

Resolution Regarding the Federal Energy Regulatory Commission's
Critical Energy Infrastructure Information (CEII) Policy, and Statement
on the Treatment of Previously Public Documents

WHEREAS, The National Association of Regulatory Utility Commissioners (NARUC) finds that further ensuring the security and reliability of the nation's energy supply and delivery infrastructures is of the highest public interest; and

WHEREAS, NARUC has formed the Ad Hoc Committee on Critical Infrastructure to identify appropriate role(s) of regulatory commissions with respect to the security of the Nation's electric, natural gas, water and telecommunications infrastructures from threats of terrorism; and

WHEREAS, The Ad Hoc Committee on Critical Infrastructure is responsible for ensuring State commissions have the information and tools needed to work with the industries to keep critical infrastructure secure; and

WHEREAS, NARUC has strongly encouraged coordinated security efforts by federal, State and local authorities; and

WHEREAS, The Federal Energy Regulatory Commission's (FERC) review of its policies and treatment regarding critical energy infrastructure information (CEII) is necessary in light of the events of September 11, 2001; and

WHEREAS, The data at issue in FERC's Notice of Proposed Rulemaking (NOPR) has generally been available, and often relied on by regulators, utilities and citizens in regulatory proceedings, and in monitoring continually evolving energy

markets; and

WHEREAS, The proposed new treatment of CEII data raises novel and difficult questions; and

WHEREAS, State commissions share the FERC interest in assuring that the questions raised by the NOPR are squarely addressed and correctly answered, so that any CEII limitations are on firm legal and practical footing, with full and due regard for the central role of public participation in utility regulatory proceedings; now therefore be it

RESOLVED, That the National Association of Regulatory Utility Commissioners (NARUC) convened in its November 2002 114th Annual Convention in Chicago, Illinois, applauds FERC's efforts; and be it further

RESOLVED, That FERC's assertion that CEII can largely be withheld under current FOIA exemptions merits further elaboration and consideration, and that FERC, in consultation with the Office of Homeland Security, should consider whether a new exemption may be needed to treat CEII; and be it further

RESOLVED, That NARUC urges FERC to clarify, and provide specific basics for, the statement that, "as a general matter...Federal law preempts State law," in regard to the questions of CEII data, at least insofar as CEII emanates from nongovernmental entities who are also subject to State commission jurisdiction; and be it further

RESOLVED, That NARUC encourages FERC to clarify that its final rule does not apply, and cannot be relied upon by public

utilities, when State agencies are seeking to directly obtain information from public utilities under State law; and be it further

RESOLVED, That NARUC encourages that the rules and procedures governing determinations of access to CEII must be reviewed for fairness; and be it further

RESOLVED, That NARUC encourage FERC to clarify how the CEII NOPR relates to FERC's Standard Market Design NOPR; and be it further

RESOLVED, That NARUC's Ad Hoc Committee on Critical Infrastructure commits to continue to work with FERC on this vitally important issue.

Sponsored by the Ad Hoc Committee on Critical Infrastructure
Recommended by the NARUC Board of Directors November
11, 2002

Adopted by NARUC Convention November 11, 2002