

Power Distribution in Complex Environmental Negotiations: Does Balance Matter?

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In this article, Burkardt et al. postulated that a balance of power among parties was necessary for successful negotiations. They found a complex relationship between balanced power and success and concluded that a balance of power was associated with success in the negotiations studied. Power played a dynamic role in the bargaining and illuminated important considerations for regulatory design.

Methods

Burkardt et al. chose to study power as a guiding concept because researchers have argued that bargaining theory begins with an analysis of power that helps explain how bargainers interpret contextual cues and position themselves in a given negotiation. Burkardt et al. defined negotiation power as the ability to influence others and prevent other parties from acting unilaterally.

To measure power behavior, Burkardt et al. asked respondents to describe their organization's power in the process, the power other parties had over them, and the overall balance of power. Respondents were also asked to rate their organization's power on a 10-point scale, with 1 meaning that they had no power, 5 meaning that power was balanced, and 10 meaning that that they could freely manipulate others. A case was considered to have balanced power if it met three conditions:

1. Each party had the ability to stop any other party from acting unilaterally (stop others).
2. Each party had the ability to prevent the other parties from collectively excluding their interests from being addressed in the negotiated agreement (prevent exclusion).
3. The balance of power was rated between 3 and 7 on a 10-point scale by all parties throughout the process.

Results

Burkardt et al. found a balance of power on the basis of respondent perceptions. The respondent scores on the scaled question about balance of power were of little assistance in making this judgment. The transcript record was relied upon to ascertain whether or not respondents reported that they could stop others or prevent exclusion (Table 4).

Table 4 Ratings of Success and Balance of Power

Project Name	Successful?	Stop Others	Prevent Exclusion
Koma Kulshan	Fully	Yes	Yes
Eastman Falls	Fully	Yes	Yes
Oswegatchie	Minimally	No	No
Cataract	Minimally	No	No
Pit 3,4,5	Minimally	No	No
Ashton-St. Anthony	Minimally	No	No

Discussion

In exploring the proposition that a balance of power is a necessary condition for successful negotiation, Burkardt et al. concluded that the two cases of successful negotiation exhibited balanced power, and the four minimally successful negotiations did not. One obvious conclusion from this finding is that even regulations designed to promote balance of power may not achieve that result.

Where a negotiation was successful, the overall context could be described as a balance of power. While participants could see that power was not balanced at every point in the process, their overall belief was that power was shared. Each party possessed and expressed power, but the actual balance was fluid.

What were Participants' Sources of Power?

The Power of Expertise

All the participants interviewed stressed the importance of expertise. FERC licensing regulations establish the presumption of the validity of agency expertise. It is presumed that resource agencies possess the expertise required to specify appropriate studies. However, powerful applicants can accede to studies, but prevail on related issues, such as research methods. Also, applicants stated that their expertise in engineering and project design enhanced their sense of power as did the supplemental biological expertise provided by consultants hired by the applicant.

Knowledge of the process is yet another kind of expertise that a party can hold. Applicants hired consultants or assigned personnel specifically for their negotiation skills and knowledge of the FERC process, and agency representatives sometimes lamented their lack of negotiation skill or commented on how a broader understanding of the FERC process could have enhanced their power.

The Power of Agenda Control

Participants in these consultations were aware of the fact that control of agendas and meeting sites was a source of power. Although applicants usually controlled meeting agendas, agency representatives were sometimes able to use an agenda to their advantage. Use of the power of expertise to achieve some level of agenda control was one way to overcome the fact that another party constructed the agenda. Another means to gain some control over an agenda was to form coalitions with other resource agencies.

The Power of Precedent

Most resource agencies studied had no good alternatives to negotiation. Without negotiating on appropriate measures to protect resources, it was unlikely that fish and wildlife agencies could achieve their goals. There was reluctance by both the agencies and the applicant to set the precedent of entirely turning the decision over to FERC. By definition, this would diminish the power of the consulting parties. Because it was uncertain what would be gained by asking FERC to settle project operation issues, parties preferred to control decision making to the extent possible.

The Power of Timeliness

One manifestation of power is the ability to control the pace of the consultation. When negotiations dragged on for several years, the resource agencies were unable to maintain a consistently high level of interest and commitment. When the consultation moved too quickly, the resource agencies had problems devoting the necessary time and attention to the project.

The Power of Personality

In several cases, respondents noted that personality played a part in the negotiations either because an individual with a strong personality assumed a leadership role or because someone with an unpleasant personality stymied progress.

Conclusion

Two of the cases, Eastman Falls and Koma Kulshan, were successful and power was balanced. Negotiators were aware of their sources of power. They made the decision to use these sources as points of leverage, but not as hammers. They made certain that the extent of their potential power was known, but they did not fully exercise it. The key power behavior was power wielded in a subtle, yet effective manner.

The four unsuccessful cases, all with unbalanced power, fell into two general categories of power behavior. In Ashton-St. Anthony and Pit 3,4,5, the pattern was to recognize sources of power but to neglect to use them. In the end, power was not balanced because the applicant effectively used available resources, especially in terms of commitment of time and personnel. Negotiators in Oswegatchie and Cataract were aware of their power and did not fail to exercise it. However, the cases were marked by the hope that FERC would make the final decision in a party's favor. Rather than attempt to influence the process as it unfolded, participants pinned all their hopes on forcing the FERC to respond positively to them by using a regulatory trump card after FERC made its ruling.