

NORRIS, GARCIA, AND PIZARCHIK NOMINATIONS

HEARING BEFORE THE COMMITTEE ON ENERGY AND NATURAL RESOURCES UNITED STATES SENATE ONE HUNDRED ELEVENTH CONGRESS

FIRST SESSION

TO

CONSIDER THE NOMINATIONS OF JOHN R. NORRIS, TO BE A MEMBER OF THE FEDERAL ENERGY REGULATORY COMMISSION, JOSE ANTONIO GARCIA, TO BE DIRECTOR OF THE OFFICE OF MINORITY ECONOMIC IMPACT, DEPARTMENT OF ENERGY, AND JOSEPH G. PIZARCHIK, TO BE DIRECTOR OF THE OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT, DEPARTMENT OF THE INTERIOR

AUGUST 6, 2009



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NORRIS, GARCIA, AND PIZARCHIK NOMINATIONS

THURSDAY, AUGUST 6, 2009

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

The committee met, pursuant to notice, at 10:05 a.m. in room SD-366, Dirksen Senate Office Building, Hon. Jeff Bingaman, chairman, presiding.

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

The CHAIRMAN. Why do we not get started here with the hearing?

The committee meets this morning to consider three nominations: John R. Norris, to be a member of the Federal Energy Regulatory Commission; Jose Antonio Garcia, to be the Director of the Office of Minority Economic Impact at the Department of Energy; and Joseph G. Pizarchik to be the Director of the Office of Surface Mining Reclamation and Enforcement at the Department of the Interior.

Mr. Norris is currently the Chief of Staff for Secretary of Agriculture Tom Vilsack. He has previously served as Chairman of the Iowa Utilities Board. He has extensive experience with electric utility regulation. He has been nominated to the seat that was left vacant by the resignation of Joseph Kelliher for the 3 years remaining on that term.

Like Mr. Norris, Mr. Garcia is also a former State public utility commissioner. He served as Chairman of the Florida Public Service Commission. Mr. Garcia was nominated to head the Office of Minority Economic Impact, which has the duty to see that minorities have the opportunity to participate fully in the Department's programs. He will bring to the job his experience both as the Executive Director of the Cuban American National Foundation and as President of his own small business, Archon Consulting.

Mr. Pizarchik has served as the Director of the Pennsylvania Bureau of Mining and Reclamation since 2002 and was legal counsel to Pennsylvania's Mining Program for 11 years before that. He will bring to the Office of Surface Mining over 17 years of experience with regulating coal mining and abandoned mine land cleanup in Pennsylvania.

President Obama has nominated three experienced and highly qualified individuals to these important offices, and I am pleased to welcome all three to the committee this morning.

Senator Murkowski was not able to be here, but she asked if we would include in the record a statement of hers, which we obviously will include at this point.

[The prepared statement of Senator Murkowski follows:]

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

I would like to thank Chairman Bingaman for holding this hearing today, and our nominees for their willingness to serve.

While all of these positions are important, I look forward to an interesting discussion with Mr. Norris, our FERC nominee.

FERC would have the responsibility for implementing some of the most controversial pieces of the energy bill reported by this Committee earlier this year, and Mr. Norris' views on these issues will be of great interest.

I also anticipate an interesting discussion with Mr. Garcia.

According to the to the University of Alaska's Institute for Social and Economic Research, rural Alaska Natives were paying 47% of their median family income for home energy use last fall, more than 13 times the national average of just over 3%. And energy prices that find fuel still selling for an average of nearly \$6 a gallon in rural Alaska, has driven up the price of food where a loaf of bread is still selling for \$6 in Barrow, a gallon of milk \$10 and a dozen eggs are costing \$4.60.

I look forward to working with Mr. Garcia regarding the role that DOE can play with regard to improving the affordability and reliability of energy for native Alaskans as this nomination process continues.

The CHAIRMAN. Let me go ahead and recognize my colleagues who are here to introduce these nominees. Senator Grassley and Senator Harkin are both here to introduce Mr. Norris, and Senator Martinez is here to introduce Mr. Garcia. So let me just start on the left and we will go right across the line. Senator Grassley, go right ahead.

**STATEMENT OF HON. CHUCK GRASSLEY, U.S. SENATOR
FROM IOWA**

Senator GRASSLEY. Thank you, Mr. Chairman. I appreciate very much this opportunity to introduce an outstanding Iowan to the committee to serve the people of this country. I am here to introduce John Norris, and of course, I am here with my colleague, Tom Harkin. I am pleased to support his nomination for the commissioner to the Federal Energy Regulatory Commission.

As members of this committee know well, the commission is an independent agency with critical responsibilities regulating energy markets. The commission has the important mission of promoting our Nation's energy infrastructure, maintaining competitive markets, and preventing manipulation in energy markets. It is important that these commissioners on FERC have a thorough understanding of Federal policies relating to interstate transmission of electricity, natural gas, and oil. Our country runs on energy and having a robust, reliable energy delivery system is essential.

So that brings me to the nominee, John Norris. He does, in fact, have the necessary experience and understanding of our energy markets to serve well, should he be confirmed.

Just his background. He has a B.A. from Simpson College, Indianola, Iowa from 1981. He graduated with distinction from the University of Iowa Law School in 1995. In March 2005, John was appointed by then Iowa Governor Tom Vilsack to the 3-member Iowa Utility Board and was Chairman of that board from 2005 until 2009. He was Co-Chair of the 2009 National Electricity Delivery Forum. He also served as a member of the National Association

of Utility Commissioners, serving on the Electricity Committee and as a member of the Demand Response Collaborative. John was also the President of the Organization of Midwest Independent System Operator States and chaired this organization—the Demand Response Working Group part of it. Prior to his service on the Iowa Utility Board, John was Chief of Staff to Governor Vilsack, as well as Chief of Staff to Iowa Congressman Leonard Boswell. He is currently Chief of Staff to Secretary of Agriculture, Governor Tom Vilsack.

I believe John is very well qualified to serve as a member of the Federal Energy Regulatory Commission. So I am here because I strongly support his nomination.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much for your statement, Senator Grassley. I appreciate it.

Senator Harkin, go right ahead.

STATEMENT OF HON. TOM HARKIN, U.S. SENATOR FROM IOWA

Senator HARKIN. Mr. Chairman, it is an honor to join with my colleague, Senator Grassley, in introducing John Norris, President Obama's nominee to serve as a commissioner on the Federal Energy Regulatory Commission.

There is no question that Mr. Norris is superbly qualified for this critical regulatory position. I do not know that I need to go through again all of the different positions that Senator Grassley just went through, just to point out again that he served as the Chief of Staff to Congressman Leonard Boswell, also Chief of Staff to the Governor of Iowa, Governor Vilsack, and then as was mentioned, he chaired the Iowa Electric Restructuring Task Force in Iowa and then went on later to chair the Iowa Utilities Board from 2005 until earlier this year and then came to Washington to be the Chief of Staff for Secretary Vilsack, as you mentioned in your opening also, Mr. Chairman.

So he has a distinguished background. He has worked on a lot of things in Iowa.

I might also say that he has held very many top positions in a lot of Presidential campaigns. I should also mention that in 1992 he was the director in Iowa of my campaign for President, though I urge members of this committee not to hold that minor lapse in judgment against him.

[Laughter.]

Senator HARKIN. As was stated earlier, he has a degree at Simpson College, which is in my home county, Warren County. I knew him then well.

Let me just put it this way. I have known John since he was a high school kid, a farm kid in Montgomery County, Red Oak, Iowa. I have followed his career. He has always been involved in my efforts and political efforts in Iowa, working for good causes. In the 1980s, John was one of those individuals that worked very hard to help family farmers in my State who were facing foreclosures. It was one of the toughest eras in family farm agriculture in our country, second only to the Great Depression. In the 1980s, we had farmers all over Iowa committing suicide, losing farms, families being broken up. John worked very diligently during those years on

behalf of those family farmers to help them stay afloat, to help them stay on the farm and to keep their families together. He was just one of the driving forces behind that whole rural effort of helping people that just had nowhere else to turn. So I have always admired him for what he did during the 1980s for our family farmers.

He is a tough guy. He was a former Golden Gloves boxer, I might put it that way. That is why I never got in an argument with him.

He has a profound understanding of energy issues and their impacts on ordinary Americans. We are looking ahead, Mr. Chairman, to major shifts in our electricity systems in the years ahead. We all know that. It will be valuable to have a commissioner with John's knowledge, his background, his expertise to help ensure that we have a fair and equitable treatment of all parties, including consumers, utilities, generators, and transmission developers.

So I just have the highest praise and affection and respect for John Norris.

Let me just also note that John's wife, Jackie Norris, is here today, a longtime school teacher in Iowa, and now serves as a senior advisor to the Corporation for National Community Service. So they are both hardened public servants and work to make sure that our country and our system works for the benefit of all. I just have the highest regard for both of them.

Mr. Chairman, I just would close on this. John Norris is a public servant of exceptional honesty, intelligence, competence, and experience. I urge this committee to send his nomination to the full Senate posthaste with a positive recommendation.

The CHAIRMAN. Thank you for your statement. I appreciate it very much. Let me just indicate if you gentlemen wish to be excused, I know you have busy schedules.

Senator Nelson has arrived and Senator Martinez is here. Senator Martinez, you were first to arrive. If you would like to go ahead and make your statements——

Senator MARTINEZ. I would like to defer to my senior colleague and let him go first.

The CHAIRMAN. Senator Nelson, we are glad to hear from you as to your views on the nomination of Mr. Garcia.

STATEMENT OF HON. BILL NELSON, U.S. SENATOR FROM FLORIDA

Senator NELSON. Thank you, Mr. Chairman. Mel and I will basically share the same information with you that Joe Garcia has had an exemplary record. He was the Chairman of our Public Service Commission. It is an appointed position, appointed by the Governor. It is one of the most sought-after appointed positions in State government and it has an enormous responsibility and portfolio in overseeing and basically regulating all of the electric utilities and other utilities in the State of Florida. Then his fellow commissioners elected him Chairman of the Public Service Commission.

He is born and raised in Miami Beach. Did you go to Beach High?

Mr. GARCIA. No.

Senator NELSON. There are a lot of famous people that have come out of Beach High.

But he has been very prominent in the Hispanic community, particularly the Cuban American community, and has done a lot of charity work. I could go on and on and give you so many details, but I am going to defer to my colleague and any additional information that you need. Obviously, Senator Martinez and I being here—we want to commend him to you for your favorable consideration.

The CHAIRMAN. Thank you very much.
Senator Martinez.

**STATEMENT OF HON. MEL MARTINEZ, U.S. SENATOR
FROM FLORIDA**

Senator MARTINEZ. Mr. Chairman, thank you. It is great to be with you this morning to introduce Joe Garcia, a fellow Floridian, a fellow Cuban American.

I will focus on two aspects of his career where we have intersected. While Joe was still a law student, he worked in a nonprofit refugee resettlement program that reunited more than 10,000 families that had emigrated out of Cuba and had, in desperate conditions, gone all over Latin America. This program was run at no cost to the American taxpayer. It was really purely done as a private effort by Cuban American families in the south Florida area. This project was an enormous undertaking and a great humanitarian undertaking, and Joe led that effort with great distinction. I was proud to work with him in that.

Then as he served in the Florida Public Service Commission, as Senator Nelson noted, I was at that time also serving in the Orlando Utilities Commission which is a municipal utility in Orlando. So Joe and I had an opportunity to intersect a great deal, work together on pro-consumer issues, as well as good ideas on how to best regulate our State utility scheme in a State that, frankly, was so fast-growing at the time that these issues were not without a great deal of challenge.

I will admit that in recent years he has been involved in some projects where we have not worked nearly as closely, but we have always maintained a very cordial relationship.

I commend Joe for his appointment. I know he will do a great job for the Department and also to look after a lot of the issues that will relate to the economic impact on minority families. So I commend him to your committee and thank him for his willingness to serve.

I wish his beautiful family was here with him. They are out of the country, but that is another great credit to him.

Thank you.

The CHAIRMAN. Thank you very much for your statement. Both of you, obviously, are excused. Thank you for being here and taking time out of your busy schedules.

Let me call the three nominees up to the witness table. Before you sit down, just go ahead and stand there and let me go through a little procedure we always do with nominees.

The rules of our committee that apply to all nominees require that they be sworn in connection with their statements. So if you would each raise your right hand. Do you solemnly swear that the testimony you are about to give to the Senate Committee on En-

ergy and Natural Resources will be the truth, the whole truth, and nothing but the truth?

Mr. NORRIS. I do.

Mr. GARCIA. I do.

Mr. PIZARCHIK. I do.

The CHAIRMAN. Please be seated.

Before you begin your statements, let me ask three questions that we in this committee address to each nominee that comes before the committee. No. 1, will you be available to appear before this committee and other congressional committees to represent departmental positions and respond to issues of concern to the Congress? If each of you could answer that, please.

Mr. Norris.

Mr. NORRIS. I will.

The CHAIRMAN. Mr. Garcia.

Mr. GARCIA. I will.

The CHAIRMAN. Mr. Pizarchik.

Mr. PIZARCHIK. I will.

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

Mr. Norris.

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

The CHAIRMAN. Thank you very much.

Mr. Garcia.

Mr. GARCIA. Senator, all my personal assets have been reviewed by both myself and by appropriate ethics counselors in the Federal Government. I have taken appropriate action to avoid any conflicts of interest.

The CHAIRMAN. Mr. Pizarchik.

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

The CHAIRMAN. All right. The third question that we always ask is, are you involved or do you have any assets held in a blind trust?

Mr. Norris.

Mr. NORRIS. No.

The CHAIRMAN. Mr. Garcia.

Mr. GARCIA. No.

The CHAIRMAN. Mr. Pizarchik.

Mr. PIZARCHIK. No, I do not.

The CHAIRMAN. All right. At this point, we always invite nominees, if they do have family members present, to introduce them, if they would like to. Mr. Norris, did you want to introduce anybody?

Mr. NORRIS. Yes. I have with me today my wife, Jackie Norris, and my three wonderful sons, Sam, Cole, and Hunter Norris.

The CHAIRMAN. We are glad to have them here.

Mr. NORRIS. Our nanny who is the reason we look so composed today, Diana Sturbek, right back here, and my good friend, Jeannie Murray, in the room as well. So thank you.

The CHAIRMAN. We are glad to have them all present. Thank you for having them here.

Mr. Garcia.

Mr. GARCIA. Senator, my family was in Europe, but I had the good fortune of having one of my best friends, almost a brother to me, visiting the city, and so I encumbered him with coming with his family. So I have a surrogate family here which is Roland Sanchez Medina, his daughters, Alesandra and Mariana.

The CHAIRMAN. We are glad that they could come.

Mr. Pizarchik.

Mr. PIZARCHIK. Senator, with me today is my wife, Teresa, and I also have with me my sister Koreen and her husband David and my sister Mary, as well as my brother Tony and friend Marian and her daughter Jane.

The CHAIRMAN. That is a good representation. Thank you very much for introducing them and I thank all of you for coming today.

At this point, why do we not go ahead with your statements, any opening statements you would like to make? We will include your full statement in the record, but if you could just summarize the main points, that would be terrific. Mr. Norris, why do we not start with you?

STATEMENT OF JOHN R. NORRIS, NOMINEE TO BE A MEMBER OF THE FEDERAL ENERGY REGULATORY COMMISSION

Mr. NORRIS. Thank you, Chairman Bingaman. It is an honor to be here today as a nominee for the Federal Energy Regulatory Commission. I would like to express my appreciation to President Obama for nominating me to this position and to thank the committee for considering my nomination.

I also want to acknowledge and express my appreciation for my two home State Senators, Senator Grassley and Senator Harkin, for their support for me and for their great service to Iowa and this Nation.

I also want to thank Secretary of Agriculture Tom Vilsack for his confidence in me that played a considerable role in my being here today. When I was serving as his Chief of Staff in Iowa, he early on appointed me to chair or take over chair of the Iowa Restructuring Task Force, Iowa Electric Restructuring Task Force. I did that for a year and a half, refocused the effort of that Restructuring Task Force to identify what were Iowa's real needs for the future and how we could address those. The result of that was landmark legislation for advanced ratemaking principles that developed a great deal of new renewable energy for Iowa and baseload and intermediate generation. As a result of that, Iowa is now a world leader—national leader—excuse me—in wind generation and has had a reliable supply of electricity at stable prices for the past 10 years.

The past 4 years, prior to my service now as Chief of Staff at USDA, I was Chair of the Iowa Utilities Board. I think that experience on a regulatory commission is a valuable experience that I would bring to the Federal Energy Regulatory Commission.

During my time on the Iowa Utilities Board, I also was active in the National Association of Regulatory Utility Commissioners on the Electricity Committee and the Energy Resources and Environment Committee.

I was also very active with the Organization of MISO States, serving as a board member, Secretary, and then President of that organization. So I dealt extensively with the work of regional transmission organizations and the issues that they face.

I have also been involved with the National Regulatory Research Institute to deal with emerging regulatory issues throughout the Nation.

I would be honored to join in the important work FERC is doing on improving the reliability and security of the electricity grid, incorporating renewable energy into the system, the grid, for the benefit of customers and the environment, and promote the development of smart grid policies that will improve the efficiency of our system and provide consumers with better choices. If confirmed by the Senate, I will make these issues a personal priority and I look forward to working with the members of this committee as it prepares to move legislation addressing them.

I know you are also aware of the serious challenges created by the uncertainty facing the industries regulated by the FERC. Investments in such capital-intensive industries as electric generation and transmission, hydroelectric power, natural gas infrastructure, and more are jeopardized by an uncertain future. There is a need to address such concerns as the reliability of our Nation's energy supply, containment of costs for consumers, upgrading of our electric transmission grid, and development of renewable energy and energy efficiency technologies. If confirmed, I look forward to working with members of this committee and Members of Congress in general to address our Nation's energy needs and resolve some of the uncertainties facing that sector of our economy.

So I believe my experience both as Chairman of the Utilities Board, the Iowa Restructuring Task Force, activities with NARUC and involvement with the Organization of MISO States will all be an asset to my ability to serve this Nation at the Federal Energy Regulatory Commission.

I also recognize the FERC's role as an independent regulatory agency in carrying out its statutory responsibilities Congress has given to it. It is essential that FERC continue to provide its expertise and assistance to the Congress in the development of Federal energy legislation. If confirmed by the Senate, I pledge to work closely with this committee toward that end.

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

[The prepared statement of Mr. Norris follows:]

PREPARED STATEMENT OF JOHN R. NORRIS, NOMINEE TO BE A MEMBER OF THE
FEDERAL ENERGY REGULATORY COMMISSION

Chairman Bingaman, Senator Murkowski, and distinguished members of the committee, I am honored to be here today as a nominee for the Federal Energy Regu-

latory Commission (FERC). I would like to express my appreciation to President Obama for nominating me to this position and to thank the committee for considering my nomination.

I also want to thank Secretary of Agriculture Tom Vilsack for his confidence in me that in large part is responsible for my being here today. While serving as then-Iowa Governor Vilsack's Chief of Staff in 1999, I was asked to take over as Chairman of Iowa's Electric Restructuring Task Force. I spent the next year and a half working with the Task Force to focus first on Iowa's energy needs for the future and then on how we could best meet those needs. The result of that process was the passage of landmark advanced ratemaking principles legislation that led to the construction of significant new electric generation capacity for Iowa, including base-load, intermediate and renewable generation. Iowa is now a national leader in wind generation as a result of the work of the Task Force and has had a reliable supply of electricity and stable electric prices for the past decade.

Beginning in March of 2005 until this past February 2009, I served as Chairman of the Iowa Utilities Board. I believe my service on a state regulatory commission is a valuable experience that I would bring with me to the Federal Energy Regulatory Commission. While serving on the Iowa Utilities Board I was a member of the National Association of Regulatory Utility Commissioners (NARUC) and worked on that organization's Energy Resources and the Environment Committee and Electricity Committee. I also was the Co-Chair of the Department of Energy/NARUC 2009 National Electricity Delivery Forum.

From 2005 through 2009 I was also deeply involved in the issues facing Regional Transmission Organizations. During that time I served as a Board Member and was elected to Secretary and then President of the Organization of Midwest Independent Transmission System Operator (MISO) States, and was Chairman of the MISO Demand Response Working Group. I also had the privilege of serving on the FERC/NARUC Demand Response Collaborative.

I have also benefitted greatly from my years of service as a Board Member of the National Regulatory Research Institute and my participation with the Institute of Public Utilities Regulatory Research and Education at Michigan State University.

I would be honored to join in the important work the FERC is doing on improving the reliability and security of the electric grid, incorporating renewable energy into the grid for the benefit of consumers and the environment, and promoting development of smart grid policies that will improve the efficiency of our system and provide consumers with better choices. If confirmed by the Senate, I will make these issues a personal priority and look forward to working with the members of this Committee as it prepares to move legislation addressing them.

I know you are also aware of the serious challenges created by the uncertainty facing the industries regulated by the FERC. Investments in such capital-intensive industries as electric generation and transmission, hydroelectric power, natural gas infrastructure and more are jeopardized by an uncertain future. There is a need to address such concerns as the reliability of our nation's energy supply, containment of costs to protect consumers, upgrading of our electric transmission grid and development of renewable energy and energy efficient technologies. If confirmed I look forward to working with members of this Committee and the members of Congress in general to address our nation's energy needs and resolve some of the uncertainties facing this sector of our economy.

I believe my experience as Chairman of the Iowa Utilities Board and my work as a member of NARUC and the Organization of MISO States will be assets at the FERC. I also recognize the FERC's role as an independent regulatory agency in carrying out the statutory responsibilities Congress has given to it. It is essential that the FERC continue to provide its expertise and assistance to Congress in the development of Federal energy legislation. If confirmed by the Senate, I pledge to work closely with this Committee to that end. I have enjoyed my years of public service, and should I be confirmed it would be a privilege and an honor to continue that public service at the Federal Energy Regulatory Commission.

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.
Mr. Garcia, go right ahead.

STATEMENT OF JOSE ANTONIO GARCIA, NOMINEE TO BE DIRECTOR OF THE OFFICE OF MINORITY ECONOMIC IMPACT, DEPARTMENT OF ENERGY

Mr. GARCIA. Thank you and good morning, Mr. Chairman. It is a pleasure to be here with you today and as well to thank my two State Senators, Senator Nelson and Senator Martinez, for their presence.

It is a privilege to appear before you as President Obama's Director of the Office of Economic Impact of the Department of Energy. It is an honor to be asked by the President to serve particularly at this transformational time in our Nation's history, a time when we need to call upon all Americans and all communities to help our economy not only recover, but prosper. The American innovative spirit, coupled with the opportunity to succeed through hard work, is the very essence of the American dream that brought my parents to this country from communist Cuba years ago. This same spirit will help small businesses and disadvantaged communities create the jobs of tomorrow.

If confirmed by the Senate, I look forward to working with Secretary Chu to carry out the statutory duties of the Office of Minority Impact and collaborate with his team to advance energy priorities that the President has outlined for our Nation.

President Obama has challenged the Department of Energy with the important task of implementing significant programs under the American Recovery and Reinvestment Act of 2009. I will make it a priority to ensure that small and disadvantaged businesses, including those owned by women, minorities, and veterans, as well as minority educational institutions, are included in these important programs.

My experience as a public servant and consumer advocate in the utility industry have formed my belief that hard work is paramount to personal success, and I will apply the same level of commitment to service and advocacy toward small businesses and disadvantaged communities. I will dedicate myself to be the Department's voice in support of those with innovative ideas and those willing to work to ensure they can all participate in the advanced energy opportunities our Nation offers.

In conclusion, I would like to reiterate my sincere gratitude to President Obama and Secretary Chu for nominating me for this position, and I want to assure the committee that I will work with the Secretary of Energy, with this committee, and with Congress to carry out the duties as Director of the Office of Economic Impact.

Thank you and I am, of course, available for questions.

[The prepared statement of Mr. Garcia follows:]

PREPARED STATEMENT OF JOSE ANTONIO GARCIA, NOMINEE TO BE DIRECTOR OF THE OFFICE OF MINORITY ECONOMIC IMPACT, DEPARTMENT OF ENERGY

Good morning, Mr. Chairman, Ranking Member Murkowski, and members of the Committee.

My name is Joe Garcia. It is a privilege to appear before you today as President Obama's nominee for the position of Director of the Office of Minority Economic Impact at the Department of Energy.

It is an honor to be asked by President Obama to serve, particularly at this transformational time in our country's history—a time when we need to call on all Americans, and all communities, to help our economy not only recover, but prosper. The American innovative spirit, coupled with the opportunity to succeed through hard

work, is the very essence of the American dream that brought my parents to America from communist Cuba years ago. This same spirit will help small businesses and disadvantaged communities create the jobs of tomorrow.

If confirmed by the Senate, I look forward to working with Secretary Chu to carry out the statutory duties of the Office of Minority Economic Impact and to collaborate with his team to advance the energy priorities that the President has outlined for our nation.

The Office of Minority Economic Impact was created to advise the Secretary of Energy on the impact of the Department's policies, regulations, legislation, and related activities on minority communities, businesses and educational institutions. This Office has the important responsibility of ensuring that minorities participate fully and actively in the programs of the Department of Energy.

I commit to you today that, if I am confirmed, I will work aggressively to carry out these responsibilities. By doing so, I believe I will advance the Department's goals across its many missions, because success will require fully tapping the talents of all of our people. That is why I am committed to the idea of making the Department of Energy as the model agency for addressing issues of diversity and for providing support and assistance to small and disadvantaged businesses and minority educational institutions. I believe that the United States cannot afford to continue to underutilize small and disadvantaged businesses, or continue the under-representation of minorities in the technical and scientific workforce and industries.

President Obama has charged the Department of Energy with the important task of implementing significant programs under the American Recovery and Reinvestment Act of 2009. I will make it a priority to ensure that small and disadvantaged businesses, including those owned by women, minorities, and veterans, as well as minority educational institutions are included in these important programs.

Small businesses must play a critical role in creating new energy technologies. Their ability to innovate remains unsurpassed, yet they need the support of the Administration to remain in the global forefront of effective energy development strategies. According to the U.S. Small Business Administration, small businesses represent 99 percent of all employers in the country. If I am confirmed for this position, I will ensure that DOE becomes a leader in utilizing small businesses to create the competitive jobs of tomorrow.

My experiences as a public servant and consumer advocate in the utility industry have formed my belief that hard work is paramount to personal success. I will apply this same level of commitment to service and advocacy towards small businesses and disadvantaged communities. I will dedicate myself to be the Department's voice in support of those with innovative ideas and those willing to work hard to ensure that they all can participate in advanced energy opportunities.

In conclusion, I would like to reiterate my sincere gratitude to President Obama for nominating me to this position. I want to assure this Committee that I will work with the Secretary of Energy, with this Committee and the Congress to carry out the duties as Director of the Office of Minority Economic Impact at the Department of Energy.

Thank you, and I will be happy to answer any questions from the Committee.

The CHAIRMAN. Thank you very much for your statement.

Mr. Pizarchik, go right ahead.

STATEMENT OF JOSEPH G. PIZARCHIK, NOMINEE TO BE DIRECTOR OF THE OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT, DEPARTMENT OF THE INTERIOR

Mr. PIZARCHIK. Thank you, Chairman Bingaman, Senators. I am honored to appear before you as President Obama's nominee to head the Office of Surface Mining Reclamation and Enforcement in the Department of the Interior. I thank President Obama and Secretary Salazar for their confidence in me and I thank you for considering my nomination.

The majority of my career has been in public service to Pennsylvania. My experience there has given me exposure to the many facets of the mining industry that make up the responsibilities of OSMRE.

For the past 17 years, I have been engaged in Pennsylvania's mining program, first as legal counsel and then as Director of the

Bureau of Mining and Reclamation where I oversaw the development and implementation of a policy to protect streams from underground coal mining subsidence without shutting down mining. I also oversaw the resolution of a post-mining discharge liability matter that was blocking progress on the Flight 93 National Memorial. Pennsylvania's mining program encompasses a broad array of issues and my tenure as Director required knowledge of a broad range of laws and interaction with various agencies.

I understand and appreciate the interests and duties of the States and Federal Government and the roles of citizens, environmentalists, and industry in protecting the environment and our people while helping to meet America's energy needs. Each plays a critical role. I have the experience, temperament, and skills to work with stakeholders. I understand the value of an objective, honest approach to resolving matters whether they are complex, simple, controversial, or mundane. I am comfortable working with people of divergent backgrounds.

As a member of the executive branch, I see my duty as executing the law.

On a more personal note, I grew up on a small farm in southwestern Pennsylvania with my parents and six brothers and sisters. Survival was a collaborative effort. The entire family had to pitch in. We all had our responsibilities. When I was 10, my brothers and I assumed full operation of the farm. We handled the crops, livestock, equipment, and buildings. My brother Tony, who is here with me today, now owns and runs that family farm. Through that experience, I learned the value of hard work, cooperative decision-making, work distribution, and completing a job the right way the first time. Those values and work ethic instilled in me as a kid are still with me today.

Coal was a part of our daily lives. That is how we heated our home. I also knew many people who worked in the mines. I saw firsthand the value placed on a job in the mines, tempered by the effects of poor safety regulations and the environmental havoc wreaked by unfettered mining. I have also witnessed the benefits of improved safety and improved environmental laws over the years.

Like four of my siblings, I worked my way through college. I earned my bachelors degree from Penn State and my law degree from the University of Arkansas at Little Rock.

It would be an honor and a privilege to serve America, its citizens, and the environment and President Obama as the Director of the Office of Surface Mining Reclamation and Enforcement.

Thank you, Mr. Chairman, for the opportunity to testify. I am ready to answer questions.

[The prepared statement of Mr. Pizarchik follows:]

PREPARED STATEMENT OF JOSEPH G. PIZARCHIK, NOMINEE TO BE DIRECTOR OF THE OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT, DEPARTMENT OF THE INTERIOR

Thank you, Chairman Bingaman and Senators. I am honored to appear before you as President Obama's nominee to head the Office of Surface Mining Reclamation and Enforcement at the Department of the Interior. I thank President Obama and Secretary Salazar for their confidence in me and I thank you for considering my nomination.

I appreciate the opportunity to present my background and qualifications. The majority of my career has been in public service for the Commonwealth of Pennsylvania. My experience there has given me exposure to the many facets of the mining industry that make-up the responsibilities of OSMRE.

For the past 17 years I have been engaged in Pennsylvania's mining program, first as legal counsel and then as the Director of the Bureau of Mining and Reclamation, where I have worked on a variety of projects. Under the guidance of Kathleen McGinty, then Secretary of the Pennsylvania Department of Environmental Protection, we developed and implemented a policy, based on sound scientific and legal principles, to protect streams from underground coal mining subsidence without shutting down mining. I was also assigned the responsibility and did resolve a postmining discharge liability matter that was blocking progress on the Flight 93 National Memorial. While working closely with the Pennsylvania State Police and the Pennsylvania Office of Homeland Security, I led the state effort to secure explosive storage magazines. These security measures, the only ones of their kind in the country, greatly reduced the risk to the nation's capital and other major East Coast cities. The number of break-ins and thefts of explosives in Pennsylvania dropped from one of the highest in the country to zero. Notwithstanding dire industry predictions, zero is also the number of explosive industry firms that left Pennsylvania or went out of business because of the security requirements.

Pennsylvania's mining program encompasses more than coal permits. It also includes water quality and stream encroachment permits, Environmental Good Samaritan projects, remining and reclamation of abandoned mines, industrial mineral mining, blasting and explosives regulation, mine subsidence insurance, and bonding. The breadth of Pennsylvania's program requires knowledge of a broad range of laws and interaction with various agencies.

I understand and appreciate the interests and duties of the states and federal government and the roles of citizens, environmentalists, and industry in protecting the environment and our citizens while helping to meet America's energy needs. They each play a critical role in effective development, implementation, and enforcement of our mining program and regulations. I have the experience, temperament, and skills to work with stakeholders for pragmatic and creative solutions.

I have represented Pennsylvania as both the client and attorney in litigation, legislative, regulatory, and programmatic matters. Through these experiences I understand the value of an objective, honest approach to resolving matters, whether they are complex, simple, controversial, or uninteresting. I am comfortable working together with people of divergent backgrounds and interests, whether an average citizen or high government official.

As a member of the Executive Branch, I see my duty as executing the laws enacted by the legislators and, at times, as interpreted by the courts. The laws are to be implemented for the benefit of America and not used to the detriment of an individual or interest.

If confirmed, I will be leaving a corps of state government employees dedicated to implementing the laws to protect Pennsylvania's environment and people while meeting the country's mining needs, but I will be joining a group of similarly dedicated federal employees and officials in OSMRE, EPA, and elsewhere in the Obama administration. Together we will work with the states, citizens, and industry to build on past successes, correct past missteps, and craft new solutions as we strive to meet America's environmental and energy needs.

On a more personal note, I grew up on a small farm in southwestern Pennsylvania with my parents and six brothers and sisters. My dad, a World War II veteran, worked in the steel mill in addition to farming. Survival was a collaborative effort; the entire family pitched in. We all had our responsibilities, which started at a very young age. Like my siblings before and after me, by the time I started school I had already moved from feeding the dogs to feeding and caring for the chickens. Life on the farm involved recycling before there was an Earth Day. We practiced conservation measures that arose out of the Dust Bowl era and cared for the environment upon which we were so dependent.

When I was 10, my brothers and I assumed full operation of the farm. We planted and harvested all of the crops, cared for the livestock, and repaired and maintained the equipment and buildings. My brother owns and runs that farm today. Through that experience I learned the value of hard work, cooperative decision making, work distribution, and completing a job the right way the first time. The values and work ethic instilled in me as a kid are still with me.

Coal was a part of our daily lives; that's how we heated our home. I also knew many people who worked in the mines so I saw first-hand the value placed on a job in the mines tempered by the effects of poor safety regulations and the environ-

mental havoc wreaked by unfettered mining. Through friends and family I witnessed the benefits of improved safety and environmental standards.

Like four of my siblings, I worked my way through college using a combination of summer jobs, work study, education grants, and Social Security, as my dad died while I was in high school. I have worked as a laborer for masons, in general construction, in a plant that fabricated steel buildings, in flood cleanup, and as a security guard. After getting my BA from the Pennsylvania State University I attended law school and received my law degree from the University of Arkansas at Little Rock.

It would be an honor and privilege to serve America, its citizens and environment, and President Obama as Director of the Office of Surface Mining Reclamation and Enforcement.

Thank you, Mr. Chairman, for the opportunity to testify. I am ready to answer questions.

The CHAIRMAN. Thank you for your statement as well.

Let me start and ask each of you a question or two, and then I am sure Senator Menendez will have some questions as well.

Mr. Norris, you referred to the substantial amount of wind generation that has been created in Iowa during the time that you chaired the Public Utility Commission. What role do you see for the Federal Energy Regulatory Commission in promoting the development of renewable generation of electricity and also in developing the additional infrastructure needed to get that generation to market?

Mr. NORRIS. One of the most pressing needs we need to address for the utilization of renewable energy is upgrading the electric transmission grid both for local distributed generation and for the transportation of renewable generation across the country. So I think one of the most critical roles that the FERC can do is to assist in the efficient and economical development of the transmission grid so we can get renewable energies from generation to the load centers.

The CHAIRMAN. Very good.

Mr. Garcia, let me ask you what steps—maybe this is premature, but do you have in mind particular steps that you would take if confirmed to reach out to these minority institutions and businesses to ensure that they compete fairly for grants and contracts that the Department is involved with?

Mr. GARCIA. I think it is a two-step process, Senator. Thank you for the question. But it is a two-step process. One is the Department of Energy's contracts that we put out tend to be highly technical and highly skilled, and for a long time, they were controlled by a relatively small group or very technical group. Clearly, minorities and disadvantaged businesses had not been given an opportunity. So part of that is to get the work force to the level that they can do some of this work and, more importantly, to offer more opportunities.

In fact, next week the Department has a conference in Long Beach, California where we have 200 exhibitors. Most of those are labs and large contractors with the Department of Energy. We have over 1,100 participants already signed up. The idea is to get those procurement officers and create mentoring programs with existing contractors and with new contractors, smaller contractors, so they can participate in the opportunity that a new energy field offers all of us.

The CHAIRMAN. All right. Thank you.

Mr. Pizarchik, there has been a great deal of concern expressed about Pennsylvania's policy on placing utility coal ash in coal mines and the possible impacts of that on water quality. Can you briefly describe what Pennsylvania's policy on mine placement of coal ash is and how Pennsylvania's policy comports with the recommendations of the National Academy of Sciences?

Mr. PIZARCHIK. Yes, Senator, I can do that. In Pennsylvania, we have what has been referred to by some as one of the best programs for ash placement in coal mines in the country. It was originally developed in the mid to late 1980s.

Under the process, not all ash is suitable for use at a mine site to assist in reclamation. The ash has to, first, be tested in accordance with EPA standards and tests to make sure that it will not leach out any hazardous metals or contaminants. Then it needs to be certified for a particular use. Once it has been tested and certified, then the applicant, the mining site, has to apply through the normal permitting process with public involvement to get approval to use the ash at that particular site. The ash and the site have to be adequately analyzed and characterized to make sure there will not be any problems. There are monitoring wells that are put in place to monitor the groundwater to make sure that the ash does not, in fact, leach any contamination out into the site.

A few years ago, we started reexamining our program to see if there were areas needed for improvement. We had a lot of public scrutiny from various citizen groups and concerned members of the public. The National Academy of Sciences had conducted its study, and as a result of that review and the recommendations of the National Academy of Sciences, in April of this year, Pennsylvania updated its coal ash beneficial use program in mine sites to include the recommendations of the National Academy of Sciences.

We are now monitoring 40 parameters instead of just 27 from a few years ago. We have also required all of the sites where coal ash is being beneficially used to upgrade their monitoring systems, and we have increased the monitoring from annually to quarterly on the sites. Certification of the ash at the powerplants has to be tested at least twice a year, instead of once a year. We have also increased the requirements for how long you have to monitor the ash after the placement ends. That period is now 10 years.

So in addition to implementing the National Academy standards, we also made a number of changes that were recommended by various citizen groups and environmental groups, but we did not stop with just the policies which we used to implement that. Recently we have also in Pennsylvania—the State has published proposed rulemakings that incorporate the national recommendations, as well as the other improvements to take a good program and make it even better. With the science that we have, we have not had any evidence of pollution of groundwater caused by the use of coal ash at these mine sites.

The CHAIRMAN. Thank you.

Let me go ahead and defer to Senator Menendez for his questions.

Senator MENENDEZ. Thank you, Mr. Chairman.

Congratulations to all of you on your nominations.

Mr. Norris, we have an energy bill that, as currently drafted, would allow FERC to approve lines anywhere and for almost any reason, as it relates to transmissions. It concerns me because, one, it could lead to more dirty coal power being piped into our State, a concern that 10 Governors of the Northeastern States have also voiced. We understand the need for greater transmission. The question is for what purposes.

So since FERC has such a significant impact in its decision-making here, especially if we were to give it this very wide authority, give me your thoughts on what the Federal Government's role should be in siting transmission lines.

Mr. NORRIS. I would bring, first of all, my experience as a State utility commissioner to the table and respectful of the rights of States and traditional rights of States in siting infrastructure and give great deference to States on this.

There is a need to upgrade our transmission grid and that is not an easy process. As we look at how we get renewables built in this country, there has to be the capacity to get that renewable energy to the load centers. So there is going to have to be an upgrade in our electric transmission grid.

I think, depending on what Congress—the power of the Congress decides to give to FERC, we have to use it very sparingly and judiciously where we would be respectful of the State process and the State input in this process.

With regards to does that enable carbon emission generation sources to be on that same grid, as you well know, you cannot control the electrons once they are on the grid. But I think what we are looking at is the development of renewable energy in this country, and the increased capacity of our transmission grid should be utilized to enable renewable generation to get on the grid as a priority.

If I understand the current legislation that gives FERC the siting authority or backstop authority for 345 kv and above and the 400 dc line and then the feeder lines for renewable energy, I think that is a key element that helps ensure that we can work to make sure that the renewable energies have the access to any upgrades in transmission.

Senator MENENDEZ. I appreciate your answer. Let me just say right now, as mapped out, the entire State of New Jersey would be subject to transmission lines going through. The entire State. I am sure that if I were taking the entire State of Iowa and throwing transmission lines through it, you all might not look at it so well.

So my concern and my interests, because if FERC is given this power as envisioned under the legislation, it would be in my view almost unlimited power. So what commissioners at FERC decide to do with that unlimited power will be very important. So my hope—I heard about your deference to States, but that deference can be as simple as listening and then disregarding.

So it is my hope that we are going to see a view that there is a role here that we understand we have a need for transmission, but we want to see more of that transmission be for renewable energies and we want to watch the consequences of how we site those lines to States like my own. It is not that we have a swath that is open to it. We have an entire State that is open to it. Whether

that goes right through the Highlands of New Jersey, which is one of the few open space areas that we have in a State that is the most densely populated per square mile in the Nation, or whether that goes through major residential areas, the consequences of that are very significant.

I also want to ask two other questions, if I may, about net metering and interconnection standards. My legislation, the Grid Access Act, tries to help us create some national net metering and interconnection standards. It basically would then allow any individual or business to put a renewable energy project on their State without local authorities using arbitrary rules to prevent it.

What are your views on that in general, and should utilities really be able to shield themselves from competition by putting up arbitrary market barriers?

Mr. NORRIS. No. I think as we look at changing the energy system of our country and empower renewables, we have to enable people to be a part of that process. So access through net metering or other means through interconnection agreements to enable local generation, local distributed generation to be a part of the solution I think is important.

Senator MENENDEZ. I have another question, but I will submit that one for the record.

Mr. Garcia, I am glad to see your nomination. I know you personally. I think you will do an excellent job in this field. Your experience speaks wonders. So I do not want you to think that a lack of a question to you is meaning that I am slighting you. The chairman basically asked what I hoped to get a sense of where you were headed.

I do hope that one of the Department's efforts in attracting more Latinos, African Americans, women, and others into the field is incredibly important. If we are going to be competitive globally, we are going to have that human capital at the end of the day be there. There are Department initiatives to try to get more of our young people engaged in this respect and also moving in the college areas. So I hope that in addition to the whole question of getting access to the opportunities that the Department of Energy provides, there will also be opportunities for the educational pursuit that will lay the foundation of the human capital and intellect in the country that we will need to achieve. So we look forward to working with you on that.

Finally, if I may, Mr. Pizarchik, I have seen that Kathleen McGinty, your former colleague and a pretty nationally respected environmental leader, has heartily endorsed your nomination.

But I have to be honest with you. I have received so many e-mails from people concerned about your nomination. I heard you respond to the chairman before, but I would like to give you the opportunity to respond to critics who say that in your work in Pennsylvania, you, one, ignored evidence that certain ways of disposing of the coal ash degrade water supplies, and they also say you are not open-minded about their concerns.

So I would like to hear your response to that and, at the same, time how you are going to be in the midst, if you are confirmed, about how we protect people from the disastrous effects of mountaintop removal. I would like to know how you intend to, if con-

firmed, implement the plan and what ideas do you have on how to tighten mountaintop removal regulations.

Mr. PIZARCHIK. Senator, that was a pretty long list there. If I do not get to them all, please bring me back to those.

Regarding the first question on the coal ash and how we used it in Pennsylvania and been open on that, we have engaged with stakeholders and people who have an interest in the safe management of coal waste, coal ash materials in the sites. I have had a number of meetings with those folks over the past year plus. We have received good input from the citizens and the activists, many of whom are not even from Pennsylvania but who bring value to the table as well.

Through the changes that we have made in our program, many of those are based on input that we received from the citizens. A number of those improvements were designed to develop higher quality data so that we can have a better data field with which to assure the public that the use of coal ash at these mine sites in Pennsylvania is not polluting the groundwater and has not polluted the groundwater.

In regards to a series of analyses that they have performed and published, there was a very large document that they put together and submitted to us. We have expended considerable resources going back and double checking every allegation to find out whether or not there is any merit to that. On each of those cases where we have looked, we have not found there to be pollution resulting from the use of the ash at those mine sites.

As far as being open-minded, I listened to everybody who comes in. I make myself available to the citizen groups, to the environmentalists, and to the regulated community to hear their perspectives. Where the requests have a valid basis in the law and in the sciences, we will act upon them. But as a member of the executive branch, I carry out the laws as they have been enacted, and I do not go off and do things for one particular interest group or another. That would be contrary to the law which I am charged with executing.

Senator MENENDEZ. So you are open-minded. Within that context you have just described, you are willing to continue to follow the opportunities for people to have input.

Mr. PIZARCHIK. Absolutely.

Senator MENENDEZ. If their input is both within the law and in fact, you are willing to consider that in terms of how you decide.

Mr. PIZARCHIK. Yes. My track record, I think, in Pennsylvania documents that. A number of years ago, we had a rulemaking package regarding coal mining and underground longwall mining, mine subsidence on that. There were a variety of issues on that where there was a difference of opinion as to how effectively Pennsylvania's law met the minimum requirements of the Federal law.

Through the course of working out the differences that existed, I led the work group for Pennsylvania that met with the citizens who were interested in this area, as well as the regulated community. It was a bit of a controversial atmosphere in that those two groups refused to be in the same room together with each other. So we literally had to have meetings in the morning with one group and in the afternoons with the other group. But it was worthwhile.

We got good input from the public. We made a lot of changes to implement the concerns.

By meeting with those folks, I find that it helps me as a government official to better understand the concerns of the public and what the basis of those concerns are. If you have an understanding of the basis of a person's concerns, you can better assess whether you can accommodate those concerns within the bounds of the law or whether there may be other means that you need to do to address those concerns.

Senator MENENDEZ [presiding]. My time is way past gone. So I will wait for either the next round or ask you to respond to my second question for the record.

The chair has had to step out and he has asked me to preside. With that, Senator Barrasso is next.

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

I want to thank you both, Mr. Norris and Mr. Pizarchik, for taking the time to come and visit with me in the office and discuss a number of these issues.

Mr. Pizarchik, we talked quite a bit about coal when you had the chance to visit, and while coal mining in the East is different than coal mining in the West, I think you bring strong credentials and an important State perspective to the job for which you have been nominated. We know that coal is an abundant, affordable, reliable, and secure source of American energy. Wyoming supplies 40 percent of our Nation's coal. Coal mining creates good paying jobs for hard-working folks in my State and your State of Pennsylvania. It provides revenues for the State and for local government. If confirmed, I would like to invite you out to visit one of Wyoming's coal mines and see the wonderful and excellent job they do with reclamation.

We talked about coal leasing and the coal bid bonuses. We talked about abandoned mine land money. We talked about the self-bonding rules. I would like to spend my time on the abandoned mine land funding.

Washington owes Wyoming hundreds of millions of accumulated abandoned mine land funds. Washington also owes significant amounts of money to many other States. After more than a decade of politically finding a solution, a bipartisan compromise was reached that satisfied the States, satisfied Washington a few years ago. The law ensures that Wyoming and other certified States and Indian tribes would receive the money that they were promised without strings attached. It also provided States with their share of future fees collected from coal mining.

President Obama, as well as Secretary Salazar, when they were Senators, both voted for this bill signed into law. Unfortunately, the administration now with President Obama and Secretary Salazar proposed a budget earlier this year that called for ending the payments to the certified States, the same payments that the President and Secretary voted for while they were members of the Senate because they knew the impact on their home States.

Are you familiar with this abandoned mine land funding issue?

Mr. PIZARCHIK. Thank you, Senator. Thank you for your compliments, and I will take you up, if confirmed, on visiting your State. I would be happy to do that.

Regarding the abandoned mine land funding, I am not familiar with the intimate details of it. I know of the issue generally. I know that a few years ago when the States were trying to get reauthorization, that there was a lot of effort put in by many States, including Wyoming, for a successful resolution of that. But at this time, I am not familiar with the details of the proposal or the basis for the proposal. So it would not be appropriate for me to speculate.

Senator BARRASSO. As a State official, formerly a State official now to come into this new position, do you think that States are entitled to their share of revenues from development within their borders?

Mr. PIZARCHIK. Senator, with the familiarity that I do have with the law, I believe Congress has specified how that money is to be handled on that, and I would defer to implementation of the law, should I be confirmed.

Senator BARRASSO. When you were working for the people of Pennsylvania, you felt, if there was an obligation to the people of Pennsylvania, they would have a right to get that money.

Mr. PIZARCHIK. Again, Senator——

[Laughter.]

Mr. PIZARCHIK [continuing]. If confirmed, I will execute the law. I understand Wyoming's position on that. I understand the other States' position. But at this point, it is not appropriate for me to speculate.

Senator BARRASSO. You talk about executing the law, and I am going to read a little bit from the law because the bill that is signed into law required that the States be paid back money owed in seven equal installments. I will read it. Quote: "The Secretary shall make payments to States or Indian tribes for the amount due for the aggregate unappropriated amounts allocated to the State or Indian tribe," and then it says under these subparagraphs. "Payments under subparagraph (a) shall be made in seven equal annual installments beginning with fiscal year 2008." Seven equal annual installments beginning fiscal year 2008.

The Interior Solicitor interpreted that stating that what Congress meant was that the funds must be paid back in the form of a grant and not in seven equal installments. When you talk about the law, what is the interpretation of "seven equal installments"? I mean, the trick question is do you agree or disagree with the Solicitor's opinion. I do not want to put you in that position.

But I think Congress tries to write laws and we try to be very clear, and then the administration, whichever administration it is, comes up with different interpretations. So I would like to hold you to your statement of I will follow the law and hopefully not try to reinterpret the law as written by the Members of the House and the Senate.

So thank you very much.

Thank you, Mr. Chairman. My time has expired.

Mr. PIZARCHIK. Thank you, Senator.

Senator MENENDEZ. Thank you, Senator.

Senator Cantwell.

Senator CANTWELL. Thank you, Mr. Chairman.

Mr. Norris, congratulations on your nomination. It is good to see—I think your family was here. It is good to have them with us in Washington, DC.

There is a tremendous amount on FERC's plate, obviously, in the deregulation of energy markets, being a policeman on the beat and new technologies and obviously our aging infrastructure. Certainly we have had a chance to talk and I am impressed with your background.

But I wanted to talk to you about there are some who want to give FERC a very new and very different and very large responsibility to police a new multi-trillion dollar carbon market. I personally have yet to hear a compelling case from anyone—I should say anyone that does not work on Wall Street—why we should set up this giant trading system. But suppose that we did. This is, obviously, a challenge in having predictable and stable carbon prices.

Do you think FERC is up to the task of regulating a new trillion dollar carbon market? How many new employees would that take, and what would the structure need to be for FERC to do a good job of that?

Mr. NORRIS. Thank you, Senator, for the question and for your kind remarks.

Is FERC up to the task? I think FERC has a great deal of talented, professional citizens who work there. I think this will be a challenging task for whatever agency is delegated this responsibility from Congress, should it delegate that responsibility. Having worked for a State independent regulatory agency, I often found myself frustrated because we would do things and have expertise there that could be very useful to policymakers, but because of the independent regulatory agency aspect of us, we are not involved in some of those decisions.

Let me get back to the point here. The point is I think FERC is capable. I think there are a number of agencies that are capable of doing that. It will take significant resources of smart, intelligent, committed people to get it done. I have no reason to think the employees of FERC and the people we would have to add there could not do that job, but I do not know as I would advocate it is a better place than someplace else. I think we will have to leave that decision to you.

Senator CANTWELL. How many people do you think it would really take to police carbon markets?

Mr. NORRIS. I have not studied it at all. I have heard, I think, 1,100 or 1,400 additional employees just in general conversation, but I have no background to be able to tell you if that is accurate or what it will take. But if it is going to take that much at FERC, it would probably take that much wherever you decide to put it.

Senator CANTWELL. If I could switch to another subject about natural gas refunds. Last fall, five of the FERC commissioners were all on record supporting legislation to change the process for issuing refunds to consumers for unjust and unreasonable natural gas rates. This change basically would allow the effective date for the overcharge to be the date of the filing of the case as opposed to current law which only allows the refunds to start at the date the case is completed. What happens is, obviously, people change

their practice once they are ruled against, and then obviously, all of that overcharge is not returned to the consumer.

So in January, Chairman Kelliher sent a letter to the Energy Committee recommending that we consider the change here, and under the current law, it is estimated that natural gas pipelines overcharged consumers by something like \$3.7 billion. This is just for a 5-year period from 2003 to 2007. So we are talking about significant problems here.

So we have, obviously, had legislation on this. So I just wanted to find out whether you support changing that effective date for the natural gas pipeline to the date the cases are filed.

Mr. NORRIS. I mean, I think the authority in the Federal Power Act to go retroactive with regard to electric rates has been effective. I think it has worked effectively and worked well. There is certainly a deterrent effect, as you said in your remarks. Whether that is necessary in the natural gas market or not, I do not know other than to say we have to have adequate tools to protect consumers and use those responsibly. So I do not know if I would advocate one way or another in terms of the change in the law, but I think if given that authority, FERC would use it effectively to make consumers are treated fairly, and it could be a deterrent effect.

Senator CANTWELL. But you think it has been working well in other areas that currently FERC has the authority on.

Mr. NORRIS. FERC, I believe, has authority under the Federal Power Act with regard to retroactivity.

Senator CANTWELL. Electricity and—

Mr. NORRIS. Electricity, yes.

Senator CANTWELL. You think it works well there.

Mr. NORRIS. To my knowledge, it has worked well there, yes.

Senator CANTWELL. I thank the chairman.

Senator MENENDEZ. Thank you, Senator Cantwell.

Since I see no other members here, two last questions.

Mr. Norris, you and I talked about regional transmission organizations, RTOs. My own view is they often do not adequately protect consumers. Now, I am aware that FERC has found parties to have engaged market manipulation at times, and while the commission has imposed penalties, I am not aware that FERC has ordered refunds in any of those cases. This suggests to me that consumers failed to receive some of the much-needed relief when there were clearly unjust and unreasonable rates as determined by the commission itself.

So do you believe as a general rule that consumer refunds should accompany any commission finding of market manipulation?

Mr. NORRIS. I think you would have to review the facts of the case. I think it can be used at appropriate times to deter inappropriate behavior.

Senator MENENDEZ. Sometimes penalties are just simply a cost of doing business unless the penalties are large enough in which the excess profits, because of market manipulation, were eliminated by virtue of the penalty. Then the penalty is fine. It does not do much for the consumer but maybe it acts as a deterrent.

My personal view is that if the commission gets to the point that they find that, in fact, parties have been engaged in market manipulation, that penalties that basically leave them short of the con-

sequences of saying, well, I will get that penalty and I will go back to it again because I will make a lot more than whatever the penalty is does not really act, one, as a deterrent and, two, does not do very much for consumers.

Mr. NORRIS. I mean, FERC's authority now for a million-dollar-a-day civil penalty I think has been regarded as an effective deterrent, and whether more authority is needed for penalties, I will obviously leave it to this body to—

Senator MENENDEZ. I do not know whether it is a question of more authority. It is whether what the commission does with its authority. I am just urging you to consider that when there is a determination of market manipulation, that in fact the commission use its authority both in its penalty authority, as well as in its rebate authority to consumers as a very strong deterrent not to have market manipulation. So I hope you will consider that. I hope you will consider that.

Mr. NORRIS. Absolutely.

Senator MENENDEZ. That is about as easy as it gets.

[Laughter.]

Mr. NORRIS. You are asking us to do our job, and I consider that part of the job, yes.

Senator MENENDEZ. Mr. Pizarchik, last question to you. I had asked you the question. I just want to remind you what it is. Both the EPA, the Department of the Interior, and the Army Corps of Engineers came to an agreement on how to protect people from the disastrous effects of mountaintop removal. It stated that these three agencies, one of which you will represent most particularly, if you are approved, will implement a plan that will minimize the environmental impacts of mountaintop removal mining in the short run and tighten regulations in the long run.

How would you work to implement that plan, and what ideas do you have as it relates to tightening mountaintop removal regulations?

Mr. PIZARCHIK. Senator, if confirmed, I will get involved in that project and learn more about the different perspectives held by the Environmental Protection Agency, the Army Corps of Engineers, as well as the other stakeholders of interest, the citizens, environmentalists in those areas, or the State agencies that regulate the actual mining activities that occur, as well as the agency. Getting involved and getting a better handle on the details of that, how that is actually being implemented, I think, and getting an understanding of the facts would be the first basis to determine what has transpired in the past, has that activity been done in accordance with the law as enacted by Congress and the regulations adopted by the State and Federal agencies, and then looking at those facts and deciding what would be the appropriate action to take at that time. It is my understanding those agencies are currently working on that with the MOU that they have announced. I have not been privy to those details or what is going on. So my first step would be getting involved to learn more about the facts and details of that.

Senator MENENDEZ. I appreciate your answer, but there is one common goal that the three agencies came to in their memorandum of understanding, and that is, that they will institute a plan that

minimizes the environmental impacts in the short run and tightens the regulations in the long run. So I hope that, if confirmed, you are going to pursue that with the vigor of what the agreement intended.

Mr. PIZARCHIK. Senator, without knowing the nuances and the details of that, but if confirmed, I will be working for the President and I will be carrying out the course charted by the administration on that.

Senator MENENDEZ. All right. With that, I see no other members present, but members will have until 5 o'clock tomorrow to submit additional questions for the record. If they are submitted, we urge the nominees to answer them as expeditiously as possible.

With that, the committee stands adjourned.

[Whereupon, at 11:05 a.m., the hearing was adjourned.]

APPENDIX

RESPONSES TO ADDITIONAL QUESTIONS

RESPONSES OF JOSE ANTONIO GARCIA TO QUESTIONS FROM SENATOR MURKOWSKI

INDIAN ENERGY

Question 1. In the Energy Policy Act of 2005, Congress approved an Indian Energy title with some grant aid to develop energy projects on Indian lands, tribal reservation lands in the Lower 48 and on Native corporation lands in Alaska, plus provided \$2 billion in loan guarantee money to help Indian energy projects proceed. While the office of Indian/tribal energy has made a few grants in the past two years, the Department's response to make this program work has been truly underwhelming for those of us from Western states.

- a. What is your view of what should be done with the Indian Energy program?
- b. Do we need to rewrite the law by adopting new amendments during Senate consideration of a pending energy bill?
- c. Is the problem purely that we have not appropriated enough funds, even though the administration sought very little funding for implementation in its FY 2010 budget?
- d. What can we do and what would you propose that we do to help Indian energy project assistance proceed?

Answer. As I understand it, the Office of Minority Economic Impact is not directly responsible for the Indian Energy program, but I do believe that this office should play a key role in championing diversity and assuring that program offices across the Department routinely reach out to native-owned small businesses to assure their participation in energy and technology development opportunities. This is particularly important now as we work to build a 21st century economy powered by innovative and sustainable clean energy. If confirmed, I look forward to working with my colleagues in the Department to make energy projects for rural and native communities a greater priority, in the lower 48 states as well as in Alaska and Hawaii.

Just this past week, Secretary Chu announced up to \$13.6 million in multi-year funding for new clean energy projects on tribal lands, including over \$3 million in Alaska. As I understand the overall DOE budget at this point, I believe there is sufficient authority and funding to make the Indian Energy Program work. If confirmed, I will certainly work with others in the Department to encourage effective implementation of the Department's American Indian and Alaska Native Tribal Government Policy.

RENEWABLE ENERGY ON NATIVE LANDS

Question 2. In Alaska we have a host of excellent potential renewable energy projects on Native-owned lands. The Fire Island wind farm owned by Cook Inlet Regional Corp., the Lake Chakachamna lake-tap hydroelectric project being pursued by TDX Power, a subsidiary of the St. Paul Native village corporation, small hydro development at Thayer Creek near Angoon being pursued by the Kootzoowoo Native village corporation of Angoon, to name just three. While there is no program yet approved to provide actual grant aid nationwide for renewable energy project construction, there is such aid for Alaska. In Sect. 803 of the Energy Independence and Security Act of 2007, such aid was authorized, but it has not been funded and the Administration did not support such funding as part of the stimulus bill earlier this winter. What is your view about whether Congress should make grant assistance available for construction of Native energy projects both in Alaska and nationwide?

Answer. If Congress appropriates funds for Section 803, I would look forward to working with the leadership of the Department to invest those funds responsibly.

RESPONSE OF JOSEPH G. PIZARCHIK TO QUESTION FROM SENATOR BINGAMAN

Question 1. The Committee has received a number of complaints from environmental groups and citizens about policies you may have promoted or actions you may have taken as Director of Pennsylvania's Bureau of Mining and Reclamation. Specifically, these complaints allege that you—

- Promoted the use of surface coal mines for disposal of coal ash and resisted adopting safeguards recommended by the National Academy of Sciences;
- Weakened Pennsylvania's stream buffer rule, allowing the filling of stream valleys with mine spoils;
- Failed to require sufficient bonding for coal mines and resisted correcting bonding deficiencies;
- Promoted long-wall mining; and
- Resisted public participation and transparent decision-making.

Please respond to these assertions.

Answer. Thank you, Mr. Chairman, for giving me the opportunity to address these assertions. Before I address each of these points below, let me first say that none of them is true. It is important to provide you with some detail in my response.

Coal Ash.—I have not promoted the use of surface coal mines for disposal of coal ash; in fact, I have consistently taken the position that Pennsylvania mines are not dumps to be used for the disposal of waste. However, the beneficial use of certified coal ash, i.e., only that coal ash that meets certain chemical and physical requirements, for mine reclamation was authorized in 1986 amendments to the Pennsylvania Solid Waste Management Act, and Pennsylvania's program for the use of coal ash was developed, and has been in use, since the mid-to late 1980's. That program does fall under my jurisdiction as Director of the Bureau of Mining and Reclamation, and I am responsible for its implementation.

Under Pennsylvania State law and regulations, the use of coal ash for reclamation activities is stringently regulated. Applications made for such beneficial uses must include a detailed operational plan, with identification of the ash source; a certification from the ash generator; amount of ash to be used; purposes of the ash utilization; operational details of how the ash is to be handled and incorporated into the site; a demonstration that the ash is chemically and physically suitable for the proposed use; documentation of the hydrogeology of the use area; and a monitoring program, including background data collection, designed to show any influence of ash use on surface and groundwater quality. In addition, public notice and participation are an integral part of the review process for all beneficial uses of coal ash on mine sites.

During my tenure, we carried out a self-examination of the program, and that examination, along with consideration of citizen concerns and scientific analyses, led us to change the State's policies governing use of coal ash at mine sites. These changes include more stringent and increased ground water sampling; improved sampling techniques; more stringent ash testing and monitoring requirements; and the addition of controls for temporary storage of ash. The coal ash approved by the PADEP mining program for the use at coal mines has occurred on a site-specific basis to facilitate reclamation such as the elimination of dangerous highwalls or abandoned pits, to facilitate revegetation of sites lacking suitable soil, or to improve water quality previously degraded by historic unregulated mining.

Stream Buffer Zone.—I have not weakened Pennsylvania's longstanding stream buffer zone rule but have diligently implemented the law, which does not allow the filling of stream valleys.

The State's stream buffer zone regulation has remained unchanged for over 20 years. Under the regulation, coal-mine operators in Pennsylvania cannot put mine spoil into streams. Filling streams with spoil would violate State law as well as adversely affect streams' aquatic communities. In 1994, the Pennsylvania General Assembly amended the Coal Refuse Disposal Control Act, replacing the absolute prohibition on disposing of coal refuse within 100 feet of any stream with a variance procedure that allows for certain streams to be put into a pipe or underdrain and then covered with coal refuse, provided the operator mitigated adverse impacts by restoring or improving other streams, but those amendments pre-date my tenure as Director of the Bureau of Mining and Reclamation.

Bonding.—I have not failed to require sufficient bonding for coal mines, nor have I resisted correcting bonding deficiencies, but have spent significant time improving the financial guarantee system.

In fact, beginning with my service as program counsel in 1992, I participated in the drafting of amendments to Pennsylvania's Surface Mining Conservation and Reclamation Act and regulations to address shortfalls in Pennsylvania's now-defunct

alternate bonding system for surface coal mines. When Pennsylvania terminated this alternate bonding system, I helped draft the appropriation legislation that authorized conversion assistance financial guarantees that prevented defaults by mine operators due to changes in the State's bonding requirements after permits had been issued. I developed the legal basis and helped draft the documents for Pennsylvania's trust fund program, the first program in the country that provided a means for the State to perpetually treat post-mining discharges in the event an operator defaulted on its obligation.

I have proactively sought such funding as well. In 2003, I notified 30 mine operators holding 59 permits that they must post additional funds to guarantee the State could treat their discharges in perpetuity. From the time the State began tracking it in 2007, the total amount of bond posted has grown from about \$122 million to approximately \$264 million. Additionally, during my tenure the bond rate guidelines for calculating surface mine reclamation bonds have been adjusted annually to reflect the State's actual costs for completing reclamation; bond rates for underground mines were adjusted for the first time in over 20 years. I led the effort in Pennsylvania to develop a legally enforceable funding stream to pay for treatment of discharges on sites forfeited under the defunct alternate bonding system, mentioned above. Through my efforts, a consensus solution was developed and implemented with input from the regulated community, the Mining and Reclamation Advisory Board, the public, and members of the General Assembly.

Longwall Mining.—I have not promoted longwall mining but have advocated for landowner protections and the use of science-based decision-making.

In fact, as program counsel and Director, I worked on two rulemakings designed to implement landowner protections from the 1994 amendments to the State statute and advocated for an interpretation of the provisions that required operators to repair or compensate for damage to all dwellings in place at the time of mining. This interpretation provided more inclusive coverage and enabled the State to demonstrate that its subsidence program was as effective as federal counterpart regulations. I also led the team that developed the surface water protection policy, which is based on science. Whole areas of the State are off limits to mining because of excessive risk to streams posed by longwall mining-induced subsidence. At the same time, sound science was used to identify the areas where responsible longwall mining would not threaten stream integrity. As Director, I have steadfastly supported decisions to deny longwall mining plans that would have resulted in permanent flow loss in overlying streams.

Public Participation and Transparency.—Finally, I have not resisted public participation and transparent decision-making but have been an advocate for increased public participation during my tenure as Director.

During my tenure as Director, the Pennsylvania Bureau of Mining and Reclamation has routinely used email distribution lists—in fact it has three separate lists—to notify interested persons and organizations of draft policies, regulations, and program changes. BMR routinely answers public information requests without requiring the submittal of a formal Right to Know Request, which is the State's version of the Freedom of Information Act. Since 2002, we have answered over 1,100 such requests while formal requests have been, I believe, less than a dozen.

I have also provided opportunities for public participation in the drafting of policies and regulations that are over and above those required by State policy or law. For example, currently the State is conducting voluntary meetings with coal ash stakeholders, including the Environmental Integrity Project, Earth Justice, Mountain Watershed Association, Sierra Club and others to obtain their input on establishing regulatory trigger mechanisms for when to institute site assessments and when to initiate corrective action in the event coal ash used at a mine site begins to leach pollutants that could affect ground water. These meetings are not required by law; I elected to hold them in order to obtain more information and a better understanding of stakeholder views on these two points. I have also held similar meetings with other interested groups that have resulted in input and information considered in developing other regulations and standards.

RESPONSES OF JOSEPH G. PIZARCHIK TO QUESTIONS FROM SENATOR MURKOWSKI

STATE ROLE IN INTERAGENCY ACTION PLAN ON SURFACE MINING

Question 2. The Interior Department recently signed an MOU with EPA and the Corps of Engineers to develop an interagency action plan on surface coal mining. Among the "short term actions" identified, OSM has been tasked with determining how it may alter agency oversight of state permitting, enforcement, and regulatory activities.

How do you envision these directives aligning with the exclusive jurisdiction vested in the states under the Surface Mining Control and Reclamation Act for the regulation of coal mining operations?

Do you believe that there should be an official role for the states in the process of developing any recommendations or reaching any decisions in the context of this interagency action plan?

Answer. The Surface Mining Control and Reclamation Act, which incorporated the concept of state primacy, envisions OSM and the states working together cooperatively. I believe that it is critical to the success of the interagency action plan for state regulatory authorities to participate in developing any recommendations.

OPPORTUNITY TO RESPOND TO CRITICISM

Question 3. The Mountain Watershed Association has said, in opposing your nomination, that “we need a consensus builder and someone who thinks outside of the box to help solve this nation’s energy challenges, not someone who totes the company line regardless of the impacts.” Do you care to respond to their criticisms?

Answer. I do not agree with this assessment of my approach. I have worked with stakeholders to reach solutions on a variety of matters during my tenure. For example, I initiated a process of face-to-face meetings that, to my knowledge, had not been used in Pennsylvania to resolve program differences between the State, the federal government, citizens, and the regulated community. These meetings and the candid discussions that ensued led to a better understanding by all of the other stakeholders’ positions and views. In these instances, my initiation of such a process led to successful resolution of the issues—without resort to litigation. If confirmed, I hope to utilize such innovative means and foster cooperation among stakeholders as Director of the Office of Surface Mining Reclamation and Enforcement.

COOPERATIVE FEDERALISM APPROACH TAKEN BY SMCRA

Question 4. Coming from a State program, you have clearly developed an understanding of the meaning and importance of State primacy, which allows States to have exclusive regulatory jurisdiction within their respective borders.

If you are confirmed as OSM Director, will you pledge to respect the longstanding principle of state primacy established in SMCRA?

What specific role do you see the states playing under the Act and how do you envision federal oversight in light of this role?

Answer. I recognize and fully support the importance of state primacy. The states have the primary responsibility for implementing SMCRA’s requirements, and OSM must ensure that the states’ implementation is appropriate. As I noted at my confirmation hearing, this can and should be done cooperatively. If confirmed, I will seek to ensure that it is.

OPPORTUNITY FOR PUBLIC COMMENT ON RULEMAKINGS

Question 5. The Administrative Procedure Act establishes a process for federal agencies to follow regarding changes to their rules and allowing for public notice and comment on those decisions. When taking major policy actions, will you commit to do so in a transparent and open manner that allows public participation through the Administrative Procedures Act process?

Answer. During my tenure as Director of the Pennsylvania Bureau of Mining and Reclamation, I have been a strong proponent of increasing public participation in the processes under my management jurisdiction. If confirmed, I commit to ensuring that OSM’s rulemaking process fully complies with the public participation provisions of the Administrative Procedure Act.

1872 MINING LAW REFORM

Question 6. This Committee has jurisdiction over the 1872 Mining Law, and may consider changes to that statute in the coming months. While not directly related, you have some valuable experience in the areas we’ll be considering—you were one of the authors of Pennsylvania’s Environmental Good Samaritan Act and you were actively involved in the administration of that State’s abandoned mine clean up program. While there is not necessarily an explicit role for OSM, but understanding the experience you bring to the table, will you commit to working constructively with us on developing effective reforms to the 1872 Mining Law?

Answer. Yes. I am aware that Secretary Salazar has indicated that reform of the 1872 Mining Law is a priority. I stand prepared, if confirmed, to work constructively and in any capacity needed to bring this law into the 21st century.

RESPONSES OF JOSEPH G. PIZARCHIK TO QUESTIONS FROM SENATOR WYDEN

Question 7. Coal ash disposal in coal mines is a controversial issue in Pennsylvania and elsewhere. In 2005, the National Research Council (NRC) completed a study concluding while disposal in coal mines might serve as a possible disposal alternative to a vexing environmental problem, it could pose significant environmental risks if not properly carried out. During your tenure, how many mines have been permitted to receive coal ash in Pennsylvania to date, on what dates, and for what volumes of waste? What changes were made in your program and regulations following release of the NRC report to conform to its recommendations?

Answer. As the chart below indicates, since my tenure as Director began in 2002, 21 permits were issued or amended for coal ash use at mines. An additional eight reclamation contracts were issued that utilized coal ash. The reclamation contracts are short-term projects (usually one year) that typically use small volumes of coal ash to manufacture soil or to stabilize the surface. For comparison, approximately 170 mine sites and reclamation contracts have been issued under this program for coal ash use approval since 1988. An average of about 50 sites are utilized every year with the others remaining inactive or completed.

Volumes of ash placed at each site vary due to methods of compaction and differing uses, but can range from a few hundred tons for soil amendments to several million tons used to fill abandoned pits. Individual site volume is generally tracked on a site-specific basis through District Mining Offices and is not readily available in our central office. However, the volume of coal ash used collectively for mine sites in Pennsylvania was tracked beginning in 2007, when an aggregate of 11.4 million tons were used, and 2008, when 11.0 million tons were used.

Mine permits issued or amended for coal ash beneficial use since 2002

02020201	Robindale Energy Svc Inc.	Renton	2002
03050105	Amerikohl Mining Inc.	George	2006
11020202	Ebensburg Power Co.	Nanty Glo West	2002
11070202	Ebensburg Power Co.	Nanty Glo East	2007
13070101	Keystone Anthracite Marketing Corp.	No 2 Strip	2007
16070103	RFI Energy	RFI 548 North	2007
17010102	Compass Coal Co.	Camp Run Mine	2002
17030112	U. S. Operating Service	North Camp Run Mine	2003
17990103	River Hill Coal Co.	Kasubick	2003
24020102	P & N Coal Co Inc.	Benezette	2003
24030103	Amfire Mining Co LLC	KPB 127 Buhler West	2003
43020103	Ben Hal Mining Co.	Schumann	2003
61970102	Rusnak Coal Co.	Hawk Run Mine	2003
10030101	Quality Aggregates	Hindman	2003
11940201	Amfire Mining, LLC	St. Michael Pile	2003
11070201	Fuel Recovery Inc.	Lilly Refuse Pile	2007
11070203	Ridge Energy, Inc.	Marstaller Pile	2007
32040202	Robindale Energy Svc., Inc.	Charles Refuse Pile	2004
49050101	Farragut Anthracite	Farragut Mine	2005
56070201	Robindale Energy, Inc.	Penn Pocahontas	2007
16090101	RFI Energy	548 NORTH 2 MINE	2009
Reclamation Contracts—not mine sites			
10-06-02(GFCC)	Quality Aggregates Inc.	Marett Project	2006

Mine permits issued or amended for coal ash beneficial use since 2002—Continued

32-03-02	Robindale Energy Svc Inc.	Blacklick GFCC	2003
32-04-01	Robindale Energy Services, Inc.	Heilwood Site	2004
32-06-01 (NCC)	Gator Coal, LP		2006
32-07-05	Robindale Energy Svc Inc.	Ballas Refuse Site	2007
65-05-04(GFCC)	Bedrock Mines LP		2005
65-06-02 GFCC)	Robindale Energy, Inc	Whitney	2006
11-07-01	Robindale Energy Services, Inc.	Beaverdale Site	2007

Following release of the NRC report and after consideration of citizen concerns, we implemented the following changes to the program for use of ash at mines:

- Background groundwater sampling was doubled from six to at least twelve monthly samples covering the complete hydrologic cycle.
- Groundwater sampling methods have been expanded from 27 to 40 different testing parameters.
- Groundwater sampling of all 40 parameters now occurs every quarter instead of once per year.
- Water samples collected are tested for total and dissolved metals instead of just total metals.
- Sampling techniques have been improved, including purging of monitoring wells to improve quality of the data.
- Monitoring must include three or more downgradient points and at least one upgradient to obtain the necessary data.
- Monitoring will occur for at least 10 years after ash placement stops.
- Testing of ash for use approval now requires leaching parameters for 32 substances, up from 20, and is a centralized, standardized process to ensure consistency.
- Ash testing at the generation facility doubled to at least four times per year.
- Acceptable leaching limits were lowered for arsenic, lead, selenium and boron.
- Controls for temporary storage will be required.
- Added assessment procedures for when monitoring indicates a potential problem.
- Added corrective action procedures should the assessment find a problem caused by the ash.
- Amount of ash used at a mine is to be reported by generator and mine operator.
- A 50% increase in the amount of ash to be used on a mine requires new public notice.
- Ash generated from fuels other than coal or waste coal are required to obtain a waste general permit approval and mine suitability determination.

Question 8. An extensive 3-year study by the Clean Air Taskforce of 15 mines where the Pennsylvania Department of Environmental Protection (PADEP) permitted the disposal of coal ash, entitled *Impacts on Water Quality from Placement of Coal Combustion Waste in Pennsylvania Coal Mines* was completed in 2007 and concluded that PADEP's data indicated that ash is contaminating nearby water supplies in two-thirds (10) of the mines studied with arsenic, lead, cadmium, selenium, nickel, zinc, sulfate, chloride, manganese, boron and other contaminants exceeding drinking water standards, health advisories, or water quality standards often by orders of magnitude. In your testimony before the Committee, you indicated that your agency had reviewed the claims made in the report and found them to be without basis and that no additional pollution was attributable to ash disposal. Please confirm whether this is, in fact, your view and please provide the technical analysis that supports your position.

Answer. I did indicate that the PADEP review of the allegations did not find pollution that resulted from the coal ash placed at the sites. The PADEP response to the allegations of pollution from the placement of coal ash and the PADEP response to Environmental Integrity Project allegations are available at: <http://www.dep.state.pa.us/dep/deputate/minres/bmr/programs/beneficial.htm>, and include the following titles:

- PDEP Response to Clean Air Task Force Report (2007);

- PADEP Response to EIP Allegations of Lead Pollution Related to BD Mining (2009)
- PADEP Response to EIP Allegations to Trace Metal Pollution Related to McDermott and Ernest (2009)

For your convenience, I am also including these documents as attachment A* to these responses.

The agency has also produced a publication entitled “Coal Ash Beneficial Use in Mine Reclamation and Mine Drainage Remediation in Pennsylvania (2004)” that can also be accessed on the website. This publication is intended as a peer-reviewed document on the beneficial use of coal ash in mine reclamation and mine drainage remediation in Pennsylvania.

Question 9. It is my understanding that permits issued under the Pennsylvania program for the beneficial use of coal ash in mines have been found deficient by an Administrative Law Judge in your own department and by judges of the Interior Board of Land Appeals (IBLA). In *Citizen Advocates United to Safeguard the Environment Inc., v. PADEP*, EHB Docket No. 2006-005-L (Consolidated with 2005-329-L) (Issued Nov. 2, 2007), a state administrative law judge found that a monitoring system approved by the Department for a mine reclamation site permitted to take 10 million cubic yards of residual wastes, primarily a river dredge-coal ash mixture, was not capable of detecting offsite groundwater contamination from the waste despite offsite drinking water wells found in all directions around the site. In *Robert Gadinski*, 177 I.B.L.A. 373 (2009), the IBLA sided with a citizen and groundwater scientist and against PADEP finding that the public wells used in Tremont, PA are potentially threatened by the failure to characterize and sufficiently monitor groundwater flows from a nearby ash minefill. Do you agree that such deficiencies in a mine ash placement permit, as identified in these decisions, which can lead to the contamination of offsite water supplies, are a fundamental violation of SMCRA? If not, why not? Does SMCRA require the issuance of permits for surface mining that demonstrate clearly, through effective characterization, monitoring and safeguards, that such damage will be avoided? What corrective actions has the Department taken, or in the IBLA case, does it intend to take, as a result of these decisions?

Answer. Before I answer your specific questions, let me offer some clarification regarding the two decisions that you mention.

First, *Citizen Advocates United to Safeguard the Environment Inc., v. PADEP* did not involve the use of coal ash at a permitted coal mine, but was an appeal from a Determination of Applicability of a Residual Waste Beneficial Use General Permit issued by the PADEP’s Waste Program. Further, the site itself is a Brownfield Remediation site involving an old landfill, abandoned surface mining areas, and old deep-mining impacts. As Director of the Bureau of Mining and Reclamation and its programs, I have no authority for permits issued by Pennsylvania’s Waste Program or over actions taken by the Brownfields Remediation Program or the Bureau of Abandoned Mine Reclamation. SMCRA was not applicable to this site because it was a Brownfield site being remediated under a consent order and agreement pursuant to the Land Recycling and Environmental Remediation Standards Act, 35 P.S. sec. 6026.101 et seq.

My understanding is that the EHB upheld the General Permit but considered the groundwater monitoring plan insufficient primarily because of the complexity of the site, with its underground mine pools, draining of pools to a mine tunnel, and other complicating hydrologic features. The expert testimony raised some questions about whether additional monitoring wells and characterization of the site was needed, and the EHB remanded to PADEP for the purpose of improving the groundwater monitoring plan.

Second, the appeal in *Robert Gadinski* was from an OSM informal review and approval of a PADEP response to a Ten Day Notice that there was no violation because no contamination of the public water supply well had occurred. The IBLA decision involved the OSM standard of review, and the question was whether the record (i.e., the data provided by the State to OSM) was sufficient for OSM to reach its conclusion. The IBLA determined that it was not, and that OSM should have ordered a federal inspection pursuant to 30 CFR 842.11(b).

The IBLA made no finding regarding contamination of water supply wells at the site. While the IBLA raised the issue of whether the hydrologic balance of the site had been impacted by ash placement activities, it made no finding to this effect. Regardless, the State was not informed of this appeal to the IBLA by OSM, and

* Documents have been retained in committee files.

PADEP did not have any opportunity to explain its investigation or supplement the record before the IBLA.

With regard to your specific questions, I agree that failure to properly characterize a specific coal ash as suitable for use at a permitted mine site and failure to properly characterize a mine site before the regulatory authority authorizes the placement of mine ash could have the potential to lead to contamination of offsite water supplies. Contamination of offsite water supplies is not authorized by SMCRA. Further, when permitting surface coal mines, PADEP will not issue a surface coal mining permit if there is evidence that the proposed mining will adversely affect a public water supply.

As a result of the *Gadinski* decision, the State has met with the OSM's Harrisburg Field Office regarding an investigation as to whether the hydrologic balance of the site has been impacted and has proposed that a thorough joint investigation be performed. I expect that investigation to begin once approvals from OSM are received. I have also arranged with OSM that the State bureau will be informed of any similar federal administrative appeals so that PADEP can intervene and present its investigation and expert findings. This cooperative approach should significantly reduce the time needed to resolve citizen complaints and should provide IBLA the information necessary to render a decision.

Question 10. It is my understanding that according to Pennsylvania Department of Environmental Protection (PADEP), one of the primary justifications for approval of the dumping of millions of tons of coal combustion waste in mines is to neutralize or cure acid mine drainage. How many mines in Pennsylvania have been successfully remediated or cleaned up by this process? Can you please provide the committee with a list of these mines? Do you require long-term monitoring at these sites to ensure that the alkalinity of the coal ashes is not exhausted resulting in the release of metals and other ash constituents to water at these sites.

Answer. As I noted in response to a previous question, the State's mining program does not allow permitted mines to be used as dumps for coal combustion wastes or other wastes. Only coal ash that qualifies for use certification can be placed at a permitted coal mine in furtherance of the reclamation of the mine. I understand that there have been 33 mines where coal ash has been approved for use as alkaline addition, and I am providing a list of those mines below. Unfortunately, the results of the use of ash at these sites are not maintained in PADEP central office files, and I have requested that our district offices identify sites successfully addressed. Specific examples that I am aware of where the removal of waste coal and reclamation with coal ash has improved water quality include the Leechburg site and the Revloc site, both listed below. As of April 18, 2009, PADEP requires monitoring to continue for 10 years after the last year of ash placement.

Alkaline Addition sites

02020201	Robindale Energy Svc Inc.	Renton	Plum Borough
11020202	Ebensburg Power Co.	Nanty Glo West	Nanty Glo Borough
11070202	Ebensburg Power Co.	Nanty Glo East	Nanty Glo Borough
11900201	Maple Coal Company, Inc.	Colver	Barr
11970201	Maple Coal Company, Inc.	Rail Yard Site	Barr
32950201	Cambria Reclamation Corp.	Ernest	White
32950202	Cambria Reclamation, Inc.	Lucerne	Center
56743701	Robindale Energy Services, Inc.	Custom Coals Laurel	Shade
24020102	P & N Coal Co Inc.	Benezette	BENEZETTE
24030103	Amfire Mining Co LLC	KPB 127 Buhler West	HORTON
43020103	Ben Hal Mining Co.	Schumann	SANDY LAKE TWP
61970102	Rusnak Coal Co.	Hawk Run Mine	IRWIN
10-06-02	Quality Aggregates Inc.	Marrett Project	ALLEGHENY
17990107	River Hill Coal Co.	Mid-Penn #1	Bigler
11833026	Greenley Energy Holdings of PA	Mine 42	Scalp Level Borough
11880201	Ebensburg Power Co.	Revloc	Cambria
11890201	Greenley Energy Holdings of PA	Mine 42 A	Scalp Level Borough
11930102	EP Bender Coal Company	54 Job	Dean
11960202	Ebensburg Power Co.	Revloc 2	Cambria
11980103	Laurel Land Development	Mcfadden No 2 Mine	Blacklick
16910104	TDK COAL SALES INC	SANDY HOLLOW MINE	MADISON
17950111	SKY HAVEN COAL INC	BLOOM 1 MINE	Bigler
17950115	LARSON ENT INC	SWAMP POODLE MINE	Morris /Cooper
17970101	Sky Haven Coal Inc.	E. M. Brown #1	Lawrence
17980114	LARSON ENT INC	GRAHAM 2 MINE	Graham
32940105	Kent Coal Mining Company	Lucerne #2	Center
32980108	Amerikohl Mining, Inc.	JACKSONVILLE SURF MINE	Young
65050102	Bedrock Mines	Marco	Washington
32-00-04	Amerikohl Mining, Inc.	Ernest Refuse Area 4	Rayne
32-98-01	Amerikohl Mining, Inc.	JACKSONVILLE HILL SITE	Young
33-00-02	ACV POWER CORP	Soldier Project	WINSLOW
CO&A		Leechburg site	
11950102	Laurel Land Development	McDermott	Jackson

Question 11. How many of the mines where coal ash disposal has occurred have long-term monitoring (defined in federal waste regulations as 30-year post-closure monitoring) to ensure that hazardous chemicals do not escape the disposal areas and enter water supplies?

Answer. To clarify, coal ash disposal does not occur at permitted coal mines in Pennsylvania but is carried out instead in landfills. Permits for this type of disposal are issued by PADEP's Waste Program, not the Bureau of Mining and Reclamation, in accordance with the Solid Waste Management Act, the Clean Streams Law, and the regulations promulgated pursuant to those statutes.

As I noted in response to a previous question, permitting the use of certified ash—ash that has been certified to meet certain chemical and physical requirements—for placement as part of the reclamation of mines began in the mid-to late 1980s. All sites that are currently using ash for reclamation purposes will be required to be monitored for at least 10 years after placement of ash concludes.

Question 12. Are there specific corrective action standards in the permits for these sites that require cleanup of contamination from ash if it exceeds certain levels? Please provide a list of those permits.

Answer. The permits contain monitoring requirements for the coal ash and for the groundwater and surface water sampling points and reporting requirements for updated maps and volumes each year. The permits do not contain corrective action standards, but as noted in my response to a previous question, the ash must be certified to meet certain quality standards, including a dry weight analysis and leachate values, before it can be used for reclamation purposes. The current frequency for testing these samples is 4 times per year, and a pattern of exceedance of these quality standards will eliminate the source from use in a reclamation project. A one-time exceedance triggers increased sampling and an investigation as to the cause of the result.

For water monitoring, samples are submitted quarterly. The data is assessed to see if any degradation trends are occurring. An anomalous sample result is investigated first by the operator (through a resample) and then, if necessary, by the agency.

Currently, typical compliance actions related to coal ash use are related to missed, late or incomplete sampling rounds or reporting. There are instances in which ash sources ceased to be used due to exceeding parameters; placed ash material was required to be amended due to a low pH caused by a generator malfunction; and on various occasions, operators on site were cited for failure to follow operation procedures (such as requirements for compaction, dust suppression, temporary stockpiles, etc.). The Department has not taken corrective action for remediation of groundwater because no polluting events have been attributable to coal ash beneficial use.

Question 13. How many of these mines have bonds or other financial assurance specifically directed to ensure that hazardous chemicals in the ash, should they escape into water supplies, can be remediated by the mine owner or the utility dumping the waste and not the taxpayer?

Answer. Permitted coal mines are not used as dumps for chemically hazardous ash. Ash used for reclamation purposes must be tested and certified for the specified use before it can be used at a mine. The mine operator must demonstrate, and the State must find, that there is no presumptive evidence of potential pollution from the ash before the permit will be amended to allow the use of coal ash for reclamation activities. Permit amendments are subject to public notice, comment, and appeal. Because there is no evidence of pollution resulting from coal ash used for these reclamation purposes, no bond is required to be posted to pay for corrective action. Should site monitoring determine that coal ash is causing pollution, PADEP has authority to require the mine operator to post the bond necessary to complete corrective action and has used that authority when coal mining has caused water pollution. If the operator does not post the additional bond, the State will proceed to forfeiture, ultimately resulting in the permittee and all owners and controllers being banned from domestic coal mining.

Question 14. How many of the surface mines in Pennsylvania where coal ash disposal has occurred have liners to ensure that toxic chemicals in the ash do not migrate from the disposal site?

Answer. To my knowledge, three coal refuse disposal/ash placement sites are lined with either clay or synthetic lining. These sites are:

- EME Homer City, generation site;
- Rosebud Mining Co., Lady Jane Preparation Plant; and
- TJS Mining, CRD #2

Question 15. How many of these coal ash disposal sites are required to dispose of the toxic industrial waste above the seasonal high groundwater table so that groundwater doesn't come into contact with the toxic materials and is not thereby contaminated by heavy metals that can leach out of the waste?

Answer. Again, coal ash that has been approved by the PADEP mining program for use in a reclamation project is tested and certified for the specified use before it can be used at a mine; permitted coal mines are not used as dumps for chemically hazardous waste. Nevertheless, it is my understanding that in every coal mine site where coal ash use has been approved, it is placed above the local groundwater table. No other ash placement occurs within the saturated zone (or groundwater table). All collected/perched water is required to be removed from a pit prior to ash placement at a mine site. All best management practices employed minimize the contact of ash with runoff water.

Question 16. As discussed in detail in the NRC report, substantive improvements are needed in the leach tests used to characterize coal combustion wastes placed in mines. You indicated that you have incorporated the recommendations of the NRC report into your mine ash placement program. Can you tell us what improvements are being made to the test(s) that you will require for coal ashes placed in mines under your program?

Answer. In this instance, for the reasons discussed below, we are continuing to use the best currently available, EPA-approved test. I apologize, as I could have been more precise in my testimony.

Unfortunately, no test yet exists to characterize coal ash as if it were placed in a mine before it is actually placed in a mine, so it would be impossible to implement such a test. The PADEP uses the Synthetic Precipitation Leaching Procedure, or SPLP, which is deemed more representative of the leaching conditions of rock/soil material than the Toxicity Characteristic Leachate Procedure, which is used for solid waste at landfills. While there are some concerns about the validity of the SPLP testing under real-world conditions, this test remains in widespread use.

The continued use of the SPLP test has proven to be effective in Pennsylvania in predicting whether harmful substances will leach out of the certified ash once it is placed in the coal mine environment. We have been successfully using this test on permitted coal mine sites for approximately 20 years.

PADEP staff has extensive experience in leach testing and has examined protocols in various laboratory settings. While the NRC recommends alternate methods that require a higher degree of skill by the collector and the laboratory, which leads to higher costs, these new types of batch, column, and multipoint leach tests have not been used extensively enough to evaluate their effectiveness. The NRC report concedes that more research is needed in the area of predicting characteristics through leach testing. Both the Pennsylvania Waste and Mining programs attempt to keep abreast of all new research results related to this topic and are willing to examine new tests for feasibility and to make necessary changes to the procedures if warranted.

The new leaching tests that have been proposed for use by some environmental groups are still under development; methods have not been standardized and labs are not equipped to conduct these tests. When these issues are overcome, it is expected that new and better leach tests will be adopted by various environmental agencies as a new standard. In addition, local industry representatives for coal-burning energy plants have expressed interest in conducting additional research and monitoring of coal ash placement areas to help answer some questions regarding long-term chemical and physical stability of the ash material.

Question 17. As noted in the NRC report, coal ash disposal practices are not clearly covered at the Federal level by either the Surface Mining Control and Reclamation Act (SMCRA) nor the Resource Conservation and Recovery Act (RCRA) and their respective regulatory regimes. As a state regulator who has permitted this practice and as someone being nominated to be in charge of implementing SMCRA, what is your view on what actions should be taken at the federal level to adopt national standards for both the disposal of coal combustion wastes and their use in mine reclamation?

Answer. Based on my experience, it is clear that not all coal ash is the same nor is all coal ash suitable for use at mine sites, either coal or other types of mines. It is also clear that not all mines are suitable for the placement of coal ash. The chemical and physical properties of ash can vary significantly due to the source of the coal, the combustion technology used, the pollution controls, and the types of other fuels used. If confirmed, I look forward to working with others in the Administration and in Congress toward developing policies on how to best manage coal ash use and disposal based on sound science and crafted to protect the public and the environment.

Question 18. Following the 2008 TVA ash disaster, the U.S. Environmental Protection Agency announced in March of this year that it intended to issue regulations governing coal ash disposal. Given your extensive experience with the disposal and regulation coal ash what is your view on whether coal ash disposal should be regulated by U.S. EPA under the Solid Waste Disposal Act or RCRA and if it should be regulated, to what extent? If confirmed as the Director, what role do you intend to play in EPA's rulemaking effort? What role should EPA and the standards that it promulgates play in the regulation of coal ash in surface mines?

Answer. As I noted in my response to the previous question, my experience as a state regulator has led me to conclude that not all coal ash is created equal. Consequently, the regulation and management of coal ash should be based on the chemical and physical properties of the ash and the character of the site where it would be placed. If confirmed as Director, it is my intention to actively engage with others in the Administration and to work cooperatively in the development of a practical and protective regulatory framework for the management of coal combustion residues in order to protect the environment and the public.

Question 19. In a letter to the Committee the Sierra Club and Earth Justice contend that in 2001, as primary regulatory counsel, you supervised the drafting of state regulations that weakened the state's stream buffer zone rule allowing the filling of stream valleys in Pennsylvania. What role did you play in drafting the Pennsylvania regulations on stream buffer zones? On April 27, 2009, Interior Secretary Salazar announced that the Interior Department would move to rescind the 1983 Federal stream buffer rule allowing valley fill and mountaintop removal. Do you believe that the existing Federal stream buffer zone rule should be revised and if so, in what way?

Answer. The Pennsylvania mining program has two stream buffer zone rules. The rule that applies to coal mining has not been changed in over twenty years, and requires the applicant that seeks a variance to demonstrate "beyond a reasonable doubt" that there will be no "adverse hydrologic impacts, water quality impacts or other environmental resource impacts . . ." 25 Pa. Code 86.102(12). For example, at my direction, violation of this rule as a basis for permit denial was added to the permit denial letter where an applicant proposed using spoil to bury one and a half mile of streams.

The other SBZ rule applies solely to coal refuse disposal, and appears in the Coal Refuse Disposal Control Act (CRDCA), 52 P.S. section 30.56a(5), and in the coal refuse disposal regulations, 25 Pa. Code 90.49. As program counsel, I assisted the Department in drafting changes to the regulations that were necessary to ensure that those regulations were consistent with requirements contained in amendments to the State statute that were enacted in 1994 to authorize variances with required prevention or mitigation of adverse impacts. As counsel, my role was also to ensure that the revised regulations were not inconsistent with and were as effective as federal SMCRA and that the revised regulations did not violate the federal Clean Water Act and would not contribute to violation of applicable state and federal water quality standards. I approved the revised regulations for form and legality.

Those revised regulations were approved by OSM and the Environmental Protection Agency, with input from the U.S. Fish and Wildlife Service and the Army Corps of Engineers.

With regard to the stream buffer zone rule, I believe that Secretary Salazar announced in April that he was asking the district court to vacate and remand the Bush Administration's last minute change to the 1983 stream buffer zone regulations. During the public comment period on that Bush Administration proposal to change the 1983 regulation, my program provided comments indicating that Pennsylvania did not support the proposal.

Question 20. In letters to the Committee from the Sierra Club/Earth Justice and PennFuture, the groups contends that the Pennsylvania coal program under your leadership had significant deficiencies in its bonding program. They contend that you did not take action to correct these deficiencies until the program was found insufficient by a Federal Appeals Court (Pennsylvania Federation of Sportsmen's Clubs, Inc. v. Kempthorne, 497 F.3d 377 (3d Cir. 2007)). However, despite recent changes, the result, they contend, is a program that is still not in conformance with SMRCRA requirements for financial guarantees to reclaim land and prevent water pollution from coal mining. Do you believe that the Pennsylvania bonding program fully complies with the letter and intent of SMCRA, and if so, on what basis?

Answer. I believe the Pennsylvania bonding program fully complies with the letter and intent of SMCRA. Program amendments submitted to OSM on August 1, 2008, provide a detailed explanation of how the State's bonding is consistent with and as effective as federal law. This information can be accessed at the following link:

http://www.dep.state.pa.us/dep/deputate/minres/bmr/bonding/Response_to_Part732_Notices/Submittal/Notices_folder01.htm

The program amendment describes the changes PADEP made to its bonding program and explains how the changes meet the federal standards. PADEP terminated the alternate bonding system to halt the accumulation of more reclamation costs. All mine operators must post bonds equal to the full cost of the amount it would take the State to complete reclamation. PADEP demonstrated that it has sufficient money to complete the land reclamation on the forfeited sites, to build mine drainage treatment systems on sites forfeited under the defunct alternate bonding system, and that it has a legally enforceable mechanism in place to generate the funds necessary to perpetually treat these discharges. The program amendment addresses the Part 732 Notices and the required demonstration and or program amendment codified in 30 CFR section 938.16(h).

An update of the status of efforts on implementing these changes is also available at: http://www.dep.state.pa.us/dep/deputate/minres/bmr/bonding/Primacy_ABS_Bond_Forfeiture_Update_January_2009/Primacy_ABS_Bond_Jan_2009.htm.

During my tenure as program counsel and as Director, I have worked extensively on correcting identified deficiencies. Beginning in 1992 I participated in drafting amendments to the State's version of SMCRA and regulations to address shortfalls in the State's now-defunct alternate bonding system for surface coal mines. When Pennsylvania terminated this alternate bonding system, I helped draft the appropriation legislation that authorized conversion assistance financial guarantees that prevented defaults by mine operators due to changes in the State's bonding requirements after permits had been issued. I developed the legal basis and helped draft the documents for Pennsylvania's trust fund program, the first program in the country that provided a means for the State to perpetually treat post-mining discharges in the event an operator defaulted on its obligation.

I have proactively sought such funding as well. In 2003, I notified 30 mine operators holding 59 permits that they were required to post additional funds to guarantee the State could treat their discharges in perpetuity. From the time the State began tracking the amount of bond posted in 2007, the total amount has grown from about \$122 million to approximately \$264 million. Additionally, during my tenure, the bond rate guidelines for calculating surface mine reclamation bonds have been adjusted annually to reflect the State's actual costs for completing reclamation; bond rates for underground mines were adjusted for the first time in over 20 years. I led the effort in Pennsylvania to develop a legally enforceable funding stream to pay for treatment of discharges on sites forfeited under the defunct alternate bonding system mentioned above. Through my efforts, a consensus solution was developed and implemented with input from the regulated community, the Mining and Reclamation Advisory Board, the public, and members of the General Assembly.

Question 21. In your testimony before the Committee, you testified that you carried out a policy of transparency and openness. In a letter to the Committee from a number of Pennsylvania citizens (Citizens letter), the claim is made that you were resistant to citizen input by limiting public testimony in permitting proceedings and holding hearings only during agency work day hours. In addition, the Sierra Club/Earth Justice and PennFuture letters contend that you joined with the Bush Administration in attempting to prevent citizens from obtaining information under the Freedom of Information Act (FOIA) by claiming in an amicus curiae filing before the Third Circuit that correspondence between PADEP and the Office of Surface Mining was eligible for protection from public disclosure as "intra-agency memorandums or letters."

Did you take or recommend such actions?

How will you, if confirmed as Director of OSM, specifically address these issues and promote meaningful participation of citizens in permitting proceedings and rulemakings, promote transparency in decision-making by providing full access to agency documents, and ensure access to public meetings for members of the working public?

Answer. During my tenure as Director, the State mining program operated with serious fiscal limitations due to reduced state and federal funding. My program was under a Department-wide policy that prohibited the payment of overtime, which was required for State employees who would attend evening public hearings. A decision was made at the Department level that foregoing evening public hearings was one option that could save funds and have the least adverse impact on our programs. During briefings with Congress, I and my counterparts in other states that were experiencing similar funding shortfalls apprised staff of how limited funding was adversely affecting our ability to effectively implement SMCRA. Congress ultimately appropriated additional funds in the 2008-2009 fiscal year, but State revenue is still

suffering. PADEP is holding, when requested, evening public hearings with management staff, which does not require payment of overtime.

I did not recommend that the State file the amicus curiae brief with the Third Circuit regarding the Freedom of Information Act litigation. Moreover, I did not participate in the development or implementation of litigation strategy regarding the freedom of information request. As I noted in response to a previous question, if confirmed as Director I will dutifully implement the relevant federal laws and the Administration's policies regarding these matters.

Question 22. The Citizens letter also claims that you have "shown little regard for SMCRA's purpose to minimize harm" in developing Pennsylvania's regulations regarding long-wall mining. Specifically, the letter claims that you were insensitive to the impact on landowners from subsidence due to long-wall mining. The letter asserts that you defended the impacts based upon the prior sale of mineral rights regardless of the fact that the technology now being employed, long-wall mining, and its potentially destructive consequences did not exist at the time of the transfer of such rights. What is your position on land owner rights where long-wall mining is occurring? And what is your interpretation of the minimization of harm obligations under SMCRA?

Answer. I understand the impacts of longwall mining can be very traumatic and stressful to landowners. However, it is my understanding that Pennsylvania's statutes and property law limited what PADEP could do through a rulemaking. It is true that longwall mining did not exist when the mineral and surface support rights were severed from the surface, but it is also true that high extraction mining did occur then and did damage surface structures. I have taken steps that are sensitive to landowners. For example, as Bureau Director, I issued a memorandum clarifying that, where enforceable building codes are in effect, repairs must meet applicable standards regardless of whether or not the damaged structure was constructed according to code. It also specified that, when compensation is offered as settlement, the amount must be sufficient to repair or replace the damaged structure in accordance with the applicable building code.

As program counsel and director, I worked on two rulemakings designed to implement landowner protections from the 1994 amendments to the State statute and advocated for an interpretation of the provisions that required operators to repair or compensate for damage to all dwellings in place at the time of mining. This interpretation provided more inclusive coverage and enabled the State to demonstrate that its subsidence program was as effective as federal counterpart regulations.

Section 516(b)(1) of the Act provides that the operator of an underground coal mine (but not longwall mining) prevent subsidence causing material damage to the extent technologically and economically feasible. Section 516(b)(11) provides operators of all underground mines must, to "the extent possible using the best technology currently available, minimize disturbances and adverse impacts of the operation on fish, wildlife, and related environmental values." I fully support all of these federal statutes and the implementing regulations.

RESPONSE OF JOSEPH G. PIZARCHIK TO QUESTION FROM SENATOR SHAHEEN

Question 23. I have heard from a number of concerned environmental groups about the environmental impacts associated with surface mining, particularly as it pertains to mountaintop mining and surfacing mining involving valley fills.

Several studies have shown that mountaintop removal is having a significant impact on watersheds in the Appalachian regions where it is being conducted. Selenium, mercury, lead, and other heavy metals and chemicals are released during the surface mining process into the watersheds of central Appalachia and are harmful to ecosystems and water quality. The studies also illustrate that there are severe ecologic and hydrologic impacts from mountaintop removal operations.

As Director of the Office of Surface Mining Reclamation and Enforcement, to what degree will science and science-based reporting affect policy decision-making within OSMRE?

Answer. If confirmed as Director, I will ensure that the Office of Surface Mining Reclamation and Enforcement uses sound science-based information to administer the requirements of the Surface Mining Control and Reclamation Act of 1977 and to implement the applicable policies of the President and the Administration. The better understanding we have of the environmental impacts of mining and the processes that cause such impacts, the better we will be able to target our policies to achieve our policy goals.

RESPONSES OF JOSEPH G. PIZARCHIK TO QUESTIONS FROM SENATOR BARRASSO

Question 24. The Mineral Leasing Act provides for the deferred payment of bonus bids for coal leases in equal installments. Under current regulations, federal coal lessees pay the bonus in five equal installments. The current system makes sense because cost is so significant—in Wyoming bonus bids for a federal coal lease can cost hundreds of millions of dollars.

The Interior Appropriations bill passed by the House requires full payment up front. Requiring payment of the bonus bid in one up front payment would undermine domestic coal production, disadvantage smaller companies that lack the financial resources, and likely reduce government revenues from coal leasing in the long run.

- Given your experience with coal mining in Pennsylvania, do you think requiring total payment of bonus bids up front—which could be tens to hundreds of millions of dollars—could discourage investment?
- Do you believe smaller companies would be at a disadvantage?

Answer. Because the coal in Pennsylvania is virtually all privately owned, my experience in the State does not involve federal coal leases or bonus bids for coal. Additionally, the Bureau of Land Management in the Department, not the OSM, implements the Mineral Leasing Act provisions under which these payments are made. Therefore, if confirmed, I do not expect to have any involvement in determining the payment structure for federal coal leases.

Question 25. In March 2006, the Wyoming Secretary of State submitted an amendment to its Coal Regulatory Program (referred to as Wyoming Rule Package 1-U) proposing changes to the rules concerning self-bonding requirements. The rule included important additions and revisions designed to address Wyoming-specific circumstances taking into account the substantially larger size of the surface coal mines in the state.

It is my understanding the Solicitor's office approved the final rule in March 2009. OSM management then returned the rule to the Western Region for additional changes. The State of Wyoming has worked with OSM on this rule for over three years.

- Is it a normal part of the process to send it back to the Western region after the Solicitor's office approves a final rule?

Answer. I have been informed that the Solicitor's Office provides advice, counsel, and legal representation to OSM, including reviewing draft regulations to ensure legal sufficiency. The Solicitor's Office staff does not approve or disapprove program amendments but reviews proposed decisions, the legal basis for those decisions, and advises its clients of any relevant findings before publication.

- Why was it sent back to the region for further changes?

Answer. I understand that once review in the Washington Office was completed, the document was returned to the Western Region for final preparation, after which it will ultimately be submitted to the OSM Director for a decision.

- What steps remain in the approval process?

Answer: I am informed that the remaining steps are a decision by the OSM Director, and publication in the *Federal Register*.

- Do you commit to finalizing the Wyoming Rule Package 1-U in a timely fashion?

Answer. Yes. If confirmed, I will commit to ensuring that a final decision is made in a timely fashion.

RESPONSES OF JOSEPH G. PIZARCHIK TO QUESTIONS FROM SENATOR SANDERS

Question 26. Several environmental groups, including The Environmental Integrity Project, Earthjustice, and the Sierra Club have raised concerns regarding your nomination. Particularly they have raised concerns about a lack of transparency and citizen input opportunities during your time working as a state official in Pennsylvania. How do you respond, and are you willing to commit that in your role as Director of the Office of Surface Mining Reclamation and Enforcement you will be a strong supporter of federal laws requiring transparency and public accountability in decision-making, such as the National Environmental Policy Act and the Freedom of Information Act?

Answer. As I noted in response to an earlier question, I have not resisted public participation and transparent decision-making but have been an advocate for in-

creased public participation during my tenure as Director. If confirmed as Director of the Office of Surface Mining Reclamation and Enforcement, I will comply with the federal laws requiring transparency and public participation and be a strong supporter of transparency in government decisionmaking.

During my tenure as Director, the Pennsylvania Bureau of Mining and Reclamation has routinely used email distribution lists—in fact it has three separate lists—to notify interested persons and organizations of draft policies, regulations, and program changes. BMR routinely answers public information requests without requiring the submittal of a formal Right to Know Request, which is the State's version of the Freedom of Information Act. Since 2002, we have answered over 1,100 such requests while formal requests have been, I believe, less than a dozen.

I have also provided opportunities for public participation in the drafting of policies and regulations that are over and above those required by State policy or law. For example, currently the State is conducting voluntary meetings with coal ash stakeholders, including the Environmental Integrity Project, Earthjustice, Mountain Watershed Association, Sierra Club and others to obtain their input on establishing regulatory trigger mechanisms for when to institute site assessments and when to initiate corrective action in the event coal ash used at a mine site begins to leach pollutants that could affect ground water. These meetings are not required by law; I elected to hold them in order to obtain more information and a better understanding of stakeholder views on these two points. I have also held similar meetings with other interested groups that has resulted in input and information considered in developing other regulations and standards.

Question 27. What are your views on mountaintop mining and its impacts on surrounding communities and water quality?

Answer. The Pennsylvania Department of Environmental Protection, in which my State Bureau of Mining and Reclamation resides, does not authorize mountain top removal mining in Pennsylvania. If confirmed, I will become more familiar with how the practice has been conducted and its impacts. I am also aware that Secretary Salazar and others within the Administration have recently taken steps to ensure that the federal agencies involved in these activities are coordinating efforts and making real progress toward reducing the environmental impacts of mountaintop coal mining. Should I be confirmed, I will work to ensure that these goals are met.

Question 28. Do you believe that water quality can be negatively impacted by the practice of using coal mines as storage sites for coal combustion wastes?

Answer. Water quality can be negatively impacted. However, it depends on several factors, because not all coal combustion residues possess the same chemical and physical properties and not all mines are suitable for the use of coal combustion residues. Depending on the properties of the coal combustion residues and the characteristics of a particular coal mine, some coal combustion residues could be safely stored at some mines, but not all residues could be safely stored at all mines.

RESPONSES OF JOSEPH G. PIZARCHIK TO QUESTIONS FROM SENATOR MENENDEZ

Question 29. The Administration has expressed an intention to tighten regulations on mountaintop removal mining. Specifically, what aspects of the practice do you think need further regulation? Would you be supportive of banning the practice or do you think the practice can continue without public health or environmental harms?

Answer. As a state regulator in the Commonwealth of Pennsylvania, I have no direct experience with mountaintop removal because those types of mines do not occur in my home state. However, if confirmed, I will become informed on the practice and current issues surrounding this type of surface mining. As I said in my confirmation hearing, it is my intent to work with the Environmental Protection Agency, U.S. Army Corps of Engineers, and the Administration to carry out the Surface Mining Control and Reclamation Act (SMCRA), Clean Water Act, and related environmental statutes effectively. Should I be confirmed, I will carefully and thoroughly research the issues with the other federal agencies and stakeholders. Only after such a review, can I judge if additional or revised SMCRA regulations are necessary.

Question 30. According to the Office of Surface Mining Reclamation and Enforcement website the Surface Mining Control and Reclamation Act “ensures that coal mining operations are conducted in an environmentally responsible manner and that the land is adequately reclaimed during and following the mining process.” Can land be “adequately reclaimed” following a mountaintop removal operation?

Answer. As I noted in the response to the previous question, I have no experience judging mountaintop removal reclamation because it does not occur in Pennsylvania. I do understand that Congress authorized steep slope and mountain-top re-

removal mining in SMCRA under certain conditions. However, there are many performance standards and reclamation requirements that apply under SMCRA. If confirmed, I will work to address the concerns raised about ensuring adequate reclamation following a mountaintop removal operation.

I am also aware that Secretary Salazar and others within the Administration have recently taken steps to ensure that the federal agencies involved in these activities are coordinating efforts and making real progress toward reducing the environmental impacts of mountaintop coal mining. Should I be confirmed, I will also work to make sure that these goals are met.

Question 31. The Department of the Interior recently rejected the Bush Administration interpretation of the Stream Buffer Zone Rule (SBZ) and said the department would return to the original intent—to prevent mining within a 100-foot buffer zone along intermittent and perennial streams. How will you enforce this interpretation? Are there any current mining operations that will have to cease or change their practices to be in compliance?

Answer. As a result of the recent decision by the District Court for the District of Columbia on August 12th, it is my understanding that the Department is working with the Office of the Solicitor to chart a path forward. If confirmed, I will be guided and informed by the statutes, regulations, and best science to make decisions about interpretations of the Stream Buffer Zone rule.

Question 32. Coal ash disposal is a highly controversial topic. Approximately how many mines have been permitted to receive coal ash in Pennsylvania to date? Are these mines required to set aside funds to remediate damages if toxins should leach onto water supplies? How are these mines being monitored to ensure that hazardous chemicals do not escape? Are these mines required to have liners to ensure that toxic chemicals in the ash do not migrate from the disposal site? How will you apply your work on coal ash disposal in Pennsylvania to your work in the federal government?

Answer. Approximately 170 mine sites and reclamation contracts have been issued under Pennsylvania's program to date. An average of about 50 sites are utilized every year with the others remaining inactive or completed. Because not all coal ash is the same, coal ash must be tested to determine whether it has the chemical and physical properties that make it environmentally acceptable to use at a mine for the specific reclamation purpose. If it is found acceptable, it is certified for use. The individual mine site is also evaluated to determine whether the certified ash can be safely used at the mine. Pennsylvania law requires that the mine operator, either in the permit application or in the permit amendment application, demonstrate that there is no presumptive evidence of potential pollution of the waters of the Commonwealth and PADEP must make such a written finding before coal ash can be allowed to be used on the mine. Because there is no evidence of pollution resulting from coal ash used for these reclamation purposes, no bond is required to be posted to pay for corrective action. Should site monitoring determine that coal ash is causing pollution, PADEP has authority to require the mine operator to post the bond necessary to complete corrective action and has used that authority when coal mining has caused water pollution. If the operator does not post the additional bond, the State will proceed to forfeiture, ultimately resulting in the permittee and all owners and controllers being banned from domestic coal mining.

In addition, as part of the permit approval process the mine operator is required to establish a groundwater monitoring plan that will be in place for at least 10 years after placement of the ash concludes. The mine operator is required to collect water samples and have them tested for certain parameters. In April 2009, the groundwater monitoring was increased from annually to quarterly. The number of parameters tested was increased to 40 (previously, testing covered 27 different parameters). PADEP also periodically collects and tests groundwater samples. The certified ash the PADEP mining program has approved for the specific reclamation use on a mine has been placed above the sites' groundwater table, and liners have not been required. If confirmed as the Director of the Office of Surface Mining Reclamation and Enforcement, I will use my experience with coal ash in Pennsylvania to be actively engaged within the Administration in the development of a scientifically sound, practical, and protective approach for the management of coal combustion residues in order to protect the environment and the public.

RESPONSES OF JOHN R. NORRIS TO QUESTIONS FROM SENATOR MURKOWSKI

FUTURE ENERGY NEEDS

Question 1. What are your views on the future role of baseload coal-fired and nuclear power generation? Do you agree with Chairman Wellinghoff's statements that the nation's future power needs can be fully met by renewable energy sources and efficiency improvements?

Answer. The nation currently depends on our existing coal and nuclear generation facilities to ensure a reliable supply of electricity. At the moment, about 70 percent of the electricity generated in the U.S. comes from these sources and it is likely that the country will continue to rely heavily on coal and nuclear energy resources for many years to come. Decisions to build new coal and nuclear generation facilities will be made as result of market forces. The markets are likely to be influenced by the amount of new renewable generation available, the availability of capital and most importantly legislation Congress may enact to address carbon dioxide emissions, transmission infrastructure improvements, demand response and a host of other issues. That being said, I cannot predict how much new conventional nuclear and coal fired generation may be built. In any event, my understanding of Chairman Wellinghoff's view (as stated, for example, at an August 6, 2009, hearing of the Senate Committee on Environment and Public Works) is not that our power needs can be fully met by renewable energy sources and efficiency improvements but that, depending on factors such as the structure and function of our energy markets and whether climate change legislation is adopted by Congress, it may be possible to use resources such as renewable energy (including solar, wind, geothermal, hydrokinetics and biomass), energy efficiency, demand response and natural gas to transition to a low-carbon energy future.

TRANSMISSION (GENERAL)

Question 2. In your opinion, what are the current obstacles to financing and siting new transmission?

Answer. First, the question of whether there is going to be a federal renewable energy standard (RES) and/or a national carbon policy needs to be decided since these policies will significantly impact renewable energy demand and any economic decisions concerning energy supply choices. Assuming there are both a RES and a carbon policy, there are several obstacles to financing and siting new transmission. One of the primary issues is "who pays" or cost allocation. Without giving FERC the ability to properly allocate costs, new national policies like a RES or carbon reduction will not be properly implemented. Besides cost allocation, some of the obstacles to siting new transmission infrastructure include: the lack of a regional and national coordinated planning process; delays in federal land right-of-way approvals; and delays in state utility commission approvals. Under the Commission's current backstop siting authority, the single largest obstacle to the siting of new transmission is the 4th Circuit Court of Appeals decision that limits the Commission's authority to instances where a state has not made a siting decision within one year. An individual State's decision to deny a project within its boundaries, can prevent the construction of new transmission even when these projects may be in the national public interest.

Question 3. Absent legislative changes, how can FERC and the states work most effectively to expedite planning and siting of multi-state transmission projects and provide regulatory certainty on cost recovery? What actions can FERC take under its existing statutory authority in these areas?

Answer. With regard to transmission planning, in Order No. 890 the Commission required jurisdictional utilities to engage in regional planning to ensure adequate and reliable transmission service within regional markets.¹ States have generally been very supportive of this requirement for regional transmission planning. Order No. 890 requires all transmission providers to develop an open and coordinated transmission planning process that involves ongoing coordination and input from stakeholders, including state and local retail regulatory entities. This process provides an ongoing opportunity for states to work with utilities in planning as well as with the FERC in addressing transmission related issues since they often choose also to participate in Commission proceedings related to planning and cost allocation for transmission in interstate commerce.

Order 890-A further required transmission providers to address issues involving comparable treatment of resources in the planning process, cost allocation and re-

¹Preventing Undue Discrimination and Preference in Transmission Service, Order No. 890, 72 FR 12,266 (Mar. 15, 2007).

regional coordination. To evaluate the effectiveness of the implementation of the regional transmission planning process and address issues, the Commission has scheduled a second series of regional technical conferences to begin in September of this year. These conferences will involve all stakeholders, including state and local retail regulators in addressing regional transmission planning, coordination, and cost allocation issues. The Commission seeks, through stakeholder feedback at these conferences, to determine if further refinements to the planning process are necessary.

With regard to transmission siting please see my response to your question #6.

Question 4. Chairman Wellinghoff has stated that one of his priorities is to integrate renewable, efficiency and demand response into the interstate grid—do you share that goal? If so, what specifically would that entail in the way of new policies and programs from FERC?

Answer. Yes, I support the Chairman's goal of integrating renewable, efficiency and demand response into the interstate electricity grid. In that regard, the Commission is undertaking several initiatives that would help achieve the Chairman's goal. These include:

- **Renewables.**—FERC staff is conducting a technical study to determine the appropriate metrics for use in assessing the reliability impact of integrating large amounts of variable renewable power generation into power grids.
- **Efficiency.**—To support participation of energy efficiency resources in wholesale electricity markets, the Commission has accepted proposals by ISO-New England and PJM to allow energy efficiency resources to receive capacity payments in exchange for taking on capacity obligations in their respective capacity markets.
- **FERC recently issued a Smart Grid Policy Statement** to prioritize and accelerate the development and adoption of interoperability standards and protocols necessary to ensure smart-grid functionality and interoperability in interstate transmission and in wholesale electricity markets. Such standards are important for unlocking the potential efficiency benefits of the Smart Grid.
- **Demand Response.**—FERC recently completed a rulemaking ordering the removal of specific barriers to the participation of demand response in the organized wholesale markets (Order No. 719, October 2008). In addition, it directed each RTO and ISO to submit, and each has now submitted, a report identifying and explaining how it will remove any remaining barriers to demand response in cooperation with its stakeholders. Also, the Commission is developing a National Action Plan on demand response, as required by the 2007 Energy Independence and Security Act. This plan will facilitate the development of demand response as a resource and business area through increased communication of its benefits to consumers and stakeholders.

Going forward, I support Chairman Wellinghoff's recent Congressional testimony on reforming national transmission policy, in which he called on Congress to enact legislation that will:

- Enable transmission developers to invoke federal authority to site transmission facilities where necessary to interconnect renewable power to the electric transmission grid, after states have had an opportunity to address the proposal first;
- Clarify FERC's authority to ensure that state and regional planning is consistent with national energy goals; and
- Clarify FERC's authority to allocate the costs of transmission infrastructure necessary to accommodate the Nation's renewable energy potential to all load-serving entities within an interconnection, when it is appropriate to do so.

TRANSMISSION SITING

Question 5. Do you believe that transmission should be an asset for all generation resources? What is your view of efforts to mandate that new transmission be limited to renewable or low-carbon emitting resources?

Answer. I believe that improvements to the interstate electric transmission grid can be an asset for all generation resources. New transmission facilities clearly are necessary in order to deliver renewable and low-carbon emitting resources to the market. At the same time, increasing the flexibility and the reliability of the grid, as well as reducing congestion, can result in the more efficient use of generation from other resources, with resultant benefits to consumers and the environment.

Question 6. Although the provisions are different, S. 1462, the American Clean Energy Leadership Act of 2009 reported by this Committee and H.R. 2454, the American Clean Energy and Security Act of 2009 passed by the House of Represent-

atives, would give FERC additional authority over transmission siting, including the ability to consider applications where a state denies a siting permit.

a. Do you support providing additional siting authority to FERC?

Answer. Yes. I believe that there is a national interest in the siting of interstate electric transmission facilities that warrants a federal role, although I also believe that federal authority should be exercised, to the maximum extent possible, with due regard for the concerns of the states.

b. S. 1462 provides FERC with backstop siting authority for those projects that are identified in the planning process as High Priority National Transmission Projects if a state fails to act within one year on the application or if the state rejects that application. Do you support this Committee's approach to transmission siting?

Answer. Yes. While, as a former state regulator, I am confident that the states will render appropriate decisions on proposed interstate electric transmission facilities in the vast majority of cases, the strong national interest in an efficient interstate electric transmission grid justifies providing FERC backup authority.

c. H.R. 2454, as passed by the House, leaves the National Interest Electric Transmission Corridor process from the Energy Policy Act of 2005 largely intact for the Eastern Interconnection. The process for federal siting in the Western Interconnection is, like the Senate language, tied into the new planning process. Do you believe federal siting authority in the area of transmission should be uniform in the Eastern and Western Interconnection?

Answer. As a general matter, a uniform approach to federal transmission siting would appear easiest to administer and most likely to provide consistent, predictable regulation. That said, I believe that there is more than one possible approach to transmission siting and that FERC will be able to fulfill whatever role Congress chooses to give it.

TRANSMISSION COST-ALLOCATION

Question 7. What, in your opinion, should be the standard or principle that governs who should be assessed costs for new transmission lines?

Answer. I do not think a "cookie-cutter" approach works when it comes to allocating transmission costs. Rather, I believe the Commission needs to have the flexibility to apply a cost allocation methodology that addresses the circumstances of the case. As a general matter, I think that the beneficiaries of a transmission project should bear the costs of that project. However, I also think that at times it is appropriate to broadly construe who are the beneficiaries of a project, e.g., those who benefit from a project that helps meet a renewable portfolio standard. I also think it is important when allocating costs to balance the state, regional and, if applicable, national goals for developing renewable energy and reducing carbon emissions, as well as to weigh the reliability and economic benefits created by the transmission upgrade.

Question 8. One issue this Committee really grappled with during consideration of S. 1462 was the issue of cost-allocation for new transmission projects. The House found this issue to be so complex that it did not even address it in H.R. 2454. As initially drafted, the transmission legislation allowed for the broad allocation of transmission costs—what some deemed the "socialization" of costs—to make projects more economical. During markup, the Committee adopted an amendment offered by Senator Corker, by a vote of 13-9,

a. Please offer your perspectives on the issue of "socializing" the costs of building new backbone interstate transmission.

b. Under this socialization concept, is it true that entities could be charged for the costs of building new transmission, even though they do not actually use that transmission to move power or receive power?

c. What would be the basis for such charges? What benefit would an entity receive from a new transmission line if it does not use that line for transmission service?

Answer. As a general matter, I believe that the decision on whether to allocate transmission costs broadly should be made on a case-by-case basis, depending on the circumstances of each case. As noted in my response to Question 7 above, I do not think a "cookie-cutter" approach works when it comes to transmission cost allocation. I also believe that a broad allocation of transmission costs would be supported by the establishment of national renewable energy or carbon policies affecting the need for new transmission lines. While it is possible under a broad allocation of

costs that entities that will not actually use a particular new transmission line could be charged for a portion of the costs of building that transmission, I do not believe such a result is typical nor is it an outcome I desire. However, I believe it is appropriate in certain instances to broadly construe who are the beneficiaries of a project, which may extend to include entities beyond those who directly use a line. This approach may be appropriate in instances where a transmission upgrade includes general reliability or economic benefits (e.g., upgrades to relieve a transmission constraint on one part of a system can produce reliability or economic benefits on other parts of the system), or where there is shared responsibility for any national goals or mandates.

TRANSMISSION (INCENTIVES)

Question 9. FERC's authority to provide incentive based rate treatment to promote construction of new or upgraded transmission facilities to address reliability and accommodate the integration of renewable resources can assist transmission investment.

a. In your opinion, has the Commission given appropriate incentives to promote investments in transmission?

Answer. In general, I believe that the Commission's policy of evaluating whether incentives are necessary to encourage new transmission investment on a case-by-case basis has enabled the Commission to grant incentives in appropriate cases to promote investment in needed transmission.

b. What types of projects do you see as meriting incentive-based rate treatment?

Answer. As a general matter, I find reasonable the Commission's current case-by-case approach of determining which projects merit incentives. First and foremost, the Commission considers whether a project ensures reliability or reduces congestion, consistent with Section 1241 of the Energy Policy Act of 2005.² In addition, the Commission requires an applicant to demonstrate that the total package of incentives is tailored to address the demonstrable risks or challenges faced by the applicant in undertaking the project. Finally, the applicant has to demonstrate under section 205 of the Federal Power Act³ that the rates it will charge to consumers are just and reasonable and that costs were prudently incurred. I believe that additional incentives may be appropriate in some cases where the project advances important national policy.

c. Are there additional criteria that you think more fairly determines the merits of a project seeking incentives?

Answer. I believe the criteria the Commission uses in its current analysis is appropriate for determining whether incentives are warranted for a transmission project in most cases. However, if confirmed, I am open to considering additional criteria for determining whether a project merits incentives, particularly when the criteria advance national policy goals, such as providing access for renewable resources to the interstate grid.

TRANSMISSION (PLANNING)

Question 10. Chairman Wellinghoff has announced that FERC will be conducting several regional technical conferences on transmission planning:

a. Is it your impression that the regional planning process under Order 890 is not working well? If so, where is it coming up short of expectations?

b. Are these technical conferences going to explore the possibility of creating an interconnection-wide planning process? Do you support such an exploration?

Answer. Commission staff is holding a series of three technical conferences on regional transmission planning in Phoenix, Philadelphia and Atlanta in September. "As stated in an August 3, 2009 Commission notice, The focus of the 2009 regional technical conferences will be: (1) to determine the progress and benefits realized by each transmission provider's transmission planning process, obtain customer and other stakeholder input, and discuss any areas that may need improvement; (2) to examine whether existing transmission planning processes adequately consider needs and solutions on a regional or interconnection-wide basis to ensure adequate and reliable supplies at just and reasonable rates; and (3) to explore whether exist-

²Energy Policy Act of 2005, Pub. L. No. 109-58, 119 Stat. 594, 315 and 1283 (2005) (codified at Federal Power Act § 219, 16 U.S.C. § 824s (2006)).

³16 U.S.C. § 824d (2006).

ing processes are sufficient to meet emerging challenges to the transmission system, such as the development of inter-regional transmission facilities, the integration of large amounts of location-constrained generation, and the interconnection of distributed energy resources.”

While, as a general matter, I believe that the current planning processes are working well, I have an open mind as to where and how there may be room for improvement in these processes. I believe that the upcoming conferences and the subsequent written comments that will be filed with the Commission will help inform my thinking on this matter should I be confirmed. Finally, I believe that the Commission, the states and market participants benefit from exploring all options, including the possibility of creating an interconnection-wide planning process.

CONGESTION ON INTERCONNECTION QUEUE

Question 11. The focus on interconnecting renewable resources to the transmission grid has created significant back logs in some interconnection queues, creating additional congestion and reliability concerns. There is concern that FERC’s current interconnection policies do not adequately address these issues and projects that are not viable or not developing as rapidly as others are clogging the queues. How should FERC update its current interconnection policies to ensure that viable projects addressing the needs of all generating resources, including renewable resources, are not stuck in the interconnection queues?

Answer. In Order No. 890, the Commission encouraged transmission providers to file queue reform proposals when they encounter queue problems. Additionally, the Commission held a technical conference on queue reform issues and issued a subsequent order on March 20, 2008, giving further guidance on its flexibility to entertain queue reform proposals. In the past two years, the Commission has approved major queue reform proposals filed by the California ISO (to address interconnection queue problems), the Bonneville Power Administration (to address transmission queue problems), Northwestern Corporation (to address transmission and interconnection queue problems), the Southwest Power Pool (to address interconnection queue problems) and the Midwest ISO (to address interconnection queue problems). It is my understanding that most if not all of these queue reform filings were made to address large numbers of requests from renewables that are trying to obtain service. Similarly, the Commission has demonstrated flexibility to address narrower queue issues by granting waivers of tariff requirements. For example, in August 2009 the Commission granted a tariff waiver to El Paso Electric Company to allow it to interconnect a solar power generator that will assist it in meeting a State of New Mexico RPS requirement. Given these actions, I believe that the Commission has taken positive steps to assist industry efforts to address the queue backlog, but nevertheless, should continue to work with the RTOs/ISOs, other planning entities and stakeholders to identify additional reform proposals to move critical projects through the queue.

RENEWABLE ELECTRICITY STANDARD

Question 12. In a report last year, the California Public Utility Commission noted that “flexible resources such as fossil peaker plants, dispatchable demand response, and energy storage will likely be needed to provide grid support services for intermittent renewable resources.” According to the CAISO’s analysis of a 20% RPS, “as wind generation further increases, the amount of variability will increase non-linearly. . . an increase of the RPS to 33% could more than double the integration problems and costs.” As a FERC Commissioner, how would you avoid these integration problems and associated costs if Congress enacts a federal RES mandate?

Answer. The amount and type of “grid support services” needed to accommodate the variability of renewable resources are influenced by the Commission approved Reliability Standard. The “users, owners and operators” of the interconnected electric energy transmission network must plan for and provide sufficient “grid support services” to at least achieve the requirements of those Reliability Standards. As such, I would assure the costs are consistent with achieving reliable operation by assuring that those Reliability Standards are technically sound and necessary for reliability and by assuring that all resources and entities are doing their part in supplying the services and not requiring or using more services than are appropriate to assure system reliability.

RENEWABLE ENERGY STANDARD

Question 13. S. 1462, the American Clean Energy Leadership Act of 2009 reported by this Committee and H.R. 2454, the American Clean Energy and Security Act of 2009 passed by the House both contain new federal Renewable Electricity Stand-

ards. However, S. 1462 tasks the Department of Energy with running the new program, while H.R. 2454 gives this responsibility to FERC. As a FERC candidate, I assume you believe FERC is the appropriate agency to manage the RES, correct? If so, why do you think FERC is the most effective agency to play this role?

Answer. Yes, I believe that FERC is the appropriate agency to manage a federal renewable electricity standard program. Because of FERC's experience regulating complicated wholesale energy markets and the electric industry, the agency has an unusual combination of skills, knowledge, access to data, and expertise that make it well suited to effectively manage a transparent national market for the sale or trade of renewable energy credits and energy efficiency credits. Furthermore, FERC has experience in administering civil penalty provisions to enforce the proper functioning of these markets.

CYBERSECURITY

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

Answer. I take the task of dealing with cyber security threats and vulnerabilities very seriously and, if confirmed, will do all I am able to make sure FERC meets the nation's needs in whatever cyber security responsibilities Congress delegates to the FERC.

My understanding is that the FERC Chairman supports legislation giving FERC authority to require actions to address existing, known cyber security threats to the reliability of the bulk power system and also authority to require actions to address future cyber or other threats to the reliability of the bulk power system if the President or his designee determines that a national security threat exists. FERC representatives also have pointed out that such authority, if limited to the bulk power system, would leave a gap in Federal authority to protect facilities that do not come within the definition of bulk power system as that term is defined in the Federal Power Act.

S. 1462 would give the FERC authority to order actions to protect critical electric infrastructure against cyber vulnerabilities. Critical electric infrastructure is defined to include systems and assets used for generation, transmission or distribution of electric energy affecting interstate commerce that, as determined by FERC or the Secretary of DOE, are so vital that their incapacity or destruction would have a debilitating impact on national security, national economic security, or national public health or safety. S. 1462 also would give the Secretary of Energy authority to require immediate actions as needed to protect critical electric infrastructure against cyber security threats. If confirmed as a FERC Commissioner and if S. 1462 is enacted, I would do all I could to see that the FERC implements its authority effectively to protect against cyber vulnerabilities.

Question 15. How can FERC work most effectively with NERC on cyber security protection? What guidance or direction should FERC provide to NERC on these matters? What input would you seek from industry on these issues?

Answer. The primary means that FERC works with NERC is through the FPA Section 215 process. Throughout this process, FERC can direct NERC to either create or modify a cybersecurity standard that becomes mandatory and enforceable to all users, owners, and operators of the bulk power system. However, FERC cannot author or modify these standards, but must rely on an industry self-regulatory organization—the Electric Reliability Organization—to develop and propose standards for its approval. (The North American Electric Reliability Corporation, or NERC has been certified by FERC as the ERO.) These standards are developed through a consensus-based process whereby all users, owners, and operators are afforded the opportunity to provide input and then to subsequently vote on the draft standard before it is submitted to FERC for approval. In this manner, FERC works directly with NERC to provide both guidance and directives to create or modify the standards in order to make them more effective. When issuing a directive for a new or modified cybersecurity standard, FERC can and has employed the rulemaking procedure first issuing a preliminary assessment, then a notice of proposed rulemaking and lastly a final rule. During the process, FERC solicits, considers, and answers the comments of industry before issuing a final rule.

The FPA Section 215 process however, is not adequate to protect against cyber or physical security vulnerabilities and threats that endanger national security. Because the standards development process is open, inclusive, and controlled by stakeholder ballot it is also non-confidential, slow, and not necessarily responsive to FERC's directives. These factors make it inadequate for use when protecting national security.

SMART GRID

Question 16. Pursuant to the Energy Independence and Security Act of 2007 (EISA), FERC is directed to promulgate rules for the smart grid once “consensus” has been reached by the collaborative on protocols being conducted by the Commerce Department’s National Institute on Standards and Technology:

a. How do you define “consensus”? Does it require all involved stakeholders to agree to the protocols in question?

Answer. The standard definition of “consensus” is a general accord or agreement. To me, this does not imply unanimity. Thus, I do not think that all stakeholders involved in NIST’s process must be in agreement before FERC promulgates rules on smart grid interoperability standards. That said, I recognize that the question of consensus around smart grid standards is difficult. If confirmed, I will weigh the many perspectives involved when determining when or if particular standards should be adopted.

b. Would FERC follow the usual notice and comment process to promulgate rules under this provision?

Answer. I assume that FERC would rely on all the customary rulemaking processes when adopting smart grid standards including notice and comment procedures, as required by the Administrative Procedure Act.

c. What would be the effect of any such rules? Do you anticipate that FERC would require utilities to adopt any standards or measures reflected in such rules?

Answer. According to FERC’s Smart Grid Policy Statement issued in July, EISA does not give FERC authority to make any smart grid standards mandatory or to enforce any standards that are adopted. The Policy Statement also notes that EISA does not authorize FERC to direct states to implement any particular policies or programs, although states could on their own initiative implement and enforce any pertinent interoperability standards. If the FERC were to make smart grid standards mandatory, it would have to rely on authority that already exists in the Federal Power Act. I expect that FERC would weigh the importance of particular interoperability standards and the nature and scope of its jurisdictional powers when determining whether to require utilities to adopt any.

d. Would any such standards or measures be treated, after promulgation, as reliability standards under section 215 of the Federal Power Act? For example, would the first level of enforcement of any such standards or measures be conducted by NERC, subject to FERC oversight? Or would FERC be the first line of oversight and enforcement?

Answer. My understanding is that only those standards filed by NERC and approved by FERC under Federal Power Act section 215 would be treated as Commission-approved reliability standards and enforced pursuant to that provision. As is currently the case, NERC may enforce reliability standards, subject to FERC oversight, and the Commission may also order compliance with reliability standards and impose penalties on its own motion or in response to a complaint. I have not yet had the chance to familiarize myself with this area enough to suggest options for enforcement of standards that have not been approved under section 215.

e. How would you approach the regulatory effort in Smart Grid areas where there are no NIST endorsed standards?

Answer. In terms of standards development, if confirmed, I might pursue informal discussions with NIST about the need for additional standards and the status of the development of such standards. In terms of rate regulation, the approach taken by the FERC in its Smart Grid Policy Statement appears reasonable. There, the Commission determined to accept rate filings submitted by public utilities to recover the costs of their smart grid deployments during the period of smart grid standards development if (among other things) the utilities are able to demonstrate that they have made appropriate protections to guard against security vulnerabilities and stranded investments. If confirmed, I would support this method of guiding utility activity in the absence of technical certainty.

f. Before consensus is reached and a rulemaking is issued, how can FERC most effectively coordinate with the states clearly define what is under the authority of the states and FERC?

Answer. As a former state commissioner and member of NARUC, I believe that the NARUC/FERC Smart Grid Collaborative is an effective body for purposes of dis-

cussing and coordinating the boundaries between federal and state authority in this area. If confirmed, I would support additional collaboration through this body.

Question 17. On July 16, 2009, FERC released a policy statement outlining how the Commission intends to facilitate smart grid technologies. In particular, FERC found that “EISA grants the Commission the authority to adopt smart grid standards—such as meter communications protocols or standards—that affect all facilities, including those that relate to distribution facilities and devices deployed at the distribution level.”

a. Do you agree that standards for smart grid systems are in the national interest?

Answer. Yes, I do believe that the continued development of standards for smart grid devices and systems will help to further the deployment of technologies that promote the nation’s energy independence, offer opportunities to reduce the demand for electricity, and ensure a reliable and secure electricity infrastructure, among other goals.

b. Do you believe that FERC has the jurisdictional authority to set appropriate national smart grid standards at the distribution level? What about facilities owned or operated by municipalities and electric cooperatives?

Answer. EISA section 1305(d) provides that FERC shall adopt certain interoperability standards and protocols, namely those that “may be necessary to insure smart-grid functionality and interoperability in interstate transmission of electric power, and regional and wholesale electricity markets.” I believe this language indicates that FERC is authorized to adopt standards that apply throughout the electricity system. If this were not the case, then it is difficult to understand how interoperability could be assured, as two-way communications will cross between the transmission and distribution systems. The specifics of who owns or operates particular equipment do not influence the necessity for various devices and systems to be able to communicate. In order for interoperability standards to be effective, they will need to apply to any equipment involved in inter-system communication, as appropriate for each application.

Question 18. Some in the industry would like to accelerate the Smart Grid rule-making process. However, in comments before NARUC this past February you stated that Smart Grid should be carried out “incrementally” and that there will have to be “some type of rate impact cushion” to protect consumers. Please explain.

Answer. My comments during the NARUC winter meeting were not directed toward the interoperability standards development and rulemaking process. Rather, these particular comments were directed toward the actual deployment of smart grid technologies. Even assuming that interoperability standards can be developed more rapidly, the question remains as to how rapidly to deploy new smart grid equipment that adheres to those standards, including how quickly to replace existing equipment and what the cost impact of various replacement rates might be on consumers. While it may sometimes be necessary to replace current, non-compliant equipment that still has years of remaining life with new smart grid equipment in order to achieve certain smart grid capabilities, we should not assume that this will be true for every smart grid application. The costs and benefits of such replacement should be considered in each case.

I believe that the FERC recognized this in its smart grid policy statement. It stressed the need for an appropriate migration plan to minimize the stranded costs of legacy systems as they are replaced with smart grid systems. In other words, the actual deployment of smart grid equipment must be carried out in a thoughtful manner that balances the costs and benefits to consumers. Accelerating the standards development process will certainly help with that effort, but it does not eliminate the need for a thoughtful approach to actual smart grid deployment decisions.

HYDROPOWER

Question 19. Do you consider hydropower to be a renewable resource? Please state your views on the hydropower resource and its contribution and value to the nation’s energy mix.

Answer. Yes, I believe hydropower is a renewable resource, although I believe that limiting its use in meeting a federal renewable energy requirement is a decision for the Congress to make. In fact, it is the largest renewable resource in the U.S., providing about 8 percent of the nation’s electricity. Analysts say that capacity can double in 30 years, rivaling the growth predicted for the nuclear power industry and at a fraction of the cost. The Federal Energy Regulatory Commission is review-

ing more than 30,000 megawatts worth of new projects, equal to a third of all existing hydropower capacity and big enough to power the New York metropolitan area.

Question 20. The hydropower industry is undergoing a transformation. Recent reports, as well as permit and license applications at the Commission, demonstrate that thousands of megawatts of this clean, emission-free power can be tapped from a variety of sources such as capacity additions and efficiency improvements; pumped storage; small hydro; powering existing non-powered dams; and ocean, tidal and instream hydrokinetics. As the agency responsible for permitting and licensing hydropower projects, what can FERC do to promote and enact policies supporting hydropower's development potential?

Answer. The FERC has been proactive in assisting in the development of all types of hydropower projects to assure the environmentally acceptable growth of this renewable resource. FERC has been especially active in the hydrokinetic area. Since the Commission's first technical conference to discuss hydrokinetic challenges in 2006, staff has responded by: (1) discouraging the "hoarding" of permits that would prevent timely project development; and (2) developing and implementing an expedited licensing process for hydrokinetic pilot projects.

Because the complexity of the regulatory environment for hydrokinetic projects, as well as the lack of information regarding their environmental effects, were identified as challenges to their orderly development, the Commission has worked to reach out to other agencies to better define relationships. In 2008, Memoranda of Understanding (MOU) to better coordinate siting in state waters were signed with both Oregon and Washington. In 2009, the Commission and the Department of Interior signed an MOU clarifying the jurisdictional responsibilities of each agency and committing to work together to streamline the authorization process for projects on the Outer Continental Shelf and both staffs have produced a guidance document with details on how the agencies will implement the MOU. Commission staff has met repeatedly with representatives from the Army Corps of Engineers, the U.S. Coast Guard, the U.S. Navy, the U.S. Committee on the Marine Transportation System, EPA, and the National Oceanographic and Atmospheric Administration, concerning programmatic concerns as well as project-specific procedures. The Commission has also participated in the international effort to identify environmental effects and solutions. FERC and MMS staffs are co-chairing, on behalf of the Department of Energy, an International Energy Agency-Ocean Energy Systems annex that is working to develop a database of environmental information.

In addition to its extensive work on hydrokinetic policy, the Commission has continued to support the development of small and incremental hydro. The FERC website contains guidance on small hydro development and provides a hotline for applicants. The Commission has also published an informative brochure targeting developers of small hydro projects.

Finally, if confirmed, I would continue to promote the Commission staff's open-door policy with regard to maintaining a dialogue with the hydro industry and other stakeholders. Staff periodically provides outreach events in states and for specific projects, meets with potential developers, continually updates the public website, and recently published a citizens' guide to hydropower licensing. The Commission should continue to proactively communicate with the public and work to address challenges in new hydropower development. 1.

Question 21. As we seek to increase renewable power generation, one question that has been raised is the ability to integrate variable sources of power on the grid. What are your thoughts on these integration issues and the role both conventional hydropower and pumped storage have to play in addressing them?

Answer. Conventional hydropower and pumped storage power have characteristics that can accommodate the variable characteristics associated with renewable resources. They are more flexible than most conventional generation in their ability to start quickly, have good governor response and can increase their output quickly to accommodate rapid increases or decreases in the differences between demand and resources for any reason.

Question 22. This year, FERC signed an MOU with the Minerals Management Service setting forth an agreement on a process of lease sales, permitting, and licensing of hydrokinetic projects on the Outer Continental Shelf. Do you believe any additional follow-up by the agencies is necessary in order to ensure that this process works smoothly and provides energy developers the certainty needed to move forward on these projects? Can FERC do anything more under its authority to aid this developing industry?

Answer. I have not had the opportunity to familiarize myself with this matter in great detail. However, if confirmed, I will be open to considering proposals to aid the development of the new hydrokinetic industry. Also, it is my understanding that the staffs of the MMS and FERC have developed a guidance document explaining

to the public how the two agencies' processes for regulating hydropower projects on the Outer Continental shelf will interrelate, and that this document is available on the Commission's website.

Question 23. In Alaska we have nearly 250 sites that hold good potential for conventional hydroelectric development. But there appears to be growing interest in companies and municipalities to file for preliminary licenses that allow holders three years to investigate the feasibility of projects. Do you have any feeling whether that period should be expanded to perhaps 5 years to give holders more time to advance to the second, construction phase for hydro projects. Do you have an opinion on whether three years is too long, too short, or about right for preliminary licenses? I ask that because of a current filing issue before the commission involving a license for a part of the potential Thomas Bay hydro project near Petersburg, Alaska.

Answer. The Federal Power Act (FPA) limits the maximum term of a preliminary permit to three years. I understand that many developers of conventional and hydrokinetic projects are not able to perfect a license application prior to the expiration date of their 3-year preliminary permit. This introduces uncertainty for these developers as to whether they will be successful in maintaining priority of application for a license by obtaining a subsequent preliminary permit while they complete their license application. This can have a negative effect on the ability to finance the project. The FPA also requires the Commission to give preference to municipal entities when granting preliminary permits. This fact adds additional uncertainty as to whether a private developer will be successful in obtaining a subsequent preliminary permit. Under the Commission's Integrated Licensing Process (the current default licensing process), it could take more than the three years afforded by a preliminary permit to perfect an application for license, especially if two years of studies are necessary. For that reason, a longer permit term may be warranted.

DEMAND RESPONSE

Question 24. How would you define the term "wholesale demand response"? Isn't all demand response really retail in nature, since it involves reductions in consumption by end users of electricity? If you do believe demand response is essentially retail in nature, do you think FERC ought to coordinate its demand response policy with those of the states?

Answer. I agree that ultimately most demand response is retail in nature. However, it is also the case that a utility that is a wholesale buyer of power can reduce its own demand for the energy purchased from others. It can do this in at least two ways. One, it can call on its own retail customers to reduce their demand, which we would call retail demand response. Second, if it has electric generation of its own, it can use more of its own generation when this costs less than buying from others in the wholesale market. The second way involves no demand response by a retail customer. Either way, the utility's action reduces its demand for energy in the wholesale market, which is what I call a wholesale demand response. The term also is often used for demand response offered by both wholesale and retail customers into organized ancillary services markets and capacity markets.

Wholesale demand response can also refer to other actions. If the utility is in an RTO or ISO, it may bid that wholesale demand response into the RTO's or ISO's organized market and be compensated according to the wholesale market rates approved by the FERC. Alternatively, a third-party curtailment service provider may aggregate the demand responses of that utility's retail customers and bid this demand response into the FERC-regulated market. Wholesale demand response may also refer to participation by either retail or wholesale power buyers in various demand response programs offered by RTOs and ISOs and approved by the FERC, including the emergency and economic load response programs.

Regardless of whether all demand response is considered retail in nature, I believe that it is important for the Commission to coordinate its demand response policies with the states. Because many demand response programs can be affected by both state and federal jurisdictions, I support the NARUC-FERC Demand Response Collaborative established by the FERC and the National Association of Regulatory Utility Commissioners as a forum to discuss common demand response issues.

Question 25. When you were the Chairman of the Iowa Utilities Board (IUB), the IUB issued some orders granting waivers for a requirement that utilities inform electricity customers on the importance of peak usage reduction. According to the IUB, "additional language might increase confusion and send a mixed message to customers."

a. As a FERC Commissioner, how would you avoid confusing customers and educate the public on the benefits of peak demand reduction?

Answer. During the time I was Chairman, the Iowa Utilities Board (IUB) granted to MidAmerican Energy Company (MidAmerican) temporary waivers of 199 IAC 20.11, which provides that each electric utility is to inform its customers of the significance of reduction in the consumption of electricity during hours of peak demand. The IUB found that language in the peak alert notice regarding delaying the need to build generating facilities or buy additional power could be confusing to customers in light of the publicity that surrounded MidAmerican's generation investments, which included coal, gas, and wind facilities. In each of its orders on the subject, the IUB encouraged MidAmerican to continue to educate customers about the benefits of energy efficiency programs that conserve energy throughout the year, not just at times of peak usage. With each waiver filing made by MidAmerican the company included examples of communications to customers regarding various energy efficiency programs, including the importance of energy efficiency efforts throughout the year. MidAmerican had and continues to have an extensive program of energy efficiency measures offered to customers that were approved by the IUB in MidAmerican's energy efficiency plan, with ongoing monitoring and evaluation efforts by the IUB that included periodic reports detailing the success of each measure.

FERC is currently engaged in the development of the National Action Plan on Demand Response. According to the statute directing this Plan, an important component of the Plan is the identification of requirements for implementation of a national communications program that includes broad-based customer education and support. I believe a principal goal of the communications program should be to educate the public about the benefits of peak demand reduction.

b. How would you avoid sending mixed messages when rolling out new technologies and rate designs while also encouraging conservation and efficiency?

Answer. I believe that to meet the future energy needs of the American consumer and the U.S. economy while coping with climate change at a reasonable cost, we need to use all available cost-effective resources, including conservation and energy efficiency together with various new technologies and rate designs. If confirmed as a FERC commissioner, I would make it clear that these programs are not at odds but are complementary and highly necessary for our energy future.

c. How can FERC encourage consumer behavioral changes and technology adoption that could decrease peak demand?

Answer. In several ways, the FERC has and can in the future encourage consumer behavioral changes and technology adoption that could decrease peak demand. FERC has been engaged for several years in efforts to remove barriers to demand response in the markets it regulates. One way to encourage customer behavioral changes and technology adoption is to send accurate price signals. In its recent Order No. 719, FERC took a number of steps to ensure that the wholesale prices accurately reflect the value of energy during periods of operating reserve shortages. FERC has also called for comparability between generation and demand resources in the reliability standards it has approved. Also, at the direction of Congress, it produces a comprehensive informational report each year on demand response and advanced metering. Recently, also at the direction of Congress, the FERC issued a National Assessment of Demand Response Potential and is now in the process of producing a National Action Plan on Demand Response. The Plan is required by law to identify actions to achieve demand response goals by (1) identifying requirements for technical assistance to States to allow them to maximize the amount of demand response resources that can be developed and deployed; (2) identifying requirements for implementation of a national communications program that includes broad-based customer education and support; and (3) identifying analytical tools, information, model regulatory provisions, model contracts, and other support materials for use by customers, States, utilities and demand response providers.

CLIMATE CHANGE

Question 26. The House-passed climate legislation would give FERC the oversight responsibility for trading in greenhouse gas emission allowances. Do you support this provision?

a. If so, why do you think FERC is the appropriate and most effective agency to play this role?

b. Will FERC require a significant increase in personnel and spending authority to oversee and regulate the allowance trading markets?

Answer. FERC has the benefit of many years of experience and expertise in regulating complex markets and if given this responsibility would carry it out effectively. Whichever agency is delegated this authority will need significant personnel and spending authority to oversee and regulate the allowance-trading market.

Question 27. In comments before NARUC this past February you stated that there is a “tremendous disconnect between the ability to achieve carbon reduction and the means to do it.” You further cautioned that we “shouldn’t put an emphasis on carbon reduction at the expense of the customer’s bill.” Please elaborate.

Answer. I believe there is a lot of misunderstanding about the current technology, our capacity to fully integrate renewable energy onto the grid, our ability to sequester carbon, our ability to store energy and more. These and other technological possibilities offer great hope to achieving long term carbon reduction but they will take varying degrees of time and investment to achieve full utilization. I believe there is still a disconnect for a lot of people in understanding what is possible now and what will be possible in the near and long term future. I am optimistic in America’s ability to meet the challenge of reducing our carbon output to sustainable levels. We also have to be vigilant at minimizing the costs to consumers while at the same time setting high but achievable goals, adequately funding research and development of new carbon reduction technologies, and maximizing efficiencies through such efforts as good transmission planning, energy conservation, demand response, energy efficiency and more.

MARKET MANIPULATION

Question 28. S. 1462, as reported by this Committee, provides “cease and desist” authority to FERC to invalidate a transaction if it determines that an entity is manipulating, has manipulated, or is attempting to manipulate the wholesale electric energy markets. In some cases, the Commission can take such action without providing prior notice and an opportunity for hearing. There is concern that providing FERC with such broad, unrestrained authority could deny due process and chill competitive electricity markets. Do you believe FERC needs such new authority or is the current authority sufficient to deal with energy market manipulation?

Answer. Whatever authority Congress delegates to FERC to enforce a fair wholesale electric Energy market should be exercised with great respect for due process and recognition of the impact it may have on the competitive electricity market. I believe the cease and desist authority being contemplated is a valuable tool to assist the Commission in ensuring that markets are well-functioning and free of market manipulation. FERC’s current authority to prohibit market manipulation does not currently enable FERC to prevent a suspected manipulator from dissipating assets during the pendency of an investigation. FERC’s inability to do that may ultimately result in the manipulator escaping with its gains.

ORGANIZED MARKETS

Question 29. What is the appropriate path forward with respect to organized and bilateral markets? Can and should they co-exist or should all utilities ultimately be in organized markets?

Answer. I believe that organized and bilateral markets can and should co-exist. As long as FERC continues to work to improve competition in both organized and bilateral markets, through such efforts as open-access transmission tariff reform, market-based rate reform, and its Competition Final Rule (Order No. 719), there is no reason why FERC should attempt to impose a single market structure on all regions. Both organized and bilateral market structures are capable of supporting competitive markets.

Question 30. Do you think that FERC’s oversight of electricity markets is sufficient to ensure that the wholesale electric rates meet the “just and reasonable standard” of the Federal Power Act? If so, what is the basis for this conclusion? If not, how could FERC do a better job?

Answer. Yes, I believe that FERC’s oversight of electricity markets is sufficient to ensure just and reasonable wholesale electric rates. In addition to recently strengthening competition in the electric power markets through its Competition Final Rule issued in 2008 (Order No. 719) and its 2007 order to prevent undue discrimination and preference in transmission service (Order No. 890), FERC now more closely monitors these markets for anomalous market behavior.

Question 31. Do you think that, based on currently available data, the wholesale electricity markets operated by Regional Transmission Organizations (RTOs) are achieving net benefits for consumers? If so, what is the basis for this conclusion? If not, are there actions, other than those identified in Order 719, which FERC can take to better protect consumers in the RTO markets?

Answer. I have not had the opportunity to work directly with all the RTOs, therefore I am currently unable to speak authoritatively about the benefits of each. However, I have had the opportunity to work with the Midwest ISO. Having served on the Board of Directors of the Organization of Midwest ISO States from 2005 through January of 2009, I am familiar with the benefits achieved through the Midwest ISO operations. I would like to limit my comments to their benefits, but I assume that other RTOs can demonstrate similar benefits (however they may be limited by other factors such as the scale of the organization).

For example performance measures for Midwest ISO would indicate the following:

1. Improved reliability through reductions in both the average size of outages and the average duration of outages. The systems developed by the Midwest ISO exceed the North American Electric Company (NERC) standards.
2. Increased economic efficiency in the commitment of generation units and dispatch of energy by combining 23 individual regions into one single region.
3. Improved dispatch of support services such as regulation, operating reserves and supplemental reserves. The formation of the Midwest ISO along with the implementation of an Ancillary Services Market allowed the Midwest ISO to improve the dispatch of these services.
4. Investment in generation has been deferred because the scale and geographic diversity of the Midwest ISO has enabled the reserve margin to be about 2.7% less than what it would have been without the Midwest ISO.
5. More efficient regional transmission planning has been implemented.

Question 32. Last September, the Government Accountability Office released a study finding, among other things, that FERC “has not conducted an empirical analysis to measure whether RTOs have achieved these expected benefits or how RTOs or restructuring efforts more generally have affected consumer electricity prices, costs of production, or infrastructure investment. . .” FERC has since reported that it is working on developing standardized performance measures for RTOs. What do you see as the most critical measures of success for these markets?

Answer. While the standardized measures are under development, in my opinion, the most critical measures of success for these markets are as follows: (1) customer benefits, in particular reduced customer costs; (2) reliability, specifically long-term reliability as measured by increasing capacity available for peak load conditions and short-term reliability as measured by no violations of NERC or regional reliability standards and success in implementing tools such as security constrained economic dispatch, security constrained unit commitment, state estimators and rapid response protocols for system emergencies; (3) improved system efficiency and diversity as measured by increased transmission flows, efficient dispatch, increased plant availability, and increased transmission capacity additions, interconnections and MW of renewable and demand resources added; and (4) increased competition as measured by new resources and new facilities being added to RTO markets. If confirmed, I look forward to reviewing what is developed by the FERC staff and working with my colleagues to develop effective measures.

Question 33. Do you think the indicators provided by the RTO market monitors in their annual reports are adequate measures of the competitiveness of the wholesale electricity markets? If not, what improvements could be made to these reports?

Answer. Yes, I think that the indicators used by the RTO market monitors are adequate for evaluating RTO/ISO market competitiveness. The RTO market monitors provide extensive data and analysis on the competitiveness of wholesale electric markets in their annual reports, by looking at, for example, ease of entry for new resources, price trends, transmission additions, and the liquidity of the market, among many other indicators.

Question 34. Do you think that there is an adequate level of transparency in the pricing and other relevant data from the electricity markets, especially those operated by RTOs?

Answer. FERC has made efforts to increase the transparency of electricity markets including RTO markets. Currently, prices for all power sales within the Commission’s jurisdiction are reported quarterly to the Commission and available to the public, and all RTOs post location-specific prices for the public on an hourly basis. FERC has also recently improved transparency in regional markets through reforms to its Open Access Transmission Tariff. FERC is also in the process of implementing Order No. 719 to increase transparency with respect to demand response and long-term power contracting. Whether these efforts are providing an adequate level of transparency, if confirmed, is a topic I will consider closely as I become more familiar with the numerous data resources available.

Question 35. What is your assessment of the success of pricing incentives in the RTO markets, such as locational pricing differentials, to spur infrastructure development and address transmission congestion?

Answer. The organized energy markets in most RTOs rely on Locational Marginal Pricing (or LMP), which is a system that allows prices to vary at different locations and at different times to reflect the market conditions and costs of meeting demand in those areas. The LMP system sends price signals to market participants regarding where generation resources are most needed, where reductions in demand are most valuable, and where transmission constraints are the most severe. The transmission planning processes employed by the RTOs considers the congestion price signals in developing transmission expansion plans. Of course, the ability to pursue upgrades identified in those transmission expansion plans would require a number of regulatory approvals in the states that they traverse. So, while the price signals sent by the RTOs' markets are an important factor in encouraging efficient transmission expansions where they are needed, they alone are not sufficient to develop infrastructure; other factors also are important.

FERC AUTHORITIES

Question 36. S. 1462, the American Clean Energy Leadership Act of 2009 reported by this Committee and H.R. 2454, the American Clean Energy and Security Act of 2009 passed by the House of Representatives, provide FERC with extensive new authority in areas such as renewables, energy efficiency, demand-side management, retail consumer interests and climate change. If confirmed, how do you intend to reach out to the states to help promote regulatory certainty?

Answer. As a former President of the Organization of MISO States and previously active member of NARUC, I understand the value of federal coordination with states to promote regulatory certainty. The recent Smart Grid Collaborative, a joint effort between NARUC and FERC to develop the criteria for establishing pre-conditions under which Smart Grid projects would be funded through the American Recovery and Reinvestment Act of 2009, is an excellent model of a collaborative effort between the federal government and the states that will help to provide regulatory certainty. If confirmed, I will get involved in or encourage additional collaborative efforts, communications, and outreach projects with states for any new areas of FERC authority.

OCEAN MARINE RENEWABLE ENERGY

Question 37. Another hydro power issue is how to proceed to encourage the development of marine hydrokinetic power. FERC and the Minerals Management Service signed an MOU this spring to work out permitting issues between your two agencies for ocean wave, tidal and current projects. Alaska, of course, has dozens of great sites for such projects. If you are aware of the terms of the agreement, what is your opinion about it? Will it work in your view to permit enough permitting and siting certainty to allow projects to be financed and proceed in a timely manner? If not, what would you as a commission like to see done to further marine renewable energy in the future?

Answer. I am not familiar with the details of the document, but am generally aware that it reflects an agreement between Chairman Wellinghoff and Secretary of the Interior Salazar that the Commission and the Minerals Management Service can without conflict exercise their respective responsibilities with respect to the development of appropriate hydrokinetic projects on the Outer Continental Shelf. I support this outcome. If confirmed, I will become more familiar with this issue.

ALASKA GAS PIPELINE PROJECT

Question 38. The biggest potential energy project on the horizon in the country is construction of an Alaska natural gas pipeline project. FERC back in 2005 issued an order to permit in-state use of the gas, offtake points, and to deal with pipeline expansion issues. At this time I don't see the need for additional FERC rulings on those issues. But for this project to proceed, FERC will have to devote considerable staff and effort to rapidly processing any application for a line certificate, perhaps after next year's open season periods end. Do you commit as a commissioner to do everything possible to complete timely review of a certificate request for any project that successfully finishes an open season process? Do you have any ideas on any changes Congress should be making either in the loan guarantee program or in a regulatory way to further the chances for this project?

Answer. I commit to doing whatever I can to ensure the completion of timely review of any application for an Alaska natural gas transportation project that is filed with the Commission. It is my understanding that in the Alaska Natural Gas Pipe-

line Act of 2004, Congress mandated that FERC issue a final environmental impact statement (EIS) no later than 18 months after receipt of a complete application for an Alaska natural gas pipeline project, and that FERC issue a final order no later than 60 days after issuance of the EIS. I am confident that FERC and its staff will make every effort to meet these deadlines.

LNG

Question 39. On January 15th of this year FERC issued a final environmental impact statement for an application to build a liquefied natural gas facility in Sparrows Point, Maryland. This decision came nearly 2 years after the application was filed with FERC. The State of Maryland has appealed this decision and requested a rehearing of the decision. What is your position on matters of upholding or overturning prior FERC decisions such as this one?

Answer. If confirmed as a Commissioner, my obligation would be to decide all matters based on the record before the Commission, applicable legal standards, and appropriate policy considerations. I would vote to affirm or overturn decisions made prior to my joining the Commission based on an objective consideration of these matters.

Question 40. Since the passage of the Energy Policy Act of 2005, only one LNG application has been granted a final environmental impact statement under the rules promulgated as a result of this law. The EPACT 2005 process was designed to front load the design and review of facility plans. This committee and the Congress also recognized the need to expedite review of those applications. Since that exhaustive process has taken over 2 years to date and is currently pending rehearing, what is your view on a reasonable duration of time before a rehearing should be completed?

Answer. Because the time needed for the Commission to act on rehearing in a given case will depend on the extent and the complexity of the matters raised on rehearing, and because I do not yet have extensive experience with the Commission's review process, I cannot suggest a generally applicable deadline for the Commission to act on requests for rehearing. However, I do believe that the Commission should act as quickly as possible, and it is my understanding that the Commission's policy is to do that.

RESPONSES OF JOHN R. NORRIS TO QUESTIONS FROM SENATOR WYDEN

Question 1. The energy bill recently reported out of the Senate Committee on Energy and Natural Resources expands FERC's authority with regard to the nation's electric grid. Given your experience in leading the utilities in the State of Iowa to modernize the electric infrastructure and to build additional sources of renewable energy, what do you believe FERC's role should be in fostering the modernization of the electric grid by the power utilities?

Answer. FERC should take a leadership role to foster modernization of the electric grid in the following ways: (1) create better federal/state/industry coordination to implement new energy efficient technologies, (2) accommodate the transmission needs of all generation types, including renewables, (3) encourage additional demand-side management programs, and (4) continue to emphasize planning to enable expansion of the interstate transmission system.

Question 2. What will you do as FERC Commissioner to encourage the use of innovative solutions for electric grid improvements and modernization? Specifically how will you promote the use of storage technologies to integrate intermittent sources of renewable energy, such as wind and solar, into the grid; alleviate the need for additional generation through peak shaving; and minimize the need for additional transmission capacity?

Answer. As you mention, there are many potential benefits of bulk energy storage, from supporting the integration of intermittent renewable generation to enabling a more efficient use of existing generation and transmission facilities. It is important to recognize, moreover, that there is a wide array of storage technologies that perform different functions and, as a result, may be able to provide existing services in a better way. For example, there is growing evidence through pilot projects that fly-wheel energy storage devices and utility-scale batteries may be better suited than traditional generation to provide certain ancillary services like frequency regulation. However, most current regulatory practices and structures were designed during a time when these new storage technologies were simply not available. As a FERC Commissioner I will strive to identify and seek to address barriers that unduly hamper the development of new storage capacity, in all of its useful forms. Specifically, I will support reforms that enable all resources, whether supply-side or de-

mand-side, to participate on a comparable basis in the energy markets regulated by the Commission.

Question 3. As energy storage systems are added into the electric grid infrastructures, some issues have arisen as to whether the costs of these storage systems can be included in transmission rates or whether they should be treated as generation assets. Do you believe that the costs of storage systems should be allowed as part of the electric grid infrastructure? If so, under what circumstances or conditions should they be allowed?

Answer. Given the variety of storage systems, such as short-term flywheel systems and long-term pumped storage systems and their different possible uses, I believe that storage systems need to be evaluated on a case-by-case basis when determining whether they should be included in transmission rates or be treated as generation assets. If confirmed, I will pay close attention to the complicated issue of how costs are allocated for storage systems used to sell electricity in energy markets.

Question 4. FERC recently issued a report assessing the potential for demand-response to reduce peak demand (*A National Assessment of Demand Response Potential*, FERC Staff Report, June, 2009). The only new technologies that were considered in the report were advanced metering and direct load control. Based on this report, FERC must now create a National Action Plan.

Answer. The FERC staff report, *National Assessment of Demand Response Potential* (Assessment), analyzed quantitatively the potential for realizing the nation's demand response potential using advanced metering and direct load control. It did recognize, in Chapter IV, that technologies other than advanced metering and direct load control may have significant potential to reduce demand. These technologies include emerging smart grid technologies, distributed energy resources, targeted energy efficiency programs, and technology-enabled demand response programs with the capability of providing ancillary services in wholesale markets (and increasing electric system flexibility to help accommodate variable resources such as wind generation.) However, the demand response achievable with these other technologies was not assessed quantitatively because there was not sufficient experience with these resources to estimate their potential reliably. However, the Commission has considered and should continue to consider opportunities to allow these other technologies to prove themselves.

Question 5. Since the scope of this report was somewhat limited, thus limiting its range of solutions, what will you do as a Commissioner to ensure that the National Action Plan, which will set the course of action for the next 5 to 10 years, has a more forward-looking scope?

Answer. If confirmed as a FERC Commissioner, I will pursue opportunities to allow a broad range of demand response technologies to prove themselves. Nothing in section 529 of the Energy Independence and Security Act of 2007 (EISA) requires the Commission to limit the scope of its National Action Plan on Demand Response to the technologies identified in the National Assessment. Further, in forming the Action Plan, the Commission should—and I understand has already begun to—solicit and accept input from a broad range of industry stakeholders, including proponents of all demand response technologies. If confirmed, I would support that approach.

Question 6. What will you do to ensure that the Demand Response National Action Plan makes recommendations that new technologies be considered for their potential in alleviating peak demand as well as providing increased reliability, specifically what will you do as a FERC Commissioner to include renewable sources of energy and storage systems in solutions that reduce the peak demand for electricity?

Answer. If confirmed as a Commissioner, I will ensure that the recommendations of the Demand Response National Action Plan consider new technologies—such as smart grid applications, electric storage technologies, and energy efficiency programs—based on their potential to reduce peak demand in a cost-effective manner. Reliability is paramount, however, as the costs to the nation of a major blackout are huge and long-lasting, so that every technology should be required to be fully tested, cybersecure, and maintain its performance throughout a reasonable performance life in a reliable manner. If confirmed, I will endeavor to provide consumers with the opportunity to select from a full range of resources that best meet their overall goals and energy needs by ensuring that all resources, including renewable sources of energy and storage systems, are able to be considered if they are reliable.

Question 7. Although statutorily authorized to establish an Office of Public Participation (16 USC § 825q-1), FERC has never established such an office. This office would coordinate assistance to the public for people who wish to intervene or participate in matters before the Commission. Because the office would also provide compensation for fees of attorneys and expert witnesses, it would serve to let other

voices be heard. Do you agree that FERC should establish the Office of Public Participation?

Answer. Participation by the public and stakeholders is a critical part of the FERC decision-making process, and is consistent with FERC's responsibility under the Federal Power Act to protect the public interest. If confirmed, I will look into ways, including the possible establishment of the Office of Public Participation, to ensure that the public has sufficient and appropriate participation in FERC processes.

Question 8. If confirmed, what steps will you take to help ensure that the office is created and properly staffed?

Answer. If confirmed, I will carefully evaluate whether the Office of Public Participation should be established and, if so, how that office should be structured and staffed to provide effective assistance to interests that may be underrepresented before the Commission. Specifically, if the Office of Public Participation is established, I will examine whether the office staff should include attorneys, technical and financial analysts, and/or engineers.

Question 9. What additional statutory authority, if any, do you believe the Commission would require to ensure that all of FERC's jurisdictional responsibilities for electricity, natural gas, and oil pipelines were covered by the Office of Public Participation?

Answer. Participation by the public and stakeholders is a key part of the FERC decision making process. If confirmed, I will look into whether FERC has the necessary authorities to ensure sufficient and appropriate participation by the public in the FERC process.

Question 10. FERC insists, as a matter of policy, that even when multiple natural gas projects are being proposed to serve the same market it need not determine which of the projects are actually needed to serve the market, or which would best serve that market. In Oregon, three separate LNG terminals and two pipelines from the Rocky Mountains have all been proposed and are currently being permitted. The quantity of gas proposed to be delivered by these projects dwarfs the actual amount of gas that can (1) be used in the Northwest, and (2) can even be transported in the existing interstate pipelines to which they will connect. Why shouldn't FERC look at which projects are truly needed, and which will, in fact, best serve that market?

Answer. The projects in Oregon that you refer to are currently pending before FERC, so it would not be appropriate for me to comment on those specific projects. To date, the Commission has taken the position that its role is to determine whether a proposal is environmentally acceptable, safe and secure, and to approve only those projects which are found to be in the public interest. Ultimately, the market and the customers of that project will decide whether the projects are commercially viable enough to move forward. While I agree generally with the notion that markets largely will decide which of several projects might ultimately be built, I also believe that the Commission could take steps to better understand the cumulative effects of multiple projects and factor that understanding into its decision process.

Question 11. In response to questions for the record during the Committee's 2005 hearing on LNG permitting, the former Director of the Office of Energy Projects testified that "The Commission is supportive of competition within the energy industry and of the idea that the market drives infrastructure development. Past experience, particularly since the restructuring on the gas industry following Order No. 636, has demonstrated that market forces can serve the same end as a competitive or "Ashbacker" hearing. Where the Commission approves multiple projects to serve a similar market, only an economically viable project will actually be built, i.e., only where customer commitments ensure new service will fulfill a genuine need." This continues to be the Commission's policy. How is this policy consistent with the obligation of the Commission to make an affirmative finding of public convenience and necessity under the Natural Gas Act? Do you agree with this policy that competitive or "Ashbacker" hearings need never be conducted where multiple projects are proposed for a given market? Are there circumstances where you believe that it is ever appropriate for the Commission to conduct competitive or "Ashbacker" hearings where multiple projects are being proposed to serve a single market? If so, when?

Answer. I do believe that the market can be an effective arbiter in selecting between competing energy infrastructure projects. Consumers are in the best position to decide whether, and under what conditions, they will support a given project. I do not think that it is necessarily inconsistent with the Commission's obligation to make a finding that a proposed project is consistent with the public convenience and necessity if, after ensuring that proposed projects meet exacting safety and environmental standards, the Commission allows demand to determine whether one or more competing projects has the public support, and thus the financial wherewithal,

to be built. That said, I do not understand it to be the Commission's policy that an Ashbacher hearing is never appropriate, nor do I believe that to be the case. Rather, I think that Ashbacher hearings are one of the regulatory tools that the Commission may elect to use. I cannot identify the specific circumstances in which I would deem an Ashbacher hearing to be the best method for dealing with competing energy infrastructure projects, but I will have an open mind on the matter.

RESPONSES OF JOHN R. NORRIS TO QUESTIONS FROM SENATOR BARRASSO

The Energy and Natural Resources Committee approved legislation that expands FERC's eminent domain authority. It allows FERC to override State rejections of proposed transmission lines.

Question 1. Do you believe FERC should have the authority to override a State rejection of a transmission proposal?

Answer. Siting of interstate transmission lines is often a very contentious process at the state level. There are a variety of reasons for a state's rejection of a transmission proposal including, but not limited to, local opposition and parochial interests. In the Energy Policy Act of 2005 Congress determined that it is in the national interest to site, build, and maintain a robust interstate electric transmission system to ensure a secure and reliable supply of electricity and integrate renewable energy. FERC has the necessary expertise to review and make national public interest determinations for electric transmission projects, since the Commission has extensive experience successfully siting linear infrastructure projects under the Natural Gas Act.

In the case of transmission siting, interstate benefits must be carefully considered when siting decisions are made. These include consideration of whether the line is needed to relieve congestion, improve system reliability, access renewable generation, or meet growing energy demand. Some states will not (or cannot) take into account these regional or national benefits when making a siting decision. Accordingly, it is quite probable that a single state could prevent construction of a needed interstate transmission project by simply denying approval within its state borders.

Authority to override a state's rejection of a transmission proposal does not guarantee that a particular proposal would be approved by FERC. The Commission could also deny the same project. Under FERC's siting authority and permit review process, consideration of an application before the Commission requires a careful evaluation of all stakeholders' interests and concerns, including the record supporting a state's public interest determination.

Question 2. Do you believe Washington is better qualified to make transmission siting decisions than State and local officials?

Answer. States are best qualified to make certain transmission siting decisions particularly for intrastate proposals, and it should be the Commission's preference that states retain primacy in siting such transmission projects. However, it has proven to be a more daunting challenge for states to make siting decisions on interstate transmission facilities due to opposition or lack of statutory authority to consider regional or national benefits when making public interest determinations. In those instances, FERC's expertise and experience in making national public interest determinations could better facilitate the siting of needed interstate transmission projects.

RESPONSES OF JOHN R. NORRIS TO QUESTIONS FROM SENATOR SHAHEEN

I was pleased to read in your testimony about your commitment to containing costs in order to protect consumers. I wholeheartedly agree with this goal. As we discussed in our meeting earlier this week, a key issue before the FERC regards the approval of favorable return on equity incentives when constructing new transmission lines.

While I agree that improvements to our nation's transmission system are necessary to ensure reliability, connect renewable energy and make smart grid improvements; I am troubled by what some see as a prolific use of rate incentives by the FERC for new transmission projects.

In EPAct 2005, Congress authorized the FERC to establish higher incentive-based rate treatments for new transmission. FERC finalized its rule to provide for these incentive rates to encourage improvements and investments in new transmission in July, 2006.

FERC has long had the authority to regulate the rates, terms, and conditions of wholesale electricity transmission. Typically, FERC has approved an average rate of return of 11% on equity for utilities' investments in transmission and generation. However, under FERC's incentive rate making rules, utilities have been able to re-

ceive return on equity rates approaching 14 percent. These incentives are borne directly by ratepayers.

Question 1. How risky do you think it is to build new transmission lines?

Answer. The risks associated with building a new transmission line vary depending on the specifics of a project and in some cases the risks can be substantial. This is the reason for the Commission's current approach of reviewing requests for incentives on a case-by-case basis.

Generally speaking, I think incentive rates implies the need for a greater return to reflect a higher than average investment risk. I believe it would be my responsibility as a member of the Commission to see that any incentive rate award is justified by a showing of a higher than average risk associated with a specific transmission project.

Question 2. From an investment standpoint, do you think transmission facilities are good investments?

Answer. As a general matter, I believe that transmission projects can be good investments. However, a decision whether or not to undertake investment in a particular project depends on many factors, and is highly dependent upon the specific facts and circumstances of each individual transmission project.

Question 3. In your view, is there a lack of investment capital for new transmission?

Answer. I believe that there is a continued need for investment in new transmission. Historically, investment in transmission facilities in real dollar terms has declined significantly in the past few decades. This decline in transmission investment in real dollars has occurred while the electric load using the Nation's grid has increased. Further, the aging infrastructure has to be updated to provide reliable and affordable service, to accommodate increased consumer demand, and accommodate large amounts of renewable generation.

Given the current investment climate, utilities may cancel or defer spending on transmission projects because they need to access very large amounts of capital at a higher cost, in addition to facing tougher competition in the debt and equity markets for limited capital over the next several years.

Question 4. Would you agree that once siting, permitting and regulatory approval have been completed, the risks for most transmission projects is relatively low?

Answer. Even though siting, permitting and regulatory approvals may reduce the risk faced by transmission projects, there are several other types of risks and challenges that a transmission project faces that will continue to exist.

Question 5. Do you think the return on equity incentives should be tied to the risks of getting the transmission facility approved?

Answer. As discussed in my previous responses, the risk of regulatory approval should be one, but not the only, factor considered when determining a request for return on equity incentives. The Commission's case-by-case approach enables it to determine the appropriate return on equity commensurate with the risks and challenges of a particular project. If confirmed, I am committed to weighing all relevant factors when examining the risks associated with a transmission project.

Question 6. In your view, what are the risks that would justify additional incentives for owners of new transmission facilities?

Answer. In my view projects that advance national policy goals, such as providing access for renewable resources to the interstate grid, and face higher than normal risks and challenges may warrant additional incentives for transmission facilities. I believe the Commission's existing case-by-case approach enables it to review the specific facts and circumstances of an individual project in order to determine whether additional incentives are warranted.

Please also see my answer to question 3 above.

Question 7. Section 1241 of EPAct 2005 authorized FERC to establish incentive-based rates for new transmission facilities "for the purpose of benefiting consumers by ensuring reliability and reducing the cost of delivered power by reducing transmission congestion." Would you agree that unless a transmission project ensures reliability or reduces congestion, there is no basis for a rate incentive?

Answer. In addition to Section 1241 of the Energy Policy Act of 2005, which you cite, the Commission has broad authority under section 205 of the Federal Power Act to encourage investment in transmission through the application of incentive pricing for projects that may provide benefits to consumers other than ensuring reliability and reducing the cost of delivered power by reducing transmission congestion. For example, an entity is not precluded from seeking incentives from the Commission for transmission facilities to interconnect large amounts of renewable power to the transmission grid. If confirmed, I will ensure that any actions are well grounded in authorities granted to FERC by Congress.

Question 8. In one recent case, the FERC approved a return on equity of 14.3 percent for a proposed transmission project (Allegheny and AEP's PATH project). In her partial dissent, Commissioner Kelly noted that FERC made the determination about the 14.3 percent return on equity without holding an evidentiary hearing, which has been traditionally been FERC's practice. Commissioner Kelly stated by skipping the evidentiary hearing and making a determination on the return on equity directly in the order, it "reinforces the notion that the Commission has adopted an ad hoc approach to granting transmission incentives in general."

Would you agree that evidentiary hearings, where parties have the opportunity for cross-examination, rebuttal, and oral argument, are essential elements when making return of equity decisions?

Answer. Evidentiary hearings are one of the ways the Commission can choose to decide the return of equity for an applicant. The issue of whether a case needs to be set for evidentiary hearing depends on the adequacy of the record before the Commission and whether the Commission has sufficient facts to decide the case. If the Commission has a sufficient record upon which to make a reasoned decision, there may not be need to obtain additional information or hold a hearing. If confirmed, I would support an evidentiary hearing in any case where I felt such a hearing is necessary to receive needed information in order to reach a reasonable and well informed decision.

A compounding factor for me is the escalating costs of transmission projects. One such project is the Middletown to Norwalk, Connecticut transmission project. In 2004, the project was estimated to cost \$690 million. That figure now stands in excess of \$1.3 billion. In New England, we share in transmission upgrades regardless of where the project is built, so these cost escalations have a direct impact on New Hampshire rate payers.

For this project, FERC granted a 50 basis point incentive for the underground portion of the project for using advanced technologies. However, at this point the project was well into the construction phase and there was little doubt the project would not be built without the additional incentives. Additionally, Connecticut law requires that underground transmission lines must be used to the maximum extent possible and the Connecticut Siting Council ("CSC") ordered in April of 2005 that the only acceptable method for construction of this project was to install 24 miles of underground XLPE cable. Therefore, no incentive was needed to encourage the use of this advanced technology, it was the only way the project would be allowed to be built.

It should also be noted that this project was already granted a 50 basis point return on equity (ROE) incentive that is give to projects build by Transmission Owners who have joined Regional Transmission Organizations such as ISO-NE and 100 basis points awarded to all new transmission projects in New England. These incentives were granted to the entire final cost of the project.

The total ROE on the project is difficult to calculate (as the 50 basis points added for the use of advanced technology was only applied to the underground portion of the project), however a good estimate would be 12.5% to 12.7%.

Not only are the ROE incentives questionable, but they are compounded, in my view, by the higher costs of the project—which effectively doubled.

Question 9. Do you believe return on equity incentives should be applied in cases where state law required advanced technologies to be used or the technologies are not truly advanced?

Answer. In Order No. 679, the Commission explained that to the extent that applicants seek additional incentives for advanced technologies, the Commission will consider the propriety of such incentives on a case-by-case basis.¹ If confirmed, I will examine each case to determine whether an applicant has justified its request for additional incentives for using advanced technologies.

Question 10. Do you think it is appropriate for return on equity incentives to apply to estimated costs of a project and not be applied for cost over runs?

Answer. As a general matter, I support the Commission's established policy for ensuring that only prudently incurred costs are recovered under section 205 of the Federal Power Act.

¹*Promoting Transmission Investment through Pricing Reform*, Order No. 679, FERC Stats. & Regs. ¶ 31,222, at P 289-292, *order on reh'g*, Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 (2006), *order on reh'g*, 119 FERC ¶ 61,062 (2007).

However, the specific issue you raise is pending before the Commission on rehearing and to avoid prejudging the issue, I cannot discuss it further at this time.

Question 11. Do you agree that a case-by-case analysis is critical for determining whether ROE incentives are, in fact, truly necessary?

Answer. I find reasonable the Commission's current approach of determining the level of the return on equity on a case-by-case basis when an application for an incentive-based return on equity is filed with the Commission.² This approach enables the Commission to authorize a unique return on equity appropriate to the specific facts and circumstances of each case.³

Moreover, the Commission requires an applicant to demonstrate that the total package of incentives is tailored to address the demonstrable risks or challenges faced by the applicant in undertaking the project. Therefore, if some of the incentives in the package reduce the risks of the project, that fact should be taken into account by the Commission in any request for an enhanced return on equity.⁴

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²Order No. 679 at P 93.

³Order No. 679-A at 65.

⁴Id. at P 27.