

ELCON PRESS RELEASE

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Statement of John Anderson, President of the Electricity Consumers Resource Council (ELCON), at the Energy Daily Media Breakfast on the Domenici-Barton Energy Policy Act of 2005, August 18, 2005

I begin with a caveat: My comments on the Domenici-Barton Energy Policy Act of 2005 are confined to the electricity provisions – primarily in Title XII. I am very well aware that the interests of my member companies go far beyond those provisions, but the interests of my association do not.

Relating to the electricity provisions of the Act, several provisions may hamper, rather than help, the move to truly competitive markets which we strongly support. A few of those provisions are in the Act. But others have been modified or eliminated, which I think has produced a generally good piece of public policy. This is not the bill as I would have written it. But neither is it a bill that is going to cause great harm to the development of competitive electricity markets. And in some areas it might actually help. I cite a few specifics:

PUHCA Repeal -- the Big Enchilada:

PUHCA repeal has been advocated for a very long time – in fact, I first testified against PUHCA repeal more than 20 years ago before Senator D’Amato and the Banking Committee. ELCON witnesses have opposed PUHCA repeal in congressional testimony at least 20 times since then. This year we lost. And when I say we, I mean all consumers, large and small, because in that 25-year debate to repeal PUHCA, I do not recall any bona fide consumer group that ever supported the effort to repeal.

PUHCA was a major federal consumer protection statute for the electric utility industry. It was passed during the Great Depression as an antidote to the fear that hard-to-trace holding companies were taking over ownership of the electricity grid. Congress wanted to be sure that the grid was not in the hands of a few large corporations, and this fear of “Power Barons” spurred enactment of PUHCA. To some degree, that fear still exists today, and now we will have the opportunity to see what develops. But, in reality, enforcement of PUHCA has been so lax that I don’t believe a lot will change.

For example, PUHCA stated that a criterion for an acceptable utility merger was that the newly merged utility be located in one region. But we have seen mergers approved that stretched the definition of “one region” to include areas from Philadelphia to Chicago, Columbus to Tulsa, and, soon, from Des Moines to Portland, Oregon. I want to state clearly that we do not view every utility merger as bad. But every merger does remove at least one competitor from the market. At some point the declining number of market participants will become a problem

There is a good point to PUHCA repeal. The registered holding companies have, for years, said that the reporting requirements are terribly expensive. Since they will not have to report in the

future, consumers expect to see reductions in their rates.

Other fears about PUHCA repeal have been somewhat mitigated by the bill. FERC has new merger review authority. And, perhaps more importantly, it has new authority to deal with market manipulation. Assuming this new law is enforced, many consumer fears about PUHCA repeal should be diminished.

In addition, I look forward to what PUHCA repeal advocates have been saying for a long time – that repealing PUHCA will free up capital that will be available for investment. I do hope that this available capital is invested in the utility industry and not in a host of non-regulated, often speculative, non-utility opportunities. Only time will tell.

Finally, I must say that I am a bit concerned about my friend Tom Kuhn. I know from experience in the corporate world that each time two of my members merge, I have one less member – and that has happened several times. That negatively impacts my dues base. I am not familiar with EEI's finances – and I suspect Tom really has nothing to worry about – but Tom, just between us association guys, you might want to start looking at PUHCA repeal from a more parochial angle.

Transmission Incentives:

For years utilities have claimed that they needed some sort of incentive to build new transmission. Those of us who pay the bills wonder why the traditional rate of return – roughly 10-13 percent for a very low-risk investment – wasn't sufficient to attract the needed capital. And we questioned why such incentives need to be available in all regions, even those where new transmission is not needed.

Although we have opposed mandatory incentives for years, this bill has an interesting provision. While it calls for incentive rates, it also links the new transmission built to increased grid reliability and states that the reduced congestion must result in lower prices for consumers. That makes sense. And during the rulemaking process, we at ELCON intend to ensure that FERC adheres to that mandated nexus.

Amendments to PURPA:

For years utilities have claimed that the mandatory purchase and sale provisions in PURPA were an unnecessary mandate. PURPA opponents have tried to repeal that language for well over a decade. Many people, including most of the utility industry, thought that the PURPA repeal issue was a slam dunk.

Well, a funny thing happened on the way to the basket. We, along with others, pointed out that PURPA imposed a purchase mandate because, without such a mandate, energy-efficient, environmentally favorable cogenerators had nowhere to sell their power. This new language states what ELCON members and other cogenerators have been saying for years – show us competitive wholesale and retail markets and the PURPA language on purchase and sale does, in fact, become an unnecessary mandate. But until those truly competitive markets materialize, the PURPA obligation will and should stay in place.

Participant Funding:

Participant funding was one of the last sections to be decided. It's a funny issue for several reasons. First participant funding was never defined – we really don't know exactly what we were debating. Second, the issue isn't about whether participant funding is good or bad, it's about whether FERC should be mandated to use only participant funding. And third, the strict participant language that was being pushed by a few utilities in the Southeast, would have imposed a national policy for funding transmission – and ironically this was being advocated by Republicans who usually reject any federally imposed national rules in favor of regional approaches.

The language actually adopted, which basically codifies existing practice and allows FERC maximum flexibility, was a victory and will, we believe, result in more transmission being built.

Backstop Siting Authority:

The backstop authority granted FERC to expedite the siting of new transmission is a real plus. A significant barrier to competition is an inadequate transmission network. My members are leery about granting any regulatory agency more power than they already have – especially in essence to take land from a private landowner. But if we are to build transmission so that our electricity infrastructure is up to the necessary standards, then the FERC backstop authority is not only warranted, it's essential.

Besides, we really believe that this provision will actually not be used by FERC very often, but will simply help motivate states to site proposed transmission improvements in a timely manner

Reliability:

ELCON members care a whole lot about reliability – and establishing a national electric reliability organization is a good thing. When the grid goes down, as it did two years ago, industrials lost billions of dollars in sales, and some ended up with permanent damage to their facilities as well. Along with many others, I worked with NERC to develop the language. While I don't believe it's perfect, it's much improved over the language circulated even six years ago and should help improve reliability in the integrated grid.

Renewable Portfolio Standard:

We are very pleased the renewable portfolio standard was not included. Industrial users are not opposed to renewable energy. Some of our members in fact produce energy from renewable sources. Others seek to purchase renewable energy either because it is good marketing or because they believe it is good policy.

But a mandate such as was proposed would be market distorting – and actually not needed. We believe that by 2020, given the amount of investment now underway in renewable energy, we will come pretty close to the 10 percent figure that was in the Senate bill. That's good for several reasons. First because it will provide further fuel diversification, and second, because that diversification will be achieved through market mechanisms and not a government mandate.

Conclusions:

From our perspective, the electricity provisions in the Domenici-Barton Act really shift the action to FERC. Over the next two years the FERC commissioners and staff will be very busy. Therefore, we at ELCON will be very busy. And, I expect that many of my colleagues here today will as well.

We believe that this bill provides the foundation to continue on the road to more competitive markets. But it also provides opportunities to take a lot of detours that could end up taking us in the totally wrong direction.

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ELCON, established in 1976, is the national association of large industrial users of electricity from virtually every manufacturing sector. 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.

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