF SMART GRID COORDINATOR OR**
4 **DISTRIBUTION SYSTEM OPERATOR.**

5 Section 111(d) of the Public Utility Regulatory Poli-
6 cies Act of 1978 (16 U.S.C. 2621(d)) (as amended by sec-
7 tion 6(b)) is amended by adding at the end the following:

8 “(22) DESIGNATION OF SMART GRID COORDI-
9 NATOR OR DISTRIBUTION SYSTEM OPERATOR.—Each
10 State regulatory authority shall consider desig-
11 nating, through a competitive process, a regulated
12 utility, other party, or a combination of regulated
13 utilities and other parties to be a smart grid coordi-
14 nator or distribution system operator for the
15 State.”.

16 **SEC. 8. CONSIDERATION OF NONTRANSMISSION ALTER-**
17 **NATIVES.**

18 Section 111(d) of the Public Utility Regulatory Poli-
19 cies Act of 1978 (16 U.S.C. 2621(d)) (as amended by sec-
20 tion 7) is amended by adding at the end the following:

21 “(23) NONTRANSMISSION ALTERNATIVES.—

22 “(A) IN GENERAL.—Each State regulatory
23 authority shall consider nontransmission alter-
24 natives in instances in which a regulated utility
25 proposes transmission projects.

“(B) COST.—To reduce the cost to the ratepayer of a potential transmission upgrade, a nontransmission alternative considered under subparagraph (A), shall receive the avoided cost of the transmission upgrade, minus a reasonable discount, as determined by the State regulatory authority.

“(C) RECOVERY.—If a nontransmission alternative proposed under subparagraph (A) obviates the need for a reliability-based transmission upgrade, the cost of the nontransmission alternative shall be recovered from the ratebase in the same manner as the transmission upgrade would have been.”.

SEC. 9. COMPLIANCE.

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

“(7)(A) Not later than 1 year after the date of enactment of this paragraph, each State regulatory authority (with respect to each electric utility for which the authority has ratemaking authority) and each nonregulated utility shall, with respect to the standards established by paragraphs (20), (22), and (23) of section 111(d)—

1 “(i) commence the consideration required
2 under those paragraphs; or

3 “(ii) set a hearing date for the consider-
4 ation.

5 “(B) Not later than 2 years after the date of
6 enactment of this paragraph, each State regulatory
7 authority (with respect to each electric utility for
8 which the authority has ratemaking authority) and
9 each nonregulated electric utility, shall, with respect
10 to the standards established by paragraphs (20),
11 (22), and (23) of section 111(d)—

12 “(i) complete the consideration under sub-
13 paragraph (A); and

14 “(ii) make the determination referred to in
15 section 111 with respect to the standards estab-
16 lished by those paragraphs.

17 “(8)(A) Not later than 2 years after the date
18 of enactment of this paragraph, each State regu-
19 latory authority (with respect to each electric utility
20 for which the authority has ratemaking authority)
21 and each nonregulated utility shall, with respect to
22 the standards established by section 111(d)(21)—

23 “(i) commence the consideration required
24 under that paragraph; or

1 “(ii) set a hearing date for the consider-
2 ation.

3 “(B) Not later than 3 years after the date of
4 enactment of this paragraph, each State regulatory
5 authority (with respect to each electric utility for
6 which the authority has ratemaking authority) and
7 each nonregulated electric utility, shall, with respect
8 to the standards established by section 111(d)(21)—

9 “(i) complete the consideration required
10 under that paragraph; and

11 “(ii) make the determination referred to in
12 section 111 with respect to the standards estab-
13 lished by section 111(d)(21).”.

14 (b) FAILURE TO COMPLY.—Section 112(c) of the
15 Public Utility Regulatory Policies Act of 1978 (16 U.S.C.
16 2622(c)) is amended by adding at the end the following:

17 “(1) In the case of the standards established by
18 paragraphs (20) through (23) of section 111(d), the
19 reference contained in this subsection to the date of
20 enactment of this Act shall be deemed to be a ref-
21 erence to the date of enactment of those para-
22 graphs.”.

23 (c) PRIOR STATE ACTIONS.—

24 (1) IN GENERAL.—Section 112 of the Public
25 Utility Regulatory Policies Act of 1978 (16 U.S.C.

1 2622) is amended by adding at the end the fol-
 2 lowing:

3 “(g) PRIOR STATE ACTIONS.—Subsections (b) and
 4 (c) shall not apply to a standard established under para-
 5 graphs (20) through (23) of section 111(d) in the case
 6 of any electric utility in a State if, before the date of enact-
 7 ment of this subsection—

8 “(1) the State has implemented for the electric
 9 utility the standard (or a comparable standard);

10 “(2) the State regulatory authority for the
 11 State, or the relevant nonregulated electric utility,
 12 has conducted a proceeding to consider implementa-
 13 tion of the standard (or a comparable standard) for
 14 the electric utility; or

15 “(3) the State legislature has voted on the im-
 16 plementation of the standard (or a comparable
 17 standard) for the electric utility.”.

18 (2) CROSS-REFERENCE.—Section 124 of the
 19 Public Utility Regulatory Policies Act of 1978 (16
 20 U.S.C. 2634) is amended by adding at the end the
 21 following: “In the case of each standard established
 22 under paragraphs (20) through (23) of section
 23 111(d), the reference contained in this subsection to
 24 the date of enactment of this Act shall be deemed

1 to be a reference to the date of enactment of those
2 paragraphs.”.

3 **SEC. 10. EFFECT OF ACT.**

4 Nothing in this Act (or an amendment made by this
5 Act) shall apply to distributed energy resource contracts
6 in effect on the date of enactment of this Act.

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