

FY 18 ECCR Report Template

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Date this report is being submitted:	March 15, 2019
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- 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 2018, 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 Commission's Dispute Resolution Service (DRS) is a neutral body operated by non-advisory staff. The DRS has two major functions: 1) to provide alternative dispute resolution (ADR) and 2) to promote the use of ADR both within and outside of the Commission through outreach activities. The following highlight the Commission's DRS accountable performance achievements in FY 2018 using ECCR/ADR processes:

- Generally, for ADR cases, a successful resolution involves facilitating communication between parties to reach a mutually beneficial solution to the problem. The DRS successfully resolved 266 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 125 ADR cases. Of the 125 cases, 112 are ECCR cases (109 ECCR cases were closed and 3 ECCR cases are ongoing). The remaining 13 ADR cases are non-environmental.
- In FY 2018, the DRS conducted 24 outreach events to promote the use of dispute resolution skills. Based on 51 returned survey responses for outreach events, there was a 92% customer satisfaction rate.

Frequency of ECR Use for ADR Cases

FY	FY2010	FY2011	FY2012	FY2013	FY2014	FY2015	FY2016	FY2017	FY2018
FERC	53	78	74	51	32	30	55	111	112

In addition, during FY 2018, approximately 20 staff from the Office of Energy Projects Division of Hydropower Licensing (DHL) received a full day of ADR training provided by ADR staff. DHL staff also continued to be apprised via email notification and the intranet of the ECCR services offered by 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, 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.
- Additional staff from program offices assist DRS neutrals on an as-needed basis in individual proceedings as non-decisional employees for their subject matter expertise.
- The DRS receives training, participates in outreach, and engages in other initiatives to improve their ADR skills and strengthen the Commission-wide program for the 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.
- Use of ECCR results in many benefits. For example, the DRS resolved 107 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 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 issued a Notice of Inquiry in docket PL18-1-000 to solicit comments on the Natural Gas Policy Statement and the Commission's review of interstate natural gas pipeline projects, including with respect to landowner concerns.
- The DHL relies on cooperation and consultation with federal and state resource agencies during the preparation of its NEPA documents. DHL

continually searches for situations requiring ECCR during hydropower licensing proceedings and, where needed, offers neutral, separated staff to help resolve disputes among license applications and interested stakeholders on environmental measures related to hydropower licensing.

- b) Please report any (a) quantitative or qualitative investments your agency captured during FY 2018; and (b) quantitative or qualitative results (benefits) you have captured during FY 2018.

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

(b) To better understand the actual or perceived savings to ADR participants, we ask participants in a survey to rank from strongly disagree to strongly agree whether ADR "helped resolve my concern more quickly" and "helped reduced my costs." Of the survey responses we received in FY 2018, 100% of respondents answered agree or strongly agree to the statement about the subject dispute being resolved more quickly, and 80% of respondents answered agree or strongly agree to the statement about reducing costs.

- 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. Also, 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. We raised such issues 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. 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 Federal courts. In addition, some relevant questions (e.g., how much did a participant save in legal fees and time by using ADR? how do parties quantify the value of a good relationship?) are difficult to answer.

. In FY 2018 the DRS developed and implemented new surveys to try to receive better feedback from participants on cost and benefits of using ADR in their particular matters. While we continue to struggle with the quantity of surveys participants complete and return, the qualitative data has significantly improved over previous years.
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3. ECCR Use: Describe the level of ECCR use within your department/agency in FY 2018 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 2018 ECCR Cases ¹	Decision making forum that was addressing the issues when ECCR was initiated:				ECCR Cases or projects completed ²	ECCR Cases or Projects sponsored ³	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	109 (DRS)	109	_____	_____	_____	106 (DRS)	_____	_____	_____
Rulemaking	_____	_____	_____	_____	_____	_____	_____	_____	_____
License and permit issuance	_____	_____	_____	_____	_____	_____	_____	_____	_____
Compliance and enforcement action	3 (DRS)	3	_____	_____	_____	3 (DRS)	_____	_____	_____
Implementation/monitoring agreements	_____	_____	_____	_____	_____	_____	_____	_____	_____
Other (specify): _____	_____	_____	_____	_____	_____	_____	_____	_____	_____
TOTAL	112	_____	_____	_____	_____	109	_____	_____	_____
		(the sum of the Decision Making Forums should equal Total FY 2018 ECCR Cases)							

¹ An “ECCR case” is a case in which a third-party neutral was active in a particular matter during FY 2018.

² A “completed case” means that neutral third party involvement in a particular ECCR case ended during FY 2018. 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.

³ 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 2018 cases it should equal total ongoing cases. If you subtract sponsored ECCR cases from Total FY 2018 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 2018 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 2018). 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 a natural gas pipeline company and a landowner where the pipeline company was constructing a new pipeline on a steep slope above the landowner's property.</p> <p>During construction, some erosion control devices (ECD) along the edge of the right-of-way failed, resulting in the slope slipping and large boulders falling down the slope into the landowner's yard while the landowner's children were playing outside. Fortunately, no one was injured. The landowner contacted DRS through the Landowner Helpline for assistance getting the slip and ECDs repaired, cleaning up the off right-of-way debris, and addressing the safety concerns raised by this incident.</p> <p>The case was funded through the use of permanent DRS mediation staff at the Commission, and self-funding by each non-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 worked closely with the Commission's Office of Energy Projects compliance staff to address this matter. DRS staff facilitated communication between the landowner and pipeline company by engaging in regular caucus sessions and hosting conference calls to explore each party's interests and generate options through joint brainstorming sessions. In the joint sessions, DRS staff emphasized areas of agreement reached in previous meetings. 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 issues raised in this dispute. The pipeline company repaired the slip and ECDs and built a triple reinforced temporary fence on the edge of the right-of-way to prevent a similar situation from recurring. The landowner provided the pipeline company access rights to clean up the debris from the slip. The pipeline company also compensated the landowner for a fence to keep the children away from the potential danger area in the event a slip happens again.

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's longstanding position is 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 more predictable, efficient, and timely proceeding.

DHL continued a number of existing procedures designed to promote collaboration on its processing of license applications for hydroelectric projects. During FY 2018, 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 2018, DHL staff 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 project.

During FY 2018, DHL and OGC each had a separated staff person active in one hydroelectric licensing case: Hells Canyon Project No. 1971. The separated staff advised the licensee (Idaho Power) on how it might help to resolve conflicting draft section 401 Clean Water Act certifications from the states of Idaho and Oregon.

For each hydro relicensing case, DHL staff continued to issue a letter to the affected Indian tribes at least one year in advance of the deadlines for a licensee to file its Notice of Intent (NOI) and Preliminary Application Document (PAD) for a new license, in order to provide the tribes with advanced notification of the relicensing proceeding, and invite consultation and their participation. For original licenses, DHL staff also continued to contact Indian tribes to invite consultation generally within 30 days of receiving a developer's NOI and PAD.

7. Non-Third-Party-assisted Collaboration Processes: Briefly describe other significant uses of environmental collaboration that your agency has undertaken in FY 2018 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.*

In FY 2018 the Commission executed a Memorandum of Understanding (MOU) to implement the One Federal Decision (OFD) policy established in Executive Order 13807. The purpose of the MOU is to establish a cooperative relationship among federal agencies that have the responsibility to review or authorize infrastructure projects, and for these same agencies to commit to a more coordinated and streamlined process of environmental reviews and authorization decisions on proposed major infrastructure projects. To carry out the MOU, the Commission developed an implementation plan that includes the Commission's programmatic approach to implementing the goals of the OFD MOU, including action items and corresponding process flowcharts. Commission staff participated in numerous OFD working group meetings to discuss interagency and programmatic approaches to meeting the goals of the OFD MOU, including the two-year timeline. In addition, the Commission's OFD implementation plan commits staff to meet and work directly with appropriate agency regional- and field-office staff on OFD implementation. As part of this effort, staff has already participated in an August 2018 hydropower workshop with multiple federal and state agencies to discuss various programmatic approaches to meeting the goals of the OFD MOU.

Staff conducted an internal assessment of its environmental review process for the siting and safety of Commission-jurisdictional Liquefied Natural Gas (LNG) facilities. In cooperation with the Pipeline and Hazardous Materials Safety Administration (PHMSA) within the U.S. Department of Transportation, the Commission identified a programmatic approach to improving coordination throughout the permit application process for LNG facilities. As a result, on August 31, 2018, the Commission and PHMSA signed a Memorandum of Understanding (MOU) to establish this framework for improved coordination (see <https://www.ferc.gov/legal/mou/2018/FERC-PHMSA-MOU.pdf>). The Commission's MOU with PHMSA establishes various steps in the coordination process to maximize the exchange of relevant information. The MOU, among other things, includes a framework for sharing documents, inspection findings, and other information to avoid duplication of efforts in the review of LNG projects under the Natural Gas Act, NEPA, and Pipeline Safety Act.

Commission staff has 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 Commission projects in order to coordinate and align the

various environmental review processes. The meetings provide 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.

In response to feedback from stakeholders at various Commission-led outreach events, Commission staff developed and released the online educational training modules “E-Learning: FERC Environmental Review and Compliance for Natural Gas Facilities” to provide additional guidance to all audiences with regard to the Commission’s environmental review process (available at <https://www.ferc.gov/industries/gas/e-learning.asp>). The Commission also developed user-friendly training entitled “Video Training: Learn How to eFile, eComment, and eSubscription at the Federal Energy Regulatory Commission” (available at <https://www.youtube.com/watch?v=jw-YIFk61Fo&feature=youtube>).

Staff also presented a 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 and Southern Gas Association, attended by industry and agency representatives, to discuss improved efficiency and collaboration for the permitting of Commission-regulated natural gas projects.

Finally, the Commission continues to provide enhanced public engagement to ensure that interested parties have appropriate opportunities to contribute to the environmental review of energy infrastructure projects. Staff attends the applicants’ informational meetings and open houses to anticipate conflicts at an early stage of reviews. Staff conducts interagency meetings and scoping and comment sessions.

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.

None

Please attach any additional information as warranted.

Report due February 22, 2019.

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