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National Energy Policy Update: Power

JOHN P. HUGHES
VICE PRESIDENT – TECHNICAL AFFAIRS
ELECTRICITY CONSUMERS RESOURCE COUNCIL (ELCON)



Electricity Consumers Resource Council

- ELCON is the national organization representing the interests of large industrial consumers of electricity.
- ELCON was founded in 1976.
- The organization's overarching objective is to advocate federal and state policy with a united front that is focused and cost effective. At the same time, its members created a base for sharing intellectual resources, data and experiences.
- Founding principles for economic regulation are based on cost causation.



The Policy Battlegrounds

EPA

FERC

NAESB

NERC

Congress

EPA “Carbon Pollution” Regulations

- The Obama EPA has initiated a sweeping portfolio of regulations that attempt to redesign the Nation’s power sector from top to bottom.
- It is no longer engaged in limiting harmful emissions from affected sources; it is forcing the restructuring of the way electricity is produced and delivered with the objective of changing the lifestyles of every American and the role of energy as the driver of economic growth.
- “Overreach” is the mostly commonly used word to describe EPA’s actions.

Authorities for Regulating “Carbon Pollution”



- Section 111 (b) is the federal program to address new, modified and reconstructed sources.
- Section 111 (d) is a state-based program for existing sources. The EPA establishes guidelines. The states then design programs that fit in those guidelines and get the needed reductions.

Section 111(d): Clean Power Plan

- EPA Objectives:
 - Building Block 1: Achieve 6% improvement in heat rates of all coal units
 - Building Block 2: Increase utilization of NGCC units to 70% annual capacity factor
 - Building Block 3: Increase deployment of renewable energy resources and succeed in bringing on line all as-planned nuclear units
 - Building Block 4: Increase end-use energy efficiency
 - States don't have to do any of these; they can do whatever they want in the name of "flexibility."
- Benefits? Next to none. Rule is justified based on benefits unrelated to climate change.

Litigation

- The EPA “Carbon Pollution” regs are probably initiating the most litigation of any class of rules in the 45-year history of the Clean Air Act. And for good reason.
- Primary groups leading opposition to the rules are US Chamber/NAM, States, Utility Air Regulatory Group (UARG) and coal interests. Tight coordination of arguments will be needed to avoid exasperating the courts.
- Petitions for a stay will be made soon after section 111(b) and 111(d) final rules are issued this summer.
- Court challenges before the DC Circuit and US Supreme Court will not be resolved until 2017.

What's Happening at FERC

- In *EPSA v. FERC*, the DC Circuit vacated FERC Order 745 on Demand Response Compensation. Demand response is proxy for price-responsive load in FERC's organized wholesale electric markets.
- In 2013, DR in the mid-Atlantic states provided 10% of the capacity and saved customers \$11.8 billion. ELCON was a leading supporter of the Order 745 rule.
- The court ruled that (1) FERC lacks the authority to allow retail customers to participate in wholesale markets, and (2) the compensation mechanism was "arbitrary and capricious."
- ELCON supported the case's appeal to the US Supreme Court. On May 5th, the court granted two *certiorari* petitions. Briefs of petitioners are due this summer with oral arguments likely later this year and a final decision a few months thereafter.
- Outcome of case will have major impact on sustainability of the market design of the FERC-jurisdictional ISOs and RTOs.



What's Happening at FERC

- Fear of the unknown: Industry analysis makes strong case that CPP will significantly degrade grid reliability – especially if interim targets are not eliminated. FERC is exploring (with EPA?) its role in implementing some form of reliability backstop.
- Further tinkering of the market design of ISOs and RTOs: Merchant generators have wrong business model or is LMP the wrong market design? After almost 20 years, FERC still hasn't got it right.
- Coordination of natural gas and electric wholesale markets.
- Infrastructure, infrastructure, infrastructure: The legacy of wishful thinking and past regulatory failures.

What's Happening at NAESB

- Gas-fired merchant (and some utility) generators will not contract for firm gas delivery. This plays Russian roulette with grid reliability during extreme cold weather events (e.g., Polar Vortex).
- Part of a broader policy debate on gas-electric coordination. FERC asked NAESB to propose solutions.
- Strong pressure from ISOs and RTOs to radically change the Gas Day.
- In final rule dated April 16, 2015, FERC directed NAESB to make certain revisions to the standards for intraday gas nominations. No change was made to the start of the Gas Day.
- Independently, the generators and ISO/RTOs appear to be improving the situation or at least it appears that way. Winter of 2014-15 was relatively problem free.

What's Happening at NERC



- The Federal Power Act was amended in 2005 to require compliance with mandatory reliability standards by “all users, owners and operators of the bulk power system.”
- Utility customers that are deemed to have a material impact on the reliability of the bulk power system are “users.”
- For the purpose of implementing the law, FERC and NERC define a subset of the bulk power system called the “Bulk Electric System” or BES.

What's Happening at NERC

- Two recent NERC initiatives affect large manufacturers:
 1. Revisions to the definition of “Bulk Electric System” (BES)
 2. Introduction of “risk-based” registration process
- The changes to the BES definition will nominally capture many of the electrical configurations of manufacturers’ interconnection with their local utility and make them candidates for NERC registration.
- Registration exposes the owner of the facility to “regulations from hell.” Investor-owned utilities, public utilities, merchant generators, and ELCON are all united in opposition to the onerous nature of NERC’s compliance and enforcement program.
- The “risk-based” initiative attempts to mitigate this risk – but will it?
- Going forward, the assets/practices of natural gas industry are at risk to the extent NERC and FERC are concerned regarding electric-gas interdependency.



What's Happening in Congress



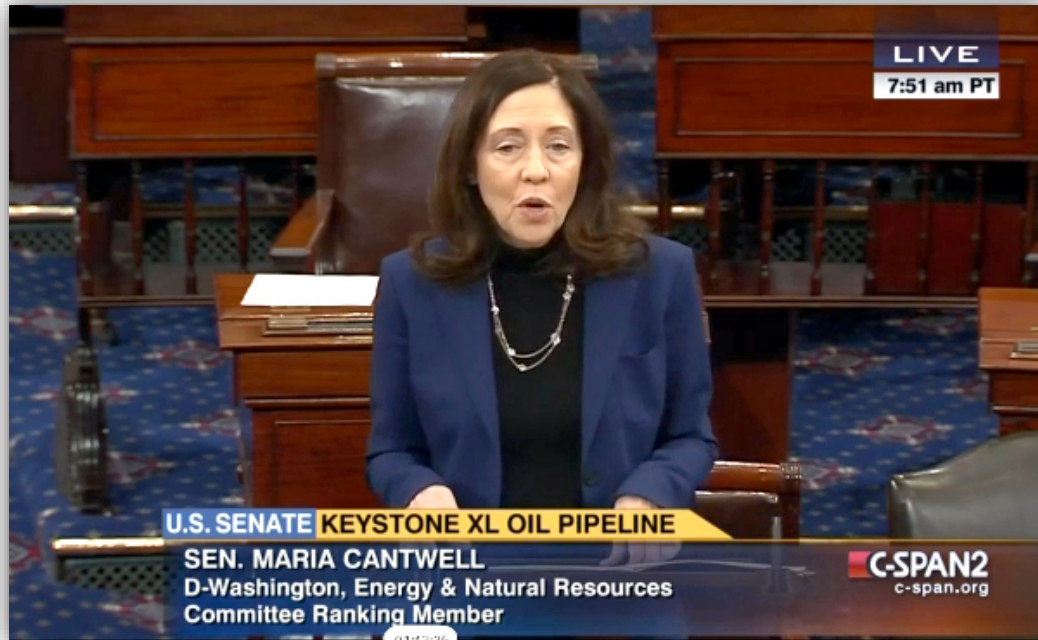
- A highly polarized Congress has kept it from considering much in the way of serious legislative business.
- Most of the energy in both houses is devoted to legislation that has no hope of becoming law. The House alone has voted to repeal Obamacare over 56 times!
- The winds of change may be beginning.

Senator Murkowski's 17 Energy Bill Package

- S. 1215, Methane Hydrate R&D Amendments Act
- S. 1216, De Novo Review of Civil Penalties under the Natural Gas Act
- S. 1217, Electric Transmission Infrastructure Permitting Improvement Act
- S. 1218, Nexus of Energy and Water for Sustainability (NEWS) Act
- S. 1219, Interconnecting Distributed Resources and Examining Net Metering
- S. 1220, Energy Distribution Act
- S. 1221, Bulk-Power System Reliability Impact Statement Act
- S. 1222, Continuity of Electric Capacity Resources Act
- S. 1223, Energy Loan Program Improvement Act
- S. 1224, The Condensate Act
- S. 1225, Federal Land Asset Inventory Reform (FLAIR) Act
- S. 1226, American Helium Production Act
- S. 1227, Micro-Grid Implementation Strategy
- S. 1229, Improving DOE Interaction with the National Laboratories
- S. 1230, Memoranda of Understanding with State Oil and Gas Programs
- S. 1231, Strategic Petroleum Reserve Modernization Act
- S. 1236, Hydropower Improvement Act



Senator Maria Cantwell's Legislation



- S. 859, Crude-By-Rail Safety Act
- S. 1046, Smart Building Acceleration Act
- S. 1241, Enhanced Grid Security Act of 2015
- S. 1243, Grid Modernization Act of 2015
- S. 1304, 21st Century Energy Workforce Act
- S. 1420, Information on Critical Energy Supplies etc.

Transmission Siting

Republican Proposal

- S. 485, sponsored by Senators Boozman and Cotton (R-AR), would prohibit DOE, WAPA and SWPA from using eminent domain for transmission siting without explicit permission from state or tribal authorities.

Democratic Proposal

- S. 1017, sponsored by Senator Heinrich (D-NM), S. 1017, would give FERC backstop authority to approve “high priority” transmission projects that face excessive delay from state or local authorities.

Distributed Resources

PURPA Ratemaking Standard

Republican Proposal

- **S. 1219**, State PUCs examine degree to which distributed resources contribute ancillary services and prescribe measures to ensure safe and reliable operation of facility's interconnection with grid. All states must at a minimum consider such action. Bill also directs each state PUC to examine the effects of net metering on customers who do not use net metering. States with net metering regulations must determine whether such rates are "just and reasonable" and "not unduly preferential or discriminatory."

Democratic Proposal

- **S. 1213**, Definition of distributed resources includes EE and DR. Requires states to establish that distributed resources have a right to interconnection with local utility and served by unbundled rates for interconnection services and net metering. Must include consideration of "attribute factors" such as societal benefits. Distributed resources facilities would automatically become PURPA Qualifying Facilities (QFs) with the right to a mandatory purchase obligation by the local utility if state fails to establish standard.

Conclusions

- Climate-related energy policies and counter-proposals are throwing gasoline on the partisan debates and increasing the polarization in the Washington DC policy space.
- The EPA “carbon pollution” rules are a very high risk strategy for the greens—given the paltry level of CO₂ reductions.
- FERC is being very cautious and avoiding undue controversy—but it is still a team player in the Obama Administration.
- NERC is the latest example of regulatory scope creep.
- There seems to be certain weariness among some members of Congress that more mundane legislative responsibilities are getting short shrift. Is the revenge of the adults at hand?