



All About Alternative Dispute Resolution (ADR)

This EnerFAQs explains some of the options available through the Alberta Energy Regulator's (AER's) Alternative Dispute Resolution (ADR) program, with a specific focus on mediation. It describes how these options work and how they can help resolve issues or matters in dispute. This information is intended for any parties that find themselves in a dispute over energy industry projects and the possible impacts of the projects. In some cases, an AER hearing commissioner will conduct ADR when a hearing or a regulatory appeal is to occur. However, as mentioned, this EnerFAQs will focus solely on the ADR administered by AER staff.

» What is ADR?

ADR stands for alternative dispute resolution and offers concerned parties a variety of options to manage disputes, including direct negotiation between the parties, AER staff mediation, and third-party mediation. This EnerFAQs focuses on the mediation options offered through ADR administered by AER staff. These options aim to help people explore and understand each other's interests and develop acceptable solutions together by creating an environment that supports respectful discussion. The solutions generated by the parties reflect their respective interests and are often solutions that would not have been arrived at individually.



» What are the goals of ADR?

The ADR process aims to

- improve landowner–industry (stakeholder) relations;
- improve industry–industry relations;
- Increase face-to-face discussions between stakeholders that lead to local solutions for local problems;
- ensure efficient use of the AER’s and stakeholders’ time and resources; and
- achieve a higher percentage of resolved disputes without having a dispute lead to an AER proceeding. Should an AER proceeding become necessary, the use of ADR can help by reducing how many issues need to be decided upon or by recommending procedures to be adopted at a hearing or other proceeding.

» When may ADR be used?

ADR may be used to resolve any issue or matter in dispute, including those between two companies. Once parties realize that they cannot resolve a dispute themselves, it is best to engage ADR sooner rather than later. ADR may continue even after an application has been filed and is being processed or a notice of an AER hearing on the application has been issued.

» What is AER mediation?

AER mediation involves a meeting between two or more parties, usually residents and energy representatives, who cannot come to an agreement and desire an AER mediator to facilitate a conversation and conduct mediation. The purpose of the meeting is to explore interests and options and hopefully arrive at a mutual solution. Mediation may take place even before an application is submitted to the AER and may be held after the application has been filed and while it is being processed. The AER mediator’s role is to help parties speak openly and respectfully about what concerns each of them and reach a solution that can be agreed on by everyone. Mediators can give information on concerns and explain the AER’s processes. Mediators will not comment on concerns outside of the AER’s jurisdiction (such as compensation) but can only facilitate discussion on these subjects.

» What is third-party mediation?

Third-party mediation is when a neutral third-party mediator assists with negotiations between two or more groups of people. “Third party” means that the mediator does not work for the AER or any of the concerned parties. A mediator may be selected by the participants from a roster maintained by a multistakeholder committee and available on the AER’s website. The mediator’s job is to help parties reach a solution to which everyone agrees. AER technical staff may attend mediation sessions as a resource to the parties.

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- » **Why is a preliminary ADR meeting held?**
- A preliminary meeting can help parties decide which ADR option will work best for them. It may be held face to face, over the phone, or by telephone or video conference, depending on the number of parties involved and the complexity of the issues. Preliminary meetings are arranged by the mediator.
- The meeting can also help set guidelines for any future mediation. It is an opportunity to talk about who needs to be involved and what the issues or matters in dispute are, and it is a good place for people to discuss costs and payment, the role of experts or legal counsel, timing, and confidentiality.
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- » **Where are mediation meetings held?**
- Mediation meetings may be held at a variety of locations. It is helpful to have a quiet, private location free from distractions. The location may be discussed and decided upon with all parties and the help of the AER's ADR staff. In some cases, it may be more convenient for the meeting to be held in the home of the resident or landowner or at a nearby venue. The venue will be agreed on by all of the parties involved through discussions with the mediator or service provider.
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- » **How much time is needed for mediation?**
- The time required depends on the complexity and number of concerns. Generally, these meetings last around four hours.
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- » **What do I, as a landowner or resident, need to bring to the table?**
- To make mediation a success and to make sure your concerns are heard, it is important to bring an open mind, speak honestly, and try to understand the views of everyone involved. You may also want to think about what you would like to have discussed and prepare a list of questions to make sure all of your concerns can be dealt with.
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- » **What do I, as an industry representative, need to bring to the table?**
- To make the meeting a success and make sure your point of view is heard, it is important to bring facts and explanations and be willing to understand the other parties' points of view. Be aware that technical discussions may be intimidating. To avoid this, be sure to speak in lay terms. Avoid jargon and do not presume that other participants possess technical knowledge. If it is necessary to bring other staff, explain why and how they will help the process.
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- » **Who will attend the meeting?**
- It is important to have the right people at the table. Those participating must have the authority to make decisions on behalf of the people or interests they represent. This prevents delays that may occur when proposals for resolution must be approved by others not present.

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- » **Will a written agreement be drafted?** If you reach an agreement at an ADR meeting, a written agreement will be drawn up. It is up to the parties, but generally if commitments are made at the meeting, the mediator will ask for those commitments in writing from the company. All parties will have input into how those commitments are worded. For more information, see EnerFAQs *The AER and You: Agreements, Commitments, and Conditions*.
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- » **What if some concerns are outside of the AER's jurisdiction?** While our jurisdiction may not cover all of your concerns, we encourage parties to discuss all of the concerns in the ADR process. AER staff members may only facilitate discussion on matters outside of the AER's jurisdiction if asked by the parties involved. They may not provide any advice or opinions on these matters. Keep in mind that these issues would not be ruled upon at an AER hearing or proceeding nor would they be incorporated into and form part of a decision of the AER's.
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- » **What if I have advisors or lawyers?** The role of a landowner's advisor or lawyer is to help the landowner understand the information and options before them and contribute to an efficient and informed ADR process. Advisors and lawyers are not required to participate in ADR. Any costs for advisors or lawyers should be discussed with the company before the first meeting.
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- » **Who pays costs?** Costs directly related to mediation are generally minimal and are normally covered by the applicant of a project. Any additional costs beyond the direct cost of the meeting should be addressed before the first meeting and then confirmed at the meeting as an agenda item. In third-party mediation, there are usually more costs, such as those for a mediator. Costs should be discussed and decided on in the first ADR meeting.
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- » **What if issues cannot be resolved through mediation?** If mediation does not resolve the concerns in dispute, an application continues to be processed and evaluated.
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- » **Why engage in ADR?** ADR is an opportunity for both parties to have input into a mutually agreeable resolution to all issues. The ADR process allows each party to ask questions and explain its interests and to make sure everyone understands. ADR usually improves relationships between all parties.

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- » **What is the success rate of ADR?** The ADR program has a very high success rate. Historically, over 80 per cent of disputes addressed through mediation are resolved.
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- » **How do I initiate mediation?** If you are interested in mediation, call 1-855-297-8311 (toll free) and ask to speak to an ADR team member.
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- » **How does ADR work when there is a group of concerned parties?** Often many of the concerned people will have common concerns. There are a number of ADR options for groups to consider. When meeting, AER mediators or the third-party mediator will explore the various options and help parties determine if they wish to form a group and participate as one voice. If there are parties that do not wish to be part of the group, they have the option to submit statements of concern on their own, and their concerns will be dealt with through the AER process, which may involve ADR (see *EnerFAQs Expressing Your Concerns – How to File a Statement of Concern About an Energy Resource Project*). The AER mediator or third-party mediator will also help the group develop its own guidelines about consensus, proxy matters, voluntary withdrawal of individuals from the group, and authority to settle.
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- » **What do “confidentiality” and “without prejudice” mean in ADR?** ADR discussions between concerned parties and the mediator are considered to be confidential and without prejudice.
- “Confidential” means that whatever nonpublic information disclosed by the parties is not to be shared outside of the ADR process unless it is otherwise agreed to by all. ADR meetings may not be recorded or form part of the record for a hearing or other proceeding. History has indicated that an atmosphere of open and free dialogue—without recording devices—enhances the chances of a successful outcome. Parties are encouraged to fully disclose their interests to each other without reservation, which in turn increases the range of solutions to be evaluated. Should parties wish to record their negotiations outside of the AER ADR process, they are certainly free to do so.
 - “Without prejudice” means that any admissions, concessions, offers to settle, and related discussions made in ADR to help address the other parties’ concerns cannot be raised by the other parties during a proceeding if the matter proceed to that forum. ADR discussions are without prejudice to encourage parties to make offers without fear of having to be held to them should the matter not be resolved through ADR. In fact, any offers that may have been made in an ADR process may not be used in a hearing or other proceeding without the consent of the persons participating in ADR.

» Where can I find more information on ADR?

Parties should discuss confidentiality, without prejudice, and how information is going to be shared early in the ADR process.

» Additional Information

ADR team members are based out of the Calgary head office and various locations across Alberta. They conduct mediations and are available to answer questions about the ADR process; call 1-855-297-8311 (toll free) and ask to speak to an ADR team member.

You may also visit the ADR page on the AER website www.aer.ca.

Also see *Manual 004: Alternative Dispute Resolution Program and Guidelines for Energy Industry Disputes*, *Alberta Energy Regulator Rules of Practice*, and the *Responsible Energy Development Act*.

For more information on the AER and its processes or if you wish to speak with your local field centre or have general questions about oil and gas in the province of Alberta, contact the AER Customer Contact Centre: Monday to Friday (8:00 a.m. to 4:30 p.m.) at 1-855-297-8311 (toll free).

This document is part of the EnerFAQs series, which explains the AER's regulations and processes as they relate to specific energy issues. Please visit www.aer.ca to read more of the EnerFAQs series. Every year the AER collects, compiles, and publishes a large amount of technical data and information about Alberta's energy development and resources for use by both industry and the general public. This includes raw data, statistics, hearing materials, and information on regulations, policies, and decisions.

Publications may be either viewed at the AER library or obtained from the Information Product Services Section (IPSS). Both are housed on the tenth floor of the AER head office in Calgary. Publications may also be downloaded free of charge from the AER website www.aer.ca.

To obtain a print or CD copy of a specific publication, contact IPSS by phone (403-297-8190), fax (403-297-7040), or e-mail (infoservices@er.ca).

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