

# CLEMENTS AND CHRISTIE NOMINATIONS

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## HEARING BEFORE THE COMMITTEE ON ENERGY AND NATURAL RESOURCES UNITED STATES SENATE

ONE HUNDRED SIXTEENTH CONGRESS

SECOND SESSION

TO

CONSIDER THE NOMINATIONS OF ALLISON CLEMENTS TO BE A MEMBER OF THE FEDERAL ENERGY REGULATORY COMMISSION AND MARK C. CHRISTIE TO BE A MEMBER OF THE FEDERAL ENERGY REGULATORY COMMISSION

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SEPTEMBER 16, 2020

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## CLEMENTS AND CHRISTIE NOMINATIONS

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WEDNESDAY, SEPTEMBER 16, 2020

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. Lisa Murkowski, Chairman of the Committee, presiding.

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

The CHAIRMAN. Good morning, everyone. The Committee will come to order. We are here today to consider the nominations of Judge Mark Christie and Ms. Allison Clements to be members of the Federal Energy Regulatory Commission (FERC). I want to welcome both nominees to the Committee this morning. I appreciate you both being here in person, and I truly appreciate your willingness to serve our country on such a consequential Commission.

I also want to express my appreciation that we are here at all today with, again, a set of bipartisan nominees before us. Back in 2016 as I was ending my first term as Chairman of this Committee, I was not able to hold this same type of a hearing despite having an open Republican seat and then two open Republican seats by roughly the same point in that year. The previous Administration chose not to send us any nominations, and I can assure those who are listening that it was not for lack of qualified or confirmable candidates. No time to go further into the reasons why or shedding any light on that but, whatever it was, we started 2017 with a three-member Commission. We quickly lost one member to resignation and then we had to wait months before we could restore a working quorum. In the meantime, the FERC was in a situation where they were simply not able to do their job—a job that is important and critical to all Americans.

So hearings like this are a good opportunity to reiterate that decisions that the FERC Commissioners make do matter. They matter not only to the energy sector but to the nation as a whole. I would point people to the Commission's website. The Commission lists a baker's dozen of its duties, and to highlight just six jobs that help determine energy security in the real world, FERC: approves the siting of interstate national gas pipelines; regulates transmission and wholesale sales of electricity; licenses and inspects hydro projects; regulates the transmission and sale of natural gas for resale; monitors and investigates energy markets; and protects

the reliability of high voltage interstate transmission systems. That is less than half of its jobs.

Several years ago, the Congressional Research Service, CRS, estimated FERC's economic reach at roughly three percent of GDP, but the Commission's real impact is likely greater because energy is a fundamental input. Given FERC's many powers, every hearing on the nomination of a FERC Commissioner is critical. Today we are able to consider nominees for two of FERC's five seats, so we have a pair before us—one nominee from the President's party and one from the other party. Although pairs are not the historical norm, I do appreciate the President's willingness to nominate individuals to fill both open seats at the Commission. I also appreciate that the two candidates before us today are clearly experts in their field. I have often said that my distinct preference is for FERC to have a full complement of five Commissioners.

Again, the job is considerable. Look at the situation in California with the electric reliability risks that I have warned about for years now. Our reality is that we need our FERC to take on the heavy tasks in front of them. We currently have three confirmed members serving on FERC. I am hoping the nominees before us today will show that they merit confirmation and allow us to restore five members at the Commission before the end of this Congress.

Our first nominee, Mark Christie, is the Chairman of the State Corporation Commission of Virginia. Judge Christie has been elected by the Virginia Legislature on a bipartisan basis three separate times since 2004. He is one of the nation's longest serving state regulators.

Our second nominee, Allison Clements, led the Sustainable FERC Project for more than half of her eight years serving as a lawyer for the National Resources Defense Council. More recently, Ms. Clements founded goodgrid LLC—an energy policy and strategy consulting firm. She spent two years as Director of the Energy Markets Program at the Energy Foundation.

I view these as consequential nominations because FERC, again, is at the center of the energy transition that we are witnessing today. In addition to grappling with a large case docket and its reliability mission, FERC is examining issues such as incentives for cybersecurity investments and potential mechanisms for pricing carbon and wholesale electricity markets. If confirmed, these nominees will serve over the next several critical years. While I am hopeful that a full slate of Commissioners will be able to deliberate and resolve complex, challenging issues to enable a more reliable, resilient, affordable, and clean energy sector throughout that period, I also want to make sure that we choose the right people for this very important role.

As with all of our nomination hearings, we will allow members to ask their questions of both nominees today. You will note that we are, once again, operating in a hybrid manner. We will have some members who will come to the Committee in person, others virtually. I will be here as long as I can to facilitate that. I will acknowledge that we have a series of votes beginning at 11:30, but we can work through that.

Recognizing that we also have a subcommittee hearing this afternoon, questions for the record will be due at the close of business tomorrow.

Senator Manchin, I will now turn to you for your opening remarks, then we will swear in the witnesses and allow them to introduce any family members who may be here in person or watching virtually.

Before I turn to you though, Senator Manchin, I want to welcome back to the Committee Pat McCormick, who has been with the Committee for many years. Pat took a brief detour and is now back with us. This is his first hearing and, given his expertise out in the private sector and what he has been working on here in the Committee, it is very opportune that we have this FERC confirmation hearing before us. So I welcome Pat back.

With that, I turn to you, Senator Manchin, for your comments.

**STATEMENT OF HON. JOE MANCHIN III,  
U.S. SENATOR FROM WEST VIRGINIA**

Senator MANCHIN. Well, thank you, Madam Chairman, for convening today's hearing on the nominations of Ms. Clements and Judge Christie to be members of the Federal Energy Regulatory Commission. I want to thank both of our nominees for being here with us this morning and being willing to serve. Given today's toxic atmosphere, it is sometimes hard to get the best, but we did get the best in you two.

I am very pleased to have both of you, a Democrat and a Republican, before the Committee. That is the way it really should be to get a five-member Commission back. First, because I think it is critical that we fill these two vacancies in the Commission and return it to a fully seated FERC. And second, because I think both of these nominees, and I have told you this before, are most qualified and will do a great job. The Federal Energy Regulatory Commission is meant to be a five-member Commission. It has been for the last ninety years. This is because Congress has always recognized that the important issues of hydro-electric development, reliability of the nation's electric grid, natural gas pipeline construction, and wholesale gas and electric rates are best left to an independent, non-partisan body of experts who can determine policy through discussion and deliberation. Even in 1977 when Congress established the Department of Energy and put most energy functions in the hands of the Secretary of Energy, it wisely insisted that the regulatory and ratemaking authorities of the former Federal Power Commission remain in the hands of a five-member Commission. Collectively, five Commissioners will always bring to the table more wisdom, more knowledge, more life experience and more diverse views than the wisest, most knowledgeable, most experienced energy czar we could ever find.

FERC functions best when it has a full complement of five members. We have seen what happens when the Commission can't act because it doesn't have a quorum. With Commissioner McNamee's departure two weeks ago, the Commission is now down to a bare minimum of three members. I hope that following our hearing today we can act quickly to get both of these nominees confirmed quickly.

When Congress established FERC in 1977, it was very clear on the sort of person it wanted on the Commission. It wrote into the statute that Commissioners were to be individuals who by demonstrated ability, background, training, or experience are specially qualified to assess fairly the needs and concerns of all interests affected by federal energy policy. I think the two nominees before us clearly meet that test.

Ms. Clements has spent her entire professional career working on energy issues, first as an associate in a law firm representing utilities and independent power producers like Southern Company and Dominion, then as the head of the Sustainable FERC Projects at the Natural Resources Defense Council. She then founded and served as President of a consulting firm focused on energy policy before joining the Energy Foundation as the Director of Clean Energy Markets and most recently transitioning to a consulting role. This is not her first time before the panel. She testified before us in 2018 in a hearing examining the performance of the electric power system during winter weather events. Her knowledge and commitment to pragmatic bipartisan and consensus solutions is demonstrated by her service as a member of a National Academy of Sciences committee that produced a report on enhancing the resilience of the nation's electrical system. Similarly, Ms. Clements co-chaired a broad stakeholder group to identify policies to support a modern and reliable U.S. electric grid published by the Bipartisan Policy Center. In sum, she has represented utilities, independent power producers, developers, lenders, non-profits, and philanthropies. As President Trump noted when he announced his intent to nominate Ms. Clements, "she will bring the Commission over two decades of experience dealing with federal energy regulatory policy, energy markets and electric grid issues."

Judge Christie has been a member of the Virginia State Corporation Commission for the past 16 years. He has been elected to that important post, three times, by bipartisan votes of both Houses of the Virginia General Assembly. He is also a native West Virginian from Bluefield, West Virginia, and served our country in the United States Marine Corps, which makes him very qualified. Judge Christie will bring to FERC the important perspective of the state utility regulator which it has lacked since Robert Powelson stepped down two years ago.

I am pleased that the President has kept with longstanding tradition and sent us a balanced, bipartisan pairing. I was highly impressed by both of these well-qualified nominees and our conversations ahead of this hearing, and I look forward to our questions and answers. Thank you both, again, for being with us here today to continue the conversation. I look forward to meeting your families also.

Thank you, Chairman Murkowski.

The CHAIRMAN. Thank you, Senator Manchin.

At this time the rules of the Committee which apply to all nominees require that they be sworn in in connection with their testimony. I ask that you both rise and raise your right hand.

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

[Both witnesses answer, yes.]

You may both be seated.

Before you begin your statements, I will ask you three questions. I have asked these to each nominee who appears before the Committee.

First, will you be available to appear before this Committee and other Congressional committees to represent departmental positions and respond to issues of concern to the Congress?

Mr. CHRISTIE. Yes.

Ms. CLEMENTS. Yes.

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

Mr. CHRISTIE. No.

Ms. CLEMENTS. Chairman, my investments, personal holdings and other interests have been reviewed by both myself and appropriate ethics counselors within the Federal Government, and I received a guidance letter based on that review. I have taken appropriate action to avoid any conflicts of interest. Incorporating the guidance in that letter, there are no conflicts of interest or appearances thereof, to my knowledge.

The CHAIRMAN. Are you involved or do you have any assets held in blind trust?

Mr. CHRISTIE. No.

Ms. CLEMENTS. No.

The CHAIRMAN. Very good.

With that, Judge Christie, you may proceed with any introductory remarks you may want to provide the Committee, introduce any family members, but the floor is yours and then we will proceed to Ms. Clements.

**STATEMENT OF HON. MARK C. CHRISTIE, NOMINATED TO BE  
A MEMBER OF THE FEDERAL ENERGY REGULATORY COM-  
MISSION**

Mr. CHRISTIE. Okay, well, good morning and thank you, Chair Murkowski, Ranking Member Manchin, other members of the Committee, Senator Heinrich, here today. Thank you for this opportunity to be considered for the Federal Energy Regulatory Commission. It is an honor to be here. I also want to thank the President of the United States for providing me this opportunity to continue serving the public on a national level as I have done for many years at the state level.

Thanking the many people who have helped me reach this point would take far too much time, but I want to thank some very important ones. And first, I want to thank my wife, Anita, who is here with me. Anita is my best friend and life partner in all ways. Next, I want to thank my fellow Commissioners on the Virginia State Corporation Commission (SCC) and all the staff of the Virginia SCC who have served with me since I joined in 2004. When my nomination was announced, I said to our staff that I did not regard this nomination as a personal recognition, but rather, a recognition of the national stature and national respect earned by the Virginia State Corporation Commission over its many years of de-

fending the public interest. Lastly, I want to thank my fellow state commissioners around the country with whom I have interacted through organizations such as NARUC and the organization of PJM states. From my peer regulators I have learned that among the states there are many commonalities, but also, that each state is unique and has different needs and approaches. I have always agreed with Justice Brandeis who said that, "States are the laboratories of democracy and should be respected as such."

For more than 16 years I have served as a state utilities regulator. That record is public, and I am proud of it. In Virginia our legislature elects members of our commission, and I've been honored to be elected three times, each time on a bipartisan basis. The Virginia SCC is an independent, non-partisan commission, so I know from experience how important independence is to making good decisions in the public interest. FERC is also independent. And if you honor me with confirmation, I will absolutely respect and defend that independence at the federal level as I have done at the state level.

Finally, I would like to describe briefly what I believe are the major roles of a regulatory agency based on my experience, both as a practitioner and as a teacher of regulation. An agency such as FERC has three essential roles, as I see it. First is what I would call the statutory role and that is to follow the law in each and every case. FERC has only the authority that has been delegated to it by you, the Congress. Statutes often contain language that is sometimes very specific and at other times much broader. So where the law does give discretion, my belief is that an agency should be deeply sensitive to the impacts of its decisions on consumers. As a state regulator I'm intensely aware that while FERC does not regulate retail rates, what FERC does affects retail rates and with millions of Americans struggling to pay their bills, FERC should always be sensitive to cost to consumers as it fulfills its duties. The second role of a regulatory agency is to inform and advise. FERC has a tremendous amount of special expertise that can inform and advise legislators and policymakers about policy choices when asked. The third role of a regulatory agency is a duty to inform the public of the true costs and benefits of public policies. The public has a right to know the realistic costs that it will be forced to pay and the realistic benefits that it can expect of policies within that area, that agency's area of expertise.

Again, thank you for this honor, and I look forward to your questions.

[The prepared statement of Mr. Christie follows:]

**OPENING STATEMENT of MARK C. CHRISTIE**  
**Chairman**  
**Virginia State Corporation Commission**  
**Nominee for Federal Energy Regulation Commission**  
**Senate Energy and Natural Resources Committee**  
**United States Senate**  
**Washington, DC**  
**September 16, 2020**

Chairman Murkowski, Ranking Member Manchin, members of the Committee, thank you for this opportunity to be considered for the Federal Energy Regulatory Commission. It is an honor to be here.

I also want to thank the President of the United States for providing me this opportunity to continue serving the public on a national level as I have done for many years at the state level.

Thanking the many people who have helped me reach this point would take far too much time, but I would like to thank some very important ones.

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Finally, I would like to describe briefly what I believe are the major roles of a regulatory agency, based on my experience both as a practitioner and as a teacher of regulation.

An agency such as FERC has three essential roles:

First, is what I would call the *statutory* role. And that is to follow the law in each and every case. FERC has only the authority that has been delegated to it by Congress.

Statutes often contain language that is sometimes very specific and at other times much broader. So where the law does give discretion, my belief is that an agency should be deeply sensitive to the impacts of its decisions on consumers. As a state regulator, I am intensely aware that while FERC does not regulate retail rates what FERC does *affects* retail rates. And with millions of Americans struggling to pay their bills, FERC should always be sensitive to costs to consumers as it fulfills its duty to ensure the reliable power supply that is essential to modern life and jobs for Americans.

The second role of a regulatory agency is to *inform and advise*. FERC has a tremendous amount of special expertise that can inform and advise legislators and policy-makers about policy choices when asked.

The third role of a regulatory agency is a duty to *inform the public* of the true costs and benefits of public policies. The public has a right to know the realistic costs that it will be forced to pay -- and the realistic benefits it can expect -- of policies within that agency's area of expertise.

Again, thank you for this honor and I look forward to your questions.



The CHAIRMAN. Judge Christie, thank you, and we welcome you to the Committee, Anita, as well.

At this time, we will turn to Allison Clements. Welcome.

**STATEMENT OF ALLISON CLEMENTS, NOMINATED TO BE A MEMBER OF THE FEDERAL ENERGY REGULATORY COMMISSION**

Ms. CLEMENTS. Thank you, Chairman.

Thank you, Chairman Murkowski, Ranking Member Manchin and members of the Committee. I am honored to appear this morning as a nominee to serve on the Federal Energy Regulatory Commission.

I will start with thanks to Minority Leader Schumer and his staff for recommending me for this nomination. Thank you also to President Trump for giving me the nomination and this opportunity, and thank you to Senator Manchin and his staff for supporting me throughout the nomination process thus far.

All things are different in light of the Coronavirus pandemic, including our ability to share these important moments with family and friends. So I thank my husband, Ray, who is here with me today and our daughters, Amelia and Claire, who are watching from home. Their support in this process makes it possible and worthwhile. I'd also like to recognize and thank my parents, Bob and Jean Clements, who are watching from Dayton, Ohio, and my siblings, David, Andrea and Janet and their families. In addition to providing unwavering support, during their 56-year marriage, my parents have demonstrated the value of hard work and dedication: My father, by climbing the ranks of General Motors over his 30-year career there and my mother as a teacher, stay-at-home mom, and then Master's Degree graduate which led to her tenured role as a Greene County Extension Agent for Ohio State University. Finally, I'd like to thank my mother-in-law, Peggy Henger, Ana and Jorge Vidal, and colleagues and good friends in Washington, Salt Lake City, and beyond, who have supported my family and me through this journey.

Some people have asked me why in such partisan and divided times I would want to take on this role. Thinking of my daughters at home, getting ready for their virtual classes today, my answer is easy, I firmly believe in public service as a high calling and I'm honored for the opportunity to serve our great country. I have tremendous respect for FERC and its role as an independent bipartisan Commission. I've developed this perspective across different roles throughout my career in the energy sector. Each of these experiences has shaped the approach I would take if having the honor of confirmed as a Commissioner.

First, representing utilities at a law firm opened my eyes to the magnitude of administrative compliance that is complying with the U.S. regulatory energy landscape maze. The role also provided me with my first encounter with the lesson affirmed over and over throughout my career: precision and integrity are critical for success in the practice of law.

Second, as an attorney representing borrowers and lenders to infrastructure project financings, I became attuned to the powerful impact that one policy change can have on a deal worth hundreds

of millions of dollars as well as the related high bar for regulatory certainty that capital markets expect as a precursor to investment. I learned to appreciate the intention, and attention, that should support any regulatory change as the impacts can be far-reaching.

Third, I'm better known for my time representing clean energy interests, a time during which I learned many things, the role deepened my expertise in electric grid operations by providing opportunities to serve as co-chair of a Bipartisan Policy Center committee on grid modernization and grid policy as well as on a National Academy of Sciences committee focused on grid resilience. There, I had the honor of working with some of the country's most eminent grid-focused engineers on how to ensure system resilience and reliability. This role also taught me to appreciate the boundaries of FERC's jurisdiction as an economic, technology neutral and reliability regulator.

Finally, this work made clear that FERC regulation does not exist in a vacuum. Individuals and communities, and in the end all of us as consumers, are affected by FERC's decisions. While the issues are sometimes technical and arcane, we must not forget that ultimately the Commission exists to serve the public interest.

If I have the honor of being confirmed, I will also bring the professional values I have employed and honed across all of these experiences. These values include a commitment to keep an open mind and to learn from and work with FERC's impressive staff, my fellow Commissioners, and sector stakeholders on the important issues facing the Commission today.

I thank you for this opportunity to appear before the Committee, and I look forward to answering your questions.

[The prepared statement of Ms. Clements follows:]

Statement of Allison Clements  
Nominee to the Federal Energy Regulatory Commission  
U.S. Senate Committee on Energy and Natural Resources  
September 16, 2020

Thank you Chairman Murkowski, Ranking Member Manchin, and members of the Committee. I am honored to appear this morning as a nominee to serve as on the Federal Energy Regulatory Commission (FERC).

I will start with thanks to Minority Leader Schumer and his staff for recommending me for this nomination. Thank you also to President Trump for the nomination and this opportunity. And, thank you to Senator Manchin and his staff for supporting me throughout the nomination process thus far.

All things are different in light of the coronavirus pandemic, including our ability to share important moments with our families and friends. So, I thank my husband Ray, who is here, and our daughters Amelia and Claire, who are streaming this hearing from home today. Their support in this process makes it possible and worthwhile. I'd also like to recognize and thank my parents, Bob and Jean Clements, who are watching from Dayton, Ohio, and my siblings David, Andrea, and Janet, and their families. In addition to providing unwavering support, over their 56-year marriage my parents have demonstrated the value of hard work and dedication: My father by climbing the ranks at General Motors over his 30-year career there and my mother as a teacher, stay-at-home mom, and then master's degree graduate, which led to her tenured role as a Greene County Extension Agent for The Ohio State University. Finally, I'd like to thank my mother-in-law Peggy Henger, Ana and Jorge Vidal, and colleagues and good friends here in Washington, Salt Lake City, and beyond, who have supported my family and me on this journey.

Some people have asked me why in such divided and partisan times I would want to take on this role. Thinking of my daughters at home getting ready for virtual classes today, my response is easy: I firmly believe in public service as a high calling. I am honored by the opportunity to serve our great country.

I have tremendous respect for FERC and its role as an independent, bipartisan commission. I have developed this perspective across different roles throughout my career in the energy sector. Each of these experiences has shaped the approach I would take as a Commissioner if confirmed to FERC.

1. First, representing large utilities at a law firm opened my eyes to the magnitude of administrative compliance that regulated entities face across the maze that is the U.S. energy regulatory landscape. The role also provided my first encounter with a lesson affirmed repeatedly throughout my career: Precision and integrity are critical for success in the practice of law.

2. Second, as an attorney representing borrowers and lenders to infrastructure project financings, I became attuned to the powerful impact that one policy change can have on a deal worth hundreds of millions of dollars, and the related high bar for regulatory certainty that capital markets expect as a precursor to investment. I learned to appreciate the intention, and attention, that should support any regulatory change because the ripple effects can be far-reaching.
  
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If I have the honor of being confirmed, I will also bring the professional values I have employed and honed across all of these experiences. These values include a commitment to keep an open mind and to learn from and work with FERC's impressive staff, my fellow commissioners, and sector stakeholders on the important issues facing the Commission today.

I thank you for this opportunity to appear before the Committee, and I look forward to answering your questions.

The CHAIRMAN. Thank you, Ms. Clements. We appreciate that, and we welcome you to the Committee, and your husband Ray, and for acknowledging the family and the supports that allow both of you to be before us today for consideration.

I am going to begin this first round of questions with questions that will be directed to both of you. They are pretty general, but I think that they go so much to the heart of the FERC. And Judge Christie, you used the words very clearly, that FERC is an independent agency. I think we all acknowledge that. We acknowledge that FERC must function as an impartial, economic regulator, not as an agency responsible for implementing the administration's policy decisions. So both of you have been involved in other matters prior to this, what assurances can you give the Committee that you will be independent, impartial as regulators and can you provide some specific examples where you have shown just that? We recognize that personal philosophy or opinions regarding energy policy influence your actions. We understand that, but what I would like to hear, and I think what is important for other members of the Committee, is to note your assurances on independence and impartiality in this important regulatory agency.

Judge Christie, we will begin with you, and then we will turn to Ms. Clements.

Mr. CHRISTIE. Well, thank you, Chairman, for that question. Independence is extremely important. The example I would offer is I spent 16 years on an independent commission. The Virginia State Corporation Commission is actually instituted by the Constitution of Virginia, and it is both statutorily, constitutionally, and by culture of Virginia, independent. And so, for 16 years I've made independent decisions based on the law and the facts and without political influence. One of the great things about the Virginia State Corporation Commission, it is, it's non-partisan and so the decisions are made based on law and facts, and I've had a 16-year record of doing that.

So, I can assure you that FERC is also independent and I believe very strongly in independence, and I think decisions ought to be made based on the law and the facts and not without, not with political influence.

The CHAIRMAN. Thank you.

Ms. Clements.

Ms. CLEMENTS. Thank you, Chairman, and I would suggest that your leadership of this Committee is a great example for a way to demonstrate bipartisanship and collaboration and so, I appreciate that.

The role of the Commission is as an economic independent regulator, pursuant to the Federal Power Act and the Natural Gas Act which provides authority for the Commission to act at all. I have had the honor of engaging with many FERC Commissioners over the last 20 years, who have been models of that independence and I would commit to following in their footsteps. I think my time representing varied interests brings a set of perspectives that allows me to understand where people are coming from. And so, when I go to the statutes that empower the Commission to act, I can take that law and apply it to the facts, in each case, and they will always be different and specific, to the best of my ability.

The CHAIRMAN. So, again, to both of you, I have mentioned that you are both considered energy experts. You have significant background here. This necessarily means that you or institutions that you have represented have litigated before or even against the FERC which brings up the matter of recusal and we recognize that you have both executed ethics agreements, perhaps haven't had an in-depth review with FERC's designated agency office, ethics officer, but what I would ask is assurance from both of you that you will recuse yourself as necessary from cases in which you were involved in your prior roles and then beyond that, following the guidance of FERC's DAEO, what will your approach to recusals be? Is there any specific matter that you have already identified that will require your recusal?

Again, Judge Christie.

Mr. CHRISTIE. Yes, thank you, Chairman.

I've gone through the process with the Office of Government Ethics and also with the FERC DAEO, and I can pledge yes to your Committee policy. I know that was attached to the questionnaire. You asked us to affirmatively sign a pledge following the ethics policy at FERC, and I can certainly pledge to do that. And I understand when you, if we get honored with being confirmed, that one of the first things we do is we sit down for a more extensive review with the FERC designated ethics office/officer and I can pledge to you to work with that DAEO anytime the issue of recusal might come up and to follow the guidance that I receive.

The CHAIRMAN. Thank you, Judge.

Ms. Clements.

Ms. CLEMENTS. Thank you. I take the ethic obligation, ethical obligations to which I would be subject as a FERC Commissioner, if confirmed, very seriously as part of integrity in the commitment of the role. I, too, have met with the Designated Agency Ethics Official (DAEO) and if confirmed would be subject to not only the guidance that's been provided by the DAEO in coordination with the Office of Government Ethics, but also to this Committee's ethics responsibility as well as the President's pledge, and certainly I would also make one of my first stops at the Commission to the Office of General Counsel to figure out the immediate next steps on that front.

The CHAIRMAN. Thank you, both.

Senator Manchin.

Senator MANCHIN. Thank you, Madam Chairman. Thank you both, again, and your families for the support they give you to do the job for the people and I appreciate that. Let me just say a word about these extreme weather conditions that we are having and the challenge of ensuring the reliability of the power grid that is demanded and people need. My youngest daughter just moved to Houston, Texas, with her husband because of his job relocation. I spent a little bit of time there as the last hurricane came up through Lake Charles, Louisiana, and they were affected. It was a beautiful day; six hours with no power. They had no idea, no explanation. We called this and that. And we watch what is happening in Florida and in California. So the reliability of the grid, and I have always said, people want reliable, dependable, and affordable

energy and they have been receiving that for quite some time, but now, it is a little bit sparse and they are concerned.

So I would ask both of you, on the reliability of the grid system, is that based on cost or based on the energy that we are able to supply to make sure that the people have dependable power—how do you all look at that from the FERC's evaluation?

Judge Christie, you might want to start.

Mr. CHRISTIE. Thank you, Senator, and that is a huge issue—reliability. Americans expect electric power on a 24/7/365 basis. They don't want hours or days where there's no power. So that's what Americans expect. It's essential to modern life. As a regulator, you're very sensitive to that and so reliability is one of your most important duties, and reliability in America is both, largely at the state level because it is the states that approve generating plants. FERC's role, of course, is to regulate the RTOs and for those states that are in RTOs FERC has a very large role in ensuring that those RTOs are doing their job to make sure that the transmission planning and the generating planning is being done properly and making sure that that reliability is a 24/7/365 deliverable and, in fact, does happen.

Senator MANCHIN. Allison?

Ms. CLEMENTS. Thank you, Senator Manchin, and thanks again for the chance to be here today.

I think the reliability authority that FERC has under Section 215 of the Federal Power Act is obviously critical and whether or not the risk to reliability comes from the kind of weather events that you're describing or from the risk of a cyberattack, which I know this Committee has spent a lot of time focusing on, that risk is real and important. I spent a year on a National Academy of Sciences committee thinking about how to ensure resilience of the system in those types of events and there's always a tradeoff. There's a tradeoff, as Chairman Christie has mentioned, between cost and reliability benefits. And so, the question is in order to ensure that FERC is meeting its obligations and protecting U.S. citizens going forward, what are the right, most efficient, effective investments that the system needs to make on a going forward basis to protect customers to provide that reliable, affordable power?

Senator MANCHIN. Energy markets are changing, as you know, and electric demand and everyone is taking a side. Is it going to be renewables or is it going to be fossil or a mix of all-of-the-above? Do you pick winners and losers in the energy mix? I don't think that is FERC's responsibility. FERC's responsibility is ensuring dependable, reliable and affordable power. But on that, right now we are having a hard time siting pipelines. West Virginia has an ocean of energy underneath our feet as far as the Marcellus/Utica shale and now that Rogersville is coming on, but we can't seem to get it out because the Atlantic Coast pipeline has been shut down, as you know, and the people in the South are demanding it. They need it in South Carolina, especially.

So my question would be to both of you, FERC plays an important permitting role. Without asking you to discuss any project that might come before you, I would like to hear both of your views on pipelines and permitting of pipelines, and on the necessity and

need for pipelines. Because of energy demands, if they don't get pipelines, no alternative energy is going to be dependable.

So whoever wants to comment on that.

Mr. CHRISTIE. I'll let you go first.

Ms. CLEMENTS. Thank you.

Mr. CHRISTIE. Likewise.

Ms. CLEMENTS. Thank you, Senator.

Absolutely, the Commission's role is not to pick winners and losers when it comes to fuel choices. The Commission's role is to ensure just and reasonable rates and to protect reliability in light of the resource mix and as it evolves over time. I think under—you raise the issue of gas infrastructure and gas is a critical component of today's diverse electricity system. It made up 38 percent of generation across the country in 2019. When it comes to approving natural gas pipelines, the Commission's responsibility comes under next, excuse me, Section 7 of the Natural Gas Act and under that section the Commission must consider whether or not a proposed pipeline is necessary for the present or future public convenience and necessity. Each time there is an application for a pipeline, there is a complex record of facts, both from the applicant's perspective and from the perspective of landowners who might be implicated by that pipeline. If confirmed, I would commit to going into each of those proceedings with an open mind and reviewing the specific facts of that case to apply Section 7 in each instance.

Mr. CHRISTIE. Yeah, and thank you, Senator, for that question.

I agree with Allison, in an infrastructure case you have to first look at the need. That's the most important thing. I've sat on a lot of infrastructure cases in my 16 years. I've sat on transmission line cases. I've sat on generating plant cases. I've sat on some pipeline cases that were intrastate to Virginia. FERC, of course, does the interstate pipelines. And the most important thing when you approach an infrastructure case is first and foremost you look at the record and the facts are different in each case. So you have to pay careful attention to the record because if eminent domain is going to be used, that's going to take somebody's property and you have to be very sensitive to that. So need has to be proven by the facts.

And then, of course, you apply the law to the facts. And just like Allison just said, once you get, if we're honored to get to FERC, I would approach every case in the same way she indicated which is you sit down with an application, each application has a very detailed, factual record. Need has to be proven. And then you, of course, want to make sure that the cost is reasonable because, again, we have to be very sensitive to what it's going to cost, but also being sensitive to the fact that eminent domain is going to be used in these cases. So I can pledge to you, based on a record of doing so for 16 years, that I approach every infrastructure case based on that record, applying the law to that record and then coming to a fair and unbiased decision.

Senator MANCHIN. Thank you, both.

Madam Chairman.

The CHAIRMAN. Senator Cassidy.

Senator CASSIDY. Hello to you both. Thank you for offering yourselves for service. Ms. Clements, I am from Louisiana. I want to



say, Clémont, but Ms. Clements, I agree with your attitude regarding public service. So thank you both for your public service.

My staff tells me that FERC will be convening a technical conference later this month on carbon pricing and organized wholesale electricity markets. Among the topics to be discussed will be the Commission's statutory authority to implement carbon pricing in the RTO/ISO markets. A question to you both, what do you believe is FERC's role in implementing a carbon tax?

Ms. CLEMENTS. Thank you, Senator Cassidy, and I'll just take a moment to recognize the leadership that you're demonstrating as your citizens in Louisiana are still reeling from the last hurricane that happened there.

Several stakeholders across the energy sector have proposed a price on carbon, or a carbon tax, as an efficient means to address and put value on carbon-free power production. I think the role of FERC, the question that you ask, in that case is to provide an open forum on this emerging issue to allow stakeholders to be heard, the economists and the legal experts, about whether or not FERC has a role to play on that front. I certainly commend Chairman Chatterjee for his decision to hold a technical conference at the end of this month. And because that technical conference is on the calendar, I don't want to risk prejudging anything that might be said there or any comments that might be provided in writing on the record following that conference. So, if confirmed, I would certainly commit to reviewing in detail the record that comes forward there and to understand the perspectives that the various stakeholders have on both the legal jurisdiction and the economic efficiency.

Senator CASSIDY. Mr. Christie.

Mr. CHRISTIE. Thank you, Senator Cassidy, for the question.

I'm aware that FERC is going to have a technical conference to air out those issues. The question about whether FERC has the legal authority to order a carbon price or a carbon tax in RTOs is a legal question that I certainly haven't come to a conclusion on, and I think it's an open question. That's why they're having the technical conference. So what I can pledge to you is, if I'm honored to get to FERC, if a question such as that arises, I approach it with an open mind. And it's really a question of legal analysis and coming to a conclusion on what the law allows FERC to do. I don't have any prejudged opinion on that as to the specific issue of the carbon price.

Senator CASSIDY. Ms. Clements, thank you for your sympathy for my fate, I appreciate it. We are still recovering, so thank you for that.

I may just not have heard your answer correctly, but in your answer to Senator Manchin regarding FERC favoring one source of energy over another I think you said, particularly as regards pipelines, so let me ask you this. In 2014, you wrote that, and I am quoting, "FERC can't pick winners or losers. FERC's authority under the Federal Power Act is not allowed to prefer any one type of power resource over another. In fact, the law requires just the opposite. FERC's job is to level the playing field so that all types of generating resources can duke it out in the marketplace." And so, kind of, you were positing a question that appeared—and then you were, kind of, disagreeing with the question you posited but

that also seems a little incompatible with your answer with Senator Manchin unless I didn't hear correctly. So I would just like to ask you to clarify.

Ms. CLEMENTS. Sure, Senator, thank you for the question.

Absolutely, it is the Commission's job under the Federal Power Act to ensure just and reasonable rates and avoid undue discrimination. That means that the Commission does not have the authority to prefer any type of resource, any type of fuel source when it comes to the question of ensuring just and reasonable rates.

Senator CASSIDY. Okay, now that is, it seems that it is a very specific answer as regards just and reasonable rates. Would there be another reason for the Commission to favor one resource over another?

Ms. CLEMENTS. Thank you, Senator.

Former Commissioner Phil Moeller once said the Commission has to be technology neutral but it cannot be reliability neutral. And so under the Commission's Section 215 authority for ensuring the grid's reliability, I think the important question for the Commission to ask and it does have an open docket on resilience going on and so, I wouldn't want to prejudge anything there. The important question for the Commission to ask is does the grid have the right services to provide reliability along with the electrons that flow across transmission lines? And in that case, there might be individual characteristics of different kinds of resources that bring benefits to the system. It's FERC's job both to ensure that we have the right set of reliability services for the grid as well as to allow resources to compete to provide them on a non-discriminatory basis.

Senator CASSIDY. Okay, thank you both, again, for offering yourselves for service. I yield back.

The CHAIRMAN. Thank you, Senator Cassidy.

Senator Wyden.

Senator WYDEN. Thank you very much, Madam Chair, and Madam Chair, thank you very much for that gracious text you sent me over the weekend about our fires. I would like to make an appeal, Madam Chair. Before I ask my questions with respect to the nominees, could I take, perhaps, three minutes to just touch on this forestry question and make an appeal to the Committee? I can do it in three minutes.

The CHAIRMAN. Go ahead, Senator. We recognize that this is a pretty extraordinary time in your state and in several of the others.

Senator WYDEN. I think it is an extraordinary time for our country and our Committee. I saw neighborhoods that were reduced to ash this weekend. The streets had cars that were melted. You can only imagine how hot it gets to melt a car. I think, Madam Chair, this is a watershed moment for our Committee as well with respect to forest policy. We have done some very good work, and you and I have worked together in the past. Particularly, we ended this ridiculous practice of fire borrowing that discriminated against prevention. There were other good changes in the Farm bill.

But the fact is that forestry policy in the Congress has not been quick enough. It has not been nimble enough to deal with these incredibly fast-moving fires. I mean, they just rampage through the West, and I would just make an appeal to my colleagues in this

special request I made to say that we have been at these decisions for a long time. We know the facts, we know the issues, and what we have to do is find a way, like we did with fire borrowing, to work in a bipartisan way, make sure that we don't let these third rails of fire policy get in the way and make some big decisions now that are going to meet the needs of our people. This Committee is the leading Committee with respect to fire. I will be reaching out to all of you here quickly. Senator Manchin and I already have a bill reflecting some of the most important new science, but I think we have some heavy lifting to do, colleagues. This is a watershed moment for our Committee and our country in terms of fire policy, and we are going to have to go with good science and go with it quickly.

Thank you, Madam Chair. I will begin my five minutes.

The CHAIRMAN. Senator, if I can just interrupt—

Senator WYDEN. Please.

The CHAIRMAN. —on that and just thank you for your comments. I think we do recognize that when it comes to wildfires and the impact, particularly in the West right now, but it is a threat throughout the country. We do have more work to do as a Committee. We recognize that we have made some significant progress. I look at my friend and colleague from Washington there. We have made advancements and certainly what we have been working on with the fire borrowing policy has made a difference from a resource allocation perspective, but we know we have more to do. We have a subcommittee hearing on public lands that Senator Lee is going to be chairing this afternoon that will have a bipartisan measure, but I think there is plenty of room to be doing more, so we look forward to engaging individually and as a Committee on these matters.

If you now wish to proceed with your questions to our nominees please do so, but thank you for that.

Senator WYDEN. Thank you, and I appreciated the consideration over the weekend, Madam Chair, and you are absolutely right, we can do this in the tradition that the Committee has worked in the past.

Question for you, Ms. Clements. We have been dealing with Jordan Cove and it has been before FERC for quite some time. There is enormous opposition in my home state to eminent domain and particularly threatening people's property without due process. Right now, we don't allow eminent domain to export other commodities. Now I am just asking you from a policy standpoint, do you think the government should allow eminent domain when you are talking about the export of natural gas?

Ms. CLEMENTS. Thank you, Senator Wyden, for the question and I, too, think of the people in your state. It's hard to fathom from where we sit here in Washington, DC, all that you all and people across the West are experiencing right now.

When it comes to Jordan Cove and the export of liquified natural gas, it's important to think about what the Commission's role is in that process. Congress has determined that the U.S. Department of Energy should be the agency that determines whether or not there is a benefit to actually exporting the gas itself, whether or not that is in the public interest. The Commission's role under Sec-

tion 3 of the Natural Gas Act is then to approve simply the facility for the export if the facts merit that approval because the facility is not contrary to the public interest. On the pipeline question itself, when the pipeline is deemed to be under Section 7 of the Natural Gas Act then eminent domain rights attach. Obviously, as Chairman Christie mentioned earlier, eminent domain is a real, a really big deal with real life impacts for property owners who are implicated. And so, if confirmed to the Commission, I would never go into any Section 7 proceeding lightly, but look very specifically at the facts of the case and the potential impacts.

Senator WYDEN. Let me ask you a question with respect to climate science and your responsibilities at FERC. And you know, part of the reason I made that comment earlier and I was appreciative of Chair Murkowski for being able to do it, is that clearly, we have to let science drive so many of these major decisions. I happen to believe that good forest science is good climate science, and I think as we look at these issues, part of the task for all nominees in resource agencies is to look at how they can affect climate policy in the most constructive way.

In your view, and you and I talked about this, how can FERC best utilize climate science when deciding whether pipelines and natural gas plants are in the public's interest?

Ms. CLEMENTS. Thank you, Senator Wyden. I think science and all facts should drive the Commission's application of the law in all circumstances, and I would certainly commit to that approach if confirmed. When it comes to how climate science interacts with the Commission's authority, as you know, the Commission is not a direct climate regulator, but one place where the science will be very important is thinking about the Commission's reliability responsibility under Section 215. It's incumbent upon the Commission to ensure that the system has the supply it needs to meet demand as well as the ongoing reliability, operating reliability of the system, in light of the best predictions and the best analysis about what the future weather patterns, what type of extreme weather events and natural disasters the country might be facing going forward.

Senator WYDEN. Well, I appreciate your comment about applying sound climate science in your work at FERC. I would also note apropos of this whole issue, FERC does have authority to consider environmental impacts. In an April 28 decision, FERC said that, as part of a notice of inquiry, that it had to look at environmental issues surrounding pipelines. So I think that you and all other nominees that come before us in FERC have to be willing, almost, to put a prism up in front of them and say, how can I use my work consistent with the rules and statutes of FERC to do the best job of dealing with climate science because good climate science is going to affect everything that we do in our country? I happen to think good forest science is good climate science apropos what I said earlier, I think good climate science has got to be part of the work of FERC.

Madam Chair, again, thank you for the extra time.

The CHAIRMAN. Thank you, Senator Wyden.

Senator Lee.

Senator LEE. Thanks to both of you for your willingness to be considered for these important positions and for being here today.

We will start with you, Mr. Christie. You have been, over the last 16 years as I recall, a regulator in Virginia. I believe you go by the title of Judge there. You don't wear a robe, but they call you Judge from time to time. Some have described you as a textualist, meaning that you have undertaken your role in Virginia as being to apply the law, to read the law based on what it says, rather than on the basis of what you might wish it said. Is that an approach that you take and is that something that you would bring to the table as a FERC Commissioner, if confirmed?

Mr. CHRISTIE. Yes, Senator, and they call us Judge unless they got a bad result and then they call us something else but—

[Laughter.]

My approach is you have to follow the law and you start with the plain meaning. In Virginia the rule is the plain meaning is what the law, is what the legislative intent is, is if the laws, if the text is plain then you follow that. I think it's important, very important to follow it because if we don't have the rule of law you don't really have a democratic society. And so, I believe it's extremely important to follow the rule of law. And in any case when I approach a case, you start with the law and then you take the facts that are in the record.

And Ms. Clements mentioned earlier that each case has a different factual record, and that's important to understand. They're not cookie cutter cases, especially infrastructure cases. It might be a transmission line one day. It might be a generating plant the next day. It might be a gas pipeline the next day. And so, it might be a DSM case the next day. In all those cases you have a different factual record. And I just believe very strongly you have to look at the entire factual record of a case and then apply the law. And let's remember where the law came from. At the state level, the law came from our elected legislators. At the federal level, it's going to come from you, the elected Members of the Congress. So, that's why it's important, I think, for an administrative body, such as the FERC, to follow the law that you, the Congress, wrote. You're the ones who are elected and that's what I've done for 16 years in Virginia is follow the law that's been enacted by our elected legislators in the General Assembly.

Senator LEE. Thank you.

Ms. Clements, I would like to talk to you for a minute. Let's talk about this concept of reasonable foreseeability. You are a lawyer by training. Do you remember first-year Torts class, what is often discussed as the Wagon Mound and Palsgraf line of cases? How does that standard relate to the tort standard? In other words, how does the tort standard relate to the concept of reasonable foreseeability in the context of FERC?

Ms. CLEMENTS. Thanks, Senator, for the question.

I certainly enjoyed the chance to speak with you about your home state and my adopted state for the last few years. So, appreciate that.

I would not claim to be an expert on torts law nor was it my favorite class in my first year of law school. I certainly can speak to the requirements under the Natural Gas Act and NEPA when it comes to consideration of reasonably foreseeable impacts. As Chairman Christie just said, each record is fact specific and the require-

ment as a FERC Commissioner would be to apply the law under NEPA which was recently interpreted by the DC Circuit said that at least in some substantive circumstances, for example, greenhouse gas (GHG) emissions downstream are reasonably foreseeable impacts and that would be something that would get incorporated into a NEPA analysis. But in each case I would have to look at the record to do my best job of applying that standard.

Senator LEE. But you are aware of no reason why it couldn't be? Is that what you are saying? Why that could not be incorporated into NEPA analysis?

Ms. CLEMENTS. I, without, kind of, getting into the unknown, sir, I would suggest that there is a reasonably foreseeable standard and there's courts interpreting it and as a FERC Commissioner my job would be to look at those, that precedent as well as existing FERC policy and apply it in each certification proceeding.

Senator LEE. In one of your previous careers, one of your previous places of employment, you worked on the Sustainable FERC Project. The Sustainable FERC Project website contains a statement with the following words, "FERC reviews critical questions like pipeline need and a project's carbon emissions through a restrictive and incomplete lens." Do you agree with that statement and, if so, what could you and would you do as a Commissioner to change that lens while remaining fair and unbiased to applicants?

Ms. CLEMENTS. Sure, thanks, Senator.

I left the FERC Project in 2015 and didn't work on Natural Gas Act issues. During my time there I was more focused on the Federal Power Act side of the ledger. Certainly, my role would be, in an instance that a certification proceeding came before me, would be to review the record and to look at the way that FERC has, per the law and per its policy, reviewed need and I would follow that as my guide.

Senator LEE. Madam Chair, I see that my time has expired. I have one other question I would like to ask, if that is okay?

The CHAIRMAN. That is okay.

Senator LEE. Thank you.

In a couple of your previous positions both with NRDC and with the Energy Foundation, a skeptic could argue that you have identified particular winners and losers within the energy industry. Tell me how your role would change if you were a member of FERC, if you were a FERC Commissioner. Would that be appropriate and would people be able to look to you as a FERC Commissioner as someone who is neutral and objective and not in this to pick winners or losers?

Ms. CLEMENTS. Thank you, Senator Lee. That's a fair question.

I have represented a varied set of interests across my time in the energy sector and in each instance I have upheld my own oath, ethical oath, to protect and advocate for their interests to the best of my ability. When I would turn to the role of the FERC which is different, is an independent commission as defined in the U.S. Department of Energy Organization Act that Senator Manchin, that Senator Manchin mentioned, excuse me, the requirements for being a Commissioner are that you can fairly represent and hear all interests that come before you in any given record. If I had the honor of being confirmed, that would be my approach.

Senator LEE. Thank you.

Thank you, Madam Chair.

Ms. CLEMENTS. Thank you, sir.

The CHAIRMAN. Thank you, Senator Lee.

Senator Cantwell.

Senator CANTWELL. Thank you, Madam Chair, and I would like to echo the comments of my colleague, Senator Wyden, about fire that this Committee, obviously, has had so much of an oversight role and you and Senator Manchin, I hope, will continue to help us in this very critical time for our states. We have had lots of comments here about the impact of COVID that we asked the fire chief and many others about what we were going to do with the impact of COVID, and we are clearly seeing an impact. We are seeing it affect our firefighters and our ability to fight these fires. So I hope that in the coming days we will be able to think creatively about getting more resources for fighting fires, helping with FEMA, discussions we have had in the past about helping rural communities. Also, Madam Chair, I think this Committee could play a very key role in the future discussions now that we have seen what this fire season looks like this year, how much we want to accelerate the work that was previously done in giving new tools and resources to monitor and reduce fuel. I think we need to take this as a very important learning lesson and move forward. So thank you for your concerns and expressing your interest in this important issue.

I want to thank you and the Ranking Member for having this hearing on FERC nominees. This has been a long process and a long battle, so thank you for trying to get a full FERC. This is such an important oversight and the Commissioners and their hard work and professional staffs have a lot cut out for them in today's environment because of, obviously, hundreds of billions of dollars that are invested in diversifying and decarbonization. I think this discussion this morning is very interesting about a price on carbon which I don't see the FERC being able to do, but on the other hand, there were people who were pushing FERC to basically say, put a tax on the American consumer by mandating that coal be the only reliable source. I mean, that is a very wrong-headed price by the FERC, in my opinion.

So I think you guys, we are counting on you to make independent, science-based decisions that favor consumers, and I am pleased to see that we have two qualified nominees before us. There is a very big bright line for me though and FERC being a policeman on the beat and that is making sure that there are not market distortions, that there are not market manipulations or anti-competitive. Last year I sent a letter with our colleagues, Senators Wyden and King and several other Senators, expressing concerns that seem to indicate that the FERC Office of Enforcement may not be acting as vigilantly as in the past. And so in my opinion we have had deregulated markets, but you better have a policeman on the beat that is enforcing just and reasonable rates. And as FERC Commissioners, I hope you will be fully committed to stopping and punishing manipulative acts that can stifle competition and result in unjust and unreasonable rates.

So I want to ask both of you, do you believe that energy markets can be competitive and produce just and reasonable rates if they are not free from market manipulation or other forms of fraud?

Mr. CHRISTIE. Well, thank you, Senator, for that question. That's a very important issue. And let me just also say up front, I just, two days ago, had a long conversation with a state regulator from your State of Washington, who told me about the fires. He had just driven from Spokane to Seattle where he lives and he was telling me how terrible it is. So my sympathy goes out for what you're going through right now.

Market manipulation is an extremely big threat to the trust that people have in these markets. And so, one thing we have to understand about these RTO markets, these wholesale markets, they're not true markets, they are regulatory constructs. We want competitive results from these regulatory constructs and getting those competitive results is the challenge. And there's, of course, a threat of market manipulation. I can pledge to you that, if I'm honored to go to FERC, to make sure that FERC uses all the tools in the tool box against market manipulation.

I know Washington and Oregon are both considering whether maybe, someday, they might go into an RTO with California and have capacity markets. I can tell you from my experience in PJM; I've lived in PJM world for the last 16 years. It is absolutely essential that you have an independent market monitor in these RTO capacity markets and that we've had a lot of experience in PJM with the need for an independent market monitor. We have an outstanding Market Monitor in PJM, Dr. Bowring, and to get competitive results, you need constant market monitoring to ensure that you're not having manipulation.

So I can promise you, if I'm honored to get to FERC, to be very sensitive about ensuring that FERC is, uses all the tools in its tool box and that these RTOs are having independent market monitoring.

Senator CANTWELL. My time is out——

Mr. CHRISTIE. I'm sorry.

Senator CANTWELL. ——so including penalties and return to consumers?

Mr. CHRISTIE. Well, I can't speak to individual remedies for individual cases because each one of these cases has an individual remedy and so, I don't want to speak to that. I'm saying I pledge that FERC should use all the tools that it's got available to it to act against market manipulation.

Senator CANTWELL. Serious, no market manipulation tools, Ms. Clements?

Ms. CLEMENTS. Yes, ma'am, very serious.

Senator CANTWELL. Thank you.

The CHAIRMAN. Thank you, Senator, and know again the commitment is to ensure that we are working together on these matters related to your state.

Senator Gardner, you are next up in the rotation. Welcome.

Senator GARDNER. Thank you, Madam Chair, and thank you to both of the nominees today for your willingness to serve. We greatly appreciate your commitment to public service.



Judge Christie, a quick question for you. The FERC mission ensures that rates, terms, and conditions are just, reasonable, and not unduly discriminatory or preferential. What does just and reasonable mean to you?

Mr. CHRISTIE. I think just and reasonable means I use the constitutional standard from Bluefield Water Works, a very famous case in utility law and that is it's fair to the producer and it's reasonable to the consumer. And I think what we have to look at in every case is making sure that that standard is met. I'm personally an advocate of least, trying to achieve the least cost to consumers based on the facts and the record. And I think that's one of the FERC's most important jobs. I think the Federal Power Act is ensuring just and reasonable rates is about protecting the consumer from paying rates that are above what I would call a market price. And of course, if you're in a cost to service regulation stance, there's a long formula that goes into that, but I think FERC's job is very important at making sure those rates are reasonable to the consumer.

Senator GARDNER. Ms. Clements, if you could answer the same question. What does a just and reasonable rate mean to you and that determination, how is it made?

Ms. CLEMENTS. Thank you, Senator Gardner.

The Federal Power Act at its core, is a consumer protection statute. And so, when it comes to considering just and reasonable rates, there needs to be fair rates and competition needs to be encouraged as is possible. And that is the core starting point for which I would approach any specific set of facts.

Senator GARDNER. In that determination, just and reasonable, do you take into account calculations on environmental issues, environmental justice issues or social justice issues?

Ms. CLEMENTS. I think that, thank you, sir. I mean, not directly. I think that the question of, there is always a tradeoff between an investment and a cost and the system is, in large part, the electricity system, in particular, is outdated and needs modernization.

Senator GARDNER. So, in part—

Ms. CLEMENTS. When it comes to—

Senator GARDNER. So sorry, continue, I am sorry.

Ms. CLEMENTS. Under the just and reasonable standard, that is not the place where a lot of the concerns which are real and do get considered in records on environmental justice on impact to communities come into play.

Senator GARDNER. But so, you said, not directly, but in your mind environmental justice could go into the consideration of just and reasonable rates, is that correct?

Ms. CLEMENTS. I would consider that, that consideration, sir, to the best of my knowledge right now, as a nominee who hasn't gone into any specific record coming into play when we're talking about specific approvals of infrastructure whether that be an interstate pipeline, an LNG facility, or a hydropower relicensing. That's the place where under NEPA, environmental considerations come into play directly under the law.

Senator GARDNER. But just to get down a little bit further on just and reasonable rates, you do not take that into consideration on rates?

Ms. CLEMENTS. At the risk—I'd be happy to go back, sir, and look at the record, look at the way that that has played out under various aspects of the Federal Power Act. That is not something that I have familiarity with. Certainly, I understand the issues, the real issues that you raise when it comes to impact to communities and other environmental concerns, I would need to look more closely to see if there's a place in the just and reasonable analysis for those issues to be considered.

Senator GARDNER. From I think 2008 to 2016, you worked for the Natural Resources Defense Council (NRDC). Can you name a major issue that you disagreed with the NRDC on?

Ms. CLEMENTS. Sure. I think that, well, I don't actually know where NRDC stands on the issue today, but I think that the existing nuclear fleet plays an important role in providing carbon-free, reliable power to the system. That's a place where many of my very well-studied and smart colleagues might disagree with me. That's one place.

Senator GARDNER. Could you name another perhaps?

Ms. CLEMENTS. You know, the NRDC was an organization of over 600 people when I worked there, all of whom were my respected colleagues, many of whom are my friends, and I'm sure we disagreed on a lot of issues. What I focused on was the Federal Power Act and the ways that the Congress has authorized the Commission to ensure the affordable, reliable delivery of electricity regardless of what's happening in the world around the Commission. And so, that's the role that I would be committed to if confirmed to this role.

Senator GARDNER. On natural gas production, the fossil fuel production, did you disagree with the NRDC on anything?

Ms. CLEMENTS. You know, I'm sure many of our colleagues disagreed on many issues related to natural gas and fossil fuels. It was not an issue that I engaged in when I was at National Resources Defense Council or spent a lot of time engaging with colleagues on at that time.

Senator GARDNER. But you can't name anything that you disagreed with them on when it comes to their fossil fuels agenda?

Ms. CLEMENTS. I honestly couldn't articulate the fossil fuels agenda for the organization right now. I've represented interests across the board as a project finance attorney and I represented the purchasers of six gas plants, three peakers and three non-peakers and, you know, did my best in that transaction to make sure that they got a fair deal in all of the contracts that they were engaging with. And so, that's the approach that I would take if confirmed to the Commission.

Senator GARDNER. All right, thank you. Thank you both for your time today, thank you. Madam Chair, thank you.

The CHAIRMAN. Thank you, Senator Gardner.

Senator Heinrich.

Senator HEINRICH. Judge Christie, you quoted Justice Brandeis that, "States are the laboratories of democracy and should be respected as such." However, a couple weeks ago, FERC voted to block proposed market changes by New York's grid operator that were aimed at aligning their markets with the state statutory policy goals. By law, New York has to receive 70 percent of its power

from clean sources by 2030, 100 percent by 2040. In a not dissimilar case, last year FERC issued an order that completely upended how state-backed, clean energy resources could compete in capacity markets run by the PJM Interconnection. Does FERC have a responsibility to respect these state statutes or should FERC feel empowered to effectively overrule state statutes?

Mr. CHRISTIE. Well, thank you, Senator. I'm aware of both of those cases. I want to note that in the, I think the second case you referenced, which is commonly called the MOPR case—

Senator HEINRICH. Right.

Mr. CHRISTIE. —Virginia, my Commission filed comments in that case and we were, we asked that the final MOPR make sure that states that were vertically integrated in their utilities were doing self-supply would be exempted from the MOPR. So we took a position in that which I agree with. In the New York ISO case, I'm aware of that result too. What I want to avoid prejudging is on issues beyond what we took a position on in Virginia which is we wanted vertically integrated states to be exempt. I believe very strongly that every state has the, should have the authority, it does have the authority, to make its own generating decisions, resource decisions and, of course, many states, certainly in your part of the country, the Southwest, have not gone into RTOs. And so, it's totally up to state regulators what they do in terms of what their resource mix is.

The cases you referenced are when states choose to go into an RTO and those RTOs are regulated by FERC. And the conundrum, or the challenge I could put it, is, and I'm a big believer in states' authorities to pick their own resource mix and not to get in the way of that. I think the question in a lot of these cases, and I'm not prejudging anything, is if the state is offloading costs of some of its policies onto consumers and other states, then what is—then FERC has a role because certainly you're dealing with interstate commerce. And so, but from the general principle, I think, states ought to have the—well, they already do, and I would respect that—have the authority to make their own resource decisions.

Senator HEINRICH. Okay.

I think we all agree with another statement you made that first and foremost we follow the law. One of you said that. That is sort of where we start in all of these cases. But there are cases where there is also discretion. And Judge Christie, you mentioned that when the statutes give discretion that FERC should be sensitive to its impacts on consumers.

Mr. CHRISTIE. Right.

Senator HEINRICH. I certainly agree with that prospect.

Given the enormous impacts today that we are seeing from climate change that are having on consumers that are occurring on financial markets, on property values and the impacts that climate change is actually now having on reliability as well, directly, when the statutes give discretion, should FERC consider the demonstrated climate impacts or the potential climate impacts of its decisions, especially if those impacts could be deleterious to either consumers and/or reliability?

Mr. CHRISTIE. Well, I think you take—I think Ms. Clements mentioned earlier, every matter in front of FERC is a case. It's an

individual case. It has an individual factual record and, of course, there's going to be a law applicable. And so, I think one thing you might be referencing is there's been a disagreement at FERC on a legal question about the downstream GHG emissions, what's required in an individual pipeline case. I don't want to prejudge that issue because that is a legal question about what does the law require and what is the DC Circuit opinion—commonly called the Sabal Trail Opinion—what does that DC Circuit opinion require?

So I don't want to prejudge that because that's going to be a legal question that's going to come, if I am honored to get to FERC.

Senator HEINRICH. Yes, I am more getting at should you be considering the best available science within the bounds of, obviously, what the statutes call out and, as you make these decisions when there is discretion, should you be incorporating up-to-date, scientific information?

Mr. CHRISTIE. I think you use the best available information in any case. The factual record, you want a complete factual record and I think that you go with the facts. And FERC is a primarily economic regulator. It has environmental duties. I would pledge to you to fulfill the environmental duties that FERC has, but I think in any factual record, as a regulator, I want to have the most complete factual record I can and I want to go with the facts and go with the realistic facts and take all those things into consideration.

Senator HEINRICH. Thank you, Chairman.

The CHAIRMAN. Thank you, Senator Heinrich.

Senator Hoeven.

Senator HOEVEN. Thank you, Madam Chairman.

I would like to address my first question to Mr. Christie and that is, do you support providing just and reasonable compensation for baseload generation resources and making sure that reliability and resiliency attributes are adequately compensated?

Mr. CHRISTIE. Well, as a state regulator I spent 16 years providing fair support to generating units. We've approved a lot of generating units in Virginia. But we had that discussion with you on the telephone, which I very much enjoyed and thank you for that time. There are two—states fall into, really, two categories in terms of the generating units that are being built. Many states in the Southeast, Southwest, Northwest are not in RTOs and state regulators in those states have the authority to approve any generating, approve generating plants and to compensate generating plants as that state wants to compensate it. So that's a state decision.

When a state chooses to go into an RTO or chooses to take its utilities into an RTO, then that RTO operates, most RTOs in America are operating capacity markets and those capacity markets are regulated by FERC, I mean, FERC would regulate the RTOs and the Federal Power Act is very clear that FERC cannot order an RTO to favor one generating resource over another. That's just, that's Federal Power Act, black letter law. So in those states that have chosen to go into those RTOs, FERC, it certainly regulates the reliability component and its job is to make sure that the RTOs and the ISOs are doing their planning properly to ensure reliability. But the Federal Power Act says to FERC, you cannot order

an RTO to favor one generating resource over another in those capacity markets.

Senator HOEVEN. Ms. Clements, same question.

Ms. CLEMENTS. Thank you, Senator Hoeven. I appreciate the question.

I think two proportions of the Commission's jurisdiction are implicated when it comes to the compensation for baseload power and one is under the Federal Power Act, the just and reasonable rate responsibility that Chairman Christie just mentioned, in which case, FERC has no authority to choose, to compensate a particular type of fuel source or resource over another. It does have the requirement to ensure the ability for resources to compete on a level playing field. When it comes to the Commission's reliability jurisdiction, it's important to say, to look at the system from a reliability perspective and say, does the system have the sufficient reliability services to ensure that the demand or, excuse me, supply will be sufficient to meet electricity demand on a going forward basis and how do we do that at the most, in the most cost-efficient way.

Senator HOEVEN. Mr. Christie, do you believe that the lack of fuel diversity in California has caused a big part of their problem with the rolling blackouts and brownouts they have had? And what is FERC's role in ensuring that RTOs don't have those types of blackouts and brownouts. I don't think that is what consumers want. What role should FERC play?

Mr. CHRISTIE. Senator, very good question, thank you and you're absolutely right. American consumers want a 24/7/365 power supply. They don't want to lose power for hours or days or weeks. And so, FERC's job as a regulator of RTOs is to make sure that the RTOs—and California ISO is one of those—are doing their transmission, their transmission and generating planning and they're making sure they have adequate resources.

The thing about the incident in California in August with the outages, one thing I've learned as a regulator is, I want to get all the facts before coming up with an opinion. And so, I think there's, a study is being done, an analyses being done by the California system operator, the Cal ISO. It's been well known in the utility area for years that California faces a challenge with what is known as the duck curve, that's the name for it, and that is because California has a large amount of solar and its solar ramps up during the day and demand ramps up during the day. What happens at night is, of course, the solar drops off, but the demand has stayed up there very high because of the hot weather. So the challenge that California ISO has had is trying to fill the gap between the drop-off in solar and the continuation of demand. They've been filling it with imports of electricity from other states in the West and so they've been trying to fill it, I think, with DR, demand response. But I think it's very important to get an after-action report on how California ISO has met that challenge. And of course, they didn't meet it, obviously, when the blackouts took place because that's not the standard. But I would like to see the after-action report about how that could have been handled better and FERC's role, to get back to FERC, and Ms. Clements mentioned it. FERC's role as a regulator, FERC regulates the Cal-ISO, CAISO, and so, FERC has

got to be very, very cognizant of what kind of planning is taking place and how is California planning to meet the challenge of phasing in a lot more solar, but what happens after the sun goes down and you have that gap between generation and demand?

Senator HOEVEN. And so, FERC's role is what?

Mr. CHRISTIE. FERC's role is to regulate. FERC's role regulates the California ISO. So FERC's role is to make sure that the planning that's being done. And I would note, the head of the California ISO, Mr. Berberich, said just recently that, he said he'd been warning for years about the lack of generation that was available to fill the gap, the peak time. Now Mr. Berberich also said that they'd filled it and they'd met it with some, with demand response and doing some load shedding.

FERC's role, specifically, is to ensure that these ISOs and RTOs are planning that they have the appropriate generating resources. And personally, I think that every state should have a balanced portfolio. I think a balanced portfolio generating resources is very important. There are other resources like storage and demand response that are part of that mix, but as a state regulator, I'm a big believer that each state should have a balanced portfolio so you can make sure you fill the gaps and you hit the peaks. That's the important thing is you've got to hit the peak demands when they come on. And what happened in California was they didn't hit the peak demand. They didn't have sufficient generation. And so, they had the blackouts. And FERC's job is to make sure that those things don't happen, but its direct job as a regulator is to do it by regulating these RTOs and ISOs.

Senator HOEVEN. Ms. Clements, the same question.

Ms. CLEMENTS. Thank you, Senator.

You know, the people of California are facing a lot these days. When it comes specific, when you ask specifically about the proactive safety shutoffs that happened in August, as Chairman Christie said, the investigation is still underway and the issues are likely to come before the Commission and so I wouldn't want to prejudge that.

Though the experience in California does highlight an inflection point for the Commission related to resource adequacy authority and that balance under the Federal Power Act of the role of the Commission as relates to the role of the states in ensuring reliability and just and reasonable rates.

Senator HOEVEN. So FERC does have a role in making sure that the baseload power is there and available?

Ms. CLEMENTS. FERC has a role, certainly FERC has a role in ensuring reliability under Section 215 and that requires whatever the resource mix is, if the grid system is not ensuring reliability sufficiently then FERC would, it would be incumbent upon the Commission to take a hard look at that and see what needs to be done. Certainly, if confirmed, that would be something that I would commit to doing.

Senator HOEVEN. You acknowledge California has a problem and that we don't want to have blackouts and brownouts in any of the states—correct?

Ms. CLEMENTS. Absolutely, across the country it is critical for individuals, for families, for businesses, for schools, to have access to reliable, affordable electricity.

Senator HOEVEN. Thank you. Thank you, Madam Chair.

The CHAIRMAN. Thank you, Senator Hoeven.

Senator King.

Senator KING. Thank you, Madam Chair.

First I want to thank you and Senator Manchin for pushing this process forward and thank the President for these two exceptional nominees.

I have been listening to this discussion and we have sort of been talking around an interesting issue and I don't know the answer to it, but in business we have a concept called life cycle cost where you look at the cost over a long period of time, not just at the time you write the check. It strikes me that that really gets at the heart of this discussion about environmental externalities as they fit into the rate. You can say a rate is just and reasonable but if those life cycle costs of floods, fires, excessive storm damage, if those are factored in, then that is part of whether the rate is just and reasonable, I would argue. I realize that is a big question, but I think it is worth talking about. It is, you can't just take a snapshot in time and say this is just and reasonable if that decision leads to greater costs later on that will be borne by consumers.

A couple of specific questions. Ms. Clements, the role of storage demand and demand response and distributed generation in the, sort of, mix of capacity and how you make those kinds of calculations—give me your thought, please.

Ms. CLEMENTS. Thank you, Senator King, and I've enjoyed and appreciated watching your leadership on storage issues and demand side resource issues and opportunities.

Under the Federal Power Act, it's incumbent upon FERC to ensure that its regional markets and, well, its electricity markets are open to competition, that there is not undue discrimination against any type of resource. And as we've seen over the last 10, 15 years, the storage market has really evolved. Demand side resource opportunities have evolved, smart energy efficiency has evolved, and all of these resources have the ability to provide both electricity and reliability services to the system. And so, FERC has taken some action. There are certainly actions still before the Commission on this question about how to ensure that the markets are open to opportunities for the resources like the ones that you mention. And if confirmed, that would be a priority for me to continue going forward, looking at the markets and then trying to ensure that discrimination is not taking place so that American innovation has the ability to keep growing the type of resources and others, that have resources you mention and others.

Senator KING. So those resources like storage, demand response, should be able to compete and be allowed to compete in the capacity market, is that your view?

Ms. CLEMENTS. Yes, it's—yes, sir. The FERC should not, if there are, if resources have the ability to perform technically to provide a service that the Commission has deemed worthy of compensation, then all resources with the technical characteristics that allowed it to compete should be able to compete.

Senator KING. One comment for both of you, and I discussed this with both of you previously this week.

I am very concerned about the cybersecurity of the gas pipeline system. I am concerned about the grid generally. I don't think we are as secure as we think we are, but particularly the gas pipeline system which you have, the FERC has, a role of regulating pipelines, allowing pipelines, permitting pipelines, but TSA has the responsibility of the security, cybersecurity of pipelines. I would like both of your thoughts on (a) whether you see that as a significant issue and (b) whether you believe that should be a FERC responsibility and do we need a statutory change to shift the responsibility from TSA to FERC?

Mr. CHRISTIE. Well, Senator, thank you for that question.

Cybersecurity is a huge issue and our Commission has been putting a lot of emphasis on it, working with our utilities and encouraging them on cybersecurity, and they've been doing a very good job on it. I know FERC has got an office dedicated to cybersecurity and FERC is taking it very seriously and elevating it to the importance that it deserves. Pipeline safety, specifically, I would note that we, as a state regulator, do the pipeline safety in Virginia and we do it under a contract with the federal pipeline, it's called PHMSA, the acronym for Pipeline and Hazardous Material Safety Administration, and that's worked very well. We do it through a—I guess you'd call that cooperative federalism.

As far as the role for FERC's job, FERC is to make sure that the pipelines, that cybersecurity has been elevated to a priority. It has done that.

And I think the issue about whether there needs to be additional federal legislation, I don't, I haven't formed an opinion on that, but I can promise you if I'm honored to get to FERC, that certainly will be a priority to be cognizant of and to continue working with the office and the great staff the FERC already has who are working on that cybersecurity issue.

Senator KING. Well, in New England the gas pipeline system is a de facto part of the electric grid because about 60 percent of our power comes from gas, none of which comes from the region, all of which comes via pipeline. So if there is a failure, if there is a cyberattack on the pipeline system, the grid will go down just as if there were an attack on a SCADA system in an operating plant or at the ISO.

Mr. CHRISTIE. And the question?

Senator KING. Well, I just commend that to both of your's attention. I think this is a very, very serious issue that will only increase in its significance. So not really a question, just urging you to take this issue of pipeline security, cybersecurity, very seriously as you move on to the Commission.

Thank you, both.

Mr. CHRISTIE. Well thank you and I can certainly make that pledge to take it very seriously, because it is an extremely serious issue, Senator. Thank you.

Senator KING. Thank you.

Thank you, Madam Chair.

The CHAIRMAN. Thank you, Senator King.

Senator Cortez Masto.



Senator CORTEZ MASTO. Thank you and I, too, want to thank the Chairwoman and the Ranking Member for holding this hearing, so important, and congratulations to both of you as nominees.

Let me follow up first on Senator King's questioning because cybersecurity attacks and cybersecurity are also a concern of mine. I know on July 21st of this year, FERC and the North American Electric Reliability Corporation published a cybersecurity guide for the power sector which covered four non-invasive techniques that security professionals could use to identify chips produced by foreign companies. I guess my question to both of you, because this is such a topical and timely issue and it is happening, we hear it all the time. I hear it in Nevada when I am talking to so many in this profession. Have you thought about or what could FERC be doing to ensure that both our urban and rural grids are protected? I would love to get your thoughts on that if you have any opinion around that and what you would bring to FERC to address this issue.

Let me start with Ms. Clements.

Ms. CLEMENTS. Thank you, Senator, for the important question and the chance to speak to it.

The time I spent on the National Academy of Sciences committee on grid resilience really opened my eyes to the magnitude of the cyber threat that is persistent and increasing for the United States. And I know this Committee has done a lot of good work and proposed legislation on that front. FERC worked with the North American Electric Reliability Corporation, as you mentioned, to establish a critical infrastructure protection standard for supply chain risk mitigation which is one of the, if not the most important aspect. I put it among the top of the obligations for the Commission under its Section 215 reliability authority.

As a nominee, I don't have access to the confidential information that says what should the Commission's next steps be on this issue and how is the critical infrastructure protection standard working, but certainly similar to Chairman Christie, if confirmed, I would commit to making this issue and staying vigilant going forward a priority.

Senator CORTEZ MASTO. Thank you.

Mr. Christie.

Mr. CHRISTIE. I'll just reiterate what Ms. Clements said. This is a huge issue, the threat of cyber threats to our grid, to pipelines and I can commit that if I'm honored to get to FERC to continue to put that, to give it the priority it deserves and I know and FERC has already done quite a bit on it. They have an office dedicated to it. FERC, of course, works with other federal agencies and quasi-independent agencies like NERC, the National Reliability Council. And so it's a very important issue, and I can certainly pledge to you to continue to elevate it to the priority it deserves.

Senator CORTEZ MASTO. Thank you. I appreciate your comments on that.

Let me jump back and talk about, there has been a lot of questioning about FERC's role in incorporating environmental impacts into its decision-making. Let me give you a specific example. In Nevada, we have been working against the odds and among growing threats from climate change to restore Walker Lake. It is one of

Nevada's desert terminus lakes; however, much of the concern of the tribal community and the local stakeholders there who have dedicated decades of times and resources to building back the lake's delicate ecosystem. In March of this year FERC issued a preliminary permit to a California company to study the feasibility of a 2,000 megawatt pumped storage project on the lake.

Now I understand that preliminary permits do not allow for any land disturbance activities or constructions, but they do provide the permittee a priority spot in line to file a license application should they choose to move forward. So my question to you is, when it comes to environmental impacts of infrastructure projects, where do you see FERC's role?

Mr. CHRISTIE. Well, thank you, Senator, and I'm going to assume with regard to the individual generating plant, hydro plant, that you're mentioning, that's probably still pending. I'm assuming that's pending at FERC and so, I don't want to, obviously, say anything that would prejudice that individual application.

Any application for an infrastructure project, whether it's a generating plant, pipeline, or some other sort of infrastructure project—we do transmission line siting in Virginia—has to be approached with an extensive factual record and then you apply the law to the record. And so the laws that apply are the laws of the case and the environmental aspects of that are written out in statute, and I can certainly pledge to you that if I'm honored to get to FERC that the laws that apply to a case, and they include environmental aspects like FERC's duties under NEPA, I would certainly pledge to carry out the fullest duties that FERC has, statutorily, which includes the environmental impact that NEPA requires.

Senator CORTEZ MASTO. Let me just touch on this because this is one of two permits by the same company. They have actually come and done something similar and filed a permit with the Pyramid Lake Paiute Tribe and this tribe in Nevada has filed a comment letter in Nevada opposing the project. So it is pending, and I recognize you can't talk about it, but to the extent that you are hearing from stakeholders, particularly tribal communities, who have concerns about their cultural sites and these particularly, in this case, Pyramid Lake Paiute Tribe, that water source is within their jurisdiction and key to this tribe. What could I tell them that you are going to consider from their comments, particularly as it addresses the ecosystem of their tribal concerns? I mean, are they wasting their time by filing a comment in opposition, I guess is my point?

Mr. CHRISTIE. Well, Senator, again, and thank you for the question and, obviously, I'm not going to respond about a specific case—

Senator CORTEZ MASTO. Right. I appreciate that.

Mr. CHRISTIE. —and what's going to happen or not happen. I can say this, in 16 years in Virginia we've had many infrastructure cases. A lot of them are very controversial. Siting transmission lines is usually not a non-controversial project because people don't want to look at them and so, therein, very controversial. We've had cases where we had hundreds of people come out in opposition to a transmission line. And so, what I can pledge is I'm a big believer in giving the public the fullest opportunity to comment in cases

that affect them. I'm not familiar because I've not been to FERC. I'm not a member of FERC, but with the public comment procedures that are built into FERC's procedures, I can promise you, if I'm honored to get to FERC, that I think in any infrastructure case which affects people, that the fullest public comment should be made available consistent with what the statute says and what the procedures are.

And I've got a 16-year track record of, we've had cases where we've had literally thousands of comments. And believe me, we take them, we give them the strongest consideration, but of course, at the end of the day, you have to follow the law. But it's very important to give the public that right to comment and right to give their input, and I believe that very strongly.

Senator CORTEZ MASTO. Thank you.

I know I have gone over my time. Thank you, Madam Chair, for your indulgence.

The CHAIRMAN. Thank you, Senator.

Senator Daines.

Senator DAINES. Thank you, Chair Murkowski.

Ms. Clements, Mr. Christie, thank you both for being here today. I first want to invite you both to come out to Montana and to see firsthand the issues that we are talking about here today. I believe it is important for you both to see this unique balance that Montana has been able to deliver and that is, understanding that we want to protect our way of life there in Montana and we want to continue to be able to deliver affordable, reliable energy every day.

Montana is all about balance. It is reflected in the way that we live. In fact, you can see a coal miner in Eastern Montana will also be an avid outdoorsman. During the week, they are on the job. On the weekends, we are outside either with a fishing pole in our hands, fly rod, or a rifle or a bow. A refinery worker in Great Falls who also is a member of a local wildlife conservation group. That is how we ride in Montana. We balance high-paying energy jobs with protecting our environment and promoting conservation. This is also reflected in our energy portfolio. Our state electricity generation is about half renewable and about half traditional. I was glad to see this Committee, years ago and the leadership here with Chair Murkowski helping us out, it actually made hydro defined as a renewable source of energy. Of course, only Washington, DC, would not classify hydro as being renewable and we got that fixed which I am grateful that we did. So we are about half and half, about half renewable with when you add hydro to that mix and about half with coal making up the rest, in general. To maintain this balance is critical for the high-paying jobs it provides as well as keeping the lights on and the heat running in Montana.

So I have a few questions and I will just, kind of, go back and forth here. I will just start left to right with Mr. Christie. Do you believe it is important for energy jobs and our electricity grid to have a balanced portfolio with renewables like hydro, wind, and solar and traditional fuels like coal, oil, and gas?

Mr. CHRISTIE. Well, thank you, Senator, and yes, I'd love to come to Montana. So that's the easy answer.

I do think each state should have a balanced portfolio, one that's unique to that state and one that meets that states' needs. Genera-

tion planning and generation approval, you know, generating plants are approved by state regulators and I've been one for 16 years and I think it's very important in a state that you have a balanced portfolio and one that's going to meet your needs, that's going to run the gamut from baseload that runs 24/7 and, of course, we're going through a transition in America working in wind and solar. So I think balance is important. The important thing is reliability. In states that are in RTOs have given the planning function, of course, the RTO planners are largely deciding and making decisions on, certainly on transmission planning and what transmission lines should be built to serve the generation and serve reliability. But yes, I do believe that states should have a balanced portfolio.

Senator DAINES. Thanks, Mr. Christie.

Ms. Clements.

Ms. CLEMENTS. Thank you, Senator Daines, for the question. I too—my sister and brother-in-law from Anaconda would certainly appreciate me spending more time in Montana, so I would love to take you up on the invitation. I think spending the last six years with my family in Utah has given me more of an appreciation for states in the West. And so, while I can't relate specifically to the way you describe your state, I certainly can from a neighboring state.

I think the diversity of the resource mix is a really important contribution to reliability, period. And I think that it's important that each state get to pursue their own resource mix, whatever the state policy preferences might be. And so, in both cases I see the Commission's role as, in light of those, the power that's reserved to the states under the Federal Power Act, continuing to think about just and reasonable rates and reliability in the context of each state's mix.

Senator DAINES. Yes, thank you. I will tell you right now, we can see how not to do it. California has now put all their eggs in one basket and I will tell you what, they can't deliver electricity now to their people here. So sometimes we can look at how to do it and how not to do it.

I want to do follow-up questions. As a FERC Commissioner will you make decisions based on the law and not—and you will also be fuel and technology neutral?

Mr. Christie.

Mr. CHRISTIE. Senator, that—yes.

Senator DAINES. Okay.

Ms. Clements.

Ms. CLEMENTS. Yes, sir.

Senator DAINES. Thank you.

I want to talk about the Keystone pipeline next. The Keystone XL pipeline enters Montana. In fact, it is the first state it enters when it comes from Canada down to the United States. It will provide hundreds of high-paying jobs, millions, in fact, tens of millions of tax revenues to our Eastern Montana counties which badly need it. Despite years of scientific study, lengthy permitting processes and strong local support, the pipeline still faces issues. The Keystone XL pipeline, as well as a handful of other pipelines currently being permitted in Montana, is hugely important for Eastern Mon-

tana and our rural communities. While you may not have jurisdiction over Keystone as a FERC Commissioner, you will play an important role in the approval of other interstate pipelines that have similar economic impacts on Montana. Unfortunately, we have seen too many times that are, these thoroughly researched, safe pipeline projects are canceled. They are denied after going through years of litigation. This hurts our jobs, it hurts our communities, and with that good old Montana balance, it also harms our environment.

My question is, have you in the past or do you currently have a bias against natural resource pipelines, including the Keystone XL pipeline?

Mr. Christie.

Mr. CHRISTIE. No.

Senator DAINES. Ms. Clements.

Ms. CLEMENTS. No.

Senator DAINES. As a FERC Commissioner will you look at pipeline approvals objectively?

Mr. Christie.

Mr. CHRISTIE. Yes.

Senator DAINES. Ms. Clements.

Ms. CLEMENTS. Yes.

Senator DAINES. Thank you.

My last question. FERC has spent the last couple of years streamlining and modernizing the regulations. Many of my colleagues and I worked with FERC on modernizing PURPA and other regulations. My question is, do you support FERC's recent modernization efforts, including the modernization of PURPA?

Mr. Christie.

Mr. CHRISTIE. Senator, my understanding is—thank you for the question—my understanding is there's several petitions for reconsideration pending. So that's still a live case and if I get honored to get to FERC, I'll probably find myself ruling on that, what is still a pending case. I will say that, in general, I believe that when LSEs, Load Serving Entities, are purchasing power it ought to be purchased at the least cost, subject to what the law might require. But I believe in the least cost purchasing principle.

Senator DAINES. Thanks.

Ms. Clements.

Ms. CLEMENTS. Thank you. With a similar caveat on the open case at the Commission, I do think that, to your question, it's appropriate for the Commission in all areas of its jurisdiction from time to time to review its policies when, in light of changing circumstances.

Senator DAINES. Thank you.

Last question, and I am over my time. Many of the modernization efforts put more control at the local level. Do you support having the local utility regulators have more say in local energy issues?

I will start with you, Ms. Clements, this time.

Ms. CLEMENTS. Thank you, sir.

The state—the Federal Power Act reserves to states and then substates a lot of authority under the Federal Power Act to choose its own resource mix and to engage in local control, and I'm certainly supportive of that.

Senator DAINES. Thank you.

Mr. Christie.

Mr. CHRISTIE. Thank you, Senator.

As a state regulator that is so easy to answer, yes.

[Laughter.]

Senator DAINES. All right. Well, thanks for your answers. I appreciate it.

Ms. Clements, I hope you come out and see your family in Anaconda.

Ms. CLEMENTS. Thanks.

Senator DAINES. And Mr. Christie, I hope we can get you out there as well.

Thanks for your time.

Ms. CLEMENTS. Thank you.

The CHAIRMAN. Thank you, Senator Daines.

We have a series of votes that have started, so I am going to wrap up. But before I do I have just two more quick questions, hopefully, but I think the range of questions that you have heard from Committee members is indicative of the interest and a real awareness as to the significance and the importance of the FERC and the role that Commissioners play. You spoke to that role as an independent commissioner operating as an impartial economic regulator here. I think that is, again, incredibly important to reinforce here.

We talk a lot about not picking winners and losers and you have both indicated that the FERC's role is really to focus on economic—what was it? Economic, technology neutral, regulatory agency, I think was the comment that you made, Ms. Clements. But again, the significance and the importance of recognizing that while we seek to have that balance, that it is not the FERC's role to prefer one type of power over another. You have touched on the pipeline approval process which for FERC, particularly at this time, is so key. In conversations with both of you, you have mentioned the significance and the high, high priority that we must place on cybersecurity and ensuring that our nation's energy sector is as secure as we can possibly address. Ms. Clements, you spoke to the role on carbon pricing and where we are with that technical conference ongoing.

The question that I will ask of you, Ms. Clements, when we spoke on the phone the other day and in your questionnaire to the Committee, you mentioned your service on the National Academy of Sciences (NAS) committee that produced this report, "Enhancing the Resilience of the Nation's Electric System." That was a good effort. I have been, as you know, very focused on reliability and resilience for the electricity system for years and supported the appropriations that helped lead to that NAS report, and I support the recommendations of that. Recommendation 11, which is directed to FERC in particular, urges FERC and the North American Energy Standards Board to address what they call the growing risk of independent natural gas and electric infrastructure. So the question to you is whether or not you support Recommendation 11 and give me a little bit of background on that. If not, why not, but in light of the recommendation, does it make sense for FERC to increase regulatory risk, costs, and delays for certification of new

interstate natural gas pipeline infrastructure? If you can speak to Recommendation 11.

Ms. CLEMENTS. Thank you, Senator. I'll have to go back and look to the very specifics of that recommendation and I'm not sure if I totally understand the end piece, but in terms of the risk and the criticality of the interstate pipeline system to the bulk electricity systems, reliability and resilience, the two are inextricably tied. And so, ensuring, you know, reliability across the board is an important component of the Commission's 215 reliability obligations and certainly, just in general, important. And so, I'm happy to take to the record more specific answer on the details of that recommendation, if that makes sense.

The CHAIRMAN. Well it does make sense. I mean, knowing that you were part of that committee and, again, I appreciate that. I happen to think that that recommendation is important, that we do address the risk of the interdependence of the infrastructure. I think we are seeing some of that play out in and, again, this is an area of jurisdiction for the FERC.

Ms. CLEMENTS. Thank you. I missed part of that question, but absolutely. The Commission has started to do some work on addressing interdependence issues. Commissioner LaFleur and Commissioner Moeller were leaders on that for some time, and I think there's still some work to do on that front. I certainly, if confirmed, commit to following their path forward and accessing where we are and any necessary next steps.

The CHAIRMAN. Last question for both of you. There has been much discussion about the situation in California and the impacts to reliability and those challenges. I guess I am asking you to be critical of the FERC, if you will, which may put you in a difficult position, but there are those who are trying to understand FERC's role in ensuring that we don't have these rolling blackouts that we saw in August, not only in California but in any other state. The question is, is whether you believe in this instance with what we are seeing, what we have seen in California, whether FERC should have been more aggressive in ensuring reliability in California given where we are right now?

Mr. CHRISTIE. Senator, thank you for that question.

As I mentioned in my earlier answer about the first question on the California situation, one thing I've learned over 16 years is you want to get all the facts before you come to a conclusion. And so, to say that FERC was not as cognizant as it should have been, I think, is premature to say at this point. Generating resource decisions are made at the state level. It's state regulators that make decisions to build or not build. And in California what's going to be interesting to see and important to see is how decisions in California about what to build and what not to build and what to shut down, you know, they're shutting down San Onofre, they've shut down other, a lot of gas resources, whether that was the cause, was it the lack of purchase power agreements with other generating resources across the West. They'd been importing a lot of coal-fired electricity, quite frankly, from states like Idaho and Wyoming to make up the gap, you know, that happens at night when the duck curve, what's called the duck curve, takes place.

So was FERC responsible for that? I think it's very premature to say who was responsible. Again, generating resource decisions are largely a state level decision about what to build and what to shut down. FERC's job, of course, is to be paying attention to these RTOs and making sure these RTOs and ISOs, like the California ISO, are doing their reliability planning, but even the ISO can't force a state to approve a generating plant. So I think that all has to be studied and I think it's a very interesting case study and a very important case study. And I really look forward to seeing the final results and all the facts about what led to those blackouts because blackouts are unacceptable. We don't accept blackouts in America. We want power 24/7/365 and anything less than that is not meeting the standard that we want.

The CHAIRMAN. Well, and again, that is why the FERC is so important.

I am going to conclude our hearing. We are about 30 minutes into the vote and I do not want to be disrespectful holding my colleagues with a vote that we know we have several coming on.

I want to thank you both for not only your direct questions here today, greatly appreciated. I know colleagues will be submitting questions for the record. We would ask that you try to be as prompt with your reply as possible. As I mentioned before the hearing, this is the first step in your confirmation, well, maybe the second step. You have gotten the President's nomination, we have now held this hearing, and we will figure out the next steps in terms of how we might be able to proceed to move your names through this process. But I appreciate your willingness to serve, and I appreciate your service in the past. Thank you for your attention to these very significant national issues as we focus on our energy security and resilience and reliability and affordability.

With that, the Committee stands adjourned, and we thank you very much.

[Whereupon, at 11:57 a.m. the hearing was adjourned.]



## **APPENDIX MATERIAL SUBMITTED**

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**Questions from Chairman Lisa Murkowski**

**Question 1:** Cybersecurity of our energy infrastructure has long been a top priority for the Energy and Natural Resources Committee. In our energy package, the American Energy Innovation Act, we have language directing FERC to establish incentive-based rates for utilities to make cybersecurity investments. FERC is also currently studying a potential framework for providing such incentives administratively.

- What is the most effective action FERC could take to improve the energy sector's cybersecurity posture?

**Answer:** The energy sector's cybersecurity posture can be improved by pursuing the Commission's approach to addressing evolving cybersecurity risks, which I understand involves both employing mandatory and enforceable North American Electric Reliability Corporation reliability standards to ensure foundational practices are implemented and also working collaboratively with industry, the states, and other federal agencies to identify and promote best practices.

**Question 2:** Earlier this year, Virginia enacted a state renewable portfolio standard (RPS) which aims to achieve 100 percent "carbon free" electricity by 2045.

- As Chairman of the state commission, what did you do to inform the drafting of that law, especially given the SCC's study that shows that the law will increase electricity costs substantially?

**Answer:** The Virginia SCC typically does not advocate for or against legislation on matters of policy, rather we make our professional staff available to provide technical analysis on questions such as how the legislation would operate and whether there are alternatives to achieve the same policy goals more efficiently and at lower costs to consumers. With regard to the legislation referenced in your question, our professional staff offered such technical analysis. With regard specifically to the cost impact on consumers, when the legislation was being considered, the SCC professional staff provided to both House and Senate committees of jurisdiction detailed cost estimates of what the legislation would likely cost consumers. The SCC staff estimated that for Dominion, Virginia's largest utility with more than two million residential customers, by 2030 the legislation would cause a typical customer to incur a monthly bill increase of approximately \$55 (\$660 per year). This estimated cost increase was subsequently corroborated.

**Question 3:** As was discussed at the end of the hearing, we have seen devastating wildfires and significant reliability challenges in the Western Interconnection, and in California in particular, during recent weeks. Please elaborate on your answer on the role that FERC can and should play in preventing and responding to these kinds of situations as they arise.

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- What is FERC's role in ensuring that the rolling blackouts that occurred in California on August 14-15 do not happen again in that state, or in other markets FERC regulates?

**Answer:** As a State regulator for the past 16 years, I have learned to get all the facts before coming to final conclusions. I understand that the California ISO ("CAISO") is conducting an investigation and I await that report. Speaking generally and without prejudgment of facts yet to be established, we already know that the standard that American consumers expect for a reliable electric system is the availability of electrical power on a 24/7/365 basis. The power outages last month in the CAISO zone failed to meet that standard. As the regulator of RTOs/ISOs, the Commission should ensure that transmission planning delivers reliability over the long term. It is also the Commission's duty to use its regulatory authority to require RTOs/ISOs with capacity markets to design and operate such markets to achieve the standard that Americans expect at costs that are just and reasonable. While the Commission is prevented by the Federal Power Act from favoring one generation resource over another, in its oversight of RTO/ISO markets, the Commission should seek to ensure that market designs include performance requirements or incentives so that capacity resources deliver as necessary to meet power demand on a 24/7/365 basis. The Commission should also ensure that consumers pay only for capacity that actually delivers. CAISO does not rely upon a capacity market for resource adequacy so the after-action analysis needs to analyze why bilateral contracts did not deliver the power resources needed to meet peak demand.

- Should FERC have been more aggressive in ensuring reliability in California?

**Answer:** It is premature to assign blame to the Commission, which can only act within the limits of its legal authority. Each and every State has the inherent authority to regulate utilities and that includes decisions on which generating resources to build and which ones to shut down. Even States that have directed their utilities to enter RTOs/ISOs retain the authority over which generating resources to build or forcibly retire to meet that State's other regulatory requirements.

- Based on what you know now and not asking you to prejudge what you may learn in the days ahead, what went wrong in California – and what would you do as a Commissioner to contribute to FERC's oversight of the situation?

**Answer:** Again, I will await the final report of the CAISO before forming final conclusions. However, speaking generally, it has been well-known in utility circles for many years that California's rapid growth in solar deployment presented a challenge in dealing with what is known colloquially as the "duck curve." Briefly, the "duck curve" describes the rapid ramp-up over the course of a sunny day of both solar generation and load. When the sun goes down, so does solar generation, but the load curve remains high on warm nights. This produces a gap that CAISO has historically filled with, among other resources, imported power, including coal-fired, gas-fired, and hydro from other Western states. It appears that last month there were no longer sufficient resources to meet the "duck curve" gap in the evening and California did not have adequate domestic resources for CAISO to dispatch.

**Question 4:** I have been concerned for many years about energy insecurity for people who are working but who do not qualify for low income energy assistance. (See, e.g.,

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<https://www.energy.senate.gov/services/files/2B1CC813-BA91-4C2E-B4D5-927EB40D9368>) In Alaska, because our energy prices are high, energy insecurity is a significant issue. But Alaska is not alone in this respect. Energy insecurity is a national problem. And I believe it is worse now in the pandemic.

I recognize that wholesale power markets are distinct from consumer-facing retail markets for electricity. Nevertheless, as was discussed at the hearing, wholesale market prices affect retail prices and, when energy is scarce, as, for example when natural gas prices spike as has happened in New England in winter.

- Have you considered the problem of energy insecurity? Do you agree with me that adequate infrastructure can help keep energy prices low? If not, why not?

**Answer:** As I stated in my opening statement at the hearing, I believe regulators must be very sensitive to the effects of regulatory actions on the costs that consumers must pay for electricity, especially with so many people struggling to pay their bills in the current pandemic. I agree that if infrastructure is needed, it should be built (at reasonable cost) to ensure an adequate supply of reliable power.

- What can FERC do to help alleviate the problem of energy insecurity?

**Answer:** The Commission should carry out its statutory duties and should always be cognizant of the impact of its actions on costs to consumers.

- Are you concerned that a focus on low energy market prices alone, without considering the costs of high capacity prices or the costs of enabling reliability and resilience, can be a problem? If not, why not?

**Answer:** In regulating the energy and capacity markets of RTOs/ISOs, the Commission must ensure that the wholesale costs that will eventually affect retail costs to consumers, which include capacity costs and costs for reliability, reflect just and reasonable rates and that RTO/ISO markets produce competitive results.

- Should the Committee or the Commission be concerned that mandates for certain high cost resources can contribute to energy insecurity?

**Answer:** Yes, if such mandates require consumers to pay more than necessary for power.

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**Question 5:** Please elaborate on your answers to questions in the hearing on recusals. In addition to following the advice of the Designated Agency Ethics Officer (DAEO), what will be your personal standard with respect to recusals? Will you be bound by Rules of Professional Responsibility that might apply to you as a member of the Bar? How do you personally interpret your obligations under Executive Order 13770, the Ethics Pledge, as it relates to recusals?

**Answer:** My personal standard will be to abide by the terms of my Ethics Agreement, the Office of Government Ethics Standards of Conduct, the Commission's Supplemental Ethics Regulations, and Executive Order 13770, and to also ensure that my staff is knowledgeable of such requirements. In instances where I believe the interests of the government require my participation in matters from which I am recused, I will consult with the DAEO to determine whether an authorization under 5 C.F.R section 2635.502 or a waiver under 18 U.S.C. section 208 would be appropriate under the circumstances. If I am ever unsure as to whether my participation in any particular matter would raise questions about my impartiality or the loss thereof or a financial conflict of interest, I will consult with the DAEO prior to participation in that matter.

I understand that I will remain bound by the Rules of Professional Responsibility that apply to me as a member of the Bar.

I understand that Executive Order 13770, the Ethics Pledge, would not require me to recuse myself from particular matters in which the Virginia State Corporation Commission is or has been a party or commenter beyond the requirements of the Office of Ethics Standards of Conduct, as it specifically excludes State agencies from the definition of "former employer."

**Questions from Senator James E. Risch**

**Question 1:** In July, FERC adopted significant revisions to its PURPA regulations. This was an important development, and many of the reforms mirror provisions that myself and others on this committee had pursued legislatively for years. These changes will help protect ratepayers from having to pay for unnecessary PURPA costs.

- a. Can you please share your thoughts on FERC's final rule on PURPA implementation?

**Answer:** I am aware that there are several petitions for rehearing currently pending at the Commission as well as a petition for review at the court of appeals, so this case remains active and I must avoid pre-judgment. As I stated at the hearing, however, as a general principle I believe that when load-serving entities purchase power, it should be done at the least cost to the consumer, unless the law requires otherwise.

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- b. Do you believe that state regulatory authorities/commissions should have the flexibility to make decisions that best address the needs of customers – for example, to determine energy rates based on actual need?

**Answer:** Yes. Speaking as a matter of general policy, as a State regulator, I am a strong believer in respecting the States' authority to make their own decisions as to how to address the needs of their own residents. States' authority includes retail rates and decisions on resource portfolios in their own States. If honored with confirmation, I will continue to respect the States and defend their authority to serve their residents. My general principle of strong support for, and deference to, State authority is subject generally to two caveats: (i) where federal law has clearly pre-empted the States' exercise of authority, or (ii) where one State's policies, by intent or effect, shift the costs of its policies onto defenseless consumers in other States.

In addition, please see my answer to Question 4 below.

- c. Do you think additional changes to PURPA regulations are needed to protect ratepayers?

**Answer:** I have come to no conclusion on which additional changes, if any, may be appropriate for these specific regulations. As a general principle, I agree that "old" regulations should be reviewed regularly and amended if necessary to make them consistent with changes in the law and economic conditions since they were originally promulgated.

**Question 2:** Hydropower is an important component of Idaho's energy mix. In fact, about 60 percent of the electricity used in Idaho each year is generated by hydropower. What are your general views about hydropower? In your opinion, do you consider hydropower to be a renewable energy source?

**Answer:** Yes, subject to any applicable federal laws, I consider hydropower to be a renewable energy resource and one that is a crucial part of the nation's energy mix. There are more than 30 Commission-licensed hydropower projects in my home state of Virginia and I am aware of their importance to consumers.

**Question 3:** Despite its many benefits, licensing or relicensing a hydropower facility takes several years. In Idaho, we've seen relicensing take more than a decade. FERC issues hydropower licenses, but the approval process involves many other federal and state agencies working under various independent statutory authorities. This can lead to delays, redundancies, conflicts and increased costs that are ultimately borne by ratepayers.

- a. What do you believe Congress can or should do to simplify this process and to ensure that reasonable timeframes for decisions are met - Or do you think current process is working? Wouldn't ratepayers benefit from a more streamlined process?

**Answer:** As a State regulator, I am well aware of the importance of an efficient regulatory process and have done my best to help meet this goal on the state level. While I am not yet prepared to make

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recommendations regarding improvements to the Commission's hydropower licensing process, I will look closely at this issue if I have the honor to be confirmed.

**Question 4:** In the past, utilities in the Pacific Northwest have explored creating either a regional transmission organization (RTO), or an independent system operator (ISO).

- a. What are your thoughts about organized markets – do you think that all regions in the country should have an organized market? What is the role of states in these decisions – do you think the federal government has the right to mandate that states join a RTO or ISO?

**Answer:** Participation in RTOs/ISOs is voluntary. I believe it is important to respect each State's decisions on such matters. As a State regulator in an RTO zone, I know from experience that there are advantages and disadvantages to membership in RTO organized markets. I also recognize that there are legitimate reasons a State may choose to remain outside of RTOs/ISOs and continue with its own chosen form of utility regulation.

**Questions from Senator Maria Cantwell**

**Question 1:** One of FERC's most important roles is to be a "cop on the beat", ensuring that markets are open and transparent and free from manipulation that costs Americans consumers. Ensuring there is monitoring of a bright red line out there that deters anti-competitive and illegal efforts to distort market prices. Deregulated markets can only work if you have adequate enforcement.

Last October I sent FERC a letter along with Committee members Wyden and King and several other Senators expressing our concern over recent trends that seem to indicate that the FERC Office of Enforcement may not acting as vigilant as it has been in years past.

- As a FERC Commissioner, would you be fully committed to finding, stopping, and punishing manipulative acts that can stifle competition and result in unjust and unreasonable prices?

**Answer:** Yes.

- Do you believe energy markets can be competitive and produce just and reasonable rates if they are not free from market manipulation and other forms of fraud?

**Answer:** No.

- If FERC determines that an energy market participant made financial gains based on fraud or manipulating markets, do you believe those misbegotten gains should be promptly returned to injured parties or consumers?

**Answer:** Yes, without prejudging any specific case. The Commission should use all the legal tools in its toolbox. I understand it is the Commission's policy that market participants are expected to disgorge unjust profits whenever they are determined or reasonably estimated to nullify the value of

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gains acquired through misconduct and to make whole those who were harmed by the violations. If confirmed, and without prejudging the facts of any specific case, I intend to uphold this long-standing Commission policy.

- What additional authorities, if any, would you like Congress to grant FERC to further augment their ability to prevent fraud and market manipulation?

**Answer:** Although I do not yet have any specific recommendations on this subject, as a State regulator I believe it is essential that regulators have the tools necessary to prevent and combat fraud and market manipulation in the energy markets. If confirmed, I look forward to engaging with my colleagues on this matter.

**Question 2:** At the end of September, FERC is convening a conference on carbon pricing in FERC regulated wholesale electric markets covered by regional transmission organizations and independent system operators (RTOs/ISOs). I commend FERC for holding this conference and taking steps necessary to understand the mechanisms and procedures needed to incorporate a carbon price directly into the wholesale energy markets.

- Do you believe directly pricing carbon emissions into energy market operations could efficiently reduce carbon emissions through technology-neutral policies that allow the markets to deploy the lowest-cost emission reduction opportunities?

**Answer:** This is a complex issue and without knowing all the details of a specific carbon pricing proposal to be applied in regional capacity and energy markets, including knowing which other regulatory and market design changes are being made as part of a comprehensive package, I cannot draw a conclusion. There are many other details that would need to be known and considered before concluding how a specific proposal would actually work in RTO/ISO markets, which are not true markets but regulatory constructs in which the threats of rent-seeking and market manipulation require constant vigilance and oversight.

- What do you hope to learn from this upcoming carbon pricing conference?

**Answer:** I am not a member of the Commission and will not be in attendance at the September 30, 2020 conference; however, my understanding is that a central question to be explored will be the core legal question of whether the Commission has the legal authority to impose or allow RTOs/ISOs to implement a carbon tax/price in their market constructs.

- Will you commit to ensuring that future conferences include participants who represent the views of renewable energy, consumer, and state interests?

**Answer:** Yes. I understand this is a group decision, and if I am confirmed, I commit to advocating to my colleagues that the Commission's conferences have a wide perspective of views.



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- Do you think that incorporating a carbon price in wholesale energy markets will help support states' initiatives to reduce carbon emissions while providing certainty for those investing in the resources for tomorrow?

**Answer:** Please see my answer to the first subpart of this question above.

**Question 3:** FERC plays a crucial regulatory role as the agency responsible for permitting interstate natural gas pipelines and determining their environmental impacts. Three years ago the D.C. Circuit Court of Appeals found FERC failed its legal responsibility by not considering the reasonably foreseeable impacts to climate change that would occur as a result of approving the Sabal Trail pipeline.

- Do you believe that FERC is legally required to consider the environmental impacts of infrastructure projects, including the foreseeable climate impacts from direct and indirect greenhouse gas emissions?

**Answer:** The scope and details of the Commission's duties under applicable federal environmental statutes is a legal issue that has produced disagreement among Commissioners recently. My practice as a State regulator for 16 years has been to study legal issues closely and perform my own due diligence before coming to legal conclusions. I commit to studying closely with an open mind and no prejudgments this issue if I am honored to be confirmed to the Commission. More generally, as I promised in the hearing, I will carry out the Commission's environmental review duties under all applicable federal statutes.

- Do you support consideration of a Life Cycle Analysis of greenhouse gas emissions when making a public interest determination for a new pipeline permit?

**Answer:** I have not yet had the opportunity to consider this issue, but will look at it closely if I have the honor to be confirmed.

- If implemented, how would the Trump Administration's rollback of long standing NEPA protections impact FERC's need to consider the indirect and cumulative impacts of projects you are asked to approve?

**Answer:** If I have the honor to be confirmed, I will review projects that the Commission is asked to approve consistent with the law and will do my best to ensure that the Commission's orders satisfy all legal requirements.

**Question 4:** In late 2017, the Energy Department sent FERC a proposed rule that would have put a tax on consumers by mandating uneconomic coal and nuclear plants as the only reliable generation sources. The proposal used bogus grid reliability and resilience argument to try and justify this proposed bailout. Unfortunately, this ham-handed attempt proved to be the first of several efforts by some Commission members to try and prop up historic energy sources at the expense of consumers.

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- Would you have voted the same way as the other five Commissioners unanimously did at the time?

**Answer:** Since I was not on the Commission then, I cannot speculate on that specific vote. I would note, however, that the Federal Power Act requires the Commission to be “fuel-source neutral” in regulating RTO/ISO markets.

- As a FERC commissioner, how would you ensure our grid stays reliable and resilient without favoring one generation source over another?

**Answer:** The Commission is required by the Federal Power Act to be neutral as to fuel source. Speaking as a matter of general principle, the Commission should use its regulatory authority over RTO/ISO markets to require those markets – which are actually regulatory constructs and not true competitive markets – to produce competitive outcomes to protect consumers from paying too much due to exercises of market power. To promote reliability and resilience, as the regulator of RTOs/ISOs, it is the Commission’s duty to require RTOs/ISOs that seek to achieve resource adequacy through capacity markets to design and operate such markets to achieve the standard that Americans expect at costs that are just and reasonable. In its oversight of RTO/ISO markets, to promote reliability, the Commission should ensure that market designs include performance requirements or incentives so that capacity resources deliver as necessary to meet demand on a 24/7/365 basis with no outages. The Commission should also protect consumers from paying for promised resources that do not deliver or from paying inflated capacity prices that reflect the exercise of market power or market manipulation.

**Question 5:** Two weeks ago, FERC rejected the latest proposal from New York’s grid operator, NYISO, to allow new renewable energy and energy storage to compete against fossil fuels in its wholesale capacity market. NYISO has made it clear that the proposed rules are necessary to reform the capacity market’s structure in a way that aligns with New York law mandating 70 percent renewable electricity by 2030 and 100 percent renewable electricity by 2040. Commissioner Glick dissented from that decision, arguing that FERC is presenting NYISO with unnecessary and unreasonable obstacles aimed at stalling the state’s efforts to transition to clean energy.

- As more states join Washington and New York in leading the energy transition to 100% clean electricity, what role do you believe FERC should play in facilitating implementation of State clean energy policies?

**Answer:** Please see my answer to the second subpart of Question 4 above. Further, I support the authority of each State to choose the energy policies and resource portfolio that it prefers. My general principle of strong support for, and deference to, State authority is subject generally to two caveats: (i) where federal law has clearly pre-empted the States’ exercise of authority, or (ii) where one State’s policies, by intent or effect, shift the costs of its policies onto defenseless consumers in other States.

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- As a Commissioner, would you respect State decisions on electricity supply mix and halt further efforts to mitigate state-sponsored clean energy resources?

**Answer:** Please see my answers to the first subpart above and to the second subpart of Question 4 above. Further, every State has the inherent authority to regulate utilities and that includes decisions on which generating resources to build and which ones to shut down. Even States that have directed their utilities to enter RTOs/ISOs retain the authority over which generating resources to build or forcibly retire to meet that State's other regulatory, including environmental, requirements.

- Do you believe inclusion of a price on carbon in wholesale energy markets provide a mechanism to allow states like Washington to achieve their clean energy objectives?

**Answer:** Please see my answers to Question 2 above. I would add that the State of Washington – and every other State – already has the authority to price and tax electricity at the retail level as it chooses, and I respect that State authority. Participation in RTO/ISOs is voluntary and I support a State's authority to make the policy decision whether to join or leave an RTO/ISO. If a State decides to enter an RTO/ISO, then the State has made a policy decision that wholesale power costs will be set in that wholesale market.

**Questions from Senator Bernard Sanders**

**Greenhouse Gas Emissions:**

**Question 1:** Do you agree with the vast majority of scientists that climate change is real, it is caused by human activity, and that we must aggressively transition away from fossil fuels to energy efficiency and sustainable energy like wind, solar, and geothermal?

**Answer:** The weight of the evidence indicates that the climate is changing, that carbon emissions are contributing to that change, and that human activity, primarily economic, impacts the amount of carbon emissions. In our democracy, the choice of policy responses to major issues is delegated to those elected by the people, specifically the members of Congress and State legislatures.

**Question 2:** Energy prices impact all American families. Climate change also poses catastrophic economic, environmental and social threats. Delaying action on climate change has severe long-term costs. Moreover, distributed renewable energy sources like wind and solar are the cheapest forms of new energy generation available, are not subject to the sorts of wild price fluctuations that we see with fossil fuels, and are more resilient to natural disasters like hurricanes and flooding.

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- A. If confirmed, will you commit to encouraging utilities around the country to aggressively transition away from fossil fuels and toward renewable, distributed energy generation, such as rooftop solar?

**Answer:** Each State in the United States has the inherent authority to choose which generation portfolio mix it wants, which generating resources to build and how to compensate them, and which generating resources to retire to meet State environmental regulations. As a matter of general policy, I support the States' authority to make these decisions. Further, participation in an RTO/ISO is voluntary, and I support a State's authority to make that decision. If a State makes the policy decision to enter an RTO/ISO, then its utilities' participation in wholesale energy and capacity markets is subject to Commission regulation, and the Commission is required by the Federal Power Act to be neutral as to generating resource. In regulating RTO/ISO markets, the Commission should protect consumers from paying inflated prices that reflect rent-seeking, exercises of market power or market manipulation, and from paying for resources that do not deliver actual benefits.

- B. What specific steps will you take to facilitate this necessary transformation?

**Answer:** Please see my answers to Questions 1 and 2.A above.

**Question 3:** In May 2018, FERC issued its *New Market Expansion* policy that eliminated most upstream and downstream greenhouse gas emissions as part of its review of interstate liquid natural gas pipelines. While defending that policy before the U.S. Court of Appeals for the D.C. Circuit, Commissioner Danly, who was at the time FERC's General Counsel, argued that any efforts to consider upstream and downstream greenhouse gas emissions was an "exercise in futility." Although the U.S. Court of Appeals for the D.C. Circuit rejected the challenge to this policy on jurisdictional grounds, the court went out of its way to reject Commissioner Danly's core legal argument. In particular, the court stated that Commissioner Danly was "wrong to suggest that downstream emissions are not reasonably foreseeable simply because the gas transported ... may displace existing natural gas supplies or high-emitting fuels," that it was "troubled," "skeptical," and had "misgivings" about the "dubious" claim that any efforts to consider upstream and downstream greenhouse gas emissions were futile.

- A. Do you agree with Commissioner Danly's argument that any efforts to consider upstream and downstream greenhouse gas emissions are an "exercise in futility"?

**Answer:** If I have the honor to be confirmed, I will do my best to ensure that all Commission decisions are consistent with the law. I have not prejudged the factual issues related to this question. I will look at the facts of each case to determine which environmental impacts must be studied under applicable law.

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B. Do you accept that FERC can deny a pipeline project due to its environmental impacts, as stated by the Court? If not, why not?

**Answer:** My practice as a State regulator for 16 years has been to study legal issues closely and perform due diligence before coming to legal conclusions. Often this process has included both written briefs and oral arguments from parties with differing views and I have learned to get the views of all parties before reaching a conclusion on a contested issue. This question asks for a legal conclusion on an issue that I have not yet studied, nor have I drawn a conclusion. When that legal issue arises in a specific case, if I am honored with confirmation, I will commit to approach it with an open mind and no prejudice.

**Net Metering**

**Question 4:** Earlier this year, FERC dismissed a proposal by the New England Ratepayer's Association that called on FERC to assert jurisdiction over 45 individual state net metering programs. In May, I joined several of my colleagues in signing a letter calling on FERC to reject this misguided proposal, which would have overturned FERC's longstanding policy that it does not have jurisdiction over sales from ratepayers to utilities if consumption is larger than production over a certain period, as well as gutted a multitude of state energy programs that are facilitating significant investments in distributed, renewable energy generation and storage. While I was pleased to see FERC unanimously reject this proposal, I was concerned to see Commissioner McNamee indicate in his concurrence that FERC still has jurisdiction to rule on this matter at a later date.

If confirmed, will you commit to opposing any future proposal that would harm state net metering programs?

**Answer:** From my experience as a State regulator, I recognize the longstanding, important role that States play with respect to net metering programs. Speaking generally as a matter of policy, I believe that net metering is and should remain under State jurisdiction over retail rates.

**Distributed Energy Resources Rule**

**Question 5:** In February of 2018, FERC improved energy market competition and innovation by finalizing a multi-year rulemaking process on energy storage. A Brattle report predicted the rule could spur 50 gigawatts of additional energy storage across the United States.

A. Do you support the FERC final order on energy storage?

**Answer:** The Commission's Order No. 841 addresses participation of electric storage resources in organized wholesale electric markets. Since I was not on the Commission when it approved Order No. 841, I cannot speculate on that specific vote. Without stating an opinion on that Order, I would emphasize, however, that storage has tremendous potential to be an important resource in the future.

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- B. Do you commit to working with the other FERC commissioners and staff to ensure that this rule is properly implemented by regional grid operators?

**Answer:** Yes, without prejudging any specific issues that may arise in specific cases implementing the rule.

**Question 6:** After FERC finalized the energy storage rulemaking, the agency announced a technical conference for the proposed rule for distributed renewable aggregation. The distributed energy resources (DER) generation rule explores how micro grids that include rooftop solar and other renewables can better integrate onto the grid. In May 2018, I joined with several of my colleagues in signing a letter urging FERC to move forward on developing this DER guidance, which FERC issued on September 17<sup>th</sup>.

- A. What role do you see this new DER rule playing in wholesale energy markets over the next 10 years?

**Answer:** As you note, the Commission recently issued Order No. 2222 on participation of DER aggregations in organized wholesale electric markets. Since it is foreseeable that this Order may be the subject of petitions for rehearing or a petition for review at the court of appeals, I wish to avoid making any statements that could be construed as prejudging issues in any rehearing requests or compliance filings with regards to Order No. 2222.

- B. Do you support the final FERC rule on DER?

**Answer:** As stated in my answer to Question 6.A above, I wish to avoid making any statement that could be construed to prejudge any rehearing requests or compliance filings on Order No. 2222. As a matter of general policy, however, I support the Commission's efforts to create a level playing field, to remove barriers to entry and to allow any resources to compete that are technically capable of participating in the RTO/ISO markets in a manner that delivers benefits to consumers at just and reasonable rates and supports the reliability of service to consumers.

- C. Do you commit to working with the other FERC commissioners and staff to ensure that this rule is properly implemented by regional grid operators?

**Answer:** Please see my answers to Questions 6.A and 6.B above.

**Question 7:** The Federal Power Act (FPA) requires FERC to judge rates in a way that is "just and reasonable" and not "unduly discriminatory or preferential". In other words, FERC commissioners cannot pick winners and losers. This is the reason the original coal-bailout proposal (in Docket No. RM18-1-000) from the Department of Energy was dismissed by FERC. Furthermore, 42 U.S. Code § 7171 says that FERC is an independent agency, so it may not take direction or be improperly influenced by private parties.

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- A. Do you commit to following the FPA and 42 U.S. Code § 7171, if you are confirmed as a FERC Commissioner?

**Answer:** Yes, I commit to following the above cited references and all applicable federal laws. Further, as I pledged at my hearing, as a State regulator for 16 years on an independent commission, I know from experience how important independence is to making good decisions in the public interest. The Commission is also independent and -- if you honor me with confirmation -- I will absolutely respect and defend that independence at the federal level as I have done at the state level.

- B. In terms of proposals like the coal-bailout proposal, do you agree that the proposed rule was properly rejected by FERC?

**Answer:** Since I was not on the Commission then, I cannot speculate on that specific vote. I agree that the Federal Power Act requires the Commission to be "fuel-source neutral" in regulating RTO/ISO markets. Under the law, these markets should operate in a neutral manner without undue discrimination for or against any specific resource.

**Capacity Markets**

**Question 8:** New England states are making significant progress in expanding the share of energy they obtain from renewable sources through policies like Vermont's 2016 Comprehensive Energy Plan, which sets a roadmap for Vermont to obtain 90 percent of its energy from renewable sources by 2050, and regional plans like the Regional Greenhouse Gas Initiative. FERC has explored, through technical conferences, how to better incorporate states' environmental policy objectives into the wholesale energy markets. Stakeholders are working to address how to incorporate state renewables policy goals. More active leadership from FERC, however, is necessary to direct Independent System Operators (ISOs) and Regional Transmission Organizations (RTOs) to develop solutions to address these price formation challenges.

- A. Do you think FERC should make any changes to the existing capacity market framework in any of the organized wholesale markets to more easily accommodate regional and local preferences?

**Answer:** RTO/ISO capacity markets are not true markets but regulatory constructs, so any changes to a specific capacity market must be considered in light of the specific market designs and regulatory details of that specific market. The Commission is required by the Federal Power Act to be neutral as to fuel source when regulating RTO/ISO markets. The Commission should use its regulatory authority over RTO/ISO markets to ensure that those markets produce competitive outcomes and the Commission should protect consumers from exercises of market power, rent-seeking, and market manipulation in RTO/ISO markets.

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- B. In the tension between states' climate policy goals and the organized markets, where do you think the responsibility for resource adequacy lies?

**Answer:** Each State has the inherent authority to regulate utilities within its jurisdiction and that includes decisions on which resources to choose to achieve resource adequacy. Even States that have directed their utilities to enter RTOs/ISOs retain the authority over which generating resources to build or forcibly retire to meet that State's environmental requirements.

- C. Do you believe ISO New England's Competitive Auctions with Sponsored Policy Resources program is adequate to accommodate state public policy interests in the long term? If so, why? If not, why not?

**Answer:** It is my understanding that issues related to ISO New England Inc.'s Competitive Auctions with Sponsored Resources program are pending before the Commission. As such, I wish to avoid statements that could be construed as prejudging these issues. If confirmed, I look forward to working with my colleagues on this matter.

- D. What role should FERC play in ensuring that wholesale market rules enable state renewable energy policies and regional agreements?

**Answer:** Please see my answers to Questions 8.A and 8.B above.

**Stakeholder Input**

**Question 9:** As public demand increases for the federal government to take action to address climate change and ensure that rates remain just and reasonable, stakeholders are similarly requesting that FERC be more transparent and responsive to public input. As necessary, FERC should adopt policies and practices to ensure that ratepayer and stakeholder concerns are addressed.

- A. Do you feel that consumer interests are adequately represented in the regional transmission organization decision-making processes?

**Answer:** As a State regulator in the PJM region for the past 16 years, I believe it is important that consumer interests are represented in RTO/ISO stakeholder processes. When I was a member of the Board of Directors of the Organization of PJM States, Inc., we supported the participation of State consumer advocates in PJM processes.

- B. Are you aware of any governance structure enhancements that could make the ISO's more directly responsive to stakeholder input?

**Answer:** I am not aware of any governance structure enhancements that would make the RTOs/ISOs more directly responsive to stakeholder input. If confirmed, I would be open to engaging with my colleagues on this issue.



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- C. A 2015 Government Accountability Office study indicated FERC lacks metrics for critically evaluating the functionality of the organized markets for capacity. Recently, FERC proposed a new set of metrics that eliminates the customer satisfaction metric. What metrics do you think are necessary to critically evaluate the markets' ability to respond to customer concerns?

**Answer:** It is my understanding that Commission staff proposed metrics that measure the economic and operational characteristics of the organized markets for energy and capacity. It is also my understanding that ISOs, RTOs, and utilities in regions outside of ISOs/RTOs are encouraged to submit voluntary responses by the end of October 2020. If confirmed, in reviewing those responses, I will consider whether additional metrics are needed to more directly address other customer concerns.

**Questions from Senator Debbie Stabenow**

**Question 1:** I want to ask you about FERC's role in ensuring the safety and integrity of our nation's hydroelectric dams. Sadly, early this year the people of Michigan learned firsthand about the catastrophic damages that can occur from a dam failure.

On May 19, two hydroelectric dams located in Midland and Gladwin Counties failed following heavy rainfall over a 48-hour period. The subsequent flooding forced 11,000 people to evacuate and damaged upwards of 2,500 buildings. Preliminary damage estimates exceed \$250 million, and at the request of Governor Whitmer and the Michigan Congressional delegation, a federal emergency declaration was issued.

FERC has a long history with Boyce Hydro, the owner of the two dams that failed (Edenville and Sanford) along with two others dams (Smallwood and Secord) on the Tittabawassee River. To say that Boyce Hydro had a checkered history is an understatement. For 14 years, FERC cited Boyce Hydro for safety violations, including repeated failings to fix spillways at the Edenville dam. As a result, FERC in 2018 revoked Boyce Hydro's license to sell electricity from Edenville pursuant to section 31(b) of the Federal Power Act.

While fines for noncompliance with safety requirements and/or the threat of having a license revoked are traditionally effective mechanisms to compel actions to address safety violations, that was not the case with Boyce Hydro. I am concerned a similar dynamic could exist at other dams across the country.

If you are confirmed, will you prioritize hydroelectric dam safety as Commissioner?

**Answer:** Yes.

**Question 2:** Second, I understand that FERC is considering ways to amend its regulations governing the safety of hydropower projects licensed under the Federal Power Act. From your perspective, what additional authorities and remedies could FERC utilize to compel a jurisdictional hydroelectric owner to address safety violations? Should FERC implement rules that would require licensees to comply

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with all state dam safety requirements prior to revocation of the license or implement risk reduction measures so that a dam no longer poses a risk to public safety or the environment after revocation?

**Answer:** The Commission's oversight of the safety of hydropower projects is a key part of its mission. If I have the honor to be confirmed, I will evaluate whether the Commission needs additional authority in this area and what the Commission can do to ensure that dams do not pose a threat to the public or the environment.

**Question 3:** Lastly, in the event that FERC rescinds another license for a hydro facility, how can FERC better assist states that inherit new oversight responsibilities of a deficient dam?

**Answer:** Although I do not yet have any specific recommendations on this subject, as a State regulator I am well aware of the need for cooperation between State and federal authorities. If I have the honor to be confirmed, I pledge to strongly support such cooperation.

**Questions from Senator Martin Heinrich**

**Questions:** Judge Christie, I think it is clear that the full promise of FERC Order 1000 has not been fully realized. New, regionally significant and interstate transmission is critical to future development of clean energy technologies. Is there more FERC can do to unlock the potential for new interstate transmission capacity? Will you commit to looking into the issue of interregional transmission planning and what FERC can do to improve it?

**Answer:** Transmission planning to support reliability and necessary interregional power flows is essential. The Commission has a large role in ensuring that transmission planning is being done properly. In Order No. 1000, the Commission required each public utility transmission provider to establish procedures with each of its neighboring transmission planning regions to coordinate and share the results of the respective regional transmission plans to identify possible interregional transmission facilities that could address regional transmission needs more efficiently or cost-effectively than separate regional transmission facilities, and jointly evaluate those interregional transmission facilities that the pair of neighboring transmission planning regions identify, including those proposed by transmission developers and stakeholders. If confirmed, I commit to working with my colleagues to discuss such issues. I would note that, as a State regulator for the past 16 years, I am very sensitive to the quickly rising costs of the transmission component in consumers' retail bills, so if honored with confirmation I will work to ensure that we meet our transmission needs with rates and costs that are just and reasonable to consumers.

**Questions from Senator Mazie Hirono**

**Question 1:** In May 2018, FERC issued a policy as part of its consideration of Dominion Energy Transmission's since-cancelled New Market gas pipeline project. FERC's policy attempted to eliminate consideration of most upstream and downstream greenhouse gas emissions as part of FERC's review of interstate gas pipelines.

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In June 2019, the D.C. Circuit Court of Appeals affirmed FERC's obligations to consider reasonably foreseeable greenhouse gas emissions under the National Environmental Policy Act and the Natural Gas Act, even while dismissing the case, *Birckhead v. FERC*, on procedural grounds.

If the Senate confirms you, how do you think FERC should identify the information on the greenhouse gas emissions from gas pipelines necessary to fulfill its statutory responsibilities?

**Answer:** If I have the honor to be confirmed, I will do my best to ensure that all Commission decisions comply fully with the law.

**Question 2:** How do you think FERC should incorporate estimates of the present and future impacts of climate change into its efforts to ensure the reliability of power and just and reasonable rates?

**Answer:** The scope and details of the Commission's duties under applicable federal environmental statutes is an ongoing legal issue that has produced disagreement among Commissioners recently. I commit to studying closely with an open mind and no prejudgments the legal issues applicable in any individual case if I am honored to be confirmed to the Commission prior to forming a legal conclusion. As I stated in the hearing, I will carry out the Commission's environmental review duties under all applicable federal statutes.

**Question 3:** What do you think FERC should do to ensure that consumers receive just and reasonable rates as energy storage and renewable power technologies decline in price below other forms of energy in many markets?

**Answer:** As I said in the hearing, as a State regulator I am very sensitive that what the Commission does affects the retail rates that consumers pay and we need to protect consumers from paying any more than necessary for power. I think it is important for the Commission, consistent with the Federal Power Act, to ensure an even playing field for all resources to compete and to make sure that markets provide sufficient reliability services to meet demand in the most cost-efficient way. I confirmed, I look forward to working on these issues with my colleagues.

**Question from Senator Cindy Hyde-Smith**

**Question:** As you know, the Tennessee Valley is supplied with electricity by the Tennessee Valley Authority. Congress established TVA to serve the public interests in providing flood control, navigation, economic development, and low-cost, reliable electricity supplies to municipal and cooperative utilities, which in turn serves residents and businesses in the Valley. The costs of power supply and the transmission grid are shared among TVA's customers. In the TVA Act and the Federal Power Act, the Congress has established special provisions limiting how both TVA and its customers can participate in electricity markets.

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Do you agree that the FERC should not exercise its limited authorities with respect to TVA in a manner that would disrupt the ability of TVA to achieve the purposes set out for it by Congress?

**Answer:** It is my understanding that the Commission has very limited authority with respect to TVA. If confirmed, I will abide by the requirements of the governing statutes and laws in exercising the Commission's authority.

**Questions from Senator John Hoeven**

**Question 1:** In May 2019, I led 21 of my Senate colleagues in sending a letter to FERC to explain that while allowing Distributed Energy Resources (DERs) into the wholesale market can encourage innovation, the aggregation of these resources should be determined at the local and state levels to ensure that there is no adverse impact on reliability, or higher costs for consumers. Do you believe that states and local stakeholders should maintain the ability to make decisions over distribution and the integration of behind-the-meter resources?

**Answer:** As a general principle, yes I believe that where DERs are compensated through retail rates, that should remain under State authority.

**Question 2:** Do you agree that the transmission system should be planned, consistent with Federal Power Act Sec. 217(b)(4), to meet the needs of load serving entities, like electric cooperatives, so they can meet the long-term power needs of their customers?

**Answer:** Yes. Transmission planning should prioritize meeting reliability needs both short and long-term. As a State regulator for the past 16 years, I am well aware of the vital power services delivered to rural customers by electricity co-ops, which are owned by their customers. I respect that role and, if confirmed, I will continue to respect the role of co-ops and work to meet the needs of their members/customers, consistent with all applicable federal statutes.

**Questions from Senator Steve Daines**

**Question 1:** Montana recently lost Units 1 and 2 of the Colstrip Power Plant. These units provide high paying jobs and reliable baseload energy. Montana is also expected to lose the Lewis and Clark Generating station in Sidney. With the closure of these two coal power plants in Montana as well as other coal and nuclear plants, the United States is poised to lose huge amounts of baseload energy. What do you believe is FERC's role in assuring the grid is stable and reliable and can continue distributing electricity when baseload energy is being removed or forcibly shut down around the country?

**Answer:** I am not familiar with the circumstances of the individual generating stations you reference; however, if I am honored to become a Commissioner, I will pledge to learn why such generating plants are closing. As a State regulator, I favor a balanced portfolio to meet reliability needs at reasonable cost. Each State in the United States has the inherent authority to choose which generating resources to build and how to compensate them. Each State has the authority to compensate a generating unit by

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putting it into rate base where it will get dollar-for-dollar cost recovery plus a return under traditional cost-of-service regulation. If, however, a State makes the policy decision to direct its utilities to participate in RTO/ISO energy or capacity markets, then the State has made a policy decision that its jurisdictional generating units shall be compensated under those market rules. Participation in RTO/ISOs is voluntary and I support the States' authority to make that choice. RTO/ISO wholesale energy and capacity markets are subject to Commission regulation and the Commission is required by the Federal Power Act to regulate these markets observing neutrality as to type of generating resource. As a matter of general principle, I believe that the Commission should also ensure that each RTO/ISO adopts market designs to guarantee that resources that participate in energy and capacity markets actually deliver the promised resources at costs that are just and reasonable to consumers.

**Question 2:** In Montana, electric cooperatives serve nearly half the state's population and distribute power to some of the most rural parts of our state. In order for them to continue serving their customers, who in this case are also their owners, they need to have the flexibility and freedom to make local decisions that fit their unique circumstances. As a FERC commissioner, how will you work with local communities and electric cooperatives to make sure they can continue to best serve their communities?

**Answer:** As a State regulator for the past 16 years, I am well aware of the vital power services delivered to rural customers by electricity co-ops, which are owned by their customers. I respect that role and, if confirmed, I will continue to respect the role of co-ops and work to meet the needs of their members/customers, consistent with all applicable federal statutes.

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**Questions from Chairman Lisa Murkowski**

**Question 1:** As was discussed at the end of the hearing, we have seen devastating wildfires and significant reliability challenges in the Western Interconnection, and in California in particular, during recent weeks. Please elaborate on your answer on the role that FERC can and should play in preventing and responding to these kinds of situations as they arise.

- What is FERC’s role in ensuring that the rolling blackouts that occurred in California on August 14-15 do not happen again in that state, or in other markets FERC regulates?

**Answer:** The California Independent System Operator’s (CAISO) investigation of the factors influencing the Public Safety Power Shutoffs on August 14 and 15, 2020, is ongoing and I do not want to risk prejudgment of any issues that may come before the Commission. Depending on the findings in the investigation, the Commission could have various roles under its Federal Power Act obligations, including pursuant to its Sections 205 and 206 responsibilities to ensure just and reasonable rates, as well as its Section 215 reliability authority. Depending on the facts that emerge from the investigation, implementation of the Commission’s obligations may be specific to the circumstances in California or the facts may also raise lessons or questions that could be applied in other markets.

- Should FERC have been more aggressive in ensuring reliability in California?

**Answer:** I understand that the CAISO is investigating the events of last month and I am reluctant to opine on what should have happened until the facts are known. If confirmed, I look forward to reviewing Commission staff’s analysis and working with my colleagues and stakeholders to address these risks to reliability consistent with the Commission’s authority.

- Based on what you know now and not asking you to prejudge what you may learn in the days ahead, what went wrong in California – and what would you do as a Commissioner to contribute to FERC’s oversight of the situation?

**Answer:** Please see my response to the question above.

**Question 2:** Please elaborate on your answer to my question during the hearing concerning the recommendation of the National Academies of Science (NAS) report *Enhancing the Resilience of the Nation’s Electric System* in 2017 that urges FERC and the North American Energy Standards Board to address the “growing risk of interdependent [natural gas and electric] infrastructure.” This was Specific Recommendation No. 11.

- Did you support Recommendation 11? If not, why not?

**Answer:** Yes, I support Recommendation 11.

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- In light of that recommendation and the interdependencies of natural gas and electric infrastructure should FERC act to decrease -- or at least not increase -- regulatory risks, costs and delays for the certification of new interstate natural gas pipeline infrastructure?

**Answer:** Recommendation 11 notes that the Commission has regulatory authority over both the gas and electricity systems and suggests that the Commission work with the North American Energy Standards Board and industry stakeholders to improve awareness, communications, coordination, and planning between the gas and electric industries. Its certification authority under Section 7 of the Natural Gas Act is one of the Commission's sources of authority that may implicate planning and coordination across the gas and electric industries. The Commission opened an inquiry into its existing natural gas pipeline certification policy in April 2018 (PL18-1-000). The inquiry sought input on potential revisions to the Commission's approach to need determinations as part of Natural Gas Act Section 7 inquiries into whether an interstate pipeline is "necessary for the present or future public convenience and necessity." This inquiry proceeding remains open at the Commission and I do not want to prejudge an issue I may be called to vote upon. The Commission has in the past taken action to address some gas-electric coordination issues, including by issuing Order No. 809 in 2015, before we developed the NAS recommendation. If confirmed, I would commit to working with colleagues on these matters.

- Should FERC through its decisions on natural gas infrastructure act to keep natural gas in the ground?

**Answer:** The Commission's role does not involve making this type of determination. Under Section 7 of the Natural Gas Act, the Commission is required to engage in an analysis as to whether each interstate pipeline seeking certification is "necessary for the present or future public convenience and necessity." The Commission must apply existing law to the specific facts on record in each instance.

- Can the electric system be reliable and resilient over the next 20 to 25 years if we effectively halt the development of natural gas infrastructure?

**Answer:** As mentioned above, under Section 7 of the Natural Gas Act, the Commission's role with respect to natural gas infrastructure development is to engage in an analysis about whether each interstate pipeline seeking certification is "necessary for the present or future public convenience and necessity." The Commission opened an inquiry into its existing natural gas pipeline certification policy in April 2018 (PL18-1-000). The inquiry sought input on potential revisions to the Commission's approach to need determinations as part of Natural Gas Act Section 7 inquiries into whether an interstate pipeline is "necessary for the present or future public convenience and necessity." This inquiry proceeding remains open at the Commission and I do not want to prejudge any issue that may come before the Commission.

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With regard to the Commission's oversight of electric system reliability, as I mentioned during the nomination hearing, the Commission's reliability authority should be forward looking. Changes in the resource mix may inform the development of reliability standards.

- Do we need natural gas and natural gas delivery infrastructure in order to keep energy reliable, resilient, affordable, and clean even as we make progress against climate change?

**Answer:** Natural gas is a central component of today's reliable electricity system. The fuel source comprised 38.4 percent of the United States' 2019 net electricity production. Reliability, resilience, and affordability in the context of a changing resource mix are system concepts that implicate the Commission's authority under Sections 205 and 206 of the Federal Power Act, as well as its Section 215 reliability authority. It is not the role of the Commission to determine the appropriate fuel mix for the U.S. electricity system. The Commission's obligation under these sections of the Federal Power Act is to ensure just and reasonable rates and that the Commission fulfill its obligations under section 215 of the FPA as the resource mix continues to change over time. If, from a reliability perspective, concerns emerge about increasing reliability risks or declining system reliability services relating to the amounts of generation resources with certain operating characteristics or powered by certain fuel types, those issues should be considered on the record as part of the Commission's oversight of system reliability.

**Question 3:** The Sustainable FERC Project's website states, "The Project and its partners combine regulatory and legal advocacy to support reforms to FERC's pipeline and LNG review process and the statutes through which FERC undertakes its reviews."

- Do you know one or more of the "reforms" to FERC's pipeline and LNG review processes that the Project supports? If so, i) please identify such reform or reforms; and ii) identify any of the Project's proposed reforms that you support and any that you do not support.

**Answer:** I am aware that, in 2017, Sue Tierney of the Analysis Group issued a report commissioned by the Natural Resources Defense Council, *Natural Gas Pipeline Certification: Policy Considerations for a Changing Industry*, which contained recommendations for updates to the Commission's current approach for interstate pipeline certification proceedings, which she filed in the Commission's inquiry proceeding into potential revisions to its existing natural gas pipeline certification policy (PL18-1-000). The Sustainable FERC Project supported Ms. Tierney's comments in that docket and also commissioned a follow-up report by Ms. Tierney, published in November 2019 as *FERC's Certification of New Interstate Natural Gas Facilities: Revising the 1999 Policy Statement for 21<sup>st</sup> Century Conditions*. It is reasonable to assume the Sustainable FERC Project also agrees with at least some of the conclusions in the follow-up report. I understand the Sustainable FERC Project has been involved in only one LNG facility certification process, and I am not aware of policy reforms that the Sustainable FERC Project has recommended for LNG review processes.



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This inquiry proceeding (PL18-1-000) remains open at the Commission and I do not want to make a judgment on an issue I may be called to vote upon.

- More broadly, what changes, if any, would you advocate to FERC's pipeline or LNG processes?

**Answer:** As noted above, the Commission maintains an open inquiry proceeding (PL18-1-000) on the question of potential changes to the Commission's interstate pipeline certification processes and I do not want to risk prejudgment on the issues addressed in that record. Also, while I am familiar with the Commission's processes on paper for LNG facility certification review, as a nominee, I have not engaged as a Commissioner with other Commissioners, staff, and stakeholders nor have I been responsible for full review of an LNG facility certification proceeding. Thus, I think it would be premature to advocate for specific changes from the Commission's perspective.

- To the extent that you have identified in your answers to the previous questions any policy changes you support, please identify those that, in your judgment, fall within the authority of the Commission to bring about. Please also identify policy changes you support that are outside the Commission's authority to accomplish.

**Answer:** Please see my response to the question above.

- Is it appropriate in your view to seek to advance policy changes in individual adjudicated cases? If so, please provide the basis for your view.

**Answer:** My perspective is that generally, the Commission's use of notice-and-comment rulemaking procedures is the appropriate process for significant policy changes. However, individually adjudicated cases require application of the law and relevant regulations as they exist. Due to the fact-specific nature of the record in each proceeding, the application of the law may differ from case to case and result in variation across decisions and, in some instances, changed policy positions over time.

**Question 4:** Cybersecurity of our energy infrastructure has long been a top priority for the Energy and Natural Resources Committee. In our energy package, the American Energy Innovation Act, we have language directing FERC to establish incentive-based rates for utilities to make cybersecurity investments. FERC is also currently studying a potential framework for providing such incentives administratively.

- What is the most effective action FERC could take to improve the energy sector's cybersecurity posture?

**Answer:** The energy sector's cybersecurity posture can be improved by not only employing mandatory and enforceable NERC reliability standards but also by working collaboratively with industry, the states and other federal agencies to address effectively emerging threats and

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implement best practices. I understand that the Commission is following this two-pronged approach. If confirmed I would work to further assess available information and support the Chair and staff in this ongoing effort.

**Question 5:** During the hearing, you stated that FERC’s role in implementing a carbon tax is “to provide an open forum on this emerging issue to allow stakeholders to be heard...”

- You previously stated that “FERC can’t impose a carbon tax, or any environmental policy for that matter.” I agree with that statement. Have you changed your view? And, if your view has changed, please outline your current view and provide the basis for it.

**Answer:** The Commission has scheduled a technical conference on carbon pricing in organized wholesale electricity markets for September 30, 2020 (AD20-14-000). The scope of this technical conference is broader than whether the Commission has authority to proactively establish a price on greenhouse gas emissions:

“The purpose of [the] conference is to discuss considerations related to state-adoption of mechanisms to price carbon dioxide emissions, commonly referred to as carbon pricing, in regions with Commission-jurisdictional organized wholesale electricity markets,” and the “conference will focus on carbon pricing approaches where a state (or group of states) sets an explicit carbon price . . . and how that carbon price intersects with RTO/ISO-administered markets, addressing both legal and technical issues.”<sup>1</sup>

It is reasonable to infer that stakeholders may advance viewpoints on the question whether the Commission can impose a carbon tax, and on that specific issue I do not want to prejudge any potential outcomes.

- In light of your answer to the foregoing question, please explain why FERC has a role providing a forum on this issue?

**Answer:** As described in the Commission’s supplemental notice of technical conference, the Commission has provided a forum for a broader range of questions related to pricing carbon in regions with regional transmission operators or independent system operators than the singular issue of whether the Commission can impose a carbon tax.

A forum to address these broad range of issues responds to substantial stakeholder interest and engagement on related topics. The New York Independent System Operator, regulated by the Commission, has been considering a carbon pricing mechanism in its stakeholder process since 2018, and numerous Commission stakeholders have argued that the Commission has a role to play in implementing carbon pricing mechanisms. The Commission may use a technical

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<sup>1</sup> Docket No. AD20-14, Supplemental Notice of Technical Conference re Carbon Pricing in Organized Wholesale Electricity Markets, Sept. 16, 2020.

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conference as a forum to examine questions such as the ones raised in its supplemental notice, allowing Commissioners and staff to gather input from different perspectives on the legal, as well as economic and engineering, considerations at issue. Inputs collected through the technical conference and ensuing record development may allow the Commission to assess whether or how it may have a role to play with a more fully informed perspective.

**Question 6:** During the hearing, you stated that the Commission is “not a direct climate regulator” and that “science should drive the Commission’s application of the law.”

- Please elaborate on your statement that FERC is not a “direct” climate regulator? In what way, if at all, is FERC an “indirect” climate regulator in your view? Please provide the legal authorities, if any, for FERC’s responsibilities, if any, as an indirect climate regulator?

**Answer:** My intent was not to indicate that the Commission is an “indirect” climate regulator, but rather to note that despite the fact that the Commission is not a climate regulator, the exercise of the Commission’s statutory responsibilities may have an effect on emissions, and the Commission must also respond to evolving facts and circumstances that may include climate change.

The Commission primarily derives its authority from the Federal Power Act and Natural Gas Act. Both statutes require the Commission to ensure just and reasonable rates and avoid undue discrimination, as well as to consider the licensing or certification of certain infrastructure projects. The Federal Power Act also gives the Commission authority to approve and enforce reliability standards.

While the Commission is not a climate regulator in carrying out these responsibilities, the issue of climate change is sometimes relevant to the Commission’s exercise of its authority, and the Commission’s actions may affect greenhouse gas emissions even where the Commission’s role does not involve considering them. For example, in exercising its authority to ensure just and reasonable rates, the Commission has recently faced questions regarding capacity market participation of resources supported by state climate and clean energy policies. With regard to the Commission’s consideration of interstate pipeline certification and hydroelectric facility licensing applications, the Commission is required to engage in NEPA analysis. The D.C. Circuit has determined that in at least some circumstances, greenhouse gas emissions are “reasonably foreseeable” and thus should be included in NEPA analysis. In another example, Section 215 of the Federal Power Act provides the Commission authority to approve and enforce reliability standards, which may change as the electricity resource mix changes. As I mentioned during the nomination hearing, the Commission’s reliability authority should be forward looking. To the extent predictions of climate-driven increasing extreme weather events are credible, it may be appropriate that reliability standards take these predictions into account to ensure reliability-focused investments and operational protocol development and modifications are cost-effective into the future.

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- Should impacts to the climate be weighted more heavily when FERC considers pipeline applications?

**Answer:** Under current law, any “reasonably foreseeable impacts” related to climate change should be considered in the Commission’s NEPA deliberations. The Commission opened an inquiry into its existing natural gas pipeline certification policy in April 2018 (PL18-1-000). The inquiry sought input on potential revisions to the Commission’s approach to need determinations as part of Natural Gas Act Section 7 inquiries into whether an interstate pipeline is “necessary for the present or future public convenience and necessity.” The question of to what extent and how the Commission should consider greenhouse gas emissions is an issue in the open proceeding, and so I do not want to risk prejudgment on this issue. The record in each interstate pipeline application proceeding should be considered individually, based on the facts in that application.

**Question 7:** I have been concerned for many years about energy insecurity for people who are working but who do not qualify for low income energy assistance. (See, e.g., <https://www.energy.senate.gov/services/files/2B1CC813-BA91-4C2E-B4D5-927EB40D9368> ) In Alaska, because our energy prices are high, energy insecurity is a significant issue. But Alaska is not alone in this respect. Energy insecurity is a national problem. And I believe it is worse now in the pandemic.

I recognize that wholesale power markets are distinct from consumer-facing retail markets for electricity. Nevertheless, as was discussed at the hearing, wholesale market prices affect retail prices and, when energy is scarce, as, for example when natural gas prices spike as has happened in New England in winter.

- Have you considered the problem of energy insecurity? Do you agree with me that adequate infrastructure can help keep energy prices low? If not, why not?

**Answer:** I admire the time you have spent on and the focus you have brought to the issue of energy insecurity. I have considered the problem mostly in the state policy context, which, as you suggest, bears much of the authority over issues impacting retail rates.

Sufficient infrastructure is a prerequisite to ensuring energy availability and security. A number of significant and complex factors, including in some cases capturing the cost of new infrastructure development, influence the impact of wholesale energy prices on retail customers. The relationship between benefits of investment in infrastructure and related costs is fact-specific and should be a consideration as the Commission implements its obligations under the Federal Power Act and Natural Gas Act.

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- What can FERC do to help alleviate the problem of energy insecurity?

**Answer:** The Federal Power Act is at its core a consumer protection statute. Costs under consideration within the Commission's jurisdiction must be just and reasonable. In many cases the Commission will not have direct jurisdiction over issues implicating energy insecurity, but in all cases serving in the public interest requires the Commission to be thoughtful when it is possible that costs will be passed through to retail customers.

- Are you concerned that a focus on low energy market prices alone, without considering the costs of high capacity prices or the costs of enabling reliability and resilience, can be a problem? If not, why not?

**Answer:** As this question suggests, capacity, energy and ancillary services markets should be considered holistically. A market design where energy prices are low, but capacity market prices are high may be an inefficient system for delivering customers with affordable and reliable power in the long run. Efforts to accurately price energy services may yield benefits even to the extent they result in higher short-term electricity prices, by reducing capacity market prices or lowering long run system costs.

- Should the Committee or the Commission be concerned that mandates for certain high cost resources can contribute to energy insecurity?

**Answer:** I defer to this Committee and Congress on any desirable actions related to the impacts of high cost resources and energy insecurity. Short of further legislative guidance, the Federal Power Act reserves to states the right to determine their resource mix. The Commission has responsibility for ensuring market rules allow all resources to compete fairly, so that low cost resources capable of providing electricity, capacity and ancillary services have the opportunity to compete.

**Question 8:** Please elaborate on your answers to questions in the hearing on recusals. In addition to following the advice of the Designated Agency Ethics Officer (DAEO), what will be your personal standard with respect to recusals? Will you be bound by Rules of Professional Responsibility that might apply to you as a member of the Bar? How do you personally interpret your obligations under Executive Order 13770, the Ethics Pledge, as it relates to recusals?

**Answer:** My personal standard will be to abide by the terms of my Ethics Agreement, the Office of Government Ethics Standards of Conduct, the Commission's Supplemental Ethics Regulations, and Executive Order 13770. In instances where I believe the interests of the government require my participation in matters from which I am recused, I will consult with the DAEO to determine whether an authorization under 5 C.F.R. § 2635.502 or a waiver under 18 U.S.C. § 208 would be appropriate under the circumstances. If I am ever unsure as to whether my participation in any particular matter would raise questions about my impartiality or the loss thereof or a financial conflict of interest, I will consult with the DAEO prior to participation. I will also ensure that my staff is knowledgeable of such requirements.

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I understand that I will remain bound by the Rules of Professional Responsibility that apply to me as a member of the Bar.

Finally, based on my understanding of Executive Order 13770, section 1, part 6, I will agree to recuse for a period of two years from the date of my appointment from particular matters involving specific parties that are directly and substantially related to my former employer or former clients. I understand that “former employer” and “former clients” are entities with which I was employed or provided services to within two years prior to the date of my appointment. In instances where I believe the interests of the government require my participation in a proceeding or matter in which at least one of my former clients, firm, or employer is involved and covered by my Ethics Pledge recusal, I will consult with the DAEO to determine whether an authorization under 5 C.F.R. § 2635.502 or a waiver under 18 U.S.C. § 208 would be appropriate under the circumstances. I will also seek a waiver from the White House Ethics Office when my Ethics Pledge recusal is applicable prior to my participation in the proceeding or matter.

**Questions from Senator James E. Risch**

**Question 1:** Question number 20 on the committee questionnaire requires nominees to disclose “any lobbying activity that you have performed during the past 10 years with respect to legislative or administrative actions at the Federal, State, or local level.” In response to this question on your questionnaire, you stated that you lobbied on behalf of the Natural Resource Defense Council’s (NRDC) Sustainable FERC Project Coalition between 2011 and 2015. Our records indicated that you testified at a June 29, 2016 FERC technical conference on “Implementation Issues under the PURPA,” while still employed by NRDC. Can you please confirm your participation at this technical conference, and clarify why it was not included on your questionnaire?

**Answer:** While it is not my understanding that it constitutes lobbying activity due to its nature as an on-the-record technical conference, I confirm that I participated in the June 29, 2016 Commission technical conference on “Implementation Issues under the PURPA” (AD16-16-000).<sup>2</sup> In the interest of full disclosure, I also participated in three other on-the-record proceedings after 2015 at the federal and state level: (1) FERC Docket EL16-39-001;<sup>3</sup> (2) FERC

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<sup>2</sup> My filed statement from that technical conference is available at: [https://elibrary.ferc.gov/eLibrary/filelist?document\\_id=14474525&accessionnumber=20160630-4055](https://elibrary.ferc.gov/eLibrary/filelist?document_id=14474525&accessionnumber=20160630-4055).

<sup>3</sup> The motion for leave to answer and answer submitted in EL16-39-001 was filed on August 3, 2016, and is available at: [https://elibrary.ferc.gov/eLibrary/filelist?document\\_id=14482605&accessionnumber=20160803-5118](https://elibrary.ferc.gov/eLibrary/filelist?document_id=14482605&accessionnumber=20160803-5118).

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Docket RM16-9-000;<sup>4</sup> and (3) Utah Public Service Commission Docket 14-035-114.<sup>5</sup> My participation in (1) and (2) occurred during my time as Senior Attorney with NRDC and during the period I was transitioning out of the coalition role of Director of the Sustainable FERC Project. That transition occurred over a period of time from December 2015 (as noted in my ENR Nominee Statement) through Summer 2016. My participation in (3) occurred after my employment as Senior Attorney with NRDC ended (as noted in my ENR Nominee Statement, December 2016) and I had founded my consulting firm, Goodgrid, LLC.

**Question 2:** In July, FERC adopted significant revisions to its PURPA regulations. This was an important development, and many of the reforms mirror provisions that myself and others on this committee had pursued legislatively for years. These changes will help protect ratepayers from having to pay for unnecessary PURPA costs.

- a. Can you please share your thoughts on FERC's final rule on PURPA implementation?

**Answer:** On September 19, 2020, the Commission issued a Notice of Denial of Rehearings by Operation of Law and Providing for Further Consideration on issues contained in Order No. 872. As there are requests for rehearing pending before the Commission, I do not want to risk stating any opinions that may constitute prejudgment.

- b. Do you believe that state regulatory authorities/commissions should have the flexibility to make decisions that best address the needs of customers – for example, to determine energy rates based on actual need?

**Answer:** In general, I do believe that state regulatory authorities and commissions should have the flexibility to make decisions that best address the needs of customers, so long as that flexibility comports with binding law. The specific issue of how energy rates are determined under PURPA is at issue in Order No. 872, for which on September 19, 2020, the Commission issued a Notice of Denial of Rehearings by Operation of Law and Providing for Further Consideration. As there are requests for rehearing pending before the Commission, I do not want to risk stating any opinions about energy rates that may constitute prejudgment.

- c. Do you think additional changes to PURPA regulations are needed to protect ratepayers?

**Answer:** Please see my answers to questions 2.a and b above.

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<sup>4</sup> The petition in RM16-9-00 was filed on March 7, 2016, and is available at: [https://elibrary.ferc.gov/eLibrary/filelist?document\\_id=14437576&accessionnumber=20160307-5262](https://elibrary.ferc.gov/eLibrary/filelist?document_id=14437576&accessionnumber=20160307-5262).

<sup>5</sup> The contents of the docket are available at: <https://psc.utah.gov/2016/06/20/docket-no-14-035-114-2/> (I submitted comments on June 8, 2017 and August 8, 2017).

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**Question 3:** Hydropower is an important component of Idaho’s energy mix. In fact, about 60 percent of the electricity used in Idaho each year is generated by hydropower. What are your general views about hydropower? In your opinion, do you consider hydropower to be a renewable energy source?

**Answer:** I concur that hydropower is an important component of the diverse U.S. electricity mix, especially in Idaho and across the West. I personally believe that hydropower is an important renewable fuel resource. Under Sections 205 and 206 of the Federal Power Act, however, the Commission’s role is to remain technology neutral and ensure that all resources, including hydroelectric power, have the opportunity to compete on a level playing field.

**Question 4:** Despite its many benefits, licensing or relicensing a hydropower facility takes several years. In Idaho, we’ve seen relicensing take more than a decade. FERC issues hydropower licenses, but the approval process involves many other federal and state agencies working under various independent statutory authorities. This can lead to delays, redundancies, conflicts and increased costs that are ultimately borne by ratepayers.

- a. What do you believe Congress can or should do to simplify this process and to ensure that reasonable timeframes for decisions are met - Or do you think current process is working? Wouldn’t ratepayers benefit from a more streamlined process?

**Answer:** I think that it is important that any regulatory process be as efficient as possible, while satisfying the requirements established by Congress. Not having participated in the Commission’s hydropower licensing process, I do not have any recommendations about how well that process is working or whether that process would benefit from Congressional action, but if I am confirmed, I will give those questions close attention.

**Question 5:** Two of your former employers, the Energy Foundation and Natural Resources Defense Council, have reportedly helped advance China’s “Belt and Road Initiative.” This massive global initiative to develop infrastructure - like shipping lanes, oil and natural gas pipelines, and nuclear power reactors - is intended to advance the Chinese government’s political and strategic interests globally, and has become a vector for China’s anti-competitive economic policies. The U.S. government and nuclear industry is actively working to retain American leadership on nuclear energy by developing the next generation of advanced nuclear reactors. China is aggressively pursuing nuclear energy export deals to expand their influence by forging a decades long nuclear relationship with countries seeking nuclear power plants. Chinese officials have stated publicly that as many as 30 nuclear reactors could be built by China over the next decade as part of the Belt and Road Initiative.



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- a. What are your view on the Belt and Road initiative?

**Answer:** I have not focused on the Belt and Road initiative in a professional capacity and do not have a perspective to offer relative to this nomination process; however, I appreciate the magnitude of the concerns you raise. If confirmed, to the extent any Commission proceeding intersects with the Belt and Road initiative, I would consider all the facts on record in applying relevant law in each case.

- b. How do you reconcile your former employers' efforts to promote the Belt and Road initiative while American nuclear companies trying to export their technologies are already at a major disadvantage trying to compete with state-owned nuclear enterprises like China?

**Answer:** I worked for U.S. Energy Foundation and did not engage in any issues related to Energy Foundation's China work. While working for Natural Resources Defense Council, I did not engage in any programmatic work related to NRDC's China program.

If confirmed, the fact that these organizations did work in China would have no bearing on my approach to considering all facts on the record in applying relevant law in each case. As in all instances, I would also be bound by the independent role required of FERC Commissioners.

**Question 6:** You worked at the Energy Foundation for nearly 3 years. The Foundation operates an office in China - which employs dozens of people and provides millions of dollars of grants to Chinese institutions. The grant application states that the Foundation reviews projects in consultation with Chinese agencies. China is a serious national security threat - so much so that Congress and the Administration banned the use of Huawei equipment on the nation's telecommunications networks given the company's links to the Chinese Communist Party. Senator King and I led a letter last year to FERC warning of the serious threat that other Huawei products - namely their solar inverters - pose to our nation's energy infrastructure.

- a. Given potential threats to American energy infrastructure posed by the Chinese government, how do you reconcile the Energy Foundation's association with Chinese interests?

**Answer:** I worked for U.S. Energy Foundation and was not engaged in any issues related to Energy Foundation's China work. If confirmed, the fact that Energy Foundation has done work in China would have no influence on me in my role as an independent Commissioner. As I stated in my confirmation hearing, if confirmed, I would commit to prioritizing cybersecurity and other grid security issues and remaining vigilant to protect the bulk electric system.

**Question 7:** In the past, utilities in the Pacific Northwest have explored creating either a regional transmission organization (RTO), or an independent system operator (ISO).

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- a. What are your thoughts about organized markets – do you think that all regions in the country should have an organized market? What is the role of states in these decisions – do you think the federal government has the right to mandate that states join a RTO or ISO?

**Answer:** The formation of RTOs and ISOs over the last several decades has created significant customer savings and other electricity system benefits. I defer to Congress as to whether the federal government should mandate that states join an RTO or ISO. Short of further legislative guidance, I appreciate the Commission's approach over the last several decades of encouraging organized market participation for regulated entities while recognizing that regional circumstances merit avoidance of a "one-size-fits-all" compliance approach.

**Questions from Senator Maria Cantwell**

**Question 1:** One of FERC's most important roles is to be a "cop on the beat", ensuring that markets are open and transparent and free from manipulation that costs Americans consumers. Ensuring there is monitoring of a bright red line out there that deters anti-competitive and illegal efforts to distort market prices. Deregulated markets can only work if you have adequate enforcement.

Last October I sent FERC a letter along with Committee members Wyden and King and several other Senators expressing our concern over recent trends that seem to indicate that the FERC Office of Enforcement may not acting as vigilant as it has been in years past.

- As a FERC Commissioner, would you be fully committed to finding, stopping, and punishing manipulative acts that can stifle competition and result in unjust and unreasonable prices?

**Answer:** Yes, I would be fully committed to robust, effective enforcement efforts.

- Do you believe energy markets can be competitive and produce just and reasonable rates if they are not free from market manipulation and other forms of fraud?

**Answer:** No market design is perfect. While regional energy markets have the potential to deliver significant savings and other system benefits, robust and effective anti-manipulation protections must be in place to ensure, to the greatest extent possible, that the markets are free from manipulation and other forms of fraud, and that entities engaging in misconduct can be held appropriately accountable.

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- If FERC determines that an energy market participant made financial gains based on fraud or manipulating markets, do you believe those misbegotten gains should be promptly returned to injured parties or consumers?

**Answer:** Yes. As discussed in the Commission's Policy Statement on Enforcement (2005) and reaffirmed in the Revised Policy Statement on Enforcement (2008) and the Commission's Penalty Guidelines (2010), market participants will be expected to disgorge unjust profits whenever they can be determined or reasonably estimated to nullify the value of gains acquired through misconduct and to compensate those who were harmed by the violations. Requiring disgorgement of unjust profits is consistent with long-standing Commission practice.

- What additional authorities, if any, would you like Congress to grant FERC to further augment their ability to prevent fraud and market manipulation?

**Answer:** At this time, I do not have specific recommendations as to additional authorities that Congress should grant the Commission to further prevent fraud and market manipulation. If confirmed, I would be fully committed to using appropriately any additional enforcement authority given to the Commission by Congress.

**Question 2:** At the end of September, FERC is convening a conference on carbon pricing in FERC regulated wholesale electric markets covered by regional transmission organizations and independent system operators (RTOs/ISOs). I commend FERC for holding this conference and taking steps necessary to understand the mechanisms and procedures needed to incorporate a carbon price directly into the wholesale energy markets.

- Do you believe directly pricing carbon emissions into energy market operations could efficiently reduce carbon emissions through technology-neutral policies that allow the markets to deploy the lowest-cost emission reduction opportunities?

**Answer:** Numerous studies contend that putting a technology-neutral price on carbon, whether done outside the wholesale markets via a mechanism such as the Regional Greenhouse Gas Initiative, or integrated more directly into wholesale market operations, is an economically efficient way to reduce greenhouse gas emissions. If confirmed, I look forward to hearing competing views on this topic at the technical conference on carbon pricing in wholesale electricity markets and reviewing the record that will emerge from the technical conference on this important issue.

- What do you hope to learn from this upcoming carbon pricing conference?

**Answer:** In addition to inputs on my response to the directly previous question, I look forward to the forum for stakeholders presenting a variety of perspectives on the issues included in the notice of the technical conference, including the price and quantity-based carbon pricing approaches that states and regions may be thinking about, as well as how those approaches

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would intersect with RTO and ISO-administered markets. If confirmed, I look forward to reviewing the record and engaging on these important issues with my colleagues.

- Will you commit to ensuring that future conferences include participants who represent the views of renewable energy, consumer, and state interests?

**Answer:** Yes, as is relevant to the issues under consideration. As evidenced by my previous experience representing a variety of interests across the energy industry, I recognize the benefit of being able to learn from different perspectives on complex energy issues. If confirmed, I commit to working with my colleagues to ensure that Commission conferences include representatives of the various types of stakeholders interested in the conference.

- Do you think that incorporating a carbon price in wholesale energy markets will help support states' initiatives to reduce carbon emissions while providing certainty for those investing in the resources for tomorrow?

**Answer:** Carbon pricing may be one effective approach to support states' initiatives to reduce carbon emissions, among others. Integration of a state's carbon price into wholesale energy markets could support such state initiatives while simultaneously realizing the benefits of competitive wholesale energy markets, which include sending economically efficient signals for investment in new resources. If confirmed, I look forward to receiving input from states that may be interested in carbon pricing and examining these issues with my colleagues.

**Question 3:** FERC plays a crucial regulatory role as the agency responsible for permitting interstate natural gas pipelines and determining their environmental impacts. Three years ago the D.C. Circuit Court of Appeals found FERC failed its legal responsibility by not considering the reasonably foreseeable impacts to climate change that would occur as a result of approving the Sabal Trail pipeline.

- Do you believe that FERC is legally required to consider the environmental impacts of infrastructure projects, including the foreseeable climate impacts from direct and indirect greenhouse gas emissions?

**Answer:** I believe that the Commission is required to consider the environmental impacts of proposed infrastructure projects, including any reasonably foreseeable climate impacts. The specific issues that need to be studied in a given case will depend on the facts of that proceeding.

- Do you support consideration of a Life Cycle Analysis of greenhouse gas emissions when making a public interest determination for a new pipeline permit?

**Answer:** The Commission opened an inquiry into its existing natural gas pipeline certification policy in April 2018 (PL18-1-000). The inquiry sought input on potential revisions to the Commission's approach to need determinations as part of Natural Gas Act Section 7 inquiries into whether an interstate pipeline is "necessary for the present or future public convenience and

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necessity.” The question of to what extent and how the Commission should consider greenhouse gas emissions is an issue in the open proceeding, and so I do not want to risk prejudgment on this issue.

- If implemented, how would the Trump Administration’s rollback of long standing NEPA protections impact FERC’s need to consider the indirect and cumulative impacts of projects you are asked to approve?

**Answer:** If confirmed, I will review each project that I am asked to consider consistent with binding law and the record of the case.

**Question 4:** In late 2017, the Energy Department sent FERC a proposed rule that would have put a tax on consumers by mandating uneconomic coal and nuclear plants as the only reliable generation sources. The proposal used bogus grid reliability and resilience argument to try and justify this proposed bailout. Unfortunately, this ham-handed attempt proved to be the first of several efforts by some Commission members to try and prop up historic energy sources at the expense of consumers.

- Would you have voted the same way as the other five Commissioners unanimously did at the time?

**Answer:** As the Commission has not addressed a request for rehearing in this case, I do not want to risk stating any opinions that may constitute prejudgment. In general, under the Federal Power Act, the Commission’s role is to remain technology neutral and ensure that all resources have the opportunity to compete on a level playing field

- As a FERC commissioner, how would you ensure our grid stays reliable and resilient without favoring one generation source over another?

**Answer:** I believe that the reliability and resilience of the grid is fundamental to the Commission’s core mission. Reliability and resilience are system concepts that implicate the Commission’s authority under Sections 205 and 206 of the Federal Power Act, as well as its Section 215 reliability authority. It is not the role of the Commission to determine the appropriate fuel mix for the U.S. electricity system. One way in which the Commission may promote reliability and resilience is to adopt market rules that do not favor any one resource and instead allow all resources to compete in the markets fairly. In addition, as I mentioned during the nomination hearing, the Commission’s reliability authority should be forward looking. To the extent predictions of climate-driven increasing extreme weather events are credible, it may be appropriate that reliability standards take these predictions into account.

**Question 5:** Two weeks ago, FERC rejected the latest proposal from New York’s grid operator, NYISO, to allow new renewable energy and energy storage to compete against fossil fuels in its wholesale capacity market. NYISO has made it clear that the proposed rules are necessary to reform the capacity market’s structure in a way that aligns with New York law mandating 70

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percent renewable electricity by 2030 and 100 percent renewable electricity by 2040. Commissioner Glick dissented from that decision, arguing that FERC is presenting NYISO with unnecessary and unreasonable obstacles aimed at stalling the state's efforts to transition to clean energy.

- As more states join Washington and New York in leading the energy transition to 100% clean electricity, what role do you believe FERC should play in facilitating implementation of State clean energy policies?

**Answer:** The Commission's role is not to pick winners and losers with respect to fuel choices, but to ensure just and reasonable rates in light of the state-selected resource mix as it evolves over time. If I am confirmed, I will work to ensure the Commission fulfills its responsibilities regarding just and reasonable rates while respecting the states' choices about generation mix.

- As a Commissioner, would you respect State decisions on electricity supply mix and halt further efforts to mitigate state-sponsored clean energy resources?

**Answer:** Several proceedings that are or may come before the Commission consider this question and I do not want to risk prejudgment. I can say that I am committed to the cooperative federalism approach embedded in the Federal Power Act and the balance that is required between the roles the Act reserves for the states and the Commission's responsibility to ensure just and reasonable rates.

- Do you believe inclusion of a price on carbon in wholesale energy markets provide a mechanism to allow states like Washington to achieve their clean energy objectives?

**Answer:** Carbon pricing in wholesale energy markets may be one effective mechanism to support states' initiatives to reduce carbon emissions, among others. I look forward to hearing varying perspectives on this issue at the upcoming carbon pricing technical conference that the Commission is holding on September 30, 2020, (AD20-14-000) and do not want to prejudge any issue that may come before the Commission. I note that Washington utilities do not currently participate in an organized wholesale energy market (some Washington utilities do or are planning to participate in the western Energy Imbalance Market, a real-time reserves sharing market). If confirmed, I would look to the technical conference, ensuing comments on the record, and the perspective of Washington and other states about their potential interest in pricing carbon via wholesale electricity markets.

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**Questions from Senator Bernard Sanders**

**Greenhouse Gas Emissions:**

**Question 1:** Do you agree with the vast majority of scientists that climate change is real, it is caused by human activity, and that we must aggressively transition away from fossil fuels to energy efficiency and sustainable energy like wind, solar, and geothermal?

**Answer:** I agree with the vast majority of scientists that climate change is real and that it is caused by human activity. I also believe that climate change is driving a transition in the power sector and beyond. Under the Federal Power Act, the Commission's role is not to pick winners and losers when it comes to fuel choices. Instead, the Commission is authorized to ensure that no barriers to market participation exist for any type of resource, and that no undue discrimination exists for resources trying to compete in the market. As a Commissioner, I would commit to ensuring all types of resources can compete on a level playing field and providing opportunities for existing as well as emerging technologies to contribute to the provision of reliable, affordable electricity.

**Question 2:** Energy prices impact all American families. Climate change also poses catastrophic economic, environmental and social threats. Delaying action on climate change has severe long-term costs. Moreover, distributed renewable energy sources like wind and solar are the cheapest forms of new energy generation available, are not subject to the sorts of wild price fluctuations that we see with fossil fuels, and are more resilient to natural disasters like hurricanes and flooding.

- A. If confirmed, will you commit to encouraging utilities around the country to aggressively transition away from fossil fuels and toward renewable, distributed energy generation, such as rooftop solar?

**Answer:** Our electricity system is undergoing a major change with new and different resources, including utility-scale renewables, distributed energy resources, demand side resources, and electric storage resources, playing a greater role. The Commission's role is not to pick winners and losers when it comes to fuel choices. However, I believe that it is incumbent upon the Commission to ensure that wholesale electricity markets are open to competition with no undue discrimination against resources that are technically capable of providing electricity or other grid services.

- B. What specific steps will you take to facilitate this necessary transformation?

**Answer:** If confirmed, I will make it a priority to work with my colleagues to examine wholesale electricity markets going forward towards ensuring that resources that are technically able to provide electricity are able to compete in those markets. I will support the Commission

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continuing its efforts to reexamine market rules to facilitate the participation of new resources in wholesale electricity markets, such as storage resources and distributed energy resources (DER).

**Question 3:** In May 2018, FERC issued its *New Market Expansion* policy that eliminated most upstream and downstream greenhouse gas emissions as part of its review of interstate liquid natural gas pipelines. While defending that policy before the U.S. Court of Appeals for the D.C. Circuit, Commissioner Danly, who was at the time FERC's General Counsel, argued that any efforts to consider upstream and downstream greenhouse gas emissions was an "exercise in futility." Although the U.S. Court of Appeals for the D.C. Circuit rejected the challenge to this policy on jurisdictional grounds, the court went out of its way to reject Commissioner Danly's core legal argument. In particular, the court stated that Commissioner Danly was "wrong to suggest that downstream emissions are not reasonably foreseeable simply because the gas transported ... may displace existing natural gas supplies or high-emitting fuels," that it was "troubled," "skeptical," and had "misgivings" about the "dubious" claim that any efforts to consider upstream and downstream greenhouse gas emissions were futile.

- A. Do you agree with Commissioner Danly's argument that any efforts to consider upstream and downstream greenhouse gas emissions are an "exercise in futility"?

**Answer:** Regarding the Commission's consideration of interstate natural gas pipeline certification applications pursuant to Section 7 of the Natural Gas Act, the D.C. Circuit has held that in at least some circumstances, greenhouse gas emissions are a "reasonably foreseeable" impact that should be considered as part of the Commission's NEPA analysis. If confirmed, I would commit to following binding judicial precedent in each proceeding, as applied to the specific facts on record.

- B. Do you accept that FERC can deny a pipeline project due to its environmental impacts, as stated by the Court? If not, why not?

**Answer:** Yes, under the Natural Gas Act and NEPA, if the statutory requirements are not satisfied with regards to environmental impacts as applied to the facts in any specific record, the Commission would be required to follow the law in denying a certification application.

**Net Metering**

**Question 4:** Earlier this year, FERC dismissed a proposal by the New England Ratepayer's Association that called on FERC to assert jurisdiction over 45 individual state net metering programs. In May, I joined several of my colleagues in signing a letter calling on FERC to reject this misguided proposal, which would have overturned FERC's longstanding policy that it does not have jurisdiction over sales from ratepayers to utilities if consumption is larger than production over a certain period, as well as gutted a multitude of state energy programs that are facilitating significant investments in distributed, renewable energy generation and storage. While I was pleased to see FERC unanimously reject this proposal, I was concerned to see



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Commissioner McNamee indicate in his concurrence that FERC still has jurisdiction to rule on this matter at a later date.

If confirmed, will you commit to opposing any future proposal that would harm state net metering programs?

**Answer:** I do not want to risk prejudgment of any issue that may come before the Commission. However, if confirmed, I would commit to recognizing the cooperative federalism approach embedded in the Federal Power Act and the rights reserved to states under the Act, as well as to applying relevant judicial precedent to the facts in each record.

**Distributed Energy Resources Rule**

**Question 5:** In February of 2018, FERC improved energy market competition and innovation by finalizing a multi-year rulemaking process on energy storage. A Brattle report predicted the rule could spur 50 gigawatts of additional energy storage across the United States.

A. Do you support the FERC final order on energy storage?

**Answer:** Several Order No. 841 compliance filings remain open at the Commission and I do not want to risk prejudgment of any issue. In general, pursuant to its Section 205 and 206 obligations to ensure just and reasonable rates and avoid undue discrimination, I support actions by the Commission to remove market barriers to existing and emerging technology resources that are capable of competing to provide electricity, capacity or ancillary services.

B. Do you commit to working with the other FERC commissioners and staff to ensure that this rule is properly implemented by regional grid operators?

**Answer:** Yes, if confirmed I would work with my fellow Commissioners and staff to continue monitoring implementation of Order No. 841.

**Question 6:** After FERC finalized the energy storage rulemaking, the agency announced a technical conference for the proposed rule for distributed renewable aggregation. The distributed energy resources (DER) generation rule explores how micro grids that include rooftop solar and other renewables can better integrate onto the grid. In May 2018, I joined with several of my colleagues in signing a letter urging FERC to move forward on developing this DER guidance, which FERC issued on September 17<sup>th</sup>.

A. What role do you see this new DER rule playing in wholesale energy markets over the next 10 years?

**Answer:** I do not want to prejudge any issues that may come before the Commission on rehearing or compliance of the new DER final rule, Order No. 2222. However, this final rule was designed to remove barriers to the participation of new technologies, such as many types of

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distributed energy resources aggregations, in the RTO/ISO markets. My expectation is that the DER final rule will introduce additional competition into RTO/ISO markets and will likely lead to an increase in the number of DER aggregations and other innovative technologies participating in markets over the next decade.

B. Do you support the final FERC rule on DER?

**Answer:** Order No. 2222 is still subject to rehearing, and, therefore, I do not want to prejudice any rehearing requests of this final rule. However, I support the Commission's efforts to ensure that wholesale electricity markets are open to competition with no undue discrimination against resources that are technically capable of providing electricity.

C. Do you commit to working with the other FERC commissioners and staff to ensure that this rule is properly implemented by regional grid operators?

**Answer:** Yes, subject to its rehearing process, if confirmed I would work with my fellow Commissioners and staff on implementation of Order No. 2222.

**Question 7:** The Federal Power Act (FPA) requires FERC to judge rates in a way that is "just and reasonable" and not "unduly discriminatory or preferential". In other words, FERC commissioners cannot pick winners and losers. This is the reason the original coal-bailout proposal (in Docket No. RM18-1-000) from the Department of Energy was dismissed by FERC. Furthermore, 42 U.S. Code § 7171 says that FERC is an independent agency, so it may not take direction or be improperly influenced by private parties.

A. Do you commit to following the FPA and 42 U.S. Code § 7171, if you are confirmed as a FERC Commissioner?

**Answer:** Yes, if confirmed I would commit to following the Federal Power Act and 42 U.S. Code § 7171.

B. In terms of proposals like the coal-bailout proposal, do you agree that the proposed rule was properly rejected by FERC?

**Answer:** As the Commission has not addressed a request for rehearing in this case, I do not want to risk stating any opinions that may constitute prejudgment. In general, under the Federal Power Act, the Commission's role is to remain technology neutral and ensure that all resources have the opportunity to compete on a level playing field.

#### **Capacity Markets**

**Question 8:** New England states are making significant progress in expanding the share of energy they obtain from renewable sources through policies like Vermont's 2016 Comprehensive Energy Plan, which sets a roadmap for Vermont to obtain 90 percent of its energy from renewable sources by 2050, and regional plans like the Regional Greenhouse Gas

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Initiative. FERC has explored, through technical conferences, how to better incorporate states' environmental policy objectives into the wholesale energy markets. Stakeholders are working to address how to incorporate state renewables policy goals. More active leadership from FERC, however, is necessary to direct Independent System Operators (ISOs) and Regional Transmission Organizations (RTOs) to develop solutions to address these price formation challenges.

- A. Do you think FERC should make any changes to the existing capacity market framework in any of the organized wholesale markets to more easily accommodate regional and local preferences?

**Answer:** The interplay between state policy decisions and wholesale capacity market is a complex issue, which the Commission is considering in multiple, ongoing proceedings. It is my understanding that the Commission is currently considering related issues in pending proceedings involving PJM Interconnection, L.L.C., ISO New England Inc., and New York Independent System Operator, Inc., and, therefore, I do not want to prejudge these issues. If confirmed, I look forward to considering these issues with my colleagues.

- B. In the tension between states' climate policy goals and the organized markets, where do you think the responsibility for resource adequacy lies?

**Answer:** Across the country, organized wholesale markets, and states with utilities participating in those markets, take varied approaches to addressing resource adequacy. The ongoing proceedings noted in my answer to (A) directly above have implications for the division of responsibility between states and the Commission over reliability and resource adequacy concerns. In addition, several states are engaging in their own proceedings or intra- or interstate initiatives to consider resource adequacy authority and approaches. Since it is likely that some of these issues may come before the Commission, I do not want to risk prejudgment. If I am confirmed, I will work to fulfill the Commission's responsibilities regarding just and reasonable rates while respecting the division of jurisdiction contained in the Federal Power Act and the role of evolving state policies as relates to states' roles with regard to resource adequacy.

- C. Do you believe ISO New England's Competitive Auctions with Sponsored Policy Resources program is adequate to accommodate state public policy interests in the long term? If so, why? If not, why not?

**Answer:** In March 2018, the Commission accepted ISO-NE's proposal to modify its Forward Capacity Market related to actions taken by New England states to procure certain resources outside of ISO-NE's wholesale markets while maintaining competitive capacity pricing. That proceeding is pending before the Commission on rehearing, and, therefore, I do not want to prejudge that pending matter. If confirmed, I will work with my colleagues to engage on this topic.

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- D. What role should FERC play in ensuring that wholesale market rules enable state renewable energy policies and regional agreements?

**Answer:** Please see my answer to Question 8.A above.

**Stakeholder Input**

**Question 9:** As public demand increases for the federal government to take action to address climate change and ensure that rates remain just and reasonable, stakeholders are similarly requesting that FERC be more transparent and responsive to public input. As necessary, FERC should adopt policies and practices to ensure that ratepayer and stakeholder concerns are addressed.

- A. Do you feel that consumer interests are adequately represented in the regional transmission organization decision-making processes?

**Answer:** Several consumer advocates, large customers and other stakeholders have expressed concern that consumer interests are not sufficiently represented in regional transmission organization and independent system operator stakeholder proceedings and decision-making processes. I recognize the importance of sufficient representation for consumer interests in those processes. If confirmed, I would commit to working with my fellow Commissioners, staff and stakeholders to better understand various stakeholder perspectives on this issue and considering whether any Commission action is merited.

- B. Are you aware of any governance structure enhancements that could make the ISO's more directly responsive to stakeholder input?

**Answer:** I am aware of a recent assessment of governance structure related issues published by R Street in 2019, *Problems in Electricity Market Governance: An Assessment*. While I do not want to prejudge any recommendations in the report, if confirmed I would work with colleagues and stakeholders to consider the issues outlined in this assessment and other assessments or enhancements that have or may be proposed.

- C. A 2015 Government Accountability Office study indicated FERC lacks metrics for critically evaluating the functionality of the organized markets for capacity. Recently, FERC proposed a new set of metrics that eliminates the customer satisfaction metric. What metrics do you think are necessary to critically evaluate the markets' ability to respond to customer concerns?

**Answer:** As mentioned in your question, Commission staff proposed metrics that measure the economic and operational characteristics of the organized markets for energy and capacity. Responses from ISOs, RTOs, and utilities in regions outside of ISOs/RTOs are expected in October 2020. If confirmed, I will review those responses and discuss with my colleagues whether other metrics may more directly address other customer concerns.

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**Questions from Senator Debbie Stabenow**

**Question 1:** I want to ask you about FERC's role in ensuring the safety and integrity of our nation's hydroelectric dams. Sadly, early this year the people of Michigan learned firsthand about the catastrophic damages that can occur from a dam failure.

On May 19, two hydroelectric dams located in Midland and Gladwin Counties failed following heavy rainfall over a 48-hour period. The subsequent flooding forced 11,000 people to evacuate and damaged upwards of 2,500 buildings. Preliminary damage estimates exceed \$250 million, and at the request of Governor Whitmer and the Michigan Congressional delegation, a federal emergency declaration was issued.

FERC has a long history with Boyce Hydro, the owner of the two dams that failed (Edenville and Sanford) along with two others dams (Smallwood and Secord) on the Tittabawassee River. To say that Boyce Hydro had a checkered history is an understatement. For 14 years, FERC cited Boyce Hydro for safety violations, including repeated failings to fix spillways at the Edenville dam. As a result, FERC in 2018 revoked Boyce Hydro's license to sell electricity from Edenville pursuant to section 31(b) of the Federal Power Act.

While fines for noncompliance with safety requirements and/or the threat of having a license revoked are traditionally effective mechanisms to compel actions to address safety violations, that was not the case with Boyce Hydro. I am concerned a similar dynamic could exist at other dams across the country.

If you are confirmed, will you prioritize hydroelectric dam safety as Commissioner?

**Answer:** Yes, if confirmed I would commit to prioritizing these important hydroelectric dam safety issues.

**Question 2:** Second, I understand that FERC is considering ways to amend its regulations governing the safety of hydropower projects licensed under the Federal Power Act. From your perspective, what additional authorities and remedies could FERC utilize to compel a jurisdictional hydroelectric owner to address safety violations? Should FERC implement rules that would require licensees to comply with all state dam safety requirements prior to revocation of the license or implement risk reduction measures so that a dam no longer poses a risk to public safety or the environment after revocation?

**Answer:** I believe that public safety is a key responsibility for the Commission in its regulation of hydropower projects. I do not have additional authorities to suggest at this time. I would defer to Congress on additional authorities for or guidance to the Commission on these issues. If I am confirmed, I will pay close attention to this issue, including whether the Commission needs additional authorities and remedies and what rules will help the Commission best carry out its public safety mission.

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**Question 3:** Lastly, in the event that FERC rescinds another license for a hydro facility, how can FERC better assist states that inherit new oversight responsibilities of a deficient dam?

**Answer:** Although I have not yet had the opportunity to consider the rescission of a hydropower license, I believe that it is important that the Commission and affected states work collaboratively on such matters. If I am confirmed, I will give this matter close attention.

**Questions from Senator Martin Heinrich**

**Questions:** Ms. Clements, I'm particularly excited about the potential of grid-enhancing technologies to increase transmission capacity and lower costs for consumers. My concern is that the commission's current transmission policies may hinder the use of these cost-effective enhancements. I'd be interested in your thoughts on the near-term opportunities for use of smart-grid technologies, such as power-flow control or storage-as-transmission, and what FERC can do to ensure that these technologies have fair access to the market?

**Answer:** The Commission issued a Notice of Proposed Rulemaking in March 2020 (RM20-10-000) to consider changes to existing Commission policy on transmission incentives, including a proposal to support the grid-enhancing technologies you include in your question, among others. I do not want to risk prejudgment of an issue that may come before the Commission. In general, pursuant to its Section 205 and 206 obligations to ensure just and reasonable rates and avoid undue discrimination, I support actions by the Commission to remove market barriers to existing and emerging technology resources that are capable of providing cost-effective solutions to grid needs.

**Question from Senator Cindy Hyde-Smith**

**Question:** As you know, the Tennessee Valley is supplied with electricity by the Tennessee Valley Authority. Congress established TVA to serve the public interests in providing flood control, navigation, economic development, and low-cost, reliable electricity supplies to municipal and cooperative utilities, which in turn serves residents and businesses in the Valley. The costs of power supply and the transmission grid are shared among TVA's customers. In the TVA Act and the Federal Power Act, the Congress has established special provisions limiting how both TVA and its customers can participate in electricity markets.

Do you agree that the FERC should not exercise its limited authorities with respect to TVA in a manner that would disrupt the ability of TVA to achieve the purposes set out for it by Congress?

**Answer:** As you note, the Commission has limited authority with respect to TVA. Cases where the Commission is asked to act with respect to TVA are thus comparatively rare. Should, however, a case arise where the Commission is called upon to exercise its authority, I would abide by the requirements of the governing statutory directives in determining whether and how the Commission should act.

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**Questions from Senator John Hoeven**

**Question 1:** In May 2019, I led 21 of my Senate colleagues in sending a letter to FERC to explain that while allowing Distributed Energy Resources (DERs) into the wholesale market can encourage innovation, the aggregation of these resources should be determined at the local and state levels to ensure that there is no adverse impact on reliability, or higher costs for consumers. Do you believe that states and local stakeholders should maintain the ability to make decisions over distribution and the integration of behind-the-meter resources?

**Answer:** I believe state and local regulators have an important role to play with respect to DERs. The Commission recently issued Order No. 2222 concerning DERs aggregation participation in wholesale market. I do not want to prejudge any issues that may come before the Commission on rehearing or compliance with that order. However, if confirmed, I will look forward to working with my colleagues on this matter.

**Question 2:** Do you agree that the transmission system should be planned, consistent with Federal Power Act Sec. 217(b)(4), to meet the needs of load serving entities, like electric cooperatives, so they can meet the long-term power needs of their customers?

**Answer:** I agree that the transmission system should be planned to meet the reasonable needs of load-serving entities in order to meet the needs of their customers.

**Questions from Senator Steve Daines**

**Question 1:** Montana recently lost Units 1 and 2 of the Colstrip Power Plant. These units provide high paying jobs and reliable baseload energy. Montana is also expected to lose the Lewis and Clark Generating station in Sidney. With the closure of these two coal power plants in Montana as well as other coal and nuclear plants, the United States is poised to lose huge amounts of baseload energy. What do you believe is FERC's role in assuring the grid is stable and reliable and can continue distributing electricity when baseload energy is being removed or forcibly shut down around the country?

**Answer:** My time living in the Utah has made me appreciate more directly the important role that coal plants have played in communities over decades as a source of high paying jobs and a center of economic stability. I also appreciate that changes in the nation's resource mix are requiring evolution in approaches to grid operations. Although selection of the resource mix is generally a state responsibility, one way in which the Commission may assure a stable and reliable grid is to adopt rules under which all resources have a fair opportunity to compete in the markets. In addition, the Commission has a responsibility under section 215 of the Federal Power Act to approve and enforce compliance with mandatory reliability standards. As I mentioned during the nomination hearing, the Commission's reliability authority should be forward looking. This means that it may be appropriate for standards to take into account changes in the resource mix.

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**Question 2:** In Montana, electric cooperatives serve nearly half the state’s population and distribute power to some of the most rural parts of our state. In order for them to continue serving their customers, who in this case are also their owners, they need to have the flexibility and freedom to make local decisions that fit their unique circumstances. As a FERC commissioner, how will you work with local communities and electric cooperatives to make sure they can continue to best serve their communities?

**Answer:** I appreciate the significant role that electric cooperatives play for their consumers in Montana and other states. If I am confirmed, I will review the record in proceedings involving electric cooperatives to ensure that rates subject to the Commission’s jurisdiction are just and reasonable and not unduly discriminatory or preferential.

**Questions from Senator Mike Lee**

**Question 1:** What are the bounds (if any) of the effects of a major federal action that FERC should consider under NEPA? Should FERC consider “reasonably foreseeable” effects that are outside the agency’s jurisdiction and control? If so, why? And if not, why not?

**Answer:** The bounds of the effects of any major federal action considered by the Commission will be dependent on the facts in each case. I believe that the Commission should determine which reasonably foreseeable effects it will consider consistent with governing law.

**Question 2:** Is considering whether an effect is “reasonably foreseeable” analogous to considering “proximate cause” in tort law? Do you believe there is any difference between “proximate cause” and “reasonable foreseeability”?

**Answer:** The Supreme Court has held that NEPA requires a reasonably close causal relationship between an environmental effect and its alleged cause, using a standard similar to the doctrine of proximate cause from tort law. To my knowledge, the Court has not explained whether there is a difference between proximate cause and reasonable foreseeability. If I am confirmed, I will carefully consider this issue should it arise, governed by applicable law and the facts of the cases at hand.

**Question 3:** Does the Supreme Court’s decision in *Department of Transportation v. Public Citizen*, 541 U.S. 752 (2004), impact your “reasonable foreseeability” analysis under NEPA? If so, how?

**Answer:** It is my understanding that the Supreme Court did not address in detail reasonable foreseeability in *Department of Transportation v. Public Citizen*. However, should I be confirmed, I will carefully consider the impact of that case on the reasonable foreseeability analysis in individual cases that come before the Commission, based on the facts of those cases.

**Question 4:** During the hearing you mentioned your responsibility to include applying the NEPA statute to items that come before FERC. While NEPA uses the terms “environmental



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impacts” and “environmental effects” it does not mention the term “direct effect” or an “indirect effect” in the statute? How would you approach the decision on whether to consider “indirect” or “direct” effects in a decision before FERC? How do you reconcile the use of a “proximate cause” consideration with an “indirect” effect? Do you agree with CEQ’s recent decision to strike the definition of “cumulative” effect from the NEPA regulations? If not, why not?

**Answer:** I have not yet had the opportunity to review CEQ’s recent rulemaking in enough detail to opine on specific aspects of it. Should I be confirmed, I will follow applicable law and regulations and examine the record of each proceeding in determining whether to consider particular effects, as well as the consistency of considering those effects with a proximate cause standard.

**Question 5:** Do you support the recent updates made by CEQ to update the NEPA regulations? If not, why not? As Commissioner, would you seek to follow the regulatory definitions recently finalized by CEQ in your NEPA considerations before FERC?

**Answer:** I have not yet had the opportunity to review CEQ’s recent rulemaking in enough detail to opine on specific aspects of it. If confirmed, I will seek to follow all relevant CEQ and Commission regulations.

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**Questions from Senator James E. Risch**

**Questions:** Ms. Clements, you noted in your answers for the record your participation in the June 29<sup>th</sup>, 2016 FERC technical conference regarding “Implementation Issues Under the PURPA.”

- Did you have any contact with FERC Commissioners or FERC staff in regards to that docket (AD16-16-000) at any time either before or after the Technical Conference whether during or after your employment with the NRDC and the Sustainable FERC Project? If so, please provide details of each contact, for example the date or approximate date of the contact, the person or persons contacted and the purpose of the contact?

I do not recall any contact with FERC Commissioners or FERC staff on the merits of Docket No. AD16-16-000 before or after the on-the-record technical conference. I expressed my interest in participating in the conference via FERC’s online submittal portal prior to April 4, 2016, which was the noticed deadline. I received communication from FERC staff that I had been asked to participate in the conference sometime prior to the Commission’s May 9, 2016 issuance of a supplemental notice of the technical conference that listed me as a participant. I think I had some communication with FERC staff about the logistics of participating in the technical conference. I do not recall, as part of my preparation for the conference, communicating with FERC Commissioners or FERC staff about the merits of the substantive issues under consideration. I do not recall any communication with FERC Commissioners or FERC staff about the merits of the issues in Docket No. AD16-16-000 at any point following the technical conference. Further, I did not participate in or engage with FERC Commissioners or FERC staff about Docket No. RM19-15-000, the rulemaking docket that emerged at least in part from the technical conference record and that led to the Commission’s issuance of Order No. 892 in July 2020.

- Should you be confirmed do you commit to recuse yourself from this proceeding or any related on-going proceeding regarding PURPA? Please list the steps you would take to ensure that there is not a conflict of interest on this issue. If confirmed will you commit to advising the Committee about the advice the DAEO provides concerning recusals involving PURPA?

I take ethics issues very seriously. I reaffirm my commitment that, if I have the honor of being confirmed as a Commissioner, I will discuss with the Commission’s DAEO any matters that raise an issue of whether my recusal from a particular case is warranted, including matters with respect to PURPA. I understand that the DAEO would advise me on a case-by-case basis as the need arises, in light of the relevant facts. I also commit that I will advise the Committee of any recommendation or determination from the DAEO on matters involving PURPA.



September 15, 2020

*Via electronic mail*

Chairman Lisa Murkowski  
 Ranking Member Joe Manchin  
 U.S. Senate Committee on Energy and Natural Resources  
 304 Dirksen Senate Office Building  
 Washington, DC 20510

Dear Chairman Murkowski and Ranking Member Manchin,

The Appalachian Trail Conservancy (ATC) is thankful that President Trump has nominated two additional commissioners to the Federal Energy Regulatory Commission (FERC), which, pending the consent of the Senate, would bring the Commission back to its full complement. As ATC has expressed previously to this Committee, FERC has historically excelled at some of its statutory charges while leaving room for improvement in others. Although ATC refrains from endorsing either Allison Clements or Mark Christie—which, given our role in managing public trust resources we generally do not do—we are hopeful that they possess the experience and judgment needed at this pivotal time in the United States as the world society must commit to arrest further changes in the climate and repair our ecosystems. We respectfully submit that the Committee must keep this in mind as it determines and offers its recommendation to the full chamber.

The Appalachian Trail Conservancy is a §501(c)(3) nonprofit organization charged under a cooperative agreement with the National Park Service (NPS) to manage the 2,193-mile Appalachian National Scenic Trail (ANST, A.T., or “Trail”), a unit of the National Park System. The Conservancy works closely with the 31 Appalachian Trail Maintaining Clubs, the National Park Service, the United States Forest Service, 14 state governments, and public and private partners to ensure the protection and stewardship of the natural, cultural, and experiential resources of the ANST as it has since our founding for that very purpose in 1925. The Trail is 2,193 miles, surrounded by approximately 300,000 acres of government-protected land, and has the second-longest boundary line within the National Park System (in excess of 4,000 miles).

As the managers of a linear park—the first designated under the National Trails System Act and brought into the National Park System—ATC has extensive experience in conserving the natural, cultural, and experiential values of our public lands. Our primary service area, spanning 14 states, gives us valuable experience in understanding the differing needs across regions. Our responsibilities on the ground and the multi-jurisdictional nature of our charge lead us to offer the following recommendations to the Committee: FERC must exercise its extant statutory authority to make decisions that affirmatively combat the climate crisis; FERC must conduct its own research to determine true current and future market supply and demand and; FERC must, when it approves projects, do so by reviewing them as a piece of a national system, not a project in isolation.

### **A Rapidly Changing Climate**

The special nature of linear parks, connecting other public and private land units over vast mileage, provides us the perspective to observe minute changes in ecosystems across altitude, longitude, and jurisdiction. Each of the 17 federally protected land units we intersect (across three agencies), and the more than 70 state units, have their own unique histories, management challenges, and natural and cultural profiles. What they have all had in common, since at least the termini of Katahdin in Maine and Springer Mountain in Georgia were connected by a long trail in 1937, is the Appalachian Trail. Today, they also share the dubious distinction of being impacted by increasing populations of invasive species, unnecessarily ad hoc energy infrastructure developments, and a changing climate that threatens the natural rhythms of the seasons and their biological stability.

Rapidly changing climates, combined with accelerated human created alterations to the landscape, are resulting in what is considered the earth's sixth mass extinction event. Globally, as many as 200 plant and animal species are lost each day with far-reaching implications. Species extinction lead to less diverse natural systems, which in turn are less resilient, less pliable, and less productive. When environmental changes result in a habitat no longer being suitable for a given species, that species population has two options for survival: move or adapt. In response to climate change, significant range shifts are currently being observed with species migrations averaging 11 miles northward and 36 feet upward in elevation, per decade. However, both survival methods take time and require specific conditions to occur. Habitat fragmentation remains the number one driver of loss in species diversity. When suitable habitat doesn't exist, movement may not be an option; and when species populations are too fragmented or small, genetic exchange and adaptation are unlikely. When changes to an environment outpace a species' ability to adjust, species decline, and ultimately extinction, is likely to result.

The 26 million acres of protected and unprotected natural lands that make up the greater Appalachian Trail Landscape—with only 300,000 acres part of the Trail's protected corridor—create the largest and most important stretch of undeveloped land in the Eastern United States. Spanning 12° of latitude in the temperate zone and over 6,500 feet in elevation, this topographically diverse landscape protects high habitat diversity and connectivity. It serves as the primary migratory route for northward and upslope migration of plants and animals across the eastern U.S. It is the only remaining landscape in the Eastern U.S. with any continuity and long-range connectivity. With the fate of human survival so inextricably tied to the ecosystem services provided by healthy landscapes, it is imperative that we work towards large-scale towards intact, functional systems that support long-term species diversity. Conserving a connected land base with viable habitat, particularly one with north/south alignment like the Appalachian Trail Landscape, is one of the best ways to protect species diversity, facilitate genetic exchange and ultimately foster ecosystem resiliency.

Although the specific reference to “cumulative” environmental impacts has been removed from the newly updated National Environmental Policy Act (NEPA) regulations, the underlying statutory authority to consider cumulative impacts of projects has not been removed from the statute by Congress. As previously stated in 40 C.F.R. §1508.7, “cumulative impacts result from the incremental effect of the action when considered in light of other past, present, and reasonably foreseeable actions.” Consideration of cumulative impacts is necessary for the avoidance, minimization, and fair compensation for impacts that individually may appear to be minor but, over time and in concert with other activities, become significant. Accordingly, FERC should cumulatively assess all proposed

pipeline projects within the same region when determining the need for any one specific project in that region. Scientifically tested tools (such as the Social Cost of Carbon and the Social Cost of Methane) exist today that allow the Commission to monetize environmental impacts and incorporate them into a review analysis. FERC can satisfy its requirements under the National Environmental Policy Act (NEPA) by using modern analytical tools to consider all direct, indirect, and cumulative environmental impacts, including downstream effects.

#### **Truly Determining Public Need**

The outdoor recreation industry's economic reach is massive and its influence continues to grow as more people engage in the outdoors. Increased participation in the outdoors is evident at many national parks, in crowded trailhead parking lots, and in the increasing up-tick of the Appalachian Trail's long-distance hikers. A 2019 report from the U.S. Bureau of Economic Analysis reflects that the outdoor recreation economy generates \$778 billion in consumer spending annually and directly supports 5.2 million American jobs. Outdoor recreation provides 2.2% of U.S. Gross Domestic Product (GDP), a greater share than mining, utilities, farming and ranching, and chemical products manufacturing. Indeed, according to an Outdoor Industry 2017 report, more Americans are directly employed in hunting and fishing industries (483,000) than oil and gas extraction (180,000).

FERC needs to evaluate impact on outdoor recreation and associated economies. One of the most notable outdoor recreation destinations in the eastern United States is the ANST, a day's drive to more than half the U.S. population. As the nation continues to increase demand for recreation on public lands—something made unavoidable clear over the course of the COVID-19 pandemic and which, in part, prompted the enactment of the Great American Outdoors Act—gas production and pipeline construction have also increased dramatically since 1999. The United States is now a net exporter of natural gas. The increased production of gas and associated pipeline development raise concerns about the impacts of the gas industry on public and private recreation lands, as well as on the health, safety, and impact on communities.

But the economic strength of outdoor recreation and public lands is only a portion of the public needs that FERC is not adequately evaluating at this time. ATC recognizes that society's demand for energy resources is increasing. The Conservancy believes that, where technically and economically feasible, demand should first be addressed with increased energy conservation strategies and demand-side management, followed by increasing our renewable energy supply. The 1999 FERC Policy Statement is meant to create a balance between the enhancement of competitive alternatives and the possibility of over-building pipelines. The Natural Gas Act requires FERC to determine whether a pipeline project is in the public interest. However, much has changed since 1999 that warrants a more comprehensive analysis of need, and an examination of the unintended consequences of overdevelopment on other industries, such as outdoor recreation. There are increasingly dangerous impacts from climate change. As this Committee conducts this hearing, an unmanageably dangerous number of wildfires in the western United States are presenting an inescapable calamity to millions of Americans' lives, health, and property. FERC must act on the imperative to take a truly "hard look" at whether additional fossil fuel infrastructure is in the public interest.

The 1999 Policy Statement directs FERC to first determine whether the proposed pipeline can be paid for without subsidization by existing customers, followed by an evaluation of the project's economic interests. The Policy Statement also outlines some factors, but not all factors, to be considered when determining whether a project is needed. However, in practice, FERC typically relies exclusively on precedent agreements—contracts between pipeline developers and prospective shippers—to determine project need. This starting point, rather than a review of the current state of the market and condition and use of potentially impacted resources and communities, is convenient, but not consistent with Congressional directives. Evidence that one subsidiary owned by a global petroleum company has agreed to sell natural gas to a second subsidiary owned by that same global petroleum company is, quite frankly, not evidence of public need. It is evidence of private convenience.

In addition to contradicting the language and intent of the Policy Statement, FERC's reliance on precedent agreements fails to consider that precedent agreements are not necessarily a good proxy for market need. Environmental and other considerations—including the lasting ability to rural communities to make use of intact forest land and clean rivers to attract outdoor recreation visitors—may override private contractual interests in determining public need. There may also be alternatives to proposed capacity to meet demand, such as using underutilized existing pipeline capacity or alternative, cleaner energy resources. Establishing new rights of way for development that could use existing rights of way should also be avoided as possible; chipping away at conserved lands for a private company's convenience's sake rather than in order to preserve trust resources is an unacceptable abrogation of the federal government's obligations to manage public resources for the public good. The President must nominate and the Senate confirm only nominees who are willing to differentiate private convenience from public necessity.

To determine "necessity," the Commission should adopt a regionally-focused review of pipeline development(s) and improve its transparency in the NEPA review process by ensuring *meaningful* opportunities for public participation and by presenting complete and accurate draft environmental impact statements for public review. It is unacceptable to have reams of information presented after public comment periods have ended and to expect to legitimately factor into the public's ability to fully review and comment on proposed actions. It is imperative that FERC adhere to NEPA processes. It is also imperative that filings are available to the public and agencies in a way that fully represents the project to assure meaningful commentary in the Draft Environmental Impact Statement (DEIS) process. An orderly labeling of filings is necessary so that affected agencies, organizations and individuals can review, monitor and track changes.

In addition to grievances outlined above, FERC must be mindful—and guard against—the suppression of public discourse. Public hearings typically allow the public to participate in public process and provide assurance that comments are not manipulated. The Cooperative Management System is organized around volunteers and local ownership of Trail miles and Corridor explains much of the ANST's persistence as an international destination and as a symbol of grit, determination, and enduring beauty. Without the ability of volunteers to fully and vociferously participate in the management of the Trail, the Trail would cease. The same goes for our democracy, whether in Americans' ability to contact to their Members of Congress or in the ability of a person whose family land is going to be bisected by a

major development to know that the individuals greenlighting that development hear that person and appreciate the impact that decision will have on their family and community.

Additionally, because the public participation provisions of NEPA include public comment on all federal and federally directed state actions (i.e. permits), a FERC Certificate of Public Convenience or Necessity Notice to Proceed regarding any aspect of construction, (including tree felling, approval for exercise of eminent domain, etc.) should only be issued after all federal, state, local and other permits are obtained. This recommendation should apply to conditional FERC certificates as well. There should be no pipe in the ground until it is clear that the need and *public* convenience are assured. The loss of resources—private or shared—should not be based on the hope of a future promise.

We submit that FERC should receive some recognition for recently improving its use on tolling orders and its treatment of private landowners who are subject to the delegated eminent domain authority FERC imbues developers with, but our appreciation is tempered by the knowledge that FERC is perhaps a decade behind in addressing this issue, and its decision was released under the shadow of a D.C. Circuit case unambiguously repudiating its historical practice. The effort that FERC has directed at improving this small but critical aspect of its execution of its statutory responsibility should be taken as proof of its ability to change its behavior under its current statutory authority in order to fulfill its Congressionally and judicially identified responsibilities.

#### **A National Perspective on Infrastructure**

This Appalachian Trail Landscape is an extended corridor of protected land, home to a wealth of natural, cultural and scenic resources. The Trail itself is eligible for the National Historic Register. Given the ANST's north-south orientation in the eastern United States, ANST lands very often are a component of environmental reviews for major new pipeline proposals emanating from Marcellus and Utica shale plays. The Natural Gas Act requires that FERC determine whether a gas pipeline is in the public interest. Too often, FERC seems to favor expeditious approval rather than the comprehensive review Congress has charged it to pursue.

Recent rapid expansion of natural gas production has led pipeline developers to propose competing projects to satisfy identical markets. For example, numerous pipeline projects that potentially have significant impacts on ANST recreation lands have been approved or are under review (i.e. Mountain Valley Pipeline, Atlantic Coast Pipeline, WB XPress Project, Appalachian Connector, PennEast Pipeline, Atlantic Sunrise Pipeline). Each of these projects is designed to transport shale gas from the Marcellus and Utica plays to customers in the eastern and southeastern U.S. and each must, in some manner, cross the rugged and ecologically sensitive terrain of the Appalachian Mountains.

When proposed projects have similarities in purpose, similar nature of environmental concerns, and a common timeline among the projects, it makes economic and ecological sense for FERC to consider pipeline projects under a Programmatic Environmental Impact Statement (PEIS), or some reasonable regional review. This approach would simultaneously consider the purpose and need of each project, the cumulative impacts of these projects in a discrete geographic region, and the optimal combination and

alignment of pipelines to deliver gas from the Marcellus and Utica shale gas plays to eastern and southeastern markets.

This approach is consistent with the Council on Environmental Quality (CEQ) regulations finalized on September 15, 2020, specifically 40 CFR §1502.4(b)(1)(i), “[w]hen preparing statements on programmatic actions (including proposals by more than one agency), agencies may find it useful to evaluate the proposal(s) . . . geographically, including actions occurring in the same general location, such as body of water, region, or metropolitan area.” In fact, each of the three justifications for PEIS issuance identified in the CFR (geography, generality, and “ability to significantly affect the quality of the human environment”) justify, if not suggest, the value of a PEIS. A PEIS and tiered NEPA review is clearly the most efficient means by which to conduct cumulative assessments of impacts from existing projects, a suite of recently proposed projects, and from additional pipelines that are a reasonably foreseeable result of the presence of a large reservoir of natural gas in the Marcellus and Utica formations. Using programmatic NEPA reviews allows an agency to better analyze proposal specific issues and provides a more comprehensive understanding of the consequences of proposed actions.

Better analysis of pipeline alignments would also better support other NEPA evaluations such as those conducted by the U.S. Forest Service, whose national forest land and resource management plan for special use authorizations and utility corridors directs that projects be located “where they minimize the need for *additional* designated sites and best serve their intended purpose.” The current policy requires joint use on land when feasible. Of significant note, the 1999 Natural Gas Policy Statement’s intent in preventing overbuilding is inadequately addressed by FERC’s lack of regionally focused reviews. This lack of regionally focused review also results in a wasteful duplication of agency reviews and infrastructure projects that are poorly balanced with regional needs and other planning initiatives. Considering each pipeline proposal in isolation also prevents the Commission from understanding how similar proposals cumulatively affect climate change, natural resources, and consumer prices. A more integrated, comprehensive review process would better assess the need for new pipelines based on the energy needs of the region(s) directly affected by the project by examining factors such as existing and proposed pipeline capacity, long-term energy needs, and state energy policies.

### **Conclusion**

Climate change is proceeding at an alarming and compounding rate. FERC must do more within its current statutory authority and must identify which additional authorities Congress may need to bestow in order to prevent avoidable deleterious effects of climate change and in order to focus the Commission on 21<sup>st</sup> Century energy markets and resource management. In particular, FERC must exercise its extant statutory authority to make decisions that affirmatively combat the climate crisis, FERC must conduct its own research to determine true current and future market supply and demand (not relying on proxy estimations as provided by applicants for federal approval), and FERC must approve projects only after reviewing them not in isolation, but as piece of a national system.

The Appalachian Trail Conservancy appreciates the opportunity to share our perspective as the Committee considers Ms. Clements and Mr. Christie, as well as additional nominees and legislation in the future. We welcome the opportunity to meet to discuss our comments and perspective, especially



given unique considerations for the Appalachian National Scenic Trail and the high demand for new pipeline construction in the Central Appalachians. I may be reached at [bmysliwec@appalachiantrail.org](mailto:bmysliwec@appalachiantrail.org).

Respectfully,

A handwritten signature in blue ink, appearing to read "Brendan Mysliwec", followed by a horizontal line.

Brendan Mysliwec  
Director of Federal Policy and Legislation  
Appalachian Trail Conservancy



**Industrial Energy Consumers of America**  
*The Voice of the Industrial Energy Consumers*

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1776 K Street, NW, Suite 720 • Washington, D.C. 20006  
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August 5, 2020

The Honorable Lisa Murkowski  
Chairman  
Committee on Energy and Natural  
Resources  
U.S. Senate  
Washington, DC 20510

The Honorable Joe Manchin  
Ranking Member  
Committee on Energy and Natural  
Resources  
U.S. Senate  
Washington, DC 20510

***Re: IECA Supports Nomination of Virginia Commissioner Mark Christie to FERC***

Dear Chairman Murkowski and Ranking Member Manchin:

On behalf of the Industrial Energy Consumers of America (IECA), we support the nomination of Commissioner Mark Christie of the Virginia State Corporation Commission, one of the nation's longest-serving state utility regulators, to the Federal Energy Regulatory Commission.

The Industrial Energy Consumers of America is a nonpartisan association of leading manufacturing companies with \$1.1 trillion in annual sales, over 4,200 facilities nationwide, and with more than 1.8 million employees. IECA membership represents a diverse set of industries including: chemicals, plastics, steel, iron ore, aluminum, paper, food processing, fertilizer, insulation, glass, industrial gases, pharmaceutical, building products, automotive, brewing, independent oil refining, and cement.

We believe that Mr. Christie is fully qualified to serve. Importantly, we appreciate the fact that he has significant state utility experience. That perspective is important at FERC and will serve consumers interests.

Sincerely,

Paul N. Cicio  
President

cc: Senate Committee on Energy and Natural Resources



**Industrial Energy Consumers of America**  
*The Voice of the Industrial Energy Consumers*

1776 K Street, NW, Suite 720 • Washington, D.C. 20006  
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August 5, 2020

The Honorable Lisa Murkowski  
 Chairman  
 Committee on Energy and Natural  
 Resources  
 U.S. Senate  
 Washington, DC 20510

The Honorable Joe Manchin  
 Ranking Member  
 Committee on Energy and Natural  
 Resources  
 U.S. Senate  
 Washington, DC 20510

***Re: IECA Supports Nomination of Allison Clements to FERC***

Dear Chairman Murkowski and Ranking Member Manchin:

On behalf of the Industrial Energy Consumers of America (IECA), we support the nomination of Allison Clements, who is an attorney with extensive experience in the energy industry, including serving as Director of the Natural Resource Defense Council's Sustainable FERC Project. We believe that Ms. Clements is fully qualified and will serve consumers public interests.

IECA is a nonpartisan association of leading manufacturing companies with \$1.1 trillion in annual sales, over 4,200 facilities nationwide, and with more than 1.8 million employees. IECA membership represents a diverse set of industries including: chemicals, plastics, steel, iron ore, aluminum, paper, food processing, fertilizer, insulation, glass, industrial gases, pharmaceutical, building products, automotive, brewing, independent oil refining, and cement.

We urge you to act quickly to advance her nomination. There are several important issues pending at FERC for which her insight would be valuable.

Sincerely,

Paul N. Cicio  
 President

cc: Senate Committee on Energy and Natural Resources



September 15, 2020

The Honorable Lisa Murkowski  
Chairman  
Committee on Energy & Natural Resources  
304 Dirksen Senate Office Building  
Washington, D.C. 20005

Dear Chairman Murkowski:

It is my pleasure and honor to endorse without reservation the nomination of Allison Clements to be a Member of the Federal Energy Regulatory Commission.

I have known Allison personally and professionally for many years, including her time as an attorney and General Counsel for the Natural Resources Defense Council, where she served as Director of the Sustainable FERC Project, as well as her time in private practice and as the founder and president of Goodgrid, LLC.

Allison is an accomplished lawyer and public policy advocate who brings an outstanding level of knowledge and experience to a wide variety of energy and energy-related issues, as well as an extensive practical understanding of FERC issues and operations, having worked on numerous important FERC Orders during her time as head of the Sustainable FERC Project.

Throughout my experiences with Allison, she has displayed sound public policy judgment, a passion for advancing smart and sustainable energy solutions, and a persistent willingness to roll up her sleeves and dive deep into complex, critical regulatory matters.

As a former FERC Commissioner, I believe that these attributes, combined with her ample energy and FERC-specific experience, make Allison Clements an ideal nominee to become a Member of the Federal Energy Regulatory Commission, and I encourage you and the members of the Energy & Natural Resources Committee to confirm her to that position.

If I can provide any more information, or answer any questions, please do not hesitate to contact me at 202-639-6055 or on cell at 202-641-6591.

Sincerely,

  
Suede G. Kelly  
Regulatory Counsel, Protect Our Power



September 15, 2020

The Honorable Lisa Murkowski  
Chairman  
U.S. Senate Committee on Energy & Natural Resources  
304 Dirksen Senate Office Building  
Washington, D.C. 20005

Dear Chairman Murkowski:

It is my great pleasure to strongly endorse the nomination of Mark C. Christie to be a Member of the Federal Energy Regulatory Commission.

I know Mark from my time serving as President of the New Jersey Board of Public Utilities. During numerous interactions, he displayed remarkable legal acumen and an innate ability to cut to the core of important energy-related public policy issues affecting New Jersey residents and businesses.

Mark is well-respected in the utility and regulatory communities and is known for bringing an objective viewpoint and a deliberate approach to utility regulatory matters, and I believe these attributes and experience make him very well-suited to be a FERC Commissioner.

I encourage you and the members of the Energy & Natural Resources Committee to support Mark C. Christie and confirm him to be a Member of the Federal Energy Regulatory Commission.

If I can provide any more information, or answer any questions, please do not hesitate to contact me at 866-261-3066.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Rich Mroz', is positioned above the typed name.

Richard Mroz  
Senior Advisor, State and Government Relations  
Protect Our Power



Jay Timmons  
President and CEO

September 16, 2020

The Honorable Lisa Murkowski  
Chairwoman  
Senate Committee on Energy and Natural  
Resources  
304 Dirksen Senate Office Building  
Washington, DC 20510

The Honorable Joe Manchin  
Ranking Member  
Senate Committee on Energy and Natural  
Resources  
304 Dirksen Senate Office Building  
Washington, DC 20510

Dear Chairwoman Murkowski and Ranking Member Manchin:

I write to express the National Association of Manufacturers' support for Mark Christie to serve as a commissioner on the Federal Energy Regulatory Commission. Manufacturers hope your committee, and ultimately the full Senate, will support this extraordinarily qualified nominee.

After serving alongside Mr. Christie throughout his time working for Gov. George Allen, I am confident that he is uniquely prepared for the important role of FERC commissioner. As one of the nation's longest-serving state utility regulators, Mr. Christie has extensive experience as an instructor of regulatory law at Virginia Commonwealth University and the University of Virginia School of Law. He also served as president of the Organization of PJM States, Inc. and the Mid-Atlantic Conference of Regulatory Utilities Commissioners.

Manufacturers share Mr. Christie's commitment to a commonsense path to a cleaner, safer and more prosperous economy. With the right policies that strike a balance between environmental ambition and commercial feasibility, the American economy can meet 21st-century environmental challenges by improving sustainability practices, increasing energy efficiency and reducing emissions.

We respectfully request your support for Mr. Christie's confirmation to serve on the Commission and look forward to continuing our strong partnership to strengthen American environmental security and innovation.

Sincerely,

Jay Timmons

*Leading Innovation. Creating Opportunity. Pursuing Progress.*

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