

**Louisville Gas and Electric Company and Kentucky Utilities Company
Southeast Energy Exchange Market (“SEEM”) Quarterly Status Report No. 2
Case Nos. 2020-00349 and 2020-00350
December 30, 2021**

SEEM Agreement

As reported in the Companies’ first Quarterly Status Report, the Companies filed their responses to FERC’s two deficiency letters on June 7, 2021 and August 11, 2021 in conjunction with the other SEEM FERC-jurisdictional members. Thereafter, on October 13, 2021, FERC issued its Notice of Filing Taking Effect By Operation of Law arising out of a 2-2 tie vote on the SEEM Agreement.¹ FERC explained that because the FERC Commissioners were divided two against two, the Commission did not act on the filing on or before October 11, 2021. Thus, pursuant to Section 205 of the Federal Power Act, the proposed SEEM Agreement became effective by operation of law as of October 12, 2021. Each of the four Commissioners provided written statements explaining their views, which were added to the record in the proceedings.²

On November 12, 2021, rehearing requests were filed in the dockets, seeking rehearing of FERC’s failure to act on the SEEM Agreement, resulting in the *de jure* acceptance of the SEEM Agreement.³ The SEEM members filed on November 29, 2021, a motion for leave to answer and answer of the request for rehearing, arguing, among other things, that the rehearing requests were filed at least two days after the running of the 30-day period for rehearing permitted by statute, and must be rejected as untimely.

¹ *Ala. Power Co., et al.*, Notice of Filing Taking Effect by Operation of Law, FERC Docket Nos. ER21-1114-002 and ER21-1120-002 (October 13, 2021).

² *Ala. Power Co., et al.*, Statement of Chairman Glick re Alabama Power Company, et al.; Statement of Commissioner Clements re Alabama Power company, et al; Statement of Commissioner Christi re Alabama Power Company, et al.; Statement of Commissioner Danly re Alabama Power company, et al, FERC Docket Nos. ER21-1114-002 and ER21-1120-002 (October 20, 2021).

³ *Ala. Power Co., et al.*, Request for Rehearing of the Public Interest Organizations, Docket Nos. ER21-1114-002 (November 12, 2021); Request for Rehearing of Clean Energy Coalition for the October 13, 2021 Deadlock Notice, FERC Docket Nos. ER21-1114-003 and ER21-1120-003 (November 12, 2021).

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On December 20, 2021, FERC issued an order by majority decision, rejecting the rehearing requests as untimely. FERC agreed with the SEEM members that since October 11, 2021 is the last date on which FERC could act on a filing, and since FERC failed to act by then, the statutory 30 days ran from that date. Thus, November 10, 2021 was the last date on which a rehearing request could be timely filed, and the November 12, 2021 filings were statutorily barred. FERC also declined to address Clean Energy Coalition’s alternative motion for clarification and rejected PIOs’ alternative request for a paper hearing with a technical conference.⁴

In parallel, on November 24, 2021, the Companies, along with the other FERC-jurisdictional SEEM Members, filed revisions⁵ to the SEEM Agreement in order to stand by the commitments previously made in the responses to FERC’s deficiency letters, as detailed in the Companies’ previous Quarterly Status Report to this Commission. Specifically, the revisions were made to (1) file through eTariff previously specified revisions to the SEEM Agreement proposed by the SEEM Members in their responses to FERC’s deficiency letters; (2) formalize other commitments offered by the SEEM Members to FERC in the deficiency letter responses but not drafted as revisions to the SEEM Agreement at that time; and (3) make ministerial changes and add necessary language to facilitate initial implementation. All revisions had either been previously proposed in the SEEM proceedings at FERC or are ministerial in nature.

⁴ *Ala. Power Co., et al.*, Order Rejecting Rehearing Requests as Untimely re Alabama Power Company et al under ER21-1111 et al. Commissioner Philips is not participating. FERC Docket Nos. ER21-1114-003 and ER21-1120-003 (December 10, 2021).

⁵ *Ala. Power Co., et al.*, Revisions to the Southeast Energy Exchange Market Agreement and Request for Waiver of Prior Notice, FERC Docket No. ER22-476-000 (November 24, 2021).

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OATT Amendment

As discussed in the Companies’ prior Quarterly Status Report, the Companies had made a separate FERC filing of the revisions to the Companies’ Open Access Transmission Tariff to enable a zero-cost transmission service in connection with SEEM transactions. On November 8, 2021, FERC accepted this filing by majority decision, determining that the revisions are just and reasonable and not unduly discriminatory. FERC also directed the Companies to submit: (1) a compliance filing within 30 days implementing ministerial revisions; and (2) an informational filing submitted at least 30 days prior to the Southeast EEM Commencement Date, to update the effective date for the OATT revisions for eTariff purposes.

Requests for Rehearing were filed on December 8, 2021 in this matter by the same organizations that filed rehearing requests in the SEEM Agreement dockets.⁶

On December 7, 2021, the Companies submitted the Compliance Filing as FERC ordered in its November 8, 2021 decision.

Other Jurisdictional Matters

On November 17, 2021, prior to submitting the revisions to the SEEM Agreement to FERC, Duke Energy Carolinas, LLC and Duke Energy Progress, LLC (collectively, “Duke”) filed the unsigned, revised SEEM Agreement at the North Carolina Utilities Commission (“NCUC”) as an

⁶ Request for Rehearing of the Commission’s November 8, 2021 Order Accepting Tariff Revisions of Public Interest Organizations, FERC Docket No. ER21-1118-003 (December 8, 2021); Request for Rehearing of the Clean Energy coalition, FERC Docket No. ER21-1118-003 (December 8, 2021).

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informational filing. The filing complied with the NCUC’s requirement that Duke submit any amendments to the SEEM Agreement before they become effective so that the NCUC can determine if the amendment triggered its jurisdiction over affiliate transactions. The NCUC has not determined that the latest amendment trigger its jurisdiction.