

***Resolution Regarding Appropriate Treatment of Excess Deferred Federal Income Taxes,
Accumulated Deferred Federal Income Taxes, and Unamortized Investment Tax Credits
When a Utility Sells, Transfers, or Otherwise Divests Its Assets***

WHEREAS, The treatment of accumulated deferred investment tax credits (ADITC), excess deferred Federal income taxes (EDFIT), and other deferred tax balances such as accumulated deferred Federal income taxes (ADFIT) which are not EDFIT, related to assets that are sold, transferred, or divested is an issue of national importance; *and*

WHEREAS, Electric utilities have received investment tax credits for their investment in power plants paid for by ratepayers through cost of service regulation, and the ADITC represents the amount of that investment tax credit that is still held by the utility pending its return to ratepayers over time; *and*

WHEREAS, EDFIT arises when the Federal tax rate is lowered and in such instances, deferred taxes above those required become excess. This results in an overpayment of taxes by ratepayers which the utilities are to return to ratepayers over time; *and*

WHEREAS, Utility ratepayers have supported and are continuing to support stranded costs related to certain generation assets, including nuclear generation assets; *and*

WHEREAS, Tax benefits, such as ADFIT, related to those assets should benefit those ratepayers as an offset to rate base; *and*

WHEREAS, An unwarranted windfall to the utilities would result if these tax balances are not returned to ratepayers in some manner since they represent ratepayer funding for taxes that the utility did not and will not pay; *and*

WHEREAS, The Internal Revenue Service (IRS) and the Department of the Treasury have concluded that the Internal Revenue Code requires both EDFIT and ADITC reserves to be returned to ratepayers over time, in accordance with a schedule provided by Congress, and that the need to return these reserves to ratepayers is unaffected by a utility's divestiture of the power plants with which these reserves are associated; *and*

WHEREAS, In the March 4, 2003 Notice of Proposed Rulemaking (26 CFR Part 1, REG-104385-01, RIN 1545-AY75), the IRS and the Department of Treasury have concluded that neither former section 46(f)(2) nor section 203(e) of the Tax Reform Act suggests that the EDFIT and ADITC reserves should not be ultimately flowed through to ratepayers, and that Congress provided a schedule for flowing through the reserves so that utilities would have the benefit of cost-free capital for a predictable period; *and*

WHEREAS, In the March 4, 2003 Notice of Proposed Rulemaking, the IRS and the Department of Treasury interpreted that utilities can pass through the benefits of EDFIT and ADITC to ratepayers subsequent to sale, transfer or divestiture, for assets sold after March 4, 2003, and utilities could elect such treatment for any assets sold, transferred, or otherwise divested before March 4, 2003; *and*

WHEREAS, In the December 21, 2005 Notice of Proposed Rulemaking (26 CFR Part 1, REG-104385-01, RIN 1545-AY75), the IRS and the Department of Treasury repeated that nothing in the normalization provisions of the Internal Revenue Code prevents a utility from returning EDFIT and ADITC to ratepayers or otherwise using them for setting rates based on cost of service, even after the utility has sold or transferred the generation assets associated with the EDFIT and ADITC; *and*

WHEREAS, Notwithstanding that interpretation of the law, the IRS and the Department of Treasury proposed in the December 21, 2005 Notice of Proposed Rulemaking to limit the return of EDFIT and ADITC, allowing it only with respect to sales or transfers of generation assets that occurred after December 21, 2005 and for a limited class of sales or transfers that occurred between March 4, 2003 and December 21, 2005; *and*

WHEREAS, That when utility assets are sold, transferred or otherwise divested, EDFIT and ADITC continue to exist and can be used in setting rates based on cost of service, regardless of when such assets have been transferred or otherwise divested; *and*

WHEREAS, That when ADFIT are not used to pay current taxes, they continue to exist and can be used to offset rate base or otherwise benefit ratepayers; *and*

WHEREAS, The IRS and the Department of Treasury have yet to finalize the proposed rulemaking on EDFIT and ADITC, and the IRS is using individual private letter rulings to globally decide the treatment of all tax benefits in sales, transfers or divestitures of utility assets; *now therefore be it*

RESOLVED, That the Board of Directors of the National Association of Regulatory Utility Commissioners (NARUC), convened in its 2006 Summer Meetings in San Francisco, California, requests that the Treasury promulgate a final Rule based on the principles outlined in the March 4, 2003 Notice of Proposed Rulemaking to clarify that when utility assets are sold, transferred or otherwise divested, ADITC, EDFIT, and ADFIT not needed to pay current taxes, continue to exist and can be used in setting rates based on cost of service, regardless of when such assets have been sold, transferred or otherwise divested.

Sponsored by the Committee on Electricity

Adopted by the NARUC Board of Directors August 2, 2006