

## Mediation Techniques Chapter 8

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### Mediation

- Brings what parties cannot provide on their own
- Should not be confused with arbitrators
- Has no authority to impose a resolution on the contending parties
- Serves at the pleasure of the negotiators

Sometimes called:

- Intervenors
- Neutrals
- Third parties

### Questions to be answered:

- What disputes are appropriate for mediation?
- What qualifications should mediators have?
- Does a mediator have obligations other than leading parties to agreement?
- Who pays for the mediation?

### Case Study:

Mediation and the Brayton Point  
Coal Conversion

### Intro

- In 1973 America was torn between two contradictory goals: energy independence and environmental protection
- The most readily available alternative was coal
- Coal is cheaper and more abundant within the U.S. but much dirtier
- More mines, more waste disposal, and more air and water pollution

### Intro

- Congress passes several bills intended to decrease our reliance on imported oil and to substitute domestically available energy sources
- One act was the Energy Supply and Environmental Coordination Act of 1974
  - ESECA
  - Gave the ESEA the authority to prohibit use of oil or natural gases in facilities capable of burning coal and also that the conversion is in compliance with existing air pollution regulations

## Challenges

- This required cooperation between FEA and EPA
  - EPA
    - Concerned about environmental effects and wanted to proceed slowly and carefully
  - FEA
    - goal was decreasing foreign oil use
    - Wanted conversion ASAP

## Response

- Many individuals were willing to attempt/consider coal conversion because oil was getting expensive
- Most were opposed to the idea of spending millions on new pollution control equipment
- So... A multidimensional conflict was created
  - Federal and state-level energy sources
  - Environmental protection agencies
  - Utilities being affected by coal conversion legislation

## Response

- After the ESECA was passed the FEA compiled a list of power plants currently burning oil or natural gas but capable of burning coal
  - The Brayton Point Generating Station was among the recipients of the ESECA prohibition order

## Brayton Point Station

- Somerset, Massachusetts
- At confluence of Taunton and Lee Rivers
- New England Power Company's largest fossil-fueled power plant
- Has four separate generating units with the total capacity of 1600 megawatts
  - 3 of the 4 boilers are capable of coal burning
  - 4<sup>th</sup> boiler (newest) - oil combustion only

## Brayton Point Station

- Owned and operated by NEPCo
  - Supplies electricity to over one million customers in R.I., M.A., and N.J.
- Contributes to New England Power Pool
- Before any conversion Brayton Point was so efficient it was almost in continuous operation
- Opposed any expenses that would decrease cost efficiency

## Fuel Combustion Process

- Both fuels are delivered to plant by water
- Coal is moved to from stock pile to power plant where it is ground and then pumped into boilers and ignited
- Heat generated in process creates high pressure steam
- Steam is passed through turbines to generate electricity

## Pollution

- Some solid matter remains after coal is burned
  - Bottom ash
  - Fly ash
    - Travels with exhaust gases
    - Most is collected by electrostatic precipitators
    - Some escapes into atmosphere as particulate pollution
- Gaseous emissions are also produced
  - Most serious pollutant is sulfur dioxide
- Both particulates and sulfur dioxide are respiratory irritants

## Sulfur Dioxide

- Sulfur Dioxide reacts chemically in atmosphere
  - Produces sulfates
    - Add to particulate problems
  - Produces sulfuric acid
    - Falls to the earth as acid rain
    - Causes water deterioration
    - Plant and property damage
- Sulfur Dioxide can be controlled by using low sulfur fuel (coal or oil) which are more expensive

## Alternatives

- Instead of cleaner fuel, the alternative is to remove sulfur dioxide from exhaust gases
  - Flue gas desulfurization- scrubbing
  - Equipment is very expensive and would cost Brayton \$150 million

## Legislation

- Conversion under ESECA required three steps
  - Notice of intent
    - Triggered public hearings
  - Prohibition order
    - Barred the use of oil or gas in the facility at the date set by the:
  - Notice of effectiveness
    - Requires environmental impact statement, approval from EPA, and approval from state governor

## Legislation

- Two months after the ESECA was passed NEPCo applied to the EPA for an ESECA mandated temporary suspension of all fuel and emission limitations
- Four months later, a six month suspension was approved but
  - NEPCo could only use coal with sulfur and ash content limitations
  - Ambient air quality monitoring stations needed to be established
    - EPA gained data on impact of burning coal without pollution control equipment and would later be used in debate over violations

## Legislation

- The monitors remained in operation following the conversion back to oil
  - 17 readings were in excess of particulate standards during 1975 and 1976
  - Considered a violation if there are 2 exceedences in one year
- EPA regarded any additional particulate emissions as unacceptable

## Task Force

- In 1976 the New England Task Force was created to study regional energy issues
  - One branch was the coal committee
    - Focused on the problem of converting New England power plants to coal
    - Concluded that whereas coal conversion was desirable it may be economically and environmentally costly
    - Suggested a test be done to determine effects of coal burning without flue gas desulfurization

- NEPCo allowed for test
  - Chance to show new expensive equipment was not needed in order to burn coal
  - But NEPCo needed to burn the "dirty" coal they had stock piled in order to make room for high-quality coal
- EPA objects
  - Three reasons
    - Did not want dirty coal burned without control
    - Believed test was already done resulting in that the equipment was necessary
    - Suspected that the test was only a NEPCo maneuver to get permission to burn the coal in the pile (worth 9 million)

- Letter from EPA to FEA confirming test was not approved and also a list of conditions where Brayton Point may be approved to burn coal
  - NEPCo would have to comply with SIP emission limits by improving precipitators
  - Purchase low sulfur coal or install scrubbers
  - Third option was a consent decree
- FEA and NEPCo were dismayed by letter in that it signaled there would be no conversion
- David O'Connor (who would later act as mediator) considered the letter as an invitation to negotiate

## Parties Incentives

- Mediation and negotiation cannot succeed unless all key stakeholders have incentives
- Important to identify ways in which parties to the Brayton Point conflict has common interests

## Parties Incentives

- |   |   |
|---|---|
| <ul style="list-style-type: none"> <li>• NEPCo.           <ul style="list-style-type: none"> <li>- Cost efficiency               <ul style="list-style-type: none"> <li>• Burn old coal</li> <li>• Continue burning cheap coal but not install expensive equipment</li> <li>• Against mandatory conversion, wanted to negotiate with EPA and FEA</li> </ul> </li> </ul> </li> </ul> | <ul style="list-style-type: none"> <li>• EPA           <ul style="list-style-type: none"> <li>- Political               <ul style="list-style-type: none"> <li>• Promote it's "good citizen" image</li> <li>• Cooperate without compromising commitment to clean air</li> </ul> </li> <li>- Save relationship               <ul style="list-style-type: none"> <li>• FEA</li> </ul> </li> </ul> </li> </ul> |
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## Parties Incentives

- |  |  |
|--|--|
| <ul style="list-style-type: none"> <li>• FEA           <ul style="list-style-type: none"> <li>- ESECA               <ul style="list-style-type: none"> <li>• Reduce dependency on foreign oil</li> <li>• Wanted to negotiate the conversion of Brayton</li> <li>• Possibly would allow coal use if could follow ESECA mandate</li> </ul> </li> </ul> </li> </ul> | <ul style="list-style-type: none"> <li>• Mass. Dept. of Envir. Quality Engineering           <ul style="list-style-type: none"> <li>- DEQE               <ul style="list-style-type: none"> <li>• Implement sulfur standards in an economically efficient manner</li> <li>• Wanted mediation in order to provide it with forum to address all it's concerns</li> </ul> </li> </ul> </li> </ul> |
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## Mediation Begins

- Began in 1977
- By this time the task force was organized to explore possibilities and problems with the Brayton conversion
- Members grew to trust each other
- Respected mediator David O'Connor

## David O'Connor

- Center of Energy Policy
  - Nonprofit org. dedicated to the peaceful resolution of energy and environmental disputes
- Completed an American Arbitration Association mediator-training program

## Mediation

- O'Connor arranges meeting of representatives from NEPCo, FEA, EPA, and DEQE, and Mass. Energy Office
  - Highly productive lead to surprising number of agreements
    - Drop idea of test coal burning
    - FEA and Energy Office agree to a joint effort to develop an environmentally and economically acceptable plan for conversion to coal
    - DEQE conceded that purchase of low sulfur coal or scrubbers would exceed economic conditions
    - Sulfur emission could be raised without critical damage to air quality
    - Additional precipitators may be needed to protect the environment

- FEA would not agree to drop ESECA conversion process
- But...
  - This continuation of formal administrative process kept the pressure on the parties to negotiate a settlement

- O'Connor suggested that parties try mediation as means of resolving remaining differences
- Groups agreed only if O'Connor was the mediator

## Mediation Continues

- Parties agree to meet 15 times over 5 months
- Costs of mediation effort (\$20,000) were divided equally among four parties
  - FEA
  - EPA
  - NEPCo
  - U.S. Bureau of Mines
    - Strong advocates of increased coal use

## Problems

- NEPCo files a lawsuit against FEA three days before the first mediation session
  - FEA issued NEPCo. An issue of intent saying it was planning to pursue the mandatory ESECA process for the Brayton Point plant
  - In response, NEPCo. Charges agency that they had not followed guidelines in developing conversion plans

- O'Connor knew lawsuit would sabotage mediation process
- O'Connor contacted NEPCo. And suit was postponed pending progress of negotiations
- FEA
  - Claimed they had greatly underestimated the costs of conversion
  - Said conversion was not practicable as they had once claimed

- First two meeting focused on rules for mediation effort
  - Communication with press
  - All parties must be present
  - Approved mediation funding
  - Notes, agenda, and summary of meetings were O'Connor's responsibility

## Meeting Summaries

- Helped identify key issues
- Stressed areas of agreement
- Noted areas that needed further decisions
- Aided in process of building consensus

## Mediation Continues...

- Mediation allowed for tests of the high sulfur fuel oil
  - EPA approved the use of high sulfur fuel oil which prompted the coal conversion work group to begin discussing the use of coal with an equivalent sulfur content for permanent conversion
- NEPCo began burning high sulfur fuel oil immediately due to fading resistance of parties

- Parties also wanted to include the residents so public hearings were held
  - Allowed for sufficient public input
  - Did not inhibit groups progress
  - Actually not many individuals or environmental groups were interested in the negotiation anyway but at least the door was open

## Final Negotiations

- By end of 1977 group had agreed on an number of points
  - New precipitator capacity required to minimize particulate emissions
  - Sulfur content limit approved on a temp. bases during neg would be required to make permanent conversion economical
  - Particulate limit lower than that existing in SIP may be required to make conversion economically acceptable

- New limits could be set for an extended period so that investments could be justified

### • By Jan. 1978...

- The particulate limit was set by compromise at .08lb/Mbtu, which was slightly higher than the projected emission rate but lower than existing .12lb/Mbtu particulate limit

## Terms and Form of Agreement

- It was decided that
  - the agreement would be in the form of a new regulation and would be specific to Brayton Point
  - Only effective until Nov. 1, 1988
  - A full review was required prior to any modification of the regulation
  - NEPCo. And DEQE agreed to sign a memorandum of understanding (MOU)

## MOU

- Document the agreements and to demonstrate the commitment of each party to abide by them
- Signed by mediators as well
- Needed to be approved

## Approval Process

- The groups reviewed the agreement for two months and made no changes
- Approved in 1979

## Finally...

- On Dec. 2, 1979 the first of the three coal-capable units at Brayton Point was back on coal
  - The first coal to be burned was that in the 2-year old coal pile that had been a big concern in negotiations
- NEPCo. Planned to install the three new precipitator equipment one unit at a time over a 3 year period

## What did we learn?

- The inclusion of *all* interested parties is very important
  - Excluded groups may challenge a negotiated settlement in court
- The functions of a mediator

- Without O'Connor the mediation would not of occurred
  - He stopped EEA from pursuing the mandatory ESECA process and the lawsuit
  - He held the negotiations on a constructive course
  - When a decision could not be decided upon he turned to other issues
  - At times he separated the groups into separate rooms to try and arrange an agreement
  - He at times yelled at the parties saying that their lack of courage was preventing an agreement- he left then came back to an agreement

- O'Connor also:
  - Operated as the facilitator and organizer
  - Tasks included setting ground rules, keeping records, making proposals, raising issues, setting agendas, dealing with press and formalizing agreements.
  - Summarized sessions
  - Made sure *all* parties attended meetings
  - Helped build group cohesion and trust
  - Moderated discussions so each group could be heard

- O'Connor Cont'd...
  - Summarized technical and legal issues to help with understanding
  - Spent a lot of time meeting with groups individually to understand concerns
  - Helped parties to clarify points
  - Encouraged parties to examine other's positions

- Overall his efforts provided a great atmosphere for negotiation
- He did not invent terms of agreement on his own like an arbitrator would
- He instead helped parties work together to develop their own agreement
- He provided discipline, advice, and encouragement and most importantly the conviction that resolution was possible



The End!!!!