

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