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ELCON SUPPORTS NERC EFFORTS TO "TECHNICALLY JUSTIFY" REVISED DEFINITION OF BULK ELECTRIC SYSTEM

John Hughes, ELCON's Vice President-Technical Affairs, is continuing his active participation on a drafting team appointed by the North American Electric Reliability Corporation (NERC) to revise the definition of the Bulk Electric System (BES). The definition is used to identify on a facility-by-facility basis the appropriate electrical components (the term used by NERC is "Elements") necessary for the reliable operation of the interconnected transmission network and therefore subject to NERC's mandatory Reliability Standards. The thirteen-member drafting team includes representatives of each industry segment. Hughes represents the Large End-User segment.

"The real deliverable of this project," according to Hughes, "is a sweeping 'bright-line' test that identifies transmission and generation facilities that are within the scope of FERC regulatory authority under section 215 of the Federal Power Act. Since section 215 applies to 'owners, operators, and users' of such Elements, the revised definition has the potential to greatly increase the number of transmission-connected industrial facilities that must comply with NERC standards. For industrial facilities, behind-the-meter generators and interconnection facilities are the most at risk."

On November 18, 2010, the Federal Energy Regulatory Commission (FERC) issued Order 743 directing NERC to revise the definition of BES so that the definition encompasses all elements and facilities necessary for the reliable operation and planning of the interconnected bulk power system. In the Order, FERC proposed that a 100 kV "bright-line" test be used. In January 2012, NERC filed its preliminary—Phase 1—revised BES definition with FERC and proposed amendments to NERC's *Rules of Procedure* (RoP) that prescribe a process for seeking exceptions to the definition. One or more rulemakings will be initiated by FERC in 2012 to finalize the definition and exception process.

In Phase 2, the drafting team is collecting and analyzing information needed to technically justify the Phase 1 revisions. This will include the technical justification of two issues that are important to ELCON members and other transmission-connected end users:

1. *The appropriate threshold for generation necessary for the reliable operation of the Bulk Electric System (BES)*. Currently, the BES includes generating resource(s) with a gross individual nameplate rating greater than 20 Mega-Volt Amperes (MVA) or a gross plant/facility aggregate nameplate rating greater than 75 MVA. For industrial cogeneration facilities, these thresholds have been interpreted to apply to the net "put" to the grid, and not to the nameplate rating. There is strong sentiment within the industry for increasing these thresholds and perhaps replacing them with a single threshold value for each interconnection.

2. *The 100 kV bright-line voltage level proposed by FERC*. The 100 kV threshold is widely deemed to unlawfully include facilities used for local distribution. While the drafting team is not likely to explore the legal ramifications of the bright-line value, it will attempt to justify a threshold value that defensibly identifies Elements that are absolutely necessary for the reliable operation of the interconnected transmission network, and the appropriate "points of demarcation" between transmission, generation, and distribution.

The drafting team is also attempting to clarify the relationship between the revised BES definition and the *Statement of Compliance Registry Criteria* (SCRC) that was approved in FERC Order 693. The SCRC is now used by NERC to identify "owners, operators, and users" of the bulk power system who are candidates for registration in the NERC Compliance Registry. Once registered, these entities must comply with all applicable requirements in NERC Reliability Standards.

The drafting team expects to complete its work in 2013.

FERC MAINTAINS MARKET POWER STANDARD

"FERC got it right," stated ELCON President John Anderson. "They looked at the market power issue, they heard everybody's point of view, and they decided that if it ain't broke, don't fix it."

Anderson was referring to a recent FERC decision to retain its existing policies regarding the analysis of horizontal market power in the case of utility mergers and acquisitions. By way of background, early in 2011 FERC issued a Notice of Inquiry (NOI) seeking comments on whether it should revise its approach to analyzing market power issues pursuant to its authority under the Federal Power Act. The NOI was triggered by revised anti-trust guidelines issued in August 2010 by the Department of Justice (DOJ) and the Federal Trade Commission (FTC) which have joint Federal jurisdiction over anti-trust issues.

In its NOI, FERC suggested that it increase its threshold levels used in assessing post-merger market power concentration which, in effect, would have relaxed the trigger levels. ELCON filed comments, which were joined by the National Association of State Utility Consumer Advocates, urging FERC not to take any action that would dilute its current market power analysis and pointing out the difference between electricity markets and other markets addressed by DOJ and the FTC. In its Order, FERC agreed with and extensively cited ELCON's comments and committed itself to a strict scrutiny of market power issues. It stated that its search for market power is "intended to be conservative enough so that the parties and the Commission can be confident that an application [for a merger or acquisition]...would have no adverse impact on competition."

"Market power has always existed in the electric utility industry," said Anderson, "and market power results in higher prices for both large and small consumers. FERC has a responsibility under the Federal Power Act to protect those consumers and I am pleased that they are continuing their commitment to do so."

MOELLER TO HEADLINE ELCON WORKSHOP

FERC Commissioner Phil Moeller will deliver the keynote address at ELCON's April 24 "Members Only" Workshop entitled "Keeping the Lights on in the Face of Emerging Threats." Moeller will address a number of issues on grid reliability, including the impact of EPA regulations, how to ensuring adequate infrastructure, and dealing with cyber threats.

NARUC President David Wright will also join the Workshop to specifically discuss EPA rulemakings and grid reliability from the "cost" perspective. Wright, who serves as the Vice Chairman of the South Carolina Public Service Commission, has been outspoken about the little discussed financial impact that EPA's panoply of proposed rules and regulations could have on electricity consumers.

Also meeting with Workshop attendees will be Lauren Azar, a senior advisor to DOE Secretary Steven Chu. Previously, Ms. Azar, was a member of the Wisconsin utility commission, vice chairwoman of DOE's Electricity Advisory Committee and president of the Organization of MISO States. Ms. Azar will speak on the Department's triennial transmission congestion study as well as changes in electricity markets. Other speakers will address transmission infrastructure, the future of the electricity grid, cyber security, and EPA regulations.

The Workshop, which will be held in Washington, D.C., is open only to ELCON members and representatives from companies that are seriously considering ELCON membership. For more information contact ELCON (202-682-1390 or elcon@elcon.org).

ELCON COMMENDS NARUC ON TRANSMISSION INCENTIVES

"Three cheers for NARUC," said ELCON President John Anderson in praising the National Association of Regulatory Utility Commissioners (NARUC) for their recent actions on transmission incentives. "We believe that consumers have been paying for unnecessary incentives. Having NARUC in agreement will be very helpful."

Anderson was speaking about NARUC passing a resolution in February urging that FERC re-examine its policy on awarding incentives for the construction of new transmission. FERC had already issued a Notice of Inquiry on the issue. Following passage of its resolution, NARUC filed comments, prefaced by the statement that "costs to build transmission, including incentives, are ultimately born [sic] by retail ratepayers."

It went on to state that the "current incentive rate policy under Order 679 has resulted in overly generous incentives" and urged that the "transmission incentive rate under Order 697 should be reformed."

"The rate of return on building new transmission should be related to the risk," stated Anderson. "Most of the new transmission being built has very low risk, yet FERC has routinely awarded incentives. It's costly to consumers, and, in the long run, harmful to the economy."

ELCON has long supported a re-examination of FERC's policy on incentive rates and recently joined in a joint filing at FERC. As part of an ad hoc coalition of state public utility commission, state consumer advocates, public power systems, rural electric cooperatives, and other end users, ELCON called on FERC to "reevaluate and recalibrate its transmission rate incentive policy to better balance the interests of transmission owners and developers the inters of consumers of electricity." The Joint Comments observed that requests for incentive rates "are being granted routinely," and urged FERC to adhere to the Federal Power Act's standard "that end use consumers should pay only just and reasonable rates for transmission."

ANDERSON WARNS ABOUT FUTURE PRICE INCREASES

"Industrial users should be prepared for electricity price increases," warned John Anderson when speaking to the Kentucky Industrial Users in Lexington, citing possible action in a variety of public policy forums.

Anderson advised the Kentucky industrial group to "watch carefully regulatory, legislative, Administrative and court proceedings."

Specifically, Anderson pointed to the Federal Energy Regulatory Commission which he said is "pushing very hard" for the integration of "green energy." He added that FERC approved a tariff for the Midwest ISO (MISO) incorporating "multi-value projects" which in essence promotes renewable energy. The FERC-approved funding mechanism would socialize costs throughout MISO, and FERC said that there was no need to explicitly weigh any project costs against prospective benefits. ELCON is challenging FERC on this case in the Seventh Circuit.

There are also a host of issues being considered by EPA that could also raise electricity prices according to Anderson. He mentioned the air transport rule (CSAPR), the air toxics rule for utilities (MATS), the cooling water rule, and the coal ash rule, among others. While he hesitated to estimate the total price impact due to the uncertainty of the implementation, Anderson stated that "the costs will be substantial," in part because, as NERC concluded in its study, "between 441 and 761 generating units would be 'economically vulnerable for accelerated retirement' by 2018." As a result, Anderson concluded that "there is little on the horizon to suggest lower electricity costs" and that "there is much to suggest higher electricity costs – perhaps substantially higher." The only question, he said, "is when and by how much."

ELCON has filed comments at FERC on this issue in response to the Commission's "Staff White Paper on the Commission's Role Regarding the Environmental Protection Agency's Mercury and Air Toxics Standards." In those comments ELCON noted that the mercury and air toxics standard (MATS) will be "one of the most expensive rules that EPA has ever promulgated." It urged that FERC provide appropriate advice and counsel to EPA that would include an "awareness of the costs and other impacts on end use consumers." ELCON also recommended that "the scope of the Commission's investigation include issues related to the full implication of MATS compliance costs."

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