UNITED STATES OF AMERICA

FEDERAL ENERGY REGULATORY COMMISSION

NOTICE TO THE PUBLIC

CLARIFICATION AND REVISION OF PREVIOUS NOTICE TO THE PUBLIC ON SETTLEMENT NEGOTIATIONS BEFORE ADMINISTRATIVE LAW JUDGES

(Issued December 6, 2016)

1. On August 30, 2016, the Chief Administrative Law Judge (Chief Judge) issued a notice to the public titled *Settlement Negotiations Before Administrative Law Judges* (Notice).
2. On November 29, 2016, the Kansas Corporation Commission, the Michigan Public Service Commission, the Pennsylvania Public Utility Commission, the South Dakota Public Utilities Commission, the New Jersey Board of Public Utilities, the North Dakota Public Service Commission, the Public Utilities Commission of Ohio, the Public Utility Commission of Texas, and the New Mexico Public Regulation Commission (collectively, the Joint State Commissions) jointly submitted comments (Joint Comments) in response to the Notice.
3. The Joint State Commissions state that they possess unique characteristics relative to most other settlement participants, which will cause them to “almost always be unable to comply with the requirements set forth in the Notice.”[[1]](#footnote-2) The Joint Comments specifically referenced the common practice of state commissions providing directions to their respective staffs for the purpose of participating in FERC settlement proceedings, but noted that these directions cannot constitute delegated authority to “accept” or “approve” the terms of a proposed settlement agreement absent the official action of the state commission itself.[[2]](#footnote-3)
4. Settlement judges have a longstanding practice of comity and accommodation regarding the unique posture of state commissions and the Notice did not intend to change that. The Notice itself specifically contemplated that certain participants possess unique characteristics and thereby provided that if a participant’s “special circumstances prevent” it from complying with the stated procedures, a request must be made to the settlement judge.[[3]](#footnote-4) The Joint State Commissions point out that this requirement is burdensome and would hamper their participation in the settlement process. As explained in their comments, state commissions have always meaningfully participated in settlement conferences by having fully informed representatives who participate in good faith on the basis of the instructions provided by their state regulatory bodies, and in turn these representatives make recommendations to their state regulatory bodies for formal acceptance or approval of any settlement negotiated.
5. In order to provide greater clarity, the language of the Notice is revised to read as follows:

In proceedings before administrative law judges acting as settlement judges or neutrals, participants must negotiate “in good faith.” To this end, at settlement conferences convened in-person, participants are required to have representatives present with authority to negotiate and if appropriate, accept or approve settlement terms, or that have prompt access to officials who can approve terms. However, it is understood, that subsequent to an agreement in principle, formal approval may still be required from a participant’s officials or leadership. For example, it is common for state commission representatives to be able to say whether they can recommend proposed settlement terms to their commission.

Carmen A. Cintron

Chief Administrative Law Judge

1. Joint Comments at 3. [↑](#footnote-ref-2)
2. *Id*. at 5. [↑](#footnote-ref-3)
3. Notice at P 1. [↑](#footnote-ref-4)