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Commissioner Tony Clark Reflects on his term at FERC



Welcome to “Open Access,” the podcast series of the Federal Energy Regulatory Commission, or FERC. I’m Craig Cano, your host.

Our goal here is to have a conversation about FERC, what it does and how that can affect you. FERC can get very legal and very technical, so we will strive to keep it simple. FERC is an independent regulatory agency that oversees the interstate transmission of electricity, natural gas and oil. FERC’s authority also includes review of proposals to build interstate natural gas pipelines and liquefied natural gas terminals, and licensing of nonfederal hydropower projects. FERC protects the reliability of the high-voltage interstate transmission system through mandatory reliability standards and it monitors interstate energy markets to ensure that everyone in those markets is playing by the rules.

Today, Mary O’Driscoll of FERC talks with Commissioner Tony Clark, who reflects on his time at the Commission as he prepares to leave at the end of September 2016. Commissioner Clark served one term at FERC, having been nominated by President Obama and sworn in on June 15, 2012. Prior to that, he served 12 years as a member of the North Dakota Public Service Commission, including a term as its president.

**Mary O’Driscoll:** Welcome to the FERC podcast, I’m Mary O’Driscoll and with me today is Commissioner Tony Clark. Welcome to the podcast, Commissioner.

**Tony Clark:** Thanks, good to be here.

**Mary O’Driscoll:** You’re leaving FERC, after serving four years as a commissioner here at FERC. What would you point to as your greatest accomplishments during your time here?

**Tony Clark:** Well I hope when I leave people say, “Here was somebody who did the job well. He took the job seriously and applied the rule of law and some common sense to the cases that proceeded before me, and during my tenure that I was here.”

I think especially something that I have tried to focus in on is the understanding and articulating the importance of infrastructure both in how it’s put in, that it’s done the right way, but also appreciating what infrastructure can do in terms of meeting future needs and changing of the electricity grid or bringing new resources online that can provide energy more affordably and more reliably to America’s energy consumers. So that’s something that I tried to work on over the course of the years that I’ve been here.

**Mary O’Driscoll:** That debate has really kind of evolved over the years. How have you seen it change in the years that you’ve been here at FERC?

**Tony Clark:** In terms of infrastructure, specifically? It's an interesting dynamic that's going on right now in that you have in many ways a marketplace that's demanding more infrastructure for various reasons, and it crosses all of the utility sectors that the Commission deals with. So you have things like the Clean Power Plan and carbon emission reduction policies that are being up implemented at the state and federal level.

Those types of policies are going to require that there be more infrastructure built because you're replacing older forms of generation. For example, sometimes it means new pipelines that bring in natural gas, which has a lower carbon profile than what it's replacing. Sometimes it means building new electric transmission infrastructure because you have to have a more robust transmission grid if you're going to be supporting more renewables, which by nature are more spread out and intermittent in their nature.

So you have on one hand the policy push and market push that is encouraging more investment in infrastructure be made. At same time we're heading into a period where there is heightened opposition to that very infrastructure, and oftentimes where it's being proposed, whether it's electric transmission lines or pipelines are in parts of the countries that are either the most densely populated or that don't have a traditional energy industry and so are little bit more hesitant to embrace infrastructure, or questioning of it. And so you have more participation in those processes. Participation is a good thing. At same time the participation that we receive we want to make sure that it's information that the Commission can act on, the Commission can take into consideration on the record and in a way that can hopefully ensure that that infrastructure is done in the right way.

**Mary O'Driscoll:** Is there anything that's been surprising to you about being on the Commission for past four years?

**Tony Clark:** Not surprising in the sense that when I came to the Commission I had had about a dozen years serving on a state Public Service Commission and had been in government for some time prior to that. So I had a pretty good sense of what the job was about, and so I wasn't necessarily surprised by any policy issues or anything like that came up.

I think in terms of maybe ways that I've pleasantly enjoyed the job, and again not necessarily surprised, but maybe positive reinforcement, has been I've seen from the inside now an agency that I think actually works quite well, sometimes in a dysfunctional town. I point to FERC, and there are a few other agencies, but I would point to FERC as one that operates in a very functional way. And I think it's why, as an agency, it has traditionally had a fairly high degree of respect across the government on Capitol Hill, amongst other agencies, with state colleagues, and very importantly in front of courts where Commission orders are regularly upheld, although not all of them are, sometimes the court sees something a little differently than the commission does. But generally speaking the Commission fares quite well and I think it's because that respect, the agency does have.

And I think it's because it's an agency that when it makes a decision works very, very hard to ensure that it's making it based on a record in a very nonpolitical way and does it in a way that can be explained so that a judge or justices can look at that record that we made, the decision we made and know that it was done in a reasonable way.

**Mary O'Driscoll:** FERC is a Commission normally with five members, though now with you leaving there will only be three. But that's five people with different points of view, different experiences, different ideologies. How does the Commission manage to work together when you have those kinds of personal differences? I just mean differences in people not...

**Tony Clark:** Right.

**Mary O'Driscoll:** ...people battling each other.

**Tony Clark:** Yeah, I think it works quite well on the whole, maybe this is the surprisingly thing that I've worked for over 15 years now in regulatory agencies, but I think the independent regulatory commission model of government for certain areas works very, very well and I think the energy industry is one of them.

When you're talking about something as important as energy, which is critical to the economy, safety, well-being of the nation's economy, our people, critically important. You want to have decisions that are made in a nonpartisan, nonpolitical way. So you have expert agencies that are made of members with a professional staff providing guidance but commissioners who are appointed for a term of office and are insulated from some of the day-to-day politics that might otherwise go on. And through these quasi-judicial, quasi-administrative agencies you can make decisions that are really in the public's interest, and what you get when you have a five-member commission like that is you can have a process by which decisions are made on that record.

You may disagree from time to time with commissioners on a certain issue or not, but it tends to not be political. It tends to not – it is often said around here there's not a Republican way or a Democrat way to keep the lights on. So I think that that nonpartisan nature of it makes it easy to work with people in good faith. Over the four-plus years that I've been here it would be difficult to find any particular pattern in terms of vote: Here was a coalition of commissioners that always voted together and here is the other side that voted together in a bloc on certain things. It never worked that way. And I think the key is you have to maintain a degree of collegiality and respect. And if you do that, I think agencies like this can work quite well.

**Mary O'Driscoll:** Yeah, I've heard it often being said that energy is not political, it's a regional type of thing.

**Tony Clark:** Yeah, that's very true and it's sort of interesting. After one of our Congressional hearings, it was in front of one of the House committees – I think there were four of us on the Commission of the time – we were at our hearing, we were sitting down at the front table and chatting amongst each other and one of the congressman

came up and was saying hi and shaking hands and whatnot, he looked at me and he said, "You know, it seems to me that that you all seem to get along together pretty well." And I said, "Yeah we actually we do get along pretty well," and he kind of smiled and said, "Yeah, that's not always the case in this town." [Laughter] So I thought it was a nice affirmation that while you can disagree about certain things that come up in cases, and from time to time with split votes and that's fine, you can do in a way that is collegial and is done out of a position of respect.

**Mary O'Driscoll:** Since you been here you've been an important voice with all the state regulatory experience that you mentioned earlier. You and Commissioner Honorable are both former state regulators. What are some of the observations that you have after having served both as a state and a federal regulator?

**Tony Clark:** Yeah, it's an appreciation for the fact that each level of government really does have a key competency and has a very important role to play. In some ways, there are times that it's best to have things handled at a state level. The way that state commissions tend operate is a little bit different than FERC in that it's usually the commissioners themselves that are sitting first chair in those hearing rooms and going through a particular case. At FERC, we're a little bit more like an appellate court. We're reviewing record that someone else builds, whether it's an Administrative Law Judge or our staff through a paper hearing. But then there are other issues like wholesale markets that cross interstate lines or market enforcement-type issues where you really do need a national regulator, not a state-by-state regulator, to take care of some of those things.

And so the division of responsibilities is important. Each level, whether state or FERC in this case has its own core competencies that I think it can bring to the table, and again it's about understanding the role that you have within the statutory framework that we've got and carrying it out. But certainly our state colleagues are a key group of stakeholders that work with FERC on a number of issues.

**Mary O'Driscoll:** What would you advise to anyone who might express interest in becoming a Commissioner at FERC?

**Tony Clark:** I would say that there's no one best way to get to FERC. If you look at the backgrounds of people who've been here, sometimes it's law, we have attorneys around here. Sometimes it's economics, sometimes it's public service. Sometimes it could be an engineering background that you have, experience working directly with utilities. Sometimes it's experience working in government, so there's no one college course you can take or course of studies or job that you can come into that will put you on the pathway to FERC, and some of it's just kind of dumb luck sometimes.

I sometimes explain to folks who asked how I got here, in a way it's sort of like getting struck by lightning. There were number of career choices that I made along the way including being on a state Public Service Commission that clearly put me in the running, where you might have an opportunity to be appointed to the commission. But at the same

time, it just so happened that I had announced I wasn't in a serve another term at my state commission. And then a seat came open at FERC, and it happened to be of the right political party and if all of those things hadn't lined up, who knows, I might not of been at FERC. It's putting yourself in a position, in a field that you think is interesting and things just work out.

**Mary O'Driscoll:** So what are your plans now that you're leaving FERC?

**Tony Clark:** Little too early to tell. I don't have any particular job lined up or anything like that. From a "where I live" standpoint, it will be wherever the job is that I decide to take, so I suspect after the last Commission meeting here, the last few days that I serve on the Commission after I end my tenure at FERC, which is going to be September 30, I will probably take a couple of weeks off and just try to figure out exactly what that job is and I'm planning to do next.

**Mary O'Driscoll:** Before I get my final question, I've got to ask, why is North Dakota all of a sudden becoming Philadelphia Eagles country?

**Tony Clark:** Ah, Philadelphia. Yeah, I'm a recent convert myself and find myself to be quite the Eagles fan now. So the reason is because Carson Wentz who's, if you're a football fan is kind of a national phenomenon now, he's a local kid from Bismarck and then went to North Dakota State led our North Dakota State football team to two – well, they've won five in a row – the two most recent national championships. He was a starting quarterback for the Bison football team and so he got drafted second overall in the NFL draft by the Eagles. And he started the first two games for the Eagles, he's played great. I watched him on Monday night and he was wonderful again, so apparently people in Philadelphia are excited about Carson, the job he's doing for the Eagles. I can tell you people North Dakota are thrilled.

I've seen some things I never thought I would see like aisles and aisles of Eagles gear in North Dakota department stores, so...

**Mary O'Driscoll:** Take that, Minnesota Vikings.

**Tony Clark:** Yeah, that's right. I mean, I sometimes wear my Carson Wentz shirt that I've got now, Eagles shirt, and I'll get stopped by people as I'm walking in the park yelling, "Go Eagles!" at me. And so, it's a passionate fan base that I'm become a part of.

**Mary O'Driscoll:** Oh, it is. Okay, final question kind of along these lines. You're probably the most prominent Chicago Cubs fan here at the Commission. So the question is, "Are they for real this year?"

**Tony Clark:** Oh, they're for real, yeah. Now as a Cub fan you never get your hopes up too much because you never know what it is that's coming around the corner that might be another letdown, but this has been a really, really fun season to be a Cub fan. In fact probably the only season I can remember where I've probably enjoyed it quite this much was the 1984 season, which is another really fun year. It's actually the first year that I was

a Cub fan when I was a kid, but I'm mindful of how that one ended, too. So, I'm trying not to get my hopes up too much, but it has been a blast to watch this particular Cubs roster play throughout the year and we're keeping our fingers crossed. They've got the best record in baseball.

**Mary O'Driscoll:** Right.

**Tony Clark:** And got a very nice starting lineup in terms of the position players, their starting pitching rotation is been solid all year, so this might be the year.

**Mary O'Driscoll:** Ah, ever optimistic are we?

**Tony Clark:** That's right. You have to be if you're a Cubs fan.

**Mary O'Driscoll:** That's true, that's true. Well, that's about it. Thank you so much for joining us Commissioner and best of luck.

**Tony Clark:** Thank you.

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