ELCON REPORT

ELECTRICITY CONSUMERS RESOURCE COUNCIL

NUMBER ONE 2002

Don't 'Clone' PJM into Other RTOs, ELCON Urges FERC, Citing Flaws in Model

ELCON commended the Federal Energy Regulatory Commission recently for undertaking a serious evaluation of regional transmission organizations (RTOs) but cautioned that the Pennsylvania-New Jersey-Maryland interconnection is flawed and should not be considered a model to "clone" into other RTOs across the country.

FERC "should not begin with the premise that PJM is the perfect model and that it should be cloned across the country," ELCON Executive Director John Anderson said. "Cloning is dangerous."

The comments were filed in response to a commission order in mid-November giving guidance on RTO filings. FERC has endorsed the PJM market design as a 'preferred platform' for a Northeast RTO, which would include the New York and New England ISOs.

ELCON's comments, along with affidavits from ELCON member companies, described market problems in the PJM area, particularly a lack of demand response. Several of the affidavits criticized PJM's use of locational marginal pricing (LMP) as restricting purchase options and therefore inhibiting competition.

Anderson explained that "simple economics dictates that both supply and demand be considered when developing a market design. If a market does not include demand considerations, it will not fully promote competition."

FERC has been told by outside experts that it needs to ensure RTOs have the proper market design from the start

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Four Join ELCON

ELCON welcomes four new members covering a range of industrial operations.

MG Industries is a leading industrial gas company with operations in the United States and Canada. It supplies industrial and process gases as well as the technology to use these gases effectively through a network of strategically placed production and distribution sites. For more information, visit the company's web site at http://www.mgindustries.com/.

Delphi Automotive Systems is a world leader in mobile electronics and transportation components and systems technology. Headquartered in Troy, Mich., Delphi's three business sectors -- Dynamics & Propulsion; Safety, Thermal & Electrical Architecture; and Electronics & Mobile Communication -- provide comprehensive product solutions to complex customer needs. See Delphi's web site at http://www.delphiauto.com/.

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ELCON's 19th Annual Seminar

Seminar Speakers List Market Concerns

Electricity and gas industries in transition -- with resulting market uncertainty -- was a common thread running through presentations at ELCON's 19th Annual Seminar, co-sponsored by the Process Gas Consumers Group (PGC), Oct. 25-26 in Arlington, Va. Prominent backdrops for several speakers' remarks were the Federal Energy Regulatory Commission's recent activities on regional transmission organizations, a pending U.S. Supreme Court case on FERC's jurisdictional authority, and how events in California earlier this year have colored the debate in Washington, D.C., and in several states.

The seminar's title, "Crisis and Chaos: Energy Markets in the New Economy," set an overriding theme. Speakers talked about the uncertainty in both the market and the regulatory environment as FERC, under new leadership, has indicated it will virtually reconfigure today's electricity industry.

The seminar also revealed deep interest among attendees in the way electricity and gas will be bought and sold in new energy markets. Several questions from the audience touched on how to avert the potential for market power and the future of the vertically integrated utility.

Market Uncertainty Poses Problems

Stakeholders at nearly every level in the electricity industry profess to seek more competitive wholesale and retail markets, but many allege that their

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Get Out Your Knife & FERC!

By Jim Rouse, Chairman, ELCON

Electricity consumers had a heaping plate of issues to deal with in 2001. We suffered through the California electricity crisis, the aftermath of Sept. 11 and the onset of a national (probably worldwide) recession. Then, the nation's largest energy marketer fell into bankruptcy and tried to do an "Enron" around its creditors, regulators, legislators and litigators.

As we digest these issues and contemplate the year ahead, we welcome Pat Wood as chairman of the Federal Energy Regulatory Commission (FERC). I have never seen a FERC chairman seize the initiative and institute proceedings that hold such promise for all stakeholders. ELCON and its member companies believe that the actions FERC has taken on regional transmission organizations (RTOs) during the past few months are just appetizers; the entrees on FERC's menu come in 2002.

ELCON staff monitored the Northeast and Southeast mediation sessions on a daily basis in July and August. (I attended three sessions). It was clear from these sessions that if customers are to achieve the large, seamless RTOs that benefit all users -- large and small -- we have much work to do.

This was demonstrated vividly during FERC's RTO Week in October, a true smorgasbord of politics, policies, rhetoric and arguments. At one day's session a virtual platoon of state commissioners and state commission representatives arrived to bombard FERC with arguments defending and justifying their authority and prerogatives. Why, a food fight almost broke out! While FERC commissioner Linda Breathitt clearly sympathized, state PUCs fear that an activist FERC means an increase in FERC's assertion of jurisdiction -- a view not universally supported.

Subsequent filings at FERC on RTOs have demonstrated marked differences between utilities/state PUCs and consumers/marketers on the policy elements and competitive emphases in RTO formation. ELCON and its member representatives must be involved in this process if we want the end product -- the infrastructure of the electricity grid -- to promote workably competitive electricity markets. In the recently-instituted FERC docket on electricity market design and structure, five ELCON companies filed affidavits attesting to flaws in the Pennsylvania-New Jersey-Maryland Interconnection (PJM) operating system, in particular its lack of liquidity, locational marginal pricing (LMP), and need for optimal customer demand response options.

Through the years ELCON members have been fortunate that FERC clearly seeks ELCON's views as the national association representing large industrial electricity consumers. Through regular meetings with FERC commissioners, their staffs, and other FERC staff groups, I truly believe that we have made significant progress toward achieving our "pro-competition, national-market" objective.

The menu before us in 2002 is daunting. FERC will continue its mission to foster the establishment of several large RTOs. It will ramp up its related activities on market power abuse and affiliate transactions. And, it may well get involved in the certification of a national reliability and standards-setting organization to administer operation of the grid.

ELCON member companies have spent a long time training for this. We know the recipes, and we thrive on the heat of the Washington kitchen. But, now more than ever, all electricity consumers should get involved in the struggle for our just desserts: real competition, not the artificial kind served up in too many states.

As Chairman of ELCON, I hope others working for real competition will join us at the table. E

Jim Rouse is Associate Director, Energy Policy, Praxair, Inc.

ELCON Backs Generator on ICAP

ELCON and other industrials sided with The New Power Co. in a Federal Energy Regulatory Commission complaint that prices in the Pennsylvania-New Jersey-Maryland (PJM) interchange capacity markets are unjust and unreasonable.

New Power complained to FERC about unfair prices for capacity in the PJM auction and bilateral markets as a result of the imposition of an installed capacity requirement and deficiency charge (ICAP). Such a charge traditionally was used to ensure that all vertically integrated utilities in a region contributed to capacity and none got free rides off the capacity of others. With restructuring, this is unnecessary and serves only to discriminate against newcomers, threatening to force them out of the residential market, New Power said.

ELCON and allies agreed, making three major points in their filing:

- Generators should not be allowed to "double dip" or "triple dip" by increasing prices during a time of shortage, recovering ICAP payments, or recovering stranded costs from uneconomic generation assets.
- With restructuring, the need for ICAP needs to be reexamined. Whereas capacity reserve margins used to be hedges against a combination of demand uncertainty and price inelasticity, in the restructured environment they can be used to discriminatre because long-standing, vertically integrated companies do not incur such charges while new-comers do.
- The capacity requirements adopted in wholesale-only markets like PJM represent a disguised form of reregulation. ICAP is ill-designed for ensuring adequate capacity. Instead of encouraging new entry and demand response, it masks price signals that would encourage new entrants. E

Efforts to Pass Energy, Restructuring Bills Still Blocked by Partisan Differences

Members of Congress continue to seek ways to pass a comprehensive energy package and an electricity restructuring bill -- separately or together -- but partisan and policy differences have proved difficult to overcome.

The House passed a comprehensive energy bill (HR 4) without electricity restructuring provisions early in 2001. Rep. Joe Barton (R-TX), chairman of the Subcommittee on Energy and Air Quality, has periodically announced that his subcommittee would proceed to mark up electricity legislation, only to have a later change of heart.

In mid-November, Republicans on his Subcommittee voted to move forward on electricity restructuring legislation (only nine members voted), but the congressional calendar precluded any action.

Throughout last year Chairman Barton expressed hope that the House would pass an electricity bill that could be married with the previously passed energy bill.

Rep. Barton circulated a draft bill in October that ELCON found deficient, although it was an improvement over the bill approved by his subcommittee in 1999 (HR 2944). The bill restricted FERC's regulatory authority, particularly in creating regional transmission organizations (RTOs), and it did not sufficiently address the potential for market power abuse. Rep. Barton then released a new draft in early December and held two days of hearings at which ELCON testified before Congress adjourned.

In the Senate, Majority Leader Tom Daschle (D-SD) informed Energy Committee Chairman Jeff Bingaman (D-NM) that he would bring a comprehensive energy bill directly to the Senate floor, bypassing the committee, under authority given the majority leader by Senate Rule 14. He then ran into all the hurdles that Sen. Bingaman had faced in committee -- exploration of the Arctic National Wildlife Refuge, renewable energy incentives, environmental constraints, and others.

Sen. Daschle was inclined to let consideration of an energy bill slip to 2002, but instead got caught in a political debate with Republican Leader Trent Lott (R-MS) and former Energy Committee Chairman Frank Murkowski (R-AK). Their strategy was to bring the House-passed measure before the Senate as an amendment to various non-germane bills (economic stimulus, agriculture, and others). After a test procedural vote on an amendment to the railroad retirement bill failed, Republicans agreed to forego any effort to bring up energy last year in exchange for Sen. Daschle's promise to address it early in 2002.

Following that parliamentary dance, Sen. Daschle introduced and Chairman Bingaman cosponsored a 400-page, comprehensive bill with sections on electricity restructuring, renewable fuels, market power and other key issues. He reiterated that action would not occur until 2002 but expressed hope that it could be completed in February.

Postponing action until 2002, however, will not help to solve any of the policy and political controversies that surrounded last year's debate.

And, the activist role being assumed at the Federal Energy Regulatory Commission may incite some utilities and their congressional allies to attempt to restrict FERC's authority. E

Bingaman Supports "Balanced" Energy Legislation With Environmental Provisions

ELCON's 19th Annual Seminar

Senate Energy Committee Chairman Jeff Bingaman (D-NM), the Friday Keynoter at ELCON's 19th Annual Seminar, stated that he supports enactment of a comprehensive energy bill this Congress, but such a package also must include consideration of environmental impacts.

Chairman Bingaman acknowledged that Senate Majority Leader Tom Daschle's (D-SD) decision to bring energy legislation directly to the Senate floor -- bypassing the Energy Committee -- took some of the decision-making out of his hands. But he stated that he and Sen. Daschle share common objectives and both want to bring a balanced package before the Senate.

That package would include some supply issues, he said. He mentioned exploration in the Arctic National Wildlife Refuge (ANWR) but did not tip his hand as to whether he would support it. (Exploration in ANWR was not included in legislation subsequently introduced by Sen. Daschle and cosponsored by Sen. Bingaman.) In the area of conservation and environmental provisions, Chairman Bingaman pointed to greater fuel economy standards in automobiles although he did not reveal whether he sought increases over the standards included in House legislation (HR 4) passed earlier this year.

Sen. Bingaman recognized ELCON's contributions to achieving a more competitive electricity industry. E

ELCON New Members

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Smurfit-Stone Container Corporation is the world's largest integrated producer of paperboard and paper-based packaging products. The company was formed in 1998 through the merger of Jefferson Smurfit Corporation and Stone Container Corporation and acquired St. Laurent Paperboard Inc. in the second quarter of 2000. For more information, go to http://www.smurfit-stone.com/.

Williams Energy Services' businesses include energy marketing and trading; natural gas gathering and processing; natural gas liquids and petroleum pipelines; exploration and production; and ethanol production. For more information, visit http://www.williamsenergy.com/. E

RTO Certainty One Key To Effective Markets, Seminar Told

A network of large, seamless, regional transmission organizations (RTOs) is key to establishing a robust wholesale electricity market in the United States. But, just as important, electric utilities and marketers must know how the RTOs will be constructed and governed.

Those points were clearly made by Betsy Moler, former FERC chair and now vice president of government affairs and policy for Exelon Corporation, and Sue Kelly, a Washington attorney with a broad practice representing public utilities and rural electric cooperatives.

Moler favored for-profit RTOs run by "transcos." Ensuring that the asset manager (i.e., the RTO) has a financial stake in the operation of the transmission grid will make the system run more efficiently, she stressed. Emphasizing the need for regulatory certainty, Moler explained how Exelon was trying to sell its transmission assets in the Midwest to National Grid. Numerous visits with FERC have given "conflicting signals," making the sale difficult if not impossible, she said.

Kelly also believed that regulatory uncertainty is being increased by recent FERC actions. She questioned FERC's promotion of "best practices," since it is unclear who will make that determination. She did not foresee any clarifying federal legislation in the near future and said she believes that a backlash by state commissions against aggressive action by FERC would only cause "paralysis" and more uncertainty.

ELCON's 19th Annual Seminar

Breathitt Urges Caution

Federal Energy Regulatory Commissioner Linda Breathitt, the seminar luncheon speaker, urged that FERC not rush into action on formation of regional transmission organizations and other electricity restructuring issues until all industry stakeholders are heard from.

During FERC's "RTO Week" in October, numerous state commissioners and state commission representatives came to Washington to press their case, said Breathitt, a former state commissioner in Kentucky. She said state commissions present a valid point of view from regulators who are close to the events in their particular state.

Breathitt also spoke in favor of stand-alone transmission companies, which she called a "very viable model." She said for-profit RTOs might have easier access to capital than non-profit RTOs. E

FERC Ties Rates To RTO Membership

In a sweeping step toward greater market competition, the Federal Energy Regulatory Commission ordered jurisdictional transmission owners to join regional transmission organizations (RTOs) before the end of the year or face losing their market-based rates, and it ruled that it would condition merger approvals on RTO participation. ELCON has long advocated such positions.

The Commission also delayed the mid-December 2001 start-up dates for RTOs.

FERC indicated it would take a hard look at the rates of any public utility that chose not to join an RTO. Chairman Pat Wood wants four RTOs nationwide (plus Texas), although he has indicated that four is not an inflexible number, and expects mediation reports for the Northeast and Southeast to help guide assessments of progress in those regions. In the Midwest, he indicated that the burden will be on Alliance and MISO to show why they should not be consolidated. E

Energy Management: In or Out-of-House?

Whether a corporation's energy management function is best handled internally or through outsourcing was debated by energy consultant "Pete" Mehra, former Ford vice president and ELCON officer, and Enron Vice President Michael Mann. (*Editor's note: the seminar was held before Enron's financial tumble.*)

Mehra aggressively made the case to keep the function "in house," at least for large purchasers, which he defined as over $50 million annually. He argued that outsourcing energy management allows a company's energy profile to be based on another company's potential for profit. Benefits of internal management, he said, include a greater knowledge of the company's current and planned future operations, the ability to suggest engineering improvements, and the ability to make energy management and energy policy a priority within the company. He also noted that an external energy management company would likely seek a speedy negotiation with an energy supplier, while internal management might negotiate longer for a more favorable agreement.

Taking the opposite view, Michael Mann, vice president of energy outsourcing for Enron Energy Services, said that energy management requires a varied set of skills from several disciplines. He said a corporation is unlikely to have engineering, planning, procurement and other such skills available within the energy management department. He said outsourcing energy management enables a company to redeploy personnel and capital to core business functions, and it also increases the possibility of using new technologies like micro-turbines and fuel cells since in-house managers would be more likely to continue traditional operations and historic relationships. Outsourcing also transfers risk of price volatility from the corporation to a third party, he said.

Mehra and Mann were in agreement that no matter how energy management was handled, it would increase in importance as gas and electric markets become more competitive and operating options increase. They also agreed that "doing nothing is not an option." E

California Seen as Isolated Problem

The consensus among several speakers who discussed electricity events in California this year at ELCON's 19th Annual Seminar was that, while lessons can be learned from the experience, those events are most likely unique to California.

Gary Ackerman, executive director of the California-based Western Power Trading Forum, facetiously described the independent nation of "Calistan," its capital city "Sacrilegious," and its numerous and varied inhabitants whose only common trait is distance from the real world.

Both keynote speaker David Sokol and Bob Dickerman, president of San Diego-based Sempra Energy Solutions, observed that the California electricity market was not an experiment in deregulation or competition, but rather re-regulation. "California should not be used as an example to say that deregulation has failed," Sokol said.

Recent events ending customer choice in California will lead to even more problems, according to Dickerman, who blamed a lack of political leadership for much of California's electricity woes. Ending direct access to retail electricity suppliers denies citizens access to market prices, he said. Politicians in California seem to have no understanding of how electricity prices work, he said.

Dickerman and Dynegy Vice President Peter Esposito also pinned a good deal of blame on the provision in California's electricity restructuring bill (AB 1890) that required utilities to receive compensation for their "stranded costs." Esposito pointed out that California citizens paid $16.8 billion to utilities in transition charges, which he called the biggest reason that competition failed.

ELCON's 19th Annual Seminar

Concerns with Markets

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efforts are hindered by market uncertainty and harmful government restrictions.

Keynote Speaker David Sokol, CEO of MidAmerican Holding Company, opened the seminar by laying out some of the fundamental principles he said are necessary to establish robust, competitive wholesale markets. Prime among them were consistent interconnection standards to facilitate market entry and seamless regional transmission organizations (RTOs) so that power can flow easily from one area to another. Sokol also advocated, as he has done consistently for many years, the repeal of the Public Utility Holding Company Act. He said PUHCA limits the electricity field only to traditional players (although many consumer groups, including ELCON, believe it is an essential federal consumer protection).

Other speakers differed on the progress that has been made toward competitive wholesale and retail markets and the benefits of such markets for consumers. Michael Wroblewski, assistant general counsel at the Federal Trade Commission and co-author of a recent study, "Competition and Consumer Protection Perspectives on Electric Power Regulatory Reform," asserted that while benefits may not yet have emerged in the transition, retail electricity competition will reduce prices and provide other benefits for consumers in the long term.

Consistent interconnect standards, seamless RTOs are key to competitive markets

Consumer advocate Charlie Acquard, executive director of the National Association of State Utility Consumer Advocates, gave a contrasting point of view. He said residential electricity consumers by and large no longer believe in the benefits of retail competition. He invoked a humorous analogy with the movie "Mom's Got a Date with a Vampire," in which an attractive looking suitor (retail electric competition) later turns into a blood-sucking monster.

But the electricity markets should be changing, according to Julie Simon of the Electric Power Supply Association (EPSA). She cited the new membership of the Federal Energy Regulatory Commission -- in particular Chairman Pat Wood, whom she called "the new wizard in town." The new FERC's activist approach under Wood will encourage even more generation, she predicted. An EPSA study estimates 324,000 mW of new generation are now in the planning and construction stages.

A number of presentations made it clear that wholesale competition in natural gas, which now has established markets, is perceived quite differently from electricity. Bruce Henning of Energy and Environmental Analysis, Inc. pointed out that gas markets are driven by basic fundamentals, primarily weather and economic growth. A new driver in gas markets is increased demand for gas as a fuel to generate electricity.

Bill Benham, vice president of regulatory affairs for BP Energy Co., observed that the gas industry is constrained in its ability to cope with sudden changes in demand. He noted that escalating prices can be attributed to either market power by pipelines or distributors, or a scarcity of resource. These are two distinctly different problems, he asserted, with distinctly different solutions.

That view was echoed by Skip Horvath, president of the Natural Gas Supply Association. Succinctly summing up the recent rise and fall of natural gas prices, he said that gas markets respond to prices. "The higher the price," said Horvath, "the more gas rigs will be available."

ELCON Activities Before The Federal Energy Regulatory Commission

RTO Structure, Governance Among Key Issues

Southeast RTO Model

ELCON disagreed with an administrative law judge of the Federal Energy Regulatory Commission over the structure that should be adopted for a Southeast regional transmission organization (RTO), urging FERC to adopt the model that offers the best assurances of preventing transco conflicts of interest.

FERC this past summer ordered a mediation session involving the major Southeast utilities in order to develop a model Southeast RTO. The ALJ managing the mediation narrowed the choices down to two models: a Collaborative Governance Model, supported by GridFlorida, GridSouth and Entergy, and an Independent System Administrator Model, favored by Southern Companies.

The ALJ then recommended FERC adopt the Collaborative model. ELCON and other industrials prefer the Independent model.

The Collaborative model is based on a for-profit transmission company with an independent board of directors. It would give transmission owners the options of divesting their facilities to the transco, transferring operating authority to the transco, or divesting or transferring operating authority to an independent transmission company which, in turn, would transfer operating authority to the transco. The model also introduces a new concept to RTOs -- a non-profit, Independent Market Administrator (IMA). This entity was created in an effort to get public power involved in the RTO by giving it certain key functions that would otherwise be taken by the transco.

The Independent System model also creates a hybrid arrangement to try to involve both investor-owned utilities that favor a for-profit system operator and transmission-owning public power entities that prefer a not-for-profit ISO. The Independent System Administrator (ISA) would operate but not own transmission assets and would assume all of the critical functions of an RTO except for contracting market monitoring to an independent organization. The ISA would be given performance-based incentives to provide certain services, but, because it is a not-for-profit, these incentives would not lead to the biases that can develop with transcos that earn profits on the assets they operate. Transcos could be created within the ISA format, but the ISA would retain ultimate decision-making authority.

The ALJ said the Collaborative model offers a "delicate balance of compromise" as a "fully integrated proposal." But ELCON, along with other industrials, told FERC the ISA model is preferable because many RTO functions are "public goods," and the not-for-profit ISA model is best at preventing conflicts of interest associated with asset ownership.

If FERC adopts the ALJ's recommendation, it should "take the transco off the top" until southeastern states commit to allow sufficient transmission divestiture, the industrials said.

The ALJ's mediation also was unable to resolve four main concerns of state commissions:

1) assertions that FERC failed to produce a cost-benefit analysis to justify a single Southeast RTO before ordering mediation;
2) the potential cost-shifting among retail customers that could occur with the institution of a region-wide postage stamp rate;
3) the possible preemption of the authority of state commissions to approve the transfer of assets to the RTO or transco; and
4) the possible preemption of state authority to regulate retail transmission rates through de facto unbundling.

Northeast RTO Mediation

ELCON and other industrials registered concerns with FERC over key governance, seams, best practices and other issues in the development of the Northeast RTO as revealed in the mediation report filed by the administrative law judge on the case. The ALJ's report itself raised a number of questions for FERC to clarify (for example, what constitutes "best practices"), but it also suggested how the Northeast RTO might take shape based on positions advocated by the Northeast independent system operators.

The industrials' comments were focused in four areas:

Compostion of the Board. The board must be balanced and open to fresh, new ideas and suggestions. A board dominated by PJM would have a tendency to endorse PJM's existing procedures and not be as open to new ideas. FERC should require the creation of a truly independent board composed of members not now serving on any of the existing ISO boards.

Composition of the Stakeholder Advisory Committee (SAC). The make-up of this committee may be as important as the make-up of the board. While the Commission focused on the composition of RTOs in earlier orders, it adopted conflicting precedent with respect to SACs, approving a broad range of advisory committee structures that treat the interests of stakeholders inconsistently. The Commission should ensure consistency among and between RTOs. It should give SACs a "bill of rights" and ensure that the industrial sector has its own representation. If industrials have to share a sector representative on a SAC, it should be only with other end-use consumers. In such a case, the industrial sub-share should be specified and votes taken from the sector should reflect any differences among the various consumer classes.

Best Practices. The implementation process must be given enough time to ensure best practices. While speed is good, best practices must not be lost in the process.

Interregional Coordination - Function 8. The business plan for the Northeast RTO is woefully inadequate when it comes to interregional coordination, offering only two pages of discussion. Basically, it says the three ISOs should continue their existing efforts. But, even if they succeed in eliminating seams between themselves, they will not have started to address inter-RTO seams. FERC should require the Northeast RTO to participate in an interconnection-wide process to resolve all commercially significant seams issues -- both intra-RTO and inter-RTO. The result should be for any boundary to be transparent to the marketplace. The process should be completed in parallel with the implementation of the RTO.

Arguments for Single Midwest RTO

FERC approved the Midwest ISO (MISO) as a full-fledged RTO but, in a separate order, rejected the Alliance Companies proposal to be a separate RTO in the Midwest. FERC asked Alliance "to explore joining the MISO organization."

ELCON and other industrial groups had supported filings by several midwestern state utility and commerce commissions asking FERC to create a single Midwest RTO. Commissions from Illinois, Michigan, Indiana, Pennsylvania and Ohio had asked FERC to reconsider its conditional approval of the Alliance RTO after the Commission failed to order a mediation process to create a single Midwest RTO. FERC had ordered single RTOs in the Northeast and Southeast.

The state commissions contended that a settlement reached earlier this year between Alliance and MISO did not achieve its goals, and the control areas failed to meet FERC's standards for scope and configuration.

ELCON and its allies urged FERC to order mediation on the basis of three arguments:

- The Midwest is larger than either the Alliance or Midwest ISO footprint. Attention has been focused on internal structural issues with the two ISOs and not enough on a long-term strategy for operating and expanding transmission in the eastern interconnection.
- FERC has told Alliance on numerous occasions that it wants to see tangible progress toward expansion. Progress to date has been insufficient, as the state commissions' filings indicate.
- The Alliance stakeholder process has serious deficiencies. The governance concerns would be aided by an open and inclusive Midwest mediation process. E

ELCON Backs Trigen In Antitrust Appeal

ELCON unsuccessfully joined two other energy trade groups in filing a brief with the U.S. Supreme Court in an antitrust lawsuit against Oklahoma Gas & Electric (OG&E).

The appeal, which was turned down without comment, supported a claim by Trigen's Oklahoma subsidiary that OG&E interfered with the company's sales of heating and cooling systems by encouraging customers to buy cooling equipment from companies that used more energy than Trigen's equipment. The lawsuit alleged that OG&E gave misleading pricing quotes and used improper payments, undue influence and lavish entertainment to gain business.

A jury awarded Trigen $21million, but the verdict was overturned on appeal based on the “state action” doctrine. This doctrine immunizes companies from antitrust action in cases where a state has clearly articulated a policy to replace competition with a regulatory program and actively supervises the regulatory program. The appeals court found that OG&E was protected even though, in this case, the utility was competing in the cooling services market and not the electric utility market. Trigen appealed to the Supreme Court.

The supporting brief from ELCON and its allies said the utility was furthering its private interests rather than the interests of the state of Oklahoma when it monopolized the cooling-services market. It said the appeals court ruling will send a message to utilities, at a time in the deregulation process when there is the greatest risk of unchecked exercise of market power, that their actions will be protected even when their anticompetitive conduct is attributable to the private party rather than to state regulation. The brief said that at this crucial stage in the evolution of deregulation, courts and other antitrust authorities must be vigilant in enforcement to prevent incumbent utilities from trying to protect their status and exclude competitors.

If market power is unchecked, the brief noted, providers of competitive energy services and innovative technologies will be discouraged from entering even partially deregulated geographic markets, consumers will be denied the benefits of competition, and states will be denied the flexibility to restructure utility regulation. E

PJM Flaws

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because fixing them after they are in operation will be difficult.

"The issue of market design and RTO configuration is too important to treat casually," Anderson said. "The PJM model has good points and bad points. But now is not the time for FERC to 'clone' around."

The comments urged FERC not to adopt the problem-plagued PJM as a platform for RTOs until the flaws have been remedied. E

Hold these dates!

Oct. 11-12, 2002

ELCON's 20th Annual Seminar

Crystal City Hyatt Regency Arlington, Va.

WHAT IS ELCON?

- **DATE ORGANIZED***:* January 15, 1976

- **WHO WE ARE**: ELCON is an association of large industrial consumers of electricity. Our members have facilities in most of the 50 states and in many foreign countries, producing a wide range of products, including aluminum, steel, paper, petroleum, chemicals, industrial gases, motor vehicles, electronics, textiles and food. Our member companies consume almost six percent of all the electricity in the US. These companies require an adequate and reliable supply of electricity at competitive prices.

- **2001 MEMBER COMPANIES**: A.E. Staley Manufacturing Company • Air Liquide • Alcan Aluminum Corporation • Anheuser-Busch Companies, Inc. • BOC Gases • BP • Central Soya Company, Inc. • ChevronTexaco • Delphi Automotive • E.I. du Pont de Nemours & Co. • Eastman Chemical Company • Equilon Pipeline, L.L.C. • Ford Motor Company • GNB Technologies • General Motors Corporation • Honda • Honeywell • Intel Corporation • International Paper • LTV Steel Company • Monsanto • MG Industries • Occidental Chemical • Owens-Corning • Praxair • Rockwell Automation • Smurfit-Stone Container Corp. • Solutia, Inc. • The Timken Company • Williams Energy Services

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