

# **An Update on Federal Matters Affecting Large Energy Consumers**

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A presentation by:

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# What Is ELCON?

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- The national association for large industrial users of electricity in the U.S.
  - Founded in 1976
  - Members from a wide range of industries from traditional manufacturing to high-tech
- The views today are mine alone



# What I Plan To Do Today

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- Discuss industrial electricity issues in:
  - Administration (primarily EPA)
  - Congress
  - FERC
  - NERC
- My main objective is to point out some areas:
  - That could result in perhaps significant electricity cost increases
  - And the impacts may not be uniform for customers

# Recent EPA Electricity Activities

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- From a large industrial electricity consumer viewpoint, current Administrative actions are primarily EPA actions
- EPA proposed rules that have received a lot of attention include (but are far from limited to):
  - Toxics Rule (Utility MACT)
  - Transport Rule (CSAPR)
  - Cooling Water Rule
  - Coal Ash Rule
  - Utility NSPS for GHG
  - PSD and GHG Tailoring Rule
- What are the increased electricity costs?
  - EPA estimates a couple of hundred billion
  - But industry suggests more than a couple of trillion
  - Only time will tell – but there could be significant increases

# Current Administration Actions

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- The EPA activities of most current interest include the:
  - 111(b) proposed rule – affecting NEW coal generators – published in the *Federal Register* on January 8, 2014
  - 111(d) proposed rule – affecting EXISTING coal generators – expected by June 2014
  - Social cost of carbon
- As I have said for the past few years – you all here in KY know these coal issues better than I
  - So here I will be brief

# 111(b): EPA's Proposed Rule re: NSPS for NEW Power Plants

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- On September 20, 2013 EPA issued its revised New Source Performance Standards (NSPS) for GHG emissions for **new** power plants:
  - The new limits are 1,000 lbs/MWh for large gas (slightly higher for smaller units) and 1,100 lbs/MWh for coal units
  - EPA believes legal challenges may be reduced with different limits for gas and coal units
  - The coal industry (and others) argue that such limits basically ban new coal generators without carbon capture and sequestration (CCS) technology
- The CAA requires EPA regulations to be based on “proven” technologies
  - EPA states that CCS is a proven technology because several demonstration projects are underway
  - However, even some Administration officials have expressed concern that the CCS technology is not proven through only 1 or 3 projects that have received federal financial assistance, are not yet operational and are facing cost overruns in the hundreds of millions of dollars

# 111(b): EPA's Proposed Rule re: NSPS for NEW Power Plants

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- What do these new proposed regulations really accomplish?
  - **Maybe** very little
  - They may actually simply codify current economics
    - As long as gas prices stay less than around \$7 – new coal plants are uneconomic
  - Certainly the coal industry will argue lost jobs, bad economy, etc. – and have taken the regulations to court
    - But the real legal issue may be whether or not CCS technology has been adequately demonstrated as a proven technology as required by the CAA
- Yet they do allow for some great political posturing
  - As an example, the “Rs” required a floor vote on a bill to repeal EPA’s NSPS for new power plants
  - Hoping to target vulnerable “Ds” in states with economies heavily invested in coal

# 111(d): EPA's Proposed Rule re: NSPS for EXISTING Power Plants

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- The President required EPA to issue a rule for **EXISTING** plants by June 2014
  - This could be the really significant electricity cost issue
- EPA believes that it is compelled to regulate GHG-emitting stationary sources under the PSD and Title V CAA provisions
  - EPA believes that CO<sub>2</sub> is one of “any air pollutant” regulated under the CAA
  - However, EPA also believes that strictly following the CAA’s PSD requirements of 100/250 tpy for non-GHG emissions would result in an “absurd result”
  - EPA thus set the requirements for GHGs at 75,000/100,000 tpy

# 111(d): EPA's Proposed Rule re: NSPS for EXISTING Power Plants

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- ❑ EPA's proposed rule is close to completion and will soon be subject to interagency and OMB review
- ❑ Expect a lengthy and protracted legal challenge
- ❑ Roughly 600 coal plants will be affected
- ❑ Hot issues include:
  - "Beyond the Fence" GHG reductions (e.g., DSM programs, EE, etc.)
  - Market-based mechanisms such as multi-state bubbles, trading and banking (e.g., RGGI)
  - Equivalency, i.e., allowing a suite of state programs to be equivalent to the lbs. CO<sub>2</sub>/MWh reduction at a covered source
  - National emissions standard versus state standards
  - Allowance for past actions (e.g., RPS)

# 111(d): EPA's Proposed Rule re: NSPS for EXISTING Power Plants

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- The US Supreme Court held arguments on February 24, 2014 on this issue
  - Petitioners argued that
    - GHGs should not be considered an “air pollutant” for purposes of PSD and Title V (the PSD program was designed to address only air pollutants with “local” effects)
    - EPA should not be allowed to “rewrite” the unambiguous statutory thresholds for major sources
- Predicting a Supreme Court decision is difficult – at best
  - And clearly the decision may well have an impact on the EPA's approach

# 111(d): EPA's Proposed Rule re: NSPS for EXISTING Power Plants

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- ❑ But the significance of the upcoming decision is far more difficult to predict
- ❑ As only one example,
  - Chief Justice Roberts asked both the petitioners and the EPA about the alternative argument that PSD provisions, although not triggered by GHG emissions alone, do require otherwise regulated major sources to implement BACT for their GHG emissions
  - The Chief Justice noted this construction would still allow the EPA to regulate 83% of GHG stationary source emissions vs. the 86% of emissions that would be subject to PSD under the EPA's more expansive reading (the "anyway" sources)
  - He asked why the court should allow a "fight over 3%" to create the myriad problems raised by the EPA's approach
- ❑ I emphasize – this is NOT a prediction of what the Court might do – just an observation

# Change in the “Social Cost of Carbon” (SCC)

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- In May 2013, the Administration revealed:
  - A change in the SCC from \$21 to \$33 per ton of carbon
  - This substantially raises the “benefits” of carbon reductions
  - And makes it much easier to “justify” the costs of new carbon regulations – and electricity cost increases
- The release was done in a very “quiet way”
  - It was on Page 409 of Appendix 16A of a technical support document for a DOE regulation on the efficiency of microwave ovens – not the first time such changes were released
  - The new SCC was not released for public comment because it is not a “rule”

# Change in the “Social Cost of Carbon” (SCC)

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- Congressional hearings were held, letters from Members of Congress were sent, and major industry groups asked OMB to withdraw the changes to the SCC
  - Critics assert that the Administration failed to justify the change,
  - Failed to comply with OMB’s transparency guidelines,
  - Lacked peer review,
  - Were based on flawed models with uncertain inputs, and
  - Focused on global impacts instead of domestic
- A coalition asked OMB to withdraw the cost increase
  - The coalition includes: US Chamber of Commerce, API, PCA, NAM, AFPM, NMA, and AF&PA
- On November 26, 2013 OMB published a notice in the Federal Register
  - Stay tuned

# Climate Change Will Remain An Important Issue

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- Even if the Rs take over the Senate and keep the House
  - Climate change will continue to be a front-burner issue
- Ds in Congress have launched a “Wake-Up Call”
  - They are using the “bully pulpit” to encourage the Administration to take more action on climate change
- The Administration continues to push GHG action
  - If Congress won’t take action, the Administration will
  - EPA continues to push its agenda
  - The President has stated:
    - “Climate change is a fact”
    - His 2015 Budget calls for repeal of \$4 billion in tax incentives for oil, gas and other fossil energy and, for the first time, incentives for CCS for gas-fired generators
    - The latter is intended to help “prove” that CCS is “proven”

# Will Congress Roll Back EPA?

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- The House has passed many bills restricting EPA in various ways
  - But these bills go nowhere in the Senate
  - And the President would veto the bills if they got to his desk
- We do not expect any real Congressional action restricting EPA any time soon

# What About A Carbon Tax?

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- Can approach in 2 ways:
  - Raise revenues (and can raise big amounts)
    - A \$20 per ton of CO<sub>2</sub> could raise over \$1 Trillion in 10 years
  - Reduce carbon emissions
    - If the tax is low – little CO<sub>2</sub> reductions
    - If the tax is high – non starter with Republicans
    - Host of sub-issues such as: double regulation, harms competitiveness, low income impact, international implications, where to impose
- Thus, limited constituency
  - Except for a few economists
  - And a few utilities (with large nuclear portfolios)
- We do not expect a Carbon Tax in this Congress – or the next
  - However, if there is a real effort to reform the tax code, everything is on the table

# Congressional Actions (or Inactions) on Energy

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- Republican rhetoric continues:
  - Regulations are bad
  - Government expenditures are bad
  - Government is bad
- Democratic dogma also continues:
  - Carbon is bad
  - Energy producers (coal, oil, frackers) are bad
  - However, there is sunlight (and wind) at the end of the tunnel
- There appears to be little give or take on either side
  
- The current focus in Congress is:
  - Get Elected – or Re-Elected
  - Get Seats
- The Ds need a net of 19 in the House
  - This is unlikely
- The Rs need a net of 6 in the Senate
  - This is possible – but far from assured



# In Spite of This, What COULD Pass?

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- Its hard to tell
  - There is a new Committee Chairman in the Senate Energy Committee (Landrieu – LA)
  - The Ranking Minority – Murkowski
  - Lots of oil and gas background with both
  - But the agenda is unknown – but do not expect too much
- A possibility – Energy Efficiency (but I said this last year also)
  - Final days of last Congress, the Senate added EE provisions to a narrow House bill – required a study of industrial efficiency and CHP by DOE – but the results appear to be less than favorable
- On March 5, 2014 the House passed a bill (375 – 36) which provides incentives to landlords and tenants who increase EE
  - There also is a much broader EE bill in the Senate



# In Spite of This, What COULD Pass? (cont.)

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- Why might energy efficiency pass?
  - Three major drivers:
    - Environmental community (Democratic support)
    - EE community (Alliance to Save Energy, American Council for Energy Efficient Economy – Democratic and Republican support)
    - EE Manufacturers – Johnson Control, Siemens, Ingersoll Rand, ABB, others (Republican support)
  - Why may it not proceed?
    - Procedural obstacles – in the Senate
    - How many – and which – amendments will be allowed?
    - Do they have to be germane? Could they address: Keystone, EPA, Obamacare, etc?

# Congressional Inaction Does NOT Mean No Pressures on Costs

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- There are many issues with very significant impacts on electricity costs – and thus on electricity consumers
- A few significant examples include:
  - At FERC:
    - The integration of “green energy” was of high priority
      - The policy positions of the new Chairman is unknown
    - However, renewables are quite expensive, often are not available when and where they are needed, and often are not located near load
      - And \$15 B of new transmission investment is planned – who will pay?
  - NERC is taking actions that can add substantial costs due to increased registration and then compliance costs
  - And grid security is of increasing concern for many
- A few comments on each follow

# The New FERC Chairman?

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- The Administration has nominated Norman Bay to be the next Chairman of FERC
  - Bay currently is the director of FERC's Office of Enforcement
  - A former law professor and U.S Attorney in New Mexico
  - He cracked down on Wall Street banking giants in the gas and power markets
- Why Norman Bay?
  - He offers a "clean slate" – no policy background
  - But there are 2 other sitting Ds on the Commission
- No confirmation hearings have been scheduled

# NERC Issues: Background

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- The North American Electric Reliability Corporation (NERC):
  - Is the FERC-designated “ERO”
  - Develops mandatory reliability standards with up to \$1 million / day penalties
  - Any entity that is on NERC’s Compliance Registry must:
    - Comply with all applicable standards
    - Make required compliance filings
    - Be subject to periodic audits
- Increasingly, industrials are becoming “Registered Entities”
  - And thus responsible for compliance with various reliability standards



# NERC Issues: Redefining the BES

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- FERC directed (Order 743) NERC to redefine the “Bulk Electric System” (BES) within one year:
  - The proposed definition presently at FERC might register any facility (among other provisions) with dual feeds looped at greater than 50 kV
  - ELCON has filed to increase this to 70 kV – but there has been no indication of the outcome
- The bottom line: many more industrial facilities may be subject to the “compliance registry” based on the revised BES definition
  - Once an entity is placed on registry, you will REALLY care about NERC



# Just A Few Examples of Other NERC Important Issues:

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- Reform of the Standards Process:
  - Can the standards be changed to be “risk based”?
- Reliability Assurance Initiative (RAI)
  - Overall intent – move off “zero tolerance” to risk-based standards
  - What happens to FFT – keeping some violations out of compliance?
  - Will it bring actual benefits to registered entities?
- Communications Protocols (CIP Standards):
  - All too often routine instructions are not conveyed correctly and are involved in outages – human errors?
  - But the “fix” may require a lot more effort and not bring reliability gains – e.g., three-part communications in all situations?
- The transfer of state-jurisdictional assets to FERC-jurisdictional assets
  - An issue just gaining momentum
- ELCON is the only manufacturing association active at NERC

# Finally – Grid Security

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- Protecting grid security involves: cybersecurity, physical security, electromagnetic pulse (EMPs) and geomagnetic storms (GMSs) – maybe more
  - Cybersecurity – thousands of hackers both foreign and domestic
  - Physical security – guns, trucks, even bombs on generators, substations and transmission lines
  - EMPs and GMSs – from sunspots and/or nuclear explosions in the air (high impact, low frequency events)
- Cyber and physical security have received a lot of recent attention
  - FERC, NERC and Congress are considering addressing
  - Any effort may be very costly



# Grid Security

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- Recent cyber attacks have raised the level of concern throughout the economy
  - Several utilities have been hacked
  - The costs of 100% grid protection are prohibitive
  - NERC has several cyber standards in effect that require substantial actions by “registered entities”
  - Some say that is not enough – but where do we “draw the line” between sweeping in more entities and facilities and the increased costs?
- The past Chairman of FERC recently raised the physical security issue to higher levels
  - In the *Wall Street Journal*, PBS and more

# Grid Security

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- Up until last Friday, the electric industry has avoided draconian actions
  - ELCON participates in a coalition of electricity stakeholders
  - Including utilities, generators, state commissioners, ISOs, NERC, Canadians, etc.
  - Objectives: grid security, information sharing, avoid over reactions – and keep costs reasonable
  - ELCON is the only consumer group in the coalition
- Unfortunately, as we learned from 9/11
  - It only takes one real catastrophic event to spur action
  - And if Congress, FERC or NERC over-reacts from such a catastrophic, the costs could be in the hundreds of millions



# Grid Security

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- Last Friday (March 7<sup>th</sup>) FERC issued an Order:
  - Requiring NERC to issue a Standard within 90 days standards that:
    - “will require certain registered entities to take steps or demonstrate that they have taken steps to address physical security risks and vulnerabilities related to the reliable operation of the Bulk-Power System.”
  - This is (maybe is) better than legislation
  - There are significant and difficult issues such as: , how many and what facilities will be affected, what must they do to “address”, confidentiality, 3<sup>rd</sup> party verification – to mention only a few
  - Some think that a “bright line” would be helpful – but what does the bright line involve, who draws it, at what level, etc.?
  - Would some sort of “safe harbor” be better?
  - The IOUs have issued a draft standard
  - The Standards Committee meets today (March 13<sup>th</sup>) to begin deliberations
    - Many approved processes will have to be waived or shortened

# Conclusions

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- You must watch carefully legislative, regulatory, Administrative and court proceedings
  - Many of the expected actions may significantly increase electricity costs
  - And not necessarily in in the same manner for each industrial consumer
- It is in your best interest to protect your relative competitive positions through vigorous individual and group actions
  - That's why belonging to groups like KIUC and ELCON are so important
- Thanks for you're the opportunity to be with you today



# To Contact ELCON

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