

Forward Energy Attribute Market Working Group

FEAM Governance & Administration Working Assumptions

Question: What administrative structure could be used to operate a CFTC-jurisdictional market for Forward Energy Attributes in PJM’s region?

This document provides a preliminary set of concepts regarding how a PJM Regional Forward Energy Attribute Market (FEAM) could be administered, and provides structural assumptions under discussion amongst interested PJM state agencies regarding how key elements of a market jurisdictional to the Commodity Futures Trading Commission (CFTC) would be governed. This memo is provided to stakeholders for input and reaction, for consideration by the Working Group of interested state agencies.

While the structure described here are informed by state agencies’ recent legal analysis, states’ discussions to date, academic literature and informal interviews with other legal experts, nothing in this document provides a legal opinion, interpretation, or position of any individual state.

WHO RUNS THE MARKET?

- **The FEAM Board will have the authority to select the FEAM administrator**, following the model recently utilized by the Western Resource Adequacy Program (WRAP).¹ For the purpose of developing and launching the FEAM in the first instance, it is assumed that a PJM Affiliate will be selected as the market administrator, support initial rules development, conduct implementation activities, and continue to act as the selected market administrator for the foreseeable future.
- **A PJM Affiliate “PJM-FEAM”** will be created to administer the FEAM under a CFTC-jurisdictional set of market rules. The new PJM-FEAM affiliate is anticipated to rely on and utilize many of the institutional and staff capabilities of PJM, LLC that may be needed to effectively operate the FEAM, such as for implementing auctions, tracking obligations, assessing penalties, managing credit requirements, and implementing settlements.

¹ In the WRAP governance structure, the Western Power Pool has the rights to select the WRAP administrator (or “Program Operator” in WRAP parlance). In the first instance at market launch (and for the foreseeable future), the RTO Southwest Power Pool has been selected as the WRAP Program Operator. [182 FERC ¶ 61,063](#) at P 10 (2023).

- **PJM-EIS** will continue to mint and track REC production and transfer in fulfillment of existing and new state-defined attribute futures and derivatives products as directed by the states and as needed to support FEAM participating resources and buyers. The tracking will take place in the same fashion as today. In addition, PJM-EIS in coordination with the new PJM Affiliate, will be tasked with: (a) the responsibility of minting and tracking any newly-defined policy attribute products that may be defined for the purposes of supporting the FEAM; and (b) supporting any additional resource qualification, data exchange, attribute reporting, attribute transfers, and attribute retirement functions that may be required to support state agencies, voluntary buyers, and the bilateral market. The FEAM will have flexibility to list multiple products including those that are already defined by states (under the sole discretion of the respective state), as well as new products introduced to support the broader marketplace of state and consumer buyers.

WHAT IS THE STRUCTURE OF THE FEAM BOARD?

- **The FEAM Board** will be comprised of representatives appointed by regulatory agencies across the PJM footprint (i.e., Public Utility Commissions that are represented in the OPSI Board) from participating states. The FEAM board must have a minimum of five seats, and no more than 14 seats (one for each jurisdiction across the PJM footprint). Each jurisdiction can be represented by only one board member.
- **Eligibility to Participate in the FEAM Board** will be determined in two processes:
 - Board Members Appointed by FEAM Participating States. An FEAM Participating State is one that has agreed to share in FEAM administrative costs.² Each FEAM Participating state may appoint one FEAM Board member. The FEAM Board may have anywhere from 1 to 14 members appointed by FEAM Participating States. Each state will determine their own Board member nomination, term duration, and re-appointment processes, as necessary.
 - OPSI-Appointed FEAM Board Members. If the FEAM Board has fewer than five seats filled by FEAM Participating states, then additional FEAM Board members will be selected via plurality vote by the OPSI Board. OPSI-Appointed FEAM Board Members will serve on the FEAM Board for a one-year term, and can be re-selected annually if needed to ensure a five-member FEAM Board is filled.

² In the long term, FEAM administrative fees are anticipated to be recovered via volumetric charges to FEAM buyers. However, initial implementation fees may be recovered in a different fashion agreed to by FEAM Participating States, such as by an allocation to LSEs in those participating states over an appropriate amortization period.

- **Authorities of the FEAM Board** include the authority to: (a) hire and fire the FEAM administrator and its primary executive; (b) approve the administrative budget and associated cost recovery of the FEAM market; (c) select the FEAM’s independent market monitor (IMM); and (d) approve FEAM rule changes that are proposed as the result of stakeholder processes and discussions.

WHERE ARE THE MARKET RULES DOCUMENTED?

- **FEAM Market Rules Document:** A new market rules document will be created subject to the CFTC requirements. Regardless of whether the FEAM functions as a Designated Contracts Market or a Futures Market subject to a CFTC waiver, there will be a public record of documented market rules.
 - Market participants wishing to purchase or sell via the FEAM will be required to sign a market participation agreement agreeing to abide by the FEAM Market Rules, including the associated governance structure and associated rules-change processes, and pay a nominal participation fee if relevant.
- **New Manuals** may be created to inform market participants of operational practices, or more detailed rule implementation guidance, on an as-needed basis. All manuals must remain within the bounds of the approved Market Rules.

HOW ARE THE RULES UPDATED OVER TIME IN WAYS THAT ADVANCE THE VALUE OF THE REGIONAL POLICY ATTRIBUTE MARKET FOR STATES AND VOLUNTARY BUYERS?

- **Filing Rights:** The FEAM Board holds all rights to amend market rules (whether by way of filing rule changes with the CFTC or accepting Market Rule and Manual changes as the sole decision-maker). Staff of the PJM-FEAM market administrator will develop proposed rule changes under the direction of the FEAM Board, and will request FEAM Board approval and, if necessary, make the appropriate filings with the CFTC.
- **Annual Performance Review and Rules-Change Processes:** The FEAM administrator will support formalized review and rules-change processes organized in an annual process that is consistent with the FEAM calendar and provides information responsive to FEAM Board directives. These processes would include:
 - A post-auction report of auction outcomes and performance recommendations provided by the IMM, that would also be presented stakeholders and to the FEAM Board;

- A public stakeholder process in which stakeholders may propose and discuss a range of potential rule changes that may be advanced by FEAM staff, stakeholders, or stakeholder coalitions; and
 - ▶ This annual stakeholder process will include at minimum, recommendations from the post-auction report and performance recommendations and any additional topics supported by stakeholders for discussion.
- A structured voting process following the annual stakeholder process will inform FEAM administrative staff’s final proposed rule changes that will be presented to the FEAM Board, as well as informing the approval decisions of the FEAM Board and/or the CFTC.
 - ▶ At the conclusion of the annual stakeholder process, a stakeholder may present the Board with an alternative, or additional, solution proposal for consideration if the proposal receives sufficient support from stakeholders (described below).
- **Rule Changes Presented to the FEAM Board:** FEAM rule changes may be presented to the FEAM Board for consideration under either of the following two avenues:
 - FEAM administrative staff may present proposed rule changes to the FEAM Board on an annual basis at the conclusion of the annual stakeholder process. The proposed rule changes would need to be accompanied by information on competing proposals, rationale, and information on the scope of support as summarized via sector-weighted vote outcomes. Information provided the FEAM Board must at a minimum consider that CFTC rules require that any dissenting views be identified and explained in the filing requesting a market rule change.³
 - Stakeholders may present alternative proposed rule changes directly to the FEAM Board if any such proposal receives a stakeholder majority vote (>50% sector-weighted vote). Such proposals shall be made at the conclusion of the annual stakeholder process, as an alternative or in addition to the FEAM administrative staff proposal.
 - ▶ Stakeholders can present issues or scope of interests that differ from the recommendations made for annual review to be discussed in the annual stakeholder process and potentially included in final proposals to the Board.
- **FEAM Board Approval of Rule Changes.** The FEAM Board may approve, reject, or require changes to any proposal presented to it by FEAM administrative staff or stakeholders. If

³ 17 C.F.R. § 40.6(a)(7)(vi) requires that any self-certified “rule submission” by a “registered entity” (a term which encompasses DCMs as well as other CFTC jurisdictional markets) “shall include . . . “[a] brief explanation of any substantive opposing views expressed to the registered entity by governing board or committee members, members of the entity or market participants, that were not incorporated into the rule, or a statement that no such opposing views were expressed.” 17 C.F.R. § 40.5(a)(8) imposes the same requirement for any rule submitted to CFTC for pre-approval.

multiple conflicting proposals are presented, the FEAM Board would select which (if any) proposal is approved for approved for filing with the CFTC.

- **Member sectors and voting shares** will align with the voluntary nature of the regional attribute market, such that the market rules and products are anticipated to reflect and suit the attribute procurement needs of the wider range of state-authorized and voluntary buyers that are expected to participate. Sector definitions and voting shares will be defined in final market rules and should strongly represent the demand of the market. A potential sector-weighted structure may allocate votes as follows:
 - 12% state-authorized buyers (e.g., agencies or LSEs submitting buy bids under state mandate)
 - 12% competitive retailer buyers (e.g., LSEs submitting voluntary buy bids)
 - 12% public power, municipalities and local governments
 - 12% direct consumer buyers
 - 12% consumer advocates
 - 35% sellers qualified to offer attributes into the market
 - 5% environmental organizations
- **Sector-weighted voting procedures** will account for weighted voting shares within each stakeholder sector (i.e., not winner-take-all within sectors). Affiliated companies or organizations that may qualify under more than one sector will have only one vote for the overall parent company/organization. Sector affiliation can be challenged by other stakeholders.

HOW IS MARKET MONITORING AND MITIGATION IMPLEMENTED?

- **Establishing a Market Monitor:** the FEAM Board will hire, review the performance of, and replace if necessary, the FEAM Market Monitor. The Market Monitor will report directly to the FEAM Board.
- **CFTC standards for market monitoring** will be implemented to include development of processes to prevent, identify, and enforce protections against exercise of market power and market manipulation. CFTC rules require a DCM to conduct real-time market surveillance,⁴ overseen by compliance and enforcement units that either directly perform these monitoring, auditing, and enforcement functions, or supervise the work of an external third-party services provider that provides these services on behalf of the DCM.⁵ These

⁴ See 7 U.S.C. § 7(d)(4).

⁵ Interested States Jurisdictional Memo. p. 1.

monitoring functions also must contain one or more disciplinary panels to adjudicate alleged rule violations, whose members must not also be members of a compliance and/or enforcement unit.⁶ Such monitoring and enforcement will be subject further to the dispute resolution provisions described below.

- **Independent market review panel:** The market monitoring unit (or third-party provider) should participate in an independent market review panel or similar to provide: (a) annual review of market performance and recommended improvements, and/or (b) independent review and responses to specific questions that may be posed by the FEAM Board or administrative staff.

HOW ARE DISPUTES RESOLVED?

- **The FEAM will have a dispute resolution procedure that is binding with respect to enforcement and inter-party disputes.** Pursuant to CFTC requirements, the dispute resolution process will provide the disputing party or parties an opportunity to have the claim decided by an objective and impartial decision-maker, at their own expense.⁷
 - All participants of the FEAM will, upon establishing membership as a participant, agree to the dispute resolution process laid out in the FEAM market rules and processes.

HOW IS THE MARKET FUNDED?

- **The FEAM will be self-funded** as a pro-rata charge on each attribute procured through the market. No costs of operating the market will be allocated to non-participants.
- **Startup and implementation costs** of the FEAM may be funded under either the pro-rata charge described above (as allocated over an appropriate amortization period), or may be approved under an alternative funding mechanism approved by FEAM Participating States, such as via a charge assessed to LSEs within those states. States that elect to be a “Participating State” to launch the FEAM will decide how the FEAM start-up costs are allocated, following the principal that no costs will be allocated to non-participants.
- **Buyers will pay for the attributes procured on their behalf.** No procurement costs will be allocated to non-participants.
- “Market Participants” are buyers and sellers of the FEAM that pay an annual membership fee to participate in the FEAM auctions, the membership fee will contribute to operational expenses of the FEAM.

⁶ 17 C.F.R. § 38.702-710.

⁷ 17 C.F.R. § 38.750; see also Appendix B to Part 38, 17 C.F.R. § 38.

- “Participating States” are states that lock in a certain level of demand in the market (the state itself can be the buyer or the state can require other entities procure on behalf of the state), the state agrees to the start-up and implementation costs of the market and they have elected a representative to serve on the FEAM Board.