

Gas Industry Examples, Including Pipeline Certification

A. Disputes Resolved Using ADR

Kansas *ad valorem* tax refund proceeding

Description. The Kansas *ad valorem* proceeding has a long and complicated history. It dates back to the early 1980s with over \$400 million dollars at stake. In 1996, the United States Court of Appeals for the D.C. Circuit issued a decision that required producers to refund to their customers all Kansas *ad valorem* tax reimbursements received after October 4, 1983.

There was a staggering number of claims and participants involved. For example, one gas company estimated that there are approximately 600 working interest owners behind 60 operators for its system. Also, it has been difficult to acquire data for each of the participants. Some of the operators and working interest owners are no longer in business, and some working interest owners are deceased.

There has also been Federal and state legislation proposed from time to time to resolve the issue. State legislation, if enacted, would result in federal appellate litigation and would potentially require several pipelines to make rate filings, putting the pipelines at risk for recovery of some of the dollars at issue. In addition, there is ongoing litigation in state courts which, if continued, would require Commission examination and appellate review.

Numerous petitions for clarification or some form of relief are also pending before the Commission, with many more petitions to be filed absent a settlement of the proceedings. The cases have been to the U.S. Court of Appeals on at least three occasions with several more appeals possible if the case remains unsettled. In sum, settlements of these proceedings will avoid the expenditure of several millions of dollars and allow significant business and Commission resources to focus on the future and not the past.

In March 2000, two conferences were held to initiate ADR processes in the various Kansas *ad valorem* proceedings. The participants agreed that settlement negotiations should be pursued

separately for each pipeline involved with the Kansas *ad valorem* tax refund issues. The participants also agreed that the DRS should facilitate/mediate the settlement negotiations.

To date, the DRS's mediation/facilitation efforts have been successful in over 90% of the disputed claims. The settlements have included resolution of thousands of claims for several companies.

Benefits. Through the use of ADR, a formal resolution of thousands of disputed claims was avoided. Most of the disputed claims would have required a hearing to resolve disputed issues of facts, and as noted above, cases would have been filed with the U. S. Court of Appeals.

This would have resulted in a significant expenditure of time and money by all parties, and the likelihood that there would have been winners and losers in the cases. Instead, these cases show that ADR, when used effectively, can save businesses, and state and federal institutions a significant amount of time and millions of dollars, and result in solutions that are satisfactory to all parties.

Propane crisis

Description. The Commission received a request from a state's governor to explore the possibility of increasing the throughput of propane on a particular pipeline. In response, the DRS facilitated a meeting with representatives of the governor's office, the pipeline, the state's propane gas association, a state petroleum group and distributors to discuss how the pipeline company allocates capacity on its pipeline, and possible ways of getting more propane into the state.

Because of the meeting, the participants gained a fuller understanding of the situation and some of the limitations that they would have faced if the cold weather returned for an extended period. Most of these limitations were beyond the control of the Commission. It also was clear to the participants that the pipeline company could not initiate a new allocation scheme without first obtaining Commission approval.

However, the pipeline company agreed to ship more propane on

its system during the crisis and to do what it could to ship even higher volumes of propane whenever the need arises. The governor's representatives did not request or suggest that the Commission initiate a formal investigation.

The parties also understood that a more formal inquiry at this time would be complicated and would involve many other participants from a number of different states. The participants also recognized that for the long term, the group needed to work together to avoid a similar situation the following year.

Benefits. The DRS facilitation proved successful. The Commission in a very short time was able to respond effectively to immediate and longer-term concerns expressed by the governor. The Commission avoided a formal inquiry that would have involved many participants from a number of different states, several filings, data inquiries, and many meetings. Instead, the parties and the Commission expended minimal resources to address the issues.

Pipeline/landowner dispute

Description. In 1999, a landowner filed a complaint against a pipeline company regarding a number of problems associated with the company's installation of a pipeline on the owner's property.

These included allegations that the pipeline company caused one of the owner's two water wells to go dry; and that the company needed to clean up construction debris from the owner's property, replace a gate on a fence to a cattle field, replace a contour furrow to prevent against erosion, and install "animal friendly" signs on the property identifying the location of the pipeline.

The owner also wanted information about road maintenance following the construction and the company's assurances that past problems would not be repeated.

The DRS contacted a pipeline company representative who agreed to meet with the landowner about these concerns. After a series of meetings and conversations between them, and follow-up by the DRS, the company formally agreed to fix the problems and provide written assurances to the owner that the company would monitor all

future visits to the owner's property and test the well if any of its equipment came too close to it. The company also agreed to compensate the owner for all out-of-pocket expenses associated with this complaint. The DRS followed up with several telephone conversations with parties to ensure that matters were being addressed satisfactorily.

Three months after filing the complaint, the landowner submitted a letter stating that all of the issues had been resolved and formally withdrew the complaint against the company.

Benefits. The DRS's "shuttle diplomacy" between the two parties averted the need for a Commission investigation and the issuance Commission orders to address the matter. This also saved time and expenses for the parties involved. Both parties were satisfied with the outcome, resulting in a "win-win" situation.

Pipeline business dispute

Description. A pipeline company filed a complaint against another company in a matter that had already been the subject of two previous Commission orders. Over twenty corporate entities became parties to the complaint proceeding.

The Commission directed the DRS to convene the parties to initiate discussions on how to resolve the dispute. During the convening session, the parties agreed to use mediation and a DRS staff mediator. In a one-day mediation session, the parties focused on their business interests and options that would address them.

Under the agreement reached, the complainant continued to receive the service that it needed, and the respondent transferred a segment of a pipeline that it no longer needed to a distributor for use in its gas distribution business. The complainant agreed to withdraw its complaint. The settlement also resolved a related filing involving the transfer of facilities that had been the subject of numerous protests.

Benefits. The settlement avoided additional Commission and appellate review. There was also the strong possibility that the complaint and the related filing would have been set for hearing before an administrative law judge, and followed by a Commission decision,

possible rehearing and possible appeal to a federal court. Although the avoided costs were not quantified, it is clear that the parties saved hundreds of thousands of dollars and countless months of human resources by avoiding further litigation of these matters.

Pipeline certification process

Description. In 2001, the Commission issued an Interim Order authorizing a pipeline company to construct and operate a pipeline that would interconnect with a high-pressure line in an urban community. The Interim Order did not certificate a specific route for the pipeline because the residents raised numerous concerns about the pipeline, including environmental justice issues, and opposed its construction through their community.

The Interim Order requested that the pipeline company and the elected officials, interested parties, and residents of the community negotiate over an alternative route. The Commission also offered the services of its Dispute Resolution Service to the parties.

The parties accepted the Commission's offer and the DRS quickly initiated a mediation process. Over the next three months, the DRS conducted several mediation sessions in the community. Within six months of the Commission's order, the pipeline company, and the mayor and city council of the affected community reached an agreement which proposed a revised pipeline route.

The city's officials called the agreement a major victory for the community that addressed a number of important concerns. The pipeline company stated the agreement also met its interests and that it remained committed to working closely with city's officials and residents during the construction. Both United States Senators from state through which the pipeline ran filed letters commending the Commission and the DRS in support of the parties' negotiation efforts.

Benefits. Through interest-based negotiation with a third-party neutral, the parties were able to reach agreement on the construction

of a highly controversial pipeline. The parties committed to work together in the future to ensure that their agreements were implemented.

B. Projects Involving the Gas Industry

Consultation with Canadian National Energy Board

Description. In October 2002, DRS staff met in Calgary with Canada's National Energy Board (NEB), the Alberta Energy and Utilities Board (EUB), and the Alberta Arbitration and Mediation Society to exchange information on the use of alternative dispute resolution in government programs related to the regulation of energy resources.

The meeting followed an April session with the NEB in which the DRS was asked to return to provide a more detailed presentation to senior leaders on how the DRS was developed, its scope and responsibilities, and lessons learned since its inception three years ago. The NEB also asked the DRS for advice on developing its in-house ADR program. In turn, the DRS sought input from the NEB and EUB about measures they have taken to increase ADR use.

Benefits. The consultation may help in the increased use of ADR in both Canada and the United States. This can benefit the NEB, FERC and others in resolving conflicts at less cost and with fewer resources, provide more options to address conflicts involving entities on either or both sides of the border, and provide an opportunity for more inter-border infrastructure disputes to be processed through collaborative processes.

ADR Workshop for Gas and Pipeline Projects

Description. In 2003, the DRS conducted an ADR workshop for pipeline industry representatives. Staff from the DRS and FERC's Office of Energy Projects met with representatives from twelve entities, mostly natural gas pipeline companies, involved in the FERC gas certificate process.

The DRS presented an overview of ADR and the value of interest-based negotiation for resolving disputes. The DRS cited practical examples of the benefits of ADR to the certificate process. A

representative from a transmission company who participated in a recently-completed gas certificate process offered a company's perspective on how valuable the ADR process can be. The audience asked whether certain situations may be appropriate for ADR and whether an ADR process may solve their disputes faster and better.

The DRS has held one additional workshop for a gas pipeline company and plans to conduct future ADR training for individual gas companies and industry representatives.

Benefits. Increased use of ADR techniques in negotiations and dispute resolution and use of mediation and/or facilitation as necessary should result in faster dispute resolution, better, longer-lasting agreements and improved relationships among gas companies and in their other business dealings.

OEP-Gas Staff Workshop in Facilitating Scoping Meetings

Description. In 2002, the DRS and senior staff of the Commission's Office of Energy Projects (OEP) lead a training for OEP staff designed to help them run better Scoping Meetings for proposed gas projects. The training explored a variety of issues and problems addressed at Scoping Meetings.

The participants discussed various goals, tasks, behaviors and challenges of leading a Scoping Meeting. The Staff also participated in a mock role play of a scoping meeting and discussed how staff can deal with a variety of situations and personalities that they might encounter during a meeting.

There will be additional programs to sharpen OEP Staff's skills in collaborating with the public.

Benefits. The trainees generally found it useful to share with each other what does and does not work when leading a scoping meeting. Most also found role playing to be a useful preparation and review of real meetings.