STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

DOCKET NO. E-2, SUB 1268
DOCKET NO. E-7, SUB 1245

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Protest Related to Informational Filing by Duke Energy Carolinas, LLC, and Duke Energy Progress, LLC	))))	ORDER DISMISSING PROTEST

BY THE COMMISSION: On December 11, 2020, Duke Energy Progress, LLC (DEP), and Duke Energy Carolinas, LLC (DEC; together, the Companies), filed a Joint Informational Filing in DEP's and DEC's company folders (Informational Filing) regarding their plans for membership and participation in the proposed Southeast Energy Exchange Market (SEEM). In summary, the Informational Filing informed the Commission of the Companies' intention to file the SEEM Platform Agreement (Platform Agreement) with the Federal Energy Regulatory Commission (FERC) on or about December 28, 2020, for approval under Section 205(c) of the Federal Power Act, 16 U.S.C. 824(c), as an agreement relating to jurisdictional transmission service.

The Platform Agreement, which was attached to the Informational Filing, establishes a region-wide, automated, intra-hour trading platform, with a goal of utilizing unused transmission capacity. The Companies expect their participation in SEEM to achieve cost savings for customers. The Companies state that their participation in the SEEM will allow them to more efficiently enter into the same type of bilateral arrangements for buying and selling excess power in which they are currently engaged. The Companies explain that their participation in the SEEM will not change or replace their other obligations: existing Balancing Authority or Transmission Provider reliability requirements; the existing Joint Dispatch Agreement between DEC and DEP (formerly known as Progress Energy Carolinas, Inc.) filed in Docket Nos. E-2, Sub 998 and E-7, Sub 986 on June 22, 2011, and amended and refiled on June 12, 2012 (JDA); or the As-Available Capacity Sales Agreement between the Companies.

The Companies state that no Commission action is required in relation to the Informational Filing and that the matter is subject to FERC's exclusive jurisdiction. The Companies further state that because DEC and DEP will not and cannot enter into transactions with each other under the Platform Agreement, informational notice is not required by Regulatory Condition 3.1 of the Amended Regulatory Conditions issued on August 24, 2018, in Docket Nos. E-2, Sub 1095A, E-7, Sub 1100A, and G-9, Sub 682A (Regulatory Conditions). The Companies also state that because they will not exchange payments with each other, the Platform Agreement is not subject to Commission preapproval under N.C. Gen. Stat. § 62-153(b).

On December 17, 2020, the Sierra Club, Southern Alliance for Clean Energy (SACE), and North Carolina Sustainable Energy Association (NCSEA; together, Protestants) filed a Joint Protest (Joint Protest) in which they contend that the Companies should have filed their Informational Filing under the advance notice provision provided in the Regulatory Conditions. Protestants assert that utilities must obtain Commission approval of all affiliate contracts under N.C.G.S. § 62-153. Protestants state that, on its face, N.C.G.S. § 62-153(a) requires public utilities to file copies of affiliate contracts with the Commission, without excepting contracts that do not envision transactions between the affiliates. Protestants also object to the Companies' interpretation of the Companies' obligations under Regulatory Condition 3.1, contending that because both DEC and DEP have financial obligations under the Platform Agreement, the contract is one that must be filed under Regulatory Condition 3.1. Finally, Protestants state that pursuant to Regulatory Condition 3.9(b), explicit Commission approval is required before the Companies enter into any agreement that commits them to or involves them in "joint planning, coordination, dispatch or operation of generation, transmission, or distribution facilities with each other . . . ."

Protestants request that the Commission make determinations of the Companies' obligations under the Regulatory Conditions and under N.C.G.S. § 62-153 and that the Commission both retain jurisdiction over the matter and ensure that the Companies do not enter into any agreements with respect to SEEM without explicit Commission approval.

Upon the filing of the Joint Protest, the Commission transferred the Informational Filing from the company folders into the above-captioned dockets.

On December 21, 2020, the Companies filed their Joint Response in Opposition to Protest. In addition to amplifying and clarifying points made in the Informational Filing, the Companies state that even assuming that the Platform Agreement is an affiliate contract within the meaning of the Regulatory Conditions, they met the notice filing requirements of Regulatory Condition 3.1(a) and N.C.G.S. § 62-153(a). They state that pursuant to Regulatory Condition 3.1(b), they provided the Public Staff with a copy of the Informational Filing 15 days prior to filing it with the Commission. The Companies also contend that Protestants did not raise any recognized statutory grounds for the Commission to withhold approval of the Platform Agreement. With respect to Regulatory Condition 3.9, the Companies assert that the terms of the Platform Agreement do not involve them in any of the joint coordination or planning activities that would require preapproval by the Commission under Regulatory Condition 3.9(b), nor is the SEEM an RTO or comparable entity that would require explicit Commission approval under Regulatory Condition 3.9(d). They emphasize that DEP and DEC's participation in the SEEM is independent of each other's operations and balancing authority area and that nothing in the Platform Agreement requires them to make capital investments in generation or transmission.

On December 23, 2020, the Commission issued an order requiring a response by the Public Staff and scheduling oral argument for the limited purposes of receiving additional information for the Commission's consideration on the threshold issue

raised by the Joint Protest, specifically whether the Commission's preapproval of the Platform Agreement is required pursuant to either N.C.G.S. § 62-153 or the Regulatory Conditions before the Platform Agreement is filed with FERC. The Commission directed the Companies not to file the Platform Agreement with FERC until further order from the Commission.

On January 6, 2021, the Public Staff filed its response. The Public Staff confirms that pursuant to Regulatory Condition 3.1(a) it informally reviewed the Platform Agreement prior to the Companies' making their Informational Filing and had no feedback or input. The Public Staff takes the position that whether the Platform Agreement is an affiliate agreement or otherwise requires Commission approval prior to execution is an "open question." The Public Staff states that if the Platform Agreement is an affiliate agreement, then the Companies have met their advance notice requirements set forth in N.C.G.S. § 62-153 and the Regulatory Conditions. The Public Staff concludes that the Commission's preapproval of the Platform Agreement is not required prior to the Companies' filing the agreement with FERC. The Public Staff summarizes the changes made to the Regulatory Conditions in the Commission's Order Granting Motion to Amend Regulatory Conditions issued August 24, 2018, in Docket Nos. E-2, Sub 1095A; E-7, Sub 1100A; and G-9, Sub 682A (Order Amending Regulatory Conditions). In particular the Public Staff notes that the order largely eliminated the "gatekeeping" provisions that required advance Commission proceedings to approve, reject, or modify the Companies' filings at FERC. Order Amending Regulatory Conditions at 11. The Public Staff observes that the Commission deemed the changes to the Regulatory Conditions to be warranted as a result of *Orangeburg v. FERC*, 862 F.3d 1071 (D.C. Cir. 2017) (*Orangeburg*), and the FERC's Order Rejecting As-Available Capacity Sales Agreement, 161 FERC ¶ 61,026 (2017).

On January 8, 2021, the Protestants filed a motion seeking leave to reply to the Public Staff's response, which was granted by order dated January 11, 2021. In their Reply, the Protestants assert that acknowledging that it is an "open question" whether the Platform Agreement requires Commission preapproval prior to execution raises the question as to when the Companies intend to execute the Platform Agreement. Additionally, the Protestants take the position that the Companies' Informational Filing does not meet regulatory advance notice requirements because it did not contain all of the documents that the Companies would be required to file with FERC in connection with membership in the SEEM.

On January 13, 2021, the Commission heard oral arguments from the Protestants and the Companies. The Public Staff appeared and was available for questions but did not offer additional argument.

In addressing the question posed in the order scheduling oral argument, the Protestants state that Commission approval is required prior to the Companies' execution of the Platform Agreement, irrespective of the timing of when the Companies file the Platform Agreement with FERC. At oral argument, the Companies clarified that it is their intent to execute the Platform Agreement prior to filing it with FERC.

Based on their oral argument, Protestants take the position that the SEEM is a loose power pool, as defined in FERC Order Nos. 888 and 888-A. *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, FERC Stats. & Regs. ¶ 31,036, at 31,682 (1996), *on reh'g*, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048, *on reh'g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *on reh'g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom. Transmission Access Policy Study Group v. FERC*, 225 F.3d 667, (D.C. Cir. 2000), *aff'd sub nom. New York v. FERC*, 535 U.S. 1, 122 S. Ct. 1012, 152 L. Ed. 2d 47 (2002). They state that FERC intentionally defined power pools very broadly to include any multilateral arrangement in which there is a pool operator providing special or discounted rates and terms. They assert that an algorithm that governs transactions can be deemed an "operator" of a power pool. Protestants assert that FERC recognizes concurrent jurisdiction with state regulators over power pools. Based on this characterization of the SEEM, Protestants contend that execution of the Platform Agreement involves the Companies in joint planning, coordination, dispatch, or operation of generation or transmission facilities with one another, thus requiring preapproval of the Commission under Regulatory Condition 3.9(b). Additionally, they contend that a power pool is an entity comparable to an RTO, which requires Commission preapproval under Regulatory Condition 3.9(d). Finally, Protestants state that the Companies are obligated under Regulatory Condition 4.10 to take all actions necessary to prevent FERC from considering the generating facilities owned by DEC and DEP to be part of a power pool, to be sufficiently integrated as to be one system, or otherwise fully subject to FERC jurisdiction as a result of DEC and DEP's participation in the JDA. Protestants raise a concern about whether participation in SEEM may require the Companies to make any changes to the JDA, thus creating a risk that FERC would consider their generating facilities to be FERC jurisdictional.

Based on the arguments made during oral argument, the Companies contest the characterization of the SEEM as a power pool arrangement because there is no joint dispatch, joint operation, or joint planning. Instead, they state that SEEM is merely a convenient marketplace to match willing buyers with willing sellers in bilateral transactions, assisted by an automated platform governed by rules set and agreed upon by the market participants. The Companies state that the SEEM is neither an RTO nor a comparable entity because there is no transfer of ownership or operation of generation and transmission assets. The Companies reiterate that because they do not have an enabling agreement, they are not able to transact with each other under the Platform Agreement. The Companies represent that entry into the SEEM would not require any changes to their Joint Dispatch Agreement.

The question before the Commission is whether the Commission must approve the Platform Agreement prior to the Companies' execution and filing of the contract with FERC. To the extent that Protestants take the position that the Commission must preapprove all affiliate agreements involving the Companies, assuming arguendo that the Platform Agreement is an affiliate agreement, the Commission finds no support for that argument in either N.C.G.S. § 62-153 or the Regulatory Conditions. To the contrary, the operation of N.C.G.S.§ 62-153 makes it clear that although review under subsection (b) is

prospective, review under subsection (a) *may* be prospective. Similarly, while the Regulatory Conditions require a notice filing of all affiliate contracts, Regulatory Condition 3.1(a), they require explicit preapproval only for a specifically described subset of agreements.

The Companies have represented to the Commission that their participation and membership in SEEM and their execution of the Platform Agreement do not invoke any of the Regulatory Conditions on which Protestants rely for their position that the Commission's preapproval of the Platform Agreement is required. The Protestants have not brought forward any citation to the Platform Agreement or to legal authority that refutes the Companies' position that their participation and membership in the SEEM and their execution of the Platform Agreement merely create a more efficient platform for conducting bilateral wholesale transmission transactions that are already permissible and transpiring or otherwise changes the Companies' operations or legal obligations. Accordingly, the Commission concludes that neither N.C.G.S. § 62-153 nor the Regulatory Conditions require this Commission to approve the Platform Agreement prior to its execution or its filing with FERC.

For the foregoing reasons, under the particular circumstances presented, the Commission denies the relief Protestants are seeking in this proceeding, and the Joint Protest is dismissed. The stay imposed by Ordering Paragraph No. 2 of the Commission's December 23, 2020 order, therefore, shall no longer be effective; however, the Companies shall file in these dockets any substantive revisions, amendments, or other modifications to the Platform Agreement before they are executed, become effective, or are acted on in any way so that the Commission may timely determine whether such amendments or modifications implicate or trigger the Commission's approval authority under either N.C.G.S. § 62-153 or under any applicable Regulatory Condition.

IT IS, THEREFORE, ORDERED that the Joint Protest of the Sierra Club, Southern Alliance for Clean Energy, and North Carolina Sustainable Energy Association shall be, and hereby is, dismissed.

ISSUED BY ORDER OF THE COMMISSION.

This the 5th day of February, 2021.

NORTH CAROLINA UTILITIES COMMISSION

Kimberley A. Campbell, Chief Clerk

Commissioner Daniel G. Clodfelter concurs.

DOCKET NO. E-2, SUB 1268
DOCKET NO. E-7, SUB 1245

Commissioner Daniel G. Clodfelter, concurring:

I concur that the Petition should be dismissed. I write separately to provide a more thorough analysis of the reasons I believe this result is correct.

The protest filed by the objecting parties[1] advances several propositions that are often entangled and not always articulated distinctly. They appear, though, to reduce to two basic complaints: (1) that the SEEM platform agreement[2] is an agreement between and among affiliates — in this case DEC and DEP — that must be filed with the Commission pursuant to N.C. Gen. Stat. § 62-153(a) and is also an "affiliate contract" that must be filed with the Commission pursuant to Regulatory Condition 3.1(a) and 3.1(b),[3] and (2) that the SEEM platform agreement must be approved by the Commission in advance of its execution pursuant to Regulatory Condition 3.9(b) because, say the objecting parties, it ". . . 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." (Petition, p.9.) Neither of these propositions has merit.[4]

With respect to the first proposition I would find that the informational filing made by the utilities on December 11, 2020, fully satisfies the requirements of each of N.C.G.S. § 62-153(a) and Regulatory Conditions 3.1(a) and 3.1(b), whether or not the SEEM platform agreement is considered an affiliate contract, either as determined by the Regulatory Conditions' definitions of "affiliate" and "affiliate contract" or as the term "affiliate" is used more generally in N.C.G.S. § 62-153(a).[5] In their Reply the objecting parties contend that because the utilities' December 11 filing does not include the utilities' proposed Non-Firm Energy Exchange Transmission Tariffs ("NFEETTs") they will submit to FERC in order to implement their participation in SEEM, the filing is therefore incomplete. I find this contention unpersuasive. The utilities' transmission tariffs are not

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[1] In the petition they refer to themselves as the "Protestants." Because I find the religious connotations of that reference a bit odd in this context, I will refer to them differently.

[2] The agreement uses the descriptor "Southeast EEM," which I have shortened to just "SEEM." The exact title of what I will refer to here as the "platform agreement" is The Southeast Energy Exchange Market Agreement. [Informational Filing, 12/11/2020].

[3] Reference to "Regulatory Conditions" is to the amended regulatory conditions adopted by Commission Order dated August 24, 2018, in dockets E-2, sub 1095A, E-7, sub 1100A, and G-9, sub 682A.

[4] At the hearing on their protest the objecting parties also invoked Regulatory Condition 4.10. That condition has no applicability however, since it pertains only to regulatory treatment by FERC that may arise "*as a result of* DEC's and DEP's participation in the [Joint Dispatch Agreement] or any successor document." The SEEM agreements cannot be characterized as "successors" to the Joint Dispatch Agreement.

[5] N.C.G.S. § 62-153(a) also requires the filing of agreements with non-affiliates providing services to a regulated public utility when the Commission so requests. No specific request for any additional, supplemental, or alternative filing to the filing made by the utilities on December 11, 2020, has been made by the Commission in this case.

routinely filed with this Commission because they are solely under the jurisdiction of FERC. In addition, the SEEM platform agreement that has been filed with the Commission adequately describes the manner in which the utilities will seek to amend their existing transmission tariffs, how non-firm energy exchange transmission service will be provided to participants, and the amount of the tariff that will be charged for such service. (*See* Section 3.4 of the platform agreement and the definition of Non-Firm Energy Exchange Transmission Service contained in Appendix B thereto.) It is true that Regulatory Condition 3.9(c) requires the filing, for informational purposes, of any proposed tariff submitted to FERC if such tariff would

> (i) affect DEC's or DEP's retail cost of service for system power supply resources or transmission system; (ii) reduce the Commission's jurisdiction with respect to transmission planning or any other aspect of the Commission's planning authority; (iii) be interpreted as involving DEC or DEP in joint planning, coordination, dispatch, or operation of generation or transmission facilities with one or more Affiliates; or (iv) otherwise have an Effect on DEC's or DEP's Rates or Service.

The objecting parties advanced no argument that either of clauses 3.9(c)(i), (ii), or (iv) are reasonably likely to be triggered by the proposed NFEETTs to be filed as part of implementation of the SEEM platform agreement. For the same reasons that are discussed in more detail later below with respect to Regulatory Condition 3.9(b), I also conclude that clause 3.9(c)(iii) does not come into play in this case.

In the Commission's order dated December 21, 2020, setting the present matter for hearing the Commission declared that the purpose of such hearing would be to determine ". . . whether the Commission's preapproval of the Platform Agreement is required pursuant to either N.C.G.S. § 62-153 or the Regulatory Conditions before the Platform Agreement is filed with the FERC." This question is readily answered by Regulatory Conditions 3.1(b) and 3.9(c), both of which provide that only "informational" filings must be made with the Commission and that Commission approval of proposed agreements is not required before filings are submitted to FERC. However, between the time of the Commission's December 21, 2020, order and the time of the hearing itself the posture of the original issue changed. (*See* Tr. 40.) As noted in the objecting parties' Reply, the utilities propose to execute and enter into the SEEM platform agreement at the same time they filed it with FERC, thereby presenting a different form of the original question — whether or not the Commission must approve the agreement before it is executed and the parties become bound to its terms. (Reply, p. 2.) At the hearing the utilities confirmed their intention to proceed with execution of the platform agreement at the same time it was filed with FERC. (Tr. 33-34.) To repeat, the objecting parties have cited no provision in Chapter 62 or in the Regulatory Conditions that requires Commission approval of the SEEM platform agreement before the proposed agreement can be filed with FERC for its review. Whether the utilities must secure Commission approval before they actually enter into the agreement, however, requires consideration of several provisions of the Regulatory Conditions and of N.C.G.S. § 62-153. I consider these different provisions in turn, beginning first with the statute itself.

As the Commission concludes, and I agree, N.C.G.S. § 62-153(a) is silent on the precise point. Its language appears to contemplate the possibility of Commission action, after hearing, either before or after an agreement has been executed, stating that the Commission may find a contract to be "void" if the necessary showing of adverse harm is made under the statute.[6] Regulatory Condition 3.1(a) confirms the Commission's interpretation that N.C.G.S. § 62-153(a) does not require advance Commission approval of contracts before they may be executed, providing instead that when a contract subject to that condition has been filed and has been submitted to the Public Staff for informal review, and when in consequence of such informal review the utilities and the Public Staff have identified no reason why the contract requires advance Commission approval, then ". . . [the utility] may proceed to execute the agreement subject to later disapproval and voidance by the Commission pursuant to N.C.G.S. § 62-153(a)."

As I read the petition and the Reply, the objecting parties do not make any argument that pre-approval of the SEEM platform agreement is required by N.C.G.S. § 62-153(b) apart from or independent of their argument under various subsections of Regulatory Condition 3.9, although they do on several occasions speak generally of the requirement of preapproval under N.C.G.S. § 62-153, without specifying whether the reference is to subsection (a) or (b) of the statute. The objecting parties do point to the fees and cost reimbursements to be paid under the platform agreement to defray the costs of operating the exchange, but they concede that these fees and costs are not paid by DEC and DEP to each other (Petition, p. 5), and they do not identify any other affiliate or subsidiary of DEC or DEP to whom such payments will be made.[7] Absent any allegation that payments of fees or other compensation are to be made to some affiliate of DEC or DEP, N.C.G.S. § 62-153(b) does not apply.

Turning then to the Regulatory Conditions, the objecting parties rely on section 3.9(b) and argue that the platform agreement either commits the utilities to or involves them in "joint coordination of transmission" or that it commits the utilities to or

[6] I note that the objecting parties do not allege the condition to which N.C.G.S.§ 62-153(a) is directed — *i.e.*, that the contract in question be ". . . unjust or unreasonable, *and* made for the purpose or with the effect of concealing, transferring or dissipating the earnings of the public utility." (emphasis in original) Given the purpose and intent and the terms of operation of SEEM, it seems highly unlikely that any such allegation could be made or sustained.

[7] Under the platform agreement the costs of operating the exchange are assessed by the Membership Board according to a formula spelled out the agreement and are billed and collected by the Southeast EEM Administrator. The objecting parties do not contend that these persons, or the Southeast EEM Agent, are affiliates of DEC or DEP. Moreover, in the language of N.C.G.S. § 62-153(b), as they are described and their duties, powers, and responsibilities are set forth in the platform agreement, none of these persons are "holding," "managing," "operating," "constructing," "engineering, "financing," or "purchasing" companies or agencies for DEC or DEP. They will not hold, manage, operate, construct, design or engineer, or finance any assets or operations of either utility. Nor, as is clear from the terms of the platform agreement and from the record as a whole, will they make any purchases of energy on behalf of either utility. All purchases and sales will be conducted pursuant to bilateral contract between member utilities. SEEM may best be thought of by analogy to a stock exchange, which serves as a vehicle for making and executing offers to purchase or sell securities between the individual members of the exchange at prices that are published on the exchange.

involves them in "coordination, operation, or dispatch of generation."[8] (Petition, p. 6.) A careful reading of the platform agreement shows that neither of these is the case. Under the SEEM platform agreement and associated SEEM market rules neither DEC nor DEP will surrender to anyone any degree of existing control over the operation or dispatch of their generating resources. Both utilities will continue to operate under their approved Joint Dispatch Agreement (the "JDA"), and the utilities have represented that no amendments or modifications of any kind to the JDA are needed by virtue of their participation in SEEM. The objecting parties observe that DEC and DEP have stated that one outcome of their participation in SEEM may be to reduce curtailments, or dispatch-down, instructions. This, however, does not result as a function of any surrender of control over the operation or dispatch of generating resources either to SEEM itself, to any participant in SEEM, or to any affiliate of either DEC or DEP. Changes to curtailments will occur instead as a result of each utility's enhanced ability, due to the information sharing mechanisms of SEEM, to identify, price, and purchase non-firm, as-available surplus energy from other participants through bilateral contracts.

Nor does the platform agreement commit or involve DEC and DEP in joint coordination of transmission. Under the SEEM Market Rules, each participating utility will identify its existing non-firm, as-available transmission capacity and will agree to provide transmission service to buyers and sellers of energy through the exchange at the approved NFEET tariff. Participants make no commitment to plan, design, construct, or operate any transmission facilities dedicated to providing service to participants under the SEEM platform agreement; they do not surrender to each other or to SEEM any control over the priority of transmission service on their existing systems; nor do they agree to waive or to remove any constraints on their existing ability to provide transmission services.[9]

The objecting parties contend that by virtue of the fact that transmission service for transactions conducted pursuant to SEEM will be provided at a discounted price pursuant to the NFEETs, SEEM meets FERC's criteria for being a "loose power pool." (Tr. 12-13.) This is an interesting observation, but it is not dispositive of the question at hand, which is what types of agreements and transactions are subject to either or both of N.C.G.S. § 62-153 and the Regulatory Conditions. Under the SEEM platform agreement and associated market rules, each participant will undertake to process bilateral wholesale power transactions with other participants using a common mechanism for making and matching offers and for scheduling transmission service. While the mechanics will be uniform and identical for all bilateral transactions among participants, I do not believe the creation of such a common mechanism constitutes the type of "joint

[8] The pertinent language in Section 3.9(b) is identical to the language in clause (iii) of Section 3.9(c), discussed earlier.

[9] The definition of "Non-Firm Energy Exchange Transmission Service" contained in the SEEM market rules is particularly pertinent here. That definition states, in part, "For the avoidance of doubt, nothing in this Agreement shall obligate any Participating Transmission Provider to (a) plan, construct, or maintain its transmission system for the benefit of any Participant; (b) provide Non-Firm Energy Exchange Transmission Service in a manner that is contrary to the terms of the Participating Transmission Provider's Tariff, or contrary to Good Utility Practice, each as determined in the sole judgment of the Participating Transmission Provider . . . ."

coordination" that is the focus of Regulatory Condition 3.9(b). Again, to use the analogy of a stock exchange, the fact that buyers and sellers of securities listed on the exchange make and execute their orders using a common set of procedures does not mean that their purchases of securities are "jointly coordinated" or that they have lost their character as bilateral transactions.[10]

For the foregoing reasons I conclude that the SEEM platform agreement — as it stands and as presented in the informational filing — does not require Commission approval before the utilities may execute it. I also fully concur, however, in the Commission's directive that any amendments to or modifications of the SEEM agreements be filed with the Commission before they are executed or become effective so that the Commission may determine whether such amendments or modifications are such as to trigger the Commission's approval authority under either N.C.G.S. § 62-153 or under any applicable Regulatory Condition.

\s\ Daniel G. Clodfelter
Commissioner Daniel G. Clodfelter

[10] Though not raised in the Petition itself at the hearing the objecting parties contended that the SEEM platform agreement might be considered "comparable to an RTO," thereby triggering the requirement of advance Commission approval set out in Section 3.9(d) of the Regulatory Conditions. This suggestion was not supported by any analysis of or citation to any specific provisions of the platform agreement, and I have been unable to find any support for it in my own review and examination of the SEEM agreement and the accompanying Market Rules. The SEEM platform agreement does not create an RTO, and the phrase "comparable to an RTO" is in any event of quite indefinite meaning — comparable in what respects, to what degree, and with what effects? In my view the objecting parties have not identified any respect in which SEEM implicates any of the Commission's potential concerns that appear to have prompted the imposition of Regulatory Condition 3.9(d).