

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

| | | |
|--------------------------------------|---|--------------------------|
| Alabama Power Company |) | Docket No. ER21-1111-000 |
| Louisville Gas and Electric Company |) | Docket No. ER21-1114-000 |
| Duke Energy Progress, LLC |) | Docket No. ER21-1115-000 |
| Duke Energy Carolinas, LLC |) | |
| Duke Energy Carolinas, LLC |) | Docket No. ER21-1116-000 |
| Duke Energy Progress, LLC |) | Docket No. ER21-1117-000 |
| Louisville Gas and Electric Company |) | Docket No. ER21-1118-000 |
| Georgia Power Company |) | Docket No. ER21-1119-000 |
| Kentucky Utilities Company |) | Docket No. ER21-1120-000 |
| Mississippi Power Company |) | Docket No. ER21-1121-000 |
| Alabama Power Company |) | Docket No. ER21-1125-000 |
| Dominion Energy South Carolina, Inc. |) | Docket No. ER21-1128-000 |

Not Consolidated

**COMMENTS OF
THE AMERICAN FOREST & PAPER ASSOCIATION**

March 15, 2021

TABLE OF CONTENTS

I. BACKGROUND 3

II. STATEMENT OF SUPPORT FOR COMPETITIVE, MARKET-BASED SOLUTIONS TO TRANSMISSION AND WHOLESALE POWER SALES IN THE SOUTHEAST... 5

III. COMMENTS 6

1. The Commission Should Condition Approval of the Southeast EEM On A Few Additional Steps To Prevent Entities From Exercising Market Power Or Engaging in Market Manipulation..... 7

 a) A Toggle-switch Is Not Much Of A Safeguard Against Market Manipulation. 9

2. The Commission Should Condition Approval of the Southeast EEM On The Completion and Filing of Additional Analysis of the Costs and Benefits of Other Approaches To Competition in the Southeast..... 11

 a) The Commission Should Direct the Southeast EEM to Consider the Costs and Benefits of a Southeast RTO or Southeast EIM. 11

 b) The Commission Should Direct the Southeast EEM to Conduct Additional Analysis on the Costs of Integrated Resource Planning in the Carbon-Constrained Outlook. 13

IV. CONCLUSION..... 15

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The American Forest & Paper Association (“AF&PA”)¹ welcomes the opportunity to submit these Comments on the Southeast Energy Exchange Market (“Southeast EEM”).^{2 3} The

¹ AF&PA serves to advance a sustainable U.S. pulp, paper, packaging, tissue and wood products manufacturing industry through fact-based public policy and marketplace advocacy. The industry meets a payroll of approximately \$50 billion annually and is among the top 10 manufacturing sector employers in 45 states.

² *Combined Notice of Filing #1*, February 12, 2021; *Errata Notice Extending Comment Date*, February 12, 2021.

³ Pursuant to the Application at Page 3, the Southeast EEM Members recommend parties submit a single pleading with a caption identifying the dockets in which the Comments are being submitted, and an indication in the caption that the dockets are “not consolidated.” The Southeast EEM Members note that the use of a single pleading across all

Southeast EEM would be a new voluntary electronic trading platform designed to enhance the existing bilateral energy market in the Southeast. Additionally, the Southeast EEM System would utilize zero-charge transmission service voluntarily provided by participating transmission service providers.⁴ The Southeast EEM Members assert that these two fundamental changes to the bilateral market in the Southeast “are inherently pro-competitive.”⁵

As explained in these Comments, AF&PA supports a more competitive regional market in the Southeast and more economical use of unused transmission capacity. To these ends, AF&PA supports the Southeast EEM proposal because it appears to be a modest improvement over the status quo. However, the Federal Energy Regulatory Commission (“Commission” or “FERC”) should carefully consider how it will ensure that market power is not exercised by Participants of the Southeast EEM. Additionally, while AF&PA appreciates the Costs-Benefit Analysis provided with the filing, further analysis should be conducted to determine if greater benefits would be achieved by a Southeast Regional Transmission Organization (“Southeast RTO”) or Southeast Energy Imbalance Market (“Southeast EIM”). For nearly a quarter century, the Commission has been promulgating rules and making decisions that foster open and dynamically competitive markets across geographically broad regions. The Southeast EEM would make the current bilateral market more competitive than it is today. Accordingly, AF&PA supports FERC’s acceptance of the Southeast EEM.

dockets will allow all parties concerned to focus on substance, rather than the process of preparing multiple documents in parallel. These Comments are being filed accordingly.

⁴ Application at 2.

⁵ Application at 38.

I. BACKGROUND

On February 12, 2021, the Southeast EEM Members submitted the proposal for a Southeast EEM (“Application”) for FERC acceptance under Section 205(c) of the Federal Power Act (“FPA”) and Part 35 of the Commission’s regulations. Section 205 of the FPA generally requires regulated utilities to file tariffs with the Commission identifying jurisdictional rates, terms, and conditions for FERC’s approval, with such rates required to be just, reasonable, and not unduly discriminatory.⁶ Accordingly, the Commission has the duty to ensure that all rates in connection with the transmission of electric energy and the wholesale sale of electric energy are just, reasonable, and not unduly discriminatory, with such finding to be the product of reasoned decision-making and based on substantial evidence.⁷

Concurrent with the request for FERC acceptance of the Southeast EEM, each of the Commission-jurisdictional Southeast EEM Members filed a Certificate of Concurrence in their respective docket.⁸ Further, each Southeast EEM Member that is a transmission service provider with an open access transmission tariff on file with the Commission filed amendments to its transmission tariff to offer zero-charge transmission service for the Southeast EEM transactions.⁹ The Southeast EEM Members note that it is the relationship of the Southeast EEM Agreement to transmission service, not power sales, that most clearly implicates filing and review of the Southeast EEM Agreement under Section 205(c) of the FPA. They also claim that neither the sale

⁶ 16 U.S.C. § 824d.

⁷ *FERC v. EPSA*, 136 S. Ct. at 774; *Hughes v. Talen Energy Mktg., LLC*, 136 S. Ct. 1288, 1292 (2016) (citing 16 U.S.C. §§ 824d, 824e).

⁸ Application at 3; the FERC-jurisdictional utilities that filed Certificates of Concurrence are Georgia Power, Mississippi Power, Dominion Energy SC, Duke Energy Carolinas, Duke Energy Progress, Kentucky Utilities, and LG&E.

⁹ Application at 3; the transmission service providers with open access transmission tariffs that filed amendments to offer zero-charge transmission service for Southeast EEM transactions are the Southern Companies, Dominion Energy SC, Duke Energy Carolinas, and LG&E.

of power nor the sale of transmission service will be effectuated through the Southeast EEM System or under the Southeast EEM Agreement. However, the Southeast EEM commits participating Southeast EEM Members to amend their transmission tariffs to provide Non-firm Energy Exchange Transmission Service (“NFEETS”).¹⁰

The Southeastern United States currently functions as a traditional wholesale electricity market with electric service providers including federal government-owned providers (TVA), stated-owned providers, electric cooperatives, municipalities, and FERC-jurisdictional investor-owned utilities. These providers engage in bilateral transactions on a voluntary basis when it is necessary or beneficial. FERC-jurisdictional entities in the Southeast conduct these bilateral transactions pursuant to their Market-Based Rate (“MBR”) authority. The Commission grants MBR authorizations for wholesale sales of energy, capacity, and ancillary services to sellers that demonstrate that they and their affiliates lack or have adequately mitigated horizontal and vertical market power.¹¹ Section 35.57 of the Commission’s regulations requires market-based rate Sellers to submit indicative screens as part of a market power analysis: (1) when seeking market-based rate authority; (2) every three years for Category 2 Sellers; and (3) at any other time the Commission requests a Seller to submit an analysis.¹² The Southeast EEM does not propose to change this process for FERC-jurisdictional entities to conduct bilateral transactions pursuant to their MBR authority or submit the required screens. Instead, the Southeast EEM is proposed to function as a platform for facilitating trades in the existing bilateral market in the Southeast.

¹⁰ Application at Page 14.

¹¹ See *Refinements to Horizontal Market Power Analysis for Sellers in Certain Reg’l Transmission Org. & Indep. Sys. Operator Mkts.*, Order No. 861 at P 5, 168 FERC ¶61,040.

¹² *Id.* at P 5.

II. STATEMENT OF SUPPORT FOR COMPETITIVE, MARKET-BASED SOLUTIONS TO TRANSMISSION AND WHOLESALE POWER SALES IN THE SOUTHEAST.

As a representative of manufacturers and large industrial customers nationwide, including the Southeast, AF&PA supports competition and market-based outcomes in regional transmission and wholesale power sales.¹³ The Southeast EEM is intended to bolster the bilateral market in the Southeast by establishing a software trading platform that matches willing buyers of energy with willing sellers of energy, using unused transmission capacity. This platform is projected to result in more economical use of the regional transmission grid and fuel-cost savings. The fuel cost savings are derived as a result of the Southeast EEM giving participants access to a lower cost, more efficient pool of resources to, among other things, manage sub-hourly load and renewable generation uncertainty.¹⁴ The Southeast EEM Members project that the Southeast EEM will provide net benefits of more than \$40 million per year, with the potential for such benefits to exceed \$100 million per year in a carbon-constrained scenario.¹⁵

AF&PA hopes that these net benefits will be realized and result in lower rates for industrial customers in the Southeast. Additionally, one of the core principles of the Southeast EEM Agreement is that “Market benefits exceed costs, *collectively and for each market participant.*”¹⁶ These benefits should be passed on to industrial consumers and other consumers in the Southeast, collectively and individually, through state-jurisdictional retail rates, including purchased power adjustment clauses.

¹³ The forest products industry accounts for approximately 4% of the total U.S. manufacturing GDP, manufactures over \$200 billion in products annually, and employs approximately 900,000 men and women. The industry meets a payroll of approximately \$50 billion annually and is among the top 10 manufacturing sector employers in 45 states.

¹⁴ Application at Attachment E-1, Page 16 of 32.

¹⁵ Application at 4, Attachment E-1.

¹⁶ Application at 8 (emphasis added).

The Southeast EEM should also aid in the reduction of transmission rate pancaking in the Southeast. Transmission customers may pay multiple rates, even for short-term opportunity purchases of power, if that power is transmitted over multiple rate zones or across multiple transmission systems. Pancaked transmission rates are economically inefficient. Through implementation of the Southeast EEM, power can be voluntarily transmitted across multiple rate zones or transmission systems when it is economically beneficial to do so, by utilizing the software trading platform to match willing buyers with willing sellers across the region.¹⁷ AF&PA supports this step towards the use of a more economically efficient regional transmission system to facilitate short-term opportunity sales of energy.

The Commission's responsibility is "to break down regulatory and economic barriers that hinder a free market in wholesale electricity."¹⁸ As noted in the Application, "the Southeast EEM brings two fundamental changes to the bilateral market in the Southeast. Both changes are inherently pro-competitive."¹⁹ While the Southeast EEM will not be an all-inclusive market for wholesale generation and transmission, it is a step in the right direction, especially considering the diverse interests, jurisdictions, and corporate structures involved in the Southeast. Accordingly, AF&PA supports FERC's acceptance of the Southeast EEM, subject to the Comments and conditions discussed below.

III. COMMENTS

The Commission has historically acted in the pursuit of two primary objectives – protecting customers and promoting competitive markets. On the former, the Commission should ensure market power is not exercised in the Southeast EEM. For the latter, the Commission should

¹⁷ Application at 2.

¹⁸ *EPSA*, 136 S. Ct. at 768 (quoting *Morgan Stanley Capital Grp.*, 554 U.S. at 536).

¹⁹ Application at 38.

consider, and direct jurisdictional entities in the Southeast to consider as a condition to approving the Southeast EEM, the total potential costs of the Southeast EEM and the potential benefits of a Southeast RTO and Southeast EIM.

1. The Commission Should Condition Approval of the Southeast EEM On A Few Additional Steps To Prevent Entities From Exercising Market Power Or Engaging in Market Manipulation.

“[P]rotecting customers is one of the Commission’s primary responsibilities.”²⁰ Indeed, the very purpose of the FPA is “to protect customers against excessive prices.”²¹ The Commission has consistently sought, and must continue to consistently seek, to protect consumers against the effects of unjust and unreasonable rates, consistent with its statutory obligation.²² Similarly, “[o]ne of TVA’s ‘primary objectives’ is to ‘produce, distribute, and sell electric power,’” at rates as low as are feasible.²³ And beyond that, states, municipalities, and electric cooperatives have similar responsibilities and interests to their customers. The interests of each of the Southeast EEM Participants are thwarted when an entity manipulates the market or exercises market power.

Market manipulation occurs when an entity has market power, which is the ability of any market participant with a large market share to significantly control or affect price by withholding production from the market, limiting service availability, or reducing purchases. If the Southeast EEM functions as designed and intended, it could present a win-win for buyers and sellers across the region. However, the Commission must be mindful that when many parties with different

²⁰ *NAACP v. FERC*, 425 U.S. 662, 666-667 (1976); *Public Utilities Comm'n of the State of Ca. v. Sellers of Long-Term Contracts to the Cal. Dep't of Water Resources et al.*, 155 FERC ¶63,004 at P 353 (2016) (“*CPUC*”) (quoting *Am. Electric Power Serv. Corp.*, 153 FERC ¶61,167 at P 17 (2015) (“*AEP*”).

²¹ *Pa. Water & Power Co. v. FPC*, 343 U.S. 414, 418 (1952); accord *FERC v. Elec. Power Supply Ass'n, U.S.*, 136 S.Ct. 760, 781 (2016); see also *Pub. Sys. v. FERC*, 606 F.2d 973, 979 (D.C. Cir. 1979) (“[T]he Federal Power Act aim[s] to protect consumers from exorbitant prices and unfair business practices.”).

²² See e.g., *CUPC*. at P 355; *AEP* at P 17; *Policy Statement on Hold Harmless Commitments*, 155 FERC ¶61,189 (2016) (“*Hold Harmless Policy Statement*”).

²³ *N.C., ex rel. Cooper v. TVA*, 615 F.3d 291, 296 (4th Cir. 2010) (quoting 16 U.S.C. §§ 831(d)(l); 831j; 831n-4(f)).

interests come together in support of a proposal, opportunities exist for one party to manipulate the market by exercising market power.

The Southeast EEM Members assert the Commission has already evaluated the potential for each jurisdictional seller of power to exercise market power in all markets where the entity has MBR authority and sells energy. They aver that the Commission will retain its existing auditing and monitoring tools and will have access to publicly posted Southeast EEM data, as well as the Participants' Electric Quarterly Reports ("EQRs"). Additionally, each FERC-jurisdictional Member must remain responsible to file triennial market power updates that provide the Commission the basis to determine whether existing mitigation measures remain appropriate.

Though the Southeast EEM Members considered concerns about market power, they rejected the notion of an independent market monitor. Instead of an independent market monitor, the Southeast EEM would be monitored by an Auditor, which will nominally have the obligation to ensure the market is operating correctly and in accordance with Market Rules.²⁴ Specifically, the Application states "[t]he 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."²⁵ The Southeast EEM Members assert that an independent market monitor would not align with their objective of transparent operation with minimal bureaucracy to maximize benefits to customers. The Members further assert that the Southeast EEM does not create new opportunities for the exercise of market power and has been designed to thwart potential avenues for market manipulation.²⁶ The Southeast EEM Members eventually state it plainly – "Members are

²⁴ Application at 17.

²⁵ *Id.*

²⁶ *Id.*; See *Economic Aff.* At PP 72, 83-89.

unwilling to fund the costs of a market monitor[.]”²⁷ While the Southeast EEM may not need a dedicated market monitor, more should be done to prevent the harm that could occur in the event of market manipulation.

Additionally, the Application states that “Southeast EEM transactions will be recognizable in EQRs because the transaction terms will be for 15 minutes.”²⁸ But the Application then notes it is possible non-Southeast EEM transactions could have a 15-minute term.²⁹ Similarly, the Southeast EEM Members assert that transactions will be easily identifiable in e-Tag data available to FERC due to the 15-minute duration of the schedule and use of NFEETS. While the Southeast EEM Members resist appointment of an independent, third-party, non-FERC entity to oversee market activities and report any market irregularities, the Commission should and must do more. The Commission should make clear to all Southwest EEM Members that the Commission’s Office of Enforcement (“OE”) will be actively monitoring Southeast EEM activity and that OE and the Commission have, and will exercise, jurisdiction over any market irregularities. To that end, the Commission should not only review EQRs, e-Tag data, and other information as it does today, but also undertake real-time review and monitoring of the Southeast EEM to ensure that the Commission can protect customers and prevent market manipulation.

a) A Toggle-switch Is Not Much Of A Safeguard Against Market Manipulation.

The Commission must remain vigilant in preventing the exercise of market power. The Southeast EEM Application states that the Agreement establishes tools, such as the toggle on and off, to allow Participants to ensure their own compliance with MBR authority obligations, affiliate

²⁷ *Id.*

²⁸ Application at Attachment C, ¶ 41.

²⁹ *Id.*, See Application at 42, footnote 159.

restrictions, and all other Commission requirements. The Application indicates that Dominion Energy SC, Duke, and LG&E/KU intend to comply with their mitigation requirements by “toggling ‘off’ their home BAAs, thus ensuring that they are not matched with any bidder in their home BAAs,” in order to meet their market power mitigation requirement.³⁰ Similarly, a Participant can toggle-off its ability to trade with a counterparty to avoid exceeding counterparty credit limits or avoid trading with a Participant without an enabling agreement. Apparently, participants can toggle-on and toggle-off their trading partners at will in 15-minute increments.³¹ The simplicity by which Participants can toggle-on and toggle-off their trading partners, including partners that are prohibited by FERC regulations or other reasons, is cause for concern. A toggle switch, in the hands of the market participants themselves, is not much of a safeguard to prevent market manipulation.

More should be done to prevent market manipulation in the Southeast EEM. One simple solution to mitigate the risk of market manipulation would be to make clear that both FERC and the Southeast EEM Administrator also have control over the “toggle switch”, instead of letting entities self-regulate from engaging in prohibited purchases or sales. By written request, a Southeast EEM Participant could notify the Administrator to permanently toggle-off transactions in the load-serving entity’s home BAA or with prohibited counterparties. The Administrator would not need complete control, just enough to place greater affirmative responsibility on certain load-serving entities to communicate in writing to the Administrator that a regulatory change has occurred and the Administrator can toggle-on or -off certain types of transactions. Additionally,

³⁰ Application at Pg. 40.

³¹ Application at Pg. 27.

if this functionality is designed into the Southeast EEM System, the Auditor can include this functionality within its review when it determines if the Southeast EEM is functioning properly.

2. The Commission Should Condition Approval of the Southeast EEM On The Completion and Filing of Additional Analysis of the Costs and Benefits of Other Approaches To Competition in the Southeast.

The Southeast EEM Members assert that the Southeast EEM is inherently pro-competitive. However, the Southeast EEM filing fails to consider the costs and benefits of other, more competitive, market constructs. The Commission has long promoted competitive markets throughout the country, and it is the primary objective of TVA, one of the Southeast EEM Members, to produce, distribute, and sell power at rates as low as feasible.³² Accordingly, the Cost-Benefit Analysis provided with the Southeast EEM should consider the costs and benefits of a Southeast RTO and Southeast EIM. Further, if the Southeast EEM Members reject more competitive market constructs and their commensurate benefits, then the Southeast EEM Members should be required to ensure that the benefits of the Southeast EEM are realized and that customers are held harmless if they are not.

a) The Commission Should Direct the Southeast EEM to Consider the Costs and Benefits of a Southeast RTO or Southeast EIM.

The Southeast EEM Members assert that stakeholder participation has been robust, but a common request is that the Southeast EEM Members take the proposed construct further than what has been proposed as the Southeast EEM.³³ To take the construct further, as stakeholders have requested, would be to consider a Southeast RTO or Southeast EIM. A Southeast RTO or Southeast EIM could, depending on the structure and design, provide even greater benefits than

³² *N.C., ex rel. Cooper v. TVA*, 615 F.3d 291, 296 (4th Cir. 2010) (quoting 16 U.S.C. §§ 831(d)(l); 831j; 831n-4(f)).

³³ Application at 12.

those projected for the Southeast EEM. While the proposed Southeast EEM does not preclude future development of a Southeast RTO or Southeast EIM, the costs and benefits of each should be considered. Further, the Cost-Benefit Analysis provided with the Southeast EIM failed to consider the potential of lost opportunity costs from pursuing the Southeast EEM rather than a Southeast RTO or Southeast EIM.

Recognizing the jurisdictional hurdle of establishing a Southeast RTO, particularly related to TVA, entities in the Southeast could first consider the benefits of a Southeast EIM. A Southeast EIM would likely provide even greater benefits than the expected benefits of the Southeast EEM while not offending the diversity of interests in the region. In practice, a Southeast EIM would be a voluntary, real-time energy market that matches supply with demand using a centralized dispatch algorithm. In other words, a Southeast EIM would be a real-time energy market that uses economic dispatch to match generation with load at the lowest possible cost across the Southeast, rather than a Southeast EEM that would enable only 15-minute transactions on a voluntary basis. Much like the Southeast EEM, a Southeast EIM would not have a capacity market.

The centralized dispatch inherent in an EIM should result in greater utilization of the generation assets in the Southeast, and therefore more savings to consumers in the Southeast. Both the Southwest Power Pool and Western EIM have used the EIM model to derive benefits for load-serving entities and customers in those regions. A report by the Energy Transition Institute finds that savings from a Southeast EIM could exceed \$100 million to \$600 million annually just for Duke Energy.³⁴ A Southeast EIM would be an even more competitive, market-based solution to the bilateral market in the Southeast, while not being nearly as comprehensive or complex as real-

³⁴ See, Matt Butner, Ph.D., *An Energy Imbalance Market in the Southeastern United States*, Energy Transition Institute (September 2020).

time and day-ahead locational marginal price-based energy markets that are coordinated by RTOs. Accordingly, AF&PA encourages FERC to condition its approval of the Southeast EEM on Southeast EEM Members committing to undertake, and file on an informational basis with FERC, an analysis of the costs and benefits of a Southeast RTO and Southeast EIM.

b) The Commission Should Direct the Southeast EEM to Conduct Additional Analysis on the Costs of Integrated Resource Planning in the Carbon-Constrained Outlook.

The Cost-Benefit Analysis provided by the Southeast EEM is certain on the costs but speculative about the benefits.³⁵ The Analysis identifies a \$3.8 million one-time startup cost with annual operating costs of \$2.8 million per Member.³⁶ And regarding the benefits, the Analysis projects between \$40 million and \$100 million per year.³⁷ But to derive these benefits, the Analysis makes several key assumptions, while recognizing the uncertainty of its forecast:

1. The study assumes a well-functioning, and relatively high-participation, market. Limited participation by members is the largest risk to Southeast EEM benefits.
2. The \$0 transmission rate sub-hourly trading could eventually cannibalize some hourly trading, yielding a reduction in non-firm transmission revenues.
3. The resource mix in the Carbon-Constrained Outlook represents a significant change from today for the Southeast, *making results much more uncertain*.³⁸

As a condition for approval, the Commission should direct the Southeast EEM to complete and file additional analysis of the costs and benefits of the Southeast EEM, with full consideration of any Integrated Resource Planning (“IRP”) costs that would be necessary to achieve the projected benefits under the Carbon-Constrained Outlook. This additional analysis is necessary to ensure

³⁵ Application, Attachment E-1 at Page 7 (emphasis added).

³⁶ *Id.* at Page 8.

³⁷ *Id.* at Page 4.

³⁸ *Id.*

the Southeast EEM does not drive-up costs to consumers in order to justify its own benefits. For example, the Carbon-Constrained Outlook shows the proportion of solar and wind generation in 2037 as three times higher than the Baseline IRP Outlook. This results in a much more variable system with greater imbalances, larger morning and evening ramping needs, reduced carbon emissions, and more zero-marginal cost hours.³⁹ These variabilities result in a more expensive grid and higher rates for consumers. While the Southeast EEM may provide greater benefits in a Carbon-Constrained scenario, the ultimate “all-in” costs to consumers to achieve such benefits could exceed the level of benefits. The Commission should require additional analysis of the costs and benefits of the Southeast EEM, so that it incorporates any IRP-related costs, to determine if the Southeast EEM is capable of delivering net benefits to consumers.

³⁹ Application, Attachment E-1 at Page 11.

IV. CONCLUSION

For nearly a quarter century, the Commission has been promulgating rules and making decisions that foster open and dynamically competitive markets across geographically broad regions. The Southeast EEM would make the current bilateral market in the Southeast more competitive than it is today. Accordingly, the AF&PA supports FERC acceptance of the Southeast EEM, with the modest conditions discussed above.

Respectfully submitted,

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Counsel to the American Forest & Paper Association

Dated: March 15, 2021

CERTIFICATE OF SERVICE

I hereby certify that I have this day served, via first-class mail, electronic transmission, or hand-delivery the foregoing upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Washington, DC this 15th day of March, 2021.

/s/ Robert A. Weishaar, Jr.

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