

Memorandum of Understanding



FERC
FEDERAL ENERGY REGULATORY COMMISSION

Agency for the
Cooperation of Energy
Regulators

Federal Energy
Regulatory Commission

**Concerning Consultation, Cooperation and the
Exchange of Information Related to the Monitoring
of Wholesale Energy Markets**

**MEMORANDUM OF UNDERSTANDING CONCERNING
CONSULTATION, COOPERATION AND THE EXCHANGE OF INFORMATION
RELATED TO THE MONITORING OF WHOLESALE ENERGY MARKETS**

In view of the growing globalisation of the world's wholesale energy markets and the increase in cross-border operations and activities of Market Participants, the European Union Agency for the Cooperation of Energy Regulators ("ACER"), and the United States Federal Energy Regulatory Commission ("FERC") have entered into this Memorandum of Understanding ("MoU") regarding consultation, cooperation and exchange of information related to the monitoring and oversight of the wholesale energy markets within the jurisdictions of ACER and FERC. ACER and FERC express, through this MoU, their willingness to cooperate with each other in the interest of fulfilling their respective regulatory mandates, particularly in the areas of: fostering market integrity and transparency of wholesale energy markets for the benefit of consumers of energy; monitoring trading activity in wholesale energy products to detect and prevent trading based on market abuse; maintain confidence in wholesale energy markets.

This MoU is without prejudice to the respective competences of the Member States of the European Union and the Union institutions, including the European External Action Service, and shall not create legal obligations in respect of the European Union and its Member States nor shall it prevent Member States and their competent authorities from concluding bilateral or multilateral arrangements with FERC.

**SECTION 1:
DEFINITIONS**

1. "Authority" means ACER or FERC (together the "Authorities")
 - a. "Requested Authority" means the Authority to whom a request is made under this MoU; and
 - b. "Requesting Authority" means the Authority making a request under this MoU.
2. "Person" means a natural or legal person.
3. "Market Participant" means a wholesale energy market participant or other Person whose activities subject it to the monitoring, oversight and/or authorisation or registration of one of the Authorities.

4. "Wholesale Energy Market" means a wholesale energy market subject to regulation, monitoring, and/or oversight by ACER or FERC.
5. "Competent Authority" means an authority with which ACER or FERC are required, by law, to cooperate and exchange information.
6. "Emergency Situation" means the occurrence of an event that requires immediate action by ACER or FERC.

SECTION 2: GENERAL PROVISIONS

1. This MoU is a statement of intent to consult, cooperate and exchange information in relation to the supervision and oversight of Wholesale Energy Markets carried out by ACER and FERC.

The Authorities anticipate that cooperation would be primarily achieved through on going, informal, oral consultations, supplemented by more in-depth, *ad hoc* cooperation. The provisions of this MoU are intended to support such informal and oral communication as well as to facilitate the written exchange of non-public information where necessary.

2. This MoU does not create any legally binding obligations, confer any rights, or supersede domestic laws. This MoU does not confer upon any Person the right or ability directly or indirectly to obtain, suppress, or exclude any information of a request for assistance under this MoU.
3. This MoU does not limit the Authorities in taking unilaterally those measures described herein in fulfilment of their regulatory functions. In particular, this MoU does not affect any right of each Authority to communicate with, or obtain information or documents from, any Person subject to their jurisdictions that is located in the territory of the other Authority.
4. This MoU does not prejudice, limit or alter the terms and conditions of any bilateral or multilateral Memoranda of Understanding or other arrangements concerning cooperation in market monitoring and regulatory matters between or among either Authority and any regulators from Member States of the European Union or from the United States.

5. The Authorities, within the framework of this MoU, intend to provide each other with the fullest cooperation permissible under the law in relation to the supervision and oversight of Wholesale Energy Markets.
6. To facilitate cooperation under this MoU, the Authorities designate the individuals listed in the Annex as contact persons.
7. The Authorities intend to periodically review the functioning and effectiveness of the cooperation arrangements between them with a view, *inter alia*, to expanding or altering the scope or operation of this MoU, should it be deemed necessary.
8. ACER and FERC, unless otherwise agreed upon, intend to bear their own respective shares of financial costs of participating in the activities under this MOU. All activities would be subject to approval of funding by each entity involved.

**SECTION 3:
SCOPE OF SUPERVISORY CONSULTATION, COOPERATION AND THE
EXCHANGE OF INFORMATION**

1. The Authorities recognise the importance of close cooperation concerning Wholesale Energy Markets and intend to consult regularly at staff level regarding: (i) general supervisory issues, including with respect to regulatory or oversight developments; (ii) issues relevant to the operations, activities, and regulation of Wholesale Energy Markets; and (iii) any other areas of common supervisory interest.
2. Cooperation should be most useful in, but is not limited to, the ongoing monitoring or oversight of Wholesale Energy Markets where issues of common regulatory concern may arise.

**SECTION 4:
EXECUTION OF REQUESTS FOR ASSISTANCE**

1. To the extent possible, a request for information with regard to Section 3, should be made in writing, and addressed to the relevant contact person. A request generally should specify the following:
 - a. The information sought by the Requesting Authority;

- b. A general description of the matter which is the subject of the request and the supervisory, oversight or compliance purpose for which the information is sought; and
 - c. The desired time period for reply and, where appropriate, the urgency thereof.
2. In Emergency Situations, the Authorities should endeavour to notify each other of the Emergency Situation and communicate information to the other as would be appropriate in the particular circumstances, taking into account all relevant factors, including the status of efforts to address the Emergency Situation. During Emergency Situations, requests for information may be made in any form, including orally, and confirmed in writing as promptly as possible following such notification.

**SECTION 5:
CONFIDENTIALITY OF INFORMATION AND ONWARD SHARING**

1. Each Authority will keep confidential to the extent permitted by law information shared under this MoU, requests made under this MoU, the contents of such requests, and any other matters arising under this MoU.
2. Except where disclosure is required by law, the Requesting Authority will obtain the prior consent of the Requested Authority before disclosing non-public information received under this MoU to any non-signatory to this MoU. If consent is refused in a way that the Requesting Authority considers unreasonable, the Authorities will consult to discuss the reasons for withholding approval of such use and the circumstances, if any, under which the intended use by the Requesting Authority might be allowed. In any case, the final decision rests with the Requested Authority.
3. Where required by law, it may become necessary for the Requesting Authority to share information obtained under this MoU with other Governmental Entities in its jurisdiction. In these circumstances and to the extent permitted by law:
 - a. The Requesting Authority will notify the Requested Authority.
 - b. Prior to passing on the information, the Requesting Authority will receive adequate assurances concerning the Governmental Entity's use and confidential treatment of the information, including, as necessary, assurances that the information is not to be shared with other parties without getting the prior consent of the Requested Authority.

4. To the extent legally permissible, the Requesting Authority will notify the Requested Authority of any legally enforceable demand for non-public information furnished under this MoU. Prior to compliance with the demand, the Requesting Authority will assert all appropriate legal exemptions or privileges with respect to such information as may be available.
5. The Authorities agree that the sharing or disclosure of non-public information, including but not limited to deliberative and consultative materials, such as written analysis, opinions or recommendations relating to non-public information that is prepared by or on behalf of an Authority, pursuant to the terms of this MoU, will not constitute a waiver of privilege or confidentiality of such information.

**SECTION 6:
MODIFICATIONS AND EXECUTION OF MoU**

1. Modifications to this MoU can be made in writing by the written consent of both Authorities.
2. Cooperation in accordance with this MoU becomes effective on the date this MoU is signed by the Authorities.

**SECTION 7:
DISCONTINUATION**

1. An Authority should endeavour to provide 30 days written notice of its intent to discontinue cooperation and assistance under this MOU. If either authority gives such notice, cooperation and assistance under this MoU should continue with respect to all requests for assistance that were made, or information provided before the effective date of notification (as indicated in the notice but no earlier than the date the notice is sent) until the Requesting Authority discontinues the matter for which assistance was requested.
2. In the event of the discontinuation of this MoU, information obtained under this MoU should continue to be treated confidentially in the manner prescribed under Section 5.

Signed this 6 day of January, 2014.

Cheryl LaFollette

Federal Energy Regulatory Commission

Antoine L. St. Laurent

Agency for the Cooperation of Energy Regulators