

## **Hydroelectric Industry Examples**

### **A. Disputes Resolved Using ADR**

#### **1. Alternative Licensing Processes**

##### **California Process**

Description. For the past three years, a team from the DRS and FERC's Office of Administrative Litigation mediated an alternative license public stakeholder process (ALP) involving hydro-power projects in California.

The issues in the re-licensing process involved balancing the environmental quality standards for the downstream ecological populations, hydro-power production, and municipal and agricultural uses for the water resources.

Additional issues unique to the projects concerned rights of local water districts to project waters, and the effect of the applicants' one hundred year-old contracts with the various water agencies (twelve in total) on the licensee's rights to produce electricity from water at the existing dams.

This re-licensing effort was also challenged by a lack of reliable historical data, ongoing drought conditions in many of California's waterways, including the rivers and streams impacted in this ALP, and the recent energy crisis during which the State looked to every source of electricity, including these projects, for additional production.

Benefits. Unlike many other water rights disputes in California that have ended up in civil litigation, this collaborative process resulted in the licensee filing the proposed terms and conditions of the projects without protest.

Because the process allowed the parties to express their concerns, they were able to reach settlement on many issues. The process also provided for their future input. The Commission later issued a Draft Environmental Assessment on the project, again without protest.

## **FPO and OEP Consultation With Indian Tribe During Process**

Description. In Spring 2002, a Native Indian tribal group contacted the FERC's Federal Preservation Officer (FPO), who is on the staff of the Dispute Resolution Service. The group requested assistance on cultural resources investigations in connection with the relicensing of a project in the Pacific Northwest.

The tribal group 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 FPO and a Cultural Resources Specialist from the Commission's Office of Energy Projects (OEP) attended a meeting with the tribal group, other Native American groups with interests in the project territory, several federal land-managing agencies, the state archeologist, and the project's sponsor. The project sponsor hired a professional facilitator to assist with the meetings.

Using ADR skills and an interest-based approach, the FPO 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 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 FPO and the OEP 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.

Benefits. The CRWG continues to meet regularly. 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.

### **Northeastern Process**

Description. In Fall 2000, parties to a re-licensing process that had been ongoing for over a year requested that the DRS provide mediation assistance. The process, which concerned the largest hydro-power station in a state, involved the licensee, 5 federal and state government agencies, and 23 private parties consisting of conservation groups, rafting and other commercial interests.

At the time the parties requested the DRS's help, the participants to the process had reached an impasse on four key elements. After only five months of interest-based negotiation with the DRS's assistance, the group reached a settlement in principle. The licensee filed a final settlement with the Commission a few months later.

Benefits. An official of the licensee called the settlement an historic agreement affecting the operations of the hydro-power station. By collaborating with all of the stakeholders in advance of the FERC licensing decision, the official believed that they had enhanced the multiple use benefits of this project.

The official noted that the agreement provides for river flows that support fish and wildlife habitat and protects lands upstream and downstream of the dam. It also provides for a wide array of recreational uses, and enables a critical source of clean energy to continue to produce power for regional electrical consumers far into the future.

The participants also praised the commitment to success by so many parties with a broad range of often conflicting goals and interests. The outcome -- which they considered no small feat -- balanced the need for continued electric power production, along with a better fishery, stability for the rafting industry, greater white water boating opportunities and significant protection of undeveloped waterfront lands.

The agreement obviated the need for a lengthy Commission proceeding and likely rehearing and possible court appeal of the decisions in the proceeding. Most importantly, the parties, which will

have a continuing relationship, were able to meet their interests and establish a good precedent for future dealings with each other.

## **2. Other Hydroelectric Proceedings**

### **Southwestern Process**

Description. The DRS became involved in a hydro-power stakeholder process after participants to the process filed a complaint with the Commission against the licensee. Prior to the complaint, there were already civil lawsuits against the licensee that alleged “a taking of property rights” by the downstream residents. The complaint alleged that the licensee was lowering lake levels to support power production in violation of the existing license.

The DRS, in coordination with the Commission's Office of Energy Projects initiated a collaborative process among the various interested parties in which they could address their issues.

Over the course of nine months, the DRS helped the participants establish a confidentiality agreement, commit to avoid negative press coverage, and give the community participants an opportunity to contribute to their governmental decision-making process. The DRS will continue to facilitate annual review meetings while the civil litigation proceeds.

Benefits. This case demonstrated that establishing a good collaborative process by the DRS can address a volatile situation in the affected communities. The participants were able to express their frustrations and then work together to achieve common goals, and establish the prospect for future dialog. In addition, the community participants were given an opportunity to contribute to their governmental decision-making process.

## **B. Projects Involving the Hydroelectric Industry**

### **Model Training Program for Hydroelectric Alternative Licensing Processes**

Description. Two national organizations in collaboration with federal agencies and two hydro-power licensees developed a training program for use by entities in re-licensing proceedings.

The training, which includes real world hydro scenarios and representative participant interests, provides extensive information on interest-based negotiation techniques as well as role play opportunities for the trainees. The training is designed to be given at the initiation of a stakeholder process to sharpen the inter-personal bargaining skills of the participants and improve the likelihood for success in the process.

Benefits. The hydroelectric training provides relevant information on skills and case examples to prepare participants to an ALP for effective negotiation and problem-solving. This training should result in better outcomes for hydroelectric pre-filing processes.

For a copy of the training, or to learn more about the program and where it has been used successfully, please contact the DRS toll free at 1-877-FERC ADR (337-2237) or locally at 202-502-8702, or by e-mail at [ferc.adr@ferc.gov](mailto:ferc.adr@ferc.gov).

### **Training for OEP Hydro Staff in ADR Skills During Licensing Pre-Filing Processes**

Description. In Spring 2003, the DRS designed a series of ADR courses for Staff in the Commission's Office of Energy Projects who are assigned to hydroelectric pre-filing processes. The courses, which were given over a three month period, included two that were taught by DRS Staff: an introduction to ADR processes for new hydro staff; and the basics of mediation, facilitation, early neutral evaluation and interest-based negotiation.

In addition, the DRS arranged a multi-day course taught by a national trainer. The course focused on facilitation and mediation skills

with with role play scenarios and was based on the training program developed for participants to alternative licensing processes described above.

Benefits. The courses provided OEP staff with new or sharpened ADR skills in their work with participants in pre-filing processes. These skills should improve their own participation in the process as well help them to assist other participants to engage in the processes fully and beneficially.