

ELCON PRESS RELEASE

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ELCON ASKS FERC FOR REHEARING ON PURPA RULE

ELCON (the Electricity Consumer Resource Council) today asked FERC for a rehearing on FERC's recently announced rule on the Public Utility Regulatory Policies Act (PURPA).

"When FERC promulgated its final rule on PURPA last month, it admitted the rule it had first proposed needed significant improvement," stated John Anderson, ELCON's president. "Several FERC Commissioners stated that the final rule was substantially different from the proposed rule. That is all true, and last month's rule is an improvement. But, even so, FERC has issued a rule that is inconsistent with statute, inconsistent with precedent, and inconsistent with our national interests. Cogenerators and other alternative power producers are going to be worse off. That simply does not make sense, and that is not what Congress intended."

PURPA, as enacted in 1978, directed utilities to purchase electricity from cogenerators and other alternative energy suppliers (called Qualifying Facilities, or QFs). The final rule promulgated last month basically gives utilities operating in the four FERC-approved organized markets (PJM, NYISO, ISO-NE and MISO) a rebuttable presumption in seeking to be relieved of their mandatory purchase and sale obligations under PURPA. ELCON's petition for rehearing laid out several reasons why FERC's rule does not adhere to the language enacted in last year's Energy Policy Act.

Listed first was that utilities should "bear the burden of proof in the four organized markets." The brief stated that "FERC has improperly subverted the usual rule, statutorily established in the Administrative Procedures Act, that the applicant for relief from an obligation has the burden of proof." Anderson elaborated, stating that "a utility that wants to be relieved of its PURPA obligations should have to prove that it meets the statutory requirements. FERC has proposed turning the normal process upside down."

ELCON's petition also noted that "FERC cannot categorically presume that Day 2 Markets [in PJM, NYISO, ISO-NE AND MISO] provide QFs with access to long-term markets" as required by statute. Anderson noted that "ELCON members with cogeneration facilities in the organized markets do not believe that the Day 2 Markets provide the access to long-term markets that the statute requires for PURPA relief. I know that FERC want to develop a generic standard. But the simple existence of Day 2 Markets should not be the standard they decide to use."

Anderson concluded by stating that "under PURPA, FERC still has an explicit obligation to encourage cogeneration. This new rule, by its very existence, will discourage those with facilities today from expanding those facilities and will have a chilling effect on those who are planning new cogeneration facilities. We are still hopeful that additional changes can be made."

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ELCON, established in 1976, is the national association of large industrial users of electricity from virtually every manufacturing sector. Many have cogeneration facilities. ELCON members seek a reliable supply of electricity at competitive prices and have long supported federal and state efforts to achieve that objective. More information about ELCON is available at ELCON's website, www.elcon.org.

