

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Alabama Power Company, Inc.	)	ER21-1111-002
Dominion Energy South Carolina, Inc	)	ER21-1112-002
Louisville Gas and Electric Company	)	ER21-1114-002
Duke Energy Carolinas, LLC and)	
Duke Energy Progress, LLC	)	ER21-1115-002
Duke Energy Carolinas, LLC	)	ER21-1116-002
Duke Energy Progress, LLC	)	ER21-1117-002
Louisville Gas and Electric Company	)	ER21-1118-002
Georgia Power Company	)	ER21-1119-002
Kentucky Utilities Company	)	ER21-1120-002
Mississippi Power Company	)	ER21-1121-002
Alabama Power Company	)	ER21-1125-002
Dominion Energy South Carolina, Inc	)	ER21-1128-002

Unconsolidated

Comments of the R Street Institute on the SEEM Response to Second Deficiency Letter

Pursuant to Rule 213 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (FERC or Commission), 18 C.F.R. § 385.213, the R Street Institute (R Street) hereby submits comments the Southeast Energy Exchange Market Agreement (SEEM) proponents' Response to Second Deficiency Letter, submitted by Alabama Power Company, et al. on August 11, 2021 in the above-captioned proceedings.¹ Due to the nature of this proposal, the structure of the responses are the same for each of the identified dockets above, but since the majority of documents associated with the SEEM proposal were submitted in ER21-1111-000, and as that is the lead docket, R Street is submitting one set of comments and including each of the associated dockets in the caption.

I. Comments

R Street provides limited comments in response to SEEM's Second Response to FERC's Second Deficiency letter and commends FERC for its efforts to gather additional insight into the operation and organization of the SEEM proposal through the questions raised in both Deficiency Letters. R Street remains concerned that the Auditor and Administrator functions in the SEEM organization will not be sufficiently independent of the Board and SEEM Members. In prior comments, R Street has repeatedly raised concerns regarding the transparency of the

¹ *Alabama Power Co., et al.*, "Response to Second Deficiency Letter," Docket Nos. ER21-1111-002, *et al.* (August 11, 2021) (SEEM Second Response). https://elibrary.ferc.gov/eLibrary/filelist?accession_number=20210811-5101.

SEEM market, the importance of having an independent market monitor to ensure that SEEM Members do not use their role to create a market to their own benefit, and the need to provide more opportunities for non-utility participants to become Members, and to ensure there is sufficient transparency over the operation of the market. As SEEM's Second Response notes, the Administrator and Auditor play a significant role in managing confidential and trade secret information.² While SEEM avers that neither the Auditor and Administrator will be a Member, Participant, Agent, an affiliate of those entities, or have one entity act as both Auditor and Administrator,³ such assurances are not to be found in the SEEM Agreement or Market Rules. Section 2.3 of the SEEM Agreement states that the "Membership Board, pursuant to Article 4, may decide to engage one or more third parties to perform the responsibilities of the Southeast EEM Administrator."⁴ As for the Auditor, the SEEM Agreement and Market Rules merely states that the Auditor is an "independent entity" hired by the SEEM Agent—itsself a creation of the SEEM Board.⁵

According to the SEEM Agreement, even accounting for changes proposed in SEEM's response to the First Deficiency Letter, the SEEM Board hires the Administrator and an Agent of the Board hires the Auditor. Furthermore, both Administrator and Auditor are responsive to the SEEM Board, which, per the SEEM Agreement, is made up solely of the SEEM Members—which are utilities. So, though the Administrator and Auditor will not be a Member, Participant, Agent, or an affiliate, both remain under the authority of the SEEM Board.

SEEM's Second Response states that the determination to decide what information to protect from Marketing Function Employees will be "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." Furthermore, as noted in SEEM's First Response, complaints submitted to the Auditor by Participants are referred back to the SEEM Board.⁶ SEEM suggests that any complaints be taken up by FERC directly or submitted to FERC by Participants rather than have the Board take action against its own Members who, according to the Auditor may be engaging in actions not allowed by the SEEM Agreement and Market Rules.⁷

As SEEM's First Response notes, "Members do not believe it is necessary to amend the Southeast EEM Agreement to require the Administrator or Membership Board to inform the Commission of potential violations; however, individual Southeast EEM Members or Participants may do so under the current Southeast EEM Agreement and Market Rules."⁸ This

² *Id.* at 3, 6.

³ *Id.* at 8.

⁴ SEEM Membership Agreement at Sec. 2.3.

⁵ *Id.* at 1.1.

⁶ *Alabama Power Co., et al., "Response to Deficiency Letter,"* Docket Nos. ER21-1111-001, *et al.*, at 22 (June 6, 2021) (SEEM First Response). https://elibrary.ferc.gov/eLibrary/filelist?accession_number=20210607-5164.

⁷ *Id.*

⁸ *Id.* at 19.

does not portend well for ability of the Auditor or the Administrator to take action against members of the Board to counter possible anti-competitive behavior.

In short, the information provided by SEEM in their First and Second Responses do little to assuage R Street's concern about the independence of the Administrator and the Auditor, and the governance of SEEM. These are vital components of a market, even one as limited as SEEM, to ensure that market power is not being exercised and all participants have an equal opportunity to participate and be heard.

R Street recommends that FERC either require modifications to the SEEM proposal that add substantial market monitoring functions—to be completed by an independent market monitor that is not answerable to the SEEM Board—or reject the SEEM filing as proposed. R Street is highly supportive of expanding market opportunities to the Southeast; rather than enable such growth, R Street is concerned that SEEM may actually stifle such opportunity. R Street believes that it may be beneficial to FERC to hold a technical conference that pertains to the Southeast to gather information about current activities, potential market opportunities in the region, and possible alternative options for the region.

II. Conclusion

SEEM's First and Second Responses do not address the many flaws in the original SEEM proposal. R Street's concerns about the SEEM proposal, as detailed in our Initial Comments and Comments to the First Response, remain unaddressed by the SEEM proponents. Absent FERC adopting the recommendations from this and prior R Street comments in this docket, R Street recommends that FERC reject the SEEM proposal.

Respectfully submitted,

/s/ Christopher Villarreal

Christopher Villarreal

R Street Institute

1212 New York Avenue, NW, Suite 900

Washington, D.C., 20005

Telephone: (415) 680-4224

Email: cvillarreal@rstreet.org

Dated at Washington, D.C.

This 23rd Day of August 2021

CERTIFICATE OF SERVICE

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

/s/ Christopher Villarreal
Christopher Villarreal

Dated at Washington, D.C.
This 23rd Day of August 2021.