ELCON REPORT

The Electricity Consumers Resource Council ⚡ Founded in 1976

Spring *Celebrating Over 40 Years of Advocacy* **2017**

Hughes Tells FERC Capacity Markets Do Not Work

Calling the capacity markets "Frankenstein-like constructions of administrative procedures," ELCON President and CEO John P. Hughes told the Federal Energy Regulatory Commission Technical Conference on State Policies and Wholesale Markets that ELCON members have "quite a bit of experience with all the ISOs and all the different variations of ISOs and RTOs that exist and generally there's dissatisfaction with almost all of them."

"For one reason or another much of it has to do with the way they were implemented or continue to be implemented," Hughes testified. "There doesn't seem to be a steady state in the way the markets were designed, which creates considerable uncertainty that my members don't like.

"In some sense some of the problem on the table here at this two-day conference are created by the fact that capacity markets don't work," he said.

In This Issue

The Technical Conference was held over two days in early May and sixty people testified while the main conference room and two satellite rooms were filled with interested parties. The remaining two commissioners – Acting Chair Cheryl A. LaFleur and Colette D. Honorable (who had just announced she is not seeking a second term when her first term expires this summer) – and a contingent of FERC staff attended the conference.

Hughes did say if he had to pick an RTO that ELCON members could live with it would be ERCOT.

"Unlike New York, Massachusetts, and California, Texas is very business friendly and they welcome heavy industry," he said. "Billions of dollars of new infrastructure in the form of new manufacturing facilities are being constructed there. The market down there doesn't get in the way of doing that. They are very energy-intensive facilities that consume a lot of natural gas and electricity. Texas and the ERCOT market is also more friendly with respect to behind-the-meter -generation, which is a critical resource for many in the manufacturing sectors in the United States, especially those capable of benefiting from the fracking revolution."

The Minimum Offer Price Rule (MOPR) was thoroughly discussed during the conference.

"The energy-only [market in ERCOT] speak volumes about what our opinion would be on MOPR. ELCON has been recognized for many years as not having very much to say positively about any of the capacity markets. In fact we don't like the fact that they are even referred to as a market. These are very Frankenstein-like constructions of administrative procedures. They're just convoluted old fashioned regulations."

Hughes testifies at FERC Technical Conference

Hughes said the FERC has a "responsibility to undergo a thorough inquiry on what's the right way to do this, if you can do it at all." He also said it was "dangerous to go down the path of trying to accommodate state policy in competitive wholesale markets."

 "Competitive wholesale markets if designed properly would be an excellent mechanism by which states can implement their policies. They should not only be encourage to do so – if you have the courage yourself to design these markets properly -- but should be insisted to do so. Otherwise I think they're violating the Federal Power Act and need to be challenged."

ELCON Urges FERC to Exempt Behind the Meter Generation

In both initial and supplemental comments filed with FERC in the Primary Frequency Response Notice of Proposed Rulemaking (NORP), ELCON supported the concepts of the proposed rule but expressed concern that the current wording "could imply that all industrial behind-the-meter generation (BTM), including but not limited to combined heat and power (CHP) units, would be required to provide primary frequency response (PFR) in the event of frequency deviations."

ELCON pointed out that nuclear generators have an exemption from providing PFR and suggested that exemption be amended to include "industrial behind the meter generation that is sized to load (i.e., the industrial load and the generation are near-balanced in real-time operation and the generation is primarily controlled to maintain the unique thermal, chemical, or mechanical output necessary for the operating requirements of its host industrial facility)."

ELCON said "requiring PFR from industrial CHP units presents significant risk of substantial consequences that are unique to, and pose unacceptable consequences for, the related manufacturing processes. Ambient temperature limitations, industrial operating limitations, steam balance, the need for reliability and predictability, the multiple harms that would result from outage of manufacturing and related mechanical equipment, and safety, health and environmental hazards all must be respected.

Manufacturing facilities that deploy BTM such as CHP should not be penalized for failing to exceed the operating limits of the host manufacturing process.

"ELCON notes that safety and reliability considerations were behind the NOPR's blanket exemption for nuclear units. Under foreseeable scenarios anticipated as a result of the large penetration of wind and solar resources, the NOPR requirements are too general, too open ended and too broad to ensure that manufacturing processes are also not jeopardized. Manufacturing facilities that deploy BTM such as CHP should not be penalized for failing to exceed the operating limits of the host manufacturing process.

"Manufacturers strive to find cost-effective methods for mitigating all risks to their operations; however, the NOPR would exclude this possibility since uninhibited response to frequency excursions would have to be provided over the full range of the governor, as determined by the prescribed settings. This is essentially requiring the manufacturer to commit to providing a 'blank check' in terms of PFR, even though there would be scenarios that could potentially harm their process. Instead, facilities may choose to forego CHP altogether, purchase all electricity requirements off the grid, and separately generate steam or other forms of thermal energy with natural gas-fired boilers, losing the efficiencies of CHP."

FERC Chair Tells ELCON At Spring Workshop Commission Still Working

The Acting Chair of the Federal Energy Regulatory Commission told attendees at the ELCON Spring Workshop she is "optimistic" that she can work with the new commissioners President Trump nominates and despite not having a quorum the commission is still working.

"We're not doing much that's public but we're doing a lot behind the scenes," Commissioner Cheryl LaFleur said.

LaFleur said the Commission received a lot of comments following the PURPA technical conference last summer and said FERC heard "loud and clear" that Combined Heat and Power (CHP) is "different than other renewables."

"If we do anything, let's not screw up CHP," she said.

She said fellow commissioner Colette Honorable is a "wonderful colleague" and would like to see her re-nominated to the Commission when her term expires later this year. She also thanked ELCON for its involvement in so many dockets before the Commission.

Acting FERC Chair Cheryl LaFleur

Two state regulators immediately followed the federal regulator and spent much of their time talking about the Clean Power Plan (CPP).

Edward Finley, who chairs the North Carolina Public Utility Commission and the NARUC Electricity Committee, stressed that states had a variety of positions on the CPP and said "the path forward on climate change is hard to predict." Travis Kavulla, a member of the Montana Commission and former Chair of NARUC, said "for myself I detested the CPP."

"If we do anything, let's not screw up CHP."

Both said PURPA was a problem with Finley noting sixty percent of all new PURPA projects are in North Carolina. Noting it was passed in 1978 when there was an oil shortage, Finley said it would be "nice if Congress would take a look at PURPA."

Kavulla said PURPA's one mile rule "allows developers to game" the system and promotes "cookie cutter development of solar farms."

Climate change was also the focus of a debate between a climate change skeptic and a former climate change skeptic.

Saying that scientists are predicting a four percent increase in temperatures by the end of the 21st century, Jerry Taylor, president of the Niskanen Center and former climate change skeptic, said that a four percent increase is a "big, big, big climate deal," noting the Ice Age temperatures were only four to six degrees cooler.

He said he supports a carbon tax whose costs would be offset by the health benefits of less greenhouse gases. "We need international action but U.S. action is a prerequisite for global action," he said. "If the U.S. does not act there will be no global action."

Commissioners Kavulla and Finley

Saying climate change is "not all that different than other challenges we face," Oren Cass, a Senior Fellow with the Manhattan Institute, said a carbon tax "produces economic drag" and is "extremely regressive."

Cass said if the U.S. acted alone on climate change it would be "similar to unilateral nuclear disarmament."

The President and CEO of Entergy Arkansas Rick Riley said prices are what matter to customers and Entergy is "trying to keep our rates low for industrial customers."

Riley said the Clean Power Plan is "not really impacting on how we go forward and that regional haze is a bigger issue for us than CPP."

"We feel the pressure to continue to be environmentally responsible," Riley said.

Another utility executive, Pat Reiten, Senior Vice President at Berkshire Hathaway, said "today's utility is not our father's utility."

He said utilities use to have three to five percent load growth but now there are "flat and declining loads with rising labor costs."

"You have to take a good look at your costs," Reiten said.

Attorney Jim Wedeking from Sidley Austin said there were four ways to reverse the tide of environmental laws and regulations enacted during the Obama Administration – legislative, Congressional Review Act, regulations and executive action.

"There has been a lot of coverage of [Trump's] executive orders – a lot more than they deserve," Wedeking said. "They don't have a lot of practical effect."

"There are a lot of limitations on what a president can do to reorganize an executive agency," he said.

Cass said if the U.S. acted alone on climate change it would be "similar to unilateral nuclear disarmament."

He also warned against "unintended consequences" of repealing environmental laws.

Wedeking said nongovernment organizations such as environmental groups and some state attorneys generals will litigate "one wacky theory after another" and will keep the EPA on the defense.

"This is going to get worse as time goes on. There is going to be a lot of time and wasted effort," he said.

Devin Hartman, Electricity Policy Manager & Senior Fellow at the R Street Institute, discussed the integration of renewable technologies and warned about the push for what he called "green theology."

ELCON Urges Trump to Fill FERC

ELCON has sent a letter to President Trump urging him to "expeditiously nominate individuals to the Federal Energy Regulatory Commission (FERC) who will safeguard the interests of the large manufacturing employers that consume natural gas and electricity to make their products." The Process Gas Consumers Group (PGC), an association of manufacturers that require natural gas in their key operations, also signed the letter.

President Trump will have to name four commissioners to fill the vacant slots on FERC.

"PGC and ELCON members count on FERC to ensure the reliable delivery of electricity and natural gas at just and reasonable prices that is essential to our members' operations to produce our goods and win in the global markets in which we compete," ELCON and PGC wrote. "They urge you to nominate FERC Commissioners who appreciate that America's complex energy infrastructure achieves its best use when it supports the growth of America's manufacturing base instead of functioning as a profit center isolated from other businesses."

"PGC and ELCON members' plants provide millions of Americans with good, family-sustaining jobs, and it is in the interest of preserving and growing these jobs that we bring our concerns to your attention," they wrote.

ELCON Tells Congress to Include CHP in Energy Legislation

After a hearing in March on "Opportunities to Improve American Energy Infrastructure" when the House Subcommittee on Energy and Power received testimony about the need for Congress to support energy resources by renewing the recently expired production tax credit, ELCON sent a letter to the committee reminding it that Combined Heat and Power (CHP) technologies are an important energy resource that such federal policies should encourage.

"CHP is an important part of our nation's energy mix," ELCON wrote the Committee. "Currently, the United States has an installed capacity of over 82 gigawatts of CHP at more than 4,100 industrial and commercial facilities, but there remains 149 gigawatts of potential CHP. To begin to tap that potential, the Department of Energy set a goal of 40 gigawatts of new, cost-effective CHP by 2020.

"CHP enhances our energy security by reducing our national energy requirements, improves business international competitiveness by increasing energy efficiency and reducing costs, diversifies energy supplies by enabling further integration of domestically produced and renewable fuels, advances environmental goals by reducing CO_2 and other pollutants, improves grid reliability, and creates jobs. It is the most cost effective, efficient and practical source of steam and power for many manufacturing processes and important for expanding the manufacturing base of our nation.

"ELCON believes that any legislation considered by Congress to improve this country's energy infrastructure should include support for further development of this critical, cost-effective, energy-efficient, and environmentally-sensible resource."

Regulatory Roundup

North American Electric Reliability Corporation (NERC) CMEP Filing – FERC Docket No. RR15-2-005

In a filing in February ELCON and other groups told the Federal Energy Regulatory Commission that they support the North American Electric Reliability Corporation's proposal to allow certain moderate risk violations be considered for treatment as compliance exceptions but opposed NERC's proposal to discontinue public posting of self-logged compliance exceptions.

Joining ELCON in the comments were the American Public Power Association (“APPA”), the National Rural Electric Association (“NRECA”), and the Transmission Access Policy Group (“TAPS”).

“We support NERC’s proposal to allow certain moderate risk violations with no aggravating circumstances to be considered for treatment as compliance exceptions,” ELCON and the other groups wrote. “We oppose NERC’s proposal to discontinue public posting of self-logged compliance exceptions.

“We ask the Commission to adhere to its February 2015 Order requiring the posting of all compliance exceptions in accordance with its consistent view.”

ELCON wrote that it and the other groups have generally supported the evolution of the Electric Reliability Organization (“ERO”) Enterprise to a more risk-based compliance and enforcement program, to better focus the resources of NERC, its Regional Entities and registered entities based on risk to the Bulk Electric System.

“Experience since initiation of the compliance exception program two years ago confirms the wisdom of the Commission’s February 2015 Order requiring public posting of all compliance exceptions consistent with the Commission’s established policy requiring transparency in compliance and enforcement.

“NERC’s proposal to provide annual summaries of self-logged non-compliances in the annual report is no substitute, in terms of timeliness or detail, for continued public posting of all compliance exceptions. Particularly given the importance of prompt identification and correction of non-compliances, annual summaries of self-logged non-compliances are too little too late.”

MALWARE CIP Standards Foundation for Resilient Societies – FERC Docket No. AD17-9-000

Saying it was aware of the danger posed to the Bulk Power System by malicious software, ELCON and a number of other trade associations urged the Federal Energy Regulatory Commission to dismiss the Petition to initiate a rulemaking to require the development of an enhanced reliability standard to detect, report, mitigate, and remove malware from the Bulk Power System (“BPS”).

The trade associations joining ELCON include the APPA, Edison Electric Institute (“EEI”), ELCON, Electric Power Supply Association (“EPSA”), Large Public Power Council (“LPPC”), NRECA, and TAPS.

“The Trade Associations appreciate the Petitioner’s effort to focus attention on malware risk, and share Petitioner’s interest in enhancing the security of the grid. But the Petition understates the reach of existing standards, the potential impact of new standards under development and study, and the breadth of cybersecurity efforts across the industry and government, including those that have been voluntarily undertaken. For these reasons, the Trade Associations ask the Commission to reject the Petition.

“The Trade Associations note that, in addition to the mandatory CIP Reliability Standards, electric utilities routinely work with voluntary cybersecurity frameworks, such as the National Institute of Standards and Technology (“NIST”) Cybersecurity Framework and the Department of Energy (“DOE”) Cybersecurity Capability Maturity Model. In addition to these voluntary undertakings, electric utilities partner with the White House and federal agencies – including DOE, DHS, Department of Defense, FERC, and the Federal Bureau of Investigation – to improve sector-wide response to cyber threats.”

Reform of Generator Interconnection Procedures and Agreements – FERC Docket No. RM17-8-000

In comments filed in April, ELCON said it “supports the principles underlying the NOPR to improve the efficiency of processing interconnection requests to make action on them more timely at lower costs, to remove barriers to the development of new technologies, and to assure the continued reliability of the grid."

"Many of the proposed reforms have the potential to serve these principles and reduce the cost and time required to navigate the interconnection procedures, including for industrial generation that comprises ELCON's membership," ELCON commented. "The changes resulting from low natural gas prices, technology developments, and state policies have created challenges for the current large generator interconnection procedures."

But ELCON said "FERC must not adopt changes to the interconnection procedures that would impact system reliability or impose or reallocate costs inappropriately."

For example, ELCON noted the NOPR's request for comment on capping the costs of network upgrades that are recovered from the interconnection customer.

FERC must not adopt changes to the interconnection procedures that would impact system reliability or impose or reallocate costs inappropriately.

"Pursuing this approach would be premature given the other proposed reforms that may largely address the issue of unanticipated cost overruns, and ELCON is concerned that the proposed solution would be inconsistent with cost causation principles."

Uplift Cost Allocation and Transparency in Markets Operated by Regional Transmission Organizations and Independent System Operators – FERC Docket No. RM17-2-000

In comments filed in April with the Federal Energy Regulatory Commission, ELCON said it recognizes that, "in view of the imperfections in the organized markets, or in connection with unusual and unpredictable occurrences, uplift charges will be necessary from time to time to ensure reliable electricity supply."

"This is because the design of the organized markets and the practicalities of their day to day operations are imperfect, though not because they are intentionally imperfect or necessarily the result of bad behavior."

But ELCON said uplift charges "must be imposed only when justified at rates that are just and reasonable, and allocated on the basis of cost causation principles. And regardless of the amount of uplift and the underlying trigger for it, transparency is essential."

Revisions to the Prevention of Significant Deterioration (PSD) and Title V Greenhouse Gas (GHG) Permitting Regulations and Establishment of a Significant Emission Rate (SER) for GHG Emissions Under the PSD Program -- Docket ID No. EPA–HQ–OAR–2015–0355

ELCON and a number of associations told the EPA that they generally support EPA's proposal to fully implement the Supreme Court's decision in *UARG* and to establish *de minimis* thresholds for GHG emissions under the PSD and Title V programs but suggested a number of changes to the rule.

Joining ELCON in the comments were The American Chemistry Council, American Coke and Coal Chemicals Institute, American Iron and Steel Institute, American Petroleum Institute, Council of Industrial Boiler Owners, National Association of Manufacturers, National Oilseed Processors Association, The Fertilizer Institute, and U.S. Chamber of Commerce

"As EPA works to finalize the SER rule, it is imperative that the agency exclude CCS as a potential control option when determining whether conducting a PSD BACT analysis would yield trivial or no emissions reductions," ELCON said. "CCS is not a commercially viable control technology as a practical matter and, thus, is not applicable to the development of a *de minimis* threshold for GHG emissions. Therefore, the Associations support EPA's proposal to base the *de minimis* threshold on potential efficiency improvements at stationary sources and urge EPA to exclude CCS when issuing a final SER for GHG emissions."

ELCON also said EPA must consider the "full range of potential *de minimis* thresholds —including those above 75,000 tpy — and select a final value based on all comments received" that there is "ample evidence to justify a threshold that is higher than 75,000 tpy."

Finally, ELCON said that "under no circumstances should EPA adopt a *de minimis* threshold below 75,000 tpy. As EPA recognizes in the proposed SER rule, the purpose of a *de minimis* threshold is to avoid imposing regulatory obligations that will not produce meaningful emissions reductions. The Associations support EPA's conclusion that meaningful GHG emissions reductions cannot be obtained from stationary sources that emit less than 75,000 tpy."

FERC Filling Up

It looks like the Trump Administration is finally getting around to filling at least two of the four open positions at FERC.

President Trump recently announced he planned to appoint Neil Chatterjee and Robert Powelson to fill two of the vacancies at FERC. The appointments are not yet official.

Chatterjee, who recently met with ELCON, is a senior energy adviser to Senate Majority Leader Mitch McConnell (R-TN). Powelson, who spoke at ELCON's 2016 Fall Workshop, is a Pennsylvania regulatory commissioner. They would take the positions that expire in 2021 and 2020 respectively.

Two other appointments will have to be made to fill the openings following the resignation of Norman Bay and the recent announcement that Colette Honorable would not seek another term, although she could stay on until her replacement is named.

It is also expected that Kevin McIntyre, who co-leads Jones Day's global energy practice, is expected to fill the third FERC vacancy. Some sources have suggested that he may be in line for the chairmanship. Honorable's position must be filled by either a Democrat or Independent.

But with the addition of Chatterjee and Powelson the FERC will have a quorum and can be back in business. FERC has been operating with just two sitting commissioners for more than two months.

FERC has a full plate of energy challenges before it. While staff can address most of the agency's business, the absence of a quorum hinders FERC's ability to enact final orders dealing with interstate natural gas pipeline projects and contested electricity rate plans.

ELCON
Electricity Consumers Resource Council

For More Information Contact:
1101 K Street, NW
Suite 700
Washington DC 20005
Voice: 202.682.1390
www.elcon.org