UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Alabama Power Company	)	ER21-1111-000
Dominion Energy South Carolina, Inc.	)	ER21-1112-000
Louisville Gas and Electric Company	)	ER21-1114-000
Duke Energy Progress, LLC Duke Energy Carolinas, LLC	)	ER21-1115-000
Duke Energy Carolinas, LLC	)	ER21-1116-000
Duke Energy Progress, LLC	)	ER21-1117-000
Louisville Gas and Electric Company	)	ER21-1118-000
Georgia Power Company	)	ER21-1119-000
Kentucky Utilities Company	)	ER21-1120-000
Mississippi Power Company	)	ER21-1121-000
Alabama Power Company	)	ER21-1125-000
Dominion Energy South Carolina, Inc.	)	ER21-1128-000
	)	(not consolidated)

MOTION FOR LEAVE TO ANSWER, AND ANSWER, OF ADVANCED ENERGY ECONOMY, ADVANCED ENERGY BUYERS GROUP, RENEWABLE ENERGY BUYERS ALLIANCE, AND THE SOLAR ENERGY INDUSTRY ASSOCIATION

Pursuant to Rule 212 and 213 of the Federal Energy Regulatory Commission's ("the "Commission" or "FERC") Rules of Practice and Procedure,[1] Advanced Energy Economy ("AEE"),

[1] 18 C.F.R. §§ 385.212, 213 (2020).

the Advanced Energy Buyers Group ("AEBG"), the Renewable Energy Buyers Alliance ("REBA"), and the Solar Energy Industries Association ("SEIA") (collectively, the "Clean Energy Coalition") hereby move for leave to answer, and Answer the Motion for Leave to Answer and Answer of the Southeast Energy Exchange Market ("SEEM") Members (the "SEEM Parties' Answer").[2]

The Clean Energy Coalition submits that good cause exists to accept this Answer. First, regardless of how the Commission acts in this proceeding, the record here demonstrates that there is broad consensus that the Commission should hold a technical conference that more holistically addresses the future development of competitive market structures in the Southeast. Establishing a separately docketed proceeding to conduct a technical conference exploring broader issues of market design in the Southeast is consistent with Commission precedent and statutory authority, and warranted given the lack of input states, customers, and other key stakeholders had in the development of SEEM. Second, the Clean Energy Coalition clarifies the Commission's statutory obligations under Section 205 of the Federal Power Act ("FPA"), particularly as it pertains to the mitigation of market power prior to accepting authorizing a proposed rate.[3] While Section 205 may put the Commission in a "passive and reactive role,"[4] the SEEM Parties' Answer intimation that

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[2] See Motion for Leave to Answer and Answer of the Southwest EEM Members, Docket Nos. ER21-1111-000, *et al.* (Mar. 30, 2021).

[3] 16 U.S.C. § 824d (2018); *see also Cajun Elec. Power Coop. v. Fed. Energy Reg. Comm'n*, 28 F.3d 173 (D.C. Cir. 1994) (explaining that the Commission must consider, as part of its Section 205 review, whether the utility's market power is sufficiently mitigated so as to ensure that the rates are just and reasonable under FPA Section 205) ("*Cajun Electric*"); *Automated Power Exch. v. Fed. Energy Regulatory Comm'n*, 204 F.3d 1144 (D.C. Cir. 2000) (explaining that an algorithmic market operators exercising effective control over jurisdictional facilities are required to demonstrate a lack of market power and/or propose sufficient mitigation measures) (*"APX v. FERC*").

[4] *See, e.g., NRG Power Mktg., LLC v. Fed. Energy Regulatory Comm'n*, 862 F.3d 108, 110 (D.C. Cir. 2017) ("*NRG*").

inquiring into or directing resolution of the deficiencies identified by intervening parties would somehow cause the Commission to exceed its jurisdictional bounds is incorrect.[5] Accepting the SEEM Proposal without considering the potential for anticompetitive consequences if SEEM does not contain appropriate market power mitigation and governance measures would be arbitrary and subject the Commission's decision here to close scrutiny "in light of the statutory obligations to protect the public interest."[6]

I. Motion for Leave to Answer

The Clean Energy Coalition respectfully moves for leave to answer the SEEM Parties' Answer. While Commission regulations generally prohibit answers to answers, the Commission regularly accepts such answers for good cause when they clarify the record and assist in the decision-making process.[7] This Answer will facilitate a more complete review of the issues, by providing needed clarifications regarding the Commission's statutory obligation under Section 205 and correcting certain mischaracterizations in the SEEM Parties' Answer.

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[5] *See, e.g.* SEEM Parties' Answer at 19 ("The Commission must reject intervenors' requests to turn a tariff filing into a 'broad redesign' of the Southeast market.")

[6] *See, e.g., Gulf States Util. Co. v. Fed. Power Comm'n.*, 411 U.S. 747, 762 (1973) ("[W]here the Commission summarily disposes of proffered objections, or where it exercises its discretion to approve an issue without considering its anticompetitive consequences, "the reviewing court must closely scrutinize its action in light of the . . . statutory obligations to protect the public interest and to enforce the antitrust laws.") (quoting *Denver & R.G.W.R. Co. v. U.S.*, 387 U.S. 485, 498 (1967)); *see also Cajun Electric* at 180 (explaining that Section 205 requires the Commission to consider implementation of market mitigation measures when market power concerns are raised by intervenors).

[7] *See, e.g., Calpine Corp. v. PJM Interconnection, LLC,* 173 FERC ¶ 61,061, PP 7, 9 (2020) (accepting answers that provide "information that assisted [the Commission] in [its] decision-making process"); *PJM Interconnection, LLC,* 173 FERC ¶ 61,028, P 29 (2020) (accepting answers to protest and answers "because they have provided information that assisted [the Commission] in [its] decision-making process"); *Midwest Indep. Transmission Sys. Operator, Inc*., 126 FERC ¶ 61,144, P 8 (2009).

II. A Technical Conference on the Future of Wholesale Markets in the Southeast is Consistent with Precedent and Authority, and Necessary Given the Lack of Consultation That Preceded SEEM

The technical conference procedure is a process conducted by the Commission staff designed to provide for the free exchange of information outside the context of formal litigation and hearing.[8] As the Clean Energy Coalition explained in its opening comments, a technical conference will provide the Commission with the opportunity to broadly solicit input from stakeholders and establish a forum in which the Commission and its state counterparts can consider all relevant facts and circumstances regarding the performance of the existing wholesale markets in the Southeast and the need for the development of more competitive market structures. [9]

The SEEM Parties' Answer makes clear that the SEEM Proposal is only intended to be a limited enhancement to the existing bilateral market.[10] The Clean Energy Coalition supports efforts to remove impediments to wholesale contracting and produce benefits to customers in the Southeast. Whether or not SEEM is a first step to removing these impediments remains unclear based on the record here, but setting that question aside, there is an opportunity for additional reforms that provide further benefits to customers.[11] When presented with an innovative market design proposal

[8] *See, e.g., Gas Transmission Northwest Corp.*, 117 FERC ¶ 61,057 (2006) (explaining the Commission's technical conference process and explaining that the boundary between issues within the purview of an Administrative Law Judge and issues reserved to the Commission).

[9] *See* Comments of Advanced Energy Economy, Advanced Energy Buyers Group, Renewable Energy Buyers Alliance, and the Solar Energy Industry Association, Docket No. ER21-1111, *et al.,* 50-52 (Mar. 15, 2021) ("Clean Energy Coalition Comments").

[10] *See, e.g.* SEEM Parties Answer at 3 (explaining that the SEEM Proposal "offers two small but significant enhancements to the existing bilateral market in the Southeast, without changing the fundamental nature of the existing market.").

[11] *See* Clean Energy Coalition Comments at 33-34, 50-53.

under Section 205 that is designed to advance wholesale competition, the Commission regularly grants stakeholders' request for a separate technical conference to consider issues broader than those presented in the Section 205 submissions.[12] Providing a forum for states, customers, and the Commission to examine market structures that would maximize benefits to consumers is consistent with the public interest and without opposition.[13] A technical conference provides the Commission with a forum to consider "the best long-term measures" to address wholesale market reform in the Southeast.[14]

The Clean Energy Coalition believes that the three-part agenda proposed by South Carolina Senator Davis provides a useful starting point for designing a technical conference.[15] Specifically,

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[12] *See, e.g., PJM Interconnection, LLC*, 115 FERC ¶ 61,079 (2006) (finding PJM's proposed Reliability Pricing Model to be unjust and unreasonable, establishing additional paper hearing procedures and convening a technical conference); *Cal. Indep. Sys. Operator Corp.*, 116 FERC ¶ 61,274 (2006) (conditionally accepting the MRTU Tariff, ordering certain significant changes, and granting requests for a technical conference on seams issues and Business Practice Manuals); *ISO-New England, Inc.*, 105 FERC ¶ 61,397 (2003) (conditionally accepting the proposed tariff and convening a technical conference for the purpose of: (i) obtaining additional information regarding the impact of ISO-NE's proposed cost allocation methodology on virtual trading activity in the New England energy markets; (ii) identifying the underlying system costs and system benefits attributable to arbitrageurs; (iii) examining any relevant differences between high-volume and low-volume arbitrageurs; and (iv) considering alternative cost allocation options.).

[13] *See, e.g.,* SEEM Parties' Answer at 9 ("As to arguments for a technical conference to explore policy issues related to the general restructuring of the Southeast markets, the Southeast EEM Members take no position in the current case, but note that this proceeding is not the forum to debate the larger issues that have been raised."). As MISO explained "it is important to ensure that long-standing coordination principles are not ignored merely because a competitive market is created outside the RTO model." Motion to Intervene and Comments of Midcontinent Independent System Operator, Inc., Docket No. ER21-1111, *et al.,* 6 (Mar. 15, 2021).

[14] *See, e.g., San Diego Gas & Elec. Co.*, 93 FERC ¶ 61,294, 62,017 (2001) ("We therefore direct our staff to convene a technical conference to explore the best long-term measures to address California's wholesale markets.").

[15] *See* Letter of Senator Tom Davis, Docket No. ER21-1111, *et al.,* (Mar. 4, 2021); *see also* Letter of Representative Nathan Ballentine, Docket No. ER21-1111, *et al.,* (Mar. 9, 2021) (requesting a technical conference to investigate wholesale market reform in the Southeast, "in light

Senator Davis proposes exploring: (1) the potential benefits for the Southeast of utility participation in an independently operated regional transmission organization or energy imbalance market; (2) how wholesale market design can ensure system reliability in the Southeast; and (3) whether there is an opportunity for an enhancement of the FERC-state partnership. State lawmakers and other stakeholders were not provided notice or an opportunity to learn about the SEEM Proposal as it was under development.[16] As such, a technical conference on these issues will aid all interested parties in understanding the costs and benefits of advancing additional market design efforts in the Southeast.

III. The Clean Energy Coalition Did Not Request that the Commission Adopt an Entirely Different Rate Design

In their Answer, the SEEM Parties misrepresent the Clean Energy Coalition's request that the Commission closely examine whether SEEM contains appropriate market power mitigation and governance measures.[17] The Clean Energy Coalition did not propose market mitigation and governance provisions simply because "[SEEM] should be treated like an [Regional Transmission Organization ("RTO")]."[18] Rather, the lack of market monitoring, market power mitigation, and stakeholder governance measures bear directly on whether the SEEM Proposal will have the structure necessary to deliver just and reasonable rates as required by Section 205.[19] Accepting the

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of the broad interest across the region in improving affordability and system reliability, and in order to create more competition for clean energy technologies").

[16] *See, e.g.,* Clean Energy Coalition Comments at 2 (explaining that few if any states in the region were consulted or even made aware of the development of the SEEM Proposal).

[17] *See, e.g.,* SEEM Parties' Answer at 8-14, 29-37.

[18] *Id.* at 29.

[19] *See, e.g.,* Clean Energy Coalition Comments at 9-27.

premise that "[m]arket power studies and market monitors are illogical over-responses"[20] simply because the SEEM "is not an RTO"[21] would fail to satisfy the Commission's statutory obligations.

A. Section 205 Obligates the Commission to Consider Whether Mitigation and Governance Measures, or the Lack Thereof, Impact the Justness and Reasonableness of SEEM

Many intervenors, including the Clean Energy Coalition, raised questions as to whether additional market mitigation and governance provisions are a necessary component of the SEEM Proposal given that many of the SEEM Members have market power in transmission and/or generation in the Southeast.[22] In *Federal Power Commission v. Conway Corporation,* the United States Supreme Court explained that in performing a Section 205 review, the Commission "must consider the tendered allegations that the proposed rates are discriminatory and anticompetitive in effect."[23] Similarly, when the United States Court of Appeals for the District of Columbia Circuit ("D.C. Circuit") reviewed the Commission's orders in *Cajun Electric Power Cooperative*, the court concluded that the Commission must consider whether new or additional market power mitigation measures are necessary to ensure rates are just, reasonable, and not unduly discriminatory.[24] The court in *Cajun Electric* further explained that the Commission cannot defer questions of necessary market mitigation to a future proceeding: "it simply will not do to assert that questions critical to the

[20] SEEM Parties' Answer at 29.

[21] *Id.*

[22] *See, e.g.,* Clean Energy Coalition Comments at 15-27.

[23] *See Fed. Power Comm'n v. Conway Corp.*, 426 U.S. 271, 279 (1976); *see also Gulf States*, 411 U.S. at 758-59 (explaining that Section 205 "clearly carries with it the responsibility to consider, in appropriate circumstances, the anticompetitive effects of regulated aspects of interstate utility operations").

[24] 28 F.3d 173, 180 (D.C. Cir. 1994).

market power determination were properly deferred for another day."[25] The court held that, because the public utility retained "sole discretion to determine the amount of transmission capability available for its competitors' use," the Commission was obligated to consider additional market mitigation measures.[26] As the court explained, "there may never be any competition if [the utility] decides to open only a slight amount of transmission capability to its competitors. At the very least, [the utility's] ability to determine whether and when it has surplus transmission capability creates an uncertainty that impedes competition."[27] As in *Cajun Electric*, here each of the Participating Transmission Providers retains the sole discretion to determine the amount of Non-Firm Energy Exchange Transmission Service ("NFEETS") available to its competitors.[28] Furthermore, intervening parties to the docket have "tendered allegations that the proposed rates are discriminatory and anticompetitive in effect."[29] Accordingly, it is the Commission's obligation to consider whether new or additional mitigation measures are necessary.

While the Commission may have limited discretion to make a material modification to a Section 205 filing,[30] this does not mean that FPA section 205 is nothing more than a "rubber stamp."

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[25] *Id.*

[26] *Id.* at 179.

[27] *Id.* at 180.

[28] *See, e.g.,* SEEM Proposal Operations Affidavit of Christopher McGeeney and Corey Sellers, Attachment C at 14 (explaining that Participating Transmission Providers have sole discretion in determining available NFEETS and loss factors and Participants with sole discretion in designating constraints).

[29] *Fed. Power Comm'n v. Conway Corp.*, 426 U.S. at 279. *See, e.g.,* Clean Energy Coalition Comments at 34-42.

[30] *See, e.g., NRG*, 862 F.3d at 114 (explaining that FERC may not unilaterally impose a new rate scheme but may propose modifications if the utility consents to the modifications).

The Commission may only approve an FPA section 205 application if it is "just and reasonable."[31] To this end, the Commission retains authority to conduct further evidentiary proceedings to determine a just and reasonable rate and may also reject filings that do not comply with the necessary requirements.[32] In the present case, the Commission should seek additional information on whether the governance and market power mitigation measures in place under SEEM are sufficient to ensure just and reasonable rates, as explained in the Clean Energy Coalition Comments.[33]

As explained previously, the pool-wide Open Access Transmission Tariff ("OATT") that must be in place for a loose power pool would mitigate the market power of the SEEM Members by ensuring there is a uniform tariff vehicle that includes governance provisions allowing "any bulk power market participant to join, regardless of the type of entity, affiliation, or geographic location"[34] and to prevent the "undue influence of vertically integrated utilities."[35] While a pool-wide OATT is not the exclusive vehicle in which the SEEM Parties could incorporate the required

[31] 16 U.S.C. § 824d.

[32] *See, e.g., Fed. Power Comm'n v. Conway Corp.*, 426 U.S. at 279 (explaining that Section 205 obligates the Commission to "arrive at a rate level deemed by it to be just and reasonable, but in doing so it must consider the tendered allegations that the proposed rates are discriminatory and anticompetitive in effect" and highlighting that Section 205(b) "forbids the maintenance of any unreasonable difference in rates or service with respect to any . . . sale subject to the jurisdiction of the Commission"); *see also Gulf States*, 411 U.S. at 758-59 (explaining that the exercise by the Commission of powers otherwise within its jurisdiction "clearly carries with it the responsibility to consider, in appropriate circumstances, the anticompetitive effectives of regulated aspects" pursuant to directive of FPA Section 205).

[33] *See* Clean Energy Coalition Comments at 15-27.

[34] *Id.* at 16.

[35] *Id.* at 19.

mitigation and governance procedures, it is an efficient approach that is well-grounded in Commission practice and precedent.[36]

Further, in their opening comments, the Clean Energy Coalition stated that the SEEM Parties should provide a market power analysis by which the Commission can judge each Member's structural market power.[37] This is necessary because only the SEEM Members that are also public utilities have approved market-based rate tariffs and in no docket has the Commission investigated whether any public utility may have structural market power under the SEEM or in any of the other balancing areas in the SEEM territory.[38] In their Answer, the SEEM Parties' respond that the Participant-controlled toggle switch is the sole and exclusive means necessary to mitigate the transmission or generation market power of any Participant on the platform.[39] But a Participant-controlled toggle switch cannot mitigate the market power of the Participant controlling the switch.[40] While participation in the SEEM is voluntary, and some SEEM Participants' do hold market-based rate tariffs, the grant of market-based rate authority did not consider the possibility of the seller engaging in SEEM transactions or how the SEEM structure would impact an applicant's ability to

[36] *Id.* at 10-15.

[37] *Id.* at 22 (requesting the Commission "direct SEEM Filing Entities to supplement their incomplete filing with information regarding . . . (5) a structural market power analysis to assess whether SEEM Members have market power under the SEEM structure in neighboring Balancing Authority Areas").

[38] *Id.* at 27 ("[T]he Commission should investigate whether these utilities have structural market power under the SEEM in any of the other balancing areas in the SEEM Territory. The Commission has ordered such analysis before and it should do so here in a deficiency letter.").

[39] *See* SEEM Parties' Answer at 33-34.

[40] *Id.* at 33 (explaining that "a [SEEM] 'toggle' is just a manifestation of a decision that any market participant can make today" and arguing that oversight of a Participant's toggle function would be a "collateral attack" on the status quo).

exercise control over prices in the region.[41] An issue the Clean Energy Coalition raised in opening comments, and a question that remains outstanding, is how to mitigate the SEEM Members' market power when the SEEM Members have sole discretion over the inputs to the price-setting Algorithm and access to the data generated by the Algorithm.[42] Well-established precedent supports addressing the potential to exercise market power prior to a determination that the SEEM Proposal yields a just and reasonable rate under Section 205.[43]

B. The Commission Should Closely Examine the Details of the SEEM Algorithm, and Seek Additional Details as Necessary, to Ensure That it Will Produce Rates That are Just and Reasonable

With respect to the SEEM Algorithm, the Clean Energy Coalition explained that the SEEM filings contained insufficient detail to determine whether it would produce just and reasonable rates.[44] The SEEM Entities now argue that no additional detail is required, and characterize requests

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[41] The Commission should dispatch of the SEEM Parties' suggestion that "The Commission already mitigates the exercise of market power by each jurisdictional entity by limiting or conditioning as necessary those entities' ability to sell power at market-based rates." SEEM Parties' Answer at 30. This ignores the fact that the SEEM structure was not considered in any of the proceedings establishing the required mitigation measures.

[42] SEEM Members must provide information about their systems "to permit the Southeast EEM Administrator to create a Network Map of the Southeast EEM Territory for purposes of confirming available capacity" prior to use of the pooled transmission services. The SEEM Algorithm then uses this Network Map to confirm availability of and to allocate NFEET Service capacity. *See* Clean Energy Coalition Comments at 11. The SEEM Proposal does not detail the entities that have access to the data and information generated through use of the Algorithm; presumably this data-access will be provided to some or all of the SEEM Members but not to Participants.

[43] *See, e.g., Fed. Power Comm'n v. Conway Corp.*, 426 U.S. at 279 ("The Commission must arrive at a rate level deemed by it to be just and reasonable, but in doing so it must consider the tendered allegations that the proposed rates are discriminatory and anticompetitive in effect"); *accord Cajun Electric*, 28 F.3d at 180 (explaining that in approving the rate without hearing, despite petitioners properly raising the issue of whether the utility might retain market power, the Commission "ignored this important question of fact and thus erred").

[44] *See* Clean Energy Coalition Comments at 42-44.

for detailed formula used to calculate the actual prices produced by the SEEM Algorithm as "elevating form over substance" and going "well beyond the scope of what is required under FPA Section 205."[45] To the contrary, the Commission has previously held that an algorithmic operator is itself a public utility within the meaning of FPA Section 201(e) and is required to submit detailed information prior to allowing participants to engage in transactions on the platform.[46] Specifically, in *Automated Power Exchange,* the Commission explained that an algorithm is a public utility when it exercises "effective control" over jurisdictional facilities, including both physical and paper facilities.[47] The Commission explained that an algorithm exercises effective control when (1) it will "determine the market price at which energy will be sold," and (2) is an "integral part of the transactional chain."[48] The Commission ultimately found in that case that the proposed Automated

[45] SEEM Parties' Answer at 49. Ironically, the SEEM Entities also suggest that the Commission apply its precedent from the context of RTOs/ISOs, arguing that in RTOs/ISOs the Commission may treat these formulas as "implementation details" best left to manuals, even as they steadfastly assert throughout their answer that RTO/ISO precedents should not apply. The manuals referenced by the SEEM Entities are developed under the auspices of an independent operator and an engaged stakeholder membership. Nothing of the sort has been proposed for review and consideration of SEEM-related "implementation details."

[46] *See Automated Power Exch.*, 82 FERC ¶ 61,287 ("*APX I*"), *reh'g denied,* 84 FERC ¶ 61,020 (1998) ("*APX II"*), *aff'd, APX v. FERC,* 204 F.3d 1144 (D.C. Cir. 2000).

[47] *APX I* at p. 62,108 ("Because jurisdictional facilities include not only physical facilities but also 'paper' facilities used to effectuate wholesale power sales, the Commission's focus on effective control applies in both circumstances."); *APX II* at p. 61,084 ("[B]ased on the facts before us, we concluded that APX will own and operate facilities used for wholesale sales in interstate commerce and we construed *both the bidding participants that sell generation and APX to be engaged in the sale of electric energy at wholesale in interstate commerce*. Therefore, we found that APX will be a public utility subject to our jurisdiction.") (emphasis added)

[48] *APX II* at pp. 61,083-84 ("We found that while APX will match willing buyers and sellers who want to contract at the market price, more importantly, APX will periodically determine the market price at which energy is sold. We noted that APX will adjust the current market price for each hourly energy market based on the balance of buy or sell orders pending, and APX's Market Engine will adjust the market price to move the market to a balance of buy and sell orders. Therefore, we concluded that APX was the necessary vehicle through which wholesale sales of energy for resale

Power Exchange ("APX") was an algorithmic operator that satisfied the definition of a public utility because, "but for APX's intervention in the process, wholesale sales transactions between buyers and sellers will not necessarily occur at the specified market price."[49] On review, the D.C. Circuit affirmed the Commission's conclusion.[50]

The SEEM Proposal's Algorithm similarly exercises effective control over jurisdictional facilities. First, as the SEEM Parties' Answer explains, "[t]he matching (and resulting scheduling of NFEETS) will be performed by the Algorithm in a way that maximizes benefits for the region, thus taking the determination of matches and the related access to NEEFTS out of the control of the Southeast EEM Members."[51] Second, the SEEM's "combination of zero-cost, non-pancaked transmission service and automated 15-minute trading will arrange beneficial transactions in ways that are unlikely to occur today."[52] Like the APX, the SEEM Algorithm (1) determines the market price at which energy will be sold, and (2) is an integral part of the transactional chain, as the SEEM Entities make clear that SEEM transactions only occur if the SEEM Algorithm authorizes them.

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will be made, and thus that it will take the combined actions of the seller and buyer participants and APX to effectuate wholesale sales.").

[49] *Id.* at 61,084.

[50] *See APX v. FERC*, 204 F.3d at 1146.

[51] SEEM Parties' Answer at 13. *See APX v. FERC*, 204 F.3d at 1153 (explaining that while the parties voluntary elect APX's services and can set limits on bids and offers "they are bound to the market price that APX sets within those limits once they submit a bid. So far as the record indicates, FERC has no way to determine at this point exactly where APX will set the market price; there is no experience to show whether the APX price may always be on the high end or, conversely, on the low end, of the parties' price range").

[52] SEEM Parties' Answer at 22 (quoting Dr. Pope). *See also Southern Cal. Edison Co.*, 80 FERC ¶ 61,262 at 61,946 (1997) (explaining that if a market operator is an integral part of the transaction chain the market operator may be a public utility).

Accordingly, it is appropriate for the Commission to closely examine whether the SEEM Algorithm is sufficiently set forth in the tariff, such that the tariff "clearly set[s] forth how [it] will interact with buyers and sellers, how it will compute prices, and what it will charge for its services."[53] Ensuring that the SEEM Proposal provides the required information to guarantee that the rates are just, reasonable, and not unduly discriminatory is thus well-within FERC's Section 205 authority.[54]

IV. Given the Uncertain Limited Benefits of SEEM, the Commission Should Require Regular Public Reports on Actual Benefits Produced

The SEEM Parties' Answer insists that the benefits they state the platform may produce are conservatively estimated and suggest that the Clean Energy Coalition "misunderstands" the benefits analysis.[55] The Clean Energy Coalition will not repeat the significant questions raised in their opening comments regarding the claimed benefits for SEEM[56] other than to reiterate that the submitted benefits analysis estimates benefits based on "a combination of production cost modeling

[53] *See APX II* at 61,090. The Commission found that APX's prposed tariff "lacks clarity and does not fully explain how the market price will be developed" and held that "the rate schedule must be specific enough for the Commission, APX's customers, and other interested parties to understand the rate setting process." *Id.*

[54] *See, e.g., APX v. FERC*, 204 F.3d at 1154 (rejecting APX's challenge to the rate schedule filing requirements explaining that "APX's objections cannot overcome the fact that how APX adjusts the price goes to the essence of FERC's jurisdictional concern--to ensure that APX's rate-setting and power sales mechanisms are just, reasonable, and not unduly discriminatory or preferential") (internal citations omitted).

[55] *See* SEEM Parties' Answer at 7 (making the inaccurate statement that "[m]ost arguments against the implementation of the Southeast EEM misunderstand or mischaracterize the proposal before the Commission").

[56] *See* Clean Energy Coalition Comments at 27-33.

and linear programming optimization,"[57] while the SEEM Algorithm is designed with the goal of maximizing the "split-the-savings" approach.[58] These are not equivalent measures for benefits.

Given the limited benefits that even the SEEM Entities assert will be produced, the Clean Energy Coalition suggests that if the Commission approves the SEEM Proposal, then it should also require regular reporting of the actual benefits produced in practice.[59] Specifically, the Commission should consider requiring the provision of regular public reports on the progress of SEEM market development efforts and the transactions that result from the SEEM platform. If, upon reviewing such reports, the Commission determines that revisions to SEEM are necessary to produce just and reasonable rates and prevent unduly discriminatory practices, the Commission retains authority under FPA section 206 to initiate proceedings to direct such revisions.[60]

V. Conclusion

The Clean Energy Coalition respectfully requests that the Commission accept this Answer and, for the reasons discussed in this Answer and in the Clean Energy Coalition's opening comments: (1) independently convene a one-day technical conference to facilitate a productive

[57] *See* Attachment E-1, Benefits Analysis at 5 (describing the modeling approach).

[58] *See* Attachment A, SEEM Agreement Market Rule 4.C ("The Southeast EEM Algorithm will match Bids and Offers so as to result in Energy Exchanges that maximize the Southeast Energy Exchange Market total benefit for the applicable Delivery Interval while simultaneously honoring all the requirements identified in Section IV.A.1 and the constraints identified in Section IV.C.6. *The total benefits shall be calculated by aggregating the benefits from each Energy Exchange for the applicable Delivery Interval*.") (emphasis added).

[59] *See, e.g., Pac. Gas and Elec. Co*., 38 FERC ¶ 61,242, 61,792 (1987) (approving the start Western System Power Pool ("WSPP") because "more can be learned in two years of an actual market test than years of laboratory studies or hearings . . . . If it proves not to be in the public interest, the Participants can return to the present method of trading with little or no disruption.").

[60] 16 U.S.C. § 824e(a).

dialogue on competitive market structures in the Southeast; (2) direct the SEEM Entities to provide additional information and address the shortcomings of their current proposal; and (3) require regular reporting by SEEM of the actual benefits produced in practice.

Respectfully Submitted,

/s/ *Jeffery Scott Dennis*
Jeffery S. Dennis, Managing Director and General Counsel
Caitlin Marquis, Director
Advanced Energy Economy
1010 Vermont Ave. NW, Suite 300,
Washington, D.C. 20005
Telephone: (202) 380-1950
jdennis@aee.net
cmarquis@aee.net

/s/ *Sean Gallagher*
Sean Gallagher
Vice President of State and Regulatory Affairs
Gizelle Wray
Director of Regulatory Affairs and Counsel
Melissa Alfano
Manager of Regulatory Affairs and Counsel
Will Giese
Southeast Regional Director
Solar Energy Industries Association
1425 K St NW Ste. 1000
Washington, DC 20005
(202) 682-0556
sgallagher@seia.org
gwray@seia.org
malfano@seia.org
wgiese@seia.org

/s/ Bryn Baker
Bryn Baker, Policy Director
Renewable Energy Buyers Alliance
1425 K St NW, Ste 1100
Washington, D.C. 20005
Telephone: Office: 833-303-7322 ext 117
bbaker@rebuyers.org

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in these proceedings.

Dated this 14th day of April, 2021.

/s/ Jeffery Dennis