

FERC Filing Procedures for Settlements Webinar Transcript, Feb. 1, 2017

FERC Chief Judge Cintron: First, I am going to thank you and Mike Goldenberg and Larry Greenfield for having reviewed everything that we have been up to. I also want to thank Keith Pierce and Don Gavelek for their help in this process. May I introduce Mr. Pierce first. Mr. Pierce is a Subject Matter Expert in the Office of Energy Market Regulation. His specialty is a natural gas pipeline rate design. His experiences include both advisory and administrative litigation of Part 154 and 157 cases. He has worked on numerous orders including Order No. 636 and 637 restructuring cases and numerous Federal Power Act and ICA cases. Mr. Pierce is also a former Commissioner's assistant. Mr. Pierce has long been involved in creating and implementing Commission business proceedings for rate filings under Parts 35, 154, 284, 300 and 341, including Orders Nos. 582, 614, 2001, 703, 714, 780 and 781. Thank you for helping us out with this.

Donald Gavelek is a program analyst for the majority of FERC's Offices that handle rate filings. His experience includes the preparation, filing, processing and analyzing tariffs in private industry, the ICC and FERC. Mr. Gavelek was significantly involved in the development and implementation of the Commission's electronic document filing, data validation, case tracking and case assignment processes, including Order Nos. 703 and 714. We doing this in conjunction with the Energy Bar Association. We have had some issues with the settlement filing processes. And when I asked for clarification, the emails I got back from a number of people in the agency made me realize that if I do not understand what they were telling me, neither would anybody else. So I'm hoping that with this process we will clarify for the industry, how we want to proceed on a going forward basis. Thank you. Don, you are on.

Don Gavelek: Thank you Judge Cintron. Before we go any farther, IT over here asked me to remind participants observing this through the webinar that questions should be directed using the live chat feature to the Host. And with that, let us resume. The objectives we hope to cover in this presentation are in four parts. First, changing filing requirements, including how we got here, resources that are have been involved. A section on Rule 602 settlements. A section on prearranged filings and concluding observations. At the end of each of these four parts, we will have an opportunity for questions. How we got here. Since I've been here I've observed quite a few changes. I'm constantly getting filings that say "we filed as you said, what we used to do things that way." And the answer is "you are right." With these new procedures, just to illustrate to begin with: Back in the days of paper used to have [a] requirement [for] 14 copies; had be an original; had a specific paper size that was required; even a minimum font size. Business processes from that time on have evolved: paper filings being received manually, processing them through the Commission. From there we went to manually archiving paper filings into Central Files. Subsequently, we were manually scanning these files in, which made it a lot easier for everybody to get their hands on a document earlier. And the result was an improved process time for all parties concerned. FERC's organization has changed. We have gone from various offices

and constantly evolving to who gets the work. Technologies evolve. Here we can find out who's been around for a while. Some people remember typewriters; Wang word processing; finally we got the laptops. Boy, that's an improvement. Media: we have gone from paper; there were floppy disks; and now with various Internet protocols to deal with this. The Commission has slowly adopted new information technology, structures and procedures to utilize this technology. By the late 80s, staff was starting to request data and rate designs in Lotus format, Quattro and dBase. Order No. 582 in 1995 required NGA open access tariffs in both paper and electronic format. Those of you around here probably know about FASTR. Commission orders were then made available electronically through CIPS.

From that point forward: Order No. 703, establishing filings via the Internet. This is a big, this is a big break for everybody, I think. This is the start of the Commission's fully integrated filing procedures. We had eFiling, which is a gateway for the public to make Commission filings. It started initially with protests and comments. We moved forward; we had enhanced our docketing system. We had eLibrary, which accepts many different native data formats, including spreadsheets. We have case tracking, distribution, notices - all tied in with this information that comes in from the electronic filing submission. We also have eService and eSubscription. Order 703 left paper filing procedures in place, but the regulations still required tariff filings in paper and they were integrated and still required some manual processing to be handled.

Order 714, 2008, effective April 2010. I remember that date. It required tariff filings to be filed only in electronic format. This is the eTariff headliner. Residual order 703 manual steps in the Tariff filing process were mostly eliminated. Non-regulated entities can still filing paper. This, of course, is referring to intervenors, small parties, etc. Commission authorized OSEC to issue instructions pertaining to electronic filing and electronic formats. This dealt with issues pertaining to allowable electronic files, documents, formats, filing of electronic - excuse me - filing of complex documents, whether they were paper (if it's required), and procedures and guidelines for submissions through the Internet. This is in 18 CFR 375 302. It also permits OSEC to update the many electronic filing requirements to match changing technology. This is been an improvement, hopefully to help all parties concerned.

As for resources, OSEC has many instructions. Dozens of instructions for different filings and forms are posted on the website. Generally regulated entities must file an electronic format. All other parties can file in either paper or electronic format. However, we stress to those parties that electronic format is preferred - we tend to have a less problem of losing those filings and get them available to the public faster. When new or revised instructions are issued, they are noticed in a specific docket. For example, RM07-16 for eFiling instructions and RM01-5 for eTariff instructions. These are posted on the Commission's website. For staff guidance, we have resources available, starting with FERC.gov, the Documents and Filing tab information that provides information such as Commission notices and orders, instructive orders and collection of FAQs that have occurred through various Commission orders on filings. There is also a resource for FERConline where staff is available to take calls and they

can field them to Commission staff as necessary. Many of the parties out there in industry also will call staff directly. They've got a resource and they will use it. There are third parties. These third parties are in connection with what we refer to for tariff filings and software and management. The Commission makes no recommendations on them. We can only refer to them. We give no instructions or provide advice on them.

This next screen is just a little small section out of what has been made available. I believe Brooks Carter started working on this when he was still here, if you recognize that name. What [this example] does is identifies various portions of the Commission's regulation's specific schedules, tariffs, what the requirements are, by section and whether an eTariff requirement is mandatory or not. This has been a great facilitator and helps in explaining to somebody for filings being rejected where they need to go look and find procedures.

At this point, are there any questions? I will turn this over to Keith Pierce.

Keith Pierce: So let's get over to the settlement filing procedures. As all of you know, the Commission has many unique definitions that applies to common words only those definitions are only applicable to contacts within the Commission. Both EBA and FERC offer classes on many of these terms and how to apply them. And this particular classroom we will go into depth with one of the particular words and that is: Settlement. We have two general categories when we refer to settlements that have unique definitions in the context of FERC. First, with what we are going refer to as Rule 602 settlements. These are settlements of issues that have or are in proceedings that are established already - already established before the Commission. And we will go a bit more to the definition later. The second set a category of settlements of we will be referring to as prearranged or preagreed filings, and they follow a completely different business process. One of the reasons for this class is that we don't want those two business processes mixed up.

Rule 602 settlements. What's their definition? It comes straight out of 385.602, where it provides that this section applies to written offers of settlement filed in any proceeding set for hearing under Part 385, subpart E, before settlement judge and/or alternative dispute resolution. The implication of course is that there is already a filing here before the Commission, that Commission has actually issued an order and set it before a presiding officer. Also, from our perspective, part of this class is that we also consider as offers of settlement any written proposal to modify or amend an existing settlement that is pending before the Commission under Rule 602. Remember that these modifications and amendments can occur at multiple points along the process. It can occur soon as the settlement has been filed. Someone made a mistake; got to refile or make a modification to it. It can occur after the judge certifies it to the Commission but before the Commission has acted on it. Or it can happen as a result of a modification that the Commission is made in the approval. And it can also happen many years thereafter, when the parties say, oh, maybe this term and condition, may be a compliance obligation – you know - will agree to make a modification. That's also a

modification to a settlement and is covered under the 602 procedures.

Rule 602 settlements have a set of required documents. Most of these come straight out of the regulations that we will go into a little bit more. Transmittal letter: of course all transmittal letters to the Commission should be addressed to the Secretary. The reason is, the Secretary distributes this material throughout the Commission. So therefore in your transmittal letter, make sure you are clear as to whom you wish the settlement to be directed. For the most part, initial settlements are going to be going to the presiding officer. However, there are some circumstances, especially in the cases of amendments that come after certification, those will be directed to the Commission. Because once a filing has been already certified out from the ALJ, those settlements don't go back to the ALJ. Those are before the Commission. Summarize your requested actions. Do you have any motions in your request? Do you have any requests for waivers? Are you addressing any interim rate issues? List the documents, especially with regard to whether not they made public, CEII or privileged information. With regard to the contact information that you put on the transmittal letter, make sure that that person is eRegistered and on the Commission service list. Remember many times the settlements here involve people who may not be on the service list because that was done in the litigated proceeding. This transmittal letter is the public document that you're asking the Secretary do something with which may not have any - which is procedural as opposed to the content of the settlement itself. Attach, of course, your stipulation and agreement, your settlement offer, and explanatory statement. You should include any copies or references to additional documents. Any such references to documents that you're incorporating by reference, try to make sure you have good citation to it. Could be an accession number because that document may be in the library in multiple locations and they may not all be identical. If necessary, and we are going to talk more later on this, including any actual tariff records that are consistent with the Order 714 format - but will you limit those actual tariff records to interim rates. We will talk more about that. Make sure you have a motion saying how you want the judge or someone else at the Commission, if it's addressed to the Commission, to manage those interim rates. And any other documents that you may deem appropriate - make sure that they are part of that package.

One of the reasons that we do not request, or do not recommend, pardon me, that you do not supply actual tariff records as part of the stipulation and agreement is that it's really difficult to predict the compliance timeline that the regulated entity will have to go by. You're going to be dealing with locked-in periods that are undefined and open-ended and, therefore, trying to predict what's going to happen is often very very difficult. Within lock-in periods, you can have multiple sub-locked-in periods which will require additional tariff records that sometimes in the heat of the moment of negotiation you may forget something. There are frequently other filings that occur at impact those Tariff records that have nothing to do with the settlement and you don't want to forget them. Further, settlements can be amended or modified. You have unexpected actions at the Commission may make that may result in having to modify those compliance records again. And further, as there is no timeline for the Commission to

act on settlements and therefore your proposed tariff records may need to be modified due to delays of Commission action. Sorry for not keeping up on the sides.

If you're involved in a tariff filing proceeding before a presiding officer or presiding – yah - presiding officer, you are supposed to be following their instructions. In other words, when you have a proceeding before the presiding officers, they control what type of documents need to be filed and in which manner. On December 1, 2016, the Secretary of the Commission in conjunction with the Chief Administrative Law Judge issued a new set of instructions and Type of Filing Codes applicable to filing of settlements before a presiding officer. It became effective on January 3, 2017. In the back I have copies of that Notice. For those of you who are listening in, you can get that off of the Commission's website. These Type of Filing Codes are specific for settlements under Rule 602 - not any other settlements that we will be discussing later. When you make that filing and put together your tariff XML filing, make sure that you associate with the original eTariff Filing Identifier. That is a term of art at the Commission: tariff Filing Identifier. That is a term of art used in eTariff. The terms that I'm going to be using are the NAESB approved and Commission adopted terminology. If you do not know what those terms are, please go to the Commission's - to the *OSEC Implementation Guide* on the Commission's website. OSEC will be assigning a new sub docket to the settlement filing. There is no need to re-intervene because the existing service list stays with any sub docketed proceeding. So if sub docketed - no need to re-intervene. Once a docket is given to a Filing ID continued to use that Filing ID with all subsequent eTariff filings. That way you don't multiply the number of roof dockets. However, there are going to be filings or proceedings that, in all, docket numbers that do not have a Filing ID. Most of those are complaints, things like that. Under those circumstances, the Secretary will issue a new roof docket number. Parties are advised to intervene as a new service list will be created for that particular root docket number. But also note that settlement Type of Filing Codes provide that the new sub docket or the new root docket filings will be before the presiding officers. There will not be an order consolidating or assigning that new sub docket or root docket over to the presiding officer. That is the purpose of the Type of Filing Code. It provides notice to everybody that this is part of that proceeding. So there won't be a separate order going out on that topic.

For filings - for Rule 602 settlements there part of multiple proceedings, put the nonassociated Filing ID's [docket number] in the Filing Description. That way that docket number will be in eLibrary and you can find it on a search. These type of instruction - these instructions, by the way, are not unique to the settlement Type of Filing Codes. The Commission issued those instructions back in 2010 [regarding] any proceeding involved involving multiple docket numbers.

When you file a settlement, put all the supporting documents and tariff records into a single filing. Please don't scatter the documents across multiple filings or multiple dockets. Make it a single package. eTariff XML format can handle approximately 200 attachments. There should be no limitation with regard to the eTariff XML structure. Only file the settlement once. If you have duplicative or piecemeal filings – they cause

confusion. It raises questions as to whether or not the multiple filings are actually identical. And it leaves parties confused as to where and to what documents they should make their 602 comments and reply comments to. Make it a single filing. There are some limited exceptions, such as if you happen to have a settlement that crosses multiple proceedings. In other words, part of it is only before presiding officer about another somewhere else, or may even be two different proceedings with two different presiding officers. There - sometimes - it is appropriate making the filing in both. The other circumstances - when you're involving multiple regulated entities. They have to make eTariff filings in multiple Tariff IDs. In those circumstances what we recommend is that you file only the transmittal letter in the second filing and [include] the appropriate tariff. Don't duplicate all the settlement documents because the same issue may arise with regard to the confusion: are those documents identical?

Rule 602 has a regulatory notice period. And what that provides for is basically on the 20th day, the 30th day from the date of filing, that is when the comments and reply comments are due. Remember with the 20th and the 30th day, the standard Commission rule applies that if it happens upon a nonbusiness day, it is the next business day. That is the applicable day from filing your reply - that is - your comments for your reply comments. However, each one of those days is independent. So the 20th day gets pushed off for three days when you combined weekend and holiday, it doesn't change the 30th day comment period. Settlements are not subject to an OSEC notice. However, as anyone who's been involved in this program for along - for the last few years, is aware that sometimes OSEC does issue a notice on Rule 602 settlements inadvertently. That is because a lot of our systems are automated, as Don mentioned. If such an incorrect second notice does get issued, it does cause quite a bit of confusion. We get telephone calls. You know that people don't know whether which states actually file their comments because the dates are not synchronized. If you see one of these incorrect notices, please inform OSEC through FERConline and we will try to get the error corrected. It serves all of our purposes and our objectives to get these type of mistakes clarified as soon as possible. So please help us in that regard. But we are hoping for is that the new Type of Filing Codes will reduce those type of errors because now they are more easily identifiable by the Secretary's office as 602 settlements as opposed to other types of filings. When you make your comments and reply comments, please put them in the sub docket of the settlements so that people know where those comments belong.

Let's go into more detail with regard to interim rates: Interim rates have always had to be filed in eTariff anyway, so this is not really a change. Let's go into some of the stuff that we expect. Interim rate filings are not subject to a separate notice. They are part of the regulatory notice of the 20 and 30 days. So even if a settlement comes in with real tariff records, the Secretary should not be issuing a separate notice on those tariff records. Make your comments associated with the interim rates in your normal 20/30 day comment timeline. Motions to accept interim rates are not subject to a Commission action date. They can sit there forever, depending on who is assigned to review and approve them. And we will discuss about that in a moment as to who that may be. When a motion is filed for approval of interim rates, OSEC looks at it and then

assigns it out. But it does not assign them to the ALJ. Those interim rates are assigned to OEMR. OEMR has three options. If the proposed interim rates are lower than the effective rates, they may refer those interim rates over to the presiding judge for approval and the presiding judge may either accept or reject those interim rates through a delegated letter order. OEMR may do the actual action itself of accepting the interim rates by delegated letter order. Or OEMR may take another action as appropriate.

Supplements and amendments of Rule 602 settlements. Keep the supplements and amendments in the same docket. They still should be filed using the Type of Filing Codes for settlements, even if it several years later. Amendments to Commission approved 602 settlements are still 602 settlements and that, like I said that may occur many years later. You'll see them on the Commission's agenda regularly. Notice will still be the 602 notice. There should not be a separate [OSEC] notice even if [the amendment] occurs multiple years later. [The] 602 comment and reply comment periods [apply], even if it's three for five years later. Think about it. You don't really want to have an OSEC notice on a settlement that's already been approved by the Commission and providing an opportunity for other parties who were not part of the original proceeding to come in and make comments on that settlement. There is a reason why these remain 602 settlements.

Resources. As I mentioned a lot of what I covered is actually listed check by check in the Commission's regulations. The Secretary puts up a lot of information with regard to the forms, with regard to the eTariff XML format and the like. We also post a lot of information on the FERC.gov website. And of course with what we post, we have our normal disclaimer on that we don't speak for the Commission and the like. As Don mentioned, you can also call staff at work or Online support. And if you do call us with regard to procedural issues on eTariff filings, every division is supposed to have a specific individual assigned to it. Call those division directors and they will send you off to the right person.

We've attached a flow diagram for you, that you can print off; put on your wall if you get confused and

Any questions? Yes [inaudible..]

Audience: With respect to the transmittal letter, page 12, should there also be a discussion of any proposed effective dates in that transmittal letter?

Keith Pierce: If you have a ... if you have interim rates, you should mention the effective date that you're requesting. With regard to the effective date of the settlement, that's, of course, a negotiated item. It, of course, is dependent upon what the parties negotiate. Many parties put in something to the effect that X number of days after Commission approval or something like that. But that's an individually negotiated item. But definitely any tariff records are supposed to have proposed effective date and the transmittal letter's motion with regard to approving it should

identify with that date is. Any other questions? Yes, Mike

Mike Goldenberg: In a proceeding before an ALJ with multiple dockets, they settle a bunch of dockets, would you prefer that they make a settlement filing using pro forma tariff sheets in just one of those associated filing identifiers or you wanted ..or would you prefer that they make several filings in each of the relevant dockets?

Keith Pierce: If you're only dealing with pro forma tariff records, please, please only make a settlement filing once....

Mike Goldenberg: And then the Commission would then issue an order requiring the compliance filings in each of the dockets?

Keith Pierce: That's correct. Try, try to reduce the amount of times you make filings here. It just causes confusion and it is also an expense on your part.

Judge Cintron: I just have some clarifications. In terms of the comment dates, the judges can shorten those comment dates on motion. I'm also requiring that the parties file a motion requesting interim rates so that I know that I have to act on them, if OEMR so desires. And only ... that the chief judge can act on the lowering of the interim rates.

Keith Pierce: That's correct all the way around. And, again, that's that's why the transmittal letter is so important to list all these items and And Judge Cintron brought up the question, or the point, with regard to a motion to reduce or shorten the comment period. For those that you direct to the Commission for settlements that are after certification, make sure you mention if you wish, that make sure you mention that in the transmittal letter also. Any other questions before we move on? Yes, Michael.

Mike Goldenberg: Compliance filings. If the settlements filed using the Type of Filing Code that you posted for settlements and it's with the Commission and in the Commission requires a compliance filing, which Type of Filing Code you want the filer to use? The same ones or with the standard filing codes?

Keith Pierce: Once a settlement has been acted upon by the Commission, then it's in a compliance filing. It is no longer a settlement filing. You're complying with the Commission order or complying with the terms of the settlement. So use a normal, everyday, compliance code appropriate for the program as applicable to your particular regulated entity.

On line reader: The online question is: in the circumstance when the settlement is of consolidated cases, what is the lead docket or Filing Identifier?

[34:18] **Keith Pierce:** OSEC doesn't care. They're all ... all those dockets presumably have been given over to the presiding officer. And it may be an issue with regard to how the parties have negotiated their settlement as to who is going to be the lead party. But as long as the docket numbers have been assigned over to the

presiding officer use any of them – they are all good.

On line reader: We have often filed a motion for interim rates in a separate supplemental from the settlement submittal, from the settlement, explanatory statement, etc. Is it preferred to combine the motion with the settlement filing instead?

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Keith Pierce: Absolutely combine it into a single filing. It's a total package that was negotiated. We don't want to see these separate filings go off in different ways. They get lost. Reduce confusion, reduced chances of error and in the long run I think it probably makes things simpler. Yes, judge

Judge Cintron: What I don't want is the motion being inside the transmittal letter because, as you pointed out, the transmittal letter is addressed to the Secretary. So we may miss it as well.

Keith Pierce: Very well, let's go on to what we are referring to is prearranged or preagreed filings. These are often referred to as settlements. However, they do not involve the settlement any pending or open proceeding before the Commission. Yes indeed, they may be referred to as a settlement by the parties. And from their perspective, it is. From the Commission's perspective is not. [inaudible] There's nothing being settled that's before us. There's no specific Commission regulation that apply prearranged or preagreed to filings - unlike 602 settlements where we do have specific regulations addressing those type of settlements. All prearranged or preagreed to filings are managed as if they were every day tariff filings under our standard eTariff business processes. Such as there is no specific Type of Filing Code applicable to prearranged or preagreed to filings. They will all receive a standard Notice from the Secretary, with regard - that usually provides for intervention and, of course, a comment period. Rule 602 comment periods do not apply to these filings. And quite frequently we see these filings come in and they say we want to comment and reply comment. No, that's not that's - that's not the notice that you're going to receive under these filings. There a lot of advantages to making these filings, the Commission of course does have a preference for people reaching agreement. And after all, it reduces the lower - lowers the risks of protests, lowers the risk of suspension. In the event of protests. There are overall lower regulatory expenses as you don't go into hearing, you do not engage in all the expenses of staffing up or all the paperwork that's involved. However, there can be sometimes unexpected results. Unexpected protest because, maybe you didn't cover all the parties that had an interest in the proceeding, or the issues were resolved the way they thought they were resolved. You can also have unexpected Commission results because we may view, or the Commission that is, may view these prepackaged filings from a different light as to what's just reasonable but they are not, or as unduly preferential or discriminatory. And the end result may be some, there may be a rejection or suspension that you may not have expected.

When you have a prepackaged or prearranged filing, there are two available business processes that you can use to make these filings before the Commission. Either the Normal/Statutory or Compliance. These are both business terms are defined in the

OSEC Implementation Guide. When you decide or are choosing which business process, make the decision based on what is the desired outcome, not on the basis that there is a prearranged settlement. So, if you want to place into effect actual tariff records, with the Commission acting pursuant to the statutory or regulatory action date, choose a Normal/Statutory business process business Type of Filing Code. If you're looking for preapproval of the prearranged or preagreed to filing, use a Compliance Type of Filing Code and then follow that up compliance filing after the Commission acts on it. Instructions for that particular procedure is in the DTI order that's in the in the slide. It's the regulatory entity's choice as to which business process use. But, of course, as always, the Commission reserves unto itself - deciding whether their choice was appropriate.

Commission staff highly recommends that parties have a prefiling meeting with with the staff to discuss prearranged and prepackaged filings. Such meetings are permitted pursuant to the regulations that I provided. The reason that we make this recommendation is that these type of filings often involved unique issues, or procedures, or timelines or tariff provisions. Staff can provide suggestions as to the documentation, explanations or tariff construction that may help in processing of that, of such filings. Notice that the disclaimer is in here, again. And the reason that I re-stated that disclaimer at this location is that, frequently after these meetings, companies will then put in the transmittal letter saying that "staff agreed." No. Staff did not agree. We cannot agree under these terms of meeting, under these particular provisions. So, there's nothing wrong with saying that you met with staff; you cannot say that we agreed this. We do not have the ability to agree. You can of course go to the Commission's regulations for guidance for putting together packages. Of course the OSEC guides and instructions are available, they are equally applicable to these type of filings and the Commission also posts additional information on FERC.gov. We have put together a flow diagram – it is not as complicated for prepackaged filings

And now any questions? Yes, judge

Judge Cintron: When you said "staff," what staff are you talking about?

Keith Pierce: Very good point. Yes for the prepackaged or prearranged deals were talking about advisory staff, not the litigation staff under OAL. When we are talking about Rule 602 settlements, the staff that we are referring to, of course, is the OAL staff. So, yes, there is a big distinction on that point. I appreciate the clarification.

Judge Cintron: What advisory staff are you talking about? What – How do they know who to call? Do they know? I mean, does the FERC.gov site mention?

Keith Pierce: That's a good point in the sense that it is supposed to be common knowledge that you called the division directors.

Judge Cintron: Wait – do they know that?

Keith Pierce: Yes, they do. In fact, we have a former one sitting right there. He used to get all those – get those calls all the time. [inaudible] But you don't have to worry about those, Judge. [inaudible] Thank you for that. Any questions on chat? Very very good. Let's move on to the to the last segment with Donald Gavelek.

Don Gavelek: Thank you, Keith. Well hopefully it's a wrap up here – if we haven't overwhelmed everyone with all this information. We have settlement points to remember. All settlements filed through eTariff are automatically loaded into eLibrary and become part of the public record. eTariff filed settlements can only be filed in a single docket number. All members of the eService and eSubscription list in that docket number are automatically informed of the filing and provided an accession number and hyperlink to the filing by OSEC. OSEC does not have access to, nor provide services to any party on service lists maintained by line, by the presiding officer. Parties to settlement should rightly focus on the major issues. But once those issues are settled, the parties need to consider how the settlement package is assembled and how the terms of the settlement are to be implemented. As each settlement is unique, it is not really possible to create a checklist beyond the basics that are already in the Commission's regulations. However, staff see scores of settlements and their implementing compliance filings. From that experience, we put together a list of points to remember. In some of these you may recognize from potholes in your own settlements hit list. So hopefully as we go through these, this will help you out. We hope this section really helps you. In a transmittal letter, clearly identify to whom the Secretary should direct the filing. Identify all proceedings, motions, appeals, etc. that are the subject of the settlement, whether or not part of the proceeding is before the ALJ, including those before the court. Identify all attachments and their security level.

If requesting privileged or CEII treatment for any document, follow the procedures and instructions of 388.112 and .113. If documents or exhibits are included by reference, please include clear citations to the document in eLibrary, such as description, prefiled testimony, its description, docket number and the accession number. If requesting comment timeline other than that provided by the section, you must provide a motion to the presiding officer. Include the motion as part of the filed settlement package. If intermittent, if interim rates are part of the settlement, the transmittal letter must include a motion to place those interim rates into effect and the proposed effective date.

As for the settlement, identify all items and proceedings, motions, appeals that are the subject of that settlement, including those before the court. Clearly, again, clearly identify those items. Clearly state the disposition of each item or proceeding, such as withdrawal of protest, filings, rehearings or appeals. For Part 154 settlements of general rate cases, a separate provision requiring an agreement as to what values the pipeline should use for the exogenous variables in the NGA section 7 certificate application's initial rate calculation.

The settlement perverts. Pardon me. If the settlement permits severing of contesting parties: provisions as to how the tariff will include filed and/or rate Tariff records, and settlement rate Tariff records applicable to contesting and consenting customers.

There should be provisions addressing the billing of contesting parties pending resolution of reserved issues. Also, provisions that note how contesting parties may become consenting parties. List and define any reserved issues. Interim rates: if interim rates are to be changed, there must be eTariff records filed in eTariff. If interim rates are part of the settlement, include the interim tariff records as part of the settlement filing. You should be sure to note provisions addressing rebilling of customers in the event settlement is not approved. [inaudible] include things such as timing and refunds.

Address comeback requirements, the date of comeback filing or effective date. Does comeback filing date consider the statutory notice and the possibility of full suspension? Also, your documentation is expected as part of the comeback requirement, impacts of other activities, filings, etc. on the scope of the comeback requirement. Also include notes on the rights to early comeback. For formula rate settlements, if the settlement includes exogenous variables in the formula rate, such as return on equity, depreciation, PBoP's, it is regulated entities responsibility to place those values into its tariff and this is in the ODEC cite: 133 FERC 61,261. If a formula or calculations are the subject of the settlement, the formula should be provided in spreadsheet format.

Compliance obligations. Clearly stated compliance requirements should be noted. The documentation requirements, formulas, calculations and methodologies. Also should note the timing of compliance obligations, note responsibilities of each party for compliance obligations, note the right of each party with respect to any compliance filing. For tariff records: settlement provides for revised terms and conditions of service and/or rates, revised tariff records are likely required. It is advisable to file only pro forma tariff records as part of the settlement. I will state that one again: it's advised to file pro forma tariff records. If the settlement provides for revised tariff text or rates, all tariff records within a lock-in period may need to be revised in a compliance filing or filings. There's a limited exception. If there are no other pending issues involving a tariff record in the subject proceeding or other proceedings, including those on appeal, and parties also agreed that the tariff need not be revised.

For filing. Use standard eTariff filing precautions and procedures. You see eTariff specific settlement Type of Filing Codes to file a settlement. Remember that metadata rules. If there's a conflict between eTariff XML data in the document contents eTariff XML data rules. Correct mistakes with a new settlement ToFC eTariff filing. If a settlement filing must be withdrawn, use a withdrawal type of filing code that's appropriate to the program. File a replacement eTariff settlement filing to ensure the Commission properly receives it before making the withdrawal filing.

If OSEC assigns a new docket number, which would be 000, to the eTariff filed settlement, the new docket number is part of the presiding officer's proceeding. There will not be an order consolidating or assigning the new docket number to the underlying proceeding. Parties are advised to intervene in the new docket number. File comments in both docket numbers. OSEC will not change eTariff assigned docket numbers. OSEC will not correct them. They will not correct a regulated entities XML

mistakes. OSEC treats mistakenly assign new docket numbers no differently than a correctly assigned docket number. To note here, the new docket number is part of the presiding officer's proceeding. The presiding officer may require the regulated entity to correct this mistake and close the new docket number.

Are there any questions on any settlement or prearrange filing procedures?

Mike Goldenberg: I have one question. I think you may have touched on it, but an electric filings that are under section 206, where they are in an EL docket, can you explain how people are supposed to file settlements for those?

Don Gavelek: They would make it - they would use a Type of Filing Code: Settlement

Mike Goldenberg: And what docket number should they choose?

Don Gavelek: They would have to choose one appropriate to their regulated program.

Keith Pierce: I think what Mike is referring to is where the EL does not have a Filing ID for them to associate with. Under those circumstances they would use a settlement Type of Filing Code. There would be no association at the Filing level, no Associated Filing ID. You'd be - the Secretary would issue a new root docket. In the Filing Description, they should identify the EL docket so that eLibrary has that docket number in eLibrary.

Mike Goldenberg: If for any reason, they have a, for example, reactive power filings, there are a lot of filings that are originally informational filings and so they do get in ER docket. Would you prefer that they use that ER docket when they file the section 206 settlement?

Don Gavelek: In the Filing Description.

Mike Goldenberg: No, but instead of getting a new root, should they use the existing ER docket when they filed the informational filing if they made it through eTariff?

Keith Pierce: If they made it through eTariff they should keep it in in there, in that docket number.

Mike Goldenberg: And the other thing is my understanding that the settlement agreement itself should not be included in the tariff portion of the filing. It should only be as a transmittal letter or a separate document, but it's not part of the tariff. So that any terms and conditions that are in settlement agreements should probably be put in the tariff itself if you expect that to be enforced. Because the settlement agreement just goes in eLibrary, not into the tariff.

Keith Pierce: That's correct. And you will, the Commission has said as such comments before in the Boston Edison order, approximately [98] FERC, somewhere in

that area.

Audience: On page 33: what's a come back requirement?

Keith Pierce: On some settlements parties have reached an agreement that the regulated entity should the comeback to the Commission with either a full or partial 205 or section 4 filing depending on what they negotiate. It often puts a timeline on as to when that filing should be made. Sorry, a term of art there.

Judge Cintron: In a lot of settlements, they just – the parties agree that they will file a tariff again in, like, 2020/2025 That's a common method. It could be other things depending on what's happening. The more problematic one is when they reserved issues, they will reserve certain things. I personally and my office does not look at those favorably because they create a lot of problems for us, including an administrative nightmare. Right now were are sitting on one docket that goes back I believe two or three years. Our tracking systems are tracking it even though it was a settlement that was partially settled and then they postponed one of the things so now they're back. And so that is not a good procedure to follow because from an administrative perspective – it just - that docket exists forever and ever more. So if we are going to settle, settle everything. In terms of when there is a new docket number, we recommend that the Commission close it out. We may tell the parties. I don't know if we are telling the parties to correct the docket number. We just say to the Commission: close out that docket number. Okay we are not. I don't believe that we are requiring the parties to do that. In terms of the interim rates, that has always been a problem. So the transmittal letter, if there is something that I need to address, the transmittal letter should mention that there is a motion. And I would still require a motion since a motion has more teeth into it than if they just put it in the transmittal letter. I will not sign off on interim rates if they don't prove that it lowers the rate.

And I was remiss on thanking Sarah for all her hard work. She was the one that put together those flowcharts and put together this presentation here today.

Don Gavelek: And I point out one observation on the new docket issue. Sometimes we experience a situation where a filing is improperly filed. You have a settlement proceeding. And as far as closing the docket out - that would fall back to the situation of: withdraw it and refile it to get a proper.

Judge Cintron: I can order that.

Don Gavelek: I can't order that.

On line reader: So the first question online. Can you describe the process for eFiling when protected or confidential documents are involved?

Keith Pierce: Under the eTariff XML format when you attach a document, there is a data element to select as to whether or not the document is public, CEII or privileged. And that is automatically recognized by the Commission software. And when it's

uploaded into eLibrary, it applies the proper restrictions as to who has access depending on the nature of the confidentiality that was selected.

On line reader: Second question, will this presentation be posted on the FERC.gov website?

Keith Pierce: Yes, and we believe that EBA will be posting it on their website also. Thank you very much for attending this meeting, this class and we hope that you learned something.