H. R. 4476

To modernize the Public Utility Regulatory Policies Act of 1978, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 29, 2017

Mr. WALBERG (for himself and Mr. BLUM) introduced the following bill; which was referred to the Committee on Energy and Commerce

A BILL

To modernize the Public Utility Regulatory Policies Act of 1978, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “PURPA Modernization Act of 2017”.

SEC. 2. LOCATION OF SMALL POWER PRODUCTION FACILITIES.

(a) REBUTTABLE PRESUMPTION.—The Federal Energy Regulatory Commission shall, not later than 180 days after the date of enactment of this Act, publish in
the Federal Register a final rule amending its regulations implementing section 3(17)(A)(ii) of the Federal Power Act (16 U.S.C. 796(17)(A)(ii)), regarding the method for determining whether facilities are considered to be located at the same site as the facility for which qualification is sought for the purpose of calculating power production capacity, to provide a rebuttable presumption that—

(1) facilities located one mile or more away from each other are not located at the same site; and

(2) facilities located within one mile of each other are located at the same site.

(b) OVERCOMING THE PRESUMPTION.—

(1) PERSONS WHO MAY REBUT THE PRESUMPTION.—The Commission shall allow any person (as defined in section 385.102 of title 18, Code of Federal Regulations, as in effect on the date of enactment of this Act) to rebut the presumption described in subsection (a).

(2) FACTORS TO BE CONSIDERED.—In determining whether a facility is considered to be located at the same site as the facility for which qualification is sought, the Commission shall take into account, to the extent practicable, the following factors:
(A) The extent to which the owners or operators of the facilities are affiliated or associated with each other, or are under the control of the same company or person.

(B) The extent to which the owners or operators of the facilities have treated the facilities as a single project for purposes of other regulatory filings or applications.

(C) Whether the facilities use the same energy resource.

(D) Whether the facilities have a common generator lead line or connect at the same or nearby interconnection points or substations.

(E) The extent to which the owners or operators of the facilities have a common land lease or land rights with respect to land on which the facilities are located.

(F) The extent to which the owners or operators of the facilities have common financing with respect to the facilities.

(G) The extent to which the facilities are part of a common development plan or permitting effort, even if the interconnection of the facilities occurs at separate points.
(c) AFFILIATION AND ASSOCIATION.—The Commission shall consider the owners or operators of facilities to be affiliated or associated for purposes of this section if they are affiliates or associate companies within the meaning of those terms as defined in section 1262 of the Public Utility Holding Company Act of 2005 (42 U.S.C. 16451).

(d) CONTROL.—The Commission shall consider the owner or operator of a facility to be under the control of a company or person for purposes of this section if—

(1) the company or person directly or indirectly owns, controls, or holds, with power to vote, 10 percent or more of the outstanding voting securities of the owner or operator; or

(2) the Commission determines, after notice and opportunity for hearing, that the company or person exercises, directly or indirectly (either alone or pursuant to an arrangement or understanding with one or more companies or persons), a controlling influence over the management of the owner or operator.

SEC. 3. NONDISCRIMINATORY ACCESS.

Section 210(m) of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 824a–3(m)) is amended by adding at the end the following:
"(8) NONDISCRIMINATORY ACCESS.—For purposes of this subsection, a qualifying small power production facility with an installed generation capacity of 2.5 megawatts or greater is presumed to have nondiscriminatory access to transmission and interconnection services and wholesale markets described in subparagraphs (A), (B), or (C) of paragraph (1)."

SEC. 4. RECOGNITION OF STATE OR LOCAL DETERMINATIONS.

Section 210(m) of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 824a–3(m)), as amended by section 3, is further amended by adding at the end the following:

"(9) STATE OR LOCAL DETERMINATION.—After the date of enactment of this paragraph, no electric utility shall be required to enter into a new contract or obligation to purchase electric energy from a qualifying small power production facility under this section if the appropriate State regulatory agency or non-regulated electric utility finds, and submits to the Commission a written determination, that—

"(A) the electric utility has no need to purchase electric energy from such qualifying small power production facility in the amounts to be
offered within the timeframe proposed by the qualifying small power production facility, consistent with the needs for electric energy and the timeframe for those needs as specified in an electric utility’s integrated resource plan, in order to meet its obligation to serve customers; or

“(B) the electric utility employs integrated resource planning and conducts a competitive resource procurement process for long-term energy resources that provides an opportunity for qualifying small power production facilities to supply electric energy to the electric utility in accordance with the integrated resource plan of the electric utility.”.