ELCON REPORT

ELECTRICITY CONSUMERS RESOURCE COUNCIL

NUMBER TWO 2006

ELCON Leads Charge Against FERC'S Proposed PURPA Rule

ELCON has organized a number of actions to communicate its concerns with a proposal from the Federal Energy Regulatory Commission to ease utility obligations under the Public Utility Regulatory Policies Act (PURPA).

Earlier this year, FERC proposed rules to implement a provision in last year's Energy Policy Act (EPAct) allowing a utility to be relieved of its obligation to purchase power from a cogenerator or to provide back-up power provided the utility showed that the market was in compliance with statutory standards for continued promotion of cogeneration. The new EPAct language added Section 210(m) to the Public Utility Regulatory Policies Act (PURPA), placing the burden of proof on utilities to show compliance either on a facility-by-facility basis or a utility-by-utility basis.

FERC's proposal, however, presumed that any utility operating in one of the four

Continued on page 7

ELCON Plans Summer Workshop

An ELCON Summer Workshop is being planned on the topic, "Western Power Markets: A Breed Apart?" To be held June 21 in Portland, Ore., it is open only to ELCON members and companies that are considering membership.

The workshop will examine western markets and their similarities and dissimilarities with markets elsewhere in the country. "Manufacturers are facing many of the same problems throughout the country," noted ELCON President John Anderson. "Regardless of whether a market is organized or not, there is a lack of customer focus and an inability for consumers to realize savings."

The workshop will feature a session on "The Northwest's Path to Organize its Markets" with Bill Keese from the Western Governors Association and Kristi Wallis from ColumbiaGrid as confirmed speakers. Armando Perez from the California ISO (CAISO) will address that market while Eric Schubert from the Texas Public Utility Commission will discuss ERCOT.

Any non-ELCON member wishing to attend should contact ELCON (202-682-1390) to determine eligibility. E

ALSO IN THIS ISSUE...

ELCON Welcomes New Members

ELCON welcomes as new members Alcoa, based in Pittsburgh; Denver-based Johns Manville, and Pioneer Americas LLC, Houston.

Alcoa is the world's leading producer of primary aluminum, fabricated aluminum, and alumina, and makes and markets consumer brands including Reynolds Wrap®, Alcoa® wheels, and Baco® household wraps. It serves the aerospace, automotive, packaging, building and construction, commercial transportation, and industrial markets. For more information, visit www.alcoa.com.

Johns Manville, a Berkshire Hathaway company, is a leading manufacturer and marketer of premium-quality building insulation, commercial roofing, roof insulation, and specialty products for commercial, industrial, and residential applications. Products include formaldehyde-free fiberglass building insulation, commercial roofing membranes and roof insulations, filtration media, and mats and reinforcements. For more information, visit www.jm.com.

Pioneer Americas LLC was established as a chlor-alkali company in 1988 and is a leading producer and marketer of chlorine, caustic soda, hydrochloric acid, bleach and related products used for water treatment, plastics, pulp and paper, detergents, agricultural chemicals, pharmaceuticals and medical disinfectants. For more information, go to www.piona.com. E

Why Pick on PURPA?

By Joe Marone, ELCON Chair

PURPA (for those of you who don't know, that's the Public Utility Regulatory Policies Act) has been a burr under the saddle of investor-owned utilities since it was first enacted in 1978. PURPA was the first federal statute that even suggested electric power could be supplied by an entity other than a vertically integrated monopoly utility -- and that it could be supplied more efficiently and provide environmental benefits.

Generally speaking, what PURPA did was require utilities to purchase power from a host of non-utility sources such as renewable energy generators, small power producers, and cogenerators. FERC, through regulations, required each utility to purchase that power at its avoided cost -- the same price the utility would have paid had it generated the power itself or bought the power from another utility. Thus, there would be no increased cost for consumers.

> Utilities lobbied hard against Carper-Collins, but cogenerators had won.

And, for the uninitiated, cogeneration means using the same fuel source to produce two different kinds of energy. Many manufacturing processes need a lot of heat and/or steam. What manufacturers do is take that steam and run it through an electric turbine either before or after its use in the industrial process. This process is more efficient than conventional utility generation and the emissions level is far less. Why would anyone complain?

Well utilities complained plenty, starting, I think, about the day after PURPA was enacted into law. They objected and took cogenerators all the way to the Supreme Court. They lost. They stonewalled when it came to signing contracts. Again they lost, when most state utility commissions insisted they buy cogenerated power. Then they undertook a very expensive lobbying effort to convince Congress to repeal this important federal statute.

They started calling PURPA a "Carter-era" law that placed "costly burdens and unnecessary mandates" on utilities. They identified a few bogus PURPA facilities and tried to convince Congress that all PURPA facilities were engaged in sham transactions. And for a while these utilities were successful in their public relations efforts and were reasonably optimistic about repealing PURPA's purchase and sale provisions.

But a funny thing happened before the PURPA repeal language ever got to the President's desk.

About five years ago, cogenerators finally woke up. They realized, first, that a very successful law providing a number of societal benefits was about to be repealed and, second, that they had a positive story to tell. Though we couldn't come close to matching utilities dollar for dollar in PR and lobbying expenses, that wouldn't be necessary since we had the facts squarely on our side.

When we -- and by we I mean the cogenerator community, renewable energy representatives, and non-utility generators -- started telling our story around Capitol Hill we found a friendly reception in several offices. We drafted language, modified it slightly, and got it approved by both the House and Senate. That was in 2001. In the Senate there was even a vote on the floor. Utilities lobbied hard against the so-called Carper-Collins amendment, but they lost by about a two-to-one margin. Cogenerators had won.

Continued on page 7

ELCON Elects Officers

At its recent Annual Meeting in Miami, ELCON elected Joe Marone, Director, Power Purchasing for Occidental Chemical, as Chairman for the coming year. Marone, previously Vice Chairman and Secretary/Treasurer, said industrial electricity users are finding markets "have little if any customer focus," adding, "We hope to change that."

Lloyd Webb, Procurement Manager for Eastman Chemical, was elected Vice Chairman. Secretary/Treasurer for the past year, he said manufacturers "need to be vocal" if they hope to keep their base in the U.S. "strong and vibrant."

Dave Lyons, Manager, Energy Planning, for DaimlerChrysler, is the new ELCON Secretary/Treasurer. Lyons has been an active ELCON member for many years. E

ELCON Advocates Demand Response

Demand response from electricity consumers "should have all the opportunities of generation to provide energy, capacity, and ancillary services," according to testimony by David Meade, Praxair, chairman of ELCON's Technical Committee, at FERC's Technical Conference on Demand Response and Advanced Metering.

ELCON has long advocated greater use of demand response as a means of responding to periods of peak demand and potential outages. ELCON differentiates between demand "programs," often run by utilities, which provide minimum benefits to participants and can include high administrative costs, and demand "markets" in which load (consumers) is treated symmetrically with suppliers (generators).

By decreasing electricity consumed to avoid a potential outage, demand response offers a number of benefits, especially when compared to the alternative of building generation and transmission. It is vir-

Continued on next page

ELCON, Allies Caution FERC Over Incentives

ELCON and allied industrial organizations cautioned the Federal Energy Regulatory Commission that while transmission constraints are a major obstacle to efficient grid operations, insufficient investment in transmission has not been caused by deficiency in FERC pricing policy. Rather, it is the result of long neglect coupled with a climate of regulatory uncertainty that has created, in many instances, an unwillingness to invest.

The comments came in response to a FERC proposal setting out a number of incentives related to transmission pricing as required by the Energy Policy Act of 2005.

FERC's task is to construct incentives that will achieve the goal of transmission expansion without disadvantaging consumers, the industrials said. FERC must specify criteria to ensure that incentives are applied on a just and reasonable basis. Safeguards the Commission should adopt include appropriately measuring risk against performance, setting guidelines for ensuring net benefits to customers exceed costs including any incentive premium, and establishing a screening process to prevent windfall profits to free-riders, among others, the comments said.

> FERC must specify criteria to ensure that incentives are applied on a just, reasonable basis.

FERC should insist on a quid pro quo for each incentive, e.g., (1) prudence review, (2) independent regional stakeholder planning process, (3) applicant's willingness to accept third-party ownership, (4) a requirement to seek third party funding that would reduce the amount of investment exposed to the incentive, (5) a requirement that long-term capacity rights in a new facility be offered in an open-season bidding process, or (6) ensuring that the transmission expansion accommodates economic needs and not just the more narrow need for reliability.

Additionally, a cost-benefit analysis is crucial to allowing the Commission to reach the conclusion that customers are benefited by the incentives, ELCON and its allies asserted. Finally, performance-based rates (PBR) carry many downside risks to consumers and provide as much opportunity for utility gamesmanship as cost of service ratemaking. At a minimum, PBR require both downward and upward adjustments to punish as well as reward performance and known benchmarks specified in advance. Application of PBR to a non-profit is a non sequitur. E

---

tually cost-free and reduces demand on the transmission grid. And, by reducing the amount of electricity consumed it reduces the need for generation, providing environmental benefits as well.

Giving consumers the same rights as generators to provide various energy services was one of three main points Meade made in his testimony.

He also noted that in some regulated jurisdictions, utilities decline even to consider demand response, despite the benefits it would bring. In other areas, its development has been hindered by the objections of generators who wish to restrict competition and maximize their own revenue and by marketers who wish to serve as intermediaries in facilitating end-use activities. Even in Organized Markets, "development of demand response has generally been given lower priority than the establishment of new markets and new constructs that favor supply-side interests," he said

Meade asserted that demand response "should be encouraged and fairly compensated for the significant reliability and economic value it provides."

He advocated the use of "guaranteed minimum prices" as an incentive. He proposed "establishing permanency to demand response opportunities by incorporating demand response provisions into the same tariff provisions that apply to generation." Such action "would remove a layer of uncertainty that would enhance long-term participation."

He also insisted that "in all instances, the full value of demand response generated by load should go to load, with value not unduly hijacked by monopoly suppliers or intermediaries."

Finally, "All qualified load should be eligible to participate."

Meade elaborated by stating that "inappropriate barriers to entry should be eliminated," specifically utility claims that demand response was prohibited by state rules. "Uncertainty around potential federal/state regulatory conflicts ought to be removed in all regions," he said. ELCON has suggested that aggregated residential customers are potential participants.

At the same time, Meade recognized the positive steps taken by several of the RTOs and ISOs:

- ISO-New England provides reliability and energy market opportunities for demand response as well as overall ease of use.
- For ancillary services, ERCOT effectively enables the demand response capabilities of many electricity users to qualify and participate as load acting as a resource.
- PJM has made strides in its recent filing to further institutionalize demand response opportunities as part of its tariff and to enable load to participate in the synchronized reserve market.

Meade said he and ELCON have hope for progress in the recognition of the benefits of demand response. E

FERC Actively Implementing EPAct

The Federal Energy Regulatory Commission has been busy implementing the new Energy Policy Act of 2005 (EPAct 2005), according to Susan Court, FERC's Director of Market Oversight and Investigations, who is charged with new authorities and responsibilities.

Court noted that EPAct had three basic themes: building and maintaining a strong energy infrastructure, reaffirming a commitment to competition, and reaffirming FERC's regulatory role.

She detailed the many features of EPAct that expand FERC's enforcement responsibilities, including an increased ability to impose civil and criminal penalties -- up to $1 million per day of violation. Such a penalty could be imposed under new FERC Order 670 for fraud, deceit or making untrue statements, she said.

Court also emphasized the importance of EPAct's language establishing a new electric reliability organization (almost certain to be the North American Electric Reliability Council) and the role FERC would play in the development of reliability standards. The new law "increases FERC's authority immensely" and "removes any ambiguity" about it with respect to grid reliability, she said. Each reliability standard will be submitted to FERC. Regarding regional differences, "FERC wants uniformity," she said. E

Panel Ponders Prevalence of Pricey Power

Even the Federal Energy Regulatory Commission admits that prices for electricity in Commission-approved organized markets have increased significantly throughout most of the nation. Susan Court, the newly appointed Director of FERC's Office of Market Oversight and Investigations, attempted to explain why at ELCON's Winter Workshop in Miami, by stating that prices for all fuels -- she mentioned gas, oil and coal specifically -- are up, leading to higher power prices.

However, higher prices cannot be viewed in isolation, according to another Workshop speaker, Tom Welch, Vice President of External Affairs at PJM. "Competitive Markets [such as PJM] have in fact achieved benefits," he said, noting that prices would have increased even more sharply without the benefits of an organized market.

Not all organized market executives agreed. Ron McNamara, Vice President of Market Management for the Midwest Independent Transmission System Operator (MISO), told the Workshop that "markets are not working and we have to fix them." He added that "right now we do not have a market."

Welch and McNamara each identified areas in their markets where they believe more work is needed. Welch pointed to demand response, transmission planning, and resource adequacy as areas needing additional attention. McNamara noted that "the long-term should drive the short-term," meaning that reliance on spot market transactions will not develop the long-term competitiveness that market operators profess to attain. "We need to transition from spot markets to bilateral markets," he said.

> Higher prices cannot be viewed in isolation; organized markets seen as factor.

Consistent with that approach, McNamara decried the use of capacity markets that are being used in other organized markets (but not in MISO). "Capacity markets are a solution looking for a problem," he said. Although they are designed to ensure against inadequate generation and thus mitigate the possibility of an outage, "90 percent of all outages have nothing to do with generator inadequacy," he said. "Debate about capacity markets has little to do with reliability."

Not surprisingly, Welch viewed the issue of eliminating capacity markets and relying on an energy-only market from a different perspective. He questioned whether an energy-only market would attract necessary investor capital. PJM does not have a philosophical objection to an energy-only market, he said, but "there are political considerations."

Workshop attendees also heard consumer advocate Rob Kelter, Director of Litigation for the Citizens Utility Board in Chicago, rail against organized markets, focusing on utility profits.

"The market has proven itself to be ineffective," he asserted, noting that Exelon, the parent company of Chicago utility ComEd, made record profits when rate freezes were in effect. Under Illinois law, "ComEd has no obligation to procure lower cost power for consumers," he said.

Kelter had a long list of suggestions. "We can't just keep building gas plants," he said, and we must take a new look at the way we interpret "just and reasonable" in rate case proceedings. E

What if We Just Returned to Regulation?

Panel Wonders if It Is Possible to Get There from Here

Several industrial end users -- and many others as well -- have concluded that the restructured electricity markets operating today are less consumer-friendly than the regulated, cost-of-service markets operating elsewhere in the nation. At ELCON's Winter Workshop in Miami, attorneys for three state industrial user groups discussed whether a return to traditional regulation would be possible in their states.

David Kleppinger, attorney for the Industrial Energy Consumers of Pennsylvania, said advocates of competitive retail and wholesale electricity markets envisioned having a choice of supplier along with new, competitively bid capacity. They also believed states with restructured markets would draw new manufacturing plants. Instead, consumers in states that have tried to implement competitive markets have seen a limited choice of suppliers, a complex pricing structure, and a number of corporate failures, he said. Manufacturers have even exited states trying competition, headed for others that maintained traditional bundled electricity markets. One of the few positives -- in Pennsylvania, at least -- has been the creation of additional generation, he said.

Kleppinger listed changes he thought necessary to improve the situation for Pennsylvania consumers, including diversification of generation ownership, better market manipulation protection, and the availability of bilateral contracts not based on locational marginal pricing (LMP). But he admitted he did not see any of those changes occurring in the near future. He also criticized PJM's auction system, in which prices are based on the marginal generating unit. Ninety percent of PJM's generation base is coal and nuclear, but 36 percent of the time consumers pay a price based on natural gas, leading to higher prices, he said.

Kleppinger confessed he no longer believes as he once did that traditional market theories apply to electricity markets. Nor does he believe customers can benefit from a complex pricing structure.

It would take a major legislative overhaul in Pennsylvania to re-impose traditional regulation, he said, which he does not see in the near future despite considerable discontent and higher prices.

Clockwise from top: Speakers at ELCON's Winter Workshop in Miami include FERC's Susan Court, MISO's Ron McNamara, and PJM's Tom Welch.

Eric Robertson, counsel to Illinois Industrial Energy Consumers, voiced similar frustrations in his state. The 1997 restructuring statute, which was phased in from 1999 to 2002, compelled utilities to sell generation but allowed them to sell to affiliated entities. This created a major barrier to returning to a regulated market since utilities no longer own generation assets. Incumbent utilities bear little risk under the market structure and therefore favor the status quo, he said. Similar support comes from the investment community.

"I'm not sure if Humpty Dumpty can be put back together again," or if it could that consumers would be any happier, he said.

Bob Strong, counsel for the Alliance of Businesses Advocating Tariff Equity in Michigan, described the "middle of the road" approach adopted in his state. Utilities had to sell their transmission assets but kept their generation and unbundled their rates. Customers had to pay both stranded costs and transition charges. The result is an "aging fleet of generators," he said. New capacity is needed in Michigan, and regulators are concerned about it, but investors lack interest because they see uncertainty as a result of the market structure, he said.

Strong concluded that legislative and regulatory action is needed, but he said he fears that that might restrict options consumers now enjoy.

Speaking separately, Rob Kelter, Director of Litigation for the Citizens Utility Board in Chicago, voiced similar frustration on the part of residential consumers. In contrast to the industrial attorneys, Kelter said he was "long opposed to retail competition." He observed that consumers were promised lower prices, but "nothing has turned out as we planned." He said he hopes to work with industrial users to remedy the situation because "industrial and residential customers are in a very similar boat." E

ELCON Activities Before The Federal Energy Regulatory Commission

Competition, Consumer Benefits Still Missing, ELCON, Others Tell Interagency Task Force

ELCON and industrial electricity users continue to find that although wholesale and retail electricity markets may be restructured, they are no more competitive than before and continue to lack consumer benefits.

This view has been put forth in several forums and was again recently in supplemental comments filed by ELCON before the Interagency Electric Energy Market Competition Task Force, established by the Energy Policy Act of 2005 and comprising representatives from the Federal Energy Regulatory Commission, the Department of Energy, the Federal Trade Commission, the Department of Justice, and the Rural Utility Service of the Department of Agriculture.

The mission of the Task Force is to examine wholesale and retail electricity markets and issue a report by August 2006 on the state of retail and wholesale competition in those markets. ELCON met with the Task Force and submitted initial comments earlier in the year.

"Since the Task Force initiated its investigation in October 2005, the state of electricity industry restructuring continues to change -- for the worse," ELCON wrote in comments. "There is growing sentiment among consumer groups and the states that restructuring is failing to deliver benefits to end-use consumers, and is beginning to impose economic hardship on the US economy -- especially the country's manufacturing sector."

The problems were illustrated in five documents submitted with the supplemental comments: a summary prepared by ELCON President John Anderson and papers by four attorneys who represent industrial electricity users in Pennsylvania, Ohio, Michigan, and Illinois. Each attested to the damage done to manufacturers due to poorly restructured state and regional retail and wholesale electricity markets. (Copies of the papers are available at www.elcon.org.)

Anderson elaborated on the shortcomings in electricity markets in comments before the American Bar Association in April. In the "Organized Markets," problems include bid-based economic dispatch with locational marginal pricing, day-ahead and real-time markets with offer caps in lieu of price-responsive loads, and, increasingly, locational installed capacity markets with administratively determined prices. "Many people claim that the Organized Markets are competitive," he said, "but they are far from that. They are simply a new form of regulation."

ELCON members continue to believe that "'real' competition is better than regulation” -- they do not advocate a return to regulated cost-of-service markets, Anderson said. Given state laws that have been enacted and asset sales that have transpired, the process would "take a long time" and be quite "messy," he said. Instead he offered six "essential preconditions" to achieving true competition:

1) Fix the RTOs. It has become hard to justify the costs of ISOs and RTOs because of the “paltry benefits” derived from FERC's bid-based market design.
2) Let markets assure supply adequacy. “We must return to the first principles of truly competitive markets, and that means an energy-only market structure with most transactions in long-term bilateral contracts. There should never be a regulated capacity component in electricity markets."
3) Establish demand response. "Demand response has to be in the wholesale market as well as the retail market." A megawatt hour of reduced consumption is equivalent to a megawatt hour of increased generation, but with less strain on the grid and increased environmental benefits.
4) Mitigate market power. Part of the solution is a market design that is less conducive to market manipulation, i.e., markets in which most power is locked up in long-term bilateral contracts. "Unfortunately, the 'markets' are going the opposite way -- toward spot transactions."
5) Ensure adequate transmission. "LMP has turned out to be a disincentive to transmission development," and while stand-alone transmission companies would be an ideal solution, “they are not politically attainable." Several provisions of the Energy Policy Act of 2005 might prove helpful.
6) Federal-State partnership. ELCON members, all of whom have facilities in multiple states, find that the U.S. is “hobbled” by split jurisdiction between state and federal authorities. This "has prevented a rational market structure from evolving even in regions that have attempted to restructure."

Even though ELCON strongly supports competitive markets, Anderson observed that "many of our members think that the conditions today are worse than under traditional regulation." E

PURPA Rule

From Page 1

approved Organized Markets (NYISO, ISO-New England, PJM, and MISO) deserved to be relieved of its purchase-and-sale obligations, and also created a mechanism to ease the way for similar relief for any utility operating under an open access transmission tariff. FERC essentially reversed the burden of proof, requiring a cogeneration facility to prove the market is not in compliance.

ELCON filed comments (individually) and reply comments (jointly with the American Forest & Paper Association) arguing against the blanket approach and reminding FERC that sections of PURPA still in place encourage cogeneration. ELCON urged FERC to "adopt an interpretation that is more faithful to the statutory mandate and more faithful to the extant PURPA mandate of encouraging cogeneration."

The reply comments also contained affidavits from four ELCON members explaining that the proposed rule is unjustified, first because not all cogenerators operating in an Organized Market have open and nondiscriminatory transmission access, and second because relieving utilities of their mandatory purchase obligation would discourage investment in the construction or expansion of cogeneration facilities. The affidavits came from Procter & Gamble, Corning, Stone-Smurfit and Eastman Chemical.

ELCON members met with each of the three FERC Commissioners to further press their views about the negative impact. In separate meetings, ELCON members described how a facility's location in an Organized Market did not necessarily result in open access to the transmission system.

ELCON also worked with other affected associations and companies to urge congressional sponsors of the new PURPA language in the law to voice their concerns to FERC. Reps. Rick Boucher (D-VA) and Chip Pickering (R-MS) wrote to FERC Chairman Joe Kelliher noting that their "purpose in drafting the PURPA provisions was to promote the use of cogeneration" and that the "proposed rule does follow this statutory directive." Similarly, Senators Tom Carper (D-DE), Susan Collins (R-ME) and Lamar Alexander (R-TN) wrote Chairman Kelliher observing that "by enacting section 210(m) the Congress did not intend to make any changes to the fundamental purpose of PURPA" and requested that FERC "modify the proposed rule to ensure it is consistent with the intent of Congress." E

Chairman’s Column

From Page 2

And although the precise language changed slightly in subsequent years, one constant remained: the mandatory purchase and sale provisions in PURPA were not going to be repealed until it was demonstrated that cogenerators had nondiscriminatory access to the transmission grid so they could continue to sell cogenerated power. Such language was included in the 2003 legislation, and again in last year's bill which was finally enacted into law as part of the Energy Policy Act of 2005 (or EPAct).

We thought we had a victory -- statutory language guaranteeing PURPA protections would remain in place until fair and open markets existed for cogenerators.

We should have known better.

Utilities turned their lobbying to FERC. Even though EPAct did not require a rulemaking on this issue, FERC, in part succumbing to utility pressure, decided to act. And it has acted in a decidedly anti-cogenerator fashion.

Whereas the law says FERC should remove a utility's PURPA obligations on a cogenerator-by-cogenerator basis, FERC is instead proposing a regional approach based on RTO and ISO membership, exempting dozens of utilities in one fell swoop. Even though RTO and ISO membership does not, by itself, translate into nondiscriminatory access to the transmission grid, FERC is assuming it does. And even though it was clear that Congress meant to preserve protections for cogenerators, FERC is proposing to take them away. If FERC's proposal becomes a final rule, investment in cogeneration will plummet.

I admit to a certain bias. I am the energy manager for a company with several cogeneration facilities. But I don't see why everybody wants to pick on PURPA. If you want efficiently produced power, if you want power produced with environmental benefits, if you want power produced in smaller increments easing transmission congestion and eliminating the need for the construction of massive (and possibly unnecessary) power plants, look at PURPA.

Those are what PURPA was intended to bring us, and those are what PURPA brought us for 28 years. That is probably why utilities have worked to repeal it for almost that long.

Joe Marone is Director, Power Purchasing, for Occidental Chemical

Rehearing Sought On Merger Rule

ELCON and allies asked for a rehearing of a final rule implementing the merger and acquisition provisions of the Energy Policy Act of 2005, arguing that FERC should have given a blanket authorization to owners of qualifying cogeneration facilities (QFs) and exempt wholesale generators (EWGs).

FERC departed from its statutory mandate in requiring pre-acquisition approval of utility interests by companies that qualify as "holding companies" solely by virtue of their ownership interests in QFs, small power production facilities, and EWGs.

The industrials pointed out in comments on the proposed rule that EPAct 2005 retains the definition of EWG from the 1935 Public Utility Holding Company Act and that new Section 203 market power analysis of existing generation facilities should apply a separate standard with respect to independent generation not affiliated with a transmission-owning utility. 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: Air Liquide • Alcoa • Anheuser-Busch Companies, Inc. • BOC Gases • BP • Bunge Corp. • Chevron • Corning, Inc. • DaimlerChrysler • Delphi Automotive Systems • E.I. du Pont de Nemours & Co. • Eastman Chemical Company • ExxonMobil Power and Gas Services, Inc. • Ford Motor Company • General Motors Corporation • Honda • Honeywell • Intel Corporation • Johns Manville • Monsanto Co. • Occidental Chemical • Pioneer Chemical LLC • Praxair • Procter & Gamble • Shell Oil Products • Smurfit Stone Container Corp. • Solutia, Inc. • Tate & Lyle • 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