

**U.S. Senate Committee on Energy and Natural Resources**  
**October 19, 2021 Hearing: The Phillips, Crabtree, and Sams Nominations**  
**Questions for the Record Submitted to Mr. Willie L. Phillips, Jr.**

**Questions from Ranking Member John Barrasso**

**Question 1:** As specifically provided by the Federal Power Act (FPA), the federal government’s authority to regulate electricity production is limited (16 U.S.C § 824 (b)(1)). Will you respect the sole discretion that states have in determining electric generating resources?

**Response:** Yes. It is not the role of the Commission to pick “winners and losers” with respect to generation resources. If I am confirmed, I will work to ensure that the Commission respects the states’ policy choices regarding their electric generation mix.

**Question 2:** During this Committee’s hearing on September 28, 2021, Commissioner Clements said, “RTOs have been saving customers billions of dollars year after year after year for several decades now.” Do you agree with Commissioner Clements? If so, please cite sources of authority for the asserted savings. If not, please explain your distinct views.

**Response:** I agree that, since their establishment, RTOs have created important customer savings. RTOs’ major responsibilities are to maintain transmission reliability and to oversee wholesale markets that are competitive or, when necessary, mitigate market power. Both of those responsibilities significantly affect consumers’ bottom line. For example, for customers in the District of Columbia, 60% of the average total electric utility bill comes from transmission and generation costs. Without well-run markets, the exercise of market power could significantly increase consumer burden. The District of Columbia is in PJM Interconnection, L.L.C. (PJM), a well-run RTO, with well-run markets, capacity, energy, and ancillary services, which help reduce our customers’ bills.

The DC Public Service Commission also recently conducted a Fixed Resource Requirement (FRR) study performed by PJM’s independent market monitor (Docket No. GD-2021-02-M). The FRR option is an alternative to continued participation in PJM’s capacity market. The FRR study ultimately found that staying in the PJM capacity market would be beneficial for customers’ bottom line. Thus, economies of scale also contribute to a reduction in cost burden for customers.

**Question 3:** FERC has been encouraging the formation of RTO-administered wholesale markets for electricity for more than two decades. However, I am unaware of an independent analysis on the effects of RTO-administered markets on cost of retail power and electric reliability. Do you see value in FERC conducting an independent study of the reliability and cost benefits of the RTOs under its jurisdiction? If not, why not? If so, will you advocate for the completion of such a study?

**Response:** Yes. I would support an independent study of the reliability and cost benefits of Commission-jurisdictional RTOs. However, another potential area for examination is sustainability. Specifically, I would support an independent study regarding how RTOs can help facilitate the establishment of clean energy markets and the potential impact on bulk power system reliability. That being said, if a study were done today, a focus on those two traditional areas of contribution, and the study output will help us determine whether additional incentives should be provided for utilities to join RTO.

**U.S. Senate Committee on Energy and Natural Resources**  
**October 19, 2021 Hearing: The Phillips, Crabtree, and Sams Nominations**  
**Questions for the Record Submitted to Mr. Willie L. Phillips, Jr.**

**Question 4:** Will you follow the advice of FERC's Designated Agency Ethics Officer (DAEO) with respect to ethical questions that may arise during your tenure?

**Response:** If I am confirmed, I will consult with and follow the advice of the DAEO with respect to ethical questions that may arise during my tenure.

**Question 5:** You are an experienced utility regulator and energy expert. You or institutions you represent have litigated before FERC. During this Committee's hearings to consider the nominations of recently-confirmed Commissioners, Senators on both sides of the dais made it clear that a potential Commissioner's approach to whether he or she must recuse themselves from a particular proceeding is an important factor in considering whether a nominee for the Commission should be confirmed.

Please explain how the Rules of Professional Responsibility that apply to you as a member of the Bar will inform your approach to the question of whether to recuse yourself from any matter pending before the Commission?

**Response:** If confirmed as a Commissioner, I will immediately seek the counsel of the DAEO with respect to possible recusals, and I will follow his recommendations to the letter.

Recognizing that you have executed ethics agreements but have not yet had an in-depth review with FERC's DAEO of specific cases;

A. Will you follow the advice of the DAEO unless you have a compelling reason that you will express in writing to pursue a less stringent course than the one he advises?

**Response:** Yes.

B. In addition to following the advice of the DAEO, what will be your personal standard with respect to recusals?

**Response:** I will abide by the Standards of Ethical Conduct for Employees of the Executive Branch and my Ethics Agreement. If I suspect my recusal might be required for other reasons, I will consult with the DAEO and follow his guidance.

C. Please assure us that you will recuse yourself as necessary from cases in which you were involved in your prior positions and,

**Response:** As noted above, if confirmed as a Commissioner, I will immediately seek the counsel of the DAEO with respect to possible recusals, and I will follow his recommendations to the letter.

D. At the same time, will do your best to be available to be in a position to vote on proposed orders of the Commission?

**U.S. Senate Committee on Energy and Natural Resources**  
**October 19, 2021 Hearing: The Phillips, Crabtree, and Sams Nominations**  
**Questions for the Record Submitted to Mr. Willie L. Phillips, Jr.**

**Response:** Yes. I understand that a Commissioner has a uniquely important role in the regulatory process. Therefore, I will do my best to be in a position to vote on proposed orders, while being aware of the potential need to recuse myself from a particular matter based on consultation with the DAEO.

**E.** Are there any specific matters that you have already identified that will require your recusal? If so, please list them.

**Response:** Although I have not developed a specific list of cases as of this time, if I am confirmed, I will immediately seek the counsel of the DAEO with respect to possible recusals, and I will follow his recommendations to the letter.

**F.** How do you personally interpret your obligations under Executive Order 13770, the Ethics Pledge, as it relates to recusals?

**Response:** I am advised that the DC Public Service Commission falls within the “state entity” exception to the Executive Order 13770’s definition of “former employer.” I am also advised that the definition of “former employer” used in Executive Order 13770 is materially similar that term used in Executive Order 13989 issued by President Biden. Those Executive Orders would not require a two-year recusal period from matters involving DC Public Service Commission. Nonetheless, if I am confirmed, I will immediately seek the counsel of the DAEO with respect to possible recusals, and I will follow his recommendations to the letter.

**Question 6:** According to the North American Electric Reliability Corporation’s (NERC) 2021 Summer Reliability Assessment, “Variable energy resources, including wind, solar, and types of hydro generation, often contribute significantly less of their installed capability at the period of peak demand.” The report goes on to state, “the availability of reliable, flexible generation is important to balancing system needs with a high penetration of variable, weather-dependent generation.”

**A.** How do you evaluate NERC’s assertion and how is your evaluation consistent with your view on the importance of the availability of abundant and affordable natural gas?

**Response:** The electric grid is evolving at a rapid pace, including through growing supply contributions from renewable generation. As this change occurs, it is critical that reliability and energy sufficiency, or having adequate energy available to serve demand, continue to be prioritized. Flexible resources, such as natural gas fired generation, battery and hybrid generation, and other supply and demand side resources, play a critical role in maintaining grid reliability at peak demand and throughout seasonal changes in electrical demand.

**B.** What is or should be the proper standard for evaluating the reliability of variable generating resources?

**Response:** Regional electric system operators have various means of evaluating the reliability and adequacy of their resource mix and use different modeling techniques to ensure they have planned for different scenarios. In addition to the traditional reserve margin, NERC and regional operators evaluate

**U.S. Senate Committee on Energy and Natural Resources**  
**October 19, 2021 Hearing: The Phillips, Crabtree, and Sams Nominations**  
**Questions for the Record Submitted to Mr. Willie L. Phillips, Jr.**

the “Effective Load Carrying Capability” of resource types to determine the actual capability a class of resource has to reliably serve load. New methods may also be needed in the future, as the resource mix continues to change, due to increases in variable resources. If confirmed, I look forward to working with my colleagues to ensure that our ability to assess and maintain the reliability of the electric system keeps pace with how the system is evolving.

**Question 7:** Does the premature retirement of electric generating units that can be dispatched on demand lead to the degradation of electric grid reliability?

**Response:** Drawing on my tenure at NERC and at the DC Public Service Commission, I assure you that the reliability of the electric grid is and will remain a top priority for me. As you note, the retirement of generating units potentially could have reliability impacts, if necessary generation is not in place when a unit retires. My understanding is that the Commission also recognizes and has taken steps to address this issue. For example, I believe that with Commission approval, the RTO and independent system operator (ISO) markets provide two protections against the degradation of electric grid reliability in light of generator retirements and additions. First, each of the RTO/ISO markets establish resource adequacy or capacity requirements that ensure there is enough generation to meet the region’s peak demand and maintain a surplus above that level. In response to the changes to the resource mix, the RTO/ISOs are continually evaluating how they value different types of resources to ensure that resource accreditations align with the reliability value they provide to the region. Second, if an RTO/ISO identifies reliability concerns, it can take steps to require or incentivize the generator to delay a planned retirement until the reliability concerns are resolved.

**Question 8:** At Secretary Granholm’s nomination hearing, I asked, in writing, if the Secretary agreed that electricity prices should reflect the proper value of dispatchable resources. She responded, “The ability of generation capacity to respond when called upon is one of many important attributes of performance that should be valued in markets.” I asked, in writing, the same question to Deputy Secretary Turk at his nomination hearing. He agreed with Secretary Granholm. Do you agree with Secretary Granholm that the ability of electric generation capacity to dispatch when called upon should be valued in wholesale markets?

**Response:** Yes. I agree that the ability of electric generation to respond to dispatch when called upon should be valued in wholesale markets.

**Question 9:** As Chairman of the District of Columbia Public Service Commission, you have been the lead regulator – the individual setting the agenda and directing the staff. As a Commissioner on the FERC, you will be one of five Commissioners.

**A.** How do you distinguish the role of Commissioner from the role of Chairman?

**Response:** The role of a Commissioner is to apply his or her judgment and the relevant statutory standards to matters within the authority that Congress has assigned to the Commission. In addition to the role of a Commissioner, the Chairman serves as the chief administrative officer of the Commission, with a responsibility to manage the budget and contracting, dockets and scheduling, and general personnel matters of the Commission.

**U.S. Senate Committee on Energy and Natural Resources**  
**October 19, 2021 Hearing: The Phillips, Crabtree, and Sams Nominations**  
**Questions for the Record Submitted to Mr. Willie L. Phillips, Jr.**

**B.** How do you expect to discharge the duties of a Commissioner?

**Response:** I will discharge my duties as a Commissioner by monitoring dockets; reviewing orders, reports, and rulemakings; voting and articulating my positions; participating in technical conferences and advising Congress on legislative and regulatory issues, among other actions.

**C.** What duty, if any, do Commissioners owe the Chairman?

**Response:** Commissioners owe a duty to the Chairman to conduct themselves with civility and in accordance with Commission practices and procedures. However, as a quasi-judicial body, each individual Commissioner must also carefully guard their independence.

**Question 10:** All four Commissioners recently appeared before this Committee for an oversight hearing on September 28, 2021. At the hearing, Chairman Glick and Commissioner Danly each acknowledged that natural gas pipelines are overwhelmingly investor-owned infrastructure. Each Commissioner noted the need for pipeline projects, and the investors who finance them, to have certainty about the Commission's rules.

**A.** Did you watch a recording or read a transcript of the oversight hearing?

**Response:** Yes, I watched a recording of the September 28<sup>th</sup> oversight hearing.

**B.** Do you agree that companies that build and maintain natural gas pipelines need certainty concerning the Commission's rules and requirements?

**Response:** Yes, I agree that companies that build and maintain natural gas pipeline need certainty with regard to Commission rules and requirements. This is consistent with my pledge to seek balance and to focus on reliability, affordability, and sustainability.

**C.** If so, how will you work to ensure certainty?

**Response:** I will work to ensure legal durability of Commission orders through my due diligence in applying applicable laws and regulations and by looking for opportunities to streamline processes to improve efficiencies. This includes the Commission's National Environmental Policy Act (NEPA) analysis when it considers interstate pipelines and hydroelectric facility licensing applications.

**Question 11:** As recent events in Texas and California have shown, abundant and affordable natural gas is central to preserving reliable electricity, competitive manufacturing, and meeting home heating needs. How can FERC help the United States to continue to develop the world's leading natural gas infrastructure?

**Response:** The Commission's role is to carefully and efficiently review proposals to certificate natural gas infrastructure and approve those that are required by the public convenience and necessity or consistent with the public interest and otherwise comply with the law. I commit to doing that if I am confirmed.

**U.S. Senate Committee on Energy and Natural Resources**  
**October 19, 2021 Hearing: The Phillips, Crabtree, and Sams Nominations**  
**Questions for the Record Submitted to Mr. Willie L. Phillips, Jr.**

**Question 12:** Congress established the Federal Energy Regulatory Commission as an independent agency. Congress required the Commission to regulate our nation’s natural gas, electricity markets, and hydropower facilities objectively, and to balance the interests of the public and investors. If confirmed, how will you ensure that the Commission neutrally and faithfully applies the Natural Gas Act and the Federal Power Act?

**Response:** As I noted at my confirmation hearing, I believe in working to reach a balance in all that we do. A regulatory agency’s independence depends most crucially on its ability to make decisions based on the record before it and in a manner consistent with the law. If confirmed, I assure you that I will make decisions in the proceedings pending before the Commission consistent with these principles.

**Question 13:** When your nomination was announced, the Director of the Energy Justice Program at the Center for Biological Diversity was quoted in *Politico* as calling your nomination “*completely anathema to what we need right now to address the climate emergency.*” As the fifth Commissioner, you will be under a great deal of pressure from the far left to rule against the use of natural gas.

**A.** Can you be independent, and will you assure us that you will resist political pressure?

**Response:** When I joined the DC Public Service Commission, in 2014, there had only been two commissioners for over a year. The DC Public Service Commission has three commissioners instead of five. At the time, several cases were divided by a split vote. As the swing vote, I carefully reviewed the record of each proceeding and made my determinations based solely on the record. If I am confirmed, I will exercise my independence as a commissioner in the same manner at the Commission.

**B.** Please give us an example from your professional life where you were able to resist outside pressure and make the right decision.

**Response:** Throughout my career as a regulator, I have consistently demonstrated my ability to focus on the case before me and to ignore political pressure. One such example which came before me was the Pepco/Exelon merger proceeding considered by the DC Public Service Commission (Formal Case No. 1119). I approached this proceeding with a deliberative and sustained focus on the facts and potential impacts to consumers. I believe that approach and my initial dissent in this case ultimately resulted in a re-negotiation of the terms, which allowed for a more thoughtful approach by all parties when it came to ensuring the public interest.

**Question 14:** Decades ago, the Federal Energy Regulatory Commission decided that the market is the best way to determine whether there is a need for a new natural gas pipeline or an upgrade to an existing natural gas pipeline. Now, the Commission is under pressure to turn back the clock and come up with a government test for determining the need for pipelines.

**A.** In your view, should the Commission continue to rely on real-world indicators, like arm’s-length contracts, for determining whether there is a need for a new natural gas pipeline or an upgrade to an existing pipeline?

**U.S. Senate Committee on Energy and Natural Resources**  
**October 19, 2021 Hearing: The Phillips, Crabtree, and Sams Nominations**  
**Questions for the Record Submitted to Mr. Willie L. Phillips, Jr.**

**Response:** Yes, I believe that real-world indicators like arm's-length contracts are important factors to be considered in determining whether a project is needed.

**B.** Will you require substantial evidence before agreeing to change how the Commission determines whether a pipeline is needed? If not, why not?

**Response:** Yes, the Natural Gas Act requires the Commission to support its decisions with substantial evidence.

**Question 15:** During your confirmation hearing, you properly noted that FERC is an economic regulator. You also expressed your views about the phenomenon of global climate change. Do you commit to put the Commission's fundamental responsibilities as an economic regulator ahead of your personal views regarding climate change? If not, why not?

**Response:** Under the Federal Power Act and Natural Gas Act, the Commission is required to ensure that jurisdictional rates are just and reasonable and not unduly discriminatory or preferential, and to review the licensing or certification of jurisdictional infrastructure projects. The Federal Power Act also authorizes the Commission to approve and enforce mandatory reliability standards for the bulk power system. I believe that it is the public interest that drives this work of the Commission and not my personal views.

**Question 16:** During your confirmation hearing you expressed your desire for the orders of the Commission to be legally "durable." What is necessary, in your judgment, for the Commission's orders to be legally durable, especially as it may relate to the issue of climate change?

**Response:** A decision is legally durable when it is based on the record developed in the proceeding and is consistent with the law. I believe that the failure to follow those principles will lead to decisions that may not survive judicial review, which harms all interested parties, including, first and foremost, project developers. As an example, the Commission is required to conduct a NEPA analysis when considering applications for permits for interstate natural gas infrastructure and hydroelectric facility licensing applications. On August 3, 2021, in *Vecinos para el Bienestar, et al. v. FERC*, the U.S. Court of Appeals for the D.C. Circuit (D.C. Circuit) determined that the Commission failed to adequately review the impacts of two proposed liquefied natural gas (LNG) export facilities on greenhouse gas emissions and environmental justice communities. Accordingly, the D.C. Circuit remanded the case back to the Commission. In order to avoid unnecessary delay and future remand of similar cases, the Commission has an obligation to conduct a thorough NEPA analysis, so that decisions can survive scrutiny on appeal and projects can avoid costly delays.

**Question 17:** Wyoming and many states in the West are still largely rural. Many, if not most, electric customers in rural areas in these states receive electricity from local, non-profit electric cooperatives and, in many cases, an associated generation and transmission (G&T) cooperative. Electric cooperatives are still the only entities that serve rural areas where very low customer density is the defining characteristic of the electric system. Electric cooperatives serve the vast number of counties in the nation characterized by persistent poverty. Reliability and affordability of electric service is critical for these rural end-use customers and is also a key to economic development opportunities in these areas. Many of our rural areas continue to face challenges.

**U.S. Senate Committee on Energy and Natural Resources**  
**October 19, 2021 Hearing: The Phillips, Crabtree, and Sams Nominations**  
**Questions for the Record Submitted to Mr. Willie L. Phillips, Jr.**

**A.** Are you familiar with the cooperative model that is critical to a significant portion of this country?

**Response:** During my work in private practice, I engaged with electric cooperatives that serve many rural communities, including places in Alabama.

**B.** Please share any experiences you've had in interactions with distribution and G&T cooperatives, and the distinct situations of each, in your career.

**Response:** Issues concerning cooperatives have periodically come up in my discussions with fellow state commissioners from different parts of the nation.

**C.** As a Commissioner, will you take time to understand the distinct features of local distribution and G&T electric cooperatives?

**Response:** If confirmed as a Commissioner, I commit to further engage on issues related to electric cooperatives.

**D.** Will you take time to understand the non-profit cooperative business model on the whole?

**Response:** If confirmed as a Commissioner, I will also take time to understand the non-profit cooperative business model as it relates to the work of the Commission.

**Question 18:** The U.S. Supreme Court has said that the principal purpose of both the Federal Power Act and the Natural Gas Act is to encourage “the orderly development of plentiful supplies of electricity and natural gas at reasonable prices.” See *NAACP v. FPC*, 425 U.S. 662, 670 (1976). Do you agree with the U.S. Supreme Court’s description of the purpose of these two statutes?

**Response:** Yes.

**Questions from Senator James E. Risch**

**Question 1:** There’s been efforts to mandate that electric utilities form or join an organized energy market. Should participation in an organized energy market remain voluntary for utilities and their state regulators, or do you think all parts of the country should be required to join one of these markets?

**Response:** Participation in organized energy markets – regional transmission organizations (RTOs) and independent system operators (ISOs) – has provided benefits, including reduced costs for customers, improved reliability, and increased access to innovative technologies. These benefits are consistent with the goals I believe that any utility commission should seek - affordability, reliability, and sustainability. I believe, at this time, participation in RTOs and ISOs remains a voluntary decision for utilities and their state regulators. I defer to Congress as to whether the federal government should mandate that states join an RTO or ISO.

**Question 2:** Many of the issues that FERC is dealing with such as extreme weather events, increased electric load on the grid, and aggregating distributed energy resources primarily exist at state and local levels. What



**U.S. Senate Committee on Energy and Natural Resources**  
**October 19, 2021 Hearing: The Phillips, Crabtree, and Sams Nominations**  
**Questions for the Record Submitted to Mr. Willie L. Phillips, Jr.**

should FERC's role be in regulating technologies or events that occur on distribution systems at state and local levels, which are outside the scope of its statutory authority?

**Response:** I respect the jurisdictional lines that Congress drew many years ago regarding state and federal matters under the Federal Power Act. I also believe that there are opportunities for the Commission to work with the states to benefit the public. For example, I understand that the Commission has initiated a joint federal-state task force to address transmission issues. I support these types of initiatives, and if I am confirmed, I will work with my colleagues on this and possible future state/federal initiatives.

**Question 3:** The federal government controls significant swaths of land in the West. In Idaho, over 60 percent of the state is federal lands, and it takes decades to build new transmission projects. This Administration is seeking to bring more renewables onto the grid, but developers looking to build new transmission lines routinely find themselves stuck in a lengthy and difficult federal permitting process. How can FERC address the issue of federal permitting delays associated with developing infrastructure projects that is plaguing the West?

**Response:** It is my understanding that federal land management agencies ultimately control whether transmission projects can be constructed on the lands they manage. Nonetheless, if and when issues arise under the Commission's limited statutory authority regarding transmission line siting, I believe that the Commission could and should work with its sister federal agencies to ensure that those issues are addressed as efficiently as possible.

**Questions from Senator Mike Lee**

**Question 1:** What are the bounds (if any) of the effects that FERC should consider under NEPA?

**Response:** Consistent with National Environmental Policy Act (NEPA) regulations and judicial precedent, the Commission must analyze those effects that will be caused by a proposal and are reasonably foreseeable.

**Question 2:** Should FERC consider "reasonably foreseeable" effects that are outside the agency's jurisdiction and control? If so, why? And if not, why not?

**Response:** I have not had the opportunity to consider this matter in detail. However, studying reasonably foreseeable effects that are outside the Commission's jurisdiction may help inform the public and could help the Commission in making decisions.

**Question 3:** Is considering whether an effect is "reasonably foreseeable" analogous to considering "proximate cause" in tort law?

**Response:** Again, this is not a matter I have had the opportunity to consider in detail. As I generally understand it, the Supreme Court has explained that causation for NEPA purposes is analogous to proximate cause, and the U.S. Court of Appeals for the District of Columbia Circuit has explored this question with respect to Commission proceedings under that Natural Gas Act. I also understand that reasonable foreseeability is an additional consideration for NEPA purposes.

**U.S. Senate Committee on Energy and Natural Resources**  
**October 19, 2021 Hearing: The Phillips, Crabtree, and Sams Nominations**  
**Questions for the Record Submitted to Mr. Willie L. Phillips, Jr.**

**Question 4:** Do you believe there is any difference between “proximate cause” and “reasonable foreseeability”?

**Response:** Again, emphasizing that this is not a matter I have explored in detail, I understand that these are different concepts and that a reasonably foreseeable result might or might not be proximately caused by a particular action.

**Question 5:** Does the Supreme Court’s decision in *Department of Transportation v. Public Citizen*, 541 U.S. 752 (2004), impact your “reasonable foreseeability” analysis under NEPA? If so, how?

**Response:** I understand that the *Public Citizen* case addressed causation and whether an agency’s decision not to prepare an environmental impact statement (EIS) violated NEPA. I believe that the Supreme Court held that an EIS was not required because the relevant environmental effects were not caused by the agency action in question and an EIS was not otherwise appropriate under NEPA’s “rule of reason.” The Court’s holding did not—again, as I understand it—turn on the definition of reasonable foreseeability.

**Question 6:** While NEPA uses the terms “environmental impacts” and “environmental effects” it does not mention the term “direct effect” or an “indirect effect” in the statute. How would you approach the decision on whether to consider “indirect” or “direct” effects in a decision before FERC?

**Response:** I would be guided by the regulations of the Council on Environmental Quality (CEQ), judicial case law, and Commission precedent.

**Question 7:** How do you reconcile the use of a “proximate cause” consideration with an “indirect” effect?

**Response:** If confirmed, this is a matter that I would carefully consider if it came before me. I understand that NEPA requires agencies to examine the effects of their potential actions and I commit to doing that in a manner consistent with law, regulation, and precedent.

**Question 8:** Do you agree with CEQ’s recent decision to strike the definition of “cumulative” effect from the NEPA regulations? If not, why not?

**Response:** This is a not a matter I have had the opportunity to study, but, if confirmed, I commit that I would do so carefully if the question arose in cases before the Commission.

**Question 9:** Do you support the recent updates made by CEQ to update the NEPA regulations? If not, why not?

**Response:** I have not had the opportunity to study the proposed CEQ updates, but I commit to doing so if I am confirmed.

**Question 10:** As Commissioner, would you seek to follow the regulatory definitions recently finalized by CEQ in your NEPA considerations before FERC?

**U.S. Senate Committee on Energy and Natural Resources**  
**October 19, 2021 Hearing: The Phillips, Crabtree, and Sams Nominations**  
**Questions for the Record Submitted to Mr. Willie L. Phillips, Jr.**

**Response:** If confirmed, I would follow CEQ regulations.

**Questions from Senator Steve Daines**

**Question 1:** As we discussed during the hearing, FERC's core mission is primarily a safety and economic regulator. However, I have concerns that FERC is moving away from that core mission and instead focusing on climate issues that are outside of the jurisdiction of FERC. Do you believe that FERC has the authority to deny a natural gas certificate based on climate or greenhouse gas emissions?

**Response:** I believe that the Commission must examine and weigh all aspects of the public interest in considering proposed natural gas projects. Should the Commission determine that the environmental impacts of a project – including greenhouse gas emissions or impacts on the climate – outweigh the project's benefits, I believe the Commission has the authority to deny a certificate.

**Question 2:** As an experienced local regulator and Chairman of the DC Public Service Commission, you know first-hand the importance of local control of and local input regarding decisions that impact your community. What do you believe should be FERC's role in regulating systems, rates, taxes, or events that occur on state and local levels, which is generally outside of the direct authority of FERC?

**Response:** I respect the jurisdictional lines that Congress drew many years ago under the Federal Power Act between federal and state issues. I also believe that there are areas in which the Commission and the states can work together in a collaborative fashion. If I am confirmed and such matters come before the Commission, I will consider them in detail.

**Question 3:** In recent weeks we have seen energy and natural gas prices spike in Europe and European allies being forced to heavily rely on imported natural gas from Russia who has a tendency to use energy as a political weapon. In the United States, we are lucky to have abundant natural gas reserves, however I have concerns that this administration is pushing us down a path that would reduce our ability to supply ourselves and our allies with affordable energy and could result in the same situation Europe is currently in. Do you believe that it is in the United States' interest and the benefit of our European allies to continue to lead in natural gas production to supply ourselves and others and reduce energy dependence on Russia?

**Response:** There are numerous advantages in maintaining our energy independence. As I stated during my confirmation hearing, such independence should be undergirded by regulatory policy focused on affordable, reliable, and sustainable utility services. This three-pronged approach is best harnessed through the development and implementation of energy technology that improves outcomes in national and global markets. It is also in the interest of the United States and other allies to distinguish between short-term and long-term goals. Specifically, when viewed through the lenses of climate change, natural gas is a part of the necessary transition to cleaner energy technologies. However, I note that the U.S. Department of Energy is the primary agency tasked with determining whether natural gas exports are in the public interest.

**Question 4:** U.S. domestic production of natural gas has resulted in abundant and affordable energy throughout the U.S. and U.S. exports of LNG have helped our allies provide for their energy needs. Do you agree that natural gas production and exports provide benefits abroad and at home?

**U.S. Senate Committee on Energy and Natural Resources**  
**October 19, 2021 Hearing: The Phillips, Crabtree, and Sams Nominations**  
**Questions for the Record Submitted to Mr. Willie L. Phillips, Jr.**

**Response:** Yes.

**Question 5:** Expanding hydropower production is an important component of increasing reliable, affordable, and carbon free electricity. What actions do you believe FERC should take to help increase the development of small-scale and large-scale hydropower projects?

**Response:** I agree that hydropower is an important component of the Nation’s energy mix. While I do not have specific proposals in mind on this topic, I commit to carefully studying the Commission’s hydropower licensing process, if I am confirmed, in an effort to identify areas for potential improvement.

**Question 6:** Recently Congress passed laws streamlining the deployment of small conduit hydropower. Do you believe that FERC or Congress should similarly streamline the deployment of in-stream hydrokinetic power?

**Response:** I have not had the opportunity to carefully study this important matter, but I commit to doing so should I be confirmed. However, as a general matter, I believe that all of the Commission’s processes should be as efficient as possible.

**Question from Senator Mazie Hirono**

**Question:** In your testimony, you mentioned your work on environmental justice at the Washington DC Public Service Commission. What are some examples of the environmental justice work you did, and how would you apply your experiences as a FERC commissioner?

**Response:** The U.S. Environmental Protection Agency (EPA) defines environmental justice as “the fair treatment and meaningful involvement of all people regardless of race, color, national origin or income, with respect to the development, implementation and enforcement of environmental laws, regulations and policies.” Environmental justice begins with an examination of those stakeholders who have historically been excluded or marginalized because of inequitable outcomes.

During my tenure at the DC Public Service Commission, we made significant efforts in promoting environmental justice. We advanced equal access to utility discount programs for low-income natural gas and electric utility customers. We developed and implemented a discount rate for senior citizens to reduce their monthly utility bills. I also established an Office of Policy Advancement and Development (OPAD) and an Office of External Affairs (OEA) to better provide our stakeholders with access to information regarding our proceedings, decisions, and programs.

For several years, I served on the DC Sustainable Energy Utility (DCSEU) board of directors. The DCSEU helps District residents, businesses and institutions save energy and money through energy efficiency and renewable energy programs. Notably, the DCSEU helps implement the DC Solar for All Program, an initiative to provide 100,000 low-to-moderate income families with benefits of locally generated clean energy. Many stories have been shared about this program – highlighting how the District is using innovation and the concept

**U.S. Senate Committee on Energy and Natural Resources**  
**October 19, 2021 Hearing: The Phillips, Crabtree, and Sams Nominations**  
**Questions for the Record Submitted to Mr. Willie L. Phillips, Jr.**

of equity for local clean energy. As a result, utility burdens have been reduced, and underserved communities have been protected in the face of the changing climate.

I also created a DC Public Service Commission Advisory Council on Supplier and Workforce Diversity (Advisory Council) to identify best practices for diversity, equity, and inclusion in contracting and employment related to the public utility sector. The Advisory Council is an independent, executive level body composed of representatives from public utilities, contractors, trade associations, local colleges and universities, and industry stakeholders. To achieve the goals of the Advisory Council, three workgroups were organized to address: (1) business development and outreach; (2) job training and retention; and (3) supplier diversity.

I spearheaded efforts to develop a memorandum of understanding (MOU) with Pepco, Washington Gas, and Verizon DC to renew their commitment to increased opportunities for diverse businesses. With this MOU, utilities are expected to provide diverse suppliers with maximum opportunity to participate in and compete for contracts and subcontracts in the utility's supply chain for goods and services that support the utility. Each utility has designated an aspirational goal of 25% diverse spending with District-based businesses.

And, just last month, the DC Public Service Commission hosted the first DC Clean Energy Summit, which included panel discussions on how utility regulators and industry experts can advance progress toward national and local clean energy goals in the path to decarbonization. This event provided a national platform to discuss the challenges and possible solutions to climate change, including those considerations of diversity and equity.

If confirmed as a FERC Commissioner, I will bring my commitment to environmental justice to that position. Having served as the Chair for the National Association of Regulatory Commissioners (NARUC), Select Committee on Regulatory and Industry Diversity, I realize the importance of diversity, equity, and inclusion, and how it correlates with environmental justice. I applaud the Commission's efforts to create a new position, Senior Counsel for Environmental Justice and Equity. I view this as a step in the right direction for advancing environmental justice. The Commission's effort to integrate equity considerations will help create processes and tools for evaluating progress. The Commission's recently created Office of Public Participation also will play a key role in addressing environmental justice issues. As economic regulators and servant leaders, we must hold ourselves accountable to do what is right for our communities.

**Questions from Senator John Hoeven**

**Question 1:** During February's extreme weather event, North Dakota's power generators supplied the grid as expected; however, due to regional shortfalls in SPP, we still faced rolling blackouts in our state. Coal-fired power provided over 50 percent of generation in both SPP and MISO at the time, meaning the situation in Texas could have more severely impacted the Midwest without our coal-fired baseload plants.

- a. Are you concerned about closures of critical baseload assets and what kind of impact this might have on the reliability and resiliency of our nation's electric grid?

**Response:** As I noted at my confirmation hearing, a regulator's core job is to work to ensure safe, affordable, and reliable energy for the Nation's consumers. As a regulator, I would be concerned if we fail to meet those

**U.S. Senate Committee on Energy and Natural Resources**  
**October 19, 2021 Hearing: The Phillips, Crabtree, and Sams Nominations**  
**Questions for the Record Submitted to Mr. Willie L. Phillips, Jr.**

important objectives due to changes in the resource mix. I believe that the best way to reach those objectives, and to address the concern you raise, is to maintain an “all of the above” approach to energy resources.

**Question 2:** The Federal Energy Regulatory Commission (FERC) has the critical mission of providing “economically efficient, safe, reliable, and secure energy for consumers.” FERC has faced increased scrutiny from anti-fossil fuel interests. Some of these groups are applying political pressure to dramatically increase our dependence on intermittent renewable resources for power generation, at the expense of grid reliability and affordability.

If confirmed, will you commit to prioritizing affordability and reliability when it comes to access to energy, consistent with FERC’s mission?

**Response:** As I stated during my confirmation hearing, I commit to prioritizing affordability and reliability. And I would reiterate that it is about balance. When you consider the example of a three-legged stool, the integrity of every leg of the stool is important to the overall operation. That is why I would seek to approach each matter that comes before me keeping the principles of reliability, affordability, and sustainability in mind. We must seek balance as we consider energy technologies that will play a critical role in sustaining the grid of the future.

**Question 3:** In recent months, natural gas prices in the U.S. have doubled, to over \$5 per million Btu. Certain areas of the country, including New England, are at risk of even higher price spikes because of dependence on natural gas from foreign sources and competition from Europe, which faces a gas crisis of its own.

- a. Are you concerned that regions like New England have been reliant on imports of natural gas from Russia and other foreign countries to keep the lights on and heat their homes in the winter?

**Response:** The New England region relies on a mix of gas supply provided by interstate pipelines connected to domestic supply basins, pipelines providing access to Canadian imports, and liquified natural gas (LNG) imported through terminals near Boston. I recognize that this region’s consumers experience high energy prices. If proposals to bring additional supplies are made to the Commission, I would consider energy security as an important factor in my assessment of the need for the project, if I am confirmed.

- b. If confirmed, how would you ensure FERC follows a clear, consistent, and timely process with respect to approving natural gas infrastructure projects?

**Response:** I do not have specific suggestions on this topic as yet, but I would do my best to work with my colleagues to ensure that the Commission reviews infrastructure projects in a clear, consistent, and timely way.

**Question 4:** When customers are willing to sign up for capacity on a proposed pipeline, do you agree that it is an important indicator that FERC should approve a project? Do you agree that customer demand, and a customer’s willingness to make significant payment commitments, is a sufficient demonstration of need for a new pipeline under the Natural Gas Act?

**U.S. Senate Committee on Energy and Natural Resources**  
**October 19, 2021 Hearing: The Phillips, Crabtree, and Sams Nominations**  
**Questions for the Record Submitted to Mr. Willie L. Phillips, Jr.**

**Response:** I agree that customer willingness to sign up and pay for capacity can be a significant indication that a project is needed. I believe that the Commission must carefully examine the facts of each case before it in order to determine need and other aspects of a proposed project.

**Question 5:** FERC at times includes certain mitigation requirements in its pipeline certificate orders that may increase the cost of a pipeline project.

If confirmed, to what extent will you consider the effect that the proposed mitigation may have on costs to the downstream consumer, and overall prices of energy, particularly for low-income communities?

**Response:** I believe that the Commission must carefully examine all aspects of proposed projects, including mitigation and the impacts of such measures on consumer costs and prices, and I commit to considering these issues should I be confirmed.

**Question 6:** Some of the issues under consideration at FERC, such as climate change; impact of extreme weather; increased electric load on the grid; and aggregating distributed energy resources are primarily addressed by state and local regulators.

What should FERC's role be with respect to technologies or events that occur on distribution systems at state and local levels, which are outside the scope of FERC's statutory authority?

**Response:** I respect the jurisdictional lines that Congress drew many years ago regarding state and federal matters under the Federal Power Act. I also believe that there are opportunities for the Commission to work with the states to benefit the public. For example, I understand that the Commission has initiated a joint federal-state task force to address transmission issues. I support these types of initiatives, and if I am confirmed, I will work with my colleagues on this and possible future state/federal initiatives.

**Questions from Senator James Lankford**

**Question 1:** Mr. Phillips, as you know, FERC is currently reviewing many of its internal policies. These reviews have created some uncertainty and prompted process questions from those with pending business before the Commission.

- If confirmed, how would you approach reviewing projects currently pending before the Commission while FERC reviews its internal policies?

**Response:** I would review projects pending before the Commission in a manner consistent with applicable law, regulation, and precedent.

- Would you support pausing all activity on current project reviews while FERC reviews its internal policies?

**Response:** I have not had the opportunity to consider this question in detail and do not want to pre-judge this or any matter, but I commit to discussing this important question with my colleagues if I am

**U.S. Senate Committee on Energy and Natural Resources**  
**October 19, 2021 Hearing: The Phillips, Crabtree, and Sams Nominations**  
**Questions for the Record Submitted to Mr. Willie L. Phillips, Jr.**

confirmed. However, it is my understanding that the Commission has been moving cases forward while conducting the review that you described, which seems to be a reasonable approach.

**Question 2:** The energy shortage faced by Europe and the United Kingdom is very concerning. The Russians have been using this shortfall, and concerns that the coming winter will only exacerbate the problem, to argue that the Nord Stream 2 pipeline should be approved more swiftly. We all know that such a reliance on Russia for energy supplies is a vulnerability, which is why many have opposed making our European and British allies more dependent on these imports.

- Mr. Phillips, do you believe that it is in our best interest to provide natural gas resources to our allies so that they are less exposed to the whims of nations like Russia? Please answer yes or no and explain.

**Response:** As a general matter, I support actions and policies that will assist the United States and our allies in being energy independent. I also believe that climate change is a global issue, and it requires serious attention. To address the challenges of climate change, we must be proactive in identifying allies who have similar interests and leverage those interests to facilitate solutions. In accordance with the Commission's mission, regulators should collect and compile relevant data that informs the direction of these policy decisions. In addition, policymakers must consider how marginal changes will affect market participants. However, it should be noted that the U.S. Department of Energy is the agency tasked with determining whether liquefied natural gas (LNG) exports are in the public interest.

**Question 3:** Mr. Phillips, with regard to the future of energy, many are pushing to replace current energy sources with new, zero emission sources (e.g., replace traditional gasoline engine vehicles with battery electric vehicles). Do you believe we should take this all or nothing approach, or do you believe there are incremental changes we could make that would meaningfully contribute to lowering emissions? For instance, do you believe that displacing heating sources like wood and fuel oil with natural gas would lower emissions?

**Response:** As I noted at my confirmation hearing, I believe we should seek a balance in all we do. Therefore, with regard to the work of the Commission, I would take an all-of-the-above strategy to ensure safe, affordable and reliable energy for the Nation's consumers. As the nation's energy resource mix increasingly transitions to lower-emissions resources, this approach could lead to lower emissions by removing barriers to participation of such resources in the markets. In addition, I would agree that generally the use of natural gas as a heating source may result in lower emissions compared to sources such as wood or fuel oil, but that depends on the sources being compared.

**Questions from Senator Mark Kelly**

**Question 1:** In June of this year, FERC approved an order that that prioritized electricity imports to California and restricted the ability of utilities in Arizona to flow clean hydropower from the Pacific Northwest through California and into Arizona. Utility regulators in my state fought against this proposal because it rewards California for failing to plan for an adequate supply of electricity at the expense of Arizonans. California should not be allowed to shift blackout risks from itself to Arizona and other neighboring states. In your opinion, was this order fair to Arizona and how should FERC respond to Arizonans who feel that the agency has placed California's interest above theirs?



**U.S. Senate Committee on Energy and Natural Resources**  
**October 19, 2021 Hearing: The Phillips, Crabtree, and Sams Nominations**  
**Questions for the Record Submitted to Mr. Willie L. Phillips, Jr.**

**Response:** In the June 25, 2021 order to which you refer, the Commission accepted, subject to further compliance, revisions to the California Independent System Operator Corporation’s Open Access Transmission Tariff to modify load, export, and wheeling priorities in the day-ahead and real-time market optimization process and establish related market rules. The order addressed comments regarding potential impacts of the proposal by various parties, including Arizona utilities and commenters from other neighboring states. That proceeding is pending before the Commission on rehearing, and, therefore, I do not want to prejudge that pending matter.

**Question 2:** The Commission currently has open proceedings to enhance grid reliability and efficiency through improved transmission planning and incentives for innovative transmission technologies. Advanced conductors can double the capacity of transmission lines on existing towers, which can also accelerate adding more renewables onto the grid while mitigating wildfire risk, reducing permitting timelines, and saving costs for consumers. If confirmed, would you commit to considering how these open proceedings can promote the deployment of more advanced conductors?

**Response:** Yes. On September 10, 2021, the Commission hosted a virtual workshop to discuss certain performance-based ratemaking approaches, particularly shared savings, that may foster deployment of transmission technologies (Docket Nos. RM20-10-000 and AD19-19-000). The Commission also sought comment on grid-enhancing technologies in an Advanced Notice of Proposed Rulemaking issued in July 2021 (*Building for the Future Through Electric Regional Transmission Planning and Cost Allocation and Generator Interconnection* 176 FERC ¶ 61,024 (issued July 15, 2021), Docket No. RM12-17-000). I would review with great interest stakeholder comments submitted in the associated dockets for comments related to possible reforms to incent innovative transmission technologies more generally, including more advanced conductors.

**Questions from Senator John W. Hickenlooper**

**Question 1:** Interregional transmission has been labeled a “federalism mismatch,” as the benefits of a more reliable, more affordable grid accrue broadly, while state-by-state siting challenges consistently delay or cancel major projects. Do you agree with this characterization of a “federalism mismatch,” and if so can you speak to what you see as some of the distributed benefits of interregional transmission? Do you agree with the 2020 report issued under then-FERC-Chairman Chatterjee that listed siting first among the challenges it identified to building new transmission?

**Response:** I agree that high voltage, long-distance interregional transmission facilities can provide benefits to customers outside of the individual states from which a transmission facility must obtain siting approval. As identified in Commission staff’s 2020 Report on Barriers and Opportunities for High Voltage Transmission Systems, the potential benefits of high voltage interregional transmission facilities include sharing of resources across regions by improving interregional power transfer capability, aiding with restoration and recovery after an event, improving frequency response, and enhancing the stability of the interconnected transmission system. Furthermore, I agree with Commission staff’s assessment in that report that there are a number of challenges to building new high voltage interregional transmission facilities, including siting. As I mentioned in my testimony before the Committee, the Commission recently issued an Advance Notice of Proposed Rulemaking (ANOPR) in Docket No. RM21-17-000 asking hundreds of questions, some of which raise and seek to address

**U.S. Senate Committee on Energy and Natural Resources**  
**October 19, 2021 Hearing: The Phillips, Crabtree, and Sams Nominations**  
**Questions for the Record Submitted to Mr. Willie L. Phillips, Jr.**

issues related to interregional transmission and the identification of the benefits of such transmission facilities. If confirmed, I will carefully consider the comments on these and all of the issues addressed in the ANOPR.

**Question 2:** The Infrastructure Investment and Jobs Act (IIJA) includes up to \$5 billion of funding for electric school buses. Recent state-level pilot Vehicle-to-Grid (V2G) programs have shown that electric school buses are a practically promising V2G option, as their large batteries collectively and predictably sit idle for many hours at a stretch. Especially if the federal government does increase funding for EV school buses, what can you do at FERC to remove barriers to V2G applications?

**Response:** The Commission has addressed the potential for distributed energy resources, such as V2G technologies, through Order No. 2222, which it issued in September 2021. That order is aimed at removing barriers to participation of distributed energy resources in the organized wholesale markets run by regional transmission organizations (RTO) and independent system operators (ISO). The order would provide for distributed energy resources, like electric vehicles, to aggregate with other resources and bid into wholesale electric markets.

Two RTOs/ISOs, the California Independent System Operator and the New York Independent System Operator, have compliance filings for Order No. 2222 pending before the Commission. Other RTO/ISO compliance filings are expected early next year. I do not wish to prejudge those filings. If I am confirmed, I would expect to review them keeping in mind the requirements of Order No. 2222.