

2003 APPROPRIATE DISPUTE RESOLUTION ANNUAL REPORT



Alberta Energy and Utilities Board



APPROPRIATE
DISPUTE
RESOLUTION

WHEN IS ADR USED?

The EUB ADR program is used when concerns and objections remain outstanding following negotiations between landowners and companies or between companies (C2C). Most disputes resolved by the ADR process relate to proposed facility applications (wells, pipelines, and plants) or C2C equity applications, such as spacing, pooling, rateable take, and common carrier or processor.

The Alberta Energy and Utilities Board's (EUB's) Appropriate Dispute Resolution (ADR) program has become the standard for encouraging participation in open dialogue to resolve conflict regarding energy issues in Alberta. Starting in early 2000, the EUB began developing the ADR program with the formation of a multi-party stakeholder committee. The committee recommended a regulatory framework for ADR and assisted in the development of *Informational Letter (IL) 2001-1: Appropriate Dispute Resolution (ADR) Program and Guidelines for Energy Industry Disputes*, which officially launched the ADR program on January 8, 2001, as a three-year pilot.

Now complete, the three-year pilot program has been extensively monitored and evaluated. The positive feedback and support have resulted in an ongoing ADR program that has evolved to meet the changing needs of landowners and industry.

Since the launch of the EUB ADR program three years ago, about

- **80 per cent of disputes addressed by ADR were resolved, and**
- **95 per cent of participants said they would use ADR again.**

Participant feedback illustrates the major benefits of ADR. These include improved relations, an improved understanding of the other party's concerns, and a faster and less expensive process for conflict resolution when compared to other options.

ADR directly involves parties: they work collaboratively to reach mutually agreeable solutions. ADR helps parties understand resolution options and processes that will assist them in developing a clear understanding of their concerns, issues, and interests and then in jointly defining resolution options.

The two main components of the EUB's ADR program are EUB staff facilitation and third-party assistance from ADR professional service providers and mediators.

EUB STAFF FACILITATION

EUB staff assist parties in understanding regulatory requirements and facilitate meetings to discover mutually agreeable options. Staff facilitation usually occurs prior to a company submitting an application but after the company has attempted to resolve the concerns of stakeholders. Staff normally assist through direct meetings or by speaking with each of the involved parties.

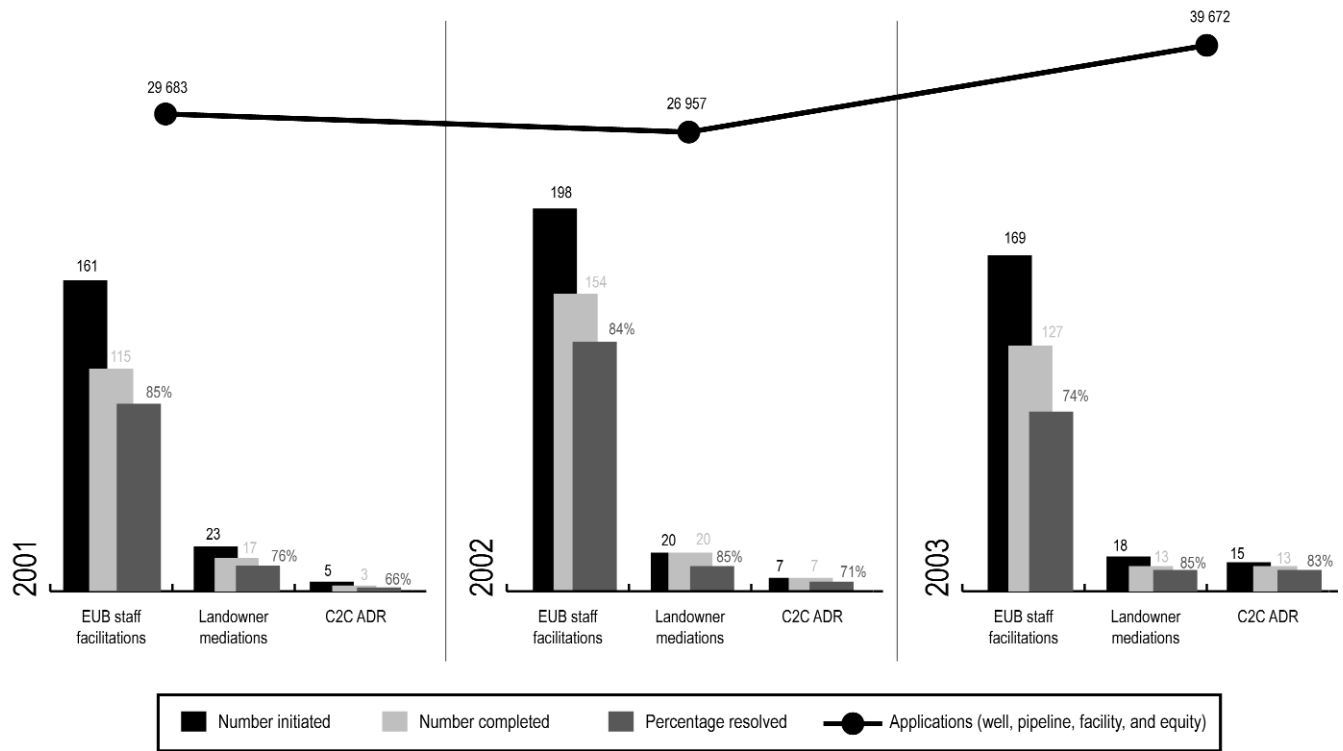
THIRD-PARTY ASSISTANCE

Third-party professional service providers and mediators are used in more complex disputes to develop win-win outcomes. They may be used when there are concerns about deadlines, disputes involving multiple parties, or difficulties engaging other parties. The first step involving third-party professionals is a Preliminary ADR (PADR) meeting, at which parties, assisted by the professional, discuss procedures and reach agreement on how to proceed, which often involves mediation.

ISSUE RESOLUTION AND PARTICIPANT SATISFACTION

Use of the ADR program has been relatively constant despite significant variation in the number of applications received by the EUB annually. The chart below illustrates ADR results since 2001.

ADR RESULTS FROM 2001 TO 2003



In an effort to improve the ADR program, the EUB asked all participants involved with PADR meetings and mediation to provide their feedback regarding the effectiveness of the program and the quality of the service provider, mediator, and EUB staff. We received feedback for 100 per cent of cases in 2003, compared to 92 per cent in 2002 and 83 per cent in 2001. Participants rated services on a scale of 1 to 5 (1 being very unsatisfactory and 5 being very satisfactory).

- Overall effectiveness of the program was rated as 4.1. Feedback indicated that parties that did not achieve resolution still believed the process was worthwhile.
- Quality of service provided by third-party ADR professionals was rated as 4.4.

INCREASED ADR SUCCESS IN REDUCING CONFLICTS

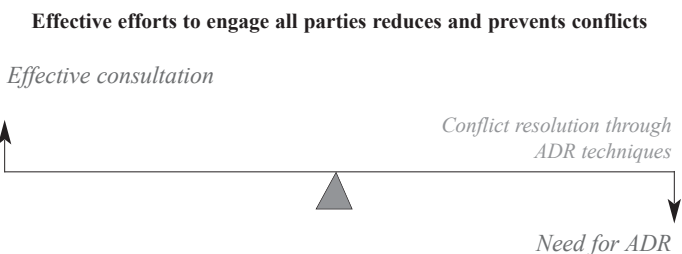
1) WORKING EARLY TO REDUCE CONFLICTS AND BUILD RELATIONSHIPS

The EUB expects applicants to identify parties that would potentially be affected by their proposed projects, notify them about the projects, and attempt to resolve any concerns they might have.

Most often, conflict arises and escalates because of the approach and treatment of one party by another. When conflict did arise, disputants indicated that they desired

- more consistent face-to-face communications,
- clear and concise information,
- improved timeliness of follow-up, and
- a less adversarial approach and a more “interest-based” approach.

With effective consultation, the number of conflicts and the need for ADR decrease. The 2003 edition of *Guide 56: Energy Development Applications and Schedules* reinforces and clarifies the importance of early and effective public engagement through the inclusion of participant involvement guidelines.



2) EUB STAFF PARTICIPATION IN ADR

In 2003, all participants in ADR indicated that EUB staff acted in a fair and impartial manner.

A consistent message from participants over the last three years has been the critical role of EUB staff. Participants have stated that they believe EUB staff add credibility, clarify regulatory requirements, and help to ensure that complete and reasonable agreements are reached. The average rating of the service provided by EUB staff in mediations since 2001 has been 4.4 out of 5. The ADR coordinator and the EUB’s Field Surveillance Branch have initiated a Facilitation Framework Initiative to ensure that the quality of EUB service is maintained.



3) USING PADR MEETINGS TO AGREE ON ADR OPTIONS AND PROCESS

The purpose of the Preliminary ADR (PADR) meeting is to ensure that the parties make an informed decision on ADR requirements and options. Several unresolved disputes are linked to rushed or incomplete PADR meetings.

ADR service providers play a critical role in preparing parties for ADR. They assist the mediator in running the PADR meeting and ensuring that follow-up is clarified and strengthened. With the help of ADR service providers, several improvements have been made to the overall ADR program, including

- further assisting parties to understand ADR,
- clarifying the issues that need to be resolved,
- developing the agenda for the PADR meeting,
- using a standard process agreement,
- preparing the ADR professionals and participants to ensure a complete PADR meeting, and
- having service providers attend the PADR meeting to assist the parties.

The EUB ADR program uses the term “Appropriate” Dispute Resolution because parties should choose the best option for resolution at the PADR meeting. The effectiveness of this approach was demonstrated during 2003, when out of 15 C2C PADR meetings, 6 did not proceed to mediation. Four chose other ADR options, such as using third-party experts or resuming direct negotiations, and two chose an EUB hearing.

OIL AND GAS INDUSTRY LAUNCH A "BETTER WAY"

Since April 2002, an industry-initiated C2C ADR taskforce of more than 70 industry volunteers with a wide range of expertise and backgrounds has been creating improved negotiation and conflict management processes, contractual provisions, ADR guidelines, and ADR tools.

This initiative is the only known multidisciplinary business-driven ADR taskforce in North America.

Eight industry organizations, two regulators, and two ADR associations have endorsed the Taskforce Report:

Alberta Energy and Utilities Board
National Energy Board
Canadian Association of Petroleum Producers
Small Explorers and Producers Association of Canada
Canadian Association of Petroleum Landmen
Canadian Association of Petroleum Land Administration
Canadian Gas Processors Association
Petroleum Accountants Society of Canada
Petroleum Joint Venture Association
Calgary Chamber of Commerce
ADR Institute of Canada
Alberta Arbitration and Mediation Society



"We endorse the C2C Taskforce Report and, in particular, the report's focus on fostering ways to better manage, control and resolve conflicts within the industry. We strongly encourage companies to consider the report's recommendations and use the guidelines, as we believe they will assist companies in selecting the most appropriate process for resolving conflict, improving business relationships, and minimizing the diversion of internal resources from other productive opportunities."



A C2C ADR Council will be formed to assist in the awareness and education of the various ADR tools and techniques recommended by the taskforce. The report will be released in April 2004.

REGULATORY ALIGNMENT WITH THE C2C TASKFORCE REPORT

A regulatory alignment team conducted interviews with 31 companies that chose the regulatory process, including hearings, to resolve their disputes. All companies agreed that the regulatory processes should be used as a last resort. However, many companies indicated they had no choice, as they were unable to meet or negotiate or were concerned about tactics used by the other party, such as involving individuals with limited authority, withholding information, and abuse of the regulatory process.

The EUB agrees with the recommendations of the taskforce regarding regulatory enhancements:

- strongly encouraging companies to endorse and use the C2C dispute resolution tools and techniques prior to selecting regulatory options;
- clarifying the need and timing of a hearing early in the application process, requiring exchange of submissions to ensure early and effective use of the PADR meeting and the sharing of pertinent information, and conducting the ADR process in parallel with the hearing process; and
- considering cost recovery from one company to the other where there is apparent abuse of the hearing process.

Complete details of the interview results and recommendations may be found in the C2C Taskforce Report, available through a link on the EUB's Web site at <www.eub.gov.ab.ca>.

2003 EUB ADR HIGHLIGHTS

The high number of disputes resolved and participant satisfaction continued in 2003. Overall, 78 per cent of disputes addressed by the program in 2003 were resolved. The results for the two main components of the EUB ADR program are

EUB Field Staff Facilitations – 74 per cent resolved

- 169 landowner cases: 127 completed, with 94 resolved

Third-Party ADR Professional Assistance – 84 per cent resolved

- 18 PADR meetings with landowners: All selected mediation—13 completed, with 85 per cent resolved
- 15 C2C PADR meetings held
 - 9 selected mediation: 8 completed, with 75 per cent resolved
 - 4 selected other ADR options, with 100 per cent resolved
 - 2 agreed that their best option was to proceed to a hearing

In situations where ADR does not result in a full resolution, an EUB hearing is often required. The EUB held 19 energy hearings in 2003. Only one of the applications related to these hearings had proceeded through the ADR program prior to the hearing. In fact, 14 scheduled hearings were cancelled as a result of successful ADR activities.



In 2003, there was strong user support for continuing the ADR program, with 95 per cent indicating they would participate in ADR again and 94 per cent indicating they would tell others to use ADR.

When questioned about their specific ADR process:

- 85 per cent indicated the process was worthwhile. Participants stated that understanding increased and relations improved as a result of the process.
- 85 per cent ranked the quality of EUB staff service in the ADR to be satisfactory or better. Most participants emphasized that it is critical that EUB staff participate in ADR to ensure complete resolution and to add credibility to the process.
- 93 per cent ranked the service provider and mediator service as satisfactory or better.

2003 RESOLUTION RESULTS

1) LANDOWNER/INDUSTRY DISPUTES

About 1 per cent (431) of all facility applications (wells, pipelines, and facilities) in 2003 were submitted with outstanding landowner objections. Landowners objected to 13 per cent of the 909 spacing applications. These objections and disputes require significant time and effort to process and resolve by landowners, industry, and EUB staff. Not included in the statistics are the disputes resolved through facilitation efforts of EUB field staff prior to the application submission.

EUB staff facilitations

Of the 169 EUB staff facilitations under way in 2003, 127 were completed and 94 were resolved: a 74 per cent success rate.

- The resolution rate for staff facilitation has decreased from 84 per cent in 2002 and 85 per cent in 2001 to 74 per cent in 2003. Of the unsuccessful field facilitations, 14 proceeded to mediation and 9 were resolved.
- As part of continuous improvement efforts, the ADR coordinator and the EUB's Field Surveillance Branch have initiated a Facilitation Framework Initiative to investigate delivery options and requirements and to develop a more formal EUB framework for staff ADR services.

Third-party ADR professional assistance

In 2003, 18 PADR meetings were held and all proceeded to mediation. Thirteen mediations were completed and 11 were resolved, for a success rate of 85 per cent.

- Two mediations did not reach full resolution. In one case the EUB Board cancelled the hearing and in the other the issue proceeded to hearing.

2) COMPANY-TO-COMPANY (C2C) DISPUTES

About 15 per cent of C2C equity applications (956 applications regarding spacing, pooling, rateable take, and common carrier or processor) were filed with outstanding industry objections. The vast majority of these were related to spacing or pooling issues. No staff facilitations were conducted on C2C disputes. The submission of an equity application with company objections initiates the more formal component of the ADR program, which commences with a required PADR meeting.



The EUB's Les Schmidt and Karine Fisher participate in mediations to assist in the resolution of concerns and objections between companies (C2C).

Third-party ADR professional assistance

15 PADR meetings were initiated. At the conclusion of the meetings, the parties agreed on a course of action:

- 2 cases concluded that a hearing was appropriate.
- 13 cases decided to proceed with ADR: 12 were completed and 10 were resolved, for a resolution rate of 83 per cent.
 - 2 cases used third-party experts: One used an arbitrator and the other used a technical consultant to assist in the resolution.
 - 2 decided they should resume direct negotiations based on the outcome of the PADR meeting. Both reached resolution.
 - 9 chose mediation. 8 were completed in 2003, of which 6 were resolved (75 per cent). One case held another PADR meeting several months later and then decided on binding arbitration, while the second case did not proceed any farther, as the company was sold.

Two C2C cases delayed their PADR meetings until several weeks from the start date of a hearing. They did not proceed through ADR because their lawyers felt the hearing was the only option. Early planning and effective interest-based negotiations with earlier PADR discussions, as recommended by the C2C taskforce, may have avoided the hearing and ongoing problems in these cases.

LOOKING FORWARD

Over the last three years, the ADR Multiparty Stakeholder Committee played a key role in monitoring and ensuring continuous improvement of the EUB ADR program. Many of the committee members also participated in the C2C taskforce. The Stakeholder Committee members have agreed to continue to meet regularly to discuss ADR processes, consider issues, provide recommendations to further enhance the ADR programs, and maintain an EUB roster of service providers and mediators.

Some matters the committee will consider are briefly described below.

IMPROVING OPTIONS FOR DIFFICULT DISPUTES

Several ADR events in 2003 did not result in resolution due to the approach taken by landowner advisors. Some companies are now reluctant to enter into future ADR meetings should certain advisors be involved. At the same time, landowners indicate they need qualified and knowledgeable advisors to assist them in their direct negotiations with landmen and that these advisors are few in number. In 2004, the committee is exploring options to address these stakeholder concerns.

Generally, service providers dealt effectively in 2003 with concerns regarding multiparty disputes that had been raised in 2002 through early dispute resolution planning and thorough PADR meetings.

MONITORING THE COST TO USE THE EUB ADR PROGRAM

The average cost of ADR services (costs of the service provider, mediator, and various arrangements) has been steadily increasing, mainly due to increased travel, the need for increased planning, coaching, and the level of assistance needed from the service provider.

- On average, it cost \$3900 to arrange and hold a PADR meeting in 2003, up from \$3100 in 2002 and \$1200 in 2001.
- In 2003 it cost an average of \$4900 to complete mediation, compared to \$3500 in 2002 and \$4300 in 2001.

Landowner cases typically cost more because of travel and service provider preparation with the parties. Multiparty cases and cases dealing with complex issues often require additional meetings and therefore cost more.

ENSURING THAT ADR TIMELINES DO NOT INCREASE

The average timelines to initiate and complete an ADR undertaking have remained relatively consistent over the last three years:

- 20 days to PADR meeting from initial contact with service provider, with an average PADR duration of 2.5 hours;
- 4 days from PADR meeting to the mediation meeting, with an average mediation duration of 8 hours.

CONTINUING AWARENESS OF ADR AND STAKEHOLDER EDUCATION

Industry personnel are generally aware of the EUB ADR program. The majority of questions now relate to how companies can effectively use the program. The ADR coordinator continues to spend a significant amount of time working with industry associations and companies, presenting ADR material, and answering specific questions.

The need to promote and educate stakeholders continues. The rollout of the C2C Taskforce Report and its ADR tools and techniques will assist in this regard. The taskforce will also be forming an ADR education committee to develop training for industry. A trial two-day ADR training session is planned with a landowner group using the EUB ADR training material; this has potential for future use with other public groups.

APPROPRIATE DISPUTE RESOLUTION MULTIPARTY STAKEHOLDER COMMITTEE:

Bill Remmer, ADR Coordinator, EUB, committee Chairman
Wayne Gent, Sunde Petroleum Operators Group
(a synergy group)

Bob Garies, Canadian Association of Petroleum Landmen

Dave Gould, mediation community

Alan Holt, Wild Rose Agricultural Producers

Judy Huntley, Alberta Environmental Network

Mark Johns, electric industry

Dean Lien, Farmers Advocate

Diana Pane, Canadian Association of Petroleum Producers

Dave Savage, Small Explorers and Producers Association
of Canada

Stan Schumacher, Surface Rights Board

Stuart Simpson, mediation community

Arden Berg, EUB Board Sponsor

Stephen Smith, EUB Advisor