ELCON REPORT

The Electricity Consumers Resource Council Founded in 1976

Fall *Celebrating 40 Years of Advocacy* 2016

ELCON Says EPA Should Not Move Forward with CEIP Rulemaking

ELCON comments filed individually and jointly with other associations representing the nation's leading energy and manufacturing sectors urged the US Environmental Protection Agency (EPA) in November not to proceed with the Clean Energy Incentive Program (CEIP) rulemaking while the Supreme Court stay of the Clean Power Plan is in place.

In separate comments ELCON said that if the EPA moves forward on the rule it must act in a fashion that "preserves authority and flexibility for state action" and warned that the CIEP "could have detrimental rather than beneficial effects, particularly as a consequence of duplicative incentives for renewables."

The associations joining ELCON in joint comments on the proposed rule include the US Chamber of Commerce, the National Association of Manufactures, the American Chemistry Council and the American Forest & Paper Association.

The CEIP was intended by EPA to encourage action in advance of the Clean Power Plan's initial 2022 compliance date.

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"At the outset, given the pendency of the Supreme Court's stay of the Clean Power Plan, EPA should not have taken this action and must postpone any further action on the CEIP until the Clean Power Plan litigation has concluded," ELCON and the other associations said.

"As an initial matter, the CEIP is fundamentally intertwined with the implementation of the Clean Power Plan, and development of the CEIP at this time would violate the Supreme Court's stay.

"EPA lacks the authority to proceed to promulgate the CEIP at this time in light of the Supreme Court's stay of the Clean Power Plan, and EPA should cease any further work on the CEIP unless and until a potential scenario arises where the litigation process is complete and the stay is lifted. Further, all of the compliance deadlines in the Clean Power Plan and CEIP must be tolled by at least the length of the stay."

ELCON noted that the Supreme Court's decision to stay implementation of the Clean Power Plan in the midst of litigation before the DC Circuit is "virtually unprecedented" and that it "demonstrates the strength of petitioners' arguments and raises a significant likelihood that the Clean Power Plan could be substantially altered—or even vacated entirely—after judicial review."

"Under these circumstances, it would be inappropriate for EPA to move forward with the CEIP at this time."

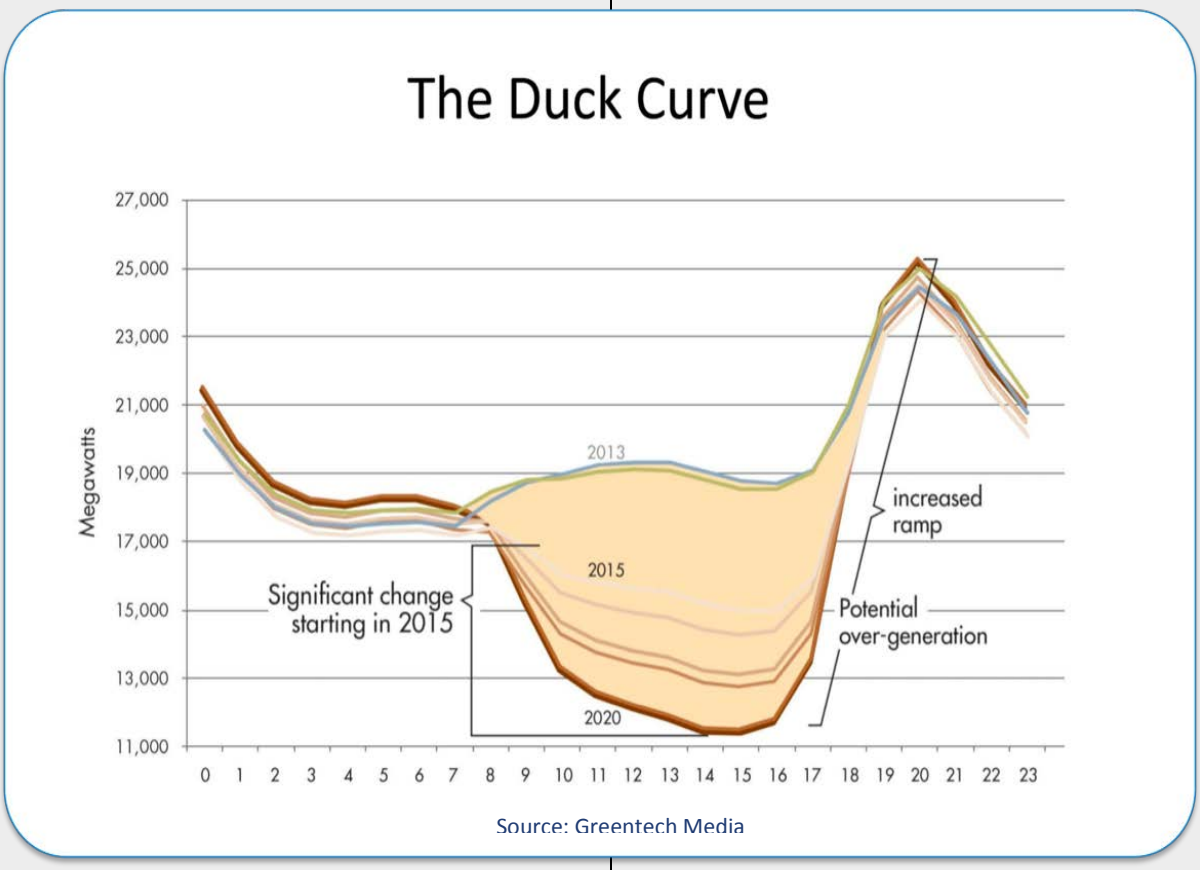
But If EPA does proceed, ELCON argued it should provide additional flexibility for early action to insure that that states have "maximum flexibility to design implementation plans that are best suited to their own economic, energy, and environmental conditions.

"EPA should give the states full flexibility to include in early action programs other grid-connected power generation sources, or electric power transmission and distribution technologies that reduce net CO_2 emissions as part of a state's long-term strategy to comply with the Clean Power Plan's emission reduction goals."

The President's Column

The North American Electric Reliability Corporation (NERC), the federally authorized electric reliability organization, is deeply concerned that high penetrations of certain so-called Distributed Energy Resources or DERs will jeopardize the reliability of the Bulk Power System. In January 2016 NERC established the Distributed Energy Resources Task Force (DERTF) to examine the reliability considerations from the integration of higher levels of DERs. At issue is the proliferation of photovoltaic arrays on the roofs of residential and commercial consumers and the fact that these resources are invisible to system operators. One concern is the potential for over-generation, i.e., when too many resources are trying to produce and sell power but there is not enough demand. Power from these resources also correlate with the sun and the challenge to system operators is managing the morning "ramp" when the sun-related resources rapidly come on line and the afternoon ramp when these same resources shutdown. As the penetration of these resources increase in response to climate-related public policies, the aggregation of daily load curves through 2020 takes the outline of a duck—and hence, the infamous Duck Curve.

In the US, California is ground zero where the Duck was first forecasted by the California ISO in 2013. A recent analysis by the consulting firm ScottMadden of average hourly production data for the CAISO from January 2011 to June 2016 confirms that "the duck curve is real and growing faster than expected." The analysis also revealed some unexpected results: (1) increasing ramps occur throughout the year, not just during the peak summer season; (2) the ramps are most severe on weekends when commercial and some industrials loads are off-line; and (3) the ramps are driven by utility-scale solar, not DERs. Meanwhile, there is a proposal in California to define a new "Super Peak" period from 4 PM to 9 PM when conservation and load shifting is critical to the system. This, of course, coincides with important family and commercial activities.



Source: Greentech Media

As of this writing, the NERC task force is continuing to assess the impact of DERs embedded within the distribution system and is struggling to come up with a working definition of DER. At one point the task force was considering the addition of utility-scale industrial

CHP in its definition of DER—these are so-called behind-the-meter generators that are directly connected to high voltage transmission that NERC defines as the Bulk Electric System or BES.

In a related effort, NERC appears to be gearing up the modeling capabilities of Transmission Planners to study the interactions of DERs and their associated loads with the Bulk Power System. The intent of these modeling exercises is clearly the presumption that DER may need to be managed in the future by system operators, new rate designs or both. NERC has already commenced outreach to representatives of loads in which NERC believes it will be necessary to collect detailed load characteristics including the business practices of commercial and industrial customers with or without on-site generation capabilities.

All of this points to the trend that as more intermittent resources are added to the system, it will be the expectation that utility customers will have to adapt their family life styles, business practices and industrial production schedules to the whims of resource intermittency—or pay the price in terms of power costs or service reliability. And intermittent resources such as wind do not receive the federal production tax credit unless they generate. This begs an important public policy question: are we recreating a power system solely for the benefit of certain elite suppliers to the detriment of American consumers?

John P. Hughes

ELCON Celebrates 40th Anniversary at Fall Workshop

"Electricity is really just organized lightening," said NERC Senior Vice President and Chief Reliability Officer Mark Lauby quoting comedian George Carlin at ELCON's Fall Workshop in Washington, DC in October.

"This is an exciting and transformative period in the industry but we need to maintain reliability," Lauby said. "There are benefits and risks emerging but working with industry we can identity and address them."

"NERC respects and values the work of ELCON," he said. "You do have an impact on NERC."

Lauby was one of seven recognized power industry leaders at the Workshop who gave ELCON their views on the rapidly changing utility landscape.

"RTOs are too expensive and the costs are ramping up," said American Public Power Association President and CEO Sue Kelly. Referring to lyrics from the song *House of the Rising Sun* ("mama don't let them do what I have done"), Kelly said "it's been a very frustrating last few years" dealing with RTOs.

APPA President and CEO Sue Kelly

"It's kind of Alice in Wonderland when you enter into RTO rules," she said. "The rules keep changing."

Kelly said capacity markets should be phased out and replaced with bilateral contract regimes.

> ***"It's kind of Alice in Wonderland when you enter into RTO rules."***
>
> ***- Sue Kelly***

American Electric Power Chairman, President and CEO Nick Adams was also critical of capacity markets.

"These organized capacity markets do not work properly," Adams said. "Baseload capacity hasn't been treated properly by the capacity markets. That's why the states are stepping up."

Adams said AEP is focusing on new technology and that "utilities are in the best position to drive technological innovations."

He also said AEP is spending $5 billion a year on infrastructure and is focusing on cyber security.

"We are ready for a cyber war. Two to three years ago we only had two to three people working on cybersecurity," he said. "Now we have an entire floor."

Commissioner Robert Powelson

Pennsylvania Public Utility Commissioner and incoming National Association of Regulatory Utility Commissioners President Robert Powelson said there is "clearly a dash to gas" as a number of combined cycle plants are being built in Pennsylvania while no one is building any coal plants, creating new challenges.

> ***"EPA needs to look at the economic impact of what they do."***
>
> ***- Robert Powelson***

"The challenge we all face is pipeline capacity," Powelson said. He also wondered if "we are running afoul of the bulk power system in the dash for gas."

Powelson was highly critical of Environmental Protection Agency. He said the "EPA needs to look at the economic impact of what they do" and that he was "fearful of a lot of unintended consequences."

Powelson said ELCON has a "seat at the table" at NARUC to "help economic regulators understand the marketplace."

The President and CEO of the Electric Power Supply Association John Shelk said the 50 percent drop in wholesale electric prices since 2008 has been "bad news for producers and good news for consumers." He said we need "more collaborative work done between federal and state government."

Shelk predicted that a newly constituted FERC would be more aggressive and deal with climate change issues if Hillary Clinton is elected. He said you might see the Secretary of Energy "teeing up issues" before FERC.

Calling it a "relic of yesteryear," the "Charles Dickens school of consumer welfare," "socially regressive" and "trickle-down economics," the Executive Director of the Harvard Electricity Policy Group Ashley Brown was highly critical of net metering and said it "means you don't see the benefits of declining costs."

He also said utility scale solar is more efficient and

> ***"With residential, solar consumers are paying more for a less efficient product."***
>
> ***- Ashley Brown***

environmentally sensitive than residential solar.

"With residential, solar consumers are paying more for a less efficient product," Brown said. He said that $1 spent on utility solar provides 22 times more carbon reduction than residential and noted that distributed solar is not in the building block for the final Clean Power Plan rule.

Harvard Electricity Policy Director Ashley Brown

The Obama legacy on climate change can be put into three buckets, said Megan Ceronsky, Special Assistant to the President and Associate Counsel to the President.

The first bucket, Ceronsky said is investment.

"Progress in clean energy has been tremendous," Ceronsky said citing $9 billion in clean energy investments and the extension of tax credits for wind and solar.

Ceronsky said the second bucket is new regulations, including fuel economy and efficiency standards and the

Clean Power Plan and that the administration "bent over backwards to create market solutions." She said the collaboration on CPP between FERC and EPA "has been quite impressive."

Finally, in the international bucket, Ceronsky said she was "hugely proud of colleagues in the White House" for the Paris Agreement, the Montreal Protocol, and the agreement on aviation emissions reductions.

Ceronsky said that the Administration tried to make all these agreements "market friendly, cost effective, and flexible as possible."

ELCON Tours and Dines in US Capitol Building

It may cost on average over $1 million to win a seat in Congress but the small registration fee of the Fall Workshop in October was all ELCON members needed to take a seat on the floor of the House of Representatives.

Returning to the halls of Congress for ELCON's 40th celebration was fitting since it was the action of Congress during the energy "crisis" of the 1970s that prompted the creation of ELCON.

ELCON members toured the Capitol guided by former Congressman Ron Sarasin from Connecticut, who is the president of the US Capitol Historical Society.

The tour included a visit to the floor of the House of Representatives. During the tour ELCON members learned:

- The famous dome we know today wasn't added to the building until the 1850s. The original, smaller "Bullfinch" dome looked out of place as the building expanded.
- Speaking of the dome, in the painting on the inside of the dome of the Capitol, Washington sits in the heavens as a deity.
- Capitol has its own crypt. It is called that because Washington's body was supposed to be entombed walk by and see him. But Washington's wishes were to be buried at Mt. Vernon.
- George Washington himself laid the cornerstone for the Capitol in 1793.

The tour was followed by dinner on the Senate side of the Capitol in the Mansfield Room, name after Sen. Mike Mansfield who was Majority Leader in the Senate when ELCON was formed.

ELCON members dine in the Historic Mansfield Room in the US Capitol Building

The featured speaker was retired ELCON Vice President Marc Yacker who first worked in Congress over 50 years ago. Yacker talked about his experiences as a congressional aide and then gave his analysis of the 2016 presidential race.

ELCON: Transmission Is Overbuilt And Incentives Distorting Market

"ELCON is deeply concerned that transmission is being overbuilt for the sake of public policy that has clearly failed to achieve a national consensus," ELCON said in post-technical conference comments filed in October.

"Transmission costs have become the fastest growing components of rates and it is not self-evident to ELCON members that the benefits always justify the costs."

ELCON President and CEO John Hughes testified at the Competitive Transmission Development Technical Conference at FERC in June.

ELCON said "there is inadequate consideration of generation and other non-transmission solutions to identifiable transmission problems. This bias in favor of transmission solutions is created by the lavish promise of performance-based rates and transmission incentives that would seem to be out of place in a truly competitive solicitation."

"The transmission incentives offered by FERC may be distorting the 'market' for competitive projects, increasing the tension between incumbent utilities and non-incumbent developers, and biasing the selection

process in favor of transmission when a generation fix might be lower cost and provide more longer-term benefits to end-use customers."

"Incentives in general should be minimized and granted on a case-by-case basis within the limits of the Federal Power Act section 219. There should be no 'incentive'

> ***"Transmission costs have become the fastest growing components of rates and it is not self-evident to ELCON members that the benefits always justify the costs."***
>
> ***- ELCON comments to FERC on Competitive Transmission Development***

for other inducement to encourage participation in a competitive solicitation."

Responding to questions about cost containment, ELCON said the "overarching requirement should be lowest-possible, discounted, long-run costs."

"There will always be an element of judgement in the project selection process and it will be FERC's responsibility to ensure that public utility transmission providers subject to its jurisdiction exercise their duties in a transparent, objective and professional manner."

ELCON said cost containment provisions should be at the discretion of the developers and there should be no presumption that proposals with cost containment provisions are necessarily better than proposals without them.

ELCON also said it strongly opposed recovery of costs for developers of transmission projects not selected and performance-based rates since utilities typically wield undue influence on the type of performance-based rates adopted and the metrics used to measure performance.

ELCON Supports FERC's Merger NOI

ELCON said in comments on section 203 merger applications filed at the Federal Energy Regulatory Commission in October that it supports almost all the proposals suggested in the Notice of Inquiry (NOI) saying the "increased concentration of production capacity in the hands of a few major utility players is cause for concern because the power system is naturally prone to unilateral market power."

"The Commission's open-access policies have certainly added more 'competition' to the industry but specific product markets remain hard to define and quantify in bilateral markets and the hybrid structures of ISOs and RTOs than they are in truly competitive markets," ELCON said.

"This dictates a need to tighten the Commission's section 203 analysis."

"It has been said that '[a]ll mergers affect competition, some by creating superior competitors and others by creating potential monopolists.' The Commission's task is to avoid the latter."

ELCON said it supports the proposed simplified *de minimis* analysis in section 203 merger applications, the consideration of incremental acquisitions into its competition analysis, the application of "an appropriately constructed pivotal supplier screen, the use of market share analysis, and the inclusions of other documents – such as consultant reports – privy to the applicant that had been submitted to other government agencies."

> ***"It has been said that '[a]ll mergers affect competition, some by creating superior competitors and other by creating potential monopolists.' The Commission's task it to avoid the latter."***
>
> ***- ELCON Comments to FERC on Mergers***

Concerning blanket authorizations for certain types of transaction authorized by EPAct 2005, ELCON said those authorizations are no longer appropriate, except for PURPA Qualifying Facilities because they "do not raise the same magnitude of market issues as exempt wholesale generators."

Finally, ELCON "generally opposes the need for a monetary threshold associated with mergers or consolidations given that the potential for creating a new pivotal supplier could exist with a relatively small (in financial terms) merger or consolidation but said that if the Commission should decide to propose a threshold it should be rebuttable."

ELCON Tells FERC PURPA is Working But Could Use Greater Enforcement

In post-technical comments filed in November, ELCON reemphasized that PURPA is working and changes to the Commission's rules and regulations implementing the law as it applies to qualifying facilities are not warranted and, if anything, need greater enforcement.

ELCON's President and CEO John Hughes had testified at the June Technical Conference on PURPA Implementation.

ELCON said it was pleased the Commission limited the scope of implementation issues to the one-mile rule and Minimum Standards for PURPA-Purchase Contracts and acknowledged "certain tensions" in some regions of the country about PURPA.

"The solution is not further denying smaller QFs the benefits and protections intended by PURPA but FERC policies that make QFs indifferent to classifications large or small."

- ELCON Comments to FERC on PURPA

The one-mile rule states that small power production facilities are considered to the be the same site if they are located within one mile of each other, share the same energy resource and are owned by the same person(s) or its affiliates. Some developers were using the rule to disaggregate large projects into smaller projects to qualify for 20-MW/80-MW and below status.

"As a matter of public policy the problems associated with the one-mile rule says more about the generally unfair treatment of larger QFs than it does about the opportunistic behavior of small ones," ELCON said. "The solution is not further denying smaller QFs the benefits and protections intended by PURPA but FERC policies that make QFs indifferent to classification as large or small."

On minimum contract standards, ELCON said that "the best way to encourage investment in those technologies is to provide a predictable, long-term revenue stream."

"In enacting PURPA, and specifically Section 210 of PURPA, Congress intended to encourage the development of non-utility generation utilizing cogeneration and small power production, thereby conserving use of fossil fuels."

"Congress believed that increased use of cogeneration and small power production would reduce the demand for traditional fossil fuels, and it recognized that electric utilities had traditionally been 'reluctant to purchase power from, and to sell power to, the nontraditional facilities.'"

"We also strongly believe that standardize contract terms and conditions are important. This avoids protracted negotiation on every issue in situations where the host utility is clearly attempting to avoid the project."

"While a 20-year term is probably optimal for new QF facilities, to optimize financing it is imperative that QFs have the flexibility to unilaterally decide to accept less than any FERC imposed minimum length."

"The law requires encouragement and, for it to work, encouragement must strive to defeat any barriers to development that exist for whatever reason. As the Commission is well aware, cogeneration development has all but disappeared since enactment of section 210(m) by the Energy Policy Act of 2005."

"While the failure of organized markets to provide a predictable, long-term revenue stream in support of new investment may not be the only cause, it is clearly a significant part of the problem that cannot be addressed by simply amending the Commission's PURPA regulations."

ELCON Says FERC Data NOPR Needs Refinement, More Definition

ELCON along with the American Forest and Paper Association (AF&PA) told the Federal Energy Regulatory Commission that while it supports the Commission's exercise of its anti-manipulation authority and recognizes the value to the Commission in collecting some of the information contemplated by the Notice of Proposed Rulemaking (NOPR) in the course of an enforcement investigation the costs and burdens associated with collecting the proposed information will be significant.

ELCON and AF&PA comments were in response to a Noticed of Proposed Rulemaking in September on Data Collection for Analytics and Surveillance and Market-Based rates purposes.

"Market information, in particular, is expensive and burdensome to collect, produce, organize and protect, and its submission and dissemination involves risk of inadvertent disclosure or malicious discovery and misuse," ELCON and AF&PA said in its filing.

"Thus it is imperative for the Commission to carefully consider the anticipated benefits of imposing these information-collection requirements against a realistic assessment of whether, in light of the Commission's existing broad authority to compel discovery of relevant information and the information already available under current rules, the substantial costs and burdens that would be imposed by the NOPR's requirements are justified."

"ELCON and AF&PA believe that many of the proposed requirements require further definition and refinement and therefore urges the Commission to closely examine the issues ELCON and AF&PA and other commentators raise before imposing any new reporting obligations."

For example, ELCON said the NOPR does not define the scope of what it means to "participate" in the wholesale electric markets and urged the Commission to clarify the term and limit it to only those affiliates that are Market Based Rate sellers or are required to register as market participants and that FERC "explicitly state that an ownership interest in a Qualifying Facility (QF) alone does not trigger Connected Entity Status."

ELCON also said the quarterly reporting requirement is burdensome, unnecessary and should not be adopted and FERC should clarify the reporting requirements for long-term purchase agreements. In addition, ELCON said any final rule should be implemented in a fashion that fully protects confidential information.

Legislative Update

The House and Senate will be back in session next week following the election with much to do during a lame duck session, the least of which is to pass another spending bill.
Not a must do but something ELCON is pushing hard for is to extend the expiring tax credits for energy including combined heat and power. Ways and Means Committee Chair Kevin Brady (R-TX) said that he is not interested in dealing with tax extenders this year but Senate Majority Leader Mitch McConnell (R-KY) and House Majority Leader Kevin McCarthy (R-CA) said they are.

ELCON is part of a broad-based coalition of groups working to extend all expiring provisions. A letter signed by ELCON and 50 other groups supporting the tax extenders was sent to the Hill at the end of September. ELCON, along with the CHP Coalition, had sent up its own letter earlier. The coalition is planning other activities like fly-ins.

ELCON has been up on the Hill meeting with key Members of Congress and has been told that it won't be easy to get the Congress to act given the short time period involved and opposition to some of the provisions – not CHP – from some environmental, taxpayer, and free-market groups.

Also left to do before adjournment is a comprehensive energy bill. A conference committee has been formed but it has only met once.

There are sharp differences between the bills passed by the House (generally favors increased fossil fuel production) and the Senate (more conservation, energy efficiency, and renewable energy).

Neither side appears ready to compromise.

Still, anything can happen in a lame duck but the safe bet is always on Congress not to act.

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