

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

**Questions from Chairman Lisa Murkowski**

**Question 1:** Cybersecurity of our energy infrastructure has long been a top priority for the Energy and Natural Resources Committee. In our energy package, the American Energy Innovation Act, we have language directing FERC to establish incentive-based rates for utilities to make cybersecurity investments. FERC is also currently studying a potential framework for providing such incentives administratively.

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

**Answer:** The energy sector's cybersecurity posture can be improved by pursuing the Commission's approach to addressing evolving cybersecurity risks, which I understand involves both employing mandatory and enforceable North American Electric Reliability Corporation reliability standards to ensure foundational practices are implemented and also working collaboratively with industry, the states, and other federal agencies to identify and promote best practices.

**Question 2:** Earlier this year, Virginia enacted a state renewable portfolio standard (RPS) which aims to achieve 100 percent "carbon free" electricity by 2045.

- As Chairman of the state commission, what did you do to inform the drafting of that law, especially given the SCC's study that shows that the law will increase electricity costs substantially?

**Answer:** The Virginia SCC typically does not advocate for or against legislation on matters of policy, rather we make our professional staff available to provide technical analysis on questions such as how the legislation would operate and whether there are alternatives to achieve the same policy goals more efficiently and at lower costs to consumers. With regard to the legislation referenced in your question, our professional staff offered such technical analysis. With regard specifically to the cost impact on consumers, when the legislation was being considered, the SCC professional staff provided to both House and Senate committees of jurisdiction detailed cost estimates of what the legislation would likely cost consumers. The SCC staff estimated that for Dominion, Virginia's largest utility with more than two million residential customers, by 2030 the legislation would cause a typical customer to incur a monthly bill increase of approximately \$55 (\$660 per year). This estimated cost increase was subsequently corroborated.

**Question 3:** As was discussed at the end of the hearing, we have seen devastating wildfires and significant reliability challenges in the Western Interconnection, and in California in particular, during recent weeks. Please elaborate on your answer on the role that FERC can and should play in preventing and responding to these kinds of situations as they arise.

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

**Answer:** As a State regulator for the past 16 years, I have learned to get all the facts before coming to final conclusions. I understand that the California ISO ("CAISO") is conducting an investigation and I await that report. Speaking generally and without prejudgment of facts yet to be established, we already know that the standard that American consumers expect for a reliable electric system is the availability of electrical power on a 24/7/365 basis. The power outages last month in the CAISO zone failed to meet that standard. As the regulator of RTOs/ISOs, the Commission should ensure that transmission planning delivers reliability over the long term. It is also the Commission's duty to use its regulatory authority to require RTOs/ISOs with capacity markets to design and operate such markets to achieve the standard that Americans expect at costs that are just and reasonable. While the Commission is prevented by the Federal Power Act from favoring one generation resource over another, in its oversight of RTO/ISO markets, the Commission should seek to ensure that market designs include performance requirements or incentives so that capacity resources deliver as necessary to meet power demand on a 24/7/365 basis. The Commission should also ensure that consumers pay only for capacity that actually delivers. CAISO does not rely upon a capacity market for resource adequacy so the after-action analysis needs to analyze why bilateral contracts did not deliver the power resources needed to meet peak demand.

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

**Answer:** It is premature to assign blame to the Commission, which can only act within the limits of its legal authority. Each and every State has the inherent authority to regulate utilities and that includes decisions on which generating resources to build and which ones to shut down. Even States that have directed their utilities to enter RTOs/ISOs retain the authority over which generating resources to build or forcibly retire to meet that State's other regulatory requirements.

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

**Answer:** Again, I will await the final report of the CAISO before forming final conclusions. However, speaking generally, it has been well-known in utility circles for many years that California's rapid growth in solar deployment presented a challenge in dealing with what is known colloquially as the "duck curve." Briefly, the "duck curve" describes the rapid ramp-up over the course of a sunny day of both solar generation and load. When the sun goes down, so does solar generation, but the load curve remains high on warm nights. This produces a gap that CAISO has historically filled with, among other resources, imported power, including coal-fired, gas-fired, and hydro from other Western states. It appears that last month there were no longer sufficient resources to meet the "duck curve" gap in the evening and California did not have adequate domestic resources for CAISO to dispatch.

**Question 4:** I have been concerned for many years about energy insecurity for people who are working but who do not qualify for low income energy assistance. (See, e.g.,

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<https://www.energy.senate.gov/services/files/2B1CC813-BA91-4C2E-B4D5-927EB40D9368>) In Alaska, because our energy prices are high, energy insecurity is a significant issue. But Alaska is not alone in this respect. Energy insecurity is a national problem. And I believe it is worse now in the pandemic.

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

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

**Answer:** As I stated in my opening statement at the hearing, I believe regulators must be very sensitive to the effects of regulatory actions on the costs that consumers must pay for electricity, especially with so many people struggling to pay their bills in the current pandemic. I agree that if infrastructure is needed, it should be built (at reasonable cost) to ensure an adequate supply of reliable power.

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

**Answer:** The Commission should carry out its statutory duties and should always be cognizant of the impact of its actions on costs to consumers.

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

**Answer:** In regulating the energy and capacity markets of RTOs/ISOs, the Commission must ensure that the wholesale costs that will eventually affect retail costs to consumers, which include capacity costs and costs for reliability, reflect just and reasonable rates and that RTO/ISO markets produce competitive results.

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

**Answer:** Yes, if such mandates require consumers to pay more than necessary for power.

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**Question 5:** Please elaborate on your answers to questions in the hearing on recusals. In addition to following the advice of the Designated Agency Ethics Officer (DAEO), what will be your personal standard with respect to recusals? Will you be bound by Rules of Professional Responsibility that might apply to you as a member of the Bar? How do you personally interpret your obligations under Executive Order 13770, the Ethics Pledge, as it relates to recusals?

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

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

I understand that Executive Order 13770, the Ethics Pledge, would not require me to recuse myself from particular matters in which the Virginia State Corporation Commission is or has been a party or commenter beyond the requirements of the Office of Ethics Standards of Conduct, as it specifically excludes State agencies from the definition of "former employer."

**Questions from Senator James E. Risch**

**Question 1:** In July, FERC adopted significant revisions to its PURPA regulations. This was an important development, and many of the reforms mirror provisions that myself and others on this committee had pursued legislatively for years. These changes will help protect ratepayers from having to pay for unnecessary PURPA costs.

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

**Answer:** I am aware that there are several petitions for rehearing currently pending at the Commission as well as a petition for review at the court of appeals, so this case remains active and I must avoid pre-judgment. As I stated at the hearing, however, as a general principle I believe that when load-serving entities purchase power, it should be done at the least cost to the consumer, unless the law requires otherwise.

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

**Answer:** Yes. Speaking as a matter of general policy, as a State regulator, I am a strong believer in respecting the States' authority to make their own decisions as to how to address the needs of their own residents. States' authority includes retail rates and decisions on resource portfolios in their own States. If honored with confirmation, I will continue to respect the States and defend their authority to serve their residents. My general principle of strong support for, and deference to, State authority is subject generally to two caveats: (i) where federal law has clearly pre-empted the States' exercise of authority, or (ii) where one State's policies, by intent or effect, shift the costs of its policies onto defenseless consumers in other States.

In addition, please see my answer to Question 4 below.

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

**Answer:** I have come to no conclusion on which additional changes, if any, may be appropriate for these specific regulations. As a general principle, I agree that "old" regulations should be reviewed regularly and amended if necessary to make them consistent with changes in the law and economic conditions since they were originally promulgated.

**Question 2:** Hydropower is an important component of Idaho's energy mix. In fact, about 60 percent of the electricity used in Idaho each year is generated by hydropower. What are your general views about hydropower? In your opinion, do you consider hydropower to be a renewable energy source?

**Answer:** Yes, subject to any applicable federal laws, I consider hydropower to be a renewable energy resource and one that is a crucial part of the nation's energy mix. There are more than 30 Commission-licensed hydropower projects in my home state of Virginia and I am aware of their importance to consumers.

**Question 3:** Despite its many benefits, licensing or relicensing a hydropower facility takes several years. In Idaho, we've seen relicensing take more than a decade. FERC issues hydropower licenses, but the approval process involves many other federal and state agencies working under various independent statutory authorities. This can lead to delays, redundancies, conflicts and increased costs that are ultimately borne by ratepayers.

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

**Answer:** As a State regulator, I am well aware of the importance of an efficient regulatory process and have done my best to help meet this goal on the state level. While I am not yet prepared to make

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recommendations regarding improvements to the Commission's hydropower licensing process, I will look closely at this issue if I have the honor to be confirmed.

**Question 4:** In the past, utilities in the Pacific Northwest have explored creating either a regional transmission organization (RTO), or an independent system operator (ISO).

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

**Answer:** Participation in RTOs/ISOs is voluntary. I believe it is important to respect each State's decisions on such matters. As a State regulator in an RTO zone, I know from experience that there are advantages and disadvantages to membership in RTO organized markets. I also recognize that there are legitimate reasons a State may choose to remain outside of RTOs/ISOs and continue with its own chosen form of utility regulation.

**Questions from Senator Maria Cantwell**

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

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

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

**Answer:** Yes.

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

**Answer:** No.

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

**Answer:** Yes, without prejudging any specific case. The Commission should use all the legal tools in its toolbox. I understand it is the Commission's policy that market participants are expected to disgorge unjust profits whenever they are determined or reasonably estimated to nullify the value of

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gains acquired through misconduct and to make whole those who were harmed by the violations. If confirmed, and without prejudging the facts of any specific case, I intend to uphold this long-standing Commission policy.

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

**Answer:** Although I do not yet have any specific recommendations on this subject, as a State regulator I believe it is essential that regulators have the tools necessary to prevent and combat fraud and market manipulation in the energy markets. If confirmed, I look forward to engaging with my colleagues on this matter.

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

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

**Answer:** This is a complex issue and without knowing all the details of a specific carbon pricing proposal to be applied in regional capacity and energy markets, including knowing which other regulatory and market design changes are being made as part of a comprehensive package, I cannot draw a conclusion. There are many other details that would need to be known and considered before concluding how a specific proposal would actually work in RTO/ISO markets, which are not true markets but regulatory constructs in which the threats of rent-seeking and market manipulation require constant vigilance and oversight.

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

**Answer:** I am not a member of the Commission and will not be in attendance at the September 30, 2020 conference; however, my understanding is that a central question to be explored will be the core legal question of whether the Commission has the legal authority to impose or allow RTOs/ISOs to implement a carbon tax/price in their market constructs.

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

**Answer:** Yes. I understand this is a group decision, and if I am confirmed, I commit to advocating to my colleagues that the Commission's conferences have a wide perspective of views.

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

**Answer:** Please see my answer to the first subpart of this question above.

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

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

**Answer:** The scope and details of the Commission's duties under applicable federal environmental statutes is a legal issue that has produced disagreement among Commissioners recently. My practice as a State regulator for 16 years has been to study legal issues closely and perform my own due diligence before coming to legal conclusions. I commit to studying closely with an open mind and no prejudgments this issue if I am honored to be confirmed to the Commission. More generally, as I promised in the hearing, I will carry out the Commission's environmental review duties under all applicable federal statutes.

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

**Answer:** I have not yet had the opportunity to consider this issue, but will look at it closely if I have the honor to be confirmed.

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

**Answer:** If I have the honor to be confirmed, I will review projects that the Commission is asked to approve consistent with the law and will do my best to ensure that the Commission's orders satisfy all legal requirements.

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

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

**Answer:** Since I was not on the Commission then, I cannot speculate on that specific vote. I would note, however, that the Federal Power Act requires the Commission to be “fuel-source neutral” in regulating RTO/ISO markets.

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

**Answer:** The Commission is required by the Federal Power Act to be neutral as to fuel source. Speaking as a matter of general principle, the Commission should use its regulatory authority over RTO/ISO markets to require those markets – which are actually regulatory constructs and not true competitive markets – to produce competitive outcomes to protect consumers from paying too much due to exercises of market power. To promote reliability and resilience, as the regulator of RTOs/ISOs, it is the Commission’s duty to require RTOs/ISOs that seek to achieve resource adequacy through capacity markets to design and operate such markets to achieve the standard that Americans expect at costs that are just and reasonable. In its oversight of RTO/ISO markets, to promote reliability, the Commission should ensure that market designs include performance requirements or incentives so that capacity resources deliver as necessary to meet demand on a 24/7/365 basis with no outages. The Commission should also protect consumers from paying for promised resources that do not deliver or from paying inflated capacity prices that reflect the exercise of market power or market manipulation.

**Question 5:** Two weeks ago, FERC rejected the latest proposal from New York’s grid operator, NYISO, to allow new renewable energy and energy storage to compete against fossil fuels in its wholesale capacity market. NYISO has made it clear that the proposed rules are necessary to reform the capacity market’s structure in a way that aligns with New York law mandating 70 percent renewable electricity by 2030 and 100 percent renewable electricity by 2040. Commissioner Glick dissented from that decision, arguing that FERC is presenting NYISO with unnecessary and unreasonable obstacles aimed at stalling the state’s efforts to transition to clean energy.

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

**Answer:** Please see my answer to the second subpart of Question 4 above. Further, I support the authority of each State to choose the energy policies and resource portfolio that it prefers. My general principle of strong support for, and deference to, State authority is subject generally to two caveats: (i) where federal law has clearly pre-empted the States’ exercise of authority, or (ii) where one State’s policies, by intent or effect, shift the costs of its policies onto defenseless consumers in other States.

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

**Answer:** Please see my answers to the first subpart above and to the second subpart of Question 4 above. Further, every State has the inherent authority to regulate utilities and that includes decisions on which generating resources to build and which ones to shut down. Even States that have directed their utilities to enter RTOs/ISOs retain the authority over which generating resources to build or forcibly retire to meet that State's other regulatory, including environmental, requirements.

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

**Answer:** Please see my answers to Question 2 above. I would add that the State of Washington – and every other State – already has the authority to price and tax electricity at the retail level as it chooses, and I respect that State authority. Participation in RTO/ISOs is voluntary and I support a State's authority to make the policy decision whether to join or leave an RTO/ISO. If a State decides to enter an RTO/ISO, then the State has made a policy decision that wholesale power costs will be set in that wholesale market.

**Questions from Senator Bernard Sanders**

**Greenhouse Gas Emissions:**

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

**Answer:** The weight of the evidence indicates that the climate is changing, that carbon emissions are contributing to that change, and that human activity, primarily economic, impacts the amount of carbon emissions. In our democracy, the choice of policy responses to major issues is delegated to those elected by the people, specifically the members of Congress and State legislatures.

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

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

**Answer:** Each State in the United States has the inherent authority to choose which generation portfolio mix it wants, which generating resources to build and how to compensate them, and which generating resources to retire to meet State environmental regulations. As a matter of general policy, I support the States' authority to make these decisions. Further, participation in an RTO/ISO is voluntary, and I support a State's authority to make that decision. If a State makes the policy decision to enter an RTO/ISO, then its utilities' participation in wholesale energy and capacity markets is subject to Commission regulation, and the Commission is required by the Federal Power Act to be neutral as to generating resource. In regulating RTO/ISO markets, the Commission should protect consumers from paying inflated prices that reflect rent-seeking, exercises of market power or market manipulation, and from paying for resources that do not deliver actual benefits.

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

**Answer:** Please see my answers to Questions 1 and 2.A above.

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

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

**Answer:** If I have the honor to be confirmed, I will do my best to ensure that all Commission decisions are consistent with the law. I have not prejudged the factual issues related to this question. I will look at the facts of each case to determine which environmental impacts must be studied under applicable law.

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

**Answer:** My practice as a State regulator for 16 years has been to study legal issues closely and perform due diligence before coming to legal conclusions. Often this process has included both written briefs and oral arguments from parties with differing views and I have learned to get the views of all parties before reaching a conclusion on a contested issue. This question asks for a legal conclusion on an issue that I have not yet studied, nor have I drawn a conclusion. When that legal issue arises in a specific case, if I am honored with confirmation, I will commit to approach it with an open mind and no pre-judgment.

### **Net Metering**

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

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

**Answer:** From my experience as a State regulator, I recognize the longstanding, important role that States play with respect to net metering programs. Speaking generally as a matter of policy, I believe that net metering is and should remain under State jurisdiction over retail rates.

### **Distributed Energy Resources Rule**

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

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

**Answer:** The Commission's Order No. 841 addresses participation of electric storage resources in organized wholesale electric markets. Since I was not on the Commission when it approved Order No. 841, I cannot speculate on that specific vote. Without stating an opinion on that Order, I would emphasize, however, that storage has tremendous potential to be an important resource in the future.

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

**Answer:** Yes, without prejudging any specific issues that may arise in specific cases implementing the rule.

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

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

**Answer:** As you note, the Commission recently issued Order No. 2222 on participation of DER aggregations in organized wholesale electric markets. Since it is foreseeable that this Order may be the subject of petitions for rehearing or a petition for review at the court of appeals, I wish to avoid making any statements that could be construed as prejudging issues in any rehearing requests or compliance filings with regards to Order No. 2222.

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

**Answer:** As stated in my answer to Question 6.A above, I wish to avoid making any statement that could be construed to prejudge any rehearing requests or compliance filings on Order No. 2222. As a matter of general policy, however, I support the Commission's efforts to create a level playing field, to remove barriers to entry and to allow any resources to compete that are technically capable of participating in the RTO/ISO markets in a manner that delivers benefits to consumers at just and reasonable rates and supports the reliability of service to consumers.

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

**Answer:** Please see my answers to Questions 6.A and 6.B above.

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

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

**Answer:** Yes, I commit to following the above cited references and all applicable federal laws. Further, as I pledged at my hearing, as a State regulator for 16 years on an independent commission, I know from experience how important independence is to making good decisions in the public interest. The Commission is also independent and -- if you honor me with confirmation -- I will absolutely respect and defend that independence at the federal level as I have done at the state level.

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

**Answer:** Since I was not on the Commission then, I cannot speculate on that specific vote. I agree that the Federal Power Act requires the Commission to be “fuel-source neutral” in regulating RTO/ISO markets. Under the law, these markets should operate in a neutral manner without undue discrimination for or against any specific resource.

### **Capacity Markets**

**Question 8:** New England states are making significant progress in expanding the share of energy they obtain from renewable sources through policies like Vermont’s 2016 Comprehensive Energy Plan, which sets a roadmap for Vermont to obtain 90 percent of its energy from renewable sources by 2050, and regional plans like the Regional Greenhouse Gas Initiative. FERC has explored, through technical conferences, how to better incorporate states’ environmental policy objectives into the wholesale energy markets. Stakeholders are working to address how to incorporate state renewables policy goals. More active leadership from FERC, however, is necessary to direct Independent System Operators (ISOs) and Regional Transmission Organizations (RTOs) to develop solutions to address these price formation challenges.

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

**Answer:** RTO/ISO capacity markets are not true markets but regulatory constructs, so any changes to a specific capacity market must be considered in light of the specific market designs and regulatory details of that specific market. The Commission is required by the Federal Power Act to be neutral as to fuel source when regulating RTO/ISO markets. The Commission should use its regulatory authority over RTO/ISO markets to ensure that those markets produce competitive outcomes and the Commission should protect consumers from exercises of market power, rent-seeking, and market manipulation in RTO/ISO markets.

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

**Answer:** Each State has the inherent authority to regulate utilities within its jurisdiction and that includes decisions on which resources to choose to achieve resource adequacy. Even States that have directed their utilities to enter RTOs/ISOs retain the authority over which generating resources to build or forcibly retire to meet that State's environmental requirements.

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

**Answer:** It is my understanding that issues related to ISO New England Inc.'s Competitive Auctions with Sponsored Resources program are pending before the Commission. As such, I wish to avoid statements that could be construed as prejudging these issues. If confirmed, I look forward to working with my colleagues on this matter.

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

**Answer:** Please see my answers to Questions 8.A and 8.B above.

#### **Stakeholder Input**

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

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

**Answer:** As a State regulator in the PJM region for the past 16 years, I believe it is important that consumer interests are represented in RTO/ISO stakeholder processes. When I was a member of the Board of Directors of the Organization of PJM States, Inc., we supported the participation of State consumer advocates in PJM processes.

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

**Answer:** I am not aware of any governance structure enhancements that would make the RTOs/ISOs more directly responsive to stakeholder input. If confirmed, I would be open to engaging with my colleagues on this issue.

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

**Answer:** It is my understanding that Commission staff proposed metrics that measure the economic and operational characteristics of the organized markets for energy and capacity. It is also my understanding that ISOs, RTOs, and utilities in regions outside of ISOs/RTOs are encouraged to submit voluntary responses by the end of October 2020. If confirmed, in reviewing those responses, I will consider whether additional metrics are needed to more directly address other customer concerns.

**Questions from Senator Debbie Stabenow**

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

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

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

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

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

**Answer:** Yes.

**Question 2:** Second, I understand that FERC is considering ways to amend its regulations governing the safety of hydropower projects licensed under the Federal Power Act. From your perspective, what additional authorities and remedies could FERC utilize to compel a jurisdictional hydroelectric owner to address safety violations? Should FERC implement rules that would require licensees to comply

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with all state dam safety requirements prior to revocation of the license or implement risk reduction measures so that a dam no longer poses a risk to public safety or the environment after revocation?

**Answer:** The Commission's oversight of the safety of hydropower projects is a key part of its mission. If I have the honor to be confirmed, I will evaluate whether the Commission needs additional authority in this area and what the Commission can do to ensure that dams do not pose a threat to the public or the environment.

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

**Answer:** Although I do not yet have any specific recommendations on this subject, as a State regulator I am well aware of the need for cooperation between State and federal authorities. If I have the honor to be confirmed, I pledge to strongly support such cooperation.

**Questions from Senator Martin Heinrich**

**Questions:** Judge Christie, I think it is clear that the full promise of FERC Order 1000 has not been fully realized. New, regionally significant and interstate transmission is critical to future development of clean energy technologies. Is there more FERC can do to unlock the potential for new interstate transmission capacity? Will you commit to looking into the issue of interregional transmission planning and what FERC can do to improve it?

**Answer:** Transmission planning to support reliability and necessary interregional power flows is essential. The Commission has a large role in ensuring that transmission planning is being done properly. In Order No. 1000, the Commission required each public utility transmission provider to establish procedures with each of its neighboring transmission planning regions to coordinate and share the results of the respective regional transmission plans to identify possible interregional transmission facilities that could address regional transmission needs more efficiently or cost-effectively than separate regional transmission facilities, and jointly evaluate those interregional transmission facilities that the pair of neighboring transmission planning regions identify, including those proposed by transmission developers and stakeholders. If confirmed, I commit to working with my colleagues to discuss such issues. I would note that, as a State regulator for the past 16 years, I am very sensitive to the quickly rising costs of the transmission component in consumers' retail bills, so if honored with confirmation I will work to ensure that we meet our transmission needs with rates and costs that are just and reasonable to consumers.

**Questions from Senator Mazie K. Hirono**

**Question 1:** In May 2018, FERC issued a policy as part of its consideration of Dominion Energy Transmission's since-cancelled New Market gas pipeline project. FERC's policy attempted to eliminate consideration of most upstream and downstream greenhouse gas emissions as part of FERC's review of interstate gas pipelines.

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In June 2019, the D.C. Circuit Court of Appeals affirmed FERC's obligations to consider reasonably foreseeable greenhouse gas emissions under the National Environmental Policy Act and the Natural Gas Act, even while dismissing the case, *Birckhead v. FERC*, on procedural grounds.

If the Senate confirms you, how do you think FERC should identify the information on the greenhouse gas emissions from gas pipelines necessary to fulfill its statutory responsibilities?

**Answer:** If I have the honor to be confirmed, I will do my best to ensure that all Commission decisions comply fully with the law.

**Question 2:** How do you think FERC should incorporate estimates of the present and future impacts of climate change into its efforts to ensure the reliability of power and just and reasonable rates?

**Answer:** The scope and details of the Commission's duties under applicable federal environmental statutes is an ongoing legal issue that has produced disagreement among Commissioners recently. I commit to studying closely with an open mind and no prejudgments the legal issues applicable in any individual case if I am honored to be confirmed to the Commission prior to forming a legal conclusion. As I stated in the hearing, I will carry out the Commission's environmental review duties under all applicable federal statutes.

**Question 3:** What do you think FERC should do to ensure that consumers receive just and reasonable rates as energy storage and renewable power technologies decline in price below other forms of energy in many markets?

**Answer:** As I said in the hearing, as a State regulator I am very sensitive that what the Commission does affects the retail rates that consumers pay and we need to protect consumers from paying any more than necessary for power. I think it is important for the Commission, consistent with the Federal Power Act, to ensure an even playing field for all resources to compete and to make sure that markets provide sufficient reliability services to meet demand in the most cost-efficient way. I confirmed, I look forward to working on these issues with my colleagues.

**Question from Senator Cindy Hyde-Smith**

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

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

**Answer:** It is my understanding that the Commission has very limited authority with respect to TVA. If confirmed, I will abide by the requirements of the governing statutes and laws in exercising the Commission's authority.

**Questions from Senator John Hoeven**

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

**Answer:** As a general principle, yes I believe that where DERs are compensated through retail rates, that should remain under State authority.

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

**Answer:** Yes. Transmission planning should prioritize meeting reliability needs both short and long-term. As a State regulator for the past 16 years, I am well aware of the vital power services delivered to rural customers by electricity co-ops, which are owned by their customers. I respect that role and, if confirmed, I will continue to respect the role of co-ops and work to meet the needs of their members/customers, consistent with all applicable federal statutes.

**Questions from Senator Steve Daines**

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

**Answer:** I am not familiar with the circumstances of the individual generating stations you reference; however, if I am honored to become a Commissioner, I will pledge to learn why such generating plants are closing. As a State regulator, I favor a balanced portfolio to meet reliability needs at reasonable cost. Each State in the United States has the inherent authority to choose which generating resources to build and how to compensate them. Each State has the authority to compensate a generating unit by

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putting it into rate base where it will get dollar-for-dollar cost recovery plus a return under traditional cost-of-service regulation. If, however, a State makes the policy decision to direct its utilities to participate in RTO/ISO energy or capacity markets, then the State has made a policy decision that its jurisdictional generating units shall be compensated under those market rules. Participation in RTO/ISOs is voluntary and I support the States' authority to make that choice. RTO/ISO wholesale energy and capacity markets are subject to Commission regulation and the Commission is required by the Federal Power Act to regulate these markets observing neutrality as to type of generating resource. As a matter of general principle, I believe that the Commission should also ensure that each RTO/ISO adopts market designs to guarantee that resources that participate in energy and capacity markets actually deliver the promised resources at costs that are just and reasonable to consumers.

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

**Answer:** As a State regulator for the past 16 years, I am well aware of the vital power services delivered to rural customers by electricity co-ops, which are owned by their customers. I respect that role and, if confirmed, I will continue to respect the role of co-ops and work to meet the needs of their members/customers, consistent with all applicable federal statutes.