

By Chris Baltimore

WASHINGTON, March 27 (Reuters) - A U.S. lawmaker on Monday asked the Federal Energy Regulatory Commission (FERC) to explain whether utility Southern Co. <SO.N> got a sweetheart deal in a pending settlement over alleged self-dealing among its subsidiaries.

The commission in May ordered its staff to look into whether Southern Power -- the utility's merchant generation unit -- gets an unfair advantage by sharing information and a pool of power supplies with the five retail electric utilities owned by Southern Co. Those utilities operate the grid in most of Georgia and Alabama and parts of Florida and Mississippi.

A FERC administrative judge suspended an agency trial in November on word that Southern was in talks with FERC trial staff and independent generators to settle the case.

Rep. Henry Waxman of California, ranking Democrat on the House Government Reform Committee, said a draft version of the agreement pending at FERC is a "sweetheart deal" for the utility, and questioned whether FERC chairman Joseph Kelliher's chief of staff improperly intervened on Southern's behalf.

According to a FERC whistle-blower, the settlement is a "complete capitulation" and skates over the commission trial staff's key concerns over Southern Power's grid powers.

"The agency's credibility is going to be undermined by the perception that if you're big enough and you know the right people, you can get a sweetheart deal," said Rich Heidorn, a FERC trial staff member who helped pursue the agency's case until Kelliher's chief of staff Daniel Larcamp ordered staff to cease its probe.

E-mails provided by the House panel hint that Larcamp was worried about the political backlash of going head-to-head with Southern, a politically connected utility that successfully lobbied to stop a former agency initiative to put the U.S. power grid under the control of independent operators.

FERC spokesman Bryan Lee said there was nothing improper about Larcamp's attempts to strike a settlement between Southern and other parties. Kelliher had no comment, Lee said.

Larcamp's efforts were above-board because the agency on Sept. 21 declared him "non-decisional," which separated him from trial staff efforts to pursue its case and freed him to help arbitrate a deal, Lee said.

The Government Accountability Project, which advocates for whistleblowers like Heidorn, said the ruling on Larcamp's status came during the same week that FERC trial staff visited Southern offices in Atlanta and Birmingham.

A month later, Larcamp told FERC investigators to cease ongoing depositions of utility officials, Heidorn said. Larcamp refused to share terms of the proposed settlement with trial staff, which did not see documents until January, he said.

Southern Co. spokesman Mike Tyndall said Larcamp's involvement was proper. "As a result, we and the parties to the case engaged in extensive settlement negotiations," Tyndall said.

Larcamp pressed for a settlement even though many FERC trial staff opposed it, Heidorn told Reuters in an interview.

"This was an outright hijacking of the case by Mr. Larcamp, a total disrespect of the trial staff," said Heidorn, who has been a FERC employee for over three years and has filed for protection under federal whistleblower protection laws.

Southern has not officially filed its settlement with the agency. However, Heidorn said the official deal could be filed at FERC as early as this week.

Southern has lots at stake in the case. A ruling against Southern Power could attach extra strings to its ability to ink long-term contracts, which are a huge growth segment.

So-called competitive generation sales accounted for over \$1.6 billion in 2005, which is more than 12 percent of Southern Co.'s revenues, according to the utility's website.

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# FERC's Probe Of Southern Co. Draws Scrutiny

By REBECCA SMITH  
*March 28, 2006; Page D7*

An investigator at the Federal Energy Regulatory Commission alleged the agency's chief of staff derailed an investigation into possibly unfair market practices by [Southern Co.](#) and tried to steer the commission toward a politically motivated settlement.

Rich Heidorn Jr., an analyst in the agency's Office of Market Oversight and Investigations unit, last month brought the issue to the attention of Rep. Henry Waxman, ranking minority member on the House Committee on Government Reform. Yesterday, Mr. Waxman made the matter public when he asked FERC Chairman Joseph Kelliher to answer questions on the matter.

In a letter to Mr. Kelliher, Mr. Waxman said a draft settlement agreement "appears to be a sweetheart deal for Southern Company" that doesn't address the "key concerns" involving anticompetitive practices that sparked the probe. In the letter, Mr. Waxman alleged the case involves "favoritism" to Southern, which he described as a "major political donor" that primarily favors Republicans.

The case grew out of concern that Southern was allowing the five utilities it owns in Georgia, Mississippi, Alabama and Florida to make special concessions to the company's unregulated affiliate, Southern Power. The alleged preferential treatment, critics say, chills the competitive wholesale market which, in turn, hurts consumers.

In May 2005, the FERC opened an investigation into "alleged affiliate abuse," including Southern's practice of giving Southern Power access to utility information that was withheld from other market participants, as well as emergency access to electricity from utility-owned generating plants, something rivals didn't have.

In an interview, Mr. Heidorn -- who is seeking federal protection as a whistleblower -- said the investigation was proceeding in a normal fashion when staff learned the chief of staff, Daniel Larcamp, was trying to cut a side deal. "He swooped in," said Mr. Heidorn, and the result was "complete capitulation to Southern."

FERC spokesman Bryan Lee said the chairman would "respond promptly" to Mr. Waxman, a California Democrat. He added that it is the agency's policy to press for settlements. Mr. Larcamp said he couldn't comment.

A Southern Co. spokesman said he expects copies of the proposed settlement to be filed within the next few days.

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## **Southern deal questioned**

### **Whistle-blower alleges company got 'unusually favorable' settlement with federal energy regulators.**

By MARGARET NEWKIRK

The Atlanta Journal-Constitution

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Citing evidence from a government whistle-blower, U.S. Rep. Henry Waxman (D-Calif.) questioned Monday whether the Federal Energy Regulatory Commission made a "sweetheart deal" with Atlanta-based Southern Co. over alleged anticompetitive practices.

Waxman said in a letter to FERC Chairman Joseph Kelliher that statements by agency employee Richard Heidorn and internal commission documents indicated that Kelliher's chief of staff undermined an ongoing case and offered the company "an unusually favorable settlement" deal.

The letter quotes internal e-mails that assert political motivations.

One of them summarizes a Dec. 2 meeting at which staff chief Daniel Larcamp reportedly told outraged FERC staff members that the case would "be a tough one politically and that he strongly prefers settlement." He was quoted as saying that "Southern would likely apply political pressure" and that Southern Co. is major political donor to Republicans, according to Waxman's letter.

Bryan Lee, an agency spokesman, said Kelliher had no comment at this time but "will answer the congressman's letter promptly."

The case in question is an extension of a battle that began in 2003 over allegations that Southern Co. was favoring an affiliate, Southern Power, when awarding contracts for purchased power. California-based Calpine Corp., now in Chapter 11 bankruptcy protection, accused Southern of steering the lion's share of some recent wholesale power purchases to Southern Power.

Southern Co. has repeatedly denied the claims. Yet as the case was moving toward a first hearing in the spring of 2004, Southern canceled the disputed contracts. As a result, FERC said it had no option but to drop an investigation into whether those particular deals were sound.

But in May 2005 the commission and its then-chairman, Pat Wood, opened a second, broader case against Southern aimed at the structure of Southern Power's relationship with its parents and affiliates.

Two months after the second case began, Kelliher replaced Wood as the presidential appointee at the head of FERC; Wood's term had expired.

The Southern Co. investigation kept going. In a structure much like that used by the Georgia Public Service Commission, FERC litigation staff began gathering evidence and data.

Citing Heidorn, a trial staff employee, Waxman says the staff had collected boxes of records and, beginning in November, was in the process of deposing Southern Co. witnesses when Kelliher's chief of staff intervened and shut the case and the depositions down.

According to the Dec. 2 e-mail, Larcamp told staff members that "support for this proceeding at the chairman level has vanished with Joe taking over from Pat" and that a settlement was needed.

Part of Waxman's concern involves how that was done: "It appears that the Southern Co. case has been handled differently," wrote Waxman, the top Democrat on the House Government Reform Committee.

Much like the Georgia PSC, the litigation staff develops a case, negotiates for settlement agreements and, if settlements are not reached, takes the case to trial. Commissioners field recommendations from advisory staff members who are not a part of the litigation or settlement negotiations, then vote.

Unlike the PSC, though, FERC has rules prohibiting decision-making commissioners or their advisory staff from communicating with the parties in a case or negotiating settlement deals on their own.

The Waxman letter says Larcamp got around that by switching roles during the Southern investigation. He made himself part of the trial staff. He then negotiated a deal with Southern, without consulting with the other members of that staff.

Commission documents "show that Larcamp was designated 'non-decisional staff' in September 2005 so that he could have direct communications with Southern Co.," Waxman wrote. "They also show that Mr. Larcamp did in fact, enter into 'extensive settlement discussions' with the Southern Co."

Waxman, again citing Heidorn, said the "career trial staff was upset that the case had been halted in such an unusual way," and that the staff charged with negotiating settlements had been kept out of the loop and did

not even see a draft copy of the settlement until this January, when Southern Co. lawyers sent it in response to a staff data request.

"The draft settlement appears to be a sweetheart deal for the Southern Co.," Waxman wrote. "It does not address either of the key concerns that led the commission to launch its investigation. Mr. Heidorn characterizes the settlement as 'complete capitulation' because the commission got 'nothing in return.' "He told my staff that the settlement reflects 'very selective enforcement' and that 'consumers are the ultimate losers.' "

FERC's Lee described Larcamp's move as "nothing at all unusual" and said that it was provided for under FERC regulations. "The bottom line is the commission supports and encourages settlements, period." He said that recent big settlements in connection with energy trading cases in California netted \$6 billion and that the commission can accept, reject or modify them.

Mike Tyndall, a spokesman for Southern Co., had similar comments. "FERC routinely encourages parties to reach a settlement instead of going through protracted litigation. ... He [Larcamp] encouraged us to try to settle. As a result, we and the parties to the case engaged in extensive settlement negotiations."

But the Waxman letter says that FERC is responsible for enforcing rules about competition consistently. "If the information I have received is true, it undercuts the basic premise that the commission will treat all market participants evenhandedly," Waxman wrote.

The letter asks for a briefing on the status of Southern's case, and copies of all communications with Southern Co. or its affiliates.

Tyndall said that a joint filing is expected to be made "soon" informing the judge of the result of the discussions. He said there was no draft settlement at this time.

*Patti Bond contributed to this article.*