

FY 2014 TEMPLATE
Environmental Collaboration and Conflict Resolution (ECCR)¹
Policy Report to OMB-CEQ

On September 7, 2012, the Director of the Office of Management and Budget (OMB), and the Chairman of the President's Council on Environmental Quality (CEQ) issued a revised policy memorandum on environmental collaboration and conflict resolution (ECCR). This joint memo builds on, reinforces, and replaces the memo on ECR issued in 2005.

The memorandum requires annual reporting by departments and agencies to OMB and CEQ on progress made each year in implementing the ECCR policy direction to increase the effective use and institutional capacity for ECCR.

ECCR is defined in Section 2 of the 2012 memorandum as:

“ . . . third-party assisted collaborative problem solving and conflict resolution in the context of environmental, public lands, or natural resources issues or conflicts, including matters related to energy, transportation, and water and land management.

The term Environmental Collaboration and Conflict Resolution encompasses a range of assisted collaboration, negotiation, and facilitated dialogue processes and applications. These processes directly engage affected interests and Federal department and agency decision makers in collaborative problem solving and conflict resolution.

Multi-issue, multi-party environmental disputes or controversies often take place in high conflict and low trust settings, where the assistance of impartial facilitators or mediators can be instrumental to reaching agreement and resolution. Such disputes range broadly from policy and regulatory disputes to administrative adjudicatory disputes, civil judicial disputes, intra- and interagency disputes, and disputes with non-Federal persons and entities.

Environmental Collaboration and Conflict Resolution can be applied during policy development or planning in the context of a rulemaking, administrative decision making, enforcement, or litigation with appropriate attention to the particular requirements of those processes. These contexts typically involve situations where a Federal department or agency has ultimate responsibility for decision making and there may be disagreement or conflict among Federal, Tribal, State and local governments and agencies, public interest organizations, citizens groups, and business and industry groups.

Although Environmental Collaboration and Conflict Resolution refers specifically to collaborative and conflict resolution processes aided by third-party neutrals, there is a broad array of partnerships, cooperative arrangements, and unassisted negotiations that Federal agencies may pursue with non-Federal entities to plan, manage, and implement department and agency programs and activities. The Basic Principles for

¹ The term ‘ECCR’ includes third-party neutral assistance in environmental collaboration and environmental conflict resolution

Agency Engagement in Environmental Conflict Resolution and Collaborative Problem Solving are presented in Attachment B. The Basic Principles provide guidance that applies to both Environmental Collaboration and Conflict Resolution and unassisted collaborative problem solving and conflict resolution. This policy recognizes the importance and value of the appropriate use of all forms collaborative problem solving and conflict resolution.”

This annual report format below is provided for the seventh year of reporting in accordance with the memo for activities in FY 2014.

The report deadline is February 15, 2015.

We understand that collecting this information may be challenging; however, the departments and agencies are requested to collect this data to the best of their abilities. The 2014 report, along with previous reports, will establish a useful baseline for your department or agency, and collect some information that can be aggregated across agencies. Departments should submit a single report that includes ECCR information from the agencies and other entities within the department. The information in your report will become part of an analysis of all FY 2014 ECCR reports. You may be contacted for the purpose of clarifying information in your report. For your reference, prior year synthesis reports are available at <http://www.udall.gov/OurPrograms/Institute/ECCRReport.aspx>

FY 2014 ECCR Report Template

Name of Department/Agency responding:	Federal Energy Regulatory Commission
Name and Title/Position of person responding:	Jacqueline Holmes/Associate Director
Division/Office of person responding:	Office of the General Counsel
Contact information (phone/email):	202-502-8198 Jacqueline.holmes@ferc.gov
Date this report is being submitted:	February 15, 2015
Name of ECR Forum Representative	

- ECCR Capacity Building Progress:** Describe steps taken by your department or agency to build programmatic and institutional capacity for environmental collaboration and conflict resolution in FY 2014, including progress made since FY 2013. Include any efforts to establish routine procedures for considering ECCR in specific situations or categories of cases. To the extent your organization wishes to report on any efforts to provide institutional support for non-assisted collaboration efforts include it here. If no steps were taken, please indicate why not.

[Please refer to the mechanisms and strategies presented in Section 5 and attachment C of the OMB-CEQ ECCR Policy Memo, including but not restricted to any efforts to a) integrate ECCR objectives into agency mission statements, Government Performance and Results Act goals, and strategic planning; b) assure that your agency's infrastructure supports ECCR; c) invest in support, programs, or trainings; and d) focus on accountable performance and achievement. You are encouraged to attach policy statements, plans and other relevant documents.]

In FY 2014 the Commission continued efforts to incorporate into its regulations procedures for considering the use of ECCR. In FY 2014, the Office of General Counsel (OGC), in consultation with the Dispute Resolution Division (DRD) and Office of Energy Projects (OEP) promulgated a rulemaking for 18 C.F.R. Part 2.55 concerning natural gas replacement projects. The Final Rule on Revisions to Auxiliary Installations, Replacement Facilities, and Siting and Maintenance Regulations in 18 C.F.R. Parts 2, 157, and 380 [Docket No. RM12-11-002; Order No. 790-A] requires companies to notify landowners prior to initiating auxiliary and replacement projects or maintenance activities to give landowners adequate notice

(to the extent practicable) of a company entering on their property, in order to avoid potential conflict between landowners and natural gas companies.

Specifically, the final rule added section 2.55(c) and revised existing section 380.15(c) to require a natural gas company to make a good faith effort to notify landowners at least five days in advance of commencing an auxiliary or replacement project or of any maintenance that will cause ground disturbance. The notice must include: 1) a brief description of the activity to be conducted or facilities to be added or replaced and the expected effects on landowners; 2) the name and phone number of a company representative who is knowledgeable about the project; and 3) a description of the Commission's Dispute Resolution Division Helpline and its phone number.

This new rule will provide additional programmatic institutional capacity for ECCR by providing contact information of an agency neutral should a landowner feel that it may potentially be affected by any of the activities described in the rule.

In addition to this new rule, the following highlights the Commission's DRD accountable performance achievements using ADR/ECCR processes:

- The DRD successfully addressed/resolved 175 requests and referrals. These requests and referrals include ADR/ECCR cases and responses to inquiries from the public and others on dispute resolution. Of that number, the DRD addressed 45 ADR cases. Of these 45 cases, 32 are ECCR cases (23 ECCR cases were closed and 9 ECCR cases are ongoing). The remaining 13 ADR cases are non-environmental.
- In FY 2014, of the 31 mediated or facilitated ADR cases that closed, 81 percent achieved consensual agreement (25 yes, 4 no interest, 2 no). There are currently 14 cases ongoing that began in FY 2014.
- In FY 2014, the DRD conducted 23 outreach events (including training to staff, jurisdictional entities, and at Energy Bar Association events) to promote the use of dispute resolution skills.
- Customers for all casework and outreach services expressed satisfaction with the DRD. In FY 2014, based on the 30 returned survey responses regarding completed ADR cases, there was a 100 percent customer satisfaction rating for cases. There was a 93 percent customer satisfaction rating for outreach.
- In FY 2014, based on the 30 returned survey responses on completed ADR cases, 87 percent reported savings in money and time.

Frequency of ECR Use for ADR Cases*

FY	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
FERC	21	16	19	53	78	74	51	32

*The decrease in ADR cases in FY 2014 may result from the DRD’s outreach efforts to energy industry representatives to prevent conflict and enhance their interest based negotiation skills. Each year, the DRD leads a “Skills to Resolve Conflict” training for the Commission’s Environmental Review and Compliance for Natural Gas Facilities seminar. In FY 2014 one training was held in Savannah and a second in Los Angeles. These trainings provided company representatives (such as land agents, outreach personnel and in house counsel) with skills they can implement and techniques to instruct others in conflict prevention and resolution. Many companies have set up outreach divisions and provide training in dispute resolution for their right-of-way agents so they can address potential environmental disputes themselves.

2. ECCR Investments and Benefits

- a) Please describe any methods your agency uses to identify the (a) investments made in ECCR, and (b) benefits realized when using ECCR.

Examples of investments may include ECCR programmatic FTEs, dedicated ECCR budgets, funds spent on contracts to support ECCR cases and programs, etc.

Examples of benefits may include cost savings, environmental and natural resource results, furtherance of agency mission, improved working relationship with stakeholders, litigation avoided, timely project progression, etc.

The Commission continually looks for ways to utilize, expand and make investments in, and increase the institutional capacity for, ECCR. The Commission invests resources to promote resolution through ECCR in several program offices:

- Currently, the DRD has five staff positions and four full-time neutrals dedicated to ADR/ECCR cases, education in the form of training, outreach and rulemakings as well as other initiatives that result in program and Commission-wide institutionalization of these tools and techniques that become embedded in the Commission's culture.
- In FY 2014 the DRD built a new case tracking system to better track all case work including ECCR matters. With the new system launching for FY 2015 the DRD hopes to have more focused data to track casework and how it relates to the agency mission, timely project progression, improved working relationships and litigation avoided.
- The Commission has supported ECCR through funding for case travel, outreach and training others to accomplish mission goals.
- The Commission invests in outreach and training for Commission employees and to affected stakeholders to ensure these audiences know that its neutral staff can assist with the resolution of business and environmental-related energy disputes as well as to provide skills training to those same audiences on the front lines to avoid, manage and resolve their own conflicts.
- There are many benefits realized through the use of ECCR. Over 30 disputes were resolved by third party neutrals, avoiding the need to draw upon other agency resources (i.e. litigation, Commission action). By using ECCR as the first avenue to resolve disputes enables landowners and companies to have more certainty in a timely fashion, saving everyone a tremendous amount of time, money and resources in resolving ECCR cases. Experience shows that the earlier a dispute is brought to a neutral party, the better the opportunities for improved long-term relationships. The Commission has a track record for timely closure and resolution of ECCR cases, closing the majority of cases

within 6 months.

- As discussed below, the Office of Energy Projects incorporates ECCR principles when working with project stakeholders throughout the comprehensive pre-filing and post-filing application processes for both natural gas and hydroelectric projects. Staff relies on cooperation and consultation with all stakeholders throughout the NEPA process, and continually seeks opportunities to apply ECCR principles; for example, in hydropower proceedings, staff may offer neutral, separated staff to assist in resolving disputes.

b) Please report any (a) quantitative or qualitative investments your agency captured during FY 2014; and (b) quantitative or qualitative results (benefits) you have captured during FY 2014.

(a) Please see response to question 1 for the Commission's investments in ADR.

(b) In order to better understand the actual or perceived savings to ADR participants, we first ask participants in a survey "Was your organization able to reduce the costs of resolving your dispute by using the DRD?" Of the twenty four responses to this survey question for cases in FY 2014, the DRD received this response:

Yes	16
No	0
Unsure	8

In FY2014 we asked participants to "provide an estimate of cost savings." The results were as follows:

\$1000-\$25,000	21%
\$25,000-\$100,000	17%
\$100,000 - \$500,000	N/A
\$500,000 - \$1,000,000	4%
Over \$1,000,000	12%
N/A	46%

- c) What difficulties have you encountered in generating cost and benefit information and how do you plan to address them?

As reported in the FY 2013 report, generating cost information is difficult since an ECCR case can take or cross many paths at the Commission. Each case is unique so it is challenging to determine the amount of resources that would be necessary to address an environmental dispute in other forums. This issue was raised to members of the U.S. Institute and CEQ in last year's report, and staff continues to work with the members of the ECCR community to better qualify and quantify data.

Due to the nature and complexity of different disputes it will be very challenging to place a dollar value on resource savings including those which go beyond human capital such as the environmental resources savings. Established or accepted standards of legitimacy in the human capital and environmental and natural resources fields on savings from agencies pursuing such research and OMB-CEQ peers is needed.

Benefit information is also a challenge. In the answer above, one participant may have thought it saved a few thousand dollars on an ECCR matter, while another participant thought they saved over a million dollars for the same matter. It is very hard for case participants to really know how a case would be handled in an adjudicated part of the Commission. For instance, a case could be appealed to the 9th Circuit or even the Supreme Court. How much did a participant save just in legal fees for using ADR? How do you quantify how much a good relationship is worth? Additionally, many participants checked the N/A button because they themselves did not know how to value the benefit of ADR. Another challenge is valuing the benefit to the Commission. A litigated matter or matter set for Commission decision does not have a defined cost that has been established. OMB-CEQ peers also will be helpful in establishing parameters in this regard.

9. **ECCR Use:** Describe the level of ECCR use within your department/agency in FY 2014 by completing the table below. [Please refer to the definition of ECCR from the OMB-CEQ memo as presented on page one of this template. An ECCR “case or project” is an instance of neutral third-party involvement to assist parties in a collaborative or conflict resolution process. In order not to double count processes, please select one category per case for decision making forums and for ECCR applications.

	Total FY 2014 ECCR Cases ²	Decision making forum that was addressing the issues when ECCR was initiated:				ECCR Cases or projects completed ³	ECCR Cases or Projects sponsored ⁴	Interagency ECCR Cases and Projects	
		Federal agency decision	Administrative proceedings /appeals	Judicial proceedings	Other (specify)			Federal only	Including non federal participants
<i>Context for ECCR Applications:</i>									
Policy development	_____	_____	_____	_____	_____	_____	_____	_____	_____
Planning	_____	_____	_____	_____	_____	_____	_____	_____	_____
Siting and construction	14 (DRD)	14	_____	_____	_____	10 (DRD)	_____	_____	_____
Rulemaking	_____	_____	_____	_____	_____	_____	_____	_____	_____
License and permit issuance	3 (DRD)	3	_____	_____	_____	2 (DRD)	_____	_____	_____
Compliance and enforcement action	13 (DRD)	13	_____	_____	_____	10 (DRD)	_____	_____	_____
Implementation/monitoring agreements	2 (DRD)	2	_____	_____	_____	1 (DRD)	_____	_____	_____
Other (specify): _____	_____	_____	_____	_____	_____	_____	_____	_____	_____
TOTAL	32	32	_____	_____	_____	23	_____	_____	_____
		(the sum of the Decision Making Forums should equal Total FY 2014 ECCR Cases)							

² An “ECCR case” is a case in which a third-party neutral was active in a particular matter during FY 2014.

³ A “completed case” means that neutral third party involvement in a particular ECCR case ended during FY 2014. The end of neutral third party involvement does not necessarily mean that the parties have concluded their collaboration/negotiation/dispute resolution process, that all issues are resolved, or that agreement has been reached.

⁴ Sponsored - to be a sponsor of an ECCR case means that an agency is contributing financial or in-kind resources (e.g., a staff mediator's time) to provide the neutral third party's services for that case. More than one sponsor is possible for a given ECCR case.

Note: If you subtract completed ECCR cases from Total FY 2014 cases it should equal total ongoing cases. If you subtract sponsored ECCR cases from Total FY 2014 ECCR cases it should equal total cases in which your agency or department participated but did not sponsor. If you subtract the combined interagency ECCR cases from Total FY 2014 cases it should equal total cases that involved only your agency or department with no other federal agency involvement.

4. ECCR Case Example

Using the template below, provide a description of an ECCR case (preferably completed in FY 2014). Please limit the length to no more than 2 pages.

Name/Identification of Problem/Conflict
Overview of problem/conflict and timeline, including reference to the nature and timing of the third-party assistance, and how the ECCR effort was funded
<p>Non-decisional staff from the DRD assisted a landowner and a natural gas pipeline company to resolve a dispute over a plan to mitigate severe erosion that caused a portion of the pipeline to become exposed in a creek bed. The temporary measures used to cover the exposed pipeline exacerbated the erosion problem, causing a significant portion of the bank to wash away.</p> <p>The process started in early October 2014 and ended within a week as time was of the essence. This case was funded through the use of permanent DRD mediation staff at FERC, while each non-FERC staff participant was self-funded.</p>
Summary of how the problem or conflict was addressed using ECCR, including details of any innovative approaches to ECCR, and how the principles for engagement in ECCR outlined in the policy memo were used
<p>DRD staff spoke with each party by phone to explore each party's interests, and generate options through a brainstorming session. The parties then agreed to meet face-to-face onsite to evaluate the options with subject matter experts to determine which potential solution best met each parties' interests.</p>
Identify the key beneficial outcomes of this case, including references to likely alternative decision making forums and how the outcomes differed as a result of ECCR
<p>The parties were able to reach a mutually beneficial agreement that provided a permanent solution to the safety issue of an exposed pipeline while also addressing the environmental issue of erosion controls. Without ECCR, the temporary solution to the exposed pipeline would likely have remained in place for many more months before a unilateral decision was made.</p>
Reflections on the lessons learned from the use of ECCR

The use of ECCR allowed a solution to be reached more quickly than traditional processes, and that satisfied both the safety and environmental interests of the parties.

5. Other ECCR Notable Cases: Briefly describe any other notable ECCR cases in the past fiscal year. (Optional)

The Dispute Resolution Division assisted in resolving an ECCR case in FY 2014 that involved clearing trees from the edge of a right of way. This case was funded through the use of permanent DRD mediation staff at FERC, while non-FERC staff participants were self-funded.

A landowner approached the DRD for assistance in resolving a dispute with a natural gas pipeline company that had an easement over the landowner's property. The pipeline company wanted to cut down a number of trees that were on the edge of the right of way because the trees obstructed line-of-sight for inspection purposes. The landowner contended that the trees were planted in the late 1980's with the pipeline company's permission, but lacked documentation to that effect.

DRD staff facilitated a conversation via telephone between the parties to explore the parties' interests and to find areas of common ground. After a series of calls, the parties agreed to a face-to-face meeting onsite to make a final determination on a tree-by-tree basis. That meeting resulted in a mutually satisfactory agreement in which some of the trees were allowed to remain in place.

Without ECCR, the parties had two potential options. First, the pipeline company may have acted unilaterally and cleared all of the trees and offered the landowner compensation. Second, the parties could have litigated the issue at substantial delay and cost.

The use of ECCR allowed the parties to move forward with a mutually satisfactory agreement that met the interests of all the parties involved.

6. Priority Uses of ECCR:

Please describe your agency's efforts to address priority or emerging areas of conflict and cross-cutting challenges either individually or in coordination with other agencies. For example, consider the following areas: NEPA, ESA, CERCLA, energy development, energy transmission, CWA 404 permitting, tribal consultation, environmental justice, management of ocean resources, infrastructure development, National Historic Preservation Act, other priority areas.

As noted in the response to question 2(a), the Office of Energy Projects incorporates ECCR principles in working with project stakeholders throughout the comprehensive pre-filing and post-filing application processes for both natural gas and hydroelectric projects.

With respect to natural gas pipeline facilities, staff had thirteen cases that went through its pre-filing process and were completed in FY 2014, and 37 cases that are still in progress. For hydroelectric licensing proceedings, in FY 2014, four Integrated Licensing Proceedings (ILP) were initiated; ten ILPs were completed (“completed” defined as an a filed license application); and 30 ILPs are pending.

For both natural gas and hydroelectric project proposals, Federal, state, local agencies and tribes with jurisdiction and/or special expertise with respect to environmental issues are invited to cooperate in the preparation of NEPA documents.

During FY 2014 the following occurred:

- DHL had separated staff assigned to three hydroelectric licensing cases: the Hells Canyon Project No. 1971; Carmen-Smith Project No. 2242; and Klamath Project No. 2082.
- DHL continued to investigate the potential for reaching MOU’s with states on DHL’s processing of NEPA documents and determinations on study needs, as well as the processing of applications for section 401 Clean Water Act certifications.
- DHL also continued to contact Indian tribes on a project-specific basis to invite consultation on hydroelectric project proposals. DHL invited the tribes by letter generally within 30 days of receiving a developer’s or existing licensee’s notice of intent to prepare a license application.
- DHL participated with the U.S. Department of Energy (DOE) and the U.S. Army Corps of Engineers (Corps) in discussions on potential procedures to streamline the Commission’s hydroelectric licensing and the Corps’ permitting processes for non-federal hydroelectric projects at Corps dams. This effort is being funded by, and is under the direction of, DOE. DOE has funded a third-party to facilitate the discussions, which are continuing into FY 2015, with the goal of establishing processing procedures to be followed by the Commission, Corps, license applicants, and licensees with licensed projects at Corps facilities.

7. Non-Third-Party-assisted Collaboration Processes: Briefly describe other significant uses of environmental collaboration that your agency has undertaken in FY 2014 to anticipate, prevent, better manage, or resolve environmental issues and conflicts that do not include a third-party neutral. *Examples may include interagency MOUs, enhanced public engagement, and structural committees with the capacity to resolve disputes, etc.*

With respect to natural gas pipeline proceedings, in FY 2014 staff:

- conducted enhanced public engagement to contribute to the environmental review of natural gas proposed projects
- attended applicant's informational meetings and open houses to anticipate conflicts at an early state of review.
- held interagency meetings and formal scoping and comment meetings.
- attended public meetings in the proposed project areas convened by elected officials to: answer stakeholder questions about FERC and its jurisdiction; develop processes to communicate more effectively; and provide information about how to become involved in the Commission's process.
- provided periodic updates to Congressional staff to inform them of activities associated with high-profile projects of potential concern to their constituents.

In hydroelectric proceedings, in FY 2014 DHL staff:

- in addition to its work with states in developing MOUs, discussed above, made determinations with recommendations from federal and state resource agencies on the need for environmental studies during the pre-license application stage in a number of hydropower licensing proceedings. Potential applicants are required to conduct the studies, consult with the federal and state resource agencies on the study results, and include the study results in their license applications.
- attended public meetings and held training sessions with the public and resource agencies on the Commission's licensing process to help these entities better engage in the licensing process and hear their issues regarding the proposed hydropower projects.
- continued formal cooperation with the U.S. Army Corps of Engineers in two license proceedings (Yuba River and R.C. Byrd Projects), the U.S. Fish and Wildlife Service in one license proceeding (Old Harbor Project), and the U.S. Department of Energy, the USDA Rural Utilities Service, the U.S. Environmental Protection Agency, U.S. Bureau of Land Management (BLM), and National Park Service in one license proceeding each (Susitna Project).
- engaged in significant tribal consultation with the Catawba Indian Nation, Eastern Band of Cherokee Indians, and the United Keetoowah

Band of Cherokee Indians in Oklahoma for the relicensing of Duke Energy Carolina's Keowee-Toxaway Hydroelectric Project No. 2503 located in North and South Carolina. DHL worked closely with the licensee and the tribes to develop language for an Historic Properties Management Plan that ensures future consultation with the tribes for project-related actions affecting tribal resources.

8. **Comments and Suggestions re: Reporting:** Please comment on any difficulties you encountered in collecting these data and if and how you overcame them. Please provide suggestions for improving these questions in the future.

Please attach any additional information as warranted.

Report due February 15, 2015.

Submit report electronically to: ECRReports@omb.eop.gov

**Basic Principles for Agency Engagement in
Environmental Conflict Resolution and Collaborative Problem Solving**

Informed Commitment	Confirm willingness and availability of appropriate agency leadership and staff at all levels to commit to principles of engagement; ensure commitment to participate in good faith with open mindset to new perspectives
Balanced, Voluntary Representation	Ensure balanced inclusion of affected/concerned interests; all parties should be willing and able to participate and select their own representatives
Group Autonomy	Engage with all participants in developing and governing process; including choice of consensus-based decision rules; seek assistance as needed from impartial facilitator/mediator selected by and accountable to all parties
Informed Process	Seek agreement on how to share, test and apply relevant information (scientific, cultural, technical, etc.) among participants; ensure relevant information is accessible and understandable by all participants
Accountability	Participate in the process directly, fully, and in good faith; be accountable to all participants, as well as agency representatives and the public
Openness	Ensure all participants and public are fully informed in a timely manner of the purpose and objectives of process; communicate agency authorities, requirements and constraints; uphold confidentiality rules and agreements as required for particular proceedings
Timeliness	Ensure timely decisions and outcomes
Implementation	Ensure decisions are implementable consistent with federal law and policy; parties should commit to identify roles and responsibilities necessary to implement agreement; parties should agree in advance on the consequences of a party being unable to provide necessary resources or implement agreement; ensure parties will take steps to implement and obtain resources necessary to agreement