

FERC Judicial Review Tracker

The State Energy & Environmental Impact Center has created this tracker to collect court decisions reviewing orders of the Federal Energy Regulatory Commission (FERC).¹ This tracker will be updated as new decisions are issued. It will also be expanded to cover earlier years.

Background

Under the statutes governing judicial review of FERC orders, the Federal Power Act and the Natural Gas Act, an aggrieved party must seek rehearing from FERC before filing a petition for review.² Court decisions reviewing FERC orders thus typically review two orders – an order, and an order on rehearing.

FERC is composed of five members, with no more than 3 from any one political party. The chair is determined by the president.³ FERC must have a quorum of three commissioners participating to take an action. A commissioner might not participate in a case if they are recused due to a conflict or other issue.

In this tracker, we include the history of the FERC orders on review. We list the Commissioner composition and Chair at the time of the final FERC order that was subject to the court decision. And we note which orders include a dissent or partial dissent (commissioners also sometimes concur, but we have not separately listed that data in this tracker for brevity's sake).

Results

In cases examined from 2020 and 2021 (thus far), the petitions for review were denied in 17 cases and granted at least in part in 9 cases. The rate of success of these challenges was slightly higher when the panel of judges was majority Democrat-appointed judges (37%) versus majority Republican-appointed judges (29%).

¹ Court decisions are gathered from FERC's website, <https://ferc.gov/enforcement-legal/legal/court-cases/opinions>.

² 15 U.S.C. § 717r; 16 U.S.C. § 825f.

³ The list of current and previous chairs is available at <https://ferc.gov/about/commission-members/current-previous-chairmen>.

Case	JUDICIAL REVIEW						FERC PROCEEDING				
	Court	Date	Judge Ideology ⁴	Case Type	Description	Was challenge successful? ⁵	FERC Orders on Review	Commissioner Composition ⁶	Chair ⁷	Number of Commissioners	
										Participating	Dissenting ⁸
<i>Oklahoma Gas And Electric Company v. FERC</i>	D.C. Circuit	Aug. 27, 2021	R	electric	Petition for review of FERC's authority over retroactive waiver of billing requirement denied.	No	Southwest Power Pool, Inc., 166 FERC ¶ 61,160(2019), order on reh'g & clar., 170 FERC ¶ 61,125 (2020).	R	Chatterjee	3	0
<i>Louisiana Public Service Commission v. FERC</i>	D.C. Circuit	Aug. 20, 2021	R	electric	Petition for review of FERC order on Entergy operating companies' allocation of production costs denied.	No	Louisiana Pub. Serv. Comm'n, v. Entergy Services, Inc., 167 FERC ¶ 61,186 (2019), reh'g denied, 169 FERC ¶ 61,247 (2019).	R	Chatterjee	3	0
<i>Public Citizen v. FERC</i>	D.C. Circuit	Aug. 6, 2021	D	electric	Petition for review of FERC orders on market manipulation complaints in MISO capacity market granted in part, denied in part.	Yes	Public Citizen, Inc., et al. v. Midcontinent Independent System Operator, Inc., 168 FERC ¶ 61,042 (2019), reh'g denied, 170 FERC ¶ 61,227 (2020).	R	Chatterjee	3	1

⁴ This tracker uses the affiliation of the president who nominated the reviewing judge as a proxy for the judge's ideology. If the decision was issued by a panel of judges that were not all nominated by a president of the same political party, we have indicated the party affiliation of the president for the majority of judges on the panel.

⁵ The answer is "no," the challenge was not successful, if the petition for review was denied in full. As long as the petition for review was granted at least in part, the case is categorized as "yes," successfully challenged.

⁶ This indicates the political party affiliation of the majority of the FERC commissioners participating in the last decision on review in the relevant court case. "Split" indicates that there was an even number of Democrats and Republicans on the Commission at the time.

⁷ This indicates the FERC chair at the time of the last decision on review in the relevant court case.

⁸ This includes Commissioners who dissented in part from the order or concurred in part and dissented in part.



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<i>Vecinos para el Bienestar de la Comunidad Costera, et al. v. FERC</i>	D.C. Circuit	Aug. 3, 2021	D	gas	Petition for review of FERC authorizations for three LNG export terminals in Cameron County, Texas, and the construction and operation of two related pipelines granted in part and denied in part as moot.	Yes	Rio Grande LNG, LLC & Rio Bravo Pipeline Co., LLC (Aug. 13, 2020), order on reh'g, 174 FERC ¶ 61,048 (2021).	R	Chatterjee	3	1
<i>National Parks Conservation Association v. FERC</i>	9th Circuit	July 29, 2021	D	hydro	Petition for review of FERC's denial of motion to intervene in post-licensing proceeding for the Eagle Mountain Pumped Storage Hydroelectric Project denied, further found no violation of the Federal Power Act in failing to provide public notice.	No	Eagle Crest Energy Co., 167 FERC ¶ 61,117 (2019), reh'g denied, 168 FERC ¶ 61,186 (2019).	R	Chatterjee	3	1



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<u>Entergy Services Inc. v. FERC</u>	D.C. Circuit	July 13, 2021	D	electric	Petition for review of FERC-ordered damages payment for misallocation of energy sales denied.	No	Louisiana Pub. Serv. Comm'n v. Entergy Corp., Op. No. 521, 139 FERC ¶ 61,240 (2012), order on reh'g, 155 FERC ¶ 61,064 (2016), order on reh'g, 160 FERC ¶ 61,109 (2016); Op. No. 548, 155 FERC ¶ 61,065 (2017), reh'g denied, 161 FERC ¶ 61,171 (2017); Op. No. 565, 165 FERC ¶ 61,022 (2018), reh'g denied, 169 FERC ¶ 61,179 (2019).	R	Chatterjee	3	0
<u>Delaware Division of the Public Advocate, et al. v. FERC</u>	D.C. Circuit	July 9, 2021	D	electric	Petition for review of FERC's orders on PJM capacity auction revisions (Variable Resource Requirement Curve) granted in part and denied in part.	Yes	PJM Interconnection, L.L.C., 167 FERC ¶ 61,029 (2019), reh'g denied, 171 FERC ¶ 61,040 (2020).	R	Chatterjee	4	1



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<u>North Carolina Department of Environmental Quality v. FERC</u>	4th Circuit	July 2, 2021	D	hydro	Petition for review of FERC license to McMahan Hydroelectric for the Bynum Hydroelectric Project granted in part, disagreeing with FERC's conclusion that the North Carolina Department of Environmental Quality waived its rights under Clean Water Action section 401 and remanding to FERC to re-issue license to include water quality conditions.	Yes	McMahan Hydroelectric, LLC, 168 FERC ¶ 61,185 (2019), reh'g denied, 171 FERC ¶ 61,046 (2020).	R	Chatterjee	4	1
<u>Environmental Defense Fund v. FERC</u>	D.C. Circuit	June 22, 2021	D	gas	Petition for review of FERC certificate for the Spire STL Pipeline granted in part, vacating and remanding certificate.	Yes	Spire STL Pipeline LLC, 164 FERC ¶ 61,085 (2018), order on reh'g, 169 FERC ¶ 61,134 (2019).	R	Chatterjee	3	1

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<i>Shafer & Freeman Lakes Environmental Conservation Corporation, et al. v. FERC</i>	D.C. Circuit	Mar. 26, 2021	D	hydro	Petition for review of FERC approval of dam procedures and Fish and Wildlife Service's Biological Opinion granted in part and denied in part.	Yes	N. Indiana Pub. Serv. Co. LLC, 163 FERC ¶ 61,212 (2018), reh'g denied, 166 FERC ¶ 61,030 (2019).	Split	Chatterjee	4	0
<i>New York State Department of Environmental Conservation and Sierra Club v. FERC</i>	2nd Circuit	Mar. 23, 2021	D	gas	Petition for review of FERC finding that New York Department of Environmental Conservation waived its Clean Water Act section 401 authority denied.	No	Millennium Pipeline Co., L.L.C., 164 FERC ¶ 61,084 (2018); reh'g denied 167 FERC ¶ 61,007 (2019).	D	Chatterjee	3	0
<i>Public Service Electric and Gas Company v. FERC</i>	D.C. Circuit	Mar. 2, 2021	D	electric	Petition for review of FERC adoption of cost allocation methodology in PJM denied.	No	Del. Pub. Serv. Comm'n. v. P.J.M. Interconnection, L.L.C., et al., 164 FERC ¶ 61,035 (2018), reh'g denied, 166 FERC ¶ 61,161 (2019)	Split	Chatterjee	4	0



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<i>Gregory R. Swecker and Beverly F. Swecker v. FERC</i>	D.C. Circuit	Feb. 22, 2021	D	electric	Petition for review of Public Utility Regulatory Policies Act matter denied on jurisdictional grounds.	No	Gregory and Beverly Swecker v. Midland Power Coop., et al., “Order Dismissing Requests,” 170 FERC ¶ 61,289 (2020), reconsideration denied, 171 FERC ¶ 61,193 (2020).	R	Chatterjee	4	0
<i>International Transmission Company, et al. v. FERC</i>	D.C. Circuit	Feb. 19, 2021	D	electric	Petition for review of FERC's orders on reduction of authorized return on equity denied.	No	Consumers Energy Co., et al. v. Intern'tl Transm. Co., et al., 165 FERC ¶ 61,021 (2018), reh'g denied, 168 FERC ¶ 61,035 (2019).	Split	Chatterjee	4	1
<i>Louisville Gas & Electric Company; Kentucky Utilities Company v. FERC</i>	6th Circuit	Feb. 17, 2021	R	electric	Petition for review of FERC's contract analysis granted.	Yes	Owensboro Municipal Utils. v. Louisville Gas and Elec. Co. and Kentucky Utils. Co., 166 FERC ¶ 61,131 (2019), reh'g denied, 169 FERC ¶ 61,030 (2019).	R	Chatterjee	3	0

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<i>Aircraft Service International, Inc., D/B/A Menzies Aviation, et al. v. FERC and United States of America</i>	D.C. Circuit	Jan. 22, 2021	R	petroleum (jet fuel)	Petition for review of FERC finding it lacked jurisdiction to regulate rates for transporting jet fuel denied.	No	Aircraft Service International Group, Inc., et al. v. Central Florida Pipeline, LLC, et al., Op. 567, 169 FERC ¶ 61,119 (2019).	R	Chatterjee	3	0
<i>Enable Mississippi River Transmission, LLC and Enable Gas Transmission, LLC v. FERC</i>	D.C. Circuit	Aug. 14, 2020	D	gas	Petition for review of FERC policy on tax allowances for pipeline partnerships dismissed as moot.	No	Inquiry Regarding the Commission's Policy for Recovery of Income Tax Costs, 162 FERC ¶ 61,227 (2018), order on reh'g, 164 FERC ¶ 61,030 (2018).	R	McIntyre	5	0
<i>SFPP, L.P. v. FERC and United States of America</i>	D.C. Circuit	July 31, 2020	D	oil	Petition for review of FERC orders denying an income tax allowance denied.	No	Inquiry Regarding the Commission's Policy for Recovery of Income Tax Costs, 162 FERC ¶ 61,227 (2018), order on reh'g, 164 FERC ¶ 61,030 (2018).	Split	Chatterjee	4	0

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<i>El Paso Natural Gas Company, L.L.C. v. FERC</i>	D.C. Circuit	July 24, 2020	D	gas	Petition for review of FERC rate orders denied.	No	El Paso Natural Gas Co., Op. No. 528, 145 FERC ¶ 61,040 (2013), order on reh'g and compl., 154 FERC ¶ 61,120 (2016), order on compl. and reh'g, 163 FERC ¶ 61,079 (2018).	R	McIntyre	5	0
<i>National Association of Regulatory Utility Commissioners v. FERC</i>	D.C. Circuit	July 10, 2020	D	electric	Petition for review of FERC order removing barriers to participation in wholesale electric markets for storage resources denied.	No	Electric Storage Participation in Markets Operated by Regional Transmission Organizations and Independent System Operators, Order 841, 162 FERC ¶ 61,127 (2018), order on reh'g and clar., Order 841-A, 167 FERC ¶ 61,154 (2019).	Split	Chatterjee	4	1

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<u>Allegheny Defense Project, et al. v. FERC</u>	D.C. Circuit	June 30, 2020	D	gas	En banc rehearing finding that FERC's use of tolling orders for rehearing requests is not action on the request under the plain statutory language and context, but denying petition for review of certificate issued for the Atlantic Sunrise Pipeline on the merits.	Yes	Transcontinental Gas Pipe Line Co., LLC, 158 FERC ¶ 61,125 (2017), order on reh'g, 161 FERC ¶ 61,250 (2017).	R	Chatterjee	3	0
<u>Nebraska Public Power District v. FERC</u>	8th Circuit	Apr. 30, 2020	R	electric	Petition for review of FERC's order on cost allocation issue in SPP denied.	No	Southwest Power Pool, Inc., Op. No. 562, 163 FERC ¶ 61,109 (2018), reh'g denied, Op. No. 562-A, 166 FERC ¶ 61,019 (2019).	Split	Chatterjee	4	0
<u>Gulf South Pipeline Company, LLP v. FERC</u>	D.C. Circuit	Apr. 10, 2020	R	gas	Petition for review of FERC's rejection of incremental-plus rates for gas pipeline granted, petition for review denied in other respects.	Yes	Gulf South Pipeline Co., LP, 163 FERC 61,124 (2018), reh'g denied, 166 FERC 61,089 (2019).	Split	Chatterjee	4	0

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<i>Baltimore Gas and Electric Company v. FERC</i>	D.C. Circuit	Mar. 27, 2020	R	electric	Petition for review of FERC's rejection of rate revisions to recover taxes denied.	No	PJM Interconnection, L.L.C., 161 FERC ¶ 61,163 (2017), order on reh'g & clar., 164 FERC ¶ 61,173 (2018).	Split	McIntyre	4	0
<i>FERC v. Powhatan Energy Fund LLC, et al.</i>	4th Circuit	Feb. 11, 2020	D	electric	Petition for review of FERC enforcement action denied (statute of limitations challenge).	No	appeal from district court ruling	n/a	n/a	n/a	n/a
<i>Narragansett Indian Tribal Historic Preservation Office v. FERC</i>	D.C. Circuit	Feb. 7, 2020	D	gas	Petition for review of FERC order denying motion to amend FERC regulations around the National Historic Preservation Act brought by Narragansett Tribe denied for lack of standing.	No	Tennessee Gas Pipeline Co., L.L.C., 162 FERC ¶ 61,013 (2018) (and earlier 4/12/17 notice to proceed), reh'g denied, 165 FERC ¶ 61,170 (2018).	D	Chatterjee	3	0