ELCON REPORT

ELECTRICITY CONSUMERS RESOURCE COUNCIL

Number Four 2010

IN THIS ISSUE...

CONGRESS LEAVES WASHINGTON, HAS FULL PLATE FOR NEXT YEAR

Congress left Washington for the elections without addressing any of the major electricity and energy issues that had been debated for nearly two years. And although some energy issues may be considered in the lame duck session (converting vehicle fleets to natural gas and providing incentives for energy efficiency are at the top of the list in the Senate), most observers believe that nothing significant will be considered, leaving a host of issues for the 112th Congress which will convene in January. However, the lack of Congressional action does not mean that electricity consumers will not be impacted – perhaps substantially.

Although the House passed a major energy/climate change bill (HR 2454) in May 2009, including a renewable energy standard (RES) and a cap-and-trade approach to addressing greenhouse gas (GHG) emissions, the Senate never brought a major energy and/or climate change bill to the floor. There were several fits and starts. The Energy Committee approved a multi-faceted bill (S 1462) including energy efficiency, transmission siting, and an RES among other provisions in June 2009, but it was never brought to floor.

The Environment and Public Works Committee approved a cap-and-trade bill (S 1733) that was similar to the House-passed bill, but it was clear that such a bill could not pass the Senate. Sens. John Kerry (D-MA), Lindsey Graham (R-SC) and Joe Lieberman (I-CT) attempted to draft a consensus bill to reduce GHG emissions (they insisted it was not cap and trade), but the effort fell apart for several reasons. Although Majority Leader Harry Reid (D-NV) kept trying to craft a narrow energy bill that he felt could pass the Senate, he never brought a bill to the floor. Energy Committee Chairman Jeff Bingaman (D-NM) repeatedly called for consideration of his Committee-passed bill, but Sen. Reid never agreed.

At the same time several energy-related issues were being considered in proposed regulations issued by both the Environmental Protection Agency (EPA) and the Federal Energy Regulatory Commission (FERC).

Attracting the most attention is EPA's effort to regulate GHG emissions under its Clean Air Authority. EPA Administrator Lisa Jackson has repeatedly stated that her agency would be open to dialog with all stakeholders. But she also has been adamant that EPA would proceed with the rulemaking. EPA is also proceeding on a number of other issues such as air transport, ozone, mercury emissions and coal ash, all of which could affect both utility costs and electricity prices – perhaps substantially.

FERC has a host of proceedings underway and several more that could begin soon. Cost allocation for new transmission, especially transmission to bring power generated by renewable sources in remote locations to population centers are big issues, as is the impact of both a "smart grid" and increased renewable generation on grid reliability. FERC has initiated a rulemaking on Demand Response (and ELCON views the proposed rule favorably) that may well continue into next year. And feed-in tariffs to fund renewable energy is an issue that is beginning to get a lot of discussion.

Congress and the agencies will all have full agendas – and any change in the composition of Congress will just make consideration of those agendas more interesting.

ELCON PLANNING NEXT WORKSHOP

ELCON will hold its Fall Workshop in Washington, DC, on October 26.

The Workshop, entitled "Controlling the Costs of Clean Energy," will be highlighted by the Keynote Speaker, Assistant Secretary of Energy Patricia Hoffman.

Other speakers will explore how the investments for a "smart grid" will be allocated, how industrials can benefit from Demand Response, and what options are available for transmission investment and cost allocation.

"Industrial electricity users are facing a number of challenges," said ELCON President John Anderson. "The general trend at both the State and Federal levels is for cleaner energy. There are costs associated with achieving cleaner energy, and those costs will be passed through to consumers. How they are passed through will be very important."

The Workshop is open to ELCON members only and to other companies that are seriously considering ELCON membership. For more information, contact elcon@elcon.org.

ANDERSON OUTLINES SMART GRID OBJECTIVES

ELCON President John Anderson was invited to participate in a Webinar sponsored by the National GridWise Alliance where he outlined what industrial electricity users are seeking from a "Smart Grid." He emphasized that ELCON has no definitive position about the concept of a Smart Grid but has several concerns about its implementation.

Speaking frankly, he said a basic concern of large and small consumers is "what will the

Smart Grid cost," adding that he has heard estimates of "more than $1 trillion." He questioned "whether the money will produce long-lived assets – or will consumers be faced with large amounts of stranded costs" when new technologies make recent investments obsolete.

Anderson acknowledged that there are many potential advantages to a Smart Grid, observing at the same time that there is no unanimity about what a Smart Grid actually is. For example, he foresaw a Smart Grid assisting grid operators in managing the flow of electricity, thus making the grid more efficient, especially over what are now congested interfaces. And he stated that a smart grid would assist in identifying the location of outages, thus improving the operation of both the transmission and distribution systems.

However, Anderson stated that a crucial component of a Smart Grid is the sending of real-time price signals to consumers as an incentive for reduced demand at peak times. He went on to say that most large industrial consumers "already have interval meters and many are today subjected to time-differentiated prices." But he questioned whether residential consumers prefer time-of-use rates to an average price. He also questioned whether a Smart Grid is necessary to achieve peak load control goals, citing 40 years of experience where "various utilities have been installing radio-controlled switches on key customer appliances," which he called a "proved – and very inexpensive – way to reduce peak load."

He concluded that, for a Smart Grid to be implemented successfully, "consumers must be convinced that the net benefits (benefits that they truly want) outweigh the costs (that are unknown, but thought to be substantial)."

ELCON OBJECTS TO PROPOSED BULK ELECTRIC SYSTEM REVISIONS

ELCON filed comments at the Federal Energy Regulatory Commission (FERC) objecting to a Notice of Proposed Rulemaking (NOPR) that would direct the North American Electric Reliability Corporation (NERC) to change the definition of the Bulk Electric System (BES).

FERC's NOPR would revise NERC's definition of the BES to "include all electric transmission facilities with a rating of 100 kV or above." Of particular interest to ELCON was the issue of radial lines. The old definition specified that "radial transmission facilities serving only load with one transmission source are generally not included." But FERC's proposed revision would require any of NERC's Regional Entities to seek NERC approval before it "exempts any transmission facility rated at 100 kV or above," although a footnote explains that FERC intends to preserve the existing language for radial lines. In its comments, ELCON noted that radial transmission "warrants far more than the offhand treatment in the NOPR" and that there "should be no doubt whatsoever that the exclusion continues to have full force."

ELCON's comments concluded that FERC should "implement regulatory language clarifying that the general exclusion for radial lines remains effective."

METHOD FOR ALLOCATING COSTS FOR NEW TRANSMISSION IS CRUCIAL

ELCON filed two sets of comments at FERC protesting the Commission's proposed rule (NOPR) on allocating costs for building new transmission.

The issue dates back to at least 2007 when the Commission approved PJM's transmission cost allocation methodology for facilities above 500 kilovolts. However, a U.S. Circuit Court ruled that, regarding new transmission facilities, FERC had failed to demonstrate that its "postage stamp" rates would be just and reasonable, as required by the Federal Power Act. Moreover, the Court ruled that FERC's methodology, which spread the costs evenly throughout the region, was not supported by FERC's claims of improved reliability and reduced congestion. FERC then initiated a generic rulemaking. A major objective of FERC's NOPR is to spread the costs of building the new transmission necessary to bring renewables onto the grid as broadly as possible.

In one set of comments, several national and state associations representing industrial electricity customers allied themselves with ELCON. In the other set, ELCON joined a number of state public utility commissions and other mostly state and local groups.

The main thrust of the brief put forth by ELCON and other industrial users urged FERC "to avoid any implication that long-standing cost causation principles are to be displaced by 'public policy' considerations" such as the promotion of renewable energy.

ELCON emphasized that the "ultimate goal should be transmission projects that: (1) deliver measurable and verifiable economic and reliability benefits, and (2) are timely planned, constructed and operated." The comments noted that the NOPR departed from these objectives, by stating that planning process should "account for transmission driven by public policy requirements established by state or federal laws or regulations." ELCON observed that "there is no statutory basis of expansion of transmission planners' authority."

ELCON's comments also touched on the subject of differing policies in different states which would complicate the planning and cost allocation process, stating that the NOPR "fails to address how a regional or interregional planning process is to account for differences among the public policies of the participating states."

"Determining cost causation is not always easy," explained ELCON President John Anderson, "but that is the job of regulators. They must fulfill that responsibility in order for costs to be assessed in a just and reasonable manner as required by law. We are not opposed to more renewable energy. But there is no reason for any electricity consumer, large or small, to pay for new transmission which provides no net benefit to that consumer."

FERC'S DEMAND RESPONSE PROPOSAL DRAWS COMMENTS

ELCON offered its unequivocal support to FERC's Notice of Proposed Rulemaking (NOPR) on Demand Response offered in the spring, but it submitted comments somewhat critical of FERC's Supplemental Notice on Demand Response issued in August.

The Supplemental Notice dealt with two issues – (1) should FERC adopt a "net benefits test" to determine when to compensate demand response providers and (2) what specific requirements should be applied to the allocations of costs of demand response.

ELCON asserted that "there is no need" for a net benefits test, which ELCON stated, would "limit the number of hours in which demand response resources may participate," or, in other words "an oblique effort, without a sound basis, to stifle demand response." ELCON supported the original NOPR, which allowed demand response participants to bid on a 24/7 basis, explaining that "a huge benefit of the NOPR's 24-by-7 proposal is adding the risk, in every hour, that any bid from the generator sector might be undercut by a demand response provider and induce more efficient (i.e., lowest possible) bids from generators."

With regard to cost allocation, ELCON offered that "the costs of demand response resources should be allocated the same way generator costs are allocated, i.e., to the beneficiaries" and that the allocation should be on "a zonal basis."

"In order for demand response to realize its potential, we need an open market" said ELCON President John Anderson. "The rules need to be as unrestrictive as possible. FERC's original NOPR was a positive step in that direction."

LARGE AND SMALL CONSUMERS SEEK ROLE IN DETERMINING NERC-FERC RELATIONS

At a FERC Technical Conference earlier this year there was considerable discussion about a new CEO-level forum to interface with FERC Commissioners and senior NERC staff as one component of improving NERC-FERC communications.

As an invited participant at that Conference, ELCON President John Anderson raised immediate concerns. "Reliability standards and the cost of implementing them have a direct impact on consumers," he said later. "If there is to be a new entity created, it should be representative of all stakeholders, including large and small consumers."

Anderson found that ELCON's concerns were shared by several other consumer groups. Accordingly, when FERC opened a formal docket on the FERC-NERC relations issue, including the possible establishment of a new entity comprised of utility CEOs, three other consumer groups, the National Association of State Utility Consumer Advocates (NASUCA), Public Citizen, and the National Consumer Law Citizen, Inc., joined ELCON in submitting joint comments. That filing noted that "NERC is responsive to the needs of all stakeholders, including consumers." Discussion regarding the new entity included "no mention of consumer participation," they observed, which, "while perhaps an oversight, is striking."

Anderson emphasized that all four groups support greater FERC-NERC communications and cooperation, but he urged that "existing structures be used before we create new entities and procedures."

ELCON MEETS WITH FERC COMMISSIONER SPITZER

A contingent of ELCON members met with FERC Commissioner Marc Spitzer in September, primarily to discuss the allocation of costs for new transmission and other issues.

According to ELCON President John Anderson, the session was one of ELCON's regular meetings with the five FERC Commissioners. "It's always helpful to meet face to face," he said. "Our members appreciate the opportunity to explain how a proposed rule or policy change will affect the real world of manufacturing. The allocation of costs for new transmission is a perfect example. While policy makers have their objectives, ELCON members can explain how additional costs for transmission will affect operations at a particular facility. It's good for us and good for the Commissioners."

ELCON also met with senior FERC staff from FERC's Office of Energy Policy and Innovation to discuss transmission, demand response, organized markets, and other issues.

For information on ELCON:
The Electricity Consumers Resource Council
1111 19th Street, NW, Suite 700
Washington, DC 20036
202-682-1390 / www.elcon.org