

**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)

**JOINT RESPONSE OF THE CLEAN ENERGY COALITION
TO THE SUPPLEMENTAL SUBMISSION BY THE SEEM MEMBERS**

Pursuant to Rule 213 of the Federal Energy Regulatory Commission’s (“the “Commission” or “FERC”) Rules of Practice and Procedure,¹ Advanced Energy Economy (“AEE”), the Advanced Energy Buyers Group (“AEBG”), and the Solar Energy Industries Association (“SEIA”) (collectively, the “Clean Energy Coalition”) hereby respond to the supplemental submission made

¹ 18 C.F.R. § 385.213 (2021).

by members of the Southeast Energy Exchange (“SEEM”) in response to the Deficiency Letter issued on May 4, 2021 in the above-captioned dockets (the “SEEM Supplemental Submission”).² As further set forth below, the SEEM Supplemental Submission does not resolve the concerns that the loose power pool arrangement proposed by the members of SEEM could produce unjust and unreasonable rates or enable undue discrimination and the exercise of market power.³ The SEEM Supplemental Submission left many concerns unresolved and it remains unclear whether SEEM will be a step forward for states and customers that desire competitive regional markets as a means to access clean electricity and further the development of new clean energy resources.

Each of the members of the Clean Energy Coalition supports competitive wholesale markets because they produce benefits for customers and allow customers to access a suite of products and services that incumbent utilities have refused to provide under a vertical integration model.⁴ Unfortunately, the SEEM Supplemental Submission confirms that the electric trading platform to allow for sub-hourly energy transactions using a new class of non-firm transmission service made

² See Response to Deficiency Letter regarding Southeast EEM Agreement, Docket No. ER21-1111, *et al* (June 7, 2021) (“SEEM Supplemental Submission”). See also Advanced Energy Economy, *et al.* Submits Comments, Docket No. ER21-1111, *et al.* (Mar. 15, 2021) (“Clean Energy Coalition Opening Comments”); Motion for Leave to Answer and Answer of Advanced Energy Economy, *et al.*, Docket No. ER21-1111, *et al* (Apr. 14, 2021) (“Clean Energy Coalition Responsive Comments”).

³ See, *e.g.*, Clean Energy Coalition Opening Comments at 9-27; 34-47.

⁴ See, *e.g.*, Comments of Advanced Energy Economy, Advanced Energy Buyers Group, and Renewable Energy Buyers Alliance, Docket No. RM20-10 (“When compared to non-RTO/ISO regions, RTO/ISO markets greatly enhance opportunities for clean energy developers and buyers to bring new renewable and advanced energy technology projects to market and transact with each other. RTOs/ISOs deliver measurable and proven benefits to all customers, including documented cost savings and reliability improvements that come from their independent and non-discriminatory economic dispatch of resources to serve load and manage system constraints, region-wide coordination of transmission planning and operations, and operation of competitive markets that allow for innovation in the provision of wholesale services.”).

available across ten Balancing Authority Areas (the “SEEM Proposal”)⁵ is not a competitive market structure and does no more than add a computerized platform to add efficiency to the existing bilateral market.⁶ As the SEEM Supplemental Submission confirms, SEEM is “merely an enhancement to the existing bilateral market,”⁷ “is not transforming the existing bilateral market into a new market,”⁸ and might strengthen the status quo whereby transactions are confirmed between almost exclusively incumbent utility trading partners. SEEM may deliver marginal savings to customers through the optimization of existing assets; however, the Commission should undertake further process to ensure that the SEEM platform will yield just and reasonable rates free from undue discrimination, and to ensure that SEEM is the beginning of the discussion of market reform in the Southeast, rather than the end.⁹ As explained *infra*, the traditional settlement judge proceedings or a joint hearing pursuant to section 209 of the Federal Power Act (“FPA”), where states and the

⁵ See Southeast EEM Agreement Filing, Docket No. ER21-1111 (Feb. 12, 2021) (“SEEM Proposal”).

⁶ See SEEM Supplemental Submission at 11 (“The Southeast EEM merely enhances the existing bilateral market in the Southeast by providing an automated means to match buyers and sellers of energy for 15-minute increments using non-firm excess capacity on the transmission grid at a zero charge transmission rate, with the resulting sales to be consummated through existing bilateral agreements.”).

⁷ SEEM Supplemental Submission at 5.

⁸ *Id.* at 6.

⁹ See, e.g., *Southwest Power Pool, Inc.*, 143 FERC ¶ 61,219 (2013) (establishing settlement judge procedures to provide a forum for the market operator and affected participant to address unresolved issues); see also Report to Congress: Security Constrained Economic Dispatch (July 31, 2006) (documenting the recommendation of the Joint Boards convened pursuant to FPA Section 209 with the South Joint Board Final Report included as Appendix E documenting unanimous agreement “that utilities operating in the region should engage in security constrained economic dispatch” but providing a coda noting to expressly note the open factual disputes on the exercise of market power and noting that “[s]ome members of the South Joint Board believe that it may be difficult for a regulatory body to determine whether actionable discrimination has occurred in the absence of the transparency that they believe to be inherent in organized markets or the use of an independent operator.”), available at: <https://www.ferc.gov/sites/default/files/2020-04/final-cong-rpt.pdf>. (

Commission could together develop additional record evidence regarding the SEEM proposal would provide a forum to resolve the deficiencies in the SEEM proposal by ensuring just and reasonable rates will result and parties will be protected against undue discrimination.

There is substantial benefit to the Southeast in moving towards a competitive market.¹⁰ Focusing only on the optimization of existing legacy assets, many of which are uneconomic and carbon-intensive, does not serve the public interest. It is disappointing that the members of the SEEM did not attempt to engage in a consensus-driven process with interested and engaged stakeholders in the Southeast, instead choosing to design a market behind closed doors without the input of states, customers, competitive service providers, or independent generation owners. Had the SEEM members engaged in open discussion and considered input from the relevant stakeholders the proposal could have produced a substantially better solution that would put the region on track to reform its wholesale markets to the benefit of customers. 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.¹¹ In addition to the joint section 209 hearing proposed above, the Commission should convene a technical conference amongst itself, its staff, SEEM members,

¹⁰ See, e.g., *Economic and Clean Energy Benefits of Establishing a Southeast U.S. Competitive Wholesale Electricity Market*, ENERGY INNOVATION (August 2020) (explaining that the utilities in the Southeast “continue to inefficiently plan the power grid at great expense to consumers. Wasted excess capacity leads to wasted consumer dollars while stifling clean energy deployment, employment gains, and public health benefits” and setting forth the benefits of wholesale market structures), *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.

¹¹ *Id.* at 7-10 (explaining how, in the Southeast, “current utility plans miss out on the potential for a clean, cheap, reliable electricity system in the region and thus open up customers to financial risk from potential stranded assets.”).

and stakeholders to facilitate a moderate discussion regarding comprehensive market reform in the Southeast.¹² The Clean Energy Coalition is confident that such a technical conference would reveal that the benefits associated with establishing a true electricity market in the Southeast (be they economic, reliability-based, or environmental) far outweigh the costs. The Commission should not let this be the end of the matter.

I. An Independently-Administered Pool Wide Open Access Transmission Tariff (“OATT”) Would Enhance the SEEM Proposal

As the Clean Energy Coalition explained in its initial comments, the SEEM Proposal contains all of the hallmarks of a loose power pool, and a pool-wide OATT would ensure that the SEEM platform functions as intended by enhancing transparency, ensuring fair governance, and protecting against the exercise of market power.¹³ The SEEM Supplemental Submission does not propose to adopt a pool-wide OATT and SEEM is fundamentally lacking for it. Adoption of a non-discriminatory pool-wide tariff would ensure that the membership criteria is consistent with Commission requirements and provide an inclusive stakeholder process to allow for the balancing of competing interests and representation by both minority and majority positions.¹⁴

Instead, the SEEM governance structure continues to concentrate decision-making authority in three entities: Tennessee Valley Authority (“TVA”), Southern Company, and Duke Energy.¹⁵

¹² See, e.g., Clean Energy Coalition Opening Comments at 50-53; Clean Energy Coalition Responsive Comments at 4-6.

¹³ Clean Energy Coalition Opening Comments at 9-33.

¹⁴ Compare *Bonneville Power Admin., et al.*, 112 FERC ¶ 61,012, P 43 (2005) (providing guidance on ideas proposed as “Grid West” and explaining that when a new provider will serve as the exclusive platform by which users can procure new regional transmission service then the Commission will “evaluate the proposed independent transmission provider under Order No. 888”) (“Grid West Guidance Order”).

¹⁵ See *id.* at 18-20 (explaining how the proposed SEEM Agreement gives TVA, Southern Company, and Duke Energy control over the SEEM Market Rules and structures).

SEEM membership remains closed to many stakeholders in the Southeast, including independent power producers and other entities that do not serve load, and the SEEM continues to lack an independent market monitor devoted to ensuring the integrity of the operation.¹⁶ The Clean Energy Coalition appreciates that the SEEM members will now transmit substantial data to the Commission so that the Commission can ensure that the platform is operating as designed and monitor participant behavior.¹⁷ As the SEEM Supplemental Submission explains, the confidential data that will be transmitted to the Commission on a weekly basis is broad enough to “enable the Commission to continuously monitor for attempts to exercise market power and attempts to manipulate Energy Exchange Prices or access to Non-Firm Energy Exchange Transmission Service (“NFEETS”).”¹⁸ The Commission should clarify that SEEM participants operating under a market-based rate tariff are obligated to provide accurate and factual information (and not submit false or misleading information, or omit material information) in any communication with the SEEM Administrator or Auditor, even though these entities are not serving as “Commission-approved market monitors.”¹⁹ The Clean Energy Coalition anticipates that the market monitoring duties will be substantial and, if the SEEM proposal is accepted in its current state, then it is the Commission and its staff that will have the burden of ensuring that the SEEM platform is producing just and reasonable rates for both bilateral energy transactions as well as pooled excess transmission in the form of NFEETS. The Commission and its staff will also have the burden of ensuring that participants are not exercising

¹⁶ *Id.* at 15-27.

¹⁷ *See* SEEM Supplemental Submission at 4; *see also id.* at 17-18.

¹⁸ *See* SEEM Supplemental Submission, Attachment D at ¶ 10 (hereinafter the “Supplemental Pope Affidavit”).

¹⁹ *See, e.g.*, 18 C.F.R. § 38.41(b).

vertical or horizontal market power or other engaging in behavior that is unduly discriminatory or otherwise manipulative or anti-competitive.²⁰

The Clean Energy Coalition also appreciates the proposal of the SEEM parties to increase transparency by furnishing Auditor reports to participants.²¹ While the Members themselves have agreed to make no filings to challenge the SEEM platform during its entire term,²² allowing Participants the opportunity to review the Auditor's reports was a necessary change. The Clean Energy Coalition is concerned, however, that the standard of review remains excessively high, which could prevent the Commission from remedying flaws identified by the Auditor and/or presented to the Commission for review.²³ As the Commission is well-aware, wholesale market design flaws "can present perverse incentives that may result in unintended inefficient or unreliable operations, but which may not be manifested for many months or years."²⁴ The heightened public interest

²⁰ See, e.g., *Investigation of Terms and Conditions of Public Utility Market-Based Rate Authorizations*, 103 FERC ¶ 61,349 (2003) (establishing the Market Behavior Rules and explaining that "our reliance on competitive markets to establish just and reasonable rates requires that we have the tools necessary to ensure that prices created in these markets continue to fall within a just and reasonable zone. We stated that the tools we have relied upon include non-discriminatory transmission access, an efficient and pro-competitive wholesale market platform, and effective market monitoring and enforcement.").

²¹ See SEEM Supplemental Submission at 3.

²² *Id.* at Attachment A, § 16.9 (providing that in order to become a Member a party must "waive all rights to challenge the validity of this Agreement or whether it is just and reasonable for and with respect to the entire term, and hereby agree to make no filings with any Governmental Entity challenging the terms and conditions of this Agreement as to whether they are just and reasonable or in the public interest. The Parties hereby further stipulate and agree that no Party may bring or support any action, proceeding or complaint seeking to modify, cancel, suspend, or abrogate the terms and conditions of this Agreement.").

²³ See SEEM Supplemental Submission at 3-4 (providing an overview of the revisions to the *Mobile-Sierra* standard); see also *id.* at Attachment A, § 16.9 (delineating the differing standards of review).

²⁴ See, e.g., *Policy Statement on Market Monitoring Units*, 111 FERC ¶ 61,267, P 4 (2005).

standard, if adopted, would place a nearly unsurmountable burden on the Commission should it find that changes are needed to the Membership criteria,²⁵ governance model,²⁶ Operating Costs,²⁷ Significant Matters,²⁸ and Material Vendor Contracts.²⁹ If the intent is that Participants would utilize the information from the Auditor reports to work in conjunction with the SEEM members to move towards a truly competitive wholesale market, then these concessions have substantial value. As new market structures emerge in the Southeast, the Clean Energy Coalition anticipates a reduced reliance on SEEM given the intra-hourly non-firm nature of the offering and the impact of the higher standard of review could be moot. If, however, the SEEM parties do not evolve beyond the instant platform, the heightened standard of review would make it nearly impossible for the Commission to

²⁵ SEEM Supplemental Submission, Attachment A § 3.2 (proving that membership in SEEM is only open to load serving entities and requiring all members to have an OATT or comparable non-jurisdictional tariff). The Member criteria would be subject to the *Mobile-Sierra* standard, making it nearly impossible to evolve the SEEM over time.

²⁶ *See id.* at Article 4 (setting forth the governance structure, including the power and qualification of the Membership Board, the unfettered discretion to appoint “committees or officers,” and the annual meeting rights). The Governance criteria would be subject to the *Mobile-Sierra* standard, making it nearly impossible to evolve the SEEM over time.

²⁷ Operating Costs remain solely within the control of the Members, with the *Mobile-Sierra* nearly impossible to overcome if the Commission wished to revise the agreement to instill discipline as Operating Costs are defined in vague and broad terms as “dues, costs, expenses and other payment obligations assessed pursuant to this Agreement, or other fees or liabilities that may be imposed by the Membership Board or in accordance with the Southeast EEM Market Rules that arise under this Agreement. *Id.* at § 1.1.

²⁸ Like Operating Costs, the “Significant Matter” definition and resulting mechanics in the Agreement would make this, and other related provisions, nearly impossible to revise if a market flaw was identified. Significant Matters include any amendment to the SEEM Agreement, the appointment, removal, substitution and replacement of the Administrator and Auditor. *Id.* at § 1.1

²⁹ “Material Vendor Contracts” similarly locks-in the SEEM structure, making the SEEM structure impenetrable if the *Mobile-Sierra* standard will be applied to contracts with “any vendor or supplier”). *Id.* at § 1.1.

order future changes to any material terms even if errors or flaws were revealed that raised rates for consumers or undue discrimination against other market participants.³⁰

The Clean Energy Coalition remains concerned that the unfettered use of Counterparty Specific Constraints allows opportunities for undue discrimination.³¹ The SEEM Supplemental Submission confirms that the Auditor, an entity for which there are no qualifications and who could be affiliated with or influenced by a member of SEEM, verifies that the algorithm honors the Counterparty Specific Constraints, but does not investigate the veracity or lawfulness of the Counterparty Specific Constraint.³² Because no independent entity reviews the work of the Auditor, it is the Commission's responsibility to closely scrutinize use and application of Counterparty Specific Constraints to ensure both that the Auditor is fulfilling its duties and that Counterparty Specific Constraints are not used to engage in undue discrimination or exercise market power. A pool-wide OATT would provide the necessary assurances and transparency. Without a pool-wide OATT, and with limited additional public transparency of market information (discussed further below) or empowerment of an independent market monitor, the responsibility falls to the

³⁰ See, e.g., *Public Utilities Commission of California, et al.*, 175 FERC ¶ 61,233 (2021) (detailing the long and complex litigation stemming from the long-term contracts entered into by a California department and establishing another hearing to determine if the *Mobile-Sierra* presumption should be avoided due to fraud at the contract formation stage); see also *NRG Power Mktg., LLC v. Maine Pub. Utils. Comm'n*, 558 U.S. 165, (2010) (providing that the *Mobile-Sierra* standard binds contract rates and severely limits the ability of the Commission to institute changes unless the heightened standard can be overcome); *Devon Power, LLC*, 134 FERC ¶ 61,208 (2011) (explaining, on remand, that the *Mobile-Sierra* standard binds when sophisticated businesses entities have presumptively equal bargaining power and are expected to negotiate a between the two of them").

³¹ See, e.g. Clean Energy Coalition Responsive Comments 10 (questioning how the Participant-controlled toggle switch could mitigate the market power of the Participant controlling the switch).

³² SEEM Supplemental Submission, Attachment A at Appendix B § VI.D.4 (noting the Auditor's role as verifying the algorithm's compliance with the entries made by Participants).

Commission to ensure that Counterparty Specific Constraints are not used to enable undue discrimination on the SEEM platform.

II. Transparency and Independence are Required to Ensure SEEM Produces Savings to Consumers

Given that the Commission's mission is to "assist consumers in obtaining economically efficient, safe, reliable, and secure energy services at a reasonable cost through appropriate regulatory and market means and collaborative efforts,"³³ the question presented is whether the SEEM Supplemental Response provides comfort that the SEEM framework will result in just, reasonable, and not unduly discriminatory or preferential rates, terms, and conditions of jurisdictional service.³⁴ The Clean Energy Coalition appreciates the work that has been done to bring forward the idea of competitive markets in the Southeast, as customers and consumers in the region have long been denied access to the host of clean energy products offered in other regions and the SEEM proposal represents a potential step forward. The SEEM platform may bring benefits to customers in the region through reduced rates due to more efficient operation of existing units, but it will not drive investment decisions for resource investment or retirement. Significantly, SEEM will in no way increase the penetration of renewable resources in the Southeast.

Whether use of the SEEM platform will, in practice, reduce a utility's cost of service, and in turn yield savings to consumers, remains an open question. In order to answer this question, it is essential that data be made publicly available. In the normal course, the transition to an electronic and automated platform would allow parties to access additional and more granular data. That is not the case for SEEM. Rather, the SEEM Supplemental Submission confirms that public data will be

³³ See Strategic Action Plan FY 2018-2022 at viii-ix (detailing the mission statement and its subcomponents).

³⁴ 16 U.S.C. § 824d.

limited to the electronic quarterly reporting (“EQR”) data submitted by jurisdictional public utilities and any non-confidential reports that may appear on the SEEM website.³⁵ As noted above, the SEEM’s facilitation of incumbent market participants pooling their owned transmission on a non-firm basis to support additional transactions will be new, and it is not clear whether existing EQR filing requirements capture new potential pricing and market activity concerns. Non-jurisdictional utilities, including those expected to control a large share of the market, do not file EQRs and there are no additional reporting methods by which such information could be garnered.³⁶ While the SEEM Supplemental Submission details how *some* information will be made available via the public website, given the restrictions on confidentiality and the broad discretion offered to parties to designate any and all submissions as confidential, it is unclear whether the website will provide the public with any relevant or actionable information. As the SEEM Agreement makes clear, neither the Administrator, nor the Agent, nor the Members shall be responsible for reporting Energy Exchange Transactions made by SEEM Participants and all relevant market information will remain confidential “except to the extent required by Law, regulation, or order.”³⁷

³⁵ See e.g., SEEM Supplemental Submission at 22-23 (explaining that no data will be made available with respect to financial transactions); *see also* SEEM Supplemental Submission, Attachment A at Appendix B § V (describing the aggregated public reports intended to be made available on the SEEM website); Supplemental Pope Affidavit at ¶¶ 11, 59-62 (explaining that manipulation will supposedly not occur because it would be difficult to profit from transaction-specific matches and implying that manipulation and anti-competitive behavior only occur in clearing-price markets).

³⁶ Compare *Grid West Guidance Order*, 112 FERC at PP 37-59 (setting forth an independent governance, monitoring, and reporting structure for transmission arrangements involving non-jurisdictional utilities).

³⁷ SEEM Supplemental Submission, Attachment A at § 10.1.2.

The SEEM Supplemental Submission makes some concessions to enhance transparency, but in doing so it raises additional concerns about independence.³⁸ For example, the Auditor, an entity that has not yet been named and for which there are no required qualifications, will be the only party other than the Commission who will have access to data to determine whether the algorithm and platform are functioning as intended and whether there are indicia that market power is being exercised.³⁹ The SEEM Agreement does not require that the Auditor be independent from any of the members.⁴⁰ It is therefore possible that the SEEM parties will select an Auditor that is affiliated with, influenced by, or under common control with at least one of the SEEM members.⁴¹ While the SEEM Supplemental Submission expands the scope of the Auditor's responsibilities, it does not set forth any required qualifications for the Auditor. There is a substantial difference between selecting Potomac Economics to serve as the Auditor versus selecting PowerSecure, an affiliate of Southern Company, to serve that role. If SEEM is accepted without any guidelines as to the independence of the Auditor, it will be the Commission's responsibility to ensure that the market is functioning as intended to produce the promised consumer savings.

³⁸ *Compare Grid West Guidance Order*, 112 FERC at P 13 (explaining that, as the exclusive provider of new regional transmission services, Grid West was an independent entity as required by Order No. 888 and Order No. 2000); *see also id.* at P 83 (explaining that the Grid West as a region-wide, independent transmission provider that will take increasing transmission provider responsibility from existing transmission providers through transmission grid expansions or the expiration of pre-existing transmission agreements, was consistent with Order No. 888).

³⁹ SEEM Supplemental Submission at 17.

⁴⁰ *Compare Grid West Guidance Order* at P 13 (including an independent market monitoring unit).

⁴¹ The definition of "Auditor" references an independent entity, without any standards or further discussion it is unclear which standards would be used to measure independence and the Clean Energy Coalition understands that an affiliate could meet this definition. *See* SEEM Supplemental Submission, Attachment A § 1.1.

Similarly, the additional responsibilities provided to the Administrator is concerning if the Administrator were affiliated with any of the SEEM members. As the SEEM Supplemental Submission clarifies “The Administrator role was intentionally designed to be purely ministerial,”⁴² yet the Administrator is charged with interfacing with the Commission and its staff to respond to information requests concerning the Order No. 760-style data that the Administrator itself is reviewing, storing, processing, and analyzing as part of its reporting function.⁴³ Again, the SEEM Agreement does not set forth required qualifications for the heretofore unidentified entity and it appears that such qualifications may only be developed through the course of a future request for proposal that would not be subject to FERC jurisdiction.⁴⁴ In addition to its role in data exchange with the Commission and the Auditor, the Administrator will submit all e-tags, review all information and reports from the Market Auditor, and create the information reports by reviewing and analyzing bids, offers and counterparty specific inputs. Yet, the Administrator is not required to inform the Commission of potential violations.⁴⁵ There do not appear to be any protections in any of the SEEM Agreements to mitigate, nor has Dr. Pope analyzed the competitive harm that would occur if an affiliate of a SEEM member is selected as the Administrator.

If the Commission were to accept the SEEM proposal, the Commission must ensure that there are sufficient measures in place to produce a transparent platform administered by independent entities. Without sufficient transparency and independence the Auditor or the Administrator could mask market manipulation by any of the SEEM Participants. Given the heightened standard of

⁴² SEEM Supplemental Submission at 24.

⁴³ SEEM Supplemental Submission at 24-25 (explaining the role of the Administrator).

⁴⁴ See SEEM Proposal at n. 47 (explaining why the “Administrator will not be Commission-jurisdictional.”).

⁴⁵ SEEM Supplement Submission at 19.

review for many of the key provisions of the Agreement, it is essential that the Commission ensure that revisions to SEEM can be implemented if structural flaws are discovered and consumer savings do not materialize. Public disclosure of additional information would allow entities other than the Commission to analyze SEEM, but where such information will not be made publicly available it will be the Commission's sole responsibility to ensure that the market is functioning as intended to produce the promised savings.

III. Further Process is Warranted

The SEEM Supplemental Submission makes clear that SEEM is not a market but is rather simply an automated platform to facilitate bilateral transactions with preferred trading partners when there is excess transmission capacity available. While the projected customer benefits of SEEM are marginal at best, given the lack of development of competitive markets in the Southeast, this small step could be an improvement over the status quo if it efficiently optimizes the use of existing generating assets and produces customer savings as a result. The Commission should initiate further process to ensure that SEEM produces benefits and is a stepping-stone to market evolution that produces further benefits for consumers.

First, to further address the deficiencies in the SEEM Proposal, the Commission should establish additional proceedings that allow the SEEM Members and interested parties to develop additional information about the detailed development of the algorithm, work together to establish safeguards to prevent SEEM Members from obtaining preferential access to data produced by the algorithm, and discuss establishment of a sufficient market monitoring and governance structure that ensures the rates, terms, and conditions of the SEEM platform are just, reasonable, and not unduly discriminatory. As the Clean Energy Coalition explained in its initial comments, the SEEM parties did not seek input from impacted stakeholders nor were state regulators provided any role in

developing the SEEM Proposal. While the Commission’s traditional settlement judge proceedings may be appropriate, the Commission could also consider establishing a joint hearing pursuant to section 209 of the FPA, where states and the Commission could together develop additional record evidence regarding the SEEM Proposal, its potential impacts on just and reasonable rates and the provision of non-discriminatory transmission service.⁴⁶ This would provide states with an opportunity to review the details of SEEM that, outside of “informational filings” made in two states, they have not had to date.⁴⁷ The Clean Energy Coalition is hopeful that, with appropriate changes to ensure fair and non-discriminatory administration of the platform, SEEM can be a step in the right direction to achieving the region’s collective goals. It is essential that the Commission ensure the SEEM Proposal will produce a just, reasonable, and not unduly discriminatory rate structure.

Additionally, the Commission can, and should, do more to encourage market developments in the Southeast separate and apart from this adjudicative proceeding about the mechanics of the SEEM Proposal. Now is the time to convene a forum by which stakeholders, including state regulators and policy makers, can begin establishing a collaborative process to consider the costs and benefits of more robust competitive markets in the Southeast as SEEM is quite limited. A technical conference like that suggested by the Clean Energy Coalition in its initial comments provides the opportunity to have the conversation that the SEEM parties foreclosed. By broadly soliciting input from stakeholders and establishing a technical conference separate and apart from this docket the

⁴⁶ 16 U.S.C. § 824h(b) ((relating to use of boards composed of State representatives and cooperation with State commissions)

⁴⁷ *See also* 18 C.F.R. § 385.1304(a) (providing that Section 209 boards “were designed for use in unusual cases, and as a means of relief to the Commission when it might find itself unable to hear and determine cases before it, in the usual course, without undue delay.”).

Commission can allow consideration of all relevant facts and circumstances, including by stakeholders most impacted. The Clean Energy Coalition supports efforts to remove impediments to wholesale contracting and produce benefits to customers in the Southeast. While SEEM could be a step in the right direction, even if it is approved, more must be done to allow consumers to access clean electricity and to incentivize new investment throughout the region. The Commission has an important role to play in ensuring that this conversation moves forward and can use its convening tools to ensure that the views of states and consumers on the future of the region's wholesale markets are heard and considered.

IV. Conclusion

The Clean Energy Coalition respectfully requests that the Commission accept the SEEM filing, subject to further procedures to ensure the SEEM platform yields rates that are just and reasonable rates while protecting against the exercise of market power and preventing undue discrimination.

Respectfully Submitted,

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June 28, 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 28th day of June, 2021.

/s/ Heather Curlee