UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Alabama Power Company	)	ER21-1111-000
Dominion Energy South Carolina, Inc.	)	ER21-1112-000
Louisville Gas and Electric Company	)	ER21-1114-000
Duke Energy Progress, LLC Duke Energy Carolinas, LLC	)	ER21-1115-000
Duke Energy Carolinas, LLC	)	ER21-1116-000
Duke Energy Progress, LLC	)	ER21-1117-000
Louisville Gas and Electric Company	)	ER21-1118-000
Georgia Power Company	)	ER21-1119-000
Kentucky Utilities Company	)	ER21-1120-000
Mississippi Power Company	)	ER21-1121-000
Alabama Power Company	)	ER21-1125-000
Dominion Energy South Carolina, Inc.	)	ER21-1128-000 (not consolidated)

COMMENTS OF ADVANCED ENERGY ECONOMY, ADVANCED ENERGY BUYERS GROUP, RENEWABLE ENERGY BUYERS ALLIANCE, AND THE SOLAR ENERGY INDUSTRY ASSOCIATION

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COMMENTS OF ADVANCED ENERGY ECONOMY, ADVANCED ENERGY BUYERS GROUP, RENEWABLE ENERGY BUYERS ALLIANCE, AND THE SOLAR ENERGY INDUSTRY ASSOCIATION

Advanced Energy Economy ("AEE"),[1] the Advanced Energy Buyers Group ("Buyers Group"), Renewable Energy Buyers Alliance ("REBA"), and Solar Energy Industries Association ("SEIA") (collectively "Clean Energy Coalition") respectfully submit these comments on the Southeast Energy Exchange Market ("SEEM") Agreement filed on February 12, 2021, by Southern Company Services, Inc. on behalf of Alabama Power Company and the other sponsoring Members of the SEEM ("SEEM Members") in Docket No. ER21-1111, as well as on the other filings submitted by those public utilities (collectively, "SEEM Filing Entities") listed in the above-captioned dockets. Together these filings propose a trading platform to allow for sub-hourly energy transactions, priced based on a formula rate, that use a new class of non-firm transmission service made available across ten Balancing Authority Areas ("SEEM Proposal").

As explained in more detail below, Clean Energy Coalition supports the development of additional competitive wholesale market options in the Southeast and the rest of the United States. The SEEM Proposal has emerged at the same time that customer demand for clean energy supplies to satisfy their sustainability commitments are rapidly increasing and states in the Southeast are expressing greater interest in the potential for more competitive wholesale markets in the region to lower consumer costs and help the region transition to a decarbonized future. Clean Energy Coalition welcomes steps by utilities and stakeholders in the region to provide customers with more options to access desired clean energy suppliers and clean energy developers with more

[1] AEE submitted a doc-less motion to intervene in each of the above-captioned dockets on March 12, 2021. Buyers Group submitted a doc-less motion to intervene in each of the above-captioned dockets on March 12, 2021. REBA submitted a doc-less motion to intervene in each of the above-captioned dockets on March 11, 2021. SEIA submitted doc-less motions to intervene in each of the above-captioned dockets on either March 12, 2021 (ER21-1119, ER21-1121, and ER21-1125) or February 26, 2021 (all others).

opportunities to compete on a level playing field to serve those customer demands. Taking these steps would unlock significant benefits for consumers, promote economic development throughout the Southeast, and put the region on a market-based path to decarbonization.

The SEEM Proposal lacks sufficient details on many important issues, however, making it unclear whether it represents a first step toward more competitive wholesale market options for customers in the region. Moreover, many of these missing details could have significant cost, transparency, and market implications for customers and stakeholders, and could end up moving the region further away from the competitive options that states and consumers increasingly seek. Accordingly, in these comments, Clean Energy Coalition identifies a number of issues raised by the SEEM Proposal, and urges the Federal Energy Regulatory Commission ("FERC" or the "Commission") to direct the SEEM Members to supplement their filings to address these issues and provide the additional details necessary to evaluate the proposed construct. Addressing these issues is necessary to ensure that, consistent with long-standing Commission precedent, sufficient stakeholder and participant protections against undue discrimination are in place, and that the SEEM (if implemented) has a transparent and responsive structure that is adaptable to stakeholder needs.

In addition, Clean Energy Coalition requests that the Commission establish a future technical conference, outside of these dockets, to convene a discussion with state officials, customers, utilities, independent power producers, and other stakeholders in the Southeast regarding the future of wholesale power markets in the region. As noted above, state leaders and customers in the region have expressed their desire to explore the development of competitive wholesale markets, but unfortunately, few if any states in the region were consulted or even made aware of the development of the SEEM Proposal. A Commission-convened discussion, outside of

the details of the SEEM Proposal, would give these key stakeholders and others a forum to examine market structures that would maximize benefits for customers.

BACKGROUND

AEE is a national organization of businesses making the energy we use secure, clean, and, affordable. AEE represents more than 100 companies and organizations that span the advanced energy industry and its value chains, and AEE's members include many companies and organizations located or active in the proposed footprint of the SEEM. AEE's members include companies involved in electric storage, energy efficiency, demand response, wind, solar photovoltaics, solar thermal electric, ground-source heat pumps, electric vehicles, advanced metering infrastructure, transmission and distribution efficiency, fuel cells, advanced nuclear power, combined heat and power, and enabling software. Used together, these technologies and services will create and maintain a higher-performing energy system—one that is reliable and resilient, diverse, cost-effective, and clean—while also improving the availability and quality of customer-facing services.

AEE also facilitates the work of the Buyers Group, a business-led coalition of large energy users engaging on policies to expand opportunities to procure energy that is secure, clean, and affordable. Members of the Buyers Group are market leaders and major employers spanning different industry segments, including technology, retail, and manufacturing. These companies are among the 71% of Fortune 100 companies and 43% of Fortune 500 companies that have established renewable and/or climate targets as part of our corporate sustainability commitments. They share a common interest in expanding the use of advanced energy, such as renewable energy like wind, solar, geothermal, and hydropower; demand-side resources like energy efficiency, demand response, and energy storage; and onsite generation from solar photovoltaics, advanced natural gas turbines, and fuel cells.

REBA is a national association for large-scale energy buyers seeking to procure renewable energy across the U.S. With more than 250 members from across the commercial and industrial sectors, non-profit organizations, as well as energy providers and service providers, REBA is working toward the creation of a resilient, zero-carbon energy system. REBA's goal is to catalyze 60 gigawatts of new renewable energy projects by 2025 and to unlock the energy market for all large-scale energy buyers by creating viable pathways to procurement.

SEIA is the national trade association of the solar energy industry. As the voice of the industry, SEIA works to make solar a mainstream and significant energy source by expanding markets, reducing costs and increasing reliability, removing market barriers, and providing education on the benefits of solar energy. SEIA represents solar companies that own and operate a wide-variety of projects throughout the country, including solar installations at the transmission and distribution levels, as well as behind-the-meter solar at commercial, industrial, and residential host-sites. The Southeast region, including the facilities owned and operated by the SEEM parties, plays an important role to the U.S. solar plus storage industry. SEIA represents solar companies that will be impacted by SEEM and not adequately represented by any other party.

Together, the members of these four organizations have significant interests in the SEEM Proposal and the development of new competitive market structures in the Southeast. Developers of clean and advanced energy and associated technologies, including members of the above organizations, face significant difficulties in and barriers to bringing their products and services to market in the region. Even though non-utility generators have the ability to offer economic wholesale power supplies to customers, it is difficult to secure opportunities to sell those supplies on a non-discriminatory basis given that Commission-jurisdictional incumbent utilities, in addition to serving much of the Southeast as bundled retail customers, also dominate the wholesale energy

market within their respective footprints. Further, because the Southeast grid is broken up into a patchwork of Balancing Authority Areas instead of a single regional grid, sending power across balancing areas requires multiple transmission reservations across systems and the payment of pancaked transmission rates due to the addition of wheeling charges.[2] Low-cost renewable power, such as solar energy in North Carolina, is sometimes curtailed rather than used.[3] Idiosyncratic solutions, like Southern Company's existing auction for imbalance energy, do not provide the sort of long-term commitment to open competition needed to enable the entry of durable clean and advanced energy solutions. Indeed, even though studies have shown that "nearly every coal plant (92 percent of existing capacity)" in the Southeast "was uneconomic compared to local wind or solar," without open competition in a centralized wholesale market, utilities in the region largely plan to follow a regionally fragmented and overbuilt business-as-usual approach into the future, without "economically optimal dispatch" and "with only minimal coordination of imports and exports."[4] Opening markets to supply competition is the best solution both for prices in the region and emissions goals.[5]

Many of the same problems stymie progress on the buyer side of the equation as well. Numerous large purchasers of energy, including members of our organizations, seek to purchase

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[2] *See* Eric Gimon *et al.*, *Summary Report: Economic and Clean Energy Benefits of Establishing a Southeast U.S. Competitive Wholesale Electricity Market*, Energy Innovation and Vibrant Clean Energy at 5, 8 (Aug. 2020) ("Energy Innovation Southeast Market Summary Report"), *available at* https://energyinnovation.org/wp-content/uploads/2020/08/Economic-And-Clean-Energy-Benefits-Of-Establishing-A-Southeast-U.S.-Competitive-Wholesale-Electricity-Market_FINAL.pdf.

[3] *See, e.g.*, John Downey, *Developers Cry Foul as Duke Energy Briefly Interrupts Private Solar-Power Purchases*, CHARLOTTE BUSINESS JOURNAL (July 10, 2018), https://www.bizjournals.com/charlotte/news/2018/07/10/developers-cry-foul-as-duke-energy-briefly.html.

[4] *See* Energy Innovation Southeast Market Summary Report, at 5, 7-8, 16-17. *See also* Eric Gimon et al, *The Coal Cost Crossover: Economic Viability of Existing Coal Compared to New Local Wind and Solar Resources*, Energy Innovation Southeast Market Summary Report at 1 (Mar. 2019) (explaining that an increasing percentage of the U.S. coal fleet is "more expensive than cleaner alternatives" that could be developed locally), *available at* https://energyinnovation.org/wp-content/uploads/2019/03/Coal-Cost-Crossover_Energy-Innovation_VCE_FINAL.pdf.

[5] *See* Energy Innovation Southeast Market Summary Report at 12 (explaining that "a competitive market with no carbon policy does a better job of reducing emissions than" utility company emissions targets).

affordable, clean, and advanced energy solutions in the Southeast. However, with only a handful of major suppliers and no centralized market, there is little transparency in energy prices throughout the region. Utilities like Duke Energy and Southern Company have announced plans to build more clean generation capacity,[6] but market structure barriers mean that buyers often do not have the ability to contract directly with new developers who can more quickly and flexibly meet their energy needs with more customer-specific products and at a lower cost. While Order No. 888, almost 25 years ago, committed the Commission "to remov[ing] impediments to competition in the wholesale bulk power marketplace and to bring more efficient, lower cost power to the Nation's electricity consumers,"[7] that principle is not a reality for consumers in the Southeast.

EXECUTIVE SUMMARY

The filings submitted by the SEEM Members in the above-captioned dockets to implement the SEEM Proposal lack foundational details critical to the efficient design and operation of an energy market or market-like trading platform in the Southeast. To properly evaluate the SEEM Proposal, Clean Energy Coalition urges the Commission to require the SEEM Members to supplement their filings (through a deficiency response) to address several critical issues where more information is necessary and/or modifications to the proposal may be necessary to comply with the Commission's open access requirements and ensure sufficient consumer and stakeholder protections are in place. Specifically, and as described in more detail in the remainder of these comments, Clean Energy Coalition has identified the following issues within the SEEM Proposal

[6] *See id.*

[7] *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, 61 Fed. Reg. 21,540, 21,541 (May 10, 1996), *order on reh'g*, Order No. 888-A, 62 Fed. Reg. 12,274 (Mar. 14, 1997), *order on reh'g*, Order No. 888-B, 62 Fed. Reg. 64,688 (Nov. 25, 1997), *order on reh'g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), aff'd in relevant part sub nom. *Transmission Access Policy Study Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), aff'd sub nom. *New York v. FERC*, 535 U.S. 1 (2002).

that require further close examination by the Commission before the proposed construct moves forward:

- **SEEM is a loose power pool that is subject to Order No. 888 filing requirements.** The SEEM Proposal has all of the characteristics that make up a loose power pool and as a result, pursuant to Order No. 888, the SEEM Members should have on file with the Commission a pool-wide Open Access Transmission Tariff ("OATT"). Under Order No. 888, the pool-wide OATT must be independently administered by a public utility in a manner that includes opportunities for stakeholders to provide input on power pool decision-making and administration.
- **SEEM must have unrestricted membership, fair and transparent governance, and a meaningful stakeholder process.** Even if the Commission finds that the SEEM proposal is not a loose power pool, as a regional entity that facilitates coordination between utilities, the SEEM must still meet the transparency and independence requirements of the Commission's open access precedents. This includes eliminating discriminatory barriers to membership in SEEM, a fair and transparent governance system that is not unduly influenced by vertically integrated utilities to the exclusion of other parties, and a stakeholder process that permits meaningful conversation and input among wholesale sellers, customers, public interest groups, state commissions, and other state officials.
- **The SEEM Platform must be transparent and allow for auditing, monitoring, and the mitigation of market power when necessary.** Because of a lack of transparency into market activity, Participants' ability to impose opaque and selective constraints on transactions, and a lack of independent oversight or ability to prevent the exercise of market power, the SEEM Platform falls well short of offering either open competition among

resources or even the assurance that market power will not be exercised via the platform. The SEEM platform must produce meaningful market activity information after sufficient time lag, avoid offering market power opportunities to incumbents via trading constraints, and have an independent and trustworthy administrator and market monitor that can detect and prevent the exercise of market power. All of these elements are currently absent from the Southeast Energy Exchange Market Agreement ("SEEM Agreement")**.**

- **The SEEM Proposal must be supported and recommended by a verifiable estimate of its promised benefits**. The benefits analysis submitted to support the SEEM concept fails to clearly define and support the benefits it claims the SEEM Proposal will generate and, even if its promised benefits are indeed accurate, they pale in comparison to the benefits from other regional trading and integration models. The SEEM Filing Entities have not yet shown that the costs, risks, and potential downsides of the SEEM construct outweigh the alleged benefits.
- **The SEEM Proposal has not yet been shown to be consistent with or superior to the *pro forma* OATT.** The Commission's open access and just and reasonable rate precedents require the use of Open Access Same-Time Information Systems ("OASIS"), the avoidance of unduly discriminatory market algorithms, and do not allow imbalance penalties, transmission loss provisions, or cost shifts among customer classes or utilities to work inequitable results. Each of these items must be addressed by the SEEM Filing Entities to complete their proposal**.**
- **The SEEM Filing Entities have not explained how the market will mesh with the three Regional Transmission Organization ("RTO") markets on its borders.** Existing interactions are already complex between SEEM Members and the three RTOs that share

borders with those SEEM Members. The new transmission service proposed in the SEEM Filings, as well as increases in very short bilateral transactions likely will exacerbate this complexity. The Filing Entities and the Commission should address these interactions—including interregional coordination generally, existing operations with neighbors specifically, and whether existing seams agreements with RTOs need to be modified—prior to SEEM implementation.

Finally, Clean Energy Coalition respectfully requests that the Commission, outside of these dockets and regardless of how it rules on the SEEM Proposal, convene a technical conference to explore future competitive wholesale market development in the Southeast. Evidence is mounting that a robust and economically efficient competitive regional wholesale market in the Southeast would provide significant benefits to the region, well above the benefits projected by the SEEM Members to be realized through the SEEM Proposal. It would be a valuable use of time to explore the future of Southeast markets with all interested stakeholders in the region.

COMMENTS

I. THERE ARE MANY OPEN QUESTIONS TO RESOLVE BEFORE THE COMMISSION RULES ON THE REASONABLENESS OF THE SEEM PROPOSAL.

A. The SEEM Filing Entities propose a loose power pool but have failed to propose an independently-administered pool-wide OATT required for such a proposal.

When the Commission directed the unbundling of transmission, ancillary services, and energy sales and opened access to transmission services in Order No. 888, power pools were no exception.[8] Public utilities that propose to pool all or part of their transmission system with other

[8] Order No. 888, 61 Fed. Reg. at 21,594.

unaffiliated utilities must have a joint pool-wide tariff on file, administered by a Public Utility that is not a member of the pool, that is consistent with or superior to the *pro forma* OATT, effective on the date that transactions begin under the pooling arrangements.[9] Like the other reforms in Order No. 888, the Commission instituted these specific reforms of power pool arrangements to remedy undue discrimination in access to monopoly-owned transmission systems. As detailed below, the SEEM Proposal is a power pool for which a pool-wide tariff is required. The Commission should investigate whether lack of a pool-wide OATT as part of the SEEM Proposal fails to meet the Commission's requirements, and whether SEEM Members may have reinstituted discriminatory practices in the provision of the zero-cost Non-Firm Energy Exchange Transmission Service ("NFEET Service").

1. **The SEEM Proposal is a loose power pool.**

The SEEM Proposal meets both prongs of the Commission's definition of a loose power pool. As the Commission explained in Order No. 888-A, a loose power pool is "[1] any multilateral arrangement, other than a tight power pool or a holding company arrangement, [2] that explicitly or implicitly contains discounted and/or special transmission arrangements, that is, rates, terms, or conditions."[10]

Under the first prong, the SEEM Agreement is an agreement among unaffiliated Public Utilities and non-public utilities ("SEEM Members") to pool certain facilities for pool-wide use. The pooled facilities are the portion of each Member's transmission system for which there are no transmission reservations in the next hour.[11] Any SEEM Member that operates a transmission system must contribute these as-available facilities to the pool every hour, 15 minutes prior to the

[9] *See* 18 C.F.R. § 35.28(c)(3).

[10] Order No. 888-A, 62 Fed. Reg. at 12,313 (Mar. 14, 1997).

[11] *See* SEEM Agreement, Attachment A § II, NFEET Service definition.

hour.[12] As one of the SEEM Members explains in its transmittal letter, "[a]s required by the Southeast EEM Agreement, NFEET Service can only be provided by Participating Transmission Providers whose system, if added to the other participating transmission systems, creates a continuous contract path."[13]

SEEM Members must also provide information about their systems "to permit the Southeast EEM Administrator to create a Network Map of the Southeast EEM Territory for purposes of confirming available capacity" prior to use of the pooled transmission services.[14] The SEEM Algorithm then uses this Network Map to confirm availability of and to allocate NFEET Service capacity.[15] Through use of the Algorithm, the SEEM System matches transactions that use the pooled transmission for the purchase and sale of energy, makes the transmission service reservations for the contract path on the pooled transmission system, and tags the transactions.[16] Indeed, the NFEET Service can only be used if the SEEM System operates to reserve, schedule, and tag each transaction.[17]

The SEEM proposal easily satisfies the second prong of the definition of a loose power pool because it contains discounted transmission arrangements with special terms and conditions. The SEEM Agreement Transmittal Letter makes clear that the NFEET Service contains many

[12] *See* SEEM Agreement, Attachment A, § 3.2.1 ("The Tariff of any Member who provides transmission service must contain [NFEET Service] provisions for those Energy Exchanges that seek to utilize such Member's transmission system."); *id*. Appendix B (SEEM Market Rules), § IV.B.2.

[13] Louisville Gas & Electric OATT Filing, Transmittal Letter, Docket No. ER21-1118, at 5 (Feb. 12, 2021) ("LG&E OATT Filing"); *see* SEEM Agreement Transmittal Letter at 25 (same); SEEM Agreement, Attachment A, § II, NFEET Service definition at (viii).

[14] SEEM Agreement, Attachment A, § IV.A.2.

[15] *See* SEEM Agreement, Appendix B, § II (defining Contract Path, Network Map); § IV.A.2 (explaining information requirements for creation of Network Map).

[16] *See* SEEM Agreement Transmittal Letter at 10; *see also* SEEM Agreement, Attachment A, at Art. 1.1 (defining "Energy Exchange" and "Southeast EEM Administrator").

[17] SEEM Agreement Transmittal Letter at 24.

discounts and special terms and conditions as compared with transmission services available under the SEEM public utilities' OATTs:

- It is non-firm transmission;
- It is available on an as-available basis (i.e., it is only available after all other uses have been taken into account);
- It is provided solely for 15-minute Energy Exchanges;
- It has the lowest curtailment priority;
- The rate for service is $0/MWh;
- There are no associated Schedule 1 or Schedule 2 ancillary service charges; [and]
- Losses will be 'financial' in that they will be supplied by the applicable Participating Transmission Provider and paid for by the matched bidder and offeror in each Energy Exchange.[18]

Some Members of the SEEM Filing Entities have asserted that the SEEM Proposal is not a loose power pool.[19] This is not the case. It is irrelevant to the Commission's definition of loose power pools that (1) there are multiple Balancing Authority Areas in the SEEM Proposal; (2) only NFEET Service, and not all of the transmission facilities of each SEEM Member, is turned over for pool operation; and (3) the SEEM Proposal may not provide for joint dispatch, joint planning or joint operation of the SEEM Members' transmission systems. First, loose power pools do not typically operate as a single control area, or in current parlance, as a single Balancing Authority

[18] *Id*.

[19] *See In the Matter of Protest Related to Informational Filing by Duke Energy Carolinas, LLC, & Duke Energy Progress, LLC*, Docket No. E-2, Sub. 1268, 2021 WL 523050, at *4 (Feb. 5, 2021) (noting that Duke Energy Progress and Duke Energy Carolinas "contest the characterization of the SEEM as a power pool arrangement because there is no joint dispatch, joint operation, or joint planning").

Area.[20] For example, Western Systems Power Pool and Southwest Power Pool ("SPP") operated their pools over multiple control areas.[21]

Second, Order No. 888-A provided that it is permissible that some transmission services may be provided from a pool, while other transmission services are provided by the individual transmission providers.[22] It is not discriminatory to provide some pool-wide transmission services to Members under a pooling agreement and to provide other transmission services to Members under the individual OATT of each SEEM Member as long as Members and non-Members have access to the same transmission services on a comparable basis and pay the same or a comparable rate for transmission.[23] Indeed, as long as there is a pool-wide tariff in compliance with FERC's regulations, participants may take service under the individual OATTs of public utilities that participate in the power pool.[24]

Third, the Commission's definition of loose power pool does not require the pooling agreement, which here is the SEEM Agreement, to provide for transmission planning, dispatch of generation, or operation of the transmission system. Again, the definition simply requires a multilateral agreement that contains discounted transmission rates or special terms and conditions

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[20] Order No. 888, 61 Fed. Reg. at 21,594.

[21] *Western Systems Power Pool*, 83 FERC ¶ 61,099 at 61,477 (1998) (noting that membership was originally open only to those that operated their own control areas); *Southwest Power Pool, Inc.*, 82 FERC ¶ 61,267 at 62,053 (1998) (noting that transmission services are provided over 18 control areas), *reh'g granted in part*, 85 FERC ¶ 61,031 (1998).

[22] *See* Order No. 888-A, 62 Fed. Reg. at 12,313; *Public Service Co. of Colorado*, 79 FERC ¶ 61,141 at 61,617 (1997) (explaining that under Order No. 888, FERC directed a pool-wide tariff where previously "Members must make available transmission for pool transactions, but separate individual company rate schedules govern the actual service").

[23] Order No. 888-A, 62 Fed. Reg. at 12,313; *Southwest Power Pool*, 82 FERC ¶ 61,267 at 62,049 (approving provision of pool services under power pool OATT for short-term firm and non-firm point-to-point service and long-term point-to-point transmission services and network transmission services under the OATTs of the public utility members of the power pool).

[24] *See Western Systems Power Pool*, 83 FERC ¶ 61,099 at 61,477 (accepting proposal in which "WSPP members will be required to obtain transmission for WSPP transactions under their Individual Open Access Tariffs" and amendments to the "pool-wide open access tariff (limited to short-term transmission services) that would be used by any pool member that does not already have an Individual Open Access Tariff on file with the Commission (e.g., a municipal utility member)").

of transmission. It is clear that the SEEM pool does not provide joint system transmission planning, although there is considerable overlap of the pool with the Southeastern Regional Transmission Planning ("SERTP") region; there may be efficiencies to be gained in eventually having the SEEM pool administer the regional planning process required by Order No. 1000.[25] It is also clear that, while the SEEM System administers the OATT process for determining which transmission customers receive transmission service and provides reservations for the NFEET Service, much like an independent transmission organization,[26] the SEEM Proposal will not control the operation of the transmission systems of the SEEM Members, as would an independent system operator ("ISO") or RTO. Operational control of transmission systems is a defining characteristic of RTOs and ISOs, not loose power pools. With regard to generation dispatch, there is no clear information about whether the SEEM Proposal will provide joint dispatch. The SEEM System will send signals to Participants in the market, just prior to the operating period, that will cause them to increase their generation, in the case of a seller, or decrease their generation, in the case of a buyer that is a load-serving entity backing down its more expensive generation. In many respects, these signals functionally serve as generation dispatch. However, for the purposes of determining whether the SEEM Proposal is a power pool, there is no need to decide this issue because generation dispatch is not a requirement for a loose power pool.

[25] *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Order No. 1000, 76 Fed. Reg. 49,842, 49,854-49,918 (Aug. 11, 2011).

[26] *See, e.g.*, *Louisville Gas & Electric Co.*, 137 FERC ¶ 61,195 at PP 14-17 (2011) (describing the functions performed by new, conditionally-approved Independent Transmission Organization for Louisville Gas & Electric Company ("LG&E") and Kentucky Utilities ("KU")); *Duke Power*, 113 FERC ¶ 61,288 at PP 2-3 (2005) (describing the role of Midwest ISO as the independent entity performing open access transmission functions, but not taking operational control of Duke Power's transmission grid).

2. The SEEM Proposal, as a loose power pool, needs a joint pool-wide OATT prior to operation.

Commission regulations require each public utility member of the power pool to have a joint pool-wide or system-wide OATT on file with FERC prior to operating the power pool.[27] The tariff must be the *pro forma* OATT "or such other open access transmission tariff as may be approved by the Commission consistent with the principles set forth in Commission rulemaking proceedings promulgating and amending the pro forma tariff."[28] Because the features of the SEEM Proposal are those of a loose power pool, it must conform to Commission requirements for loose power pools, including an OATT and appropriate membership and governance policies. The Commission should further investigate whether a pool-wide OATT is applicable to the proposed SEEM as currently envisioned. While the Commission is limited in terms of the modifications that it can unilaterally impose under Section 205 of the Federal Power Act ("FPA"),[29] it can make clear to the SEEM Filing Entities that a pool-wide OATT filed by an independent Public Utility must be submitted and accepted prior to the operation of the SEEM.[30]

B. The SEEM Proposal, whether or not it is a loose power pool, must have just and reasonable and not unduly discriminatory membership and governance policy.

The Clean Energy Coalition requests that the Commission investigate whether adoption of a single pool-wide *pro forma* OATT is required, and whether the membership and governance

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[27] 18 C.F.R. § 35.28(c)(3).

[28] *Id*.; *MidContinent Area Power Pool*, 78 FERC ¶ 61,203 at 61,881 (1997) (stating that Public Utility power pools "may file a revised pool tariff with terms and conditions that differ from those in the compliance filing tariff, if they can demonstrate that the proposed revisions are consistent with, or superior to, the terms and conditions of the compliance filing tariff. (citing Order No. 888 at 21,619)).

[29] *See NRG Power Marketing, LLC v. FERC*, 862 F.3d 108, 114-15 (D.C. Cir. 2017).

[30] Giving guidance to filers is often part of the iterative process of forming regional arrangements and entities. *See, e.g., Southwest Power Pool, Inc.*, 106 FERC ¶ 61,110, at 61,368-69 (2004) (granting RTO status upon successful completion of additional steps, including implementation of an independent Board, modification of its governance structure, and selection of an independent market monitor to monitor the competitiveness and efficiency of the market); *order on compliance*, 108 FERC ¶ 61,003 at 61,014 (2004) (recognizing "that SPP has made significant progress in satisfying the prerequisites for RTO status" and directing further changes).

expectations for loose power pools set forth in Order No. 888 apply to the SEEM. However, even if the Commission ultimately decides that the SEEM Proposal does not result in the creation of a loose power pool, the Commission must address membership and governance shortcomings of the current SEEM Proposal.

1. The SEEM Proposal must allow unrestricted membership by any bulk power market participant in the Southeast.

Under the current SEEM Proposal, eligibility criteria for membership is tied to load-serving responsibilities.[31] Only entities that serve load can qualify as Members. This is inconsistent with Order No. 888 and related Commission precedent. In Order No. 888, the Commission clarified that the membership criteria in collaborations like power pool agreements "must allow any bulk power market participant to join, regardless of the type of entity, affiliation, or geographic location."[32] And with respect to power pools, coordination arrangements, and bilateral arrangements that allow preferential transmission pricing or access, it is "not enough to cure undue discrimination in transmission" if trading "with a selective group" involves "discriminatorily exclud[ing] others from becoming a member" and "provides preferential. . . transmission rights and rates" to members.[33] SEEM membership should therefore be open to any bulk power market participant in the Southeast, including independent power producers. The SEEM Filing Entities' non-discriminatory pool-wide tariff must ensure that membership criteria is consistent with Commission requirements. Absent that, the SEEM Proposal must be improved to remove these discriminatory barriers to membership.

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[31] Overview Affidavit, Attachment B, at 13.

[32] Order No. 888, 61 Fed. Reg. at 21,594; *see MidContinent Area Power Pool*, 78 FERC ¶ 61,203 at 61,881 (explaining this and other requirements for loose power pools).

[33] Order No. 888, 61 Fed. Reg. at 21,593. In that discussion, Order No. 888 "use[d] the term power pool in a very broad context" to include "arrangements that represent some form of pooling" including "multilateral coordination arrangements." *Id.* at 21,593 n.415.

2. **The SEEM Proposal must provide for fair and transparent governance.**

Even if the Commission does not find that SEEM is a loose power pool with associated governance requirements, the SEEM Proposal calls for regional collaboration and coordination with open and even-handed governance. As proposed, the governance provisions in the SEEM Agreement would allow concentrated decision-making authority in the hands of three large utilities in the Southeast: two Commission-jurisdictional public utilities and one federal power authority. These public utilities, which each maintain horizontal market power in their local Balancing Authority Areas, and the federal power authority have done little to advance the status quo minimum open access market structure in the Southeast for the quarter of a century since the Commission issued Order No. 888.

Order No. 888 builds on decades of precedent that finds exclusionary governance provisions inconsistent with the antidiscrimination requirements of the FPA. To remedy undue discrimination, the Commission and, before it, the Federal Power Commission ("FPC"), required entities like loose power pools to adopt governance rules that ensure fairness and transparency.[34] Indeed, the FPC required, and the United States Court of Appeals for the District of Columbia Circuit ("D.C. Circuit") upheld, removal of restrictions on membership in a loose power pool that allowed for one class of members to have more privileges than the other, creating unreasonable governance provisions and undue discrimination.[35] Later, the Commission found that the governance rules of that same loose power pool "do not satisfy Order No. 888 because they give undue influence to vertically integrated utilities."[36] In particular, the Commission found

[34] *See* Order No. 888, 61 Fed. Reg. at 21,561 (citing *Central Iowa Power Cooperative v. FERC*, 606 F.2d 1156 (D.C. Cir. 1979)).

[35] *See Central Iowa Power Cooperative*, 606 F.2d at 1167.

[36] *Mid-Continent Area Power Pool*, 87 FERC ¶ 61,075 at 61,317 (1999), *petitions for review denied*, *Alliant Energy Corp. v. FERC*, 253 F.3d 748 (D.C. Cir. 2001).

impermissible a voting structure that awarded additional votes based on electric revenues from transmission revenues from pool transmission facilities, power sales revenues to non-pool customers from existing pool generation, and also power sales revenues over the past three years.[37] The Commission "direct[ed] [the power pool] to revise the governance for the Management Committee to eliminate voting on the basis of Electric Revenues which, as presently designed . . . gives too much influence to the vertically integrated utility members that own the transmission system."[38]

As currently structured, the governance of the SEEM is controlled by its Members, all load-serving entities,[39] through the Membership Board and Operating Committee.[40] Each Member has two votes on the Membership Board: 1) a single vote ("Popular Vote"); and 2) a weighted vote based on the Member's net energy for load ("NEL Vote").[41] For any vote, the combined NEL Vote must represent at least three entities.[42] To pass significant changes, e.g., market rule amendments, requires a majority Popular Vote *and* a greater than 67% NEL Vote.[43] All other changes require majority votes of the Popular Vote and NEL Vote.[44] The Operating Committee, which handles day-to-day activities and action on any matter not reserved for the Membership Board, will have four Members, each with a single, equal vote: two from the Investor-Owned Utility Sector, one from the Cooperative Sector, and one from the Governmental Utility Sector.[45] Votes by the

[37] *Id*. at 61,317 & n.43 ("Each member has one vote plus additional votes awarded on the basis of Electric Revenues, with a 20 percent cap on the votes of any single member or group of affiliates.").

[38] *Id*. at 61,317-18.

[39] *See* SEEM Agreement § 3.2.1 (member criteria).

[40] SEEM Agreement Transmittal Letter at 21-22.

[41] *See* SEEM Agreement at § 4.1.5 (describing the assignment of member votes according to Net Energy for Load).

[42] SEEM Agreement Transmittal Letter at 21; SEEM Agreement § 4.1.5(b) (noting that the majority of Net Energy for Load Vote must be comprised of at least three member representatives). Affiliated Members are counted as a single Member for the popular vote.

[43] SEEM Agreement Transmittal Letter at 21

[44] *Id.*

[45] *Id*. at 22.

Operating Committee must be unanimous, with any issues that cannot be resolved taken up to the Membership Board.[46]

This governance structure is not just and reasonable, not only because it excludes whole classes of interested parties from any participation in governance as addressed above regarding membership, but also because it allows for control entirely by vertically integrated utilities. In order for the Commission to find the SEEM agreement to be just and reasonable, the SEEM Filing Parties must revise these provisions to be consistent with the Commission's more open requirements for regional entities that are or function like loose power pools. It is not consistent with Order No. 888 or its application to regional coordination efforts for influence to be wielded by one type of market participant. This leaves others without a say in the operation of the regional entity or the development and potential adoption of market rule changes. For the SEEM Agreement to satisfy the FPA's "just and reasonable" standard, the SEEM Filing Entities must reform the governance structure to be consistent with the Commission's longstanding rules and restrict the undue influence of vertically integrated utilities in the SEEM Proposal.[47]

Indeed, even if the Commission decides, contrary to its regulations, that a pool-wide tariff is not required, the proposed governance of the SEEM does not provide for reasonable representation. The proposed voting structure effectively gives the three largest utility Members veto rights over any significant issues. Assuming conservatively that membership expands to include all those entities that have not yet signed the SEEM Agreement, Tennessee Valley Authority ("TVA"), Southern Company, and Duke Energy would control about 26%, 25% and 22% of the NEL Vote, respectively.[48] The remaining ten Members make up a mere 28% of the

[46] *Id*.

[47] Order No. 888, 61 Fed. Reg. at 21,561; *see also Mid-Continent Area Power Pool*, 87 FERC ¶ 61,075 at 61,317.

[48] *See* Operations Affidavit, Attachment C, at 9-10.

NEL Vote with the largest share of a single small Member being almost 7%.[49] This means that a change to any market rule or other significant provision of the SEEM Agreement would require at least two of the three largest Members in addition to all of the smaller ones. Any other change would require at least one of the three largest Members and all of the smaller ones. In this way, TVA, Southern Company, and Duke Energy maintain control over the SEEM Market Rules and structures. In practice, this will lock in all of the provisions in the current SEEM Agreement for the foreseeable future and not allow for changes to be made to respond to circumstances that may arise in the course of operating the SEEM or for any evolution to more beneficial forms of markets.

3. The SEEM Proposal must provide stakeholders with a process for participating in SEEM decision-making.

The Commission should require that the SEEM tariff (whether a system-wide power pool OATT or other agreement) provide for a robust stakeholder process that explicitly contemplates the participation of customers, independent suppliers, public interest groups, and state and local regulators. Each of these groups have important input to offer on regional energy issues and should be permitted to provide that input on the administration of SEEM. A formal structure for considering that input in the SEEM decision-making process is vital.

As currently proposed, the SEEM Agreement provides for an annual meeting that "will be an open forum for stakeholders to address any issues they may have with the Southeast EEM."[50] This once-a-year commitment to a single meeting is plainly insufficient. The annual meeting will provide a venue for stakeholders to discuss issues, but that is all it would entail. The SEEM Agreement Filing gives no indication that the Membership Board is in any way obligated to

[49] *Id*.

[50] SEEM Agreement Transmittal Letter at 23.

respond to or even consider issues raised by stakeholders at the annual meeting.[51] The Commission should remedy this by requiring that SEEM, like other regional efforts, include a substantive and meaningful stakeholder process. Specifically, the Commission should make clear that the SEEM must have a stakeholder process that ensures inclusiveness, balances diverse stakeholder interests, provides for representation of minority positions, and responds to the ongoing system needs of SEEM Participants and other stakeholders.[52]

C. The lack of transparency of market prices and transactions, as well as opportunities to exercise market power, require market monitoring and potentially the implementation of market mitigation measures.

While the SEEM Proposal could incrementally increase market opportunities in the Southeast, the proposal suffers from flaws that ultimately may stymie its success. Because of the lack of transparency into market activity, participants' ability to impose opaque constraints on trading, and anemic auditing and oversight provisions, the SEEM Proposal falls well short of the image projected by its proponents—that it will be an actual regional marketplace with open participation that will drive customer savings. Clean Energy Coalition requests that the Commission direct SEEM Filing Entities to supplement their incomplete filing with information regarding the following: (1) how they will provide necessary transparency through release of pertinent data, after a reasonable time lag, that is consistent with regional entity practices; (2) how and to what extent Energy Exchanges will erode the hourly bilateral market and how this will affect the potential to exercise market power; (3) what options, other than Counterparty Specific

[51] SEEM Agreement, Article 4, § 4.4.

[52] *Accord*, *Wholesale Competition in Regions With Organized Electric Markets*, Order No. 719, 73 Fed. Reg. 64,100, 64,102 (Oct. 17, 2008) (articulating principles of RTO and ISO responsiveness to customers and other stakeholders); *California Independent System Operator Corp.*, 133 FERC ¶ 61,067 at P 41 (2010) (noting that "governance policies and stakeholder processes should be well suited to enhance appropriate stakeholder access to RTO/ISO boards and, in turn, facilitate the boards' direct receipt and consideration of stakeholder concerns and recommendations, including minority views").

Constraints, would allow SEEM Members to address affiliate and market-based rate limitations without presenting significant opportunities for market power abuses; (4) how the SEEM Proposal will provide meaningful monitoring or mitigation of the opportunities for exercise of market power in the SEEM; and (5) a structural market power analysis to assess whether SEEM Members have market power under the SEEM structure in neighboring Balancing Authority Areas.

The SEEM Members claim that the SEEM Agreement was developed with "objectives of transparent operation with minimal bureaucracy to maximize benefits to customers."[53] Unfortunately, the proposed Market Rules do not reflect this intention. Instead of transparency, the rules, procedures, and decision-making structure offer meager information regarding transactions and market prices. Only Members under the SEEM Agreement have decision-making power and Participants' audit rights are limited to their own information. Without more transparency that offers some assurance of fairness and proper market function, independent sellers and buyers of power may severely limit their participation in SEEM, which in turn will defeat the goal of maximizing benefits to customers. The public reports to be published by the SEEM Administrator do not increase transparency appreciably—these reports' "pricing information will be aggregated" and provided at some later point.[54] It is not clear how this information will shed light on whether the SEEM is working properly and providing benefits. As the Commission knows, RTOs and ISOs provide bids and offer information after sufficient time lag; this has not resulted in anti-competitive price discovery. Thus information like trading intervals, trade price-volume sources and sinks, average pricing for intervals, and sub-regional pricing should be published, after a similar time lag and in a similar manner to other regional entities.

[53] SEEM Agreement Transmittal Letter at 17.

[54] *See* SEEM Agreement Transmittal Letter at 30; SEEM Agreement, Appendix B § V.

Furthermore, SEEM presents potential risks of expansion of market power of incumbents. The SEEM Agreement Filing makes clear that each of the Public utilities forming the SEEM lacks market-based rates in their own Balancing Authority Areas due to market power concerns.[55] This existing market power could be exacerbated by the zero-charge transmission rate for NFEET Service eroding the demand for hourly trading, as reported in the Guidehouse Report.[56] As the vertically integrated SEEM Members rely more on Energy Exchanges, the bilateral market and hourly trading may diminish. With a diminished hourly bilateral market, more sellers may be forced into the SEEM, with less than clear results. Moving more and more trading into the SEEM, without a clear window into the functioning of that market, offers vertically integrated utilities an opportunity to negotiate among themselves the prices for the power that they purchase. This is especially harmful to independent power providers that are not allowed input into the governance of the market, the modification of market rules, or provided with independent insight or transparency into market function. And, as the Commission knows, flawed market design, especially in real-time markets, can "create[] opportunities for bad outcomes."[57]

Troubling too is the fact that suppliers are permitted to include any constraints, without limitation, on their Offers and Bids.[58] Little transparency, yet wide discretion, is a recipe for undue discrimination among similar transactions. The SEEM Filing Entities explain that each Participant may enumerate "counterparties with whom it will not accept a match or geographic areas where it will not trade—known as "Counterparty Specific Constraints" that "can be selected for any

[55] *See* SEEM Agreement Transmittal Letter at 39 & n.147.

[56] Benefits Analysis, Attachment E, page 19 of 32.

[57] *See* William W. Hogan, *Electricity Market Design: California ISO/PX 'Fundamentally Flawed*', Harv. Electricity Pol'y Grp. at 13 (Oct. 1, 2019), *available at* https://scholar.harvard.edu/whogan/files/hogan_hepg_calmelt_100119.pdf.

[58] *See* SEEM Agreement, Appendix B, Market Rules § IV.A.1.b.

reason."[59] Participants may also supply "information about its Bid or Offer" of its own determination.[60] The matching process then connects bids with offers accordingly,[61] though the SEEM Proposal makes clear that the platform "will not set or police individual restrictions"[62] as those are up to Participants. In other words, the Market Rules allow for self-styled constraints on offers that, while presented as a means for Participants to mind their affiliate and market power restrictions, would effectively allow them to limit transactions for almost any reason, not only those legal requirements. In so doing, SEEM Members may be able to withhold NFEET Service from their competitors by not designating their competitors as counterparties. Since Participants "do not have to identify a reason for their selection," seemingly even to the platform or any independent observer,[63] this constraint discretion undoubtedly allows for Participants to only transact with certain entities, and if so motivated, to the exclusion of independent power providers. SEEM Filing Entities should explain what other options were considered to address affiliate and market-based rate limitations and whether these options present the same significant opportunities for market power abuses.[64]

Even if there were a clear paper trail for an independent authority to follow, the proposed administration and auditing structures are also acutely insufficient to ward against undue discrimination because they provide no meaningful safeguards or assurances for Participants not in charge of the Membership Board.[65] With respect to administration, the Membership Board alone

[59] SEEM Agreement Transmittal Letter at 26-27.

[60] *Id*. at 27-28.

[61] *Id.* at 29.

[62] *Id.* at 27. So long as "at least three potential counterparties for each transaction" are enabled, a transaction may proceed and Participants "do not have to identify a reason for their selection." *See id.*

[63] *See id.*

[64] *See* Operations Affidavit, Attachment C, at PP 40–41.

[65] *See* SEEM Agreement Transmittal Letter at 16-17.

would retain the power to hire and fire, without cause, the SEEM Agent, a Member that acts as signatory for the Members.[66] The SEEM Agent in turn hires the SEEM Administrator that runs the day-to-day operations of the SEEM System.[67] This effectively gives the Membership Board control over the day-to-day operations of the SEEM System—only one signatory that will "perform a purely administrative role" is between the operator and the Members.[68] This puts too much control into the hands of those with the incentives and ability to implement the Market Rules in ways that benefit load-serving entities or vertically integrated utilities to the detriment of other participants in the market.

The requirement for periodic audits of the Market Rules by an "independent" SEEM Auditor is of no help. The SEEM Filing Entities go to great lengths to explain that the SEEM Auditor will not act a market monitor and will only ensure that SEEM is "operating correctly and in accordance with the Market Rules."[69] However, even within these extremely narrow parameters, the SEEM Agreement goes on to specify that the Membership Board alone will hire the Auditor and that it alone would determine how often, if ever, the Auditor performs its auditing function.[70] Additionally, the Membership Board would retain sole authority to determine whether to share this information with anyone outside of the Board, that is, if any reports are produced by the auditor.[71] Thus, the Membership Board need not release *any* information or act on *any* flaws identified by the auditor. It is free to ignore them.

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[66] *See id.* at 18; *see also* SEEM Agreement §§ 6.1, 6.3.

[67] SEEM Agreement, Art. 1, definition of *Southeast EEM Administrator*.

[68] *See* SEEM Agreement Transmittal Letter at 18.

[69] SEEM Agreement Transmittal Letter at 17 ("The Auditor will not be a market monitor; it will not monitor Participant behavior, nor will it be tasked with suggesting improvements to the Southeast EEM"); *id*. ("[T]here is no need for a market monitoring function. . . ."); *id*. ("Members are unwilling to fund the costs of a market monitor.").

[70] SEEM Agreement, Appendix B at § VI.D.6.

[71] *Id.* at § VI.D.

Regardless of whether the SEEM Proposal forms a loose power pool, these problems show why the Commission must require an independent market administrator as well as an independent market monitor that can meaningfully monitor SEEM market behavior and market participants. Any activity that constrains transmission or excludes competitors in the SEEM for market advantage would amount to market manipulation, yet it is not at all plain from the SEEM Proposal how those activities could be detected and remedied. Calling the SEEM Administrator and SEEM Auditor "independent" does not make them independent[72]—only the structure of their relationships can make the market operators independent of and free from undue influence by any Member or Participant in the SEEM.[73]

Substantively, to guard against the exercise of market power prior to the Algorithm solving for the market benefits and matching Offers and Bids, the independent market monitor should develop mitigation measures that operate as an overlay on top of Participants' submissions. Consistent with Commission policy, the exercise of market power must be addressed prior to running the market to avoid the disruptive and difficult task of re-running the market later to determine just and reasonable outcomes. If the Commission were to depend solely on Electronic Quarterly Reports to determine whether the exercise of market power occurred in the SEEM, the retrospective option the current SEEM Proposal embraces,[74] it would inevitably have to "unscramble the eggs" of the market outcomes to remedy the harm. Given the market power that already exists for Public Utility Members of the SEEM, it is reasonable for the Commission to

[72] *See* SEEM Agreement Transmittal Letter at 18.

[73] *See Southern Company Services, Inc.*, 125 FERC ¶ 61316 at PP 48–50 (2008) (directing development of an Independent Auction Monitor).

[74] *See* SEEM Agreement Transmittal Letter at 7, 30-31.

require, for any SEEM that goes forward, the formulation and implementation of mitigation measures by an independent market monitor.

Finally, to supplement their incomplete filing, the SEEM Filing Entities should submit a market power analysis by which the Commission can judge each entity's structural market power under the SEEM. While the SEEM Agreement Filing makes clear that the SEEM Members that are public utilities do not have market-based rates in their own balancing areas, the Commission should investigate whether these utilities have structural market power under the SEEM in any of the other balancing areas in the SEEM Territory. The Commission has ordered such analysis before and it should do so here in a deficiency letter.[75]

In sum, the Commission should request information on how the SEEM Filing Entities will implement, in their tariffs, minimum market transparency, antidiscrimination, and market administration and monitoring protections that allow for confidence in and effective oversight of the SEEM.

D. The projected savings from SEEM are not fully supported and other market options likely provide much greater cost savings.

Clean Energy Coalition asks that the Commission direct a supplemental filing that provides detail on: (1) the definition of "benefit" in the SEEM benefits analysis; (2) participation assumptions in that analysis; and (3) the discount, if any, applied to account for curtailment of Available Transmission Capacity ("ATC") in the analysis.

The SEEM Filing Entities portray the Proposal as a new opportunity to unlock efficiencies, but these projections are likely overstate and should be put in perspective. When presented with a

[75] *See California Independent System Operator Corp.*, 147 FERC ¶ 61,231 at P 219 (2014) (ordering new EIM member to submit market power analysis "so that the Commission can assess whether [member] has structural market power in its BAAs under the EIM structure"), *reh'g denied, clarification granted*, *California Independent System Operator Corp.*, 149 FERC ¶ 61,058 (2014).

new market-oriented proposal, the Commission conducts "a 'common-sense assessment'" that asks whether "the costs that will be incurred are consistent with the ratepayers' overall needs and interests."[76] Though this is not a formal "quantified cost-benefit analysis" requirement, the Commission must determine whether the "overall design" of market-based proposals are just and reasonable, which requires close attention to the professed benefits and anticipated costs of the proposal.[77] The SEEM Filing Entities have gone further than that and identified that their SEEM proposal is "based . . . on . . . the principle that market benefits must exceed costs, collectively and for each market participant."[78] To substantiate that principle, the SEEM filing includes a "benefits analysis" that projects "approximately $40 million in market-wide benefits per year, largely from fuel cost savings" if SEEM Members' integrated resource plans come to fruition.[79] It compares those projected benefits to "individual internal company start-up and ongoing costs (totaling about $3.1 million per year on a levelized basis)" plus start-up costs for the SEEM Platform of "$1 million to $5 million, with ongoing annual costs estimated below $1 million."[80] The benefits analysis also projects that benefits would increase with greater penetration of solar and wind generation in the Southeast beyond that expected by Member integrated resource plans.[81] Most of the benefits projected in the benefits analysis come from providing access to lower cost resources "in managing subhourly load and renewable uncertainty."[82]

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[76] *Southwest Power Pool, Inc.*, 173 FERC ¶ 61,267 at P 30 & n.52 (2020) (quoting *PJM Interconnection, L.L.C.*, 155 FERC ¶ 61,157, at P 30 (2016) and finding the design of SPP's Western Energy Imbalance Service Market to be just and reasonable).

[77] *Id.* at P 30.

[78] SEEM Agreement Transmittal Letter at 12.

[79] Transmittal Letter at 2-3, 11, 32.

[80] Transmittal Letter at 11.

[81] Transmittal Letter at 12, 32-33. It should be noted that the SEEM Filing Entities provide no basis for how this "carbon constrained scenario" would ever come to pass given that the SEEM itself will in no way require the procurement of more wind or solar resources in the Southeast.

[82] Benefits Analysis, Attachment E-1 at page 7 of 32 ("Guidehouse Report").

However, as the Commission knows, "the devil is in the details,"[83] and projections are only as good as the assumptions underlying them. Specifically, here there are at least three critical details of the benefits analysis that should make the Commission question the accuracy of the analysis and not rely upon it in making ultimate conclusions or determinations. At a minimum, the Commission should request additional information of the SEEM Filing Entities to give the Commission and parties full information about the benefits claimed in the SEEM filing.

The threshold issue that requires additional information is how the SEEM Filing Entities determined what constitutes a 'benefit' in the proffered benefits analysis. Quite simply, the benefits may be overstated, may not reflect the proposed pricing in the SEEM, and may not aid the Commission in evaluating the proposal. The Guidehouse Report explains that the "[SEEM] benefits are derived from fuel cost savings" because the SEEM Proposal would allow load-serving entities "access to a lower cost, more efficient pool of resources to manage subhourly load and renewable uncertainty."[84] The report gives a "simple example" of a SEEM settlement resolving a 300 megawatts ("MW") sub-hourly imbalance at $26/MWh, but does not explain exactly how much even that "simple example" contributes to the benefits calculation—it merely says "[t]he split-savings trading price of $26 provides benefits to both Company X and Company Y."[85] Only by reference to the overall benefits estimate, reported on the next page as "about $45 million" a year, does the report estimate a dollars-per-MWh figure for benefits.[86] And that calculation finds

[83] *See California Independent System Operator Corp.*, 116 FERC ¶ 61,274 at PP 741-43 (2006) (finding proposed approach to congestion revenue rights allocation and auction methodology to be reasonable, but reaffirming the Commission's "expressed interest in the dry run" the filer intended to undertake and report on before the process actually went live), *requests for clarification and rehearing granted in part and denied in part*, 119 FERC ¶ 61,076 at PP 391-92, 400-01 (2007), *requests for clarification and rehearing granted in part and denied in part*, 120 FERC ¶ 61,271 (2007).

[84] Benefits Analysis, Attachment E-1 at page 16 of 32.

[85] *Id*. at 8 n.11.

[86] *Id*. at 9 & n.13.

an "approximately $2/MWh benefit for *each company participating* in the transaction," suggesting that the entire price difference between buyers and sellers in SEEM settlements should count as a 'benefit' from the market as a whole.[87]

Indeed, despite the Guidehouse Report's statement that "benefits are derived from fuel cost savings,"[88] which would suggest that 'benefit' means savings that might eventually accrue to customers, other parts of the SEEM filing explain that the "term, 'benefits,' as used in this context, is *not* synonymous with 'economic cost savings,'" but instead is measured by the total difference between buyers' bids and sellers' offers:

> The total benefit of a single Energy Exchange transaction is the savings enabled by the transaction, as measured by the bid of the buyer minus the offer of the seller multiplied by the megawatt-hour quantity of the transaction, less the total cost of losses for the transaction.[89]

Whether and how these benefits actually flow back to customers is unclear. And even if that 'benefit' did flow back to customers in full on both sides of the transaction, this measurement of benefits also depends on the further assumption that participants exhibit 'true cost' bid/offer behavior,[90] which is neither required nor guaranteed.[91]

Second, the benefits analysis is not fully clear about its participation assumptions, even though "[l]imited participation by members is the largest risk to Southeast EEM benefits" that the authors identified.[92] The SEEM Agreement allows Participants to place constraints on their offers

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[87] *Id.* at 9 & n.13 (emphasis added); *see also* Economics Affidavit, Attachment D at P 5 (each transaction participant "receives half of the energy-related benefits of the Energy Exchange, as measured by the difference between the bid price and offer price, and each pays half of the cost of transmission losses").

[88] Benefits Analysis, Attachment E-1 at page 16 of 32.

[89] Economics Affidavit, Attachment D at P 34 (emphasis added).

[90] Benefits Analysis, Attachment E-1 at page 15 of 32.

[91] *See* Economics Affidavit, Attachment D, at PP 36, 41, 59 (describing "an incentive for buyer bids and seller offers to deviate from their underlying costs" due to split-the-difference pricing).

[92] Benefits Analysis, Attachment E-1 at page 8 of 32. The study "somewhat limited" participation in its assumptions to account for this issue but reports market participation levels as having a "High" impact on results. *Id*. at page 15 of 32.

for any reason.[93] While there is a requirement for participation in Energy Exchanges that the constraints must be set such that there are at least three other non-affiliated Participants with whom the submitting Participant can be matched,[94] the default is non-participation. Members must take affirmative action to actively toggle on other Participants in order to offer or bid in the SEEM.[95] This structure could reduce transactions to a level well below that assumed in the Guidehouse Report. To believe the results of the benefits analysis, one must "assume[] a well-functioning, and relatively high-participation market."[96] But the study also reported that "modeled participation is somewhat limited to reflect that some imbalance will be handled internally as opposed to being met with the market."[97] Indeed, market participation assumptions have a "High" impact on results, yet it is not clear what the difference is between "relatively high-participation" or "somewhat limited" participation, and what this "single largest uncertainty" means for the trustworthiness of the benefits numbers reported.[98] This too bears further explanation, as it is not clear the degree to which the results of the benefits analysis are driven by its participation assumptions.

Third, the Benefits Analysis does not appear to discount the benefits for the potential of NFEET Service curtailment. While the Guidehouse Report recognizes that "there will be a new $0/MWh transmission product which can only be procured in the intra-hour market for any remaining non-firm ATC and represents the lowest level priority of non-firm transmission service,"[99] it uses average 2019 ATC for calculating benefits as compared with a base case for

[93] Operations Affidavit, Attachment C, at P 40.

[94] *Id.* at P 39.

[95] *Id*. at P 41 ("the default setting for all locations and all counterparties will be 'off,' so that the [p]articipants must affirmatively turn on their ability to trade with specific counterparties and in specific locations").

[96] Benefits Analysis, Attachment E-1 at page 19 of 32

[97] *Id.* at page 15 of 32.

[98] *Id.* at pages 15, 19 of 32.

[99] *Id.* at pages 5 of 32.

which it assumes that the remaining ATC is unused.[100] But the NFEET Service as the lowest priority of non-firm transmission service will be subject to the most curtailments. Therefore, it may be an inappropriate assumption to use the full average 2019 ATC for calculating benefits.

While these three details provide a reason for questioning the benefits estimate for SEEM, there is a more fundamental reason for the Commission to carefully scrutinize any claimed benefits here. The utilities repeatedly make analogies to other regional constructs like the Western Energy Imbalance Market ("Western EIM"), seeking to invite the comparison between the SEEM proposal and the efficiency-advancing regional efforts the Commission has seen before.[101] This comparison with other market deserves exploration. Even taking the benefits analysis at face value, the results show just how far away from a true efficiency-advancing regional effort the SEEM proposal is in actuality. The SEEM Filing Entities project a $40 million annual benefit from implementation of the SEEM proposal, subject to the above uncertainties and questions. The annual economic benefits projected at the outset of the Western EIM were "between $21 and $129 million" for the imbalance market connection between the California Independent System Operator and PacifiCorp alone,[102] and, in practice, since market operation (and thanks in large part due to robust participation) the actual benefits have run into the hundreds of millions of dollars per year.[103] Studies of participation in full RTO/ISO market constructs show benefits an order of magnitude greater; billions can be saved per year when utilities, including vertically integrated utilities, form true regional markets.[104] If only one state in the SEEM footprint were to participate in an RTO,

[100] *See id*. at 15 of 32.

[101] *See, e.g.*, Transmittal Letter at 35 & n.130, 36 & n.135, 37 & n.140.

[102] *See California Independent System Operator Corp.*, 147 FERC ¶ 61,231, at P 4.

[103] *See Benefits*, Western Energy Imbalance Market (as of Jan. 29, 2021) (reporting annual benefits in 2017 of $145.82 million, in 2018 of $276.44 million, in 2019 of $296.91 million and in 2020 of $325.08 million), *available at* https://www.westerneim.com/Pages/About/QuarterlyBenefits.aspx.

[104] *See* Judy Chang *et al.*, *Potential Benefits of a Regional Wholesale Power Market to North Carolina's Electricity Customers*, Brattle Group at 6 (Apr. 2019) (Table 2 – Recent Retrospective RTO Membership Study Benefits)

that decision alone is projected to have greater customer benefit than all of the utilities' participation in SEEM is claimed to have.[105] If the Southeast were to band together to create a new RTO, the potential benefits could total in the hundreds of billions by 2040.[106] The Clean Energy Coalition encourages the SEEM Filing Entities and the Commission to think more ambitiously than the proposal offered in these proceedings, given the tremendous upside to true regional market integration.

Finally, while the Clean Energy Coalition recognizes that the total start-up and ongoing costs of the SEEM are expected to be low, that is, perhaps around $4 million annually, plus $1 million to $5 million to develop the SEEM Platform,[107] the question remains whether even this level of expenditure is prudent given the uncertainty in benefits of SEEM, the potential downside risks it presents for market power and governance in the region, and the insignificance of its projected benefits relative to the benefits of an organized imbalance market operating with locational marginal pricing or a full-scale RTO market. An expenditure of $5 million to establish a trading Platform is still $5 million not well spent should the region or any individual Member (or its regulator) determine in a couple of years that another market model is more appropriate. Any Member that departs from SEEM is required to pay "any costs previously allocated to them prior to the date of their withdrawal"; it is not entirely costless to exit the market.[108] Importantly,

(collecting results of retrospective RTO membership studies), *available at* http://brattlefiles.blob.core.windows.net/files/16092_nc_wholesale_power_market_whitepaper_april_2019_final.pdf; *see also* Midcontinent Independent System Operator, Inc., *2020 MISO Value Proposition – Executive Summary* (Feb. 12, 2021) (showing that "MISO provides between $3.1 and $3.9 billion in annual net economic benefits to its region with over $30b to date"), *available at* https://cdn.misoenergy.org/2020%20Value%20Propostion%20Exec%20Summary521884.pdf; PJM Interconnection, L.L.C., *PJM Value Proposition* (2019) ("PJM operations, markets and planning result in annual savings of $3.2−4 billion."), *available at* https://pjm.com/about-pjm/~/media/about-pjm/pjm-value-proposition.ashx.

[105] *See* Chang *et al.*, *supra* note 26 at 7 (production cost benefits recognized in RTO membership studies, if applied to Duke's North Carolina thermal power plants, "would yield roughly $60 million to $180 million in annual customer savings").

[106] *See generally* Energy Innovation Southeast Market Summary Report.

[107] *See* SEEM Agreement Transmittal Letter at 11.

[108] SEEM Agreement Transmittal Letter at 19; *see also* Platform Agreement, § 4.2.

the efforts and money spent to implement the SEEM should form a foundation for broader market reform and policy solutions in the region[109]—not calcify an incremental step that provides only the most modest of net benefits to the region.

E. The Commission should investigate whether the OATT amendments by SEEM Filing Entities are consistent with or superior to the *pro forma* OATT and whether it presents opportunities for undue discrimination.

Clean Energy Coalition asks the Commission to require the SEEM Filing Entities to provide further information on the following incomplete aspects of the SEEM Proposal: (1) whether the proposal meets the Commission's OASIS requirements; (2) whether it properly applies imbalance charges; (3) the magnitude of cost shifts to point-to-point and network customers (that are not native load customers of SEEM Members) and among SEEM Members from loss of non-firm point-to-point transmission revenues; (4) detailed information on the Algorithm, its development costs, and its operation; and (5) whether the restriction against in-kind payment of transmission losses is unduly discriminatory.

1. The SEEM proposal raises significant market transparency concerns given that it prohibits use of existing Open Access Same Time Information Systems.

The proposed NFEET Service departs from settled practices and Commission precedent on market transparency in at least one critical way—the SEEM Filing Entities explain that NFEET Service "may be obtained only using the reservation, scheduling and tagging functions of the Southeast EEM System (rather than directly through Open Access Same Time Information System) . . . offered by the Participating Transmission Provider."[110] While the Clean Energy

[109] Broader market reforms have the best potential to provide solutions to help address the climate crisis and displace new investments in fossil generation that may become stranded with carbon pricing or similar policies. *See* Tyler Fitch, *Carbon Stranding: Climate Risk and Stranded Assets in Duke's Integrated Resource Plan*, Energy Transition Inst. (Jan. 2021), *available at* https://energytransitions.org/carbon-stranding.

[110] SEEM Agreement Transmittal Letter at 24.

Coalition understands that non-public utilities may have other methods for reserving transmission capacity, all Commission-jurisdictional Transmission Providers are required by Commission regulation to post transfer capability and accept transmission service requests through an OASIS.[111] The reason for this requirement is that "accurate postings and fair treatment" are necessary to "competitive utilization of transmission systems" and to "discerning any patterns of undue discrimination."[112] Indeed, for decades, the Commission has made clear "that open access non-discriminatory transmission service requires that information about the transmission system must be made available to all transmission users at the same time by way of the" Transmission Provider's OASIS.[113] Yet here, the SEEM proposal not only does not operate through the existing OASIS framework; it expressly *forbids* NFEET Service from being obtained through those systems.

The SEEM Proposal contains precious little information about this no-OASIS requirement and how it is just and reasonable and not unduly discriminatory, or even how the SEEM platform will ensure market transparency and full, public information about NFEET Service use.[114] The SEEM Filing Entities pledge to post information to the "Southeast EEM website," but do not

[111] 18 C.F.R. § 37.5(a) ("Each Transmission Provider is required to provide for the operation of an OASIS, either individually or jointly with other Transmission Providers, in accordance with the requirements of this Part."); *id.* at 37.1 ("This part applies to any public utility that owns, operates, or controls facilities used for the transmission of electric energy in interstate commerce and to transactions performed under the *pro forma* tariff required in part 35 of this chapter."); *see also id.* § 37.6 (Information to be posted on the OASIS).

[112] *Open Access Same-Time Information System and Standards of Conduct*, Order on OASIS-Related Issues, 83 FERC ¶ 61,360, at 62,456 (1998), *rehearing denied*, 86 FERC ¶ 61,139 (1999).

[113] *Id.* at 62,450.

[114] *See* Transmittal Letter at 10-11 (comparing the "Existing Market" to "Addition of Southeast EEM" regarding "Transparency" with the only changes being "Southeast EEM transaction eTags collected by FERC pursuant to Order No. 771 will be identifiable" and "Additional, publicly posted aggregate information about Southeast EEM transactions and an Annual Meeting"); *id.* at 30-31 (describing transparency and auditing plans, mostly with respect to generation transactions); Benefits Analysis, Attachment E-1 at page 23 of 32 (explaining that uncertainties remain regarding "the compatibility between the existing software systems in house with the software provided by the selected central entity").

indicate whether this portal will serve as the OASIS for the SEEM or explain how it meets the Commission's OASIS requirements.[115]

The Commission has the ability to grant waivers from OASIS requirements,[116] for example when those "regulations are incompatible with the transmission services provided under" the transmission provider's tariff,[117] but that is clearly not the case here. And these particular transmission providers are not small utilities or owners of limited and discrete facilities either.[118] Thus, it is incumbent upon the SEEM Filing Entities to explain how the no-OASIS approach to the SEEM Platform is just and reasonable, and consistent with the Commission's market transparency policies when it comes to the availability of NFEET Service.

2. The proposal to apply generator imbalance penalties is unclear and may be unjust and unreasonable.

The SEEM Filing Entities propose to apply generator imbalance penalties on Energy Exchange transactions,[119] but fail to explain exactly how these penalties will be applied. LG&E and KU ("LG&E/KU") provides this further explanation in its OATT filing: "If a Southeast EEM transaction is cut, or not fulfilled, the affected Participant must have the capability to ramp its owned or contracted generation to make up the difference, or face imbalance charges, just like it would for any non-firm transaction."[120] But that explanation is still lacking in several

[115] Operations Affidavit at P 53; *see also* SEEM Agreement art. 10 (Transparency; Confidentiality; Auditing).

[116] *See, e.g.*, *New York Independent Sys. Operator, Inc.*, 134 FERC ¶ 61,255 at PP 6-7 (2011) (describing prior orders granting "waivers from certain Open-Access Same Time Information Systems (OASIS) posting requirements").

[117] *See, e.g.*, *New York Independent Sys. Operator, Inc.*, 130 FERC ¶ 61,104 at P 18 (2010); *Alcoa Power Generating Inc., (Tapoco Division)*, 120 FERC ¶ 61,037 at P 15 (2007) (granting waiver where no OATT needed to be on file).

[118] *See, e.g.*, *American Municipal Power, Inc.*, 163 FERC ¶ 61,220 at PP 15-17 (2018); *Central Minnesota Municipal Power Agency*, Order on Requests for Disclaimer of Jurisdiction and for Waiver of Order Nos. 888 and 889, 79 FERC ¶ 61,260, at 62,127 (1997).

[119] SEEM Agreement Transmittal Letter at 30 (if "Participants to the transaction do not operate in accordance with the e-Tag schedule (*i.e.,* generator does not ramp up to serve schedule), the offending Participant(s) may be subject to imbalance charges through the applicable transmission tariffs"); *see* Operations Affidavit at P 47 (explaining that imbalance penalties will apply as they always have).

[120] LG&E OATT Filing, Transmittal Letter at 11.

important details, as explained next, and may be unjust and unreasonable as applied to SEEM transactions.

First, there should be only one transmission customer per Energy Exchange transaction and that transmission customer should be responsible for imbalance charges. To do otherwise contradicts the Commission's *pro forma* OATT requirements regarding imbalances and could result in double charges.[121] The SEEM Proposal contemplates that every buyer and seller would be a transmission customer taking NFEET Service under the OATT of every public utility in the Territory.[122] When buyers and sellers are matched and a reservation is made by the SEEM System, either the buyer or seller must be designated as the transmission customer. The SEEM Filing Entities have not explained how this will occur, nor have they explained which entity will be designated as the transmission customer. Because it is unclear whether the load or generator will be the transmission customer in the Energy Exchange transaction, it is impossible to determine whether transmission providers will properly apply imbalance penalties. Moreover, because there is a single contract path for each Energy Exchange transaction, the imbalances should be treated as if they are in a single Balancing Authority. This result could be efficiently achieved through a pool-wide tariff, as required by the Commission's regulations for multilateral agreements with discounted transmission like the SEEM Proposal (and as discussed above).[123]

Second, penalties are "applied hourly to any generator imbalance that occurs as a result of the Transmission Customer's scheduled transaction(s)" and netted on a monthly basis.[124] SEEM

[121] *See Pro Forma* OATT, Schedule 9 (adopted in *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, 72 Fed. Reg. 12,266, 12,529 (Mar. 15, 2007)) ("The Transmission Provider may charge a Transmission Customer a penalty for either hourly generator imbalances under this Schedule [Generator Imbalance Service] or hourly imbalances under Schedule 4 [Energy Imbalance Service] for the same imbalance, but not both.").

[122] SEEM Agreement, Appendix B, § III.B.4.

[123] *See* above at pages 10-16.

[124] *Pro Forma* OATT, Schedule 9.

Filing Entities have not explained how 15-minute transactions will be handled when the penalties are applied hourly. Nor have they explained whether a generator with multiple Energy Exchange transactions during the same interval will have those imbalances netted. The SEEM Agreement Filing indicates that generators should be able to ramp up to meet their SEEM schedules, but if the ramping occurs over a single 15-minute interval instead of the normal hourly interval, it is likely that generators will incur more imbalance penalties.

Third, because the NFEET Service is the lowest priority service, it is the most likely to be curtailed, which shifts unreasonable risks of imbalance penalties onto Participants in the SEEM. A pool-wide tariff would mitigate this risk by ensuring that imbalance penalties are applied only once—to either the generator or the load—when the transaction using the pooled facilities is curtailed. So that potential Participants understand the risks that they face in the SEEM, the SEEM Filing Entities should provide detailed examples of the charges that will apply to buyers and sellers when NFEET Service is curtailed.

Finally, SEEM Filing Entities have not explained whether imbalance penalties will apply to buyers or sellers located in non-public utility Balancing Authority Areas. If these SEEM Members will apply penalties, the SEEM Filing Entities should explain how the penalties are calculated and whether that method differs from the Commission's *pro forma* OATT requirements.

The Commission requires that to the extent a transmission provider wishes to deviate from the *pro forma* OATT generator imbalance provisions, it may demonstrate in an FPA section 205 proceeding that the proposed changes are consistent with or superior to the *pro forma* OATT.[125] Without the details outlined above, it is impossible to determine whether the SEEM transmission

[125] Order No. 890, 72 Fed. Reg. 12,266, 12,349; *see also Public Service Company of Colorado*, 157 FERC ¶ 61,157 (2016) (conditionally accepting proposal to modify energy and generator imbalance charges).

providers will need to modify the imbalance provisions of their tariff and justify those changes as consistent with or superior to the *pro forma* OATT.

3. The SEEM proposal raises significant concerns about financial impacts on existing, firm transmission customers.

By choosing to offer NFEET Service at $0/MWh, the SEEM Filing Entities' proposal leads to an indirect financial impact that should concern the Commission. The SEEM Filing Entities acknowledge in their presentation that, as a general matter, "any Point-to-Point uses provide revenues that act as credits to reduce the revenue requirements paid by network load."[126] They also predict "that availability of NFEET Service may result" in reduced non-firm Point-to-Point service reservations, and thus reduce credits that "offset payments by network load."[127] Indeed, the Benefits Analysis acknowledges that a "$0 transmission rate sub-hourly trading could eventually cannibalize some hourly trading yielding a reduction in non-firm transmission revenues."[128] The SEEM Filing Entities do not attempt to quantify the potential increase in network service costs or the resulting consequences for network customers; they reason instead that the effect must be minimal,[129] and whatever its actual magnitude, the costs and benefits to native load customers will be "roughly balanced" since increases in transmission charges would be offset by "decreases in their energy costs."[130]

What SEEM Filing Entities fail to acknowledge is that this increase in the transmission revenue requirement due to fewer credits from non-firm Point-to-Point service reservations also increases the cost of Firm and Conditional Firm Point-to-Point service. These transmission

[126] SEEM Agreement Transmittal Letter at 36 & n.137 (citing Order No. 888, FERC Stats. & Regs. ¶ 31,036, at p.304).
[127] *Id.* at 36-37 (citing Benefits Analysis at 8, 19).
[128] Benefits Analysis, Attachment E-1 at page 19 of 32.
[129] *See* Transmittal Letter at 37 n.139 (citing Economic Affidavit at P 67 (citing in turn Overview Affidavit at P 23)).
[130] SEEM Agreement Transmittal Letter at 37

customers who have secured firm transmission service on these highly congested systems would thus likely bear some of the costs of the decision to price the NFEET Service at $0/MWh. As holders of firm transmission rights (but not native load customers of the utilities), they would be unlikely to benefit from Energy Exchange sales, because presumably they would use their firm rights to complete transactions. Thus, these transmission customers—be they buyers or sellers—likely would not benefit from SEEM and in fact may see increased costs because of it. Furthermore, the SEEM Entities have not pledged to hold transmission customers harmless from increases caused by the SEEM Proposal. The Commission should require more information about whether the proposal to price NFEET Service at $0/MWh would adversely impact or unduly discriminate against holders of Firm and Conditional Firm transmission rights.

With regard to the effect on network customers, the SEEM Filing Entities' dismissal of the problem deserves a probing review. Their reason is premised on a view that native load and network load are the same thing. The SEEM may benefit *native* load by reducing energy costs, but does not necessarily benefit all of *network* load equally.

The SEEM Filing Entities appear to recognize this problem, offering two arguments addressing the erosion of non-firm point-to-point revenues. The first is that the Commission, in addressing the Western EIM construct, found that "the elimination of pancaked transmission rates" in the EIM was likely to "result[] in lower energy costs overall and thus benefit[] native load customers in CAISO and in an EIM Entity BAA who largely bear transmission costs."[131] That citation suggests that because native load and network load are "largely" the same customers, the Commission can look past issues that affect them differently, even where the SEEM Filing Entities have not specifically identified the magnitude of the impacts on either customer group or explained

[131] *California Independent System Operator Corp.*, 147 FERC ¶ 61,231 at P 156; *see also* Transmittal Letter at 37 & n.140 (citing *CAISO*, 147 FERC ¶ 61,231 at P 156).

why those disparate impacts are justified. That is the essence of an undue discrimination problem.[132]

The second argument the SEEM Filing Entities offer fares no better. They offer that: "If, against expectation, the level of erosion" of Point-to-Point charges "somehow exceeds benefits, a Member or Participating Transmission Provider can leave the Southeast EEM at any time, for any reason."[133] While Members that are Participating Transmission Providers may have that contractual right under the SEEM construct, a network load customer that bears additional transmission service charges because its transmission provider participates in SEEM would not have that luxury. The network customer bears the cost of its Transmission Provider's decision to participate in SEEM and make use of NFEET Service.[134]

There is also the possibility that the SEEM platform will lead to cost shifts between SEEM Members. Some Members may have more revenue from Point-to-Point reservations than other Members. When the flight from paid Point-to-Point reservations to effectively free NFEET Service inevitably occurs, the effects may be worse for transmission customers of a Member with formerly high Point-to-Point revenues. The effect of the cost shift may be worse on some Members and is likely to be uneven across the SEEM Territory, resulting in a cost shift among Members and their customers. The Commission should request a supplemental filing that reveals sufficient detail into the lost Point-to-Point revenues and the resulting cost shifts to ensure that there is not undue

[132] *See Transource, LLC v. PJM Interconnection, L.L.C.,* 168 FERC ¶ 61,119 at P 240 (2019) ("a finding of undue discrimination requires a showing that (1) two classes of customers are treated differently; and (2) the two classes of customers are similarly situated" (citations omitted)); *PJM Interconnection, L.L.C*., 155 FERC ¶ 61,061 at P 13 (2016) (differential treatment must be "justified by some legitimate factor" to be permissible under the FPA (citation omitted)); *see also* 16 U.S.C. § 824d(b).

[133] SEEM Agreement Transmittal Letter at 37 & n.141 (citing SEEM Agreement § 4.2.1).

[134] *See* SEEM Agreement § 4.2.1.

discrimination among the SEEM members and various classes of transmission customers and that the SEEM does not result in unintended risks or consequences.

4. There is insufficient detail about the SEEM Algorithm to conclude that it is just and reasonable and not unduly discriminatory.

The SEEM Algorithm determines whether exchange transactions will occur by matching Offers and Bids subject to constraints entered by Participants and available transmission provide by Participating Transmission Providers.[135] That much is clear from the SEEM Agreement, which constitutes the "filed rate."[136] But beyond that, the SEEM Agreement fails to provide any real detail that would allow the Commission to determine whether the proposed rate is just and reasonable.

Neither the Algorithm nor the formulas and methodologies it will employ are included in the proposed rate. Rather, the SEEM Agreement provides only simple statements of principles that are subject to multiple interpretations to describe the matching process.[137] Participants selling and buying energy need to be able to use the tariff to reasonably determine whether the matching process and resulting rates applied to their sales or purchases are consistent with the filed rate.[138] This is not possible with the current SEEM Agreement. The SEEM Agreement must contain all of the provisions of the market that "significantly affect rates and services."[139]

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[135] SEEM Agreement, Exhibit B § IV.C.

[136] SEEM Agreement Transmittal Letter at 23 ("[B]ecause the Market Rules are part of the filed rate, any changes to the Market Rules will need to be filed at FERC").

[137] E.g., SEEM Agreement, Exhibit B § IV.C.4(a)-(b).

[138] *Southwest Power Pool, Inc.*, 112 FERC ¶ 61,303 at P 25 (2005) ("When conflicts arise, SPP's tariff determines whether actions taken are consistent with the filed rate and, therefore, SPP's imbalance tariff provisions should include a greater level of detail than those submitted in the current filing."), *rehearing dismissed*, 113 FERC ¶ 61,115 (2005).

[139] 16 U.S.C. § 824d; *see also ANL Funding I, LLC v. ISO New England, Inc.*, 110 FERC ¶ 61,040 at P 22-23 (2005) (finding that ISO New England's operating procedures "could significantly affect compensation" that generators receive by limiting their bidding options).

Indeed, there is even a gap between the level of detail in the filing materials and those in the SEEM Agreement. In the filing materials, a very simple formula for determining the Energy Exchange price is shown.[140] Yet, that same formula is not included in the SEEM Agreement. Instead, a description of the formula is included in the SEEM Agreement Market Rules that introduces the ambiguous word of "average" in describing how the price will be determined. Given these and other missing details, the Commission should direct SEEM Filing Entities to supplement their filing with an updated agreement that provides more detail on how the SEEM Algorithm will operate, including the formula rate for calculating the Energy Exchange prices, and provide, for the benefit of parties and the Commission, detailed examples of how the Algorithm will solve given different scenarios of inputs, constraints, and transmission limitations.[141]

Clean Energy Coalition is concerned that, given the complexity of the problem that the Algorithm must solve every 15 minutes, that the SEEM Filing Entities have underestimated the costs of developing and administering the market. For example, the Algorithm must solve for thousands of source and sink combinations overlaid on the transmission systems of 13 balancing authorities, price-quantity pairs in Bids and Offers, constraints selected by Participants, and the trading partners selected by Participants. The costs to develop and *maintain* this complex market model are not well documented, and the lack of detail in the SEEM Agreement filing presents the risk that the system will not be robust, accurate, or secure. The Commission should probe further into these costs to ensure that the system is robust, secure, and appropriately implemented and maintained, and to ensure that customers are protected from unexpected costs that are inconsistent with the estimates in the SEEM Agreement filing.

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[140] *E.g.*, SEEM Agreement Transmittal Letter at 28-29.

[141] *See Southwest Power Pool, Inc.*, 112 FERC ¶ 61,303, at P 24 (rejecting imbalance market proposal and providing guidance to "incorporate the rules for managing [curtailments and imbalance market] these interactions into its tariff, and include the formula rate for calculating the [Locational Imbalance Price] at each node").

Another concern is that many of the implementation details, even those included in the transmittal letter and expert affidavit, will be included in business practice manuals ("SEEM Manuals") rather than the SEEM Agreement Market Rules.[142] For example, Dr. Susan Pope, expert witness for SEEM Filing Entities, describes a randomization process that will apply when (1) two or more buyers in the same balancing area submit identical bids but there is insufficient supply offered to allow both bids to be fully matched, and (2) different pairings of buyers and sellers yield the same total (maximized) benefit.[143] First, only the second of these applications of randomization is even mentioned in the SEEM Agreement.[144] And, second, there is no detail around how the randomization will be selected; Dr. Pope is forced to guess as to how it will work in order to conduct her economic analysis.[145]

There is no assurance provided in the SEEM Proposal that the Market Rules will contain all the rules significantly affecting rates and services. Therefore, the SEEM Filing Entities' assurances[146]—that Participants will be able to provide input on changes to Market Rules when the proceeding comes before the Commission—ring hollow. If the rules about the matching process and calculation of the rate are included in the business practice manuals, and changes are made solely at the discretion of the Operating Committee, there will be no recourse for market Participants. In sum, because the Algorithm is not described in sufficient detail in the SEEM Agreement to answer questions about whether it will produce just and reasonable rates and services, the Commission should direct the SEEM Filing Entities to provide additional detailed information on the Algorithm, its development costs, and its operation.

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[142] *See* SEEM Agreement Transmittal Letter at 25, n.80.

[143] Economics Affidavit, Attachment D, at PP 53-54.

[144] SEEM Agreement, Exhibit B § IV.C.7.

[145] Economics Affidavit, Attachment D, at P 53 & n.26.

[146] SEEM Agreement Transmittal Letter at 23.

5. The SEEM Filing Entities have not supported a change to the transmission loss provisions of their OATTs.

The SEEM Filing Entities propose to financially settle Real Power Losses in each Energy Exchange transaction based on the applicable Participating Transmission Provider's loss factor and loss rate in its OATT.[147] In-kind losses are not allowed for Energy Exchange transactions.[148] In Order No. 888, the Commission considered options other than financial settlement of losses providing that "[a] customer seeking transmission service must bring to the transaction sufficient energy and capacity to replace the losses associated with its intended transaction."[149]

If the SEEM Proposal is revised to include a joint pool-wide tariff, the Clean Energy Coalition would not object to the settlement of losses exclusively through financial means for Energy Exchange transactions using the pooled facilities and a common loss factor. Using a common loss factor and an index or other measure to determine costs of losses over pooled facilities puts all sellers on an equal footing. However, because SEEM Filing Entities have not proposed a pool-wide tariff, in contradiction of FERC's regulations, they must demonstrate, at a minimum, that the financial settlement of losses for Energy Exchange transactions is consistent with their existing OATT or, if proposing a change, that the change is consistent with or superior to the *pro forma* OATT.[150] Special rules that narrow the options for Energy Exchange transactions as compared with the options for other non-firm transactions may be unduly discriminatory.

For example, proposed Attachment S (NFEET Service) of LG&E/KU's OATT provides that "[l]osses shall be charged as set forth in Schedule 11 (Loss Compensation Service) of the

[147] SEEM Agreement Transmittal Letter at 24.

[148] Overview Affidavit, Attachment B at 10 of 14 (explaining that SEEM "[a]dds Non-firm Energy Exchange Transmission Service priced at $0/MWh plus losses (which must be financial)").

[149] Order No. 888, 61 Fed. Reg. at 21,583.

[150] *See Southwest Power Pool, Inc.*, 82 FERC ¶ 61,267 at 62,049 (finding "proposal to require customers to purchase losses from the SPP Transmission Providers [instead of provide in-kind losses] is inconsistent with Order No. 888" and directing SPP to adopt "provisions of the *pro forma* transmission tariff").

Tariff, using (i) the loss factor specified in Schedule 11 and (ii) rate for compensation specified for option 3 in Schedule 11."[151] Transmission Customers using other firm and non-firm transmission services on LG&E/KU's system have two other options for addressing losses that allow a Transmission Customer to purchase or provide power to physically replace its losses, i.e., in-kind losses.[152] Neither LG&E/KU nor any of the other SEEM Filing Entities has explained adequately why Transmission Customers using Energy Exchanges cannot physically settle losses like all other Transmission Customers. Financial settlement of losses may be the most expensive form of loss compensation. For example, LG&E/KU charges a rate that represents its highest incremental energy costs (even after opportunity sales) plus a capacity rate of $6/MWh.[153]

Moreover, financial settlement of losses is not the only way to ensure "each Energy Exchange will only be entered into if the transaction will produce benefits to the buyer and seller after taking into account Losses . . ."[154] Sellers and buyers of Exchange Energy are sophisticated entities and can incorporate their own cost of losses into their Offers and Bids—and still split the costs of losses through the SEEM Algorithm. In turn, those sellers and buyers can settle their losses by physical delivery of power to the Participating Transmission Provider just as now occurs with other bilateral transactions. Financial settlement of losses to the exclusion of in-kind replacement may disadvantage SEEM Participants and unduly restrict a Transmission Customer's ability to determine the most appropriate commercial arrangements to address real power losses associated with its transactions in the most cost-effective manner. The Commission should not allow for

[151] LG&E OATT Filing, LG&E/KU OATT, Proposed Attachment S at § 6.1.2.

[152] LG&E OATT Filing, Transmittal Letter, at 9.

[153] LG&E OATT Filing, Transmittal Letter, at 10 ("Per Schedule 11, the charge for Loss Compensation Service is set at 'at a rate not to exceed 100 percent of the Transmission Owner's incremental cost to produce energy after serving all other obligations (including economy and opportunity transactions) and a Generation Capacity Loss Adder of $.006 per kWh.'").

[154] *Id*. at 9-10.

unduly discriminatory treatment among different uses of the transmission system, when all uses produce the same losses, without some reason that withstands scrutiny.

F. The SEEM Proposal raises issues regarding interaction at the seams of RTO markets.

As the SEEM Agreement Filing shows, the SEEM Territory shares borders with three RTOs: PJM Interconnection, L.L.C. ("PJM"), Midcontinent Independent System Operator, Inc. ("MISO"), and SPP.[155] Yet, the SEEM Proposal does not address, or even mention, how the automated platform that matches buyers and sellers across the Territory and the new transmission service to support these exchanges will affect interactions with the RTOs. The Commission should require the SEEM Filing Entities to explain how the proposed market will affect interregional coordination generally, existing operations with neighbors specifically, and whether existing seams agreements with RTOs need to be modified.

The SEEM Proposal creates a new class of NFEET Service that changes the curtailment priorities among existing transmission services. SEEM Filing Entities assert that this will not affect reliability or existing operations, principally because the service will be offer on an "as available" basis.[156] They have not, however, explained how these new transactions will impact curtailments on the border of the SEEM Territory. Will NFEET Service be curtailed before other non-firm transactions on border of the Territory are curtailed? How will the NFEET Service change the interaction with RTOs that use market flows instead of contract path control? Will market flow be curtailed prior to NFEET Service? Will transmission loading relief procedures with RTO neighbors otherwise need to be adjusted to account for the new NFEET Service? These are all open questions that must be answered.

[155] SEEM Agreement Transmittal Letter at 5 (map).

[156] Operations Affidavit at PP 19, 23.

With the creation of other markets, the Commission has directed seams agreements to govern the many issues that can arise between markets and on the markets' boundaries.[157] The Commission should do so here as well. If participation in the SEEM is as robust as expected and achieves the economic benefits and diminution of market power that the SEEM expert assumes,[158] it is also likely to have impacts on real-time power flows that will impact the neighboring RTOs. For example, will the increased usage of SEEM pooled transmission facilities cause loop flows or unreserved usage on neighboring systems? At a minimum, additional coordination at the seams prior to implementation of the SEEM could avoid unintended consequences in neighboring RTOs.

Indeed, the SEEM Proposal raises an important issue related to the prior resolution of a seam issue between MISO, SPP, and many of the same parties that are SEEM Members. Under a settlement filed with and accepted by the Commission, MISO reached agreement with SPP, Associated Electric Cooperative, Inc., Southern Company, TVA, Power South Energy Cooperative, and LG&E/KU to pay for MISO's "Available System Capacity Usage."[159] According to MISO, the Settlement resolved a dispute about loop flows on neighboring systems caused by MISO's market flows.[160] Under the Settlement, MISO pays between about $16 and $40 million per year to "have the ability to use on a non-firm, as available basis, available system transmission capacity of the other Parties' systems" subject to conditions spelled out in the settlement.[161] SEEM Filing Parties now propose to use that same non-firm, as-available transmission service to make Energy Exchanges and to charge $0/MWh (plus losses) for the service.

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[157] *See, e.g.*, *Southwest Power Pool, Inc.*, 106 FERC ¶ 61,110 at PP 201-204.

[158] Economic Affidavit, Attachment D at PP 45-53, 68.

[159] *See* Offer of Settlement, Docket Nos. EL14-21-000, *et al*. (filed Oct. 13, 2015) ("Settlement").

[160] Settlement Transmittal Letter at 5.

[161] Settlement § 2.1; *see* Settlement § 2.6.3 (compensation levels).

The Commission should investigate whether the SEEM Filing Entities are using the same transmission facilities for the MISO market flows as they are using for enhancing the bilateral energy market in the Territory. How will SEEM Members along the MISO border account for the service that they currently provide to MISO so as not to double-count the capacity for Energy Exchanges? Furthermore, SEEM Filing Entities should explain why the different rates for what appears to be the same service is not unduly discriminatory.

REQUEST FOR REMEDIES

For the reasons discussed above, the Commission must take a hard look at the SEEM Proposal to determine whether proposes a market that will result in just and reasonable outcomes and rates that are not preferential or unduly discriminatory. This task is made particularly difficult because the SEEM Proposal is unclear on implementation details or states that some details will be determined at a later time, and potential market Participants have not yet been provided information regarding such details. Accordingly, the Commission should direct the SEEM Filing Entities to provide additional explanations and information regarding the above issues so that both potential market Participants and the Commission may properly evaluate the SEEM Proposal. The Commission should require the SEEM Filing Entities to provide the additional information described herein such that parties and the Commission have the opportunity to fully evaluate the justness and reasonableness of the SEEM Proposal and its impacts.

When evaluating the SEEM Proposal in its current form or with additional modifications consistent with the discussion above, the Commission should keep in mind that the development of more robust competitive wholesale markets would bring significant benefits to the region above and beyond the modest benefits estimated to come from SEEM. If changes are not made to the proposal to increase transparency, stakeholder protections, and provide shared governance, it could solidify a relatively inconsequential change that stymies any positive development of mechanisms

to address present and future energy challenges. The SEEM could be a springboard for further market development that would lower costs for customers, provide buyers with access to clean, economically efficient, and carbon-free energy to meet their corporate goals, and create a higher-performing energy system—but not without modifications to the current proposal that build in adaptability and transparency. Without greater market and stakeholder protections—including market monitoring and mitigation, transparency, open governance, and public utility status for the SEEM power pool administrator—the SEEM could become an institution that does not change for another 25 years, putting in jeopardy the future market development in the Southeast.

REQUEST FOR TECHNICAL CONFERENCE

Regardless of how the Commission ultimately rules on the SEEM Proposal, Clean Energy Coalition requests that the Commission establish a one-day technical conference outside of these dockets to facilitate discussion among state leaders, utilities, customers, independent power providers, and other stakeholders regarding the future development of competitive market structures in the Southeast beyond the narrow SEEM Proposal. The growing evidence of the potential benefits that broader regional competitive wholesale markets could bring to states and customers in the region, and the strong interest of state energy policymakers in the region in exploring new constructs to maximize consumer benefits, make the time ripe for the Commission to convene such a discussion.

Establishing more coordinated competitive wholesale markets in the Southeast would go much further than SEEM in resolving long-standing barriers to entry (noted above) blocking clean energy developers from the wholesale market and hurting the ability of customers to access low-cost clean energy products. These barriers include issues of incumbent market power, transmission access, and transmission rate pancaking, which have all led to curtailment of low-cost clean energy

production and development in the region.[162] Recent studies have shown that billions of dollars of potential consumer savings are being left on the table by failing to move toward competitive wholesale markets that resolve these challenges. One study finds that a competitive wholesale market in the form of an RTO in the Southeast could yield as much as $384 billion in consumer savings by 2040, reducing retail costs by 23%.[163] That study also finds that such a market structure would reduce carbon emissions in the region by 37%compared to 2018 levels, without any additional policies or mandates.[164] Another study finds that an energy imbalance market, while not optimal as compared to an RTO, would itself produce benefits of $100 to $600 million annually to Duke Energy alone, more than double the projected annual region-wide benefits of SEEM.[165]

Recognizing the significant benefits that could accrue to consumers and businesses in the region, states in the Southeast are focusing attention and resources on exploring potential wholesale market reforms that could improve competition and customer access to low-cost energy supplies. For example, South Carolina enacted Act. No. 187 of 2020, which creates an Electricity Market Reform Measures Study Committee tasked with, *inter alia*, assessing the benefits to South Carolina customers of establishing or joining a broader regional wholesale market such as an RTO or energy imbalance market.[166] South Carolina legislators (including one appointed to the Study Committee) have already submitted letters to be posted in these dockets asking FERC to convene a joint federal-state dialogue regarding the potential for wholesale market reforms that allow for

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[162] *See* Energy Innovation Southeast Market Summary Report at 5, 8.

[163] *See id.*

[164] *Id.*

[165]Matt Butner, *An Energy Imbalance Market in the Southeastern United States: Context, Benefits, and Design Considerations for Stakeholders and Policymakers*, Energy Transitions Institute (Sept. 2020), *available at* https://energytransitions.org/energy-imbalance-market.

[166] *See generally* S.C. Act 187, H.4940, 123d Sess., Joint Resolution to Establish the Electricity Market Reform Measures Study Committee (S.C. eff. Sept. 29, 2020), *available at* https://www.scstatehouse.gov/billsearch.php?billnumbers=4940&session=123&summary=B.

"open market[s] for generation, storage, and demand-management" to "reinforce and facilitate state reliability, affordability, and clean energy goals in the Southeast."[167] Similarly, a broad set of policymakers in North Carolina (including the North Carolina Utilities Commission, Department of Environmental Quality, Attorney General, and General Assembly), under the direction of Governor Cooper's Executive Order 80, recently engaged in a lengthy collaboration process to study updates to utility regulations and wholesale electricity market structures that would support the state's 2019 Clean Energy Plan.[168] The group studied various wholesale market reforms and designs, including SEEM, an energy imbalance market, and an RTO, and recommended that the General Assembly conduct a study of the costs and benefits of wholesale electricity market reform.[169]

The SEEM Proposal, which had been under development for months, came to light in the middle of these and other state efforts to assess competitive wholesale power markets. Yet, aside from "courtesy" informational filings sent to North Carolina and South Carolina regulators, states were not consulted on the SEEM Proposal design or its objectives. As a result, state regulators and officials with an interest in exploring wholesale market reforms have not had an opportunity for any meaningful regional dialogue with customers, independent energy developers, utilities, and other stakeholders regarding such potential reforms.

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[167] Letter from South Carolina State Senator Tom Davis to the Honorable Richard Glick, Chairman, Federal Energy Regulatory Commission, Re: *Invitation to Joint Technical Conference/Docket No. ER21-1111* (Mar. 4, 2021); *see also* Letter from South Carolina State Representative Nathan Ballentine to the Honorable Richard Glick, Chairman, Federal Energy Regulatory Commission, Re: *Docket # ER21-1111; Invitation for Fed/State Technical Conference* (Mar. 9, 2021). It is the Clean Energy Coalition's understanding that these letters were mailed in hard copy to the Commission and will be posted in Docket No. ER21-1111.

[168] *See* Josh Brooks et al., *North Carolina Energy Regulatory Process, Summary Report and Compilation of Outputs*, Rocky Mountain Inst., Regul. Assistance Project (Dec. 22, 2020), *available at* https://files.nc.gov/ncdeq/climate-change/clean-energy-plan/2020-NERP-Final-Report.pdf.

[169] *Id*. at 20-24.

The one-day technical conference Clean Energy Coalition requests here would establish a forum for such a dialogue. That technical conference should primarily be focused on fostering a discussion among the Commission and state regulators and policymakers across the region regarding the goals that states and their customers seek to achieve through electricity market reforms. Given the Commission's vast experience in regulating various types of wholesale electricity markets, the Commission stands to play an essential and vital part of this conversation. Customers, independent clean energy developers, utilities, and other stakeholders should also be included, all with a focus on discussing consumer needs and the potential for competitive electricity market reforms to address those needs. Our organizations stand ready to work with the Commission on the design of this technical conference.

CONCLUSION

Clean Energy Coalition respectfully requests that the Commission direct the SEEM Filing Entities to provide additional information and address the shortcomings of their current proposal, and that the Commission independently convene a one-day technical conference to facilitate a productive dialogue on competitive market structures in the Southeast.

Respectfully submitted,

/s/ *Jeffery Scott Dennis*
Jeffery S. Dennis, Managing Director and General Counsel
Caitlin Marquis, Director
Advanced Energy Economy
1010 Vermont Ave. NW, Suite 300,
Washington, D.C. 20005
Telephone: (202) 380-1950
jdennis@aee.net
cmarquis@aee.net

/s/ *Sean Gallagher*
Sean Gallagher
Vice President of State and Regulatory Affairs
Gizelle Wray
Director of Regulatory Affairs and Counsel
Will Giese
Southeast Regional Director
Solar Energy Industries Association
1425 K St NW Ste. 1000
Washington, DC 20005
(202) 682-0556
sgallagher@seia.org
gwray@seia.org
wgiese@seia.org

/s/ Bryn Baker
Bryn Baker, Policy Director
Renewable Energy Buyers Alliance
1425 K St NW, Ste 1100
Washington, D.C. 20005
Telephone: Office: 833-303-7322 ext 117
bbaker@rebuyers.org

Dated: March 15, 2021

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in these proceedings.

Dated this 15th day of March, 2021.

/s/ Jeffery S. Dennis
Advanced Energy Economy