

# FERC ADR NEWS

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## ADR News

### ***Environmental Conflict Resolution: Learn More About It!***

The Commission reported to the Office of Management and Budget (OMB) and the Council on Environmental Quality (CEQ) on Environmental Conflict Resolution (ECR) at the Federal Energy Regulatory Commission. Two annual reports for fiscal years 2006 and 2007 activities were issued in response to a joint OMB-CEQ federal policy memo dated November 28, 2005, which directs federal agencies to increase the effective use of ECR and their institutional capacity for collaborative problem-solving. Four offices at the Commission prepared the response: Office of General Council, Dispute Resolution Service, Office of Energy Projects and Office of Enforcement.

As defined in the OMB-CEQ joint memo:

*“ECR is third-party assisted and collaborative problem-solving in the context of environmental,*

*public lands or natural resources issues or conflicts, including matters related to energy, transportation, and land use. These processes directly engage affected interests and agency decision makers in conflict resolution and collaborative problem-solving. Multi-issue, multi-party environmental disputes or controversies often take place in *high conflict and low trust settings, where the assistance of impartial facilitators or mediators can be instrumental to reaching agreement and resolution.*”<sup>1</sup>*

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<sup>1</sup> Memorandum from Joshua Bolton, Dir., Office of Management and Budget and James L. Connaughton, Chairman, Council on Environmental Quality on Environmental Conflict Resolution (November 28, 2005), <http://www.whitehouse.gov/ceq/joint-statement.html>.

The Commission has a long history of successfully addressing environmental disputes and the development of processes over time to involve the public and relevant government agencies in the planning process as early as practicable. The Commission also established the Dispute Resolution Service in 1999, making full-time, third parties neutrals available to assist with ECR.



### ECR 2006 Report

ECR and collaborative problem-solving methods will continue to be helpful in addressing challenges in four priority environmental areas under the Commission's purview:

- Hydropower licensing and re-licensing applications;
- Natural gas facility applications;
- Liquefied natural gas facility applications; and
- Electric transmission permits applications, where the Commission has new supplemental authority.

The Commission makes full use of ECR, as applicable and quantified the results for cases using unassisted collaborative problem-solving and third-party assisted collaborative efforts. For example, the Integrated Licensing Process (ILP) and the Alternative Licensing Process (ALP) are specifically designed to encourage greater interaction among participants to achieve more collaborative solutions to environmental conflicts. Non-decisional

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staff in OGC aided parties in resolving environmental conflicts. The DRS served as third party neutrals and provided mediation and coaching services on the environmental components of natural gas facility and hydropower applications and licenses.

The Commission outlined the actions the agency is taking in response to the policy memo to:

- Integrate ECR objectives into Agency Mission statements, Government Performance and Results Act goals,
- Assure that the agency infrastructure supports ECR;
- Invest in support of programs, skills based training and partnerships that support ECR; and
- Focus on accountable performance and achievement through conducting program evaluation, ECR case and project evaluation and responding appropriately to evaluation results to improve appropriate use of ECR.

### ECR 2007 Report

For FY 2007, the Commission continued to build programmatic and institutional capacity for ECR. The Commission integrated ECR objectives in its goals and objectives, GPRA goals and strategic planning. In its Strategic Plan, the Commission notes that it “encourages the use of alternative dispute resolution procedures” as part of its guiding principle of *Due Process and Transparency*. The annual Performance Budget Request to OMB tracks environmental collaborative problem-solving and Alternative Dispute Resolution (ADR) processes

(including ECR) and identifies specific performance measurement data and results supporting the Commission's ADR and ECR initiatives. ECR continues to be applied to the four priority energy areas identified in FY 2006 as noted above.

The report addressed mechanisms currently in place for making a decision to initiate or participate in an ADR or ECR process. Procedures for initiating an ADR process are addressed in specific rulemakings. Interested parties and the public can consult the Commission's main webpage at [www.ferc.gov](http://www.ferc.gov) (see reference to DRS for assistance), the DRS toll-free helpline 1-877-337-2237, the email address [ferc.adr@ferc.gov](mailto:ferc.adr@ferc.gov) or the Commission's Enforcement hotline telephone number 1-888-889-8030.

The report described anticipatory measures to prevent, better manage, or resolve environmental conflict. For example, in 2003, the Commission established the Integrated Licensing Process (ILP) for non-federal hydroelectric projects. This process is intended to make hydro licensing more efficient and predictable and to reduce the costs associated with licensing. The ILP specifically is aimed at improving coordination among the Commission and other agencies, including the concurrent preparation of environmental documents. It also is aimed at streamlining dispute resolution and expanding opportunities for public participation in pre-filing consultation. The success of this effort is demonstrated by the fact that the first ILP license was issued approximately one year after the application prepared under this process was filed.

The report noted the Commission's *Policy on Hydropower Licensing*

*Settlements*, issued September 21, 2006 that set forth Commission precedent and case law, set out broad principles, and sought to provide clarity regarding the use of settlements in hydro proceedings. In issuing the policy statement, the Commission noted that:

*"it is the Commission's hope that by providing a review of the principles established in orders dealing with settlements, parties can streamline their settlements to include only appropriate provisions. Settlements save time and money, avoid the need for protracted litigation [and] promote the development of positive relationships among entities."*

Finally, notable achievements and advancements in ECR were highlighted: case and training performance, customer satisfaction, outreach, education, consultation, and ADR skills-based and customized training both given and received by ADR professionals.

The Commission continues to participate in quarterly forums with OMB, CEQ, the U.S. Institute for Environmental Conflict Resolution (U.S. Institute) and other federal agencies on the effective use of ECR. At request of the U.S. Institute at the next quarterly forum the Commission staff will present on the successful use of ECR on a natural gas pipeline project.



## ***Devon Power PJM Settlements***

Two very large settlement cases with many parties and complex issues were mediated by former Deputy Chief Judge Lawrence Brenner in his role as a settlement judge and co-mediated by David Doot and a FERC Dispute Resolution Specialist respectively. Both mediations involved the establishment of a forward auction capacity market, one in New England and the other in PJM. Each of the cases resulted in a contested settlement that had widespread support of the parties.

As summarized in Judge Brenner's report issued April 11, 2006 (115 FERC ¶ 63,013), the New England settlement over time involved more than 175 individuals representing over 100 parties, and was the result of over 30 formally noticed settlement conferences with Judge Brenner, and numerous additional meetings. In the end, the settlement was supported by 106 of the 115 parties to the proceeding. In brief, the settlement results in a Forward Capacity Market (FCM), with an annual descending clock auction by which ISO New England (which is an RTO) would obtain the Installed Capacity Requirement normally 3 years in advance (the first auction will have a truncated period of an early 2008 auction for the power year beginning June 1, 2010). The ISO will determine in advance of the main annual auction based on whether there are binding transmission limits that would cause zonal price separation, whether there should be Capacity Zones with separate auctions for each zone. Under the FCM,

capacity suppliers will be penalized and rewarded depending on whether they are available during defined "Shortage Events". Prior to the first FCM commitment period, the settlement provides for a transition period of December 1, 2006-May 31, 2010, with a schedule of fixed capacity payments.

The Commission's orders accepting the contested New England settlement, and denying rehearing, both cited above, discuss extensively the four approaches for considering contested settlements under the *Trailblazer Pipeline Co.* case. See, e.g., the Commission's October 31, 2006 *Devon Power* rehearing order, at PP 13-45. The Commission mainly applied the second approach of approving the settlement based on finding that the overall settlement as a package is in the public interest and just and reasonable. The Commission as part of its determination found that the relatively few objecting parties would be in no worse position under the settlement than if the case were litigated.

The PJM contested settlement was summarized in Judge Brenner's November 9, 2006 report, 117 FERC ¶ 63,036. He noted that the proposed settlement was the product of over 25 days of settlement discussions with his direct involvement, with the invaluable assistance of FERC's Dispute Resolution Service. Over time, there were more than 150 people representing over 65 parties. In the end, the settlement was opposed by only six market participants; out of 13 states and D.C. in the PJM region, entities affiliated with only three states, including only two state commissions, opposed the settlement. Like the New England settlement, the PJM settlement proposes a 3-year forward auction

capacity market. Unlike New England, the PJM capacity auctions would be cleared using a downward-sloping Variable Resource Requirement demand curve. There would be a phase-in locational element, leading to 23 Locational Deliverability Areas. Also different than the New England settlement, in large part because of the differences among the many states in PJM regarding whether there is retail competition or integrated utilities, entities satisfying certain requirements may opt out of the capacity market auctions and fulfill their capacity obligations through a long-term commitment of resources known as the Fixed Resource Requirement Alternative (FRR Alternative). Among numerous rules governing the FRR Alternative, an entity selecting it must commit to a minimum period of five consecutive years, unless the exception occurs of a defined State Regulatory Structural Change.

In both cases, Judge Brenner noted that the widespread consensus reached by the many parties was extraordinary, especially considering the complexity and contentiousness of the issues. In *Devon Power*, the Commission stated that it favors settlement as a means of resolving highly contested, complex proceedings. 115 FERC ¶ 61,340, at P 66.

### ***Order 890; RM05-17-000 and RM05-25,000***

In February 2007, the Commission issued Order 890, which required electric transmission providers to amend their open access transmission tariffs to increase the transparency in transmission planning by providing for an open and coordinated transmission planning process. The transmission planning process would be open to

customers, with whom transmission providers would share information and coordinate about future system plans. The Commission developed nine principles for the transmission providers to address in pursuit of these goals. One of the nine principles was dispute resolution.

The dispute resolution principle requires transmission providers to identify a process to manage disputes that arise in the planning process. Order No. 890 recommended that transmission providers consider a three-step process of negotiation, mediation, and either arbitration or filing with the Commission. All parties would retain their rights under Section 206 of the Federal Power Act. Transmission providers have filed their amendments and others have commented on these filings.



### ***Environmental Conflict Resolution Encouraged; RM06-12 and Order Denying Rehearing***

On November 16, 2006, the Commission issued final regulations setting forth procedures for the processing of applications to site electric transmission facilities. Those regulations encourage maximum participation from all interested stakeholders, requiring the development of a Public Participation Plan and setting forth procedures for extensive pre-application and post-application

processes. The participation plans will provide all interested parties, including affected landowners, with information on all aspects of the proposed project, including environmental impacts. The participation plans provide for public involvement during the extensive pre-filing and application processes.

Additionally, the Final Rule made it incumbent on project sponsors and states to work together to site facilities at the state level as the most expeditious way to site facilities. To that end, in the Commission Order dated May 17, 2007, adopting the regulations, the Commission offered its Dispute Resolution Service if the parties to a state siting proceeding request assistance to facilitate the resolution of issues at the state level.

## [From the DRS](#)

### ***Training Courses***

The Dispute Resolution Service (DRS) continues to provide its negotiation, described below.

#### ***Effective Negotiation Processes:***

Provides an in-depth look at the elements of interest-based negotiation. The course begins with a look at traditional – or win-lose – negotiation, as well as an examination of the barriers that are inherent to and exacerbated by this process. The interest-based negotiation model is proposed as one that might eliminate, or at least alleviate, some of these barriers, through a focus on communication, relationships, and, ultimately, mutually satisfactory solutions. In addition, participants will have the opportunity to consider, through lecture and role play, the

interplay between gender and negotiation and culture and negotiation. Finally, participants will have the opportunity to explore the dynamics of multi-party negotiation, particularly decision-making within this context.

If you have specific questions about any of our courses, please contact FERC's Dispute Resolution Service.



### ***Brown Bag Lunch and Learn***

The “lunch and learn” series sponsored by the Dispute Resolution Service for the 2007 fiscal year brought a range of dispute resolution professionals to the Commission to share the work that they have done – or are doing – in the dispute resolution field. The goal of the series is to provide exposure to different facets of and approaches to dispute resolution. Sessions included:

#### ***Effective Communication Skills:***

Jerry Roscoe, a prominent mediator with JAMS, led a session on *effective communication skills*. With lessons gleaned through a short role-play exercise, Jerry guided participants' discussion on how messages are sent and received – and why some communications are more effective than others.

***Mediation Programs at the U.S. Court of Appeals for the District of Columbia Circuit and the U.S. District Court for the District of Columbia:*** Nancy Stanley, the

former director of the Court of Appeals for the District of Columbia Circuit Appellate Mediation Program and the U.S. District Mediation Program, provided an overview of these programs, which she touts as an integral part of the Court's case management system. As Nancy explained, the mediation programs have facilitated case settlement, reduced costs, and contributed to procedural streamlining, all essential to successful case management.

*Environmental and Economic Benefits of Environmental Conflict Resolution (ECR) - Pelton Round Butte and Marmot Hydro Projects:* Andy Rowe, an environmental conflict resolution consultant and economist, provided an overview of the evaluation of the impact of alternative dispute resolution on environmental decisions. Working with representatives from the University of Arizona, the State of Oregon, and the EPA Conflict Prevention and Resolution Center, Andy developed and applied the SEEER (Systematic Evaluation of Environmental and Economic Results) methodology to six Oregon cases, including two Portland General Electric (PGE) FERC cases: the Pelton Round Butte relicensing and the Marmot Bull Run decommissioning. The results demonstrated that alternative dispute resolution yields positive results in producing environmental outcomes that are better than the alternatives and encouraging economic benefits, including improved social capital amongst parties and better informed decision-making processes.

*Gender and Negotiation:* The Dispute Resolution Service facilitated a brown bag session on the interplay between gender and negotiation. The discussion was centered on the book, "The Shadow Negotiation: How Women Can Master the Hidden Agendas that Determine Bargaining Success," by Deborah Kolb. Kolb asserts that the standard of the "model negotiator" – someone who is competitive, independent, objective, self-confident, and cool – is a masculine standard, which can pose a problem for both men and women who are exhibiting more socially defined feminine characteristics, such as awareness of other's feelings, warmth, gentleness and emotional understanding. Kolb builds on this understanding to posit that the issues that gender raises in negotiation should not be about either/or choices between adopting a masculine or feminine style. Kolb asserts that we need not a gender-neutral understanding of effectiveness, but one that allows women AND men to use all of our skills and intelligences –in both analysis and relationship building.

These are just a few of the brown bag lunch and learn sessions that the DRS sponsored during the fiscal year 2007. We are in the process of planning our series for 2008. Based on feedback collected at our recent sessions, we have heard an interest in brown bag sessions on the following topics:

- 1) *Issues in and mediation of environmental conflicts;*
- 2) *Techniques for successful outcomes in unassisted and assisted negotiation, especially with those parties who are reluctant to*

*participate; and 3) FERC dispute resolution activity and examples.* We are incorporating these topics - and more! - into our brown bag schedule for this year. If you have additional ideas for dispute resolution topics that interest you - or that you think would be of interest to the Commission, please let us know!



### ***Deskbook for ALJ Judges Check It Out!***

The Dispute Resolution Service (DRS) is in the process of finalizing the “Deskbook for Administrative Law Judges: Best Practices in Settlement Judge Processes.” The DRS is developing the Deskbook using best practices shared by FERC’s Administrative Law Judges during the Judges Advanced Settlement Skills Training in 2006. The Deskbook will reflect the wealth of experience and expertise of FERC’s Administrative Law Judges on settlement process stages, dynamics, and outcomes.

Specifically, the Deskbook focuses on:

- the questions and preliminary considerations that arise prior to a settlement process;
- the theory of interest-based negotiation through a look at the seven elements of effective negotiation;
- the role of the third-party neutral, both facilitative and evaluative; and
- best practices for Judges in all stages of a settlement process, from coming to the table through developing an agreement.

If you are interested in learning more about the Deskbook, please don’t hesitate to contact the DRS!

### ***Report to the President Check It Out!***

FERC’s extensive dispute resolution activities, from Dispute Resolution Service mediations, to settlement judge proceedings, to collaborative pre-license processes, are prominently featured in the recent “Report for the President on the Use and Results of Alternative Dispute Resolution in the Executive Branch of the Federal Government: Giving the American People Better Results and More Value,” issued in April 2007. FERC played a lead role in producing the Report, which is a collaborative project of representatives from the Federal Interagency ADR Working Group Sections, the Federal Interagency Alternative Dispute Resolution Working Group Steering Committee, and Agencies in the Executive Branch of the Federal Government.

The Report highlights the advantage of Alternative Dispute Resolution (ADR) in three areas.

First, in *promoting a citizen-centered government* through making government more responsive, and inclusive of the interests impacted by government initiatives. In this area, the



Report profiles the FERC enforcement Hotline as a tool that is accessible and easy to use, providing citizens a means to resolve commercial and landowner disputes efficiently and amicably.

Second, in managing costs through controlling the costs of conflict, producing quicker and more durable results, and preserving resources for the agency. In this area, the Report profiles feedback from participants in FERC dispute resolution processes, most of whom report substantial savings through the use of ADR. For example, in two cases, four out of ten parties reported that participation in the dispute resolution process resulted in a cost savings of approximately \$400,000 (as well as significant savings in avoided personnel costs and time spent preparing for and participating in, litigation).

Third, in *managing strategically* through maximizing resources, promoting innovation, and fostering continuous improvement and expansion. In this area, the Report profiles FERC efforts to provide training on ADR procedures and negotiation to FERC parties and staff. The Training Program equips participants with the tools to better understand the conflict, the barriers to resolution, and appropriate resolution techniques. Additionally, the Program equips participants to further resolution efforts through the application of an interest-based approach to disputes.

To download the Report, and learn more about ADR initiatives in the Federal Government – and FERC’s contributions to these efforts – go to [www.adr.gov](http://www.adr.gov).

## **ADR Techniques and Tools**



### ***Highlights of “Getting Past No”***

**A**lbert Einstein once said “(i)n the middle of every difficulty lies opportunity,” an adage that aptly applies to negotiation. We negotiate every day, with our families, our co-workers, our clients. Sometimes our negotiations are successful. Often, however, we walk away from negotiations with less than what we want or nothing at all. William Ury uses this reality as a starting point for his recent work, “Getting Past No: Negotiating Your Way from Confrontation to Cooperation.”

Interestingly, the focus of Ury’s approach is not the opponent, but YOU as the negotiator. Ury outlines a “breakthrough negotiation” strategy, consisting of five steps focused on “winning” the cooperation of others in a world of strongly felt differences. The essence of the strategy is indirect action, which requires that we do the opposite of what we naturally feel like doing in difficult situations. (p. 10) If the other side is threatening, for example, rather than responding in kind and escalating the conflict, indirect action requires restraint: don’t engage in the game of threats and hostility. Instead, change

the game into a problem solving endeavor.

Ury's five steps of breakthrough negotiation are highlighted below.

***Step One: Going to the Balcony***

The first step in Ury's approach is to go to the balcony, understanding that YOUR reaction to an opponent's hostility can either exacerbate or deescalate a conflict. Going to the balcony entails taking a step back from a difficult negotiation to collect your wits and see the situation objectively. Imagine that you are on a balcony overlooking the stage of conflict. You disengage from the conflict for a moment so that you can calmly evaluate it and prepare to respond in a deliberate, thoughtful fashion.

Ury suggests a number of techniques for going to the balcony:

- **Pause and say nothing:** the other side then has nothing to push against
- **Rewind the tape:** Enlist the other side's help in reviewing how you got to this point and the proposal on the table
- **Take a time-out:** Break if you need more time to think. Have a ready excuse to do so, if you're concerned that calling for a break will be interpreted as a sign of indecisiveness or weakness: "I really need to check with my superiors on this point."
- **Don't make important decisions on the spot – make them on the balcony!** Try to take the time to

reflect on a proposal before committing to it.



***Step Two: Don't Argue; Step to Their Side***

The second step in Ury's approach is to better understand the opponent by "stepping to their side." This encompasses:

*Listening to what the other side has to say*

Listening to the other side requires patience and discipline. Rather than formulating a response while the other side is talking, focus on what the other side is saying. Why is this important? Because listening to the other side gives you a chance to engage them in a "cooperative task" – that of understanding their problem. (p.56) Once you have truly listened to the other side, the other side will be more inclined to listen to you. Active listening skills are essential to this step. For example, paraphrase what the other side says through summing up their message and repeating it back in your own words.

*Acknowledging the other side's point, feelings, competence, and status*

Acknowledging the other side's point, feelings, competence, and status does not mean you agree with what the other side is saying. Instead, you are accepting the other side's view as one perspective on the matter and/or recognizing that this is an important

issue for them: “I appreciate how you feel.”

### *Agreeing whenever you can*

Agreeing whenever you can does not mean that you are conceding to the other side. Rather, instead of focusing on disagreements with your opponent, you are focusing on issues on which you already agree.

### ***Step Three: Don't Reject, Reframe***

The third step in Ury's approach is to reframe the other side's positions and tactics. Ury outlines some strategies for doing so.



### *Changing the Game*

Ury suggests resisting the inclination to reject an opponent's seemingly inflexible position and instead to consider the position a starting point for dialogue about the problem.(p.78) The tools for better understanding and reframing an opponent's position are problem solving questions. Ask the opponent *why* he/she is taking a particular position (or *why not?*). Pose hypothetical questions – *what ifs?* - to an opponent to get a sense of movement on a position or receptiveness to a potential solution. Ask the other side for advice: *What* would you do if you were in my shoes? Try to understand the reasoning behind an opponent's position through questioning: *What* makes that fair?



### *Reframe Tactics*

Ury explores how tactics, like positions, can be reframed. For example:

- To go around stone walls:
  - ignore the stone walls (on the assumption that if the opponent is serious about the stone wall, they will repeat it);
  - reinterpret the stone wall as an aspiration, something that the parties can strive for, but that may not be entirely realistic; or
  - Take the stone wall seriously but test it during the course of the negotiation to see if it will hold up.
  
- To deflect attacks or threats, insults, or blame:
  - ignore the attack (on the assumption that if the other side sees that their tactics are not working, then they will likely stop);
  - Reframe an attack on you as an attack on the problem (what are your suggestions for improving our proposal, our approach, and our presentation?);
  - reorient the perspective from the past to the future (how do we address similar problems when they arise in the future?); or

- Reframe from you and me to we (how can we improve the situation?).
- the party employing the tactic).
- Negotiate about the negotiation. (Could we talk about the process?)
- To expose tricks:
  - Clarify questions to test the sincerity of the other side's words or uncover the trick. For example, through expressing confusion and trying to enlist the other side's assistance in understanding the issues, you put the other side on task to justify their reasoning.
  - Question tactics. For example, if the other side tries to make a last-minute demand as you are nearing agreement, question whether they want to reopen the negotiation or simply move forward with the agreement that has been reached.
  - Request an opportunity to conduct an independent review of a proposal with an appropriate expert – an accountant or an attorney, for example – before agreeing to a deal.
- To negotiate about the rules of the game:
  - Call attention to it (in a way that is focused on the tactic, rather than on

***Step Four: Don't Push: Build Them a Golden Bridge***



The next step in Ury's approach is to resist the urge to push or pressure an opponent who is balking at a deal. This pressure may lead an opponent to feel boxed in and less inclined to agree to any proposal. A different – and more effective – approach, Ury suggests, is to draw the other side in the direction you want them to move, through building them a golden bridge and, in the process, making it easier for them to agree.

To build a golden bridge, Ury recommends:

- Helping the other side own the solution to the problem. Remember that the process of negotiation is as important as the product. (p.111) When parties have the opportunity to *craft* a solution – rather than just respond to the solution – they own that solution and will advocate for it.
- Attending to the other side's interests. Rather than dismissing the other side's positions and interests as irrational, step into their shoes to better understand

where they are coming from. Expand the pie in a way that benefits you *and* satisfies the other's side's interests. Pose solutions as if-then possibilities rather than already anointed definites to assess the other side's reaction to potential proposals.

- Consider the other side's constituency. Remember that the other side will likely have to sell the proposal to a constituency whose opinion and/or approval is critical. Your challenge is to help the other side to save face with this audience. One approach to doing so is to request an independent third-party recommendation: a proposal coming from the neutral may be more palatable – for both the opponent and the opponent's constituency – than if it is coming from the "other". Ury also suggests pointing to a standard of fairness (the going price in the market for example) when an independent third party evaluator is not available. In accepting this, the other side is not backing down, but merely acceding to a fair standard.
- Consider the pace: Ury emphasizes that it is important to go slow to go fast during the course of a negotiation. Break the proposal into small pieces and garner approval on each piece before seeking agreement on the package. Begin with the issue on which it is easiest to agree and then progress to more difficult issues. Refrain from asking for a final commitment until the end of the process:

many parties resist committing until they know that they can agree to each component of the proposal.

### ***Step Five: Don't Escalate: Use Power to Educate***



The fifth step in Ury's approach is to use "power to *educate* the other side that the only way for them to win is for *both* of you to win together." (p.133) Ury suggests a number of strategies for doing so:

- Help the other side to understand the consequences of failing to reach agreement by:
  - Using reality-testing questions to help the other side consider what will happen if no agreement is reached.
  - Warning the other party about what will happen if no agreement is reached. Note that a warning is different than a threat. It is not delivered in a confrontational manner, but in a neutral, objective tone.
  - Demonstrating your BATNA (best alternative to a negotiated agreement). This lets the other side know that you have a plan, though you

have yet to take any steps to carry it out.

- Defuse their reaction by:
    - Neutralizing their attacks. Ury gives the example of a customer who is threatening to go over a salesperson's head to get a better deal. Rather than counterattack, the salesperson talks to his/her boss first, and thus neutralizes the customer's threat because that line of communication has already been opened.
    - Looking beyond your sources of influence to mobilize other sources of support or, as Ury puts it: Tapping the "Third Force." Involving other people may be one way of resisting the other side's attacks without provoking a counter reaction. (p.144) Third parties can stem threats or attacks – or encourage movement between the parties.
  - Keep sharpening their choice through:
    - Making clear the contrast between no agreement and crossing the golden bridge.
    - Giving the other side the space to make their own decision – and
- Continuing to negotiate, even when you are positioned to "win." As Ury points out – and has been demonstrated throughout history: "The most stable and satisfactory outcomes, even for the stronger parties, are usually those achieved by negotiation." (p.152)
- Forge a lasting agreement through:
    - Designing a deal that minimizes your risks – so that you have a way out if they do not fulfill their end of the bargain.
    - Including a dispute resolution provision in the agreement to ensure options if parties do not fulfill their responsibilities.
  - Aim for mutual satisfaction, not victory.

## ***Conclusion***

Ury's five step breakthrough strategy is not a panacea for negotiations that go awry. But the strategy does provide us with tools to counter common negotiation challenges. The tools won't get us from "No!" to "Yes" every time, but they will increase our chances of transforming confrontation into collaboration and, in the process, of getting what we want from a negotiation.

## FERC's Dispute Resolution Service

*. . . Guiding parties to achieve mutually satisfactory solutions to their disputes*

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