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# FEDERAL ENERGY REGULATORY COMMISSION



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## NEWS RELEASE

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### FOR IMMEDIATE RELEASE

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### **CHAIRMAN URGES SETTLEMENT OF 2000-01 ENERGY CRISIS DISPUTES AS FEDERAL JUDGE OPENS MEDIATION TALKS IN SAN FRANCISCO**

Settlement of lingering disputes arising from the 2000-2001 energy crisis in California and other Western states is the surest and best course of action for consumers, Federal Energy Regulatory Commission Chairman Joseph T. Kelliher told parties today via a videoconference link as a federal judge opened mediation discussions in San Francisco. The Chairman pledged "the full support of the Commission to that end."

Chairman Kelliher thanked Senior Circuit Judge Edward Leavy for asking him to participate in today's settlement conference, which was the result of an August 2, 2006, directive from a three-judge panel of the U.S. Court of Appeals for the 9th Circuit, before which more than 200 appeals of Commission actions related to the California and Western energy crisis are pending. Nearly two dozen other appeals are pending before the U.S. Court of Appeals for the D.C. Circuit, the Chairman noted.

"The question arises as to how we are going to resolve the disputes arising from the California and Western energy crisis after it began more than six years ago," Chairman Kelliher said.

"I see two paths towards resolution of the California and Western power crisis. One path is settlement; one path is litigation," Chairman Kelliher continued. "Over the past six years, which path has produced more results? Which path has produced timely resolution of disputes and which path has produced more justice? I think it is very clear that the settlement path has produced far more than litigation."

To date, FERC-related settlements have produced more than \$6 billion for consumers, Chairman Kelliher noted. "Litigation up to this point has produced nothing," he said. "The settlement path clearly will foster an early resolution of the California and Western power crisis. But litigation, on the other hand, could stretch for five to 10 years into the future."

Administrative Law Judge William Cowan, formerly the second-ranking ALJ at the Commission who recently became a Supervising ALJ for the Department of Health and Human Services in California, has been selected as a special master representing the Commission in the mediation talks, the Chairman noted. He praised Judge Cowan's skills as a settlement judge and thanked HHS for making his services available for the mediation effort. Judge Cowan did not preside over any cases related to the 2000-2001 energy crisis in California and the West, the Chairman noted.

Lee Ann Watson, Deputy Director of the Office of Investigations in the Commission's Office of Enforcement, will be supporting Judge Cowan's efforts as special master. The Chairman lauded Ms. Watson's role in helping negotiate "major settlements in some of the California and Western disputes." FERC Solicitor Robert Solomon will continue as the Commission's litigation counsel.

Entering into settlement agreements will provide certain results far faster than litigation, which has produced mixed and very unpredictable results so far in decisions from the 9<sup>th</sup> Circuit and other courts, Chairman Kelliher told the parties assembled by Judge Leavy. "Some of these decisions have favored buyers, some have favored sellers," he observed, asserting that settlement offers a means of asserting control over the outcome that is more certain and predictable than "the risk of litigation."

The Commission believes it is important to bring final resolution to the California and Western energy crisis, Chairman Kelliher emphasized.

"We recognize that passions run very high – but these kinds of disputes do lend themselves to settlement if the parties have a will to explore settlement – and I urge the parties to seek settlement," Chairman Kelliher said. "I ask you to set your passions aside and apply cold reason instead. It's clear that settlement will resolve the California and Western power crisis much sooner. It will deliver more concrete results, and in a manner where parties have a greater degree of control over the outcome than litigation itself."

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