ELCON REPORT

ELECTRICITY CONSUMERS RESOURCE COUNCIL

NUMBER TWO 2003

ELCON Seeks California-Type Rules Against Gaming, Manipulation

ELCON urged the Federal Energy Regulatory Commission to require all RTOs, ISOs and ITPs to adopt strong, California-like prohibitions against gaming and other anti-competitive behavior. The recommendation was made in a filing related to a FERC fact-finding investigation into manipulation in electric and natural gas markets (see www.elcon.org for document).

RTO market monitoring provisions vary widely across the country, with "tremendous variation" in anti-gaming and manipulation rules, according to ELCON. RTOs outside California focus too much on mitigation and less on identifying and prohibiting manipulative behavior. In California, RTOs must specifically address "gaming" and "anomalous behavior" in their monitoring activities.

All RTOs and ISOs should be required to address such issues in their Market Monitoring Plans (MMPs), ELCON said.

FERC's proposed rulemaking on standard market design (SMD) deals with price caps and certain other market-power issues, but it does not specifically address problems such as Enron-type trading strategies, or economic or physical withholding, ELCON said.

ELCON Executive Director John Anderson said, "We believe that the California language is best. But of course we need FERC to do more than put forth language--we need enforcement."

FERC should act as quickly as possible

Continued on page 5

ELCON Members Choose Workshops Over Seminar

ELCON members have decided to replace the annual ELCON seminar with an expanded members-only workshop program. The decision came "after considerable deliberation," according to ELCON Chairman Bob Freedman of DuPont.

"We held seminars for 20 years," said Freedman. "When we started, the ELCON seminar on electricity was the only game in town. Now there are seminars all year long for every issue and sub-issue."

Freedman explained that "our members have found that our workshops are

Continued on page 6

Also In This Issue...

Curtailed Load Not Subject To Network Charges, FERC Rules

Commission Agrees with ELCON in Occidental Chemical Case

The Federal Energy Regulatory Commission agreed with arguments made by ELCON that the PJM Interconnection over-allocated network access charges to an industrial electricity user by including non-firm, curtailed load in the calculations (see www.elcon.org for document).

Occidental Chemical Corp. filed a complaint against PJM and Delmarva Power & Light contending that PJM was improperly calculating its network charge based on peak demand, which accounted for Occidental's non-firm, curtailed load, and that Delmarva was improperly assigning financial transmission rights. The Commission denied the complaint but asked PJM to explain its charges or exclude that portion based on non-firm, curtailed load.

PJM argued that a customer's load curtailed during emergency conditions should be included in the calculation of the network access charges because the customer could use the grid if there were imports into the system.

ELCON intervened to contend that

Continued on page 7

Politics Can be Hard to Understand

By John Anderson, Executive Director, ELCON

I was trained as an economist, not a politician. I have lived in the Washington area for about 30 years, but I am still not an expert on how our laws are made. My Florida roots run deep. I have heard it said--and I concur wholeheartedly--that Washington, D.C., is a city of 67 square miles surrounded on all four sides by reality. I think I understand policy. But sometimes politics just does not make sense.

The ongoing debate in Congress and FERC about our national electricity grid has demonstrated to me, once again, that how I see the world is very different from how a politician sees the world.

Why are these law-makers so insistent on passing legislation that enhances state rather than national markets?

I have been involved in energy markets for over 25 years. I have been a free market activist as electricity markets slowly evolved from the historical model of vertically integrated monopolies with defined service areas to a newer system that includes non-utility generators such as merchant plants and cogenerators as well as marketers and traders who are pushing electricity across our interstate electricity grid in ways that promote both innovation and competition. I think these efforts generally--though certainly not in every instance--are beneficial to all consumers, from the large industrial facilities operated by ELCON members to the home my wife and I maintain in suburban Virginia.

I know for a fact that the interstate electricity grid is divided into three sections or interconnections, one east of the Rockies, one west of the Rockies, and one comprising most of Texas. Without getting into technical details about how power in each interconnection is synchronized, I will simply state that within any one interconnection there are no engineering or physical boundaries as to where power can flow. At my home in Virginia, I know that the electricity I use might be generated in-state--but it doesn't work any differently if it was generated in Maryland or West Virginia. I also know that nobody can track that electricity, so you never really know where it comes from. Given the absence of true retail competition, I must trust my local utility to go into wholesale power markets and find the lowest priced electricity it can.

But, then I think about how Congress views electricity markets. Why are these law-makers so insistent on passing legislation that enhances state rather than national markets? I can understand why some state regulators want to keep as much jurisdiction over the electricity network in their state as possible, but why are federal legislators supporting that effort?

States rights is a valid doctrine. It has a place in deciding policy on a host of issues. But I thought one purpose of our federal Constitution was to ensure that states could not impede interstate commerce.

As I said, I am an economist, not a historian, but I know that we did away with the Articles of Confederation because we recognized that 13 separate markets (to say nothing of 50) were not the way to build a strong and workable economy.

If there ever was a commodity that was interstate in nature, it is an electron of electricity. Once an electron gets on the grid, it cannot be directed. It simply follows the path of least resistance, darting back and forth across state lines until it

Continued on page 4

ELCON Seeks Rehearing of NYISO Demand Proposal

The Federal Energy Regulatory Commission accepted with modifications the New York ISO's (NYISO) proposed installed capacity demand charge (ICAP). ELCON, which had filed comments opposing the mechanism as extreme and costly, is filing for a rehearing (see www.elcon.org for document).

"This is a clear-cut example of 'generator welfare'," asserted ELCON Executive Director John Anderson. "The New York ISO's proposed 'demand curve' is an unnecessary subsidy that will raise the total cost of electricity for all consumers. The bottom line is that no one has demonstrated that this proposal is anything but a subsidy to existing generators."

Anderson noted that "although FERC purports that this proposal will benefit consumers, consumer groups are overwhelmingly in opposition."

NYISO's ICAP demand curve would administratively set a price that buyers would have to pay for capacity. The price would vary with the amount of capacity available at any given time. NYISO said the proposal was necessary to spur investment, arguing that the current value of capacity outside of New York City and Long Island is too low to maintain continued operation of low-capacity-factor generating units and to attract investment to meet the state's future needs.

ELCON said it agreed with comments by New York industrials that the case had not been made. The demand curve would significantly increase the cost of installed capacity in New York and thus the total cost of electricity to end users. The problem with such proposals is that consumers will only pay true market-clearing prices when such prices are high, but prices that are low will be administratively fixed to ensure that generators escape risk. This is a perversion of the competitive model, according to ELCON.

Continued on page 7

Prospects for Electricity Legislation Uncertain

Congress is making progress toward enactment of a comprehensive energy bill, but at this point the outcome is far from certain.

While the House has passed one bill (HR 6) and the Senate is considering another (S 14), the path to a ceremony in the Rose Garden will not be easy to traverse, nor will it happen quickly.

The House bill, which was approved on April 11 by a vote of 247-175, has several non-electricity pro-supply provisions favored by manufacturers seeking a balanced fuel supply. But the electricity title has little to offer industrial users such as ELCON members. It repeals the Public Utility Holding Company Act (PUHCA) without providing any replacement language to guard against market power abuse. It also includes, among other provisions, statutory authority for utilities to use their transmission to "protect" their own "native load" (i.e., use their transmission to obstruct merchant generators and cogenerators from gaining access to the transmission grid), and it directs FERC to develop incentive rates to encourage the construction of new transmission.

The electricity title has little to offer industrial users such as ELCON members.

In addition, ELCON does not support the "reliability" language, in part because it does not take into account the intrinsic relationship between reliability and commercial impact. Similar language is in the Senate bill. Interestingly, the Bush Administration, in its Statement of Administration Policy, raised questions about the constitutionality of that section, stating that it violated the Appointments Clause of the Constitution. (See box at right.)

The language amending the Public Utility Regulatory Policies Act (PURPA), repealing in part the law's mandatory purchase and sale requirements, was developed with considerable input from anti-PURPA utilities. However, it does contain a valuable "look-back" section enabling FERC to reinstate PURPA's mandatory purchase and sale obligations should they be removed because of a competitive market that then ceases to exist.

The Senate electricity title was considered and approved by the Committee on Energy and Natural Resources in a partisan atmosphere that could cloud consideration on the floor. The vote on the comprehensive bill was 13-10, with every Republican voting for it and all but one Democrat in opposition.

The Senate bill repeals PUHCA without any market power protection language. It also mandates that FERC issue a final rule on Standard Market Design no earlier than July 1, 2005. It repeals the mandatory purchase and sale requirements in PURPA contingent on the establishment of competitive wholesale and retail markets, pursuant to the Carper-Collins language approved by the Senate last year.

The outlook for Senate floor action is uncertain. The bill was not considered before Memorial Day, as Energy Committee Chairman Pete Domenici (R-NM) had hoped at one point would happen. Instead, the bill has been brought up intermittently for a day or two at a time. There is no firm schedule for consideration or for the order in which the bill's twelve titles will be addressed. In fact, the bill will not be considered by title, so amendments to the electricity title could be offered at any time.

The Senate Majority Leader's office has stated that several others bills will be considered before the energy legislation, and the energy bill will not be a priority for floor debate until some time this summer at the earliest. Democrats are preparing several amendments, including many aimed at adding pro-environmental language. Among the issues to be addressed on the floor are a renewable portfolio standard, increased automobile efficiency standards, and greenhouse gas emissions. Some observers predict that, given the multitude of amendments, many of them controversial, the Senate may need six weeks of floor debate on the energy bill. That could delay a vote on final passage until after Labor Day.

ELCON will continue to press for provisions that will enhance competition in wholesale and retail electricity markets. E

Who's Against Reliability?

Administration Questions Constitutionality of Bill

Both the House and Senate electricity bills contain "reliability" sections, but neither bill's provisions will really improve reliability, in ELCON's view. In fact, according to the Administration, the reliability sections may be unconstitutional.

What each bill does is direct the Federal Energy Regulatory Commission to designate an electric reliability organization (ERO) to set standards to ensure the reliability of the interstate electricity grid. It is generally assumed that FERC's chosen ERO will be the North American Electric Reliability Council (NERC), which has been filling this function as a self-appointed body, without statutory authority, for more than 30 years. NERC has been the strongest supporter of the reliability language in the House and Senate bills.

For years NERC comprised only utility executives, and its decisions often reflected the makeup of the membership. A few years ago non-utilities, including consumers and merchant generators, were allowed to participate. ELCON and several

Continued on page 7

FERC Asked to Override Virginia Law on Joining RTOs

American Electric Power, a utility operating in 11 states, must be ordered to join an approved RTO to prevent the disintegration of RTOs in the Eastern Interconnection, ELCON told the Federal Energy Regulatory Commission (see www.elcon.org for document).

Virginia enacted a law this year that prohibits AEP from joining an RTO until July 2004 and then only with the permission of the Virginia State Corp. Commission. ELCON said the law stymies wholesale market development in the 27-state "super-region" covered by PJM, MISO and SPP. The law affects ComEd since it is connected to PJM through AEP, and MISO and SPP have since called off a proposed merger, "further devastating prospects for seamless markets." A domino effect could occur without FERC action, the comments said.

The Virginia law also impermissibly burdens interstate commerce, ELCON said. FERC has exclusive authority over interstate transmission, and at least twice has preempted states from taking action inconsistent with its policy to protect their own retail customers. The U.S. Supreme Court has upheld FERC's authority in this area, the comments pointed out.

The state commissions of Michigan, Ohio and Pennsylvania and Excelon, the parent company of ComEd, asked FERC to order AEP and another Virginia utility, Dominion Virginia Power, to join PJM. So far, the Commission has avoided a confrontation with Virginia by giving the utilities in question permission to join PJM without requiring them to do so. E

ELCON Coordinating Formation Of Regional, Large-User Groups

In June, ELCON hosted a roundtable on forming and coordinating regional, large-user electricity groups.

Held in St. Louis in conjunction with other ELCON meetings, the roundtable grew out of earlier meetings organized by ELCON members to address how industrial users can best respond to changing electricity markets, particularly now that many market "rules" are being made on a regional basis rather than by state regulatory commissions. Industrial users need a regional means of response so that costly, duplicate efforts are not undertaken by each state's industrial user group.

Meetings were previously held in Morristown, N.J.; New Orleans, and St. Louis to discuss markets in those respective regions.

The workshop explored how to identify participants in each region, how to facilitate better communication and coordination between the new regional groups and existing federal and state user groups, and how to identify "best practices" for each group in terms of structure, governance, and communication processes.

Participants included several attorneys who have been active at both the State and regional levels. These included Dave Kleppinger (PJM), Bob Loughney (Multiple Interveners in New York), Kevin Murray (Midwest), Bob Weishaar (NEPOOL), Bill Booth (California), Linc Wolverton (ICNU) and Jeff Pollock (TIEC). Each panelist gave his views on issues facing large customers with respect to market design, capacity allocation, transmission rate making, congestion, and demand side response, among other areas of interest.

Most of the regional groups expect to be more formally constituted and have legal counsel by the end of the year. E

Executive Director

From Page 2

ends up in a home or factory for its end use. State regulators cannot, by regulation or edict, keep an electron wholly within the bounds of their state. Why does Congress act as if it can?

Congressional efforts to regulate the grid on a state-by-state or region-by-region basis seem to me to be counter to both the laws of physics and the needs of consumers. When federal legislators talk about preserving states rights or protecting a particular utility's "native load," I just don't understand. I have no quarrel with states rights, but there is no state in the lower 48 where all the residents use electrons generated only in that state. And everybody is somebody's native load--nobody needs or deserves special protection. My fear is that Congress, in attempting to protect one utility's native load, will in fact be doing harm to the customers of another utility.

Electricity markets are interstate. If we have different rules in different states, it will be more difficult to advance the principles of free markets and competition and instead we will remain beholden to anti-competition monopolies. Can you imagine what our long distance telephone system would be like if each state, rather than the Federal Communications Commission, were the regulator? It defies logic to think that each state could attempt to protect its own consumers first. If I tried to call my mother in St. Petersburg from my home in Virginia, could North or South Carolina deny the call, claiming that it needed all the in-state telephone transmission capabilities for its own residents?

So it is with electricity. We need national markets with standard rules so that generators in one state are not limited as to how and to whom they can sell their power. That is how ELCON members and I would like to see the electricity market develop. Why are federal lawmakers trying to close electricity markets rather than open them?

The bottom line is I understand electricity--but I am frequently reminded that I don't really understand politics. E

Industrials Cool on Incentives to Reward Transmission Owners For Joining RTOs

ELCON and ally groups agreed with the goal but not the mechanism proposed by the Federal Energy Regulatory Commission to reward transmission owners for joining RTOs and creating a more efficient grid. Giving companies an increase in their return on equity would simply tax transmission services without guaranteeing the intended benefits, the groups said in a FERC filing (see www.elcon.org for document).

FERC proposed various increases in the basis points of transmission companies' ROE for putting their facilities under control of an approved RTO.

The industrials said they support FERC's objectives to encourage the formation of large, seamless, independent RTOs in all regions; to show that ITCs are viable business models for transmission; and to create an adequate, reliable transmission infrastructure.

But, they said the incentives lack specific criteria ensuring that they are applied on a just and reasonable basis. Missing are:

1) appropriate quantitative and qualitative benchmarks for measuring risk against performance;
2) guidelines for ensuring that net benefits to customers exceed costs plus the incentive premium;
3) guidelines for ensuring that efficient investment tradeoffs are made among competing technologies (i.e., generation and demand response solutions to congestion); and
4) a screening process for preventing windfall profits to free-riders.

"As proposed, the incentives are a tax on transmission services," the filing noted. "And like any tax, once implemented, it is hard to get rid of and there is constant pressure to increase it."

The problem of insufficient investment in transmission is not a result of FERC pricing policy, the comments said. Rather, it reflects the resistance of vertically integrated utilities to relieve congestion that favors their generation, as well as regulatory uncertainty. The incentives will not overcome these obstacles. FERC has sufficient existing authority to require the results the incentives would encourage, the comments said.

FERC may also be looking at a court challenge on the basis that no empirical evidence supports the level of the incentives (between 50 and 150 basis points), the comments said. E

Gaming

From Page 1

and not wait for a final SMD rule, ELCON said. "The problems in the marketplace are here and now," Anderson said. "As we have seen all too graphically, the risk to end-use customers is simply too great to wait."

The filing noted that FERC has a statutory duty to remedy anti-competitive practices. "When the Commission authorizes market-based rates, it is under a continuing duty to ensure that the relevant market remains sufficiently competitive to prevent unjust and unreasonable prices," Anderson said.

FERC also has an obligation to define the expected outcomes of bid-based markets and to clearly specify acceptable and unacceptable behavior, ELCON said. E

How California Takes Aim at Gaming

Most market monitoring plans only vaguely address gaming and related market manipulation activities. Here are the definitions the Cal ISO uses in its Market Monitoring and Information Protocol.

Gaming: "[T]aking unfair advantage of the rules and procedures set forth in the [Cal]PX or [Cal]ISO Tariffs, Protocols or Activity Rules, or of transmission constraints in periods in which exist substantial Congestion, to the detriment of the efficiency of, and of consumers in , the [Cal]ISO Markets. 'Gaming' may also include taking undue advantage of other conditions that may affect the availability of transmission and generation capacity, such as loop flow, facility outages, level of hydropower output or seasonal limits on energy imports from out-of-state, or actions or behaviors that may otherwise render the system and the ISO Markets vulnerable to price manipulation to the detriment of their efficiency."

Anomalous Market Behavior: "…behavior that departs significantly from the normal behavior in competitive markets that do not require continuing regulation or as behavior leading to unusual or unexplained market outcomes. Evidence of such behavior may be derived from a number of circumstances, including…

unusual trades or transactions;

pricing and bidding patterns that are inconsistent with prevailing supply and demand conditions, e.g., prices and bids that appear consistently excessive for or otherwise inconsistent with such conditions; and

unusual activity or circumstances relating to imports from or exports to other markets or exchanges. E

ELCON Participates In Transmission Forum

Realization is growing that the nation's energy infrastructure is inadequate to meet anticipated future demands. Yet, uncertainty about the structure and regulation of the energy industry generally--and the electricity transmission component specifically--has hindered necessary investment.

These are some of the preliminary conclusions of a forum on energy infrastructure, investment and incentives in which ELCON has participated over the past year. Coordinated by the Center for the Advancement of Energy Markets (CAEM), the forum has included former state and federal regulators, industry executives, and congressional staff.

A final report is anticipated in early summer and will be available at CAEM's website (www.caem.org).

The forum has not recommended creating subsidies or other incentives to encourage utilities to build new transmission. Rather, the group's recommendations have focused on market and non-market mechanisms that would lead to increased transmission without increased costs to consumers or others.

One recommendation to be included in the final report is to "ensure that new transmission owners and investors are not excluded from transmission construction and ownership." The report will also recommend support for "new technology demonstrations," noting that new technologies can assist in reducing transmission constraints. And, participants urged support for continuing with FERC's standard market design (SMD) process.

Not all participants endorsed all provisions in FERC's proposal or revised "white paper," but they agreed generally that larger, rather than smaller, markets would encourage more market participants and make it easier to build new transmission in different regions because of common rules.

Other recommendations focused on increasing awareness of infrastructure issues, including encouraging efforts to facilitate data sharing and the application of open transmission modeling capabilities, and making information easily available to the investment community so it can determine the risks and rewards associated with power plant and transmission protect investments.

CAEM is a not-for-profit corporation devoted to promoting open energy markets through educational programs and publications. E

ELCON Workshops

From Page 1

much more valuable--and a better use of staff time in preparation--than the seminar. We have pretty much the same quality of speakers as we did for our seminars, but by limiting it to ELCON members we have more opportunity for participation."

ELCON had been holding two workshops a year, which will now increase to three. The next workshop will be held in October on the West Coast. E

ELCON Workshop Shows Range of Views on SMD

At the ELCON annual meeting in San Diego, representatives from several stakeholder groups were invited to participate in a day-long ELCON member workshop, "The SMD Rule: Where is it Going?" to discuss how they anticipate being affected by the Federal Energy Regulatory Commission's proposed standard market design (SMD).

Utilities--regardless of whether they are investor-owned, municipal, or cooperative--indicated they are not yet ready to endorse the SMD proposal in substance or, for the most part, in process.

David Dworzak of the Edison Electric Institute detailed problems that investor-owned utilities envision under the SMD. Many believe more regional flexibility is needed than is offered. Allen Mosher of the American Public Power Association and Dave Mohre of the National Rural Electric Cooperative Association noted problems with non-jurisdictional utilities (i.e., their own member companies) and pointed out that differences between "the West" and other parts of the country suggest different rules might be beneficial. They questioned whether the SMD should even go forward.

On the other hand, Nancy Bagot of the Electric Power Supply Association, representing independent generators, supported the proposed rule. She stressed that consistent market rules would enable merchant generators to locate throughout the country and to sell lower-cost power in multiple markets.

The workshop also heard representatives from three western Regional Transmission Organizations (RTO) describe why the Western Interconnection would best be served by several RTOs rather than one interconnection-wide market. All three--John Carr of RTO West, Steve Greenleaf of the California ISO, and Charles Reinhold from West Connect--said their nascent RTOs operate in the best interest of the local end users. Some ELCON participants with facilities in the areas offered contrasting views. Carr also stressed the importance of including the Bonneville Power Administration formally or informally. E

New ELCON Officers

ELCON elected new officers for 2003-04 at its annual meeting. Bob Freedman, Senior Sourcing Manager of DuPont, was elected chairman. He has served as vice chairman for the past year and has been active in ELCON for over 10 years.

Mike Miller, Director, Energy Services, Shell Pipeline Company LP, was elected vice chairman. Mike spent the past year as secretary-treasurer.

Gary Kajander, Manager, Energy and Environmental Procurement for Monsanto Corporation, was elected secretary-treasurer. Gary is a long-time participant in ELCON--Monsanto is the fourth ELCON member for which he has worked. E

Idaho Commissioner Meets with ELCON

The West is different than the East in terms of electricity grid operations, according to Marsha Smith, a commissioner with the Idaho Public Utilities Commission and Chair of the Electricity Committee of the National Association of Regulatory Utility Commissioners (NARUC). She spoke on "Why the West is Different" at a luncheon at ELCON's annual meeting earlier this year.

The vast geographic areas served by western utilities mean electricity is being transmitted over much longer distances than in other regions, particularly the East, and that there are fewer customers per mile of transmission line, resulting in greater line loss, Ms. Smith said.

She also said the West's reliance on hydroelectric energy makes planning more difficult than in the East. Hydropower cannot be forecast, and the amount of winter snow determines how much may be shipped each spring and summer to power-dependent areas such as California. Reliance on hydro makes long-term planning difficult and plays havoc with the day-ahead market, envisioned in FERC's proposed standard market design (SMD) rule.

Ms. Smith also said the SMD rule would be meaningless unless it includes the Bonneville Power Administration, which she said is not a certainty. E

Reliability

From Page 3

members have served on various NERC committees. But, utilities have continued to dominate.

Stakeholders, including ELCON, have been drafting and redrafting legislative language to establish an ERO for approximately seven years. ELCON's objectives throughout the process have been to ensure that rules are national rather than regional in orientation. This is to avoid balkanization of the market and to establish a process by which both reliability and commercial impact (which are intrinsically linked) are considered in the standard-setting process.

The language in the current House and Senate bills fails on both counts. First, it defers to regional advisory bodies on standard setting, which will lead to regional rather than national standards. Second, it fails to take into account commercial practices, leaving those decisions to another body (the North American Energy Standards Board) in a separate standard-setting process.

Now comes a new wrinkle. The Bush Administration, in an official statement of policy on the Senate energy bill, argues that the language in the reliability section may be in violation of the Constitution's Appointments clause. The reasoning, which was not fully spelled out in the letter, is that if the ERO is established by statute and is basically setting federal policy, then appointments to the body must be made in accordance with the Constitution--i.e., made by the President and approved by the Senate, not simply appointed internally as proposed.

ELCON recognizes that the reliability section enjoys wide support from utilities (investor-owned, municipal, and cooperative), state regulators, and others, and it will likely be included should an energy bill be enacted into law. It remains to be seen whether it is ruled constitutional and whether it really improves reliability. E

Curtailed Load

From Page 1

only a customer's actual use of the grid is an appropriate basis for network access charges and that it is improper to include load curtailed during emergency conditions. ELCON urged FERC to establish firmly that charges may be based only on a customer's actual use of the grid.

FERC agreed, holding PJM's cost allocation was unjust and unreasonable in the way it added back certain curtailed load in determining peak usage. E

NYISO

From Page 2

The absence of evidence that the approach is necessary to stimulate new investment not only raises questions about its advisability but also suggests susceptibility to legal challenge, ELCON said. Court precedent in these matters requires careful calibration of incentives to ensure they do not produce a windfall.

FERC disagreed, saying that the proposed ICAP charges are not automatically applied to power sales but can be avoided by self-supplying or procuring adequate capacity through bilateral contracts. The proposed charges are not incentive rates, the Commission ruled.

ELCON's request for a rehearing focuses on rebutting FERC's claim that the New York proposal will, in fact, create more or lower-cost generation. The brief pointed out that the payments generators would receive under the new demand curve proposal "are not tied to actual incremental investment in New York…suppliers receiving the increased payments would be free to simply pocket them." And, because the ICAP program is not designed as an incentive for new generation, "there is no direct connection between the increased funding and actual increased investment in New York by generators receiving this largesse."

ELCON's brief also highlighted the "seams" issue. It asserted that the New York proposal would "increase regional disparities [with New England and PJM] and erect a new obstacle to developing a regional approach to resource adequacy in the Northeast." E

Learn more about ELCON and our activities at our web site, www.elcon.org

WHAT IS ELCON?

- **DATE ORGANIZED***:* January 15, 1976

- **WHO WE ARE**: The Electricity Consumers Resource Council (ELCON) is the national association representing large industrial consumers of electricity. ELCON was organized to promote the development of coordinated and rational federal and state polices that will assure an adequate, reliable and efficient supply of electricity for all users at competitive prices. ELCON's member companies come from virtually every segment of the manufacturing community.

- **MEMBER COMPANIES**: A.E. Staley Manufacturing Company • Air Liquide • Alcan Aluminum Corporation • Anheuser-Busch Companies, Inc. • BOC Gases • BP • Central Soya Company, Inc. • ChevronTexaco • Delphi Automotive Systems • E.I. du Pont de Nemours & Co. • Eastman Chemical Company • ExxonMobil • FMC Corp. • Ford Motor Company • General Motors Corporation • Honda • Intel Corporation • International Paper • Lafarge • MG Industries • Monsanto Co. • Occidental Chemical • Praxair • Rockwell Automation • Shell Oil Products • Smurfit Stone Container Corp. • Solutia, Inc. • Weyerhaeuser

- **FOR MORE INFORMATION CONTACT:** ELCON, 1333 H Street, NW, West Tower, 8th Floor, Washington, DC 20005, 202/682-1390, fax: 202/289-6370. E-mail: ELCON@ELCON.ORG or on the Internet: WWW.ELCON.ORG

The Electricity Consumers Resource Council

The West Tower
1333 H Street, NW, 8th Floor
Washington, DC 20005

PRE-SORTED RATE
US POSTAGE PAID
WASHINGTON, D.C.
PERMIT NO. 5725