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# MOELLER AND LAFLEUR NOMINATIONS

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## HEARING

BEFORE THE

## COMMITTEE ON

## ENERGY AND NATURAL RESOURCES

## UNITED STATES SENATE

ONE HUNDRED ELEVENTH CONGRESS

SECOND SESSION

TO

CONSIDER THE NOMINATIONS OF PHILIP D. MOELLER AND CHERYL A. LAFLEUR, TO BE MEMBERS OF THE FEDERAL ENERGY REGULATORY COMMISSION

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APRIL 27, 2010



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## MOELLER AND LAFLEUR NOMINATIONS

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TUESDAY, APRIL 27, 2010

U.S. SENATE,  
COMMITTEE ON ENERGY AND NATURAL RESOURCES,  
*Washington, DC.*

The committee met, pursuant to notice, at 10:03 a.m. in room SD-366, Dirksen Senate Office Building, Hon. Jeff Bingaman, chairman, presiding.

### OPENING STATEMENT OF HON. JEFF BINGAMAN, U.S. SENATOR FROM NEW MEXICO

The CHAIRMAN. OK. Why don't we get started?

The committee meets this morning to consider 2 nominations to the Federal Energy Regulatory Commission. Phil Moeller was previously nominated and confirmed to a seat on the commission in 2006. That term expires June 30 of this year. The President has nominated Mr. Moeller for a second term, which will expire June 30, 2015.

Cheryl LaFleur has been nominated to the seat previously held by Suedeen Kelly, whose term expired last year. If confirmed, her term would expire in 2014.

Mr. Moeller is well known to the committee for the years that he spent working for our former colleague Senator Slade Gorton and from his service on the commission over the past 4 years.

Ms. LaFleur has spent more than 20 years in the electric utility industry as an attorney and senior official at the New England Electric System and its successor, National Grid USA, from which she retired in 2007 as executive vice president and acting chief executive officer.

Both nominees are extremely well qualified. I am pleased to welcome them to the committee today. Before calling on some of our colleagues to make introductions, let me defer to Senator Murkowski for her statement.

### STATEMENT OF HON. LISA MURKOWSKI, U.S. SENATOR FROM ALASKA

Senator MURKOWSKI. Thank you, Mr. Chairman.

Very briefly, I, too, would like to welcome both nominees for the Federal Energy Regulatory Commission. I would like to welcome Commissioner Moeller back to the committee. He has been a real leader on hydropower, and I certainly appreciate that.

I also appreciate your annual visits up to the State. They are greatly appreciated. I don't think a lot of people realize this, but Commissioner Moeller was actually a machinist up in the State of

Alaska, working for a salmon plant at one point during his younger days in college.

I would also like to welcome Ms. LaFleur to the committee. Ms. LaFleur is a native New Englander with over 20 years of electric industry experience so I am interested in the perspective and the geographic diversity that she will bring to the commission.

I thank both of you for your willingness to serve, and I am hopeful, Mr. Chairman, that we can report out your nomination shortly so that the FERC can once again enjoy a full complement of commissioners.

Thank you.

The CHAIRMAN. Thank you very much.

We have a couple of our colleagues here, wishing to make statements and endorse candidates.

Senator Murray, why don't you go right ahead?

**STATEMENT OF HON. PATTY MURRAY, U.S. SENATOR  
FROM WASHINGTON**

Senator MURRAY. Thank you very much, Mr. Chairman, Senator Murkowski.

It is my pleasure to be here today to introduce Phil Moeller, who has been nominated to serve a second term on the Federal Energy Regulatory Commission.

Commissioner Moeller has spent his career in public service building a reputation as an energy expert who will work across party lines to solve problems. I am pleased to report that Phil has built on those skills during his tenure as a FERC commissioner.

I first got to know Phil during his time working for my colleague Senator Slade Gorton, where he really stood out as an example of what an effective congressional staffer should be. He wanted to hear all sides of an issue. He would work with anyone, and he operated in a bipartisan manner while protecting the interests of his boss and Washington State.

While Phil has traveled a long ways from his days growing up on a ranch outside of Spokane, Washington, he maintains a unique perspective on issues important to our Northwest. I can tell you, I am personally excited that Phil brings to the commission a working knowing of hydropower systems and the intricacies of the Pacific Northwest.

Mr. Chairman, Phil has dedicated his life to public service. The knowledge, the perspective, and the expertise he has gained throughout his career have been a great benefit to the commission throughout his first term, which is why I am so proud to support his nomination to the Federal Energy Regulatory Commission for a second term.

So I want to say I am very proud to be here today to request the committee again pass him on as FERC commissioner, and I especially want to thank his beautiful family, who is sitting behind me. His kids are so well behaved. I am just way impressed. His wife and, I believe, his sister.

So thank you very much, Mr. Chairman. Phil, thank you for your willingness to be a public servant. We appreciate it.

The CHAIRMAN. Thank you very much for that strong endorsement.

We have 2 of our colleagues, Senator Shaheen, who is, of course, a member of our committee, and Senator Brown. I believe each of them wanted to make a statement on behalf of the nominee Cheryl LaFleur. So whatever order you would like. Go right ahead, Senator Shaheen.

**STATEMENT OF HON. JEANNE SHAHEEN, U.S. SENATOR FROM  
NEW HAMPSHIRE**

Senator SHAHEEN. Thank you very much, Mr. Chairman.

I am delighted to be here to introduce Cheryl LaFleur. I want to welcome her family—Bill Kuncik and their children, Daniel and Allison. It is great that you can be here for your mom today and your wife.

I know that Cheryl is technically from Massachusetts, but I had the good fortune of working with her when I was in the State senate and then Governor when she was president of Granite State Electric and then at New England Electric Systems. I am really excited about her nomination for 2 reasons.

First of all, I think it is very important to have someone on the FERC who understands the challenges facing our energy regulatory environment today. But I think it is particularly important for those of us in the Northeast to have someone who understands that the challenges we face in the Northeast are not exactly the same as those in the Midwest and the far West. So, I am particularly pleased to have someone who so clearly understands what some of those special challenges are.

Second, and probably most important, is that I know how exceptionally qualified Cheryl is to be a commissioner on the Federal Energy Regulatory Commission. You know, she retired in 2007 as executive vice president and acting CEO of National Grid. In her role there, she was responsible for the delivery of electricity to 3.4 million customers in the Northeast.

As I said, I got to appreciate Cheryl's work when she was the president of Granite State Electric in New Hampshire. When she was at New England Electric Systems in the 1990s, she led energy efficiency programs in New Hampshire and across the region that became an award-winning national model because of their focus on residential efficiency. I think this is one of the real benefits that she is going to bring to the FERC.

She understands how regulators' decisions affect real customers, and she has been committed to providing reliable energy to people in the Northeast and to Americans for a very long time. I think that special appreciation for the impact on consumers is something that she brings that is going to be very important going forward.

So I am really delighted to be here to introduce Cheryl, to commend her to the committee. Certainly, I will be voting for her as a member of the committee. There is no doubt about that, and I am sorry that because I have to go preside, I am not going to be able to be here to give her some softballs that can point out just how very qualified and what an excellent job she is going to do on the committee.

So thank you very much, Mr. Chairman.

The CHAIRMAN. Thank you for your strong endorsement.

Senator Brown, we welcome you to the committee. Go right ahead.

**STATEMENT OF HON. SCOTT BROWN, U.S. SENATOR  
FROM MASSACHUSETTS**

Senator BROWN. Thank you, Mr. Chairman, and I am honored to be here with Senator Shaheen. I know she has duties to attend to. So I wanted to let her go first, certainly, and she deserves that opportunity.

As you know, I am new here, relatively, compared to everybody else. This is the first opportunity I have had to speak on behalf of somebody that I felt and feel is most qualified to be in this position.

Obviously, from Massachusetts, and Cheryl has been working very hard for our State and for, obviously, the region as per Senator Shaheen's statements. As you know, it is an independent—FERC is an independent commission charged with regulating our Nation's energy markets and preventing manipulation, maintaining a strong competitive marketplace, and improving and supporting the infrastructure. That is something that we have great concerns with in Massachusetts and in the New England area.

Obviously, dealing with electricity, oil, and gas, natural gas's role as providing reliable energy services to our constituents in Massachusetts and the Northeast, and her 20 years of experience in the electric and gas industry, executive VP and CEO of National Grid, she oversaw, as you know, 3.4 million customers and the service and challenges associated with dealing with Boston and the surrounding areas and the politics involved there.

I think that she will be a real leader and a great asset to FERC, and it takes a lot for me to come and testify for folks. I take my testimony and my endorsement very, very seriously. Through my independent research and review of her qualifications, I can think of no one better to be in this position, to represent the interests of Massachusetts, but more importantly, the Northeast, and obviously, the rest of the country. To have that balance and that knowledge that she can bring in her personal experiences, I think, is very, very important.

So she has my overwhelming endorsement. I wanted to thank you for allowing me to come and speak on her behalf, and I am hopeful that you will also move her out favorably and give us an opportunity to vote on it.

Thank you.

The CHAIRMAN. Thank you for your strong endorsement as well. We appreciate it very much, and thank you for coming to our hearing.

Senator BROWN. Thank you, Mr. Chairman.

The CHAIRMAN. The rules of the committee that apply to all nominees require that they be sworn in connection with their testimony.

I would ask the 2 of you to each stand and raise your right hand. Do you solemnly swear that the testimony you are about to give to the Senate Committee on Energy and Natural Resources shall be the truth, the whole truth, and nothing but the truth?

Mr. MOELLER. I do.

Ms. LAFLEUR. I do.



The CHAIRMAN. Please be seated.

Before you begin your statement, I will ask 3 questions addressed to each nominee before the committee. First question, will you be available to appear before this committee and other congressional committees to represent departmental positions and respond to issues of concern to the Congress?

Mr. Moeller.

Mr. MOELLER. I will.

The CHAIRMAN. Ms. LaFleur.

Ms. LAFLEUR. I will.

The CHAIRMAN. Second question, are you aware of any personal holdings, investments, or interests that could constitute a conflict of interest or create the appearance of such a conflict should you be confirmed and assume the office to which you have been nominated by the President?

Mr. Moeller.

Mr. MOELLER. My investments, personal holdings, and other interests have been reviewed both by myself and the appropriate ethics counselors within the Federal Government. I have taken appropriate action to avoid any conflicts of interest. There are no conflicts of interest or appearances thereof to my knowledge.

The CHAIRMAN. Ms. LaFleur.

Ms. LAFLEUR. My investments, personal holdings, and other interests have been reviewed both by myself and by the appropriate ethics counselors within the Federal Government. I have taken appropriate action to avoid any conflicts of interest, and there are no conflicts of interest or appearances thereof to my knowledge.

The CHAIRMAN. The final question, are you involved or do you have any assets that are held in a blind trust?

Mr. Moeller.

Mr. MOELLER. No.

The CHAIRMAN. Ms. LaFleur.

Ms. LAFLEUR. No.

The CHAIRMAN. All right. At this point, our tradition is to allow and invite nominees to introduce any family members that they brought with them today. Mr. Moeller, why don't you go right ahead?

Mr. MOELLER. Thank you, Mr. Chairman.

It is my pleasure to introduce my wife, Elizabeth, and our children, Philip and Caroline, who just turned 3 a couple of weeks ago. Also is my sister Ann Marie and my team, Jennifer Quinlan, Jennifer Shipley, Robert Ivanauskas, Michelle Brown. Jason Stanek on our team, his appendix decided to go out last week. So we are missing him today.

The CHAIRMAN. We welcome all of you to the hearing, and thank you for coming.

Ms. LaFleur, if you have family members or visitors you want to introduce?

Ms. LAFLEUR. Thank you, Senator.

I do have my family behind me. I would like to introduce my husband, Bill Kuncik, and our children, Dan LaFleur Kuncik and Allison LaFleur Kuncik, who have—the kids both came in overnight to be here, and I really appreciate it.

The CHAIRMAN. All right. We welcome them to the hearing as well.

At this point, let me call on the 2 nominees to make any opening statement they would like.

Mr. Moeller, why don't you start?

**STATEMENT OF PHILIP D. MOELLER, NOMINEE TO BE A MEMBER OF THE FEDERAL ENERGY REGULATORY COMMISSION**

Mr. MOELLER. Thank you, Mr. Chairman, Senator Murkowski. It is a pleasure to be here.

It is an honor to have served on the FERC, and I appreciate the heart-felt comments that Senator Murray made in my introduction. She introduced me nearly 4 years ago, and I am honored to continue to receive her support.

I also thank President Obama for nominating me, and I also appreciate the support of Senator McConnell for nominating me to another term.

I also extend special thanks to my wife, who supports my career in public service.

In the nearly 4 years that I have spent on FERC, I have voted on over 4,500 orders. As with my first day of my service, I remain motivated to make decisions that benefit and protect consumers through the safe and efficient provision of the energy products and services we regulate.

I have extensive written comments, but I thought I would summarize kind of eight areas that we have focused on and that I think, if I am confirmed, I would still continue to work on, and certainly, it will be in the commission's areas—areas where the commission will be spending a lot of time.

As noted, I come from the Pacific Northwest, and as such, I have tried to be an advocate for hydropower. All energy sources have tradeoffs, but hydropower is kind of the quiet workhorse that provides about 10 percent of the Nation's electricity needs, and it is renewable energy. We regulate over 2,600 dams in this country. So it is a big part of what FERC does.

The new hydrokinetic technologies, whether it be wave power, tidal power, ocean current, or in-stream current, all have enormous potential. But in order for them to develop and for the environment to be protected, the commission is going to have foster and nurture and watch these technologies, and we have tried to do our part to encourage them along the way.

On electric reliability, during my term, we passed the first set of mandatory and enforceable reliability standards that came out of 2005 EPACT. This has been largely a successful framework that we have put together, and yet a lot of work still needs to be done.

We need to make sure that these standards are enforceable, that they are effective and they are cost effective. I think we also need to look at the fact that taking a longer-term look at reliability, perhaps with a cybersecurity component, is something that at this point would serve consumers well.

In terms of energy infrastructure in this country, it seems clear to me that we are going to be using more natural gas to generate electricity in this country, even though the most efficient use of it is direct usage. As such, it is our job, I believe, at the commission

to develop the kind of policies that allow the adequate natural gas infrastructure to be deployed.

We have deployed or at least we have approved significant natural gas pipelines in the last few years, significant new natural gas storage. We have approved some LNG terminals, and we have given significant support to 2 entities that are looking at building a pipe from Alaska to deliver domestic natural gas.

Wholesale electric markets is something that we probably spend most of our time on at the commission, and they have evolved in different ways and at different paces throughout the country. Often, the policies related to electricity are really more based on regional differences than anything else.

Yet there has been enormous progress in the wholesale markets, both in their expansion and the new services that they have delivered in just the last couple of years. Yet we need to work at the commission to make sure that we protect consumers, that they feel that the RTOs are responsive, and that we have adequate metrics that measure the success of these markets. In the next year, we will also be dealing a lot with demand response and the compensation for that product.

Enforcement is an area that we have also spent a lot of time on in the last few years. You gave us major league enforcement powers in EPACT 2005, and we appreciate it. Yet we need to be cautious when we wield the Government sword of enforcement. I have worked to make sure that our process is transparent and that we are firm and fair. We have more work to do here, but we have made a lot of progress.

A big part of the next year at the commission will be working on the integration of variable generation. The good news is that wind and solar power has been a significant part of our electric mix in the last few years, but there are challenges that are being delivered through that because the system wasn't designed for variable generation.

These are not insurmountable problems, but they are difficult, and they will take an increasing amount of time in the next year and perhaps more than that. At the commission, we have a major notice of inquiry, where we have asked people to comment on, and the comments are voluminous.

The smart grid is something that you have tasked us with dealing with through the 2007 legislation. Specifically, you asked us to adopt interoperability standards for the smart grid. We expect that NIST will be delivering us a package of those in the near future. Yet it is going to be something we have to make sure that consumers do not feel that they have been overpromised the benefits of the smart grid because although I believe that they are transformative and they will be widespread and benefit consumers, it will take longer than probably most people realize to fully utilize the smart grid and implement it throughout the country.

Finally, you, as committee members, are well aware that we have a CFTC-FERC jurisdictional battle going on in terms of regulating certain components of the energy market. Regardless of what you direct us to do, where that bright line or not-so-bright line goes jurisdictionally, I have worked to try and make sure the 2 agencies are working together better, both at the commissioner level and the

staff level. So that, in essence, our main motivation is to protect consumers.

With that, again, it is an honor to be here, and I look forward to answering any of your questions.

[The prepared statement of Mr. Moeller follows:]

PREPARED STATEMENT OF PHILIP D. MOELLER, NOMINEE TO BE A MEMBER OF THE  
FEDERAL ENERGY REGULATORY COMMISSION

Chairman Bingaman, Ranking Republican Murkowski, and members of the committee, thank you for considering my nomination today for another term on the Federal Energy Regulatory Commission (FERC). I send heartfelt thanks to Senator Murray from my home state of Washington for her kind words. She introduced me nearly four years ago and I am honored to continue to receive her support. I thank President Obama for nominating me, and I greatly appreciate both Senator McConnell and Senator Murkowski for supporting my nomination to another term. And I extend special thanks to my wife Elizabeth for supporting my career in public service.

In the nearly four years that I have served on the FERC I have voted on over 4500 orders. As with my first day on the commission, I remain motivated to make decisions that benefit and protect consumers through the safe and efficient provision of the energy products and services we regulate.

Working with my colleagues, current Chairman Wellinghoff, Commissioners Spitzer and Norris, former commissioner Kelly, former Chairman Kelliher along with the talented staff at FERC, I have been deeply involved in efforts to better protect consumers through economic and safety regulation, improve energy markets, encourage needed energy infrastructure, and ensure bulk-power system reliability. Much has been done, but more needs to be done. If confirmed for another term, I look forward to the opportunity to continue to serve. In my efforts to keep improving the areas in which we regulate, I have focused on several issues and I expect all of these areas to receive necessary and extensive attention in the next several years.

#### HYDROPOWER

I hail from the Pacific Northwest, the region that most relies on hydropower to deliver needed energy to consumers. With that background, I have worked to assure that my colleagues have a thorough appreciation of hydropower and the benefits that this resource delivers. All energy sources—including hydropower—exhibit inherent tradeoffs, but traditional hydropower is a mature renewable resource that provides enormous benefits through the over 1600 projects—which includes approximately 2600 dams—that the Commission regulates. The new hydrokinetic technologies that make use of wave, tidal, ocean current, and in-stream current resources hold the promise of a new generation of benefits. The Commission has worked to enable these technologies to be deployed, but the hydrokinetic industry is still a nascent one that needs attention to develop in an orderly manner while assuring that citizens and the environment are protected.

#### RELIABILITY

During my term FERC approved the first set of mandatory and enforceable standards intended to enhance the reliability of the nation's bulk-power system. Subsequently we have approved and proposed additional standards. This authority and responsibility emanates from the 2005 Energy Policy Act that this committee developed. Overseeing the implementation of this system of mandatory and enforceable reliability standards by the designated Electric Reliability Organization (NERC) has been a major undertaking. As with any new and comprehensive regulatory regime, there have been plenty of challenges highlighted by the complex nature of these standards. Our efforts have been largely successful in setting the framework for this new and transformative approach toward ensuring consumers have the reliable power they need delivered through the bulk power system. However, the Commission still has a lot to do in the realm of reliability policy—especially in regards to assuring that we focus on short term and long term reliability challenges and implementing cost effective standards that truly improve the reliability of the bulk power system. Cyber security is a major area of our attention, and we are likely to spend additional efforts to clarify the standards in this area, perhaps with more direction from Congress to FERC this session.

## INFRASTRUCTURE

Over the last several years, the nation has dramatically increased its use of natural gas to generate electricity. Because I see this trend continuing in the foreseeable future, a big part of FERC's responsibilities is to ensure that we promote policies that allow safe and sufficient natural gas infrastructure to meet this demand. Consumers have benefitted especially from the new sources of shale gas that have been developed in just the last few years. Domestic production of natural gas increased dramatically in 2007 (by some estimates an 8 percent increase) and again in 2008. The Commission has approved significant new capacity in new pipelines, new gas storage and liquefied natural gas terminals while also providing extensive guidance to entities interested in developing a natural gas pipeline from Alaska. In fact, two proposals to develop an Alaska pipeline are currently in the pre-filing process at the Commission.

Expansion of the nation's electric transmission infrastructure has not been as robust as in the natural gas arena. Some of this is attributable to issues of uncertainty over transmission planning, transmission siting authority and transmission cost allocation. We need to assure that consumers who pay for transmission investments receive benefits from such investments. Our Order 890 (discussed below) is an effort to provide guidance so that additional cost-effective transmission investments can be made. I have made it a priority to promote policies that allow for additional qualified entrants in the transmission field (independent developers, merchant developers, and joint projects) along with more creative approaches such as the "anchor shipper" model often used in the natural gas industry.

## WHOLESALE ELECTRIC MARKETS

Wholesale electricity markets are evolving in different ways and at different paces in various regions throughout the nation. In the last two years alone, most of the organized wholesale markets have expanded in either their membership and/or the scope of products provided. Several examples include: the California market (through the California Independent System Operator) saw the implementation of the long-planned Market Redesign and Technology Update (MRTU) launched in March of last year; the Midwest market (through the Midwest Independent System Operator) saw significant new membership additions and the launch of its ancillary services market; and the Southwest market (through the Southwest Power Pool) expanded with new members from Nebraska, new product launches and SPP has recently proposed a major transmission expansion plan.

During my term FERC implemented Order 890, a comprehensive review and reform of the nation's wholesale transmission markets. One of the major components of Order 890 included regional transmission planning requirements based on specific principles. As with the other issues, significant progress has been made but that progress needs to continue to assure that adequate infrastructure is developed to serve the nation's consumers.

Although in the last year we have witnessed dramatic drops in the price of power—in many areas approximately a fifty percent decrease in price—the Commission still needs to be vigilant in assuring that the benefits of competitive markets flow through to consumers and that these regional market structures are responsive to customer concerns. We are currently undertaking efforts to improve the responsiveness of regional transmission organizations and developing the metrics necessary to evaluate wholesale markets. Another issue we will address in the next year is the best way to compensate demand-side resources in the organized wholesale markets.

## ENFORCEMENT

Early in my term the Commission first exercised its penalty authority that was authorized by the Energy Policy Act of 2005. To date we have approved 41 settlements, of which 40 involved civil penalties. FERC's enforcement process continues to mature, as our most recent annual enforcement report highlighted the agency's enforcement priorities and relevant case studies. Recently proposed penalty guidelines are an additional effort to provide context and clarity to the entities we regulate. However, FERC needs to continue these recent improvements in our enforcement process to assure that we are firm but fair in providing a transparent process that emphasizes compliance while maintaining the threat of substantial penalties for non-compliance and violations of our rules.

## INTEGRATION OF VARIABLE GENERATION

Over the last several years the Commission has undertaken efforts to facilitate the integration of variable generation—namely wind power and solar power—onto the electric transmission grid. We have done this by requiring jurisdictional transmission providers to better utilize existing transmission capacity to meet customer needs through “conditional firm” access to the grid; expending considerable time and effort in reforming “queue” policies to hasten clearing the backlog of interconnection requests; and approving transmission cost allocation proposals designed by regions to address particular needs. And as the development of these resources has been quite significant and successful, it has led to new challenges precisely because of the amount of these resources now on the grid.

The Commission will be spending a great deal of time and effort in the near term focusing on these challenges that are present in nearly every region of the nation (with the general exception of the Southeast.) Even in my home region of the Pacific Northwest, the Bonneville Power Administration is struggling with integrating these resources into a system that was not designed or developed with variable generation in mind. In response to this situation, in January we issued a Notice of Inquiry (NOI) on this issue, requesting comments on how the FERC should address a wide range of policy questions. Within the last month, the first round of comments has been submitted in response to our NOI. I am convinced that these challenges are not insurmountable but are extensive and growing in their complexity.

## SMART GRID

Congress tasked the Commission with implementing “smart grid” interoperability standards through the Energy Independence and Security Act of 2007. Last year FERC adopted a policy statement with core principles intended to provide guidance for jurisdictional entities pursuing smart grid investments and for those developing the standards through the process coordinated by the National Institute of Standards and Technology (NIST). We expect NIST to deliver a set of interoperability standards to FERC in the near future and to commence a rulemaking on the adoption of standards. When considering such a rulemaking, cyber security of the grid will be my paramount concern.

Although the concept of the “smart grid” can be defined many different ways, its potential to allow two-way communication with consumers has revolutionary and transformative potential in ways that can bring greater efficiencies to our nation’s electric system. However, the transformation will not be immediate and will occur at varying paces throughout the nation. And although many of the policies related to the actual implementation of the smart grid will occur at the state and local levels, we at FERC also need to be aware not to overpromise the benefits of the smart grid to consumers lest there be a backlash that slows the pace of its implementation.

## CFTC/FERC JURISDICTIONAL ISSUES

As this committee is well aware, there is an ongoing debate pertaining to the jurisdictional lines of regulation between the FERC and the Commodity Futures Trading Commission (CFTC) over certain energy-related trading products. As the committee works with the Senate Agriculture Committee to clarify our respective roles, it is my firm belief that consumers will benefit if the two agencies can forge a closer and more productive working relationship. I have worked to bring the staffs and the commissioners of the two agencies together for briefings and meetings to better appreciate the different sets of expertise that each agency can bring to this effort to better protect consumers.

Thank you again for the opportunity to appear before the committee today and I look forward to answering your questions.

The CHAIRMAN. Thank you very much.

Ms. LaFleur, why don’t you go ahead with your statement?

**STATEMENT OF CHERYL A. LAFLEUR NOMINEE TO BE A MEMBER OF THE FEDERAL ENERGY REGULATORY COMMISSION**

Ms. LAFLEUR. Thank you, Chairman Bingaman, Senator Murkowski, members of the committee.

I am deeply honored to be here today as a nominee for the Federal Energy Regulatory Commission. I would like to thank President Obama for nominating me, and thank the committee for your consideration and for scheduling this hearing so quickly.

I would like to thank Senator Shaheen for her very generous introduction and everything she has done for the citizens of New Hampshire and New England, both as Governor and Senator.

Also Senator Brown for being here today, for his very kind endorsement, and for his service, both as my State senator and now this year as the U.S. Senator for our entire State.

Finally, thank you to my family for being here for me today and every day.

I know that FERC is faced with substantial responsibilities, and Congress is considering adding even more as it takes up energy bills, including the one this committee reported out last year. Issues before FERC in the coming years will be critical to strengthening electric and gas infrastructure for greater reliability, security, and economic growth; facilitating environmental improvement through greater reliance on new sources of energy; and promoting fair and efficient markets to reduce costs to consumers. I would welcome the opportunity to apply myself diligently to these efforts.

I believe my background is well suited to many of the challenges FERC will be facing should I be confirmed. I was fortunate to have a wonderful education through the sacrifices of my parents and the availability of public and private financial aid. I was trained as a lawyer and practiced law for several years, but have spent the last 20-plus years of my career in the electric and gas industry.

I have leadership experience both in a vertically integrated electric company with a diverse fossil, hydro, and nuclear portfolio, and in a restructured electric and gas company that provided transmission and distribution services and bought power in a competitive wholesale market.

Much of my career has been spent at the distribution customer level, and I understand that everything FERC does affects real customers. I was closely involved in the restructuring of the electric markets in the New England States and in helping customers to understand and benefit from the new marketplace. I also led a major effort to improve reliability and safety through infrastructure investment.

Earlier in my career, as Senator Shaheen alluded to, I spent 4 years directly leading energy efficiency and demand response programs for business and residential customers in Massachusetts, New Hampshire, and Rhode Island. I know that demand-side efforts can save money for homes and businesses; help markets meet energy needs, especially peaks; and contribute to environmental improvement.

I come from a part of the country that has been an early leader in the development of robust competitive markets, in sustainable demand-side programs, and in efforts to boost renewable energy, and I am proud to have been a part of those efforts. At the same time, the Northeast has struggled with a lack of indigenous energy resources and historically high energy prices.

If confirmed as a FERC commissioner, I would work to understand and be sensitive to the unique situations and needs of dif-

ferent geographic regions and markets across the country and to approach all issues with an open mind. I would look forward to working closely with State utility commissions, whose work complements FERC's in many areas. I would also be honored to work with the members and staff of this committee.

Thank you again for the opportunity to testify, and I would be happy to answer your questions.

[The prepared statement of Ms. LaFleur follows:]

PREPARED STATEMENT OF CHERYL A. LAFLEUR, NOMINEE TO BE A MEMBER OF THE  
FEDERAL ENERGY REGULATORY COMMISSION

I thank you, Chairman Bingaman, Ranking Member Murkowski, and members of the Committee. I am deeply honored to be here today as a nominee for the Federal Energy Regulatory Commission. I would like to thank President Obama for nominating me, and thank the Committee for their consideration and for scheduling this hearing so quickly. I would like to thank Senator Shaheen for her very generous introduction, and for all that she has done for the citizens of New Hampshire and New England as both Governor and Senator. Finally, thank you to my home state Senators, Senator Kerry and Senator Brown, for all that they do for the people of Massachusetts.

I know that FERC is faced with substantial responsibilities, and Congress is considering adding even more as it takes up energy bills including the one this Committee reported out last year. Issues before FERC in the coming years will be critical to strengthening electric and gas infrastructure for greater reliability, security, and economic growth; facilitating environmental improvement through greater reliance on new sources of energy; and promoting fair and efficient markets to reduce costs to consumers. I would welcome the opportunity to apply myself diligently to these efforts.

I believe my background is well-suited to meet many of the challenges FERC will be facing should I be confirmed. I was fortunate to have a wonderful education through the sacrifices of my parents and the availability of public and private financial aid. I was trained as a lawyer and practiced law for several years, but have spent the last twenty plus years of my career in the electric and gas industry. I have leadership experience both in a vertically integrated electric company with a diverse fossil, hydro and nuclear portfolio, and in a restructured electric and gas company that provided transmission and distribution services and bought power in a competitive wholesale market.

Much of my career has been spent at the distribution customer level, and I understand that everything FERC and other regulators do affects real customers. I was closely involved in the restructuring of the electric markets by statute and regulation in the New England states, and in helping customers to understand and benefit from the competitive marketplace. I also led a major effort to improve distribution reliability and safety through infrastructure investment.

Earlier in my career, I spent four years leading energy efficiency and demand response programs for business and residential customers in Massachusetts, New Hampshire and Rhode Island. I know that demand-side efforts can save money for homes and businesses, help markets meet energy needs, and contribute to environmental improvement.

I come from a part of the country that has been an early leader in the development of robust competitive markets, in sustainable demand-side programs, and in efforts to boost renewable energy, and I am proud to have been a part of those efforts. At the same time, the Northeast has struggled with a lack of indigenous energy resources and historically high energy prices. If confirmed as a FERC Commissioner, I would work to understand and be sensitive to the unique situations and needs of different geographic regions and markets across the country and to approach all issues with an open mind. I would look forward to working closely with state utility commissions, whose work complements FERC's in many areas. I would also be honored to work with the members and staff of this Committee.

Thank you again for the opportunity to testify this morning, and I would be happy to answer any questions you have.

The CHAIRMAN. Thank you both for your statements.

As I indicated before, I think the President has chosen wisely in nominating both of you and re-nominating Phil Moeller for this position and in nominating Ms. LaFleur for the commission as well.



So I will have no questions. Let me defer to Senator Murkowski. Senator MURKOWSKI. Thank you, Mr. Chairman.

I just have a couple of questions here this morning. Commissioner Moeller, I appreciate your comment about the role of natural gas, and hydro.

But you mentioned natural gas, and of course, we are seeking to advance a project—actually, there are a couple that you are reviewing now, currently, to get Alaska's gas from the North Slope and to the consumer here in the lower 48. I want to thank you for your very open-door policy, the conversations that you have had, as members of the State administration and the legislature come and visit.

I know they have a steady stream of them that come in February and March, and I hear very, very positive reports about the level of meetings that they have had with those of you at the FERC. I just want to thank you for that and just urge you, as a commissioner, and Ms. LaFleur, as I am assuming you will be an incoming commissioner, to just commit to working with the State of Alaska as we try to advance these very important projects for the country when it comes to our natural gas resources.

Mr. MOELLER. Senator, thank you for those comments.

Of course, you have my commitment toward that, and I have spent considerable time with Alaskans and in the State. I think that it is not only critical, but it is something that I feel a little bit of a connection to because they have kind of adopted me as an honorary Alaskan, given that I have lived in the State. So you have my commitment.

Senator MURKOWSKI. I appreciate that.

Ms. LaFleur, I am sure you will be spending plenty of time coming up to speed on it, but I appreciate your interest in it as well.

Ms. LAFLEUR. Thank you.

I certainly pledge my support, first of all, to learn quickly as much as I can about the project. I know it is something FERC has been working very hard to permit the pipelines, and I think they are critically important to bring a huge domestic resource to market.

Senator MURKOWSKI. Thank you.

Let me ask a question to both of you about transmission cost allocation. The issue of who pays for the new transmission, I think we all agree, is a very difficult one. This committee has spent some significant time on it.

Chairman Wellinghoff has recently told reporters that he believes that FERC already has the authority to broadly allocate the cost to pay for transmission lines, but he did acknowledge that this power could be derived only implicitly from FERC's existing Federal Power Act authority and stated his preference for congressional legislation that would make the authority more explicit.

Now, in this committee, we have declined to socialize the transmission costs. Instead, we have adopted an amendment to ensure that the costs are more appropriately allocated to the beneficiaries of the new transmission. But it does appear that FERC is reviewing stakeholder comments on the issue. They have directed FERC staff to begin drafting a proposed transmission cost allocation rule.

So the question that I have to you this morning is whether or not you think it is appropriate for FERC to basically get out in front of Congress on this issue? Then also whether you believe that the Federal Power Act does provide the explicit authority to FERC to broadly allocate these costs?

If you can just speak to this as an issue because it is so important, as you recognize.

Mr. MOELLER. Thank you, Senator Murkowski.

It is a critical issue, and I will associate my comments with those of the chairman, or Chairman Wellinghoff, that we believe we have authority, but it would be helpful if we had further direction from Congress. We are walking a little bit of a fine line because we have, for instance, States that are developing renewable portfolio standards, and they need the infrastructure to support those. We are dealing with proposals that come to us with regional differences, and I think that is appropriate, and we will continue to do so.

I am very sympathetic to the home region of Ms. LaFleur, New England, who they will claim, rightfully so, that they have made significant investments in transmission, and they feel like their customers are paying for that, and they don't want to have something added on to that.

We have allowed regional approaches to occur and have adopted them as they have come to us, largely supported through a stakeholder process. But something that could change the game is if you decide in Congress to perhaps have a national renewable portfolio standard or something along that line that will clearly require the additional transmission construction. If that is the case, perhaps our authority needs to be clarified as well.

Senator MURKOWSKI. Ms. LaFleur, do you have any comments?

Ms. LAFLEUR. Thank you.

I don't pretend to understand the Federal Power Act as well as Chairman Wellinghoff, but I do think it has a rather general standard of just reasonable and nondiscriminatory rates. So it gives FERC, by its terms, quite a bit of discretion. However, I think a more current and pointed statement of congressional intent would be extremely helpful, especially as FERC considers going into new areas.

I think that transmission cost allocation, whether it is within a State, within a region, and certainly beyond regions, is inherently a very tricky business. Should Congress choose to give FERC more authority, it would have to be used very judiciously because new transmission infrastructure could cross between regions of the country that have very different internal mechanisms to allocate costs that affect customers differently and also have, as Commissioner Moeller alluded to, a lot of ongoing efforts to improve their own generation portfolio and improve their transmission planning within regions that the idea isn't to disrupt or set back things that are already going on.

So I do think it would be useful, as you asked, to have Congress give FERC some guidance on this issue.

Senator MURKOWSKI. Thank you. I appreciate those comments.

Then one final question here. FERC had contracted with the Lawrence Berkeley Laboratory to do this comprehensive study of

the reliability of our grid system as we add in these intermittent renewable resources. It is my understanding that we anticipated that the results of this study would be out in December 2009, but to date, it has not yet been released.

Can you give me an update, Commissioner Moeller? Do we know whether the study has been completed? Do we know where we are with the findings and when that study might be made available to the committee?

Mr. MOELLER. Senator Murkowski, I will get back to you with more of an update, but I checked on it last week. The word I received is that they are still working on it at Lawrence Berkeley. We did initially anticipate it within 6 months, but it is my understanding that perhaps the issues are a little more extensive and complicated than they realized so that they are still working on it.

Senator MURKOWSKI. Couldn't we have said we could tell you that they were going to be more complicated than that? We knew that. But it is still underway then?

Mr. MOELLER. Still underway. But it is a critical study, and I greatly anticipate it, and I think it is something that we will do our best to let the members and staff of this committee know what the results are because it is a very important issue.

Senator MURKOWSKI. I appreciate that.

Mr. Chairman, those are all my questions, but I just did want to note for the record we talk about this committee being a very bipartisan committee. We get along pretty well. But it was interesting to note today that the Republican nominee was introduced by a Democrat Senator, and our Democrat nominee was introduced by a Republican Senator as well as a Democrat Senator. So it just continues that fine tradition of bipartisanship.

The CHAIRMAN. All right. Senator Risch.

Senator RISCH. Thank you, Mr. Chairman.

The President certainly has appointed a diverse pair, one from the Northeast and one from the Northwest. Mr. Moeller hails from part of the country we call "the Palouse," which is an area that straddles the State line between Washington and Idaho. Although he was on the wrong side of that line, he had substantial experience in Washington, which speaks highly of him.

I have advised Ms. LaFleur she is going to learn a lot more about anadromous fish than she wants to hear about on FERC. But certainly, 2 good appointees that we are going to be relying on as we head into the nuclear renaissance in this country, something we are going to be looking for support from FERC on that, as we move forward and hopefully move forward aggressively.

So thank you, Mr. Chairman.

The CHAIRMAN. Thank you.

Senator Wyden.

Senator WYDEN. Thank you very much, and good to have a chance to spend a few minutes with both of these individuals.

I want to walk through a situation—Ms. LaFleur, you and I have talked about it—that will help us address the question of how to get the States a bigger role in key parts of this debate, particularly involving liquefied natural gas.

Now, on April 5, FERC approved construction of the Ruby pipeline. This was a project that will bring 1.5 billion cubic feet of nat-

ural gas to Oregon from the Rocky Mountains. This comes after FERC approved the Bradwood LNG project, which would bring another 1.3 billion cubic feet of gas to Oregon.

It approved the Jordan Cove LNG project, bringing in another billion cubic feet of natural gas to Oregon, and FERC is working its way through the permitting process for the Oregon LNG project in Warrenton, Oregon, to bring another 1.5 billion cubic feet of natural gas to the State.

So, on top of these capacity issues, the agency is also about to issue a draft Environmental Impact Statement for the Palomar pipeline that would run throughout Mount Hood National Forest, with the capacity to bring another 1.3 billion cubic feet of gas a day to western Oregon.

Now for all of these projects, FERC has or will issue the certificate of public convenience and necessity justifying their construction. So you say to yourself, how do we get in this situation where one project after another is just getting a green light to proceed apace without really thinking through what this is going to mean for a State where, traditionally, we have brought everybody together. We brought together economic development interests, environmental interests, and fishing families and land owners, and we were able to strike a balance.

It seems, as a result of the change in policy, which I vehemently opposed that, in effect, cut the State's role, handed everything back to FERC, that States, and I am sure mine is the not the only one, feel that they are getting trampled in this debate. So I have introduced legislation in the past to return control to the States.

A gentleman I am fond of now living at 1600 Pennsylvania, President Obama, when he was here, was a co-sponsor of this legislation. So the administration knows of my longstanding interest in this issue. I would like to get on the record from both of you, your view with respect to how the States can have an expanded voice in these decisions because I think if we are going to get balanced approaches to LNG and natural resources, running roughshod over the States is not the way to do it.

Senator Risch, for example, has done great work as a State official trying to bring people together. That is what I am trying to make the hallmark of my approach to natural resources in my home State.

Ms. LaFleur, I will start with you, since we have talked about it in the office. No. 1, what is your assessment of the description of events, and do you think that this is a legitimate concern?

No. 2, if you do, if you think that this is a legitimate concern, what would be your thoughts from a policy standpoint about how, if confirmed, you could ensure that the States would have a bigger voice in these matters?

Ms. LAFLEUR. Thank you, Senator for that question. Thank you for the time you spent educating me on the situation in Oregon.

I am no stranger to LNG because I come from a part of the country that is heavily dependent on LNG to meet winter peaks, and I also know that LNG siting can cause great controversy. I have family in Fall River, Massachusetts, very close to a proposed LNG facility. If Tip O'Neill said all politics is local, all siting is very, very local.

Obviously, I don't want to comment on the specific all the dockets you enumerated that are pending with respect to LNG certification and pipelines in Oregon because they could still be pending should I be confirmed as a commissioner. But I do understand that the process you describe has been really difficult for your constituents, and I would make it a high priority to learn more about that process.

I think FERC and all agencies at the State or Federal level should always be committed to improving their processes and doing better, and I would be open to exploring whether there could be an expanded role for State regulators in cases where there are—particularly in cases where there are multiple projects within a State, multiple options being considered, whether the State regulators could help sort through that in a way that would improve the process.

Senator WYDEN. So, from a policy standpoint, I guess this is a yes or a no, I want to know from a nominee whether they think the States should have more of a say in this process?

Ms. LAFLEUR. I think that—

Senator WYDEN. You got pretty close to saying yes. Don't unravel it.

Ms. LAFLEUR. I mean, I do think that the States could usefully play a bigger role, and I think, should I be confirmed to FERC, cases will come before me. I know FERC has a lot of precedent in this area, and it is up to the commissioners to adapt that precedent, apply it, evolve it, based on the record before. I would have an open mind on that.

Senator WYDEN. Mr. Moeller, should States have more of a say in this process?

Mr. MOELLER. Senator, I think they should. I am not quite sure how we formalize that. I have a very good relationship with the Oregon commission, former Chairman Beyer, Commissioner Savage. You have a new commissioner there as well, and Ray Baum has been out here a lot.

So I think I have reached out to the Oregon commission, but I think we can do a better job with the other State agencies because, as you outlined, you have constituents that feel that at times that their voice hasn't been heard, and we never like that. We want to make sure Government should be responsive to constituent concerns.

I won't go into specifics as well, but I recognize that things can be improved.

Senator WYDEN. I think this has certainly been a step in the right direction. I just want to make clear. I think that multiple proceedings allow for multiple disruptions of people's lives, and that is what is going on in my home State.

There are a whole host of issues that you all have correctly said today go to the question of how you deal with this. For example, it seems to me that there ought to be discussion about a threshold for combining proceedings, and that is something that would be a legitimate topic of debate. But when FERC insists that no 2 projects can ever be considered together, I just think that is a prescription for trouble, and I need you all to take a look at it.

Mr. Chairman and Senator Murkowski, thank you for this extra time and look forward to working with both of you.

The CHAIRMAN. Thank you.

Senator Murkowski, did you have any other points we need to raise?

Senator MURKOWSKI. I do not, Mr. Chairman.

The CHAIRMAN. We thank both nominees for being here. We will advise members and staff that they will have until 5 p.m. tomorrow to submit any written questions, if there are questions that someone would like to have a response to.

With that, the committee will stand in adjournment.

[Whereupon, at 10:44 a.m., the hearing was adjourned.]

APPENDIX  
RESPONSES TO ADDITIONAL QUESTIONS

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RESPONSES OF PHILIP D. MOELLER TO QUESTIONS FROM SENATOR MURKOWSKI

*Question 1.* Do you agree that one of the important aspects of the Commission's mission is to set clear policy and to provide clear guidance to the energy industry regarding the enforcement of your policies? Do you agree that market participants must be able to clearly understand what behavior is prohibited in order to avoid engaging in that conduct? For example, I understand that a number of trade associations have requested greater clarity with respect to affiliate bids in the same open season for interstate transportation or storage capacity.

Answer. I fully agree that clear guidance on policies and enforcement is essential. My votes, including separate concurrences and dissents, have reflected my strong feelings on this subject.

*Question 2.* Do you believe that transmission should be an asset for all generation resources? How do you view efforts to limit federal benefits like cost allocation and back-stop siting to new transmission for only renewable or low-carbon emitting resources?

Answer. I believe that transmission policies should not be limited to any specific types of resources.

*Question 3.* Do you believe federal siting authority in the area of transmission should be uniform in the Eastern and Western interconnection?

Answer. Yes. While its authority should be the same, FERC can and should consider the specific circumstances in a region when it makes infrastructure decisions.

*Question 4.* In your opinion, what is the appropriate standard or principle that governs who should be assessed the costs for new transmission lines?

Answer. I favor policies that lead to additional cost-effective transmission getting constructed over policies that lead to lengthy litigation over cost allocation. With this as my guiding principle, I support the statement below that customers should not pay for transmission unless they benefit from transmission.

*Question 5.* As a general matter, do you believe that the beneficiaries of a transmission project should bear the costs of that project?

Answer. As noted above, yes.

*Question 6.* Do you believe it is ever appropriate to allocate the costs of transmission infrastructure over an entire interconnection area?

Answer. In the case of ERCOT, yes. Absent new federal legislation (such as mandatory renewable energy production levels) I do not envision a cost-allocation proposal that would apply to either the entire Eastern interconnection or the entire Western interconnection.

*Question 7.* Last year, the Commission conducted a series of regional transmission planning conferences. What is your assessment of the existing transmission processes? Does FERC require additional statutory legislation in this area?

Answer. I believe our Order 890 advanced the policy of better regional planning, but the progress needs to continue. I will be very interested in the results of the ongoing interconnection-wide planning efforts. I do not believe we need additional statutory direction to require more regional planning.

*Question 8.* Do you believe that FERC's authority to provide incentive-based rate treatment to promote construction of new or upgraded transmission facilities to address reliability and accommodated the integration of renewable resources has had a positive impact in transmission investment?

Answer. Yes.

*Question 9.* In your opinion, has the Commission given appropriate incentives to promote investments in transmission? Additionally, what types of projects do you see as meriting incentive-based rate treatment?

Answer. I believe FERC has awarded appropriate incentives for transmission incentives. In some orders I wrote separately urging greater use of incentives for

newer technologies that provided significant reliability or environmental benefits in an effort to encourage greater deployment of these technologies.

*Question 10.* FERC recently initiated an inquiry on the integration of variable energy resources. What actions will FERC take in this area? Will FERC recognize the regional differences that will impact such integration and support market-based innovation to facilitate integration?

Answer. Examining the issues within this Notice of Inquiry will consume much of the next year, as the initial round of comments are extensive and voluminous. I am not certain which actions we will even consider at this point, but regional differences and market-based innovation will be extremely important to me as I consider our policy options.

*Question 11.* The focus on interconnecting renewable resources to the transmission grid has created significant backlogs in some interconnection queues, resulting in additional congestion and reliability concerns. Does FERC's current interconnection policies adequately address these issues? How should FERC update its current interconnection policies to ensure that viable projects addressing the needs of all generating resources, including renewable resources, are not stuck in the interconnection queue?

Answer. FERC is working to address queue backlog issues that are affecting most areas in the nation. Some matters pertaining to this issue are pending, but progress has been made in addressing "phantom" projects and new policies such as the "cluster" approach pioneered by BPA. This is an ongoing issue that requires continued oversight by FERC.

*Question 12.* S. 1462, as reported by this Committee last year, provides DOE with the authority to deal with cybersecurity threats and FERC with the authority to deal with cybersecurity vulnerabilities. Do you support this shared responsibility?

Answer. In general I support policies that give FERC more responsibility but I recognize that Congress may decide that the identification of national security threats should be done by the President or an agency such as DOE.

*Question 13.* I understand that FERC is working with NERC on cyber security protection through the standards development process set forth in Section 215 of the Federal Power Act. Is this Section 215 process adequate to address cyber security threats and vulnerabilities? Absent Congressional legislation in this area, what actions can FERC take administratively to secure critical electrical infrastructure?

Answer. I do not believe that the section 215 process is adequate to address cyber security threats and vulnerabilities on the grid. I support Congressional proposals to give FERC more authority in this area, in order to ensure that the grid will be protected while the section 215 standards development process proceeds. Absent additional authority, FERC will continue to make improving the cybersecurity of the electric grid a very high priority in its current work under section 215 by enforcing existing cyber security standards and ensuring that they are updated to reflect current conditions and risks.

*Question 14.* On March 18, 2010, FERC issued a Notice of Proposed Rulemaking which directs the North American Electric Reliability Corporation to include electric transmission facilities of 100 kilovolts (kV) or more in its "bulk electric system" definition.

a. What is the status of this NOPR and how soon does FERC intend to move forward on implementation?

Answer. The Commission has sought comments on its proposal to direct NERC to include electric transmission facilities of 100kV or more in its "bulk electric system" definition. Those comments will be submitted by May 10, 2010. I expect that we will treat this matter with some urgency as the definition of "bulk electric system" determines which facilities are subject to the standards and therefore covered by their requirements.

b. If the NOPR requires a case by case review by FERC for each facility exemption, does the Commission have the capacity to manage this workload?

Answer. Only one of the eight Regional Entities currently uses a definition that sets a voltage baseline in excess of NERC's 100 kV threshold. Therefore, I believe we have the resources to manage this process.

*Question 15.* There is growing concern that "smart" meters are vulnerable to hacking. At a recent House oversight hearing, Chairman Wellinghoff noted that because smart grid technology will introduce many potential access points, security must be addressed. Are these concerns being addressed at the federal level? Please respond.

Answer. This issue is being considered by FERC, NIST, DOE, DHS and others. These concerns may be addressed specifically in our rulemaking on interoperability



standards. The issue of cyber security as it is impacted through these standards will be my top priority as I consider a proposed rulemaking.

*Question 16.* The 2007 Energy Independence and Security Act (EISA) directs the National Institute of Standards and Technology (NIST) to coordinate the development of standards to ensure the interoperability and functionality of Smart Grid. When sufficient consensus of NIST's work is reached, EISA directs FERC to initiate a rulemaking to adopt such standards and protocols. The FERC Policy Statement issued last July adopts key priorities for the interoperability and cyber security of standards. With respect to cyber security, how does FERC plan to determine whether the standards are cyber secure? Is there a coordination process between FERC and NIST or is FERC planning to wait for NIST to submit standards before making any determinations?

*Answer.* FERC staff and NIST are coordinating closely regarding the smart grid standards development process, holding weekly meetings and sharing information about issues and new developments as they arise. In particular, NIST has organized a Smart Grid Interoperability Panel Cyber Security Working Group to analyze cyber security issues and assess individual smart grid standards to ensure that cyber security is properly addressed. The Commission's staff participates with this group. The Cyber Security Working Group is expected to issue a final NIST Interagency Report on Smart Grid Cyber Security Strategy and Requirements later this year. NIST has not yet completed work on its initial set of smart grid standards; I do not expect that FERC will take action on any standards until that process is completed.

*Question 17.* Last year, the Commission conducted a technical conference on improving the licensing process for small hydropower development. The comment period closed last month and I understand FERC has already identified several common issues to address. Has the Commission identified any legislative actions Congress can take to help facilitate small hydropower?

*Answer.* At the last Commission meeting, the Commission discussed an action plan, under its existing authority, for assisting developers of small hydropower projects in the licensing process. I have not identified any legislative actions that are needed to facilitate small hydropower, though I stand ready to assist if Congress determines that additional legislative action is appropriate in this area.

*Question 18.* What are your thoughts on the issue of reliably integrating intermittent renewable resources onto the grid? What role can both conventional hydropower and pumped storage have to play in addressing these problems?

*Answer.* Conventional hydropower and pumped storage are—where available—the ideal complementing technologies for firming or shaping intermittent renewable resources.

*Question 19.* FERC recently released a policy statement on penalties for violation of reliability rules. There has been some concern by stakeholders regarding the substantial penalties for shedding load. What about a situation where there is a failure of critical facilities due to natural or manmade disasters and utilities must intentionally shed the load in order to preserve the reliability of the larger system? Is it FERC's intention to impose some of its highest penalty fees—which will ultimately be passed through to consumers—onto utilities when it might be more desirable for the overall grid to shed a portion of the load?

*Answer.* The concerns raised in this question are legitimate, as the overall reliability of the grid can be enhanced in rare circumstances by shedding load. I believe the penalty guidelines—when better explained and understood, and perhaps modified—will help address this concern.

*Question 20.* Are you concerned that substantial penalties could have a chilling effect on self-reporting?

*Answer.* I believe our penalty guidelines, when finalized and implemented, will be better understood as the regulated community has the time to fully digest the policy statement. Self-reporting is actually rewarded—significantly—in our penalty guidelines. These guidelines provide transparency to a process that has been too mysterious until now.

*Question 21.* How important is FERC action to recognize demand-side and efficiency measures in its efforts to support the grid integration of renewable and other energy resources?

*Answer.* Demand-side and energy efficiency are important and growing resources in our electricity mix and will play a very important role in the effort to better integrate renewable resources.

*Question 22.* FERC has issued a Notice of Proposed Rulemaking to require all RTOs to pay wholesale demand response providers in RTO markets the locational marginal price in all hours. There are some concerns that such pricing policies could result in perverse economic incentives that might overcompensate demand response

providers. What are your thoughts on how best to compensate demand response measures?

Answer. I am undecided on how to best compensate demand response. My partial concurrence and dissent in our proposed rule on this subject extensively outlined my concerns: although I strongly support cost-effective demand response programs I also feel strongly that we do not know enough yet to decide on the best way to provide this compensation. I would have preferred a Notice of Inquiry instead of a proposed rule.

*Question 23.* What is the appropriate path forward with respect to organized and bilateral wholesale markets? Can and should they co-exist or should all utilities ultimately be in organized markets?

Answer. These markets can co-exist. Organized markets have generally been growing and offering more products in the last several years.

*Question 24.* Is FERC's oversight of electricity markets sufficient to ensure that the wholesale electric rates meet the "just and reasonable" standard of the Federal Power Act?

Answer. Yes. I believe we are satisfying our responsibilities under the Federal Power Act in this area. FERC devotes significant resources to reviewing market rules and proposed changes to them, as well as overseeing activities in the markets and investigating and litigating enforcement actions.

*Question 25.* Do you believe that the wholesale electricity markets operated by regional transmission organizations are achieving net benefits for consumers as compared to those regions without RTOs?

Answer. I believe that consumers are enjoying net benefits from RTOs but I recognize that conflicting studies can be cited by advocates on both sides of this argument. Prices in RTO markets fell nearly fifty percent last year and some consumers are already receiving the benefits of these price reductions. Several regions are not yet comfortable moving forward with organized markets.

*Question 26.* Do you think that there is a sufficient level of transparency in the pricing and other relevant data from the electricity markets, particularly those operated by RTOs?

Answer. I believe there is sufficient pricing transparency in RTOs that in many cases exceeds that available in non-RTO markets. FERC must continue its vigilance on this front, however. Also, FERC has proposed rules to elicit price data from non-public utilities.

*Question 27.* What is your assessment of the success of pricing incentives in the RTO markets, such as Locational Marginal Pricing, to spur infrastructure development and address transmission congestion?

Answer. Locational marginal pricing helps provide appropriate price signals in RTO markets for generators and load-serving utilities. While the market rules may need to be changed from time to time to ensure they operate effectively, I believe locational marginal pricing is a reasonable tool in these markets for eliciting appropriate investment.

*Question 28.* Do you believe RTO-run locational capacity markets are providing adequate revenue and certain for new generation while avoiding excess payments to existing generation?

Answer. I support existing capacity markets but recognize that they continue to evolve as conditions change; matters pertaining to specific markets are pending but our ongoing challenge is to best assure that the needed capacity is there for consumers balanced by the concern that payments are reasonable.

*Question 29.* As the Senate works on Wall Street reform legislation, we can all agree that Congress must guard against systemic risk by improving the oversight, transparency, and stability of financial markets. The CFTC will certainly be provided with additional regulatory authority aimed at addressing systemic risk in the Over-the-Counter market. But we need to carefully tailor Congressional action to avoid sweeping in the physical energy markets that are regulated by FERC.

How would CFTC jurisdiction over electricity market mechanisms like Financial Transmission Rights (FTRs) affect FERC's overall mission of ensuring just and reasonable rates?

Answer. CFTC jurisdiction over FTRs could significantly impair FERC's ability to ensure just and reasonable rates. FTRs are an important tool for protecting customers against the risk of price increases for transmission services in RTOs/ISOs. Congress recognized the importance of FTRs when it enacted FPA section 217 as part of the Energy Policy Act of 2005, requiring FERC to use its authority in a way that enables load-serving entities to secure FTRs on a long-term basis for long-term power supply arrangements made to meet their customer needs. CFTC jurisdiction over FTRs could lead to, e.g., limits on the availability of FTRs for load-serving enti-

ties and thus less protection for their customers against increases in transmission costs.

*Question 30.* How would CFTC jurisdiction over FTRs impair FERC's ability to protect against manipulation in the RTO markets?

Answer. Under the Commodity Exchange Act, the CFTC asserts exclusive jurisdiction in the markets they regulate. Were the CFTC to acquire exclusive jurisdiction over the FTRs currently traded in RTO/ISO markets subject to FERC regulation, FERC's authority to prevent and penalize market manipulation in the RTO markets could be restricted.

*Question 31.* Are you concerned about potential CFTC jurisdiction over products that are available outside of RTO and ISO markets?

Answer. Yes. For example, the definition of "swaps" in financial reform legislation passed by the House of Representatives last year (H.R. 4173) could be construed to include a number of contractual products outside of RTO and ISO markets, including bilateral capacity contracts.

*Question 32.* The Tres Amigas project currently under development seeks to transmit renewable power out of the Southwest and into Texas. This project, then, raises a tough jurisdictional issue since it would create a historic linkage among the three separate power grids—ERCOT and the Eastern and Western grid interconnections. Because this is an ongoing case at the Commission, I won't ask you to comment on the specifics of the proposal. However, I am interested in your thoughts on the relationship between FERC and ERCOT and whether the jurisdictional bright lines will be able to be maintained in the future.

Answer. ERCOT generally has guarded its jurisdictional boundaries. As markets evolve and (in general) become more interconnected and sophisticated, both FERC and ERCOT will be dealing with ongoing issues of balancing consumer benefits of interconnectedness with legitimate ERCOT concerns over being subject to FERC jurisdiction.

#### RESPONSES OF PHILIP D. MOELLER TO QUESTIONS FROM SENATOR SHAHEEN

*Question 1.* Traditionally, the planning, siting and cost allocation of new transmission has been left up to the states. However, given the importance of investing in our transmission system—especially for the connection of renewables, some have talked about the need for an increased federal role and sharing of costs.

How do we balance the concerns expressed by the New England Governors, PUC Commissioners and others about protecting the competitive New England markets from potentially market-distorting subsidies for new transmission as a result of a broad cost allocation scheme with the need to overcome the barriers of connecting renewable resources that are often location constrained and distant from load?

Answer. FERC needs to consider regional implications of its decisions. I am very sympathetic to the concerns of New England as it is clear to me that the region has already made significant and worthwhile investments in its transmission grid. To some extent we await direction from Congress on national renewable energy standards.

*Question 2.* In New England, we share costs of new transmission projects needed for reliability rather broadly. In your view, could a similar structure work for the construction of transmission needed to connect renewable energy? Could such a policy be workable for new transmission, or upgrades to existing transmission infrastructure, solely to connect renewable resources?

Answer. I believe a similar structure could work for transmission needed to connect renewable energy and it could work for both new transmission and upgrades. As noted above, if Congress mandates a national renewable energy standard then FERC would need to be open to all types of proposals that would result in the actual deployment of new transmission facilities.

*Question 3.* How can we connect our renewable resources to the grid and allocate costs in a fair way that helps pay for transmission projects or upgrades?

What role should the FERC play in helping to get renewable resources connected to the grid? What problems would be addressed with this new authority?

Answer. We should allocate costs in a manner in which those that benefit from the transmission bear the costs of the transmission. FERC has undertaken a number of policies that encourage the grid interconnection of renewable resources, including our "conditional firm" requirement in Order 890 and our focus on clearing the "queue" backlog in many markets. Going forward, our Notice of Inquiry on Intermittent Generation is addressing a range of challenges that pertain to allowing more renewable generation to be interconnected to the grid; this NOI is extensive and the process of addressing these challenges will probably consume us for the next year.

*Question 4.* Municipal and cooperative utilities in New England have told me that they would like the opportunity to jointly plan, finance and own new transmission facilities. They believe their participation will bring additional capital and political support to needed projects and will make cost allocation decisions easier. Do you support joint ownership by these utilities?

Answer. I support joint transmission projects and have encouraged these types of projects throughout the nation.

*Question 5.* One issue that has come up in the context of transmission incentives is whether their availability should be conditioned on the applicant taking steps to allow financial participation and investment by other entities, including public power and cooperative utilities. The FERC has stated that it seeks to encourage diversity of ownership of the nation's transmission grid, which is an essential set of facilities. My understanding is that, encouragement aside, little is happening in terms of ownership diversity.

Why has the Commission refused to link incentive compensation to affording public power and cooperative entities an opportunity to participate in new investment?

Answer. I consider strictly linking incentives to joint projects as too stringent an approach to incentive policy. However, I have explicitly encouraged entities to reconsider the benefits of joint projects and my sense is that there is growing momentum to do so. Generally speaking there are many more joint projects in the Western United States and I hope to see more of these projects in the East as well.

*Question 6.* There is great concern about the substantial increase in transmission charges, including in New England. The transmission investment base is growing by leaps and bounds. The transmission investment base (the basis for rates) was roughly \$3.5 billion in mid-2009. By 2013, it is forecast to be \$8.5 billion. I am concerned that laddling incentive return on equity adders on top of the existing rate of return will exacerbate the cost impact on consumers.

In your view, what are the risks that would justify additional incentives for owners of new transmission facilities?

Answer. In my view transmission projects inherently entail great risk due to the challenges of siting and in some cases cost allocation. Transmission is a relatively small part of a consumer's final bill (usually less than fifteen percent) yet the lack of transmission can result in much more expensive generation charges. The risks that justify additional incentives include siting challenges (including physical challenges and public perception challenges) and technological challenges.

#### RESPONSES OF PHILIP D. MOELLER TO QUESTIONS FROM SENATOR MENENDEZ

*Question 1.* The Energy Bill as currently drafted would allow FERC to approve lines anywhere and for almost any reason. Some are concerned that this means the federal government will be siting transmission lines through protected open spaces and through people's back yards. Do you believe that FERC should have the authority to site transmission lines and use eminent domain power to site those lines over local opposition?

Answer. Electric transmission is essential for consumers and interstate commerce, and I believe consumers would benefit from FERC having its siting authority clarified when it is presented with transmission proposals. However I envision this as "backstop" authority that is exercised rarely, partly because the very existence of such backstop authority would result in it rarely needing to be used, as it would encourage states and local entities to find the optimum regional solution that meets the needs of customers. Though there are energy infrastructure projects where eminent domain authority is exercised as a result of a FERC certificate order, there are many where it is not exercised at all.

*Question 2.* Some claim that enhanced federal power to site transmission lines will only result in getting more wind power on the grid, but for New Jersey more transmission will likely lead to more dirty, coal power being transported into our state, a concern that 10 governors of the Northeastern states have also voiced. When exercising your current back stop authority to site transmission lines or future powers Congress might bestow on you, do you believe it is appropriate to consider the fuel mix that transmission project will likely bring onto the grid? In other words if you know a transmission line will result in more coal being burned and in turn increase pollution and public health impacts, would it be appropriate to reject that line because of those environmental and public health impacts? Should those impacts even be a factor in your decisions?

Answer. In general, I believe the future of coal-generated electricity is going to hinge much more on environmental laws and regulation rather than on transmission policy. My decisions are motivated by assuring the reliability of the bulk power system due to the inability to "color" the electrons on the grid. However, envi-

ronmental impacts are factors that I presently consider in siting decisions and will continue to do so.

*Question 3.* FERC is currently reviewing an application to have a high pressure natural gas pipeline located in a dense urban environment of high-rise residences in New Jersey. There are concerns that this pipeline could have a significant detriment to economic development. What is your position on placing these types of high pressure natural gas pipelines in dense urban environments? Is that appropriate? Should FERC consider the economic impacts of such pipelines before providing approval?

*Answer.* The Commission has a long history and a great deal of experience in siting natural gas infrastructure, including lines in dense urban environments. Cities represent large and growing markets for natural gas. Thus, there may well be a need to site additional infrastructure in such areas. All interstate natural gas pipelines are required to comply with the Department of Transportation's safety regulations, and it is my understanding that these regulations take population density into account. In addition, in our review pursuant to the National Environmental Policy Act, the Commission analyzes the potential environmental impact a proposed project would have on residents and communities in the vicinity of the projects. Also, pursuant to our Certificate Policy Statement, the Commission specifically considers potential economic effects of proposed pipelines on affected communities.

#### RESPONSES OF PHILIP D. MOELLER TO QUESTIONS FROM SENATOR BARRASSO

*Question 1.* The Energy and Natural Resources Committee approved legislation that expands FERC's eminent domain authority. It allows FERC to override State rejections of proposed transmission lines. Do you believe FERC should have the authority to override a State's rejection of a transmission proposal?

*Answer.* I believe that it would be helpful for Congress to clarify and strengthen FERC's backstop siting jurisdiction. However, I believe it is important for states and local jurisdictions to have the primary responsibility for siting transmission lines. If Commission involvement becomes necessary, the Commission will give appropriate consideration to the effects of proposed projects on the interests of landowners and communities, as it currently does in its other infrastructure siting work.

*Question 2.* What is your view on the future role of baseload power sources like coal and nuclear in America's energy portfolio?

*Answer.* Baseload power sources including coal and nuclear will be essential in our fuel mix for the foreseeable future, at least many decades in my view.

*Question 3.* Last year, Chairman Wellinghoff said that the nation's future power needs can be fully met by renewable energy sources and efficiency improvements. Do you agree?

*Answer.* Although I support renewable energy and energy efficiency, I do not believe these sources will be sufficient to meet the nation's future electricity needs. New methods of energy storage will help to greatly increase our use of renewable energy, but these methods of storage need to be proven cost effective and technologically feasible before they can be applied on a wide scale.

*Question 4.* Do you support requirements that new transmission favor or be limited to renewable or low-carbon emitting resources?

*Answer.* I do not support limiting new transmission to only certain types of resources. And in this situation the laws of physics would rule: electricity flows on the path of least resistance.

#### RESPONSES OF PHILIP D. MOELLER TO QUESTIONS FROM SENATOR SESSIONS

*Question 1.* Do you believe FERC needs new cease and desist authority, or is FERC's current authority sufficient to deal with energy market manipulation?

*Answer.* I believe consumers would enjoy a greater level of protection if FERC is given additional cease and desist authority.

*Question 2.* Once the economy recovers, it is expected our nation's demand for electricity will increase significantly over the next 20 years. I subscribe to the belief we will need a variety of both supply and demand side resources to meet our energy needs, including new nuclear, renewables, clean coal, demand response, and energy efficiency. In your opinion can we afford to take any of these resources off the table and still deliver the reliable, low cost, and clean energy our homes and businesses need?

*Answer.* I agree that all sources of supply and demand need to be in the mix to assure that consumers have the electricity they need.

*Question 3.* Considering your extensive knowledge of the energy industry, I'm sure you are familiar with "standard market design," a Commission proposed restructuring of the electric industry that would have required all utilities to join Regional

Transmission Organizations and adopt centralized operating control of the grid. As a result of concerns from many states and members of Congress, that proposal was dropped, and as a result today's industry structure has a mix of vertically-integrated utilities operating under state rate regulation and restructured utilities operating in organized markets. In your opinion do you believe that these two market structures can continue to co-exist?

Answer. I believe these two market structures can continue to co-exist.

*Question 4.* Section 215 of the Federal Power Act requires the Commission to provide "due weight to the technical expertise" of NERC with regard to reliability standards. It also requires FERC to "provide for reasonable notice and opportunity for public comment, due process, openness, and balance of interests in developing reliability standards and otherwise exercising its duties". How do you reconcile these statutory requirements with a series of recent FERC orders that are very prescriptive in directing NERC to make certain modifications to its standards and to do so by specified deadlines?

Answer. The recent FERC orders to which you refer are pending on rehearing, and thus it would be inappropriate for me to comment. I would note, however, that we have approved most of the proposed standards presented by NERC and the regional entities for approval. Where appropriate, I believe that deadlines are an important tool.

*Question 5.* Regarding the NIST lead effort to develop Smart Grid interoperability standards under the 2007 Energy Independence and Security Act (EISA),

a. How will FERC determine and confirm that sufficient consensus has been reached before moving forward with a rulemaking proceeding to adopt such standards?

b. How will FERC determine which of the many standards proposed by NIST are appropriate for a rulemaking proceeding?

Answer. I anticipate that NIST will finish a package of standards in the near future and that we will need to examine any supporting evidence to determine if sufficient consensus was reached. I will want to evaluate the package before determining which of the standards are appropriate for an initial rulemaking, but I fully expect that we will have more than one rulemaking proceeding as more standards are proposed and as consumers and the industry gain experience.

#### RESPONSES OF PHILIP D. MOELLER TO QUESTIONS FROM SENATOR WYDEN

*Question 1.* In response to questions for the record during the Committee's 2005 hearing on LNG permitting, Mark Robinson, then Director of the Office of Energy Projects responded that,

The Commission is supportive of competition within the energy industry and of the idea that the market drives infrastructure development. Past experience, particularly since the restructuring on the gas industry following Order No. 636, has demonstrated that market forces can serve the same end as a competitive or "Ashbacker" hearing. Where the Commission approves multiple projects to serve a similar market, only an economically viable project will actually be built, i.e., only where customer commitments ensure new service will fulfill a genuine need.

The Commission continues to follow this policy.

a. How is this policy consistent with the obligation of the Commission to make an affirmative finding of public convenience and necessity under the Natural Gas Act?

Answer. *Ashbacker Radio Corp. v. FCC* requires comparative hearings for mutually exclusive applications, i.e., where granting approval to one would preclude the grant of approval to the other. Most of the LNG applications that come before the Commission are not mutually exclusive—they propose to serve different customers, may have proposed different sources of supply, and may be on different timelines. The Commission thus examines each project on its own merits, including a rigorous review of all potential environmental and safety impacts, and will grant approval only if it affirmatively finds that construction and operation of the project would be consistent with the public interest. If a project is approved, the Commission then lets market forces determine whether a project will be built.

b. Do you agree with this policy that competitive or "Ashbacker" hearings need never be conducted where multiple projects are proposed for a given market or to serve a specific demand, such as send-out capacity for an LNG terminal?

Answer. I think that the Commission should avail itself of whatever regulatory tool best suits the circumstances at hand. I will keep an open mind as to best manner of processing specific cases.

c. Are there any circumstances where you believe that it is ever appropriate for the Commission to conduct competitive or “Ashbacker” hearings where multiple projects are being proposed to serve a single market or even a specific facility, such as an LNG terminal? If so, when?

Answer. Although, as noted in Mr. Robinson’s statement, it has been the Commission’s policy that market forces may serve the same end as a competitive hearing, where projects appear to be mutually exclusive, the Commission could decide that it was appropriate to hold an “Ashbacker” hearing. I cannot prejudge what process I would consider to be the most appropriate in the absence of case-specific facts.

d. In Oregon there are multiple projects including three LNG terminals all proposed to serve the Northwest market with far more capacity than the region uses. Under what circumstances, if any, should LNG projects such as these be the subject of combined proceeding?

Answer. Unfortunately, it would not be appropriate for me to speculate on the outcome of a pending case. However, as I stated above, I will consider arguments for comparative hearings with an open mind.

e. In the circumstance of the Palomar Pipeline pending before FERC now, and the Northern Star pipeline approved by FERC as part of the Bradwood LNG projects, the projects are intended to transport exactly the same Bradwood-originated gas shipments. Under what circumstances, if any, should pipeline projects be the subject of a combined proceeding?

Answer. Unfortunately, it would not be appropriate for me to speculate on the outcome of a pending case. However, as I stated above, I will consider arguments for comparative hearings with an open mind.

f. If the Commission has already approved a pipeline, for example the Northern Star pipeline, to serve a specific demand, what basis does it or should it have to make the public convenience and necessity finding required under the Natural Gas Act for a second pipeline for exactly the same shipments?

Answer. The Commission could not authorize construction of the second pipeline unless the Commission found that the pipeline was required by the public convenience and necessity.

*Question 2.* The Federal Power Act currently includes authority to establish an Office of Public Participation which has never been created. FERC is now being given more and more authority over the siting energy facilities. In addition to natural gas pipelines, in 2005 Congress gave FERC authority over siting LNG, and back-stop authority to site electric transmission. Congress is currently considering legislation to give FERC even broader authority over the siting of electric transmission lines. Our experience in Oregon with LNG and natural gas pipelines has been abysmal. Most recently, land owners were denied the ability to submit written testimony in a FERC proceeding to investigate possible abuses by the applicant on their own property. Why shouldn’t FERC have an Office of Public Participation to ensure that citizens have a voice in FERC decisions that so directly affect their lives and their communities? Would you support establishing and funding this office to ensure that the public is heard?

Answer. If Congress chooses to fund an Office of Public Participation, I believe it might play a useful role in the Commission’s proceedings. Even without such an Office, however, I assure you that I take very seriously the interests of consumers in making decisions at the Commission.

*Question 3.* The Federal Power Act and the Natural Gas Act require FERC to ensure that rates are just and reasonable—a requirement FERC has decided it can ignore in favor of letting the market set the price—even when that market is dysfunctional or being manipulated as we saw with Enron. Utility consumer advocates exist in many states. Wouldn’t you agree that consumer advocates can provide important consumer protections for rate payers? Would you support the creation of an office of consumer advocate within FERC?

Answer. Consumer advocates play a valuable role at many state commissions. If Congress chooses to create such an office, it could be helpful in identifying and presenting the interests of consumers. However, it would be preferable for any such office to be external to, and thus independent from, FERC.

## RESPONSES OF CHERYL A. LAFLEUR TO QUESTIONS FROM SENATOR MURKOWSKI

## REGIONAL PERSPECTIVE

*Question 1.* Coming from New England, you're viewed as a candidate who will bring some geographical diversity to the Commission. Too often it seems Congress attempts to impose a "one-size-fits-all" solution for the nation. However, this Committee can tell you that energy issues often fall along regional lines. How important is it at FERC to recognize and appreciate these regional differences?

Answer. I believe that it is very important for FERC to understand and consider regional differences in shaping energy policy. The regions vary considerably not just in obvious characteristics such as geography and population density but also in their market structures (organized or bilateral markets), resource mix, and ongoing regional energy and environmental efforts. At the same time, FERC is by its very nature a federal agency, and needs to consider energy needs and projects that span regions, as it has done for example in the area of natural gas pipeline construction.

## HYDROPOWER

*Question 2.* Do you consider hydropower to be a renewable resource? Please state your views on the hydropower resource and its contribution and value to the nation's energy mix.

Answer. Yes. Hydropower is the original renewable resource and the predominant renewable resource in the nation's generation mix today. I believe that both existing and new hydropower facilities will play an important role in meeting future energy needs and contributing to environmental improvement. In my own region of New England, the hydro generation facilities along the Connecticut and Deerfield Rivers are an important component of our energy mix, and of course I know the large hydro facilities in the Western United States are critical to the energy and economic needs of those regions. I also believe there is considerable potential for new small (low-head) hydro facilities, as well as new technologies such as hydrokinetics.

## GENERAL

*Question 3.* Do you agree that one of the important aspects of the Commission's mission is to set clear policy and to provide clear guidance to the energy industry regarding the enforcement of your policies? Do you agree that market participants must be able to clearly understand what behavior is prohibited in order to avoid engaging in that conduct? For example, I understand that a number of trade associations have requested greater clarity with respect to affiliate bids in the same open season for interstate transportation or storage capacity.

Answer. Yes. I believe that clarity and transparency are very important in the enforcement area. While I cannot comment on a matter pending before the Commission, the purpose of enforcement is to encourage compliance, and only if the policies are understood can that purpose be met.

## TRANSMISSION (SITING)

*Question 4.* Do you believe that transmission should be an asset for all generation resources? How do you view efforts to limit federal benefits like cost allocation and back-stop siting to new transmission for only renewable or low-carbon emitting resources?

Answer. By definition, transmission is the link between generation and load. Currently, transmission facilities connect to and support all types of generation resources. Transmission capacity cannot be limited to electrons generated only by specific resources, nor can electrons be targeted only to specific transmission facilities, as electricity by its nature follows the path of least resistance. It is true that transmission is a particularly critical issue for geographically-constrained renewable resources that are remote from load, and that transmission would need to be constructed in order for such potential resources to serve energy markets. At the same time, I believe that the generation mix will largely be influenced by environmental policies, such as the renewable portfolio standard that this Committee passed last year, and not driven by transmission policy.

*Question 5.* Do you believe federal siting authority in the area of transmission should be uniform in the Eastern and Western interconnection?

Answer. FERC's existing siting authority does not vary between the Eastern and Western Interconnections, and I note that the bill passed by this Committee similarly does not distinguish between the Eastern and the Western Interconnections. I believe that is appropriate. However, I do believe FERC should exercise its authority with respect for and consideration of regional and geographic differences.



## TRANSMISSION (COST ALLOCATION)

*Question 6.* In your opinion, what is the appropriate standard or principle that governs who should be assessed the costs for new transmission lines?

Answer. In general, those who benefit from transmission should pay for it. I believe that there are several well-functioning models of cost allocation that have been negotiated and agreed to within existing RTOs, which in general terms allocate the cost of high-voltage transmission more broadly because it provides reliability and economic benefits across a region, and assign the costs of low-voltage transmission to more limited geographic areas that directly receive such benefits.

*Question 7.* As a general matter, do you believe that the beneficiaries of a transmission project should bear the costs of that project?

Answer. Yes, as a general matter. I have an open mind about how benefits and beneficiaries are defined, but believe the principle is important.

*Question 8.* Do you believe it is ever appropriate to allocate the costs of transmission infrastructure over an entire interconnection area?

Answer. Because I know that proposals for transmission cost allocation will come before me if I am confirmed as a commissioner, I have an open mind about specific proposals. I believe, however, that the larger an area across which costs are proposed to be allocated, the more care should be exercised in assessing whether customers within the area are receiving a benefit. In general, I believe the Commission should seek to encourage cost allocation proposals that garner support from market participants and state and local regulators.

## TRANSMISSION (PLANNING)

*Question 9.* Last year, the Commission conducted a series of regional transmission planning conferences. What is your assessment of the existing transmission processes? Does FERC require additional statutory legislation in this area?

Answer. In general, I think that much progress has been made on transmission planning within regions. But I do believe that the U.S. needs more high-voltage transmission infrastructure to support reliability and energy security, help connect new domestic energy resources, and make markets work well for customers. I believe it was prudent for FERC to issue Order No. 890, requiring open and transparent transmission planning processes. It was also prudent for FERC to request comments late last year on how existing transmission planning processes can be improved, and I understand FERC has received a large number of comments from a very broad group of stakeholders. Were I to be confirmed, I would look forward to considering those stakeholder comments on this issue. I have not studied the issue of whether FERC needs additional statutory authority in this area.

## TRANSMISSION (INCENTIVES)

*Question 10.* Do you believe that FERC's authority to provide incentive-based rate treatment to promote construction of new or upgraded transmission facilities to address reliability and accommodated the integration of renewable resources has had a positive impact in transmission investment?

Answer. Yes, I believe that FERC's authority to provide incentive-based rate treatment for transmission, including the authority that Congress provided in the Energy Policy Act of 2005, has had a positive impact on transmission investment.

*Question 11.* In your opinion, has the Commission given appropriate incentives to promote investments in transmission? Additionally, what types of projects do you see as meriting incentive-based rate treatment?

Answer. I think incentives can be in the best interests of customers where they help promote transmission construction that strengthens reliability and makes markets work better. I agree with FERC's statement in its rulemaking implementing the incentives provision of the Energy Policy Act of 2005 that routine investments made in the ordinary course of expanding the system are less compelling cases for incentives. It is also important that incentives be proportional to the benefits they are intended to promote, and I would support them in appropriate cases where supported by customer benefits.

## TRANSMISSION (INTEGRATING VARIABLE ENERGY RESOURCES)

*Question 12.* FERC recently initiated an inquiry on the integration of variable energy resources. What actions will FERC take in this area? Will FERC recognize the regional differences that will impact such integration and support market-based innovation to facilitate integration?

Answer. I believe that FERC's ongoing inquiry is important to address the unique characteristics of variable energy resources, particularly wind and solar generation,

and the implications of integrating those resources into grid operations. I do believe that FERC should consider regional differences and support marketbased innovation when considering any changes to market rules that may be necessary to enable the efficient and reliable integration of variable generation.

TRANSMISSION (CONGESTION ON INTERCONNECTION QUEUE)

*Question 13.* The focus on interconnecting renewable resources to the transmission grid has created significant backlogs in some interconnection queues, resulting in additional congestion and reliability concerns. Do FERC's current interconnection policies adequately address these issues? How should FERC update its current interconnection policies to ensure that viable projects addressing the needs of all generating resources, including renewable resources, are not stuck in the interconnection queue?

Answer. I understand that in December 2007, the Commission held a technical conference on interconnection queuing practices, which focused on the significant increases in the queue backlogs of ISOs and RTOs due to greater interest of new generation entrants, particularly renewable resources. The Commission directed each ISO and RTO to file a report describing the status of stakeholder discussions on queue reform and the schedule for selecting and implementing any necessary reforms.

As a result of these efforts, the Commission has received and approved proposals from several RTOs to improve the interconnection process and shorten the time required for the parties to execute a generator interconnection agreement. In accepting these proposals, the Commission has evolved its policy toward generator interconnection from a rigid "first-in, first-served" approach to a more flexible policy that allows transmission providers to adopt a "first-ready, firstserved" approach, and has allowed other adjustments to the RTOs' queueing methodology.

I understand that the Commission is waiting to see how these changes have impacted interconnection queue backlogs and to determine if further action is required. If confirmed, I would consider this issue carefully.

CYBERSECURITY

*Question 14.* S. 1462, as reported by this Committee last year, provides DOE with the authority to deal with cybersecurity threats and FERC with the authority to deal with cybersecurity vulnerabilities. Do you support this shared responsibility?

Answer. Yes, I support the proposed division of authority between DOE and FERC in S. 1462 to respond to cybersecurity threats and vulnerabilities.

*Question 15.* I understand that FERC is working with NERC on cyber security protection through the standards development process set forth in Section 215 of the Federal Power Act. Is this Section 215 process adequate to address cyber security threats and vulnerabilities? Absent Congressional legislation in this area, what actions can FERC take administratively to secure critical electrical infrastructure?

Answer. I believe that nothing in the area of energy is more important than the security and reliability of the nation's electric grid. I support Congressional proposals to give FERC more authority in this area, particularly the authority to address imminent threats, as well as vulnerabilities, promptly and effectively. Absent increased authority, FERC should continue to make improving the cybersecurity of the electric grid a very high priority in its current work under section 215.

*Question 16.* On March 18, 2010, FERC issued a Notice of Proposed Rulemaking which directs the North American Electric Reliability Corporation to include electric transmission facilities of 100 kilovolts (kV) or more in its "bulk electric system" definition.

a. What is the status of this NOPR and how soon does FERC intend to move forward on implementation?

Answer. I understand that the Commission has sought comments on its proposal to direct NERC to include electric transmission facilities of 100kV or more in its "bulk electric system" definition, and that those comments will be submitted by May 10, 2010. The next step would be for FERC to consider the comments and then determine whether to proceed to a final rule. I do not know how soon FERC intends to make that determination or to move forward on implementation of its proposal.

b. If the NOPR requires a case by case review by FERC for each facility exemption, does the Commission have the capacity to manage this workload?

Answer. My understanding is that only one of the eight Regional Entities currently uses a definition that sets a voltage baseline in excess of NERC's 100 kV threshold. Considering that every region except that one uses the 100 kV threshold,

and that any exemption must first be approved by the applicable Regional Entity and then by the ERO before it is submitted to the Commission, I understand that the Commission expects that it will receive a small volume of exemption requests based on particular circumstances and therefore that it has the capacity to manage the exemption process.

#### SMART GRID

*Question 17.* There is growing concern that “smart” meters are vulnerable to hacking. At a recent House oversight hearing, Chairman Wellinghoff noted that because smart grid technology will introduce many potential access points, security must be addressed. Are these concerns being addressed at the federal level? Please respond.

Answer. I am informed that the Commission and other federal agencies are working to identify and address potential vulnerabilities that may be introduced by the deployment of smart grid technology. Most notably, the National Institute of Standards and Technology (NIST) has organized a Smart Grid Interoperability Panel Cyber Security Working Group to analyze cyber security issues and assess individual smart grid standards to ensure that cybersecurity is properly addressed. The Commission participates with this group. The Cyber Security Working Group is expected to issue a final NIST Interagency Report on Smart Grid Cyber Security Strategy and Requirements later this year.

Other agencies involved with smart grid initiatives include the Department of Energy and the Department of Homeland Security. The Smart Grid Task Force meets regularly to ensure awareness, coordination and integration of the diverse activities among DOE and other agencies in the Federal Government related to Smart Grid, including identifying and addressing potential vulnerabilities. If confirmed, I would look forward to learning more about these issues and working to address them.

*Question 18.* The 2007 Energy Independence and Security Act (EISA) directs the National Institute of Standards and Technology (NIST) to coordinate the development of standards to ensure the interoperability and functionality of Smart Grid. When sufficient consensus of NIST’s work is reached, EISA directs FERC to initiate a rulemaking to adopt such standards and protocols. The FERC Policy Statement issued last July adopts key priorities for the interoperability and cyber security of standards. With respect to cyber security, how does FERC plan to determine whether the standards are cyber secure? Is there a coordination process between FERC and NIST or is PERC planning to wait for NIST to submit standards before making any determinations?

Answer. I have been informed that FERC and NIST are coordinating closely regarding the smart grid standards development process, holding weekly meetings and sharing information about issues and new developments as they arise. Beyond these efforts, and the efforts described in the preceding answer, I do not know the Commission’s specific plans on this point.

#### HYDROPOWER

*Question 19.* Last year, the Commission conducted a technical conference on improving the licensing process for small hydropower development. The comment period closed last month and I understand FERC has already identified several common issues to address. Has the Commission identified any legislative actions Congress can take to help facilitate small hydropower?

Answer. I understand that at the last Commission meeting, the Commission discussed an action plan, under its existing authority, for assisting developers of small hydropower projects in the licensing process. I am not aware of any statement by the Commission that additional legislative authority is needed in this area.

*Question 20.* What are your thoughts on the issue of reliably integrating intermittent renewable resources onto the grid? What role can both conventional hydropower and pumped storage have to play in addressing these problems?

Answer. I believe that peaking resources such as pumped storage as well as demand response can play a valuable role in helping to balance certain energy resources, especially wind and solar generation. Those conventional hydropower projects that can operate in a peaking mode may also be able to assist in this area.

#### RELIABILITY

*Question 21.* FERC recently released a policy statement on penalties for violation of reliability rules. There has been some concern by stakeholders regarding the substantial penalties for shedding load. What about a situation where there is a failure of critical facilities due to natural or manmade disasters and utilities must intentionally shed the load in order to preserve the reliability of the larger system? Is it FERC’s intention to impose some of its highest penalty fees - which will ulti-

mately be passed through to consumers - onto utilities when it might be more desirable for the overall grid to shed a portion of the load?

Answer. While I cannot speak to FERC's intention in releasing its Policy Statement on Penalty Guidelines, I believe that utilities should not be penalized for acting in the best interests of customers. I cannot comment on specific cases that might come before the Commission should I be confirmed, but in general I believe it would be important to consider the overall circumstances that led to the need for the load-shedding. If none of NERC's reliability standards were violated by the circumstances that led to the load-shedding, and if load-shedding was conducted pursuant to the requirements of the reliability standards, no penalty would be appropriate. I also note that FERC settlement agreements typically require entities that pay civil penalties to agree not to pass through the penalty to current or future rate-payers.

*Question 22.* Are you concerned that substantial penalties could have a chilling effect on self-reporting?

Answer. I believe that self-reporting plays a critical role in an overall compliance structure. In general, self-reporting requires that the reporters have trust in the entity to whom they are reporting, including the likely proportionality of penalties to violations.

#### DEMAND RESPONSE

*Question 23.* How important is FERC action to recognize demand-side and efficiency measures in its efforts to support the grid integration of renewable and other energy resources?

Answer. I believe it is important to recognize demand-side measures in considering overall capacity needs, particularly for peak periods, and in supporting grid integration of variable renewable resources. I have experience in delivering demand response programs for customers (such as radio control of water heaters and other appliances to shift load off peak), and know that they can work well to reduce the need for new resources and save money for customers. Newer technologies such as smart meters and internet-enabled communication to control energy needs have tremendous potential to reduce peak energy needs. They can also play a very important role in complementing the load characteristics of variable energy resources such as wind and solar.

I do believe that harnessing demand response resources will require not just FERC action but close collaboration between FERC and state regulators, since state regulators are close to end-use customers and can help influence customers to manage their energy and shift loads off peak through time-of-use-rates and other mechanisms.

*Question 24.* FERC has issued a Notice of Proposed Rulemaking to require all RTOs to pay wholesale demand response providers in RTO markets the locational marginal price in all hours. There are some concerns that such pricing policies could result in perverse economic incentives that might overcompensate demand response providers. What are your thoughts on how best to compensate demand response measures?

Answer. I am reluctant to comment on the specific proposal since it could still be under consideration if I were confirmed. In general I believe locational pricing for demand response makes good economic sense, since capacity needs can be very geographically specific. Ensuring that demand response resources bidding into RTO markets are compensated appropriately is an important element of setting the just and reasonable wholesale rate, and if confirmed I would consider carefully any proposed rules in this regard.

#### ORGANIZED MARKETS

*Question 25.* What is the appropriate path forward with respect to organized and bilateral wholesale markets? Can and should they co-exist or should all utilities ultimately be in organized markets?

Answer. I believe that organized and bilateral markets are likely to co-exist for the foreseeable future, and that FERC can accommodate and work effectively with this dual market structure.

*Question 26.* Is PERC's oversight of electricity markets sufficient to ensure that the wholesale electric rates meet the "just and reasonable" standard of the Federal Power Act?

Answer. I believe that, with respect to organized markets, FERC carries out its responsibility to ensure just and reasonable rates by:

- ensuring that markets are structured effectively, recognizing the interests of customers

- monitoring markets carefully and investigating any market aberrations or possible manipulation or exercise of market power
- seeking penalties and other appropriate remedies for any market manipulation, and implementing corrective action to prevent recurrence.

While FERC and all agencies can and should always strive to improve their operations, I believe FERC is satisfying its responsibilities under the Federal Power Act in this area.

*Question 27.* Do you believe that the wholesale electricity markets operated by regional transmission organizations are achieving net benefits for consumers as compared to those regions without RTOs?

Answer. I believe it is difficult to compare benefits to customers between organized markets run by RTOs and bilateral markets in regions without RTOs. In general, and not coincidentally, market restructuring and the introduction of competitive markets occurred in regions of the country that had high energy costs. Northeastern states such as my own have historically had much higher rates than many other regions of the country, and still largely do. I would look to whether the regions with RTOs are better off than had they not been restructured, and I believe in general they are. Certainly in New England we have seen much more generation come online and more transmission be constructed than was occurring in the period prior to the competitive market, reducing wholesale costs to customers and improving grid reliability. RTOs have also played a very useful role in organizing large-scale demand response efforts and other regional projects on a scale very difficult to achieve company-by-company.

*Question 28.* Do you think that there is a sufficient level of transparency in the pricing and other relevant data from the electricity markets, particularly those operated by RTOs?

Answer. Market transparency is desirable and, if I am confirmed, I would be interested in exploring whether additional transparency is needed, particularly in RTO and ISO markets. RTO and ISO markets provide pricing data, transmission characteristics, and forecasted and actual demand. In addition, all FERC jurisdictional sellers, including those in RTO and ISO markets, are required to file quarterly reports providing prices on all jurisdictional power transactions. I also understand that the Commission has recently issued a Notice of Inquiry seeking comment on whether it should require pricing information from market participants that are excluded from the Commission's jurisdiction under section 205 of the Federal Power Act.

*Question 29.* What is your assessment of the success of pricing incentives in the RTO markets, such as Locational Marginal Pricing, to spur infrastructure development and address transmission congestion?

Answer. I believe locational marginal pricing is a useful tool to spur the construction of needed generation and transmission and help reduce long-run costs for customers in transmission-constrained geographic pockets. Of course, experience in the Northeast and other organized markets shows the difficulty of crafting market rules that always ensure strong competition, and the rules may need adjusting over time. I believe FERC must continue to monitor the markets carefully, and allow or require changes to market rules when appropriate.

*Question 30.* Do you believe RTO-run locational capacity markets are providing adequate revenue and certain for new generation while avoiding excess payments to existing generation?

Answer. I believe the locational capacity markets help provide a reasonable price signal for construction of capacity or development of other resources when and where needed. The rules for these markets must ensure that rates are neither excessive for customers nor inadequate to elicit the necessary supply of resources. I believe it is important, however, to continually examine the market structure and rules to ensure that they are achieving these goals.

#### CFTC/FERC

*Question 31.* As the Senate works on Wall Street reform legislation, we can all agree that Congress must guard against systemic risk by improving the oversight, transparency, and stability of financial markets. The CFTC will certainly be provided with additional regulatory authority aimed at addressing systemic risk in the Over-the-Counter market. But we need to carefully tailor Congressional action to avoid sweeping in the physical energy markets that are regulated by FERC.

- a. How would CFTC jurisdiction over electricity market mechanisms like Financial Transmission Rights (FTRs) affect FERC's overall mission of ensuring just and reasonable rates?

Answer. I am not yet familiar with the scope of CFTC jurisdiction, but do consider FTRs an important tool for FERC in protecting customers against the risk of price increases for transmission services in RTOs/ISOs. Congress recognized the importance of FTRs when it enacted the Energy Policy Act of 2005, requiring FERC to use its authority in a way that enables load-serving entities to secure FTRs on a long-term basis for long-term power supply arrangements made to meet their customer needs.

b. How would CFTC jurisdiction over FTRs impair FERC's ability to protect against manipulation in the RTO markets?

Answer. I am not yet familiar with the scope of CFTC jurisdiction, but would be concerned if its jurisdiction were deemed to limit or impair FERC's authority to prevent and penalize market manipulation in the RTO markets.

c. Are you concerned about potential CFTC jurisdiction over products that are available outside of RTO and ISO markets?

Answer. I am not yet familiar with the scope of CFTC jurisdiction, but would be concerned if its jurisdiction were deemed to limit or impair FERC's ability to ensure just and reasonable rates, or to prevent and penalize market manipulation outside of RTO and ISO markets. For example, capacity contracts allow a load-serving entity to assure its ability to meet its customers' needs by buying the right to use certain resources (e.g., a power plant's output or a right to demand response). In an RTO/ISO market, capacity obligations help ensure that there will be enough resources to meet the aggregate needs of the market's customers. In bilateral markets, capacity contracts can serve the same purpose for an individual utility. In both organized markets and bilateral markets, capacity contracts can be critical in ensuring that a proposed resource has a projected revenue stream sufficient to allow development of the resource.

#### FERC/ERCOT JURISDICTION

*Question 32.* The Tres Amigas project currently under development seeks to transmit renewable power out of the Southwest and into Texas. This project, then, raises a tough jurisdictional issue since it would create a historic linkage among the three separate power grids - ERCOT and the Eastern and Western grid interconnections. Because this is an ongoing case at the Commission, I won't ask you to comment on the specifics of the proposal. However, I am interested in your thoughts on the relationship between FERC and ERCOT and whether the jurisdictional bright lines will be able to be maintained in the future.

Answer. This is a subject about which I look forward to learning more. I am of course aware of ERCOT's unique jurisdictional circumstances as a single-state transmission grid. I think it is important to respect ERCOT's jurisdiction when considering cross-interconnection projects. I also note by comparison that a number of highly beneficial projects have been undertaken between the U.S. and Canada without compromising the energy jurisdiction of either nation. Thus, I expect that projects can be structured to maintain the jurisdictional lines between ERCOT and the Western and Eastern Interconnections.

#### RESPONSES OF CHERYL A. LAFLEUR TO QUESTIONS FROM SENATOR SHAHEEN

*Question 1.* Traditionally, the planning, siting and cost allocation of new transmission has been left up to the states. However, given the importance of investing in our transmission system - especially for the connection of renewables, some have talked about the need for an increased federal role and sharing of costs.

How do we balance the concerns expressed by the New England Governors, PUC Commissioners and others about protecting the competitive New England markets from potentially market-distorting subsidies for new transmission as a result of a broad cost allocation scheme with the need to overcome the barriers of connecting renewable resources that are often location constrained and distant from load?

Answer. I believe that the cost-sharing mechanisms within ISO-New England have functioned particularly well because they have been negotiated among the participants and have built on a long tradition of close cooperation in regional planning dating back to NEPOOL. A cost-sharing mechanism to bring Midwestern renewable resources to Eastern markets, such as the New England Governors and others have expressed concerns about, would obviously involve a much larger geographic area and span regions with greatly different market structures and existing resources plans. I think cost allocation between regions should be approached with great care, but I would approach the issues with an open mind, considering the concerns of the New England region but of course the needs of other regions as well. In general,

I believe the Commission should seek to encourage cost allocation proposals that garner support from market participants and state and local regulators.

*Question 2.* In New England, we share costs of new transmission projects needed for reliability rather broadly. In your view, could a similar structure work for the construction of transmission needed to connect renewable energy? Could such a policy be workable for new transmission, or upgrades to existing transmission infrastructure, solely to connect renewable resources?

Answer. I believe if Congress gives FERC more express authority to allocate costs of high-voltage transmission, it would need to be executed with great care and in close collaboration with the states and regions affected. I believe that more transmission is needed to connect new sources of energy as well as for reliability and to make markets work for customers. I would have an open mind about cost allocation proposals for transmission intended to connect renewable resources to the grid and bring them to market. As far as special policies solely to connect renewable resources, it would be difficult to isolate transmission for a particular purpose, since transmission by its nature would connect the existing generation mix as well as new resources. I believe that the generation mix will largely be influenced by environmental policies, such as the renewable portfolio standard that this Committee passed last year, and not driven by transmission policy.

*Question 3.* How can we connect our renewable resources to the grid and allocate costs in a fair way that helps pay for transmission projects or upgrades?

What role should the FERC play in helping to get renewable resources connected to the grid? What problems would be addressed with this new authority?

Answer. As noted above, I believe that if Congress gives FERC more explicit authority to allocate the costs of high-voltage transmission, it will need to be used carefully and in collaboration with states and regions. The backstop siting authority that Congress gave FERC in the Energy Policy Act of 2005 provides a useful example of how giving FERC more authority can help in bring states to the table to agree on transmission projects that cross state lines and affect different regions differently. I believe that passage of new legislation giving FERC more explicit authority to allocate costs of high-voltage transmission could similarly play a very valuable role in bringing states and regions to the table to work together with FERC on high-voltage transmission improvements that serve the interests of more than one region, including the interest in connecting new renewable power sources.

*Question 4.* Municipal and cooperative utilities in New England have told me that they would like the opportunity to jointly plan, finance and own new transmission facilities. They believe their participation will bring additional capital and political support to needed projects and will make cost allocation decisions easier. Do you support joint ownership by these utilities?

Answer. I believe participation by municipal and cooperative utilities can play an important part in expansion of the transmission system. While joint ownership can increase the complexity of planning and developing a transmission project, the benefits of joint ownership include increasing opportunities for investment in the transmission grid.

*Question 5.* One issue that has come up in the context of transmission incentives is whether their availability should be conditioned on the applicant taking steps to allow financial participation and investment by other entities, including public power and cooperative utilities. The FERC has stated that it seeks to encourage diversity of ownership of the nation's transmission grid, which is an essential set of facilities. My understanding is that, encouragement aside, little is happening in terms of ownership diversity.

Why has the Commission refused to link incentive compensation to affording public power and cooperative entities an opportunity to participate in new investment?

Answer. As stated above, participation by municipal and cooperative utilities can play an important part in expansion of the transmission system. I agree with FERC's statements that it is appropriate to encourage such utilities' participation in new transmission projects. For example, FERC has stated that it will look favorably on a request for transmission incentives that includes joint ownership with such utilities. Making a joint ownership structure a precondition for transmission incentives, however, could inadvertently chill some needed transmission investment. Participation by a diverse group of investors may be the best ownership structure for a particular transmission project, but may not be appropriate in all circumstances.

*Question 6.* There is great concern about the substantial increase in transmission charges, including in New England. The transmission investment base is growing by leaps and bounds. The transmission investment base (the basis for rates) was roughly \$3.5 billion in mid-2009. By 2013, it is forecast to be \$8.5 billion. I am con-

cerned that laddling incentive return on equity adders on top of the existing rate of return will exacerbate the cost impact on consumers.

In your view, what are the risks that would justify additional incentives for owners of new transmission facilities?

Answer. Incentive-based ratemaking encompasses many techniques, such as incentive return on equity (ROE) adders and recovery of costs associated with projects that are abandoned for reasons beyond the developer's control. I think such incentives can be in the best interests of customers where they help promote transmission construction that strengthens reliability and makes markets work better. However, routine investments made in the ordinary course of expanding the system are less compelling cases for incentives, particularly incentive ROE adders. It is also important that incentives be proportional to the benefits they are intended to promote.

#### RESPONSES OF CHERYL A. LAFLEUR TO QUESTIONS FROM SENATOR MENENDEZ

*Question 1.* The Energy Bill as currently drafted would allow FERC to approve lines anywhere and for almost any reason. Some are concerned that this means the federal government will be siting transmission lines thorough protected open spaces and through people's back yards. Do you believe that FERC should have the authority to site transmission lines and use eminent domain power to site those lines over local opposition?

Answer. I believe that it would be helpful for Congress to clarify and strengthen FERC's backstop siting jurisdiction. However, I believe that jurisdiction would have to be applied very judiciously, because siting is first and foremost a state and local responsibility. I know from my own experience that siting projects across state lines can be very difficult, particularly when the projects impact different customers differently. I think a major benefit of FERC's backstop siting authority is to encourage states to work out issues collaboratively and resolve them without FERC doing so. In addition, the Commission's current transmission siting authority is constrained by specific limitations, particularly a "public interest" standard. I believe a similar standard in any additional authority would help ensure that the Commission gives appropriate consideration to the effects of proposed projects on the interests of landowners and communities.

*Question 2.* Some claim that enhanced federal power to site transmission lines will only result in getting more wind power on the grid, but for New Jersey more transmission will likely lead to more dirty, coal power being transported into our state, a concern that 10 governors of the Northeastern states have also voiced. When exercising your current back stop authority to site transmission lines or future powers Congress might bestow on you, do you believe it is appropriate to consider the fuel mix that transmission project will likely bring onto the grid? In other words if you know a transmission line will result in more coal being burned and in turn increase pollution and public health impacts, would it be appropriate to reject that line because of those environmental and public health impacts? Should those impacts even be a factor in your decisions?

Answer. Transmission capacity cannot be limited to electrons generated only by specific resources, nor can electrons be targeted only to specific transmission facilities, as electricity by its nature follows the path of least resistance. As a result, transmission lines built to connect different regions of the country would likely carry electricity reflecting the overall generation mix, not just new sources. Also, I believe that changes in the generation mix are likely to be determined largely by environmental policy, such as the renewable portfolio standard that the Committee passed last year, and not driven by transmission policy.

Having said that, FERC is required under section 216 of the Federal Power Act to consider whether proposed interstate electric transmission facilities within FERC's limited backstop siting jurisdiction are consistent with the public interest and with sound national energy policy. Moreover, the National Environmental Policy Act requires federal agencies to take a hard look at the environmental impacts of proposed actions. Thus, I would expect FERC, in examining a proposed transmission project, to consider all public interest factors, including environmental impacts, and to impose conditions reducing such impacts to an acceptable level or to deny approval if it finds that the impacts cannot be so reduced. I cannot predict what issues would be within the scope of FERC's review in a given case, but if confirmed I would carefully consider and apply the law in this area.

*Question 3.* FERC is currently reviewing an application to have a high pressure natural gas pipeline located in a dense urban environment of high-rise residences in New Jersey. There are concerns that this pipeline could have a significant detriment to economic development. What is your position on placing these types of



high pressure natural gas pipelines in dense urban environments? Is that appropriate? Should FERC consider the economic impacts of such pipelines before providing approval?

Answer. I cannot comment on any specific proposal that might come before me should I be confirmed. I do know that interstate natural gas pipelines are required to comply with the Department of Transportation's safety regulations, which take population density into account. In addition, in reviewing proposed projects, FERC analyzes the potential environmental impact they would have on residents and communities, and the potential economic effects of proposed pipelines on affected communities. If confirmed, I would certainly strive to consider all relevant impacts on communities in reviewing any siting proposals.

#### CONSUMER PROTECTION—WHOLESALE ELECTRICITY MARKETS

*Question 4.* Ms. LaFleur, many of the nominees we have for FERC come from State Boards of Public Utilities. I think this helpful because in this position they need to weigh the interests of utilities against those of consumers. On your resume, however, I only see that you have experience on the utility side of things. In fact, as far as we can tell you might be the first nominee to FERC or the FPC (became an independent body in 1935) by Democratic President for a Democratic seat that is coming from the industry. What in your background can assure me that you will protect consumers and make sure they are charged just and reasonable rates for electricity?

Answer. First of all, in terms of my experience in the electric and gas industry, most of my experience has been at the distribution customer level, directly serving residential and business customers. I have had considerable face-to-face experience meeting with customers to discuss their questions about their electric bills, reliability problems and storm response, siting new distribution projects such as new lines and substations, and providing energy services such as conservation and load management. I believe I understand well the impact that all regulatory decisions have on people and communities, and would reflect those considerations as I weigh issues before the Commission. In addition, beyond my utility background, I have considerable experience as a community and non-profit board member, a lawyer, and a private citizen. I have been closely involved in hospitals, colleges, community service agencies, and economic development organizations, and I know how much the cost and availability of energy affects jobs and customers' pocketbooks.

Although I have not served as a state regulator, I have worked closely and productively with state commissioners in Massachusetts, New Hampshire and Rhode Island, and to a more limited extent in New York. I would look forward to working with state utility commissioners from across the country through NARUC and other collaborative efforts.

Finally, if confirmed it would be my sworn duty to decide all matters based on my independent judgment and in the public interest, and that is what I would do.

#### RESPONSES OF CHERYL A. LAFLEUR TO QUESTIONS FROM SENATOR BARRASSO

*Question 1.* The Energy and Natural Resources Committee approved legislation that expands FERC's eminent domain authority. It allows FERC to override State rejections of proposed transmission lines. Do you believe FERC should have the authority to override a State's rejection of a transmission proposal?

Answer. I believe that it would be helpful for Congress to clarify and strengthen FERC's backstop siting jurisdiction. However, I believe that jurisdiction would have to be applied very judiciously, because siting is first and foremost a state and local responsibility. I know from my own experience that siting projects across state lines can be very difficult, particularly when the projects impact different customers differently. I think a major benefit of FERC's backstop siting authority is to encourage states to work out issues collaboratively and resolve them without FERC doing so. In addition, the Commission's current transmission siting authority is constrained by specific limitations, particularly a "public interest" standard. I believe a similar standard in any additional authority would help ensure that the Commission gives appropriate consideration to the effects of proposed projects on the interests of landowners and communities.

*Question 2.* What is your view on the future role of baseload power sources like coal and nuclear in America's energy portfolio?

Answer. I believe that existing generation resources, including both coal and nuclear, are likely to continue to be a part of America's energy portfolio. As far as new resources to be added to the portfolio, I support efforts to add nuclear generation where supported by local communities and states. I think that the future of new

coal generation units will likely depend on the success of ongoing research on clean coal and carbon sequestration technology. I support research in these areas.

*Question 3.* Last year, Chairman Wellinghoff said that the nation's future power needs can be fully met by renewable energy sources and efficiency improvements. Do you agree?

Answer. I certainly agree with Chairman Wellinghoff that renewable energy and demand-side resources, both energy efficiency and demand response, can play a very substantial role in meeting new power needs. Because of the characteristics of those resources, I do not believe that they will supplant the need for new baseload resources in the short to medium term.

*Question 4.* Do you support requirements that new transmission favor or be limited to renewable or low-carbon emitting resources?

Answer. By definition, transmission is the link between generation and load. Currently, transmission facilities connect to and support all types of generation resources. Transmission capacity cannot be limited to electrons generated only by specific resources, nor can electrons be targeted only to specific transmission facilities, as electricity by its nature follows the path of least resistance. It is true that transmission is a particularly critical issue for geographically-constrained renewable resources that are remote from load, and that transmission would need to be constructed in order for such potential resources to serve energy markets. At the same time, I believe that the generation mix will largely be influenced by environmental policies, such as the renewable portfolio standard that this Committee passed last year, and not driven by transmission policy.

#### RESPONSES OF CHERYL A. LAFLEUR TO QUESTIONS FROM SENATOR SESSIONS

*Question 1.* Do you believe FERC needs new cease and desist authority, or is FERC's current authority sufficient to deal with energy market manipulation?

Answer. I believe that it would be useful for FERC to have cease and desist authority to deal promptly and effectively with instances of market manipulation, which would bring FERC's authority in line with that of the SEC and the CFTC. I would also support FERC having authority, with appropriate judicial review, to freeze assets to ensure that FERC can prevent the significant dissipation or conversion of assets and thus ensure that it can effectuate a remedy.

*Question 2.* Once the economy recovers, it is expected our nation's demand for electricity will increase significantly over the next 20 years. I subscribe to the belief we will need a variety of both supply and demand side resources to meet our energy needs, including new nuclear, renewables, clean coal, demand response, and energy efficiency. In your opinion can we afford to take any of these resources off the table and still deliver the reliable, low cost, and clean energy our homes and businesses need?

Answer. I believe that there is considerable potential for demand-side resources such as energy efficiency and demand response to slow the growth of energy demands, especially peak demands, and believe we should work hard at the state and federal level to harness that resource. However, I agree that we will also continue to need a diverse mix of supply-side resources to meet energy needs. I would not take any of the resources you list off the table.

*Question 3.* Considering your extensive knowledge of the energy industry, I'm sure you are familiar with "standard market design," a Commission proposed restructuring of the electric industry that would have required all utilities to join Regional Transmission Organizations and adopt centralized operating control of the grid. As a result of concerns from many states and members of Congress, that proposal was dropped, and as a result today's industry structure has a mix of vertically-integrated utilities operating under state rate regulation and restructured utilities operating in organized markets. In your opinion do you believe that these two market structures can continue to co-exist?

Answer. I believe we will continue to see a dual structure of organized markets in some regions and bilateral markets in other regions for the foreseeable future. I believe that FERC can work effectively with this dual structure in its development of energy policy.

*Question 4.* Section 215 of the Federal Power Act requires the Commission to provide "due weight to the technical expertise" of NERC with regard to reliability standards. It also requires FERC to "provide for reasonable notice and opportunity for public comment, due process, openness, and balance of interests in developing reliability standards and otherwise exercising its duties". How do you reconcile these statutory requirements with a series of recent FERC orders that are very prescriptive in directing NERC to make certain modifications to its standards and to do so by specified deadlines?

Answer. The recent FERC orders to which you refer are pending on rehearing, and thus it would be inappropriate to comment on them as they might come before me should I be confirmed as a Commissioner. However, I respect the expertise of those who have developed the standards, and understand the Congressional intent that FERC should give “due weight” to NERC. In any event, I believe that deadlines are important to keep the process of standard setting moving.

*Question 5.* Regarding the NIST lead effort to develop Smart Grid interoperability standards under the 2007 Energy Independence and Security Act (EISA),

a. How will FERC determine and confirm that sufficient consensus has been reached before moving forward with a rulemaking proceeding to adopt such standards?

Answer. EISA section 1305 directs FERC to institute a rulemaking after the work by NIST “has led to sufficient consensus in the Commission’s judgment,” but does not specify criteria for finding “sufficient consensus.” I think it might be informative to consider the process for developing consensus in other standards development processes accredited by the American National Standards Institute. If confirmed, I would look forward to learning more about this and helping to move this important process to completion.

b. How will FERC determine which of the many standards proposed by NIST are appropriate for a rulemaking proceeding?

Answer. EISA section 1305 requires FERC, upon finding sufficient consensus, to adopt “such standards and protocols as may be necessary to insure smart-grid functionality and interoperability in interstate transmission of electric power, and regional and wholesale electricity markets.” Consistent with these criteria, FERC issued a Policy Statement in July 2009 to provide guidance to NIST and industry as to FERC’s priorities in the development of smart grid standards. However, NIST has not yet completed work on its initial set of smart grid standards and it is therefore too early to tell which may be appropriate for a rulemaking by FERC.

#### RESPONSES OF CHERYL A. LAFLEUR TO QUESTIONS FROM SENATOR WYDEN

*Question 1.* In response to questions for the record during the Committee’s 2005 hearing on LNG permitting, Mark Robinson, then Director of the Office of Energy Projects responded that,

The Commission is supportive of competition within the energy industry and of the idea that the market drives infrastructure development. Past experience, particularly since the restructuring on the gas industry following Order No. 636, has demonstrated that market forces can serve the same end as a competitive or “Ashbacker” hearing. Where the Commission approves multiple projects to serve a similar market, only an economically viable project will actually be built, i.e., only where customer commitments ensure new service will fulfill a genuine need.

The Commission continues to follow this policy.

a. How is this policy consistent with the obligation of the Commission to make an affirmative finding of public convenience and necessity under the Natural Gas Act?

Answer. I want to be very careful in my answer as I have not studied FERC policy and past decisions in this area. If confirmed as a Commissioner, I would certainly work hard to study these matters with care.

Having said that, as I understand FERC decisions in this area, LNG proposals have been approved without comparative hearings where such proposals were deemed to be not mutually exclusive within the meaning of Ashbacker. FERC has examined each project on its own merits, including all potential environmental and safety impacts, and granted approval if it affirmatively found the project to be consistent with the public interest.

b. Do you agree with this policy that competitive or “Ashbacker” hearings need never be conducted where multiple projects are proposed for a given market or to serve a specific demand, such as send-out capacity for an LNG terminal?

Answer. If confirmed, I would work hard to study this area and to understand the background of existing FERC policy. As with all matters, I would give due deference to existing precedent but would seek to apply the law in my independent judgment based on the facts of the case before me.

c. Are there any circumstances where you believe that it is ever appropriate for the Commission to conduct competitive or "Ashbacker" hearings where multiple projects are being proposed to serve a single market or even a specific facility, such as an LNG terminal? If so, when?

Answer. As stated above, I have an open mind and, if confirmed, would consider this in view of the specific circumstances of the case before me.

d. In Oregon there are multiple projects including three LNG terminals all proposed to serve the Northwest market with far more capacity than the region uses. Under what circumstances, if any, should LNG projects such as these be the subject of combined proceeding?

Answer. I cannot comment on the specifics of cases that are still pending or could be brought before the Commission should I be confirmed. Were I presented with such an issue if confirmed as a member of the Commission, I would approach it with an open mind based on the facts and law of the case before me.

e. In the circumstance of the Palomar Pipeline pending before FERC now, and the Northern Star pipeline approved by FERC as part of the Bradwood LNG projects, the projects are intended to transport exactly the same Bradwood-originated gas shipments. Under what circumstances, if any, should pipeline projects be the subject of a combined proceeding?

Answer. Since these cases are pending before the Commission, I cannot comment on the specific proceedings or how I might approach them should I be confirmed. On the general question of when proceedings should be combined, I would consider arguments with an open mind and seek to make the best decision on the facts and the law in cases that came before me.

f. If the Commission has already approved a pipeline, for example the Northern Star pipeline, to serve a specific demand, what basis does it or should it have to make the public convenience and necessity finding required under the Natural Gas Act for a second pipeline for exactly the same shipments?

Answer. As I understand the law, the Commission could not authorize construction of the second pipeline unless it affirmatively found that the pipeline was required by the public convenience and necessity. This finding would have to be made based on the facts of the specific case before it.

*Question 2.* The Federal Power Act currently includes authority to establish an Office of Public Participation which has never been created. FERC is now being given more and more authority over the siting energy facilities. In addition to natural gas pipelines, in 2005 Congress gave FERC authority over siting LNG, and back-stop authority to site electric transmission. Congress is currently considering legislation to give FERC even broader authority over the siting of electric transmission lines. Our experience in Oregon with LNG and natural gas pipelines has been abysmal. Most recently, land owners were denied the ability to submit written testimony in a FERC proceeding to investigate possible abuses by the applicant on their own property. Why shouldn't FERC have an Office of Public Participation to ensure that citizens have a voice in FERC decisions that so directly affect their lives and their communities? Would you support establishing and funding this office to ensure that the public is heard?

Answer. FERC has an existing obligation to consider the interests of citizens, and allow them to be heard in FERC proceedings, regardless of whether an Office of Public Participation is created and funded. If confirmed as a Commissioner, I would strive to uphold this duty. However, if Congress chooses to fund an Office of Public Participation, I believe it might play a useful role in helping consumers and other stakeholders participate in FERC proceedings and making sure that FERC processes support such participation. An alternative approach might be the creation of an Office of Consumer Advocacy, as mentioned in your next question.

*Question 3.* The Federal Power Act and the Natural Gas Act require FERC to ensure that rates are just and reasonable - a requirement FERC has decided it can ignore in favor of letting the market set the price - even when that market is dysfunctional or being manipulated as we saw with Enron. Utility consumer advocates exist in many states. Wouldn't you agree that consumer advocates can provide important consumer protections for rate payers? Would you support the creation of an office of consumer advocate within FERC?

Answer. The Commissioners of FERC, and all offices within FERC, have an existing obligation to consider the interests of consumers when applying the enabling acts and making decisions about energy projects and other matters. If confirmed as a Commissioner, I would work very hard to meet that obligation. I do not think a

consumer advocate could relieve FERC of that obligation, or be responsible for representing consumers in all matters before the Commission. However, I know that consumer advocates play a valuable role at many state commissions. If Congress chooses to appropriate funds to create such an office, it might play a useful role, for example in helping consumers participate in FERC proceedings and strengthening relationships between FERC and consumer groups that seek to be heard on energy policy.

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