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Alabama's Power Struggle

By NEELA BANERJEE

BIRMINGHAM, Ala. -- The really sultry weather will probably drift into this city around the Fourth of July, Dr. Jack Hasson figures, and then his asthma patients will become sicker.

The humidity and air pollution will make drawing a breath bruising. On some days, after a morning run, Dr. Hasson can tell that he will be busy at work just by the way his own lungs feel. Asthma patients will stream into his pulmonology clinic, complaining that they cannot catch their breath. He will give stronger medication to most and hospitalize the frailest.

"It's frustrating that their condition is well controlled and they do fine and then their attacks are triggered by pollution," he said. "It just sabotages our work."

The steel mills that once fired Birmingham's economy and filled it with blue smoke are mostly gone. The pollution that worries Dr. Hasson now is barely visible: a tremulous summer haze that washes in from three large coal-burning power plants that surround Birmingham and are owned by the Southern Company, one of the country's largest utility holding corporations.

The pollution over Birmingham seems the inevitable side effect of being neighbors with such a big power company. Southern, which has headquarters in Atlanta, contends that anti-pollution improvements it is installing at its plants take time, because it has to make sure that the environmental science is sound and that the regulatory requirements are fair before investing billions of dollars.

But critics like Dr. Hasson and a range of environmentalists and regulators contend that Southern has always marshaled its considerable political and economic might to resist changes, particularly stricter environmental requirements, that threaten a comfortable status quo and healthy profits. Southern, for example, fought doggedly for years against the same federal regulations that have now compelled it to install new anti-pollution equipment at its power plants through the Southeast.

But after the arrival in Washington of an administration sympathetic to the energy industry, Southern has had greater success in challenging environmental initiatives.

Ten days ago, the Bush administration handed energy companies a crucial

victory, proposing to relax an important enforcement statute of the Clean Air Act. The statute, known as the new source review, requires them to install anti-pollution equipment on old upgraded coal-fired plants.

Under the administration's proposal, companies like Southern would be in better position to win lawsuits that accuse them of violating the new source review statute.

Southern was the first to press for such a change. Its thoroughbred Washington lobbyists, like Haley Barbour, the former Republican Party chairman, and Marc Racicot, the current chairman, helped shape White House thinking on the issue. In the 2000 elections, Southern was one of the most generous contributors to the Republican Party.

Southern bristles at its growing anti-environmental reputation. "We think the Clean Air Act is a landmark piece of legislation," said Dr. Charles H. Goodman, senior vice president for research and environmental affairs at Southern, "and many people tend to imply that we will circumvent it."

Many Alabamians could have said right away that Southern would prove formidable, after watching the company's local subsidiary, [Alabama Power](#), finesse state politics and press its agenda. Alabama Power and its allies are among the top contributors to state elections, and former executives from Alabama Power hold important positions in the administration of Gov. Donald Siegelman. Few, if any, state regulators or politicians criticize the company publicly.

People here once considered the company one of the big mules, an alliance of Birmingham corporations and large agricultural interests that have dominated state politics for the last century, said Carl Grafton, a political science professor at Auburn University Montgomery.

The cost of such close relations is tangible everywhere, critics of Alabama Power say. The Clinton Justice Department sued Southern over five of Alabama Power's coal-fired plants, including the three near Birmingham, accusing them of violating the new source review statute.

Birmingham is in violation of federal air pollution standards for smog. Those violations, in turn, have driven away new businesses and cost the city about \$1 billion in outside investment over five years, according to the Metropolitan Development Board, a regional economic development unit. Some dams that Alabama Power operates have ravaged the rivers and the land that lies below them, environmentalists and some federal regulators say. Levels of toxic mercury, in large part from an Alabama Power plant in the area, are disturbingly high in the waters around Mobile and in many area residents, according to an investigation by The Mobile Register. Critics are particularly angry that Alabama Power exports some electricity to other states, leaving Alabamians with the damage and the cleanup.

"It isn't just the state's power company," said Brad McLane, executive director of the Alabama Rivers Alliance and a vocal critic of Alabama Power. "It is the powerful company."

Southern, the largest coal-burning utility in the United States behind American Electric Power of Columbus, Ohio, does not apologize for fighting hard to protect its interests. Alabama Power's electricity rates are 15 to 17 percent lower than the national average, according to state regulators. Over all, Southern provides power to most of Georgia and Alabama and parts of Mississippi and the Florida Panhandle, a region with a rapidly growing population and with the advantage, the company said, of cheap electricity. At the same time, Southern has a return on investment of about 13 percent a year, higher than the industry average, and its shares are trading at a premium to those of other power companies. Southern asserts that all this would be jeopardized if it acquiesced to environmental regulations it finds onerous or irresponsible.

"We will make improvements when we have gone through with regulators, consumers and others that what needs to be done is well defined," Dr. Goodman said. "We have to balance everything that is doable."

But other companies and regulators say Southern's activism exceeds the workaday pragmatism that drives most corporations. Some power companies, like American Electric Power and the [Energy Corporation](#) of New Orleans have accepted the view that current methods of burning fossil fuels contribute to global warming. Southern counters that the science is inconclusive, although it has reduced its own emissions of carbon dioxide, thought to cause global warming.

The Federal Energy Regulatory Commission has pushed utilities to submit plans for the creation of regional transmission authorities to expedite the movement of power and smooth the patchwork nature of the deregulated market. Southern opposes deregulation in its backyard, and what it submitted to the commission was "the most stark" rejection of the commission's goals of any plan offered, one regulator said.

They will do anything it takes to win," said Eric V. Schaeffer, former head of civil enforcement at the Environmental Protection Agency and now the director of the Rockefeller Family Fund's Environmental Integrity Project. When he resigned from the E.P.A. in February, Mr. Schaeffer complained that energy companies facing federal lawsuits under the new source review statute were lobbying the Bush administration to have it weakened. Southern has said previously that it has no qualms about lobbying regulators and politicians to review the statute in an effort to disable the lawsuits.

Mr. Schaeffer continued: "Some companies facing lawsuits say, 'Let's settle this.' Some will joust with you over the law. And then you have Southern, who says, 'This is our business and we will do whatever it takes to keep you

out of it, and if that means going to White House and getting you rolled politically, we will do it.' "

Among the plants that the Justice Department is suing is Southern's James H. Miller Jr. power plant, 30 miles northwest of Birmingham. Miller's enormous cooling tower rises like a spaceship from the lush, rolling countryside. In the lawsuit, the government contends that Southern increased the output from Miller without installing the proper pollution control equipment, violating the new source review statute.

Elsewhere, utilities facing litigation have settled or are negotiating settlements with the Justice Department. Southern says that it did nothing wrong and that the E.P.A., in the late years of the Clinton administration, changed its interpretation of the new source review to pursue these lawsuits. The company plans to fight the suits in federal courts in Atlanta.

Alabama Power appears quite proud of Miller, a hamlet of smokestacks, boxy buildings and coal hills on the Black Warrior River that produces about 2,800 megawatts of electricity. (One megawatt is enough to power about 800 homes.) One steamy day, Willard Bowers, the vice president for external affairs at Alabama Power, showed a reporter the improvements made at Miller to reduce pollution. The plant, like all of Southern's coal-fired plants, burns low-sulfur coal. Miller pulverizes the coal as fine as talcum powder so it burns more efficiently.

On a catwalk between two buildings, Mr. Bowers points out a 600-foot-high red crane and a swarm of men installing the first of four selective catalytic reduction systems, known as S.C.R.'s, part of an investment of \$1.2 billion that Southern is making at plants in the Atlanta and Birmingham areas to reduce emissions of nitrogen oxides. That pollutant reacts with sunlight and creates ground-level ozone, or smog, the gas that inflames the lungs of people like asthma patients.

In most of the country, cars contribute the greater proportion of nitrogen oxides to the air. But in the Birmingham area, about 60 percent of the pollutant comes from Alabama Power's nearby plants, county health officials say. Birmingham, the state's biggest city, and neighboring Shelby County are in violation of federal standards for nitrogen oxides. Once all the pollution control units are in place at Miller by May 2005, Alabama Power expects emissions of nitrogen oxides to fall by more than 80 percent. That, Alabama Power says, will put Birmingham in compliance with current federal air quality standards.

"Ozone is a health issue and we're the first to say it," Mr. Bowers said. He said pollution control units were going in only now because it took years to settle the science of what caused smog, get the permits and finish construction. "Understand, we are doing things as quick as we can," he said. "From the time you start the S.C.R. construction process to its completion is three years. When people say Alabama Power is dragging its feet, well, I object to that."

EMISSIONS of sulfur dioxides and nitrogen oxides have fallen in Alabama over the last decade, as they have across the country. But what goes unsaid by Southern and other utilities is that the reductions were ordered by the E.P.A. and that the power industry fought relentlessly to block the federal mandate. From the mid-1990's until at least 2000, for instance, Southern was among the leaders of a power industry campaign to fight the new nitrogen oxide requirements.

Environmentalists like Mr. Schaeffer contend that had utilities like Southern followed the new source review statute and installed pollution-control technologies years ago, the cuts in noxious emissions would be even more substantial now.

Just about everyone in Alabama's political circuit, however, considers Alabama Power a good citizen. The utility serves 1.3 million customers over most of the lower two-thirds of the state. It contributes generously to local charities and nature conservation programs. It has long been a leader in research, like clean-coal technology and a pilot project at its Gaston Plant in Wilsonville, southeast of Birmingham, to reduce emissions of mercury.

Alabama Power is also among the largest contributors to state election coffers, just as Southern was for the 2000 presidential race. From Jan. 1 to late April, Alabama Power and the closely affiliated Business Council of Alabama contributed more than \$717,000 to state political races, according to a review of state lobbying disclosures by The Birmingham News. Only the teachers' lobby surpassed that total.

Elmer B. Harris, the company's longtime chief executive who retired recently, was the chairman of the transition team for Governor Siegelman, a Democrat, when he came to office in 1999. Henry Mabry, a former manager for legislative affairs at Alabama Power, is now the administration's finance director. And Trey Glen, who previously was an engineer at Alabama Power, is director of the Office of Water Resources for the state's Department of Economic and Community Affairs.

But some outside the power establishment doubt Alabama Power.

About 100 miles east of Birmingham, people who live along the Tallapoosa River downstream of Alabama Power's Harris Dam say that for years now, they have understood what regulators and environmentalists in Washington are only just beginning to discover about the tenacity of the Southern Company.

At least once a day, the Harris Dam opens its gates and floods the Tallapoosa. The dam makes money by providing power at times of peak electricity demand, when the price is higher than it is the rest of the day. A horn calls from the dam over the saltbox houses and one-room churches in towns like

Malone and Wadley and then, in the course of an hour or so, the water level rises from a trickle to a wall 8 to 10 feet high. The flooding has badly eroded the riverbanks and killed much of the fish and wildlife in the river, according to the Alabama Rivers Alliance, federal wildlife regulators and homeowners along the Tallapoosa.

They have have all been negotiating with Alabama Power for at least two years, in some cases longer, to try to persuade it to create a stronger and more even flow. Mr. Bowers of Alabama Power said that the company was offering a reasonable increase in the flow but that area residents wanted a flow so great that it would ruin the utility's ability to run the dam as a provider of electricity during peak demand. To Alabama Power's critics, the company is offering a low increase mainly to drag out the negotiations.

James Traylor's family has lived in its house on the Tallapoosa since 1945. One late afternoon in May, he walked down to its banks with his father, George, some neighbors and a black Labrador puppy. "Something was robbed from me; something was robbed from my kids," he said, looking at the low, muddy river that he says is a good two feet lower than it was during the droughts of his childhood 20 years ago.

The banks have been eaten away at least eight feet in the last 15 years or so. Trees hang over the river because there is no soil to cling to anymore. Fallen timber lies in large piles, carried and mixed up by the daily flooding.

"We used to wade the tributaries and catch fish when I was a kid," Mr. Traylor said. "You would see deer, muskrats, hawks. Now you go up the creeks, and there's nothing to catch." Nothing, he and his friends say, can survive the daily flood and ebb.

"We just want them to give us a flow, and you can generate your electricity," said Curtis B. McGill, a burly man in overalls and baseball cap who has organized his neighbors to negotiate with Alabama Power. "But their attitude is, 'To hell with you.'"

To Mr. Bowers of Alabama Power, the riverbank residents are viewing it too simplistically. "We have always pledged to change," Mr. Bowers said, "if that change would be beneficial and accomplished with the economic viability of the plant."