

U.S. Senate Committee on Energy and Natural Resources
November 15, 2018 Hearing: *Pending Nominations*
Answers to Questions for the Record Submitted to Mr. Bernard L. McNamee

Questions from Chairman Lisa Murkowski

Question 1: In addition to regulating electricity markets and natural gas pipelines, FERC also issues licenses to construct and operate hydropower projects. The delays associated with hydropower permitting are staggering. Approvals for issuing new licenses or relicensing existing dams can take over a decade and cost tens of millions of dollars. We've received testimony in this Committee that obtaining a hydro license renewal routinely exceeds \$20 million per license, with some proceedings topping \$50 million. These costs and delays are due to a number of factors, including lack of coordination among the FERC and the resource agencies, and redundant reviews at the federal and state level.

- How can the hydropower licensing process be improved?

Answer: I recognize the importance of hydropower as part of the nation's energy mix, and that it is important that the licensing process be as efficient and cost-effective as possible. FERC's Report on the Pilot Two-Year Hydroelectric Licensing Process submitted to Congress in May 2017 stated that multiple federal and state authorizations are needed before FERC can act on a license application, and delays in receiving these authorizations delay FERC action. I note that, pursuant to the America's Water Infrastructure Act of 2018, FERC recently announced that it will soon be convening an Interagency Task Force to assist in establishing expedited processes for issuing licenses for qualifying hydropower facilities at existing non-powered dams and for closed-loop pumped storage projects. These expedited processes are intended to help ensure a final decision by FERC on an application for a license within two years after receipt of a completed application. If confirmed, I commit to exploring with my colleagues ways in which FERC can streamline its processes and encourage other federal and state agencies with federal statutory authorities to improve timeliness.

Question 2: Earlier this year, FERC announced that it would conduct a review of its regulations under the Public Utility Regulatory Policies Act (PURPA) of 1978. PURPA was enacted 40 years ago to reduce our dependence on foreign oil for power generation by encouraging the development of renewable energy technologies. Today, renewable energy is widespread, and many stakeholders believe that the PURPA regulations are outdated and add unnecessary costs to customer utility bills.

- What, if any, changes do you believe need to be made to FERC's PURPA regulations?
- Many PURPA plants are paid what is called an "avoided cost" rate for power that is set by state regulators. Do you believe that all power plants, including PURPA plants, should be paid competitively-determined rates for power?
- Is now the time for the Commission to address avoided cost pricing, abuse of the "one-mile" rule, or the ability of utilities to waive the mandatory purchase obligation when they do not need additional power?

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Answer: Though I am generally familiar with PURPA issues, I have not studied what changes to FERC’s regulations may be appropriate in light of changing circumstances since PURPA’s enactment in 1978. My understanding is that many in the industry believe that FERC’s one-mile rule and the PURPA pricing provisions are matters that may be ripe for reconsideration, among other matters. I also understand that there have been complaints from all sides—electric utilities, qualifying facilities, and the states—concerning the current implementation of PURPA. I understand that FERC has instituted a re-examination of its regulations, and, if confirmed, I look forward to reviewing the issues related to PURPA implementation with my colleagues.

Questions from Ranking Member Maria Cantwell

Question 1: What role did you play in formulating or promoting the Grid Reliability and Resilience Pricing Rule that Secretary Perry proposed to the Commission last year?

Answer: During the development and filing of Secretary Perry’s Notice of Proposed Rulemaking for the Grid Reliability and Resilience Pricing Rule (submitted to FERC pursuant to Section 403 of the Department of Energy Organization Act), I served as the lawyer for the Department of Energy (DOE) in my position as the Deputy General Counsel for Energy Policy at DOE. After DOE submitted its proposal to FERC, I also represented DOE in explaining the purpose of the proposal, including at a National Association of Regulatory Utility Commissioners (NARUC) meeting in November 2017 and by responding to questions from members of the Senate Energy and Natural Resources Committee during hearings held on October 3, 2017, and July 19, 2018.

Question 2: What role, if any, did you play in formulating or promoting Secretary Perry’s plan to use his emergency and national security authorities under the Federal Power and Defense Production Acts to favor coal and nuclear power plants?

Answer: I was not involved in the drafting of the draft memorandum leaked to the press on or about June 1, 2018 that purported to be a proposal to use emergency and national security authorities under the Federal Power and Defense Production Acts to support generation resources on the electric grid. I was not an employee at the Department of Energy or the federal government at the time it was apparently drafted or leaked. When I returned to DOE as an employee (Executive Director of the Office of Policy), I reviewed the draft memorandum and began researching and trying to work through the substantive issues, as well as examining the statutes and legal justifications contained in the proposal. I stopped work on the draft memorandum in August 2018.

Question 3: What role, if any, have you played in supporting or promoting Secretary Perry’s plan since leaving the Department of Energy’s Office of General Counsel, either at the Texas Public Policy Foundation or in the Department of Energy’s Office of Policy?

Answer: In regard to the Section 403 Notice of Proposed Rulemaking for the Grid Reliability and Resilience Pricing Rule (Section 403 NOPR), I do not recall making any public statements

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of support or promoting the proposal while at the Texas Public Policy Foundation (but I do recall talking about the benefits of coal and nuclear to the grid). When I returned to DOE as Executive Director of the Office of Policy, I testified about the proposal before the Senate Energy and Natural Resources Committee during a hearing held on July 19, 2018. I may have discussed the Section 403 NOPR (or grid reliability and resilience) in some other contexts, but I do not recall making any public comments (other than my July 19, 2018 committee testimony) after my return to DOE in my role as Executive Director of the Office of Policy.

In regard to the “leaked memo” regarding the use of emergency powers under the Federal Power Act the Defense Production Act, I was not aware of it while at the Texas Public Policy Foundation and therefore did not comment on it. After I returned to DOE as Executive Director of the Office of Policy on June 6, 2018, I testified about the proposal before the Senate Energy and Natural Resources Committee during a hearing July 19, 2018. I may have discussed resilience issues in some other contexts, but I do not recall making any other public comments (other than my July 19, 2018 committee testimony) about the “leaked memo” after my return to DOE.

Question 4: The Federal Power Act requires FERC to ensure electric rates are just and reasonable. FERC fulfills that obligation by relying on market competition, on the theory that a market-based rate is a just and reasonable one. How can FERC ensure rates are just and reasonable if the Secretary of Energy uses his emergency and national security authorities to require regional transmission organizations and independent system operators to dispatch the high-cost coal and nuclear generation in preference to lower cost alternatives?

Answer: FERC has an obligation to examine any proposal that comes before it under its statutory mandates, including the requirement that rates be just, reasonable, and not unduly discriminatory. As an independent agency, any decisions FERC makes should be based on the law and facts presented to it.

Question 5: Since you have served as counsel and adviser in the Department of Energy on the grid resiliency order and have publicly expressed opinions on the merits of the proposed Defense Production Act and Federal Power Act emergency orders, your participation in any Commission proceedings related to these matters in the future may raise questions about your impartiality on these matters. Will you commit to consult with the Commission’s designated ethics officer to determine if your participation in any such proceedings would warrant your recusal under the Commission’s impartiality rules?

Answer: Yes, I commit to consult with FERC’s Designated Agency Ethics Official to determine if my participation in any matters related to Secretary Perry’s Notice of Proposed Rulemaking for the Grid Reliability and Resilience Pricing Rule would warrant my recusal under FERC’s rules and any relevant statutes. Likewise, I commit to consult with FERC’s Designated Agency Ethics Official to determine if my participation in any matters related to the Defense Production Act and Federal Power Act emergency orders referenced in the “leaked memo” would warrant my recusal under FERC’s rules and any relevant statutes.

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Question 6: The Commission has been called “the guardian of the public interest.” The purpose of the two principal laws it is charged with administering, the Federal Power Act and the Natural Gas Act, is to protect consumers from excessive rates and charges, not to promote the private interests of the utilities and energy producers. The courts have said that this role does not permit FERC “to act as an umpire blandly calling balls and strikes.” Instead, “the public must receive active and affirmative protection at the hands of the Commission.”

- a. Are you committed to that mission?
- b. If confirmed, will you place protection of consumers from excessive rates and charges ahead of the business interests of utilities and energy producers?

Answer: I am committed to FERC’s mission under the Federal Power Act (FPA) and the Natural Gas Act to ensure that rates for jurisdictional services are just and reasonable and not unduly discriminatory or preferential. Just and reasonable rates should both protect customers and offer service providers fair compensation for the services provided. If I am confirmed, I commit to working with my colleagues to fulfill this mission to ensure just and reasonable rates under the law.

Question 7: The Supreme Court has said that FERC must be “non-partisan” and that it must “act with impartiality.” It went on to say that FERC “is charged with the enforcement of no policy except the policy of the law. Its duties are neither political nor executive, but predominately quasi-judicial and quasi-legislative.” E & E News, on the other hand, said that if you were confirmed you “would be the most overtly political person to serve on FERC in decades.”

- a. How do you respond to that? Is it a fair characterization?

Answer: The article is not an accurate or fair characterization of me and it is not an accurate or fair characterization of how I will perform my duties if I am confirmed to serve as a FERC Commissioner. I commit that, if confirmed, I will perform my duties as a FERC Commissioner independently from any outside influence, private or governmental. As I stated at my confirmation hearing, I also commit that, if confirmed, I will be a fair, objective, and impartial arbiter in the cases and issues that would confront me as a Commissioner. My decisions will be based on the law and the facts; not politics. In my view, such impartiality helps sustain the rule of law by ensuring that all those who come before a government tribunal have confidence that their positions will be heard and thoughtfully considered.

- b. Given this characterization, what will you do to combat any appearance of your actions being “overtly political”?

Answer: As noted, I commit to deciding each matter on the merits as guided by the record that is developed in each proceeding and applicable case law.

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- c. If confirmed, will your actions be governed by the law and the public interest rather than the policies of the Administration?

Answer: Please see my responses to (a) and (b) above.

- d. How will you ensure that?

Answer: Please see my responses to (a) and (b) above.

Question 8: The Energy Policy Act of 2005 authorized FERC, acting through the North American Electric Reliability Corporation, to develop and enforce mandatory reliability standards, including cybersecurity standards, for the electric grid. The Aviation and Transportation Act of 2001 authorized the Transportation Security Administration to issue “such regulations as are necessary” to protect natural gas pipelines. TSA has chosen to rely on voluntary industry guidelines to protect natural gas pipelines from cyberattacks.

- a. Do you think that having mandatory standards for the bulk power system, but *only* voluntary guidelines for pipelines provides the security the country demands?

Answer: I believe that as a nation we must be vigilant about the security of our electric grid and natural gas pipelines, particularly in light of the growing threats from cyber attacks. I believe that critical energy infrastructure, including gas pipelines, should be protected by appropriate means. It is my understanding that the Transportation Security Administration (TSA) has the authority to establish mandatory cybersecurity regulations for natural gas pipelines. Thus, I consider it more appropriate for Congress and the TSA to address the adequacy of TSA’s natural gas pipeline cybersecurity program. However, if confirmed, I commit to working with my colleagues to explore this important issue.

- b. In your view, what are FERC’s authorities and responsibilities when it comes to cybersecurity of energy infrastructure, including gas pipelines?

Answer: FERC relies on mandatory Reliability Standards, voluntary best practices, and information-sharing to address cybersecurity threats to the bulk-power system.

FERC has the authority and responsibility to approve and enforce mandatory Reliability Standards developed by the North American Electric Reliability Corporation (NERC). FERC can also direct NERC to develop new or modified Reliability Standards. The current FERC-approved Critical Infrastructure Protection Reliability Standards address cybersecurity threats.

I understand that FERC, with its federal partners, conducts analyses and outreach to share threat information and conducts voluntary on-site network assessments to identify and apply best practices for cybersecurity. As an example, FERC and TSA staff developed a joint,

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voluntary assessment program to conduct in-depth cybersecurity assessments of natural gas pipeline entities.

Question 9: PURPA plays an important role in ensuring free market competition. There has been some discussion of FERC revising its implementing rules for PURPA.

- a. What is your view about the importance of competition and market access for independent power producers?
- b. Are you aware that many states refuse to implement PURPA by, for example, not offering long-term fixed-price contracts?
- c. What would you do as FERC Commissioner to remedy the failure of states to implement PURPA so that market access is provided and competition can flourish?
- d. In fully regulated markets with no wholesale energy competition, should PURPA allow for new, cheaper, privately financed generation sources to displace existing, inefficient, rate-based generation sources when there are clear benefits to ratepayers?

Answer: In general, competition and market access are important principles for all types of resources, including independent power producers. I understand that there have been complaints from all sides—electric utilities, qualifying facilities, and the states—concerning the current implementation of PURPA. Although I have not studied these matters in depth, I understand that FERC has instituted a re-examination of its regulations, and, if confirmed, I look forward to reviewing the issues related to PURPA implementation with my colleagues.

Question 10: The National Renewable Energy Laboratory has found that renewable electricity generation from technologies that are commercially available today, in combination with a more flexible electric system, can reliably supply 80% of total U.S. electricity generation in 2050. And we've seen how these resources protect the grid during periods of high stress. For example, during the 2014 Polar Vortex, wind, and demand response helped to keep the lights on, while there were a record number of gas and coal plants outages. Do you agree that renewable energy and demand side resources play an important role in reliably meeting our power needs?

Answer: Renewable energy resources, including wind, solar, biomass, and hydroelectric, and demand side resources, along with natural gas, coal, and nuclear resources, all play important roles in supporting a reliable grid to meet our nation's power needs.

Question 11: Do you believe that renewable energy and energy efficiency can serve America's national security and economic interests every bit as much as fossil fuels, and if not, why not?

Answer: When effectively integrated, all resources can enhance the functioning of the grid, and have the potential to contribute to our economic growth and national security.

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Question 12: As levels of wind and solar energy resources expand, how important will regional coordination and more efficient dispatch be in ensuring that these and other variable energy resources are cost-effectively integrated into the power grid? What can FERC do to facilitate this integration?

Answer: Regional coordination and efficient dispatch can enable the cost-effective and reliable integration of all resources into the electric grid. For instance, by taking advantage of a pool of geographically diverse resources, regional coordination helps balance power supplies, maintain grid reliability, and reduce costs for customers.

I believe FERC has a role in developing market rules that support the integration of all types of resources, including renewable energy resources, in a cost-effective and reliable manner. If confirmed, I look forward to working with my colleagues to monitor and review opportunities to ensure cost-effective integration of all resources, including renewable energy resources.

Question 13: Do you support market-based and technology-neutral means to procure any grid services needed to ensure that the grid is able to withstand or recover from major disruptive events?

Answer: I think that markets generally are the best way to allocate resources and set prices and markets are an appropriate mechanism for procuring services that the electric grid needs, regardless of technology type.

Question 14: As an employee for the Texas Public Policy Foundation, you wrote in an op-ed in The Hill earlier this year: “Some suggest that we can replace fossil fuels with renewable resources to meet our needs, but they never explain how . . . we need to be honest about whether renewables can displace other energy resources in providing for our energy needs.” Do you still believe that renewables cannot displace existing fossil fuel resources and question whether “renewable resources [can] meet our needs”?

Answer: I recognize that each state or region of the country may have unique circumstances and opportunities that influence how it meets its energy needs. Nationwide, renewable energy resources play a significant role in supplying U.S. electric generation, as well as other resources. According to EIA 2017 data, approximately 17 percent of U.S. electric generation comes from renewables (hydro 7.4 percent, wind 6.3 percent, biomass 1.6 percent, solar 1.3 percent, and geothermal 0.4 percent); 62.9 percent from fossil fuels (coal 29.9 percent, natural gas 32.1 percent, and petroleum 0.5 percent); and 20 percent from nuclear. My understanding is that one of the fundamental technical pieces needed for renewables to be a substitute for all fossil fuels in electric generation for the entire nation (each state may be different) is the availability of utility scale storage to power the grid and provide essential reliability services when renewable resources are not available to generate electricity. I understand significant investments are being made to develop such storage technology.

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Questions from Senator Ron Wyden

Question 1: In September 2018, FERC filed its notice of schedule for the Jordan Cove Liquefied Natural Gas Project, stating that the agency anticipates issuing a final order for the Project no later than November 2019. This filing is not an approval of the Project, and while the Commission evaluates the merits of the Project, it is critical that the review is conducted independently and without influence from the White House. However, after an April 2017 meeting with Jordan Cove officials, a Trump official commented that approving a pipeline in the Northwest is one of the Administration's priorities.

- a. Do you think it is appropriate for the White House to throw its support behind a project that FERC has yet to make a formal determination about?

Answer: FERC is an independent agency. FERC's role is to ensure that its decision-making is based on the record developed for a proceeding and applicable legal precedent. If I am confirmed, that is the approach I will follow.

- b. Do you commit to ensuring that neither your decision nor that of the Commission in matters related to Jordan Cove is influenced in any way by the White House or any other ex parte communication?

Answer: As I stated at my confirmation hearing, if confirmed, I commit that I will be a fair, objective, and impartial arbiter in the cases and issues that would confront me as a Commissioner. My decisions will be based on the law and the facts, not politics. In my view, such impartiality helps sustain the rule of law by ensuring that all those who come before a government tribunal have confidence that their positions will be heard and thoughtfully considered.

Question 2: Energy storage is one of the most rapidly growing energy technologies, and it can provide multiple benefits to increasing grid resiliency. I would like to see you commit to removing unfair barriers to energy storage--and other emerging technologies, like distributed energy resources (DERs) --in the wholesale electricity markets.

- a. Do you agree FERC should be promoting technology-neutral competitive markets?
- b. More specifically, do you think energy storage assets--and DERs--should be able to compete in wholesale electricity markets?

Answer: As a general matter, I agree that the competitive wholesale electric markets should offer a level playing field for all types of technology to compete to provide services. I also recognize the significant potential of storage as a resource for the electric grid. Earlier this year, FERC issued a final rule – Order No. 841 – addressing barriers to the participation of electric storage resources in competitive wholesale electric markets; however, I understand that there is a rehearing pending on this matter, so it would be inappropriate for me to be more specific about my views. Additionally, in Order No. 841, the Commission did not take

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final action with regard to the participation of distributed energy resource aggregations in those markets, but held an April 2018 technical conference on the issue to gather more information for the record. If confirmed, I look forward to reviewing the comments that FERC received on participation of distributed energy resource aggregations in those markets.

Question 3: Given your involvement in DOE's coal and nuclear proposed rule requiring the use of coal and nuclear plants to maintain electric reliability which was subsequently considered and rejected by FERC, will you recuse yourself from all matters that come before FERC relating to the establishment or adjudication of rates and subsidies specific to coal and nuclear plants for reliability?

Answer: The proposed rule that DOE submitted to FERC in the fall of 2017 sought to address resilience of the bulk-power system in a very specific manner, and FERC terminated its proceeding on that specific proposal earlier this year. I commit that prior to making a determination about whether a recusal is necessary in any given proceeding, I will consult with FERC's Designated Agency Ethics Official.

Questions from Senator Bernard Sanders

Question 1: In September 2017, DOE Secretary Perry proposed the Grid Resiliency Pricing Rule to prop up coal and nuclear power plants, falsely arguing that these fuel sources are more secure and reliable than other types of energy resources. In January 2018, FERC unanimously rejected the proposed rule. In June 2018, the Trump Administration announced a new proposed rule to use Section 202(c) of the Federal Power Act to bail out uneconomic coal and nuclear plants.

You previously worked on this proposed rule as DOE's Deputy General Counsel for Energy Policy, and defended the proposal in a Senate hearing earlier this year as DOE's Office of Policy head. Please describe the specific role you played at DOE in developing these proposals and provide the committee with all written documents and correspondence you had with FERC commissioners and employees, as well as with individuals outside the federal government, while working on either proposal.

Have you ever spoken with Murray Energy CEO Robert Murray or any representatives of Murray Energy about either of these proposed rules? If so, please identify each communication and include the date, time, participants, and topics discussed.

Answer: During the development and filing of Secretary Perry's Notice of Proposed Rulemaking for the Grid Reliability and Resilience Pricing Rule (submitted to FERC pursuant to Section 403 of the Department of Energy Organization Act), I served as the lawyer for the Department of Energy (DOE) in my position as the Deputy General Counsel for Energy Policy at DOE. After DOE submitted its proposal to FERC, I also represented DOE in explaining the purpose of the proposal, including a NARUC meeting in November 2017 and responding to

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questions from members of the Senate Energy and Natural Resources Committee during hearings held on October 3, 2017, and July 19, 2018.

I was not involved in the drafting of the draft memorandum leaked to the press on or about June 1, 2018, that purported to be a proposal to use emergency and national security authorities under the Federal Power and Defense Production Acts to support generation resources on the electric grid. I was not an employee at the Department of Energy or the federal government at the time it was apparently drafted or leaked. When I returned as an employee to DOE (Executive Director of the Office of Policy), I reviewed the draft memorandum and began researching and trying to work through the substantive issues, as well as examining the statutes and legal justifications contained in the proposal. I stopped work on the draft memorandum in August 2018.

As to providing any potential written documents or correspondence I may have had with FERC commissioners and employees or individuals outside the federal government while working on either proposal, in my current position as a Senior Advisor in the Office of Science, I am not the custodian of such potential records.

I have not spoken with Murray Energy CEO Robert Murray about the Notice of Proposed Rulemaking for the Grid Reliability and Resilience Pricing Rule or a proposal to use emergency and national security authorities under the Federal Power and Defense Production Acts to support generation resources on the electric grid. To my knowledge or recollection, I have not spoken to any representatives of Murray Energy about either of those proposals.

Question 2: Federal law requires any judge, justice, or magistrate judge who has “expressed an opinion concerning the merits of a particular case or controversy” to recuse themselves from matters before the commission. Will you commit to recusing yourself according to the law?

If not, what further clarification from ethics counsel would you seek that would allow you to violate U.S. law by participating?

Answer: I commit that prior to making a determination about whether a recusal is necessary in any given proceeding, I will consult with FERC’s Designated Agency Ethics Official.

Question 3: You have worked for, or collaborated with, a number of organizations, such as the Texas Public Policy Foundation, which has funding ties to the Koch Brothers, ExxonMobil, Donors Trust, and other front groups for the fossil fuel industry. Please provide a full list of groups that supported your work or donated to the Texas Public Policy Foundation during your tenure there.

Will you recuse yourself from particular matters involving these former funders?

Answer: The Texas Public Policy Foundation is organized as a 501(c)(3) non-profit, non-partisan research institute and does not disclose its donors. I commit that prior to making a

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determination about whether a recusal is necessary in any given proceeding, I will consult with FERC's Designated Agency Ethics Official.

Question 4: You have spent the vast majority of your professional career advocating that fossil fuels are superior to other resources like solar and wind, regardless of their impact on the environment or price signals from the market.

During this hearing, you stated that "the role of FERC is not to pick and choose [energy sources], but [to] allow the market to choose."

Market designs affect the practical outcomes of the fuels that are eventually used. For example, market design preferences for onsite fuel and baseload generation have the effect of giving overall market preference to resources like coal, natural gas, nuclear and oil.

As you know, FERC unanimously rejected the proposed Grid Resiliency Pricing Rule because it would have given unfair preference to coal and nuclear resources in the market. Will you now commit to rejecting any proposed rule or market design, such as the proposed Grid Resiliency Pricing Rule, that favors coal and nuclear resources in the market?

Answer: A majority of my career in the energy sector has been representing electric and gas utilities on a variety of matters. I practiced energy law for almost nine years total as a partner and senior counsel with McGuireWoods LLP, in Richmond, Virginia. The matters I worked on included:

- Approval of three utility-scale solar electric generating facilities in Virginia.
- Approval of the conversion of three older coal electric plants to biomass in Virginia.
- Approval of renewable portfolio standards (RPS) plans for a major electric utility.
- Approval of energy efficiency and conservation plans for electric and natural gas utilities.
- Approval of a 1358 MW natural gas combined cycle electric generating facility in Virginia.
- Approval of various electric transmission lines.
- Approval of rate cases and fuel cases for electric and natural gas utilities.
- Approval for an independent generator to acquire a co-generation facility.
- Approval of integrated resource plans (IRP) for electric utility that included natural gas, coal, nuclear, and renewables.

It would be inappropriate for me to prejudge how I would vote on any specific proposal that may come before the Commission in the future. However, as I am committed to continuing FERC's independence and, should I be confirmed, I will be an independent arbiter, making my decisions based on the law and facts, and not politics.

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Question 5: The capacity market in New England has struggled to keep costs low for consumers and accommodate state public policy objectives like regulating pollution emissions, resource diversity, and jobs). When you think about FERC’s mission to ensure just and reasonable rates in these markets, to what extent will you focus on what these factors mean for consumers?

Answer: The effect on consumers is an important factor in FERC’s assessment of whether any wholesale rate is just and reasonable. I also respect the regulatory role that states play given their jurisdiction over, among other things, generation facilities. If I am confirmed, I will carefully consider these factors when evaluating Commission-jurisdictional rates, including those related to the New England markets.

Question 6: On August 9th, 2018, Politico reported that support for coal and nuclear plant bailouts, similar to the bailout proposed in the DOE’s proposed Grid Resiliency Pricing Rule, was a key litmus test for the FERC Commissioner position to which you were eventually nominated. Were you asked by anyone connected to, or representing, the White House, DOE, or FERC to support the Grid Resiliency Pricing Rule prior to being nominated to this position?

Answer: No.

Question 7: A Sierra Club Freedom of Information Act lawsuit has uncovered emails which prove that DOE officials appointed by President Trump used selective data and outright lies in the 2017 DOE report on the “bomb cyclone” snow event in New England to suggest that certain coal plants were more valuable than other energy sources.

Did you participate in any research or writing connected to this report?

Answer: If you are referring to the “Reliability and the Oncoming Wave of Retiring Baseload Units, Volume I: The Critical Role of Thermal Units During Extreme Weather Events” issued by the National Energy Technology Laboratory on March 13, 2018, I was not employed at DOE at the time it was issued. I did not research or write the report. However, before I left my position as Deputy General Counsel for Energy Policy at DOE in early February 2018, I received updates about the generation resources that were called on during the “bomb cyclone” in the winter of 2017/2018.

Do you agree with the report’s conclusion that ratepayers should subsidize certain mid-Atlantic coal plants at the expense of other energy resources?

Answer: I do not recall reading the report and therefore am unable to address the report’s conclusion.

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Questions from Senator Mike Lee

Question 1: What can FERC do to improve coordination between cooperating agencies during the NEPA process for permitting pipelines?

Answer: I think it is very important for government to be as efficient as possible when examining infrastructure projects. Unnecessary bureaucratic delays, particularly through a lack of interagency coordination, increase costs and undermine the confidence of all stakeholders in the process. It is my understanding that FERC has a pre-filing process designed to encourage interagency coordination before an application is filed through early invitations for agencies to cooperate in the environmental review process; opportunities to review draft application materials; and participation in interagency meetings. I also understand that FERC continues to implement the Fixing America's Surface Transportation Act (FAST-41) and is working to employ the provisions of the memorandum of understanding on One Federal Decision. Both of these efforts contain goals of improving interagency coordination for the permitting of energy infrastructure. If confirmed, I will work with my colleagues at the Commission and other agencies, where appropriate, to ensure that there is interagency coordination, while also fulfilling FERC's obligations under NEPA.

Question 2: If confirmed, what would you do at FERC to ensure the thorough and timely processing of pipeline and other infrastructure applications?

Answer: In April 2018, FERC initiated a review of its Certificate Policy Statement for the natural gas pipeline review processes through the issuance of a Notice of Inquiry. Through this review, FERC sought stakeholder input on, among other issues, how FERC may improve the efficiency of the certificate review process. In addition, I note that, pursuant to the America's Water Infrastructure Act of 2018, FERC recently announced it will soon be convening an Interagency Task Force to assist in establishing expedited processes for issuing licenses for qualifying hydropower facilities at existing non-powered dams and for closed-loop pumped storage projects. If confirmed, I will work with my colleagues, as well as with other federal and state agencies and affected stakeholders, to evaluate process improvements to ensure that infrastructure projects are processed in a thorough and timely manner, consistent with applicable law.

Questions from Senator Joe Manchin III

Question 1: I am very proud to say that West Virginia is home to one of the most efficient coal-fired power plants in North America – the Longview power plant in Madsville. This plant is a 700 megawatt plant that can power over 500,000 homes continuously. It has a best-in-class heat rate of 8,760 btu per kilowatt hour. It uses an advanced supercritical boiler, a low cost fuel (coal) and other project efficiencies to produce a low cost of dispatch and its pollution control systems result in much lower emissions including of CO₂. It cost \$2 billion to build – one of the largest private investments in West Virginia's history. In 2017, Secretary Perry visited the plant with me. If you are confirmed to this role on FERC, I'd like for you and the other

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commissioners to join me for a tour as well. Can you commit to work with me to get this on your calendar?

Answer: Yes. Should I be confirmed, I look forward to the opportunity to visit West Virginia and the Longview power plant in Madsville, in particular.

Question 2: I think it's fair to say that everyone knows West Virginia as an energy-exporting state. Our state's coal miners helped power this nation through war and into prosperity in the second half of the last century. But, we are an all-of-the-above energy state, and I think it's important to note that we have some critical hydropower resources. While hydro in West Virginia is small, it is also growing. The Glen Ferris project on the Kanawha River powers about 4,500 households. The Hawks Nest project is a 102 megawatt plant on the New River. Furthermore, President Trump signed my bill into law earlier this fall which helps provide certainty to the Jennings-Randolph dam – a vital hydro project being developed in West Virginia. You and I discussed hydro in our meeting back in October and I appreciate your enthusiasm for what we are trying to do in West Virginia to expand our hydro resources responsibly. What else can FERC can do to improve and expedite the relicensing of these renewable energy projects?

Answer: I enjoyed our discussion and appreciated your informing me about the thoughtful efforts West Virginia is making to expand its hydro resources. Pursuant to the America's Water Infrastructure Act of 2018, FERC recently announced that it will soon be convening an Interagency Task Force to assist in establishing expedited processes for issuing licenses for qualifying hydropower facilities at existing non-powered dams and for closed-loop pumped storage projects. These expedited processes are intended to help ensure a final decision by FERC on an application for a license within two years after receipt of a completed application. Although the Water Infrastructure Act only applies to facilities meeting certain criteria, the information generated by the Interagency Task Force could inform ways to improve the licensing process on a broader scale. If confirmed, I will work with my colleagues, as well as with other federal and state agencies and affected stakeholders, where appropriate, to explore ways of improving the timeliness and efficiency of relicensing hydropower projects.

Question 3: As you know PJM is a regional grid operator that oversees 13 states – including West Virginia - and the District of Columbia. It serves about 65 million customers and is the traffic cop for nearly 89,000 megawatts of generation capacity. Over 20,000 megawatts of the power capacity in PJM is coal-fired and over 29,000 megawatts is nuclear power – both of which provide essential reliability services to our grid. On November 1st, PJM announced the results of a fuel supply analysis or “stress test” it completed.

One of the major conclusions PJM reached is that: “While there is no imminent threat, fuel security is an important component of ensuring reliability – especially if multiple risks come to fruition. The findings underscore the importance of PJM exploring proactive measures to value fuel security attributes, and PJM believes this is best done through competitive wholesale markets.” Have you reviewed the PJM report?

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Answer: Yes.

Question 4: Do you agree with the idea that competitive wholesale markets are the best way to ensure fuel supply?

Answer: I think competitive markets are generally the best way to allocate resources and set prices.

Question 5: Do you believe that, as things stand today, the markets fairly compensate all fuel types?

Answer: As the electric grid evolves with changing supply portfolios, consumption patterns, and demand side resources, I believe that it is important to continue to examine developing needs of the grid to ensure reliability and just and reasonable rates. I also believe that market mechanisms are an appropriate way to compensate resources. This does not mean that all resources must receive identical payments in the market, as resources have different capabilities and provide different services, but all resources should have the opportunity to be compensated for the services that they are capable of providing to meet system needs.

Questions from Senator Steve Daines

Question 1: Montana is blessed with abundant natural resources – coal, natural gas, hydropower, wind and solar – that keep the lights on for families across the Northwest. In your role as FERC Commissioner, you will have the responsibility to make decisions that keep our grid secure and resilient. Towards that goal, a diverse energy system – comprised of coal, hydropower, and other sources – make for a more resilient grid. Do you agree that the United States needs a diverse energy system and will you commit to recognizing the value of diverse energy sources, including the importance of baseload generation, when you make your decisions?

Answer: I believe there is great benefit to an “all-of-the-above” strategy for satisfying our nation’s energy needs. As the electric grid evolves with changing supply portfolios and consumption patterns, I believe that it is important to continue to examine developing needs of the grid to ensure reliability and just and reasonable rates, and to provide appropriate price signals so that all resources have the opportunity to be compensated for the services that they are capable of providing to meet system needs.

Question 2: Another important role of FERC for Montana is the approval of interstate pipelines. In many rural Montana communities, pipelines bring in most of the local tax revenue needed for schools and other public services. One exciting project we are seeing happen in Montana right now is the Elk Creek Pipeline, which would inject \$1.4 billion in local economies, over \$12 million in payroll in Montana alone. As FERC considers policies governing this important aspect of our energy system, certainty and efficiency is of utmost importance. What are your

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views on the pipeline certification process NOI initiated by FERC earlier this year and the certification process in general?

Answer: I recognize the importance of energy infrastructure projects, such as interstate pipelines, to local communities and the national economy as a whole. I understand FERC's natural gas pipeline certification policy statement has been in place since 1999, and that given changes in the markets, it makes sense to reevaluate that policy. If confirmed, I look forward to reviewing the record in the NOI proceeding and working with my colleagues to ensure that FERC's pipeline certification process is as efficient and effective as possible.

Question 3: As Montana is an energy exporter at this point, much of our energy production relies on interstate energy infrastructure—specifically pipelines, rail lines, and export terminals. FERC serves as the lead agency for environmental review and permitting of interstate natural gas pipelines in particular. Other agencies are to follow FERC permit review schedule. Unfortunately, not all agencies adhere to it, with one recent example being some state agencies acting under section 401 of the Clean Water Act. I am a sponsor of S. 3303, the *Water Quality Certification Improvement Act*, to help clarify the purpose of Section 401 and protect states' ability to certify water quality but prohibit them for hijacking the process for issues outside of Congressional intent. We have seen similar actions under this authority by Washington State Department of Ecology blocking a coal export terminal important to my state. How would you ensure that FERC's role as lead agency is enforced across the spectrum of permitting agencies at the federal and state level?

Answer: I think it is very important for government to be as efficient as possible when examining infrastructure projects. Unnecessary bureaucratic delays, particularly through a lack of interagency coordination, increase costs and undermine the confidence of all stakeholders in the process. If confirmed, I will work with my colleagues, as well as with other federal and state agencies and affected stakeholders, to process infrastructure applications in a timely manner consistent with law. It is my understanding that under statutes such as the Clean Water Act, other federal and state agencies have jurisdiction to issue required federal authorizations and in setting their schedule.

Questions from Senator Martin Heinrich

Question 1: The electric utility sector is the only critical infrastructure that has mandatory and enforceable standards for physical and cybersecurity. Given the current role of natural gas in power generation, what are your thoughts on the adequacy of current measures to protect interstate gas pipelines used for power generation?

Answer: I believe that as a nation we must be vigilant about the security of our electric grid and natural gas pipelines. I believe that critical energy infrastructure, including natural gas pipelines that support the bulk-power system, should be protected by appropriate means. It is my understanding that the Transportation Security Administration (TSA) has the authority to establish mandatory cybersecurity regulations for natural gas pipelines. I also understand that

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the TSA has issued physical security guidelines for natural gas pipelines. Thus, I consider it more appropriate for Congress and the TSA to address the adequacy of TSA's natural gas pipeline cybersecurity and physical security programs. However, if confirmed, I commit to working with my colleagues to explore this important issue.

Question 2: Investment in new power transmission lines can also help improve grid reliability and resilience. What are your thoughts on the commission's current approach to encouraging investment in transmission capacity to improve reliability in bulk-power markets?

Answer: I agree that investment in transmission infrastructure is an important component to supporting and improving grid reliability and resilience. Over the past decade or more, FERC has taken multiple steps, including issuing rulemakings on transmission planning and incentives for investment in transmission infrastructure, to ensure that there is adequate transmission infrastructure in place and that there is open access to transmission service. My understanding is that Chairman Chatterjee recently announced an initiative to consider both the return on equity for transmission investment and FERC's transmission incentives policy, two issues that may affect transmission investment. If confirmed, I look forward to working with my colleagues at FERC to consider these and other important issues related to the development of transmission infrastructure.

Question 3: Do you think the commission's Order 1000 has been effective in supporting regional planning and encouraging investment in new transmission?

Answer: Issued in 2011, Order No. 1000 significantly changed the process through which certain transmission facilities are planned. Order No. 1000 has supported regional planning and encouraged investment in new transmission by, among other things, implementing regional transmission planning and interregional coordination processes, and removing barriers to investment in new transmission facilities on the part of nonincumbent transmission developers. I understand, however, that FERC has an open proceeding to examine further a range of issues related to Order No. 1000. To date, this proceeding has involved a technical conference and an invitation for public comment, establishing a record for FERC's consideration. If confirmed, I look forward to working with my colleagues to consider whether there are refinements to Order No. 1000 that would better support effective regional transmission planning and encourage needed investment in transmission infrastructure.

Question 4: Do you agree that carbon emissions from fossil fuels are contributing to climate change?

Answer: Clearly, the burning of fossil fuels emits carbon dioxide. I think that the climate is changing and that carbon dioxide is a greenhouse gas that impacts the Earth's climate.

Question 5: In your view, does FERC properly consider greenhouse gas emissions in its decisions related to LNG facilities and gas pipelines?

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Answer: I understand that there has been discussion at FERC as to how to address greenhouse gas emissions in proceedings involving LNG terminals and natural gas pipelines. If I am confirmed, I commit to carefully studying this issue and acting in accordance with the law.

Question 6: Do you believe it is appropriate under the Federal Power Act to accommodate public policy requirements established by state or federal laws or regulations within the competitive structure of organized wholesale power markets?

Answer: I understand the important perspective of the states in our federal system, and I respect states' authority to make resource decisions and certain public policy choices that are within their jurisdiction. FERC held a technical conference regarding the interaction between state initiatives and FERC-jurisdictional wholesale electricity markets in May 2017 and has subsequently addressed the issue in multiple, ongoing proceedings. If I am confirmed, I look forward to discussing this issue further with my colleagues.

Questions from Senator Mazie Hirono

Question 1: As part of my responsibility as a member of the Senate Committee on Energy and Natural Resources and to ensure the fitness of nominees for an appointed position, I am asking nominees to answer the following two questions:

- a. Since you became a legal adult, have you ever made unwanted requests for sexual favors, or committed any verbal or physical harassment or assault of a sexual nature?

Answer: No.

- b. Have you ever faced discipline, or entered into a settlement related to this kind of conduct?

Answer: No.

Question 2: In 2015, after the Supreme Court decided the case of *Obergefell v. Hodges* on the question of same-sex marriage, Texas Attorney General Ken Paxton, for whom you served as Chief of Staff, issued an advisory opinion recommending that county clerks who object to gay marriage can refuse to issue marriage licenses to same-sex couples. This raises concerns that ideology will guide your policymaking, rather than faithful interpretation of the law and analysis of the facts.

Please explain your role in Attorney General Paxton's issuance of the advisory opinion in *Obergefell*, and explain how you will address issues that arise that challenge your ideological views as a member of the FERC.

Answer: If you are referring to the June 28, 2015 advisory opinion addressed to the Lt. Governor of Texas from the Attorney General of Texas, in that advisory opinion the Attorney

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General of Texas made clear that the U.S. Supreme Court's decision in *Obergefell v. Hodges* provided the Constitutional right of same-sex couples to marry in Texas. This position was also confirmed through a filing by the Office of the Attorney General of Texas in the U.S. Court of Appeals for the Fifth Circuit on June 30, 2015. The advisory opinion was issued in response to questions asked by the Lt. Governor about potential accommodations for officials exercising their sincerely held religious beliefs. The Attorney General responded in his official capacity. The advisory opinion cites the *Obergefell* majority opinion's discussion about the liberty rights of those who oppose same-sex marriage for religious reasons. It also identifies that if a religious accommodation of an official results in same-sex couples not receiving marriage licenses that other couples are receiving, then this may result in a constitutional violation. I served as the Chief of Staff in the Office of the Attorney General of Texas at that time.

I am committed to continuing FERC's independence and, should I be confirmed, I will be an independent arbiter, making my decisions based on the law and facts, and not politics.

Question 3: Hawaii has set the goal of replacing imported fossil fuels with 100% renewable energy by 2045. As an employee for the Texas Public Policy Foundation, you wrote in an op-ed in *The Hill* earlier this year: "Some suggest that we can replace fossil fuels with renewable resources to meet our needs, but they never explain how . . . we need to be honest about whether renewables can displace other energy resources in providing for our energy needs."

Do you still believe that renewables cannot displace existing fossil fuel resources? Do you still have questions as to how "renewable resources [can] meet our needs"?

Answer: I recognize that each state or region of the country may have unique circumstances and opportunities that influence how it meets its energy needs. Nationwide, renewable energy resources play a significant role in supplying U.S. electric generation, as well as other resources. According to EIA 2017 data, approximately 17 percent of U.S. electric generation comes from renewables (hydro 7.4 percent, wind 6.3 percent, biomass 1.6 percent, solar 1.3 percent, and geothermal 0.4 percent); 62.9 percent from fossil fuels (coal 29.9 percent, natural gas 32.1 percent, and petroleum 0.5 percent); and 20 percent from nuclear. My understanding is that one of the fundamental technical pieces needed for renewables to be a substitute for all fossil fuels in electric generation for the entire nation (each state may be different) is the availability of utility scale storage to power the grid and provide essential reliability services when renewable resources are not available to generate electricity. I understand significant investments are being made to develop such storage technology.

Questions from Senator John Hoeven

Question 1: You mentioned in the hearing challenges faced by baseload sources due to the onset of renewable energy sources; however, baseload power has proven to be a reliable source in the event of natural disasters as it has the ability to cycle up and down on demand. Can you speak to the need for transmission infrastructure for baseload power in this country? If confirmed, will you support expanding reasonable access to transmission for baseload sources?

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Answer: I support FERC's efforts to encourage adequate transmission infrastructure for transmission of electricity for all types of resources, including those capable of operating as baseload resources. I also support FERC's open access transmission policies, which provide resources access to the electric grid. If confirmed, I look forward to working with my colleagues on matters involving FERC's important responsibilities related to the development, operation, and reliability of the transmission system.

Question 2: FERC has proposed rules to enable aggregations of distributed energy resources on local distribution grids to participate in wholesale electric markets. If FERC moves forward with this proposal, would you support recognizing the right of state and local regulatory authorities to decide whether aggregations of distributed energy resources may participate in wholesale markets, similar to the right they have with respect to aggregations of demand response resources?

Answer: I recognize that there are complicated issues to work through with regard to distributed energy resource aggregations on the distribution system participating in wholesale electricity markets. My understanding is that FERC has developed a substantial record on these issues through a Notice of Proposed Rulemaking and technical conference. If confirmed, I commit to considering carefully that record and making a reasoned decision about the role that state and local regulatory authorities should have in determining whether and how distributed energy resource aggregations participate in wholesale markets.

Question 3: Earlier this year, I reintroduced the North American Energy Infrastructure Act, which would streamline the review of energy infrastructure projects across the United States border with Canada and Mexico. This legislation would also effectively eliminate the Presidential Permit requirement for cross-border pipelines and transfer that authority from the U.S. Department of State to FERC. If confirmed, would you commit to an expeditious review of these cross-border energy projects that are so critical to our country's energy resiliency and infrastructure?

Answer: Yes, if confirmed, I will work with my colleagues to ensure that all infrastructure proposals, including cross-border energy projects, are reviewed in an expeditious manner.

Questions from Senator Catherine Cortez Masto

Question: In 2013, one of Nevada's rural electric cooperatives, Valley Electric Association, became the first utility not physically located in California to become part of the California Independent System Operator (Cal-ISO), and it is the only utility in Nevada that is part of California's energy grid. It specifically supports California renewable energy

Its service territory receives more solar radiance than anywhere else in the country. So, this part of Nevada is an especially attractive location for clean energy where it supports California's

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steadily growing renewable energy demand, principally through the state's renewable portfolio standard.

Valley has encountered a situation where larger scale renewable projects outside their service territory are seeking to connect to their low-voltage transmission system, driving network upgrades that would have a real impact on the utility bills of Valley's customers and my constituents, yet the generation and upgrades are not specifically needed by Valley. As you likely know, the rules which underpin access to transmission systems and long-term planning are regulated by FERC. Nevada and California want to work together to foster regional collaboration on clean energy, but we need a partner at FERC who understands and is paying attention to these types of unique needs and circumstances.

Do you have any experience working on these types of issues? Should you be confirmed, can I have your commitment that you will look into this situation?

Answer: I do not have specific experience with the issue you describe. Should I be confirmed, I would be happy to look into this issue as appropriate.

Questions from Senator Rob Portman

Question 1: As a FERC Commissioner, how will you improve the federal permitting process for major infrastructure projects—particularly the covered projects on the dashboard?
FERC is one of the key member agencies of the Federal Permitting Improvement Steering Council, which was created by Title 41 of the FAST Act in 2015, which I authored. FAST-41 and the Council are designed to increase communication between agencies at the front end of projects and to ensure a smoother, more efficient permitting process. These major projects can take a decade or more to permit right now, which is just unacceptable. For example, FERC recently took 10 years to grant licenses for the R.C. Byrd hydropower project in Ohio, and it now is still in the permitting process with other agencies.

Answer: I think it is very important for government to be as efficient as possible when examining infrastructure projects. Unnecessary bureaucratic delays, particularly through a lack of interagency coordination, increase costs and undermine the confidence of all stakeholders in the process. I understand that FERC issued a Notice of Inquiry in April 2018 to initiate a review of its Certificate Policy Statement for the natural gas pipeline review processes, including major infrastructure projects subject to FAST-41 or the memorandum of understanding (MOU) implementing One Federal Decision. If confirmed, I will work with my colleagues at the Commission and other agencies, where appropriate, to explore and implement steps that would further improve the permitting process.

As to the matter of improving the timeliness of hydropower licensing, pursuant to the America's Water Infrastructure Act of 2018, FERC recently announced that it will soon be convening an Interagency Task Force to assist in establishing expedited processes for issuing licenses for qualifying hydropower facilities at existing non-powered dams and for closed-loop pumped

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storage projects. These expedited processes are intended to help ensure a final decision by FERC on an application for a license within two years after receipt of a completed application. Although the Water Infrastructure Act only applies to facilities meeting certain criteria, the information generated by the Interagency Task Force could inform ways to improve the licensing process on a broader scale. Should I be confirmed, I would work with my colleagues at the Commission and other agencies, where appropriate, to explore ways of improving the timeliness and efficiency of licensing all jurisdictional hydropower projects.

Question 2: How would you improve communication and planning at the front-end between agencies?

Answer: FERC has a pre-filing process designed to encourage communication and planning among agencies and project sponsors before an application is filed. In addition, FERC's April 2018 Notice of Inquiry on the Certificate Policy Statement sought stakeholder input on whether FERC should consider changes to the pre-filing process and how to ensure the most effective participation of stakeholders and agencies. The Notice of Inquiry also sought recommendations on how FERC can work more efficiently and effectively with other agencies that have a role in the review process. If confirmed, I look forward to working with my colleagues, as well as with other federal and state agencies and affected stakeholders, where appropriate, to evaluate recommendations to improve communication and planning between agencies.

Question 3: I know you're not at FERC yet, but do you have any other ideas about how the federal permitting process can be improved? Are there any authorities you think you need from Congress to improve that process?

Answer: If confirmed, I look forward to first reviewing how FAST-41, the MOU implementing One Federal Decision, the ongoing review of the Commission's Certificate Policy Statement, and the hydropower rulemaking pursuant to the America's Water Infrastructure Act of 2018 are improving the permitting process for energy infrastructure. I also commit to working with my colleagues, as well as with other federal and state agencies and affected stakeholders, where appropriate, to implement feasible measures to further improve the process.

Question 4: Do I have your commitment to work with the Council to ensure that all required timelines and other information are posted on the online dashboard in a timely manner?

Answer: Yes.