

Ferc ADRnews

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New Alternative Dispute Resolution Information on FERC's Website!

<http://www.ferc.gov/legal/adr.asp>

INSIDE
THIS
ISSUE



The Commission recently unveiled a new look for its website at www.ferc.gov with more user-friendly features. As part of the upgrade, all of the Commission's ADR-related materials are consolidated in the drop-down list under "Legal Resources" and "Alternative Dispute Resolution." Among the topics addressed are:

* Benefits of ADR

* The role of confidentiality in an ADR process

* The continuum of dispute resolution methods from unassisted negotiation to litigation

* A description of the various ADR options available at the Commission, including: Dispute Resolution Service, Settlement Judges, FERC Trial Staff, and the Enforcement Hotline

* A link to the FERC ADR Newsletter and other significant ADR documents

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"The courts of this country should not be the places where the resolution of disputes begins. They should be the places where disputes end – and after alternative methods of resolving disputes have been considered and tried."

– Justice Sandra Day O'Connor

NOTABLE QUOTE

ADR Workshops for Industry Participants

Workshops Promote Greater Stakeholder Involvement in Pipeline Certificate Processes

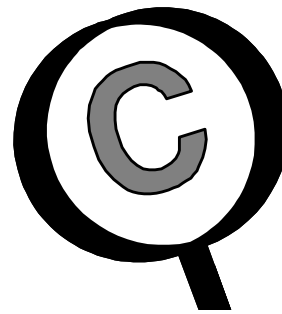
The Dispute Resolution Service and Office of Energy Projects have conducted and are planning a number of workshops for the natural gas pipeline industry to increase stakeholder participation in pipeline certificate processes.

In November 2002, the FERC participated in a workshop in Lowell, Massachusetts for representatives of pipeline companies, landowners, state agencies, and technical consultants. Another workshop was held in January 2003 in Houston, Texas for twelve entities (mostly natural gas pipeline companies) involved in the FERC gas certificate process. In these workshops, the group discussed FERC's pre-filing process, various options to achieve better buy-in from stakeholders in the design and planning of a project, lessons learned from past experiences with the pipeline certificate process, and the public benefits and opportunities pertaining to pipeline projects.

In March and July 2003, respectively, the DRS held workshops for Columbia Gas Transmission in Charleston, West Virginia and Williams Company in Salt Lake City. These workshops provided assistance to companies on improving stakeholder processes.

The DRS encourages entities involved in gas certificate proceedings to call or e-mail for information about a workshop on the benefits of interest-based processes in gas certificate proceedings. The DRS toll free number is 1-877-FERCADR (337-2237) and the e-mail address is ferc.adr@ferc.gov.

HydroVision 2002 Conference Highlights ADR Workshop



In the hydroelectric industry, there are alternatives to the traditional processes that may reduce the disputes that are an unavoidable fact of life. Unfortunately, existing administrative conflict resolution systems are often overburdened and ineffective. Adjudicative procedures can exacerbate an adversarial situation, further contributing to division and negative feelings. Fortunately, there are alternatives to the traditional processes that may reduce the time and cost of reaching a decision, and also help participants feel better about the process.

At the HydroVision 2002 Conference, the Director of the DRS and Peter Woodrow from CDR Associates conducted a workshop that presented an overview of the alternatives that can be used to help parties resolve disputes. The workshop also focused on the differences between positional and interest-based negotiations, and emphasized the importance of good negotiation skills.

The workshop addressed how to start an ADR process, how to screen a dispute to determine the most appropriate resolution process, the value of a convening session, the role of mediation and the mediator, and the benefits of early neutral evaluation in assessing positions and interests. The workshop also engaged the participants in a discussion of industry needs for resolving disputes economically, quickly, and with use of fewer human resources.

SUCCESSSES

From OAL/OALJ

Trial Staff in the Office of Administrative Litigation (OAL) and the Administrative Law Judges (ALJs) in their roles as settlement judges often are key to helping parties to achieve settlement in contested proceedings.

Among recent successes is a hotly contested rate proceeding in Portland Natural Gas Transmission System (Docket No. RP02-13). Although no Settlement Judge or mediator was assigned to this proceeding, the parties had to grapple with many difficult issues. These included a tripling of the pipeline's cost of service, a significant change in the company's rate design, and a claim that the pipeline's substantial construction cost overruns were caused by company mismanagement. The participants submitted extensive testimony and exhibits related to these issues. After months of difficult and intensive negotiations, and with the persistent efforts of OAL Trial Staff, the parties were able to reach settlement prior to the trial date. Under the settlement, the pipeline's customers have received substantial refunds and are now paying significantly reduced rates. The settlement was approved by the Commission on January 14, 2003.

In two other cases, FERC Administrative Law Judge Lawrence Brenner oversaw settlement discussions in which Trial Staff assisted. In the first of the cases, *Golden Spread Elec. Coop. v. Southwestern Public Service*, Judge Lawrence Brenner served as mediator between the parties to a bilateral contract. Judge Brenner met both individually with the parties and in joint sessions with

parties and Trial Staff. Trial Staff assisted the Judge, in particular by proposing alternatives to difficult-to-resolve issues. As a result, the parties achieved a settlement of all issues raised in a complaint and cross-complaint. The settlement provided for a lump sum payment of \$5 million to one complainant, agreement on a number of specific rate-making and operating concerns, and detailed procedures for future implementation of terms of the Agreement in question in the proceeding. The parties also provided for an Operating Committee represented by both parties to resolve future disputes, and for binding arbitration if issues cannot be resolved by the Operating Committee. The Commission approved the settlement on July 10, 2003.

In the other case, *Tampa Electric Company*, there were issues regarding open access transmission tariff rates that involved numerous parties with a variety of interests. Again, Judge Brenner conducted both individual and joint sessions with the parties. Trial Staff played a valuable role in the complex proceeding. Staff prepared and presented a preliminary settlement proposal in the form of "Top Sheets", an analysis of the underlying cost of service. In addition, Judge Brenner allowed Trial Staff to work independently with the parties in certain negotiating sessions. As a result of these efforts, the parties agreed to a settlement that produced lower rates for a number of transmission services, and provided a moratorium on future rate increase filings. The Commission approved the settlement on July 9, 2003.

SUCCESSSES

From Dispute Resolution Service

In September 2002, the Office of Energy Projects (OEP) asked the Dispute Resolution Service (DRS) to help the Grand River Dam Authority (GRDA) and the affected federal and state agencies address their differences over a fish and waterfowl habitat management plan (mitigation plan) for GRDA's Pensacola project.

The DRS met with GRDA, the agencies and other interested stakeholders and helped them identify interests and options that would move them toward an agreement. As the parties began to understand each other's interests, they understood why the other parties wanted something. Then the parties were able to cooperate and use the interests as the basis for creating options and solutions for settlement. As a result, in April 2003, the parties agreed on the mitigation plan terms. Among the terms: (1) GRDA will contribute annually to a fund that will be used to mitigate the environmental impact of the project; (2) a Technical Committee, composed of representatives from GRDA, the U.S. Fish and Wildlife Service, the Oklahoma Department of Wildlife Conservation, the Oklahoma Water Resources Board, the U.S. Army Corps of Engineers and Oklahoma State University, will decide how the mitigation fund will be used; and (3) GRDA will fund millet seeding each year. GRDA filed the mitigation plan and the Commission accepted it on May 22, 2003.

The mediation process had the additional benefit of improving the relationship among the parties. They are working together on other Pensacola issues, as well as collaborating on a re-licensing effort on another GRDA project. The effects of the mediation process should provide a legacy for cooperative and collaborative efforts.

FPO and OEP Consultation Benefits the Colville Tribe on the Priest Rapids Hydro Relicensing Project

In Spring 2002, the Confederated Tribes of the Colville Reservation (Colville) contacted the Commission's then-Federal Preservation Officer (FPO), who is a Dispute Resolution Specialist in the Dispute Resolution Service. The Colville requested assistance on cultural resources investigations in connection with the relicensing of the Priest Rapids Hydroelectric Project (P-2114) in Washington State. The Colville raised several concerns regarding the treatment of human remains identified from archeological surveys associated with the project, the tribal notification process following discovery of sensitive remains, and FERC's consultation and coordination roles with

Indian tribal governments under Executive Order 13084 and Section 106 of the National Historic Preservation Act (NHPA).

On May 9, 2002, the Dispute Specialist and a Cultural Resources Specialist from the Commission's Office of Energy Projects (OEP) attended a meeting in Ephrata, Washington with the Colville, other Native American groups with interests in the project territory, several federal land-managing agencies, the Washington State Archeologist, and Grant County Public Utility District, the project sponsor. Grant County PUD hired a professional facilitator to assist with the meetings.

The Dispute Specialist and the OEP representative requested that the participants identify their interests and work together to meet each others' interests. The participants agreed to establish a Cultural Resource Work

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Group (CRWG) and meet regularly to discuss individual and mutual interests as well as new matters related to compliance with the NHPA. After two CRWG meetings, which the FERC staff attended, the group established written procedures to notify tribes about human remains, clarified FERC's and the applicant's roles in the Section 106 review for this project, and began a dialogue on reburial of sensitive remains when more than one tribe claimed ownership of the remains.

The Grant County PUD filed a license application on October 29, 2003. The CRWG also plans to continue to meet. By establishing early, respectful, interest-based consultation, the trust between Federal, state and tribal governments should increase and help transform culturally diverse parties into joint problem-solvers.

Even More SUCCESSSES

From El Dorado Collaborative Process OGC and OEP Staff

Following an intensive 2-year schedule of dialogue, technical meetings, studies and analysis, a staff team from FERC's Office of General Counsel—Projects and the Office of Energy Projects completed a successful collaborative process for the re-licensing of El Dorado Project No. 184. The El Dorado project is a 21 megawatt hydroelectric and water supply project owned and operated by the El Dorado Irrigation District (EID). The members of the collaborative team (EID, federal, state and local representatives, non-governmental organizations and landowners) signed a com-

prehensive settlement agreement that was filed with FERC on April 29, 2003.

Terms of the agreement include: a sophisticated regime of minimum streamflow requirements at key points in the system to mimic natural processes and provide healthy habitat for aquatic species, fish screens to avoid accidental injury of trout, provisions to protect and enhance recreational opportunities and facilities at the Project's reservoirs, ongoing monitoring programs for key ecological indicators, maintenance of EID's ability to continue full delivery of its consumptive water rights, and opportunities for EID to produce significant revenues from electrical generation at the Akin Powerhouse.

Several individuals praised the facilitated process that led to the agreement. A U.S. Forest Service representative stated that, "all the parties' interests were taken into account and balanced in the settlement agreement." An EID spokesperson found it "refreshing to arrive at a win-win agreement when so many interests are involved." The spokesperson noted that the agreement provides a long-term blueprint for the project. "More than that," she added, "it creates a real partnership. Valuable relationships have grown during the collaborative process among more than a dozen government agencies, citizens' groups and individuals representing a full spectrum of interests."

Interagency ADR Working Group: "ADR Central" for the Federal Government

The DRS staff actively participates on the Interagency ADR Working Group Steering Committee. The Committee, which consists of ADR professionals and experts from over 26 federal agencies, coordinates multi-agency ADR initiatives, promotes best practices for federal ADR, and conducts discourse on, and disseminates information regarding, federal policy on ADR. In addition to participating in the general activities of the Committee, the DRS Director chairs the Committee's Civil Enforcement and Regulatory section. The Director has also overseen the committee's preparation of a briefing paper on ADR use in the federal sector. A goal of the DRS is to consult with other federal agencies on how to expand their ADR efforts beyond workplace and procurement disputes.

Ferc ADRnews

Upcoming Topics

- DRS Partners With State Regulatory Agencies to Advance the Use of ADR
- DRS Promotes ADR in Civil Enforcement and Regulatory Disputes
- ADR Use in Regional Transmission Organization Disputes
- More ADR Success Stories From Around the Commission

Don't Forget our new web address: www.ferc.gov/legal/adr.asp

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