

Environment & Human Affairs



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Class 8.
Mediation Techniques

Mediators

- o Sometimes called intervenors, neutrals, or third parties
- o Neutral to the issues at stake
- o Process-neutral
- o John McCory: mediation is unlike arbitration because
 - Mediation is informal
 - Fact-Finding and Arbitration are more structured techniques

Fact-Finding, Arbitration, and Mediation

- o **Fact finding**
 - takes in all available information
 - reports potential resolution
- o **Arbitration**
 - takes information submitted by disputants
 - renders a binding agreement
- o **Mediation**
 - intervenes between conflicting parties
 - promotes reconciliation, settlement, compromise, and understanding

● ● ● **Mediators**

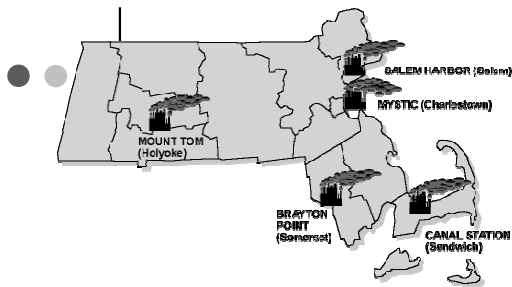
- **Procedurally flexible**
- **Not concerned with**
 - prohibitions of communication
 - formation of records that impair confidential relationships
- **Can adopt procedures to facilitate resolution**
- **Attempt to help parties resolve issues in a manner agreeable to all**

Brayton Point



Above photos are of Brayton Point Power Station. Aerial photo courtesy of the U.S. Environmental Protection Agency, New England Office

Brayton Point Now Considered One of the "Filthy Five"





Brayton Point Problems

- o Largest single source of air pollution in New England - 20% of Massachusetts total air pollution:
 - **Carbon dioxide:**
greenhouse gas and thought to be the main contributor to global climate change;
Brayton Point emits
 - 4.6 million tons of CO₂ each year.
 - 36% of Massachusetts' total carbon dioxide released from power plants.
 - **Sulfur dioxide:**
 - 47,480 tons a year -- 253% above the Clean Air Act standard of 13,393 tons/year.
 - particulate matter, often in the form of soot, known to cause respiratory illnesses similar to those of smoking.



Brayton Point Problems

- **Nitrogen oxide:**
 - 14,494 tons of nitrogen oxide a year-- 116% above the Clear Air Act standard of 6,696 tons/year.
 - respiratory irritant and a key ingredient in smog formation.
- **Airborne mercury (known poison):**
 - 674lb of airborne mercury/year from burning coal and oil.
 - roughly 20% of the mercury caused by burning coal and oil in Massachusetts.
 - can travel great distances through the air
 - those poisoned by it suffer reduced mental capabilities and motor skill coordination.
 - particularly harmful for infants and fetuses and is often ingested by consuming contaminated fish.
 - The Clean Air Act does not explicitly set emissions standards for mercury

<http://ccervone.web.wesleyan.edu/philosophy/deadlytruth.htm>



Brayton Point Coal Conversion

- o 1973: OPEC oil embargo
- o 1974: To achieve energy independence, Congress enacted ESECA (the Energy Supply and Environmental Coordination Act)
 - gave the FEA the authority to prohibit the use of natural gas or oil in facilities capable of burning coal



Background Info

- o **For coal conversion**
 - increasing costs of oil
- o **Against conversion**
 - expensive pollution control devices needed
- o **FEA created list of 32 plants that could convert, including Brayton Point**



Brayton Point

- o **New England's largest fossil fuel power plant**
- o **Produces 1600MW**
- o **3 boilers capable of burning coal or oil**
- o **Highly efficient plant**
- o **Interested in coal if cheaper than oil**
- o **NEPCo did not want to invest in pollution controls**



An Electric Dinosaur

- o Brayton Point became operational in 1961. Newer power plants are up to 70 times cleaner than it.
- o Profile:
 - **4 generators, 3 coal-fired and one oil-fired.**
 - **oil-fired generator is also capable of burning natural gas.**
 - **capacity of over 1500 megawatts-- enough to provide electricity for a city of more than 1 million people.**
 - **owned by Pacific Gas & Electric (PG&E) (a multi-billion dollar utility, one of the largest in the industry)**
- o Lawsuits have been and are filed against the corporation for environmental damage and public health problems for which they may be responsible.

● ● ● | **Boiler Process**

- **Coal is moved from storage, pulverized, pumped to the boilers, and ignited**
- **Fly ash travels with exhaust gas**
 - some is collected on electrostatic precipitators
 - some is discharged to atmosphere
- **Sulfur dioxide is also a combustion by-product, further reacts to form sulfates and sulfuric acid**
- **Sulfur dioxide can be removed from exhaust gases using scrubbers**

● ● ● | **Brayton Point**

- **Concerns with coal use stemming from the Clean Air Act**
 - Meeting primary national ambient air quality standards which focus on human health
 - Meeting the State Implemented Plan for regional air quality standards
 - EPA generally does not allow air quality degradation in non-attainment areas

● ● ● | **ESECA steps to coal conversion**

- **Notice of intent**
 - Has capabilities of burning coal
 - Coal burning is practical and consistent with ESECA
 - Coal and its transportation are available
 - Coal burning would not impair their ability to supply energy
- **Issue a prohibition order**
 - Environmental impact statement
 - Approved by EPA
 - Approved by Governor of state
- **Issue a notice of effectiveness**



Reasons to Negotiate

New England Power Company

- o Wants cheapest fuel;
- o Does not want to equip boiler with scrubbers and precipitators
- o Knew that notice of intent and prohibition was likely
- o Knew that they could be required to purchase and install control technology



Reasons to Negotiate

Federal Energy Administration

- o Three years into ESECA, no significant conversion to coal
- o Process is lengthy and vulnerable to court battles



Reasons to Negotiate

EPA

- o Politics; they stressed conversion from imported fuels
- o Relationship between EPA Region administrator and the FEA administrator

● ● ● | **Reasons to Negotiate**
Department of Environmental Quality Engineering

- **Under statutory obligation to implement sulfur standards**
- **Wanted to participate in the decision making process - feared**
 - conditions met might be unresponsive to the environmental needs of Massachusetts
 - inadequate control of particulates and uneconomical sulfur restrictions

● ● ● | **Negotiation Begins**

- **Mediator: David O'Connor from Center for Energy Policy - had**
 - different interpretation of letter
 - highly productive meetings
 - DEQE acknowledged economics of low sulfur coal and scrubbers
 - DEQE acknowledged sulfur limits could increase assuming SIP was revised
 - NEPCo acknowledged they may need additional precipitators

● ● ● | **Negotiations**

- **FEA following ESECA processes issues notice of intent to NEPCo**
- **NEPCo files suit**
- **O'Connor asks NEPCo to drop suit, then lays out ground rules for mediation activities**
 - Acknowledgement
 - group based decisions
 - all parties must be present,
 - O'Connor would run meetings

● ● ● **Negotiation Breakthroughs**

- EPA decided to perform site-specific study on particulates
- Study confirmed NEPCo's position that they were not causing high particulate levels
- Study confirmed that burning coal did not significantly contribute to NAAQS sulfur exceedences

● ● ● **Negotiation Breakthroughs**

- EPA approved SIP revision
- NEPCo started to burn high sulfur coal
 - Looked for problems with sulfur dioxide
 - Looked for problems with particulates
- Resistance to using high sulfur coal faded

● ● ● **Negotiations Breakthroughs**

- How should the public be involved in process?
 - Determined that once decision was made, they would allow for comments
 - Low levels of public involvement

● ● ● **Negotiation Breakthroughs**

- NEPCo informed group that additional precipitators may be necessary
- DEQE asked NEPCo to comply with even lower levels of particulates
- NEPCo would agree to lower levels if DEQE and EPA gave assurance that there would be no significant changes to emission standards over life of the plant

● ● ● **Negotiation Breakthroughs**

- Groups agreement
 - New precipitators to be installed
 - Increased sulfur content under the SIP would be needed for economics
 - Particulate levels in SIP would be reduced to make conversion environmentally acceptable
 - New limits would be set for an extended period
- Bilateral meetings between NEPCo and DEQE to determine how the above agreement would be implemented
- Ultimately consensus was reached and notice of effectiveness was issued

● ● ● **Role of Mediators**

- O'Connor ability to initiate informal negotiations →
 - Postponed NEPCo's lawsuit
 - Changed negotiation topic when agreement could not be reached
 - Provided intensity to resolve issues



Role of Mediator

- o **Acted as facilitator and organizer**
- o **Laid ground rules for negotiations**
- o **Spent time individually with parties**
 - Helped parties clarify their positions and present rational
 - Encouraged creative solutions
 - Encouraged exploration of other parties positions in order to discover areas of concession
- o **Played active role in work group meetings**



What Mediators Bring

oPer Lon Fuller

- The capacity to re-orientate parties towards each other by developing new perceptions that change attitudes between the parties:
A mediator
 - Is a catalyst
 - Is an educator
 - Is a translator
 - Expands resources available to parties
 - Is the bearer of bad news
 - Is an agent of reality
 - is a scapegoat



What a Mediator Does

O'Connor and Foster

o Four stages of formal mediation

- Fact-finding
- Meeting separately to determine interests and items that need to be protected
- Inventing phase: determining possible solutions
- Draft agreement for review and revision

● ● ● | **Ways of Earning Trust**

- **Explain presence and role, do not take sides, and learn from the parties**
- **Reduce defensive communication**
 - Description, not evaluation; avoiding judgments of requests
 - Problem orientation, not control
 - Demonstrate empathy
 - Demonstrate equality
 - Demonstrate provisionalism

● ● ● | **Ways Mediators Can Help**

- **Reduce risk on positions**
- **Tackle the big problems or the little ones**
- **Use external pressures**
- **Use deadlines and marathon sessions**
- **Deflate extreme positions**
- **Show the consequence of no agreement**
- **Propose solutions**

● ● ● | **Next Time ...**

Mediation of big disputes and mediation ethics
