

# The ELCON Report

The Electricity Consumers Resource Council ⚡ Founded in 1976

Number 2

2015

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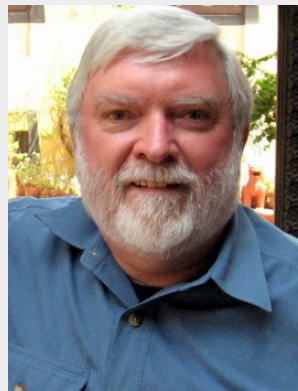
## NEW ELCON STAFF LEADERSHIP

ELCON's Board of Directors has elected John P. Hughes to serve as ELCON's President and CEO. Hughes assumed the position in October. Long-time president John Anderson will retire at the end of the year and assumes the title of President Emeritus until December 31.

Hughes described being selected as ELCON President as the "highlight of his career." An economist and engineer by training, Hughes joined ELCON in 1987 and since then has managed ELCON's interventions before FERC, DOE, and EPA, and was the lead author of ELCON position papers and policy briefs. He also provides ELCON's technical/policy input at NERC where he has served on several standing committees, the BES Standards Drafting Team and a variety of task forces and working groups. He previously was Director of Economic Research for Niagara Mohawk Power Corporation and Chief Economist of the Massachusetts Energy Facilities Siting Council.

Hughes said that "the strength of the organization has been its solid economic, engineering and legal analysis in support of its broad lobbying and

advocacy activities. Since its inception in 1976, ELCON and ELCON members have sought a reliable supply of electricity at just and reasonable prices. In many ways, those objectives are in as much jeopardy in today's changing electricity marketplace as they ever have been."



Left: ELCON's new President and CEO, John P. Hughes. Right: New Vice President of Government and Public Affairs, Charles "Charlie" Acquard.

ELCON Chairman Dave Meade of Praxair noted that "throughout his career at ELCON, Mr. Hughes has demonstrated that he understands power markets, he understands issues, and most important, he understands how ELCON members can play a meaningful role in the public policy debates."

In addition to Hughes assuming ELCON's presidency, Charles "Charlie" Acquard is joining ELCON as Vice President, Government and Public Affairs, succeeding Marc Yacker who is retiring at the end of the year. Yacker began his career on Capitol Hill in 1968 and later worked for the American Forest & Paper Association. He joined ELCON in 1996.

Until recently Acquard served as Executive Director the National Association of State Utility Consumer Advocates (NASUCA). He had previously worked as the senior legislative representative for the American Public Power Association and before that

he worked on Capitol Hill. He has a law and undergraduate degrees from Southern Methodist University in Dallas. Acquard stated that he will “look forward to work on behalf of large industrial electricity users. Electricity is an important resource for America’s manufacturing base – we need a reliable supply of electricity at just and reasonable prices to keep our industrial base strong.”

## FALL WORKSHOP REVIEW: CLEAN POWER PLAN HIGH PRIORITY FOR ELCON MEMBERS

Many ELCON members believe EPA’s Clean Power Plan (CPP) could potentially have the greatest impact of any federal regulation in history. At ELCON’s Fall Workshop, the CPP was examined and analyzed by speakers ranging from among the Plan’s most stalwart supporters to its strongest opponents.

On the “pro” side, Megan Ceronsky, the point person for the CPP on the White House staff, was a strong supporter, emphasizing that one benefit of the Plan was that “states should retain flexibility” in developing their compliance plan. That approach was echoed by Gabriel Pacyniak of the Georgetown University Climate Center, who noted that “states have choices,” and Pam Kiely of the Environmental Defense Fund who insisted that “states will be in the driver’s seat.”

But others disagreed. Roger Martella, former general counsel at EPA who now serves as the attorney coordinating efforts in the manufacturing community (including ELCON, see related article), laid out the legal and policy arguments against the CPP, as well as the myriad of legal challenges being mounted by states, utilities, and coal companies, in addition to manufacturers. He added that litigation will not be “the end of the story.” His policy concerns were supported by Kathy Robertson, senior manager of environmental policy for Exelon, who questioned the latest CPP’s determination that natural gas combined cycle generators would not be credited for their low carbon emissions. She said that could work against “lowest cost compliance.”

Other speakers added regional perspectives. Maury Galbraith of the Western Interstate Energy Board said that “the West is in pretty good shape,” though

some states would have a more difficult task than others. California is being watched closely by the other states because its CPP implementation activities will likely have direct impacts on how the other states must comply. Galbraith had specific questions about how states could trade credits, and he said that determination could have a major impact on how states implemented the CPP’s requirements. Paul Murphy, former president and CEO of the Independent Electricity System Operator in Ontario, Canada, gave a real world example of



Left: Megan Ceronsky, President Obama’s Senior Policy Advisor on Energy & Climate. Right: Roger R. Martella Jr., Partner, Sidley Austin LLP, and former EPA General Counsel under President George W. Bush

what happens when electric generation fuel sources change. Ontario has recently achieved its objective of phasing out all coal-fired generation units. Murphy noted that power flows changed as the coal plants were shut down. In addition, the change in fuels resulted in “considerable transmission work at quite a bit of expense.”

Many electricity industry stakeholders believe that the CPP could raise reliability questions for the North American electricity grid. Paul Barber, a former professor of electrical engineering at West Point and now a member of the North American Electric Reliability Corporation’s (NERC) Board of Trustees, updated ELCON members on how NERC is changing its views on enforcing reliability breaches. NERC is now focusing on a risk-based approach, according to Barber, and the two basic questions are “how bad is it?” and “how likely is it?”

## **ELCON DEFENDS STANDING OF RETAIL CONSUMERS TO CHALLENGE TRANSMISSION RATES AND COSTS**

In an ongoing transmission rate case involving the American Electric Power Service Corporation, a FERC Administrative Law Judge recently ruled that retail customers (and by extension, associations like ELCON representing retail consumers) did not have standing to intervene in wholesale rate cases and such interventions violate the principle of federalism.

Specifically the ALJ stated that “retail ratepayers are not permitted to bring an FPA section 205 complaint against wholesale sellers of electricity,” further noting that “a different interpretation would interfere with state jurisdictions over retail rates.”

ELCON coordinated the response with twelve other industrial consumer groups to protest the ALJ’s ruling. And FERC Commissioners quickly concurred with ELCON’s views, reversing the ALJ’s ruling in an order dated November 12, 2015 and stating unequivocally that “retail ratepayers may file complaints and protest transmission rates and wholesale power sales rates before the Commission.” The Commissioners’ order went on to say that “allowing retail customers to challenge transmission and wholesale power sales rates does not violate the principles of federalism.” The Commission cited a series of precedents in which it has allowed retail customers to challenge wholesale power and interstate transmission rates, finding that such action is “consistent with federalism” because the issues involve interstate commerce and not local distribution. Finally, the Commission noted that “protecting consumers is one of the Commission’s primary responsibilities.”

“This was a troubling case,” said ELCON President John Hughes, “in that it questioned the basic role of FERC. Under the Federal Power Act, FERC is entrusted with certain responsibilities such as ensuring that rates are just and reasonable. Consumers need to be heard and be part of the process. ELCON will continue to fight any attempts by utilities to marginalize the role of retail consumers in regulatory proceedings.”

## **ELCON CONTINUES ACTIVE ROLE ON DEMAND RESPONSE**

ELCON members are eagerly awaiting the decision of the US Supreme Court in what is technically FERC v. EPSA, but commonly referred to as the “Demand Response Case.”

The case centers on FERC Order 745, which was issued in 2011. ELCON was a major driver in bringing the issue of demand response before the Commission and in urging it to help rationalize the design of the organized wholesale electric markets that are administered by ISOs and RTOs. FERC’s order, which was strongly supported by ELCON, directed the FERC-jurisdictional ISOs and RTOs to establish demand response tariffs that compensated participants at the full locational marginal price and was available on a 24/7 basis.

Generators, in the form of the Electric Power Supply Association (EPSA), challenged the order in court before the DC Circuit on two grounds. First, they argued that FERC did not have jurisdiction over demand response, since they asserted it was a retail transaction (although demand response is part of the supply auction held by some markets which is clearly a wholesale sale). And, second, they argued that the compensation was too lucrative, and that a different formula, resulting in a lower payment to participants, was more appropriate.

The DC Circuit, in a 2-1 decision, upheld EPSA’s position. ELCON allied with other demand response supporters – manufacturers, retailers, technology companies, and others – in asking the Supreme Court to consider the case. When the Court agreed to do so, ELCON joined with others and filed an amicus brief in opposition to the DC Circuit decision in support of FERC’s order.

Oral arguments were heard by the Court on October 14. The “conservative” wing of the Court (minus Justice Alito who recused himself due to a conflict of interest) asked questions seemingly in support of the Circuit Court’s ruling. The “liberal” wing was generally supportive of demand response. The decision could come at any time.

ELCON continues to be a strong supporter of Order 745 and is an associate member of the Advanced Energy Management Alliance, a multi-industry coalition working in support of demand response.

## **ELCON JOINS JUDICIAL CHALLENGE OF THE CLEAN POWER PLAN**

ELCON has joined with 15 other national trade associations in challenging the Clean Power Plan (CPP) promulgated by the Environmental Protection Agency (EPA). The CPP, which governs carbon emissions from existing power plants, was (finally) published in the Federal Register at the end of October, and the coalition's petition for review was filed shortly thereafter.

The filing, which is being coordinated by the US Chamber of Commerce and the National Association of Manufacturers, challenged the CPP on both legal and policy grounds. ELCON is particularly concerned that the CPP, by basically forcing the retirement of efficient low-cost coal generation facilities and replacing them with intermittent generators most often based on renewable fuels, could jeopardize the reliability of the national electric grid. ELCON is also fearful that these retirements could raise electricity rates, particularly in regions that are now heavily dependent on coal-fired generation.

Numerous other challenges to the CPP have also been filed. A coalition of 24 states filed suit challenging the regulations, and several other states filed individually. And a number of utilities have submitted briefs, as have several industrial groups such as the American Association of Railroads and the National Mining Association.

The timetable for consideration of these challenges at the District Court level is uncertain, but most observers expect the process to last well beyond 2016.

## **EFFORTS TO REPEAL PURPA KEEP POPPING UP**

When the House and Senate energy committees began consideration of energy legislation earlier this year, several utilities initiated intense lobbying

efforts to add PURPA repeal to the eventual legislative product.

Since the Public Utility Regulatory Policies Act (PURPA) was enacted in 1978, utilities have sought to repeal Title II, which created Qualifying Facilities (QFs) under Federal law, defined as qualifying cogeneration facilities or qualifying small power production facilities that have a right to sell to their host electric utilities at the utility's "avoided cost" and receive standby, backup and maintenance power at reasonable rates. Section 210 required utilities to purchase power generated by renewable sources, industrial cogenerators, and other small power producers.

In 2005, Congress amended PURPA by adding a new PURPA section 210(m) that requires FERC to excuse host utilities from entering into new purchase or contract obligations if there is access to a sufficiently competitive market for a QF to sell its power. Generally, this would apply to QFs located within the footprints of ISOs and RTOs. In a rulemaking implementing this requirement, FERC also created a rebuttable presumption that QFs larger than 20 MW have non-discriminatory access. This allowed the smaller class of QFs to benefit from the original section 210 language and some developers of qualifying SPPs are allegedly breaking up projects to stay within the 20 MW cap.

In response, some utilities and their state regulators are seeking a fix for what they consider is "gaming" the system to ensure that utilities are still required to purchase power. Utilities especially object to the FERC regulation that mandates "avoided cost" as the standard for those purchases since it has been very difficult for states to estimate avoid costs due to the large influx of renewable resources.

In the Senate, legislation was introduced allowing state utility commissions to waive the mandatory purchase provisions if there was already sufficient power. ELCON and others in the cogeneration community lobbied against those measures, and the issue – which was clearly controversial – was not brought up when the committee approved a bill (S 2012) by a strong bipartisan vote.

In the House, draft language was circulated prior to a subcommittee markup (on HR 8) directing FERC to conduct a technical conference on the issue. ELCON coordinated a joint statement from several manufacturing trade association opposing the proposal, noting that even a technical conference could have a chilling effect on the planning and development of large and small cogeneration facilities. The issue was not brought up during the subcommittee markup, but several Members mentioned it as an issue they would continue to pursue.

Subsequent to that, Reps. Fred Upton (R-MI) and Ed Whitfield (R-KY), chairs of the full Energy and Commerce Committee and the Energy and Power Subcommittee, respectively, along with Senate Energy Committee Chairman Lisa Murkowski (R-AK), wrote FERC Chairman Norman Bay listing six issues they would like the Commission to consider in a technical conference. ELCON again coordinated an opposition effort by manufacturing associations, communicating their opposition to Chairman Bay and the three other FERC Commissioners.

Both houses may consider legislation this fall and PURPA “reform” could be back on the table.

ELCON’s main concern with any attempt to “reform” PURPA is the fear that utilities—who were never in favor of any form of self-generation by their largest customers—would attempt complete repeal, including elimination of the interconnection requirement. ELCON President Hughes said, “QFs less than 20 MW are a common feature of many industrial sites. And increasingly ELCON members are investing in a broad range of cost-efficient clean technologies. These efforts should not be put in harm’s way by the failure of the states to properly implement PURPA.”

## **SOMETIMES “LITTLE” ISSUES AT FERC HAVE BIG CONSUMER IMPACTS**

“Sometimes it is the ‘little’ issues that we have to be most concerned about,” said ELCON President John Hughes, referring to a series of proposed rulemakings and other activities now under consideration at FERC.

In a recent proposed rulemaking (Docket No. RM15-23-000) FERC has proposed that ISO/RTO market participants must identify and describe their relationship with “connected entities,” i.e., those entities that due to corporate structure, employees, or other factors are related to the market participant. FERC maintains that this information will “assist screening and investigative efforts.” ELCON members believe this proposal is unduly burdensome for entities whose core business is not the trading of electricity, and will oppose FERC’s NOPR.

FERC has also proposed a rule on Settlement Intervals and Shortage Pricing in RTO/ISO markets (Docket No. RM15-24-000). ELCON has mixed views about FERC’s proposal, favoring the proposed change that would direct markets to settle and dispatch resources at identical intervals, but questioning whether the NOPR’s language on shortage pricing would, in fact, unduly reward generators that do not directly relieve the shortage conditions. ELCON also urged FERC “to take a more unified approach” to market reform in the future.

FERC is also requesting access to certain NERC data bases to aid in its investigative activities. ELCON cannot see a definitive benefit from FERC gaining such access, and believes that NERC, as the entity responsible for grid reliability, does not need to share such data unless FERC demonstrates a specific need for specific data. ELCON also believes that NERC’s enabling language as the certified Electric Reliability Organization (ERO) prohibits FERC from duplicating NERC’s plenary responsibilities. ⚡



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