The Energy Community
Dispute Resolution Forum

Mediation: Competition or Complement to Arbitration?

Why mediation works where arbitration has failed…

27 September 2018
Why Mediation works…

- Alternative Dispute Resolution (ADR)

- Has arbitration failed?

- Does mediation work?
  - Success rates | client satisfaction
  - Non-judgmental
  - Party-led settlements
  - Assisted negotiation
  - Contractual settlement

- Mediating cases involving state entities

- Outlook
Why Mediation works…
Alternative Dispute Resolution (ADR)

- What does the "A" in "ADR" really stand for?
- What does ADR have to offer?
- When should ADR be considered?
Why Mediation works…
Has arbitration failed?

- Big expectations
- Bigger disappointments?
- International best practice: multi-tiered dispute resolution processes
Why Mediation works…
Does mediation work?

- Success rates | client satisfaction
- Non-judgmental
- Party-led settlements
- Assisted negotiation
- Contractual settlement
Why Mediation works…
Mediating cases involving state entities

- Administrative authority
- Legislative framework to mediate
- Public official liability
- Transparency
- Power-of-Attorney and composition of the delegation of the State
- Identifying stakeholders (involvement of non-parties, e.g. local government representatives)
- Credibility of the process
- Approval/authorization process within the State (including approval of final settlement)
Stakeholders are increasingly aware of the "different layers" of dispute resolution processes

Multi-tier dispute resolution still needs to be anchored in company / government culture

Early case assessment is key

82% of users prefer institutional over *ad hoc* mediation proceedings

Legal advisors should
- be familiar with the complete dispute resolution tool box…
- understand conflict dynamics…
- excel at negotiation techniques…
- talk less and listen more…
Do Not Let The Behavior Of Others Destroy Your Inner Peace.
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We aim for your goal.

Vavrovsky Heine Marth