UNITED STATES OF AMERICA

BEFORE THE

FEDERAL ENERGY REGULATORY COMMISSION

Southern Company Services, Inc.	)	**ER21-1111**
Dominion Energy South Carolina, Inc	)	**ER21-1112**
Louisville Gas and Electric Company	)	**ER21-1114**
Duke Energy Carolinas, LLC and	)	
Duke Energy Progress, LLC	)	**ER21-1115**
Duke Energy Carolinas, LLC	)	**ER21-1116**
Duke Energy Progress, LLC	)	**ER21-1117**
Louisville Gas and Electric Company	)	**ER21-1118**
Georgia Power Company	)	**ER21-1119**
Kentucky Utilities Company	)	**ER21-1120**
Mississippi Power Company	)	**ER21-1121**
Alabama Power Company	)	**ER21-1125**
Dominion Energy South Carolina, Inc	)	**ER21-1128**

Unconsolidated

Motion to Intervene and Comments of the R Street Institute

Pursuant to Rule 214 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (FERC or Commission), 18 C.F.R. §§ 385.214, the R Street Institute (R Street) hereby moves to intervene and submit comments on the Southeast Energy Exchange Market Agreement (SEEM) submitted by Southern Company Services filing submitted on February 12, 2021 in the above-captioned proceeding. Due to the nature of this proposal, the majority of documents associated with the SEEM proposal were submitted in ER21-1111, and—per the request in that initial filing—R Street is submitting one set of comments and including each of the associated dockets in the caption.

I. Motion to Intervene

A. About R Street Institute

The R Street Institute (R Street) is a nonprofit, nonpartisan public policy research organization. Our mission is to engage in policy research and outreach to promote free markets and limited, effective government. We favor regulation that is transparent and applied equitably, as well as systems that rely on price signals rather than central planning. At the same time, we recognize that natural monopolies and externalities are real concerns that governments must address. We offer research and analysis that advance the goals of a more market-oriented society and an effective, limited government, with the full realization that progress takes time.

As one of the preeminent free-market entities in the United States, R Street has a unique perspective as to the issues raised in this proceeding regarding the growth and development of wholesale markets, ensuring transparency in wholesale market structures, reducing barriers to entry in wholesale markets and seeking to lower costs via market-based solutions. Accordingly, their interests cannot be represented by any other party, and their intervention is in the public interest.

B. Communications

Correspondence and communications regarding this filing should be addressed to the undersigned as follows:

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II. Comments

A. Background

On February 21, 2021, Southern Company Services submitted an application for the approval of the Southeast Energy Exchange Market Agreement (SEEM). Contemporaneously, eleven other filings related to this proposal were submitted by the other members of the SEEM proposal. These filings serve two main purposes:

- To submit materials supporting the SEEM proposal, including SEEM agreement and affidavits
- Associated edits to each utility's transmission tariffs to enable the SEEM proposal.

The SEEM proposal creates a non-firm, imbalance market for its members to utilize in order to more effectively utilize idle transmission capacity across the Southeast United States. The current members in SEEM includes investor-owned utilities, cooperative utilities, municipal utilities and Federal electric entities. This region retains the traditional vertically-integrated utility structure, and utilizes bilateral contracts between utilities and balancing authorities to ensure reliability across the region. The SEEM proposal seeks to offer a more formalized

[1] Person designated for service.

exchange across the service territories of the utilities to address imbalances that may occur between and across the region.

To support the proposal, the SEEM members identified a set of core principles:

- Each electric service provider/state maintains control of generation and transmission investment decisions;
- Each transmission provider remains independent with its own transmission tariff (or equivalent);
- Each Balancing Authority ("BA") remains independent;
- Bureaucracy is minimized while benefits to customers are maximized;
- Participation is voluntary;
- Market benefits exceed costs, collectively and for each market participant;
- Transparency in governance and operations is ensured while Member confidentiality is maintained.[2]

The proposal estimates benefits of more than $40 million per year across the SEEM market.[3]

B. Overview of R Street's Comments

R Street supports the initial step of the utilities included in this proposal. The Southeast has long been reluctant to embrace the potential benefits of Regional Transmission Organizations (RTOs), so this imbalance, bilateral market proposal can be seen as a step in the right direction. However, R Street has substantial concerns that the proposal here fails to adequately facilitate more market-based opportunities and solutions; fails to provide necessary market monitoring and governance protections; and leaves significant savings across the region on the table by limiting the scope of the market functions.

In particular, the SEEM proposal fails to include a market monitor that would be empowered to ensure the SEEM market is operating fairly and providing benefits to members and customers; fails to include representation from other affected groups; fails to provide transparency on market prices or utilized locational marginal price structures; and fails to ensure public notice of activities. Markets remain one of the most efficient means to organize resources; while the Southeast has historically eschewed RTOs, the SEEM proposal is a modest attempt for its member utilities to leverage market opportunities. Unfortunately, the proposal fails to realize those opportunities and would be insulated amongst its membership from outside competitive pressures which would effectively expand its monopolistic practices across the region.

[2] SEEM Application at 8.
[3] *Id.* at 4.

To help further the discussion, R Street requests FERC convene a technical conference to discuss market reform opportunities in the Southeast, including the consideration of an Energy Imbalance Market.

C. The SEEM Proposal Lacks Transparency

There are several aspects of the SEEM proposal that R Street perceives as lacking sufficient transparency for the public.

1. Membership

According to the SEEM Agreement, to be a member of SEEM, an entity must be:

> (i) a Load Serving Entity located in the Territory; (ii) an association, Cooperative or Governmental Utility that is a Load Serving Entity located in the Territory; or (iii) an association, Cooperative or Governmental Utility created for the purpose of providing service that includes Energy to a Cooperative or governmental Load Serving Entity (or the Load Serving Entities being served by an association, Cooperative or Governmental Utility) located in the Territory.[4]

To help manage the operation of the SEEM market, it creates a Membership Board which is made up of one representative from each Member.[5] The Membership Board holds substantial authority over the operation of the SEEM market. For example, it oversees and approves budgets, approves any manuals developed by the Operating Committee, and directs the functions of the Market Auditor. However, the SEEM Agreement provides no requirement that its materials, minutes, or actions taken during a Membership Board meeting be made public. The only exception to this is for the Annual Meeting where "Stakeholders" are allowed to attend.[6] However, the SEEM Agreement only requires a seven-day advance notice announcing the day and time of the meeting.

Since membership to SEEM is limited to transmission owners, FERC should take extra care to ensure that transparency remains a cornerstone of any market operation. The SEEM proposal limits the opportunities for the public to better understand the workings of SEEM since no minutes or notice of action of the Membership Board meetings are to be released, no non-transmission owner is allowed to be on the Membership Board, and the Membership Board controls the actions of the Market Auditor.

To ensure a more equitable management of SEEM, FERC should direct SEEM to allow stakeholders to more actively participate in the Membership Board. Alternatively, FERC should direct SEEM to include independent individuals to participate in the Membership Board to ensure a fair and equitable operation of the SEEM market to the benefit of customers. Since the Membership Board is composed entirely of the transmission owners, it is imperative that

[4] SEEM Agreement at Section 3.2, p. 10.
[5] *Id.* at Sec. 4.1.2.
[6] *Id.* at Sec. 4.5.

participation from non-transmission owners—including customers, regulators, or other independent perspectives—be allowed to participate in the Membership Board.

2. Market Auditor role should be expanded

Section 10.2.3 of the SEEM Agreement defines the role of the Market Auditor:

> The Market Auditor has independent authority to prepare and submit any reports described herein without any prior review or approval by any Member or any other outside sources.[7]

However, the SEEM Market Rules document provides more specificity on the role of the Market Auditor. Notably, it states:

> Auditing functions will be performed by the Market Auditor at the direction of the Membership Board. The Market Auditor will report its conclusions, and provide any supporting data in the event that problems are identified to the Membership Board on an after-the-fact, periodic basis. The Membership Board will maintain sole responsibility for determining whether to share the information any further.[8]

Based on the SEEM Market Rules, it appears that the Market Auditor has significantly less authority to analyze and investigate potential market violations or the practices of the SEEM members. Without a fully independent Market Auditor, the operations of SEEM itself may be subject to manipulation; since the Market Auditor acts at the behest of the Membership Board and any reports prepared by the Market Auditor go directly to the Membership Board, which retains the right to make any documents public, then there cannot be any practical assurance that SEEM is operating in the public interest.

Market monitors serve important functions in the operation of all RTOs around the country. As FERC noted in Order 1000, ""the principle of independence is the bedrock upon which the ISO must be built "and emphasized that this principle must apply to all RTOs, whether they are ISOs, transcos or variants of the two. We also stated that "[a]n RTO needs to be independent in both reality and perception."”[9] While the SEEM is more limited in scale than an RTO, ensuring that it operates in a sound and equitable manner is no less important. Under the SEEM Agreement and Market Rules, the Market Auditor is significantly less independent than other market monitors across the RTOs. FERC should direct SEEM to develop an independent market monitor that operates independently of the Membership Board and be allowed to publicly release any materials or reports about the operation of the SEEM marketplace without interference of the Membership Board. FERC Order 719 allows an RTO to require a market monitor to submit draft reports for review, but an RTO board “may not alter the reports

[7] SEEM Agreement at Sec. 10.2.3.
[8] SEEM Market Rules at Sec. VI.D.
[9] *Regional Transmission Organizations*, Order No. 2000, 65 FR 809 (Jan. 6, 2000), FERC Stats. & Regs. ¶ 31,089, at p. 193 (1999), *order on reh'g*, Order No. 2000-A, 65 FR 12088 (Mar. 8, 2000), FERC Stats. & Regs. ¶ 31,092 (2000), *aff'd sub nom. Pub. Util. Dist. No. 1 of Snohomish County, Washington v. FERC*, 272 F.3d 607 (D.C. Cir. 2001).

generated by the [market monitoring unit] or dictate the [market monitoring unit's] conclusions. … In any event, the [market monitoring unit] is free to disregard any suggestions with which it disagrees."[10] Furthermore, as currently proposed, the Market Auditor is not included in the list of individuals who are allowed to attend Membership Board meetings; FERC should direct SEEM to allow the Market Auditor to participate in relevant meetings to ensure that the SEEM members are acting equitably and in the best interests of the public.

3. SEEM Proposal Lacks Price Discovery

Recognizing that the SEEM market is predicted on bilateral transactions, it is still based on prices between a source and a sink. A member offers a bid and another member offers a price and the source and the sink must be locations on each other's transmission system in order for power to flow and be delivered. Each of those points also represents a price. A well-functioning market will include more transparency as to the prices for those locations, yet the SEEM proposal fails in two important ways:

- Prices are not based on locational marginal prices (LMP).
- There is no requirement for the publication of prices.

i. Locational Marginal Prices

The use of LMPs in wholesale markets are well-established. However, it is clear in the proposal that SEEM is not using LMPs to generate prices. Instead, SEEM will use a "split-the-savings" model where the "transaction price will reflect the midpoint between the seller's offer price and the buyer's bid price, with an adjustment for losses."[11] Without price transparency and use of LMPs, these are largely paper transactions occurring between two parties, which is not all that different from how the Southeast works today. A significant benefit of more organized markets is the ability to transact according to price signals. Without those price signals, it is harder to determine if there are true savings to customers as savings and prices are not based on the actual prices at those locations.

ii. Availability of market prices

Since SEEM is not proposing to use LMPs, it is left to the public and stakeholders to use what information it is willing to make available. SEEM proposes to make three time-periods of data available: monthly, daily, and hourly. Generally, what is reported in each of those increments is largely focused on the volume of transactions across the market. For example, on a monthly basis, the SEEM Administrator is to release:

[10] *Wholesale Competition in Regions with Organized Electric Markets*, Order No. 719, 73 Fed. Reg. 64,100 (Oct. 28, 2008), FERC Stats. & Regs. ¶ 31,281, at P 360 (2008), *order on reh'g*, Order No. 719-A, FERC Stats. & Reg. ¶ 31,292 (2009), FERC Stats. & Regs. ¶ 31,292 (2009), *order on reh'g*, Order No. 719-B, 129 FERC ¶ 61,252 (2009).
[11] SEEM Application at 4.

1. Minimum, maximum, and average match prices;

2. Amount of Non-Firm Energy offered and sold as well as bid and purchased over all Delivery Intervals;

3. Amount of Non-Firm Energy that flowed once matched as an Energy Exchange;

4. Total number of Energy Exchanges;

5. Total benefit to be calculated in accordance with Section IV.C.2;

6. Minimum, maximum, and average MW Energy Exchange amount; and

7. Energy Exchanges made but not executed.[12]

On a daily basis, the SEEM Administrator is to release:

1. Total number of Bids and Offers during each Clock Hour of the prior day;

2. Amount of Non-Firm Energy offered and sold as well as bid and purchased during each Clock Hour of the prior day;

3. Number of Energy Exchanges executed for each Clock Hour of the prior day;

4. Total number of Participants who submitted Bids for each Clock Hour of the prior day;

5. Total number of Participants who submitted Offers for each Clock Hour of the prior day; and

6. Weighted average match price per Clock Hour.[13]

Lastly, 15 minutes after the Clock Hour, the SEEM Administrator is to release hourly:

1. Total number of Bids and Offers during that Clock Hour;

2. Amount of Non-Firm Energy offered and sold as well as bid and purchased during that Clock Hour;

3. Number of Energy Exchanges executed for that Clock Hour;

4. Total number of Participants who submitted Bids during that Clock Hour; and

5. Total number of Participants who submitted Offers during that Clock Hour.[14]

In none of these releases are the prices settled between transactions and members made available. Rather, the weighted average match price per hour is available on a daily basis, and the maximum, minimum, and average prices are available on a monthly basis. While those prices may provide some information to market participants and the public, making more

[12] SEEM Market Rules at Sec. V.A.
[13] *Id.* at Sec. V.B.
[14] *Id.* at Sec. V.C.

pricing details available would allow the marketplace to identify lower-cost opportunities, and perhaps provide signals that can direct distribution utilities, customers and developers to optimal locations for new transmission, generation or even distributed energy resources. This information would increase the amount of benefits the SEEM market could generate if such pricing information was more publicly available. Instead, in the Affidavit of Christopher McGeeney and Corey Sellers they state that "the information provided is intended to ensure that commercially sensitive information is protected."[15] This statement is unsupported by any evidence whatsoever and FERC should require greater price transparency and discovery. In order for such information to remain confidential, the SEEM proponents are required to provide evidence or an explanation for why that information must remain confidential. Simply making a generic statement that such information is commercially sensitive is insufficient and FERC should reject such a recommendation.

D. Benefits

The SEEM proposal identifies savings of $40 million per year across the SEEM market. These savings are largely attributable to lower fuel costs and greater operational savings due to more efficient operation of the transmission systems. In 2020, R Street released a study that compared a potential Southeast imbalance market, much like the one proposed here, with other imbalance markets in the United States, including the Western Energy Imbalance Market, operated by the California ISO, and an imbalance market operated by the Southwest Power Pool (SPP). As noted, the SEEM proposal estimates $40 million per year in savings; on the other hand, a 2005 study found:

> [A] 2.5 percent savings in annual production costs. The SPP in 2005 was about 40 gigawatts, and the net benefits were estimated to be $373 million to the transmission owners over the ten-year study period.[16]

In essence, the SEEM benefit study is missing substantial savings to an energy imbalance market, at least compared to a prior study for the SPP, which is also made up of vertically-integrated utilities. Indeed, the SEEM footprint would be substantially larger than SPP circa 2005, yet comparatively, its projected net benefits were higher on a per-gigawatt basis by a factor of three.[17] This is to say that an energy imbalance market across the southeast would reap greater savings for the region than the far more constrained SEEM proposal.

III. Request for Technical Conference

This proposal is an important development for the Southeast; however, there are serious and substantial concerns about the independence, governance, and transparency in the current

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[15] Affidavit of Christopher McGeeney and Corey Sellers, Attachment C, P. 53.
[16] Jennifer Chen and Michael Bardee, "How Voluntary Electricity Trading Can Help Efficiency in the Southeast," *R Street Policy Study* No. 201, August 2020, p. 9. https://www.rstreet.org/2020/08/26/how-voluntary-electricity-trading-can-help-efficiency-in-the-southeast.
[17] *Id.*

proposal. R Street's study showed that an energy imbalance market would provide greater savings for customers and result in more optimized operations across the region. Furthermore, a true imbalance market would include substantially more customer protections and market monitoring functions which would provide greater stability and trust in the market across the Southeast. R Street requests that FERC hold a technical conference to consider these broader market opportunities and market reform options for the Southeast. As discussed in these comments, the SEEM Membership Board is made up entirely of its own members with no opportunity for independent or stakeholder participation, including state regulatory commissions or consumer advocates. Convening a technical conference to discuss market reform opportunities in the Southeast would provide stakeholders and FERC an opportunity to discuss what changes are needed and how best to generate benefits for customers throughout the region.

IV. Conclusion

R Street appreciates the thought and effort that went into the development of the SEEM proposal. Unfortunately, the proposal lacks significant safeguards for the region and the SEEM market. For reasons discussed above, R Street recommends that FERC require SEEM to resolve issues associated with the transparency and governance of the SEEM proposal, require greater price discovery and use of LMPs, and host a technical conference to discuss energy market reforms in the Southeast. Without such changes, FERC should reject the proposal as filed as inconsistent with basic market functions and requirements.

Respectfully submitted,

/s/ Christopher Villarreal

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Dated at Washington, D.C.
This 15th Day of March 2021

CERTIFICATE OF SERVICE

The undersigned hereby certifies that one copy of the foregoing pleading has this day been served in a manner permitted by Rule 2010 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.2010) on each person whose name appears on the Official Service List compiled by the Secretary in this proceeding.

/s/ Christopher Villarreal
Christopher Villarreal

Dated at Washington, D.C.
This 15th Day of March 2021.