

An Update on Federal Matters Affecting Large Energy Consumers

A presentation by:

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What Is ELCON?

- 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

- Discuss industrial electricity issues in:
 - Administration (primarily EPA)
 - Congress
 - FERC
 - NERC
- My main objective is to point out some areas of concern to large industrial electricity consumers
 - I will focus on issues where ELCON has been working hard to protect all industrial consumers – members or not

Recent EPA Electricity Activities

- ❑ From a large industrial electricity consumer viewpoint, current Administrative actions are primarily EPA actions
- ❑ As you have discussed all morning, the top EPA concern today is the Clean Power Plan (CPP or 111(d) rules)
- ❑ The CPP (very high level review):
 - Specifies a 30% CO2 emissions reduction target by 2030
 - States develop compliance plans – or get a FIP (now unknown)
 - Relies on 4 “building blocks” including (1) heat rate improvements, (2) environmental dispatch, (3) zero or low-emissions resources, and (4) demand side energy management including energy efficiency
- ❑ EPA predicts that monthly electric bills will decline by +/- 9% -- due primarily to energy efficiency
 - But assuming that today we have security constrained economic dispatch – moving to environmental dispatch, by definition, increases costs and
 - A NERA/ACCE study predicts double digit rate increases in 43 states
- ❑ Over 4 million comments have been filed

111(d): EPA's Proposed Rules re: NSPS for Existing Power Plants

- The US Chamber analyzed filings by states and found 12 significant areas of concern:
 - Legality of the rule
 - Impact on electricity prices, jobs and the economy
 - Impact on electric reliability
 - Technological assumptions and associated impact on compliance flexibility and achievability
 - Presence of mistakes and errors within the rule
 - Accelerated timeline for finalization and implementation
 - Achievability of the rule's interim targets
 - The 2012 baseline year & credit for early action
 - Treatment of nuclear generation
 - Lack of consideration of stranded costs
 - Rule's goals in comparison to those set for new power plants
 - Rule's estimation of plants' generation capacity and resultant impact on state targets

111(d): EPA's Proposed Rules re: NSPS for Existing Power Plants

- ELCON prepared a 20-page review of the states' filings and a 3-page summary
 - That paper can be found at:
<http://www.elcon.org/Documents/Profiles%20and%20Publications/Status%20of%20the%20Debate%20on%20EPA%20Section%20111d%20-%20Full%20Report%20-%20Feb%202015.pdf>
- We felt that 11 of the 12 concerns were quite well researched
 - However, reliability was far from well covered
 - Given ELCON's extensive and detailed participation in NERC (more on this later) and the fact that ELCON provided some funding, ELCON was able to bring reliability expertise to those preparing detailed industrial comments

111(d): EPA's Proposed Rules – Reliability Concerns

- Electricity grids now are often operated with very little margin for error
 - Last year's Polar Vortex brought this vividly to our attention
 - NERC prepared an extensive reliability review raising serious concerns
- Questions have been raised on EPA's consideration of reliability
 - FERC Commissioners Moeller and Clark explicitly raised concerns
 - Moeller said that he received only a very short oral briefing and was not allowed to actually read the EPA's documents
 - And Clark said that with today's tight capacity reserves, FERC is left with the unenviable task of choosing between allowing prices to rise or letting reliability suffer
- Of course, the other side basically said that NERC's fears are largely overstated and do not take into account a host of solutions

111(d): EPA's Proposed Rule – Reliability Concerns

- Our main reliability concerns include:
 - Infrastructure improvements (transmission, NGCC and pipelines)
 - Essential reliability services:
 - Including load following, regulation and ramping services which will be challenged as the proportion of intermittent variable energy resources increases (e.g., wind and solar)
 - And distributed energy resources (e.g., rooftop photo voltaic arrays) that cannot be dispatched
- ELCON participated in – and helped fund – a very detailed set of comments
 - The “Associations Comments” – led by the US Chamber and NAM and including many national industrial trades
 - The first draft contained only very limited reliability concerns
 - ELCON's John Hughes was able to insure that the Associations Comments contained the most detailed and comprehensive reliability comments of any filing

111(d): EPA's Proposed Rule – What's Next?

- There is no clear “crystal ball”
 - Legal challenges have been filed
 - Such as the Murray Energy cases
 - And the 12-state filing
 - There are both:
 - Procedural issues (e.g., the rule is not yet final and the Supreme Court already is considering a related case) as well as
 - Legal issues (e.g., can EPA regulate under 111(d) if it already is regulating under 112 and is CCS “adequately demonstrated” as required by the CCA)
 - But the EPA is “burning the midnight oil” to enshrine emissions regulations for power plants in federal law before President Obama leaves office in 22 months
 - As you already have heard, there has been strong pushback
 - There are rumors that EPA may make (perhaps significant) changes to its proposal (e.g., the 2020 interim goal, eliminating CCS, etc.)

What Might Congress Do RE: CPP?

- The House has passed many bills restricting EPA in various ways
 - And it probably will continue in the future
 - But the House and Senate are totally different entities
- As we all know, the Senate
 - Is now in Republican control (54 to 46) and the
 - Chairman of the EPW is Senator Inhofe – a fierce critic of the CPP
- The Senate now is operating under “regular order”
 - Where there are no bans on amendments – and more were considered in January 2015 than in all of 2014
 - But climate related:
 - The Senate voted 98-1 that climate change is not a hoax, 59-40 that climate change is real, and 50-49 against saying that human activity significantly contributes to climate change
 - And there were only 62 votes in the Senate to overturn the Keystone veto
- And we must keep in mind that the President has said that he would veto any bill that gets to his desk that rolls back his efforts relating to climate change

What Might Congress Do RE: CPP?

- To make matters more complex
 - Next year, 24 Senate seats now held by Republicans are up
 - Some are in very vulnerable states (e.g., NH, IL, IA & OH)
 - McConnell wants to avoid difficult votes for those Senators
- Republican leaders in both the House and Senate
 - Don't want to be a party of no
 - Don't want to look like losers
 - Don't want to give the President victories
- Republicans want to develop proposals that can actually be enacted – not just “messaging bills”

What Might Congress Do RE: CPP?

- As a specific example Ed Whitfield – from here in KY – chair of Energy & Power Subcommittee said:
 - “The problem is that the Obama EPA has strayed well beyond its legitimate functions and has embarked on an expansive and expensive global warming regulatory agenda that is on shaky legal grounds and is bad policy for the country.”
 - That sure is good rhetoric!
- However, Mr. Upton – chair of the full Committee – prepared a legislative package on energy
 - That does not even mention greenhouse gases
- House Republicans know that it is very difficult (impossible?) to enact legislation to stop EPA that will pass the Senate and then be signed by the President

However, beyond the CPP...

- ❑ There are many other important federal issues being considered that could significantly increase electricity costs to industrials
- ❑ These issues are being debated at both FERC and NERC – and industrials must be adequately represented in both venues
- ❑ I offer a few comments on each below

The New FERC?

- FERC will get a new Chairman
 - Norman Bay was 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
 - He was confirmed as a new commissioner last fall
 - And will become Chairman on April 15th
- What does this mean?
 - Bay offers a "clean slate" – no policy background
 - And Current Chairman LaFleur – a sitting Democrat on the Commission – was by-passed
 - The dynamics of FERC politics are hard to predict

Is There A FERC Role re: CPP?

- ❑ FERC's role is a combination of policy and politics
- ❑ Commissioner Moeller (R) called for a public and transparent forum for a discussion of the issues
- ❑ Current Chairman Cheryl LaFleur (D)
 - First equivocated about how much EPA had consulted with FERC on grid reliability in developing the CPP
 - Then on how active FERC should be once the rule was issued
 - But then agreed to hold 4 Technical Conferences the first of which contained testimony ranging from
 - ❑ Arizona Corp. Comm. Chairman saying the CPP would result in insufficient generation, inadequate transmission, and inadequate pipelines
 - ❑ While a CA PUC member said that the CPP would make the electric system cleaner, more resilient and economically resurgent
- ❑ We do expect Sen Murkowski, Chair of the Senate Appropriations Subcommittee to take an active oversight role regarding FERC
- ❑ Time will tell what FERC actually will (or will be able to) do



But the CPP is Far From the Only FERC Issue of Concerns to Industrials

□ Demand Response

- In April '14 the DC Circuit vacated in its entirety FERC Order 745 – the DR compensation rule – on the basis that FERC improperly encroached on the jurisdiction of the states to regulate retail markets
- The ruling was stayed
- Shortly after, FirstEnergy filed an emergency complaint requesting that FERC stop PJM from including DR in capacity auctions and void earlier auctions
- The Solicitor General filed for certiorari with the Supreme Court
 - About half of the filing explains wholesale markets and the role of DR
 - It then says that the DC Circuit seriously misinterpreted the FPA saying that DR is an integral participant in wholesale markets and that
 - DR commitments are critical to ensuring efficiencies and reliability of the grid and
 - The 3rd & 4th Circuits held that MD & NJ could not promote new generation because that was fundamentally in wholesale markets
- ELCON is a member of the Advanced Energy Management Alliance
 - That strongly supports overturning the DC Circuit's decision
 - But there is a lot of opposition



Demand Response -- Continued

- Amicus Briefs were filed February 17
 - EPSA was given 30 days extra to file its response to our briefs
 - Replies from Petitioners (FERC & EnerNoc) are allowed
- The entire package of materials is then presented to the members of the Supreme Court
 - The Court then decides whether or not to take the case
 - Our attorneys guess they will meet on April 28th – but there is no hard timetable
- If they take the case, a schedule will be established for briefing and oral arguments
- The decision could have very significant impacts on the so-called “organized markets”

Other FERC Issues in Which ELCON has Participated

- As just a few examples of a few other FERC Issues:
 - Access to generator tie lines –
 - An April 2014 FERC NOPR raised the bar for 3rd parties access to tie lines
 - ELCON supported the NOPR as long as it does not apply to industrial tie lines
 - ELCON is taking action to prevent wind or solar developers from seeking “open access” to industrial interconnection facilities
 - Transmission rate incentives –
 - In 2013 the Working Group for Investment in Reliable and Economic Electric Systems (WIRES) petitioned FERC to raise ROE for high voltage transmission
 - ELCON (along with a broad coalition of industrials) filed urging FERC to continue to apply the just and reasonable standard
 - ELCON is taking action to keep the ROE’s on T in line
 - Information sharing –
 - In 2013 FERC issued Order 787 allowing the sharing of nonpublic information to promote reliability and integrity of the grid
 - The Order contained a “No-Conduit” rule restricting new information to affiliates
 - ELCON argued that the No-Conduit rule be strengthened – TO’s should account for costs and be required to strengthen record-keeping and reporting
 - ELCON is taking action to protect industrial customers from artificially-high rates due to collusion between suppliers and their affiliates



Other FERC Issues in Which ELCON has Participated

- Physical security:
 - ELCON opposed unilateral actions by FERC that could undermine due process protections
- Centralized capacity market design:
 - ELCON has opposed the capacity market construct since its inception – and participated on a FERC Technical Conference in December
- Phase II revisions of NERC BES definition:
 - ELCON's advocacy reduced the risk to industrial facilities of being BES classified
- Coordination of gas and electric markets:
 - ELCON has worked diligently to help coordinate the two markets to protect reliability



NERC Issues: Background

- As I have pointed out in years past, 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
- If an industrial becomes a “Registered Entity”
 - It then is responsible for compliance with various reliability standards

NERC Issues: Redefining the BES

- ELCON is the only industrial organization actively participating in NERC
- ELCON worked very effectively to educate the ERO enterprise about industrial loads and generation
 - ELCON was a significant participant in the successful effort to move the ERO to a “risk-based” rather than “zero tolerance” approach to registration and compliance
 - ELCON was able to influence the drafting of the approach in a manner that excludes most industrial facilities
- Clearly, there are some (albeit only a very few) industrial facilities that may have some impact on the BES
 - They should be – and are -- registered and held accountable to the myriad and costly NERC compliance requirements
 - If any of your now unregistered facilities become registered, you will immediately understand the value of ELCON’s NERC participation
 - But until that time, participation in NERC is the best remedy for insomnia I can think of
- Unfortunately, from a membership perspective, ELCON has done too good a job for industrials



Conclusions

- 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 is so important
- Thanks for the opportunity to be with you today

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