

Resolution Regarding the Pursuit of Nuclear Waste Program Reform

WHEREAS, Congress, in the Nuclear Waste Policy Act (NWPA) of 1982, directed the Department of Energy (DOE) to begin disposing of commercially generated spent nuclear fuel by January 31, 1998 in return for electric utility payments to the Nuclear Waste Fund; *and*

WHEREAS, The United States Court of Appeals recognized that Section 302(a)(5)(B) of the NWPA creates an obligation of the DOE, reciprocal to the utilities' obligation to pay, to start disposing of spent nuclear fuel no later than January 31, 1998 and the DOE chose not to appeal the Court's decision; *and*

WHEREAS, Electric utility contributions, funded by ratepayers, as required by the NWPA, to the Nuclear Waste Fund of approximately \$600 million annually and since 1983 have contributed, including interest, a total of over \$12 billion to this fund; *and*

WHEREAS, The DOE claims that, under the existing statutory and regulatory framework, the DOE will be unable to begin accepting spent nuclear fuel for disposal on January 31, 1998 which will constitute a breach of contract; *and*

WHEREAS, The member Commissioners of the National Association of Regulatory Utility Commissioners (NARUC) are obligated to protect the interest of electric utility ratepayers and as such are increasingly concerned about the propriety of continuing to allow recovery of payments into the Nuclear Waste Fund; *and*

WHEREAS, The NARUC has encouraged State public utility commissions to investigate the legal and policy issues surrounding the potential failure of the Federal government to provide timely storage and disposal of spent nuclear fuel including the Federal government's collection and use of funds for the spent nuclear fuel disposal program; *and*

WHEREAS, Several State utility commissions, including Virginia, Minnesota, Iowa, South Carolina and Mississippi have initiated State-specific investigations to explore the issue of escrowing Nuclear Waste Fund payments; *and*

WHEREAS, The United States Court of Appeals did not prescribe a specific remedy if the DOE does not begin accepting spent nuclear fuel by January 31, 1998; *and*

WHEREAS, The 104th Congress failed to adopt comprehensive nuclear waste legislation to reform the existing program and establish an integrated nuclear waste management and disposal program; *now, therefore, be it*

RESOLVED, That the National Association of Regulatory Utility Commissioners (NARUC), convened at its 108th Annual Convention in San Francisco, California, recognizes that the January 31, 1998 deadline for the DOE to begin accepting spent nuclear fuel for disposal is fourteen (14) months away and because the DOE will not

fulfill its obligation under its current program plan, several options can and should be pursued by NARUC to protect the ratepayers; *and be it further*

RESOLVED, That all interested parties are encouraged to work with the NARUC in protecting the ratepayers as the NARUC:

- 1) Works constructively with the U.S. Senate, the U.S. House of Representatives, and the Executive Branch to pursue as a high and immediate priority of the 105th Congress legislation reforming our Nation's high-level radioactive waste program in a manner consistent with the NARUC principles.
- 2) Urges the DOE to meet its January 31, 1998 deadline.
- 3) Considers further federal court action requesting relief and damages from the DOE's anticipated breach of the January 31, 1998 obligation to begin accepting spent nuclear fuel.

Sponsored by the Committee on Electricity
Adopted November 20, 1996