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## While Watching Election Returns Trump Replaces FERC Chairman

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With the eyes of the nation still focused on the election results, and with ballots still being counted in battleground states like Pennsylvania, Georgia, and Arizona, few Americans were thinking about FERC, the Federal Energy Regulatory Commission charged with regulating natural gas, oil, hydropower and electricity, and approving interstate energy pipelines. Few that is except Donald Trump.

Taking time out from watching the vote counting, President Trump last night sacked FERC Chairman Neil Chatterjee and replaced him with Commissioner James Danly. Few in the energy industry anticipated the move and there was no reason given for it. However, E&E News reported that it comes a month after Chatterjee “spearheaded a daylong technical conference exploring the possibility of implementing a carbon tax into wholesale energy markets.” Greentech Media also noted that only Danly had voted against FERC’s September issuance of Order 2222, “which orders the country’s grid operators to allow aggregated distributed energy resources such as batteries, electric vehicles and demand response to participate in their wholesale energy, capacity and ancillary services markets.”

There can be up to five FERC Commissioners. Each serves for a term of five years and each has an equal vote on regulatory matters. Currently there are only three Commissioners, Republicans Danly and Chatterjee along with Democrat Richard Glick. All were appointed by Donald Trump. Chatterjee and Glick were confirmed in 2017. Danly was confirmed earlier this year. As was just shown, the President has the power to appoint and replace the Chair.

That the move happened now is surprising not just because of the Presidential limbo, but also because regardless of the Presidential outcome, the election results clearly were not what the Democrats had hoped for. Some observers point to that Party’s position on energy and the “Green New Deal” as being one potential reason why they underperformed expectations. . If the President’s actions relating to Chatterjee were indeed caused by the former Chairman’s willingness to explore new approaches to energy distribution and pricing, they reflect the same problem in reverse, and give both Joe Biden (should he win) and Republicans in Congress a new opportunity.

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One sided energy politics played poorly this week in Pennsylvania (more on that in a future post). The Biden/Harris ticket spent the last two months of the campaign repeating endlessly that it would not ban fracking. Should it be inaugurated on January 20, and should control of the Senate not swing to the Democrats, a Biden Administration may be forced to take a more balanced approach to energy than those favoring the Green New Deal in that party would have liked. This is especially true now that the Democratic Congressional Caucus already has fractured, with moderates blasting more extreme members on a recent post-election party conference call.

Conversely, the President's actions yesterday show the flip side of that coin, an unwillingness to engage even the thought of new ideas relating to energy policy. Replacing Chatterjee during a period when the election results remain undetermined is an audacious move. Chairman Danly is known as a very conservative Commissioner. Enforcing discipline at this stage certainly will have a chilling effect on any further attempt to make any changes in current energy policy. It comes precisely at the time that Democrats are themselves being cautioned against taking their ideas too far.

If there is one thing consistently true about energy, it is that there is no magic energy source that produces energy without adverse environmental and/or economic impacts. Finding the correct balance remains the key. On Tuesday, the American people showed they understand that better than the American politicians, pollsters and activists. Should Biden be determined the winner, he will have the chance to show he understands that as well.

#### **ATTORNEYS MENTIONED**

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