Resolution Regarding State Authority over Public Utility Resource Planning

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

WHEREAS, To the extent allowed by Section 201, FPA Section 217 requires FERC to merely facilitate planning and expansion of the transmission facilities to meet the reasonable needs of load-serving entities to serve their service obligations and does not otherwise expand FERC’s Section 201 jurisdiction; and

WHEREAS, For decades States have exercised jurisdiction over, inter alia, planning and siting of transmission lines and issuance of related certificates, as well as approved utility integrated resource plans, other resource adequacy determinations, interconnections to distribution facilities, retail rates, and determinations of the reasonable needs of load-serving entities to meet State service obligations; and

WHEREAS, NARUC previously resolved that the cost of upgrades and expansions necessary to support incremental new loads or demands on a transmission system should be borne by those requiring the upgraded service; and

WHEREAS, FERC’s Order No. 1000 requires each jurisdictional utility that provides transmission service to participate in regional and interregional planning processes that must consider transmission needs driven by “public policy requirements” and include a regional cost allocation method for any new facilities; and

WHEREAS, Order No. 1000 does not define the word “beneficiaries” and therefore FERC’s rulings on Order No. 1000 compliance filings may result in transmission planning and cost allocations that conflict with State jurisdiction and policies; and

WHEREAS, NARUC has filed FERC pleadings raising the concern that Order No. 1000 can be construed to interfere with States’ ability to fully execute their jurisdictional responsibilities, and

WHEREAS, In some regions of the country without organized wholesale markets, FERC-jurisdictional and non-FERC-jurisdictional utilities such as public power entities and federal power marketing agencies have cooperated extensively to pursue transmission planning and cost allocation approaches that are suitable to those regions, and States have engaged vigorously in those cooperative efforts; and

WHEREAS, The absence in Order No. 1000 of proper recognition of the decisive role States and cooperative regional planning processes play could actually delay successful transmission planning and cost allocation; and
WHEREAS, Order No. 1000-A expressly disclaims any intent to undermine the States’ role, stating: “nothing is intended to preempt or otherwise conflict with State authority over the siting, permitting, and construction of transmission facilities or over integrated resource planning and similar processes;” and

WHEREAS, In the course of reviewing Order No. 1000 transmission compliance filings, FERC has taken, in certain regions, and may continue to take, action contrary to that statement; and

WHEREAS, States have demonstrable expertise and in-depth knowledge of local and regional conditions derived from decades as the primary overseer of utility resource planning, as well as associated transmission planning and expansion, and, like our federal counterparts, are adjudicators of the “public interest,” and

WHEREAS, Because of that status and history, States should not be relegated to the status of a mere “stakeholder” on these crucial issues nor should FERC action on Order No. 1000 compliance filings undermine or supersede State policies respecting transmission needs assessments, transmission siting, permitting and construction, integrated resource planning processes, reliability, and regional coordination of bulk electric systems; now, therefore, be it

RESOLVED, That the Board of Directors of the National Association of Regulatory Utility Commissioners, convened at its 2013 Summer Committee Meeting in Denver, Colorado, concludes that Order No. 1000, as implemented, inappropriately infringes on State authority reserved by Congress over integrated resource plans, generation and transmission decisions, assurance of resource adequacy and reliability, and authorization and construction of new facilities; and be it further

RESOLVED, That FERC, in future compliance orders, should properly recognize the crucial role of the States and their role in shaping regional transmission planning and cost allocation policies; and be it further

RESOLVED, That FERC should implement Order No. 1000 in a more flexible manner, giving deference to cooperatively developed regional solutions for regional needs, as advocated by States.

Sponsored by the Committee on Electricity
Adopted by the NARUC Board of Directors, July 24, 2013