

**U.S. Senate Committee on Energy and Natural Resources**  
**September 7, 2017 Hearing: Pending Nominations**  
**Questions for the Record Submitted to Mr. Kevin J. McIntyre**

**Questions from Ranking Member Maria Cantwell**

**Question 1:** Chairman Murkowski and I tried to enact energy legislation last Congress that included reforms to hydroelectric licensing at FERC.

45 percent of FERC-licensed projects accounting for one-third of licensed capacity will begin pre-filing for new licenses by 2030. For many of these projects, it will be the first time they will participate in the licensing process Congress in 1986 amended the Federal Power Act directing FERC to give equal consideration to environmental factors.

I believe that, rather than waiting for Congress to act, FERC can, on its own, make several changes that would improve interagency cooperation in the licensing process. For example, FERC could adjust how it implements its *ex parte* rules to encourage more of its sister federal agencies to accept cooperating agency status under the National Environmental Policy Act. FERC could also accept more requests from its sister agencies for studies likely to be required in any event under other federal statutes (e.g., the Endangered Species Act) at a later stage.

- If confirmed, will you help identify and reduce barriers to interagency cooperation within FERC's existing statutory authority?

**Answer:** Decision-making over hydropower licensing does not rest solely with the Commission. Other agencies are vested with mandatory conditioning authority. I believe that it is incumbent upon any agency, including FERC, to look for opportunities to reduce regulatory burdens while continuing to attend fully to its statutory responsibilities, and if I am confirmed I will work with my colleagues to help identify and address potential reductions in regulatory burdens associated with hydroelectric licensing and relicensing, including the potential for eliminating or reducing barriers to interagency cooperation in this area.

**Question 2:** Under its existing policy, FERC only considers investments in a hydroelectric project on a forward-looking basis as part of the licensing process. This creates a perverse incentive to delay potential investments that could benefit the environment and ratepayers.

The Commission recently asked for comments on whether it should revise its current policy with respect to establishing the length of new license terms for hydroelectric projects.

I have supported legislation to require the Commission to treat project investments by licensees under existing licenses (beyond those already required by the license) the same way it treats investments made under new licenses. This provision has been referred to as the "early action" provision. While accounting for prior investments may complicate the Commission's determination of an appropriate length license term, changing this policy could accelerate improvements in fish passage, turbine efficiency, and other project upgrades.

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- Will you commit to considering changing the Commission’s current policy with respect to establishing the length of hydroelectric license terms by removing the perverse incentive to delay investments under current licenses?

**Answer:** FERC issued a notice of inquiry in 2016 regarding its policy for setting new license terms for hydropower projects, which under the Federal Power Act must be between 30 and 50 years. The notice sought input on a number of issues, including “early action” and whether there should be a 50-year default license term. In response FERC has received written comments from numerous stakeholders, establishing a record for consideration of potential further steps. If confirmed, I will give these important issues the careful attention they deserve, including by evaluating the responses to the FERC notice, and I will address this matter with my colleagues.

**Question 3:** In 2013, Congress passed the Hydropower Regulatory Efficiency Act, directing FERC to investigate the feasibility of issuing a license for hydropower development at non-powered dams and closed loop pumped storage projects during a two-year period. FERC implemented a pilot program, ultimately applied to one non-powered dam project in Kentucky, and issued a license for the project within two years. FERC issued final report, required under the 2013 law, this past summer, following a final workshop in the spring.

- If confirmed, how would you approach the challenge of reducing disincentives in the licensing process and potentially inadequate compensation in the wholesale markets to the development of hydropower at existing non-powered multi-purpose dams and at appropriately sited and designed pumped storage projects?

**Answer:** As a supporter of an “all-of-the-above” strategy for satisfying our nation’s energy needs, I recognize the important role played by hydroelectric resources in helping to meet those needs and believe that hydropower should continue to play this role. The May 2017 FERC report you reference stated that hydropower licenses have been and can be issued in two years or less under certain circumstances. If confirmed, I look forward to discussing with my colleagues ways the Commission could further improve its processes regarding hydropower development.

**Question 4:** Unlike the Commodity Futures Trading Commission and the Securities and Exchange Commission, FERC cannot license or ban individual traders from trading in jurisdictional markets. It is estimated that more than 2,500 firms and thousands of individual traders participate in physical electricity and natural gas markets. Little is publicly known about which banks, hedge funds, utilities, and marketers are active players.

Furthermore, a repeat offender previously fined by FERC can continue to trade. A trader convicted of criminal fraud, or a former securities or commodities trader who had their securities or commodities trading license revoked would still be permitted to trade over FERC markets.

- Do you think that FERC should explore adopting a registry to keep track of repeat violators of market manipulation restrictions?

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- Do you think FERC should explore a licensing regime to, among other things, keep those convicted of market manipulation in other markets from participating in FERC-regulated markets?

**Answer:** As I noted at the confirmation hearing, I believe in a robust enforcement program. It is vitally important to enforce FERC's rules and regulations to deter fraud and manipulation in the markets FERC regulates. Recognizing the differences you note between FERC authority in this area and the corresponding authorities of the Commodity Futures Trading Commission and the Securities and Exchange Commission, I regard the civil penalty authority granted to FERC in the Energy Policy Act of 2005 as a formidable tool for addressing issues of market manipulation or, for that matter, any other violations of FERC requirements. This authority empowers FERC to impose civil penalties on violators in the amount of over \$1.2 million per day, per violation – an amount that exceeds the comparative civil penalty authority of most other federal agencies. I believe that FERC should, from time to time, review its existing policies to ensure they are functioning effectively, and if confirmed I commit to reviewing the Commission's enforcement policies to determine whether there are opportunities for improvement, including consideration of a possible registry or licensing regime as your question suggests.

**Question 5:** I am concerned that sophisticated energy traders can engage in schemes designed to manipulate energy markets without actually being in violation of a tariff on file with FERC. These traders argue that FERC's anti-manipulation authority does not apply if there is no specific tariff violation?

- Don't you believe that FERC's market manipulation authority can apply even if there is not a specific tariff violation?

**Answer:** In the Energy Policy Act of 2005, Congress gave FERC authority to police and punish market manipulation in FERC-regulated energy markets. In doing so Congress employed broad statutory language taken from our nation's securities laws, declaring it unlawful for anyone to use or employ "any manipulative or deceptive device or contrivance" in markets or activities overseen by FERC, without any reference to tariffs and thus without expressly limiting FERC's manipulation authority to tariff violation situations. I have had no occasion to review or consider the specific legal argument your question references, but if confirmed I commit that, in addressing issues concerning FERC's authority over market manipulation, I will base my decision-making and actions on careful review of the applicable law as applied to the specific situation at hand.

**Question 6:** The Federal Power Act limits FERC's jurisdiction with respect to certain utilities and FERC's authority to require participation in organized markets. Governmental entities and non-public utilities, including federal power marketing agencies, municipal utilities, rural electric cooperatives, and public utility districts, are exempt from most regulatory oversight by the Commission.

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- What is your understanding of the limitations on FERC's authority with respect to the Bonneville Power Administration?
- What is your understanding about FERC's authority to require utilities to participate in organized markets?
- Will you abide by these limitations if confirmed?

**Answer:** Pursuant to the Pacific Northwest Electric Power Planning and Conservation Act (Northwest Power Act), FERC's review of Bonneville's regional power and transmission rates is, as I generally understand it, limited to whether Bonneville's rates meet three specific requirements:

- (i) The rates must be sufficient to assure repayment of the Federal investment in the Federal Columbia River Power System over a reasonable number of years after first meeting other costs;
- (ii) The rates must be based upon the Administrator's total system costs; and
- (iii) With respect to transmission rates, they must equitably allocate the costs of the Federal transmission system between the Federal and non-Federal power that uses the system.

The Federal Power Act also gives FERC authority over Bonneville with respect to electric reliability standards adopted pursuant to section 215 of that statute.

As to whether FERC has authority to mandate participation in the organized electricity markets it oversees, each such market is operated by a regional transmission organization (RTO) or independent system operator (ISO), and it is my understanding that the Commission has determined that the decision by a utility or other market participant whether to participate in an RTO or ISO is voluntary. If I am confirmed, as specific issues may arise concerning the FERC's authority in this area, I commit that I will base my decision-making and actions on careful review of the applicable law as applied to the situation at hand.

**Question 7:** Just before resigning, Commissioner Bay wrote a Concurring Opinion to an order granting a natural gas pipeline certificate in which he suggested that the Commission should reconsider its use of precedent agreements between pipelines and potential future customers to assess whether a proposed new pipeline is needed. In particular, Commissioner Bay argued that precedent agreements involving pipeline affiliates are particularly suspect.

- Do you agree with Commissioner Bay that the Commission should reexamine its policies for assessing whether a new pipeline is necessary? If not, why not?

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**Answer:** Under the Natural Gas Act of 1938, FERC must determine whether a proposed new pipeline project is consistent with the public convenience and necessity. As part of that determination, FERC has an obligation to consider whether the pipeline is needed. Accordingly, a detailed evaluation of pipeline need already is a longstanding component of FERC’s legal process for evaluation of natural gas pipeline certificate applications. The currently effective formal policy governing this determination of pipeline need was adopted by the Commission in 1999. If confirmed, I commit that I will base my decision-making and actions on careful review of the applicable law as applied to the situation at hand. I also believe that agencies periodically should review their policies to ensure they are effective, and if confirmed I will give these important issues concerning pipeline need the careful attention they deserve and will work to ensure that the Commission’s review process considers all relevant issues.

**Question 8:** Just before resigning, Commissioner Bay wrote a Concurring Opinion to an order granting a natural gas pipeline certificate in which he suggested that the Commission should engage in a broad regional assessment of the environmental impacts of the Marcellus and Utica shale gas development activities. Last month, the Court of Appeals for the D.C. Circuit vacated FERC’s issuance of a certificate for the Southeast Market Pipelines Project because in its environmental impact statement FERC gave neither “a quantitative estimate of the downstream greenhouse emissions” nor “explained more specifically why it could not have done so.”

- In light of the D.C. Circuit decision, do you believe FERC needs to change how it conducts environmental reviews of certificates of public convenience and necessity for natural gas pipelines?

**Answer:** I am aware of the D.C. Circuit decision you mention, and, if confirmed, I will carefully review the case and consider its implications for Commission policy in this area. I commit that I will base my decision-making and actions on careful review of the applicable law as applied to the specific situation at hand. I also believe, as noted above, that agencies periodically should review their policies to ensure they are effective, and if confirmed I will give these important issues concerning FERC consideration of downstream emissions the careful attention they deserve and will work to ensure that the Commission’s review process considers all relevant issues.

**Question 9:** When FERC grants a Certificate of Public Convenience and Necessity to a proposed interstate natural gas pipeline, the developer is also granted eminent domain authority. Sometimes the eminent domain authority is used before the Commission has acted on a Request for Rehearing of its initial order and before a party to the proceeding has had an opportunity to seek judicial review of the order.

- Do you believe that a pipeline should have the opportunity to utilize eminent domain authority if it remains possible that the Commission, pursuant to a Rehearing Order, or an appellate court, can still issue an order reversing FERC’s decision to grant the Certificate? Please explain.

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**Answer:** Since 1947, the Natural Gas Act has provided authority for the developer of a natural gas pipeline to use eminent domain. However, the exercise of that eminent domain authority is enforced not by FERC but rather by state and federal courts. Nonetheless, if confirmed, I will work to ensure that the Commission's processes appropriately address the concerns of landowners affected by infrastructure projects.

**Question 10:** Last year the Senate Energy and Natural Resources Committee held a hearing on natural gas pipelines. We heard testimony that, in some instances, existing natural gas pipelines are not being fully utilized. For instance, several interstate pipelines serving the northeast were not fully utilized during the Polar Vortex.

- Do you believe we should explore how to use existing natural gas pipeline capacity more efficiently before the Commission grants new Certificates to build additional pipeline capacity in the same region?

**Answer:** FERC's process for considering and ruling upon applications to construct new pipeline infrastructure is subject to detailed legal requirements, and if confirmed I will base my decision-making and actions in this area on careful review of the applicable law as applied to the specific situation at hand. As a general matter, I believe that it is important to make efficient use of existing natural gas pipeline capacity – and that our nation is likely to need additional natural gas pipeline infrastructure. Efficient use of existing pipeline capacity ensures that prior pipeline investment yields benefits to the public. Investment in new pipelines carries the potential to enhance the resilience of our nation's gas pipeline network and to facilitate other investment and economic growth in the energy sector and otherwise, likewise benefiting the public. I believe that FERC should, from time to time, review its existing policies to ensure they are functioning effectively, and if confirmed I commit to considering the potential for improvements in FERC certificate policy, as to these specific issues and otherwise.

**Question 11:** Both the Federal Power Act and the Natural Gas Act require that a rate or tariff change proposed by a jurisdictional utility or interstate natural gas pipeline goes into effect if the Commission fails to act within 60 days of the proposal. There have been instances in which a rate increase has been permitted to go into effect because a tie vote prevented the Commission from acting. An appellate court has ruled that, in those circumstances, a party opposing the rate increase has no standing to challenge the rate change in court because FERC never issued an order on the matter.

- Senator Markey has proposed legislation that would enable opponents of a rate or tariff change to seek judicial review even if the Commission fails to issue an order due to a tie vote. Do you support this legislation?

**Answer:** The 2016 D.C. Circuit decision your question references addressed the situation where a rate or tariff change took effect after 60 days, under operation of law, due to a two-to-two tie in voting among FERC Commissioners – a highly unusual scenario that failed to produce a FERC

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order supported by the required majority of the participating Commissioners. The court based its ruling on the express statutory requirement that “unless the Commission otherwise orders,” a proposed rate or tariff change will take effect upon “sixty days’ notice to the Commission and to the public.” I have had no occasion to review the referenced proposed legislation and thus have no sense of whether it would provide a remedy needed to address a meaningful defect in the current state of the law. As a general matter, however, I do support the ability of parties to a FERC proceeding who are adversely affected by a rate or tariff change to seek relief, both before the Commission and in court. In light of this view, I am glad that instances where proposed rate/tariff changes take effect due to a FERC voting tie are exceedingly rare.

**Question 12:** Cybersecurity vulnerabilities in our nation’s energy infrastructure pose grave national security and economic risks to the country. The Department of Homeland Security reported that 56% of cyber incidents against critical infrastructure in 2013 were directed at energy infrastructure. This number has since decreased: in 2016 it was down to 20%, but it is still too high. Although we have mandatory cybersecurity standards for electric utilities, natural gas pipelines are subject to merely voluntary guidelines issued by the Transportation Security Administration (TSA).

- Given the increased dependence on natural gas for power generation for many of FERC regulated utilities, don’t you agree that there should be a mandatory standards regime for gas pipeline cybersecurity, just as there is for electric utility cybersecurity?

**Answer:** It is my understanding that the Transportation Security Administration (TSA) has the authority to establish mandatory cybersecurity regulations for natural gas pipelines. Thus, I consider it more appropriate for Congress and the TSA to address the adequacy of TSA’s natural gas pipeline cybersecurity program. I further understand that TSA is reviewing its voluntary cybersecurity guidelines for pipelines and that FERC staff has offered to assist the TSA on this matter.

**Question 13:** Since 1978, Section 210 of the Public Utility Regulatory Policies Act (PURPA) has required monopoly utilities to purchase competitive renewable energy from independent producers. While Congress has relaxed this requirement for utilities in organized electric markets, PURPA remains a key driver of renewable energy and competitive prices in the West and the Southeast.

In June 2016, FERC held a technical conference on the implementation of PURPA. Utilities used the technical conference to argue for greater FERC intervention to limit opportunities for small renewable energy developers. I believe state commissions already have many ways to tailor the must-purchase requirement to address local concerns. I am deeply skeptical about utilities running to Congress and FERC when they don’t get their way with their own regulators.

- Do you agree that regulators in traditional monopoly states have powerful ways to adjust the “must-purchase” requirement under PURPA?

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- Given the states' own authority under PURPA, why would FERC need to intervene to limit one of the only federal mechanisms that encourage independent power production in those states?

**Answer:** I agree that both FERC and the states have a role to play under PURPA. Although any major changes to PURPA must come from Congress, I note that FERC convened a technical conference last year to discuss issues related to the statute's implementation. If confirmed I will give these important PURPA issues the careful attention they deserve and will work to determine whether there are opportunities for improvements to FERC policy in this area.

**Question 14:** Would you continue FERC's encouragement of a holistic approach to transmission planning that incorporates non-wires alternatives, high-voltage transmission lines, and advanced transmission technologies (such as high-capacity and high-efficiency conductors, compact transmission towers, and variable frequency transformers)?

**Answer:** FERC's Order Nos. 890 and 1000 require open, transparent transmission planning processes for public utility transmission providers, which provide an opportunity to consider various transmission alternatives in order to identify more efficient or cost-effective solutions to transmission needs. I support the goal of these efforts and if confirmed would look for opportunities to ensure that FERC policy in this area continues to encourage consideration of the full range of potential solutions to transmission needs.

**Question 15:** FERC Order No. 1000, which among other things, requires regional transmission planning, has received mixed reviews in part because it has not led to the development of transmission lines connecting separate energy planning regions, which would help access remotely located renewable electricity resources, such as wind and solar.

- What do you believe FERC should do, if anything, to encourage interregional transmission planning?

**Answer:** Last year, the Commission held a technical conference to address issues related to the competitive transmission development processes that were established to comply with Order No. 1000, which included a discussion of issues related to interregional transmission coordination and regional transmission planning. I believe that it could be beneficial to further develop that record and to continue discussions with stakeholders regarding interregional planning. If confirmed, I look forward to addressing this issue with my colleagues.

**Question 16:** FERC is responsible for protecting against corporate affiliate abuse in a variety of transactions, including power sales and facility acquisition. Transactions between a public utility and a merchant affiliate can expose the utility's captive customers to cross-subsidizing the affiliate and its shareholders.



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- Are you familiar with the provisions of the Federal Power Act that prohibit public utilities from inappropriately cross-subsidizing non-utility corporate affiliates?
- Will you commit to enforcing existing FERC standards applied to reviewing market rate contracts between corporate affiliates?
- Do you agree that the transfer of facilities subject to FERC jurisdiction between a public utility and its merchant affiliate must always be scrutinized for cross-subsidization?

**Answer:** I am familiar with the provisions of section 203 of the Federal Power Act that prohibit public utilities from inappropriately cross-subsidizing non-utility corporate affiliates, and with the Commission's policies under section 205 of the Federal Power Act that protect customers from the effect of inappropriate cross-subsidization between a public utility and its market regulated power sales affiliates. FERC's regulations likewise address these matters in detail. I also am aware of Commission precedent that applies to market rate contracts between corporate affiliates. If confirmed, I will base my decision-making and actions in this area on careful review of the applicable law as applied to the specific situation at hand.

**Questions from Senator Ron Wyden**

**Question 1:** The Jordan Cove Energy Project is a proposed Liquefied Natural Gas (LNG) export terminal at the Port of Coos Bay in Southwestern Oregon. FERC denied the 232-mile pipeline and export facility project in 2016. In February, Jordan Cove entered into FERC's pre-filing phase, and expects to officially refile its application for FERC approval by the end of September. While there is considerable local support for Jordan Cove, there are also local concerns about the potential environmental impacts of the project and the use of eminent domain.

In April the Trump administration met with officials from Jordan Cove. After the meeting, *The Washington Post* reported that a Trump advisor stated "the first thing we're going to do is we're going to approve a pipeline in the Northwest." This statement generated a fair amount of controversy in Southern Oregon, and in response, our Oregon delegation of U.S. Senators sent a letter to Trump demanding that he avoid political interference in the FERC process.

I strongly believe that FERC – an independent agency with a longstanding tradition of bipartisanship and that operates under a deliberative process that includes broad stakeholder engagement and strict adherence to the law -- must be free from undue political influence.

**Do you think it is appropriate for the White House to throw its support behind a project that FERC has yet to make a formal determination about?**

**Answer:** Senator Wyden, let me first thank you for the time you took to meet with me recently to discuss important FERC issues, including this one.

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FERC is indeed an independent agency, and I share your view that FERC must conduct its work in a manner that is free from undue political influence. If confirmed by the Senate, that is the approach that I intend to reflect in all my activities and decision-making at FERC. Situations often arise where public officials from all branches of government publicly express their opinions – sometimes in very strong terms – about actions that they believe should be taken by FERC. The Commission’s role is to ensure that its decision-making is based on the legal requirements FERC is charged with administering, following due process, allowing as appropriate for stakeholder and public input and taking into account the views expressed, all while ensuring avoidance of improper political influence. Preserving and adhering to the integrity of this process is important – to FERC as an institution and to me personally. To do otherwise would be inconsistent with FERC’s role as an independent agency. If I am confirmed, that is the approach I will bring to FERC.

**Should you be confirmed as a FERC commissioner, will you commit to avoiding any step that could be interpreted as political interference from the White House in FERC’s deliberative permitting process in Oregon and nationwide?**

**Answer:** Consistent with my recognition of FERC’s important role as an independent agency, I gladly commit that if confirmed to FERC I will base my actions and decisions there on the legal requirements FERC is charged with administering, following due process, allowing as appropriate for stakeholder and public input and taking into account the views expressed, all while ensuring avoidance of improper political influence from any outside public official or governmental entity. As I note in my prior response, preserving and adhering to the integrity of this process is important to me, and, if I am confirmed, that is the approach I will bring to FERC, with regard to matters affecting Oregon or any other part of the country.

**Earlier this year, I requested president Trump restore bipartisanship at the Commission by nominating commissioners from both parties. How will you commit to working in a fair, balanced, bipartisan and transparent fashion during all of your FERC dealings?**

**Answer:** You reference FERC’s longstanding tradition of bipartisanship. In my years of legal practice before FERC, I have observed that tradition and have developed a strong appreciation for it. I commit that, if I am confirmed by the Senate, the focus of my decision-making and actions at FERC will be rigorous adherence to the legal requirements FERC is charged with administering, while following processes that are appropriately open, transparent and fair. Consistent with FERC’s bipartisan tradition, I expect this approach to result in FERC decisions that are supported by Commissioners from both political parties.

**Question 2:** I am concerned about abuse of eminent domain by the natural gas and pipeline industries in recent years, aided and abetted by premature and improper FERC authorization of eminent domain. A review of FERC’s approval process is needed, because of the ramifications of the certificate, which grants the holder the ability to exercise eminent domain.

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**If confirmed, will you take steps to review, and revise if necessary, the eminent domain proceedings at FERC?**

**Also, can you commit to holding an evidentiary hearing, as articulated in FERC's official policy, when a significant amount of eminent domain is implicated in a project?**

**Answer:** Since 1947, the Natural Gas Act has provided authority for the developer of a natural gas pipeline to use eminent domain. The exercise of that eminent domain authority is enforced not by FERC but rather by state and federal courts. Nonetheless, if confirmed, I will work with my colleagues to ensure that the Commission's processes appropriately address the concerns of landowners affected by infrastructure projects.

**Question 3:** Energy storage is one of the most rapidly growing energy technologies out there, and it can provide multiple benefits to the grid. Storage would also reduce the overall cost of electricity to American homes and businesses by allowing low-cost energy produced at night from any source to be stored to meet peak demand during the day when less efficient, more expensive generation sources are added to meet peak demand. Since this cycle repeats itself day in and day out, storage could help lower everyone's electric bills 365 days a year.

FERC currently has a proposal before the Commission to more effectively integrate electric storage resources into organized wholesale markets to enhance competition and help ensure that these markets produce fair and reasonable rates. Proponents of energy storage are concerned that the Commission is slow walking the rulemaking process.

To get my vote, I'm going to need to see you commit to removing unfair barriers to energy storage--and other emerging technologies, like distributed energy resources--in the wholesale electricity markets.

**Do you agree FERC should be promoting technology-neutral competitive markets?**

**Answer:** FERC's role in overseeing our nation's electricity markets – which includes ensuring that rates, terms and conditions for transactions in those markets be just and reasonable and not unduly discriminatory – is one of its most important functions. You note the proposal currently pending before FERC to remove barriers to the participation of electric storage resources and distributed energy resource aggregations in wholesale electricity markets overseen by FERC. Although it would not be appropriate for me to suggest a view on that pending matter, I gladly commit that if confirmed to FERC I will give these important issues the careful attention they deserve.

**Will you be supportive of completing the current FERC energy storage rulemaking, in a way that gives storage a clear signal that it can participate in wholesale markets?**

**Answer:** Although it would not be appropriate for me to suggest a view on this pending rulemaking proceeding, I gladly commit that if confirmed to FERC I will review the record

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carefully and will give the important issues raised by the energy storage rulemaking proceeding the careful attention they deserve.

**Question 4:** A broad coalition in Oregon, including consumer advocates, electric utilities and environmental groups, has championed recent legislation to increase the renewable portfolio standard to 50% for our state. The state legislature made that decision and the governor signed that into law. Now, in some FERC-supervised markets, this sort of democratic process is under attack. FERC recently held a technical conference to explore those assaults on state authority.

**Do you support the federal government trampling states' rights to pursue state energy policies, such as renewable portfolio standards? Or do you think states should have the authority to establish their own energy policy through their constitutional rights? Given that FERC has endorsed markets and competition for energy and ancillary services, is it your opinion that this approach can be successfully used for any and all providers of all reliability-related services?**

**Answer:** I respect states' authority to make resource decisions that are within their jurisdiction. FERC, too, has authority relevant to this issue – its statutory obligation to ensure just and reasonable wholesale electricity rates. As you note, the Commission held a technical conference regarding the interaction between state initiatives and FERC-jurisdictional wholesale electricity markets. If I am confirmed, I look forward to reviewing the record in the Commission's proceeding and discussing these issues with my colleagues.

To your last question, concerning FERC-regulated organized markets for energy and ancillary services, these markets have been said to have yielded consumer benefits in the regions that have adopted them. Each such market is operated by a regional transmission organization (RTO) or independent system operator (ISO), and the decision by a utility or other market participant whether to participate in an RTO or ISO is voluntary. The existence of regions of the country where no such organized markets operate is a reflection of these voluntary decisions by market participants in the aggregate. I believe that it is incumbent upon any agency, including FERC, to look for opportunities to improve its policies while continuing to assure full adherence to the legal requirements it oversees, and if I am confirmed I will work with my colleagues to help identify and address potential policy improvements in this area.

**Question 5:** The Pacific Northwest has a long history of beneficial bulk regional exchanges between California, taking advantage of the AC-DC Interties, a major high-voltage transmission import-export path which allows both regions to integrate unprecedented penetrations of renewables cost-effectively and reliability at scale. Interregional, and economically beneficial electricity transmission is often neglected by the utility industry because of divisions in service areas, state's boundaries, and preferences of utilities to take narrow view of economic benefits.

**How will you facilitate the development of interregional transmission projects shown to provide more efficient or cost-effective solutions to regional needs?**

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**Answer:** FERC held a technical conference on this issue earlier this year and subsequently requested post-technical conference comments. This proceeding has provided the Commission with a record detailing various commenters' concerns with current interregional transmission coordination procedures, as well as their suggestions for supporting more efficient or cost-effective interregional transmission development. If confirmed, I look forward to reviewing this record and addressing this issue with my colleagues.

**How will you ensure that interregional evaluation processes and cost allocation methods encompass the full range of benefits (e.g., reliability, resilience, security, facilitating state policies, and congestion/planning reserve margin reduction) provided by interregional projects? What opportunities will each affected Regional Transmission Organization have to study the project proposals?**

**Answer:** In the technical conference proceeding noted above, participants have raised issues relating to the evaluation processes and interregional cost allocation methods that apply to interregional transmission facilities. If confirmed, I look forward to reviewing this record and addressing these issues with my colleagues.

In response to your last question, regarding opportunities for Regional Transmission Organization study of project proposals, FERC Order No. 1000 required that an interregional transmission project be selected in each region's regional transmission plan for purposes of cost allocation in order to be eligible for interregional cost allocation. Thus, Order No. 1000 provides that potential interregional transmission projects must be considered through each transmission planning region's regional transmission planning process before they are eligible for interregional cost allocation. These Order No. 1000 requirements apply to all public utility transmission providers, not just Regional Transmission Organizations.

**Question 6:** Former FERC chairman Norman Bay made comments before he left, noting that it is "inefficient to build pipelines that may not be needed over the long term and that become stranded assets." He also suggested that simply considering precedent agreements may not be an adequate measure of need.

**How would you define need for a gas pipeline? Is having customers for the pipeline's capacity enough? How is that decision-making changed if those customers are the same entities-- or affiliates of those entities--involved in seeking approval for the pipeline?**

**Answer:** Under the Natural Gas Act of 1938, FERC must determine whether a proposed new pipeline project is consistent with the public convenience and necessity. As part of that determination, FERC has an obligation to consider whether the pipeline is needed. Accordingly, a detailed evaluation of pipeline need already is a longstanding component of FERC's legal process for evaluation of natural gas pipeline certificate applications. The currently effective formal policy governing this determination of pipeline need was adopted by the Commission in 1999. If confirmed, I commit that I will base my decision-making and actions on careful review of the applicable law as applied to the situation at hand. I also believe that agencies periodically

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should review their policies to ensure they are effective, and if confirmed I will give these important issues concerning pipeline need the careful attention they deserve and will work to ensure that the Commission's review process considers all relevant issues.

**As commissioner, what steps would you take to promote public participation, transparency, and confidence in FERC's pipeline certification process by incorporating community, landowner and scientific inputs?**

**Answer:** FERC's process for considering and ruling upon applications to construct new pipeline infrastructure is subject to detailed legal requirements, and if confirmed I will base my decision-making and actions in this area on careful review of the applicable law as applied to the specific situation at hand. As a general matter I believe that providing for public input into FERC proceedings and processes instills confidence in the Commission's determinations. I also believe that agencies should review their policies from time to time to ensure they are effective, and if confirmed I will work with my colleagues to evaluate the Commission's policies for considering pipeline applications to ensure that the Commission's review process considers all relevant issues, including affording adequate opportunities to address the concerns of landowners and other members of the public affected by infrastructure projects or concerned about other relevant issues, including those pertaining to scientific matters.

**In your view, should FERC have a significantly different process for its certification of gas pipelines than it does for interstate transmission lines?**

**Answer:** With respect to infrastructure certification and associated issues of siting, interstate natural gas pipelines and interstate electric transmission facilities raise similar issues. As your question suggests, however, each facility type has its own, separate legal framework governing the applicable siting process. Authority over interstate natural gas pipeline certification resides exclusively with FERC under the Natural Gas Act of 1938. However, most siting of electric transmission facilities, including those utilized for the provision of transmission services subject to the jurisdiction of FERC, is subject to processes overseen by the various states. In the Energy Policy Act of 2005, Congress gave FERC special siting authority for electric transmission projects located within high priority regions identified by the U.S. Department of Energy (DOE) as National Interest Electric Transmission Corridors, essentially transferring the state's traditional transmission siting role to FERC within such Corridors under circumstances Congress deemed appropriate to address transmission needs therein. This FERC role became known as its "backstop siting authority," and pursuant to this authority FERC adopted implementing regulations for its use, based in part on its extensive experience with the siting of natural gas pipelines. However, FERC's backstop siting authority for electric transmission has been severely restricted by court decisions. I believe that FERC should, from time to time, review its existing policies to ensure they are functioning as effectively as they can, and if confirmed I commit to reviewing the Commission's policies to determine whether there are opportunities for improvement, despite the challenges presented by the court decisions.

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**Question 7:** Also in his departing comments from FERC, former chairman Bay noted that it is “in light of the heightened public interest and in the interests of good government, I believe the Commission should analyze the environmental effects of increased regional gas production from the Marcellus and Utica.”

**As Commissioner, if confirmed, can you commit to directing Commission staff to conduct such studies on new and expanded pipelines?**

**Answer:** FERC’s process for considering and ruling upon applications to construct new pipeline infrastructure is subject to detailed legal requirements under the Natural Gas Act, and if confirmed I will base my decision-making and actions in this area on careful review of the applicable law as applied to the specific situation at hand. This necessary legal review also requires taking into account relevant developments in appellate court decisions, and in this respect a recent decision of the U.S. Court of Appeals for the D.C. Circuit is likely to require careful review because it overturned a FERC pipeline approval on grounds pertaining to the sufficiency of FERC’s consideration of greenhouse gas emissions associated with the downstream usage of the natural gas to be transported by the pipeline at issue. Besides ensuring full satisfaction of all legal requirements, I also believe that agencies periodically should review their policies to ensure they are effective, and if confirmed I will work with my colleagues to evaluate the Commission’s policies for considering pipeline applications to ensure that the Commission’s review process considers all relevant issues.

**Question 8:** Chairman Bay also noted that “where it is possible to do so, the Commission should also be open to analyzing the downstream impacts of the use of natural gas and to performing a life-cycle greenhouse gas emissions study.” It is my opinion that FERC should incorporate climate considerations into their evaluation of the environmental impacts of proposed natural gas pipelines and liquefied natural gas export facilities, as required under the National Environmental Policy Act.

**As Commissioner, if confirmed, can you commit to including climate change considerations and analysis in the environmental review conducted on new and expanded pipelines?**

**Answer:** As I have noted in my response to Question 7, FERC’s process for considering and ruling upon applications to construct new pipeline infrastructure is subject to detailed legal requirements under the Natural Gas Act, and if confirmed I will base my decision-making and actions in this area on careful review of the applicable law as applied to the specific situation at hand. It is my understanding that current Commission requirements already require consideration of the greenhouse gas emissions associated with the construction and operation of proposed natural gas facilities, as well as impacts potentially resulting from climate change over the region in which the facility is located in conducting its environmental analysis for the project.

The necessary legal review also requires taking into account relevant developments in appellate court decisions, and in this respect the recent D.C. Circuit case I reference above is likely to require careful review by FERC because it overturned a FERC pipeline approval on grounds

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pertaining to the sufficiency of FERC's consideration of greenhouse gas emissions associated with downstream usage of the natural gas to be transported by the pipeline at issue. Besides ensuring full satisfaction of all legal requirements, I also believe that agencies periodically should review their policies to ensure they are effective, and if confirmed I will work with my colleagues to evaluate the Commission's policies for considering pipeline applications to ensure that the Commission's review process considers all relevant issues, including as appropriate the climate issues raised by your question.

**Questions from Senator Bernard Sanders**

**Climate Change**

**Question 1:** President Trump has suggested in the past that climate change is a hoax. Is the President correct? Is climate change a hoax?

**Answer:** My general understanding is that Earth's climate has been in a state of constant change for as long as the planet has existed. I do not regard climate change as a hoax.

**Question 2:** 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 toward energy efficiency and sustainable energy like wind, solar, and geothermal?

**Answer:** I believe that climate change is indeed real and that it is affected by numerous factors including human activity. FERC is not an environmental regulatory agency, and, under longstanding policies of fuel-neutrality, FERC does not make determinations regarding the selection of fuels used to satisfy our nation's energy needs.

**Question 3:** Do you agree with the vast majority of scientists that the combustion of fossil fuels contributes to climate change?

**Answer:** My general understanding is that climate change is affected by numerous factors, including human activity such as the combustion of fossil fuels.

**Question 4:** Do you believe that FERC has a role in reducing the extraction and use of fossil fuels?

**Answer:** It is my understanding that neither the Natural Gas Act nor any other law assigning statutory responsibilities to FERC gives FERC any direct role regarding the extraction or use of fossil fuels.

**Question 5:** If confirmed, what steps will you take at FERC to help the U.S. transform its energy system as quickly as possible from one based on carbon-intensive fuels to one based on clean, sustainable fuels?



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**Answer:** Congress has charged FERC with carrying out certain specified statutory responsibilities. The policies implemented by FERC in fulfilling those responsibilities are recognized as being resource-neutral and fuel-neutral. However, the energy industry is changing, which warrants continued evaluation of the performance and structure of the energy markets FERC oversees. Against that backdrop, the Commission held a two-day technical conference in May to explore the interplay between wholesale markets and state policy goals, including state support of particular energy resource types. Interested parties have filed post-technical conference comments, and if confirmed, I look forward to reviewing the record and discussing these matters with my colleagues.

**Question 6:** If confirmed, how will you work to address climate change?

**Answer:** Under the laws passed by Congress that determine FERC's jurisdiction, FERC does not have a climate change mission. FERC is not an environmental regulatory agency, and, under longstanding policies of fuel-neutrality, FERC does not make determinations regarding the selection of fuels used to satisfy our nation's energy needs, whether to address climate change or any other environmental issue.

**Question 7:** What do you believe are the best ways to achieve a sustainable, carbon-free energy future?

**Answer:** In light of the limitations on FERC's regulatory role as noted above, it would not be appropriate for me to suggest a FERC course of action intended to achieve policy results that are beyond FERC's jurisdiction.

**Question 8:** What role do you see FERC has in increasing the reliability of the electric grid in the face of increasingly extreme weather like Hurricanes Harvey and Irma, while ensuring generation is sustainable?

**Answer:** Under section 215 of the Federal Power Act, FERC reviews reliability standards for approval and enforces those standards. The reliability standards are largely resource-neutral. My understanding is that FERC looks to NERC to perform event analysis for extreme weather events on an interconnection-wide basis; such broad analysis considers the use/performance of all resources to assess reliability risks during the weather event. If confirmed, I look forward to working with my colleagues and engaging stakeholders on these matters.

**Question 9:** Energy prices impact all American families. Yet climate change poses catastrophic economic, environmental, and social threats to all Americans. Delaying action on climate change has severe long-term costs. Moreover, renewable energy sources like wind and solar are the cheapest available, and are not subject to the sorts of wild price fluctuations that we see with fossil fuels. When combined with aggressive energy efficiency, they can provide cheaper energy over the long term than dirty fossil fuels.

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If confirmed, what steps will you take to help the U.S. transform its energy system, as quickly as possible, from one based on carbon-intensive fuels to one based on clean, sustainable fuels?

**Answer:** Under the laws passed by Congress that determine FERC's jurisdiction, FERC does not have a climate change mission. In light of this limitation on FERC's regulatory role, it would not be appropriate for me to suggest a FERC course of action intended to achieve policy results that are beyond FERC's jurisdiction.

**Question 10:** Are reforms needed to the wholesale markets to support distributed energy resources? If not, do you commit to ensuring that wholesale markets continue to support distributed energy resources? If so, what could be done to ensure wholesale markets better support distributed energy resources?

**Answer:** FERC has sought to remove barriers to the participation of distributed energy resources in the wholesale markets it oversees. Last year, FERC issued a Notice of Proposed Rulemaking on Electric Storage Participation in Markets Operated by Regional Transmission Organizations and Independent System Operators. This notice proposed to address barriers to distributed energy resources' participation in the organized wholesale energy markets overseen by FERC by allowing such resources to participate in those markets through a process of resource aggregation. If confirmed, I look forward to reviewing the comments the Commission received in response to the proposal and giving this issue the attention it deserves.

**Question 11:** What steps can FERC take to prioritize dispatching clean distributed renewable energy before dispatching fossil fuel generation?

**Answer:** The markets operated by the FERC-regulated Regional Transmission Operators (RTOs) and Independent System Operators (ISOs) dispatch electric generation resources to meet electric demand for the relevant time period, and generally they do so on a least-cost basis. The owner-operators of electric generating resources (of the full range of fuel types) make offers to sell their electric output into these markets, based on their marginal cost of production. The RTOs/ISOs assess the various offers to sell, in the aggregate, and accept/purchase offered electricity in an amount sufficient to satisfy the overall market's demand for the relevant time period. This "clearing" process is designed to minimize costs to electricity consumers while recognizing transmission constraints and other reliability issues. Many renewable energy resources have no fuel costs, and have low or zero marginal costs, and thus are economic to dispatch whenever they are available. Thus, the RTO/ISO markets generally dispatch these resources fully, unless transmission lines become overloaded or other reliability constraints prevent their full dispatch.

**Question 12:** If confirmed, will you commit to encouraging utilities around the country to dramatically expand rooftop solar and other types of distributed generation?

**Answer:** Under the laws passed by Congress that determine FERC's jurisdiction, FERC does not direct or encourage particular forms of electric generation facilities, whether of a distributed

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nature (such as rooftop solar) or otherwise. In light of this limitation on FERC's regulatory role, it would not be appropriate for me to suggest a FERC course of action intended to achieve policy results that are beyond FERC's jurisdiction.

**Question 13:** If confirmed, will you support the development of large and small-scale storage, which will make our grid more resilient and encourage the buildout of renewable energy technology?

**Answer:** As a general matter, I believe that our nation should rely on a wide range of resources to address its energy needs, including renewable and electric storage resources. FERC recently took steps to assess potential barriers to the participation of electric storage resources in the organized wholesale electric markets overseen by FERC. If confirmed, I look forward to reviewing this matter carefully and addressing it with my colleagues.

**Question 14:** Do you see a role for FERC in encouraging ancillary and reliability services markets to ensure all generators can compete to provide services to maintain grid reliability and get compensated for those services?

**Answer:** FERC-regulated organized markets for energy and ancillary services have yielded consumer benefits in the regions that have adopted them. Each such market is operated by a regional transmission organization (RTO) or independent system operator (ISO), and the decision by a utility or other market participant whether to participate in an RTO or ISO is voluntary. Thus, there are regions of the country where no such organized markets operate, reflecting these voluntary decisions by market participants in the aggregate. I believe that it is incumbent upon any agency, including FERC, to look for opportunities to improve its policies while continuing to assure full adherence to the legal requirements it oversees, and if I am confirmed I will work with my colleagues to help identify and address potential policy improvements in this area.

**Question 15:** The Public Utility Regulatory Policy Act (PURPA) allows industrial companies to build and operate combined heat and power (CHP) and waste heat to power (WHP) facilities that can simultaneously produce economical steam and electricity with energy efficiencies up to 80 percent. Do you support maintaining PURPA as currently enacted?

**Answer:** I am familiar with PURPA and the respective roles it assigns to FERC and the states. I have not had occasion to develop a view on the specific question you raise regarding PURPA's provisions as currently enacted, and as a general matter I regard this question as an issue better left to the judgment of Congress.

**Question 16:** Under the National Environmental Policy Act, all federal agencies are required to assess the environmental impacts of their proposed activities, including FERC. In 2016, the Council on Environmental Quality released guidance for measuring an activity's contribution to climate change as part of that assessment. This guidance includes measuring the full lifecycle greenhouse gas emissions from proposed pipeline projects – from gas extraction to pipeline

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construction to combustion of the gas that a pipeline carries. If confirmed, will you commit to requiring a full, robust analysis of a proposed project's full lifecycle greenhouse gas emissions using the best science?

**Answer:** FERC's process for considering and ruling upon applications to construct new pipeline infrastructure is subject to detailed legal requirements under the Natural Gas Act, and if confirmed I will base my decision-making and actions in this area on careful review of the applicable law as applied to the specific situation at hand. This necessary legal review also requires taking into account relevant developments in appellate court decisions, and in this respect a recent decision of the U.S. Court of Appeals for the D.C. Circuit is likely to require careful review because it overturned a FERC pipeline approval on grounds pertaining to the sufficiency of FERC's consideration of greenhouse gas emissions associated with the downstream usage of the natural gas to be transported by the pipeline at issue. Besides ensuring full satisfaction of all legal requirements, I also believe that agencies periodically should review their policies to ensure they are effective, and if confirmed I will work with my colleagues to evaluate the Commission's policies for considering pipeline applications to ensure that the Commission's review process considers all relevant issues, including in this evaluation due consideration of the greenhouse gas issues you raise in your question.

**Costs to Consumers**

**Question 17:** In what ways can FERC prevent economic harm to low-income Americans?

**Answer:** Although most programs intended to provide economic protection or assistance to low-income Americans with regard to satisfying their energy needs are administered at the state or local level, FERC too has a role that has been recognized as yielding economic benefits to consumers. Specifically, FERC is statutorily charged with assuring that all sales and services overseen by the Commission take place at rates that are just and reasonable.

**Question 18:** In Vermont, energy efficiency investments have saved \$279 million in avoided regional transmission system upgrades. What additional steps can FERC take to aggressively promote the use of energy efficiency and other strategies to avoid unnecessary expensive new transmission lines and new baseload power plants?

**Answer:** FERC already has taken steps to allow the integration of customer demand resources, such as energy efficiency, into the markets it oversees. For example, Order No. 1000 required each public utility transmission provider to consider proposed non-transmission alternatives on a comparable basis when evaluating potential transmission solutions in their regional transmission planning processes. FERC also has required that demand response resources be considered on a basis comparable to the services provided by generation resources in local transmission planning processes where appropriate. In addition, two of the wholesale markets that the Commission regulates, PJM and ISO New England, provide a mechanism for energy efficiency investments to participate in and receive compensation for their capacity value from the wholesale capacity market. Apart from these existing features of FERC-regulated markets, I believe that FERC

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should, from time to time, review its existing policies to ensure they are functioning effectively, and if confirmed I commit to reviewing the Commission's policies in this area to determine whether there are opportunities for improvement.

**Question 19:** If confirmed, will you commit to just and reasonable rates for consumers, not just for market participants?

**Answer:** "Just and reasonable rates" is indeed the standard that FERC is statutorily directed to uphold with regard to transactions and services within its jurisdiction, and I gladly commit that, if I am confirmed by the Senate, my decision-making and actions at FERC will reflect that statutory obligation. Although FERC has no jurisdiction over the rates applicable to energy products and services that are provided directly to retail consumers, FERC's role in assuring just and reasonable rates within its jurisdiction has been recognized as yielding economic benefits to consumers.

**Supporting the Policy Goals of Individual States**

**Question 20:** Approximately 30 states have passed renewable portfolio standards. States are enacting these policies for a wide variety of reasons including fuel diversity, environmental benefits, and economic development. If confirmed, how would you act to protect these states' clean energy policy?

**Answer:** States have authority to make resource decisions within their respective jurisdictions. FERC and the various states have an obligation to respect each other's authority under the law. Thus, if confirmed I will be mindful of state authority while carrying out my duties at FERC.

**Question 21:** While recognizing that FERC must place a premium on system reliability, many states have established aggressive energy policy goals. Vermont, for instance, is committed to reducing greenhouse gas emissions by 90% by 2050. Should you be confirmed, what steps will you take to give more weight to the policy goals of individual states like Vermont?

**Answer:** I respect states' authority to make resource decisions, including those based on environmental goals, in a manner consistent with their respective jurisdictions. FERC has its own statutorily assigned role overseeing energy markets under the Federal Power Act. FERC recently held a technical conference regarding the interaction between state initiatives and FERC-jurisdictional wholesale electricity markets. If I am confirmed, I look forward to reviewing the record in the Commission's proceeding and discussing these issues with my colleagues.

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**Stakeholder influence**

**Question 22:** As an attorney, you frequently represent oil and gas companies. What do you say to those who believe you would continue to represent their interests at FERC and act as a rubber stamp for pipelines and other fossil fuel infrastructure?

**Answer:** I am firmly committed to the rule of law. I am proud of the role of the attorney in our American legal system and have been pleased to have had the opportunity in my legal career to represent many different types of clients, in FERC cases and in matters having no relation to FERC or the energy industry. In each such instance, I have taken very seriously my ethical obligation to do my best for my client. In like fashion, if I am confirmed by the Senate to FERC, I will ensure, with equal seriousness of purpose, that my FERC decision-making and actions will reflect this same focus on the rule of law and on the obligations inherent in my role. In matters that come before me at FERC if I am confirmed, I will begin by identifying the applicable legal requirements and will act to ensure not only that the Commission's actions satisfy those requirements in full, but also that, through processes that are open, transparent and fair, there is sufficient opportunity for input by stakeholders, including the public.

**Question 23:** If confirmed, how will you work to prevent undue influence on FERC by the fossil fuel industry?

**Answer:** By statutory design, FERC is an independent agency, and its independence is one of its most important characteristics. FERC's obligation is to discharge its statutory obligations in a manner that accords with the law. I am firmly committed to the rule of law. The law allows no special rights of FERC access or influence to any energy industry sector (or to any other stakeholder or constituency), and it is important that FERC avoid even the appearance of any such influence. If I am confirmed by the Senate to FERC, these principles will be reflected in my decision-making and actions there.

**Question 24:** One of FERC's most important responsibilities is to investigate market manipulation and enforce related rules. Is FERC devoting adequate resources to these enforcement activities? Are the fines sufficient? If confirmed, what steps will you take to sustain and improve on FERC's enforcement capacity and success?

**Answer:** As I noted at the confirmation hearing, I believe FERC's enforcement program must be robust. I have not had access to specific information regarding the level of FERC resources devoted to enforcement, but my general impression is that FERC has devoted significant resources to its enforcement activities. I do have extensive experience with FERC's civil penalty authority (*i.e.*, the Commission's authority to impose fines), which Congress granted to FERC in the Energy Policy Act of 2005, and I regard that authority as a formidable tool for addressing issues of market manipulation and other violations of FERC requirements. This authority empowers FERC to impose civil penalties on violators in the amount of over \$1.2 million per day, per violation – an amount that exceeds the comparative civil penalty authority of most other federal agencies. I believe that FERC should, from time to time, review its existing policies to

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ensure they are functioning effectively, and if confirmed I commit to reviewing the Commission's enforcement policies to determine whether there are opportunities for improvement.

**Question 25:** FERC is incredibly complicated, and the barrier to entry for someone to simply understand FERC proceedings, much less to participate, is extremely high. Stakeholders with considerable financial resources can participate, but everyone else is effectively excluded. How can FERC do a better job of ensuring all interested parties can meaningfully participate in FERC processes?

**Answer:** I believe that FERC's proceedings and processes, to the maximum extent practicable, should be open, transparent and fair – and should be accessible to all interested parties. If confirmed, I will address with my colleagues efforts to promote these objectives.

**Future of Nuclear Power**

**Question 26:** What do you envision as the future of nuclear power?

**Answer:** Nuclear-fueled electric generation historically has played a significant role in contributing to the satisfaction of our nation's energy needs. I am aware that nuclear resources today face significant economic challenges. For example, the relatively low cost of natural gas has helped drive down energy prices and revenues, making it more difficult for nuclear resources to compete. In addition, some state and federal policies that impose new environmental requirements and seek to procure specific resource types likewise have presented challenges for nuclear resources. Under longstanding policies of fuel-neutrality, FERC does not make determinations regarding the selection of fuels used to satisfy our nation's energy needs. Consistent with that role, I believe FERC should focus on ensuring that its electric market policies satisfy all legal requirements and as appropriate promote policies that support nondiscriminatory, resource-neutral, and reliable electricity delivery. FERC recently initiated a technical conference proceeding to evaluate price formation in the energy and ancillary services markets it regulates, which included consideration of energy prices for various generation resources including nuclear. If confirmed, I look forward to reviewing these matters with my colleagues.

**Question 27:** What do you believe is the proper role of FERC in the future direction of nuclear power in the United States?

**Answer:** Please see my response to your Question 26 above. In addition, I am aware of steps taken by FERC to date to engage industry members and to work with other federal agencies to better understand the challenges facing nuclear power. For instance, FERC has participated in joint meetings with the Nuclear Regulatory Commission to discuss the reliability of the bulk power system, nuclear power safety and security, and market factors influencing nuclear power economics.

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**Regional Initiatives**

**Question 28:** New England has a regional ISO engaged in the process known as IMAPP – integrating markets and public policy. The ISO and FERC are beginning to acknowledge these administrative markets are in conflict with some of the objectives states have with regard to energy policy.

If confirmed, would you support efforts, such as in New England, to develop fixes to wholesale markets to better implement state policy goals?

**Answer:** FERC has taken steps to consider this issue through the referenced technical conference proceeding on the interplay of state policy goals and FERC-regulated wholesale energy and capacity markets. If I am confirmed, I look forward to reviewing the record in the Commission’s proceeding and discussing these issues with my colleagues.

**Question 29:** Energy markets do not accurately reflect environmental costs, including the social costs of carbon pollution. Do you believe that FERC and wholesale market operators should continue to explore how to better integrate the real cost of carbon pollution into our energy markets?

**Answer:** FERC policies are resource-neutral and fuel-neutral, whereas wholesale energy and capacity markets generally focus on encouraging competition and minimizing the costs incurred in satisfying the respective markets’ aggregate energy needs. The referenced FERC technical conference proceeding on the interplay of state policy goals and FERC-regulated markets includes consideration of state policies targeting environmental concerns such as the carbon issue you cite. If I am confirmed, I look forward to reviewing the record in the Commission’s proceeding and discussing these issues with my colleagues.

**Question 30:** Earlier this month, FERC held a technical conference to examine how to better incorporate states’ environmental policy objectives into wholesale markets. Stakeholders are working to address challenges in these markets, particularly as it relates to price formation like carbon pricing. More active leadership from FERC, however, may be necessary to direct wholesale market operators to develop solutions to address these price formation challenges.

If confirmed, would you help FERC take a more active role to assist state and market operator efforts to resolve price formation issues associated with states’ environmental policies?

**Answer:** Although it would not be appropriate for me to suggest a view on any FERC decisions that should emerge from this pending matter, I gladly commit that if confirmed to FERC I will give these important issues the careful attention they deserve.

**Question 31:** New England is making considerable progress implementing renewable portfolio standards, renewable energy standards, and the Regional Greenhouse Gas Initiative. These reforms will be an enduring aspect of the region’s energy strategy.



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If confirmed, will you commit to work with ISO-New England to ensure that wholesale market rules complement state policies and regional agreements?

**Answer:** As I note above, FERC has taken steps through its technical conference proceeding to consider the interplay between FERC-regulated wholesale market structures and state policy initiatives. If I am confirmed, I look forward to reviewing the record in the Commission's proceeding and discussing these issues with my colleagues.

**Question 32:** The New England region saw considerable price increases in the region's forward capacity auctions (FCAs) in 2014. In recent auctions, costs have come down, while the region has been able to secure sufficient resources to maintain system reliability. Part of the reason why auction prices came down is because ISO-New England included more renewable energy in its installed capacity requirement (ICR). ISO-New England has continued to improve its inclusion of renewable energy in the ICR calculation, but could do better.

How can ISO-New England's consideration of energy, efficiency, renewable generation, and improved metrics in the forward capacity auctions that value the benefits of carbon-free generation help reduce system costs and improve system reliability?

**Answer:** My general understanding of this matter is that ISO-New England achieved the result you cite – lower aggregate costs for forward capacity auction results – in part by revising its market design to incorporate a presumption that higher amounts of power from renewable sources than previously forecast would make their way onto the New England grid during the time period in question, reducing the remaining amount of power that would need to be purchased through the forward capacity auction process. In pursuing such market design changes, ISO-New England is subject to detailed stakeholder processes and to FERC oversight both as to process and the specifics of the proposed market design changes. Should further changes to ISO-New England policies in this area be desired or proposed, whether by ISO-New England or by stakeholders, my understanding is that the same process would apply.

**Question 33:** Large-scale renewable generation currently faces a large barrier for bidding into the FCAs because of upfront costs. If confirmed, will you commit to working with the New England ISOs to continue reducing the barriers to including more renewables into the ICR and for bidding into its energy auctions?

**Answer:** The market rules governing the forward capacity auction conducted by ISO-New England are complex, and the computation of the region's installed capacity requirement is an important part of those market rules. It is important for ISO-New England or any other FERC-regulated ISO or RTO to provide for the inclusion of all suitable resource types in the conduct of its market processes while continuing to ensure that such inclusion does not have an adverse impact on system reliability. If confirmed, I look forward to addressing this issue with my colleagues.

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**Natural Gas Pipeline infrastructure**

**Question 34:** Producing electricity from gas was once thought to be relatively clean and that switching from coal to gas was part of a climate solution. We now know that because of methane leakage along the gas supply chain, which can more than double its life-cycle emissions, gas power can be dirtier than coal-fired power.

Given FERC's mandate to protect the interests of the American public, and the proven harmful impacts of climate change on the American people, what steps should FERC take to ensure Americans are protected from a buildout of natural gas infrastructure? What steps will you take to ensure FERC's environmental reviews of gas projects include a full, robust analysis of the lifecycle greenhouse gas pollution they cause, including from fracking, methane leakage across the gas supply chain, and combustion?

**Answer:** FERC's process for considering and ruling upon applications to construct new pipeline infrastructure is subject to detailed legal requirements under the Natural Gas Act, and if confirmed I will base my decision-making and actions in this area on careful review of the applicable law as applied to the specific situation at hand. This necessary legal review also requires taking into account relevant developments in appellate court decisions, and in this respect a recent decision of the U.S. Court of Appeals for the D.C. Circuit is likely to require careful review because it overturned a FERC pipeline approval on grounds pertaining to the sufficiency of FERC's consideration of greenhouse gas emissions associated with the downstream usage of the natural gas to be transported by the pipeline at issue. Besides ensuring full satisfaction of all legal requirements, I also believe that agencies periodically should review their policies to ensure they are effective, and if confirmed I will work with my colleagues to evaluate the Commission's policies for considering pipeline applications to ensure that the Commission's review process considers all relevant issues.

**Question 35:** New pipelines can cost up to three times more to transport gas than existing pipelines, which have already been paid for by previous ratepayers. New pipelines are a windfall for pipeline companies, but a costly burden for their customers.

Similarly, overbuilding new capital-intensive and long-lived pipelines based on artificial need may subject ratepayers to increased costs of shipping gas on legacy systems. If a new pipeline takes customers away from an existing legacy system, the remaining captive customers on the system may pay higher rates.

If confirmed, will you commit to implementing a programmatic analysis to evaluate the true market need for any project and identify whether sufficient capacity currently exists to meet that need to protect ratepayers and shareholders from the burden of stranded costs?

**Answer:** Under the Natural Gas Act of 1938, FERC must determine whether a proposed new pipeline project is consistent with the public convenience and necessity. As part of that determination, FERC has an obligation to consider whether the pipeline is needed. I understand

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that the Commission's current policy regarding demonstrating need was established in 1999 and (a) requires natural gas pipeline project proponents as a threshold matter to demonstrate that they are prepared to financially support proposed projects without relying on subsidization from existing customers and (b) requires FERC to determine whether the applicant has made efforts to eliminate or minimize adverse effects the project might have on the applicant's existing customers or on existing pipelines in the market or their captive customers. Thus, a detailed evaluation of pipeline need already is a component of the FERC process for evaluation of natural gas pipeline certificate applications. If confirmed, I commit that I will base my decision-making and actions on careful review of the applicable law as applied to the situation at hand. However, I also believe that agencies periodically should review their policies to ensure they are effective, and if confirmed I will work with my colleagues to evaluate the Commission's policies for considering pipeline applications to ensure that the Commission's review process considers all relevant issues.

**Question 36:** The Natural Gas Act gives FERC the ability to invoke eminent domain to turn private land over to pipeline companies if new pipelines are needed for the public good. If confirmed, how will you balance the rights of private property owners with developers' desire for profit? Will you commit to reviewing the process by which eminent domain is used to define what it means for a pipeline to serve "the public good?"

**Answer:** Since 1947, the Natural Gas Act has provided authority for the developer of a natural gas pipeline to use eminent domain. That eminent domain authority is neither exercised nor enforced by FERC. Rather, my understanding is that it is incumbent upon the holder of a FERC-granted certificate of public convenience and necessity for a given natural gas pipeline project to attempt in the first instance to obtain rights-of-way necessary for the project by reaching agreement with property owners, but that that certificate holder may acquire the lands through the use of eminent domain. The certificate holder's exercise of eminent domain authority in such instances is enforced not by FERC but rather by state and federal courts. Nonetheless, if confirmed, I will work with my colleagues to ensure that the Commission's processes appropriately address the concerns of landowners affected by infrastructure projects.

**Question 37:** How will you evaluate climate impacts during the review of applications for the construction and operation of natural gas pipelines?

**Answer:** As I note in my response to Question 34, FERC's process for considering and ruling upon applications to construct new pipeline infrastructure is subject to detailed legal requirements under the Natural Gas Act, and if confirmed I will base my decision-making and actions in this area on careful review of the applicable law as applied to the specific situation at hand. It is my understanding that current Commission requirements already require consideration of the greenhouse gas emissions associated with the construction and operation of proposed natural gas facilities in conducting its environmental analysis for the project.

The necessary legal review also requires taking into account relevant developments in appellate court decisions, and in this respect the recent D.C. Circuit I reference above is likely to require

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Careful review by FERC because it overturned a FERC pipeline approval on grounds pertaining to the sufficiency of FERC's consideration of greenhouse gas emissions associated with downstream usage of the natural gas to be transported by the pipeline at issue.

Besides ensuring full satisfaction of all legal requirements, I also believe that agencies periodically should review their policies to ensure they are effective, and if confirmed I will work with my colleagues to evaluate the Commission's policies for considering pipeline applications to ensure that the Commission's review process considers all relevant issues, including as appropriate the climate issues raised by your question.

**Question 38:** While instilling important powers in the federal government, the Clean Water Act also ensures the protection and respect of states' rights. Section 401 of the Act explicitly states that no [federal] license or permit shall be granted until the certification required by this section has been granted or waived. Similarly, the U.S. Supreme Court has said Section 401 requires States to provide a water quality certification before a federal license or permit can be issued and without [Section 401] certification, FERC lacks authority to issue a license.

Given the language of the Clean Water Act and its interpretation by the Courts, do you think it appropriate that FERC is routinely issuing its Certificates of Public Convenience and Necessity for pipeline projects prior to all affected states rendering their decisions on Section 401 certification? If confirmed, will you commit to ensuring all relevant state level permits are granted prior to issuing a Certificate of Public Convenience and Necessity for any pipeline project?

**Answer:** It is my general understanding that FERC issues conditional certificates of public convenience and necessity for natural gas pipeline projects that preclude natural gas companies from commencing construction until they have obtained all necessary authorizations under federal law, including Clean Water Act certification. I also understand that the U.S. Court of Appeals for the D.C. Circuit has held that a certificate conditioned on the receipt of state water quality certification did not authorize a discharge into the navigable waters of the United States, and thus did not violate the Clean Water Act. If confirmed, I will work with my colleagues to ensure that all Commission decisions regarding natural gas pipeline projects are consistent with law.

**Question 39:** Under federal law, a private party is not allowed to legally challenge FERC approval of a pipeline project until they have first submitted a rehearing request to FERC, and FERC has affirmatively granted or denied that request. Rather than do one or the other, FERC's practice has been to issue a tolling order in response to such requests, which puts the request under further consideration. The result is that communities are put into legal limbo, unable to challenge the FERC decision until a final grant or denial is issued from the agency. Routinely FERC leaves people in that legal limbo for months, and sometimes over a year, while it allows the applicant to exercise the power of eminent domain and advance construction.

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Do you see the use of tolling orders as an abuse of power by FERC? If confirmed, will you commit to either affirmatively grant or deny a rehearing request?

**Answer:** I understand that the courts have upheld the Commission's use of tolling orders in this situation. As rehearing requests frequently involve complex issues, tolling orders provide more time for the Commission to thoroughly review, consider, and address all the arguments.

I realize that in some instances this process places a burden on those affected by a FERC order. I cannot prejudge how I will act on rehearing requests. However, if I am confirmed, I commit to working to ensure that the Commission's processes for addressing submissions are as efficient as possible.

**Questions from Senator Al Franken**

**Question 1:** As you know, FERC released Order 1000 to identify transmission needs and solicit competitive transmission projects by requiring regional transmission planning and interregional coordination. As the recently released DOE grid reliability study notes, transmission is critical to improving the reliability and resilience of the grid. Furthermore, both wind and solar need transmission to move the power from the rural places where it is generated to the urban markets where it is consumed. And a lack of transmission capacity is preventing further development of renewables. Do you support FERC Order 1000? What are the barriers to interregional transmission lines and what can FERC do to remove those barriers?

**Answer:** FERC's landmark Order No. 1000, implemented in 2011, brought marked change to the process by which facilities intended to address our nation's electric transmission needs are planned, implementing detailed requirements for organized regional transmission planning and interregional coordination and establishing a framework to address critical questions regarding how to allocate the costs of new transmission infrastructure projects selected for development through the transmission planning process. Many in the industry – and no doubt FERC itself – anticipated that these features of Order No. 1000, together with the order's elimination of presumptive development rights previously held by incumbent transmission providers (called federal "rights of first refusal"), would boost competitive investment in new transmission infrastructure, including projects that would address needs along the lines you cite – *i.e.*, moving wind power and solar power from the rural places where it is generated to the more urban markets where it is consumed. I recognize and appreciate the merits of these public policy goals underlying Order No. 1000. I also am aware of criticisms that Order No. 1000 thus far has failed to achieve these goals, resulting in fewer new transmission projects coming to fruition than had been expected, particularly projects that are interregional in nature. FERC recently has taken steps to consider these important issues further, convening a technical conference to discuss the state of competitive transmission development. FERC requested comments on several associated issues, including issues related to regional transmission planning and competitive transmission development. I expect that that FERC proceeding will provide a helpful record regarding potential Commission action to address these issues. If confirmed, I look forward to reviewing the record and considering these issues.

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**Question 2:** A few years ago during the severe winter polar vortex, coal stockpiles at utilities in Minnesota repeatedly dropped to dangerously low levels, due to inadequate rail delivery of coal. As a result, a number of coal power plants in Minnesota were idled. This impacted the reliability of the grid and increased costs for consumers, as they paid for the more expensive replacement power that was purchased to make up for lost generation. That's why I pressed FERC to work with all other stakeholders to find a solution to this ongoing problem.

- a. What do you think FERC should do to mitigate the problems with delivery of coal to our power plants?
- b. Last Congress I introduced the legislation, which would require coordination among key federal agencies when a fuel emergency is declared. Do you think this coordination is a good idea, and how could FERC support such an effort?

**Answer:** Under the laws passed by Congress that determine FERC's jurisdiction, FERC does not have authority over the shipment of coal. However, if confirmed I would be willing to meet with utilities, rail regulators and other interested parties to explore whether FERC could provide assistance in this area.

**Question 3:** Because of its low prices, more and more Americans are using natural gas, both in homes and in industry. And the DOE Energy Information Administration projects that use of natural gas will continue to grow. At the same time, the federal government has approved more than 52 billion cubic feet per day of LNG exports—which is equal to about 70 percent of U.S. demand. Now, the natural gas industry wants more LNG exports because they can get a higher prices overseas. This will increase the price of natural gas here in the U.S.—disproportionately harming domestic industries like the agricultural, paper, and metal manufacturing sectors that will suffer from higher natural gas and electricity prices. It will also increase the price of energy for U.S. families, and be especially burdensome on low-income households because they expend a higher percentage of their income on energy bills. I understand that part of the FERC's responsibility is ensuring just and reasonable electricity rates. So do you think that FERC has a role to play here to make sure we are not unnecessarily increasing the cost of energy for Americans?

**Answer:** One of the Commission's core statutory responsibilities is to ensure that electric rates that it approves are just and reasonable, and I commit to fulfilling that mandate if I am confirmed. I also note that it is the sole responsibility of the Department of Energy (DOE) to act on applications for authorization to export of natural gas, under the laws passed by Congress that determine DOE's jurisdiction. FERC's authority in this area is limited to reviewing applications for physical export facilities, under statutory standards likewise imposed on FERC by Congress. FERC's role involves no determination whether gas exports are in the public interest.

**Question 4:** As you know, FERC's approval process for natural gas pipelines has gained national attention. Former Chairman Norman Bay released a statement on his last day recognizing the increased public interest surrounding the approval process and encouraging the agency to change how it determines whether approving a pipeline is within the national interest.

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Traditionally, FERC has relied on a contract with potential shippers to show market demand and therefore demonstrate that a project is in the national interest. But, this is fairly myopic view and Mr. Bay suggests that more comprehensive cost-benefit analysis may be necessary. Mr. Bay also recommended that FERC consider the environmental impacts of increasing gas production allowed by pipeline construction as well as an assessment of lifecycle greenhouse gas emissions. Do you agree with the former Chairman's assessment? If not, why not, and if so, what changes would you suggest?

**Answer:** Under the Natural Gas Act of 1938, the Commission must determine whether pipeline projects are consistent with the public convenience and necessity. FERC's process for considering and ruling upon applications to construct new pipeline infrastructure is subject to detailed legal requirements, and if confirmed I will base my decision-making and actions in this area on careful review of the applicable law as applied to the specific situation at hand.

As to the pipeline applicant's demonstration of market demand for the project at issue, FERC's process requires consideration whether a pipeline satisfies the standard for demonstrating pipeline need. I understand that the Commission's current policy regarding demonstration of pipeline need was established in 1999 and (a) requires natural gas pipeline project proponents as a threshold matter to demonstrate that they are prepared to financially support proposed projects without relying on subsidization from existing customers, and (b) requires FERC to determine whether the applicant has made efforts to eliminate or minimize adverse effects the project might have on the applicant's existing customers or on existing pipelines in the market or their captive customers. Thus, a detailed evaluation of pipeline need already is a component of the FERC process for evaluation of natural gas pipeline certificate applications.

As to the greenhouse gas issues you raise, it is my understanding that current Commission requirements already require consideration of the greenhouse gas emissions associated with the construction and operation of proposed natural gas facilities in conducting its environmental analysis for the project.

My commitment that if confirmed I will address such issues on the basis of a complete legal review also requires taking into account relevant developments in appellate court decisions, and in this respect a recent decision of the U.S. Court of Appeals for the D.C. Circuit is likely to require careful consideration because it overturned a FERC pipeline approval on grounds pertaining to the sufficiency of FERC's consideration of greenhouse gas emissions associated with downstream usage of the natural gas to be transported by the pipeline at issue.

Besides ensuring full satisfaction of all legal requirements, I also believe that agencies periodically should review their policies to ensure they are effective, and if confirmed I will work with my colleagues to evaluate the Commission's policies for considering pipeline applications to ensure that the Commission's review process considers all relevant issues, including as appropriate the pipeline need and climate issues raised by your question.

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**Question 5:** Senator Shaheen and I recently reintroduced legislation, the Public Engagement at FERC Act (S. 1240), that will improve public involvement at the FERC and facilitate advocacy at the agency on behalf of residential and small commercial energy consumers. Specifically, the Public Engagement at FERC Act would build off existing language in the Public Utility Regulatory Policy Act (PURPA) and establish an Office of Public Participation and Consumer Advocacy to ensure the public has a strong role in shaping our nation’s energy future. It is important that anyone who assumes the role of a FERC Commissioner understands how their decisions are directly or even indirectly impacting private citizens. When FERC evaluates whether a project or agreement is “in the public interest” it is vital that the Commission indeed consult the public.

- a. Do you agree that public engagement should be prioritized during the various proceedings administered by FERC?
- b. If confirmed, what steps will you take to make commission proceedings and processes more accessible to the public?
- c. While I’m not asking you to weigh in on the legislation directly, do you agree with allowing more public participation in the agency through the creations of a dedicated office?

**Answer:** I am committed to governmental processes that are open, transparent and fair – and that provide sufficient opportunity for input by stakeholders including the public. At FERC, the public already has several avenues available to raise concerns with the Commission. Members of the public may intervene in FERC proceedings, and also may submit comments on rules and regulations that the Commission proposes. State utility commissions and ratepayer advocates, which seek to protect the interests of retail and residential customers, in addition to groups representing the interests of landowners, environmentalists, labor, recreational and community development interests, and many other viewpoints, regularly intervene in FERC cases and comment on FERC’s proposed rules and regulations, representing specific perspectives among the members of the broader public. If confirmed, I will work with my colleagues to determine whether there are additional steps the Commission should take to make its proceedings and processes more accessible to the public.

**Question 6:** In 2006, FERC started requiring wholesale generators to file Form 556 Certificate of Qualifying Facility (QF) Status for a small power production facility. I’m concerned that some small, community wind facilities across the country may have missed this change. These projects went through an extensive study process to facilitate interconnection of their wind projects with the transmission grid. These interconnections were ultimately approved by FERC as exempt wholesale generators and have been operating safely. However, in 2006 FERC established a filing requirement for all facilities larger than 1MW, but some missed this change. The filing requires announcing the total electricity generated by the QF.

In one case, a company MinWind failed to start filing with FERC, and subsequently sought a waiver from FERC for the Form 556 filing arguing that they did not know about the rule. But, the waiver was denied and the company was assessed a substantial repayment obligation



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equivalent to the interest that they have been unfairly accruing since 2006. The amount was large enough that they were forced to file for bankruptcy. While I do not know the specifics of this case, in general, this seems like an onerous requirement that if not handled appropriately could drive more companies into bankruptcy. Will you commit to working with me to find a solution to this issue?

**Answer:** I too do not know the specifics of the case you cite, but as a general matter I readily acknowledge the importance of providing industry with adequate notice of regulatory requirements and reasonable remedies for failure to comply. If confirmed, I would be pleased to work with you on this issue, and I look forward to discussing this issue with my colleagues.

**Question from Senator Steve Daines**

**Question:** Hydroelectric power is a very important part of Montana's energy portfolio. It is also a reliable and renewable form of baseload energy. The recent DOE's Grid Study recommended that FERC revisit the current licensing and relicensing processes and minimize regulatory burdens. As commissioner, do you agree with the Department of Energy's grid study on the need to reduce the regulatory burden and red tape on hydropower facilities?

**Answer:** I believe that it is incumbent upon FERC (or any other federal agency) to look for opportunities to eliminate unnecessary regulatory burdens while continuing to attend fully to its statutory responsibilities. FERC from time to time in the past has undertaken efforts to reduce regulatory burdens associated with hydroelectric facilities, such as by granting certain exemptions to smaller hydroelectric projects and by entering into memoranda of understanding with other federal agencies and state governments in an effort to reduce regulatory conflict and overlap. I regard such efforts as healthy and appropriate. Although it would not be appropriate for me to suggest a specific view on the DOE grid study's recommendations concerning FERC hydroelectric licensing and relicensing processes, given that those issues may come before FERC for consideration of formal action, I do believe that the grid study's recommendations merit careful attention by FERC, and if I am confirmed I intend to review these issues and discuss them with my colleagues.

**Questions from Senator Joe Manchin III**

**Questions:** Regarding the Department of Energy's recently released grid reliability study, I would like to get your opinion on a couple of conclusions that the Department of Energy came to regarding the extent to which regulatory burdens as well as certain federal policies have forced the premature retirement of baseload power plants including:

1. The biggest contributor to coal and nuclear plant retirements has been the advantaged economics of natural gas fired generation.
2. Dispatch of variable renewable energy has negatively impacted the economics of baseload plant.

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3. Investments required for regulatory compliance have also negatively impacted baseload plant economics, and the peak in baseload plant retirements (which occurred in 2015).

The Department then recommends developing a comprehensive strategy for long-term reliability and resilience.

Do you agree with these assumptions?

How will you work to address these challenges in your role at FERC?

**Answer:** The DOE's grid study is a useful, data-intensive document that merits the attention of FERC and others having a policy role in our nation's energy industry. I recognize that many factors may affect the economics affecting coal and nuclear generating units. The DOE study indicates that the retirement of baseload generation has not impaired the reliability of the system to date, but that future retirements may negatively impact reliability. I believe this is an issue to which FERC should give careful attention, including whether there are reliability or resilience attributes of baseload resources that are not currently compensated adequately. If confirmed, I look forward to addressing these issues with my colleagues.

**Question 2:** Today, our reliability organizations and electric utilities are tasked with maintaining our electric grid in an increasingly challenging environment. A perfect storm of factors has put baseload units at risk. In the meantime, aging infrastructure, extreme weather events, the threat of cyberattacks, a rapidly changing fuel mix, and overregulation are increasingly testing our nation's electric grid. Several times throughout the month of January 2014, the upper Midwest and Mid-Atlantic experienced temperatures below zero. The Eastern portion of the PJM grid flirted with rolling blackouts. Interestingly, following the winter of 2014, AEP reported that nearly 90% of its coal plants scheduled for retirement ran during the Polar Vortex. Coal helped keep the lights on.

Do you have concerns regarding the reliability and resiliency of our grid in light of the nuclear and coal-fired units that have gone off-line since the Polar Vortex or are scheduled to go off-line?

**Answer:** FERC's role in overseeing the reliability of our grid is one of its most important functions. FERC, working with NERC, has developed and implemented a suite of mandatory electric reliability standards that have maintained reliability in recent years even as nuclear and coal plants have retired. Complacency in such a critical area, however, is never acceptable. As the mix of currently operating generating resources continues to evolve and to include new technologies, it is important that FERC, working with NERC and stakeholders, address potential reliability risks. One area not addressed directly by the existing reliability standards is the concept of resilience. I am interested in this subject, and, if confirmed, I look forward to working with my colleagues, NERC, industry, and key stakeholders, to examine how best to address the resilience of the grid.

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**Question 3:** One of the major criticisms that I hear from West Virginians regarding pipelines that are being developed in our state is that FERC does not allow for enough public engagement and is “abusing” its power. As you know, there are several major pipelines being developed in the mid-Atlantic and Northeast. I support the environmentally responsible development of energy infrastructure as long as that development includes public engagement – particularly for landowners along the pipeline route – so that their voices are heard.

Can you discuss how you will support public engagement at FERC and ensure that landowner and community concerns are appropriately addressed?

**Answer:** I am committed to governmental processes that are open, transparent and fair – and that provide sufficient opportunity for input by stakeholders, including the public. At FERC, the public already has several avenues available to raise concerns with the Commission. Members of the public may intervene in FERC proceedings and may submit comments on rules and regulations that the Commission proposes. State utility commissions and ratepayer advocates, which seek to protect the interests of retail and residential customers, in addition to groups representing the interests of landowners, environmentalists, labor, recreational and community development interests, and many other viewpoints, regularly intervene in FERC cases and comment on FERC’s proposed rules and regulations, representing specific perspectives among the members of the broader public. If confirmed, I will work with my colleagues to determine whether there are additional steps the Commission should take to make its proceedings and processes more accessible to the public.

**Questions from Senator John Hoeven**

**Question 1:** Electric reliability is a critical issue, especially as it relates to baseload power and ensuring our country has the assets needed to maintain low-cost electricity.

For example, the previous Administration’s EPA has promulgated substantial new regulations on electricity producers that would have subjected them to unachievable mandates and artificial compliance schedules. Together, the EPA’s attempts to reduce emissions would have driven up electricity rates for customers and potentially compromise the reliability of our power grid.

- How will you approach reliability issues going forward?
- What role can fossil fuels play in ensuring electric reliability and baseload power?

**Answer:** FERC’s role in overseeing the reliability of our grid is one of its most important functions. FERC, working with NERC, has developed and implemented a suite of mandatory electric reliability standards that have maintained reliability in recent years even as coal plants have retired. Complacency in such a critical area, however, is never acceptable. As the mix of currently operating generating resources continues to evolve and to include new technologies, it is important that FERC, working with NERC and stakeholders, address potential reliability risks. One area not addressed directly by the existing reliability standards is the concept of resilience,

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which many regard as a valuable attribute of historical baseload units such as coal and nuclear facilities. I am interested in this subject, and, if confirmed, I would give the matter careful consideration and would work with colleagues, NERC, industry, and key stakeholders, to examine how best to address the resilience of the grid.

**Question 2:** In order to become truly North American energy secure, we need the infrastructure to deliver our energy resources from producers to consumers. I have sponsored the North American Energy Infrastructure Act that would require FERC to approve natural gas import or export applications to Canada or Mexico within 30 days of filing.

- What is your view on the increased need for energy infrastructure?
- What is FERC’s role in ensuring adequate pipeline capacity?
- Do you support efforts to increase our energy infrastructure network with Canada and Mexico?

**Answer:** FERC’s role in making decisions on proposed energy infrastructure projects is one of its most important functions, and ensuring the sufficiency of our energy infrastructure is important for the nation’s economy. Adequate infrastructure also helps ensure that consumers have access to a variety of energy resources at reasonable rates. FERC, under the Natural Gas Act, approves a proposed natural gas pipeline project if the applicant demonstrates that the project satisfies the applicable statutory standard – *i.e.*, that the project will serve “the public convenience and necessity.” Where that standard is satisfied, FERC would grant its approval, including for facilities designed to import or export energy with our trading partners in Canada and Mexico.

**Question 3:** In North Dakota, rural electric co-ops ensure that over 350,000 consumers have access to reliable and affordable electricity.

The Federal Power Act exempts rural electric co-ops from FERC jurisdiction and this statutory exemption contributes to the state’s affordable electricity rates.

- Do you plan to adhere to the Federal Power Act and continue to exempt rural electric co-ops from FERC jurisdiction?

**Answer:** If confirmed, I of course will adhere fully to the Federal Power Act provisions regarding jurisdiction over electric cooperatives.

**Question 4:** Two of the industries FERC regulates – electricity and natural gas – are growing closer together as gas increases its share in electricity markets. This ties together the reliability of natural gas supply and the reliability of electricity supply like never before. This makes it all the more important that gas pipelines get sited timely when they are needed and not get bogged down in environmental reviews that, in the name of being thorough, can be overly burdensome while adding questionable value. We have had projects delayed, for example, by consideration of

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greenhouse gas emissions. Fortunately the guidance requiring consideration of GHGs was rescinded in April.

Both Congress and the Administration have made it plain in law and by executive action that they want infrastructure reviews to be accelerated.

- Will you work to ensure that gas infrastructure is sited promptly and not unnecessarily delayed by overly bureaucratic reviews?

**Answer:** I recognize the importance of natural gas pipeline infrastructure to meeting our nation's energy needs. If confirmed, I look forward to reviewing the Commission's policies and processes for considering pipeline applications and working with my colleagues to improve process efficiency while ensuring that the Commission satisfies all legal requirements and appropriately considers all relevant factors.

**Questions from Senator Bill Cassidy**

**Question 1:** I have heard from an LNG export applicant that they had 11 rounds of questions, spanning over 18 months, from the FERC on the same portion of the application with each round including new questions not asked at earlier stages.

If confirmed, how can FERC be more forthcoming with information requests earlier in the process while still producing a legally defensible permit?

**Answer:** I believe strongly in adherence to governmental processes that are open, transparent and fair, and I recognize that unnecessarily cumbersome government processes can result in costly burdens and delays. Although I have no familiarity with the specific LNG export applicant situation you cite, I know that FERC regulations and guidance provide a great deal of detail as to the specific material to be included in an application for authority to construct an LNG facility and that the length of the Commission's review process often is affected profoundly by the extent to which the applicant supplies the required material. I do believe that Commission review of infrastructure applications should be as efficient as possible and, if confirmed, I will work with my colleagues and Commission staff to look for opportunities to streamline and improve the process.

**Question 2:** What areas of the LNG export facility permit process could be standardized?

**Answer:** Consistent with the complex nature of the facilities involved, FERC's LNG export facility application process is detailed and complicated. You raise a good question regarding the potential for standardizations within this process, and I regard it as a matter that deserves careful consideration. If confirmed, I will work with my colleagues and FERC staff to examine this issue.

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**Question 3:** In the 2000s the regulatory costs and permitting fees associated with an import terminal were approximately \$10-20 million with an approval timeline of close to 18 months. In 2017, an export terminal's regulatory costs and permitting fees can be more than \$100 Million with a timeline of up to 4 years.

Now that FERC has the experience from approving 13 LNG export projects, what efficiencies and regulatory and permitting costs can be improved or reduced for the 2<sup>nd</sup> generation of LNG export facilities?

**Answer:** As with Question 2, you raise a valid issue regarding the potential for increased efficiencies and decreased permitting cost within the LNG export project application process, and I regard it as a matter that deserves careful consideration. If confirmed, I will work with my colleagues and FERC staff to examine this issue.

**Question 4:** What are your thoughts on creating a timeline requirement, similar to the one used by MARAD for LNG export projects?

**Answer:** I believe that it is important for the Commission to act on LNG export project applications as efficiently as possible. If confirmed, I will work with my colleagues and Commission staff to examine this matter.