

Resolution Seeking To Mitigate The Potential For Market Power Abuse

WHEREAS, The regulations of the Federal Energy Regulatory Commission (FERC) require a right-of-first-refusal (ROFR) process for customers of interstate pipelines to protect them from the exercise of market power upon the expiration of the term of their service contracts; and

WHEREAS, Gas distribution companies require firm pipeline service contracts to provide service to their residential, commercial, and industrial customers, and gas distribution companies and other firm pipeline service customers rely upon the ROFR process to ensure continuing, reliable service to themselves and their customers; and

WHEREAS, There has been a continuing controversy as to the length of contract offered by a new prospective pipeline customer that must be matched by the existing pipeline customer in the ROFR process in order to retain that capacity; and

WHEREAS, On October 31, 2002, FERC determined to remove the existing contract-term matching cap in the ROFR process so that existing firm customers will now have to match the rate offered by a prospective new customer for a contract term of any length offered by that prospective new customer; and

WHEREAS, The removal of the existing contract-term matching cap in the ROFR process could adversely affect those States that have adopted unbundling or customer-choice programs for

retail natural gas consumers; and

WHEREAS, Under the new FERC regulations, local distribution companies with customer-choice programs may be required to commit to contract terms longer than they otherwise would have executed; and

WHEREAS, The result of the new FERC regulation may lead to higher retail prices for consumers and fewer capacity suppliers serving retail customers; and

WHEREAS, A ROFR process incorporating both a rate cap and a term cap is beneficial in ensuring consumer protection; now therefore be it

RESOLVED, That the National Association of Regulatory Utility Commissioners (NARUC) convened in its November 2002 Annual Meeting in Chicago, Illinois, finds that FERC's decision to remove the five-year matching term cap does not effectuate the consumer protection mandate of the Natural Gas Act; and be it further

RESOLVED, That NARUC recommends that FERC reconsider its decision on rehearing and reinstate the five-year matching term cap to provide effective consumer protection for the nation's gas consumers.

Sponsored by the NARUC Committee on Gas

Adopted by the NARUC Board of Directors November 12, 2002

Adopted NARUC Convention November 12, 2002