

U.S. Senate's Energy and Natural Resources Committee Hears Testimony of FERC Nominees, Begins Process to Reestablish Needed FERC Quorum

Environment & Energy Alert

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Federal Energy Regulatory Commission nominees Robert Powelson and Neil Chatterjee testified yesterday before the U.S. Senate Committee on Energy and Natural Resources. The two Republican nominees—Mr. Powelson, Chairman of the Pennsylvania Public Utility Commission and President of the National Association of Regulatory Utility Commissioners, and Mr. Chatterjee, senior energy policy advisor to Senate Majority Leader Mitch McConnell (R-Ky.)—were nominated by President Donald Trump earlier this month. The committee will vote soon on whether to advance the nominees to the full Senate for a confirmation vote.

FERC Commissioners are appointed by the President, with the advice and consent of the Senate, and serve a five-year term. The President also selects the Chairman, and may appoint three of the five seats to members of his political party. Nominees Powelson and Chatterjee, if confirmed, would fill the seats vacated by the early departures of two Commissioners and would only serve out the remainder of those Commissioners' five-year terms. Mr. Powelson's term would expire in June 2020, and Mr. Chatterjee's term would expire the following year. A third vacant Commissioner seat remains, and a fourth will open at the end of June.

Reestablishing a FERC quorum. Consideration of the nominees is important because whoever is confirmed will reestablish the quorum of three Commissioners needed for FERC to conduct its business. FERC has been without a quorum—or a permanent Chairman—since Chairman Norman Bay resigned in early February 2017. This period marks the first time that FERC has been without a quorum in 40 years. “We need to have a fully functioning Commission,” emphasized Committee Chair Senator Lisa Murkowski (R-Alaska), who pointed to a Bloomberg report that the agency's inability to do business has put \$50 billion of project investment at risk. The proposed appointments will fill two of the three vacant Commissioner seats and, by as early as July, could reestablish the much-needed quorum.

Concerns raised about federal energy regulation on states' economic welfare. Predictably, the Senators pressed the nominees during questioning about local concerns, including:

- timely processing of permitting applications for liquefied natural gas (LNG) exports and coordinating permitting among federal agencies;
- investment in LNG export infrastructure, natural gas pipelines, and transmission to export renewable energy;
- grid security and cybersecurity;
- support for distributed generation, clean technologies, and electric storage;
- reliability, diversity of generation supply, and the value of nuclear and coal baseload generation; and
- state energy policies and the related thorny issue of preemption.

Responding to a question from Senator Al Franken (D-Minn.) about what should be done to enable distributed generation to participate in the marketplace, Mr. Chatterjee said that FERC plays a critical role in the development of infrastructure, and that the grid must be prepared to address the transformation as different technologies and renewables enter the market. “Clean tech investment is part of this 21st-century landscape,” Mr. Powelson testified, pointing to Bloom Energy’s oxidized fuel cells, pairing of renewable and storage technologies, electric vehicle charging, and other emerging energy technologies. He noted that Pennsylvania’s energy efficiency program has provided nearly \$1 billion in utility investment and has produced about \$1.8 billion of net benefits for customers.

When asked by Senator Joe Manchin (D-W. Va.) about views on reliability and how the generation mix affects reliability, Mr. Chatterjee responded that reliability is a core function of the agency, and that a reliable generation portfolio is premised on fuel diversity, which includes baseload generation resources. Mr. Powelson said there is a tectonic shift taking place with low-priced natural gas, but that the country needs a diverse fuel supply that includes coal. Responding to a question from Senator Catherine Masto (D-Nev.), both nominees appeared to agree that solar and wind generation can be reliably integrated into the grid.

Senators Cory Gardner (R-Colo.) and Tammy Duckworth (D-Ill.) elicited the nominees’ views as to where they would draw the line on using federal power to preempt state law. To date, about 30 states have adopted renewable portfolio standards, and several states have adopted policies to support existing nuclear plants. The question was asked in the context of wholesale power markets and state energy policy, the subject of a recent FERC technical conference. Mr. Powelson characterized this as a “very big issue” and, while respectful of states’ rights, believes that FERC needs to step in when state policies interfere with regional markets. Mr. Chatterjee stated that he believes in states’ rights, but acknowledged the complex issues that arise when figuring out how to maintain fuel diversity—needed to ensure safe, affordable, reliable electricity delivery—in the face of market challenges. Mr. Chatterjee said that FERC needs to address this “critical matter,” and he pledged to look closely at the issue.

There is still work to be done. A committee vote to advance the nominations to the Senate is expected soon, but there is more work to be done. Kevin McIntyre is reportedly slated for the Chairman position, but he has not been nominated yet. With Commissioner Collette Honorable recently announcing that she will not seek a second term appointment after her term ends on June 30, a fourth seat will need to be filled. She could leave her post on June 30, or continue to serve until the earlier of either her successor’s confirmation or the end of the Congressional session.

Senator Murkowski asked that questions for the nominees be submitted by close of business on May 25, 2017. The archived webcast of the hearing is available [here](#).