

Resolution on the Federal Energy Regulatory Commission's Proposed Rules on Open Access Wholesale Transmission Services and Recovery of Stranded Costs

WHEREAS, On March 29, 1995, the Federal Energy Regulatory Commission (FERC or the Commission) issued two notices of proposed rulemaking proposing to revise its rules (1) to require electric utilities subject to its jurisdiction under sections 205 and 206 to file non-discriminatory open-access transmission tariffs, and (2) to establish policies and procedures permitting utilities to recover the costs that are "stranded" when a wholesale or retail customer changes power suppliers; *and*

WHEREAS, The open-access proposal would require, by rule, that utilities provide comparable wholesale transmission services to third-parties on a functionally unbundled basis; *and*

WHEREAS, The stranded cost proposal would, among other things, allow utilities to petition the Commission to recover certain costs of providing retail service; *and*

WHEREAS, In 1994, the National Association of Regulatory Utility Commissioners adopted resolutions on an earlier FERC proposal on stranded costs stating the Association's views that "it is the jurisdictional responsibility of the States" to determine policies for the recovery of stranded costs; *and*

WHEREAS, If adopted, the Commission's proposals would be the most significant regulatory development affecting the structure and operation of the electric utility industry since the enactment of the Federal Power Act in 1935, surpassing the initiatives implemented as a result of the enactment of the Public Utility Regulatory Policies Act in 1978 and the Energy Policy Act of 1992; *now, therefore, be it,*

RESOLVED, That the Executive Committee of the National Association of Regulatory Utility Commissioners (NARUC), convened in its 1995 Summer Meeting in San Francisco, California, hereby commends the Commission and its staff for its willingness to work with the State regulatory commissions in developing its proposed rules, and pledges to continue to work cooperatively with the Commission to develop and implement policies at both Federal and State levels which serve the public's interest in affordable and reliable electric service provided in an economically efficient and environmentally appropriate manner; *and be it further*

RESOLVED, That the NARUC endorses the following Statement of Principles as its position on the issues raised by the Commission's proposals:

- I. Open Access, Non-discriminatory Transmission Services -- Docket No. RM95-8-000
 - A. Introduction--

The NARUC supports FERC's goal of fostering the development of a workably competitive electric industry at the wholesale level. While individual States have questions as to whether FERC can or should proceed with the proposed generic approach, NARUC adopts this statement of principles:

B. Market-Based Pricing --

The NARUC supports reliance on competitive markets where they can improve the efficient delivery of electric services and thereby benefit consumers. Accordingly, the Association generally supports FERC's efforts to consider implementing a market-based pricing approach for new wholesale generation. The NARUC believes that such consideration is timely given State commission programs which require electric utilities to procure bulk power supplies on a competitive basis. Until wholesale power markets become fully competitive, we foresee a continuing need for FERC to supervise wholesale power sales markets, including use of cost-based methodologies where appropriate. However, FERC regulation of wholesale sales does not preempt the ability of States to supervise power purchase decisions, including supervision of distribution utility resource portfolios.

C. State Jurisdiction --

The NARUC supports continued State authority to regulate retail utility services including (1) the need for, siting and use of transmission facilities for the benefit of retail customers of the transmission-owning utility, (2) the identification, allocation and recovery of costs of transmission services provided on behalf of retail ratepayers, and (3) structural issues related to the provision of retail services, such as functional unbundling, structural separation, or divestiture of generation, transmission and distribution services now reflected in bundled retail services. In particular, States should remain the ultimate authority to regulate retail access.

Transmission facilities are used to provide services subject to both State and Federal jurisdiction. With respect to retail transmission services, NARUC believes that there is no need for a jurisdictional test because retail transmission and distribution services are subject to State jurisdiction. Accordingly, we submit that the Commission's conclusion that the FPA provides it with exclusive jurisdiction over unbundled transmission services provided to retail customers is not legally correct. Further, we have serious reservations concerning the workability of the Commission's proposed "functional test" for determining the dividing line between unbundled retail transmission and distribution. Where there is concurrent jurisdiction, NARUC pledges its willingness to work with the

Commission and its staff to develop workable alternatives involving principles of mutual deference implemented on a State specific or regional basis.

D. Native Load --

The NARUC expects that functional unbundling of wholesale transmission services will have an effect on rates and conditions of transmission services provided a utility's wholesale and retail native load consumers. Because these consumers have borne the vast majority of the costs of the utility's transmission facilities and because the utility's obligation under State law or FERC-approved contract is to provide these consumers reliable and affordable service, they should not bear any burden due to the transition to an open access transmission regime. Native load customers should be held harmless with respect to such issues as their priority of service, quality of service, and allocation of joint and common costs. We support FERC transmission policies that assist in the evolution to economically and environmentally efficient regional markets that will provide benefits to all customers, wherever located.

E. State/FERC Joint Processes --

Because of the division of jurisdictional authority established by the FPA, neither the FERC nor the State commissions can reasonably manage the transition to a more competitive industry unilaterally. Accordingly, it is necessary that the FERC and the State commissions quickly establish processes to coordinate actions relating to services and facilities of mutual State and Federal concern, i.e. through a process of cooperative federalism. Such processes could encompass coordination of transmission pricing and cost allocation, identification and recovery of transition costs, regulation of so-called "ancillary services" on an unbundled basis, and the possible role of regional transmission groups to resolve cross-jurisdictional issues. We again express our strong support for the FERC and the States to develop creative approaches to the use of RTGs, other regional groups or joint processes to which FERC would defer, as the means to address and resolve region wide issues of mutual concern.

F. Ancillary Services --

In general, the NARUC supports the Commission's proposal to require that so-called "ancillary services" be offered on an unbundled basis. However, we urge the Commission to identify those ancillary services that involve the operation of generation facilities (which are subject to State regulation) and use the processes described in Principle E above for their resolution. With respect to the FERC's proposed RINS system, we believe that the Commission should not require disclosure of generation-based

proprietary information which can undermine the efficient functioning of a competitive market. We urge the careful consideration of the pricing of ancillary services. The use of market pricing must be based upon genuinely competitive opportunities. In addition, for reliability purposes, appropriate charges should be required to provide that the necessary appropriate ancillary services are purchased.

II. Stranded Costs -- Docket No. RM94-7-001

A. Retail Stranded Costs --

It is the jurisdictional responsibility of the appropriate State authorities to address the question of retail 'stranded costs' according to procedures established in State law. There are no instances in which jurisdiction over retail costs is unclear, and therefore, FERC has no authority over retail cost recovery. In certain instances, such as municipalization and cooperatives, where retail customers become wholesale customers under a FERC-approved open access tariff, costs of the utility which served the customer at retail may become stranded. A practical regulatory gap may exist that prevents State commission consideration of recovery of these potentially strandable costs, which would be inequitable. Where the gap exists, the affected States and the FERC should develop collaboratively a mechanism to address this gap in order to provide an equitable result.

B. Stranded Benefits --

Any federal actions taken with respect to electric industry competition and restructuring must not foreclose the ability of the States and State regulatory commissions to secure public benefits within the several States. Members of the NARUC are committed to promote environmental, fuel diversity, efficiency and equity goals in cooperation with federal regulators and State legislatures to further the long-term public interests of both the nation and individual States.

FERC has focused primarily on the recovery of past costs. In addition, the Commission's final rules must accommodate and must not preempt the ability of the States to establish competitively-neutral, non-discriminatory, non-bypassable fees to fund, on a going-forward basis, such programs as low-income assistance, DSM and energy efficiency, environmental mitigation and research and development. In addition, in considering whether particular transactions are "sham transactions," the FERC should consider, in addition to other factors, whether the transaction would bypass and strand programs and policies that the State has determined to be in the public interest.

C. Calculation of Stranded Costs --

Because FERC has no jurisdiction over retail stranded cost recovery, its calculation methodology cannot be applied to retail cost issues. Moreover, the NARUC is concerned about the workability of the FERC's revenues-lost approach, because it involves administrative projections of what revenues a departing retail customer would have contributed to the utility and what the level of market prices will be. Over time, these calculations will result in under or over recovery of actual costs stranded by the customer's departure.

D. Mitigation --

With respect to FERC's jurisdiction to regulate the recovery of wholesale stranded costs, NARUC supports the Commission's proposal to establish a general obligation upon utilities to mitigate their stranded costs exposure which would be assessed through evidentiary hearings on a case-by-case basis. Such an assessment should not reopen questions of prudence previously decided by the State commission.

*Sponsored by the Committees on Electricity and Energy Conservation
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