**NATIONAL ASSOCIATION OF STATE UTILITY CONSUMER ADVOCATES**

Resolution 2014-04

Urging that State Authority as to Resource Decisions Be Respected

**WHEREAS**, States have an obligation to ensure that electric customers in their State receive safe and reliable electricity service just and reasonable rates; *and*

**WHEREAS**, States have long had exclusive regulatory responsibility for regulating the procurement decisions of electric utilities and assuring generation resource adequacy for retail electric customers; *and*

**WHEREAS,** States have long exercised their responsibility so as to consider a broad range of public policy interests beyond short term economics including but not limited to the value of particular assets or types of assets over their full expected useful lives, the extent to which particular types of resources may help hedge long-term rate impacts on customers, the wide range of potential environmental and health implications of particular assets or types of assets, economic development and overall impact of particular resource choices in terms of their impact on the broader economy of the region and its ratepayers, and many other factors; *and*

**WHEREAS**, In Section 201 of the Federal Power Act (“FPA”), Congress specifies that federal regulation under the FPA "extend[s] only to those matters that are not subject to regulation by the States”; *and*

**WHEREAS,** The FPA reserves to the States authority over facilities used in the generation of electric energy; *and*

**WHEREAS**, The FPA protects State authority over “integrated resource planning and utility buy-side” decisions and “utility generation and resource portfolios,” *New York v. FERC*, 535 U.S. 1, 24 (2002) (*quoting* FERC Order No. 888 at 31,782 n.544); *and*

**WHEREAS**, in recent years there have been challenges to maintaining sufficient generation resources in certain regions of the country; *and*

**WHEREAS**, States that have restructured their electric utilities and States that have not restructured their electric industry continue to regulate the procurement decisions of electric utilities; *and*

**WHEREAS**, States have enacted or are considering the enactment of statutes and regulatory commissions have implemented or may consider implementing programs designed to address the States’ need to ensure the construction of new generation and to address environmental concerns; *and*

**WHEREAS**, The U.S. Court of Appeals for the Fourth Circuit, in its published decision in *PPL EnergyPlus, LLC v. Nazarian*, 753 F.3d 467 (2014), and the U.S. Court of Appeals for the Third Circuit in *PPL EnergyPlus, LLC v. Solomon,* 766F.3d 241 (2014), have ruled that decisions by the Maryland Public Service Commission and similar New Jersey statutes directing regulated utilities to enter into certain procurement contracts with new generators are preempted by the FPA; *and*

**WHEREAS**, These decisions are based on a broad and sweeping application of the field preemption doctrine and have the potential to adversely impact the States’ FPA-protected authority over utility procurement decisions, utility generation, distribution, resource portfolios, renewable energy requirements, demand side management programs, and integrated resource planning; *and*

**WHEREAS,** The broad and sweeping application of the field preemption doctrine that forms the basis of these two decisions to prohibit or invalidate State-sanctioned contracts supporting new generation undermines and conflicts with the States’ jurisdiction to ensure clean, affordable and reliable electric energy;

**NOW, THEREFORE, BE IT RESOLVED THAT NASUCA** continues to support State authority: to preside over the procurement decisions of electric utilities; to decide the type, amount and timing of new generation facilities that will be constructed within the State to achieve legitimate State policy objectives; to promote new development of electric resources, including demand resources, through State supervision of retail utilities and utility procurement; to operate programs to procure new generation for reliability, affordability and environmental purposes through use of long-term contracts or any State statutory or regulatory actions; and to support efforts to ensure that nothing in the Federal Power Act be deemed to preempt or prohibit such activity by the States.

***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 its membership of any action taken pursuant to this resolution.

Approved by NASUCA:

Date: November 18, 2014 Submitted by:

Place: San Francisco, CA NASUCA Electric Committee

Abstained: Michigan