

Substantive Resolutions
Passed by the NARUC Board of Directors
at the
February 25-28, 2024
NARUC Winter Policy Summit
In Washington, D.C.

If you are interested in a particular resolution, you should read the entire resolution and not rely on the truncated description in the Table of Contents.

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Sponsor: Kimberly Barrow, PA PUC [Version: 0223 5:23 PM vz from Kimberly Barrow]

Resolution involves appeal of a novel federal district court decision that limits the scope of state permitting authority based on an expanded preemption analysis that will likely be cited in other statutory contexts. The resolution supports the existing scope of FERC authority advanced by the PA PUC in the appeal and opposes the novel district court analysis.

***EL-2 Resolution on EPA’s Regulation of Greenhouse Gas Emissions from New and Existing Power Plants*.....4**

Sponsor: Kent Chandler, KY PSC [Version: 0216 0417:25 PM vz from Kent Chandler]

Resolution urges the EPA, in developing any carbon emissions guidelines for new or existing plants, to recognize the primacy of states, and to rely on both state utility and environmental regulators to lead the creation of emission performance systems that reflect the policies, energy needs, resource mix, and economic conditions of each state and region; and ensure that if EPA issues rules, they (i) consider the impact of those rules on reliability and affordability; (ii) permit states maximum flexibility in meeting rules’ requirements; (iii) create rules flexible enough to allow states individually or regionally to take into account existing and planned power generation in each state and region to achieve the most cost-effective emissions reductions in each state; and (iv) credit states’ emissions reduction achievements to date, recognize any and all existing state emission reduction programs, and not intrude on the states’ jurisdiction over decisions regarding integrated resource planning and/or resource adequacy.

II. Committee on Telecommunications

***TC-1 Resolution Encouraging the FCC To Stop Robocalling and Improve the Efficiency of Numbering Resources by Auditing Telecommunications Carriers Failing to Legally and Efficiently Use Finite Telephone Numbers*.....7**

Sponsor: Tim Schram, NE PSC [Version: 0225 12:45 PM vz from Sherry Lichtenberg]

Resolution urges the FCC to act to provide updated guidance on how states should bring forward cases of telephone number resource mismanagement or suspected robocalling using rented telephone numbers to the Commission using the audit process outlined in 47 CFR 52.15(k).

EL-1 Resolution Supporting States' Jurisdiction to Render Transmission Permitting Authority

Whereas, states have long been the arbiter of transmission permitting within their boundaries, including but not limited to the purposes of siting, environmental review, and eminent domain;

Whereas, before and after the passage of the Federal Power Act, States continued to exercise their permitting authority over electric transmission facilities—an authority that is separate and apart from Federal Energy Regulatory Commission's (FERC) transmission and wholesale electricity ratemaking authority;

Whereas, in 2005, through the enactment of the Energy Policy Act of 2005, (Pub. L. No. 109-58, 1119 Stat. 594, *as amended*, Pub. L. No. 117-58, 135 Stat. 933 (Nov. 15, 2021)) Congress gave FERC limited transmission siting backstop authority but only in “a national interest electric transmission corridor designated by the Secretary” (NIETC);

Whereas, the states share the RTOs' concerns regarding transmission congestion and the need for robust transmission infrastructure because it is in the States' interests to ensure that adequate electric transmission facilities are constructed to meet the needs for economic and reliable utility service to their citizens;

Whereas, the National Association of Regulatory Utility Commissioners takes no position on whether the transmission line at issue should be sited; *now, therefore be it*

Resolved, that the Board of Directors of the National Association of Regulatory Utility Commissioners, convened at its February 28, 2024 Winter Policy Summit in Washington, D.C., supports the primary role of States in siting, permitting, and the exercise of eminent domain for transmission; *and be it further*

Resolved, that NARUC will file amicus briefs in the matter of *Transource Pennsylvania, LLC v. Steven¹ [sic] M. DeFrank, et al.*, Docket No. 24-1045 (3d. Cir.), CIVIL 1:21-CV-01101 (M.D. Pa.), for the limited and specific purpose of advocating NARUC's policies as a supporter of states' rights. NARUC's amicus filing will be limited to any or all of the following issues: opposing any overreach into state eminent domain authority; opposing an overly narrow interpretation of state siting authority that constrains a state's authority to the Oxford Dictionary definition of the term “siting,” especially given the scope of State siting authority under Section 216 of the Federal Power Act; opposing any interpretation of the opinion that suggests that a state can never deny siting or eminent domain for a FERC transmission planning region's selected project; and, opposing the Court's novel expansion of accepted dormant commerce clause jurisprudence regarding what is a per se violation of the dormant commerce clause.

Passed by the Committee on Electricity on February 26, 2024

Adopted by the NARUC Board of Directors on February 28, 2024

¹ The case caption incorrectly spells the name of Stephen M. DeFrank, Chairman of the PA PUC.

EL-2 Resolution on EPA's Regulation of Greenhouse Gas Emissions from New and Existing Power Plants

Whereas a reliable, affordable energy supply is vital to the nation's future economic growth, security, and quality of life;

Whereas compliance with expected environmental regulations regulating greenhouse gas (GHG) emissions will affect ratepayers differently, depending on each state's existing generation, energy resources, electricity market, and state commission decisions;

Whereas states have jurisdiction over the reliability and affordability of electricity provided to retail customers;

Whereas incorporating flexibility in the implementation of Environmental Protection Agency (EPA) regulations to allow for unique state or regional strategies can lessen generation cost increases because of improved planning, greater use of energy efficiency and demand-side resources, and orderly decision-making;

Whereas NARUC, at this time, takes no position regarding the merits of specific EPA rulemakings for the purpose of regulating GHG from new or existing power plants;

Whereas the Regional Greenhouse Gas Initiative implemented by a number of states is recognized as reducing emissions and provides a net consumer and economic benefit;

Whereas a number of states have successfully implemented market-based emissions trading systems applicable to the electrical power sectors for the purpose of reducing emissions;

Whereas many states have: 1) implemented mandatory and/or voluntary renewable portfolio/energy standards, 2) implemented energy efficiency and/or peak load reduction programs, 3) experienced significant retirements of coal-based generating plants, and/or 4) mandated emission reductions programs; all of which have already contributed to a reduction in GHG emissions;

Whereas it may be in the best interest of ratepayers and states to maintain the operation of certain existing fossil fuel-based electricity generating plants that meet environmental performance requirements for priority pollutants for a period of time;

Whereas on October 23, 2015, the EPA promulgated the Carbon Pollution Guidelines for Existing Stationary Sources: Electric Generating Units, commonly referred to as the Clean Power Plan;

Whereas on June 19, 2019, the EPA issued its Repeal of the Clean Power Plan; Emission Guidelines for Greenhouse Gas Emissions from Existing Electric Utility Generating Units; Revisions to Emission Guidelines Implementing Regulations, otherwise referred to as the Affordable Clean Energy, or ACE Rule;

Whereas on June 30, 2022, the Supreme Court of the United States ruled in the matter of *West Virginia et al. v. Environmental Protection Agency*, and held that the manner by which the Clean

Power Plan regulated emissions violated the law;

Whereas in *West Virginia v EPA*, the Supreme Court noted that emitting sources can meet an “emissions cap any way it chooses; the key is that its pollution be no more than the amount achievable through the application of the best system of emission reduction ... adequately demonstrated,” or the [best system of emission reduction];”

Whereas on May 23, 2023, the EPA proposed a new rule, New Source Performance Standards for Greenhouse Gas Emissions From New, Modified, and Reconstructed Fossil Fuel-Fired Electric Generating Units; Emission Guidelines for Greenhouse Gas Emissions From Existing Fossil Fuel-Fired Electric Generating Units; and Repeal of the Affordable Clean Energy Rule;

Whereas Sections 111(b) and 111(d) require the EPA to establish a standard of performance for new and existing sources of emissions;

Whereas Section 111(a) of the Clean Air Act requires a best system of emission reduction be achievable, demonstrated, and cost effective;

Whereas for existing sources, Section 111(d)(1)(A) requires the EPA to establish a procedure under which each state shall submit to the Administrator a plan that establishes standards of performance for existing sources;

Whereas for existing sources, Section 111(d)(1)(B) requires: (1) the plan submitted by the state to provide for the implementation and enforcement of such standards of performance and (2) the Administrator to permit a state, in applying such standards of performance, “to take into consideration, among other factors, the remaining useful life of the existing source to which such standard applies;”

Whereas the states rely on EPA to issue procedures under Sections 111(b) and 111(d) that reflects the best system or systems of emission reductions that has been adequately demonstrated at affected facilities;

Whereas state utility regulators have jurisdiction over decisions regarding integrated resource planning and/or resource adequacy, processes which ultimately determine the mixes of fuels and resources in state generation portfolios, which differ from state to state;

Whereas states have different mixes of fuels and resources in their existing generation portfolios;

Whereas states have different public policy objectives related to future source(s) of electric generation; *and*

Whereas states have achieved different levels of GHG reductions to date, and have diverse economies and face different economic conditions, including states with energy intensive manufacturing industries that provide goods for the entire nation; *now, therefore be it*

Resolved that the Board of Directors of the National Association of Regulatory Utility

Commissioners, convened at its 2024 Winter Policy Summit in Washington, D.C., urges the EPA, in developing any emissions guidelines for regulating carbon emissions from new or existing power plants, to recognize the primacy of States, and to rely on both state utility and environmental regulators to lead the creation of emission performance systems that reflect the policies, energy needs, resource mix, economic conditions of each state and region; *and be it further*

Resolved that under the relevant statutory factors, if the EPA issues rules, they should ensure the rules for standards of performance for new and existing sources are achievable, demonstrated, and cost effective; *and be it further*

Resolved that if the EPA issues rules, they should adequately consider the impact of those rules on reliability and affordability; *and be it further*

Resolved that if the EPA issues rules, they should permit states' maximum flexibility in meeting rules' requirements; *and be it further*

Resolved that any guidelines should be flexible enough to allow states, individually or regionally, to take into account, when establishing standards of performance, the different makeup of existing and planned power generation in each state and region; *and be it further*

Resolved that the guidelines should provide sufficiently flexible compliance pathways or mechanisms that recognize state and regional variations to achieve the most cost-effective emissions reductions in each state; *and be it further*

Resolved that the guidelines recognize and credit states' emissions reduction achievements to date, recognize any and all existing state emission reduction programs, and shall not intrude on the states' jurisdiction over decisions regarding integrated resource planning and/or resource adequacy or otherwise mandate specific modifications to the mix of fuels and resources in existing and future state generation portfolios.

Passed by the Committee on Electricity on February 26, 2024

Adopted by the NARUC Board of Directors on February 28, 2024.

TC-1 Resolution Encouraging the Federal Communications Commission To Stop Robocalling and Improve the Efficiency of Numbering Resources by Auditing Telecommunications Carriers and Voice over Internet Protocol service providers Failing to Legally and Efficiently Use Finite Telephone Numbers

Whereas the North American Numbering Plan (NANP), the telephone numbering plan providing numbering resources to North America and the Caribbean, is currently expected to run out of telephone numbers by 2051; (NANPA website);

Whereas if current trends in telephone number usage continue, the NANP could run out of numbers even sooner;

Whereas according to industry numbering rules, when the NANP is scheduled to exhaust within 15 years, the North American Numbering Planning Administrator (NANPA) will commence work on a NANP expansion plan. (Section 6.2 of the NPA Allocation Plan and Assignment INC Guidelines);

Whereas based on current projections, planning for NANP expansion would begin in just 12 years in 2036 (ITN Report Appendix);

Whereas transitioning to an expanded plan would require moving to 12-digit dialing;

Whereas previous estimates by the Federal Communication Commission (FCC) suggest that the transition to 12-digit dialing could have a societal cost of up to \$270 billion; (IOT Notice);

Whereas state commissions, in their efforts to ensure that telephone numbers are used efficiently and legally, are facing issues caused by carriers that fail to comply with federal numbering rules and the numbering authority delegated to the states;

Whereas, state commissions have partnered with and enjoyed a great deal of cooperation from many telecommunications carriers, especially large, national carriers; however, there remain bad actors whose misuse of numbering resources causes problems for the state commissions and the industry alike;

Whereas a number of state commissions have reported that many telecommunications carriers and Voice over Internet Protocol service providers fail to fulfil basic reporting requirements, over-inflate the forecasted need for telephone numbers, and use blocks of thousands of numbers inefficiently, contaminating them for future use by another carrier;

Whereas some telecommunications carriers and Voice over Internet Protocol (VoIP) service providers are knowingly facilitating illegal robocalling and circumventing FCC rules by renting finite telephone numbering resources to wholesale telecommunications customers who are often located outside of the United States;

Whereas illegal robocallers seek out “local telephone numbers” from wholesale telecommunications carriers such as Interconnected (I-VoIP) providers and Competitive Local

Exchange Carriers to target unsuspecting victims by calling them from a number that looks “familiar” from a “neighboring” community;

Whereas under normal FCC rules, these scam efforts could be reduced, but by using rented telephone numbers from wholesale providers of telephone numbers, robocalling rules can still be defeated or circumvented;

Whereas state commissions, through their ongoing review of numbering resource requests from telecommunications carriers and VoIP providers, are in a unique position to identify inefficient, unusual, or bad behavior from telecommunication carriers and Voice over Internet Protocol service providers with direct access to numbering resources;

Whereas NARUC is reconstituting its Numbering Subcommittee to increase state commission focus on this issue;

Whereas the FCC has established an audit program in its rules and the NANPA budget includes funding for such audit expenses, but there has not been an audit of a telecommunications carrier or VoIP service providers in at least a decade; (47 CFR 52.15(k) and ITN Report)

Whereas as numbering resources dwindle, due in part to poor management by some telecommunications carriers and VoIP service providers with direct access to numbering resources, state commissions need more tools and resources available to them as the regulatory outpost of the FCC to enforce both state and federal numbering rules; *now therefore be it*

Resolved that the Board of Directors of the National Association of Regulatory Utility Commissioners (NARUC), convened at its 2024 Winter Policy Summit in Washington, D.C., urges the FCC to act to provide updated guidance on how states should bring forward cases of telephone number resource mismanagement or suspected robocalling using rented telephone numbers to the Commission using the audit process outlined in 47 CFR 52.15(k).

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