

Resolution Encouraging State Utility Commissions to Consider Improving the Regulatory Treatment of Cloud Computing Arrangements

WHEREAS, The business of electric, gas, and water utilities is changing rapidly. Utilities are now faced with how best to respond to modern customer expectations, technological innovation, and new regulatory drivers; *and*

WHEREAS, To thrive in the future, utilities may need to modernize and transform their business operations. A key element of this may be access to state-of-the-art commercial cloud computing services, which is increasingly delivered via a “cloud-based” or “software-as-a-service” model; *and*

WHEREAS, The various functionalities provided by commercial cloud computing services may help utilities fully realize the economic, social, and environmental value of the smart gas and electric grid; *and*

WHEREAS, Other highly regulated industries like financial services, healthcare, telecommunications, and auto insurance use commercial cloud computing services and are delivering a superior customer experience. These industries now outperform utilities in customer satisfaction rankings, according to surveys from J.D. Power and Associates; *and*

WHEREAS, Federal government agencies, including the Departments of Treasury, State, and Defense, are rapidly transitioning to commercial cloud computing services and cloud-based solutions through a federal requirement to “evaluate safe, secure cloud computing options before making any new IT investments”; *and*

WHEREAS, In addition to enhanced security, commercial cloud computing services can provide increased reliability and flexibility. In contrast to on-premise solutions, cloud-based solutions can be frequently and easily updated with minimal business disruptions, allowing utilities to keep pace with innovation and changing technology; *and*

WHEREAS, Commercial cloud computing services and traditional on-premise software have different business models and payment streams. Purchasing cloud computing services typically involves periodic payments for the services consumed, while purchasing on-premise software typically involves a large up-front payment and a regular maintenance fee; *and*

WHEREAS, Under current guidelines, a utility may classify investments in legacy hardware and supporting on-premise software as a capital expense, on which it can receive a rate of return; however, if a utility invests in cloud-based technologies, it typically treats the investment as an operating expense, on which it does not receive a rate of return; *and*

WHEREAS, The disparity in accounting treatments between these two software approaches creates a regulatory incentive for utilities to invest in on-premise software solutions and creates unintended financial hurdles that hinder utilities from realizing the benefits that so many other industries are experiencing with cloud-based software; *and*

WHEREAS, Utilities should be free to make software investments based on which option best meets both the needs of the utility and its customers, rather than how the investment will be treated for accounting purposes; *and*

WHEREAS, The existing regulatory accounting rules may be interpreted, if appropriate, to allow for utilities to capitalize cloud-based software; *and*

WHEREAS, Regardless of how cloud computing is treated for regulatory accounting purposes, regulators will still examine whether the investment is prudent; *now, therefore be it*

RESOLVED, That the Board of Directors of the National Association of Regulatory Utility Commissioners (NARUC), convened at its 2016 Annual Meetings in La Quinta, California, recognizes that utilities best serve customers, society, the environment, and the grid by making software procurement decisions regardless of the delivery method or payment model; *and be it further*

RESOLVED, That NARUC encourages State regulators to consider whether cloud computing and on-premise solutions should receive similar regulatory accounting treatment, in that both would be eligible to earn a rate of return and would be paid for out of a utility's capital budget.

Sponsored by the Committees on Critical Infrastructure, Gas, and Water

Recommended by the NARUC Board of Directors on November 15, 2016

Adopted by the NARUC Committee of the Whole on November 16, 2016