

FERC

Trump to pick agency lawyer to fill vacant seat — sources

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James Danly, general counsel at the Federal Energy Regulatory Commission, testifying before a House subcommittee in January 2018. Energy and Commerce Committee

President Trump intends to nominate James Danly, general counsel of the Federal Energy Regulatory Commission, to fill a vacancy at the five-member agency, according to multiple sources close to the administration and in industries regulated by FERC.

Danly is "excited and ready to go," said one former FERC colleague.

His formal nomination could be announced, as one source said, "any day now; we've been expecting it for about a week."

But on Capitol Hill, there is less optimism for immediate action, as the seat has been vacant since the death of Commissioner Kevin McIntyre in January.

The administration seems content to leave the agency with its 2-1 working quorum consisting of two Republicans and one Democrat, a congressional source said.

Energy Secretary Rick Perry said as much Sept. 13, when he told reporters that "we have a FERC that is functional. At this particular point in time, I have not heard or seen, to my recollection, a roadblock to any projects that need to go forward on the FERC perspective."

While it would be ideal to have a full contingent, the agency can still get things done, he said.

Danly, 43, would be relatively inexperienced on energy matters compared with previous FERC commissioners.

He joined FERC as general counsel in September 2017 as a political appointee selected for the post by the White House.

He is the second political appointee to serve as FERC general counsel and the first not to have been chosen by the chairman.

Unlike previous FERC general counsels, Danly did not have a long career either with the commission or in the energy industry before becoming the top lawyer in an agency that employs hundreds of attorneys.

Before joining FERC, Danly was for several years an associate in the energy regulation and litigation practice at Skadden, Arps, Slate, Meagher & Flom LLP in Washington. He graduated from Vanderbilt University Law School in 2013.

He also would be just the second FERC staffer to serve on the commission. Norman Bay, the former head of FERC's enforcement office, was nominated by President Obama, sworn in in 2014 and designated chairman in 2015.

Bay had career stints as a federal prosecutor and law professor before joining FERC's enforcement office in 2009, including as U.S. attorney for the District of New Mexico.

Push to 'get moving'

In his time at FERC, Danly has distinguished himself in espousing his theory of "the humble regulator."

Drawing on tenets of the Federalist Society, the idea means a regulator shouldn't exercise the full extent of an agency's jurisdiction, according to several people who have heard Danly discuss it ([*Energywire*](#), June 10).

At FERC, that translates to a very narrow reading of the Federal Power Act and the Natural Gas Act, they said, with a reluctance to use the agency's discretion to interpret those and the other statutes under which it operates — a departure from past approaches by FERC chairs of both political parties.

Danly's nomination would still leave a vacancy at FERC, as there is another opening since the departure of Democrat Cheryl LaFleur on Aug. 30.

By Senate tradition in such circumstances, the nomination of a Republican such as Danly would be paired with that of a Democrat. But that is not going to happen this time, sources said.

Democrats have settled on Allison Clements for their next nominee. A well-known energy lawyer who is the director of clean energy markets at the Energy Foundation, Clements is supported by Senate Minority Leader Chuck Schumer (D-N.Y.) ([*Energywire*](#), July 18).

Senate Energy and Natural Resources Chairwoman Lisa Murkowski (R-Alaska) said this week that she remains committed to considering nominees sooner rather than later.

"We've been waiting for so long on somebody to come forward that I want to get moving," she told reporters.

As for the lack of pairing with a Democratic nominee, she said, "We have done it in the past, but I think it's also important that we recognize that the seat we are looking to fill, the McIntyre seat, is one that his term did not expire naturally at the end of his term. It was a very unfortunate death."

McIntyre briefly served as chairman of FERC.

"I think there is probably a different application here," Murkowski added.

ENR ranking member Joe Manchin (D-W.Va.) has pressed back against the notion of only moving a Republican nominee, warning that it would break Senate tradition.

"That is wrong," he said. "We have never done it that way. We have a person teed up, very bright person, who I think will do a great job, and they should put them up. I've talked with Lisa Murkowski, and hopefully, she can support that position. That's what we have done before, and that's what we should do this time."

FERC Chairman Neil Chatterjee in an interview with E&E News on Monday said, "I value James and his counsel and expertise" but declined to comment on whether he knew Danly would be named ([*Energywire*](#), Sept. 17).

Chatterjee said he did not know Danly before he arrived at FERC, but that now "we work very closely together."

Asked how he could not know that his general counsel was going to be nominated by the president, Chatterjee said, "I'm not going to comment on it."