

**U.S. Senate Committee on Energy and Natural Resources**  
**June 8, 2021 Hearing: Pending Nominations**  
**Questions for the Record Submitted to Mr. Samuel T. Walsh**

**Questions from Ranking Member John Barrasso, M.D.**

**Question 1:** The General Counsel is established in the Department of Energy Organization Act as one of the Department’s Principal Officers. The Act, however, provides only that the General Counsel, “*shall perform such functions and duties as the Secretary shall prescribe.*”

- a. Do you agree that because of this broad grant of discretion to the Secretary, this Committee must have independent confidence that the person confirmed as General Counsel will ensure that the Department follows the law, including ethics laws, and meets its contractual commitments—in effect that the top lawyer will “speak truth to power”?

**Answer 1a:** Yes, if confirmed as General Counsel, it would be my role to provide frank and candid legal advice to the Secretary and other leaders within the Department, even when that advice might be received as unwelcome or inconvenient.

**Question 2:** On April 29, when President Biden announced his intention to nominate you, Secretary Granholm said of you, Dr. Light, and another prospective nominee:

*“From solving environmental challenges through the power of the basic sciences, to guiding some of America’s most critical international climate negotiations, to helping the federal government navigate the clean energy transition, each of these nominees brings a wealth of experience that will be instrumental as we work towards achieving the President’s ambitious climate goals.”*

- a. Can you assure this committee that, no matter what, you will see to it that the Department meets its legal and contractual obligations with respect to its traditional functions and domestic energy production and use, particularly concerning domestic production of coal, natural gas, and oil?

**Answer 2a:** Yes, if confirmed as General Counsel, it would be my role to ensure that the Department meets its legal and contractual obligations without regard to the kind of energy at issue.

**Question 3:**

- a. Have you had any discussion with Secretary Granholm about the scope of the functions and duties she will assign to you?

**Answer 3a:** No. I have had one brief conversation with the Secretary the purpose of which was for us to get to know each other. We did not discuss the scope of the functions or duties I might be assigned.

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- b. If so, has she been supportive of receiving unbiased legal advice from you that is grounded in the Department's legal obligations?

**Answer 3b:** N/A

**Question 4:** You have already committed to appear before this Committee.

- a. Will you also be available to me and to my staff promptly and directly to answer questions about the Department's legal authorities and obligations?

**Answer 4a:** Yes, if confirmed, I am committed to ensuring that the Department is responsive to oversight requests and provides Congress with the information that it needs consistent with applicable law and regulation.

- b. Will you counsel other Department officials to be similarly available to answer questions within the scope of their duties, even if they are not so inclined?

**Answer 4b:** Yes, I will counsel Department officials to be available to answer questions as consistent with the applicable laws and Department policies.

**Question 5:** It appears that the Biden Administration has instructed agencies not to process any energy applications until it determines how to incorporate a requirement related to its effort against climate change.

- a. Is it legal for an agency to delay the processing of applications that otherwise meet statutory and regulatory requirements?

**Answer 5a:** The procedural requirements of licensing decisions – including any mandatory timelines that might apply – are contained in the authorizing statute and/or the implementing regulations of the applicable agency. If confirmed as General Counsel, I would do everything in my power to ensure that the Department of Energy meets its statutory and regulatory requirements in processing applications.

The Department's discharge of its obligations with respect to pending applications for LNG exports is of interest to me and many members of this Committee.

- b. Do you commit to determine for the committee the status of each pending application for the export of LNG?

**Answer 5b:** If confirmed, I would be more than happy to provide, in cooperation with the Department's Office of Fossil Energy, updates on LNG proceedings at the Committee's request.

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- c. Do you commit to promote the prompt processing of energy applications and the prompt issuance of the related authorizations?

**Answer 5c:** The Department’s natural gas import and export orders are issued by the Department’s Office of Fossil Energy. The Office of General Counsel reviews those orders for legal sufficiency and in some cases assists in drafting. I can commit that, if confirmed, the Office of General Counsel will perform its functions in those proceedings as promptly as possible.

**Question 6:** You are well aware that the Federal Energy Regulatory Commission has siting authority for interstate natural gas pipelines.

- a. Should federal siting authority on the gas side be limited, such as New Jersey and other states have argued?

**Answer 6a:** The Federal Energy Regulatory Commission (and its predecessor the Federal Power Commission) have exercised siting authority over interstate natural gas pipelines for the better part of a century. The Commission’s oversight is partly responsible for the robust interstate pipeline system that presently serves consumers nationwide. The Department of Energy plays no role in that process and is barred by statute from exercising any supervisory authority over the Commission.

**Question 7:** Almost all electric transmission lines are installed overhead while gas pipelines are almost all underground.

- a. Should current federal authority be enhanced for electric transmission but limited for gas pipelines?

**Answer 7a:** If confirmed, I would be happy to provide technical assistance to the Committee or others in Congress with respect to legislative efforts on transmission development. I am not aware of any legislative efforts to curtail the Federal Energy Regulatory Commission’s authority over natural gas pipelines.

**Question 8:** In the responses to a question for the record, Secretary Granholm stated that,

*“The ability of generation capacity to respond when called upon is one of many important attributes of performance that should be valued in the markets.”*

- a. Do you agree that we need to ensure electricity markets properly value the security and resiliency provided by existing baseload capacity, like gas, coal, and nuclear?

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**Answer 8a:** I agree that the ability of generation capacity to respond when called upon is an attribute that should be valued in electricity markets, and that different types of generation may have different technical capabilities in this respect.

**Question from Senator James E. Risch**

**Question 1:** In 1995, the State of Idaho, the Department of Energy, and the US Navy entered into an agreement, referred to as the Batt Agreement related to the storage, treatment and disposal of DOE and Navy Spent Nuclear Fuel that is stored at the Idaho National Lab. During the last administration, DOE and the State of Idaho added a supplemental agreement that would allow the INL to continue doing important nuclear research and development while ensuring that there is accountability for the Department to dispose of the wastes stored on site.

This was a positive development that required a lot of good work and goodwill between the State of Idaho and the Department. The relationship between the DOE General Counsel and the state needs to be strong. Should you be confirmed as General Counsel, maintaining this momentum and productive working relationship between DOE and the State of Idaho will be your responsibility. I would encourage you to reach out to Governor Little and Attorney General Wasden so DOE can continue to make progress. Will you commit to this?

**Answer 1:** Yes, if confirmed, I would be pleased to reach out to Governor Little and Attorney General Wasden.

**Questions from Senator Steve Daines**

**Question 1:** Mr. Walsh, as General Counsel, if confirmed, you will be advising the Secretary and the President on the legal authorities they have to carry out their agenda. You will also need to defend the actions taken by this administration after rules are published or actions are taken. It is incumbent on the Counsel to “speak truth to power” and advise the Secretary and President when you believe they are not following the law as written. Do you commit to being a strong voice in the administration for upholding the rule of law and, as necessary, speak up if you believe laws are being bent or broken?

**Answer 1:** Yes, if confirmed as General Counsel, it would be my role to provide frank and candid legal advice to the Secretary and other leaders within the Department, even when that advice might be received as unwelcome or inconvenient.

**Question 2:** Mr. Walsh, Congress is very explicit when they give a department or agency authorities in enacted legislation. Often Congress gives authority or directs actions for multiple departments over a single provision of

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law, which may cause jurisdictional disagreements between agencies. Will you be a strong voice for the Department of Energy to ensure that they are exercising their given authorities when more than one department is included in an existing or new law?

**Answer 2:** Yes, if confirmed as General Counsel, one aspect of my role would be to represent the Department of Energy forcefully in interagency processes pertaining to legal matters.

**Questions from Senator James Lankford**

**Question 1:** A report from the Obama administration in 2010 reinforced the importance of faith-based partnerships. Among the recommendations put forward in the report was to draw more on the local expertise and relationships of faith-based organizations as a way of filling gaps in the provision of essential services. Faith-based organizations are excellent, effective, and efficient at meeting the needs of our most at-risk populations. Do you agree that it is important to continue pursuing ways to engage and expand faith-based partnerships as a way of effectively addressing some of the most critical needs in our country?

**Answer 1:** Yes. President Biden has, by Executive Order, reiterated the importance of federal agencies drawing on the capabilities of faith-based organizations. If confirmed, I would look forward to participating in that effort where applicable.

**Question 2:** The Supreme Court has, in multiple decisions, reiterated that religious organizations cannot be discriminated against in the distribution of a public benefit for which they otherwise qualify because of their religious beliefs or identity. Will you commit to ensuring that no policy of your Department will disqualify a religious organization from receiving aid or participating in grant programs simply because of the organization's religious beliefs or because the organization receives statutory protections for religious freedom like those in Title VII and Title IX?

**Answer 2:** If confirmed, I would instruct agency officials to adhere to all legal requirements pertaining to religious freedom.

**Question 3:** An important part of prompting and expanding faith-based partnerships is providing clarity on the legal obligations that will be expected of faith-based organizations when they partner with the government. Title VII of the Civil Rights Act of 1964 protects the ability of religious organizations to hire employees that support its religious beliefs and mission. Do you agree that it is both logical and appropriate that religious organizations should be able to hire employees that support the religious mission and beliefs of the organization? Do you agree that it is inappropriate for the federal government to dictate to a house of worship or a religious organization what tenets of the faith should be observed? Will you commit to ensuring that any nondiscrimination policy implemented by your agency will reinforce the hiring protections that Congress has passed in Title VII for religious organizations?

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**Answer 3:** Yes, I can commit that, if confirmed, I would ensure that agency policies comply with Title VII and other applicable laws.

**Questions from Senator John W. Hickenlooper**

**Question 1:** As we look to account for the real-world costs of climate change, one tool we have to quantify these costs and inform practical decision making is the social cost of carbon. The Department of Energy has stood out among government agencies for its use of the social cost of carbon for dozens of energy efficiency regulations. DOE has many operations where the social cost of carbon has not yet been applied. As examples, DOE could potentially incorporate the social cost of carbon into federal building codes, or into the Energy Star Federal Energy Management Program, in order to influence procurement across all of government. Do you see a path under existing law for expanding the use of the Social Cost of Carbon within DOE in order to better account for the climate costs and benefits of government decisions?

**Answer 1:** In Executive Order 13,990 (§ 5(b)(ii)(C)) President Biden directed the Interagency Working Group on the Social Cost of Greenhouse Gases, of which the Department of Energy is a member, to “provide recommendations to the President, by no later than September 1, 2021, regarding areas of decision-making, budgeting, and procurement by the Federal Government where the Social Cost of Carbon, Social Cost of Nitrogen, and Social Cost of Methane should be applied.” If confirmed, I would look forward to the recommendations of the Interagency Working Group and would provide any necessary legal support with respect to the Department’s legal authorities.