

PRIMER ON SETTLING

# UTILITY DISPUTES



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# WELCOME



I would like to thank you for considering me to assist you in compliance, business, international transactions, mediation and other legal matters. Our firm has built a reputation of integrity and efficiency over the past 30 years. We take great pride in the clients we serve and will do everything to exceed your expectations.

Every client is important and we view our relationship with each client as a partnership. We are available as a sounding board as situations arise and provide a proactive and personalized service.

I welcome all inquiries and am happy to answer any questions or concerns.

Thank you for your consideration.

*Lewis K. Harley*

# PRIMER ON SETTLING UTILITY DISPUTES



Settling a utility dispute is an expensive and frustrating process. It takes time and resources away from your company's most important concerns and in the end can still result in expensive fines. Taking the issue to court is an option, but litigation can cause the expense to spiral out of control. Mediation provides an efficient and effective tool for resolving utility disputes.

Parties involved in a dispute have the option of initially resolving the matter themselves. If they are unable to do so, they can pursue litigation and put the resolution in the hands of a judge, or they can opt for alternative dispute resolution (ADR). ADR offers a variety of methods to resolve the matter through settlement instead of litigation.

ADR is voluntary and utilizes the services of a third party neutral. The process is focused on achieving a mutually satisfactory solution rather than on determining who is right and who is wrong. The third party neutral helps disputing parties design a process to aid them in finding mutually acceptable solutions to their disputes and then determining which of those solutions is best.

## **Benefits of Using Mediation to Settle Regulatory Disputes**

Mediation has a structure, timetable, and dynamics that are not present in so-called ordinary negotiations. The process provides procedural and other benefits to regulated entities in the settlement negotiation process. It is private and confidential, and participation is usually voluntary.

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The benefits of using mediation in regulatory disputes include:

**Cost:** Mediation dramatically reduces the amount of money and resources it takes to resolve a dispute. Often, the only expense is the mediator's fee, which is comparable to that of an attorney. Mediation takes much less time than moving a case through standard administrative and legal channels, which means hourly fees and costs are much less.

It also means there are fewer back-end costs, because those involved are not forced away from their on-the-job responsibilities to spend time in negotiations or court. Many mediations are settled in just a fraction of time it would take to litigation the same issue.

**Confidentiality:** Mediation is strictly confidential and nobody but the parties involved in the dispute and the mediator(s) are aware of what happens during the process. Confidentiality in mediation is placed in such high regard that in most cases the administrative or legal system cannot force a mediator to testify in court concerning the content or progress of mediation.



**Control:** Mediation gives complete control to the parties involved. This means nobody walks away from the process feeling as if they have lost or been treated unfairly. They played a role in the resolution's design and they agreed to it without coercion or stipulation of a judge or arbitrator. They have no choice but to accept what they agreed to in the process.

**Support:** Litigation often includes lengthy explanations of industry specific matters. This takes increases the amount of time to resolve an issue that could be less if overseen by someone already "in the know."



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Mediation uses industry-specific mediators trained to work with difficult, complex, and technical situations. The goal of the mediator is to act as a neutral facilitator and guide the parties through the process. He or she helps the parties think "outside of the box" for solutions to the dispute, broadening the range of possible solutions and allowing for unique resolutions that are perfectly suited to the issue at hand. All of this is possible because the mediator arrives at the negotiations with a pre-existing understanding of the issues.



## FERC and NERC Mediation

In most instances, mediation sessions that pertain to FERC or NERC regulations include six steps. These are:

- Introductory remarks
- Statements of the issue(s) by the Parties
- Information gathering
- Issue identification
- Determination and discussion of options
- A written Mediation Settlement Agreement

Everyone has an opportunity to share his or her opinion or side, and everyone is given a fair say in how the final resolution will look. The process does not force anyone into anything. As a matter of fact, mediators are not permitted to issue rulings like judges or arbitrators. Their role is to facilitate discussion and help parties understand the benefits of avoiding litigation and settling the dispute through mediation.

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The key to successful utility dispute mediation is finding someone who can help your company when it is accused of being in breach of state or federal regulations. Lewis Harley can help. Lewis is often hired by the compliance officers at utility companies to help with mediation. He has experience handling utility disputes throughout North America in the United States, Canada, and Northern Mexico, NERC's geographical jurisdiction.

Lewis has over 28 years of domestic and international practice experience in private practice, and general counsel to both public and private companies and as government counsel. His specialties include white collar fraud/abuse civil and criminal litigation, corporate compliance and integrity, finance, international commercial and business law, legislative and regulatory issues, and due diligence.

Since 2010, Lewis has served as outside general counsel for a regulatory compliance consulting practice responsible for FERC, NERC, Regional Reliability Organization and ISO reports. He assists with audits, self-reports, mitigation plans, enterprise risk, assessments, and other reliability compliance related material. He has successfully provided collaborative mediation for NERC regulatory enforcement sanctions cases as well as mediated FERC Coordinated Functional Registration disputes

Additionally, Lewis has been responsible for oversight of mitigation plans filed in response to either self-reports or findings from regulatory audits, and has reviewed self-reports and conducted mock regulatory reviews prior to filing those reports concerning FCPA, FERC, and NERC matters.

If you would like to learn more or you are interested in working with Lewis, contact his at 713.968.6540 or by email at [lewis.harley@harleylawgroup.com](mailto:lewis.harley@harleylawgroup.com).

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