

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...

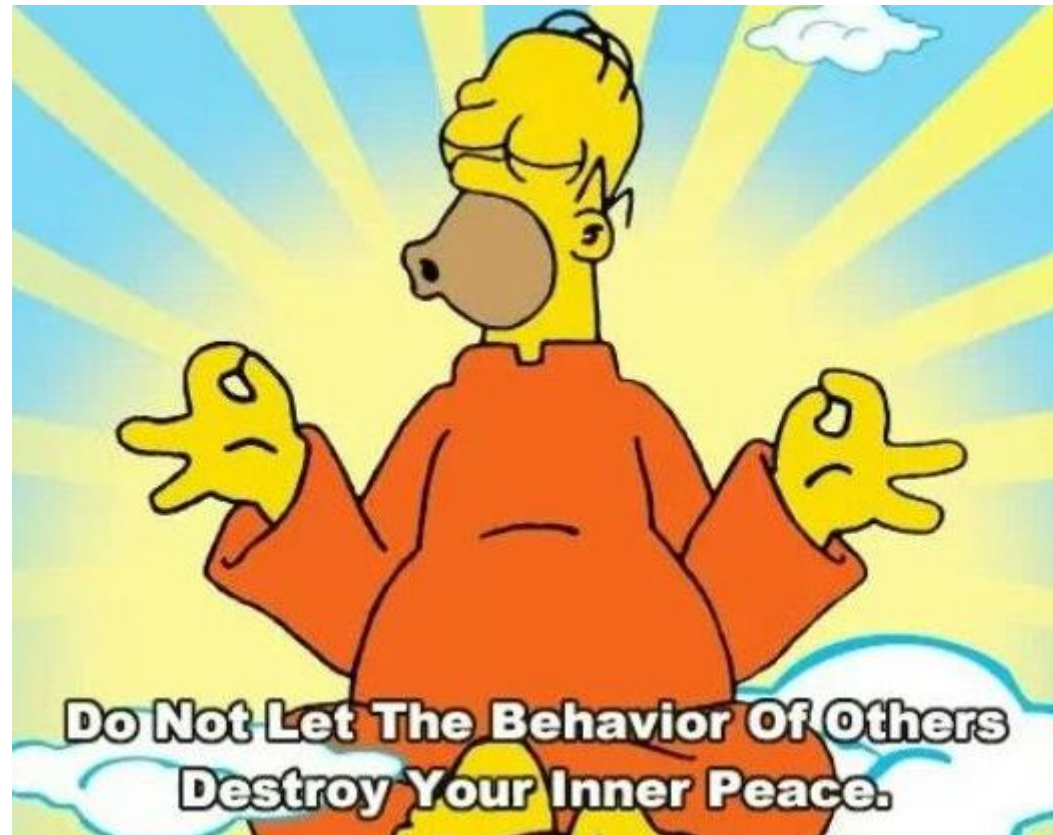
Mediating cases involving state entities

- ▶ **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)**

Why Mediation works...

Outlook

- ▶ **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...*





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