

# **The Federal Energy Regulatory Commission (FERC): Authorities and Membership**

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## The Federal Energy Regulatory Commission (FERC): Authorities and Membership

The Federal Energy Regulatory Commission (FERC or the Commission) is an independent federal agency that regulates the interstate transmission of electricity, natural gas, and oil, among other responsibilities. Because of FERC's influence on critical energy infrastructure—such as electric transmission lines, natural gas pipelines, liquefied natural gas (LNG) terminals, and hydroelectric dams—the composition of FERC is of ongoing interest to Congress.

In 1977, Congress passed the Department of Energy Organization Act (EOA; P.L. 95-91), creating FERC as an independent commission within the newly formed Department of Energy to take over certain regulatory duties previously administered by other entities. The Commission was tasked with hydroelectric dam licensing and safety, as well as regulation of rates and services for wholesale electricity transmission and sale. The EOA also gave FERC authority over rates for the interstate transportation and sale of natural gas and for the permitting of interstate gas infrastructure and LNG terminals. The EOA gave FERC jurisdiction over the movement of oil by interstate pipelines and the associated rates and charges.

FERC is structured to have five commissioners—no more than three from the same political party—serving staggered five-year terms. Each commissioner is appointed by the President, with the advice and consent of the Senate. The President designates one member as chairman, responsible for FERC's executive and administrative operation. In practice, the chairman also sets the agenda for the Commission and serves as the presiding officer for its official meetings. In this capacity, the chairman generally decides which matters will be brought up for a vote.

As of April 23, 2025, FERC has four sitting commissioners—two Republicans, including the chairman, and two Democrats—but the makeup of the Commission has varied over time. There are often vacancies on the Commission due primarily to resignations and the timing of presidential nominations and Senate confirmations for open seats. In recent years, some individual seats have remained vacant for an extended period of time, resulting in multiple nominees to the Commission being considered at the same time.

Between January 2009 and April 2025, FERC has had a full complement of five commissioners only 46% of the time, on a monthly basis. During this period, Democratic commissioners have been in the majority 51% of the time, Republican commissioners have been in the majority 20% of the time, and the Commission has been evenly divided 29% of the time. At times, the makeup of the Commission has affected FERC's ability to function or set policy. The EOA requires a quorum of three commissioners to transact business, and FERC has lost its quorum on more than one occasion, most recently in 2017. An evenly divided Commission has been an issue when it has resulted in a 2-2 deadlocked vote. In the event of a deadlocked Commission, certain wholesale electricity rate changes may take effect by operation of law.

Because of the staggered, five-year terms of FERC commissioners, a new President typically comes into office with a Commission appointed by his or her predecessor, potentially with the majority (and chairman) being from the opposite party. If all five Commission seats are full at the start of a new Administration, the President may have limited ability to quickly alter FERC's makeup. Removing a sitting commissioner due to policy disagreements may be a challenge because, by law, commissioners “may be removed by the President only for inefficiency, neglect of duty, or malfeasance in office.” The President does have the ability to name a new chairman from among the sitting commissioners, as President Trump did on January 20, 2025, when he named Commissioner Mark Christie as chairman. To flip the majority, the President would typically need to wait for one or more commissioners' terms to expire or for their resignation. With the early resignation of Commissioner Phillips in April 2025, President Trump has the opportunity to nominate a third Republican Commissioner immediately, establishing a majority Republican FERC after Senate confirmation.

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## Introduction

The Federal Energy Regulatory Commission (FERC or the Commission) is an independent federal agency that regulates the interstate transmission of electricity, natural gas, and oil, among other responsibilities. FERC's jurisdiction and regulatory authority are largely focused on interstate energy transactions, the development of a reliable energy infrastructure, and the protection of wholesale customers from unjust or unreasonable rates and undue discrimination or preference. FERC is statutorily structured to have five commissioners, with one member appointed by the President as chairman and no more than three from the same political party.<sup>1</sup>

On April 22, 2025, Commissioner Willie Phillips resigned his seat, leaving FERC with four sitting commissioners.<sup>2</sup> Over the last 20 years, extended vacancies have been common. Because of FERC's influence on the development and economic oversight of critical energy infrastructure—such as electric transmission lines, natural gas pipelines, liquefied natural gas (LNG) terminals, and hydropower projects—the composition of FERC is of ongoing interest to Congress.

This report discusses the Commission's statutory history, its regulatory responsibilities, and its composition over the last two decades. The report highlights noteworthy time periods during which the Commission faced unusual transitions or challenges to its work. It concludes with a discussion of the President's ability to influence the Commission during a change of Administration.

## FERC's History and Regulatory Authority

In 1920, Congress passed the Federal Water Power Act (FWPA) to provide federal oversight of hydropower development on navigable waters in the United States. The act created the Federal Power Commission (FPC) to regulate the construction and operation of nonfederal hydropower projects (i.e., hydropower projects not owned by federal agencies).<sup>3</sup> In subsequent years, many companies began to enter the electric power industry. Large companies began to form and consolidate the industry as economies of scale began to dominate electric power production. Many of these individual companies fell under the organizational control of even larger "holding companies."<sup>4</sup> This consolidation was likely an effort to evade state regulation—states did not have jurisdiction over interstate transmission or rates charged for electricity, and federal regulations did not exist for such interstate activities.<sup>5</sup>

In 1935, Congress passed the Public Utility Act (PUA), which sought to end abuses of market power in the electricity industry at that time.<sup>6</sup> Title I of the PUA, the Public Utility Holding Company Act of 1935 (PUHCA; P.L. 74-333), was created to address the lack of oversight over

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<sup>1</sup> Department of Energy Organization Act (P.L. 95-91), §401(e).

<sup>2</sup> Federal Energy Regulatory Commission (FERC), "FERC Chairman Mark C. Christie's Statement on the Resignation of Commissioner Willie L. Phillips," April 22, 2025, <https://ferc.gov/news-events/news/ferc-chairman-mark-c-christies-statement-resignation-commissioner-willie-l>.

<sup>3</sup> 16 U.S.C. §§791-823d.

<sup>4</sup> A "holding company" is defined in statute as "any company that directly or indirectly owns, controls, or holds, with power to vote, 10 percent or more of the outstanding voting securities of a public-utility company or of a holding company of any public-utility company." 42 U.S.C. §16451.

<sup>5</sup> Jonathan Lesser and Leonardo Giacchino, "A Brief History," in *Fundamentals of Energy Regulation*, 1<sup>st</sup> ed. (Public Utilities Reports, 2007), pp. 4-5.

<sup>6</sup> See discussion, "Necessity for control of holding companies," at 15 U.S.C. §79a.

holding companies. Among other actions, PUHCA gave the Securities and Exchange Commission (SEC) authority over many holding company transactions, and it limited electric power industry mergers and acquisitions to contiguous areas.<sup>7</sup>

Title II of the PUA amended the FWPA to create the Federal Power Act (FPA)<sup>8</sup> and granted authority to the FPC to regulate the interstate transmission and sales of electricity. The FWPA became Part I of the FPA, with the FPC assuming authority over nonfederal hydropower projects on navigable waterways and federal lands.

Part II of the FPA authorized the FPC to regulate the interstate transportation and wholesale sale (i.e., sale for resale) of electric energy, while leaving jurisdiction over intrastate transportation and retail sales (i.e., sale to the ultimate consumer) in the hands of the states.<sup>9</sup> Under FPA Section 205, all rates and charges “made, demanded, or received” by public utilities for the transmission or sale of electricity subject to FPC authority cannot be “unjust or unreasonable” and cannot be “unduly discriminatory or preferential.”<sup>10</sup> Under FPA Section 206, the FPC could initiate an investigation (on its own or by request) to ensure that rules or practices affecting wholesale rates are just and reasonable.<sup>11</sup>

## **Creation of the Federal Energy Regulatory Commission**

In 1977, Congress passed the Department of Energy Organization Act (EOA; P.L. 95-91), terminating the FPC and creating FERC as an independent commission,<sup>12</sup> administratively situated within the newly formed U.S. Department of Energy (DOE).<sup>13</sup> The reorganization effort was largely ascribed to growing concerns about the effectiveness of the FPC.<sup>14</sup>

The organization of FERC is addressed in EOA Section 401(b), as amended:

The Commission shall be composed of five members appointed by the President, by and with the advice and consent of the Senate. One of the members shall be designated by the President as Chairman. Members shall hold office for a term of 5 years and may be

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<sup>7</sup> See 15 U.S.C. §79c(a). PUHCA required interstate holding companies engaged through their subsidiaries in the electric utility business to register with the SEC; to file detailed reports about their organization, financial structure, and operations; and to operate as coordinated, integrated systems, confined to the “State in which it is organized and States contiguous thereto.” Repeal of PUHCA in the Energy Policy Act of 2005 (P.L. 109-58) nullified the contiguous requirement.

<sup>8</sup> 16 U.S.C. §§791 et seq.

<sup>9</sup> See 16 U.S.C. §824(b)(1). For additional discussion on the scope of the Federal Power Act, see CRS In Focus IF11411, *The Legal Framework of the Federal Power Act*, by Adam Vann.

<sup>10</sup> 16 U.S.C. §824e.

<sup>11</sup> *Ibid.*

<sup>12</sup> FERC recovers the full cost of its operations through annual charges and filing fees assessed on the industries it regulates as authorized by the Federal Power Act and the Omnibus Budget Reconciliation Act of 1986. The Commission deposits this revenue into the Treasury as a direct offset to its appropriation, resulting in no net appropriations. FERC, *FY 2025 Congressional Justification*, March 11, 2024, page 9, <https://ferc.gov/strategic-documents/fy-congressional-budget-justification>.

<sup>13</sup> The Department of Energy Organization Act, which created a new Department of Energy, was part of a bipartisan effort to deal with energy policy fragmentation across the executive branch at the time. The legislation was also driven by the Arab oil embargo of 1973-1974, which had exposed and intensified U.S. energy policy concerns. See U.S. Congress, Senate Governmental Affairs Committee, *Department of Energy Organization Act*, 95<sup>th</sup> Cong., 1<sup>st</sup> sess., May 14, 1977, S. Rpt. 95-164 (GPO, 1977), p. 36.

<sup>14</sup> “The Federal Power Commission ... was a commission in significant disarray. It had a decisional process that assigned the Commission about 22,000 decisions per year, and it had a backlog of some 20 to 25 years of matters awaiting decision of the Commission.” FERC, “Charles Curtis: Forty Years of FERC,” FERC Podcast Transcript, September 22, 2016, <https://www.ferc.gov/sites/default/files/2020-05/09-22-transcript.pdf>.

removed by the President only for inefficiency, neglect of duty, or malfeasance in office. Not more than three members of the Commission shall be members of the same political party.<sup>15</sup>

Section 402 of the EOA outlined FERC's jurisdiction, transferring some of the FPC's obligations to FERC. The Commission was tasked with hydroelectric dam licensing and safety (primarily under Part I of the FPA)<sup>16</sup> and regulation of rates and services for the transmission or wholesale sale of electric energy (primarily under Parts II and III of the FPA). Section 402 of the EOA also transferred the FPC's administrative, procedural, and accounting functions (among other responsibilities) under Part III of the FPA to FERC.<sup>17</sup>

Among other responsibilities, the EOA also transferred authority under the Natural Gas Act (NGA; P.L. 75-688) from the FPC to FERC to establish, review, and enforce rates and charges for the interstate transportation and sale of natural gas (under NGA Sections 1, 4, 5, and 6) and to issue certificates of public convenience and necessity (i.e., permits) for interstate natural gas infrastructure, including the abandonment of facilities or services and the establishment of physical connections under Section 7 of the NGA. Under Section 3 of the NGA, FERC has approval authority over the place of entry and exit, siting, construction, and operation of new liquefied natural gas (LNG) terminals as well as modifications or extensions of existing LNG terminals.<sup>18</sup> The EOA also transferred to FERC jurisdiction previously held by the Interstate Commerce Commission over the movement of oil by interstate pipelines and the associated rates and charges.<sup>19</sup>

FERC is unique among independent federal regulatory commissions in being situated within a department (DOE). However, the authorizing committees in the House and Senate intended to preserve FERC's independence from the Secretary of Energy (and the President). The House Government Operations Committee report accompanying the EOA states that "[a] special effort was made to preserve the independence of action and decision of the Commission and to insulate it from influences from other parts of the Department."<sup>20</sup> The report further states that "[t]he Secretary is required to provide the Commission with such support as the Commission may need to carry out its function."<sup>21</sup>

## **FERC's Jurisdiction and Authority**

FERC's jurisdiction and regulatory authority are largely focused on interstate energy transactions, the development and operation of a reliable energy infrastructure, and the protection of wholesale customers from unjust or unreasonable rates and undue discrimination or preference. More specifically, under its current statutory authority, the Commission

- regulates the transmission and wholesale sale of electricity in interstate commerce; protects the reliability of the high voltage interstate transmission system through mandatory reliability standards; reviews certain mergers and

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<sup>15</sup> 42 U.S.C. §7171(b)(1).

<sup>16</sup> 16 U.S.C. §§791 et seq.

<sup>17</sup> 16 U.S.C. §§825 et seq.

<sup>18</sup> See 18 C.F.R. §153.

<sup>19</sup> 42 U.S.C. §§7155, 7172(b).

<sup>20</sup> U.S. Congress, House Government Operations Committee, *Department of Energy Organization Act*, 95<sup>th</sup> Cong., 1<sup>st</sup> sess., May 16, 1977, H. Rpt. 95-306, Part 1 (GPO, 1977), p. 8.

<sup>21</sup> *Ibid.* Although FERC receives appropriations from Congress, the Commission recovers the cost of its operations through annual charges and other fees assessed on the industries it regulates, resulting in a net appropriation of zero.

- acquisitions and corporate transactions by electricity companies; and reviews the siting application for electric transmission projects under limited circumstances;
- regulates the transmission and sale of natural gas for resale in interstate commerce; approves the siting and abandonment of interstate natural gas pipelines, LNG terminals, and natural gas storage facilities;<sup>22</sup> and assesses the safe operation and reliability of proposed and operating LNG terminals;
- regulates some aspects of the transportation of oil by pipelines in interstate commerce;
- licenses and inspects private, municipal, and state hydroelectric projects;
- monitors and investigates energy markets subject to its jurisdiction; and administers accounting and financial reporting regulations and conduct of regulated companies;
- oversees environmental matters related to natural gas and hydroelectric projects and other matters; and
- enforces FERC regulatory requirements through imposition of civil penalties and other means.<sup>23</sup>

## Makeup of the Commission

FERC is composed of five commissioners serving staggered, five-year terms, with each commissioner having an equal vote. Each commissioner is appointed to his or her seat by the President, with the advice and consent of the Senate. In the event a commissioner leaves FERC before their term expires, a new commissioner appointed to fill the vacancy can serve only for the remainder of the original term for that seat.<sup>24</sup> A commissioner may continue to serve after the expiration of their term until the end of the current Congress if the President has not appointed a new commissioner for that seat.<sup>25</sup> A commissioner may be reappointed by the President for another term, but the commissioner must be reconfirmed by the Senate.

As of April 23, 2025, FERC has four sitting commissioners—two Republicans, including the chairman, and two Democrats—but the makeup of the Commission has varied over time. The chart in **Figure 1** illustrates commissioner appointments and chairman designations, including party affiliations, from June 2001 to April 2025. This time period captures new appointments to the Commission over the last 20 years. As **Figure 1** shows, since 2001, Presidents have appointed 23 FERC commissioners—13 Republicans and 10 Democrats. These commissioners have served for widely varying periods—as long as nine years and three months (Philip Moeller) and as short as one year (Robert Powelson).

## FERC Chairmen

As indicated above, the EOA requires the President to designate one FERC member as chairman. By statute, the role of the chairman is to be responsible for the executive and administrative

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<sup>22</sup> The Department of Energy (DOE) regulates the import and export of natural gas through LNG terminals. DOE, “How to Obtain Authorization to Import and/or Export Natural Gas and LNG,” web page, accessed December 5, 2024, <https://www.energy.gov/fecm/how-obtain-authorization-import-and-or-export-natural-gas-and-lng>.

<sup>23</sup> FERC, “What FERC Does,” web page, last updated October 23, 2024, <https://www.ferc.gov/what-ferc-does>.

<sup>24</sup> 42 U.S.C. §7171(b)(1). Under these circumstances, the new commissioner could also be separately nominated to the term that follows.

<sup>25</sup> Ibid.



operation of the Commission, part of which is the hiring and supervision of hearing examiners, consultants, and staff—including an executive director; and distributing Commission business among FERC personnel and administrative units.<sup>26</sup> The chairman fulfills many of these responsibilities through FERC’s Office of the Executive Director.<sup>27</sup> In practice, the chairman also sets the agenda for the Commission and serves as the presiding officer for its official meetings. In this capacity, the chairman generally decides which matters will be brought up for a vote.

Although the President requires the advice and consent of the Senate to appoint a FERC commissioner, the designation of a chairman is at the President’s sole discretion. On occasion, a President has designated a commissioner as “acting” chairman.<sup>28</sup> However, the EOA does not provide for such a distinction.<sup>29</sup> As **Figure 1** shows, since 2001, there have been 11 different chairmen (including acting chairmen), five Democrats and six Republicans. The longest tenure of a chairman was nearly five years (Jon Wellenhoff) and the shortest was 12 weeks (James Danly).

## Extended Vacancies on the Commission

Although FERC is statutorily structured to have five commissioners, there are often extended vacancies due primarily to resignations and the timing of Presidential nominations and Senate confirmations for open seats. In recent years, some individual seats have remained vacant for an extended period of time, resulting in multiple nominees to the Commission being considered at the same time. In June 2024, for example, the Senate confirmed three FERC commissioners in one proceeding—Commissioners Judy Chang, David Rosner, and Lindsay See—two Democrats and one Republican. Some analysts suggest that this practice may ease confirmation.

FERC nominees face increasing challenges during the Senate confirmation process, and the practice of pairing a Democratic nominee with a Republican nominee for that process has proved more effective than pursuing confirmation of a single FERC nominee. When a single nominee is proposed, there is frequently heavy opposition along political party lines. This backdrop can result in the fifth FERC commissioner position remaining vacant for longer periods than in the past.<sup>30</sup>

As a result of such extended vacancies, over the last two decades there has been at least one vacant seat on the Commission more often than not.

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<sup>26</sup> 42 U.S.C. §7171(c).

<sup>27</sup> FERC, “Office of the Executive Director (OED),” web page, last updated November 7, 2023, <https://www.ferc.gov/office-executive-director-oed>.

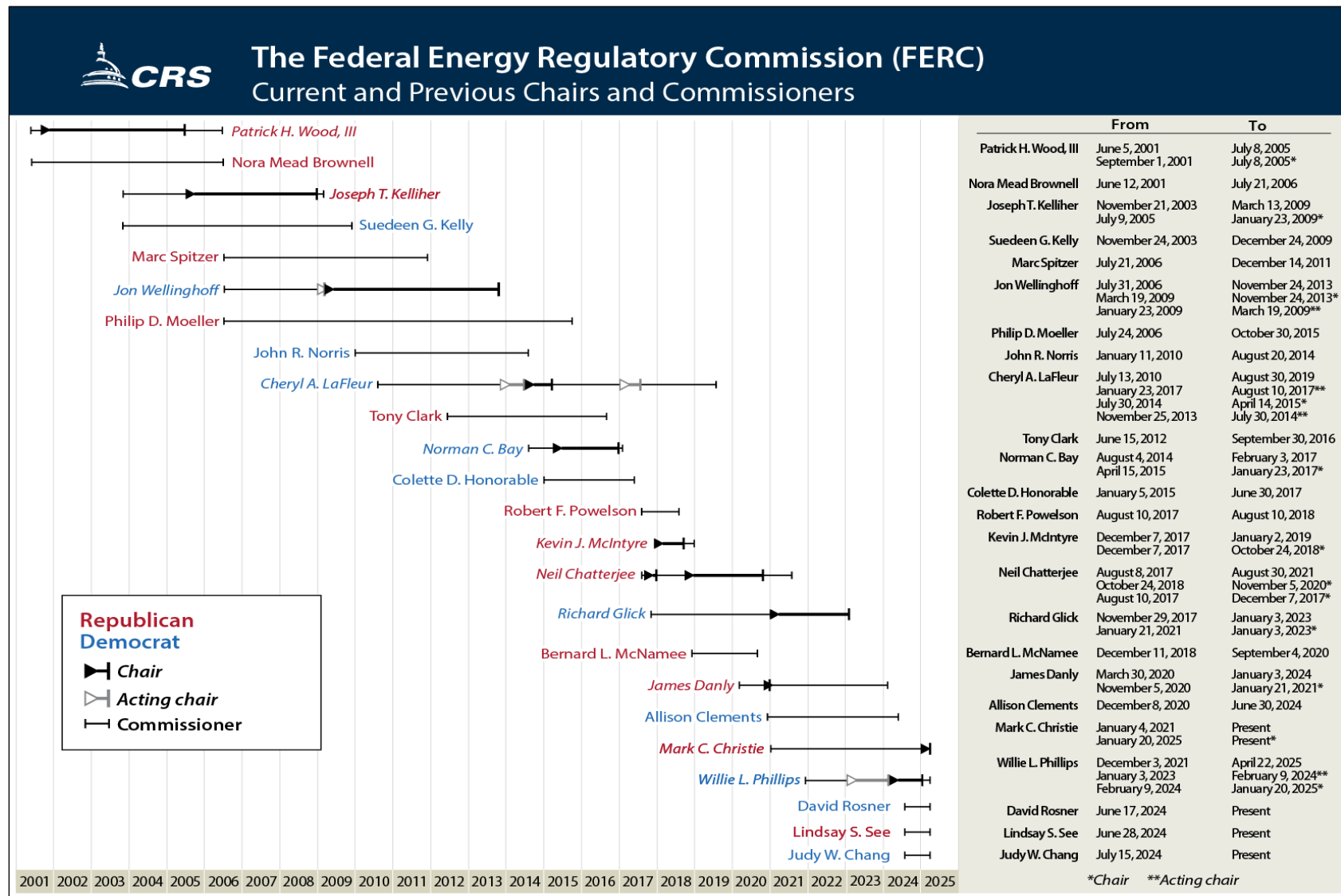
<sup>28</sup> FERC, “President Biden Names Willie Phillips Acting Chairman,” press release, January 3, 2023.

<sup>29</sup> Notwithstanding President Biden’s appointment of Willie Phillips as “acting” chairman, his official order of appointment does not use that term. It reads, in full, “I hereby designate Willie L. Phillips, Jr. as Chair of the Federal Energy Regulatory Commission.” White House order, January 3, 2023 (available to congressional staff on request). The EOA does allow the FERC chairman to temporarily designate another commissioner to serve “as Acting Chairman to act in the place and stead of the Chairman during his absence.” 42 U.S.C. §7171(e).

<sup>30</sup> Catherine P. McCarthy et al., “Third Circuit Provides Guidance on Reviewability of Constructive Approvals Resulting from FERC Deadlocks in PJM Focused-MOPR Appeal,” *Energy Legal Blog*, Bracewell LLP, December 13, 2023, <https://www.bracewell.com/resources/third-circuit-provides-guidance-reviewability-constructive-approvals/>.



**Figure I. FERC Commissioner Appointments, 2001-2025**



**Source:** CRS using data from Federal Energy Regulatory Commission (FERC), “Meet the Commissioners: FERC’s Current and Previous Chairmen” (includes tabbed list of “Current and Previous Commissioners”), accessed April 23, 2025, <https://www.ferc.gov/about/commission-members/current-previous-chairmen>.

**Note:** Political party affiliations are provided only as a snapshot in time; individuals may choose to change their affiliation at any point. CRS has relied on publicly available authoritative sources regarding political party but has not independently verified each affiliation.

**Figure 2** shows the monthly composition of the Commission by party affiliation and presidential Administration since 2009, which captures the last three Administrations. It also projects the duration of the terms of the commissioners as of April 2025 into the second Trump Administration. Projections after April 2025 are for the four sitting commissioners if they remain for their full terms but not beyond. They do not include potential new appointments, reappointments, or commissioners serving beyond the expiration of their terms as permitted by statute. The timing of any future commissioner retirements or appointments is uncertain.

As shown in **Figure 2**, between January 2009 and April 2025, FERC has had a full complement of five commissioners only 46% of the time, on a monthly basis. During this period, Democratic commissioners have been in the majority 51% of the time, Republican commissioners have been in the majority 20% of the time, and the Commission has been evenly divided 29% of the time.<sup>31</sup> At times, the makeup of the Commission has limited FERC's ability to conduct business or set policy.

### **Loss of Quorum**

The EOA requires that a quorum of three commissioners be present to transact business.<sup>32</sup> FERC has lost its quorum on more than one occasion, most recently in 2017.<sup>33</sup> On January 25, 2017, President Trump designated Commissioner Cheryl LaFleur to serve as acting chairman of FERC, replacing Norman Bay as chair. Commissioner Bay subsequently resigned from the Commission effective February 3, 2017, leaving FERC without a voting quorum of three members; only Commissioner LaFleur and Commissioner Colette Honorable remained. FERC's quorum was restored with the appointment of Commissioner Neil Chatterjee on August 8, 2017.

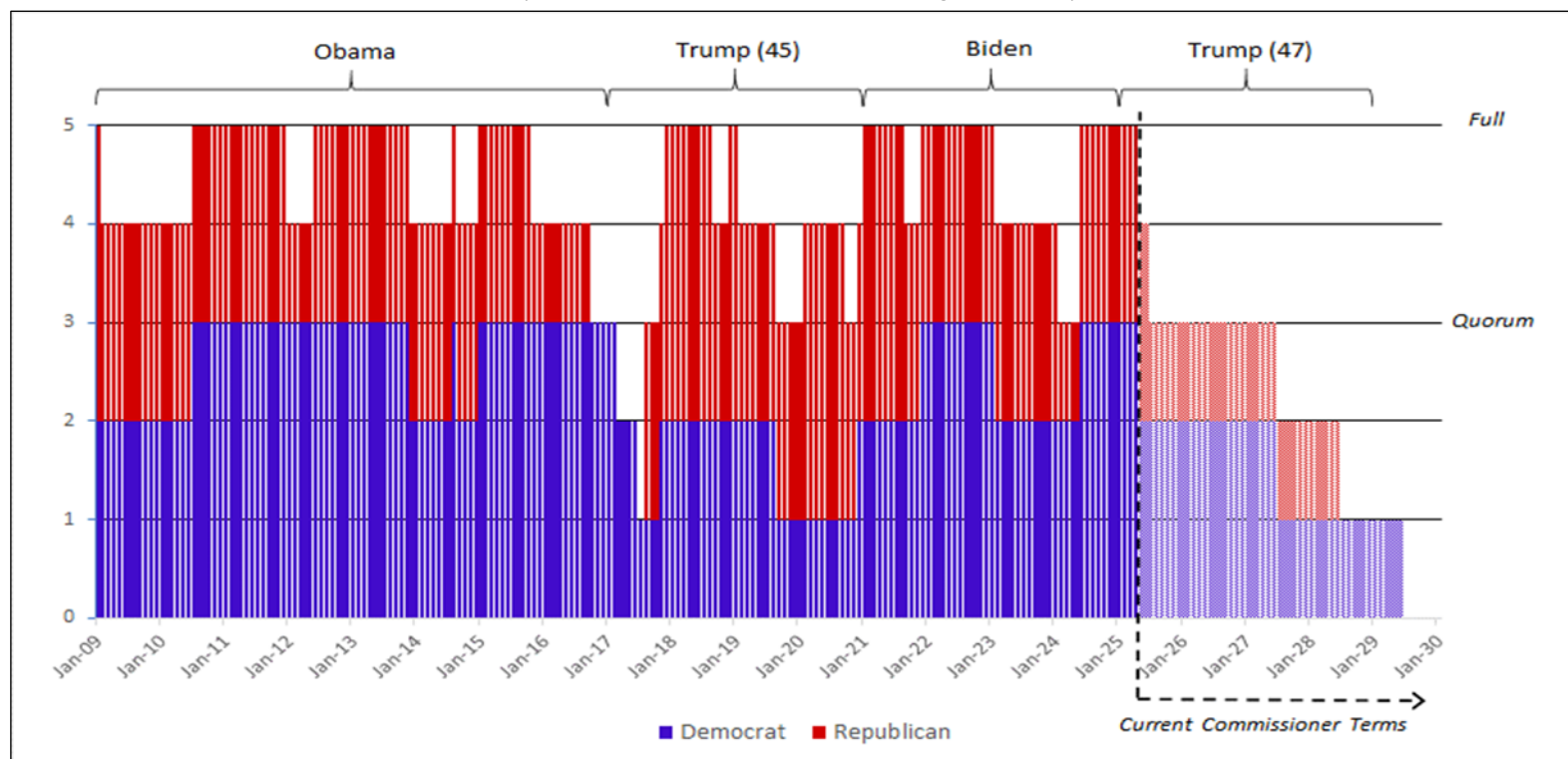
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<sup>31</sup> The party affiliations of Commission majorities typically relate to the parties of the presidential Administrations in power at the time. From 2009 to 2025, Democrats held the White House for 12 years and Republicans for 4, so a more frequent Democratic majority on the Commission during these years is not unexpected.

<sup>32</sup> Under Section 401(e) of the Department of Energy Organization Act (P.L. 95-91), "a quorum for the transaction of business shall consist of at least three members present. Each member of the Commission, including the Chairman, shall have one vote. Actions of the Commission shall be decided by a majority vote of the members present."

<sup>33</sup> FERC previously lost its quorum from mid-2001 through late 2003.

**Figure 2. Composition of FERC by Political Party, 2009-2025, with Projected Terms for Sitting Commissioners**  
(number of commissioners seated in a given month)



**Source:** Federal Energy Regulatory Commission (FERC), “Meet the Commissioners: FERC’s Current and Previous Chairmen” (includes tabbed list of “Current and Previous Commissioners”), accessed April 23, 2025, <https://www.ferc.gov/about/commission-members/current-previous-chairmen>.

**Notes:** Vertical axis of chart represents number of commissioners of each party at that point in time. White space represents unfilled seats. Political party affiliations are provided only as a snapshot in time; individuals may change party affiliation at any point. CRS has relied on publicly available authoritative sources regarding political party but has not independently verified each affiliation. The chart indicates only in which month commissioners began or ended their service on the Commission, not whether they were participants in any specific proceeding on any specific day. Commissioners are counted in a given month if they were seated for any days in that month. Columns after April 2025 are projections for the sitting commissioners as of April 23, 2025, if they remain for their full terms but not beyond. They do not include potential new appointments, reappointments, or commissioners serving beyond the expiration of their terms as permitted by statute. The timing of any future commissioner retirements or appointments is uncertain.

The absence of a quorum limits FERC's authority to issue orders concerning projects or rate and tariff issues.<sup>34</sup> Without a quorum, for example, FERC cannot issue new agency policies or rules or make final decisions on applications to authorize certain electric utility mergers and acquisitions, natural gas pipelines, LNG terminals, or hydroelectric projects. FERC staff can, however, continue to gather information and prepare analyses (such as for Environmental Impact Statements for proposed pipeline projects and hydropower licenses) necessary to process permit applications. Staff may also prepare draft orders that the Commission may approve once a quorum is restored.<sup>35</sup> FERC may also delegate certain authorities to staff. On February 3, 2017, anticipating a lack of quorum, the Commission chose to issue an order (while it still had a quorum) delegating authority to staff for certain agency functions.<sup>36</sup> FERC took similar action to delegate authority to its staff to act in the absence of a quorum in 1993.<sup>37</sup>

## **Deadlocked Commissions**

As noted above, since January 2009, FERC has been evenly divided between two Democrats and two Republicans over a quarter of the time. It became evenly divided again in April 2025 upon the resignation of Democratic Commissioner Phillips. An even division has sometimes led to inaction on matters due to policy differences. In addition, where an evenly divided Commission has resulted in a 2-2 deadlocked vote, on certain matters statutorily automatic actions have sometimes occurred. Electric utilities under FERC's jurisdiction cannot make changes to their transmission rates without 60-day notice to, and the approval of, the Commission.<sup>38</sup> However, in the event of a deadlocked Commission, such rate changes may take effect by operation of law.

[I]f the Commission permits the 60-day period established therein to expire without issuing an order accepting or denying the change because the Commissioners are divided two against two as to the lawfulness of the change, as a result of vacancy, incapacity, or recusal on the Commission, or if the Commission lacks a quorum ... the failure to issue an order accepting or denying the change by the Commission shall be considered to be an order issued by the Commission accepting the change.<sup>39</sup>

Such a proceeding occurred in October 2021 when the Southeast Energy Exchange Market (SEEM), a regional wholesale electricity market, was allowed to form by operation of law due to a 2-2 deadlocked Commission.<sup>40</sup> The Commission subsequently approved rate provisions by SEEM transmission providers by majority vote; these FERC approvals were subsequently vacated and remanded to FERC by a federal appeals court in 2023.<sup>41</sup>

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<sup>34</sup> *Rates* are defined as "the authorized charges per unit or level of consumption for a specified time period for any of the classes of utility services provided to a customer." *Tariffs* are defined as "a compilation of all effective rate schedules of a particular company or utility. Tariffs include General Terms and Conditions along with a copy of each form of service agreement." See FERC, "Glossary," last updated August 31, 2020, <https://www.ferc.gov/about/what-ferc/about/glossary>.

<sup>35</sup> Discussion with FERC Office of External Affairs, February 7, 2017.

<sup>36</sup> 158 FERC ¶ 61,135.

<sup>37</sup> See Order Delegating Authority to the Secretary and Certain Office Directors, 63 FERC ¶ 61,073 (1993).

<sup>38</sup> 16 U.S.C. §824d(d).

<sup>39</sup> 16 U.S.C. §824d(g).

<sup>40</sup> FERC, "Notice of Filing Taking Effect by Operation of Law," 86 *Federal Register* 199, pp. 57821-57822, October 19, 2021.

<sup>41</sup> *Advanced Energy United, Inc. v. FERC*, 82 F.4<sup>th</sup> 1095 (D.C. Cir. 2023), <https://media.cadc.uscourts.gov/opinions/docs/2023/07/22-1018-2007875.pdf>.

## FERC During Presidential Transitions

Because of the staggered, five-year terms of FERC commissioners, a new President typically comes into office with a Commission appointed by his or her predecessor, potentially with the majority (and chairman) from the opposite party. As **Figure 2** shows, this was the case at the start of the Biden Administration and the second Trump Administration.<sup>42</sup> If all five Commission seats are full at the start of a new presidential Administration, the President may have limited ability to quickly alter the makeup of the Commission. Removing a sitting commissioner due to policy disagreements may be a challenge because, as noted above, commissioners “may be removed by the President only for inefficiency, neglect of duty, or malfeasance in office.” The President does have the ability to name a new chairman from among the sitting commissioners, as President Trump did on January 20, 2025, when he named Commissioner Christie as chairman.<sup>43</sup> To flip the majority, the President typically would need to wait for a sitting commissioner’s term to expire or for their early resignation. With the early resignation of Commissioner Phillips, President Trump has the opportunity to nominate a third Republican Commissioner immediately, establishing a majority Republican FERC after Senate confirmation.

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<sup>42</sup> President Biden did not have a Democratic majority on the Commission until approximately 11 months after he took office.

<sup>43</sup> FERC, “President Trump Names Mark Christie Chairman of FERC,” news release, January 20, 2025, <https://www.ferc.gov/news-events/news/president-trump-names-mark-christie-chairman-ferc>.