



Accomplishments Report for 2020

The Electricity Consumers Resource Council ⚡ Founded in 1976
Highlights of ELCON Activities for the 12 Months Ending August 31, 2020

ELCON Leads Efforts to Ensure that CHP is Not Harmed by PURPA Final Rule

On September 19, 2019, FERC issued a Notice of Proposed Rulemaking (NOPR) regarding its rules for implementing the Public Utility Regulatory Policies Act of 1978 (PURPA). ELCON and members had met earlier with Commissioners and staff and emphasized the benefits of PURPA to industrial consumers, mentioning that ELCON was founded in anticipation of the passage of PURPA in the 70s and stressing the importance of maintaining the 20 MW exemption for Qualifying Facilities (QFs), whether they are classified as Combined Heat and Power (CHP) or Small Power Production (SPP) facilities. The proposed rule maintained the 20-megawatt (MW) exemption for CHPs but lowered the exemption for SPPs to 1 MW. ELCON, along with the American Forest & Paper Association (AF&PA) and the American Chemistry Council (ACC), filed comments in December 2019 encouraging the Commission to maintain the 20 MW exemption for both CHP and SPP facilities. ELCON members also met with Commissioners and staff in June 2020 to better align the final rule with ELCON members' business models as industrial consumers. On July 16, 2020, FERC issued the PURPA Final Rule, maintaining the 20 MW exemption for CHP and raising the exemption for SPPs to 5 MW while creating a rebuttable presumption of access to markets for SPPs sized between 5 MW and 20 MW.

Benefit to ELCON Members: The Final Rule benefits ELCON members who operate CHP facilities and who operate or are interested in further development of SPPs by largely preserving the existing PURPA exemption. ELCON's leadership on this issue—including educating Commissioners and staff about the value of PURPA to industrial customers—was a key factor in winning a favorable outcome. Specifically, paragraphs 640 and 641 of the final rule state that SPPs can “rebut the presumption of access to the market by demonstrating,” among other things, “a predominant purpose other than selling electricity which would warrant the small power QF being treated similarly to cogenerators.” This language is precisely what we asked for, and it is a victory for ELCON members.

ELCON Submits Highly Critical Comments on FERC's Transmission Incentives Policy

While noting that industrial consumers fully support the NOPR's proposal to remove the independent transmission company (or “transco”) incentive, ELCON, joined by AF&PA and ACC, sharply criticized the Commission's approach in the transmission incentives NOPR. In comments drafted by ELCON, industrial consumers said we understood the practical need for new transmission development but disagreed with FERC that transmission incentives policies should be – or can be – a key driver of that development. Industrial consumers said the root cause of underdevelopment (if any) is a set of institutional barriers that should be addressed head on rather than tangentially, expensively, and ineffectively via transmission incentives policy. Industrial consumers said the appropriate tools available include improvements to transmission planning and cost allocation, or potentially new legislation from Congress to address any additional federal role in transmission siting. Drawing sharp contrast to the NOPR, industrial consumers referenced the statutory language of Section 219 of the Federal Power Act and highlighted where the NOPR fell short in each subsection. In particular, industrial consumers stressed the lack of focus in the NOPR on a key premise of the statute—that FERC should establish incentives “for the purpose of benefitting consumers by ensuring reliability and reducing the cost of delivered power by reducing transmission congestion.” Industrial consumers noted that FERC's proposal does not take seriously the charge from Congress to reduce the cost of delivered power.

Benefit to ELCON Members: Transmission rates are a major component of the electricity costs paid by members in manufacturing processes and, therefore, ELCON opposes actions that needlessly raise transmission rates. The proposals in the NOPR could cost consumers multiple billions of dollars. Further, by emphasizing the need for FERC to independently evaluate “the cost of delivered power,” ELCON paved the way to a new line of advocacy in which we can scrutinize the cost of delivered power and push FERC to undertake its own analysis of all-in costs to consumers.

ELCON Testifies on COVID Policy

On June 8, 2020, ELCON testified at FERC about the impacts of COVID-19 on industrial consumers and the broader implications of COVID-19 for reliable electricity supply at just and reasonable rates. ELCON's written testimony was also filed in the relevant FERC docket (AD20-17). ELCON highlighted the fact that members place a particularly high value on electric reliability, noting that even a small glitch can shut down a manufacturing facility for days and cost millions of dollars. ELCON testified that, according to the North American Electric Reliability Corporation (NERC), COVID-19 presents reliability risks, and these risks are likely to continue throughout the summer. Also, ELCON testified that members are concerned about the impacts to rates that may result from some utilities attempting to recover costs connected to COVID-19. ELCON encouraged the Commission to take a close look at any rate filing that may include COVID-19-related costs to ensure that they are in fact just and reasonable. In responding to questions from Chairman Neil Chatterjee and Commissioner Rich Glick, ELCON emphasized the filed rate doctrine and urged FERC to avoid cross-subsidization between consumer classes and to prevent utilities from gaming the situation for their private gain.

Benefit to ELCON Members: The COVID-19 pandemic presents many new challenges to ELCON members but should not prompt unnecessary recovery of utility costs and increased rates for consumers. ELCON's testimony highlighted this concern and insured that FERC was aware of this potential problem. Further, ELCON's participation in the technical conference raised the profile of the organization. ELCON President and CEO Travis Fisher was on a panel with the Presidents and CEOs of PacifiCorp, Minnkota Power Cooperative, Midcontinent Independent System Operator, Vistra Energy, New York Power Authority, LS Power, and the Chairman of the Ohio Public Utilities Commission.

ELCON Files Extensive Comments on DOE's Implementation of Executive Order 13920

For years, ELCON has successfully advocated for the grid security rules promulgated by NERC and others to be fair and tailored to the threats at hand. For example, in 2014, FERC accepted NERC's proposal to exclude certain self-supply facilities from its definition of the Bulk Electric System (BES). ELCON fought hard for that exclusion. Today, ELCON is fighting to keep the Department of Energy (DOE) from encroaching on the bright line definition of the BES established in 2014 and subjecting ELCON members to expensive new rules that stifle business operations with regulatory uncertainty and introduce new, potentially very large compliance costs. Notably, Executive Order 13920 attempts to redefine the bulk power system as any facility

rated at 69kV or above. It also proposes to blacklist and/or whitelist certain equipment suppliers, threatening to cause major disruptions and cost increases in ELCON members' procurement of electrical equipment.

Benefit to ELCON Members: Through ELCON's outreach to the DOE—via phone conversations, emailed comments, and recently a formal set of comments responding to the DOE's Request for Information regarding Executive Order 13920—we are confident that DOE officials hear our concerns. The Energy Daily summarized ELCON's comments in a recent piece:

"Industrial power customers, represented by the Electricity Consumers Resource Council (ELCON), were more explicit in urging DOE to trim the scope of its order... 'We feel strongly that DOE and electricity consumers would benefit if DOE were to tailor the scope of its implementation of [the executive order] to the existing and well-defined bulk electric system (BES), the largely high-voltage network that NERC oversees. Restricting the reach of [the executive order] to the BES as defined by NERC would provide much-needed regulatory certainty and better integrate implementation of [the executive order] with existing NERC standards,' ELCON said."

When the NOPR is issued (due October 1, 2020), ELCON will evaluate it and submit further comments or opinion pieces as appropriate. Shaping DOE's implementation of Executive Order 13920 would save ELCON members hundreds of millions of dollars.

ELCON Requests Rehearing on PJM MOPR

On December 19, 2019, FERC issued its "Order Establishing Just and Reasonable Rate" instituting a new replacement rate that expanded applicability of the minimum offer price rule (MOPR) in the capacity market of PJM Interconnection. ELCON filed comments saying "[e]xpanding MOPR will elevate offers above competitive levels, resulting in inflated market prices that elevate costs to load above competitive levels." ELCON also said the Order fails to support FERC's departure from the MOPR's fundamental purpose to mitigate the exercise of market power. Further, ELCON argued the replacement rate would result in inefficient outcomes and excessive costs to consumers and limit competition and result in over-mitigation. ELCON said the Commission should exempt competitive processes and exempt voluntary bilateral contracts.

Benefit to ELCON Members: Expanding the minimum price offer rule unnecessarily raises the market price of electricity for ELCON members resulting in higher costs. ELCON's opposition may tip the scales in favor of a court remand of the PJM MOPR.

ELCON Nominee to Testifies at CO2 Conference

In April, the FERC issued a Notice of Request for a Technical Conference on Carbon Pricing in FERC-Jurisdictional Organized Regional Wholesale Electric Energy Markets. ELCON filed comments saying it is supportive of the Commission holding a technical conference or workshop on carbon pricing in FERC-jurisdictional wholesale electricity markets. ELCON said it agrees with other groups that the time appears ripe for the Commission to convene a technical conference or workshop on these issues. ELCON said it supports a robust discussion of market design and that a technical conference should include a diverse array of consumers and—crucially—the discussion of carbon pricing should address duplicative policies. In preliminary discussions with FERC staff, ELCON nominated itself along with Mike Mager of Couch White, who represents Multiple Intervenors, to participate in the technical conference on behalf of industrial consumers. While ELCON was not chosen to participate in the conference, the addition of Mike Mager provided the much-needed voice of the consumer along with the practical perspective Mike gained in dealing with New York's approach to carbon pricing. The technical conference was held virtually on September 30, 2020 from 9:00am to approximately 6:30pm.

Benefit to ELCON Members: ELCON members compete in worldwide markets. We want to ensure that any carbon price proposal does not needlessly and inefficiently add to electricity costs and reduce the competitiveness of ELCON members in multi-state and international markets. ELCON is well positioned to offer thoughtful written comments in the post-technical conference comment period.

ELCON Asks NERC Not to Revise Supply Chain Risk Assessment

In comments filed for the February 2020 Board of Trustee and Member Representative Committee meetings, ELCON said it disagreed with NERC's recommendation that the Supply Chain Standards be revised to include low impact BES Cyber Systems with remote electronic access connectivity. ELCON said the analysis as presented by NERC does not represent a supply chain risk but rather a remote access control risk and allowing necessary connectivity does not inherently increase an entity's supply chain risk. ELCON said there are more cost-effective methods in which to address the true risk identified in NERC's analysis.

Benefit to ELCON Members: ELCON continues to fight against unnecessary costs imposed on ELCON members, particularly when costly new standards offer little or no reliability benefits.

ELCON Hires Travis Fisher as President, CEO

This spring, ELCON hired Travis Fisher to replace interim President John Hughes as President and CEO. Fisher has 15 years of experience in energy policy, most recently serving as Economic Advisor to FERC Commissioner Bernard McNamee and holding several positions under former Chairman Kevin McIntyre. In January 2017, after serving on President Trump's transition team at FERC and DOE, Fisher joined DOE as a Senior Advisor in the Loan Programs Office and then the Office of Electricity. At DOE, he was responsible for leading the Department's efforts on the 2017 Staff Report to the Secretary on Electricity Markets and Reliability. Prior to resuming public service, Fisher was active in publishing materials on the cost of electricity and the political economy of electricity as an economist at the Institute for Energy Research, free-market think tank, as well as with the US Association for Energy Economics. Fisher began his career as a staff economist at FERC. A native of North Carolina, Fisher holds a bachelor's and a master's degree in economics from NC State University.

Benefit to ELCON Members: Travis Fisher has the background and experience to win policy battles for ELCON members. He leverages his relationships in government and the electricity industry to provide access for ELCON members to interact directly with decisionmakers at FERC, DOE, NERC, and Congress. In addition, his academic and research background provides the foundation for ELCON to maintain its thought leadership in the electricity industry and to expand ELCON's work into new areas. For example, earlier this year Fisher joined the Advisory Committee of the Future Power Markets Forum, a group hosted jointly by Columbia and Johns Hopkins Universities and guided by industry leaders such as David Hill, Benjamin Hobbs, Rob Gramlich, and former FERC Chairman and Commissioner Cheryl LaFleur.

ELCON Leads Congressional Effort to Improve, Expand Competitive Wholesale Markets

ELCON is leading a coalition of groups representing producers, consumers, and think tanks to encourage Congress to enact pro-consumer, pro-competition market reform legislation in regions with established markets and create such markets in regions without them. ELCON has met with over 20 key Senate and House staff members to educate them about the benefits of competitive markets, and we will work to enact pro-consumer legislation in the upcoming Congress.

Benefit to ELCON Members: Low electricity prices allow ELCON members to keep costs low and compete in international markets. ELCON's strong presence in coalition efforts ensures that new legislation will not raise electricity prices for ELCON members. ⚡



Snapshot of ELCON’s Engagement at FERC, NERC, and DOE in the Past 12 Months

| FERC Docket No. | Issue | Benefits to ELCON Members |
|---|---|--|
| RM19-15 AD16-16 EL20-42 | FERC Revisions to PURPA Regulations; related filing asking FERC to expand PURPA rules to net metering | Many ELCON members self-supply with Combined Heat and Power (CHP) and Small Power Production (SPP) facilities. ELCON opposed changes to PURPA that would limit members’ options and successfully lobbied to have members’ SPP and CHP facilities treated comparably. |
| RM20-10 | Notice of Proposed Rulemaking re: FERC’s Transmission Incentives Policy | ELCON pushed back on FERC’s incentives proposal and highlighted parts of Federal Power Act Section 219 that FERC left unaddressed for 15 years. Specifically, ELCON argued that FERC lacks a fundamental understanding of the “cost of delivered power” and therefore should not use transmission incentives in a blind attempt to lower it. |
| AD20-14 | Technical Conference on Carbon Pricing in Wholesale Electricity Markets | ELCON submitted comments in support of the technical conference. One of ELCON’s nominees (Mike Mager of Multiple Intervenors) was selected to testify, ensuring that consumer interests were raised during the conference. |
| EL16-49 EL18-178 | Expanded MOPR in the PJM Capacity Market | ELCON opposed expanding the MOPR in PJM because it would raise offers and thus increase capacity costs to load. |
| AD19-18 | Notices of Penalties to Violations of Critical Infrastructure Protection (CIP) Reliability Standards | ELCON with other groups argued that the proposed revisions to CIP standards did not adequately protect disclosure of CEII information from malicious actors and should not come at the expense of ensuring a reliable and secure Bulk Power System. |
| AD20-17 | Technical Conference on the Impacts of Covid-19 on the Energy Industry | ELCON testified at FERC’s technical conference and encouraged the Commission to scrutinize any rate filings by utilities that seek to recover lost revenue stemming from the Covid-19 demand contraction. |
| NERC Comments | Issue | Benefits to ELCON Members |
| Draft ERO Reliability Risks Priorities Report | Draft Risk Prioritization Report | ELCON agreed with the identified risks in the report but said a standards-first approach would have limited effectiveness and may add costs to consumers that outweigh benefits. |
| Sector 8 Policy Input for NERC Quarterly Meeting (Feb 2020) | Proposed Changes to Low Impact BES Standards | ELCON opposed the recommendation that supply chain standards be revised to include low impact BES Cyber Systems with remote electronic access connectivity suggesting more cost-effective methods to address risk. |
| Sector 8 Policy Input for NERC Quarterly Meeting (May 2020) | Security and Cost of the Align Tool | ELCON supported the steps taken by NERC to secure the Align tool and the ERO secure evidence locker. ELCON also supported the attempt to minimize the cost impacts of the delay and enhancement of the Align tool. |
| DOE ID No. | Issue | Benefits to ELCON Members |
| DOE-HQ-2020-0028 | DOE Request for Information on Securing the U.S. Bulk Power System | ELCON submitted a detailed response to each question posed by the DOE in its request for information and raised concerns about costs to members of blacklisting certain equipment suppliers. |