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**PENNSYLVANIA PUBLIC UTILITY COMMISSION
&
ENERGY REGULATION BOARD OF ZAMBIA:**

**3RD PARTNERSHIP ACTIVITY OF THE
National Association of Regulatory Utility Commissioners
March 20-23, 2006**

ALTERNATE DISPUTE RESOLUTION

PRESENTED BY:

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ALTERNATE DISPUTE RESOLUTION -2

Overview

- **Parties Control**
- ■ Unassisted Negotiation
- **Parties Do Not Control**
- ■ Litigation



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ALTERNATE DISPUTE RESOLUTION – 3

Overview

- Tradition Full Litigation:
 - **CONTESTED PROCEEDINGS**
 - **OFFICE OF ADMINISTRATIVE LAW JUDGE**
 - Provides open, fair forum and full opportunity for individuals/groups to present positions



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ALTERNATE DISPUTE RESOLUTION -4

Overview

- **Commission Proceedings**
 - Due process guides all proceedings
 - • Notice of proceeding
 - • The right to be heard
 - • Impartial adjudicator
 - • The right to present evidence
 - • The right to cross-examine evidence



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ALTERNATE DISPUTE RESOLUTION -5

Overview

- **Litigation involves Administrative Law Judge who presides over:**
 - **Prehearing conference**
 - » **Identify parties**
 - » **Identify issues**
 - » **Discovery schedule**
 - » **Litigation schedule**
 - » **Formal hearings/witnesses**
 - **Gather all facts**
 - **Parties file briefs**
 - **Prepare written decision outlining issues and recommending resolution**
 - **Exceptions/ Commission Decision**



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ALTERNATE DISPUTE RESOLUTION - 6

Overview

- Goal of ADR – to resolve differences without full litigation:
 - Less costly
 - Allows parties to have more control over outcome



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ALTERNATE DISPUTE RESOLUTION -7

Forms of ADR *

- Settlements –competitive negotiations
- Arbitration*- submit dispute to neutral 3rd party – limited application
- Mediation-Voluntary/informal/non-adjudicatory/non-binding*



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ALTERNATE DISPUTE RESOLUTION – 8 Commission Policy

- PUC encourages dispute resolution by negotiation* (settlements);
- PUC encourages mediation where parties alone cannot resolve dispute**

ALTERNATE DISPUTE RESOLUTION -9

- **Private Negotiations**
- **Public Settlement**
- • Cases may be settled by two or more parties to a proceeding.

Settlement Discussions are private

- • Commission must review Settlement in an open proceeding and may approve, reject or modify the Settlement Agreement



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ALTERNATE DISPUTE RESOLUTION -10

- Settlements (cont.)
- Settlement: supported by probative evidence and found to be in the public interest
- Additional Pre-filed Testimony to support of Settlement Agreement



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ALTERNATE DISPUTE RESOLUTION – 11

Forms of ADR

- WHAT IS MEDIATION?
- Confidential process
- neutral third party (the mediator) assists in negotiations
- collaborates with parties to arrive at agreements.

- The mediator has no decision-making authority,
- provides substantive guidance
- encourages the parties to broaden their options/ expand the range of possible resolutions.



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ALTERNATE DISPUTE RESOLUTION – 12

- Benefits of Mediation
 - Saves Money
 - Saves Time
 - Psychological benefits
 - Win-Win Result



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ALTERNATE DISPUTE RESOLUTION -13

- When is Mediation Appropriate?
 - The parties may be willing to settle or reevaluate their positions.
 - Reconcilable Relationships*
 - Mediator can facilitate communication/ change dynamics.



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ALTERNATE DISPUTE RESOLUTION -14

- Mediation Not Appropriate:
 - Determination of law is required
 - Determination of who is right is desired
 - Desire to establish precedent
 - Need to establish policy for all stakeholders*



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ALTERNATE DISPUTE RESOLUTION -15

- Steps
 - Office of Administrative Law Judge manages mediation program
 - Screen pleadings to determine if mediation is appropriate
 - If appropriate, legal supervisor will forward to mediator for concurrence (mediation review)*



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ALTERNATE DISPUTE RESOLUTION -16

- Chief ALJ issues interim Order requiring dispute resolution conference
- Notice to parties seeking consent to mediation
- If parties consent, send mediation notice to parties with
 - Good Faith factors for mediation
 - PBA Working rules for Professionalism



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ALTERNATE DISPUTE RESOLUTION -17

- If not appropriate, for mediation, give to scheduling unit for hearing.



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ALTERNATE DISPUTE RESOLUTION -18

- At Mediation Conference
 - Develop opening statements.
 - Identify issues.
 - Identify interests.
 - Develop options.



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ALTERNATE DISPUTE RESOLUTION -19

- Mediation Process
 - Define participants
 - Assure authority of participant
 - Review Process
 - Have parties consent to process



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ALTERNATE DISPUTE RESOLUTION -20

- Mediation Process (cont.)
 - Joint Discussions
 - Separate Discussions



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ALTERNATE DISPUTE RESOLUTION -21

- Mediation Process (cont.)
 - Develop Options
 - Identify areas for agreement
 - Agreement document: sign/implement



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ALTERNATE DISPUTE RESOLUTION -22

- **NEGOTIATION TECHNIQUES**
 - Preparation Stage: Limits & Goals
 - Preliminary Stage: Identity/Tone
 - Information Stage: Value Creation
 - Competitive Stage: Value Claiming
 - Closing Stage: Value Solidifying
 - Cooperative Stage