



ELCON Recommends Appropriate Regulatory Treatment of Uneconomic Power Plants

In July, ELCON released a position paper on the regulatory treatment of uneconomic power plants that said the “uneconomic legacy assets of traditionally regulated utilities should be afforded some degree of cost recovery to balance the rate impact on consumers with the financial impact on the utility.” However, the paper went on to say that “utilities should be denied full recovery of such cost to provide incentives for efficiency in reducing those costs in the first place.”

On the other hand, affiliated merchant entities, the paper said, “should not be afforded any opportunity for cost recovery unless such action significantly impairs the credit rating of the regulated affiliate. And, “unregulated, merchant generation unaffiliated with a regulated utility are not entitled to any form of regulatory relief that results from changing market conditions or environmental regulations.

In This Issue

- **ELCON Recommends Appropriate Regulatory Treatment of Uneconomic Power Plants**
- **ELCON Cautions FERC on Relaxing Offer Caps**
- **ELCON Urges EPA to Allow Same Flexibility to Federal Plans as Allowed for State Plans Implementing the CPP**
- **Spring Workshop Review: Assessing the Clean Power Plan, a “Dysfunctional” Congress & More**
- **ELCON President Speaks at FERC Technical Conferences on PURPA Implementation & Competitive Transmission Development**
- **ELCON Supports Extension of ITC for Industrial CHP**
- **NERC Is Cautioned on Future Assessments of Reliability**
- **History of ELCON: The Early Years**
- **Regulatory Roundup**

However, “it may be necessary to support the continued operation of certain affiliate and unregulated merchant plants if the relevant NERC Balancing and Planning Authorities deem the asset a reliability must run (RMR) unit. The determination of RMR status should be done on a case-by-case basis by an independent assessment.”

The paper noted that a “combination of factors has rendered many existing coal-fired and nuclear power plants uneconomic and at risk of early retirement. Most notable are market conditions such as low natural gas prices and environmental regulations that have increased the cost of coal-fired generation. Another, perhaps more significant factor, is federally-subsidized wind and solar resources.

“In organized markets such as MISO or PJM, these factors can interact with short-term oriented market design and provide little in the way of long-term price support for base-loaded generation.”

The paper also addressed how regulators should determine if a plant is uneconomic on a long-term, forward cost basis and should be retired.

“This determination should be based on reasonably expected market conditions and environmental regulations, and consistent with the utility’s most recently approved Integrated Resource Plan (IRP), including a thorough evaluation of cost-effective alternative resource options. These options should include new plant construction, selling the plant, temporarily idling the plant, coal-to-gas conversions, distributed generation (including Combined Heat and Power), purchases power agreements, and purchases from ISO/RTO energy and capacity markets (where applicable).

“Once a determination has been made that the asset is deemed uneconomic, the Public Utility Commission should consider the prudence of the unamortized balances and other abandonment costs. Only those costs prudently incurred should be eligible for recovery from ratepayers.



President's Column

We live in interesting times so the saying goes. It is clearly the state of affairs in the US electric industry with yet unknown but likely significant impacts on large industrial consumers of electricity. Since the last ELCON Report, the US Supreme Court reversed the DC Circuit's decision vacating FERC Order No. 745 and unequivocally affirmed the important role of demand response in the organized wholesale power markets. Not long after that the Supreme Court stayed the EPA's over-ambitious Clean Power Plan giving the industry much needed time to ponder how and under what authority we should consider redesigning the carbon-intensive electric utility industry. ELCON's comments to EPA in January on the Federal Plan proposal was intended to ensure that when and if the CPP gets the green light, the Federal Plan allows the same degree of "flexibility" as for State Plans.

FERC has been incredibly busy and ELCON members have taken notice. Two dockets are underway on price formation that intend to enact yet more tweaks to the market design of ISOs and RTOs – but none of the proposed changes address the fundamental flaw in organized markets, which is to provide long-term price support for base-loaded generation. The alignment of dispatch with the settlements interval is a good idea if it proves to be cost effective, but relaxing offer caps in markets that are increasingly dependent on pricing police (a.k.a., market monitors) seems a patent violation of the principles of competition.

Finally, it is now official, NERC has reached its long-awaited "steady state" – the condition in which it is no longer growing up and figuring out its prudent responsibilities under FPA Section 215. Since 2006, ELCON has fought to limit the reach of NERC's regulatory arm and has generally succeeded. But an ongoing presence at NERC remains essential for large manufacturers.

John P. Hughes
President & CEO

"The amortization period should be long as possible consistent with maintaining the utility's financial viability and reducing the rate impact on consumers." ⚡

ELCON Cautions FERC on Relaxing Organized Market Offer Caps

In April, ELCON along with a group of industrial customers urged the Federal Energy Regulatory Commission in its Offer Cap Notice of Proposed Remaking (NOPR) not to allow "rare and exceptional" circumstances like the January, 2014 Polar Vortex to set the market clearing price because doing so has "many negative consequences for customers that far outweigh any potential upside."

The NOPR, issued in January 2016, contends that a \$1,000 offer cap may impair price formation by suppressing Locational Marginal Prices (LMPs) below the marginal cost of production which could be a disincentive to supply power during times when the electric system may need it the most.

"The current offer caps are a critical market mitigation tool necessary to protect consumers from the exercise of market power and market manipulation."

ELCON Comments to FERC, Docket No. RM16-5-000

The NOPR also claims that if resources cannot reflect their short-term marginal costs due to the cap, grid operators cannot dispatch the most efficient set of resources, and alleges the Vortex weather lead to a significant rise in natural gas prices that may have caused operating losses for generators with must-run requirements.

ELCON and the industrial customers argued "the record shows that, in all but an isolated instance in a severe weather event in the PJM region, an offer cap of \$1,000/MWh has been sufficiently high to allow recovery of costs during scarcity periods without allowing for the exercise of market power."

"There is no evidence of a persistent flaw in the \$1,000 cap that would justify permanent higher offer caps," ELCON and the industrial customers said. "Industrial customers respectfully disagree that the conditions cited by the NOPR, which are not likely in the foreseeable future to recur, and which were adequately addressed in

subsequent proceeding before the FERC, are sufficient to support revision of the current offer cap rules.

“The NOPR is a purported solution for a claimed set of problematic circumstances that no longer exist. More importantly, although highly unlikely in view of current natural gas supply and price conditions, any unforeseeable repeat of the January 2014 natural gas price spikes in PJM could be readily and adequately addressed through verified make-whole payments in ISO/RTO tariffs to the few generators that may incur high-priced fuel.

“Make whole procedures are preferable because they can be focused and limited to the resources that specifically correct the supply-demand imbalance. A process limiting payments to the resources that are necessary to balance the market, rather than to all resources, achieves cost recovery objectives for these units without engendering the multiple disadvantages of increasing the \$1,000 cap.”

The industrial customers said they “support the Commission’s recognition that the \$1,000 energy market cap continues to serve, and should continue to serve, as the default protective measure against the exercise of market power in RTO-coordinated energy markets.”

“The current offer caps are a critical market mitigation tool necessary to protect consumers from the exercise of market power and market manipulation. The ISO/RTO markets are not perfectly or, in many cases, even workably competitive. They remain a complex regulatory construct, inclusive of stringent market power mitigation rules, for producing just and reasonable rates.

“Offer caps are needed to protect consumer from paying excessive prices during times when limited supply options exists, given the general inelasticity of electric demand. As consumer may incur huge costs before market power abuse is recognized and regulators respond, market power mitigation alone is not enough.”

The industrial customers filing the comments include PJM Industrial Customer Coalition, Coalition of MISO Transmission Customers, American Chemistry Council, Association of Businesses Advocating Tariff Equity, Connecticut Industrial Energy Consumers, Illinois Industrial Energy Consumers, Indiana Industrial Energy Consumers, Louisiana Energy Users Group, Minnesota Large Industrial Group, Missouri Industrial Energy Consumers, Multiple Intervenors, New Jersey Large Energy Users Coalition and the Wisconsin Industrial Energy Group. ⚡

ELCON Urges EPA to Allow the Same Flexibility to Federal Plans as Allowed for the State Plans Implementing CPP

In comments filed in January on the Clean Power Plan (CPP), ELCON urged the Environmental Protection Agency (EPA) to “recognize all CO₂ emission reducing technologies and all sources of energy” to maximize the “flexibility, efficiency and cost-effectiveness” in the proposed rule and give “equal recognition to voluntary and independently implemented Industrial Energy Efficiency (IEE), Combined Heat and Power (CHP), and Waste Heat and Power (WHP).

“It is essential that EPA maximize flexibility options for states and ensure that states and affected EGUs can meet EPA emission reduction goals in the most efficient and cost-effective manner.”

ELCON Comments to EPA on Federal Plans

The comments were supported by the American Chemistry Council and the Council of Industrial Boiler Owners.

The comments also said that the “implementation plans must recognize that international leakage is an issue of critical importance and that it will not be resolved by the Paris Agreement under the United Nations Framework on Climate Change.

“It is essential that EPA maximize flexibility options for states and ensure that states and affected EGUs can meet EPA emission reduction goals in the most efficient and cost-effective manner,” the filing said. “Thus, EPA must allow for broadly inclusive FIP model trading rules that incorporate all CO₂ emission reduction technologies and all sources of energy that can contribute to the achievement of EPA’s emission reduction requirements.

“If EPA wants to maximize the value of all cost effective emission reduction technologies and eliminate any uncertainty that might discourage state adoption, it should expressly include CHP and WHP as presumptively approvable in the model rate-based trading rule and in any FIP it develops. EPA should also provide states with acceptable options for allowance distribution to

promote IEE, CHP and WHP under the model mass-based trading rule and any FIP.”

ELCON also joined with the National Association of Manufacturers, the U.S. Chamber of Commerce, the American Forest & Paper Association and others on separate comments on the CPP.

In those comments, ELCON and others said that while the associations believe that the CPP is unlawful and should be set aside in its entirety, if the courts uphold the legality of any aspect of the CPP it must incorporate “flexible, least-cost compliance options that minimize the impact of emissions reductions on electricity and manufacturing sectors.” ⚡

Spring Workshop Review: Assessing the Clean Power Plan, a “Dysfunctional” Congress & More

The newest commissioner on the Federal Energy Regulatory Commission (FERC) told attendees at ELCON's Spring Workshop that the Commission is "getting it on both sides" on PURPA and encouraged ELCON members to participate in the upcoming technical conference.

"We really need ELCON there," said **Commissioner Collette Honorable**, who was appointed to FERC just over a year ago. "Please continue to educate commissioners and general staff."

Commissioner Honorable was one of seven speakers at the Spring Workshop on April 12 covering such issues as the Clean Power Plan, distributed energy resources, reliability, energy efficiency, carbon taxes and the "dysfunctional" Congress.

Commissioner Honorable apologized for FERC scheduling so many technical conferences, calling them "job security for lawyers." She also said she would "take our offer cap comments to heart" and that FERC would try to balance the interests as it considers changes to PJM's offer cap. "We don't want any unintended consequences from these proposals."

She said she "enjoys working with consumer interests" and that the FERC needs to be "nimble and flexible to serve consumers the way they deserve to be served."

Former Michigan Commissioner and newly appointed Executive Director of the National Association of Regulatory Commissions (NARUC) **Greg White** said he was a strong supporter of Combined Heat and Power (CHP), calling it a "win, win." He said pipeline safety reauthorization is a "priority" for NARUC, pointing out

that states commissions are 85 percent responsible for pipeline safety, and said the Clean Power Plan (CPP) has "demanded most of the time of our members."

White said the fundamentals of regulation has remained the same for over 100 years but it all changed in the last 25 years because of competition. He said the new market entrants have a different business plan than traditional utilities in that their return on investment is



Spring Workshop's Luncheon Speaker
FERC Commissioner Colette D. Honorable

accelerated. "We have to redesign how we do rate regulation." White recalled how active former ELCON CEO John Anderson was and current CEO John Hughes is at NARUC and invited all ELCON members to "engage with us."

Another former state commissioner **Dave Scott**, now with the Great Plains Institute, said his group does not advocate but instead tries to build a consensus on energy and environmental policy. "We have a wide-ranging membership with a Midwest perspective," Scott said. "We play by Vegas rules, everything that happens in the room stays in the room."

Scott said the stay by the Supreme Court of the CPP coupled with the death of Justice Antonin Scalia adds "incredible uncertainty and ambiguity" of what might happen and wondered if the EPA would issue more guidelines in the interim along the lines of "here's what we're thinking."

Attorney **Roger Martella**, who was a former General Counsel at EPA and one of the authors of the reply brief to the D.C. Circuit signed by ELCON and over 160 parties opposed to the CPP, said the brief focused on "the unprecedented nature of what EPA is doing." He said that he believes the deadlines in the CPP are pushed back the length of the stay and that states can voluntarily proceed with compliance plans but EPA cannot approve them.

Martella said he expects the Supreme Court to take up the appeal in mid to late 2017.

James Bushnell, Professor of Economics at the University of California, Davis, presented an economic analysis of the potential effect of the CPP in terms of electricity market outcomes and state adoption initiatives. The study showed that "under certain conditions, adoption of inefficient rate standards is a dominant strategy from both consumers' and generators' perspectives." The study also documented "significant inefficiencies from a failure to coordinate in the Western U.S. electricity market."

CHP is a "valuable compliance option under the CPP and is treated well in the final CPP," according to **Jennifer Kefer** of the Alliance for Industrial Energy Efficiency, a coalition of business, labor, and non-profit organizations who advocate for policies to increase U.S. manufacturing competitiveness through industrial energy efficiency, especially the use of CHP and WHP. "States need to develop plans that take advantage of this opportunity."

Calling it "one of the most cost effective ways to generate power," Kefer said there is about 149 gigawatts of potential CHP in the U.S.

The Vice Chair of the North American Electric Reliability Corporation Planning Committee expressed concerns about the impact renewable resources could have on reliability. **Brian Evan-Mongeon** said he expects a 100 percent increase in solar from 2015 to 2025 and said that could impact frequency and ramping capability.

He pointed out that at one point 48 percent of the load in Texas was served by wind and solar. "How do you ramp up generation when the sun takes a hike or the wind is no longer there," he asked.

Jerry Taylor, who spent 23 years at the Cato Institute and now serves as president of the Niskanen Center said that there is "little doubt that global climate change is happening and the country is "ill served by the climate of denial." Under 111(d) he said the EPA has "virtually no boundaries" and they get to "dictate climate policies."

Taylor supports a carbon tax. "Carbon taxes reduces the economic cost of dealing with climate change," Taylor said. "If we're going to spend money, it's better to spend it less stupidly."

The final and keynote speaker **Norman Ornstein**, resident scholar at the American Enterprise Institute, said that people are suspicious of those in power, calling it "angry populism." He said it started in the late 80s and continues today with the rise of Bernie Sanders, Donald Trump, and Ted Cruz. "There is growing suspicion of all institutions, not just political," Ornstein said. He said politics is now made up of extremes, right and left.

"What use to be a vibrant center is gone." Ornstein did say there was good news, however. "We're actually doing good compared to other countries." ⚡



Spring Workshop's Keynote Speaker
Norman J. Ornstein
Resident Scholar
American Enterprise Institute

ELCON President Speaks at FERC Technical Conferences:

Technical Conference on PURPA Implementation, Docket No. AD16-16-000

"There is no question that PURPA works and the Commission should resist changes to its regulations implementing the 1978 act that amount to the repeal of the act," ELCON President and CEO John Hughes told the Federal Energy Regulatory Commission at its Technical Conference on PURPA Implementation on June 29th.

"Our concern is that attempts to limit regulatory arbitrage associated with avoided cost payments may result in other 'reforms' imposing collateral damage to the huge existing fleet of industrial QFs with a proven track-record as highly efficient, reliable and clean energy resources," Hughes said. "Over 60 GW of combined heat and power (CHP) or cogeneration was developed in the US since PURPA's enactment."

The technical conference was prompted by a letter from the chairmen of several congressional energy committees and subcommittees suggesting that FERC's implementation of PURPA needs a comprehensive reevaluation due to significant developments in the

industry over the last few decades. Significantly, all four commissioners indicated during the conference that they did not believe CHP was a problem with Commissioner Tony Clark saying that if the “sole issue was CHP, we wouldn’t have a conference.”

Hughes told the four commissioners and staff at the conference that PURPA Title II is extremely important to the US manufacturing community. He said it supports the economic viability of steam-driven industrial sectors including agricultural products, building materials, chemicals, food processing, glass, mining, oil and natural gas, paper and forest products, pharmaceuticals, rubber, steel, and textiles.

“The mandatory purchase obligation, where applicable, and supplementary, backup and maintenance power services at just and reasonable rates are even more important today than when PURPA was enacted.” he said. “Industrial QFs are impossible without these essential services.

“If the claims that QFs are locking in buyback rates that exceed avoided costs and that the capacity from these resources are not otherwise needed are true, then it reflects a failure of state regulators to properly implement PURPA, not a failure of PURPA.”

“States can obviously do a better job with avoided cost calculations – this is not rocket science. Uncertainties abound in everything a utility does including new additions to their rate base or the setting of customer rates.”

Opening Remarks of John P. Hughes
FERC Technical Conference on PURPA Implementation

Hughes noted that the entitlement of QFs under PURPA and the FERC regulations to payment of rates based upon the utility’s “full avoided cost” and not a lesser rate unless the QF and utility mutually agree was upheld by the United States Supreme Court.

“States can obviously do a better job with avoided cost calculations – this is not rocket science. Uncertainties abound in everything a utility does including new additions to their rate base or the setting of customer rates. PURPA and the FERC regulations already prohibit states from using avoided costs as a policy tool to discourage economically viable resources (with rates that are below avoided costs) or to encourage or subsidize uneconomic resources (with rates that exceed

avoided costs). It is time to enforce, not change, PURPA and FERC regulations.

Hughes closed with three recommendations to the Commission.

First, the Commission should issue a policy statement reaffirming its support for PURPA.

Second, the Commission should direct its staff to prepare a guidance document on the applicability of the various avoided cost methodologies.

Finally, the Commission needs to acknowledge that its implementation of section 210(m)—which generally eliminated the purchase obligation in ISOs and RTOs—is flawed and, at least in part, responsible for the huge drop-off in new cogeneration development beginning in 2005—the year section 210(m) was enacted. In addition, it should require its jurisdictional ISOs and RTOs to offer a standard QF tariff that a QF may use to more easily access the bewildering array of energy and capacity services that are available in the organized markets.

Technical Conference on Competitive Transmission Development, Docket No. AD16-18-000

ELCON President and CEO John Hughes told the Federal Energy Regulatory Commission at the June 27th FERC Technical Conference on Competitive Transmission Development that “using competitive practices such as competitive sourcing and auctions is the expected behavior of any unregulated entity, not the exception that needs to be subsidized or promoted with incentives.”

Hughes also said there should not be a rebuttable presumption that any competitively bid investment or expense be free from on-going regulatory scrutiny.

“Cost containment is the same and begs the question: Is the lack of cost containment the expected norm under the Federal Power Act?” Hughes asked the four FERC commissioners attending the Technical Conference. “I think not.”

Hughes was one of several panelists testifying at the June FERC Technical Conference to discuss issues related to competitive transmission development processes, including the use of cost containment provisions. Others testifying on Hughes’ panel were representatives from municipal and investor owned utilities, PJM, a transmission company, and a New York state utility commissioner.

Hughes told the commissioners that rate-setting based on competitive and efficient electricity markets is “extremely important” to the economic viability of the country’s manufacturing community and reminded the commissioners that the “purpose of the Federal Power Act is to protect consumers, not to protect transmission project competitors from risk associated with their voluntary choices to submit binding bids.

“Transmission project developers should not be allowed to shift risk to consumers by severely limiting ratepayers’ substantive and procedural rights and abilities to protest transmission future rates in the false name of ‘cost

“Locking in rates for 40 years or so and precluding future claims that the rates are no longer ‘just and reasonable’ would be detrimental to consumers and an abrogation of the Commission’s responsibility under the Federal Power Act.”

Opening Remarks of John P. Hughes
FERC Technical Conference on Competitive Transmission

containment,” Hughes said. “In particular, we strenuously oppose any binding cost agreement that would have granted the transmission project developer the extraordinary incentive of Mobile Sierra protection.

“Locking in rates for 40 years or so and precluding future claims that the rates are no longer ‘just and reasonable’ would be detrimental to consumers and an abrogation of the Commission’s responsibility under the Federal Power Act,” he said. Mobile Sierra protection imposes the requirement that any cancellation of a contract must be deemed to be in the public interest, a much higher bar than showing that rates are just and reasonable.

Hughes said the Commission is perhaps “unwittingly complicit” in creating an investment environment in which nothing gets done without some form of incentives.

“In reality, these incentives are subsidies that only create the illusion of success. Subsidies to promote responses by independent transmission companies to the competitive solicitations mandated under Order 1000 do not create a competitive market. And easy money does not promote innovation. At best, they negate the cost savings – if any – that might be achieved by auctions for soliciting transmission projects. At worst, they simply impose added costs that have to be recovered from consumers.

“The appropriate FERC action should be to continue case-by-case reviews of the need for any new incentives or other special rate treatment and that includes a determination that consumers receive net benefits in their bills.” ⚡

ELCON Supports Extension of Investment Tax Credit for Industrial CHP Applications

ELCON and the Combined Heat and Power Association (CHPA) sent a letter in June to members of the House tax writing Ways and Means Committee to express support for H.R. 5167, the Technologies for Energy Security Act.

The bipartisan legislation, introduced by Congressman Tom Reed (R-NY), includes language that extends the combined heat and power (CHP) investment tax credit (ITC) for five years, stimulating further development of this critical, cost-effective, energy-efficient, and environmentally-sensible resource.

ELCON wrote the committee that CHP is an important part of our nation’s energy mix and pointed out that currently the United States has an installed capacity of over 82 gigawatts of CHP at more than 4,100 industrial and commercial facilities, but there remains 149 gigawatts of potential CHP.

To begin to tap that potential, ELCON wrote, the Administration has set a goal of 40 gigawatts of new, cost-effective CHP by 2020. Extending the ITC is necessary to reach that goal. ⚡

ELCON Cautions NERC on Assessing the Reliability of the Evolving Bulk Power System

The chairman of NERC’s Board of Trustees regularly seeks “policy input” from major NERC stakeholders. ELCON, on behalf of Large End-Use Consumers, responds to these requests. In May, ELCON submitted detailed comments in response to two questions: (1) Do proposed enhancements to NERC’s reliability assessments reflect an appropriate approach for assessing reliability given the increased complexity from the changes in resource mix and electricity delivery? And (2) Are there additional emerging risks that should be considered for enhancing reliability assessments?

ELCON’s comments reminded the NERC Board that its members actively participate in the data submission processes and have a vested interest in their accuracy and ability to predict future trends. In general, we find

that the ERO Enterprise does a fine job acquiring, consolidating, and assessing the information needed for seasonal, long-term, and special reliability assessments.

But even more importantly, ELCON has observed a sustained commitment by NERC and the Regional assessment teams to the protection of confidential information. This remains a vital component of any additional data needed to support the next generation reports, particularly if a major part of the new focus is on the assets of retail consumers—large and small. And, of course, this is just not an issue of assuring fair competition – rogue nations and terrorists are actively attempting to access sensitive information in order to conduct cyber and physical attacks. Frankly, their success rate is a source of great concern to all of us.

ELCON believes NERC will need to take a very different approach to assess human-based reliability threats as compared to those with a natural origin. (Those touched off by human error fit somewhere in-between the two.) We have reviewed many of the conference materials provided by security experts, and the continual chess match between attackers and the attacked suggest a military mindset is needed. This means that a tight connection to the Department of Defense may be in order.

Secondly, the increased need for data must be accommodated through automation wherever possible. For far too long, overlapping data demands from various NERC organizations, the Regional Entities, the DOE, and FERC have been thrust on the private sector. Each one comes with its own data template and portal – with little or no consistency between them. A single interface with behind-the-scenes distribution is long overdue.

Additionally, data that can be gleaned by the telemetry provided upstream to Balancing Authorities and Reliability Coordinators should not be requested from the equipment owner/operators who already aggregate the information in a manner that should be helpful to the analysis teams, and provides fewer points of interface to them.

Switching gears, ELCON applauded NERC’s plan to increase the use of statistical analysis to identify performance trends and reliability risks. In our view, this maintains consistency with the risk-based approach to reliability – a cornerstone of the ERO Enterprise’s compliance and enforcement strategy. There is a large improvement opportunity awaiting, as too many perceived threats are taking priority at the moment. These analyses must be refined to the point that the

industry and regulatory community fully align with their results.

As an example, ELCON is not yet convinced that an in-depth look into distribution-centric resources is a compelling priority. On one hand, the use of load-side management, smart grid distribution systems, and roof-based solar panels is growing rapidly – and is no doubt increasing the potential to impact the BES. On the other hand, it seems premature to hasten back into this arena, particularly as we have spent the last year trying to back away from it (i.e., by relaxing the criteria for Distribution Service Providers and eliminating the Load Serving Entity function). Instead, NERC should closely monitor and continue to assess these developments in the abstract. NERC’s recent assessments of the Clean Power Plan seem to suggest that any cause for alarm is premature.

In addition, ELCON sees this as an exciting area of innovation that promotes carefully managed energy use, robust distribution systems, and resource redundancy. We believe that if the regulatory bodies move quickly to prevent yet-unseen reliability threats, the costs to deploy the new technologies will increase – and discourage new entrants. The issue can be revisited, but for now there are far more urgent priorities. We believe NERC has captured them in their analysis proposal. Renewables deployment, gas/electricity interoperability, generator availability, and frequency response deserve immediate focus. Each are sure to present a formidable challenge, but there is no dispute that reliability will be impaired if left unaddressed. ⚡

History of ELCON: The Early Years

Editor’s Note: 2016 marks the 40th anniversary of ELCON. A history of the organization and its accomplishment was written for ELCON’s new website. The early years of ELCON is reprinted here.

ELCON was formed in the aftermath of the Energy Crisis that began in October 1973 when Egypt and Syria attacked Israel on the Jewish holy day of Yom Kippur. Soon thereafter, the Soviet Union sent arms to Egypt and Syria that provoked President Nixon to pledge \$2.2 billion in aid to Israel. In response, Libya, Saudi Arabia and other Arab OPEC states embargoed all US-bound oil. The embargo occurred at the same time the OPEC states were otherwise reducing production with the intent of increasing global oil prices. While the Yom Kippur War ended quickly in late October and a cease-fire agreement between Israel and Egypt signed the following month, the embargo was not lifted until March 1974. During the embargo, OPEC increased oil prices

from under \$2 per barrel to \$12 (\$64 in 2016 dollars) and they remained at those high levels after the embargo was lifted. The immediate result in the US was severe price hikes for gasoline and other oil products and fuel shortages.

Electric utilities were especially exposed to the oil crisis. Since enactment of the Clean Air Act of 1970, and in response to exceptional high growth in demand, they had increased their use of low-sulfur oil from the Middle East to generate electricity. Fearing consumer (and political) backlash in passing through in rates the higher oil prices, one of the nation's largest utilities at the time, Con Ed, eliminated its April 1974 dividend—an unprecedented action by a regulated US utility. Other utilities (and their state regulators) were not as generous. State ratemaking policies began to abandon rate designs based on cost of service and shift a greater burden for the higher fuel costs onto industrial consumers of electricity establishing what became known as cross-class subsidization. Other ratemaking policies were advocated before state public utility commissions to achieve other social purposes, which also needlessly increased the energy costs of US manufacturers.

At the same time, President Ford (and later President Carter) and Congress began focusing on changes to domestic energy policies with broad consequences. For example, in 1974, Congress established the Federal Energy Administration (FEA), the first US agency with the primary focus on energy and mandated it to collect, assemble, evaluate, and analyze energy information. The FEA was also responsible for managing federal programs for energy research and development. In 1975, Congress also enacted the Energy Policy and Conservation Act, which mandated increased car fuel efficiency, created the Strategic Petroleum Reserve, banned the export of crude oil, imposed oil price controls, promoted domestic coal production, and established the first major federal programs and regulations on energy conservation. Other legislative proposals were in play that would require all electric utilities to adopt various ratemaking reforms.

The Creation of ELCON

Like most large industrial or commercial ratepayers, and unlike residential ratepayers, ELCON member manufacturing facilities were served by their local utility under a two-part tariff consisting of a demand charge to recover fixed costs incurred by the utility to serve the customer and an energy charge to recover variable costs such as fuel. ELCON members would factor in this rate

structure in the design and operation of their facilities to minimize both charges. Hence ELCON member facilities tend to have very high load factors resulting in the fact that the average rate they pay their utility is lower than the average rate paid by lower load factor ratepayers such as residential consumers. The fairness of this fact was little understood or appreciated by the public and many policy makers.

“The purpose of ELCON is to promote by all lawful means the development and adoption of coordinated, rational and consistent federal, state and local policies that will assure an adequate and reliable supply of electricity for all users at price based upon the costs incurred in serving customers”

ELCON Articles of Association (1976)

In the aftermath of the oil embargo political pressures increased to (1) shield residential ratepayers from the full effect of fuel price increases, and (2) redesign rate structures to discourage consumption. The policy recommendations included: (1) the elimination of declining block tariffs (which were deemed “promotional”) and replacing them with increasing block tariffs and (2) time-of-use rates based on “marginal costs.” At the time, most ratepayers were served under declining block tariffs because this rate design captures the fact that once fixed costs are recovered, the average rate tends to decline with increased usage. It is a cost-based rate structure. Opponents of this rate structure argued that an increasing block tariff—that artificially imposed higher rates on bigger users of electricity—would promote conservation. Lifeline rates for residential ratepayers was a form of increasing block rate structure with a targeted subsidy based on the consumption level of a residential household. Higher charges on industrial ratepayer bills would pay for the subsidies. Typically the rate design consisted of two blocks with the initial block of energy consumption (e.g., 500 kWh/month) having a heavily subsidized rate and the second (“tail”) block having a much higher rate. The intent of lifeline rates—as the name suggests—was to improve affordability for the poor, promote universal access, and (for consumption in the tail block) encourage conservation. It was never clear at the time that quantity-based consumption subsidies achieved the intended benefits to the poor because poor households were not necessarily frugal energy consumers. On many

utility systems the lifeline initial block was a huge windfall to families with second homes.

Rates based on time-of-use were also widely promoted and this encouraged wide public debate on the merits of designing rates based on estimated “marginal costs.” In practice, the marginal cost was a highly simplistic construct taken from introductory economics. There was some confusion regarding whether short-term or long-term marginal cost was the appropriate measure, and in the case of long-term marginal costs, the rate designers had to base their computations on unknown future costs often using hypothetical power plant configurations. These projections were prone to the biases of regulatory staff and consumer advocates who were not always sympathetic to the US manufacturing community. Another serious problem was the fact that rates based on marginal costs tended to over-collect the utility’s revenue requirement requiring arbitrary adjustments. Large manufacturers were not convinced that the resulting rate was any better than a TOU rate based strictly on actually incurred costs.

In the summer of 1975 a small group of executives representing large industrial consumers of electricity met to consider the formation of an “Industrial Power Consumers Council” or IPC. The name was later changed to “The Council of Industrial Power Consumers.” The companies most actively involved were Union Carbide Corporation, AIRCO, Inc., Stauffer Chemical Company,



ELCON’s original logo was retired in 2001.

Monsanto Company, FMC Corporation, Air Products & Chemicals, General Motors Corporation, Hanna Mining Company, and PPG Industries, Inc. They were particularly concerned that “[e]lectric power rate structures appear to be in for major revamping.” They singled out several proposed bills in Congress that would “prohibit unjustified differences in rates to different classes of consumers” as examples of energy policies that promote cross-class subsidization.

On January 15, 1976, the organizational meeting of the “Electricity Consumers Resource Council” (“ELCON”) was convened in Washington DC. Attendees included David J. Craig (AIRCO, Inc.), Edward V. Sherry (Air Products & Chemicals), Harold J. Newman (Allegheny Ludlum Industries), Charles B. Herman (FMC Corporation), Chester L. Knowles, Jr. (Olin Corporation), George L. Cobb (PPG Industries), and James C. Malone (Union

Carbide). Also present was Philip A. Fleming of the law firm Jones, Day, Reavis & Pogue who was asked to assist in the organization of the new association. Mr. Craig announced that the ELCON was being formed as an unincorporated, 501(c) (6) non-profit association. As stated in the proposed Articles of Association:

The purpose of ELCON is to promote by all lawful means the development and adoption of coordinated, rational and consistent federal, state and local policies that will assure an adequate and reliable supply of electricity for all users at price based upon the costs incurred in serving customers

All seven companies agreed to support and signed the Articles of Association. Mr. Craig was elected ELCON’s first chairman and Ronald S. Wishart of Union Carbide was elected Executive Director Pro Tem and Secretary-Treasurer. Mr. Wishart would lead the organization until a permanent executive director was hired. The group also established the following standing committees: Technical Committee, Communications Committee, Legal Committee, and Government Liaison Committee. A State Relations Committee and a Federal Relations Committee would later replace the Government Liaison Committee. Mr. Fleming of Jones Day was designated the organization’s legal counsel. [In 1979 Fleming became partner at the firm Crowell & Moring and would continue as ELCON’s General Counsel until 1988.]

ELCON’s membership expanded in the months to follow and regular Board and Member Meetings were scheduled. At the October 1976 Member Meeting it was reported that ELCON representatives had met with officials at the Federal Energy Administration (FEA) and that ELCON staff was in the process of introducing the organization to various state industrial groups. Mr. Wishart reiterated ELCON’s mission as a national voice for major industrial electricity users. He identified the following key priorities: (1) preparation of materials on lifeline rates; (2) preparation of materials that demonstrate that cost-of-service principles “do not place unfair financial burdens on residential ratepayers;” (3) continue to liaison with FEA; (4) preparation of a response to the New York Public Service Commission’s decision advocating marginal cost pricing; and (5) the development of materials on load management, peak load pricing, time-of-day rates, fuel supply, and coal policy. It was also reported by the chairman of the Government Liaison Committee that Congressman John Dingell (D-MI), Philip R. Sharp (D-IN) and others have introduced an electric rate reform bill.

At the December 1976 Member Meeting it was reported that the Executive Director Search Committee was in the

final stages of negotiation with Dr. Jay B. Kennedy to be ELCON's new executive director. Dr. Kennedy was a professor of economics at the University of South Florida and was formerly Staff Director of the Florida Public Utilities Commission. The members approved the hire of Dr. Kennedy effective January 15, 1977. Dr. Kennedy would lead ELCON during its important formative years.

In August 1977, Congress passed the Department of Energy Organization Act (P. L. 95-91). The Act consolidated all federal energy agencies under the new cabinet-level Department of Energy (DOE).

On April 20, 1977, President Jimmy Carter submitted his National Energy Plan (NEP) to Congress. NEP consisted of 113 specific legislative and administrative proposals that were designed to establish a comprehensive national energy policy and address the country's dependency on foreign imported oil. In November 1978, Congress responded by enacting five pieces of legislation, collectively known as the National Energy Act of 1978 (NEA):

- Natural Gas Policy Act (NGPA), P. L. 95-621
- Public Utility Regulatory Policies Act (PURPA), P. L. 95-617
- Energy Tax Act (ETA), P.L. 95-618
- Powerplant & Industrial Fuel Use Act (Fuel Use Act), P. L. 95-620
- National Energy Conservation Policy Act (NECPA), P. L. 95-619

The NEA mandated energy efficiency programs, tax incentives, tax disincentives, energy conservation programs, alternative fuel programs, and a variety of regulatory and market-based initiatives. While each of the five acts would to some degree impact ELCON members, it was PURPA that would especially dominate ELCON's work load.

Title I of PURPA established a variety of federal ratemaking and regulatory standards, including guidelines for lifeline rates and cost-of-service data requirements. The federal ratemaking standards address cost of service, load management techniques (including interruptible rates), declining block rates, time-of-day rates, and seasonal rates. While the standards in Title I were federal standards, the act allowed each state only to consider implementing the standard in a classic example of cooperative federalism.

At ELCON's November 1978 Board Meeting the Directors approved a recommendation that ELCON's Legal Committee develop a program "to disseminate information and advice regarding state rate case

implications of PURPA" for the benefit of the attorneys who represent industrial ratepayers interests at the state level and other attorneys. In January 1979 the membership endorsed "the concept of developing standardized, prepared ELCON testimony and exhibits to use in state rate proceedings" in which each PURPA standard was adjudicated. The "packaged" testimony was completed in July 1979. Originally the intent was that ELCON would provide the written material for the use of the attorneys representing the local industrial group. The terms of engagement was dictated under an ELCON policy, "Procedure for ELCON Participation in State Regulatory Proceedings." But once the states started to act on the federal mandate it became apparent that in many cases ELCON would directly intervene in order to make its case and ELCON staff—particularly Dr. Kennedy—would be the expert witness sponsoring the prepared testimony. By 1982, ELCON had submitted testimony, either written or oral or both, in over 40 states! ⚡

Read the continuation of ELCON's history at ELCON's new website that is under development.

Regulatory Roundup

Proposed Rule on Market Based Rate Filings (Docket No. RM16-3)

On December 17, 2015, FERC issued a NOPR that would reduce the upstream ownership information that would be required in market-based rate filings, such as initial applications for market-based rate authority and change in status filings.

ELCON filed comments in support of the NOPR arguing that the burdens of the filing outweighs the benefits.

FERC action on the NOPR remains pending.

Final Rule on Cybersecurity Reliability Standards (Docket No. RM15-14)

On July 16, 2015, FERC issued a notice of proposed rulemaking (NOPR) to approve seven NERC-developed reliability standards relating to cybersecurity, ranging from personnel and training to physical security of BES cyber systems and information protection. The NOPR also directed NERC to develop requirements addressing supply chain management security controls.

ELCON participated in joint comments with other utility associations urging prompt approval of the NERC

standard as proposed but opposing the Commission's proposed directive for mandatory supply chain requirements.

On January 21, 2016, FERC issued a final rule adopting the proposed revisions.

Rehearing requests for the final rule were filed asserting that the approved cybersecurity standard is inadequate.

On April 21, 2016, additional comments were filed by a group of trade associations including ELCON reiterating that FERC should not direct NERC to develop new requirements or a new Reliability Standard to address vendor risk management. Instead, the Commission should allow CIPV5 implementation to mature and use the NERC compliance and enforcement process to evaluate whether there are potential gaps in the existing requirements.

Rehearing remains pending before FERC.

Proposed Rule on GMD Reliability Standards (Docket No. RM15-11)

On May 14, 2015, FERC issued a notice of proposed rulemaking (NOPR) to approve the second stage of NERC's geomagnetic disturbances (GMD) reliability standard. The second stage standard sets requirements for transmission planners and owners to assess the vulnerability of their systems to a "benchmark GMD event," which NERC described as a "one-in-100-year" event. If an entity does not meet certain performance requirements based on the assessments, it must develop a plan to achieve the requirements.

ELCON joined a coalition of trade association commenters supporting the NERC standard as drafted but for technical and cost reasons objected to FERC's proposed modifications. On March 1, 2016, FERC held a technical conference to address GMD-related topics.

FERC action on the NOPR is pending.

Proposed Rule on Price Formation in Energy and Ancillary Service Markets Operated by ISOs/RTOs (Docket No. RM15-24)

On September 17, 2015, FERC issued a NOPR on settlement intervals and shortage pricing as a "first step" in addressing price formation issues in the organized markets. The NOPR states that FERC expects to take future action on other price formation topics, including price caps, mitigation, uplift transparency, and uplift drivers.

ELCON's comments argued that the shortage pricing aspect of the NOPR would only be appropriate if technology-neutral fast ramp products were developed to provide the specific shortage service and for which the compensation would not inflate real time energy prices.

FERC action remains pending.

Proposed Rule on "Connected Entity" Data (Docket No. RM15-23)

On September 17, 2015, FERC issued a notice of proposed rulemaking on collection of data on "connected entities" from the ISOs/RTOs. The requirements would be implemented through revisions to the ISO/TRO tariffs. The NOPR would require ISO/RTO market participants to identify and describe their relationship with individuals and entities that are classified as "connected entities" because of their affiliation, employment, debt or contractual dealings.

ELCON, joined by AF&PA, did not dispute that some of the information contemplated by the NOPR could be valuable to the Commission in the course of a particular investigation but argued that value needs to be balanced with a realistic assessment of whether, in light of the Commission's existing broad authority to compel discovery of relevant information and the information already available under current rules, the substantial costs and burdens that would be imposed by the NOPR's requirements are not justified by anticipated incremental benefits.

FERC action remains pending.

Proposed Rule on FERC Access to NERC Databases (Docket No. RM15-25)

On September 17, 2015, FERC issued a notice of proposed rulemaking that would allow it, on an ongoing basis, to view and download NERC data on transmission and generation outages and protection system misoperations.

ELCON jointly filed with EEI, EPA, and NRECA. The coalition strongly encouraged the Commission to continue to leverage existing NERC structures and processes in identifying potential gaps in Commission-approved Reliability Standards. The Commission does not need access to the GADS, TADS, and relay misoperation databases to fulfill its oversight responsibilities under Section 215.

Furthermore, by gaining access to the raw data contained in the databases, the Commission would

unnecessarily increase risk of disclosure of the data and ensuing harm to BPS users, owners, and operators, whose individual facility-specific information resides in the databases. Therefore, instead of proceeding with the proposed rule, the coalition commented that the Commission should take advantage of NERC and industry expertise by working cooperatively with NERC, the Regional Entities, and the electric industry to improve existing communication and to provide the Commission with the necessary analyses it needs without increasing the risk of unintended consequences

FERC action on the NOPR remains pending.

Notice of Inquiry on Primary Frequency Response (Docket No. RM16-6)

On February 18, 2016, FERC issued a Notice of Inquiry (NOI) seeking comment on the need to reform the regulations on provision and compensation of primary frequency response. FERC is raising the issue because of retirements of baseload synchronous units and its

replacement by variable energy resources such as solar and wind.

ELCON commented that while it generally supports FERC's emphasis on securing a reliable electricity system in the context of an evolving market with regard to the composition of generation sources, it is imperative that any solution follow the principles of cost causation to ensure that inequitable and burdensome costs are not imposed on load.

In addition, ELCON recommended that FERC should prioritize developing a solution for this particular generation issue to avoid unintended consequences for load. In particular, Combined Heat and Power (CHP) units that are integrated with a manufacturing process and should not be required to provide Primary Frequency Response. The appropriate mechanism for involving loads with the provision of any Essential Reliability Service is demand response, which ELCON has long supported.

FERC action on the NOPR remains pending. ⚡



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