

Special Report

Energy adviser who solicited Enron to help write national energy named chief of FERC

By Jason Leopold

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July 2, 2005—The audacity of the Bush administration never ceases to amaze.

The latest example of chutzpah from Bush & Co. is the announcement that Joseph Kelliher, a former policy adviser with the Department of Energy who currently serves as a commissioner on the Federal Energy Regulatory Commission, the agency that controls the country's natural gas industry, hydroelectric projects, electric utilities, and oil pipelines and has played a critical role in the deregulation of those industries, was named by the White House Thursday to chair FERC.

President Bush had previously picked Rebecca Klein, the former Republican head of the Texas Public Utilities Commission and a close friend of the president, to chair FERC but red flags were raised recently during a routine FBI background check on Klein, which forced the president to choose a new chairman at the last minute. The White House would not comment on the FBI's probe of Klein. Klein did not return numerous calls for comment.

Still, news of Kelliher's appointment to chair FERC came late Wednesday as a welcome surprise to many industry lobbyists and energy executives who view him as a staunch supporter of the free-market principles of deregulation and an advocate of eliminating regulatory restrictions that interferes with the free-market, despite the fact those rules are in place to protect consumers from energy price gouging and market manipulation that took place prior to the Enron scandal four years ago and, to some extent, is still somewhat routine in various parts of the country.

However, what's most troubling about Kelliher's appointment to head FERC, a role in which his main priority will now be to protect consumers from the manipulative tactics of the very industry he enjoys a cozy relationship with, is the relentless lobbying of bigwigs in the energy industry in early 2001, as a member of Vice President Dick Cheney's energy task force, to help write Bush's National Energy Policy in such a way that would be financially beneficial to energy corporations—at the expense of consumers.

The extent to which Kelliher's went to solicit key players in the energy industry to help write the National Energy Policy became apparent in 2003 when Judicial Watch, a bipartisan watchdog group that sued Cheney to gain access to Cheney's list of industry insiders who participated in secret meetings with Cheney's energy task force, won a legal battle that forced the White House to release several hundred pages of task force related documents.

One such document, a March 10, 2001, [email](#) to energy lobbyist [Dana Contratto](#), was damning in that Kelliher asked Contratto if he was "King" or "Il Duce" "what would you include in a national energy policy, especially with respect to natural gas issues?"

Contratto [responded](#) with a three-page list of ideas, many of which were included in the final version of the energy policy.

"Kelliher's inappropriate relationship and communications with corporate lobbyists not only tainted the administration's National Energy Policy, but raise questions about the ability of Mr. Kelliher to be an impartial voice at FERC," Public Citizen Director Joan Claybrook said in a Feb. 11, 2003, [letter](#) sent to the Senate Committee on Energy and Natural Resources, in response to Bush's announcement that Kelliher would fill one of the vacant seats on the FERC.

"FERC is weathering a storm of criticism for its deficient handling of the West Coast energy crisis, the Commission's failure to maintain any effective enforcement of dozens of corrupt energy corporations, the deteriorating relations between FERC and nearly half of the state utility regulators who continue to be mistrustful of the Commission's jurisdictional intentions, and the Commission's poor track record protecting consumers," Claybrook said.

On another occasion, Kelliher sought out Stephen Craig Sayle, an Enron Corp. lobbyist, to make similar recommendations. Sayle, former counsel for the House Commerce Committee, sent Kelliher Enron's "dream list," including a recommendation that the administration commit to market-based emissions trading, which was also used in the administration's National Energy Policy.

Sayle wrote Kelliher that "a multi-pollutant regulatory strategy should be estimated for the power generation sector including: Gradually phased in [mercury, nitrogen oxides and sulfur dioxide emissions] reductions; Reform/replacement of NSR; Use of market-based/emission trading programs; Inclusion of both existing and new plants and equal treatment for both. The last bullet is the critical one to ensure that: a) we encourage the new generation that is required b) we ensure that the new technologies developed through DOE programs can come into the market.

"Obviously, this is a dream list," Sayle said in the March 23, 2001 [email](#) he sent to Kelliher. "Not all will be done. But perhaps some of these ideas could be floated and adopted."

Sayle also provided Kelliher with a PowerPoint presentation on behalf of his other energy clients in the so-called [Clean Power Group](#), a consortium made up of a handful of the country's biggest energy companies, including NiSource Inc., Calpine Corp., Trigen Energy Corp., and El Paso Corp, whose mission, according to the group's website, is to "streamline requirements under the Clean Air Act for electric generating facilities while at the same time making major reductions in air emissions."

The PowerPoint presentation, A Comprehensive Multi-Pollutant Emission Control Strategy for Power Generation, summarized the Clean Power Group's support of a "cap and trade" method in addressing emissions of mercury, nitrogen oxides and sulfur dioxide from power plants, but included a proposal for a voluntary cap on carbon dioxide. The Clean Power Group stood to benefit from the initiative it urged Kelliher to get the White House to adopt in that the companies could release more emissions under its proposed plan than under the more restrictive rules the Clinton administration had put in place.

After receiving Sayle's email and supporting material, Kelliher recommended that Bush "direct the Administrator of the Environmental Protection Agency (EPA) to propose multi-pollutant legislation that would establish a flexible, market-based program to significantly reduce and cap emissions; provide regulatory certainty to allow utilities to make modifications to their plants without fear of new litigation; provide market based incentives, such as emissions-trading credits to help achieve the required reductions," all of which the president approved and was eventually incorporated into the National Energy Policy.

In fact, Bush's "Clear Skies" initiative consists of many of the bullet points laid out months earlier in Sayle's email to Kelliher.

In addition to Kelliher correspondence with Sayle, he also met with oil and gas industry lobbyists who helped write executive orders that Kelliher passed on directly to the White House. Two months later, the president issued executive orders nearly identical to those Kelliher received from the lobbyists months earlier.

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Jason Leopold is the author of the explosive memoir, News Junkie, to be released in the spring of 2006 by Process/Feral House Books. Visit Leopold's website at www.jasonleopold.com for updates.

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