



Facilitation, Collaboration & Conflict Management

## Energy Experience: Joseph P. McMahon, Manager

Mediating since 1991

M.S. in Civil Engineering

Registered Professional Engineer, Colorado, 1975

Experience in the mediation, facilitation, arbitration and litigation of a wide variety of energy and natural resource disputes.

### **Panels, memberships:**

CPR Institute on Dispute Resolution

American Arbitration Assn., Energy Panel

American Arbitration Assn., Large and Complex Case Panel

Panel, U.S. Institute for Environmental Conflict Resolution

**General experience.** I have been working in ADR since my initial mediation training in 1991, and also began service as an arbitrator at that time. In addition to law, I am a registered professional engineer (civil). As an engineer, I worked in construction scheduling, on site management, change orders, contract oversight, quality control, contract specifications, hydrology and materials science. I have an MS in Civil Engineering from the University of Denver.

**Energy subjects.** I have worked in matters disputes involving, among others, the following:

- Geothermal exploration and development
- Compliance with transmission agreement
- Geothermal exploration delays and required reporting
- Court administered breakup of energy partnership
- Gas re-pricing contract clauses
- Pipeline transportation fees and accounting
- Coal fired generation
- Power Sales Agreements
- Power delivery point
- Coal supply disputes
- Coal repricing and equitable adjustments
- Refinery construction
- Dissenting shareholder rights
- Coal royalties and mine plan
- Acquisition agreements

The following are **example energy engagements:**

- Panel chair, arbitration of coal supply dispute, 2010, hearings over failure to deliver contract coal amounts and claimed damages.
- Arbitrator, energy related construction dispute, 2008.
- Arbitrator, geothermal energy partnership (2007). Selected to serve as arbitrator on a dispute over competing claims of breach of a partnership agreement.

- Arbitrator, geothermal energy development agreement (2006). Selected to arbitrate a dispute over the terms of a geothermal energy dispute and render an award on the status of the parties' business relationship.
- Colstrip Unit 4 Power Sales Agreement Dispute (1997). This dispute was pending in Court and concerned the alleged breach of a power sales agreement from Unit 4 of the Colstrip power generation facility in southeast Montana for transmission by The Montana Power Company to Puget Sound Energy. Key disputes related to the PSA requirements about firm ability to transmit the purchased power. This dispute was taking place in the context of expectations of additional deregulation, and rapidly changing pricing – leading to an ‘out of market’ contract.
- Arbitrator, Power Development and Sale Agreement, 2005 (parties confidential). Asked to arbitrate a dispute over the effect of environmental litigation on the terms of an agreement to develop and sell power – in this instance geothermal. Under an agreement between buyer and seller, seller was required to meet certain deadlines for project completion and sell power by an identified date. Key disputes concerned whether the instance of environmental disputes and related regulatory proceedings excused or delayed certain deadlines, or alternatively, whether the cited failures and delays meant the buyer was entitled to terminate the agreement. .
- Arbitrator, Power Purchase and Sale Agreement, 2003 (parties confidential). Asked to arbitrate disputes concerning the Parties’ Master Power Purchase and Sale Agreement. The key dispute concerned which of two alternate delivery points for power sale was the point at which power would be priced. The payment location was to be determined by the arbitrator.
- Colstrip Power Plant – Coal Supply Mediation, Montana (1998). These disputes (one arbitration and with two other price arbitrations planned) involved the coal supply, transportation of coal for, and the generation and sale of power from the four Units of the Colstrip Power Plan. It was occurring as various deregulation legislative proposals were underway, including legislation in Montana. The key issues were possible price changes under the contracts that provided for price renegotiation and gross inequity pricing provisions among the following parties.
- Arbitration – Coal sale for thermal power generation (parties confidential). Trial counsel in a dispute over coal pricing for thermal power in New Mexico. Initial disputes concerned mine royalties and appropriate payment. Arbitration issues expanded to include various disputes over proper mining approach, payment for coal and agreements between lessee and the power plant receiving the coal.
- Natural Gas price determinations and volumes of reserves. Served as arbitrator or mediator in energy related pricing or delivery/gathering disputes approximately ten times.