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MOELLER AND WELLINGHOFF NOMINATIONS

HEARING

BEFORE THE

COMMITTEE ON ENERGY AND NATURAL RESOURCES UNITED STATES SENATE

ONE HUNDRED NINTH CONGRESS

SECOND SESSION

TO

CONSIDER THE NOMINATIONS OF PHILIP D. MOELLER AND JON WELLINGHOFF TO BE MEMBERS OF THE FEDERAL ENERGY REGULATORY COMMISSION

JUNE 8, 2006

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MOELLER AND WELLINGHOFF NOMINATIONS

THURSDAY, JUNE 8, 2006

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

The committee met, pursuant to notice, at 10 a.m., in room SD–366, Dirksen Senate Office Building, Hon. Pete V. Domenici, chairman, presiding.

OPENING STATEMENT OF HON. PETE V. DOMENICI, U.S. SENATOR FROM NEW MEXICO

The CHAIRMAN. The hearing will please come to order. Good morning everybody. We are here this morning to consider the following nominations: Philip Moeller to be a Commissioner of the Federal Energy Regulatory Commission, and Jon Wellinghoff to be a Commissioner of the Federal Energy Regulatory Commission.

Before we begin, I understand that the distinguished Minority Leader, Senator Reid, and the two Senators from Washington, Senators Murray and Cantwell, would like to say a few words regarding these nominees. Senator Reid, if you would please begin, then we will follow with Senators Murray and Cantwell, in that order.

STATEMENT OF HON. HARRY REID, U.S. SENATOR FROM NEVADA

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

The CHAIRMAN. You are welcome.

Senator REID. I appreciate you and Senator Bingaman getting us to this point. I know that we have had a lot of qualified, good commissioners on the Federal Energy Regulatory Commission, but there will never be anybody that is better qualified and a better person than Jon Wellinghoff. He will do as well as anyone has ever done. We know that there are a lot of problems facing our Nation; for example, the Enron trial underscored the need for a nominee of Jon's caliber and experience. He is a person with strong commitment to consumer protections and diversity of experience, not only with traditional sources of energy, but also with renewable sources.

I think he is the right person at the right time. He has three decades of experience in energy markets, spanning both the public and private sectors. His public experience included not only time back here working in the Senate and the Federal Trade Commission, but extensive experience at State level, working to protect Nevada consumers. He has served as chief of the district attorney's consumer fraud division in Reno, counsel to the Nevada Public Utilities Com-

mission and for 7 years he was appointed by the Nevada Governor as consumer advocate.

Jon saved Nevada utilities customers millions and millions of dollars. He helped write and enact Nevada's renewable energy requirements, which is one of the strongest of the Nation. He has extensive experience representing private clients, hotels, renewable energy providers and others, and his current role as a member of a prominent law firm in Las Vegas.

Members of the committee, I certainly have to say that Jon is not only well-qualified personally, but he has a wonderful wife, a close personal friend to former Secretary of Labor, Secretary of State, and what ever else Secretary Shultz did. She was a presidential scholar working at the White House where she met Secretary Shultz. In addition to that, he has a brother-in-law, a prominent Las Vegas lawyer, one of the best-known lawyers Nevada has ever had—Neal Galatz, who is in the audience—he and his lovely wife Helene are longtime friends of mine. I can say nothing more to you, Mr. Chairman and members of this committee, but that he will do a good job, he is not a partisan, he will do what is right for America. Thank you very much.

The CHAIRMAN. Thank you very much, Senator Reid.

Senator REID. If I could be excused, may I do that, Mr. Chairman?

The CHAIRMAN. You may be excused.

Senator Murray.

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

Senator MURRAY. Well, Mr. Chairman I am very pleased to be here this morning to help introduce Phil Moeller as a nominee to be a Commissioner of the Federal Energy Regulatory Commission, and I believe that Phil's wife, Elizabeth Vella Moeller, is in the audience. I want to welcome her and thank her for being here as well. In Washington State and in Washington, D.C., Phil Moeller has built a repetition as someone who knows energy issues, and as someone who people want to work with to solve problems.

Personally, I am excited that Phil will bring a working knowledge of hydropower systems and the perspective of the Pacific Northwest to FERC. In the 10 years that he was a staff coordinator for Washington State Senate committee on energy, utilities, and telecommunications, Philip Moeller learned the value of hearing all sides of an issue, and built an understanding of how different policy issues are related.

When Phil served on the staff of Senator Slade Gorton, he stood out as an example of what an excellent Hill staffer should be. He was willing and open to working with anyone on the issues. He operated in a bipartisan fashion while protecting the positions of his boss. He spoke clearly and intelligently on a wide variety of energy issues. That is why Phil was one of the widely respected voices on Capitol Hill and an assets for the Washington State delegation.

Phil has traveled far from the days of growing up on a ranch in Washington State. He has dedicated his life to public service, and he offers a perspective and expertise that is badly needed on the Commission. Mr. Chairman, I am proud to join with Senator Cant-

well today to support the nomination of Phil Mueller to the Federal Energy Regulatory Commission, and know that his voice and his experience will serve our country well.

The CHAIRMAN. Thank you very much, Senator.

Senator Cantwell.

STATEMENT OF HON. MARIA CANTWELL, U.S. SENATOR FROM WASHINGTON

Senator CANTWELL. Thank you Mr. Chairman. It is great to be here with my colleague, Senator Murray, and I thank the chairman and the entire committee for holding this hearing today. And it is my pleasure to join with Senator Murray in introducing the nomination of Philip D. Moeller to the Federal Energy Regulatory Commission. It is hard to believe, but in Washington State the Federal Energy Regulatory Commission has actually become a household word. And so I actually want to congratulate President Bush on this appointment and nomination of Phil Moeller from the State of Washington.

As Senator Murray points out, Phil Moeller was raised in the Northwest just outside of Spokane, Washington, I think in the Freeman school district, probably just a few miles from the State of Idaho, so all of eastern Washington is proud of Mr. Moeller. All of the State of Washington is proud of Mr. Moeller. And all of the Northwest is proud of Mr. Moeller.

I say that because as we talk about energy policy here in the Northwest, and here in the U.S. Senate, I do not think we have ever had a nominee to the Federal Energy Regulatory Commission from the Northwest, so we think this is a very important issue for us, and for energy issues that need the emphasis of collaboration, consensus, and innovation.

In the rich tradition carried on by my Northwest colleagues on this committee, Mr. Moeller I think represents the heritage and fine tradition of being a good practitioner of these Northwest traditions on the Commission. And I think that when we talk about the energy crisis of 2001, and the voices from the region, I think Mr. Moeller both represents good practical experience here in Washington, D.C., and outside private-sector experience as well.

I think it is very important, as Senator Murray pointed out, that Mr. Moeller has a long and distinct career in public service. Before his recent work in private-sector, Mr. Moeller was a leader in Washington State energy policy with the Washington State legislature on energy and telecom issues for more than 10 years. He worked for the Senate energy telecommunications committee. At the time of his departure from the Legislature, began a wide involvement in a variety of policy issues here at the Federal level, working with Senator Slade Gorton on Federal legislation. I think Mr. Moeller's approach is one of problem solving and I think one of the main accomplishments that I think that Mr. Moeller in his tenure here in Washington, D.C. was successful in first passing legislation out of the Senate in 2000 on mandatory and enforceable electricity reliability standards, something that was then later passed by this committee again, and then adopted into Federal policy legislation in 2005.

I want to note perhaps a little less known but important achievement made during his working career. He has been quite involved in groundbreaking policy as it relates to affordable broadband telecommunication policy to rural communities, using the Bonneville Power Administration backbone. Today, many local exchanges in rural areas are strapped and challenged, and I think this is another example of commonsense problem-solving and leadership on public policy issues that I think are the spirit of the execution and talent that Mr. Moeller brings to this position.

In the Northwest, as I said, we understand that there are a variety of views, but we think that there is a great deal of sensibility that Mr. Moeller will bring to the Federal Energy Regulatory Commission, so I hope that this committee and the U.S. Senate will swiftly approve the nomination of Mr. Moeller to the Federal Energy Regulatory Commission, and I thank the Chairman.

[The prepared statement of Senator Cantwell follows:]

PREPARED STATEMENT OF HON. MARIA CANTWELL, U.S. SENATOR FROM WASHINGTON

Thank you Mr. Chairman and thank you committee colleagues. It is my pleasure to join my friend from the State of Washington, Senator Murray to introduce the nomination of Philip D. Moeller, to the Federal Energy Regulatory Commission (FERC). I want to congratulate President Bush on this appointment, and I am proud to join Senator Murray and many others from the State of Washington in support of Phil's nomination.

As Senator Murray points out, Phil was raised in the Northwest, just outside of Spokane, Washington. Throughout his career in both public service and the private sector, he has earned an impeccable reputation, not just for his knowledge of complex energy policy issues—but also for his common-sense, proactive, balanced approach to problem-solving.

These are the hallmarks of the way we consider energy policy in the Pacific Northwest. For decades, the Northwest approach to energy issues has emphasized collaboration, consensus and innovation.

It is a rich tradition, carried on by my Northwest colleagues on this Committee today—and Phil is clearly a product of this heritage. If confirmed, we are confident he will be an able practitioner of this Northwest tradition when he reaches the Commission.

Now, I think we have reached an interesting milestone with these nominations today. When I joined this Committee in 2001 in the midst of the Western energy crisis, several of us in the Northwest delegation got the idea that it was about time to add a voice from our region to the Commission, and Phil was at the top of our list.

In fact, we've done a little research: since the DOE Organization Act of 1977 created the Federal Energy Regulatory Commission as it exists today, we have never had a Northwest FERC Commissioner.

So, to put that in some historical perspective: 1977 also happens to be the Seattle Mariners' inaugural season, which brought Major League Baseball back to the Pacific Northwest.

While we came close in 2001, the Mariners have yet to make it to the World Series. I know Phil's an avid baseball fan, so he probably looked at the standings himself this morning. This might not be the Mariners' year, so Phil, I hope it's not too much pressure to suggest that the Pacific Northwest is relying on you to break this other streak this year.

On a more serious note, I mentioned at the outset that Phil has had a long and distinguished career in public service, before his more recent work in the private sector. Our paths initially crossed when Phil worked in the Washington State Legislature on energy and telecommunication issues. For almost ten years, he served as the staff coordinator for the state Senate's Energy and Telecommunications Committee.

Nor is Phil a stranger to my colleagues on this Committee. After his time with the legislature, he served for four years as Senior Legislative Assistant to my predecessor Senator Slade Gorton.

I noted at the outset Phil's proactive approach to problem-solving. One of the major accomplishments that can be traced back to his work with Senator Gorton

is legislation to establish mandatory and enforceable electric reliability standards, which first passed the Senate in June 2000—that is, three years before the largest blackout in U.S. history struck the Northeast and Midwest in August 2003. When I got to the Senate, I was pleased to join that legislative effort and last year, with the leadership of the Chairman, Ranking Member, and my fellow committee members, the Energy Policy Act of 2005 included provisions based on that original bill.

I want to note for the Committee one more, perhaps little-known, but vitally important, contribution Phil made during his career working for the people of Washington state. He was quite involved in groundbreaking efforts to make broadband available to a number of our most rural communities, using the Bonneville Power Administration's fiber optic backbone. Today, many local exchanges in rural areas of our state tap into this system, which is crucial for economic development.

I raise this issue as another example of the outstanding leadership, vision, and spirit of innovation that Phil will bring with him to the Commission.

In the Northwest, we understand the importance of affordable, reliable energy. It's is in our blood, because it shaped our history. It built our economy. And it is a key to our continuing prosperity. I know Phil shares this view, and will bring this sensibility to FERC—along with a wealth of experience in the public and private sectors.

So in closing, Mr. Chairman, I urge my colleagues to swiftly approve the nomination of Phil Moeller to serve at the Federal Energy Regulatory Commission.

The CHAIRMAN. Thank you very much, Senator.

With that, I welcome both of the nominees to the committee. Senators, you are excused if you care to be, and would the two nominees please assume their chairs.

If either of you have family members present, please introduce them now if you would like.

Mr. Moeller, would you start.

Mr. MOELLER. Thank you, Mr. Chairman. In addition to my wife, my sister, Anne Marie Moeller is here, my wife's sister, Tristan Vella is here, and I have a special friend, a college roommate, Jim Illich and his son Colter, who are here from Houston.

The CHAIRMAN. Would they at least stand up so we can see they are. All right, thank you very much.

Now, Mr. Wellinghoff, do you have anyone you would like to introduce?

Mr. WELLINGHOFF. Yes, Mr. Chairman, and thank you. I have here what I consider to be one of the best attorneys in this country, and who also happens to be my brother-in-law, Mr. Neal Galatz.

The CHAIRMAN. Very nice having him here, thank you very much. Now we are going to proceed with the hearing. Let me just begin by noting that the Energy Policy Act that we passed last year gave very broad authority to FERC, the Commission that you are going to join if you succeed in what you have been appointed for. Both in the areas of electricity and gas, great new authorities were given to the Commission. These include electric reliability provisions, removal of barriers to competition, and the streamlining permitting of new facilities. Thus far, FERC, through the superior leadership of Chairman Kelliher, has done a fantastic job of moving forward on the implementation of these provisions, but there is a lot of work to be done. And I am hoping that if confirmed, the two of you will use your expertise to assist the chairman in continuing to shape the energy policy as we envisioned it in the Energy Policy Act.

This is a very big job. I want to thank both of you, each of you individually, for your willingness and devotion, and commitment to your country, that brings you before us today, having accepted the

President's presentation to us for acceptance to these two respective Commission positions.

Are there any Senators here on the dais who would like to make opening statements.

Senator Bingaman.

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

Senator BINGAMAN. Thank you, Mr. Chairman. I would like to welcome both nominees. I think the President has sent us two very well-qualified nominees for the Federal Energy Regulatory Commission and obviously, as you pointed out, there are some very new and important responsibilities at the Commission. It is a very important time in the history of the Commission, and the full panoply of issues that are pending before the Commission, so I look forward to supporting these nominees, and look forward to their statements. I will have a couple of questions once we get to that part of the hearing, thank you.

The CHAIRMAN. Thank you very much, Senator.

Any opening statement, Senator Thomas?

STATEMENT OF HON. CRAIG THOMAS, U.S. SENATOR FROM WYOMING

Senator THOMAS. Just very briefly, Mr. Chairman. I too welcome the candidates and I am certainly pleased that we nominated well-qualified individuals for these important positions. Wyoming, of course as you know, produces a good deal of energy, and the infrastructure to get that to the market is one of the key issues before us. And so we are very hopeful that we can continue to work on that, and FERC has done a good job of adhering to our congressional intent in this bill, I believe, and we look forward to working with you. Thank you for being here.

The CHAIRMAN. Senator Wyden.

STATEMENT OF HON. RON WYDEN, U.S. SENATOR FROM OREGON

Senator WYDEN. Very briefly as well, Mr. Chairman. I think we have two good people. I am going to be supporting them. I do have some questions to ask. I think business as usual at FERC is unacceptable. I think it is hurting the consumer in a number of areas. That is what I will be asking about, and I look forward to supporting both of the nominees.

The CHAIRMAN. Good.

Senator Smith.

STATEMENT OF HON. GORDON SMITH, U.S. SENATOR FROM OREGON

Senator SMITH. Thank you, Mr. Chairman. I join all of my colleagues in expressing admiration for these two nominees. They are excellent, and I intend to support them.

I want to note that Mr. Moeller is a native of the Northwest, and a neighbor to Oregon. I am particularly pleased with what he will obviously bring to FERC, which is an understanding of hydropower and the unique challenges that we have in generation and trans-

mission of electricity. These are challenges that frankly have not been very well reflected in FERC rulemaking in the past, and I hope that he will be able to add some understanding to that. Proposals like standard market design and others have caused great angst in the Pacific Northwest.

Mr. Wellinghoff obviously has a great background in consumer protection, and I think Nevada, like the rest of the West, is still recovering from the west coast energy crisis, and I believe it will be very important for you, sir, to focus on the criteria by which FERC will renew and improve BPA rates.

The administration in its 2000 budget proposal was going to require BPA to prepay debt, which would have a very likely consequence of keeping market rates higher in the Pacific Northwest than they need to be, and therefore harmful to consumers. So I believe it is very important that FERC ensures that BPA power rates are not raised arbitrarily from such a proposal, and I hope that you will be sensitive to that. With that I look forward to supporting your nominations, and I will have some questions for the record.

[The prepared statement of Senator Smith follows:]

PREPARED STATEMENT OF HON. GORDON SMITH, U.S. SENATOR FROM OREGON

Mr. Chairman, I appreciate your willingness to hold this hearing on the nominations of Philip Moeller and Jon Wellinghoff to be Commissioners of the Federal Energy Regulatory Commission.

I intend to support both of these nominees, and believe they are highly qualified to serve on FERC. Mr. Moeller is a native of the State of Washington, and worked for several years on issues related to northwest utilities and the Bonneville Power Administration. I think that background will be helpful during his tenure on FERC. The Pacific Northwest is the only region of the country where hydroelectricity is the predominant resource for the generation of electricity. This provides our region with unique challenges for both the generation and transmission of electricity.

These challenges have not always been reflected in draft FERC rulemakings, such as the Standard Market Design proposal. I'm pleased that the current FERC leadership understands the unique nature of the various regional electricity markets, and appears ready to allow for regional flexibility in transmission organizations. I am confident that Mr. Moeller will embrace this approach, and will add to FERC's understanding of electricity issues facing the Pacific Northwest.

Mr. Wellinghoff, from your background, it would appear that you bring a strong consumer protection background and a long-term knowledge of utilities in the rapidly growing southwestern United States. For those of us whose constituents are still paying for the West Coast energy crisis of 2000-2001, we are seeking a strong FERC to ensure just and reasonable rates for consumers.

One issue I will follow closely in the coming years is the criteria by which FERC will review and approve BPA's rates. There is a long-standing precedent, in accordance with the Transmission Act of 1974, that requires the BPA Administrator to consider all revenues in the aggregate when setting rates. In its fiscal year 2007 budget proposal, the Administration has proposed to earmark BPA's secondary revenues in excess of $500 million annually in order to pre-pay BPA debt. This would require BPA to raise firm power rates in order to do so. We have been able to stop this proposal for this fiscal year, but it is important that FERC ensures that BPA power rates are not raised arbitrarily to reduce the federal deficit.

I look forward to hearing from nominees, and will have a few questions for the record for each of you.

The CHAIRMAN. Thank you, Senator.

Now, the rules of the committee which apply to all nominees require that you be sworn in, in connection with your testimony. Would you please raise your right hands.

[Witnesses sworn.]

The CHAIRMAN. Please be seated. Before you begin your statements I will ask three questions addressed to each nominee before

this committee. Each of you please respond separately to each question.

Would you be available to appear before this committee and congressional committees to request departmental positions, and respond to issues of concern to the Congress?

Mr. MOELLER. I will.

Mr. WELLINGHOFF. Mr. Chairman, I will.

The CHAIRMAN. Are you aware of any personal holdings, investments, or interests that could constitute a conflict 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? Each of you will answer that, please.

Mr. MOELLER. My investments, personal holdings and other interests have been reviewed by both 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 other appearances thereof, to my knowledge.

Mr. WELLINGHOFF. My investments, personal holdings and other interests been reviewed by both 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 other appearances thereof, to my knowledge.

The CHAIRMAN. I thank you very much. Now we will move to your statements. Your statement will be made part of the record as you read. We will start now—oh, I had one third question about trusts that I forgot. Would you answer it now? Are you involved with, or do you have any assets held in blind trusts? Mr. Moeller, you first.

Mr. MOELLER. No.

Mr. WELLINGHOFF. No, I do not.

The CHAIRMAN. All right. Now we will proceed. I encourage you to summarize your statements. They will be made part of the record in their entirety.

Please proceed, Mr. Moeller.

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

Mr. MOELLER. Mr. Chairman, Senator Bingaman, members of the committee, it is a great honor to be before you today to be considered to be a member of the Federal Energy Regulatory Commission. I express thanks to President Bush for nominating me to this position. Thank you for holding this hearing, and I appreciate the compliments from Senators Murray and Cantwell, as well.

I've been involved in energy policy for over 20 years. Most of that, in my early career, was in Olympia, Washington, as the head of the State senate energy and telecommunications committee. There I saw firsthand the effects of Federal decisions such as those from FERC to the State, both in good ways and in challenging ways. First, really, in the 1980's with the restructuring of the natural gas industry, and then in the 1990's as the competitive wholesale market in transmission started to emerge.

I came to work here for the U.S. Senate for Senator Slade Gorton in 1997. My primary responsibility was to work on a wide array of energy policies that of course included not just national policies,

but a real focus on the Pacific Northwest with its hydropower, its Bonneville issues, and a variety of complicated matters that made life always very interesting.

We saw the Western energy crisis develop before our eyes in the spring of 2000, May and June of 2000, and it was a frustrating experience to see it unfold before us and to see the devastating impacts that it had on the entire West, particularly on the citizens of California and the Pacific Northwest, as prices rose. I pledge to you that that will always be a memory that will stay with me and will guide me in terms of consumer protection, if I am confirmed to the FERC.

After leaving public service I worked in the private sector both for a generating company and for a utility. This has given me a broader range of experience, particularly as it pertains to Midwest issues in the energy markets.

Thanks in large part to the efforts of Chairman Domenici, Senator Bingaman, and the rest of the members this committee, the provisions of EPAct 2005 are now law, and a lot of those things that deal with both the supply side and the demand side of energy will be positive for this Nation. You also gave FERC a lot of things to do. Part of the provisions that you gave to FERC include more consumer protection and an effort to make markets more transparent, and to get the kind of fines and penalties that FERC needs to hopefully prevent any kind of market manipulation in the future. FERC has had a lot of these things to do. As far as I know, Chairman Kelliher has done a great job along with the rest of the staff and Commissioners in making sure that they have been done on time and under budget, and if I am confirmed, I will work to make sure that that continues.

It's also essential that the FERC and Congress work very closely together and maintain strong lines of communication. If confirmed by the Senate, I think my experience working for a member of this committee will enhance this relationship at a critical time of energy policy implementation. It would be an honor and a privilege to return to public service at the FERC, and I appreciate the chance to testify before you and 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 Domenici, Senator Bingaman and members of the committee, it is a great honor to be before you today as a nominee to the Federal Energy Regulatory Commission (FERC). I express thanks to President Bush for nominating me to this position, and I thank you for holding this hearing.

I have been involved in energy policy development for over 20 years. For much of my early career, I was the staff director for the Washington State Senate Energy and Telecommunications Committee in Olympia, where I saw firsthand both the positive and challenging effects of decisions by FERC on my state of Washington and the Pacific Northwest region—most notably with the restructuring of the natural gas industry in the 1980s and the development of more competitive interstate wholesale electricity markets in the 1990s.

I came to work here in the United States Senate for Senator Slade Gorton of Washington State in 1997, where my primary responsibility was to work on a wide range of energy policy legislation. In addition to focusing on regional energy issues and hydropower policy, I spent a great deal of time developing electric reliability legislation. As a Senate office, we saw the Western electricity crisis develop in the early summer of 2000 and witnessed the devastating impacts that high prices had

on the economy of the state and region, and on the lives of the consumers and citizens of our state and the entire West. The memories of that experience will always motivate me to work at assuring that energy consumers are protected when energy policy is actually implemented in the marketplace.

After leaving public service I have worked in the private sector on energy policy, both with a generating company and a utility. This experience has broadened my perspective, especially regarding energy issues that are crucial to the Midwest states.

Thanks in large part to the efforts of Chairman Domenici, Senator Bingaman and this entire committee, last year's Energy Policy Act is now law. In addition to the law's wide range of policies promoting both the supply side and the demand side of energy, EPACT 2005 also aided energy consumers through new consumer protection mechanisms and modernized authority for FERC to impose fines and penalties intended to prevent market manipulation.

The law gave FERC a long list of responsibilities and tasks to accomplish. Chairman Kelliher and the rest of the Commission have worked diligently to assure that, to date, all of the tasks assigned to FERC have been completed on time and under budget. Many of the tasks assigned to FERC remain to be addressed, and if confirmed I would work to assure that this trend continues. I would also closely follow whether the provisions of EPACT 2005 are working to meet the intent of Congress.

It is essential that FERC and Congress work closely together and maintain strong lines of communication. If confirmed by the Senate, I believe my experience working for a member of this committee will enhance this relationship at a critical time of energy policy implementation. It would be an honor and a privilege to return to public service at the FERC. I appreciate the chance to testify before you today and look forward to answering your questions.

The CHAIRMAN. Thank you very much.

Now we will have your statement, please, Mr. Wellinghoff.

TESTIMONY OF JON WELLINGHOFF, NOMINEE TO BE A MEMBER OF THE FEDERAL ENERGY REGULATORY COMMISSION

Mr. WELLINGHOFF. Thank you, Mr. Chairman. Chairman Domenici, Senator Bingaman, and distinguished members of the committee, I'm honored to be considered today by you for confirmation of my nomination to the Federal Energy Regulatory Commission. I thank President Bush for my nomination, and I'm also grateful for the trust and confidence placed in me by Senator Reid, who recommended me for this position. Energy and regulatory law and policy have been the primary focus of my career for more than 30 years. I have worked in both the public and private sectors, and I have supported business and public interests advocating numerous energy issues over that time.

When I first got out of law school, my first job was with the Nevada Public Utilities Commission. This was at the time of the Arab oil embargo. I was there for approximately 2 years, and in that 2 years I saw more rate increases than had been seen in the previous 10 years. So I really definitely feel that I earned my Ph.D. in utility regulation in that job. After working for the Nevada Commission in the early 1980's, I held a number of positions in the public sector. And then I worked with the Nevada attorney general to create the first consumer advocate office. I was appointed by the attorney general to serve as Nevada's first consumer advocate, and in that office I represented the interests of Nevada's utility ratepayers before the Nevada commission, before the FERC, and other regulatory agencies. In that position I managed and developed strategy for multiple electric and natural gas proceedings in Nevada. I also developed legislative policy and instituted a number of energy policy initiatives during my two terms. The most important initiative

was drafting the first comprehensive integrated resource planning act for Nevada's electric utilities.

In the 18 years since leaving the consumer advocate office, I've been primarily in private practice, with a short stint back at the Public Utilities Commission as a staff counsel to the commission, and been working both as attorney and an energy consultant. I've testified or consulted in numerous jurisdictions including Colorado, New Mexico, Arizona, Texas, Washington, Hawaii, Oregon, Nevada, and California, and on various energy issues including integrated resource planning, energy efficiency demand response, natural gas decoupling, and others.

I have represented numerous clients in energy related matters, including utility rate proceedings, integrated resource planning cases, legislative proceedings, and power contract negotiations.

My clients included the Department of Energy, the Department of Defense, the Department of the Navy, Sandia National Labs, major international corporations, utilities, manufacturers of energy efficiency equipment, and renewable resource developers.

I also, like Mr. Moeller, experienced firsthand the challenges of electric market restructuring in representing clients after the aftermath of the electric market failures in the West during the 1999 to 2002 time frame. The FERC is an important independent regulatory agency with an essential mission. The Congress has placed even greater responsibility on the agency with the enhancement to FERC's powers in EPAct 2005.

Resource adequacy, electric system reliability, demand response and transmission planning are all integral to the integrated resource planning process that I helped initiate in Nevada in the early 1980's, and in numerous other States where I acted as a consultant. These are also issues for which the FERC has been given a the level of responsibility under the energy act of 2005.

If confirmed, I will transfer my experience I've gained in these areas working at the State level to my work at FERC. I also plan to bring with me if confirmed my 30 years of experience in regulation of electric and gas utilities and my general philosophy of energy regulation, which is to keep it efficient, effective, and responsive to the needs of consumers.

In closing, I want to acknowledge and thank my wife Karen Galatz, who has been with me for over two thirds of my energy law career. I could have accomplished little without her by my side. She unfortunately could not be here today. She is with our two sons who are taking their junior high and high school exams in Nevada. I appreciate the opportunity to be here to testify before you. I am honored to be considered, and I am happy to answer any questions that you may have. Thank you, Mr. Chairman.

[The prepared statement of Mr. Wellinghoff follows:]

PREPARED STATEMENT OF JON WELLINGHOFF, NOMINEE TO BE A MEMBER OF THE FEDERAL ENERGY REGULATORY COMMISSION

Chairman Domenici, Senator Bingaman and distinguished members of the Committee, I am honored to be considered today by you for confirmation of my nomination to the Federal Energy Regulatory Commission (FERC). I thank President Bush for nominating me. I am also grateful for the trust and confidence expressed by Senator Reid who recommended me for this position.

Energy and regulatory law and policy have been the primary focus of my career for more than thirty years. I have worked both in the public and private sectors.

I have represented both consumers and utilities. I have supported business and public interests advocating energy efficiency, renewable energy, retail competition, and clean coal technologies.

Like Chairman Domenici, I first worked as a junior high school math teacher. Like Chairman Domenici, I too quickly turned to law. After law school I became a legal assistant to Evo Granata, Commissioner of the Nevada Public Utilities Commission (NPUC). This was the time of the Arab oil embargo, and utility rates were rising faster than ever before. In my two years at the Nevada Commission I saw more utility rate cases compressed into that short period of time than in the preceding ten years. I definitely felt as if I had earned my "Ph.D." in utility regulation in that job under the expert tutelage of Commissioner Granata and Chairman Noel Clark.

After working for the Nevada Commission, I held a number of positions in the public sector including Deputy District Attorney in Nevada and staff attorney for the U.S. Senate Commerce Committee and the Federal Trade Commission in Washington, D.C. All of these positions encompassed work on energy-related matters.

Returning to Nevada, I worked with the then Attorney General, later Governor and U.S. Senator, Richard Bryan, and a private citizen, Randolph Townsend, who would later become a prominent State Senator, to create the first Consumer Advocate in Nevada for Customers of Public Utilities. I was appointed by Attorney General Bryan to serve as Nevada's first Consumer Advocate. In that office, I represented the interests of Nevada's utility ratepayers before the Nevada Commission and the FERC. I was Nevada's Consumer Advocate for seven years, serving term appointments under both Democratic and Republican Attorneys General. I managed and developed strategy for multiple electric and natural gas proceedings in Nevada. I also developed legislative policy and instituted a number of energy policy initiatives during my two terms. The most important initiative was drafting the first comprehensive integrated resource planning (IRP) act for Nevada's electric utilities. Nevada's act was passed in 1983 and became a model for similar acts that were subsequently passed in 17 other states. After passage of the act, I participated in the IRP rulemaking process before the NPUC and managed numerous related cases.

In the eighteen years since, with the exception of a short return to the public sector as Staff Counsel to the Nevada Commission, I have been in private practice as both an attorney and an energy consultant. I have testified and/or consulted in various states including Colorado, New Mexico, Arizona, Texas, Washington, Hawaii, Oregon, Nevada, and California on the IRP process, energy efficiency, demand response, natural gas decoupling, and other energy issues.

For the past six years I have been in private practice with the law firm of Beckley Singleton in Las Vegas and Reno, Nevada. I have been a Shareholder in the firm for the past four years. During my time at Beckley, I have represented numerous clients in energy-related matters including utility rate proceedings, IRP cases, legislative proceedings, and power contract negotiations. My clients have included the Department of Energy, DOD/Department of the Navy, Sandia Labs, major international corporations, utilities, manufacturers of energy efficiency equipment, and renewable resource developers. During this period, one of the legislative energy policy initiatives I proposed on behalf of my clients was Nevada's Renewable Portfolio Standard (RPS). That RPS legislation originally created a market for the sale of 15% renewable energy to Nevada's electric utilities as enacted in 2001 and was then amended by a proposal I submitted to the legislature in 2005 to a 20% RPS market. Since the first enactment of an RPS in Nevada in 2001, I have consulted on RPS proposals in California, Oregon, Idaho, New Mexico, Arizona, and Colorado. In addition to my policy work on RPS legislation, I also experienced first hand the challenges of electric market restructuring in representing clients in the aftermath of market failures in the West during the 1999-2002 timeframe.

The FERC is an important independent regulatory agency with an essential mission. The Congress has placed even greater responsibility on the agency with the enhancements to FERC's powers in the Energy Policy Act of 2005. Resource adequacy, electric system reliability, demand response, and transmission planning are all integral to the IRP process that I helped initiate in Nevada and numerous other states. These are also issues for which FERC has been given a level of responsibility under the Energy Policy Act of 2005. If confirmed, I hope to transfer the experience I have gained in these areas working at a state level to my work at FERC. I also hope to bring with me, if confirmed, my thirty years of experience in the regulation of electric and gas utilities and my general philosophy of energy regulation which is to keep it efficient, effective, and responsive to the needs of the energy consumer.

In closing, I want to acknowledge and thank my wife, Karen Galatz, who has been with me through over two thirds of my career in energy law. I could have accomplished little without her by my side. She could not be here today at my confirma-

tion hearing as she had to be with our two sons who are taking their junior high and high school final exams in Nevada.

I appreciate the opportunity to testify before you today and am happy to answer any questions you may have.

The CHAIRMAN. Thank you very much. Thanks to both of you. I have been told there will be a vote around 10:45, just for each one's information.

I have a lead-off question. If I have any further ones after the vote comes, I will submit them to you if I do not get them in. My first one has to do with the energy reliability organization, ERO. The new law directed FERC to ensure the reliability and security of the Nations bulk power system. Pursuant to the energy bill, a single electric reliability organization, the ERO, will have the authority to establish and enforce mandatory reliability standards. We are now in the process, nationally, of transitioning from a system of voluntary compliance to this new mandatory regime. In order to avoid a one-size-fits-all approach, Congress carefully provided a role for these regional reliability organizations, as it called them. The national ERO, which set reliability standards, must—and these are words from the act, quote, "Arebuttably presume that a standard proposed by a regional entity is valid." As a commissioner, how will you address the issue of regional flexibility? How will this fit into the ERO's national standard, and their enforceability? We will start with you, Mr. Moeller.

Mr. MOELLER. Thank you, Mr. Chairman. As a commissioner of course I would follow the law and give deference as the law states to different regions. Different regions operate differently in this country. The transmission system was not set up as a national grid, even though in many ways it has evolved into something close to that. But particularly in the West, generation sources are often farther from the load centers, and they have a very legitimate concern about having their own regional differences. This is something I've heard about for years, so I would plan to pay a lot of attention to it, follow the law, be deferential, but ultimately we have to make sure that we have a system that works coupled with enforceability and reliability that works for the whole Nation, but with a deference to the regions.

The CHAIRMAN. Thank you very much. Mr. Wellinghoff.

Mr. WELLINGHOFF. Mr. Chairman, yes, I would generally agree with Mr. Moeller's response, and let me add to it that the contracts between the ERO and the regional reliability entities such as the WECC in the West are going to be essential, and I think this rebuttable presumption that you mentioned is essential as well, to ensure that entities like the WECC can in fact run their region in a way to operate most efficiently and best for that particular region. I will have to look with respect to every region, and I think it will be essential to have stakeholder meetings to ensure that those contracts reflect what the regions need, to make sure there is reliability there.

The CHAIRMAN. Thank you very much. With that, I will yield to you, Senator Bingaman.

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

Let me ask about one of the sections in the Energy Act and the way the Commission is proposing to implement it. This is section

203. You know, one of the most important things we did in the energy bill last year was to repeal the Public Utility Holding Company Act. As we did that, we also gave FERC additional responsibilities to approve mergers and acquisitions. A specific part of what we tasked FERC with doing was to make a determination that the proposed merger or acquisition would not result in cost-subsidization of a non-utility associate company, or the pledge or encumbrance of utility assets for the benefit of an associate company.

This was of course in response to some abuses that had come to light, in connection with inter-affiliate relationships. A couple of utilities come to mind, Allegheny Electric and WestStar were two examples.

My thought at the time we did that provision of energy bill, was that in order for the Commission to implement it, the Commission would probably need to, by rule, impose some strict structural rules, that controlled any inter-affiliate transactions and prohibited those, except in rare circumstances.

The truth is the Commission's proposed rulemaking does not do that. In its rulemaking implementing this subsection, it requires something very different. It says that the applicant must provide an explanation with appropriate evidentiary support of how it is providing assurance that the proposed transaction will not result in cross-subsidization. It sounds to me as though it is going to be on a case-by-case basis, much more than adhering to structural rules for ensuring that this cross-subsidization not occur.

I would just be interested in whether either of you have thoughts as to how this is going to work, whether this is going to be adequate to protect consumers, whether just taking these cases one at a time is really an adequate way to proceed to deal with this possible problem. Mr. Moeller, do you have a thought?

Mr. MOELLER. Thank you, Senator Bingaman. I'll be a little careful since it's a pending matter in my comments. But first of all, thanks to the committee and the Congress for giving FERC additional authority in this matter, through last year's bill. Cross-subsidization is something that shouldn't just be followed on a snapshot basis, for instance, in the case of a merger or whatever, but it's something that the Commission should keep their eye on constantly. That would be my philosophy. I will study the merits of the proposal and get back to you in writing, as appropriate, but it's a concept that should be continuously observed and followed to make sure that consumers are protected.

Senator BINGAMAN. Mr. Wellinghoff, do you have any thoughts on this?

Mr. WELLINGHOFF. Yes I do, Senator Bingaman. Thank you. Actually, I have more than thoughts, I have some experience in the area. When I was consumer advocate, it was an issue actually with telephone companies that were regulated in Nevada, ones that were subsidiaries of major national companies.

The cross-subsidization between the Nevada company and the national company is a very difficult thing to deal with. Given that it is a pending rulemaking for the Commission, I don't want to comment specifically on the rule, but I will comment generically on my view and philosophy of the cross-subsidization issue. I think

you may need more than strict structural rules. In fact, you need the ability to fully audit, and you have to have the ability to go in and determine where the money is going, and I need to ensure that FERC does have the authority. I haven't looked into this in detail, but I assure you that I will if confirmed. Thank you.

Senator BINGAMAN. Thank you. Let me ask one more question. This relates to this so-called Mobile-Sierra doctrine. It is an issue that is complex, and has sort of gotten us wrapped around the axle here in Congress, and in the administration as well, in my view. As I understand, the Federal Power Act, it essentially says that the Commission shall assure that the rates that are charged are just and reasonable.

Under this proposed rule, again, talking about the proposed rule that FERC has come out with, they have proposed to revise the standard of review for modifications of jurisdictional agreements. Essentially, what they have said that they are doing there is to codify the Mobile Sierra doctrine. I am not sure that that is what in fact is happening. The Commission rule would provide that in cases where the contracting parties did not explicitly agree to allow contract revisions, to provide for changes in rates, or terms, or conditions of service, then the standard of review is no longer whether those rates are just and reasonable, but there is some other standard which is a public-interest standard.

That concerns me somewhat. It seems to me that the effect of what is going here is that FERC is in some ways delegating to the contracting parties the responsibility for determining whether rates are just and reasonable, and in some ways stepping back and saying that it is no longer their responsibility under the Federal Power Act, which is not my understanding of the law. I do not know if that is something you could comment on, if it is something you have looked into, but it is an issue I am sure you will hear a lot about in your new position, and let me just give you a chance to give any comment that you want to on that. Mr. Moeller?

Mr. MOELLER. Thank you, Senator. I'll be real careful, because it is a pending matter. It seems to me you have a couple things going on from a public policy perspective. You want to assure that contracts remain—you want to encourage contracts to be executed and respected. On the other hand, you have the public interest involved, and those potentially can collide. But FERC needs to maintain the ability to revisit contracts in the event that they are not just and reasonable.

Senator BINGAMAN. Very good. Mr. Wellinghoff, did you have any thoughts on this?

Mr. WELLINGHOFF. Yes, Senator Bingaman. I think—again, I don't want to comment on the pending rule before the Commission because I may have to vote on it, but as a general matter, the law as you stated it says that rates should be "just and reasonable." That is fairly clear. The Mobile-Sierra doctrine is a doctrine as I understand that—I read the case—applies to a particular set of facts, a particular situation. So I think what needs to be followed is the overall law; rates should be just and reasonable.

Senator BINGAMAN. Well, thank you both for those responses, thank you Mr. Chairman.

The CHAIRMAN. Senator Thomas.

Senator THOMAS. Thank you.

Gentlemen, unfortunately in some parts of the country, the necessary levels of partnership between the Commission and the States is lacking. FERC has the authority to convene joint boards with State regulators, but they do not do that. How do you build a partnership with the States to ensure a reliable power grid? How can States and State entities have better interaction and contact with the Commission?

Mr. MOELLER. Senator Thomas, the joint boards are a good idea. I think particularly in electricity issues, it is essential to keep the lines of communication open between FERC and the States, particularly State utility commissions. There are a variety of issues where you just have to have a good working relationship to move forward, because States have a duty to their citizens, but in many cases this is interstate commerce, it is involved with putting electrons across State lines. So maintaining and enhancing those relations would be a priority of mine, if confirmed.

Mr. WELLINGHOFF. Senator Thomas, thank you. I would only add to that that I think joint boards are an excellent idea, and not only that but the participation I have had, for instance, in the Western Governors' Association, activities with the Frontier Line, for example, give some type of a framework to the type of thing that FERC needs to get involved in with respect to looking at these joint transmission issues throughout the West and other parts of the country. I think FERC definitely needs to be involved in those types of things.

Senator THOMAS. Just a little follow-up. Seems pretty clear that regional transmission organizations will not be established in the West. How do you think it affects project like Frontier Line?

Mr. WELLINGHOFF. Senator, I think we have a number of different experiments going on in different parts of the country. There are some places where RTOs seem to be working to some degree. There are others where things are just fine without them. I think we can do interstate agreements, in essence, that would allow for the cooperation and collaboration and development of things like the Frontier Line, and other lines in the West, and other areas where there are not RTOs. Without necessarily having an RTO there if the utilities and the stakeholders in that region think they can operate otherwise and think they can operate in a way collaboratively and cooperatively to make those things possible, I think there are opportunities to work with or without an RTO.

Senator THOMAS. Any comment, Mr. Moeller?

Mr. MOELLER. I think the Frontier Line, as Mr. Wellinghoff said, is a good example. From my understanding, the Governors of the various States have gotten together. They are working toward a solution, a regional energy solution. FERC has to be, if appropriate, a part of that, to make sure that it works as well as possible. Wyoming has energy to export, and there are other areas where the energy is needed.

Senator THOMAS. Thank you, Mr. Chairman.

Senator WYDEN. Thank you, Mr. Chairman, and I commend both of you for your thoughtful responses and I think one of the reasons you're getting these questions is because we have high expectations

for you both. And that is essentially what I am going to be looking for, as well, in the areas I am going to ask about now.

As you both know, Enron's former chief executives have now been found guilty in their criminal trials. The bankruptcy case has been wrapped up. And yet FERC continues to keep secret evidence of Enron's manipulation of the energy markets. And I just cannot come up with a logical reason why FERC should continue to keep secret documents, trader tapes, and other evidence of how Enron manipulated energy markets back in 2000, 2001. So 5 years has gone by and we have had the criminal convictions, we have had the bankruptcy process go forward, and yet still the State regulators and the public cannot get access to critical information. My question for both of you, and why not start with you, Mr. Moeller, is at what point should State regulators and the public be able to get access to information that in my view should have been out some time ago?

Mr. MOELLER. Senator Wyden, thank you for the question. My general feeling is that as much as can be legally released should be, and I think that FERC is moving in that direction. Generally, that applies to generally transparent issues, that more is better.

Also, my understanding is that the Department of Justice still has restricted a lot of that information because there are more criminal prosecutions being investigated. So I think that's the primary reason most of that haven't been released yet.

Senator WYDEN. Mr. Wellinghoff.

Mr. WELLINGHOFF. Senator Wyden, thank you. I have a similar understanding. I certainly believe anything that would not jeopardize a criminal investigation should be released to the public, and/or to State regulatory agencies for access. And so to that extent, I would support that.

Senator WYDEN. My concern is that it does not seem that FERC is striking the right balance between protecting information for example which obviously is needed as it relates to criminal prosecutions, certainly needed with respect to legitimate reasons of business confidentiality, and yet at the same time the public has a right to know. For example, I have been getting recent reports that FERC is making additional information secret under what is called a form one. This is a privileged kind of document. Again, there can be business grounds that are legitimate, but also the public has a right to know in a lot of these instances.

I hope that the two of you will push FERC to strike a better balance. Let us protect information where it is needed for criminal prosecution, or other legitimate reasons of business confidentiality, but let us also respect the public's right to know. And I think you are two people who will do a good job. Go in there and see if you can push the agency to strike a better balance with respect to these concerns that I am raising.

The other question that I had for both of you is, when Chairman Domenici had the oil executives up last year, ExxonMobil CEO Lee Raymond testified to our committee that speculation in the oil markets raised the price by $20 per barrel. Now, that is the oil sector, and obviously FERC does not have jurisdiction over the oil markets. But there is some authority over speculation in sales of electricity and natural gas. Do you think it makes sense for the agency

to do more to watchdog speculative practices in areas where the agency does have some jurisdiction?

Mr. Moeller.

Mr. MOELLER. Yes.

Senator WYDEN. Good answer.

Mr. Wellinghoff.

Mr. WELLINGHOFF. Senator Wyden, thank you. Yes, I would also answer yes, and I would add to that a little bit in that I think it actually goes somewhat to your previous question with respect to information. I think transparency in these markets is essential to the extent that we can get more data out and have that available, not only for the public but for FERC to review and analyze. It will help FERC stop speculation.

Senator WYDEN. Well, I look forward to working with both of you, and I think in a lot of these areas what has happened particularly as relates to speculation is the public has gotten very little information. Chairman Domenici, to his credit, brought the executives up. Lee Raymond gave us information that I found pretty amazing; that speculation in the oil market is raising the price by such a large amount per barrel. It forced me to start looking at speculation in other areas. I am glad that you all want to see the Commission do more in this area, and Mr. Chairman, I think it is been a good hearing, and we have got two good people, and I look forward to moving ahead with their nomination.

The CHAIRMAN. We were just looking at the clock and trying to figure what we were going to do. Senator what are your plans?

Senator MENENDEZ. Well, I have two brief questions, Mr. Chairman.

The CHAIRMAN. Two questions, and then you would go vote?

Senator MENENDEZ. Yes, if I may.

The CHAIRMAN. Well, why do we not let you take over on the understanding that you will proceed with two questions while I go vote. We will be in recess until the Chair or a designee returns to open the meeting, and that will be the understanding. It will not be closed until either I or a designee returns and closes it. Thank you.

Senator MENENDEZ [presiding]. Thank you, Mr. Chairman.

Congratulations to both of you on your nominations, and I look forward to the answers to these questions that I would like to pose to you. The people of New Jersey, like so many others around the country, are facing much higher electric bills this year because of the high cost of natural gas and other fuels. Just last week New Jersey ratepayers were told that they would be paying over 12 percent more, which is bad, but not as bad as it could have been, because of the State's competitive auction, getting better prices than neighboring States. But the auction system cannot work without a vibrant, effective, and competitive regional power market.

So my question in this one set is will you work to ensure that regional markets in the mid-Atlantic, Midwest, and Northeast, all of which are critical to power consumers in my State, grow and thrive? And can you help guarantee that as many competitive generating companies as possible get access to a reliable open transmission grid, so they can compete, to provide my constituents with electric power?

Mr. WELLINGHOFF. Senator, if I may. Thank you for the question. And I would only hope that we in Nevada can only have a 12 percent increase. We just had a 23 percent one proposed there, so I understand the difficulty of these types of increases. And I would say these kinds of competitive regional markets are essential. The more access we can have to generators of all types, using all sources of fuel, and also not only generators but other things we can do to help consumers with respect to lowering overall costs in the market, such as demand response, I think are essential things that we need to look at.

So these will certainly be things that I would like to work with, and work on when I'm at FERC, and I intend to do so if confirmed. Thank you.

Mr. MOELLER. Senator, I agree with most everything Mr. Wellinghoff said, as well. We need to make sure that regional markets work. The key to that is a vibrant and open transmission system, and the Commission now is kind of taking another look at those policies after they were initially implemented about 10 years ago. I look forward to being part of that to make sure that the system works as efficiently as possible.

Senator MENENDEZ. I appreciate those answers. I just want to stress how important the open grid transmission system is to a State like New Jersey, which is a net importer of electricity. Our regional transmission organization, PGM, has done an excellent job of operating a competitive market, and maintaining the reliability of the grid. PGM is one of the reasons that the blackout of 3 years ago did not affect New Jersey as badly as it could have. So it's my hope that as the Commission focuses on areas of the country that don't have regionalized transmission organizations, that we don't backslide on the gains we had made in New Jersey and in the Mid Atlantic.

And my second question is, my State has an interest in seeing the development of renewable sources such as solar power and wind power, and demand-side resources such as energy efficiency as a means to diversify our resources and reduce our dependency on foreign oil. Now New Jersey has, on its own initiative, helped create a huge boom in solar power, thanks to a number of incentives to homes and businesses, and I am proud to join Senator Smith, who introduced a bill that would extend the Federal tax incentives for solar and fuel-cell installations.

I've been told by a number of suppliers of energy efficiency devices and renewable resources that a competitive wholesale power market is key to stimulating new markets for energy efficiency and renewable resources, and my question is do you agree, and what will you do to spur development of competitive markets that enable these alternative energy sources to grow and develop in States like my own?

Mr. WELLINGHOFF. Senator, if I may. I would agree that development of solar, wind, and demand-side resources is essential for many different reasons. But one of the best reasons is that it really does have the ability to drive down prices and make markets work better, especially things like demand-side resources, and demand response, where there have been some studies that have shown that if you could just reduce peak load by, say, 5 percent, you could

reduce prices in that market by 50 percent during that peak. You have tremendous opportunities there, and I do agree that competition in those markets will help those different resources participate.

You also have to look at market barriers to those resources, though. I think it is an essential part. They have to have equal access to the market. That is one thing I really want to look at at FERC, to make sure that solar, wind, geothermal—that we have a lot of in the Western United States—biomass, DSM, demand response, all can participate in that market equally. That is really essential to make those markets work well and work effectively and efficiently.

Mr. MOELLER. Senator, I would just add that the Commission is, as a reference, taking a 10-year look-back on open access of transmission. And one of the issues there is how to treat intermittent generators—renewables sometimes fall into that category. And so the Commission is looking forward, specifically, on that aspect of renewables in a way that should give it guidance to allow the industry to grow.

Senator MENENDEZ. Thank you both.

[Recess.]

Senator MURKOWSKI [presiding]. The meeting will be back in order. Appreciate the opportunity for a little break there and stretch while we took our vote. Welcome to both of you this morning. I appreciated the opportunity that I had to meet with both of you to discuss a little bit about your background and some of the concerns, and the issues certainly before the State of Alaska as they relate to the FERC. This is probably not going to be any surprise to you this morning that I continue with my questions as they relate to probably Alaska's leading energy issue; that of supplying the rest of the United States with our vast supplies of natural gas.

As you know, we have got about 35 trillion cubic feet of proven reserves with hopefully another 150 trillion cubic feet awaiting discovery up there on the North Slope. As you know, the Alaska legislature is working to finish a special session in fact they are supposed to conclude this evening to consider the contract with the North Slope producers, intended to lead to construction of this natural gas pipeline, a line that would bring about 4.5 billion cubic feet a day of natural gas to the market over the next decade.

So we are very hopeful that we will see passage of a contract, perhaps sometime later this summer, and most possibly, or most probably, a second special session. So I want to ask both of you this morning to just speak to the importance, if you will, the importance to the Nation for the Alaska gas line to win approval now, could I speak to the timing issue. And second, if there is anything that you might consider that the FERC could do to perhaps facilitate construction, or facilitate progress towards a natural gas pipeline, to bring this very, very important resource to the rest of the lower 48. I throw it out to both of you, and Mr. Wellinghoff, you look like you are ready to take the question.

Mr. WELLINGHOFF. Senator, I'd be happy to take the question, thank you very much. I think this pipeline is critical to the Nation. I know it's very important to Alaska, but it's also very important for the entire Nation's security. We do need to absolutely increase

our supplies of natural gas in this country. The State I am from, Nevada, has a number of very large natural gas generating facilities that depend upon that gas resource, as do many places in the West, and I know more and more generation in the recent times has been in the area of natural gas.

So utilizing it is essential. Also, I think it can be essential as a shaping resource for renewables, as well. So it has a part to play there. And of course for natural gas, other than generation, there are so many other essential uses in this country.

So, I can't think of anything, can't imagine anything more critical for this country. And as for timing and the ability to facilitate it via FERC, I think we can just look at the wellhead logs out of Canada, out of the Permian basin, and just see that we are not in a situation of increasing supplies there. We do have to accelerate supply from someplace, and this seems to be the most promising location within our country.

To do so, I believe that FERC has in process, in place, procedures with respect to accelerating pipeline permitting and the environmental impact statement aspects of pipelines that I am certain the FERC will do everything they can to facilitate. I certainly, if I am confirmed, will be happy to participate in that process in a way that will recognize my feeling that this is a critical resource for the country. Thank you.

Senator MURKOWSKI. Thank you.

Mr. Moeller.

Mr. MOELLER. Senator Murkowski, I will echo Mr. Wellinghoff's comments. I learned early in life the relationship between the price of natural gas and the price of fertilizer, for instance. It affects many aspects of our economy, and we need more of it, and as you said in Alaska there is an abundant supply of domestic natural gas. I would work to ensure appropriately that if confirmed that infrastructure be part of our Nation's supply of energy.

Senator MURKOWSKI. Mr. Moeller, your background familiarity with Midwestern natural gas, you know, you have mentioned the connection there between fertilizer and natural gas, and the significance there. We had a hearing yesterday in Foreign Relations, and former Chairman Greenspan addressed the issue of oil dependency in pretty general terms. And I asked him a question about the natural gas picture, supply-demand picture. And he really chose to focus on the importance of imported LNG, to meet the Nation's demand for natural gas. I happened to disagree with the chairman and expressed the concern that we not go down the same path with natural gas that we are currently with oil; in a place for we are some 57, 58 percent dependent on foreign sources of oil, on countries that might have been our friend a couple years ago, but are no longer our friends now. It puts us in a very unstable position, a very volatile position, if you will.

And my concern is that we don't want an energy policy that guides us with natural gas in that same direction. Right now, we are only importing about 3 percent of our natural gas, but the increase over the past few years has been phenomenal, because we are trying to meet that demand. So from the perspective of certainly the Midwest, isn't getting gas to the upper Midwest better for the Nation than relying solely on LNG imports that are going

to be arriving on our coasts, that will require new infrastructure, new pipelines, new siding terminals, which we have acknowledged is a difficult task right now?

Can you just kind of speak to this direction of doing more domestically, and of course I am coming from the advocacy position of Alaska's natural gas because of those vast quantities, but doing more domestically as opposed to a policy direction that takes us to further imports of a resource that is incredibly critical to the economic security of this nation?

Mr. WELLINGHOFF. Senator, I think that our demand is such that we need to look frankly at all sources. But domestically, it's closer. Sometimes we have challenges in terms of the infrastructure—the pipeline that is not there, or needs to be expanded—to take advantage of domestic and international sources. Every aspect of the supply equation comes with its trade-offs, both positive and negative. Sometimes there are quality issues with LNG. But it all has to be part of the picture. As does demand-side management, because that also, although that often falls to the States, can be a part of shaving that peak demand that then can benefit the marketplace. I think everything has to be on the table, but domestic sources are our own, and they're going to be naturally more secure if we can get them to the market.

Senator MURKOWSKI. Well, and that is certainly the direction I think we should start first. Start domestically first and then if you are not able to meet that demand, that is when you look to the external. I do not disagree with you from a comprehensive approach. We do need to be looking to all sources because of the demand that we have, and we do need to be looking to the conservation side.

Mr. Wellinghoff, I had an opportunity yesterday to talk just very briefly about the renewable aspect of energy development, and your interest in promoting electricity development from renewable sources, and we spoke a little bit about the geothermal, which I too believe has great potential, as does ocean, energy, and wind.

Can you tell me your views about where you feel most of our electricity in the future will come from, whether from natural gas, from coal, ICGG development, or from other renewables? Where do you see the direction that this Nation will take, in terms of renewable development?

Mr. WELLINGHOFF. Well, Senator, if I may, thank you. I believe it's going to have to come from many, multiple sources. And I'll answer this question by somewhat going back to your previous question to Mr. Moeller with respect to developing the gas supplies in Alaska. We need to do the most efficient things in this country first. And so one of the most efficient things would be to develop the sources of gas supply in Alaska rather than take LNG from Qatar. We may have to someday take LNG.

But let's do the most efficient things first. Certainly, demand response and energy efficiency are traditionally usually the least expensive things to do. There are advancing technologies that are going to reduce our energy loads in this country tremendously in the next 10 to 15 years in lighting, in air-conditioning, and other end-use load areas. So that is going to be one piece, and I think that is probably the most efficient and least expensive piece.

Another piece is going to be renewables. That is going to include a wide array of renewables. Regarding geothermal, as we talked about yesterday, not only are there significant geothermal resources in the West and in Alaska as well, but there are also substantial geothermal resources, for example in Texas in geopressure zones, that people aren't even aware of, where we have oil and gas wells very deep in the earth, where there is actually hot water that can be brought up and used to produce electricity. Wind energy and solar energy have great potential. We have advances in solar photovoltaic technology such that once the price of a solar photovoltaic system, the solar cells that you put on top of the roof of your house or a business, is equal to the price of the retail price of electricity—because they compete at the retail level and not at the wholesale level—we are going to have a massive change in what is happening in this country. People are just going to roll into the mortgage the cost of putting a solar system on their house. It is going to be much less expensive to do that than to pay the utility company 15, 18 to 20 cents a kilowatt-hour, to where we will get someday, or where we already are in some parts of this country, in the price of electricity. That is going to have a massive effect on how much transmission we need in this country, on how much central generation we need in this country. Other efficient ways to generate electricity include combined heat and power, where I think we just scratched the surface, where you can go into a large facility and put in a cogen system that provides electricity to the facility and also provides waste heat out of backend that can be used for hot water, be used for space heating, and can even used for cooling, through absorption chilling. That is an extremely efficient use of natural gas, for example. By using natural gas in that manner, combined heat and power, you can ultimately produce total energy at an efficiency level of 75 to 95 percent as opposed to producing it at the generating source with the natural gas powerplant at 40 to 50 percent. So it's a much, much more effective use of using natural gas.

We need to look at all of these things. We need to look at them very hard, and we need to start doing the most efficient things as quickly as we can.

Senator MURKOWSKI. And again, it underscores the need to get those domestic supplies down to the——

Mr. WELLINGHOFF. Absolutely.

Senator MURKOWSKI. One very quick question for the two of you, and then I will go over to my colleague here. Is there anything more that the FERC should be doing to promote renewable energy usage, or is this a policy direction that is left to the Congress? Is there anything else that the Commission should be moving forward with to get us further in the direction of renewable usage?

Mr. Moeller.

Mr. MOELLER. Senator, we spoke a little bit earlier about the fact that the Commission is taking a look at its general transmission policies, really kind of its first look-back after 10 years of Order 888. As part of that, intermittent generation is being considered, and thoroughly analyzed, to see how it should fit into the transmission grid. Typically, that's something that's affecting renewable energy right now because, usually, it's of intermittent nature. So

clarifying that should help the industry. At least give it direction for the future.

Senator MURKOWSKI. Mr. Wellinghoff, anything to add to that?

Mr. WELLINGHOFF. Yes, Senator Murkowski. Just a little, in the sense that I think I would expand just a little bit. On that intermittent issue with respect to wind. Some of the penalties that are put on intermittent resources I think inappropriately discriminate against those resources to interconnect with the grid. I think this needs to be looked at, and I believe the FERC is doing that. I hope to participate in that process if confirmed. But beyond that, I think we need to look at what are the market barriers to ensuring that both renewables and energy efficiency; i.e., demand response, have equal access to the grid—equal access in a way that they can participate with other generating resources to provide for overall supply.

It is not simply a matter of economics in some instances. In some instances, there also are structural market barriers that need to be looked at in the way that rules have been set up either on a Federal level or a State level—and certainly FERC has the primary jurisdiction on the Federal level. We need to look at this type of thing and determine how we can better integrate them into the overall grid system. That's one thing I'd be very interested in doing if confirmed.

Senator MURKOWSKI. Well, thank you, both of you, for your responses, and for giving me the time yesterday to inquire a little bit further. I appreciate your willingness to serve on the Commission. I think we learned yesterday that you are moving onto a Commission that is incredibly important, certainly to my State, but to the entire country in terms of how we move forward with the implementation of our energy policy as a result of the Energy Policy Act last year. The FERC has a lot more on its plate in terms of responsibilities and tasks that we are looking for you to take up. And the reality is that you have not been working with a full Commission for some time. So the burden on you, should you be confirmed, which we anticipate that we will move forward with this very shortly, it is going to be a tall order, and we appreciate your willingness to serve on this very, very important Commission.

Senator Alexander.

Senator ALEXANDER [presiding]. Thank you, Senator Murkowski. Senator Domenici said he would not be coming back to the committee, and unless you have other questions you would like to ask, what I am going to do is request to adjourn the meeting unless other Senators are expected to have a question. I want to thank our witnesses for being here, the nominees. I enjoyed my visit with each of you, and appreciate your taking the time to come by. I would like to say, at the chairman's request, that any additional questions from Senators be filed with committee staff by close of business today. Now I wonder if either of you have any of the comment that you would like to make before we close the hearing?

Mr. WELLINGHOFF. I just want to thank you, Senator, and thank all the members of the committee for this opportunity. Thank you very much.

Mr. MOELLER. Same here. I appreciate your time, and having us here today.

Senator ALEXANDER. Thank you both very much for coming.
The hearing is adjourned.
[Whereupon, at 11:30 a.m., the hearing was adjourned.]

APPENDIXES

APPENDIX I

Responses to Additional Questions

RESPONSES OF PHILIP D. MOELLER TO QUESTIONS FROM SENATOR DOMENICI

ELECTRIC RELIABILITY ORGANIZATION

Question 1. EPAct directed FERC to ensure the reliability and security of the nation's bulk-power system. Pursuant to the Energy bill, a single Electric Reliability Organization—the "ERO"—will have the authority to establish and enforce mandatory reliability standards. We are now in the process of transitioning from a system of voluntary compliance to this new mandatory regime.

In order to avoid a "one size fits all" approach, Congress was careful to provide a substantial role for regional reliability organizations. The national ERO which sets reliability standards must "rebuttably presume" that a standard proposed by a Regional Entity is valid.

As a Commissioner, how will you address the issue of regional flexibility? How will this fit into the ERO's national standards and their enforceability?

Answer. As a Commissioner, I would follow the law in regards to the rebuttable presumption of a standard proposed from a Regional Entity. Ultimately, the Commission must do all that it can to assure that reliability standards are workable and enforceable for all regions and the nation.

TRANSMISSION INVESTMENT

Question 2. There has been sustained underinvestment in transmission in recent years. In order to encourage greater investment, EPACT directed FERC to issue a transmission incentives rule to establish incentives for greater investment. Do you think there is a need for greater transmission investment, and if so, would you comment on whether you believe transmission incentives are the way to secure that investment? ? Do you think incentives should be extended to vertically integrated utilities?

Answer. The nation needs significant investment in new electric transmission infrastructure. Transmission rate incentives are one way to help promote this-investment. Congress has also aided these investments through tax depreciation policies. This is a serious issue and one I would follow very closely as a Commissioner. As a general matter, I support sufficient transmission incentives that will work to assure more actual (as opposed to proposed) investment that leads to open and nondiscriminatory access regardless of its ownership structure.

FERC-STATE RELATIONSHIP

Question 3. With FERC's new expanded responsibilities in the areas of reliability and backstop transmission siting, there is the potential for federal/state conflict. How do you propose to promote greater cooperation and coordination with the states in these areas? How can FERC best work with the states to identify and resolve congestion issues?

Answer. With both reliability and backstop transmission siting, FERC and the states must communicate effectively and frequently to minimize any potential conflict. Active joint collaborative efforts between FERC and the states is a good start to this process. Key to the concept of "backstop" authority is that primary responsibility to site transmission will remain with the states. These joint collaborative efforts, with appropriate participation from USDOE, should provide a good forum to identify and resolve congestion issues. In addition, the Commission on June 15

issued proposed regulations on this subject that should provide the necessary framework for a thorough consideration of this issue.

Question 4. How would you suggest that FERC and the states better coordinate to provide regulatory consistency on transmission expansion issues such as cost allocation and cost recovery?

Answer. Coordination of these key principles is based on regional recognition of costs and benefits. As stated above, joint collaborative efforts between the Commission and states should provide a good forum to address these issues.

COAL DELIVERY

Question 5. While FERC does not have direct statutory authority pertaining to coal deliveries, coal constitutes approximately 50% of the fuel for electric generation today, and utilities are seeking to build more baseload coal plants in the future. Coal delivery issues, then, can greatly impact electric reliability. FERC has scheduled a meeting with utility and railroad representatives on June 15th to discuss coal-delivery matters and their impact on markets and electric reliability.

Do you think there is a regulatory gap in this area?

Answer. This is an extremely serious issue for the reliability, cost and future of the nation's electricity system. The results of the June 15th meeting should provide an answer to whether there is a regulatory gap or whether existing regulatory authority should be exercised in a different manner.

Question 6. Do you believe FERC should coordinate more closely with the Surface Transportation Board to ensure adequate and timely coal deliveries?

Answer. Yes.

REGIONAL TRANSMISSION ORGANIZATIONS (RTOS)

Question 7. RTOs are subject to FERC regulation, but have independent boards, not shareholder boards like other utilities. Independent RTOs presently serve about 2/3 of this country. What can the Commission do to hold RTOs accountable for their costs like other utilities? How do you measure "reasonable" charges?

Answer. Part of the challenge with developing RTOs is that they are relatively new entities, and regional differences will be reflected in some differences between RTOs. Startup costs should be "one time" in nature, and the Commission needs to closely monitor these costs to assure the benefits of RTOs flow to consumers. "Reasonable" charges are those that are necessary to allow regional markets to work in an efficient manner, and the concept is likely to evolve as the markets mature.

Question 8. What do you see as the Commission's role in fostering independent operation of the transmission grid?

Answer. The Commission should place a high priority on both fostering independent operation of the transmission grid and constantly monitoring operation to assure that open access to the grid is maintained.

Question 9. How do you envision the new ERO working with the RTOs? How do you envision the new Regional Entities working with the RTOs?

Answer. The Commission needs to assure that as the ERO is developed, its structure allows for an extremely close working relationship with the RTOs. Similarly, the new Regional Entities should maintain open lines of communication with RTOs.

OPEN ACCESS TRANSMISSION

Question 10. Rather than pursue a Standard Market Design proposal, which would have fundamentally restructured the electric power industry, FERC is now focused on revising the Commission's open access transmission policy under Order 888. How will you approach revision of Order 888?

Answer. It's critical for the Commission to thoroughly review what has worked with Order 888 and also identify any deficiencies. The transmission system and the wholesale market have undergone truly fundamental changes in a relatively short time frame, and the Commission's goal should be to assure that wholesale markets are open, non-discriminatory, and promote the interests of reliability and energy consumers.

Question 11. In Section 1231 of EPAct, Congress gave FERC the authority to require government-owned utilities and electric cooperatives to provide open, non-discriminatory transmission access on their systems in a comparable manner to that required for public utilities. In its recent NOPR on Order 888, the Commission chose not to propose a generic rule to implement Section 1231, but instead to apply its provisions on a case-by-case basis. Do you agree with this approach?

Answer. As part of its review of Order 888, the Commission needs to examine the role of government-owned utilities and electric cooperatives in the transmission system. The vast majority of these utilities are small and are minor players in the

transmission system. A generic rule may not be necessary unless it is demonstrated that these smaller utilities are behaving in a way that is counter to the principles of open access. Until evidence is presented otherwise, a case-by-case approach appears to be a good balance.

RELIABILITY INVESTMENT

Question 12. Reliability, of course, is one of FERC's top priorities. The Commission had indicated that for prudent reliability expenditures, such as vegetation management charges, it will consider separate rate recovery mechanisms, such as surcharges. Consequently, companies need not undertake a full blown rate case. When utilities seek rate recovery for a reliability investment, do you agree that the Commission should address this in a single issue rate case rather than examine the utility's entire set of rates?

Answer. Yes. The Commission should take actions that encourage these investments and expenses, and reliability should not be seen as a profit center but rather as a vital and necessary activity.

NATIVE LOAD

Question 13. In EPAct, Congress provided that utilities with service obligations to their native load customers are entitled to use the transmission they own or hold under contract to meet these service obligations. Do you agree that the statute makes clear that there is nothing discriminatory about exercising this right?

Answer. I agree with the statue that protecting native load customers is very important, and that the statute makes clear that load-serving entities are entitled to use firm transmission rights to deliver energy to meet their service obligations.

Question 14. Where there are competing uses of utility transmission under the open access framework, do you believe that the Commission must recognize the utility's statutory right to use its transmission to serve its native load customers?

Answer. Yes, I believe that the Commission needs to follow the statute and recognize the rights of load serving entities as they pertain to native load customers.

NATURAL GAS

Question 15. Inadequate gas storage capacity contributes to volatility of gas prices. In order to reduce volatility, the Energy Policy Act of 2005 authorized FERC to grant market-based rates to gas storage developers, even if they have market power, as long as a proposal meets a three part test: (1) it is in the public interest, (2) market based rates are needed, and (3) customers are adequately protected. I recognize it is unusual for Congress to authorize market-based rates to a company that has market power.

Are you prepared to support implementation of this provision and authorize market-based rates, assuming the public interest, need, and adequate protection criteria are met?

Answer. Yes, and I intend to follow the law.

Question 16. According to FERC, Liquified Natural Gas (LNG) presently comprises 2% of the natural gas used in the Northeast and it could provide up to 17% by 2025. Additionally, there are currently about 40 LNG terminals either before FERC consideration or being contemplated by the natural gas industry.

As we meet this growing trend toward LNG in the U.S., what do you envision FERC's priorities should be and how do you think FERC can meet these priorities?

Answer. FERC's highest priority has to be safety. Once safety is adequately addressed, gas quality should be assured. LNG is not the sole solution to the nation's natural gas supply needs, it is part of the solution. FERC needs to assure that adequate pipeline and storage capacity exists for existing and new sources of domestic and imported natural gas.

Question 17. In the Energy Policy Act of 2005, Congress clearly grants FERC exclusive authority to approve or deny an application for the siting, construction, expansion, or operation of an LNG terminal. Do you see any practical threats to this authority by those opposed to the construction of LNG facilities through the use of other laws to potentially place roadblocks (not intended by Congress) to the construction and siting of LNG facilities?

Answer. I am not aware of any specific threats to this authority, but if any develop I would be very interested in making certain that the nation's infrastructure needs are not delayed by laws that are used out of context.

Question 18. If so, how do you think this is best alleviated?

Answer. Both Congress and FERC should remain vigilant to assure that needed infrastructure is constructed, and that unrelated laws are not used to delay necessary investment.

NATURAL GAS MARKETS

Question 19. Please comment on what you think the impact of commodities trading is on the price of natural gas. Do you believe that executive branch currently has the appropriate authority to effectively oversee the energy markets? Do you think that FERC has the appropriate authority necessary?

Answer. As a general matter, I support the goal of additional transparency in natural gas commodity trading. I believe that FERC has been given appropriate authority, but some have suggested the. Commodities Futures Trading Commission (CFTC) could benefit from additional authority. I defer to the CFTC as to whether additional statutory authority would be beneficial.

Question 20. In recent testimony before another Senate Committee, Commissioner Brownell stated, "The natural gas and electricity markets are inextricably linked. . . . The emergence of renewable wind energy as an important electricity supply alternative, for example, will have a mitigating impact on natural gas prices."

First, do you agree with this statement?

Answer. Yes.

Secondly, do you believe that the present authorities under current law are effective with respect to advancing the production of renewable energy on federal lands and federal submerged lands?

Answer. I am not aware of any changes that are needed in present law in order to promote additional renewable energy development on federal lands and federal submerged lands. However, I am aware that when multiple federal agencies are landowners in a specific area, this can present unique challenges to energy development.

Question 21. In the Commission's report to Congress in February on the subject of bringing natural gas from Alaska's North Slope to the lower 48 states, the Commission identified a number of obstacles that have emerged over several years that have impeded the development of the Alaska natural gas pipeline. Additionally, the report comments on the wide-ranging federal and state cooperation, inter-agency cooperation, and government and industry cooperation necessary to meet this challenge. Please comment on what you think FERC's role in this process is and how you think FERC can reasonably help to expedite the resolution of these issues so that the American people can have the benefit of Alaska's vast supply of natural gas?

Answer. Alaska's natural gas is an enormously valuable and needed domestic source of energy. Although many of the specific policies are currently being debated in the Alaska Legislature, FERC can play a constructive role by acknowledging the benefits of this energy source and by thoroughly examining any impediments to the project in its regular reports to Congress on the project. Once the state of Alaska has decided how to proceed, FERC can play a role in coordinating appropriate federal cooperation.

Question 22. Without getting into the specifics of a matter potentially before the Commission, I would like to ask you a question on gas pipeline infrastructure. One of FERC's main priorities is the expansion of U.S. domestic energy infrastructure. Do you think that a mandated return on equity on a pipeline system that would be lower than the return on equity of any pipeline in the past 40 years would be consistent with FERC's priority of expanding energy infrastructure?

Answer. FERC needs to assure that returns are such that the investment community continues to make these needed infrastructure investments.

Question 23. I am fully aware that the United States consumes about a 1/4 of the natural gas consumed worldwide. I am also aware that over 95% of the world's proven natural gas reserves lies outside of North America. Additionally, I am concerned that a large portion of the United States, specifically most of the OCS, remains currently off-limits to exploration and production of natural gas. As such, LNG is an important part of our energy mix in this country. However, how do you think we avoid becoming reliant upon foreign sources of natural gas, the same we are dependent upon foreign oil, from areas that are unstable and unfriendly to U.S. interests?

Answer. The nation has to have a range of natural gas supply options so that we do not become dependent on LNG. In addition to existing and new sources of domestic gas, both additional gas storage and additional gas pipeline capacity would help stabilize the market and help prevent price spikes that could occur if foreign sources of natural gas were disrupted.

Question 24. Recently, I have grown concerned about the potential for LNG shipments to be diverted away from the U.S. markets to other consuming nations. Can you comment on the state of this trend, the future of this trend as you see it, and how we can mitigate this potential diversion of significant natural gas supply?

Answer. LNG is a commodity, and the owner of the commodity is able to move it to potentially more lucrative markets with willing buyers. In addition to developing more domestic sources of natural gas, additional natural gas storage and additional pipeline capacity would allow for a more stable market that would in turn create more certainty for sellers of the commodity.

Question 25. Pursuant to Section 316 of the Energy Policy Act, the Natural Gas Act was amended and the Commission was directed to facilitate price transparency in markets for the sale or transportation of physical natural gas in interstate commerce. Further, the Commission is granted the authority to prescribe such rules as the Commission deems necessary and appropriate to carry out the purposes of Section 316. Have you had the opportunity to examine the question of transparency in the natural gas markets? If so, have you drawn any conclusions that you could share with this committee that could help us promote and advance fair competition, market integrity, and ultimately protect the consuming public?

Answer. Additional price transparency would help consumers and regulators, and I support this general effort. If confirmed, I would expect this is an issue that the Commission will spend a lot of time considering, and I would welcome the opportunity to report to the committee my thoughts on any policy recommendations that would further protect the consuming public.

Question 26. Along those same lines, as mandated by EPACT, FERC and the CFTC entered into a memorandum of understanding with respect to information sharing to prevent procedural duplication in the oversight of the commodity markets. Do you commit to working with the CFTC to ensure that this issue of natural gas market transparency is given continued attention at FERC?

Answer. Yes.

Question 27. FERC has a strategic plan and the first goal stated in the plan is promote development of a robust energy infrastructure. I think that's a critical mission statement for this agency. Through a combination of legislation, regulation and litigation we've made it very difficult to develop major new energy facilities in this country. Do you share the vision that FERC's primary mission is to promote the development of energy infrastructure for this country?

Answer. FERC's primary mission is to protect the consuming public; part of that mission is to promote the development of energy infrastructure, with safety, reliability, and consumer protection as major components of that entire effort. I strongly support the development of additional energy infrastructure in this country.

Question 28. What are the critical elements of a FERC policy that will ensure that needed infrastructure is built and built in a timely manner? How does an agency like FERC make sure that regulated companies are allowed to a sufficient return to attract capital into that business?

Answer. There are many critical elements to ensuring the construction of critically needed infrastructure. Identifying the types and locations of needed infrastructure, providing for investment certainty through timely and sufficient returns on investment, and assuring efficient and transparent energy markets are all necessary and complicated components of this goal.

Question 29. You are both from the West and had the experience of seeing the California energy crisis and its fallout for other Western states first hand. One of the obvious lessons from that experience is that electricity markets have to be structured properly if competition is to benefit consumers. Do you agree that competitive wholesale markets, properly structured, do benefit consumers and what about the use of price caps, bid caps and similar price mitigation measures?

Answer. I agree that properly structured competitive wholesale markets benefit consumers. Various price mitigation measures should only be used in rare cases but need to remain an option when markets have become dysfunctional.

Question 30. What more does FERC need to do so that consumers see the full benefits of competitive markets? How would you proposed that FERC work with the state regulatory authorities, RTOs and others to advance fairness for merchant generators when it comes to access to the grid and in bidding for new capacity?

Answer. In reviewing Order 888, FERC is taking the necessary action to evaluate what is working and what needs improvement in open access transmission policy. FERC needs to maintain a constant dialogue with all the parties in wholesale transmission markets to assure that there is open access to the grid and that consumers benefit from multiple sources of new capacity.

Question 31. The *Mobile Sierra* doctrine and the public interest standard were established by the U.S. Supreme Court in a series of cases a half-century ago. The public interest standard does not protect sellers, it protects contracts, it protects the agreement. Sometimes the public interest standard works to the advantage of the seller, sometimes to the advantage of the buyer. Recently, it has worked to the advantage of the buyer. The power sales contracts between Calpine and California are

costing Calpine $1 billion, and helped drive it into bankruptcy. Under the just and reasonable standard, there is little doubt the contract would have been modified. Under the public interest standard, Calpine continued to perform. So, the public interest standard saved California consumers $1 billion. The Supreme Court is presumed to be competent to read a statute. They read the Federal Power Act and came up with the *Mobile Sierra* doctrine and the public interest standard. What is your view of the *Mobile Sierra* doctrine? Is it good law? Do you agree with the Supreme Court?

Answer. This specific issue is pending at the Commission as it pertains to a default standard for future contracts, so my answer will be guarded. In general, the primary task of the Commission is to guard the consumer. Many wholesale power sales occur under contract, and there is a benefit to encouraging this practice. At times it still may be necessary for the Commission to modify a power sales contract. Whatever approach the Commission takes should be consistent with the law, including the Federal Power Act and decisions of the Supreme Court.

Question 32. I want your views on FERC authority over buyer market power. FERC has been encouraged to regulate buyer market power, by forcing utilities to buy available lower cost power rather than self-generate. I am not convinced FERC has legal authority in this area. Also, there is serious potential for conflict with the states, since a FERC order to a utility to buy power instead of self generating would undercut state decisions on ratebasing generation. Do you think FERC has this kind of legal authority and do you think it is good policy?

Answer. This is a complex area where FERC should be cautious in setting policy. In addition to the questions about legal authority, there are major questions about the need to put stable generating sources into the ratebase and the role of the states in making these decisions. Especially as it relates to the cost of fuel, the cost of some power may be lower for some duration but not over the life of the facility. For example, the cost of electricity generated from natural gas has seen a steep rise in price in only a few years, and points to the need for balance in sources of generation. Due to this complexity, FERC must be very careful in attempting to regulate buyer market power.

Question 33. The market-based rate proposed rules FERC issued last month ask questions about what happens when a utility loses market-based rates. For example, if a utility loses market-based rates in some markets, but retains it in other markets, should FERC force a utility to sell at cost-based rates in lieu of making market-based sales? I am concerned that such forced sales would hurt the native load customers of the utility, by reducing wholesale revenues that would otherwise be shared with native load. It also allows the buyer of the cost-based power to resell it at a profit, so it could constitute a wealth transfer. What is your view of such forced sales?

Answer. As a general matter, I do not prefer the option of forced sales. This issue is part of what the Commission is presently considering as part of its comprehensive review of Order 888. The Commission needs to balance the needs of native load customers with concern over the exercise of market power. Presumably, a utility would only lose market-based rate authority if it is found to have market power. If confirmed, I look forward to reviewing the range comments that the Commission receives on this subject and having the opportunity to thoroughly consider the Commission's alternatives.

Question 34. One of the obstacles in building transmission is cost allocation. FERC has taken different approaches to this issue in different regions, which seems appropriate. However, some have urged FERC to roll in all transmission expansion costs. That seems very unfair to me. Since most transmission is owned by vertically integrated utilities, it would burden the native load customers of those utilities, while the beneficiaries contribute nothing. Do you believe FERC should roll in all transmission expansion costs?

Answer. FERC needs and has flexibility in dealing with assigning transmission costs. In some cases the costs should be rolled-in, in other cases these costs should be directly assigned, and in some cases there should be a combination of both approaches.

Question 35. Under current law, the only way a licensee can challenge an arbitrary condition included in a FERC hydro license through exercise of mandatory conditioning authority is to seek judicial review of the FERC license. That is true even when FERC believes the mandatory condition is unsupported by the record or even contradicted by the record. The EPAct alternative condition provisions should reduce the prospect of arbitrary mandatory conditions, but they may still be proposed. For reasons of comity FERC sometimes does not highlight its disagreement with the federal or state agency when they propose an arbitrary condition. I think that approach is fundamentally unfair to licensees, since it deprives them of any

prospect of overturning an arbitrary condition through judicial review. I believe FERC should make any disagreement with a conditioning agency plain in its orders. Do you agree?"

Answer. Yes.

RESPONSES OF PHILIP D. MOELLER TO QUESTIONS FROM SENATOR THOMAS

Question 1. Will you pledge to work closely with states to enable the timely development of transmission that is needed to meet future load growth?

Answer. Yes, that is a critical issue. If confirmed, it will be one of my priorities.

Question 2. In Wyoming and elsewhere, it's not always easy to ship our coal to customers. There are a number of proposals for mine-mouth coal power plants in my state and others as a result. These projects will benefit the communities by building a tax base, and the nation, by diversifying our energy supply. They will not move forward without access to competitive regional power markets through a strong, open power grid. Can I count on you to support the development of these strong regional markets and the open-access power grid that will be so essential to their success? Will you make sure that new power plants can connect with the interstate power grid at reasonable cost and have the opportunity to reach the customers they need to succeed?

Answer. Yes, both transmission expansion and open access to the grid are priorities of mine.

Question 3. In the Energy Bill, DOE was given authority to designate National Interest Electric Transmission Corridors. If there were a transmission project ready to move forward tomorrow, do you think that those projects should have to wait for DOE to complete their study and designations in order to benefit from the permitting improvements that exist under EPACT?

Answer. It is in the nation's interest to assure that those projects start as soon as possible.

Question 4. According to the Commission's current strategic plan, FERC's highest priority goal is to "Promote Development of Robust Energy Infrastructure." Do you agree with that priority, and if so, can you provide me with some detailed insights as to how you believe FERC can best promote that objective?

Answer. Yes, I agree with that priority as long as consumer interests, safety and reliability are part of that goal. I strongly support the development of additional energy infrastructure in this nation. There are many critical elements to ensuring the construction of critically needed infrastructure. Identifying the types and locations of needed infrastructure, providing for investment certainty through timely and sufficient returns on investment, and assuring efficient and transparent energy markets are all necessary and complex components of this goal.

RESPONSES OF PHILIP D. MOELLER TO QUESTIONS FROM SENATOR ALLEN

Question 1. Virginia both produces electricity through coal, nuclear and natural gas resources and also, at times, imports power from the Midwest when the costs to generate electricity in that region are lower than the costs to generate in Virginia. I have been approached by constituents who are interested to know what assurance you can provide the Committee that the region will not end up with "least common denominator" solutions that might work for other regions of the country but work contrary to the wholesale competitive market model that is in place in Virginia?

Answer. All the regional markets are going through some sort of transition, and all need significant energy infrastructure investments, whether it is in new generation, new transmission or both in order for wholesale markets to work properly and provide consumer benefits. I am very aware that each region has its differences, and each market will reflect those differences.

Question 2. Do you believe that a competitive market model for wholesale markets can stimulate new investment in transmission, renewable resources and energy efficiency? If so, what can be done to support development of such models? If not, why not?

Answer. Yes, I believe that properly constructed competitive wholesale markets will provide the certainty that will lead to needed incentives for investments in transmission, new generation—including renewable resources—and energy efficiency. Various market models exist and are being developed throughout the nation, and the Commission needs to monitor the development of these different models to determine which market characteristics best provide for the actual investment in energy infrastructure.

Question 3. The Regional Transmission Organization that operates the transmission grid in Virginia presently undertakes an independent regional planning

process to determine needed new transmission infrastructure. All of the instate electricity producers, Dominion, AEP, Allegheny and the municipal and cooperative utilities, participate in that process which is open to the public. On the other hand, Virginia borders other States that do not have similar processes. What is the best way for the Commission to address the "seam" that is created along the borders where regional planning is undertaken in some regions and not others?

Answer. The Commission needs to closely follow seams issues wherever they occur throughout the nation, as they are a critical element of making markets work for consumers on both sides of the seam. The FERC-State Joint Boards need to keep this a priority so that states, regions, and the Commission remain informed of potential planning deficiencies. Ultimately, greater transmission investment can alleviate many of the problems that can occur at seams.

RESPONSES OF PHILIP D. MOELLER TO QUESTIONS FROM SENATOR SMITH

Question 1. As you know, FERC has a statutory responsibility in reviewing rates filed for approval by the Bonneville Power Administration, to ensure that the proposed rate is sufficient to cover its Treasury obligation. Do you agree that FERC would have to reject any rate that "walled off" revenues from BPA secondary sales and required such funds be used to pre-pay debt, rather than being used consistent with established precedent?

Answer. It is my understanding that this latest proposal has been resolved through recent Congressional action. However, any rate that "walled off" revenues would have to be examined very skeptically to make certain that BPA retained needed flexibility and sufficient revenue to assure that it could meet its ongoing Treasury obligation.

Question 2. Do you agree that the Federal Columbia River Transmission System Act (P.L. 93-454) requires the BPA Administrator to consider all revenue sources "in the aggregate" when setting rates?

Answer. I agree with the law.

Question 3. Are you aware that that CAISO has filed a Market Redesign proposal (MRTU) with FERC and that a number of entities, including other control areas, in the Western Interconnection have objected to that filing? After seeing the impact on Nevada and the Western markets of the 2000-2001 California energy crisis, are you concerned about this? Do you plan to insist that no decision be made on this filing until you are confirmed? Do you think the FERC has the obligation to resolve the specific seams issues articulated by the other western utilities before implementing such a dramatic market rule change?

Answer. I am aware of the proposal, and the objections, and given the severity of the Western energy crisis I can assure you that I will do everything I can to promote policies that prevent anything resembling a repeat of those events. I would hope to be a part of this decision, and I agree that seams issues need resolution in the West and the rest of the nation.

Question 4. I understand that there is significant concern at FERC about development of the bulk transmission system and the failure of organized markets to effectively encourage these investments. Specifically, I understand that the Locational Marginal Pricing mechanism used in organized markets has not resulted in substantial transmission investment, however ISOs continue to try to implement these mechanisms. Most recently, the CAISO, in its MRTU, is proposing LMP for its members and in doing so, threatens to unwittingly bring in the entire region. At the same time, the FERC's 2004 State of the Markets Report clearly identifies that the stable markets in the West generate more investment in transmission than in California or any other region dominated by RTO-administered financial markets.

What are your thoughts on this subject? Should regions be forced to embrace a mechanism that has not resulted in its promised benefits, when what we are already doing is working better?

Answer. The Commission needs to determine which policies are resulting in actual investment in new transmission infrastructure. There are regional differences in both what is proposed and what is resulting in transmission investment. I believe regional differences should be embraced if they are working to get actual transmission built.

Question 5. You are perhaps aware that many entities in the West opposed the imposition of the FERC's version of Standard Market Design or "SMD," which included LMP. Some of the concerns raised by the West involving SMD were the clear differences between Eastern pool-based markets, with tightly clustered transmission systems and the predominance of thermally-based generation and Western bilateral markets, with long transmission systems (dispersed consumers) and vast hydroelectric systems, particularly in the pacific northwest. In other words, many entities

in the West continue to be concerned about the imposition of Eastern-style market designs in a vastly different, both from a resource and system perspective, West.

What are your views on the significance of these East vs. West distinctions? How heavily should the FERC weigh these distinctions when evaluating current and future market design proposals, including MRTU?

Answer. As referenced in the preceding answer, I fully recognize there are distinct differences in the physical and market structure of regional markets, even within the East and the West, and these differences should be reflected in the market designs in each of the regional markets.

RESPONSES OF PHILIP D. MOELLER TO QUESTIONS FROM SENATOR BUNNING

Question 1. A number of Kentucky electric distribution companies (and other customers) signed new service agreements with the Tennessee Valley Authority (TVA) in 1997. The agreements included provisions under which the Kentucky distributors agreed to remain TVA customers for another 10 years. However, the agreements also stated that the Kentucky customers could provide TVA Notice of their intent to leave TVA after five years and would then be allowed to leave TVA after an additional 5 years. The contracts also specifically stated that any departing customers would not be liable for any exit fees or stranded costs. The agreements further contained language concerning services (eg transmission) TVA would provide departing customers. Several Kentucky customers (and a Tennessee customer) of TVA have exercised the rights they have under these contracts and given Notice of their intent to leave TVA. The Kentucky customers provided this Notice for, among other reasons, their ability to secure much less expensive power for their customers from sources other than TVA. Since giving Notice, these Kentucky customers have attempted to negotiate with TVA on the rates and terms of conditions of the requested transmission service. TVA has been entirely unwilling to even discuss the transmission services the departing customers are requesting.

Please provide your views on whether the FERC, as a matter of public policy, should facilitate access to the interstate transmission grid and encourage competition in the electric generation market by ordering the wheeling of power for electric distribution companies that wish to secure transmission service on our interstate transmission grid. For purposes of this question, please assume that the FERC has the legal authority to compel transmission on behalf of customers on the TVA system (ie "inside the fence").

Answer. I believe FERC should facilitate access to the interstate transmission grid. Specific to TVA customers, the Commission has shown a willingness to address these concerns. Any major changes to transmission policies related to TVA must be done carefully to assure that any action does not threaten remaining TVA customers.

Question 2. Kentucky has the least expensive electric rates in America. This is in large part due to the abundance of coal in Kentucky and the use of this coal to generate power. The railroads play an integral part in moving coal from the mine locations to the power generating facilities. Recently, problems with the reliability of coal deliveries and the rates railroads are charging for transporting coal have begun to develop. These problems have the potential to impact the ability of Kentucky to use its coal to generate reasonably priced power in Kentucky and to send its coal to other markets.

I understand the FERC has recently scheduled a conference on these coal issues. Please provide your views on what role the FERC's should play in assuring an adequate, reliable supply of coal for our nation's generating facilities.

Answer. This is a very serious issue that has reliability and cost ramifications for Kentucky and much of the nation. Although FERC does not have a statutory role in railroad issues, it should work closely with the Surface Transportation Board to help facilitate a resolution of delivery problems of coal via rail.

Question 3. As I noted above, Kentucky has the least expensive power in the nation. Kentucky is anxious to make sure its citizens and businesses continue to enjoy this reasonably priced power.

Please explain your views on the importance of the FERC recognizing and respecting differences in regional energy markets as it makes decisions on the structure of the interstate energy markets.

Answer. There are distinct differences between regional markets, and those differences must be recognized and respected. The key issue for FERC is determining what is working in each market to actually get more infrastructure built. As long as these investments are being made and that the investments facilitate competitive wholesale markets, regional differences can be managed.

Question 4. The Energy Policy Act of 2005 (EPAct) gave the Department of Energy authority to establish National Interest Electric Transmission Corridors. EPAct further gave the FERC the authority to authorize the construction of transmission lines in these corridors.

Please provide your views on the responsibility of the FERC to consult and collaborate with states that may be impacted by the construction of electric transmission lines in these corridors.

Answer. FERC must be extremely sensitive to the concerns of the states involved, and must maintain frequent and open communication with the states involved in any transmission corridor. Some type of formal collaborative effort between FERC and the states should help in facilitating this communication, but it must remain a priority for FERC regardless of whether such collaborative effort is formalized. In addition, the Commission on June 15 issued proposed regulations on this subject that should provide the necessary framework for a thorough consideration of this issue.

Question 5. Concerns have recently been raised that the operating costs charged by Regional Transmission Organizations are excessive. These costs can eventually be absorbed by residential and industrial electricity consumers in states like Kentucky.

Please provide your views on the responsibility of the FERC to oversee and review these types of RTO costs.

Answer. FERC has a responsibility to closely monitor these costs and urge the RTOs to contain them. Many of these start-up costs should be one-time expenditures, but FERC needs to work to assure that costs are managed so that the benefits of more competitive wholesale markets flow to actual consumers and are not eroded by unnecessary expenditures.

Question 6. Transparency of energy markets and the availability of timely information about costs and capacity in energy markets is crucial for state commission to perform their duties.

Please provide your views on the FERC's responsibility and legal authority to provide for transparency in energy markets and the timely availability about conditions in the energy markets.

Answer. Market transparency is not only crucial to state commissions, it is necessary for customers to feel confidence in the markets in which they are participating. FERC was given new authority in EPACT 2005 to require certain market transparency disclosures, and is in the process of implementing this authority. I fully support these efforts and would welcome any suggestions for improving market transparency.

RESPONSES OF PHILIP D. MOELLER TO QUESTIONS FROM SENATOR BINGAMAN

HYDROPOWER

Question 1. Section 241 of the Energy Policy Act of 2005 amends the Federal Power Act to modify some aspects of the hydroelectric relicensing process with respect to conditions and fishway prescriptions. I want to ensure that these modifications are implemented in a manner that does not undermine protection of federal reservations or Indian lands or trust resources.

Do I have your commitment that you will work to ensure that the FERC staff coordinates closely with the resource agencies and takes other steps necessary to ensure that these provisions are implemented in a manner that protects federal reservations and Indian lands and trust resources during the licensing process?

Answer. Yes.

Question 2. In 1986, the Federal Power Act was amended to require the Commission, in addition to power and development purposes, to "give equal consideration to the purposes of energy conservation, the protection, mitigation of damage to, and enhancement of, fish and wildlife . . ., the protection of recreational opportunities, and the preservation of other aspects of environmental quality" in deciding whether to issue a hydroelectric license.

As a commissioner, will you ensure that environmental protection is given equal consideration during the hydroelectric relicensing process?

Answer. Yes, environmental protection is critical in this process.

TRIBAL TRUST RESPONSIBILITY

Question 3. Do I have your commitment that you will carry out your duties as Commissioner in a manner consistent with FERC's tribal trust responsibility?

Answer. Yes.

RESPONSES OF PHILIP D. MOELLER TO QUESTIONS FROM SENATOR DORGAN

Question 1. In recent months, North Dakota oil producers have experienced a marked price discount between the price of crude oil that they produce and the prevailing West Texas Intermediate (WTI) price of oil. Part of the reason for this price differential is a lack of pipeline capacity to transport expanded North Dakota production out of the region and to other refining markets.

I note that FERC's web site and its "Strategic Plan" emphasize the Commission's role in the "development of a robust energy infrastructure." Do you see this as an important role for the Commission?

Answer. Yes, developing energy infrastructure is essential to allowing consumers to benefit from competitive markets.

Question 2. What can the Commission do to encourage construction of energy infrastructure, including for pipelines serving constrained markets?

Answer. There are many critical elements to ensuring the construction of critically needed energy infrastructure. Identifying the types and locations of needed infrastructure, providing for investment certainty through timely and sufficient returns on investment, and assuring efficient and transparent energy markets are all necessary and complex components of this goal.

Question 3. Specifically, what can be done in establishing rate structures that would encourage investment in new pipelines and ensure that needed capacity is built in a timely manner?

Answer. Similar to other energy infrastructure, investment in new pipelines is encouraged by certainty of the permitting process and sufficient return on the investment.

Question 4. Is there additional legislative authority that Congress should provide the Commission to encourage development of needed energy infrastructure?

Answer. I am not aware of the need for any additional authority that FERC has requested. Congress has addressed and can choose to address in the future both environmental policy and tax policy in an effort to encourage the development of energy infrastructure.

RESPONSES OF PHILIP D. MOELLER TO QUESTIONS FROM SENATOR CANTWELL

Question 1. Under the Northwest Power Act, FERC has the final say in approving the Bonneville Power Administration's rates provided that the proposed rates are "sufficient to assure repayment of the Federal investment in the Federal Columbia River Power System over a reasonable number of years after first meeting the Administrator's other costs . . . and are based upon the Administrator's total system costs."

When determining the definition of terms like "reasonable number of years" and other terms in BPA's various organic statutes what deference would you give to years of agency precedent and practice in defining those terms?

Answer. I would give great deference to the agency's precedent. BPA has a long history of managing the financial implications of weather variations in the Pacific Northwest's hydro-dependent system.

Question 2. What deference would you give to federal statues that define certain provisions in BPA's organic statutes?

Answer. I would follow the law and give appropriate deference.

Question 3. As a FERC Commissioner, would you rely on relevant judicial precedent in order to define terms in BPA's organic statutes?

Answer. Yes.

Question 4. As you probably know, you will have a number of applications for renewal of hydroelectric licenses before you in the next few years. The Northwest is heavily reliant on hydroelectric generating resources. In WA State alone some 13 projects representing 5,863 MW of generating capacity will be in various stages of the relicensing process between now and 2015.

Can you provide the Committee with your perspective on hydroelectric power and your thoughts on the relicensing process under EPACT '05 and the Interim Final Rule published last year?

Answer. Hydroelectric power is essential not only to the state of Washington, but to the Pacific Northwest and the entire West. Licensing and relicensing of hydropower projects always entails the balancing of various interests. It is my impression that most of the interested parties have cautious optimism toward the new process that was included in EPACT '05 and addressed in the Interim Final Rule, and that it will be a fairer and more predictable process for most of,the parties. If confirmed, I intend to monitor the process to assure that its implementation meets the intent of Congress on this issue.

Question 5. The Northwest has spent more than a decade locked in contentious debate over various forms of regional transmission management. The region is currently looking at an option—known as ColumbiaGrid—that appears very promising, both in its substance and broad base of support. I will note, however, that it does not meet the RTO standards of FERC Order 2000.

Do you think FERC should nonetheless encourage the development of this region-specific development as it moves forward?

Answer. Yes. FERC should encourage regional solutions as long as they appear likely to result in additional transmission investment and the development of efficient wholesale markets.

Question 6. As you know, western energy markets and ratepayers in WA State are still suffering negative effects of deregulation and related market manipulation during the 2000-2001 energy crisis. Ratepayers in the Northwest and the larger regional economy continue to suffer the ill effects of related energy hikes—some as high as 50%. The GAO noted in a report last November that ". . . consumers in California and across other parts of the West will attest, there have been many negative effects [related to restructuring], including higher prices and market manipulation." Has energy market restructuring been successful?

Answer. Greater competition in the wholesale electric market has clearly benefited consumers in the West and throughout the nation. However, negative impacts of the 2000-2001 Western energy crisis continue to affect the economies of Western states. The initial causes of the crisis—high demand and short supplies combining to expose the flaws of the California market—were exacerbated by regulatory inaction and market manipulation. Restructuring of the energy market is an ongoing process that if done correctly will be successful by providing consumers with lower cost energy and more choices.

Question 7. Of those areas of the country that have not restructured and have not deregulated retail rates, like the Pacific Northwest, do you believe those regions should largely be left alone to address the needs of their specific industry structure as they see fit? If not, how far should FERC go in changing them?

Answer. States will continue to decide whether they want to implement retail competition in their markets. FERC should allow regions to develop markets based on regional characteristics, with the recognition that regional markets affect each other. FERC needs to assure that one region's market design does not negatively impact a neighboring region.

Question 8. In recent press reports, the head of the California Independent System Operator has suggested that the rest of the West will simply have to comply with California markets and that the seams created between California and other areas in the west is a failure of the neighboring states to adopt compatible models. My region has suffered once as a result of California's experiments, and stakeholders throughout the west are very concerned by these comments.

Do you believe that FERC has a responsibility, when reviewing filings for California's market redesign efforts, to assess the impact and consequences for neighboring states?

Answer. As referenced in the preceding answer, yes.

Question 9. Last year's comprehensive energy legislation included a broad ban on the market manipulation practices exercised by Enron. As you know, the Northwest continues to suffer from the ill-effects of Enron's market manipulation practices. I imagine you are acquainted with the smoking-gun Enron memos, in which the company laid out strategies such as 'Fat Boy,' 'Get Shorty,' 'Death Star' and the like, to drive up prices in the West.

I would like to know whether you believe there is any circumstance in which a transaction resulting from manipulative market practices can be "in the public interest," or "just and reasonable?"

Answer. It's theoretically possible that such a transaction is somehow in the public interest. However, my real world focus would be on enforcement of the ban on market manipulation practices.

Question 10. Under FERC's Notice of Proposed Rulemaking RM-05-35-000, the Commission has proposed amending its regulations regarding the standard of review that must be met to justify proposed modifications to Commission-jurisdictional agreements. Essentially, with the exception of transmission service agreements under the Open Access Transmission Tariff and certain natural gas transportation agreements, when proposed modifications to FERC jurisdictional agreements are not agreed to be dealt with by contract signatories under the 'just and reasonable' standard, the Commission will review such agreements under the 'public interest' standard, in accordance with the Mobile-Sierra doctrine. Most people believe that the "public interest' standard is practically insurmountable.

I know you can't tell me how you might vote as a Commissioner. I am concerned about any diminishment of consumers ability to find relief when they are exposed to rates, terms, and conditions of service that are not just and reasonable—the standard found in the Federal Power Act. However, can you tell me your views on the application of the "public interest" standard and how you think it should be applied in contracts where there is no standard of review specified?

Answer. That question is at the heart of the matter that is now under consideration at the Commission. The public policy questions center on two issues. The Commission needs to encourage the use of contracts, as contracts have been historically widely used in the wholesale market. Secondly, the Commission needs to protect the public interest. Ultimately, the Commission needs to retain the authority to review contracts.

RESPONSES OF PHILIP D. MOELLER TO QUESTIONS FROM SENATOR WYDEN

PROMOTING GREEN POWER

Question 1. Recently, the Federal Energy Regulatory Commission certified an incremental hydroelectric upgrade for the first time under provisions of the Energy Policy Act of 2005, allowing PacificCorp, an Oregon energy company, to qualify for a renewable energy tax credit. Are there other FERC policies and programs that can boost the production, use and sales of renewable energy? What will you do as a commissioner to encourage FERC to promote green power?

Answer. The position of commissioner can serve as a prominent voice in promoting and encouraging green power development. I have worked extensively on policies promoting both wind power and geothermal power, in addition to policies related to hydropower. Specifically, FERC is now reviewing the effects of its transmission policies under Order 888, and one of the many issues related to that review pertains to the question of how to deal with "intermittent" generation. Providing more certainty on that issue—something that is especially important to wind power and solar power—will help encourage the development of these forms of renewable energy.

CONSUMER ADVOCATE

Question 2. Chairman Kelliher and Commissioner Kelly both support my proposal to create a Federal consumer advocate at FERC similar to what more than 40 states currently have. My proposal to create this position was unanimously agreed to during consideration of the Senate Energy Bill. Will you support creating a Federal ratepayer advocate at FERC?

Answer. I feel that the primary job of the Commission is already to protect ratepayers, so any consumer advocate position would need to be carefully structured. If the roles and responsibilities of the consumer advocate position can be structured in an acceptable manner, I would support the creation of the position.

RESPECT FOR STATE/LOCAL VIEWS IN LNG LICENSING

Question 3. As you know, the Energy Bill gave FERC exclusive authority over siting, construction and operation of liquefied natural gas (LNG) import facilities. The role of states and local communities is limited to making suggestions to FERC during the licensing process. What will you do to ensure that the views of states and local communities are not only considered but given deference in the licensing process? Will you support licensing of facilities over the strong objections of the state and local community?

Answer. FERC needs to assure that states and local communities are given opportunities throughout the process to express their views and concerns about any LNG facilities, and I will commit to that premise. It is in the interest of all the parties that state and local community concerns be heard throughout the process. I will give those concerns careful consideration and deference to the extent authorized by law. I would expect that there would be at least some opposition to nearly every proposed energy-related project in this nation, including LNG facilities. With LNG facilities, FERC needs to make public safety its primary goal.

HYDRO RELICENSING SETTLEMENTS

Question 4. I understand the Commission's practice has generally been to encourage hydro relicensing settlement agreements, but that the Commission has never addressed in a comprehensive manner the question of what kinds of settlement provisions may be incorporated into license conditions. As a result, similar proposed conditions have been accepted in some cases and rejected in others. This has caused

confusion among parties to these settlements as to how FERC draws these distinctions. There appears to be a growing recognition within the Commission that additional guidance is needed and that prompt agency action is necessary to provide negotiating parties the regulatory certainty and clarity they've been lacking. Do you share that view, and if so, would you agree that the Commission's treatment of proposed hydro licensing conditions ought to be consistent and predictable for all parties involved?

Answer. As a general matter, I strongly support providing entities more certainty in hydropower relicensing, as the lack of certainty was one of the major complaints that led to legislative changes of the relicensing process in EPACT 2005. My impression is that most entities are guardedly optimistic that those changes in the relicensing process will provide that certainty, but I will commit to following this area very closely and working to assure that conditions are consistent and predictable for the parties involved.

RESPONSES OF JON WELLINGHOFF TO QUESTIONS FROM SENATOR DOMENICI

ELECTRIC RELIABILITY ORGANIZATION

Question 1. EPAct directed FERC to ensure the reliability and security of the nation's bulk-power system. Pursuant to the Energy bill, a single Electric Reliability Organization—the "ERO"—will have the authority to establish and enforce mandatory reliability standards. We are now in the process of transitioning from a system of voluntary compliance to this new mandatory regime.

In order to avoid a "one size fits all" approach, Congress was careful to provide a substantial role for regional reliability organizations. The national ERO which sets reliability standards must "rebuttably presume" that a standard proposed by a Regional Entity is valid.

As a Commissioner, how will you address the issue of regional flexibility? How will this fit into the ERO's national standards and their enforceability?

Answer. I agree that new Section 215 does not contemplate a 'one size fits all' approach to reliability standards. I recognize that there are circumstances under which regional differences are appropriate, such as to reflect physical differences in the grid, and if confirmed, I intend to carefully consider any requests for regional differences, particularly from regional entities that are organized on an interconnection-wide basis.

TRANSMISSION INVESTMENT

Question 2. There has been sustained underinvestment in transmission in recent years. In order to encourage greater investment, EPACT directed FERC to issue a transmission incentives rule to establish incentives for greater investment. Do you think there is a need for greater transmission investment, and if so, would you comment on whether you believe transmission incentives are the way to secure that investment? Do you think incentives should be extended to vertically integrated utilities?

Answer. Yes, I believe there needs to be greater investment in more efficient electric grid infrastructure both at the transmission level (primarily FERC jurisdiction) and at the distribution level (primarily state jurisdiction). Incentives are usually a preferred method of spurring investment (as opposed to fines or penalties or mandates). However, it is important to have properly structured incentives to ensure that the most efficient investments are pursued. Efficient alternatives to grid infrastructure investments should also be encouraged so that we do not have stranded transmission investments if alternatives to transmission prove to be more economically viable and efficient. Distributed generation and demand response are two possible examples.

FERC-STATE RELATIONSHIP

Question 3. With FERC's new expanded responsibilities in the areas of reliability and backstop transmission siting, there is the potential for federal/state conflict. How do you propose to promote greater cooperation and coordination with the states in these areas? How can FERC best work with the states to identify and resolve congestion issues?

Answer. FERC should collaborate with the states in electric grid efficiency improvements to the extent practicable and appropriate through coordination of reliability requirements with the regional reliability organizations and state commissions. As for congestion and other transmission planning issues, FERC again should collaborate to the extent practicable and appropriate with state commissions, re-

gional planning organizations (Southwest Area Transmission, for example), and RTOs/ISOs to identify electric grid infrastructure efficiency improvements (increasing reliability and/or economic grid operation) that would include identification of areas of congestion.

Question 4. How would you suggest that FERC and the states better coordinate to provide regulatory consistency on transmission expansion issues such as cost allocation and cost recovery?

Answer. To the extent new transmission expansions are in the planning stages, it may be appropriate to open a dialog with the appropriate state commission(s) involved to discuss cost allocation and cost recovery issues.

COAL DELIVERY

Question 5. While FERC does not have direct statutory authority pertaining to coal deliveries, coal constitutes approximately 50% of the fuel for electric generation today, and utilities are seeking to build more baseload coal plants in the future. Coal delivery issues, then, can greatly impact electric reliability. FERC has scheduled a meeting with utility and railroad representatives on June 15th to discuss coal-delivery matters and their impact on markets and electric reliability.

Do you think there is a regulatory gap in this area?

Answer. I have not studied this issue in any depth and do not know if there is a regulatory gap in this area. If confirmed, I look forward to reading the information developed from the June 15th meeting and exploring this issue further.

Question 6. Do you believe FERC should coordinate more closely with the Surface Transportation Board to ensure adequate and timely coal deliveries?

Answer. I would include this question among those to consider when I have had an opportunity to explore the issue in more depth.

REGIONAL TRANSMISSION ORGANIZATIONS (RTOS)

Question 7. RTOs are subject to FERC regulation, but have independent boards, not shareholder boards like other utilities. Independent RTOs presently serve about 2/3 of this country. What can the Commission do to hold RTOs accountable for their costs like other utilities? How do you measure "reasonable" charges?

Answer. I believe expenses incurred by the RTOs should be held to the high standard required of other utility expenses. First, the costs must be "used and useful". That is, the costs must be incurred for the purpose of carrying out the utility responsibilities of the entity. Second, the costs must be prudently incurred. That is, those costs must be comparable to costs incurred in the industry for similar services. Thus, costs need to be compared across RTOs and with other non-RTO entities that may provide similar services and incur similar costs. These two tests should be used by independent auditors that audit RTO costs and recommend approval of cost recovery for these expenses.

Question 8. What do you see as the Commission's role in fostering independent operation of the transmission grid?

Answer. I see the Commission as an enabler and overseer of grid independence. This can in part be accomplished with greater transparency in grid operation and with oversight and enforcement of equal/open access to the grid by all resource providers including renewable energy, distributed generation, demand response, and other demand-side measures. This can be done in the context of RTOs, independent transmission owner/operators, and vertically integrated utilities.

Question 9. How do you envision the new ERO working with the RTOs? How do you envision the new Regional Entities working with the RTOs?

Answer. I hope that these relationships can be collaborative rather than confrontational and punitive. That collaboration needs to be fostered, however, by the Commission.

OPEN ACCESS TRANSMISSION

Question 10. Rather than pursue a Standard Market Design proposal, which would have fundamentally restructured the electric power industry, FERC is now focused on revising the Commission's open access transmission policy under Order 888. How will you approach revision of Order 888?

Answer. See response to Question 8 above.

Question 11. In Section 1231 of EPAct, Congress gave FERC the authority to require government-owned utilities and electric cooperatives to provide open, non-discriminatory transmission access on their systems in a comparable manner to that required for public utilities. In its recent NOPR on Order 888, the Commission chose not to propose a generic rule to implement Section 1231, but instead to apply its provisions on a case-by-case basis. Do you agree with this approach?

Answer. Given that, if confirmed, I will be asked to vote on this pending NOPR, it would not be appropriate for me to comment regarding this issue. It is my understanding, however, that there currently is some level of reciprocity required of government-owned utilities and co-ops regarding open access. In general if a government-owned or member owned utility is currently benefiting from open access use of utility lines under FERC jurisdiction, there should be reciprocity with respect to open access on the lines owned by the government-owned or member-owned utility by investor owned utilities within the constraints of the native load requirements of EPAct.

RELIABILITY INVESTMENT

Question 12. Reliability, of course, is one of FERC's top priorities. The Commission had indicated that for prudent reliability expenditures, such as vegetation management charges, it will consider separate rate recovery mechanisms, such as surcharges. Consequently, companies need not undertake a full blown rate case. When utilities seek rate recovery for a reliability investment, do you agree that the Commission should address this in a single issue rate case rather than examine the utility's entire set of rates?

Answer. I believe that single issue rate cases should only be used in very limited circumstances. Such circumstances may include, for example, where the expense is volatile and a large proportion of total cost of service such as fuel, or the expense is one that is essential to reliable service. Vegetation management may fall into the latter category.

NATIVE LOAD

Question 13. In EPAct, Congress provided that utilities with service obligations to their native load customers are entitled to use the transmission they own or hold under contract to meet these service obligations. Do you agree that the statute makes clear that there is nothing discriminatory about exercising this right?

Answer. Sec. 1233 of EPAct 2005 states in part: "(k) Effect of Exercising Rights—An entity that to the extent required to meet its service obligations exercises rights described in subsection (b) shall not be considered by such action as engaging in undue discrimination or preference under this Act." Yes, the statute makes clear that an entity exercising the right shall not be consider as engaging in undue discrimination.

Question 14. Where there are competing uses of utility transmission under the open access framework, do you believe that the Commission must recognize the utility's statutory right to use its transmission to serve its native load customers?

Answer. Yes, generally. That does not, however, give that utility the right to use the transmission system in a manner that is unduly discriminatory or preferential. The system should be used efficiently.

NATURAL GAS

Question 15. Inadequate gas storage capacity contributes to volatility of gas prices. In order to reduce volatility, the Energy Policy Act of 2005 authorized FERC to grant market-based rates to gas storage developers, even if they have market power, as long as a proposal meets a three part test: (1) it is in the public interest, (2) market based rates are needed, and (3) customers are adequately protected. I recognize it is unusual for Congress to authorize market-based rates to a company that has market power.

Are you prepared to support implementation of this provision and authorize market-based rates, assuming the public interest, need, and adequate protection criteria are met?

Answer. If all the statutory criteria are met, if confirmed, I would support the implementation of this provision.

Question 16. According to FERC, Liquefied Natural Gas (LNG) presently comprises 2% of the natural gas used in the Northeast and it could provide up to 17% by 2025. Additionally, there are currently about 40 LNG terminals either before FERC consideration or being contemplated by the natural gas industry.

As we meet this growing trend toward LNG in the U.S., what do you envision FERC's priorities should be and how do you think FERC can meet these priorities?

Answer. FERC's priority should be to maximize the efficient production, distribution, and use of energy consistent with its statutory authority. FERC can meet these priorities by considering applications for LNG terminals in the context of the storage and delivery of other natural gas options and alternatives.

Question 17. In the Energy Policy Act of 2005, Congress clearly grants FERC exclusive authority to approve or deny an application for the siting, construction, ex-

pansion, or operation of an LNG terminal. Do you see any practical threats to this authority by those opposed to the construction of LNG facilities through the use of other laws to potentially place roadblocks (not intended by Congress) to the construction and siting of LNG facilities?

Answer. I have not participated in the siting, construction, expansion, or operation of an LNG terminal. Thus, I am not aware of any practical threats to FERC's authority in this area.

Question 18. If so, how do you think this is best alleviated?

Answer. See response to Question 17 above.

NATURAL GAS MARKETS

Question 19. Please comment on what you think the impact of commodities trading is on the price of natural gas. Do you believe that executive branch currently has the appropriate authority to effectively oversee the energy markets? Do you think that FERC has the appropriate authority necessary?

Answer. I am not familiar with the impact of commodities trading on the price of natural gas. I also am not aware of the extent of oversight by the executive branch regarding energy markets. I do believe, however, that the expanded authority that the Congress has conferred on FERC through EPAct 2005 may provide sufficient authority to the Commission to effectively oversee energy market activity. It is my understanding that market oversight is an area in which FERC is currently placing a great deal of effort. To the extent that any deficiencies exist they should be readily revealed in FERC's monitoring of that oversight activity. To the extent that commodity trading influences energy and specifically gas markets, this is an area that FERC should review and suggest to Congress, if necessary, additional authority.

Question 20. In recent testimony before another Senate Committee, Commissioner Brownell stated, "The natural gas and electricity markets are inextricably linked. . . . The emergence of renewable wind energy as an important electricity supply alternative, for example, will have a mitigating impact on natural gas prices."

First, do you agree with this statement?

Secondly, do you believe that the present authorities under current law are effective with respect to advancing the production of renewable energy on federal lands and federal submerged lands?

Answer. Natural gas and electric markets are currently linked to some degree, given the level of electric generation from natural gas. To the extent that renewable energy sources can be increased in proportion to the total load serving resource portfolio, the linkage will be reduced. Similarly, independent studies have indicated that to the extent that more electric load requirements are met with renewable energy resources, pressure on gas demand will decline and with that decline in demand there may be a commensurate decline to real gas prices. Electric markets are also linked to other factors such as weather and peak demand. These factors are independent of natural gas markets.

Present authority under current law provides for mechanisms to site renewable systems on federal lands and federal submerged lands. Whether these authorities are effective to advance production of renewable energy on federal lands is in question. For example, the Geothermal Steam Act was significantly revised in EPAct 2005. Whether these revisions will effectively advance the development of geothermal energy on federal lands has not yet been determined. It is hoped that they will. Similarly, the BLM has recently completed a programmatic EIS on the siting of wind systems on BLM lands. Again, whether this authority and new regulatory initiative will effectively advance wind energy production on federal lands has not been determined.

Question 21. In the Commission's report to Congress in February on the subject of bringing natural gas from Alaska's North Slope to the lower 48 states, the Commission identified a number of obstacles that have emerged over several years that have impeded the development of the Alaska natural gas pipeline. Additionally, the report comments on the wide-ranging federal and state cooperation, inter-agency cooperation, and government and industry cooperation necessary to meet this challenge. Please comment on what you think FERC's role in this process is and how you think FERC can reasonably help to expedite the resolution of these issues so that the American people can have the benefit of Alaska's vast supply of natural gas?

Answer. FERC has taken an active role in advancing this project. As stated in their February report to Congress:

> The Commission has been actively preparing to meet its responsibilities in the authorization process for any Alaska natural gas pipeline project. To

this end, the Commission's activities have included: (1) entering into memoranda of agreements with the Regulatory Commission of Alaska and the National Energy Board of Canada; (2) working on a memorandum of understanding with 13 federal agencies and the Office of Federal Coordinator to establish a project management framework that ensures early coordination and compliance with the many deadlines and procedures that will attach to the process; (3) touring the pipeline routes; and (4) conducting meetings with federal and Alaska agencies, prospective sponsors, and other Alaskan stakeholders as recently as January 2006.

Additionally, the Commission's new open-season rules governing any Alaska natural gas pipeline should be beneficial to the overall development of the project in several ways. First, the rules provide the sponsors with important flexibility to design open seasons that could help yield firm transportation contracts needed to secure the capital to develop and construct the project. Second, the ability to secure the significant capital required to develop and construct the project has been enhanced by the rules' allowance of pre-subscriptions of reserved capacity. Third, the regulations provide that a presumption of rolled-in rate treatment will attach to voluntary expansions of the Alaska gas pipeline.

FERC needs to continue this effort and seek other possible roles including the development of analyses that would demonstrate the urgency for the project and economic benefits to the nation from its construction. Such analyses should be communicated to project stakeholders and state officials in order to provide those decision makers with the necessary information to reach expeditious and informed decisions.

Question 22. Without getting into the specifics of a matter potentially before the Commission, I would like to ask you a question on gas pipeline infrastructure. One of FERC's main priorities is the expansion of U.S. domestic energy infrastructure. Do you think that a mandated return on equity on a pipeline system that would be lower than the return on equity of any pipeline in the past 40 years would be consistent with FERC's priority of expanding energy infrastructure?

Answer. Such a return, absent other mitigating circumstances, would seem to be inconsistent with a goal of expansion of domestic energy infrastructure. Again, such infrastructure should be expanded in an efficient manner that promotes reliability and considers alternatives that may result in lower societal costs.

Question 23. I am fully aware that the United States consumes about a 1/4 of the natural gas consumed worldwide. I am also aware that over 95% of the world's proven natural gas reserves lies outside of North America. Additionally, I am concerned that a large portion of the United States, specifically most of the OCS, remains currently off-limits to exploration and production of natural gas. As such, LNG is an important part of our energy mix in this country. However, how do you think we avoid becoming reliant upon foreign sources of natural gas, the same we are dependent upon foreign oil, from areas that are unstable and unfriendly to U.S. interests?

Answer. Reliance on LNG poses several concerns. One certainly is the issue of unstable and unfriendly interests controlling our energy future. Other concerns include the economic instability of reliance on a fuel whose supply, and therefore price, may depend on alternative uses of the base resource, such as conversion of natural gas to liquid fuel instead of LNG. This could result in not only disrupted supplies of LNG, but also stranded investments in infrastructure that may be born by utility ratepayers in this country. These concerns can be alleviated to the extent we can balance our resource mix with renewable energy, energy efficiency, and more efficient means of using fossil fuels such as combined heat and power systems, and the use of indigenous fuels for generation such as coal in advanced clean coal technologies like IGCC.

Question 24. Recently, I have grown concerned about the potential for LNG shipments to be diverted away from the U.S. markets to other consuming nations. Can you comment on the state of this trend, the future of this trend as you see it, and how we can mitigate this potential diversion of significant natural gas supply?

Answer. I, too, think this is a serious concern and see no real answer except to diversify our portfolio as I have suggested in my response to Question 23 above.

Question 25. Pursuant to Section 316 of the Energy Policy Act, the Natural Gas Act was amended and the Commission was directed to facilitate price transparency in markets for the sale or transportation of physical natural gas in interstate commerce. Further, the Commission is granted the authority to prescribe such rules as the Commission deems necessary and appropriate to carry out the purposes of Section 316. Have you had the opportunity to examine the question of transparency in the natural gas markets? If so, have you drawn any conclusions that you could

share with this committee that could help us promote and advance fair competition, market integrity, and ultimately protect the consuming public?

Answer. I have not had the opportunity to examine this question with reference to natural gas markets. I have had experience in the electric markets. With respect to those markets, there is some question as to whether transparency promotes or inhibits competition. Some market analysts claim that transparency may lead to market collusion and ultimately price uniformity rather than true price competition. My experience indicates that transparency should promote fair competition and assist in protecting consumers. If confirmed, I look forward to exploring these issues at FERC with respect to both gas and electric markets.

Question 26. Along those same lines, as mandated by EPACT, FERC and the CFTC entered into a memorandum of understanding with respect to information sharing to prevent procedural duplication in the oversight of the commodity markets. Do you commit to working with the CFTC to ensure that this issue of natural gas market transparency is given continued attention at FERC?

Answer. Yes, if confirmed, I do.

Question 27. FERC has a strategic plan and the first goal stated in the plan is promote development of a robust energy infrastructure. I think that's a critical mission statement for this agency. Through a combination of legislation, regulation and litigation we've made it very difficult to develop major new energy facilities in this country. Do you share the vision that FERC's primary mission is to promote the development of energy infrastructure for this country?

Answer. With the caveat that the Commission's mission is to promote the development of efficient energy infrastructure I would generally agree. Promoting such development may entail promoting efficiency improvements to distribution infrastructure rather than transmission infrastructure where such development may be more cost effective and provide higher societal benefits. See also my responses to Question 2 and Question 16 above.

Question 28. What are the critical elements of a FERC policy that will ensure that needed infrastructure is built and built in a timely manner? How does an agency like FERC make sure that regulated companies are allowed to a sufficient return to attract capital into that business?

Answer. FERC's rate-setting authority for infrastructure investments is the key policy that will drive such investments. Sufficient returns are those that allow companies that invest in efficient infrastructure project returns commensurate with those earned by companies that experience similar levels of business risk. If confirmed, I would support providing those companies that make such investments a return at that level.

Question 29. You are both from the West and had the experience of seeing the California energy crisis and its fallout for other Western states first hand. One of the obvious lessons from that experience is that electricity markets have to be structured properly if competition is to benefit consumers. Do you agree that competitive wholesale markets, properly structured, do benefit consumers and what about the use of price caps, bid caps an similar price mitigation measures?

Answer. Properly structured competitive wholesale electric markets may benefit retail consumers to the extent that those consumers have sufficient choices in those markets and can also respond to retail price signals. The choices I refer to include access to capital and information that would allow those consumers options including enhancing energy efficiency of their end-use consumption, considering distributed generation, having the option to participate in and be compensated adequately for demand response activities. Price mitigation measures may be appropriate as market oversight tools in markets that are not fully competitive or properly structured.

Question 30. What more does FERC need to do so that consumers see the full benefits of competitive markets? How would you proposed that FERC work with the state regulatory authorities, RTOs and others to advance fairness for merchant generators when it comes to access to the grid and in bidding for new capacity?

Answer. Many of the things that need to be done for consumers to see the full benefits of competitive markets are within the jurisdiction of the states and not FERC. To the extent that FERC can collaborate with state commissions to determine what federal barriers exist to state implementation of effective markets for consumers, FERC should do so. FERC should work within its statutory authority with all parties mentioned to provide all resources—merchant generators, renewable generators, providers of energy efficiency and demand response resources, and distributed generators—equal and fair access to consumers in order to establish truly competitive markets.

Question 31. The *Mobile Sierra* doctrine and the public interest standard were established by the U.S. Supreme Court in a series of cases a half-century ago. The

public interest standard does not protect sellers, it protects contracts, it protects the agreement. Sometimes the public interest standard works to the advantage of the seller, sometimes to the advantage of the buyer. Recently, it has worked to the advantage of the buyer. The power sales contracts between Calpine and California are costing Calpine $1 billion, and helped drive it into bankruptcy. Under the just and reasonable standard, there is little doubt the contract would have been modified. Under the public interest standard, Calpine continued to perform. So, the public interest standard saved California consumers $1 billion. The Supreme Court is presumed to be competent to read a statute. They read the Federal Power Act and came up with the *Mobile Sierra* doctrine and the public interest standard. What is your view of the *Mobile Sierra* doctrine? Is it good law? Do you agree with the Supreme Court?

Answer. In general I believe that regulators should be retain the power necessary to carry out their statutory responsibilities. The requirements of sections 205 and 206 of the Federal Power Act require that all rates, charges, terms, and conditions be just and reasonable and not unduly discriminatory or preferential. The Commission should have full authority to implement the provisions of the statute. Therefore, the Commission must, in determining how or whether to apply the Mobile Sierra doctrine, consider whether the full requirements of the statute are being met.

It should be noted that the Mobile Sierra doctrine was applied by the Supreme Court to rates. Thus, there remains a question whether the doctrine also applies to non-rate terms and conditions such as termination clauses. The First Circuit has held that FERC has substantial discretion in determining how or whether to apply the Mobile Sierra doctrine to ensure that customers are adequately protected. Specifically, several years ago, Judge Boudin, writing for the First Circuit in a *Mobile-Sierra* case, noted that,

> "whether and when Mobile-Sierra applies in varying contexts is going to remain in confusion unless and until the FERC makes up its mind and squarely confronts the underlying issues. It is not at all clear to us that FERC, which is now becoming hostile to Mobile-Sierra, needs to tolerate it at all. FERC has broad powers to regulate the substantive terms of filings that it accepts and allows to become effective, whether they are ordinary tariffs or contracts, [. . .]; and such powers may include the power to require prospectively by regulation, that all contracts set their rates subject to the FERC's just and reasonable standard." . . . Alternatively, if FERC were neutral to or opposed to such clauses but wanted to eliminate much of the existing uncertainty as to the parties intent, it might prescribe prospectively the terms the parties would have to use to invoke Mobile-Sierra protection."
>
> [*Boston Edison Co. v. FERC,* 233 F.3d 60, 68 (1st Cir. 2000)]

Question 32. I want your views on FERC authority over buyer market power. FERC has been encouraged to regulate buyer market power, by forcing utilities to buy available lower cost power rather than self-generate. I am not convinced FERC has legal authority in this area. Also, there is serious potential for conflict with the states, since a FERC order to a utility to buy power instead of self generating would undercut state decisions on ratebasing generation. Do you think FERC has this kind of legal authority and do you think it is good policy?

Answer. I do not believe FERC has jurisdiction in this area either. I would need to see the authority under which it ordered a retail utility to buy in a specific market from a specific seller rather than self-generate. If lower cost power was available in the market to that utility, however, I do not see any prohibition in FERC informing the appropriate state regulatory agency that would have jurisdiction over recovery of the costs associated with the ultimate retail sale. Thus, FERC may have an impact on the buying decisions of retail distribution companies, but not in a direct regulatory manner. The general policy is to encourage the utility to make efficient purchasing decisions that minimize total societal costs. FERC may play some role in this, but the primary role is for the state commissions. And a state commission may have a valid rationale, based on a state policy such as a renewable portfolio standard that produces lower societal costs, to allow a utility under its jurisdiction to self-generate higher cost power than can be purchased in the market.

Question 33. The market-based rate proposed rules FERC issued last month ask questions about what happens when a utility loses market-based rates. For example, if a utility loses market-based rates in some markets, but retains it in other markets, should FERC force a utility to sell at cost-based rates in lieu of making market-based sales? I am concerned that such forced sales would hurt the native load customers of the utility, by reducing wholesale revenues that would otherwise be shared with native load. It also allows the buyer of the cost-based power to resell

it at a profit, so it could constitute a wealth transfer. What is your view of such forced sales?

Answer. Given that, if confirmed, I will be asked to vote on this pending NOPR, it would not be appropriate for me to comment regarding this issue. Further, the questions presume a number of assumptions that make it difficult to provide an useful answer. If confirmed, I would commit to carefully review this issue and be open to all views presented.

Question 34. One of the obstacles in building transmission is cost allocation. FERC has taken different approaches to this issue in different regions, which seems appropriate. However, some have urged FERC to roll in all transmission expansion costs. That seems very unfair to me. Since most transmission is owned by vertically integrated utilities, it would burden the native load customers of those utilities, while the beneficiaries contribute nothing. Do you believe FERC should roll in all transmission expansion costs?

Answer. Transmission expansion costs should generally be allocated to those entities who either cause the costs to be incurred—a generator or large load on a radial line necessary to interconnect to the transmission provider's network—or to those customers who benefit from the expansion via reliability improvements and/or direct or indirect economic benefits. So to the extent that "rolling in" transmission costs as defined in the question would result in "beneficiaries" contributing nothing to the expansion costs, I do not believe that it is appropriate regulatory policy.

Question 35. Under current law, the only way a licensee can challenge an arbitrary condition included in a FERC hydro license through exercise of mandatory conditioning authority is to seek judicial review of the FERC license. That is true even when FERC believes the mandatory condition is unsupported by the record or even contradicted by the record. The EPAct alternative condition provisions should reduce the prospect of arbitrary mandatory conditions, but they may still be proposed. For reasons of comity FERC sometimes does not highlight its disagreement with the federal or state agency when they propose an arbitrary condition. I think that approach is fundamentally unfair to licensees, since it deprives them of any prospect of overturning an arbitrary condition through judicial review. I believe FERC should make any disagreement with a conditioning agency plain in its orders. Do you agree?"

Answer. Yes.

RESPONSES OF JON WELLINGHOFF TO QUESTIONS FROM SENATOR THOMAS

Question 1. Will you pledge to work closely with states to enable the timely development of transmission that is needed to meet future load growth?

Answer. Yes. I have extensive experience working with state commissions and agencies. If confirmed, I will work with them within the statutory authority of FERC to enable the timely development of efficient electric grid enhancements and demand-side measures to meet load requirements.

Question 2. In Wyoming and elsewhere, it's not always easy to ship our coal to customers. There are a number of proposals for mine-mouth coal power plants in my state and others as a result. These projects will benefit the communities by building a tax base, and the nation, by diversifying our energy supply. They will not move forward without access to competitive regional power markets through a strong, open power grid. Can I count on you to support the development of these strong regional markets and the open-access power grid that will be so essential to their success? Will you make sure that new power plants can connect with the interstate power grid at reasonable cost and have the opportunity to reach the customers they need to succeed?

Answer. I believe that mine-mouth coal base generating facilities using advanced clean coal technologies are an essential and integral part of this nation's energy future. If confirmed, I will work within the statutory authority of FERC to provide for open, fair, and reasonably priced access to all efficient load serving resources including mine-mouth clean coal facilities.

Question 3. In the Energy Bill, DOE was given authority to designate National Interest Electric Transmission Corridors. If there were a transmission project ready to move forward tomorrow, do you think that those projects should have to wait for DOE to complete their study and designations in order to benefit from the permitting improvements that exist under EPACT?

Answer. No. If there is a project ready to move forward tomorrow, it should be allowed to proceed in parallel to the DOE study.

Question 4. According to the Commission's current strategic plan, FERC's highest priority goal is to "Promote Development of Robust Energy Infrastructure." Do you

agree with that priority, and if so, can you provide me with some detailed insights as to how you believe FERC can best promote that objective?

Answer. With the caveat that the Commission's mission is to promote the development of an efficient as well as a robust energy infrastructure, I would generally agree. Promoting such development may entail promoting efficiency improvements to distribution infrastructure rather than transmission infrastructure where such development may be more cost effective and provide higher societal benefits. It also may entail promoting demand response and demand measures to the extent appropriate within the statutory authority of FERC. In any case, FERC can promote this objective by providing equal, fair, and reasonably priced access to all resource providers that meet load requirements in an efficient and effective manner. Promoting an efficient expanded energy infrastructure would also apply to the delivery of natural gas and the provision of hydro services. In the natural gas arena for example, gas compressor stations on interstate pipelines can be made more efficient through the use of heat recovery systems that generate electricity from what would otherwise be waste heat. FERC should encourage such efficiency improvements.

RESPONSES OF JON WELLINGHOFF TO QUESTIONS FROM SENATOR ALLEN

Question 1. Virginia both produces electricity through coal, nuclear and natural gas resources and also, at times, imports power from the midwest when the costs to generate electricity in that region are lower than the costs to generate in Virginia. I have been approached by constituents who are interested to know what assurance you can provide the Committee that the region will not end up with "least common denominator" solutions that might work for other regions of the country but work contrary to the wholesale competitive market model that is in place in Virginia?

Answer. I firmly believe that the states and regional stakeholders should determine their own regional energy solutions. I hope that FERC can provide Virginia with information as to "best practices" that may be considered for adoption in your region, however, to improve efficiency and lower total bills. But I am not a proponent of imposing uniform solutions on states or regions.

Question 2. Do you believe that a competitive market model for wholesale markets can stimulate new investment in transmission, renewable resources and energy efficiency? If so, what can be done to support development of such models? If not, why not?

Answer. Yes, possibly. That model must be properly structured and provide consumers with appropriate access to information and capital to make the most efficient decisions. Support of such a model will require collaboration and cooperation among FERC, the states, utilities, transmission operators, market operators, and other stakeholders. Investors will need to be provided assurances of a reasonable return and a tolerable level of business risk. These conditions can be met, but cross-jurisdictional cooperation is essential. A number of states have in place mechanisms to stimulate investment in renewable energy development and energy efficiency. FERC needs to review its statutory authority in these areas and determine within the boundaries of that authority how it may collaborate with the states to stimulate these investments.

Question 3. The Regional Transmission Organization that operates the transmission grid in Virginia presently undertakes an independent regional planning process to determine needed new transmission infrastructure. All of the instate electricity producers, Dominion, AEP, Allegheny and the municipal and cooperative utilities, participate in that process which is open to the public. On the other hand, Virginia borders other States that do not have similar processes. What is the best way for the Commission to address the "seam" that is created along the borders where regional planning is undertaken in some regions and not others?

Answer. Within the boundaries of its statutory authority, the Commission should encourage the type of regional transmission planning that is conducted by the RTO that operates in Virginia and in other areas that border Virginia. To the extent that those jurisdictions do not choose to engage in such regional planning, it may be appropriate to institute a dialog to provide information as to how such planning may be beneficial to consumers in those jurisdictions. Once such data is provided to them, consumers, utilities, commissions, and other stakeholders in those border regions can make an informed decision as to the efficacy of such regional transmission planning activities.

RESPONSES OF JON WELLINGHOFF TO QUESTIONS FROM SENATOR SMITH

Question 1. During your testimony, you stated your support for the development of more renewable energy resources to meet the nation's electricity needs. However,

you did not include hydropower in your response. Do you believe that hydropower is a renewable energy resource? What are your views regarding its contribution and value to the country's energy mix?

Answer. Large hydropower (> 30 MW) is not defined as a renewable resource in the Nevada portfolio standard. Certainly the currently installed hydropower generation is a valuable asset to our country's energy portfolio. As for new hydropower, it is my understanding that there are not significant sites for new hydropower development.

Question 2. Hydropower has significant potential for new development at traditional sites and with emerging hydro technologies. This growth potential includes capacity and efficiency gains at existing hydro facilities, installing hydro generation at non-hydro dams, and development of in-stream, ocean/tidal and conduit power.

Given the energy problems the country currently faces, the growing demand for electricity, and the need for clean energy sources, would you support policies at FERC that encourage and facilitate development and licensing of these hydropower resources?

Answer. Yes, to the extent that they improved efficiency of hydropower production or utilized new technologies such as in-stream or ocean/tidal and conduit power, these are new energy sources that should be pursued.

Question 3. As you know, FERC has a statutory responsibility in reviewing rates filed for approval by the Bonneville Power Administration, to ensure that the proposed rate is sufficient to cover its Treasury obligation. Do you agree that FERC would have to reject any rate that "walled off" revenues from BPA secondary sales and required such funds be used to pre-pay debt, rather than being used consistent with established precedent?

Answer. I am not familiar enough with the BPA rate setting requirements to offer an opinion. If confirmed, I would be open to consider the rejection of such a restricted rate if one was proposed consistent with the evidence presented and the law governing the BPA rate setting authority of FERC.

Question 4. Do you agree that the Federal Columbia River Transmission System Act (P.L. 93-454) requires the BPA Administrator to consider all revenue sources "in the aggregate" when setting rates?

Answer. I am not familiar with the Act. If confirmed, I would intend to review the statute in preparation for participation in BPA rate setting proceedings.

Question 5. Are you aware that that CAISO has filed a Market Redesign proposal (MRTU) with FERC and that a number of entities, including other control areas, in the Western Interconnection have objected to that filing? After seeing the impact on Nevada and the Western markets of the 2000-2001 California energy crisis, are you concerned about this? Do you plan to insist that no decision be made on this filing until you are confirmed? Do you think the FERC has the obligation to resolve the specific seams issues articulated by the other western utilities before implementing such a dramatic market rule change?

Answer. Yes, I am aware of the filing and the concern expressed by certain entities. If confirmed, I may be required to rule on this pending matter, and so it would not be appropriate for me to comment on my position with respect to the filing or the objections to it. If confirmed, I will give the matter every consideration and review the evidence presented and concerns expressed by all parties prior to rendering my decision.

Question 6. I understand that there is significant concern at FERC about development of the bulk transmission system and the failure of organized markets to effectively encourage these investments. Specifically, I understand that the Locational Marginal Pricing mechanism used in organized markets has not resulted in substantial transmission investment; however, ISOs continue to try to implement these mechanisms. Most recently, the CAISO, in its MRTU, is proposing LMP for its members and in doing so, threatens to unwittingly bring in the entire region. At the same time, the FERC's 2004 State of the Markets Report clearly identifies that the stable markets in the West generate more investment in transmission than in California or any other region dominated by RTO-administered financial markets.

What are your thoughts on this subject? Should regions be forced to embrace a mechanism that has not resulted in its promised benefits, when what we are already doing is working better?

Answer. No, I do not believe that regions should be forced to embrace mechanisms that are not efficient in producing intended results. We must look also to the results we are trying to encourage. Transmission investment in and of itself should not be a goal. The goal should be the investment in efficient energy infrastructure that produces the greatest societal benefits at the least societal cost. This may entail implementing demand response in some instances instead of making transmission investments or encouraging investments in distributed generation. We must look at the

energy problem from an integrated perspective of optimizing overall efficiency. So what is being done in areas outside the CAISO with respect to transmission investment may not be "working better" if the metric used to measure "better" is simply new transmission miles installed.

Question 7. You are perhaps aware that many entities in the West opposed the imposition of the FERC's version of Standard Market Design or "SMD," which included LMP. Some of the concerns raised by the West involving SMD were the clear differences between Eastern pool-based markets, with tightly clustered transmission systems and the predominance of thermally-based generation and Western bilateral markets, with long transmission systems (dispersed consumers) and vast hydroelectric systems, particularly in the pacific northwest. In other words, many entities in the West continue to be concerned about the imposition of Eastern-style market designs in a vastly different, both from a resource and system perspective, West.

What are your views on the significance of these East vs. West distinctions? How heavily should the FERC weigh these distinctions when evaluating current and future market design proposals, including MRTU?

Answer. FERC needs to carefully consider regional differences when reviewing market structures and appropriate mechanisms to encourage efficient markets. The West's electric system is distinct from that operating in the East, and FERC should give careful consideration to the characteristics of each region and the policies within each state within the regions (such as renewable portfolio standards) when evaluating proposals that are being considered for implementation in those markets.

RESPONSES OF JON WELLINGHOFF TO QUESTIONS FROM SENATOR BUNNING

Question 1. A number of Kentucky electric distribution companies (and other customers) signed new service agreements with the Tennessee Valley Authority (TVA) in 1997. The agreements included provisions under which the Kentucky distributors agreed to remain TVA customers for another 10 years. However, the agreements also stated that the Kentucky customers could provide TVA Notice of their intent to leave TVA after five years and would then be allowed to leave TVA after an additional 5 years.

The contracts also specifically stated that any departing customers would not be liable for any exit fees or stranded costs. The agreements further contained language concerning services (eg transmission) TVA would provide departing customers. Several Kentucky customers (and a Tennessee customer) of TVA have exercised the rights they have under these contracts and given Notice of their intent to leave TVA. The Kentucky customers provided this Notice for, among other reasons, their ability to secure much less expensive power for their customers from sources other than TVA. Since giving Notice, these Kentucky customers have attempted to negotiate with TVA on the rates and terms of conditions of the requested transmission service. TVA has been entirely unwilling to even discuss the transmission services the departing customers are requesting.

Please provide your views on whether the FERC, as a matter of public policy, should facilitate access to the interstate transmission grid and encourage competition in the electric generation market by ordering the wheeling of power for electric distribution companies that wish to secure transmission service on our interstate transmission grid. For purposes of this question, please assume that the FERC has the legal authority to compel transmission on behalf of customers on the TVA system (ie "inside the fence").

Answer. It is not clear to me that FERC has sufficient jurisdiction to effectuate a resolution to the controversy you have described, and it is not an issue that I have researched. If I assume that FERC does have authority to compel TVA to wheel power for the distribution customers, then public policy would favor allowing the distribution customers to access the most efficient resources to meet their demand.

Question 2. Kentucky has the least expensive electric rates in America. This is in large part due to the abundance of coal in Kentucky and the use of this coal to generate power. The railroads play an integral part in moving coal from the mine locations to the power generating facilities. Recently, problems with the reliability of coal deliveries and the rates railroads are charging for transporting coal have begun to develop. These problems have the potential to impact the ability of Kentucky to use its coal to generate reasonably priced power in Kentucky and to send its coal to other markets.

I understand the FERC has recently scheduled a conference on these coal issues. Please provide your views on what role the FERC's should play in assuring an adequate, reliable supply of coal for our nation's generating facilities.

Answer. I have not studied this issue in any depth. If confirmed, I look forward to reading the information developed from the June 15th FERC conference on this matter and exploring this issue further.

Question 3. As I noted above, Kentucky has the least expensive power in the nation. Kentucky is anxious to make sure its citizens and businesses continue to enjoy this reasonably priced power.

Please explain your views on the importance of the FERC recognizing and respecting differences in regional energy markets as it makes decisions on the structure of the interstate energy markets.

Answer. It is important for FERC to both recognize and respect the regional differences in energy markets. This is necessary to not only preserve regional autonomy, thereby producing alternative models that can produce data for the benefit of all regions, but more importantly it is necessary to structure markets in the most efficient manner possible by considering the particular characteristics of a region and tailoring the region's market structure to optimize those characteristics.

Question 4. The Energy Policy Act of 2005 (EPAct) gave the Department of Energy authority to establish National Interest Electric Transmission Corridors. EPAct further gave the FERC the authority to authorize the construction of transmission lines in these corridors.

Please provide your views on the responsibility of the FERC to consult and collaborate with states that may be impacted by the construction of electric transmission lines in these corridors.

Answer. FERC has a responsibility to consult and collaborate with the states regarding the construction of transmission lines in designated corridors. In addition to review and analysis of the most efficient options to line construction, that collaboration should include consultation on efficient siting and construction alternatives, generation alternatives, demand response, and distributed generation.

Question 5. Concerns have recently been raised that the operating costs charged by Regional Transmission Organizations are excessive. These costs can eventually be absorbed by residential and industrial electricity consumers in states like Kentucky.

Please provide your views on the responsibility of the FERC to oversee and review these types of RTO costs.

Answer. FERC has the responsibility to oversee and review these costs. I believe expenses incurred by the RTOs should be held to the high standard required of other utility expenses. First the costs must be "used and useful." That is, the costs must be incurred for the purpose of carrying out the responsibilities of the entity. Second, the costs must be prudently incurred. That is, those costs must be comparable to costs incurred in the industry for similar services. Thus, costs need to be compared across RTOs and with other non-RTO entities that may provide similar services and incur similar costs. These two tests should be used by independent auditors that audit RTO costs and recommend approval of cost recovery for these expenses.

Question 6. Transparency of energy markets and the availability of timely information about costs and capacity in energy markets is crucial for state commission to perform their duties.

Please provide your views on the FERC's responsibility and legal authority to provide for transparency in energy markets and the timely availability about conditions in the energy markets.

Answer. EPAct 2005 provided FERC with the authority to provide for transparency in energy markets. This information is not only necessary for state commissions to perform their duties, but transparency can assist consumers in making informed decisions with respect to alternative investments in energy efficiency, distributed generation and demand response. Thus, transparency is not only essential for state regulators, it is one of the precepts to an efficient market structure.

RESPONSES OF JON WELLINGHOFF TO QUESTIONS FROM SENATOR BINGAMAN

HYDROPOWER

Question 1. Section 241 of the Energy Policy Act of 2005 amends the Federal Power Act to modify some aspects of the hydroelectric relicensing process with respect to conditions and fishway prescriptions. I want to ensure that these modifications are implemented in a manner that does not undermine protection of federal reservations or Indian lands or trust resources.

Do I have your commitment that you will work to ensure that the FERC staff coordinates closely with the resource agencies and takes other steps necessary to en-

sure that these provisions are implemented in a manner that protects federal reservations and Indian lands and trust resources during the licensing process?

Answer. Yes, if confirmed, I will, to the extent possible and consistent with statute, request that FERC staff coordinate closely with the resource agencies and take other steps necessary to provide for the protection of federal reservations and Indian lands and trust resources during the hydroelectric licensing process.

Question 2. In 1986, the Federal Power Act was amended to require the Commission, in addition to power and development purposes, to "give equal consideration to the purposes of energy conservation, the protection, mitigation of damage to, and enhancement of, fish and wildlife . . ., the protection of recreational opportunities, and the preservation of other aspects of environmental quality" in deciding whether to issue a hydroelectric license.

As a commissioner, will you ensure that environmental protection is given equal consideration during the hydroelectric relicensing process?

Answer. If confirmed, I will to the extent of my authority and consistent with other statutory provisions, give equal consideration to the purposes of energy conservation, the protection, mitigation of damage to, and enhancement of, fish and wildlife . . ., the protection of recreational opportunities, and the preservation of other aspects of environmental quality in deciding whether to issue a hydroelectric license

TRIBAL TRUST RESPONSIBILITY

Question 3. Do I have your commitment that you will carry out your duties as Commissioner in a manner consistent with FERC's tribal trust responsibility?

Answer. Yes. If confirmed I will do so to the extent of my authority consistent with other statutory requirements.

RESPONSES OF JON WELLINGHOFF TO QUESTIONS FROM SENATOR DORGAN

Question 1. In recent months, North Dakota oil producers have experienced a marked price discount between the price of crude oil that they produce and the prevailing West Texas Intermediate (WTI) price of oil. Part of the reason for this price differential is a lack of pipeline capacity to transport expanded North Dakota production out of the region and to other refining markets.

I note that FERC's web site and its "Strategic Plan" emphasize the Commission's role in the "development of a robust energy infrastructure." Do you see this as an important role for the Commission?

Answer. Yes, I do.

Question 2. What can the Commission do to encourage construction of energy infrastructure, including for pipelines serving constrained markets?

Answer. It can ensure that under its rate-setting authority it provides for a return on investment commensurate with the risks involved in developing and operating the infrastructure project.

Question 3. Specifically, what can be done in establishing rate structures that would encourage investment in new pipelines and ensure that needed capacity is built in a timely manner?

Answer. Alternative rate structures may encourage investments in a more timely manner if those rate structures provided for some method of accelerated recovery of investment. I have not investigated the feasibility of such rate structures, but if confirmed, I would be open to considering such mechanisms to the extent they encouraged efficient infrastructure investments. Also, as noted above, the Commission can ensure that under its rate-setting authority it provides for a return on investment commensurate with the risks involved in developing and operating the infrastructure project.

Question 4. Is there additional legislative authority that Congress should provide the Commission to encourage development of needed energy infrastructure?

Answer. I am not aware of the need for additional legislative authority from Congress to encourage development of needed energy infrastructure.

RESPONSES OF JON WELLINGHOFF TO QUESTIONS FROM SENATOR CANTWELL

Question 1. Under the Northwest Power Act, FERC has the final say in approving the Bonneville Power Administration's rates provided that the proposed rates are "sufficient to assure repayment of the Federal investment in the Federal Columbia River Power System over a reasonable number of years after first meeting the Administrator's other costs . . . and are based upon the Administrator's total system costs."

When determining the definition of terms like "reasonable number of years" and other terms in BPA's various organic statutes what deference would you give to years of agency precedent and practice in defining those terms?

Answer. If confirmed I would give a great deal of deference to the agency's precedent and practice in defining those terms.

Question 2. What deference would you give to federal statues that define certain provisions in BPA's organic statutes?

Answer. I would give a great deal of deference to federal statues that define certain provisions in BPA's organic statutes.

Question 3. As a FERC Commissioner, would you rely on relevant judicial precedent in order to define terms in BPA's organic statutes?

Answer. Yes, I would rely on relevant judicial precedent in order to define terms in BPA's organic statutes.

Question 4. As you probably know, you will have a number of applications for renewal of hydroelectric licenses before you in the next few years. The Northwest is heavily reliant on hydroelectric generating resources. In WA State alone some 13 projects representing 5,863 MW of generating capacity will be in various stages of the relicensing process between now and 2015.

Can you provide the Committee with your perspective on hydroelectric power and your thoughts on the relicensing process under EPACT '05 and the Interim Final Rule published last year?

Answer. I believe that hydroelectric power is an integral part of our nation's resource portfolio. It is my understanding that EPACT 2005 and the Interim Final Rule provide for procedures for relicensing that are anticipated to streamline the process. If confirmed, I will review that process to determine if it is operating efficiently and take appropriate action within my statutory authority, if in my opinion, the process is not operating efficiently.

Question 5. The Northwest has spent more than a decade locked in contentious debate over various forms of regional transmission management. The region is currently looking at an option—known as ColumbiaGrid—that appears very promising, both in its substance and broad base of support. I will note, however, that it does not meet the RTO standards of FERC Order 2000.

Do you think FERC should nonetheless encourage the development of this region-specific development as it moves forward?

Answer. Yes, I support region specific transmission management, and I believe it should be encouraged by FERC.

Question 6. As you know, western energy markets and ratepayers in WA State are still suffering negative effects of deregulation and related market manipulation during the 2000-2001 energy crisis. Ratepayers in the Northwest and the larger regional economy continue to suffer the ill effects of related energy hikes—some as high as 50%. The GAO noted in a report last November that ". . . consumers in California and across other parts of the West will attest, there have been many negative effects [related to restructuring], including higher prices and market manipulation."

Has energy market restructuring been successful?

Answer. No, energy market restructuring has not been successful in many respects. Therefore, the Commission must, in regulating wholesale markets, seek to ensure that any jurisdictional market rules or tariffs are designed to provide effective protection to customers. Competition can serve to lower prices and benefit consumers only if competition is effective and markets are structured efficiently.

Question 7. Of those areas of the country that have not restructured and have not deregulated retail rates, like the Pacific Northwest, do you believe those regions should largely be left alone to address the needs of their specific industry structure as they see fit? If not, how far should FERC go in changing them?

Answer. Each region of the country should decide, based on the characteristics of the electric system in that region, the appropriate market structure for the region. FERC should provide market oversight and assistance to convey "best practices" and "lessons learned" from other regions so that efficiencies can be gained in all regions from the experiences of others. In addition, FERC has the statutory responsibility to provide for open access to the transmission system in those areas where it is given jurisdiction and to oversee reliability and resource adequacy to the extent of its statutory authority. FERC also has authority to oversee markets to determine if there is market manipulation occurring and take appropriate action consistent with its statutory authority.

Question 8. In recent press reports, the head of the California Independent System Operator has suggested that the rest of the West will simply have to comply with California markets and that the seams created between California and other areas in the west is a failure of the neighboring states to adopt compatible models.

My region has suffered once as a result of California's experiments, and stakeholders throughout the west are very concerned by these comments.

Do you believe that FERC has a responsibility, when reviewing filings for California's market redesign efforts, to assess the impact and consequences for neighboring states?

Answer. Yes.

Question 9. Last year's comprehensive energy legislation included a broad ban on the market manipulation practices exercised by Enron. As you know, the Northwest continues to suffer from the ill-effects of Enron's market manipulation practices. I imagine you are acquainted with the

smoking-gun Enron memos, in which the company laid out strategies such as 'Fat Boy,' 'Get Shorty,' 'Death Star' and the like, to drive up prices in the West.

I would like to know whether you believe there is any circumstance in which a transaction resulting from manipulative market practices can be "in the public interest," or "just and reasonable?"

Answer. I cannot think of an example where such a practice would either be consistent with the public interest or be just and reasonable.

Question 10. Under FERC's Notice of Proposed Rulemaking RM-05-35-000, the Commission has proposed amending its regulations regarding the standard of review that must be met to justify proposed modifications to Commission-jurisdictional agreements. Essentially, with the exception of transmission service agreements under the Open Access Transmission Tariff and certain natural gas transportation agreements, when proposed modifications to FERC jurisdictional agreements are not agreed to be dealt with by contract signatories under the 'just and reasonable' standard, the Commission will review such agreements under the 'public interest' standard, in accordance with the Mobile-Sierra doctrine. Most people believe that the 'public interest' standard is practically insurmountable.

I know you can't tell me how you might vote as a Commissioner. I am concerned about any diminishment of consumers ability to find relief when they are exposed to rates, terms, and conditions of service that are not just and reasonable—the standard found in the Federal Power Act.

However, can you tell me your views on the application of the "public interest" standard and how you think it should be applied in contracts where there is no standard of review specified?

Answer. First, I am also concerned about the consumers' limited ability to be afforded relief when rates, terms, and conditions of service clearly are not just and reasonable. The Commission is provided with the statutory responsibility to ensure that rates, charges and conditions of service are just and reasonable. The Mobile-Sierra doctrine's test of public interest was applied by the Supreme Court specifically to rates. Thus, it may not be applicable to all contract terms such as termination clauses. The doctrine also was applied by the Supreme Court in situations where there were arms length transactions that did not involve fraud, or market manipulation. So, these would seem to be situations where the public interest test may not be appropriate and the statutory standard of just and reasonable would apply. With respect to the issue of the application of the public interest standard, the courts could not have intended it to be an insurmountable test because it would then become no test at all but rather a barrier to ever reforming a contract. Thus, there are certainly circumstances where if the application of the test fits the criteria of the Mobile-Sierra cases, the public interest would dictate modifying the contract terms.

RESPONSES OF JON WELLINGHOFF TO QUESTIONS FROM SENATOR WYDEN

PROMOTING GREEN POWER

Question 1. Recently, the Federal Energy Regulatory Commission certified an incremental hydroelectric upgrade for the first time under provisions of the Energy Policy Act of 2005, allowing PacificCorp, an Oregon energy company, to qualify for a renewable energy tax credit. Are there other FERC policies and programs that can boost the production, use and sales of renewable energy? What will you do as a commissioner to encourage FERC to promote green power?

Answer. Yes, there are a number of policies and programs where FERC can assist in integrating renewable energy into the nation's energy resource portfolio and thereby boost renewable energy production. Chief among these are FERC policies regarding open access transmission. If confirmed as a FERC commissioner, I would support policies that recognize the unique characteristics of renewable resources such as size, location, efficiency, and in some cases intermittency, to insure that those attributes are considered in a manner to reduce and hopefully eliminate any

discriminatory treatment of renewable resources when interconnecting with the transmission grid. Another area where FERC may be in a position to act to boost production of renewable energy is consideration of the role of renewable energy in maintaining and augmenting the reliability of the transmission grid. For example, in certain instances it may be more efficient (and less expensive) to improve grid reliability by the encouragement of additional distributed generation such as solar photovoltaic systems rather than solely through transmission upgrades. If confirmed as a FERC commissioner, I intend to investigate these opportunities to enhance the use of renewable energy while making our grid system more efficient.

CONSUMER ADVOCATE

Question 2. Chairman Kelliher and Commissioner Kelly both support my proposal to create a Federal consumer advocate at FERC similar to what more than 40 states currently have. My proposal to create this position was unanimously agreed to during consideration of the Senate Energy Bill. Will you support creating a Federal ratepayer advocate at FERC?

Answer. Retail utility ratepayers who are not otherwise represented at FERC should have an opportunity to advocate their positions before the Commission. Whether the creation of a Federal ratepayer advocate is the most effective way to accomplish this is not clear. As you indicate, at least 40 states now have a utility consumer advocate incorporated into the structure of each state's regulatory system. I was the first utility consumer advocate appointed in Nevada. From that perspective, I would suggest that those individual state advocates are best equipped to represent the interests of their retail constituents before FERC in contested matters. So if the goal is to enable retail utility consumers to be adequately represented before FERC, I would suggest it may be appropriate to consider the creation of a statutory right to be awarded attorney's fees and costs for state consumer advocates that intervene in FERC proceedings to represent the rights of their retail utility consumers. This would guarantee adequate representation of retail consumers in most states for the majority of matters before FERC. This should be limited to contested cases where FERC determines retail ratepayers have a substantial interest in the outcome of the proceeding. Cases that immediately come to mind are the Enron contract termination cases. A Federal ratepayer advocate may provide some benefit, however, in the instance of more generic proceedings such as rulemakings and other investigations of more general applicability.

RESPECT FOR STATE/LOCAL VIEWS IN LNG LICENSING

Question 3. As you know, the Energy Bill gave FERC exclusive authority over siting, construction and operation of liquefied natural gas (LNG) import facilities. The role of states and local communities is limited to making suggestions to FERC during the licensing process. What will you do to ensure that the views of states and local communities are not only considered but given deference in the licensing process? Will you support licensing of facilities over the strong objections of the state and local community?

Answer. Under the Energy Bill, the exclusive authority of FERC to site LNG facilities is subject to applicable federal environmental statutes such as the Coastal Zone Management Act (CZMA), the Clean Air Act, and the Federal Water Pollution Control Act, and applicable states' rights thereunder. Thus the views of states and local communities must be considered in the siting process and given deference to the extent that they raise legitimate issues under those Federal acts where they are given specific rights. If confirmed, I intend to follow the law in this regard and give deference to those views where appropriate. If states and/or communities raise strong objections to the siting of such facilities due to the inability of the project to meet Federal statutory requirements, I will give those concerns due consideration and deference to the extent of my statutory authority.

HYDRO RELICENSING SETTLEMENTS

Question 4. I understand the Commission's practice has generally been to encourage hydro relicensing settlement agreements, but that the Commission has never addressed in a comprehensive manner the question of what kinds of settlement provisions may be incorporated into license conditions. As a result, similar proposed conditions have been accepted in some cases and rejected in others. This has caused confusion among parties to these settlements as to how FERC draws these distinctions. There appears to be a growing recognition within the Commission that additional guidance is needed and that prompt agency action is necessary to provide negotiating parties the regulatory certainty and clarity they've been lacking. Do you share that view, and if so, would you agree that the Commission's treatment of pro-

posed hydro licensing conditions ought to be consistent and predictable for all parties involved?

Answer. I am unfamiliar with the details of the settlement process before FERC on hydro relicensing. If confirmed, I would be open, however, after learning more about the history and issues involved, to considering the need for additional guidance in this area. I would certainly agree that the treatment of licensing for hydro projects should be consistent and predictable.

APPENDIX II

Additional Material Submitted for the Record

TAPS,
June 1, 2006.

Chairman PETE DOMENICI,
Senate Energy and Natural Resources Committee, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: I am writing on behalf of TAPS to support the confirmation of the President's nominees for FERC Commissioner, Philip D. Moeller and Jon Wellinghoff, and to encourage the Energy and Natural Resources Committee to quickly approve the two nominees so that the full Senate may vote on their confirmation as soon as practical.

TAPS is an informal association of transmission-dependent electric utilities located in more than 33 states. Its members are utilities that must rely on transmission facilities owned by others to serve their loads. TAPS' focus is on transmission and market power issues that are crucial to the competitive viability of small systems and to creation and maintenance of truly competitive wholesale markets.

The FERC is currently undertaking multiple initiatives that will shape the future of the electric markets including, implementing the provisions of EPAct 2005, considering updating policies related to open access for transmission through revising Order 888, and, guiding the development of regional markets. During this period, it is imperative that the FERC have a full compliment of commissioners to participate in the process.

Phil Moeller and Jon Wellinghoff are both very well qualified to serve on the FERC. On behalf of the TAPS membership, I encourage rapid action to confirm these nominees.

Sincerely,

ROY THILLY,
TAPS Chair.

PRESTON GATES & ELLIS LLP,
Seattle, WA, June 5, 2006.

Hon. PETE V. DOMENICI,
Chairman, Energy and Natural Resources Committee, Washington, DC.

Re: Phil Moeller

DEAR PETE: It would be difficult for me to endorse anyone more highly for a position than I do Phil Moeller as the current nominee for a position on FERC. As I believe you know, Phil worked for me as my L.A. for energy for several years, after a number of years in a similar position for the Washington state legislature.

He was a hard working and invaluable assistant to me in all of the issues that has come before your committee.

Since leaving my staff, as you know, he has held a number of wide ranging and important positions outside of the federal government, all adding to his background in energy policy and energy regulatory issues. He would make a magnificent addition to the Commission.

Sincerely,

SLADE GORTON.

AMERICAN PUBLIC GAS ASSOCIATION,
Washington, DC, June 6, 2006.

Hon. PETE V. DOMENICI,
Chairman, U.S. Senate Energy and Natural Resources Committee, Washington, DC.

DEAR CHAIRMAN DOMENICI: On behalf of the American Public Gas Association (APGA), I want to express our strong support for the confirmation of Mr. Philip D. Moeller to the Federal Energy Regulatory Commission (FERC) seat vacated by former FERC Chairman Patrick Wood.

APGA is the national association for approximately 650 public gas distribution systems operated by municipalities, counties and utility districts in thirty-six states. Our members are owned by, and accountable to, the communities they serve. Nationwide, there are about 1,000 publicly-owned gas utilities in this country serving almost 5 million natural gas customers.

Mr. Moeller's experience as a Senior Legislative Assistant to Senator Slade Gorton provides him with a strong background in energy policy issues. In addition, his experience as a utility employee has given him an excellent perspective on the gas and electric operations of a utility. APGA believes that this work experience will be of great value to Mr. Moeller in his deliberations as a FERC Commissioner. We also believe that Mr. Moeller will be a strong champion for consumer interests during his service on the Commission and will maintain the balance of regulatory oversight for all.

Prompt attention to the filling of the vacancy created by former Chairman wood will put the FERC back in balance with its defined organizational structure. We strongly urge the Committee's thorough and quick action towards the confirmation of Mr. Moeller.

Sincerely,

BERT KALISCH,
President & CEO.

AMERICAN PUBLIC GAS ASSOCIATION,
Washington, DC, June 7, 2006.

Hon. PETE V. DOMENICI,
Chairman, U.S. Senate Energy and Natural Resources Committee, Washington, DC.

DEAR CHAIRMAN DOMENICI: On behalf of the American Public Gas Association (APGA), I want to express our strong support for the confirmation of Mr. Jon Wellinghoff to the Federal Energy Regulatory Commission (FERC) seat vacated by former FERC Commissioner William Lloyd Massey.

APGA is the national association for approximately 650 public gas distribution systems operated by municipalities, counties and utility. districts in thirty-six states. Our members are owned by, and accountable to, the communities they serve. Nationwide, there are about 1,000 publicly-owned gas utilities in this country serving almost 5 million natural gas customers.

Mr. Wellinghoff's span of three decades of broad experience in energy industry advocacy that includes state and regional energy legislation, consumer fraud, power contracting, renewable energy resource development and public utility law practice provides him with a strong background in energy policy issues suitable to the nominated position. In addition, his experience heading the Nevada Attorney General's Consumer Advocate Division has given him an excellent perspective on the gas and electric operations of a utility. APGA believes that this work experience will be of great value to Mr. Wellinghoff in his deliberations as a FERC Commissioner. We also believe that Mr. Wellinghoff will be a strong champion for consumer interests during his service on the Commission and will maintain the balance of regulatory oversight for all.

Prompt attention to the filling of the vacancy created by former Commissioner Massey will put the FERC back in balance with its defined organizational structure. We strongly urge the Committee's thorough and quick action towards the confirmation of Mr. Wellinghoff.

Sincerely,

BERT KALISCH,
President & CEO.

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