

**U.S. Senate Committee on Energy and Natural Resources**  
**August 16, 2018 Hearing: *Pending Nominations***  
**Questions for the Record Submitted to Mr. William Cooper**

**Question from Ranking Member Maria Cantwell**

**Question:** This question follows up on the question I asked you during your hearing about meeting the milestones in the Tri-Party Agreement. You said you did not “know what the milestones are, but if it’s in the agreement and the departments on it, then my advice is to strongly try to adhere to them, yes.”

The Department of Energy, the State of Washington Department of Ecology, and the Environmental Protection Agency entered into the Tri-Party Agreement in 1989 to ensure the cleanup of Hanford. It contains many milestones, which represent the actions necessary to ensure acceptable progress toward compliance with federal and state environmental cleanup laws. Those milestones are set forth in Appendix D to the Action Plan, which is Appendix 2 to the Agreement. Although section 12 of the Action Plan provides a process for amending the agreement and its milestones, and although the parties have agreed to many changes in the past 29 years, the milestones are not mere suggestions, but are “an integral and enforceable part of this Agreement.” Indeed, the Justice Department’s letter stating that the Agreement is legally “binding and enforceable” under CERCLA and RCRA is made a part of the Agreement as Appendix 1.

Do you agree that the milestones in the Tri-Party Agreement are binding and enforceable and that the Department is legally bound to comply with them?

**Answer:** I believe that the Department should honor all legal commitments and work in good faith to meet all previously agreed to milestones.

**Questions from Senator Ron Wyden**

**Question 1:** As general counsel to the Department of Energy you are responsible for providing legal advice and counsel to further the Department’s mission. Without question, you possess the necessary skills and experience for the role, but it is critical that someone with your responsibility possess a reasonable sense of judgement and independence. In a very questionable plan, President Trump and Secretary Perry said there was a national emergency and invoked the Federal Power Act and the Defense Production Act in an attempt to provide federal subsidies to pay for the continued operation of un-economic coal and nuclear power plants. According to the Federal Energy Regulatory Commission, no such national emergency exists, and these federal subsidies could raise Americans’ electric bills by tens of billions of dollars each year.

What is your assessment of the legal underpinnings of this plan?

**Answer:** The provisions of the Federal Power Act and the Defense Production Act are known. To my knowledge, the Department has not issued an order regarding coal or nuclear involving the Federal Power Act or the Defense Production Act. As to DOE’s proposed rule to FERC last

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year, I am not privy to all the facts that led to its development. If confirmed, I look forward to looking into this issue.

**Question 2:** The recent Trump Memo cites a national emergency and directs the Department of Energy to subsidize coal and nuclear power plants. This directive appears to be motivated by politics, rather than facts, as FERC has determined no such emergency exists while the proposal is projected to raise nationwide electric utility bills up to \$65 billion per year. To get my support, you will need to commit to me that you will avoid political interference from the White House and provide the Department of Energy with objective legal advice.

What will you do, if confirmed, to ensure your decisions and the decisions of your office and staff are based on legal analysis and not political pressures?

Will you commit, unequivocally, to avoiding political interference from the White House and provide advice based on the law and not based on political directive?

**Answer:** I am not familiar with the specifics of these proposals or of FERC's determinations, however, the job of the General Counsel is to provide factual, unbiased legal advice to Department officials. I take that duty seriously and commit to being an impartial legal adviser to the Department. I commit to remaining unbiased and to never be persuaded by political interference when it comes to administering legal opinions for the Department.

**Question 3:** I am a strong advocate for whistleblowers, especially at the Department of Energy. Whistleblowers are one of the early warning systems that can bring important safety or financial issues to management's attention. Yet, the Department of Energy has an abysmal record of protecting whistleblowers, especially at the Department's many contractor-operated facilities.

If confirmed General Counsel, what are specific actions you will take to eliminate the pattern of hostility towards whistleblowers and retaliatory practices that the Department of Energy and its contractors have engaged in against whistleblowers?

**Answer:** I will commit to you that whistleblower safety and transparency will be a top priority for me if confirmed. All federal workers should be empowered to relay their concerns without fear of retaliation. If confirmed, I will look into current protocols in place. I will also make sure the laws, regulations, and policies regarding whistleblowers are enforced, including the protections offered under the Whistleblower Protection Act. If confirmed, I hope to help develop a culture of safety for all Department employees or contractors.

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**Question from Senator Angus S. King, Jr**

**Question:** Under the Natural Gas Act, the Department of Energy is required to assert that a proposal to export liquefied natural gas is “consistent with the public interest.” Is it your legal opinion that this standard requires the Department of Energy to evaluate the impact of the proposed exports on domestic natural gas prices as part of the public interest analysis? Please answer this question with a yes or a no.

**Answer:** My understanding is that the “public interest” is not defined in the Natural Gas Act. I am aware that the Department has provided regulatory clarity as to what constitutes the public interest by stating: “DOE will consider any issues required by law or policy. DOE will consider domestic need for the natural gas, as well as any other issues determined to be appropriate, including whether the arrangement is consistent with DOE’s policy of promoting competition in the marketplace by allowing commercial parties to freely negotiate their own trade arrangements. As part of this analysis, DOE...[examines] the cumulative impacts of exporting domestically produced LNG.” (Federal Register Vol. 83, No. 21, page 4474, January 31, 2018.) Though I am not at the Department and have not reviewed this in detail, the determination of the “domestic need” appears to be a more holistic approach to evaluating the applications for the export of LNG than just impacts on domestic natural gas prices.