
SUBMITTED COMMITTEE REPORTS

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REPORT OF THE ALTERNATIVE DISPUTE RESOLUTION COMMITTEE*

This report of the Energy Bar Association's (EBA) Alternative Dispute Resolution Committee (Committee) will examine recent developments in settlement procedures at the Federal Energy Regulatory Commission (FERC or Commission) that occurred following the Commission's establishment of its Dispute Resolution Services division (DRS) in February 1999. The objective of this report is to provide summaries of recent settlements facilitated by the DRS and to describe the services available at the DRS which may be of help to EBA attorneys appearing before the Commission.

I. ALTERNATIVE DISPUTE RESOLUTION AT THE FEDERAL ENERGY REGULATORY COMMISSION

The Commission's preference for disposing of cases through settlement existed under the Federal Power Commission (FPC). From 1976 through 1995, the Commission issued a series of Orders and regulations that established Alternative Dispute Resolution (ADR) procedures, and included these procedures in the overall framework for formal dispute settlements.¹ Until recently, nearly all mediation and settlement occurred under the direction of the Office of Administrative Law Judges (ALJ).

The Commission's Dispute Resolution Service represents an extension of the Commission's existing settlement procedures. The Commission had been developing ADR settlement procedures to accompany its adjudication and rulemaking efforts outside of the hearing process for several years. These practices were in keeping with long-standing executive and judicial policies that favored the use of ADR procedures when appropriate.²

* The Committee would like to thank Michael Zolandz, Jr., who contributed greatly to researching and writing this article while working as a Summer Associate with the Energy Law Group at Steptoe & Johnson, LLP in Washington, D.C.

1. See generally Order No. 578, *Alternative Dispute Resolution*, 71 F.E.R.C. ¶ 61,036 (1995)(codified at 18 C.F.R. §§ 343, 385)(codifying dispute resolution procedures following the passage of the Administrative Dispute Resolution Act of 1990, 5 U.S.C. §§ 571-83 (1988), as amended by Pub. L. 102-354, 106 Stat. 944 (1992)).

2. A 1998 memorandum from President Clinton to all heads of executive agencies required all federal agencies to encourage the use of various forms of ADR and challenged agency heads to develop a new ADR program in the following year. The President also ordered the creation of an Alternative Dispute Resolution Working Group to "facilitate and encourage" the use of ADR. *Designation of Interagency Committees to Facilitate and Encourage Agency Use of Alternate Means of Dispute Resolution and Negotiated Rulemaking*, Memo, Office of the Press Secretary, 34 WEEKLY COMP. PRES. DOC. 749 (May 1, 1998) (Presidential Memorandum). See also Chief Justice Warren Burger's famous call for action, *Isn't There a Better Way?*, 68 A.B.A. J. 274 (1982).

ADR is broadly defined as "any procedure that is used [in lieu of adjudication] to resolve issues in controversy."³ Among the examples of ADR listed in both federal regulations and the mission statement of the DRS are facilitation and mediation. In general, facilitation involves a discussion of the procedures that will be used to resolve the dispute between the parties. The facilitator takes no position on the underlying substantive issues and generally focuses on procedural assistance. This type of ADR is of particular use when the parties' positions are not extremely polarized, when a reasonable level of trust already exists between the parties, or when the parties face a common problem.⁴ Mediation involves more substantive participation on the part of the neutral party to the dispute. Here, the mediator may offer both procedural and substantive suggestions to encourage the parties to "expand the range of possible resolutions."⁵ Mediation may also involve individual meetings, or caucuses, between the mediator and one or more parties to the dispute.

Proponents of ADR champion efficient solutions to disputes in terms of time and money, and the fact that resolutions may be tailored specifically to meet the interests of the complainants. Complainants can craft custom solutions and do not need to rely on Commission mandated remedies. Furthermore, ADR provides each side with the opportunity to focus on valuing interests in a mutually beneficial settlement instead of defending against all liabilities as in a hearing-type setting. The emphasis on interest bargaining allows complainants to craft creative solutions, in order to accommodate each other's interests, and to develop mutually beneficial solutions.

II. THE COMMISSION'S DISPUTE RESOLUTION SERVICES

Following the issuance of the Presidential Memorandum, the Commission announced the creation of the Office of Dispute Resolution Service on February 24, 1999, and promulgated new regulations governing the complaint process and the use of ADR.⁶ These new regulations were intended to reflect the goals of the Presidential Memorandum by injecting ADR into each stage of the FERC complaint process, including the pre-complaint process. The Commission's ADR procedures also were intended to comply with the amended Administrative Dispute Resolution

3. Administrative Dispute Resolution Act of 1996, 5 U.S.C. §§ 571-84, as amended by Pub. L. No. 104-320, 110 Stat. 3870 (Oct. 19, 1996), 18 C.F.R. § 385.606(a) (2000)[hereinafter ADRA].

4. Office of Personnel Management, *Alternative Dispute Resolution: A Resource Guide 3* (1999), available at <http://www.opm.gov/er/adrguide>.

5. *Id.* at 5-6.

6. See generally DISPUTE RESOLUTION SERVICES, REPORT ON THE FEDERAL ENERGY REGULATORY COMMISSION'S ALTERNATIVE DISPUTE RESOLUTION INITIATIVES (Dec. 20, 1999)[hereinafter DRS Report]. Additional information may be obtained through the Commission's website, available at <http://www.ferc.fed.us/public/drs.htm> (last modified Dec. 20, 2000). The Final Rule was issued on July 29, 1999, and took effect on May 10, 1999. See generally Order No. 602, Complaint Procedures, 86 F.E.R.C. ¶ 61,324, 64 Fed. Reg. 17,087 (Apr. 8, 1999).

Act of 1996.⁷ The newly-created DRS was designed to perform the facilitation and mediation duties of ADR, and also provide “outreach” and “in-reach” programs to educate potential complainants and agency officials on the uses and benefits of ADR.⁸ Services offered range from confidential consultations to explore whether settlement is appropriate for a particular complaint after filing, to advise on effective negotiation strategies, and to interpretations of Commission Rules and Regulations.

As part of its efforts to provide consultation services, the DRS staffs the Commission’s Enforcement Hotline, a toll-free telephone service that will entertain complaints in the pre-filing stage and attempt to provide settlement advice or assistance.⁹ All calls to the Enforcement Hotline are confidential and do not preclude formal action if no resolution is reached. Attorneys responding to the calls are responsible for investigating the allegations and providing informal, neutral evaluations of the dispute.

The DRS, although a division of the FERC, acts as a neutral in all proceedings, providing an alternative forum for settlement that is divorced from the decisional process of the Commission. This position as a facilitator is in opposition to the role of both Commission Trial Staff and Administrative Law Judges, who may take substantive positions on the issues to be settled. Thus, the DRS enables the Commission to offer a full line of ADR services to potential complainants provided by neutrals. Because issues of fact are not adjudicated at the DRS settlement proceedings and consultations, *ex parte* rules do not apply.¹⁰ In addition, all consultations are confidential.¹¹

In a standard complaint, a complainant must clearly identify the action complained of, explain how the action violates the law, state the business issues presented by the complaint, make a good faith valuation of the injury, indicate practical injuries resulting from the action, state whether the claim is pending in another forum, and state the relief requested.¹² Public notice of the complaint will be issued by the Commission.¹³ Under the new complaint regulations, complainants are encouraged to use ADR before filing a formal complaint.¹⁴

7. *Supra* note 3.

8. The FERC offered Brown-Bag Lunches at law firms to educate practitioners on the DRS and the value of mediation services available at the Commission. Interview with Richard Miles, Director of the Commission’s Dispute Resolution Services, in Washington, D.C. (Jan. 23, 2001)[hereinafter Richard Miles].

9. Attorneys staffing the Enforcement Hotline may be reached using the toll-free number 1-877-303-4340 to reach the DRS administrative staff, 1-877-337-2237 (1-877-FERC-ADR).

10. *See generally* Order No. 608, Regulations Governing Off the Record Communications, 88 F.E.R.C. ¶ 61,225 (1999); 18 C.F.R. § 385.2201-02.

11. Disclosures are confidential to the extent that disclosure is not otherwise required by law, or necessary to prevent manifest injustice, prevent violation of law, or prevent harm to the public. *See generally* ADRA, 5 U.S.C. § 573; *cf.* 18 C.F.R. § 385.606.

12. 18 C.F.R. § 385.206(b)(1)-(7) (2000).

13. 18 C.F.R. § 385.206(d) (2000).

14. 18 C.F.R. § 385.206(b)(9) (2000).

The new regulations require complainants to include statements regarding the use of ADR, specifically the following: 1) whether ADR was used before filing a formal complaint and any reasons why ADR was not chosen; 2) the complainant's opinion as to whether ADR would be suitable to the complaint; 3) if the complainant believes that ADR would be successful, a list of the types of ADR that would have the greatest chances for success; and 4) whether there is an agreement between the parties to the complaint with respect to dispute resolution.¹⁵

Under the amended regulations as originally proposed, once a complaint has been filed, answers are required within twenty days of filing (thirty days if the complainant requested privileged treatment of information contained in the complaint).¹⁶ Under the regulations, therefore, an answer could be required even as settlement negotiations or ADR were on-going. The Commission addressed this potential conflict in Order No. 602-A by noting that the Commission would entertain requests for extensions for filing the answer as this embodied "one of the principles of the complaint rule of encouraging consensual resolution where possible."¹⁷ In order to seek an extension of time for any reason, including the continuation of ADR, the requesting party must file a motion under the Commission's formal requirements for filings in proceedings.¹⁸

After answers are filed, or during any stay or extension granted under Order No. 602-A, the Commission assigns the dispute to a complaint path.¹⁹ The available paths are ADR,²⁰ appointment of a settlement judge,²¹ issuance of an order on the merits of the pleadings, or a formal hearing before an ALJ.²² Petitioners may request fast-track treatment by designating a in bold type "COMPLAINT REQUESTING FAST TRACK PROCESSING."²³ If the Commission finds the need for expedition persuasive, the formal time limits and procedures under section 206 may be shortened at the Commission's discretion.²⁴

III. THE DISPUTE RESOLUTION PROCESS AT THE COMMISSION

Once a complaint is submitted, it is not uncommon for the Commission to formally "encourage" the parties to consider use of the DRS. In some instances, the Commission will order parties to engage in a consultation (convening session) through which the DRS will decide if mediation

15. *Id.*

16. 18 C.F.R. § 385.206(f) (2000).

17. 88 F.E.R.C. ¶ 61,114 (1999).

18. 18 C.F.R. § 385.2008 (2000).

19. 18 C.F.R. § 385.206(g) (2000).

20. 18 C.F.R. § 385.206(g), referring to 18 C.F.R. §§ 385.604-06 (2000).

21. 18 C.F.R. § 385.206(g), referring to 18 C.F.R. § 385.603 (2000).

22. 18 C.F.R. § 385.206(g) (2000).

23. 18 C.F.R. § 385.206(h)(2) (2000).

24. 18 C.F.R. § 385.206(h)(3); cf. § 385.206(i) (2000).

would be appropriate and, if so, develop a plan for settlement.²⁵ These consultations generally will last one to two hours and are intended to lay the groundwork for the scope of the settlement to be pursued and the procedure.²⁶ The scope may be broad or may be limited to specific issues raised in the complaint. The procedure may involve mediation facilitated by a DRS neutral or one selected by the parties, use of an ALJ in the Commission's Settlement Judge proceedings, settlement negotiations involving Commission Trial Staff, mediation performed without the aid of DRS,²⁷ or a return to formal adjudication. If the consent of all parties is obtained, the mediation plan developed by the DRS becomes the "complaint resolution path."²⁸ If consent is not obtained from all parties, the Commission will process the complaint either by submitting the matter to a hearing before an ALJ or deciding the matter on the pleadings.²⁹ Hearing procedure addresses familiar subjects such as motions, discovery, intervention, amendment of pleadings, summary disposition, provision of testimony, and depositions.³⁰

In order to utilize ADR, complainants must submit a written proposal signed by all the parties to the dispute. This proposal should detail the method or methods of ADR that the complainant wishes to use, along with an identification of the issues in the dispute, and a certificate of service.³¹ The use of ADR, although encouraged by the FERC in most circumstances, is not automatically available. The new regulations note that ADR may not be appropriate in all circumstances and outlines six areas in which ADR will not be used unless the ADR process can overcome the "identified factor."³² Among these problem areas are circumstances in which "definitive or authoritative resolution" is needed to create precedent, situations where a "full public record" is important and ADR cannot provide such a record, or where the matter in question "may bear upon significant questions of policy" and ADR would not aid in the development of "recommended policy."³³ If the Commission rejects a proposal to use ADR, that decision is not subject to judicial review.³⁴

A request for ADR may be submitted by the parties "at any time"

25. 18 C.F.R. § 385.601 (2000).

26. Richard Miles, *supra* note 8.

27. *See generally Montana Power Co.*, 91 F.E.R.C. ¶ 61,296 (2000) (Despite the encouragement of the DRS and the Commission, the parties declined to allow private settlement); *Arizona Pub. Serv. Co.*, 88 F.E.R.C. ¶ 61,183 (1999) (after DRS consultation on issue of need for transmission upgrades on tribal lands, parties agreed to pursue their own settlement negotiations, which ultimately were successful with the assistance of DRS).

28. 18 C.F.R. § 385.206(g) (2000).

29. *Id.*

30. *See generally* 18 C.F.R. §§ 385.401, 385.501.

31. 18 C.F.R. § 385.604(e) (2000).

32. 18 C.F.R. § 385.604(a)(2) (2000).

33. *Id.*

34. 18 C.F.R. § 385.604(a)(4) (2000).

throughout the complaint process, including during the hearing stage.³⁵ Parties may also elect to attempt to settle some elements of their dispute through ADR, while pursuing others through the standard complaint process.³⁶ In addition, ADR settlements are given the same force as settlements reached through traditional channels. The use of ADR at any point in the complaint process, however, is still intended to be a supplement to, instead of a limitation on, traditional methods.³⁷ Appeal to settlement procedures does not impair any right or claim available in the normal hearing process if a complainant chooses to abandon a settlement procedure.³⁸ While ADR proceedings have been subject to confidentiality provisions,³⁹ additional provisions promulgated through the new regulations serve to protect the identity of the parties, as well as protecting the information exchanged, throughout the dispute resolution process.⁴⁰

Through the procedures developed to implement DRS, the Commission is responding to many of the challenges historically presented by mediation and arbitration processes in more widely available case law. These challenges include concerns related to partisan ALJs and arbitrary settlement orders. The flexibility of the services offered by DRS allow complainants to choose a solution tailored to the needs of the situation and to decline to participate in ADR, if the parties do not believe it will be effective. Possible procedures offered by the Commission now range from encouragement and advice to parties through oversight of third-party neutrals who do not have a substantive interest in the dispute,⁴¹ to formal arbitration-type proceedings involving fact-finding to an extent agreed upon by the parties. Consultations are confidential, easing the fears of litigators wary of showing any sign of weakness or compromise. Finally, the requirement of consent of all parties and approval by the Commission ensures that important public interests are protected.⁴²

IV. RECENT SETTLEMENTS

The following are summaries of a selected sample of recent cases where Commission referrals led to settlement using the services of DRS. Many cases resolved with the use of DRS services are not reported in the Federal Register—in some cases no complaint is filed. Details of settle-

35. 18 C.F.R. § 385.604(d) (2000).

36. See generally *Kern River Gas Transmission Co.*, 90 F.E.R.C. ¶ 61,124 (2000) (non-settling party allowed to adjudicate substantive issues at formal hearing while all other parties joined settlement agreement); *Vector Pipeline L.P.*, 89 F.E.R.C. ¶ 61,242 (1999) (issues concerning the terms of easements in pipeline construction authorization settled through ADR process).

37. 18 C.F.R. § 385.604(a)(1) (2000).

38. 18 C.F.R. § 385.602(i) (2000) (Reservation of Rights).

39. 18 C.F.R. § 385.606(a) (2000).

40. *Id.*

41. See the discussion of *Arizona Pub. Serv. Co.*, 88 F.E.R.C. ¶ 61,183 (1999), *infra* pp. 140-41.

42. Cf. *New York Independent Sys. Operator, Inc.*, 91 F.E.R.C. ¶ 61,218 (May 31, 2000, as amended June 15, 2000) (NYISO request for mediation services rejected by New York Public Service Commission).

ment negotiations are confidential, so many important details may be not appear in the Order accepting the proposed settlement.

*A. The Kansas Ad Valorem Tax Proceedings*⁴³

This series of cases involved thousands of claims totaling \$400 million under both state and federal jurisdiction. The origin of the claims was a 1988 decision by the Commission that Kansas' *ad valorem* taxes had been improperly added to the maximum allowable prices for natural gas under the Natural Gas Policy Act.⁴⁴ The Commission began ordering refunds from producers and other "first sellers" in 1988.⁴⁵ After three trips to the Court of Appeals⁴⁶ and consolidation of claims in several states at every jurisdictional level, the Commission's holding ultimately was upheld.⁴⁷ However, many issues remained outstanding. These issues included allocation of refunds among principals and other owners, disposition of uncollectable accounts, as well as a determination of the amount to be distributed by the central pipeline owner to customers once the liability of the producers and first sellers was established.⁴⁸

DRS was called on to implement a Commission Procedural Order establishing timetables for producers to make refunds to pipelines and pipelines to make refunds to consumers.⁴⁹ After seventeen years of protracted litigation, the remaining issues were settled in a matter of months. Consequently, pipelines quickly received funds with which to make customer refunds. Furthermore, the final nature of the settlement ensured that parties would not be subject to the additional uncertainties of potential appeals.

*B. Phelps Dodge Corporation v. El Paso Natural Gas Company*⁵⁰

This dispute arose under the provisions of a gas transportation service agreement between the parties.⁵¹ Under that agreement, El Paso was required to add a delivery point to its pipeline to meet the full-requirements service of Phelps Dodge's refinery.⁵² The Commission issued an order requiring El Paso to install the connection or show cause why it physically could not do so.⁵³ El Paso wished to abandon facilities related to the claim and had filed a request to do so. El Paso claimed that the pipeline was no

43. *Northern Natural Gas Co.*, 93 F.E.R.C. ¶ 61,311 (2000); *Colorado Interstate Gas Co.*, 93 F.E.R.C. ¶ 61,185 (2000); *Williams Gas Pipelines Cent., Inc.*, 93 F.E.R.C. ¶ 61,030 (2000).

44. *Northern Natural Gas*, 93 F.E.R.C. ¶ 61,311, at 62,073 & n.5, citing *Williams Gas Pipelines Cent.*, 83 F.E.R.C. ¶ 61,351 (1988).

45. 93 F.E.R.C. at 61,608.

46. *Id.* at 61,608, nn.2, 4, and 5.

47. 93 F.E.R.C. at 62,073, citing *Public Serv. Co. of Colorado v. FERC*, 91 F.3d 1478 (D.C. Cir. 1996).

48. 93 F.E.R.C. at 62,073.

49. *Id.* at 62,073, n.5.

50. *Phelps Dodge Corp. v. El Paso Natural Gas Co.*, 89 F.E.R.C. ¶ 61,265 (1999).

51. *Id.* at 61,770.

52. 89 F.E.R.C. at 61,770.

53. *Id.*

longer being used to provide transmission service, but instead was providing distribution services.⁵⁴ Furthermore, El Paso claimed that it could not install the connection facilities because the pipeline capacity was already dedicated to another full-requirements shipper, Southern Union.⁵⁵

The Commission determined that El Paso was obligated to provide service and expand capacity at its own cost.⁵⁶ A meeting with DRS staff was ordered to resolve remaining issues. Southern Union intervened to protect its rights to pipeline capacity.⁵⁷ After a one-day conference with a mediator from DRS, a settlement was reached between El Paso, Phelps Dodge, and Southern Union.⁵⁸ Under the final agreement, El Paso was granted leave to abandon the line by selling it to Southern Union.⁵⁹ Southern Union will install the connection to Phelps Dodge's refinery and El Paso will install an upstream connection to maintain the capacity to serve its obligations to Southern Union.⁶⁰ Needless to say, it would have been difficult for the Commission to order such a flexible remedy in an adjudication.

C. Arizona Public Service Co.— the "Nudge" approach⁶¹

This case highlights the need for flexibility in administrative facilitation of settlement agreements. The claim at issue was whether the Navajo Tribal Utility Authority (NTUA) was required to make improvements to transmission facilities located on tribal lands as required by Arizona Public Service Co. (APS) to meet the service requirements of APS's electric transmission tariff.⁶² NTUA was responsible for maintaining the lines, but claimed that the upgrades demanded by APC were unnecessary given the small loads involved and the unique nature of services provided within NTUA's jurisdiction.⁶³ The Commission accepted APS' service agreement and set the matter for hearing. However, the Commission held the claim in abeyance to give the parties the opportunity to pursue settlement.⁶⁴

The DRS held a convening hearing with the parties. The parties requested that they be permitted to negotiate on their own, but were required under the Commission's order to report progress to DRS.⁶⁵ The DRS reported that the parties settled their dispute within sixty days with-

54. 89 F.E.R.C. at 61,771.

55. *Id.* at 61,770-71.

56. 89 F.E.R.C. at 61,771.

57. *Id.* at 61,770, n.5.

58. 89 F.E.R.C. at 61,770, n.5.

59. *Id.* at 61,771.

60. 89 F.E.R.C. at 61,771-72.

61. *Arizona Pub. Serv. Co.*, 88 F.E.R.C. ¶ 61,183 (1999) (accepting unexecuted service agreement, but holding final order in abeyance pending outcome of settlement proceedings).

62. *Id.* at 61,593-94, nn.1, 2.

63. 88 F.E.R.C. at 61,593-94.

64. *Id.* at 61,594-95.

65. 88 F.E.R.C. at 61,595.

out substantial input from DRS staff.⁶⁶ However, members of the DRS staff monitored the negotiations to ensure that appropriate movement towards settlement was being made. DRS officials believe that this encouragement led to a settlement between parties that otherwise might not have reached agreement.⁶⁷

*D. New England Power Pool*⁶⁸

Development of electric wholesale markets through Independent System Operators (ISO) and Regional Transmission Organizations (RTO) presents a potentially productive arena for the implementation of ADR techniques. The issues are complex and fact intensive, the number of parties is large, the market characteristics may be specific to each area, and the novelty of the issues presented leads itself to creative solutions. The Commission has strongly encouraged the use of DRS in these situations.⁶⁹

In the New England Power Pool (NEPOOL) case, the parties submitted proposed governance provisions that allocated voting rights based on, among other things, the size of the entity and the type of service it provided (generation, transmission, and/or distribution).⁷⁰ Although no one entity dominated, the Commission was concerned that the eight largest entities controlled a sizeable majority of the voting power in the 112-member group,⁷¹ especially considering that each of these large members was a vertically-integrated transmission-owning utility.⁷² The Commission rejected the plan as giving too much influence to these utilities.⁷³ A subsequently revised plan also was rejected for failing to remedy the imbalance.⁷⁴ The parties were ordered to submit an acceptable solution within sixty days.⁷⁵ In the alternative, the Commission would institute a governance structure of the Commission's choosing.⁷⁶

With the aid of DRS, the parties commenced a proceeding before a settlement judge.⁷⁷ The ALJ guided the parties through a structured mediation process and the parties submitted a revised governance structure

66. Richard Miles, *supra* note 8.

67. *Id.*

68. *New England Power Pool*, 88 F.E.R.C. ¶ 61,079 (1999) (order accepting revised governance provisions developed with aid of the DRS).

69. *See generally New England Power Pool*, 86 F.E.R.C. ¶ 61,262 (1999) (rejecting revised governance provisions and noting that the Commission would issue its own proposal if parties failed to produce an acceptable settlement).

70. *Id.* at 61,962-63, n.4, same case, 83 F.E.R.C. ¶ 61,045 (1998) (rejecting proposed governance procedures).

71. 86 F.E.R.C. at 61,963.

72. *Id.*

73. 83 F.E.R.C. at 61,260.

74. 86 F.E.R.C. at 61,964-65, n. 14.

75. *Id.* at 61,965.

76. 86 F.E.R.C. at 61,965, n.23.

77. DRS Report, *supra* note 6, at 9.

within the required time frame.⁷⁸ The ALJ's technique was to divide the representatives into groups with common interests, develop consensus within the groups, and suggest solutions to disagreements while working groups focused on concrete issues.⁷⁹ The end result was a final proposal, which was accepted by the Commission.⁸⁰

The Commission has been able to employ the lessons learned from this experience in other regional transmission cases. For example, in *Central Hudson Gas & Electric Corp.*, the Director of DRS provided facilitation services in the New York ISO governance settlement proceedings.⁸¹ These discussions were overseen by an ALJ from the New York Public Service Commission.⁸² More recently, the Commission has referred a dispute between members of the Midwest ISO, PJM, and Alliance RTO to DRS for a convening hearing.⁸³ In this case, the dispute concerns the formation of a large RTO in the Midwest designed to fill in gaps resulting from the current proposals. The Commission is hopeful that the settlement process can bridge the differences and result in a single RTO for the entire Midwest.

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78. *Id.*

79. DRS Report, *supra* note 6, at 9.

80. *New England Power Pool*, 88 F.E.R.C. ¶ 61,079 (1999).

81. *Central Hudson Gas & Elec. Corp.*, 88 F.E.R.C. ¶ 61,229 (1999).

82. *Id.* at 61,759.

83. *Alliance Companies*, 94 F.E.R.C. ¶ 61,070 (2001).