

Resolution on Legislation to Change the Public Utility Holding Company Act of 1935

WHEREAS, Legislation to reform or repeal the Public Utility Holding Company Act of 1935 (PUHCA or the Act) is again being considered by Congress, in light of an increasingly competitive electricity market and the potential economic efficiencies associated with growing competition in the electric industry; *and*

WHEREAS, The National Association of Regulatory Utility Commissioners (NARUC) and State commissions will play an indispensable role in managing any transition to a more competitive energy market in order to ensure that energy services are provided at rates and conditions that are just, reasonable and nondiscriminatory for all consumers; *and*

WHEREAS, The NARUC supports reducing some of the restrictions and prohibitions of the Act, while favoring those specific enforcement mechanisms in the PUHCA amendments enacted in the Energy Policy Act of 1992 and the Telecommunications Act of 1996 which, inter alia, provide State commission access to holding company books and records of exempt wholesale generators and exempt telecommunications companies, State consent for sale of jurisdictional utility assets, protection against abusive affiliate transactions, and independent audit authority for the effective discharge of State oversight responsibilities; *and*

WHEREAS, The NARUC, by a previous resolution on PUHCA reform, supports the position that such reform should not include arbitrary distinctions based on corporate structure, should ensure that the authority of the States to regulate utility holding companies is not preempted or restricted, and should include a meaningful transition period before the new Federal legislation takes effect; *now, therefore, be it*

RESOLVED, By the Executive Committee of the National Association of Regulatory Utility Commissioners, convened at its 1996 Summer Meeting in Los Angeles, California, that any legislation to change PUHCA should be consistent with the following:

1. Reform or repeal of the Public Utility Holding Company Act of 1935, and the amendments set forth by the Energy Policy Act of 1992 and the Telecommunication Act of 1996, should be considered in light of discussions on comprehensive legislation to revise the Federal Power Act and restructure the electric utility industry through appropriate state processes.
2. A sensible mechanism should be established that maintains effective State and Federal regulation against abusive holding company practices that could place undue market power in the hands of multistate holding companies and harm the development of competition. Any legislation must recognize that regulation should be reduced only as competition becomes effective at preventing monopoly abuses and allowing pro-competitive change and availability of customer choice.

3. Any comprehensive legislation should be consistent with the PUHCA reform provisions embodied in the Energy Policy Act of 1992 and the Telecommunications Act of 1996 as supported by the NARUC and provide for (a) State consent for sale, encumbrance, or disposition of existing state jurisdictional rate-based facilities, (b) reporting obligations concerning investments and activities of multi-State public utility holding company systems, (c) restrictions against assumption of liabilities of non-regulated activities through securities issuances, guarantees, endorsements, or sureties and the pledging or mortgaging of assets, (d) protection against abusive affiliate transactions, (e) prohibitions against reciprocal arrangements entered into in order to avoid the provisions of that legislation, (f) Federal and State commission access to books and records, (g) independent audit authority for State commissions, and (h) non-preemption of State rate authority; and finally, nothing in that legislation should affect the authority of State commissions under State laws concerning the provisions of utility services, to regulate the activities of a public utility which is an affiliate, subsidiary or associate of a multi-State public utility holding company, and other relevant consumer protections.
4. Any comprehensive legislation should provide the States with the flexibility to respond to changes in the utility industry arising from market forces, technology, or financial conditions.

With these protections for consumers, the States will be able to regulate where they must to protect the public interest and deregulate when market conditions warrant.

Sponsored by the Committee on Electricity
Adopted July 25, 1996