

RESOLUTIONS

PASSED BY THE

NARUC COMMITTEE OF THE WHOLE

2017 ANNUAL MEETING AND
EDUCATION CONFERENCE
OF THE

NATIONAL ASSOCIATION OF
REGULATORY UTILITY COMMISSIONERS

(NOVEMBER 15, 2017)

Important Caveat: The descriptions in the Table of Contents are truncated. If you are interested in the topic, you should read the entire resolution to get a better idea of what is being proposed. Also note, these are only drafts and could change during the Committee deliberations.

(Questions? Contact Brad Ramsay at 202.898.2207 or jramsay@naruc.org)

Resolution Regarding the Sec 201 Trade Case

Page 1

Sponsor: Commissioner Peterman (Last revision from sponsor 11/09 at 4:40 p.m.)

Resolution urges the U.S. Trade Representative to carefully weigh (i) the harm that could result to energy customers from increasing the costs of solar inputs and (ii) the potential challenges to achieving State renewable energy/greenhouse gas goals that may result from higher solar prices.

Resolution on E911 Access and Enterprise Communications Systems

Page 4

Sponsor: Commissioner Moser (Received from L. Notarianni on 11/13 at 4:17 p.m.)

Resolution supports federal and State actions to require ECS manufacturers, installers, and operators to design and configure ECS to allow direct dialing of 9-1-1, route 9-1-1 calls to the proper PSAP regardless of the location of the extension used, provide the PSAP with location info accurate enough for first responders to locate the caller, and to support on-site notification.

Resolution Urging Congress to Not Restrict the Right of State Regulators

Page 6

to Determine How Reductions in the Corporate Tax Rate are Addressed

Received: 10/31 at 11:38 a.m. Revised: 11/10/17 at 1:01 p.m./11/11 9:11 p.m.

Resolution urges Congress to refrain from inserting any language into any revision of the federal tax law that will restrict the jurisdiction of the State public utility commissions over utility rates or specify how State commissions implement a reduction in the corporate tax rate or any other changes to the tax code in the retail rate setting process.

Resolution Regarding the Sec 201 Trade Case

Whereas the U.S. Trade Representative (“USTR”) is considering the imposition of import duties or non-tariff barriers on solar cells and panels in a trade case (“Trade Case”) brought under Section 201 of the Trade Act of 1974 (P.L. 93-618) which permits the President to grant import restrictions on goods entering the United States that injure or threaten to injure domestic industries producing like goods;

Whereas Suniva, Inc. on May 17, 2017, filed a petition with the U.S. International Trade Commission (“ITC”) asking to impose tariffs and quotas on imported solar cells and modules, as well as a price floor on solar modules. On May 25 2017, SolarWorld Americas announced it had joined as co-petitioner;¹

Whereas on June 1, 2017, the U.S. International Trade Commission initiated investigation No. TA-201-75 under Section 202 of the Trade Act (19 U.S.C. § 2252) to determine whether crystalline silicon photovoltaic (“CSPV”) cells (whether or not partially or fully assembled into other products) are being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industry producing an article like or directly competitive with the imported articles;²

Whereas on September 22, 2017, the ITC determined that the increased importation of CSPV cells is a substantial cause of serious injury, or threat thereof to the domestic CSPV industry. The ITC advanced the case to a remedy phase.³ The ITC’s remedy recommendations will be forwarded to the USTR on November 13, 2017;⁴

Whereas on October 31, 2017, the ITC Commissioners announced their respective remedy recommendations regarding imports of CSVP. Commissioners’ recommendations included tariffs on solar modules, tariffs on solar cells, quantity restrictions on imported cells and modules, international negotiations to address the underlying cause of the increase in imports, and appropriate funding mechanisms that may facilitate a positive adjustment to import competition. The ITC will forward its report, which will contain its injury determination, remedy recommendations, certain additional findings, and the basis for them, to the President by November 13, 2017;⁵

¹ USITC, “Crystalline Silicon Photovoltaic Cells (whether or not partially or fully assembled into other products)”. Staff report. September 22, 2017. Investigation No. TA-201-75. <https://www.lawofrenewableenergy.com/wp-content/uploads/sites/370/2017/09/CSPV-201-ITC-Final-Injury-Staff-Report-9.22.2017-1230109-623629.pdf>

² Ibid.

³ USITC, News Release 17-133, Inv. No. TA-201-075. September 22, 2017, https://www.usitc.gov/press_room/news_release/2017/er092211832.htm

⁴ Ibid.

⁵ USITC, “Crystalline Silicon Photovoltaic Cells (whether or not partially or fully assembled into other products)” Commissioner comments. October 31, 2017. Link found at: USITC, New Release, 17-159, Inv. No.TA-201-075. October 31, 2017.

Whereas Section 201 of the Trade Act (19 U.S.C. § 2251) authorizes the President, in the event of an affirmative determination by the ITC, to take all appropriate and feasible action within his power that he determines will facilitate efforts by the domestic industry to make a positive adjustment to import competition and provide greater economic and social benefits than costs;

Whereas Section 203 of the Trade Act (19 U.S.C. § 2253) describes what the President shall consider in determining possible actions in response to an injury finding. Such factors include the ITC recommendations, the extent to which the domestic industry will benefit from adjustment assistance, the efforts of the domestic industry to make positive adjustments, short and long term economic and social costs and benefits of possible actions, and other factors related to the national economic interest including the effect of the implementation of actions on consumers;

Whereas the potential action the President may take in response to an injury finding includes: imposition, or increase, or a duty on the imported articles in question; use of a tariff-rate quota; modification or imposition or any quantitative restriction on the importation of articles into the United States; a proposal to negotiate and carry out an agreement with foreign countries to limit the exportation from foreign countries and importation into the United States; procedures for the granting of import licenses; other negotiations to identify the underlying cause of the increased imports to alleviate the injury; legislative proposals, and any combination of these actions;⁶

Whereas the USTR, on behalf of the Trade Policy Staff Committee, has requested comment on the appropriateness of potential actions and how such action would be in the public interest; the short- and long-term effects the potential action is likely to have on the domestic CSPV industry, other domestic industries, and downstream consumers; and the effects that not taking potential action is likely to have on the domestic CSPV industry and other domestic industries and consumers;⁷

Whereas solar energy is being developed in many states to provide fuel diversity and support state policy goals, including Renewable Portfolio Standards, reduce greenhouse gas emissions, and provide resiliency to state and regional electric grids;

Whereas in 2016, solar was the single largest source of new electric generating capacity in the nation and 15 Gigawatts (“GW”) were deployed nationally in 2016, a 100% increase over 2015;⁸

Whereas cumulatively, solar capacity in the United States now totals 44.7 GW, and is expected to increase to 50 GW by the end of 2017;⁹

⁶ Office of the US Trade Representative, “Request for Comments and Public Hearing About the Administration’s Action Following a Determination of Import Injury With Regard to Certain Crystalline Silicon Photovoltaic Cells.” Docket No. USTR-2017-0020. Federal Register / Vol. 82, No. 205, Wednesday October 25, 2017.

⁷ Ibid.

⁸ SEIA/GTM Research “Solar Market Insight Report 2016 Year In Review,” available at <https://www.seia.org/research-resources/solar-market-insight-report-2016-year-review>.

⁹ SEIA/GTM Research “Solar Market Insight Report,” (September 11, 2017) available at, <https://www.seia.org/us-solar-market-insight>

Whereas the future growth in solar investments, installations, and solar energy produced could be stifled if possible actions taken in response to the injury finding causes solar panel prices to spike significantly;

Whereas NARUC does not dispute the ITC's finding of injury, but NARUC is concerned that at least some of the requested trade protections could significantly increase the price of solar panels and therefore the cost of solar electricity generation;

Whereas GTM Research estimates that a significant price increase resulting from the proposed tariffs would cut the demand for solar projects approximately in half over the next four years;¹⁰

Whereas in cases where regulated utilities continue to construct or contract for, or interconnect solar projects to meet state policy and regulatory requirements, higher costs will likely be borne by customers and achievement of policy goals may be impeded;

Whereas the USTR, on behalf of the Trade Policy Staff Committee, has requested comments by November 20, 2017, and responses to those comments by November 29, 2017, on the appropriateness of potential actions and how such action would be in the public interest, including the potential effects of any actions on consumers. This request for comment provides an opportunity for NARUC to express its interest in the USTR considering the interaction of potential actions with state policy goals and consumer costs; *now therefore be it*

Resolved that the National Association of Regulatory Utility Commissioners, convened at its 2017 Annual Meeting and Education Conference in Baltimore, Maryland, as regulators working to protect the public interest and to ensure safe, reliable and affordable sources of electricity, urges the USTR, in its consideration of potential action, to carefully weigh the harm that could result to energy customers from increasing the costs of solar inputs across the country, and the potential challenges to achieving state renewable energy and greenhouse gas goals that may result from higher solar energy prices.

*Sponsored by the Committee on Energy Resources and the Environment
Recommended by the NARUC Board of Directors November 14, 2017
Adopted by the NARUC Committee of the Whole November 15, 2017*

¹⁰ The Potential Impact of Solar Tariffs in 12 Charts (October 17, 2017), <https://www.greentechmedia.com/articles/read/the-potential-impact-of-solar-tariffs-in-12-charts#gs.vDo9rtA>.

Resolution on E911 Access and Enterprise Communications Systems

Whereas the Federal Communications Commission (FCC) issued a Notice of Inquiry on September 26, 2017 at PS Docket No. 17-239 (“NOI”) entitled “Inquiry Concerning 911 Access, Routing, and Location in Enterprise Communications Systems” requesting input on the technical capabilities, public expectations, and needs of public safety answering points regarding the E911 capabilities of Enterprise Communications Systems (“ECS”);

Whereas voluntary efforts among ECS manufacturers, installers, and operators are laudable, but may leave many 9-1-1 callers vulnerable;

Whereas the ability to dial 9-1-1 in an emergency is often the first and last resort for many individuals in the United States when requesting help in an emergency;

Whereas members of the public traveling for work or leisure cannot be expected to know the different requirements and capabilities of ECS from one State to the next;

Whereas requiring callers using ECS attempting to call 9-1-1 to dial an additional digit before dialing 9-1-1 may cause significant delays in reaching a Public Safety Answering Point (“PSAP”), when even minor delays can mean the difference between life and death for individuals calling 9-1-1;

Whereas individuals calling 9-1-1 from an ECS may not know their address or may be unable to verbally describe their location, either due to an existing disability, an acute medical condition, or because speaking out loud would compromise their safety;

Whereas an ECS that provides on-site notification of 9-1-1 calls may allow on-site personnel to implement procedures to direct first responders to the proper location rapidly and efficiently; *and* *Whereas* calls that are misrouted to the wrong PSAP require transferring, significantly delaying emergency response to the incident that prompted the call;

Whereas the FCC has historically shared jurisdictional authority over various portions of 9-1-1 telecommunications services matters with the States;

Whereas consistency, uniformity, and ubiquity of service is highly desirable in the dialing of 9-1-1; *now therefore be it*

Resolved that the National Association of Regulatory Utility Commissioners, convened at its 2017 Annual Meeting and Educational Conference in Baltimore, Maryland, supports federal and State actions to require ECS manufacturers, installers, and operators to design and configure ECS to allow direct dialing of 9-1-1, to route 9-1-1 calls to the proper PSAP regardless of the particular location of the extension used to call 9-1-1, provide the PSAP with location information specific and accurate enough for first responders to locate the caller, and to support on-site notification; *and be it further*

Resolved that any federal action should be mandatory for all ECS manufacturers, installers, and operators; *and be it further*

Resolved that federal requirements regarding ECS must not be written or implemented in such a way that it preempts States from imposing additional requirements as they see fit, presuming that such additional requirements do not contradict or conflict with federal requirements.

Sponsored by the Committee on Telecommunications

Recommended by the NARUC Board of Directors November 14, 2017

Adopted by the NARUC Committee of the Whole November 15, 2017

Resolution Urging Congress to Not Restrict the Right of State Regulators to Determine How Reductions in the Corporate Income Tax Rate are Addressed in Utility Rates

Whereas on September 27, 2017, the Trump Administration announced several proposed changes to the tax code. For public utility customers, the most consequential is the administration's proposal to reduce the corporate income tax rate from 35% to 20%;

Whereas Congress has also stated its intention to make changes to the tax code and has also proposed reductions in the corporate income tax rate;

Whereas for a State-regulated investor owned utility, a reduction in the corporate income tax rate should result in a direct benefit to customers, so long as it is captured in the State ratemaking process;

Whereas other federal tax policies, such as bonus tax depreciation, have allowed utilities to claim accelerated expenses associated with capital investments which reduce the taxes payable in the year when the deduction is claimed;

Whereas despite the reduction in taxes paid in a given year by a regulated investor owned utility, the rates which customers pay are conventionally designed to recover the statutory corporate income tax rate, and not the taxes actually paid by the utility reflecting such deductions;

Whereas this difference between tax expense paid by consumers in utility rates and taxes actually paid by a utility will increase the cash flow available to a utility's management in a year when such deductions are claimed. This additional tax benefit is accounted for as a deferred tax reserve and is conventionally treated similarly to customer-contributed capital, reducing the amount of rate base that is accounted for as having been contributed by equity and debt investors;

Whereas a process of normalization will refund to consumers this tax benefit over the lifespan of a given capital asset that has given rise to the deduction. The use of normalization by States is generally required by §168 of the Internal Revenue Code as a precondition of a regulated investor owned utility's ability to claim certain deductions;

Whereas if the corporate income tax rate is reduced from 35% to a lower rate, this lower rate will increase the deferred tax reserve that should be refunded to customers, because some utility income that will be subject to this lower tax rate has already had its associated tax expense paid for by customers, and at the higher, 35% tax rate. This incremental benefit is known as an excess tax reserve;

Whereas current drafts of the tax reform legislation being considered in Congress include language which requires States to normalize the excess tax reserve and would pre-empt States' ability to elect a rate treatment of their own choosing to either normalize, flow-through, or take some intermediate approach to refunding the excess tax reserve. This pre-emption reconstitutes a policy enacted by Congress when it last changed the corporate income tax rate in 1986;

Whereas Internal Revenue Code, §162, permits flexibility to regulated investor owned utilities, subject to State regulation, to elect either to flow-through or to normalize a similar type of tax benefit associated with the expensing of repairs to capital property;

Whereas federal tax legislation is not an appropriate vehicle to include language pre-empting States from exercising their traditional ratemaking authority;

Whereas the use of normalization spreads the distribution of the excess tax revenue to both current and future customers, all of whom will help pay off the cost of long-lived assets to benefit customers; and

Whereas while normalization is one potential treatment of the excess tax reserve, the appropriate treatment may depend on local considerations and should rest with the State, exercising its authority to set retail rates for a regulated investor owned utility; *now, therefore be it*

Resolved that the National Association of Regulatory Utility Commissioners, convened at its Annual Meeting and Education Conference in Baltimore, Maryland, urges Congress to refrain from inserting any language into any revision of the federal tax law that will restrict the jurisdiction of the State public utility commissions over utility rates or specify how State commissions may reflect changes in tax expense in the retail ratemaking process.

Sponsored by the Committee on Water

Recommended by the NARUC Board of Directors November 14, 2017

Adopted by the NARUC Committee of the Whole November 15, 2017