

Resolution on the Separation of the National Regulatory Research Institute from the Ohio State University and Transition to a Reconstituted Institution

BE IT RESOLVED, By the Board of Directors of the National Association of Regulatory Utility Commissioners (NARUC) that the National Regulatory Research Institute (NRRI) be separated from The Ohio State University (OSU) following appropriate notice provided to the College of Engineering at OSU and the NRRI Board of Directors; *and be it further*

RESOLVED, That the Board of Directors commends The Ohio State University for its 30-year stewardship of NRRI and expresses its deep appreciation to OSU for its steadfast support for NRRI; *and be it further*

RESOLVED, That the Board of Directors directs that NRRI be reconstituted as NARUC's affiliated research institute pursuant to the attached NRRI Transition Plan.

Sponsored by the Executive Committee

Adopted by the NARUC Board of Directors July 18, 2007

ADDENDUM
NRRI's Transition Plan:
For Presentation by the NRRI Board
to the
NARUC Executive Committee and the NARUC Board

Approved by the NRRI Board June 11, 2007
Endorsed by the NARUC Executive Committee June 28, 2007

This document sets forth the NRRI Board's description of NRRI for the interim period beginning with the departure from Ohio State University. The expectation is that this interim period will last about 18 months, during which time NRRI and NARUC will determine its permanent arrangements. This document is in summary form to expedite review. Any reader wishing more detail may contact Scott Hempling, NRRI Director; David Coen, NRRI Board Chair; or Charles Gray, NARUC Executive Director.

This document covers the following topics:

1. Mission
2. Products and Activities
3. Staffing
4. Corporate form
5. NRRI Relationship to NARUC
6. NRRI Affiliations (with entities other than NARUC)
7. Governance
8. Fiscal Parameters
9. Physical Location

1) Mission

NRRI's mission is to ensure that utility regulation achieves the highest possible quality, through the provision of indispensable research services to State commissions. This mission statement has implications for NRRI's work priorities, its quality, its values and its jurisdictional focus.

To achieve its mission, NRRI must (a) identify all regulatory challenges requiring research, (b) create or stimulate creation of the new knowledge necessary to meet those challenges, (c) democratize access to existing knowledge necessary to meet those challenges and (d) lead opinion making on principles of high-quality regulation.

2) Products and Activities

The products and activities must satisfy the mission statement's demand for both work that creates new knowledge and that democratizes access to existing knowledge. Assuming sufficient resources and successful recruiting, there will be five priority

products and services. This list is not exhaustive, as State commissions may demand additional types of products and services.

A. Research studies: These studies should satisfy seven criteria: (a) address previously avoided, difficult, sensitive questions; (b) break new ground; (c) emphasize prominent current issues and look-around-the-corner issues; (d) avoid obscure issues or issues that have only temporary interest; (e) have short gestation periods, e.g., two months; (f) cover the traditional sectors of water, telecommunications, gas, electricity, consumer affairs; and (g) demonstrate that NRRI's research is innovative, indispensable, useful and responsive.

B. On-line, interactive journal for each sector: Within his or her subject area, each researcher should create and maintain an on-line, interactive journal addressing issues of current interest. The journal would be web-based, and would include or involve (a) a list of groundbreaking research needs, (b) a list of advisors and contributors, (c) recruitment of experts to work on the issues, (d) current and past projects and publications, (e) “quick response” queries and answers, (f) archives of relevant past work, and (g) one or more comment areas in which experts can contribute essays and interim research reports on current matters.

C. Guide to current regulatory challenges: In each of the major industries – electricity, gas, telecommunications and water – there is a limited number of “big issues” facing regulators at any one time. For each of these issues, there are existing foundational research materials of which every regulator should be aware to achieve literacy and effectiveness. Each NRRI sector should prepare a section of our web site that contains these materials.¹

D. “Quick response”: It has been a long-time practice, popular with the regulatory community, for NRRI researchers to field phone calls from commissioners and staff on issues of specific and immediate importance to them. Sometimes these calls seek information already known to NRRI; others require new research. With scarce resources, there is tension between filling this need, and filling the others listed above. NRRI will likely create some type of allocation mechanism that grants to each State some minimum access to NRRI’s quick response time, and that also encourages States to pool their access rights.

E. Monthly essays from the Director on the quality of regulation: Consistent with NRRI’s role as an opinion leader on the quality of regulation, these essays will enter sensitive areas warranting candor about the practice of regulation. These essays would

¹ NRRI used to offer new commissioner tutorials. Due to budget constraints, the large amount of research demands, and the resources devoted to the transition, NRRI will not offer them generally in the immediate future. Future offerings will depend on several factors: demand, identification of the most effective means of delivery, interactions with other institutes, decisions of the NRRI Board, and decisions of the NARUC’s Board’s education and research subcommittee. Whoever offers such tutorials, NRRI’s individual personnel will be available to assist.

likely not be industry-specific, but instead would focus on the institution of regulation. Opportunities will exist for reader feedback.

3) Staffing

To accomplish the foregoing objectives within a conservative \$1.5 million budget,² NRRI expects to hire top experts who are committed to the mission, have mastery of regulation and at least one regulated industry, and demonstrate high productivity and the ability to discern and anticipate commission needs. For the interim period, there will likely be a mix of core employees and consultants. The goal will be to retain the best talent at the best price.

A preliminary view of staffing, consistent with the current budget, is: (1) one person each to preside over each of four subject areas: gas, water, telecomm, electricity; (2) at least one person to identify and work on cross-sector issues, such as consumer protection, infrastructure protection, climate change, mergers and acquisitions, and regulatory quality; (3) special subject matter consultants where there is need for special expertise; (4) the Director; (5) an administrator, to oversee fiscal, HR, office logistics, seminars, IT, external communications, and board matters; (6) student assistants to assist with routine work; and (7) consulting vendors for IT, accounting and bookkeeping, pension, and corporate legal affairs.

NRRI will seek to leverage these assets by attracting ambitious graduate students, college students, professors and consultants willing to donate their time.

4) Corporate Form

NRRI would be an independent corporation with Section 501(c)(3) (tax-exempt) status.

5) Relationship of NRRI to NARUC

The status quo NRRI-NARUC relationship (since 1982) has the following features.

- i) NRRI is a unit within OSU.
- ii) OSU is a contractor to NARUC, performing research services for NARUC's members as required by NRRI's Board.

² That figure, insufficient relative to the duespayers' needs, represents the officially invoiced dues less the historical unpaid dues. It does not include any revenues from contracts or seminars.

- iii) The majority of NRRI's Board members (and all non-OSU members) are appointed by NARUC's President, the remainder appointed by OSU's President.
- iv) NARUC collects NRRI dues from its members via a dues schedule approved by the NRRI Board and the NARUC Board.
- v) NARUC by contract with OSU must submit dues to OSU monthly.
- vi) OSU, not NARUC, is fiscally responsible for NRRI costs.
- vii) OSU, not NARUC, is legally responsible for any NRRI liabilities.

In the interim NRRI-NARUC relationship, NRRI would be corporately independent of NARUC. There would remain an oversight relationship, consisting of the following components:

A. Governance relationship: NARUC would establish NRRI as an independent corporation. The incorporation process will include certain governance, tax, fiscal and other requirements designed to ensure product accountability and fiscal accountability. NARUC's President would have the power to appoint all Board members, and NRRI's Board would have a majority of State commissioners. NARUC's education and research subcommittee would evaluate NRRI's performance.

B. Financial relationship: NARUC will have no financial obligation for NRRI debt. NARUC's Board would approve the NRRI dues structure. NARUC, through its Executive Committee and other means, also will review the NRRI budget. NARUC's financial staff will have access to NRRI's books.

C. Limited line of credit: The voluntary nature of dues payments makes NRRI's finances unpredictable, but dues-payers expect a constant flow of product. This variance between expectation of predictable product and unpredictable revenue flow requires cash flow coverage. In the interim model, NARUC will furnish a line of credit, per a contract between NARUC and NRRI and limited to this purpose of addressing the unpredictability of dues payments. The parties will negotiate the boundaries of the line of credit relationship, in terms of amount and length of time outstanding, and interest rate.³

D. Contractual relationship: A contract between NARUC and NRRI (such contract to be approved by the NARUC Executive Committee) would spell out NRRI's obligation to undergo an audit, and to report its finances to and open its fiscal books to, NARUC and its representatives. It would also establish the parameters on the line of credit that NARUC will make available to NRRI. The contract will make clear that NARUC has no obligation for NRRI liabilities.

³ Dues-paying practices vary among the States. The variables include, among other things: whether to pay, when to pay, the number of installments, whether payment should come from the commission or from the regulated utilities, (and if from regulated utilities, which regulated utilities, based on what metric). Where the payment comes from utilities, there also is variation among the States in terms of whether the payment is voluntary with the utilities or ordered by the commission.

6) NRRI Affiliations (with entities other than NARUC)

NRRI would have no exclusive affiliations with any institution, educational or otherwise. The Director would have discretion to enter into non-exclusive "affiliations," as necessary or helpful to NRRI's mission. For example, NRRI could have contractual or other arrangements with one or more graduate schools, under which students at such schools receive credit for working at NRRI, professors assist on NRRI work, or NRRI staff teach at the school. Or, NRRI could join an association of research institutes created to pool research needs, resources and ideas.

7) Internal Governance

This section addresses the membership of the Board of Directors and members' manner of appointment.

A. NRRI Board composition: The Board will have no more than twelve (12) members. The members would include:

NARUC Second Vice President

Other State commission members

NARUC Executive Director

NRRI Executive Director
Public members

The number of public members will not exceed five (5), and the number of State commission members (including the NARUC Executive Director) will exceed the number of public members. All members other than the NRRI Executive Director will be voting members.

B. Qualifications: Beginning with the fiscal year that starts July 1, 2008, a State commissioner's eligibility for Board membership is contingent on his or her commissioner's commitment to pay dues in full.

C. Procedures: Board shall elect one of its NARUC members as Chair. A majority of Board members shall constitute a quorum. NRRI Board Chair may appoint members of committees.

D. Manner of Board appointment: The NARUC President shall appoint all NRRI Board members to their initial term (which shall begin July 1st of the relevant year) or to fill the partial term caused by a vacancy. NRRI Board, NRRI Executive Committee, and/or NRRI Executive Director may recommend to the NARUC President specific individuals for appointment to the Board as well as desirable backgrounds, qualifications, affiliations, diversity and skill levels for potential appointees.

E. Term: Full term of an appointed Board member shall be three years. An appointed member may not serve more than two consecutive terms.

8) Fiscal Parameters

A. Budget year: As an independent corporation, NRRI will maintain its own set of books, operating on a July-June fiscal year basis. NRRI will be subject to audits as required by law or contract.

B. NARUC access to fiscal books: NARUC will assist in the setup of NRRI's fiscal books. NARUC's Chief Financial Officer and Executive Director will have regular access to these books. NRRI's fiscal circumstances will be reported regularly to the NRRI Board, and by the NRRI Board Chairman to the NARUC Executive Committee and NARUC Board.

C. NRRI Audit Committee: The NRRI Chairman will appoint an audit committee of the NRRI Board. The audit committee will include NARUC's Chief Financial Officer as an ex officio member.

D. NRRI transition budget: NRRI will propose to NARUC, for funding by NARUC, a transition budget consisting of one-time expenses necessitated by the move from OSU.

E. Dues: NRRI will invoice dues per the NARUC-approved dues formula approved by NARUC in 2006. NRRI will be responsible for all invoicing and collection. To the extent feasible and mutually compatible, NRRI and NARUC will negotiate a contract addressing NARUC's possible involvement in the collection and banking of dues payments.

9) Physical Location

NRRI's transitional physical location will be in the D.C. area, with the specifics to be determined by its Director, subject to NRRI Board review.