

FY 2015 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 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.”

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

This annual report format below is provided for the seventh year of reporting in accordance with the memo for activities in FY 2015.

The report deadline is February 15, 2016.

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 2015 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 2015 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.ecr.gov/Resources/FederalECRPolicy/AnnualECRReport.aspx>

FY 2015 ECCR Report Template

Name of Department/Agency responding:	Federal Energy Regulatory Commission
Name and Title/Position of person responding:	Jacqueline Holmes, Associate General Counsel
Division/Office of person responding:	Office of General Counsel, Office of Energy Projects
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Date this report is being submitted:	February 16, 2016
Name of ECR Forum Representative	Deborah Osborne

1. **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 2015, 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 2015, the Federal Energy Regulatory Commission (FERC or Commission) designated a dedicated Landowner Helpline function within the Office of Administrative Law Judges and Dispute Resolution. The Landowner Helpline is the primary contact for handling dispute-related calls pertaining to the construction and operation of jurisdictional infrastructure projects. This reorganization reflects an allocation of dedicated resources to serve the public interest in ECCR disputes.

The following highlight the Commission’s Dispute Resolution Division (DRD) accountable performance achievements using ADR/ECCR processes:

- The DRD successfully addressed/resolved 109 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 46 ADR cases. Of the 46 ADR cases, 30 are ECCR cases (26 ECR cases were closed and four ECCR cases are ongoing). The remaining 16 ADR cases are non-environmental.
- In FY 2015, of the 38 mediated or facilitated ADR cases closed, 95 percent achieved consensual agreement (36 Yes, 2 No). There are currently eight cases ongoing that began in FY 2014.
- In FY 2015, the DRD conducted 25 outreach events to promote the use of dispute resolution skills.
- Customers for all casework and outreach services expressed favorable satisfaction with the DRD. In FY 2015, based on the nine returned survey responses of completed ADR cases, there was a 100% customer satisfaction rate for cases. There was a 93% customer satisfaction rate for outreach.
- In FY 2015, based on the nine returned survey responses on completed ADR cases, 91% reported savings in both money and time.

Frequency of ECR Use for ADR Cases*

FY	FY2007	FY2008	FY2009	FY2010	FY2011	FY2012	FY2013	FY2014	FY2015
FERC	21	16	19	53	78	74	51	32	30

*Note the data used to answer Question 3 includes FY 2015 data from the Landowner Helpline in addition to the ADR cases reported above. As noted below, in FY 2015, the Landowner Helpline addressed 77 disputes. Other than Question 3, the remainder of this report extracted responses from the ADR cases reported in Question 1.

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 six staff positions and five full-time neutrals. One of these neutrals serves in the new Landowner Helpline position.
- DRD invests in 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 2015 the DRD launched a new case tracking system to better track all case work including ECCR matters. The new system provides the DRD with 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 neutral staff can assist with the resolution of business and environmental-related energy disputes as well as to provide skills training to these same audiences on the front lines to avoid, manage, and resolve their own conflicts.
- There are many benefits realized through the use of ECCR. More than 30 disputes were resolved by DRD third party neutrals, avoiding the need to tax other agency resources (i.e. litigation, Commission action). The new dedicated Landowner Helpline position addressed an additional 77 disputes, further reducing the need to use other agency resources. By using ECCR as the first avenue to resolve disputes, landowners and companies have been able to have certainty in a timely fashion, saving everyone a tremendous amount of time, money, and

resources in resolving ECCR cases. It is clear 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 in more detail below, 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. Commission staff relies on cooperation and consultation with all stakeholders in the preparation of NEPA documents. Staff continually seeks opportunities to apply ECCR principles in its hydropower and natural gas proceedings and, where needed (particularly in hydropower proceedings), offers neutral, separated staff to assist in resolving disputes.

b) Please report any (a) quantitative or qualitative investments your agency captured during FY 2015; and (b) quantitative or qualitative results (benefits) you have captured during FY 2015.

(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 five responses to this survey question for cases in FY 2015, the DRD received this response:

Yes	4
No	1

In FY2015 we asked participants to “provide an estimate of cost savings.” The results were as follows:

\$1000-\$25,000	40%
\$25,000-\$100,000	N/A
\$100,000 - \$500,000	N/A
\$500,000 - \$1,000,000	20%
Over \$1,000,000	20%
N/A	20%

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

As reported in the FY 2014 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 would be welcomed.

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 would also be helpful in establishing parameters in this regard.

9. **ECCR Use:** Describe the level of ECCR use within your department/agency in FY 2015 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 2015 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	1 (DRD)	1	_____	_____	_____	_____	_____	_____	_____
Siting and construction	90 (DRD)	90	_____	_____	_____	90 (DRD)	_____	_____	_____
Rulemaking	_____	_____	_____	_____	_____	_____	_____	_____	_____
License and permit issuance	_____	_____	_____	_____	_____	_____	_____	_____	_____
Compliance and enforcement action	16 (DRD)	16	_____	_____	_____	13 (DRD)	_____	_____	_____
Implementation/monitoring agreements	_____	_____	_____	_____	_____	_____	_____	_____	_____
Other (specify): _____	_____	_____	_____	_____	_____	_____	_____	_____	_____
TOTAL	107	107	_____	_____	_____	103	_____	_____	_____
		(the sum of the Decision Making Forums should equal Total FY 2015 ECCR Cases)							

² An “ECCR case” is a case in which a third-party neutral was active in a particular matter during FY 2015.

³ A “completed case” means that neutral third party involvement in a particular ECCR case ended during FY 2015. 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 2015 cases it should equal total ongoing cases. If you subtract sponsored ECCR cases from Total FY 2015 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 2015 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 2015). 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 mediated a dispute between a natural gas pipeline company and its customers. The parties reached an uncontested settlement regarding the company's plan to abandon over 300 miles of older natural gas pipeline in two states. The company determined that it was not safe to continue operating the pipeline because of its age and lack of adequate maintenance. The customers were primarily concerned with continuity of service and potential rate shock for alternative service arrangements. The case was complex and involved numerous different parties including towns, prisons, utilities, trade associations, industrial customers, and two states public utility commissions.</p> <p>The parties approached the DRD about using ECCR in May 2014 and the Commission approved the uncontested settlement in April 2015. The 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 hosted regular conference calls and monthly in-person meetings to keep the parties engaged in a dialogue. DRD staff also engaged in regular caucus sessions with parties to explore each party's interests and generate options through brainstorming sessions. In the joint sessions DRD staff emphasized areas of agreement reached in previous meetings and facilitated option generation and evaluation for areas still in dispute. DRD staff also regularly engaged in conference calls for disputed issues that only affected a subset of parties in the larger complex multiparty mediation. Proper management of the mediation process by the mediators and the committed work of the parties resulted in a complete resolution of all issues in this complex, multiparty dispute.</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 creative solution to the unique set of problems raised by this natural gas pipeline. All customers were provided continuity of service either through conversion to propane, construction of a new pipeline, or conveyance of segments of the pipeline to customers with taps into other natural gas pipelines. The rate shock issue was addressed by creating a tiered rate structure that slowly phased in rates over time, and the safety issues were addressed by getting the old pipeline out of service in a timely manner. For the uncontested settlement filed by the parties, see http://elibrary.ferc.gov/idmws/common/opennat.asp?fileID=13708946. To view the Commission's approval of the uncontested settlement, see</p>

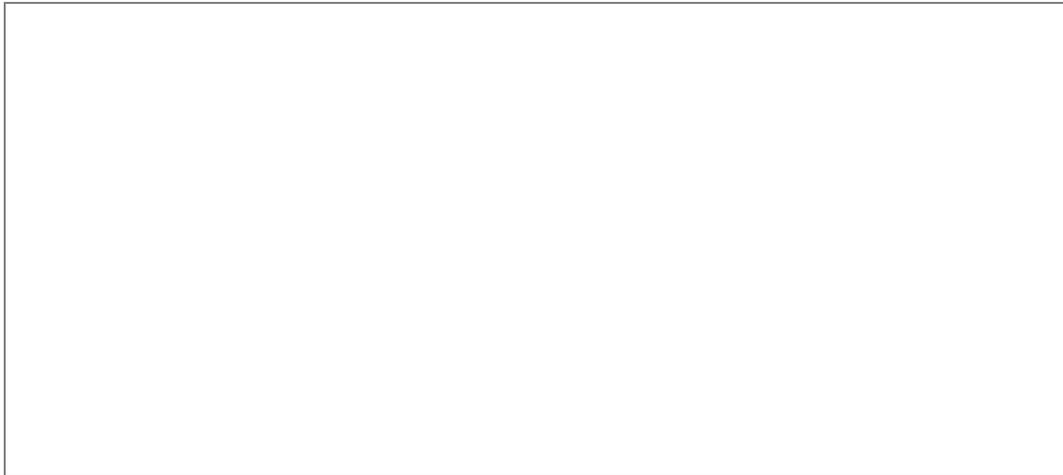
<http://elibrary.ferc.gov/idmws/common/opennat.asp?fileID=13842092>.

Without ECCR, the parties would have likely engaged in lengthy litigation at FERC that would have resulted in the old pipeline remaining in service for a substantial amount of time.

Reflections on the lessons learned from the use of ECCR

The use of ECCR allowed the parties to reach a creative solution to a problem 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)



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.

Program offices were engaged in ongoing efforts to facilitate collaboration throughout the processing of Commission authorizations/approvals. For example, during FY 2015, the Division of Hydropower Licensing (DHL) within the Office of Energy Projects continued to invite Federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues to cooperate in the preparation of NEPA documents. DHL did this on a project-specific basis via public notice published in the Federal Register and the Commission's eLibrary, and letters sent to individual agencies. The Commission's policy on agency cooperation can be found at 94 FERC ¶ 61,076 (2001).

During FY 2015, 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. These licensing efforts are ongoing.

DHL also continued to investigate the potential for reaching MOUs with the States on DHL's processing of NEPA documents and determinations on study needs, as well as States' processing of applications for water quality certifications under Section 401 of the Clean Water Act.

DHL also continued to contact Indian tribes on a project-specific basis to invite consultation on hydroelectric proposals. Most invitations are by letter within 30 days of receiving a notice of intent to prepare and file a license application .

DHL, the Department of Energy, and the U.S. Army Corps of Engineers (Corps) engaged in discussions on potential procedures to streamline the Commission's hydroelectric licensing and the Corps' permitting processes for non-federal projects located at Corps dams. The effort is funded by and is under the direction of the Department of Energy. Discussions are continuing in FY 2016, with a goal of finalizing procedures.

7. Non-Third-Party-assisted Collaboration Processes: Briefly describe other significant uses of environmental collaboration that your agency has undertaken in FY 2015 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.*

The Commission's processes and procedures provide for extensive public involvement to ensure that interested parties have meaningful opportunities to contribute to the environmental review process for both natural gas and hydroelectric facilities.

Staff conducted training sessions with the public, industry, and resource agencies to facilitate a better understanding of the Commission's processes and procedures, and to facilitate engagement in proceedings at an early stage. For example, with respect to natural gas facilities, staff conducted seven 3-day training seminars on FERC Regulatory Overview Process and Environmental Compliance for industry and the public. The seminars included half-day seminars for specific areas of concern, including an overview of consultations under section 106 of the National Historic Preservation Act, as well as tribal consultations.

During FY 2015, DHL staff attended public meetings and held training sessions with the public and resource agencies on the Commission's licensing process to facilitate stakeholder engagement in the licensing process.

In FY 2015, staff held a conference in Connecticut entitled "Working Together in Energy: Tribal Interactions with FERC," which addressed, among other things, enhancing general communication and coordination with tribes for both hydroelectric and natural gas projects. A similar conference is planned for tribes in the western United States.

Natural Gas Proceedings

With respect to natural gas facilities, staff attended the applicants' information meetings and open houses to anticipate potential conflicts at an early stage of review. In July 2015, staff issued its "Suggested Best Practices for Industry Outreach Programs to Stakeholders," in an effort to effectively engage stakeholders to assist in identifying and resolving issues throughout the course of the project review process.

Staff also developed an additional scoping meeting format to allow a less formal, one-on-one setting among the public, staff, and cooperating agencies. This allows additional opportunities to answer questions from the public when interacting with a very large number of stakeholders, and an increased number of court reporters, which provides more opportunities for staff to receive oral testimony.

Hydroelectric Proceedings

On the hydroelectric side, during FY 2015, DHL made determinations with

recommendations from federal and state resource agencies on the need for environmental studies during the pre-application stage in a number of hydropower relicensing proceedings. Potential applicants are required to conduct the studies, consult with relevant state and federal resource agencies on the study results, and include the study results in their license applications.

During FY 2015, DHL continued formal NEPA cooperation with the Corp in multiple licensing proceedings, and in separate proceedings with the U.S. Fish and Wildlife Service; the U.S. Department of Agriculture Rural Utilities Service; and the Environmental Protection Agency. DHL entered into formal NEPA cooperation with the Corps, and with the Department of Energy.

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, 2016.

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