

**Environmental Law & Policy Center \* Natural Resources Defense Council \***  
**Solar Energy Industries Association \***  
**Southern Environmental Law Center \* Vote Solar \***

January 18, 2018

The Honorable Fred Upton, Chairman  
Energy Subcommittee  
House Energy and Commerce Committee

The Honorable Bobby Rush, Ranking Member  
Energy Subcommittee  
House Energy and Commerce Committee

Dear Chairman Upton and Ranking Member Rush,

We are writing to urge you to oppose H.R. 4476, the PURPA Modernization Act of 2017.

The Public Utility Regulatory Policies Act (PURPA) advances competition in the electric utility industry. The Act was passed in response to a pattern of utility “discrimination” against small power producers. The threat of that discrimination and its adverse consequences for the U.S. economy and to consumers, who are deprived of affordable, independent energy, remains. Forty years after its passage, where it has been effectively implemented, PURPA is delivering on its goal of increasing competitiveness in the electricity sector by improving fair market access for small renewable energy and cogeneration facilities in traditional monopoly utility markets.

PURPA provides that utilities pay their “avoided costs,” (what it would have cost the utility to generate and deliver that power itself) for electricity generated by “qualified facilities,” including small cogeneration, hydro, solar and wind power producers. PURPA helps *reduce* utility costs over time by helping to delay or defer the need for expensive new power plants that raise consumers’ utility bills when rate-based.

Unfortunately, H.R. 4476’s provisions would weaken PURPA and the competition and diversity of energy sources it brings for consumers’ benefit.

**H.R. 4476 would undermine the essential goals of a competitive market by allowing utilities to avoid buying power from qualified facilities under PURPA.** The way PURPA works, the forces of competition determine the size of the market for qualified small power producers based on the need for additional energy. As long as these generators can deliver energy below the utility’s “avoided cost,” then development is encouraged. As H.R. 4476 is written, *utilities* will define the size of the PURPA market, in consultation with state agencies. This would put the proverbial fox in charge of the hen house — and consumers will ultimately be the ones to suffer if utilities are able to favor more expensive self-built generation. The inevitable result of H.R. 4476 will be less competition, higher electric rates, less investment in new technologies, less economic development, fewer new jobs, and less progress towards cleaner air and protection of public health.

**H.R. 4476 would create a presumption that all small power producers 2.5 MW or larger in size have non-discriminatory access to competitive markets.** This proposed change is vastly

different than the presumption currently in effect under FERC regulations. FERC has consistently determined that there are high barriers for entry to the electricity generating market for these small producers. The change in the presumption proposed in H.R. 4476 would effectively deny market access to a wide range of small power producers facing very real discrimination.

**H.R. 4476 creates a means for utilities to frustrate competitive market development through FERC litigation about the size of small power producers.** From the date of initial passage, PURPA has distinguished between large and small power production facilities. FERC has the authority to modify the rule if changes are necessary. But H.R. 4476 changes would replace an objective rule with a presumption, thus inviting utilities to litigate to overturn the presumption for facilities located more than one mile apart. Monopoly utilities, unlike private-sector competitors, can attempt to pass these litigation expenses on to ratepayers.

H.R. 4476 does not modernize PURPA, but, instead, it threatens to undermine the essential competition that PURPA brings to the electricity market and the many benefits to consumers – including clean renewable energy and a healthier environment. **We urge you to oppose H.R. 4476.**

Sincerely,

Environmental Law & Policy Center  
Natural Resources Defense Council  
Solar Energy Industries Association  
Southern Environmental Law Center  
Vote Solar

Cc: Members of the Energy Subcommittee, House Energy and Commerce Committee