



New FERC Chairman Mark C. Christie Aims to Keep Things Running Smoothly at FERC Despite Challenges Provides Advice to Lawyers

By Gary E. Guy and David Martin Connelly

The Honorable Mark C. Christie was named Chairman of the Federal Energy Regulatory Commission by the White House on Inauguration Day. Naturally, EBA's news hounds Gary E. Guy and David Martin Connelly (aka "William Safire and Crosby Noyes") immediately requested an audience with this top newsmaker, which he graciously assented to with alacrity. We had the honor of visiting the Chairman at his Offices in early February and are glad to share with our EBA members what he had to say to us on your behalf.

Applying Military Field Command Training to Management

A former Marine Corps Officer, Chairman Christie learned management through combat training, in which lower-ranked field personnel are given a lot of independence by senior commanders to accomplish strategic goals. As a former utility commissioner in Virginia, and now at FERC, he manages that way, giving strategic overall guidance to his Staff but not micromanaging their implementation. This is not a new approach for the Chairman. "Marine Corps officer training emphasizes trusting the guys who are actually in the field to figure out how to get the job done and not to micromanage them from headquarters. I have always delegated a lot of discretion to the people I supervise. I am far more

interested in preferred outcomes than in the details of how to get to the preferred outcomes. I trust the staff I supervise until or unless they give me reason not to.” He is intent on bringing this leadership practice to bear as employment policies are implemented at his agency based on OPM directives and to make the broad objectives workable to the needs of the agency.

With regard to the Administration’s pronouncements that might affect the FERC Staff, he indicates that, “We are trying to work through all these OPM emails and policies on personnel matters. My goal is to try to work through these and come out with compliance with these requirements in a way that is practical and enables FERC to deliver its mission outcomes efficiently.” He wants to make “orders from on high” work at the agency, which is “in the field.” Again, he likens this to his Marine Corps experience where, as a young officer “they teach you to show initiative in the field. The General gives the strategic direction, like ‘Take the hill,’ while the Lieutenant in the field figures out how to do it. You figure out how to get the objective accomplished. Someone higher up sets the strategic goal; the Marines in the field figure out the tactical way to get it done.”

“My goal is to come out with compliance with back-to-work and other requirements in a way that is practical and workable and enables FERC to do its critical mission in promoting reliability of the electric grid and getting needed energy infrastructure built.”

Applying This Approach to Energy Regulation as Well

To illustrate his delegation of authority to the field command, the Chairman explained that as a regulator he makes no attempt to micromanage the specialized work performed by those that are regulated. For example, “the engineers at the RTO know better how to run a system than anybody here, including me. Yes, we’re the regulator; yes, we look at filings they make to ensure compliance with the law. But we have to understand that the engineers in the field running that system – the system operators – know infinitely better than we do how to keep that system balanced.” The same philosophy holds true with those responsible for maintaining resource adequacy and keeping the system running.

RTO balancing system engineers “do a great job!”

“I think the RTOs do an absolutely great job of being a system operator. People forget with all the controversy over capacity markets, energy markets, ancillary services . . . and transmission planners as well . . . that RTOs are, to start with, system operators, balancing authorities, and they do a great job. That is the heart of the system. Every single minute of every single hour of every single day the system has to be balanced. Supply and demand have to be balanced. To use an engineering term, it has to be balanced as to frequency or the system crashes. It’s amazing how they keep power supply and load

balanced. I visited PJM’s control room; I visited CAISO’s control room. It is amazing when you think that they’re literally balancing power supply coming into the grid with the demand load every second of every minute. And they are balancing it. It’s awesome, the engineering skills that keep America’s lights on. It’s the engineers getting it done. And they do a great job!”

Bringing Prior FERC Experience to Immediate Appointment

Chairman Christie is even more of an old hand at FERC than people realize. In 1979, as a first-year law student, he applied in response to a newspaper ad in *The Washington Post* to a post office box for summer law clerks at “FERC,” otherwise unidentified and at no specified address. He got a letter back saying to report for duty – and that is when he found out what the four letters of the agency stood for and that it was fortuitously located near his Capitol Hill one-bedroom apartment – and although the Capitol Hill neighborhood then was “pretty grim with crack houses,” he walked to work. Being “pretty much drafted,” without so much as a job interview, he spent the entire summer writing a memo on Hydro-Quebec and remembers nothing about it. His only recollection is discussing ACC basketball “the whole time” with the attorney he was assigned to and whose office he co-occupied. “I didn’t think when I walked out of there at the end of the summer that I would be working at FERC, much less be Chairman,” he remarked. Since the more senior member of your “Safire/Noyes” reporting team was an Opinion Writer at FERC from 1978 to 1981, the Chairman joked that we may have passed each other in the cafeteria in the old building at North Capitol Street (which he recalls accurately “was a dump”) and that now that he has seen me, he knows that not everyone else in the building back then besides him is either retired or dead. At the time, he was not too impressed, telling his then-girlfriend that, “If I ever have to work at that place, just shoot me.”

However, in the intervening years, he came to have a renewed liking for the agency and accepted the appointment and confirmation as a FERC Commissioner, sworn in on January 4, 2021, for a term ending in June 2025. Thus, he has twice been chosen for a position by President Trump, both in his first and now his second term. He now loves the place and thinks highly of the well-motivated Staff, who he points out can make more money by leaving but choose to stay out of dedication. As he puts it, “If you like energy law and energy issues, it’s a great place to work.” He maintains that “We have a good work force, a dedicated work force. A lot of our people could make a lot more money if they left for the private sector, but they stay out of a commitment to public service, which is an honorable calling.”

Destined by Birth to Keep Coming to FERC

But FERC and Mark Christie were destined for each other even before he took that blind ad clerkship position. The stars were so aligned from the moment of his birth in Bluefield, West Virginia, famous for the *Bluefield Waterworks/Hope Natural Gas Doctrine* of just and reasonable rates and setting ROEs within a zone of reasonableness under an end results test. That obviously explains why he was pulled to FERC by the newspaper job listing, by the White House Commissioner nomination, and by the White House Chairmanship appointment.

But before he got all the impressive positions, he first grew up in Welch, West Virginia, where he attended public school. Then he graduated *magna cum laude* from Wake Forest University, earning Phi

Beta Kappa and degrees in History and English. He holds a law degree from Georgetown University Law Center. And, as pointed out, he is a former United States Marine Corps Officer. As we expected, he told us in response to our question that he chose the Marines because “they are the toughest.” With *Semper Fi* grit and determination, he is obviously well rounded in the arcana of energy regulation and administrative law, and leadership, all of which is needed in a public servant called to his post for immediate duty.

Long-Time *Major Domo* in the Old Dominion

We asked the Chairman how he ended up back at FERC so many years after his summer clerkship, which had caused him to think he never wanted to work at the place ever again. He explained that, as a lawyer in Richmond, he was involved in government.



He explained that when George Allen (son of the legendary Washington Redskins coach) was elected Governor in 1993, he was asked to come into the Allen Administration as Deputy and then Chief Counsel and Policy Director. (What else is there, we wondered to each other.) He agreed because it seemed “like a whole lot of fun” even though it meant giving up his lucrative law practice. From that point on, at the age of 40, he has spent most of his days in unsought government service. As the Governor of Virginia’s chief lawyer, he covered everything from government procurement lawsuits to death penalty cases (including hearing the final clemency appeal of an indigent defendant ably represented by a remarkably well-prepared Tim Kaine long before he became Governor, Vice Presidential nominee and now Senator). He was also the liaison between the Governor and the legislature, so that he was well known by all its members. “It was a fabulous job for somebody who loves policy, government, and legislation.” Christie only

had a brief return to private practice after the end of Governor Allen’s term (as Governors are only permitted a single term in Virginia).

However, on account of his being known on a first-name basis by all the 140 combined legislators from the Senate and House of both parties, he was called back into government to be Counsel to the incoming Speaker of the House at a “huge pay cut.” Then, he was unanimously elected by voice vote of each house of the legislature to be Commissioner of the Virginia State Corporation Commission (a position that is NOT first nominated by a Governor, as the Constitution of Virginia makes the SCC entirely independent of the executive). At the completion of his initial six-year term, he was re-elected twice. As VSCC Chairman he was also a national figure, serving as President of the Organization of PJM States, Inc., and the Mid-Atlantic Conference of Regulatory Utility Commissioners.

And Virginia Law Professor to Boot

Plus, he has taught regulatory law at the University of Virginia School of Law as well as constitutional law and government in Virginia Commonwealth University's public administration doctoral program. His law students were well taught by Professor Christie in that he explained to them that upon graduation they have two skill sets that fit into two circles, one depicting their range of knowledge in a wide spectrum of legal subjects and the other circle depicting their communication skills. To be successful, he told them that the Venn diagrams must overlap, otherwise their knowledge will not be put to good use. He explained to his students that they must excel both in writing and in oral advocacy. "Even if you are a tax lawyer and sit in your office all day, you still must have communication skills because you have to explain arcane tax issues to clients and potentially IRS agents. And as a trial lawyer, you are going to have to look a juror in the eye and make something that is difficult even for a lawyer to understand to be something that a juror with little education can understand." The same holds true, he conveyed to students, when you come before administrative tribunals. "A judge is just a juror in a black robe," was something a lawyer said to him once that he has never forgotten. "He probably has little knowledge of the subject matter and little interest in it if it is his eighth case of the day. Therefore, you must be able to communicate to judges, juries, and administrative regulators in terms that they can understand."

"You must be able to communicate to juries, judges and regulators in terms that they can understand."

Wooing the Virginia Regulator to FERC

Nearing the end of his 18th year as VSCC Chairman in 2020, Mr. Christie received a call from an outgoing FERC Commissioner who had formerly worked for him in the Governor's Office about being nominated for a FERC Commissionership. While not particularly interested, he allowed his name to be put forward to the Trump Administration, was invited for a White House interview in the Old Executive Office Building with eight Administration Staff members and was notified a couple months later that he was to be nominated. He chose to be sworn in as a FERC Commissioner in his VSCC courtroom where he had spent the last 17 years of his life by federal Fourth Circuit Court Judge G. Steven Agee. It was January 2021 and with COVID, the FERC building was closed and, other than a day at FERC to get his badge and complete his paperwork, he was set up with a FERC office in Richmond and did not return to FERC in person until October.

Elevation to Chairman

While he knew he had to be under consideration for Chairman once Mr. Trump was elected to a second term in November, there was no advance communication until Sunday, January 19th at 3 pm while he was watching NFL football, that he would become Chairman effective upon Mr. Trump taking office the next day. He knew his priorities, however, and was ready to proceed. As a Marine, he had been

trained to be prepared for anything, “the best, the worst, and in between.” As a lawyer, he had to be prepared for trial. “So, I had prepared an action plan and put it into effect,” he told us. He put out a press release and a tweet with his priorities. “I knew who I was going to call, starting with my Staff, and my colleagues. So, I had a whole list of things to do and I just worked the list.”

Of his colleagues, he states, “It’s really a great bunch.” While he reads about “other multi-member commissions, like FCC, FTC, SEC, and all their rancor, the thing about FERC is, we have disagreements obviously, like in Order 1920, I did a dissent, pretty pointed, but as personalities, it’s been a pretty good group to serve with.” He liked Chairman Richard Glick, who was there when then-Commissioner Christie first arrived (“other than he’s a Mets fan, and as a Pirates fan, I resent teams with rich owners and big markets”). And he said that Glick’s successor, now former Chairman Willie Phillips, is a “good man and likeable guy.” “And we have a wonderful line up right now,” he adds, “we all like each other and try to work through things.”

He estimates that approximately 98 percent of FERC’s orders are unanimous. And, he adds, that 99 percent of the time, FERC is in a reactive mode, responding to applications filed under FPA Section 205 and NGA Section 4, or complaints submitted under FPA Section 206 and NGA Section 5, and NGA Section 7 CPCN applications. “We have statutory deadlines; we have to act on them.”

The other 1 percent are “usually under the rubric of a rulemaking. Not surprisingly,” he continues, “that is where you get most of the controversy, certainly over the last four years, pushing policy agendas, like Order 1920, that I certainly didn’t agree with.” But the “five of us here want to get things done and get orders out, we want to be expeditious in a business-like fashion because we know that the industry depends on FERC.”

While he points out that the “rule of 3” applies to FERC’s five-member agency with the Chairman having only a single vote (or a quorum when there is a vacancy, such as Order 1920 passing on a 2-1 vote “with me being the 1”), he acknowledges that the Chairman is the gatekeeper on what rulemakings are drafted and brought before the full Commission for consideration. “As Chairman, you control the docket, you decide what gets brought up for a vote. And that is a very important power, no question about it.” But, he is quick to add, it does not change the equal voting power of each Commissioner, and it does not change that some filings, such as 205s, must be brought up for a vote or else the filing takes effect automatically at the end of the notice period by statute.

Lawyers: Look up “Brief” in the Dictionary

In terms of all these 99 percent of filings submitted by counsel for which FERC must react, Chairman Christie has some advice for the Bar. “Remember the movie *Amadeus*,” he advises. Mozart debuts a symphony before the Emperor of Austria, who tells the child prodigy that it has “too many notes.” That applies to pleadings as well. He tells us that, “Sometimes briefs and pleadings and filings have too many notes. You are not writing a Mozart symphony – if you want to, don’t go to law school -- but a legal document that needs to be brief, to the point, and most of all, persuasive.”

“Brevity is the soul of getting it read.”

He is a “big believer in brevity. Brevity is the soul of getting it read,” he admonishes. As a University of Virginia Law School Professor, he told his students that he would not impose any page limit on assigned papers, “but I’m only going to read the first 10 pages.” He points out that, “There is a reason



that they are called briefs, and I have seen lawyers over the years who do not understand what the word ‘brief’ means. Maybe they are getting paid by the word, like Charles Dickens, which is why his novels are so long. And always remember Mark Twain who sent a letter that began, ‘I apologize for writing you this ten-page letter, but I did not have time to write a five-page one.’”

His Mission at FERC

As Chairman, “I spend more time in Washington.” The administrative work is “very, very demanding,” especially with the OPM pronouncements.

But ultimately, he tells us that as Chairman, he wants to accomplish what he set out to do from the day he was sworn in as a FERC Commissioner: “One of my priorities is protecting consumers from excessive increases in costs. We’re here as regulators first and foremost to protect the public interest, the people that are not represented by lawyers, that pay their monthly bills, [especially] with a big run-up of inflation in the last four years, for some reasons under FERC’s control and some not under FERC’s control. We don’t control commodity prices; we don’t control distribution-level costs. But we do control transmission costs in the sense that we control transmission rates.”

At the same time, he does not call himself a consumer advocate in an official sense, since FERC does not have such an office (which they had at the VSCC) and points out that as a state regulator he approved the construction of “scores of assets, over 100 transmission lines, and multiple generating units, and I know that these assets cost money, that they go into rate base and go into consumers bills. We must have utility assets, but the costs must be just and reasonable.”

“It must be just to the utility and reasonable to the consumer.” It is a constitutional standard dating back to *Bluefield Water Works* that must be met to be just to the utility based on a century of case law. He sees a need to balance both requirements but look out for the side that has no legal advocacy on its behalf.

As a legal practitioner, law professor, state and federal regulator, chosen without contest by both legislative bodies in Virginia by members of both political parties to lead the VSCC, and with a military training in both inspiring those he leads and delegating to them where they are best able to execute in furtherance of an established objective, Mark C. Christie clearly has the motivation, insights, and leadership skills that one seeks in a public servant. He is truly a steady hand in a turbulent time.

Crystal Balling Chairman Christie

1. Favorite Pizza Topping: Basic Margherita, Mozzarella cheese and add red pepper flakes.
2. Most Admired Public Figure: Abraham Lincoln.
3. What to Have on a Deserted Island: Kindle (until the charge dies).
4. Surprising Personal Fact: I had a summer job in college as a coal miner and am a member of the United Mine Workers Union.
5. Best Concert Ever Attended: Bruce Springsteen, August 1978, Cap Center, Landover, MD (Floor in front of the stage).
6. Secret to work/life balance: Don't ask a lawyer.
7. Most Influential Person in Childhood: My grandfather, a small-town lawyer.
8. Most Beautiful Place Ever Seen: Grand Canyon.
9. Most Proud Of: Being known as a straight shooter, someone who keeps his word.
10. Prediction of World Series Winner: Dodgers. (My team, the Pirates, don't have the money and the Mets don't spend their money wisely. See, e.g., Bobby Bonilla Day)
11. Who Should Play You in a Biopic: Humphrey Bogart (because my favorite movie is *Casablanca* and I love the character, Rick, that is played by Bogart. My wife and I rented it to show in a big theatre to friends on one of my birthdays and I have read several books on this timeless classic. Many of the lines were extemporaneous, like “Round up the usual suspects.”).