

# US: Regional, industry conflicts stall energy bill

By Joseph Kay  
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A major piece of legislation on energy-related issues stalled in the US Senate Monday November 24, after a narrowly successful filibuster forced its backers to withdraw the bill until next year. The bill—consisting of a grab bag of multibillion-dollar handouts to different sectors of the energy industry—has generated deep conflicts that reflect the fractured character of the energy industry itself. These conflicts derailed the bill—at least temporarily—in spite of persistent pressure from the Bush administration and the support of both the Democratic and Republican Party leaderships.

The bill was approved by a House vote of 246-180 on November 18. Senate supporters of the measure failed, however, to get the 60 votes needed to override a filibuster and bring the legislation to a vote. Sections of both parties revolted against their leaderships in joining the filibuster.

The Republican congressional leadership—which crafted the energy bill in its final form—has vowed to reintroduce it next year. There is a broad bipartisan consensus in support of a number of measures long demanded by the major energy corporations. These include the repeal of the Public Utilities Holding Company Act (PUHCA)—which will pave the way for further consolidation of the industry—and extensive subsidies for the promotion of coal and gas production.

Both the content of the energy bill and the manner in which it was passed underscore the deeply undemocratic nature of the legislative process in the United States. The entire process had the character of a gang of thieves splitting up a pot of loot, as different congressmen representing different sections of the industry were bought off in order to push the bill through.

The overall cost of the bill is estimated at \$100 billion over 10 years. Major sections are devoted to selective tax breaks—valued at some \$25 billion—to oil, natural gas, coal and nuclear power producers. The figure is over three times what the Bush administration had originally called for. The breakdown in the tax incentives is: \$13 billion for the oil and gas industry, \$5.4 billion for coal, \$4.2 billion for ethanol production, \$1.4 billion for nuclear power. Ethanol is an alcohol-based alternative fuel made from corn that can be blended with gasoline.

The bill also includes loan guarantees for the construction of coal plants in Alaska, Louisiana, Minnesota and West Virginia. The loans are structured by job, with no limit on government liability.

The main stumbling block to the bill's passage was a provision that would have exempted producers of the gasoline additive methyl tertiary butyl ether (MTBE) from pollution liability. The exemption was to be made retroactive to September 5 of this year, nullifying lawsuits filed by state authorities in California, New York and Massachusetts seeking to force the producers to pay for cleaning up MTBE-contaminated water supplies.

In general, the bill was geared toward the interests of Southern and Midwestern states. Some legislators were also upset at the massive tax breaks for coal-generated power plants—located mainly in the Midwest—which are a primary source of pollution plaguing the Northeast.

MTBE was originally introduced as a gasoline additive to limit smog generation; however, it was soon discovered that the chemical caused more damage than it eliminated. The estimated cost of cleaning up MTBE pollution is \$29 billion, the burden of which would be shifted to taxpayers and local governments. Not only would the bill severely limit liability lawsuits, it would also provide MTBE producers with a \$2 billion windfall, supposedly to help them phase out production of the chemical by 2012.

In an agreement that highlights the corporate conflicts behind the bill, the MTBE provision eventually became part of a quid pro quo between House Majority leader Tom Delay, on the one hand, and Senator Charles Grassley and Senate Minority Leader Tom Daschle on the other. The largest manufacturers of MTBE are headquartered in Texas, Delay's home state.

Grassley is a Republican from Iowa and Daschle is a Democrat from South Dakota. Both are farm states with high volumes of corn production, and the two agreed to support the bill with the MTBE provision in exchange for a measure promoting corn-based ethanol as a substitute additive. The bill calls for doubling the use of ethanol as a gasoline additive by 2012. The giant agricultural firm Archers Daniel Midland, the largest producer of ethanol, has close ties to both Daschle and Grassley.

As it became clear that the MTBE liability exemption had generated enough opposition from legislators from some states to sustain the filibuster, the White House stepped in to attempt to broker a compromise. Delay, however, refused to consider eliminating the provision, and as a result the bill did not pass.

The White House was eager to force through the bill, which contains provisions that it has sought to implement for some time, going back to the secret energy task force meetings convened by Vice President Dick Cheney in 2001.

Perhaps the most significant component of the bill—and one that has received scant coverage in the media—is the repeal of the Public Utility Holding Company Act (PUHCA). PUHCA is a law enacted in 1935 that was designed to shield electricity production from the unrestrained manipulation of giant corporations. The act prohibits utility companies or companies with partial ownership of utilities from engaging in non-utility businesses. Utilities are involved in electricity generation and transmission.

PUHCA was a response to the corruption and speculation that had overtaken the energy industry during the first decades of the 20th century. In addition to limiting the conglomeration of utilities with other energy companies, the act provided for federal regulation of utilities that operated in more than one state. It also limited the amount of debt that utility companies could hold. Its repeal will open the way for a massive consolidation of electricity production and transmission.

To a certain extent, the repeal of PUHCA will simply codify tendencies that are already well under way. Over the past two decades, constraints on the energy industry have been systematically eroded, particularly with the

emergence of a wholesale energy market, once dominated by Enron. The new energy bill will take these steps even further. Public Citizen, a consumer advocacy group, estimates that the repeal will trigger a series of mergers valued at up to \$1 trillion, resulting in the domination of a handful of energy giants.

The repeal of PUHCA has been pushed by the larger utilities that have the resources to consolidate their market position. One of the main backers is Southern Co., one of the country's largest utilities and electrical producers. Southern Co.—which has operations in Alabama, Mississippi, Georgia and other Southern states—has very close ties to President Bush and legislators from the South. Several of Bush's largest donors are executives or lobbyists for Southern Co.

Repeal of PUHCA is also supported by outside energy corporations and investors who have been barred from investing in utilities for decades.

Other notable provisions in the bill include exemption of the practice of “hydraulic fracturing” from controls put in place by the Safe Drinking Water Act of 1974. The practice is a particular kind of drilling technique used by companies—particularly by Halliburton, the company Vice President Cheney headed before taking office—to drill for oil and gas. Another part of the bill would allow for oil and gas exploration without a now-required permit under the Clean Water Act. In moving to gut environmental legislation, Congress is bypassing the Environmental Protection Agency (EPA), which has been considering these issues separately.

While calling for a small investment in alternative sources of energy such as wind and solar power, the final bill eliminated a provision that would have required utilities to use a set amount of renewable energy by 2015.

Divisions between different utility companies stalled plans pushed by the administration to extend regional transmission organizations (RTOs) that would be responsible for managing transmission lines and overseeing and developing markets in wholesale energy. RTOs have already been set up in the Northeast and Midwest. Some of the giant utilities in the south—including Southern Co.—have opposed these measures because they would require the relinquishing of utility control over electrical transmission lines.

Billed by the administration as an answer to the Northeast blackout of last summer, the provisions covering RTOs are in fact designed to further open up electrical production to market manipulation. It was such manipulation that was responsible for the energy crisis in California in 2000-2001. Wholesale energy retailers gauged the market, withholding electricity in order to drive up prices.

In the end, Southern states were able to ensure that the final bill included language delaying mandatory membership in RTOs for several years. Richard Shelby, a Republican Senator from Alabama, was the principal representative for these interests.

The manner in which the bill was pushed through the House is indicative of the way corporate interests override even the semblance of democratic procedure in the US legislative process.

A previous version of the bill was deadlocked in the Senate due to opposition from the Democrats. In early August, Senate Republicans decided to shelve the legislation and instead adopted an earlier bill that had been passed under Democratic leadership last year. The explicit aim of the maneuver was to get the bill into a Republican-controlled House-Senate conference committee, nominally charged with reconciling the House and Senate versions, with the aim of rewriting the legislation at will.

Senator Pete Domenici, a Republican from New Mexico, said at the time, “We’ll be writing a completely different bill.” The move allowed Republicans to avoid debate over controversial provisions—such as the MTBE exemption and the gutting of environmental standards.

Once the bill was sent to the conference committee, the Republican

leadership excluded Democratic legislators from the process. When the committee presented the House with a document numbering over 1,000 pages, Republican leaders demanded a vote within 24 hours. Once the bill was passed on to the Senate, supporters attempted to push it through without any debate.

Senator James Jeffords, an independent from Vermont, noted: “The whole closed-door process was like a cover-up operation. They tried to sneak things in there that shouldn’t be in the bill. Those members of the House-Senate negotiating committee who were not invited to the real meetings where the bill was written were given a copy of the 1,100-page measure less than an hour before being asked to vote on it.”

As legislators sought to cobble together enough votes in the Senate to get the bill through, various measures were included to win the support of different Senators. Cheney brokered the MTBE-ethanol agreement between Southern and Western legislators after opposition from Daschle threatened to kill the bill. Daschle’s support was almost enough to break the Senate filibuster.

In some cases, provisions were added with the explicit aim of buying off this or that congressman. For example, an \$800 million loan guarantee for the construction of a coal plant in Minnesota was included to secure the vote of one of that state’s senators, Norm Coleman. In order to win over a senator from Idaho, a \$1 billion loan to fund a modern nuclear reactor in that state was included.

The subsidization of a gas pipeline from Alaska was included in part to secure the votes of the two senators from that state. This was to make up for the removal of a plan to open up the Alaska National Wildlife Refuge (ANWR) for oil exploration. The ANWR provision could not get by opposition from Senate Democrats.

The whole sordid process was carried out under the general assumption that the sole determining factor in deciding policy should be the interests of energy and other giant corporations. Parts of the bill were written directly by energy companies themselves. According to a September 28 article in the *Washington Post*, a key section of the final bill was written by a policy executive for Southern Co. on behalf of his company and Louisiana-based Entergy. The *Post* quotes the executive as saying, “People on [Capitol] Hill asked our lobbyist what changes we wanted to make to the bill. We’re not the only ones.”

Beginning with Cheney’s energy task force meetings in 2001—whose deliberations the Bush White House has continued to cloak in secrecy—the interests of energy giants have received top priority, from the war in Iraq to the complete evisceration of environmental regulations on energy production. In this context, the energy bill is merely a continuation of the policy the administration has pursued since it came into office.

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