

**SIEMINSKI, BURKE, CLARK, AND NORRIS  
NOMINATIONS**

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**HEARING**  
BEFORE THE  
**COMMITTEE ON**  
**ENERGY AND NATURAL RESOURCES**  
**UNITED STATES SENATE**  
ONE HUNDRED TWELFTH CONGRESS  
SECOND SESSION

TO

CONSIDER THE NOMINATIONS OF ADAM SIEMINSKI, TO BE ADMINISTRATOR OF THE ENERGY INFORMATION ADMINISTRATION, MARCILYNN BURKE, TO BE AN ASSISTANT SECRETARY OF THE INTERIOR, ANTHONY CLARK, TO BE A MEMBER OF THE FEDERAL ENERGY REGULATORY COMMISSION, AND JOHN NORRIS, TO BE A MEMBER OF THE FEDERAL ENERGY REGULATORY COMMISSION

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MARCH 20, 2012



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# CONTENTS

## STATEMENTS

	Page
Bingaman, Hon. Jeff, U.S. Senator From New Mexico .....	1
Burke, Marcilynn A., To Be an Assistant Secretary of the Interior (Land and Minerals Management) .....	11
Clark, Anthony T., To Be a Member of the Federal Energy Regulatory Com- mission .....	16
Grassley, Hon. Chuck, U.S. Senator From Iowa .....	3
Harkin, Hon. Tom, U.S. Senator From Iowa .....	3
Hoeven, Hon. John, U.S. Senator From North Dakota .....	7
Murkowski, Hon. Lisa, U.S. Senator From Alaska .....	2
Norris, John R., To Be a Member of the Federal Energy Regulatory Commis- sion .....	13
Rowe, Robert C., President and CEO, NorthWestern Energy, Butte, MT .....	38
Sieminski, Adam E., To Be Administrator of the Energy Information Adminis- tration .....	8

## APPENDIX

Responses to additional questions .....	41
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## **SIEMINSKI, BURKE, CLARK, AND NORRIS NOMINATIONS**

**TUESDAY, MARCH 20, 2012**

U.S. SENATE,  
COMMITTEE ON ENERGY AND NATURAL RESOURCES,  
*Washington, DC.*

The committee met, pursuant to notice, at 10:05 a.m. in room SD-366, Dirksen Senate Office Building, Hon. Jeff Bingaman, chairman, presiding.

### **OPENING STATEMENT OF HON. JEFF BINGAMAN, U.S. SENATOR FROM NEW MEXICO**

The CHAIRMAN. OK, why don't we get started here? The committee will meet this morning to consider 4 nominations.

Adam Sieminski, to be the Administrator of the Energy Information Administration.

Marcilynn A. Burke, to be the Assistant Secretary of the Interior for Land and Minerals Management.

Anthony Clark, to be a Member of the Federal Energy Regulatory Commission.

John Norris, who has been nominated for a second term as a member of the Federal Energy Regulatory Commission.

Mr. Sieminski is currently the Senior Director of Energy and Climate Change on the staff of the National Security Council. He previously was the Chief Energy Economist for Deutsche Bank. He was appointed to the National Petroleum Council by Secretary Bodman. He's been a Senior Advisor to the Center for Strategic and International Studies Energy and National Security Program.

Ms. Burke is currently the Acting Assistant Secretary of Interior for Land and Minerals Management. She previously was the Deputy Director for Programs and Policy at the Bureau of Land Management. She is on an unpaid leave of absence from the University of Houston Law Center where she is a tenured Associate Professor of Law.

Mr. Clark is currently the Chairman of the North Dakota Public Service Commission and has been a member of that Commission since 2001. He previously was North Dakota's Labor Commissioner, the Administrative Officer for North Dakota's Tax Department and a member of North Dakota's House of Representatives. He has also served as the President of NARUC, the National Association of Regulatory Utility Commissioners.

Mr. Norris has been nominated for a second term on the Federal Energy Regulatory Commission where he has served since January 2010. He previously was Chief of Staff to Agriculture Secretary,

Tom Vilsack, before that he was Chairman of the Iowa Utilities Board.

The President has nominated 4 experienced and well qualified individuals to these important posts. I support all 4 of their nominations. I'm glad to welcome them before the committee this morning.

Let me call on Senator Murkowski for her statement. Then we have two of our colleagues, who are here to introduce nominees as well.

Senator Murkowski.

**STATEMENT OF HON. LISA MURKOWSKI, U.S. SENATOR  
FROM ALASKA**

Senator MURKOWSKI. Thank you, Mr. Chairman. It's nice to welcome our colleagues from Iowa here this morning and I look forward to their comments in support of the nominee. I'd also like to welcome the 4 nominees.

These 4 have been chosen for their key role at one of the agencies under our committee's jurisdiction. I look forward to hearing how each of them will undertake those jobs if ultimately confirmed.

To Mr. Sieminski, I think it's important to recognize that we rely on the Energy Information Administration to provide timely and accurate data about our Nation's energy usage and policies. He's been asked to take over as Administrator at a very consequential moment for our Nation's energy policies. If confirmed, we'll be counting on him to provide the facts that we and others need to make informed decisions, particularly when shortcomings in our policies may be harming our refining sector and impacting gasoline prices.

We welcome Ms. Burke. We count on the Department of the Interior to manage our public lands and to facilitate the production of our Nation's tremendous resource base. As the Acting Assistant Secretary clearly you've got some knowledge of what that requires. We're going to be counting on her to boost domestic production on Federal lands, just as we've seen with our State and our private lands. I look forward to hearing from her exactly how we're going to accomplish that.

To Mr. Norris and Mr. Clark, I think it's very clear that we depend on the FERC to make sure that our electricity supply stays reliable and affordable to enable our Nation's pipeline infrastructure to, likewise, be safe, dependable and reasonably priced and to regulate hydroelectric facilities, licensing new hydro dams when the opportunity presents itself, such as may be the case in Alaska with our Watana project.

Mr. Chairman, I have not yet made up my mind about all of the nominees. I have several questions to ask each of them today ranging from issues such as wild lands initiative, the BLM/OSM merger, take on world oil markets and views on how new environmental regs may affect electric reliability.

So we've got a lot on the plate this morning. I look forward to questions and answers from our nominees. Again, welcome to all.

The CHAIRMAN. Now we'll call on our colleagues. Senator Grassley and Senator Harkin, as I understand it, are here to introduce John Norris and make a statement in support of his nomination.

Following that Senator Hoeven would like to make a statement, as I understand it, of introduction for Tony Clark, in support of his nomination.

So Senator Grassley, why don't you begin or Senator Harkin, which ever order you prefer.

Senator Grassley.

**STATEMENT OF HON. CHUCK GRASSLEY, U.S. SENATOR  
FROM IOWA**

Senator GRASSLEY. Thank you, Senator Bingaman and Senator Murkowski.

Obviously I'm here to support John Norris, as I was, two or so years ago, to support his nomination. I'm very enthusiastic this time, as I was last time, but more so because he's had two or more successful years already serving in this position and his re-nomination.

Mr. Norris was first nominated by President Obama. He was confirmed December 24, 2009. I believe Commissioner Norris has the necessary experience and understanding of our energy markets to continue his service as a Commissioner on FERC.

As Commissioner, Mr. Norris has pursued his objective of ensuring the consumers have access to reliable and efficient energy services. Prior to his appointment he was Chief of Staff for Secretary of Agriculture, Tom Vilsack. In March 2005, John was appointed by then Iowa Governor, Tom Vilsack, to the 3 member Iowa Utilities Board and served as Chairman for 4 years, 2005 to 2009.

It was during this period of time of Iowa service he was co-Chair of the 2009 National Electricity Delivery Forum. He also served as member of the National Association of Utility Commissioners, serving on the Electricity Committee and as a member of the Demand Response Collaborative.

Before his service on the Iowa Utilities Board, John was Chief of Staff to Governor Vilsack as well as Chief of Staff to Iowa Congressman Leonard Boswell.

John received a BA degree from Simpson College, Indianola, Iowa. He graduated with distinction from the University of Iowa Law School in 1995.

I'm pleased to support John during his re-nomination process. Hopefully it's one of these things that will rapidly go through the Senate because it is a re-nomination.

Thank you.

The CHAIRMAN. Thank you for your statement, Senator Grassley. We appreciate your views on the nominee.

Senator Harkin, go right ahead.

**STATEMENT OF HON. TOM HARKIN, U.S. SENATOR FROM IOWA**

Senator HARKIN. Thank you very much, Chairman Bingaman and Ranking Member Murkowski, members of this committee. Again, as my colleague said, it's an honor to appear before this committee to introduce and support John Norris, President Obama's nominee to serve a new 5 year term as Commissioner of the Federal Energy Regulatory Commission. There's no question that Mr. Norris is superbly qualified to continue his service in this critical regulatory responsibility.

I won't go over all the things that my colleague, Senator Grassley, said about his background and just to note that he has had important executive positions in the past. Of course, Chair of the Iowa Utilities Board for 4 years from 2005 to 2009. He was also a Board Member, Secretary and President of the Organization of Midwest Independent Operator States. As Senator Grassley said he was also a member of the Demand Responsive Collaborative of FERC and the National Association of Regulatory Utility Commissioners and he serves today on the Board of Directors of the National Regulatory Research Institute.

I've known John Norris and his family since he was in high school in Red Oak, where he was born and raised, a small, rural town, where he was at one time, a Golden Gloves boxer. As Senator Grassley said he was a former Chief of Staff to our Governor, former Chief of Staff to Congressman Boswell. I might also add that Senator Grassley didn't mention that in 1992 he was the Director of my Iowa campaign when I ran for President, although I urge members of the committee not to hold this singular lapse of judgment against him.

[Laughter.]

Senator HARKIN. Again, I've known him and his family, as I said, since his high school and watched him in all these capacities. He's just an excellent individual, obviously, extremely smart, but also committed to public service. The one thing I'm interested in and commend him to you for is that he has a profound understanding of Energy Regulatory Policies and their impacts on ordinary Americans, especially those who live in small towns and rural America.

That's something that's really absolutely needed there. As we look ahead to major shifts in our electricity systems in the years ahead it will be valuable to have a Commissioner of John's knowledge and expertise to help ensure fair and equitable treatment of all parties, including consumers, utilities, generators and transmission developers. I might also add that last year, John helped shape and support an important rulemaking at FERC that directs electric power industry to address the regional planning and cost allocation of transmission to better meet the transmission needs of our country. This new order 1000 will expedite the development of critical transmission systems by providing the framework for regional planning as well as rules and guidelines for addressing cost allocation.

I might also just say that I know he's going to introduce them, but I'll beat him to the punch. His wife Jackie Norris is here with their twin sons, Hunter and Cole and their son, Sam. Jackie also I've known for a long time, a former schoolteacher in Iowa. As a matter of fact a visitor to her classroom one time in Perry, Iowa and then later when she taught in Ames. So a long, long history on both of them of being dedicated public servants.

So again, Mr. Chairman, members of the committee, I join with my colleague in recommending a public servant of exceptional intelligence, confidence and experience. I urge the committee to send his nomination to the full Senate with a unanimous recommendation.



The CHAIRMAN. Thank you both very much for your statements and strong endorsements of the nominee and we appreciate that. We will allow you to go on with your other responsibilities.

I know Senator Hoeven was going to make a statement at this time of introduction and support for Tony Clark and his nomination. Did you want to go ahead and do that?

Senator HOEVEN. Yes, thank you, Mr. Chairman. Are you going to have the witnesses come forward at this point?

The CHAIRMAN. Yes, as soon as we finish all the statements we're going to bring them forward and have them take the oath and make whatever statements they'd like.

Senator HOEVEN. Alright.

The CHAIRMAN. If you'd like to wait til after that, we can.

Senator HOEVEN. Why don't we do that and then I'll introduce Tony once he's at the——

The CHAIRMAN. Alright. Why don't we ask all the 4 nominees to please come forward and we will administer the Oath of Office.

It's not the, excuse me, it's not the Oath of Office, it's——

[Laughter.]

The CHAIRMAN. I was getting ahead of myself.

[Laughter.]

The CHAIRMAN. Let me ask each of you to stand and raise your right hand.

Do you solemnly swear that the testimony you're about to give to the Senate Committee on Energy and Natural Resources shall be the truth, the whole and nothing but the truth?

[Witnesses sworn.]

The CHAIRMAN. Please be seated.

Before you begin your statement I'll ask 3 questions that I'll address to each nominee and that we, as a committee, always address to each nominee that comes before our committee.

The first question. Will you be available to appear before this committee and other congressional committees to represent departmental positions and to respond to issues of concern to the Congress?

Mr. Sieminski.

Mr. SIEMINSKI. I will.

The CHAIRMAN. Ms. Burke.

Ms. BURKE. I will.

The CHAIRMAN. Mr. Norris.

Mr. NORRIS. I will.

The CHAIRMAN. Mr. Clark.

Mr. CLARK. I will.

The CHAIRMAN. Alright.

Second question. Are you aware of any personal holdings, investments or interests that could constitute a conflict of interest or create the appearance of such a conflict should you be confirmed and assume the office to which you have been nominated by the President?

Mr. Sieminski.

Mr. SIEMINSKI. My investments, personal holdings and other interests have been reviewed both by myself and the appropriate ethics counselors within the Federal Government. I have taken appro-

appropriate action to avoid any conflicts of interest. There are no conflicts of interest or appearances thereof to my knowledge.

The CHAIRMAN. Thank you.

Ms. Burke.

Ms. BURKE. My investments, personal holdings and other interests have been reviewed both by myself and the appropriate ethics counselors within the Federal Government. I have taken appropriate action to avoid any conflicts of interest. There are no conflicts of interest or appearances thereof to my knowledge.

The CHAIRMAN. Thank you very much.

Mr. Norris.

Mr. NORRIS. Thank you. My investments, personal holdings and other interests have been reviewed by both myself and the appropriate ethics counselors within the Federal Government. I have taken appropriate action to avoid any conflicts of interest. There are no conflicts of interest or appearances thereof to my knowledge.

The CHAIRMAN. Thank you.

Mr. Clark.

Mr. CLARK. Thank you. My investments, personal holdings and other interests have been reviewed by both myself and appropriate ethics counselors within the Federal Government. I've taken appropriate action to avoid any conflicts of interest. There are no conflicts of interest or appearances thereof to my knowledge.

The CHAIRMAN. Thank you all for your answers.

The third question we ask is are you involved or do you have any assets that are held in a blind trust?

Mr. Sieminski.

Mr. SIEMINSKI. No, I do not.

The CHAIRMAN. Ms. Burke.

Ms. BURKE. No, Mr. Chairman.

The CHAIRMAN. Mr. Norris.

Mr. NORRIS. No, I do not.

The CHAIRMAN. Mr. Clark.

Mr. CLARK. No, Mr. Chairman.

The CHAIRMAN. Alright. At this point it's our tradition to invite nominees to introduce any family members they would like to introduce before we go on to hear their statements.

Mr. Sieminski, did you have anyone you wanted to introduce?

Mr. SIEMINSKI. Thank you very much, Senator. My wife, Lori, my son, Adam and my daughter, Ellen and her husband, John are here and a bunch of friends in the back, Senator.

The CHAIRMAN. Alright, well we welcome all of them.

Ms. Burke, did you have anyone you wish to introduce?

Ms. BURKE. Yes, thank you, Mr. Chairman.

I'd like to introduce my cousin, Dr. Jacqueline Henry and a number of my colleagues from the Department. Thank you.

The CHAIRMAN. Thank you very much.

Mr. Norris, did you have anyone you want to introduce?

Mr. NORRIS. Yes, thank you, Mr. Chairman.

I have my 3 sons here, Hunter, Cole and Sam Norris, and my wife, Jackie, with me today.

The CHAIRMAN. Alright. We welcome all of them to the hearing.

Mr. Clark, did you have anyone that you want to introduce?

Mr. CLARK. I understand that my kids are getting out of school today to watch on the Internet. So they're back home in Bismarck and weren't able to make the trip this time.

The CHAIRMAN. Alright. We hate to be the cause of anyone missing school, so.

[Laughter.]

The CHAIRMAN. Why don't we go ahead with opening statements? If each of you could make your opening statement, of course your full opening statement will be made part of the record, but if you could give us the short—oh, Senator Hoeven, did you want to go ahead and make your statement with regard to Mr. Clark at this point?

**STATEMENT OF HON. JOHN HOEVEN, U.S. SENATOR FROM  
NORTH DAKOTA**

Senator HOEVEN. Thank you, Mr. Chairman. I appreciate that.

I'm very pleased to introduce to the committee today, Tony Clark. Tony has a distinguished career in North Dakota. I'm very pleased that he's been nominated for the position on the FERC.

Tony and I have known each other for many years. I'm not sure just how long, but he started his career in public service in our legislature. He was elected to the legislature from Fargo and did an outstanding job in the North Dakota legislature.

Subsequent to that he was then appointed Labor Commissioner by Governor Ed Schafer, who was Governor right before I was Governor and did a fine job in that post as well.

Tony and I actually spent a fair amount of time together on the campaign trail. He ran for office for the Public Service Commission in 2000 which is the year that I first ran for Governor. So we traveled the State and I got to know Tony very well and see him not only in the context of talking to the public and interacting with the citizens of our State, but also in a private, one on one context as well. He's always demonstrated great judgment, great integrity and great character.

As a matter of fact as we'd go around we used to all give presentations. I think that year we had about 14 candidates for State-wide offices, something like that, maybe it was 12. I can't remember exactly.

But we'd all make our presentations and whenever my wife, Mikey, watched all the presentations, you know, afterwards sometimes I'd after I finished up I'd, you know, come and ask her, well how did I do? She'd say either, you know, OK or terrible, depending on how I did that day, but—or good. But invariably she'd comment on how well Tony did addressing the public and encourage me to kind of watch him and develop some of his techniques. That's a true story. She really did.

But he served on the PSC now for a dozen years, Public Service Commission, in North Dakota for two full terms, two 6-year terms including serving as the chairman of our Public Service Commission. Outstanding job.

He has also been elected by his peers as the President of the National Association of Regulatory Utility Commissioners which is not only a tremendous honor, but really demonstrates what his peers

think of him. All 50 States across the country elected him to that position. He's just finishing his service in that position.

The other and final comment that I would make is it's not just reflective of his abilities that he was elected the National President of the NARUC, but it also means that he brings to this job with the FERC a working knowledge and relationship with regulators across the country, as well as companies across the country that are working to produce more energy for all Americans. I think when you think about the FERC and what they need to do and the challenges that we face in energy right now, I think that that is a tremendous background and exactly the kind of grassroots background we need. Not only that experience at the local level, but the knowledge and the relationships that he has across the country that he's developed in his role as the National President.

So I'm very pleased today to welcome, to introduce and welcome, Tony Clark to this hearing.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much for your strong statement. Let me also just mention that I have a statement that Senator Conrad provided indicating that he was not able to come today, but strongly supports this nomination as well and wanted that to be noted.

Why don't we go ahead now?

Mr. Sieminski, why don't you make your statement and then we'll go just down the line and hear from each of the nominees?

**TESTIMONY OF ADAM SIEMINSKI, TO BE ADMINISTRATOR OF  
THE ENERGY INFORMATION ADMINISTRATION**

Mr. SIEMINSKI. Mr. Chairman, Ranking Member Murkowski, distinguished members of the committee, it's an honor and a privilege to appear before you today as President Obama's nominee for Administrator of the Energy Information Administration. I'm grateful to the President and to Secretary Chu for their confidence entrusting me with this important assignment. I'd also like to thank my family and friends for their constant support.

If confirmed by the Senate I will bring to this position the experience of 40 years of energy research and analysis. I've spent my career drawing on a wide variety of government, academic, NGO and industry sources in an effort to understand and be able to explain the ever changing energy markets with a particular focus on petroleum and refined products and natural gas. To be confirmed for this position would be the highpoint of my career.

As a customer of EIA for virtually my entire professional career, I can attest to the fact that EIA's mission is as critical today as it was when it was created by Congress in 1977 as the Nation's premier source of unbiased energy data analysis and forecasting. EIA is required by law to prepare its products independently of policy positions taken within the Federal Government. As an analyst in investment research I fully understand the critical need for independence in preparation and delivery of products like this.

Energy is a complex subject touching every aspect of daily life and the overall economy involving a wide variety of technologies and deeply affecting our interactions with the rest of the world. Understanding the situation here and abroad is critical, especially

with regard to oil and gas and increasingly diesel and gasoline trade. In the U.S. the collection of energy information straddles numerous regulatory authorities.

EIA is uniquely qualified to deal with the complications that arise from this structure to make sure that the data is relevant, timely and accurate and that the analyses are performed with integrity, that data and projections are available widely. I valued these qualities as a user of EIA's output. If confirmed would do my utmost to ensure its continuing credibility.

This is a sector where capital investments of billions of dollars are made in long lived infrastructure projects. I'm acutely aware of the significance of those investments that supplies equally to mature elements of the sector as it does to emerging technologies such as renewable energy, energy storage, smart grids and natural gas fueled vehicles. Understanding structural change in trends and efficiency on the part of consumers is also key. Ensuring the quality and timeliness of the data and focusing on EIA's finite resources on those elements that provide the most value to EIA stakeholders will be my highest priority.

I've watched the transition from price controls to open access competitive energy markets that we see today. EIA statistics and analysis have been invaluable in understanding these shifts, particularly in the natural gas industry from the early restructuring days to taking on the storage report which is a national economic indicator for the current dramatic transformation on the supply side. The resource base and technology that revitalized natural gas is now on the verge of playing a similar role in oil production. EIA is now being called on to provide insights as policymakers grapple with these changes.

If confirmed as EIA Administrator I would carry on the work started by recent administrators to understand and assess the interrelated roles played by fundamentals, financial market behavior and other factors in energy price formation.

If confirmed I look forward to working with members of this committee and others both inside and outside of government in order to improve the information and analytical base used for making sound energy decisions, in doing so I will draw on a vast network of experts from energy, economic communities and will strive to raise public understanding of these issues.

Finally, Senator Murkowski I want you to know that I got my start in the energy sector as a draftsman for the Golden Valley Electrical Association in Fairbanks, Alaska during the summer of 1968. My first job in Washington was following air pollution policy and investment issues after the passage of the Clean Air Act in 1970. More recently I contributed to my former company's efforts in carbon markets, renewable energy and clean energy investment.

I understand the important roles of all of our fuels are playing in delivering energy to consumers. I look forward to answering any questions the members of the committee may have either now at this hearing or in writing for the record. Thank you very much.

[The prepared statement of Mr. Sieminski follows:]

## PREPARED STATEMENT OF ADAM SIEMINSKI, NOMINEE TO BE ADMINISTRATOR OF THE ENERGY INFORMATION ADMINISTRATION

Mr. Chairman, Ranking Member Murkowski, distinguished members of the Committee—it is an honor and a privilege to appear before you today as President Obama’s nominee for Administrator of the Energy Information Administration. I’m grateful to the President and to Secretary Chu for their confidence in trusting me with this important assignment. If confirmed by the Senate, I will bring to the position the experience of 40-years of energy research and analysis. I have spent my career drawing on a wide variety of government, academic, NGO, and industry sources in an effort to understand, and be able to explain, the ever-changing energy markets, with a particular focus on petroleum, refined product and natural gas markets. To be confirmed for this position would be the high point of my career.

As a customer of EIA for virtually my entire professional career, I can attest to the fact EIA’s mission is as critical today as when it was created by Congress in 1977. As the Nation’s premier source of unbiased energy data, analysis and forecasting, EIA is required by law to prepare its products independently of policy positions taken within the Federal Government. As an analyst in investment research, I fully understand the critical need for independence in its preparation and delivery.

Since 2006 when I was appointed to the National Petroleum Council (NPC) by former Energy Secretary Bodman, I have been engaged in the work of the NPC, starting with the 2007 Global Oil and Gas Study, *The Hard Truths*, as well as its 2011 report, *Prudent Development*, requested by Energy Secretary Chu, which deals with ways to realize the potential of North America’s abundant natural gas and oil resources. As the NPC and virtually everybody who has ever looked at these issues emphasizes, the American people are very concerned about energy—its availability, reliability, cost, and environmental impact.

Energy is a complex subject, touching every aspect of daily life and the overall economy, involving a wide variety of technologies, and deeply affecting our interaction with the rest of the world. Understanding the situation both here and abroad is critical, especially with regard to oil and, increasingly, diesel and gasoline trade. In the US, the collection of energy information straddles numerous regulatory authorities. EIA is uniquely qualified to deal with the complications that arise from this structure and to make sure that the data is relevant, timely and accurate, that the analyses are performed with integrity, and that the data and the projections are available widely. I valued these qualities as a user of EIA’s output, and if confirmed would do my utmost to ensure its continuing credibility.

This is a sector where capital investments of billions of dollars are made in long lived infrastructure projects. I am acutely aware of the significance of those investments. This applies equally to mature elements of the sector as it does to emerging technologies such as renewable energy, energy storage, smart grids, and natural gas fueled vehicles. Understanding structural change and trends in efficiency on the part of energy consumers is also key. Ensuring the quality and timeliness of data and focusing EIA’s finite resources on those elements that provide the most value to EIA’s stakeholders will be my highest priorities.

I have watched the transition from price controls to the open-access competitive energy markets we see today. EIA’s statistics and analysis have been invaluable to understanding the shifts in the natural gas industry from the early restructuring days to taking on the storage report—a national economic indicator—to the current dramatic transformation on the supply side. The resources base and technology that revitalized natural gas now appear on the verge of playing a similar role in oil production. EIA is now being called on to provide insights as policymakers grapple with these changes.

As EIA Administrator, I would carry on the work started by recent Administrators to understand and assess the interrelated roles played by fundamentals, financial market behavior and other factors in energy price formation. If confirmed I look forward to working with members of this committee and others both inside and outside of government in order to improve the information analytical base used for making sound energy decisions. In doing so, I will draw on a vast network of experts from the energy economics community and will strive to raise public understanding of these energy issues.

Finally I want to note that I got my start in the energy sector as a draftsman for the Golden Valley Electrical Association in Fairbanks, Alaska, during the summer of 1968. My first job in Washington was following air pollution policy and investment issues after the passage of the Clean Air Act of 1970. More recently, I contributed to my former company’s efforts in carbon markets, renewable energy, and clean energy investing. I understand the important roles that all of our fuels are playing in delivering energy to consumers.

I look forward to answering any questions members of the Committee may have—either now at this hearing or in writing for the record. Thank you.

The CHAIRMAN. Thank you very much.  
Ms. Burke, go right ahead.

**TESTIMONY OF MARCILYNN A. BURKE, ASSISTANT  
SECRETARY-DESIGNATE, DEPARTMENT OF THE INTERIOR**

Ms. BURKE. Thank you, Mr. Chairman, Senator Murkowski and members of the committee. It is an honor and a privilege to appear before you today as President Obama's nominee for the position of Assistant Secretary for Land and Minerals Management at the U.S. Department of the Interior. I have appeared before this committee several times for legislative and oversight hearings. I appreciate the opportunity to come before you today for consideration of my nomination.

Before I begin I would like to thank President Obama for the confidence he has shown in me through this nomination. In addition I would like to express my deep appreciation to Secretary Salazar for his unwavering support of me and his steadfast leadership at the Department. Finally I want to thank my family and friends for their support, love and guidance.

I was born in Raleigh, North Carolina, the second of two children. I attended public schools in North Carolina and graduated from the University of North Carolina at Chapel Hill. I obtained my law degree from Yale Law School.

My parents, Doris and Johnnie Burke, who are unable to be here with me today, spent their careers as public school educators. At a young age I came to appreciate the value of education both as a tool for personal growth and as a means of helping others to achieve their potential. In addition to my love for education I have a passion for the law. After practicing law in a variety of areas, my interest in the law and education merged and led to a law teaching career.

It was from my position as an Associate Professor of Law at the University of Houston Law Center that I first came to the Department. When called to become the Bureau of Land Management's Deputy Director for Programs and Policy in 2009 it was a great honor and opportunity for someone who had spent the last 8 years teaching about the management of Federal lands. During my tenure with the Department of the Interior I've been able to work on a variety of complex and challenging natural resources issues.

Diverse as they have been, these issues share certain characteristics.

First, they almost never lend themselves to easy solutions.

Second, their resolution requires a thoughtful, balanced approach that is informed by the needs and perspectives of our stakeholders both here in Washington and throughout the Nation.

Third, they have real and direct consequences for the places where people live, work and play.

I recognize and appreciate the importance of the Office of the Assistant Secretary for Land and Minerals Management. The Bureau over which the Assistant Secretary has administrative oversight span a vast geographical distance and encompass a wide spectrum of responsibilities. I am committed to the Administra-

tion's "All of the Above?" approach to developing conventional and renewable energy resources in the right places in the right way. That means that we are always mindful of our responsibilities as stewards for other natural resources as well as cultural resources.

I'm keenly aware of the events that surrounded the Deep Water Horizon oil spill. I stand ready to continue to provide leadership and policy guidance to the Bureau of Ocean Energy Management and the Bureau of Safety and Environmental Enforcement. As we strive to improve how we fulfill our responsibilities to promote safe and environmentally sound, offshore energy development.

By virtue of my tenure as the Deputy Director of the BLM, I am well acquainted with the competing demands of our public lands. In meeting its multiple use mission the BLM must balance a wide array of uses and resources from mining to energy, to grazing, to timber harvesting, to recreation, to the protection of unique, special and sensitive cultural and archeological resources, as well as land species and habitats.

Finally, I appreciate and support the mission of the Office of Surface Mining Reclamation and Enforcement. As it works closely with States, tribes, industry, coal mining communities and public interest groups. Its nationwide program to protect society and the environment from adverse effects of surface coal mining operations while balancing the need for coal production as a part of our energy portfolio is vitally important.

The opportunity to serve at the Department of the Interior stands alone among my professional experiences. It has been the most challenging, rewarding and enjoyable professional experience of my life. If confirmed, I would look forward to working with this committee and continuing this important work with a deep understanding of the awesome responsibility that we have as public servants to manage the lands and waters in our care.

Thank you for the opportunity to appear before you today. I'm happy to answer any questions.

[The prepared statement of Ms. Burke follows:]

PREPARED STATEMENT OF MARCILYNN A. BURKE, ASSISTANT SECRETARY-DESIGNATE,  
DEPARTMENT OF THE INTERIOR

Chairman Bingaman, Senator Murkowski, and Members of the Committee, it is an honor and a privilege to appear before you today as President Obama's nominee for the position of Assistant Secretary for Land and Minerals Management at the U.S. Department of the Interior. I have appeared before this Committee several times for legislative and oversight hearings on public land management issues, and I appreciate the opportunity to come before you today for consideration of my nomination.

Before I begin, I would like to thank President Obama for the confidence he has shown in me by nominating me for this important position. In addition, I wish to express my deep appreciation to Secretary Salazar for his unwavering support of me and his steadfast leadership of the Department. Finally, I want to thank my family and friends for their support, love, and guidance. My gratitude to them knows no bounds; without them, I would not be here today.

I was born in Raleigh, North Carolina, the second of two children. I attended public schools in North Carolina and graduated from the University of North Carolina at Chapel Hill with a bachelor's degree in International Studies. I obtained my law degree from Yale Law School. My parents, Doris and Johnnie Burke, who are unfortunately unable to be here today, spent their careers as public school educators. As a result of the example set by my parents, I came to appreciate the value of education—both as a tool for personal growth and as a means of helping others to achieve their potential. In addition to my love for education, I have a passion for



the law. After practicing law in a variety of areas, including environmental law, antitrust, and civil and criminal litigation, my interest in law and education merged and led to a law teaching career.

It was from my position as an Associate Professor of Law at the University of Houston Law Center that I first came to the Department of the Interior. When called to become the Bureau of Land Management's Deputy Director for Programs and Policy in 2009, it was a great honor and opportunity for someone like me who had spent the past 8 years teaching in the areas of property law, land use law, and the management of Federal lands and its natural resources.

My professional experiences, both in teaching and in private law practice, have honed in me a natural instinct to listen and learn first, before making recommendations or decisions. These instincts are further reinforced by my sincere belief in the value of collaboration, consensus building, and transparency in the development and implementation of policies governing the management of the public lands and waters. During my tenure with the Department of the Interior, I have been able to work on a wide variety of complex and challenging natural resources issues. Diverse as they have been, these issues share certain characteristics. First, they almost never lend themselves to easy solutions. Second, their resolution requires a thoughtful, balanced approach that is informed by the needs and perspectives of our stakeholders, both here in Washington and throughout the Nation. Third, they have real and direct consequences for the places where people live, work, and play. I recognize and appreciate the importance of the Office of the Assistant Secretary for Land and Minerals Management. The bureaus over which the Assistant Secretary has administrative oversight span a vast geographical distance and encompass a wide spectrum of responsibilities. I am committed to the Administration's "all of the above" approach to developing conventional and renewable energy resources both onshore and offshore, in the right places and in the right way. That means that we are always mindful of our responsibilities as stewards for other natural as well as cultural resources. And if confirmed, I would be ready to help advance Secretary Salazar's "Smart from the Start" approach to the development of energy resources, both on- and offshore.

I am keenly aware of the tragic events surrounding the Deepwater Horizon explosion and oil spill. I stand ready to continue to provide leadership and policy guidance to the Bureau of Ocean Energy Management and the Bureau of Safety and Environmental Enforcement as we strive to improve how we fulfill our responsibilities to promote safe and environmentally sound offshore energy development.

By virtue of my tenure with as a Deputy Director of the Bureau of Land Management (BLM), I am well acquainted with the myriad of competing demands that are placed on our public lands. As a result of significant population growth in the West over the past several decades, the need for balanced, consensus-based public land management has never been greater. In meeting its multiple use mission, the BLM must balance a wide array of uses and resources—from mining; to energy—conventional and renewable—to grazing; to timber harvesting; to recreation; to the protection of unique, special, and sensitive cultural and archeological resources, land, species, and habitats.

Finally, I appreciate and support the mission of the Office of Surface Mining Reclamation and Enforcement as it works closely with states, tribes, industry, coal mining communities, and public interest groups. Its nationwide program to protect society and the environment from the adverse effects of surface coal mining operations, while balancing the need for continued coal production as part of our energy portfolio is vitally important.

The opportunity to serve at the Department of the Interior stands alone among my professional experiences. It has been the most challenging, rewarding, and enjoyable professional experience of my life. If confirmed, I would look forward to working with this Committee and continuing this important work with a deep understanding of the awesome responsibility that we have as public servants to manage the lands and waters in our care. Thank you for the opportunity to appear before you today. I would be happy to answer any questions.

The CHAIRMAN. Thank you very much.  
Mr. Norris.

**TESTIMONY OF JOHN R. NORRIS, TO BE A MEMBER OF THE  
FEDERAL ENERGY REGULATORY COMMISSION**

Mr. NORRIS. Thank you, Chairman Bingaman, Ranking Member Murkowski, Senator Hoeven. I'm honored to be here today to ap-

pear before this committee. I also want to express my appreciation to President Obama for nominating me to the Federal Energy Regulatory Commission. Thank you, Chairman Bingaman and Ranking Member Murkowski, for scheduling this hearing here today.

I also want to acknowledge and thank my two great Senators from Iowa, who took the time today to introduce me and just say how much I appreciate, admire and respect their many years of service to Iowans and this country. It's an honor to have them here on my behalf.

I'm also pleased to be here with my fellow nominee to the FERC, Tony Clark. I've known Tony since I was on the State Public Service Commissioner of Iowa's Utilities Board in 2005. I have a great respect for both his abilities and his long time commitment to public service. I look forward, hopefully if given the opportunity, to serve with him at the Commission.

I enjoyed my 2 years in the Commission. I'll enjoy even more having a full term in 5 years. So let me just say and I know we have a lot of issues you want to talk about.

So I'll make this brief and just say, I think the 2 years I've had at the Commission, my 4 years as chairman of a State public service commission. As the Senators noted, I worked both in the district and on Capitol Hill for a Member of Congress, Members of Congress. I've worked in the executive branch of State government and Federal Government.

I have worked for a non-profit sector during the farm crisis in Iowa in the 1980s. I've owned my own business and ran my own business with 20 plus employees. So I get what it means to have government regulations.

Maybe most importantly I grew up on a family farm in Iowa and consider my degree, the best degree, to be in common sense where you kind of learn in the end stuff has to work. I bring that to this experience. Those many lab experiences that I think are an asset to being a regulator to get different perspectives of what you do and how it impacts folks because we can talk about policy and due process and a number of factors in this regulatory arena, but when you throw physics on the table as well and in the end it has to work. That's what I strive to do at FERC is make this a reliable system that's as cost efficient and effective as possible. I will continue to strive to do that.

I also, since my first month at the State Commission in the State of Iowa and to this day on my desk calendar you have on your desk, I write at the top of that calendar, the uncompleted sentence. This decision affects—benefits the consumer because, dot, dot, dot. Every decision I make I want to be able to provide a reasonable answer to that question.

So that drives my thinking. How this benefits the consumer and how this helps maintain a reliable infrastructure for an energy system that is so important for our economy and health and safety of our citizens. I would greatly appreciate the opportunity to have a full term to continue that work.

Thank you very much.

[The prepared statement of Mr. Norris follows:]

PREPARED STATEMENT OF JOHN R. NORRIS, NOMINEE TO BE A MEMBER OF THE  
FEDERAL ENERGY REGULATORY COMMISSION

Chairman Bingaman, Ranking Member Murkowski, and distinguished members of the Committee, I am honored to be here today as a nominee for the Federal Energy Regulatory Commission (FERC). I would like to express my appreciation to President Obama for nominating me to this position and I want to thank Chairman Bingaman and Ranking Member Murkowski for holding this hearing.

I am also pleased to be here today with my fellow FERC nominee, Tony Clark. I have known and worked with Mr. Clark since my time as Chairman of the Iowa Utilities Board, beginning in 2005, and I have the highest regard for his abilities and his long-time commitment to public service.

I am grateful to have had the opportunity to serve my country the past two years as a member of the Federal Energy Regulatory Commission. I would be honored if allowed to serve an additional, full five-year term. The energy issues we are working on at FERC are critical to America's economy and to the safety and well-being of our citizens. I believe the experience I have gained in the past two years, along with my years as Chairman of the Iowa Utilities Board, are assets that I would bring to further service. In addition, I have worked for the U.S. Congress, and in both the state and federal executive branches, all of which provided important experiences that help me weigh policy choices. I also believe my experiences outside of government have given me valuable perspective that I bring to the Commission. For example, as a small business owner, I had to understand and comply with government regulations. And, perhaps most importantly, I earned a "degree" in "common sense" growing up working on our family farm, and that experience has always and will always ground my judgment and decision-making. When it comes to making any decision, but particularly when it comes to our energy infrastructure, I am grounded in the realization that, in the end, it has to work.

While we can debate economics, due process, and other important issues with policy implications, in the industries we regulate, physics provides a reality check on what we can do if we want our complex, interconnected energy infrastructure to work. I strive to find the correct balance among economics, due process, and the limits and reality of the physics in all decisions before me. However, every month of my service at the Iowa Utility Board and as a Commissioner at FERC, I write one question on top of my desk calendar to answer for in every decision I make: "How does this decision benefit the consumer?"

I believe, for example, that consumers benefit from a reliable and efficient electric grid. I believe they also benefit when there is an open and honest discussion of the costs to maintain a reliable grid. So, I take very seriously FERC's responsibility under the Federal Power Act to work with the North American Electric Reliability Corporation (NERC) to develop and enforce reliability standards, and have worked to help strengthen our relationship with NERC and its stakeholders and foster an open and transparent dialogue of critical bulk power system reliability issues.

I have also worked to achieve for the benefit of consumers the efficiencies of a fair and transparent wholesale competitive market, and to see that consumers are protected from harm through the firm and fair enforcement of rules prohibiting market manipulation under legislation enacted by Congress in 2005.

I believe we have made progress during my time at FERC to increase efficiencies in the transmission of electricity to consumers, but more work remains to be done. Open and transparent regional transmission planning processes that include a diverse set of interests and that find the most efficient solutions for maintaining reliability, relieving economic congestion, and meeting public policy directives will yield a more efficient and cost-effective supply of energy for consumers. I also believe there are efficiencies to be gained from increased coordination among regions to find locations where jointly planned and constructed transmission facilities, with a fair allocation of the costs of those facilities among benefiting consumers, will result in a more efficient energy system.

In addition to our nation's existing energy assets, I believe the United States has tremendous potential to make our energy supplies more sustainable and secure. The increased supply of natural gas from shale gas discoveries, technology advancements that are bringing down the costs of wind, solar and other renewable resources, an abundance of hydroelectric power, and the continued push for energy efficiency and demand side resources all hold great promise to modernize our infrastructure and build a sustainable energy system for the future of America. With much of our energy infrastructure quite old and in need of upgrading or replacement, the timing is right to seize this potential.

At FERC, we can help seize this potential not only through the wholesale electric market and electric transmission policies I note above, but also by continuing to

build on our impressive track record of fairly and efficiently siting needed natural gas pipeline infrastructure, by providing flexible licensing procedures for new hydroelectric technologies, and taking other steps to ensure that new energy infrastructure can be brought online at just and reasonable rates. My continued goal will be to make sure we meet our needs for today and the future in the most efficient way possible, for the benefit of consumers and America's economy.

Thank you again for the opportunity to testify before you today and I am happy to answer any questions you may have.

The CHAIRMAN. Thank you very much.  
Mr. Clark, go right ahead.

**TESTIMONY OF ANTHONY CLARK, TO BE A MEMBER OF THE  
FEDERAL ENERGY REGULATORY COMMISSION**

Mr. CLARK. Thank you, Chairman Bingaman, Ranking Member Murkowski, Senator Hoeven and members of the committee. I'm greatly honored to be before you today as a nominee for the FERC. I'd like to thank President Obama for nominating me and I'd like to thank Senator McConnell for his support as well.

I'm especially pleased to acknowledge my own two Senators from North Dakota. Senator Hoeven, thank you for your kind words and Senator Conrad's support both means a great deal to me.

Last, but most importantly, I want to acknowledge my family, who has been so supportive of my career in public service. To my wife, Amy, our 3 boys, Thomas, Alex and Michael and to my parents, they've always been there for me. As I indicated the distance between North Dakota and Washington prevents them from being here in person today. But I did want them to know how much they mean to me.

FERC does extremely important work on behalf of the American people. Its work plays a critical role in protecting our energy consumers and the infrastructure that provides them with some of the necessities of life in the modern world. If confirmed for the Senate I'd look forward to putting to good use the experiences that I've gained over the last, approximately, 18 years. I've had the tremendous honor of serving the people in North Dakota since I was in my early 20s. First as a State Legislator, then as a State employee, the head of a cabinet level agency and for the last 12 years, as a member of the Public Service Commission, the State's top utility regulatory body.

Perhaps the best way to introduce my experience to the committee is to tell the story of North Dakota over the last decade. Since January 2001, I've served as the Public Service Commissioner for the State and I'm currently the Senior Member and Chairman of the NDPSC. When I first joined the Commission our State had a regionally important energy sector comprised of several base load lignite-fired power plants and one large Western Area Power Administration hydro dam.

In the year 2000, North Dakota was effectively 50th in wind energy production with no commercial wind energy. As recently as 2006, we were the Nation's ninth largest oil producing State. What a difference a few years has made in the life of my home State.

Today North Dakota is amongst the top ten wind energy producing States with approximately 1,400 megawatts of commercial capacity. We've sited or in the process of siting hundreds of miles

of new electric transmission line. North Dakota is a leader in clean coal and innovative carbon capture and sequestration projects.

Hundreds of millions of dollars have been invested in oil and gas pipelines and processing infrastructure. It was just announced that North Dakota is now the Nation's third largest oil producing State and is expected to be second only to Texas within as little as a year. North Dakota has truly become an example of an "All of the Above" energy State.

Much like the FERC at the Federal level, the NDPSC is the lead regulatory agency at the State level for jurisdictional matters related to investor owned utilities, pipelines and the siting of energy development projects. In my tenure in office I've participated in proceedings that have authorized approximately \$6 billion in energy infrastructure projects. Having a hands on experience in helping to regulate and shape energy policy during this period of rapid change has given me insights into both the opportunities and the challenges associated with energy development. It's this unique experience that I hope to bring to the Commission should I be confirmed.

Another experience that I've had, and Senator Hoeven indicated some of it, which was the, my tenure as President at NARUC, the National Association of Regulatory Utility Commissioners. Within NARUC, I worked hard to ensure that all voices were heard successfully working across regional lines, philosophical lines, party lines for consensus oriented solutions that I hope benefited our Nation's consumers. The experience, perhaps more than any other one that someone could have, has deepened my respect for and my understanding of the regional diversity that exists across this country.

If I'm confirmed, I hope to take this broad understanding of how energy regulation works at both the State and Federal level with me to the FERC. It's probably safe to say that there's not a single State across the country with which I have not had at least some interaction. Should I be confirmed I will be a much better commissioner for that experience.

Mr. Chairman and members of the committee, the FERC has big issues ahead of it. Developing infrastructure in the right way, facilitating American's access to affordable, reliable, environmentally responsible forms of energy, protecting our Nation's critical assets, these are all top of mind issues for me as I know they are for you. If confirmed, I look forward to engaging with you on these important issues and would be happy to provide whatever expertise I may have in the furtherance of your important work.

Mr. Chairman, that concludes my testimony. I'd be happy to answer any questions you may have.

[The prepared statement of Mr. Clark follows:]

PREPARED STATEMENT OF ANTHONY CLARK, NOMINEE TO BE A MEMBER OF THE  
FEDERAL ENERGY REGULATORY COMMISSION

Thank you Chairman Bingaman, Ranking Member Murkowski and members of the Committee. I am greatly honored to be before you today as a nominee for the Federal Energy Regulatory Commission (FERC). I would like to thank President Obama for nominating me. I also wish to thank Senator McConnell for his support. And I am especially pleased to acknowledge my own two Senators from North Dakota. Senator Hoeven's and Senator Conrad's support means a great deal to me, and I appreciate their kind words regarding my nomination. Last, but most importantly,

I want to acknowledge my family, who has been so supportive of my career in public service. To my wife, Amy and our three boys Thomas, Alex and Michael, and to my parents; you have always been there for me. The distance between North Dakota and Washington, DC keeps them from being able to be here in person today, but I know they are with me in spirit and are watching on the Internet and I just wanted them to let know how much they mean to me.

FERC does extremely important work on behalf of the American people. Its work plays a critical role in protecting our energy consumers and the infrastructure that provides them some of the basic necessities of life in the modern world. If confirmed by the Senate, I would look forward to putting to good use the experiences I have gained over the last approximately 18 years. I have had the tremendous honor of serving the people of North Dakota since I was in my early 20's; first as a state legislator, then as a state employee, the head of a cabinet-level agency, and for the last nearly 12 years as a member of the state's top utility regulatory body.

Perhaps the best way to introduce my experience to the committee is to tell the story of North Dakota over the last decade. Since January 2001, I have served as a Public Service Commissioner for the state of North Dakota and today I am the senior member and Chairman of the North Dakota Public Service Commission (NDPSC). When I first joined the NDPSC, our state had a regionally important energy sector, comprised of several base load lignite-fired power plants, and one large Western Area Power Administration hydro dam. In the year 2000, North Dakota was effectively 50th in wind energy production, with no commercial wind farms. And as recently as 2006, North Dakota was the nation's 9th largest oil producing state.

What a difference a few years have made in the life of my home state. Today, North Dakota is amongst the top 10 wind energy producing states, with approximately 1,400 MW of capacity. We have sited, or are in the process of siting, hundreds of miles of new electric transmission lines. North Dakota is a leader in clean coal and innovative carbon capture and sequestration projects. Hundreds of millions of dollars have been invested in oil and gas pipelines and processing infrastructure. And it was just announced that North Dakota is now the nation's third largest oil producing state, and is expected to be second only to Texas within as little as a year. When taken together with our large biomass and biofuels potential, North Dakota has truly become an example of an "all-of-the-above" energy state.

As Senator Hoeven has often said, both as our Governor and now as our Senator, this dynamic energy economy is the result of not only North Dakota's God given natural resources, but also having the right legal, tax and regulatory climate in place. In my current job, I cannot take much credit for our legal and tax policy. I can report the NDPSC has a lot to say about regulatory policy. In authorizing projects, we take pride in not cutting corners. In many ways, we have some of the most comprehensive policies related to what is expected of projects in terms of mitigating impacts on the welfare of citizens and on our state's natural, cultural and historic resources. At the same time, we have worked to ensure that unnecessary bureaucracy does not hold up regionally or nationally needed projects.

Much like the FERC at the federal level, the NDPSC is the lead regulatory agency at the state level for jurisdictional matters related to investor owned utilities, pipelines and the siting of energy development projects. In my tenure of office, I have participated in proceedings that have authorized approximately \$6 billion in energy infrastructure projects. At the same time, our state's consumers pay some of the lowest energy rates in the nation, and our environment is among the best. North Dakota is a leader in meeting air quality standards. And programs such as those carried out by the NDPSC's Mine Reclamation Division, are considered world-class. Having hands-on experience in helping to regulate and shape energy policy during this period of rapid change has given me insights into both the opportunities and challenges associated with energy development. It is this unique experience that I hope to draw upon should I be confirmed.

Another experience that I have had that I would draw upon is one that extends beyond the borders of North Dakota. In November of 2010, I was unanimously elected by my state commissioner colleagues across the nation to serve a one year term as President of the National Association of Regulatory Utility Commissioners (NARUC). In that role, I was the lead state commissioner responsible for representing the association before numerous stakeholders. My experience leading this organization of regulatory professionals gave me a valuable understanding that can perhaps only be developed through a position like the one I held.

As a leader within NARUC, I worked hard to ensure that all voices were heard. I successfully worked across regional lines, philosophical lines and party lines for consensus oriented solutions that benefitted our nation's consumers. This experi-

ence, perhaps more than any other that one could have, deepened my respect for, and my understanding of, the regional diversity that exists across the country.

If I am confirmed, I will take this broad understanding of how energy regulation works at both the state and federal level with me to the FERC. Since my nomination, I have been truly humbled by the support I have received from my state colleagues across the country, and I want to acknowledge them at this time. Over the years, I have learned much from them. It is probably safe to say there is not a single state across the country with which I have not had at least some interaction. And should I be confirmed, I will be a much better Commissioner for that experience.

Mr. Chairman and members of the Committee, the FERC has big issues ahead of it. Developing infrastructure in the right way, facilitating Americans' access to affordable, reliable, environmentally responsible forms of energy, protecting our nation's critical assets; these are all top of mind issues for me, as I know they are for you. As someone who first cut his teeth in public service as an elected member of the state House of Representatives, I have a tremendous respect for the legislative branch of government and a tremendous respect for the sacrifices you have all made to serve your constituents. If confirmed, I look forward to engaging with you on these important issues, and would be happy to provide whatever expertise I may have in the furtherance of your important work.

That concludes my testimony. I would be pleased to answer any questions you may have.

The CHAIRMAN. Thank you very much. Thank you all for your excellent statements. I'll start with a few questions.

First, let me ask the two FERC nominees. In your view would it be advisable for Congress to give the Federal Energy Regulatory Commission additional authority to have transmissionsited?

Mr. Norris.

Mr. NORRIS. To have transmission siting?

The CHAIRMAN. Yes, siting authority. At the FERC level do you think we are, under current law, able to build all the transmission we need in this country or do we need to change the law?

Mr. NORRIS. I wouldn't say we need to change the law yet. I think the biggest hurdle in my mind for getting transmission built in this country has been the inability to reach consensus on cost allocation. Which is why in Iowa 1000, we gave great deference to the regional planning entities to come up with a cost allocation formula based on the principle of beneficiary pace.

I believe if we can give that a chance to work that will help remove a major barrier in building transmission in this country. Of course with the 2005 legislation, EPACT 2005, and the backstop siting authority there's still, I think, a fair question out there as to what, how far that statute and that law goes with the 4 circuit decision that it only applies if a State fails to act. I think there's still some uncertainty about would that be adequate if we don't resolve cost allocation, planned entities don't move forward with transmission build and if States begin to withhold siting approval on much needed projects.

I would say there's a chance we would need to revisit that. But I think it would probably be premature at this time.

The CHAIRMAN. Mr. Clark, did you have a point of view on this?

Mr. CLARK. Sure. In my role as a Commissioner on the North Dakota Commission, I've been supportive of the Federal backstop authority which probably places me a little bit outside. Maybe even of some of the mainstream of State commissioners, many of whom would prefer that it be left strictly as a State matter.

I do think that backstop Federal authority is a good idea. As Commissioner Norris references, there may be cases where there

may be a regionally or nationally important line. I don't know that we'd want to have a situation where maybe one State or one township or one county in the middle of a very important reliability line, for example, is able to block that.

So there may be, as Congress recognized in EPACT 2005 the necessity of having that Federal backstop authority. I would be hesitant though to go much beyond that. In my experience as a State Commissioner it's best to at least have States and local government have a first crack at siting electric transmission.

Electric transmission, in my experience and I've sited both a lot of it and pipelines, is the most difficult infrastructure to site. So I think it's important that we have that point of local contact that ability of land owners to go directly to a more local commission, like a State commission, first.

The CHAIRMAN. Alright.

Ms. Burke, let me ask you. Your position, as I understand it, involves oversight or jurisdiction over the Office of Surface Mining and the Bureau of Land Management. The Department has announced plans to consolidate certain Administrative and support functions in those two departments or those two offices. Both of the agencies report to you.

Are you satisfied that the proposed reforms will improve efficiency, but still ensure the independence of the offices and preserve their ability to perform their statutory duties?

Ms. BURKE. Thank you for that question, Mr. Chairman. In short, yes, I do believe that the recommendations will yield certain efficiencies and make the both bureaus more effective while at the same time allowing them to carry forward with their regulatory responsibilities on the OSM side as well as the leasing responsibilities on the BLM side.

The CHAIRMAN. Alright.

Let me ask, Mr. Sieminski, if you could tell us what some of the key areas of strength and areas that you think need improvement in the current Energy Information Administration programs and how you would proceed to provide improvement in areas that you see as lacking?

Mr. SIEMINSKI. Senator Bingaman, thank you. I've got, sort of, 4 basic ideas, I think, that guide my efforts at the Energy Information Administration.

First of all I think we need to take advantage of new ways to get data faster and cheaper. I met, about 6 weeks ago, with one producer out in Oklahoma that was still faxing information on natural gas storage into the EIA. I think that web based systems would be far more accurate and ultimately cheaper. I would like to see things like that happen.

I would love to get the Energy Information Administration to promote best practices in data collection and management by all of our State and Federal partners. I'm struck, actually, by one of my fellow panel members here. One of the best States in terms of the accuracy, timeliness and comprehensiveness of its data is North Dakota. I would like to find some way to, maybe through NARUC and EIA working together to find ways to get other States to adopt similar policies so that we get data on energy production and use in a more timely basis.



I'd like to make it a big part of my tenure, if confirmed for the EIA position, to find ways to retain good people to analyze the data and look for insights. Over the course of my career I've been involved in putting together award winning, global teams. I want to, hopefully, carry on that tradition at the Energy Information Administration.

Finally, we need to find ways to make the data in forecast that EIA creates more readily available to its stakeholders including the Congress, the public and others. There are some wonderful innovations actually in the last year or so at EIA. The daily energy briefs, the weekly energy updates that are shorter, punchier, more market relevant and that's what I was involved in my prior job. I'd like to see EIA carry on with that.

Thank you.

The CHAIRMAN. Thank you very much.

Senator Murkowski.

Senator MURKOWSKI. Thank you, Mr. Chairman.

Mr. Sieminski, thank you for your 4 areas where you think that we can make some positive changes within EIA. Let me continue on in that questioning because in addition to getting the data or making the data readily available, which we all agree is key, of course what we're hoping for is that you're able to accurately forecast. I recognize that forecast means that we don't know with exact precision.

But how difficult is it really to predict the commodity prices, 25, 35 years out, to predict the supply and demand trends? We're making policy decisions based on the efficiency of the data, the adequacy and recognize, again, that these are forecasts, these are predictions. But in your job as an economist, recognizing what you've been able to do within the private sector, how can you translate this into also making sure that we've got a level of accuracy to the fullest extent possible?

Mr. SIEMINSKI. Senator Murkowski, as you know, there are a huge number of factors.

Senator MURKOWSKI. Right.

Mr. SIEMINSKI. That impact the energy markets, the economic activity, geopolitics, weather and then all of the supply/demand and pricing issues that make forecasting a challenge. I think that EIA has done and I would hope to continue to be very explicit about the assumptions that go into the EIA analyses so that everybody is working or understands the basic driving factors behind the analyses.

EIA does often show variations in their forecasts.

What would happen if the economy grew faster or slower?

What would happen if oil prices or electricity prices were higher or lower?

That is absolutely essential to do and to continue.

One of the things that EIA is now doing that basically started on—in the financial community is to use information available in the options markets to try to put probabilities on price developments. This is how EIA is now bracketing the high and low oil price forecasts and gasoline price forecasts that they're making. It is a better way, I think, of trying to use market based information

to inform the decisionmaking process and analyses that EIA publishes.

I think that continuing to innovate in that way is very important. I would hope to be able to do that, if confirmed.

Senator MURKOWSKI. Let me ask you the question that everybody in America is asking.

[Laughter.]

Senator MURKOWSKI. That is what can be done about the high price of gasoline? I think we recognize that there are long term solutions. There are those who are looking for that shorter term solution, that silver bullet.

I don't believe that there is one silver bullet. I agree with the President on that. But are there any regulations that, whether it's seasonal fuel specs or regulations that target refineries specifically, might provide some short term steps that in your opinion could influence the price of gas at the pump?

Mr. SIEMINSKI. Senator, the things like fuel specifications, of course, are under the jurisdiction of the Environmental Protection Agency and not the Energy Information Administration. It's certainly possible for EIA, through its data collection analysis operations, to point out what that means and how different specifications for fuel in different parts of the country make it more difficult from a logistical standpoint to supply fuels during emergencies.

Senator MURKOWSKI. So if EPA were to deal with those regs, it could have an impact on this?

Mr. SIEMINSKI. It could. I believe things like that are actually being looked at. With the closure of the refineries in the Philadelphia area, the city of Pittsburgh is having some difficulty associated with getting the right specifications for gasoline in the summer time.

It's things like that that can be looked at. One of the things that EIA, of course, could do, would be to help map out some of that and show the logistical issues associated with that.

Senator MURKOWSKI. Do you know if EIA is doing that currently? Doing this sort of charting?

Mr. SIEMINSKI. They have and they've been pointing that out, particularly in the East Coast Refining report that was just issued a month ago.

On other issues, in terms of gasoline prices, how to deal with it. It is supply and demand. Anything that could be done to improve supply and not just of gasoline itself, but alternative fuels and anything that could be done to reduce demand such as fuel efficiency standards, would contribute to the move toward stabilizing gasoline prices.

Again, not really under the jurisdiction of the Energy Information Administration, but certainly the data and analyses associated with understanding the supply and demand factors are something that EIA does and will continue to do.

Senator MURKOWSKI. Thank you, Mr. Chairman. My time is expired. So I'll wait for a second round.

The CHAIRMAN. Senator Wyden.

Senator WYDEN. Thank you very much, Mr. Chairman. I want to focus some questions about natural gas on Mr. Norris and Mr. Clark.

I think we all understand with natural gas prices and abundant supply this is an area where America has got a competitive economic advantage. This is good news. This is a shot in the arm to the economy.

What we're going to need is sensible policies that in effect, nurture this economic advantage. That's why I want to ask you both about the matter of natural gas exports. Now you can't talk about specific cases that are pending before the Commission, but you can talk about the underlying principles that you'd follow in addressing these cases.

Now under the Natural Gas Act, I want to be very specific about this, because I indicated in the office when we discussed this that we really expect some answers from you all this morning and as part of this confirmation process. DOE approves the exports of natural gas. But FERC approves the physical terminals that are needed to carry out the exports and any pipelines that are needed to connect them to gas supplies.

FERC's record on approving import terminals including the Oregon, you know, terminals where we've had some very passionate debates, raises real questions in my mind about how the Commission is going to go about tackling these issues related to export terminals. For example, FERC refused to look at whether the terminals were even needed to serve their markets. So it ended up approving terminals, like one in Coos Bay, Oregon, that now wants almost overnight to convert to exports because they don't have an import market.

So my question to both of you and this will be central to my judgment with respect to confirming you all. Do you believe that FERC has an actual obligation to make a finding that an export terminal is in the public interest?

Mr. Norris, let's start with you.

Mr. NORRIS. Let me first say I totally agree. Our export policy nationally is 20 years old, huge change in circumstances from 1992 to the present. We are seeing incredible dependence upon this new technology for extracting shale gas and the supply.

It's providing jobs to the manufacturing sector. It's changing our base load generation in this country where everyone is building new base load with gas. It's maintaining regional prices for consumers.

So I agree we need to look at this as a bigger, broader issue that's changed. I think it's broader than the Federal Energy Regulatory Commission. I would encourage the Congress to take it up as well.

Senator WYDEN. I understand that. But you all—

Mr. NORRIS. Yes.

Senator WYDEN. You can't export the gas unless somebody approves the terminals. That is your statutory responsibility. I want to know how you're going to measure the public interest as part of that responsibility.

Mr. NORRIS. So let me say that I think it's a big, broad issue. When you look at it in terms of after the Secretary of Energy, which is largely prescribed for the Secretary as well. It's deemed in the public interest to export to free trade States. The Secretary

has to prove it's not in the interest to go to non-free trade agreement countries.

Then it would come to FERC in terms of a license for the construction and operation of a facility. Which is largely to make sure it's a safely and environmentally safe run facility. There is a public interest balance.

Having said that I think it would be a stretch. When you look at our current applications before the FERC they revolve around existing facilities. The ability to adapt an existing facility for export really only involves minor modifications. They certainly aren't major modifications.

So I think it would be a stretch to say that we could find a way to analyze the public interest of this great, big, broader issue regarding export of LNG juxtaposed or balanced against the minor modifications for altering an existing LNG facility. Perhaps—

Senator WYDEN. But Coos Bay is not an existing facility, for example. I mean we're going to have instances where you don't have existing facilities. The Congress and the country deserves to know how FERC is going to look at that.

Mr. NORRIS. That's the case before us. I don't want to talk about Coos Bay directly because it's still under a hearing.

Senator WYDEN. Just hearing about the principle.

Mr. NORRIS. But the principle of if there's a new, brand new, facility be constructed. That may, and I don't want to pre-judge that. But that will certainly be, I think, it would be reasonable to think that we can weigh the public interest of the policy when you're talking about something, a substantial new facility.

But it's a stretch to get there for minor modification of current facilities.

Senator WYDEN. Alright.

Mr. Clark, we're making a little progress now.

Mr. CLARK. Senator Wyden.

Senator WYDEN. Mr. Norris indicated that there was a public interest responsibility when we were talking about a new facility. My time is up. I thank you Mr. Chairman, if Mr. Clark could just respond.

Mr. CLARK. Sure. As we talked about last week and thank you for the question, coming from perhaps the most land locked piece of land on the entire North American continent means I haven't had to deal a lot with LNG terminals. I'm certainly familiar with siting processes, however.

I would say that the notion of whether there exists a need standard or a public interest standard may be one that's right for bringing to the Commission and maybe become part of a case. So I hesitate to pre-judge that notion. But I would simply say that, again, not having had to take a position on LNG, I would bring to the table a fresh set of eyes and an open mind to those sorts of arguments.

Senator WYDEN. Mr. Chairman, thank you. I hope on the second round we can get into some issues with Ms. Burke.

The CHAIRMAN. Senator Hoeven.

Senator HOEVEN. Thank you, Mr. Chairman.

Mr. Clark, if you would talk a little bit about how, as we develop more energy in States like North Dakota, how can the FERC and

I understand you play a regulatory role. But how can the FERC help us get that energy to market?

Mr. CLARK. Mr. Chairman, Senator Hoeven, I think there are a number of ways. Speaking to the electricity side, for example, one of the things I think the FERC can do is to try to support, as much as possible, a bottoms up approach to system planning. A lot of the decisions that are made in electricity policy have impact in other States throughout the region in whatever region you happen to be in.

So I found and I know as you have, as Governor of our State and now as a Senator, that things like the upper Midwest Transmission Development Initiative to the degree that they can be supported by FERC for information sharing, so on and so forth. I think that can do a lot to improve regional planning for things like transmission, transmission cost allocation. What you develop then are coalitions of the willing who are willing to move forward and build out needed energy infrastructure projects.

The other thing that I would say is and I think we've had some success in this regard in North Dakota is you have to do as much as you can to provide regulatory clarity and certainty. You've spoken a lot eloquently in North Dakota about the need for legal tax regulatory structure that supports investment. While the FERC doesn't have a lot to do with tax policy or maybe even legal policy, it has a lot to do with regulatory policy.

I think the notion would be that as a regulatory agency you want to provide, as much as possible, a clear, consistent set of rules so that all stakeholders who are involved, public interest stakeholders, industry stakeholders, have a sense for how the process works.

Senator HOEVEN. Talk a little bit about how we or how the FERC can drive that certainty because I agree with you. Mr. Norris talked about pricing certainty and understand pricing and you know, understanding pricing. But how does the FERC help create that certainty both in terms of the current regulatory environment, but help move us to greater certainty in the regulatory environment.

If you would address the pricing issue which is very complicated? Then also address a little bit, the role both in terms of making the regulations understandable, but also how do the regulators both enforce the regulations but empower investment in the infrastructure development that we need?

Mr. CLARK. What I have found, Senator, is that as a regulator when you make decisions and you put out those orders that's the one time that the Commission, be it at a State or Federal level, really speaks as one. That you do so in such a way that you're very tied to a strict reading of the law, that you're not, sort of, pushing the boundaries further than it needs to go. Because what you expose yourself to if you play a little too fast and loose, is that you end up with situations where you're constantly in litigation. Then the Commission is being overturned.

To me that is, as much as anything, drives away investment from a regulated sector. If there's a sense that they don't ever really know that the Commission's findings are going to stick in court. So it's been true on the State level.

I think that on the Federal level it's the same policy. You have to be very careful in how you interpret those laws. That you interpret them in such a way that you have, that you as a regulator in the industry as well, has a high degree of confidence in those rules that you promulgate, those orders that you issue, that they'll be upheld in the courts.

Senator HOEVEN. Touch on for a minute the, "Not in my Backyard? challenge of siting transmission or gas pipelines. I think both you and Mr. Norris referred to it when Chairman Bingaman asked about backstop authority. But this is a real challenge and a real balancing act.

We have States that are producing a lot more energy. Then we have States that are the energy consumers. We've got to link them up.

This is an interstate issue. As a Governor and certainly you, as a Public Service Commissioner, saw the state perspective where they want to have, you know, a say and a certain level of control in siting within their jurisdiction. But at the same time, you know it's a national issue that we're able to move this energy. So touch on how do we do this in a way that works?

Mr. CLARK. Sure. I think it's very important to get local input. One of the things that I think I've been blessed with as a State Commissioner is we have a State law that says when you site a project, you have to hold a hearing in that actual county. It can't just be in Bismarck in the capital. You have to go out and meet with the folks who are actually affected.

So I think you have to have a high degree of local input. That helps make the process at the end of the day, although it can be a little more time consuming up front. At the end of the day, I think it really saves time because you can get some public acceptance.

By in there, of course, sometimes, comes a time when there may be a project that absolutely has to be built because it supports the reliability of the grid. It keeps the lights on, so on and so forth. Then you just have to make a call.

They're tough calls. They're not always fun. But they're ones that you have to make in order that we have safe, reliable, affordable electricity and natural gas energy for American consumers, but base it on a record.

Senator HOEVEN. Thank you, Tony.

The CHAIRMAN. Senator Barrasso.

Senator BARRASSO. Thank you, Mr. Chairman.

Ms. Burke, it's my understanding that you were a member of the Defenders of Wildlife Litigation Committee from 2005 to 2006. The Defenders of Wildlife is one of many radical environmental groups that tries to block access to our Nation's public lands. The Defenders of Wildlife routinely sues the Interior Department to stop energy production, timber harvesting, grazing and even public recreation.

In fact, the Defenders of Wildlife uses taxpayer dollars to block access to our Federal public lands. That's right through the Equal Access to Justice Act, the Defenders of Wildlife uses taxpayer dollars to prevent taxpayers from accessing our public lands. So I look at this and I'm trying to think why we would put someone who has

spent her time blocking access to public lands in charge of an agency with responsibility for providing access to public lands.

Isn't this a little bit like, you know, putting the fox in charge of the hen house?

Ms. BURKE. Thank you for your question, Senator Barrasso.

Yes, I was a member of the Litigation Committee for the Defenders of Wildlife for approximately 1 year in making decisions about what litigation would be appropriate to bring. Now I sit on the other side of the table from organizations like Defenders of Wildlife defending the actions that the agencies under my recite take. So it is, in a sense, a role reversal.

In that instance I was part of a committee and not a sole voice as I am at the Department, part of a group of policymakers. What we had in common though was to move forward with our missions. The mission at the Department of the Interior and for all the Bureaus for which I have oversight is to balance the need for the development and production of natural resources including energy, resources on public lands while at the same time making sure that we take appropriate care for our other natural resources in the environment.

Senator BARRASSO. In this role reversal, my question would be: when you look at the legal positions that the Defenders of Wildlife took with you involved in the decision-making process (2005/2006), do you agree with the legal positions that the Defenders of Wildlife took in those years? If not, what specific legal positions do you disagree with and why?

Ms. BURKE. Thank you, Senator Barrasso.

My participation to say was quite minimal on the committee having met twice I believe to discuss litigation, none of which, I think actually had an impact on any of the 4 Bureaus that I deal with now. They were Park Service issues and forests, Fish and Wildlife service issues. But I don't recall any of the specific cases in which I was involved in the discussion.

But I was not the ultimate decisionmaker in any of those.

Senator BARRASSO. Thank you.

Mr. Norris, I'd like to ask you about your exchanges with the Administration on the impacts of the EPA's proposed rules on the reliability of the electric grid. Did you discuss the EPA's Mercury and Air Toxics Standards Rule and its impact on reliability with anyone in the Administration?

Mr. NORRIS. I certainly had a meeting with EPA. I can't remember the date now, prior to the issuance of the rule to get a briefing on what it was they were considering.

Mr. NORRIS. It was with Administrator McCarthy.

Senator BARRASSO. She's testifying upstairs. I've been back and forth between the two meetings.

Can you talk a little bit about what you discussed about the impacts on the reliability of the grid with the Administrator?

Mr. NORRIS. It was more of a briefing. I wanted to know what they were considering. I think from my input to them was I encouraged them to make sure that there's a communication with the water division. I forget the exact name of the—so they realized that the joint impact of the MERC and the CSPAR and the 301B and once through coolings that this will have a cumulative impact on

liquid generation which means, from our standpoint, it all affects reliability.

So that was my main message in that meeting.

Senator BARRASSO. Ms. Burke, just a final question for you.

You previously served as the BLM's Deputy Director for Programs and Policy. I understand that you played a critical leadership role in the development and implementation of the BLM's Wild Lands Policy, and the so-called onshore oil and gas leasing reforms. Both policies were efforts by the Administration to block access to our Nation's public lands.

The Wild Lands policy was effectively a means of the Administration to create wilderness without the approval of Congress. The so-called onshore oil and gas leasing reforms added more red tape to onshore oil and gas production. So would you agree that there's a common theme in your work at the Defenders of Wildlife as well as at the BLM that appears to be blocking access to our Nation's public lands?

Ms. BURKE. Senator Barrasso, I would respectfully disagree that there's not a common theme here. The common theme is that of one of balance and that recognizing that the public lands play a very important part in our Nation's energy future. But there are a number of resources for which the BLM was responsible.

With the Wild Lands policy, it was an attempt to carry out the mandate under FLPMA, BLM's authorizing statute, to make sure that it takes inventory of all resources on the public lands which would include lands with wilderness characteristics and to use that information in its land use planning process. In which case, as the BLM does today, make a decision about whether or not to make a decision about what types of activities would be appropriate in those areas.

With respect to the oil and gas leasing reform, I think that those reforms actually will do more to make the appropriate land available for oil and gas development. At the time of the beginning of this Administration by all accounts we had a broken system. We had more than half of the leases that were being sold, being protested either through an administrative process or in litigation. So it was very difficult for us to actually do the work.

So through the land shore leasing reforms the BLM is able to address those issues. Do a lot of that work up front. So that both the BLM and industry can have confidence that at the time of a lease sale the BLM will actually be able to issue the lease that it sold.

Senator BARRASSO. Thank you.

Thank you, Mr. Chairman.

The CHAIRMAN. I think everyone has had a chance to ask a first round of questions. Why don't we go ahead with a second round? Let me start with Senator Murkowski.

Any questions that you have for the second round? Go right ahead.

Senator MURKOWSKI. Thank you, Mr. Chairman.

Let's go to Mr. Norris, if I may. This follows a little bit on Senator Barrasso's question here.

As you know, I have been pushing the issue of reliability and trying to get some real, clear answers as to the impact of the new EPA rules that apply to power plants. I'm assuming that you would



agree with me that this cumulative impact has the potential to be quite serious in terms of reliability.

Mr. NORRIS. Yes, it will certainly impact reliability and anything that impacts reliability, I take seriously, yes.

Senator MURKOWSKI. I noted your statement that whether this decision benefits the consumer because and again, we're very cognizant of that.

But you have received, subsequent to the technical conference that was held in the fall, you've had testimony there. You've had filings made in response to the Commission's notice of that conference.

You've had assessments done by the NERC and the Planning Authorities.

You've got staff papers.

A whole series of evidence has been gathered not to mention the retirement announcements that we're seeing are already greater than was predicted by the EPA.

You made a statement last fall, and I will use your words, that the, "Reliability of the electric grid can be adequately maintained as compliance with EPA regulations is achieved." I guess the question to you is in light of what we have seen come forward since the November technical conference. In light of these recent retirements, is that still a statement that you stand by?

Mr. NORRIS. Yes. I think there are sufficient tools in place to address the reliability of the grid. I think there were, as you well know, a range of studies with a range of predictions. I probably think the EPA's prediction is now, yes, it's more than that. It's less than some doomsday predictions. But it's going to land somewhere in the middle.

The main thing in my mind is we have the tools to deal with it as it comes forward. I think most of those assessments said we will be OK from a resource adequacy standpoint across the region. It will be a much more localized concern which is why I think the process is in place to have the 3 years to comply, the additional year and then the fifth year of Administrative order and how EPA is seeking input from both the FERC and the industry and other stakeholders.

I believe there is sufficient tools to address reliability concerns going forward.

Senator MURKOWSKI. As you may know, I am working to address that because I'm not certain that we do have the sufficient tools. We're looking at a safety valve concept. But I want to make sure that we're always answering that question that you have on your desk, whether or not what we're seeing, how it would impact the consumer there.

Ms. Burke, I would like to go to you in my remaining time here. You've indicated in response to Senator Barrasso that what you're trying to do is find this balance here. On some Alaska specific issues I'm curious.

We have NPR-A planning. This is the National Petroleum Reserve Alaska. It is the last petroleum reserve under Federal control in the Nation. In your view what should be the priority for NPR-A as we look at the planning?

Is it to use the lands to produce the oil and gas that is contained within or is it to set aside acreage for purposes of conservation?

Ms. BURKE. Thank you for your question, Senator Murkowski.

Unfortunately with BLM lands it's rarely and either/or situation. Obviously it's a petroleum reserve and so we're looking to ways in which we can responsibly make land available for oil and gas development. But at the same time we have to take account for the sensitive resources that are found there.

So the planning, as you know, is well underway. We'll be releasing a plan this spring so that we can move forward in NPR-A.

Senator MURKOWSKI. What about in those areas where we're dealing with ANILCA and the no more clause?

I'm sure that you're very, very familiar with Section 1326. That basically says that there shall be no more wilderness within the State of Alaska. So the question that we're wondering in Alaska is you've got this push by Fish and Wildlife to move forward a new land management plan for ANWR that may very well result in a recommendation for additional wilderness created there within the ANWR region in direct contradiction to the provisions set out in ANILCA.

So I guess the question to you is specifically what is your view of the meaning of section 1326 that calls for no more wilderness within that region? Then explain how the process, the planning process that is currently underway within the ANWR region, is not somehow then in conflict with the no more clause.

Ms. BURKE. Thank you, Senator Murkowski.

As you know ANWR, as you said, is under the Fish and Wildlife service's jurisdiction. If there were to be any development in that area the BLM would be responsible for managing that development. But it is not responsible for that planning process.

Also, and when I joined the Department I took an oath not to practice law at the Department. So I'm very cautious about my offering my interpretation of the statute here. We're very mindful of the statute and the solicitors are part of this analysis at each step of the way to make sure that we do not run afoul of any statutes governing ANWR, in particular ANILCA, with respect to whether or not there would be designation of new wilderness in that area.

Senator MURKOWSKI. We are very cognizant of the effort to find balance while we access our resources. But we are up against an Administration that has been, oftentimes, very difficult to work with as we try to do just that. Sometimes it seems that we're being shut down because the effort is more to lock up rather than to access.

So we'd be working with you to try to find strong balance.

Thank you, Mr. Chairman.

The CHAIRMAN. Senator Wyden and then Senator Risch.

Senator WYDEN. Mr. Chairman, I'd be willing

Senator RISCH. I yield to Senator Wyden. I have to run to a meeting.

Senator WYDEN. You sure? If you do, I'd be—

Senator RISCH [continuing]. The nominees most of them come from Iowa, so I've had the opportunity—

The CHAIRMAN. Whichever order you folks want to ask.

Senator WYDEN. I thank my friend.

Ms. Burke, I want to talk to you and I appreciated the visit in our office about this question striking the balance. Because I think that's so key. On this committee we try to put together a bipartisan coalition for some of these questions and that's right at the heart is achieving a balance to bring people together.

Now you heard me talk about natural gas. I think, particularly you look at these prices. You look at the supply. This is an advantage for us. We've got to figure out how to nurture it and build on it.

One of the areas that I've been particularly interested in is saying that natural gas development on public lands, in effect, is a kind of natural laboratory for us to cultivate what amounts to best practices. In other words this is a place we can bring together industry folks, environmental folks, the scientists, the people that you need to strike the kind of balance the colleagues are talking about up here in the committee and show that we can make policy in the most, kind of, thoughtful way.

You could, for example, use this kind of process on the fracking, you know, issue. Where there's concern to come up with what amounts to a model on issues like disclosure of the fracking, you know, fluids. What do you think about the idea, if confirmed, about trying to use the public lands on issue like natural gas where we have an advantage and we want to nurture it. Use that as a place to try to bring people together and reflect the kind of balance that makes sense for the country?

Ms. BURKE. Thank you, Senator Wyden. I do appreciate the opportunity to discuss this with you last week as well. We, at the Department, agree that hydraulic fracturing technologies and the advancements that have been made are integrals for our continued ability to facilitate the expansion of exploration and development of natural gas on public lands.

At the same time we know that the public has grown concerned about whether or not hydraulic fracturing may cause contamination to underground water sources. So in an effort to facilitate development while at the same time addressing those concerns, we have engaged in quite an extensive effort. To work with industry, to work with environmental groups, to work with State regulators and regional regulators to develop what we think would be a model rule for the regulation of well stimulation activities which include hydraulic fracturing.

So as you know those rules would include public disclosure of chemicals used in hydraulic fracturing operations, confirmation that the wells that are fractured meet the appropriate construction requirements with respect to cement and its ability to withstand pressure. Also a requirement that operators put into place appropriate plans for managing flow back waters from fracking operations. So in developing this rule we tried to pull together and synthesize really the best elements of regulation that's occurring across the States to make sure that we have consistent oversight and a disclosure model that will work well on the public lands.

Senator WYDEN. I just hope, I appreciate the direction you're trying to outline, that you all will really look at the public lands as a place where we can think about best practices. Bringing together all of the parties because what you've heard up here is Senators

talk about how we're going to strike the balance. You've got an opportunity to bring the parties together given what you're faced with on the public lands.

One last question, if I might, involves renewable energy development and how we're going to come up with a consistent approach toward renewable energy development particularly on the lands in your Department on BLM.

We've got geothermal energy development essentially done by lease.

We've got solar and wind energy development done by right of way.

You just, kind of, look at this sort of hodge podge of approaches and you say, well, Ms. Burke, this is your Department.

How can we figure out a way to come up with a consistent approach that would again bring the kind of predictability and certainty that would allow us to strike the kind of balance we've been talking about today? So would you support a consistent approach toward renewable energy development and what are some of your thoughts on it?

Ms. BURKE. Thank you, Senator Wyden.

As you know, the BLM is currently working under existing authorities. They are quite varied from whether or not it's a lease or right of way. The BLM is currently undertaking a rulemaking to make solar and wind, to make that a competitive bidding situation so it would make it more comparable to a lease.

But I do agree that a consistency will be important for industry and for the agency in order to progress even further than we already have with respect to renewable development. If confirmed, I would look forward to working with you to make sure we are able to develop a consistent process.

Senator WYDEN. Thank you.

Thank you, Mr. Chairman.

The CHAIRMAN. Senator Franken. No, excuse me, I think—

Senator HOEVEN. I'm certainly willing to defer to Senator Franken since he hasn't had an opportunity.

The CHAIRMAN. I thought Senator Risch was going to ask questions, but I guess he had to leave.

Senator FRANKEN. Has Senator Hoeven already had a chance to ask questions?

The CHAIRMAN. He did. He had a first—

Senator FRANKEN. Yet you called on him?

The CHAIRMAN. He had a first round of questions.

Senator HOEVEN. They were very, very good questions.

The CHAIRMAN. Very insightful questions. Now if you have similar insightful questions, go right ahead.

Senator FRANKEN. OK. I don't. But I have some questions nevertheless. I'll go ahead. I'm sure Senator Hoeven's questions were stellar.

Mr. Sieminski, as you know, people are feeling the pain at the gas pump. While part of the problem is, I guess, due to tight supplies and I just don't think supply and demand alone is enough to explain what's going on. That's why many of us on this committee have supported efforts to stop speculators who we believe are artificially driving up costs.

Just yesterday Senator Sanders, myself and others introduced legislation that requires the Commodity Futures Trading Commission to invoke emergency powers to curb speculation. Yet when I look at the Energy Information Administration's Annual Energy Outlook report, I don't see really adequate attention paid to this issue.

What are your views on the role of speculators on current gas prices?

Mr. SIEMINSKI. Thank you, Senator Franken.

There are many factors that influence global oil markets and prices in my view. Speculation is certainly one of those things. It, price formation, involves supply, demand, geopolitical issues and many others.

The Energy Information Administration under Dr. Richard Newell did launch an Energy and Financial Markets Initiative that would help to improve the understanding and analysis associated with price formation and what drives oil, gasoline and natural gas prices. I fully support that effort and would hope to continue with it.

I think one of the things that I bring to this job, let me mention, that my career in the financial services industry was in research, not trading. But I worked with traders, very closely. I understand the language. I think I know the kinds of questions to ask that might help us get to a better understanding of issues like that.

I think it's critical that we have transparency so that everybody is operating on the same page. I would love to be able to work with the Commodity Future Trading Commission and other relevant agencies to try to make that understanding and transparency more obvious to the public and others to allay their concerns or to deal with other issues if they should be found.

Senator, one of the things that I've found in looking at this issue over the years is that the adequacy of the data to actually do really good analysis is not good. The Commodity Futures Trading Commission improved the disaggregation of its data on trading activity back in 2008 and 2009. But some of that data is still not available to academic and other researchers who would love to have access to it to accurately be able to put better numbers on this.

I would support the EIA and CFTC acting together if that's appropriate to try to get the data available so that researchers everywhere could—

Senator FRANKEN. We do have, actually, some data. Some members of public and private sector have done some. They've at least made some statements about this. Let me cite a quote from a Goldman Sachs study as described in Forbes Magazine.

Goldman Sachs believes that each million barrels of speculation in the oil futures market adds about ten cents to the price of a barrel of oil. This means that in theory the speculative premium in oil prices due to speculation is as much as \$23, 39 cents a barrel on the price of the NYMEX crude oil. So if there were no speculation in oil futures the price of a barrel of oil might be as low as \$74.61. The present price is \$108 a barrel.

Speculators now make up 70 percent of the open interest in crude oil futures whereas physical end users make up less than 30

percent. I have quotes from the Research Division from the Federal Reserve Bank of St. Louis. They're doing this research.

So I would ask you will you commit to raising the profile of this issue at the EIA? Will you incorporate and analyze the issue of oil speculation in future EIA Energy Outlook reports?

Mr. SIEMINSKI. Senator, I would be happy to do that and to do my best to carry on with the Financial Markets Initiative that is already underway at the Energy Information Administration.

Senator FRANKEN. Thank you, and I thank Senator Hoeven for his indulgence and the Chairman.

The CHAIRMAN. Senator Hoeven.

Senator HOEVEN. Ms. Burke, you mentioned 3 components of new BLM regulations pertaining to hydraulic fracturing. As I understand it those rules are currently undergoing review by the Office of Management and Budget and have not been formally proposed yet. They're not public yet.

Should we consider the items you listed as a finite list of what's contained in those rules or is there more?

Ms. BURKE. Thank you, Senator Hoeven.

Those are the primary components of the proposed rule as drafted. Public disclosure, well integrity and management of flow back water.

Senator HOEVEN. OK.

In the last 3 years we've seen increase on private lands in oil and gas production but declining production on public lands. Obviously gas prices going up everyday creating great hardship for American consumers. Clearly supply, I believe, is the most important way to help bring prices down increasing supply both domestically and with our dependable friends like Canada.

So are you concerned about the fact that production is declining on public lands? What do you attribute it to and how do you intend to address it?

Ms. BURKE. Thank you, Senator Hoeven.

With respect to whether or not production is declining on public land, we see that we are leasing, still holding quarterly lease sales, that there are a number of APDs that applications from permit to drill that we have approved where industry has not taken advantage of that authorization. So the Bureau is taking every reasonable action to make sure that we are having sufficient development on the public lands. I think in your State, where production is booming, most of that activity is in fact occurring on private land. But if you take out what is happening in North Dakota and look at the rest of the public lands, you will see that production is not decreasing.

Senator HOEVEN. Repeat the last part again, if you would, Ms. Burke?

Ms. BURKE. I say with respect to production on public lands setting aside the activity that is occurring on State land that you would not see a decline in the activity on public land.

Senator HOEVEN. I don't follow that statement. We are seeing a decline on public land.

Ms. BURKE. I think that it depends on the snapshot that you're taking with respect to when you're evaluating production on public land. That number is adjusted over time. So depending on when

you take a look at that information, you may find that the numbers change rather frequently.

Senator HOEVEN. How would you work with the industry to increase development on Federal lands, public lands, deploy new technologies which can not only produce more energy, but do it with good, solid, sound, environmental stewardship?

One of the things that I've referred to in trying to get legislation passed for the Keystone pipeline is that 80 percent of the new development in the Canadian oil sands is in situ, meaning drilling, which reduces both the footprint and the greenhouse gas emissions. That means both more oil, better environmental stewardship. We can do that but we've got to have a regulatory regime, a permitting regime that empowers it.

How do you propose to do that, No. 1?

Are you willing to come out to places like North Dakota and other areas with Federal lands and meet with the people that are working on these challenges?

Ms. BURKE. Thank you, Senator Hoeven.

I'll start with the second part of your question, first. I have had the opportunity to travel to North Dakota and go out in the field with our, the BLM's Dickinson Field Office, and to meet with a number of industry representatives as well as tribal representatives to discuss development and the impacts of development in North Dakota. I would welcome that opportunity to visit other locations and discuss that with other stakeholders.

With respect to how I would increase development over time. One of the things that we were doing, while the hydraulic fracturing rule may be viewed by many as a way that dampens development, I think that in fact the hydraulic fracturing rule has the opportunity to allow this very important development to continue and to move forward. Because it will give the public the confidence that we are taking all necessary precautions to make sure that this vitally important resource is able to be developed in a way that is environmentally responsible.

But we continue to work with industry, for example on the API standards working with those groups and incorporating those into our regulations. So we're working on a number of fronts. If I'm confirmed, I would welcome the opportunity to work with you and your stakeholders to make sure that we are, in fact, taking advantage of this Nation's vast natural resources.

Senator HOEVEN. Do you believe that with technology development we can produce more energy, more oil and gas on Federal lands, on public lands and achieve the stewardship that you want to achieve?

Ms. BURKE. Yes, I do believe that.

Senator HOEVEN. You're committed to helping to do that?

Ms. BURKE. If confirmed, yes, sir.

Senator HOEVEN. How do you see the hydraulic fracturing rules applying on Federal lands where we have States with primary regulatory authority? In other words when you bring these rules forward how do you work with the States on regulating hydraulic fracturing in a way that the industry can understand. They can work with. They can address. That provides disclosure, but still empowers energy development in a good, solid, sound way?

Remember because you're talking both your rules, your Federal rules and the State rules. This gets complicated and difficult for people that are trying to invest and produce the energy. So are you willing to work with the States in a way that follows the State's regulatory regime so that the industry is kind of working with one set of rules instead of two?

Ms. BURKE. Thank you, Senator Hoeven.

Yes, we're very cognizant of the overlapping jurisdictions in this area. We will work in concert with other regulators and their requirements so that we won't introduce complicated, new procedures that are difficult for industry and the public and the regulators to understand. Our concern is that we provide consistent oversight for the Federal lands, but we always work with the State regulators and industry to make sure that we are able to balance these competing interests both the need for more energy production as well as for environmental protection.

Senator HOEVEN. Thank you.

The CHAIRMAN. Ms. Burke, let me ask a couple of questions along the same subject area on this hydraulic fracturing rule that's being developed.

A concern I've heard from industry in my State is that they believe it's very possible that a second permit would be required under this new rule. So there'd be one permit to get to drill in the first place, and a second permit if you wanted to proceed with hydraulic fracturing.

They question the workability of this and the idea that industry would make a very substantial investment without having, in hand, the permits that they need to go ahead and complete a well. So that's one question.

Also, they've questioned whether or not the Department has the resources to staff up to deal with anything like this, if this is required. I know this is not a public regulation yet. But there is a great deal of concern that I've begun to hear about what this rule might contain.

Could you give us any more insight into this?

Ms. BURKE. Thank you, Mr. Chairman.

With respect to whether or not there will be a second permit necessary in addition to the application for permit to drill, we also have heard those concerns and have taken that into account in the drafting of the rule. Today I would say upwards of 90 percent of all wells, that new well starts on public lands involve hydraulic fracturing.

So we're aware that normally, oftentimes, an operator can submit those at the same time. But we're looking at whether or not—one question is whether or not authorization will be required before or could be done afterwards. Those are all discussions that have been occurring with industry that have come into express their concerns with us.

The second question about with respect to resources at the Department. As you know we are operating in a very tight budget environment. But we have taken that into account in developing these requirements about whether or not we have the resources in order to actually fulfill our mission.



The CHAIRMAN. Let me ask on one other subject. I was with the Secretary, Secretary Salazar, when he visited Southeastern New Mexico and we had a useful meeting there with representatives of the potash industry and also representatives of the oil and gas industry. The upshot of that meeting was the establishment of a working group which the BLM was overseeing composed of potash companies and some of the larger independents in the area trying to figure out what changes could be made, if any, with regards to those two industries working together in that area.

He established a deadline of April first for wanting to have a set of recommendations for what to do there. As that date is now quickly approaching I've begun to hear from small, independent oil and gas producers in that area saying that they have not had a chance to have their input considered or their point of view considered. I was just wondering if you could assure us that you will be sure that you do provide an opportunity to hear from all of the producers in that area, who have a point of view that they want to have considered before anything is finalized.

Ms. BURKE. Absolutely, Mr. Chairman. I will work with the BLM to make sure that all stakeholders' voices are heard.

The CHAIRMAN. That will be a help. I appreciate it.

Let me ask if Senator Franken has any additional questions.

Senator FRANKEN. Yes, really just one more. This is for Assistant Secretary Burke. It was a pleasure meeting with you yesterday in my office to discuss your nomination. I appreciate the work you've been doing at Interior.

We discussed this certain issue. In these difficult budgetary times it's important to be extra careful with taxpayer's funds. That's why I'm concerned that taxpayers instead of oil and gas companies are funding programs that are beneficial to these companies.

One example is a proposed \$45 million program involving the U.S. Geological Survey, the EPA and the Department of Energy to better understand aspects of hydro fracking. So this is research that the taxpayers are going to pay for. I think it's needed research to make sure that this, the fracking, is done in an environmentally friendly way.

But I'm, you know, this is a very mature industry. In my State we have, for example, the medical device industries which pay a user fee to the FDA when it gets its products approved. So in other words the medical device industry pays for the regulators to regulate them. Here is a very, very, very, profitable industry and yet this \$45 million program is being footed by the taxpayers.

My question is when you are confirmed how will you guarantee that oil and gas companies are the ones paying for these types of activities?

Ms. BURKE. Thank you, Senator Franken. Thank you for the opportunity to visit with you yesterday and discuss these important issues. I really appreciate your concerns in this tight budget environment that the user pays, if you will, for the use of the public resource.

So after our conversation I did talk with the BLM about the types of fees that industry does pay today for the administration of the programs, such as the APD fee, the application for permit

to drill for site specific environmental analysis under NEPA, for they contribute to mitigation whether it's air monitoring or wildlife monitoring or vegetation monitoring. In this year's budget proposal and also as in last year's proposal is an inspection fee so that just as we have for offshore development that industry would actually pay an inspection fee for that regulation.

So the study of which you are concerned about is a study being undertaken by the U.S. Geological Survey, I believe and EPA and perhaps the Department of Energy. If I were confirmed I would look forward to working with you and other members of this committee to look at the ways in which we're funding the activities of the agency in order to support the development of oil and gas.

Senator FRANKEN. OK. You've listed some of the fees that the oil and gas industry pays. But my question is does the industry pay all the fees?

Can you get me a list of oil and gas activities at the Department that are not paid for by oil and gas companies? I'm talking about environmental reviews, permitting, etcetera, leasing operations, oversight activities. Can you commit to getting me that information within 60 days?

Ms. BURKE. Yes.

Senator FRANKEN. Thank you so much. I really appreciate that. Again, I just want to say on behalf of the taxpayers of Minnesota I think when \$45 million may not seem like a tremendous amount of money in our budget, but I think that it's something. It just seems to me that these industries, this industry, that's going to benefit from the study of how to do fracking in a way that makes the fracking possible to do.

[Laughter.]

Senator FRANKEN. Should be the ones that foot the bill for the research. So thank you.

Thank you, Mr. Chairman.

The CHAIRMAN. Alright. Thank you all very much. I think it's been a useful hearing. We will try to move ahead with your nominations sometime in the near future.

Thank you for being here.

That will conclude our hearing.

[Whereupon, at 11:52 a.m. the hearing was adjourned.]

[The following statement was received for the record.]

NORTHWESTERN ENERGY,  
Butte, MT, March 26, 2012.

Hon. HARRY REID,  
Majority Leader, S-221 Capitol Building, U.S. Senate, Washington, DC.

Hon. JEFF BINGAMAN,  
Chairman, Committee on Energy & Natural Resources, 304 Dirksen Senate Office Building, U.S. Senate, Washington, DC.

Hon. MITCH McCONNELL,  
Minority Leader, S-230 Capitol Building, U.S. Senate, Washington, DC.

Hon. LISA MURKOWSKI,  
Ranking Member, Committee of Energy & Natural Resources, 304 Dirksen Senate Office Building, U.S. Senate, Washington, DC.

DEAR LEADERS REID AND McCONNELL AND SENATORS BINGAMAN AND MURKOWSKI:

I write in strong support of the nomination of Chairman Tony Clark from the North Dakota Public Service Commission to be a Commissioner to the Federal Energy Regulatory Commission ("FERC").

As the Chief Executive Officer of NorthWestern Energy and (while serving as a Montana Public Service Commissioner from 1993 to 2004) a past President of the National Association of Regulatory Utility Commissioners (“NARUC”), I have had the honor to know Chairman Clark on a personal and professional level. On both fronts, Chairman Clark has impressed me as a thoughtful public servant who maintains a reasonable and balanced perspective on the needs of customers and industry stakeholders. Tony’s outstanding service as the NARUC President and in other capacities, and as a North Dakota Commissioner uniquely position him to be an effective FERC Commissioner.

Thanks to the variety of positions in which he has served nationally, regionally and at home, Chairman Clark also brings valuable depth in technology and meeting the evolving needs for high quality infrastructure in more rural areas. Given the developing state of energy policy in the United States, his experience and perspective will be a strong asset at the FERC.

Finally, Chairman Clark has been an effective leader and member of a multi-member regulatory body, with strong additional relevant experience at the national level. He understands what is required to help ensure that one of the nation’s most important regulatory agencies continues to be effective.

I commend President Obama for nominating such a qualified individual and urge his quick confirmation.

Very truly yours,

ROBERT C. ROWE,  
*President and CEO.*



## APPENDIX

### RESPONSES TO ADDITIONAL QUESTIONS

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#### RESPONSE OF ADAM SIEMINSKI TO QUESTION FROM SENATOR WYDEN

*Question 1.* Financial speculation—Recently the Consumer Federation of America issued a study in which it estimated that 20% of the cost of gasoline that Americans are paying at the pump was due to speculation—or roughly \$600 a year for the average family. In the past, EIA has been reluctant to even consider the impact of speculation and trading on energy prices. Under your watch is this going to change? Will you ensure that all of the factors that go into energy prices, including the role of trading and speculation, be considered in EIA’s work?

Answer. If confirmed, I will make it a high priority to continue EIA’s work on improving our understanding of the key determinants of oil prices, including both physical and financial factors. I would also work to increase interactions between EIA and other federal agencies involved in energy markets.

In September 2009, EIA launched its Energy and Financial Markets Initiative with the aim of assessing the influences of financial activities and markets, such as speculation, hedging, investment, and exchange rates on energy price movements in addition to EIA’s traditional coverage of physical fundamentals such as energy consumption, production, inventories, spare production capacity, and geopolitical risks. As part of that initiative, EIA produced the website, “Energy & Financial Markets: What Drives Crude Oil Prices?” Along with supply and demand factors, EIA discussed the increase in oil futures trading, the growth of oil as an investment, and the increase in correlations between oil prices and other commodity prices and other financial markets. EIA updates that website on a monthly basis. EIA also brought together many of the leading researchers in the area of oil price formation for a workshop in August 2011 to improve our understanding of physical and financial market linkages, and EIA continues its collaboration with other federal agencies and market participants to improve its data and analysis in this area. I have been very interested in EIA’s work in this area, and over the past 18 months I organized a series of e-mail exchanges of papers and reports among a broad and diverse group of academics and policy analysts to provide a forum for exchanging views on this important topic. I strongly believe that energy economists should try to look at this issue from all possible angles.

#### RESPONSES OF ADAM SIEMINSKI TO QUESTIONS FROM SENATOR MURKOWSKI

*Question 1.* How important is spare capacity to the price of oil? If global spare capacity was several million barrels higher than it is today, do you think oil prices would be lower or less volatile?

Answer. Spare oil production capacity can enhance the world oil market’s ability to respond to oil supply disruptions and a high level of spare capacity can be reassuring to oil market participants. Low spare capacity indicates that markets are tight and that there is little cushion for supply to easily meet fluctuations in global oil demand. In its analysis of oil price formation, EIA identified low spare capacity as an important factor in the rise in oil prices from 2003 to 2008. During that period, spare capacity remained below 2.5 million barrels per day. Higher spare capacity usually provides assurances to the market that temporary disruptions in supply can be accommodated, and, other things being equal, would tend to lower the oil prices and volatility. However, the reason for the higher spare capacity is also important. If spare capacity is higher because members of the Organization of the Petroleum Exporting Countries (OPEC) have cut production, oil markets could still be tight despite higher spare capacity. Although important, spare capacity is just one of many factors that affect oil prices, including supply, demand, inventory levels, and financial market conditions.

*Question 2.* As an economist and a long-time user of EIA's data, I'm curious if you have identified anything that the agency could be doing differently or doing better. If you are confirmed by the Senate, have you thought of any changes you would make at EIA?

Answer. In my view, EIA is the world's premier energy statistical agency and there are very few areas where EIA falls short in its collection, analysis, and reporting responsibilities. If confirmed, there are a few things that I would like to emphasize:

- Take advantage of new ways to collect data faster and cheaper with web-based systems;
- Promote "best practices" in data collection and management by EIA's state and federal partners;
- Retain good people and deal with the "retirement bulge" that is impacting virtually all energy businesses and institutions;
- Find ways to make the data sets, analyses, and forecasts more readily available to the public in different forms;
- Budget permitting: improve data on railroad shipments of petroleum and petroleum products, including ethanol and reinstate the International Energy Outlook; and
- Budget permitting, collect more timely monthly data on domestic oil production directly from operators, as is now done for natural gas, as well as timely data on exports of petroleum products, which is necessary to understand changes in the amount of products supplied to domestic consumers.

*Question 3.* For years there has been debate about the importance of additional oil production and whether greater world supplies of crude oil will not only stabilize, but can drive down global oil prices. It has been assumed by many that to influence market prices significantly, new supply would have to rise by more than what OPEC members could afford to withhold from the market. and we have heard repeatedly the misleading statement that since America only has 2% to 3% of the world's proven reserves, increased U.S. production would have little impact on prices. What is your opinion? How much would non-OPEC production have to rise to be able to significantly drive down global prices for oil?

Answer. In its analysis of oil price formation, EIA identified non-OPEC oil production as an important factor in oil price formation. Other things being equal, higher levels of non-OPEC supply tend to put downward pressure on oil prices by increasing total global supply and reducing the "call on OPEC". The lower the call on OPEC, the lower its ability to influence prices. From 2005 to 2008, non-OPEC production changed little, and in the face of rising oil demand, this contributed to higher oil prices. If, in contrast, non-OPEC production began rising faster than global demand for crude oil, this could put substantial downward pressure on oil prices. Of course, non-OPEC oil production is just one of many factors that affect oil prices, including supply, demand, inventory levels, and financial market conditions. While higher non-OPEC production would put downward pressure on oil prices, the observed oil price level would be determined by overall market conditions.

*Question 4.* In recent years there has been an increase in the forecasts for the amount of oil that North America can produce. Canadian oil sands production could rise nearly 2 million barrels a day, and U.S. production could rise by even more thanks to the Arctic coastal plain, OCS areas, oil sands, oil shales, tight oil, and biofuels. New forecasts for Alaska crude oil and shale oil production have now raised the mean estimate for total Alaska oil to 43.8 billion barrels and the total natural gas forecast to nearly 400 trillion cubic feet. In fact EIA now projects that total U.S. liquid fuel production will rise from less than 8 million barrels a day today to more than 13 million barrels by 2035. If we accelerate that production through additional leasing and exploration, what would a rise of, say, 3 million more barrels of daily domestic production, within a decade, do to global oil prices and thus to U.S. pump prices?

Answer. Higher North American oil production, other things being equal, would tend to put downward pressure on oil prices and would reduce the influence of OPEC on oil markets. A three million barrel per day increase in 2022 would represent approximately a three percent increase in total global liquid fuels supplies, which could have a substantial effect on world oil prices. Of course, North American oil production is just one of many factors that affects oil and gasoline prices, including other supply, demand, inventory levels, and financial market conditions. While higher North American oil production would put downward pressure on oil prices, the observed oil price level would be determined by overall market conditions.

*Question 5.* How has EIA's track record been in accurately predicting future commodity prices, both in the short-term and in the long-term? a.How difficult is it to

predict commodity prices 25 or 35 years—or even one year—into the future? b. How difficult is it to predict supply and demand trends? c. What kind of factors impact how these numbers move and how easy is it to predict those factors? d. Given how successful you have been in the private sector at forecasting trends and prices, is there anything about the way that EIA approaches this task that you might change, should you be confirmed?

Answer. Since my experience has been principally dealing with oil production and price projections, I will focus mostly on that area in providing you a response especially concerning the short-term.

Crude oil prices are volatile in the short-term, in part, because of the very slow response of supply to changes in market prices. An unexpected disruption to existing crude oil supply or increase in world demand can contribute to significant increases in crude oil prices. Because of the long lead times required to drill and begin producing from new resources, prices rise in order to ration consumption and maintain a balance with available supplies. Storage and underutilized or ‘swing’ production capacity has developed in order to manage such disruptions, but cannot remove all price impacts. Financial markets also developed in this context, and can either dampen or enhance short-term price movements.

Oil prices can be relatively stable during periods when few significant and unexpected events occur. For example, in the January 2010 Short-Term Energy Outlook (STEO), EIA projected that the West Texas Intermediate (WTI) crude oil spot price would average \$79.83 per barrel during 2010, which was only slightly higher than the actual 2010 average price of \$79.40 per barrel. However, during the course of a year prices can also change dramatically. The January 2011 STEO projected the WTI spot price would average \$93.42 per barrel during 2011, slightly lower than the final realized \$94.86 per barrel average for that year. But within this stable average price for 2011, the daily WTI spot price ranged from a high of \$113.39 per barrel on April 29, 2011, following the disruption to Libyan crude oil production, to a low of \$75.40 on October 4, 2011.

EIA has consistently emphasized the uncertainty of forecasting short-term energy wholesale and retail prices. Beginning in October 2009, EIA began reporting crude oil price forecast confidence intervals and probabilities of prices exceeding or falling below given levels based on trading of NYMEX crude oil futures and options in the STEO. In January 2010, EIA began publishing the Market Price Uncertainty Report (MPUR) as a monthly supplement to the STEO. The MPUR also reports on trends in financial market activity in the futures and options markets.

EIA also created a new “Energy & Financial Markets: What Drives Crude Oil Prices?” web page that reports on the relationship between crude oil prices and various market factors that influence prices, such as world crude oil supply and demand, as well as purely financial aspects including futures market open interest, futures contracts held by physical participants and financial money managers, and the correlation of crude oil prices with other commodities.

In the long term, the challenges are somewhat different, as you don’t have the rigidity of the system in responding to market surprises, but you have the difficulty of predicting unexpected events or trends from the perspective of today. Commodity prices are sensitive to trends in technology, economic growth, and political decisions, among others.

While some of the influences on energy supply and demand trends are highly predictable, such as population or demographic trends, other factors are subject to uncertainty from the same factors that influence commodity prices. Of course, even the factors that are more predictable are subject to more uncertainty the longer the projection period.

Trends in supply and demand, particularly in demand, tend to be more easily predicted than commodity prices. EIA tracks the accuracy of its long term projections summarizing the differences between actual energy indicators and past AEO projections.

EIA currently uses several approaches to help to bracket the uncertainty in energy market prices and address shifts in energy market trends. While EIA completes numerous alternative cases, the focus of the analysis discussion tends to be on a single, reference case. It is important to highlight the uncertainty inherent in energy markets in discussions and de-emphasize a single point projection. There are other risk management tools available for dealing with this type of uncertainty that could be applied to EIA’s work. I think this is an important issue and, if confirmed, I will want to see EIA extend its efforts to address uncertainty in its projections and other energy analyses, and effectively communicate about it with the public.

*Question 6.* In reviewing the recent EIA report about the impact of U.S. LNG exports on domestic energy markets, I was struck by how aggressive EIA’s build-out

scenarios appear to be. I wonder if you could please explain your view on their likelihood.

a. In all of the scenarios, EIA findings about the long-term impact of exports appear to be somewhat minimal, yet the conclusions about short-term impact seem quite extreme. This may be based on the very aggressive export schedule EIA modeled, but it appears likely that industry could respond to such a shock reasonably quickly, by producing more gas. Do you agree?

b. How realistic is the short-term impact that EIA is projecting, considering the low likelihood of the presumed export schedule?

Answer. The scenarios contained in the report, *Effect of Increased Natural Gas Exports on Domestic Energy Markets*, were specified by DOE's Office of Fossil Energy. EIA has not performed an analysis of the likelihood of these LNG export scenarios. EIA also notes that future U.S. exports of LNG would be affected by future U.S. natural gas prices. High U.S. natural gas prices would tend to discourage LNG exports while low U.S. natural gas prices would encourage exports. The EIA study did not attempt to model this relationship or other aspects of the worldwide natural gas market.

The Office of Fossil Energy has indicated that these scenarios were specified to capture a wide range of possible outcomes. The shorter-term rapid increase in prices shown in the report largely reflects expected increases in production costs due to the production of more natural gas, which occurs relatively quickly. Domestic production increases, on average, from 4 to 12 percent when exports are added. Production costs increase due to the increased demand for equipment (e.g., rigs) and labor to support the necessary drilling, as well as for lease rights. EIA did not consider other, slower, build-out scenarios other than those specified by the Office of Fossil Energy.

*Question 7.* We are all concerned about rising gasoline prices and the impact that they have on our economic recovery. In your opinion, what are some immediate steps that the Administration could take to help?

a. I am particularly interested to know if there are any regulations that could be rolled back—for instance EPA seasonal fuel specs or regulations targeting refiners specifically. What kind of impact do you think this would have?

b. In your opinion, what are some longer term solutions?

Answer. The impact of such changes would depend on the specific circumstances. It is my understanding that the Department of Energy's Office of Policy and International Affairs has a very strong capability to provide analysis of the issue you raise. If confirmed as EIA Administrator, I would seek to utilize the combined capabilities of that office and EIA to provide analysis that bears on this issue.

EIA is the statistical and analytical agency within the U.S. Department of Energy. EIA collects, analyzes, and disseminates independent and impartial energy information to promote sound policymaking, efficient markets, and public understanding regarding energy and its interaction with the economy and the environment. EIA, in keeping with its responsibility for impartial information and analysis, does not recommend policy positions. Nonetheless, EIA has historically worked with Congress and the Administration to help quantify the possible impacts of well-specified energy policy proposals on energy markets. If confirmed, I would look forward to continuing and extending EIA's activities in this area.

*Question 8.* As Congress and the Administration refine our sanctions policy towards Iran, it is critical that we have accurate, up-to-date and non-biased information about the state of Iran's energy sector. To that end, Congress has called upon the EIA to produce a report every 60 days, on the price and availability of alternatives to Iranian petroleum. Currently the President is required to impose sanctions on companies investing in Iran's energy sector, selling Iran energy technology, or providing Iran refined petroleum. Certain sanctions are dependent upon whether a country has significantly reduced its import of Iranian petroleum. In the past, the EIA has issued reports on these topics to the discomfort of the State Department which has failed to sanction companies identified in the reports. If confirmed, will you ensure country reports on Iran continue to identify foreign companies working in Iran's energy sector or providing Iran with refined petroleum?

Answer. EIA is the statistical and analytical agency within the U.S. Department of Energy that provides independent and impartial energy information to inform policymakers. EIA has statutory independence with respect to its data, analyses, and forecasts. To the extent that resources are available, if confirmed, I would plan to continue the reporting of information related to commercial activity. In my experience, EIA has successfully maintained that independence, a practice I will scrupulously uphold if confirmed.



## RESPONSES OF ADAM SIEMINSKI TO QUESTIONS FROM SENATOR CANTWELL

## FUTURE COAL PRICES

*Question 1.* According to Energy Information Administration (EIA) data (Annual Energy Review 2011, Table 7.9), coal prices in the United States rose by more than 5 percent annually, on average—from \$18.93 to \$32.2 per ton—between 2000 and 2010. However, the EIA’s Annual Energy Outlook (AEO) 2012 Early Release projects rising U.S. coal production and exports, but average annual coal price increases of just 0.9% over the period 2009-2035.

a. What factors do you think contribute to EIA’s significant departure from historical trends in coal prices?

b. Do you think environmental regulations that effectively limit U.S. coal use to relatively cleaner supplies are likely to increase future coal prices?

c. From 1999 through 2010, the AEO has consistently projected a falling price per ton for Central Appalachia (CAPP) coal. While AEO 2011 projected a price increase of only a small margin through 2035, CAPP coal prices have risen consistently since 1999, and by well over 100%. Why do you think the EIA’s coal price projections have been so consistently and significantly off and what would you do as EIA Administrator to address this problem?

d. The National Research Council’s 2010 report “The Hidden Costs of Energy” showed that the average additional cost of coal generation due to emissions of SO<sub>2</sub>, NO<sub>x</sub>, and particulate matter was 3.2 cents per kilowatt-hour in 2005 and will decrease to roughly 1.7 cents per kilowatt-hour by 2030. Do you think EIA should incorporate these externalities into EIA’s models?

e. If the additional cost of coal generation estimated by the National Research Council’s 2010 report “The Hidden Costs of Energy” were included in EIA’s modeling how would that change the estimate for future coal consumption and the price through 2035?

*Answer.* The increase in coal prices from 2000 to 2010 was due to many factors, including declines in coal mining productivity and the rising costs of mine equipment, parts and supplies, fuel prices, explosives, and labor. According to the AEO Early Release (AEO2012), the trend in coal mining productivity is expected to improve over that of recent years. As far as regulations driving coal prices, without details on specific requirements it is difficult to assess their potential impact. Generally, regulations that reduce the supply of usable coal would lead to higher coal prices. Conversely, regulations that would lower the demand (i.e. restrictions on power plant use of coal) would decrease the price of coal. In either case, the magnitude of the cost impact would depend on the specifics of the regulations.

I do not believe EIA has analyzed the potential impacts of the non-market externalities referred to in the NRC report. If externality costs of coal were incorporated into pricing, coal plant operators would have an incentive to abate emissions in order to reduce impacts on generation costs. What costs and how they could be included in EIA’s modeling, at least for sensitivity cases is something I would be willing to explore, if confirmed.

## LIKELY AMOUNT OF COAL CONSUMED IN THE U.S.

*Question 2.* In an investment analysis published about a year ago (<http://www.anga.us/media/180381/deutsche%20bank%20report-%20nov%202010.pdf>), Deutsche Bank concluded that coal use for electricity production in the United States is likely to decline significantly in coming decades—from 47 percent in 2009 to 22 percent in 2030. Several factors contribute to coal’s decline, including capital cost increases relative to gas, retirement of aging plants, increasingly stringent regulation of criteria pollutants, rising ash disposal costs, and financial barriers due to the regulatory uncertainty associated with greenhouse gas emissions. In contrast, EIA’s Annual Energy Outlook 2012 Early Release projects that U.S. aggregate coal use will continue to rise and that coal will still account for 39 percent of U.S. electricity production in 2035.

a. Were you involved in this Deutsche Bank analysis and do you believe it is credible? If you do, please explain what you think explains the stark differences between its conclusions and those of EIA.

b. Do you concur with the broad consensus that anticipated plant retirements, increasing regulatory obligations, and higher hurdles to capital finance for new coal plants will have a profound impact on U.S. coal consumption?

c. If you do agree with the consensus of plant retirements, increasing regulatory obligations, and higher hurdles to capital finance for new coal plants,

what is driving future increases in U.S. coal consumption in EIA's modeling and analysis?

d. Should EIA work with financial analysts and incorporate what the private sector predicts will happen to coal usage?

e. Based on the AEO, the proportion of high to low-sulfur coal going to market will worsen for utilities using APP coal. If EIA is correct also that power plants closure will be nothing like industry projections, these plants will have to accommodate high-sulfur coal with retrofits, which will be charged to ratepayers or taxpayers. How will you reflect this in the AEO for energy prices?

Answer. The Deutsche Bank report *Natural Gas and Renewables, A Secure Low Carbon Energy Plan for the United States* (November 2010), was authored by DB Climate Change Advisors, a subsidiary of the Deutsche Bank Group that is not part of the division of Deutsche Bank that I worked for during my employment at the firm. My understanding is that the report in question provided an analysis of a policy-oriented initiative, specifically the identification of a low cost solution for achieving a 17-percent reduction in overall U.S. greenhouse gas (GHG) emissions by 2020 and an 83-percent reduction by 2050 relative to the 2005 level. A statement to this effect is made at the beginning of the "Key Research Findings" section on page 8 of the report. Those policy goals were not represented in the *Annual Energy Outlook 2012* (AEO2012) Early Release. The AEO reference case, appropriately, does not include policy measures not already in law.

EIA is currently projecting an overall increase in U.S. electricity generation with other technologies, especially natural gas and renewable, gaining an increased share of overall generation and coal's share experiencing a decline. A number of factors could affect the outlook for coal consumption including continuing natural gas prices at a level competitive with existing coal plants for electric power dispatch, slower economic growth reducing electricity demand, and new policy initiatives. Understanding and modeling all the various factors that affect current capacity and prospects for new generation requires a sophisticated understanding of the current regulatory and market environment. In my experience, this is best gained with ongoing dialogue with the private sector, financial analysts, regulators and other stakeholders. I know that EIA has participated in meetings and workshops with private sector analysts as well as a wide array of experts in the past. If confirmed, I would encourage and expand on such outreach.

#### FUTURE REGIONAL DEMAND OF COAL

*Question 3.* The Congressional Research Service documented in a 2007 study that significant bottlenecks in rail transport caused billions of dollars in losses in previous years, and that many billions of dollars of improvements would be required to avoid such problems in the future.

a. How much would these bottlenecks increase the true cost of coal?

b. What do you think must be invested to ensure the national reliability of inputs to coal-fired power plants considering that that EIA also projects coal mining to become more geographically constrained?

c. USGS and EIA data seem to be completely inconsistent regarding the potential production of coal from NAPP, Central Appalachia (CAPP), ILB, Rocky Mountain, and New Mexico/Arizona. In each of these cases, USGS estimates that the total amount of coal that is actually economic to mine is far lower than what EIA projects will be mined by 2035—even as EIA projects to increase only slightly. According to USGS, there is only 771 Mt of economic coal left to mine in NAPP, but EIA projects 4,067 Mt will be mined through 2035; 976 Mt versus 3,435 Mt in CAPP; 1,074 Mt versus 3,326 MT in ILB; 1,078 Mt versus 1,526 Mt in Rocky Mountain, and 214 Mt for AZ/NM versus 917 Mt in AZ/NM. Given the importance of EIA's projections in various energy models and public policy discussions, are you concerned about these huge differences between EIA's projection for the production and prices of coal from these major coal basins and what USGS says is economically possible? Please detail what you would do about these discrepancies as EIA Administrator.

d. USGS estimates a 200 million ton shortfall of low-sulfur coal in the Appalachian region. This is consistent with industry projections about coal-fired power plant closures, such as from Deutsche Bank, Brattle Group, and ICF. Why does the AEO contrast with USGS and industry projections about this shortfall of coal in the East?

Answer. Coal transportation bottlenecks and reserve estimates have not been a specific focus of my past research, and I have not analyzed these issues in the specific context of the findings of the Congressional Research Service and the USGS.

If confirmed, I would be willing to look at the differences between the EIA projections and other findings with a view to attempting to reconcile them. In my experience, reserve estimates often vary because of the exact definitions used and assumptions made by the estimators.

Identifying and explaining changes in the regional composition of coal demand and the necessary supply linkages, including transportation, are certainly critical areas for EIA. While this is not an area in which I have done analysis, I recognize that collecting and disseminating accurate and timely data and analysis at the level of granularity needed in the marketplace would be a priority if I am confirmed as Administrator.

I am aware that rail bottlenecks have occurred along various coal supply lines in the past. The growing demand for rail capacity for crude oil shipments is adding a new dimension. In fact, I mentioned this at the hearing. It is my understanding there is limited publicly available data related to rail infrastructure costs and capacity needs. The directional movements of coal and crude oil are likely to differ and it is not clear whether or not any enhancements to the rail system that may be needed could be managed within the normal range of railroad capital investments.

#### DISCREPANCIES IN COAL RESERVES ESTIMATES

*Question 4.* The U.S. Geological Survey (USGS) has been updating data on U.S. coal reserves in the last few years. The AEO 2012 updated, and reduced, previous estimates for technically recoverable reserves of shale gas based on new data from USGS. However, the AEO 2012 does not mention its reference for coal reserves.

- a. Do you believe the latest USGS data for coal reserves to be reliable?
- b. Do you believe that EIA is, or should be, integrating the latest numbers from USGS for reserves, recoverability factors, etc.?
- c. Is there a reason that EIA does not use the CoalVal model developed by USGS to analyze economic recoverability from coal mines?
- d. In 2009 USGS published an analysis that included evaluations on how to calculate economic recoverability, estimating that 6% of the Demonstrated Reserve Base (DRB) was 'economically recoverable' without a rise in price per ton that is well beyond current EIA projections. If USGS estimates on economic recoverability were included in the AEO, how do you think the projected prices, exports, and production for all energy types be affected?
- e. If there is disagreement between USGS and EIA on analysis of coal reserves, costs, and production, how would you work to get that data resolved, and how can we be sure that EIA is providing Congress with the best data?

*Answer.* As I mentioned in my previous answer, if confirmed as EIA Administrator, I would attempt to pinpoint the reasons for disagreement between the USGS and EIA on the analysis of coal reserves, and oil and natural gas reserves as well. The best way to resolve such issues, in my view, is to work through the specific data and assumption being used in the analyses. EIA's mission is to deliver independent, objective, and timely data and analyses, and to assure it is integrity, accuracy and usefulness. If confirmed, I would do my best to assure the Congress that the EIA was doing the best possible job and explain the methodologies behind the findings.

#### IMPACTS OF FOSSIL FUEL EXPORTS

*Question 5.* The 2011 Annual Energy Outlook shows U.S. exports of coal increasing annually by 1.8%, from 1.51 quadrillion Btu in 2009 to 3.24 quadrillion Btu in 2035. In contrast, U.S. production of coal is only projected to increase by 0.3% annually, from 21.63 quadrillion Btu in 2009 to 23.51 quadrillion Btu in 2035. This suggests that exports will account for over 13% of coal production by 2035.

- a. Do you think coal prices increase substantially more than projected if world demand increases faster than expected? If exports were to increase annually at twice the projected rate such that 20% of U.S. coal production was exported by 2035, roughly in what range would coal prices be?
- b. As the rest of the world consumes an increasing percentage of U.S. coal, do you think will coal act more like a fungible commodity subject to prices set by the world market? Do you think this dynamic would cause U.S. coal prices to increase and become more volatile?
- c. Do you think it make sense for the United States to export more raw energy commodities—and the resulting environmental impacts—across the Pacific just to have finished goods such as solar panels imported back to the U.S.?
- d. Do you think exporting coal and natural gas would make them behave more like oil—a world market commodity, governed by higher, more volatile day-to-day prices?

Answer. In my experience, prices respond to supply and demand. Higher demand implies higher prices—but determining the change in prices depends on numerous other factors including but certainly not limited to the elasticities of supply and demand with respect to price and the elasticity of demand with respect to income. The EIA is not involved in the “national interest” determinations that are made by policy division of relevant agencies. I believe that volatility in commodity prices is determined by numerous market forces and that export determinations would be more likely to impact price levels than price volatility.

EIA’s role is one of observing and analyzing these markets. I am not privy to EIA’s plans for the full AEO2012 due out in several months, but that or future analyses could include sensitivity cases along the lines suggested by the questions you raise.

#### IRAN

*Question 6.* As Congress and the administration calibrate our sanctions policy on Iran, it is crucial that we have accurate, up-to-date and unbiased information on the state of Iran’s energy sector. To that end, Congress has called on the EIA to produce every 60 days a report on the price and availability of alternatives to Iranian petroleum. The first of these reports was issued last month, and I was impressed with the detail and professionalism in which the report was done.

a. If confirmed, will you ensure the EIA’s reports on Iran are done in the timeframe established by Congress?

b. Will you ensure the Iran reports are unbiased and are free from outside political influence?

c. Currently the President is required to impose sanctions on companies investing in Iran’s energy sector, selling Iran energy technology, or providing Iran refined petroleum. Certain sanctions are also incumbent upon whether a country has significantly reduced its import of Iranian petroleum. In the past, the EIA has issued reports on these topics but the Administration has failed to sanction companies identified in the reports. If confirmed will you ensure country reports on Iran continue to identify foreign companies working in Iran’s energy sector or providing Iran refined petroleum?

Answer. I am familiar with EIA’s reporting responsibilities regarding sanctions policy on Iran and, if confirmed, would ensure any and all reports are unbiased, free from political influence and provided in the necessary timeframes. I understand EIA’s recent budget constraints caused the reduction, even elimination, of some of the work it had done in the international area. To the extent that resources are available, if confirmed, I would plan to continue the reporting of information related to commercial activity.

#### OPEN FUEL STANDARD

*Question 7.* Proponents of an Open Fuels Standard, such as the one proposed by Senate Bill 1603 which I introduced with Senator Lugar, believe it would enable millions of gallons of petroleum alternatives to come online and effectively end the monopoly oil has on our nation’s transportation system.

a. If 20 to 30 percent of our nation’s petroleum demand could be replaced with alternative fuels such as methanol derived from natural gas or ethanol from non-food biomass at prices less than the current price of gasoline, what impact do you think that would have on overall gasoline prices?

b. Do you think that having competing fuels at the gas pump would help lower prices because consumers can switch between fuels?

c. How much natural gas would it take to produce a million gallons of methanol?

Answer. I believe that if alternative fuels can be supplied to consumers at prices competitive with existing fuels that such competition would tend to lower prices. Converting natural gas to methanol is a complex procedure with the conversion rate depending on a number of factors including the specifics of the process and catalysts used. To the best of my knowledge, a method to convert ethane to methanol has not been commercially demonstrated.

The impact of such a standard would depend on the cost and availability of alternate fuel vehicles compatible with methanol and other alternatives, sufficient concentration of like vehicles in an area to stimulate fueling infrastructure investment, as well as local codes and standards compatible with residential use and/or distribution of such fuels. Based on 65 percent conversion efficiency, 56,800 Btu per gallon

of methanol, and 1,025 Btu per cubic foot of natural gas, production of one million gallons of methanol would require about 82.7 million cubic feet of natural gas.

RELATIONSHIP BETWEEN GASOLINE PRICES TO SUPPLY AND DEMAND FUNDAMENTALS

*Question 8.* There are few economic drivers more significant than prices at the pump. Even small gas price increases can significantly impact every family budget and the bottom lines of virtually every American business. Many industry analysts think we are just a few months away from \$4 per gallon of gas, perhaps higher. And we'll shoot right past that if Iran reacts to additional economic sanctions by restricting its production or even attempting to close the Strait of Hormuz.

While these geopolitical considerations have an understandable impact on prices at the pump, every year the oil markets seem to be getting further and further divorced from the laws of supply and demand. During a Finance Committee hearing last year, I asked Exxon-Mobil CEO Rex Tillerson what he thought the price of oil should be if it were based on supply and demand fundamentals. His answer was \$60 to \$70 a barrel, rather than the \$100—\$115 we see today. I've studied this issue closely for many years now, and I think the evidence is clear that excessive speculation in the oil futures market drives disruptive behavior in the price of oil.

- a. What do you think is responsible for our new era of volatile and elevated oil and gasoline prices?
- b. What role do you think excessive speculation in the oil futures markets has on spot prices today?
- c. EIA recently reported that U.S. demand for gasoline fell 6.7% in February relative to a year ago to its lowest level since 2001. What do you think explains this counterintuitive finding?
- d. Are you concerned that flaws in EIA's methodology or other unrelated mistakes undermine the credibility of its data products?
- e. Do you think Americans and the rest of the world simply have to live with high prices and high volatility until better alternatives allow us to run our cars and trucks on something other than oil, or make them all run on less oil?

*Answer.* My research suggest that oil and oil product prices have been volatile over the entire course of the development of the oil industry. This volatility can be attributed to a variety of supply, demand, weather, geopolitical and financial factors. Over the past several months the oil market has gone through a period of rising prices. As I indicated at my nomination hearing and in the above answer, I believe there are a wide variety of factors involved in oil price movements, including financial market activity and its interaction with energy markets. Over the past few years, debate over the role of financial investment in commodity markets has heated up. Flows to commodity funds and commodity prices have surged in recent years. The impact of higher commodity prices on inflation and growth, as well as potential hardship for fuel and food consumers, have caused analysts and policymakers to look closely at the factors influencing prices and volatility.

EIA has identified several factors that contributed to the increase in oil prices over the past 10 years. Strong economic growth in non-Organization of Economic and Development (OECD) countries led to increases in oil consumption. Slow growth in non-OPEC oil production from 2005 to 2008 limited oil supply growth. Low spare capacity from 2003 to 2008 reduced the cushion for supply to meet fluctuations in global oil demand. In addition to supply and demand factors, the increase in oil futures trading, the growth of oil as an investment, and the increase in correlations between oil prices and other commodity prices and other financial markets also contributed to changes in oil markets and oil prices.

Understanding the contribution of these different factors to oil price formation is an area where EIA has been actively engaged. I have participated in several EIA workshops over the past few years ago with academic and regulatory economists dissecting and critiquing academic analyses of market data. As I said at the hearing, if confirmed as Administrator, I would continue and expand EIA's collaboration with other federal agencies and market participants to improve access to market data and support critical analysis in this area.

As a professional analyst I am always concerned data quality. I understand the tremendous challenge for EIA to collect, verify and report high quality data in a timely manner, especially as markets evolve and the roles of market players change. The recent discussion of the percentage decline in gasoline demand and the difficulty of estimating exports is a case in point. EIA became aware of that the weekly data were understating exports, thereby overstating demand so it changed the methodology which was described in Today in Energy on the website. In my experience, EIA has been responsive to corrections and improving its systems when prob-

lems are discovered. I too have had my frustrations that data series were not adjusted sooner at times, but I do not underestimate the challenge of rebuilding the tracks while keeping the trains running on time. As I said at the hearing, if confirmed, my top priority will be to modernize and improve the data collection and dissemination systems.

#### ELEVATED GASOLINE PRICES

*Question 9a.* In 2011 we paid the highest average price for gasoline in history, and it looks like 2012 average prices will be even higher. Do you think there is any way that the average annual price for gasoline will go below 2011 levels in the next 20 years?

*Question 9b.* Do you believe that given rapidly increasing international demand and only marginal increases in new oil supplies that there could be an oil shortage sometime in the next 20 years?

*Question 9c.* It was just a decade ago that Saudi Arabia was trying to keep world prices in the range of \$22 to \$28 dollars per barrel to discourage the development of alternatives, why do you think \$100 per barrel helping spur alternatives to gasoline?

*Question 9d.* Please share your suggestions on how America can break oil's monopoly on our transportation system, and what will bring alternative fuels online on a scale to compete with fossil fuels?

*Question 9e.* I understand that over the last three years the Chinese government has loaned around \$120 billion to its state-owned oil industries to secure supplies of oil that will now not go onto the world oil market. Can you verify this information and analyze what impact it could have on world oil prices and U.S. gasoline prices in the coming years?

Answer. Many analysts expect rising demand for oil in the developing world to push crude oil prices higher in real terms over the coming years, which would result in higher prices for gasoline and other petroleum products. However, past experience teaches analysts to be humble in making long-term price projections. Therefore, I think it would be unwise to completely rule out the possibility that annual average gasoline prices would fall below the 2011 level sometime within the next two decades.

It is certainly possible that there could be an oil shortage sometime in the next two decades. The balance between demand and supply growth will determine whether or not an oil shortage occurs. The demand for oil is likely to increase in the developing economies, but to stagnate or decline in the traditional industrialized economies. Efficiency improvements, subsidy reforms, and the development of alternative fuels have the potential to slow the growth in demand for oil, while technological developments and institutional reforms have the potential to increase supply growth.

At present price levels, oil remains an attractive fuel for transportation applications, but there are some indications that alternative fuels can expand their role. Because EIA does not promote or formulate policy proposals, I am reluctant to make suggestions regarding measures to accelerate the adoption of alternative fuels. However, if confirmed as EIA's Administrator, I would certainly continue EIA's traditional role in providing analysis of specific policy proposals in this and other energy-related areas.

Oil's high energy density and ease of storage make it an excellent transportation fuel. The opportunities for natural gas (LNG, methanol conversion, and compressed gas) as well as improvements in battery technology could have a significant impact over the next decade.

The balance between global demand and global supply is a key determinant of the future direction of future crude oil and petroleum product prices. China's contribution to both demand and supply affect the global balance. My understanding is that the government of China has been building its strategic petroleum reserves for the same reason that the United States and its IEA partners have pursued this option. Generally, investments that help to increase global supply help to ameliorate tightness in world oil markets, regardless of who makes those investment and where the oil that is produced as the result of any given investment is actually consumed.

#### CORRELATION BETWEEN DOMESTIC OIL PRODUCTION AND PUMP PRICES

*Question 10.* A recent statistical analysis of 36 years of monthly, inflation-adjusted gasoline prices and U.S. domestic oil production by the Associated Press shows no statistical correlation between how much oil comes out of U.S. wells and the price at the pump. For example, since February 2009, U.S. oil production has increased 15 percent when seasonally adjusted. Prices in those three years went

from \$2.07 per gallon to \$3.58. And the AP similarly found no correlation between domestic production rates and inflation-adjusted gasoline prices going back to 1976.

a. The AP concluded that this lack of casualty is due to oil being a global commodity, meaning that U.S. production has only a tiny influence on supply. Factors far beyond the control of a nation or a president dictate the price of gasoline. Do you agree with their conclusions?

b. Similarly, the EIA found that even the most comprehensive domestic drilling proposals would only decrease gasoline prices by 3 to 5 cents—and not until 2030. Does this analysis make sense to you, and, in your opinion, will any amount of additional drilling lead to substantially lower prices at the pump today, tomorrow, or any time in the next 20 years?

Answer. I have not personally reviewed the AP analysis, but I do not find the results at all surprising. The balance between supply and demand on a global scale is a key fundamental determinant of crude oil prices, which are in turn the key driver of petroleum product prices. Future prices will be influenced by trends in both demand and supply on a global basis.

Both supply and demand in the United States are a part of the global picture. Policies influencing U.S. supply and/or U.S. demand can affect world markets both directly and indirectly. Indirect effects may arise through the impact of U.S. policies and technologies on demand and supply throughout the world. For example, technologies used to raise the fuel economy of vehicles sold in the United States are also likely to be applied elsewhere, as are technologies developed to exploit new categories of resources, such as deepwater offshore resources and onshore resources in shales and other tight formations.

The impact of drilling on prices will depend on the combination of its direct and indirect effects and on the extent of demand responses. Generally only modest price impacts would be expected if supply from drilling in one area is offset by reductions in supply from other areas, or if demand is relatively more responsive to changes in supply, as is possible over an extended time period. However, there are many other economic, environmental and geopolitical benefits that might accompany increases in domestic oil development.

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RESPONSE OF MARCILYNN A. BURKE TO QUESTION FROM SENATOR WYDEN

TIMBER MANAGEMENT/O&C LANDS

*Question 1.* I have repeatedly raised the issue of timber management on the O&C lands with the Secretary and others in the BLM and we had a chance to discuss this issue as well. I applaud the Secretary for advancing new pilot projects. However, I still remain concerned that the volume of timber from these and other sales remains very low and will not support the remaining mills in my state. In order to turn this around I think we will need leadership and engagement from the top. Can I get your commitment that you will be engaged on these issues and help turn the timber volume numbers around?

Answer. If confirmed, I will work to ensure that the BLM remains committed to providing a predictable, sustainable supply of timber and other forest products that help maintain the stability of local and regional economies, and contribute valuable resources to the national economy. The BLM's 2013 budget includes an increase for timber programs in Western Oregon. Just last month, Secretary Salazar announced that we are beginning the process of revising Resource Management Plans (RMP) for 2.5 million acres of forested lands across six BLM Districts in western Oregon. The BLM is seeking public input on the issues and alternatives that the new RMPs should address. This public scoping period began March 9 and will end June 7, 2012.

RESPONSES OF MARCILYNN A. BURKE TO QUESTIONS FROM SENATOR MURKOWSKI

*Question 1.* The BLM is responsible for completing the conveyance of some 5 million acres of Alaska's Statehood entitlement, promised to the state 53 years ago, and some 4 million acres of Alaska Native Corporations conveyances, which were promised 41 years ago. The Department, however, continues to propose lower funding to complete the conveyances, the budget having proposed to cut conveyance funding in half. At the current pace of conveyances of interim conveyances and of surveys to provide final patents, it might well take the Department another 50 years or more at the level of funding the Administration is currently proposing to complete all conveyances. I've heard of "due deliberate speed" but this seems anything but speedy.

- a. Would you agree that the government has a moral and legal obligation to comply with legislation and to implement the conveyances?
- b. Will funding for Alaska land conveyances be a priority for you, if you are confirmed for the Assistant Secretary position?

Answer. The BLM is eager to complete these conveyances. While funding has been reduced as part of an effort to reevaluate and streamline the conveyance process, conveyance work has been ongoing since the 1960s and the 2004 Alaska Land Transfer Acceleration Act has allowed the BLM to streamline the conveyance program and reduce program costs. The BLM is developing several procedures to enhance efficiency and continues to work to further streamline the program so that resources are focused on completing the goal of transferring title to 150 million acres the agency is required to convey.

If I am confirmed, I will make it a priority for the BLM to complete the transfer process, and commit to examining funding opportunities for the conveyance program.

*Question 2.* The Bureau of Land Management that you will oversee in your new post is currently working on a new land plan for the National Petroleum Reserve-Alaska—the last petroleum reserve under federal control in the nation. In your view what should be the priority: to use the lands to produce the oil and gas this nation needs, or to set aside acreage in the area for conservation purposes?

Answer. As I mentioned when I appeared before the Committee, the mission of the Department of the Interior and the bureaus for which the Assistant Secretary for Land and Minerals Management has oversight responsibility is to balance the need for development and production of energy on the public lands with the need to take appropriate care of our other natural resources and the environment. The Department recognizes the provisions of the 1976 NPR-A transfer act as amended which calls for an oil and gas leasing program while also recognizing and providing for the protection of other resources. The priority is to get that balance right through careful planning that gives due consideration to competing resource values. If confirmed, achieving the proper balance will be a priority for me.

*Question 3.* Congress included several provisions in the Alaska National Interest Lands Conservation Act to preclude the withdrawal of tracts of greater than 5,000 acres in Alaska in the future. This makes sense, as the act resulted in the creation of 58 million acres of wilderness and nearly 130 million acres of new parks, monuments, and preserves just in my home state.

- a. What is your view of the meaning of Section 1326 of ANILCA, the section that Alaskans call the “No More” Clause? Is it that no further studies of wilderness leading to withdrawals should be undertaken by your department unless prior authorization is provided by Congress, or is it that the Administration is free to propose additional wilderness designations in Alaska, but just not to permanently place lands in wilderness by use of the 1906 Antiquities Act?

Answer. I am mindful of the provisions of ANILCA. The actions of the Department of the Interior must be consistent with the Act. While the Secretary has the legal prerogative to identify well-suited wilderness areas, Congress alone holds the power to designate wilderness.

*Question 4.* Right now the Department’s Fish and Wildlife Service seems to be progressing on a new land management plan for ANWR that may well result, based upon the draft plan, in recommendations for more wilderness to be created in ANWR.

- a. Please explain: how is the planning that led to wilderness proposals in the draft plan not a clear violation of Section 1326 of ANILCA?

Answer. If confirmed as Assistant Secretary for Land and Minerals Management, the U.S. Fish and Wildlife Service would not be under my supervision. However the Service advises me that preparation of the Revised comprehensive conservation plans (CCP) derives from the requirement in Section 102(A) of ANILCA that comprehensive conservation plans be prepared and periodically updated for each refuge. The revised plan is an update of the 1988 plan, and it is a management plan for the entire Refuge. While it includes a wilderness review, the revised plan is not being completed for the purpose of establishing a conservation system unit. Rather, it is being completed as a statutory requirement of ANILCA section 304(g) which requires the Plan revision include the “wilderness value of the refuge.” No wilderness can be created without the consent of Congress.

*Question 4b.* The Comprehensive Conservation Plan draft concedes that at least 40,000 acres are not suitable for Wilderness designation due to their continuing and foreseeable occupation by humans and motorized vehicles. The entire 1002 area has



been covered in seismic surveys as well. The 1965 Wilderness Act defines wilderness as untrammelled by man and unoccupied by humans. Do you believe the rest of the 1002 area—or all of it—is suitable for Wilderness designation?

Answer. If confirmed as Assistant Secretary for Land and Minerals Management, the U.S. Fish and Wildlife Service would not be under my supervision. However, the Service has provided the following response to your question.

The Wilderness Act's definition of wilderness as "an area where the earth and its community of life are untrammelled by man, where man himself is a visitor who does not remain" is part of the vision for wilderness. However, the definition is not the standard by which lands qualify for entry into the National Wilderness Preservation System. Congress has designated wilderness areas that are located near population centers and in areas that show evidence of past human use. Three criteria derived from the Wilderness Act are used to determine whether an area meets the minimum criteria of wilderness: size, naturalness, and opportunities for solitude or primitive recreation. The 1002 area arguably meets these criteria. It is a large area, encompassing 1.4 million acres, and it exhibits a high level of ecological integrity and apparent natural condition. While scattered sections of seismic trails from the 1984-1985 oil and gas exploration project are visible, their natural recovery continues. The 1002 Area also provides outstanding opportunities for both solitude and primitive recreation.

*Question 5.* Right now the National Park Service reports that it has several billion dollars of deferred maintenance needs in our national parks. We have significant facility needs in our wildlife refuges. If you are confirmed, what would your view be on spending of our increasingly scarce dollars—should the priority be to spend on maintenance of our existing parks and refuges, or should it be on buying/acquiring new lands for wilderness, park or refuge designations and additions?

Answer. If confirmed as Assistant Secretary for Land and Minerals Management, neither the National Park Service nor the U.S. Fish and Wildlife Service would be under my purview. However, I agree with Secretary Salazar that we must balance the needs of existing parks, refuges, and resources while engaging in strategic conservation that yields measurable ecological outcomes and community benefits. As Secretary Salazar has said, conservation is a priority for the Administration, and we must continue to invest in land and water projects that have the support of communities who depend on the job creating power of the outdoor economy.

*Question 6.* When the Administration was preparing to attempt to implement its Wildlands Policy, you briefed the staff of the Senate Energy and Natural Resources Committee. At the time you were advocating for the policy. Then the House of Representatives and the Senate attached language to the FY 2011 Interior Appropriations bill and again in the FY 2012 bill that prohibits spending any funds to implement the Wildlands Policy.

a. Will you commit to me that you will not attempt to implement any administrative land set-asides or designations that in any way would restrict access or uses on BLM lands in ways similar to a Wilderness restriction, if you are confirmed?

Answer. Secretarial Order 3310 was issued in December of 2010 to provide national guidance for protecting lands with wilderness characteristics as Wild Lands. Congress has prohibited the use of appropriated funds to implement, administer, or enforce Secretarial Order 3310. The BLM is in full compliance with that Congressional direction, and has not and will not designate any Wild Lands. If confirmed, I commit that the BLM will continue to comply with all applicable laws.

*Question 7.* Is there any reason that an economic pipeline corridor to bring Arctic oil and gas production to the Trans-Alaska pipeline corridor will be difficult to permit across the 23 million-acre National Petroleum Reserve? Is it in the national interest to plan for such a pipeline corridor and to keep the Trans-Alaska Pipeline at operational throughput?

Answer. There are a number of issues that need to be analyzed when planning and permitting a pipeline corridor in the Arctic environment; however, I am unaware of any particular issue that would currently preclude a pipeline corridor across the NPR-A. The BLM's current planning for NPR-A takes into account the possibility of future pipelines and acknowledges the importance of the Trans-Alaska Pipeline System as strategic infrastructure for the continued production of oil out of the Arctic. A future pipeline proposal across the NPR-A would require further specific NEPA compliance. The BLM also recognizes the importance of maintaining operational throughput to the State of Alaska.

*Question 8.* In your view, what is the primary purpose of the undesignated public lands in America, meaning the 264 million acres that BLM controls, and not the lands under the control of the National Park Service or the US Fish and Wildlife Service? Is it for those lands to fuel the nation's economy and produce jobs, or is it for those lands to be preserved in their natural states? What would you see as your primary responsibility?

*Answer.* Congress has not assigned a single primary purpose to the management of America's public lands, whereas the management missions given to the National Park Service and the U.S. Fish and Wildlife Service are more narrowly focused. The more than 245 million acres of public lands administered by the BLM encompass the vast array of the American landscape, from the Alaskan tundra, to the dense forests of the Pacific Northwest, the red rock deserts of the American Southwest, and the sagebrush steppes of the Great Basin. Through the Federal Land Policy and Management Act (FLPMA), Congress charged the BLM with the mission of managing these diverse public lands for multiple use. Under this mandate, the BLM manages public land resources for a variety of uses including energy development, livestock grazing, recreation, and timber harvesting, while protecting a wide array of natural, cultural, and historical resources. Not every acre managed by the BLM is appropriate for oil and gas leasing, just as it is true that not every acre is suitable for wilderness designations. If confirmed, a priority of mine would be upholding FLPMA; my responsibility as Assistant Secretary for Land and Minerals Management would be to help ensure that the BLM make land use decisions that are informed by an open, transparent, and public process.

*Question 9.* You recently lectured the University of North Dakota's law school regarding the decrease in lawsuits as relates to federal onshore oil and gas leasing.

a. Some of this is due to very detailed and process intensive work in regional management plans and lease schedules, but is simply less activity, or less available acreage in new areas, also a reason for less litigation?

*Answer.* While additional factors may have contributed to a decline in leasing-related litigation, the oil and gas leasing reforms announced in 2010 are a factor in that decrease. These reforms are helping to reduce potential conflicts that lead to costly and time-consuming protests and litigation. The BLM's current interdisciplinary approach prior to making leasing commitments is making oil and gas leasing more predictable, increasing certainty for stakeholders—including industry—and restoring balance to the resource development process.

*Question 9b.* Have approved APDs increased or decreased since 2008?

*Answer.* Oil and gas drilling and development are market-driven activities, and demand is a function of market conditions and national energy consumption. The number of APDs submitted by industry is an indication of industry interest and intent to drill for oil and gas. The table below presents the APD statistics for 2001-2011.

APD Statistics--Combined Federal & Tribal Mineral Estate

	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
<b>APDs Received</b>	4,819	4,585	5,063	6,979	7,796	9,846	7,963	7,728	4,833	3,963	4,728
<b>APDs Processed</b>	4,266	5,830	5,143	7,351	7,736	8,854	8,964	7,846	5,306	5,237	5,200
<b>APDs Approved</b>	3,636	3,540	3,961	6,452	4,579	6,738	7,124	6,617	4,487	4,090	4,725
<b>Wells Spud</b>	3,641	2,977	3,074	4,056	1,742	4,708	5,343	5,044	3,267	1,480	3,664

Industry may elect not to drill even after the BLM has approved its APDs. As of September 30, 2011, the BLM had approved 7,226 applications for permits to drill on Federal and Indian lands that had not been drilled.

*Question 10.* Two weeks ago in our Appropriations budget hearing with Secretary Salazar, Sen. Hoeven noted that there should be a cost-benefit analysis before DOI formally proposes its new hydraulic fracturing rules.

a. Would you agree that there should be cost-benefit analysis?

*Answer.* The hydraulic fracturing rulemaking process includes an estimate of economic benefits and costs, which considers a number of factors, including employ-

ment impacts, discounted present value, uncertainty, and a number of rule alternatives.

*Question 10b.* Has there been a formal cost-benefit analysis on this proposal?

Answer. The hydraulic fracturing rulemaking process includes an estimate of economic benefits and costs, which considers a number of factors, including employment impacts, discounted present value, uncertainty, and a number of rule alternatives.

*Question 11.* What is your position on whether royalty rates should be raised on producers of federal oil and gas resources?

Answer. I believe that it is important for the taxpayer to receive a fair return on the resources extracted from the public lands. As part of that commitment, the Department and the BLM are studying royalty rates. If confirmed, I would work to ensure that any decisions regarding royalty rates are fair to both producers and the taxpayer.

*Question 11a.* Do you disagree with the study that DOI recently commissioned, which concluded that the GAO report had failed to take major revenues into account, and that all three federal regimes were taking more revenue than competing regimes?

Answer. Studies thus far have not provided specific conclusions regarding potential new royalty rates. If confirmed, I will continue to look at all available information in order to address any potential revision of the royalty rates.

*Question 11b.* If raising royalty rates were to result in increased revenues but decreased production, would that be an acceptable outcome?

Answer. Royalty rates are only one of many factors that affect oil and gas production levels. Oil and gas prices are the primary driving forces. The Department would not expect royalty rate changes of the magnitude considered to cause a significant decrease in production, as many oil producing states have higher royalty rates than those currently assessed for onshore production on Federal land. Recent changes to offshore royalty rates do not appear to have had any significant impact on industry interest in leasing on the Outer Continental Shelf. If confirmed, there are many factors, including production impacts, that I would consider as part of any royalty rate evaluation so as to ensure a fair return for the American taxpayer.

*Question 12.* Is U.S. oil production a factor in the price of oil?

Answer. The price of oil is determined by the international market. Producing more oil and natural gas domestically is not a solution to high prices, but it will help reduce our reliance on foreign oil and our vulnerability to the ups and downs of the international market.

*Question 13.* On January 27, 2011, E&E Daily reported that you told a town hall meeting that you had met with 40 Congressional staff to discuss DOI's Wildlands policy and had left most of the meetings confident that the agency made the right decision.

a. Given the Congressional Appropriations language that defunded the Wildlands Policy proposal, could you give me your assessment of the statements you made to that town hall as reported by E&E daily?

Answer. Secretarial Order 3310 was issued in December of 2010 to provide national guidance for protecting some lands with wilderness characteristics as Wild Lands. Congress has prohibited the use of appropriated funds to implement, administer, or enforce Secretarial Order 3310. The BLM is in full compliance with Congressional direction and will not designate Wild Lands.

*Question 14.* On March 15, 2010, E&E Daily reported on your testimony at a House of Representatives hearing at which you were reported to have said, "Opening new land to Sealaska would set a precedent that would encourage other native Alaskan corporations to seek new areas as well, hurting the administration's goal of quickly resolving the outstanding conveyances." At the same time BLM was beginning to construct its FY 2012 budget request that proposed to almost zero out the Alaska Conveyance Program budget line item.

a. Let me begin by asking you to explain your agency's goal to "quickly resolv[e] the outstanding conveyances" given BLM's budget requests for the Alaska Land Conveyance line item, which was cut in half in the FY 2012 and FY 2013 budget requests. Can you help me reconcile your testimony as reported in E&E Daily on March 15, 2010, with the two budget requests BLM made in FY 2012 and FY 2013?

Answer. The Department of the Interior and the BLM are committed to the conveyances of lands, not only to individuals and to corporations formed under the Alaska Natives Claim Settlement Act, but also to the State of Alaska under the Alaska Statehood Act. The 2004 Alaska Land Transfer Acceleration Act has allowed

the BLM to streamline the conveyance program and reduce program costs. The BLM is exploring opportunities to further streamline the program so that available resources are focused on completing the goal of transferring title to the remaining portion of the 150 million acres the agency is required to convey. In FY 2011, the BLM began testing a new type of survey or business process which, if adopted, would expedite the issuance of final patents in Alaska. The BLM is committed to identifying and taking advantage of opportunities to further accelerate patents to remaining entitlements.

*Question 14b.* Do you understand the revenues generated by the sale of timber from Sealaska lands is shared with the other Native Corporations in Alaska, and if Sealaska has to shut down its timber operations all the other Native Corporations will also suffer?

Answer. Yes, we understand the importance of these revenues for Native Corporations in Alaska. The BLM is working closely with Sealaska and the U.S. Forest Service to complete Sealaska's conveyance, specifically the Frank's Lake parcel, so that Sealaska can continue its timber operations.

*Question 14c.* If confirmed, will you commit to me that BLM will propose budgets that will fund sufficient staff to complete all Alaska conveyances within the next five years?

Answer. The Department of the Interior and the BLM are committed to the conveyances of lands, not only to individuals and to corporations formed under the Alaska Natives Claim Settlement Act, but also to the State of Alaska under the Alaska Statehood Act. The BLM will continue to utilize best practices and efficiencies to ensure that the funding appropriated by Congress for the Alaska Land Conveyance program is used in the best manner possible.

*Question 15.* Over the past several years the Administration has testified in favor of legislative proposals that include provisions requiring a public interest finding by either the Secretary of the Interior or the Secretary of Agriculture.

a. Do you personally believe that Congress has the right and responsibility to direct land exchanges?

b. Do you believe that Congress has the right to exempt land exchanges from NEPA and/or public interest findings or other laws?

c. If confirmed and you receive a law on a land exchange that exempts the exchange from NEPA, other laws, and/or a public interest finding, will you commit to me that you will faithfully execute that law in the timelines prescribed in that land exchange law?

Answer. Congress passes the laws that the Executive Branch implements and administers on behalf of all Americans. The National Environmental Policy Act is the backbone of our nation's suite of environmental laws, and was created to ensure Federal agencies consider the environmental impacts of their actions and decisions. If confirmed as the Assistant Secretary for Land and Minerals Management, I will faithfully implement all applicable laws that pertain to programs overseen by that office.

*Question 16.* On January 12, 2011, the Desert Sun Newspaper from Palm Springs, California reported that at a tribal summit on renewable energy, you addressed tribal leaders who traveled to Palm Springs and said the BLM is analyzing 50 projects this year and rating the impact the projects might have on tribal, cultural, spiritual and natural resources. You are reported to have said: "We want to be smart from the start."

Given the number of the renewable energy projects that have been legally challenged, or have fallen on financial difficulty (sometimes partially as a result of federal government actions or inactions), could you give the BLM and the Department a grade on whether or not they have been "smart from the start"?

Answer. The Department of the Interior has been "smart from the start" with our renewable energy program. The BLM has permitted more than 6,500 MWs of renewable energy projects since 2010 and is processing applications that, if approved, would support almost 6,800 MWs of renewable energy this year.

The Department of the Interior and the BLM have been proactive in evaluating and streamlining their siting and approval processes to ensure that our decisions continue to be smart from the start. In February 2011, the Department hosted a Renewable Energy Forum with a variety of stakeholders to further discuss and evaluate lessons learned from the first round of renewable energy projects. The BLM issued policy guidance in February 2011 that memorialized best practices for early coordination and careful review of proposed renewable energy projects with Federal, state, tribal and local government agencies. The policy has assisted the BLM in identifying and prioritizing applications with the fewest resource conflicts and the greatest likelihood of success in the permitting process. This smart from the

start approach is consistent with the Secretary's goal to facilitate environmentally responsible development of renewable energy projects on the public lands. The renewable energy projects that the BLM reviewed and approved in 2011 and the current 2012 priority projects have involved rigorous coordination and review, consistent with the principles of smart from the start.

*Question 17.* In a University of Cincinnati Law Review article titled "Much Ado About Nothing: Kelo v. City of New London, Babbitt v. Sweet Home, and Other Tales from the Supreme Court" that you authored, you wrote:

Because the current rhetoric about the use of eminent domain in this country may be inaccurate at best, such rhetoric must be challenged vigorously. For if we allow the inaccuracies to remain unchallenged long enough, we may find ourselves operating under the delusion that they are truths, unduly hampering government's authority and obligation to regulate on the behalf of the public's health, safety, welfare, and morals."

Do you believe that same standard should be imposed on BLM or DOI scientists, for example, who have been found to have used false information or data to advocate for the listing of a specific species under the Endangered Species Act? If not, why not?

Answer. I support the Department of the Interior's policy on the integrity of scientific and scholarly activities, which addresses this issue. The Department's policy is contained in Chapter 3, Part 305, of the Departmental Manual, available online: <http://elips.doi.gov/elips/>

*Question 18.* In a Notre Dame Law Review article titled "The Emperor's New Clothes: Exposing the Failures of Regulating Land Use through the Ballot Box" that you authored, you appeared to be arguing that local or state ballot measures may not be a legitimate tool for regulating land use.

a. If you believe that, what are your views on imposing other environmental regulations through ballot measures?

b. Question: If a local ballot measure on land use regulations is perhaps illegitimate for the reasons expressed in your Notre Dame Law Review article, shouldn't we also be suspect of the environmental regulatory ballot measures as well?

c. Question: Given your views and beliefs, who in your mind has the most legitimate authority and responsibility to regulate land use: the Congress; an Administrative agency such as the BLM; a state government; a local government; or citizens through a ballot measure? Please explain why.

Answer. The bureaus for which the Assistant Secretary for Land and Minerals Management has oversight responsibility promulgate regulations in accordance with governing statutes, including the Federal Land Policy and Management Act, the Outer Continental Shelf Lands Act, the Surface Mining Control and Reclamation Act, the National Environmental Policy Act, and the Administrative Procedure Act. The bureaus do not use ballot measures as a tool for management of Federal public lands or the Outer Continental Shelf. Should I be confirmed, I will continue to help ensure that management is conducted in accordance with all applicable Federal laws and regulations.

*Question 19.* The BLM is struggling with wild horse overpopulation on the lands it manages in the Intermountain West.

a. Do you believe that invasive species should be given protection under the Endangered Species Act?

Answer. The Endangered Species Act (ESA) was enacted to conserve plants and animals that are or are likely to be threatened with extinction in their native range or country. To my knowledge, no non-native invasive species has ever been listed under the ESA. Moreover, invasive species are generally increasing in number and distribution and, therefore, are unlikely to face extinction or warrant protection under the ESA.

*Question 19b.* In relative terms do you think euthanizing wild horses that have overpopulated an area is less or more humane than leaving the herds on the land to die of starvation when forage becomes scarce?

Answer. If confirmed, I will support the Department of the Interior's position that euthanasia of healthy wild horses is not a viable or acceptable management option, even though this legal authority is provided under the Wild Free-Roaming Horses and Burros Act of 1971, as amended. The BLM's goal is to ensure healthy horse and burro populations can thrive in balance with other resources and uses on healthy public rangelands. I support the goal of putting the Wild Horse and Burro Program on a sustainable course that benefits the animals, the land, and the Amer-

ican people. Since passage of the 1971 law, the BLM has found good homes through its adoption program for more than 225,000 wild horses and burros. Also, we are continuing to aggressively pursue methods to control herd population growth by, among other things, applying fertility control to mares before returning them to the range. In instances where drought and other severe conditions on the range result in inadequate forage and water for wild horses, the BLM must seriously consider emergency gathers, to ensure the health of the horses and the range.

*Question 19c.* Do you believe wild horse health and welfare should take priority over other native ungulates like deer, elk, and antelope?

Answer. The 1971 Wild Free-Roaming Horses and Burros Act authorizes the BLM to manage, protect, and control wild horses and burros. This law also directs the BLM to remove excess wild horses and burros from the range to sustain the health and productivity of the public lands. If confirmed, I would work to ensure the best balance of uses and resource protections for the public lands consistent with both the Federal Land Policy and Management Act and the Wild Free-Roaming Horses and Burros Act. If confirmed, I would support the BLM's commitment to using the best science available in making resource allocation decisions, including those affecting wildlife and wild horses. The BLM has commissioned a study by the National Academy of Sciences to help it move forward in addressing wild horse and burro management challenges.

*Question 20.* Efficiency was a stated rationale for the proposed BLM-OSM merger, and I understood that meant DOI expected it would save taxpayer dollars. However, we have yet to see any calculations showing what the merger would cost—or, potentially, what it would save. What studies, or other internal analysis, have you completed to demonstrate that merging BLM and OSM will increase their relative efficiency? Please provide all relevant documents to the Committee.

Answer. At the Direction of the Secretary, the BLM and OSM analyzed a number of similar functions currently being carried out by both agencies and the DOI Office of Natural Resources Revenue. The OSM devotes a significant portion of its budget to maintaining its own administrative support functions, rather than sharing administrative services as other Departmental bureaus and offices have done. The consolidation of certain administrative functions could make available a larger percentage of OSM's budget for mission-critical activities to thereby enable OSM to more effectively deliver services to the American people. (Attached is the final Report for the Secretary on the Proposed BLM/OSM Consolidation that includes an analysis of the various consolidation options considered.)

*Question 21.* Since you first proposed merging OSM and BLM, we have had conversations about its legality, particularly with respect to SMCRA. The Committee staff has requested a legal opinion from your counsel on how such a merger is legal under SMCRA. Is it your legal opinion that transferring staff or agency functions from BLM to OSM does not violate SMCRA?

Answer. The recommendations contained in the report to the Secretary of the Interior, dated February 15, 2012, on the proposed BLM/OSM consolidation were thoroughly reviewed by the Department of the Interior's Office of the Solicitor and found to be in compliance with SMCRA.

*Question 22.* Whose input have you sought in the three months since Secretarial Order 3315 was first issued for the BLM-OSM merger? Will you publish the comments you have received from the public?

Answer. In analyzing the proposed consolidation, the BLM and OSM sought input from a number of stakeholders, including agency employees, industry, tribes, the public, and Members of Congress. Together, the agencies held four employee meetings, ten stakeholder meetings, and two tribal consultations. DOI leadership held conference calls and met five times with Congressional staff and Members of Congress. In addition, Deputy Secretary David J. Hayes testified before the Senate Energy and Natural Resources Committee to discuss the proposed consolidation. The BLM, OSM, and the Department also solicited input via their websites and received 220 external comments and 68 internal comments. The Department does not plan to publish the comments it received.

*Question 23.* According to your biography, you previously "served as visiting assistant professor of law at the Rutgers School of Law in Camden, N.J., and subsequently, at Seattle University School of Law for its 'Summer in Alaska' program." According to the website for that program, students enrolled in it "learn from experts in Anchorage, Alaska, about important environmental, legal, and social issues that impact Alaska Native rights and natural resource management in the Arctic National Wildlife Refuge and wildlife preservation."

a. When did you participate in the 'Summer in Alaska' program?

b. Please describe your involvement in this program. Please provide a list of all courses you taught, as well as syllabi and reading materials that were assigned for those courses.

c. Please summarize your views—as expressed by you during your participation in the ‘Summer in Alaska’ program—on the “important environmental, legal, and social issues that impact Alaska Native rights and natural resource management in the Arctic National Wildlife Refuge and wildlife preservation.”

d. Do you believe that oil exploration and production could be carried out safely and responsibly in the non-wilderness portion of ANWR?

Answer. I taught the second half of an eight-week course during the summers of 2006 and 2007, as a part of Seattle University School of Law’s “Summer in Alaska” program. The first half of the course, taught by another professor, focused on laws specific to Native Alaskans. The portion of the course that I taught focused on environmental and natural resources laws. My portion of the course was designed to introduce some of the statutes relevant to the management of primarily Federal lands and waters in Alaska and to provide a sampling of the many complex resource management issues. Enclosed are the syllabi and the reading materials that I assigned. The course began with an introduction to environmental law and the role of science in environmental law. Then it focused on select statutes and issues such as the Endangered Species Act, the Marine Mammal Protection Act, salmon, mining, the U.S. Forest Service’s Roadless Area Conservation rule, and the Arctic National Wildlife Refuge. Also enclosed are the PowerPoint slides that I used to present the materials in class. With respect to possible oil and gas development in the Arctic National Wildlife Refuge, the President and Secretary Salazar have been clear that there are some places where such development is appropriate and some places where it is not. The Arctic National Wildlife Refuge, because of its unique conservation values and importance as wildlife habitat, is a place where development is not appropriate.

#### RESPONSES OF MARCILYNN A. BURKE TO QUESTIONS FROM SENATOR BARRASSO

*Question 1.* Please provide a list of all the legal actions and threats of legal action made by the Defenders of Wildlife in 2005 and 2006 with which you disagreed or took an opposing view. b. Please provide a short explanation of what, if any, action you took as a member of the Defenders of Wildlife Litigation Committee to articulate your disagreement with the legal actions and threats of legal action made by the Defenders of Wildlife.

Answer. I was a member of the Defenders of Wildlife’s litigation committee for approximately one year. During that year, I reviewed legal memoranda and recommendations from the legal staff of the Defenders of Wildlife concerning whether the organization should initiate litigation or participate in existing litigation. According to my records and to the best of my recollection, I voted to approve the Defenders of Wildlife legal staff recommendations in two cases. One involved their recommendation to file an amicus brief with the United States Supreme Court in the consolidated cases *United States v. Rapanos* and *United States v. Carabell*. The second recommendation I voted to approve was to initiate litigation in *Defenders of Wildlife v. National Park Service*.

*Question 2.* Did you receive any payments from the Defenders of Wildlife for your work on the Defenders of Wildlife Litigation Committee in 2005 and 2006? If so, please provide a detailed accounting of all the payments you received.

Answer. As a member of the Litigation Committee I was reimbursed for travel expenses to attend one meeting in 2005. I received no payments for my work.

*Question 3.* Please provide all documents, including but not limited to calendars, notes, and electronic correspondence, related to your work for the Defenders of Wildlife.

Answer. I attended one meeting as a member of the litigation committee, on Friday, September 23, 2005. According to my records and to my recollection, as a member of the litigation committee I voted to approve the Defenders of Wildlife legal staff recommendations in two cases. One involved their recommendation to file an amicus brief with the United States Supreme Court in the consolidated cases *United States v. Rapanos* and *United States v. Carabell*. The second recommendation I voted to approve was to initiate litigation in *Defenders of Wildlife v. National Park Service*. I have contacted the Defenders of Wildlife, and the organization has declined to waive any attorney-client privilege with respect to litigation related materials.

*Question 4.* Please provide any existing transcripts or recordings of all speeches and presentations you have made, including but not limited to statements made as a participant of a panel, roundtable, debate, conference, or symposium, since 2002.

Answer. Enclosed please find a list of the events in which I made a speech or a presentation since 2002. Enclosed is the one transcript of which I am aware. The following is a list of recordings of speeches and presentations I have made that are available on the internet. The list includes the web address where the recordings may be accessed.

Location	Date	Web Address
Washington and Lee University School of Law	Feb. 2009	<a href="http://law.wlu.edu/news/mediaplayer.asp?type=vid&amp;id=513">http://law.wlu.edu/news/mediaplayer.asp?type=vid&amp;id=513</a>
Washington and Lee University School of Law	Feb. 2010	<a href="http://law.wlu.edu/news/mediaplayer.asp?type=vid&amp;id=763">http://law.wlu.edu/news/mediaplayer.asp?type=vid&amp;id=763</a>
University of North Dakota School of Law	Nov. 2011	<a href="http://law.und.edu/law-review/symposium/2011-energy/2011-energy-03.cfm">http://law.und.edu/law-review/symposium/2011-energy/2011-energy-03.cfm</a>

*Question 5.* In your written testimony, you state that you have a “sincere belief in the value of collaboration, consensus building, and transparency in the development and implementation of policies governing the management of the public lands and waters.” However, it is my understanding that the Department spent approximately one year developing and implementing the Wild Lands policy prior to announcing the policy to the public on December 23, 2010. a. Why did the Department fail to consult Congress on the Wild Lands policy? b. How does the Department’s failure to consult Congress reflect the values of collaboration, consensus building, and transparency?

Answer. Under the Secretarial Order no. 3310, no Federal land was to be designated as ‘Wild Lands’ until and unless there was ample opportunity for comment from Congress, from state and local government officials, and from interested citizens. The Secretarial Order restored the traditional multi-use approach to managing Federal lands as provided in Federal law.

The manuals developed by BLM to implement Secretarial Order 3310 described a process that would have included full public involvement in the land use planning process before a Wild Land could be designated in any plan decision.

Collaboration, consensus building, and transparency would have been important tools in implementing the Wild Lands Policy, and I continue to believe they are of great value in land use management decisions. It is my commitment to continue putting these tools to good use if I am confirmed.

*Question 6.* Did the Department consult any individuals or entities outside the Federal government when developing and implementing the Wild Lands policy? If so, please list all the individuals and entities the Department consulted. Please include as part of the record all documents, including but not limited to calendars, notes, and electronic correspondence, related to the Department’s consultations with these individuals and entities.

Answer. The Wild Lands policy was developed as a result of internal conversations within the Department of the Interior and the Bureau of Land Management. Because the development and issuance of Secretarial Order 3310 were internal policy decisions, there was neither a formal process for soliciting input outside the Department nor any formal consultations with outside groups. Views on how the Department should manage its lands, whether for wilderness characteristics, energy development, or some other use, are regularly received by the Department from constituents and stakeholders.

*Question 7.* Did the Department consult any individuals or entities outside the Federal government when developing and implementing the so-called onshore oil and gas leasing reforms? If so, please list all the individuals and entities that the Department consulted. Please include as part of the record all documents, including but not limited to calendars, notes, and electronic correspondence, related to the Department’s consultations with these individuals and entities.

Answer. The onshore leasing reforms were developed as the result of internal conversations within the Department of the Interior and the BLM. There was neither a formal process for soliciting input outside the Department nor any formal consultations with outside groups. Views on how the Department should manage its lands are regularly received by the Department from constituents and stakeholders.

*Question 8.* You have written extensively on the U.S. Supreme Court’s decision in *Kelo v. City of New London*. In that case, the Court upheld New London’s use of eminent domain to condemn the home of Ms. Kelo for the purposes of giving her land to a much larger and richer private party. You have written that there were



“colossal overreactions in the media and legislatures across the country” to the Court’s decision, and that “there is primarily only anecdotal evidence of abuses of the power of eminent domain.” a. Do you still believe there is only anecdotal evidence of abuses of the power of eminent domain? If so, why and if not, why not? b. You have a very narrow view on the rights of home owners. What are your views on the rights of leaseholders and permittees who use our public lands?

Answer. Other than as described in my article, I am unaware of any studies or analyses regarding the use of the power of eminent domain. The rights of leaseholders and permittees who use our public lands are prescribed by laws, regulations, and the terms of the applicable instruments conveying those rights. Should I be confirmed, I will remain committed to recognizing those rights.

*Question 9.* You have criticized “conservative and libertarian members of Congress [for] propagating their ideology of limited government.”

a. Do you believe limited government is an “ideology” or one of our nation’s bedrock principles?

b. If you believe there are limits to the Federal government’s power, please explain in detail what those limits are?

Answer. The United States Constitution is the supreme law of the nation and establishes the framework for the powers of the Federal Government. Should I be confirmed, I will continue to uphold the Constitution and comply with the laws of the United States.

*Question 10.* The Office of Surface Mining (OSM) is rewriting the 2008 stream buffer rule. It is my understanding that OSM’s 2008 rule took about five years to complete. I understand that this process involved two proposed rules, approximately 5,000 pages of environmental analysis, and took into account about 40,000 public comments.

a. How much is the rewrite of the 2008 rule costing taxpayers?

Answer. Since 2009, OSM has spent approximately \$7.7 million to develop this rulemaking. The majority of the expenditures (\$5.2 million) represent obligations for contract support to develop portions of an Environmental Impact Statement (EIS) and the regulatory impact analysis. The remaining \$2.5 million spent thus far is for staff costs.

*Question 10b.* How many coal mining jobs would be impacted if the new rule were implemented today?

Answer. OSM is in the process of developing a proposed Stream Protection Rule and the related economic and environmental analyses. When OSM publishes a proposed rule, it also will make available the Draft EIS, and together those documents will contain a detailed economic analysis, including any anticipated impacts on jobs in the coal mining industry.

*Question 10c.* What steps are you taking to ensure that OSM complies with the National Environmental Policy Act and the Administrative Procedure Act?

Answer. OSM published an Advance Notice of Proposed Rulemaking (ANPR) and received over 32,000 public comments. OSM conducted nine scoping sessions pursuant to the National Environmental Policy Act (NEPA), and received over 20,000 comments. OSM will publish its Proposed Rule and make available its Draft EIS for public notice and comment in accordance with the Administrative Procedure Act (APA), NEPA, and other applicable Federal law. Prior to publishing a Final Rule and Final EIS, OSM will consider public comments it receives on its Proposed Rule and Draft EIS. Any Final Rule and Final EIS will be published in accordance with the APA, NEPA, and any other applicable Federal law.

*Question 10d.* What steps are you taking to ensure that OSM provides cooperating state agencies and the public sufficient time to comment on the new rule and participate in the rulemaking process?

Answer. Fourteen state agencies, which are acting as cooperating agencies on the OSM’s Draft EIS, reviewed and provided extensive comments on early working versions of the Draft EIS. OSM has taken those comments into consideration as it develops both its Proposed Rule and Draft EIS. When OSM publishes its Proposed Rule and makes available its Draft EIS in the Federal Register, the states, along with the public, will have the opportunity to review and provide comments on those documents in accordance with the APA, NEPA, and other applicable Federal law.

*Question 11.* It is my understanding that OSM is rewriting the 2008 stream buffer rule to address an issue specific to the Appalachian region. However, the rule will affect every coal mine throughout the country.

a. Has OSM provided any documentation or evidence that there is a nationwide problem that requires a new rulemaking?

Answer. OSM is still in the process of developing a proposed Stream Protection Rule. The Proposed Rule and Draft EIS, when published and made available for public notice and comment, will provide a full explanation of the scope of the Proposed Rule, including reasons for the geographic application of various provisions of the Proposed Rule.

*Question 11b.* If so, when did OSM provide this documentation and will you include it as part of the record?

Answer. OSM is still in the process of developing its Proposed Rule and Draft EIS. When complete, these documents will be published and made available to the public, and will detail the basis for provisions of the Proposed Rule.

#### RESPONSES OF MARCILYNN A. BURKE TO QUESTIONS FROM SENATOR PAUL

[Questions are in reference to the article, *Much Ado About Nothing: Kelo v. City of New London, Sweet Home v. Babbitt, and Other Tales from the Supreme Court*, 75 U. CIN. L. REV. 663 (2006) (lead article)]

*Question 1.* Do you support the use of eminent domain in acquiring blighted property which is then handed over to a private party?

*Question 2.* Do you support the use of eminent domain in acquiring non-blighted property which is then handed over to a private party?

*Question 3.* Are there any cases where blighted property should be protected from eminent domain?

*Question 4.* Are there any cases where non-blighted property should be protected from eminent domain?

*Question 5.* Do you believe that state legislatures that re-evaluated or strengthened their private property laws following the Kelo and Sweet Home decisions were acting in an outrageous or irrational manner?

*Question 6.* Do you believe that transferring private property to private developers in order to increase tax revenues is a legitimate use of eminent domain?

Answer. The BLM most commonly acquires property through voluntary transactions involving purchase, exchange, or donation. Should I be confirmed, I will continue to comply with all applicable laws and regulations regarding the acquisition of real property.

#### RESPONSES OF MARCILYNN A. BURKE TO QUESTIONS FROM SENATOR HELLER

*Question 1.* If confirmed, your portfolio would include management of much of our nation's oil and gas resources development on public lands. As I'm sure you are keenly aware, gas prices have doubled since the beginning of this Administration and are causing strain for all American families. I believe that alternative sources of energy are our future. While we work to develop the technologies, we need to secure our economy now by having an energy policy that respects the cause of the problem—supply and demand.

Members of this Committee are well aware that domestic production has increased, however it has largely been on non-federal lands. Do you believe that we have a responsibility to develop our natural resources on public lands for the American public? And, do you believe that would help stabilize prices and secure the energy necessary to power our economy now while we develop the technologies of the future?

Answer. I agree that alternative sources of energy are an important part of our energy future. If confirmed, my responsibility would be to balance the need for development and production of energy resources on the public lands with protecting other natural and cultural resources and the environment. Producing more oil and natural gas domestically is not a solution to high prices, but it will help reduce our reliance on foreign oil and our vulnerability to the ups and downs of the international market.

*Question 2.* In your view, do you think there is anything DOI can do to bring down prices at the pump?

Answer. As the President has stated, our country needs an all-out, all-of-the-above strategy that develops every available source of American energy—a strategy that's cleaner, cheaper, and fosters new jobs, while protecting the environment. He has also made clear that there are no quick fixes to fluctuating gas prices, which are subject to cyclical spikes due to forces largely outside our control, like international demand.

The Department is working to expand opportunities to develop cleaner sources of energy, including renewables like wind, solar, and geothermal, as well as coal and natural gas on public lands. Facilitating the efficient, responsible development of our oil and gas resources is also a necessary component of energy security. Domestic

oil and gas production remains critical to our nation's energy supply and is a part of a broad, "all-of-the-above" energy strategy that will help reduce our dependence on oil imports.

*Question 3.* I mentioned to you when we met last week that there was a large energy company that told me they would never build a project on federal lands again because of the problems associated with permitting. And, as you know, this was distressing to me because 87% of Nevada is controlled by the federal government and we heavily rely on access to public lands for economic development.

Job creators need a measure of certainty and there is a lot of uncertainty relating to permitting on public lands. What do you think DOI should do to incentivize development on public lands and provide more certainty to job creators?

*Answer.* I recognize that the public lands are important to the livelihoods of many who live in the rural West and agree that it is important to bring certainty to the permitting process for activities on the public lands. One example where we have done this is through oil and gas leasing reforms. When Secretary Salazar took office in January 2009, nearly half of the parcels offered by the BLM for oil and gas development were protested, resulting in delays, extra costs, and lengthy court battles. The BLM moved to develop and implement leasing reforms that have led to a significant reduction in the number of protests. These leasing reforms provide certainty for industry by reducing conflict, litigation, and protests. Our current interdisciplinary approach, which occurs prior to making leasing commitments, is bringing greater certainty to stakeholders—including industry—and helping ensure that jobs are available. If confirmed, I would continue to support making public lands available for energy development in a thoughtful and balanced manner.

*Question 4.* You and I have discussed previously the difficulties associated with permitting mines on public lands. I introduced a bill in November to give DOI 45 days to complete the Washington Office review of certain NEPA documents with the idea that it will improve efficiency in the permitting process without impacting environmental analysis. You reported to me that NEPA documents are now making it out of the Washington office in 30 days or less. I am gratified that this simple action has been prioritized and would like you to please provide me with instances where this has occurred.

*Answer.* I understand that delays in completing necessary environmental reviews may adversely affect mining projects that are important to the West's economy. The BLM has improved its processes for getting critical mining-related, environmental impact statement notices published in a timely manner in the Federal Register. Two success stories are the publication in the Federal Register of the notices of availability of the draft Environmental Impact Statement prepared for General Moly's proposed Mt. Hope molybdenum project in Eureka County and Newmont Mining Corporation's Phoenix Copper Leach expansion south of Battle Mountain. In the case of the Newmont project, a company official acknowledged that process that could have taken up to a year was completed in 42 days. Making the review process as timely and efficient as possible is not only a worthy goal in and of itself, but also directly connected to the economic health of industries that operate on BLM-managed lands. If confirmed, I intend to continue moving this effort forward—without compromising the environmental review process that is needed to protect America's public lands.

*Question 5.* While DOI is working to improve the permitting aspect, the President's Budget has proposed a gross royalty on hardrock mining on public lands again. This ill-conceived tax will have a devastating impact on our domestic mining industry. We discussed this briefly, but I want to follow-up with you on it because it is such an important issue to Nevada and I'm still not sure what your position is on the issue.

*Question 6.* Why does the Administration insist on proposing this particular type of royalty? How do you think it will impact competitiveness for the domestic mining industry? Do you believe that domestic mineral development is in our national interest?

*Answer.* Domestic mineral development continues to be in our national interest, and it is important to provide a fair return to the taxpayer from hardrock production on Federal lands. The legislative proposal would implement a leasing and royalty system on a discrete number of specifically identified minerals, including gold, silver, lead, zinc, copper, uranium, and molybdenum that are currently covered by the General Mining Law of 1872. This system would help ensure a fair return to the public on the development of their resources, with half of the receipts distributed to the states in which the leases are located and the remaining half deposited in the Treasury.

*Question 7.* Because 87% of Nevada is in federal ownership, there are many long-standing issues that impact local communities. One that I hope you will commit to

addressing is the issue of historic mining townsites, where Nevadans have bought their land and have been paying taxes in some cases for generations, but are considered to be in trespass by BLM. These citizens deserve to have this issue resolved. There are other outstanding issues that require action from the BLM in Nevada—but they cannot be settled without more active participation from your agency, and I would like your help. Can I count on your help? I am happy to provide you with information on the specific cases in Nevada that need attention.

Answer. Nevada is a state in which the BLM manages a great deal of public land for the benefit of Nevadans and all Americans. If confirmed I will be happy to discuss these issues with you.

*Question 8.* A listing of either the Bi-State or Greater Sage Grouse population would have a devastating impact on Nevada and the entire West. I'm not sure if you know this, but a lot of the best sage grouse habitat in Nevada is on private lands or public lands that are managed. This is important because it tells the story of the importance of managing for wildfire, grazing, mitigation efforts, and good stewardship.

Any decisions about the sage grouse should be those that are truly the best for the species—not decisions driven by politics or threat of litigation. What is the BLM doing to account for the needs of communities and industries as decisions are made about the sage grouse? What more can be done to insure that decisions made about the sage grouse will not have a devastating impact on our already fragile economy?

Answer. The BLM is implementing a rigorous and consistent Bureau-wide sage-grouse strategy that accounts for the most recent science pertaining to impacts of various land uses and stressors on sage-grouse and their habitat. The aim of these science-based measures is to maintain and restore viable populations of greater sage-grouse and sagebrush habitat. The BLM is working to develop a strategy that protects the health of the public lands, while also facilitating multiple uses. By proactively addressing sage grouse conservation concerns on public lands, the BLM hopes to maintain the widest possible range of options for our neighboring landowners. The BLM is committed to working with its partners to protect sage-grouse habitat so as to avoid the impacts of listing on both public land managers and private landowners. If confirmed, I will strongly support the BLM's efforts to carry out its sage-grouse strategy.

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#### RESPONSES OF ANTHONY CLARK TO QUESTIONS FROM SENATOR WYDEN

##### LNG EXPORTS

*Question 1.* Under the Natural Gas Act, DOE approves the exports of natural gas, but FERC approves the physical terminals that are needed to carry out the exports and any pipelines that are needed to connect them to gas supplies. Under the Natural Gas Act, FERC must make a finding of public need and necessity for infrastructure certificates. LNG export terminals will reduce U.S. supplies of natural gas and according to the Energy Information Administration, increase U.S. natural gas prices. How will you apply this public interest test to LNG export terminals?

Answer. It is my understanding that the Secretary of Energy retained the authority under section 3 of the Natural Gas Act to approve or deny applications to import or export natural gas. The Secretary delegated to the Commission the authority to approve or deny applications for the construction and operation of facilities used for the import or export of natural gas. I would expect to examine all public interest issues that commenters raise relating to the siting of export facilities.

##### LNG NEPA REVIEW

*Question 2.* FERC is currently in the process of approving the first export terminal conversion for Sabine Pass. FERC staff has concluded that it can recommend approval without completing a full environmental impact statement. Do you believe that it is appropriate to approve construction of multi-billion facilities that will allow the export of over 2 billion of cubic feet of natural gas a day, and consume roughly 10% of that much per day for operations, without a full environmental impact statement? Some facilities expected to apply for authority to build export facilities, such as Jordan Cove LNG in Oregon, have not even begun physical construction while others such as Cove Point have been in operation for many years. Do you believe there is a different threshold for NEPA review for construction of export facilities at an existing facility versus an entirely new facility?

Answer. The Sabine Pass proceeding is currently before the Commission, and Jordan Cove LNG may initiate a new proceeding for export facilities later this year. If confirmed, I might be expected to rule on those cases. For this reason, it would

not be appropriate to me to comment on substantive issues that could arise in those cases, including the extent of environmental review required under NEPA. As a general matter, I understand that under NEPA an agency may prepare an environmental assessment on any action in order to assist agency planning and decision-making, and that it needs to prepare an environmental impact statement if it determines that the proposed action will have a significant impact on the human environment. In addition, I note that I did not have the opportunity to address export terminals for LNG in my role as a state regulator in North Dakota. I look forward to exploring this important issue, including implementation of any direction that Congress may choose to provide.

## SEC. 211A

*Question 3.* FERC recently agreed with wind generators that it has authority to intervene in the Bonneville Power Administration's transmission system rates under Sec. 211A of the Federal Power Act. I am concerned about where FERC will draw the line on how it uses its authority under 211A of the Federal Power Act to regulate access to transmission systems owned by BPA, or the Tennessee Valley Authority, or any of the other Federal and consumer-owned utilities. Do you agree that this authority should be used on a case-by-case basis to provide transmission customers an avenue for relief or do believe that FERC can or should use this authority to regulate BPA and other "non-jurisdictional" transmission systems on a day-to-day basis?

Answer. Given that the *Iberdrola Renewables, Inc. v. Bonneville Power Administration* proceeding is currently before the Commission and, if confirmed, I might be expected to rule on the matter, it would not be appropriate for me to comment on substantive issues in that case. I do note, however, that the Commission's recent order stated its expectation that "the need to use this statutory authority would be rare." I agree with this general principle.

## TRANSMISSION COST—ALLOCATION AND PLANNING

*Question 4.* Last year, FERC issued an order—Order 1000—putting in place new requirements for regional transmission planning and allocation of cost for building new transmission projects. FERC adopted a principle of allocated costs that are "roughly commensurate" with benefits. I am concerned that this could lead to utility customers paying for transmission constructions that are not directly tied to benefits. How do you interpret "roughly commensurate" standard? What assurance can you give me that utility customers are going to be protected?

Answer. My experience as a state commissioner has convinced me that whatever cost methodology is adopted must be grounded in the sound principles of the user or beneficiary pays model. Simply put, those who do not use and do not benefit from infrastructure should not be expected to pay for it. I believe this standard can fit within a number of definitions, including "roughly commensurate." In order to accomplish these goals, I believe an acceptable cost allocation methodology will need to be developed in a ground-up, not top-down manner, and it will need to be dependent on a record that specifically attempts to quantify, within reason, why a given methodology meets the just and reasonable standard.

## HYDROELECTRIC LICENSING

*Question 5.* There is enormous interest in expanding the use of small, low-impact hydroelectric projects in existing irrigation canals, city water systems, and other existing water systems. Many of these have very little environmental impact and can help pay for system upgrades and water saving measures like replacing open canals with pipelines. FERC, however, subjects these projects to licensing requirements that cost almost as much as the projects would save by producing energy. Would you support the creation of a separate process for approving low-impact hydro projects in existing water systems?

Answer. If confirmed, I would be interested in exploring ways in which a streamlined process might be made to work in a way that reduces unnecessary bureaucracy while protecting statutory and procedural rights.

## STORAGE TECHNOLOGY

*Question 6.* FERC has recently come out with some very helpful rulings that require energy storage technologies to be compensated for the services they provide. What is your opinion on the benefit of energy storage applications on the interstate power system? Would you support including energy storage as an alternative to the construction of new transmission lines in regional transmission planning processes?

Answer. I believe energy storage is not only a potential “game changer” in the long term, but also has the potential to be incrementally helpful as well. Energy storage technologies can be helpful in shaping load curves and in interacting with the wholesale market in innovative and helpful ways. I believe that energy storage can and should be considered as one tool in system planning, respecting that each region of the country will need to assess costs and benefits given its specific circumstance. It is my understanding that for purposes of identifying needed transmission facilities, Order No. 1000 required that regional transmission planning processes consider proposals for non-transmission alternatives, which may include energy storage, on a basis comparable to proposals for new transmission development.

#### OIL PIPELINES

*Question 7.* FERC sets the rates for interstate pipelines that carry oil and petroleum products although it does not control the siting or location of these pipelines. It’s clear to me from the Keystone XL pipeline debate that some of these pipelines are going to have significant impacts on oil prices in regional markets. TransCanada provided testimony that its shippers were prepared to absorb billions of dollars in increased shipping costs on its pipeline in order to earn billions more by raising oil prices in the Midwest. To what extent should FERC consider the impact of regional price impacts in setting pipeline rates?

Answer. FERC does not regulate the price of oil; it regulates only the price of the transportation of oil. Under the provisions of the Interstate Commerce Act, FERC ensures that the rates for movements of crude oil are just and reasonable and protect shippers by prohibiting the exercise of undue preference by pipelines. It is my understanding that the Interstate Commerce Act does not allow the Commission to consider regional oil price impacts in determining the just and reasonable rate for transportation of oil.

#### RESPONSE OF ANTHONY CLARK TO QUESTION FROM SENATOR SHAHEEN

*Question 1.* I was pleased to see that the National Association of Regulatory Utility Commissioners (NARUC), where you served as President from 2010-2011, recently filed comments on the FERC’s regulatory incentives Notice of Inquiry. NARUC’s comments indicated that state regulators had found that FERC’s incentives policies have “transferred hundreds of millions of dollars from consumers to transmission investors without any clear showing of need or benefit” and that those policies “are in dire need of reform.” Do you agree with NARUC’s comments? What specific changes, if any, to FERC’s incentives policies would you advocate for if confirmed to the Commission?

Answer. Given my position as a nominee for the FERC, I technically abstained from that particular NARUC vote, so as not to prejudge any future proceeding in which I may be asked to vote. I can report that I do believe this is a topic that is worthy of FERC consideration. FERC is in the position of needing to be responsive to Congressional intent via the Energy Policy Act of 2005, which directed FERC to establish a framework for incentive rates. At the same time FERC must ensure that the rates are structured so as to not be overly-generous. That is to say, incentive rates should not simply add unjust consumer-borne costs to lines that would be built in any event. A fact-based record is the best way to assess the matter.

#### RESPONSES OF ANTHONY CLARK TO QUESTIONS FROM SENATOR MURKOWSKI

*Question 1.* In your opinion, what is the appropriate standard or principle that governs who should be assessed the costs for new transmission lines?

Answer. Whatever cost methodology is adopted must be grounded in the sound principles of the user or beneficiary pays model. Simply put, those who do not use and do not benefit from infrastructure should not be expected to pay for it. In order to accomplish this goal, I believe an acceptable cost allocation methodology will need to be developed in a ground-up, not top-down manner, and it will need to be dependent on a record that specifically attempts to quantify, within reason, why a given methodology meets the just and reasonable standard.

*Question 2.* As a general matter, do you believe that FERC’s Order No. 1000 upholds the “beneficiary pays” principle that the beneficiaries of a transmission project should bear the costs of that project?

Answer. I believe it is too early to tell. The compliance filings and how FERC reacts to them will be where that question is definitively answered.

*Question 3.* How do you view the “benefits” portion of FERC’s Order No. 1000? What kinds of broad social “benefits” need to be considered when looking at new transmission lines?

Answer. I believe FERC must be careful to not so broadly define “benefits” so as to eviscerate the principle of user or beneficiary pays. It will be important for FERC to respect and understand the differences between regions of the country, so that the Order 1000 planning process is a “ground-up” and not “top-down” project for the purpose of defining benefits. Transmission plans that are developed and approved should be supportive of state and regional efforts, not determinative of them.

*Question 4.* Do you believe it is ever appropriate to allocate the costs of transmission infrastructure over an entire interconnection area?

Answer. Without prejudging any particular matter, an interconnection-wide allocation seems somewhat unlikely. This would be especially true across a very large interconnection, though ERCOT could be an example of an exception. I would like to note, however, that FERC has no jurisdiction over ERCOT for purposes of cost allocation under Order No. 1000. Nonetheless, the decision would be dependent upon a fact-based record that attempts to quantify cost causers and beneficiaries in a meaningful way.

*Question 5.* In your opinion, has the Commission given appropriate incentives to promote investments in transmission?

Answer. I believe this is a topic that is worthy of FERC consideration. FERC is in the position of needing to be responsive to Congressional intent via the Energy Policy Act of 2005, which directed FERC to establish a framework for incentive rates. At the same time FERC must ensure that the rates are structured so as to not be overly-generous. That is to say, that they are not simply adding unjust consumer-borne costs to lines that would be built in any event. A fact-based record is the best way to assess the matter.

*Question 6.* Do you believe we are investing enough in transmission? Where exactly is new transmission needed and why? Is building long-distance transmission to access remote renewable resources always a better deal for the customer or should states look at local resources first?

Answer. I do not believe there is a one-size-fits-all answer to that question. This is why I believe that regional planning can be a helpful tool. In my experience in the Midwest, it is rarely the case that the answer is all distant generation, or all local generation. We have typically found that some mixture of both leads to a least-regrets plan that is both cost-effective and diverse. That is why it is so important for upfront analyses to be done, so regulators, industry, policymakers and other stakeholders have a common set of assumptions regarding the costs and benefits of various scenarios. More often than not, the answers will be highly regional in nature.

*Question 7.* Pursuant to Section 215 of the Federal Power Act (FPA), FERC is responsible for assuring the electric grid is operated reliably.

a. Given this responsibility, what can FERC do to educate EPA and stakeholders interested in the Utility MACT implementation process about how utilities, NERC, its regional entities and its Planning Authorities actually plan to assure reliability?

Answer. I believe FERC can play an important role by using its position at the nexus of utilities, NERC, regional entities and planning authorities to encourage and develop a fact-based record that can help inform the EPA and others with regard to logistical issues related to a widespread shutdown or retrofitting of the electric generation fleet.

*Question 7b.* DOE has emergency authority under the Federal Power Act to order electric generation facilities to operate when needed to keep the lights on in true emergency situations. At least once in the past, a company had to run its plant longer than permitted by its environmental permit in order to comply with a DOE emergency order to maintain reliability. That company faced a dilemma as to which law to follow and which law to break. And it ultimately had to pay millions of dollars for violating its environmental permit limitations. As a regulator responsible for maintaining the reliability of the grid, would you support a clarification to the law that would keep companies from facing this “Hobson’s choice” when the reliability of the grid is at stake?

Answer. I would support such a clarification.

*Question 7c.* In your experience, how much time does it take to build a transmission line that would be big enough to replace a power plant? Do you agree with EPA that this can take place in less than 3 or even 4 years?

Answer. To some degree, the answer depends on where the line would be built. Some states and utilities have a speedier track record than others, but in my experience, less than four years is not the norm, especially for larger projects.

*Question 7d.* Can you discuss where you see reliability in light of other topics identified as top initiatives on the FERC website (smart grid, demand response, integration of renewables and transmission planning)?

Answer. As a state commissioner, reliability has been one of my very top concerns. I anticipate that would continue for me if I am confirmed for a position on the FERC. The reason I place such an emphasis on reliability is because the consequences of a large-scale reliability event are an immediate health and human safety concern, not simply an economic inconvenience. An extended energy shortage in the dead of winter on the northern plains, or at the height of summer in an urban area, is an immediate threat to safety, especially for our most vulnerable citizens.

#### HYDROPOWER

*Question 8a.* Do you consider hydropower to be a renewable resource?

Answer. I do.

*Question 8b.* Please state your views on the hydropower resource and its contribution and value to the nation's energy mix.

Answer. I believe hydropower is an important resource for the nation. It has traditionally been a reliable source of clean, affordable power for the American people.

*Question 8c.* What are your thoughts on the issue of reliably integrating intermittent renewable resources onto the grid?

Answer. This will be an area of ongoing work for the FERC and all stakeholder groups, especially states, which have a great deal to say about generation. Intermittent sources of power such as wind and solar can play a role in supplying electricity to the nation. In my home state of North Dakota, we have seen nearly 1,400 MW of wind power placed into the grid. Yet, without question, intermittency is an issue and a challenge that will continue to be dealt with by regulators at both the state and federal levels of government.

*Question 8d.* What role can both conventional hydropower and pumped storage have to play in addressing these problems?

Answer. I believe both conventional hydro and pumped storage have a role to play. I have seen first-hand, as a state commissioner, utilities that have successfully "paired" intermittent resources with dispatchable resources in a way that is reliable and affordable.

#### ORGANIZED MARKETS

*Question 9a.* What is the appropriate path forward with respect to organized and bilateral wholesale markets? Can and should they co-exist or should all utilities ultimately be in organized markets?

Answer. As a state commissioner, I have felt strongly that these are decisions that must be made from the ground-up, as "coalitions of the willing" develop. FERC should be supportive of the different regions of the country as they work to find solutions that work for their consumers, but should be careful to not impose one-size-fits all solutions.

*Question 9b.* Is FERC's oversight of electricity markets sufficient to ensure that the wholesale electric rates meet the "just and reasonable" standard of the Federal Power Act?

Answer. It is my understanding that FERC market oversight capability has grown greatly in the last several years. I would seek to continue to look for ways to ensure that FERC is effective in fulfilling its oversight responsibilities.

*Question 9c.* Do you believe that the wholesale electricity markets operated by regional transmission organizations are achieving net benefits for consumers as compared to those regions without RTOs?

Answer. I am most knowledgeable about the experiences of North Dakota's utilities and their customers within MISO, so I can speak from that perspective. While there have been some bumps along the way of belonging to a market, our general view in North Dakota has been that it has been a net positive experience, and the numbers would appear to justify that conclusion. How this plays in different regions and with different utilities is probably very region and utility specific. It is important for FERC, the states and stakeholders to be vigilant in ensuring that there continue to be a "value proposition" in belonging to an RTO.

*Question 9d.* Do you think that there is a sufficient level of transparency in the pricing and other relevant data from the electricity markets, particularly those operated by RTOs?

Answer. I understand the FERC has done a fair amount of work in recent years to increase market monitoring activities. Nonetheless, I am always open to consid-



ering ways to improve such efforts so as to ensure the FERC is appropriately handling its important duties under its relevant statutes.

*Question 9e.* What is your assessment of the success of pricing incentives in the RTO markets, such as Locational Marginal Pricing, to spur infrastructure development and address transmission congestion?

Answer. As a general rule, those regions that have moved to a market model have adopted somewhat similar features such as LMP and found them to be useful tools in promoting efficient outcomes. There have been some successes in promoting infrastructure investment where needed because of this. At the same time, there can be other intervening factors such as cost allocation uncertainty, siting challenges, slower demand growth and changing fuel costs, that have slowed transmission development.

*Question 9f.* Do you believe RTO-run locational capacity markets are providing adequate revenue and certain for new generation while avoiding excess payments to existing generation?

Answer. I believe this is a question that is ripe for further FERC analysis. Not all capacity market models are the same, and some have a longer track record than others. A fact-based record would help assess whether capacity markets have been sending appropriate price signals to provide adequate capacity, or whether certain models are flawed.

*Question 10.* How does FERC consider priorities for industry and its costs in approving the various initiatives it reviews?

Answer. Not being an incumbent FERC Commissioner, I am unsure how FERC internally assesses these priorities.

*Question 11.* FERC has many offices and many responsibilities. As Commissioner, do you feel reviewing FERC's budget and looking for internal efficiencies, reducing duplication, should be a priority? If so, what areas would you target?

Answer. It is my understanding that much of the administrative and budgetary duties flow through the Office of the Chairman from a structural standpoint. Nonetheless, I would intend to be an appropriately engaged Commissioner. Although the FERC is a "charge-back" agency, it is still important that it set a good example of prudent fiscal management at all times, but especially during such trying financial times as we have now. My standards at a state level commission have been to only ask for such resources as are necessary to meet the agency's duties effectively and efficiently.

#### RESPONSES OF ANTHONY CLARK TO QUESTIONS FROM SENATOR CORKER

*Question 1.* As you may know, last year I introduced S. 400, a bill sponsored by 7 other Senators, including Senators Murkowski and Wyden of this Committee. Its premise is similar to language in an amendment this committee adopted with respect to the 2009 energy bill. Simply put, the bill amends the Federal Power Act to state that electric consumers cannot be charged for the cost of new transmission facilities unless they are "reasonably proportionate to measurable economic or reliability benefits." To me, that seems completely consistent with the Federal Power Act's existing requirement that electricity rates must be "just and reasonable." Do you agree or disagree with the language of S. 400, and why?

Answer. On its face, I generally would find it difficult to disagree with the goals of S. 400. I believe "reasonably proportionate," not unlike "roughly commensurate" could work to facilitate sound beneficiary pays principles within the broad just and reasonable standard. One word of caution, that I would recommend the Senate weigh, is related to what a change in legislative language might mean in the courts. I have learned from experience at the state level, that seemingly innocuous changes in statutory language can have an unintended effect in the courts. I believe it would be an unfortunate outcome if a reinterpretation by the courts due to slightly revised language were used to inject uncertainty into existing cost allocation methodologies that may be working perfectly well for certain regions of the country. Legislative changes always incur a litigation risk, one that may bring unwanted uncertainty into the marketplace.

*Question 2.* Order 1000 has been criticized as going beyond existing law, by assuming that transmission "benefits"—a term not defined under the Federal Power Act or in the Order itself—would be broadly enjoyed by nearly anyone who theoretically could use a new transmission line. Doesn't this vague use of the term "benefits" go far beyond FERC's existing authority? Shouldn't the agency be asking Congress to consider legislation which would provide such authority—as was considered in the 2009 energy bill when my amendment was adopted?

Answer. The critical piece of Order 1000 will be the compliance filings and the FERC reaction to those filings. While costs and benefits are something regulators

look at in nearly every case we review, in theory, there always exists a potential for the term “benefits”(or costs for that matter) to be construed so broadly by regulators as to undermine the intent of the Federal Power Act and/or sound regulatory practice. As of today, I am not certain that I would say that this potential causes me to conclude that FERC should have, necessarily, sought a specific statutory change however.

*Question 3.* With many utilities and their customers facing increased costs from the need to retrofit power pollutants with costly pollution control equipment to comply with a myriad of new EPA regulations, do you think it is fair and appropriate to add yet another burden in the form of subsidies to build new transmission to import distant renewables?

Answer. As a general matter, I am not supportive of uneconomic subsidies for any form of power. However, I think it would be too broad a statement to conclude that geographically diverse renewables are never a cost effective solution for any state or any region. I believe there will likely be somewhat different answers in different regions of the country. That is why it is so important that FERC respect those regional differences and not impose one-size-fits-all solutions on states and regions that are working towards solutions that work best for their consumers.

#### RESPONSES OF ANTHONY CLARK TO QUESTIONS FROM SENATOR CANTWELL

##### FERC JURISDICTION OVER THE BONNEVILLE POWER ADMINISTRATION

*Question 1.* The Federal Energy Regulatory Commission recently issued an order under Section 211A of the 2005 Energy Bill asserting that actions by the Bonneville Power Administration (BPA) were discriminatory in its dealing with over-generation of wind during periods of light electric demand. I realize that this issue is still pending for rehearing and you are therefore limited in what you can say. I do want to emphasize, however, that the scope of FERC’s decision is a potentially troubling issue. BPA has sought clarification on a number of critical issues, and I strongly encourage the Commission to carefully consider this matter.

a. If confirmed, will you respect the authority and jurisdiction that Congress granted and has historically been provided to BPA under the Federal Power Act?

b. Please provide specific examples of any role, authority, or jurisdiction the FERC has or should have over the decision making of the Bonneville Power Administration.

Answer. Given that the Iberdrola Renewables, Inc. v. Bonneville Power Administration proceeding is currently before the Commission and, if confirmed, I might be expected to rule on the matter, it would not be appropriate for me to comment on substantive issues in that case. I do note, however, that the Commission’s recent order stated its expectation that “the need to use this statutory authority would be rare.” I agree with this general principle.

##### SECTION 5 OF THE NATURAL GAS ACT

*Question 2.* Section 206 of the Federal Power Act has refund protection for complainants while Section 5 of the Natural Gas Act (NGA) does not. Every sitting FERC Commissioner (as well as recently departed Commissioner Spitzer) has indicated at various times that Section 5 should be amended to provide natural gas consumers with the same refund protection as electric consumers.

a. Do you agree that natural gas consumers should be afforded retroactive refund protection in cases where a pipeline has been shown to have charged unjust and unreasonable rates?

Answer. Not having administered the NGA, I have not yet formed a definitive opinion on the question. However, in my experience as a state regulator, I do know that retroactive refund provisions within regulatory practice are a common and acceptable method for ensuring customers are not unduly harmed by “regulatory lag.”

*Question 2b.* Can you think of any credible policy justification to not undertaking this reform to Section 5 of the Natural Gas Act?

Answer. I understand the pipeline industry has suggested there is something different about its industry with regard to the nature of its structure and revenue model. But I do not yet have enough information to verify whether this is a valid concern.

## RESPONSES OF ANTHONY CLARK TO QUESTIONS FROM SENATOR LANDRIEU

*Question 1.* I was pleased to see that the National Association of Regulatory Utility Commissioners (NARUC), where you served as President in 2010-2011, recently filed strong comments on the incentives NOI, stating that state regulators had concluded that FERC's incentives policies have "transferred hundreds of millions of dollars from consumers to transmission investors without any clear showing of need or benefit" and that those policies "are in dire need of reform." Do you personally agree with the NARUC comments? What specific changes to FERC's incentives policies would you advocate if confirmed for a Commission seat?

Answer. Given my position as a nominee for the FERC, I technically abstained from that particular NARUC vote, so as not to prejudge any future proceeding in which I may be asked to vote. I can report that I do believe this is a topic that is worthy of FERC consideration. FERC is in the position of needing to be responsive to Congressional intent via the Energy Policy Act of 2005, which directed FERC to establish a framework for incentive rates. At the same time FERC must ensure that the rates are structured so as to not be overly-generous. That is to say, incentive rates should not simply add unjust consumer-borne costs to lines that would be built in any event. A fact-based record is the best way to assess the matter.

## TRANSMISSION PLANNING FOR LOAD-SERVING ENTITIES

*Question 2.* Section 217 (b) (4) of the Federal Power Act directs FERC to exercise its authority to facilitate the planning and expansion of the transmission grid to meet the reasonable needs of Load Serving Entities, so that utilities with an obligation to serve will be able to secure transmission rights needed to match their long term investments in power supply. What is FERC doing or planning to do to ensure that Congress' directive with regard to transmission planning is met?

Answer. In 2007, FERC established requirements for open and transparent planning processes for electric transmission facilities. Last year, FERC issued Order 1000, which adopts additional reforms to improve transmission planning. FERC stated that those transmission planning reforms are consistent with section 217 of the Federal Power Act because they support the development of needed transmission facilities, which ultimately benefits load-serving entities. If confirmed as a FERC commissioner, I will work to ensure that Congress' directive with regard to transmission planning is met.

## RESPONSES OF JOHN R. NORRIS TO QUESTIONS FROM SENATOR WYDEN

## LNG EXPORTS

*Question 1.* Under the Natural Gas Act, DOE approves the exports of natural gas, but FERC approves the physical terminals that are needed to carry out the exports and any pipelines that are needed to connect them to gas supplies. Under the Natural Gas Act, FERC must make a finding of public need and necessity for infrastructure certificates. LNG export terminals will reduce U.S. supplies of natural gas and according to the Energy Information Administration, increase U.S. natural gas prices. How will you apply this public interest test to LNG export terminals?

Answer. As your question notes, DOE and FERC share responsibility under section 3 of the Natural Gas Act to consider proposals to import or export natural gas, and proposed facilities for such import or export. The Natural Gas Act deems that LNG exports to free trade agreement countries are in the public interest. With regard to LNG exports to non-free trade agreement countries, the Natural Gas Act requires a determination that the export will not be consistent with the public interest in order to reject such a proposal. As I testified at hearing, if confirmed, I would expect to consider all public interest issues brought before me in light of this statutory structure and the particular facts and circumstances of an individual LNG export terminal application.

## LNG NEPA REVIEW

*Question 2.* FERC is currently in the process of approving the first export terminal conversion for Sabine Pass. FERC staff has concluded that it can recommend approval without completing a full environmental impact statement. Do you believe that it is appropriate to approve construction of multi-billion facilities that will allow the export of over 2 billion of cubic feet of natural gas a day, and consume roughly 10% of that much per day for operations, without a full environmental impact statement? Some facilities expected to apply for authority to build export facilities, such as Jordan Cove LNG in Oregon, have not even begun physical construc-

tion while others such as Cove Point have been in operation for many years. Do you believe there is a different threshold for NEPA review for construction of export facilities at an existing facility versus an entirely new facility?

Answer. Given that the Sabine Pass matter is currently before the Commission, and Jordan Cove LNG may start a proceeding on this point soon, I cannot prejudge how I might decide these cases. Generally, an agency must do an environmental impact statement if a proposed action will have a significant impact on the human environment. If confirmed, I will fairly consider all relevant views and comments submitted in these cases, recognizing the possible concerns of local citizens, and other issues within the scope of the responsibility defined by Congress.

#### SEC. 211A

*Question 3.* FERC recently agreed with wind generators that it has authority to intervene in the Bonneville Power Administration's transmission system rates under Sec. 211A of the Federal Power Act. I am concerned about where FERC will draw the line on how it uses its authority under 211A of the Federal Power Act to regulate access to transmission systems owned by BPA, or the Tennessee Valley Authority, or any of the other Federal and consumer-owned utilities. Do you agree that this authority should be used on a case-by-case basis to provide transmission customers an avenue for relief or do believe that FERC can or should use this authority to regulate BPA and other "non-jurisdictional" transmission systems on a day-to-day basis?

Answer. Federal Power Act section 211A is a tool that Congress gave FERC to protect open access to transmission service. However, I believe it is a tool that should be utilized only in rare instances. As a result, I agree that this authority should be used on a case-by-case basis when specific issues arise regarding open access to transmission, and should not be used to regulate non-public utilities on a day-to-day basis.

#### TRANSMISSION COST-ALLOCATION AND PLANNING

*Question 4.* Last year, FERC issued an order—Order 1000—putting in place new requirements for regional transmission planning and allocation of cost for building new transmission projects. FERC adopted a principle of allocated costs that are "roughly commensurate" with benefits. I am concerned that this could lead to utility customers paying for transmission constructions that are not directly tied to benefits. How do you interpret "roughly commensurate" standard? What assurance can you give me that utility customers are going to be protected?

Answer. Order No. 1000 states clearly that those who do not benefit from transmission facilities are not required to pay for them. The order also includes the related principle that the cost of new transmission facilities meeting certain criteria must be allocated to those within a transmission planning region that benefit from those facilities in a manner that is at least "roughly commensurate" with estimated benefits. This principle draws on language used by the U.S. Court of Appeals for the Seventh Circuit in addressing FERC orders on cost allocation for transmission facilities. It is important to also note that Order No. 1000 requires open, transparent planning processes where all stakeholders are given a chance to participate, so that stakeholders can decide how best to meet their transmission needs and how best to pay for them.

#### HYDROELECTRIC LICENSING

*Question 5.* There is enormous interest in expanding the use of small, low-impact hydroelectric projects in existing irrigation canals, city water systems, and other existing water systems. Many of these have very little environmental impact and can help pay for system upgrades and water saving measures like replacing open canals with pipelines. FERC, however, subjects these projects to licensing requirements that cost almost as much as the projects would save by producing energy. Would you support the creation of a separate process for approving low-impact hydro projects in existing water systems?

Answer. I am in favor of anything that can be done to promote the speedy approval of low-impact hydro projects, consistent with statutory mandates. For example, over the past two years, Commission staff worked with Colorado regulators to obtain state "pre-approval" of projects, so that the Commission could act on applications within a month or two. I note that many of the requirements imposed on licenses are statutory, and often under the control of other agencies, so that the Commission cannot control them.

## STORAGE TECHNOLOGY

*Question 6.* FERC has recently come out with some very helpful rulings that require energy storage technologies to be compensated for the services they provide. What is your opinion on the benefit of energy storage applications on the interstate power system? Would you support including energy storage as an alternative to the construction of new transmission lines in regional transmission planning processes?

Answer. I strongly believe that storage technologies hold great promise to help our nation reliably and cost-effectively address many of the challenges facing our interstate power system. Given the enormous potential benefits of storage technologies, the Commission should strive to ensure that our regulatory policies foster, rather than inhibit, their growth. I have supported, and will continue to support, policies that ensure that alternatives like storage are equally considered in regional transmission planning processes.

## OIL PIPELINES

*Question 7.* FERC sets the rates for interstate pipelines that carry oil and petroleum products although it does not control the siting or location of these pipelines. It's clear to me from the Keystone XL pipeline debate that some of these pipelines are going to have significant impacts on oil prices in regional markets. TransCanada provided testimony that its shippers were prepared to absorb billions of dollars in increased shipping costs on its pipeline in order to earn billions more by raising oil prices in the Midwest. To what extent should FERC consider the impact of regional price impacts in setting pipeline rates?

Answer. The Interstate Commerce Act does not provide the Commission with jurisdiction over the price of oil itself. The Commission is only authorized to ensure just and reasonable rates for the transportation of oil. The Commission does this by prohibiting the exercise of undue preference by oil pipelines. In performing this analysis, the Commission does not consider how pipeline rates may affect the cost of oil as a commodity because we do not have the legal authority to do so.

## RESPONSE OF JOHN R. NORRIS TO QUESTION FROM SENATOR SHAHEEN

*Question 1.* I have concerns about FERC's implementation of Order 679, which guides the Commission's decision making process on deciding whether to grant regulatory incentives for the construction of electricity transmission infrastructure. While I believe that appropriate investment in these facilities plays a vital role in our nation's energy future, I think that the current bonus rate incentives policy has resulted in consumers, especially those in New Hampshire, paying more than what is necessary to get transmission built.

That is why I led a letter to (FERC) Chairman Jon Wellinghoff, signed by 10 of my Senate colleagues, in response to the Commission's Notice of Inquiry (NOI) seeking comments on Rule 679, urging FERC to consider a more objective approach to awarding transmission rate incentives. For example, FERC should make a specific finding of the necessary risk that must be undertaken before a project receives an incentive.

Where is FERC in terms of reviewing the comments it received and what can we expect to see from the Commission in terms of possible changes to its incentives policy?

Answer. The Commission has received more than 1500 pages of comprehensive and helpful comments with respect to our Notice of Inquiry on incentives. We are currently reviewing those comments and I am hopeful that we will move to the next step in this process soon. I believe that it is crucial that the Commission enumerate a clear policy that appropriately balances the Congressional mandate to provide incentive rate treatments for the construction of needed transmission projects with the interests of consumers who will pay for those projects.

## RESPONSES OF JOHN R. NORRIS TO QUESTIONS FROM SENATOR MURKOWSKI

*Question 1.* Basis for your opinion regarding the potential impact of EPA's rules on electric reliability: At the Commission's Technical Conference held on November 30, 2011, you said you were "sufficiently satisfied" that "the reliability of the electric grid can be adequately maintained as compliance with EPA regulations is achieved." At the Committee's hearing on March 20, 2012, you reaffirmed that you continue to maintain that opinion in the light of evidence received since then which includes, for example, testimony at the technical conference, filings made in response to the Commission's notice of that conference, assessments done by NERC and planning authorities, and the scope and scale of announcements of generation retirements to date.

- a. Please state all of the facts that form the basis for your opinion.
- b. For purposes of your statement quoted above, do you define “EPA regulations” to include the Mercury and Air Toxics (“MATS”) Rule, and the other regulations outlined in Senator Murkowski’s letter to you of May 17, 2011?
- c. If not, what rules would you add to or omit from “EPA regulations” in this context? How did you define the term “EPA Regulations” in the context of your answer at the hearing on March 20, 2012?
- d. For purposes of your statement quoted above and your opinion as stated, how do you define “the reliability of the electric grid”?
- e. For purposes of the same statement, how do you define “adequately maintained”?

Answer. I believe a reliable electric grid is extremely important to our economy and to the health and safety of our citizens, and I take very seriously my responsibility to oversee and protect the reliability of our electric grid. Industry also takes reliability extremely seriously, and has a remarkable track record of maintaining high levels of reliability while responding to new environmental regulations.

My statements that I am “sufficiently satisfied” that “the reliability of the electric grid can be adequately maintained as compliance with EPA regulations is achieved” should be understood in the broader context of the competing variables that can impact reliability. As I noted in my testimony to the House Energy and Commerce Committee last year, in reliability, like many other elements of our electric power system, there is an intersection of physics, economics, policy, law, and other factors. These factors are constantly changing and evolving, and for that reason, I do not believe that lawmakers, regulators or industry can ever claim 100 percent satisfaction that the reliability of the electric grid will never be impacted as those factors change and evolve. I strive to balance all of these factors, as they are understood at the time, when I make decisions on reliability matters before me. But we cannot guarantee future outcomes, so the key is having the appropriate tools available so we are prepared to deal with the myriad of situations that might occur.

My views in this area are shaped by my review of the numerous studies and reports that have been produced analyzing the potential impact of EPA rules on generation retirements, the testimony produced at our November 30, 2011 Technical Conference, and numerous discussions, conferences and meetings that I have attended with a wide variety of stakeholders. In response to your question 2, I have provided a number of studies, reports, and other documents that I found especially valuable as I have considered these issues. These materials present a large amount of data and a multitude of factors that go into analyzing the impact to reliability of environmental regulations, and it would be impractical to identify a comprehensive set of facts supporting my views. Rather, I have formed my views based on a review of the totality of the evidence and factors presented to me, as applied to the broader context of reliability that I describe above.

However, I would note a few key factors that I find particularly relevant to my views:

- Multiple entities have prepared analytical studies on the impact of EPA rules throughout the rulemaking process, and these studies have used a wide range of assumptions and produced a wide range of outcomes.
- A number of the early studies used assumptions of what would be in proposed or final EPA rules that later proved inaccurate, resulting in an overstatement of the level of projected plant retirements. One example of this is the assumptions that were used as to what EPA would include in its proposed Clean Water Act Section 316(b) Rule; EPA’s actual proposal includes implementation options that differ substantially from those assumed in the 2010 NERC EPA Assessment.
- Moreover, many of the studies and reports use static assumptions that fail to take into account the response to the EPA regulations that we can expect from competitive wholesale markets. FERC oversees these markets to ensure that they are designed to respond to factors like new environmental regulations and provide appropriate price signals for investment in new resources when needed.
- A significant cross-section of over 30 utility companies have made statements in the last six months indicating confidence that those companies would meet the EPA regulations within the proposed compliance timeline.
- From 2000 to 2003, electric companies added over 200 GW of new capacity. This large-scale addition of capacity in four years is more than any of the analytical studies suggest may be needed in the 2011 to 2017 time period to replace capacity that could retire as a result of EPA rules.
- By 2018, NERC projects energy efficiency programs will reduce summer peak demands by nearly 20,000 MW. Moreover, demand response programs have ex-

panded significantly at the retail and wholesale levels; FERC staff recently reported that demand response participation in RTO/ISO markets alone increased more than 16 percent between 2009 and 2010. Demand response and energy efficiency resources can be targeted to address specific localized reliability issues if needed. In regions where demand response is not widely utilized, one would expect that such resources will have significant value in responding to new environmental regulations.

- PJM states in its August 2011 report that “resource adequacy does not currently appear at risk in spite of projected retirements.” This statement is indicative of the opinions in many of the analytical studies that I have reviewed.
- The EPA has included a process of addressing unit specific reliability concerns through the use of CAA section 113(a) administrative orders.
- There remains the Presidential authority to grant further extensions where a threat to reliability continues to exist after all other actions and precautions are exhausted.

I define “EPA regulations” as including the Mercury and Air Toxics Rule (MATS), the Cross-State Air Pollution Rule (CSAPR), the Coal Combustion Residuals Rule, and the Clean Water Act Section 316(b) Rule. These are the rules that, to date, most analysts have focused on as having the potential to have the most impact on the electric sector, and are the rules included in the analytical studies that have been conducted for purposes of reviewing the reliability impact of pending EPA Rules. I would add that, because there is more certainty with respect to the MATS and CASPR Rules, I have focused more of my attention with respect to those rules when reviewing reports and analysis. However, as new EPA rules are proposed, I intend to monitor the impact they may have as well.

I would note that NERC and the industry are currently working to better define terms such as “adequate level of reliability” through their stakeholder processes. Without prejudging those efforts, which I hope will arrive at more certain definitions, I define “the reliability of the electric grid” to mean that the availability of electricity on demand is maintained at a level that a reasonable person would expect. I define “adequately maintained” to mean that the availability of electricity is maintained consistent with historical performance, and/or at a level that meets a reasonable person’s expectations.

*Question 2.* Evidence related to potential impacts of EPA’s rules on electric reliability: Please list all documents that you read at any time prior to the Committee’s hearing on March 20, 2012 that contain evidence of the potential impact of the EPA’s pending or recently-issued regulations affecting power plants or upon which relied for the purpose of forming your opinion concerning the potential impact of EPA regulations on reliability. (For purposes of this and following questions, please include among such regulations, the MATS Rule and the other regulations listed in Senator Murkowski’s letter to you of May 17, 2011.)

a. Please list especially studies or reports prepared by the North American Electric Reliability Corporation (NERC), regional reliability entities, planning authorities or regional transmission organizations that you read on or before March 20, 2012.

b. Please provide and highlight any such document, and especially any report or analysis prepared by any entity referenced above, and any specific portion of any such document that serves as a basis for your opinion that “the reliability of the electric grid can be adequately maintained as compliance with EPA regulations is achieved.”

Answer. As I note in response to your question 1, numerous studies, reports, and other documents have been prepared assessing the potential impact of EPA regulations on the electric sector and grid reliability. Below, I list a number that I have found valuable and probative as to the reliability issues raised in your questions, and that have helped form the basis of my views in this area. As you requested, I have provided some highlights to many of these documents, but I must stress that the documents need to be viewed in their totality. Given the extensive nature of the materials available, however, this list is not exhaustive.

- NERC 2010 Special Reliability Scenario Assessment: Resource Adequacy Impacts of Potential US Environmental Regulations, October 2010
- NERC 2011 Long-Term Reliability Assessment, November 2011
- Potential Retirement of Coal Fired Generation and its Effect on System Reliability (Preliminary Results), FERC OER Division of Bulk Power System Analysis. October 2010. Graphs Pg. 24-25

- November 2011 Update: Ensuring a Clean, Modern Electric Generating Fleet while Maintaining Electric System Reliability, M.J. Bradley & Associates LLC, November 2011. Appendix A
- Overview of U.S. Environmental Protection Agency Rules for the Electric Power Sector, Environmental Protection Agency, February 2011
- Coal Capacity at Risk for Retirement in PJM: Potential Impacts of the Finalized EPA Cross State Air Pollution Rule and Propose National Emissions Standards for Hazardous Air Pollutants, PJM, August 26, 2011. Executive Summary, pg. 33
- EPA Impact Analysis: Impacts from the EPA Regulations on MISO, MISO, August 2011. Pg. 3, Pg. 6
- Correspondence between Luminant, EPA, & Southwest Power Pool
  - Luminant Announces Facility Closures, Job Reductions in Response to EPA Rule, Luminant Media, September 12, 2011
  - Letter from Bob Perciasepe, EPA Deputy Administrator, to David Campbell, CEO, Luminant, September 11, 2011
  - Letter from Southwest Power Pool CEO & Trustees to Administrator Lisa Jackson, EPA, September 28, 2011
- Testimony of H.B. Doggett, Electric Reliability Council of Texas, Inc. before the House Committee on Energy and Commerce, Subcommittee on Energy and Power, United States House of Representatives, September 14, 2011
- The Clean Air Act's "Exemption Authority" is the Appropriate Tool for Allowing More Than Four Years for Utility MACT Compliance, EEI Briefing Paper, October 20, 2011
- Letter & Testimony from Gerry Cauley, President and CEO of North American Electric Reliability Corporation, to Chairman Fred Upton and Chairman Ed Whitfield, September 13, 2011. Testimony pg. 8
- Review of the Potential Impacts of Proposed Environmental Regulations on the ERCOT System, ERCOT, June 21, 2011. Pages 9-11
- Impacts of the Cross-State Air Pollution Rule on ERCOT Grid Operations, ERCOT Presentation, September 14, 2011
- Petition of Public Service Commission of South Carolina, September 1, 2011
- Reliability Impacts of Climate Change Initiatives: Technology Assessment and Scenario Development, North American Electric Reliability Corporation, July 27, 2010
- Letter from Thomas R. Kuhn, President of Edison Electric Institute, to Assistant Administrator Regina McCarthy, August 3, 2011. Pg. 5, 66-Conclusion
- PJM's Comments to EPA Proposed Hazardous Air Pollutant Rule, Craig Glazer, Vice President-Federal Government Policy, PJM, August 4, 2011. Pg. 9
- EPA Ascendant as Congress Stalls Out—Busy Year Ahead, Baird, September 1, 2010. Pg. 13, Pg. 14
- Assessment of Technology Options Available to Achieve Reductions of Hazardous Air Pollutants, URS Corporation, April 5, 2011. Executive Summary, Introduction, Conclusion
- US Utilities: Can Texas Comply with the Cross-State Air Pollution Rule? Yes, If Existing Scrubbers are Turned On, Bernstein Research, July 20, 2011. Pg. 2, Pg. 8
- Opening Statement of Regina McCarthy, Assistant Administrator for Air and Radiation U.S. Environmental Protection Agency, Legislative Hearing On H.R. 2250, the EPA Regulatory Relief Act of 2011, and H.R. 2681, the Cement Sector Regulatory Relief Act of 2011, September 8, 2011
- EPA's Enforcement Response Policy for Use of Clean Air Act Section 113(a) Administrative Orders in Relation to Electric Reliability and the Mercury and Air Toxics Standard, EPA Memorandum, December 16, 2011. Pg. 5-7; Section A-D
- Electric Reliability under New EPA Power Plant Regulations: A Field Guide, Susan Tierney, Ph.D. for World Resources Institute, January 18, 2011. Pg. 6, Pg. 8
- Ensuring a Clean, Modern Electric Generating Fleet while Maintaining Electric System Reliability, M.J. Bradley & Associates LLC, August 2010. Pg. 5, Table 2, Pg.7 Fig.3, Pg. 8, Table 3
- Ensuring a Clean, Modern Electric Generating Fleet while Maintaining Electric System Reliability, 2011 Summer Update, M.J. Bradley & Associates LLC, June 2011. Pg. 17, Chart
- Testimony of Susan F. Tierney, Ph.D. Hearing on the Impacts of EPA Regulations on Electric System Reliability, September 14, 2011. Pg. 19, Table; Pg. 21, Table; Pg. 23



- Environmental Regulations and Electric System Reliability, Bipartisan Policy Center, June 13, 2011. Sec. III; Sec. V
- EPA’s Regulation of Coal-Fired Power: Is a “Train Wreck” Coming?, James E. McCarthy and Claudia Copeland, Congressional Research Service, August 8, 2011. Summary; Pg.14-17; Pg.28-35; Pg. 39-40
- Testimony from Panel III, FERC Reliability Technical Conference, November 30, 2011.
  - Written Remarks from Mark Lauby, Vice President and Director of Reliability Assessment & Performance Analysis
  - Testimony of Michael J. Kormos, Senior Vice President PJM Interconnection, LLC
  - Statement & Testimony of Carl A. Monroe, Executive Vice President and COO Southwest Power Pool, Inc.
  - Statement by Thomas F. Farrell, II, Chairman and CEO, Dominion. Pg. 1-8
  - Testimony of Kathleen L. Barron, Vice President, Federal Regulatory Affairs and Policy, Exelon Corporation. Pg. 6
  - Statement of Anthony Topazi, Chief Operating Officer, Southern Company
- Testimony from Panel IV, FERC Reliability Technical Conference, November 30, 2011
  - Written Remarks from Gerry Cauley, President and CEO, NERC
  - Testimony of Nicholas K. Akins, President and CEO, American Electric Power
  - Comments of the Midwest Independent Transmission System Operator, Inc.
  - Comments submitted on behalf of the PUCO
  - Statement of Eric D. Baker, President and CEO of Wolverine Power Supply Cooperative. Pg. 3, Sec. I
- Reliability Technical Conference, Docket No. Ad12-1-000, Debra Raggio, Vice President Government and Regulatory Affairs, and Assistant General Counsel, GenOn Energy, Inc. November 29, 2011
- Letter from Chairman Donna Nelson, Public Utility Commission of Texas, to EPA Docket Center, August 4, 2011
- Proposed Language to Effectuate RTO’s Proposed Reliability Safety Valve for MACT Rule, Email from Craig Glazer, October 14, 2011
- Comments of the Electric Reliability Council of Texas, The Midwest Independent Transmission System Operator, The New York Independent System Operator, PJM Interconnection, LLC, and the Southwest Power Pool, August 4, 2011
- Corrected Comments of PJM Interconnection, LLC, Craig Glazer, August 4, 2011
- Testimony of John Hanger before the US House of Representatives Energy and Commerce Committee Subcommittee on Energy and Power, September 14, 2011
- Reliability-Only Dispatch: Protecting Lives & Human Health While Ensuring System Reliability, John Hanger, Clean Air Task Force, Exelon Corporation and Constellation Energy, September 29, 2011. Pg. 17
- Revisions to Federal Implementation Plans to Reduce Interstate Transport of Fine Particulate Matter and Ozone, EPA Proposed Rule, October 6, 2011 (Finalized February 21, 2012)
- Commissioner-led Reliability Technical Conference, FERC Transcript, November 30, 2011. Pg.268-270
- Court remands Kemper County approval; On road with CEO, Bank of America Merrill Lynch, March 15, 2012. Pg. 1
- Why Coal Plants Retire: Power Market Fundamentals as of 2012, Susan F. Tierney, Ph.D., February 16, 2012. Pg.1-13

*Question 3.* Do you believe that the cumulative impact of the EPA Regulations on electric reliability has the potential to be quite serious? Please provide the facts that support your answer.

Answer. believe that on any given day our electric grid is vulnerable to a serious outage, given the number of variables that go into ensuring reliability on a day-to-day and moment-to-moment basis. The grid is a machine with many moving parts, some of them decades old. Moreover, there are hundreds if not thousands of trained professionals making split-second, critical decisions on system operations at any given time. Our electric grid is vulnerable to extreme weather, cyber attack, physical attack, human error, and mechanical failure, to name just a few variables. A failure in any of these factors could lead to a serious problem if not appropriately managed. For this reason, maintaining reliability is in large part an exercise in

planning to ensure that failures or unexpected contingencies can be managed with minimal impact on the end user.

If the EPA regulations were to be implemented overnight without time to plan system adjustments for them, and without any tools to address the impacts of those regulations, the result could be quite serious. However, that is not the case. Generally, the EPA regulations are to be phased in over time, with the possibility to obtain extensions if warranted. There are plans to be developed, infrastructure projects to be built, and tools available to make adjustments to deal with reliability vulnerabilities that surface. I believe the cumulative impact of the EPA regulations can be managed collaboratively by industry and policymakers to avoid serious reliability risk. I expect adjustments or changes will have to be made as more information and further analysis is available. That is why I have been supportive of the development of additional tools, like the safety valve proposal from the RTOs (EPA responded to this request with the Administrative Order process issued with the MATS Rule), should they be needed. To the extent additional tools within FERC's jurisdiction prove to be necessary, I will advocate that we provide them. In addition, should Congress wish to develop additional tools, such as the safety valve legislation proposal you have described, if confirmed, I would be happy to assist by providing my feedback.

In short, I believe there could be serious reliability concerns if the EPA regulations were not being taken seriously. However, I believe that these regulations are being taken seriously by all involved. I have heard EPA Assistant Administrator McCarthy say on multiple occasions that she and the EPA take reliability very seriously. I know you take it seriously. I also know that FERC, NERC, states, industry, and the many other entities involved in maintaining reliability take it seriously. For that reason, I believe the EPA regulations can be successfully implemented over the next several years without jeopardizing reliability.

*Question 4.* Do you believe that NERC's analysis of the potential impact of EPA's rules is flawed or its concerns are overstated?

a. If so, why?

b. In your view, are or were any of the NERC or RTO assessments that you have reviewed among the "doomsday predictions" that you referenced during the March 20 hearing? (See Archived Webcast at 91:30 -94:45)

c. Do you accord a study or studies by the Bipartisan Policy Center of the impact of EPA regulations on electric reliability more, less or the same weight as the NERC 2010 and 2011 Reliability Assessments as each relates to the pending EPA regulations?

d. Should such a study or studies by the Bipartisan Policy Center be given more, less or the same weight as such an assessment by the Midwest Independent Transmission System Operator (Midwest ISO), the Southwest Power Pool or any other FERC-approved Regional Transmission Organization?

e. What weight should be accorded to the Bipartisan Policy Center's assessment of the impact of EPA rules on electric reliability?

f. What weight should be accorded to reviews by the Congressional Research Service (CRS) of studies related to the potential impact of EPA regulations on electric reliability?

g. Should more, less or the same weight be given to the work of the Congressional Research Service with respect to the potential impact of EPA regulations on the reliability of electric service than to the referenced NERC or RTO assessments?

h. Mr. Mark Lauby, NERC's Vice President and Director of Reliability Assessment, testified at the Commission's technical conference on November 30 that "Reserve Margins are not the complete landscape. . . . Policy that changes normal operations must be understood to appreciate overall reliability effects. More importantly, based on input from NERC's regional entities, NERC is concerned about the risk to reliability from retrofitting by 2015, environmental controls in over 500 units, representing over 250 gigawatts of capacity driven by the utility air toxics rule." (Transcript at 173).

i. What facts enable you to maintain your opinion in the face of Mr. Lauby's testimony?

ii. What "sufficient tools are in place" to address the risk to reliability identified by Mr. Lauby?

iii. And which of those tools, specifically, would reduce the risk of "retrofitting by 2015 environmental controls in 500 units representing 250 gigawatts of capacity?" or of unit retirements of the magnitude that appear to be emerging.

iv. As to each such tool, how would that tool reduce the risk?

i. You appeared to observe at the hearing on March 20 that EPA underestimated the retirements of electric generating units attributable to just one of its rules, the MATS rule. (See Archived Webcast 91:30-94:45.)

i. In light of announcements of unit retirements attributed to the MATS rule, what role going forward—with respect to that rule or any currently pending or future EPA rule—do you see for the Commission and entities subject to its regulation and oversight for influencing EPA’s regulations or improving EPA’s analysis of potential impacts of its regulation?

ii. What are you doing or will you do to see that EPA takes into account the Commission’s views or the expertise of those entities subject to its regulation or oversight, e.g., the ERO, regional reliability organizations, planning authorities or RTOs?

Answer. As a general matter, analyses of the impact of the EPA regulations on electric reliability require numerous assumptions, and as those assumptions change so do the results. For this reason, I do not view any NERC or RTO assessment as flawed, overstated, or a “doomsday prediction,” nor do I give any particular study or report greater or lesser weight. While I have paid particular attention to the NERC and RTO assessments given the important roles these entities have in reliability planning, each of the reports and studies that have been released provide important data points to consider as we continue to monitor and assess the impact of the EPA regulations on the grid.

Mr. Lauby’s testimony at the November 30, 2011 Technical Conference highlighted the important issue of coordinating maintenance outages for generating units that choose to install new environmental controls to comply with EPA regulations. In further discussion on this issue at the technical conference, I questioned panelists representing RTOs on the current process for coordinating maintenance outages, and whether that process is sufficient. They each represented that they currently have the tools they need to sequence outages, provided that they have adequate information from generator owners and operators and additional time to address any particular units for which maintenance cannot be scheduled within the compliance timeframe. With regard to the possible need for additional time for particular units to schedule outages for retrofit, panelists pointed to a “safety valve” as an appropriate mechanism to provide that extra time. (See Transcript at 268-270) As I note in response to your question 3, EPA has provided a form of the RTO safety valve proposal through the Administrative Order process included with the MATS Rule. However, as I state in response to your question 22, an additional statutory safety valve tool such as the one you describe could be valuable, and I would be happy to work with you and your staff as you develop legislation.

Going forward, I believe the Commission can be a resource to EPA and other stakeholders by providing our reliability expertise to their ongoing efforts to assess the reliability impacts of new environmental regulations. If confirmed, I would expect to closely monitor these efforts and the Commission’s interactions with EPA, and to advocate for enhanced dialogue and communication. In addition, the Commission should continually assess whether the tools for achieving compliance with these regulations that are under our jurisdiction—such as the transmission planning processes and the competitive wholesale markets—are sufficiently robust and flexible. To the extent changes or reforms are needed to ensure that these tools are adequate, the Commission can and should respond quickly.

*Question 5.* During the hearing on March 20, you acknowledged that EPA regulations will have an impact on reliability and that there will be a “localized concern” (See Archived Webcast at 91:30—94:30).

- a. Do you see these impacts as potentially serious?
- b. To your knowledge, is there a formal definition of such a “localized effect”?
- c. And, if not, how do you define such an effect?
- d. Would a “localized effect” include the loss of service to the downtown area of a major city?
- e. Have you seen instances where a “localized effect” on the electric grid spreads rapidly to a broader area?
- f. In your judgment, how would the “tools in place” reduce the risk of a localized effect? Please be specific.
- g. As you see it, would additional risks to electric reliability, such as loss of units necessary for grid support services such as “black start” or “voltage support” be acceptable if the loss of those units were a consequence of timely compliance with EPA rules?

Answer. With respect to whether localized impacts of EPA regulations could be potentially serious, please reference my response to question 3. Without time to un-

dertake reliability planning and tools to address potential impacts, the result could be serious. However, as I state in response to question 3, there is time for planning and infrastructure development, tools are available, and additional tools can be developed if necessary, to ensure that reliability is maintained and that serious impacts can be avoided.

I am not aware of a “formal definition” of the term “localized effect” as I used it in the March 20th hearing. My use of that term was a general reference to a point made in multiple reports and comments from entities like NERC (“Local reliability issues resulting from individual unit retirements”) and the RTOs (“local reliability impacts”). I believe the various usages of “local” is a general reference to a more limited geographic area where one or a limited number of plant retirements may cause a concern that is more specific than a regional or interconnection-wide resource adequacy concern. That would certainly include the loss of service to the downtown area of a major city.

Certainly, there have been instances where a local reliability issue spread to a broader area. The best example is the 2003 blackout, where a vegetation touch on a transmission line in Ohio is considered to be the major precipitating cause. However, as with many broader reliability events, other variables and factors compounded to cause this local issue to spread beyond a more limited geographic area.

The impact on local reliability of EPA rules will be assessed by the relevant transmission planning authorities after generation owners make a business decision on whether to retire or upgrade a plant to meet EPA regulations. Once that decision is made, planners will be able to determine what reliability concerns may result, and what options are available to address those concerns. Those options could include constructing new generation or transmission, developing additional demand side resources, or making other resource additions to address reliability needs. If the identified reliability needs cannot be met within the EPA implementation timeline, there are extension tools available to meet specific circumstances. For example, in conjunction with the MATS rule, EPA issued a Policy Memorandum on the use of CAA Section 113(a) administrative orders (AOs) with respect to sources that must operate in noncompliance with the MATS rule for up to a year to address a specific and documented reliability concern. The issuance of such an AO would add an additional fifth year for compliance.

I share your interest in an adequate safety valve as you stated at the March 20 hearing. The Commission is currently considering approaches and processes for providing advice to the EPA regarding the December 16, 2011, Policy Memorandum and on its use of AOs for critical units. I believe this is an effort by the EPA to address the need for a safety valve in instances where a specific unit must operate to ensure reliability. If confirmed, I will continue to monitor how the EPA intends to process AO requests so it adequately addresses local reliability concerns. I would also welcome the opportunity to assist you with any additional safety valve proposals you are considering.

I do not believe that additional risks to reliability from the loss of units necessary for grid support services, without adequate planning to replace the services provided by those units, would be acceptable. However, I believe the work of planning regions to address reliability concerns and the multi-year process for compliance will enable these and other reliability concerns to be addressed.

*Question 6.* Recognizing that the Chairman and not individual Commissioners direct the work of the Commission’s staff, how would you, if you were Chairman, administer the Commission with respect to the reliability impacts of EPA rules?

a. Are you satisfied that at all times during your tenure as a Commissioner you have had access to the information you have needed when you have needed it fully and fairly to perform your duties as a Commissioner?

b. What, if anything, would you have done differently in the Commission’s handling of the issue of the impact of EPA regulations on electric reliability since September 2010 when Commissioner Moeller raised the issue at the Commission’s monthly open meeting had you been Chairman during that time?

c. Why did the Commission wait more than a year after the September 2010 Commission meeting to convene a Technical Conference addressing the potential reliability impacts of the EPA Regulations? Should it have waited that long?

d. If you were Chairman, how would you expect the Commission to interact with EPA, NERC and the planning authorities on the question of the potential impact of EPA Regulations on electric reliability?

e. What is your view of the NARUC-FERC process underway to consider these reliability/environmental issues going forward? Will you support full participation by the Commission and its staff in that process?

f. Please provide, to the fullest extent that you have formed them, your views on the Staff White Paper on the Commission's Role Regarding Environmental Protection Agency's Mercury and Air Toxics Standards. What do you see as FERC's role on the matters outlined in the Staff White Paper? Should the Commission defer to the recommendations of planning authorities and NERC?

g. May I have your commitment that as long as you are serving on the Commission you will provide prompt, thorough and complete answers to questions that may be posed to you by members of this committee in correspondence or otherwise? Will you do everything in your power to assure that the Commission provides such answers to the Committee?

Answer. I believe it is essential for FERC to work with industry, NERC, states, other federal agencies, and all stakeholders on this and a number of issues that fall within the scope of our Congressional mandate. Clearly, more can always be done to better coordinate with the many stakeholders involved in an issue as important as the reliability of the electric grid. I also think it is essential that I, as a FERC commissioner, stay as up-to-date as possible on the issues surrounding EPA regulations and potential impacts on reliability. Staff has been made available to me to discuss their analysis of EPA regulations. Additionally, I have set up monthly briefings with FERC staff to keep me apprised of any developments related to these issues. With regard to the issue of the scheduling of a technical conference on EPA regulations, I note that the Chairman sets the calendar for technical conferences.

As a general matter, I believe that additional interaction with all of our fellow agencies in the federal and state governments would help us to better achieve the public good. With this in mind, I consider the NARUC-FERC process to be a valuable forum to discuss reliability/environmental issues. I think it is essential for federal regulators to work with our state colleagues on these issues and I support full participation by the Commission and its staff in that process.

I supported the issuance of the staff white paper. We are partners in this effort with NERC, Regional Entities, planning authorities and the states, and it is appropriate to consult with them with regard to EPA regulations and potential reliability concerns. We have received a number of comments regarding the approach outlined in staff's white paper. I am reviewing those comments and expect that they will better inform my views on the appropriate path forward on this issue. In my early review of this record, I note that many commenters make an excellent point that determinations regarding the reliability impacts of the shut down of a particular plant are best made by the relevant local planning authority, which has the best "on the ground" knowledge of local system needs.

If confirmed, I commit to providing prompt, thorough, and complete answers to questions posed to me by members of this committee or otherwise. If confirmed, I commit to do what is in my power to assure that the Commission provides such answers to the Committee.

*Question 7.* In correspondence to me during 2011 you provided answers to a series of questions. Please review your answers to those questions and supplement your answers to the extent that you have new information or are aware of new information that would affect your prior answer in any material way. To the extent that you have no new information or have no need or desire to supplement any of your answers, please so indicate.

Answer. I have not received any information since my last letter of correspondence to you on October 7, 2011 that would affect my prior answers in any material way.

I would note that at the Commission's Technical Conference held on November 30, 2011, the topic of the unfair dilemma an electric generator can face if it is ordered by DOE to operate to maintain reliability, and doing so results in a violation of its environmental permit, was discussed. I committed at that Technical Conference, as I do in my answer to your question number 17, to fully support a change in the law to address that situation.

Similarly, I noted in my response to you in the October 7, 2011 letter that I believe the RTO/ISO proposal for compliance flexibility "has great merit." I reaffirm my belief in a "safety valve" provision in my response to your questions number 3 and 22.

*Question 8.* On December 1, 2011, the Department of Energy released a report entitled "Resource Adequacy Implications of Forthcoming EPA Air Quality Regulations." The report represents an assessment by DOE of the adequacy of U.S. electric generation resources under air pollution regulations being finalized by the U.S. Environmental Protection Agency.

a. Were you or your staff consulted at any time before, during or after the preparation of the report about its contents or direction? If so, by whom were you contacted and what was the substance of the consultation?

Answer. Neither I nor my staff was consulted with respect to the contents or direction of the Department of Energy report.

*Question 9.* Can you please provide a list of those hydropower projects for which FERC collects a federal land use fee under Section 24 of the Federal Power Act even where the underlying land has been transferred out of federal ownership but for a power site classification?

Answer. It is my understanding that the Commission does not collect this information. While the Commission does keep track of projects as to which the Commission charges licensees federal land use fees, and how much federal acreage is included in each project, I am told that the Commission does not keep track of the basis for the land charges. In other words, the Commission does not track whether federal land use charges are based on federal fee ownership, leases, rights-of-way, easements, section 24 reservations, or other interests.

*Question 10.* In Docket No. RM 11-6-000, the Commission proposes to revise its methodology to assess annual charges on hydropower licenses for use of government lands. I'm concerned that some Alaskan projects will face increase tremendous increases. Sitka's Green Lake Project, for example, could see fees increase by a stunning 142 percent.

a. Do you believe such increases can be considered "reasonable" as required by the Federal Power Act?

b. In revising its methodology to assess federal land use fees, do you think it is appropriate for the Commission to adopt a single per-acre rate for land use fees for all federal lands in Alaska? Do you believe a phase-in implementation period is warranted? Do you support providing the licensee with the ability to challenge the application of whatever formula for land use fees the Commission decides upon?

c. In preparing comments for Docket No. RM 11-6-000, I was surprised to learn that, under section 24 of the Federal Power Act, FERC is able to collect federal land use fees for hydropower projects even when the "federal" land in question has been transferred out of federal ownership if that land retains a power site classification. If the fees being collected are to recompense the government for the "use, occupancy and enjoyment" of federal lands is it fair to be collecting such fees when the land subject to those fees is no longer owned by the federal government? Would you support legislation addressing this discrepancy?

Answer. I share your concerns over significant rate increases for the use of federal lands. The Commission is carefully considering provisions for calculating a new per-acre rental fee promulgated by the Bureau of Land Management for linear rights of way. I will be guided by the principles in section 10(e) that require the Commission to fix reasonable annual charges for, among other things, the use, occupancy, and enjoyment of federal lands. I am willing to consider a variety of methods for implementing any new rule regarding federal land use fees, and I have not formulated any final opinions on these matters.

With respect to collecting federal land use fees where the lands in question have been transferred out of federal ownership, I too was unaware of the circumstances you describe. I am still learning about this issue, and have not formed any opinions on it, but if confirmed, I would be happy to discuss legislative proposals with you and your staff.

*Question 11.* The Cooper Lake Hydroelectric Project in Alaska, operated by the Chugach Electric Association, recently went through FERC's hydropower relicensing process to secure a new 50 year term license. As part of the settlement process, the resource agencies directed Chugach to improve the habitat for certain fish in the lower reaches of Cooper Creek by raising the water temperature. At the time, in 2005, the estimated cost of the Stetson Creek diversion project was \$12 million. However, with the engineering changes sought by FERC, the current estimated costs of this license condition for this small 20 megawatt project have doubled to an astounding \$24 million.

a. Does this seem like a fair result to you?

b. Do you believe that both resource agencies and the Commission need to keep licensing costs just and reasonable for the end consumer?

c. Given that we have a number of Alaskan hydro projects up for relicensing in the next few years, what can be done to avoid such a result in the future?

d. Can cost containment be accomplished administratively or are legislative changes to the Federal Power Act necessary?

Answer. This matter was resolved by Commission staff in an uncontested proceeding. I am aware that environmental and engineering requirements can significantly increase project costs. To the extent that these are matters within the Commission's control, licensees may timely seek Commission review of any actions to which they object.

I believe that the Commission has done the best that it can to establish collaborative licensing processes, in which issues are developed by stakeholders as early as possible, and information needs and study results are shared. I also believe that the Commission does a good job of balancing competing resource needs in issuing licenses.

I believe that both resources agencies and the Commission should do everything they can, consistent with governing statutes, to ensure that licensing costs are just and reasonable. Under the current regulatory structure, however, the Commission has only a limited ability to contain certain licensing costs. Certain statutory provisions, including sections 4(e) and 18 of the Federal Power Act, section 401 of the Clean Water Act, and sections 7 and 10 of the Endangered Species Act, give agencies other than the Commission the ability to impose mandatory license conditions that the Commission may not alter in its final license. Thus, the Commission in many instances lacks the ability to control licensing costs.

*Question 12.* FERC has opened a Notice of Inquiry into its incentive rates policy for new transmission investments. Why did you learn from this NOI and has FERC decided on any next steps?

Answer. The Commission has received more than 1,500 pages of comprehensive and helpful comments with respect to our Notice of Inquiry on incentives. We are currently reviewing those comments and I am hopeful that we will move to the next step in this process soon. I believe that it is crucial that the Commission enumerate a clear policy that appropriately balances the Congressional mandate to provide incentive rate treatments for the construction of needed transmission projects with the interests of consumers who will pay for those projects.

*Question 13.* Last July, several New York City generators filed a complaint with FERC (Docket No. EL11-50-000) asking for expedited/emergency review of a NYISO determination in applying Buyer-Side Market Power Rules. Leaving aside the merits of that complaint, I understand that while nearly 9 months have passed since the filing, the Commission has still not issued a ruling on the complaint. According to stakeholders, the absence of a Commission decision has created so much uncertainty in the market that New York City may be facing reliability issues this summer. What is causing the delay? When can we expect FERC to make a decision on this emergency filing?

Answer. The complaint filed on July 11, 2011, alleged that the NYISO improperly applied its buyer-side market power mitigation rules with respect to two generating facilities. After reviewing the complaint and NYISO's August 3, 2011 answer, the Commission found that it did not have sufficient information to address the complaint and thus, on August 31, 2011, issued an order seeking additional information. (Order Directing Submission of Supplemental Information and Issuing Protective Order, Astoria Generating Company, L.P. and TC Ravenswood, LLC v. New York Independent System Operator, Inc., 136 FERC § 61,155 (2011)). It was not until after the additional confidential information was submitted that the Complainants and other interested parties were able to address the issues raised in the Complaint in detail in an extended series of subsequently-filed comments, answers, and other pleadings. The last set of pleadings in response to this Commission order was received by the Commission in December 2011.

The Commission is currently reviewing the large record in this case, and its decision will be based on the full record thus established, including the subsequently-filed information and pleadings. Since this proceeding in Docket No. EL11-50-000 is pending before the Commission, I cannot further comment on the merits of the case or the timing of the Commission's action. That being said, I intend to consider carefully this matter, including the potential reliability issues with regard to New York City.

*Question 14.* In furtherance of the Energy Policy Act of 2005, FERC designated NERC as the Electric Reliability Organization (ERO). In recent remarks, FERC Chairman Wellinghoff has questioned whether NERC is still the proper entity to be the ERO. In fact, I understand that NERC is now being audited by FERC. What is the purpose of this audit? In your opinion, how has NERC performed as the ERO?

Answer. I am very satisfied with NERC's performance as the Electric Reliability Organization. Audits can provide valuable information to both the Commission and

the entity under review about areas where they can achieve better compliance with Commission policies, and where efficiencies can be gained in performance and operation. I think with any new entity, let alone a unique entity like NERC, there is value to be gained from an audit and from identifying opportunities to create efficiencies. I see our audit of NERC as an opportunity to work with NERC and its stakeholders to achieve greater efficiencies.

*Question 15.* Just last week, the Department of Homeland Security briefed members on a “grid-attack scenario” to highlight the problem of cybersecurity. As the primary regulator of the nation’s grid, why didn’t the Commission participate in this cyber attack scenario? How does FERC interact with DHS, and the rest of the federal government, on cyber issues today? Does DHS have the necessary level of expertise to regulate the grid?

Answer. With respect to the “grid-attack scenario,” it is my understanding that FERC received informal advance notice of the exercise, but was not invited to participate.

FERC, DHS, DOE, DOD, NRC, FBI, NSA, and CIA share information about vulnerabilities to the electric grid. This interaction includes ad hoc meetings on specific cybersecurity topics and participation in established forums. These forums include the Government Coordinating Council for the Energy Sector (FERC supports DOE as the sector-specific agency), the Industrial Control Systems Joint Working Group (organized by DHS), and the Roadmap to Secure Control Systems in the Energy Sector (sponsored by DHS and DOE). FERC also receives daily reports on threats and vulnerabilities from DHS, the U.S. Cyber Emergency Response Team (CERT), the Industrial Control Systems CERT, and the SCADA Test Bed. It is my understanding that the federal governmental relationships are working well.

With respect to DHS’s current expertise to regulate the grid, I do not have sufficient information to address this question.

*Question 16.* How important is information sharing in the debate on cybersecurity?

Answer. Information sharing is an important aspect to protecting the cyber security of the grid. However, while it is a necessary component, information sharing alone may not be sufficient to ensure cyber security.

*Question 17.* Pursuant to Section 215 of the Federal Power Act (FPA), FERC is responsible for assuring the electric grid is operated reliably.

a. Given this responsibility, what can FERC do to educate EPA and stakeholders interested in the Utility MACT implementation process about how utilities, NERC, its regional entities and its Planning Authorities actually plan to assure reliability?

b. DOE has emergency authority under the Federal Power Act to order electric generation facilities to operate when needed to keep the lights on in true emergency situations. At least once in the past, a company had to run its plant longer than permitted by its environmental permit in order to comply with a DOE emergency order to maintain reliability. That company faced a dilemma as to which law to follow and which law to break. And it ultimately had to pay millions of dollars for violating its environmental permit limitations. As a regulator responsible for maintaining the reliability of the grid, would you support a clarification to the law that would keep companies from facing this “Hobson’s choice” when the reliability of the grid is at stake?

c. In your experience, how much time does it take to build a transmission line that would be big enough to replace a power plant? Do you agree with EPA that this can take place in less than 3 or even 4 years?

d. Can you discuss where you see reliability in light of other topics identified as top initiatives on the FERC website (smart grid, demand response, integration of renewables and transmission planning)?

Answer. The Commission has important statutory roles and responsibilities with respect to bulk power system reliability, and I take these responsibilities very seriously. To fulfill these roles and responsibilities, the Commission has developed significant staff expertise that I believe can be a valuable resource to help educate EPA, other federal agencies, and stakeholders with respect to reliability planning processes. Providing information and education on the roles of NERC, regional entities, planning authorities, and the states in reliability planning can help ensure that EPA and others involved in implementing the Utility MACT rule know which of these entities are the best source of advice and analysis regarding the potential reliability impacts of shutting down a particular power plant or set of plants.

I understand and appreciate the unfair dilemma that an electric generator can face if it is ordered by DOE to operate to maintain reliability, and doing so results in a violation of its environmental permit. As I stated at the Commission’s Novem-



ber 30 Technical Conference, I fully support a clarification to the law to address this situation.

The time it can take to construct a transmission line to replace a power plant, assuming that the relevant reliability planning process chooses a transmission line as the best replacement solution, depends greatly on the specific circumstances. In some cases, such as a shorter line or an upgrade of a line in an existing right-of-way, a transmission solution could be built in a relatively short amount of time. In other cases, however, we have seen transmission facilities take far too long to be sited and constructed. Reliability planning processes should, and to the best of my knowledge do, take these timing considerations into account when choosing the best solution to a reliability concern prompted by the retirement of a power plant.

I view the reliability of the electric grid as a very high priority. Fulfilling our roles and responsibilities under section 215 of the Federal Power Act has been a focus of my work at the Commission. More broadly, however, I believe power system reliability is a factor in nearly every decision the Commission makes, because when it comes to our energy infrastructure, at the end of the day it all has to work reliably and efficiently.

*Question 18. Hydropower*

- a. Do you consider hydropower to be a renewable resource?
- b. Please state your views on the hydropower resource and its contribution and value to the nation's energy mix.
- c. What are your thoughts on the issue of reliably integrating intermittent renewable resources onto the grid?
- d. What role can both conventional hydropower and pumped storage have to play in addressing these problems?

Answer. I consider hydropower to be a renewable resource that makes a very valuable contribution to the nation's energy mix, although I believe that limiting its use in meeting a federal renewable energy requirement is a decision for Congress to make. In fact, it is the largest renewable resource in the U.S., providing about 10 percent of the nation's electric capacity. Analysts say that capacity can double in 30 years. FERC is reviewing more than 30,000 MWs worth of new projects, equal to a third of all existing hydropower capacity and enough to power the New York metropolitan area.

I believe that intermittent renewable resources will also play a key role in our nation's energy future. This intermittency can raise potential reliability concerns that can and are being addressed in numerous regions around the country. Many states and regions are already integrating intermittent renewables in large numbers. These regions are learning important lessons that can be shared with other entities that are similarly working on renewables integration. Conventional hydropower and pumped storage have characteristics that can accommodate the variable characteristics associated with renewable resources. They are more flexible than most conventional generation in their ability to start quickly to accommodate rapid increases or decreases in the differences between demand and resources for any reason.

*Question 19. Organized Markets*

- a. What is the appropriate path forward with respect to organized and bilateral wholesale markets? Can and should they co-exist or should all utilities ultimately be in organized markets?
- b. Is FERC's oversight of electricity markets sufficient to ensure that the wholesale electric rates meet the "just and reasonable" standard of the Federal Power Act?
- c. Do you believe that the wholesale electricity markets operated by regional transmission organizations are achieving net benefits for consumers as compared to those regions without RTOs?
- d. Do you think that there is a sufficient level of transparency in the pricing and other relevant data from the electricity markets, particularly those operated by RTOs?
- e. What is your assessment of the success of pricing incentives in the RTO markets, such as Locational Marginal Pricing, to spur infrastructure development and address transmission congestion?
- f. Do you believe RTO-run locational capacity markets are providing adequate revenue and certain for new generation while avoiding excess payments to existing generation?

Answer. I believe that organized and bilateral markets can and should co-exist. As long as FERC continues to work to improve competition in both organized and bilateral markets, through such efforts as open access transmission tariff reform,

market based rate reform, and Order No. 1000, FERC should not attempt to impose a single market structure on all regions. Both organized and bilateral market structures are capable of supporting competitive markets. With respect to the path forward, as both the organized and bilateral wholesale markets continue to evolve, I expect that the Commission will receive filings that seek to modify and improve these markets to assist consumers in obtaining reliable, efficient, and sustainable energy services at a reasonable cost. In response to such filings or on its own motion, the Commission will take action as appropriate to support this goal.

I believe that FERC's oversight of electricity markets is sufficient to ensure just and reasonable wholesale electric rates. In addition to strengthening competition in electric power markets, FERC closely monitors these markets for anomalous market behavior. The Commission's Office of Enforcement protects consumers through (1) oversight and surveillance of wholesale electric energy markets, (2) assuring compliance with tariffs, rules, regulations, and orders, (3) investigating potential violations and manipulation, and (4) crafting appropriate remedies, including civil penalties and other measures.

I support the voluntary nature of RTOs and ISOs. I believe that there are net benefits that can be achieved in regions with organized wholesale markets. The wholesale electricity markets operated by ISOs and RTOs are designed to enhance competition and maximize utilization of least-cost resources. Wholesale markets provide important price signals for needed investment in transmission infrastructure, as well as demand response and energy efficiency. RTOs and ISOs also help ensure continued reliability of the regional transmission system through long-term transmission planning. Having said that, however, I also believe that those who question the benefits of organized wholesale markets are entitled to reasonable answers. I support continued and enhanced efforts to assess these markets.

FERC has made efforts to increase the transparency of electricity markets including RTO markets. Currently, prices for all power sales within the Commission's jurisdiction are reported quarterly to the Commission and made available to the public, and all RTOs post location-specific prices for the public on an hourly basis. If confirmed, I will continue to closely follow issues related to the transparency and competitiveness of organized markets.

The organized energy markets in most RTOs rely on Locational Marginal Pricing (LMP), which is a system that allows prices to vary at different locations and at different times to reflect the market conditions and costs of meeting demand in those areas. The LMP system sends price signals to market participants regarding where generation resources are most needed, where reductions in demand are most valuable, and where transmission constraints are the most severe. The transmission planning processes employed by the RTOs consider the congestion price signals in developing transmission expansion plans. Of course, the ability to pursue upgrades identified in those transmission expansion plans would require a number of regulatory approvals in the states that they traverse. So, while the price signals sent by the RTOs' markets are an important factor in encouraging efficient resource developments where they are needed, they alone are not sufficient to develop infrastructure; other factors also are important.

With respect to capacity markets, there are several contested proceedings before FERC addressing capacity market issues that I do not wish to prejudge. Generally, however, capacity markets should be designed to fairly compensate existing generation for the capacity they provide to the grid, and should efficiently acquire new generation when it is the least cost resource to meet reliability. Demand response resources, energy efficiency, and existing generation, however, may provide a more efficient alternative, and when this is the case, capacity markets should acquire such lower cost alternatives. Capacity market rules should also ensure competitive procurement of capacity resources and protect against the exercise of market power, to avoid market outcomes that provide either insufficient or excess revenues.

*Question 20.* How does FERC consider priorities for industry and its costs in approving the various initiatives it reviews?

Answer. FERC has an open and deliberative process that provides opportunity for industry and consumers to comment and participate. In reviewing Commission initiatives, ensuring that we do not impose unnecessary burdens on industry, and ultimately on consumers and our overall economy, is vitally important to me.

*Question 21.* FERC has many offices and many responsibilities. As Commissioner, do you feel reviewing FERC's budget and looking for internal efficiencies, reducing duplication, should be a priority? If so, what areas would you target?

Answer. Under the direction of the Chairman, FERC conducts a review of our budget annually. I am not aware of any specific concerns that have been raised with respect to inefficiencies or duplication of efforts. In contrast, I have heard compliments regarding FERC's efficient processes, especially with respect to energy

projects. With that said, internal efficiency and avoiding government waste are significant issues that I take seriously and, if confirmed, I commit to remain vigilant with respect to these issues.

*Question 22.* I am developing legislation to ensure that the Federal Power Act contains a “safety valve” to protect electric reliability in situations such as those presented since 2010 with respect to EPA Regulations. Please provide your views, in concept, about amending the FPA to provide authority for the Commission or entities subject to its regulation or oversight with respect to reliability assurance to have a formal role to ensure that EPA Regulations do not threaten electric reliability unduly.

*Answer.* Protecting electric reliability as compliance with EPA regulations is achieved requires us to utilize all the tools we can. I believe having an additional statutory tool such as the one you describe could be valuable, and I would be happy to work with you and your staff as you develop legislation.

#### RESPONSES OF JOHN R. NORRIS TO QUESTIONS FROM SENATOR BARRASSO

*Question 1.* Did you have any exchange, in person or otherwise, at any time before March 20, 2012 with anyone in the Administration about EPA’s Mercury and Air Toxics Standards Rule and its impact on electric reliability? If so, please provide the names and titles of these individuals, the agencies that the individuals represented, and the dates the exchanges took place.

*Answer.* I met with EPA Assistant Administrator for Air and Radiation Gina McCarthy, on November 29, 2010. Commissioner Cheryl LaFleur, members of our staffs, and members of Ms. McCarthy’s staff were also present. I also participated in a panel discussion that included Ms. McCarthy at the National Association of Regulatory Utility Commissioners (NARUC) Winter Meeting on February 14, 2011. Ms. McCarthy and I also participated in a panel discussion at an Energy Bar Association conference on May 4, 2011.

*Question 2.* What, if anything, in the exchanges you described in question 1 serves as the basis for your statement at the Technical Conference on November 30, 2011, that you are “sufficiently satisfied that the reliability of the electric grid can be adequately maintained as compliance with EPA regulations is achieved”?

*Answer.* My statement that I am sufficiently satisfied that we can protect reliability while achieving compliance with EPA regulations was based primarily on my review of reports prepared on the subject, comments and written testimony filed prior to the technical conference, and discussions with industry participants. However, in my exchanges with Ms. McCarthy, I have emphasized the need for EPA to consider reliability impacts not just with respect to the air regulations under her responsibility, but also with respect to new water quality regulations. In our exchanges, Ms. McCarthy has assured me that EPA understands the critical importance of electric reliability to the economy and to the health and welfare of the public, and that EPA will take reliability into account as it crafts regulations impacting the power sector.

*Question 3.* On March 20, 2012, EPA’s Assistant Administrator for Air and Radiation, Gina McCarthy, testified before the Senate Subcommittee on Clean Air and Nuclear Safety that EPA had not conducted an assessment of the cumulative impact of all of EPA’s regulations, including proposed regulations that have not yet been made final. a. Given that EPA has not conducted an assessment of the cumulative impact of its regulations, please explain the basis for your conclusion that you are satisfied that the cumulative impact of these regulations will not affect electric reliability? b. Given that EPA has not performed an assessment of the cumulative impact, will you advocate that the FERC provide such an assessment? c. Do you believe that EPA should issue any additional final rules affecting the power sector, including the pending coal ash and water intake structure regulations and proposals for greenhouse gas new source performance standards, before a an analysis of the cumulative impact on electric reliability is completed?

*Answer.* Based on the available information that I have reviewed to date on EPA’s proposed and final regulations, I am sufficiently satisfied that the overall reliability of the electric grid can be adequately maintained as compliance with EPA’s regulations is achieved. However, given the importance of a reliable electric grid to our economy and the safety of our citizens and the number of variable factors and competing choices that impact grid reliability, I do not believe that we can ever claim 100 percent satisfaction that any of the numerous factors impacting the public and private entities engaged in our electric system will not at some time impact reliability. With EPA having finalized some of its proposed rules, and as it finalizes other proposed rules or refines final rules, generation owners are making their own business decisions based on their own individual circumstances as to whether to

continue to operate. As those business decisions are made, any potential local reliability concerns that result can be adequately studied and addressed using the tools available to industry and regulators. It is key that we remain vigilant in monitoring grid reliability as generation owners make their business decisions, and that we have appropriate tools available to address reliability concerns if and when they arise. As evidenced by assumptions in a number of prior studies that have proved to be inaccurate, it is difficult to do a cumulative impact study until EPA regulations are final. However, I have encouraged EPA to consider the cumulative impact of their regulations.

I base these views first on the extensive analyses that have been performed to date by a wide variety of entities to attempt to assess the reliability impact of EPA's proposed and final regulations. While the results of these studies have varied greatly, given that they employed widely varying assumptions regarding the ultimate requirements EPA would adopt, the costs of compliance, and the relative economics of different types of generation, none of the studies are unreasonable. Each of them provides key data points for consideration as we monitor the overall impact on grid reliability. These kinds of studies are continuing to be performed, and I will continue to monitor their results.

Second, to the extent reliability concerns are identified as generation owners make their business decisions regarding continued operation, I believe there are numerous tools available to manage electric reliability as compliance with EPA's regulations is achieved. FERC, state public utility commissions, and EPA all have important tools that can be utilized. FERC's tools include its oversight of competitive wholesale power markets and the local and regional planning processes developed pursuant to Order Nos. 890 and 1000. State public utility commission tools include their primary oversight of generation, and of Integrated Resource Planning processes and other measures to ensure that their utilities are adequately planning to meet environmental requirements. EPA's tools include existing flexibility under the Clean Air Act and Clean Water Act to extend compliance timeframes where necessary. EPA has already utilized this flexibility in its final MATS Rule, which allows a fourth year for compliance, and also establishes an Administrative Order process to allow units needed for reliability to continue to operate for a fifth year. In that process, EPA will seek input on reliability issues from FERC, NERC, planning authorities and state commissions. We recently received public comments on a staff white paper addressing ways in which FERC can advise EPA in this process, and I am currently reviewing those comments and considering how we can best provide our expertise to EPA and other stakeholders as compliance with the MATS Rule moves forward.

*Question 4.* I am concerned that the FERC under Chairman Wellinghoff has underestimated the cumulative impact of EPA's new and proposed regulations on electric reliability. If President Obama wins a second term and you are confirmed, it is not unreasonable to assume that you would have a strong chance to become the next Chairman of the FERC. As Chairman, what would you do differently to assess the impact of EPA's regulations on electric reliability?

Answer. The Commission has significant expertise in electric reliability matters that I believe can be a valuable resource to entities across the federal government, including EPA. It is important to continually emphasize and strengthen dialogue and communication regarding reliability matters such as the impact of EPA regulations, so that our resources can be effectively utilized, and I would advocate for even more dialogue and communication between agencies on these issues.

*Question 5.* On March 20, 2011, Cass Sunstein, Administrator of the Office of Information and Regulatory Affairs of the Office of Management and Budget, issued a "Memorandum for the Heads of Executive Departments and Agencies." It states that "[c]onsistent with Executive Order 13563, and to the extent permitted by law, agencies should take active steps to take account of the cumulative effects of new and existing rules." Should the FERC insist that EPA undertake an assessment of the cumulative impact of its existing and new power sector regulations in order to ensure that there is no impact to electric reliability?

Answer. As I noted in response to question 4, the Commission has significant expertise in electric reliability matters that I believe can be a valuable resource to entities across the federal government, including EPA. I support strengthened communication and dialogue with EPA as it analyzes the impacts of its regulations on the power sector, and will assist in any way that I can. I have emphasized the importance of considering the impact of all rules to EPA in the past, and will continue to do so.

## RESPONSES OF JOHN R. NORRIS TO QUESTIONS FROM SENATOR CORKER

*Question 1.* As you may know, last year I introduced S. 400, a bill sponsored by 7 other Senators, including Senators Murkowski and Wyden of this Committee. Its premise is similar to language in an amendment this committee adopted with respect to the 2009 energy bill. Simply put, the bill amends the Federal Power Act to state that electric consumers cannot be charged for the cost of new transmission facilities unless they are “reasonably proportionate to measurable economic or reliability benefits.” To me, that seems completely consistent with the Federal Power Act’s existing requirement that electricity rates must be “just and reasonable.” Do you agree or disagree with the language of S. 400, and why?

Answer. As I stated at last week’s hearing, uncertainty about cost allocation has been perhaps the largest barrier to the development of needed transmission facilities. I have two concerns about a requirement that costs of new transmission facilities be allocated only based on a demonstration that those costs are “reasonably proportionate to measurable economic or reliability benefits.”

First, a limitation to “economic or reliability benefits” may exclude important benefits associated with new transmission facilities. I believe that Order No. 1000 appropriately requires transmission planning regions to develop a cost allocation method that accounts for the benefits associated with new transmission facilities that are selected to address regional transmission needs in a cost-effective manner. Importantly, Order No. 1000 provides flexibility to each region in determining how to consider transmission needs and how to account for benefits associated with transmission facilities built to meet those needs. Order No. 1000 also states clearly that those who do not benefit from transmission facilities will not pay for them.

Second, I am concerned that a requirement that benefits be “measurable” may contribute to confusion and litigation that would impede needed transmission development. If “measurable” is read as requiring a degree of quantification, then the term arguably is redundant with the requirement that costs and benefits be “reasonably proportionate.” Moreover, “measurable” suggests the benefits can be measured with exacting precision, e.g., by meters or other devices, which may be difficult to apply to facilities that are not yet constructed, and may exclude certain benefits that regions, exercising the flexibility of Order No. 1000, may wish to recognize in their cost allocation methods.

*Question 2.* Order 1000 has been criticized as going beyond existing law, by assuming that transmission “benefits”—a term not defined under the Federal Power Act or in the Order itself—would be broadly enjoyed by nearly anyone who theoretically could use a new transmission line. Doesn’t this vague use of the term “benefits” go far beyond FERC’s existing authority? Shouldn’t the agency be asking Congress to consider legislation which would provide such authority—as was considered in the 2009 energy bill when my amendment was adopted?

Answer. I believe that the cost allocation requirements of Order No. 1000 are within FERC’s existing statutory authority. Court precedent makes clear that consideration of benefits must be an important part of FERC’s analysis of whether a proposed cost allocation method produces just and reasonable rates. Although FERC could have defined “benefits” more specifically in Order No. 1000, I believe that it was more appropriate to give transmission planning regions considerable flexibility in defining “benefits” in ways that reflect their respective needs and distinctive characteristics. I also believe that this approach is preferable to a one-size-fits-all mandate on this issue.

*Question 3.* With many utilities and their customers facing increased costs from the need to retrofit power pollutants with costly pollution control equipment to comply with a myriad of new EPA regulations, do you think it is fair and appropriate to add yet another burden in the form of subsidies to build new transmission to import distant renewables?

Answer. I do not support subsidies to build new transmission to import distant renewables. I share your concerns about increasing costs to consumers, and that is one reason why I support Order No. 1000. Specifically, Order No. 1000 provides utilities, customers, and other stakeholders, including state regulators, the opportunity to participate in a fair, open and transparent transmission planning process to make the decisions about how to cost-effectively satisfy that region’s transmission needs. Order No. 1000 also requires that public utility transmission providers identify a cost allocation method that abides by several principles, one of which is that those that receive no benefit from transmission facilities, either at present or in a likely future scenario, must not be involuntarily allocated costs of those facilities. Order No. 1000 is technology and resource neutral and does not require the building of transmission facilities to serve specific generating resources.

## RESPONSES OF JOHN R. NORRIS TO QUESTIONS FROM SENATOR CANTWELL

*Question 1.* FERC Jurisdiction over the Bonneville Power Administration—The Federal Energy Regulatory Commission recently issued an order under Section 211A of the 2005 Energy Bill asserting that actions by the Bonneville Power Administration (BPA) were discriminatory in its dealing with over-generation of wind during periods of light electric demand. I realize that this issue is still pending for rehearing and you are therefore limited in what you can say. I do want to emphasize, however, that the scope of FERC's decision is a potentially troubling issue. BPA has sought clarification on a number of critical issues, and I strongly encourage the Commission to carefully consider this matter.

- a. If confirmed, will you respect the authority and jurisdiction that Congress granted and has historically been provided to BPA under the Federal Power Act?
- b. Please provide specific examples of any role, authority, or jurisdiction the FERC has or should have over the decision making of the Bonneville Power Administration.

Answer. I respect the authority and jurisdiction that Congress has granted and carefully consider the merits of all matters that come before the Commission including the Iberdrola Resources, Inc. v. BPA matter. However, as you note in your question, that matter is currently pending before the Commission on rehearing, and it would be inappropriate for me to comment on the substance of this matter as I might be required to rule on it. Generally, I would note that Federal Power Act section 211A is a tool that Congress gave FERC to protect open access to transmission service. However, I believe it is a tool that should be utilized only in rare instances, and I do not believe that FERC should use that statute or any other authority to regulate non-public utilities like BPA on a day-to-day basis.

*Question 2.* Section 5 of the Natural Gas Act—Section 206 of the Federal Power Act has refund protection for complainants while Section 5 of the Natural Gas Act (NGA) does not. Every sitting FERC Commissioner (as well as recently departed Commissioner Spitzer) has indicated at various times that Section 5 should be amended to provide natural gas consumers with the same refund protection as electric consumers.

- a. Do you agree that natural gas consumers should be afforded retroactive refund protection in cases where a pipeline has been shown to have charged unjust and unreasonable rates?
- b. Can you think of any credible policy justification to not undertaking this reform to Section 5 of the Natural Gas Act?

Answer. I support affording natural gas consumers retroactive refund protection under section 5 of the Natural Gas Act, similar to the protection provided to electricity consumers under section 206 of the Federal Power Act.

## RESPONSES OF JOHN R. NORRIS TO QUESTIONS FROM SENATOR LANDRIEU

## JOINT OWNERSHIP

*Question 1.* The implementation of policies to broaden the ownership of the transmission grid to all load serving entities in certain areas through Joint Ownership appears to have had a positive impact on the development of a robust electric grid by promoting more comprehensive planning, reducing permitting disputes, engaging more advocates and facilitating more effective integrated resource planning. In Vermont, this has also lowered the cost to ratepayers of building new transmission.

The Commission has, on several occasions, expressed strong support for Joint Ownership of transmission. Other than expressions of support and encouragement, has the Commission taken or ordered any action to actively promote Joint Ownership? If not, why not?

Answer. I agree that Joint Ownership of transmission facilities can have a number of benefits, including those you noted. The Commission, in Order No. 1000, took action that may help promote Joint Ownership of transmission facilities. Order No. 1000 requires that public utility transmission providers have a regional transmission planning process that is open, transparent, aligns transmission planning and cost allocation, and produces a regional transmission plan. These measures may have the effect of promoting cooperation and participation among a range of investors and thus promoting Joint Ownership of transmission facilities. In addition, the Notice of Inquiry (NOI) on Promoting Transmission Investment Through Pricing Reform (RM11-26), raised the question of whether the Commission's approach to incentives has adequately reflected the benefits of Joint Ownership and whether there

are other approaches to providing incentives that would encourage Joint Ownership of transmission facilities. Some commenters addressed this issue in their comments on the NOI, and the Commission is considering next steps in that docket.

#### COST ALLOCATION

*Question 2.* Cost allocation is one of the most difficult issues facing the development of new transmission. One proposal contemplated in this committee is to require all costs be allocated based on “measurable benefits”. I understand the FERC has weighed in with concerns regarding this approach. What are the concerns that a “measurable” standard might create in attempting to build new transmission?

Answer. I am concerned that a requirement that costs of new transmission facilities be allocated based only on “measurable” benefits may contribute to confusion and litigation that would impede needed transmission infrastructure development. For example, in the context of such a requirement, if “measurable” is read as requiring a measurement by meters or other devices, it may exclude certain determinable benefits that regions might prefer to recognize. I would note that under Order No. 1000, each transmission planning region has significant flexibility to define the benefits of transmission facilities in ways that account for the region’s needs and distinctive characteristics.

#### INCENTIVE RATES (SENT TO SEN. SHAHEEN)

*Question 3.* I am very concerned that FERC implementation of its incentive rates authority has resulted in consumers, including consumers in New Hampshire, paying more than necessary to get needed transmission built. I was encouraged by the May 2011 Notice of Inquiry that FERC initiated last year, and as you know, 11 of my Senate colleagues and I sent a letter commending FERC for this action and urging that the Commission consider changes to its incentive rates policies to make them more performance-based and better focused on determining whether incentives are needed to overcome specific risks.

I also note that on March 5, 2012 a coalition of state utility commissions; attorneys general; national and regional consumer advocates, environmental groups and NGOs; and others filed joint comments on the NOI, asking FERC to modify its incentive policies in several specific ways.

Where is FERC in terms of reviewing the comments it received and what can we expect to see from the Commission in terms of changes in its incentives policy?

Answer. The Commission has received more than 1,500 pages of comprehensive and helpful comments with respect to our Notice of Inquiry on incentives. We are currently reviewing those comments, and I am hopeful that we will move to the next step in this process soon. I believe that it is crucial that the Commission enumerate a clear policy that appropriately balances the Congressional mandate to provide incentive rate treatments for the construction of needed transmission projects with the interests of consumers who will pay for those projects.