

EAA DISPUTE RESOLUTION

Responding to the electricity industry

The needs for a tailor-made scheme.

Over 20 years ago the foundations for the modern electricity industry were laid. The Electricity Arbitration Association (EAA) was then created to provide a means whereby disputes amongst all types of participants, including retail customers, could be resolved satisfactorily. After widespread consultation, rules were drawn up which not only reflected best practice but pioneered innovative techniques which are today taken for granted. The Association was able to call on people to act as arbitrators and other forms of dispute solvers who were knowledgeable about the industry and experienced in cost-effective means of resolving disputes.

The continuous development of the electricity industry and the contribution of new participants have given rise to a multitude of contractual relationships amongst generators, buyers, sellers and distributors and increased activity by regulators.

The number of enquiries and subject matter of disputes filed with the EAA indicate that there is a continuing role for an independent body to help resolve disputes; one which will act in the best interests of all parties, offer up-to-date techniques of ADR and cost effective arbitration.

The services provided by the Association

The EAA maintains a list of suitably qualified and independent arbitrators and neutrals who can be called on to assist in resolving disputes.

They may be experienced lawyers or experts in areas such as energy, economics, computing, electrical engineering, competition law or construction claims. If parties are unable to agree on the identity of such persons, the President will make the necessary appointments.

The President of the Association is His Honour Humphrey LLoyd QC, a former Judge of the Technical and Construction Court of the High Court in England and Wales and now once again a practising arbitrator. He has been active in the world of arbitration for forty years.

The Deputy President of the Association is Gary Chapman Esq formerly of RWE npower.

Appointments are made by the President on the advice of the Deputy President.

Inquiries about the services offered by the Association and requests for the appointment of arbitrators and others should be directed to:

G Chapman Esq,

Deputy President,

The Electricity Arbitration Association,

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Bradford on Avon,

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The Awards of arbitrators are binding under the laws of England and Wales. The determinations of experts and recommendations of mediators can also be binding if the parties so wish.

The users of the EAA Rules and procedures do not have to be members of the Association and the Association charges no fee for its services. Its modest costs are borne by contributions from the electricity industry.

Efficiency and expedition

At the outset of a procedure the attention of parties and arbitrators is drawn to the desirability of conducting efficient procedures. The Association appoints arbitrators and other dispute solvers promptly. Timetables are specific requirements in the rules. Another feature is the voluntary acceptance of a limitation on the recovery of costs from losing parties.

Confidentiality, Consolidation and Publication

Unlike many other arbitration rules, the EAA Rules expressly impose a duty of confidentiality on the parties. Parties may consider this of value when disputes involve information which is sensitive for members of an industry group.

In limited circumstances the President may order the consolidation of arbitrations where there are similar issues in more than one arbitration. Again, confidentiality will be an important matter.

He may also ask the parties to an arbitration to allow publication but without identifying the parties, of any award so that the industry may benefit from decisions.

Appointment of a Neutral adviser

The parties to a dispute may prefer a mediation-type procedure or ADR (Alternative Dispute Resolution) to formal arbitration. If required the President will make an appointment.

The rules for the conduct of a Neutral Adviser procedure (in the EAA rules called a Model Procedure for Extra-arbitral Dispute Resolution) follow much the same content as might be expected in any other institutional ADR process.

They provide specifically for

- a detailed timetable to be settled by the parties with supervision and direction by the Neutral Adviser,

- a meeting chaired by the Neutral Adviser in the presence of senior managers who have authority to negotiate a settlement and,

- a clear termination

but otherwise leave the parties and Neutral Adviser freedom to agree procedures.

The Constitution of the Association

The constitution provides for membership to comprise six groups and provides for the introduction of others. The initial six were :-

- The licensed generators; National Power plc; PowerGen plc and Nuclear Electric plc

- All other generators

- The descendants of the 12 original regional electricity companies of England and Wales

- Other independent distributors

- Holders of a Transmission Licence (currently the National Grid)

- Commercial, industrial and agricultural customers who buy substantial quantities of electricity.

Each of these member groups may nominate a representative to sit on the EAA Standing Committee which is chaired by the President of the Association. The membership of the Association and its Standing Committee can be extended to other participants in the industry so as to reflect its composition.