

# **EIM FERC Jurisdiction and Governance - Concepts**

A WSPP Perspective

Arnold Podgorsky  
WSPP General Counsel  
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# Today's Presentation

- Nature of FERC jurisdiction over EIM and Market Participants
  - Jurisdiction over EIM rates and terms under FPA 205
  - Jurisdiction over EIM would not create FERC jurisdiction over exempt utilities (“Exempt”), with a wrinkle
- An EIM can stand alone, without an ISO/RTO (both “RTO”)
- Governance can address concerns that the EIM would transform into an RTO or broader energy markets
- An illustrative governance structure

# Caveats

- The Webinar is to provide information
  - We cannot assure what the FERC would do; while we have high confidence in the concepts we present, particular details could add complexity
    - Ahead of filing, many details can be explored informally at the FERC to help assure success
  - The materials and comments reflect no WSPP position— WSPP supports exploring the EIM and training, but its Board has adopted no formal position for or against the EIM
  - Support for many concepts is set out in WSPP’s paper on EIM Corporate Structure at [wspp.org](http://wspp.org)

# FERC Jurisdiction

- Nature of FERC jurisdiction over an EIM
  - The EIM would not be Exempt; the FERC would have jurisdiction to determine that EIM rates, terms, and conditions are just and reasonable (FPA 205)
    - All rates, terms and conditions (the EIM Tariff) must be filed under 205; FERC has 60 days to act; intervention and protests are permitted
      - Includes any “adder” to cover EIM operational costs
    - Because EIM rates are market based, the FERC would very likely require that the EIM retain an independent consultant to monitor the market for undue participant market power
      - Market power remedy could require sellers with market power in identified pockets to sell at cost-based prices (cost caps)
      - Presence of market monitor would likely avoid FERC requiring that each seller perform its own market power study for ancillary (balancing) services (see *Avista* cases)

# FERC Jurisdiction

- FERC jurisdiction over EIM would not cause EIM participants to become jurisdictional themselves
  - Exempt entity’s participation in EIM would not cause loss of exemption or otherwise subject Exempt’s rates to FERC review, subject to a wrinkle
- FERC will “review rates, revenue requirements, and costs . . . only if they *affect* the rates charged by jurisdictional Participants . . . .” *West Connect*, 124 FERC 61,240 (2008).
  - To assure that jurisdictionals’ rates are just and reasonable, FERC may elect to review rate inputs, but only if they “affect” the jurisdictionals’ rates

# FERC Jurisdiction

- Examples:
  - *Basin Electric*, 113 FERC 61,079 (2005), FERC reviewed Basin's revenue requirement because it affected transmission rates under a joint OATT between Basin and a jurisdictional utility
  - *West Connect*, cite above, because revenues for jurisdictional participants in Regional Transmission Pricing Initiative were capped at these participants' respective OATT rates, the Exempts' rates could never cause the jurisdictional rates to be unjust/unreasonable

# FERC Jurisdiction

- FERC review of Exempt rates in the EIM? We think not
  - Because EIM rates are market-based and, absent market power, would be inherently just and reasonable, there is no need to examine Exempt rates to assure that EIM rates are just and reasonable
  - Exempt lack of market power is key
    - If an Exempt has market power, FERC may be expected to mitigate that power with cost-caps (e.g., requiring the Exempt to sell in to the EIM at its cost) or other remedies to offset any impact of the market power on EIM jurisdictional rates
- Questions about FERC jurisdiction?

## RTO Concerns

- EIM will not control transmission assets of others and, therefore, need not be an RTO
  - Core functions and characteristics of an RTO
    - Core RTO function is independent administration of transmission tariff(s), to assure open, non-discriminatory access to transmission, in both fact and appearance (see FERC Order 888 (1996))
      - Transmission includes generator interconnection
    - Core RTO characteristic is independence (hence, the “*independent* transmission system operator”), such that RTO and staff are not beholden to any market participant or sector
    - Additional RTO functions- Order 2000 *et al* expanded functions of RTO to include organized energy markets (e.g. LMP/FTRs), and enhanced transmission planning and now inter-regional coordination



# RTO Concerns

- Federal regulatory principles do not otherwise require that EIM be an RTO
  - RTO formation is voluntary- apart from a few cases where RTO participation was a condition of merger approval, the FERC does not compel RTO formation or participation
  - FERC precedent establishes that an organized energy market can exist without an RTO

# RTO Concerns

- Avoiding a potential pitfall
  - To avoid forming a market that unwittingly would need to have RTO characteristics or status, the EIM
    - Should not control transmission facilities owned by others
    - Should not be a transmission provider
    - Would not have an OATT
  - A tentative transmission service structure
    - EIM Corp would have transmission service agreements with transmission owners
    - Each transmission owner would add EIM transmission service and rate to its OATT or tariff that conforms to a common, agreed rate approach requiring FERC approval
      - EIM transmission rate likely different than traditional non-firm

# RTO Concerns

- Even though FERC would not require an RTO, could the organization transform into an RTO anyway?
  - Some market participants may want, or come to want, an RTO
  - In theory, EIM staff or market operator could favor expansion

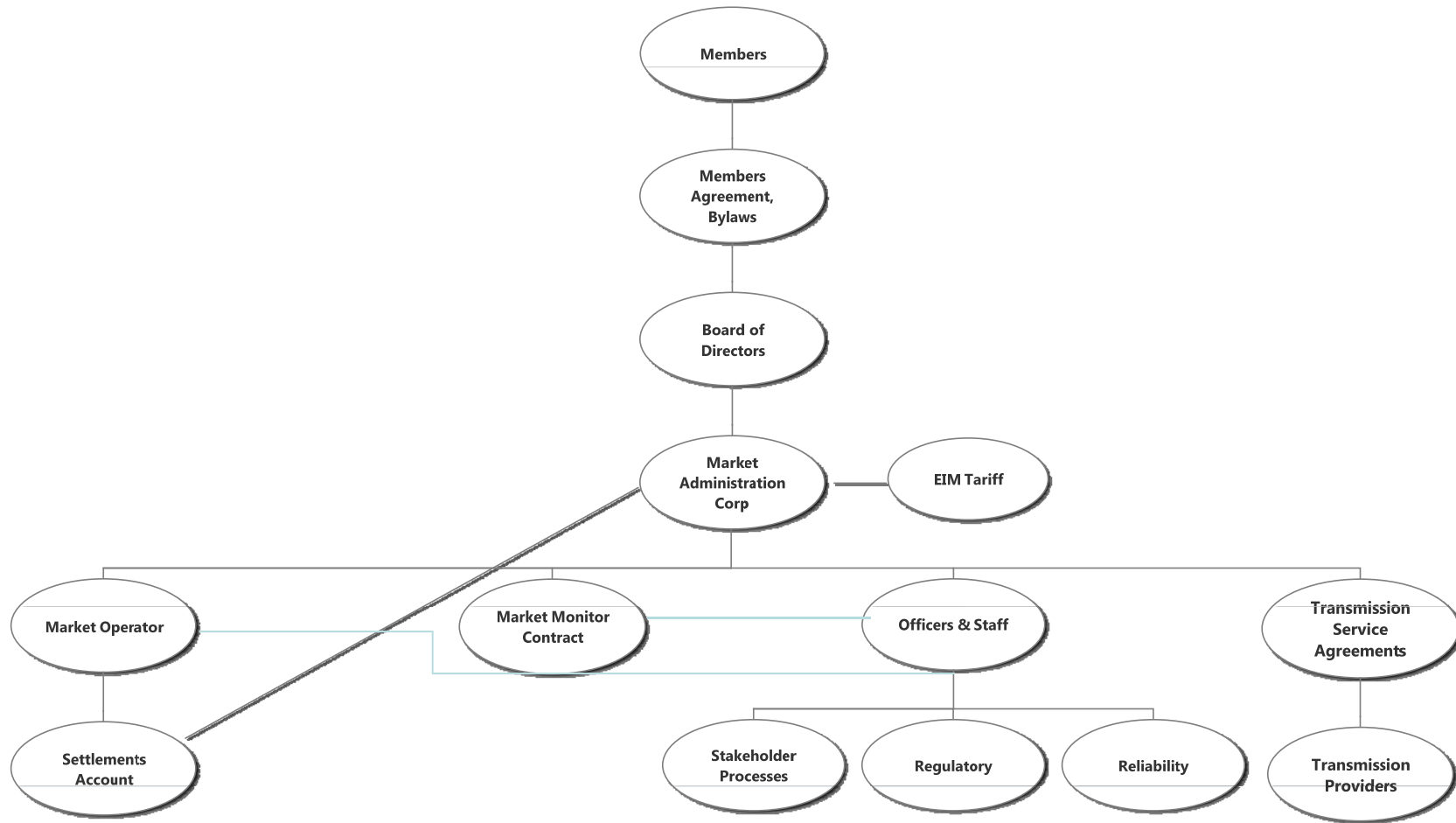
# RTO Concerns

- Potential solutions
  - Binding contractual term in Members' Agreement and corporate bylaws
    - Members' Agreement, a binding contract establishing certain terms and conditions of membership
    - Can include provisions that the EIM corporate entity will administer an EIM and perform no other market or function, and also similarly limit the power of the Board of Directors
      - Can require any threshold for amendment, including unanimity or high percentage of agreement
- Questions about RTO Concerns

# Governance

- Governance Challenges
  - Hear concerns of potential participants and identify significant issues
  - Facilitate and reach agreement on a practical governance structure, designed to
    - Assure against undue discrimination
    - Provide ongoing cost efficient, appropriate stakeholder input
    - Cover all corporate, commercial and regulatory requirements
- Following is a very basic diagram to facilitate thinking about the organization (not all relationships are indicated)

# A Basic EIM Governance Structure



# Governance

- Market Administrator Corporate Concepts
  - Non-profit corporation (though could be for-profit if equity structure were preferred) (below assumes non-profit)
  - Members Agreement might include (some matters could be in bylaws)
    - Potentially expand functions only with unanimous or supermajority agreement
    - Board of Directors, selection mechanisms and qualifications
    - Goals of Market Administrator- what is fiduciary duty and to whom owed
    - Member eligibility criteria
    - Minimum standards for stakeholder process
    - Voting rights, whether per capita, weighted, or by market sector
    - Exit rights and addressing potential stranded costs
    - Commercial structure (whether EIM Corp is buyer to seller and seller to buyer, or not) (See FERC Order 741)

# Governance Concepts

- EIM Tariff is all rules and procedures for EIM purchases and sales, filed with the FERC
  - Likely provides funding mechanism for ongoing EIM operations
- Market Administrator staff, following is an example of minimum functions
  - CEO, including contract administration with market operator and market monitor
  - CFO, including oversight of market operator settlement function and audit function
  - Regulatory office, including
    - stakeholder processes and facilitation
    - oversight of tariff administration and FERC filings
  - Reliability office, including interface with NERC, WECC



## Footprint Issues

- Some may prefer West-Wide, some may prefer smaller footprint(s). Considerations expressed include
  - Broad territory to achieve highest operational and startup cost-efficiencies and highest ongoing market efficiency
  - Smaller territory(ies) to make it easier to stand up an EIM(s)
  - Conceivably these concepts join as discussions, economic analyses, and footprints evolve

Questions?

Discussion?

# Contact



For more information, please contact:

Arnold Podgorsky

[podgorsky@wrightlaw.com](mailto:podgorsky@wrightlaw.com)

202-393-1200 (O)

703-217-1827 (C)