

## **Background Information on ADR – Regulatory Issues**

In addition to the information contained above, this information provides a basis for the report actions and recommendations.

### **APPENDIX 1: REGULATORY ALIGNMENT QUESTIONNAIRE FINDINGS**

1. It was often very difficult for one party to get the other to sit down and have face-to-face discussions. Most often cited (71%) were that one party viewed its offer as final, the other party was wrong, or they were being ignored.
2. Delays and timing were frequently cited as a problem.
3. Two-thirds of the parties had been negotiating between 6 to 8 months before involving the EUB.
4. Most viewed the regulatory process as the only option to get a solution or to engage the other side (48%); as the other side, some felt they were dragged into the regulatory process (19%).
5. Ninety-eight per cent indicated it is appropriate to use the regulatory process to resolve disputes.
6. The companies often disagree on the need and priority to enter into meaningful negotiations. (Question: Is it a problem of a small vs. a big company, a power issue, or competitive advantage?)
7. There appears to be disagreement on what level of management involvement is needed. However, there was no trend in this regard; i.e., 17 out of 25 felt the other side involved different levels, but 8 out of these 17 indicated they brought lower levels of management than the other company. (The key is to determine and engage the right authority levels required for resolution.)
8. There is low support to engage senior management in the resolution process. (Question: Is there a relationship between application type or the dollars involved to the level of senior management needed?)
9. Only 14 of the 31 respondents used outside assistance (mediator or EUB staff) in their negotiations. There appears to be little understanding about the need for a person to assist in the negotiation process. The majority (10 of the 14) that did use outside assistance were encouraged to do so by regulatory staff.
10. Only 9 of 30 respondents had participated in an EUB hearing, and 4 felt that all of their outstanding issues were resolved. In the other situations, 12 parties developed their own solution, EUB staff assisted 6, 2 went through litigation, and 6 followed some form of EUB direction.

11. There was a fairly even split between those who viewed the cost of dealing with the dispute as “low” compared to “significant.”
12. To resolve the dispute more quickly, 15 out the 34 suggestions were for the EUB to be more proactive in setting clear requirements/guidelines and a quick hearing date. Others suggested a need to meet sooner.
13. There was strong support for some better method of getting parties to the table. Most of the respondents (86%) supported some form of strong EUB direction. Eleven out of the 28 respondents indicated that mandatory measures should be used to force the parties to the table (PADR meeting).
14. Most participants indicated that EUB staff (ensure right staff) should be present at some or all of the meetings.
15. Sixty-seven per cent indicated that a regulatory process is required and that ADR is not a replacement. Twelve of the respondents did not express concerns with third-party assistance. Eleven had concerns about delays or costs. Six indicated some concerns about loss of confidential data or perhaps showing their cards too soon.

When asked for additional comments, most indicated the need to improve understanding of ADR.

*Interviewer comment:*

- There are numerous difficulties to overcome to encourage more widespread use of ADR—lack of understanding, the competitive nature of the industry, the tendency to jump to solutions, and perhaps a stigma related to using outside assistance.

**APPENDIX 2: C2C INTERVIEW RESPONSE SUMMARY  
TEAM 2 – REGULATORY ALIGNMENT QUESTIONNAIRE**

**INTRODUCTION**

The results of 40 contacts initiated and 31 interviews conducted in January and February 2003 are summarized below. Companies were selected from a list of EUB C2C files from 2001 and 2002. The team attempted to interview both sides of the dispute to ensure that more complete feedback was received. Overall, the breakdown is as follows:

Interviewed

- 16 applicants
- 15 opposing parties

Issues

- 8 common processor/ratable take
- 11 pooling/drainage
- 6 facility/gas plant
- 4 spacing
- 2 well/disposal

**PURPOSE**

The purpose of the questionnaire is to gain some insight on the impacts of disputes between companies, the measures they have used in trying to resolve them on their own, and what led them to use the regulatory process compared with various appropriate dispute resolution (ADR) options, such as third-party facilitation, mediation, or arbitration. A summary of the responses is provided below. The analysis assisted the team in identifying a number of issues to be considered and developing recommendations to be provided to the taskforce and the EUB.

The questionnaire was divided into four parts:

- Type of dispute and what aspects made the dispute difficult
- Initial steps taken to try to resolve the dispute(s)
- Impacts of the dispute(s)
- Measures that could be initiated to enhance the early use of ADR and what enhancements to EUB processes should be considered

**A) DISPUTE BACKGROUND**

16. Type of dispute
- Summarized in the introduction
17. What aspects of the dispute made it difficult to resolve compared to others you or your company has been involved with?
- Won't meet or negotiate 4
  - Ignored calls – no interest or incentive 8
  - Very positional 6
  - Only written, no face to face 1
  - Difference in data interpretation 6

- Pressure tactics 1
- Relationships 2
- Clarity needed in EUB policy 6

*Interviewer comment:*

- There appears to be a significantly higher level of concern from the company that initiated the regulatory action.

**B) STEPS TAKEN TO RESOLVE**

3. What was the negotiation process used?

- Face-to-face meeting
- Phone conference/meetings
- Paper flow
- Regulatory body staff
- Combination
- please explain) \_\_\_\_\_

*Interviewer comment:*

- Most used a combination, but most started with paper flow and many were not able to meet face to face.

4. How long did the negotiations take before an EUB application or objection was considered?

- >24 months: 1
- 12 to 23 months: 2
- 8 to 12 months: 2
- 6 to 8 months: 6
- <6 months: 19

5. What prevented your company from resolving the disagreement with the other company (e.g., you needed to file an EUB application or an objection)?

- Would not meet face to face (final position, fair offer, no further negotiations as they were right, too far apart) 15
- Ignored or was low priority for the other side 7
- Could not agree on technical details 5
- It was a tactic by the other side to gain advantage (completive drainage, nothing to gain, or stall) 4

6. Why did you participate in the regulatory process compared to other options (i.e. what were your expectations both pro and con)?

- Only option 15
- Dragged in – forced by application 6
- Just did it – protect interests 4
- Final process 3

- Needed a third party 2
- Required application by EUB 1

**In this regard, would you agree that your company has pursued or was drawn into the EUB processes, as the other party was not willing to participate or continue with negotiations?**

- Strongly agree: 16
- Agree: 12
- Don't know: 1
- Disagree: 1
- Strongly disagree: 0

7. Do you believe it is appropriate to use the regulatory process to resolve company/company disputes? When and why?

- No other way 30
- No 1

Why?

- To engage the other side 7
- To get or clarify information 1
- To get a decision 10
- To deal with timelines 3
- **A last resort** 2
- **Concerned with abuse** 3
- Easier to get a hearing 1

8. What level of management was actively involved in the negotiations, and what was the degree of their direct involvement and support to resolve?

A) From your company?

Management level / involvement	Significant	Neutral	Low
Senior	17	2	4
Middle	11	2	
Supervisory	4	1	
Technical	17	2	2
Area	2		2
Legal	6		4
Accounting			2
(Other—define)			

B) For the other company?

Management level / involvement	Significant	Neutral	Low
Senior	15	2	4
Middle	17		
Supervisory	4	2	1
Technical	15	1	
Area	2	1	2
Legal	5		4
Accounting			2
(Other—define)			

*Interviewer comment:*

- There appears to be some imbalance between the authority levels as viewed by the other side; that is, 17 out of 25 felt the other side involved different levels of authority. However, 8 out of the 17 indicated they involved lower levels. Therefore the team could not reach conclusions regarding authority level concerns.

The team believes that a key factor should be for the parties to discuss the required authority levels needed for their negotiations (it varies, depending upon the issues and dispute value) and how to involve the right people in the negotiations.

9. How was the dispute resolved?

- Parties agreed to a solution: 12
- By assistance of EUB staff: 6
- EUB hearing/decision: 14
- Went to litigation/arbitration: 2
- ADR: 2

*Interviewer comment:*

- Many of the 12 had been involved with a PADR meeting.

10a. If you used third-party assistance (e.g., facilitator, mediator, outside expert, EUB staff), what triggered their involvement?

- Money: 1
- Time: 1
- Relationships: 0
- Avoidance of litigation: 0
- Encouraged by regulatory body: 10

*Interviewer comment:*

- 12/28 did not use outside assistance.

10b. What type of experience did the third-party assistance have and what was their role (i.e., did they focus on process)?

*Question:*

- Does the lack of response tell us something?

11. How would you rate the success of the use of a third-party process?

- Very: 6
- Generally: 4
- Somewhat: 3
- Partially: 2
- Not at all: 3

12. How often has your company been involved in an EUB process in the last two years (applications or objections)?

- 5 +: 2
- 3 to 4: 8
- 1 to 2: 16
- none: 3

13. If you participated in an EUB hearing, what was your experience and were all the issues resolved as a result?

- No or not for a long time 18
- Not all resolved 5
- All resolved (but a lot of money) 4
- Need to get decision on requirements 1

14. How often has your company been involved the use of third-party assistance to resolve disputes (not EUB) in the last two years?

- 5 to 6: 2
- 1 to 2: 9
- none: 13
- N/A: 4
- Other: 2

### **C) IMPACTS OF A DISPUTE**

Impacts include both direct costs of staff and resources to deal with the dispute, plus the lost opportunity to use these resources elsewhere.

15a. What is your estimate of the process cost (\$) of the dispute, including staff time, legal, lost revenue, fees, etc.

- >1MM: 11
- 750 to 1MM: 1
- 500 to 749K: 1

• 250 to 500K:	3
• <250K:	21
15b. What is your estimate of the cost (\$) of what was at stake in the dispute?	
• >1MM:	16
• 750 to 1MM:	3
• 500 to 749K:	2
• 250 to 500K:	4
• <250K:	3
16a. How significant was the amount of the dispute to your company?	
• Significant:	10
• Moderate:	8
• Low:	11
16b. What is your estimate of the indirect cost of not settling the dispute such as lost relationships or reputations, lost contracts, lost opportunities in using resources and people elsewhere, etc? Are these costs	
• Significant:	9
• Moderate:	9
• Low:	11

#### **D) IMPROVEMENTS TO RESOLUTION PROCESSES**

17a. What could have assisted in resolving the matter quicker?	
• EUB more proactive (guidelines, set early hearing)	15
• Meet sooner ( e.g., 1 letter and meet)	5
• Process – fairness	2
• Third-party PADR	2
• Different people	3
• EUB dismiss objection	2
• Expand objection requirements (penalty?)	2
• OK or nothing	5
•	
17b. For example: If senior management had been more involved in the process, would it have been enhanced?	
• Definitely:	2
• Might:	2
• Don't know:	7
• No:	11
• Created more problems:	1

#### *Question:*

- What bearing does the application type or value of the dispute have on the answer to this question?

18. What processes or factors need to be in place for companies to use ADR early and prior to a regulatory process?
- Process to get parties to the table (e.g. mandatory, compel, when application filed) 15
  - Consistent and clear EUB approach 2
  - Collaborate vs. regulatory 2
  - Persuasion by EUB 1
  - Any party may ask, and if refuse, deal in short time 1
  - Improve skills of industry people 1
  - Start the clock ticking (retroactive) and parallel path 1
  - Don't know 2
- 19a. Do you see ADR as a replacement for regulatory processes or litigation?
- Strongly agree: 6
  - Agree: 2
  - Don't know: 0
  - Disagree: 13
  - Strongly disagree: 7
  - Hindrance: 2
- 19b. Or do you see ADR as a preliminary or parallel process to try to avoid the final steps of hearings and court proceedings?
- Strongly agree: 2
  - Agree: 12
  - Don't know: 3
  - Disagree: 3
  - Strongly disagree: 0
  - Supplement: 2
- 19b. What do you think about the risk of using third-party assistance (e.g., if there is no settlement)?
- Loss of confidential data, use later or show cards 6
  - Delays 9
  - Little or no risk 12
  - Costs 2
  - Loss of creditability of parties 1

*Interviewer comment:*

- *Does this also reflect a lack of understanding and trust in ADR?*

20a. Do you believe it is important to have EUB staff participate? If so, how often and why?

- Yes or as required 16
- Sometimes /first meeting 3
- No 1
- Make sure it is the right staff 4

20b. Should the EUB put in measures to encourage (or force) the parties to engage in ADR before making an application? Such measures might be guidelines (more open disclosure), pre-application requirement, mandatory triggers, PADR meeting or other options.

- Yes 20
- Not sure 2
- Ok now 2
- Case by case 1
- Require steps before 1
- No 4

21. What process improvements are needed in the EUB ADR program or application requirements, including encouragements or enhancements in the use of dispute resolution processes?

- Process faster re suggesting ADR and hearing date 6
- Disclose same info in ADR as hearing 2
- Improve evaluation of objections 2
- More awareness of ADR 2
- Ensure fairness 1
- Prior to application 1
- Improve screening for ADR 1
- Current ok 2

22. What other comments could you provide that may assist this initiative to have companies use ADR to resolve their disputes?

- Improve ADR awareness 8
- Improve staff involvement 3
- Enhance use 6
- Clarify partial resolutions 1
- Avoid abuse 2
- Improve EUB decision making 1

Can your company name to be used in the survey?

Yes  No  Other authority  
 required

Contact \_\_\_\_\_