Legal Eagle

The Conflicted Power Lobby

By Stephen Barlas

ON JULY 20, the joint staffs of the House and Senate energy committees published a draft of a compromise energy bill, recently signed into law by President Bush. Electricity transmission language sought by Southern, Duke and public power utilities was noticeably missing. “The COMPETE coalition — they wanted that language out,” explains Marilyn Showalter, a Southern ally and executive director of the Public Power Council in Portland, Ore. The missing section tied the hands of the Federal Energy Regulatory Commission (FERC) in terms of ordering companies to join regional transmission groups.

COMPETE feels it too had to compromise. “During debate over the energy bill in the last Congress, we were probably not as aggressive as we should have been,” explains David Brown, vice president of congressional affairs for Exelon, a leader of COMPETE, a national advocacy coalition of electricity stakeholders established in February to support policies that, supporters say, promote reliable, low-cost electric power through competitive electricity markets. COMPETE includes Exelon, Sempra, Constellation, Mirant and Reliant and other members. COMPETE hired three separate teams of high-profile lobbyists, including former high-ranking Republican Sen. Don Nickles and former FERC Commissioner William Massey.

While dropping the language on RTOs was a victory for COMPETE, the staff draft wasn’t a total loss for Southern and Duke. That’s because it retained an amendment dealing with native load protection, which would make it harder for FERC to allege that utilities with owned and operated transmission systems—like Southern and Duke—are discriminating against out-of-the-area power suppliers such as Calpine.

“We were not pleased with the native load language,” acknowledges Joel Malina, the executive director of COMPETE. “We did not bat a thousand.” That early action on the Senate-House energy bill conference reflected in a nutshell some of the verities of electric utility lobbying. Rival companies oppose one another on many issues, with positions dictated by operational realities, such as whether a company is vertically integrated or has mostly coal-fired plants. Regional alliances are frequent, especially those involving Southern, Entergy and Duke. Moreover, a rival on one issue can be an ally on another. So where Entergy is a member of the Clean Energy Group with Calpine, Entergy is fighting tooth and nail with Calpine over a provision on participant funding in the energy bill.

The multiple battle lines and shifting mix of combatants makes it difficult to compute individual batting averages. Nevertheless, it’s clear that one of the industry’s biggest swingers is Southern. “Southern isn’t afraid to rattle cages,” concedes Frank Maisano, executive director of the Electric Reliability Coordinating Council (EERC), a lobbying group composed of Southern, Duke and TXU primarily funded by Southern. According to Southern spokesman Todd Terrell, neither Buzz Miller, head of Southern’s Washington office, nor Dwight Evans, Miller’s boss in Atlanta, were available to discuss Southern’s lobbying activities.

Southern also has the bing to go with swing. In 2004, it spent $11.5 million on lobbying in Washington, according to documents filed in the Senate and tabulated by the Center for Public Integrity, a non-profit, nonpartisan, tax-exempt organization based in Washington that conducts investigative research and reports on public policy issues. That was nearly a 100 percent increase over its $5.6 million in 2003. By comparison, Pacific Gas & Electric spent $2.6 million while Duke, Entergy, First Energy and Exelon weighed in between $1 million to $2 million for 2004. In fact, Southern actually outspent the Edison Electric Institute (EEI). EEI spent $11 million in 2004, down from a high of $18 million in 2000.

Some of Southern’s allies and competitors try to make up some of the lobby funding gap with “big names.” Betsy Moler, executive vice president for government affairs and public policy for Exelon, is a former deputy secretary of energy and FERC commissioner. Former FERC Commissioner Curt Hebert, Jr., is executive vice president for external affairs at Entergy in New Orleans.

If he or she is effective, a company CEO sometimes trumps a “name” lobbyist. One Senate staffer says Exelon is aided by its president and CEO John Rowe. “He is a smart guy, and explains himself well,” the staffer says.

All Washington offices are interested in influencing Congress, either for the sake of legislation or for
sends a message to FERC or the EPA. But Shawn Cooper, the director of communications for Pacific Gas & Electric, says his company’s office, which has no “name” lobbyists, is more concerned with quieting anxieties in the California congressional delegation caused by consumer complaints in the Golden State. “We can always hire good lobbyists to help us on the issues,” explains Cooper, who notes the company just rejoined EEI, which PG&E left in 1998 for financial reasons. EEI offers PG&E resources it would not otherwise have access to.

Tom Kuhn, EEI president and a 20-year veteran of the organization, is in a paradoxical position. He is a former Yale classmate of President Bush and thus is in a position to influence administration energy policy. At the same time, EEI is representing an industry that is increasingly diverse in its views. Power companies have a variety of business strategies and legislative and policy needs.

EEI, once a formidable power on Capitol Hill and FERC, is now seen as a lumbering, ambivalent giant, unable to take positions on key issues. For example, when FERC Chairman Joe Kelliher spoke to the EEI annual convention in Las Vegas this summer, he asked the group to take a position on acceptable changes to Order 888. But the EEI has been unable to take a position, frustrating Kelliher, according to a current FERC staffer.

EEI’s and Southern lost their battle to get the Senate Environment and Public Works Committee to pass Clear Skies legislation, which would free the electric utility industry from a number of EPA regulatory emission programs. The bill sponsored by Committee Chairman Sen. James Inhofe (R-OK) stumbled when the Senate committee voted 9-9 in early March, meaning the legislation could not move forward.

One reason the bill failed was that members of the Clean Energy Group, which includes Exelon, Entergy, PG&E, PSEG, Florida Power & Light, Calpine and Sempra, wanted carbon dioxide reductions and a couple of other provisions included in the Inhofe bill.

The energy bill was another example of long-stalled industry legislation and intra-industry dog fights. Southern and Entergy have been pushing hard for a strong participant funding provision which would force companies like Calpine to pay for additional transmission capacity built by companies like Southern and Entergy. “The big Southern utilities are aggressive,” says a Senate staffer.

The Participant Funding Coalition, composed of Calpine, PacifiCorp, energy users and some public power companies, opposed Entergy. The final energy bill essentially split the difference between the two positions, allowing FERC to resort to participant funding, but not mandating it. There was considerable comment in town about how Rep. Joe Barton (R-TX), chairman of the House Energy and Commerce Committee, was able to hold off congressional backers of Entergy. “Southern and Entergy are trying to put a smiley face on it,” says one lobbyist outside both camps.

Aggressive, yes; but Southern, despite its Steinbrenner-like lobbying roster, seems to strike out at least as often as it hits home runs. Meanwhile, Exelon, Calpine, PG&E and many others seem to spend most of their time trying to limit Southern, Entergy and Duke to singles.

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