

FY 2017 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).

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 in accordance with the memo for activities in FY 2017.

The report deadline is February 23, 2018.

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 2017 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 2017 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 17 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 elisabeth.blaug@ferc.gov
Date this report is being submitted:	February 23, 2018
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 2017, including progress made since FY 2016. 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 2017 using ECCR/ADR processes:

The DRS successfully resolved 185 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 113 ADR cases. Of the 113 cases, 111 are ECCR cases (101 ECCR cases were closed and 10 ECCR cases are

ongoing). The remaining 2 ADR cases are non-environmental.

In FY 2017, the DRS conducted 32 outreach events to promote the use of dispute resolution skills. Based on 154 returned survey responses for outreach events, there was a 94% customer satisfaction rate.

Frequency of ECR Use for ADR Cases

FY	FY2009	FY2010	FY2011	FY2012	FY2013	FY2014	FY2015	FY2016	FY2017
FERC	19	53	78	74	51	32	30	55	111

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, 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 four full-time neutrals that focus on ECCR/ADR case work. Additionally, in FY 2017, the DRS trained Office of Administrative Law Judges and Dispute Resolution support staff to assist with performing intake on Landowner Helpline calls.
- Additional staff from program offices assist DRS neutrals and parties on an as-needed basis in individual proceedings as non-decisional employees for their subject matter expertise, thereby aiding the parties in reaching a settlement.
- The DRS receives training and participates in outreach and other initiatives to improve its ADR skills and strengthen the Commission-wide program for 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.
- The Commission supports ECCR/ADR and funds travel for cases, outreach, and training to accomplish Commission-wide goals.
- The Commission has found that use of ECCR results in many benefits. For example, the DRS resolved 101 disputes avoiding the need to draw upon other Commission resources. By using ECCR as the *first* avenue to resolve disputes, landowners and companies gain more certainty on the outcome 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 88% success rate achieving settlement of disputes which sometimes involves environmental issues.
- For hydropower proceedings, where needed, license applicants and

interested stakeholders are offered neutral, separated staff to help resolve disputes on environmental measures.

- b) Please report any (a) quantitative or qualitative investments your agency captured during FY 2017; and (b) quantitative or qualitative results (benefits) you have captured during FY 2017.

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

(b) The Commission, through its DRS, has developed a new survey which was recently approved by OMB to collect feedback from a greater number of participants that voluntarily participate in ADR processes for cases. We anticipate the increased quantity of results will improve the reliability of the feedback we receive from participants.

- 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 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.

Benefits at a granular level also present challenges. Parties have difficulty predicting how a case might be handled at the Commission or on appeal to the Court of Appeals or the 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.

3. **ECCR Use:** Describe the level of ECCR use within your department/agency in FY 2017 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 2017 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	103 (DRS)	103	_____	_____	_____	94 (DRS)	_____	_____	_____
Rulemaking	_____	_____	_____	_____	_____	_____	_____	_____	_____
License and permit issuance	4	4	_____	_____	_____	_____	4	_____	4
Compliance and enforcement action	8 (DRS)	8	_____	_____	_____	7 (DRS)	_____	_____	_____
Implementation/monitoring agreements	_____	_____	_____	_____	_____	_____	_____	_____	_____
Other (specify): _____	_____	_____	_____	_____	_____	_____	_____	_____	_____
TOTAL	115	115	_____	_____	_____	101	4	_____	4
		(the sum of the Decision Making Forums should equal Total FY 2017 ECCR Cases)							

² An “ECCR case” is a case in which a third-party neutral was active in a particular matter during FY 2017.

³ A “completed case” means that neutral third party involvement in a particular ECCR case ended during FY 2017. 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 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 2017 cases it should equal total ongoing cases. If you subtract sponsored ECCR cases from Total FY 2017 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 2017 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 2017). Please limit the length to no more than 2 pages.

Name/Identification of Problem/Conflict
<p>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>
<p>Non-decisional staff from the DRS mediated a dispute between a natural gas pipeline company and a landowner where the pipeline was proposed to be built on his property.</p> <p>When the parties attempted unassisted negotiations, tensions escalated and communication broke down. The parties reached out to the DRS through the Landowner Helpline to help get negotiations back on track. The property owner contacted the Landowner Helpline with concerns about the path of a pipeline through his property. The pipeline was routed to go directly through a dike on the owners land. The property owner was not satisfied with the routing choice or the potential damage both short- and long-term that could occur if the dike was impacted.</p> <p>Specifically, the landowner requested an explanation as to why the dike would need to be impacted and assurances that the pipeline company would pay any resulting damages. Through mediation and periodic caucuses tensions cooled and the parties were able to meaningfully discuss the issues and reach a mutually beneficial resolution.</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>
<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>
<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 commitment by the parties to achieve consensus resulted in 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

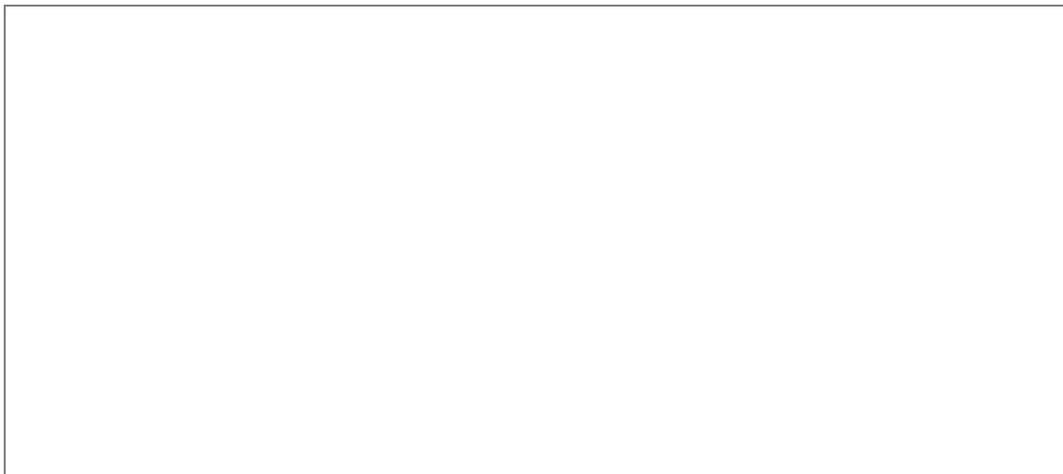
The parties reached a mutually beneficial agreement that provided a permanent solution to the problems raised in this dispute. The pipeline company agreed to re-route the pipeline to avoid impacting the landowner's dike.

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.

The Commission observes that the sooner stakeholders become involved in a proposed natural gas or hydroelectric project, the earlier potential environmental issues can be identified and resolved. In both natural gas and hydroelectric proceedings, stakeholders can engage with staff and the applicant well before an application is filed. For certain natural gas facilities, staff uses the pre-filing process, while for certain hydroelectric proceedings, staff offers the Integrated Licensing Process (ILP). Both facilitate a predictable, efficient, and timely proceeding.

7. Non-Third-Party-assisted Collaboration Processes: Briefly describe other significant uses of environmental collaboration that your agency has undertaken in FY 2017 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.*

Staff continued to implement existing processes designed to promote collaboration in hydroelectric and natural gas proceedings. Staff engaged in the following activities in FY 2017:

Natural Gas

Conducted enhanced public engagement to ensure that interested parties have appropriate opportunities to contribute to the environmental review of natural gas facility projects. Staff attends the applicant's informational meetings and open houses to anticipate conflicts at an early stage of review.

Conducted interagency meetings and scoping and comment sessions. The scoping session format allows a one-on-one setting among the public, FERC staff and cooperating agencies. This provides additional opportunities to answer questions from the public when interacting with a larger number of stakeholders and, because of an increased number of court reporters, more opportunities for the Commission to receive oral testimony.

Attended public meetings in the project areas convened by elected officials to answer questions from stakeholders about FERC and its jurisdiction, develop processes to communicate more effectively, and provide information about how to become involved in the Commission's process. The Commission has also provided periodic updates to Congressional staff to inform them of activities associated with high-profile projects of concern to their constituents.

Issued revised Guidance Manual for Environmental Report Preparation to improve the overall quality and consistency of data analyses and formatting in the resource reports that comprise the Environmental Report to be filed under FERC regulations implementing the National Environmental Policy Act. The revised guidance is intended to resolve concerns raised by the public and other agencies in a proactive manner.

Hosted a Tribal Conference (Santa Fe, New Mexico) and attended tribal meetings (Mashpee, Massachusetts, and Washington, DC) which discussed the opportunities for tribes to participate and pursue projects regulated by the Commission. Staff also attended two tribal meetings held by the Departments of the Interior and Justice and the U.S. Army Corps of Engineers to hear concerns arising from the Dakota Access Pipeline proposal; one in Albuquerque, NM, and the other by teleconference.

Provided in-the-field learning opportunities for other agencies regarding

pipeline and compressor station construction and restoration. Staff has also organized biannual agency meetings with agencies involved in review of FERC projects in order to coordinate and align the various environmental review processes. The meetings provided a time to discuss any specific issues or questions the agencies may have, allow updates to all agencies at one time, and provide an opportunity for collaborative discussions amongst our federal agency partners.

Presented the FERC Seminar to provide training to applicants, agencies, and consultants on implementing the environmental review process for natural gas projects. Commission staff has also participated in seminars hosted by the Interstate Natural Gas Association of America, attended by industry and agency representatives, to discuss improved efficiency and collaboration for the permitting of FERC-regulated natural gas projects.

Hydroelectric

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. Division of Hydropower Licensing (DHL) did this on a project-specific basis via public notice published in the Federal Register and the Commission's eLibrary and letter sent to the individual agencies. The Commission's policy on agency cooperation can be found at 94 FERC ¶ 61,076 (2001).

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 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 and file a license application for a hydroelectric project.

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 23, 2018.

Submit report electronically to: owen@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