

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.