ELCON REPORT

The Electricity Consumers Resource Council Founded in 1976

Fall 2020

ELCON Fall Workshop Covers Market Reforms, New Technologies

Former FERC Commissioner Bernard McNamee told attendees at ELCON's virtual Fall Workshop last month that ELCON members are an "important piece of making electric markets work" and that he understood the cost of electricity is important to industrial consumes because "every penny can make a difference because you're in a global competitive market."

McNamee was one of five speakers at ELCON's Fall Workshop discussing the theme – "U.S. Power Industry: Transition to What?" Other experts speaking at the workshop were: Greg White, Executive Director, National Association of Regulatory Utility Commissioners; Sarah Novosel, Senior Vice President, Calpine; John Moore, Director, Sustainable FERC Project, Natural Resources Defense Council; and Dr. Joe Bowring, President, Monitoring Analytics.

McNamee spoke of the challenges facing the utility industry, noting the difficulty of getting remote resources to market and dealing with the numerous changes in the industry including storage. "There are great challenges but also great opportunities. A one size fits all solution doesn't work."

McNamee said the country is "seeking to get more resources from carbon neutral sources" and noted that it is estimated to cost $338 billion to keep up with needed infrastructure investments and to meet clean energy goals. (See ASCE report)

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Fisher Hired as ELCON President/CEO

Travis Fisher, former Economic Advisor to Federal Energy Regulatory Commissioner Bernard McNamee and Chairman Kevin McIntyre, was hired this April as ELCON's President and CEO.

Fisher brings to ELCON over 15 years of experience in energy policy. In January 2017, after serving as an integral member of President Trump's transition team at both FERC and the Department of Energy (DOE), Fisher joined DOE as a Senior Advisor in the Office of Electricity Delivery and Energy Reliability.

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Note from the President

This election cycle, amid a global pandemic and an ugly battle for the Presidency, it's easy to feel as if the challenges we face in America are insurmountable. Maybe they are—energy/environmental policy is certainly no pushover. Nonetheless, I feel optimistic about the next chapter, particularly when it comes to electricity policy. If you'll indulge me, I'd like to offer three reasons why I think the future for electricity—and for ELCON—is bright.

1. America meets crises with innovation and resilience.
2. The energy and environmental problems we face can be solved.
3. Realism beats political favoritism, especially when the consumer's voice is strong.

Let's start with ELCON's first year: 1976. In the 1970s, Congress was committed to changing national electricity policy with the Public Utility Regulatory Policies Act (PURPA), among other reforms. While Congress's intentions may have been good—to open the door to electricity competition, to lessen our dependence on foreign supplies of oil, etc.—large industrial consumers of electricity were concerned about the coming changes. They also sensed their DC presence was lacking, and they needed a group dedicated to electricity policy. So they formed ELCON at a meeting in DC on January 15, 1976.

These were essentially the dark ages of energy and environmental policy. The most significant worries at the time included running out of energy and other resources, overpopulation, and rampant pollution. However, many of the crises imagined in the 1970s either never materialized or were short-lived. Why bring this up? While it was impossible to know at the time, in hindsight it's clear our problems were no match for our solutions. With technological advancements, we find and create new resources all the time. The world's growing population is increasingly well nourished and prosperous. Advanced nations have some of the cleanest air and water on record. In short, we not only were resilient to past challenges, but we emerged better and stronger.

The world's growing population is increasingly well nourished and prosperous. Advanced nations have some of the cleanest air and water on record. In short, we not only were resilient to past challenges, but we emerged better and stronger.

Today's energy challenges offer a parallel. The ongoing Coronavirus pandemic has forever changed the way we live and use energy, many political leaders tell us climate change is an existential threat to humanity, and political favoritism is pervasive in the utility industry. We may no longer fear running out of oil, but we're running low on optimism. However, if we hold up the lessons learned from ELCON's founding decade, we can picture a world in which we overcome the present pandemic, design technical and political solutions to help us mitigate and adapt to a changing climate, and resist corporate cronyism in favor of consumer-friendly energy markets.

I'll be the first to admit I am not an expert on global pandemics or the physics of global temperature changes, but I do have great faith in human creativity to solve those problems. The challenge ELCON is best suited to address is the ever-present threat of political favoritism, which seems to be in a waxing phase (but hopefully waning soon) at both the state and federal level.

For example, when I served on the political team at the Department of Energy in 2017, we were pressured to give political support to "baseload generation," i.e. the large coal and nuclear power plants that had been the subject of expensive regulations under the previous administration and were struggling in the era of low-cost natural gas. In the end, DOE's unwise proposals to subsidize uneconomic generation were rejected and caused little lasting harm. Some states temporarily succumbed to the same pressure. Illinois and Ohio are each dealing with the fallout from investigations into the companies, lobbyists, and politicians that engaged in political favoritism for specific coal and nuclear power plants.

But the important takeaway is this: realism won out. When policies go up against energy reality—and consumers have a seat at the table—they are doomed to fail. Other examples abound: federal loans to concentrating solar arrays, various synthetic fuel programs attempting to make oil or natural gas from coal or corn, and the costly unbuilt V.C. Summer nuclear power plant in South Carolina come to mind. The jury may still be out on state-level mandates for renewable resources. If the mandates are consistent with energy reality (and are, essentially, non-binding and not expensive) then they'll survive. If they end up foisting huge costs on consumers, they won't.

One of ELCON's central roles going forward is to stand guard against political favoritism and costly policies. And the reason ELCON's founders needed a group dedicated to electricity policy is that the issues are complex and require deep expertise. Principles as simple as "cost causation"—the rate design concept that the entity that creates a cost should bear it—become more difficult to apply as policies and technologies grow more complicated every year. Some of today's more thorny issues include the social cost of carbon dioxide emissions and other externalities, the integration costs associated with intermittent generation, and the cost shifts among customer classes that might occur with the proliferation of generation resources behind customer meters (i.e. distributed energy resources). Each of these issues, and many more, requires a watchful eye and a strong voice on behalf of consumers.

Despite the challenges we face, the future is bright because we have solutions. The solution to unwise policies in the electricity sector, like those advancing political favoritism, is transparency and scrutiny from the point of view of the consumer. As Justice Brandeis famously noted, "sunlight is said to be the best of disinfectants."

We at ELCON are optimistic about letting the light in.

Fisher *(from page 1)*

At DOE he was responsible for leading the Department's efforts on the *Staff Report to the Secretary on Electricity Markets and Reliability* published in 2017. From 2013 to 2017, Fisher was an economist at the Institute for Energy Research. Prior to that, he served as a staff economist at FERC from 2006 to 2013. A native of North Carolina, Fisher holds a bachelor's and master's degree in economics from North Carolina State University.

"I am thrilled to have been selected by ELCON's board of directors to be the next President and CEO," Fisher said. "I look forward to serving in this role and representing the ELCON membership as we tackle the important issues facing large electricity consumers."

Workshop (from page 1)

McNamee was positive on the nomination to FERC of Mark Christie, who has served on the Virginia Corporation Commission since 2004. "Judge Christie is fantastic. He and I have been friends for 25 years. He's absolutely excellent. He's just a great intellect."

Sarah Novosel said ELCON members and Calpine "don't agree on everything, but we're both strong supporters of competitive markets." Novosel said Calpine is the largest generator of electricity from natural gas and geothermal resources and noted that "we need natural gas generation to back up renewables in the morning and early evening. It's not practical to say [all] carbon free generation in 2040-2050."

Novosel said competitive markets such as PJM work and regulated markets work but are expensive. She said hybrid markets "don't work" and that "we're stuck in hybrid markets right now."

Novosel said Calpine supports capacity markets and "capacity markets are just a tool for achieving reliability."

NRDC's John Moore told workshop attendees "there is no such thing as a perfect capacity." He noted a letter signed by NRDC, ELCON, NASUCA, NRECA, and others that set out principles for market design. The letter emphasized technology neutrality, encouraged bilateral contracting, and said wholesale markets should benefit customers and reduce barriers to entry and exits.

Speaking on the topic of resource adequacy, Moore said states "need to step up their RA game" and said what's going on in California highlights the need for more grid flexibility, energy efficiency and a regional grid.

Joe Bowring, PJM's market monitor, said "ELCON was there at the beginning pushing for competition and key to bringing on competition." He said "markets have been extremely positive. No perfect market exists but they need to be fixed, not abandoned."

He said the result of PJM's present capacity construct is to "significantly over-precure" reserves. "PJM has been buying more capacity than customers have been requiring." Still, he said the "PJM's capacity market is the right way to go but has significant design issues."

Bowring noted the tension between state subsidies and the PJM market and added "renewables are competitive now. They do not a need subsidies."

NARUC's Greg White said "ELCON has been a leading voice in competitive markets" and NARUC "focuses on resource adequacy, reliability and affordability." He said "spot markets function well. The problem seems to be capacity markets."

White said "it's the prerogative of states to determine the appropriate resource mix. There are differences in resource mixes in regional markets and that adds layers of complexity in the system."

White was also supportive of the nomination of Mark Christie to FERC. "I couldn't be more thrilled to see my good friend Mark Christie nominated to the commission. Mark understands the markets very well."

Regarding legislative changes, White said he wasn't optimistic about a broad-based energy bill being passed. Turning to the issue of utility return on equity, he said "Wall Street folks are a necessary evil. All they want is higher ROEs. I've seen some high ROEs that I couldn't begin to explain."

ELCON Asks DOE to Consult Congress Before Expanding Cyber Transmission Incentives

In response to the Department of Energy's request for information regarding Executive Order 13920 "Securing the United States Bulk Power System," ELCON said "any effort by DOE and FERC to expand transmission incentives to cybersecurity should be done in consultation with Congress."

FERC acknowledged in its white paper that "additional transmission incentives are not necessary to maintain an adequate level of reliability. However, transmission incentives to counter the evolving and increasing threats to the cybersecurity of the electric grid may be warranted."

ELCON wrote "in our view, determining whether or not cybersecurity incentives are warranted is the role of Congress. ELCON disagrees that it is the role of FERC staff or Commissioners to mix and match statutory obligations to suit the needs of the day. If Congress had intended FERC to use incentives as part of its FPA Section 215 obligations, it would have authorized incentives in that section as it did with Section 219."

ELCON also said limiting purchase options on hardware, firmware, or software particularly for non-BES assets "could raise costs substantially for industrial consumers and reduce their competitiveness with the very foreign adversaries identified in this request for information."

ELCON Largely Opposes FERC Transmission Incentives NOPR

ELCON, along with other industrial consumers of electricity, emphasized in comments on FERC's Transmission Incentive Docket in March that "transmission customers and end-use consumers should pay only just and reasonable rates for transmission service under the FPA." ELCON, joined by the American Chemistry

Council and the American Forest & Paper Association, noted that "prudently planned transmission can benefit consumers by increasing supply options, reducing congestion-related costs, integrating renewable resources, and promoting grid reliability and resilience" but said "many of the concerns we raised in the transmission incentives NOI proceeding remain unaddressed in the NOPR."

ELCON went on to say that "nothing in Section 219 requires or encourages the Commission to revise its incentives policy at all, let alone every six to eight years" and that "at a fundamental level, the essential feature of Section 219(a) is that it requires the Commission to understand the relationship between transmission incentives and the total cost of delivered power before prescribing an incentives policy. The NOPR does not reflect an understanding of such a relationship."

On the other hand, ELCON and industrial consumers "agree with the NOPR's recognition that the Transco incentive plainly violates the text of Section 219(b)(1). Industrial Consumers fully support the NOPR's proposal to remove the Transco incentive, and we implore FERC to extend the same textualist approach to other aspects of its transmission incentives policy."

Additionally, ELCON said it understands "the practical need for new transmission development, but we disagree with the Commission that transmission incentives policy should be—or can be—a key driver of that development. The root cause of underdevelopment, to the extent underdevelopment is pervasive and problematic, is a set of institutional barriers that should be addressed head-on instead of tangentially, expensively, and ineffectively via transmission incentives policy.

"The appropriate tools available to federal policymakers to address barriers to development include improvements to transmission planning and cost allocation, as well as new legislation from Congress if it chooses to address any additional federal role in transmission siting."

ELCON Tells 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.

ELCON Testifies on COVID Policy

In June, ELCON President and CEO Travis Fisher 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.

Fisher 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. Fisher testified that, according to NERC, COVID-19 presents reliability risks, and these risks are likely to continue throughout the summer. Also, Fisher testified members are concerned about the impacts to rates that may result from some utilities attempting to recover revenue losses connected to the electricity demand slump caused by COVID-19.

Fisher 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.

ELCON Comments on DOE Bulk Electric System Executive Order

Executive Order 13920, "Securing the United States Bulk Power System," attempted to redefine the bulk power system as everything rated at 69kV and above. ELCON urged DOE to trim the scope of the EO, saying "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."

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. In 2014, ELCON successfully fought to exclude certain self-supply facilities from NERC's definition of the Bulk Electric System.

ELCON Calls for MOPR Rehearing

In a filing in January, ELCON asked FERC to rehear its December order expanding the minimum price offer rule (MOPR) in the PJM capacity market, saying the MOPR will "elevate offers above competitive levels, resulting in inflated market prices that elevate costs to load above competitive levels."

ELCON said FERC's December 19, 2019 order, which broadly applies MOPR with an expansive definition of state subsidies, would result in rates that are unjust, unreasonable, unduly discriminatory, and preferential, and its issuance is arbitrary and capricious rulemaking that is not supported by sufficient evidence. ELCON argued that former FERC Chairman Bay's ultimate conclusion in one of his last orders should be heeded: "the MOPR has turned out to be unsound in principle and unworkable in practice."

ELCON also pointed out that "there is not sufficient evidence to justify the administrative intervention reflected in the December 19 Order because there is no showing of market power or manipulation or any other identified market failure, and none could be shown. Prior administrative interventions generally have been aimed at preventing the exercise of market power, given court determinations about what is a just and reasonable rate in a market context."

ELCON Tells FERC Not to Water Down PURPA, Commission Listens

The final rule revising FERC's regulations implementing the Public Utility Regulatory Policies Act of 1978 (PURPA) was issued in July. The final rule maintained the 20 MW exemption for CHP and raised 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.

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 inform FERC of ways it could better align the final rule with ELCON members' business models as industrial consumers.

In the comments, ELCON said PURPA, implemented in the fashion that Congress conceived, "is critically important to the economic viability of our members," and "although certain surgical improvements to PURPA implementation may be appropriate, watering down the statute would reduce competition."

ELCON said "narrowly crafted improvements to the PURPA regulations, focused on those isolated instances where they have been abused or implemented in unforeseen and problematic ways, are appropriate. However, PURPA continues to have an essential role in promoting competition and benefitting consumers, notwithstanding changes in technologies and in the energy markets."

ELCON Says Penalty Notice Rules Need Revision

In comments filed with FERC late last year, ELCON and other groups urged the Commission to modify the proposed rules regarding Notices of Penalties about violations of Critical Infrastructure Protection. ELCON, along with the Edison Electric Institute, American Public Power Association, National Rural Electric Cooperative Association, Large Public Power Council, Transmission Access Policy Study Group, and the Electric Power Supply Association suggested modifications to allow more information sharing but to avoid disclosing a particular violation so the information could not be used to attack utilities and the bulk power system.

ELCON and the other trade associations also said the Commission should recognize that there are circumstances in which the disclosure of registered entities may compromise security, even once mitigation is complete.

ELCON Says NERC Risk Report Must Justify Cost

In comments filed late last year, ELCON told NERC in response to the “2019 ERO Reliability Risk Priorities Report” that while ”Large Consumers place a particularly high value on electric reliability and appreciate NERC’s diligence in evaluating the risks to Bulk Power System (BPS) reliability, Large Consumers also place a high value on procurement flexibility and are very sensitive to cost impacts. As such, Large Consumers seek to ensure that NERC actions have demonstrated reliability benefits that justify any added costs, rely on incentives instead of standards where appropriate, and preserve procurement flexibility throughout the supply chain.”

ELCON noted that the report’s “scope of extreme natural events is notable, which used to be limited to hurricanes and winter storms, but now includes tornados, hailstorms, flooding, wildfires, and droughts. Without a better decisional risk framework for such low probability, high impact events, Large Consumers are concerned that additional reliability standards will have costs that outweigh benefits and may restrict their procurement flexibility.”

ELCON said large consumers concur with the identified risks in the report but caution that a standards-first approach will only have limited effectiveness and, if done outside an economic framework, may impose costs that outweigh benefits to consumers. Rather, NERC’s role in achieving “influence by information” should be the predominate strategy.”

“Generally, the report would benefit from adopting an end-user perspective, rather than presuming that a uniform, arbitrary level of reliability for all firm load is desirable,” ELCON said.

ELCON Energizes Congressional Effort to Improve, Expand Competitive Wholesale Markets

ELCON is a leading member among a large coalition of groups representing producers, consumers, and think tanks encouraging 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 30 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.

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