

U.S. Senate Committee on Energy and Natural Resources
July 20, 2017 Hearing: Pending Nominations
Questions for the Record Submitted to Mr. David Jonas

Question from Ranking Member Maria Cantwell

Question: Since 1993 the Department of Energy’s Power Marketing Administrations, including the Bonneville Power Administration, have reported to the Deputy Secretary. If you are confirmed as General Counsel will you advise the Secretary that the PMAs should continue to report directly to the Deputy Secretary?

Answer: I recognize the importance of the PMAs to Western states, especially the Bonneville Power Administration’s importance to your home state of Washington. I have not been fully briefed on the reporting structure of the Department, nor do I have any details about the future of that structure. However, I will commit to working with you and your staff on the issue to ensure that the Department operates in accordance with the law and in an efficient manner that is respectful to the American taxpayer.

Question from Senator Ron Wyden

Question: Protection of whistleblowers is an issue I take very seriously. As you know, Sen. Grassley and I head up the bi-partisan Senate Whistleblower Protection Caucus and over the years, I have found whistleblowers play an essential role in uncovering the facts, especially at places like the Department of Energy’s Hanford reservation. In my view, DOE has a terrible record on the treatment of whistleblowers; a view confirmed by a U.S. Government Accountability office report issued last year (“Department of Energy – Whistleblower Protections Need Strengthening; GAO-16-618, July 2016) and the new administration is off to a bad start. One of the first things the administration did at DOE was to suspend recently issued regulations that would allow the Department to take action against contractors who retaliate against whistleblowers.

If confirmed, please tell me what you are going to do as General Counsel to end the Department’s hostile whistleblower practices, especially with regard to its contractors?

Answer: I know when we met that you made it clear how important this issue is to you and I appreciate your commitment to ensuring that the Department of Energy (DOE) is a safe work environment for our employees and contractors. I share that goal. All workers should feel empowered to come forward with concerns without fear of retaliation. If confirmed, I will look into current protocols in place. It is my intention to emphasize the processes under that structure and to protect the people who take pride in looking after the good work of the Department. I will also make sure the laws, regulations and policies regarding whistleblowers are enforced, including the protections offered under the Whistleblower Protection Act. If confirmed, I hope to help instill a culture of safety and openness for DOE’s federal and contractor employees.

Questions from Senator Bernard Sanders

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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: I believe the climate is changing. I also believe that we are having some impact. I agree with Secretary Perry that the focus should not be so much on if the climate is changing, but how we address this issue in a way that doesn't compromise economic growth, the affordability of energy, or American jobs.

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 the climate is changing and that we are having some impact. I agree with Secretary Perry that the focus should not be so much on if the climate is changing, but how we address this issue in a way that doesn't compromise economic growth, the affordability of energy, or American jobs.

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

Answer: I believe the climate is changing and that we are having some impact. If confirmed, I look forward to getting a better understanding of these dynamics.

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

Answer: According to the Department of Energy Organization Act, I believe that the Department's roles were created by Congress and may be updated by Congress. For example, Congress has stated that, "a strong national energy program is needed to meet the present and future energy needs of the Nation consistent with overall national economic, environmental and social goals." I believe in those goals, and, if confirmed, I will advise the Department on how to implement policies in accordance with the law.

Question 5: If confirmed, how will you work to address climate change?

Answer: It is my understanding that the role of the General Counsel is primarily to provide legal advice to the Secretary and the Department of Energy as a whole. I do not believe that the role of the General Counsel is a policy making role and therefore, if I was confirmed, I would not be taking a position on climate change. If confirmed, I look forward to helping the Department implement its policies in accordance with the law.

Question 6: DOE's Office of Science is the single largest funder of basic research in the

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physical sciences in the United States. What do you see as the most pressing priorities for the office?

Answer: It is my understanding that the role of the General Counsel is primarily to provide legal advice to the Secretary and the Department of Energy, as a whole. As to the policy question, the President's FY18 budget refocuses the Department's energy and science programs on early-stage research and development at our National Laboratories to advance American primacy in scientific and energy research in an efficient and cost-effective manner.

Question 7: What role should DOE play in advancing clean energy innovation in the U.S.?

Answer: It is my understanding that the role of the General Counsel is primarily to provide legal advice to the Secretary and the Department of Energy (DOE), as a whole. I believe the Department's roles were created by Congress and may be updated by Congress. For example, Congress has stated that, "a strong national energy program is needed to meet the present and future energy needs of the Nation consistent with overall national economic, environmental and social goals."

As to the policy question, DOE plays a critical role in early-stage, fundamental energy research and innovation. I believe that Secretary Perry is working hard to promote further clean energy innovation at the Department of Energy because he believes it is American innovation and technology that will clean up the environment.

Question 8: Secretary Perry requested a study in April to ascertain whether wind and solar power are threatening electric grid reliability. It has been reported that the study found no such threat. Do you agree with the science that demonstrates wind and solar can in fact improve reliability while decreasing costs?

Answer: It is my understanding that the role of the General Counsel is primarily to provide legal advice to the Secretary and the Department of Energy, as a whole. As to the policy question, I support the Administration's "all of the above" energy strategy, and renewable energy plays an important role in that strategy. From what I understand, the study is an internal review of the affordability, reliability, and resiliency of the electric grid. At the time of these answers, I do not believe that the final grid study has been issued.

Question 9: The National Academy of Sciences was asked to conduct an assessment of the progress Advanced Research Projects Agency-Energy (ARPA-E) has made toward achieving its congressionally mandated mission and goals. It found that "there are clear indications that ARPA-E is making progress toward its statutory mission and goals." If confirmed, do you commit to fully supporting ARPA-E?

Answer: It is my understanding that the role of the General Counsel is primarily to provide legal advice to the Secretary and the Department of Energy, as a whole. As to the policy question, I support the Department's shift to focus on early-stage research and development at

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our national laboratories to more efficiently and cost-effectively advance American dominance in scientific and energy research. Congress and the President will ultimately arrive at an agreement regarding funding of ARPA-E, and I will advise the Department about honoring that agreement in accordance with the law.

Question 10: The president has called for “energy dominance,” yet China leads the world in solar photovoltaic manufacturing. The largest markets for solar and wind are also in China. Do you believe the US is falling behind in the international clean energy market? Will competing with China to develop renewable technology be a priority if you are confirmed?

Answer: It is my understanding that the role of the General Counsel is primarily to provide legal advice to the Secretary and the Department of Energy, as a whole. As to the policy question, I understand that competing with China to develop not only renewable technology, but all kinds of energy technologies, will be a priority of the Department. The United States is the world’s leader in clean energy technology and I understand that the Secretary is committed to keeping it that way. One of the things that makes America great is that we have a vibrant private sector that is actively competing with China.

Question 11: When I met with Secretary Perry, we discussed subsidies for the fossil fuel industry. He reminded me that he made a campaign promise to “eliminate direct subsidies and tax credits” for energy. Will you commit to working with him to repeal all fossil fuel subsidies?

Answer: It is my understanding that the role of the General Counsel is primarily to provide legal advice to the Secretary and the Department of Energy, as a whole. If confirmed, I commit to working with Secretary Perry to ensure that the Department’s programs are operating in the best interests of the American people in accordance with the law. Since many of the subsidies for various forms of energy are defined in laws we will work with you and your colleagues in Congress to prioritize.

Question 12: President Trump’s FY18 budget proposal would revive the approval process for the Yucca Mountain nuclear waste site. If confirmed, will you commit to blocking the unsafe Yucca Mountain proposal and instead work to find a publicly-accepted, safe, long-term solution to this country’s significant problem of nuclear waste disposal?

Answer: It is my understanding that the role of the General Counsel is primarily to provide legal advice to the Secretary and the Department of Energy, as a whole. If I am honored to be confirmed, I will be committed to follow the law, including the Nuclear Waste Policy Act. The Nuclear Regulatory Commission is the final arbiter to determine whether Yucca Mountain is safe and should they approve it, I will implement any DOE activities in accordance with that direction. I recognize that the problem of nuclear waste management is extraordinarily complex, and if confirmed, am committed to working with all stakeholders to meet our commitments.

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Question 13: Do you promise to uphold the merit system principles set forth in Chapter 23 Title 5 U.S. Code, which prohibit factors other than merit from consideration in civil service employment decisions?

Answer: Yes.

Question 14: The Holman Rule allows any member of Congress to propose amending an appropriations bill to single out a government employee or cut a specific program. If confirmed, do you commit to opposing any acts of Congress to individually target DOE employees based on political whims?

Answer: It is my understanding that the role of the General Counsel is primarily to provide legal advice to the Secretary and the Department of Energy, as a whole. I am committed to the outstanding staff and work of the Department.

Question 15 (a-d): The Trump administration, following in the footsteps of its predecessor, is seeking to end construction of the mixed-oxide (MOX) fuel fabrication plant at the Savannah River Site in South Carolina. The U.S. effort to dispose of its plutonium via the MOX fuel path has suffered from large cost increases and schedule delays that put the project in jeopardy. NNSA estimates the total construction of the project at \$17 billion, of which approximately \$5 billion has already been spent. The agency projects the annual cost to operate the facility at \$800 million to \$1 billion.

The alternative “dilute and dispose” process would down-blend the plutonium with an inert material for direct disposal in a repository, namely the Waste Isolation Pilot Plant in New Mexico. That approach can be implemented decades sooner at a much lower cost and with fewer risks, according to NNSA. The agency plans to spend \$500 million to get the alternative approach up and running and \$400 annually to implement it.

Despite the Energy Department’s efforts to terminate the MOX fuel project, Congress has refused to abandon it. Meanwhile, Russia last fall suspended implementation of the 2000 Plutonium Management and Disposition Agreement, which committed each country to dispose of the 34 tons of plutonium.

- a) Does the United States plan to stick to its commitment under the PMDA to dispose of the 34 metric tons of plutonium despite Russia's suspension of the agreement?

Answer: It is my understanding that the role of the General Counsel is primarily to provide legal advice to the Secretary and the Department of Energy, as a whole. As to the policy question, I have not been fully briefed on the particulars of the PMDA and as such cannot comment on the official position of the Administration.

- b) What is the Energy Department's plan to convince Congress to abandon MOX and fund

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the alternative dilute and dispose approach?

Answer: It is my understanding that the role of the General Counsel is primarily to provide legal advice to the Secretary and the Department of Energy, as a whole. As to the policy question, I understand that the President's FY 2018 budget request proposes to terminate the MOX project and pursue "dilute and dispose."

- c) Does the Department of Energy believe that all of the 34 tons of plutonium declared excess to U.S. military needs will be able to fit in the underground storage spaces at WIPP?

Answer: It is my understanding that the role of the General Counsel is primarily to provide legal advice to the Secretary and the Department of Energy, as a whole. As to the policy question, I am not an Administration official at this time, so I cannot comment on the official positions of the Administration.

- d) Is it possible to emplace most, if not all, of the diluted plutonium at WIPP without changing the WIPP Land Withdrawal Act?

Answer: It is my understanding that the role of the General Counsel is primarily to provide legal advice to the Secretary and the Department of Energy, as a whole. As to the policy question, I am somewhat familiar with the Act, but will need to carefully review legal issues relating to WIPP before commenting on the matter.

Question 16 (a, b): The United States already has the world's most formidable nuclear arsenal. It is on track to spend more than a trillion dollars over the next three decades to sustain, replace, and refurbish delivery systems, warheads, and their supporting infrastructure. The plans include the pursuit by NNSA of the so-called "3+2" nuclear warhead modernization strategy.

Congress has repeatedly questioned the wisdom of the 3+2 approach, which could cost over \$60 billion, citing the cost and risks involved with the interoperable warheads.

In addition, a report published in April by the Government Accountability Office disputed NNSA's claim that its long-term plans to sustain and rebuild U.S. nuclear warheads and their supporting infrastructure are affordable, calling this conclusion "optimistic."

- a) Does the Energy Secretary plan to undertake a comprehensive review of the need and affordability of NNSA's modernization plans?

Answer: It is my understanding that the role of the General Counsel is primarily to provide legal advice to the Secretary and the Department of Energy, as a whole. As to the policy question, I believe that the Department is committed to nuclear security, including

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its modernization functions.

- b) Would the Secretary, in consultation with the White House and Nuclear Weapons Council, be open to altering the pace and scope of the current modernization plans if it is clear significant taxpayer savings can be achieved while meeting deterrence requirements?

Answer: It is my understanding that the role of the General Counsel is primarily to provide legal advice to the Secretary and the Department of Energy, as a whole. As to the policy question, while I am not an Administration official at this time, I believe that the Administration is committed to spending taxpayer dollars in a cost-effective manner while maintaining our national security.

Question 17 (a, b): Twenty years ago, the United States was the first country to sign the Comprehensive Test Ban Treaty (CTBT), which now has 183 signatories. Today only one state – North Korea – conducts nuclear test explosions.

But the treaty has not yet formally entered into force because the United States and seven other states have not yet ratified the pact. Nevertheless, Democratic and Republican administrations have supported the U.S. nuclear test moratorium in place since 1992 and the global monitoring system to detect and deter nuclear testing, and we have worked hard to prevent the resumption of nuclear testing by others.

- a) What in your view would be the strategic consequences if the United States withdrew its signature from the CTBT?

Answer: It is my understanding that the role of the General Counsel is primarily to provide legal advice to the Secretary and the Department of Energy, as a whole. As to the policy question, I have not been briefed on the particulars of the CTBT, and I commit to receiving appropriate briefings should my nomination be confirmed by the U.S. Senate.

- b) How do you think other nuclear-armed states would react if the United States withdrew from the CTBT?

Answer: It is my understanding that the role of the General Counsel is primarily to provide legal advice to the Secretary and the Department of Energy as a whole. As to the policy question, I have not been briefed on the particulars of the CTBT, and I commit to receiving appropriate briefings should my nomination be confirmed by the U.S. Senate.

Question 18 (a, b): A series of investigative reports published in June by the Center for Public Integrity cites numerous internal reports and other documents outlining federal regulators' concerns about safety lapses at Los Alamos National Laboratory over the years, including spilled plutonium and workers positioning plutonium rods in a way that could have been

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disastrous. The report also described how the penalties imposed by the government for these errors were typically small, relative to the tens of millions of dollars the NNSA gives to each of the contractors annually in pure profit.

- a) What is the Department doing to address all identified issues with its plutonium program?

Answer: If my nomination is confirmed by the U.S. Senate, I commit to receiving briefings on this subject.

- b) Have all of the identified safety issues been resolved? If not, why not?

Answer: If my nomination is confirmed by the U.S. Senate, I commit to receiving briefings on this subject.

Question 19: A February report by the Defense Nuclear Facilities Safety Board said Los Alamos needs 27 fully qualified safety engineers specialized in keeping plutonium from going critical (i.e. fissioning out of control), but that the lab only has 10. What is the Department doing to increase the number of engineers to the recommended level as quickly as possible?

Answer: I am not an Administration official at this time, so I cannot comment. If my nomination is confirmed by the U.S. Senate, I commit to receiving briefings on this subject.

Question from Senator Steve Daines

Question: With your extensive experience within the military and in the National Nuclear Security Administration, do you agree that it is important for the U.S. to continue to be a world energy leader?

Answer: It is my understanding that the role of the General Counsel is primarily to provide legal advice to the Secretary and the Department of Energy, as a whole. However, I know that the President and Secretary Perry believe that the U.S. must maintain its global leadership in the energy industry.

Question from Senator Joe Manchin III

Question: My home state is known for coal. But what we're less known for is the work we've done to burn that coal more cleanly. The bulk of DOE's fossil energy research is centered at the National Energy Technology Laboratory (NETL). One of NETL's facilities is in Morgantown, West Virginia, where NETL has worked with the private sector on the technologies we use to

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remove particulates and other harmful substances from coal. The National Energy Technology Lab in Morgantown, West Virginia is an extraordinary complex that is near and dear to my heart and employs 612 people. The budget proposed consolidation of the 3 lab facilities that make up NETL in a phased approach. I had the opportunity to sit down with Secretary Perry at NETL earlier this month and I was encouraged by his interest in the work that these world-class researchers have undertaken. I believe that research and development is critical to the Department of Energy mission and the national lab system is vital to ensuring that we are on the cutting edge of energy technology development. The Morgantown facility is seen as a mainstay of fossil fuel technology development. Their projects on carbon capture, efficient utilization of coal, and how to integrate fossil fuel systems with renewable energy are vital to our energy future. So you can understand why the consolidation proposal may cause me and many West Virginians some heartburn.

If you could each tell me about an experience you had with our national labs that better qualifies you to help oversee them?

Answer: I agree that our national laboratories are a critical part of the Department of Energy enterprise and are national treasures. Our national laboratories are the crown jewels of the nation and I plan to support and advocate for their work in accordance with the law, even though the General Counsel does not directly oversee the labs.

I would encourage each of you to visit the NETL Morgantown facility to get an up-close look.

Answer: If my nomination is confirmed by the U.S. Senate, and my official duties and budget permit, I would like to visit NETL Morgantown and the other national laboratories. In so doing, I would not only meet with the federal and contractor officials there, but with the outstanding federal and contractor attorneys there.

Questions from Senator Catherine Cortez Masto

Question 1: I want to make sure that all nominees for the Department of Energy understand the important relationship between renewable energy and economic development. How does the proposed DOE budget support its R&D programs that have helped develop clean energy technologies, improved national security, and grid reliability?

Answer: It is my understanding that the role of the General Counsel is primarily to provide legal advice to the Secretary and the Department of Energy, as a whole. My understanding of the President's FY 2018 budget is that it focuses on early-stage research and development that will allow the United States to remain a leader in science and technological innovation. Such leadership is important not only for science but for the economic growth and security of our nation.

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Question 2: What do you think should be budgetary priorities for your office/Department?

Answer: It is my understanding that the role of the General Counsel is primarily to provide legal advice to the Secretary and the Department of Energy, as a whole. As to the policy question, the budgetary priorities are laid out in the President's FY18 budget proposal. I support the President's budget, but also recognize that through the budgetary process Congress will make appropriations decisions.

Question 3: Do you believe DOE and the National Labs' R&D and clean energy technology work is integral to the United States securing energy independence and staying globally competitive?

Answer: It is my understanding that the role of the General Counsel is primarily to provide legal advice to the Secretary and the Department of Energy, as a whole. As to the policy question, I believe that all forms of energy contribute to the nation's energy independence and global leadership.

Question 4: Are there areas where DOE should do more?

Answer: Because I am not an Administration official at this time, I feel constrained in commenting on this topic. However, if confirmed by the U.S. Senate, I look forward to working with the President, Secretary Perry, and the Department's leadership to provide the highest level of service to the American people.

Question 5: Why do you believe you are qualified for the position you are nominated for?

Answer: My extensive experience in litigation, international law, general law, government contracting, national security law, academia, and previous service as the General Counsel of two federal government agencies, including the NNSA, a separately organized agency within the Department of Energy (DOE), has prepared me for the role of DOE General Counsel. In his letter to this Committee, Scott Harris, the DOE General Counsel under President Obama, noted that "Dave may well be among the most prepared to be General Counsel of the Department of Energy of all those to have been nominated for the position."

Question 6: Secretary Perry indicated that he may reassign functions in some of your offices. What do you believe should remain as a priority in your office and what should be assigned to your office?

Answer: Since I am not an Administration official at this time, I feel constrained to comment on this topic. However, if confirmed by the U.S. Senate, I look forward to working with Secretary Perry and the Department's leadership to make the best use of resources within the Department and the talent of the Department's employees.

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Question 7: Should anything be reassigned to another office?

Answer: If confirmed by the U.S. Senate, I look forward to working with Secretary Perry and the Department's leadership to make the best use of Department resources and the talent of the employees.

Question 8: The nominee for Deputy Secretary, Dan Brouillette, commented in his nomination hearing that if the science is not there that he would **not** support Yucca Mountain as a permanent repository. Yucca Mountain has serious safety and environmental concerns which are detailed in the hundreds of contentions filed by the state of Nevada, the most the NRC has ever considered. The contentions alone will take up to 4 years to adjudicate, but even if the site was greenlighted, it would take up to 50 years to build infrastructure in Nevada and across the country and to allow the waste to cool and be shipped through heavily populated communities. I know that you may not be engaged with the Yucca Mountain project, but I want to quickly note that even if you are involved in the most peripheral way, that data, sound science, and consent have to be at the forefront of this conversation. Do you agree with that statement?

Answer: It is my understanding that the role of the General Counsel is primarily to provide legal advice to the Secretary and the Department of Energy, as a whole. As to the policy question, all scientific decisions related to Yucca Mountain should be based on sound science. If confirmed, I will ensure that such actions related to Yucca Mountain will be in accordance with applicable law.

Question 9: In Nevada, DOE has provided the essential funding for state-run energy programs that are helping local communities save taxpayer dollars. For example, Nevada's Pershing County School District is saving \$72,000 every year after installing rooftop solar panels on schools, while energy efficient lighting in the Carson City school district is saving close to \$80,000 a year for taxpayers. Do you believe federal funding cuts to state-run energy programs will harm state initiatives that save taxpayers money and create clean energy?

Answer: It is my understanding that the role of the General Counsel is primarily to provide legal advice to the Secretary and the Department of Energy, as a whole. As to the policy question, the budgetary priorities are laid out in the President's FY 2018 budget proposal. I support the President's budget, but also recognize that through the budgetary process, Congress will make appropriations decisions.

Question 10: How would you prioritize these programs if you were to be confirmed?

Answer: It is my understanding that the role of the General Counsel is primarily to provide legal advice to the Secretary and the Department of Energy, as a whole. As to the policy question, the budgetary priorities are laid out in the President's FY 2018 budget proposal. I support the President's budget, but also recognize that through the budgetary process Congress will make appropriations decisions.

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