

**U.S. Senate Committee on Energy and Natural Resources**  
**September 16, 2020 Hearing: Nominations of Mark C. Christie and Allison Clements**  
**Answers to Questions for the Record Submitted to Ms. Allison Clements**

**Questions from Chairman Lisa Murkowski**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

**Questions from Senator James E. Risch**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Questions from Senator Maria Cantwell**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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**Questions from Senator Bernard Sanders**

**Greenhouse Gas Emissions:**

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

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

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

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

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

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

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

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

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

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

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

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

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

### **Net Metering**

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

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

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

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

### **Distributed Energy Resources Rule**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### **Capacity Markets**

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

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

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

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

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

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

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

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

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

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

### **Stakeholder Input**

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

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

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

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

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

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

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

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**Questions from Senator Debbie Stabenow**

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

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

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

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

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

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

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

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



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

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

**Questions from Senator Martin Heinrich**

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

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

**Question from Senator Cindy Hyde-Smith**

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

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

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

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**Questions from Senator John Hoeven**

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

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

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

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

**Questions from Senator Steve Daines**

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

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

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

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

**Questions from Senator Mike Lee**

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

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

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

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

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

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

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

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

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

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

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