

**SUEDEEN G. KELLY NOMINATION**

---

---

**HEARING**  
BEFORE THE  
**COMMITTEE ON**  
**ENERGY AND NATURAL RESOURCES**  
**UNITED STATES SENATE**  
**ONE HUNDRED EIGHTH CONGRESS**  
**SECOND SESSION**

ON

THE NOMINATION OF SUEDEEN G. KELLY TO BE A MEMBER OF THE FEDERAL  
ENERGY REGULATORY COMMISSION

---

JUNE 8, 2004



Printed for the use of the  
Committee on Energy and Natural Resources

---

U.S. GOVERNMENT PRINTING OFFICE

96-177 PDF

WASHINGTON : 2004

---

For sale by the Superintendent of Documents, U.S. Government Printing Office  
Internet: bookstore.gpo.gov Phone: toll free (866) 512-1800; DC area (202) 512-1800  
Fax: (202) 512-2250 Mail: Stop SSOP, Washington, DC 20402-0001

COMMITTEE ON ENERGY AND NATURAL RESOURCES

PETE V. DOMENICI, *New Mexico, Chairman*

DON NICKLES, Oklahoma	JEFF BINGAMAN, New Mexico
LARRY E. CRAIG, Idaho	DANIEL K. AKAKA, Hawaii
BEN NIGHTHORSE CAMPBELL, Colorado	BYRON L. DORGAN, North Dakota
CRAIG THOMAS, Wyoming	BOB GRAHAM, Florida
LAMAR ALEXANDER, Tennessee	RON WYDEN, Oregon
LISA MURKOWSKI, Alaska	TIM JOHNSON, South Dakota
JAMES M. TALENT, Missouri	MARY L. LANDRIEU, Louisiana
CONRAD BURNS, Montana	EVAN BAYH, Indiana
GORDON SMITH, Oregon	DIANNE FEINSTEIN, California
JIM BUNNING, Kentucky	CHARLES E. SCHUMER, New York
JON KYL, Arizona	MARIA CANTWELL, Washington

ALEX FLINT, *Staff Director*

JUDITH K. PENSABENE, *Chief Counsel*

ROBERT M. SIMON, *Democratic Staff Director*

SAM E. FOWLER, *Democratic Chief Counsel*

# CONTENTS

## STATEMENTS

	Page
Bingaman, Hon. Jeff, U.S. Senator from New Mexico .....	3
Domenici, Hon. Pete V., U.S. Senator from New Mexico .....	1
Kelly, Suedeem G., Nominated to be a Member of the Federal Energy Regulatory Commission .....	4

## APPENDIX

Responses to additional questions .....	9
---	---



## SUEDEEN G. KELLY NOMINATION

---

TUESDAY, JUNE 8, 2004

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

The committee met, pursuant to notice, at 10:04 a.m. in room SD-366, Dirksen Senate Office Building, Hon. Pete V. Domenici, chairman, presiding.

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

The CHAIRMAN. The committee will come to order. I wonder if you would go ahead and take a seat, please, Suedeem.

Good morning, everyone. Ms. Kelly, I welcome you back to our committee so that we may consider your nomination for an additional term as commissioner of the Federal Energy Regulatory Commission. While your first term, which concludes on June 30, has been brief since you were filling an unexpired term of a former commissioner, I note that you are generally regarded as conscientious and diligent in the performance of your duties.

The rules of the committee which apply to all nominees require that you be sworn in connection with your testimony. Please rise and raise your right hand. Do you solemnly swear that the testimony that you are about to give to the Senate Committee on Energy and Natural Resources shall be the truth, the whole truth, and nothing but the truth?

Ms. KELLY. I do.

The CHAIRMAN. Please be seated. Before you begin your statement, I'll ask you three questions that are always asked of our nominees. Would you be available to appear before the committees of the Congress and other Congressional committees to represent departmental positions and respond to issues of concern to the Congress?

Ms. KELLY. I will, Mr. Chairman.

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

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

The CHAIRMAN. Are you involved or do you have any assets held in blind trust?

Ms. KELLY. No.

The CHAIRMAN. We'll move now to opening statements from other members who may wish to make them. I assume that you would like to make a statement, Senator Bingaman.

[The prepares statement of Senator Dorgan follows:]

PREPARED STATEMENT OF HON. BYRON L. DORGAN, U.S. SENATOR  
FROM NORTH DAKOTA

I want to thank the Committee for holding this hearing and reconfirming Ms. Kelly in such an expeditious manner. Ms. Kelly has served the Commission well and will continue to play a vital and pivotal role as the Federal Energy Regulatory Commission (FERC) moves forward in the coming years to secure our energy needs and ensure consumer protections and reliability.

While commending Commissioner Kelly on the job she has done since last November, I also want to bring her attention to a developing situation at FERC. This issue involves some FERC jurisdictional utilities and the contracts they entered into with non jurisdictional utilities. As the Commissioner may know, the Midwest Independent System Operator (MISO) recently proposed an Open Access Transmission and Energy Market Tariff (EMT). While understanding the need to provide a more efficient and reliable transmission infrastructure, I am concerned about the way this EMT will be implemented. As you will recall, the issue of Standard Market Designs (SMD's) was debated during consideration of the comprehensive energy bill, and it was ultimately decided that FERC would not implement any SMD's for 5 years. While this energy measure remains stalled in the Congress, it does shed light on Congress's view of SMD's.

Before MISO was formed, over 300 contracts were entered into between jurisdictional and nonjurisdictional utilities. Since that time, many of these jurisdictional utilities have joined MISO and deposited their transmission assets for MISO to operate. There is a concern that MISO is trying to abrogate these contracts and force utilities within the MISO region to join MISO either directly or by default. It troubles me when the government intervenes into a contractual situation that has been negotiated between two private parties. These contacts were negotiated to facilitate jointly delivering electricity to the utilities in an efficient and reliable manner with cost savings to each.

Additionally, the implementation of this EMT could have significant price increases to consumers, especially those citizens living in rural areas of my state. If these contracts have to be renegotiated, some of the additional costs that were not included in the original contracts, including congestion costs, marginal losses and administrative costs will need to be put into the new contracts. Ultimately, I am concerned consumers will get stuck with the bill.

During the West Coast energy crisis a few years ago, FERC refused to abrogate "over-priced" California wholesale contracts entered into under duress, citing the sanctity of contracts and the importance of settled expectations. However, FERC, apparently in the MISO case, is willing to abrogate over 300-grandfathered agreements in the MISO region. These grandfathered agreements have served both jurisdictional and non jurisdictional utilities very well. These longterm contacts were negotiated to facilitate jointly delivering electricity to the utilities in an efficient and reliable manner with cost savings to each.

FERC seems to be pushing a Standard Market Design (SMD) through MISO over the objections of a large percentage of stakeholders in the region and MISO appears to see the grandfathered agreements as an obstacle to moving forward.

While I don't want you to comment on ongoing proceedings, there is an important broad policy here on which I think you can and should comment.

QUESTIONS

1. Do you believe that grandfathered agreements, on which transmission customers rely for access for reliable, reasonably priced, power should be given at least as much protection as the Commission gave to the high-priced wholesale power contracts in California?

2. Do you believe that long-term transmission agreements between jurisdictional and nonjurisdictional utilities should be changed because an RTO wants to initiate an energy market concept?

3. FERC has been pressing forward with implementation of its Standard Market Design (SMD) aggressively, especially through MISO. However, there remain significant concerns about costs associated with this effort. Will you undertake a serious effort to evaluate the costs and benefits of the SMD model prior to its implementation?

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

Senator BINGAMAN. Thank you very much, Mr. Chairman, for holding this hearing.

I am very pleased to make a short statement in support of Suedeen Kelly's nomination to a full 5-year term. As you recall, she was confirmed by the Senate last November and has only been in the position she now holds for a little over 6 months. I think it is very important that she be approved for a full 5-year term so that she can continue in that position. Her current term expires at the end of this month.

She had a very impressive record of public service while in New Mexico, first as an attorney with the public utility section of the attorney general's office, then as a member, a commissioner, and then chairwoman of the New Mexico Public Service Commission. Of course, she taught at our law school. I thought last year the President made a very good choice in nominating her for this position and I am very pleased with the job she is doing. I think everyone who works with her is very impressed with the talent, experience, and dedication that she has brought to the position.

So I commend you again for holding this hearing and I hope we can move very expeditiously to report her nomination to the full Senate and get her confirmed for a full term. Thank you.

The CHAIRMAN. Thank you.

Senator Bingaman, you mentioned that the President nominated her. I want to also acknowledge that you recommended her, and I appreciate that. I was pleased to encourage the administration to proceed and so she is here.

I have about seven questions. Most of them have to do with reliability and a few related things. But I think I will submit them to you so that you can answer them. I would hope you would expedite those because, as I understand it, we ought to be approving you rather quickly. We cannot do that today. In a couple of weeks you should have these answered and we will have all of them here, and then we will confirm this, you will go on the calendar, and we hope there will not be any delays there because you are a sitting commissioner.

I think that Senator Nickles also may have a question. I should have it, I apologize. He told us what it was, but we do not have it.

So with that, unless you have something else, Senator Bingaman.

Senator BINGAMAN. I think just any statement she would have.

The CHAIRMAN. That is correct. It is your turn to tell us what you are going to do. I was going to not even let you speak. Go ahead, ma'am.

Ms. KELLY. Thank you, Mr. Chairman. I am prepared to say a few things.

The CHAIRMAN. I was kind of in a hurry to get you out of here. But go ahead.

**TESTIMONY OF SUEDEEN G. KELLY, NOMINATED TO BE A MEMBER OF THE FEDERAL ENERGY REGULATORY COMMISSION**

Ms. KELLY. I will speak quickly.

Mr. Chairman, Senator BINGAMAN. I am honored to appear before you today and I would like to express my appreciation to President Bush for the confidence he has placed in me. I know that the committee has a full agenda of issues, so I am especially grateful to you, Mr. Chairman, and to your staff for scheduling the hearing expeditiously.

I would like to thank Senator Bingaman for the support and the friendship he has provided me for over 20 years, and I would note that I learned a significant amount of energy law working for him when he was attorney general for the State of New Mexico.

I have served as a Commissioner for 6 months now and I found the Commission staff to be very impressive. I have brought five of my personal staff members with me. They are experts in their field, very hard-working and dedicated to serving the public interest.

I have appreciated also Chairman Wood's handling of matters that come before the commission. He seeks open discussion and consultation with me as well as the other commissioners.

The pace at FERC is challenging and there have been some significant developments in energy policy since I began serving on the Commission. In the area of reliability, many initiatives have begun. In April, shortly after the U.S.-Canada Power System Outage Task Force issued its final report on the August 14, 2003, blackout, FERC took several actions designed to increase the reliability of the country's interstate transmission grid.

The Commission addressed the need to expeditiously modify the North American Electric Reliability Council's, NERC's, reliability standards in order to make them clear and enforceable. Priority matters that need to be handled by the NERC standards include vegetation management on transmission rights of way, transmission operator training, and adequacy of operator tools. NERC is working on coming up with mandatory reliability standards by January 2005 and the Commission is very supportive of this effort.

FERC and NERC also agreed that by June 20 of this year NERC would undertake audits of the reliability readiness of 20 control areas in the United States. These chosen control areas serve 80 percent of the U.S. electricity load.

FERC has also announced that it expects public utilities to comply with reliability standards, stating that the commission interprets the phrase "good utility practice" that is present in most tariffs for transmission service to include compliance with reliability standards.

FERC has also ordered all transmission owners to report on the status of their vegetation management practices by June 17 and based on this information FERC will report to Congress on this matter.

In the natural gas arena, FERC remains concerned that natural gas supplies are going to be tight this year in relation to demand. Since the fall of 2003, FERC has authorized 12 natural gas pipeline projects to increase deliverability of gas in the United States, 4 gas storage projects and 2 liquified natural gas projects. I would like to note that four of the projects will allow access to additional natural gas supplies in the Rockies and there are pending 11 project applications that would do the same thing.

Finally, in the area of hydroelectricity, FERC, before I joined the Commission, adopted the Integrated Licensing Process, which is a new process option for the licensing and relicensing of hydrologic facilities. Its goal is to expedite the licensing process through better coordination with the processes of the other Federal and State agencies with responsibilities in licensing as well as through increased public participation during the pre-filing phase.

ILP provides for the development by the applicant of a Commission-approved plan of studies and encouragement of informal resolution of disagreements at the beginning of the process. Since November, I am pleased to report that seven licensees have chosen this option for the processing of their applications, and I am hopeful that the process will indeed provide applicants and the public with a more efficient and satisfactory way to handle their license and relicense requests.

In closing, Mr. Chairman, I thank you for the opportunity to appear before you today and if confirmed I will endeavor to serve the public with diligence, concern, and responsiveness to the many energy challenges the country will be facing in the next 5 years.

Thank you.

[The prepared statement of Ms. Kelly follows:]

PREPARED STATEMENT OF SUEDEEN G. KELLY, 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 appear before you today as a nominee for Commissioner of the Federal Energy Regulatory Commission (FERC). I would like to express my appreciation to President Bush for the confidence he has placed in me. I know that this Committee has a full agenda of issues, so I am especially grateful to Chairman Domenici and his excellent staff for scheduling this hearing expeditiously. I would like to thank Senator Bingaman for the support and friendship he has provided me for over twenty years. I learned a significant amount of energy law working for him when he was Attorney General for the State of New Mexico. He hired me to work in the office he set up to protect the interests of New Mexico's residential and small business consumers in public utility matters.

I have served as a Commissioner for six months now. I have found the Commission's staff to be very impressive. They are experts in their field, very hardworking and dedicated to serving the public interest. I have appreciated Chairman Wood's handling of matters that come before the Commission. He seeks open discussion and consultation with me as well as the other Commissioners. The pace at FERC is challenging, and there have been some significant developments in energy policy since I began serving on the Commission.

In April, shortly after the U.S.-Canada Power System Outage Task Force issued its final report on the August 14, 2003, blackout, FERC took several actions designed to increase the reliability of the country's interstate transmission grid. The Commission addressed the need to expeditiously modify the North American Electric Reliability Council's (NERC) reliability standards in order to make them clear and enforceable. Priority matters that need to be handled by the NERC standards include vegetation management on transmission rights-of-way, transmission operator training, and adequacy of operator tools. NERC is working on coming up with mandatory reliability standards by January 2005. The Commission is very supportive of this effort. FERC and NERC agreed that by June 20, 2004, NERC would

undertake audits of the reliability readiness of twenty control areas in the United States. These chosen control areas serve 80% of the U.S. electricity load. FERC has also announced that it expects public utilities to comply with reliability standards, stating that it interprets the phrase "good utility practice" that is present in most tariffs for transmission service to include compliance with reliability standards. Thus, violation of good reliability practices will amount to violation of the utility's FERC tariff, and the Commission will consider taking utility-specific action on a case-by-case basis to address significant reliability matters. FERC has also ordered all transmission owners to report on the status of their vegetation management practices by June 17th. Based on this information, FERC will report to Congress on this matter.

In the natural gas arena, FERC remains concerned that natural gas supplies are going to be tight in relation to demand. Since the Fall of 2003, FERC has authorized twelve natural gas pipeline projects, four gas storage projects and two liquefied natural gas projects. Four of the projects will allow access to additional natural gas supplies in the Rockies.

Last year, before I joined the Commission, FERC adopted the Integrated Licensing Process (ILP), a new process option for the licensing and re-licensing of hydroelectric facilities. Its goal is to expedite the licensing process through better coordination with the processes of the other federal and state agencies with responsibilities in licensing, as well as through increased public participation during the pre-filing phase. ILP provides for the development by the applicant of a Commission-approved plan for studies of project impacts on environmental resources and encouragement of informal resolution of study disagreements, backed up by a formal dispute resolution process. Since November, I am pleased to report that seven licensees have chosen this option for the processing of their license applications. I am hopeful that the ILP process will indeed provide applicants and the public with a more efficient and satisfactory way to handle their license and re-license requests.

In closing, I thank you for the opportunity to appear before you today. If confirmed, I will endeavor to serve the public with diligence, concern and responsiveness to the many energy challenges the country will be facing in the next five years. I look forward to any questions you may have.

The CHAIRMAN. Thank you.

On the pipeline issue and the liquefaction, could you tell us about the liquefaction? You said there were two. What does that mean and where are they?

Ms. KELLY. There were two LNG projects that were approved last fall. They were actually approved right before I arrived at the Commission. One is the expansion of the Trunkline LNG Import Terminal at Lake Charles, Louisiana, and the other is a new LNG import facility at Cameron, Louisiana, that provides capacity for 19.6 Bcf of LNG storage and sendout capacity of 2.7 Bcf of regassified LNG.

There were also two pipeline approvals that FERC issued in the last several months for pipelines from the Bahamas to Florida associated with LNG facilities in the Bahamas. The United States—FERC does not have jurisdiction over the facility itself, but we approved the pipelines.

The CHAIRMAN. In the Bahamas?

Ms. KELLY. In the Bahamas.

The CHAIRMAN. That would be—the United States has no regulatory agency that has anything to do with the Bahama site?

Ms. KELLY. Mr. Chairman, I am not certain if it would be the Coast Guard that would be involved in that or not. But the Bahama government, the Bahamian government, is involved in the approval process.

The CHAIRMAN. I got you.

With reference to the regular pipeline—let me stay on liquefaction for a minute. Does the local community have any input before you approve such things? I know this one, these two LNG's,

were approved before you, but could you tell us—I think you would know. I understand it is not so easy now in various parts of the Nation to get a liquefaction, an LNG plant built; is that correct?

Ms. KELLY. Mr. Chairman, there have not been any built in a while. We do have approximately seven other proposed terminals pending before us, and the process is very inclusive of public participation. FERC is responsible for the NEPA assessment and for ensuring that the facility as it is planned will be safe.

We have a memorandum of understanding with the Department of Transportation as well as the Coast Guard, and we work cooperatively with them to ensure that all aspects of the import of LNG and the regassification are safe and that the environmental impacts are fully analyzed before any approval is given.

The CHAIRMAN. Those two that are in Louisiana, would their product just go in the gas lines that are there?

Ms. KELLY. That is correct.

The CHAIRMAN. So wherever we put them, an LNG plant, once they produce the gas it is the same as any other and if the pipelines accommodate that is where they will go?

Ms. KELLY. That is exactly right. Actually, we do have an initiative at FERC right now to ensure that the LNG that is imported is interchangeable with U.S. domestic gas that is in the pipeline. The Natural Gas Council has convened an industry-wide collaborative initiative to come up with a process for ensuring that everything is interchangeable.

The CHAIRMAN. Thank you very much.

I forgot to have you introduce your daughter, who is here.

Ms. KELLY. Thank you, Senator.

The CHAIRMAN. Would you do that, please.

Ms. KELLY. Yes. With me is my daughter, Vickie Kelly. Vickie, last Friday, finished her first year of medical school at the University of New Mexico. So I am very happy that she could come to be with me today.

My other daughter, Katherine, is not with me. As we speak, she is sitting in a classroom at summer school at the University of Pennsylvania. She tells me that she is taking her laptop to class, that she has gone to the web site, she is following the webcast, and that her professor has no idea that she is watching television instead of taking notes.

[Laughter.]

I also have some friends of the family with me: Ian Medlock, who is from Thousand Oaks, California, and a graduate student at the University of New Mexico; and Tim Reynolds from Newport Beach, California, who is a senior at the University of Pennsylvania.

Mr. Chairman, if I might introduce my staff.

The CHAIRMAN. Let us go.

Ms. KELLY. Thank you. Carrie Blocker, my secretary; Donna Glasgow, my confidential assistant; Rahim Amerkhail, my economic advisor; Maria Vouras, my legal advisor; and Laura Vallance, my legal advisor.

Mr. Chairman, I also have a number of friends and colleagues in the audience and I would just like to acknowledge them and thank them for being here.

The CHAIRMAN. Very good.

Senator Bingaman.

Senator BINGAMAN. Mr. Chairman, I have no questions.

Ms. KELLY. Thank you, Senator.

The CHAIRMAN. All right. We stand in recess.

[Whereupon, at 10:19 a.m., the hearing was adjourned.]

## APPENDIX

### RESPONSES TO ADDITIONAL QUESTIONS

---

FEDERAL ENERGY REGULATORY COMMISSION,  
OFFICE OF THE COMMISSIONER,  
Washington, DC, June 14, 2004.

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

DEAR MR. CHAIRMAN: Enclosed are my responses to questions for the record of your committee's June 8 hearing to consider my reappointment to the Federal Energy Regulatory Commission for the term expiring June 30, 2009.

If you have further questions or need additional information, please let me know.  
Sincerely,

SUEDEEN G. KELLY.

[Enclosure.]

#### QUESTIONS FROM SENATOR DOMENICI

*Question 1.* As you noted in your testimony, since December of last year, FERC has taken a number of steps to address electric reliability matters. Are you supportive of NERC as the lead organization on reliability matters until mandatory reliability rules are in place?

Answer. NERC is currently undertaking several initiatives on reliability matters, and I am supportive of them and of NERC being the lead organization regarding them. For example, in response to the Final Report of the U.S.-Canada Power System Outage Task Force on the August 14, 2003 Blackout, NERC is working to replace its existing reliability standards with standards that are clearer and will be enforceable. NERC expects to adopt an integrated set of new reliability standards by February 2005. In addition, NERC is reviewing the reliability readiness of reliability coordinators and the major control areas. NERC plans to complete the 20 highest priority reviews by June 30 of this year. The operators that will be audited by NERC serve over 80 percent of North America's electric load.

*Question 2.* There is some debate about how an Electric Reliability Organization should be funded to ensure independence. Can you describe for us the funding models under consideration and tell us how you would ensure that non jurisdictional utilities as well as Canadian and Mexican transmission owners participate in the funding?

Answer. FERC has assembled a staff task force and directed it to explore all possible options for funding an Electric Reliability Organization to ensure its independence in relationship to the entities whose actions it will oversee. FERC asked the task force to conduct its study and report its findings to the Commission as expeditiously as possible. The task force is currently working on this project.

I will work to ensure that all transmission owners pay their fair share of the costs necessarily incurred by an effective Electric Reliability Organization. I am hopeful that all non jurisdictional, Canadian and Mexican transmission owners will be willing to enter voluntarily into binding agreements to participate fairly in the funding. I am willing to work with the Electric Reliability Organization to achieve this goal.

*Question 3.* FERC has been supportive of utility cost recovery for reliability-related expenditures. A significant percentage of utilities' transmission revenues are recovered through state-approved charges. How does FERC plan to work with the states to ensure that reliability costs are fully recovered?

Answer. Since I have been at the Commission, FERC has embarked on a series of reliability initiatives. One of them is a new, comprehensive liaison effort with government, as well as industry, leaders to foster better electric reliability across North America. We have begun reliability-related outreach efforts with the National Asso-

ciation of Regulatory Utility Commissioners, which is the organization of state utility regulators, as well as with Natural Resources Canada, the Canadian provincial regulators, the Department of Energy, the Nuclear Regulatory Commission, NERC and representatives from the electric industry. This is the effort we will use to work with the states to help ensure that utilities' prudently incurred reliability costs are fully recovered.

*Question 4.* Do you believe that the business model of a vertically integrated utility can coexist with competitive wholesale markets and RTOs?

Answer. Yes, I do. Although a vertically integrated utility structure can present a situation where a utility affiliate operating in the competitive market could benefit unfairly from preferential treatment by the utility, I believe that the Commission's rule prescribing standards of conduct governing the relationship between transmission utilities and their energy affiliates goes a long way toward eliminating this potential for abuse. The Commission's standards of conduct rule was adopted in November 2003 and clarified and reaffirmed in April 2004.

*Question 5.* How would you envision the balance of roles for the states, FERC, and the RTOs in overseeing the planning and acquisition of generation resources to serve native load?

Answer. States have primary responsibility for ensuring that their utilities acquire generation resources sufficient to serve native load. RTOs have a role in planning for the adequacy of transmission in a region. Because transmission is the means of getting generation resources to load and because transmission and generation are sometimes alternatives for providing electricity to load, transmission planning is inevitably tied to generation planning and location. Therefore, RTOs will have a coordination role in regional planning for generation adequacy; and states, in turn, would likely benefit from receiving regional resource adequacy information from RTOs when the states are looking at generation adequacy. I do not believe RTOs should be in the business of acquiring generation resources, although I would hold out the possibility that an exception might be made to this rule in the, hopefully unlikely, situation of a generation emergency that for some reason cannot be adequately addressed by the affected state. Finally, in carrying out its statutory responsibilities under the Federal Power Act to approve acquisitions and mergers if they are in the public interest, and to ensure that rates are just and reasonable in reviewing contracts for wholesale sales of power, FERC may be required to look at the acquisition of generation resources.

#### QUESTION FROM SENATOR NICKLES

*Question 1.* As you are aware, the recent OG&E case regarding market power and the acquisition of generation facilities has caused some controversy at the Commission. Parties to the case have filed settlement plans with the Administrative Law Judge and FERC has stepped in to expedite the appeal of the case. Can you tell me what the expected timeline is for resolution of that matter?

Answer. Chairman Wood, in his role as motions Commissioner, referred both OG&E's settlement offer and Intergen's competing settlement offer to the full Commission for consideration on May 10 and May 18, respectively. The Commissioners are currently giving this matter their full consideration, and I am hopeful that we will issue a decision quickly. I understand the importance of this case to the people of Oklahoma and your desire to have it settled as expeditiously as possible.

#### QUESTIONS FROM SENATOR DORGAN

*Question 1.* Do you believe that grandfathered agreements, on which transmission customers rely for access for reliable, reasonably priced, power should be given at least as much protection as the Commission gave to the high-priced wholesale power contracts in California?

Answer. I believe that grandfathered agreements, like the high-priced wholesale power contracts you reference, should be protected as written unless there is record evidence that the contracts are unjust and unreasonable, unduly discriminatory or preferential or contrary to the public interest pursuant to the Federal Power Act.

*Question 2.* Do you believe that long-term transmission agreements between jurisdictional and non-jurisdictional utilities should be changed because an RTO wants to initiate an energy market concept?

Answer. I do not believe that the Commission should change the terms of long-term transmission agreements unless there is substantial evidence in the record that the contracts are unjust and unreasonable, unduly discriminatory or preferential or contrary to the public interest pursuant to the Federal Power Act.

*Question 3.* FERC has been pressing forward with implementation of its Standard Market Design (SMD) aggressively, especially through MISO. However, there re-

main significant concerns about costs associated with this effort. Will you undertake a serious effort to evaluate the costs and benefits of the SMD model prior to its implementation?

Answer. Yes. In fact, the Commission recently requested specific evidence from MISO and its Market Monitor regarding the benefits, including any reliability benefits, of the MISO's proposed congestion management system. In determining whether to approve this proposal, I will give careful consideration to the costs and benefits of implementing it, as well as to all other facts in the record developed at the Commission.

#### QUESTIONS FROM SENATOR CANTWELL

*Question 1.* As you know, the Western electricity crisis of 2000-2001 has left my region with deep economic scars. We are still paying the price for the schemes of Enron and other unscrupulous actors in the market, which conspired to drive up prices and gouge our consumers. People in the State of Washington are shocked and disgusted by the evidence that continues to surface, demonstrating the brazen and despicable attitude of the Enron traders, who knew they were essentially "stealing from Grandma Millie" while the crisis was unfolding. As you probably know, I have proposed legislation (S. 2015, the Enron Act) that would—based on securities law that has been on the books for 50 years—put in place a broad statutory ban on manipulative practices in our nation's electricity markets. Further, it would declare rates resulting from market manipulation "unjust and unreasonable" under the Federal Power Act. This language has previously passed the Senate with 57 votes. Personally, I believe that FERC already has authority to take a strong stand against market manipulation. But by making this ban explicit, this legislation would leave no doubt in the mind of FERC or the energy industry that Congress will not abide the types of Enron schemes we saw in California, and would eliminate the inevitable legal challenges. Do you support legislation, such as the ENRON Act, that would make explicit a ban on manipulation in our nation's electricity markets?

Answer. Yes. I agree with the goals of S. 2015, the Electricity Needs Rules and Oversight Now (ENRON) Act. This legislation would significantly enhance the Commission's authority to prohibit market manipulation, and I support it.

*Question 2.* I think there is one other piece of electricity-related legislation that Congress must pass this year before we adjourn: electric reliability legislation. The Northeast-Midwest blackout last summer caused an estimated 50 million consumers and businesses in the Northeast and Midwest to lose power—in some cases, for up to four days—and cost Americans an estimated \$4 billion to \$10 billion as a result of lost economic activity. Therefore, I think adjourning this year without passing legislation to make reliability standards mandatory and enforceable would be nothing short of irresponsible. Here in the Senate, we have a tripartisan reliability bill—S. 2236—with 30 Senators as cosponsors. I think it is very unfortunate that it is being held hostage to broader politics surrounding the energy bill conference report. In the very least, passing stand-alone reliability legislation now would serve as an insurance policy—in the very likely event no consensus is reached on comprehensive energy legislation. Do you agree that Congress should pass stand-alone reliability legislation as soon as possible?

Answer. It is my hope that Congress acts swiftly to pass legislation to make reliability standards mandatory and enforceable in whatever fashion Congress finds appropriate.