CLIENT ALERTS & INSIGHTS

FERC Chairman Removed

NOVEMBER 9, 2020

Last Thursday, on November 5th, President Trump removed Commissioner Neil Chatterjee as Chairman of the Federal Energy Regulatory Commission ("FERC"). Chatterjee is a Republican who has served as Chairman of the agency since October of 2018.

While the Chairman's vote does not carry any more weight than that of the other commissioners, the Chairman does have the ability to shape the agency's policy agenda. Under Chatterjee's leadership, FERC made major policy moves effecting the electric and gas industries, including major gains for gas pipelines and infrastructure development. Chatterjee's leadership also ushered in approval of numerous liquefied natural gas projects. Although Chatterjee largely toed the Republican party line, he also backed some clean energy friendly policies. For example, Chatterjee voted to approve FERC Order No. 2222, which removed market barriers for rooftop solar and other distributed energy resources.

President Trump's removal of Chatterjee as Chairman follows closely after Chatterjee's participation in organizing a conference on carbon pricing and helping to push through bipartisan support of FERC consideration of carbon pricing in electricity markets, a move some consider damaging to the coal industry. On October 15, 2020, FERC issued a proposed policy statement on the incorporation of carbon pricing into FERC-jurisdictional markets. The policy statement clarifies that FERC has jurisdiction over organized wholesale electric market rules that incorporate a state-determined carbon price within those markets, thus encouraging regional electric market operators to explore the benefits of establishing such green initiatives.

To replace Chatterjee, President Trump appointed James Danly as Chair. Danly is also a Republican and is a recently new commissioner, having been appointed in March of 2020. More information on Danly is available here: https://www.beneschlaw.com/publication/senate-confirms-james-danly-as-republican-ferc-commissioner/. Danly dissented on the carbon pricing policy statement, as well as on Order 2222.

Chatterjee indicated he would continue to serve out the remainder of his term, which expires June 30, 2021. FERC is still operating with only three commissioners (the minimum for a quorum), thus any recusal would prevent FERC from deciding certain matters. At the end of July 2020, President Trump nominated a pair of new commissioners to FERC, one Democrat and one Republican. Senate confirmation of the two nominees is still pending. More information on the new FERC nominees is available here: https://www.beneschlaw.com/publication/ferc-commissioner-mcnamee-to-step-down/.

For more information, please contact a member of Benesch's Energy Practice Group.