



25th world gas conference  
"Gas: Sustaining Future Global Growth"

# FERC and ACER: An Overview and Comparison of the Legal Structures and Responsibilities of the two Overarching Regulatory Authorities

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Plenary Hall



Patron



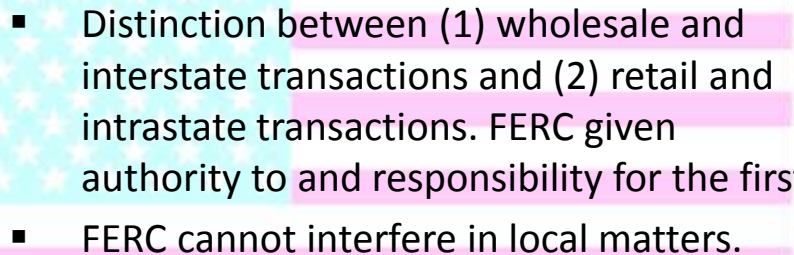
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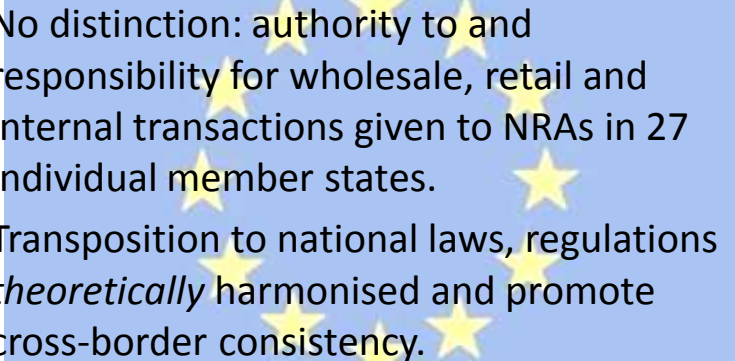
## UNITES STATES OF AMERICA

- 
- Distinction between (1) wholesale and interstate transactions and (2) retail and intrastate transactions. FERC given authority to and responsibility for the first.
  - FERC cannot interfere in local matters.



Uniform interstate policy at the national level

## EUROPEAN UNION

- 
- No distinction: authority to and responsibility for wholesale, retail and internal transactions given to NRAs in 27 individual member states.
  - Transposition to national laws, regulations *theoretically* harmonised and promote cross-border consistency.



*Even laws may be unevenly implemented across the EU*

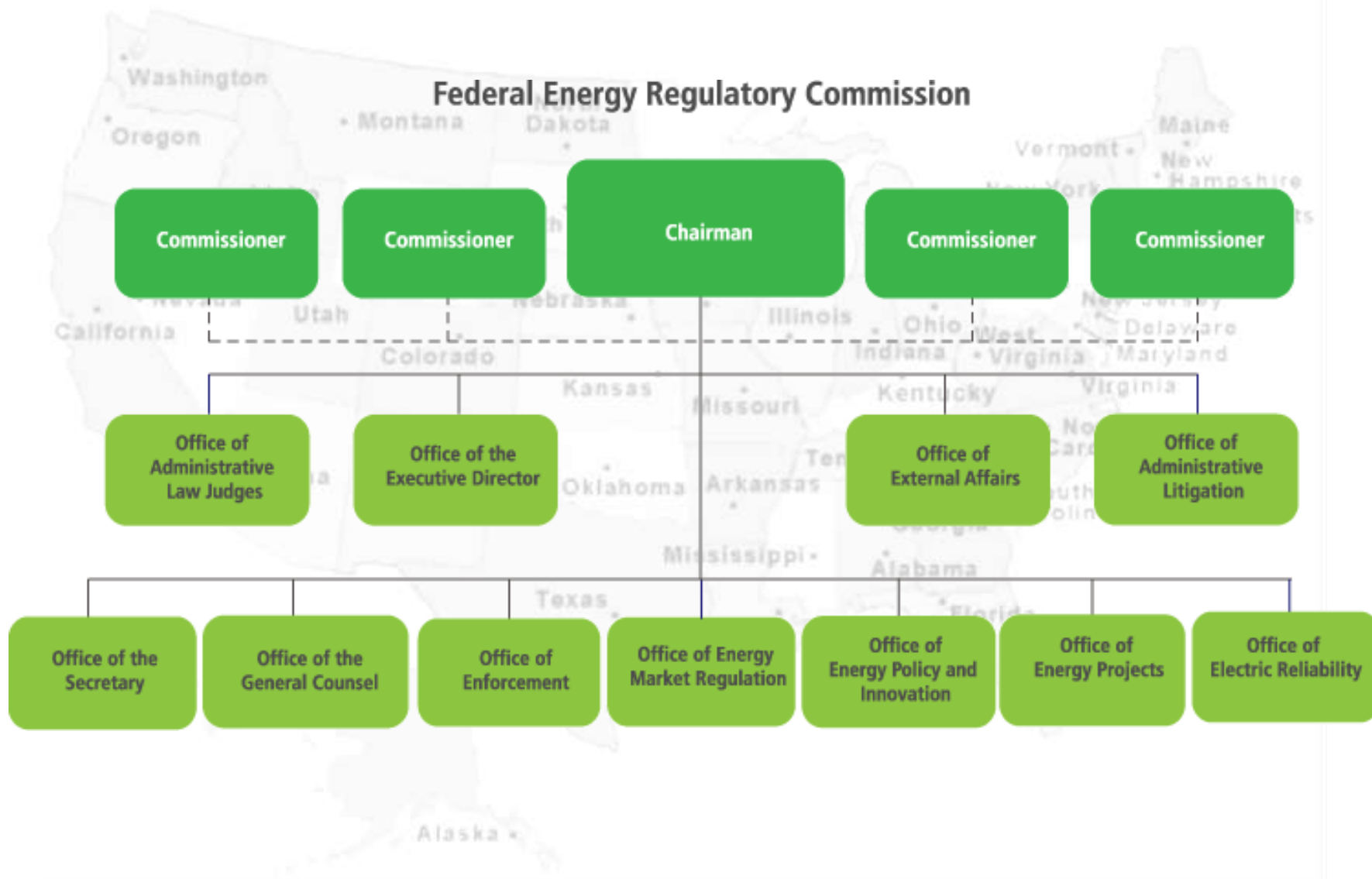
**Recent creation of ACER**

- Independent Federal regulatory agency, created in Oct 1977 (FPC, created in 1935, transferred FERC most of its regulatory mission)
- 5 members appointed by the president with the advice and consent of the Senate to 5-year staggered terms.
- All of them with equal vote on regulatory matters, not more than 3 from same political party
- One serves as Chairman and chief administrative officer.
- Members and staff subject to strict conflict of interests laws and post-employment restrictions.
- Headquartered in Washington, D.C. + 5 regional offices + staff assigned to 2 regional electric markets + satellite office of Office of Electric Reliability
- 1,500 full time employees, +300 million USD budget

**FERC receives its mandate in the form of enabling statutes from the US Congress, which may delegate vast authority and powers to the Commission (only limited by US Constitution)**

# Composition of FERC

## Federal Energy Regulatory Commission



- Preceded by CEER, a not-for-profit, independent, voluntary organization developed by NRAs in 2000 for cooperation, and by ERGEG, established in 2003 as an advisory body to the EC on EU energy market issues.
- ACER: European Community body with “legal personality” created by the 3<sup>rd</sup> Package.
- Located in Ljubliana and operational since 3<sup>rd</sup> March 2011.
- 3 Boards: Administrative Board (governance, 9 members), Board of Regulators (27 NRAs representatives and non-voting member of the EU) and Board of Appeal, and a Director responsible for overall management.
- 32 policy members and approx. 50 professional staff.
- Provides a forum for national energy regulators to cooperate on cross-border energy market issues and develop guidelines to regulate the handling of cross-border disputes

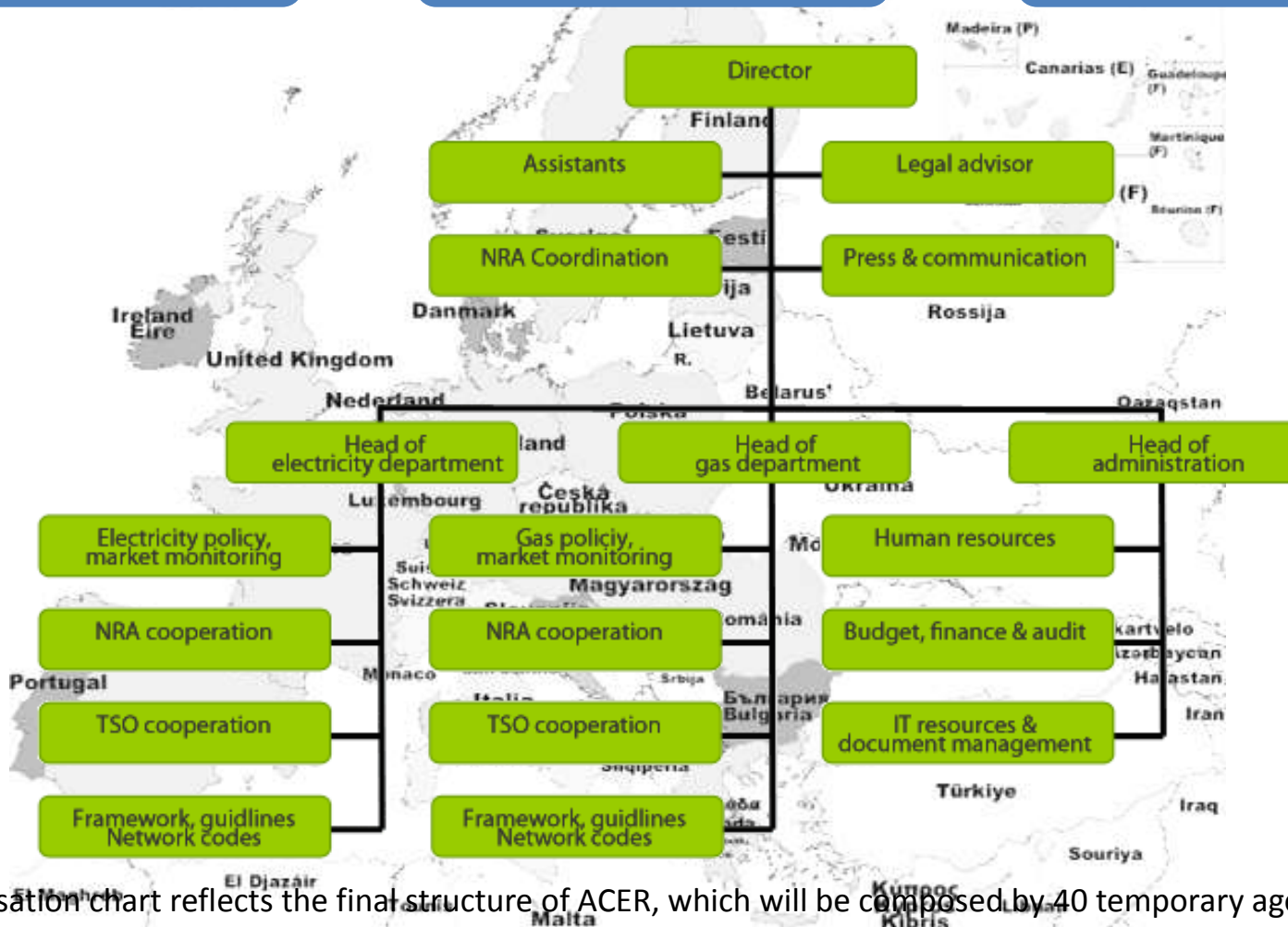
**ACER's authority is indirectly delegated by the Parliament and Council, and directly delegated by the European Commission, which under the “Meroni” doctrine cannot give the agency more authority than it has itself**

# Composition of ACER

Administrative Board

Board of Regulators

Board of Appeal



\* This organisation chart reflects the final structure of ACER, which will be composed by 40 temporary agents by 2013.

# Regulatory Responsibilities

## FERC

### Monitoring Powers

- Vast authority to monitor the operations and activities of companies that fall within its jurisdiction
- Monitors annual and quarterly financial reports submitted by companies
- Requires to file Annual Reports of Natural Gas Transactions
- Monitors contract information from interstate natural gas pipelines
- Oversees and analyses natural gas and electric power markets

## ACER

### Monitoring Powers

- Monitors “regional cooperation between TSOs in the electricity and gas sectors “
- Monitors work of ENTSO-E and ENTSO-G
- Monitors the internal gas and electricity markets
- Monitor Implementation of Network Codes, the Ten Year Network Development Plan (TYNDP), Energy Regulator’s Annual Work Programme
- REMIT: with its implementation ACER will monitor the Integrity and Transparency of wholesale energy markets. Coordination role for data collection, monitoring and investigating market abuse at cross-border level: extra staff and financial resources

# Regulatory Responsibilities

## FERC

### Advisory Powers

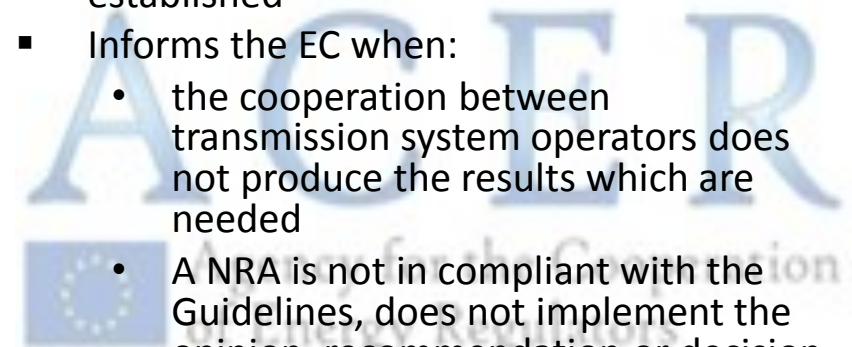
- Limited powers (or more precisely, responsibility)
- Advice Given to US Congress Upon Request



## ACER

### Advisory Powers

- Limited: for the EC, other Community institutions and NRAs as regards the issues relating the purpose for which it was established
- Informs the EC when:
  - the cooperation between transmission system operators does not produce the results which are needed
  - A NRA is not in compliance with the Guidelines, does not implement the opinion, recommendation or decision of the Agency appropriately.
- Development of Framework Guidelines
- Issue Opinions on Network Codes





# Regulatory Responsibilities

## FERC

### Decision-making Powers

- Extensive and comprehensive authority over natural gas transactions in interstate commerce
- Authorization of new interstate pipelines, onshore LNG facilities, etc
- Establishment of cost-based rates and consideration of whether rates continue to be just and reasonable
- Makes decisions generically through the issuances of rules or regulations, preceded by rulemakings
- Approves standards (as opposed to crafting regulations) for business practices of natural gas companies
  - NAESB proposals, which once approved are found in the NAESB manuals and incorporated by reference in Title 18 of Code of Federal Regulation (section 284.12 for natural gas)
- Processes complaints

## ACER

### Decision-making Powers

- Limited
- Regulatory issues at cross-border level:
  - in the case that NRAs have not reached an agreement
  - upon a joint request from the competent NRAs
- May decide on exemptions (infrastructures located in more than one member state)
- Board of Appeal (cross-border disputes). But its decisions are subject to appeal before the Court of First Instance or the Court of the European Communities
- ACER decisions can be amended or vetoed by the EC

# Regulatory Responsibilities

## FERC

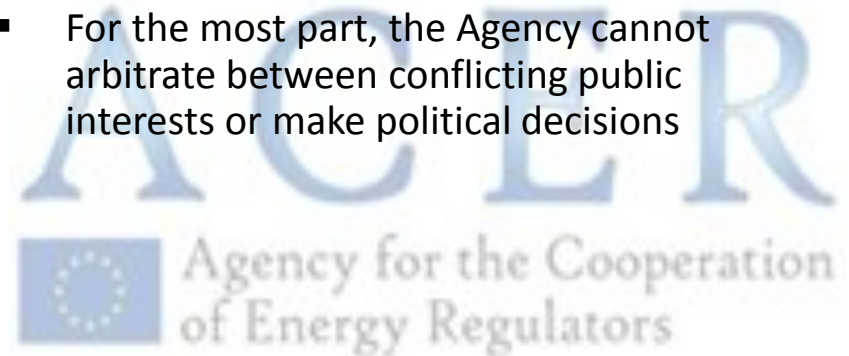
### Enforcement Powers

- Limited enforcement powers before EPCRA 2005:
  - Order a company to disgorge its profits from the unlawful activity
  - Authority to refer matters to the U.S. Department of Justice for criminal prosecution
- Enactment of the EPCRA 2005 :
  - Civil penalty authority for violations of the Natural Gas Act
  - Increased penalty authority for violations of the Natural Gas Policy Act -- up to one million dollars (U.S.) a day per violation for the duration of the violation.
  - ...applies to *any* entity that manipulates wholesale natural gas markets by engaging in fraud or deceit in connection with jurisdictional transactions.
- FERC exercises its enforcement authority using a three-pronged approach :
  - Actively monitors the natural gas and electric energy markets
  - Conducts audits
  - Reacts to informal complaints or other sources of information

## ACER

### Enforcement Powers

- No enforcement power
- Where an NRA does not comply with the opinion of ACER they have to inform the EC
- For the most part, the Agency cannot arbitrate between conflicting public interests or make political decisions



## Comparison of FERC and ACER

- ✓ FERC and ACER are both government agencies created by a legislature, charged with a mission, and empowered with a mandate.
- ✗ FERC is empowered by US Congress whereas ACER powers are limited
- ✓ Structurally comparable: policy members selected by other political bodies and represent a balance of power within their respective jurisdictions.
- ✗ FERC much bigger than ACER in size and budget
- ? FERC's decisions are reviewable by a court of law; the extent to which stakeholders will be able to challenge ACER decisions beyond the Board of Appeal is unclear at this time
- ✗ FERC commissioners are by law foreclosed from working elsewhere, whereas ACER Board Members are not full-time employees of the Agency and the members of the Board of Regulators by definition work at other agencies
- ✗ Different role of ACER's Director and FERC's Chairman, being the former involved in directing the substantive activities of the staff, and its legal representative and public face

# Comparison of FERC and ACER

- ✓ Similar missions: achieve well functioning energy markets through a balance between competition and regulation
- ✗ Different scopes of their mandates
- ✓ Similar monitoring tasks
- ✓ Similar approaches to establishing network codes, although not identical
- ✗ Differences in the scope of their decision making authority and especially their power to enforce the law
- ✗ FERC is a licencing agency, whereas ACER is not

## FERC`s primary role



**Regulation**

## ACER`s primary role



**Coordination**

Companies affected by the regulatory oversight in both jurisdictions should closely follow the developments at these agencies as well as the agencies at the state (in the USA) and national (in the EU) levels, to understand and be in a position to respond to any cross-pollination of policies between and among them



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# Thank you for your kind attention



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