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June 7, 2021

VIA eTARIFF

Ms. Kimberly D. Bose
Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426

**Re: *Alabama Power Co., Docket No. ER21-1111-000*
 Dominion Energy South Carolina, Inc., Docket No. ER21-1112-000
 Louisville Gas & Elec. Co., Docket No. ER21-1114-000
 Duke Energy Progress, LLC, Duke Energy Carolinas, LLC, Docket No. ER21-1115-000
 Duke Energy Carolinas, LLC, Docket No. ER21-1116-000
 Duke Energy Progress, LLC, Docket No. ER21-1117-000
 Louisville Gas & Elec. Co., Docket No. ER21-1118-000
 Georgia Power Co., Docket No. ER21-1119-000
 Kentucky Utilities Co., Docket No. ER21-1120-000
 Mississippi Power Co., Docket No. ER21-1121-000
 Alabama Power Co., Docket No. ER21-1125-000
 Dominion Energy South Carolina, Inc., Docket No. ER21-1128-000
 (not consolidated)**

Response to Deficiency Letter

Dear Secretary Bose:

The Members of the Southeast Energy Exchange Market (“Southeast EEM”) hereby respond to the Deficiency Letter issued by the Staff of the Federal Energy Regulatory Commission (“Commission” or “FERC”) on May 4, 2021.¹

The Southeast EEM Members² appreciate the opportunity to respond to the questions

¹ *Ala. Power Co.*, Deficiency Letter, Docket Nos. ER21-1111-000, ER21-1112-000, ER21-1114-000, ER21-1115-000, ER21-1116-000, ER21-1117-000, ER21-1118-000, ER21-1119-000, ER21-1120-000, ER21-1121-000, ER21-1125-000 ER21-1128-000 (May 4, 2021) (“Deficiency Letter”). Because the Deficiency Letter was issued in each Southeast EEM Filing docket, the Southeast EEM Members are filing this Response in each docket. The only difference is the tariff record accompanying each eTariff submission, which correspond to the company making the filing.

² For purposes of this Filing, the Southeast EEM Members are: Alabama Power Company, Georgia

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posed by Commission Staff. The Southeast EEM Members continue to believe that the Southeast EEM Proposal will materially benefit customers throughout the southeastern United States by enhancing opportunities for competition in the bilateral market and increasing access to lower cost energy from across the large footprint of the Southeast EEM.

The Southeast EEM Members welcome the opportunity presented by the thoughtful questions in the Deficiency Letter to further demonstrate that the Southeast EEM Proposal is just, reasonable, and not unduly discriminatory, and more simply, a good outcome for customers in the Southeast. Notably, and as explained in detail below, the Southeast EEM Members are committing to make certain changes to the Southeast EEM Agreement intended to increase transparency and provide the Commission, Participants, and other stakeholders with the same confidence as the Southeast EEM Members that the Southeast EEM will operate to the benefit of all concerned.

Executive Summary

It is apparent from many of the Deficiency Letter's questions that Commission Staff is interested in issues related to market power, market manipulation, and market oversight—as should be expected given the Commission's mission and objectives. To support the Commission's continued vigilance to ensure that proposals it approves do not result in abuses of market power, the Responses to the Deficiency Letter further explain how—by building upon the existing bilateral market where any market power has been mitigated and designing the Southeast EEM to be a voluntary, residual market with individually-priced bilateral transactions, the Southeast EEM provides no new opportunities to exercise market power. In addition, in recognition of the Commission Staff's and other stakeholders' interest in greater transparency about the Southeast EEM's operation, the Southeast EEM Members, in this response, make several commitments to provide additional information to the Commission on a confidential basis and to provide other information to the public on the Southeast EEM Website. This information will provide the Commission and others with confidence that there are not and will not be market power abuses and hopefully allay any Commission or intervenor concerns with the proposal, allowing for expeditious approval so that market implementation may proceed and customers may realize the benefits as soon as possible.

Power Company, and Mississippi Power Company (collectively, "Southern Companies"); Associated Electric Cooperative, Inc. ("AECI"); Dalton Utilities ("Dalton"); Dominion Energy South Carolina, Inc. ("Dominion Energy SC"); Duke Energy Carolinas, LLC ("DEC") and Duke Energy Progress, LLC ("DEP") (together with DEC, "Duke"); Louisville Gas & Electric Company ("LG&E") and Kentucky Utilities Company ("KU") (and LG&E and KU Services Company and LG&E and KU Energy LLC, when acting as the agent or representative of LG&E/KU) (collectively, "LG&E/KU"); North Carolina Municipal Power Agency Number 1 ("NCMPA Number 1"); PowerSouth Energy Cooperative ("PowerSouth"); North Carolina Electric Membership Corporation ("NCEMC"); and Tennessee Valley Authority ("TVA") (each a "Member" and collectively, the "Members"). In addition, the following entities have participated in the creation of the Southeast EEM and are in the process of or are contemplating seeking the necessary approvals to execute the Southeast EEM Agreement and become Members: Georgia System Operations Corporation ("GSOC"); Georgia Transmission Corporation ("GTC"); Municipal Electric Authority of Georgia ("MEAG Power"); Oglethorpe Power Corporation (An Electric Membership Corporation) ("Oglethorpe"); and South Carolina Public Service Authority ("Santee Cooper").

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The Southeast EEM Members intend to implement these commitments to additional transparency through revisions to the Southeast EEM Agreement. The Southeast EEM Members also offer a few revisions to the Southeast EEM Agreement to clarify the intent and operation of certain provisions. Collectively, these changes further ensure that the Southeast EEM will operate efficiently, effectively, and transparently for the benefit of the entire region. Specifically, and as detailed further below, the Southeast EEM Members propose changes to the Southeast EEM Agreement that can be summarized as follows:

- **Weekly, Confidential Submission of Market Data to the Commission:** Under the proposed revisions to the Southeast EEM Agreement, the Administrator would provide substantial data, on a confidential basis, to the Commission and the Market Auditor, comparable to the data provided by Regional Transmission Organizations (“RTOs”) under Order No. 760 (taking into account differences in market design). This will include all of the information identified by Commission Staff in Question 4.b, and more. A complete list is provided in response to Question 4. This newly proposed weekly flow of electronic data directly from the Administrator to the Commission and the Market Auditor will allow Commission Staff to monitor for anomalies or evidence of the exercise of market power, or market manipulation, and will aid the Auditor in discharging its appointed task of ensuring that the market is functioning properly.
- **Posting of Market Auditor Reports and Responses to Regulator Inquiries:** The proposed revisions to the Southeast EEM Agreement also clarify and increase the transparency of the Administrator’s and the Market Auditor’s functions and roles, establishing concrete rules for access to information by the Commission and other regulators, and rules requiring disclosure of regulators’ questions and answers, as well as Market Auditor reports, to Participants, subject to restrictions on access to confidential information by marketing function employees. Southeast EEM Members will access information in the same way and subject to the same restrictions as other Participants. These revisions are intended to facilitate informed decision-making by regulators and market participants, providing them with access to the Market Auditor’s evaluations and, thus, the means to determine for themselves if the market is operating according to the Market Rules and raise issues or concerns where and when appropriate.
- **Protections for Neighboring Transmission Systems:** The proposed revisions to the Southeast EEM Agreement clarify that Available Transfer Capability (“ATC”) calculated by Participating Transmission Providers in accordance with the requirements of their Tariff (or equivalent) must be provided to the Administrator and must be used in the Algorithm for each leg of any Contract Path, thereby ensuring that transmission across an ATC limit will not exceed the available capability of the limit. This proposed change should fully allay any concerns of intentional unauthorized use of the transmission facilities of any neighboring transmission system.
- **Revised Mobile-Sierra Protections:** The proposed revisions to the Southeast EEM

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Agreement modify the application of *Mobile-Sierra* protections such that the just and reasonable standard will be the default, and the *Mobile-Sierra* public interest standard will apply to a narrow set of enumerated provisions that expressly govern only the rights and obligations of the Southeast EEM Members. For example, the entirety of Appendix B (the Market Rules) will be subject to the just and reasonable standard, while provisions for allocating costs among only the Southeast EEM Members, or giving broad latitude for Southeast EEM Members to withdraw from the Southeast EEM Agreement, can only be changed if the public interest requires it. With these changes, in the event that a problem with the Market Rules is identified and (against expectation) the Southeast EEM Members do not themselves propose a fix under Section 205, changes proposed under Section 206 by the Commission and other market participants will be judged based on the just and reasonable standard and will not have to overcome the public interest standard.

While the Southeast EEM Members do not believe these changes are needed here to ensure that the proposed market enhancements are just, reasonable, and not unduly discriminatory or preferential, the changes are offered to respect and heed the message suggested by the Staff questions and the intervenor concerns some of those questions echo. Collectively, these revisions and the explanations offered below weave together to augment, in belt and suspender fashion, the protections that the existing bilateral market and the initial Southeast EEM Proposal already provided to all market participants. Specifically:

- As detailed in the Southeast EEM Initial Filings, the existing bilateral market already has a set of rules for sales of power at wholesale and sales of transmission in interstate commerce, and the Southeast EEM Proposal fully complies with those rules.³ This is borne out by the Commission's approval of constructs in the West that have similar key features.⁴ Non-Firm Energy Exchange Transmission Service

³ See Southeast EEM Filings, Transmittal at 7 (“The Commission has numerous tools available to monitor [Market-Based Rate (“MBR”)] sellers. All MBR sellers that own or are affiliated with more than 500 MW of generation must update their market power analyses every three years to show that they continue to meet the requirements (including any necessary mitigation) for MBR authority. MBR sellers must submit [Electric Quarterly Reports (“EQRs”)], and must file notices of change in status for any material changes in facts. Furthermore, the Commission has ongoing audit rights for all jurisdictional sellers. The implementation of the Southeast EEM will not affect these existing tools for monitoring bilateral transactions.”) (citations omitted); *id.* at 38-39 (describing the current market power mitigation in place); *id.* at 41-42 (describing the existing auditing and monitoring tools available to the Commission); *id.*, Econ. Aff. at P 89 (noting that “[n]o other new avenues for possible market manipulation are apparent” to Dr. Pope at this time); see also *California ex rel. Lockyer v. FERC*, 383 F.3d 1006, 1013 (9th Cir. 2004) (finding market-based rates to be consistent with the statutory scheme in a competitive market where the absence of market power was coupled with transparency in the form of reporting requirements, such as Electric Quarterly Reports).

⁴ See, e.g., *Pub. Serv. Co. of Colo.*, 154 FERC ¶ 61,107 at PP 81-89 (2016) (approving similar construct built around zero charge lowest priority transmission that would allow parties to utilize unused transmission capacity without requiring a market power analysis or market monitor, and rejecting claims that such charges were inconsistent with cost causation); *Sw. Power Pool, Inc.*, 173 FERC ¶ 61,267 at PP

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(“NFEETS”) will follow all rules of applicable tariffs, including rules for calculation of ATC⁵ and OASIS posting.⁶

- Existing market power mitigation is already sufficient to prevent exercise of market power by jurisdictional Southeast EEM Market participants.⁷ These existing mitigation measures apply to Southeast EEM transactions because the Southeast EEM is merely an enhancement to the existing bilateral market. Therefore, the existing Commission-approved mitigation measures that prevent market power abuses will continue to work as designed for Southeast EEM transactions and no additional measures are necessary.
- The Southeast EEM Members also have no incentive to behave in an exclusionary fashion toward other sellers of generation. As discussed further below, Southeast EEM Members transact today with each other, with Independent Power Producers, and with others, and the Southeast EEM, as an extension of the existing bilateral market, will only enhance those opportunities. Rather than an entirely new market, the Southeast EEM is expressly intended to increase opportunities to expand interactions with third parties by facilitating new transactions in the existing market.⁸
- The Proposal can only result in lower power costs for customers—this is so because Southeast EEM transactions will only occur when a seller has lower cost energy available to meet those 15-minute non-firm increments than the buyer has available from its owned or controlled firm generation. Therefore, there is no potential for the

124-26 (2020) (establishing that rules for coordinating with neighbors are met so long as transmission for the new service is limited to ATC of the participants).

⁵ See Attachment A, Proposed Revisions to Southeast EEM Agreement, Market Rules, IV.A.2; *see also* Response to Question 8.a.

⁶ See, e.g., Southeast EEM Agreement, Market Rules, IV.C.8.iv (requiring “[a]ppropriate OASIS information [to] be provided to the relevant Participating Transmission Service Providers” after a match is made).

⁷ See Southeast EEM Filings, Transmittal at 39 & n.147 (describing the existing mitigation in place for each Southeast EEM Member and noting that “[t]he Commission has imposed mitigation where needed to assure that there can be no such exercise of market power, and has done so for each of the FERC Jurisdictional Members. The Southeast EEM transactions are bilateral energy transactions under existing MBR authority that will be subject to such existing mitigation.”) (citations omitted); *id.*, Econ. Aff. at P 72 (“The Southeast EEM will enable application of market power mitigation measures required today for bilateral trades in the Southeast, per the MBRs of jurisdictional Participants. Taking the current bilateral market as a starting point, the Southeast EEM is designed to eliminate barriers to increased competition for 15-minute trades. Additionally, the Southeast EEM is a voluntary, residual market, in effect ruling out the possibility of one or more Participants exercising horizontal market power.”).

⁸ See Southeast EEM Answer to Protests at 35-37 (refuting arguments on excluding Participants using the “toggle” feature or the three-counter-party rule and noting that “benefits [from the Southeast EEM] will be at their greatest with counterparties maximized”).

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Southeast EEM to be used as a tool to increase prices through the exercise of market power.

- The Southeast EEM is distinct from other market initiatives and does not have the same design features that give rise to market power concerns. Unlike other recent market initiatives, such as the Western Energy Imbalance Market (“EIM”), the Southeast EEM is not transforming the existing bilateral market into a new market. It will not function as an imbalance market – balancing services will continue to be provided by the relevant balancing authorities.⁹ So while “EIM” and “EEM” may sound similar, the difference between the “I” (imbalance) and “E” (exchange) is significant. The “EEM”, unlike the “EIM”, will have no market clearing imbalance price that could be driven up through an exercise of market power to favor a related position – each Southeast EEM “exchange” will be individually priced, just like the other bilateral transactions for which existing market power mitigation measures are already sufficient.¹⁰
- It should also be self-evident from the composition and diversity of interests represented in the Southeast EEM Membership that the proposal is designed to be pro-competitive and beneficial to customers.¹¹ The Southeast EEM Members are comprised of a federal agency that is already subject to robust independent oversight by an Inspector General, franchised public utilities that must answer to state and federal regulators, and cooperatives and municipalities accountable to their customer-owners. The Southeast EEM Proposal is a delicate compromise designed to satisfy the requirements of this diverse group and bring benefits to each Participant across this large region.
- The new measures proposed here will be additive: the Commission and Participants will have more information with which to spot any flaws in the market, and increased capability to do something about it, due to the change in the *Mobile-Sierra* provision.

In sum, the benefits of the Southeast EEM Proposal’s enhancement to the existing bilateral energy market are real and important,¹² and the increased information access for the

⁹ Attachment D, Supplemental Affidavit of Dr. Susan Pope (“Pope Aff.”) at PP 27-50.

¹⁰ *Id.* at PP 40-48.

¹¹ See Southeast EEM Filings, Transmittal at 8 (describing the list of core principles shared by all of the diverse Southeast EEM Members).

¹² See Southeast EEM Filings, Overview Aff. at P 6 (“The Southeast EEM is an enhancement of the existing bilateral market in the Southeast that is intended to reduce customer costs across the region by providing additional opportunities for bilateral trades . . .”); *id.*, Ops. Aff. at P 34 (“One of the Southeast EEM’s biggest enhancements to the bilateral market is the ability to compress the timeline for bilateral trading to facilitate intra-hour trading availability on a wide scale. . . . Introducing technology to automatically find buyers and sellers, set the price based on their parameters, and tag energy transactions, combined with the new zero-cost, as-available NFEETS that will reduce hurdle rates, will make intra-

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Commission, other regulators, and Participants back up that belief. Because the evidence demonstrates that the Southeast EEM, as proposed to be modified here, will benefit customers, the Southeast EEM Members request that the Commission approve the Southeast EEM as soon as reasonably possible, but no later than August 6, 2021.¹³

If the Commission finds these proposed changes acceptable and otherwise accepts the Southeast EEM Proposal as submitted, the Southeast EEM Members commit to subsequently submit a compliance filing to effectuate the proposed revisions to the Southeast EEM Agreement within 30 days of acceptance.¹⁴

Having provided the foregoing summary, the Southeast EEM Members next respond in turn to each question posed by the Commission.

Responses to Each Deficiency Letter Question

The Deficiency Letter contained twelve questions, each of which are answered below.

1. *Filing Parties state that Southern Companies anticipate submitting a maximum energy exchange price that will be no more than the mitigated price cap that is set forth in their Market-Based Rate (MBR) Tariff (MBR Tariff). Filing Parties explain that “[i]f the match price is above the ‘maximum Energy Exchange Price’ for buyers in mitigated [balancing authority areas], the match price will be adjusted down to the ‘Energy Exchange Price.’”*
 - a. *When Filing Parties state that the match price will be adjusted down to the “Energy Exchange Price,” do they mean adjusted down to the “maximum Energy Exchange Price”?*

hour trading more practical, beneficial, and economic on a large scale.”); *id.*, Econ. Aff. at P 47 (“The expectation is that there will be broad participation in the Southeast EEM, due to its low costs for participation and zero-cost transmission. The intention is to enable robust competition among multiple sellers submitting multiple offers and multiple buyers submitting multiple bids.”); *id.* at PP 69-72 (explaining why the Southeast EEM will not facilitate the exercise of market power and stating that “[t]aking the current bilateral market as a starting point, the Southeast EEM is designed to eliminate barriers to increased competition for 15-minute trades. Additionally, the Southeast EEM is a voluntary, residual market, in effect ruling out the possibility of one or more Participants exercising horizontal market power.”).

¹³ As explained in the Initial Filings, the regulatory certainty of Commission approval is a prerequisite to further significant investment in this venture. Southeast EEM Filings, Transmittal at 42 (“Although the Southeast EEM is not anticipated to go live until the first quarter of 2022, an earlier effective date for the Southeast EEM Agreement is necessary to provide Members with regulatory certainty before spending significant additional capital and time to develop the Southeast EEM System. The Southeast EEM Agreement must be binding on the Members before further significant financial commitments are made, meaning, under the terms of the Southeast EEM Agreement, that it must be accepted and effective.”).

¹⁴ See, e.g., *PacifiCorp*, 171 FERC ¶ 61,112 at P 102 (2020) (accepting PacifiCorp’s offer in its deficiency response to submit a compliance filing with tariff revisions); *Sw. Power Pool, Inc.*, 154 FERC ¶ 61,121 at P 30 (2016) (accepting Southwest Power Pool, Inc.’s (“SPP”) proposal and directing a compliance filing to implement proposed tariff revisions).

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Response:

Yes, if the Southern Companies' match price for an energy sale is above the maximum Energy Exchange Price, then the Energy Exchange Price used for settlements will be the "maximum Energy Exchange Price;" the match price is, in effect, adjusted down.

- i. If the answer is no, when the final match price is above the maximum Energy Exchange Price, what will the final price be?*

Response:

See above response.

- ii. If the Energy Exchange Price is below the maximum Energy Exchange Price, will the final price be the maximum Energy Exchange Price or the Energy Exchange Price?*

Response:

If the matched price is below the maximum Energy Exchange Price, the final Energy Exchange Price used for settlements will be the match price.

- b. To help explain the mechanics of how the Southeast EEM, including the Energy Exchange Price, will interact with existing market power mitigation in certain balancing authority areas and for specific participants, please address the following:*
- i. Please provide further explanation, with examples, on how the "maximum Energy Exchange Price," "match price," and "Energy Exchange Price" will be used in the bidding process.*

Response:

The "maximum Energy Exchange Price" is a price submitted by a Participant that will be no more than the mitigated price cap applicable under the seller's MBR tariff.

The "match price" is the price that results from applying the "split the savings" process. If it is higher than the "maximum Energy Exchange Price", the process will automatically apply the "maximum Energy Exchange Price" for the seller to determine the Energy Exchange Price used to settle the match.

The "Energy Exchange Price" is the price that is ultimately used in the transaction, in \$/MWh, calculated by the Southeast EEM Algorithm for a specific Energy Exchange. This price will be subject to the existing Commission-approved mitigation and will not exceed the maximum Energy Exchange Price. The chart attached as Attachment B provides an example of applying the mitigated price cap for a Southeast EEM transaction.

- ii. Please explain what the mitigated price cap is, how it works, and provide examples. Please also explain whether the mitigated price cap refers to the cost-based cap associated with the average variable cost, or to the incremental variable cost, within the Southern*

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Companies' Energy Auction in mitigated balancing authority areas.

Response:

The mitigated price cap is the cap included in Southern Companies' MBR tariff that is applied to bilateral transactions consistent with its cost-based tariff.¹⁵ This price cap is the cost-based cap associated with the anticipated variable cost as outlined in Southern Companies' cost-based tariff on file at FERC. As outlined in the Southern Companies' MBR tariff, "all sales of less than one year made outside of the Auction in mitigated balancing authority areas will be capped at the relevant Commission-approved cost-based tariff that Southern Companies have (or may have) on file for that product."¹⁶ Please see the chart attached as Attachment B for an example of applying the mitigated price cap for a Southeast EEM transaction.

iii. Please explain why it is just and reasonable to use the mitigated price cap for non-intra hour trading as a cap for real-time, 15-minute energy trading.

Response:

The mitigated price cap currently applies to bilateral transactions of less than one year under Southern Companies' MBR authority that has been approved by the Commission, which therefore applies to potential 15-minute transactions. In FERC's order on Southern Companies' MBR authority, the Commission found that Southern Companies' MBR authority was just and reasonable, provided the tariff included the mitigation that is currently in its tariff:

Thus, we accept Southern Companies' filing subject to the condition that Southern Companies submit a revised market-based rate tariff, within 30 days of the date of this order, revising the limitations and exemptions section of the tariff to reflect that all sales of less than one year made outside of the Auction in mitigated balancing authority areas will be capped at the relevant Commission-approved cost-based tariff that Southern Companies have (or may have) on file for that product. We find that this price cap, combined with the Auction revisions and other proffered changes, will provide adequate alternative mitigation for Southern Companies' market power in the mitigated balancing authority areas, **ensuring just and reasonable rates**.¹⁷

The Southeastern EEM concerns 15-minute bilateral energy transactions. So the same mitigated price cap would apply, and thus would be just and reasonable, consistent with FERC's previous orders on Southern Companies' MBR authority. Moreover, as described more generally below in response to Question 3, mitigation that is sufficient to prevent exercise of market power in markets where firm hourly or longer products are traded is also sufficient to prevent exercise of market power for Southeast EEM transactions.

¹⁵ See *Ala. Power Co.*, 158 FERC ¶ 61,131 at P 21 (2017).

¹⁶ *Id.*

¹⁷ *Id.* (emphasis added).

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2. *Under Southern Companies' MBR Tariff, Southern Companies are required to offer all available and uncommitted thermal generating capacity (the must offer requirement) into the Energy Auction in (1) firm Energy that is subject to liquidated damages and recallable in 50-megawatt (MW) blocks of day-ahead energy and (2) in non-firm 1 MW blocks of hour-ahead energy.*
 - a. *Southern Companies' existing MBR Tariff states that all "available capacity" is offered into the Energy Auction. Please explain how the Energy Auction and the Southeast EEM will work together. As part of your explanation, please address whether "available capacity" would be offered first to the Energy Auction and then to the Southeast EEM, or whether "available capacity" would be offered to the Southeast EEM before the Energy Auction in the mitigated balancing authority areas.*

Response:

The Southeast EEM will not interfere with the Energy Auction, as the Southeast EEM transaction process does not begin until after the hour-ahead and day-ahead Southern Energy Auction process has completed. The Day-Ahead Energy Auction clears the day before the transaction occurs, and the Hour-Ahead Energy Auction clears 65 minutes before the transaction occurs. For transactions created during both the Day-Ahead and Hour-Ahead Energy Auctions, successful market participants are notified immediately upon clearing of that auction. In the Southeast EEM, the bid and offer are matched 10 minutes before the transaction occurs and the deadline for submitting or modifying bids and offers is 15 minutes before the transactions occurs. Therefore, all of the auction transactions will have occurred prior to the Southeast EEM transactions occurring. Thus, all "available capacity" would be offered into the Energy Auction prior to the intra-hour time period in which the Southeast EEM will be operating.

- b. *Please confirm that the Southeast EEM proposal would not change the definition of available capacity in Southern Companies' MBR Tariff.*

Response:

Confirmed: the Southeast EEM Proposal will not change the definition of "available capacity" under the Southern Companies MBR Tariff.

3. *Filing Parties assert that the Southeast EEM will enhance bilateral, intra-hour (15-minute increment) trading of a non-firm energy product. Please clarify how the Southeast EEM will interact with or replace transactions that would occur under other bilateral agreements or any other aspects of existing markets by addressing the following:*

General/Overarching Response:

Energy transactions can already occur on a 15-minute basis in the Southeast,¹⁸ so 15-minute blocks of energy are not a new product. However, today such transactions are rare.¹⁹

¹⁸ Southeast EEM Filings, Ops. Aff. at P 41.

¹⁹ *Id.*

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The Southeast EEM therefore is a platform for additional 15-minute bilateral transactions to occur under bilateral Enabling Agreements that exist today or will be newly entered to take advantage of the expanded reach that the Southeast EEM provides to the bilateral market. Just as parties to existing Enabling Agreements today have the ability to enter into a 15-minute transaction (subject to applicable Commission-approved mitigation), they can enter into such a transaction under the Southeast EEM. The Southeast EEM merely enhances the existing bilateral market in the Southeast by providing an automated means to match buyers and sellers of energy for 15-minute increments using non-firm excess capacity on the transmission grid at a zero charge transmission rate, with the resulting sales to be consummated through existing bilateral agreements.

Southeast EEM transactions will not replace firmly deliverable resources or firm transactions that are being used to maintain resource adequacy, though they may from time to time replace the energy component of such a transaction. In the context of this discussion, “resource adequacy” refers to the need of a load serving entity (“LSE”) to maintain owned or contracted firm resources sufficient to ensure that the LSE can serve its load. NFEETS is lowest priority transmission service, and so does not meet the criteria of firmness necessary to serve most load (i.e., all load that is not interruptible). Accordingly, power sourced through Energy Exchanges, which can only be delivered using NFEETS, likewise lacks the firmness requisite for resource adequacy.

In other words, instead of replacing firm resources or transactions needed to serve load in their entirety, an Energy Exchange can be used to replace the energy *portion* of that transaction, if it makes economic sense to make such a replacement – i.e., if the LSE’s purchase price for the Southeast EEM Energy Exchange is lower than the marginal energy cost of the LSE’s existing firm resource or firm transaction. The part of the firm transaction used to maintain resource adequacy, i.e., the firm right to *call* upon the resource if the resource is needed to provide energy, *would not be replaced* by such an Energy Exchange, because again, the Energy Exchange is not firm, and the LSE will need the firm right to call upon the firm resource in order to maintain its ability to serve load.²⁰

This has a direct and important effect when it comes to market power. Because each LSE will maintain the firm rights to *call* on resources sufficient to serve its load, even while seeking to decrease energy costs through Energy Exchanges, the LSE would have no reason to enter into a Southeast EEM Energy Exchange above its cost of calling on its existing resource.

This is a crucial feature of the Southeast EEM that distinguishes it from balancing markets in which participants do more than buy and sell non-firm energy: buyers in balancing

²⁰ None of this is entirely new. Bilateral markets have long had both firm transactions and non-firm transactions. It also has long been the case that firm transactions are used to provide resource adequacy sufficient to serve an LSE’s load, while non-firm transactions can be used to shave the energy cost of serving that load, without sacrificing reliability, because the LSE maintains the firm capability to serve its load in the event that the non-firm resource is not delivered. NFEETS is just another form of non-firm service.

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markets are required to purchase energy if necessary to serve their firm load and sellers must sell energy they will be injecting in excess of their firm contractual commitments made prior to the balancing market. Participants in such markets, such as the Western EIM, are required to settle imbalances on their firm commitments. In the Southeast EEM, *the buyer can specify its maximum purchase price, and choose not to transact through the Southeast EEM at a price above that maximum, even if the buyer has an imbalance.* In the Southeast EEM, the LSE specifies its Bid Price, and the rules expressly provide that the LSE will not be matched at a price above its Bid Price, minus net Losses.²¹ A rational resource-adequate LSE will tend to specify a maximum bid price at a level that is at or near its marginal cost of energy for its firm resource. Accordingly, the marginal energy costs for firm resources used by LSEs to maintain resource adequacy will be *de facto* price caps for matches for LSEs in the Southeast EEM, meaning that suppliers will not be able to raise Southeast EEM prices above the marginal energy costs of the purchasing LSEs.

Because Offerors will not be able to raise energy prices above the marginal energy cost of the Bidder, the only question remaining is whether Offerors could first influence the marginal energy cost of the Bidders, and thereby create an opportunity to raise prices in the Southeast EEM Market. And the answer to that question is no, due to the Commission's existing market power mitigation measures, which have already been applied to each jurisdictional Member.²² Thus, the Southeast EEM Market will interact with the existing bilateral market, from a market power perspective, in that already-mitigated prices of hourly or longer firm transactions will also serve to mitigate prices for Southeast EEM Energy Exchanges.

The Southeast EEM is not a balancing market.²³ Nor will the Southeast EEM replace the balancing service provided by the ten balancing authorities across the Southeast EEM footprint.²⁴ Again, this underscores the differences between the "EEM" approach on the table here, and the "EIM" approach used in the West. Balancing markets have clearing prices for imbalances that cannot be avoided, while in the EEM, because it is not a Balancing Authority and does not

²¹ Southeast EEM Agreement, Market Rules, IV.C.6.b.ii.c.

²² See *S.C. Elec. & Gas Co.*, 121 FERC ¶ 61,263 at P 6 (2007) (finding that Dominion Energy SC's (f/k/a South Carolina Electric and Gas Company) "proposal not to make sales within its balancing authority area under its market-based rate tariff adequately addressed [Dominion Energy SC's] failure of the market share screen in its balancing authority area"); *LG&E Energy Mktg., Inc.*, Docket Nos. ER06-1046-000, *et al.* (letter order issued July 6, 2006) (accepting "revised market-based rate tariff sheets that would, among other things, restrict the LG&E Parties' authority to make sales at market-based rates in the LG&E/KU control area" upon LG&E/KU's exit from the Midwest Independent System Operator, Inc.); *Ala. Power Co.*, 163 FERC ¶ 61,090 at P 32 (2018) (finding that the price cap and auction process established in each of the Southern Companies' MBR tariffs "serve as adequate mitigation for the Southern, SCEG, Tallahassee, and Santee Cooper balancing authority areas"); *Duke Power*, 111 FERC ¶ 61,506 at P 61 (2005) (Commission prohibiting Duke sales within the DEC balancing authority to "mitigate the potential for the exercise of generation market power"); *Fla. Power Corp.*, 113 FERC ¶ 61,131 (2016) (prohibiting Duke sales in the DEP BA).

²³ Attachment D, Pope Aff. at PP 27-50.

²⁴ *Id.* at P 27.

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balance supply and demand in real-time, buyers and sellers may simply decline to transact if an Energy Exchange is not available at a beneficial match price.

For all of these reasons, Southeast EEM transactions will only decrease customer costs. This is so because a Southeast EEM Participant will only enter into an Energy Exchange as a buyer if doing so will decrease its energy costs, as just explained, and will not enter into or be forced into a transaction at a price it is unwilling to pay.

- a. Please identify what product(s) currently available in the bilateral wholesale energy market could reasonably be a substitute for the 15-minute residual energy Southeast EEM product.*

Response:

As discussed above, a purchasing LSE must be independently resource adequate, meaning that Southeast EEM Energy Exchanges may replace the “energy” component of a firm transaction (if the firm transaction provides that flexibility), but will not replace the “capacity” component of the transaction. Instead, each LSE will retain its firm rights to call upon its firm resources, in quantities sufficient to serve its load, even when it buys replacement energy through a non-firm Energy Exchange.²⁵

This means that the product currently available in the bilateral wholesale market that could reasonably be a substitute for the 15-minute residual energy Southeast EEM product is the energy that can be called upon by an LSE from the firm resource it backed down (i.e., dispatched down) in favor of the energy from a Southeast EEM Energy Exchange. As also explained above, and by Dr. Pope, the availability of this callable firm energy, coupled with existing market power mitigation, will prevent any effort to exercise market power through the Southeast EEM.²⁶

- b. What is the supply in MWs of 15-minute residual energy expected to be offered, in terms of the number of companies offering to sell energy and the size of their offers, in a typical peak and off-peak period? What is the expected demand, in terms of the number of companies offering to purchase energy and their size, in a typical peak and off-peak period?*

Response:

Before market launch, forward looking estimates of the level of supply and demand in this voluntary residual market are difficult to make with any precision or certainty.²⁷ However, Dr. Pope expects that the market will attract robust participation by buyers and sellers in the Southeast.²⁸

²⁵ Similarly, non-firm energy sales or purchases could be replaced with Southeast EEM Energy Exchanges if the Energy Exchanges are more economic.

²⁶ See Exhibit D, Pope Aff. at PP 37-39, 44-48.

²⁷ See Southeast EEM Filings, Benefits Analysis at 19.

²⁸ *Id.*, Econ. Aff. at P 70 (“The Proposal is expected to attract robust participation by buyers and sellers in the Southeast, due to its low transaction cost and the provision of zero-cost, non-pancaked

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In any event, with the commitments made herein the Commission will receive significant data on supply and demand conditions once the Southeast EEM is in operation, if approved. Specifically, the Administrator will provide the following actual data on supply conditions: (1) MWs of 15-minute residual energy offered, (2) the entities offering to sell energy, (3) the price and quantity information in the offer, and (4) any restrictions on the identity or location of counterparties with whom each offer can be matched. The Administrator will also provide the follow data on demand conditions: (1) price and quantity information of bids in each 15-minute increment, (2) the entities bidding to purchase energy, (3) the price and quantity information in the bid, and (4) any restrictions on the identity or location of counterparties with whom each bid can be matched. This will provide sufficient detail for the Commission to evaluate peak and off-peak periods.

If there are periods of low transaction volumes, there will still be incremental benefits relative to a paradigm in which the Southeast EEM is not implemented, because (as described above at the start of the response to Question 3) each incremental transaction in the Southeast EEM will be at a lower price than the marginal cost of the energy being replaced, and the purchases that establish such marginal energy costs are already subject to market power mitigation. In other words, whether the volume of transactions in the Southeast EEM is low or high, customers will benefit. And because of the split-the-savings pricing, generators will benefit as well, including IPPs that elect to participate.

Additionally, because the Southeast EEM Members commit below to reporting data to the Commission that is comparable to what is required under Order No. 760 (although different in nature due to the differing market designs),²⁹ the Commission will have more than sufficient data to conduct analysis and oversight.

c. Do you expect trades for 15-minute residual energy will expand across the whole Southeast EEM Territory? Do you expect to have areas where some sellers are unlikely to find a match?

Response:

Yes, the Southeast EEM Members anticipate that it is possible, and even likely, that Energy Exchanges will expand across the whole Southeast EEM Territory.³⁰ That is certainly the goal. This is an important aspect of the enhancement of the existing bilateral market.

Whether there are areas where some sellers are unlikely to find a match will depend on residual available transmission capacity. Transmission may or may not be available, just as is

NFEETS. Also, the Southeast EEM System will arrange these zero-cost bilateral trades using the available transmission of multiple Participating Transmission Providers spanning the broad Southeast EEM Territory, further encouraging competition. The Southeast EEM's pairing of zero-cost, non-pancaked transmission service with automated 15-minute trading is intended to engage willing buyers and sellers in the market, thereby fostering competition.").

²⁹ See Response to Question 4.a.

³⁰ See Southeast EEM Filings, Benefits Analysis at 17 (projecting between 40-45 15-minute trades (or wheel-throughs) in the Southeast EEM in a typical hour, with an average of 41 trades projected within each hour at 130 MW per trade in 2022).

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the case today. Additionally, there will likely be times during which sellers may be unable to find a match, just as there are today. With the advent of the Southeast EEM there should be more transactions than there currently are. This is because the role of the Southeast EEM is to create opportunities for transactions that would not occur otherwise – or to put it in the terms used in the question--to help sellers find matches they could not find today. And the underlying intent behind one of the purposes of the Southeast EEM is to maximize efficiency by fully utilizing the transmission system. So as Dr. Pope points out. “[i]f and when all residual ATC on one or more ATC limits is scheduled, it will indicate that the Southeast EEM Algorithm is functioning as intended.”³¹ Because Southeast EEM transactions will occur only on the basis of ATC that is available after all other uses of the transmission system are taken into account, there is no potential for Southeast EEM transactions to cause congestion that could preclude other transactions using other forms of OATT service.³² And even if residual ATC is fully utilized for NFEETS supporting Energy Exchanges, there will still be no opportunity to exercise market power.³³

d. Do you expect congestion, as in frequently binding constraints, would affect how trades are distributed across the Southeast EEM Territory in any time period? Do you expect that there will be frequent times when one area may not be able to trade with another because of congestion? If so, how would you expect to measure congestion in the Southeast EEM?

Response:

In the Southeast, congestion can manifest as unavailability of transmission with which to conduct a transaction, or, in rare instances, cutting of a transaction through transmission loading relief (“TLR”). As noted above, it is a goal of the Southeast EEM to fully utilize otherwise unutilized transmission to enhance the efficient use of the system, such that any resulting unavailability of transmission will represent fulfillment of a goal of the Southeast EEM. As further noted above, this will not create congestion applicable to other types of transactions.

It is important to note that such full utilization of available residual transmission will not create “congestion” applicable to other transactions, such as firm transactions used to maintain resource adequacy, or even transactions supported by ordinary non-firm transmission. There are two safeguards against this, each independently sufficient. First, NFEETS will only be granted if there is residual ATC available along every leg of the Contract Path after all other non-NFEETS transmission schedules are taken into account.³⁴ This safeguard will work because NFEETS is only available after the time window to obtain other forms of transmission has closed. Second,

³¹ Attachment D, Pope Aff. at P 52.

³² *Id.* at P 53.

³³ *Id.* at P 54.

³⁴ To make this more clear, the Southeast EEM Members propose to amend Section IV.C.6.B.i of the Southeast EEM Agreement to read “In matching Bids and Offers, the Southeast EEM Algorithm shall not make any Energy Exchanges that would cause the ATC of any Participating Transmission Provider on any given Contract Path to be exceeded.”

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in the unlikely event that a TLR is called resulting in curtailment, NFEETS has lowest priority, and will be curtailed first.

Moreover, neither un-availability of transmission or TLRs will create opportunities to exercise market power, for the reasons already explained in more detail above in the response to Question 3; specifically, the 15-minute bilateral transactions for residual energy are not a substitute for obligations to maintain resource adequacy for LSEs to serve their load obligations, such that existing mitigation applicable to firm purchases made to meet those existing obligations will also suffice for Southeast EEM Energy Exchanges.

Finally, the Southeast EEM Members do not propose to measure congestion, *per se*. However, the Southeast EEM Members are proposing, as part of the data provided confidentially to the Commission every seven days, to provide (if feasible) information on the Implied Marginal Benefit of foregone transactions over each ATC limit, as explained in Dr. Pope's affidavit.³⁵ This information will be information about the benefit (the difference between the Bid and Offer) that is not realized for the next Energy Exchange that would have been scheduled over a constrained transmission facility if there had been sufficient transmission for an additional transaction.³⁶ Dr. Pope believes that the Commission could find this information helpful in monitoring for any attempts at market manipulation or to exercise market power.³⁷ As discussed in response to the next question, the revised Southeast EEM Agreement provides for this information to be provided confidentially to the Commission "to the extent such information can reasonably be produced by the Southeast EEM Algorithm."³⁸ The Southeast EEM Members commit to report to the Commission, in the notification filing that will be provided ahead of market launch, whether such information will be provided, and if not, what difficulties were encountered that made the effort to produce the information unreasonable.

4. *Filing Parties state that the Southeast EEM will not create new opportunities for market manipulation, such that the Commission's existing auditing and monitoring tools for bilateral markets will remain sufficient. Specifically, Filing Parties explain that the Commission will have access to individual trades via the Electronic Quarterly Reports (EQR) that 13 of the Southeast EEM Members are required to submit, representing approximately 98% of the total net energy for load of the Members. Filing Parties further explain that the Commission will continue to have access to e-Tag data submitted pursuant to Order No. 771. Filing Parties assert that Southeast EEM transactions will be easily identifiable in EQR and e-Tag data given the 15-minute duration of the schedule and use of NFEETS. Filing Parties also note that the Commission will have access to the aggregated Southeast EEM data in the informational reports that the Southeast EEM Administrator (Administrator) will post publicly. Lastly, Filing Parties state that the "three-eligible-counterparty rule," i.e., the requirement that all Participants have "toggled on" at least three unaffiliated potential counterparties each time they bid or offer, will protect against opportunities*

³⁵ Attachment D, Pope Aff. at PP 16-26.

³⁶ *Id.* at P 21.

³⁷ *Id.* at PP 16, 24.

³⁸ See Attachment A, Proposed Revisions to the Southeast EEM Agreement, at App'x D.

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for market manipulation.

- a. Please explain what, if any, information will routinely be available to the Commission to detect and address potential market manipulation in a near real-time manner (e.g., less than 30 days) in the Southeast EEM.*

Response:

The Southeast EEM Members commit to providing information comparable to what RTOs provide under Order No. 760, but adjusted for the different market design of the Southeast EEM. The list here includes all of the types of data identified by Commission Staff below in Question 4.b, plus additional information identified by Dr. Pope and the Southeast EEM Members as being potentially helpful. Specifically, the Southeast EEM Members propose to amend the Southeast EEM Agreement to require the Southeast EEM Administrator to confidentially provide the following information to the Commission, and to the Market Auditor, every seven days:

- Participant, bid/offer price, quantity, location, and All or Nothing information for each bid and offer in each interval;
- Specific parameter data for each Participant for all 15-minute intervals, including counterparties the Participant has elected to not be matched with for an interval and Balancing areas for which the Participant has elected not to be matched with a counterparty during an interval;
- Enabling Agreement counterparties for each Participant;
- The Network Map, updated as necessary;
- For each interval, ATC made available to the Southeast EEM by each Participating Transmission Provider, as well as the amounts of such ATC that are not used by the Southeast EEM;
- Price caps, as relevant for each Participant;
- Matched bids and offers with their associated scheduled MWh quantity and Energy Exchange Price;
- Implied marginal benefit information for each ATC limit for each interval, to the extent such information can reasonably be produced by the Southeast EEM Algorithm; and
- Descriptive information, such as market participant names and unique identifiers.³⁹

The Southeast EEM Members propose to provide this information with respect to all transactions within the Southeast EEM, regardless of whether the parties to the transaction are jurisdictional. However, submission of this data with respect to non-jurisdictional entities is voluntary in conjunction only with the participation of such entities in the Southeast EEM, and the Southeast EEM Members request that the Commission expressly confirm that submission

³⁹

See Attachment A, Proposed Revisions to Southeast EEM Agreement, App'x D.

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and receipt of such data does not and will not affect the jurisdictional status of non-jurisdictional Members in any way. Also, with respect to the confidentiality of the information submitted, the Southeast EEM Members request that the Commission affirm that, like the information submitted by RTOs in response to Order No. 760, the data submitted by the Southeast EEM to FERC will remain non-public, and subject to FOIA Exemption 4.⁴⁰

To implement this commitment, the Southeast EEM Members propose to add a new Section 2.5 to the Southeast EEM Agreement, which will state as follows:

The Southeast EEM Administrator shall provide the information set forth in Appendix D to FERC in accordance with FERC's secure file transfer protocol, and to the Market Auditor, every seven (7) days for the immediately preceding seven (7)-day period and shall answer any follow-up questions from FERC regarding such information, which questions and answers shall be posted on the Southeast EEM Website in the same manner as the reports of the Market Auditor, including the same requirements for confidential treatment of transmission information and commercially sensitive information.⁴¹

- b. *Please explain whether the Administrator, Southeast EEM Market Auditor, or Membership Board will have the authority to respond to requests from the Commission for the following information for any and all Participants: specific parameter data for all 15-minute intervals, including toggled counterparty choices; Enabling Agreement counterparties; toggled balancing authority area choices; Available Transfer Capability made available to the Southeast EEM; bid/offer curves with price and quantity information; price caps; and/or matched bids with their associated price information.*

Response:

As described above, the Southeast EEM Members propose that the Administrator will confidentially provide this information to the Commission and the Market Auditor every seven days. The Southeast EEM Members believe that this will ensure that the Commission has access to meaningful information that will help detect any market concerns in near real-time. To the extent that the Commission has follow-up information requests, it may make such requests to the Administrator, in writing, or if specific to a particular Participant, to the Participant itself. For requests directed to the Administrator, the Administrator will follow the posting process outlined below in Response to Question 7.d.ii, and notify the Membership Board of such posting.

- c. *Please explain whether the Administrator, Southeast EEM Market Auditor, or Membership Board will be required to inform the Commission of potential violations of the Southeast EEM Market Rules or the Commission's statutes, regulations, or orders when and if they are identified.*

⁴⁰ See Enhancement of Elec. Mkt. Surveillance & Analysis through Ongoing Elec. Delivery of Data from Reg'l Transmission Orgs. & Indep. Sys. Operators, Order No. 760, 139 FERC ¶ 61,053 at PP 34-36 (2012) ("Order No. 760").

⁴¹ See Attachment A, Proposed Revisions to Southeast EEM Agreement, Section 2.5.

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Response:

With the new commitments to provide data to the Commission and increase the transparency of Market Auditor reports to Participants, there will be significant transparency and ability to identify any violations of the Southeast EEM Market Rules or the Commission's statutes, regulations, or orders. The Commission can act upon such information *sua sponte*, and a Participant could file a complaint. With these safeguards, the Southeast EEM Members do not believe it is necessary to amend the Southeast EEM Agreement to require the Administrator or Membership Board to inform the Commission of potential violations; however, individual Southeast EEM Members or Participants may do so under the current Southeast EEM Agreement and Market Rules.

As discussed further below, the transparency of Market Auditor reports is being increased, such that Participants, including the Southeast EEM Members and all others transacting in the Southeast EEM Market, and the Commission if it wishes, can access that information. This ensures that Participants can bring any such matters to the attention of the Commission or the Commission can raise them on its own motion. Furthermore, having access to the additional data mentioned above, including the Market Auditor reports, allows the Commission and Participants to identify and pursue any potential violations if they occur. Also, as explained below, the Southeast EEM Members are proposing to revise the *Mobile-Sierra* language in the Southeast EEM Agreement so that the just and reasonable standard would apply to provisions of general applicability. That said, it is the intent of the Southeast EEM Members to be proactive in addressing any unexpected problems with the functioning of the Southeast EEM, potentially through market rules changes that would be filed and subject to notice and comment and Commission review and approval. The Southeast EEM Members will also work to ensure compliance with the filed agreement, as they would any other filed tariff. None of the Southeast EEM Members want a market that does not work to design.

5. *To become a Participant in the Southeast EEM, a prospective Participant must, among other requirements, have or enter into an Enabling Agreement with at least three or more Participants. The Southeast EEM Agreement defines an Enabling Agreement as "a bilateral agreement for the purchase and sale of Energy that provides for Energy Exchanges between a Seller and a Buyer and that, for Sellers that are Public Utilities and require authorization to engage in sales for resale of electric energy, capacity or ancillary services at market-based rates under Section 205 of the FPA, has been entered into pursuant to such Seller's market-based rate authority." Filing Parties state that all transactions in the Southeast EEM will be consummated under Enabling Agreements instead of being consummated within the Southeast EEM itself.*

- a. *Are there any limitations on a Participant's ability to refuse to enter into an Enabling Agreement with a prospective or current Participant?*

Response:

As a starting point, it is important to recognize that Enabling Agreements are used today in the Southeast bilateral market. These are typically standardized agreements that parties have in-place to facilitate regular bilateral energy transactions. These same Enabling Agreements, as well as new Enabling Agreements Participants may enter into, will be used for making bilateral

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transaction as part of the Southeast EEM. In the current bilateral market, there are no prescribed limitations on a party's ability to refuse to enter into an Enabling Agreement with a prospective or current party.

Likewise, the Southeast EEM Agreement does not contain any such limitations, but it does require Participants to have an Enabling Agreement with three or more other Participants. This is purely a safeguard against market manipulation, as explained by Dr. Pope.⁴²

As noted above, the Enabling Agreements are not unique to Southeast EEM participation; many are already in place to facilitate bilateral transactions today. The Southeast EEM Members are providing a list of the entities with which they have entered into Enabling Agreements, thereby demonstrating the diversity of such agreements already. These Enabling Agreements would apply to Southeast EEM transactions, so where one exists a new one would not be necessary. The list is attached as Attachment C.⁴³ Collectively between the Southeast EEM Members, there are at least 180 counterparties to existing Enabling Agreements today. The list is provided to demonstrate that, in the current bilateral market, entities are already incentivized to have a robust, diverse network of trading partners. With the expanded reach of the Southeast EEM, such diversity is only expected to increase; every Participant, Southeast EEM Members included, has the incentive to enter into numerous Enabling Agreements to maximize potential matches, and thereby potential benefits. Moreover, as noted, Enabling Agreement data used by the Algorithm will be reported to the Commission.

The Southeast EEM Members reiterate that they have no incentive to block trading in the Southeast EEM, and in fact, have every incentive to encourage robust trading. It would not have made sense for the Southeast EEM Members to propose the Southeast EEM if that were not the case. Nor is it credible that such a diverse group of Southeast EEM Members (including an agency of the Federal Government) would have come together around such a goal.

With that being said, the Southeast EEM Members are providing additional transparency both to the Commission and Participants.⁴⁴ This will allow the Commission and all market participants visibility into the process and if there are any concerns going forward they can be resolved under the Federal Power Act ("FPA") if and when they arise.

b. Are Participants required to provide any reason for refusing to sign an Enabling Agreement with a prospective or current Participant?

⁴² See Southeast EEM Filings, Econ. Aff. at PP 77-83 (describing the conduct the Rule was created to address and how the rule prevents such conduct).

⁴³ This list, which is a composite list of the counterparties to Enabling Agreements of the Southeast EEM Members today, does not include Enabling Agreements of those entities that have not yet executed the Southeast EEM Agreement. This list includes Enabling Agreements to buy and to sell, and each counterparty is listed only once, even if that entity has Enabling Agreements with more than one Southeast EEM Member (as many do). The Southeast EEM Members note that this list includes Enabling Agreements with entities outside the Southeast EEM footprint, as well as a diverse array of entities that could, upon satisfying the criteria for participation and assuming they have Points of Receipt and Points of Delivery within the Southeast EEM footprint, sell through the Southeast EEM.

⁴⁴ In particular, see Responses to Question 4.a and Question 7.d.i.

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Response:

As Enabling Agreements are currently used in the Southeast, buyers and sellers are not required to state any explicit reason for choosing not to enter into an Enabling Agreement with another participant. Likewise, the Southeast EEM Agreement does not require a Participant to state any explicit reason for choosing not to enter into an Enabling Agreement with another Participant. In other words, the Southeast EEM will not change the existing framework and requirements for entering into an Enabling Agreement, or for choosing not to do so. The data provided in response to Question 5.a demonstrates that in the existing bilateral market, there is already a robust and diverse network of Enabling Agreements, which should address any concern that Participants have an incentive or will act to restrict the number of Enabling Agreements with prospective or current Participants.

As a practical matter, it makes sense for Participants to maintain their autonomy to decide whether to enter into an Enabling Agreement—Enabling Agreements are bilateral agreements between parties. Enabling Agreements require negotiation and mutual agreement, particularly on commercial terms like credit requirements, and it is not the role of the Southeast EEM to mandate entering into agreements.

The Southeast EEM is an extension of the existing just and reasonable bilateral market, and the very term “bilateral” connotes that agreements in the Southeast are freely negotiated between the two parties to such agreements. Moreover, the foundational premise of market-based rate authority is to provide entities the freedom to enter into such freely negotiated bilateral contracts in lieu of pre-approved rates, terms and conditions.⁴⁵ Importantly, restrictions on such contracting necessary to prevent exercise of market power have already been addressed through market power mitigation measures.⁴⁶ However, additional transparency measures the Southeast EEM Members are offering to provide will provide increased visibility to the Commission and Participants,⁴⁷ and if there are any concerns, they can be resolved, hopefully on

⁴⁵ *Mkt.-Based Rates for Wholesale Sales of Energy, Capacity & Ancillary Servs. by Pub. Utils.*, Order No. 697, 119 FERC ¶ 61,295 at PP 943-54 (2007), *order on reh'g*, Order No. 697-A, 123 FERC ¶ 61,055 (2008) (explaining the reasoning behind not requiring all negotiated MBR-based contracts to be filed with the Commission).

⁴⁶ *See S.C. Elec. & Gas Co.*, 121 FERC ¶ 61,263 at P 6 (2007) (finding that Dominion Energy SC's (f/k/a South Carolina Electric and Gas Company) “proposal not to make sales within its balancing authority area under its market-based rate tariff adequately addressed [Dominion Energy SC's] failure of the market share screen in its balancing authority area”); *LG&E Energy Mktg., Inc.*, Docket Nos. ER06-1046-000, *et al.* (letter order issued July 6, 2006) (accepting “revised market-based rate tariff sheets that would, among other things, restrict the LG&E Parties' authority to make sales at market-based rates in the LG&E/KU control area” upon LG&E/KU's exit from the Midwest Independent System Operator, Inc.); *Ala. Power Co.*, 163 FERC ¶ 61,090 at P 32 (2018) (finding that the price cap and auction process established in each of the Southern Companies' MBR tariffs “serve as adequate mitigation for the Southern, SCEG, Tallahassee, and Santee Cooper balancing authority areas”); *Duke Power*, 111 FERC ¶ 61,506 at P 61 (2005) (Commission prohibiting Duke sales within the DEC balancing authority to “mitigate the potential for the exercise of generation market power”); *Fla. Power Corp.*, 113 FERC ¶ 61,131 (2016) (prohibiting Duke sales in the DEP BA).

⁴⁷ *See Responses to Question 4.a and Question 7.d.i.*

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a consensual basis, but if not, then through a complaint or investigation.

- c. What are the options for prospective or current Participants to challenge refusals by Participants to enter into an Enabling Agreement?*

Response

Southeast EEM Participants can submit complaints to the Market Auditor, which will be referred to the Membership Board.⁴⁸ In addition, if a prospective or current Participant wants to challenge the refusal by another Jurisdictional Participant to enter into an Enabling Agreement, it may file a complaint with the Commission under Section 206 of the FPA, just as it could today. Moreover, as noted, the Southeast EEM Members are proposing to provide additional transparency both to the Commission and Participants, including transparency around the treatment of complaints made to the Market Auditor.

- 6. Filing Parties propose that the Administrator will create and maintain informational reports, including a monthly report of the weighted average match prices and daily reports containing the weighted average exchange price. According to Filing Parties' affiant, manipulation of the average exchange price is unlikely because the weighted average Southeast EEM prices are not well-suited for settling related contracts that would be susceptible to manipulation and, further, it would be difficult for participants to materially change the weighted-average prices. Additionally, Filing Parties' affiants clarify that any party that does not consummate its Southeast EEM transactions—either by dispatching up its cleared supply or dispatching down its current supplies to reflect its cleared demand—will face imbalance charges.*
- a. Please explain how access to e-Tag data, EQRs, and any other data provided by the Administrator or Southeast EEM Market Auditor (Auditor) could be used to detect potential exchanges that are cleared by the Southeast EEM but not physically consummated.*

Response:

The Algorithm will output information on matches, not physically consummated transactions. Financial consummation of transactions will be a matter of private contracting between the parties to the matched transaction. Consummation of transmission scheduling will occur via the e-Tagging process. If a transaction is not physically consummated, in whole or in part, imbalances may occur and, for point-to-point transmission customers, imbalance charges could result.⁴⁹ Unfortunately, however, data on physical imbalances for specific bilateral

⁴⁸ Southeast EEM Agreement, Market Rules, VI.D.5.

⁴⁹ See Southeast EEM Filings, Ops. Aff. at P 47 (“Matches made through the Southeast EEM System are for non-firm energy and will be consummated in accordance with the underlying Enabling Agreement for the matched Energy Exchange. Each such Enabling Agreement will be entered into separately between the Participants, under terms and conditions of their choosing – the Southeast EEM will have no role in that. If an Offeror is matched with a Bidder but does not alter its dispatch to effectuate the match, its under-generation will be treated as imbalance, just as it would with bilateral physical transactions today. The same is true if a load fails to dispatch its owned or contracted generation down to reflect a Southeast EEM purchase. As the Ops Team says, “submitted is committed” in terms of Bids and

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transactions energy is not metered and cannot otherwise be calculated, and so cannot be isolated to Southeast EEM transactions. The Southeast EEM Members have spent considerable time and energy, working with subject matter experts across the Southeast EEM Member companies, to attempt to devise a means to provide Southeast EEM-specific data to the Commission with respect to physically unconsummated transactions, and have not been able to devise a means to do so. We do note, however, that any pattern of unconsummated transactions could very well trigger complaints by Participants to the Market Auditor, or directly to FERC. Moreover, as noted, a Participant that matches but does not perform remains financially committed, which protects the other party to the transaction, and serves as a disincentive to such behavior. Dr. Pope believes that Participants are very unlikely to have any incentive to deliberately and systematically enter into transactions that they do not intend to physically consummate.⁵⁰ Among other things, there is no clearing price in the Southeast EEM to attempt to manipulate through such behavior.

b. Please explain the reasoning for including unconsummated transactions in the calculation of the weighted average exchange price.

Response:

All transactions are included in calculating the Weighted Average Match Price⁵¹ because they represent a binding financial commitment between the parties. The Southeast EEM matches buyers and sellers, and matched buyers and sellers are committed to transact, under their bilateral Enabling Agreement, at the price set by the Algorithm. Whether a transaction is then physically consummated by energy actually being delivered is a private matter of contractual performance between the buyer and the seller. Put differently, the Weighted Average Match Price includes all transactions because whether a transaction is physically consummated is not a factor in determining which parties match with one another. Thus, calculating in this fashion provides the best representation of the matching performed by the Algorithm.

c. Please describe what, if any, data or information on unconsummated Southeast EEM transactions will be made available to the Commission, either in reports provided by the Southeast EEM Administrator or elsewhere.

Response:

See response to Question 6.a.

7. The Southeast EEM Agreement states that the Administrator will be responsible for, among other things, (1) the on-going functions of the Southeast EEM System and overseeing and/or performing the operation and maintenance services necessary to allow the Southeast EEM System to operate in a reliable manner, and (2) maintaining open communications by and among the Southeast EEM Administrator, Participants

Offers. This is necessary to make the Southeast EEM System function properly and will also help ensure that participants submit only bona fide Bids and Offers they are able and willing to physically perform on if matched.”).

⁵⁰ Attachment D, Pope Aff. at PP 58-62.

⁵¹ Weighted Average Match Price is the term used by the Southeast EEM Agreement, and we have assumed for purposes of answering the question that this is the term to which the question refers.

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and the Southeast EEM Agent. The proposed Southeast EEM Market Rules state that the Auditor will perform its functions at the direction of the Membership Board. The Auditor will report its conclusions and provide any supporting data in the event that problems are identified to the Membership Board on an after-the-fact, periodic basis. The Membership Board will maintain sole responsibility for determining whether to share the information any further.

- a. What authority does the Administrator have to report concerns with the functionality, correct operations, and accordance with Market Rules of the Southeast EEM, or to recommend improvements to the Southeast EEM, to the Membership Board or to any other entities? Must the Administrator wait for an auditing interval to report such concerns to the Auditor, or does the Administrator have other means of sharing concerns with the Membership Board or other parties?*

Response:

The Administrator role was intentionally designed to be purely ministerial with circumscribed responsibilities focused on the day-to-day operation of the Southeast EEM System. However, the Administrator is expected to work closely with the Market Auditor, who is empowered with several responsibilities, including verifying that the Southeast EEM operates in accordance with the Market Rules and reporting to the Membership Board any operational concerns. To further equip the Market Auditor for these responsibilities and in addition to the coordination already permitted and required within the Southeast EEM Agreement,⁵² the Southeast EEM Members are proposing to have the Administrator provide the same information it provides to the Commission every seven days to the Market Auditor. Thus, the Market Auditor, whose role is aimed at ensuring that the Southeast EEM functions as intended, will have the information needed to do that job, and the role of the Administrator need not be expanded to duplicate that responsibility. Moreover, the Southeast EEM Members also are proposing to increase transparency to both the Commission and to Participants, who can then request changes under Section 206, subject, of course, to making the requisite showings.⁵³ Finally, the Southeast EEM Members expect to be proactive in addressing any legitimate concerns raised by the Market Auditor (or anyone else), such that protections provided by Section 206, while available, should prove unnecessary. The Southeast EEM Members want this market to work, and work well.

- b. The proposed Southeast EEM Market Rules describe one of the Auditor's auditing functions as to "[p]rovide evaluation regarding the proper function of the Southeast EEM System, and the effectiveness of any Southeast EEM System specific controls in place related to the operation of the Southeast EEM System."*
 - i. Please explain the process that the Auditor will use to ensure that the Southeast EEM system is functioning properly.*

⁵² See Southeast EEM Agreement, Sections 2.4, 10.1.2, 10.2.2; *id.*, Market Rules, VI.D.

⁵³ As discussed below, Southeast EEM Agreement provisions of general applicability now will be subject to the just and reasonable standard.

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Response:

The integrity of Southeast EEM will be protected by two lines of defense: (1) the selected software platform implementing the Algorithm; and (2) the Market Auditor, who will provide “checks” on the system functioning. The Southeast EEM Members are currently seeking a platform developer that will provide a responsible, automated approach to testing the Southeast EEM System that helps ensure that output of the Algorithm is high quality and free of errors and regressions. Section IV.C.6 of the Market Rules provide several rules that the Algorithm must follow for all matches.⁵⁴ For instance, the Market Rules provide that the Algorithm shall not make any Energy Exchanges that would cause the available transmission capacity reported to the Southeast EEM System to be exceeded on any ATC limit in the Southeast EEM Territory.⁵⁵

As part of the second line of defense, every month the Market Auditor will check, through testing, to ensure that ATC is not being exceeded, including verification that the Network Map is accurate. The Auditor will similarly test to ensure that each of the Generally Applicable Constraints listed in the Market Rules are being followed by the Algorithm on a monthly basis.⁵⁶ Examples include confirming that a Buyer does not purchase more MW than the amount set forth in its Bid;⁵⁷ that a Participant’s Bid is not matched with an Offer made by the same Participant;⁵⁸ or that an offsetting Energy Exchange, whereby Participant 1 sells to Participant 2 while Participant 2 sells to Participant 1 during the same interval at the same location, does not occur.⁵⁹

The Market Auditor will also review data to ensure that Participant-Specific Constraints,⁶⁰ as communicated by the Participant, are properly implemented by the Algorithm once a month. For instance, if a Participant “toggles” off another Participant, the Market Auditor will confirm whether the Algorithm properly accounted for that toggle in its optimization.

Finally, the Market Auditor will ensure that the Algorithm properly implements the information submitted with Bids and Offers.⁶¹ For instance, every month the Market Auditor will review to determine whether all Offers properly include a Source and all Bids properly

⁵⁴ Southeast EEM Filings, Ops. Aff. at P 38.

⁵⁵ Southeast EEM Agreement, Market Rules, IV.C.6.b.i.

⁵⁶ Clarified Southeast EEM Agreement language covering this point is discussed in the Response to Question 7.b.ii.

⁵⁷ See Southeast EEM Agreement, Market Rules, IV.C.6.b.ii.(a).

⁵⁸ See *id.*, IV.C.6.b.v.

⁵⁹ See *id.*, IV.C.6.b.vi.

⁶⁰ See *id.*, IV.A.1.b

⁶¹ See *id.*, IV.B.3.

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include a Sink,⁶² that a Delivery Interval is included,⁶³ and that the 4 MW rule is being properly implemented.⁶⁴

- ii. *Please describe what is meant by “any Southeast EEM System specific controls in place related to the operation of the Southeast EEM System.”*

Response:

The Southeast EEM Members agree that the term “specific controls” was unduly vague. It was meant to connote Generally Applicable Constraints and Participant-Specific Constraints, and accordingly the Southeast EEM Members propose to change the provision as follows:

Provide evaluation regarding the proper functioning of the Southeast EEM System, **and including verifying the effectiveness compliance of any the Southeast EEM System specific controls with the Participant-Specific Constraints and Generally Applicable Constraints identified in place Section IV.B.6 related to the operation of the Southeast EEM System.**⁶⁵

- c. *The proposed Southeast EEM Market Rules describe one of the Auditor’s auditing functions as to “[r]efer any complaints received to the Membership Board, and investigate further at the Membership Board’s direction.”*
- i. *Please explain whether the Membership Board is required to respond to the Auditor’s reports and referred complaints.*

Response:

The Southeast EEM Members expect to be proactive to address any identified problems, although there is no requirement for the Membership Board to respond to the Market Auditor’s reports and reported complaints. Moreover, the Market Rules will be filed rates of the FERC-jurisdictional Members, and they will work to ensure compliance with the Market Rules as they do with all of their Tariffs.

Moreover, as explained below,⁶⁶ Auditor reports, including complaints referred to the Membership Board, will now be available to the Commission and Participants, such that the Commission can address them *sua sponte*, or a Participant can bring the issues addressed in a report to the Commission’s attention (including through a complaint under Section 206 of the FPA) if they are not satisfied with the approach taken by the Membership Board, subject of course to making the requisite showings.

⁶² *Id.*, IV.B.3.a.v.

⁶³ *Id.*, IV.B.3.a.vi.

⁶⁴ *Id.*, IV.B.3.a.iii.

⁶⁵ Attachment A, Proposed Revisions to the Southeast EEM Agreement, Market Rules, Section VI.D.4.

⁶⁶ *See* Response to Question 7.d.ii.

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- ii. *Please explain the criteria that the Membership Board will use to evaluate the Auditor's reports and referred complaints and to determine whether further action is necessary.*

Response:

There are no specific criteria; instead, the Membership Board will appropriately address any such reports or complaints on a case-by-case basis. This is necessary in order to retain flexibility to react to unforeseen circumstances.

- d. *Filing Parties' affiants state that the Auditor will be responsible for responding to questions from Participants and/or regulators regarding the integrity of the matching process.*
 - i. *Please clarify to which regulators the Auditor will be required to respond. Please also clarify on what timeline the Auditor will respond to questions from regulators or Participants.*

Response:

In addition to the Commission and NERC, the Market Auditor will be required to respond to the state Commissions in the region, which currently include Alabama, South Carolina, Mississippi, Virginia, Tennessee, Georgia, North Carolina, and portions of Kentucky, Oklahoma and Florida. In the case of TVA, the Auditor will respond to questions from its Inspector General. The Market Auditor will also be required to respond to any other regulators that oversee the operations of any Member. The Market Auditor will use reasonable efforts to respond within 30 days.

- ii. *Please clarify whether the Auditor will be required to send its response to a question from a regulator or Participant to the Membership Board for review, prior to responding.*

Response:

The Market Auditor's response to a regulator's or Participant's question will be provided to the Membership Board simultaneously with the Market Auditor's submission of the response to the regulator or Participant. This will be accomplished via postings on the Southeast EEM Website. Specifically, the Market Auditor will provide any information request to the Administrator, which will post the request to the Southeast EEM Website. The Market Auditor then will provide its response to the Administrator, which will post the response as well. To achieve this additional transparency, the Southeast EEM Members propose that all requests to the Market Auditor be in writing. To the extent that such information (whether the question or the response) is confidential, it will be posted to a confidential section of the Southeast EEM Website. At the end of the answer to this question there are two flowcharts showing how information access will be provided, and transparency increased.

In order to effectuate this revision, the Southeast EEM Members propose the following language be added to the Market Rules' description of the Market Auditor's functions:

Respond to written questions from Participants, FERC, NERC, applicable state commissions in the region, Tennessee Valley Authority's Inspector General, and any other applicable regulators that oversee the electric

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operations of any Member regarding the integrity of the matching process. Such information requests and Market Auditor responses (which will be provided, where reasonable, within 30 days), along with any reports generated by the Market Auditor in accordance with these Market Rules, will be provided to the Administrator, which will post such documents to the Southeast EEM website. To the extent that such information (whether the question or the response or other document) is Transmission Function Information or Commercially Sensitive Information, it will be posted to a confidential section of the Southeast EEM website, and access by Participants shall be governed pursuant to the confidentiality provision of the Participant Agreement. Access by regulators shall be subject to a standing request that such regulators treat such information with the highest degree of confidentiality permissible under law applicable to each such regulator. “Transmission Function Information” shall have the meaning provided at 18 C.F.R. Sections 358.3(i), or the successor to that provision. Commercially Sensitive Information shall include any information that could confer a competitive advantage on the recipient, or whose disclosure could harm or commercially disadvantage an entity associated with the information, including, but not limited to, any Participant-specific information, such as the bid and offer information provided to FERC and the Market Auditor every seven days. The entity providing the information for the Administrator to post to the Website (i.e., typically the Market Auditor) shall be responsible for determining which information posted to the Website should be placed in the confidential section of the Website, and shall resolve any uncertainty in favor of treating the information confidentially. In no event shall the Market Auditor or Administrator cause Commercially Sensitive Information that is identifiable to a particular Participant or Critical Energy/Electric Infrastructure Information to be posted to the Southeast EEM Website. Southeast EEM Members shall have access to information posted on the website at the same time and subject to the same restrictions as other Participants. To the extent that the Market Auditor is required to provide a report or document to the Membership Board, it will do so by notifying the Membership Board when the report or document has been posted to the website.⁶⁷

While the general thrust of this requirement is to increase transparency, Participant-specific information and Critical Energy Infrastructure Information (“CEII”) will not be posted. Such information will be redacted from any document or information that is posted. Unredacted copies will be confidentially provided to the Commission or other applicable regulator upon request.

The Southeast EEM Members also propose to delete the following sentence in the Market Rules, at Section VI.D: “The Membership Board will maintain sole responsibility for

⁶⁷ See Attachment A, Proposed Revisions to Southeast EEM Agreement, Market Rules, VI.D.6. As noted below, this is a new provision that will cause the former Section IV.D.6 to become VI.D.7.

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determining whether to share the information any further.” Doing so will avoid conflict with the transparency revisions proposed herein. In its place, the Southeast EEM Members propose to add the following sentence to that section (bolded and underlined):

Auditing Process. Auditing functions will be performed by the Market Auditor at the direction of the Membership Board. The Market Auditor will report its conclusions, and provide any supporting data in the event that problems are identified to the Membership Board on an after-the-fact, periodic basis. **This will be accomplished through the Website posting process identified in Section VI.D.6, thereby ensuring that access to these reports by the Members and others will be simultaneous, subject to any applicable confidentiality restrictions. . .**

The Southeast EEM Members also propose to revise the complaints provision in Section VI.D.5 of the Market Rules to ensure that both complaints submitted by Participants, as well as any subsequent investigation, are subject to the new Website posting requirement:

Refer Report any complaints received to the Membership Board, and investigate **and report** further at the Membership Board’s direction.

To accommodate the new targeted 30-day deadline for responding to regulators, the Southeast EEM Members propose to revise the Market Rules to state as follows:

Except as otherwise specified herein, the Membership Board will be responsible for defining the time interval(s) for the auditing function to be performed and **for the Auditor to** report back to the governing body. Such interval(s) will be published in the Southeast EEM Manuals.⁶⁸

The Southeast EEM Agreement contains restrictions on access to non-public transmission function information and competitively sensitive information by marketing function personnel of the Southeast EEM Members or their affiliates.⁶⁹ Additionally, in light of the proposed availability of this information to Participants, and the potential commercial sensitivity of some such information, the Southeast EEM Members are proposing that Participants (including Members) be subject to an enhanced restriction – i.e., that they commit that information posted by the Administrator in the confidential section of the Southeast EEM Website will not be provided to marketing function employees.⁷⁰ To this end, the Southeast EEM Members are proposing changes to the Participant Agreement. Specifically, the Southeast EEM Members propose to add the following to the Participant Agreement:

The Participant shall supply the Southeast EEM Administrator with any and all information deemed reasonably necessary for the administration of the Southeast EEM System. **The Participant acknowledges and agrees that it will not**

⁶⁸ Under the as-filed Southeast EEM Agreement, the revision at issue was Section VI.B.6, but under the proposed revisions will be Section VI.B.7.

⁶⁹ See Southeast EEM Agreement, Section 3.5 (Member Standard of Conduct).

⁷⁰ See Attachment A, Proposed Revisions to Southeast EEM Agreement, Participant Agreement, Section 6.0.

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provide information posted in the confidential section of the Southeast EEM Website to any employee of itself or an affiliate engaged in Marketing Functions, where Marketing Functions shall be those meeting the definition found at 18 C.F.R. Section 358.3(d), except that for purposes of this Agreement Marketing Functions shall also refer to the functions described in that provision even if the entity performing those functions is not a public utility subject to FERC jurisdiction. The Participant shall identify to the Southeast EEM Administrator all employees who may access the confidential portion of the Southeast EEM website, and certify that such employees are not engaged in Marketing Functions, and the Southeast EEM Administrator will grant access to the confidential portion of the Southeast EEM Website only to such employees. The Participant shall be responsible to ensure that the Southeast EEM Administrator is notified before any such employee commences engagement in Marketing Functions such that access to the confidential section of the Southeast EEM Website can be revoked.⁷¹

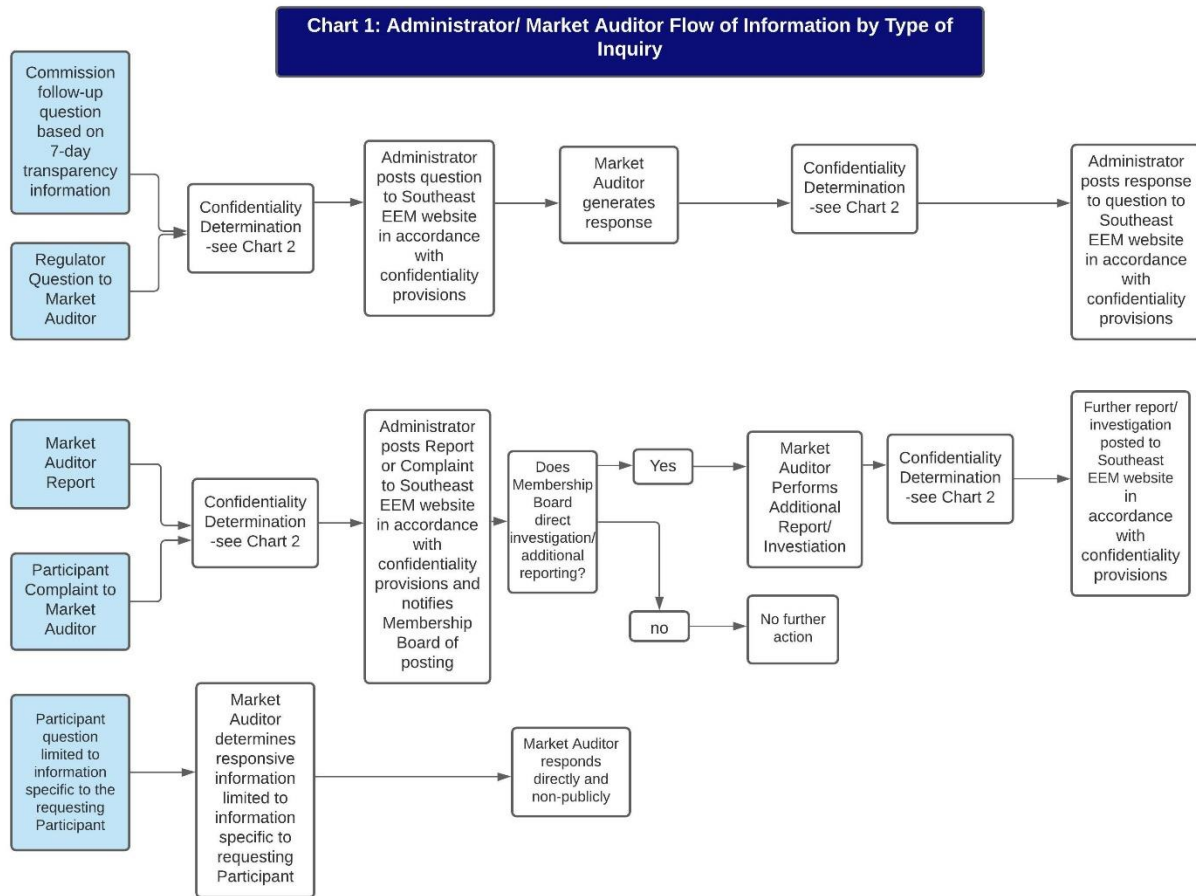
We note that these changes to restrict access to confidential information are not a barrier to entry – they apply *only* if the Participant *elects* to obtain such confidential information. The Participant does not need to make such an election in order to transact in the Southeast EEM.

The flowcharts below provide a visual of how information will flow between the Market Auditor, the Administrator, and Participants depending on the type of inquiry – the first chart reflects how information will flow under the various transparency requirements, while the second chart provides the decision tree for determining what information to post, and how it may be accessed, each time there is a posting determination to be made:

⁷¹ See *id.* (new language bolded and underlined).

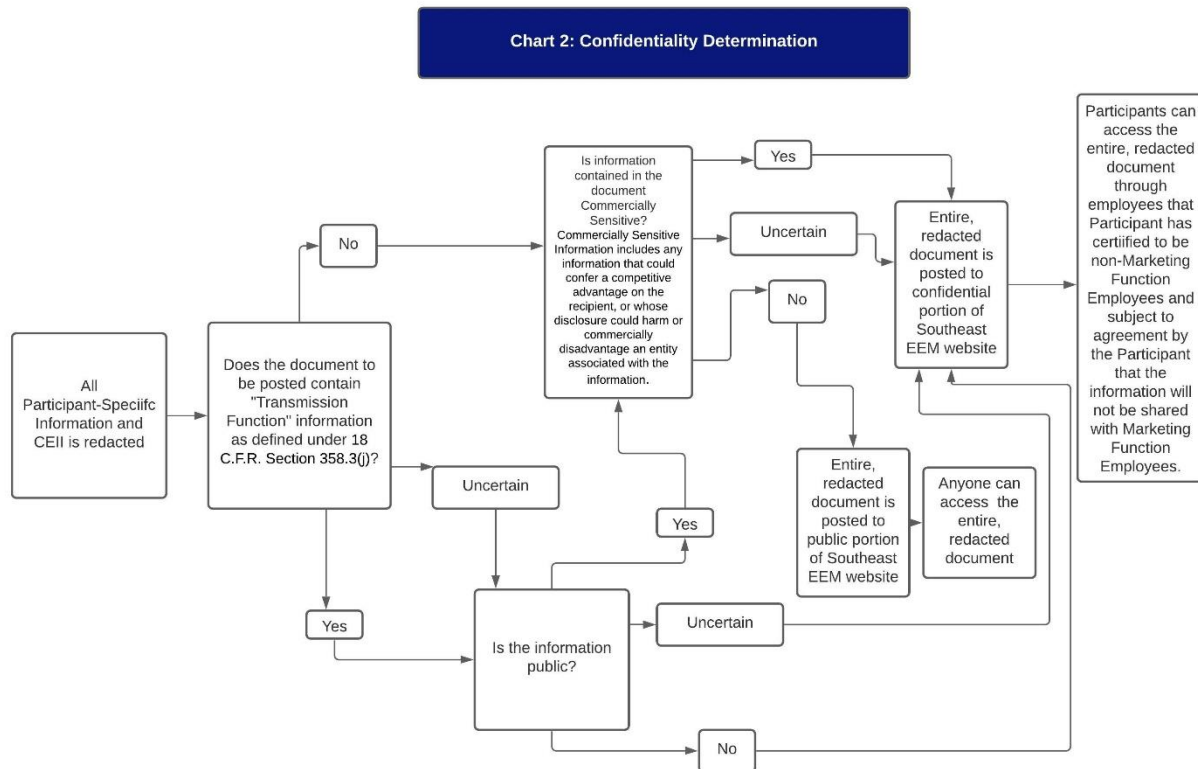
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iii. Please explain what information the Auditor will have access to on its own to answer questions about the integrity of the matching process, or whether it will need to rely upon the Administrator to provide such information.

Response:

The Market Auditor will receive the same reports (as discussed above) every seven days as FERC,⁷² and have the same ability to ask follow up questions as necessary to fulfill its appointed role. The Administrator will follow the posting process described in Response to Question 7.d.ii in responding to Market Auditor questions, just as it will in responding to questions from FERC. The Southeast EEM Agreement also allows for the Market Auditor and Administrator to share information on a confidential and reciprocal basis to support the Market Auditor's responsibilities.⁷³

8. *The Southeast EEM Territory shares borders with the Midcontinent Independent System Operator, Inc. (MISO), PJM Interconnection, L.L.C. (PJM), and Southwest Power Pool, Inc. (SPP). Filing Parties state that the Southeast EEM proposes to observe all physical and contractual limits on the transmission system of the Southeast EEM Members. Filing Parties explain that an Energy Exchange*

⁷² See *id.*, Section 2.5.

⁷³ Southeast EEM Agreement, Section 10.2.2.

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transaction under the Southeast EEM would not be matched if that transaction needed to rely on a neighboring transmission system.

- a. Please explain how the Southeast EEM will interact at the seams with MISO, PJM, and SPP. Please explain how SEEM will manage loop flow, including an explanation of whether such loop flow would require additional interregional coordination, beyond that which exists today and how such coordination would work to respect contractual circumstances such as the MISO Settlement.*

Response:

The Southeast EEM will respect other systems and abide by all existing agreements on seams issues, including contractual limits. However, to address any remaining concerns over unauthorized use of neighboring systems, the Southeast EEM Members propose certain clarifying changes to the Southeast EEM Agreement and Market Rules.

The terms of the Southeast EEM Agreement already require Participating Transmission Providers providing NFEETS to provide information required by the Market Rules, including “sufficient information to permit the Southeast EEM Administrator to create a Network Map . . . for purposes of confirming available capacity for NFEETS along Contract Paths for all potential Energy Exchanges.”⁷⁴ Each Southeast EEM Transmission Provider already posts on its OASIS (or equivalent) its methodology for calculating ATC. To clarify the intent that a precondition for any match will be sufficient ATC on each system along the Contract Path, the Southeast EEM Members propose the following modifications to the Southeast EEM Agreement to require each Transmission Provider to commit to following its posted methodology in making its reports of ATC to the Southeast EEM System. This, in turn, will ensure that there is no match that exceeds the most limiting element along the Contract Path for that transaction.

Specifically, the language the Southeast EEM Members propose states as follows (with proposed changes bolded and underlined):

Prior to being permitted to provide Non-Firm Energy Exchange Transmission Service, Participating Transmission Providers shall provide sufficient information to permit the Southeast EEM Administrator to create a Network Map of the Southeast EEM Territory for purposes of confirming available capacity for NFEETS along Contract Paths for all potential Energy Exchanges. **On an ongoing basis, consistent with the timing requirements of Section IV.B.2.a, each Participating Transmission Provider shall provide the Administrator with the Available Transfer Capability (“ATC”) as calculated by the Participating Transmission Provider per the methodology for calculating**

⁷⁴ See Southeast EEM Agreement, Market Rules, IV.A.2; *id.*, Market Rules, Definition of “Non-Firm Energy Exchange Transmission” (requiring the Participating Transmission Provider to provide “the information specified in and as required by Section IV.A.2 of the Southeast EEM Market Rules to the Southeast EEM System”).

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ATC that each Participating Transmission Provider already specifies in its OATT (or equivalent) and posts on its OASIS (or equivalent), as that ATC may change from time to time.⁷⁵

In Section IV.B.1.2, the Southeast EEM Members propose to revise the language on timing of providing ATC information to clarify that it will be ATC information. The proposed revision will read as follows (with proposed language bolded and underlined):

For each Clock Hour, every Participating Transmission Provider's ~~available capacity for NFEETS~~ **ATC** must be available as an input to the Southeast EEM Algorithm no later than fifteen (15) minutes before the start of such next Clock Hour. To the extent a Participating Transmission Provider can update its ~~available capacity for NFEETS~~ **ATC** within a Clock Hour, such updated information must be available as an input to the Southeast EEM Algorithm no later than fifteen (15) minutes before the start of the applicable Delivery Interval.

Additionally, in Section IV.C.1, the Southeast EEM Members propose to broaden the "requirements" that must be honored when the Algorithm produces matches. Instead of referring only to those requirements in Section IV.A.1, the provision will now encompass all requirements in Section IV.A in order to encompass the ATC reporting provision. Specifically, the Southeast EEM Members propose Section IV.C.1 to read as follows:

...
The Southeast EEM Algorithm will match Bids and Offers so as to result in Energy Exchanges that maximize the Southeast Energy Exchange Market total benefit for the applicable Delivery Interval while simultaneously honoring all the requirements identified in Section ~~IV.A.1~~ **IV.A** and the constraints identified in Section IV.C.6. The total benefit shall be calculated by aggregating the benefits from each Energy Exchange for the applicable Delivery Interval

Finally, the Southeast EEM Members propose to revise the Southeast EEM Agreement to more clearly require the Algorithm to respect ATC limits by removing the reference to "available capacity for NFEETS" and instead tying the provision to ATC calculated by the Participating Transmission Provider. The Southeast EEM Members propose to revise Section IV.C.6.b.i as follows:

In matching Bids and Offers, the Southeast EEM Algorithm shall not make any Energy Exchanges that would cause the ~~available capacity for NFEETS~~ **ATC of any Participating Transmission Provider** on any given Contract Path to be exceeded.

⁷⁵ See Attachment A, Proposed Revisions to Southeast EEM Agreement, Market Rules, IV.A.2 (proposed language bolded and underlined).

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- b. *Filing Parties state that the Southeast EEM does not alter how transmission availability is calculated for bilateral transactions today and will not adversely affect the MISO Settlement, which provides for the contractual rights to transfer up to 1,000 MWs of energy between MISO South and MISO Midwest via transmission facilities operated by MISO.*
 - i. *Please explain how the operation of the Southeast EEM (i.e., matching bids and offers and consummation of Energy Exchange transactions) and the Southeast EEM's preclusion against transactions occurring over neighboring transmission systems will respect the 1,000 MWs of contractual rights under the MISO Settlement.*

Response:

As part of the ATC calculation, the 1,000 MW is taken into consideration as firm service on the MISO system, just like other firm service on the MISO system is taken into account in calculating ATC. Therefore, when calculating whether Energy Exchanges can occur using NFEETS, the Southeast EEM will take into account the firm service under the MISO Settlement. As discussed above, NFEETS will not be utilized in a transaction unless there is sufficient ATC to accommodate the transaction on the systems of all Participating Transmission Providers along the Contract Path.

- ii. *Please explain which service—NFEETS or non-firm service under the MISO Settlement—would get priority on the systems of Southeast EEM Participating Transmission Providers.*

Response:

NFEETS is lowest priority transmission. MISO Settlement flows will be higher priority, and treated as such by the Interchange Distribution Calculator and the relevant Reliability Coordinators.

- 9. *Filing Parties state that since the Southeast EEM “will only use transmission that is not otherwise being used, [NFEETS] will not result in underfunding of transmission.” At the same time, Filing Parties indicate that availability of NFEETS may result in “some slight decrease in Point-to-Point revenues, which in turn would lessen revenue credits used to offset” charges to network service transmission customers. According to Filing Parties, any increase in network transmission service rates would be “roughly balanced” by expected benefits from decreased energy costs resulting from the Southeast EEM.*
 - a. *Please explain how the statement that NFEETS will only use transmission that would not otherwise be used is consistent with the potential for a reduction in point-to-point transmission service reservations as a result of NFEETS. To the extent the increase in network service transmission rates due to an erosion of point-to-point transmission service reservations exceeds benefits to network service transmission customers resulting from the Southeast EEM, please explain how the zero-rate for NFEETS is consistent with cost causation.*

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Response:

The statement that NFEETS will only use transmission that would not otherwise be used is consistent with the potential effect on point-to-point transmission because NFEETS will only be scheduled after scheduling deadlines for other types of transmission service have passed and there is still remaining transmission available. But it is certainly true, as the question correctly implies, that a decision that could lead to erosion of non-firm point to point revenues – i.e., a decision to forego a transaction using a different form of non-firm service in favor of seeking a match using NFEETS – could contribute to the amount of residual ATC available for NFEETS.

As explained in response to Question 3 above, NFEETS is unlikely to be used as a substitute for firm transactions, because firm transmission provides resource adequacy, while NFEETS does not. As to non-firm transactions, today, any point-to-point revenue credits from such transactions are already minimal in the existing bilateral market. This is established by Mr. Melda and Mr. Bellar, who explained that the current “revenues from short-term wheeling transactions of the type that could be replaced by Southeast EEM transactions are minimal.”⁷⁶

The slight reduction in point-to-point revenues that could result from customers voluntarily opting to transact via the Southeast EEM is consistent with cost causation because the costs (in the form of potentially higher network service or firm Point-to-Point transmission rates from reduced credits for point-to-point transmission revenues) will be borne by those who benefit from the lower cost energy alternatives enabled by the Southeast EEM. As Dr. Pope explains, “the Southeast EEM **is expected to** reduce energy costs for native load customers, so any increase in network service transmission rates would be roughly balanced by expected benefits from decreases in their energy costs.”⁷⁷ And indeed, the Commission has stated that cost allocation need not be made with “exacting precision,”⁷⁸ but must be only “roughly commensurate” with the anticipated benefits.⁷⁹ The Southeast EEM meets that requirement, notwithstanding the slight reduction in point-to-point revenues that is anticipated to occur.

This conclusion is consistent with the similar conclusion with respect to the Western EIM. There, the Commission found that “elimination of the seam between California Independent System Operator, Corp. (“CAISO”) and the EIM Entity [Balancing Area Authorities (“BAAs”)] promotes more efficient and competitive electricity markets, provides customers in the EIM and in CAISO access to additional energy supplies, decreases the number of transactions that must pay pancaked rates, and therefore enhances competitive electricity markets in the region.”⁸⁰ The Commission also found the elimination of pancaked rates within the EIM would “result in downward pressure on market prices, resulting in lower energy costs overall and thus benefitting native load customers in CAISO and in an EIM Entity BAA who

⁷⁶ Southeast EEM Filings, Overview Aff. at P 23.

⁷⁷ See Southeast EEM Filings, Econ. Aff. at P 67.⁷⁸ *Sithe/Indep. Power Partners, L.P. v. FERC*, 285 F.3d 1, 5 (D.C. Cir. 2002).

⁷⁸ *Sithe/Indep. Power Partners, L.P. v. FERC*, 285 F.3d 1, 5 (D.C. Cir. 2002).

⁷⁹ See *Ill. Commerce Comm’n v. FERC*, 576 F.3d 470, 477 (7th Cir. 2009).

⁸⁰ *Cal. Indep. Sys. Operator Corp.*, 147 FERC ¶ 61,231 at P 156.

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largely bear transmission costs[,]” and therefore fulfill cost causation principles.⁸¹ The same logic applies here. Network load and firm point-to-point load will receive the benefits of the Southeast EEM, so it is fair and consistent with principles of cost causation to ask such load to shoulder any incremental transmission system revenue requirements network load is exposed to as a result of any erosion of non-firm point-to-point revenues, which is not expected to be significant.⁸² Therefore, any increase in network service transmission rates or firm Point to Point rates due to an erosion of non-firm point-to-point transmission service reservations is not expected to exceed Southeast EEM benefits to network service transmission customers.

- b. Please explain how the availability of NFEETS may impact rates for firm point-to-point transmission charged by each prospective Southeast EEM Member that is a transmission service provider.*

Response:

The impact on rates for firm Point-to-Point service is likely to be minimal and out outweighed by Southeast EEM benefits for the reasons explained in response to Question 9.a.

- c. Please explain how the information Filing Parties propose to have posted regarding NFEETS meets the Commission’s OASIS requirements.*

Response:

The Southeast EEM will interact with OASIS the same as occurs today in the bilateral market, which complies with OASIS requirements. The Southeast EEM simply automates the process of providing information to OASIS.⁸³

- 10. Filing Parties state that the Southeast EEM Market Rules present the mathematical equation for how Energy Exchange prices will be calculated. Filing Parties also state that certain other implementation details are the type of information that the Commission regularly finds are best left to unfiled business practice manuals. Further, Filing Parties explain that the Southeast EEM Members commit to posting any applicable business practice manuals and meeting minutes on the Southeast EEM Website.*

- a. Please clarify what implementation details related to the functioning of the Southeast EEM Algorithm—such as the conditional logic, iterations, or other computational processes that will be used by the Southeast EEM Algorithm—you propose to include in the business practice manuals.*

⁸¹ *Id.*

⁸² See Response to Question 9.b.

⁸³ Southeast EEM Agreement, Market Rules, IV.C.8.a.iv (explaining that the Southeast EEM will provide “appropriate OASIS information . . . to the relevant Participating Transmission Service Provider”); Southeast EEM Filings, Transmittal at 10 (chart explaining that in the existing Market, Buyers and sellers locate one another and schedule delivery of energy with e-Tags; with the addition of the Southeast EEM, Buyers and Sellers are matched through the Southeast EEM, and the Southeast EEM submits transmission service reservations and e-Tags to the applicable BA(s)/Transmission Service Providers/Participants)

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Response:

In addition to the items identified in the Initial Filings, the Southeast EEM Members anticipate that Southeast EEM Manuals will include concrete examples of different scenarios that the Algorithm will solve. The Southeast EEM Manuals will not include a mathematical statement of the optimization problem solved by the Algorithm (i.e., the software platform implementing the Southeast EEM), because this could be a significant undertaking and possibly an additional material Southeast EEM Member expense in addition to the planned cost of hiring a software vendor. Further expense and administrative burden also would be incurred to check the mathematical specification and modify it, if needed, with every change to the Market Rules, if and when these occurred and even if the change appeared to be minor.

However, we note that, like other Business Practice Manuals, it is likely the contents of the Southeast EEM Manuals will evolve over time, and those changes are not presently foreseeable. Consistent with FERC practice, the Southeast EEM will follow the rule of reason,⁸⁴ and any Participant is free to challenge the Southeast EEM's adherence to that rule, subject to making the necessary showing.

- b. Please clarify whether the Southeast EEM business practice manuals will be posted to a publicly viewable portion of the Southeast EEM website, i.e., whether the manuals will be publicly accessible. If not, please clarify which entities will be able to access the manuals.*

Response:

The Southeast EEM Manuals will be publicly available and posted to the Southeast EEM Website.⁸⁵

- c. In addition to the posting of the business practice manuals on the Southeast EEM website, please describe any data about the Southeast EEM Algorithm's operation that will be posted to the Southeast EEM website, aside from the data that will be published in hourly, daily, and monthly ex-post reporting.*

Response:

As detailed above, the Southeast EEM Members propose to provide a wide variety of information confidentially to the Commission. However, much of the data to be provided to the Commission is competitively sensitive, and the Southeast EEM Members are concerned that such data if publicly posted could be used in anti-competitive fashion. Therefore, they do not propose to post any additional market data publicly.

11. Filing Parties state that prior to being permitted to provide NFEETS, Participating

⁸⁴ See, e.g., *City of Cleveland v. FERC*, 773 F.2d 1368, 1376 (D.C. Cir. 1985) (Section 205(c) of the FPA "must reasonably be read to require recitation of only those practices that affect rates and service significantly, that are realistically susceptible of specification, and that are not so generally understood in any contractual arrangement as to render recitation superfluous.") (emphasis in original).

⁸⁵ See Southeast EEM Answer to Protests at n.140 ("[T]he Southeast EEM Members commit to posting any applicable business practice manuals and meeting minutes on the Southeast EEM Website, <https://southeastenergymarket.com/>").

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Transmission Providers shall provide sufficient information to permit the Administrator to create a Network Map of the Southeast EEM Territory for the purpose of confirming available capacity for NFEETS along Contract Paths for all potential Energy Exchanges. Filing Parties define “Network Map” as the computer-based representation of all Participating Transmission Provider service territories, Balancing Authorities, valid transmission paths (Point of Receipt – Point of Delivery combinations), Sources, and Sinks.

- a. Please describe what information will be sufficient to permit the Administrator to create a Network Map, including how that information would be updated to reflect the 15-minute intervals.*

Response:

The Network Map itself will be updated as needed, based on any changes in transmission topography relevant to the Network Map. Such changes are not expected to occur every 15 minutes, so the Network Map will not necessarily be updated every 15 minutes. ATC, which is not included in the Network Map, will be updated every 15 minutes, and that data, along with the Network Map, will be provided to the Commission, as detailed above in response to Question 4.

The Point of Receipt, Point of Delivery, and NAESB WebRegistry information will be used in creating the Network Map.

- b. Please explain how the Southeast EEM Algorithm will ensure that transmission capacity submitted by Participants as available for NFEETS is consistent with Available Transfer Capacity on the relevant transmission lines.*

Response:

The *pro forma* Tariff language for each of the jurisdictional entities notes that “Non-Firm Energy Exchange Transmission Service will be made available for Energy Exchanges from posted ATC after procurement and scheduling deadlines have passed for the next operating hour, taking into account other higher priority uses and the limitations of the Transmission System of the Transmission Provider.”

Additionally, as noted above, the Southeast EEM Members offer to revise the Agreement to state that each Participating Transmission Provider will post its ATC methodology online, and commits to using that methodology here, and that the output of those calculations will be utilized in the Algorithm in determining matches.⁸⁶

- 12. The Southeast EEM Agreement states that the standard of review for any changes to the Agreement proposed by a non-party or by the Commission shall be no lower than the “public interest” standard of review set forth in United Gas Pipe Line Co. v. Mobile Sierra Gas Service Corp., 350 U.S. 332 (1956) and Federal Power Commission v. Sierra Pacific Power Co., 350 U.S. 348 (1956).*

⁸⁶

See Response to Question 8.a.

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- a. *Please provide further justification for the application of the Mobile-Sierra “public interest” standard of review to any changes to the Southeast EEM Agreement proposed by a non-party or the Commission.*

Response:

The Southeast EEM Members believe that there are certain portions of the Southeast EEM Agreement that may be perceived as being generally applicable in nature. The general standard of review therefore has been changed to “just and reasonable.” However, other sections are more bilateral in nature, govern key rights and obligations among the Southeast EEM Members (such as cost allocation provisions and exit provisions, among others), and were therefore central to the negotiated terms the Members agreed upon in developing the Southeast EEM.⁸⁷ In other words, it is crucial to the development and implementation of the Southeast EEM that these provisions in particular provide for contractual certainty to Members. As the Commission has said in similar circumstances, it is appropriate to “balance the needs of the Transmission Owners for contractual certainty with the interests properly represented by [a market].”⁸⁸ Therefore the Southeast EEM Members are proposing to subject these provisions to the more stringent “public interest” standard. Those provisions are as follows:

- The following defined terms under Article 1:
 - Interest Rate
 - Investor Owned Utilities
 - Governmental Utilities
 - Market Auditor
 - Material Vendor Contract
 - Member
 - Member Net Energy for Load
 - Net Energy for Load
 - Operating Costs
 - Record Date
 - Sector
 - Significant Matters
 - Southeast EEM Administrator
 - Southeast EEM Agent

⁸⁷ See *Texaco Inc. v. FERC*, 148 F.3d 1091, 1095 (D.C. Cir. 1998) (“[W]here parties have negotiated a . . . contract that sets firm prices . . . and that denies either party the right to change such prices or charges unilaterally, [the Commission] may abrogate or modify the contract only if the public interest so requires.”); *PJM Interconnection, L.L.C.*, 142 FERC ¶ 61,214 at P 184 (2013), *reh’g denied*, 147 FERC ¶ 61,128 (2014) (“On one hand, all such provisions in bilateral power sales contracts freely negotiated at arm’s length between sophisticated parties generally would establish contract rates and would come within the [*Mobile-Sierra*] presumption [of justness and reasonableness]. On the other hand, where the terms of an agreement would, if approved, be incorporated into the service agreements of all present and future customers, those terms are properly classified as tariff rates and the *Mobile-Sierra* presumption would not apply.”).

⁸⁸ *ISO New England Inc.*, 106 FERC ¶ 61,280 at P 128 (2004), *reh’g granted in part, denied in part*, 109 FERC ¶ 61,147 (2004).

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- Territory
- Section 3.2 (Member Criteria);
- Article 4 (Governance);
- Sections 6.1 and 6.2 (Appointment of Southeast EEM Agent);
- Article 7 (Budgeting and Cost Responsibility)
- Sections 8.6 and 8.7 (Inter-related Inter-dependent provisions and Withdrawal);
- Article 9 (Release and Liability; No Fiduciary Duties);
- Section 10.3 (Equitable Relief);
- Section 11.2 (Reliability Obligations);
- Article 12 (Dispute Resolution);
- Article 14 (Defaults);
- Article 15 (Confidentiality);
- Section 16.1 (“Public Utility” Status of Members);
- Section 16.4.1 (No Reliance Interest on Non-Firm Energy Exchange Transmission Service);
- Section 16.5 (No Dedication of Facilities);
- Section 16.9 (Amendments);
- Exhibit B (Form of Joinder Agreement to add new Members); and
- Appendix C (Southeast EEM Agent Scope).⁸⁹

The Southeast EEM Members believe that subjecting these select provisions to a higher standard of review is appropriate, and consistent with Commission precedent regarding similarly complex agreements that defy classification in their entirety.⁹⁰

- b. Please explain why the Southeast EEM Agreement establishes contract rates that qualify for the Mobile-Sierra presumption. Alternatively, please explain why the Commission should apply Mobile-Sierra to the Southeast EEM Agreement if it is not classified as a contract rate.*

Response:

Most of the Southeast EEM Agreement will be subject to the just and reasonable standard, including the entirety of the Market Rules. As discussed in the Response to Question 12.a, the remaining limited number of provisions that are now proposed to be subject to the public interest standard are bilateral in nature and govern key rights and obligations among the Southeast EEM Members, or establish important limitations on the nature of the services being provided by the Members. All provisions of general applicability have been designated as subject to the just and reasonable standards, including the entirety of the Market Rules.

⁸⁹ See Attachment A, Proposed Revisions to the Southeast EEM Agreement, Section 16.9 (Amendments).

⁹⁰ *PJM Interconnection, L.L.C.*, 142 FERC ¶ 61,214 at P 185 (permitting the Consolidated Transmission Owner Agreement (“CTOA”) to be subject to differing standards of review because it could not “be classified in its entirety as containing contract rates or tariff rates” and noting that the differing standards would “recognize the distinctions among its provisions”).

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- c. What standard of review will apply to amendments to the Southeast EEM Agreement proposed by the Members?*

Response:

A Southeast EEM Member acting unilaterally or without the requisite vote would be subject to the rules outlined above, because such action would occur under Section 206. The just and reasonable standard will apply to any modifications proposed by the Southeast EEM Members upon approval consistent with the rules on governance,⁹¹ because such modifications would be submitted to the Commission by the Southeast EEM Members under Section 205.

Additional Changes to the Agreement

The review of the Southeast EEM Agreement caused by the Deficiency Letter led to the identification of a handful of clarifying changes to the Southeast EEM Agreement. Specifically, the Southeast EEM Members propose the following additional modifications:

- (1) The Southeast EEM Members propose to revise Section IV.C.7.a of the Market Rules to state that randomization will be used if a heuristic is required to resolve ties or ambiguities. This is a clarification to the agreement to track a statement previously made in the Operations Affidavit.⁹² As revised, the Section will read as follows:

In the event that multiple Bids or Offers that are at the same price at a Source or Sink are identical which create the same benefit for the Southeast EEM, a randomized preference will be assigned to the Bid(s) or Offer(s). **Additionally, randomization will be employed in the algorithm in all other situations if a heuristic is required to resolve ties or ambiguities.**

- (2) The Southeast EEM Members propose to revise Section VI.B.2 of the Market Rules to correct a scribenor's error that resulted in the omission of an important limitation on a Participant's administrator who is authorized to run and review reports available in the Southeast EEM. That provision will now state as follows:

Each Participant will be required to identify an administrator that is authorized by the Participant to run and review all of the reports available in the Southeast EEM System that are redacted to ~~all~~ **only** show the information related to the Participant it represents (the "Company System Administrator"). The Southeast EEM System will provide each Company System Administrator with the right to grant access to certain reports and related data to identified delegates within the Participant's organization. Each Company System Administrator (and any delegate identified by the Company System Administrator) shall be able to run all of the reports

⁹¹ See Southeast EEM Agreement, § 4.1.9.

⁹² Southeast EEM Filings, Ops. Aff. at P 44.

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available in the system but receive only the data that belong to the Participant it represents.

- (3) The Southeast EEM Members propose to revise Section VI.E.1 of the Market Rules to clarify the Administrator's authority to maintain configuration parameters, and to avoid confusion about whether the Administrator is permitted to change those parameters (it is not). Specifically, the Southeast EEM Members propose the following revision to Section IV.E.1 of the Market Rules:

Parameters. The Southeast EEM Administrator shall ~~set and~~ maintain the following Southeast EEM System configuration parameters, which shall be posted for access by all Members . . .

List of Documents Provided with this Filing

Following is a list of documents included with this eTariff⁹³ filing:

<u>Attachment A</u>	Proposed Revisions to Southeast EEM Agreement;
<u>Attachment B</u>	Chart of Example Mitigated Price Cap for SEEM Transaction;
<u>Attachment C</u>	List of Enabling Agreements; and
<u>Attachment D</u>	Pope Affidavit.

Conclusion

The Southeast EEM Members respectfully request that the Commission accept the Southeast EEM Agreement, and the related filings in these unconsolidated dockets, subject to the modifications proposed herein, to become effective on August 6, 2021. If the Commission finds these proposed changes acceptable and otherwise accepts the Southeast EEM Proposal as submitted, the Southeast EEM Members commit to subsequently submit a compliance filing to effectuate the proposed revisions within 30 days of acceptance.

⁹³ Additionally, and as noted above, each Southeast EEM Member is submitting unrevised tariff records through eTariff that correspond to the original filing in that docket.

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Respectfully Submitted,

/s/ Noel Symons

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*Counsel for the Members of the
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Dated: June 7, 2021

CERTIFICATE OF SERVICE

I hereby certify that I have on this day caused to be served a copy of the foregoing upon all parties on the service list in these proceedings in accordance with the requirements of Rule 2010 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.2010 (2020).

Dated at Washington, D.C. this 7th day of June, 2021.

/s/ Carrie A. Mobley
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Attachment A

Proposed Revisions to Southeast EEM Agreement

~~EXECUTION~~PROPOSED REVISIONS TO EXECUTED VERSION

SOUTHEAST ENERGY EXCHANGE MARKET AGREEMENT

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EXHIBITS

EXHIBIT A	Names and Addresses of the Members
EXHIBIT B	Form of Joinder Agreement

APPENDICES

APPENDIX A	Form of Participant Agreement
APPENDIX B	Southeast EEM Market Rules
APPENDIX C	Southeast EEM Agent Scope

<u>APPENDIX D</u>	<u>Information Provided to FERC and the Market Auditor</u>
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EXECUTION PROPOSED REVISIONS TO EXECUTED VERSION**SOUTHEAST ENERGY EXCHANGE MARKET AGREEMENT**

This SOUTHEAST ENERGY EXCHANGE MARKET AGREEMENT (as the same may be amended from time to time in accordance with the terms hereof, the “Agreement”), by and among each of the entities listed on Exhibit A hereto (each entity, a “Party,” and collectively, the “Parties”), as that exhibit may be amended from time to time in accordance with the terms hereof, is made, entered into and effective this 28th day of December, 2020. Hereinafter, Parties to this Agreement may be referred to individually as a “Member” and collectively as the “Members.”

W I T N E S S E T H

WHEREAS, there is presently no centrally operated electricity market in the southeastern United States and, accordingly, inter-utility electricity transactions presently occur through bilateral transactions;

WHEREAS, Members believe that a voluntary, region-wide, bilateral, automated, intra-hour electric exchange utilizing unreserved transmission capacity of Participating Transmission Providers at a zero-dollar transmission rate will provide value to their customers by creating efficiencies, transparency, and market liquidity;

WHEREAS, Members desire to participate and to permit other entities to participate as Participants in the exchange; and

WHEREAS, the Members believe that the foregoing objectives can be achieved through a joint effort to sponsor and create a common trading platform that facilitates bilateral electricity transactions between and within their respective service territories.

NOW, THEREFORE, the Members, for good and valuable consideration, enter into this Agreement that sets forth their mutual covenants, rights, and obligations for establishing, funding, and participating in the Southeast Energy Exchange Market (defined below).

ARTICLE 1**DEFINITIONS AND RULES OF INTERPRETATION**

1.1 Definitions. The following terms shall have the meaning hereinafter specified:

“Additional Member” has the meaning provided to it in Section 3.2.3.

“Affiliate” has the meaning set forth in 18 C.F.R. § 35.36(9), as amended.

“Affirmative Majority Vote” has the meaning set forth in Section 4.1.5(b).

“Affirmative Supermajority Vote” has the meaning set forth in Section 4.1.5(c).

“Alternate Committee Member” has the meaning set forth in Section 5.9(b).

“Alternate MNEL Value” has the meaning set forth in Section 7.3.1(a).

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“Alternate Representative” has the meaning set forth in Section 4.1.7(b).

“Annual Budget” has the meaning set forth in Section 7.2.2.

“Annual Budget Determination Date” has the meaning set forth in Section 7.2.2.

“Annual Meeting” has the meaning set forth in Section 4.4.

“Annual Member Meeting” has the meaning set forth in Section 4.5.

“Authorized Action” has the meaning set forth in Section 6.1.

“Balancing Authority” shall have the meaning set forth in the Southeast EEM Market Rules.

“Balancing Authority Area” shall have the meaning set forth in the Southeast EEM Market Rules.

“Bid” shall have the meaning set forth in the Southeast EEM Market Rules.

“Bid Information” shall have the meaning set forth in the Southeast EEM Market Rules.

“Bidder” shall have the meaning set forth in the Southeast EEM Market Rules.

“Business Day” means each weekday, Monday through Friday, excluding NERC holidays.

“Buyer” shall have the meaning set forth in the Southeast EEM Market Rules.

“Chair of the Membership Board” has the meaning set forth in Section 4.3.2.

“Change in Law” has the meaning set forth in Section 8.6.

“Committee Member” has the meaning set forth in Section 5.1.

“Cooperatives” means those electric membership cooperative Members that serve load, and cooperatives that provide generation, transmission and/or system operations services to electric membership cooperatives that serve load, in each case in the Territory.

“Deadlock Issue” has the meaning set forth in Section 5.7.2.

“Delivery Interval” shall have the meaning set forth in the Southeast EEM Market Rules.

“Disaggregated Utility” means multiple entities of a disaggregated generation/transmission/system operations utility system.

“Effective Date” has the meaning set forth in Section 8.4.1.

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“Enabling Agreement” means a bilateral agreement for the purchase and sale of Energy that provides for Energy Exchanges between a Seller and a Buyer and that, for Sellers that are Public Utilities and require authorization to engage in sales for resale of electric energy, capacity or ancillary services at market-based rates under Section 205 of the FPA, has been entered into pursuant to such Seller’s market-based rate authority.

“Energy” means electric energy delivered as three-phase alternating current.

“Energy Exchange” means a transaction for the purchase and sale of Non-Firm Energy using the transaction matching, reservation and tagging functions of the Southeast EEM between Participants pursuant to an Enabling Agreement and in conformance with the requirements of the Southeast EEM Market Rules.

“Enrollment Period” has the meaning set forth in Section 3.2.3.

“FERC” means the Federal Energy Regulatory Commission or any successor to its rights and obligations under Part II of the FPA.

“FPA” means the Federal Power Act, as amended.

“Good Utility Practice” shall have the meaning set forth in the Southeast EEM Market Rules.

“Governmental Action Withdrawal Date” has the meaning set forth in Section 8.6.

“Governmental Entity” means any federal, state, county, municipal, local or foreign government or entity or any legislature, agency, bureau, branch, department, division, commission, court, tribunal, magistrate, justice, arbitrator, multi-national organization, quasi-governmental body, or other similar recognized organization or body of any federal, state, county, municipal, local, or foreign government or any enforcement authority or other similar recognized organization or body exercising similar powers or authority, including FERC, any public utility commission or public service commission or similar authority, but excluding in each case, any Member acting in its capacity as a Member hereunder and not otherwise in a governmental capacity.

“Governmental Utility” means any electric utility located in the Territory that is owned, operated or controlled by the United States, or any state or commonwealth included in the Territory, any political subdivision of a state or commonwealth included in the Territory, or any agency, authority, or instrumentality of any one or more of the foregoing, or any corporation which is wholly owned, directly or indirectly, by any one or more of the foregoing.

“Interest Rate” means the lesser of (i) the per annum rate of interest announced from time to time by Citibank, N.A. (or a suitable replacement specified by the Operating Committee) as its “prime rate” for commercial loans effective on the date payment is due as established from time to time by such bank, plus two percent (2%), or (ii) the maximum lawful rate permitted by applicable Law.

“Investor Owned Utilities” means those investor owned utility Members that serve load in the Territory.

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“Jurisdictional Member” means a Member that is a Public Utility.

“Law” means any federal, state or local law, statute, act, rule, code, ordinance, decree, treaty, regulation, order, judgment, legally binding announcement, directive or published interpretation thereof, enacted, issued or promulgated by any Governmental Entity.

“Load Serving Entity” has the meaning set forth in the NERC Rules of Procedure, as approved by FERC.

“Market Auditor” means an independent entity engaged by the Southeast EEM Agent to perform the scope of responsibilities identified in Section 10.2 and in the Southeast EEM Market Rules.

“Material Vendor Contract” means an agreement between the Southeast EEM Agent, on behalf of the Members, and any vendor or supplier that, together with all other such agreements with such vendor or supplier and its Affiliates, involves aggregate consideration payable by the Members.

“Member” or “Members” has the meaning set forth in the preamble, except that to the extent any of the Members have not executed this Agreement at the time that it is filed with FERC, such Member may execute this Agreement no later than thirty (30) days after the Effective Date. Thereafter, any entity listed on Exhibit A that has not executed the Agreement may seek to become an Additional Member pursuant to Section 3.2.3.

“Member Net Energy for Load” means, except as modified pursuant to Section 7.3.1, the Net Energy for Load calculated for each Member and submitted in NERC’s business plan and budget filed annually with FERC in accordance with 18 C.F.R. § 39.4(b), as amended. For purposes of Section 4.1.5 and Section 7.2, (i) a Representative’s Member that is an entity part of a Disaggregated Utility, and (ii) any Affiliates of a Representative’s Member, shall in each case be assigned the total Net Energy for Load of the associated entities in such Disaggregated Utility or of such Member Affiliates, as applicable.

“Membership Board” means the membership board established pursuant to Article 4.

“MW” means megawatt or megawatts.

“MWh” means megawatt-hour or megawatt-hours.

“NAESB EIR” shall have the meaning set forth in the Southeast EEM Market Rules.

“NERC” means the North American Electric Reliability Corporation or its successor.

“Net Energy for Load” means net generation of an electric system plus Energy received from others less Energy delivered to others through interchange; it includes system losses but excludes Energy required for the storage of Energy at energy storage facilities. For purposes of this definition “electric system” means a Load Serving Entity.

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“Non-Firm Energy” shall have the meaning set forth to it in the Southeast EEM Market Rules

“Non-Firm Energy Exchange Transmission Service” shall have the meaning set forth in the Southeast EEM Market Rules.

“Non-Firm Energy Exchange Transmission Service Agreement” means an agreement for the provision of Non-Firm Energy Exchange Transmission Service between a Participant and a Participating Transmission Provider, as provided in such Participating Transmission Provider’s Tariff, as any such agreement may be updated from time to time.

“Non-Jurisdictional Member” means a Member that is not a Public Utility.

“OATI webRegistry” shall have the meaning set forth in the Southeast EEM Market Rules.

“Offer” shall have the meaning set forth in the Southeast EEM Market Rules.

“Offer Information” shall have the meaning set forth in the Southeast EEM Market Rules.

“Offer Price” shall have the meaning set forth in the Southeast EEM Market Rules.

“Offeror” shall have the meaning set forth in the Southeast EEM Market Rules.

“Operating Committee” means that committee established pursuant to Article 5.

“Operating Costs” shall mean dues, costs, expenses and other payment obligations assessed pursuant to this Agreement, or other fees or liabilities that may be imposed by the Membership Board or in accordance with the Southeast EEM Market Rules that arise under this Agreement. For the avoidance of doubt, Operating Costs includes fees, costs and expenses incurred by the Southeast EEM Agent in performing its duties hereunder and the cost of employing third party vendors by the Southeast EEM Agent regardless of whether such costs are billed to the Members through the Southeast EEM Agent, the Southeast EEM Administrator, a third party or directly by such vendors.

“Other Court/Governmental Entity Action” has the meaning set forth in Section 8.6.

“Participant” shall have the meaning set forth in the Southeast EEM Market Rules.

“Participant Agreement” has the meaning set forth in Section 3.3.

“Participating Transmission Provider” means a transmission provider that is providing Non-Firm Energy Exchange Transmission Service.

“Popular Vote” has the meaning set forth in Section 4.1.5(a)(i).

“Public Utility” has meaning set forth in Section 201 of the FPA.

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“Record Date” means the date upon which FERC accepted the most recent annual Business Plan/Budget, including Net Energy for Load values, filed by NERC pursuant to the requirements of 18 C.F.R. § 39.4, as amended.

“Regulatory Filing” means any filing or submission made with or to a Governmental Entity.

“Related Parties” has the meaning set forth in Section 9.1.

“Reliability Obligations” has the meaning set forth in Section 11.2.

“Representative” has the meaning set forth in Section 4.1.2(a).

“Representative Losses” has the meaning set forth in Section 6.5.

“RUS” means the Rural Utilities Service, or its successor.

“Secretary” has the meaning set forth in Section 4.3.3.

“Sector” means individually and collectively, the Investor Owned Utilities, Cooperatives and Governmental Utilities.

“Seller” shall have the meaning set forth in the Southeast EEM Market Rules.

“SERC” has the meaning set forth in Section 11.2.

“Significant Matters” means (i) any amendment to this Agreement (excluding updates to Exhibit A solely to update notice information pursuant to Section 16.8), including but not limited to the Southeast EEM Market Rules, (ii) the appointment, removal, substitution and replacement of the Southeast EEM Agent and/or the Southeast EEM Administrator and the approval of, and any amendment or extension of, the agreement(s) between the Southeast EEM Agent (on behalf of the Members, including the Southeast EEM Agent Scope) and/or the Southeast EEM Administrator, (iii) the development of, or any material modification to, the Southeast EEM Algorithm or the Southeast EEM System, (iv) the appointment, removal, substitution and replacement of the Market Auditor, and any amendment or extension of the agreement(s) between the Southeast EEM Agent (on behalf of the Members) and the Market Auditor that would modify the scope set forth in Section 10.2.1, (v) any other contract or writing that obligates any Member to pay two hundred thousand dollars (\$200,000) or more in a calendar year in excess of such Member’s allocated share of costs as set forth in the Annual Budget, (vi) the submission of any Regulatory Filing on behalf of the Members, provided that (a) no Member can be compelled to join any Regulatory Filing, and (b) no Member can be compelled to take any action that in the reasonable view of such Member would jeopardize its jurisdictional status, (vii) the sale of all or substantially all of the property held by the Southeast EEM Agent (if any) for the benefit of the Southeast EEM System, or (viii) pursuant to Section 4.2.2, the (A) suspension of a Member’s voting rights, (B) removal of a Member from any committee appointment, and (C) suspension of any Member’s access to the Southeast EEM System.

“Sink” shall have the meaning set forth in the Southeast EEM Market Rules.

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“Source” shall have the meaning set forth in the Southeast EEM Market Rules.

“Southeast EEM Administrator” means that entity hired by the Southeast EEM Agent, on behalf of the Membership Board acting in its capacity on behalf of the Members, to operate the Southeast EEM System from day to day.

“Southeast EEM Administrator Agreement” means that certain agreement by and between the Southeast EEM Administrator and Southeast EEM Agent (in its capacity as agent for the Members), which agreement sets forth the rights and obligations of the Southeast EEM Administrator, as may be amended from time to time in accordance with this Agreement.

“Southeast EEM Agent” means that entity designated by the Membership Board from time to time, which has certain limited rights and responsibilities under this Agreement as expressly set forth in Article 6 below.

“Southeast EEM Agent Scope” has the meaning set forth in Section 6.1.

“Southeast EEM Algorithm” shall have the meaning set forth in the Southeast EEM Market Rules.

“Southeast EEM Commencement Date” means the date upon which the Southeast EEM commences operation.

“Southeast EEM Order” has the meaning set forth in Section 8.6.

“Southeast EEM Manuals” shall have the meaning set forth in the Southeast EEM Market Rules.

“Southeast EEM Market Rules” means the Rules of the Southeast Energy Exchange Market as set forth in Appendix B, as may be amended from time to time pursuant to Section 4.1.9.

“Southeast Energy Exchange Market” or “Southeast EEM” means the Territory-wide, automated, intra-hour electric energy exchange operated by means of the Southeast EEM System and utilizing Non-Firm Energy Exchange Transmission Service pursuant to the terms and conditions of this Agreement.

“Southeast EEM System” means the Southeast EEM Algorithm and any ancillary or supporting software solutions that (i) automatically matches Bids and Offers among Participants for the next Delivery Interval during which the wholesale sale of Non-Firm Energy will be sold by the Seller and the purchase of the Non-Firm Energy will be purchased by the Buyer to serve load in the Territory and (ii) automatically reserves and tags Non-Firm Energy Exchange Transmission Service.

“Southeast EEM System Interface” shall have the meaning set forth in the Southeast EEM Market Rules.

“Stakeholders” means interested state commissions, customers, interested future Southeast EEM Market Members or Participants, public interest groups or any other interested parties.

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“Tariff” means a Participating Transmission Provider’s FERC-jurisdictional Open Access Transmission Tariff, non-jurisdictional transmission tariff or non-jurisdictional transmission service guidelines, as applicable.

“Tariff Filings” has the meaning set forth in Section 8.3.

“Territory” means, collectively, the areas served by the Participating Transmission Providers, which as of the Effective Date includes the Balancing Authority Areas operated by the following Balancing Authorities: Associated Electric Cooperative, Inc.; Louisville Gas and Electric Company and Kentucky Utilities Company; Tennessee Valley Authority; Duke Energy Progress (f/k/a Carolina Power and Light Company); Duke Energy Carolinas; South Carolina Electric & Gas Company (n/k/a Dominion Energy South Carolina, Inc.); Santee Cooper; Southern Company; and Power South Energy Cooperative. A current description of the Territory shall be maintained on the Southeast EEM System Interface.

“Voluntary Withdrawal Date” has the meaning set forth in Section 4.2.1.

“Withdrawal Date” means a Voluntary Withdrawal Date or a Governmental Action Withdrawal Date, as applicable.

1.2 Rules of Construction. The capitalized terms listed in this Article 1 shall have the meanings set forth herein whenever the terms appear in this Agreement, whether in the singular or the plural or in the present or past tense. Other terms used in this Agreement but not listed in this Article 1 shall have meanings defined herein or by NERC and the Tariff of each Participating Transmission Provider or, if not so defined, shall have meanings as commonly used in the English language. In the event of a conflict regarding a defined term contained herein and the provisions of a Tariff or NERC rules, the provisions set forth by the applicable Tariff and NERC rules shall take precedence over the defined terms set forth in this Agreement. Words not otherwise defined herein that have well known and generally accepted technical or trade meanings are used herein in accordance with such recognized meanings. In addition, the following rules of interpretation shall apply:

The masculine shall include the feminine and neuter.

References to “Articles,” “Sections,” or “Exhibits” shall be to articles, sections, or exhibits of this Agreement.

References to “days” that are not specifically defined as “Business Days” shall be calendar days, which term includes every day on the calendar including weekends and holidays.

The Exhibits and Appendices attached hereto are incorporated in and are intended to be part of this Agreement; provided, however, that in the event of a conflict between the terms of any Exhibit and the terms of this Agreement, the terms of this Agreement shall take precedence.

This Agreement was negotiated and prepared by all Parties with the advice and participation of counsel. The Parties have agreed to the wording of this Agreement and none of the provisions hereof shall be construed against one Party on the ground that such Party is the author of this Agreement or any part hereof.

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Unless expressly provided otherwise in this Agreement, where the Agreement requires the consent, approval, or similar action by a Party, such consent or approval shall not be unreasonably withheld, conditioned or delayed, except in each case that the foregoing shall not apply to any action of a Party under Article 11.

Use of the words “include” or “including” or similar words shall be interpreted as “including but not limited to” or “including, without limitation.”

ARTICLE 2

ESTABLISHMENT OF SOUTHEAST EEM AND ADMINISTRATION

2.1 The Members shall cause the establishment and operation of the Southeast EEM System as set forth herein and administered via the Southeast EEM System Interface or such other protocol as determined by the Membership Board, to facilitate the matching of Sellers with Buyers for the purpose of entering into Energy Exchanges.

2.2 The Southeast EEM Administrator shall operate the Southeast EEM System in accordance with the Southeast EEM Market Rules for the purpose of matching Bids and Offers for the four (4) fifteen (15) minute increments in every hour of every day, including but not limited to Business Days, weekends, and NERC holidays.

2.3 As will be set forth in the Southeast EEM Administrator Agreement, the Southeast EEM Administrator will be primarily responsible for: (i) the on-going functions of the Southeast EEM System and overseeing and/or performing the operation and maintenance services necessary to allow the Southeast EEM System to operate in a reliable manner; (ii) the protection and safeguarding of data submitted to and transmitted from the Southeast EEM System; (iii) limiting access to the Southeast EEM System to Participants; and (iv) maintaining open communications by and among the Southeast EEM Administrator, Participants and the Southeast EEM Agent. For avoidance of doubt, the Membership Board, pursuant to Article 4, may decide to engage one or more third parties to perform the responsibilities of the Southeast EEM Administrator.

2.4 All Bid Information and Offer Information submitted to the Southeast EEM System shall be used by the Southeast EEM Administrator only for operation, maintenance, and the on-going functions of the Southeast EEM System or as requested by the Market Auditor, in each case in accordance with this Agreement, the Southeast EEM Market Rules and applicable Law.

2.5 The Southeast EEM Administrator shall provide the information set forth in Appendix D to FERC in accordance with FERC’s secure file transfer protocol, and to the Market Auditor, every seven (7) days for the immediately preceding seven (7)-day period and shall answer any follow-up questions from FERC regarding such information, which questions and answers shall be posted on the Southeast EEM Website in the same manner as the reports of the Market Auditor, including the same requirements for confidential treatment of transmission function information and commercially sensitive information.

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ARTICLE 3

MEMBERSHIP AND PARTICIPATION

3.1 Each Member shall comply with all applicable rules, policies, guidelines, or other standards or requirements set forth in this Agreement and as may otherwise be required by the Membership Board or applicable Law.

3.2 Member Criteria.

3.2.1 To be a Member of the Southeast EEM, an entity must be: (i) a Load Serving Entity located in the Territory; (ii) an association, Cooperative or Governmental Utility that is a Load Serving Entity located in the Territory; or (iii) an association, Cooperative or Governmental Utility created for the purpose of providing service that includes Energy to a Cooperative or governmental Load Serving Entity (or the Load Serving Entities being served by an association, Cooperative or Governmental Utility) located in the Territory. The Tariff of any Member who provides transmission service must contain Non-Firm Energy Exchange Transmission Service provisions for those Energy Exchanges that seek to utilize such Member's transmission system.

3.2.2 If an entity and one or more of its Affiliates are Members, or if multiple entities of a Disaggregated Utility are Members, then only one entity from the group of entities (including any subsidiaries, affiliates or divisions thereof) may have a Representative on the Membership Board, and for the sake of clarity, for all purposes hereunder, such Disaggregated Utility shall be counted as a single Member.

3.2.3 An entity that satisfies the criteria set forth in this Agreement for qualification and admission as a Member, as determined by the Membership Board, shall be eligible to become a Member during the period between July 1st and September 30th of each calendar year (the "Enrollment Period") and may become an additional Member (an "Additional Member") effective as of the first day of the following calendar year in which such entity satisfies the Member criteria set forth in Section 3.2 after executing this Agreement or a joinder hereto in the form of Exhibit B (the "Joinder") that is countersigned by the Southeast EEM Agent, submitting a duly executed copy to the Secretary and the Southeast EEM Administrator, and upon payment of all applicable fees, dues and contributions as specified or authorized in Article 7. For the avoidance of doubt, an entity seeking to become an Additional Member shall be bound by the terms of this Agreement on the date such entity executes a Joinder that is countersigned by the Southeast EEM Agent.

3.3 Participant Criteria. To become a "Participant," an entity must (i) meet all requirements of being a Participant as set forth in the Southeast EEM Market Rules, and (ii) execute a Participant Agreement in the form attached hereto as Appendix A (the "Participant Agreement") which agreement shall, among other things, contractually bind such entity to comply with the Southeast EEM Market Rules.

3.4 Participating Transmission Providers. Prior to the Southeast EEM Commencement Date, or, for any Participating Transmission Provider offering service after such commencement date, prior to the date upon which it commences providing Non-Firm Energy Exchange

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Transmission Service, Participating Transmission Providers shall amend their Tariffs to include the provision of Non-Firm Energy Exchange Transmission Service and, if required by Law, shall obtain acceptance of such provisions from FERC or such other Governmental Entity(ies) having jurisdiction over such Tariff. Participating Transmission Service Providers shall take such other actions and provide such information to the Southeast EEM Administrator as required by the provisions of the Southeast EEM Market Rules or as otherwise reasonably requested by the Southeast EEM Administrator in order to operate the Southeast EEM.

3.5 Member Standard of Conduct. Members shall not provide any non-public transmission function information they receive by virtue of their participation in the Southeast EEM to any of their marketing function employees or provide any undue preference through the sharing of non-public market information they receive by virtue of their participation in the Southeast EEM to their marketing function employees. For purposes of this Section 3.5, marketing function employees of a Member's Affiliates shall be deemed marketing function employees of the Member.

ARTICLE 4

GOVERNANCE

4.1 Membership Board.

4.1.1 Power and Qualification of the Membership Board. Except as set forth in Article 5, all business of the Southeast EEM System and performance of any agreements entered into or otherwise assumed for the benefit of the Members shall be managed under the direction of the Membership Board.

4.1.2 Number of Representatives. Subject to the limitations set forth in Section 3.2.2:

(a) The Membership Board shall consist of one (1) representative for each Member (each, a "Representative").

(b) Each Member shall appoint one (1) Representative to serve until such Representative is replaced by such Member. No Member shall be permitted to have more than one (1) Representative on the Membership Board.

4.1.3 Method of Selecting or Removing Representatives; Vacancies.

(a) A Representative shall be removed or replaced solely at the discretion of the Member that originally appointed such Representative; provided, however, that each Member must at all times have a Representative in place to vote on matters pursuant to Section 4.1.5.

(b) All Representative vacancies, occurring for any reason, shall be filled by the Member who appointed such Representative.

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4.1.4 Resignations. A Representative may resign at any time by delivering written notice to the Member who appointed such Representative, the Membership Board and the Southeast EEM Administrator. Such resignation shall take effect when such notice is delivered to the applicable Member, unless the notice specifies a later effective date.

4.1.5 Quorum of Representatives and Action by the Membership Board; Voting.

(a) The votes of the Members shall be held by the Representatives and shall be weighted with each Representative holding:

(i) one (1) vote for each Representative of the Southeast EEM System (the “Popular Vote”); and

(ii) a number of votes (the “Net Energy for Load Vote”) equal to the following calculation:

$$\text{Net Energy for Load Vote} = (\text{MNEL}/\text{ANEL})$$

Where:

MNEL = such Member Net Energy for Load of the Representative’s Member, Affiliates of such Member and those related entities part of a Disaggregated Utility as of the Record Date; and

ANEL = the sum of the Member Net Energy for Load for all Members as of the Record Date.

(b) Subject to Section 4.1.7(c), attendance by a majority of the holders of each of the aggregate Popular Votes and the Net Energy for Load Votes shall constitute a quorum for the transaction of business. Except for Significant Matters, the actions of the Membership Board shall pass by the affirmative vote of the Representatives present at a meeting at which a quorum is present that constitutes (i) more than fifty percent (50%) of the Popular Vote of the Representatives in attendance, and (ii) more than fifty percent (50%) of the Net Energy for Load Vote of the Representatives in attendance; provided that more than fifty percent (50%) of the Net Energy for Load Vote of the Representatives in attendance must be comprised of MNEL from three (3) or more Representatives (conditions (i) and (ii) together, the “Affirmative Majority Vote”).

(c) Subject to Section 4.1.7(c), the actions of the Membership Board to decide on matters related to the Significant Matters shall pass by the affirmative vote of the Representatives present at a meeting at which a quorum is present that constitutes (i) more than fifty percent (50%) of the Popular Vote of the Representatives in attendance and (ii) more than sixty-seven percent (67%) of the Net Energy for Load Vote of the Representatives in attendance; provided that more than sixty-seven percent (67%) of the Net Energy for Load Vote of the Representatives in attendance must be comprised of MNEL from three (3) or more Representatives (conditions (i) and (ii) together, the “Affirmative Supermajority Vote”).

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(d) The number of Net Energy for Load Vote of each Representative shall be adjusted each year following the Enrollment Period and prior to the start of the next calendar year to reflect the revision to such proportions resulting from the inclusion of Additional Members (if any) when determining Net Energy for Load Vote for each Representative. Notwithstanding anything to the contrary herein, a Member's right to have its Representative vote or be included in a Representative's Net Energy for Load Vote may be suspended pursuant to Section 4.2.2 during any period in which such Member is delinquent in the payment of any of the dues or costs and expenses allocated to such Member in accordance with Article 7. If a Member's Representative's right to vote has been suspended, the Membership Board shall recalculate the Net Energy for Load Vote of each other Representative excluding such suspended Member's Representative, and each other calculation required by this Section 4.1.5 and Article 4 (including for purposes of determining if there is a quorum and whether there is an Affirmative Majority Vote and Affirmative Supermajority Vote, as applicable) shall be determined excluding such suspended Member's Representative.

4.1.6 Meetings of the Membership Board. Meetings of the Membership Board, unless otherwise provided in this Agreement, may be called (i) by the Chair of the Membership Board, or (ii) by a written consent delivered to the Membership Board that is executed by a majority of the holders of each of the aggregate Popular Votes and the Net Energy for Load Votes. Meetings of the Membership Board, regular or special, may be held at such place within the Territory and upon such notice as may be prescribed by resolution of the Membership Board.

4.1.7 Notice of Meetings of Representatives.

(a) The Chair of the Membership Board, or a Representative directed by the Chair of the Membership Board, shall provide written notice by electronic mail (and shall confirm receipt of such notice by requesting a return receipt) of each Membership Board meeting to all Representatives. Such notice shall state the date, place, hour and purpose or purposes of the meeting, including any Significant Matters to be discussed, and shall be delivered by a nationally recognized overnight courier service to each Representative's usual place of business as recorded in the Secretary's records, or delivered by internet electronic mail (with return internet electronic mail from the recipient acknowledging receipt) sent to the internet electronic mail address for such Representative as recorded in the Secretary's records, not less than seven (7) Business Days prior to the date of the meeting.

(b) Any Member may designate, by submitting a written communication to the Chair of the Membership Board, an alternate to act on behalf of the Representative ("Alternate Representative"). Any reference herein to "Representative" shall be deemed a reference to the Alternate Representative where applicable.

(c) Notwithstanding anything to the contrary set forth herein, the Membership Board shall only vote on matters set forth in a duly delivered notice pursuant to this Section 4.1.7; provided, however that the Membership Board may (i) discuss any and all matters within the scope of the Membership Board's duties at any duly constituted meeting of the Membership Board, and/or (ii) vote upon any matter within the scope of the Membership Board's duties that is not set forth in a duly delivered notice pursuant to this Section 4.1.7 if all

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Representatives are present at such meeting of the Membership Board and such matter is approved in accordance with the applicable voting requirements set forth in Section 4.1.5.

4.1.8 Action by Representatives in Lieu of a Meeting; Participation in Meetings by Conference Telephone.

(a) Unless otherwise restricted by this Agreement, any action required or permitted to be taken at a meeting of the Membership Board may be taken without a meeting if the action is evidenced by written consent describing the action taken, signed by all of the Representatives. The written consents and the resolutions thereto by the Representatives shall be filed with the minutes of the Membership Board or filed with the records maintained by the Secretary reflecting the action taken. Action taken under this Section 4.1.8(a) becomes effective when the last Representative signs the consent, unless the consent specifies a different effective date, in which event the action taken is effective as of the date specified therein, provided the consent states the date of execution by each Representative.

(b) The Representatives may participate in any meeting of the Membership Board or of a committee thereof by means of conference telephone or by any means of communication by which all Representatives participating may hear one another during the meeting; all meetings shall be available for participation via such means. A Representative participating in a meeting by such means is deemed to be present in person at the meeting.

4.1.9 Powers Exclusive to the Membership Board.

(a) The following matters are reserved to and may only be addressed by the Membership Board:

- (i) all Significant Matters;
- (ii) the creation and appointment of committees and officers pursuant to Section 4.3;
- (iii) the establishment and amendment of Annual Budgets;
- (iv) the establishment and modification of billing processes for Operating Costs;
- (v) the approval of Southeast EEM Manuals or amendments to Southeast EEM Manuals proposed by the Operating Committee;
- (vi) the approval and establishment of the Southeast EEM Commencement Date following the satisfaction of the conditions set forth in Section 8.4.2;
- (vii) all Deadlock Issues; and
- (viii) the authorization of the Southeast EEM Agent to execute, transfer or terminate Participant Agreements.

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(b) Any changes, modifications or amendments to this Agreement agreed to by the Membership Board as provided herein shall be submitted to the required Governmental Entities for approval or acceptance and the orders on such submissions shall be deemed to be and treated as Southeast EEM Orders for purposes of Article 8.

4.2 Removal or Withdrawal of Members. Upon withdrawal, suspension or removal of a Member as set forth below, such Member shall no longer be entitled to exercise the voting power provided under this Agreement, shall be automatically removed from any committee appointments, and shall not be entitled to any other rights as a Member hereunder. Notwithstanding the foregoing, (i) a Member that withdraws or is removed or is suspended by the Membership Board or is no longer a Member during a calendar year shall remain liable for all dues, costs and expenses and other payment obligations as provided in Section 4.2.1 and Section 4.2.4, and (ii) nothing in this Section 4.2 shall act to prevent a Member who is no longer a Member, but is in compliance with all surviving obligations under this Agreement, from becoming a Participant; provided it has met the criteria for a Participant set forth in the Southeast EEM Market Rules. Any Member that withdraws or is removed by the Membership Board or is no longer a Member during a calendar year shall pre-pay all amounts owed by such Member under any Material Vendor Contract that requires the acceleration or prepayment of sums owed in the event of a Member's withdrawal.

4.2.1 Except as set forth in Section 8.5, Section 8.6 and Section 8.7, any Member shall have the right to withdraw from the Southeast EEM System (and a Participating Transmission provider shall take all necessary actions to withdraw the provisions for Non-Firm Energy Exchange Transmission Service from its Tariff) by providing at least (i) thirty (30) days advance written notice to the Membership Board in the case of any Member that is not a Balancing Authority or Participating Transmission Provider and (ii) at least ninety (90) days advance written notice to the Membership Board in the case of any Member that is a Balancing Authority or Participating Transmission Provider (the effective date of such withdrawal, in the case of clause (i) or (ii), as applicable, the "Voluntary Withdrawal Date"). A withdrawing Member shall continue to be liable for (A) all Operating Costs allocated to and owed by the withdrawing Member at the time that it delivered its notice of withdrawal, and (B) its allocated share of future Operating Costs as provided in Section 4.2.4; provided, however, that for the sake of clarity and notwithstanding anything to the contrary herein, the withdrawing Member shall not be responsible for any new Operating Costs first approved and incurred after the date such Member provides written notice of its intent to withdraw, and a withdrawing Member that is also a Participating Transmission Provider shall have no obligation to provide Non-Firm Energy Exchange Transmission Service following the Voluntary Withdrawal Date.

4.2.2 If a Member fails to cure nonpayment of any financial obligations related to the Southeast EEM (including undisputed amounts payable and any other amounts due to any third parties as directed by the Membership Board or pursuant to the Southeast EEM Market Rules) within ten (10) Business Days after receipt of notice by the Operating Committee of such nonpayment, the Membership Board shall have the right in its discretion to: (i) suspend such Member's voting rights, (ii) remove such Member from any committee appointments and (iii) suspend such Member's access to the Southeast EEM System.

4.2.3 The Membership Board may remove a Member for any of the following reasons: (i) failure to comply with this Agreement, (ii) repeated failure to consummate valid Energy

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Exchanges resulting from Bids or Offers submitted by a Member, arranged by or through the Southeast EEM System in accordance with and subject to the Southeast EEM Market Rules or the Southeast EEM Manuals; and (iii) failure to comply with the standards, rules, procedures or other requirements for participation in the Southeast EEM System, as established and modified from time to time by the Operating Committee.

4.2.4 Any Member that provides notice to withdraw in accordance with Section 4.2.1, Section 8.5, Section 8.6 or Section 8.7 or who is otherwise removed pursuant to Section 4.2.3 shall remain liable for its share of all costs and expenses in accordance with Article 7. If such Member withdraws prior to the Annual Budget Determination Date, such Member shall only be responsible for the costs and expenses allocated to such Member for the year in which such Member withdraws. If such Member withdraws after the Annual Budget Determination Date, such Member shall (i) be responsible for the costs and expenses allocated to such Member pursuant to Section 7.2.2 for the year in which such Member withdraws and the following year for which the Annual Budget has already been determined, and (ii) pre-pay all amounts owed by such Member under any Material Vendor Contract that requires the acceleration or prepayment of sums owed in the event of a Member's withdrawal.

4.3 Committees and Officers.

4.3.1 An Affirmative Majority Vote may appoint such committees or officers as the Membership Board deems necessary or desirable to carry on the business of the Southeast EEM System and may delegate to any such committee or officer such authority to act on behalf of the Membership Board. Each officer shall hold office until its successor is designated by an Affirmative Majority Vote. Any officer may resign at any time upon written notice to the Membership Board. Any officer may be removed by an Affirmative Majority Vote at any time, with or without cause. A vacancy in any officer position shall be filled at the discretion of, and by, an Affirmative Majority Vote.

4.3.2 The Membership Board shall appoint a chair of the Membership Board (the "Chair of the Membership Board") who shall be responsible for calling and overseeing all meetings of the Membership Board, and shall perform such duties and have such additional powers as an Affirmative Majority Vote shall designate.

4.3.3 The Membership Board shall appoint a secretary of the Membership Board (the "Secretary") who shall be responsible for overseeing the maintenance of the books and records of the Membership Board and its Members and shall perform such duties and have such additional powers as an Affirmative Majority Vote shall designate.

4.4 Annual Meeting of Participants and Stakeholders. The Membership Board shall hold an annual meeting of Participants and Stakeholders (the "Annual Meeting") at a time determined by the Membership Board that is reasonably proximate to (either before or after) May 1st of each year. The Southeast EEM Administrator shall provide written notice of the Annual Meeting to all Participants. Such notice shall state the date, place, hour and purpose or purposes of the meeting and shall be delivered by a nationally recognized overnight courier service to each Participant's usual place of business as recorded in the Southeast EEM Administrator's records, or such notice shall be delivered by internet electronic mail (with return receipt requested for purposes of

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confirming receipt) sent to the electronic mail address for such Participant as recorded in the Southeast EEM Administrator's records, not less than seven (7) Business Days prior to the date of the Annual Meeting. In addition, the Southeast EEM Administrator shall publicly post the notice of the Annual Meeting, including the date, place and time of such Annual Meeting, on the Southeast EEM System Interface or other public website administered for the Southeast EEM, not less than seven (7) Business Days prior to the date of the Annual Meeting. The Participants and Stakeholders may participate in Annual Meetings by means of conference telephone or by any means of communication by which all Participants and Stakeholders participating may hear one another during the meeting, and all Annual Meetings shall be available for participation via such means.

4.5 Annual Meeting of Members. The Membership Board shall hold an annual meeting attended only by Members (the "Annual Member Meeting") at a time determined by the Membership Board that is reasonably proximate to (either before or after) October 30th of each year. The Secretary shall provide written notice of the Annual Member Meeting to, and confirm actual receipt of such notice by, all Members. Such notice shall state the date, place, hour and purpose or purposes of the meeting and shall be delivered by nationally recognized overnight courier service to each Member's usual place of business as recorded in the Secretary's records, or delivered by internet electronic mail (with return internet electronic mail from the recipient acknowledging receipt) sent to the internet electronic mail address for such Member's Representative as recorded in the Secretary's records, not less than seven (7) Business Days prior to the date of the Annual Member Meeting. The Members may participate in the Annual Member Meeting by means of conference telephone or by any means of communication by which all Members participating may hear one another during the meeting, and all meetings shall be available for participation via such means.

ARTICLE 5

OPERATING COMMITTEE

5.1 Power and Qualification of the Operating Committee. Except with respect to matters specifically reserved to the Membership Board pursuant to Section 4.1.9, the Members hereby agree and hereby appoint the Operating Committee to supervise the day-to-day operation of the Southeast EEM System, with each individual member of the Operating Committee referred to as a "Committee Member". The Operating Committee shall be responsible for developing and maintaining the Southeast EEM Manuals for approval by the Membership Board.

5.2 Number of Committee Members. The Operating Committee shall consist of four (4) Committee Members, as determined by this Agreement.

5.3 Election and Term of Committee Members; Appointment of Chair.

5.3.1 Except as provided in this Agreement, the Members of each Sector shall elect the Committee Members as provided in Section 5.4 at the Annual Member Meeting. The Committee Members shall be allocated by Sectors: (a) the Members comprising Investor-Owned Utilities shall elect two (2) Committee Members; (b) the Members comprising Cooperatives shall elect one (1) Committee Member; and (c) the Members comprising Governmental Utilities shall elect one (1) Committee Member. Each Committee Member shall be entitled to cast one (1) vote.

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Notwithstanding the foregoing, no Member shall be permitted to have more than one (1) representative serve on the Operating Committee. Each Committee Member's term shall commence upon election and continue until the earlier of such Committee Member's resignation or the date of the next Annual Member Meeting and the election of such Committee Member's successor.

5.3.2 The properly elected Committee Members shall determine which Committee Member shall be the chair of the Operating Committee by the majority approval of the Committee Members. The chair of the Operating Committee may be removed or replaced with or without cause at any time upon the majority approval of the Committee Members.

5.4 Method of Selecting or Removing Committee Members. Each Sector may establish the method and criteria for electing or appointing the Committee Member(s) of such Sector as set forth in Section 5.3 and for selecting or removing the Committee Member or Committee Members elected or appointed by such Sector and shall provide a copy of such method and criteria to the Southeast EEM Administrator as well as any updates thereto. A Committee Member shall be deemed properly appointed by the applicable Sector upon delivery to the Southeast EEM Administrator a certificate signed by Members of the Sector with sufficient voting power pursuant to such Sector's criteria to elect such Committee Member. A Sector may remove a Committee Member with or without cause by delivering to the Southeast EEM Administrator a certificate signed by Members of the Sector with sufficient voting power to remove the Committee Members. Such Committee Member's removal shall be effective on the later of the date such certificate is delivered to the Southeast EEM Administrator or date specified in the certificate.

5.5 Vacancies. All Committee Member vacancies, occurring for any reason, shall be filled by the Members of the Sector in which the vacancy occurs, in the same manner as a Committee Member is elected pursuant to Section 5.4. A Committee Member elected or appointed to fill a vacancy shall assume office upon delivery to the Southeast EEM Administrator a certificate signed by Members of the Sector with sufficient voting power to fill the vacancy.

5.6 Resignations. A Committee Member may resign at any time by delivering written notice to the Secretary and to the Members of the Sector which elected or appointed such Committee Member. Such resignation shall take effect when such notice is delivered to the Southeast EEM Administrator, unless the notice specifies a later effective date.

5.7 Quorum of Committee Members and Action by the Operating Committee.

5.7.1 Attendance by at least one (1) Committee Member representing each of the three (3) Sectors shall constitute a quorum for the transaction of business. The act of all the votes of the Committee Members present at a meeting at which a quorum is present shall constitute the action of the Operating Committee.

5.7.2 To the extent that the Operating Committee cannot obtain a unanimous vote on any business or issue properly before the Operating Committee when a quorum is present (the "Deadlock Issue"), then the Operating Committee may, upon the written request of a Committee Member, submit the Deadlock Issue to the Membership Board for final resolution. For purposes of clarity, a vote of the Operating Committee that is held at a meeting for which a quorum is present

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shall be considered unanimous if at least one (1) Committee Member representing each of the three (3) Sectors is present.

5.8 Meetings of the Operating Committee. Meetings of the Operating Committee may be called (i) by the chair of the Operating Committee, or (ii) by a written consent delivered to the chair of the Operating Committee that is executed by a majority of the Committee Members.

5.9 Notice of Meetings of Committee Members; Member Observation Rights.

(a) The Southeast EEM Administrator shall provide written notice of each Operating Committee meeting to all members of the Operating Committee as well as to all Members. Such notice shall state the date, place and hour of the meeting and shall be delivered by internet electronic mail (with return internet electronic mail from the recipient acknowledging receipt) sent to the internet electronic mail address for such Committee Member and for such Member as recorded in the Secretary's records, not less than seven (7) Business Days prior to the date of the meeting. Members who are not Committee Members shall have the right to attend, observe and participate in any discussion at any Operating Committee Meeting, but may not cast a vote.

(b) Any Committee Member unable to attend a meeting may designate, in writing, an alternate from the same Sector as such Committee Member to act on behalf of the Committee Member ("Alternate Committee Member"). Any reference herein to "Committee Member" shall be deemed a reference to the Alternate Committee Member where applicable.

(c) A Committee Member's attendance at or participation in a meeting waives any required notice to him or her of such meeting unless, at the beginning of such meeting or promptly upon his or her arrival, such Committee Member objects to holding the meeting or transacting business at the meeting and does not thereafter vote for or assent to action taken at the meeting.

(d) A notice shall specify the business to be transacted at, or the purpose of, any meeting of the Operating Committee; provided, however, such notice shall not limit the actions the Operating Committee may take at a meeting.

5.10 Action by Committee Members in Lieu of a Meeting; Meetings by Telephone Conference.

(a) Any action required or permitted to be taken at a meeting of the Operating Committee may be taken without a meeting if at least one (1) Committee Member representing each of the three (3) Sectors consents in writing to the adoption of a resolution authorizing the action. The resolution and the written consents thereto by the Committee Members shall be filed with the minutes of the Operating Committee or filed with the records maintained by the Secretary reflecting the action taken. Any action taken under this Section 5.10(a) shall be effective when the last Committee Member signs the consent, unless the consent specifies a different effective date, in which event the action taken is effective as of the date specified therein, provided, the consent states the date of execution by each Committee Member. Such consent shall have the same force and effect as a unanimous vote.

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(b) The Committee Members and Members may participate in any meeting of the Operating Committee or of a committee thereof by means of telephone conference or by any means of communication by which all Committee Members and Members participating may hear one another during the meeting, and all meetings shall be available for participation via such means. A Committee Member participating in a meeting by such means is deemed to be present in person at the meeting.

5.11 Liability of Committee Members. The Operating Committee and the Committee Members shall not be liable to any Member for any act done or omitted by Committee Members while acting in good faith and in the exercise of reasonable judgment. The Members shall indemnify the Committee Members (solely in such capacity) and hold them harmless against any loss or expense actually incurred without gross negligence or willful misconduct on the part of the Committee Members and arising out of or in connection with the acceptance or administration of their role on the Operating Committee.

ARTICLE 6

APPOINTMENT OF SOUTHEAST EEM AGENT

6.1 Each Member agrees to appoint the Southeast EEM Agent as its representative and as each such Member's true and lawful agent and authorizes the Southeast EEM Agent to act for such Member in accordance with the scope of the Southeast EEM Agent's responsibilities (the "Southeast EEM Agent Scope") as specifically defined by the Membership Board in Appendix C. Each Member grants unto the Southeast EEM Agent only that authority which is granted to the Southeast EEM Agent by the Membership Board under this Agreement and that is necessary to perform the actions required in connection with the development and operation of the Southeast EEM System, and in each case in a manner consistent with the Southeast EEM Agent Scope. Each Member agrees and acknowledges that a third party shall be entitled to rely on any action taken, or the failure to take any action, by the Southeast EEM Agent, on behalf of Members pursuant to and in accordance with this Article 6 (each, an "Authorized Action"), and that each Authorized Action shall be binding on each Member as fully as if such Members had taken such Authorized Action directly. The initial Southeast EEM Agent and any replacement Southeast EEM Agent, as determined by the Membership Board in accordance with Section 4.1.9, must meet any criteria set by the Membership Board from time to time (collectively, the "Southeast EEM Agent Criteria"). Any entity that does not meet the Southeast EEM Agent Criteria may not serve as the Southeast EEM Agent; provided, however, that the Membership Board may, in its discretion, alter or revise the Southeast EEM Agent Criteria.

6.2 Each Member acknowledges and agrees that upon execution of this Agreement, and upon any delivery by the Southeast EEM Agent of any waiver, amendment, agreement, opinion, certificate or other document within the Southeast EEM Agent Scope executed by the Southeast EEM Agent, such Member shall be bound by such documents or action as fully as if such Member had executed and delivered such documents. Each Member shall pay its allocated share of (i) all Operating Costs arising from contracts entered into by the Southeast EEM Agent entered into in accordance with the Southeast EEM Agent Scope, and (ii) fees, costs and expenses incurred by the Southeast EEM Agent in performing its duties hereunder.

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6.3 The Southeast EEM Agent may resign at any time upon sixty (60) days written notice to the Membership Board and may be removed at any time with or without cause by the Membership Board pursuant to Section 4.1.9. Upon the resignation of the Southeast EEM Agent pursuant to this Section 6.3 or its removal pursuant to Section 4.1.9, the resigning or removed Southeast EEM Agent shall take or cause to be taken, all actions and do, or cause to be done, or execute and deliver, or cause to be executed and delivered, all such documents and instruments and shall take, or cause to be taken, all such further or other actions as the Membership Board may reasonably deem necessary, proper or advisable to transition the rights and obligations of the Southeast EEM Agent to the replacement Southeast EEM Agent, as promptly as practicable or sooner as required by this Agreement, including, without limitation, such actions as are necessary to assign all contracts, agreements or other documents executed on behalf of the Members within the Southeast EEM Agent Scope to the replacement Southeast EEM Agent.

6.4 For the avoidance of doubt, it is the intent of the Members that the Operating Committee, not the Southeast EEM Agent, be responsible for interfacing and coordinating with third party vendors with regard to the performance of contracts with such vendors. Further, in the event that the Southeast EEM Agent is required to take any ministerial action under such contracts, the Southeast EEM Agent shall only do so at the direction of the Membership Board or Operating Committee and in accordance with the Southeast EEM Agent Scope. The Southeast EEM Agent shall have no right or access to data related to the Southeast EEM beyond what it has as a Member and Participant.

6.5 The Southeast EEM Agent will incur no liability of any kind with respect to any action or omission by the Southeast EEM Agent in connection with the Southeast EEM Agent's role pursuant to this Agreement and any agreements ancillary hereto within the Southeast EEM Agent Scope, except in the event of liability directly resulting from the Southeast EEM Agent's gross negligence or willful misconduct. The Members will indemnify, defend and hold harmless the Southeast EEM Agent from and against any and all losses, liabilities, damages, claims, penalties, fines, forfeitures, actions, fees, costs and expenses (including the fees and expenses of counsel and experts and their staffs and all expense of document location, duplication and shipment) (collectively, "Representative Losses") arising out of or in connection with the Southeast EEM Agent's execution and performance of this Agreement and any agreements ancillary hereto, in each case as such Representative Loss is suffered or incurred; provided, that in the event that any such Representative Loss is finally adjudicated to have been directly caused by the gross negligence or willful misconduct of the Southeast EEM Agent or actions beyond the Southeast EEM Agent Scope, the Southeast EEM Agent will reimburse the Members the amount of such indemnified Representative Loss to the extent attributable to such gross negligence or willful misconduct. In no event will the Southeast EEM Agent be required to advance its own funds on behalf of the Members or otherwise. The Members acknowledge and agree that the foregoing indemnities will survive the resignation or removal of the Southeast EEM Agent or the termination of this Agreement.

ARTICLE 7

BUDGETING AND COST RESPONSIBILITY

7.1 Member Responsibility. Each Member will be assigned and is responsible for its allocated share of Operating Costs and such other dues or fees as assessed by the Membership

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Board from time to time based on the methodology set forth in Section 7.2. If a Member fails to cure any nonpayment of its allocated share of Operating Costs or any other amount assessed against such Member under this Agreement within ten (10) Business Days after receiving notice from the Operating Committee of such non-payment, such Member may, in the discretion of the Membership Board, lose its right to vote on matters related to this Agreement or to have representation on the Membership Board and any committees unless and until such amounts are paid in full. Any amounts owed that are not paid in accordance with this Agreement shall be delinquent and shall accrue interest at the Interest Rate, such interest to be calculated from the due date to the date the delinquent amount is paid in full.

7.2 Allocation of Costs. Operating Costs, including but not limited to the costs and expenses of the Southeast EEM System, shall be allocated and assessed to each Member based on the following formula, provided that (i) for purposes of a Disaggregated Utility, such Disaggregated Utility shall be counted as a single Member for purposes of this calculation and the costs will be allocated among the entities of such Disaggregated Utility according to their direction (which allocation shall not control for any purposes hereunder), and (ii) for purposes of Member Affiliates, the Member Affiliates shall be counted as a single Member for purposes of this calculation and the costs will be allocated among the Member Affiliates according to their direction (which allocation shall not control for any purposes hereunder):

$$[(1/4)(TC)(1/TNM)] + [(3/4)(TC)(MNEL/ANEL)] = MAC, \text{ where:}$$

TC = Total allocable costs.

TNM = the total number of Members.

MNEL = such Member Net Energy for Load of the Representative's Member,

Affiliates of such Member and those related entities part of a Disaggregated

Utility as of the Record Date.

ANEL = the sum of all the Member Net Energy for Load as of the Record Date.

MAC = Member's allocated costs.

7.2.1 Billing Process. Each Member shall be billed directly by the Southeast EEM Administrator for its allocated share of Operating Costs in accordance with the terms of this Agreement. In the event that the direct billing process described in the foregoing sentence proves to be unworkable for certain Operating Costs, the Membership Board shall use commercially reasonable efforts to (i) require third party vendors to structure all Southeast EEM invoices on an individual Member basis based upon the cost methodology set forth in this Agreement; or (ii) if such third party vendors refuse to provide such individual Member billings services, establish an alternative billing procedure for such Operating Costs (including the engagement of a third party billing service provider) to ensure such invoices are billed on an individual Member basis. The Membership Board shall establish such an alternative billing procedure in a timely manner; provided, however, that a delay in establishing such a procedure shall not eliminate the Members'

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individual obligations to pay their allocated share of Operating Costs. Nothing in this Section 7.2.1 is intended to modify or diminish the Membership Board's authority to establish or amend billing procedures from time to time.

7.2.2 Annual Budget. On or before October 30th of each calendar year, but in any case no earlier than October 1st of each calendar year, the Membership Board shall set the annual budget for the following calendar year (the "Annual Budget Determination Date"), which budget shall include but not be limited to all projected Operating Costs, including all vendor costs and all costs and expenses associated with the Southeast EEM Agent (the "Annual Budget"). Costs are deemed allocated to each Member as of the Annual Budget Determination Date, but, except as otherwise provided herein, are not payable until such costs are due and payable subject to the applicable agreements concerning such costs.

7.3 Additional Members. The costs and expenses of the Southeast EEM System allocated to each Member shall be adjusted each year in accordance with Section 7.2 following the Enrollment Period but prior to the Annual Budget Determination Date to reflect any changes in a Member Net Energy for Load valuation or the inclusion of Additional Members in such calculations for the following calendar year.

7.3.1 Submission of Information.

(a) Upon the request of the Secretary or upon a schedule approved by the Membership Board, each Member shall provide its Member Net Energy for Load values, and any other information required for the calculations set forth in Section 4.1.5 and Section 7.2, to the Southeast EEM Administrator and all other Members. If a Member proposes to use a Member Net Energy for Load value that differs from the Net Energy for Load value as provided to NERC by the Record Date (an "Alternate MNEL Value"), such Member shall submit a written request to the Operating Committee at least thirty (30) days prior to the Annual Budget Determination Date requesting the Operating Committee's approval of such Member's Alternate MNEL Value in the upcoming year. The submitting Member's request shall contain (i) an explanation of why the Alternate MNEL Value differs from the Member Net Energy for Load value submitted to NERC, and (ii) all other reasonably necessary information evidencing such Member's calculation of the Alternate MNEL Value. The Operating Committee shall review a Member's request to use an Alternate MNEL Value and shall use commercially reasonable efforts to approve, deny or request additional information regarding such request within fifteen (15) days from the date the Operating Committee receives the request.

(b) If the Operating Committee denies a Member's request to use an Alternate MNEL Value, the Member may, within thirty (30) days of such denial, submit the request to the Membership Board for review, and the Membership Board shall, as soon as reasonably practicable, hold a vote to either uphold or overturn the Operating Committee's denial of the request, as determined by an Affirmative Majority Vote. The requesting Member shall provide to the Membership Board such information reasonably requested by the Membership Board in order to evaluate the Member's request. If the Operating Committee or the Membership Board, as applicable, approves a Member's Alternate MNEL Value, such Alternate MNEL Value shall be used for the calculations set forth in Section 4.1.5 and Section 7.2 in the following calendar year. If the Operating Committee or the Membership Board, as applicable, deny such requesting

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Member's request to use an Alternative MNEL Value, the Member's Member Net Energy for Load value shall be that Member Net Energy for Load as determined by the Membership Board in accordance with this Agreement; provided, however, that during the pendency of the review of a Member's Net Energy for Load pursuant to this Section 7.3.1 and until such value is finally determined, the requesting Member's Member Net Energy for Load value shall be the Member Net Energy Load value provided by such Member that was approved and used in the most recent calendar year.

ARTICLE 8

FILINGS WITH GOVERNMENT ENTITIES; EFFECTIVE DATE

8.1 This Agreement is subject to valid Laws, orders, rules and regulations of duly constituted Governmental Entities having jurisdiction. Nothing contained in this Agreement shall be construed as a grant of jurisdiction over any Member by any Governmental Entity not otherwise having jurisdiction by Law.

8.2 Filing With and Approval or Acceptance by Governmental Entities.

8.2.1 Any entity desiring to become a Member that is subject to the jurisdiction of any Governmental Entity from which approval or acceptance of this Agreement or participation in the Southeast EEM is required for such entity to participate in the Southeast EEM shall institute proceedings to obtain such acceptance or approval or shall provide such notice, except as provided in Section 8.2.2 below. All required approvals, acceptances and notices must be received by such entity prior to its participation in the Southeast EEM. The Members shall cooperate in securing all required Governmental Entity approvals or acceptances of this Agreement.

8.2.2 No later than sixty (60) days prior to the proposed Effective Date, the Southeast EEM Agent shall file this Agreement with FERC on behalf of the Jurisdictional Members in accordance with Section 8.2.1 under Section 205(c) of the FPA. Within ten (10) Business Days of the date of such filing, the remaining Jurisdictional Members shall file certificates of concurrence with such filing and the Non-Jurisdictional Members shall file comments in support of such filing.

8.3 On the same date that the Southeast EEM Agent files this Agreement with FERC, the Jurisdictional Members that are also transmission service providers will make filings with FERC to amend their Tariffs to include the provision of Non-Firm Energy Exchange Transmission Service and become Participating Transmission Providers, in accordance with Section 3.4 above (the "Tariff Filings").

8.4 Effective Date and Southeast EEM Commencement Date.

8.4.1 Unless specific provisions become effective earlier by the explicit terms contained herein, this Agreement shall be binding upon the Members upon the effective date established by FERC in a FERC order accepting the Agreement without modification or condition (the "Effective Date"); provided, however, that that this Agreement shall not become binding upon an individual Member who seeks acceptance or approval from a Governmental Entity pursuant to Section 8.2.1 above until the later of: (x) the date of issuance of an order by such Governmental Entity approving without modification or condition this Agreement and/or such Member's

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participation in the Southeast EEM and (y) the Effective Date; and provided, further, that the Members agree that this Agreement will bind each of them upon signing, subject only to the approvals and acceptances provided in this Section 8.4. In the event FERC does not accept the Agreement as filed, the Members may agree to changes or modifications to the Agreement pursuant to an Affirmative Supermajority Vote as set forth in Section 8.6, in which event the Effective Date shall be the date that FERC accepts the revised Agreement with any such changes or modifications agreed to pursuant to Section 8.6.

8.4.2 The Southeast EEM Commencement Date shall not occur until after (i) the Effective Date, (ii) the issuance by FERC of an order or orders accepting without modification or condition all of the Jurisdictional Member Participating Transmission Provider's Tariff Filings, and (iii) the Membership Board has approved and established the Southeast EEM Commencement Date in accordance with Section 4.1.9(vi).

8.5 If a Governmental Entity (other than FERC) to which a Member's participation in the Southeast EEM has been submitted for approval pursuant to Section 8.2.1 has not issued an order on such request within four (4) months from the date of submission, the Member for which such approval was requested may withdraw from this Agreement by providing written notice to all other Members no later than fifteen (15) days after such four-month period has elapsed. Withdrawal under this Section 8.5 shall be subject to the provisions of Section 4.2.

8.6 The individual provisions of this Agreement are inter-related and inter-dependent, and the agreement of the Members to the terms hereof is based on the expectation that it will be approved by all necessary Governmental Entities in its entirety. Accordingly, the terms of this Agreement are not severable, and are an integrated package that is submitted with the understanding and condition that it will be approved by the necessary Governmental Entities in its entirety. As such, if at any time (i) a Governmental Entity issues an order that does not accept or approve this Agreement or a Tariff Filing in its entirety without condition or requires modifications to the Agreement or the relevant Tariff ("Southeast EEM Order"), or (ii) any state or federal Laws or regulations, now existing or enacted or promulgated after the Effective Date are interpreted by a Governmental Entity in such a manner as to indicate that the structure or terms of this Agreement are more likely than not to be a violation of such Laws or regulations or are more likely than not to impact the jurisdictional status of any Member (a "Change in Law"), or (iii) if any provision or portion of this Agreement shall for any reason be held or adjudged to be invalid or illegal or unenforceable by any court of competent jurisdiction or other Governmental Entity ("Other Court/Governmental Entity Action"), the Members will engage in good faith negotiations during a forty-five (45) day period after the date of the Southeast EEM Order or Change in Law or Other Court/Governmental Entity Action to agree to Agreement modifications or conditions that are consistent with the modifications and conditions imposed by such Southeast EEM Order, Change in Law or Other Court/Governmental Entity Action; provided, however, that in any such negotiation the Members are not under any obligation to reach an agreement. Any changes, modifications or conditions to the effectiveness of this Agreement agreed to by an Affirmative Supermajority Vote shall be submitted to the required Governmental Entities for approval or acceptance and the orders on such filings shall be deemed to be and treated as Southeast EEM Orders for purposes of this Article 8. If an Affirmative Supermajority Vote cannot be achieved within such forty-five (45) day period, then the Agreement shall terminate and be of no force and effect. If a Member does not agree with the modifications to the Agreement adopted by the

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Affirmative Supermajority Vote, such non-agreeing Member shall be subject to the waiver of rights provisions of Section 16.9, but shall have the right to withdraw from this Agreement and the Southeast EEM upon thirty (30) days prior written notice. Upon such notice of withdrawal by a Member, any other Member may withdraw from this Agreement by providing written notice to the other Members within twenty-five (25) days after the date of the first Member's notice of withdrawal. Any notice to withdraw provided in accordance with this Section 8.6 shall become effective as of the later of the date provided in such notice and the date such Member is permitted to withdraw in accordance with Section 8.5 (the "Governmental Action Withdrawal Date"). Withdrawal under this Section 8.6 shall be subject to the provisions of Section 4.2.

8.7 A Non-Jurisdictional Member, in its sole discretion, may immediately withdraw from this Agreement if it becomes apparent that the Non-Jurisdictional Member's engagement in activities under this Agreement or FERC's approval of this Agreement would (i) jeopardize the tax-exempt status of interest paid by the Non-Jurisdictional Member on outstanding debt obligations, (ii) render the Non-Jurisdictional Member a Public Utility subject to FERC's jurisdiction, or (iii) if the Non-Jurisdictional Member determines that any conflict exists between provisions of this Agreement and applicable Laws and regulations of the state of its creation, or rate schedules adopted by its governing body under state Law, in which case such state Laws, regulations, or rate schedules shall govern with respect to such Non-Jurisdictional Member. The withdrawing Non-Jurisdictional Member may withdraw from this Agreement on this basis by providing written notice to all other Members and the Southeast EEM Administrator. Withdrawal under this Section 8.7 shall be subject to the provisions of Section 4.2.

ARTICLE 9

RELEASE AND LIABILITY; NO FIDUCIARY DUTIES

9.1 Except as expressly set forth in Section 14.2, to the maximum extent permitted by applicable Law, each Member releases and discharges every other Member from any and all liability for any and all liabilities, claims, losses, damages, expenses and other claims whatsoever the releasing Member, its officers, directors, trustees, agents, employees, affiliates, successors or assigns (collectively "Related Parties") may have that arise out of or relate to the establishment, development, operation or maintenance of, or any deficiency in, the Southeast EEM System. In addition, to the maximum extent permitted by applicable Law (i) no Member shall be liable to any other Member or its Related Parties for any liabilities, damages, obligations, payments, losses, costs or expenses under this Agreement in any amount in excess of the actual compensatory damages suffered by such other Member or its Related Parties in connection with, or resulting from, the releasing Member's performance or non-performance of this Agreement, or any actions undertaken by the releasing Member in connection with or related to this Agreement, and (ii) each Member waives any right to recover from any other Member or its Related Parties incidental, punitive, exemplary, special, indirect, multiple or consequential damages (including attorneys' fees or litigation costs to recover the same and any claims arising from any loss of interchange sales or revenues, loss of profits, costs of substitute power, costs of additional operating expenses, or suits by third parties) in connection with, or resulting from, performance or non-performance of this Agreement, or any actions undertaken in connection with or related to this Agreement or that arise out of or relate to the establishment, development, operation or maintenance of, or any deficiency in, the Southeast EEM System. Notwithstanding the foregoing, however, no Member shall be

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released, discharged, indemnified or held harmless with respect to any liability for damages or other claims arising from any action or failure to act by that Member that is unlawful, undertaken in bad faith, grossly negligent or the product of willful misconduct. Nothing herein shall release any Member from any obligation or liability it may have pursuant to any other agreement with any other Member.

9.2 EXCEPT FOR THE WARRANTIES AND REPRESENTATIONS SET FORTH IN ARTICLE 13 HEREOF, NONE OF THE MEMBERS, COLLECTIVELY OR INDIVIDUALLY, MAKES ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, TO ANY MEMBER, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

9.3 The provisions set forth in this Article 9 shall be given the maximum effect permitted by Law and shall indefinitely survive the termination or expiration of this Agreement with respect to any Member or Members.

9.4 No Fiduciary Duties. Nothing in this Agreement should be construed or interpreted as creating a partnership by and among the Members. To the extent any Member attempts to construe this Agreement as evidence of a partnership or otherwise a basis for requiring certain implied duties and rights among the Members, notwithstanding any other provisions of this Agreement, or any other agreement, the Members covenant and agree not to prosecute, file or maintain any action, controversy, dispute, or proceeding, and do hereby expressly eliminate, waive, disclaim and release, any and all fiduciary duties of the Members that may arise pursuant to performance of their obligations or exercise of their rights pursuant to this Agreement, or that may arise pursuant to any other standard, to any Party herein, including, without limitation, its Members, and in the case of insolvency or the zone of insolvency, to creditors of any character or claim. This Agreement (including this provision) is not intended to, and shall not, create or impose any fiduciary duties on the Member or any other party for any purpose, without limitation.

9.5 No Implied Covenants. Each Member acknowledges and agrees that, and notwithstanding any other provisions of this Agreement or any other agreement contemplated herein or any applicable provisions of Law or equity or otherwise, no covenants, duties or obligations, whether express, implied, statutory or otherwise, including, without limitation, (i) the duty of good faith and fair dealing, (ii) the fiduciary duties of care, loyalty and obedience, shall apply to the acts, omissions, behavior or conduct of the Members, in any context, except for those covenants, duties and obligations expressly contained in this Agreement.

9.6 No Restriction on Competition of Members. Each of the Members agrees, severally and not jointly, that for the term of this Agreement, they are expressly permitted and authorized to directly or indirectly own, manage, operate, join, control and/or participate in the ownership, management, operation or control of, any business engaged in business or operations that compete or relate to, directly or indirectly, the business of the Southeast EEM System. The legal doctrines of "corporate opportunity," "business opportunity" and similar doctrines shall not be applied to any such competitive venture or activity of a Member or its Affiliates. No Member or its Affiliates will have any obligation to the Southeast EEM System or the Southeast EEM System's other Members or Participants with respect to any opportunity relating to the Southeast EEM System or its business.

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ARTICLE 10

TRANSPARENCY; CONFIDENTIALITY; AUDITING

10.1 Transparency; Confidentiality.

10.1.1 The decision and obligation to report quantities, prices, or other data regarding Energy Exchange transactions to either a Governmental Entity, a reputable index developer or a data hub will be the responsibility of each Seller and Buyer. Neither the Southeast EEM Administrator, nor the Southeast EEM Agent nor the Members shall be responsible for reporting Energy Exchange transactions made by other entities through the Southeast EEM System.

10.1.2 Except as provided in Appendix B, the identity of all Bidders, Offerors, Sellers and Buyers shall be kept confidential from all third party entities, other than the FERC, the Market Auditor, and the Southeast EEM Administrator except to the extent required by Law, regulation, or order.

10.1.3 The Southeast EEM Administrator shall post and maintain on the Southeast EEM System Interface: (i) a list of all Members and Participants and their contact information, (ii) the notice provisions provided in this Agreement as set forth in Section 16.8, (iii) the notice information of each Annual Meeting and Annual Member Meeting, including the date, place and time of such Annual Meeting and Annual Member Meeting, and (iv) a current description of the Territory.

10.1.4 The Southeast EEM Administrator shall prepare and post reports that would include data aggregated by the Southeast EEM System as set forth in Section V of the Southeast EEM Market Rules.

10.2 Auditing.

10.2.1 The Southeast EEM Agent will engage the Market Auditor to perform the auditing scope of work as set forth in Section VI of the Southeast EEM Market Rules.

10.2.2 The Market Auditor and Southeast EEM Administrator may share information related to the Southeast EEM on a confidential and reciprocal basis.

10.2.3 The Market Auditor has independent authority to prepare and submit any reports described herein without any prior review or approval by any Member or any other outside sources.

10.3 Each Member is entitled to equitable relief, by injunction or otherwise, to enforce its rights under this Article 10 to prevent the release of confidential information, and may seek other remedies available at Law or in equity for breach of this provision.

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ARTICLE 11

SOUTHEAST EEM MARKET RULES

11.1 Set out in Appendix B to this Agreement are the Southeast EEM Market Rules that shall govern the Bid, Offer and matching procedures of the Southeast EEM System and the reservation and tagging functions of the Southeast EEM System, as such appendix may be amended and revised from time to time by the Membership Board in accordance with Section 4.1.9.

11.2 The rules, guidelines, requirements and other standards for the Southeast EEM System shall not impose any obligation on any Member that would cause any Member to violate any reliability criteria, guideline, standard or requirement (hereafter referred to as “Reliability Obligations”) of NERC, the applicable Balance Authority, and any other recognized region or subregion of NERC (including the SERC Reliability Corporation (“SERC”)), including any successors to NERC or SERC, or applicable state or federal Reliability Obligations, to the extent any such Reliability Obligations are applicable to a Member. Each Member shall participate in the Southeast EEM System in a manner that conforms to all Reliability Obligations as may be applicable to it. The rules, guidelines, requirements and other standards for the Southeast EEM System shall not impose any obligation on any Member that would cause any Member to engage in conduct not consistent with Good Utility Practice.

11.3 The Operating Committee shall establish rules and procedures, including appropriate audit procedures, under which any Member may request a determination of whether the hardware, software, management, or operation of, or Member participation in, the Southeast EEM System, as they may affect the requesting Member, comply with all rules, guidelines, requirements and other standards for the Southeast EEM System as set forth in the Southeast EEM Market Rules in Appendix B. The Operating Committee, in a manner consistent with all applicable provisions of this Agreement, may make recommendations to the Membership Board to apportion the costs of making revisions or modifications to the Southeast EEM System.

ARTICLE 12

DISPUTE RESOLUTION

12.1 Any dispute between two (2) or more Members arising under this Agreement shall first be referred to a designated senior representative of each of the Members involved in such dispute for resolution on an informal basis as promptly as practicable. Such designated senior representatives shall meet, negotiate and attempt in good faith to resolve the dispute quickly, informally, and inexpensively. In the event the designated senior representatives are unable to resolve the dispute within thirty (30) days (or other such period as the Parties may agree upon) by mutual agreement, such dispute within ten (10) Business Days shall be submitted to a mediator and resolved in accordance with the mediation procedures set forth below.

12.2 Following the procedures set forth in Section 12.1, any dispute between two (2) or more Members arising under this Agreement shall be subject to non-binding mediation prior to the initiation of judicial, mutually agreed upon arbitration, or other dispute resolution proceedings, unless the Parties to the dispute mutually shall determine from the nature of the dispute, the

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positions of the Parties, and other relevant facts and circumstances that mediation will not lead to resolution of the dispute. The Parties to any such dispute shall select a mediator to assist in the resolution of their dispute. The mediator shall (i) be knowledgeable in the subject matter of the dispute and (ii) have no official, financial, or personal conflict of interest with respect to the issues in controversy, unless the interest is fully disclosed in writing to all participants and all participants waive in writing any objection to the interest.

12.3 The disputing Parties shall attempt in good faith to resolve their dispute in accordance with the procedures and timetable established by the mediator. In furtherance of the mediation efforts, the mediator may:

12.3.1 Require the Parties to meet for face-to-face discussions, with or without the mediator;

12.3.2 Act as an intermediary between the disputing Parties;

12.3.3 Require the disputing Parties to submit written statements of issues and positions; and

12.3.4 If requested by the disputing Parties, provide a written recommendation on resolution of the dispute.

12.4 If a resolution of the dispute is not reached by the thirtieth (30th) day after the appointment of the mediator or such later date as may be agreed to by the Parties, the mediator shall promptly provide the disputing Parties with a written, confidential, non-binding recommendation on resolution of the dispute, including the mediator's assessment of the merits of the principal positions being advanced by each of the disputing Parties. At a time and place specified by the mediator after delivery of the foregoing recommendation, but no later than fifteen (15) days after issuance of the mediator's recommendation, the disputing Parties shall meet in a good faith attempt to resolve the dispute in light of the mediator's recommendation. Each disputing Party shall be represented at the meeting by a person with authority to settle the dispute, along with such other persons as each disputing Party shall deem appropriate. If the disputing Parties are unable to resolve the dispute at or in connection with this meeting, then: (i) any disputing Party may commence such judicial, mutually agreed upon arbitration, or other dispute resolution proceedings as may be appropriate; and (ii) the recommendation of the mediator shall have no further force or effect, and shall not be admissible for any purpose in any subsequent arbitral, judicial, or other dispute resolution proceeding.

12.5 The costs of the time, expenses, and other charges of the mediator and of the mediation process shall be borne by the Parties to the dispute, with each side in a mediated matter bearing equal costs. Each Party shall bear its own costs and attorney's fees incurred in connection with any mediation under this Agreement.

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ARTICLE 13

REPRESENTATIONS AND WARRANTIES

13.1 Each Member represents and warrants to each other Member that on the date it executes this Agreement and throughout the term of this Agreement, the following representations and warranties are, and will continue to be, true and correct in all material respects:

13.1.1 it is duly organized, validity existing and in good standing under the Laws of the state of its incorporation or organization;

13.1.2 it will at all times comply with the provisions of this Agreement and all Exhibits and Appendices hereto, each as amended from time to time;

13.1.3 it has all requisite corporate or other organizational power to carry on its business as contemplated by this Agreement;

13.1.4 except for the authorizations and approvals described in Article 8 of this Agreement, it has all authorizations from Governmental Entities necessary for it to legally perform its obligations under this Agreement;

13.1.5 the execution, delivery and performance of this Agreement and any other documentation it is required to deliver under this Agreement are within its powers, have been duly authorized by all necessary action, and do not violate any of the terms or conditions in its governing documents, any contract or other agreement to which it is a party or any Law applicable to it;

13.1.6 the individual(s) executing and delivering this Agreement and any other documentation required to be delivered under this Agreement on behalf of such Member are duly empowered and authorized to do so at the time of such execution and delivery;

13.1.7 this Agreement has been duly and validly executed and delivered by such Member and constitutes such Member's legal, valid and binding obligation; and

13.1.8 all information that has been provided by or on behalf of a Member pursuant to this Agreement, is true and correct in all material respects. Each Member further covenants that all information provided to the Operating Committee, the Market Auditor, the Southeast EEM Agent or the Southeast EEM Administrator by or on behalf of such Member pursuant to this Agreement, subsequent to the date hereof, shall be true and correct in all material respects.

ARTICLE 14

DEFAULTS

14.1 A Member shall be in default in payment when payment is not made in accordance with the billing procedures established under this Agreement within ten (10) Business Days after its final due date. A default by any Member in its payment obligations under this Agreement shall be cured by payment of all overdue amounts together with interest accrued at the Interest Rate, prorated daily from the due date to the date the payment curing the default is made.

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14.2 Notwithstanding Article 9, a defaulting Member shall be liable to the non-defaulting Members for all costs, including costs of collection and reasonable attorney fees incurred by such non-defaulting Members, plus interest at the Interest Rate. The proceeds paid by a defaulting Member to remedy any such default shall be distributed as directed by the Membership Board to the non-defaulting Members in proportion to the additional costs and expenses actually paid by the non-defaulting Members as a result of the default.

14.3 The rights of a Member who is in default of any of its payment or other material obligations herein may be terminated by the Membership Board. This provision allowing the non-defaulting Members to terminate such rights is in addition to any other remedies provided in this Agreement, at Law, or in equity, and shall in no way limit the non-defaulting Members' ability to seek judicial enforcement of the defaulting Member's obligations under this Agreement. Upon the effective date of such termination of rights, all rights of the defaulting Member and all obligations of non-defaulting Members to the defaulting Member imposed by this Agreement, except (i) payment obligations, (ii) the indemnification obligations set forth in Section 6.5, (iii) the release and other obligations set forth in Article 9, (iv) the confidentiality obligations set forth in Article 10 and Article 15, and (v) the obligations set forth in Section 16.9 and Section 16.14, shall immediately be terminated, except that no such termination shall impact Enabling Agreements any such Member is a party to.

14.4 Upon termination of the rights of a defaulting Member under this Agreement, the Operating Committee shall review responsibility and cost allocations of the non-defaulting Members and make adjustments thereto as it deems necessary.

ARTICLE 15**CONFIDENTIALITY**

15.1 Any information provided by a Member to any other Member pursuant to this Agreement that is labeled "Confidential" shall be used by the receiving Member solely in connection with the purposes of this Agreement and shall not be disclosed by the receiving Member to any third party, except with the providing Member's consent, and upon request of the providing Member shall be returned thereto. Notwithstanding the above, a Member may disclose any such information to third parties as may be necessary for such Member to perform its obligations under this Agreement (including, but not limited to, the Member's employees, officers, directors, trustees, attorneys and other consultants). To the extent that such disclosures are necessary, the Members shall endeavor in disclosing any such information to seek to preserve the confidentiality of such information. This provision shall not prevent any Member from providing any confidential information received from any other Member to any court or governmental body to enforce its rights or perform its obligations hereunder or as may otherwise be required by such court or body or by Law, provided that, to the extent required, if feasible, the disclosing Member shall have given prior notice to the Member that provided such information of such required disclosure and, if so requested by such other Member, shall have used all reasonable efforts to oppose the requested disclosures, if appropriate under the circumstances, or to otherwise make such disclosure pursuant to a protective order or other similar arrangement for confidentiality. Without limiting the scope of the foregoing, the Members shall use all reasonable efforts to maintain the confidentiality of any confidential information in any filings with, or submissions to, any governmental or regulatory

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authorities. Information shall not be considered confidential for purposes of this Article 15 if the Member receiving such information from another Member can demonstrate by competent documentary evidence that such information: (a) was rightfully in the possession of the receiving Member prior to its disclosure to the receiving Member by the disclosing Member; (b) was in the public domain prior to its disclosure by the disclosing Member to the receiving Member; (c) came into the public domain, by publication or otherwise, through no direct or indirect act or omission of the receiving Member, subsequent to its disclosure by the disclosing Member to the receiving Member; or (d) was supplied to the receiving Member by a third party having the legal right to disclose it to the receiving Member, but only if the third party does not owe a duty of confidentiality to the disclosing Member with respect to such information.

15.2 Any information provided by a Member to a mediator or arbitrator pursuant to this Agreement that is labeled “Confidential” shall be subject to the provisions of this Article 15. For such purposes, any mediation or arbitration arranged pursuant to Article 12 of this Agreement shall provide for such mediator or arbitrator to comply with the provisions applicable to a Member receiving Confidential information from another Member.

15.3 Each Member is entitled to equitable relief, by injunction or otherwise, to enforce its rights under this Article 15 to prevent the release of confidential information, and may seek other remedies available at Law or in equity for breach of this provision.

ARTICLE 16

MISCELLANEOUS

16.1 “Public Utility” Status of Members. Certain Members are not Public Utilities. Nothing in this Agreement is intended to subject such Members to FERC jurisdiction as Public Utilities, and Members that are not Public Utilities shall not be required to take any action or participate in any filing or appeal that would confer FERC jurisdiction over such Members that does not otherwise exist.

16.2 Transfer of Interest in Agreement. No voluntary transfer of interest, rights, or obligations of any Member under this Agreement shall be made without the written consent and approval of all other Members except to a successor in operation of all or substantially all of its electric utility assets. Written approval when required shall not be unreasonably withheld. Any successor or assignee of the rights of any Member, whether by voluntary transfer, judicial or foreclosure sale or otherwise, shall be subject to all the provisions and conditions of this Agreement, to the same extent as though such successor or assignee were the original Member hereunder, and no assignment or transfer of any rights hereunder shall be effective unless and until the assignee or transferee agrees in writing to assume all of the obligations of the assignor or transferor and to be bound by all of the provisions and conditions of this Agreement; provided, that the execution of a mortgage or trust deed or a judicial or foreclosure sale made thereunder, or if through the disposition by the Administrator of the RUS, shall not be deemed a voluntary transfer within the meaning of this Section 16.2. If, due to reorganization, sale/purchase, or other means, a Member no longer owns or operates generation or has load obligation in the Territory, its membership(s) will be evaluated by the Operating Committee and any appropriate change in representation will be subject to approval of the Operating Committee.

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16.3 Relationship of Parties.

16.3.1 Nothing contained herein shall be construed to create an association, joint venture, trust, or partnership, or impose a trust, partnership, covenant, obligation, or liability on or with regard to any one or more of the Parties. Each Party shall be individually responsible for its own covenants, obligations, and liabilities under this Agreement.

16.3.2 All rights of the Parties are several, not joint. No Party shall be under the control of or shall be deemed to control another Party. Except as expressly provided in this Agreement, no Party shall have a right or power to bind another Party without its express written consent.

16.4 Third Party Beneficiaries. This Agreement shall not be construed to create rights in, or to grant remedies to, any third party as a beneficiary of this Agreement, or of any duty, obligation or undertaking established herein. No party not a signatory hereto shall be entitled to enforce this Agreement against any person or entity.

16.4.1 No Reliance Interest on Non-Firm Energy Exchange Transmission Service. Notwithstanding anything to the contrary in this Agreement, Non-Firm Energy Exchange Transmission Service over a Participating Transmission Provider's transmission system shall only be offered to the extent of that Participating Transmission Provider's participation in the Southeast EEM, and only for that purpose. For the avoidance of doubt, owing to the voluntary nature of a Member's participation in this Agreement, membership in this Agreement shall not give rise to any third-party expectation or reliance interest on the availability of Non-Firm Energy Exchange Transmission Service upon the withdrawal of a Member.

16.5 No Dedication of Facilities. Any undertaking by one Party to another Party under any provision of this Agreement shall not constitute the dedication of the Southeast EEM System or any portion thereof of the undertaking Party to the public or to the other Party, and it is understood and agreed that any such undertaking by a Party shall cease upon the termination of such Party's obligations under this Agreement.

16.6 Other Agreements. No provision of this Agreement shall preclude a Member from entering into other agreements or conducting transactions under existing agreements (including where applicable any Enabling Agreements) with other Members, Participants or Additional Members. This Agreement shall not be deemed to modify or change any rights or obligations under any prior contracts or agreements between or among any of the Members.

16.7 Further Assurances. The Parties to this Agreement hereby agree to provide all other information, execute and deliver any further instruments or documents, and take or forbear from any further acts that may be reasonably required or useful to carry out the intent and purpose of this Agreement, provided that such requirements are consistent with the express terms of this Agreement and all applicable Laws and regulations, and in the case of confidential information subject to Article 15 of this Agreement. Without limiting the scope of the foregoing, each Member shall, subject to the confidentiality provisions set forth in Article 15, provide the Membership Board with any information that is reasonably necessary to operate the Southeast EEM System or for the Operating Committee or the Southeast EEM Administrator to implement any provisions of this

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Agreement, or any other business related to the development or the operation of the Southeast EEM System.

16.8 Notices. All notices or other communications required or permitted to be given pursuant to this Agreement shall be in writing and shall be (i) delivered by internet electronic mail (with return internet electronic mail from the recipient acknowledging receipt) sent to the internet electronic mail address for such recipient as recorded in the Secretary's records, and (ii) delivered in person, by nationally recognized overnight courier service, or by first class mail, certified or registered, postage prepaid, to the addresses of the Members set forth in Exhibit A hereto. Any Member may change its address by giving notice in writing stating its new address to the Southeast EEM Administrator and the Secretary, and the Secretary shall promptly update Exhibit A accordingly. Any notice, demand or other communication shall be deemed given and effective as of the date of delivery in person or upon receipt as set forth on the return receipt if delivered by certified or registered mail or by overnight courier service. The inability to deliver because of changed address of which no notice was given, or the rejection or other refusal to accept any notice, demand or other communication, shall be deemed to be receipt of the notice, demand or other communication as of the date of such inability to deliver or the rejection or refusal to accept.

16.9 Amendments. Except as otherwise provided in the following two sentences, this Agreement, including each of the Exhibits and Appendices hereto, may be modified or amended in the manner set forth in this Section 16.9, Article 4, and Article 8. In accordance with Article 3 of this Agreement, an entity that meets the criteria for qualification and admission as a Member, as determined by the Membership Board, may become an Additional Member and a Party to this Agreement by executing this Agreement or a Joinder hereto, and upon payment of all applicable fees, dues and contributions so specified or authorized in this Agreement, the Secretary shall revise, or cause to be revised, Exhibit A to include such Additional Member. The Parties hereby stipulate and agree that this Agreement was entered into as a result of arm's-length negotiations between the Parties. Further, the Parties believe that the terms and conditions of this Agreement are just and reasonable and shall remain so over the life of the Agreement. The Parties waive all rights to challenge the validity of this Agreement or whether it is just and reasonable for and with respect to the entire term, and hereby agree to make no filings with any Governmental Entity challenging the terms and conditions of this Agreement as to whether they are just and reasonable or in the public interest. The Parties hereby further stipulate and agree that no Party may bring or support any action, proceeding or complaint seeking to modify, cancel, suspend, or abrogate the terms and conditions of this Agreement. Absent an amendment to this Agreement pursuant to Section 4.1.9, Article 4 and Article 8 approving the proposed change, the standard of review for changes to ~~any portion of this Agreement~~ (i) the following defined terms: "Interest Rate", "Investor Owned Utilities", "Governmental Utilities", "Market Auditor", "Material Vendor Contract", "Member", "Member Net Energy for Load", "Net Energy for Load", "Operating Costs", "Record Date", "Sector", "Significant Matters", "Southeast EEM Administrator", "Southeast EEM Agent", and "Territory"; (ii) the following sections: Section 3.2, Article 4, Section 6.1, Section 6.2, Article 7, Section 8.6, Section 8.7, Article 9, Section 10.3, Section 11.2, Article 12, Article 14, Article 15, Section 16.1, Section 16.4.1, Section 16.5, Section 16.9, Exhibit B and Appendix C; in each case proposed by a non-Party, or FERC acting *sua sponte*, shall be the strictest standard of review permissible to preserve the intent of the Parties to uphold the sanctity of contracts without modification, which in no event shall be lower than the "public interest" standard of review set

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forth in *United Gas Pipe Line Co. v. Mobile Sierra Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956).

16.10 Headings. Section headings used in this Agreement are for convenience and reference only and are not to be considered in construing the terms of this Agreement.

16.11 Applicable Law. This Agreement shall be governed by and construed in accordance with the Laws of the State of Delaware without regard to its conflict of laws principles or rules.

16.12 Entire Agreement. This Agreement constitutes the entire agreement among the Members with respect to the subject matter hereof. This Agreement supersedes all prior agreements and oral understandings among the Members with respect to such matters.

16.13 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original but all of which together shall constitute one instrument, binding upon all Parties hereto, notwithstanding that all of such Parties may not have executed the same counterpart.

16.14 WAIVER OF JURY TRIAL. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EACH MEMBER WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT TO ANY ACTION, SUIT OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT.

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IN WITNESS WHEREOF, each of the Members and the Southeast EEM Agent (solely for purposes of Article 6) has executed this Agreement as of the day and year indicated next to the signature.

DATE: _____

Member: _____

By: _____

Name: _____

Title: _____

Solely for purposes of Article 6, the Southeast EEM Agent acknowledges and agrees with the provisions of Article 6 and hereby accepts the appointment as the Southeast EEM Agent as of the Effective Date:

Southeast EEM Agent: _____

By: _____

Name: _____

Title: _____

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30 Ivan Allen Jr. Blvd. NW
Atlanta, GA 30308

Associated Electric Cooperative, Inc.

2814 S. Golden
PO Box 754
Springfield, MO 65807

Dalton Utilities

1200 VD Parrott, Jr. Parkway
PO Box 869
Dalton, GA 30722

Dominion Energy South Carolina, Inc.

220 Operation Way, MC C222
Cayce, SC 29033

Duke Energy Carolinas, LLC

550 South Tryon Street
Charlotte, NC 28202

Duke Energy Progress, LLC

550 South Tryon Street
Charlotte, NC 28202

Georgia Power Company

30 Ivan Allen Jr. Blvd. NW
Atlanta, GA 30308

Georgia System Operations Corporation

2100 East Exchange Place
Tucker, GA 30084

Georgia Transmission Corporation (An Electric Membership Corporation)

2100 East Exchange Place
Tucker, GA 30084

Kentucky Utilities Company

One Quality Street
Lexington, KY 40507

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Louisville Gas and Electric Company
220 West Main Street
Louisville, KY 40202

MEAG Power
1470 Riveredge Pwky., NW
Atlanta, GA 30328

Mississippi Power Company
30 Ivan Allen Jr. Blvd. NW
Atlanta, GA 30308

North Carolina Electric Membership Corporation
3400 Summer Blvd.
Raleigh, NC 27616

North Carolina Municipal Power Agency No. 1
1427 Meadow Wood Blvd.
Raleigh, NC 27604

Oglethorpe Power Corporation (An Electric Membership Corporation)
2100 East Exchange Place
Tucker, GA 30084

PowerSouth Energy Cooperative
2027 East Three Notch Street
Andalusia, AL 36421

Santee Cooper
One Riverwood Avenue
Moncks Corner, SC 29461

Tennessee Valley Authority
400 West Summit Hill Drive, WT 6A-K
Knoxville, Tennessee 37902

EXECUTION PROPOSED REVISIONS TO EXECUTED VERSION**EXHIBIT B****FORM OF JOINDER AGREEMENT****JOINDER AGREEMENT**

Reference is made to the Southeast Energy Exchange Market Agreement, dated as of December 28, 2020, as the same may be amended from time to time (the “Southeast EEM Agreement”), by and among the entities listed on Exhibit A thereto. Capitalized terms used but not otherwise defined herein shall have the meanings given to such terms in the Southeast EEM Agreement.

The undersigned hereby agrees to become a Member of the Southeast EEM and be bound by the terms of the Southeast EEM Agreement as if an original party thereto. The Membership Board hereby consents to the addition of the undersigned as a Member of the Southeast EEM and as party to the Southeast EEM Agreement as if an original party thereto. A duly executed copy of this Joinder Agreement shall be delivered to the Secretary and the Southeast EEM Administrator.

IN WITNESS WHEREOF, the undersigned has caused this Joinder Agreement to be duly executed as of the date set forth below.

Date: _____, 20__

[NAME OF JOINING MEMBER],
A [Jurisdiction] [Entity Type]

By: _____

Name: _____

Title: _____

ACKNOWLEDGED AND ACCEPTED:

By: _____

Name: _____

Title: Secretary, Membership Board

EXECUTION PROPOSED REVISIONS TO EXECUTED VERSION**APPENDIX A****FORM OF PARTICIPANT AGREEMENT**

- 1.0 This Participant Agreement (“Agreement”), dated as of _____, is entered into, by and between [INSERT NAME OF ENTITY], the Southeast EEM Agent acting in its capacity as the agent of the Members of the Southeast Energy Exchange Market (“Southeast EEM”) and _____ (“Participant”).
- 2.0 The Participant and Southeast EEM agree that this Agreement shall incorporate, in their entirety, Appendix B to the Southeast EEM Agreement (“Southeast EEM Market Rules”), designated as Alabama Power Company’s Market Based Rate Tariff, Rate Schedule No. 1011, Southeast EEM Agreement, and the Southeast EEM Manuals. Any term not defined herein shall have the meaning ascribed to it in the Southeast EEM Market Rules. In the event of any conflict between this Agreement and the Southeast EEM Market Rules, the Southeast EEM Market Rules shall control.
- 3.0 The Participant has submitted an application for participation in the Southeast EEM and has been determined by the Southeast EEM to meet all requirements of being a Participant as defined in the Southeast EEM Market Rules. The Participant warrants that all information submitted in the application is true and accurate.
- 4.0 The Participant agrees to be bound by and accepts all of the terms of the Southeast EEM Market Rules and the Southeast EEM Manuals, as both may be amended from time to time. Any amendments to the Southeast EEM Market Rules or the Southeast EEM Manuals are automatically and without further action incorporated into this Agreement.

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- 5.0 The Southeast EEM agrees that Participant shall be deemed a “Participant” under the terms of the Southeast EEM Market Rules, with all rights of participation and access to the Southeast EEM System afforded Participants under the Southeast EEM Market Rules.
- 6.0 The Participant shall supply the Southeast EEM Administrator with any and all information deemed reasonably necessary for the administration of the Southeast EEM System. The Participant acknowledges and agrees that it will not provide information posted in the confidential section of the Southeast EEM Website to any employee of itself or an affiliate engaged in Marketing Functions, where Marketing Functions shall be those meeting the definition found at 18 C.F.R. Section 358.3(d), except that for purposes of this Agreement Marketing Functions shall also refer to the functions described in that provision even if the entity performing those functions is not a public utility subject to FERC jurisdiction. The Participant shall identify to the Southeast EEM Administrator all employees who may access the confidential portion of the Southeast EEM website, and certify that such employees are not engaged in Marketing Functions, and the Southeast EEM Administrator will grant access to the confidential portion of the Southeast EEM Website only to such employees. The Participant shall be responsible to ensure that the Southeast EEM Administrator is notified before any such employee commences engagement in Marketing Functions such that access to the confidential section of the Southeast EEM Website can be revoked.
- 7.0 Either Party can assign or transfer any or all of its rights and/or obligations under this Agreement upon thirty (30) days written notice. Any such transfer or assignment shall be

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conditioned upon the successor in interest accepting the rights and/or obligations under this Agreement as if said successor in interest was an original Party to this Agreement.

8.0 An event of “Force Majeure” means any act of God, labor disturbance, act of the public enemy, war, insurrection, riot, fire, storm or flood, explosion, pandemic, epidemic, breakage or accident to machinery or equipment, any curtailment, order, regulation or restriction imposed by governmental military or lawfully established civilian authorities or any other cause beyond a Party’s control. A Force Majeure event does not include an act of negligence or intentional wrongdoing. Neither the Southeast EEM Agent, the Southeast EEM, the Members, nor the Participant will be considered in default as to any obligation under this Agreement if prevented from fulfilling the obligation due to an event of Force Majeure. However, a Party whose performance under this Agreement is hindered by an event of Force Majeure shall make all reasonable efforts to perform its obligations under this Agreement.

9.0 The Participant shall at all times indemnify, defend, and save the Southeast EEM System, the Southeast EEM Agent and the Southeast EEM Administrator harmless from, any and all damages, losses, claims, including claims and actions relating to demands, suits, recoveries, costs and expenses, court costs, attorney fees, and all other obligations by or to third parties, arising out of or resulting from the Southeast EEM Agent’s or Southeast EEM Administrator’s, as applicable, performance of its obligations under this Agreement and the Southeast EEM Market Rules, except in cases of negligence or intentional wrongdoing by the Southeast EEM Agent or Southeast EEM Administrator, as applicable.

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- 10.0 This Agreement shall be deemed to be a contract made under, and for all purposes shall be governed by and construed in accordance with, the laws of the State of Delaware.
- 11.0 This Agreement shall be effective upon execution by both parties and shall remain in full force and effect until terminated pursuant to Sections 12 or 13 of this Agreement.
- 12.0 The Southeast EEM may terminate this Agreement by providing written notice of termination to the Participant in the event the Participant commits a material violation of its obligations under the terms of the Southeast EEM Market Rules which, if capable of being remedied, is not remedied within thirty (30) days after the date the Southeast EEM has given the Participant written notice of the violation, unless excused by reason of Force Majeure as provided in Section 8 of this Agreement.
- 13.0 The Participant may terminate this Agreement upon thirty (30) days written notice to the Southeast EEM.
- 14.0 Upon termination of this Agreement for any reason, Participant shall not have access to the Southeast EEM System, nor be entitled to submit Bids or Offers thereunder.
- 15.0 This Agreement may be executed in one or more counterparts at different times, each of which shall be regarded as an original and all of which, taken together, shall constitute one and the same Agreement.
- 16.0 Any notice or request made to either of the Parties to this Agreement shall be made to the following representatives:

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Title: _____

Address: _____

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their respective authorized officials.

Southeast EEMParticipant

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

EXECUTION PROPOSED REVISIONS TO EXECUTED VERSION**APPENDIX B****SOUTHEAST EEM MARKET RULES****I. INTRODUCTION AND APPLICABILITY.**

Set forth below are the rules governing: 1) Participation in the Southeast EEM; 2) Bidding, Offering, and matching procedures for Energy Exchanges arranged through the Southeast EEM System, 3) Southeast EEM System data reporting, and 4) the processes for auditing Energy Exchanges and the hardware, software, management and operation of the Southeast EEM System. This Appendix B is subject to the terms and conditions of the Agreement. In the event of a conflict between the terms of the Agreement and the terms of this Appendix B, the terms of the Agreement shall control.

II. DEFINITIONS.

The following terms shall be defined as indicated for the purposes of this Appendix B. Definitions and terms expressed in the singular shall include the plural and *vice versa*. Any capitalized terms not defined herein shall have the meaning set forth in the Agreement.

“Agreement” means the Southeast Energy Exchange Market Agreement By and Among the Members of the Southeast EEM to which this Appendix B is appended.

“Balancing Authority” means the responsible entity that integrates resource plans ahead of time, maintains demand and resource balance within a Balancing Authority Area, and supports interconnection frequency in real time.

“Balancing Authority Area” means the collection of generation, transmission and loads within the metered boundaries of the Balancing Authority. The Balancing Authority maintains load-resource balance within this area.

“Bid” means a voluntary submission containing the required Bid Information to purchase a certain amount of Non-Firm Energy (set forth in MW).

“Bid Information” means the information applicable to Bids set forth in Section IV.B.3.

“Bid Price” means the price, in \$/MWh for the amount of Non-Firm Energy submitted in a Bid. This represents the maximum price that the Bidder is willing to pay.

“Bidder” means a Participant who submits a Bid into the Southeast EEM System.

“Buyer” means a Bidder that has been matched with an Offeror for an Energy Exchange through the Southeast EEM System.

“Clock Hour” means the sixty-minute period ending at :00.

“Company System Administrator” has the meaning set forth in Section VI.B.2.

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“Contract Path” means the continuous transmission path for the flow of Non-Firm Energy between the Participants reserved for an Energy Exchange using the transaction matching, reservation and tagging functions of the Southeast EEM System.

“Delivery Interval” means a fifteen (15) minute period in which Non-Firm Energy is intended to be delivered by a Seller to its matched Buyer(s).

“Energy Exchange” means a transaction for the purchase and sale of Non-Firm Energy in the Southeast EEM between Buyers and Sellers pursuant to an Enabling Agreement and in conformance with the requirements of the Southeast EEM Rules.

“Electronic Tag” or “e-Tag” means the primary method for coordination of Interchange Schedules or Energy Schedules where Energy is transferred between Balancing Authority Areas and coordination required between multiple entities. Various entities can communicate important information pertaining to the Interchange transaction to each other via the internet using computer applications, which are based on the e-Tag specifications and schema maintained by the North American Energy Standards Board (“NAESB”).

“Energy Exchange Notification” means the notice provided to Bidders and Offerors who were matched for an Energy Exchange by the Southeast EEM Algorithm; to be automatically generated by the Southeast EEM System and provided before the start of a Delivery Interval; and to include data on the matched Energy Exchange including Buyer, Seller, price, amount of Non-Firm Energy, Source, Sink, delivery location, applicable Delivery Interval, and other any other necessary data for Participants to record the transaction.

“Energy Exchange Price” means the price, in \$/MWh, calculated by the Southeast EEM Algorithm for a specific Energy Exchange.

“FERC” means the Federal Energy Regulatory Commission.

“Good Utility Practice” means any of the practices, methods and acts engaged in or approved by a significant portion of the electric utility industry during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgment and in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practice does not require the optimum practice, method, or act to the exclusion of all others, but rather is intended to include acceptable practices, methods, or acts generally accepted in the SERC Reliability Corporation region.

“Losses” means the total cost of the electrical energy lost in the transmission of electrical energy from a Source to a Sink based on the real power loss factor (%) (“Loss Factor”) and loss rate (\$/MWh) (“Loss Rate”) of each Participating Transmission Provider on the Energy Exchange’s Contract Path.

“NAESB Electric Industry Registry” or “NAESB EIR” means thea central registry and repository of information required for commercial transactions that is maintained by NAESB.

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“Network Map” means the computer-based representation of all Participating Transmission Provider service territories, Balancing Authorities, valid transmission paths (Point of Receipt – Point of Delivery combinations), Sources, and Sinks.

“Non-Firm Energy” means a product for which delivery or receipt of the energy may be interrupted for any reason or no reason, without liability on the part of either buyer or seller.

“Non-Firm Energy Exchange Transmission Service” means transmission service provided by a transmission provider, pursuant to its Tariff, that has the following characteristics: (i) it is non-firm transmission service with the lowest curtailment priority, provided solely on an as-available basis for 15-minute Energy Exchanges, after taking into account other higher priority uses and the limitations of the transmission system of the Participating Transmission Provider; (ii) it is available solely for Energy Exchanges; (iii) it is identified and offered in the Tariff as “Non-Firm Energy Exchange Transmission Service;” (iv) the charge for such service, and related Schedule 1 and Schedule 2 (or equivalent) ancillary services, is \$0/MWh; (v) the charge for financial losses is based on the methodology established in the Participating Transmission Provider’s Tariff; (vi) the service must be obtained by a Participant using the transaction matching, reservation and tagging functions of the Southeast EEM System, rather than directly through Open Access Same Time Information System or other reservation, scheduling or tagging requirements applicable to other forms of transmission service offered by a Participating Transmission Provider; (vii) the service may not be reassigned, redirected, or sold by the transmission customer; (viii) in combination with the other Participating Transmission Providers’ provisions of Non-Firm Energy Exchange Transmission Service, the service allows for a continuous Contract Path for Energy Exchanges; and (ix) the Participating Transmission Provider is required to provide the information specified in and as required by Section IV.A.2 of the Southeast EEM Market Rules to the Southeast EEM System. For the avoidance of doubt, nothing in this Agreement shall obligate any Participating Transmission Provider to (a) plan, construct, or maintain its transmission system for the benefit of any Participant; (b) provide Non-Firm Energy Exchange Transmission Service in a manner that is contrary to the terms of the Participating Transmission Provider’s Tariff, or contrary to Good Utility Practice, each as determined in the sole judgment of the Participating Transmission Provider; (c) provide Non-Firm Energy Exchange Transmission Service following termination of its Southeast EEM Member status; (d) provide Non-Firm Energy Exchange Transmission Service to a non - Participant; or (e) file its Tariff with FERC if the Tariff is not already required to be filed with FERC.

“OASIS” means an Open Access Same-Time Information System that conforms to the requirements of Part 37 of the FERC’s regulations, 18 CFR §§ 37.1, et seq.

“OATI webRegistry” means the system developed by Open Access Technology International, Inc. to perform the NAESB EIR functions.

“Offer” means a voluntary submission containing the required Offer Information to sell a certain amount of Non-Firm Energy (set forth in MW).

“Offer Price” means the price, in \$/MWh for the amount of Non-Firm Energy offered in an Offer. This represents the minimum price that the Offeror is willing to collect to sell.

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“Offer Information” means the information applicable to Offers set forth in Section IV.B.3, as well as other information that may be required by the Southeast EEM Administrator.

“Offeror” means a Participant who submits an Offer into the Southeast EEM System.

“Participant Profile” means that information identified in Section IV.A.1., Section IV.C.6., and such other information requested by the Southeast EEM System Interface to assist in the creation of Energy Exchanges.

“Participant” means an entity that meets the requirements set forth in Section III of this Appendix B.

“Participant Specific Constraints” has the meaning set forth in Section IV.A.1.b. and IV.C.5.

“Seller” means an Offeror that has been matched with a Buyer through the Southeast EEM System.

“Sink” means a pre-approved and validated OATI webRegistry sink point.

“Source” means a pre-approved and validated OATI webRegistry source point.

“Southeast EEM Algorithm” means the mathematical equations that determine the matching Bids and Offers resulting in Energy Exchanges.

“Southeast EEM System Interface” means the graphical user interface (“GUI”) and application programming interfaces (“API”) used by the Southeast EEM System that meet the Southeast EEM System requirements developed by the Southeast EEM Administrator and the Operating Committee.

“Southeast EEM Manuals” means the instructions, rules, procedures and guidelines established by the Operating Committee for the Southeast EEM.

“System Administrators” means, collectively, the Southeast EEM Administrator and Company System Administrators.

III. PARTICIPATION

A. Any entity that meets the requirements of this Section III may become a Participant.

B. A Participant must:

- 1.** Own or otherwise control a Source within the Territory and/or be contractually obligated to serve a Sink within the Territory;
- 2.** Execute a Participant Agreement in the form attached to the Agreement as Appendix A (the “Participant Agreement”) which agreement shall, among

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other things, contractually bind such entity to comply with the rules set forth in this Appendix B;

3. Deliver the executed Participant Agreement to the Secretary and the Southeast EEM Administrator, which shall become effective when countersigned by the Southeast EEM Agent at the direction of the Operating Committee;
4. Execute and deliver a Non-Firm Energy Exchange Transmission Service Agreement with each Participating Transmission Provider who requires delivery of such agreement, or otherwise have access to Non-Firm Energy Exchange Transmission Service from each Participating Transmission Provider; and
5. Have or enter into an Enabling Agreement with at least three (3) or more Participants.

IV. BIDS/OFFERS AND MATCHING PROCEDURES.**A. Pre-Bid/Offer Information Requirements.**

1. Information Submitted by Participants.
 - a. Prior to being permitted to submit Bids or Offers, each Participant shall provide the Southeast EEM all required information in its Participant Profile. Participants are responsible for providing accurate information to the Southeast EEM System in its Participant Profile, as well as submitting any updates or modifications to the Southeast EEM Administrator to maintain the accuracy of Participant's Profile.
 - b. Participant-Specific Constraints.
 - i. Prior to being permitted to submit Bids or Offers, each Participant shall provide to the Southeast EEM in its Participant Profile, any constraints the Southeast EEM Algorithm must take into account in matching Bids or Offers from such Participant ("Participant-Specific Constraints"). Participant-Specific Constraints can be either counterparty specific or geographic.
 - ii. Offers from a Participant for a Delivery Interval will not be processed unless the Participant's Participant-Specific Constraints are set such that there are at least three other non-affiliated Participants with whom the submitting Participant can be matched for an Energy Exchange as a Seller, and Bids from a Participant for a Delivery Interval will not be processed unless the Participant's Participant-Specific

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Constraints are set such that there are at least three (3) other non-affiliated Participants with whom the submitting Participant can be matched for an Energy Exchange as a Buyer.

- iii. Participants shall not be required to provide a reason for any Participant-Specific Constraint. The reason for such constraints could be, but is not limited to, the following:
 - (a) Lack of an Enabling Agreement with a Participant;
 - (b) Counterparty issues (e.g., credit);
 - (c) Affiliates restrictions; and
 - (d) Geographic issues causing supply or delivery point restrictions and related regulatory requirements.
- c. Prior to being permitted to submit Bids or Offers, each Participant must affirm that it has executed Service Agreements for Non-Firm Energy Exchange Transmission Service with each Participating Transmission Provider that requires delivery of such agreement or that it otherwise has access to Non-Firm Energy Exchange Transmission Service as to each Participating Transmission Provider through such Participating Transmission Provider's Tariff.
- 2. Prior to being permitted to provide Non-Firm Energy Exchange Transmission Service, Participating Transmission Providers shall provide sufficient information to permit the Southeast EEM Administrator to create a Network Map of the Southeast EEM Territory for purposes of confirming available capacity for NFEETS along Contract Paths for all potential Energy Exchanges. On an ongoing basis, consistent with the timing requirements of Section IV.B.2.a, each Participating Transmission Provider shall provide the Administrator with the Available Transfer Capability ("ATC") as calculated by the Participating Transmission Provider per the methodology for calculating ATC that each Participating Transmission Provider already specifies in its OATT (or equivalent) and posts on its OASIS (or equivalent), as that ATC may change from time to time.
- 3. Participant shall supply the Southeast EEM Administrator with any and all information the Operating Committee deems reasonably necessary for the administration of the Southeast EEM System.

B. Bids and Offers.

- 1. Delivery Intervals. Each Clock Hour will consist of four (4) Delivery Intervals:

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xx:00 to xx:15;

xx:15 to xx:30;

xx:30 to xx:45; and

xx:45 to xx:00 of the next Clock Hour.

2. Deadlines.

- a.** For each Clock Hour, every Participating Transmission Provider's ~~available capacity for NFEETSATC~~ must be available as an input to the Southeast EEM Algorithm no later than fifteen (15) minutes before the start of such next Clock Hour. To the extent a Participating Transmission Provider can update its ~~available capacity for NFEETSATC~~ within a Clock Hour, such updated information must be available as an input to the Southeast EEM Algorithm no later than fifteen (15) minutes before the start of the applicable Delivery Interval.
- b.** Each Participating Transmission Provider's Loss Factor and Loss Rate must be available as an input to the Southeast EEM Algorithm no later than fifteen (15) minutes prior to the Clock Hour for which the Loss Factor and Loss Rate are to apply. If the Participating Transmission Provider does not update its Loss Factor and Loss Rate, the values for the prior Clock Hour will apply.
- c.** Bid and Offers must be submitted through the Southeast EEM System Interface not earlier than seven (7) days prior to the applicable Delivery Interval and not later than fifteen (15) minutes prior to the Delivery Interval for which they are submitted. Participants may modify or cancel previously submitted Bids or Offers at any time before 15 minutes prior to the upcoming Delivery Interval; no further modifications may be submitted to a Bid or Offer within the fifteen (15)-minute period prior to the applicable Delivery Interval.
- d.** The Southeast EEM System will: 1) match the Bids and Offers for the next Delivery Interval, subject to the constraints and limitations established pursuant to this Appendix; and 2) provide an Energy Exchange Notification to all Participants who were matched as an Energy Exchange for the upcoming Delivery Interval, and 3) submit all necessary transmission reservations and e-Tags ten (10) minutes prior to the relevant Delivery Interval.

3. Bid and Offer Requirements.

- a.** Each Bid or Offer must include the following components:

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- i. Participant name.
 - ii. Whether the submission is a Bid or an Offer.
 - iii. An amount of Non-Firm Energy (MW) for the Bid or Offer in increments of 4MW blocks.
 - iv. For all Offers, an Offer Price and for all Bids, a Bid Price.
 - v. For all Offers, a Source and for all Bids, a Sink.
 - vi. The specific Delivery Interval to which the Bid or Offer applies.
 - vii. Whether the submission: 1) must be matched in full or not at all or 2) can be matched at any volume below the Bid or Offer volume (subject to the 4MW increment rule) (“All or Nothing Selection”).
 - viii. Any other components as may be required for the Southeast EEM System to perform actions set forth in Section IV.C of this Appendix or to generate the reports described in Section V of this Appendix.
- b.** An Offer may include the maximum Energy Exchange Price that the Participant is willing to accept for a particular Source/Sink pair for the applicable Delivery Interval.
 - c.** Participants are permitted to submit multiple Bids or Offers for the same Delivery Interval with varying Source or Sink locations, as applicable, Non-Firm Energy amounts, and pricing, subject to any limitation on the number of Bids or Offers that may be submitted at any one Source or Sink for a particular Delivery Interval as may be established in the Southeast EEM Manuals.
 - d.** Submission of Bids and Offers is voluntary; Participants are not required to submit any Bids or Offers for any Delivery Interval.

C. Matching.

- 1.** Subject to the constraints defined below and all Bid Information and Offer Information, the Southeast EEM Algorithm will evaluate all Bids and Offers for each Delivery Interval and produce Energy Exchanges.

The Southeast EEM Algorithm will match Bids and Offers so as to result in Energy Exchanges that maximize the Southeast Energy Exchange Market total benefit for the applicable Delivery Interval while simultaneously honoring all the requirements identified in Section IV.A.† and the

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constraints identified in Section IV.C.6. The total benefit shall be calculated by aggregating the benefits from each Energy Exchange for the applicable Delivery Interval.

2. The benefit associated with each Energy Exchange will be calculated by taking the difference between the Bid Price and Offer Price and multiplying it by the MW amount of Non-Firm Energy identified in the Energy Exchange, less the costs of transmission services (Losses) provided along the Contract Path.
3. For any Energy Exchange where the Energy Exchange Price exceeds the maximum value submitted in accordance with Section IV.B.3.b., the Energy Exchange Price will be adjusted down to that maximum value, such that the total benefit associated with the Energy Exchange remains the same, but the benefit allocation will be adjusted in the Buyer's favor.
4. Matching Principles.
 - a. Whole and/or partial amounts of Non-Firm Energy shall be matched, consistent with the Participant's All or Nothing Selection in its Bid Information or Offer Information.
 - b. Bids or Offers that can be matched with multiple Participants shall be allowed, subject to the matching rules set forth in this Appendix.
5. Match/Energy Exchange Price.
 - a. Each Energy Exchange Price will be the sum of: 1) the average of the Bid Price and Offer Price for the Energy Exchange, and 2) half the net Losses for all Transmission Service Providers along the Contract Path, where net Losses equals the Losses paid for by Seller minus the Losses paid for by Buyer.
 - b. Data demonstrating Losses will be incorporated into the Energy Exchange Price.
 - i. Each Participating Transmission Provider determines the method for pricing its Losses;
 - ii. Each Participating Transmission Provider is responsible for updating its Tariff to address how Losses will be priced; and
 - iii. Loss Rate and Loss Factor are an input into the algorithm by the relevant Participating Transmission Provider.

EXECUTION PROPOSED REVISIONS TO EXECUTED VERSION**6. Constraints.**

- a.** Participant-Specific Constraints. In matching Bids and Offers, the Southeast EEM Algorithm will take into account the Participant-Specific Constraints submitted by the Bidders and Offerors in accordance with Section IV.A.1.b.
- b.** Generally Applicable Constraints.
 - i. In matching Bids and Offers, the Southeast EEM Algorithm shall not make any Energy Exchanges that would cause the ~~available capacity for NFEETS~~ATC of any Participating Transmission Provider on any given Contract Path to be exceeded.
 - ii. Energy Exchanges shall not be made that cause:
 - (a) A Buyer to purchase more MW than the amount set forth in its Bid;
 - (b) A Seller to sell more MW than the amount set forth in its Offer; and
 - (c) For matched Bids and Offers, the Energy Exchange Price to (i) be less than the Offer Price plus half of net Losses, as calculated per Section IV.C.5.a, and (ii) more than the Bid Price minus net Losses, as calculated per Section IV.C.5.a.
 - iii. The Southeast EEM Algorithm shall only make Energy Exchanges that yield positive benefits to both Buyer and Seller, as defined in Section IV.C.2, after Losses have been considered.
 - iv. The total MW of potential Energy Exchanges in any Delivery Interval shall not exceed the aggregate amount of Non-Firm Energy identified in the applicable Offers or Bids for such Delivery Interval.
 - v. A Participant's Bid may not be matched with an Offer made by the same Participant.
 - vi. The Southeast EEM Algorithm shall not create Energy Exchanges in the same Delivery Interval that would create offsetting Energy Exchanges whereby Participant 1 sells to Participant 2 while Participant 2 sells to Participant 1 during the same interval at the same location.

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7. Treatment of Identical Offers or Bids.
 - a. In the event that multiple Bids or Offers that are at the same price at a Source or Sink are identical which create the same benefit for the Southeast EEM, a randomized preference will be assigned to the Bid(s) or Offer(s). Additionally, randomization will be employed in the algorithm in all other situations if a heuristic is required to resolve ties or ambiguities.
8. Notification, Scheduling, and Transmission for Energy Exchanges.
 - a. After an Energy Exchange for a Delivery Interval is determined:
 - i. The Bidder and Offeror shall be notified of match via an Energy Exchange Notification.
 - ii. Transmission reservations and e-Tags shall be automatically created by the Southeast EEM System based on the matches within the time frame noted above. All e-Tags will be sent to the applicable Participating Transmission Provider(s), Balancing Authority(ies) and matched Participants. Consistent with the discretion afforded to Participating Transmission Providers and Balancing Authorities in the NAESB business practices, each participating Balancing Authority within the Territory agrees that it will not reject an e-Tag automatically created by the Southeast EEM System on the basis that it was submitted less than twenty (20) minutes prior to the Delivery Interval but at least ten (10) minutes prior to the Delivery Interval.
 - iii. The Southeast EEM System will generate and provide sufficient information to Participating Transmission Providers to validate and collect payment for Losses from applicable Buyers and Sellers for each Energy Exchange.
 - iv. Appropriate OASIS information will be provided to the relevant Participating Transmission Service Providers.
9. The contractual “point of sale” of an Energy Exchange will be at the Buyer’s Balancing Authority border for a transaction delivered out of or thru one or more Balancing Authorities. For an Energy Exchange that stays within one Balancing Authority (Source and Sink in same Balancing Authority), the “point of sale” will be at the bus of the Seller’s Source. For an Energy Exchange fully delivered to a Buyer’s Balancing Authority border, the Participant acting as the Seller will be the responsible party for the transmission service to deliver the Non-Firm Energy to the “point of sale” and the Buyer will be responsible for the transmission service required to

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sink the Non-Firm Energy. For an Energy Exchange that stays within one Balancing Authority, the Buyer will be the responsible party for the transmission service required to sink the Non-Firm Energy. For avoidance of doubt, Non-Firm Energy Exchange Transmission Service must be used for the entire Contract Path from Source to Sink for all Energy Exchanges.

V. SOUTHEAST EEM ENERGY EXCHANGE REPORTS.

The Southeast EEM Administrator and the Company System Administrators shall create and maintain the reports concerning Energy Exchanges as required by the Operating Committee. The reports that are provided by the System Administrators shall include, but need not be limited to, the following:

- A. Public Monthly Informational Report.** This report shall be generated by the Southeast EEM Administrator and posted to the Southeast EEM website on or before midnight of the fifth Business Day of the following month and shall include the following information from the prior month:
1. Minimum, maximum, and average match prices;
 2. Amount of Non-Firm Energy offered and sold as well as bid and purchased over all Delivery Intervals;
 3. Amount of Non-Firm Energy that flowed once matched as an Energy Exchange;
 4. Total number of Energy Exchanges;
 5. Total benefit to be calculated in accordance with Section IV.C.2;
 6. Minimum, maximum, and average MW Energy Exchange amount; and
 7. Energy Exchanges made but not executed.
- B. Public Daily Informational Report.** This report shall be generated by the Southeast EEM Administrator and posted to the Southeast EEM website by 6:00 A.M. CPT and shall include the following aggregated information from the prior day:
1. Total number of Bids and Offers during each Clock Hour of the prior day;
 2. Amount of Non-Firm Energy offered and sold as well as bid and purchased during each Clock Hour of the prior day;
 3. Number of Energy Exchanges executed for each Clock Hour of the prior day;

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4. Total number of Participants who submitted Bids for each Clock Hour of the prior day;
 5. Total number of Participants who submitted Offers for each Clock Hour of the prior day; and
 6. Weighted average match price per Clock Hour.
- C. **Public Hourly Informational Report.** This report shall be generated by the Southeast EEM Administrator and posted to the Southeast EEM website fifteen (15) minutes after the applicable Clock Hour and shall include the following aggregated information from the applicable Clock Hour:
1. Total number of Bids and Offers during that Clock Hour;
 2. Amount of Non-Firm Energy offered and sold as well as bid and purchased during that Clock Hour;
 3. Number of Energy Exchanges executed for that Clock Hour;
 4. Total number of Participants who submitted Bids during that Clock Hour; and
 5. Total number of Participants who submitted Offers during that Clock Hour.

VI. AUDITING AND DATA ADMINISTRATION.

- A. **Archiving of Data.** All Southeast EEM System input data necessary to recreate and audit any Delivery Interval, and all Southeast EEM System output data for each Delivery Interval, shall be archived such that at least the three prior months of data can be retrieved in real time. Five (5) years of data shall be archived off-line. Participants may request access to their own data and it shall be made available upon request within 24 hours. Data older than five (5) years shall be deleted at the end of each month on a rolling basis.
- B. **Access to Southeast EEM System Energy Exchange Data.**
1. The Southeast EEM Administrator shall have access, via system software, to the results of the matching process for any Delivery Interval of on-line history. The data to which the System Administrators have access shall include raw Participant data, matched output data, and intermediate results of the algorithm. To be clear, the Southeast EEM Administrator shall be able to run all of the reports available in the system and view the data for all Participants.
 2. Each Participant will be required to identify an administrator that is authorized by the Participant to run and review all of the reports available in the Southeast EEM System that are redacted to ~~at~~only show the

EXECUTION PROPOSED REVISIONS TO EXECUTED VERSION

information related to the Participant it represents (the “Company System Administrator”). The Southeast EEM System will provide each Company System Administrator with the right to grant access to certain reports and related data to identified delegates within the Participant’s organization. Each Company System Administrator (and any delegate identified by the Company System Administrator) shall be able to run all of the reports available in the system but receive only the data that belong to the Participant it represents.

- C. Additional Southeast EEM Administrator Functions.** Subject to the limitations set forth in subsection (B) above, the Southeast EEM Administrator shall employ the system software to perform the following functions:

1. Oversee the matching process;
2. Maintain model data and Southeast EEM System parameters; and
3. View Participant usage statistics and generate Participant benefit reports.

- D. Auditing Process.** Auditing functions will be performed by the Market Auditor at the direction of the Membership Board. The Market Auditor will report its conclusions, and provide any supporting data in the event that problems are identified to the Membership Board on an after-the-fact, periodic basis. ~~The Membership Board will maintain sole responsibility for determining whether to share the information any further. This will be accomplished through the Website posting process identified in Section VI.D.6, thereby ensuring that access to these reports by the Members and others will be simultaneous, subject to any applicable confidentiality restrictions.~~ Auditing functions include the following:

1. Verify that the Southeast EEM System operates in accordance with the Southeast EEM Rules, including the determination and application of Bids, Offers, constraints, matched settlements, OASIS reservations, and e-tags.
2. Ensure that Energy Exchange data is available to the applicable Participants in accordance with the Southeast EEM Rules.
3. Report to the Membership Board any concerns regarding the reliability and accuracy of the Southeast EEM System process and results including any instance of operational problems or anomalies with the functioning of the Southeast EEM System.
4. Provide evaluation regarding the proper ~~function~~functioning of the Southeast EEM System, ~~and—~~including verifying the effectiveness~~compliance~~ of ~~any~~the Southeast EEM System ~~specific controls~~with the Participant-Specific Constraints and Generally Applicable Constraints identified in ~~place~~Section IV.B.6 related to the operation of the Southeast EEM System.

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5. Refer~~Report~~ any complaints received to the Membership Board, and investigate and report further at the Membership Board's direction.
6. The~~Respond~~ to written questions from Participants, FERC, NERC, applicable state commissions in the region, Tennessee Valley Authority's Inspector General, and any other applicable regulators that oversee the electric operations of any Member regarding the integrity of the matching process. Such information requests and Market Auditor responses (which will be provided, where reasonable, within 30 days), along with any reports generated by the Market Auditor in accordance with these Market Rules, will be provided to the Administrator, which will post such documents to the Southeast EEM website. To the extent that such information (whether the question or the response or other document) is Transmission Function Information or Commercially Sensitive Information, it will be posted to a confidential section of the Southeast EEM website, and access by Participants shall be governed pursuant to the confidentiality provision of the Participant Agreement. Access by regulators shall be subject to a standing request that such regulators treat such information with the highest degree of confidentiality permissible under law applicable to each such regulator. "Transmission Function Information" shall have the meaning provided at 18 C.F.R. Sections 358.3(j), or the successor to that provision. Commercially Sensitive Information shall include any information that could confer a competitive advantage on the recipient, or whose disclosure could harm or commercially disadvantage an entity associated with the information, including, but not limited to, any Participant-specific information, such as the bid and offer information provided to FERC and the Market Auditor every seven days. The entity providing the information for the Administrator to post to the Website (i.e., typically the Market Auditor) shall be responsible for determining which information posted to the Website should be placed in the confidential section of the Website, and shall resolve any uncertainty in favor of treating the information confidentially. In no event shall the Market Auditor or Administrator cause Commercially Sensitive Information that is identifiable to a particular Participant or Critical Energy/Electric Infrastructure Information to be posted to the Southeast EEM Website. Southeast EEM Members shall have access to information posted on the website at the same time and subject to the same restrictions as other Participants. To the extent that the Market Auditor is required to provide a report or document to the Membership Board, it will do so by notifying the Membership Board when the report or document has been posted to the website.
- 6.7. Except as otherwise specified herein, the Membership Board will be responsible for defining the time interval(s) for the auditing function to be performed and for the Auditor to report back to the governing body. Such interval(s) will be published in the Southeast EEM Manuals.

E. Data Administration.

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1. Parameters. The Southeast EEM Administrator shall ~~set and~~ maintain the following Southeast EEM System configuration parameters, which shall be posted for access by all Members:
 - a. The matching process start time for each Clock Hour;
 - b. The number of minutes before the start of the matching process when no additional Bids and Offers will be accepted;
 - c. The number of minutes before the start of the matching process by which the processing of any in-transit Bids and Offers must be completed;
 - d. The addition or deletion of Participants;
 - e. The addition or deletion of a Company System Administrator for each Participant;
 - f. Manage, store, and safeguard data (e.g., Bid, Offer, match, and Participant Information) to ensure appropriate levels of confidentiality and records retention;
 - g. Grant access to the data on the Southeast EEM System as appropriate;
 - h. Supply data to Participants involved in Energy Exchanges to complete the applicable transaction, including (but not limited to):
 - i. Participant identification of the Buyer and the Seller;
 - ii. Balancing Authority Area identifications for the MWh quoted by the Buyer and the Seller;
 - iii. e-Tag number;
 - iv. Transaction quantity in MW/MWh, including the MWh out of the Source area and the MWh into the Sink area;
 - v. Information specifically related to an Energy Exchange (not price of the other side of the match as may reveal sensitive transmission information);
 - vi. Energy Exchange Price;
 - vii. Benefit for the Buyer and the Seller in total dollars and \$/MWh; and
 - viii. Energy Exchanges not executed.

EXECUTION PROPOSED REVISIONS TO EXECUTED VERSION

- i. Supply needed information/data for auditing functions to ensure that the Southeast EEM System is being properly administered.

EXECUTION PROPOSED REVISIONS TO EXECUTED VERSION**APPENDIX C****SOUTHEAST EEM AGENT SCOPE**

The Southeast EEM Agent Scope shall be limited to the following:

- a. Subject to paragraph (b) below, the Southeast EEM Agent shall execute contracts with third parties solely as the agent for and on behalf of the Members and not in the Southeast EEM Agent's own name or for its own account.
- b. The Southeast EEM Agent shall be empowered to execute contracts only after being given specific written or electronic authorization to do so by the Membership Board, or in the case of minor or unsubstantial contracts, the Operating Committee, in either case as delivered to the Southeast EEM Agent by the Membership Board or the Operating Committee, as applicable.
- c. The Southeast EEM Agent shall be authorized to execute amendments to contracts entered into on behalf of the Members, provided that such amendment is authorized by the Membership Board or, in the case of minor or unsubstantial contracts, by the Operating Committee, in either case as delivered to the Southeast EEM Agent by the Membership Board or the Operating Committee, as applicable.
- d. For convenience, the Southeast EEM Agent shall be authorized to accept notices under the contracts that it executes on behalf of the Members.
- e. The Southeast EEM Agent shall **not** be involved in the billing process under the vendor contracts. Third-party vendors will bill the Members directly for their proportionate share of the costs under the contracts executed by the Southeast EEM Agent on behalf of the Members.
- f. If certain vendors are unwilling to bill Members directly, the Membership Board shall develop an alternative billing arrangement, such as using a third-party billing agent.
- g. The Southeast EEM Agent shall **not** have any special role in, or authority over, the operation or administration of the Southeast EEM System. The vendor contracts shall specify that the day-to-day contact for such vendor shall be the Operating Committee, not the Southeast EEM Agent.
- h. The Southeast EEM Agent shall not be exposed to incremental liability for actions taken within the Southeast EEM Agent Scope.

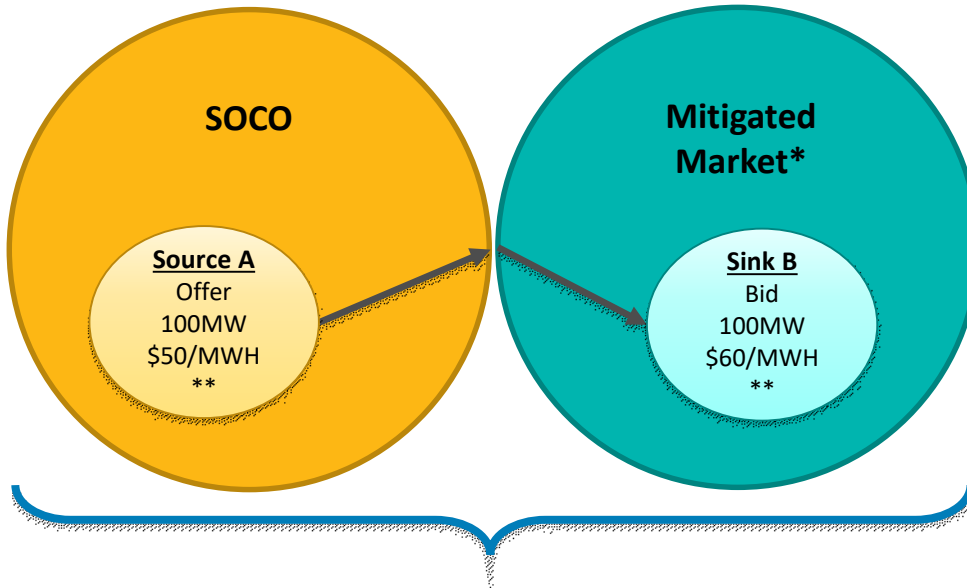
EXECUTION PROPOSED REVISIONS TO EXECUTED VERSION**APPENDIX D****INFORMATION PROVIDED TO FERC AND MARKET AUDITOR**

- a. Participant, bid/offer price, quantity, location, and All or Nothing information for each bid and offer in each interval;
- b. Specific parameter data for each Participant for all 15-minute intervals, including counterparties the Participant has elected to not be matched with for an interval and Balancing areas for which the Participant has elected not to be matched with a counterparty during an interval;
- c. Enabling Agreement counterparties for each Participant;
- d. The Network Map, updated as necessary;
- e. For each interval, ATC made available to the Southeast EEM by each Participating Transmission Provider, as well as the amounts of such ATC that are not used by the Southeast EEM;
- f. Price caps, as relevant for each Participant;
- g. Matched bids and offers with their associated scheduled MWh quantity and Energy Exchange Price;
- h. Implied marginal benefit information for each ATC limit for each interval, to the extent such information can reasonably be produced by the Southeast EEM Algorithm; and
- i. Descriptive information, such as market participant names and unique identifiers.

Attachment B

Simplified Sample Transaction

Simplified Sample Transaction



*Mitigated markets are the markets identified in the SoCo MBR tariff.

In a market where SoCo is currently mitigated the mitigated price cap under the MBR tariff applies

For example purposes only, cost-based cap referenced in MBR tariff cap is \$52/MWH

**Note that Southern's settlement price is capped at the mitigated price cap in the areas where it applies.

***Losses were not included for purposes of this example

"Energy Exchange Price" is the price that is ultimately used in the transaction, in \$/MWh, calculated by the Southeast EEM Algorithm for a specific Energy Exchange. This price will be subject to the existing Commission-approved mitigation and will not exceed the maximum Energy Exchange Price.

The **"match price"** is the price that results from applying the "split the savings" process. If it is higher than the "maximum Energy Exchange Price", the process will automatically apply the "maximum Energy Exchange Price" for the seller to determine the Energy Exchange Price used to settle the match.

The **"maximum Energy Exchange Price"** is a price submitted by a Participant that will be no more than the mitigated price cap applicable under the seller's MBR tariff. This is the cost-based cap associated with the anticipated variable cost.

Maximum Exchange Price Example:

Maximum Energy Exchange Price = \$52.00

Match Price = \$55.00

Energy Exchange Price = \$52.00

So the transaction will clear at \$52.00

Attachment C

List of Existing Enabling Agreements

Attachment C
List of Existing Enabling Agreements
Page 1 of 6

- ACES
- AEP Energy Partners
- Alabama Municipal Electric Authority
- Alcoa Corporation
- Alcoa Power Generating Company
- Alcoa Power Marketing, LLC
- Alliant Energy
- AMEA
- Ameren Energy Marketing Company
- Ameren Energy, Inc.
- Ameren-UE
- American Electric Power Service Corporation
- ArcLight Energy Marketing, LLC
- Arkansas Electric Cooperative Corporation
- Associated Electric Cooperative Inc.
- Basin Electric Power Cooperative
- Big Rivers Electric Corporation
- Black Oak Capital, LLC
- BNP Paribas Energy Trading GP
- BP Energy Company
- Brookfield Energy Marketing, LP
- Brookfield Renewable Trading and Marketing LP
- Calpine Energy Services, LP
- Carolina Power Partners
- Central Virginia Electric Cooperative
- Citigroup Energy, Inc.
- City of Carthage Water & Light
- City of Columbia, MO
- City of Fayetteville
- City of Gainesville
- City of Independence, Missouri
- City of Jacksonville
- City of Jonesboro, Arkansas
- City of Lafayette
- City of Paragould, Arkansas
- City of Sikeston - Bd. of Muni. Util.
- City of Tallahassee
- City Utilities of Springfield, Missouri
- CLECO Corporation
- Cobb Electric Membership Corporation
- Cobb EMC
- ConocoPhillips Company

Attachment C
List of Existing Enabling Agreements
Page 2 of 6

- Constellation Energy
- Constellation Energy Commodities
- Constellation Energy Services, Inc.
- Cooperative Energy Incorporated
- Cube Yadkin Generation
- Dayton Power & Light
- Dominion Energy Marketing
- Dominion Energy South Carolina, Inc.
- DTE Energy Trading, Inc.
- Duke Energy Corporation
- Duke Energy Carolinas, LLC
- Duke Energy Florida, LLC
- Duke Energy Ohio
- Duke Energy Progress, LLC
- Dynasty Power Inc.
- Dynegy Power Marketing
- Eagle Energy Partners I, L.P.
- East Kentucky Power Cooperative, Inc.
- EDF Energy
- EDF Trading North America, LLC
- Empire District Electric Company
- Endure Energy, L.L.C.
- Engie Energy Marketing NA, Inc.
- Entergy Services, Inc.
- Entergy Services, Inc.
- ETC Endure Energy L.L.C.
- Evergy
- Evergy Kansas Central, Inc.
- Evergy Metro, Inc.
- Exelon Corp
- Exelon Energy
- Exelon Generating LLC (formley Constellation Energy Commodities Group, Inc.)
- Exelon Generation Company, LLC
- FC Stone
- Florida Power and Light
- Florida Power Corporation (Duke Energy Corporation)
- GDF Suez Energy
- GenOn Energy
- Grand River Dam Authority
- Heartland Consumers Power District
- Hoosier Energy Rural Electric Cooperative, Inc.
- Illinois Municipal Electric Agency

- Illinois Power Marketing Company
- Indiana Municipal Power Agency
- J. Aron & Company LLC
- J.P. Morgan Ventures Energy Corporation
- Jacksonville Electric Authority
- JP Morgan Ventures Energy Corporation
- Kansas City Board of Public Utilities
- Kentucky Municipal Energy Agency
- Kentucky Utilities Company
- Lincoln Electric System
- Louisiana Energy & Power Authority
- Louisville Gas and Electric Company
- Luminant Energy Company LLC
- Macquarie Energy LLC
- Macquarie Group
- Magnitude 7 Metals
- Mercuria Energy America Inc
- Mercuria Energy America, LLC
- Merrill Lynch & Co., Inc.
- Merrill Lynch Commodities, Inc.
- MidAmerican Energy Company
- Midcontinent Independent System Operator, Inc.
- Missouri Joint Municipal Electric Utility Commission
- Morgan Stanley Capital Group, Inc.
- Municipal Electric Authority of Georgia
- Municipal Energy Agency of Mississippi (MEAM)
- Municipal Energy Agency of Nebraska
- Nebraska Public Power District
- NextEra Energy Marketing, LLC
- NextEra Energy, Inc.
- Nextera Power Marketing, LLC
- Noble Americas Gas & Power Corporation
- North Carolina Electric Membership Corporation
- North Carolina Municipal Power Agency Number 1
- Northern Indiana Public Service Company LLC
- NRG Energy
- NRG Power Marketing LLC
- NTE Carolinas, LLC
- Occidental Power Services, Inc.
- Oglethorpe Power Corporation
- Ohio Valley Electric Corporation
- Oklahoma Gas & Electric Services

Attachment C
List of Existing Enabling Agreements
Page 4 of 6

- Oklahoma Municipal Power Authority
- Old Dominion Electric Cooperative
- Omaha Public Power District
- OPC (marketing by ACES)
- Orlando Utilities Commission
- Otter Tail Power Wholesale Marketing
- Owensboro Municipal Utilities
- Peninsula Power, LLC
- Piedmont Municipal Power Agency
- PJM Interconnection, L.L.C.
- PJM Settlement, Inc.
- Powerex
- PowerSouth Energy Cooperative
- PPL Energy Plus
- Progress Energy Carolinas Inc, Duke Energy Corporation
- PSEG Energy Resources & Trade LLC
- Rainbow Energy Marketing Corporation
- RDAF Energy Solutions
- Santee Cooper
- Seminole Electric Cooperative
- Seminole Electric Corp
- Sempra Energy Trading Corp.
- SEPA (off-system)
- SEPA (on-system)
- Shell Energy North America (US), L.P.
- Snapping Shoals Electric Membership Corporation
- South Carolina Electric & Gas Company
- South Carolina Public Service Authority
- Southeastern Power Administration
- Southern Company
- Southern Company Services, Inc.
- Southern Illinois Power Cooperative
- Southern Power
- Southern Power Company
- Southwest Power Pool
- Southwestern Power Administration
- Southwestern Public Service Company
- Sunflower Electric Power Corporation
- Tampa Electric Company
- Tenaska Power Services Company
- Tennessee Valley Authority
- The Energy Authority, Inc.

- TransAlta Energy Marketing (U.S.) Inc.
- Twin Eagle
- Tyr Energy, LLC
- Union Electric Company
- Virginia Electric and Power Company
- Wabash Valley Power Association, Inc.
- Washington Electric Membership
- Westar Energy, Inc.
- Western Area Power Administration
- Western Farmers Electric Cooperative
- White Pine Solar, LLC
- Wisconsin Electric Power Company
- WSPP members

Attachment D

Supplemental Affidavit of Susan L. Pope

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

<i>Alabama Power Company</i>	)	Docket No. ER21-1111-000
<i>Dominion Energy South Carolina, Inc.</i>	)	Docket No. ER21-1112-000
<i>Louisville Gas and Electric Company</i>	)	Docket No. ER21-1114-000
<i>Duke Energy Progress, LLC</i>	)	Docket No. ER21-1115-000
<i>Duke Energy Carolinas, LLC</i>)	
<i>Duke Energy Carolinas, LLC</i>	)	Docket No. ER21-1116-000
<i>Duke Energy Progress, LLC</i>	)	Docket No. ER21-1117-000
<i>Louisville Gas and Electric Company</i>	)	Docket No. ER21-1118-000
<i>Georgia Power Company</i>	)	Docket No. ER21-1119-000
<i>Kentucky Utilities Company</i>	)	Docket No. ER21-1120-000
<i>Mississippi Power Company</i>	)	Docket No. ER21-1121-000
<i>Alabama Power Company</i>	)	Docket No. ER21-1125-000
<i>Dominion Energy South Carolina, Inc.</i>	)	Docket No. ER21-1128-000
		(Not Consolidated)

**SUPPLEMENTAL AFFIDAVIT
OF
SUSAN L. POPE**

**ON BEHALF OF
THE MEMBERS OF THE SOUTHEAST ENERGY EXCHANGE MARKET**

June 7, 2021

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SUPPLEMENTAL AFFIDAVIT OF SUSAN L. POPE

I. INTRODUCTION

1. In this Affidavit I provide information to facilitate response to certain questions posed by the Federal Energy Regulatory Commission (“**Commission**”) in its May 4, 2021 letter (“**Deficiency Letter**”) to Members of the Southeast Energy Exchange Market (“**Members**”) in Docket Nos. ER21-1111-000, et al. I address questions related to my February 12, 2021 Affidavit (“**February Affidavit**”) in this proceeding and clarify certain aspects of the Southeast Energy Exchange Market (“**Southeast EEM**”) Proposal (“**Proposal**”).

A. Assignment by Counsel

2. Counsel for the filing Members has asked me to respond to three questions about the Southeast EEM Proposal. The Commission does not directly ask these questions in the Deficiency Letter but responding to them provides pertinent detail about how the Southeast EEM will operate. This additional information is directly relevant to the Members’ responses to questions 3, 4, and 6 of the Deficiency Letter and aids in understanding their responses to other Commission questions.
 - **Is the Southeast EEM a balancing market?** What are the key differences between the Southeast EEM and typical energy balancing markets? In particular, how are real-time balancing services provided and priced in the Southeast EEM versus balancing markets? Do these differences increase or decrease the potential for the exercise of market power or the potential for market manipulation in the Southeast EEM in comparison with typical balancing markets?
 - **Could the Southeast EEM fully use all residual Available Transmission Capacity (“ATC”) on one or more of the ATC limits in the Southeast EEM Territory (“Territory”)?** If and when this occurs, could it create a potential for the exercise of market power or an opportunity for market manipulation?
 - **Could a Southeast EEM Participant (“Participant”) profit by intentionally failing to physically consummate bilateral transaction matches arranged by the Southeast EEM?** Could a Participant exercise market power or manipulate the market by intentionally failing to consummate one or more of its Energy Exchange matches?

B. Assumptions

3. In responding to the above questions, I have relied on the same assumptions and information about the Proposal that I relied on in my February Affidavit. For reference, I repeat these assumptions with minor updates to include changes introduced in the Members’ response

to the Deficiency Letter (“**Member Response**”).¹

4. *First*, I assume that the implementation of the Southeast EEM will adhere to the market rules as presented in Appendix B (“**Market Rules**”) to the Southeast Energy Exchange Market Agreement (“**Southeast EEM Agreement**”), inclusive of all changes to the Market Rules proposed in the Member Response, and in Attachment C to the Southeast EEM Agreement, the Affidavit of Mr. McGeeney and Mr. Sellers (“**Operations Affidavit**”), *i.e.*, the implementation will not include any material additions to or deletions from the market rules explained in the Market Rules and the Operations Affidavit.
5. *Second*, I assume that all bilateral transactions arranged through the Southeast EEM will occur under Members’ and Participants’ existing Commission-approved Market Based Rate (“**MBR**”) authority and existing Open Access Transmission Tariffs (“**OATTs**”) for jurisdictional entities. The Member OATTs will be revised to include Non-Firm Energy Exchange Transmission Service (“**NFEETS**”) per the terms of the Southeast EEM Agreement. Southeast EEM transactions by non-jurisdictional entities will occur under the authority of their existing arrangements for market-based sales and transmission service.²
6. *Third*, I assume that jurisdictional Southeast EEM Participants will use the functionality of the Southeast EEM System to ensure that their participation in the Southeast EEM abides by all market power mitigation measures that the Commission imposes on them. As explained in the Operations Affidavit, Participant offers into the Southeast EEM can include counterparty and geographic restrictions to enable them to abide by market power mitigation measures limiting the parties with whom and the locations at which they may sell at market-based rates. Additionally, the Energy Exchange Prices determined by the Southeast EEM Algorithm, (“**Algorithm**”), will be capped at the level set by any applicable MBR order.
7. *Fourth*, I assume that the software to implement the Southeast EEM platform will maximize the total benefits of the set of Energy Exchanges arranged every 15 minutes with a reasonable degree of consistency. If and when the software implementation requires a rule to resolve ties or ambiguities, I assume that it will use a random number generator.
8. *Fifth*, I assume that the Commission will continue to monitor adherence to the rules, restrictions, and requirements that apply to some Members’ pre-Southeast EEM bilateral trading activity to address the potential for the exercise of horizontal or vertical market power. Likewise, the Commission will continue to have the authority it has today over Participating Transmission Providers’ OATTs and uphold the underlying principles of open

¹ See Response to Deficiency Letter, dated June 7, 2021.

² See Operations Affidavit at P 10.

access and non-discrimination.³

C. Qualifications

9. Please refer to my February Affidavit for a description of my qualifications and a copy of my *curriculum vitae*.

II. SUMMARY OF CONCLUSIONS

10. Based on the assumptions set forth above and the explanations below and in my February Affidavit, I conclude as follows:

- The data the Members will transmit to the Commission weekly, per the changes proposed in this Member Response, will enable the Commission to continuously monitor for attempts to exercise market power and attempts to manipulate Energy Exchange Prices or access to NFEETS. Weekly receipt of data on the implied marginal benefit of ATC limits, if it can be provided, could substantially assist the Commission in monitoring competition in the Southeast EEM.
- The Southeast EEM is not a proposal for a region-wide real-time balancing market similar to the Western EIM. A distinguishing feature of real-time balancing markets is that participating entities are required to settle all of their energy imbalances—whether positive or negative—at the real-time price(s) resulting from the balancing market operation. This is not the case for the Southeast EEM Proposal. Because key elements of the Southeast EEM design fundamentally differ from the design of real-time balancing markets, concerns about horizontal market power and market manipulation specific to real-time balancing markets are very unlikely to apply to the Southeast EEM.
- Participating Transmission Providers are expected to have residual ATC that they will make available for NFEETS and, after the matching process, the scheduled Energy Exchange matches at times will be likely to fully use all of the residual ATC on one or more ATC limits. However, scheduling of residual ATC will not reduce the availability or firmness of any previously arranged OATT transmission service because all such non-NFEETS service will be scheduled prior to when the Southeast EEM operates.⁴ Additionally, when residual ATC is fully scheduled, it will not create congestion with the potential to affect bilateral markets operating in advance of the Southeast EEM. Scheduling of residual ATC will not enable the exercise of market power and, to the

³ 18 C.F.R. Part 1c (2020).

⁴ Paragraph 35 of the Operations Affidavit illustrates the timing of the scheduling of the Southeast EEM NFEETS in comparison with timing of scheduling of non-NFEETS OATT service. It shows, in particular, that e-Tags for non-NFEETS service are completed prior to the operation of the Southeast EEM and the issuance of e-Tags for Southeast EEM matches.

best of my understanding, is very unlikely to provide an opportunity for market manipulation.

- There is no material potential for a Participant to consistently profit by intentionally failing to consummate matches scheduled by the Southeast EEM.

III. DATA TO BE PROVIDED TO THE COMMISSION WEEKLY ENABLES CONTINUOUS MONITORING

11. The data the Members will transmit to the Commission weekly, per the changes proposed in the Member Response, will enable the Commission to monitor for attempts to exercise market power or manipulate the Southeast EEM. This data, in addition to *a priori* assessments of the proposed Market Rules that I have undertaken, provides assurance that this new design for a regional energy exchange is very unlikely to be manipulated, misused, or distorted by unanticipated Participant actions.

A. Data to Be Provided

12. Appendix D of the revised Market Rules provided within the Member Response lists the data Members commit to provide weekly to the Commission. It includes input data the Southeast EEM Algorithm will use to arrange Energy Exchange matches for each 15-minute Delivery Interval and also relevant output data for each Delivery Interval. As stated in Appendix D, the Members will provide:
 - a. Participant, bid/offer price, quantity, location, and All or Nothing information for each bid and offer in each interval;
 - b. Specific parameter data for each Participant for all 15-minute intervals, including counterparties the Participant has elected to not be matched with for an interval and Balancing Areas (“BAs”) for which the Participant has elected not to be matched with a counterparty during an interval;
 - c. Enabling Agreement counterparties for each Participant;
 - d. The Network Map, updated as necessary;
 - e. For each interval, ATC made available to the Southeast EEM by each Participating Transmission Provider, as well as the amounts of such ATC that are not used by the Southeast EEM;
 - f. Price caps, as relevant for each Participant;
 - g. Matched bids and offers with their associated scheduled MWh quantity and Energy Exchange Price;

- h. Implied marginal benefit information for each ATC limit for each interval, to the extent such information can reasonably be produced by the Southeast EEM Algorithm; and
 - i. Descriptive information, such as market participant names and unique identifiers.
- 13. The price caps listed as part “f” above cannot be greater than the maximum Energy Exchange Prices which Participants, subject to mitigation under their MBRs, are permitted to charge for sales to particular buyers or to buyers in particular BAs.
- 14. In Section III.B below I will elaborate on the meaning of the implied marginal benefit of each ATC limit listed as part “h” above.
- 15. Commission Staff could use this information to monitor competition in the Southeast EEM. If the set of matched bids and offers varied, for example, in a somewhat predictable way with gas prices or temperature differences between sub-regions, monitoring could detect significant changes in this pattern as a trigger to instigate more detailed examination of the data.

B. Explanation of Implied Marginal Benefit of ATC Limits

- 16. In my view, the Members’ commitment to provide the Commission with weekly data on the implied marginal benefit of each ATC limit for each Delivery Interval, if the information can reasonably be provided by the Algorithm, could substantially assist the Commission in monitoring for the possible exercise of market power or attempts to manipulate the Southeast EEM. In this section, I explain the meaning of implied marginal benefit, how this information could be useful to the Commission, and why there is uncertainty at this time about whether the information will be produced by the Algorithm.
- 17. The building blocks for understanding the meaning of implied marginal benefit reside in explanation of how the Algorithm will make Energy Exchange matches from Bid Prices and Offer Prices. As proposed, the Southeast EEM will arrange for Energy Exchange matches using data submitted by load (i.e., Bidders) and supply (i.e., Offerors). Loads will submit bids (i.e., Bid Prices) for the maximum they would be willing to pay for energy delivery in a match arranged by the Algorithm. Similarly, suppliers will submit offers (i.e., Offer Prices) for the minimum price they would accept for energy they supply via an arranged match. The benefit of each match arranged by the Algorithm will be the Bid Price of the load, less the Offer Price of the supplier, and less charges for financial losses for the bilateral transaction. Leaving aside losses, the benefit of the match will be the spread between the Bid Price and the Offer Price. Intuitively, it will be the savings from

substituting the supplier's lower cost supply for the load's higher-cost energy resource.⁵

18. The benefit of each arranged match will be split equally between the Bidder and Offeror, as will be the total financial cost of losses, per the equation for split-the-savings pricing applied after the Algorithm has determined matches.⁶ The benefit of a match will be determined when the match is made and subsequently divided equally between buyer and seller via the Energy Exchange Price.
19. Many different sets of matches could be constructed from the pool of load bids and supplier offers submitted for each Delivery Interval. The allowed matches will be limited, to an extent, by a number of constraints described in the Market Rules. Participants could specify, for example, participant-specific constraints, such as that a bid or offer must be matched in full or not at all.⁷ Additionally, the Market Rules will impose constraints applying to all matches, such as a requirement for all matches to yield a positive benefit for both the buyer and the seller.⁸ Finally, the feasible set of matches the Algorithm will assemble from the pool of bids and offers will be constrained by ATC limits. The Algorithm will generate e-Tags to schedule NFEETS on a contract path connecting the seller in each match to the buyer, so there must be sufficient residual transmission capacity on each ATC limit to accommodate all e-Tags generated in a Delivery Interval. Even after considering the constraints described in this paragraph, there will be many different ways the pool of bids and offers in an interval could be feasibly paired into beneficial matches.
20. The Market Rules direct the Algorithm to be designed and implemented to choose the set of matches in each interval that will have the greatest total benefits, considering all of the constraints. The "benefit maximization" approach will enable the Southeast EEM to use residual ATC to maximally benefit the Southeast as a whole. The Algorithm will determine, to the greatest extent reasonably possible, how to match bids and offers to achieve maximal benefits from the residual available ATC. It will schedule additional feasible matches using up this residual ATC as long as there are still benefits to be obtained.
21. At times, the Algorithm will not be able to schedule additional beneficial matches because no residual ATC remains on one or more ATC limits. When this occurs there will be, in principle, a positive implied marginal benefit of residual ATC on each of these limits. The

⁵ The accuracy of this intuitive explanation, in practice, will depend on the strength of the incentive for buyers to submit bids equal to their marginal avoided cost and for suppliers to submit offers equal to their marginal production cost. In my February Affidavit (at P 62), I concluded that "[a]s long as robust competition occurs as expected in the Southeast EEM, I expect market uncertainty to incent rational Participants to bid and offer close to their underlying costs most of the time."

⁶ See February Affidavit at P 39.

⁷ See Operations Affidavit at PP 39 - 42.

⁸ See Market Rules at Section IV.C.6.b and Operations Affidavit at P 38.

benefit of the next 4 MWh match that would have been made if residual ATC on a limit were not exhausted is the implied marginal benefit of the ATC limit.⁹ Implied marginal benefit is, in concept, the spread between the bid and offer price of the next match that would have been made (but could not be made) using capacity on an ATC limit, after subtracting the cost of financial losses. The implied marginal benefit is not what the split-the-savings price would have been for the hypothetical match.

22. In the Algorithm developed for the Southeast EEM, the implied marginal benefit data reported might be defined as described above, as the benefit of the “next match that would be made” if there were additional residual capacity on an ATC limit, or in some other way.¹⁰ Assuming the Southeast EEM software vendor determines a reasonable way to define the implied marginal benefits of ATC limits, the data reported will depend on the Network Map, bids, offers, and all the constraints the Algorithm will consider in determining a final set of matches for an interval. The implied marginal benefit of ATC limits will not depend on Energy Exchange Prices, because prices are calculated after-the-fact from the data produced when the Algorithm has completed the matching process (i.e., from the Energy Exchange matches), whereas the implied marginal benefits will be *part of* the Algorithm solution but possibly difficult at times to pinpoint.

23. When the value of the implied marginal benefit is small, the spread between the bid and offer of additional beneficial matches that could use capacity on an ATC limit would be small. Conversely, if the implied marginal benefit of an ATC limit is high, the benefit of scheduling additional matches across the limit would be high.¹¹ If the implied marginal benefit is zero, the matches in an interval will not have used all of the residual capacity on the ATC limit.

24. Continuous receipt of data each week on the implied marginal benefit of ATC limits could

⁹ Southeast EEM bids, offers, and matches must be made in 4 MWh increments per 15 minute period. The Members adopted this rule so that a 4 MWh match for 15 minutes could, when necessary or convenient, be reported as a 1 MWh match.

¹⁰ If the optimization of benefits did not require a “mixed-integer linear programming concept” (Operations Affidavit at P 36) for the Algorithm, the choice between defining and calculating the implied marginal benefit of an ATC limit based on the “next” or “last” match for the limit, or in some other way, would likely not be required.

The Southeast EEM software vendor will likely need to make choices to determine how the implied marginal benefit of ATC limits will be defined and reported. The software vendor should work with the Members to select a definition of implied marginal benefit that can be implemented in the software, if and when reasonably possible, and an explanation should be provided in the BPMs. The BPMs also should describe, in general, situations in which the implied marginal benefit of an ATC limit cannot be calculated or, if calculated, would not be meaningful because the Algorithm will be a “mixed integer linear programming concept.”

¹¹ This sentence and the one immediately preceding assume the software vendor determines a reasonably sound way to report the implied marginal benefit data.

substantially assist the Commission in monitoring competition in the Southeast EEM. If the implied marginal benefit of an ATC limit were inexplicably and consistently high at particular times or under particular market conditions, it could simply reflect market fundamentals, but certain patterns could also indicate where the Commission might check for the exercise of market power or market manipulation. This situation could trigger analyses of the bid and offer data provided to determine, for example, whether particular bids or offers are consistently driving the high implied marginal benefit of the ATC limit, whether these bids and offers appear likely to be unreasonably disconnected from underlying costs, or whether the bids and offers originate from a small number of Participants.¹²

25. As I have stated, I do not see a potential for the exercise of market power under the Market Rules for Energy Exchange matches. Also, I have not identified *a priori* any ways in which the Southeast EEM might be manipulated. By providing data, if possible, on the implied marginal benefits of ATC Limits, the Members will assist the Commission in continuously monitoring the outcomes of the Southeast EEM.
26. I cannot presume the software programming techniques the Southeast EEM's software vendor will use to solve the Algorithm to determine Energy Exchange matches. The non-linear constraints described above, plus the requirement for all bids and offers to be submitted in 4 MWh increments, will complicate determination of an optimized set of matches and may also complicate reporting of the implied marginal benefit of the ATC limits. My understanding is that the Members will report back to the Commission, when they provide the Commission with advance notice that the Southeast EEM is ready to launch, on whether the software developer has been successful in developing rules for defining and reporting implied marginal benefits and, if not, will provide an explanation.

IV. THE SOUTHEAST EEM IS NOT A BALANCING MARKET¹³

27. The Southeast EEM will match buyers and sellers in bilateral Energy Exchanges every 15-

¹² Additionally, implied marginal benefit data could assist the Commission and Auditor in roughly checking the reasonableness of the Algorithm results. If a seemingly high unmatched bid cannot be paired with an unmatched offer so as to yield a benefit higher than the sum of the implied marginal benefits of the ATC limits on all alternative contract paths connecting the buyer to the seller, the fact that the bid is unmatched generally would be reasonable given the Algorithm solution for the interval.

¹³ With regard to the issues discussed in this Affidavit, the terms "real-time balancing market," "energy imbalance market," "balancing market," "real-time energy market," "real-time market," "regional real-time market," and "regional real-time balancing market," are synonymous. I will use the term "balancing market" throughout.

A key characteristic of balancing markets, for purposes of comparison to the Southeast EEM proposal, is that their schedules implicitly include all imbalances participants have not resolved prior to the when the balancing market is run. Participants cannot choose to resolve these remaining imbalances in another way. Additionally, settlements for balancing market schedules are based on prices calculated from the regionally coordinated bid-based economic dispatch

minutes only for the quantities that the buyers and sellers voluntarily submit to the Southeast EEM, and utilizing the residual ATC available in the Southeast EEM region. These Energy Exchanges will be settled based on split-the-savings prices, which are not market clearing prices. The existing Balancing Authorities in the Southeast EEM Territory will remain responsible for balancing load and generation in real time and Southeast EEM Participating Transmission Providers will charge for imbalance services for point-to-point transmission service according to the terms of their OATTs.

28. There are fundamental differences between the Southeast EEM and balancing markets:

- Balancing markets do not arrange bilateral transaction matches;¹⁴
- Participants in a balancing market are required to settle their imbalances through the market, and based on prices determined from the balancing market;¹⁵ and
- The prices used to settle balancing markets are typically market-clearing prices.

29. These differences between the Southeast EEM Proposal and the market rules of typical balancing markets are critical to understanding why competitive concerns often arising in balancing markets do not extend to the Southeast EEM.

A. Balancing Markets Do Not Arrange for Bilateral Transactions

30. The way the Southeast EEM will operate fundamentally differs from how balancing markets

used to effectuate the balancing market. Most balancing markets elect to use prices intended to “clear” the balancing market.

A second relevant and distinguishing characteristic of balancing markets is that they determine the set point schedules for control area interchange among BAs. *After* the operation of balancing markets, BA’s adjust the output of resources affiliated with the BA (when the Balancing Authority is a vertically integrated utility) or resources designated and generally compensated to provide regulation or ramping services to the BA to offset any subsequent net imbalances within its control area. This balancing function of Balancing Authorities, to maintain set control area interchange schedules with neighboring Balancing Authorities, is a reliability function and has not changed with the introduction of balancing markets. The Southeast EEM is not a Balancing Authority, so does not arrange or maintain set points for control area interchange.

¹⁴ Balancing markets are unable to arrange for new bilateral transactions but typically can accommodate bilateral transactions arranged by a deadline prior to when the balancing market runs.

Non-discrimination in the Southeast EEM is effectuated by scheduling matches under the terms of the Commission-approved Member Transmission Service Provider OATTs. Unlike balancing markets, the Southeast EEM is not intended to be a new mechanism to provide for non-discriminatory transmission service but, rather, to extend the non-discriminatory practices established in the Members’ OATTs.

¹⁵ In the Western EIM, EIM participants that are Balancing Authorities have elected to modify their OATTs to financially settle all imbalances within their control areas at the EIM-determined balancing market prices.

operate. The Southeast EEM provides a new opportunity for voluntary 15-minute bilateral trading in the Southeast EEM Territory. It will use residual ATC (i.e., any transmission capacity on ATC limits remaining after all transactions using OATT service other than NFEETS have been scheduled) to arrange for mutually beneficial Energy Exchanges between a willing buyer and a willing seller. The exchange of energy through the Southeast EEM will be supported by the Members' agreement to offer NFEETS—the lowest priority OATT transmission service—for free and by the implementation of an automated platform to arrange for Energy Exchanges.

31. As I explained in my February Affidavit, the elimination of transmission rate pancaking and the use of automation to arrange for Energy Exchange matches will offer an opportunity for 15-minute bilateral transactions to be scheduled in the Southeast EEM that may not otherwise be economic.¹⁶ The set of Energy Exchanges matched in each interval will be chosen to optimize the benefit of the matches, in total, subject to residual ATC limits and other constraints. The Southeast EEM will enable efficiency gains because residual ATC can be used to allow Southeast entities to substitute lower-cost energy supply sources for higher-cost sources to serve load in the Southeast EEM Territory. Settlement prices for Energy Exchange bilateral transactions will be calculated separately for each match, based on the bid of the matched buyer and the offer of the matched seller.
32. In contrast to the Southeast EEM, the core function of balancing markets is to manage regional energy imbalances efficiently and without discrimination, not to provide a regional platform to efficiently schedule incrementally beneficial bilateral transactions. System operators effectuate real-time balancing markets by running a least-cost dispatch of physical supply and (infrequently) physical load, based on offers and bids, to produce real-time schedules for energy injections and withdrawals at specific locations. These schedules are constrained by the requirements that they balance load and supply in the balancing market region and that the resulting physical power flows on the regional transmission grid do not violate physical transmission constraints (“**security-constrained economic dispatch**”). Assessment of the feasibility of energy injections and withdrawals in balancing markets is based on the physical power flow on the regional transmission grid instead of ATC limits.
33. In a balancing market, there is no “link” between energy injections and withdrawals, as there is in bilateral transactions. Instead, the balancing market ensures that energy injections into the regional market as a whole are balanced against total withdrawals in order to maintain reliability. Injections and withdrawals scheduled in balancing markets are typically settled at balancing market clearing prices, determined so as to be consistent with

¹⁶ See February Affidavit at P 31.

balancing market schedules.¹⁷

B. Balancing Market Participants Must Resolve Real-Time Imbalances in the Balancing Market

34. Participation in the Southeast EEM will be voluntary, with each Participant free to determine how much—if any—energy it is willing to transact in each 15-minute interval. There will be no must-offer requirement, or must-purchase obligation. The incentive to participate will be to incrementally lower the cost of power (for a Bidder) or increase sales revenues (for an Offeror).
35. Participants may bid or offer into the Southeast EEM to attempt to economically address real-time load or generation imbalances identified 15 or more minutes in advance of real time, but there will be no guarantee a match will be made to resolve the imbalance. In my February Affidavit, I explain that Participants will not be able to depend on any bid or offer into the Southeast EEM being matched in any interval, because a match will depend on the availability of residual ATC in the interval and the bids and offers of potential match counterparties and competitors.¹⁸
36. Also, to be clear, the Southeast EEM is not designed to prioritize matches that will resolve Participant imbalances. The Southeast EEM will schedule bilateral Energy Exchanges for the purpose of maximizing aggregate benefits to the region from the use of residual ATC, not to enable load-serving entities to fulfill obligations to provide electricity to end-use loads. Resource adequacy obligations will continue to be the responsibility of Participants according to current rules established by the states or other entities. Participants *may* use the Southeast EEM to attempt to manage imbalances, but are not *required* to do so, nor will they necessarily be successful if they voluntarily bid or offer for this purpose.
37. The Southeast EEM will provide a new alternative for prospectively managing imbalances known 15 minutes before the Delivery Interval, but because matches are not guaranteed, Participants will continue to rely on the same mechanisms for handling imbalances that they use today. They can resolve imbalances by adjusting the injections or withdrawals of their own resources, when possible and allowed under the terms of their OATT service.¹⁹ Participants will also continue to obtain and pay for real-time imbalance service, when needed, subject to the terms of their Transmission Service Provider OATTs. The Southeast EEM will not be a Balancing Authority; it will not perform a centralized economic dispatch

¹⁷ Settlements for real-time balancing market schedules in the U.S. are for the difference between real-time schedules and day-ahead schedules except in the CAISO. In the CAISO the real-time settlement is for the difference between real-time schedules and 15-minute schedules.

¹⁸ See February Affidavit at PP 52, 71, and 82.

¹⁹ This will happen automatically for generation and load affiliated with the BA.

in real time, so it will not be able to provide imbalance service by balancing injections and withdrawals in real time like Balancing Authority.²⁰

38. Unlike the Southeast EEM, entities choosing to participate in a regional balancing market commit to settling their real-time imbalances based on the schedules and prices determined by the operation of the market. Participants are generally allowed to manage imbalances in advance of the balancing market through changes to their schedules. However, in balancing markets there is generally a time at which any further schedule changes are subject to financial settlement as imbalances.²¹ After this time, all remaining imbalances are addressed within the overall balancing market dispatch for the region, which economically adjusts the dispatch set points of bid-in suppliers and loads to maintain the supply/demand balance for the BA as a whole. Participants in balancing markets cannot elect to pay for another type of imbalance service or self-supply imbalances after the cutoff time.
39. In a balancing market, participants commit to financially settle all imbalances (relative to schedules at a defined cut-off time) through the balancing market at the balancing market prices. The Southeast EEM will be entirely different: if a participating utility's load is higher than forecast in real time, it will not automatically be deemed to purchase that energy from the Southeast EEM, nor could it do so. Likewise, if its load is lower than forecast in real-time, it will not and could not automatically be deemed to sell that energy to the Southeast EEM. In a balancing market, in contrast, the utility would be charged or paid the price the balancing market determines for its load imbalance, and the market operator would dispatch all available resources to meet the aggregate BA imbalance needs at least bid-cost.

C. The Prices Used to Settle Balancing Markets Are Typically Market-Clearing Prices

40. Settlement prices in the Southeast EEM are not clearing prices resulting from a region-wide security-constrained economic dispatch as in balancing markets. Energy Exchange Prices will be calculated separately for each Energy Exchange match, based on the bid price of the matched buyer and the offer price of the matched seller.²² The Energy Exchange Price load at a single location pays will be different for each of its matches in a Delivery Interval. Similarly, the Energy Exchange Price a supplier at a particular location is paid for each of its matches in an interval will be different.
41. Southeast EEM split-the-savings Energy Exchange Prices are completely different than the market clearing prices typically used to settle balancing market schedules. With a clearing price design, all load at a location pays the same balancing market price and all supply at a

²⁰ U.S. ISOs, the Western EIM, and the Western EIS perform this Balancing Authority function through their balancing market, i.e., they perform an economic dispatch to balance load and supply.

²¹ The deadlines and practices for bilateral transaction scheduling vary among balancing markets.

²² See February Affidavit at P 39, Equation 1.

location is paid the same price.²³

42. Moreover, if the balancing market settlement prices are locational or zonal, they will systematically differ based on the degree to which injections (or withdrawals) at a location affect energy flows on constrained transmission lines or interfaces. For example, an injection at a location causing a substantial increase in flow on a constrained transmission line would be paid a lower price than an injection causing less flow on the constrained line, and the difference in prices would be directly related to the difference in these flows.
43. Settlement prices in a balancing market are also interrelated by connection to the offers of the marginal suppliers scheduled to balance energy injections and withdrawals in the region in an interval.²⁴ If there are no transmission constraints in the balancing market region, the dispatch of supply will be in merit order and the last supplier scheduled to balance load is the marginal supplier. The balancing market in this case would have the same clearing price at all locations, equal to the offer of the marginal supplier.²⁵ In balancing markets, the number of marginal suppliers increases with increases in the number of transmission constraints limiting the merit-order dispatch. All settlement prices in balancing markets are related to the offer(s) of one or more of these marginal suppliers.
44. Concerns about the exercise of horizontal market power in balancing markets arise largely because of the interrelationships among the clearing prices used for balancing market settlements.²⁶ The exercise of supply-side market power could cause the balancing market to use a marginal supplier with a substantially higher offer price than the supplier that would otherwise have been used.²⁷ When this occurs, the higher marginal offer price could cause an increase in settlement price(s) across the whole region or a sub-region, with the degree of impact on the prices at different locations varying based on the pricing interrelationships described above.
45. The exercise of supply-side market power is profitable in balancing markets when the lost

²³ This statement is intended to include different approaches to determining clearing prices for a balancing market (LMP, zonal, same price at all locations), although there are important differences in how efficiently alternative pricing approaches “clear” the market.

²⁴ The marginal entity could be a load rather than a supplier. For simplicity, I will refer use the term “marginal supplier” herein with the caveat that it is intended to generalize to dispatchable load.

²⁵ For simplicity, this description ignores the effect of marginal losses on settlement prices in balancing markets.

²⁶ The same interrelationships and concerns about the exercise of horizontal market power or manipulation of clearing prices exist, in principle but generally less so in practice, for day-ahead electricity markets designed similarly to the balancing markets described in this Affidavit.

²⁷ Analogous scenarios could be described for the possible exercise of buyer-side market power to decrease prices in balancing markets. Buyer-side market power is a second type of horizontal market power. For simplicity, in this Affidavit I explain the potential for horizontal market power in balancing markets from the perspective of the supply-side, without providing a parallel explanation for the buy-side.

profits a participant incurs from economically or physically withholding a relatively small quantity of supply are less than the increased profits it receives from the higher settlement prices it causes to be applied to a large quantity (MWh) of its other scheduled injections. Participants might be able to profit in this way when the market structure conditions enable the withholding of a relatively small quantity of supply to cause a material increase in the offer price of one of the marginal suppliers selected to balance the market. Concerns about supply-side market power arise when competition is not sufficient to constrain the ability of a single supplier, or possibly a group of suppliers, from withholding supply so as to materially increase settlement prices.

46. The exercise of supply-side market power in balancing markets typically becomes a possible concern if there is transmission congestion. When there is transmission congestion, sometimes only a small number of competing supply offers can feasibly be scheduled to balance some of the load in the balancing market region. To take an extreme example, if transmission congestion isolates a “load pocket,” only supply within the load pocket can be dispatched to balance the load in the load pocket. Assessment of the potential for supply-side market power in balancing markets focuses on situations in which transmission congestion leads to structural concentration, i.e., leads to competition among only a small number of different suppliers to balance some loads.
47. The profitability of manipulating balancing market prices (as opposed to exercising market power) is also often related to a participant’s ability to change prices at many balancing market settlement locations, or for many transactions, though actions that increase (or decrease) the offer price of a marginal supplier. As an example of fraud, consider the impact of a participant scheduling a large export prior to the balancing market and then purposefully failing check-out with one of the neighboring BAs with which it has scheduled.²⁸ This fraud decreases market prices because supply will be scheduled in advance to serve the fraudulent export and, when the export load does not materialize, balancing market prices will decrease. The perpetrator of this fraud might profit in a number of ways, such as through contracts for related transactions that are more profitable when the balancing market price is low.
48. The supply-side market power concerns and market manipulation concerns I have described for real-time balancing markets do not extend to the Southeast EEM for a number of reasons. Energy Exchange Prices will be calculated separately for each match. They will not be interrelated market clearing prices like balancing market settlement prices. The inability to systematically affect the prices used to settle many megawatt-hours of Southeast EEM transactions by taking losses by withholding a much smaller number of megawatt-hours of energy rules out the possible exercise of horizontal market power in the way I

²⁸ “Check-out” refers to the process by which importing or exporting parties verify that the transaction is acceptable to all relevant Balancing Authorities, and that the information in the transaction’s E-Tag meets various criteria.

describe above.

49. In addition, I have not identified any ways to manipulate the Southeast EEM, other than the scheme addressed by imposing the 3 eligible counterparty requirement.²⁹ Market manipulation schemes that depend on being able to predictably change Energy Exchange schedules or prices by taking relatively small losses on a few transactions do not appear to be possible. As I discuss in my February Affidavit, Energy Exchange matches and prices will typically not be predictable because the Southeast EEM will be a residual market and also because of the use of spilt-the-savings to calculate prices.³⁰
50. Finally, because the Southeast EEM will be a residual market, the potential price impact from the exercise of market power or manipulation of the market is effectively capped at a lower level than the price caps imposed in U.S. balancing markets. Since bidding into the EEM will be voluntary, load will not rationally bid more than the cost of its cheapest alternative source of supply. When a load bid is matched, the total price for its match (including the cost of losses) will not exceed its bid, which means that the price will not exceed the cost of the load's cheapest alternative supply resource (or the estimated cost of its Transmission Service Provider's imbalance service, if this is less).

V. FULL USE OF RESIDUAL ATC IS VERY UNLIKELY TO CAUSE COMPETITIVE CONCERNS

51. The Southeast EEM will be designed to fully use residual ATC to schedule beneficial Energy Exchanges whenever possible. This will be facilitated by the proposal to charge \$0/MWh for NFEETS and to automate the process of pairing buyers and sellers. Since the costs of bidding and offering into the Energy Exchange and effectuating matches will be small, it is reasonable to expect buyers and sellers to bid and offer whenever they see the possibility of a benefit. As I discussed earlier, the Algorithm will continue to schedule feasible transactions using residual ATC until no additional benefits can be attained by matching the remaining unmatched bids and offers.
52. If bids and offers are plentiful, it is likely that Energy Exchange matches will use all of the capacity on one or more ATC limits in at least some intervals. Because the Southeast EEM will seek to use residual ATC to arrange for beneficial trades, even if the benefit of the final trades arranged is small, all of the residual ATC on one or more ATC limits will likely be used, even during the first weeks and months of the Energy Exchange.³¹ If and when all

²⁹ See February Affidavit at PP 77 - 85.

³⁰ See February Affidavit at PP 51 - 52, and 71.

³¹ The Guidehouse Study suggests that the final matches made in the Southeast EEM may have only a small gap between the buyer's bid and the supplier's offer, stating "intra-hour trades are scheduled in the model even if their margin is low, until no further trades are possible due to ATC limits." Southeast EEM Filings, Attachment E-1, Benefits Analysis at at 17.

residual ATC on one or more ATC limits is scheduled, it will indicate that the Southeast EEM Algorithm is functioning as intended, and would not be a cause for concern.

53. Full use of residual ATC will not reduce the availability or firmness of any non-NFEETS OATT transmission service, because all other forms of OATT transmission service must be arranged prior to when the Southeast EEM operates. The ATC available to support Southeast EEM matches will be the residual capacity remaining after accounting for the transmission scheduled for transactions using non-NFEETS types of OATT transmission service.³² For this reason, when granting of NFEETS results in residual ATC becoming fully scheduled, it will not create congestion with the potential to affect bilateral markets operating in advance of the Southeast EEM.
54. The likelihood of the Algorithm scheduling all residual ATC on one or more ATC limits does not alter the conclusion I reach in my February Affidavit about the potential for the exercise of horizontal market power. I stated that “the Southeast EEM is a voluntary, residual market, in effect ruling out the possibility of one or more Participants exercising horizontal market power as defined by the Commission.”³³ This conclusion does not hinge on whether or not Southeast EEM ATC limits will be fully scheduled. The Southeast EEM provides Participants with a new option for scheduling non-firm bilateral transactions, in addition to the alternatives they have today, for which the Commission imposes mitigation to prevent the exercise of market power, if required, in the process of evaluating and approving applications for MBRs. It is unclear how a strictly additive new option for arranging for bilateral transactions could be anything other than pro-competitive. Access to NFEETS is not required to serve load. It simply enables the substitution of lower-cost supply for higher-cost supply to serve load.
55. The likelihood of the Southeast EEM fully scheduling all residual capacity on one or more ATC limits also does not impact my prior conclusions about the potential for market manipulation. Energy Exchange prices will generally be difficult to predict and, therefore, to manipulate, even when residual ATC is fully scheduled, because they are calculated separately for each match and are not interrelated and connected to the offers of marginal suppliers as in a balancing market.
56. For these reasons, concerns about congestion enabling the exercise of horizontal market power or providing an opportunity for market manipulation that may arise in the context of balancing markets do not appear to extend to the scheduling of residual ATC in the Southeast EEM.
57. To remove all doubt, the Members are revising the Market Rules to include a commitment

³² See February Affidavit at P 13.

³³ See February Affidavit at P 71.

to provide the Commission with data to support continuous monitoring to detect potentially anti-competitive actions by Participants in the Southeast EEM. The data transfer will include information about the quantity of unscheduled residual capacity on each ATC limit. Therefore, the Commission can evaluate how the scheduling of all residual capacity on an ATC limit impacts Energy Exchange matches and prices. Also, the data on implied marginal benefits for each ATC limit, if available, will further support assessments of whether or not full scheduling of ATC limits is systematically connected to potentially anti-competitive market outcomes.

VI. MANIPULATION BY INTENTIONALLY NOT CONSUMMATING MATCHES IS VERY UNLIKELY TO OCCUR

58. I have not identified a way for a Participant to predictably or consistently profit from bidding or offering so as to be matched in an Energy Exchange with the intention of not consummating the match. Concerns about manipulating the market by scheduling transactions and then intentionally failing to consummate them that might arise in U.S. balancing markets do not appear to extend to the Southeast EEM.
59. The reason for my conclusion in this regard is the same as the reason, discussed earlier in this Affidavit and in my February Affidavit, why other types of potential manipulations of Southeast EEM prices are very unlikely to be profitable: it does not appear to be possible to sufficiently manipulate the Energy Exchange Price used to settle a sufficient quantity of matches or other transactions to make it profitable to engage in a manipulative scheme that requires taking losses on other matches. This is because the Southeast EEM will be a voluntary, residual, bilateral market in which the settlement price for each individual transaction will be calculated separately. These characteristics of the Southeast EEM differ from typical balancing markets. They mean it will be virtually impossible to manipulate the settlement price at many locations through actions affecting the scheduling of just one supplier (or a few suppliers), and that settlement prices will be capped by the avoided costs of loads bidding into the exchange. These characteristics greatly limit the potential to profit by manipulating prices.
60. For the specific case at hand, the failure to physically consummate transactions would not directly or predictably confer a higher (or lower) price for the perpetrator's other matches or related transactions. The scheduling of the fraudulent trade would not have the potential to ripple through settlement prices as in a real-time balancing market. Thus, it would not lead to a substantial change in the reported weighted average price if the plan were to manipulate this in order to profit on the settlement of related transactions.
61. In addition to schemes intended to manipulate settlement prices, I also considered the potential for participant actions intended to foreclose the matches of competitors. It appears that these might be tried in some circumstances but would be extremely unlikely to be profitable. For example, a supplier might offer below its cost (or, equivalently, offer energy

it does not intend to supply so that it likely ends up paying for imbalances at a higher price than its Energy Exchange match price) to attempt to foreclose a competing supply offer from being matched. In the unusual circumstance in which both suppliers knew they were competing to use exactly the same scarce residual ATC to be matched with buyers, the perpetrator might be able to offer uneconomically so as to prevent its competitor from being matched with a load. However, this would require it to incur losses on each MWh for which it is scheduled rather than the competing supplier. Unless its competitor mistakenly submitted an offer that had to be matched as a whole (e.g., a 100 MWh block offer), there would be no multiplier effect whereby the perpetrator could take losses on a small number of MWh in order to foreclose its competitor from being matched for a much larger number of MWh. Without this type of multiplier effect, intentionally offering so as to attempt to foreclose matches by competing suppliers would be very unlikely to occur.

62. To clarify discussion of unconsummated matches, I would like to explain that it does not appear to be possible to identify *physically* unconsummated Energy Exchange matches. If a supplier with point-to-point transmission service has imbalances, it will pay its Transmission Service Provider's rate for imbalance service. It will not be possible, though, to specifically attribute its imbalances to failure to consummated one or more of its (possibly many) bilateral supply contracts. The only available information will be the total injections of the supplier in comparison to its total scheduled injections. Similarly, a Balancing Authority dispatches its supply, as a whole, to manage imbalances in its BA, so it is not possible to determine the imbalance of any particular BA-affiliated supplier or load, or to associate any imbalance with a particular BA bilateral contract. All deviations of BA-affiliated suppliers from their schedules, BA loads from load forecasts, and imports/exports from control area interchange schedules are pooled together and managed by the Balancing Authority to abide by its control area interchange schedule. For these reasons it will not be possible to identify when a particular NFEETS match is unconsummated except, possibly, in unusual circumstances. However, as I state above, I have not identified a way for a Participant to predictably or consistently profit from bidding or offering so as to be matched in an Energy Exchange with the intention of not consummating the match.
63. To address any remaining concerns about market manipulation, as part of this filing the Members have committed to provide data about inputs to and outputs from the Southeast EEM Algorithm to the Commission, so that it can perform its own assessments.
64. This concludes my affidavit.

VERIFICATION OF SUSAN L. POPE

Pursuant to 18 U.S.C. § 1746 (2020), I state under penalty of perjury that the foregoing affidavit is true and correct to the best of my knowledge, information, and belief.

Executed this 3RD day of June, 2021.

A handwritten signature in blue ink that reads "Susan Pope". The signature is written in a cursive style with a horizontal line underneath it.

Susan L. Pope
FTI Consulting, Inc.
Managing Director

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EXHIBITS

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APPENDIX B	Southeast EEM Market Rules
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SOUTHEAST ENERGY EXCHANGE MARKET AGREEMENT

This SOUTHEAST ENERGY EXCHANGE MARKET AGREEMENT (as the same may be amended from time to time in accordance with the terms hereof, the “Agreement”), by and among each of the entities listed on Exhibit A hereto (each entity, a “Party,” and collectively, the “Parties”), as that exhibit may be amended from time to time in accordance with the terms hereof, is made, entered into and effective this 28th day of December, 2020. Hereinafter, Parties to this Agreement may be referred to individually as a “Member” and collectively as the “Members.”

W I T N E S S E T H

WHEREAS, there is presently no centrally operated electricity market in the southeastern United States and, accordingly, inter-utility electricity transactions presently occur through bilateral transactions;

WHEREAS, Members believe that a voluntary, region-wide, bilateral, automated, intra-hour electric exchange utilizing unreserved transmission capacity of Participating Transmission Providers at a zero-dollar transmission rate will provide value to their customers by creating efficiencies, transparency, and market liquidity;

WHEREAS, Members desire to participate and to permit other entities to participate as Participants in the exchange; and

WHEREAS, the Members believe that the foregoing objectives can be achieved through a joint effort to sponsor and create a common trading platform that facilitates bilateral electricity transactions between and within their respective service territories.

NOW, THEREFORE, the Members, for good and valuable consideration, enter into this Agreement that sets forth their mutual covenants, rights, and obligations for establishing, funding, and participating in the Southeast Energy Exchange Market (defined below).

ARTICLE 1

DEFINITIONS AND RULES OF INTERPRETATION

1.1 Definitions. The following terms shall have the meaning hereinafter specified:

“Additional Member” has the meaning provided to it in Section 3.2.3.

“Affiliate” has the meaning set forth in 18 C.F.R. § 35.36(9), as amended.

“Affirmative Majority Vote” has the meaning set forth in Section 4.1.5(b).

“Affirmative Supermajority Vote” has the meaning set forth in Section 4.1.5(c).

“Alternate Committee Member” has the meaning set forth in Section 5.9(b).

“Alternate MNEL Value” has the meaning set forth in Section 7.3.1(a).

“Alternate Representative” has the meaning set forth in Section 4.1.7(b).

“Annual Budget” has the meaning set forth in Section 7.2.2.

“Annual Budget Determination Date” has the meaning set forth in Section 7.2.2.

“Annual Meeting” has the meaning set forth in Section 4.4.

“Annual Member Meeting” has the meaning set forth in Section 4.5.

“Authorized Action” has the meaning set forth in Section 6.1.

“Balancing Authority” shall have the meaning set forth in the Southeast EEM Market Rules.

“Balancing Authority Area” shall have the meaning set forth in the Southeast EEM Market Rules.

“Bid” shall have the meaning set forth in the Southeast EEM Market Rules.

“Bid Information” shall have the meaning set forth in the Southeast EEM Market Rules.

“Bidder” shall have the meaning set forth in the Southeast EEM Market Rules.

“Business Day” means each weekday, Monday through Friday, excluding NERC holidays.

“Buyer” shall have the meaning set forth in the Southeast EEM Market Rules.

“Chair of the Membership Board” has the meaning set forth in Section 4.3.2.

“Change in Law” has the meaning set forth in Section 8.6.

“Committee Member” has the meaning set forth in Section 5.1.

“Cooperatives” means those electric membership cooperative Members that serve load, and cooperatives that provide generation, transmission and/or system operations services to electric membership cooperatives that serve load, in each case in the Territory.

“Deadlock Issue” has the meaning set forth in Section 5.7.2.

“Delivery Interval” shall have the meaning set forth in the Southeast EEM Market Rules.

“Disaggregated Utility” means multiple entities of a disaggregated generation/transmission/system operations utility system.

“Effective Date” has the meaning set forth in Section 8.4.1.

“Enabling Agreement” means a bilateral agreement for the purchase and sale of Energy that provides for Energy Exchanges between a Seller and a Buyer and that, for Sellers that are Public Utilities and require authorization to engage in sales for resale of electric energy, capacity or ancillary services at market-based rates under Section 205 of the FPA, has been entered into pursuant to such Seller’s market-based rate authority.

“Energy” means electric energy delivered as three-phase alternating current.

“Energy Exchange” means a transaction for the purchase and sale of Non-Firm Energy using the transaction matching, reservation and tagging functions of the Southeast EEM between Participants pursuant to an Enabling Agreement and in conformance with the requirements of the Southeast EEM Market Rules.

“Enrollment Period” has the meaning set forth in Section 3.2.3.

“FERC” means the Federal Energy Regulatory Commission or any successor to its rights and obligations under Part II of the FPA.

“FPA” means the Federal Power Act, as amended.

“Good Utility Practice” shall have the meaning set forth in the Southeast EEM Market Rules.

“Governmental Action Withdrawal Date” has the meaning set forth in Section 8.6.

“Governmental Entity” means any federal, state, county, municipal, local or foreign government or entity or any legislature, agency, bureau, branch, department, division, commission, court, tribunal, magistrate, justice, arbitrator, multi-national organization, quasi-governmental body, or other similar recognized organization or body of any federal, state, county, municipal, local, or foreign government or any enforcement authority or other similar recognized organization or body exercising similar powers or authority, including FERC, any public utility commission or public service commission or similar authority, but excluding in each case, any Member acting in its capacity as a Member hereunder and not otherwise in a governmental capacity.

“Governmental Utility” means any electric utility located in the Territory that is owned, operated or controlled by the United States, or any state or commonwealth included in the Territory, any political subdivision of a state or commonwealth included in the Territory, or any agency, authority, or instrumentality of any one or more of the foregoing, or any corporation which is wholly owned, directly or indirectly, by any one or more of the foregoing.

“Interest Rate” means the lesser of (i) the per annum rate of interest announced from time to time by Citibank, N.A. (or a suitable replacement specified by the Operating Committee) as its “prime rate” for commercial loans effective on the date payment is due as established from time to time by such bank, plus two percent (2%), or (ii) the maximum lawful rate permitted by applicable Law.

“Investor Owned Utilities” means those investor owned utility Members that serve load in the Territory.

“Jurisdictional Member” means a Member that is a Public Utility.

“Law” means any federal, state or local law, statute, act, rule, code, ordinance, decree, treaty, regulation, order, judgment, legally binding announcement, directive or published interpretation thereof, enacted, issued or promulgated by any Governmental Entity.

“Load Serving Entity” has the meaning set forth in the NERC Rules of Procedure, as approved by FERC.

“Market Auditor” means an independent entity engaged by the Southeast EEM Agent to perform the scope of responsibilities identified in Section 10.2 and in the Southeast EEM Market Rules.

“Material Vendor Contract” means an agreement between the Southeast EEM Agent, on behalf of the Members, and any vendor or supplier that, together with all other such agreements with such vendor or supplier and its Affiliates, involves aggregate consideration payable by the Members.

“Member” or “Members” has the meaning set forth in the preamble, except that to the extent any of the Members have not executed this Agreement at the time that it is filed with FERC, such Member may execute this Agreement no later than thirty (30) days after the Effective Date. Thereafter, any entity listed on Exhibit A that has not executed the Agreement may seek to become an Additional Member pursuant to Section 3.2.3.

“Member Net Energy for Load” means, except as modified pursuant to Section 7.3.1, the Net Energy for Load calculated for each Member and submitted in NERC’s business plan and budget filed annually with FERC in accordance with 18 C.F.R. § 39.4(b), as amended. For purposes of Section 4.1.5 and Section 7.2, (i) a Representative’s Member that is an entity part of a Disaggregated Utility, and (ii) any Affiliates of a Representative’s Member, shall in each case be assigned the total Net Energy for Load of the associated entities in such Disaggregated Utility or of such Member Affiliates, as applicable.

“Membership Board” means the membership board established pursuant to Article 4.

“MW” means megawatt or megawatts.

“MWh” means megawatt-hour or megawatt-hours.

“NAESB EIR” shall have the meaning set forth in the Southeast EEM Market Rules.

“NERC” means the North American Electric Reliability Corporation or its successor.

“Net Energy for Load” means net generation of an electric system plus Energy received from others less Energy delivered to others through interchange; it includes system losses but

excludes Energy required for the storage of Energy at energy storage facilities. For purposes of this definition “electric system” means a Load Serving Entity.

“Non-Firm Energy” shall have the meaning set forth to it in the Southeast EEM Market Rules

“Non-Firm Energy Exchange Transmission Service” shall have the meaning set forth in the Southeast EEM Market Rules.

“Non-Firm Energy Exchange Transmission Service Agreement” means an agreement for the provision of Non-Firm Energy Exchange Transmission Service between a Participant and a Participating Transmission Provider, as provided in such Participating Transmission Provider’s Tariff, as any such agreement may be updated from time to time.

“Non-Jurisdictional Member” means a Member that is not a Public Utility.

“OATI webRegistry” shall have the meaning set forth in the Southeast EEM Market Rules.

“Offer” shall have the meaning set forth in the Southeast EEM Market Rules.

“Offer Information” shall have the meaning set forth in the Southeast EEM Market Rules.

“Offer Price” shall have the meaning set forth in the Southeast EEM Market Rules.

“Offeror” shall have the meaning set forth in the Southeast EEM Market Rules.

“Operating Committee” means that committee established pursuant to Article 5.

“Operating Costs” shall mean dues, costs, expenses and other payment obligations assessed pursuant to this Agreement, or other fees or liabilities that may be imposed by the Membership Board or in accordance with the Southeast EEM Market Rules that arise under this Agreement. For the avoidance of doubt, Operating Costs includes fees, costs and expenses incurred by the Southeast EEM Agent in performing its duties hereunder and the cost of employing third party vendors by the Southeast EEM Agent regardless of whether such costs are billed to the Members through the Southeast EEM Agent, the Southeast EEM Administrator, a third party or directly by such vendors.

“Other Court/Governmental Entity Action” has the meaning set forth in Section 8.6.

“Participant” shall have the meaning set forth in the Southeast EEM Market Rules.

“Participant Agreement” has the meaning set forth in Section 3.3.

“Participating Transmission Provider” means a transmission provider that is providing Non-Firm Energy Exchange Transmission Service.

“Popular Vote” has the meaning set forth in Section 4.1.5(a)(i).

“Public Utility” has meaning set forth in Section 201 of the FPA.

“Record Date” means the date upon which FERC accepted the most recent annual Business Plan/Budget, including Net Energy for Load values, filed by NERC pursuant to the requirements of 18 C.F.R. § 39.4, as amended.

“Regulatory Filing” means any filing or submission made with or to a Governmental Entity.

“Related Parties” has the meaning set forth in Section 9.1.

“Reliability Obligations” has the meaning set forth in Section 11.2.

“Representative” has the meaning set forth in Section 4.1.2(a).

“Representative Losses” has the meaning set forth in Section 6.5.

“RUS” means the Rural Utilities Service, or its successor.

“Secretary” has the meaning set forth in Section 4.3.3.

“Sector” means individually and collectively, the Investor Owned Utilities, Cooperatives and Governmental Utilities.

“Seller” shall have the meaning set forth in the Southeast EEM Market Rules.

“SERC” has the meaning set forth in Section 11.2.

“Significant Matters” means (i) any amendment to this Agreement (excluding updates to Exhibit A solely to update notice information pursuant to Section 16.8), including but not limited to the Southeast EEM Market Rules, (ii) the appointment, removal, substitution and replacement of the Southeast EEM Agent and/or the Southeast EEM Administrator and the approval of, and any amendment or extension of, the agreement(s) between the Southeast EEM Agent (on behalf of the Members, including the Southeast EEM Agent Scope) and/or the Southeast EEM Administrator, (iii) the development of, or any material modification to, the Southeast EEM Algorithm or the Southeast EEM System, (iv) the appointment, removal, substitution and replacement of the Market Auditor, and any amendment or extension of the agreement(s) between the Southeast EEM Agent (on behalf of the Members) and the Market Auditor that would modify the scope set forth in Section 10.2.1, (v) any other contract or writing that obligates any Member to pay two hundred thousand dollars (\$200,000) or more in a calendar year in excess of such Member’s allocated share of costs as set forth in the Annual Budget, (vi) the submission of any Regulatory Filing on behalf of the Members, provided that (a) no Member can be compelled to join any Regulatory Filing, and (b) no Member can be compelled to take any action that in the reasonable view of such Member would jeopardize its jurisdictional status, (vii) the sale of all or substantially all of the property held by the Southeast EEM Agent (if any) for the benefit of the Southeast EEM System, or (viii) pursuant to Section 4.2.2, the (A) suspension of a Member’s voting rights, (B) removal of a Member from any committee appointment, and (C) suspension of any Member’s access to the Southeast EEM System.

“Sink” shall have the meaning set forth in the Southeast EEM Market Rules.

“Source” shall have the meaning set forth in the Southeast EEM Market Rules.

“Southeast EEM Administrator” means that entity hired by the Southeast EEM Agent, on behalf of the Membership Board acting in its capacity on behalf of the Members, to operate the Southeast EEM System from day to day.

“Southeast EEM Administrator Agreement” means that certain agreement by and between the Southeast EEM Administrator and Southeast EEM Agent (in its capacity as agent for the Members), which agreement sets forth the rights and obligations of the Southeast EEM Administrator, as may be amended from time to time in accordance with this Agreement.

“Southeast EEM Agent” means that entity designated by the Membership Board from time to time, which has certain limited rights and responsibilities under this Agreement as expressly set forth in Article 6 below.

“Southeast EEM Agent Scope” has the meaning set forth in Section 6.1.

“Southeast EEM Algorithm” shall have the meaning set forth in the Southeast EEM Market Rules.

“Southeast EEM Commencement Date” means the date upon which the Southeast EEM commences operation.

“Southeast EEM Order” has the meaning set forth in Section 8.6.

“Southeast EEM Manuals” shall have the meaning set forth in the Southeast EEM Market Rules.

“Southeast EEM Market Rules” means the Rules of the Southeast Energy Exchange Market as set forth in Appendix B, as may be amended from time to time pursuant to Section 4.1.9.

“Southeast Energy Exchange Market” or “Southeast EEM” means the Territory-wide, automated, intra-hour electric energy exchange operated by means of the Southeast EEM System and utilizing Non-Firm Energy Exchange Transmission Service pursuant to the terms and conditions of this Agreement.

“Southeast EEM System” means the Southeast EEM Algorithm and any ancillary or supporting software solutions that (i) automatically matches Bids and Offers among Participants for the next Delivery Interval during which the wholesale sale of Non-Firm Energy will be sold by the Seller and the purchase of the Non-Firm Energy will be purchased by the Buyer to serve load in the Territory and (ii) automatically reserves and tags Non-Firm Energy Exchange Transmission Service.

“Southeast EEM System Interface” shall have the meaning set forth in the Southeast EEM Market Rules.

“Stakeholders” means interested state commissions, customers, interested future Southeast EEM Market Members or Participants, public interest groups or any other interested parties.

“Tariff” means a Participating Transmission Provider’s FERC-jurisdictional Open Access Transmission Tariff, non-jurisdictional transmission tariff or non-jurisdictional transmission service guidelines, as applicable.

“Tariff Filings” has the meaning set forth in Section 8.3.

“Territory” means, collectively, the areas served by the Participating Transmission Providers, which as of the Effective Date includes the Balancing Authority Areas operated by the following Balancing Authorities: Associated Electric Cooperative, Inc.; Louisville Gas and Electric Company and Kentucky Utilities Company; Tennessee Valley Authority; Duke Energy Progress (f/k/a Carolina Power and Light Company); Duke Energy Carolinas; South Carolina Electric & Gas Company (n/k/a Dominion Energy South Carolina, Inc.); Santee Cooper; Southern Company; and Power South Energy Cooperative. A current description of the Territory shall be maintained on the Southeast EEM System Interface.

“Voluntary Withdrawal Date” has the meaning set forth in Section 4.2.1.

“Withdrawal Date” means a Voluntary Withdrawal Date or a Governmental Action Withdrawal Date, as applicable.

1.2 Rules of Construction. The capitalized terms listed in this Article 1 shall have the meanings set forth herein whenever the terms appear in this Agreement, whether in the singular or the plural or in the present or past tense. Other terms used in this Agreement but not listed in this Article 1 shall have meanings defined herein or by NERC and the Tariff of each Participating Transmission Provider or, if not so defined, shall have meanings as commonly used in the English language. In the event of a conflict regarding a defined term contained herein and the provisions of a Tariff or NERC rules, the provisions set forth by the applicable Tariff and NERC rules shall take precedence over the defined terms set forth in this Agreement. Words not otherwise defined herein that have well known and generally accepted technical or trade meanings are used herein in accordance with such recognized meanings. In addition, the following rules of interpretation shall apply:

The masculine shall include the feminine and neuter.

References to “Articles,” “Sections,” or “Exhibits” shall be to articles, sections, or exhibits of this Agreement.

References to “days” that are not specifically defined as “Business Days” shall be calendar days, which term includes every day on the calendar including weekends and holidays.

The Exhibits and Appendices attached hereto are incorporated in and are intended to be part of this Agreement; provided, however, that in the event of a conflict between the terms of any Exhibit and the terms of this Agreement, the terms of this Agreement shall take precedence.

This Agreement was negotiated and prepared by all Parties with the advice and participation of counsel. The Parties have agreed to the wording of this Agreement and none of the provisions hereof shall be construed against one Party on the ground that such Party is the author of this Agreement or any part hereof.

Unless expressly provided otherwise in this Agreement, where the Agreement requires the consent, approval, or similar action by a Party, such consent or approval shall not be unreasonably withheld, conditioned or delayed, except in each case that the foregoing shall not apply to any action of a Party under Article 11.

Use of the words “include” or “including” or similar words shall be interpreted as “including but not limited to” or “including, without limitation.”

ARTICLE 2

ESTABLISHMENT OF SOUTHEAST EEM AND ADMINISTRATION

2.1 The Members shall cause the establishment and operation of the Southeast EEM System as set forth herein and administered via the Southeast EEM System Interface or such other protocol as determined by the Membership Board, to facilitate the matching of Sellers with Buyers for the purpose of entering into Energy Exchanges.

2.2 The Southeast EEM Administrator shall operate the Southeast EEM System in accordance with the Southeast EEM Market Rules for the purpose of matching Bids and Offers for the four (4) fifteen (15) minute increments in every hour of every day, including but not limited to Business Days, weekends, and NERC holidays.

2.3 As will be set forth in the Southeast EEM Administrator Agreement, the Southeast EEM Administrator will be primarily responsible for: (i) the on-going functions of the Southeast EEM System and overseeing and/or performing the operation and maintenance services necessary to allow the Southeast EEM System to operate in a reliable manner; (ii) the protection and safeguarding of data submitted to and transmitted from the Southeast EEM System; (iii) limiting access to the Southeast EEM System to Participants; and (iv) maintaining open communications by and among the Southeast EEM Administrator, Participants and the Southeast EEM Agent. For avoidance of doubt, the Membership Board, pursuant to Article 4, may decide to engage one or more third parties to perform the responsibilities of the Southeast EEM Administrator.

2.4 All Bid Information and Offer Information submitted to the Southeast EEM System shall be used by the Southeast EEM Administrator only for operation, maintenance, and the on-going functions of the Southeast EEM System or as requested by the Market Auditor, in each case in accordance with this Agreement, the Southeast EEM Market Rules and applicable Law.

ARTICLE 3

MEMBERSHIP AND PARTICIPATION

3.1 Each Member shall comply with all applicable rules, policies, guidelines, or other standards or requirements set forth in this Agreement and as may otherwise be required by the Membership Board or applicable Law.

3.2 Member Criteria.

3.2.1 To be a Member of the Southeast EEM, an entity must be: (i) a Load Serving Entity located in the Territory; (ii) an association, Cooperative or Governmental Utility that is a Load Serving Entity located in the Territory; or (iii) an association, Cooperative or Governmental Utility created for the purpose of providing service that includes Energy to a Cooperative or governmental Load Serving Entity (or the Load Serving Entities being served by an association, Cooperative or Governmental Utility) located in the Territory. The Tariff of any Member who provides transmission service must contain Non-Firm Energy Exchange Transmission Service provisions for those Energy Exchanges that seek to utilize such Member's transmission system.

3.2.2 If an entity and one or more of its Affiliates are Members, or if multiple entities of a Disaggregated Utility are Members, then only one entity from the group of entities (including any subsidiaries, affiliates or divisions thereof) may have a Representative on the Membership Board, and for the sake of clarity, for all purposes hereunder, such Disaggregated Utility shall be counted as a single Member.

3.2.3 An entity that satisfies the criteria set forth in this Agreement for qualification and admission as a Member, as determined by the Membership Board, shall be eligible to become a Member during the period between July 1st and September 30th of each calendar year (the "Enrollment Period") and may become an additional Member (an "Additional Member") effective as of the first day of the following calendar year in which such entity satisfies the Member criteria set forth in Section 3.2 after executing this Agreement or a Joinder hereto in the form of Exhibit B (the "Joinder") that is countersigned by the Southeast EEM Agent, submitting a duly executed copy to the Secretary and the Southeast EEM Administrator, and upon payment of all applicable fees, dues and contributions as specified or authorized in Article 7. For the avoidance of doubt, an entity seeking to become an Additional Member shall be bound by the terms of this Agreement on the date such entity executes a Joinder that is countersigned by the Southeast EEM Agent.

3.3 Participant Criteria. To become a "Participant," an entity must (i) meet all requirements of being a Participant as set forth in the Southeast EEM Market Rules, and (ii) execute a Participant Agreement in the form attached hereto as Appendix A (the "Participant Agreement") which agreement shall, among other things, contractually bind such entity to comply with the Southeast EEM Market Rules.

3.4 Participating Transmission Providers. Prior to the Southeast EEM Commencement Date, or, for any Participating Transmission Provider offering service after such

commencement date, prior to the date upon which it commences providing Non-Firm Energy Exchange Transmission Service, Participating Transmission Providers shall amend their Tariffs to include the provision of Non-Firm Energy Exchange Transmission Service and, if required by Law, shall obtain acceptance of such provisions from FERC or such other Governmental Entity(ies) having jurisdiction over such Tariff. Participating Transmission Service Providers shall take such other actions and provide such information to the Southeast EEM Administrator as required by the provisions of the Southeast EEM Market Rules or as otherwise reasonably requested by the Southeast EEM Administrator in order to operate the Southeast EEM.

3.5 Member Standard of Conduct. Members shall not provide any non-public transmission function information they receive by virtue of their participation in the Southeast EEM to any of their marketing function employees or provide any undue preference through the sharing of non-public market information they receive by virtue of their participation in the Southeast EEM to their marketing function employees. For purposes of this Section 3.5, marketing function employees of a Member's Affiliates shall be deemed marketing function employees of the Member.

ARTICLE 4

GOVERNANCE

4.1 Membership Board.

4.1.1 Power and Qualification of the Membership Board. Except as set forth in Article 5, all business of the Southeast EEM System and performance of any agreements entered into or otherwise assumed for the benefit of the Members shall be managed under the direction of the Membership Board.

4.1.2 Number of Representatives. Subject to the limitations set forth in Section 3.2.2:

(a) The Membership Board shall consist of one (1) representative for each Member (each, a "Representative").

(b) Each Member shall appoint one (1) Representative to serve until such Representative is replaced by such Member. No Member shall be permitted to have more than one (1) Representative on the Membership Board.

4.1.3 Method of Selecting or Removing Representatives; Vacancies.

(a) A Representative shall be removed or replaced solely at the discretion of the Member that originally appointed such Representative; provided, however, that each Member must at all times have a Representative in place to vote on matters pursuant to Section 4.1.5.

(b) All Representative vacancies, occurring for any reason, shall be filled by the Member who appointed such Representative.

4.1.4 Resignations. A Representative may resign at any time by delivering written notice to the Member who appointed such Representative, the Membership Board and the Southeast EEM Administrator. Such resignation shall take effect when such notice is delivered to the applicable Member, unless the notice specifies a later effective date.

4.1.5 Quorum of Representatives and Action by the Membership Board; Voting.

(a) The votes of the Members shall be held by the Representatives and shall be weighted with each Representative holding:

(i) one (1) vote for each Representative of the Southeast EEM System (the “Popular Vote”); and

(ii) a number of votes (the “Net Energy for Load Vote”) equal to the following calculation:

$$\text{Net Energy for Load Vote} = (\text{MNEL}/\text{ANEL})$$

Where:

MNEL = such Member Net Energy for Load of the Representative’s Member, Affiliates of such Member and those related entities part of a Disaggregated Utility as of the Record Date; and

ANEL = the sum of the Member Net Energy for Load for all Members as of the Record Date.

(b) Subject to Section 4.1.7(c), attendance by a majority of the holders of each of the aggregate Popular Votes and the Net Energy for Load Votes shall constitute a quorum for the transaction of business. Except for Significant Matters, the actions of the Membership Board shall pass by the affirmative vote of the Representatives present at a meeting at which a quorum is present that constitutes (i) more than fifty percent (50%) of the Popular Vote of the Representatives in attendance, and (ii) more than fifty percent (50%) of the Net Energy for Load Vote of the Representatives in attendance; provided that more than fifty percent (50%) of the Net Energy for Load Vote of the Representatives in attendance must be comprised of MNEL from three (3) or more Representatives (conditions (i) and (ii) together, the “Affirmative Majority Vote”).

(c) Subject to Section 4.1.7(c), the actions of the Membership Board to decide on matters related to the Significant Matters shall pass by the affirmative vote of the Representatives present at a meeting at which a quorum is present that constitutes (i) more than fifty percent (50%) of the Popular Vote of the Representatives in attendance and (ii) more than sixty-seven percent (67%) of the Net Energy for Load Vote of the Representatives in attendance; provided that more than sixty-seven percent (67%) of the Net Energy for Load Vote of the Representatives in attendance must be comprised of MNEL from three (3) or more Representatives (conditions (i) and (ii) together, the “Affirmative Supermajority Vote”).

(d) The number of Net Energy for Load Vote of each Representative shall be adjusted each year following the Enrollment Period and prior to the start of the next calendar year to reflect the revision to such proportions resulting from the inclusion of Additional Members (if any) when determining Net Energy for Load Vote for each Representative. Notwithstanding anything to the contrary herein, a Member's right to have its Representative vote or be included in a Representative's Net Energy for Load Vote may be suspended pursuant to Section 4.2.2 during any period in which such Member is delinquent in the payment of any of the dues or costs and expenses allocated to such Member in accordance with Article 7. If a Member's Representative's right to vote has been suspended, the Membership Board shall recalculate the Net Energy for Load Vote of each other Representative excluding such suspended Member's Representative, and each other calculation required by this Section 4.1.5 and Article 4 (including for purposes of determining if there is a quorum and whether there is an Affirmative Majority Vote and Affirmative Supermajority Vote, as applicable) shall be determined excluding such suspended Member's Representative.

4.1.6 Meetings of the Membership Board. Meetings of the Membership Board, unless otherwise provided in this Agreement, may be called (i) by the Chair of the Membership Board, or (ii) by a written consent delivered to the Membership Board that is executed by a majority of the holders of each of the aggregate Popular Votes and the Net Energy for Load Votes. Meetings of the Membership Board, regular or special, may be held at such place within the Territory and upon such notice as may be prescribed by resolution of the Membership Board.

4.1.7 Notice of Meetings of Representatives.

(a) The Chair of the Membership Board, or a Representative directed by the Chair of the Membership Board, shall provide written notice by electronic mail (and shall confirm receipt of such notice by requesting a return receipt) of each Membership Board meeting to all Representatives. Such notice shall state the date, place, hour and purpose or purposes of the meeting, including any Significant Matters to be discussed, and shall be delivered by a nationally recognized overnight courier service to each Representative's usual place of business as recorded in the Secretary's records, or delivered by internet electronic mail (with return internet electronic mail from the recipient acknowledging receipt) sent to the internet electronic mail address for such Representative as recorded in the Secretary's records, not less than seven (7) Business Days prior to the date of the meeting.

(b) Any Member may designate, by submitting a written communication to the Chair of the Membership Board, an alternate to act on behalf of the Representative ("Alternate Representative"). Any reference herein to "Representative" shall be deemed a reference to the Alternate Representative where applicable.

(c) Notwithstanding anything to the contrary set forth herein, the Membership Board shall only vote on matters set forth in a duly delivered notice pursuant to this Section 4.1.7; provided, however that the Membership Board may (i) discuss any and all matters within the scope of the Membership Board's duties at any duly constituted meeting of the Membership Board, and/or (ii) vote upon any matter within the scope of the Membership Board's duties that is not set forth in a duly delivered notice pursuant to this Section 4.1.7 if all

Representatives are present at such meeting of the Membership Board and such matter is approved in accordance with the applicable voting requirements set forth in Section 4.1.5.

4.1.8 Action by Representatives in Lieu of a Meeting; Participation in Meetings by Conference Telephone.

(a) Unless otherwise restricted by this Agreement, any action required or permitted to be taken at a meeting of the Membership Board may be taken without a meeting if the action is evidenced by written consent describing the action taken, signed by all of the Representatives. The written consents and the resolutions thereto by the Representatives shall be filed with the minutes of the Membership Board or filed with the records maintained by the Secretary reflecting the action taken. Action taken under this Section 4.1.8(a) becomes effective when the last Representative signs the consent, unless the consent specifies a different effective date, in which event the action taken is effective as of the date specified therein, provided the consent states the date of execution by each Representative.

(b) The Representatives may participate in any meeting of the Membership Board or of a committee thereof by means of conference telephone or by any means of communication by which all Representatives participating may hear one another during the meeting; all meetings shall be available for participation via such means. A Representative participating in a meeting by such means is deemed to be present in person at the meeting.

4.1.9 Powers Exclusive to the Membership Board.

(a) The following matters are reserved to and may only be addressed by the Membership Board:

- (i) all Significant Matters;
- (ii) the creation and appointment of committees and officers pursuant to Section 4.3;
- (iii) the establishment and amendment of Annual Budgets;
- (iv) the establishment and modification of billing processes for Operating Costs;
- (v) the approval of Southeast EEM Manuals or amendments to Southeast EEM Manuals proposed by the Operating Committee;
- (vi) the approval and establishment of the Southeast EEM Commencement Date following the satisfaction of the conditions set forth in Section 8.4.2;
- (vii) all Deadlock Issues; and
- (viii) the authorization of the Southeast EEM Agent to execute, transfer or terminate Participant Agreements.

(b) Any changes, modifications or amendments to this Agreement agreed to by the Membership Board as provided herein shall be submitted to the required Governmental Entities for approval or acceptance and the orders on such submissions shall be deemed to be and treated as Southeast EEM Orders for purposes of Article 8.

4.2 Removal or Withdrawal of Members. Upon withdrawal, suspension or removal of a Member as set forth below, such Member shall no longer be entitled to exercise the voting power provided under this Agreement, shall be automatically removed from any committee appointments, and shall not be entitled to any other rights as a Member hereunder. Notwithstanding the foregoing, (i) a Member that withdraws or is removed or is suspended by the Membership Board or is no longer a Member during a calendar year shall remain liable for all dues, costs and expenses and other payment obligations as provided in Section 4.2.1 and Section 4.2.4, and (ii) nothing in this Section 4.2 shall act to prevent a Member who is no longer a Member, but is in compliance with all surviving obligations under this Agreement, from becoming a Participant; provided it has met the criteria for a Participant set forth in the Southeast EEM Market Rules. Any Member that withdraws or is removed by the Membership Board or is no longer a Member during a calendar year shall pre-pay all amounts owed by such Member under any Material Vendor Contract that requires the acceleration or prepayment of sums owed in the event of a Member's withdrawal.

4.2.1 Except as set forth in Section 8.5, Section 8.6 and Section 8.7, any Member shall have the right to withdraw from the Southeast EEM System (and a Participating Transmission provider shall take all necessary actions to withdraw the provisions for Non-Firm Energy Exchange Transmission Service from its Tariff) by providing at least (i) thirty (30) days advance written notice to the Membership Board in the case of any Member that is not a Balancing Authority or Participating Transmission Provider and (ii) at least ninety (90) days advance written notice to the Membership Board in the case of any Member that is a Balancing Authority or Participating Transmission Provider (the effective date of such withdrawal, in the case of clause (i) or (ii), as applicable, the "Voluntary Withdrawal Date"). A withdrawing Member shall continue to be liable for (A) all Operating Costs allocated to and owed by the withdrawing Member at the time that it delivered its notice of withdrawal, and (B) its allocated share of future Operating Costs as provided in Section 4.2.4; provided, however, that for the sake of clarity and notwithstanding anything to the contrary herein, the withdrawing Member shall not be responsible for any new Operating Costs first approved and incurred after the date such Member provides written notice of its intent to withdraw, and a withdrawing Member that is also a Participating Transmission Provider shall have no obligation to provide Non-Firm Energy Exchange Transmission Service following the Voluntary Withdrawal Date.

4.2.2 If a Member fails to cure nonpayment of any financial obligations related to the Southeast EEM (including undisputed amounts payable and any other amounts due to any third parties as directed by the Membership Board or pursuant to the Southeast EEM Market Rules) within ten (10) Business Days after receipt of notice by the Operating Committee of such nonpayment, the Membership Board shall have the right in its discretion to: (i) suspend such Member's voting rights, (ii) remove such Member from any committee appointments and (iii) suspend such Member's access to the Southeast EEM System.

4.2.3 The Membership Board may remove a Member for any of the following reasons: (i) failure to comply with this Agreement, (ii) repeated failure to consummate valid Energy Exchanges resulting from Bids or Offers submitted by a Member, arranged by or through the Southeast EEM System in accordance with and subject to the Southeast EEM Market Rules or the Southeast EEM Manuals; and (iii) failure to comply with the standards, rules, procedures or other requirements for participation in the Southeast EEM System, as established and modified from time to time by the Operating Committee.

4.2.4 Any Member that provides notice to withdraw in accordance with Section 4.2.1, Section 8.5, Section 8.6 or Section 8.7 or who is otherwise removed pursuant to Section 4.2.3 shall remain liable for its share of all costs and expenses in accordance with Article 7. If such Member withdraws prior to the Annual Budget Determination Date, such Member shall only be responsible for the costs and expenses allocated to such Member for the year in which such Member withdraws. If such Member withdraws after the Annual Budget Determination Date, such Member shall (i) be responsible for the costs and expenses allocated to such Member pursuant to Section 7.2.2 for the year in which such Member withdraws and the following year for which the Annual Budget has already been determined, and (ii) pre-pay all amounts owed by such Member under any Material Vendor Contract that requires the acceleration or prepayment of sums owed in the event of a Member's withdrawal.

4.3 Committees and Officers.

4.3.1 An Affirmative Majority Vote may appoint such committees or officers as the Membership Board deems necessary or desirable to carry on the business of the Southeast EEM System and may delegate to any such committee or officer such authority to act on behalf of the Membership Board. Each officer shall hold office until its successor is designated by an Affirmative Majority Vote. Any officer may resign at any time upon written notice to the Membership Board. Any officer may be removed by an Affirmative Majority Vote at any time, with or without cause. A vacancy in any officer position shall be filled at the discretion of, and by, an Affirmative Majority Vote.

4.3.2 The Membership Board shall appoint a chair of the Membership Board (the "Chair of the Membership Board") who shall be responsible for calling and overseeing all meetings of the Membership Board, and shall perform such duties and have such additional powers as an Affirmative Majority Vote shall designate.

4.3.3 The Membership Board shall appoint a secretary of the Membership Board (the "Secretary") who shall be responsible for overseeing the maintenance of the books and records of the Membership Board and its Members and shall perform such duties and have such additional powers as an Affirmative Majority Vote shall designate.

4.4 Annual Meeting of Participants and Stakeholders. The Membership Board shall hold an annual meeting of Participants and Stakeholders (the "Annual Meeting") at a time determined by the Membership Board that is reasonably proximate to (either before or after) May 1st of each year. The Southeast EEM Administrator shall provide written notice of the Annual Meeting to all Participants. Such notice shall state the date, place, hour and purpose or purposes of the meeting and shall be delivered by a nationally recognized overnight courier service to each

Participant's usual place of business as recorded in the Southeast EEM Administrator's records, or such notice shall be delivered by internet electronic mail (with return receipt requested for purposes of confirming receipt) sent to the electronic mail address for such Participant as recorded in the Southeast EEM Administrator's records, not less than seven (7) Business Days prior to the date of the Annual Meeting. In addition, the Southeast EEM Administrator shall publicly post the notice of the Annual Meeting, including the date, place and time of such Annual Meeting, on the Southeast EEM System Interface or other public website administered for the Southeast EEM, not less than seven (7) Business Days prior to the date of the Annual Meeting. The Participants and Stakeholders may participate in Annual Meetings by means of conference telephone or by any means of communication by which all Participants and Stakeholders participating may hear one another during the meeting, and all Annual Meetings shall be available for participation via such means.

4.5 Annual Meeting of Members. The Membership Board shall hold an annual meeting attended only by Members (the "Annual Member Meeting") at a time determined by the Membership Board that is reasonably proximate to (either before or after) October 30th of each year. The Secretary shall provide written notice of the Annual Member Meeting to, and confirm actual receipt of such notice by, all Members. Such notice shall state the date, place, hour and purpose or purposes of the meeting and shall be delivered by nationally recognized overnight courier service to each Member's usual place of business as recorded in the Secretary's records, or delivered by internet electronic mail (with return internet electronic mail from the recipient acknowledging receipt) sent to the internet electronic mail address for such Member's Representative as recorded in the Secretary's records, not less than seven (7) Business Days prior to the date of the Annual Member Meeting. The Members may participate in the Annual Member Meeting by means of conference telephone or by any means of communication by which all Members participating may hear one another during the meeting, and all meetings shall be available for participation via such means.

ARTICLE 5

OPERATING COMMITTEE

5.1 Power and Qualification of the Operating Committee. Except with respect to matters specifically reserved to the Membership Board pursuant to Section 4.1.9, the Members hereby agree and hereby appoint the Operating Committee to supervise the day-to-day operation of the Southeast EEM System, with each individual member of the Operating Committee referred to as a "Committee Member". The Operating Committee shall be responsible for developing and maintaining the Southeast EEM Manuals for approval by the Membership Board.

5.2 Number of Committee Members. The Operating Committee shall consist of four (4) Committee Members, as determined by this Agreement.

5.3 Election and Term of Committee Members; Appointment of Chair.

5.3.1 Except as provided in this Agreement, the Members of each Sector shall elect the Committee Members as provided in Section 5.4 at the Annual Member Meeting. The Committee Members shall be allocated by Sectors: (a) the Members comprising Investor-Owned

Utilities shall elect two (2) Committee Members; (b) the Members comprising Cooperatives shall elect one (1) Committee Member; and (c) the Members comprising Governmental Utilities shall elect one (1) Committee Member. Each Committee Member shall be entitled to cast one (1) vote. Notwithstanding the foregoing, no Member shall be permitted to have more than one (1) representative serve on the Operating Committee. Each Committee Member's term shall commence upon election and continue until the earlier of such Committee Member's resignation or the date of the next Annual Member Meeting and the election of such Committee Member's successor.

5.3.2 The properly elected Committee Members shall determine which Committee Member shall be the chair of the Operating Committee by the majority approval of the Committee Members. The chair of the Operating Committee may be removed or replaced with or without cause at any time upon the majority approval of the Committee Members.

5.4 Method of Selecting or Removing Committee Members. Each Sector may establish the method and criteria for electing or appointing the Committee Member(s) of such Sector as set forth in Section 5.3 and for selecting or removing the Committee Member or Committee Members elected or appointed by such Sector and shall provide a copy of such method and criteria to the Southeast EEM Administrator as well as any updates thereto. A Committee Member shall be deemed properly appointed by the applicable Sector upon delivery to the Southeast EEM Administrator a certificate signed by Members of the Sector with sufficient voting power pursuant to such Sector's criteria to elect such Committee Member. A Sector may remove a Committee Member with or without cause by delivering to the Southeast EEM Administrator a certificate signed by Members of the Sector with sufficient voting power to remove the Committee Members. Such Committee Member's removal shall be effective on the later of the date such certificate is delivered to the Southeast EEM Administrator or date specified in the certificate.

5.5 Vacancies. All Committee Member vacancies, occurring for any reason, shall be filled by the Members of the Sector in which the vacancy occurs, in the same manner as a Committee Member is elected pursuant to Section 5.4. A Committee Member elected or appointed to fill a vacancy shall assume office upon delivery to the Southeast EEM Administrator a certificate signed by Members of the Sector with sufficient voting power to fill the vacancy.

5.6 Resignations. A Committee Member may resign at any time by delivering written notice to the Secretary and to the Members of the Sector which elected or appointed such Committee Member. Such resignation shall take effect when such notice is delivered to the Southeast EEM Administrator, unless the notice specifies a later effective date.

5.7 Quorum of Committee Members and Action by the Operating Committee.

5.7.1 Attendance by at least one (1) Committee Member representing each of the three (3) Sectors shall constitute a quorum for the transaction of business. The act of all the votes of the Committee Members present at a meeting at which a quorum is present shall constitute the action of the Operating Committee.

5.7.2 To the extent that the Operating Committee cannot obtain a unanimous vote on any business or issue properly before the Operating Committee when a quorum is present (the “Deadlock Issue”), then the Operating Committee may, upon the written request of a Committee Member, submit the Deadlock Issue to the Membership Board for final resolution. For purposes of clarity, a vote of the Operating Committee that is held at a meeting for which a quorum is present shall be considered unanimous if at least one (1) Committee Member representing each of the three (3) Sectors is present.

5.8 Meetings of the Operating Committee. Meetings of the Operating Committee may be called (i) by the chair of the Operating Committee, or (ii) by a written consent delivered to the chair of the Operating Committee that is executed by a majority of the Committee Members.

5.9 Notice of Meetings of Committee Members; Member Observation Rights.

(a) The Southeast EEM Administrator shall provide written notice of each Operating Committee meeting to all members of the Operating Committee as well as to all Members. Such notice shall state the date, place and hour of the meeting and shall be delivered by internet electronic mail (with return internet electronic mail from the recipient acknowledging receipt) sent to the internet electronic mail address for such Committee Member and for such Member as recorded in the Secretary’s records, not less than seven (7) Business Days prior to the date of the meeting. Members who are not Committee Members shall have the right to attend, observe and participate in any discussion at any Operating Committee Meeting, but may not cast a vote.

(b) Any Committee Member unable to attend a meeting may designate, in writing, an alternate from the same Sector as such Committee Member to act on behalf of the Committee Member (“Alternate Committee Member”). Any reference herein to “Committee Member” shall be deemed a reference to the Alternate Committee Member where applicable.

(c) A Committee Member’s attendance at or participation in a meeting waives any required notice to him or her of such meeting unless, at the beginning of such meeting or promptly upon his or her arrival, such Committee Member objects to holding the meeting or transacting business at the meeting and does not thereafter vote for or assent to action taken at the meeting.

(d) A notice shall specify the business to be transacted at, or the purpose of, any meeting of the Operating Committee; provided, however, such notice shall not limit the actions the Operating Committee may take at a meeting.

5.10 Action by Committee Members in Lieu of a Meeting; Meetings by Telephone Conference.

(a) Any action required or permitted to be taken at a meeting of the Operating Committee may be taken without a meeting if at least one (1) Committee Member representing each of the three (3) Sectors consents in writing to the adoption of a resolution authorizing the action. The resolution and the written consents thereto by the Committee Members shall be filed with the minutes of the Operating Committee or filed with the records

maintained by the Secretary reflecting the action taken. Any action taken under this Section 5.10(a) shall be effective when the last Committee Member signs the consent, unless the consent specifies a different effective date, in which event the action taken is effective as of the date specified therein, provided, the consent states the date of execution by each Committee Member. Such consent shall have the same force and effect as a unanimous vote.

(b) The Committee Members and Members may participate in any meeting of the Operating Committee or of a committee thereof by means of telephone conference or by any means of communication by which all Committee Members and Members participating may hear one another during the meeting, and all meetings shall be available for participation via such means. A Committee Member participating in a meeting by such means is deemed to be present in person at the meeting.

5.11 Liability of Committee Members. The Operating Committee and the Committee Members shall not be liable to any Member for any act done or omitted by Committee Members while acting in good faith and in the exercise of reasonable judgment. The Members shall indemnify the Committee Members (solely in such capacity) and hold them harmless against any loss or expense actually incurred without gross negligence or willful misconduct on the part of the Committee Members and arising out of or in connection with the acceptance or administration of their role on the Operating Committee.

ARTICLE 6

APPOINTMENT OF SOUTHEAST EEM AGENT

6.1 Each Member agrees to appoint the Southeast EEM Agent as its representative and as each such Member's true and lawful agent and authorizes the Southeast EEM Agent to act for such Member in accordance with the scope of the Southeast EEM Agent's responsibilities (the "Southeast EEM Agent Scope") as specifically defined by the Membership Board in Appendix C. Each Member grants unto the Southeast EEM Agent only that authority which is granted to the Southeast EEM Agent by the Membership Board under this Agreement and that is necessary to perform the actions required in connection with the development and operation of the Southeast EEM System, and in each case in a manner consistent with the Southeast EEM Agent Scope. Each Member agrees and acknowledges that a third party shall be entitled to rely on any action taken, or the failure to take any action, by the Southeast EEM Agent, on behalf of Members pursuant to and in accordance with this Article 6 (each, an "Authorized Action"), and that each Authorized Action shall be binding on each Member as fully as if such Members had taken such Authorized Action directly. The initial Southeast EEM Agent and any replacement Southeast EEM Agent, as determined by the Membership Board in accordance with Section 4.1.9, must meet any criteria set by the Membership Board from time to time (collectively, the "Southeast EEM Agent Criteria"). Any entity that does not meet the Southeast EEM Agent Criteria may not serve as the Southeast EEM Agent; provided, however, that the Membership Board may, in its discretion, alter or revise the Southeast EEM Agent Criteria.

6.2 Each Member acknowledges and agrees that upon execution of this Agreement, and upon any delivery by the Southeast EEM Agent of any waiver, amendment, agreement, opinion, certificate or other document within the Southeast EEM Agent Scope executed by the

Southeast EEM Agent, such Member shall be bound by such documents or action as fully as if such Member had executed and delivered such documents. Each Member shall pay its allocated share of (i) all Operating Costs arising from contracts entered into by the Southeast EEM Agent entered into in accordance with the Southeast EEM Agent Scope, and (ii) fees, costs and expenses incurred by the Southeast EEM Agent in performing its duties hereunder.

6.3 The Southeast EEM Agent may resign at any time upon sixty (60) days written notice to the Membership Board and may be removed at any time with or without cause by the Membership Board pursuant to Section 4.1.9. Upon the resignation of the Southeast EEM Agent pursuant to this Section 6.3 or its removal pursuant to Section 4.1.9, the resigning or removed Southeast EEM Agent shall take or cause to be taken, all actions and do, or cause to be done, or execute and deliver, or cause to be executed and delivered, all such documents and instruments and shall take, or cause to be taken, all such further or other actions as the Membership Board may reasonably deem necessary, proper or advisable to transition the rights and obligations of the Southeast EEM Agent to the replacement Southeast EEM Agent, as promptly as practicable or sooner as required by this Agreement, including, without limitation, such actions as are necessary to assign all contracts, agreements or other documents executed on behalf of the Members within the Southeast EEM Agent Scope to the replacement Southeast EEM Agent.

6.4 For the avoidance of doubt, it is the intent of the Members that the Operating Committee, not the Southeast EEM Agent, be responsible for interfacing and coordinating with third party vendors with regard to the performance of contracts with such vendors. Further, in the event that the Southeast EEM Agent is required to take any ministerial action under such contracts, the Southeast EEM Agent shall only do so at the direction of the Membership Board or Operating Committee and in accordance with the Southeast EEM Agent Scope. The Southeast EEM Agent shall have no right or access to data related to the Southeast EEM beyond what it has as a Member and Participant.

6.5 The Southeast EEM Agent will incur no liability of any kind with respect to any action or omission by the Southeast EEM Agent in connection with the Southeast EEM Agent's role pursuant to this Agreement and any agreements ancillary hereto within the Southeast EEM Agent Scope, except in the event of liability directly resulting from the Southeast EEM Agent's gross negligence or willful misconduct. The Members will indemnify, defend and hold harmless the Southeast EEM Agent from and against any and all losses, liabilities, damages, claims, penalties, fines, forfeitures, actions, fees, costs and expenses (including the fees and expenses of counsel and experts and their staffs and all expense of document location, duplication and shipment) (collectively, "Representative Losses") arising out of or in connection with the Southeast EEM Agent's execution and performance of this Agreement and any agreements ancillary hereto, in each case as such Representative Loss is suffered or incurred; provided, that in the event that any such Representative Loss is finally adjudicated to have been directly caused by the gross negligence or willful misconduct of the Southeast EEM Agent or actions beyond the Southeast EEM Agent Scope, the Southeast EEM Agent will reimburse the Members the amount of such indemnified Representative Loss to the extent attributable to such gross negligence or willful misconduct. In no event will the Southeast EEM Agent be required to advance its own funds on behalf of the Members or otherwise. The Members acknowledge and agree that the foregoing indemnities will survive the resignation or removal of the Southeast EEM Agent or the termination of this Agreement.

ARTICLE 7

BUDGETING AND COST RESPONSIBILITY

7.1 Member Responsibility. Each Member will be assigned and is responsible for its allocated share of Operating Costs and such other dues or fees as assessed by the Membership Board from time to time based on the methodology set forth in Section 7.2. If a Member fails to cure any nonpayment of its allocated share of Operating Costs or any other amount assessed against such Member under this Agreement within ten (10) Business Days after receiving notice from the Operating Committee of such non-payment, such Member may, in the discretion of the Membership Board, lose its right to vote on matters related to this Agreement or to have representation on the Membership Board and any committees unless and until such amounts are paid in full. Any amounts owed that are not paid in accordance with this Agreement shall be delinquent and shall accrue interest at the Interest Rate, such interest to be calculated from the due date to the date the delinquent amount is paid in full.

7.2 Allocation of Costs. Operating Costs, including but not limited to the costs and expenses of the Southeast EEM System, shall be allocated and assessed to each Member based on the following formula, provided that (i) for purposes of a Disaggregated Utility, such Disaggregated Utility shall be counted as a single Member for purposes of this calculation and the costs will be allocated among the entities of such Disaggregated Utility according to their direction (which allocation shall not control for any purposes hereunder), and (ii) for purposes of Member Affiliates, the Member Affiliates shall be counted as a single Member for purposes of this calculation and the costs will be allocated among the Member Affiliates according to their direction (which allocation shall not control for any purposes hereunder):

$$[(1/4)(TC)(1/TNM)] + [(3/4)(TC)(MNEL/ANEL)] = MAC, \text{ where:}$$

TC = Total allocable costs.

TNM = the total number of Members.

MNEL = such Member Net Energy for Load of the Representative's Member,

Affiliates of such Member and those related entities part of a Disaggregated Utility as of the Record Date.

ANEL = the sum of all the Member Net Energy for Load as of the Record Date.

MAC = Member's allocated costs.

7.2.1 Billing Process. Each Member shall be billed directly by the Southeast EEM Administrator for its allocated share of Operating Costs in accordance with the terms of this Agreement. In the event that the direct billing process described in the foregoing sentence proves to be unworkable for certain Operating Costs, the Membership Board shall use commercially reasonable efforts to (i) require third party vendors to structure all Southeast EEM invoices on an

individual Member basis based upon the cost methodology set forth in this Agreement; or (ii) if such third party vendors refuse to provide such individual Member billings services, establish an alternative billing procedure for such Operating Costs (including the engagement of a third party billing service provider) to ensure such invoices are billed on an individual Member basis. The Membership Board shall establish such an alternative billing procedure in a timely manner; provided, however, that a delay in establishing such a procedure shall not eliminate the Members' individual obligations to pay their allocated share of Operating Costs. Nothing in this Section 7.2.1 is intended to modify or diminish the Membership Board's authority to establish or amend billing procedures from time to time.

7.2.2 Annual Budget. On or before October 30th of each calendar year, but in any case no earlier than October 1st of each calendar year, the Membership Board shall set the annual budget for the following calendar year (the "Annual Budget Determination Date"), which budget shall include but not be limited to all projected Operating Costs, including all vendor costs and all costs and expenses associated with the Southeast EEM Agent (the "Annual Budget"). Costs are deemed allocated to each Member as of the Annual Budget Determination Date, but, except as otherwise provided herein, are not payable until such costs are due and payable subject to the applicable agreements concerning such costs.

7.3 Additional Members. The costs and expenses of the Southeast EEM System allocated to each Member shall be adjusted each year in accordance with Section 7.2 following the Enrollment Period but prior to the Annual Budget Determination Date to reflect any changes in a Member Net Energy for Load valuation or the inclusion of Additional Members in such calculations for the following calendar year.

7.3.1 Submission of Information.

(a) Upon the request of the Secretary or upon a schedule approved by the Membership Board, each Member shall provide its Member Net Energy for Load values, and any other information required for the calculations set forth in Section 4.1.5 and Section 7.2, to the Southeast EEM Administrator and all other Members. If a Member proposes to use a Member Net Energy for Load value that differs from the Net Energy for Load value as provided to NERC by the Record Date (an "Alternate MNEL Value"), such Member shall submit a written request to the Operating Committee at least thirty (30) days prior to the Annual Budget Determination Date requesting the Operating Committee's approval of such Member's Alternate MNEL Value in the upcoming year. The submitting Member's request shall contain (i) an explanation of why the Alternate MNEL Value differs from the Member Net Energy for Load value submitted to NERC, and (ii) all other reasonably necessary information evidencing such Member's calculation of the Alternate MNEL Value. The Operating Committee shall review a Member's request to use an Alternate MNEL Value and shall use commercially reasonable efforts to approve, deny or request additional information regarding such request within fifteen (15) days from the date the Operating Committee receives the request.

(b) If the Operating Committee denies a Member's request to use an Alternate MNEL Value, the Member may, within thirty (30) days of such denial, submit the request to the Membership Board for review, and the Membership Board shall, as soon as reasonably practicable, hold a vote to either uphold or overturn the Operating Committee's

denial of the request, as determined by an Affirmative Majority Vote. The requesting Member shall provide to the Membership Board such information reasonably requested by the Membership Board in order to evaluate the Member's request. If the Operating Committee or the Membership Board, as applicable, approves a Member's Alternate MNEL Value, such Alternate MNEL Value shall be used for the calculations set forth in Section 4.1.5 and Section 7.2 in the following calendar year. If the Operating Committee or the Membership Board, as applicable, deny such requesting Member's request to use an Alternative MNEL Value, the Member's Member Net Energy for Load value shall be that Member Net Energy for Load as determined by the Membership Board in accordance with this Agreement; provided, however, that during the pendency of the review of a Member's Net Energy for Load pursuant to this Section 7.3.1 and until such value is finally determined, the requesting Member's Member Net Energy for Load value shall be the Member Net Energy Load value provided by such Member that was approved and used in the most recent calendar year.

ARTICLE 8

FILINGS WITH GOVERNMENT ENTITIES; EFFECTIVE DATE

8.1 This Agreement is subject to valid Laws, orders, rules and regulations of duly constituted Governmental Entities having jurisdiction. Nothing contained in this Agreement shall be construed as a grant of jurisdiction over any Member by any Governmental Entity not otherwise having jurisdiction by Law.

8.2 Filing With and Approval or Acceptance by Governmental Entities.

8.2.1 Any entity desiring to become a Member that is subject to the jurisdiction of any Governmental Entity from which approval or acceptance of this Agreement or participation in the Southeast EEM is required for such entity to participate in the Southeast EEM shall institute proceedings to obtain such acceptance or approval or shall provide such notice, except as provided in Section 8.2.2 below. All required approvals, acceptances and notices must be received by such entity prior to its participation in the Southeast EEM. The Members shall cooperate in securing all required Governmental Entity approvals or acceptances of this Agreement.

8.2.2 No later than sixty (60) days prior to the proposed Effective Date, the Southeast EEM Agent shall file this Agreement with FERC on behalf of the Jurisdictional Members in accordance with Section 8.2.1 under Section 205(c) of the FPA. Within ten (10) Business Days of the date of such filing, the remaining Jurisdictional Members shall file certificates of concurrence with such filing and the Non-Jurisdictional Members shall file comments in support of such filing.

8.3 On the same date that the Southeast EEM Agent files this Agreement with FERC, the Jurisdictional Members that are also transmission service providers will make filings with FERC to amend their Tariffs to include the provision of Non-Firm Energy Exchange Transmission Service and become Participating Transmission Providers, in accordance with Section 3.4 above (the "Tariff Filings").

8.4 Effective Date and Southeast EEM Commencement Date.

8.4.1 Unless specific provisions become effective earlier by the explicit terms contained herein, this Agreement shall be binding upon the Members upon the effective date established by FERC in a FERC order accepting the Agreement without modification or condition (the “Effective Date”); provided, however, that that this Agreement shall not become binding upon an individual Member who seeks acceptance or approval from a Governmental Entity pursuant to Section 8.2.1 above until the later of: (x) the date of issuance of an order by such Governmental Entity approving without modification or condition this Agreement and/or such Member’s participation in the Southeast EEM and (y) the Effective Date; and provided, further, that the Members agree that this Agreement will bind each of them upon signing, subject only to the approvals and acceptances provided in this Section 8.4. In the event FERC does not accept the Agreement as filed, the Members may agree to changes or modifications to the Agreement pursuant to an Affirmative Supermajority Vote as set forth in Section 8.6, in which event the Effective Date shall be the date that FERC accepts the revised Agreement with any such changes or modifications agreed to pursuant to Section 8.6.

8.4.2 The Southeast EEM Commencement Date shall not occur until after (i) the Effective Date, (ii) the issuance by FERC of an order or orders accepting without modification or condition all of the Jurisdictional Member Participating Transmission Provider’s Tariff Filings, and (iii) the Membership Board has approved and established the Southeast EEM Commencement Date in accordance with Section 4.1.9(vi).

8.5 If a Governmental Entity (other than FERC) to which a Member’s participation in the Southeast EEM has been submitted for approval pursuant to Section 8.2.1 has not issued an order on such request within four (4) months from the date of submission, the Member for which such approval was requested may withdraw from this Agreement by providing written notice to all other Members no later than fifteen (15) days after such four-month period has elapsed. Withdrawal under this Section 8.5 shall be subject to the provisions of Section 4.2.

8.6 The individual provisions of this Agreement are inter-related and inter-dependent, and the agreement of the Members to the terms hereof is based on the expectation that it will be approved by all necessary Governmental Entities in its entirety. Accordingly, the terms of this Agreement are not severable, and are an integrated package that is submitted with the understanding and condition that it will be approved by the necessary Governmental Entities in its entirety. As such, if at any time (i) a Governmental Entity issues an order that does not accept or approve this Agreement or a Tariff Filing in its entirety without condition or requires modifications to the Agreement or the relevant Tariff (“Southeast EEM Order”), or (ii) any state or federal Laws or regulations, now existing or enacted or promulgated after the Effective Date are interpreted by a Governmental Entity in such a manner as to indicate that the structure or terms of this Agreement are more likely than not to be a violation of such Laws or regulations or are more likely than not to impact the jurisdictional status of any Member (a “Change in Law”), or (iii) if any provision or portion of this Agreement shall for any reason be held or adjudged to be invalid or illegal or unenforceable by any court of competent jurisdiction or other Governmental Entity (“Other Court/Governmental Entity Action”), the Members will engage in good faith negotiations during a forty-five (45) day period after the date of the Southeast EEM Order or Change in Law or Other Court/Governmental Entity Action to agree to Agreement modifications or conditions that are consistent with the modifications and conditions imposed by such Southeast EEM Order, Change in Law or Other Court/Governmental Entity Action; provided, however, that

in any such negotiation the Members are not under any obligation to reach an agreement. Any changes, modifications or conditions to the effectiveness of this Agreement agreed to by an Affirmative Supermajority Vote shall be submitted to the required Governmental Entities for approval or acceptance and the orders on such filings shall be deemed to be and treated as Southeast EEM Orders for purposes of this Article 8. If an Affirmative Supermajority Vote cannot be achieved within such forty-five (45) day period, then the Agreement shall terminate and be of no force and effect. If a Member does not agree with the modifications to the Agreement adopted by the Affirmative Supermajority Vote, such non-agreeing Member shall be subject to the waiver of rights provisions of Section 16.9, but shall have the right to withdraw from this Agreement and the Southeast EEM upon thirty (30) days prior written notice. Upon such notice of withdrawal by a Member, any other Member may withdraw from this Agreement by providing written notice to the other Members within twenty-five (25) days after the date of the first Member's notice of withdrawal. Any notice to withdraw provided in accordance with this Section 8.6 shall become effective as of the later of the date provided in such notice and the date such Member is permitted to withdraw in accordance with Section 8.5 (the "Governmental Action Withdrawal Date"). Withdrawal under this Section 8.6 shall be subject to the provisions of Section 4.2.

8.7 A Non-Jurisdictional Member, in its sole discretion, may immediately withdraw from this Agreement if it becomes apparent that the Non-Jurisdictional Member's engagement in activities under this Agreement or FERC's approval of this Agreement would (i) jeopardize the tax-exempt status of interest paid by the Non-Jurisdictional Member on outstanding debt obligations, (ii) render the Non-Jurisdictional Member a Public Utility subject to FERC's jurisdiction, or (iii) if the Non-Jurisdictional Member determines that any conflict exists between provisions of this Agreement and applicable Laws and regulations of the state of its creation, or rate schedules adopted by its governing body under state Law, in which case such state Laws, regulations, or rate schedules shall govern with respect to such Non-Jurisdictional Member. The withdrawing Non-Jurisdictional Member may withdraw from this Agreement on this basis by providing written notice to all other Members and the Southeast EEM Administrator. Withdrawal under this Section 8.7 shall be subject to the provisions of Section 4.2.

ARTICLE 9

RELEASE AND LIABILITY; NO FIDUCIARY DUTIES

9.1 Except as expressly set forth in Section 14.2, to the maximum extent permitted by applicable Law, each Member releases and discharges every other Member from any and all liability for any and all liabilities, claims, losses, damages, expenses and other claims whatsoever the releasing Member, its officers, directors, trustees, agents, employees, affiliates, successors or assigns (collectively "Related Parties") may have that arise out of or relate to the establishment, development, operation or maintenance of, or any deficiency in, the Southeast EEM System. In addition, to the maximum extent permitted by applicable Law (i) no Member shall be liable to any other Member or its Related Parties for any liabilities, damages, obligations, payments, losses, costs or expenses under this Agreement in any amount in excess of the actual compensatory damages suffered by such other Member or its Related Parties in connection with, or resulting from, the releasing Member's performance or non-performance of this Agreement, or any actions undertaken by the releasing Member in connection with or related to this Agreement, and (ii) each

Member waives any right to recover from any other Member or its Related Parties incidental, punitive, exemplary, special, indirect, multiple or consequential damages (including attorneys' fees or litigation costs to recover the same and any claims arising from any loss of interchange sales or revenues, loss of profits, costs of substitute power, costs of additional operating expenses, or suits by third parties) in connection with, or resulting from, performance or non-performance of this Agreement, or any actions undertaken in connection with or related to this Agreement or that arise out of or relate to the establishment, development, operation or maintenance of, or any deficiency in, the Southeast EEM System. Notwithstanding the foregoing, however, no Member shall be released, discharged, indemnified or held harmless with respect to any liability for damages or other claims arising from any action or failure to act by that Member that is unlawful, undertaken in bad faith, grossly negligent or the product of willful misconduct. Nothing herein shall release any Member from any obligation or liability it may have pursuant to any other agreement with any other Member.

9.2 EXCEPT FOR THE WARRANTIES AND REPRESENTATIONS SET FORTH IN ARTICLE 13 HEREOF, NONE OF THE MEMBERS, COLLECTIVELY OR INDIVIDUALLY, MAKES ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, TO ANY MEMBER, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

9.3 The provisions set forth in this Article 9 shall be given the maximum effect permitted by Law and shall indefinitely survive the termination or expiration of this Agreement with respect to any Member or Members.

9.4 No Fiduciary Duties. Nothing in this Agreement should be construed or interpreted as creating a partnership by and among the Members. To the extent any Member attempts to construe this Agreement as evidence of a partnership or otherwise a basis for requiring certain implied duties and rights among the Members, notwithstanding any other provisions of this Agreement, or any other agreement, the Members covenant and agree not to prosecute, file or maintain any action, controversy, dispute, or proceeding, and do hereby expressly eliminate, waive, disclaim and release, any and all fiduciary duties of the Members that may arise pursuant to performance of their obligations or exercise of their rights pursuant to this Agreement, or that may arise pursuant to any other standard, to any Party herein, including, without limitation, its Members, and in the case of insolvency or the zone of insolvency, to creditors of any character or claim. This Agreement (including this provision) is not intended to, and shall not, create or impose any fiduciary duties on the Member or any other party for any purpose, without limitation.

9.5 No Implied Covenants. Each Member acknowledges and agrees that, and notwithstanding any other provisions of this Agreement or any other agreement contemplated herein or any applicable provisions of Law or equity or otherwise, no covenants, duties or obligations, whether express, implied, statutory or otherwise, including, without limitation, (i) the duty of good faith and fair dealing, (ii) the fiduciary duties of care, loyalty and obedience, shall apply to the acts, omissions, behavior or conduct of the Members, in any context, except for those covenants, duties and obligations expressly contained in this Agreement.

9.6 No Restriction on Competition of Members. Each of the Members agrees, severally and not jointly, that for the term of this Agreement, they are expressly permitted and

authorized to directly or indirectly own, manage, operate, join, control and/or participate in the ownership, management, operation or control of, any business engaged in business or operations that compete or relate to, directly or indirectly, the business of the Southeast EEM System. The legal doctrines of “corporate opportunity,” “business opportunity” and similar doctrines shall not be applied to any such competitive venture or activity of a Member or its Affiliates. No Member or its Affiliates will have any obligation to the Southeast EEM System or the Southeast EEM System’s other Members or Participants with respect to any opportunity relating to the Southeast EEM System or its business.

ARTICLE 10

TRANSPARENCY; CONFIDENTIALITY; AUDITING

10.1 Transparency; Confidentiality.

10.1.1 The decision and obligation to report quantities, prices, or other data regarding Energy Exchange transactions to either a Governmental Entity, a reputable index developer or a data hub will be the responsibility of each Seller and Buyer. Neither the Southeast EEM Administrator, nor the Southeast EEM Agent nor the Members shall be responsible for reporting Energy Exchange transactions made by other entities through the Southeast EEM System.

10.1.2 Except as provided in Appendix B, the identity of all Bidders, Offerors, Sellers and Buyers shall be kept confidential from all third party entities, other than the FERC, the Market Auditor, and the Southeast EEM Administrator except to the extent required by Law, regulation, or order.

10.1.3 The Southeast EEM Administrator shall post and maintain on the Southeast EEM System Interface: (i) a list of all Members and Participants and their contact information, (ii) the notice provisions provided in this Agreement as set forth in Section 16.8, (iii) the notice information of each Annual Meeting and Annual Member Meeting, including the date, place and time of such Annual Meeting and Annual Member Meeting, and (iv) a current description of the Territory.

10.1.4 The Southeast EEM Administrator shall prepare and post reports that would include data aggregated by the Southeast EEM System as set forth in Section V of the Southeast EEM Market Rules.

10.2 Auditing.

10.2.1 The Southeast EEM Agent will engage the Market Auditor to perform the auditing scope of work as set forth in Section VI of the Southeast EEM Market Rules.

10.2.2 The Market Auditor and Southeast EEM Administrator may share information related to the Southeast EEM on a confidential and reciprocal basis.

10.2.3 The Market Auditor has independent authority to prepare and submit any reports described herein without any prior review or approval by any Member or any other outside sources.

10.3 Each Member is entitled to equitable relief, by injunction or otherwise, to enforce its rights under this Article 10 to prevent the release of confidential information, and may seek other remedies available at Law or in equity for breach of this provision.

ARTICLE 11

SOUTHEAST EEM MARKET RULES

11.1 Set out in Appendix B to this Agreement are the Southeast EEM Market Rules that shall govern the Bid, Offer and matching procedures of the Southeast EEM System and the reservation and tagging functions of the Southeast EEM System, as such appendix may be amended and revised from time to time by the Membership Board in accordance with Section 4.1.9.

11.2 The rules, guidelines, requirements and other standards for the Southeast EEM System shall not impose any obligation on any Member that would cause any Member to violate any reliability criteria, guideline, standard or requirement (hereafter referred to as “Reliability Obligations”) of NERC, the applicable Balance Authority, and any other recognized region or subregion of NERC (including the SERC Reliability Corporation (“SERC”)), including any successors to NERC or SERC, or applicable state or federal Reliability Obligations, to the extent any such Reliability Obligations are applicable to a Member. Each Member shall participate in the Southeast EEM System in a manner that conforms to all Reliability Obligations as may be applicable to it. The rules, guidelines, requirements and other standards for the Southeast EEM System shall not impose any obligation on any Member that would cause any Member to engage in conduct not consistent with Good Utility Practice.

11.3 The Operating Committee shall establish rules and procedures, including appropriate audit procedures, under which any Member may request a determination of whether the hardware, software, management, or operation of, or Member participation in, the Southeast EEM System, as they may affect the requesting Member, comply with all rules, guidelines, requirements and other standards for the Southeast EEM System as set forth in the Southeast EEM Market Rules in Appendix B. The Operating Committee, in a manner consistent with all applicable provisions of this Agreement, may make recommendations to the Membership Board to apportion the costs of making revisions or modifications to the Southeast EEM System.

ARTICLE 12

DISPUTE RESOLUTION

12.1 Any dispute between two (2) or more Members arising under this Agreement shall first be referred to a designated senior representative of each of the Members involved in such dispute for resolution on an informal basis as promptly as practicable. Such designated senior representatives shall meet, negotiate and attempt in good faith to resolve the dispute quickly,

informally, and inexpensively. In the event the designated senior representatives are unable to resolve the dispute within thirty (30) days (or other such period as the Parties may agree upon) by mutual agreement, such dispute within ten (10) Business Days shall be submitted to a mediator and resolved in accordance with the mediation procedures set forth below.

12.2 Following the procedures set forth in Section 12.1, any dispute between two (2) or more Members arising under this Agreement shall be subject to non-binding mediation prior to the initiation of judicial, mutually agreed upon arbitration, or other dispute resolution proceedings, unless the Parties to the dispute mutually shall determine from the nature of the dispute, the positions of the Parties, and other relevant facts and circumstances that mediation will not lead to resolution of the dispute. The Parties to any such dispute shall select a mediator to assist in the resolution of their dispute. The mediator shall (i) be knowledgeable in the subject matter of the dispute and (ii) have no official, financial, or personal conflict of interest with respect to the issues in controversy, unless the interest is fully disclosed in writing to all participants and all participants waive in writing any objection to the interest.

12.3 The disputing Parties shall attempt in good faith to resolve their dispute in accordance with the procedures and timetable established by the mediator. In furtherance of the mediation efforts, the mediator may:

12.3.1 Require the Parties to meet for face-to-face discussions, with or without the mediator;

12.3.2 Act as an intermediary between the disputing Parties;

12.3.3 Require the disputing Parties to submit written statements of issues and positions; and

12.3.4 If requested by the disputing Parties, provide a written recommendation on resolution of the dispute.

12.4 If a resolution of the dispute is not reached by the thirtieth (30th) day after the appointment of the mediator or such later date as may be agreed to by the Parties, the mediator shall promptly provide the disputing Parties with a written, confidential, non-binding recommendation on resolution of the dispute, including the mediator's assessment of the merits of the principal positions being advanced by each of the disputing Parties. At a time and place specified by the mediator after delivery of the foregoing recommendation, but no later than fifteen (15) days after issuance of the mediator's recommendation, the disputing Parties shall meet in a good faith attempt to resolve the dispute in light of the mediator's recommendation. Each disputing Party shall be represented at the meeting by a person with authority to settle the dispute, along with such other persons as each disputing Party shall deem appropriate. If the disputing Parties are unable to resolve the dispute at or in connection with this meeting, then: (i) any disputing Party may commence such judicial, mutually agreed upon arbitration, or other dispute resolution proceedings as may be appropriate; and (ii) the recommendation of the mediator shall have no further force or effect, and shall not be admissible for any purpose in any subsequent arbitral, judicial, or other dispute resolution proceeding.

12.5 The costs of the time, expenses, and other charges of the mediator and of the mediation process shall be borne by the Parties to the dispute, with each side in a mediated matter bearing equal costs. Each Party shall bear its own costs and attorney's fees incurred in connection with any mediation under this Agreement.

ARTICLE 13

REPRESENTATIONS AND WARRANTIES

13.1 Each Member represents and warrants to each other Member that on the date it executes this Agreement and throughout the term of this Agreement, the following representations and warranties are, and will continue to be, true and correct in all material respects:

13.1.1 it is duly organized, validity existing and in good standing under the Laws of the state of its incorporation or organization;

13.1.2 it will at all times comply with the provisions of this Agreement and all Exhibits and Appendices hereto, each as amended from time to time;

13.1.3 it has all requisite corporate or other organizational power to carry on its business as contemplated by this Agreement;

13.1.4 except for the authorizations and approvals described in Article 8 of this Agreement, it has all authorizations from Governmental Entities necessary for it to legally perform its obligations under this Agreement;

13.1.5 the execution, delivery and performance of this Agreement and any other documentation it is required to deliver under this Agreement are within its powers, have been duly authorized by all necessary action, and do not violate any of the terms or conditions in its governing documents, any contract or other agreement to which it is a party or any Law applicable to it;

13.1.6 the individual(s) executing and delivering this Agreement and any other documentation required to be delivered under this Agreement on behalf of such Member are duly empowered and authorized to do so at the time of such execution and delivery;

13.1.7 this Agreement has been duly and validly executed and delivered by such Member and constitutes such Member's legal, valid and binding obligation; and

13.1.8 all information that has been provided by or on behalf of a Member pursuant to this Agreement, is true and correct in all material respects. Each Member further covenants that all information provided to the Operating Committee, the Market Auditor, the Southeast EEM Agent or the Southeast EEM Administrator by or on behalf of such Member pursuant to this Agreement, subsequent to the date hereof, shall be true and correct in all material respects.

ARTICLE 14

DEFAULTS

14.1 A Member shall be in default in payment when payment is not made in accordance with the billing procedures established under this Agreement within ten (10) Business Days after its final due date. A default by any Member in its payment obligations under this Agreement shall be cured by payment of all overdue amounts together with interest accrued at the Interest Rate, prorated daily from the due date to the date the payment curing the default is made.

14.2 Notwithstanding Article 9, a defaulting Member shall be liable to the non-defaulting Members for all costs, including costs of collection and reasonable attorney fees incurred by such non-defaulting Members, plus interest at the Interest Rate. The proceeds paid by a defaulting Member to remedy any such default shall be distributed as directed by the Membership Board to the non-defaulting Members in proportion to the additional costs and expenses actually paid by the non-defaulting Members as a result of the default.

14.3 The rights of a Member who is in default of any of its payment or other material obligations herein may be terminated by the Membership Board. This provision allowing the non-defaulting Members to terminate such rights is in addition to any other remedies provided in this Agreement, at Law, or in equity, and shall in no way limit the non-defaulting Members' ability to seek judicial enforcement of the defaulting Member's obligations under this Agreement. Upon the effective date of such termination of rights, all rights of the defaulting Member and all obligations of non-defaulting Members to the defaulting Member imposed by this Agreement, except (i) payment obligations, (ii), the indemnification obligations set forth in Section 6.5, (iii) the release and other obligations set forth in Article 9, (iv) the confidentiality obligations set forth in Article 10 and Article 15, and (v) the obligations set forth in Section 16.9 and Section 16.14, shall immediately be terminated, except that no such termination shall impact Enabling Agreements any such Member is a party to.

14.4 Upon termination of the rights of a defaulting Member under this Agreement, the Operating Committee shall review responsibility and cost allocations of the non-defaulting Members and make adjustments thereto as it deems necessary.

ARTICLE 15

CONFIDENTIALITY

15.1 Any information provided by a Member to any other Member pursuant to this Agreement that is labeled "Confidential" shall be used by the receiving Member solely in connection with the purposes of this Agreement and shall not be disclosed by the receiving Member to any third party, except with the providing Member's consent, and upon request of the providing Member shall be returned thereto. Notwithstanding the above, a Member may disclose any such information to third parties as may be necessary for such Member to perform its obligations under this Agreement (including, but not limited to, the Member's employees, officers, directors, trustees, attorneys and other consultants). To the extent that such disclosures are necessary, the Members shall endeavor in disclosing any such information to seek to preserve

the confidentiality of such information. This provision shall not prevent any Member from providing any confidential information received from any other Member to any court or governmental body to enforce its rights or perform its obligations hereunder or as may otherwise be required by such court or body or by Law, provided that, to the extent required, if feasible, the disclosing Member shall have given prior notice to the Member that provided such information of such required disclosure and, if so requested by such other Member, shall have used all reasonable efforts to oppose the requested disclosures, if appropriate under the circumstances, or to otherwise make such disclosure pursuant to a protective order or other similar arrangement for confidentiality. Without limiting the scope of the foregoing, the Members shall use all reasonable efforts to maintain the confidentiality of any confidential information in any filings with, or submissions to, any governmental or regulatory authorities. Information shall not be considered confidential for purposes of this Article 15 if the Member receiving such information from another Member can demonstrate by competent documentary evidence that such information: (a) was rightfully in the possession of the receiving Member prior to its disclosure to the receiving Member by the disclosing Member; (b) was in the public domain prior to its disclosure by the disclosing Member to the receiving Member; (c) came into the public domain, by publication or otherwise, through no direct or indirect act or omission of the receiving Member, subsequent to its disclosure by the disclosing Member to the receiving Member; or (d) was supplied to the receiving Member by a third party having the legal right to disclose it to the receiving Member, but only if the third party does not owe a duty of confidentiality to the disclosing Member with respect to such information.

15.2 Any information provided by a Member to a mediator or arbitrator pursuant to this Agreement that is labeled “Confidential” shall be subject to the provisions of this Article 15. For such purposes, any mediation or arbitration arranged pursuant to Article 12 of this Agreement shall provide for such mediator or arbitrator to comply with the provisions applicable to a Member receiving Confidential information from another Member.

15.3 Each Member is entitled to equitable relief, by injunction or otherwise, to enforce its rights under this Article 15 to prevent the release of confidential information, and may seek other remedies available at Law or in equity for breach of this provision.

ARTICLE 16

MISCELLANEOUS

16.1 “Public Utility” Status of Members. Certain Members are not Public Utilities. Nothing in this Agreement is intended to subject such Members to FERC jurisdiction as Public Utilities, and Members that are not Public Utilities shall not be required to take any action or participate in any filing or appeal that would confer FERC jurisdiction over such Members that does not otherwise exist.

16.2 Transfer of Interest in Agreement. No voluntary transfer of interest, rights, or obligations of any Member under this Agreement shall be made without the written consent and approval of all other Members except to a successor in operation of all or substantially all of its electric utility assets. Written approval when required shall not be unreasonably withheld. Any successor or assignee of the rights of any Member, whether by voluntary transfer, judicial or

foreclosure sale or otherwise, shall be subject to all the provisions and conditions of this Agreement, to the same extent as though such successor or assignee were the original Member hereunder, and no assignment or transfer of any rights hereunder shall be effective unless and until the assignee or transferee agrees in writing to assume all of the obligations of the assignor or transferor and to be bound by all of the provisions and conditions of this Agreement; provided, that the execution of a mortgage or trust deed or a judicial or foreclosure sale made thereunder, or if through the disposition by the Administrator of the RUS, shall not be deemed a voluntary transfer within the meaning of this Section 16.2. If, due to reorganization, sale/purchase, or other means, a Member no longer owns or operates generation or has load obligation in the Territory, its membership(s) will be evaluated by the Operating Committee and any appropriate change in representation will be subject to approval of the Operating Committee.

16.3 Relationship of Parties.

16.3.1 Nothing contained herein shall be construed to create an association, joint venture, trust, or partnership, or impose a trust, partnership, covenant, obligation, or liability on or with regard to any one or more of the Parties. Each Party shall be individually responsible for its own covenants, obligations, and liabilities under this Agreement.

16.3.2 All rights of the Parties are several, not joint. No Party shall be under the control of or shall be deemed to control another Party. Except as expressly provided in this Agreement, no Party shall have a right or power to bind another Party without its express written consent.

16.4 Third Party Beneficiaries. This Agreement shall not be construed to create rights in, or to grant remedies to, any third party as a beneficiary of this Agreement, or of any duty, obligation or undertaking established herein. No party not a signatory hereto shall be entitled to enforce this Agreement against any person or entity.

16.4.1 No Reliance Interest on Non-Firm Energy Exchange Transmission Service. Notwithstanding anything to the contrary in this Agreement, Non-Firm Energy Exchange Transmission Service over a Participating Transmission Provider's transmission system shall only be offered to the extent of that Participating Transmission Provider's participation in the Southeast EEM, and only for that purpose. For the avoidance of doubt, owing to the voluntary nature of a Member's participation in this Agreement, membership in this Agreement shall not give rise to any third-party expectation or reliance interest on the availability of Non-Firm Energy Exchange Transmission Service upon the withdrawal of a Member.

16.5 No Dedication of Facilities. Any undertaking by one Party to another Party under any provision of this Agreement shall not constitute the dedication of the Southeast EEM System or any portion thereof of the undertaking Party to the public or to the other Party, and it is understood and agreed that any such undertaking by a Party shall cease upon the termination of such Party's obligations under this Agreement.

16.6 Other Agreements. No provision of this Agreement shall preclude a Member from entering into other agreements or conducting transactions under existing agreements (including where applicable any Enabling Agreements) with other Members, Participants or Additional

Members. This Agreement shall not be deemed to modify or change any rights or obligations under any prior contracts or agreements between or among any of the Members.

16.7 Further Assurances. The Parties to this Agreement hereby agree to provide all other information, execute and deliver any further instruments or documents, and take or forbear from any further acts that may be reasonably required or useful to carry out the intent and purpose of this Agreement, provided that such requirements are consistent with the express terms of this Agreement and all applicable Laws and regulations, and in the case of confidential information subject to Article 15 of this Agreement. Without limiting the scope of the foregoing, each Member shall, subject to the confidentiality provisions set forth in Article 15, provide the Membership Board with any information that is reasonably necessary to operate the Southeast EEM System or for the Operating Committee or the Southeast EEM Administrator to implement any provisions of this Agreement, or any other business related to the development or the operation of the Southeast EEM System.

16.8 Notices. All notices or other communications required or permitted to be given pursuant to this Agreement shall be in writing and shall be (i) delivered by internet electronic mail (with return internet electronic mail from the recipient acknowledging receipt) sent to the internet electronic mail address for such recipient as recorded in the Secretary's records, and (ii) delivered in person, by nationally recognized overnight courier service, or by first class mail, certified or registered, postage prepaid, to the addresses of the Members set forth in Exhibit A hereto. Any Member may change its address by giving notice in writing stating its new address to the Southeast EEM Administrator and the Secretary, and the Secretary shall promptly update Exhibit A accordingly. Any notice, demand or other communication shall be deemed given and effective as of the date of delivery in person or upon receipt as set forth on the return receipt if delivered by certified or registered mail or by overnight courier service. The inability to deliver because of changed address of which no notice was given, or the rejection or other refusal to accept any notice, demand or other communication, shall be deemed to be receipt of the notice, demand or other communication as of the date of such inability to deliver or the rejection or refusal to accept.

16.9 Amendments. Except as otherwise provided in the following two sentences, this Agreement, including each of the Exhibits and Appendices hereto, may be modified or amended in the manner set forth in this Section 16.9, Article 4, and Article 8. In accordance with Article 3 of this Agreement, an entity that meets the criteria for qualification and admission as a Member, as determined by the Membership Board, may become an Additional Member and a Party to this Agreement by executing this Agreement or a Joinder hereto, and upon payment of all applicable fees, dues and contributions so specified or authorized in this Agreement, the Secretary shall revise, or cause to be revised, Exhibit A to include such Additional Member. The Parties hereby stipulate and agree that this Agreement was entered into as a result of arm's-length negotiations between the Parties. Further, the Parties believe that the terms and conditions of this Agreement are just and reasonable and shall remain so over the life of the Agreement. The Parties waive all rights to challenge the validity of this Agreement or whether it is just and reasonable for and with respect to the entire term, and hereby agree to make no filings with any Governmental Entity challenging the terms and conditions of this Agreement as to whether they are just and reasonable or in the public interest. The Parties hereby further stipulate and agree that no Party may bring or support any action, proceeding or complaint seeking to modify, cancel, suspend, or abrogate the terms and conditions of this Agreement. Absent an amendment to this Agreement pursuant to

Section 4.1.9, Article 4 and Article 8 approving the proposed change, the standard of review for changes to any portion of this Agreement proposed by a non-Party, or FERC acting *sua sponte*, shall be the strictest standard of review permissible to preserve the intent of the Parties to uphold the sanctity of contracts without modification, which in no event shall be lower than the “public interest” standard of review set forth in *United Gas Pipe Line Co. v. Mobile Sierra Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956).

16.10 Headings. Section headings used in this Agreement are for convenience and reference only and are not to be considered in construing the terms of this Agreement.

16.11 Applicable Law. This Agreement shall be governed by and construed in accordance with the Laws of the State of Delaware without regard to its conflict of laws principles or rules.

16.12 Entire Agreement. This Agreement constitutes the entire agreement among the Members with respect to the subject matter hereof. This Agreement supersedes all prior agreements and oral understandings among the Members with respect to such matters.

16.13 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original but all of which together shall constitute one instrument, binding upon all Parties hereto, notwithstanding that all of such Parties may not have executed the same counterpart.

16.14 WAIVER OF JURY TRIAL. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EACH MEMBER WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT TO ANY ACTION, SUIT OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT.

IN WITNESS WHEREOF, each of the Members and the Southeast EEM Agent (solely for purposes of Article 6) has executed this Agreement as of the day and year indicated next to the signature.

DATE: _____

Member: _____

By: _____

Name: _____

Title: _____

Solely for purposes of Article 6, the Southeast EEM Agent acknowledges and agrees with the provisions of Article 6 and hereby accepts the appointment as the Southeast EEM Agent as of the Effective Date:

Southeast EEM Agent: _____

By: _____

Name: _____

Title: _____

EXHIBIT A**NAMES AND ADDRESSES OF THE MEMBERS****Alabama Power Company**

30 Ivan Allen Jr. Blvd. NW
Atlanta, GA 30308

Associated Electric Cooperative, Inc.

2814 S. Golden
PO Box 754
Springfield, MO 65807

Dalton Utilities

1200 VD Parrott, Jr. Parkway
PO Box 869
Dalton, GA 30722

Dominion Energy South Carolina, Inc.

220 Operation Way, MC C222
Cayce, SC 29033

Duke Energy Carolinas, LLC

550 South Tryon Street
Charlotte, NC 28202

Duke Energy Progress, LLC

550 South Tryon Street
Charlotte, NC 28202

Georgia Power Company

30 Ivan Allen Jr. Blvd. NW
Atlanta, GA 30308

Georgia System Operations Corporation

2100 East Exchange Place
Tucker, GA 30084

Georgia Transmission Corporation (An Electric Membership Corporation)

2100 East Exchange Place
Tucker, GA 30084

Kentucky Utilities Company

One Quality Street
Lexington, KY 40507

Louisville Gas and Electric Company

220 West Main Street
Louisville, KY 40202

MEAG Power

1470 Riveredge Pwky., NW
Atlanta, GA 30328

Mississippi Power Company

30 Ivan Allen Jr. Blvd. NW
Atlanta, GA 30308

North Carolina Electric Membership Corporation

3400 Sumner Blvd.
Raleigh, NC 27616

North Carolina Municipal Power Agency No. 1

1427 Meadow Wood Blvd.
Raleigh, NC 27604

Oglethorpe Power Corporation (An Electric Membership Corporation)

2100 East Exchange Place
Tucker, GA 30084

PowerSouth Energy Cooperative

2027 East Three Notch Street
Andalusia, AL 36421

Santee Cooper

One Riverwood Avenue
Moncks Corner, SC 29461

Tennessee Valley Authority

400 West Summit Hill Drive, WT 6A-K
Knoxville, Tennessee 37902

EXHIBIT B
FORM OF JOINDER AGREEMENT

JOINDER AGREEMENT

Reference is made to the Southeast Energy Exchange Market Agreement, dated as of December 28, 2020, as the same may be amended from time to time (the “Southeast EEM Agreement”), by and among the entities listed on Exhibit A thereto. Capitalized terms used but not otherwise defined herein shall have the meanings given to such terms in the Southeast EEM Agreement.

The undersigned hereby agrees to become a Member of the Southeast EEM and be bound by the terms of the Southeast EEM Agreement as if an original party thereto. The Membership Board hereby consents to the addition of the undersigned as a Member of the Southeast EEM and as party to the Southeast EEM Agreement as if an original party thereto. A duly executed copy of this Joinder Agreement shall be delivered to the Secretary and the Southeast EEM Administrator.

IN WITNESS WHEREOF, the undersigned has caused this Joinder Agreement to be duly executed as of the date set forth below.

Date: _____, 20__

[NAME OF JOINING MEMBER],
A [Jurisdiction] [Entity Type]

By: _____

Name: _____

Title: _____

ACKNOWLEDGED AND ACCEPTED:

By: _____

Name: _____

Title: Secretary, Membership Board

APPENDIX A
FORM OF PARTICIPANT AGREEMENT

- 1.0 This Participant Agreement (“Agreement”), dated as of _____, is entered into, by and between [INSERT NAME OF ENTITY], the Southeast EEM Agent acting in its capacity as the agent of the Members of the Southeast Energy Exchange Market (“Southeast EEM”) and _____ (“Participant”).
- 2.0 The Participant and Southeast EEM agree that this Agreement shall incorporate, in their entirety, Appendix B to the Southeast EEM Agreement (“Southeast EEM Market Rules”), designated as Alabama Power Company’s Market Based Rate Tariff, Rate Schedule No. 1011, Southeast EEM Agreement, and the Southeast EEM Manuals. Any term not defined herein shall have the meaning ascribed to it in the Southeast EEM Market Rules. In the event of any conflict between this Agreement and the Southeast EEM Market Rules, the Southeast EEM Market Rules shall control.
- 3.0 The Participant has submitted an application for participation in the Southeast EEM and has been determined by the Southeast EEM to meet all requirements of being a Participant as defined in the Southeast EEM Market Rules. The Participant warrants that all information submitted in the application is true and accurate.
- 4.0 The Participant agrees to be bound by and accepts all of the terms of the Southeast EEM Market Rules and the Southeast EEM Manuals, as both may be amended from time to time. Any amendments to the Southeast EEM Market Rules or the Southeast EEM Manuals are automatically and without further action incorporated into this Agreement.

- 5.0 The Southeast EEM agrees that Participant shall be deemed a “Participant” under the terms of the Southeast EEM Market Rules, with all rights of participation and access to the Southeast EEM System afforded Participants under the Southeast EEM Market Rules.
- 6.0 The Participant shall supply the Southeast EEM Administrator with any and all information deemed reasonably necessary for the administration of the Southeast EEM System.
- 7.0 Either Party can assign or transfer any or all of its rights and/or obligations under this Agreement upon thirty (30) days written notice. Any such transfer or assignment shall be conditioned upon the successor in interest accepting the rights and/or obligations under this Agreement as if said successor in interest was an original Party to this Agreement.
- 8.0 An event of “Force Majeure” means any act of God, labor disturbance, act of the public enemy, war, insurrection, riot, fire, storm or flood, explosion, pandemic, epidemic, breakage or accident to machinery or equipment, any curtailment, order, regulation or restriction imposed by governmental military or lawfully established civilian authorities or any other cause beyond a Party’s control. A Force Majeure event does not include an act of negligence or intentional wrongdoing. Neither the Southeast EEM Agent, the Southeast EEM, the Members, nor the Participant will be considered in default as to any obligation under this Agreement if prevented from fulfilling the obligation due to an event of Force Majeure. However, a Party whose performance under this Agreement is hindered by an event of Force Majeure shall make all reasonable efforts to perform its obligations under this Agreement.

- 9.0 The Participant shall at all times indemnify, defend, and save the Southeast EEM System, the Southeast EEM Agent and the Southeast EEM Administrator harmless from, any and all damages, losses, claims, including claims and actions relating to demands, suits, recoveries, costs and expenses, court costs, attorney fees, and all other obligations by or to third parties, arising out of or resulting from the Southeast EEM Agent's or Southeast EEM Administrator's, as applicable, performance of its obligations under this Agreement and the Southeast EEM Market Rules, except in cases of negligence or intentional wrongdoing by the Southeast EEM Agent or Southeast EEM Administrator, as applicable.
- 10.0 This Agreement shall be deemed to be a contract made under, and for all purposes shall be governed by and construed in accordance with, the laws of the State of Delaware.
- 11.0 This Agreement shall be effective upon execution by both parties and shall remain in full force and effect until terminated pursuant to Sections 12 or 13 of this Agreement.
- 12.0 The Southeast EEM may terminate this Agreement by providing written notice of termination to the Participant in the event the Participant commits a material violation of its obligations under the terms of the Southeast EEM Market Rules which, if capable of being remedied, is not remedied within thirty (30) days after the date the Southeast EEM has given the Participant written notice of the violation, unless excused by reason of Force Majeure as provided in Section 8 of this Agreement.
- 13.0 The Participant may terminate this Agreement upon thirty (30) days written notice to the Southeast EEM.

- 14.0 Upon termination of this Agreement for any reason, Participant shall not have access to the Southeast EEM System, nor be entitled to submit Bids or Offers thereunder.
- 15.0 This Agreement may be executed in one or more counterparts at different times, each of which shall be regarded as an original and all of which, taken together, shall constitute one and the same Agreement.
- 16.0 Any notice or request made to either of the Parties to this Agreement shall be made to the following representatives:

	<u>Southeast EEM</u>	<u>Participant</u>
Title:	_____	_____
Address:	_____	_____
	_____	_____

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their respective authorized officials.

	<u>Southeast EEM</u>	<u>Participant</u>
By:	_____	By:_____
Name:	_____	Name: _____
Title:	_____	Title: _____
Date:	_____	Date: _____

APPENDIX B**SOUTHEAST EEM MARKET RULES****I. INTRODUCTION AND APPLICABILITY.**

Set forth below are the rules governing: 1) Participation in the Southeast EEM; 2) Bidding, Offering, and matching procedures for Energy Exchanges arranged through the Southeast EEM System, 3) Southeast EEM System data reporting, and 4) the processes for auditing Energy Exchanges and the hardware, software, management and operation of the Southeast EEM System. This Appendix B is subject to the terms and conditions of the Agreement. In the event of a conflict between the terms of the Agreement and the terms of this Appendix B, the terms of the Agreement shall control.

II. DEFINITIONS.

The following terms shall be defined as indicated for the purposes of this Appendix B. Definitions and terms expressed in the singular shall include the plural and *vice versa*. Any capitalized terms not defined herein shall have the meaning set forth in the Agreement.

“Agreement” means the Southeast Energy Exchange Market Agreement By and Among the Members of the Southeast EEM to which this Appendix B is appended.

“Balancing Authority” means the responsible entity that integrates resource plans ahead of time, maintains demand and resource balance within a Balancing Authority Area, and supports interconnection frequency in real time.

“Balancing Authority Area” means the collection of generation, transmission and loads within the metered boundaries of the Balancing Authority. The Balancing Authority maintains load-resource balance within this area.

“Bid” means a voluntary submission containing the required Bid Information to purchase a certain amount of Non-Firm Energy (set forth in MW).

“Bid Information” means the information applicable to Bids set forth in Section IV.B.3.

“Bid Price” means the price, in \$/MWh for the amount of Non-Firm Energy submitted in a Bid. This represents the maximum price that the Bidder is willing to pay.

“Bidder” means a Participant who submits a Bid into the Southeast EEM System.

“Buyer” means a Bidder that has been matched with an Offeror for an Energy Exchange through the Southeast EEM System.

“Clock Hour” means the sixty-minute period ending at :00.

“Company System Administrator” has the meaning set forth in Section VI.B.2.

“Contract Path” means the continuous transmission path for the flow of Non-Firm Energy between the Participants reserved for an Energy Exchange using the transaction matching, reservation and tagging functions of the Southeast EEM System.

“Delivery Interval” means a fifteen (15) minute period in which Non-Firm Energy is intended to be delivered by a Seller to its matched Buyer(s).

“Energy Exchange” means a transaction for the purchase and sale of Non-Firm Energy in the Southeast EEM between Buyers and Sellers pursuant to an Enabling Agreement and in conformance with the requirements of the Southeast EEM Rules.

“Electronic Tag” or “e-Tag” means the primary method for coordination of Interchange Schedules or Energy Schedules where Energy is transferred between Balancing Authority Areas and coordination required between multiple entities. Various entities can communicate important information pertaining to the Interchange transaction to each other via the internet using computer applications, which are based on the e-Tag specifications and schema maintained by the North American Energy Standards Board (“NAESB”).

“Energy Exchange Notification” means the notice provided to Bidders and Offerors who were matched for an Energy Exchange by the Southeast EEM Algorithm; to be automatically generated by the Southeast EEM System and provided before the start of a Delivery Interval; and to include data on the matched Energy Exchange including Buyer, Seller, price, amount of Non-Firm Energy, Source, Sink, delivery location, applicable Delivery Interval, and other any other necessary data for Participants to record the transaction.

“Energy Exchange Price” means the price, in \$/MWh, calculated by the Southeast EEM Algorithm for a specific Energy Exchange.

“FERC” means the Federal Energy Regulatory Commission.

“Good Utility Practice” means any of the practices, methods and acts engaged in or approved by a significant portion of the electric utility industry during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgment and in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practice does not require the optimum practice, method, or act to the exclusion of all others, but rather is intended to include acceptable practices, methods, or acts generally accepted in the SERC Reliability Corporation region.

“Losses” means the total cost of the electrical energy lost in the transmission of electrical energy from a Source to a Sink based on the real power loss factor (%) (“Loss Factor”) and loss rate (\$/MWh) (“Loss Rate”) of each Participating Transmission Provider on the Energy Exchange’s Contract Path.

“NAESB Electric Industry Registry” or “NAESB EIR” means thea central registry and repository of information required for commercial transactions that is maintained by NAESB.

“Network Map” means the computer-based representation of all Participating Transmission Provider service territories, Balancing Authorities, valid transmission paths (Point of Receipt – Point of Delivery combinations), Sources, and Sinks.

“Non-Firm Energy” means a product for which delivery or receipt of the energy may be interrupted for any reason or no reason, without liability on the part of either buyer or seller.

“Non-Firm Energy Exchange Transmission Service” means transmission service provided by a transmission provider, pursuant to its Tariff, that has the following characteristics: (i) it is non-firm transmission service with the lowest curtailment priority, provided solely on an as-available basis for 15-minute Energy Exchanges, after taking into account other higher priority uses and the limitations of the transmission system of the Participating Transmission Provider; (ii) it is available solely for Energy Exchanges; (iii) it is identified and offered in the Tariff as “Non-Firm Energy Exchange Transmission Service;” (iv) the charge for such service, and related Schedule 1 and Schedule 2 (or equivalent) ancillary services, is \$0/MWh; (v) the charge for financial losses is based on the methodology established in the Participating Transmission Provider’s Tariff; (vi) the service must be obtained by a Participant using the transaction matching, reservation and tagging functions of the Southeast EEM System, rather than directly through Open Access Same Time Information System or other reservation, scheduling or tagging requirements applicable to other forms of transmission service offered by a Participating Transmission Provider; (vii) the service may not be reassigned, redirected, or sold by the transmission customer; (viii) in combination with the other Participating Transmission Providers’ provisions of Non-Firm Energy Exchange Transmission Service, the service allows for a continuous Contract Path for Energy Exchanges; and (ix) the Participating Transmission Provider is required to provide the information specified in and as required by Section IV.A.2 of the Southeast EEM Market Rules to the Southeast EEM System. For the avoidance of doubt, nothing in this Agreement shall obligate any Participating Transmission Provider to (a) plan, construct, or maintain its transmission system for the benefit of any Participant; (b) provide Non-Firm Energy Exchange Transmission Service in a manner that is contrary to the terms of the Participating Transmission Provider’s Tariff, or contrary to Good Utility Practice, each as determined in the sole judgment of the Participating Transmission Provider; (c) provide Non-Firm Energy Exchange Transmission Service following termination of its Southeast EEM Member status; (d) provide Non-Firm Energy Exchange Transmission Service to a non - Participant; or (e) file its Tariff with FERC if the Tariff is not already required to be filed with FERC.

“OASIS” means an Open Access Same-Time Information System that conforms to the requirements of Part 37 of the FERC’s regulations, 18 CFR §§ 37.1, et seq.

“OATI webRegistry” means the system developed by Open Access Technology International, Inc. to perform the NAESB EIR functions.

“Offer” means a voluntary submission containing the required Offer Information to sell a certain amount of Non-Firm Energy (set forth in MW).

“Offer Price” means the price, in \$/MWh for the amount of Non-Firm Energy offered in an Offer. This represents the minimum price that the Offeror is willing to collect to sell.

“Offer Information” means the information applicable to Offers set forth in Section IV.B.3, as well as other information that may be required by the Southeast EEM Administrator.

“Offeror” means a Participant who submits an Offer into the Southeast EEM System.

“Participant Profile” means that information identified in Section IV.A.1., Section IV.C.6., and such other information requested by the Southeast EEM System Interface to assist in the creation of Energy Exchanges.

“Participant” means an entity that meets the requirements set forth in Section III of this Appendix B.

“Participant Specific Constraints” has the meaning set forth in Section IV.A.1.b. and IV.C.5.

“Seller” means an Offeror that has been matched with a Buyer through the Southeast EEM System.

“Sink” means a pre-approved and validated OATI webRegistry sink point.

“Source” means a pre-approved and validated OATI webRegistry source point.

“Southeast EEM Algorithm” means the mathematical equations that determine the matching Bids and Offers resulting in Energy Exchanges.

“Southeast EEM System Interface” means the graphical user interface (“GUI”) and application programming interfaces (“API”) used by the Southeast EEM System that meet the Southeast EEM System requirements developed by the Southeast EEM Administrator and the Operating Committee.

“Southeast EEM Manuals” means the instructions, rules, procedures and guidelines established by the Operating Committee for the Southeast EEM.

“System Administrators” means, collectively, the Southeast EEM Administrator and Company System Administrators.

III. PARTICIPATION

A. Any entity that meets the requirements of this Section III may become a Participant.

B. A Participant must:

- 1.** Own or otherwise control a Source within the Territory and/or be contractually obligated to serve a Sink within the Territory;
- 2.** Execute a Participant Agreement in the form attached to the Agreement as Appendix A (the “Participant Agreement”) which agreement shall, among

other things, contractually bind such entity to comply with the rules set forth in this Appendix B;

3. Deliver the executed Participant Agreement to the Secretary and the Southeast EEM Administrator, which shall become effective when countersigned by the Southeast EEM Agent at the direction of the Operating Committee;
4. Execute and deliver a Non-Firm Energy Exchange Transmission Service Agreement with each Participating Transmission Provider who requires delivery of such agreement, or otherwise have access to Non-Firm Energy Exchange Transmission Service from each Participating Transmission Provider; and
5. Have or enter into an Enabling Agreement with at least three (3) or more Participants.

IV. BIDS/OFFERS AND MATCHING PROCEDURES.

A. Pre-Bid/Offer Information Requirements.

1. Information Submitted by Participants.
 - a. Prior to being permitted to submit Bids or Offers, each Participant shall provide the Southeast EEM all required information in its Participant Profile. Participants are responsible for providing accurate information to the Southeast EEM System in its Participant Profile, as well as submitting any updates or modifications to the Southeast EEM Administrator to maintain the accuracy of Participant's Profile.
 - b. Participant-Specific Constraints.
 - i. Prior to being permitted to submit Bids or Offers, each Participant shall provide to the Southeast EEM in its Participant Profile, any constraints the Southeast EEM Algorithm must take into account in matching Bids or Offers from such Participant ("Participant-Specific Constraints"). Participant-Specific Constraints can be either counterparty specific or geographic.
 - ii. Offers from a Participant for a Delivery Interval will not be processed unless the Participant's Participant-Specific Constraints are set such that there are at least three other non-affiliated Participants with whom the submitting Participant can be matched for an Energy Exchange as a Seller, and Bids from a Participant for a Delivery Interval will not be processed unless the Participant's Participant-

Specific Constraints are set such that there are at least three (3) other non-affiliated Participants with whom the submitting Participant can be matched for an Energy Exchange as a Buyer.

iii. Participants shall not be required to provide a reason for any Participant-Specific Constraint. The reason for such constraints could be, but is not limited to, the following:

- (a) Lack of an Enabling Agreement with a Participant;
- (b) Counterparty issues (e.g., credit);
- (c) Affiliates restrictions; and
- (d) Geographic issues causing supply or delivery point restrictions and related regulatory requirements.

c. Prior to being permitted to submit Bids or Offers, each Participant must affirm that it has executed Service Agreements for Non-Firm Energy Exchange Transmission Service with each Participating Transmission Provider that requires delivery of such agreement or that it otherwise has access to Non-Firm Energy Exchange Transmission Service as to each Participating Transmission Provider through such Participating Transmission Provider's Tariff.

2. Prior to being permitted to provide Non-Firm Energy Exchange Transmission Service, Participating Transmission Providers shall provide sufficient information to permit the Southeast EEM Administrator to create a Network Map of the Southeast EEM Territory for purposes of confirming available capacity for NFEETS along Contract Paths for all potential Energy Exchanges.
3. Participant shall supply the Southeast EEM Administrator with any and all information the Operating Committee deems reasonably necessary for the administration of the Southeast EEM System.

B. Bids and Offers.

1. Delivery Intervals. Each Clock Hour will consist of four (4) Delivery Intervals:
 - xx:00 to xx:15;
 - xx:15 to xx:30;
 - xx:30 to xx:45; and

xx:45 to xx:00 of the next Clock Hour.

2. Deadlines.

- a.** For each Clock Hour, every Participating Transmission Provider's available capacity for NFEETS must be available as an input to the Southeast EEM Algorithm no later than fifteen (15) minutes before the start of such next Clock Hour. To the extent a Participating Transmission Provider can update its available capacity for NFEETS within a Clock Hour, such updated information must be available as an input to the Southeast EEM Algorithm no later than fifteen (15) minutes before the start of the applicable Delivery Interval.
- b.** Each Participating Transmission Provider's Loss Factor and Loss Rate must be available as an input to the Southeast EEM Algorithm no later than fifteen (15) minutes prior to the Clock Hour for which the Loss Factor and Loss Rate are to apply. If the Participating Transmission Provider does not update its Loss Factor and Loss Rate, the values for the prior Clock Hour will apply.
- c.** Bid and Offers must be submitted through the Southeast EEM System Interface not earlier than seven (7) days prior to the applicable Delivery Interval and not later than fifteen (15) minutes prior to the Delivery Interval for which they are submitted. Participants may modify or cancel previously submitted Bids or Offers at any time before 15 minutes prior to the upcoming Delivery Interval; no further modifications may be submitted to a Bid or Offer within the fifteen (15)-minute period prior to the applicable Delivery Interval.
- d.** The Southeast EEM System will: 1) match the Bids and Offers for the next Delivery Interval, subject to the constraints and limitations established pursuant to this Appendix; and 2) provide an Energy Exchange Notification to all Participants who were matched as an Energy Exchange for the upcoming Delivery Interval, and 3) submit all necessary transmission reservations and e-Tags ten (10) minutes prior to the relevant Delivery Interval.

3. Bid and Offer Requirements.

- a.** Each Bid or Offer must include the following components:

 - i. Participant name.
 - ii. Whether the submission is a Bid or an Offer.

- iii. An amount of Non-Firm Energy (MW) for the Bid or Offer in increments of 4MW blocks.
 - iv. For all Offers, an Offer Price and for all Bids, a Bid Price.
 - v. For all Offers, a Source and for all Bids, a Sink.
 - vi. The specific Delivery Interval to which the Bid or Offer applies.
 - vii. Whether the submission: 1) must be matched in full or not at all or 2) can be matched at any volume below the Bid or Offer volume (subject to the 4MW increment rule) (“All or Nothing Selection”).
 - viii. Any other components as may be required for the Southeast EEM System to perform actions set forth in Section IV.C of this Appendix or to generate the reports described in Section V of this Appendix.
- b. An Offer may include the maximum Energy Exchange Price that the Participant is willing to accept for a particular Source/Sink pair for the applicable Delivery Interval.
 - c. Participants are permitted to submit multiple Bids or Offers for the same Delivery Interval with varying Source or Sink locations, as applicable, Non-Firm Energy amounts, and pricing, subject to any limitation on the number of Bids or Offers that may be submitted at any one Source or Sink for a particular Delivery Interval as may be established in the Southeast EEM Manuals.
 - d. Submission of Bids and Offers is voluntary; Participants are not required to submit any Bids or Offers for any Delivery Interval.

C. Matching.

- 1. Subject to the constraints defined below and all Bid Information and Offer Information, the Southeast EEM Algorithm will evaluate all Bids and Offers for each Delivery Interval and produce Energy Exchanges.

The Southeast EEM Algorithm will match Bids and Offers so as to result in Energy Exchanges that maximize the Southeast Energy Exchange Market total benefit for the applicable Delivery Interval while simultaneously honoring all the requirements identified in Section IV.A.1 and the constraints identified in Section IV.C.6. The total benefit shall be calculated by aggregating the benefits from each Energy Exchange for the applicable Delivery Interval.

2. The benefit associated with each Energy Exchange will be calculated by taking the difference between the Bid Price and Offer Price and multiplying it by the MW amount of Non-Firm Energy identified in the Energy Exchange, less the costs of transmission services (Losses) provided along the Contract Path.
3. For any Energy Exchange where the Energy Exchange Price exceeds the maximum value submitted in accordance with Section IV.B.3.b., the Energy Exchange Price will be adjusted down to that maximum value, such that the total benefit associated with the Energy Exchange remains the same, but the benefit allocation will be adjusted in the Buyer's favor.
4. Matching Principles.
 - a. Whole and/or partial amounts of Non-Firm Energy shall be matched, consistent with the Participant's All or Nothing Selection in its Bid Information or Offer Information.
 - b. Bids or Offers that can be matched with multiple Participants shall be allowed, subject to the matching rules set forth in this Appendix.
5. Match/Energy Exchange Price.
 - a. Each Energy Exchange Price will be the sum of: 1) the average of the Bid Price and Offer Price for the Energy Exchange, and 2) half the net Losses for all Transmission Service Providers along the Contract Path, where net Losses equals the Losses paid for by Seller minus the Losses paid for by Buyer.
 - b. Data demonstrating Losses will be incorporated into the Energy Exchange Price.
 - i. Each Participating Transmission Provider determines the method for pricing its Losses;
 - ii. Each Participating Transmission Provider is responsible for updating its Tariff to address how Losses will be priced; and
 - iii. Loss Rate and Loss Factor are an input into the algorithm by the relevant Participating Transmission Provider.
6. Constraints.
 - a. Participant-Specific Constraints. In matching Bids and Offers, the Southeast EEM Algorithm will take into account the Participant-

Specific Constraints submitted by the Bidders and Offerors in accordance with Section IV.A.1.b.

b. Generally Applicable Constraints.

- i. In matching Bids and Offers, the Southeast EEM Algorithm shall not make any Energy Exchanges that would cause the available capacity for NFEETS on any given Contract Path to be exceeded.
- ii. Energy Exchanges shall not be made that cause:
 - (a) A Buyer to purchase more MW than the amount set forth in its Bid;
 - (b) A Seller to sell more MW than the amount set forth in its Offer; and
 - (c) For matched Bids and Offers, the Energy Exchange Price to (i) be less than the Offer Price plus half of net Losses, as calculated per Section IV.C.5.a, and (ii) more than the Bid Price minus net Losses, as calculated per Section IV.C.5.a.
- iii. The Southeast EEM Algorithm shall only make Energy Exchanges that yield positive benefits to both Buyer and Seller, as defined in Section IV.C.2, after Losses have been considered.
- iv. The total MW of potential Energy Exchanges in any Delivery Interval shall not exceed the aggregate amount of Non-Firm Energy identified in the applicable Offers or Bids for such Delivery Interval.
- v. A Participant's Bid may not be matched with an Offer made by the same Participant.
- vi. The Southeast EEM Algorithm shall not create Energy Exchanges in the same Delivery Interval that would create offsetting Energy Exchanges whereby Participant 1 sells to Participant 2 while Participant 2 sells to Participant 1 during the same interval at the same location.

7. Treatment of Identical Offers or Bids.

- a.** In the event that multiple Bids or Offers that are at the same price at a Source or Sink are identical which create the same benefit for

the Southeast EEM, a randomized preference will be assigned to the Bid(s) or Offer(s).

8. Notification, Scheduling, and Transmission for Energy Exchanges.

a. After an Energy Exchange for a Delivery Interval is determined:

- i. The Bidder and Offeror shall be notified of match via an Energy Exchange Notification.
- ii. Transmission reservations and e-Tags shall be automatically created by the Southeast EEM System based on the matches within the time frame noted above. All e-Tags will be sent to the applicable Participating Transmission Provider(s), Balancing Authority(ies) and matched Participants. Consistent with the discretion afforded to Participating Transmission Providers and Balancing Authorities in the NAESB business practices, each participating Balancing Authority within the Territory agrees that it will not reject an e-Tag automatically created by the Southeast EEM System on the basis that it was submitted less than twenty (20) minutes prior to the Delivery Interval but at least ten (10) minutes prior to the Delivery Interval.
- iii. The Southeast EEM System will generate and provide sufficient information to Participating Transmission Providers to validate and collect payment for Losses from applicable Buyers and Sellers for each Energy Exchange.
- iv. Appropriate OASIS information will be provided to the relevant Participating Transmission Service Providers.

9. The contractual “point of sale” of an Energy Exchange will be at the Buyer’s Balancing Authority border for a transaction delivered out of or thru one or more Balancing Authorities. For an Energy Exchange that stays within one Balancing Authority (Source and Sink in same Balancing Authority), the “point of sale” will be at the bus of the Seller’s Source. For an Energy Exchange fully delivered to a Buyer’s Balancing Authority border, the Participant acting as the Seller will be the responsible party for the transmission service to deliver the Non-Firm Energy to the “point of sale” and the Buyer will be responsible for the transmission service required to sink the Non-Firm Energy. For an Energy Exchange that stays within one Balancing Authority, the Buyer will be the responsible party for the transmission service required to sink the Non-Firm Energy. For avoidance of doubt, Non-Firm Energy Exchange Transmission Service

must be used for the entire Contract Path from Source to Sink for all Energy Exchanges.

V. SOUTHEAST EEM ENERGY EXCHANGE REPORTS.

The Southeast EEM Administrator and the Company System Administrators shall create and maintain the reports concerning Energy Exchanges as required by the Operating Committee. The reports that are provided by the System Administrators shall include, but need not be limited to, the following:

A. Public Monthly Informational Report. This report shall be generated by the Southeast EEM Administrator and posted to the Southeast EEM website on or before midnight of the fifth Business Day of the following month and shall include the following information from the prior month:

1. Minimum, maximum, and average match prices;
2. Amount of Non-Firm Energy offered and sold as well as bid and purchased over all Delivery Intervals;
3. Amount of Non-Firm Energy that flowed once matched as an Energy Exchange;
4. Total number of Energy Exchanges;
5. Total benefit to be calculated in accordance with Section IV.C.2;
6. Minimum, maximum, and average MW Energy Exchange amount; and
7. Energy Exchanges made but not executed.

B. Public Daily Informational Report. This report shall be generated by the Southeast EEM Administrator and posted to the Southeast EEM website by 6:00 A.M. CPT and shall include the following aggregated information from the prior day:

1. Total number of Bids and Offers during each Clock Hour of the prior day;
2. Amount of Non-Firm Energy offered and sold as well as bid and purchased during each Clock Hour of the prior day;
3. Number of Energy Exchanges executed for each Clock Hour of the prior day;
4. Total number of Participants who submitted Bids for each Clock Hour of the prior day;
5. Total number of Participants who submitted Offers for each Clock Hour of the prior day; and

6. Weighted average match price per Clock Hour.
- C. **Public Hourly Informational Report.** This report shall be generated by the Southeast EEM Administrator and posted to the Southeast EEM website fifteen (15) minutes after the applicable Clock Hour and shall include the following aggregated information from the applicable Clock Hour:
1. Total number of Bids and Offers during that Clock Hour;
 2. Amount of Non-Firm Energy offered and sold as well as bid and purchased during that Clock Hour;
 3. Number of Energy Exchanges executed for that Clock Hour;
 4. Total number of Participants who submitted Bids during that Clock Hour; and
 5. Total number of Participants who submitted Offers during that Clock Hour.

VI. **AUDITING AND DATA ADMINISTRATION.**

- A. **Archiving of Data.** All Southeast EEM System input data necessary to recreate and audit any Delivery Interval, and all Southeast EEM System output data for each Delivery Interval, shall be archived such that at least the three prior months of data can be retrieved in real time. Five (5) years of data shall be archived off-line. Participants may request access to their own data and it shall be made available upon request within 24 hours. Data older than five (5) years shall be deleted at the end of each month on a rolling basis.
- B. **Access to Southeast EEM System Energy Exchange Data.**
1. The Southeast EEM Administrator shall have access, via system software, to the results of the matching process for any Delivery Interval of on-line history. The data to which the System Administrators have access shall include raw Participant data, matched output data, and intermediate results of the algorithm. To be clear, the Southeast EEM Administrator shall be able to run all of the reports available in the system and view the data for all Participants.
 2. Each Participant will be required to identify an administrator that is authorized by the Participant to run and review all of the reports available in the Southeast EEM System that are redacted to all show the information related to the Participant it represents (the "Company System Administrator"). The Southeast EEM System will provide each Company System Administrator with the right to grant access to certain reports and related data to identified delegates within the Participant's organization. Each Company System Administrator (and any delegate identified by the

Company System Administrator) shall be able to run all of the reports available in the system but receive only the data that belong to the Participant it represents.

C. Additional Southeast EEM Administrator Functions. Subject to the limitations set forth in subsection (B) above, the Southeast EEM Administrator shall employ the system software to perform the following functions:

1. Oversee the matching process;
2. Maintain model data and Southeast EEM System parameters; and
3. View Participant usage statistics and generate Participant benefit reports.

D. Auditing Process. Auditing functions will be performed by the Market Auditor at the direction of the Membership Board. The Market Auditor will report its conclusions, and provide any supporting data in the event that problems are identified to the Membership Board on an after-the-fact, periodic basis. The Membership Board will maintain sole responsibility for determining whether to share the information any further. Auditing functions include the following:

1. Verify that the Southeast EEM System operates in accordance with the Southeast EEM Rules, including the determination and application of Bids, Offers, constraints, matched settlements, OASIS reservations, and e-tags.
2. Ensure that Energy Exchange data is available to the applicable Participants in accordance with the Southeast EEM Rules.
3. Report to the Membership Board any concerns regarding the reliability and accuracy of the Southeast EEM System process and results including any instance of operational problems or anomalies with the functioning of the Southeast EEM System.
4. Provide evaluation regarding the proper function of the Southeast EEM System, and the effectiveness of any Southeast EEM System specific controls in place related to the operation of the Southeast EEM System.
5. Refer any complaints received to the Membership Board, and investigate further at the Membership Board's direction.
6. The Membership Board will be responsible for defining the time interval(s) for the auditing function to be performed and report back to the governing body. Such interval(s) will be published in the Southeast EEM Manuals.

E. Data Administration.

1. Parameters. The Southeast EEM Administrator shall set and maintain the following Southeast EEM System configuration parameters, which shall be posted for access by all Members:
 - a. The matching process start time for each Clock Hour;
 - b. The number of minutes before the start of the matching process when no additional Bids and Offers will be accepted;
 - c. The number of minutes before the start of the matching process by which the processing of any in-transit Bids and Offers must be completed;
 - d. The addition or deletion of Participants;
 - e. The addition or deletion of a Company System Administrator for each Participant;
 - f. Manage, store, and safeguard data (e.g., Bid, Offer, match, and Participant Information) to ensure appropriate levels of confidentiality and records retention;
 - g. Grant access to the data on the Southeast EEM System as appropriate;
 - h. Supply data to Participants involved in Energy Exchanges to complete the applicable transaction, including (but not limited to):
 - i. Participant identification of the Buyer and the Seller;
 - ii. Balancing Authority Area identifications for the MWh quoted by the Buyer and the Seller;
 - iii. e-Tag number;
 - iv. Transaction quantity in MW/MWh, including the MWh out of the Source area and the MWh into the Sink area;
 - v. Information specifically related to an Energy Exchange (not price of the other side of the match as may reveal sensitive transmission information);
 - vi. Energy Exchange Price;
 - vii. Benefit for the Buyer and the Seller in total dollars and \$/MWh; and
 - viii. Energy Exchanges not executed.

- i.** Supply needed information/data for auditing functions to ensure that the Southeast EEM System is being properly administered.

APPENDIX C

SOUTHEAST EEM AGENT SCOPE

The Southeast EEM Agent Scope shall be limited to the following:

- a. Subject to paragraph (b) below, the Southeast EEM Agent shall execute contracts with third parties solely as the agent for and on behalf of the Members and not in the Southeast EEM Agent's own name or for its own account.
- b. The Southeast EEM Agent shall be empowered to execute contracts only after being given specific written or electronic authorization to do so by the Membership Board, or in the case of minor or unsubstantial contracts, the Operating Committee, in either case as delivered to the Southeast EEM Agent by the Membership Board or the Operating Committee, as applicable.
- c. The Southeast EEM Agent shall be authorized to execute amendments to contracts entered into on behalf of the Members, provided that such amendment is authorized by the Membership Board or, in the case of minor or unsubstantial contracts, by the Operating Committee, in either case as delivered to the Southeast EEM Agent by the Membership Board or the Operating Committee, as applicable.
- d. For convenience, the Southeast EEM Agent shall be authorized to accept notices under the contracts that it executes on behalf of the Members.
- e. The Southeast EEM Agent shall **not** be involved in the billing process under the vendor contracts. Third-party vendors will bill the Members directly for their proportionate share of the costs under the contracts executed by the Southeast EEM Agent on behalf of the Members.
- f. If certain vendors are unwilling to bill Members directly, the Membership Board shall develop an alternative billing arrangement, such as using a third-party billing agent.
- g. The Southeast EEM Agent shall **not** have any special role in, or authority over, the operation or administration of the Southeast EEM System. The vendor contracts shall specify that the day-to-day contact for such vendor shall be the Operating Committee, not the Southeast EEM Agent.
- h. The Southeast EEM Agent shall not be exposed to incremental liability for actions taken within the Southeast EEM Agent Scope.

FERC rendition of the electronically filed tariff records in Docket No. ER21-01111-001

Filing Data:

CID: C001552

Filing Title: Response to Deficiency Letter regarding Southeast EEM Agreement

Company Filing Identifier: 472

Type of Filing Code: 180

Associated Filing Identifier: 444

Tariff Title: Market Based Rate Tariff

Tariff ID: 1

Payment Confirmation:

Suspension Motion:

Tariff Record Data:

Record Content Description, Tariff Record Title, Record Version Number, Option Code:

Rate Schedule No. 1011, Southeast EEM Agreement, 0.0.1, A

Record Narrative Name:

Tariff Record ID: 2056

Tariff Record Collation Value: 167772160 Tariff Record Parent Identifier: 0

Proposed Date: 2021-08-06

Priority Order: 1000000000

Record Change Type: CHANGE

Record Content Type: 1

Associated Filing Identifier: 444

SOUTHEAST ENERGY EXCHANGE MARKET AGREEMENT

Record Content Description, Tariff Record Title, Record Version Number, Option Code:

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Record Narrative Name:

Tariff Record ID: 2057

Tariff Record Collation Value: 167804928 Tariff Record Parent Identifier: 2056

Proposed Date: 2021-08-06

Priority Order: 1000000000

Record Change Type: CHANGE

Record Content Type: 1

Associated Filing Identifier: 444

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Record Content Description, Tariff Record Title, Record Version Number, Option Code:

Southeast EEM Agreement, , 0.0.1, A

Record Narrative Name:

Tariff Record ID: 2058

Tariff Record Collation Value: 167837696 Tariff Record Parent Identifier: 2056

Proposed Date: 2021-08-06

Priority Order: 1000000000

Record Change Type: CHANGE

Record Content Type: 1

Associated Filing Identifier: 444

SOUTHEAST ENERGY EXCHANGE MARKET AGREEMENT

This SOUTHEAST ENERGY EXCHANGE MARKET AGREEMENT (as the same may be amended from time to time in accordance with the terms hereof, the “Agreement”), by and among each of the entities listed on Exhibit A hereto (each entity, a “Party,” and collectively, the “Parties”), as that exhibit may be amended from time to time in accordance with the terms hereof, is made, entered into and effective this 28th day of December, 2020. Hereinafter, Parties to this Agreement may be referred to individually as a “Member” and collectively as the “Members.”

WITNESSETH

WHEREAS, there is presently no centrally operated electricity market in the southeastern United States and, accordingly, inter-utility electricity transactions presently occur through bilateral transactions;

WHEREAS, Members believe that a voluntary, region-wide, bilateral, automated, intra-hour electric exchange utilizing unreserved transmission capacity of Participating Transmission Providers at a zero-dollar transmission rate will provide value to their customers by creating efficiencies, transparency, and market liquidity;

WHEREAS, Members desire to participate and to permit other entities to participate as Participants in the exchange; and

WHEREAS, the Members believe that the foregoing objectives can be achieved through a joint effort to sponsor and create a common trading platform that facilitates bilateral electricity transactions between and within their respective service territories.

NOW, THEREFORE, the Members, for good and valuable consideration, enter into this Agreement that sets forth their mutual covenants, rights, and obligations for establishing, funding, and participating in the Southeast Energy Exchange Market (defined below).

ARTICLE 1

DEFINITIONS AND RULES OF INTERPRETATION

1.1

Definitions.

“Additional Member” has the meaning provided to it in Section 3.2.3.

“Affiliate” has the meaning set forth in 18 C.F.R. § 35.36(9), as amended.

“Affirmative Majority Vote” has the meaning set forth in Section 4.1.5(b).

“Affirmative Supermajority Vote” has the meaning set forth in Section 4.1.5(c).

“Alternate Committee Member” has the meaning set forth in Section 5.9(b).

“Alternate MNEL Value” has the meaning set forth in Section 7.3.1(a).

“Alternate Representative” has the meaning set forth in Section 4.1.7(b).

“Annual Budget” has the meaning set forth in Section 7.2.2.

“Annual Budget Determination Date” has the meaning set forth in Section 7.2.2.

“Annual Meeting” has the meaning set forth in Section 4.4.

“Annual Member Meeting” has the meaning set forth in Section 4.5.

“Authorized Action” has the meaning set forth in Section 6.1.

“Balancing Authority” shall have the meaning set forth in the Southeast EEM Market Rules.

“Balancing Authority Area” shall have the meaning set forth in the Southeast EEM Market Rules.

“Bid” shall have the meaning set forth in the Southeast EEM Market Rules.

“Bid Information” shall have the meaning set forth in the Southeast EEM Market Rules.

“Bidder” shall have the meaning set forth in the Southeast EEM Market Rules.

“Business Day” means each weekday, Monday through Friday, excluding NERC holidays.

“Buyer” shall have the meaning set forth in the Southeast EEM Market Rules.

“Chair of the Membership Board” has the meaning set forth in Section 4.3.2.

“Change in Law” has the meaning set forth in Section 8.6.

“Committee Member” has the meaning set forth in Section 5.1.

“Cooperatives” means those electric membership cooperative Members that serve load, and cooperatives that provide generation, transmission and/or system operations services to electric membership cooperatives that serve load, in each case in the Territory.

“Deadlock Issue” has the meaning set forth in Section 5.7.2.

“Delivery Interval” shall have the meaning set forth in the Southeast EEM Market Rules.

“Disaggregated Utility” means multiple entities of a disaggregated generation/transmission/system operations utility system.

“Effective Date” has the meaning set forth in Section 8.4.1.

“Enabling Agreement” means a bilateral agreement for the purchase and sale of Energy that provides for Energy Exchanges between a Seller and a Buyer and that, for Sellers that are Public Utilities and require authorization to engage in sales for resale of electric energy, capacity or ancillary services at market-based rates under Section 205 of the FPA, has been entered into pursuant to such Seller’s market-based rate authority.

“Energy” means electric energy delivered as three-phase alternating current.

“Energy Exchange” means a transaction for the purchase and sale of Non-Firm Energy using the transaction matching, reservation and tagging functions of the Southeast EEM between

Participants pursuant to an Enabling Agreement and in conformance with the requirements of the Southeast EEM Market Rules.

“Enrollment Period” has the meaning set forth in Section 3.2.3.

“FERC” means the Federal Energy Regulatory Commission or any successor to its rights and obligations under Part II of the FPA.

“FPA” means the Federal Power Act, as amended.

“Good Utility Practice” shall have the meaning set forth in the Southeast EEM Market Rules.

“Governmental Action Withdrawal Date” has the meaning set forth in Section 8.6.

“Governmental Entity” means any federal, state, county, municipal, local or foreign government or entity or any legislature, agency, bureau, branch, department, division, commission, court, tribunal, magistrate, justice, arbitrator, multi-national organization, quasi-governmental body, or other similar recognized organization or body of any federal, state, county, municipal, local, or foreign government or any enforcement authority or other similar recognized organization or body exercising similar powers or authority, including FERC, any public utility commission or public service commission or similar authority, but excluding in each case, any Member acting in its capacity as a Member hereunder and not otherwise in a governmental capacity.

“Governmental Utility” means any electric utility located in the Territory that is owned, operated or controlled by the United States, or any state or commonwealth included in the Territory, any political subdivision of a state or commonwealth included in the Territory, or any agency, authority, or instrumentality of any one or more of the foregoing, or any corporation which is wholly owned, directly or indirectly, by any one or more of the foregoing.

“Interest Rate” means the lesser of (i) the per annum rate of interest announced from time to time by Citibank, N.A. (or a suitable replacement specified by the Operating Committee) as its “prime rate” for commercial loans effective on the date payment is due as established from time to time by such bank, plus two percent (2%), or (ii) the maximum lawful rate permitted by applicable Law.

“Investor Owned Utilities” means those investor owned utility Members that serve load in the Territory.

“Jurisdictional Member” means a Member that is a Public Utility.

“Law” means any federal, state or local law, statute, act, rule, code, ordinance, decree, treaty, regulation, order, judgment, legally binding announcement, directive or published interpretation thereof, enacted, issued or promulgated by any Governmental Entity.

“Load Serving Entity” has the meaning set forth in the NERC Rules of Procedure, as approved by FERC.

“Market Auditor” means an independent entity engaged by the Southeast EEM Agent to perform the scope of responsibilities identified in Section 10.2 and in the Southeast EEM Market Rules.

“Material Vendor Contract” means an agreement between the Southeast EEM Agent, on behalf of the Members, and any vendor or supplier that, together with all other such agreements with such vendor or supplier and its Affiliates, involves aggregate consideration payable by the Members.

“Member” or “Members” has the meaning set forth in the preamble, except that to the extent any of the Members have not executed this Agreement at the time that it is filed with FERC, such Member may execute this Agreement no later than thirty (30) days after the Effective Date. Thereafter, any entity listed on Exhibit A that has not executed the Agreement may seek to become an Additional Member pursuant to Section 3.2.3.

“Member Net Energy for Load” means, except as modified pursuant to Section 7.3.1, the Net Energy for Load calculated for each Member and submitted in NERC’s business plan and budget filed annually with FERC in accordance with 18 C.F.R. § 39.4(b), as amended. For purposes of Section 4.1.5 and Section 7.2, (i) a Representative’s Member that is an entity part of a Disaggregated Utility, and (ii) any Affiliates of a Representative’s Member, shall in each case be assigned the total Net Energy for Load of the associated entities in such Disaggregated Utility or of such Member Affiliates, as applicable.

“Membership Board” means the membership board established pursuant to Article 4.

“MW” means megawatt or megawatts.

“MWh” means megawatt-hour or megawatt-hours.

“NAESB EIR” shall have the meaning set forth in the Southeast EEM Market Rules.

“NERC” means the North American Electric Reliability Corporation or its successor.

“Net Energy for Load” means net generation of an electric system plus Energy received from others less Energy delivered to others through interchange; it includes system losses but excludes Energy required for the storage of Energy at energy storage facilities. For purposes of this definition “electric system” means a Load Serving Entity.

“Non-Firm Energy” shall have the meaning set forth to it in the Southeast EEM Market Rules

“Non-Firm Energy Exchange Transmission Service” shall have the meaning set forth in the Southeast EEM Market Rules.

“Non-Firm Energy Exchange Transmission Service Agreement” means an agreement for the provision of Non-Firm Energy Exchange Transmission Service between a Participant and a Participating Transmission Provider, as provided in such Participating Transmission Provider’s Tariff, as any such agreement may be updated from time to time.

“Non-Jurisdictional Member” means a Member that is not a Public Utility.

“OATI webRegistry” shall have the meaning set forth in the Southeast EEM Market Rules.

“Offer” shall have the meaning set forth in the Southeast EEM Market Rules.

“Offer Information” shall have the meaning set forth in the Southeast EEM Market Rules.

“Offer Price” shall have the meaning set forth in the Southeast EEM Market Rules.

“Offeror” shall have the meaning set forth in the Southeast EEM Market Rules.

“Operating Committee” means that committee established pursuant to Article 5.

“Operating Costs” shall mean dues, costs, expenses and other payment obligations assessed pursuant to this Agreement, or other fees or liabilities that may be imposed by the Membership Board or in accordance with the Southeast EEM Market Rules that arise under this Agreement. For the avoidance of doubt, Operating Costs includes fees, costs and expenses incurred by the Southeast EEM Agent in performing its duties hereunder and the cost of employing third party vendors by the Southeast EEM Agent regardless of whether such costs are billed to the Members through the Southeast EEM Agent, the Southeast EEM Administrator, a third party or directly by such vendors.

“Other Court/Governmental Entity Action” has the meaning set forth in Section 8.6.

“Participant” shall have the meaning set forth in the Southeast EEM Market Rules.

“Participant Agreement” has the meaning set forth in Section 3.3.

“Participating Transmission Provider” means a transmission provider that is providing Non-Firm Energy Exchange Transmission Service.

“Popular Vote” has the meaning set forth in Section 4.1.5(a)(i).

“Public Utility” has meaning set forth in Section 201 of the FPA.

“Record Date” means the date upon which FERC accepted the most recent annual Business Plan/Budget, including Net Energy for Load values, filed by NERC pursuant to the requirements of 18 C.F.R. § 39.4, as amended.

“Regulatory Filing” means any filing or submission made with or to a Governmental Entity.

“Related Parties” has the meaning set forth in Section 9.1.

“Reliability Obligations” has the meaning set forth in Section 11.2.

“Representative” has the meaning set forth in Section 4.1.2(a).

“Representative Losses” has the meaning set forth in Section 6.5.

“RUS” means the Rural Utilities Service, or its successor.

“Secretary” has the meaning set forth in Section 4.3.3.

“Sector” means individually and collectively, the Investor Owned Utilities, Cooperatives and Governmental Utilities.

“Seller” shall have the meaning set forth in the Southeast EEM Market Rules.

“SERC” has the meaning set forth in Section 11.2.

“Significant Matters” means (i) any amendment to this Agreement (excluding updates to Exhibit A solely to update notice information pursuant to Section 16.8), including but not limited to the Southeast EEM Market Rules, (ii) the appointment, removal, substitution and replacement of the Southeast EEM Agent and/or the Southeast EEM Administrator and the approval of, and any amendment or extension of, the agreement(s) between the Southeast EEM Agent (on behalf of the Members, including the Southeast EEM Agent Scope) and/or the Southeast EEM Administrator, (iii) the development of, or any material modification to, the Southeast EEM Algorithm or the Southeast EEM System, (iv) the appointment, removal, substitution and replacement of the Market Auditor, and any amendment or extension of the agreement(s) between the Southeast EEM Agent (on behalf of the Members) and the Market Auditor that would modify the scope set forth in Section 10.2.1, (v) any other contract or writing that obligates any Member to pay two hundred thousand dollars (\$200,000) or more in a calendar year in excess of such Member’s allocated share of costs as set forth in the Annual Budget, (vi) the submission of any Regulatory Filing on behalf of the Members, provided that (a) no Member can be compelled to join any Regulatory Filing, and (b) no Member can be compelled to take any action that in the reasonable view of such Member would jeopardize its jurisdictional status, (vii) the sale of all or substantially all of the property held by the Southeast EEM Agent (if any) for the benefit of the Southeast EEM System, or (viii) pursuant to Section 4.2.2, the (A) suspension of a Member’s voting rights, (B) removal of a Member from any committee appointment, and (C) suspension of any Member’s access to the Southeast EEM System.

“Sink” shall have the meaning set forth in the Southeast EEM Market Rules.

“Source” shall have the meaning set forth in the Southeast EEM Market Rules.

“Southeast EEM Administrator” means that entity hired by the Southeast EEM Agent, on behalf of the Membership Board acting in its capacity on behalf of the Members, to operate the Southeast EEM System from day to day.

“Southeast EEM Administrator Agreement” means that certain agreement by and between the Southeast EEM Administrator and Southeast EEM Agent (in its capacity as agent for the Members), which agreement sets forth the rights and obligations of the Southeast EEM Administrator, as may be amended from time to time in accordance with this Agreement.

“Southeast EEM Agent” means that entity designated by the Membership Board from time to time, which has certain limited rights and responsibilities under this Agreement as expressly set forth in Article 6 below.

“Southeast EEM Agent Scope” has the meaning set forth in Section 6.1.

“Southeast EEM Algorithm” shall have the meaning set forth in the Southeast EEM Market Rules.

“Southeast EEM Commencement Date” means the date upon which the Southeast EEM commences operation.

“Southeast EEM Order” has the meaning set forth in Section 8.6.

“Southeast EEM Manuals” shall have the meaning set forth in the Southeast EEM Market Rules.

“Southeast EEM Market Rules” means the Rules of the Southeast Energy Exchange Market as set forth in Appendix B, as may be amended from time to time pursuant to Section 4.1.9.

“Southeast Energy Exchange Market” or “Southeast EEM” means the Territory-wide, automated, intra-hour electric energy exchange operated by means of the Southeast EEM System and utilizing Non-Firm Energy Exchange Transmission Service pursuant to the terms and conditions of this Agreement.

“Southeast EEM System” means the Southeast EEM Algorithm and any ancillary or supporting software solutions that (i) automatically matches Bids and Offers among Participants for the next Delivery Interval during which the wholesale sale of Non-Firm Energy will be sold by the Seller and the purchase of the Non-Firm Energy will be purchased by the Buyer to serve load in the Territory and (ii) automatically reserves and tags Non-Firm Energy Exchange Transmission Service.

“Southeast EEM System Interface” shall have the meaning set forth in the Southeast EEM Market Rules.

“Stakeholders” means interested state commissions, customers, interested future Southeast EEM Market Members or Participants, public interest groups or any other interested parties.

“Tariff” means a Participating Transmission Provider’s FERC-jurisdictional Open Access Transmission Tariff, non-jurisdictional transmission tariff or non-jurisdictional transmission service guidelines, as applicable.

“Tariff Filings” has the meaning set forth in Section 8.3.

“Territory” means, collectively, the areas served by the Participating Transmission Providers, which as of the Effective Date includes the Balancing Authority Areas operated by the

following Balancing Authorities: Associated Electric Cooperative, Inc.; Louisville Gas and Electric Company and Kentucky Utilities Company; Tennessee Valley Authority; Duke Energy Progress (f/k/a Carolina Power and Light Company); Duke Energy Carolinas; South Carolina Electric & Gas Company (n/k/a Dominion Energy South Carolina, Inc.); Santee Cooper; Southern Company; and Power South Energy Cooperative. A current description of the Territory shall be maintained on the Southeast EEM System Interface.

“Voluntary Withdrawal Date” has the meaning set forth in Section 4.2.1.

“Withdrawal Date” means a Voluntary Withdrawal Date or a Governmental Action Withdrawal Date, as applicable.

1.2

terms used in this Agreement but not listed in this Article 1 shall have meanings defined herein or by NERC and the Tariff of each Participating Transmission Provider or, if not so defined, shall have meanings as commonly used in the English language. In the event of a conflict regarding a defined term contained herein and the provisions of a Tariff or NERC rules, the provisions set forth by the applicable Tariff and NERC rules shall take precedence over the defined terms set forth in this Agreement. Words not otherwise defined herein that have well known and generally accepted technical or trade meanings are used herein in accordance with such recognized meanings. In addition, the following rules of interpretation shall apply:

Rules of Con

The masculine shall include the feminine and neuter.

References to “Articles,” “Sections,” or “Exhibits” shall be to articles, sections, or exhibits of this Agreement.

References to “days” that are not specifically defined as “Business Days” shall be calendar days, which term includes every day on the calendar including weekends and holidays.

The Exhibits and Appendices attached hereto are incorporated in and are intended to be part of this Agreement; provided, however, that in the event of a conflict between the terms of any Exhibit and the terms of this Agreement, the terms of this Agreement shall take precedence.

This Agreement was negotiated and prepared by all Parties with the advice and participation of counsel. The Parties have agreed to the wording of this Agreement and none of the provisions hereof shall be construed against one Party on the ground that such Party is the author of this Agreement or any part hereof.

Unless expressly provided otherwise in this Agreement, where the Agreement requires the consent, approval, or similar action by a Party, such consent or approval shall not be unreasonably withheld, conditioned or delayed, except in each case that the foregoing shall not apply to any action of a Party under Article 11. _

Use of the words “include” or “including” or similar words shall be interpreted as “including but not limited to” or “including, without limitation.”

ARTICLE 2

ESTABLISHMENT OF SOUTHEAST EEM AND ADMINISTRATION

2.1 to facilitate the matching of Sellers with Buyers for the purpose of entering into Energy Exchanges.

The Member

2.2 hour of every day, including but not limited to Business Days, weekends, and NERC holidays.

The Southeast

2.3 the operation and maintenance services necessary to allow the Southeast EEM System to operate in a reliable manner; (ii) the protection and safeguarding of data submitted to and transmitted from the Southeast EEM System; (iii) limiting access to the Southeast EEM System to Participants; and (iv) maintaining open communications by and among the Southeast EEM Administrator, Participants and the Southeast EEM Agent. For avoidance of doubt, the Membership Board, pursuant to Article 4, may decide to engage one or more third parties to perform the responsibilities of the Southeast EEM Administrator.

As will be se

2.4 as requested by the Market Auditor, in each case in accordance with this Agreement, the Southeast EEM Market Rules and applicable Law.

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ARTICLE 3

MEMBERSHIP AND PARTICIPATION

3.1

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3.2

Member Crit

3.2.1 To be a Member of the Southeast EEM, an entity must be: (i) a Load Serving Entity located in the Territory; (ii) an association, Cooperative or Governmental Utility that is a Load Serving Entity located in the Territory; or (iii) an association, Cooperative or Governmental Utility created for the purpose of providing service that includes Energy to a Cooperative or governmental Load Serving Entity (or the Load Serving Entities being served by an association, Cooperative or Governmental Utility) located in the Territory. The Tariff of any Member who provides transmission service must contain Non-Firm Energy Exchange Transmission Service provisions for those Energy Exchanges that seek to utilize such Member's transmission system.

3.2.2 If an entity and one or more of its Affiliates are Members, or if multiple entities of a Disaggregated Utility are Members, then only one entity from the group of entities (including any subsidiaries, affiliates or divisions thereof) may have a Representative on the Membership Board, and for the sake of clarity, for all purposes hereunder, such Disaggregated Utility shall be counted as a single Member.

3.2.3 An entity that satisfies the criteria set forth in this Agreement for qualification and admission as a Member, as determined by the Membership Board, shall be eligible to become a Member during the period between July 1st and September 30th of each calendar year (the “Enrollment Period”) and may become an additional Member (an “Additional Member”) effective as of the first day of the following calendar year in which such entity satisfies the Member criteria set forth in Section 3.2 after executing this Agreement or a Joinder hereto in the form of Exhibit B (the “Joinder”) that is countersigned by the Southeast EEM Agent, submitting a duly executed copy to the Secretary and the Southeast EEM Administrator, and upon payment of all applicable fees, dues and contributions as specified or authorized in Article 7. For the avoidance of doubt, an entity seeking to become an Additional Member shall be bound by the terms of this Agreement on the date such entity executes a Joinder that is countersigned by the Southeast EEM Agent.

3.3 as Appendix A (the “Participant Agreement”) which agreement shall, among other things, contractually bind such entity to comply with the Southeast EEM Market Rules.

Participant C

3.4 providing Non-Firm Energy Exchange Transmission Service, Participating Transmission Providers shall amend their Tariffs to include the provision of Non-Firm Energy Exchange Transmission Service and, if required by Law, shall obtain acceptance of such provisions from FERC or such other Governmental Entity(ies) having jurisdiction over such Tariff. Participating Transmission Service Providers shall take such other actions and provide such information to the Southeast EEM Administrator as required by the provisions of the Southeast EEM Market Rules or as otherwise reasonably requested by the Southeast EEM Administrator in order to operate the Southeast EEM.

Participating

3.5 provide any undue preference through the sharing of non-public market information they receive by virtue of their participation in the Southeast EEM to their marketing function employees. For purposes of this Section 3.5, marketing function employees of a Member’s Affiliates shall be deemed marketing function employees of the Member.

Member Star

ARTICLE 4

GOVERNANCE

4.1 Power and Qualification of the Membership Board. Except as set forth in Article 5, all business of the Southeast EEM System and performance of any agreements entered into or otherwise assumed for the benefit of the Members shall be managed under the direction of the Membership Board.

Membership

4.1.2 Number of Representatives. Subject to the limitations set forth in Section 3.2.2:

(a) The Membership Board shall consist of one (1) representative for each Member (each, a “Representative”).

(b) Each Member shall appoint one (1) Representative to serve until such Representative is replaced by such Member. No Member shall be permitted to have more than one (1) Representative on the Membership Board.

4.1.3 Method of Selecting or Removing Representatives; Vacancies.

(a) A Representative shall be removed or replaced solely at the discretion of the Member that originally appointed such Representative; provided, however, that each Member must at all times have a Representative in place to vote on matters pursuant to Section 4.1.5.

(b) All Representative vacancies, occurring for any reason, shall be filled by the Member who appointed such Representative.

4.1.4 Resignations. A Representative may resign at any time by delivering written notice to the Member who appointed such Representative, the Membership Board and the Southeast EEM Administrator. Such resignation shall take effect when such notice is delivered to the applicable Member, unless the notice specifies a later effective date.

4.1.5 Quorum of Representatives and Action by the Membership Board; Voting.

(a) The votes of the Members shall be held by the Representatives and shall be weighted with each Representative holding:

- (i) one (1) vote for each Member
- (ii) a number of votes equal to the number of Members holding such Representative

Net Energy for Load Vote = (MNEL/ANEL)

Where:

MNEL = such Member Net Energy for Load of the Representative’s Member, Affiliates of such Member and those related entities part of a Disaggregated Utility as of the Record Date; and

ANEL = the sum of the Member Net Energy for Load for all Members as of the Record Date.

(b) Subject to Section 4.1.7(c), attendance by a majority of the holders of each of the aggregate Popular Votes and the Net Energy for Load Votes shall constitute a quorum for the transaction of business. Except for Significant Matters, the actions of the Membership Board shall pass by the affirmative vote of the Representatives present at a

meeting at which a quorum is present that constitutes (i) more than fifty percent (50%) of the Popular Vote of the Representatives in attendance, and (ii) more than fifty percent (50%) of the Net Energy for Load Vote of the Representatives in attendance; provided that more than fifty percent (50%) of the Net Energy for Load Vote of the Representatives in attendance must be comprised of MNEL from three (3) or more Representatives (conditions (i) and (ii) together, the “Affirmative Majority Vote”).

(c) Subject to Section 4.1.7(c), the actions of the Membership Board to decide on matters related to the Significant Matters shall pass by the affirmative vote of the Representatives present at a meeting at which a quorum is present that constitutes (i) more than fifty percent (50%) of the Popular Vote of the Representatives in attendance and (ii) more than sixty-seven percent (67%) of the Net Energy for Load Vote of the Representatives in attendance; provided that more than sixty-seven percent (67%) of the Net Energy for Load Vote of the Representatives in attendance must be comprised of MNEL from three (3) or more Representatives (conditions (i) and (ii) together, the “Affirmative Supermajority Vote”).

(d) The number of Net Energy for Load Vote of each Representative shall be adjusted each year following the Enrollment Period and prior to the start of the next calendar year to reflect the revision to such proportions resulting from the inclusion of Additional Members (if any) when determining Net Energy for Load Vote for each Representative. Notwithstanding anything to the contrary herein, a Member’s right to have its Representative vote or be included in a Representative’s Net Energy for Load Vote may be suspended pursuant to Section 4.2.2 during any period in which such Member is delinquent in the payment of any of the dues or costs and expenses allocated to such Member in accordance with Article 7. If a Member’s Representative’s right to vote has been suspended, the Membership Board shall recalculate the Net Energy for Load Vote of each other Representative excluding such suspended Member’s Representative, and each other calculation required by this Section 4.1.5 and Article 4 (including for purposes of determining if there is a quorum and whether there is an Affirmative Majority Vote and Affirmative Supermajority Vote, as applicable) shall be determined excluding such suspended Member’s Representative.

4.1.6 Meetings of the Membership Board. Meetings of the Membership Board, unless otherwise provided in this Agreement, may be called (i) by the Chair of the Membership Board, or (ii) by a written consent delivered to the Membership Board that is executed by a majority of the holders of each of the aggregate Popular Votes and the Net Energy for Load Votes. Meetings of the Membership Board, regular or special, may be held at such place within the Territory and upon such notice as may be prescribed by resolution of the Membership Board.

4.1.7 Notice of Meetings of Representatives.

(a) The Chair of the Membership Board, or a Representative directed by the Chair of the Membership Board, shall provide written notice by electronic mail (and shall confirm receipt of such notice by requesting a return receipt) of each Membership Board meeting to all Representatives. Such notice shall state the date, place, hour and purpose or purposes of the meeting, including any Significant Matters to be discussed, and shall be delivered by a nationally recognized overnight courier service to each Representative’s usual

place of business as recorded in the Secretary's records, or delivered by internet electronic mail (with return internet electronic mail from the recipient acknowledging receipt) sent to the internet electronic mail address for such Representative as recorded in the Secretary's records, not less than seven (7) Business Days prior to the date of the meeting.

(b) Any Member may designate, by submitting a written communication to the Chair of the Membership Board, an alternate to act on behalf of the Representative ("Alternate Representative"). Any reference herein to "Representative" shall be deemed a reference to the Alternate Representative where applicable.

(c) Notwithstanding anything to the contrary set forth herein, the Membership Board shall only vote on matters set forth in a duly delivered notice pursuant to this Section 4.1.7; provided, however that the Membership Board may (i) discuss any and all matters within the scope of the Membership Board's duties at any duly constituted meeting of the Membership Board, and/or (ii) vote upon any matter within the scope of the Membership Board's duties that is not set forth in a duly delivered notice pursuant to this Section 4.1.7 if all Representatives are present at such meeting of the Membership Board and such matter is approved in accordance with the applicable voting requirements set forth in Section 4.1.5.

4.1.8 Action by Representatives in Lieu of a Meeting: Participation in Meetings by Conference Telephone.

(a) Unless otherwise restricted by this Agreement, any action required or permitted to be taken at a meeting of the Membership Board may be taken without a meeting if the action is evidenced by written consent describing the action taken, signed by all of the Representatives. The written consents and the resolutions thereto by the Representatives shall be filed with the minutes of the Membership Board or filed with the records maintained by the Secretary reflecting the action taken. Action taken under this Section 4.1.8(a) becomes effective when the last Representative signs the consent, unless the consent specifies a different effective date, in which event the action taken is effective as of the date specified therein, provided the consent states the date of execution by each Representative.

(b) The Representatives may participate in any meeting of the Membership Board or of a committee thereof by means of conference telephone or by any means of communication by which all Representatives participating may hear one another during the meeting; all meetings shall be available for participation via such means. A Representative participating in a meeting by such means is deemed to be present in person at the meeting.

4.1.9 Powers Exclusive to the Membership Board.

(a) The following matters are reserved to and may only be addressed by the Membership Board:

- (i) all Significant
- (ii) the creation a
- (iii) the establish

(iv)

the establish

(v)

the approval

(vi)

the approval

(vii)

all Deadlock

(viii)

the authoriza

(b) Any changes, modifications or amendments to this Agreement agreed to by the Membership Board as provided herein shall be submitted to the required Governmental Entities for approval or acceptance and the orders on such submissions shall be deemed to be and treated as Southeast EEM Orders for purposes of Article 8.

4.2

Removal or

automatically removed from any committee appointments, and shall not be entitled to any other rights as a Member hereunder. Notwithstanding the foregoing, (i) a Member that withdraws or is removed or is suspended by the Membership Board or is no longer a Member during a calendar year shall remain liable for all dues, costs and expenses and other payment obligations as provided in Section 4.2.1 and Section 4.2.4, and (ii) nothing in this Section 4.2 shall act to prevent a Member who is no longer a Member, but is in compliance with all surviving obligations under this Agreement, from becoming a Participant; provided it has met the criteria for a Participant set forth in the Southeast EEM Market Rules. Any Member that withdraws or is removed by the Membership Board or is no longer a Member during a calendar year shall pre-pay all amounts owed by such Member under any Material Vendor Contract that requires the acceleration or prepayment of sums owed in the event of a Member's withdrawal.

4.2.1 Except as set forth in Section 8.5, Section 8.6 and Section 8.7, any Member shall have the right to withdraw from the Southeast EEM System (and a Participating Transmission provider shall take all necessary actions to withdraw the provisions for Non-Firm Energy Exchange Transmission Service from its Tariff) by providing at least (i) thirty (30) days advance written notice to the Membership Board in the case of any Member that is not a Balancing Authority or Participating Transmission Provider and (ii) at least ninety (90) days advance written notice to the Membership Board in the case of any Member that is a Balancing Authority or Participating Transmission Provider (the effective date of such withdrawal, in the case of clause (i) or (ii), as applicable, the "Voluntary Withdrawal Date"). A withdrawing Member shall continue to be liable for (A) all Operating Costs allocated to and owed by the withdrawing Member at the time that it delivered its notice of withdrawal, and (B) its allocated share of future Operating Costs as provided in Section 4.2.4; provided, however, that for the sake of clarity and notwithstanding anything to the contrary herein, the withdrawing Member shall not be responsible for any new Operating Costs first approved and incurred after the date such Member provides written notice of its intent to withdraw, and a withdrawing Member that is also a Participating Transmission Provider shall have no obligation to provide Non-Firm Energy Exchange Transmission Service following the Voluntary Withdrawal Date.

4.2.2 If a Member fails to cure nonpayment of any financial obligations related to the Southeast EEM (including undisputed amounts payable and any other

amounts due to any third parties as directed by the Membership Board or pursuant to the Southeast EEM Market Rules) within ten (10) Business Days after receipt of notice by the Operating Committee of such nonpayment, the Membership Board shall have the right in its discretion to: (i) suspend such Member's voting rights, (ii) remove such Member from any committee appointments and (iii) suspend such Member's access to the Southeast EEM System.

4.2.3 The Membership Board may remove a Member for any of the following reasons: (i) failure to comply with this Agreement, (ii) repeated failure to consummate valid Energy Exchanges resulting from Bids or Offers submitted by a Member, arranged by or through the Southeast EEM System in accordance with and subject to the Southeast EEM Market Rules or the Southeast EEM Manuals; and (iii) failure to comply with the standards, rules, procedures or other requirements for participation in the Southeast EEM System, as established and modified from time to time by the Operating Committee.

4.2.4 Any Member that provides notice to withdraw in accordance with Section 4.2.1, Section 8.5, Section 8.6 or Section 8.7 or who is otherwise removed pursuant to Section 4.2.3 shall remain liable for its share of all costs and expenses in accordance with Article 7. If such Member withdraws prior to the Annual Budget Determination Date, such Member shall only be responsible for the costs and expenses allocated to such Member for the year in which such Member withdraws. If such Member withdraws after the Annual Budget Determination Date, such Member shall (i) be responsible for the costs and expenses allocated to such Member pursuant to Section 7.2.2 for the year in which such Member withdraws and the following year for which the Annual Budget has already been determined, and (ii) pre-pay all amounts owed by such Member under any Material Vendor Contract that requires the acceleration or prepayment of sums owed in the event of a Member's withdrawal.

4.3

Committees

4.3.1 An Affirmative Majority Vote may appoint such committees or officers as the Membership Board deems necessary or desirable to carry on the business of the Southeast EEM System and may delegate to any such committee or officer such authority to act on behalf of the Membership Board. Each officer shall hold office until its successor is designated by an Affirmative Majority Vote. Any officer may resign at any time upon written notice to the Membership Board. Any officer may be removed by an Affirmative Majority Vote at any time, with or without cause. A vacancy in any officer position shall be filled at the discretion of, and by, an Affirmative Majority Vote.

4.3.2 The Membership Board shall appoint a chair of the Membership Board (the "Chair of the Membership Board") who shall be responsible for calling and overseeing all meetings of the Membership Board, and shall perform such duties and have such additional powers as an Affirmative Majority Vote shall designate.

4.3.3 The Membership Board shall appoint a secretary of the Membership Board (the "Secretary") who shall be responsible for overseeing the maintenance of the books and records of the Membership Board and its Members and shall perform such duties and have such additional powers as an Affirmative Majority Vote shall designate.

4.4

Annual Meeting

proximate to (either before or after) May 1st of each year. The Southeast EEM Administrator shall provide written notice of the Annual Meeting to all Participants. Such notice shall state the date, place, hour and purpose or purposes of the meeting and shall be delivered by a nationally recognized overnight courier service to each Participant's usual place of business as recorded in the Southeast EEM Administrator's records, or such notice shall be delivered by internet electronic mail (with return receipt requested for purposes of confirming receipt) sent to the electronic mail address for such Participant as recorded in the Southeast EEM Administrator's records, not less than seven (7) Business Days prior to the date of the Annual Meeting. In addition, the Southeast EEM Administrator shall publicly post the notice of the Annual Meeting, including the date, place and time of such Annual Meeting, on the Southeast EEM System Interface or other public website administered for the Southeast EEM, not less than seven (7) Business Days prior to the date of the Annual Meeting. The Participants and Stakeholders may participate in Annual Meetings by means of conference telephone or by any means of communication by which all Participants and Stakeholders participating may hear one another during the meeting, and all Annual Meetings shall be available for participation via such means.

4.5

Annual Meeting

(either before or after) October 30th of each year. The Secretary shall provide written notice of the Annual Member Meeting to, and confirm actual receipt of such notice by, all Members. Such notice shall state the date, place, hour and purpose or purposes of the meeting and shall be delivered by nationally recognized overnight courier service to each Member's usual place of business as recorded in the Secretary's records, or delivered by internet electronic mail (with return internet electronic mail from the recipient acknowledging receipt) sent to the internet electronic mail address for such Member's Representative as recorded in the Secretary's records, not less than seven (7) Business Days prior to the date of the Annual Member Meeting. The Members may participate in the Annual Member Meeting by means of conference telephone or by any means of communication by which all Members participating may hear one another during the meeting, and all meetings shall be available for participation via such means.

ARTICLE 5**OPERATING COMMITTEE**

5.1

Power and C

Committee to supervise the day-to-day operation of the Southeast EEM System, with each individual member of the Operating Committee referred to as a "Committee Member". The Operating Committee shall be responsible for developing and maintaining the Southeast EEM Manuals for approval by the Membership Board.

5.2

Number of C

5.3

Election and

5.3.1 Except as provided in this Agreement, the Members of each Sector shall elect the Committee Members as provided in Section 5.4 at the Annual Member Meeting. The Committee Members shall be allocated by Sectors: (a) the Members comprising

Investor-Owned Utilities shall elect two (2) Committee Members; (b) the Members comprising Cooperatives shall elect one (1) Committee Member; and (c) the Members comprising Governmental Utilities shall elect one (1) Committee Member. Each Committee Member shall be entitled to cast one (1) vote. Notwithstanding the foregoing, no Member shall be permitted to have more than one (1) representative serve on the Operating Committee. Each Committee Member's term shall commence upon election and continue until the earlier of such Committee Member's resignation or the date of the next Annual Member Meeting and the election of such Committee Member's successor.

5.3.2 The properly elected Committee Members shall determine which Committee Member shall be the chair of the Operating Committee by the majority approval of the Committee Members. The chair of the Operating Committee may be removed or replaced with or without cause at any time upon the majority approval of the Committee Members.

5.4 removing the Committee Member or Committee Members elected or appointed by such Sector and shall provide a copy of such method and criteria to the Southeast EEM Administrator as well as any updates thereto. A Committee Member shall be deemed properly appointed by the applicable Sector upon delivery to the Southeast EEM Administrator a certificate signed by Members of the Sector with sufficient voting power pursuant to such Sector's criteria to elect such Committee Member. A Sector may remove a Committee Member with or without cause by delivering to the Southeast EEM Administrator a certificate signed by Members of the Sector with sufficient voting power to remove the Committee Members. Such Committee Member's removal shall be effective on the later of the date such certificate is delivered to the Southeast EEM Administrator or date specified in the certificate.

Method of S

5.5 A Committee Member elected or appointed to fill a vacancy shall assume office upon delivery to the Southeast EEM Administrator a certificate signed by Members of the Sector with sufficient voting power to fill the vacancy.

Vacancies.

5.6 when such notice is delivered to the Southeast EEM Administrator, unless the notice specifies a later effective date.

Resignations.

5.7 Attendance by at least one (1) Committee Member representing each of the three (3) Sectors shall constitute a quorum for the transaction of business. The act of all the votes of the Committee Members present at a meeting at which a quorum is present shall constitute the action of the Operating Committee.

Quorum of C

5.7.2 To the extent that the Operating Committee cannot obtain a unanimous vote on any business or issue properly before the Operating Committee when a quorum is present (the "Deadlock Issue"), then the Operating Committee may, upon the written request of a Committee Member, submit the Deadlock Issue to the Membership Board for final resolution. For purposes of clarity, a vote of the Operating Committee that is held at a meeting for

which a quorum is present shall be considered unanimous if at least one (1) Committee Member representing each of the three (3) Sectors is present.

5.8
executed by a majority of the Committee Members.

Meetings of

5.9

Notice of Me

(a) The Southeast EEM Administrator shall provide written notice of each Operating Committee meeting to all members of the Operating Committee as well as to all Members. Such notice shall state the date, place and hour of the meeting and shall be delivered by internet electronic mail (with return internet electronic mail from the recipient acknowledging receipt) sent to the internet electronic mail address for such Committee Member and for such Member as recorded in the Secretary's records, not less than seven (7) Business Days prior to the date of the meeting. Members who are not Committee Members shall have the right to attend, observe and participate in any discussion at any Operating Committee Meeting, but may not cast a vote.

(b) Any Committee Member unable to attend a meeting may designate, in writing, an alternate from the same Sector as such Committee Member to act on behalf of the Committee Member ("Alternate Committee Member"). Any reference herein to "Committee Member" shall be deemed a reference to the Alternate Committee Member where applicable.

(c) A Committee Member's attendance at or participation in a meeting waives any required notice to him or her of such meeting unless, at the beginning of such meeting or promptly upon his or her arrival, such Committee Member objects to holding the meeting or transacting business at the meeting and does not thereafter vote for or assent to action taken at the meeting.

(d) A notice shall specify the business to be transacted at, or the purpose of, any meeting of the Operating Committee; provided, however, such notice shall not limit the actions the Operating Committee may take at a meeting.

5.10

Action by Co

(a) Any action required or permitted to be taken at a meeting of the Operating Committee may be taken without a meeting if at least one (1) Committee Member representing each of the three (3) Sectors consents in writing to the adoption of a resolution authorizing the action. The resolution and the written consents thereto by the Committee Members shall be filed with the minutes of the Operating Committee or filed with the records maintained by the Secretary reflecting the action taken. Any action taken under this Section 5.10(a) shall be effective when the last Committee Member signs the consent, unless the consent specifies a different effective date, in which event the action taken is effective as of the date specified therein, provided, the consent states the date of execution by each Committee Member. Such consent shall have the same force and effect as a unanimous vote.

(b) The Committee Members and Members may participate in any meeting of the Operating Committee or of a committee thereof by means of telephone conference or by any means of communication by which all Committee Members and Members participating may hear one another during the meeting, and all meetings shall be available for participation via such means. A Committee Member participating in a meeting by such means is deemed to be present in person at the meeting.

5.11

reasonable judgment. The Members shall indemnify the Committee Members (solely in such capacity) and hold them harmless against any loss or expense actually incurred without gross negligence or willful misconduct on the part of the Committee Members and arising out of or in connection with the acceptance or administration of their role on the Operating Committee.

Liability of C

ARTICLE 6

APPOINTMENT OF SOUTHEAST EEM AGENT

6.1

Southeast EEM Agent's responsibilities (the "Southeast EEM Agent Scope") as specifically defined by the Membership Board in Appendix C. Each Member grants unto the Southeast EEM Agent only that authority which is granted to the Southeast EEM Agent by the Membership Board under this Agreement and that is necessary to perform the actions required in connection with the development and operation of the Southeast EEM System, and in each case in a manner consistent with the Southeast EEM Agent Scope. Each Member agrees and acknowledges that a third party shall be entitled to rely on any action taken, or the failure to take any action, by the Southeast EEM Agent, on behalf of Members pursuant to and in accordance with this Article 6 (each, an "Authorized Action"), and that each Authorized Action shall be binding on each Member as fully as if such Members had taken such Authorized Action directly. The initial Southeast EEM Agent and any replacement Southeast EEM Agent, as determined by the Membership Board in accordance with Section 4.1.9, must meet any criteria set by the Membership Board from time to time (collectively, the "Southeast EEM Agent Criteria"). Any entity that does not meet the Southeast EEM Agent Criteria may not serve as the Southeast EEM Agent; provided, however, that the Membership Board may, in its discretion, alter or revise the Southeast EEM Agent Criteria.

Each Membe

6.2

Southeast EEM Agent Scope executed by the Southeast EEM Agent, such Member shall be bound by such documents or action as fully as if such Member had executed and delivered such documents. Each Member shall pay its allocated share of (i) all Operating Costs arising from contracts entered into by the Southeast EEM Agent entered into in accordance with the Southeast EEM Agent Scope, and (ii) fees, costs and expenses incurred by the Southeast EEM Agent in performing its duties hereunder.

Each Membe

6.3

the resignation of the Southeast EEM Agent pursuant to this Section 6.3 or its removal pursuant to Section 4.1.9, the resigning or removed Southeast EEM Agent shall take or cause to be taken, all actions and do, or cause to be done, or execute and deliver, or cause to be executed and delivered,

The Southeas

all such documents and instruments and shall take, or cause to be taken, all such further or other actions as the Membership Board may reasonably deem necessary, proper or advisable to transition the rights and obligations of the Southeast EEM Agent to the replacement Southeast EEM Agent, as promptly as practicable or sooner as required by this Agreement, including, without limitation, such actions as are necessary to assign all contracts, agreements or other documents executed on behalf of the Members within the Southeast EEM Agent Scope to the replacement Southeast EEM Agent.

6.4

contracts with such vendors. Further, in the event that the Southeast EEM Agent is required to take any ministerial action under such contracts, the Southeast EEM Agent shall only do so at the direction of the Membership Board or Operating Committee and in accordance with the Southeast EEM Agent Scope. The Southeast EEM Agent shall have no right or access to data related to the Southeast EEM beyond what it has as a Member and Participant.

For the avoid

6.5

ancillary hereto within the Southeast EEM Agent Scope, except in the event of liability directly resulting from the Southeast EEM Agent's gross negligence or willful misconduct. The Members will indemnify, defend and hold harmless the Southeast EEM Agent from and against any and all losses, liabilities, damages, claims, penalties, fines, forfeitures, actions, fees, costs and expenses (including the fees and expenses of counsel and experts and their staffs and all expense of document location, duplication and shipment) (collectively, "Representative Losses") arising out of or in connection with the Southeast EEM Agent's execution and performance of this Agreement and any agreements ancillary hereto, in each case as such Representative Loss is suffered or incurred; provided, that in the event that any such Representative Loss is finally adjudicated to have been directly caused by the gross negligence or willful misconduct of the Southeast EEM Agent or actions beyond the Southeast EEM Agent Scope, the Southeast EEM Agent will reimburse the Members the amount of such indemnified Representative Loss to the extent attributable to such gross negligence or willful misconduct. In no event will the Southeast EEM Agent be required to advance its own funds on behalf of the Members or otherwise. The Members acknowledge and agree that the foregoing indemnities will survive the resignation or removal of the Southeast EEM Agent or the termination of this Agreement.

The Southeast

ARTICLE 7

BUDGETING AND COST RESPONSIBILITY

7.1

set forth in Section 7.2. If a Member fails to cure any nonpayment of its allocated share of Operating Costs or any other amount assessed against such Member under this Agreement within ten (10) Business Days after receiving notice from the Operating Committee of such non-payment, such Member may, in the discretion of the Membership Board, lose its right to vote on matters related to this Agreement or to have representation on the Membership Board and any committees unless and until such amounts are paid in full. Any amounts owed that are not paid in accordance with this Agreement shall be delinquent and shall accrue interest at the Interest Rate, such interest to be calculated from the due date to the date the delinquent amount is paid in full.

Member Resp

7.2

Allocation of

purposes of a Disaggregated Utility, such Disaggregated Utility shall be counted as a single Member for purposes of this calculation and the costs will be allocated among the entities of such Disaggregated Utility according to their direction (which allocation shall not control for any purposes hereunder), and (ii) for purposes of Member Affiliates, the Member Affiliates shall be counted as a single Member for purposes of this calculation and the costs will be allocated among the Member Affiliates according to their direction (which allocation shall not control for any purposes hereunder):

$$[(1/4)(TC)(1/TNM)] + [(3/4)(TC)(MNEL/ANEL)] = \text{MAC}, \text{ where:}$$

TC = Total allocable costs.

TNM = the total number of Members.

MNEL = such Member Net Energy for Load of the Representative's Member, Affiliates of such Member and those related entities part of a Disaggregated Utility as of the Record Date.

ANEL = the sum of all the Member Net Energy for Load as of the Record Date.

MAC = Member's allocated costs.

7.2.1 Billing Process. Each Member shall be billed directly by the Southeast EEM Administrator for its allocated share of Operating Costs in accordance with the terms of this Agreement. In the event that the direct billing process described in the foregoing sentence proves to be unworkable for certain Operating Costs, the Membership Board shall use commercially reasonable efforts to (i) require third party vendors to structure all Southeast EEM invoices on an individual Member basis based upon the cost methodology set forth in this Agreement; or (ii) if such third party vendors refuse to provide such individual Member billings services, establish an alternative billing procedure for such Operating Costs (including the engagement of a third party billing service provider) to ensure such invoices are billed on an individual Member basis. The Membership Board shall establish such an alternative billing procedure in a timely manner; provided, however, that a delay in establishing such a procedure shall not eliminate the Members' individual obligations to pay their allocated share of Operating Costs. Nothing in this Section 7.2.1 is intended to modify or diminish the Membership Board's authority to establish or amend billing procedures from time to time.

7.2.2 Annual Budget. On or before October 30th of each calendar year, but in any case no earlier than October 1st of each calendar year, the Membership Board shall set the annual budget for the following calendar year (the "Annual Budget Determination Date"), which budget shall include but not be limited to all projected Operating Costs, including all vendor costs and all costs and expenses associated with the Southeast EEM Agent (the "Annual Budget"). Costs are deemed allocated to each Member as of the Annual Budget

Determination Date, but, except as otherwise provided herein, are not payable until such costs are due and payable subject to the applicable agreements concerning such costs.

7.3

Additional M

Determination Date to reflect any changes in a Member Net Energy for Load valuation or the inclusion of Additional Members in such calculations for the following calendar year.

7.3.1 Submission of Information.

(a) Upon the request of the Secretary or upon a schedule approved by the Membership Board, each Member shall provide its Member Net Energy for Load values, and any other information required for the calculations set forth in Section 4.1.5 and Section 7.2, to the Southeast EEM Administrator and all other Members. If a Member proposes to use a Member Net Energy for Load value that differs from the Net Energy for Load value as provided to NERC by the Record Date (an “Alternate MNEL Value”), such Member shall submit a written request to the Operating Committee at least thirty (30) days prior to the Annual Budget Determination Date requesting the Operating Committee’s approval of such Member’s Alternate MNEL Value in the upcoming year. The submitting Member’s request shall contain (i) an explanation of why the Alternate MNEL Value differs from the Member Net Energy for Load value submitted to NERC, and (ii) all other reasonably necessary information evidencing such Member’s calculation of the Alternate MNEL Value. The Operating Committee shall review a Member’s request to use an Alternate MNEL Value and shall use commercially reasonable efforts to approve, deny or request additional information regarding such request within fifteen (15) days from the date the Operating Committee receives the request.

(b) If the Operating Committee denies a Member’s request to use an Alternate MNEL Value, the Member may, within thirty (30) days of such denial, submit the request to the Membership Board for review, and the Membership Board shall, as soon as reasonably practicable, hold a vote to either uphold or overturn the Operating Committee’s denial of the request, as determined by an Affirmative Majority Vote. The requesting Member shall provide to the Membership Board such information reasonably requested by the Membership Board in order to evaluate the Member’s request. If the Operating Committee or the Membership Board, as applicable, approves a Member’s Alternate MNEL Value, such Alternate MNEL Value shall be used for the calculations set forth in Section 4.1.5 and Section 7.2 in the following calendar year. If the Operating Committee or the Membership Board, as applicable, deny such requesting Member’s request to use an Alternative MNEL Value, the Member’s Member Net Energy for Load value shall be that Member Net Energy for Load as determined by the Membership Board in accordance with this Agreement; provided, however, that during the pendency of the review of a Member’s Net Energy for Load pursuant to this Section 7.3.1 and until such value is finally determined, the requesting Member’s Member Net Energy for Load value shall be the Member Net Energy Load value provided by such Member that was approved and used in the most recent calendar year.

ARTICLE 8

FILINGS WITH GOVERNMENT ENTITIES; EFFECTIVE DATE

8.1
Member by any Governmental Entity not otherwise having jurisdiction by Law.

This Agreement

8.2

Filing With a

8.2.1 Any entity desiring to become a Member that is subject to the jurisdiction of any Governmental Entity from which approval or acceptance of this Agreement or participation in the Southeast EEM is required for such entity to participate in the Southeast EEM shall institute proceedings to obtain such acceptance or approval or shall provide such notice, except as provided in Section 8.2.2 below. All required approvals, acceptances and notices must be received by such entity prior to its participation in the Southeast EEM. The Members shall cooperate in securing all required Governmental Entity approvals or acceptances of this Agreement.

8.2.2 No later than sixty (60) days prior to the proposed Effective Date, the Southeast EEM Agent shall file this Agreement with FERC on behalf of the Jurisdictional Members in accordance with Section 8.2.1 under Section 205(c) of the FPA. Within ten (10) Business Days of the date of such filing, the remaining Jurisdictional Members shall file certificates of concurrence with such filing and the Non-Jurisdictional Members shall file comments in support of such filing.

8.3
of Non-Firm Energy Exchange Transmission Service and become Participating Transmission Providers, in accordance with Section 3.4 above (the "Tariff Filings").

On the same

8.4

Effective Date

8.4.1 Unless specific provisions become effective earlier by the explicit terms contained herein, this Agreement shall be binding upon the Members upon the effective date established by FERC in a FERC order accepting the Agreement without modification or condition (the "Effective Date"); provided, however, that this Agreement shall not become binding upon an individual Member who seeks acceptance or approval from a Governmental Entity pursuant to Section 8.2.1 above until the later of: (x) the date of issuance of an order by such Governmental Entity approving without modification or condition this Agreement and/or such Member's participation in the Southeast EEM and (y) the Effective Date; and provided, further, that the Members agree that this Agreement will bind each of them upon signing, subject only to the approvals and acceptances provided in this Section 8.4. In the event FERC does not accept the Agreement as filed, the Members may agree to changes or modifications to the Agreement pursuant to an Affirmative Supermajority Vote as set forth in Section 8.6, in which event the Effective Date shall be the date that FERC accepts the revised Agreement with any such changes or modifications agreed to pursuant to Section 8.6.

8.4.2 The Southeast EEM Commencement Date shall not occur until after (i) the Effective Date, (ii) the issuance by FERC of an order or orders accepting without

modification or condition all of the Jurisdictional Member Participating Transmission Provider's Tariff Filings, and (iii) the Membership Board has approved and established the Southeast EEM Commencement Date in accordance with Section 4.1.9(vi).

8.5

the date of submission, the Member for which such approval was requested may withdraw from this Agreement by providing written notice to all other Members no later than fifteen (15) days after such four-month period has elapsed. Withdrawal under this Section 8.5 shall be subject to the provisions of Section 4.2.

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8.6

its entirety. Accordingly, the terms of this Agreement are not severable, and are an integrated package that is submitted with the understanding and condition that it will be approved by the necessary Governmental Entities in its entirety. As such, if at any time (i) a Governmental Entity issues an order that does not accept or approve this Agreement or a Tariff Filing in its entirety without condition or requires modifications to the Agreement or the relevant Tariff ("Southeast EEM Order"), or (ii) any state or federal Laws or regulations, now existing or enacted or promulgated after the Effective Date are interpreted by a Governmental Entity in such a manner as to indicate that the structure or terms of this Agreement are more likely than not to be a violation of such Laws or regulations or are more likely than not to impact the jurisdictional status of any Member (a "Change in Law"), or (iii) if any provision or portion of this Agreement shall for any reason be held or adjudged to be invalid or illegal or unenforceable by any court of competent jurisdiction or other Governmental Entity ("Other Court/Governmental Entity Action"), the Members will engage in good faith negotiations during a forty-five (45) day period after the date of the Southeast EEM Order or Change in Law or Other Court/Governmental Entity Action to agree to Agreement modifications or conditions that are consistent with the modifications and conditions imposed by such Southeast EEM Order, Change in Law or Other Court/Governmental Entity Action; provided, however, that in any such negotiation the Members are not under any obligation to reach an agreement. Any changes, modifications or conditions to the effectiveness of this Agreement agreed to by an Affirmative Supermajority Vote shall be submitted to the required Governmental Entities for approval or acceptance and the orders on such filings shall be deemed to be and treated as Southeast EEM Orders for purposes of this Article 8. If an Affirmative Supermajority Vote cannot be achieved within such forty-five (45) day period, then the Agreement shall terminate and be of no force and effect. If a Member does not agree with the modifications to the Agreement adopted by the Affirmative Supermajority Vote, such non-agreeing Member shall be subject to the waiver of rights provisions of Section 16.9, but shall have the right to withdraw from this Agreement and the Southeast EEM upon thirty (30) days prior written notice. Upon such notice of withdrawal by a Member, any other Member may withdraw from this Agreement by providing written notice to the other Members within twenty-five (25) days after the date of the first Member's notice of withdrawal. Any notice to withdraw provided in accordance with this Section 8.6 shall become effective as of the later of the date provided in such notice and the date such Member is permitted to withdraw in accordance with Section 8.5 (the "Governmental Action Withdrawal Date"). Withdrawal under this Section 8.6 shall be subject to the provisions of Section 4.2.

The individua

8.7

of this Agreement would (i) jeopardize the tax-exempt status of interest paid by the

A Non-Jurisd

Non-Jurisdictional Member on outstanding debt obligations, (ii) render the Non-Jurisdictional Member a Public Utility subject to FERC's jurisdiction, or (iii) if the Non-Jurisdictional Member determines that any conflict exists between provisions of this Agreement and applicable Laws and regulations of the state of its creation, or rate schedules adopted by its governing body under state Law, in which case such state Laws, regulations, or rate schedules shall govern with respect to such Non-Jurisdictional Member. The withdrawing Non-Jurisdictional Member may withdraw from this Agreement on this basis by providing written notice to all other Members and the Southeast EEM Administrator. Withdrawal under this Section 8.7 shall be subject to the provisions of Section 4.2.

ARTICLE 9

RELEASE AND LIABILITY; NO FIDUCIARY DUTIES

9.1 damages, expenses and other claims whatsoever the releasing Member, its officers, directors, trustees, agents, employees, affiliates, successors or assigns (collectively "Related Parties") may have that arise out of or relate to the establishment, development, operation or maintenance of, or any deficiency in, the Southeast EEM System. In addition, to the maximum extent permitted by applicable Law (i) no Member shall be liable to any other Member or its Related Parties for any liabilities, damages, obligations, payments, losses, costs or expenses under this Agreement in any amount in excess of the actual compensatory damages suffered by such other Member or its Related Parties in connection with, or resulting from, the releasing Member's performance or non-performance of this Agreement, or any actions undertaken by the releasing Member in connection with or related to this Agreement, and (ii) each Member waives any right to recover from any other Member or its Related Parties incidental, punitive, exemplary, special, indirect, multiple or consequential damages (including attorneys' fees or litigation costs to recover the same and any claims arising from any loss of interchange sales or revenues, loss of profits, costs of substitute power, costs of additional operating expenses, or suits by third parties) in connection with, or resulting from, performance or non-performance of this Agreement, or any actions undertaken in connection with or related to this Agreement or that arise out of or relate to the establishment, development, operation or maintenance of, or any deficiency in, the Southeast EEM System. Notwithstanding the foregoing, however, no Member shall be released, discharged, indemnified or held harmless with respect to any liability for damages or other claims arising from any action or failure to act by that Member that is unlawful, undertaken in bad faith, grossly negligent or the product of willful misconduct. Nothing herein shall release any Member from any obligation or liability it may have pursuant to any other agreement with any other Member.

Except as ex

9.2 WARRANTIES, EXPRESS OR IMPLIED, TO ANY MEMBER, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

EXCEPT FO

9.3

9.4 partnership or otherwise a basis for requiring certain implied duties and rights among the

The provision

No Fiduciary

Members, notwithstanding any other provisions of this Agreement, or any other agreement, the Members covenant and agree not to prosecute, file or maintain any action, controversy, dispute, or proceeding, and do hereby expressly eliminate, waive, disclaim and release, any and all fiduciary duties of the Members that may arise pursuant to performance of their obligations or exercise of their rights pursuant to this Agreement, or that may arise pursuant to any other standard, to any Party herein, including, without limitation, its Members, and in the case of insolvency or the zone of insolvency, to creditors of any character or claim. This Agreement (including this provision) is not intended to, and shall not, create or impose any fiduciary duties on the Member or any other party for any purpose, without limitation.

9.5

otherwise, no covenants, duties or obligations, whether express, implied, statutory or otherwise, including, without limitation, (i) the duty of good faith and fair dealing, (ii) the fiduciary duties of care, loyalty and obedience, shall apply to the acts, omissions, behavior or conduct of the Members, in any context, except for those covenants, duties and obligations expressly contained in this Agreement.

No Implied C

9.6

join, control and/or participate in the ownership, management, operation or control of, any business engaged in business or operations that compete or relate to, directly or indirectly, the business of the Southeast EEM System. The legal doctrines of “corporate opportunity,” “business opportunity” and similar doctrines shall not be applied to any such competitive venture or activity of a Member or its Affiliates. No Member or its Affiliates will have any obligation to the Southeast EEM System or the Southeast EEM System’s other Members or Participants with respect to any opportunity relating to the Southeast EEM System or its business.

No Restriction

ARTICLE 10

TRANSPARENCY; CONFIDENTIALITY; AUDITING

10.1

Transparency

10.1.1 The decision and obligation to report quantities, prices, or other data regarding Energy Exchange transactions to either a Governmental Entity, a reputable index developer or a data hub will be the responsibility of each Seller and Buyer. Neither the Southeast EEM Administrator, nor the Southeast EEM Agent nor the Members shall be responsible for reporting Energy Exchange transactions made by other entities through the Southeast EEM System.

10.1.2 Except as provided in Appendix B, the identity of all Bidders, Offerors, Sellers and Buyers shall be kept confidential from all third party entities, other than the FERC, the Market Auditor, and the Southeast EEM Administrator except to the extent required by Law, regulation, or order.

10.1.3 The Southeast EEM Administrator shall post and maintain on the Southeast EEM System Interface: (i) a list of all Members and Participants and their contact information, (ii) the notice provisions provided in this Agreement as set forth in Section 16.8, (iii)

the notice information of each Annual Meeting and Annual Member Meeting, including the date, place and time of such Annual Meeting and Annual Member Meeting, and (iv) a current description of the Territory.

10.1.4 The Southeast EEM Administrator shall prepare and post reports that would include data aggregated by the Southeast EEM System as set forth in Section V of the Southeast EEM Market Rules.

10.2

Auditing.

10.2.1 The Southeast EEM Agent will engage the Market Auditor to perform the auditing scope of work as set forth in Section VI of the Southeast EEM Market Rules.

10.2.2 The Market Auditor and Southeast EEM Administrator may share information related to the Southeast EEM on a confidential and reciprocal basis.

10.2.3 The Market Auditor has independent authority to prepare and submit any reports described herein without any prior review or approval by any Member or any other outside sources.

10.3
breach of this provision.

Each Member

ARTICLE 11

SOUTHEAST EEM MARKET RULES

11.1
EEM System, as such appendix may be amended and revised from time to time by the Membership Board in accordance with Section 4.1.9.

Set out in Ap

11.2
requirement (hereafter referred to as “Reliability Obligations”) of NERC, the applicable Balance Authority, and any other recognized region or subregion of NERC (including the SERC Reliability Corporation (“SERC”)), including any successors to NERC or SERC, or applicable state or federal Reliability Obligations, to the extent any such Reliability Obligations are applicable to a Member. Each Member shall participate in the Southeast EEM System in a manner that conforms to all Reliability Obligations as may be applicable to it. The rules, guidelines, requirements and other standards for the Southeast EEM System shall not impose any obligation on any Member that would cause any Member to engage in conduct not consistent with Good Utility Practice.

The rules, gu

11.3
Member participation in, the Southeast EEM System, as they may affect the requesting Member, comply with all rules, guidelines, requirements and other standards for the Southeast EEM System as set forth in the Southeast EEM Market Rules in Appendix B. The Operating Committee, in a manner consistent with all applicable provisions of this Agreement, may make

The Operatin

recommendations to the Membership Board to apportion the costs of making revisions or modifications to the Southeast EEM System.

ARTICLE 12

DISPUTE RESOLUTION

12.1 promptly as practicable. Such designated senior representatives shall meet, negotiate and attempt in good faith to resolve the dispute quickly, informally, and inexpensively. In the event the designated senior representatives are unable to resolve the dispute within thirty (30) days (or other such period as the Parties may agree upon) by mutual agreement, such dispute within ten (10) Business Days shall be submitted to a mediator and resolved in accordance with the mediation procedures set forth below.

Any dispute

12.2 arbitration, or other dispute resolution proceedings, unless the Parties to the dispute mutually shall determine from the nature of the dispute, the positions of the Parties, and other relevant facts and circumstances that mediation will not lead to resolution of the dispute. The Parties to any such dispute shall select a mediator to assist in the resolution of their dispute. The mediator shall (i) be knowledgeable in the subject matter of the dispute and (ii) have no official, financial, or personal conflict of interest with respect to the issues in controversy, unless the interest is fully disclosed in writing to all participants and all participants waive in writing any objection to the interest.

Following the

12.3

12.3.1 Require the Parties to meet for face-to-face discussions, with or without the mediator;

12.3.2 Act as an intermediary between the disputing Parties;

12.3.3 Require the disputing Parties to submit written statements of issues and positions; and

12.3.4 If requested by the disputing Parties, provide a written recommendation on resolution of the dispute.

The disputing

12.4 written, confidential, non-binding recommendation on resolution of the dispute, including the mediator's assessment of the merits of the principal positions being advanced by each of the disputing Parties. At a time and place specified by the mediator after delivery of the foregoing recommendation, but no later than fifteen (15) days after issuance of the mediator's recommendation, the disputing Parties shall meet in a good faith attempt to resolve the dispute in light of the mediator's recommendation. Each disputing Party shall be represented at the meeting by a person with authority to settle the dispute, along with such other persons as each disputing Party shall deem appropriate. If the disputing Parties are unable to resolve the dispute at or in connection with this meeting, then: (i) any disputing Party may commence such judicial, mutually agreed upon arbitration, or other dispute resolution proceedings as may be appropriate; and (ii)

If a resolution

the recommendation of the mediator shall have no further force or effect, and shall not be admissible for any purpose in any subsequent arbitral, judicial, or other dispute resolution proceeding.

12.5 costs and attorney's fees incurred in connection with any mediation under this Agreement.

The costs of

ARTICLE 13

REPRESENTATIONS AND WARRANTIES

13.1 correct in all material respects:

Each Membe

13.1.1 it is duly organized, validity existing and in good standing under the Laws of the state of its incorporation or organization;

13.1.2 it will at all times comply with the provisions of this Agreement and all Exhibits and Appendices hereto, each as amended from time to time;

13.1.3 it has all requisite corporate or other organizational power to carry on its business as contemplated by this Agreement;

13.1.4 except for the authorizations and approvals described in Article 8 of this Agreement, it has all authorizations from Governmental Entities necessary for it to legally perform its obligations under this Agreement;

13.1.5 the execution, delivery and performance of this Agreement and any other documentation it is required to deliver under this Agreement are within its powers, have been duly authorized by all necessary action, and do not violate any of the terms or conditions in its governing documents, any contract or other agreement to which it is a party or any Law applicable to it;

13.1.6 the individual(s) executing and delivering this Agreement and any other documentation required to be delivered under this Agreement on behalf of such Member are duly empowered and authorized to do so at the time of such execution and delivery;

13.1.7 this Agreement has been duly and validly executed and delivered by such Member and constitutes such Member's legal, valid and binding obligation; and

13.1.8 all information that has been provided by or on behalf of a Member pursuant to this Agreement, is true and correct in all material respects. Each Member further covenants that all information provided to the Operating Committee, the Market Auditor, the Southeast EEM Agent or the Southeast EEM Administrator by or on behalf of such Member pursuant to this Agreement, subsequent to the date hereof, shall be true and correct in all material respects.

ARTICLE 14

DEFAULTS

14.1
payment obligations under this Agreement shall be cured by payment of all overdue amounts together with interest accrued at the Interest Rate, prorated daily from the due date to the date the payment curing the default is made.

A Member sh

14.2
Interest Rate. The proceeds paid by a defaulting Member to remedy any such default shall be distributed as directed by the Membership Board to the non-defaulting Members in proportion to the additional costs and expenses actually paid by the non-defaulting Members as a result of the default.

Notwithstand

14.3
addition to any other remedies provided in this Agreement, at Law, or in equity, and shall in no way limit the non-defaulting Members' ability to seek judicial enforcement of the defaulting Member's obligations under this Agreement. Upon the effective date of such termination of rights, all rights of the defaulting Member and all obligations of non-defaulting Members to the defaulting Member imposed by this Agreement, except (i) payment obligations, (ii), the indemnification obligations set forth in Section 6.5, (iii) the release and other obligations set forth in Article 9, (iv) the confidentiality obligations set forth in Article 10 and Article 15, and (v) the obligations set forth in Section 16.9 and Section 16.14, shall immediately be terminated, except that no such termination shall impact Enabling Agreements any such Member is a party to.

The rights of

14.4
necessary.

Upon termin

ARTICLE 15

CONFIDENTIALITY

15.1
be disclosed by the receiving Member to any third party, except with the providing Member's consent, and upon request of the providing Member shall be returned thereto. Notwithstanding the above, a Member may disclose any such information to third parties as may be necessary for such Member to perform its obligations under this Agreement (including, but not limited to, the Member's employees, officers, directors, trustees, attorneys and other consultants). To the extent that such disclosures are necessary, the Members shall endeavor in disclosing any such information to seek to preserve the confidentiality of such information. This provision shall not prevent any Member from providing any confidential information received from any other Member to any court or governmental body to enforce its rights or perform its obligations hereunder or as may otherwise be required by such court or body or by Law, provided that, to the extent required, if feasible, the disclosing Member shall have given prior notice to the Member that provided such information of such required disclosure and, if so requested by such other Member, shall have used all reasonable efforts to oppose the requested disclosures, if appropriate

Any informat

under the circumstances, or to otherwise make such disclosure pursuant to a protective order or other similar arrangement for confidentiality. Without limiting the scope of the foregoing, the Members shall use all reasonable efforts to maintain the confidentiality of any confidential information in any filings with, or submissions to, any governmental or regulatory authorities. Information shall not be considered confidential for purposes of this Article 15 if the Member receiving such information from another Member can demonstrate by competent documentary evidence that such information: (a) was rightfully in the possession of the receiving Member prior to its disclosure to the receiving Member by the disclosing Member; (b) was in the public domain prior to its disclosure by the disclosing Member to the receiving Member; (c) came into the public domain, by publication or otherwise, through no direct or indirect act or omission of the receiving Member, subsequent to its disclosure by the disclosing Member to the receiving Member; or (d) was supplied to the receiving Member by a third party having the legal right to disclose it to the receiving Member, but only if the third party does not owe a duty of confidentiality to the disclosing Member with respect to such information.

15.2 Any informa
arranged pursuant to Article 12 of this Agreement shall provide for such mediator or arbitrator to comply with the provisions applicable to a Member receiving Confidential information from another Member.

15.3 Each Membe
breach of this provision.

ARTICLE 16

MISCELLANEOUS

16.1 “Public Utilit
shall not be required to take any action or participate in any filing or appeal that would confer FERC jurisdiction over such Members that does not otherwise exist.

16.2 Transfer of In
operation of all or substantially all of its electric utility assets. Written approval when required shall not be unreasonably withheld. Any successor or assignee of the rights of any Member, whether by voluntary transfer, judicial or foreclosure sale or otherwise, shall be subject to all the provisions and conditions of this Agreement, to the same extent as though such successor or assignee were the original Member hereunder, and no assignment or transfer of any rights hereunder shall be effective unless and until the assignee or transferee agrees in writing to assume all of the obligations of the assignor or transferor and to be bound by all of the provisions and conditions of this Agreement; provided, that the execution of a mortgage or trust deed or a judicial or foreclosure sale made thereunder, or if through the disposition by the Administrator of the RUS, shall not be deemed a voluntary transfer within the meaning of this Section 16.2. If, due to reorganization, sale/purchase, or other means, a Member no longer owns or operates generation or has load obligation in the Territory, its membership(s) will be evaluated by the Operating Committee and any appropriate change in representation will be subject to approval of the Operating Committee.

16.3

Relationship

16.3.1 Nothing contained herein shall be construed to create an association, joint venture, trust, or partnership, or impose a trust, partnership, covenant, obligation, or liability on or with regard to any one or more of the Parties. Each Party shall be individually responsible for its own covenants, obligations, and liabilities under this Agreement.

16.3.2 All rights of the Parties are several, not joint. No Party shall be under the control of or shall be deemed to control another Party. Except as expressly provided in this Agreement, no Party shall have a right or power to bind another Party without its express written consent.

16.4

Third Party E

not a signatory hereto shall be entitled to enforce this Agreement against any person or entity.

16.4.1 No Reliance Interest on Non-Firm Energy Exchange Transmission Service. Notwithstanding anything to the contrary in this Agreement, Non-Firm Energy Exchange Transmission Service over a Participating Transmission Provider's transmission system shall only be offered to the extent of that Participating Transmission Provider's participation in the Southeast EEM, and only for that purpose. For the avoidance of doubt, owing to the voluntary nature of a Member's participation in this Agreement, membership in this Agreement shall not give rise to any third-party expectation or reliance interest on the availability of Non-Firm Energy Exchange Transmission Service upon the withdrawal of a Member.

16.5

No Dedicatio

the public or to the other Party, and it is understood and agreed that any such undertaking by a Party shall cease upon the termination of such Party's obligations under this Agreement.

16.6

Other Agree

other Members, Participants or Additional Members. This Agreement shall not be deemed to modify or change any rights or obligations under any prior contracts or agreements between or among any of the Members.

16.7

Further Assu

required or useful to carry out the intent and purpose of this Agreement, provided that such requirements are consistent with the express terms of this Agreement and all applicable Laws and regulations, and in the case of confidential information subject to Article 15 of this Agreement. Without limiting the scope of the foregoing, each Member shall, subject to the confidentiality provisions set forth in Article 15, provide the Membership Board with any information that is reasonably necessary to operate the Southeast EEM System or for the Operating Committee or the Southeast EEM Administrator to implement any provisions of this Agreement, or any other business related to the development or the operation of the Southeast EEM System.

16.8

Notices. All

recipient acknowledging receipt) sent to the internet electronic mail address for such recipient as recorded in the Secretary's records, and (ii) delivered in person, by nationally recognized overnight courier service, or by first class mail, certified or registered, postage prepaid, to the

addresses of the Members set forth in Exhibit A hereto. Any Member may change its address by giving notice in writing stating its new address to the Southeast EEM Administrator and the Secretary, and the Secretary shall promptly update Exhibit A accordingly. Any notice, demand or other communication shall be deemed given and effective as of the date of delivery in person or upon receipt as set forth on the return receipt if delivered by certified or registered mail or by overnight courier service. The inability to deliver because of changed address of which no notice was given, or the rejection or other refusal to accept any notice, demand or other communication, shall be deemed to be receipt of the notice, demand or other communication as of the date of such inability to deliver or the rejection or refusal to accept.

16.9

Amendments

4, and Article 8. In accordance with Article 3 of this Agreement, an entity that meets the criteria for qualification and admission as a Member, as determined by the Membership Board, may become an Additional Member and a Party to this Agreement by executing this Agreement or a Joinder hereto, and upon payment of all applicable fees, dues and contributions so specified or authorized in this Agreement, the Secretary shall revise, or cause to be revised, Exhibit A to include such Additional Member. The Parties hereby stipulate and agree that this Agreement was entered into as a result of arm's-length negotiations between the Parties. Further, the Parties believe that the terms and conditions of this Agreement are just and reasonable and shall remain so over the life of the Agreement. The Parties waive all rights to challenge the validity of this Agreement or whether it is just and reasonable for and with respect to the entire term, and hereby agree to make no filings with any Governmental Entity challenging the terms and conditions of this Agreement as to whether they are just and reasonable or in the public interest. The Parties hereby further stipulate and agree that no Party may bring or support any action, proceeding or complaint seeking to modify, cancel, suspend, or abrogate the terms and conditions of this Agreement. Absent an amendment to this Agreement pursuant to Section 4.1.9, Article 4 and Article 8 approving the proposed change, the standard of review for changes to any portion of this Agreement proposed by a non-Party, or FERC acting *sua sponte*, shall be the strictest standard of review permissible to preserve the intent of the Parties to uphold the sanctity of contracts without modification, which in no event shall be lower than the "public interest" standard of review set forth in *United Gas Pipe Line Co. v. Mobile Sierra Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956).

16.10

Headings. Se

16.11

Applicable L

16.12

Entire Agreee

respect to such matters.

16.13

Counterparts

such Parties may not have executed the same counterpart.

16.14

WAIVER OF

SUIT OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT.

IN WITNESS WHEREOF, each of the Members and the Southeast EEM Agent (solely for purposes of Article 6) has executed this Agreement as of the day and year indicated next to the signature.

DATE: _____

Member: _____

By: _____

Name: _____

Title: _____

Solely for purposes of Article 6, the Southeast EEM Agent acknowledges and agrees with the provisions of Article 6 and hereby accepts the appointment as the Southeast EEM Agent as of the Effective Date:

Southeast EEM Agent: _____

By: _____

Name: _____

Title: Record Content Description, Tariff Record
Title, Record Version Number, Option Code:
Exhibit A, Names and Addresses of the Members,
0.0.1, A

Record Narrative Name:

Tariff Record ID: 2059

Tariff Record Collation Value: 167870464 Tariff

Record Parent Identifier: 2056

Proposed Date: 2021-08-06

Priority Order: 1000000000

Record Change Type: CHANGE

Record Content Type: 1

Associated Filing Identifier: 444

EXHIBIT A

NAMES AND ADDRESSES OF THE MEMBERS

Alabama Power Company
30 Ivan Allen Jr. Blvd. NW
Atlanta, GA 30308

Associated Electric Cooperative, Inc.
2814 S. Golden
PO Box 754

Springfield, MO 65807

Dalton Utilities

1200 VD Parrott, Jr. Parkway
PO Box 869
Dalton, GA 30722

Dominion Energy South Carolina, Inc.

220 Operation Way, MC C222
Cayce, SC 29033

Duke Energy Carolinas, LLC

550 South Tryon Street
Charlotte, NC 28202

Duke Energy Progress, LLC

550 South Tryon Street
Charlotte, NC 28202

Georgia Power Company

30 Ivan Allen Jr. Blvd. NW
Atlanta, GA 30308

Georgia System Operations Corporation

2100 East Exchange Place
Tucker, GA 30084

**Georgia Transmission Corporation (An
Electric Membership Corporation)**

2100 East Exchange Place
Tucker, GA 30084

Kentucky Utilities Company

One Quality Street
Lexington, KY 40507

Louisville Gas and Electric Company

220 West Main Street
Louisville, KY 40202

MEAG Power

1470 Riveredge Pwky., NW
Atlanta, GA 30328

Mississippi Power Company

30 Ivan Allen Jr. Blvd. NW

Atlanta, GA 30308

**North Carolina Electric Membership
Corporation**

3400 Sumner Blvd.
Raleigh, NC 27616

**North Carolina Municipal Power Agency
No. 1**

1427 Meadow Wood Blvd.
Raleigh, NC 27604

**Oglethorpe Power Corporation (An
Electric Membership Corporation)**

2100 East Exchange Place
Tucker, GA 30084

PowerSouth Energy Cooperative

2027 East Three Notch Street
Andalusia, AL 36421

Santee Cooper

One Riverwood Avenue
Moncks Corner, SC 29461

Tennessee Valley Authority

400 West Summit Hill Drive, WT 6A-K
Knoxville, Tennessee 37902

Record Content Description, Tariff Record Title, Record
Version Number, Option Code:

Exhibit B, Form of Joinder Agreement, 0.0.1, A

Record Narrative Name:

Tariff Record ID: 2060

Tariff Record Collation Value: 167903232 Tariff

Record Parent Identifier: 2056

Proposed Date: 2021-08-06

Priority Order: 1000000000

Record Change Type: CHANGE

Record Content Type: 1

Associated Filing Identifier: 444

EXHIBIT B

FORM OF JOINDER AGREEMENT

JOINDER AGREEMENT

Reference is made to the Southeast

Energy Exchange Market Agreement, dated as of December 28, 2020, as the same may be amended from time to time (the “Southeast EEM Agreement”), by and among the entities listed on Exhibit A thereto. Capitalized terms used but not otherwise defined herein shall have the meanings given to such terms in the Southeast EEM Agreement.

The undersigned hereby agrees to become a Member of the Southeast EEM and be bound by the terms of the Southeast EEM Agreement as if an original party thereto. The Membership Board hereby consents to the addition of the undersigned as a Member of the Southeast EEM and as party to the Southeast EEM Agreement as if an original party thereto. A duly executed copy of this Joinder Agreement shall be delivered to the Secretary and the Southeast EEM Administrator.

IN WITNESS WHEREOF, the undersigned has caused this Joinder Agreement to be duly executed as of the date set forth below.

Date: _____, 20__

[NAME OF JOINING MEMBER],
A [Jurisdiction] [Entity Type]

By: _____

Name: _____

Title: _____

ACKNOWLEDGED AND ACCEPTED:

By: _____

Name: _____

Title: Secretary, Membership Board

Record Content Description, Tariff Record Title, Record Version Number, Option Code:

Appendix A, Form of Participation Agreement, 0.0.1, A

Record Narrative Name:

Tariff Record ID: 2061

Tariff Record Collation Value: 167936000 Tariff

Record Parent Identifier: 2056

Proposed Date: 2021-08-06

Priority Order: 1000000000

Record Change Type: CHANGE

Record Content Type: 1

Associated Filing Identifier: 444

APPENDIX A

FORM OF PARTICIPANT AGREEMENT

1.0 This Participant Agreement
(“Agreement”), dated as of
_____, is entered
into, by and between [INSERT
NAME OF ENTITY], the Southeast
EEM Agent acting in its capacity as
the agent of the Members of the
Southeast Energy Exchange Market
(“Southeast EEM”)
and _____

(“Participant”).

2.0 The Participant and Southeast EEM agree that this Agreement shall incorporate, in their entirety, Appendix B to the Southeast EEM Agreement (“Southeast EEM Market Rules”), designated as Alabama Power Company’s Market Based Rate Tariff, Rate Schedule No. 1011, Southeast EEM Agreement, and the Southeast EEM Manuals. Any term not defined herein shall have the meaning ascribed to it in the Southeast EEM Market Rules. In the event of any conflict between this Agreement and the Southeast EEM Market Rules, the Southeast EEM Market Rules shall control.

3.0 The Participant has submitted an application for participation in the Southeast EEM and has been

determined by the Southeast EEM to meet all requirements of being a Participant as defined in the Southeast EEM Market Rules. The Participant warrants that all information submitted in the application is true and accurate.

4.0 The Participant agrees to be bound by and accepts all of the terms of the Southeast EEM Market Rules and the Southeast EEM Manuals, as both may be amended from time to time. Any amendments to the Southeast EEM Market Rules or the Southeast EEM Manuals are automatically and without further action incorporated into this Agreement.

5.0 The Southeast EEM agrees that Participant shall be deemed a "Participant" under the terms of the Southeast EEM Market Rules, with all rights of participation and access

to the Southeast EEM System
afforded Participants under the
Southeast EEM Market Rules.

6.0 The Participant shall supply the
Southeast EEM Administrator with
any and all information deemed
reasonably necessary for the
administration of the Southeast
EEM System.

7.0 Either Party can assign or transfer
any or all of its rights and/or
obligations under this Agreement
upon thirty (30) days written notice.
Any such transfer or assignment
shall be conditioned upon the
successor in interest accepting the
rights and/or obligations under this
Agreement as if said successor in
interest was an original Party to this
Agreement.

8.0 An event of "Force Majeure" means

any act of God, labor disturbance, act of the public enemy, war, insurrection, riot, fire, storm or flood, explosion, pandemic, epidemic, breakage or accident to machinery or equipment, any curtailment, order, regulation or restriction imposed by governmental military or lawfully established civilian authorities or any other cause beyond a Party's control. A Force Majeure event does not include an act of negligence or intentional wrongdoing. Neither the Southeast EEM Agent, the Southeast EEM, the Members, nor the Participant will be considered in default as to any obligation under this Agreement if prevented from fulfilling the obligation due to an event of Force Majeure. However, a Party whose performance under this Agreement is hindered by an event

of Force Majeure shall make all reasonable efforts to perform its obligations under this Agreement.

9.0 The Participant shall at all times indemnify, defend, and save the Southeast EEM System, the Southeast EEM Agent and the Southeast EEM Administrator harmless from, any and all damages, losses, claims, including claims and actions relating to demands, suits, recoveries, costs and expenses, court costs, attorney fees, and all other obligations by or to third parties, arising out of or resulting from the Southeast EEM Agent's or Southeast EEM Administrator's, as applicable, performance of its obligations under this Agreement and the Southeast EEM Market Rules, except in cases of negligence or intentional wrongdoing by the

Southeast EEM Agent or Southeast EEM Administrator, as applicable.

10.0 This Agreement shall be deemed to be a contract made under, and for all purposes shall be governed by and construed in accordance with, the laws of the State of Delaware.

11.0 This Agreement shall be effective upon execution by both parties and shall remain in full force and effect until terminated pursuant to Sections 12 or 13 of this Agreement.

12.0 The Southeast EEM may terminate this Agreement by providing written notice of termination to the Participant in the event the Participant commits a material violation of its obligations under the terms of the Southeast EEM Market Rules which, if capable of being remedied, is not remedied within

thirty (30) days after the date the Southeast EEM has given the Participant written notice of the violation, unless excused by reason of Force Majeure as provided in Section 8 of this Agreement.

13.0 The Participant may terminate this Agreement upon thirty (30) days written notice to the Southeast EEM.

14.0 Upon termination of this Agreement for any reason, Participant shall not have access to the Southeast EEM System, nor be entitled to submit Bids or Offers thereunder.

15.0 This Agreement may be executed in one or more counterparts at different times, each of which shall be regarded as an original and all of which, taken together, shall constitute one and the same

Agreement.

16.0 Any notice or request made to either
of the Parties to this Agreement
shall be made to the following
representatives:

Southeast EEM

Participant

Title:

Address:

IN WITNESS WHEREOF, the

Parties have caused this Agreement to be
executed by their respective authorized
officials.

Southeast EEM

Participant

By: _____

Name: _____

Title: _____

Date: _____

Record Content Description, Tariff Record Title, Record
Version Number, Option Code:
Appendix B, Southeast EEM Market Rules, 0.0.1, A
Record Narrative Name:
Tariff Record ID: 2062
Tariff Record Collation Value: 167968768 Tariff
Record Parent Identifier: 2056
Proposed Date: 2021-08-06
Priority Order: 1000000000
Record Change Type: CHANGE
Record Content Type: 1
Associated Filing Identifier: 444

SOUTHEAST EEM MARKET RULES

I. INTRODUCTION AND

APPLICABILITY.

Set forth below are the rules governing: 1) Participation in the Southeast EEM; 2) Bidding, Offering, and matching procedures for Energy Exchanges arranged through the Southeast EEM System, 3) Southeast EEM System data reporting, and 4) the processes for auditing Energy Exchanges and the hardware, software, management and operation of the Southeast EEM System. This Appendix B is subject to the terms and conditions of the Agreement. In the event of a conflict between the terms of the Agreement and the terms of this Appendix B, the terms of the Agreement shall control.

II. DEFINITIONS.

The following terms shall be defined as indicated for the purposes of this Appendix B. Definitions and terms expressed in the singular shall include the plural and *vice versa*. Any capitalized terms not defined herein shall have the meaning set forth in the Agreement.

“Agreement” means the Southeast Energy Exchange Market Agreement By and Among the Members of the Southeast EEM to which this Appendix B is appended.

“Balancing Authority” means the responsible entity that integrates resource plans ahead of time, maintains demand and resource balance within a Balancing Authority Area, and supports interconnection frequency in real time.

“Balancing Authority Area” means the collection of generation, transmission and loads within the metered boundaries of the Balancing Authority. The Balancing Authority maintains load-resource balance

within this area.

“Bid” means a voluntary submission containing the required Bid Information to purchase a certain amount of Non-Firm Energy (set forth in MW).

“Bid Information” means the information applicable to Bids set forth in Section IV.B.3.

“Bid Price” means the price, in \$/MWh for the amount of Non-Firm Energy submitted in a Bid. This represents the maximum price that the Bidder is willing to pay.

“Bidder” means a Participant who submits a Bid into the Southeast EEM System.

“Buyer” means a Bidder that has been matched with an Offeror for an Energy Exchange through the Southeast EEM System.

“Clock Hour” means the sixty-minute period ending at :00.

“Company System Administrator” has the meaning set forth in Section VI.B.2.

“Contract Path” means the continuous transmission path for the flow of Non-Firm Energy between the Participants reserved for an Energy Exchange using the transaction matching, reservation and tagging functions of the Southeast EEM System.

“Delivery Interval” means a fifteen (15) minute period in which Non-Firm Energy is intended to be delivered by a Seller to its matched Buyer(s).

“Energy Exchange” means a transaction for the purchase and sale of Non-Firm Energy in the Southeast EEM

between Buyers and Sellers pursuant to an Enabling Agreement and in conformance with the requirements of the Southeast EEM Rules.

“Electronic Tag” or “e-Tag” means the primary method for coordination of Interchange Schedules or Energy Schedules where Energy is transferred between Balancing Authority Areas and coordination required between multiple entities. Various entities can communicate important information pertaining to the Interchange transaction to each other via the internet using computer applications, which are based on the e-Tag specifications and schema maintained by the North American Energy Standards Board (“NAESB”).

“Energy Exchange Notification” means the notice provided to Bidders and Offerors who were matched for an Energy Exchange by the Southeast EEM Algorithm; to be automatically generated by the Southeast EEM System and provided before the start of a Delivery Interval; and to include data on the matched Energy Exchange including Buyer, Seller, price, amount of Non-Firm Energy, Source, Sink, delivery location, applicable Delivery Interval, and other any other necessary data for Participants to record the transaction.

“Energy Exchange Price” means the price, in \$/MWh, calculated by the Southeast EEM Algorithm for a specific Energy Exchange.

“FERC” means the Federal Energy Regulatory Commission.

“Good Utility Practice” means any of the practices, methods and acts engaged in or approved by a significant portion of the electric utility industry during the relevant time period, or any of the practices, methods and acts which, in the exercise of

reasonable judgment and in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practice does not require the optimum practice, method, or act to the exclusion of all others, but rather is intended to include acceptable practices, methods, or acts generally accepted in the SERC Reliability Corporation region.

“Losses” means the total cost of the electrical energy lost in the transmission of electrical energy from a Source to a Sink based on the real power loss factor (%) (“Loss Factor”) and loss rate (\$/MWh) (“Loss Rate”) of each Participating Transmission Provider on the Energy Exchange’s Contract Path.

“NAESB Electric Industry Registry” or “NAESB EIR” means thea central registry and repository of information required for commercial transactions that is maintained by NAESB.

“Network Map” means the computer-based representation of all Participating Transmission Provider service territories, Balancing Authorities, valid transmission paths (Point of Receipt – Point of Delivery combinations), Sources, and Sinks.

“Non-Firm Energy” means a product for which delivery or receipt of the energy may be interrupted for any reason or no reason, without liability on the part of either buyer or seller.

“Non-Firm Energy Exchange Transmission Service” means transmission service provided by a transmission provider, pursuant to its Tariff, that has the following characteristics: (i) it is non-firm

transmission service with the lowest curtailment priority, provided solely on an as-available basis for 15-minute Energy Exchanges, after taking into account other higher priority uses and the limitations of the transmission system of the Participating Transmission Provider; (ii) it is available solely for Energy Exchanges; (iii) it is identified and offered in the Tariff as “Non-Firm Energy Exchange Transmission Service;” (iv) the charge for such service, and related Schedule 1 and Schedule 2 (or equivalent) ancillary services, is \$0/MWh; (v) the charge for financial losses is based on the methodology established in the Participating Transmission Provider’s Tariff; (vi) the service must be obtained by a Participant using the transaction matching, reservation and tagging functions of the Southeast EEM System, rather than directly through Open Access Same Time Information System or other reservation, scheduling or tagging requirements applicable to other forms of transmission service offered by a Participating Transmission Provider; (vii) the service may not be reassigned, redirected, or sold by the transmission customer; (viii) in combination with the other Participating Transmission Providers’ provisions of Non-Firm Energy Exchange Transmission Service, the service allows for a continuous Contract Path for Energy Exchanges; and (ix) the Participating Transmission Provider is required to provide the information specified in and as required by Section IV.A.2 of the Southeast EEM Market Rules to the Southeast EEM System. For the avoidance of doubt, nothing in this Agreement shall obligate any Participating Transmission Provider to (a) plan, construct, or maintain its transmission system for the benefit of any Participant; (b) provide Non-Firm Energy Exchange Transmission Service in a manner that is contrary to the terms of the Participating

Transmission Provider's Tariff, or contrary to Good Utility Practice, each as determined in the sole judgment of the Participating Transmission Provider; (c) provide Non-Firm Energy Exchange Transmission Service following termination of its Southeast EEM Member status; (d) provide Non-Firm Energy Exchange Transmission Service to a non - Participant; or (e) file its Tariff with FERC if the Tariff is not already required to be filed with FERC.

"OASIS" means an Open Access Same-Time Information System that conforms to the requirements of Part 37 of the FERC's regulations, 18 CFR §§ 37.1, et seq.

"OATI webRegistry" means the system developed by Open Access Technology International, Inc. to perform the NAESB EIR functions.

"Offer" means a voluntary submission containing the required Offer Information to sell a certain amount of Non-Firm Energy (set forth in MW).

"Offer Price" means the price, in \$/MWh for the amount of Non-Firm Energy offered in an Offer. This represents the minimum price that the Offeror is willing to collect to sell.

"Offer Information" means the information applicable to Offers set forth in Section IV.B.3, as well as other information that may be required by the Southeast EEM Administrator.

"Offeror" means a Participant who submits an Offer into the Southeast EEM System.

"Participant Profile" means that information identified in Section IV.A.1., Section IV.C.6., and such other information

requested by the Southeast EEM System Interface to assist in the creation of Energy Exchanges.

“Participant” means an entity that meets the requirements set forth in Section III of this Appendix B.

“Participant Specific Constraints” has the meaning set forth in Section IV.A.1.b. and IV.C.5.

“Seller” means an Offeror that has been matched with a Buyer through the Southeast EEM System.

“Sink” means a pre-approved and validated OATI webRegistry sink point.

“Source” means a pre-approved and validated OATI webRegistry source point.

“Southeast EEM Algorithm” means the mathematical equations that determine the matching Bids and Offers resulting in Energy Exchanges.

“Southeast EEM System Interface” means the graphical user interface (“GUI”) and application programming interfaces (“API”) used by the Southeast EEM System that meet the Southeast EEM System requirements developed by the Southeast EEM Administrator and the Operating Committee.

“Southeast EEM Manuals” means the instructions, rules, procedures and guidelines established by the Operating Committee for the Southeast EEM.

“System Administrators” means, collectively, the Southeast EEM Administrator and Company System Administrators.

III. PARTICIPATION

- A.** Any entity that meets the requirements of this Section III may become a Participant.
- B.** A Participant must:

 - 1.** Own or otherwise control a Source within the Territory and/or be contractually obligated to serve a Sink within the Territory;
 - 2.** Execute a Participant Agreement in the form attached to the Agreement as Appendix A (the “Participant Agreement”) which agreement shall, among other things, contractually bind such entity to comply with the rules set forth in this Appendix B;
 - 3.** Deliver the executed Participant Agreement to the Secretary and the Southeast EEM Administrator, which shall become effective when countersigned by the Southeast EEM Agent at the direction of the Operating Committee;
 - 4.** Execute and deliver a Non-Firm Energy

Exchange
Transmission Service
Agreement with each
Participating
Transmission
Provider who
requires delivery of
such agreement, or
otherwise have
access to Non-Firm
Energy Exchange
Transmission Service
from each
Participating
Transmission
Provider; and

5. Have or enter into an Enabling Agreement with at least three (3) or more Participants.

IV. BIDS/OFFERS AND MATCHING PROCEDURES.

A. Pre-Bid/Offer Information Requirements.

1. Information Submitted by Participants.
 - a. Prior to being permitted to submit Bids or Offers, each Participant shall provide the Southeast EEM all required information in its Participant Profile. Participants are

responsible
for providing
accurate
information to
the Southeast
EEM System
in its
Participant
Profile, as
well as
submitting
any updates
or
modifications
to the
Southeast
EEM
Administrator
to maintain
the accuracy
of
Participant's
Profile.

b.

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- ii. Offers from a Participant for a Delivery Interval will not be processed unless the Participant's Participant-Specific Constraints are set such that there are at least three other non-affiliated Participants with whom the submitting Participant can be matched for

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Buyer.

iii.

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- c. Prior to being permitted to submit Bids or Offers,

each
Participant
must affirm
that it has
executed
Service
Agreements
for Non-Firm
Energy
Exchange
Transmission
Service with
each
Participating
Transmission
Provider that
requires
delivery of
such
agreement or
that it
otherwise has
access to
Non-Firm
Energy
Exchange
Transmission
Service as to
each
Participating
Transmission
Provider
through such
Participating
Transmission
Provider's
Tariff.

2. Prior to being
permitted to provide
Non-Firm Energy
Exchange
Transmission
Service, Participating
Transmission
Providers shall
provide sufficient

information to permit the Southeast EEM Administrator to create a Network Map of the Southeast EEM Territory for purposes of confirming available capacity for NFEETS along Contract Paths for all potential Energy Exchanges.

3. Participant shall supply the Southeast EEM Administrator with any and all information the Operating Committee deems reasonably necessary for the administration of the Southeast EEM System.

B. Bids and Offers.

1. Delivery Intervals. Each Clock Hour will consist of four (4) Delivery Intervals:

xx:00 to xx:15;

xx:15 to xx:30;

xx:30 to xx:45; and

xx:45 to xx:00 of the next Clock Hour.

2. Deadlines.

- a. For each Clock Hour, every Participating Transmission

Provider's
available
capacity for
NFEETS
must be
available as
an input to the
Southeast
EEM
Algorithm no
later than
fifteen (15)
minutes
before the
start of such
next Clock
Hour. To the
extent a
Participating
Transmission
Provider can
update its
available
capacity for
NFEETS
within a
Clock Hour,
such updated
information
must be
available as
an input to the
Southeast
EEM
Algorithm no
later than
fifteen (15)
minutes
before the
start of the
applicable
Delivery
Interval.

- b.** Each
Participating
Transmission

Provider's
Loss Factor
and Loss Rate
must be
available as
an input to the
Southeast
EEM
Algorithm no
later than
fifteen (15)
minutes prior
to the Clock
Hour for
which the
Loss Factor
and Loss Rate
are to apply.
If the
Participating
Transmission
Provider does
not update its
Loss Factor
and Loss
Rate, the
values for the
prior Clock
Hour will
apply.

- c. Bid and
Offers must
be submitted
through the
Southeast
EEM System
Interface not
earlier than
seven (7) days
prior to the
applicable
Delivery
Interval and
not later than
fifteen (15)
minutes prior

to the
Delivery
Interval for
which they
are submitted.
Participants
may modify
or cancel
previously
submitted
Bids or Offers
at any time
before 15
minutes prior
to the
upcoming
Delivery
Interval; no
further
modifications
may be
submitted to a
Bid or Offer
within the
fifteen
(15)-minute
period prior to
the applicable
Delivery
Interval.

- d.** The Southeast
EEM System
will: 1) match
the Bids and
Offers for the
next Delivery
Interval,
subject to the
constraints
and
limitations
established
pursuant to
this
Appendix;
and 2)

provide an Energy Exchange Notification to all Participants who were matched as an Energy Exchange for the upcoming Delivery Interval, and 3) submit all necessary transmission reservations and e-Tags ten (10) minutes prior to the relevant Delivery Interval.

3. Bid and Offer Requirements.

a. Each Bid or Offer must include the following components:

i.

Participant name.

ii.

Whether the submission is a

- Bid or
an
Offer.
- iii. An
amoun
t of
Non-F
irm
Energ
y
(MW)
for the
Bid or
Offer
in
increm
ents of
4MW
blocks
.
- iv. For all
Offers,
an
Offer
Price
and
for all
Bids, a
Bid
Price.
- v. For all
Offers,
a
Source
and
for all
Bids, a
Sink.
- vi. The
specifi
c
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ry

Interval to which the Bid or Offer applies.

vii.

Whether the submission:
1) must be matched in full or not at all or
2) can be matched at any volume below the Bid or Offer volume (subject to the 4MW increment rule)
("All or Nothing

Selecti
on”).

viii. Any
other
compo
nents
as may
be
requir
ed for
the
Southe
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EEM
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te the
reports
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bed in
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n V of
this
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dix.

b. An Offer may
include the
maximum
Energy
Exchange
Price that the
Participant is

willing to
accept for a
particular
Source/Sink
pair for the
applicable
Delivery
Interval.

- c. Participants are permitted to submit multiple Bids or Offers for the same Delivery Interval with varying Source or Sink locations, as applicable, Non-Firm Energy amounts, and pricing, subject to any limitation on the number of Bids or Offers that may be submitted at any one Source or Sink for a particular Delivery Interval as may be established in the Southeast EEM Manuals.
- d. Submission of Bids and Offers is

voluntary;
Participants
are not
required to
submit any
Bids or Offers
for any
Delivery
Interval.

C. Matching.

1. Subject to the constraints defined below and all Bid Information and Offer Information, the Southeast EEM Algorithm will evaluate all Bids and Offers for each Delivery Interval and produce Energy Exchanges.

The Southeast EEM Algorithm will match Bids and Offers so as to result in Energy Exchanges that maximize the Southeast Energy Exchange Market total benefit for the applicable Delivery Interval while simultaneously honoring all the requirements identified in Section IV.A.1 and the constraints identified in Section IV.C.6. The total benefit shall be calculated by aggregating the benefits from each

Energy Exchange for the applicable Delivery Interval.

2. The benefit associated with each Energy Exchange will be calculated by taking the difference between the Bid Price and Offer Price and multiplying it by the MW amount of Non-Firm Energy identified in the Energy Exchange, less the costs of transmission services (Losses) provided along the Contract Path.
3. For any Energy Exchange where the Energy Exchange Price exceeds the maximum value submitted in accordance with Section IV.B.3.b., the Energy Exchange Price will be adjusted down to that maximum value, such that the total benefit associated with the Energy Exchange remains the same, but the benefit allocation will be adjusted in the Buyer's favor.
4. Matching Principles.
 - a. Whole and/or partial amounts of

Non-Firm
Energy shall
be matched,
consistent
with the
Participant's
All or
Nothing
Selection in
its Bid
Information
or Offer
Information.

- b.** Bids or Offers
that can be
matched with
multiple
Participants
shall be
allowed,
subject to the
matching
rules set forth
in this
Appendix.

5. Match/Energy
Exchange Price.

- a.** Each Energy
Exchange
Price will be
the sum of: 1)
the average of
the Bid Price
and Offer
Price for the
Energy
Exchange,
and 2) half the
net Losses for
all
Transmission
Service
Providers
along the

Contract Path, where net Losses equals the Losses paid for by Seller minus the Losses paid for by Buyer.

b. Data demonstrating Losses will be incorporated into the Energy Exchange Price.

i. Each Participating Transmission Provider determines the method for pricing its Losses ;

ii. Each Participating Transmission Provider is responsible

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ng its
Tariff
to
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Losses
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6. Constraints.

a.

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In matching
Bids and
Offers, the
Southeast
EEM
Algorithm
will take into

account the
Participant-Sp
ecific
Constraints
submitted by
the Bidders
and Offerors
in accordance
with Section
IV.A.1.b.

b. Generally
Applicable
Constraints.

i. In
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Bids
and
Offers,
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Algori
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Contract Path
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ii.

Energy
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- iv. The
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Delivery
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7. Treatment of
Identical Offers or
Bids.

- a. In the event
that multiple
Bids or Offers
that are at the
same price at
a Source or
Sink are
identical
which create
the same

benefit for the
Southeast
EEM, a
randomized
preference
will be
assigned to
the Bid(s) or
Offer(s).

8. Notification,
Scheduling, and
Transmission for
Energy Exchanges.

a. After an
Energy
Exchange for
a Delivery
Interval is
determined:

i. The
Bidder
and
Offeror shall
be
notified of
match
via an
Energy
Exchange
Notification.

ii.

Trans
mission
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reserv
ations
and

e-Tags shall be automatically created by the Southeast EEM System based on the matches within the time frame noted above. All e-Tags will be sent to the applicable Participating Transmission Provider(s), Balancing Authority(ies) and matched Participating

pants.
Consistent
with
the
discretion
afforded
to
Participating
Transmission
Providers
and
Balancing
Authorities
in the
NAESB
business
practices,
each
participating
Balancing
Authority
within
the
Territory
agrees
that it
will
not
reject
an
e-Tag

automatically created by the Southeast EEM System on the basis that it was submitted less than twenty (20) minutes prior to the Delivery Interval but at least ten (10) minutes prior to the Delivery Interval.

- iii. The Southeast EEM System will genera

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relevant
Participating
Transmission
Service
Providers.

9. The contractual “point of sale” of an Energy Exchange will be at the Buyer’s Balancing Authority border for a transaction delivered out of or thru one or more Balancing Authorities. For an Energy Exchange that stays within one Balancing Authority (Source and Sink in same Balancing Authority), the “point of sale” will be at the bus of the Seller’s Source. For an Energy Exchange fully delivered to a Buyer’s Balancing Authority border, the Participant acting as the Seller will be the responsible party for the transmission service to deliver the Non-Firm Energy to the “point of sale” and the Buyer will be responsible for the transmission service required to sink the

Non-Firm Energy. For an Energy Exchange that stays within one Balancing Authority, the Buyer will be the responsible party for the transmission service required to sink the Non-Firm Energy. For avoidance of doubt, Non-Firm Energy Exchange Transmission Service must be used for the entire Contract Path from Source to Sink for all Energy Exchanges.

V. SOUTHEAST EEM ENERGY EXCHANGE REPORTS.

The Southeast EEM Administrator and the Company System Administrators shall create and maintain the reports concerning Energy Exchanges as required by the Operating Committee. The reports that are provided by the System Administrators shall include, but need not be limited to, the following:

A. Public Monthly Informational Report.

This report shall be generated by the Southeast EEM Administrator and posted to the Southeast EEM website on or before midnight of the fifth Business Day of the following month and shall include the following information from the prior

month:

1. Minimum, maximum, and average match prices;
2. Amount of Non-Firm Energy offered and sold as well as bid and purchased over all Delivery Intervals;
3. Amount of Non-Firm Energy that flowed once matched as an Energy Exchange;
4. Total number of Energy Exchanges;
5. Total benefit to be calculated in accordance with Section IV.C.2;
6. Minimum, maximum, and average MW Energy Exchange amount; and
7. Energy Exchanges made but not executed.

B. Public Daily Informational Report. This report shall be generated by the Southeast EEM Administrator and posted to the Southeast EEM website by 6:00 A.M. CPT and shall include the following aggregated information from the prior day:

1. Total number of Bids and Offers during each Clock Hour of the prior day;
2. Amount of Non-Firm Energy offered and sold as well as bid and purchased during each Clock Hour of

the prior day;

3. Number of Energy Exchanges executed for each Clock Hour of the prior day;
4. Total number of Participants who submitted Bids for each Clock Hour of the prior day;
5. Total number of Participants who submitted Offers for each Clock Hour of the prior day; and
6. Weighted average match price per Clock Hour.

C. Public Hourly Informational Report.

This report shall be generated by the Southeast EEM Administrator and posted to the Southeast EEM website fifteen (15) minutes after the applicable Clock Hour and shall include the following aggregated information from the applicable Clock Hour:

1. Total number of Bids and Offers during that Clock Hour;
2. Amount of Non-Firm Energy offered and sold as well as bid and purchased during that Clock Hour;
3. Number of Energy Exchanges executed

for that Clock Hour;

4. Total number of Participants who submitted Bids during that Clock Hour; and
5. Total number of Participants who submitted Offers during that Clock Hour.

VI. AUDITING AND DATA ADMINISTRATION.

A. Archiving of Data. All Southeast EEM System input data necessary to recreate and audit any Delivery Interval, and all Southeast EEM System output data for each Delivery Interval, shall be archived such that at least the three prior months of data can be retrieved in real time. Five (5) years of data shall be archived off-line. Participants may request access to their own data and it shall be made available upon request within 24 hours. Data older than five (5) years shall be deleted at the end of each month on a rolling basis.

B. Access to Southeast EEM System Energy Exchange Data.

1. The Southeast EEM Administrator shall have access, via system software, to the results of the

matching process for any Delivery Interval of on-line history. The data to which the System

Administrators have access shall include raw Participant data, matched output data, and intermediate results of the algorithm. To be clear, the Southeast EEM Administrator shall be able to run all of the reports available in the system and view the data for all Participants.

2. Each Participant will be required to identify an administrator that is authorized by the Participant to run and review all of the reports available in the Southeast EEM System that are redacted to all show the information related to the Participant it represents (the "Company System Administrator"). The Southeast EEM System will provide each Company System Administrator with the right to grant access to certain reports and related data to identified delegates within the

Participant's organization. Each Company System Administrator (and any delegate identified by the Company System Administrator) shall be able to run all of the reports available in the system but receive only the data that belong to the Participant it represents.

C. Additional Southeast EEM Administrator Functions.

Subject to the limitations set forth in subsection (B) above, the Southeast EEM Administrator shall employ the system software to perform the following functions:

1. Oversee the matching process;
2. Maintain model data and Southeast EEM System parameters; and
3. View Participant usage statistics and generate Participant benefit reports.

D. Auditing Process.

Auditing functions will be performed by the Market Auditor at the direction of the Membership Board. The Market Auditor will report its conclusions, and provide any supporting data

in the event that problems are identified to the Membership Board on an after-the-fact, periodic basis. The Membership Board will maintain sole responsibility for determining whether to share the information any further. Auditing functions include the following:

1. Verify that the Southeast EEM System operates in accordance with the Southeast EEM Rules, including the determination and application of Bids, Offers, constraints, matched settlements, OASIS reservations, and e-tags.
2. Ensure that Energy Exchange data is available to the applicable Participants in accordance with the Southeast EEM Rules.
3. Report to the Membership Board any concerns regarding the reliability and accuracy of the Southeast EEM System process and results including any instance of operational problems or anomalies with the functioning of the Southeast EEM

System.

4. Provide evaluation regarding the proper function of the Southeast EEM System, and the effectiveness of any Southeast EEM System specific controls in place related to the operation of the Southeast EEM System.
5. Refer any complaints received to the Membership Board, and investigate further at the Membership Board's direction.
6. The Membership Board will be responsible for defining the time interval(s) for the auditing function to be performed and report back to the governing body. Such interval(s) will be published in the Southeast EEM Manuals.

E. Data Administration.

1. Parameters. The Southeast EEM Administrator shall set and maintain the following Southeast EEM System configuration

parameters, which shall be posted for access by all Members:

- a. The matching process start time for each Clock Hour;
- b. The number of minutes before the start of the matching process when no additional Bids and Offers will be accepted;
- c. The number of minutes before the start of the matching process by which the processing of any in-transit Bids and Offers must be completed;
- d. The addition or deletion of Participants;
- e. The addition or deletion of a Company System Administrator for each Participant;
- f. Manage,

store, and
safeguard data
(e.g., Bid,
Offer, match,
and
Participant
Information)
to ensure
appropriate
levels of
confidentialit
y and records
retention;

g. Grant access
to the data on
the Southeast
EEM System
as
appropriate;

h. Supply data to
Participants
involved in
Energy
Exchanges to
complete the
applicable
transaction,
including (but
not limited
to):

i.

Partici
pant
identif
ication
of the
Buyer
and
the
Seller;

ii.

Balancing
Authority
Area
identifications
for
the
MWh
quoted
by the
Buyer
and
the
Seller;

iii. e-Tag
number;

iv.

Transaction
quantity in
MW/
MWh,
including the
MWh
out of
the
Source
area
and
the
MWh
into
the
Sink
area;

v.

Inform

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executed.

- i. Supply needed information/data for auditing functions to ensure that the Southeast EEM System is being properly administered.

Record Content Description, Tariff Record Title, Record
Version Number, Option Code:
Appendix C, Southeast EEM Agent Scope, 0.0.1, A
Record Narrative Name:
Tariff Record ID: 2063
Tariff Record Collation Value: 168001536 Tariff
Record Parent Identifier: 2056
Proposed Date: 2021-08-06
Priority Order: 1000000000
Record Change Type: CHANGE
Record Content Type: 1
Associated Filing Identifier: 444

APPENDIX C

SOUTHEAST EEM AGENT SCOPE

The Southeast EEM Agent Scope shall be limited to the following:

- a. Subject to paragraph (b) below, the Southeast EEM Agent shall execute contracts with third parties solely as the agent for and on behalf of the

Members and not in the Southeast EEM Agent's own name or for its own account.

- b. The Southeast EEM Agent shall be empowered to execute contracts only after being given specific written or electronic authorization to do so by the Membership Board, or in the case of minor or unsubstantial contracts, the Operating Committee, in either case as delivered to the Southeast EEM Agent by the Membership Board or the Operating Committee, as applicable.
- c. The Southeast EEM Agent shall be authorized to execute amendments to contracts entered into on behalf of the Members, provided that such amendment is authorized by the Membership Board or, in the case of minor or unsubstantial contracts, by the Operating Committee, in either case as delivered to the Southeast EEM Agent by the Membership Board or the Operating Committee, as applicable.
- d. For convenience, the Southeast EEM Agent shall be authorized to accept notices under the contracts that it executes on behalf of the Members.
- e. The Southeast EEM Agent shall **not** be involved in the billing process under the vendor contracts. Third-party vendors will bill the Members directly for their proportionate share of the costs under the contracts executed by the

Southeast EEM Agent on behalf of the Members.

- f. If certain vendors are unwilling to bill Members directly, the Membership Board shall develop an alternative billing arrangement, such as using a third-party billing agent.
 - g. The Southeast EEM Agent shall **not** have any special role in, or authority over, the operation or administration of the Southeast EEM System. The vendor contracts shall specify that the day-to-day contact for such vendor shall be the Operating Committee, not the Southeast EEM Agent.
 - h. The Southeast EEM Agent shall not be exposed to incremental liability for actions taken within the Southeast EEM Agent Scope.
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