

1996-04

NATIONAL ASSOCIATION OF STATE UTILITY CONSUMER ADVOCATES**RESOLUTION****Urging the Congress and Federal Agencies to Address Market Power
as a Component of Any Federal Restructuring Action**

WHEREAS, Congress and the FERC are reviewing existing laws and rules governing the structure of the electric utility industry; and

WHEREAS, the FERC has issued a Notice Of Inquiry into the types of market and consumer protections that are necessary with respect to mergers in light of the trend toward competition in the electric utility industry; and

WHEREAS, the Congress enacted the Public Utility Holding Company Act (PUHCA) in order to reduce and constrain the exercise of market power in the investor-owned electric and natural gas utility industries as well as to prevent abusive stock and business practices of far flung investor-owned electric and gas utility holding companies; and

WHEREAS, in the electric utility as well as other industries, mergers, barriers to entry, abusive self-dealing, and cross subsidies can be used to stifle competition; and

WHEREAS, an efficient and competitive electric industry will not develop if the market consolidates to a handful of large entities or if certain participants with market power are allowed to engage in unduly discriminatory actions; and

WHEREAS, undue dominance by an entity in any geographic or product market will frustrate and eventually eliminate effective competition, requiring corrective action; and

WHEREAS, the mitigation or elimination of market power through PUHCA's protections or other statutory and regulatory means is necessary to ensure competitive outcomes that are consistent with the public interest; and

WHEREAS, specific merger standards are needed which would enable the FERC (and others) to distinguish efficient from inefficient mergers, and pro-competitive from anticompetitive mergers; and

WHEREAS, the goal of restructuring should be to send sufficiently clear and rational signals to the market so that the behavior of participants will be consistent with the public interest.

THEREFORE, BE IT RESOLVED that the National Association of State Utility Consumer Advocates (NASUCA) urges Congress and federal agencies to adopt specific measures to protect consumers from market power abuses; and

BE IT FURTHER RESOLVED that in considering action affecting regulation or the structure of the electric industry, including PUHCA repeal or reform, Congress should require federal regulatory agencies to: 1) prevent abusive or preferential affiliate transactions, 2) continue oversight and

protection over corporate and market structure to prevent abuses to consumers and competition, 3) disallow costs which are not prudent and reasonable from wholesale rates, 4) exercise sufficient regulatory authority to prevent ratepayers from bearing any risk of utility diversification and to prohibit cross-subsidies between regulated and nonregulated subsidiaries; and

BE IT FURTHER RESOLVED that NASUCA urges the FERC to reject or condition, as appropriate, any merger that creates or exacerbates market power in the relevant geographic and product markets and reject mergers whose anticipated consumer benefits can be achieved through other means; and

BE IT FURTHER RESOLVED that NASUCA authorizes its Executive Committee to develop specific positions and to take appropriate actions consistent with the terms of this resolution. The Executive Committee shall advise the membership of any proposed action prior to taking such action if possible. In any event, the Executive Committee shall notify the membership of any action taken pursuant to this resolution.

Approved by NASUCA:

June 26, 1996
Date

Chicago, Illinois
Place

Submitted by: NASUCA Electricity Committee

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