



FERC Commissioner Bernard L. McNamee Provides Insights on His Approach as a Regulator and How He Applies It to Good Effect at the Agency

Outgoing Commissioner Still Going Strong

By Gary Guy & David Martin Connelly

Having renounced serving another term of office as a Commissioner of the Federal Energy Regulatory Commission once his term expires June 30, 2020 (but who can serve until Congress adjourns at the end of the year if his successor has not been nominated, confirmed, and sworn in), Bernard L. McNamee was the interviewee of choice by your avid truth-seekers Gary E. Guy and David Martin Connelly (aka “William Manchester and Carl Sandburg”). We learned a great deal about what motivates this public servant and skilled legal practitioner and are glad to be able to share it with you.

We began by asking him how difficult it was to make the decision to ask not to be reappointed after only a year and a half in office from his swearing in on December 11, 2018, but understanding the hardship of having his family living in Richmond. Calling it a “great honor and opportunity” to serve on the Commission and telling us that he loves the job and work, he said that his decision was both “hard and easy.” In particular, he enjoys “digging into the issues” and “making a difference.” But, “I love my family and they have been very supportive of the public policy jobs I’ve done up in D.C.” His son is going off to high school this fall “and I want to be there for him.”

So, Commissioner McNamee is “looking forward to the next stage in my life and my career.” As to what that might be, we were unable to extract anything from him because he remains focused on his job, noting that “there is a lot of work before the Commission.” Whatever the future holds, he already has amassed quite an impressive career in private practice, holding high level positions in the federal and state governments as well as on Capitol Hill. No doors are foreclosed to him.



Comprehensive Concurrences and Dissents

We next asked Commissioner McNamee about the divisions within the Commission, with the sharp and lengthy dissents, and how that affects him in performing his role. He observes that there will always be policy disagreements and disagreements between lawyers on what the law means. But he takes the “political edge off of things” by basing his decisions strictly on the law and the facts of the case.

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He maintains that “our system works because people have the confidence that their points of view are being heard. They won’t always get the answers they want, but they want to know that people are listening.” He puts aside politics and what is going on in Washington.

He also pointed out that, despite the portrayal of a split Commission, “most of our decisions are unanimous.” He says it is fine that there are sometimes disagreements, stating that is why Congress made it a multi-member Commission reflecting different points of view. His aim is to “lower tensions and show that Washington can work.”

As an example, he points out that after two years of having no natural gas exportation facility certificated, he and Commissioner LaFleur were able to reach common ground and work with Chairman Chatterjee to “find the path forward, to bridge the gap, and compromise.” Eleven LNG facilities have been approved as a result.

In those instances where there are disagreements, Commissioner McNamee sees value in the lengthy, heavily footnoted dissents and concurring opinions in that “it is important for people to understand what my reasoning is.” He thinks that this is important to

the parties to the case as well as to courts if the matters are appealed, and that it is helpful to future Commissions. The purpose is to lay out his view of the facts and the law where it diverges from that of the Commission order or that of an opposing Commissioner. Otherwise, he believes people will be left having to speculate.

As an example, he points to Order No. 841-A, where he made clear his support for energy storage but had concerns with jurisdictional issues. Another example he gives is his concurrences in pipeline certificate matters, where he has explained where he sees that the issues for which the Commission has authority to decide under the Natural Gas Act and NEPA are being addressed. He provides this information for the benefit of both those who agree with the agency action and those who are against it.

How He Has Made a Difference

Commissioner McNamee believes that his legacy is in precisely his adherence to proper standards of decision-making. “I have tried to do my best to work hard, pay attention to the details, pay attention to the law and follow the law and the facts wherever they lead.” In that way, “FERC works; the law works.” Also, he is proud of finding common ground for making advances, such as with the LNG projects that had been stalled for so long before his arrival. This has helped “unleash the American energy benefits of providing more markets for gas along with DOE decisions.” And it has allowed millions of dollars of investment, new jobs, new opportunities, and new tools for policymakers to deal with geopolitical issues by depriving other countries from using gas as a tool for advancing foreign policy objectives. He sees an American renaissance in world affairs by way of the displacement of foreign influences around the world with American sources of supply being made available through FERC-certificated projects exporting excess supplies. It occurred to us as we heard him speak so persuasively that these larger ramifications are sometimes overlooked, and it was interesting to hear the Commissioner point out the bigger picture results of the agency’s disposition of docketed proceedings.

All in all, he can point to true achievements through collaborative efforts and rules-based decision making that puts politics aside. That is quite a legacy, for sure.



Deciding Without Fear or Favor

In that connection, he informs us that he has been careful not to establish an agenda at FERC. He was “shocked” at how he was approached by people asking him “What’s your agenda?” when he first appeared on the scene at FERC. He conducts himself as an honest broker dealing with the issues and challenges strictly on the merits. His whole frame of reference is the opposite of what others seemed to be expecting of him. He does not have foregone outcomes prior to delving into the record and pleadings of the cases that come before him.

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To him, that is so basic he had not expected it to be necessary to explain. He calls himself an “adjudicator” albeit his decisions have policy implications. He says that “Congress made the agenda.” He follows those statutory directives. “My obligation is to try to figure out how does that broad policy agenda work with the facts and the law as presented to me.” And he does not try to “reframe other people’s opinions.” He lets each speak for himself. While “it is fun to debate policy and the law, it should never be personal, it should never be to win political points, or to try to win points with the media. That’s not what this job is about.”

He has been an advocate representing clients, and in policy making roles with legislators. “That can be very satisfying but that is a very different role.” In private practice and in state Attorney General offices, including being the number two lawyer in the office, he saw how state commissioners made the transition when they had previously been in advocacy or political roles and he appreciated them giving him a fair hearing. Now he does the same for those who have matters come to him for decision. His model is “Be even-keeled, focus on the law and facts, don’t make this a policy matter or a political battle; make it about what’s before you, take out the politics, and turn down the temperature that can take place in Washington when people take to their corners.” He recognizes that “there is a lot of grey.” No knee-jerk reactions are given by him by being labelled as being of one persuasion or another.

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“At the end of the day, I want people to say he is here to consider the issues and the law even when they disagree with my decisions.” It helps ratchet down mistrust of the process. While he did not say it himself, the word that came to our minds is that he is a man of integrity.

Preparation for a FERC Commissionership

We asked how Commissioner McNamee came to have such a winding and impressive career in so many areas. This includes (not necessarily in chronological order) Executive Director of the Office of Policy and Deputy General Counsel for Energy Policy at the Department of Energy, Senior Domestic Policy Advisor and Counsel to United States Senator Ted Cruz, Policy Advisor to Governor George Allen of Virginia, top level positions serving four Attorneys General in two states, a director of the Texas Public Policy Foundation, Partner and Senior Counsel at two major law firms, and degrees from the University of Virginia and Emory University School of Law.



“I didn’t have any grand plan,” he responds. In each of the above positions, he finds that he has become more informed and was helped in being a better policy advisor, lawyer, and Commissioner as a result of what he did before. For example, he looked at issues important to the state in those Attorney General offices as well as the interrelationship with the federal government, precisely what he must consider at FERC.

In his law practice, he was involved in putting together rate cases; now he must decide them. On Capitol Hill, he looked at how to put together a legislative agenda. Now he implements Congressional directives. “Being a FERC Commissioner has been a culmination of those different things to help me reason through them.”

We could not help but ask about Senator Cruz, and he immediately beamed at the mention of his name. He calls the Senator an “incredible man” who it was a privilege to work for, one of the most intelligent people he worked for, “a fantastic lawyer with great insights” and someone who articulates and frames issues very well. “He had a vision, he knew where he wanted to go, and my job was to give him some points to help him get there.” The American Energy Renaissance Act was a major Cruz legislative initiative that he worked on as his Senior Domestic Policy Advisor, helping to frame a broad view of what energy policy should be. Commissioner McNamee describes Senator Cruz as a “great person to work for; I really enjoyed him as a person. Not just insightful and smart, but fun to be around, and curious about his staff.”

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Advice to the Energy Bar

“I am very impressed by the quality of the energy bar. It really is fantastic. There are brilliant lawyers. I enjoy learning from everybody that walks through my door, whether it’s an NGO, or a company. I learn a lot and hear about a lot of things about which I had no idea. That’s one of the satisfying things, recognizing that you don’t know everything, and learning from people who know so much.”

However, we are not perfect, and Commissioner McNamee gave us this helpful advice: “I recommend that in complex pleadings, tell me what you are about to tell me. Too many people tell chronological stories and you don’t know until the end what they are trying to get at. You must read the whole brief again. You should indicate upfront what result you are seeking.”

He learned that in his policy jobs. “When a lot of people are involved, and busy, and looking at their phones, tell them this is the result you are seeking and then explain why it is the right result.”

He also had this observation in response to our question about the accuracy of coverage of FERC: “The press has a job to do, to sell papers or get clicks. They do what they need to do. I focus on what is right and not worry about how they describe me or describe the Commission. I figure that if I just do what I think is right, conduct myself in the way that I think is conducive to getting good results, and give people the ability to look at how I think I am obligated to look at cases, that’s all I can worry about.”

The sheer volume of orders, about 1,000 a year, surprised him. But it does not bother him a bit. “I am satisfied with the quality of the work, the interaction with the great Staff, and the quality of the professionals. I like digging into the issues; I like reading. Part of the joy is learning something new every day. And figuring out what does that mean. There is a challenge, and something new to learn.”

No doubt Commissioner McNamee will continue his upward spiral to even greater heights, with greater challenges, and greater accomplishments. God speed, Bernard McNamee!

McNamee Magnified

Early Bird or Night Owl: “A little of both.” Gets in by 7:30, leaves by 7 or 7:30. “But I usually go to bed pretty early.”

Secret to Work/Life Balance: Not yet discovered.

Life’s Guiding Principle: “My faith as a Catholic.”

Dream Car: Porsche 911.

Kindle or Hardcopy: Hardcopy.

Most Influential in Childhood: Parents.

A Surprising Personal Fact: “I love listening to heavy metal.”

Favorite Pizza: Pepperoni.

Favorite Junk Food: Chocolate Chip Cookies.

Favorite Movie: *Star Wars: A New Hope*.

Favorite Books: “I love reading political philosophy, particularly ancient and medieval.”

Best Advice Ever Received: “Do what’s right and don’t worry about what others think.”

Advice for an Incoming Commissioner: “Pay attention to the details, pay attention to the law, and make your decisions based on that.”

Hardest Thing about Being a Commissioner: “Making sure I consider all facts and issues in making good decisions.”

Most Rewarding Aspect of Being a Commissioner: “Working with smart, intelligent, engaging people and exploring the law.”

Most Missed Thing about Leaving FERC: The people.