Remarks of
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"Alternate Dispute Resolution (ADR) - An Invaluable Tool For Today's Evolving Energy Markets"

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Good Morning. It is a pleasure being asked to address this forum on energy regulation. The theme of this forum is important to regulators worldwide - how to foster competition while balancing the interests of consumers and industry. I am especially pleased to be here with so many state and provincial regulators as I regulated as the state level not too long ago. The focus of my remarks is that alternate dispute resolution, or ADR, will play a key role in addressing the needs of today's increasingly competitive marketplace.

The Federal Energy Regulatory Commission (FERC) regulates key aspects of the electric power, natural gas, and oil pipeline industries. Over the past decade, FERC has dedicated its resources primarily to championing competitive markets for energy while continuing to regulate

the monopoly elements of the industries. The FERC's success in achieving a more competitive market has been the result of a series of rulemakings that have resulted in profound changes in the manner in which natural gas and electric utilities operate. FERC's goal of promoting competition in the electric power and natural gas pipelines industries was implemented through the issuance of major rulemakings - Order Nos. 888 and 889 and 636. FERC's initiatives restructured these industries and established the open access rules that are key to increased competition. Within the last year, FERC has built upon the success of these rules with two initiatives, Order Nos. 2000 and 637, that will further the Commission's goal of creating a more competitive marketplace for electric power and natural gas.

Because of this the Commission's approach to regulation has shifted as a result of increased competition in the electric and natural gas industries. In this environment of increased competition new issues are developing more quickly than in the past. The consequence is that the Commission must be flexible and innovative to meet these new challenges. To respond to the new market dynamics, the Commission

has turned to procedures that promote collaborative resolution of issues. This represents a major conceptual change that was all but unthinkable just a few short years ago.

Presently, the Commission is consciously making greater use of ADR processes in lieu of formal litigation to resolve specific disputes. ADR encompasses a variety of dispute resolution methods that are used in lieu of adjudicative methods of settling disputes. In general, ADR is a voluntary process for all participants that focuses on the parties interests rather than their positions or demands.

Because the Commission has recognized the value of ADR as the industries it regulates move to more competitive markets, we have undertaken a series of changes to expand the use of ADR approaches. The Commission recently restructured its complaint procedures to foster increased use of ADR techniques, developed collaborative procedures for use in the natural gas pipeline and hydroelectric licensing process, and has made greater use of settlement judge procedures. In addition, the Commission has also created the Dispute Resolution Service, a new unit dedicated solely to ADR implementation. In our recent major rulemaking -

Order No. 2000, the Commission specified that tariffs for its proposed Regional Transmission Organizations or RTOs should contain ADR provisions that allow for mediation or other low-cost forms of ADR. These changes have been made to enable the Commission to keep current with the changes in the energy markets and to prepare for the future.

However laudable the Commission's efforts may be, they won't be effective absent modification of the basic presumption that formal litigation is the best way to address traditional disputes. Thus, promoting and enhancing the use of ADR both within and outside of the Commission will be one of the major functions of on the Dispute Resolution Service. The objective of this office's outreach efforts is to advocate ADR as the first choice in dispute resolution as opposed to the last. This office aims to achieve its goal by providing information on the use and applicability of ADR to the public and regulated entities, as well as advising the Commission of new opportunities to use ADR effectively.

The other major function of the Dispute Resolution Service is to actually perform ADR services, such as facilitation and mediation. Examples of the ADR techniques employed at the Commission include:

collaborative processes, fact finding, facilitated negotiations, mediation, settlement judge procedures, mini-trial, and binding and non-binding arbitration. The Commission is aware that one technique may not be suited for all disputes. Thus, there is a wide array of techniques available to assist parties in designing a process to find mutually acceptable solutions to their differences. I view this type of flexibility as a key to moving away from the traditional use of the formal hearing procedures.

ADR processes help ensure that disputes are resolved more quickly, effectively and economically than under traditional approaches. The Dispute Resolution Service staff at FERC often can cut through procedural red tape because the staff can contact the parties quickly and set up meetings at the parties' convenience. The ADR process involves staff that is independent and neutral; there are no decisional employees or trial staff. Consequently, there are no ex parte concerns as there are with the decisional staff. These features can save time and money for both the parties and the Commission. Another benefit is that the use of ADR can result in better business relationships among the parties as compared to always being in adversarial hearings. At best, it can result in fewer

disputes in the future. So, I believe there are significant benefits that can accrue through the use of ADR.

The Commission's experience with the use of ADR has been positive so far. ADR techniques have proven effective in each of FERC's program areas. One of the first uses of ADR by our new office was an electric power case which involved the governance structure of a power pool. The parties agreed to proceed with a mediation process using one of the Commission's Administrative Law Judges as a mediator. Following a number of mediation sessions, the parties successfully reached a settlement that was approved by the Commission. Mediators from the Dispute Resolution Service have also been successful in enabling parties to reach settlements in a number of difficult natural gas pipeline proceedings. On the hydroelectric program area, the Dispute Resolution Service convened a meeting with other federal agencies to resolve a dispute involving the construction of facilities at a project. These cases highlight the fact that ADR techniques can be flexible and effective. They are also a tool that can be used jointly with state commissions as we have recently done in a case in New York .

Even though ADR processes are becoming an important tool in today's fast-paced energy marketplace; I recognize that ADR will not work in every instance. There will certainly be cases in which the parties are advocating policy changes that require Commission consideration. Although parties generally recognize that while ADR would allow them to focus on their interests, they may believe that it is more important that the Commission address their positions to establish precedent. Further, there will always be instances in which Commission rulings are necessary to effectively administer FERC regulatory programs. So, the Commission will continue to be confronted with legal, factual, and policy issues that may need to be addressed in a formal hearing or in a Commission order.

In closing, quick and efficient resolution of disputes aid in promoting a functional and competitive marketplace. As regulators we have an important role for ensuring that today's competitive marketplace can function efficiently. ADR provides one of the means which will enable the parties involved in our evolving energy markets to address disputes in a timely fashion. Less time spent resolving disputes means more time for parties to meet their business interests.

Thank you again for inviting me.