FERC’S ELECTRONIC HEARING PROCESS

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Presentation to Energy Bar Association
Energizer: Tips and Tricks to Manage FERC’s Paperless Hearings
February 9, 2016
Objective

- Reduce or eliminate paper required for evidentiary hearings; better address protected materials concerns.

Advantages:
- No need to lug hard copies of every cross-examination exhibit for other parties.
- No need to lug hard copies of pre-filed testimony.

Disadvantages:
- Some Judges still require one paper copy of each exhibit.
- Tricky at first, but even techno-phobes will learn to love it!
Needed Hardware and Software

- FERC requires two laptops: one for backup.
- You could load files onto laptop or a flashdrive.
- Both laptops will need internet access and Adobe Acrobat Professional
  - Adobe Reader will not work – you must be able to edit the headers of any PDF documents submitted as new exhibits during the hearings.*
  - Laptops also should have access to Word and Excel software.

* Depends on the Judge’s instructions, some may want exhibits pre-labeled.
FERC-Designated Laptop

- Some firms have dedicated a laptop and flashdrive for use at FERC electronic hearings.
- Make arrangements well in advance of the hearings to make sure the laptop is available.
  - Arrange in advance for your firm to provide the MAC address for the Firm laptop.
- FERC requires a second laptop as back-up – this could be a firm or personal laptop.
MAC Address

- FERC requires you to provide the Internet Protocol Media Access Control number (“MAC address”) for all laptops connected to the FERC Hearing Room network.
  - This is NOT the computer’s IP address!
  - MAC address is needed for each computer that needs to access hearing materials, e.g., witnesses and co-counsel.

- Registration consists of providing the MAC addresses for each computer to the Presiding ALJ’s law clerk or technical assistant in advance of hearing.
MAC Address for Windows

- Self-Help Using Windows 7 only
  - Click Start, All Programs, Accessories, Command Prompt.
  - In the prompt that appears, type `ipconfig /all` and click Return.
  - Find 'Ethernet Adapter Wireless Network Connection' section.
  - Look for the 'Physical Address' entry. This line will display your adapter's MAC address, which typically looks like a string of letters and numbers separated by dashes.
MAC Address for Mac Laptops

- Self-Help Way Using Mac OS X
  - Click the *Apple* menu on the upper left of screen.
  - Click *System Preferences*. In the resulting System Preferences menu, select *Network*.
  - In the Network window, choose *Wi-Fi* from the list of interfaces on the left and click *Advanced*.
  - Choose the Hardware tab – it will provide the MAC address of your wireless card.
Alternative Instructions to Obtain the MAC Address

- **Self Help:**
  - Plethora of information on the web about how to find the MAC address; one source:
    - [http://www.pcworld.com/article/240803/how_to_find_your_ip_address_and_mac_address.html](http://www.pcworld.com/article/240803/how_to_find_your_ip_address_and_mac_address.html)

- **Easy Way:**
  - Call your IT department; they can walk you through it!
Training Before the Hearing

- Training and internet wireless connection information (address and password) provided before or at hearing.
  - **NEED WIFI CAPABILITY** to connect to FERC Hearing Room Network and access exhibits during hearing.
  - FERC provides internet access via WIFI.
  - IT Tech Staff is available throughout the hearing to help.

- Some Judges hold training sessions before the hearing.
  - Training before hearing allows fast-start to hearing.

- Others use the morning of first day of hearing.
Access to FERC Folders

- Two Types: 1. Individual Party Folders  
  2. Shared Folders
- FERC IT Tech Staff will be there to assist and provide instructions to connect to folders:
  - Start Menu
  - Computer
  - Map to Network Drive
  - “S:” Drive (all boxes checked)
  - Type network address
    - Each party will be given a specific network address, either the morning of the first day of the hearing or during the training session.
Individual Party Folder

- Each party either should load its exhibits on its laptop, or have a flash drive with all exhibits – both prefiled and potential cross-examination exhibits.

- These files will be uploaded to your Individual Party Folder, e.g., “Party X” Folder.
  - Your cross-examination exhibits should be in PDF format and labeled with your party identifier:
    - Some Judges require pre-numbering cross exhibits, and allow submission of cross-exam exhibits out of order;
    - Others require you to leave exhibit number blank, e.g., Exhibit No. S-___, and add number when cross-exhibit is introduced.
Shared Folder

- The Shared Folder is the official hearing folder where all Parties’ exhibits will be uploaded.
- After loading your exhibits to your Individual Party Folder, upload all of your *pre-filed* exhibits to the Shared Folder.

**DO NOT UPLOAD CROSS EXHIBITS TO SHARED FOLDERS AT THIS TIME!**

- Cross-examination exhibits will be uploaded at the time those exhibits are marked for identification during cross-examination.
Each Judge has his/her own way of organizing material within the Shared Folders.

In Docket No. EL14-12, Judge Coffman used a miscellaneous sub-folder:
- For orders, rules, tariffs, and other publicly available materials.

In Docket No. EL10-49, Judge Haubner created sub-folders for each Witness containing:
- That witness’ prefiled testimony and exhibits;
- Cross-examination exhibits used on that witness.
Folder Access

- All parties have access to Shared Folders on their laptops, but only for as long as you are connected to the FERC website.

- Individual Party Folders are accessible only by the individual parties.

- The witness, Judge and law clerk each have a laptop for access to shared folders and any exhibits used at hearing.

- Large screen for viewing exhibits in Shared Folders (but may be easier to view on individual laptops).
Folder Access by Witnesses

- Witnesses can access the Shared Folders from the witness stand.
  - Computer provided by FERC for the witness at stand.
- Lawyers should get ALJ permission for the witness to approach the stand before testifying to learn how to access the Shared Folders.
  - Shared Folders include cross-exam exhibits;
  - No paper copies, thus witnesses need computer access while off the stand as well;
  - Advantage: electronic searches for data.
FINAL NOTES

- DOWNLOAD TO THE LAPTOP OR FLASHDRIVE ALL EXHIBITS IN SHARED FOLDERS AT THE END OF EACH DAY!
  - You will not have access to the Shared Folders after the hearing concludes.
  - You will not have paper copies to rely upon!
  - You should upload all official exhibits from your laptop or flashdrive to your office computers when you return to the office.
Bring an Assistant!

- It is difficult to conduct cross and upload your cross-exhibits to the Shared Folders at same time!

- In Judge Haubner’s hearing, he required someone to “drive” the laptop connected to the overhead projector screen when your witness was on the stand.

- Judge Coffman had his law clerk handle the projector laptop.
Questions?

- Everyone is still finding their way through this process!
- Call the ALJ’s law clerk.
  - Judges may have different approaches.
- Notify the ALJ or the ALJ’s law clerk of any technical issues – ALJ law clerk will contact FERC IT staff for assistance
  - FERC IT staff is available throughout the hearing, although they may not be in the hearing room the entire duration.
Contact Information

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EBA Energizer
Paperless Hearings at FERC

February 9, 2016

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Talking Points

- How did we get here?
- FERC’s Hearing Room Infrastructure
  - Live Demonstration
- Anticipated Questions & Information
- Recommendations
- Q&A
How did we get here?

- “Courtroom of the Future” - Chief Judge Curtis Wagner

- Draft Notice of proposed rulemaking - 12/12/2014
  - Followed by a great deal of internal FERC discussions

- Notice of proposed rulemaking - 03/19/2015
  - Amended Rule 508 of the Commission’s Rules of Practice and Procedure which eliminated the requirement that participants in Commission trial-type hearings must provide paper copies of all exhibits introduced as evidence.
How did we get here?

- The first hearing to utilize the amended rules was March 30, 2015

11 days later!
How did we get here?

- Brainstormed
- Keep it in-house?
- Security
- CD/DVDs?
- Scope
- Time
- Outsourced It?
- Costs
- USB Drives?
- Do nothing?
- Encryption?
FERC’s Hearing Room’s Infrastructure

- Important factors for the electronic hearings
  - Speed of implementation
  - Low Cost Investment
  - Security
  - Ease of use

- Take advantage of existing IT infrastructure
  - Wireless Network
  - Available IT hardware/software

- 91.35% of Desktop Operating Systems Worldwide is some flavor of Microsoft Windows
FERC’s Hearing Room’s Infrastructure

FERC Hearing Room Domain

FERC Wireless Network

FERC Production Network
eLibrary

Participant Industry Counsel

FERC Counsel

Shared Folder
- Privilege
- Non-Privilege

Participant Industry Counsel

FERC Counsel

Exhibits
FERC’s Hearing Room’s Infrastructure

- Separate from the FERC production network
- Secured with controlled access credentials provided by FERC
- No CAPEX – Existing Infrastructure and labor
- Utilizing Familiar Technologies
  - Laptops
  - Microsoft Windows File Structure
  - Wi-Fi
FERC’s Hearing Room’s Infrastructure

Live Demonstration

Controlled Unclassified Information
FERC’s Hearing Room’s Infrastructure

- Potential IT enhancements for the future
  - Secure Drop Box
    - Capability to upload pre-filed exhibits securely from the outside
  - Trail Presentation Software
    - Trail Director, Visionary Pro, etc.
  - Video Conference
    - Capability to have remote and joint hearings
Anticipated Questions & Information

- What changes has the FERC made to its wireless network to accommodate all of the users during a hearing?
  - Other than some slight security configuration modifications (Time Boxing and Time Out Settings), nothing.

- How will the FERC ensure that attorneys are not "kicked off" the wireless system (which happens now, after approximately 10 minutes online) during a hearing?
  - Perception – Timeout is set for 4 hours (Timeout vs Inactivity)
  - If this is occurring, there may be a potential issue with the Wi-Fi on the laptop
Anticipated Questions & Information

- Will the hearing rooms have their own IT person every day, in the likely event that there are problems with FERC's wireless and paperless hearing network systems?
  - Yes and No…
  - As a courtesy for a few hours on the first day of the hearing, FERC IT staff are present to assist.
  - If there are any issues, the FERC’s IT Service Desk can be called for assistance.
  - Pre-Hearing Meeting is imperative to avoid issues
Anticipated Questions & Information

- Will the hearing have to be suspended for the day, in the likely event that there are problems with FERC's wireless and paperless hearing network systems? Or will there be a "backup plan" in place that will permit the attorneys and witnesses to proceed as planned?

  - Technology is technology…technical issues may occur from time to time.
  - The hearing room is the Judge’s domain. Any back up plans are up to the judge’s discretion.
  - The FERC IT Service Desk will attempt to resolve any technical issue as expedient as possible.
  - Please be advised the FERC IT Service Desk is not responsible for non-FERC equipment. Responsibility demarcation ends at the FERC Wi-Fi Access Point.
Anticipated Questions & Information

- Why do we need to provide MAC addresses?
  - Security purposes. Only those devices authorized to access to the Hearing Room Network will have access. The MAC address uniquely identifies the hardware.

- Does the FERC staff have to provide MAC addresses? Are both parties being treated fairly?
  - All parties are treated equal.
  - All parties are subject to the constraints of the system.
  - And no, FERC staff doesn’t have to provide MAC addresses because we already have them. 😊
Recommendations

- **Pre-Hearing Meeting**
  - Technical familiarization, administration tasks, and test credentials
  - Upload pre-filed exhibits (only one at the HRN at FERC)
  - Ask questions
  - If Pre-Hearing meeting is not scheduled, arrive early the first day of the hearing

- **Provide information as soon as possible**
  - MAC addresses for 2 laptops at the minimum

- **During a hearing**
  - If issues occur or something is wrong, like anything that would happen unexpectedly prior to 3/19/15, let the Judge’s Office know.
Q&A