

# Height Commentary

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## Chairman Changes - How FERC Leadership Shapes Policy

### THE TAKEAWAY

Last night, the White House [announced](#) that Federal Energy Regulatory Commission chairman Kevin McIntyre will step down into the role of commissioner, allowing Commissioner Neil Chatterjee to step into the chairman's role. McIntyre's health has been a concern for much of this year, and has prevented him from attending the last two FERC meetings. The two men are very different - Chatterjee's background is in the Senate as energy advisor to Majority Leader Mitch McConnell (R-KY), while McIntyre co-led the global energy practice at the Jones Day law firm. No doubt, their diverse backgrounds provide both with different approaches to FERC and energy policy. In this report, we discuss sectors which we think may see a more favorable policy approach under Chairman Chatterjee and which may lose out.

### Sector Winners

#### Subsidized Nuclear, Merchant Coal Units Seeking Aid

Perhaps the biggest difference between Chatterjee and McIntyre are their opinions on how and whether to support marginal coal and nuclear generators in competitive markets. These differences came to a head in late 2017, when the Department of Energy sent FERC a Notice of Proposed Rulemaking (the DOE NOPR) which outlined a plan to economically support merchant generators with 90 days of on-site fuel supply. Chatterjee's initial response was to voice support for such a policy and highlight the grid resiliency benefits of coal and nuclear. However, FERC initially rejected the policy - opening a new docket to discuss grid resiliency in principle. Under Chatterjee's leadership, that resiliency docket may be much more interesting. We still would not expect FERC to champion anti-competitive policies, per se, but, especially with confirmation of Bernard McNamee looming (who played an integral role in preparing the DOE NOPR), it is almost a certainty that FERC will become more sensitive to the issue of fuel diversity and grid resiliency. *For our latest thoughts on the resiliency docket, see our [note FERC Rejects DOE Grid Resiliency Support; East Coast Thaws after Bomb Cyclone](#).*

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## LNG Exports

LNG exports, and approving LNG export terminals, is a key focus for the Trump Administration. Incredibly, FERC has failed to approve a single project application since Trump took office in January 2017. Chatterjee, who had relatively little experience with the LNG industry before joining FERC, has sought to ingratiate himself with the industry. Most recently, he made the rounds at Gastech, an LNG-focused conference in Barcelona. Expect Chatterjee to heed the Administration and throw more muscle behind LNG project approvals. FERC announced an effort to pick up the pace, but the impact is in execution - we expect Chairman Chatterjee will work diligently to ensure that FERC keeps to the aggressive timelines they've articulated for nearly a dozen proposed LNG export terminals. *For more information on FERC and LNG export applications, see our note [FERC Accelerates LNG Project Reviews, Streamlines Process](#).*

## Sector Losers

### Environmental groups

FERC has never, even under Democratic leadership, been viewed by the environmental community as an ally. However, former Chairman Kevin McIntyre, as an attorney, is certainly more sensitive to the legal frameworks around LNG and pipeline project applications than Chairman Chatterjee is likely to be. Those legal frameworks are the environmental community's best defense against unmitigated pipeline and LNG development - and if FERC chooses to steamroll over the environmentalists' critiques (rather than carefully weighing and addressing them), the environmental community loses its first line of defense. One clear example of how FERC can neutralize the environmental threat is the rehearing process. Many investors are familiar with rehearing - following a major decision, opponents are entitled to ask FERC to "rehear", or reconsider that decision. Ostensibly, rehearing has a 30-day stop clock, however, FERC nearly always "tolls" these requests, giving themselves an unlimited amount of time to hold the rehearing request in abeyance. During this time, environmental groups cannot challenge the underlying FERC decision in court. If FERC wishes, it could toll the rehearing process for months - potentially sitting on it until the project is near completion. Naturally, this is viewed by the environmental lobby as a major threat, and they've sought to convince courts that FERC must act on rehearing in a timely manner. So far, no dice. FERC can toll rehearing as long as it likes.

### FERC Pipeline Policy Statement

One of the more baffling efforts undertaken by FERC under McIntyre's leadership was the reopening of the 1999 Pipeline Policy Statement - a document that governs the process that FERC uses to assess pipeline project applications. McIntyre made promises to Senators in the confirmation process that he would look at the policy statement, and it was one of his first actions once sworn in. However, the devil is in the details for the policy statement, and Democratic Commissioners have sought to use the process to compel FERC to conduct wide-ranging analyses of pipeline impacts to climate change - actions which have no support from the Republican side. We expect the pipeline policy statement review to go nowhere under Chairman Chatterjee.

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