

# SOUTHERN ENVIRONMENTAL LAW CENTER

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December 17, 2020

***Via Electronic Filing***

Ms. Kim Campbell  
Chief Clerk  
North Carolina Utilities Commission  
430 North Salisbury Street  
Dobbs Building  
Raleigh, NC 27603-5918

Re: **Docket Nos. E-2, Sub 1268 and E-7, Sub 1245**

Dear Ms. Campbell:

Attached is a Joint Protest for filing on behalf of the Sierra Club, Southern Alliance for Clean Energy, and North Carolina Sustainable Energy Association in the above-referenced dockets.

Please let me know if you have any questions about this filing.

Sincerely,

/s/ Gudrun Thompson

Enclosures

cc: Parties of Record

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

DOCKET NO. E-2, Sub 1268

DOCKET NO. E-7, Sub 1245

In the Matter of: )  
 ) **JOINT PROTEST OF THE SIERRA**  
 ) **CLUB, SOUTHERN ALLIANCE FOR**  
Protest related to informational filing by ) **CLEAN ENERGY, AND NORTH**  
Duke Energy Carolinas and Duke ) **CAROLINA SUSTAINABLE ENERGY**  
Energy Progress ) **ASSOCIATION**  
 )  
 )

PURSUANT TO N.C. Gen. Stat. § 62-73 and Commission Rules R1-5 and R1-6, the Sierra Club, Southern Alliance for Clean Energy (“SACE”), and North Carolina Sustainable Energy Association (“NCSEA”) (together, “Protestants”) file this protest in response to Duke Energy Progress, LLC (“DEP”) and Duke Energy Carolinas, LLC’s (“DEC”) (together, “Duke Energy”) December 11, 2020, Joint Informational Filing in Company Folders E-7 and E-2 (“Informational Filing”) regarding the proposed Southeast Energy Exchange Market (“SEEM”).

1. Southern Alliance for Clean Energy (“SACE”) is a nonprofit organization whose mission is to promote responsible energy choices that create global warming solutions and ensure clean, safe and healthy communities throughout the Southeast. The principal address of SACE is: P.O. Box 1842, Knoxville, Tennessee 37901. SACE also has offices in North Carolina and Georgia, and field offices across the region. SACE’s members include customers of both DEC and DEP.

2. The Sierra Club is a national environmental organization whose mission is to explore, enjoy, and protect the wild places of the earth; to practice and promote the

responsible use of the earth's ecosystems and resources; to educate and enlist humanity to protect and restore the quality of the natural and human environment; and to use all lawful means to carry out these objectives. In furtherance of this mission, the Sierra Club works to accelerate the transition from fossil fuels like coal and gas to clean energy solutions like solar, wind, and energy efficiency, and advocates for state and federal policies and industry action to achieve this transition. The Sierra Club has a long history of working to reduce pollution from fossil-fueled power plants and promoting clean energy resources in North Carolina. The Sierra Club's members include customers of both DEC and DEP. The address of the Sierra Club's principal office in North Carolina is 19 West Hargett Street, Suite 210, Raleigh, NC 27601.

3. The attorneys for SACE and the Sierra Club to whom all correspondence and filings in this docket should be addressed are:

Gudrun Thompson  
Southern Environmental Law Center  
601 West Rosemary St.  
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Chapel Hill, NC 27516  
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Maia Hutt  
Southern Environmental Law Center  
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4. NCSEA is a non-profit corporation formed under the laws of North Carolina, with individual, business, and government members located across the State. NCSEA's mission is to promote a sustainable future through the use of renewable energy and energy efficiency programs. NCSEA's members include customers of both DEC and DEP, as well as sellers and purchasers of electricity at the wholesale level. NCSEA's address is 4800 Six Forks Road, Suite 300, Raleigh, NC 27609.

5. The attorneys for NCSEA to whom all correspondence and filings related to this proceeding should be addressed to are:

Peter H. Ledford  
Counsel for NCSEA  
4800 Six Forks Road  
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Raleigh, NC 27609  
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6. The Protestants object to Duke Energy's failure to file the Informational Filing under the Amended Regulatory Conditions' advance notice conditions approved by the Commission in its *Order Granting Motion to Amend Regulatory Conditions*, Docket Nos. E-2, Sub 1095A, E-7, Sub 1100A, and G-9, Sub 682A. *See* Informational Filing at 3. The Protestants further object to Duke Energy's characterization of N.C. Gen. Stat. § 62-153 as "not applying" to the SEEM platform agreement ("Platform Agreement") included in the Informational Filing. *See id.* Finally, the Protestants request that the Commission maintain jurisdiction over this matter and ensure that Duke Energy does not enter into the SEEM agreement without "explicit approval of the Commission," as required by Regulatory Condition 3.9(b).

7. N.C. Gen. Stat § 62-153 requires utilities to obtain Commission approval of contracts with their affiliates. Duke Energy's claim that N.C. Gen. Stat § 62-153 does not apply to the Platform Agreement is incorrect. *See* Informational Filing at 3. Contrary to Duke Energy's representation, the general statute does not premise the requirement to file with the Commission on the existence of a "transaction." N.C. Gen. Stat § 62-153(a). Instead, the statute requires that "[a]ll public utilities shall file with the Commission copies of contracts with any affiliated or subsidiary . . . company or agency." *Id.* The

Platform Agreement is a contract to which DEC and DEP are both parties. *See* Platform Agreement at 1 (“[T]he Members, for good and valuable consideration, enter into this Agreement that sets forth their mutual covenants, rights, and obligations for establishing, funding, and participating in the Southeast Energy Exchange Market[.]”). Therefore it is a contract with and among affiliates and N.C. Gen. Stat § 62-153’s requirements apply.

8. Similarly, Duke Energy’s assertion that the Platform Agreement does not constitute an “Affiliate Contract” under the Regulatory Conditions because “DEC and DEP are not contracting with each other; they are simply signatories to the Platform Agreement”, Informational Filing at 3, is a distinction without a difference under the Regulatory Conditions’ definition of the term:

(a) *Any contract or agreement between or among* DEC, DEP, and Piedmont or between or among DEC, DEP, or Piedmont and any other Affiliate or proposed Affiliate, and (b) any contract or agreement between such other Affiliate or proposed Affiliate and another Affiliate that is related to the same subject matter and is reasonably likely to have an Effect on DEC’s, DEP’s, or Piedmont’s Rates or Service. Such contracts and agreements include, but are not limited to, service, operating, interchange, pooling, *wholesale power sales agreements* and agreements involving financings and asset transfers and sales, and the Joint Dispatch Agreement.

Regulatory Condition, Section I (emphasis added). The Platform Agreement is an “agreement between or among DEC, DEP” and several other investor-owned utilities. This alone is sufficient to render the Platform Agreement an “Affiliate Contract.” The Regulatory Conditions were intended to mitigate the risk of “self-dealing or anti-competitive conduct by and among DEC, DEP and Piedmont after the merger.” *Order Approving Merger Subject to Regulatory Conditions and Code of Conduct*, Docket Nos. E-2, Sub 1095, E-7, Sub 1100 and G-9, Sub 682 at 57 (Sept. 29, 2016). The Regulatory Conditions would lose any meaning if Duke Energy could avoid the designation of a

contract as an Affiliate Contract, and the increased Commission oversight it triggers, by adding an additional non-Affiliate party to an agreement. Further, Duke Energy’s claim that the SEEM is “not a wholesale power sales agreement”, *id.* at 3, but “an overlay to the existing bilateral market to increase efficiency and opportunities for wholesale economic energy purchases and sales”, *id.* at 1, is farcical—what Duke is describing, via circumlocution, is a wholesale market. In fact, the Fact Sheet produced by the SEEM participants even acknowledges that SEEM is a “proposed market” of a “wholesale nature[.]”<sup>1</sup>

9. Duke Energy’s conclusion that Regulatory Condition 3.1 does not apply to their filing is also incorrect. Duke Energy claims that under the Platform Agreement DEC and DEP do not “transact with one another” and therefore Regulatory Condition 3.1’s advance notice filing is not required. Informational Filing at 3. But Duke Energy’s unjustifiably narrow interpretation of the term “transact” is unsupported. The Regulatory Conditions provide that “DEC, DEP, and Piedmont shall not engage in any transactions with Affiliates . . . without first filing the proposed contracts or agreements and obtaining from the Commission such determinations and authorizations as may be required under North Carolina Law.” Regulatory Condition 3.1(a). Duke Energy argues that because the Platform Agreement does not enable DEC and DEP to engage in “energy exchange transactions,” no transaction between Affiliates occurs. Informational Filing at 3. But the Platform Agreement does commit DEC and DEP to financial obligations. *See* Platform Agreement Art. 7. SEEM members are required to pay “Operating Costs and other dues or fees.” *Id.* While these payments may not be “to each other,” Informational Filing at 3, they are certainly “involving Duke Energy, DEC, [or] DEP,” Regulatory

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<sup>1</sup> SEEM, Southeastern Energy Exchange Market Fact Sheet, Attachment 1, p. 2.

Conditions at 3. Therefore, Duke Energy’s claim that a lack of direct energy exchange transactions between Affiliates precludes Regulatory Condition 3.1’s requirements from applying is incorrect, given that Regulatory Condition 3.1 governs financial transactions as well.

10. The Regulatory Conditions also provide that “[n]o agreement shall be entered into by or on behalf of DEC or DEP, that [] commits DEC or DEP to, or involves either of them in, joint planning, coordination, dispatch or operation of generation, transmission, or distribution facilities with each other or with one or more other Affiliates . . . absent explicit approval of the Commission.” Regulatory Condition 3.9(b). Duke Energy altogether omitted mention of this condition. Informational Filing at 2-3. The Platform Agreement is an “agreement . . . that commits DEC or DEP to, or involves either of them in . . . joint . . . coordination . . . of . . . transmission.” Regulatory Condition 3.9(b). Furthermore, the Platform Agreement is an “agreement . . . that commits DEC or DEP to, or involves either of them in . . . coordination, dispatch or operation of generation. . .” *Id.* The Platform Agreement inherently changes how DEC and DEP dispatch and operate their generation resources, and has been touted by Duke Energy as a way to reduce curtailments, which are in effect dispatch-down instructions.<sup>2</sup> Therefore, Duke Energy must obtain “explicit approval” from this Commission before entering into the SEEM agreement. To effectuate this Condition, Protestants request that the Commission retain jurisdiction over this matter.

11. In light of the foregoing, Protestants respectfully request that the Commission determine that the Platform Agreement is an affiliate contract required to be filed under N.C. Gen. Stat. § 62-153, that 15 days’ advance notice prior to filing the

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<sup>2</sup> *Id.* at 1.

Platform Agreement with the FERC is required under Regulatory Condition 3.1, and that Commission approval is required under Regulatory Condition 3.9. Protestants further request that the Commission maintain jurisdiction over this matter and ensure that Duke Energy does not enter into the SEEM agreement without explicit approval of the Commission.

Respectfully submitted this 17th day of December, 2020.

/s/ Gudrun Thompson

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/s/ Peter H. Ledford

Peter H. Ledford

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CERTIFICATE OF SERVICE

I certify that all parties of record on the service list have been served with the foregoing Joint Protest either by electronic mail or by deposit in the U.S. Mail, postage prepaid.

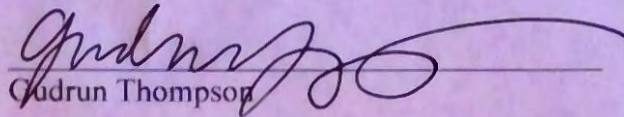
This, the 17th day of December, 2020.

/s/Gudrun Thompson

VERIFICATION

Gudrun Thompson, first being duly sworn, deposes and says that she is the attorney for the Sierra Club and the Southern Alliance for Clean Energy; that she has read the foregoing filing and that the same is true to her personal knowledge, except as to any matters and things therein stated on information and belief, and as to those, she believes them to be true; and that she is authorized to sign this verification on behalf of the Sierra Club and the Southern Alliance for Clean Energy.

This the 16<sup>th</sup> day of December, 2020.

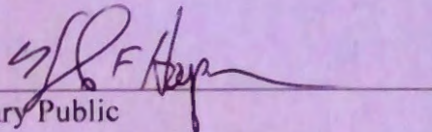
  
Gudrun Thompson

NORTH CAROLINA  
ORANGE COUNTY

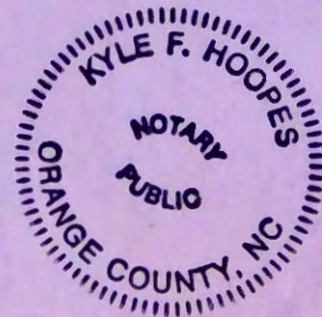
Sworn to and subscribed before me,

this the 16<sup>th</sup> day of December, 2020.

[AFFIX SEAL OF NOTARY]

  
Notary Public

Kyle F Hoopes  
Printed Name of Notary Public  
My Commission Expires: JAN 27, 2023



VERIFICATION

Peter H. Ledford, first being duly sworn, deposes and says that he is the attorney for NCSEA; that he has read the foregoing filing and that the same is true of his personal knowledge, except as to any matters and things therein stated on information and belief, and as to those, he believes them to be true; and that he is authorized to sign this verification on behalf of NCSEA.

This the 15 day of December, 2020.



\_\_\_\_\_  
Peter H. Ledford

NORTH CAROLINA  
WAKE COUNTY

Sworn to and subscribed before me,

this the 15 day of December, 2020.

[AFFIX SEAL OF NOTARY]



\_\_\_\_\_  
Notary Public

Daniel G. Brookshire

Printed Name of Notary Public

My Commission Expires: 7-2-2022

**Daniel G Brookshire, Notary Public  
Orange County, North Carolina  
My Commission Expires 7/2/2022**

# Attachment 1

# Southeastern Energy Exchange Market (SEEM)

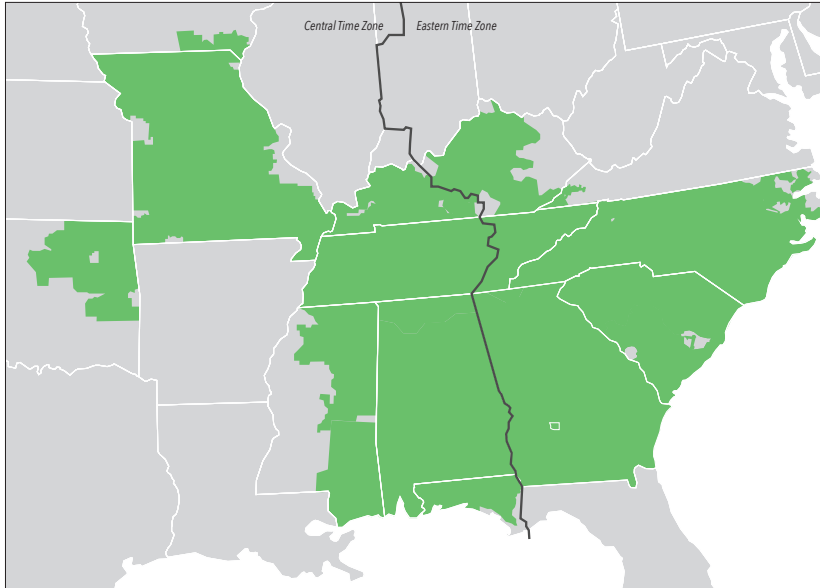


## Fact Sheet

### What is SEEM?

A group of energy companies serving electricity customers across a wide geographic region in the southeastern U.S. is exploring an integrated, automated intra-hour energy exchange with goals of lowering costs to customers, optimizing renewable energy resources and helping maintain the reliable service we provide today.

Companies exploring the energy exchange market include Associated Electric Cooperative Inc., Dalton Utilities, Dominion Energy South Carolina, Duke Energy Carolinas, Duke Energy Progress, Electricities of North Carolina, Inc., Georgia System Operations Corporation, Georgia Transmission Corporation, LG&E and KU Energy, MEAG Power, NCEMC, Oglethorpe Power Corp., PowerSouth, Santee Cooper, Southern Company, and TVA.



### Members

- The members represent 16 entities in parts of 11 states with more than 160,000 MWs (summer capacity; winter capacity is nearly 180,000 MWs) across two time zones. These companies serve the energy needs of more than 32 million retail customers (roughly more than 50 million people).
- SEEM members would maintain existing control of generation and transmission assets, and membership is voluntary.

### Benefits

- This is the first of its kind in our region and is a low-cost, low-risk way to provide immediate customer benefits through a shared market structure.
- SEEM would be a 15-minute energy exchange market that would use technology and advanced market systems to find low-cost, clean and safe energy to serve customers across a wide geographic area.
- Potential benefits include cost savings for customers and better integration of diverse generation resources, including rapidly growing renewables and fewer solar curtailments. An independent third-party consultant estimated that total benefits to grid operators and customers range from \$40 million to \$50 million annually in the near-term, to \$100 million to \$150 million annually in later years as more solar and other variable energy resources are added. (This is dependent, of course, on the number of member companies.)
- We expect customer savings to be realized through lower fuel costs as we're able to select lower-cost and more efficient generation resources to serve customer demand. As sellers identify a use for their excess energy, those profits also benefit customers.

## Is SEEM an energy imbalance market?

No, while this market would share some of the same principles as an energy imbalance market (to assist with imbalances and reduce energy costs), it's less complex, less costly and less time intensive compared with setting up an EIM. It also does not rely on centralized unit dispatch.

## How is SEEM similar or different from the Western Energy Imbalance Market?

	Western EIM	Southeast EEM
<b>Resource Dispatch</b>	5-minute nodal SCED market platform sends individual resource dispatch signals to participating resources every 5 minutes	15-minute block schedule via electronic interchange tags – BA/BA interface transactions – the Market Platform tool matches bids and offers to maximize benefit savings, while adhering to transmission capability (ATC) constraints
<b>Complexity</b>	Moderately complex due to establishing marketing system that also assesses security constraints	Simple due to leveraging existing bilateral trading processes
<b>Costs</b>	Significant startup costs	Low startup and ongoing costs
<b>Transmission Service Charge</b>	\$0/MWh	\$0/MWh
<b>Ancillary Services</b>	Limited	Limited
<b>Manual/Automated</b>	Automated	Automated
<b>Day Ahead Market</b>	No	No
<b>Resource Offer into Market</b>	Voluntary	Voluntary
<b>Manages Imbalance</b>	Directly	Indirectly

## Regulatory approvals

FERC approval will be required to implement the SEEM. The FERC filing and approval process will provide an opportunity for the members of the SEEM to demonstrate the benefits of the proposed market design and for interested parties to provide feedback and comments for FERC to consider. State jurisdiction is limited to the affiliate component, if triggered, while FERC governs the structure and wholesale nature of the transactions.

## What does this potential market mean for state utilities commissions and governing boards?

A primary objective is to maintain the same level of jurisdictional control and oversight as currently exists, where applicable, while facilitating more interchange transactions that support the cost-effective use of a diverse resource mix. FERC will have oversight authority as they do today to ensure those transactions occur with just and reasonable rates, terms and conditions.

