

115TH CONGRESS
1ST SESSION

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.

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 “PURPA Modernization
5 Act of 2017”.

6 **SEC. 2. LOCATION OF SMALL POWER PRODUCTION FACILI-**
7 **TIES.**

8 (a) REBUTTABLE PRESUMPTION.—The Federal En-
9 ergy Regulatory Commission shall, not later than 180
10 days after the date of enactment of this Act, publish in

1 the Federal Register a final rule amending its regulations
2 implementing section 3(17)(A)(ii) of the Federal Power
3 Act (16 U.S.C. 796(17)(A)(ii)), regarding the method for
4 determining whether facilities are considered to be located
5 at the same site as the facility for which qualification is
6 sought for the purpose of calculating power production ca-
7 pacity, to provide a rebuttable presumption that—

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

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

13 (b) OVERCOMING THE PRESUMPTION.—

14 (1) PERSONS WHO MAY REBUT THE PRESUMP-
15 TION.—The Commission shall allow any person (as
16 defined in section 385.102 of title 18, Code of Fed-
17 eral Regulations, as in effect on the date of enact-
18 ment of this Act) to rebut the presumption described
19 in subsection (a).

20 (2) FACTORS TO BE CONSIDERED.—In deter-
21 mining whether a facility is considered to be located
22 at the same site as the facility for which qualifica-
23 tion is sought, the Commission shall take into ac-
24 count, to the extent practicable, the following fac-
25 tors:

1 (A) The extent to which the owners or op-
2 erators of the facilities are affiliated or associ-
3 ated with each other, or are under the control
4 of the same company or person.

5 (B) The extent to which the owners or op-
6 erators of the facilities have treated the facili-
7 ties as a single project for purposes of other
8 regulatory filings or applications.

9 (C) Whether the facilities use the same en-
10 ergy resource.

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

14 (E) The extent to which the owners or op-
15 erators of the facilities have a common land
16 lease or land rights with respect to land on
17 which the facilities are located.

18 (F) The extent to which the owners or op-
19 erators of the facilities have common financing
20 with respect to the facilities.

21 (G) The extent to which the facilities are
22 part of a common development plan or permit-
23 ting effort, even if the interconnection of the fa-
24 cilities occurs at separate points.

1 (c) AFFILIATION AND ASSOCIATION.—The Commis-
2 sion shall consider the owners or operators of facilities to
3 be affiliated or associated for purposes of this section if
4 they are affiliates or associate companies within the mean-
5 ing of those terms as defined in section 1262 of the Public
6 Utility Holding Company Act of 2005 (42 U.S.C. 16451).

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

10 (1) the company or person directly or indirectly
11 owns, controls, or holds, with power to vote, 10 per-
12 cent or more of the outstanding voting securities of
13 the owner or operator; or

14 (2) the Commission determines, after notice
15 and opportunity for hearing, that the company or
16 person exercises, directly or indirectly (either alone
17 or pursuant to an arrangement or understanding
18 with one or more companies or persons), a control-
19 ling influence over the management of the owner or
20 operator.

21 **SEC. 3. NONDISCRIMINATORY ACCESS.**

22 Section 210(m) of the Public Utility Regulatory Poli-
23 cies Act of 1978 (16 U.S.C. 824a–3(m)) is amended by
24 adding at the end the following:

1 “(8) NONDISCRIMINATORY ACCESS.—For pur-
2 poses of this subsection, a qualifying small power
3 production facility with an installed generation ca-
4 pacity of 2.5 megawatts or greater is presumed to
5 have nondiscriminatory access to transmission and
6 interconnection services and wholesale markets de-
7 scribed in subparagraphs (A), (B), or (C) of para-
8 graph (1).”.

9 **SEC. 4. RECOGNITION OF STATE OR LOCAL DETERMINA-**
10 **TIONS.**

11 Section 210(m) of the Public Utility Regulatory Poli-
12 cies Act of 1978 (16 U.S.C. 824a-3(m)), as amended by
13 section 3, is further amended by adding at the end the
14 following:

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

23 “(A) the electric utility has no need to pur-
24 chase electric energy from such qualifying small
25 power production facility in the amounts to be

1 offered within the timeframe proposed by the
2 qualifying small power production facility, con-
3 sistent with the needs for electric energy and
4 the timeframe for those needs as specified in an
5 electric utility’s integrated resource plan, in
6 order to meet its obligation to serve customers;
7 or

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

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