

Resolution Relating to Market Power In A Restructured Electric Power Industry

WHEREAS, Some state and territorial legislatures and regulatory commissions, in considering legislation and developing policies to restructure the electric industry to introduce competition in retail power supply markets, have recognized that after-the-fact antitrust enforcement may not be sufficient to protect against market power abuses in the transition from monopoly to competitive markets; *and*

WHEREAS, Abuse of market power can diminish the economic gains to consumers from a restructured electric power industry, in which long-term consumer interests require that neither incumbents nor new entrants gain or retain unfair market advantage; *and*

WHEREAS, Abuse of market power may be avoided or mitigated by various governmental actions, ranging from behavioral rules and functional unbundling to structural separation and divestiture, with varying effects on consumers and firms; *and*

WHEREAS, Abuse of market power may stem from barriers to competition from a variety of sources, including barriers erected by incumbent firms; *and*

WHEREAS, The effectiveness of individual market-power mitigation actions depends on the unique circumstances surrounding a specific market area within which electric services are transacted; *now, therefore, be it*

RESOLVED, That the Executive Committee of the National Association of Regulatory Utility Commissioners (NARUC), convened at its 1998 Summer Meetings in Seattle, Washington, hereby states that Congress should not preempt jurisdiction in the States and territories to address market power concerns; and State and territorial legislatures should give clear and adequate authority to the State and territorial public utility commissions to protect all classes of consumers from the abuse of market power, including the authority to require behavioral and structural remedies to address excessive market power; *and be it further*

RESOLVED, That industry restructuring to achieve effective retail competition in electric supply should remove barriers to entry and allow open and nondiscriminatory access to essential network facilities; *and be it further*

RESOLVED, That restructuring designed to open competitive electricity markets should protect consumers against the abuses resulting from the exercise of market power; *and be it further*

RESOLVED, That any market-power remedies should weigh the benefits and costs, including reliability impacts and economies of scale and scope, from the perspective of all classes of electricity consumers; *and be it further*

RESOLVED, That NARUC advocates a continuum of options for the mitigation of market power, and urges State and territorial legislatures and Congress, in considering restructuring, to preserve State and territorial flexibility to use these options as needed. Legislation should clarify the authority to use accounting conventions and codes of conduct, which may be sufficient safeguards in some cases. Legislation should clarify the authority of the States and territories to require and police the separation of utility and non-utility, and monopoly and competitive businesses, and to impose affiliate transaction and other rules to assure that electric customers do not subsidize non-utility ventures. Legislation should clarify that States and territories have clear authority to require the formation of appropriate state, territory, and regional institutions where necessary to ensure a competitive electricity market. As market power abuse may require the application of well-tailored structural solutions, legislation should clarify that the States are authorized to require divestiture where appropriate and necessary; *and be it further*

RESOLVED, That governmental agencies, including State and territorial commissions, the United States Department of Justice, the Federal Trade Commission, State and territorial attorneys general, and the FERC, should cooperate in monitoring, preventing, and correcting excessive market power in the electric power industry, with attention to market concentration, entry barriers, collusion, and other anti-competitive activities; *and be it further*

RESOLVED, That in providing critical tools to assist State and territorial regulators in addressing market power, Congress should also clarify that State and territorial regulators have the ultimate and meaningful authority to ensure effective retail markets and should eliminate any barriers to the exercise of that authority by the States and territories.

Sponsored by the Committees on Electricity, Energy Resources, Finance and Technology, and Gas

Adopted July 1998