

***Resolution on the Need for Review of FERC Incentive Rate Regulation Policies Under
Order No. 679***

WHEREAS, The National Association of Regulatory Utility Commissioners (NARUC) is the national organization of the State commissions responsible for economic and safety regulation of the retail operations of utilities as well as responsible for ensuring that such services are provided at just and reasonable rates; *and*

WHEREAS, NARUC represents the collective interests of State regulatory commissions; *and*

WHEREAS, Retail customers are impacted by the decisions and orders issued by the Federal Energy Regulatory Commission (FERC or Commission); *and*

WHEREAS, In May 2011, FERC issued its Notice of Inquiry (NOI)¹ requesting comment on the Commission's transmission-incentive regulations and policies under Order No. 679;² *and*

WHEREAS, Nationwide, incentives already granted as of June 2009 by FERC pursuant to Order No. 679 will cost consumers hundreds of millions of dollars per year or more;³ *and*

WHEREAS, FERC's implementation of Order 679 incentives has resulted in the approval of overly generous ROE incentives requests by transmission developers; *and*

WHEREAS, It appears the Commission has not attempted to gather the necessary data or analyses establishing a link between improved performance and specific incentives as result of decisions applying Order No. 679; *and*

WHEREAS, Available industry data as early as 2005 and prior to decisions applying Order No. 679 appears to demonstrate that transmission developers, prior to enactment of FPA 219, planned and were prepared to construct appropriate improvement to the interstate grid without incentives;⁴ *and*

WHEREAS, The significant development and enforcement of mandatory reliability standards by the Commission and the North American Electric Reliability Corporation (NERC) also affected the level of investment in transmission facilities outside of the Commission's decisions applying Order No. 679; *and*

WHEREAS, Under current Federal Energy Regulatory Commission (FERC) Order 679 rate incentive implementation policy there is a near certainty a transmission developer's petition for rate incentives will be granted through overly generous incentive awards such as formula rate

¹ Promoting Transmission Investment Through Pricing Reform, 135 FERC ¶ 61,146, 76 Fed. Reg. 30,869 (May 27, 2011).

² Promoting Transmission Investment Through Pricing Reform, Order No. 679, 71 Fed. Reg. 43294 (Jul. 31, 2006), FERC Stats. & Regs. ¶ 31,222 (2006), order on reh'g, Order No. 679-A, 72 Fed. Reg. 1152 (Jan. 10, 2007), FERC Stats. & Regs. ¶ 31,236, order on reh'g, 119 FERC ¶ 61,062 (2007).

³ See Letter from Hon. Jon Wellinghoff, Chairman, Federal Energy Regulatory Commission, to Hon. Edward J. Markey, Chair, Subcommittee on Energy and Environment, U.S. House of Representatives, Attachment A (June 11, 2009) (eLibrary No. 20090618-0125), with adjustment for taxes.

⁴ EEI, EEI Survey of Transmission Investment Historical and Planned Capital Expenditures (1999-2008) (May 2005) (available at http://www.eei.org/ourissues/ElectricityTransmission/Documents/Trans_Survey_Web.pdf).

recovery of all (prudent) project costs, inclusion of CWIP in rate base, and recovery of abandonment costs which greatly reduces investors' risk of financial loss; *and*

WHEREAS, Even though Federal Power Act (FPA) Section 219 requires the Commission to adopt, by rule, "incentive-based (*including performance-based*) rate treatments" for new transmission investment,⁵ to date, the Commission's incentive-rate policy has included no performance-based element; *and*

WHEREAS, The Commission's award of overly generous incentive rates to transmission developers subsequent to the issuance of Order 679 has received considerable critical attention in Congress, among the States, users of the interstate transmission system and retail customers, raising important issues that FERC has recognized as requiring exploration by issuance of the Commission's May 19, 2011 Notice of Inquiry; *now, therefore be it*

RESOLVED, The Board of Directors of the National Association of Regulatory Utility Commissioners, convened at its 2012 Winter Committee Meetings in Washington, D.C., supports the goals of FPA Section 219,⁶ but has concerns about the manner in which that provision has been implemented; *and be it further*

RESOLVED, That NARUC supports the Commission's decision to undertake an inquiry into the design and implementation of transmission-incentive rate policies; *and be it further*

RESOLVED, That NARUC encourages the Commission to commit to a rigorous analysis of available data to determine whether there exists a significant and cost effective link between FERC's award of transmission incentives and real-world transmission development investment decisions; *and be it further*

RESOLVED, That NARUC encourages the Commission to specify enforceable performance metrics goals and require regular metrics filings to demonstrate achievement of required goals; *and be it further*

RESOLVED, That while Congress has directed the development of incentive transmission rate rules, the National Association of Regulatory Utility Commissioners concludes that the granting of incentive rates under the Commission's current transmission-incentive regulations and policies under Order No. 679 has transferred hundreds of millions of dollars from consumers to transmission investors without any clear showing of need or benefit and Order 679 prescribes policies that are in dire need of reform; *and be it further*

RESOLVED, That NARUC encourages the Commission to respond to the comments filed in response to its Notice of Inquiry and amend its rules and modify its policies in order to reduce unnecessary costs imposed on consumers.

Sponsored by the Committee on Electricity

Adopted by the NARUC Board of Directors February 8, 2012

⁵ 16 U.S.C. § 824s (a) (emphasis added).

⁶ Section 219 directed the Commission to "establish ... incentive-based (including performance-based) rate treatments for the transmission of electric energy in interstate commerce by public utilities for the purpose of benefitting consumers by ensuring reliability and reducing the cost of delivered power by reducing transmission congestion." 16 U.S.C. § 824s (a). Section 219 required the rule to "promote reliable and economically efficient" transmission and generation of electric energy. *Id.* § 824s (b) (1).