

August 11, 2021

VIA eTARIFF

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

**Re: *Alabama Power Co.*, Docket No. ER21-1111-000
Dominion Energy South Carolina, Inc., Docket No. ER21-1112-000
Louisville Gas & Elec. Co., Docket No. ER21-1114-000
Duke Energy Progress, LLC, Duke Energy Carolinas, LLC, Docket No. ER21-1115-000
Duke Energy Carolinas, LLC, Docket No. ER21-1116-000
Duke Energy Progress, LLC, Docket No. ER21-1117-000
Louisville Gas & Elec. Co., Docket No. ER21-1118-000
Georgia Power Co., Docket No. ER21-1119-000
Kentucky Utilities Co., Docket No. ER21-1120-000
Mississippi Power Co., Docket No. ER21-1121-000
Alabama Power Co., Docket No. ER21-1125-000
Dominion Energy South Carolina, Inc., Docket No. ER21-1128-000
(not consolidated)**

Response to Second Deficiency Letter; Request for Shortened Comment Period and Expedited Action

Dear Secretary Bose:

The Members of the Southeast Energy Exchange Market (“Southeast EEM”) hereby respond to the Second Deficiency Letter issued by the Staff of the Federal Energy Regulatory Commission (“Commission” or “FERC”) on August 6, 2021.¹

¹ *Ala. Power Co.*, Second Deficiency Letter, Docket Nos. ER21-1111-000, ER21-1112-000, ER21-1114-000, ER21-1115-000, ER21-1116-000, ER21-1117-000, ER21-1118-000, ER21-1119-000, ER21-1120-000, ER21-1121-000, ER21-1125-000 ER21-1128-000 (Aug. 6, 2021) (“Deficiency Letter”). Because the Deficiency Letter was issued in each Southeast EEM Filing docket, the Southeast EEM Members are filing this Response in each docket. The only difference is the tariff record accompanying each eTariff submission, which corresponds to the company making the filing. This Response does not

The Southeast EEM Members² are eager to commence market improvements to materially benefit customers throughout the southeastern United States by enhancing opportunities for competition in the bilateral market and increasing access to lower cost energy from across the large footprint of the Southeast EEM. The Southeast EEM Members note the limited nature of this second set of questions, and urge the Commission to expeditiously issue an order accepting the Southeast EEM proposal, subject to a compliance filing to implement the changes identified by the Southeast EEM Members in the First Deficiency Response.³ To that end, this response is being provided three business days after receipt of the questions. Given the limited nature of the second Deficiency Letter and response, the Southeast EEM Members request a shortened comment period of 10 days, or August 23, 2021, and action within 30 days, or September 10. Additionally, the Members request an effective date (as to the Southeast EEM Agreement and concurrence filings) of October 12, 2021, sixty days from the filing of this Response. To facilitate the Commission's consideration of this proposal and the Members' requested timeframe, the Southeast EEM Members will not answer any protests again rehashing issues outside the scope of the proceeding, or previously addressed.

Responses to Each Deficiency Letter Question

- 1. Filing Parties state in their proposal that Members who are subject to restrictions under the Commission's Standards of Conduct and affiliate restrictions will remain subject to those rules and, for avoidance of doubt, the Southeast EEM Agreement*

propose to modify any tariff records. The Members previously committed to providing revised tariff records in a compliance filing 30 days after acceptance of the Southeast EEM Proposal.

² For purposes of this Filing, the Southeast EEM Members are: Alabama Power Company, 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"); PowerSouth 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 (An Electric Membership 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").

³ See Response to Deficiency Letter, Docket Nos. ER21-1111-001, ER21-1114-001, ER21-1119-001, ER21-1121-001, ER21-1116-001, ER21-1117-001, ER21-1125-001, ER21-1115-001 (filed June 7, 2021) ("First Deficiency Response"). The First Deficiency Response was also filed in the following dockets after the 5p.m. deadline on June 7th, and so is dated as of June 8th in those dockets: ER21-1112-001, ER21-1120-001, ER21-1128-001, and ER21-1118-001.

contains prohibitions on sharing transmission function and market information. Please explain how proposed provisions in the Southeast EEM Agreement ensure that Members cannot access competitors' transmission function or commercially sensitive information via reports or information provided by the Administrator or Auditor in the execution of their respective functions.

Response:

Section 3.5 of the Southeast EEM Agreement prohibits Members (both jurisdictional and non-jurisdictional) from providing marketing function employees with non-public transmission function information or non-public market information received through the Southeast EEM:

3.5 Member Standard of Conduct. Members shall not provide any non-public transmission function information they receive by virtue of their participation in the Southeast EEM to any of their marketing function employees or provide any undue preference through the sharing of non-public market information they receive by virtue of their participation in the Southeast EEM to their marketing function employees. For purposes of this Section 3.5, marketing function employees of a Member's Affiliates shall be deemed marketing function employees of the Member.

While Section 3.5 is an original provision of the Southeast EEM Agreement, in the First Deficiency Response, the Southeast EEM Members committed to greater information transparency, including the posting of the reports referenced in the question. Market Auditor and Southeast EEM Administrator postings are expressly subject to two steps to further protect sensitive information. First, per the provision of the Market Rules that governs the functions of the Market Auditor, prior to posting a report, the Market Auditor or Southeast EEM Administrator, as appropriate, must redact Participant specific information, and CEII:

In no event shall the Market Auditor or Administrator cause Commercially Sensitive Information that is identifiable to a particular Participant or Critical Energy/Electric Infrastructure Information to be posted to the Southeast EEM Website.⁴

Thus, neither the Members nor any other Participant will see Participant-specific information (other than their own⁵) or CEII. Unredacted reports will only be viewed by the Market Auditor and Southeast EEM Administrator, and will be available to the Commission or applicable regulatory authorities.

Members also will not receive such information, or any information from the Market Auditor or Southeast EEM Administrator, through any non-public process, per the Market Rules:

⁴ See First Deficiency Response, proposed revisions to Southeast EEM, Market Rules, VI.D.6.

⁵ Southeast EEM Agreement, Market Rules VI.A (Participants may request access to their own data and it will be provided within 24 hours).

Southeast EEM Members shall have access to information posted on the website at the same time and subject to the same restrictions as other Participants. To the extent that the Market Auditor is required to provide a report or document to the Membership Board, it will do so by notifying the Membership Board when the report or document has been posted to the website.⁶

Thus, for example, if the Membership Board decided to direct the Market Auditor to conduct an investigation, the results of the investigation would be a report that the Market Auditor is required to post, subject to the redaction requirements of Section VI.D.6 of the Market Rules discussed above.

The second step agreed to by the Members to further protect sensitive information was to expand upon the restrictions on sharing non-public transmission function information, and non-public market information. The First Deficiency Response proposed to task the Market Auditor and the Southeast EEM Administrator with responsibility for identifying non-public transmission function information or other commercially sensitive information in any posting they make, and post such information to a confidential section of the Website. This is specified in the Market Rules describing the Market Auditor functions, which include:

Respond to written questions from Participants, FERC, NERC, applicable state commissions in the region, Tennessee Valley Authority's Inspector General, and any other applicable regulators that oversee the electric operations of any Member regarding the integrity of the matching process. Such information requests and Market Auditor responses (which will be provided, where reasonable, within 30 days), along with any reports generated by the Market Auditor in accordance with these Market Rules, will be provided to the Administrator, which will post such documents to the Southeast EEM website. To the extent that such information (whether the question or the response or other document) is Transmission Function Information or Commercially Sensitive Information, it will be posted to a confidential section of the Southeast EEM website, and access by Participants shall be governed pursuant to the confidentiality provision of the Participant Agreement. Access by regulators shall be subject to a standing request that such regulators treat such information with the highest degree of confidentiality permissible under law applicable to each such regulator. "Transmission Function Information" shall have the meaning provided at 18 C.F.R. Sections 358.3(j), or the successor to that provision. Commercially Sensitive Information shall include any information that could confer a competitive advantage on the recipient, or whose

⁶ See First Deficiency Response, proposed revisions to Southeast EEM, Market Rules, VI.D.6. See also proposed revision to Market Rules Section VI.D:

Auditing Process. Auditing functions will be performed by the Market Auditor at the direction of the Membership Board. The Market Auditor will report its conclusions, and provide any supporting data in the event that problems are identified to the Membership Board on an after-the-fact, periodic basis. **This will be accomplished through the Website posting process identified in Section VI.D.6, thereby ensuring that access to these reports by the Members and others will be simultaneous, subject to any applicable confidentiality restrictions . . .**

disclosure could harm or commercially disadvantage an entity associated with the information, including, but not limited to, any Participant-specific information, such as the bid and offer information provided to FERC and the Market Auditor every seven days. The entity providing the information for the Administrator to post to the Website (i.e., typically the Market Auditor) shall be responsible for determining which information posted to the Website should be placed in the confidential section of the Website, and shall resolve any uncertainty in favor of treating the information confidentially.⁷

The Southeast EEM Administrator is similarly required to post information to the Website subject to confidentiality determinations based on whether the posting has non-public market information or non-public transmission function information.⁸

Next, the Members committed in the First Deficiency Response to change the Participant Agreement to create a binding contractual commitment, through execution of the Participant Agreement, to (1) make information sharing restrictions applicable to all Participants, including both jurisdictional and non-jurisdictional Members,⁹ and (2) bind all such Participants, including Members, to honor the determinations of the Market Auditor and the Southeast EEM Administrator as to information that cannot be shared with Marketing Function Employees:

The Participant shall supply the Southeast EEM Administrator with any and all information deemed reasonably necessary for the administration of the Southeast EEM System. The Participant acknowledges and agrees that it will not provide information posted in the confidential section of the Southeast EEM Website to any employee of itself or an affiliate engaged in Marketing Functions, where Marketing Functions shall be those meeting the definition found at 18 C.F.R. Section 358.3(d), except that for purposes of this Agreement Marketing Functions shall also refer to the functions described in that provision even if the entity performing those functions is not a public utility subject to FERC jurisdiction. The Participant shall identify to the Southeast EEM Administrator all employees who may access the confidential portion of the Southeast EEM website, and certify that such employees are not engaged in Marketing Functions, and the Southeast EEM Administrator will grant access to the confidential portion of the Southeast EEM Website only to such employees. The Participant shall be responsible to ensure that the Southeast EEM Administrator is notified before any such employee commences engagement in Marketing Functions such that access to the confidential section of the Southeast EEM Website can be revoked.

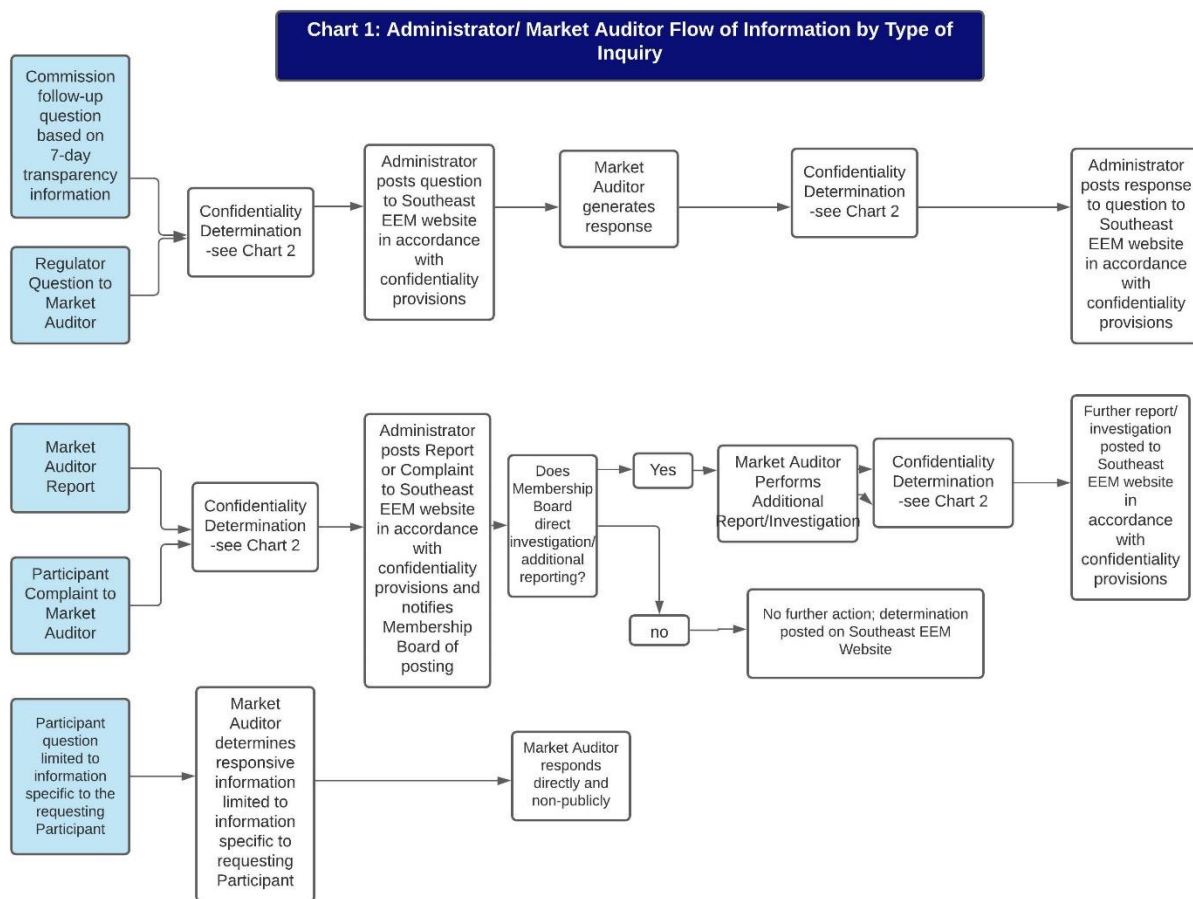
⁷ See First Deficiency Response, proposed revisions to Southeast EEM, Market Rules, VI.D.6.

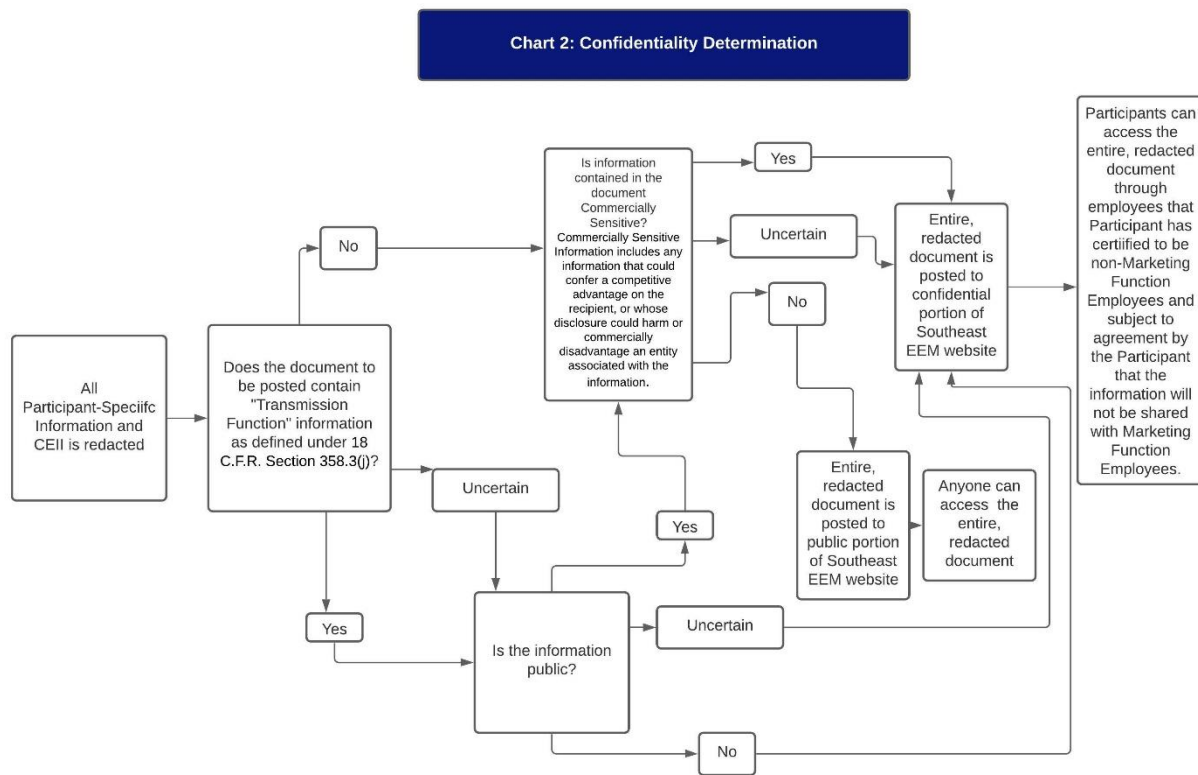
⁸ See First Deficiency Response, proposed revisions to Market Rules Section 2.5.

⁹ See Southeast EEM Agreement, Market Rules, III (noting that any entity that meets the requirements in that section, including a Member, is a “Participant”).

In other words, the approach taken by the Members is to create uniformity in the application of the information sharing restrictions by applying them, with respect to information derived through the Southeast EEM, (i) to jurisdictional and non-jurisdictional entities alike; and (ii) the same to Members as to other Participants. In addition, these restrictions place the decision of what information needs to be protected from Marketing Function Employees in the hands of the Market Auditor and Southeast EEM Administrator, such that there will not be variances in application of the rules due to differing interpretation of the rules, or unfamiliarity with the concepts of deciding what falls into the restricted information categories.

The process for determining what information gets posted, and what is posted to the confidential section of the website that is not accessible by Marketing Function employees, is summarized in the following charts:





2. *Filing Parties state in their Deficiency Response that confidential information will be posted to a dedicated confidential portion of the Southeast EEM website. Filing Parties also propose amending the Southeast EEM Agreement to require each Participant to designate employees who will have access to this portion of the Southeast EEM website. Please explain, using examples as appropriate, whether the availability of redacted documents posted to the confidential portion of the Southeast EEM website will vary depending on the identity of the Participant accessing those documents (e.g., to avoid divulging commercially sensitive information to a Participant’s competitors).*

Response:

As described in the above response, the rules are designed to create uniformity in the application of the information-sharing restrictions by applying them, with respect to information derived through the Southeast EEM, (i) to jurisdictional and non-jurisdictional entities alike; and (ii) the same to Members as to other Participants; and by placing the decision of what information needs to be protected from Marketing Function Employees in the hands of the Market Auditor and Southeast EEM Administrator, such that there will not be variances in application of the rules due to differing interpretation of the rules, or unfamiliarity with the concepts of deciding what falls into the restricted information categories.

Thus, the availability of redacted documents posted to the confidential portion of the Southeast EEM website will not vary depending on the identity of the Participant accessing those documents. As described above, all CEII and Participant-specific information will be redacted prior to being posted, and information that is commercially sensitive, or non-public transmission function information, will only be posted to a confidential section of the Website, to avoid giving a competitive advantage. Marketing Function Employees are not permitted access to the confidential section of the website, and each Participant is contractually committed, through the Participant Agreement, not to share such information with Marketing Function Employees and to inform the Southeast EEM Administrator if an employee previously provided access becomes a Marketing Function Employee, so that access rights can be revoked.¹⁰ Further, to the extent that Participants already are bound by the Commission's Standards of Conduct regulations or Affiliate Restrictions regulations regarding access to such information, they will remain subject to those rules.

- 3. Filing Parties state that the Administrator and the Auditor will be third-party independent entities. Filing Parties explain further that the Auditor will not be a Member, Participant, Agent, or the Administrator, nor an affiliate of those entities. Please clarify whether the Administrator similarly will not be a Member, Participant, Agent, or affiliate of those entities.*

Response:

The Administrator will not be a Member, Participant, Agent, or the Market Auditor, nor an affiliate of those entities.

Request for Shortened Comment Period and Expedited Action

The Southeast EEM Members request a shortened comment period of 10 days or August 23, 2021. There is good cause for shortening the comment period on these responses to the second Deficiency Letter. The questions and responses are narrow in scope, and a 10-day comment period matches the shortened timeframe set out in the Deficiency Letter for the Southeast EEM Members' responses.

The Southeast EEM Members also respectfully request expedited Commission action on or before September 10, 2021—30 days after the filing date. Again, the narrow scope of the questions and responses justifies an expedited timeline for action. Additionally, there are no substantive changes to the Southeast EEM proposal in the response, and the responses largely point back to prior filings by the Southeast EEM Members. Lastly, Commission action is the critical path item to the Southeast EEM Members moving forward with the development of the Southeast EEM platform. The Southeast EEM Members have delayed executing necessary vendor contracts to develop the Southeast EEM software platform until the proposal receives Commission approval. The requested expedited action is necessary if the Southeast EEM

¹⁰ See First Deficiency Response, Proposed Revisions to Southeast EEM Agreement, Participant Agreement, Section 6.0.

August 11, 2021

Page 9

Members are to stay on track to bring the benefits of Southeast EEM to customers during the first half of 2022. Further delay of Commission action may push the implementation of the Southeast EEM into the third quarter of 2022, which would delay the cost savings benefits for customers.

Conclusion

The Southeast EEM Members respectfully request that the Commission accept the Southeast EEM Agreement, and the related filings in these unconsolidated dockets, subject to the modifications proposed by the Members in previous filings, to become effective on October 12, 2021. If the Commission finds these proposed changes acceptable and otherwise accepts the Southeast EEM Proposal as submitted, the Southeast EEM Members commit to subsequently submit a compliance filing to effectuate the proposed revisions within 30 days of acceptance.

Respectfully Submitted,

/s/ Noel Symons

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Dated: August 11, 2021

CERTIFICATE OF SERVICE

I hereby certify that I have on this day caused to be served a copy of the foregoing upon all parties on the service list in these proceedings in accordance with the requirements of Rule 2010 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.2010 (2020).

Dated at Washington, D.C. this 11th day of August, 2021.

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