

ELCON *PRESS* RELEASE

FOR RELEASE: February 21, 2006

CONTACT: Marc Yacker/202-682-1390

ELCON FAULTS FERC'S APPROACH ON PURPA

ELCON today filed initial comments at the Federal Energy Regulatory Commission (FERC) objecting to FERC's proposed rule governing power sales by cogenerators to utilities (Docket No. RM06-10-000).

In response to provisions in the Energy Policy Act of 2005 allowing utilities to be relieved of their obligations to purchase power from Qualifying Facilities (QFs) such as cogenerators (adding Section 210 (m) to the Public Utility Regulatory Policies Act, or PURPA), FERC issued a Proposed Rule in late January. That proposal in essence stated that any utility operating in one of the FERC approved Organized Markets (MISO, PJM, NYISO and ISO-NE) or meeting other market-based criteria would no longer be obligated to purchase power from a QF.

ELCON's filing registered a strong objection, stating that "had Congress intended that the presence of a FERC-approved RTO alone would serve as basis for waiver of the QF purchase obligation, the statute would have so provided."

In addition, as ELCON's filing asserted that "basing a waiver on a generic finding that a QF is located in a FERC-approved RTO or ISO does not meet all of the elements of the statutory language."

ELCON's brief pointed out that before granting a utility a PURPA waiver, the new statute requires that the QF must have access to long-term markets. Yet, none of the criteria involved in FERC approving an RTO addresses such access. Therefore, ELCON states, "There is no rational basis to assume that such markets exist based on the mere fact of RTO approval."

ELCON concluded that "FERC has a statutory obligation imposed by Congress that, before waiving QF purchase obligations, it [must] make a facility-specific determination that non-discriminatory access to long-term markets truly exists." Several ELCON members have attested to the lack of such markets, and ELCON expects to submit such evidence in supplementary comments before the February 27 deadline.

ELCON's filing also notes that "Congress chose to amend PURPA, not to repeal it." As ELCON President John Anderson explained, "It is universally recognized that cogenerated power is energy efficient, environmentally favorable, and can help relieve transmission congestion. One of PURPA's objectives when enacted in 1978 was to 'encourage cogeneration,' and FERC's statutory obligation to fulfill that objective has not been repealed. Cogenerators throughout the country recognize that when they have access to a non-discriminatory wholesale market, they will sell their surplus power just like any other generator. But right now cogenerators face obstacle after obstacle, first in their effort to access the market and, second, to find purchasers willing to engage in long-term contracts. If this rule is finalized, the result will clearly be less cogeneration. Existing QFs won't modernize or expand, and new QFs won't be built because they won't have market access.

"When Congress amended PURPA last year," he continued, "I don't think they intended to hinder cogeneration. But if this rule is finalized, I am afraid that will be the ultimate effect."

#####

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. In addition, numerous ELCON members are cogenerators. More information about ELCON is available at ELCON's website, www.elcon.org.