Nos. 14-614, 14-623

IN THE

Supreme Court of the United States

W. KEVIN HUGHES, ET AL.,

Petitioners,

v.

PPL ENERGYPLUS, LLC, ET AL.,

Respondents.

CPV MARYLAND, LLC,

Petitioner,

v.

PPL ENERGYPLUS, LLC, ET AL.,

Respondents.

On Writs of Certiorari to the United States Court of Appeals for the Fourth Circuit

BRIEF OF *AMICUS CURIAE* NATIONAL ASSOCIATION OF REGULATORY UTILITY COMMISSIONERS IN SUPPORT OF PETITIONERS

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QUESTIONS PRESENTED

The Federal Power Act (FPA) splits authority among states, utilities, and the Federal Energy Regulatory Commission (FERC). States regulate generation facilities and retail utility power purchases, but may not set wholesale rates. Wholesale energy sellers set their own rates. FERC has exclusive jurisdiction to review them and determine their legality.

In much of the country, independent system operators run multi-state transmission systems and wholesale energy markets. PJM Interconnection, LLC (PJM), an operator whose region includes Maryland, procures by auction the generation capacity it expects the region to need for a one-year period beginning three years later. Looking beyond that horizon and concerned that facility retirements could degrade reliability, Maryland decided it needed new generation. It solicited offers, and required retail utilities to accept the winning bid. The resulting contracts obligate the bidder to build a plant and make it available to PJM for twenty years, while the retail utilities pay (or receive) the difference between the contract and PJM auction prices. The Fourth Circuit held Maryland's actions field and conflict preempted–contrary to the FPA's structure and decisions of this Court, the D.C. Circuit, and FERC.

The questions presented are:

1. When a seller offers to build generation and sell wholesale power on a fixed-rate contract basis, does the FPA field-preempt a state order directing retail utilities to enter into the contract?

2. Does FERC's acceptance of an annual regional capacity auction preempt states from requiring retail utilities to contract at fixed rates with sellers who are willing to commit to sell into the auction on a long-term basis?

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INTEREST OF AMICUS CURIAE[1]

The National Association of Regulatory Utility Commissioners (NARUC) is a quasi-governmental nonprofit organization founded in 1889. NARUC represents the government officials in the fifty States, the District of Columbia, Puerto Rico, and the Virgin Islands, charged with, among other things, ensuring the provision of safe, affordable and reliable electric service to the citizens within their respective borders.[2] NARUC's member commissions are directly impacted by the decision below.

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[1] In accordance with U.S. Sup. Ct. Rule 37.2(a), 28 U.S.C.A., all parties have provided blanket consent to the filing of *amicus curiae* briefs, which the Clerk of the Court has noted on the docket. Pursuant to U.S. Sup. Ct. Rule 37.6, 28 U.S.C.A., NARUC states the following: (1) NARUC counsel authored this brief; (2) no counsel for a party to the decision below, or other entity, authored this brief in whole or in part; and (3) no person or entity other than NARUC made a financial contribution to the preparation or submission of this brief.

[2] Both the United States Congress and federal courts have recognized that NARUC is a proper party to represent the collective interest of State regulatory commissions. *See e.g.*, 47 U.S.C. § 410 (1986), where Congress calls NARUC "the national organization of the State commissions" responsible for economic and safety regulation of the intrastate operation of carriers and utilities. *See also United States v. S. Motor Carrier Rate Conference, et al.*, 467 F.Supp. 471 (N.D. Ga. 1979), *aff.* 672 F.2d 469 (5th Cir. Unit "B" 1982); *aff. en banc*, 702 F.2d 532 (5th Cir. Unit "B" 1983, *rev'd*, 471 U.S. 48 (1985). *See also Indianapolis Power and Light Co. v. ICC*, 587 F.2d 1098 (7th Cir. 1982); *Wash. Utils. & Transp. Comm'n v. FCC,* 513 F.2d 1142 (9th Cir. 1976).

The Fourth Circuit in *Douglas R.M. Nazarian v. PPL EnergyPlus, LLC*, 753 F.3d 467 (4th Cir. 2014), impermissibly constrains crucial State functions necessary to ensure the long-term reliability of the electric grid.

The case concerns a State-mandated long-term contract for differences between Maryland utilities and a developer, CPV Maryland, LLC (CPV), to construct a power plant that the Maryland found necessary to maintain electric reliability. CPV set the contract price with its winning bid in the underlying competitive procurement process. As part of the contract, CPV was required to bid into PJM Interconnection, LLC's (PJM) Federal Energy Regulatory Commission (FERC)-administered regional capacity market and clear the auction in order to receive its contract payment. The contract specifically left the determination of the capacity price to the PJM market. The Fourth Circuit held that the FERC-administered market prohibits the use of such contracts because it determined that Maryland set wholesale rates through the contract.

By effectively holding that buy-side long-term contracts for new generation exceed State authority by setting wholesale prices, the decision opens the door for attacks on all State-directed mechanisms to assure adequate generation capacity. This could include support offered directly (*e.g.*, in the form of a subsidy payment) or indirectly (*e.g.*, in the form of a tax rebate).

The Federal Power Act (FPA) expressly preserves State authority over facilities used for the generation of electric energy.[3] NARUC's member commissions play a crucial role in long-term energy resource planning. The decisions below eviscerate State authority to ensure timely construction of new generation. Thus, in response to the Fourth Circuit's decision, in July 2014, NARUC passed a *Resolution on Preserving State Authority Over New Electric Generation* [4] effectively mandating the association's participation in this proceeding to:

> protect and preserve States' authority to decide the type, amount and timing of new or existing generation facilities that will be constructed or maintained within the State to achieve legitimate State policy objectives [and] to safeguard and guarantee *States' continued right to operate programs to procure new generation or maintain existing generation for reliability, affordability and environmental purposes through use of long-term contracts* or any State statutory or regulatory actions.[5]

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[3] *See* 16 U.S.C. § 824(b)(1).

[4] *See Resolution on Preserving State Authority Over New Electric Generation* (July 16, 2014), attached hereto at Appendix.

[5] *Id.* (*emphasis added*).

Only States can maintain diverse generation resource options through, *inter alia*, ordering of long-term integrated resource planning, construction of new facilities, or contracts with generation developers that include terms necessary to ensure such construction. Even FERC acknowledges that States continue to have authority to create incentives "for the construction of new capacity by entering into long-term bilateral agreements."[6]

FERC itself has no authority to order the construction or siting of new generation; nor the resources to handle the task; nor the authority to require that the need for such construction be determined *exclusively* by a FERC-supervised short-term market.

Recent and pending federal environmental regulations have placed even more pressure on States' ongoing plans to adjust generation sources while maintaining reliability. *If the decision below stands, it can only significantly undermine State authority to ensure reliable electric service and invite countless needless lawsuits over any related State programs that have a similar impact.* Delay in bringing new generation resources online can

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[6] *PJM Interconnection, LLC*, 115 FERC ¶ 61,079 at P172 (2006). *See also New York v. FERC*, 535 U.S. 1, 24 (2002) (*quoting* FERC Order No. 888 at 31,782 n.544) (the FPA protects State authority over "integrated resource planning and utility buy-side" decisions and "utility generation and resource portfolios.").

threaten the reliability of the electric grid. The Court should vacate the decision below.

SUMMARY OF ARGUMENT

Congress, in the FPA, expressly preserved State's authority over electric generation as well as local utilities.[7] The Fourth Circuit decision undermines States' FPA-preserved authority to assure reliable electric service. It raises the prospect of additional challenges to States' integrated resource planning, utility procurement decisions, utility generation, and resource portfolios. The decision improperly applies the "field preemption" doctrine where Congress has expressly acknowledged States' exclusive jurisdiction. It applies "conflict preemption" where even the responsible agency, FERC, finds none.

The practical impact is to hamstring States' ability to engage in the long-term planning required to ensure safe and reliable electric service.

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[7] 16 U.S.C.S 824 et seq.; *compare*, *Conn. Dep't of Pub. Util. Control v. FERC,* 569 F.3d 477, 481 (D.C. Cir. 2009) ("State. . . authorities retain the right to forbid new entrants from providing new capacity, to require retirement of existing generators, to limit new construction to more expensive, environmentally-friendly units, or to take any other action in their role as regulators of generation facilities without direct interference from the Commission. Of course, those choices . . . affect[ ] the market clearing price for capacity.").

ARGUMENT

Congress preserved States' exclusive regulatory responsibility for assuring generation resource adequacy for retail customers.[8] Under the FPA, States may even limit new construction to more expensive, environmentally–friendly units.[9] Even FERC recognizes that States, in pursuing legitimate policy goals, can procure new generation capacity, even when short-term market prices may suggest new capacity is not needed.[10] The decision below unlawfully constrains States' ability to ensure resource adequacy and will have significant practical consequences.

NARUC specifically endorses the arguments presented in both Petitioner briefs. However, we respectfully supplement those arguments to aid the Court in fully understanding the national impact of the Fourth Circuit decision on State FPA-sanctioned

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[8] *See New York v. FERC*, 535 U.S. 1, 24 (2002) (enumerating areas of State authority to include: reliability of local service, administration of integrated resource planning and utility buy-side and demand-side decisions, including demand-side management, authority over utility generation and resource portfolios, and *authority to impose distribution or retail stranded cost charges*).

[9] *Conn. Dep't of Pub. Util. Control v. FERC*, 569 F.3d 477, 481 (D.C. Cir. 2009).

[10] *ISO New England, Inc.*, 135 FERC ¶ 61,029, P20 (2011).

responsibility to assure reliable, safe, and affordable electric services.

I. Field Preemption Cannot Apply Where Congress Has Specified State Jurisdiction.

A. State authority over generation, siting, and retail utilities predate the FPA.

State authority, either directly or through local subdivisions, over generation matters predate the FPA. In the mid to late 1800s, electric utilities were regulated by municipal franchises which, *inter alia*, set price ceilings and service thresholds through twenty- to fifty-year contracts.[11] State-level regulation began around 1910 with the establishment of public utility commissions (PUCs).[12] Generally, the laws governing these

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[11] Werner Troesken, Regime Change and Corruption: A History of Public Utility Regulation, in CORRUPTION AND REFORM: LESSONS FROM AMERICA'S ECONOMIC HISTORY 260-61 (Edward L. Glaeser and Claudia Goldin, eds., 2006), http://www.nber.org/chapters/c9986.

[12] Although States had commissions that regulated railroads and other matters starting with Rhode Island in 1839, Massachusetts created the first statewide commission to regulate public utilities (gas and electric) in 1887. *Id.* at 262; Robert L. Swartwout, *Current Utility Regulatory Practice From A Historical Perspective*, 32 Nat. Resources J. 289, 300 (1992). In 1907, New York and Wisconsin established the first State utility regulatory commissions with full regulatory

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commissions charge them with the duty to protect (1) utility customers; (2) utility investors; and (3) the general public.[13] New Mexico's statute is typical:

> It is the declared policy of the state that the public interest, the interest of consumers and the interest of investors require the regulation and supervision of such public utilities to the end that reasonable and proper services shall be available at fair, just and reasonable rates, and to the end that capital and investment may be encouraged and attracted so as to provide for the construction, development and extension, without unnecessary duplication and economic waste, of proper plants and facilities for the rendition of service to the general public and to industry.[14]

PUCs have several functions. The functions vary somewhat among the states, but the "first and best established functions of the state commission are to

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authority. Swartwout at 300-301. By 1920, nearly every State had established a utility commission. *Id.* at 301.

[13] *Id.* at 303.

[14] *Id.* at 303 (emphasis added).

determine a utility's revenue requirement and to establish prices or rates for each customer class."[15]

Along with setting a utility's revenue requirement and customer rates, PUCs also have authority over a utility's resource acquisitions, which can take several of forms. It can include: (1) examining the amount of resources necessary through long-term planning processes referred to as integrated resource planning to determine the target for future investments in generation, transmission, distribution and energy efficiency; (2) regulating the type of generation through mechanisms like renewable energy portfolio standards, which require utilities to meet a certain percentage of their demand with designated types of renewable resources; (3) requiring an alternative to meeting demand through new resources by mandating energy efficiency standards; (4) reviewing proposed plans for power plants and approving, rejecting or modifying those plans; or (5) conducting prudence reviews of new construction or other capital projects.[16]

To date, States have met their mandate to ensure reliable service through a variety of tools. Long-term contracts have been the mainstay of non-

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[15] Regulatory Assistance Project, *Electricity Regulation in the US: A Guide*, 25 (2011), www.raponline.org/docs/RAP_Lazar_ElectricityRegulationInTheUS_Guide_2011_03.pdf.

[16] *Id*. at 25-26.

utility power development for three decades, never questioned on Constitutional or other grounds.

B. The FPA preserves State authority over generation and retail utility services.

Where State regulation exists, this Court has required a clear showing of congressional intent to preempt in any subsequent federal enactment.[17] Prior to the FPA, States unequivocally possessed authority over resource adequacy as part of their traditional police powers. That authority included jurisdiction to order utilities to construct or procure new generation.

In the FPA, Congress preserved States' authority over resource adequacy. The FPA expressly excludes FERC from matters traditionally regulated by the States and expressly preserves State authority over generation[18] by including a "specific grant of power to the States to regulate production."[19]

The rise of regional transmission organizations did not change State authority over purchasing decisions of regulated electric distribution utilities. States continue to regulate and approve contracts to

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[17] *See Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947).

[18] 16 U.S.C. § 824(a) & (b)(1).

[19] *See Nazarian*, 753 F.3d 467, 480 (*citing NW Cent. Pipeline Corp*, 489 U.S. 493, 515 (1989)).

ensure resource adequacy. Because this is precisely the task Congress left to States, field preemption is simply not applicable. There is no explicit statutory text that precludes the actions taken by Maryland in the case below.

This misapplication of the field preemption doctrine to generation procurement, an area where States have clear authority, can only undermine States' ability to act in related areas. If the Fourth Circuit did correctly apply the field preemption doctrine, <u>any</u> State effort to allow a generator to earn more money than it otherwise would through wholesale capacity sales would always be preempted if such additional <u>income</u> is determined to be a rate received for their capacity.[20] Until this decision, State authority over integrated resource planning, utility procurement decisions, utility generation, and renewable generation portfolios was reserved unequivocally by Congress. But, under the Fourth Circuit's rationale, these crucial tasks are all subject to the same legal challenge.

In the FPA, Congress recognized that continued oversight of generation and retail utility rates and practices should remain at the State level.

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[20] *Id.* at 476. As discussed by Petitioners, even if these contracts are FERC-jurisdictional, preemption is still not warranted because FERC could review them to determine if they set just and reasonable rates. *See* Brief for Petitioner CPV Maryland, LLC at 12 n.9, *Hughes et al. v. PPL EnergyPlus, LLC*, No. 14-623, (U.S. docketed Dec. 8, 2015).

II. There is No Conflict Between the FERC-mandated Capacity Auction and the Maryland-approved Contract for Differences.

New power plants cost billions. A reasonable financier could require assurances like a dedicated income stream prior to breaking ground. That is why long-term contracts are an essential option to the financing and construction of new power plants.[21] It is also why it is common practice for States to conduct procurements to develop new power plants. The Fourth Circuit decision eliminates the States' Congressionally-sanctioned ability to ensure resource adequacy by preventing utilities from entering into competitively-procured long-term power plant construction contracts if the winning bidder earns a single dollar more than it would from its wholesale capacity sales. This inhibits development of new generation and disrupts one of the major functions of a PUC, which is risk management.

Here, Maryland determined, after receiving reports regarding reliability concerns, that the risk to providing reliable service was greater than the investment risk of entering a long-term contract. In a wholesale capacity market, the risk involved with investment decisions is borne by the independent

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[21] *See* American Public Power Association, *Power Plants Are Not Built on Spec—2014 Update* at 2 and Table 1 (2014), http://goo.gl/t62QuS.

power producers. A contract for differences like the one used by Maryland shifts some of the risk back to the utilities and ratepayers from the independent power producers. Maryland trades the risk, on behalf of utilities and ratepayers, that they will pay more through a long-term contract than they would have through the market for the assurance of reliability for a twenty-year period. CPV trades off the risk that price volatility would prevent it from earning a suitable return on its investment with the risk of losing out on possibly higher returns. Maryland mitigated some of the financial risk of the contract for its interest groups by requiring as part of the contract that CPV clear the PJM capacity auction. Under the PJM market rules, without this requirement, the utilities and the ratepayers "could have had to pay twice for the capacity–once to CPV and again to PJM–with no offsetting revenue."[22] The current market structure alone was not allowing Maryland to fulfill its obligation to manage the risk of unreliable service to the groups whose interests it protects because the market could not provide a way to secure the reliable service that Maryland needed.[23] In this case, reliable service

[22] Brief for Petitioners Hughes et al. at 21, 42-43, *Hughes et al. v. PPL EnergyPlus, LLC*, No. 14-623, (U.S. docketed Dec. 8, 2015). Bearing this kind of risk would be an acceptable condition for a willing seller like CPV because if it did not clear the market, then it would not be under a capacity obligation and it would not have to make the investment in the new power plant.

[23] FERC-supervised capacity markets offer the

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required a long-term investment in a specific area. By entering a long-term contract for differences involving the capacity market, Maryland was able to address the risk to reliable service.

This is entirely consistent with both the express text of the FPA and existing FERC regulations. Maryland's acceptance of a contract for differences between CPV and its utilities for twenty years does not conflict with FERC's authority to conduct wholesale capacity markets or the functioning of the PJM capacity auction. The contract for differences required CPV to submit a bid into the auction and clear the auction. PJM evaluated CPV's bid under the cost-based minimum offer price rule (MOPR). After an adjustment, PJM allowed CPV to submit its bid. CPV's PJM-approved bid cleared the auction.

Conflict preemption occurs "when there is outright or actual conflict between federal and state

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participants the opportunity to sell or purchase electric capacity in the short-term, e.g., a month, season, year; the PJM auction that is the most forward looking is one that is for one year of capacity three years in the future. FERC Office of Enforcement, *Energy Primer: A Handbook of Energy Market Basics* 61 (2015), http://perma.cc/U9AG-K4M6. This approach promises generators and utilities still only relatively short-term assurances, though in the PJM market some new entrants can lock-in their initial clearing price for a three-year period. *See PJM Interconnection, LLC*, 128 FERC ¶ 61,157, at P 92 (2009).

law, e.g., where compliance with both federal and state law is in effect physically impossible . . . ."[24] FERC has stated that even in circumstances where resources receive discriminatory subsidies, if the resource clears with a MOPR bid, "then it is a competitive resource and should be permitted to participate in the auction regardless of whether it also receives a subsidy."[25] Moreover, on rehearing, FERC affirmed the MOPR and found that it reconciled the "tension" between State policies seeking to construct specific resources and FERC's obligation to ensure the justness and reasonableness of the wholesale market prices.[26] There can be no conflict if the federal agency charged with implementing the federal law acknowledges that the two can coexist.

The Fourth Circuit also found that the length of the contract for differences created a conflict with the PJM market because of PJM's New Entry Price Adjustment (NEPA).[27] This is a non-sequitur. The NEPA is a mechanism within the market that allows certain new generators to lock in their initial

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[24] *La. Pub. Serv. Comm'n v. FCC*, 476 U.S. 355, 368 (1986) (citations omitted).

[25] *PJM Interconnection, LLC*, 135 FERC ¶ 61,022, P 177 (2011), *on reh'g*, 137 FERC ¶ 61,145 (2011), *reh'g denied*, 138 FERC ¶ 61,160, *and reh'g denied*, 138 FERC ¶ 61,194 (2012), *review denied sub nom. N.J. Bd. of Pub. Utils. v. FERC*, 744 F.3d 74 (3d Cir. 2014).

[26] *PJM*, 137 FERC ¶ 61,145, P 4.

[27] *Nazarian*, 753 F.3d at 479.

clearing bid for three years. The Fourth Circuit concluded that because the contract for differences was for a twenty-year period, it was in direct conflict with this mechanism and FERC policy. Generators receiving the NEPA are selling a different product into the market, namely short-term capacity, where both their pricing and their obligation to provide capacity are short term. In contrast, in the contract for differences, CPV is selling its capacity indirectly to the utility at a set rate for a twenty-year obligation. As with a finding of field preemption, a finding of conflict preemption also puts at risk a whole range of other activities currently within State authority. Furthermore, FERC has affirmed the right of parties to contract for longer time periods.[28]

CONCLUSION

Elimination of the ability of States to procure new generation through long-term contracting eliminates a major long-term planning and risk management tool. Any curtailment of a State's ability to engage in long-term resource adequacy planning will necessarily reduce reliability of generation sources. Moreover, FERC does not stand in a position to substitute for States in terms of long-term resource adequacy planning. FERC cannot order generation, even to compel generating

[28] *PJM Interconnection, LLC*, 107 FERC ¶ 61,112, P 20 (2004), *on reh'g*, 110 FERC ¶ 61,053, *on reh'g*, 112 FERC ¶ 61,031 (2005), *on reh'g*, 114 FERC ¶ 61,302 (2006).

facilities as a means of remedying insufficient service.[29] Eliminating this tool will also have an impact on States' ability to comply efficiently with federal environmental programs such as the U.S. Environmental Protection Agency's Clean Power Plan.[30] States need all the regulatory tools possible to respond to resource adequacy concerns and federal environmental requirements.

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[29] *See* 16 U.S.C. § 824f.

[30] The Clean Power Plan is the U.S. Environmental Protection Agency's name for the final rule titled "Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units." 80 Fed. Reg. 64,662 (October 23, 2015) (to be codified at 40 C.F.R. pt. 60).

For the reasons set forth, *supra*, NARUC urges the Court to reverse the decision of the court of appeals.

Respectfully submitted,

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December 15, 2015

APPENDIX

Resolution on Preserving State Authority Over New Electric Generation

WHEREAS, The National Association of Regulatory Utility Commissioners (NARUC) is a national organization representing State Commissions statutorily responsible for regulating utilities that provide energy services; *and*

WHEREAS, State Commissions have a statutory obligation to ensure that the electric utilities they regulate provide safe and reliable service to retail customers at just and reasonable rates; *and*

WHEREAS, State Commissions have long had exclusive regulatory responsibility for assuring generation resource adequacy for retail electric customers; *and*

WHEREAS, In Section 201 of the Federal Power Act (FPA), Congress specifies that federal regulation under the FPA "extend[s] only to those matters that are not subject to regulation by the States"; *and*

WHEREAS, The FPA reserves to the States authority over facilities used in the generation of electric energy; *and*

WHEREAS, The FPA protects State authority over "integrated resource planning and utility buy-side" decisions and "utility generation and resource portfolios," *New York v. FERC*, 535 U.S. 1, 24 (2002) (*quoting* FERC Order No. 888 at 31,782 n.544); *and*

WHEREAS, Over the last several years, storms and periods of extraordinary weather events have challenged the existing generation infrastructure; *and*

WHEREAS, Numerous States have enacted or are considering the enactment of statutes and their commissions have implemented or may consider implementing programs designed to address the States' need to ensure the construction of new generation, to maintain existing generation, and to address environmental concerns; *and*

WHEREAS, The U.S. Court of Appeals for the Fourth Circuit, in its published decision in *PPL EnergyPlus, LLC v. Nazarian*, __ F.3d __, 2014 WL 2445800 (4th Cir. June 2, 2014), has ruled that Maryland's programs providing for regulated retail utilities to contract with new generators are preempted by the FPA; *and*

WHEREAS, The U.S. District Court for the District of New Jersey, utilizing the same reasoning as adopted by the 4th Circuit, ruled that New Jersey's statute which is similar to Maryland's program, is also preempted by the FPA, *PPL EnergyPlus, LLC v. Hanna*, 977 F. Supp. 2d 372 (D.N.J. 2013), appeal pending, Nos. 13-4330 et al. (argued Mar. 27, 2014); *and*

WHEREAS, The application of broad and sweeping field preemption doctrine in these two decisions has the potential to adversely impact the

States’ FPA-protected authority over integrated resource planning, utility procurement decisions, utility generation, distribution, and resource portfolios; *and*

WHEREAS, The two decisions' application of broad and sweeping field preemption doctrine to prohibit or invalidate State-sanctioned contracts supporting new generation undermines and conflicts with the State Commissions' jurisdictional authority to ensure clean, affordable and reliable electric energy; *now, therefore be it*

RESOLVED, That the Board of Directors of the National Association of Regulatory Utility Commissioners, convened at its Summer Meeting in Dallas, Texas, continues to support legal and legislative actions to protect and preserve States’ authority to decide the type, amount and timing of new or existing generation facilities that will be constructed or maintained within the State to achieve legitimate State policy objectives; to promote such new development through State supervision of retail utility contracting; to safeguard and guarantee States' continued right to operate programs to procure new generation or maintain existing generation for reliability, affordability and environmental purposes through use of long-term contracts or any State statutory or regulatory actions; and to ensure that nothing in the Federal

Power Act be deemed to preempt or prohibit such activity by the States.

Passed by the Committees on Electricity and on Energy Resources and the Environment.

Adopted by the Board of Directors, July 16, 2014.