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February 12, 2021

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

**RE: *Southern Company Services, Inc.*
Southeast Energy Exchange Market Agreement
Docket No. ER21-____-000**

Dear Secretary Bose:

Southern Company Services, Inc. (“Southern Company”), as agent for Alabama Power Company (“Alabama Power”), on behalf of itself and the other Members of the Southeast Energy Exchange Market (“Southeast EEM”),¹ submits the Southeast Energy Exchange Market Agreement (“Southeast EEM Agreement”)² for Federal Energy Regulatory Commission (“Commission” or “FERC”) acceptance under Section 205(c) of the Federal Power Act (“FPA”)

¹ While e-Tariff rules require separate filings, and non-jurisdictional Southeast EEM Members do not require Commission approval to participate in the Southeast EEM, Southern Company is authorized to state that each of the Southeast EEM Members, as well as those listed below that are exploring membership, supports this filing and Commission acceptance of the Southeast EEM Agreement without modification. As of the date of filing, the following entities are Members of the Southeast EEM: Alabama Power, Georgia Power Company, and Mississippi Power Company (collectively, “Southern Companies”); Associated Electric Cooperative, Inc. (“AECI”); Dalton Utilities (“Dalton”); Dominion Energy South Carolina, Inc. (“Dominion Energy SC”); Duke Energy Carolinas, LLC (“DEC”) and Duke Energy Progress, LLC (“DEP”) (together with DEC, “Duke”); Louisville Gas & Electric Company (“LG&E”) and Kentucky Utilities Company (“KU”) (and LG&E and KU Services Company and LG&E and KU Energy LLC, when acting as the agent or representative of LG&E/KU) (collectively, “LG&E/KU”); North Carolina Municipal Power Agency Number 1 (“NCMPA Number 1”); Power South Energy Cooperative (“PowerSouth”); North Carolina Electric Membership Corporation (“NCEMC”); and Tennessee Valley Authority (“TVA”) (each a “Member” and collectively, the “Members”). In addition, the following entities have participated in the creation of the Southeast EEM and are in the process of or are contemplating seeking the necessary approvals to execute the Southeast EEM Agreement and become Members: Georgia System Operations Corporation (“GSOC”); Georgia Transmission Corporation (“GTC”); Municipal Electric Authority of Georgia (“MEAG Power”); Oglethorpe Power Corporation (An Electric Membership Corporation) (“Oglethorpe”); and South Carolina Public Service Authority (“Santee Cooper”).

² The Southeast EEM Agreement is being filed as Alabama Power’s Rate Schedule No. 1011 in its Market-Based Rate Tariff eTariff database.

and Part 35 of the Commission's regulations.³ The Southeast EEM Agreement sets forth the framework and rules for establishing and maintaining a new voluntary electronic trading platform designed to enhance the existing bilateral market in the Southeast utilizing zero-charge transmission service (the "Southeast EEM System"). That transmission service, in turn, will be voluntarily provided by participating transmission service providers ("Participating Transmission Providers").

The Southeast EEM proposal submitted here ("Southeast EEM Proposal") will materially benefit customers throughout the Southeast. It will add a new, voluntary, and consensus-driven layer to the existing bilateral market that will comprehensively cover the region, and will facilitate market access to currently unused transmission capacity across the region. Moreover, it will aid in the reduction of transmission rate pancaking, which has been an object of Commission pricing policy for many years.⁴

The Southeast EEM Agreement is not, in and of itself, a contractual vehicle for the sale or transmission of electric energy at wholesale. Rather, it reflects the agreement among a wide-ranging group of entities within the Southeast region to create a framework to reduce transactional friction in the Southeast and increase the efficiency of the existing bilateral market by matching willing bidders and offerors for transactions that will occur under other bilateral agreements.

The Southeast EEM Proposal is just and reasonable and should be accepted for filing without modification. Included in support of this filing are: 1) the Southeast EEM Agreement, including the Names and Addresses of the Members (Exhibit A), Form of Joinder Agreement (Exhibit B), Form of Participation Agreement (Appendix A), the Southeast EEM Market Rules (Appendix B, the "Market Rules"), and Southeast EEM Agent Scope (Appendix C), appended thereto; 2) the Affidavit of Mr. Aaron Melda of TVA and Mr. Lonnie Bellar of LG&E/KU, who provide an overview of the Southeast EEM Proposal and how it was developed ("Overview Affidavit"); 3) the Affidavit of Mr. Chris McGeeny of AECI and Mr. Corey Sellers of Southern Company, who describe the functioning of the Southeast EEM in more detail ("Operations Affidavit"); 4) the Affidavit of Dr. Susan Pope of FTI Consulting, who explains why the Southeast EEM will provide economic benefits, why it does not provide new opportunities for the exercise of market power, and how it has been designed to thwart new avenues for market manipulation ("Economic Affidavit"); and 5) the Affidavit of Andrew Rea of Guidehouse, who

³ 16 U.S.C. § 824d(c) (2016); 18 C.F.R. pt. 35.

⁴ See, e.g., *Cal. Indep. Sys. Operator Corp.*, 147 FERC ¶ 61,213 at P 156 (2014) ("*Western EIM Order*") ("[T]he elimination of the seam between [California Independent System Operator, Corp. ("CAISO")] and the [Energy Imbalance Market ("EIM")] Entity BAAs promotes more efficient and competitive electricity markets, provides customers in the EIM and in CAISO access to additional energy supplies, decreases the number of transactions that must pay pancaked rates, and therefore enhances competitive electricity markets in the region.").

sponsors a benefits analysis performed by Guidehouse and Charles River Associates (“Benefits Analysis”) appended thereto.

The Southeast EEM Members respectfully request that the Commission accept the Southeast EEM Agreement to become effective May 13, 2021, 90 days after this filing. The Southeast EEM Members wish to have the regulatory certainty provided by a Commission order before proceeding with further significant investment. The effective date will not be the market “go live” date, which is currently expected to occur in the first quarter of 2022 and is referred to in the Southeast EEM Agreement as the “Commencement Date.”⁵ To ensure that the Commission and potential Participants know when the Commencement Date will occur, the Members commit to make a notice filing in this docket, and the other proceedings discussed next, 30 days before the Commencement Date.

Concurrently with this filing, each of the other Commission-jurisdictional Members (together with Southern Companies, the “FERC Jurisdictional Members”), is filing a Certificate of Concurrence (together, the “Concurrence Filings”).⁶ Additionally, each Member that is a transmission service provider with an open access transmission tariff (“transmission tariff” or “OATT”) on file with the Commission, including Southern Companies, is filing amendments to its transmission tariff to offer zero-charge transmission service for Southeast Energy Exchange transactions (known as “Non-Firm Energy Exchange Transmission Service” or “NFEETS”) (collectively, the “Tariff Filings,” together with the Concurrence Filings and this filing, the “Southeast EEM Filings”).⁷

While eTariff requirements mandate that each of the Southeast EEM Filings have its own docket, and entities interested in more than one docket should intervene in each docket to which they wish to become a party, that does not mean it is necessary to file duplicate sets of comments in more than one docket. Rather, the Southeast EEM Members recommend submitting a single pleading with a caption identifying the dockets it is being submitted in, and an indication in the caption that the dockets are “unconsolidated.” While the consolidation of dockets is not appropriate because the dockets involve different filings by different parties, the issues in the dockets are related, such that use of a single pleading across all dockets will allow all concerned to focus on substance, rather than the process of preparing multiple documents in parallel.

In order to provide ample time to potential commenters who may wish to provide comments, we respectfully request that the Commission establish a comment period of thirty days, rather than the usual twenty-one, such that the comment date would be March 15, 2021.

⁵ As discussed below in Section IV, rather than specify a date in the Southeast EEM Agreement on which the Southeast EEM will become operational, the Members are leaving the Commencement Date flexible to accommodate any unforeseen implementation or readiness issues that might arise.

⁶ Specifically, Georgia Power, Mississippi Power, Dominion Energy SC, DEC, DEP, KU, and LG&E are each filing a Certificate of Concurrence.

⁷ Specifically, the Southern Companies, Dominion Energy SC, DEC, and LG&E are each filing amendments to their transmission tariffs, some of which are joint OATTs.

As noted, the requested effective date, and the requested date for Commission action, is in 90 days. Accordingly, a 30-day period for comments will still provide the Commission 60 days to act upon the Southeast EEM Filings after comments are received.

I. Executive summary

The Southeast EEM is an innovative market enhancement that will make the existing bilateral market in the Southeast more efficient, resulting in material customer benefits. “The design of the Southeast EEM leverages automation and zero-cost transmission to facilitate beneficial sub-hourly bilateral transactions.”⁸ The foundation of the Southeast EEM will be the Southeast EEM System. It will be a region-wide, automated, intra-hour market platform to facilitate bilateral trading between voluntary market participants (“Participants”) that will utilize unused transmission capacity to achieve cost savings throughout the region.

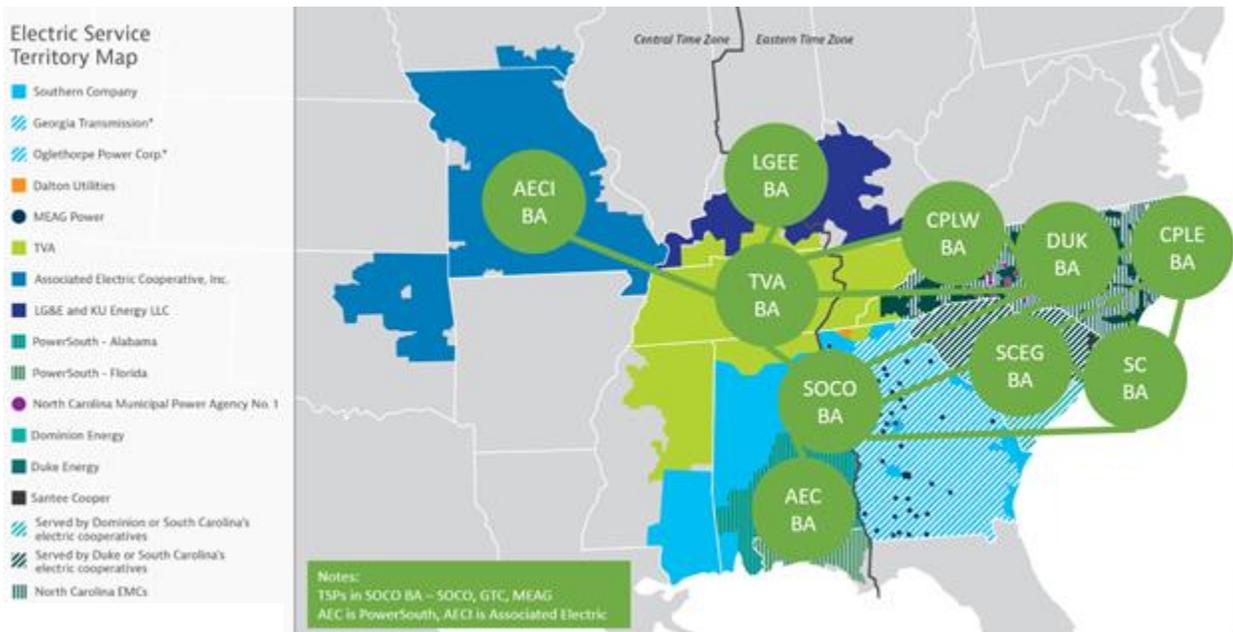
The Southeast EEM System will be a secure software system that will rely on Participant inputs (including bids and offers) applied to an algorithm (the “Algorithm”). The Algorithm will match bids and offers voluntarily submitted by Participants for 15-minute intervals and price matched transactions on a “split-the-savings” basis. For purposes of the Southeast EEM, “split-the-savings” pricing means that the transaction price will reflect the midpoint between the seller’s offer price and the buyer’s bid price, with an adjustment for losses. These matches are referred to in the Southeast EEM Agreement and this filing as “Energy Exchanges.” Energy Exchanges will rely on the zero-charge NFEETS provided by the Participating Transmission Providers.

The combination of an automated system for matching trading partners and zero charge transmission over a wide region will allow more buyers and sellers to beneficially transact with one another, thereby increasing efficiency and lowering customer costs. The new trading platform is expected to result in substantial benefits of more than \$40 million per year by covering a large footprint over parts of 10 states, and including initial membership commitments from fourteen founding electric service providers in the region, and five additional entities that are actively pursuing membership.⁹ These founding entities collectively own approximately 160,000 MW of generating capacity, and serve about 640 TWh of energy for load across 10 Balancing Authority Areas (“BAAs”) and two time zones:¹⁰

⁸ Economic Aff. at P 33.

⁹ See *supra* note 1.

¹⁰ See Overview Aff. at P 8.



The Commission should accept the Southeast EEM Agreement for filing because it is a just and reasonable and not unduly discriminatory improvement to the existing bilateral market. Today’s trading mechanisms in the bilateral market (chiefly market-based rate (“MBR”) sales) have already been found to be just and reasonable, and the Southeast EEM is built on that existing just and reasonable framework. The Southeast EEM will achieve customer savings by facilitating more efficient use of existing, and unused, transmission capacity over a large footprint and ultimately increasing the number of cost-reducing transactions between buyers and sellers. This will be accomplished without any compromise to existing measures to preserve reliability and serve load – rather, it is a just and reasonable means to continue to reliably serve load while achieving new cost savings.

II. Background

A. In the Southeast today, trading is bilateral, with the shortest transaction period typically being hourly

Today, the Southeast region functions as what the Commission refers to as a “traditional wholesale electricity market.”¹¹ That means that electric service providers generally remain responsible for system operations and management, and are load serving entities (“LSEs”) that provide service to retail customers within their service territory.¹² There is great diversity in the types of electric service providers in the Southeast region. These electric service providers include federal government-owned providers such as TVA, state-owned providers, electric

¹¹ See Fed. Energy Regulatory Comm’n, Energy Primer: A Handbook for Energy Market Basics at 61 (Apr. 2020), <https://www.ferc.gov/sites/default/files/2020-06/energy-primer-2020.pdf>.

¹² *Id.* Not every entity follows this model. For example, TVA sells power primarily at wholesale to local power companies within its service area.

cooperatives, municipalities, and Commission jurisdictional investor-owned utilities (“IOUs”). There is also great diversity in the types of technologies and fuels used to meet customer needs.

Energy transactions in the Southeast are best understood against the backdrop of generation planning mechanisms employed by the electric service providers in the region. These entities are responsible for maintaining resource adequacy through Integrated Resource Planning (“IRP”) processes.¹³ As explained by Mr. Melda and Mr. Bellar, each load serving entity “has an obligation and responsibility to plan to serve its load through its own generation, or long-term power purchase arrangements, or both. Such entities can use bilateral power purchases and sales to reduce customers’ cost of energy closer to real time, such as in the hourly market.”¹⁴ As Mr. Melda and Mr. Bellar further explain:

Generally, a short-term power purchase will be sought if more expensive generation can be backed down. An entity will typically engage in a power sale when there is an opportunity to provide power bilaterally to a counterparty at a price greater than the seller’s own cost to produce and deliver the power, after satisfying any obligations it may have to its own load. In other words, short-term purchases are generally made for economic purposes to displace more expensive generation. Therefore, these purchases typically reduce customer costs. When sales are made, a significant portion or all of the margin from the sale will be credited to customers, which helps to achieve net cost savings. Most utilities use a mechanism such as a fuel adjustment clause to pass back credits to customers for purchases and sales. Other utilities, such as TVA, pass back the savings from sales by lowering base revenue requirements instead.¹⁵

Today, trading occurs bilaterally under wholesale power sales contracts. Commission-jurisdictional entities’ contracts are often entered into pursuant to the sellers’ MBR authority. To effectuate any particular transaction, the parties must discover one another, negotiate the terms of the sale, arrange and pay for transmission service across all utilized transmission systems, and schedule the delivery of energy. All of this is done with “traditional” methods of communication, by phone and electronically, thus creating transactional friction. To determine whether any given energy transaction is economic, the bilateral market participants must consider the cost of transmission service, as well as charges for Real Power Losses (“Losses”) and ancillary services. Trades generally occur on an hourly basis as the shortest increment, and most often occur only with entities in the same or directly interconnected balancing authorities. While intra-hour trading and trading with more distant entities is possible, neither is common.¹⁶

¹³ For IOUs, IRP processes typically are overseen by state regulators.

¹⁴ Overview Aff. at P 9.

¹⁵ *Id.* This trading construct, under which an entity pursues opportunities for short term purchases and sales based on the marginal cost of producing power from its generation portfolio, is sometimes referred to in this letter, in short hand, as “trading around” the utility’s assets.

¹⁶ See Overview Aff. at P 9.

Commission-jurisdictional entities transacting under their MBR authority do not file resulting bilateral agreements with the Commission. Instead, MBR sellers conduct the transactions in accordance with the terms and conditions of their MBR tariff, and report MBR contracts in their Electric Quarterly Reports (“EQRs”) along with transaction information for all associated transactions in the relevant reporting period. Through its MBR authorization process, the Commission evaluates the market power of each MBR seller and may impose mitigation measures on sellers for a particular market.¹⁷ Indeed, each of the FERC Jurisdictional Members has conditions in its MBR tariff that limit certain sales and mitigate the potential to exercise market power in bilateral trades.¹⁸

Participation in the Southeast EEM will not alter the applicability of each entity’s MBR authority requirements. The Commission has numerous tools available to monitor MBR sellers. All MBR sellers that own or are affiliated with more than 500 MW of generation must update their market power analyses every three years to show that they continue to meet the requirements (including any necessary mitigation) for MBR authority.¹⁹ MBR sellers must submit EQRs, and must file notices of change in status for any material changes in facts.²⁰ Furthermore, the Commission has ongoing audit rights for all jurisdictional sellers. The implementation of the Southeast EEM will not affect these existing tools for monitoring bilateral transactions.

B. Development of mutually agreed-upon core principles led to this proposal for two small but significant beneficial changes to the existing bilateral market

As discussed above, electric service providers in the Southeast seek bilateral transactions that can either save costs directly (purchases) or earn a margin to offset costs (sales). Transaction economics can be diminished both by “friction” involved in identifying trading

¹⁷ 18 C.F.R. §§ 35.37(a)-(b).

¹⁸ See *S.C. Elec. & Gas Co.*, 121 FERC ¶ 61,263 at P 6 (2007) (finding that Dominion Energy SC’s (f/k/a South Carolina Electric and Gas Company) “proposal not to make sales within its balancing authority area under its market-based rate tariff adequately addressed [Dominion Energy SC’s] failure of the market share screen in its balancing authority area”); *LG&E Energy Mktg., Inc.*, Docket Nos. ER06-1046-000, *et al.* (letter order issued July 6, 2006) (accepting “revised market-based rate tariff sheets that would, among other things, restrict the LG&E Parties’ authority to make sales at market-based rates in the LG&E/KU control area” upon LG&E/KU’s exit from the Midwest Independent System Operator, Inc.); *Ala. Power Co.*, 163 FERC ¶ 61,090 at P 32 (2018) (finding that the price cap and auction process established in each of the Southern Companies’ MBR tariffs “serve as adequate mitigation for the Southern, SCEG, Tallahassee, and Santee Cooper balancing authority areas”); *Duke Power*, 111 FERC ¶ 61,506 at P 61 (2005) (Commission prohibiting Duke sales within the DEC balancing authority to “mitigate the potential for the exercise of generation market power”); *Fla. Power Corp.*, 113 FERC ¶ 61,131 (2016) (prohibiting Duke sales in the DEP BA).

¹⁹ 18 C.F.R. § 35.37(a)(1).

²⁰ 18 C.F.R. § 35.42.

partners and added costs of transmitting power to distant potential counterparties. As Mr. Melda and Mr. Bellar explain, “[t]hese factors result in some economic energy going unpurchased and some available transmission going unutilized. A central objective of the Members’ efforts to identify potential regional improvements, which has led to the development of the Southeast EEM, is finding ways to increase the use of available transmission and increase opportunities for economic energy purchases and sales.”²¹

The effort to identify potential regional improvement led to development of a set of core principles – commonly shared convictions that make today’s Southeast EEM Proposal possible. Identifying a common list of core principles shared by all of the very diverse Southeast EEM Members – and thus being able to blanket the region – was an important step, without which there would be no Southeast EEM. These critical core principles are:

- Each electric service provider/state maintains control of generation and transmission investment decisions;
- Each transmission provider remains independent with its own transmission tariff (or equivalent²²);
- 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.²³

Applying the core principles above, the Members proceeded to develop a proposal to enhance the Southeast’s bilateral market, which culminates in today’s filing. Mr. Melda and Mr. Bellar describe the simple yet significant nature of the two key design features of the Southeast EEM Proposal as follows:

The Southeast EEM has two simple design features that work together to create matches of buyers and sellers for more mutually beneficial bilateral transactions to produce customer savings.

First, if Southeast EEM Participating Transmission Providers’ transmission capacity is not being used for other transactions, it will be made available on an intra-hour basis at no cost (other than financial losses and any applicable imbalance charges) for 15-minute Southeast EEM Energy Exchanges under the Participating Transmission Providers’ tariffs . . . Since Southeast EEM will only

²¹ See Overview Aff. at P 13.

²² TVA has transmission service guidelines that are equivalent to a tariff.

²³ See Overview Aff. at P 19.

use transmission that is not otherwise being used, it will not result in underfunding of transmission, which will still be paid for through current rate constructs, *i.e.*, through revenues received from customers of Network Service and Point-to-Point Service, or their equivalent. It is possible that availability of the new free service will lead to some slight decrease in Point-to-Point revenues, which in turn would lessen revenue credits used to offset Network Service charges. However, today, Participating Transmission Providers’ revenues from short-term wheeling transactions of the type that could be replaced by Southeast EEM transactions are minimal. In general, we expect that any small increase in Network Service charges will be more than offset by reductions in overall customers’ costs attained through the Southeast EEM.

Second, the Southeast EEM will use load bids and generation offers to match buyers and sellers for transactions on a split-the-savings basis that benefits both the buyer and the seller. In today’s short-term bilateral market, transactions between buyers and sellers are typically done on an hourly basis. The Southeast EEM will allow for shorter-term, intra-hour, transactions and greater flexibility through an automated matching system. The Southeast EEM will provide a platform that enhances efficiency by using the information input by buyers and sellers to expand the universe of potential trading matchups and to automatically find counterparties.²⁴

In other words, the Southeast EEM is not – and was never intended to be – a top-to-bottom reimagining of the Southeast energy market; rather, it reflects incremental improvement to the existing bilateral market.²⁵ The table below reflects that, other than the two principle changes described above, the bilateral market structure in the Southeast will remain relatively unchanged:²⁶

	Existing Market	Addition of Southeast EEM
Nature of market	<ul style="list-style-type: none"> • Bilateral: long-term, seasonal, day-ahead, hourly (limited intra-hour) • Products traded: Capacity, firm energy, non-firm energy, and other products 	<ul style="list-style-type: none"> • Significantly enhances bilateral, intra-hour (15-minute increments) • Products traded: Facilitates non-firm energy transactions only

²⁴ Overview Aff. at PP 22-24.

²⁵ *See id.* at P 6.

²⁶ This table is provided in the Overview Aff. at P 28.

	Existing Market	Addition of Southeast EEM
Transmission Service	<ul style="list-style-type: none"> Point-to-Point Service or Network Integration Transmission Service (“NITS”) required for any transmission system used Rate based on transmission tariff Schedules plus Losses and ancillary services e-Tags submitted by parties to transaction 	<ul style="list-style-type: none"> Adds Non-firm Energy Exchange Transmission Service priced at \$0/MWh plus Losses (which must be financial) e-Tags submitted by Southeast EEM System (for both intra-BA and inter-BA Energy Exchange transactions)
Transactional Friction	<ul style="list-style-type: none"> Buyers and sellers locate one another, negotiate with each other, obtain transmission service, and schedule delivery of energy with e-Tags (using phones, fax, and electronic communications) 	<ul style="list-style-type: none"> Buyers and sellers self-identify to Southeast EEM System, which matches them according to the Algorithm; Southeast EEM System submits transmission service reservations and e-Tags to schedule delivery of energy with applicable BA(s)/Transmission Service Provider(s)/Participants
Pricing and Settlements	<ul style="list-style-type: none"> Market-based or cost-based, as appropriate Negotiated between counterparties subject to any limitations imposed by market power mitigation or other restrictions, such as TVA fence or counterparty credit limits Settlements occur bilaterally 	<ul style="list-style-type: none"> Market-based, but subject to cost capping where applicable for MBR mitigation Determined by matching Algorithm on a split-the-savings basis, including [Losses], with matching subject to identified constraints (e.g., to respect TVA fence or counterparty credit limits) Settlements occur bilaterally
Transparency	<ul style="list-style-type: none"> EQRs, notices of change in status & triennial market power updates FERC audit rights e-Tags collected by FERC pursuant to Order No. 771 	<ul style="list-style-type: none"> EQRs, notices of change in status & triennial market power updates FERC audit rights Southeast EEM transaction e-Tags collected by FERC pursuant to Order No. 771 will be identifiable

	Existing Market	Addition of Southeast EEM
		<ul style="list-style-type: none"> Additional, publicly posted aggregate information about Southeast EEM transactions and an Annual Meeting
Resource Adequacy	<ul style="list-style-type: none"> Per individual entity and/or state oversight 	<ul style="list-style-type: none"> No change
Reliability	<ul style="list-style-type: none"> BAs, Transmission Providers, generators and LSEs have roles assigned by North American Electric Reliability Corporation (“NERC”) 	<ul style="list-style-type: none"> No change
State Jurisdictional Issues	<ul style="list-style-type: none"> Any retail access or demand response issues are under state or non-jurisdictional authority 	<ul style="list-style-type: none"> No change

While the experience of the Members suggested that these improvements to the existing bilateral market would bring benefits, the Members sought to validate their expected outcomes with analysis from an unbiased third party. Accordingly, the Members hired independent experts to evaluate the potential benefits of region-wide, intra-hour trading with no-cost transmission. The Benefits Analysis also evaluated potential internal company costs of the Southeast EEM Proposal.

As expected, the results verified that the operation of the Southeast EEM would produce significant quantifiable customer benefits. The Benefits Analysis, attached as Attachment E-1 to this Filing, conservatively estimated approximately \$40 million in market-wide benefits per year, largely from fuel cost savings, in comparison with low individual internal company start-up and ongoing costs (totaling about \$3.1 million per year on a levelized basis).²⁷ While the study did not quantify vendor costs associated with developing, operating and auditing the Southeast EEM System (because the selection process for that work has not been completed),²⁸ those incremental costs also are expected to be small, relative to benefits.²⁹ As described in the Overview Affidavit, initial vendor price estimates to develop the Platform ranged from \$1 million to \$5 million, with ongoing annual costs estimated below \$1 million.³⁰

²⁷ Benefits Analysis at 4.

²⁸ *Id.* (footnote 2).

²⁹ Overview Aff. at P 31.

³⁰ *Id.*

In addition, the “Southeast EEM will allow for better integration of diverse generation resources, including rapidly growing renewables and will reduce renewable curtailments.”³¹ The Benefits Analysis confirmed that benefits will scale with the addition of more solar and wind resources in the region. Specifically, the Benefits Analysis looked at a “carbon constrained scenario” that assumed increased penetration of renewables over time, consistent with trends in the region. Under this scenario, benefits are projected to rise to about \$100 million per year.³²

Finally, the relative simplicity of the Southeast EEM also means it can be implemented quickly. This means expected benefits will flow to Members and their customers as soon as possible.

In short, the Members designed the Southeast EEM to implement incremental improvements to the efficiency of the existing bilateral wholesale market in the Southeast that will yield substantial benefits, relative to costs. Members based the design on explicit core principles, in particular the principle that market benefits must exceed costs, collectively and for each market participant. These principles were developed through concerted consensus building, enabling a diverse group of entities to come together to agree upon enhancements to the Southeastern market structure.

C. Development efforts and stakeholder engagement have been robust

Over the past year, the Southeast EEM Members have pursued the core principles set out above, developed and refined their proposal, and engaged experts to further review and refine their proposal, all while engaging in extensive stakeholder discussions. The effort has involved hundreds of individuals and thousands of hours of work from Members’ employees. Stakeholder outreach has included “governmental entities and non-governmental entities such as environmental groups, trade associations, and individual customers. In many cases, there were multiple discussions with the same entity. The resulting exchanges of ideas were robust and welcome.”³³ All told, the Members estimate there were hundreds of conversations of this nature. The result of this combined effort is the Southeast EEM Proposal submitted to the Commission today. The Southeast EEM Proposal is a significant achievement.

D. Commission action is a prerequisite to further significant development

Before making significant commitments of monetary and human capital to develop the Southeast EEM, the Members need regulatory certainty. If the Commission accepts the Southeast EEM Filings without material modification or condition within the requested 90 days, the Members anticipate the following schedule to implement the Southeast EEM:

³¹ *Id.* at P 26.

³² Benefits Analysis at 4.

³³ Overview Aff. at P 20.

- May 13, 2021: Proposed effective date of the Southeast EEM Agreement.
- First Quarter 2021: Selection of vendor to build the Southeast EEM System.³⁴
- Second and Third Quarter 2021: Build out of Southeast EEM System.
- First Quarter 2022: Southeast EEM Commencement Date (customer savings begin).

Commission acceptance of the Southeast EEM Proposal is thus an integral step toward implementing the Southeast EEM.

III. The Commission should accept the Southeast EEM Agreement

The Southeast EEM, as structured under the terms of the Southeast EEM Agreement, is a just, reasonable and not unduly discriminatory expansion to the existing just and reasonable bilateral market in the Southeast. It will provide substantial incremental benefits to customers, driven by the two incremental changes enabled by the Southeast EEM Agreement – zero-dollar transmission service and automated matching at split-the-savings pricing for Energy Exchanges. Accordingly, the Southeast EEM Agreement should be accepted without modification.

Additionally, it is important to note that the proposal before the Commission is a carefully negotiated series of compromises, negotiated at arm’s length between fourteen very different founding Members, encompassing ten BAAs, and comprehensively blanketing the Southeast Region (“Territory”).³⁵ Further, it is a narrow proposal, from a review perspective, since the Southeast EEM Agreement is not, by itself, a new vehicle for the sale or transmission of electric energy at wholesale. Rather, transactions that occur through the Southeast EEM System would be consummated under existing authority. Features of bilateral markets in the

³⁴ The Members note that, while they may endeavor to select a vendor before obtaining FERC approval, they plan to condition the commencement of performance of any vendor agreement on FERC acceptance.

³⁵ As part of that agreement, the Members selected the *Mobile-Sierra* public interest standard of review for the Southeast EEM Agreement. Under that standard, “where parties have negotiated a . . . contract that sets firm prices . . . and that denies either party the right to change such prices or charges unilaterally, [the Commission] may abrogate or modify the contract only if the public interest so requires.” *Texaco Inc. v. FERC*, 148 F.3d 1091, 1095 (D.C. Cir. 1998). Such a standard is justified here where the Southeast EEM Agreement was freely negotiated by sophisticated parties and does not contain terms that are generally applicable to non-signatories. See *PJM Interconnection, L.L.C.*, 142 FERC ¶ 61,214 at P 184 (2013) (“On one hand, all such provisions in bilateral power sales contracts freely negotiated at arm’s length between sophisticated parties generally would establish contract rates and would come within the [*Mobile-Sierra*] presumption [of justness and reasonableness]. On the other hand, where the terms of an agreement would, if approved, be incorporated into the service agreements of all present and future customers, those terms are properly classified as tariff rates and the *Mobile-Sierra* presumption would not apply.”).

Southeast that are not changing are beyond the scope of this filing.³⁶ The changes proposed to implement the Southeast EEM Agreement improve on an already just and reasonable bilateral paradigm, and are themselves just and reasonable.

A. Commission jurisdiction

The Southeast EEM Agreement provides for the creation of a new trading platform that will match willing buyers and sellers across an expanded region created through de-pancaking of transmission rates for Southeast EEM transactions. However, neither the sale of power nor the sale of transmission service will be effectuated through the Southeast EEM System or under the Southeast EEM Agreement. Instead, all Energy Exchanges will be consummated under enabling agreements in the same manner that bilateral sales are consummated today, with transmission service provided under Participating Transmission Providers' transmission tariffs.

The Southeast EEM Agreement does, however, commit Members that are Participating Transmission Providers to amend their transmission tariffs to provide NFEETS. Thus, even though the NFEETS will be provided under those transmission tariffs, the Southeast EEM Agreement is related to that service within the meaning of Section 205(c).³⁷ We note that the Southeast EEM Agreement is also related to the provision of wholesale power sales that are subject to the Commission's jurisdiction. However, only sales that are pre-authorized under market-based rate authority will be "matched" through the Southeast EEM. The agreements for those sales are not filed with the Commission, so the Southeast EEM Agreement is not required to be reviewed by the Commission by virtue of its relationship to those unfiled agreements.

In short, it is the relationship of the Southeast EEM Agreement to transmission service, rather than its relationship to power sales, that most clearly implicates filing and review of the Southeast EEM Agreement under Section 205(c).

³⁶ See, e.g., *Duke Energy Ohio, Inc.*, 163 FERC ¶ 61,173 at P 25 (2018) (rejecting American Municipal Power's challenges to Duke Energy Ohio's return on equity, Section 30.9 credits and unfunded reserves as outside the scope of the proceeding where the utility "proposed narrow and discrete changes to its Template and Protocols" and such challenges were not "integral to [its] proposed changes"); *PJM Interconnection, L.L.C.*, 155 FERC ¶ 61,157 at P 195 (2016) (rejecting commenters' requests to institute an alternative Minimum Offer Price Rule ("MOPR") as outside the scope of the proceeding where PJM was not proposing to change its MOPR rules).

³⁷ While Southern Company is filing the entire Southeast EEM Agreement, the Commission's authority to review it remains limited by its statutory authority. See, e.g., *Cal. Indep. Sys. Operator Corp. v. FERC*, 372 F.3d 395 (D.C. Cir. 2004) (finding that the Commission exceeded its statutory authority to examine practices "related to" rates when it attempted to replace CAISO's governing board based on its own method of selection).

B. Key elements of the Southeast EEM Agreement

1. Southeast EEM roles and responsibilities

a. Southeast EEM roles

There are several distinct roles with the Southeast EEM. Members are those entities that, to date, have developed the Southeast EEM, executed the Southeast EEM Agreement, and agreed to fund the upfront and ongoing costs of the Southeast EEM as set forth in the Southeast EEM Agreement. To be a Member, an entity must be one of the following: (i) a Load Serving Entity located in the Territory; (ii) an Association, Cooperative or Governmental Entity that is a Load Serving Entity located in the Territory; or (iii) an Association, Cooperative or Governmental Utility created for the purpose of providing Energy to a Cooperative or Governmental Load Serving Entities (or the Load Serving Entities being served by an Association, Cooperative or Governmental Entity) located in the Territory.³⁸ As explained by Mr. Melda and Mr. Bellar:

Because the goal of the Southeast EEM is to bring benefits to customers through reduced costs gained by more efficient transactions that would not otherwise occur, the eligibility criteria for membership was tied to load-serving responsibilities, ensuring that the entities with decision-making authority over the design, goals, and objectives of the Southeast EEM will share a common purpose of achieving benefits for customers.³⁹

As of the date of this filing, there are fourteen Members, and several other entities have been involved in the development of the Southeast EEM and are working to obtain the necessary approvals to become Members.⁴⁰ In addition, in the future, any entity that meets the definition of “Member” and agrees to the Membership conditions contained in the Southeast EEM Agreement can become a Member.

The Members will govern the Southeast EEM and each will have a seat on a Membership Board that will be responsible for all significant decisions for the Southeast EEM. In addition, a revolving subset of Members will sit on the Operating Committee, which will be comprised of four representatives overseeing the day-to-day operations of the Southeast EEM. Finally, the Members will appoint one of the Members as their “Agent” for certain discrete Southeast EEM matters, as an administrative convenience. The Agent will have limited authority to enter into

³⁸ Southeast EEM Agreement Section 3.2.

³⁹ See Overview Aff. at P 33.

⁴⁰ As noted above in note 1, the following entities have participated in the creation of the Southeast EEM and are in the process of or are contemplating seeking the necessary approvals to execute the Southeast EEM Agreement and become Members: GSOC; GTC; MEAG, Oglethorpe; and Santee Cooper.

related agreements and take other actions on behalf of the Members that the Membership Board specifically approves.⁴¹

Entities that submit bids and offers into the Southeast EEM System are called “Participants” under the Southeast EEM Agreement. Participation is open to all entities that can physically transact in bilateral markets in the Southeast today, *i.e.*, any entity that “own[s] or otherwise control[s] a Source within the Territory and/or is contractually obligated to serve a Sink within the Southeast EEM footprint,” as well as any entities that can physically transact in the future.⁴² Because most transactions in the Southeast today are physical, this approach is consistent with the Members’ intent to enhance the existing bilateral market. Within this framework, the Members defined “Participant” to enable maximum participation. In addition to the Source/Sink requirement, Participants must: 1) execute a Participation Agreement, the form of which is attached to the Southeast EEM Agreement as Appendix A; 2) arrange to take Non-Firm Energy Exchange Transmission Service from each Participating Transmission Provider, either through execution of a service agreement under the transmission provider’s tariff or otherwise making arrangements for such service; and 3) have or enter into an enabling power sales agreement with at least three or more other Participants.⁴³ There is no cost to Participants for participating in the Southeast EEM.

Only Participants can use the Southeast EEM System to be matched for Energy Exchanges. A Member that wishes to engage in Energy Exchanges must do so as a Participant, and on exactly the same terms and conditions as non-Member Participants. Members who are subject to information sharing and other restrictions under the Commission’s Standards of Conduct⁴⁴ and Affiliate Restrictions⁴⁵ remain subject to those rules. In any event, for avoidance of doubt, the Southeast EEM Agreement contains prohibitions on sharing transmission function information or market information.⁴⁶

Two third-party independent entities will implement, manage, and oversee operation of the Southeast EEM System. In addition to issuing a request for proposals (“RFP”) to identify

⁴¹ See Southeast EEM Agreement, Appendix C (describing limited Agent functions).

⁴² See Market Rules at Part III (listing Participant requirements). For example, as noted in the Operations Affidavit, demand response and distributed energy resources cannot be a registered source or sink today, but could at some point be able to participate in the market under revised state laws. See Operations Aff. at n.6.

⁴³ *Id.*

⁴⁴ 18 C.F.R. pt. 358.

⁴⁵ 18 C.F.R. § 35.39. Participants will have access to their own information, but will not be able to access any information regarding other Participants, other than settlement information related to the parties they are matched with, and the transactions for which they are matched – the same information they would have if they entered into a bilateral transaction without the matchmaking provided by the Southeast EEM System.

⁴⁶ Southeast EEM Agreement Section 3.5.

entities capable of developing the Southeast EEM, the Members will subsequently issue an RFP to identify an entity capable of administering the Southeast EEM System in accordance with the Market Rules (the “Southeast EEM Administrator”). The Southeast EEM Administrator selected to manage and oversee operation of the Southeast EEM System may be the same entity that the Members select through the RFP process to develop and build the Southeast EEM System or may be a different qualified entity.⁴⁷

In addition, the Membership Board will hire an auditor, who will monitor the functionality of the Southeast EEM System to ensure that it is operating correctly and in accordance with the Market Rules outlined in the Southeast EEM Agreement (“Auditor”).⁴⁸ 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. The scope of the Auditor’s responsibilities aligns with the Members’ objectives of transparent operation with minimal bureaucracy to maximize benefits to customers. As described below and in the Economic Affidavit, the Southeast EEM does not create new opportunities for exercise of market power and has been designed to thwart potential avenues for market manipulation.⁴⁹ Without any new opportunities for the exercise of market power and with strong safeguards regarding potential market manipulation, there is no need for a market monitoring function, just as there is no such need today. Any additional market monitoring functions beyond the Auditor’s responsibilities would be superfluous, creating additional administrative costs that are not justified. For these reasons, Members are unwilling to fund the costs of a market monitor and believe the traditional means of Commission oversight of MBR transactions will continue to provide adequate opportunities for review and regulatory protection.

⁴⁷ Operations Aff. at P 31. The Administrator will not be Commission-jurisdictional as its role will be purely ministerial. *See, e.g., 1 Bechtel Power Corp.*, 60 FERC ¶ 61,156, 61,572 (1992) (finding that a company was not “operating” a facility where it “merely perform[ed] specific services that are ordered and directed by another party”). Transmission service will continue to be provided by Participating Transmission Providers under their respective tariffs, with the Southeast EEM Administrator only overseeing and operating the Southeast EEM System and submitting e-Tags to reserve and schedule such service. In addition, and as noted above, the Southeast EEM Administrator will not be a party to any transactions consummated as the result of Energy Exchanges or otherwise itself engage in power sales.

⁴⁸ Market Rules at Section IV.D; Operations Aff. at P 52.

⁴⁹ *See* Economic Aff. at PP 72, 83-89.

The chart below, also included in the Operations Affidavit, summarizes these roles:⁵⁰

Members	Will be the parties to the Southeast EEM Agreement; will fund initial development of Southeast EEM System and on-going costs; will have voting rights; may also be Participants.
Participants	Will not be parties to the Southeast EEM Agreement unless are also Members; must sign a Market Participant Agreement; will be able to participate in the market; Participants that are not also Members will not have funding obligations or voting rights.
Membership Board	Will be the governing body comprised of a representative from each of the Members.
Operating Committee	Will handle day-to-day operations, comprised of four representatives from the Members.
Agent	Will perform a purely administrative role (<i>e.g.</i> , will act as signatory to the agreement with Southeast EEM Administrator); will be one of the Members.
Southeast EEM Administrator	Will be an independent third party contracted to operate the Southeast EEM; will not be a Member, Participant, Agent, or Auditor.
Auditor	Will be an independent third party that reports to Membership Board; tasked with ensuring that the Southeast EEM System functions properly (<i>e.g.</i> , that it adheres to the Market Rules); will not be a Member, Participant, Agent, or Southeast EEM Administrator.
Participating Transmission Providers	Will provide [NFEETS] to Participants under their respective transmission service tariffs or guidelines; may also be Members or Participants; are not parties to the Southeast EEM Agreement or the Market Participant Agreement in their capacity as a Participating Transmission Provider. ⁵¹

b. Cost allocation to Members

Members will share the costs of developing the Southeast EEM System and of ongoing operations (including paying for the Administrator and Auditor). Each Member’s allocated costs will have two components: 1) 25% of costs will be allocated equally based on the number of Member Representatives; and 2) the remaining 75% of costs will be allocated based on the breakdown of each Member’s net energy for load (“NEL”), with Members paying an amount proportionate to their individual Member NEL (“MNEL”) versus total NEL of all Members

⁵⁰ Operations Aff. at P 13.

⁵¹ To the extent the Participating Transmission Provider is also a Member, it will be a party to the Southeast EEM Agreement, and to the extent a Participating Transmission Provider is also a Participant, it will be a party to a Market Participant Agreement.

(“ANEL”).⁵² The MNEL for each Member will be updated each year for purposes of cost allocation and voting rights.⁵³ Costs will be allocated to Members at the beginning of every year, based on their then-current MNEL and the annual Southeast EEM budget for that year (“Annual Budget”). However, amounts will be payable when the costs are actually incurred.

New Members will be able to join during an “Enrollment Period” that will run from July 1 through September 30 of each year.⁵⁴ The Enrollment Period will give Members certainty about cost allocation and voting rights when the NEL values are updated each October. There is no minimum Membership term and there is no “exit fee” for withdrawal. Withdrawing Members will remain responsible for any costs previously allocated to them prior to the date of their withdrawal, but will not be responsible for any additional fees assessed during that year.⁵⁵ A Withdrawing Member’s cost allocation would include any initial start-up fees allocated to it as of the date of its notice of withdrawal.⁵⁶ The Members do not view this as a barrier to exit or an exit fee, because the start-up costs will be low (relative to other models) and are expected to be paid out within the first year of market operations by each of the Members. Similarly, annual budgeted costs are expected to be low, again relative to other models.

As Mr. McGeeney and Mr. Sellers explain, the “hybrid cost allocation methodology is intended to reflect the reality that some costs of the Southeast EEM will be incurred no matter the number or size of Members, and therefore, should be allocated equally among Members; while other costs will be incurred because of the added scale, use, and benefit of Members with more generation or load and, therefore, should be allocated based on size.”⁵⁷ The Members selected NEL as the basis for cost allocation because “Members have also sought to ensure that those Members which are expected to make more use and receive more benefits from the Southeast EEM based on their larger generation portfolio and load responsibilities will not only have a larger voting interest, but will also bear more cost responsibility.”⁵⁸ In addition, NEL is an objective measure that is verifiable (based on NERC submissions each year) and will remain relatively stable over time, thus providing greater certainty about costs associated with the market, compared to transaction- or trading volume-based measures. Cost stability is particularly desirable in the early days of a market.

⁵² Southeast EEM Agreement Section 7.2. For purposes of the 25% allocation, affiliated Members will be counted as a single Member, and for purposes of the 75% allocation, the NELs of all affiliated Members will be aggregated. The Operations Affidavit provides a breakdown of the current Members’ load. *See also* Operations Aff. at P 29.

⁵³ Southeast EEM Agreement Section 7.2.

⁵⁴ *Id.* at Section 3.2.3.

⁵⁵ *Id.* at Section 4.2.

⁵⁶ *Id.*

⁵⁷ Operations Aff. at P 28.

⁵⁸ *Id.*

Finally, similar metrics will be used to allocate voting rights, as described below. Thus, payment responsibility will align with voting rights.

c. **Withdrawal**

A core principle of the Southeast EEM is that it must be completely voluntary. To that end, the Southeast EEM Agreement does not require or mandate a minimum participation term for Members. Members may withdraw at any time after either 30 or 90 days written notice (with Balancing Authority/Participating Transmission Provider Members having a longer notice period), while remaining responsible for all costs previously allocated to them.⁵⁹ In addition, to respect the non-jurisdictional status of many of the founding Members, the Southeast EEM Agreement contains a special provision allowing such Members to withdraw immediately if their non-jurisdictional status is threatened.⁶⁰ Again, such Member would remain responsible for its previously allocated annual costs.

A FERC notice of termination filing will be required to terminate the participation of any Jurisdictional Member in the Southeast EEM Agreement.⁶¹ However, no such filing will be required for withdrawal of Non-Jurisdictional Members. As to the Non-Jurisdictional Members, the Southeast EEM Agreement is not a rate schedule, tariff or service agreement “required to be on file” within the meaning of 18 C.F.R. § 35.15. The non-jurisdictional Members are not providing jurisdictional service, and so are not filing the Southeast EEM Agreement. They also are not receiving service under the Southeast EEM Agreement (as noted, the Southeast EEM Agreement is related to such service, but does not provide it). Accordingly, Non-Jurisdictional Members do not require, and will not seek, authorization of this Commission to withdraw from the Southeast EEM and terminate their participation in the Southeast EEM Agreement.⁶²

⁵⁹ Southeast EEM Agreement Sections 4.2.1, 8.7.

⁶⁰ *Id.* at Section 4.2.1; Operations Aff. at P 19.

⁶¹ See 18 C.F.R. § 35.15. The exact nature of the filing or (filings) associated with withdrawal will depend on whether the Member filed a certificate of concurrence or, as Southern Company has, the entire Southeast EEM Agreement. See Overview Aff. at P 35 & n.6. Additionally, if a Participating Transmission Provider withdraws, it would need to file with the Commission to remove the provisions for NFEETS from its OATT. Such a filing would be presumptively just and reasonable, to the extent that it was returning the Tariff to conformance with the *pro forma* tariff. See, e.g., *Louisville Gas & Elec. Co.*, 114 FERC ¶ 61,282 at P 27 (2006) (articulating a withdrawal standard requiring, among other things, that a company prove its replacement tariff, including any deviations from the pro forma OATT, is “consistent with or superior to” the pro forma OATT, and accepting the company’s replacement tariff where it incorporated the *pro forma* OATT). In addition, as discussed more fully in the Tariff Filings, the tariff amendments for NFEETS specify that a transmission owner providing NFEETS will not plan its system to provide such service, and that the transmission provider’s membership in the Southeast EEM, and provision of NFEETS, is voluntary, such that no Participant can or should rely on continued provision of such service.

⁶² See Southeast EEM Agreement Section 8.7 (“A Non-Jurisdictional Member, in its sole discretion, may immediately withdraw from this Agreement if it becomes apparent that the Non-Jurisdictional Member’s engagement in activities under this Agreement or FERC’s approval of this Agreement would

2. Governance

a. Governing bodies

The Members of the Southeast EEM will make all decisions through a Membership Board that is responsible for all significant issues and an Operating Committee that is responsible for day-to-day functioning of the Southeast EEM System. “When developing the governance structure for the Southeast EEM, the Members had two primary goals: 1) fairly allocating voting rights to ensure that higher paying Members have higher voting rights while respecting smaller entities; and 2) respecting and recognizing the diverse Member interests.”⁶³ Thus, the composition of these governing bodies and their respective voting rights were designed to give entities representing more load (and taking on a higher share of costs) commensurate voting rights, while also ensuring that entities representing a smaller share of load have a fair say. Further, the Operating Committee is comprised of representatives of each of the Membership sectors. As described below, the governance structure of this multilateral arrangement fairly balances payment responsibility with the desire for every Member to have a voice. Ultimately, continued fairness will be dictated by the voluntary nature of participation in the Southeast EEM. Decisions that are not consensual will risk the loss of Members. That means that the governance structure is a structure for consensus-driven administration.

i. The Membership Board

Article 4 of the Southeast EEM Agreement establishes the rules of the Membership Board. Each Member, including Members with multiple participating affiliates in the Southeast EEM, will have one representative on the Membership Board. Each Representative will have two votes: 1) a single vote (“Popular Vote”); and 2) a weighted vote based on the Member’s MNEL (“NEL Vote”). To ensure that no entity can control the vote, the Southeast EEM Agreement requires that, for any vote, the combined NEL Vote must represent at least three entities. For “Significant Matters,” defined in the Southeast EEM Agreement to include the most critical issues (*e.g.*, amendments to the Southeast EEM Agreement),⁶⁴ an action will pass with a majority of the Popular Vote but requires a supermajority NEL Vote. For all other matters, an action will pass with a majority of the Popular Vote and NEL Vote. In summary, for any action

(i) jeopardize the tax-exempt status of interest paid by the Non-Jurisdictional Member on outstanding debt obligations, (ii) render the Non-Jurisdictional Member a Public Utility subject to FERC’s jurisdiction, or (iii) if the Non-Jurisdictional Member determines that any conflict exists between provisions of this Agreement and applicable Laws and regulations of the state of its creation, or rate schedules adopted by its governing body under state Law, in which case such state Laws, regulations, or rate schedules shall govern with respect to such Non-Jurisdictional Member. The withdrawing Non-Jurisdictional Member may withdraw from this Agreement on this basis by providing written notice to all other Members and the Southeast EEM Administrator.”); Operations Aff. at P 19.

⁶³ Operations Aff. at P 14.

⁶⁴ Southeast EEM Agreement Section 1.1 (defining “Significant Matters”).

to pass the Membership Board, the following voting rules will be followed, with the percentages based on the present Members (who must represent a quorum):⁶⁵

	Popular Vote	NEL Vote	Minimum Members in Support
General Matters	>50%	>50%	3
Significant Matters	>50%	>67%	3

As Mr. McGeeney and Mr. Sellers explain, these voting rights were carefully negotiated among the parties, and are intended to ensure that all Members have a voice in governance.⁶⁶

ii. The Operating Committee

The Operating Committee will handle all day-to-day activities of the Membership, including interfacing with the Southeast EEM Administrator, and can act on any matter not specifically reserved to the Membership Board.⁶⁷ Like voting rights and cost allocation, the composition of the Operating Committee is in part driven by load and has built-in protections to ensure that each sector has a fair say. The Operating Committee will have four Committee Members, each with a single, equal vote:⁶⁸ two from the “IOU Sector,” one from the “Cooperative Sector,” and one from the “Governmental Utility Sector.”⁶⁹ The Members agreed to this composition because the IOU Sector makes up about half of the total NEL, with the Cooperative Sector and Governmental Utility Sector making up the other half.⁷⁰ Committee Members will be selected by their sectors, and will have year-long terms. Each sector also has the authority to remove Committee Members.⁷¹ To ensure, again, that one subset of Members cannot unduly control the Southeast EEM, votes by the Operating Committee must be unanimous, with any issues that cannot be resolved taken up to the Membership Board. To encourage transparency among the Members, all Members have a right to attend, observe, and participate in Operating Committee meetings, but cannot vote if they are not an Operating Committee member.⁷²

⁶⁵ Operations Aff. at P 23.

⁶⁶ *Id.* at P 24.

⁶⁷ Southeast EEM Agreement Section 5.1.

⁶⁸ *Id.* at Sections 5.2, 5.7.

⁶⁹ *Id.* at Sections 5.2, 5.7.

⁷⁰ *See* Operations Aff. at P 25.

⁷¹ Southeast EEM Agreement Section 5.4.

⁷² *Id.* at Section 5.9(a).

b. Participant and external stakeholder involvement

The Members have engaged in extensive stakeholder outreach, which will not end with this filing; Members will continue to actively encourage stakeholders to communicate their questions and concerns. As discussed above, the Members, individually or collectively, have spoken to a wide variety of government entities, trade groups, non-governmental entities, and individual customers. In many cases, they have met multiple times with the same entities, and the discussions have been free-flowing and robust, with good communication and idea exchanges on all sides. Comments have been overwhelmingly supportive, but a common request was that the Members take the Southeast EEM construct further, to have more ambitious aims entailing far greater complexity. As described in the Overview Affidavit, the current proposal is the one that struck a delicate balance among the Members, and thereby enables, for the first time, a region-wide market enhancement in the Southeast.⁷³

Stakeholders, and indeed the general public, will have access through the Southeast EEM website to all data described below in Section III.B.5. To facilitate continued engagement with all stakeholders, the Members will hold annual meetings open to all interested parties.⁷⁴ These meetings will be an open forum for stakeholders to address any issues they may have with the Southeast EEM. Stakeholders will also have opportunities to comment on the Southeast EEM proposal in this proceeding and, for any future amendments to the Southeast EEM Agreement, in any subsequent proceedings at the Commission. Finally, because the Market Rules are part of the filed rate, any changes to the Market Rules will need to be filed at FERC. As such, stakeholders will be able to submit comments on any such amendments to the Market Rules.

c. Dispute resolution

Article 12 of the Southeast EEM Agreement establishes dispute resolution procedures for the Members. It is based on the dispute resolution procedures in the FERC *pro forma* OATT and applies equally to all Members, including non FERC-jurisdictional Members.⁷⁵ Because NFEETS will be provided under Participating Transmission Providers' existing tariffs, any dispute between a Participant, as a transmission customer, and a Participating Transmission Provider will be resolved under the dispute resolution provisions of the Participating Transmission Provider's tariff. Any dispute between two Participants over an Energy Exchange would be resolved under the contract between those Participants under which the Energy Exchange is consummated and settled.⁷⁶

⁷³ Overview Aff. at P 4.

⁷⁴ Southeast EEM Agreement Section 4.4.

⁷⁵ See *Pro Forma* OATT, Section 12 (Dispute Resolution Procedures), <https://www.ferc.gov/sites/default/files/2020-05/pro-forma-OATT.pdf>.

⁷⁶ Participants also can submit complaints to the Southeast EEM Auditor, which will be referred to the Membership Board. Southeast EEM Agreement, Appendix B at VI.D.5.

3. Non-Firm Energy Exchange Transmission Service

The Southeast EEM Agreement and Market Rules provide that, to utilize the Southeast EEM, Participants must have separate arrangements in place with each of the Participating Transmission Providers to take NFEETS. Further, all Members that own and operate transmission need to amend their tariff or comparable documentation to provide NFEETS.⁷⁷ The current FERC Jurisdictional Members are implementing these requirements through the Tariff Filings being made contemporaneously with this Filing. Acceptance of the NFEETS tariff amendments is being sought in those dockets.

NFEETS is a new type of transmission service. It is a non-firm product, provided on an as-available basis for the sole purpose of facilitating Energy Exchanges, and it has the lowest priority of all available services. The Southeast EEM Agreement establishes the minimum characteristics of NFEETS and requires Participants to obtain it from all Participating Transmission Providers within the Southeast EEM Footprint. However, the service itself will be obtained by each Participant from individual Participating Transmission Providers, and it will be the responsibility of Participants to execute the necessary service agreements enabling them to receive NFEETS. The Southeast EEM Agreement and Market Rules provide that NFEETS must have the following characteristics:

- 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;
- 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. Such financial Losses will be assessed based on the loss factor and loss rate in the Participating Transmission Provider’s tariff and equally shared between the matched bidder and offeror;
- It 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 or other reservation, scheduling or tagging requirements applicable to other forms of transmission service offered by the Participating Transmission Provider);

⁷⁷ Southeast EEM Agreement at 3.2.1; Southeast EEM Agreement, Appendix B at III.B.4.

- It may not be reassigned, sold, or redirected;
- It can only be provided by a Participating Transmission Provider whose system, if added to the other participating transmission systems, creates a continuous Contract Path; and
- The Participating Transmission Provider must provide the information required by the Southeast EEM Market Rules (*e.g.*, available transmission).⁷⁸

Because it is a non-firm, as-available product, no transmission studies are necessary to obtain NFEETS. Participants need only execute a transmission service agreement for NFEETS (or otherwise have access to NFEETS)⁷⁹ on each Participating Transmission Provider's transmission system.

4. Market Rules

The Southeast EEM Market Rules establish the terms for: 1) market timing; 2) how Bids and Offers will be submitted, matched and how associated e-Tags will be submitted; 3) what the Algorithm will solve for; 4) what information about the Southeast EEM will be publicly available and 5) how the Auditor will function.⁸⁰ The Market Rules are included as Appendix B to the Southeast EEM Agreement and are incorporated by reference in the Participation Agreement. All Participants will be required to sign the Participation Agreement, the form of which is included as Appendix A to the Southeast EEM Agreement, through which the Participants will agree to be bound by the Market Rules, as they may be changed from time to time.

a. Market timing

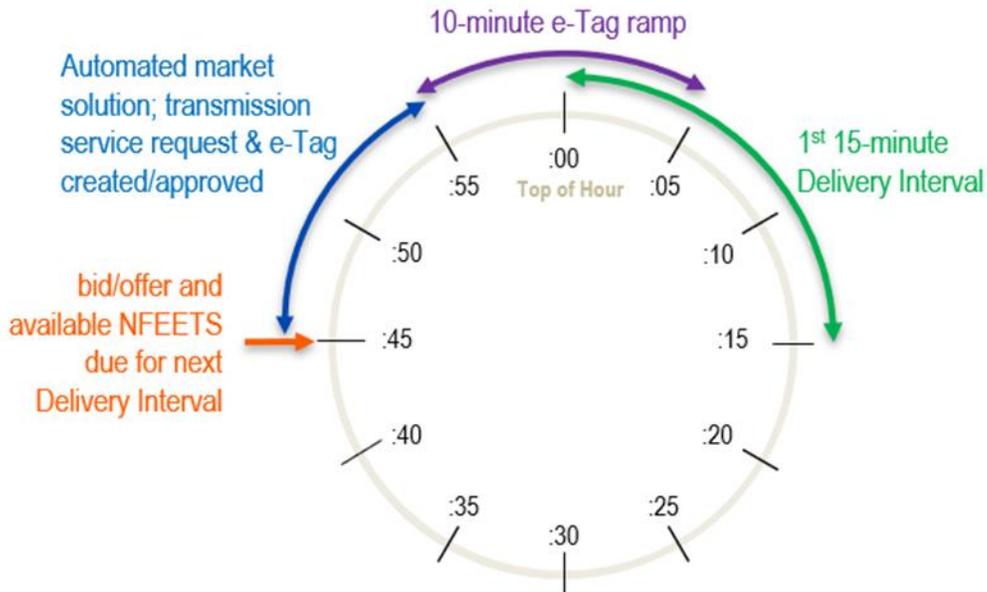
Besides eliminating transmission costs, the most significant enhancement to the bilateral market that the Southeast EEM provides is the ability to transact on a compressed timeframe,

⁷⁸ Southeast EEM Agreement at 1.1; Operations Aff. at P 32.

⁷⁹ Some of the non-jurisdictional entities will not require service agreements to make NFEETS available.

⁸⁰ In addition to the Market Rules, the Southeast EEM will also utilize a business practice manual containing more detail on procedures surrounding market implementation. Transmission Providers often use manuals containing "implementation details" of their tariffs, consistent with the Commission's "rule of reason" policy under Section 205(c) of the FPA. *See, e.g., Puget Sound Energy, Inc.*, 155 FERC ¶ 61,111 at P 97 (2016) (accepting Puget's proposal to clarify in its EIM Business Manual the fact that it would not charge loads and resources telemetered out of Puget's BAA for EIM administrative charges and it would not sub-allocate any EIM resources to those loads telemetered out of Puget's BAA because "it would not be reasonable to require Puget to set forth in its OATT a list of all parties who are not subject to each specific provision" and therefore "Puget's EIM Business Practice Manual is an appropriate place for Puget to include [that] information."). The manuals here would perform the same function; to provide further details regarding the implementation of processes found in the Southeast EEM Agreement.

made possible by the Southeast EEM System technology to be funded by Members. The graphic below demonstrates the Southeast EEM anticipated market timing for the first Delivery Interval⁸¹ as an example, which is described in more detail in the Operations Affidavit.⁸² There are four, fifteen-minute “Delivery Intervals” per hour:



b. Inputs to Southeast EEM Algorithm

The Algorithm will run based on information provided to it by Participating Transmission Providers and Participants. The Algorithm must have Participating Transmission Providers’ data related to available transmission on their system for the upcoming hour⁸³ and the applicable transmission loss factor and transmission loss rates no later than 15 minutes before the start of the next Clock Hour. The transmission loss factor and rate will be based on each Participating Transmission Provider’s tariff and must be provided so that financial Losses can be calculated when matching Energy Exchanges. Participants will be required to submit two sets of information: 1) general “profile” information about counterparties with whom it will not accept a match or geographic areas where it will not trade (“Counterparty Specific Constraints”); and 2)

⁸¹ A “Delivery Interval” is defined under the Market Rules as “a fifteen (15) minute period in which Non-Firm Energy is intended to be delivered by a Seller to its matched Buyer(s).” Market Rules at Article II.

⁸² See Operations Aff. at P 35.

⁸³ Some Participating Transmission Service Providers have the availability to provide updated intra-hour available transmission information, and will be permitted to do so as long as the Southeast EEM System has the information at least 15 minutes prior to the applicable Delivery Interval. See Operations Aff. at P 35. The plans of Dominion Energy SC, Duke Energy, LG&E/KU and the Southern Companies are described *infra* at 40.

for each Delivery Interval, information about its Bid or Offer (“Bid Information” or “Offer Information”).⁸⁴

Counterparty Specific Constraints can be selected for any reason and will be one mechanism by which Commission-jurisdictional entities can ensure compliance with their MBR authority. Like today, the burden of ensuring compliance with MBR limitations will be on the Participants (not on the Southeast EEM System). For example, if a Participant has market-power mitigation and cannot make sales at market-based rates in its BAA, it is able to designate its BAA as a locational constraint so that the Algorithm would not permit it to match for any sales with a Point of Delivery within that BAA.⁸⁵ Similarly, a Participant can toggle off its ability to trade with a particular counterparty, so as to, for example, prevent violation of the Commission’s affiliate restrictions,⁸⁶ avoid exceeding counterparty credit limits, or avoid trading with a Participant without an enabling agreement with that Participant. Participants can update their Counterparty Specific Constraints at any time up to 15 minutes prior to the start of the next Delivery Interval, and do not have to identify a reason for their selection.⁸⁷ The Market Rules require that Participants toggle on at least three potential counterparties for each transaction.⁸⁸ These constraints will be constant inputs into the Algorithm until changed by the Participant – the Participant need not submit the information with each new Bid or Offer.

Moreover, while the Southeast EEM will not set or police individual restrictions, the default start for all geographic and counterparty toggles will be “off.” That means that to trade in a particular BAA, or with a particular counterparty, a Participant will have to make a conscious decision to toggle that capability to “on.” That will provide Participants the opportunity to set toggles to reflect, for example, on any market power mitigation or affiliate transaction requirements.

Bid and Offer Information must be submitted no later than 15 minutes before the start of the next Delivery Interval and must include:

- Participant name.
- Whether the submission is a Bid or an Offer.
- A MW volume for the Bid or Offer in increments of 4 MW.

⁸⁴ Southeast EEM Agreement, Appendix B at IV.B.3.

⁸⁵ Dominion Energy SC, Duke, LG&E/KU, and the Southern Companies each have market power mitigation within their BAAs. *See supra* note 18. Dominion Energy SC, Duke, LG&E/KU each intend to use this Counterparty Specific Constraint mechanism to comply with the limitations in their respective MBR tariffs.

⁸⁶ 18 C.F.R. § 35.39.

⁸⁷ Southeast EEM Agreement, Appendix C at IV.A.2.

⁸⁸ *See* Market Rules at Article IV.A.3. *See also* Operations Aff. at P 39.

- For all Offers, an Offer Price and for all Bids, a Bid Price.
- For all Offers, a Source and for all Bids, a Sink.
- The specific Delivery Interval to which the Bid or Offer applies.
- Whether the submission: 1) must be matched in full or not at all or 2) can be matched at any volume below the Bid or Offer volume (subject to the 4 MW increment rule).
- Any other components as may be required for the Southeast EEM System to perform actions set forth in Section IV.C of the Market Rules or to generate the reports described in Section V of the Market Rules.⁸⁹

In addition, an Offer may include (as applicable) the maximum Energy Exchange Price an offeror is willing to accept.⁹⁰ The “maximum Energy Exchange Price” function is another mechanism by which Participants can ensure compliance with MBR mitigation, as discussed below in Section III.C.6.

c. Matching through the Southeast EEM Algorithm

The Algorithm will run for the 15-minute Delivery Intervals starting at the top of each hour and will produce a set of Energy Exchanges that maximizes overall market benefit in light of the submitted Bids and Offers, financial Losses, and all constraints. An Energy Exchange will not be made if there is a constraint (*e.g.*, if there is insufficient transmission along the contract path, or if a match would be contrary to a Counterparty Specific Constraint entered by a Participant). Further, the Algorithm will only produce Energy Exchanges that, on their own, provide a benefit to both the bidder and offeror after accounting for charges for transmission losses.

Prices for Energy Exchanges will be set on a split-the-savings basis, *i.e.*, the price will be halfway between the Bid Price and Offer Price, adjusted for any Losses (which must be financial and will also be split evenly between the matched Participants).⁹¹ Dr. Pope provides the following formulaic representation of the Energy Exchange Price for any particular Energy Exchange:⁹²

⁸⁹ Southeast EEM Agreement, Appendix B at IV.B.3.

⁹⁰ *Id.*

⁹¹ *Id.* at IV.C.5.

⁹² Economic Aff. at P 39.

(1) **Energy Exchange Price** (\$/MWh) =

$$\frac{\frac{1}{2}(Bid\ Price + Offer\ Price)(MWh) + \frac{1}{2}(Seller\ Losses - Buyer\ Losses)}{MWh}$$

Where *Bid Price* and *Offer Price* refer to prices in \$/MWh and *Seller Losses* and *Buyer Losses* refer to total cost of losses.

The Members selected the split-the-savings methodology because it comports with the core principle of maximizing and sharing benefits. An offer-based methodology or bid-based methodology would stack those benefits towards load or generators, respectively.⁹³ The split-the-savings methodology instead is a “win-win” for all Participants. Moreover, as explained by Mr. Melda and Mr. Bellar, split-the-savings pricing compliments the existing IRP-based structure of the Southeast market:

The decision to use split-the-savings pricing is a natural outgrowth of the goal of achieving customer benefits for everyone participating in the Southeast EEM. As we described earlier, electric providers in the Southeast use bilateral trades in conjunction with systems designed through integrated resource planning (or equivalent) procedures to enhance customer savings. They do this by using bilateral transactions to trade around the assets developed through their planning processes. Purchases of power produce savings when they allow a generator with higher marginal costs to be backed down, and sales of power produce savings by allowing crediting of margins from sales against customer costs. Split-the-savings, as the name rightfully suggests, splits the benefit among the buyer and the seller, and so enhances the benefits that Participants already obtain by trading around their planned resources.⁹⁴

Matching through the Southeast EEM System is intended to be binding on the Participants. By submitting a Bid or Offer, the Participant is committing to consummate the sale under the appropriate enabling agreement if matched, and as discussed, may face imbalance charges if it fails to do so.⁹⁵ The Southeast EEM System will submit e-Tags to the appropriate BA(s) and Participating Transmission Provider(s) and applicable Participant(s) and will provide sufficient information for the selling Participant to ramp up or down and dispatch its generation as needed.⁹⁶ The Southeast EEM System will also send matched Participants a notification of the basic information regarding the match such as the price and volume. It will be up to

⁹³ Operations Aff. at P 49.

⁹⁴ Overview Aff. at P 25.

⁹⁵ See Operations Aff. at P 47.

⁹⁶ See *id.* at P 48.

Participants to dispatch their generation in accordance with the e-Tag,⁹⁷ and subsequently to settle the transactions pursuant to the applicable enabling agreement, as they would for any other transaction in the bilateral market. The Southeast EEM will not establish any independent, third party entity for settlement purposes or to otherwise take part in the transaction and, thus, aside from the matched buyer and seller, there is no other party to any transaction matched through the Southeast EEM.

If for some reason an Energy Exchange is made, an e-Tag created, and one or both 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.⁹⁸ This is an important feature of the Southeast EEM design and is consistent with operations in the bilateral market today. The potential to pay imbalance charges creates what amounts to a penalty for anyone who does not live up to their delivery or purchase commitment, thereby creating a substantial incentive to submit only physically realistic Bids and Offers.

5. Transparency and auditing

The Southeast EEM Agreement and the Market Rules enhance transparency in the Southeast markets. Section V of the Market Rules provides that the Southeast EEM Administrator will publish robust public information and specifies what the information will be.⁹⁹ This list is intended to strike a balance to provide Participants, customers, and the public with confidence that the Southeast EEM is working properly and providing benefits, while at the same time protecting commercially sensitive information and avoiding potentially anti-competitive price discovery.¹⁰⁰ To achieve this balance, all reported pricing information will be aggregated and will not be provided until at least the day after the trading day.¹⁰¹ As Dr. Pope explains, the information proposed to be provided will neither enable a Participant to predict future pricing or collude with others.¹⁰² In addition to the Southeast EEM's publicly provided data, all sales made by entities that submit EQRs today¹⁰³ will continue to be reflected in EQRs

⁹⁷ Note that in addition to the seller dispatching generation up, *i.e.*, increasing generator output, the buyer likely will need to dispatch generation down. The Southeast EEM is not a substitute for resource adequacy requirements. *See* Overview Aff. at P 27.

⁹⁸ *See* Operations Aff. at P 47.

⁹⁹ Southeast EEM Agreement, Appendix B at V.

¹⁰⁰ *See* Operations Aff. at P 53.

¹⁰¹ *See* Market Rules Section V.

¹⁰² *See* Economic Aff. at PP 49-50 & n.32.

¹⁰³ The following Members currently file EQRs and will continue to do so upon operation of the Southeast EEM: Southern Companies, AECI, Dominion Energy SC, DEC, DEP, LG&E, KU, NCMIPA Number 1, PowerSouth, NCEMC and TVA. Additionally, of the entities listed in note 1, *supra*, that are pursuing Membership, Oglethorpe Power Corporation files EQRs.

for the appropriate enabling agreements. Because transactions matched as Energy Exchanges will be 15-minute transactions, they generally will be easily identifiable in the EQRs of FERC-jurisdictional sellers.¹⁰⁴ Additionally, FERC will continue to have access to e-Tags submitted pursuant to Order No. 771.¹⁰⁵ Southeast EEM 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.

The Southeast EEM Members will hire a third-party Auditor to review and analyze Southeast EEM market data to ensure that the Southeast EEM System is properly functioning. The Auditor will “[v]erify that the Southeast EEM System operates in accordance with the Market Rules, including the determination and application of Bids, Offers, constraints, matched settlements, OASIS reservations, and e-Tags”¹⁰⁶ and will report any concerns to the Membership Board. The Auditor may also receive complaints from Participants, which it will refer to the Membership Board and investigate at the Membership Board’s discretion.¹⁰⁷ A full list of Auditor functions is listed in Section VI.D. of the Market Rules.

As discussed above, the Southeast EEM will not create new concerns related to the Commission’s information sharing restrictions in the Standards of Conduct¹⁰⁸ or Affiliate Restrictions.¹⁰⁹ All Members subject to those rules are obligated to ensure their own compliance, and for avoidance of doubt, the Southeast EEM Agreement contains safeguards regarding disclosure of transmission function information and market information.¹¹⁰

C. The Southeast EEM Agreement is just and reasonable and not unduly discriminatory and should be accepted

The Southeast EEM Agreement is just and reasonable and not unduly discriminatory, and thus it should be accepted for filing without modification. When reviewing a proposal under FPA Section 205, the Commission’s inquiry is limited to determining “whether the rates proposed by a utility are reasonable - and [does not] extend to determining whether a proposed rate schedule is more or less reasonable than alternative rate designs.”¹¹¹ Further, the Commission’s authority to change aspects of a proposal filed under FPA Section 205 is limited

¹⁰⁴ Some limited 15-minute transactions may occur outside of the Southeast EEM, but the Members expect those to be limited, as they are today. *See* Operations Aff. at P 41.

¹⁰⁵ *See generally, Availability of E-Tag Information to Comm’n Staff*, Order No. 771, 141 FERC ¶ 61,235 (2012) (“Order No. 771”).

¹⁰⁶ Southeast EEM Agreement, Appendix B at VI.D.

¹⁰⁷ *Id.*

¹⁰⁸ 18 C.F.R. pt. 358.

¹⁰⁹ 18 C.F.R. § 35.39.

¹¹⁰ Southeast EEM Agreement Section 3.5.

¹¹¹ *City of Bethany v. FERC*, 727 F.2d 1131, 1136 (D.C. Cir. 1984).

to “minor deviations” from the filed provision to which the filer consents.¹¹² The Commission may not require changes that would result in an “entirely different rate design” than that proposed, nor can the Commission accept “only half of a proposed rate.”¹¹³ The existence of these statutory safeguards is part of the reason the Southeast EEM Members were able to achieve regional consensus on the delicate balance reflected in the proposal submitted today.

1. The Southeast EEM will create material benefits at a low cost

A key reason for the Members’ participation in the Southeast EEM is that it can bring significant benefits to customers at low costs, relative to other market constructs, which was confirmed in the Benefits Analysis conducted by Charles Rivers Associates and Guidehouse. As Dr. Pope explains:

The Southeast EEM’s combination of zero-cost, non-pancaked transmission service and automated 15-minute trading enable willing buyers and sellers to arrange beneficial trades that use available transmission remaining after deliveries have been scheduled under existing OATT service. The [Southeast EEM] Proposal will yield benefits by arranging bilateral trades using the available transmission of multiple Participating Transmission Providers in ways that are unlikely to occur today. The automated system will have a substantial advantage in searching for transmission paths with available transmission to complete beneficial trades, overcoming transaction costs and information barriers. Further, the Algorithm will exhaustively seek out all possible beneficial trades across the Territory, as measured by voluntary bids and offers, capturing the additional benefits made available by scheduling otherwise unused available transmission with zero-cost transmission service.¹¹⁴

Dr. Pope’s qualitative assessment is corroborated by the Benefits Analysis assessment of economic benefits. The Benefits Analysis used a production cost model to compare a “status quo” situation to two different scenarios with intra-hour trading and no cost transmission over a twenty-year period. The first scenario was an “IRP Baseline Outlook” and was based on Guidehouse’s Reference Case outlook on North America, supplemented with information from each of the Member’s most recent integrated resource plan (or equivalent Member data where an integrated resource plan did not exist). The second scenario was a “Carbon Constrained Outlook,” which also factored in a potential future outlook where aggressive carbon reduction goals are met. The Benefits Analysis estimates approximately \$40 million in benefits per year in the IRP Baseline Outlook (in 2020 USD). Benefits under the IRP Baseline Outlook are

¹¹² See *W. Res., Inc. v. FERC*, 9 F.3d 1568, 1578 (D.C. Cir. 1993) (“*W. Res.*”); *City of Winnfield v. FERC*, 744 F.2d. 871, 876 (D.C. Cir. 1984).

¹¹³ *NRG Power Mktg., LLC v. FERC*, 862 F.3d 108 (D.C. Cir. 2017) (quoting *W. Res.*, 9 F.3d at 1579).

¹¹⁴ Economic Aff. at P 32.

estimated to remain fairly constant over the 20-year study period.¹¹⁵ These benefits are fairly conservative when considering the Carbon Constrained Outlook estimated benefits. Under the Carbon Constrained Outlook, benefits were estimated to increase significantly over time, with benefits reaching more than \$100 million per year by 2037.¹¹⁶

The study also evaluated the internal costs anticipated for each of the prospective Members and estimated that individual internal company start-up and ongoing costs would total about \$3.1 million per year on a levelized basis.¹¹⁷ The study did not quantify external costs, such as vendor costs associated with developing, operating and auditing the Southeast EEM System or Auditing services (because the RFPs for that work have not been completed). However, based on exploratory outreach to prospective vendors, the Members expect those incremental costs will also be small relative to benefits.¹¹⁸ Compared to the estimated \$3.1 million total internal costs estimated for all Members, and even considering external costs not quantified in the Benefits Analysis, the Members anticipate that benefits will far exceed anticipated costs.

In addition, as noted above, the Southeast EEM is expected to support increased renewables integration in the Southeast. As Mr. Melda and Mr. Bellar explain:

It is generally recognized that facilitating greater liquidity in sub-hourly transactions can help support greater integration of renewable resources. Transmission service providers are required under their OATTs to provide imbalance service to generators and to loads. Greater levels of renewable resource penetration can require transmission service providers to carry additional flexible capacity in reserve in order to be able to balance the variable output of renewable resources against their schedules. If there is little or no sub-hourly market liquidity, this generally means the transmission provider must be prepared to balance all variation in renewable output across the full hour. By creating greater liquidity in sub-hourly wholesale transactions, especially across a broad geographic area encompassing possibly different weather conditions and renewable policies, the Southeast EEM can provide additional opportunities for transmission service providers to either procure additional energy or to dispose of excess energy, rather than having to rely exclusively on increasing or decreasing the output from their own generation resources that provide imbalance service. Furthermore, renewable resources that elect to participate directly in the Southeast EEM will have an opportunity to avoid or reduce their imbalances by entering

¹¹⁵ Benefits Analysis at 4.

¹¹⁶ *Id.*

¹¹⁷ *Id.*

¹¹⁸ Overview Aff. at P 31.

into sub-hourly sales when the output of their resources trends higher than the hourly quantities forecasted and scheduled farther in advance.¹¹⁹

Thus, the Members expect and believe that Southeast EEM benefits will significantly exceed the costs of developing and operating the Southeast EEM.

2. The Algorithm reasonably uses a split-the-savings rule to calculate the match price for buyers and sellers

The Members evaluated three different types of bilateral pricing mechanisms – bid based, offer based, and split-the-savings. The Members agreed to the split-the-savings method because it would share benefits equally between generators and load.¹²⁰ In addition, split-the-savings matching is complementary to the way that utilities in the Southeast plan their systems and ensure resource adequacy. As Mr. Melda and Mr. Bellar note, Southeastern entities “seek bilateral transactions that can either save costs directly (purchases) or earn a margin to offset costs (sales).”¹²¹ The Southeast EEM, and the use of split-the-savings pricing, will help entities use bilateral trades to trade around the resources that result from their planning processes.¹²²

Southeast EEM Members are able to use their market-based rate authority today to enter into split-the-savings transactions, and with certain exceptions discussed below, will be able to continue to do so under the Southeast EEM. Split-the-savings pricing is a time-honored concept.¹²³ As the Commission has said, “split-savings rates are reasonable since they share the pool of benefits equally between buyer and seller,” and “equal sharing is deemed to be reasonable and an equitable result.”¹²⁴ Additionally, the Commission has found that “[s]plit-savings provide benefits to both the buyer and seller and assure the efficient use of generating resources . . . The transactions are wholly voluntary and only if both parties can benefit will an economy sale take place.”¹²⁵ The use of split-the-savings proposed here is likewise just and reasonable.

¹¹⁹ *Id.* at P 32.

¹²⁰ *See* Operations Aff. at P 49.

¹²¹ Overview Aff. at P 13.

¹²² In this regard, it is also worth noting that the design of the Algorithm will incentivize buyers and sellers to bid and offer in a manner that reflects their underlying costs. *See* Economic Aff. at PP 45-48.

¹²³ *See, e.g., Alabama Power Co.*, 12 FERC ¶ 61,210, 61,512 (1980) (accepting economy interchange rate “predicated on a split-savings approach, consistent with the industry standard”).

¹²⁴ *S. Co. Servs., Inc.*, 37 FERC ¶ 61,190, 61,451-52 (1986) (accepting an arrangement with a three-way split-the-savings rate). *See also Am. Elec. Power Serv. Corp.*, 8 FERC ¶ 61,068, 61,233 (1979), *aff'd, Ohio Power Co. v. FERC*, 668 F.2d 880 (6th Cir. 1982) (approving a modification to a split-savings arrangement that would eliminate a previous price ceiling and allow economy energy to be priced on a wholly split-savings basis).

¹²⁵ *Commonwealth Edison Co.*, 23 FERC ¶ 61,219, 61,472 (1983).

3. Cost allocation to Members based on NEL is just and reasonable

The proposal to allocate upfront and ongoing costs to Members based primarily on NEL is just and reasonable. As described above, the Members selected NEL as the basis because it would provide rate predictability and stability. Further, the Members estimate that while some baseline costs would be incurred no matter the number or size of the Members, others will be “incurred because of the added scale, use, and benefit of Members with more generation or load.”¹²⁶

Additionally, the Benefits Analysis predicts that a significant amount of savings will accrue to Members, which can be passed to load. Accordingly, the proposal to allocate to Members (all of whom are LSEs, or have obligations to LSEs) based on load size follows both the Commission’s cost causation and beneficiary pays principles of cost allocation.¹²⁷ Cost allocation need not be made with “exacting precision,”¹²⁸ but must be at least “roughly commensurate” with the anticipated benefit.¹²⁹ Furthermore, the Commission accepted a similar cost allocation proposal in the bilateral agreements that the CAISO filed when new members joined its Western EIM.¹³⁰ A supporting declaration to CAISO’s filing explained that CAISO determined PacifiCorp’s cost by first establishing a rate based on dividing the total anticipated implementation cost by the total “MWh of non-ISO new energy for load in the WECC” and then applying that rate “to PacifiCorp’s most recently reported net energy for load.”¹³¹ When accepting this proposal, the Commission explained that “[t]he implementation fee allocates a portion of that projected overall cost to PacifiCorp in an amount proportionate to PacifiCorp’s benefits from the energy imbalance market, as measured by usage.”¹³² In any event, the proposed payment structure is 100% voluntary; nobody is being allocated costs they have not already agreed to pay.¹³³

¹²⁶ Operations Aff. at P 28.

¹²⁷ *K N Energy, Inc. v. FERC*, 968 F.2d 1295, 1300 (D.C. Cir. 1992); (“[A]ll approved rates [must] reflect to some degree the costs actually caused by the customer who must pay them.”) *Ill. Comm. Comm’n v. FERC*, 576 F.3d 470, 476 (7th Cir. 2009) (to the extent an entity benefits from a cost, “it may be said to have ‘caused’ a part of those costs to be incurred”) (“*ICC v. FERC*”).

¹²⁸ *Sithe/Indep. Power Partners, L.P. v. FERC*, 285 F.3d 1, 5 (D.C. Cir. 2002).

¹²⁹ See *ICC v. FERC*, 576 F.3d at 477.

¹³⁰ See *Cal. Indep. Sys. Operator Corp.*, 143 FERC ¶ 61,298 at PP 31-32 (2013) (“*PacifiCorp Western EIM Implementation Agreement Order*”).

¹³¹ *Cal. Indep. Sys. Operator, Inc.*, Filing of ISO Rate Schedule No. 73, Attachment B, Declaration of Michael K. Epstein at PP 21-22, Docket No. ER13-1372-000 (filed Apr. 30, 2013).

¹³² *PacifiCorp Western EIM Implementation Agreement Order*, 143 FERC ¶ 61,298 at P 32.

¹³³ The Southeast EEM Agreement does not allocate any costs to Participants. Allocating costs to Members as opposed to Participants is reasonable because the Members have decided to create the Southeast EEM and so have caused the costs incurred. Additionally, any charge to Participants would be speculative at this point, because there is no baseline to evaluate, for example, how many transactions will

4. Providing NFEETS at no charge is not unduly discriminatory and is consistent with rules of cost causation

Providing NFEETS with no charge for the service is just and reasonable and consistent with other models that the Commission has approved in the Western United States.¹³⁴ In CAISO's Western EIM, for example, CAISO proposed to waive all wheeling charges that otherwise would be charged to exports.¹³⁵ In response to protesters, the Commission found that even though "EIM transfer[s] use[] the same transmission facilities as other CAISO exports," it was nonetheless "just and reasonable that CAISO charges differently for [those] transactions because there are underlying differences in transmission service that allow for different rate treatment."¹³⁶ Here too, NFEETS is fundamentally different than other transmission services – indeed, each of the Participating Transmission Providers must revise its tariff to add the new class of service. The service uses as-available lowest priority transmission that otherwise would not be used and cannot be reserved by the Transmission Customer directly, but rather can only be reserved through the Southeast EEM System to facilitate Energy Exchanges.

Further, all network service customers are expected to benefit from the reduced costs, making the proposal consistent with cost causation principles. As the Commission knows, transmission systems are built in the first instance to serve the load connected to them. Thus, it has long been Commission policy that network customers pay for the system, but that any Point-to-Point uses provide revenues that act as credits to reduce the revenue requirements paid by network load.¹³⁷ The Benefits Analysis predicts that availability of NFEETS service may result in some small decrease in Point-to-Point reservations, and hence in some small reduction in

be made market-wide or some other usage-based indication. Finally, although Participants will not pay any fees to transact over the Southeast EEM System, the Members anticipate that higher levels of participation will increase competition and provide more trading opportunities, thus benefitting the Members and their customers, as well as Participants.

¹³⁴ See *Pub. Serv. Co. of Colo.*, 154 FERC ¶ 61,107 at PP 84-86 (2016) (accepting CO JDA proposal to provide no-cost transmission service); *Western EIM Order*, 147 FERC ¶ 61,231 at P 153 (accepting CAISO proposal to waive wheeling charges for Western Energy Imbalance Market transactions).

¹³⁵ *Western EIM Order*, 147 FERC ¶ 61,231 at P 125.

¹³⁶ *Id.* at P 154.

¹³⁷ See *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Servs. by Pub. Utils.; Recovery of Stranded Costs by Pub. Utils. & Transmitting Utils.*, Order No. 888, FERC Stats. & Regs. ¶ 31,036, at p.304 (1996), *order on reh'g*, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048 (1997), *order on reh'g*, Order No. 888-B, 81 FERC ¶ 61,248 (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 Grp. v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York v. FERC*, 535 U.S. 1 (2002) ("In order to prevent over-recovery of costs for those who [consider a firm reservation as the equivalent of a load for cost allocation and planning purposes], we will require transmission providers to include firm point-to-point capacity reservations in the derivation of their load ratio calculations for billings under network service. In addition, revenue from non-firm services should continue to be reflected as a revenue credit in the derivation of firm transmission tariff rates.").

credits to offset payments by network load.¹³⁸ But this is entirely consistent with principles of cost causation, because the costs will be borne by those who benefit from the Southeast EEM. As Dr. Pope explains, “the Southeast EEM is expected to reduce energy costs for native load customers, so any increase in network service transmission rates would be roughly balanced by expected benefits from decreases in their energy costs.”¹³⁹ The Commission relied on similar logic when approving the Western EIM, concluding that it would “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.”¹⁴⁰

While the Southeast EEM differs from CAISO’s Western EIM, the same logic applies. Network load will receive the benefits of the Southeast EEM, so it is fair and consistent with principles of cost causation to ask network load to shoulder any incremental transmission system revenue requirements network load is exposed to as a result of any erosion of Point-to-Point revenues. If, against expectation, the level of erosion somehow exceeds benefits, a Member or Participating Transmission Provider can leave the Southeast EEM at any time, for any reason.¹⁴¹ Every Member is engaged in the Southeast EEM effort to reduce costs to its customers.

5. Implementation of the Southeast EEM will not negatively impact reliability or existing operations, including service to native load

The Southeast EEM will not have any negative impact on reliability because it will not change any current reliability roles or responsibilities and will rely on unused transmission given the lowest curtailment priority. It will be purely an energy market – capacity will not be sold through the Southeast EEM. As Mr. McGeeney and Mr. Sellers explain, the Southeast EEM was designed so that it would not impact reliability roles.¹⁴² To that end, the reliability obligations that BAs and transmission providers have today are unchanged under the Southeast EEM.

Further, each LSE must maintain adequate firm NITS and Point-to-Point Service on the transmission system where it is located in the amount of its entire wholesale and retail native load. The transmission service used for Southeast EEM Energy Exchanges, NFEETS, is based on Participating Transmission Providers’ reporting of available transmission after all other scheduled uses have been taken into account. The Administrator will submit e-Tags so that any Participating Transmission Provider whose system is used for an Energy Exchange will be notified and can take that transaction into account.

Southeast EEM participation does not relieve any Participant of its resource adequacy responsibilities. Southeast EEM Energy Exchanges do not and are not intended to provide resource adequacy, because they are the lowest priority transactions that can be displaced by

¹³⁸ Benefits Analysis at 8, 19.

¹³⁹ Economic Aff. at P 67.

¹⁴⁰ *Western EIM Order*, 147 FERC ¶ 61,231 at P 156.

¹⁴¹ See Southeast EEM Agreement Section 4.2.1.

¹⁴² Operations Aff. at PP 55-57.

higher priority transactions, and would be the first to be cut in a transmission loading relief (“TLR”) situation. Additionally, generators serving native load will never be redispatched to accommodate intra-hour Southeast EEM transactions – Southeast EEM transactions would be curtailed instead.

This means that every load-serving entity participating in the market needs a plan to serve its own load outside and independent of the Southeast EEM. For this reason, Southeast EEM transactions should not drive unit commitment. A Participant would back down owned or contracted generation when it makes a Southeast EEM purchase, but would still likely plan to have ramping capability to cover for a curtailed Southeast EEM transaction. If the Participant does not have that ramping capability, it would fall to the applicable BA or Participating Transmission Provider to provide imbalance, just as occurs today. Under the Southeast EEM, there will be no changes to a BA’s responsibility for NERC Resource and Demand Balancing standards or other standards. The potential for imbalance charges is a powerful motivation for the party making a Southeast EEM transaction to maintain the ramping capability needed to make up for a displaced or cut transaction. This is the same way that LSEs need to think today about relying on any transaction using non-firm transmission to back down higher-cost owned or contracted generation. The Southeast EEM’s NFEETS is just another form of non-firm service from the perspective of staying resource adequate.

At bottom, Southeast EEM transactions should not result in a reliability concern for native load, or anyone. In essence, the LSE is able to realize energy savings for its customers through the Southeast EEM, yet not affect reliability since its owned or purchased generator(s) should still be available to ramp back up in the event needed. And all of this will occur against a backdrop where each BA’s and each Participating Transmission Provider’s responsibilities for maintaining reliability, including providing imbalance service, remain unchanged.

6. Existing market power mitigation will remain in place, and Southeast EEM will tend to have a deconcentrating effect on market power

There is no need for a market power analysis to support the Southeast EEM proposal because the Southeast EEM will not create market power. As discussed above, the Southeast EEM brings two fundamental changes to the bilateral market in the Southeast. Both changes are inherently pro-competitive. First, for the Southeast EEM intra-hour transactions, it will eliminate rate pancakes across a vast region encompassing ten BAAs. Second, the Southeast EEM will reduce transactional friction by adding another option for finding transactional counterparties with a computer algorithm that matches bids and offers. Together, these changes will enhance efficiencies and reduce opportunities to exercise market power by allowing more buyers to transact with more sellers over a much bigger region.¹⁴³

Further, the fact that the Southeast EEM is a voluntary, residual market “in effect rul[es] out the possibility of one or more Participants exercising horizontal market power as defined by

¹⁴³ See Economic Aff. at PP 20-31.

the Commission.”¹⁴⁴ Each LSE has a responsibility to remain resource adequate, and because NFEETS is as-available, lowest priority transmission service, it cannot be relied upon to maintain resource adequacy. Rather, as described above and by Mr. McGeeney and Mr. Sellers, LSEs must have owned or purchased generation sufficient to meet their needs – Southeast EEM purchases only permit such generation to be backed down.¹⁴⁵ That means that no load should be in a position of needing to purchase power in the Southeast EEM at an amount above its avoidable cost of generation. Thus, per Dr. Pope, “[n]o Participant could exercise market power in the Southeast EEM unless it already could exercise market power in today’s hourly bilateral market.”¹⁴⁶

Fortunately, 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. The Commission has imposed mitigation where needed to assure that there can be no such exercise of market power, and has done so for each of the FERC Jurisdictional Members.¹⁴⁷ The Southeast EEM transactions are bilateral energy transactions under existing MBR authority that will be subject to such existing mitigation. These measures, together with the pro-competitive effects of the Southeast EEM, will ensure that the Southeast EEM does not create any ability to exercise market power.¹⁴⁸ And each FERC Jurisdictional Member will remain responsible to file triennial market power updates that will provide the Commission the basis to determine whether existing mitigation measures remain appropriate. Accordingly, there is no need for a new, Southeast EEM-specific market power analysis, and there is also no need for a notice of change in status.¹⁴⁹

¹⁴⁴ *Id.* at P 72.

¹⁴⁵ Operations Aff. at P 56.

¹⁴⁶ Economic Aff. at P 69.

¹⁴⁷ *See S.C. Elec. & Gas Co.*, 121 FERC ¶ 61,263 at P 6 (2007) (finding that Dominion Energy SC’s (f/k/a South Carolina Electric and Gas Company) “proposal not to make sales within its balancing authority area under its market-based rate tariff adequately addressed [Dominion Energy SC’s] failure of the market share screen in its balancing authority area”); *LG&E Energy Mktg., Inc.*, Docket Nos. ER06-1046-000, *et al.* (letter order issued July 6, 2006) (accepting “revised market-based rate tariff sheets that would, among other things, restrict the LG&E Parties’ authority to make sales at market-based rates in the LG&E/KU control area” upon LG&E/KU’s exit from the Midwest Independent System Operator, Inc.); *Ala. Power Co.*, 163 FERC ¶ 61,090 at P 27 (2018) (finding that the price cap and auction process established in each of the Southern Companies’ MBR tariffs “serve as adequate mitigation for the Southern, SCEG, Tallahassee, and Santee Cooper balancing authority areas”); *Duke Power*, 111 FERC ¶ 61,506 at P 61 (2005) (Commission prohibiting Duke sales within the DEC balancing authority to “mitigate the potential for the exercise of generation market power”); *Fla. Power Corp.*, 113 FERC ¶ 61,131 (2016) (prohibiting Duke sales in the DEP BA).

¹⁴⁸ Economic Aff. at PP 13, 72.

¹⁴⁹ Because there is no change in the ability of the Members to exercise market power, there is no need for entities with Market Based Rates to file a notice of change in status by virtue of their participation in the Southeast EEM. This distinguishes the Southeast EEM from *PacifiCorp*, 147 FERC ¶

The Southeast EEM will not be responsible for ensuring that its Members comply with mitigation requirements imposed by the Commission, but it will provide the tools for them to do so. Each mitigated company will be able to put constraints into the Algorithm to ensure that the mitigation is observed. Dominion Energy SC, Duke and LG&E/KU anticipate complying with their mitigation requirements by toggling “off” their home BAAs, thus ensuring that they are not matched with any bidder in their home BAAs, and more than meeting the market power mitigation requirement. The Southern Companies anticipate submitting a “maximum Energy Exchange Price” that will be no more than the mitigated price cap that is incorporated into their MBR authority. If the match price is above the “maximum Energy Exchange Price” for buyers in mitigated BAAs, the match price will be adjusted down to the “Energy Exchange Price.” This adjustment will occur after the optimization function of the Algorithm is performed to ensure that there are no unintended impacts on optimization.¹⁵⁰ The Market Rules establish both tools as a means for Participants to comply with their applicable mitigation requirements.¹⁵¹

7. The Southeast EEM does not create new opportunities for market manipulation

There is no need for a market monitor because the Southeast EEM will not create new opportunities for market manipulation, as shown in the Economic Affidavit, such that the Commission’s existing tools for bilateral markets will remain sufficient. In evaluating the potential for market manipulation Dr. Pope began with the fact that the Southeast EEM’s changes to the existing bilateral market will be minimal. There are two things that differentiate the Southeast EEM from the existing bilateral market when it comes to consideration of the potential for market manipulation. Specifically, Dr. Pope explains that it would be problematic if:

- A Participant could unfairly obtain zero-cost NFEETS and thereby profit at the potential expense of the efficiency benefits realized by the Southeast EEM, the benefits realized by other Participants, or the transmission costs paid by electricity customers; or

61,227 at P 206 (2014) and *Nevada Power Co.*, 155 FERC ¶ 61,186, PP 22-25 (2016), which address market power studies in the CAISO EIM. As Dr. Pope explains, “[t]he voluntary aspect of the Southeast EEM is a distinguishing feature in comparison with the CAISO EIM in regard to the potential for the exercise of market power. All transmission service providers that have joined the CAISO EIM have modified their OATTs to pass through the EIM clearing prices as charges for customer imbalances. The fact that transmission customers have no alternative to paying EIM prices for imbalances supports non-discriminatory open access in the EIM, but is also one of the reasons why the EIM has had to consider the potential for the exercise of market power and includes a process for offer mitigation.” Economic Aff. at n.49. In short, the market power concerns that could trigger a notice of change in status filing are not present here – nor are there any other changes in material facts germane to the Commission’s MBR analysis that could trigger such a requirement. *See* 18 C.F.R § 35.42(a).

¹⁵⁰ Operations Aff. at P 40.

¹⁵¹ Market Rules at IV.A.1.b and IV.B.3; Operations Aff. at P 41.

- A Participant could profit from manipulation of the average hourly Energy Exchange Prices published daily and monthly.¹⁵²

As discussed below, and in the Economic Affidavit, the design of the Southeast EEM deters both potential manipulative schemes.

First, Dr. Pope explains that the “three-eligible-counterparty rule,” *i.e.*, the requirement that all Participants have “toggled on” at least three unaffiliated potential counterparties each time they bid or offer, protects against collusive schemes to create false benefits in order to trick the Algorithm into moving the schemers to the front of the line for zero-cost transmission.¹⁵³ The number of counterparties renders it difficult and risky for parties to coordinate to implement such a scheme, particularly in light of the small benefit to be obtained (*i.e.*, a greater probability of obtaining zero-cost NFEETS). Further, the design of the algorithm itself, which factors in multiple pieces of information (such as transmission availability and the bids of other Participants) that will be unknown to Participants, renders it difficult to guarantee the preferred match when multiple potential counterparties are involved.

Second, Dr. Pope explains that it is unlikely that Participants would be able to engage in a cross-market manipulative scheme based on the reported average Energy Exchange Price.¹⁵⁴ In such a scheme, a Participant would attempt to impact the average reported price for the purpose of benefitting a different contract based on that price as a reference point (essentially a related position scheme). Dr. Pope notes at the outset that it is “very unlikely” that Participants or financial traders would choose to enter into any contract based on the average Energy Exchange price because it is an average weighted price calculated across the entire Southeast EEM footprint.¹⁵⁵ In other words, it does not reflect the “actual market price for energy at any location.”¹⁵⁶ Even if a Participant did enter into such a contract, it would be “extremely difficult” for a Participant to attempt to impact the published price.¹⁵⁷

According to Dr. Pope, “[o]ther possibilities for conduct that might be considered to be market manipulation seem to be even more unlikely,” such that “[n]o other new avenues for possible market manipulation are apparent to [Dr. Pope] at this time.”¹⁵⁸ In any event, the Commission will retain its existing auditing and monitoring tools and will have, in addition, access to the publicly-posted Southeast EEM data discussed above in Section III.B.5. This additional transparency is intended to give the Commission, as well as Participants, confidence

¹⁵² Economic Aff. at P 75.

¹⁵³ Economic Aff. at PP 83-85.

¹⁵⁴ *Id.* at P 86.

¹⁵⁵ *Id.*

¹⁵⁶ *Id.*

¹⁵⁷ *Id.* at P 87.

¹⁵⁸ *Id.* at PP 88-89.

in the Southeast EEM. While the publicly-posted information will not contain information on individual trades, that information will be included in Participants' EQR reports. Of the current Members, thirteen entities submit EQRs. This includes eight IOUs and five non-jurisdictional entities that are defined as having more than a de minimis impact on wholesale markets. All told, this represents approximately 98% of total NEL of the Members.¹⁵⁹ Additionally, FERC will continue to have access to e-Tags submitted pursuant to Order No. 771. Southeast EEM 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.

IV. Requested effective date and commitment to notice filing for Commencement Date

Southern Company and the other Southeast EEM Members respectfully request that the Southeast EEM Agreement become effective on May 13, 2021, 90 days after filing. This requested effective date is consistent with 18 C.F.R. §§ 35.2(f) and 35.3(a)(1). Although the Southeast EEM is not anticipated to go live until the first quarter of 2022, an earlier effective date for the Southeast EEM Agreement is necessary to provide Members with regulatory certainty before spending significant additional capital and time to develop the Southeast EEM System. The Southeast EEM Agreement must be binding on the Members before further significant financial commitments are made, meaning, under the terms of the Southeast EEM Agreement, that it must be accepted and effective.

To avoid any potential need for an amendment filing if there are unanticipated readiness issues that delay a market Commencement Date, the Southeast EEM Agreement does not have such a date hardwired. Rather, that date will be determined through the governance process described above. The Members commit to make a notice filing with the Commission no later than 30 days before the Commencement Date in this docket and the other dockets that together comprise the Southeast EEM Filings.

V. Request for waivers

Southern Company respectfully requests that the Commission grant such waivers of the Commission's regulations as may be necessary. This request is made out of an abundance of caution; Southern Company and the Members are unaware of any need for a waiver. However, to the extent a waiver is needed, good cause exists to grant it, because acceptance of the filing effective May 13, 2021 will permit customers in the Southeast to begin enjoying the benefits of the Southeast EEM at the earliest possible date.

¹⁵⁹ Operations Aff. at P 41. Because the sales will be consummated under the applicable enabling agreement, the Southeast EEM sales will not be identifiable in the EQR reports by "contract." However, because all transactions will be in 15-minute increments (which is a rare occurrence today), the Commission will be able to discern with some certainty which transactions were matched through the Southeast EEM.

VI. Communications

Southern Company respectfully requests that the following persons be added to the official service list in this proceeding:¹⁶⁰

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VII. Filing contents

In addition to this transmittal letter, Southern Company and the Southeast EEM Members are submitting the following documents in support of this filing:

- **Attachment A:** Southeast EEM Agreement;
- **Attachment B:** Affidavit of Mr. Aaron Melda and Mr. Lonnie Bellar;
- **Attachment C:** Affidavit of Mr. Christopher McGeeney and Mr. Corey Sellers;
- **Attachments D and D-1:** Affidavit of Dr. Susan Pope and attached Curriculum Vitae;
- **Attachments E and E-1:** Affidavit of Andrew Rea and attached Benefits Analysis.
- An .rtf version of the Southeast EEM Agreement, for filing through the Commission's eTariff software.

¹⁶⁰ Southern Company respectfully requests waiver of 18 C.F.R. § 385.203(b)(3) to permit more than two persons to be added to the official service list in this proceeding.

Ms. Kimberly D. Bose

February 12, 2021

Page 44

VIII. Conclusion

Southern Company and the Southeast EEM Members respectfully request that the Commission accept the Southeast EEM Agreement, without modification, to become effective on May 13, 2021.

Respectfully submitted,

/s/ Christopher H. Demko

Christopher H. Demko

/s/ Noel Symons

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