

Resolution Relating To the Federal/State Jurisdictional Boundaries in Setting Generation Resource Adequacy Standards

WHEREAS, Assuring generation resource adequacy is of critical importance to the provision of reliable electric service to retail consumers; *and*

WHEREAS, State commissions have long had regulatory responsibility for assuring generation resource adequacy for retail electric customers; *and*

WHEREAS, State commissions have been, and are likely to continue to be, the regulatory agencies that have the closest contact with the providers of retail electric service and that best understand the needs of retail customers; *and*

WHEREAS, There are significant differences in the manner in which retail electric service is provided in different regions of the United States including, but not limited to, variations in the types of generating units used to provide service, the density of customer load, the mix of customers being served, the extent to which retail restructuring has occurred, the extent to which suppliers rely on power purchased in competitive wholesale markets, and similar factors; *and*

WHEREAS, These regional differences could reasonably lead to the adoption of differing approaches to generation resource adequacy issues by State commissions; *and*

WHEREAS, State commissions have exercised jurisdiction over generation resource adequacy in different ways, with some State commissions directly exercising authority over generation resource adequacy issues, others relying primarily on regional reliability councils or Electric Reliability Organizations (EROs), and still others placing primary reliance on independent system operators (ISOs) or regional transmission organizations (RTOs); *and*

WHEREAS, Many State commissions, regardless of the extent to which retail electric restructuring has been implemented in their jurisdictions, wish to retain their long-standing jurisdiction over generation resource adequacy issues; *and*

WHEREAS, State commissions desirous of preserving their jurisdiction over generation resource adequacy should make decisions concerning such issues in consultation with other affected States given the fact that generation resource adequacy decisions made in one State might affect conditions in other States; *and*

WHEREAS, The Federal Energy Regulatory Commission (FERC) has jurisdiction under the Federal Power Act over the transmission of electric power in interstate commerce and the sale of electric power for resale; *and*

WHEREAS, The Federal Power Act expressly provides that FERC has no jurisdiction over generating facilities; *and*

WHEREAS, The FERC may not rely upon the inclusion of provisions dealing with a particular subject such as generation resource adequacy and reliability in RTO or ISO tariffs, without more, to support asserting jurisdiction over that subject (See, for example, Columbia Gas Transmission Corp. v. FERC, No. 04-1049 (D.C. Cir. April 15, 2005)); *and*

WHEREAS, A white paper issued by the FERC affirmed that States have authority over resource adequacy requirements; that “an RTO or [independent system operator (ISO)] may implement a resource adequacy program only where a State (or States) asks it to do so, or where a State does not act;” and that it is the responsibility of an RTO or ISO to “assist the States in whatever manner they desire, including evaluating the impact of new generation, transmission, energy efficiency, and demand response on regional reliability;” *and*

WHEREAS, The FERC recognized that States have jurisdiction over generation resource adequacy in an order issued on March 23, 2005, in Devon Power, L.L.C., et al, Docket No. ER03-563-030, et al.; *and*

WHEREAS, The FERC and State commissions should exercise their respective jurisdictions in a complementary manner to assure that each body is able to adequately protect the wholesale and retail consumers of electric power; *and*

WHEREAS, The FERC stated in ¶¶ 29-32 of its March 23, 2005, order in Devon Power, L.L.C. et al, Docket No. ER03-563-030, et al., and in ¶ 33 of its May 9, 2005, order in Docket No. ER05-715-000 et al. that the ISO New England (ISO-NE) had the authority to establish generation resource adequacy standards on the grounds that the ISO-NE’s installed capacity market is governed by a tariff that had been filed for approval by the FERC and that the ISO-NE’s tariff and Participants Agreement authorize the ISO-NE to seek FERC approval of the ISO-NE’s proposed resource adequacy determinations; *and*

WHEREAS, The National Association of Regulatory Utility Commissioners (NARUC) believes that the adequacy of generation service provided to retail load is a matter committed to State and not federal jurisdiction under applicable law; *and*

WHEREAS, NARUC believes that State jurisdiction over generation resource adequacy should not be exercised in such a manner as to undermine FERC’s jurisdiction over wholesale electricity sales; *and*

WHEREAS, NARUC believes that FERC jurisdiction over wholesale electricity sales should not be exercised in such a manner as to undermine State jurisdiction over generation resource adequacy issues; *now therefore be it*

RESOLVED, That the Board of Directors of the National Association of Regulatory Utility Commissioners, convened in its July 2005 Summer Meetings in Austin, Texas, hereby states its belief that generation resource adequacy is a matter committed to State and not federal jurisdiction under applicable law; that State jurisdiction over generation resource adequacy should not be exercised in such a manner as to undermine FERC’s jurisdiction over wholesale electricity sales; that FERC jurisdiction over wholesale electricity sales should not be exercised in such a manner as to undermine State jurisdiction over generation resource adequacy issues; *and* that FERC and State commissions should work together in a cooperative manner to assure that each agency exercises its jurisdiction in an appropriate manner; *and be it further*

RESOLVED, That State processes to establish generation resource adequacy standards can be enhanced by assistance from the FERC, control area operators, regional reliability councils, EROs

ISOs, RTOs, and similar entities, and that State commissions should welcome such assistance; *and be it further*

RESOLVED, That FERC, control area operators, regional reliability councils, EROs, ISOs, RTOs, and similar entities should acknowledge State jurisdiction, practices, and expertise in setting generation resource adequacy standards; *and be it further*

RESOLVED, That States and groups of States, in a region with jurisdiction over multi-jurisdictional utilities, and/or existing and future regional State committees and similar regional organizations, can and should coordinate regional generation resource adequacy planning and other efforts to establish generation resource adequacy standards that apply to each State in each region.

Sponsored by the Committee on Electricity

Adopted by the NARUC Board of Directors, July 27, 2005