



ADR NEWS



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DISPUTE RESOLUTION SERVICE | FEDERAL ENERGY REGULATORY COMMISSION



FERC Offices Work Together with Parties To Reach Resolution on Revisions to the Shoreline Management Plan for Smith Mountain Lake Hydroelectric Project

Non-decisional staff from FERC’s Office of the General Counsel (Elizabeth Molloy), Office of Energy Projects (Jon Cofrancesco), and Dispute Resolution Service (Paula Felt) worked collaboratively to assist parties in resolving a dispute over revisions to the shoreline management plan (SMP) for the Smith Mountain Lake Pumped Storage Project No. 2210. The complex, multi-party dispute involved the licensee, Appalachian Power Company (APCO); the Tri-County AEP Relicensing Committee (TCRC); four of the counties that are adjacent to or within the project’s boundaries, Bedford, Campbell, Franklin and Pittsylvania (the Counties); and a local resident, William C. Brush.

The disagreement related to APCO’s proposed SMP update filed with the Commission pursuant to its project license. The disputes included such issues as high-density commercial and multi-use regulations, documentation of docks and piers in existence prior to and after the original 2003 SMP, replacement and repair of destroyed or damaged structures, monitoring and enforcement of structure maintenance, and wetland identification with mitigation guidelines.

In December 2011, the parties asked the Commission to assign a member of the

Commission’s Dispute Resolution Service, with subject matter experts from OGC and OEP, to assist them in resolving the disputes. The process began in December 2011 and ended on February 28, 2013, when the parties filed a settlement agreement with the Commission.

The parties signed a confidentiality agreement and met with non-decisional staff in a number of face-to-face mediation sessions in Washington, D.C., and Roanoke, Virginia, and by teleconference. Commission staff assisted the parties to articulate their interests and explained the Commission’s views and prior decisions regarding the disputed issues. The parties were able to explore options and evaluate possible solutions to best meet their interests. Staff also ensured that the settlement talks made progress by summarizing the parties’ statements and positions and confirming their mutual understanding of tentative agreements, disagreements, and future assignments.

In the end, the parties achieved a mutually satisfactory agreement that met their common goal of promoting public use of the project while maintaining appropriate environmental values. The Commission will have the opportunity to act on the settlement agreement as part of its review of the updated shoreline management plan. ♦

Case Corner

Creative Resolution of Long-Term Contract Dispute in California

DRS successfully used alternative dispute resolution (ADR) to resolve a decade-old dispute between the California Public Utilities Commission (CPUC) and Dynegy Power Marketing, Inc., and certain affiliates. This high profile case and seven others were remanded to the Commission after an appeal to the Supreme Court of the United States. To date, five cases have been resolved by DRS using ADR and one was resolved elsewhere, leaving two cases pending. A creative and novel agreement was reached by the parties and approved in November 2012 by the Commission, pursuant to which all claims associated with the long-term contracts at issue are released in return for payment of \$122.5 million by NRG Energy, Inc., which has assumed responsibility for Dynegy's settlement obligations. Of this amount, \$20 million will be a cash payment to the CPUC and the balance will be invested in charging stations for electric cars throughout California and in research to aid citizens in understanding the value of such vehicles.

Mediation Terminates Litigation on Classification of Electric Facilities

The DRS mediated a dispute between Pella City, Iowa (Pella), MidAmerican

Energy Company (MidAmerican), and the Midwest Independent Transmission System Operator (MISO) concerning the proper classification of certain Pella 69 kV electric facilities. The Commission determined that Pella's facilities were transmission facilities under the Commission's seven factor test. In addition, the Commission ruled that because they were connected to the MidAmerican 69 kV facilities, which were classified as distribution, they were not currently integrated into the MISO grid. The Commission also held that necessary arrangements were not yet in place to provide for immediate compensation for these facilities. The parties filed for rehearing.

Emphasizing the mutual economic value of the parties' long-standing business relationship, the DRS mediator successfully guided the parties to reach a settlement. The Commission accepted the agreement in July 2012. Specifically, the agreement committed MidAmerican to proceed with regulatory filings, which ultimately reclassified some MidAmerican 69 kV facilities as transmission, and it provided that, with that reclassification, MidAmerican would work to ensure that Pella received compensation for its 69 kV facilities. The settlement terminated all litigation.

Gas Pipeline Relocation Resolved Using DRS Helpline

A natural gas pipeline company wanted to retire an existing segment of pipe for which there was an easement on a landowner's acreage and replace it with a new segment, raising the issue of whether a new easement was needed. The landowner wanted the company to relocate a replacement segment of pipe to elsewhere on her property to maximize her use of the property. As the dispute continued, it appeared that the option of relocating the pipeline as the owner requested would require her to pay out-of-pocket expenses in the range of \$50,000, and the option of obtaining a new easement adjacent to the existing one would require unattractive expenditures by the company.

The DRS neutral worked with the Office of Energy Projects staff to share critical information and facilitate discussions. After several conference calls arranged by DRS, the company and the landowner reached an agreement that complied with Pipeline and Hazardous Materials Safety Administration requirements and met both the company's and the landowner's goals. ◇

Contact the DRS:

Toll Free Help Line: 1-877-337-2237

E-mail: ferc.adr@ferc.gov

Website: www.ferc.gov/legal/adr.asp

Deborah Osborne
Director

deborah.osborne@ferc.gov

202.502.8831

Dispute Resolution Specialists:

Joshua Hurwitz

joshua.hurwitz@ferc.gov

202.502.6668

Paula J. Felt

paula.felt@ferc.gov

202.502.6544

Rebecca Ratner

rebecca.ratner@ferc.gov

202.502.6654

Sara Klynsma

Dispute Resolution Support Specialist

sara.klynsma@ferc.gov

202.502.8259



Federal Energy Regulatory Commission

Dispute Resolution Service

888 First Street, N.E.,

Washington D.C. 20426

Conciliation: Predominant ADR Tool Used To Resolve DRS Helpline Matters

The DRS Toll-Free Helpline assists callers affected by the construction of natural gas pipelines and other Commission jurisdictional energy infrastructure facilities. In fiscal year 2012, callers expressed concern predominantly about the natural gas pipeline construction process, post-construction property restoration, re-vegetation monitoring, and erosion. Callers also expressed concern about natural gas compressor stations, natural gas storage facilities, shoreline management agreements, and electric interconnection agreements. Since the transfer of certain energy infrastructure disputes to the DRS Helpline in May 2010, conciliation continues to be the most value-added ADR tool to address Commission jurisdictional energy disputes.

When the DRS Helpline receives calls, DRS specialists screen cases and conduct intake. During intake, the specialists assess whether the issues are within the Commission's jurisdiction, and whether DRS, another office within the Commission, a state utility commission, or other federal agency should address this matter.

When the issues are within the Commission's jurisdiction and appropriate for ADR, and the parties voluntarily agree to participate, DRS specialists use conciliation to assist parties with

clarifying issues and misunderstandings. Generally, the neutral shuttles between parties to ensure that parties understand each other's concerns, remain focused on the problems, and generate options for resolution. Parties are then better equipped to address and resolve the issues on their own and with less intervention by the neutral.

The DRS uses conciliation frequently for post-construction restoration disputes. Why? First, the DRS has found that landowners and energy companies perceive their goals to be incompatible. For instance, in restoration disputes, parties either fail to share information, filter information based on what they want to hear, or interpret information based on their own perceptions of how restoration should turn out. Second, conciliation works for the company and the landowner because it creates a continuing relationship between them.

In restoration disputes, DRS specialists regularly speak with all parties involved to work toward an understanding of interests and to explore options for resolution. DRS has found that in natural gas pipeline construction matters in particular, both landowners' and pipeline company personnel's interests focus on safety and the timely completion of construction and property restoration. DRS specialists help parties to identify these common interests in order to keep the lines of communication open to discuss and resolve the substantive concerns in dispute.

For example, a property owner contacted the DRS Helpline to express concern with ongoing, post-construction restoration. The property owner raised numerous issues including the removal of fences that secured

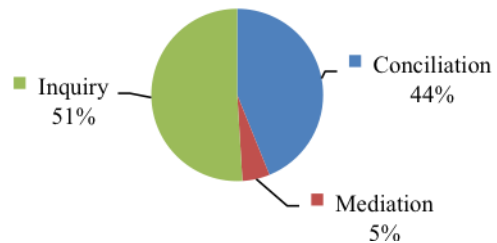
cattle, erosion, loss of timber, and a road re-routed through the property. DRS guided the parties so they understood each other's concerns and kept them focused on the problems. As a result, the parties generated their own options for resolution while restoration was ongoing.

Conciliation is a useful tool to resolve natural gas pipeline facility disputes because the property owner and company have a continuing relationship with each other. When callers are emotionally charged and communications break down, DRS is there to listen and neutralize the emotions in the conflict to allow the parties to focus more on their interests and resolve the problems. In the conciliator role, DRS assists parties with rebuilding trust and restoring business relations.

Helpline Call Data

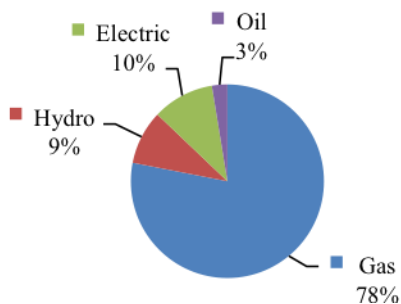
During fiscal year 2012 (October 1, 2011-September 30, 2012), the DRS received 155 calls to the Helpline. In 44 percent of matters, DRS specialists employed conciliation to open lines of communication between parties, to clarify misunderstandings, and to pave the way to resolution. In 5 percent of matters, DRS specialists employed mediation to reach resolution between the parties. In 51 percent of matters, DRS specialists assisted landowners on how to access information, or directed the caller to an appropriate resource in or outside of the Commission, depending on whether the matter was jurisdictional.

**Helpline Actions by Process
FY 2012**



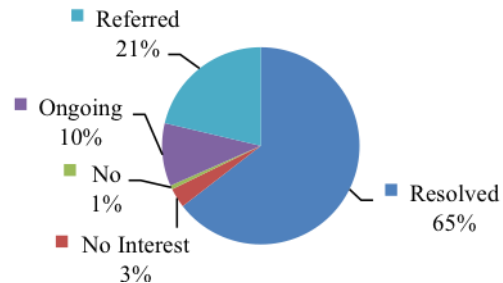
Of the 155 DRS Helpline calls by sector, 78 percent pertained to natural gas pipelines and an additional 9 percent were about hydropower facilities. Ten percent of calls pertained to electric utilities and an additional 3 percent were oil pipelines.

**Helpline Actions by Sector
FY 2012**



Of the 155 matters directly addressed by DRS specialists, 65 percent (100 matters) resulted in a mutually acceptable resolution to the issues in dispute. Twenty-one percent (33 matters) were referred to other offices within the Commission or entities outside the Commission. An additional 10 percent (16 matters) remain open and ongoing as the DRS specialists continue to work with the parties to come to an acceptable resolution. Three percent (5 matters) did not have an interest in pursuing an ADR process. Only one matter was not able to come to a mutually acceptable resolution after convening, identifying interests, and exploring options.

**Helpline Actions by Status
FY 2012**



The DRS encourages calls and questions to the DRS Helpline in matters within the Commission’s jurisdiction. Whether early or late in the conflict, before or after a matter has been filed with the Commission, the DRS is available as a resource for all. So give us a call!

***DRS Fields Helpline Calls on
Small Generator Interconnection
Matters***

Several companies with small renewable projects are currently seeking DRS assistance with disputes they are having with transmission interconnection providers. These disagreements focus on the cost of transmission upgrades, the methodology used to determine load at the interconnection site, and concern over underperforming projects “clogging up the queue.” Several of the DRS staff attended a March 2013 FERC workshop, at which participants discussed with stakeholders proposed revisions to the Small Generator Interconnection Procedures and Agreements. DRS staff was interested in learning how FERC is trying to address, through its proposed rulemaking, some of the same matters of concern in the disputes DRS staff is facilitating. ◇

Outreach

The DRS built capacity for ADR with key audiences such as the natural gas pipeline industry, and with the introduction of new topics on mediation advocacy, mediating the litigated case, and cross-cultural partnering, which assists members of the Energy Bar Association, attorneys in the private and governmental sectors, and Native Americans.

Externally, DRS delivered presentations on the value of using ADR for resolving energy regulatory disputes and environmental and cultural resources conflicts to seven different audiences totaling approximately 210 people.

Increasing ADR Capacity through Program Administration and Education

FERC's DRS spearheaded an effort with the Administrative Conference of the United States, the Interagency ADR Steering Committee, and the Department of Justice (DOJ). The DRS played a key role in formulating the agenda for a government-wide workshop on the status of and potential for ADR in the federal government that was held at DOJ. High level officials attended the event and Attorney General Eric Holder gave the keynote address.

Web-Based Education Program To Prevent Conflict Associated with Energy Infrastructure

DRS initiated development of a new web-based education product, "Building Rapport," to educate landowners and company personnel on conflict prevention and resolution of disputes that may arise as

pipelines plan and build infrastructure projects on the landowners' properties. This user-friendly web tool will be a free internet resource accessible to all, and will present realistic scenarios to convey important information to persons affected by pipelines.

The DRS anticipates that the web tool will include video modules on topics ranging from pipeline route surveying to post-construction land restoration. The information presented will assist private property owners, pipeline company representatives and land agents, and members of the public to gain skills to interact more collaboratively in dealing with the practical aspects and impacts of construction of pipeline infrastructure. Over time, DRS expects that this on-line resource will be useful in equipping people to prevent and to resolve conflicts, and to reduce the need for DRS intervention in disputes.

ADR Tools To Resolve Cultural Resources Conflicts

DRS gave a presentation to CLE International at a workshop in Washington, D.C, in October 2012. The DRS talk focused on increasing awareness of conflict-producing situations in the legal and regulatory contexts of historic preservation law and using ADR tools to resolve these heritage conflicts. An overview of the Commission's ADR program was provided and was well-received by this international group. This audience was comprised of legal and historic preservation professionals as well as practitioners from diverse cultural backgrounds inclusive of Native Americans and Native Hawaiian heritage.◇

Training

54th Annual Regulatory Studies Program

In August, the DRS held two workshops at the Institute of Public Utilities Annual Regulatory Studies Program (Program) sponsored by Michigan State University's Institute of Public Utilities (IPU-MSU). The workshops, which encompassed an overview of ADR and detailed information about mediation, were attended by regulators from many different countries. The DRS staff has served on the faculty for the Program for six straight years.

IPU-MSU is a not-for-profit, non-partisan research and training center designed to promote education and research in the public utility fields.

Skills To Resolve Conflict Training at OEP Natural Gas Seminar

The DRS created a new course for natural gas industry professionals and other energy stakeholders entitled, "Skills to Resolve Conflict." The course is conducted in coordination with FERC's Office of Energy Projects three day workshop, "FERC's Environmental Review and Compliance for Natural Gas Facilities Seminar" at different locations across the country. The training sessions bring together energy and environmental professionals to discuss the certificate, siting, and installation of natural gas pipelines.

In an attempt to reduce conflict, the DRS has added its course the day before Office of Energy Project's seminar to introduce these industry and environmental professionals to the advantages of Alternative Dispute Resolution and to give them practical skills

to help address and prevent conflict. By adding this training to the dispute resolution program for Helpline matters, proactive conflict resolution skills will continue to be disseminated to stakeholders associated with industries the Commission regulates.

Lunch and Learn on Generational Differences and Conflict Resolution

In August 2012, the DRS facilitated a lunch-and-learn event on generational differences and conflict resolution. The topic drew a diverse crowd of Commission employees to learn about four different generations: Traditionalists, Baby Boomers, Generation X, and Generation Y, and to discuss approaches to managing conflicts among generations. The facilitators encouraged the audience to discuss influential historical factors and supposed traits for each of the generations, and to understand the role of conflict management in addressing disputes across generations.

Other ADR Training

In addition to these new courses, the DRS delivered a variety of topics to FERC employees including presentations on: Understanding and Relating to Different Temperament Styles; Facilitating Group Meetings and Building Consensus; Communications; and Effective ADR Tools for Difficult Conversations. In 2012, 82 Commission staff members took advantage of DRS internal training sessions, which also benefit the Commission by avoiding outside training and travel costs. Since 2009, 523 Commission staff members have received training from DRS. ♦

Fond Farewell to Jerrilynne Purdy and Paula Felt

The DRS says goodbye to Dispute Resolution Specialists Jerrilynne (Jeri) Purdy, who retired on April 30, and Paula Felt, who retires on June 1, 2013. Jeri has been at the Commission for over eighteen years and in the federal government for twenty-five years. Paula leaves after spending more than twelve years at the agency and over twenty-eight years working for the federal government.



Jeri

During Jeri's eleven years in the DRS, she has assisted parties in resolving many complex disputes involving and relating to the electric, hydroelectric, and natural gas and oil pipeline industries. She developed and delivered dispute resolution training and workshops for Commission staff, other government agencies, and private entities. Most recently, Jeri was the lead on developing the new web-based education product to assist private property owners and pipeline company representatives to work more cooperatively in resolving matters relating to the construction of pipeline infrastructure.

Jeri received training from the U.S. Institute for Environmental Conflict Resolution Collaborative Competencies course, the Program on Negotiation at Harvard Law, and the Center for Dispute Resolution. She is a certified mediator in Virginia. Jeri graduated with a B.A. in Business from Michigan State University

and an MBA from the George Washington University.

Before working in DRS, Jeri was a branch chief in the electric rates area, supervising analysts processing filings. She served as an assistant to former FERC Chairman James Hoecker, advising him on electric, gas and oil pipeline, and hydroelectric matters. Prior to her career at FERC, Jeri worked for NSTAR (formally Boston Edison) for thirteen years, where she managed the company's wholesale power and transmission contracts department, participated in the company's New England Power Pool activities, and later managed the company's environmental affairs. Jeri has been in the energy field for thirty-three years, and her expertise, excellent facilitation skills, and friendly personality will be greatly missed.



Paula

Paula has been with the DRS for four years where she has enjoyed assisting parties resolve disputes relating to FERC jurisdictional natural gas, hydroelectric, and electric projects. She recently worked with OGC and OEP staff to help parties to finalize a settlement agreement pertaining to the Smith Mountain Lake Shoreline Management Plan. Along with Jeri and other DRS coworkers, she has developed and delivered conflict resolution training within and outside the Commission. The years of experience in congressional and public affairs Paula brought to DRS have

been an asset in helping DRS outreach to other FERC offices, federal agencies, energy companies, stakeholders, and the public.

Prior to joining the DRS staff, Paula spent over eight years in FERC's Office of External Affairs (OEA) where she was a public information specialist in the Congressional and Intergovernmental Affairs Division. She was responsible for reviewing, assigning, tracking, and editing the congressional and other controlled correspondence as well as writing *This Week in Congress* to report on weekly legislative actions affecting the Commission.

Before coming to FERC, Paula worked as the Executive Director of the historic Sewall-Belmont House on Capitol Hill, and as Congressional and Public Affairs Specialists at the Department of Justice and FEMA. She also was employed on Capitol Hill for ten years as Legislative or Press

Assistant for several Members of Congress. While working for Rep. John Anderson (IL), she assisted him in passage of a major energy and environmental bill, the Udall-Anderson Alaska Lands legislation, which became public law.

When in OEA, Paula availed herself of the ADR training provided by DRS, George Mason University, and Northern Virginia Mediation Services. During her time in DRS, she received mediation training at Pepperdine University School of Law's Straus Institute for Dispute Resolution, and negotiation training at the Program on Negotiation at Harvard Law. Paula received her undergraduate degree in political science from Wheeling Jesuit University where she was a member of the Jesuit Honor Society and the Student Government. She did her graduate work at Duquesne University, where she was a graduate teaching assistant in the Political Science Department. ◇



Josh Hurwitz (standing) provides Four Lenses Temperament training to Commission staff

Remember!!!

The DRS offers trainings:

- Difficult Conversations
- Negotiation
- ADR 101
- Facilitation

Give us a call to find out more!