

ELCON PRESS RELEASE

FOR RELEASE: August 31, 2004

CONTACT: John Hughes or Marc Yacker
202-682-1390

ELCON URGES FERC: IT'S TIME TO INVESTIGATE MARKET POWER

“Everybody knows that a basic premise of American jurisprudence is that no man is above the law,” said John Anderson, executive director of the Electricity Consumers Resource Council (ELCON). “But apparently some utilities think that some laws don’t apply to them.”

Anderson’s comments accompanied ELCON filing three motions to intervene at FERC in cases involving Southern Company, Entergy, and AEP. Each of the utilities had filed at FERC their intention to continue to seek market-based rates despite the utilities’ inability to comply with FERC’s April 14 Order on mitigation of market power.

“The largest vertically-integrated utilities want it both ways,” asserted Anderson. “They should not be able to benefit from competition in wholesale markets by having the ability to sell uncommitted capacity at market-based rates, and yet, at the same time, exercise market power raising the specter that the utility may stifle competition in its own backyard. It is consumers who end up paying higher prices when FERC allows a utility that is exercising market power the ability to charge market-based rates.”

According to ELCON’s motions, if the utilities do not like FERC’s test for market power the proper remedy for utilities “is not to ignore the [market power] screens, but rather to seek judicial redress.”

“Utilities can seek a stay to delay implementation of FERC’s Order,” explained Anderson, “but unless and until a stay is obtained, each of these utilities must comply with FERC’s Order.

“We agree with FERC’s statement that ‘market-based authority is not a right,’” he stated, quoting FERC’s April 14 Order. “The Commission may grant such authority under the Federal Power Act only to applicants who demonstrably lack market power. This is a basic consumer protection.”

In each of the three motions ELCON urged FERC to initiate a “Section 206 investigation” unless and until each utility offers a plan for market power mitigation. “FERC issued its Order pursuant to public law,” said Anderson. “A utility should not be allowed to disregard a FERC Order – that’s equivalent to disregarding public law. We are urging FERC to stand firm and to begin the investigations. If they allow utilities to subvert the law and continue to exercise market power, it’s a bad day for consumers. And it’s a terrible day for our legal system.”

###

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. Copies of ELCON’s three motions are available at www.elcon.org.