STATEMENT OF MARC YACKER

REPRESENTING THE ELECTRICITY CONSUMERS RESOURCE COUNCIL (ELCON)

BEFORE THE HOUSE SUBCOMMITTEE ON ENERGY AND AIR QUALITY

JULY 27, 2001

SUMMARY

Introduction

- ELCON members seek competition over regulation.
- Consistent rules and standards are preferable over state rules and balkanized markets.
- California Crisis has erroneously been called failure of "competition" and "deregulation."

PURPA

- PURPA has diversified generation base in energy efficient, environmentally favorable manner.
- Avoided cost concept did not produce above-market contracts. Rather:
  - Long-term contracts were based on erroneous assumptions by utilities;
  - State Commissions wrongly implemented PURPA and avoided-cost concept.

Mandatory purchase requirements are not necessary with truly competitive wholesale market.

PURPA also provides guarantee of back-up power.

- Without back-up power guarantee, there would be virtually no investment in cogeneration.
- In non-competitive states, removal of back-up power puts cogenerators at mercy of monopoly utilities.

Back-up power requirements are not necessary with truly competitive retail market.

Interconnection

- Transmission owners have sometimes worked against interconnection by non-utility generators.
- Uniform interconnection standards are needed at transmission and distribution levels.

Net Metering

- Net metering has existed for years in some industrial facilities.
- Net metering can contribute to a broader electricity generation base.

PUHCA

- No bona fide consumer group supports repeal of PUHCA either on a stand-alone basis or until we have true wholesale competition.
- Market power abuse and anti-competitive behavior can cause markets to become dysfunctional.
- Strong federal regulatory authority is needed to replace PUHCA.

STATEMENT OF MARC YACKER, REPRESENTING THE ELCTRICITY CONSUMERS RESOURCE COUNCIL (ELCON), BEFORE THE HOUSE SUBCOMMITTEE ON ENERGY AND AIR QUALITY, JULY 27, 2001

Mr. Chairman, I am Marc Yacker, Director of Government and Public Affairs for the Electricity Consumers Resource Council, or ELCON. ELCON, established in 1976, is the national association representing large industrial users of electricity. ELCON's member companies come from virtually every segment of the manufacturing community.

ELCON's members operate in competitive, international markets. They require an adequate and reliable supply of electricity at competitive prices in a vibrant interstate marketplace. Large users of electricity know very well that the decisions made in this Subcommittee and by Congress will have a direct impact on their businesses' well being as well as their business decisions. ELCON greatly appreciates the opportunity to testify.

ELCON and its member companies favor competition over regulation. They have long advocated truly open and fully competitive electricity markets, including retail access guaranteeing that all consumers have the right to choose their supplier of electricity and electricity services. We also believe that, just as is true for other energy products, a large national or even international market with consistent rules and standards is optimal for the sale and purchase of electricity. Market rules for goods produced by any manufacturer do not change as we move from state to state. The same should be true for electricity.

Recently, industrial electricity users have experienced some good news and some less than good

news. The good news is that competition in electricity is coming. It is inevitable. Well over sixty percent of the population live in states that have already decided to create competitive markets to the extent that they can absent federal legislation. We at ELCON believe that these competitive markets should come as soon as possible. The less than good news is that many people view California as an experiment in competition and that it has failed. In fact it has failed -- but the California experiment was an experiment in reregulation, not competition. It was doomed to failure from the start.

Today's hearing is on PUHCA, PURPA, interconnection and net metering. Many industry stakeholders view these issues as relatively non-controversial. I disagree, at least in part.

For the past several Congresses, there has been legislation introduced by Congressman Stearns and others to repeal the mandatory purchase and sale requirements in Section 210 of the Public Utility Regulatory Policies Act (or PURPA) of 1978. Many ELCON members cogenerate and sell electricity to utilities as Qualifying Facilities (or QFs) pursuant to PURPA. All ELCON members, by definition, are large consumers of electricity and seek a varied generation base. ELCON members, therefore, do not seek legislation to repeal those PURPA Section 210 requirements at this time.

PURPA has succeeded in demonstrating that electricity can be generated by non-utility sources in an energy-efficient, reliable, and environmentally favorable manner. Just 23 years ago utilities vehemently disputed what is now fact.

Despite PURPA's bad press, as long as consumers are held captive to monopoly utilities, it is an

essential law. It has produced a broader, more efficient, more environmentally favorable base of electricity generation. Due to PURPA, electricity capacity was added in smaller increments, thus not burdening users with paying for generators that proved to be much larger than necessary. And generation was funded by entrepreneurs with private non-regulated capital.

I would like to emphasize that the much-maligned avoided cost concept is not to blame. If properly implemented by state utility commissions, the avoided cost concept cannot cost consumers anything. The problem with PURPA was that utilities in the 1980s, believing that fuel prices would increase, entered into long-term contracts, many for 30 years, locking them into fixed-price purchase agreements with cogenerators. Nothing in PURPA required such long-term contracts. It should be noted that all PURPA contracts were approved by the appropriate state utility commission. This is another failure of regulation, not of competition.

When fuel prices went down, utilities found they had guessed wrong, and they then had above-market contracts. Interestingly, had PURPA not been enacted, consumers would not have saved any money, because utilities would have entered into similar, long-term contracts with other utility generators. In fact, a study released a few years ago showed the utilities had more above market contracts with other utilities than with cogenerators pursuant to PURPA. I have no reason to believe that data is any different today.

That having been said, the "mandatory purchase" provisions of PURPA will be an anachronism when we finally achieve a truly competitive wholesale market. With regard to existing PURPA contracts, be they at market or above today's market, no one is suggesting that such contracts be rescinded. Existing PURPA contracts are and should be a non-issue. Similarly, those above-

market contracts utilities have with other utilities should be protected as well. That simply reflects the sanctity of contracts.

The impact of repealing the mandatory purchase provisions of PURPA on a prospective basis, as proposed in legislation, is virtually non-existent. The number of new, uneconomic PURPA-based contracts being signed today is close to nil. The mandatory purchase provisions of PURPA clearly will not be needed in a truly competitive wholesale electricity market. But we do not yet have that.

In discussing competitive wholesale markets, an objective Congress set forth in the Energy Policy Act (or EPAct) of 1992, it is important to note what is theory and what is fact. FERC, in Order 888, again in Order 2000, and once again in its RTO order earlier in July, clearly recognized that an open, non-discriminatory transmission system is the lynchpin of a competitive wholesale market. Unfortunately we are not there yet. Transmission owners still attempt to utilize the grid to the benefit of their own generation and to the detriment of others.

In a monopoly market, or in a market in transition from monopoly to competition as is true for the wholesale electricity market today, mandatory purchase requirements are necessary if there is to be a market for cogenerated power. I know that this hearing is not on transmission issues, but I need to state, until the transmission system is truly open, we will not have a competitive wholesale market.

However it is important to note that PURPA and Section 210 are much more than mandatory purchase. I cannot overemphasize the importance of a federal guarantee for back-up power --

during periods of scheduled maintenance or repair -- at just and reasonable rates in states that remain non-competitive. Without such a guarantee, cogenerators would be captive to unregulated monopolies that could charge what they wish, and the cogenerators would have no alternative. In states without customer choice, retaining the federal guarantee for back-up power now in PURPA is essential if there is to be any investment in cogeneration capacity. Once there is a truly competitive retail market, cogenerators can buy back-up power in the open market and the back-up power guarantee will not longer be essential.

Before I leave PURPA, I would like to make one more point. When Congress enacted PURPA in 1978, cogenerators and other Qualifying Facilities took Congress at its word. Significant investments were made based on existing federal statute. Repealing parts of PURPA puts those who made such investments at a disadvantage.

Related to PURPA is the issue of interconnection. Under PURPA, Qualifying Facilities were guaranteed the right to interconnect at the transmission level. But through the years, QFs and Exempt Wholesale Generators established pursuant to EPAct have found that transmission owners often engaged in lengthy and expensive delaying tactics. If Congress truly wants to diversify the generation base to bring on new efficient, technologically advanced equipment and processes, uniform interconnection standards at the transmission and distribution levels, with a guaranteed timetable, are not just desirable, they are essential.

With regard to net metering, the practice of net metering is not new. Many industrials with cogeneration capacity have had net metering at their facilities for years. Objection comes from those who want to keep the generation base narrow and who utilize their monopoly power in any

way possible to perpetuate their profitable monopoly status. I do not fault them. Given their responsibility to shareholders to maximize profits, it is an understandable course of action. But such exclusionary tactics are not in the best interest of consumers. And they are not in the best interest of our nation if we do indeed want a more modern electricity system.

Regarding the repeal of PUHCA, we emphasize that PUHCA is the only federal consumer protection statute for electric utility customers. That is why no bona fide consumer group supports repeal of PUHCA either on a stand-alone basis or until we have truly competitive markets.

We believe that, if PUHCA is repealed, we need clear authority vested in the Federal Energy Regulatory Commission to prohibit potential anti-competitive practices involving regulated utilities and unregulated affiliates. Rules are needed to address the operational unbundling of generation, transmission, system control, marketing and local distribution functions. State and Federal regulators must have complete access to all books and records of all regulated entities and entities owned or controlled by regulated entities. In addition, PUHCA repeal should not be effective until all states have retail access or until competition on a nation-wide basis is otherwise achieved. The need for federal regulatory authority -- in FERC, the Department of Justice, or the Federal Trade Commission -- to address market power and anti-competitive activities is recognized by virtually every stakeholder involved in electricity policy issues. Events in California have clearly demonstrated that short-term market power abuse can cause markets to quickly become dysfunctional.

We need strong, but not excessive, federal regulatory authority to guarantee that electricity is

available throughout the nation on a non-discriminatory basis. It is up to this Committee and other oversight bodies to ensure that such regulation is not over-reaching, that it is encouraging and not hindering true competition.

In conclusion, ELCON and its member companies favor a strong federal bill so that all electricity consumers can enjoy the benefits of competition. Interconnection rights and net metering must be part of that bill. Modification to PURPA and PUHCA are also essential, but they should be considered at the end of the process, when we have competitive and functioning wholesale and retail markets, so we have a better idea of how to protect consumers from potentially anti-competitive practices.

ELCON appreciates the opportunity to testify and we look forward to continued constructive dialog with this Subcommittee.

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