ELCON REPORT
ELECTRICITY CONSUMERS RESOURCE COUNCIL

Number Two 2014

The Electricity Consumers Resource Council (ELCON) is the national association of large industrial electricity consumers. Issues addressed in this ELCON Report include:

ELCON RAISES RELIABILITY CONCERNS ON EPA PROPOSED RULE

Under the joint leadership of the NAM and the US Chamber of Congress, ELCON is part of a consortium of manufacturing associations which filed comments with EPA in opposition to the agencies Clean Power Plan, also known as the "111(d) rule."

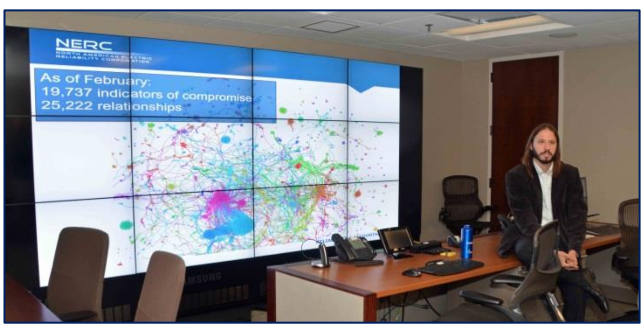
The primary interest of ELCON and the coalition in filing comments is (1) that, as has been pointed out in several studies, due to changes in the electricity generation base necessary to implement the rule, the reliability of the interstate transmission grid could be jeopardized and (2) to emphasize that the requirements imposed on existing power plants as a result of the proposed rule could very likely result in increased electricity prices for manufacturers, thus disadvantaging them in worldwide markets,.

John Hughes, ELCON's Technical VP who is the point person on this issue, stated that "EPA will receive millions of communications on this proposed rule. There are many issues that will be raised. As industrial users, we want to do what we can to be sure that EPA knows what the real world effect will be on the manufacturing community. And if the final EPA rule is not changed significantly, we want to be sure that the facts are on the table for legal action in the future."

ELCON MEETS WITH NERC TO DISCUSS GRID SECURITY

As part ELCON's Fall Seminar on Emerging NERC issues, ELCON members were able to tour NERC's Operations Center – a "secure room" – where NERC staff are constantly monitoring physical and cyber threats to the nation's interstate electricity grid.

Tim Roxey, NERC's chief security officer, along with Ben Miller and Brian Harold, demonstrated how, when faced with a cyber threat, they quickly look for related websites to determine trends and possible sources. The security staff, which is associated with the Electricity Sector Information Sharing and Analysis Center (the ES-ISAC), is separated from other NERC operations and access is restricted.



The NERC Secure Room Where ELCON members were given a private educational tour

Also at the Seminar, David DeFalaise from FERC's Office of Reliability discussed how his shop is working to ensure grid reliability. He described NERC's Critical Infra-

FERC's David DeFalaise

structure Protection (CIP) program which has gone through numerous interactions is now in Version 5, which he described as a "brand new re-write."

FERC is also working with the Department of Homeland Security to coordinate grid protection. DeFalaise said that by January 2015 he expected to start sending information to stakeholders on how to comply with all FERC requirements on grid security.

Also working on grid security is Rebecca Michael, NERC's Senior Director for Reliability. Her responsibilities include both NERC's new definition of the Bulk Electric System (BES) and the Risk Assessment Initiative (RAI), and she said both exercises seem "to be going quite well."

NERC's Rebecca Michael

With regard to the BES re-write, she said NERC's objective is to "ensure the right entities are identified." Those components identified as part of the BES would then be considered candidates for inclusion on NERC's Compliance Registry. Inclusion makes an entity subject to the applicable NERC reliability standards and subject to NERC enforcement (with fines potentially up to $1 million per day per violation).

She stated that the objective in implementing the RAI was "parity in decisions." For commercial and industrial facilities those subject to NERC standards would "basically be those that sell to end users."

Sonia Mendonca, NERC's associate general counsel and senior director of compliance and enforcement, gave the Seminar's last presentation. She emphasized that NERC's current practice is to focus resources on those violations that have "high risk and the highest impact." She added that NERC would try to have compliance plans specific for each registered entity.

She also described NERC's new program for "self-logging." Documents describing how that program is being implemented, along with information on other NERC programs, are available on NERC's website (www.nerc.com).

IMPACT OF EPA REGULATIONS DEBATED

The Environmental Protection Agency (EPA) is proceeding with its Clean Power Plan to reduce carbon emissions from existing power generators and Sarah Dunham, who spoke to ELCON's Fall Workshop, is the point person in finalizing the rule which was submitted to the public for comments on June 18th.

Sarah Dunham, Director of the Office of Atmospheric Programs, Environmental Protection Agency

Dunham, EPA's director for the Office of Atmospheric Programs, made clear that EPA is looking for comments from stakeholders, but EPA fully intends to have a final plan by next spring, as President Obama directed. The proposal, also known as the "111(d) rule," directs each State to prepare a plan to reduce carbon emissions in 2030 by 30 percent from 2005 levels. EPA assumes that much of the reduced emissions will result from increased energy efficiency and decreased demand for power. Many ELCON members are fearful that the plan, when fully implemented, will result in higher prices for less reliable electricity.

Dunham was questioned by ELCON members about the impact of the new rule on grid reliability. She asserted that EPA looked to the Department of Energy for expertise on that issue, and that she realized more time might be needed to make the necessary infrastructure improvements. She allowed that "there will be changes" when the rule is finalized next year.

Joel Visser and Megan Ceronsky

The Workshop included a "debate" between Joel Visser from the Sidley Austin law firm (which prepared comments for a coalition of associations representing manufacturers, including ELCON) and Megan Ceronsky, an attorney from the Environmental Defense Fund. Visser raised a series of questions about EPA's legal authority to impose carbon limits on States, including the assertion that EPA cannot regulate the same source of emissions (*i.e.*, power plants) under two different sections of Clean Air Act (CAA). Since power plants are already regulated under Section 112 of the CAA, he asserted that they cannot also be regulated under Section 111(d). He questioned whether EPA's proposed rule intruded into areas that are legally and historically within the jurisdiction of each State, and he also challenged EPA's technical assumptions, stating that the agency was not sufficiently "proficient."

Ceronsky countered that several court decisions in the DC Circuit have held that

Section 111 is the "appropriate place to address carbon pollution." She commended EPA for allowing each State to take an individual approach, pointing out that increased renewable generation, plant replacement, and increased reliance on demand markets could be used, depending on each State's present situation.

Kyle Danish of Van Ness

Kyle Danish, a lawyer with the firm Van Ness Feldman who has considerable expertise on energy and environmental law, discussed how the proposed EPA rule would affect combined heat and power (CHP) facilities. He noted the benefits of CHP – it is much more efficient than conventional electrical generation because it uses the same fuel inputs two or three times – but warned that there is a risk, especially for large cogenerators, that some units could be classified as "affected electricity generators" and thus incur additional coverage under the rule. There are several criteria, he said, that are used in determining that classification. For non-affected CHP facilities, Danish said "they can be part of the solution" as each State develops its own Clean Power Plan carbon pollution proposal.

VARIETY OF ISSUES FACING ELECTRICITY MARKETS OF FUTURE

For a number of reasons, many electricity stakeholders believe that the markets of future will be quite different than the markets that are operating today. Several issues related to those changing marketplaces were discussed at ELCON's Fall Workshop.

Raj Addepalli, NY DPS

Raj Addepalli from New York's Department of Public Service outlined the situation in his State where the load factor, which not long ago was 60 percent, will drop to 50 percent in the near future. The result, he said, is that the unit rate for electricity per kWh will go up. In addition, utilities will be increasing their investments in infrastructure. But a relatively flat demand means that those expenditure will also result in higher prices per kWh. He also mentioned other variables which have the potential to push prices higher, including a disruption in natural gas supply or unexpected volatility in natural gas prices.

He concluded that we need to create a "new regulatory paradigm" to provide the right incentives to distribution utilities. He cited the many new technologies coming on line – he specifically cited NEST and Google – and urged all parties to look close at new services and products. He noted that for industrial users these technologies could increase opportunities for Demand Response (DR).

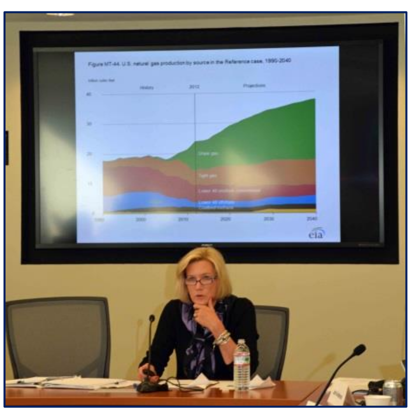
Those views were echoed by Bruce Biewald, president of Synapse Energy Economics, Inc. He said that utility planning "was very bad" because they had "no incentive to do better." To do otherwise, he pointed out that there is general agreement that some sort of carbon pricing is coming, and that prices will increase. But, he said, utility planning models are internally inconsistent using different estimated

Bruce Biewald, President Synapse Energy Economics

prices for commodity purchases.
Gregg Dixon, EnerNOC's vice president for marketing and sales, pointed out that Demand Response has problems of its own. He said the recent decision of the DC Circuit Court, basically vacating FERC's Order 745 which promoted Demand Response, is the "single biggest policy issue" he's ever seen. Without Demand Response, he said, wholesale prices in PJM would double. He mentioned that a pro-Demand Response Coalition, the Advanced Energy Management Alliance (AEMA), in which ELCON participates, is working to reverse the Circuit Court's decision and to marshal forces in support of DR. He urged ELCON members to get involved (see related article).

Gregg Dixon, Vice President, EnerNOC

Change is also likely in how electricity markets interface with gas markets. Dena Wiggins, president of the Natural Gas Supply Association, outlined how the two markets operate on different schedules, leading many to fear that – when demand for gas is highest – electricity suppliers, who are increasingly reliant on natural gas, may be unable to access supply because gas markets are not operating at that time.



Dena Wiggins, President, NGSA

The daily schedule for the gas market, she said, was established by the North American Energy Standards Board (NAESB). Gas suppliers want to sell their product on a day ahead basis and be through by late morning. But last winter, during the polar vortex, some gas buyers, particularly in the Northeast, found that they were in danger of not being able to get adequate supplies. She hoped that eventually there would be a system where market signals would dictate the time and price of gas sales, but she said that at present the situation is "in transition."

Doug Jaeger, a member of the Board of Trustees for the North American Electric Reliability Corporation (NERC), listed some of the changes he was seeing in electricity markets.

Among them were that "the infrastructure is getting old" and that the "awareness of electricity is growing." He also noted the numerous obstacles to keeping the electricity grid reliable, including cyber threats, increasingly unpredictable weather, and solar eruptions.

NERC, whose primary task is to ensure a reliable grid, is changing its focus, said Jaeger, becoming less "program-centric" and more "result-centric." He added that as markets change, "NERC is maturing," but, he cautioned, "we can't tackle everything."

Doug Jaeger, Member of the Board of Trustees, NERC

STATE INDUSTRIAL LEADERS FORESEE BUSY YEAR

Although most of the state groups representing large industrial users of electricity do not usually participate in federal proceedings, EPA's Clean Power Plan, which has a direct and different impact on each State's electricity market, may well provoke those groups to take action, as was evidenced at the annual Roundtable Discussion of state industrial attorneys as part of ELCON's Fall Workshop.

Attorneys representing various state industrial groups discussing issues of importance in their states

For example, Bette Dodd of the Indiana Industrial Energy Consumers (INDIEC) said that her organization's normal practice was to not participate in federal regulatory proceedings. But INDIEC will be submitting comments to EPA focusing on the need for the proposed rule not to penalize states with significant manufacturing.

Similarly Mike Mager of Multiple Interveners, the state group representing industrial users in New York, said the "111(d)" rule "may be the exception" and it is likely they will file comments at EPA. He said that New York has already made significant progress in reducing carbon and is not getting credit for those improvements.

And Diana Vuylsteke who represents the Missouri industrials said her group plans to file comments as well, although they may be part of a united effort with local utilities and coal producers, pointing out the $4 billion impact on her State. Other attorneys, including those from Louisiana (Randy Young) and New Jersey (Keith Forshay), said it was likely they would submit comments to their State commission, and that those comments in turn would be forwarded to EPA.

Each of the attorneys also related their victories and defeats for the past year. A common thread was utilities seeking either rate increases (or their equivalents with "trackers"), often because of requirements designed to reduce carbon or other emissions. Several attorneys also cited state provisions allowing industrial facilities to "opt out" of otherwise mandatory State energy efficiency programs, and said they would be working to maintain that status in the coming year.

ELCON PUSHING TO MAINTAIN DEMAND RESPONSE PROGRAMS

ELCON is an active member of the Advanced Energy Management Alliance (AEMA), a coalition supporting Demand Response from the non-utility perspective.

The core players in AEMA are aggregators, technology companies and industrial and commercial end users. Originally formed to advocate for increased Demand Response in the RTOs and ISOs as well as before State commissions, the coalition has been thrust into the legal developments following the DC Circuit Court's ruling, basically voiding FERC Order 745 which promoted Demand Response. ELCON has joined other AEMA members in meeting with FERC members and staff, Members of Congress, the EPA and others to push for reinstatement of the FERC Order.

Action is now being pursued on several fronts. First, ELCON and AEMA are opposing a request to FERC from First Energy to disallow PJM from utilizing Demand Response in its capacity advance auctions. Second, AEMA is filing comments with EPA highlighting how difficult it would be to achieve the carbon-reduction targets inherent in the Clean Power Plan – which relies heavily on participation from the demand side – if the Court decision on Order 745 is allowed to stand. And, third, AEMA and ELCON are encouraging the Administration to appeal the Court decision to the Supreme Court.

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