

FEDERAL ENERGY REGULATORY COMMISSION  
WASHINGTON, DC 20426

OFFICE OF THE CHAIRMAN

June 4, 2014

The Honorable Mary Landrieu  
Chair  
Committee on Energy and Natural Resources  
United States Senate  
Washington, DC 20510

Dear Chair Landrieu:

Thank you for the opportunity to testify before the Committee on Energy and Natural Resources on May 20, 2014 on my nomination to the Federal Energy Regulatory Commission.

Attached are my responses to questions for the record posed by the members of the Committee. Please let me know if I can be of further assistance.

Sincerely,



Cheryl A. LaFleur  
Acting Chairman

Attachment

# QUESTIONS FOR THE RECORD FOR MS. CHERYL LaFLEUR

## SENATOR MARY LANDRIEU

Louisiana is at the center of America's energy revolution and issues before FERC affect Louisianans in many different ways.

I understand that both Commissioner LaFleur and Mr. Bay cannot answer questions about disputed issues pending before the Commission due to *ex parte* rules, but I would like remind you both of a number of issues that I have previously raised with FERC. These are by no means a comprehensive list of my concerns that impact Louisiana directly.

### Question 1. TOLEDO BEND

Last weekend, I held a field hearing in Louisiana at the beautiful Toledo Bend Reservoir to discuss how the hydroelectric project there can further enhance the economic benefits it brings to the region.

The Toledo Bend dam and reservoir provide significant benefits to Northwest Louisiana through the abundant supply of clean water, renewable electricity, and recreation opportunities. The ongoing FERC relicensing process, however, threatens the economic promise of the project. The Sabine River Authority has already spent \$10 million over the past 7 years on relicensing, a huge sum of money that could have otherwise been invested in new infrastructure needed to secure additional economic development and create jobs.

FERC can partially offset these costs by granting the Toledo Bend Project a new 50-year term as I requested in a letter I sent on February 5. Without objection, a copy of this letter will be entered into the Committee record of this hearing.

The problems Toledo Bend has faced over the past several years are not unique. **What is FERC doing to simplify the relicensing process and how it is making sure that the costs associated with relicensing aren't diminishing the economic benefits of hydroelectric projects like Toledo Bend?**

Answer: The Federal Power Act requires the Commission to ensure that hydropower licenses are best adapted to a comprehensive plan for developing affected waterways, which the Supreme Court has held requires an examination of all public interest considerations. In order to provide sufficient information for the Commission to understand the environmental impacts of relicensing a project, license applicants must provide the Commission information regarding affected resources. The costs of gathering this information will vary, depending on the complexity of the issues and the extent to which there is already existing information available.

Proceedings may become more lengthy and expensive if state and federal resource agencies with mandatory conditioning authority seek substantial new information, or if there are significant disputes among stakeholders. Within these constraints, the Commission makes every effort to ensure that hydropower relicensing proceedings are as efficient and cost-effective as possible, requiring only those studies that are justified and shown to be reasonably cost-effective, and encouraging stakeholders to reach agreement on the scope of the process and the issues in the proceeding. In addition, pursuant to the Hydropower Regulatory Efficiency Act of 2013, the Commission is investigating the feasibility of a two-year licensing process for projects at non-powered dams and for closed-loop pumped storage projects. To date, the Commission has held a public workshop, received public comment, and issued criteria and solicited applications for projects to test a two-year process.

### **Question 2. LIQUID NATURAL GAS**

FERC remains at the center of our efforts to efficiently approve licenses for Liquefied Natural Gas (LNG) export facilities in Louisiana and across the country. Responsibly exporting LNG will create thousands of high-paying jobs and help provide energy security for our allies. We should be exploring how to expedite the approval of LNG export facilities.

On April 2, 2014, I wrote a letter calling on FERC to swiftly approve Sempra's planned LNG export facility in Cameron Parish that would create nearly 3,000 jobs. Without objection, this letter will be included in the official record of this hearing.

On April 24, 2014, I wrote the Commission a letter in strong support of Trunkline's Lake Charles LNG export facility asking that FERC move expeditiously through the regulatory process. This facility is expected to create about 250 permanent positions and several thousand jobs. Without objection, this shall be made part of the hearing record.

### **What can FERC do to expedite the approval of LNG export facilities in the United States?**

Answer: In general, FERC acts on both pipeline and LNG project applications expeditiously. About 92 percent of applications are acted on within a year of the filing of a complete application. To date, and in light of this record, I have not identified specific changes that I believe are needed at this time. However, I believe that the Commission should continue to dedicate sufficient resources to maintain an expeditious review process, and I am always open to looking for ways to improve the Commission's processes.

### **Question 3. MIDLA PIPELINE**

The Commission has heard from me a number of times about Boston-based hedge fund ArcLight's plans to abandon the Midla Pipeline and the people of nine parishes in Northeast and Central Louisiana. ArcLight's plan would effectively end affordable natural gas service to nine parishes in Louisiana - Franklin, Catahoula, Ouachita, Richard, Tensas, Concordia, West Feliciana, East Feliciana and East Baton Rouge.

ArcLight should have known the pipeline was in serious need of repair to maintain safe operations when it purchased Midla in April 2013. I agree with Louisiana customers that ArcLight should be held responsible for the poor condition of the pipeline, which it recently purchased and now owns, and is also responsible to finance the necessary maintenance, repair and possible replacement without saddling customers with an unaffordable bill. ArcLight must take responsibility for the safety and operation of the Midla pipeline and offer constructive solutions to solve the safety and operational problems of the pipeline in a way that allows 9,000 Louisiana customers to continue to get natural gas at an affordable price.

**Without getting into specifics of the ArcLight abandonment proceedings, do you agree that it is a violation of the Natural Gas Act public interest standard to abandon a pipeline and effectively strand the affected customers with no service, or unreasonable terms of service?**

Answer: Under Section 7(b) of the Natural Gas Act, an interstate pipeline company may only abandon jurisdictional facilities or services if the abandonment is permitted by the “present or future public convenience or necessity.” Central to the Commission’s consideration of any request for abandonment authorization are the principles that (1) a pipeline which has obtained a certificate of public convenience and necessity to serve a particular market has an obligation to continue to serve, and (2) the burden of proof is on the applicant to show that the public convenience or necessity permits abandonment, that is, that the public interest will in no way be disserved by abandonment.

## **SENATOR TIM JOHNSON**

**Question 1.** Expanding transmission has been a big hurdle to wind energy development in the Dakotas. What policy steps should we be taking to encourage transmission? And what are your views on the allocation of costs from building new transmission?

Answer: The Commission has undertaken and continues to undertake a number of policy steps to encourage appropriate development of transmission facilities. For example, I supported Order No. 1000 because I believe it promotes robust regional transmission planning processes to identify more efficient or cost-effective transmission facilities to meet regional needs, as well as greater certainty regarding how the costs of new transmission facilities will be allocated, both of which are key to increasing the likelihood that needed transmission will move forward to construction. Further, in response to policy direction from Congress in the Energy Policy Act of 2005, the Commission provides incentive rate treatments to encourage transmission development in appropriate circumstances. In 2012, I supported a policy statement that refocused those incentives to encourage utilities to use ratemaking tools that mitigate risk, and that provides guidance as to the kinds of transmission projects that the Commission believes would merit a higher return on equity.

With respect to allocating costs of new transmission, I believe the Commission’s policies must be flexible to account for differing regional needs. In my time on the Commission, I have supported orders approving different approaches across the country that all respect the central principle that costs must be allocated in a manner at least roughly commensurate with benefits.

**Question 2.** South Dakota has a large number of rural electric cooperatives and public power entities that focus first and foremost on low costs for their customers. How can the need to preserve low rates be reconciled with the Administration's environmental and clean electricity goals?

**Answer:** Virtually all energy issues and decisions require consideration of – and sometimes tradeoffs among – reliability, cost, and the environment. Rural electric cooperatives and municipal utilities are often leaders in efforts to bring down the cost of clean energy to their customers, including through deployment of new technologies. If confirmed, I am committed to continuing to work to help all segments of industry fairly balance all three considerations.

**Question 3.** What are your thoughts on FERC's authorities to combat financial manipulation in energy markets? Does FERC have the right tools and information to combat fraud?

**Answer:** I believe FERC has strong authority to combat financial manipulation in the energy markets. I have noted that it would be helpful for Congress to provide clarification of the respective jurisdictions of the Commission and the Commodities Futures Trading Commission (CFTC) in the wake of last year's Court of Appeals for the District of Columbia case, *Hunter v. FERC*, 711 F.3d 155 (D.C. Cir. 2013) related to exclusive jurisdiction over futures contracts. However, if confirmed, I would continue to focus on ensuring the Commission effectively uses the authority to combat market manipulation that Congress provided in the Energy Policy Act of 2005.

I also believe that FERC has sufficient tools and information to combat fraud. Over the past several years, the Commission has promulgated a number of rulemakings – such as Order No. 760, requiring RTO and ISOs to provide FERC with certain market transaction data, and Order No. 771, providing FERC with access to information (e-tags) used for scheduling electricity transmission – to increase the quantity and quality of information it receives about the energy markets. In addition, under the information sharing Memorandum of Understanding with the CFTC that I and then-CFTC Chairman Gensler executed on January 2, 2014, the Commission recently began receiving important financial energy trading data from the CFTC's Large Trader Report. This information has significantly aided the Commission's efforts to conduct market surveillance and analysis. I also worked with CFTC Acting Chairman Wetjen to create a staff-level Interagency Surveillance and Data Analytics Working Group to coordinate information sharing between the agencies and focus on data security, data sharing infrastructure, and the use of analytical tools for regulatory purposes. If confirmed, I believe the Commission should continue to look for ways within its jurisdiction to improve its market oversight abilities.

## **SENATOR DEBBIE STABENOW**

**Question 1.** In July, 2013 the FERC imposed \$410 million in penalties on JP Morgan for manipulating electricity markets in Michigan and California in 2010 and 2011. The company had to pay back \$1 million it had defrauded from electricity customers in Michigan and \$124 million for customers in California.

This demonstrates the need for FERC's oversight to ensure that energy markets provide customers with a fair price for the energy they depend on in their homes, farms, and businesses. What ideas will you bring to enhance FERC's efforts to detect instances of illegal market manipulation?

Answer: I agree that market oversight is a critical part of FERC's work, and that the Commission should act within its existing jurisdiction to rigorously monitor the energy markets for instances of manipulative behavior. In order to strengthen the Commission's ability to do that work, on January 2, 2014 I executed the information sharing Memorandum of Understanding (MOU) with the CFTC required by the Dodd-Frank Act. Under that MOU, the CFTC recently began providing key data from its Large Trader Report, which the Office of Enforcement uses in its market surveillance and oversight efforts. In addition, CFTC Acting Chairman Wetjen and I created a staff-level Interagency Surveillance and Data Analytics Working Group to coordinate information sharing between the agencies and focus on data security, data sharing infrastructure, and the use of analytical tools for regulatory purposes. Furthermore, over the past several years, the Commission has promulgated a number of rulemakings – such as Order No. 760, requiring RTO and ISOs to provide FERC with certain market transaction data, and Order No. 771, providing FERC with access to information (e-tags) used for scheduling electricity transmission – to increase the quantity and quality of information it receives about the energy markets. If confirmed, I believe the Commission should continue to look for ways within its jurisdiction to improve its market oversight abilities.

**Question 2.** Under FERC's Order 1000, one of the standards of review for a regional cost allocation formula for electric transmission is that the costs imposed are “roughly commensurate” to the benefits received. What do you interpret “roughly commensurate” to mean and what types of information would you look for to determine whether the standard has been met in a particular instance?

Answer: I agree with the bedrock foundation underlying the Order No. 1000 cost allocation principles: costs of new transmission facilities must be allocated in a manner at least roughly commensurate with benefits received. As the U.S. Court of Appeals for the Seventh Circuit (Seventh Circuit) has stated, “[t]o the extent that a utility benefits from the costs of new facilities, it may be said to have ‘caused’ a part of those costs to be incurred.” The “roughly commensurate” standard referenced in your question stems from the same Seventh Circuit decision. As there is no formulaic definition for “roughly commensurate,” I have previously stated that the Commission should remain flexible in assessing potential regional variations in the application of this standard. In evaluating filings submitted in compliance with Order No. 1000, we have not mandated a “one-size-fits-all” approach. Indeed, the Commission has found that various cost allocation proposals will allocate costs in a manner at least “roughly commensurate” with benefits received.

**Question 3.** Although I am not opposed to all exports of natural gas, I am concerned that large-scale exports of natural gas could result in higher prices for residential consumers and squander what is clearly a competitive advantage right now for American manufacturers and for the American economy. The new abundance in American natural gas has led to more than \$100 billion in announced investments in more than 120 new manufacturing projects. A study by the

Boston Consulting Group concluded that affordable natural gas prices could lead to 5 million more manufacturing jobs by the end of the decade. A recent study by Charles River Associates found that using natural gas to increase American manufacturing output creates twice the direct value to our economy and creates eight times as many jobs as exporting the gas.

Thirteen projects to export natural gas have been proposed to FERC. Combined with the export terminal at Sabine pass that has already been approved, the projects represent a total export capacity of 20.9 billion cubic feet per day, equivalent to 31 percent of U.S. production in 2013. With such a significant volume of exports under consideration, FERC's responsibility for ensuring that project are constructed and operated safely and with minimal environmental impacts takes on significant importance. What lessons have you learned so far about FERC's natural gas export terminal evaluation process that would help FERC carry out its responsibilities in a thorough way?

Answer: The Commission's role with respect to exports is limited to approving the physical facilities used in exports, and ensuring, as you explain, that the facilities are designed and constructed safely and with minimal environmental impacts. Each export facility is unique as to its potential environmental impacts and also, to some extent, in its design. Therefore, every project must be evaluated on its own merits and it is difficult to draw many general conclusions from the projects that we have reviewed to date. I believe it is important that the review of every proposed project be thorough, and that the Commission dedicates sufficient resources to that task.

### **SENATOR MARTIN HEINRICH**

I understand there are cases still pending at the Commission that are inhibiting generators from gaining access to existing transmission capacity because FERC has effectively delayed a decision by issuing tolling orders. In the west, development of a number of clean-energy projects depends on open access to the grid. Will you commit to acting on these types of cases as quickly as possible without issuing tolling orders that extend statutory deadlines?

Answer: Under the Federal Power Act, parties must seek rehearing of a Commission order within 30 days after the issuance of an order, and rehearing requests are denied by operation of law if the Commission does not act within 30 days after a party seeks rehearing. The Commission issues tolling orders of rehearing requests to prevent the denial of those requests by operation of law, and to ensure that the arguments raised by parties on rehearing receive fair and full consideration by the Commission. I certainly agree that the Commission should act on all matters before it in a timely manner, and, if confirmed, I commit to continue my efforts to help ensure that the Commission acts in a fair, clear, and timely manner on issues that come before it.

### **SENATOR JOE MANCHIN III**

**Question 1:** Would you describe to the Committee your views on the Commission's duties, responsibility and authority provided to it under Section 215 of the Federal Power Act?

Answer: The Commission's role under section 215, generally, is to certify and oversee the Electric Reliability Organization (ERO), to approve or remand mandatory reliability standards proposed by the ERO, and oversee enforcement of the approved standards. The Commission also may direct the ERO to file a new or modified reliability standard, as it did recently in directing the ERO to file new standards on physical security and geomagnetic disturbances. It is important to note that the Commission cannot write these standards itself. Fundamentally, the Commission's role under section 215 is to ensure, within the scope of jurisdiction granted by Congress, that these standards help maintain the reliability and security of the bulk-power system.

**Question 2:** What steps are you preparing to take to carefully and objectively review the impacts of the pending 111(d) GHG rules on grid reliability?

Answer: The Commission has a responsibility to help ensure that grid reliability is maintained as EPA rules are implemented. The Commission's formal role in reviewing EPA rules occurs during the Office of Management and Budget (OMB) interagency review process. Commission staff reviewed parts of the draft Greenhouse Gas rule as a part of that OMB process and provided input to the EPA from a reliability perspective. I am reviewing the June 2 proposal and note that it gives significant flexibility to states and permits regional approaches to compliance. I look forward to discussing the proposed rule with the EPA, utilities, the National Association of Regulatory Utility Commissioners (NARUC), Independent System Operators/Regional Transmission Organizations (ISOs/RTOs), the North American Electric Reliability Corporation (NERC), and industry.

In addition to commenting on EPA's proposal, FERC has a role in ensuring that the energy infrastructure and markets adapt to new environmental requirements through its authority over transmission ratemaking and natural gas permitting and ratemaking. For example, if additional gas generating capacity is needed and more gas pipelines need to be built, FERC has a role in certifying those pipelines. FERC also has a role in ensuring that the regulations under its jurisdiction are sufficient to attract needed investment in electric transmission and gas pipelines.

**Question 3:** Can you assure the Committee the commission will work closely with EPA, utilities and NERC to ensure that reliability is not compromised by the pending rule?

Answer: Yes. I believe it is important that the Commission continue its relationship with the EPA, utilities, NERC, and other stakeholders to ensure that reliability is sustained as the electric sector complies with new environmental regulations.

**Question 4:** What steps are you prepared to take to address the possibility that the 111(d) rule would require resources to be dispatched on the basis on environmental "attributes" rather than cost?

Answer: Generally, the dispatch of resources by the markets reflects their costs (or bids) but also reflects any applicable requirements imposed under other laws, including federal or state environmental requirements. For example, if a valid and approved State implementation plan under the federal Clean Air Act were to require an "environmental dispatch," that requirement

would have to be met by the affected utilities and ISOs/RTOs. Under such a scenario, the Commission's statutory responsibilities would remain unchanged: to ensure just and reasonable rates, a reliable power grid, and fair and efficient markets. I note that markets in the East and in California have already begun to incorporate the price of compliance with greenhouse gas emissions reduction goals in response to the creation of the Regional Greenhouse Gas Initiative (RGGI) and California's carbon cap-and-trade program.

**Question 5:** Should FERC adopt policies that support one fuel type over another?

Answer: No. FERC policies should focus on ensuring that the rules that govern organized and bilateral wholesale electric markets promote the delivery of reliable power in a manner that is nondiscriminatory and resource-neutral, resulting in efficient price signals that market participants can rely on to make investment decisions. Although the drivers of power supply changes are largely outside of the Commission's jurisdiction, we must be aware of, and adapt to, these developments in order to carry out our statutory responsibilities to ensure just and reasonable rates, a reliable power grid, and fair and efficient markets.

**Question 6:** Are there currently any FERC policies, in your view, that promote one fuel type or energy source over another?

Answer: No. Please see my answer to question 5.

**Question 7:** EPA projected that its Mercury and Air Toxics Standards would not endanger grid reliability because the regulation would result in less than 5 GW of power plant retirements. Yet, EIA now projects that the regulation will close for 50 GW of power plants. More EPA regulations are to come – particularly for GHG emissions from existing plants. How will you address the inaccuracy to date on EPA projections on regulatory impacts on reliability?

Answer: FERC's formal role in reviewing EPA rules occurs during the OMB interagency review process. I believe that FERC should be involved in commenting on draft rules, monitoring industry's progress in responding to rules that potentially impact electric reliability, and helping assure that energy infrastructure and markets support environmental compliance.

Commission staff reviewed parts of the draft Greenhouse Gas rule as a part of the OMB process and provided input to the EPA. EPA issued its proposal on June 2. I am reviewing the June 2 proposal and note that it gives significant flexibility to states and permits regional approaches to compliance. I look forward to discussing the proposed rule with the EPA, utilities, NARUC, ISOs/RTOs, NERC, and industry.

**Question 8:** We hear that base load energy is essential to the grid but struggles in organized markets. Can you describe benefits to the grid that base load power is uniquely positioned to provide?

Answer: Serving customers reliably at the lowest possible cost requires the use of multiple types of resources with different characteristics. Base load generation is characterized by the ability to continuously meet energy demand at a relatively constant rate and base load generators have traditionally been a source of dependability, fuel security, and resource diversity. In addition to

base load generation, system operators also rely on other resources that can change output levels quickly or otherwise provide flexibility to the system. The importance of any one characteristic depends on system conditions at a given time. For instance, during the extreme weather events experienced last winter, resources that had a secure fuel supply enhanced system operations and reliability. During significant fluctuations in load or variable energy resource output, flexibility and responsiveness are of primary importance.

I am aware that certain types of baseload resources are finding it difficult to recover their costs in the organized markets. The docket the Commission opened last fall on eastern RTO/ISO capacity markets is a potential forum for consideration of this issue.

**Question 9:** Do you believe that base load energy resources are essential to the reliable operation of the grid?

Answer: I believe that base load generation, which can provide continuous power to the grid, is one resource that provides system operators with the tools they need to reliably satisfy load at least cost.

**Question 10:** Why shouldn't FERC treat any net metering sale as a wholesale sale?

Answer: Although no net-metering cases have come before me during my time at the Commission, I have been following with interest the debates surrounding net metering that are occurring at the state level. While it would be inappropriate for me to prejudge issues related to net metering that could be presented to the Commission in the future, I look forward to participating, if confirmed, in any Commission consideration of this important issue.

**Question 11:** If a utility's grid operating costs are being shifted from net metering customers to other customers, is that just and reasonable?

Answer: Issues related to net metering, including the potential for cost shifting among customers, have received increased attention in recent months. I know such cases require careful balancing of the costs to interconnection customers with the costs borne by all other customers on the system. Although discussions have occurred primarily at the state level, it would be inappropriate for me to prejudge issues related to net metering that could be presented to the Commission in the future. However, I look forward to participating, if confirmed, in any Commission consideration of this important issue.

**Question 12:** Under what circumstances do you believe FERC should take action to prevent cost shifting from net metering customers to other customers?

Answer: As noted above, issues related to net metering, including the potential for cost shifting among customers, have received increased attention in recent months. I know such cases require careful balancing of the costs to interconnection customers with the costs borne by all other customers on the system. Although discussions have occurred primarily at the state level, it would be inappropriate for me to prejudge issues related to net metering that could be presented

to the Commission in the future. However, I look forward to participating, if confirmed, in any Commission consideration of this important issue.

**Question 13:** FERC has determined that demand response should be given the locational marginal price. Do you believe this is the right policy or should it be overturned?

Answer: I voted in favor of Order No. 745, which, among other things, established rules for pricing demand response services in the organized energy markets. On Friday, May 23, 2014, the U.S. Court of Appeals for the D.C. Circuit issued a decision vacating Order No. 745 and addressing both the Commission's jurisdiction over demand response and Order No. 745's compensation requirements. The Commission is in the process of reviewing that decision and determining next steps. It would be inappropriate for me to prejudge any actions the Commission might take in response to the D.C. Circuit opinion.

**Question 14:** Should FERC treat a megawatt of energy produced the same as a "negawatt" of energy saved? What are the issues that differentiate a megawatt from a negawatt?

Answer: As noted above, the U.S. Court of Appeals for the D.C. Circuit recently issued a decision vacating Order No. 745 and addressing both the Commission's jurisdiction over demand response and Order No. 745's compensation requirements. The Commission is in the process of reviewing that decision and determining next steps. It would be inappropriate for me to prejudge any actions the Commission might take in response to the D.C. Circuit opinion.

**Question 15:** Will the physical security standard recently passed by NERC adequately protect the public from electric grid outage caused by terrorist attack?

Answer: NERC's petition to approve the physical security standard was filed with the Commission for review on May 23, 2014. It would be inappropriate for me to judge the merits before interested parties have an opportunity to submit comments to the Commission, so that we can consider all relevant arguments. I assure you that I will carefully consider the proposal and all filed comments to ensure that NERC's filing does adequately protect the public.

**Question 16:** Could an attack on an electric generation plant cause a cascading outage or long-term power shortage?

Answer: A carefully planned and executed attack on a single or multiple generation plants could cause cascading outages, but I have not seen information that would lead me to believe that it could cause a long-term power shortage. The extent and duration of any outage from an attack would depend upon a number of factors, such as the size and location of the plant, system loads, the configuration of the grid, the availability of replacement equipment and fuel, and the resilience of the systems under attack. Resilience begins with how the system is planned, designed, constructed, and operated, and is informed by how asset owners and grid operators respond to and learn from events. Many of these factors are addressed in detail in the FERC-approved mandatory reliability standards, such as standards requiring that the grid be able to continue to operate after a single contingency event and certain blackstart capabilities be in place, ensuring that additional generation is able to come online to replace units lost

unexpectedly. Building a resilient grid requires comprehensive and ongoing assessments under a range of conditions, and, if confirmed, I will be dedicated to carrying out this work with NERC and others.

**Question 17:** Why were generation plants exempted from NERC's physical security standard?

Answer: NERC's petition to approve the physical security standard was filed with the Commission for review on May 23, 2014. In the petition, NERC states that a generation facility does not have the same critical functionality as certain transmission substations, and also that the planning process for the electric grid already plans for the possible loss of a generator. NERC adds that limiting the standard to certain transmission substations and their associated primary control centers will allow the industry to focus resources where they are most essential for maintaining reliable operations. It would be inappropriate for me to judge the merits before interested parties have an opportunity to submit comments to the Commission, so that we can consider all relevant arguments. I assure you that I will carefully consider the merits to ensure that NERC's filing does adequately protect the public.

**Question 18:** Why did NERC exempt operators of critical control centers--including the two major control centers for the western half of the United States--from physical security requirements?

Answer: NERC's petition to approve the physical security standard states that the drafting team determined that the standard should only provide additional physical security protections to those primary control centers that can physically operate critical substations. The drafting team also determined that a physical attack on a control center that only has monitoring or oversight capabilities of a critical substation would not have a direct impact on reliability in real-time. It would be inappropriate for me to judge the merits before interested parties have an opportunity to submit comments to the Commission, so that we can consider all relevant arguments. I assure you that I will carefully consider the merits to ensure that NERC's filing does adequately protect the public. I also note that control centers are required to be protected under the recently-approved NERC Version 5 cyber security reliability standard.

**Question 19:** Is it true that an electromagnetic pulse device in a suitcase or van could take out a critical grid control center or substation?

Answer: My understanding is that this is possible. The effectiveness of such an attack would depend on a number of factors, including the strength of the device, the proximity of the device to the target, the type of equipment that is being targeted, and the type of shelter housing that equipment.

**Question 20:** How much would it cost to build an electromagnetic pulse device capable of taking out a grid control center or substation?

Answer: It is my understanding that these devices generally cost tens of thousands of dollars to build. However, the effectiveness of such a device would depend upon the factors described above in response to Question 19.

**Question 21:** Why doesn't the new physical security standard approved by NERC contain required protection against local electromagnetic pulse devices?

Answer: NERC's petition does not directly address this issue. It would be inappropriate for me to judge the merits before interested parties have an opportunity to submit comments to the Commission, so that we can consider all relevant arguments. I assure you that I will carefully consider the merits to ensure that NERC's filing does protect the public adequately. However, it is worth noting that the Commission has directed NERC to propose reliability standards to address the threat posed by a geomagnetic disturbance event. Because of the similarities between GMD and EMP events and impacts, the forthcoming GMD standards could also help address the threat of EMP attacks.

**Question 22:** Do you agree that with the basic principle that the "cost causer" should pay for transmission upgrades – that is, that when transmission upgrades are needed, the entities that made them necessary should pay?

Answer: I agree that the "cost causation" principle, as it has been established by the courts and applied by the Commission, is a central tenet of fair cost allocation.

It is important to note that needed transmission upgrades may be identified in a number of ways. For example, transmission upgrades may be needed to reliably interconnect individual new generation resources or to create capacity to satisfy individual requests for transmission service. In these situations, long-standing Commission policy allows a transmission provider to charge the customer a rate equal to the higher of either: (1) the incremental cost of the required upgrades or (2) the embedded costs of the transmission provider's system. This policy ensures that individual interconnecting generators and transmission service customers pay the full cost of the upgrades they require (or "cause"), and that existing customers do not subsidize any costs caused by these new customers.

More recently, in Order Nos. 890 and 1000, the Commission adopted cost allocation requirements for transmission facilities that are identified in a regional transmission planning process as needed to meet reliability requirements, provide economic benefits, or address transmission needs driven by public policy requirements enacted by federal, state or local governmental authorities. Notably, these types of transmission facilities are not driven by a specific service request. To address these types of transmission facilities, I supported adopting the cost allocation principles in Order No. 1000 to guide the allocation of the costs of regionally-planned projects, while giving each region the flexibility to design its own cost allocation approach to meet its own needs, consistent with these principles.

I agree with the bedrock foundation underlying the Order No. 1000 cost allocation principles: costs must be allocated in a manner at least roughly commensurate with benefits received. Allocating transmission costs commensurate with the benefits received by grid users is not a departure from the "cost causation" principle; in explaining the "cost causation" principle, the U.S. Court of Appeals for the Seventh Circuit Court has stated that "[t]o the extent that a utility

benefits from the costs of new facilities, it may be said to have ‘caused’ a part of those costs to be incurred.”

**Question 23:** I recognize that you cannot address merits of specific compliance proceedings pending before the Commission. But I have a couple of questions I trust you can answer about the general policy behind FERC Order 1000:

**a.** A number of observers believe that FERC has overreached its statutory authority (under the Federal Power Act) – by effectively pursuing a preference for renewable-based electricity under Order 1000.

(This results from the Order’s subsidization, or “socialization” of the cost of new long-distance transmission lines. Order 1000 allocates such costs very broadly, even though these lines are designed primarily to transmit wind power thousands of miles to faraway markets. The result is that consumers in states which do not need the power or otherwise benefit from the new lines have to help pay for them.)

Answer: I do not believe that Order No. 1000 either exceeds FERC’s statutory authority or establishes a preference for renewable-based electricity. Rather, Order No. 1000 facilitates the identification of transmission facilities that are more efficient or cost-effective solutions to regional transmission needs, including reliability and economic needs, as well as transmission needs driven by federal, state, or local public policy requirements. Order No. 1000 does not mandate any particular regional cost allocation methodology, and I agree with the bedrock foundation underlying the Order No. 1000 cost allocation principles: costs of new transmission facilities must be allocated in a manner at least roughly commensurate with benefits received. Ultimately, the Federal Power Act requires that the rates, terms and conditions of transmission service provided by public utilities be just and reasonable and not unduly discriminatory or preferential, and I believe that Order No. 1000’s cost allocation principles further that statutory requirement.

**Question 24:** Shouldn’t FERC transmission policy be neutral with respect to the source of electricity generation? Do you agree or disagree?

Answer: I agree. FERC policies should focus on ensuring that the rules that govern organized and bilateral wholesale electric markets promote the delivery of reliable power in a manner that is nondiscriminatory and resource-neutral, resulting in efficient price signals that market participants can rely on to make investment decisions.

**Question 25:** If you disagree, can you identify provisions in the Federal Power Act that authorize FERC to favor a particular source of generation over others?

Answer: See answer to Question 24; I am not aware of any provisions in the Federal Power Act that authorize FERC to implement transmission policies that favor a particular source of generation.

**Question 26:** If Congress wanted to express a preference for a particular generation source, don't you think it would have so stated – for example, by enacting a federal renewable portfolio standard? Isn't this Congress' prerogative – not FERC's?

Answer: The Commission can only act under the authority delegated to it by Congress. It is the prerogative of Congress to enact legislation, such as you mention. As noted above, FERC policies should focus on ensuring that the rules that govern organized and bilateral wholesale electric markets promote the delivery of reliable power in a manner that is nondiscriminatory and resource-neutral, resulting in efficient price signals that market participants can rely on to make investment decisions. Those markets should be capable of accommodating changes in power supply that may be driven by factors outside of the Commission's jurisdiction, such as changes in law enacted by Congress. Although the drivers of power supply changes are largely outside of the Commission's jurisdiction, we must be aware of, and adapt to, these developments in order to carry out our statutory responsibilities to ensure just and reasonable rates, a reliable power grid, and fair and efficient markets.

**Question 27:** Do you support this aspect of Order 1000 – specifically that FERC has ordered states to plan for new transmission lines on the basis of undefined and unspecified “public policies” including environmental mandates?

Answer: I supported the reforms required in Order No. 1000, which did not order states to plan for new transmission lines based on undefined and unspecified public policies. Rather, Order No. 1000 requires local and regional transmission planning processes to consider transmission needs driven by public policy requirements established by duly enacted federal, state or local laws or regulations. The Commission stated in Order No. 1000 that recent increases in transmission development combined with projections by industry and NERC of the need for significant future additional transmission investments, as well as changes in the generation mix driven in part by public policy developments, required action to ensure that transmission planning and cost allocation requirements are adequate to support more efficient and cost-effective transmission facility decisions. The Commission will monitor transmission planning processes to ensure that they are effective in meeting regional transmission needs and supporting the provision of Commission-jurisdictional service at rates, terms and conditions that are just and reasonable and not unduly discriminatory or preferential.

**Question 28:** If so, can you direct me to the provision of the Federal Power Act that authorizes FERC to require states to conduct this type of planning?

Answer: As explained in the answer to Question 27, FERC has not ordered states to plan for new transmission lines based on undefined public policies. In Order No. 1000, the Commission relied on section 206 of the Federal Power Act, which obligates the Commission to ensure that jurisdictional electric rates are just and reasonable and not unduly discriminatory or preferential. In addition, the Commission explained that section 201(b)(1) of the Federal Power Act grants the Commission jurisdiction over the transmission of electric energy in interstate commerce, as well as jurisdiction over all facilities for the transmission of electric energy.

**Question 29:** Couldn't this policy result in the construction of new transmission lines --the need for which is premised on EPA rules that currently subject to challenge in the courts – which may be struck down? Wouldn't that be wasteful? How is this fair to consumers?

Answer: I believe that robust regional transmission planning processes that comply with the requirements of Order No. 1000 will benefit consumers by promoting more efficient and cost-effective transmission facilities. I supported the Commission's requirement that public utility transmission providers in a transmission planning region consider transmission needs driven by public policy requirements. Like you, I recognize that the public policy requirements that drive such transmission needs could change over time for a variety of reasons. Nonetheless, I believe that it is prudent to consider transmission needs driven by duly enacted public policy requirements as a transmission planning region identifies transmission solutions.

Furthermore, I believe the concern that you have identified will be mitigated by a number of aspects of regional transmission planning. First, transmission lines are frequently designed and constructed to serve multiple needs, including not only needs driven by enacted public policies, but also reliability needs and efforts to reduce congestion. Thus, comprehensive transmission planning can ensure that ratepayers receive benefits beyond those associated with public policies. Second, transmission planning regions may reevaluate their regional transmission plans each planning cycle to determine whether a transmission need still exists and whether a transmission project is still needed. If enacted public policies change over time, the transmission planning process is therefore equipped to address associated changes in transmission needs. Finally, as you know, planning and constructing new transmission infrastructure can take a significant amount of time. Given this lengthy process, I believe that transmission planning processes will be able to account for changes in enacted public policies that drive transmission needs.

## **SENATOR RON WYDEN**

**Question 1.** I view FERC Order 1000—where FERC has insisted that the Bonneville Power Administration and other governmental utilities in the Northwest agree to cede their transmission cost-allocation authority to FERC—as a significant overreach. Can you assure me that if you are confirmed you will support policies that keep the locus of Northwest electricity decisions in the Northwest as opposed to shifting authority to FERC headquarters in Washington, D.C.?

Answer: If confirmed, I will give due consideration to the concerns you raise. With respect to Order No. 1000, I do not believe that the Commission sought to centralize authority over regional transmission planning at FERC; rather, the requirements of Order No. 1000 are intended to facilitate transmission planning and decision-making at the regional level, using criteria and processes developed by public utility transmission providers, enrolled non-public utility transmission providers, and interested stakeholders. Importantly, the Commission in Order No. 1000 did not require non-public utility transmission providers to participate in regional transmission planning processes and corresponding cost allocation methods. Instead, the Commission encouraged such participation and noted that the success of the reforms called for in the rule would be enhanced if all transmission owners, including non-public utility transmission

providers, participate. If confirmed, I will continue to carefully consider the concerns raised by non-public utility transmission providers as the Commission addresses further filings related to Order No. 1000 implementation.

**Question 2.** The nation's electricity sector is in a period of transition, with significant shifts in the past decade due to the greater usage of renewables, lowered costs of natural gas, and many older units scheduled to come offline. One important effect of these changes has been decrease in carbon emissions from the power sector, a trend that needs to continue for our nation to move to a truly low-carbon economy. As the power sector continues to evolve in this manner, what challenges do you see coming up in the future as a result of this transition, and what role do you envision for the FERC in helping to manage the challenges that will come along with that transition?

Answer: As I frequently note, the nation is making substantial changes in its energy supply due to the increased availability of domestic natural gas and its use for power generation, the growth of renewable and demand-side resources, and new environmental requirements. Although these drivers of change are largely outside the Commission's jurisdiction, we must be aware of and adapt to them to carry out our statutory responsibilities. These developments are driving a great deal of the Commission's work on both infrastructure and markets. Our nation is making substantial investments in electric transmission and gas pipelines, and the Commission, through its authority over transmission ratemaking and natural gas permitting and ratemaking, has a critical impact on those investments. In addition, power supply changes require adaptations in competitive electric markets, to assure they attract needed investment and coordinate effectively with natural gas markets.

## **SENATOR AL FRANKEN**

Question 1. I want to commend the Federal Energy Regulatory Commission (FERC) for issuing an order last year that effectively fast-tracked the ability of small wind projects to get connected to the grid. How would you continue to support the interconnection of community wind projects with the electric grid, and how would you ensure that community wind owners are offered fair rates by utilities?

Answer: I believe that the revisions adopted last year to the Commission's *pro forma* small generator interconnection procedures will help facilitate the interconnection of community wind projects. Compliance filings to implement the Commission's order are due in August 2014. If confirmed, I look forward to continuing to monitor the impact of the rule going forward, as well as looking for other opportunities to remove barriers to interconnection while ensuring that all generators receive just and reasonable prices for their power.

Question 2. For large wind farms, are there other steps you would take to ensure efficient and cost-effective transmission of wind energy from places that generate the energy to places that need it?

Answer: I believe that a number of recent Commission initiatives, including Order No. 1000, will facilitate the construction of new efficient and cost-effective transmission infrastructure for new resources of various types in the coming years as those initiatives are implemented. In

addition, the Commission has been, and should continue to be, responsive to requests for flexibility in rates, terms and conditions from developers of transmission projects under non-traditional business models, including merchant transmission, that can foster needed development.

Question 3. In Minnesota and across the Midwest and other areas of the country this past winter, we experienced a very serious propane shortage. I was pleased that FERC used its authority to prioritize shipments of propane on the Enterprise pipeline running from Mont Belvieu, Texas to distributors further north. This action helped get propane to those who needed it. However, the Cochin pipeline, which has been transporting a very substantial amount of propane from Canada to the Midwest, is being repurposed to send other petroleum products in the opposite direction. Should FERC be given additional authorities to conduct a public interest determination before permitting the reversal of pipelines such as Cochin?

Answer: As your question recognizes, under the Interstate Commerce Act, the Commission does not have the statutory authority to prevent an oil pipeline or product pipeline from abandoning service in one direction and then starting service in the opposite direction. The Commission's emergency powers under ICA section 1(15) provide discretion to the Commission to address situations on an ad hoc basis as they may arise. As I said at the hearing, I believe that the Commission should first ensure that it uses its existing authority effectively, and that the Commission should continue to be alert and proactive in monitoring the propane markets. If I am confirmed and Congress chooses to grant the Commission additional authority over such pipelines, I will work to ensure that the Commission faithfully executes that additional authority.

Question 4. Another issue during the propane shortage this past winter was that some pipeline terminals had long lines of truck drivers waiting to pick up loads of propane, while other terminals had no lines because truck drivers didn't know that propane was available there. Do you think it would be a good idea for FERC to improve transparency into pipeline operations so that we avoid this kind of confusion in the future?

Answer: I support efforts to improve transparency into pipeline operations, though I believe that these efforts should be consistent with the regulatory authority vested by Congress in the Commission. Under the Interstate Commerce Act, common carriers are prohibited from disclosing certain information, including the nature, kind, quantity, destination, or routing of any property delivered over the pipeline, that may be used to the detriment of shippers or improperly disclose business transactions to a competitor. Thus, the Commission does not currently receive from oil or product pipelines product shipment information, including when and where, for example, propane is shipped. However, if confirmed, I commit to continue the Commission's efforts to be alert and proactive in monitoring the propane markets.

Question 5. Utilities installing wind turbines are often exempt from local zoning laws and can install 100-foot structures at will, but homeowners and businesses are subject to 35-foot or other height restrictions. What actions could FERC take to help homeowners and businesses who wish to install distributed generation projects such as community wind?

Answer: Under the Federal Power Act, the Commission does not have jurisdiction over the siting of generation, including height restrictions governed by state or local zoning laws. As mentioned

above, if confirmed, I will continue to look for opportunities to remove barriers to interconnection of new resources while ensuring that all generators receive just and reasonable prices for their power.

Question 6. The attacks on the Metcalf substation have shown that physical security of the electric grid is a critical problem. As you know, I wrote to FERC on this issue, and you responded by tasking the North American Electric Reliability Corporation (NERC) to develop a national reliability standard. Should NERC also provide input on an approach for maintaining spare transformers that can be moved around the country as circumstances require?

Answer: I agree that the adequacy of transformer supply is important to the resiliency of the electric grid. In addressing supply chain and appropriate inventory levels, it is important to have a clear understanding of which assets are the most critical in terms of how their loss would impact operation of the bulk power system. The version of cybersecurity reliability standards recently approved by FERC (CIP version 5) expressly requires utilities to determine the criticality of cyber assets and tailor protections accordingly. The FERC directive that NERC develop a physical security standard also requires identification of the most critical facilities. In addition, FERC's final rule on geomagnetic disturbance standards also required identification of the assets most important to protect and explicitly identified inventory management as a possible mitigation strategy to be used under the standards.

NERC's petition to approve a physical security standard was filed with the Commission for review on May 23, 2014. It would be inappropriate for me to judge the merits before interested parties have an opportunity to submit comments to the Commission, so that we can consider all relevant arguments. I assure you that I will carefully consider the proposal and all filed comments to ensure that NERC's filing does adequately protect the public.

I also note that the Edison Electric Institute (EEI) has undertaken the voluntary Spare Transformer Program (STEP) and that NERC maintains the Spare Equipment Database (SED) Program. These programs are designed to help utilities identify and share spare transformers in emergencies. Finally, the Department of Homeland Security, the Department of Energy, and others are working to develop the Recovery Transformer (RecX), a prototype extra-high voltage (EHV) transformer that would significantly reduce the recovery time associated with EHV transformers. This initiative may play an important role in improving our ability to recover if a number of transformers are damaged concurrently for any reason.

Question 7. This reliability standard is intended to help safeguard the grid against attacks by humans. Do you believe that this standard would also provide adequate protection against extreme weather events?

Answer: As mentioned above, NERC's petition to approve a physical security standard was filed with the Commission for review on May 23, 2014. Because the reliability standard is pending before the Commission, I cannot comment on it at this time. I note that many other existing reliability standards are intended to mitigate the type of system impacts that may be caused by an extreme weather event.

## **SENATOR DEAN HELLER**

### **Question on Order No. 1000:**

**Mr. Bay and Ms. LaFleur,**

Order No. 1000 creates obligations for neighboring transmission planning regions to develop procedures for joint identification and evaluation of regional and interregional transmission needs, potential facilities to address those needs, and a cost allocation methodology for allocating the costs of such facilities. The costs of regional and interregional transmission facilities are expected to be allocated to customers roughly commensurate to the benefits they receive. FERC gave the industry some flexibility to comply with very broad directives. It is my understanding that the compliance process has been messy, and getting the requirements of the order into effect has been a significant challenge that has consumed FERC's time and policy attention for over a year and counting.

1. In your view, how much flexibility and deference, if any, should FERC provide individual planning regions to develop and implement unique methods for allocating costs to the recipients of the benefits? Do you think FERC should mandate certain aspects of compliance for sensitive issues such as binding cost allocation, or simply defer to each region's direction?

Answer: I believe that FERC's cost allocation policies should be flexible to meet regional needs in both established regional transmission organizations and in bilateral market regions. That is why I supported the regional transmission planning and cost allocation approach of Order No. 1000, which adopted minimum requirements for regional transmission planning and cost allocation, but gave regions flexibility to develop specific proposals that will meet regional needs and reflect regional differences. In evaluating filings submitted in compliance with Order No. 1000, we have not mandated a "one-size-fits-all" approach. Indeed, we have approved a variety of cost allocation proposals that satisfy the minimum requirements established in Order No. 1000.

Because the issue of binding cost allocation is pending before the Commission, I cannot comment on it at this time.

2. As you know, the West has a predominance of non-jurisdictional transmission providers compared to other regions. Given their significant footprint and unique compliance status on one hand and the need for enhanced operational coordination and planning across the region on the other, how should FERC balance these factors in seeking to facilitate broad utility participation, on a comparable and non-discriminatory basis, in the regional and interregional planning processes formed under the order?

Answer: I recognize the significant contributions of non-public utility transmission providers to regional transmission planning, and in Order No. 1000, the Commission encouraged their participation, noting that the success of the reforms called for in the rule would be enhanced if all transmission owners, including non-public utility transmission providers, participate. In

particular, the Commission stated that regions may propose as part of their Order No. 1000 compliance filings any tariff provisions they believe are necessary to recognize the unique status of non-public utilities that seek to participate in the regional planning process. A number of proposals addressing the enrollment and participation of non-public utility transmission providers are currently pending before the Commission on rehearing and compliance, and, accordingly, I cannot comment on them at this time.

3. What role do you see for existing vertically electric utilities in future transmission development? What role do you see for new entrants in this area?

Answer: I expect that existing vertically-integrated electric utilities will have a significant role in future transmission development at the local, regional, and interregional levels. As the Commission noted in Order No. 1000, existing utilities bring certain strengths they can rely on when proposing to construct transmission projects, such as unique knowledge of their own transmission systems, familiarity with the communities they serve, economies of scale, experience in building and maintaining transmission facilities, and access to funds needed to maintain reliability.

Meanwhile, following implementation of the non-incumbent transmission developer reforms in Order No. 1000, I expect new entrants to pursue opportunities to identify, propose, and develop transmission facilities, primarily, though not exclusively, at the regional level. It is important to note that Order No. 1000's non-incumbent developer reforms did not seek to define specific roles for existing utilities and new entrants; rather, Order No. 1000 simply sought to remove a barrier to entry that the Commission concluded has the potential to undermine the identification and evaluation of more efficient or cost effective transmission projects and result in unjust and unreasonable rates or undue discrimination by public utility transmission providers.

Accordingly, I expect to see new entrants focus primarily on new transmission facilities that are governed by the requirements of Order No. 1000.

## **Question on Renewable Development**

### **Mr. Bay and Ms. LaFleur**

Geothermal energy is base load renewable power that plays an extremely important role in Nevada but gets too little attention nationally. It provides 24/7 power without emissions and, in the case of binary geothermal, with negligible water consumption. Geothermal is a valuable energy resource and yet it is lagging behind other renewables sources in development.

1) What is your view of geothermal energy and the challenges it faces?

Answer: Geothermal energy is a sustainable source of base load energy, with growing potential due to the development of new technologies to utilize it. Similar to other types of technologies that may be located a distance from load centers, geothermal energy will need to obtain cost-effective access to transmission lines to move that power from its source to the loads. As noted

below, FERC works to ensure open access to transmission facilities and promote transmission planning and generator interconnection policies that are fair to all resources.

2) What can FERC do to help our markets value exactly what geothermal provides—reliable clean energy?

Answer: One of the Commission’s core responsibilities is to ensure that wholesale rates are just and reasonable. As such, the Commission has long supported the development of competitive wholesale power markets that support investment and are fair to all types of technologies and sources of power, including geothermal. I believe that the Commission should continue to assess our competitive power markets in the upcoming years to, among other things, ensure they properly value the contributions of all types of resources.

[Preamble to Question 3]In October 2012, the Secretary of the Interior signed the Record of Decision finalizing a program to facilitate development of solar energy on public lands in six southwestern states. The Western Solar Plan provides a blueprint for utility-scale solar energy permitting in Arizona, California, Colorado, Nevada, New Mexico and Utah by establishing solar energy zones, incentives for development within those zones, and a process through which to consider additional zones and solar projects. The Western Solar Plan established an initial set of 17 Solar Energy Zones, totaling about 285,000 acres of public lands, that serve as priority areas for commercial-scale solar development, with the potential for additional zones through ongoing and future regional planning processes. Two additional Solar Energy Zones were designated in 2013 in Arizona and California. Additionally, a programmatic environmental impact statement relating to the authorization of geothermal leasing in Nevada was completed in October 2008.

Energy development is critical to the economic development of the West but one of the primary barriers to development is access transmission.

3) What can FERC do to improve its permitting process to get transmission lines built on public lands in the West, so that all forms of energy development can proceed where it is suitable?

Answer: The Commission currently has no direct ability to authorize transmission lines on public lands in the West, other than in the limited case of primary transmission lines that connect hydropower projects to the interstate electric transmission grid. While the Energy Policy Act of 2005 granted limited “backstop” authority to the Commission, subsequent court decisions have effectively prevented the Commission from exercising that authority. Nonetheless, the Commission has participated, and will continue to participate, in interagency efforts that seek to improve and streamline federal permitting processes for construction of new transmission infrastructure on public lands, such as the Rapid Response Team for Transmission.

Although FERC does not have a direct role in permitting transmission facilities, it is the Commission's responsibility to ensure open access to transmission facilities and develop transmission planning and generator interconnection policies that are fair to all resources. For example, the Commission recently issued a Notice of Proposed Rulemaking concerning open access for Interconnection Facilities, proposing new rules to remove barriers to competitive generation development.

4) Specifically, what can be done to improve access to transmission in these "solar and geothermal energy zones?"

Answer: Access to transmission is a critical issue for location-constrained resources. As noted above, the Commission has worked with relevant federal agencies to improve and streamline federal permitting processes for transmission on public lands. If confirmed, I will continue to support these important interagency efforts.

**Question on waste heat recovery:**

**Ms. LaFleur:**

In their 2009-2014 Strategic Plan, FERC established a "Long Term Performance goal" that by FY2013, 100% of jurisdictional natural gas companies will be "examined for feasibility of installing waste-heat recovery systems." The plan called for FERC to conduct bi-monthly reviews of electronic bulletin boards (EBB) "to gauge the availability of information on waste-heat recovery potential," beginning in FY2010 and continuing through FY2014 and for Pipeline companies to voluntarily post information about waste heat feasibility on their Electronic Bulletin Boards (EBBs).

FERC made these recommendations formal in July 2012 rulemaking, Order No. 587-V. O It is my understanding that the rulemakings have had limited impact to encourage companies to actually move toward implementing waste heat.

1) How has FERC worked toward this goal since that time? Has the natural gas supply chain made measurable progress in implementing waste heat technologies on pipelines and other operations?

Answer: Consistent with the performance goal you cite, the Commission has examined 100 percent of interstate pipelines' EBBs to verify that each pipeline has examined its system to identify resources conducive to the installation of waste-heat recovery facilities and made such information publicly available. The Commission does not track installation of waste-heat recovery facilities, but I understand that the industry has moved to seek opportunities to install such facilities.

2) FERC requires pipeline companies to demonstrate consideration of waste heat recovery technologies when they work with FERC to site a new facility. Does FERC have any

mechanisms for prioritizing siting applications for pipelines and other natural gas operations that include co-benefits like waste heat?

Answer: The Commission acts on all natural gas project applications as soon as the record is complete in each case, and processes multiple applications simultaneously. Because Commission practice does not establish a queue for pipeline applications, there is no process by which certain projects can be prioritized over others.

## **Question on Wholesale Electric Market Reform**

**Mr. Bay and Ms. LaFleur,**

It is my understanding that FERC is currently investigating the current centralized capacity markets to ensure they function efficiently and support the procurement and retention of resources necessary to meet future reliability and operational needs. In particular, FERC is examining whether rule changes are necessary so that these markets send the proper investment signals in light of structural changes impacting the power sector.

1) As the nation's energy supply becomes more diverse, how important do you think regional coordination and more efficient dispatch services will ensuring that variable energy resources like geothermal and solar power generation are cost-effectively integrated into the electric grid?

Answer: I believe that regional coordination and efficient dispatch services are very important to ensure that variable energy resources are cost-effectively integrated into the grid. In recent years, the Commission has issued significant orders that address these issues, including Order No. 1000 to improve regional coordination and transmission planning, and Order No. 764 to remove barriers to the integration of variable energy resources. If confirmed, I will continue to work to ensure that the rules governing organized and bilateral wholesale electric markets, including rules governing regional coordination and resource dispatch, further non-discriminatory access to those markets for all resources.

As you may have heard, the biggest electric utility in my state, NV Energy, is attempting to form a regional energy imbalance market with PacifiCorp, and California ISO.

2) What are your thoughts on the ongoing voluntary efforts in the West to explore potential customer, clean energy, and reliability benefits that can be achieved by implementing a regional energy imbalance market?

Answer: I have been closely following the discussions surrounding the potential for developing an energy imbalance market in the West over the past several years. Commission staff has served as a resource to those exploring the idea of a Western energy imbalance market and to those with questions about how such a market might affect them. However, because a number of cases concerning the formation of a Western energy imbalance market are currently pending before Commission, I cannot comment specifically on the merits of such a market.

5) It has been contended that capacity markets should remain voluntary and that states and regions should make the decision whether or not to implement such a market, and if so, be allowed to design them to reflect the unique features of the relevant market. What's your view here?

Answer: Membership in a regional transmission organization (RTO) or independent system operator (ISO) is voluntary, and I believe it should continue to be voluntary. Regulatory structures in different regions of the country appropriately reflect the unique features of the relevant region. Within an RTO or ISO structure, I believe that states would have an important role in any consideration of implementing a capacity market.

## **FROM SENATOR MURKOWSKI**

**Question 1.** Lessons learned from surviving January's polar vortex revealed that key systems relied on coal capacity slated for retirement to keep the power on. For example, I was told AEP relied upon 89 percent of the coal capacity that is slated for retirement next year, in order to meet demand. You recently stated that during the polar vortex the electricity grid was "close to the edge" of breaking. Commissioner Moeller has said that "the power grid is now already at the limit." The Department of Energy estimates that EPA rules will force several hundred coal-based electricity plants to close, and pending rules for greenhouse gases could close another 100 power plants.

a. What actions has FERC taken to advise the EPA of the dangerous impacts their rules are having on grid reliability? Is FERC playing a formal role in evaluating the EPA proposed rules? Does a MOU exist between the EPA and FERC to govern your discussions?

Answer: The Commission has a responsibility to help ensure that grid reliability is maintained as EPA rules are implemented. The Commission's formal role in reviewing EPA rules occurs during the OMB interagency review process. Commission staff reviewed parts of the draft Greenhouse Gas rule as a part of that OMB process and provided input to the EPA from a reliability perspective. I am reviewing the June 2 proposal and note that it gives significant flexibility to states and permits regional approaches to compliance. I look forward to discussing the proposed rule with the EPA, utilities, NARUC, ISOs/RTOs, NERC, and industry.

In addition to commenting on EPA's proposal, FERC also has a role in ensuring that the energy infrastructure and markets adapt to new environmental requirements through its authority over transmission ratemaking and natural gas permitting and ratemaking. For example, if additional gas generating capacity is needed and more gas pipelines need to be built, FERC has a role in certificating those pipelines. FERC also has a role in ensuring that the regulatory rules under its jurisdiction are sufficient to attract needed investment in electric transmission and gas pipelines.

FERC, EPA and DOE staff have jointly developed a document that describes how the three agencies are monitoring, within their respective jurisdictions, the progress in responding to certain EPA regulations affecting the electric power sector.

b. Did FERC conduct, or are you in the process of conducting, a grid impact analysis on the greenhouse gas regulations that are proposed by the EPA?

Answer: The greenhouse gas regulations were proposed on Monday, June 2, 2014. FERC has not conducted a grid impact analysis of those regulations.

c. What do you believe are the three largest threats to baseload generation?

Answer: I believe that baseload generation plays a critical role in our resource mix. However, I am aware that certain of these resources have recently found it difficult to ensure cost recovery in the wholesale power markets. For example, the relatively low cost of natural gas has helped drive down energy prices and revenues. In addition, state and federal policies that impose new environmental requirements and seek to procure specific resource types have challenged baseload resources. Finally, the emergence of new competitive technologies has also challenged baseload resources.

FERC policies should focus on ensuring that the rules that govern organized and bilateral wholesale electric markets promote the delivery of reliable power in a manner that is nondiscriminatory and resource-neutral, resulting in efficient price signals that market participants can rely on to make investment decisions. Although the drivers of power supply changes are largely outside of the Commission's jurisdiction, we must be aware of, and adapt to, these developments in order to carry out our statutory responsibilities to ensure just and reasonable rates, a reliable power grid, and fair and efficient markets

d. In general, widespread and persistent outages to the Bulk Power System are rare. However, as assets begin to retire, there is a quiet consensus that the risk of a "localized" reliability effect is growing. If true, would you find this impact acceptable if caused by federal policy?

Answer: Reliability is a top priority for me and must be sustained in the face of any change in federal policy. That is why I think it is important to work with NERC, utilities, NARUC, the RTOs/ISOs, and industry to understand the impacts of changes in policy and understand any reliability impacts that might occur as a result of such changes.

**Question 2.** As you may be aware, the *Energy Law Journal* recently published an article that alleges numerous due process and substantive violations in FERC enforcement.

a. Has the Commission adopted a definition of market manipulation? What definition does the Commission use to identify market manipulation?

Answer: The Commission adopted a definition of market manipulation in Order No. 670 in 2006. Under the Commission's regulations, "[t]he Commission will act in cases where an entity: (1) uses a fraudulent device, scheme or artifice, or makes a material misrepresentation or a material omission as to which there is a duty to speak under a Commission-filed tariff, Commission order, rule or regulation, or engages in any act, practice, or course of business that operates or would operate as a fraud or deceit upon any entity; (2) with the requisite scienter; (3)

in connection with the purchase or sale of natural gas or electric energy or transportation of natural gas or transmission of electric energy subject to the jurisdiction of the Commission.” An essential element of our anti-manipulation rule, as noted, is scienter—which refers to the state of mind of the individual or company engaging in the conduct. To establish a violation of the rule, the Commission must show that the subject of a market manipulation investigation engaged in the conduct at issue with actual intent or recklessness. That being said, the Commission is early in our work on manipulation cases and I believe the Commission should continue to assess whether additional guidance may be helpful going forward.

b. Should a person or company be liable for acting consistently with the governing market rules?

Answer. Under Order No. 670, “[i]f a market participant undertakes an action or transaction that is explicitly contemplated in Commission-approved rules and regulations, we will presume that the market participant is not in violation of the Final Rule.” However, this presumption is not dispositive of whether or not an entity has violated Commission rules and regulations, and market manipulation under the Commission’s Rule 1c is not limited to tariff violations. In considering enforcement matters before the Commission, I always take into account the principle set forth in Order No. 670.

c. Do you believe FERC investigations should be reformed to follow guidelines similar to those adopted by the SEC?

Answer. My understanding is that many of the rules that govern FERC investigations are similar to those adopted by the SEC. While there may be some differences in the text of the rules and investigative practices, I am not aware of any specific FERC rules or practices that should be changed to make them more similar to the SEC’s investigative guidelines. However, I am always looking for ways to improve our procedures to make them more efficient and fair, and that is true of Enforcement matters and matters throughout the Commission.

d. The law review article asserts when individuals are under FERC investigation, FERC enforcement does not have to provide access to deposition transcripts or provide the information – even if exculpatory -- to individuals that has been shared with the Commission. Is this true, and if so, do you personally believe individuals should have timely access to their deposition transcripts and information that was shared with Commissioners?

Answer. Commission regulations set forth at 18 C.F.R. § 1b.12 do require that subjects of investigations be given access to their deposition transcripts. In addition, Commission policy, set forth in the *Policy Statement on Disclosure of Exculpatory Materials*, Enforcement of Statutes, Regulations, and Orders, 129 F.E.R.C. ¶ 61,248 (2009), requires that “[d]uring the course of an investigation conducted under Section 1b of the Commission’s regulations, Enforcement staff will scrutinize materials it receives from sources other than the investigative subject(s) for material that would be required to be disclosed under *Brady* [the policy requiring the provision of exculpatory information]. Any such materials or information that are not known to be in the subject’s possession shall be provided to the subject.” I personally believe that individuals

should have timely access to both their deposition transcripts and exculpatory material.

I have not previously considered the question of whether subjects of investigations should have access to all of the information that Enforcement staff has shared with the Commission. I note that there are some categories of information that would not be appropriate to share with individual investigative subjects. For example, there are work product, attorney-client, and deliberative process protections that allow Commissioners to communicate effectively with Commission staff—whether Enforcement staff or any other program office staff. However, I am always looking for ways to improve our procedures to make them more efficient and fair, and that is true of Enforcement matters and matters throughout the Commission.

e. Should subjects of non-public investigations have the same access to the Commission as the Enforcement staff at an earlier stage in the proceedings than today? If so, when should parity be imposed? If not, why not?

Answer. The Commission’s policies provide that the subject of an investigation may communicate directly with the Commission, in writing, about anything relating to the case that the subject wishes to communicate—and at any time throughout the course of an investigation. Many investigative subjects avail themselves of this opportunity, and some have made multiple submissions directly to the Commission during the investigation stage. I believe this direct communication between subjects and the Commission is important for both the subject and the Commissioners. However, as noted above, I am always looking for ways to improve our procedures to make them more efficient and fair, and that is true of Enforcement matters and matters throughout the Commission.

**Question 3.** One of the responses to the EPA’s regulations on the use of coal is a “rush to gas”. Industry is turning to natural gas as an alternative to coal as a result of the lower price and increased supply of natural gas, causing a new reliance on natural gas to fuel existing and new power plants. However, the polar vortex highlighted coordination problems between the gas and electricity markets.

a. What steps should FERC take to ensure that gas-electric coordination does not become a problem in terms of reliability or excessive price volatility? Does FERC have sufficient authority to impose and enforce any necessary solutions?

Answer: FERC has proactively engaged the electric and natural gas industries to work to enhance gas-electric coordination. The Commission convened conferences throughout the country in 2012; they were widely attended by gas and electric industry stakeholders, representatives from state regulatory commissions, and staff from NERC. The subjects at these conferences – communications and scheduling – were discussed at length over the series of meetings. The result was that the Commission issued a Final Rule allowing interstate natural gas pipelines and electric transmission operators to share non-public operational information to promote the reliability and integrity of their systems. In addition, in March of 2014, the Commission issued a NOPR to gather public comments on its proposals to revise the natural gas operating day and scheduling practices used by interstate pipelines to schedule natural gas transportation service. In order to address gas-electric coordination issues, the proposed revisions include starting the natural gas operating day earlier, moving the Timely Nomination

Cycle later, and increasing the number of intra-day nomination opportunities to help shippers adjust their scheduling to reflect changes in demand.

The Commission also initiated investigations under section 206 of the FPA into the day-ahead scheduling practices of the RTOs and ISOs to determine if they are just and reasonable and to ensure that these entities' scheduling practices correlate with any revisions to the natural gas scheduling practices that may be adopted by the Commission in a Final Rule stemming from the NOPR. In a third order, the Commission initiated an NGA section 5 show cause proceeding requiring all interstate natural gas pipelines to revise their tariffs to provide for the posting of offers to purchase released pipeline capacity in compliance with 18 CFR §284.8(d) of the Commission's regulations, or to otherwise demonstrate full compliance with that regulation.

The Commission has also asked staff for quarterly reports through 2014 on industry efforts and initiatives on gas-electric coordination. Those reports are posted on the Commission's website.

b. Does the shale gas revolution raise the prospect of an overreliance on a single fuel for U.S. power generation? What would this mean for electric reliability?

Answer: An adequately diverse fuel supply can help in addressing a range of possible risks or problems. For example, coal supplies were recently affected by delivery curtailments; this summer, hydropower generation may be affected in some locations by drought conditions. Similarly, natural gas delivery can be impacted by pipeline constraints. As noted in my answer to Question 3(a), the Commission has focused extensively on the coordination of the electric and natural gas industries, and will continue to do so. The broader issue of fuel diversity was discussed at our April technical conference on winter market operations in the RTOs/ISOs.

c. What in your view are the reliability implications of increasing natural gas use for electricity generation, especially in the Northeast? Are existing federal policies and initiatives adequate to ensure gas-electric interdependency does not become a reliability problem in the future?

Answer: The rapid increase in the use of natural gas for electricity generation will continue to require significant work by the industry, State commissions and FERC to ensure that reliability is maintained. While natural gas can provide economic benefits, its increased use in the generation of electricity contributes to potential coordination issues. As noted in my answer to Question 3(a), the Commission has proposed certain regulatory changes to address this issue.

d. Does FERC have a role in encouraging the development of gas pipeline infrastructure to serve regions of increasing demand but with limited logistics?

Answer: FERC plays a key role in facilitating interstate pipeline expansions to serve regions of increasing demand by issuing certificates for the construction of new facilities. Over the past 10 years (since the beginning of 2003 through the present), FERC has certified 93.1 Bcfd of capacity in new pipelines and expansions, 1,053.7 Bcf of storage capacity, and nearly 37 Bcfd of LNG regasification capacity. The Commission has also approved 2.76 Bcfd of LNG liquefaction capacity at one terminal. With respect to encouraging pipeline infrastructure development in

other ways, at our April technical conference on winter market operations in the RTOs/ISOs, there was discussion concerning the pricing of fuel security into the wholesale power markets. The Commission is presently evaluating this issue in its evaluation of the comments received from the technical conference.

**Question 4.** Regarding capacity markets:

a. What is the appropriate path forward with respect to organized and bilateral wholesale markets? Can and should they co-exist or should all utilities ultimately be in organized markets?

Answer: I do not believe that there is one particular path forward with respect to market participation. Membership in an RTO or ISO is voluntary, and I believe it should continue to be voluntary. Thus, organized and bilateral wholesale markets will continue to co-exist. The Commission exercises its jurisdiction to ensure that rates, terms and conditions of service are just and reasonable over both organized and bilateral wholesale markets.

b. Do you believe that the wholesale electricity markets operated by regional transmission organizations are achieving net benefits for consumers as compared to those regions without RTOs?

Answer: It is difficult to validly compare results in RTO and bilateral market regions since those areas of the country with historically higher energy costs have been more likely to utilize competitive markets. However, I believe that those entities that have voluntarily joined organized regional wholesale markets have found significant benefits associated with RTO membership, such as greater price transparency, access to more efficient ancillary and balancing services, more efficient transmission grid management, and decreased opportunities for discriminatory transmission practices. As detailed in the Commission's April 2011 report to Congress on performance metrics for RTOs and ISOs, security constrained economic dispatch and ISO/RTO efficiency programs have yielded demonstrable benefits. For example, PJM was able to reduce annual generation production costs by \$122 million due to improved generation dispatch in 2009. Security constrained economic dispatch also reduced reliance by ISOs and RTOs on less efficient and less reliable physical and manual procedures, such as transmission loading relief, to resolve system constraint problems.

c. Do you think that there is a sufficient level of transparency in pricing and other relevant data from the electricity markets, particularly those operated by RTOs?

Answer: I believe that the Commission has enacted rules that provide for transparency in the electricity markets. First, each public utility transmission provider must post information on available transmission capacity on its website. In addition, Commission regulations require sellers of wholesale services to make quarterly reports detailing transactions, and this information is made available to the public roughly one month after it is submitted. The RTOs and ISOs also provide a source of price transparency by posting pricing data on their websites. I believe that the Commission should always remain open to ideas to promote additional transparency.

d. How might FERC ensure that the capacity markets do not impede local and state resource decisions?

Answer: The Commission staff issued a white paper and held a technical conference in September 2013 to consider how current centralized capacity market rules and structures are supporting the procurement and retention of resources necessary to meet future reliability and operational needs. The issue of how capacity markets can support local and state resources decisions was a key issue in this technical conference. The Commission is presently evaluating this issue in its consideration of possible next steps as a follow-up to the technical conference.

e. Do you believe a 3-year capacity market commitment period used by RTOs is the appropriate time period to capture the value of capacity?

Answer: Both the staff white paper on capacity markets and the September 2013 technical conference explored the issue of what is the appropriate commitment and forward period in centralized capacity markets. The Commission is presently evaluating this issue in its consideration of possible next steps as a follow-up to the technical conference.

f. Do you believe the RTO capacity markets are attracting and/or retaining baseload power resources?

Answer: The centralized capacity markets are designed to provide appropriate price signals to facilitate entry of new resources as needed and provide for the appropriate price signals for the orderly retirement of older, less efficient resources. The capacity markets have been attracting and retaining many types of resources, including baseload resources. For example, PJM's base residual action for 2017/2018 procured about 4,800 MW of new combined cycle generation. The Commission is presently evaluating this issue in its consideration of possible next steps as a follow-up to the technical conference.

## **SENATOR JEFF FLAKE**

**Question 1.** In response to a question from Senator Cantwell, you indicated that you have "dissented on a few orders to show cause in terms of the application of the penalty guidelines, and [you have] also had some procedural dissents in some of the procedures that are used in the investigations." Please list your dissents to cases that were brought before the Commission during Mr. Bay's tenure as the head of the enforcement division?

Answer: My dissents (and relevant concurrences) in public Commission enforcement orders are as follows:

*Competitive Energy Services, LLC*, 140 FERC ¶ 61,032 (2012)  
*Rumford Paper Company*, 140 FERC ¶ 61,030 (2012)  
*Barclays Bank PLC*, 143 FERC ¶ 61,024 (2013)  
*Competitive Energy Services*, 144 FERC ¶ 61,163 (2013)  
*Richard Silkman*, 144 FERC ¶ 61,164 (2013)  
*Lincoln Paper and Tissue, LLC*, 144 FERC ¶ 61,162 (2013)

I have also dissented on one non-public order related to the timing of access to deposition transcripts in a confidential enforcement matter.

Finally, although not strictly an enforcement case, I dissented in *J.P. Morgan Ventures Energy Corporation*, 141 FERC ¶ 61,131 (2012), a rate case related to alleged misrepresentations during the course of an enforcement investigation.

**Question 2.** Please identify the specific investigative procedures employed by Mr. Bay's enforcement division that you opposed?

Answer: As I noted during the May 20 hearing, the bulk of my enforcement-related dissents were focused on procedural issues.

One such issue was the application of the Commission's Penalty Guidelines, which were established in two policy statements from which the Commission has the discretion to depart.<sup>1</sup> In the *Competitive Energy Services, LLC* (CES), *Lincoln Paper and Tissue, LLC* (Lincoln), and *Rumford Paper Company* (Rumford) cases cited above, I dissented (or, in some instances, concurred) with respect to the narrow issue of the calculation of the civil penalty range. Specifically, I believe that in those cases strict adherence to the Penalty Guidelines had the effect of double-counting the duration of the violations and unduly increasing the amount of the civil penalty range.

The Commission's Penalty Guidelines increase penalty levels based on the cumulative value of the monetary loss caused by the violation, which in those cases was directly attributable to the duration of the behavior at issue. The Penalty Guidelines also include a separate duration adder that increases the penalty level based on the number of days the behavior persisted. Thus, in the CES, Lincoln, and Rumford cases, the duration of the violation was counted twice in calculating the civil penalty range, as much as tripling the top end of the range that would have been resulted if duration had not been double counted.

I believe that civil penalties should reflect the magnitude of the fraud committed and that applying a separate duration adder may be appropriate in some circumstances. However, when the Commission exercises its civil penalty authority, it must do so with care and due regard for the circumstances of the particular violation. In some situations, the Commission may have to depart from the Penalty Guidelines and assess a civil penalty that is tailored to the circumstances at hand. I believe that in order to appropriately match the penalty to the violations in the CES, Lincoln, and Rumford cases, the Commission should have exercised its discretion to depart from the Penalty Guidelines.

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<sup>1</sup> *Revised Policy Statement on Penalty Guidelines, Enforcement of Statutes, Orders, Rules, and Regulations*, 132 F.E.R.C. ¶ 61,216 (2010); *Policy Statement on Penalty Guidelines, Enforcement of Statutes, Orders, Rules, and Regulations*, 130 F.E.R.C. ¶ 61,220 (2010) (collectively, "Penalty Guidelines").

Similarly, in *Richard Silkman*, I dissented in part, with Commissioner Norris, on the narrow issue of the penalty assessed on Dr. Silkman, who as a managing member at CES was involved in fraudulent behavior in the ISO-New England market. Commissioner Norris and I agreed with the majority that Dr. Silkman, as an individual, and CES, as the corporate entity, were separately liable for violating the Commission's regulations. However, we disagreed with the penalty amount determination because it failed to account for the fact that Dr. Silkman, as a managing member, would likely also be required to pay some portion of the penalty imposed upon CES, a fact recognized in the Commission's order assessing a civil penalty on CES. Therefore, we believed that the Commission should have considered the collective impacts of both the penalty against CES and the individual penalty against Dr. Silkman in determining the appropriate penalty amount.

I have also dissented on two procedural matters unrelated to the assessment of civil penalties. First, in the *Barclays* case cited above, I dissented from the majority's decision to reject Barclay's motion to quash a subpoena. The Office of Enforcement sought to enforce a subpoena against Barclays after the Commission had issued an Order to Show Cause why Barclays should not be found to have violated the Anti-Market Manipulation Rule, and after Barclays had elected, under Section 31(d) of the Federal Power Act, to forego a hearing before an administrative law judge and instead have the Commission "promptly assess" a civil penalty for the alleged misconduct that could be reviewed in U.S. District Court. In my view, the statutory directive that the Commission "promptly assess" a civil penalty could not be reconciled with further investigation into the conduct that was detailed in the Order to Show Cause and that would be reviewed by a District Court. Second, I dissented in a non-public order related to the timing of an investigation subject's access to deposition transcripts. The Commission's regulations state that even if good cause exists to deny witnesses a copy of his or her deposition transcript, "[i]n any event, any witness or his counsel, upon proper identification, shall have the right to inspect the official transcript of the witness' own testimony." I believe this regulation does not permit a delay in providing access to transcripts.

Finally, in the *J.P. Morgan Energy Ventures* case cited above, I disagreed with the majority's decision to suspend J.P. Morgan's market-based rate authority (which allows a utility to sell energy and ancillary services at market-based rather than cost-based rates) in response to J.P. Morgan's alleged misrepresentations during the course of an investigation into whether the company violated the prohibition on energy market manipulation. I viewed such a suspension as inconsistent with the Commission's market-based rate regulations. Instead, I believe that any misrepresentations should have been addressed as part of the ongoing investigation into J.P. Morgan's bidding activities, either as separate counts of obstruction, or as aggravating circumstances factoring into the determination of a civil penalty.

**Question 3.** Environmental Protection Agency ("EPA") regulations are having a significant impact on the nation's energy portfolio. With plant retirements and the prospect of stringent EPA rules on the horizon, plant retirements are occurring and more are likely. Those retirements could have a corresponding impact on the reliability of the electric grid. To what extent do you believe EPA should consider the impact its regulations will have on reliability of the grid?

Answer: It is critically important that reliability be sustained in the face of any change in federal policy. Commission staff reviewed parts of the draft Greenhouse Gas rule as a part of the OMB interagency review process and provided input to the EPA from a reliability perspective. EPA issued its proposal on June 2. I am reviewing that proposal and note that that it gives significant flexibility to states and permits regional approaches to compliance. I look forward to discussing the proposed rule with the EPA, utilities, NARUC, ISOs/RTOs, NERC and industry.

**Question 4.** What do you believe FERC's agenda should be in the next year?

Answer: As I noted in my recent nomination hearing before this Committee, the nation is going through a significant change in energy supply, which is shaping much of the Commission's agenda on both infrastructure and markets. In the area of infrastructure, we are seeing substantial investment in electric transmission, gas pipelines, and liquefied natural gas facilities, which is driving work at the Commission on both electric and gas ratemaking and project permitting. In addition, the changes in the nation's resource mix will require continued oversight of competitive electric markets, to ensure they are fair and efficient and attract investment needed to support reliability and compliance with environmental regulations. Finally, grid reliability and security, including the Commission's oversight of NERC, must remain a high priority, with particular emphasis on emerging issues like cyber and physical security. As I noted in my testimony at the hearing, these priorities will require that FERC continue to engage with other federal agencies like the EPA and the Commodities Futures Trading Commission, and with our state counterparts.