

114TH CONGRESS  
1ST SESSION

**S.** \_\_\_\_\_

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

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IN THE SENATE OF THE UNITED STATES

Mr. KING introduced the following bill; which was read twice and referred to the Committee on \_\_\_\_\_

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**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  
 4 regulatory authority considers to be appro-  
 5 priate.”.]

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

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

12 (1) in paragraph (17)(C)—

13 (A) by indenting appropriately; and

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

22 (2) in paragraph (18)(B)—

23 (A) by indenting appropriately; and

24 (B) by inserting “(including a distributed  
 25 energy resource in any State in which a State

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

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

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

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

1           “(i) the rates to be established at the  
2           full retail rate **【net energy metering】**; 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.

1           “(B) COST.—To reduce the cost to the  
 2           ratepayer of a potential transmission upgrade, a  
 3           nontransmission alternative considered under  
 4           subparagraph (A), shall receive the avoided cost  
 5           of the transmission upgrade, minus a reason-  
 6           able discount, as determined by the State regu-  
 7           latory authority.

8           “(C) RECOVERY.—If a nontransmission al-  
 9           ternative proposed under subparagraph (A) ob-  
 10          viates the need for a reliability-based trans-  
 11          mission upgrade, the cost of the nontrans-  
 12          mission alternative shall be recovered from the  
 13          ratebase in the same manner as the trans-  
 14          mission upgrade would have been.”.

15 **SEC. 9. COMPLIANCE.**

16          (a) TIME LIMITATIONS.—Section 112(b) of the Pub-  
 17          lic Utility Regulatory Policies Act of 1978 (16 U.S.C.  
 18          2622(b)) is amended by adding at the end the following:

19                 “(7)(A) Not later than **【**\_\_\_\_\_ **】** after  
 20          the date of enactment of this paragraph, each State  
 21          regulatory authority (with respect to each electric  
 22          utility for which the authority has ratemaking au-  
 23          thority) and each nonregulated utility shall, with re-  
 24          spect to the standards established by paragraphs  
 25          (20), (22), and (23) of section 111(d)—

1           “(i) commence the consideration referred  
2           to in section 111; or

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

5           “(B) Not later than **【\_\_\_\_\_】**after the date  
6           of the enactment of this paragraph, each State regu-  
7           latory authority (with respect to each electric utility  
8           for which the authority has ratemaking authority),  
9           and each nonregulated electric utility, shall—

10           “(i) complete the consideration under sub-  
11           paragraph (A); and

12           “(ii) make the determination referred to in  
13           section 111 with respect to each standard es-  
14           tablished by paragraphs (20), (22), and (23) of  
15           section 111(d).

16           “(8)(A) Not later than **【\_\_\_\_\_】** after  
17           the date of enactment of this paragraph, each State  
18           regulatory authority (with respect to each electric  
19           utility for which the authority has ratemaking au-  
20           thority) and each nonregulated utility shall, with re-  
21           spect to the standards established by section  
22           111(d)(21)—

23           “(i) commence the consideration referred  
24           to in section 111; or

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

3           “(B) Not later than [\_\_\_\_\_] after the date  
4           of the enactment of this paragraph, each State regu-  
5           latory authority (with respect to each electric utility  
6           for which the authority has ratemaking authority),  
7           and each nonregulated electric utility, shall—

8           “(i) complete the consideration under sub-  
9           paragraph (A); and

10           “(ii) make the determination referred to in  
11           section 111 with respect to each standard es-  
12           tablished by section 111(d)(21).”.

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

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

22           (c) PRIOR STATE ACTIONS.—

23           (1) IN GENERAL.—Section 112 of the Public  
24           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 after [\_\_\_\_\_],  
13       to consider implementation of the standard (or a  
14       comparable standard) for 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.