

FY 2016 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 10th year of reporting in accordance with the memo for activities in FY 2016.

The report deadline is February 24, 2017.

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 2016 report, along with previous reports, will establish a useful baseline for your department or agency. 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 2016 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 16 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:	OGC-Energy Projects
Contact information (phone/email):	Elisabeth Blaug, 502-8189, elisabeth.blaug@ferc.gov
Date this report is being submitted:	February 24, 2017
Name of ECR Forum Representative	Deborah Osborne

- 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 2016, including progress made since FY 2012. 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.]

The following highlight the Commission's Dispute Resolution Service (DRS) accountable performance achievements in FY 2016 using ECCR/ADR processes:

- The DRS successfully addressed/resolved 187 requests and referrals. These requests and referrals include ECCR/ADR cases and responses to inquiries from the public and others on dispute resolution. Of that number, the DRS addressed 61 ADR cases. Of the 61 cases, 55 are ECCR cases (51 ECCR cases were closed and four ECCR cases are ongoing). The remaining 6 ADR cases are non-environmental.

- In FY 2016, the DRS conducted 20 outreach events to promote the use of dispute resolution skills. Based on 46 returned survey responses for outreach events, there was an 88% customer satisfaction rate.

Frequency of ECR Use for ADR Cases

FY	FY2008	FY2009	FY2010	FY2011	FY2012	FY2013	FY2014	FY2015	FY2016
FERC	16	19	53	78	74	51	32	30	55

Program offices within FERC are continually made aware, via email notifications and the FERC intranet, of the ECCR services offered by the DRS.

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:

- The DRS has six staff positions and five full-time neutrals. One of these neutrals serves in the dedicated Landowner Helpline position.
- As discussed below, additional staff from program offices are used as neutrals on an as-needed basis in individual proceedings.
- The DRS invests in education in the form of training and outreach, as well as other initiatives that result in Commission-wide institutionalization of ADR tools and techniques.
- The Commission invests in outreach and training for Commission employees and affected stakeholders. The DRS trains audiences on ADR skills to reduce, manage, and resolve conflicts and the role of the Commission’s neutrals to provide ADR services.

- The Commission supports ECCR/ADR and funds travel for cases, outreach, and training to accomplish Commission-wide goals.
- In FY 2016 the Commission issued a Final Rule that revised regulations ([18 C.F.R. § 1b.22](#)) to clarify the role of the Landowner Helpline in the informal resolution of landowner disputes associated with energy infrastructure projects.
- Use of ECCR results in many benefits. For example, the DRS resolved 51 disputes avoiding the need to tax other Commission resources. By using ECCR as the *first* avenue to resolve disputes, landowners and companies gain more certainty on the outcomes each party needs to achieve. The earlier a dispute is brought to the attention of a neutral party, the greater the likelihood for improved communications and 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.
- The Commission also has a robust settlement judge program with an 86% success rate achieving settlement of disputes which sometimes involves environmental issues.

b) Please report any (a) quantitative or qualitative investments your agency captured during FY 2016; and (b) quantitative or qualitative results (benefits) you have captured during FY 2016.

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

(b) The DRS has submitted to OMB for review revisions to our survey questions to allow for a greater number of surveys to be used. We hope this effort will improve the quality and quantity of our feedback results.

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

As previously reported, generating cost information is difficult because many ECCR cases are unique and can take many paths at the Commission before they are fully resolved. We raised this issue to members of the U.S. Institute and CEQ in last year's report and staff continues to work with the larger ECCR community to better qualify and quantify data. Due to the nature, magnitude, and complexity of different disputes, it is very challenging to place a dollar value on resource savings which go beyond human capital, such as environmental and natural resource savings. We welcome input from our OMB and CEQ peers on accepted standards of legitimacy to calculate ECCR cost savings.

Benefit information also presents challenges. Parties have difficulty predicting how a case might be handled at the Commission or on appeal to the circuit courts or Supreme Court. For instance, how much did a participant save in legal fees and time by using ADR? How do parties quantify the value of a good relationship? These questions are hard to answer. OMB and CEQ peers could also be helpful in establishing numerical cost savings and benefits standards.

The DRS is exploring ways to increase the quantity of survey results in FY 2017 and beyond.

5. **ECCR Use:** Describe the level of ECCR use within your department/agency in FY 2016 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 2016 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	3 (DRS)	3	_____	_____	_____	1 (DRS)	_____	_____	_____	_____
Siting and construction	51 (DRS)	51	_____	_____	_____	50 (DRS)	_____	_____	_____	_____
Rulemaking	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____
License and permit issuance	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____
Compliance and enforcement action	1 (DRS)	1	_____	_____	_____	_____	_____	_____	_____	_____
Implementation/monitoring agreements	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____
Other (specify): _____	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____
TOTAL	55	55	_____	_____	_____	51	_____	_____	_____	_____
		(the sum of the Decision Making Forums should equal Total FY 2016 ECCR Cases)								

² An “ECCR case” is a case in which a third-party neutral was active in a particular matter during FY 2016.

³ A “completed case” means that neutral third party involvement in a particular ECCR case ended during FY 2016. 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 2016 cases it should equal total ongoing cases. If you subtract sponsored ECCR cases from Total FY 2016 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 2016 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 2016). 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 DRS mediated a dispute between an electric utility company and a landowner with transmission lines on his property. The parties reached an uncontested settlement regarding the company's vegetation management policy and the landowner's ability to grow vegetation near the transmission lines. Issues arose when, after a change in ownership, the utility company implemented a more robust vegetation management policy that resulted in the removal of trees and other vegetation that had been in place since the transmission lines were originally built many years ago. During removal, the landowner and the contractor communicated poorly and the conflict escalated quickly. The landowner did not understand the new vegetation management policy and was unable to get an explanation from the contractor or the company. Furthermore, after the vegetation was removed the contractor threatened the landowner that it would come back and remove the rest of the trees on his property during the next trimming cycle. The landowner requested DRS assistance in clarifying which trees were at risk of removal during the next trimming cycle, reimbursement for work that was needed on his property to repair damage done by the contractor, and an explanation of what types of vegetation could be grown near the transmission lines without running afoul of the vegetation management policy.</p> <p>The case was funded through the use of permanent DRS mediation staff at FERC, and self-funding by each non-FERC staff participant.</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>DRS staff hosted regular conference calls to keep the parties engaged in a dialogue. DRS 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 DRS staff emphasized areas of agreement reached in previous meetings and facilitated option generation and evaluation for areas still in dispute. 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 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

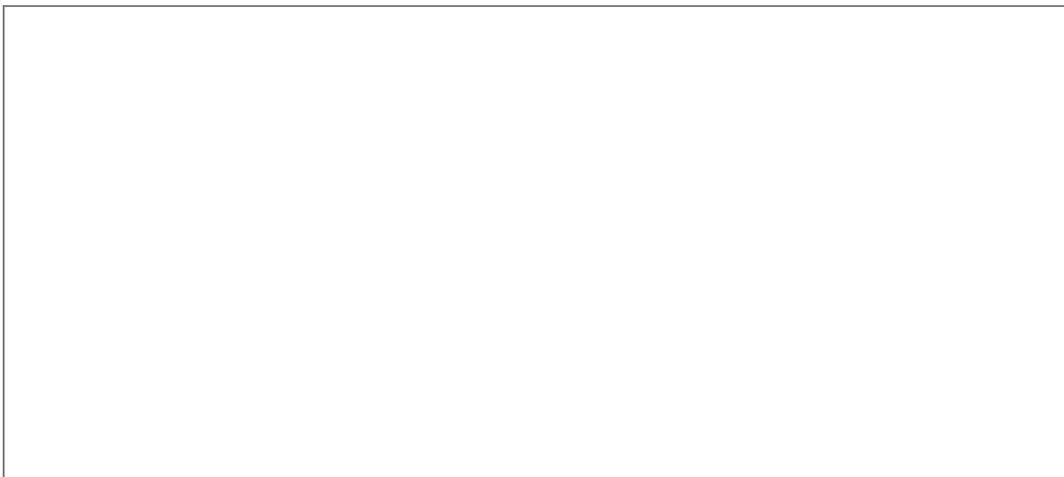
The parties reached a mutually beneficial agreement that provided a permanent solution to the problems raised by this vegetation management policy. The landowner was reimbursed for expenses incurred repairing damage caused by the contractor and was able to regrow vegetation with assurances that it was compliant with the vegetation management plan.

Without ECCR, the parties would have likely engaged in litigation.

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.

FERC staff continued to implement existing processes designed to promote collaboration in hydroelectric and natural gas proceedings.

During FY 2016, the Division of Hydropower Licensing (DHL) 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 the individual agencies. The Commission's policy on agency cooperation can be found at 94 FERC ¶ 61,076 (2001).

During FY 2016 DHL had separated staff assigned to three hydroelectric licensing cases: Hells Canyon Project No. 1971, Carmen-Smith Project No. 2242, and Klamath Project No. 2082. In the Carmen-Smith case, separated staff actively participated in an advisory role during comprehensive settlement re-negotiations among the parties. In the Hells Canyon case, separated staff participated in several telephone conferences with parties in an effort to assist in resolving issues.

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 project proponent's notice of intent to prepare and file a license application.

7. Non-Third-Party-assisted Collaboration Processes: Briefly describe other significant uses of environmental collaboration that your agency has undertaken in FY 2016 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.*

Hydroelectric Proceedings

- In cooperation with the U.S. Department of Energy (DOE) and the U.S. Army Corps of Engineers (Corps), identified procedures to streamline FERC's hydroelectric licensing and the Corps' permitting processes for non-federal hydroelectric projects at Corps' dams. The effort was funded by DOE and the discussions were facilitated by a third-party group. The procedures were included in a Memorandum of Understanding (MOU) signed by FERC and the Corps. The goals of the procedures are to coordinate the agencies' environmental and technical reviews up front to reduce processing times and redundant environmental review. One objective of the approach is for FERC and Corps staff to work collaboratively on one environmental document that both agencies can use in their respective processes.
- 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 FERC's licensing process to help these entities better engage in the process and hear their issues regarding the proposed hydropower projects.
- Continued formal NEPA cooperation with: the Corps in two license proceedings (Sweetheart Lake and Susitna Projects); the U.S. Fish and Wildlife Service in one proceeding (Old Harbor Project); the U.S. Environmental Protection Agency in one licensing proceeding (Susitna Project); and DOE in one license proceedings (Soule River Project).

Natural Gas Proceedings

- Continued conducting enhanced public engagement to ensure that interested parties have appropriate opportunities to contribute to the environmental review of natural gas facility projects.

- Attended the applicants' informational meetings and open houses to anticipate conflicts at an early stage of review.
- Continued to conduct interagency meetings and formal scoping and comment meetings.
- Developed an additional scoping meeting format to allow a one-on-one setting between the public and FERC staff and cooperating agencies. This allows more opportunities to answer questions from the public when interacting with a large number of stakeholders and, because of an increased number of court reporters, more opportunities for staff to receive and consider oral testimony.
- Attended public meetings in the project areas convened by elected officials to answer questions, develop processes to communicate more effectively, and provide information about how to get involved in FERC proceedings. Staff has also provided periodic updates to congressional staff to inform them of activities associated with high-profile projects of concern to their constituents.

Hydroelectric and Natural Gas

As it did in 2015 for eastern tribes, in 2016 staff held a conference in Arizona entitled "Working Together in Energy: Tribal Interaction with FERC," which addressed the opportunities for tribes in the western U.S. to participate and pursue projects regulated by FERC. Topics included: how to be involved in natural gas pipeline and hydroelectric pre-and post-filing processes; opportunities for energy development by tribes; and general communication and coordination with tribes.

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 24, 2017.

Submit report electronically to: kavanaugh@udall.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