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HOUSE BILL - FINAL VERSION

1994 SESSION 3580B

94-2175

03/02

HOUSE BILL 1263-FN

AN ACT authorizing the public utilities commission to allow alternative forms of regulation, removing the incorporation requirement for telecommunications utilities, exempting accounting standards from certain format requirements, and **expanding the commission's rulemaking authority.**

SPONSORS: Rep. Rodeschin, Sull 4

COMMITTEE: Science, Technology and Energy

AMENDED ANALYSIS

This bill:

- (1) Allows the public utilities commission to approve alternative forms of regulation other than the traditional methods based on cost of service, rate base and rate of return.
- (2) Exempts the uniform system of accounts for regulated utilities from the requirements of the administrative procedure act.
- (3) Exempts foreign telecommunications utilities from the incorporation requirements if they are fully registered with the New Hampshire secretary of state and in compliance with the requirements of the commission.
- (4) Expands the rulemaking authority of the public utilities commission, including giving the commission rulemaking authority relating to all utilities law under title 34.**

EXPLANATION: Matter added to current law appears in ***bold italics***.

Matter removed from current law appears in [brackets].

Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

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CHAPTER 193

HOUSE BILL - FINAL VERSION

3580B

94-2175

03/02

HB 1263-FN

STATE OF NEW HAMPSHIRE

In the year of Our Lord

One Thousand Nine Hundred and Ninety-Four

AN ACT

authorizing the public utilities commission to allow alternative forms of regulation, removing the incorporation requirement for telecommunications utilities, exempting accounting standards from certain format requirements, and expanding the commission's rulemaking authority.

Be it Enacted by the Senate and House of Representatives in General Court convened:

193:1 Rulemaking Expanded. RSA 365:8 is repealed and reenacted to read as follows:

365:8 Rulemaking Authority. The commission shall adopt rules, pursuant to RSA 541-A, relative to:

I. The conduct of its hearings, including alternative processes in hearings and other forms of alternative dispute resolution.

II. Standards and procedures for streamlined review or other alternative processes to enhance the efficiency of the commission

and respond to the needs of the utility's ratepayers and shareholders.

III. Standards and procedures for the creation, monitoring and evaluation of alternative forms of regulation.

IV. Standards and procedures for the handling of confidential information, in accordance with RSA 91-A.

V. Standards and procedures for filing requirements for tariffs, engineering, accounting, and other commission matters.

VI. Standards and procedures for franchise terms and conditions, including extended area telephone service.

VII. Standards and procedures for safe and reliable utility service and termination of service subject to RSA 363-B.

VIII. Standards and procedures for matters related to the proper administration of RSA 366 relative to utility relations with affiliates.

IX. Standards and procedures relative to a reasonable amount of the short-term notes, bonds or other evidences of indebtedness based upon the amount of the utility's respective plant investment which each utility shall not exceed without first obtaining the approval of the commission pursuant to RSA 369:7.

X. Standards and procedures for determination and recovery of rate case expenses.

XI. Standards and procedures for the conduct of investigations authorized under this title.

XII. Procedures necessary to provide for the proper administration of and to further the purposes of this title.

193:2 New Section; Alternative Forms of Regulation. Amend RSA 374 by inserting after section 3 the following new section:

374:3-a Alternative Forms of Regulation; Incentive Regulation. Upon petition of a regulated utility or upon its own initiative and after notice and hearing, the public utilities commission may approve alternative forms of regulation other than the traditional methods which are based upon cost of service, rate base and rate of return, provided that any such alternative results in just and reasonable rates and provides the utility the opportunity to realize a reasonable return on its investment.

193:3 Exemption for Accounting Standards From Format Requirements of RSA 541-A. Amend RSA 374:8 to read as follows:

374:8 Accounting Systems.

I. The commission may, whenever it deems it advisable, establish a system of accounts and records to be used by public utilities for their business within this state, may classify them and prescribe a system of accounts for each class, and may prescribe the manner in which said accounts shall be kept.

II. The uniform system of accounts for regulated utilities established under the provisions of this section shall be exempt from the requirements of RSA 541-A, the administrative procedure act. The commission shall file, however, in the office of legislative services a copy of all rules adopted, amended or repealed under this section by the commission.

193:4 Exceptions; Telecommunications Utilities Added. Amend RSA 374:25 to read as follows:

374:25 Exceptions. RSA 374:24 shall not apply to:

I. Any business entity operating a public utility plant in this state on June 1, 1911, or doing or desiring to do an interstate business[, or];

II. [To] Any electric utility as defined in RSA 374-A:1 participating or desiring to participate in an electric power facility within this state in accordance with RSA 374-A[, or];

III. [To] Any foreign business entity authorized by the Interstate Commerce Commission to operate motor vehicles for the carriage of passengers for hire in interstate commerce over the highways of this state which presently conducts or desires to conduct the business of transportation of passengers and/or baggage, mail, newspapers and express in the same vehicles with passengers for hire by motor vehicles in intrastate commerce; **or**

IV. Any telecommunications utility, foreign or domestic, fully registered with the New Hampshire secretary of state and in compliance with commission requirements.

193:5 Rulemaking Provision Removed. Amend RSA 378:28 to read as follows:

378:28 Permanent Rates. So far as possible, the provisions of RSA 378:27 shall be applied by the commission in fixing and determining permanent rates, as well as temporary rates. The commission shall not include in permanent rates any return on any plant, equipment, or capital improvement which has not first been found by the commission to be prudent, used, and useful. Nothing contained in this section shall preclude the commission from receiving and considering any evidence which may be

pertinent and material to the determination of a just and reasonable rate base and a just and reasonable rate of return thereon. [The commission may adopt rules applicable to the recovery of rate case expenses under RSA 541-A.]

193:6 Exemption Added. Amend RSA 541-A:10, I(p) to read as follows:

(p) RSA 268 and RSA 261:72-a, V, relative to motor vehicle emissions[.];

(q) RSA 374:8, relative to a uniform system of accounts for regulated utilities.

193:7 Rulemaking Removed. Amend RSA 369:7, II to read as follows:

II. [The commission may adopt rules under RSA 541-A relative to a reasonable amount of the notes, bonds, or other evidences of indebtedness based on the amount of their respective plant investment which each utility shall not exceed without first obtaining the approval of the commission.] In establishing the amounts of the notes, bonds, and other evidences of indebtedness which the utility is permitted to issue or renew without prior commission approval, the commission shall consider the size, circumstances, and other characteristics of each utility, the aggregate term of the renewals of such notes, bonds, and other evidences of indebtedness, and the time period and manner for reporting such renewals to the commission.

193:8 Repeal. The following are repealed:

I. RSA 363-B:2, IV, relative to the rulemaking authority of the commission under RSA 363-B.

II. RSA 366:10, relative to the rulemaking authority of the public utilities commission under RSA 366.

193:9 Effective Date. This act shall take effect 60 days after its passage.

Approved: May 24, 1994

Effective: July 23, 1994

LBAO

LSR 94-2175

11/12/93

FISCAL NOTE for an act authorizing the Public Utilities Commission to allow alternative forms of regulation, removing the incorporation requirement for telecommunications utilities, exempting accounting standards from certain format requirements, and expanding the Commission's rulemaking authority.

FISCAL IMPACT:

The Public Utilities Commission and the Office of Secretary of State have determined this bill will have no fiscal impact on state, county and local revenues and expenditures.

METHODOLOGY:

The Commission states the proposed legislation would not affect the staffing or budget requirements of the agency. The Secretary of State has determined this bill will not impact revenues or expenditures of its Office.

NEW HAMPSHIRE WATER RESOURCES PRIMER



DECEMBER 2008

New Hampshire Water Resources Primer

Overview

*New Hampshire has an abundant supply of clean drinking water. There are challenges, however, for the public water systems that serve 64 percent of New Hampshire's population and for the remaining 36 percent of residents that rely on private, household drilled or dug wells (NHDES, 2008a). Drinking water from public water supplies is highly regulated to protect public health, but aging infrastructure and the cost of treating drinking water and otherwise meeting ever increasing regulatory requirements are significant issues for public water suppliers. Few public water systems in New Hampshire charge the true cost of providing water or have adequately planned to maintain and replace infrastructure that is decades old. Also, as our ability to detect and evaluate contaminants in drinking water has increased, so has the need to address more contaminants to protect public health. A recent example of this phenomenon is the presence of trace amounts of personal care products and pharmaceuticals in some water supply sources. The wisdom of treating all water to drinking water standards, water which is then used for non-drinking water purposes, is being addressed elsewhere in the country and needs to be considered in New Hampshire as well. **Because of New Hampshire's rural nature, there is a large proportion of very small community public water systems, many of which are hard-pressed to meet the same requirements as larger systems, but with far fewer resources.***

For both private well owners and public water systems that use wells, naturally occurring contaminants such as radon and arsenic are significant health concerns. Unlike public water systems, there is no requirement for private well water to be tested or treated, and many people in New Hampshire are unknowingly drinking water that exceeds health-based contaminant limits.

Finally, New Hampshire is a nationally recognized leader in protecting the groundwater and surface water that are the sources of drinking water. Still, landscape change has the potential to degrade our sources of drinking water by contributing contaminants and changing hydrology as described in Chapter 1 – Introduction and Overview.

8.1 Description and Significance

8.1.1 Drinking Water Is Critical to Health and Quality of Life

Human life depends on water. The average human can live 40 days or more without food, but only three to five days without water (Kendall, 1991). Drinking water is also used for food production and preparation, sanitation, outdoor irrigation, industrial processes and for many other activities.

The importance of drinking water and its protection was recognized 400 years ago at colonial Jamestown, Va., (see sidebar) and has been an acknowledged public health priority for centuries in the U.S. Unlike in developing countries, fewer than 1 percent of U.S. residents lived without complete indoor plumbing by the year 2000 (Rural Community Assistance Partnership, n.d.). As a result, diseases caused by unclean water supplies are much rarer in the U.S. Waterborne disease

outbreaks, however, continue to occur in the U.S. and the endemic waterborne disease burden is significant. Recently, an expert panel of scientists from the Centers for Disease Control and Prevention and the U.S. Environmental Protection Agency estimated that 5.5 million to 32.8 million cases of acute gastrointestinal illness per year are attributable to community drinking water systems in the U.S. (Messner et al., 2006).

8.1.2 New Hampshire Water Supply: Where Do We Get Our Drinking Water and How Is It Tested?

Private Wells

An estimated 36 percent of New Hampshire residents obtain their drinking water from private wells with roughly 4,700 new wells constructed each year. There are two main types of private wells in New Hampshire: bedrock wells and shallow dug wells. The type of well used is largely dependent on local soil types and water availability on the property. An estimated 90 percent of all new wells are bedrock wells, which can be from 100 to 700 feet deep, depending on where an adequate supply or yield is reached (NHDES, 2008c).

Since 2000, private wells have had to meet statewide design criteria for construction and placement (We 100-1000), but there are no clear state requirements for minimum well water quality or quantity. The State Plumbing Code requires that only potable water sources be connected to domestic plumbing systems, but this requirement is not uniformly applied, in part due to confusion about the meaning of “potable” and the absence of specific water quality standards. When homes are sold, the owner must disclose information about both the water supply system and the wastewater disposal system, including the date of the most recent water test and whether the seller has experienced a problem such as an unsatisfactory water test (RSA 477:4-c), but there is no requirement to do a test. As a result, private wells are usually only tested when the buyer chooses to do so, when a lender requires it at the time of sale, when a homeowner has a new well drilled by a contractor who recommends a test, when problems with water quality are noticeable, or in those few towns where a private well water test is required for a certificate of occupancy or for property transfer. There are also no state standards in regards to treatment of water from private wells.

Public Water Systems

A public water system is defined as “a piped water system having its own source of supply, serving 15 or more services or 25 or more people, for 60 or more days per year” (RSA 485:1-a). Public water systems must meet all the requirements of the federal and state Safe Drinking Water Acts. These requirements have increased over time.

“There shall be no man or woman dare to wash any unclean linen, wash clothes, ...nor rinse or make clean any kettle, pot or pan, or any suchlike vessel within twenty feet of the old well or new pump. Nor shall anyone aforesaid within less than a quarter mile of the fort, dare to do the necessities of nature, since by these unmanly, slothful, and loathsome immodesties, the whole fort may be choked and poisoned.”

*- Governor Gage of Virginia,
1610*

(Source: Virginia Dept. of Health, 2007)

New Hampshire Water Resources Primer

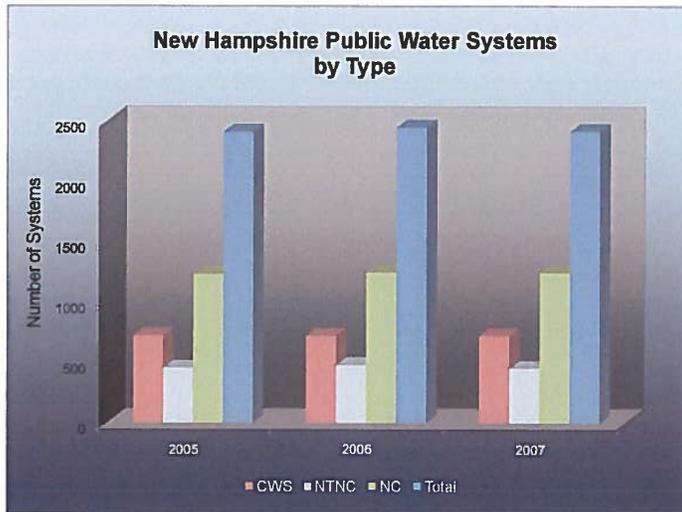


Figure 8-1. New Hampshire public water system profile: Community water system (CWS); non-transient/non-community (NTNC); transient/non-community (NC). Source: NHDES, 2008a.

There are three types of public water systems: community water systems; non-transient/non-community systems; and transient systems. Depending on the type of system, the requirements vary, with more stringent requirements for larger systems and for those serving residential populations. Figure 8-1 shows the number of New Hampshire's public water systems among these categories. Each is described briefly below.

In 2007 there were 721 community water systems (CWSs) serving a combined resident population of approximately 849,905 (average size: 1,179) (NHDES, 2008a). These include municipalities, apartments and condomini-

ums, mobile home parks, and single family home developments. **Ninety-five percent of the CWSs in New Hampshire are small systems serving fewer than 3,300 residents.** There are also 36 medium CWSs that each serve between 3,300 and 50,000 people, and two that are classified as large systems serving more than 50,000 each – Manchester Water Works and Pennichuck Water Works in the Nashua area (Figure 8-2) (NHDES, 2008a). The largest systems primarily use surface water for their source of supply, while the majority of small systems use groundwater.

The largest community systems are required to do the most comprehensive monitoring and treatment. Currently community systems must monitor for over 100 contaminants on a relatively frequent basis.

In 2007 there were 451 non-transient/non-community water systems (NTNCs) in New Hampshire (NHDES, 2008a). Typical NTNCs include non-residential schools, day cares, office buildings, commercial and industrial buildings, and

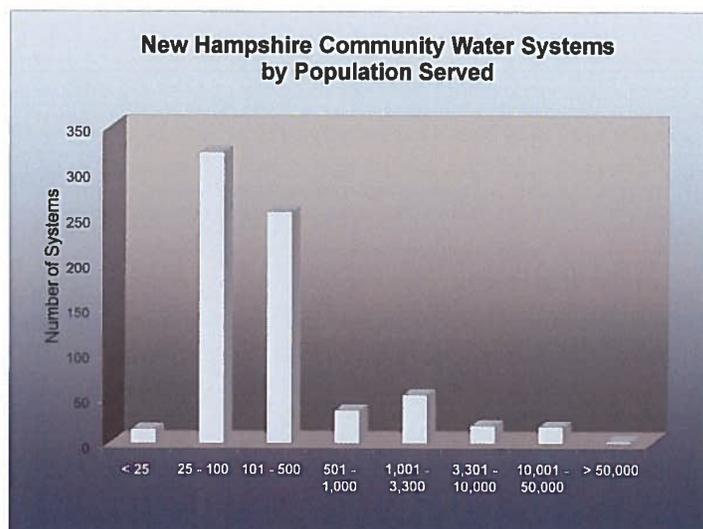


Figure 8-2. Of community water systems, the majority (82%) serve relatively small populations that have fewer than 500 customers. Source: NHDES, 2008a.

New Hampshire has embraced this approach and has promoted protection of the sources of our drinking water as an important tool in ensuring safe drinking water. The state supports local land use planning consistent with protecting both the quantity and quality of drinking water and many municipalities have adopted ordinances to protect their drinking water.

8.2 Issues

8.2.1 Private Well Users at Risk

Although about 36 percent of New Hampshire residents use private wells for their drinking water supply, the water quality of many of these wells is unknown. Currently there are no statewide monitoring or treatment requirements for private wells. Private wells are not covered by the Safe Drinking Water Act and are rarely regulated in towns or other states. New Hampshire has required a well construction report for private wells since the year 2000; however, there may be no records for wells constructed before then. Further, while New Hampshire encourages private well testing, it is unclear how effective the educational efforts have been.

As previously described, estimates suggest that a significant proportion of New Hampshire's private bedrock wells are contaminated with arsenic and/or radon, two naturally occurring contaminants. Recent studies have also increased concern about the health risks of elevated manganese and fluoride in some areas (Rocha-Amador et al., 2007). Dug wells are often at risk for pathogen entry if they are improperly maintained or constructed, or if wells are located where contaminants might enter due to flooding, nearby animal pens, manure piles, etc. In addition, there are other less common contaminants such as radionuclides other than radon, fluoride or beryllium, which can occur at unsafe levels in particular geographic areas. Salt from roads or salt piles is also a common problem in many areas of the state.

8.2.2 New Hampshire Has a High Proportion of Struggling Small Community Systems

Even large community water systems find the Safe Drinking Water Act regulations difficult and costly to meet, so it is no surprise that it is much more difficult for small water systems. Figure 8-7 depicts the many challenges that small water systems may encounter as they provide safe drinking water. New Hampshire has a large proportion of small systems which are widely distributed and often impossible to interconnect. Per customer costs may be dramatically different than those associated with large systems. These small stand-alone systems require fairly sophisticated operations, yet they cannot afford to hire full-time staff that specialize in drinking water. Some small municipal water systems may have to share one part-time staff member with the highway department, the fire department and others.

Conversely, larger systems benefit from economies of scale and can afford to hire highly educated, specialized staff teams with in-depth knowledge of treatment, distribution, and other aspects of drinking water provisions. As a result, customers of the smallest systems often pay the most for

New Hampshire Water Resources Primer

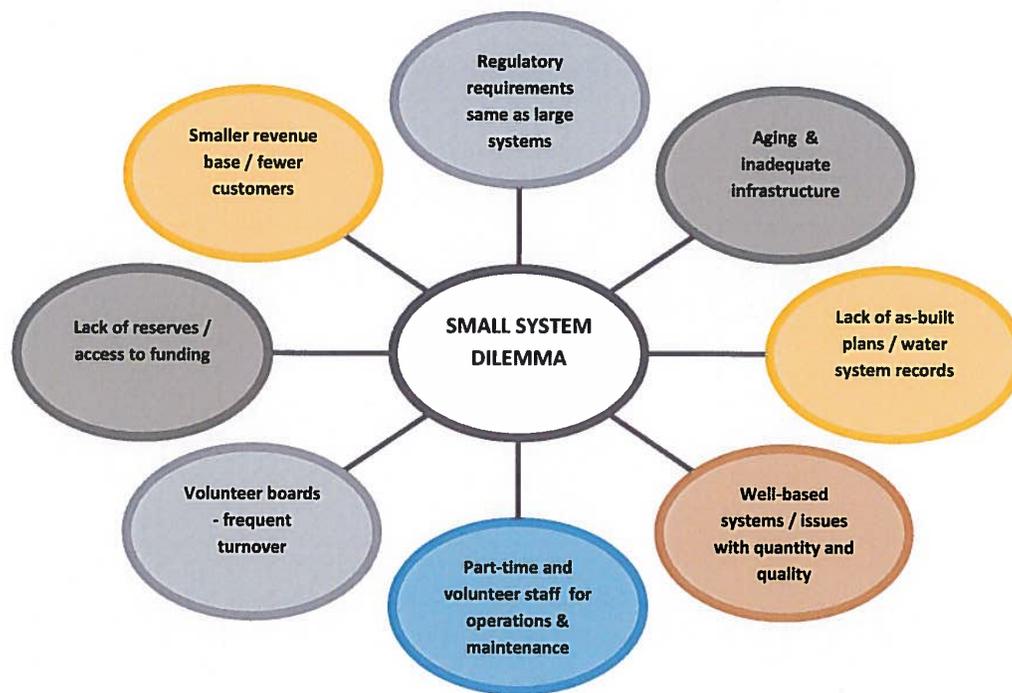


Figure 8-7. Challenges for small community water systems in New Hampshire.

the least in services. It is also important to note that providing water supply is a highly capital intensive mission where even the largest systems struggle to maintain and replace their aging infrastructure.

8.2.3 Aging Water Supply Infrastructure Is Widespread: Funding Insufficient

Much of the drinking water infrastructure in New Hampshire's cities and towns is 50 to 100 years old. The infrastructure can include some or all of the following: dams for reservoirs, intakes, wells, pumps, transmission lines that take the water supply to treatment facilities, treatment facilities, water storage tanks, distribution networks, pump stations, meters, and electronic monitoring systems. Nearly all of these are costly to maintain or replace. Without regular capital improvements, more water leakage can occur and drinking water can become more difficult and costly to meet community needs.

A few of the largest systems are able to develop and implement long-term capital improvement plans, making infrastructure improvements over time. But for the most part, typical municipal systems are unable to keep up with the capital improvements that are needed to keep their systems up to date and operating efficiently, since they lack larger systems' economies of scale. Most water systems do not charge enough to cover all of the costs associated with providing water.

***Resolution Supporting the Consideration of Regulatory Mechanisms and Policies Deemed
“Best Practices” for the Regulation of Small Water Systems***

WHEREAS, The United States Environmental Protection Agency estimates that more than eighty percent of the total water systems in the United States serve fewer than 3,300 people per system; *and*

WHEREAS, The NARUC Water Committee recognized that “small water company viability issues continue to be a challenge for regulators” in the *Resolution Supporting Consideration of Regulatory Best Policies Deemed as Best Practices* (2005); *and*

WHEREAS, It is acknowledged that the traditional cost-of-service regulatory model as applied to small water systems may result in regulatory costs that are disproportionately high on a per-customer basis, which ultimately impacts customers served by those systems; *and*

WHEREAS, A number of regulatory policies and mechanisms have been implemented by public utility commissions throughout the United States to specifically address the challenges of regulating small water systems; *and*

WHEREAS, In the regulation of small water systems, it is recognized that rate application processes and mechanisms that reduce or remove the need for use of outside counsel or consulting services, thus reducing rate application duration and costs, should be encouraged; *and*

WHEREAS, To meet the challenges of environmental compliance and continued capital investment required to deliver safe and reliable service to the customers served by regulated small water systems, the following practices have been identified as means to improve sustainable and continued investment in small water system infrastructure at cost-effective rates: a) simplified rate applications for small water systems; b) electronic filing procedures; c) use of the annual report provided by the utility to the public utility commission to provide a significant portion of the rate application; d) commission staff assisted rate cases including both direct commission staff involvement in the rate application process and site visits to reduce the need for formal discovery; f) simplified rate of return mechanisms that may include formulaic rate of return calculations or percentage increases in authorized returns indexed to recent water cases in the same jurisdiction; g) cost of living adjustments; h) rate mechanisms to facilitate emergency infrastructure funds; i) operating ratio rate mechanisms where there is very limited rate base; j) limiting the use of Contributions In Aid of Construction in situations where unsustainably low rates may be instituted as a result; and k) combining water and wastewater revenue requirements for purposes of rate cases, as appropriate, if the water and wastewater utilities are under the same ownership, which will reduce rate case expense and offer rate increase mitigation options driven by economies of scale that would be unavailable otherwise; *and*

WHEREAS, It is further recognized that there are regulatory policies and mechanisms that address the viability of newly operating small water systems, including: a) enforcing the technical, managerial, and financial requirements as defined by the United States Environmental Protection Agency; b) where applicable and beneficial to the customer, encouraging consolidation with a nearby water system; and c) in the case where the new system provides the

most benefit to the consumers, assuring adequate rates for infrastructure sustainability and emergency funding; *and*

WHEREAS, It is recommended that jurisdictions periodically evaluate classification criteria for defining which water systems qualify as small water systems; *now, therefore be it*

RESOLVED, That the National Association of Regulatory Utility Commissioners, convened in its 2013 Summer Meetings in Denver, Colorado, conceptually supports review and consideration of the innovative regulatory policies and practices identified herein as “best practices” in the regulation of small water systems; *and be it further*

RESOLVED, That NARUC recommends that economic regulators consider and adopt as many as appropriate of the regulatory mechanisms identified herein as best practices; *and be it further*

RESOLVED, That the Committee on Water stands ready to assist economic regulators with implementation of any of the best practices set forth within this Resolution.

Sponsored by the Committee on Water

Adopted by the NARUC Board of Directors, July 24, 2013

WA-3 Resolution Addressing Gap Between Authorized Versus Actual Returns on Equity in Regulation of Water and Wastewater Utilities

WHEREAS, There is both a constitutional basis and judicial precedent allowing investor owned public water and wastewater utilities the opportunity to earn a rate of return that is reasonably sufficient to assure confidence in the financial soundness of the utility and its ability to provide quality service; *and*

WHEREAS, Through the *Resolution Supporting Consideration of Regulatory Policies Deemed as "Best Practices"* (2005), the National Association of Regulatory Utility Commissioners has previously recognized the role of innovative regulatory policies and mechanisms in the ability for public water and wastewater utilities to address significant infrastructure investment challenges facing water and wastewater system operators; *and*

WHEREAS, Public utilities carry the responsibility to invest prudently, provide safe and reliable service, and take reasonable action to take precautionary measures to address business risk and economic forces, as necessary; *and*

WHEREAS, Recent analysis shows that as compared to other regulated utility sectors, significant and widespread discrepancies continue to be observed between commission authorized returns on equity and observed actual returns on equity among regulated water and wastewater utilities; *and*

WHEREAS, The extent of such discrepancies suggests the existence of challenges unique to the regulation of water and wastewater utilities; *and*

WHEREAS, Ratemaking that has worked reasonably well in the past for water and wastewater utilities no longer addresses the challenges of today and tomorrow. Revenue, driven by declining use per customer, is flat to decreasing while the nature of investment (rate base) has shifted largely from plant needed to serve new customers to non-revenue producing infrastructure replacement; *and*

WHEREAS, Deficient returns present a clear challenge to the ability of the water and wastewater industry to attract the capital necessary to address future infrastructure investment requirements necessary to provide safe and reliable service, which could exceed one trillion dollars over a 20-year period; *and*

WHEREAS, The NARUC Committee on Water recognizes the critical role of the implementation and the effective use of sound regulatory practice and the innovative regulatory policies identified in the *Resolution Supporting Consideration of Regulatory Policies Deemed as "Best Practices"* (2005); *and*

WHEREAS, It is recognized that State legislative bodies play a significant and important role in considering and addressing the challenges present in the regulation of water and wastewater utilities; therefore, it is critical that economic regulators strive to continue to foster an environment of cooperation and open communication between themselves, legislative bodies,

and other State agencies involved in the oversight of water and wastewater utilities such that implementation and effective use of sound regulatory practice and the innovative regulatory policies identified in the *Resolution Supporting Consideration of Regulatory Policies Deemed as "Best Practices"* (2005) is both possible and effective; *and*

WHEREAS, A number of issues have been identified that if addressed may assist in lessening the discrepancy between authorized and actual returns, including: a) reducing, where appropriate, the length of time between rate cases and/or the length of time to process rate cases for regulated water and wastewater utilities; b) reducing rate case expense relative to requested revenue increases through the encouragement of mediation and settlement as appropriate; and c) examining the rate of infrastructure replacement and system improvements among regulated water and wastewater utilities; *now, therefore be it*

RESOLVED, That the Board of Directors of the National Association of Regulatory Utility Commissioners, convened at its 2013 Summer Meeting in Denver, Colorado, identifies the implementation and effective use of sound regulatory practice and the innovative regulatory policies identified in the *Resolution Supporting Consideration of Regulatory Policies Deemed as "Best Practices"* (2005) as a critical component of a water and/or wastewater utility's reasonable ability to earn its authorized return; *and be it further*

RESOLVED, That NARUC recommends that economic regulators carefully consider and implement appropriate ratemaking measures as needed so that water and wastewater utilities have a reasonable opportunity to earn their authorized returns within their jurisdictions; *and be it further*

RESOLVED, That the Committee on Water stands ready to assist economic regulators with the execution of a sound regulatory environment for regulated water utilities, and will continue to monitor progress on this issue at future national committee meetings until satisfactorily improved.

Sponsored by the Committee on Water

Adopted by the NARUC Board of Directors, July 24, 2013