

Resolution Concerning FERC Policies for Secondary Market Transactions on Interstate Gas Pipelines

WHEREAS, The Federal Energy Regulatory Commission (FERC or the Commission) adopted a "capacity release" mechanism in its Order No. 636 for shippers to assign their contractual rights to firm pipeline transportation services; *and*

WHEREAS, In July 1993, the Executive Committee of the National Association of Regulatory Utility Commissioners (NARUC) adopted a resolution calling upon FERC to open a proceeding to "examine whether the 'capacity release' mechanism is adequate as *the exclusive option* to meet the cost mitigation and operational management requirements of State-regulated gas utilities and to review alternative approaches to meeting these essential requirements" [NARUC Bulletin No. 32-1993 at 17 (emphasis in original)]; *and*

WHEREAS, For a variety of reasons, the capacity release mechanism has not been fully successful in creating a robust secondary market in which capacity rights are freely and efficiently traded; *and*

WHEREAS, On July 31, 1996, the FERC issued a notice of proposed rulemaking entitled "Secondary Market Transactions on Interstate Natural Gas Pipelines," Docket No. RM96-14-000 [61 Fed. Reg. 41046-41058 (August 7, 1996)] proposing changes to its capacity release policy to improve the efficiency of markets for pipeline capacity; *and*

WHEREAS, The NOPR proposed changes in three areas: first, to require pipelines to improve the efficiency of the capacity release mechanisms by, *inter alia*, treating all short-term transportation in a comparable manner; second, to remove the current competitive bidding requirement for resale of released capacity; and third, to permit capacity releases at rates above the pipeline's maximum rate upon a showing that the releasing shipper or pipeline cannot exercise market power; *and*

WHEREAS, Concerning the third point, the NOPR proposed that local distribution companies (LDCs) regulated by State regulatory commissions must provide open access transportation through their distribution facilities in order to meet the market power test, and further, raised the possibility that despite State commission approval of an LDC's open access program, "the Commission could review an LDC's program *de novo*" to determine its acceptability; *and*

WHEREAS, Unbundling behind the city gate is rapidly expanding and is principally industry driven at a pace deemed appropriate by individual State commissions; *now, therefore, be it*

RESOLVED, By the National Association of Regulatory Utility Commissioners (NARUC), convened at its 108th Annual Convention in San Francisco, California, that the NARUC continues to support the FERC's efforts to improve the efficiency of the

interstate pipeline capacity market, including the development of a robust secondary market for capacity rights; *and be it further*

RESOLVED, That the Natural Gas Act delineates the jurisdiction of FERC and State commissions, and accordingly, NARUC strongly opposes proposals by the Commission in this or other proceedings to extend, either directly or indirectly through its conditioning authority, its jurisdiction behind the city gate to address matters involving retail gas distribution markets that are properly within the exclusive jurisdiction of State regulatory commissions acting in the public interest; *and be it further*

RESOLVED, That the NARUC will work cooperatively with the Commission to ensure a successful transition to more competitive gas markets at both the pipeline and LDC levels.

Sponsored by the Committee on Gas

Adopted November 20, 1996