

FY 2013 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 2013.

The report deadline is February 15, 2014.

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 2013 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 2013 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 13 ECCR Report Template

Name of Department/Agency responding:	Federal Energy Regulatory Commission
Name and Title/Position of person responding:	Jacqueline Holmes/Associate Director
Division/Office of person responding:	Office of the General Counsel
Contact information (phone/email):	202-502-8198 jacqueline.holmes@ferc.gov
Date this report is being submitted:	March 3, 2014
Name of ECR Forum Representative	

- ECCR Capacity Building Progress:** Describe steps taken by your department or agency to build programmatic and institutional capacity for environmental collaboration and conflict resolution in FY 2013, 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.]

To better align its services with the Commission's programs, in June 2013, the Commission's Dispute Resolution Division (formerly known as the Dispute Resolution Service) merged with the Office of Administrative Law Judges and the office was renamed the Office of Administrative Law Judges and Dispute Resolution (OALJDR). Formerly, the DRD was housed in the Office of Administrative Litigation. OALJDR continues to offer all of the services previously provided by dispute resolution specialists and administrative law judges, and continually looks for ways to enhance the visibility and accessibility of these services.

The following highlight the Commission’s DRD accountable performance achievements using ADR/ECR processes:

- The DRD successfully addressed/resolved 185 requests and referrals including ADR/ECR cases and responses to inquiries from the public and others on dispute resolution. Of that number, the DRD addressed 63 ADR cases. Of the 63 ADR cases, 51 are ECR cases (48 ECR cases closed, 1 on hold, and 2 ECR cases are ongoing). The remaining 12 ADR cases are non-environmental.
- In FY 2013, of the 56 mediated or facilitated ADR cases closed (5 more are ongoing, 2 on hold), 93 percent achieved consensual agreement (52 Yes, 4 No Interest).
- In FY 2013, the DRD conducted 33 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 2013, based on the 12 returned survey responses of completed ADR cases, there was a 100% customer satisfaction rate for cases. There was an 89% customer satisfaction rate for outreach.
- In FY 2013, based on the 12 returned survey responses on completed ADR cases, 93.3% reported savings in money and savings in time.

Frequency of ECR Use for ADR Cases*

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

*The decrease in ADR cases in FY 2013 may result from more collaborative skill sets affected parties are acquiring from their ADR case experience and the outreach and education the DRD provides them leading them to prevent or resolve conflicts on their own. In addition, DRD has more experience now on screening the calls to refer callers to offices more suitable to address their immediate subject matter concerns. Further, more contentious long haul interstate pipeline projects were installed prior to FY 2013, especially during FY2011. All these factors could result in a decrease in ADR cases in FY 2013.

2. ECCR Investments and Benefits

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

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

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

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

- Currently, the DRD has five staff positions and full-time neutrals dedicated to ADR/ECR cases, education in the form of training and outreach and rulemakings and other initiatives that result in program and Commission-wide institutionalization of these tools and techniques that become embedded in the Commission's culture.
- With the merger of DRD with the ALJs, DRD revised individual staff performance standards to ensure that individual critical performance elements are (a) aligned with the Commission's overall energy mission, goals, and objectives and (b) are valuable to the entire Commission workforce, external stakeholders, and affected parties in the overall accomplishment of agency mission.
- The Commission has supported ECCR through funding for case travel, outreach and training others to accomplish mission goals.
- The Commission invests in outreach and training for Commission employees and to affected stakeholders to ensure these audiences know that its neutral staff can assist with the resolution of business and environmental-related energy disputes as well as to provide skills training to those same audiences on the front lines to avoid, manage and resolve their own conflicts.
- In May 2010 the Commission issued FERC Order No. 734, which transferred the responsibility for responding to dispute-related calls to the Toll-free Helpline pertaining to the construction and operation of jurisdictional infrastructure projects to DRD. Most cases that enter the DRD Helpline are environmental or ECR cases requiring a neutral third-party to guide the parties in achieving resolution. Since May 2010, DRD has successfully resolved 634 inquiries; 210 infrastructure disputes arose requiring the use of ADR/ECR. DRD has guided landowners, energy companies and other interested entities to a

resolution in 93 percent of these infrastructure disputes (195 of the 210 disputes).

- There are many benefits realized through the use of ECR. Over 50 disputes were resolved by third party neutrals, avoiding the need to tax other agency resources (i.e. litigation, Commission action). By using ECR 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 ECR 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 ECR cases (77% of matters were complete 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 2013; and (b) quantitative or qualitative results (benefits) you have captured during FY 2013.

Please see Response 1 for results of the Commission’s investments in ADR. In FY 2013, the DRD began to focus more closely on trying to understand cost savings to ADR participants by putting a greater emphasis on survey results.

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 twelve responses to this survey question for cases in FY 2013, the DRD received this response:

Yes	10
No	0
Unsure	2

In FY2014 we asked participants to “provide an estimate of cost savings.” The

results were:

\$1000-\$25,000	19.2%
\$25,000-\$100,000	26.0%
\$100,000 - \$500,000	2.7%
\$500,000 - \$1,000,000	5.5%
Over \$1,000,000	5.5%
N/A	41.1%

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

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 very difficult 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 the past and a call for criteria or guidance would be helpful from these leaders in generating uniform, baseline data and parameters. Although Commission staff can attempt to mine information to see if quantifiable data is available for certain types of environmental disputes, there are constraints. Due to the nature and complexity of different disputes it will be very challenging to place a dollar value on resource savings including those which go beyond human capital such as the environmental resources savings. Established or accepted standards of legitimacy in the human capital and environmental and natural resources fields on savings from agencies pursuing such research and OMB-CEQ peers is needed.

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

3. **ECCR Use:** Describe the level of ECCR use within your department/agency in FY 2013 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 2013 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	15 (DRD)	15____	_____	_____	_____	_____	_____	1 (DRD)	_____
Rulemaking	_____	_____	_____	_____	_____	_____	_____	_____	_____
License and permit issuance	7 (4 DRD)	7____	_____	_____	_____	3 (DRD)	_____	_____	_____
Compliance and enforcement action	32 (DRD)	32____	_____	_____	_____	30 (DRD)	_____	_____	_____
Implementation/monitoring agreements	_____	_____	_____	_____	_____	_____	_____	_____	_____
Other (specify): _____	_____	_____	_____	_____	_____	_____	_____	_____	_____
TOTAL	54	54				33		1	
		(the sum of the Decision Making Forums should equal Total FY 2013 ECCR Cases)							

² An “ECCR case” is a case in which a third-party neutral was active in a particular matter during FY 2013.

³ A “completed case” means that neutral third party involvement in a particular ECCR case ended during FY 2013. 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 2013 cases it should equal total ongoing cases. If you subtract sponsored ECCR cases from Total FY 2013 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 2013 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 2013). 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 Office of General Counsel, Office of Energy Projects, and DRD assisted the licensee, four adjacent counties and a local resident to resolve a dispute over revisions to the shoreline management plan for the Smith Mountain Lake Pumped Storage Project No. 2210.</p> <p>The process started in December 2011 and ended on February 28, 2013, when the parties filed a settlement agreement with the Commission. Each 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>The parties met with non-decisional staff in a number of face-to-face mediation sessions in Washington, DC and Roanoke, Virginia, as well as by teleconference. Commission staff led the parties in communicating their interests, which allowed them to explore options and evaluate possible solutions to best meet these interests. Staff also ensured that progress continued by summarizing the parties' comments, tentative agreements, disagreements and future assignments.</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>In the end, the parties achieved a mutually satisfactory agreement that was the result of exploring options that met their common goal of promoting public use of the project while maintaining appropriate environmental values. The Commission approved the filed agreement on January 30, 2014 (146 FERC ¶ 62,083).</p>
Reflections on the lessons learned from the use of ECCR
<p>This case reflects the Commission's longstanding recognition that the use of ADR/ECR can resolve even the most complicated disputes through means other than litigation. By engaging stakeholders early and often in the Smith Mountain Lake Pumped Storage Project proceeding, creative solutions and a timely resolution were reached among a number of parties with divergent interests.</p>

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

The Dispute Resolution Division assisted in resolving an ECCR case in FY 2013 that involved the siting of a solar project. This case was funded through the use of permanent DRD mediation staff at FERC, while each non-FERC staff participant was self-funded.

The developer of a solar project approached the DRD for help to overcome an interconnection dispute with the local utility. There were several issues in dispute but the primary issue turned out to be environmental in nature.

The developer and the utility were in a dispute over the use of a road that was needed to access the project site. This issue itself had several sub issues. First, the road passed through a protected turtle habitat. Second, it was unclear who owned the road, and finally, there was a threshold question of whether a NEPA analysis was needed to determine if this road could be used.

The project involved two Federal agencies and a county government, each of whom had some jurisdiction over the dispute. The FERC mediator convened all the parties and helped them find terms for a resolution of the road issue, which led to a global settlement of all issues.

Without ECCR, the parties had two potential options. First, the matter may have ended up in prolonged litigation, resulting in associated delays and costs. Second, the developer could have terminated the project and lost the more than \$200,000 that had already been invested.

The use of ECCR allowed the project to move forward without the need for litigation, and it also allowed for an agreement to be structured that addressed the interests of all the concerned parties.

6. Priority Uses of ECCR:

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

As discussed earlier, the Commission employs a comprehensive pre-filing process for proposed energy infrastructure projects that incorporates all of the relevant statutes and stakeholders early on, and is designed to promote collaboration in applications for natural gas and hydroelectric projects. For both natural gas and hydroelectric project proposals, Federal, state, local and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues are invited to cooperate in the preparation of NEPA documents. As an example, the Commission, U.S. Army Corps of Engineers, the U.S. Forest Service, and the National Park Service, cooperated with the U.S. Fish and Wildlife Service (FWS), lead agency for the coordination and review of NiSource Incorporated's (NiSource) multispecies Habitat Conservation Plan (HCP) and environmental impact statement. In FY 2013, the agencies issued a final EIS/final HCP, and the FWS subsequently issued its Biological Opinion and Incidental Take Permit, setting forth certain conservation measures developed collaboratively to ensure that NiSource's future actions are mitigated, as well as address the agencies' policies and regulations. As a result, Endangered Species Act and Migratory Bird Treaty Act consultations for NiSource's future covered projects will be streamlined.

As another example, in FY 2013, the Commission, through its Division of Hydroelectric Licensing (DHL), continued to investigate the potential for reaching MOUs with states on DHL's processing of NEPA documents and determinations of study needs, and the state's processing of applications for section 401 water quality certifications under the Clean Water Act. DHL also continued to contact Indian tribes on a project-specific basis seeking 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.

7. Non-Third-Party-assisted Collaboration Processes: Briefly describe other significant uses of environmental collaboration that your agency has undertaken in FY 2013 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.*

A key component of the Commission's pre-filing process is enhanced public involvement to ensure that interested parties have appropriate opportunities to contribute to the environmental review of proposed energy infrastructure projects. Commission staff frequently attends applicants' informational meetings and open houses, in addition to conducting the Commission's scoping and comment meetings. Staff also frequently attends public meetings in the project areas convened by elected officials to answer questions about the Commission and its jurisdiction, develop processes to communicate more effectively, and provide information on how to become involved in the Commission's process.

In FY 2013, the Commission's Division of Hydroelectric Licensing signed an MOU with the state of California that, among other things, established a protocol for consultation during study plan and NEPA preparation phases, and specified options for cooperating on NEPA documents for proposed hydroelectric projects. With respect to study planning, DHL makes determinations with recommendations from federal and state resource agencies on the need for environmental studies during the pre-filing stage. 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.

In FY 2013, DHL engaged in significant tribal consultations with the Narragansett Indian Tribe of Rhode Island regarding the concurrent relicensing of five hydroelectric projects on the Connecticut River in Vermont, New Hampshire and Massachusetts. The five projects have a combined installed capacity of approximately 1,300 megawatts. Discussion topics included: (1) the Tribe's interest in the relicensing of the five projects; (2) the Commission's licensing process; and (3) procedures for future communications between staff and tribal representatives.

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.

A challenge was answering the quantitative and qualitative results questions in response #2. As discussed previously it is difficult to put a value on the use and results of ECCR. It would be helpful for CEQ to provide guidance through the ECCR forum on how to capture such data. Question #1 and #2 also appears to ask for the same cost/benefit information in different ways which could be clarified in the future.

Please attach any additional information as warranted.

Report due March 3, 2014.

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