



## SESSION A: INNOVATION IN THE FERC HEARING PROCESS

MAY 7, 2019, 11:00 AM – 12:15 PM

Hearings are impractical anytime the amount in controversy is less than the cost of litigation. This panel discusses an innovative hearing format that would address this problem by suggesting an example of a “minitrial,” mentioned in Rule 604; and amending Rule 218 to provide similar structure for complaint cases with \$1M or less at issue.

The panel also explains the mechanics of a two-party auction, for use in settlement proceedings. The auction may be used to settle any dispute that can be quantified, e.g., rate or reactive power cases.

**Moderator:** The Honorable John P. Dring, Administrative Law Judge, FERC

**Panelists:**

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# Innovation in FERC Hearing Processes

- THE HARMONIC AUCTION



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# Purpose/Overview

- SETTLEMENT TOOL WHICH MAY BE USEFUL IN EFFICIENTLY RESOLVING ISSUES IN WHICH TWO PARTIES HAVE A QUANTIFIABLE DISPUTE, *E.G.*, RATES OR DOLLAR AMOUNTS
- AUCTIONEER SETS A “BID” AMOUNT
- ONE PARTY IS GIVEN THE OPPORTUNITY TO ACCEPT OR REJECT
- IF REJECTED, THE AUCTIONEER MOVES THE BID AMOUNT AWAY FROM THE MIDPOINT
- REJECTING BID “UPS THE ANTE” AND THUS BOTH RISK OF AN ADVERSE OUTCOME AND POSSIBILITY OF A FAVORABLE OUTCOME



Never Say Never Again (1983)



# Definitions

- *TERMINAL POSITION*: THE OUTCOME THAT EACH BIDDER CONSIDERS OPTIMAL
- *MIDPOINT*: THE POINT WHICH IS AN EQUAL DISTANCE (AMOUNT) FROM EACH TERMINAL POSITION
- *INTERVAL AMOUNT*: THE AMOUNT BY WHICH EACH CONSECUTIVE BID CHANGES, TOWARDS A TERMINAL POSITION



# Process

- BIDDING BEGINS WITH A COIN TOSS—THE FIRST BID PRICE/OPPORTUNITY TO ACCEPT A BID AMOUNT IS OFFERED AT ONE INTERVAL AMOUNT AWAY FROM THE MIDPOINT, IN THE DIRECTION OF THE COIN TOSS WINNER'S TERMINAL POSITION
- ONLY THE COIN TOSS WINNER MAY ACCEPT OR REJECT THIS INITIAL BID PRICE
- IF THIS BID IS NOT ACCEPTED, THE NEXT BID PRICE IS ONE INTERVAL AMOUNT AWAY FROM THE MIDPOINT, BUT IN THE DIRECTION OF THE LOSER OF THE COIN TOSS
- EACH SUCCESSIVE BID POINT OFFER IS AN EQUAL, BUT ALTERNATING & OPPOSITE AMOUNT AWAY FROM THE MIDPOINT, AND TOWARDS THE PARTIES' RESPECTIVE TERMINAL POSITIONS



# Example

- *TERMINAL POSITIONS*

Party A – \$5 million

Party B – \$1 million

Midpoint, therefore, equals \$3 million

- AUCTIONEER SETS INTERVAL AT \$500,000
- PARTY A WINS COIN TOSS, IS OFFERED SETTLEMENT AT \$3.25M
- IF PARTY A ACCEPTS—GAME OVER, SETTLEMENT REACHED
- IF PARTY A REJECTS—PARTY B OFFERED SETTLEMENT AT \$2.75M
- ITERATIONS CONTINUE UNTIL ONE PARTY ACCEPTS



1) Party A wins coin toss and is offered \$3.5m – it rejects offer



2) Party B is offered \$2.55m – it rejects offer



3) Party A is offered \$4m – it rejects offer



4) Party B is offered \$2m – it accepts offer – auction over, settlement reached at \$2 million





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# Potential Issues

- *TERMINAL POSITIONS*

Likely most critical part of Auction; must be seen as intellectually, economically and legally supportable by all Parties and OAL Staff (even if Parties will not admit to such)

Likely best to be set at latest settlement offers

- *INTERVAL AMOUNT*

Must be small enough to allow the loser of the coin toss not to feel cheated or abused if the winner accepts the first bid iteration

Must must be large enough to move the auction along at an acceptable rate, and to not unduly burden the Parties in “running the numbers” on each bid interval

- *DISCOVERY IS CRITICAL*

Each Party must have a good feel for where it thinks the other party will accept the bid