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Clean Power Plan – Act II
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Update on Federal Issues Affecting Large Energy Consumers

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Electricity Consumers Resource Council

- ELCON is the national organization representing the interests of large industrial consumers of electricity.
- ELCON was founded in 1976.
- Founding principles for economic regulation are based on cost causation.
- In 2015, ELCON was active in 14 docketed proceedings at FERC and EPA, and 2 court challenges before the DC Circuit and US Supreme Court, respectively. Interventions are supported by off-budget legal fund. The average member contribution to each of these cases was \$350.



Overview

- Federal legislation
- EPA Clean Power Plan rulemaking
- Recent FERC policy priorities
- NERC



Two Mutually Exclusive Political Playlists

DEMOCRATS

- Income gap between rich and poor
- Climate change
- Voting rights
- Gay rights
- Workplace equality
- Minimum wage

REPUBLICANS

- ObamaCare
- Guns
- Abortion
- Tax cuts for the rich
- Border fences & Deporting Illegal Immigrants
- Torture

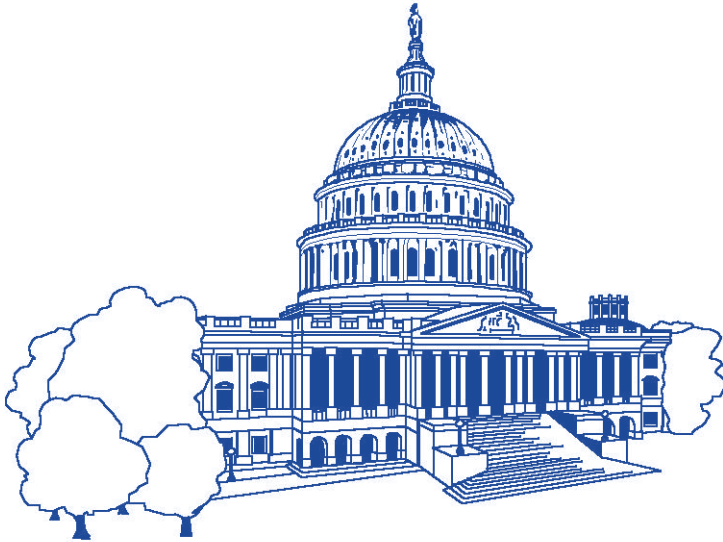




Never has the death of an unelected official – US Supreme Court Justice Antonin Scalia – had the potential to disrupt the enactment of important energy legislation or the implementation of important environmental regulations.



On the Hill



- In 2015, serious efforts began in support of bipartisan energy legislation.
- Rule was that anything controversial must be taken off the table.
- Dems had a slight upper hand in deciding content of “comprehensive” bills. So not quite as bipartisan as it looks.

In the House:

H.R. 8: North American Energy Security and Infrastructure Act

- Coordinate siting of interstate natural gas pipelines
- Remove conflict between grid reliability and EPA rules
- Critical electric infrastructure
- Energy and manufacturing workforce development
- Energy Efficiency
- Market manipulation, enforcement & compliance



In the Senate:

S. 2012 - The Energy Policy Modernization Act

- Energy efficiency (including manufacturing facilities)
- Grid modernization & reliability
- Cybersecurity
- Microgrids
- Natural gas exports
- Hydropower & bioenergy
- Land & water conservation



The Fighting Continues

- In the House, utility lobbyists were fighting for provisions that would gut PURPA and bailout uncompetitive nuclear and coal-fired power plants with guaranteed subsidies from ISO/RTO capacity markets.
- ELCON (with AF&PA, ACC and The CHP Association) succeeded in taking the issues off the table and suspending markup on the committee bill.
- PURPA attack was replaced with a FERC technical conference – the “capacity markets” issue was downgraded to two “studies” by GAO and FERC.
- The fight over Scalia’s replacement and/or funds for Flint Michigan may very well kill the chance for a “bipartisan” bill in this Congress.



December 18, 2015 Omnibus Bill

- \$1.1 trillion spending package keeps government open until September 2016.
- It passed the House on a 316-133 vote. 95 Repubs and 18 Dems voted against it. Vote in Senate was 65-33.
- Big compromise issues were lifting of 40-yr ban on crude oil exports in exchange for renewal of solar tax credits (30% ITC) and production tax credit for wind to expire at end of 2019. Other renewables qualify for either credit if construction starts before end of 2016.
- Other provisions included R&D tax credit and a major initiative on cybersecurity.



EPA Clean Power Plan



- Final, final rule issued on October 23, 2015.
- 27 States and US Chamber *et al* (including ELCON) filed application for stay with the US Supreme Court.
- In an unprecedented act, the Court granted the stay on February 9, 2016 in a 5-to-4 vote.
- Scalia's death may be a win for the CPP's supporters.



Top Regulatory Issues for Large Electricity Consumers

1. Challenges at FERC to rights of retail consumers to contest utility costs.
2. Supreme Court reaffirms FERC authority with respect to demand response.
3. Bailout proposals for baseload coal and nuclear plants.
4. A lot of activity related to ROEs for new or upgraded transmission facilities—ground zero for this debate is MISO.
5. Price formation “reforms” in organized wholesale electric markets.
6. PURPA Implementation Issues.



Threats to Consumer Standing

Offender	Issue
EPSA & Utilities	On January 25 th , the Supreme Court overturned the DC Circuit's ruling that FERC lacked jurisdiction to mandate demand response in wholesale markets.
ITC Grid Development August 2015 Proposal	ITC sought FERC order denying rights of retail and wholesale customers to challenge cost recovery in the future— <i>i.e.</i> , for 40 years or life of project!
AEP Service Corporation & Administrative Law Judge	The ALJ sought FERC ruling that would deny the right of retail consumers to pursue Federal Power Act complaints challenging wholesale rates. ELCON <i>et al</i> filed in opposition. In November 2015, FERC denied ALJ's claims.



FERC v. EPSA *et al.*

FERC Wins at Supreme Court

- SCOTUS ruled that demand response is well within FERC's authority over the wholesale markets and that LMP compensation was an exercise of "reasoned decision making."
- The decision stated that FERC's authority is so clear that it did not even have to address the alternative point that FERC's statutory interpretation is entitled to *Chevron* deference.
- The Court adopted a 2004 precedent that rules or practices that "*directly affect*" wholesale rates are within FERC's jurisdiction. Under that approach, the Supreme Court found this to be an easy case – the FERC rule "meet[s] that standard with room to spare" because it reduces wholesale prices.
- All wholesale regulation has "natural consequences at the retail level," but "that is of no legal consequence."



Collateral Damage

- The production tax credit (PTC) for wind resources, and to a lesser extent low natural gas prices, have conspired to push traditional coal-fired and nuclear plants out of merit order in economic dispatch.
- Owners of these plants are seeking relief in the form of ratepayer subsidies. Ground Zero: Ohio (AEP, FirstEnergy & DP&L) and New York (Indian Point, Fitzpatrick & Nine Mile).
- Merchant generators have started to challenge the subsidies at FERC claiming the bailouts distort FERC-regulated wholesale power markets.
- Interestingly, Scalia's absence on the Supreme Court give FERC the upper hand (if they so choose) to decide.



ROEs

- Interest rates have reached a level not experienced since the 1950s. Central banks in the Euro Zone, Japan, Sweden, Denmark, and Switzerland have pushed their short-term interest rate targets below zero.
- Utilities believe they are entitled to ROEs of 12-14%.
- Obstacles to resolving this impasse are FERC's desires to encourage independent wires companies and the development of projects that support wind resources.
- Ground Zero:
 1. *ABATE et al. v. MISO et al.*, Docket No. EL14-12-002
 2. *AECC et al. vis. ALLETE, Inc. et al.*, Docket No. EL15-45-000



Price Formation in ISO/RTO Markets

Now in Rulemaking Phase

- Shortage/scarcity pricing
- Uplift payments
- Offer caps (*i.e.*, energy offer mitigation)
- Unpriced operator-initiated commitments

The hidden agenda seems to be a covert attempt to increase the volume of “out-of-merit” transactions that set the LMPs – in other words, increase the revenues that ALL generators receive regardless of the circumstances and regardless of the benefits each resource provides to the system operator.



Offer Caps

FERC Docket No. RM16-5-000

- FERC proposes to require that each ISO and RTO cap each resource's incremental energy offer to the higher of \$1,000/MWh (or \$2,000 in PJM) or that resource's cost-based incremental energy offer—subject to verification by the market monitor.
- The higher offer would be used to calculate LMPs.
- Under existing policies, resource owners are eligible for “make whole” payments or the ISO/RTO can seek a limited waiver of the offer cap.
- ELCON is opposing the proposal.



PURPA Implementation Issues

FERC Docket No. AD16-16-000

- PURPA Title II is classic example of “cooperative federalism.” States were charged with implementing the Act’s requirement subject to oversight of FERC.
- This process has always been a hotbed of rent seeking behavior because some States cannot refuse the opportunity to use avoided-cost calculations as a policy tool either to promote favored technologies with buyback rates in excess of avoided costs or to discourage less favored technologies with buyback rates below actual avoided costs.
- FERC has scheduled June 29th conference on the issues.



Protect Industrial Cogeneration

FERC Docket No. AD16-16-000

- Attempts to correct certain rent-seeking behavior associated with Order 688 and avoided cost calculations might result in other “reforms” that could impose collateral damage to the huge existing fleet of industrial QFs with a proven track record as highly efficient, reliable and clean energy resources.
- Industrial QFs would be infeasible without standby, backup and maintenance power services at just and reasonable rates.
- States can and should do a better job with avoided cost calculations to minimize rent-seeking behavior. This is not rocket science. If it is so problematic to estimate reasonably foreseeable avoided costs, what faith should consumers have in the methods used to set customer rates.



Reliability Standards

NERC

NORTH AMERICAN ELECTRIC
RELIABILITY CORPORATION



- After ten years, NERC is finally reaching a “steady state.”
- Many recent actions (all approved by FERC) have an uncertain impact on manufacturing facilities with or without behind-the-meter generation.
- ELCON has consistently made the case that manufacturers are low risk and should be treated accordingly.
- The evidence now suggests that manufacturing facilities without generation are exempt.



Questions?

