Comment date: October 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection.

David P. Boergers,

Secretary.

[FR Doc. 98–26532 Filed 10–2–98; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Southeastern Power Administration

Notice of Proposed Rate Adjustment

AGENCY: Southeastern Power Administration, DOE.

ACTION: Notice of rate order.

SUMMARY: Notice is given of the confirmation and approval by the Deputy Secretary of the Department of Energy, on an interim basis, of Rate Schedules SOCO–1, SOCO–2, SOCO–3, SOCO–4, ALA–1–I, MISS–1–I, Duke-1, Duke-2, Duke-3, Duke-4, Santee-1, Santee-2, Santee-3, Santee-4, SCE&G–1, SCE&G–2, SCE&G–3, SCE&G–4, and Pump-1. The rates were approved on an interim basis through September 30, 2003, and are subject to confirmation and approval by the Federal Regulatory Commission on a final basis.

DATES: Approval of rates on an interim basis is effective through September 30, 2003.

FOR FURTHER INFORMATION CONTACT: Leon Jourolmon, Assistant Administrator, Finance & Marketing, Southeastern Power Administration, Department of Energy, Samuel Elbert Building, 2 South Public Square, Elberton, Georgia 30635–2496,(706) 213–3800.

SUPPLEMENTARY INFORMATION: The Federal Energy Regulatory Commission by Order issued March 18, 1994, in Docket No. EF93–3011–000, confirmed and approved Wholesale Power Rate Schedules GA–1–D, GA–2–D, GA–3–C, GU–1–D, ALA–1–H, MISS–1–H, MISS–2–D, SC–3–C, SC–4–B, CAR–3–C, SCE–2–C, GAMF–3–B. Rate schedules SOCO–1,SOCO–2, SOCO–3, SOCO–4, ALA–1–I, MISS–1–I, Duke-1, Duke-2, Duke-3, Duke-4, Santee-1, Santee-2, Santee-3, Santee-4, SCE&G–1, SCE&G–2, SCE&G–3, SCE&G–4, and Pump-1 replace these schedules.

Dated: September 18, 1998.

Elizabeth A. Moler,

Deputy Secretary.

In the matter of: Southeastern Power Administration—Georgia-Alabama-South Carolina System Power Rates. Rate Order No. SEPA–37.

Order Confirming and Approving Power Rates on an Interim Basis

Pursuant to Sections 302(a) and 301(b) of the Department of Energy Organization Act, Pub. L. 95–91, the functions of the Secretary of the Interior and the Federal Power Commission under Section 5 of the Flood Control Act of 1944, 16 U.S.C. 825s, relating to the Southeastern Power Administration (Southeastern) were transferred to and vested in the Secretary of Energy. By Delegation Order No. 0204–108, effective May 30, 1986, 51 FR 19744 (May 30, 1986), the Secretary of Energy delegated to the Administrator the authority to develop power and transmission rates, and delegated to the Under Secretary the authority to confirm, approve, and place in effect such rates on an interim basis, and delegated to the Federal Energy Regulatory Commission (FERC) the authority to confirm and approve on a final basis or to disapprove rates developed by the Administrator under the delegation. On November 4, 1993, the Secretary of Energy issued Amendment No. 3 to Delegation Order No. 0204–108, granting the Deputy Secretary authority to confirm, approve, and place into effect Southeastern's rates on an interim basis. This rate is issued by the Deputy Secretary pursuant to said notice.

Background

Power from the Georgia-Alabama-South Carolina System of Projects is presently sold under Wholesale Power Rate Schedules GA–1–D, GA–2–D, GA–3–C, GA–1–D, ALA–1–H, ALA–3–D, MISS–1–H, MISS–2–D, SC–3–C, SC–4–B, CAR–3–C, SCE–2–C, and GAMF–3–B. These rate schedules were approved by the FERC on March 18, 1994, for a period ending September 30, 1998 (66 FERC 62168).

Discussion

System Repayment

An examination of Southeastern's revised system power repayment study, prepared in July 1998, for the Georgia-Alabama-South Carolina System shows that with an annual revenue increase of $1,877,000 over the revenues in the current repayment study using current rates, all system power costs are paid within the 50-year repayment period required by existing law and DOE Procedure RA 6120.2. The Administrator of Southeastern has certified that the rates are consistent with applicable law and that they are the lowest possible rates to customers consistent with sound business principles.

Public Notice and Comment

Opportunities for Public Review and Comment on Wholesale Power Rate Schedules SOCO–1, SOCO–2, SOCO–3, SOCO–4, ALA–1–I, MISS–1–I, Duke-1, Duke-2, Duke-3, Duke-4, Santee-1, Santee-2, Santee-3, Santee-4, SCE&G–1, SCE&G–2, SCE&G–3, SCE&G–4, and Pump-1, was announced by notice published in the **Federal Register** March 24, 1998. Public Information and Comment Forums were held April 29, 1998, in College Park, Georgia, and April 30, 1998, in Columbia, South Carolina, and written comments were invited through June 22, 1998. The notice proposed rates with a revenue increase of $14.6 million in Fiscal Year 1999 and all future years. An alternative set of rates including the costs associated with the Pump Storage Units at the Richard B. Russell Project was also proposed. There were 22 comments received and evaluated. Written comments were received from five (5) sources by mail and facsimile during the comment period. Transcripts of the Public Information and Comment Forums are included as Exhibits A–4–A and A–4–B. A review of comments is included as Exhibit A–5. The following is a summary of the 22 comments.

Staff Evaluation of Public Comments

1. *Comment:* Using the 1997 Corps of Engineers' O&M amount, which is significantly higher than prior years, as a base for the 1998 study amount for O&M yields an unrealistically high number. In computing Corps O&M Expense, Southeastern should take 1993–1997 average costs and escalate them at a rate of about 4% for 2.5 years yielding an average annual cost of $34,307,000.

Response: Two responders suggested an alternative way to estimate Corps of Engineers O&M expenses. Because the

estimates provided by the Corps of Engineers were based on an accounting number which appears to be suspect, and because the accounting system that created that number is new and people do not feel comfortable with the accuracy of the numbers, Southeastern agrees that an alternative method should be used. Southeastern used a method that in some ways was similar to the one described in the two responders comments. Southeastern took the actual escalation rate for the 5-year period 1992 through 1996, thereby not including 1997. The actual rate of escalation over the 5-year period was 3.7%. Southeastern then escalated the actual 1996 amount of $30,461,000 at a 3.7% rate until half way through the cost evaluation period or midway through fiscal year 2001 or 4.5 years. The resultant O&M Expense is $32,784,927 in 1998, $34,012,547 in 1999, $35,286,135 in 2000, and $35,946,773 in 2001 to the end of the study.

2. *Comment:* Corps of Engineers should analyze joint O&M costs and any inappropriate joint costs should be excluded.

Response: The Corps of Engineers and Southeastern are discussing which of the costs that are currently recorded as Joint Costs should be recorded more appropriately as specific costs to purposes other than power. Corps of Engineers personnel believe that any decision to record costs to other purposes would need to be approved at the Headquarters level in Washington, D.C. Southeastern will continue to investigate methods to allocate as many costs as possible to specific purposes. However, Southeastern has made no modification to the present rate proposal in regard to this comment.

3. *Comment:* The Corps of Engineers' projections of capitalized costs from 1999 through 2003 should be reexamined.

Response: The Corps of Engineers reexamined the projections of the capitalized costs for the period 1998 through 2003. In the reexamination, they looked at the question of whether costs were a capitalized item or an expenditure. The corrected numbers are intended to be included when they will be capitalized and modified to be the Corps of Engineers' best estimate. The corrected numbers are included in the proposed rates. The amount of costs decreased by a total of about $6,000,000 for the 1998 to 2003 period.

4. *Comment:* The Southeastern projections of capitalized costs at the Corps of Engineers' projects after 2003 should be reexamined.

Response: Southeastern reexamined the projections of capitalized costs for the fiscal years after 2003. Southeastern determined that the in-service dates should be modified to agree with the major rehabilitation work currently going on. Using the original in-service date overlooks the current work on the system. Changing these in-service dates meant that replacement costs for fiscal years 2004 through 2045 decreased from $238 million to $214 million.

5. *Comment:* Southeastern marketing expenses should be recalculated using a more normal escalation rate and escalating the costs until midway through the cost evaluation period.

Response: Southeastern agrees with the comment of the responders. Southeastern's marketing cost used in the repayment study at the time of the forum included costs escalated at 6.235% until the year 2003. The 6.235% was the actual annual rate of escalation over the period from 1993 through 1997. The amount used in the earlier study was $3,587,892. The period used to compute the escalation rate was determined to be an inappropriate period because the increase in costs were primarily one-time costs to begin an operating center and control areas. Southeastern has modified its projected marketing costs by using the escalation rate allowed in Federal budgeting and escalating the costs until the midpoint of the cost evaluation period, or midway through fiscal year 2001. Southeastern marketing expenses are now estimated to be $2,698,067 in 1998, $2,733,142 in 1999, $2,823,335 in 2000, and $2,869,920 from 2001 to the end of the study.

6. *Comment:* Southeastern should review all costs to determine if any can be reduced or eliminated. Areas to consider include personnel, communications, contract maintenance, competitive resources strategy (CRS) services and supplies, ADP supplies and equipment, and other services.

Response: Southeastern is continually looking at the appropriateness of the costs including those mentioned. It is Southeastern's position that the costs used in the past and the costs requested for the present and near future are necessary and are the lowest possible costs consistent with sound business principles.

7. *Comment:* Southeastern should include additional capacity resulting from rehabilitation work at various projects and the revenues resulting from that additional capacity in the rate proposal.

Response: Southeastern has reexamined the capacity available for sale because of the rehabilitation work currently in progress. We believe that an additional 144,000 kilowatts of capacity will be available because of the rehabilitation work. For the next few years the increased amount will help provide reserves for the time units are out of service because of the rehabilitation work. Therefore, in the years 2001 through 2003 Southeastern has included an additional 79,000 kilowatts and in 2004 through the end of the study Southeastern has included an additional 144,000 kilowatts marketed in the proposed repayment study.

8. *Comment:* Southeastern should not include Civil Service Retirement System costs (CSRS) and pension health benefits costs that are funded by the Office of Personnel Management.

Response: The Department of Energy has made a determination that it is appropriate for the Power Marketing Administrations to include the Civil Service Retirement System costs and pension health benefits costs that are funded by the Office of Personnel Management in the rates charged to customers. Therefore, Southeastern has included the costs in the repayment study and thereby included them in the rates that Southeastern proposes to charge to the customers.

9. *Comment:* Southeastern does not have legal authority to collect Civil Service Retirement System costs that are funded by the Office of Personnel Management.

Response: One of the responders made several legal arguments contending the Southeastern did not have the requisite legal authority to collect Civil Service Retirement System costs and pension health benefits costs that are funded by the Office of Personnel Management (OPM). On July 1, 1998, the Department of Energy's General Counsel Mary Anne Sullivan issued a Memorandum of same date entitled ''PMA Authority To Collect In Rates, And Reimburse To Treasury, Government's Full Costs Of Post-Retirement Benefits.'' (Opinion) A copy of the Opinion is included as Attachment 1 to this notice, as well as part of the Administrator's record of decision as Exhibit A–5 filed with the Federal Energy Regulatory Commission (FERC) pursuant to 18 CFR 300.10 et seq. in support of this rate action.

Preliminarily, the Opinion relates that the Administration's FY 1998 budget documentation states that starting in FY 1998 Southeastern and the three other Power Marketing Administrations (PMA's) '' '* * * will set rates, consistent with current law, to begin to recover the full cost of the Civil Service Retirement System and Post-Retirement

Health Benefits for its employees that have not been recovered in the past' ''. (Opinion, p. 1.) The Opinion notes that (1) PMA rates generally have not reflected the cost to the Government of the unfunded liability related to the Retirement Fund or post-retirement health and life insurance benefits, and (2) that these undercollected amounts are eleven percent in the case of Civil Service Retirement System employees. (Opinion, pp. 1 & 6)

As a matter of background Congress addressed the problem of potential shortfalls * * * of funding for retiree benefits by authorizing a permanent indefinite appropriations to the Retirement Fund to finance the unfunded liability created by: (1) New or liberalized benefits payable from the Fund; (2) extension of coverage of the Fund to new groups of employees or; (3) increases in pay on which benefits are computed. (Opinion, p. 2), citing 5 U.S.C. 8348(f).

The relevant statutory authority for Southeastern to set rates is found in the Flood Control Act of 1944 16 U.S.C. 825s (the Act), which applies to projects built by the Army Corps of Engineers and provides that rates shall be set (by Southeastern) ''* * * having regard to the recovery * * * of the costs of producing and transmitting such electric energy.'' This statutory obligation is also coupled with the obligation to:

> * * * transmit and dispose of such power and energy in such manner as to encourage the most widespread use thereof at the lowest possible rates to consumers consistent with sound business principles * * *

All PMA revenues are required to be deposited in a statutorily specified fund or account in the Treasury.

The Opinion also notes that, ''pursuant to the Flood Control Act requirements, monies received from power rates to recover costs of unfunded liabilities from power marketed by Southeastern * * * would be deposited into the general fund of the Treasury as miscellaneous receipts (Opinion, p. 10).

The Opinion recognizes that Section 5 of the Act (as to Southeastern) leaves considerable discretion to the Southeastern regarding the recovery of costs. Courts have noted the broad discretionary authority conferred upon the Secretary of Energy, Southeastern and the other PMAs regarding actions taken pursuant to the Act. The 9th Circuit has observed that Section 5 of the Act, ''* * * 'breathes discretion at every pore' * * * (it) permits the exercise of the widest administrative discretion by the Secretary. It does not supply 'law to apply.' '' for purposes of judicial review under the Administrative Procedures Act. *City of Santa Clara* v. *Andrus,* 572 F.2d 660 at 668 (cert. den. 439 U.S. 859 (1978). See also *Greenwood Utilities Commission* v. *Hodel,* 764 F.2d 1459, 1464 (11th Cir. 1985) *Electricities of North Carolina* v. *Southeastern Power Administration,* 774 F.D. 1262, 1267 (4th Cir. 1985).

With recognition of the broad discretionary authority conferred by Section 5 of the Act, the Opinion alludes, at page 4, to a ''Reasonable Interpretation of 'Cost.' '' It concludes that it is ''* * * reasonable to interpret the term 'cost' in the organic statutes to include the total costs to the Government of post-retirement benefits for PMA-related employees'' * * * because ''courts accord considerable weight to an executive department's 'construction of a statutory scheme it is entrusted to administer,'' citing *Chevron* v. *Natural Resources Defense Council,* 467 U.S. 837, 844 (1984).

Also, the Opinion notes that ''in reviewing actions of the PMA's, courts give substantial deference to PMA interpretations of their organic statutes,'' citing *Department of Water & Power of the City of Los Angeles* v. *Bonneville Power Administration.,* 759 F.2d 684, 690–91 (9th Cir. 1985). In addition, *Alcoa* v. *Central Lincoln Peoples' Util. Dist.,* 467 U.S. 380, 389 (1984) is cited for the proposition that the ''* * * courts need not find that an agency's interpretation of its organic statutes 'is the only reasonable one, or even that it is the result [the court] would have reached had the question arisen in the first instance in judicial proceedings.' '' (Citations omitted.) The court ''need only conclude that the interpretation is a reasonable one,'' citing *Chevron* v. *Natural Resources Defense Council,* 467 U.S. at 845.

The Department of Energy repayment policy is set forth in Department of Energy Order No. RA 6120.2, dated September 20, 1979. The Opinion cites Section 12(a)(1) of DOE Order No. RA 6120.2 (Sept. 20, 1979), which states that rates for a power system are ''* * * adequate if, and only if, a power repayment study indicates that * * * expected revenues are at least sufficient to recover,'' *inter alia,* ''* * * (a)ll costs of operating and maintaining the power system during the year in which such costs are incurred.''

The General Counsel concludes in the Opinion that, ''On a practical, common sense level, there seems little room to dispute that the full amount of the retiree benefits is a 'cost' of hiring the employees to operate and maintain the PMA power systems.'' (Opinion, p. 5.) The General Counsel further reasoned that ''* * * recovering those costs in rates is entirely consistent with the congressional objective that the PMA's operate on fiscally self-supporting basis.'' Ibid, at 5. Also, by way of analogy, The Opinion notes that:

> Similarly, FERC has recognized that the obligation for such retiree benefits is legitimately treated as a cost. For example, FERC recognizes, as a component of cost-based rates, allowances for prudently incurred cost of post-retirement benefits other than pensions (PBOPs) that are consistent with the accounting principles set forth in FASB Statement No. 106 (1991) 61 FERC ¶ 61,330, at 62,200 (1992). Opinion, p. 5.

The Opinion also notes that, at present, the ''four PMA's are recovering in rates the cost of their own direct contributions to the three OPM funds with respect to their own employees'' as well as ''power-related generation and maintenance expenses of the Corps * * *.'' Such Corps costs ''include contributions'' by the Corps of Engineers ''to the OPM Funds to the extent Corps of Engineers employees conduct these functions.'' The Opinion concludes that ''[t]hus there is no question as to the authority to include in rates the agency funded contributions to these funds.'' (Opinion, p. 6). It also notes that although ''PMA rates generally have not reflected the cost to the Government of the unfunded liability related to the Retirement Fund or post-retirement health and life insurance benefits,'' however the ''Alaska Power Administration, has recovered these costs in rates since FY 1991.'' Also, the Western Area Power Administration rates included these costs for two years (FY 1992 and 1993). (Opinion, p. 6).

Western Area Power Administration included retirement costs as a function of operation and maintenance expense. Notice of proposed Salt Lake City Integrated Project Rates (56 FR 47203; September 18, 1991); and Notice of Boulder Canyon Project Rate Adjustment (57 FR 61,074, 61,080, December 23, 1992).

DOE's Order RA No. 6120.2 holds power rates are adequate only it they recover all costs of operating and maintaining the power system. Employee salaries and post-retirement personnel benefits are in Southeastern's opinion in the nature of operating costs.

The General Counsel elaborates by stating:

> The relevant statutory text provides that the PMA's must set rates that fully recover costs. Because the statutes provide direction as to how the agencies are to interpret the term ''costs'' and leave considerable discretion to the PMAs (including

Southeastern) in applying the standard, it is entirely reasonable for the PMAs to interpret costs to include all employer costs of employee retirement benefits. The PMA rate practices to date acknowledge that PMA customers bear responsibility for some of the Government's costs of post-retirement benefits for PMA employee and for the power operations employees of the Bureau (of Reclamation) and the Corps. DOE policy, (Financial Accounting Standards Board) FASB principles, and FERC ratemaking policy indicate the inclusion in rates applicable for a given period of all employer costs accruing in that period is a reasonable interpretation of the statutory obligation to recover costs. A reasonable interpretation adopted by DOE and the PMA's is entitled to judicial deference. On these grounds, we conclude that it is within the discretion of the PMA Administrators to include in rates the allocated undercollections for post-retirement benefits. (Opinion, pp. 6–7).

The General Counsel also determined that the ''flow of rate revenues for * * * Southeastern * * * is governed by the Flood Control Act of 1944'' which provides that ''[a]ll moneys received from * * * (electric) sales shall be deposited in the Treasury of the United States as miscellaneous receipts.'' 16 U.S.C. 825s and that, ''any monies received in rates to recover the costs of unfunded liabilities would be deposited directly into the miscellaneous receipts fund of the Treasury, and could not be expended without further appropriation. See 31 U.S.C. 3302(b).'' (Opinion, p. 7). For these reasons, Southeastern has included these costs in the repayment study and in the rates that Southeastern proposes to charge the customers.

10. *Comment:* FERC ratemaking requirements imposed upon regulated electric and natural gas utilities derived from Statement 106 of the Financial Accounting Standards Board (FASB) including establishment of an ''irrevocable external trust fund'' to receive monies collected as post-retirement benefit costs in these rates should apply to Southeastern and the other PMAs.

Response: At the outset it should be recognized that the jurisdiction conferred by The Federal Power Act (FPA) (18 U.S.C. 824 et seq.) upon FERC to regulate electric and natural gas public utilities does not apply to the PMAs. Jurisdiction to review PMA rates is conferred and limited by a delegation from the Secretary of Energy to FERC. See Department of Energy Delegation Order No. 0204–108, as amended. 58 F. R. 59716 (November 10, 1993). For example, the Commission recognizes that, as to the FPA's prohibition regarding ''retroactive ratemaking'', ''* * * [it] does not apply to PMAs including Southeastern (Power Administration), that operate subject to a different statutory and regulatory scheme''. *U.S. Department of Energy—Southeastern Power Administration* 55 FERC ¶ 61, 016, p. 61045 (1991), appeal pending sub nom. *Central Electric Power Corp.* v. Southeastern, Civil No. 3–91–2449–0 (D. S. C. Filed August 15, 1991). See also: *US Department of Energy-Southwestern Power Administration,* 56 FERC ¶ 61,398, p. 62,469 (1991) and *U.S. Department of Energy, Western Area Power Administration,* 65 FERC ¶ 61,186, p. 61,914 (1993). Since Southeastern is not a regulated public utility under the FPA, the ratemaking requirements of FERC advocated by the responder should not be applied herein.

Also because Southeastern is required by Flood Control Act of 1944 as well as the Miscellaneous Receipts Act (31 U.S.C. 3302) to deposit all monies received to the Treasury of United States as miscellaneous receipts, it is not possible for Southeastern to establish an ''irrevocable external trust fund'' for these monies as FERC has in some instances required of regulated electric and gas public utilities.

11. *Comment:* Collection of full CSRS costs as proposed in Southeastern's rates and deposit to the U.S. Treasury will constitute an illegal augmentation of appropriations.

Response: Although the Opinion does not directly address this comment, it noted, however, that, ''In 1969, Congress addressed the problem of potential shortfalls in the sufficiency of funding for retiree benefits by authorizing a permanent indefinite appropriation for transfer of general funds from the Treasury,'' (Opinion p. 2), citing 5 U.S.C. 8348(f). The Opinion concludes that the 1969 Act ''authorizes appropriations to the Retirement Fund to finance the unfunded liability created by new or liberalized benefits payable from the Fund, extension of the coverage of the Fund to new groups of employees, or increases in pay on which benefits are computed.'' (Opinion, p.2.)

It was found that, ''All PMA rate revenues are required to be deposited in a statutorily specified fund or account of the Treasury,'' and that ''(p)ursuant to Flood Control Act requirements, monies received from power rates to recover costs of unfunded liabilities from power marketed by Southeastern and SWPA'' are to ''* * * be deposited into the general fund of the Treasury as miscellaneous receipts.'' The Opinion concludes that such deposits to miscellaneous receipts would ''therefore offset the appropriation for unfunded liability made to the OPM Funds,'' from the general fund of the Treasury. (Opinion p.10).

By adoption of Public Law 91–93 of Oct. 20, 1969, 5 U.S.C. 8348 (f) and (g), ''Congress made it clear that increases in the unfunded liability of the Civil Service Retirement Fund were not to be permitted.'' *In the matter of Dr. Katsura Fukui,* (B–191321), 58 Comp. Gen. 115, 118 (November 30, 1978). The Comptroller General explained such unfunded liability would be avoided by the addition of subsections (f) and (g) of the 1969 Act which authorizes appropriations to the Civil Service Retirement Fund to fund the ''new liability'' under ''any statute authorizing new or more liberal annuity payments, extension of retirement coverage to new groups, or increases in the pay used to compute retirement benefits.'' Id. at p. 118. The Comptroller General also said that ''Taken together, these provisions express a congressional mandate limiting further increases to the unfunded liability of the Retirement Fund.'' See Senate Report 91–339, 91st Cong., 1st Sess., August 1, 1969. Id.

Since Congress provided for a permanent indefinite appropriations (ie: without imposing a dollar ceiling on a particular fund) for the transfer of general funds from the Treasury to address the unfunded utility of the CSRS, the augmentation of appropriations prohibition would not apply. Rather the reason for such a prohibition is to:

''* * * protect Congress' power of the purse and its prerogative to determine the level at which an agency of Federal program may operate.'' See Nolan: *Public Interest, Private Income: Conflicts and Control Units on the Outside Income of Government Officials,* 87 Nw. U. L. Rev. 57, 122 (1992).

Again, in this instance, Congress has addressed an ongoing problem by placing no dollar limits on appropriations from the general fund (or derived from miscellaneous receipts) to assure full funding of these employee benefits. Southeastern is depositing the revenues to miscellaneous receipts, no funds are remitted to OPM, and therefore there is no augmentation of appropriations.

12. *Comment:* Southeastern's proposed increase in PMA rates to collect post-retirement benefits is an unexplained departure from previous interpretations.

Response: The Opinion acknowledges Congress's 1969 effort to address the ongoing problem of agencies' underfunding of retiree benefits under the Civil Service Retirement Act and other acts. (Opinion, p. 2) The Opinion concludes '' * * *that the PMA's have sufficient statutory authority to include

these costs in their rates and can deposit such funds into an appropriate Treasury account so as to effectively offset the appropriations made to the OPM funds from which these post-retirement costs are paid to retirees.'' Id., at p. 2. By passing Public Law 91–93 of Oct. 20, 1960, (5 USC 8348 (f) & (g)) Congress made it clear that further increases in the unfunded liability of the Civil Service Retirement Fund were not to be permitted and, as demonstrated in the legislative history, there is a Congressional mandate limiting such increases in unfunded liability. See Senate Report 91–339, 91st Congress 1st Sess., August 1, 1969.

The Southeastern Power Administration like non-Federal enterprises must be mindful of the Generally Accepted Accounting Principles adopted by the Financial Accounting Standards Board. PMAs are required by Section 6(a) of DOE Order No. RA 6120.2 to use ''accounting practices'' in ''accordance'' with Financial Accounting Standards Board principles. FERC, for example, regards RA 6120.2 and its accounting principles and Financial Standards as a substantive regulation binding upon BPA when FERC reviews BPA's rates under Section 7(a)(2) of the Northwest Power Act, 16 U.S.C. 839(e)(a)(2). See: U.S. Department of Energy, Bonneville Power Administration 72 FERC ¶ 62,045, p. 64,064, fn. 4 (1995); 67 FERC ¶ 61,351, p. 62,217, fn. 8 (1994); 65 FERC ¶ 62,179, p. 64,396, fn. 4 (1993); and 64 FERC ¶ 61,375, p. 63,606, fn. 5 (1993).

In the view of Southeastern and DOE, Section 6(a) of DOE Order No. RA 6120.2 requires the PMAs to use accounting practices consistent with the Generally Accepted Accounting Principles prescribed by the Financial Accounting Standards Board. The requirement to set rates consistent with this DOE order has been judicially recognized. *E.g. Overton Power Dist. No. 5* v. *Watkins,* 829 F. Supp.1523, 1530 n.5 (D. Nev.1993).

The Financial Accounting Standards Board (FASB) in December 1985 established standards for financial reporting and accounting of employee pension benefits. The standard is Statement of Accounting Standards No. 87 (FAS 87). Under FAS 87, ''a company must recognize future pension benefits earned by current employees as current pension costs rather than when the pension benefits are actually paid.'' *Southwestern Bell Telephone Co.,* Missouri Public Service Commission. (case No. TC–93–224), 2 Mo. P.S.C. 3d 479; 1993 Mo. P.S.C. Lexis 62 (Dec. 17, 1993).

The Opinion, likewise, notes FAS 87, stating (1) ''The Financial Accounting Standards Board (FASB)'' by ''FASB Statement No. 87 (1990)'' has ''issued rules and audit procedures for pensions'' and that (2) ''FASB 87 recognizes that unfunded pensions promised to current and retired employees are actual liabilities'' so that there must be ''recognition as a cost in any period of ''the actuarial present value of benefits attributed by the pension benefit formula to employee service during the period.'' Opinion at p. 5, f.n. 5.

In 1991, the Financial Accounting Standards Board issued FAS No. 106, (''FAS 106''). This ''changes generally accepted accounting principles * * * for post-retirement, medical and life insurance benefits from accounting on a pay-as-you-go basis to an accrual basis.'' *Pennsylvania Public Utility Commission* v. *Metropolitan Edison Company.* Case No. R–00922314) 78 Penn, PUC 124; 141 P.U.R. 4th 336 (January 21, 1993).

Prior to FAS 106, ''most companies expensed these benefits as they were paid.'' *Puget Sound Power and Light Co.,* (Docket No. UE–920433) (Washington Utilities and Transportation Commission), 147 P.U.R. 4th 80 (September 21, 1993).

In this connection, it should be noted that the Federal Government since 1969 has operated in essentially the same manner. It has established a general indefinite appropriation from the Federal Treasury to the Civil Service Retirement Fund of amounts needed to fund retiree benefits not covered by employer-employee contributions to the Fund.

The Opinion also addressed FAS 106, stating: ''the FASB in ''December 1990'' by ''FASB Statement No. 106'' recognized post-retirement benefits to be broader than simply pensions.'' The General Counsel stated, the FASB issued ''standards, regarding post-retirement benefits other than pensions,'' and that ''post-retirement benefits include post-retirement health care and life insurance provided outside a pension plan to retirees * * *.'' (Opinion, p. 5, fn. 5).

The General Counsel concluded stating that, ''(a) post-retirement benefits are part of the compensation paid to an employee for services rendered,'' citing FASB 106.18. (Ibid at 5, fn. 5). This was so because the General Counsel was of the view that (1) ''the (FASB) believes that the cost of providing the benefits should be recognized over those employee service periods,'' citing FASB 106.03 and (2) ''(b)ecause the obligation to provide benefits arises as employees render services.'' (Opinion, p. 5, f.n. 5).

Southeastern did not in prior rate proceedings include the unfunded portion of employee benefit costs in its rates. It does so now in light of Administration policy as set forth in and confirmed by General Counsel Sullivan's Opinion.

Also, the non-collection of these costs by the PMAs has recently received ongoing congressional scrutiny and criticism. See e.g.: Reports of United State General Accounting Office: *Power Marketing Administrations: Repayment of Power Cost Need Closer Monitoring* (GAO/AIMED–98–164, June 30, 1998), *Federal Electricity Activities: The Federal Government's Net Cost and Potential for Future Losses,* volumes 1 and 2 (GAO/AIMD–97–110 and 110A, September 19, 1997), *Addressing The Deficit: Budgetary Implications of Selected GAO Work for Fiscal Year 1998* (GAO/O.G.–97–2, March 14, 1997), *Power Marketing Administrations: Cost Recovery Financing, and Comparison to Nonfederal Utilities,* (GOA/AIMD–96–145, September 19, 1996). The Opinion also acknowledges the Administration's FY 1998 budget documentation that states that, ''starting in FY 1998'' Southeastern (and two other PMAs) ''* * * will set rates, consistent with current law, to begin to recover the full cost of the Civil Service Retirement system and post-retirement health benefits for its employees that have not been recovered in the past.'' (Opinion, p. 1). This seems to implement the 1969 Congressional effort to deal with ongoing underfunding problems in this regard.

The Opinion reviews; (1) legal and statutory authorities; (2) establishment of a reasonable interpretation of ''cost'; and (3) DOE and FERC policy on ratemaking and rate practices of PMAs. The Opinion states that:

> Given the PMA's previous practice of not securing recovery in rates of the unfunded portion of employee retirement benefits, it may be argued that the PMAs' inclusions of such costs now would represent a change in agency interpretation. We do not understand this practice, however, to have been premised on an articulated legal judgment that it would be legally impermissible. (Opinion, p.).

The Opinion further states in regards to current and past rate practices of PMAs that:

> At present, the four PMA's are recovering in rates the cost of their own direct contributions to the three OPM funds with respect to their own employees. They also are recovering in rates the power-related operation and maintenance expenses of the Corps and the Bureau, which we understand to include contributions by those two agencies to the OPM funds to the extent that

their employees conduct these functions. Thus, there is no question as to the authority to include in rates the agency-funded contributions to these funds.

The PMA rates generally have not reflected the cost to the Government of the unfunded liability related to the Retirement fund or post-retirement health and life insurance benefits. However, the Alaska Power Administration has recovered these costs in rates since FY 1991, and WAPA rates included these costs for two years (FY 1992 and FY 1993). (Opinion, p. 6)

Given the current and prior recoveries of these funds it is clear that no ''articulated legal judgment'' was in place to bar to the inclusion of such costs in rates. Rather the proposal here is to comply with a congressional mandate that these costs be recovered in accordance with the law and DOE Order No. RA 6120.2 that Southeastern establish its rates in accordance with generally accepted accounting principles as enunciated by the Financial Accounting Standards Board.

13. *Comment:* The estimates of the CSRS costs and pensions health benefits cost that are funded by the Office of Personnel Management are not accurate.

Response: Southeastern estimated the CSRS and pensions health benefits cost of the Corps of Engineers and Southeastern that are funded by the Office of Personnel Management by analyzing the computation of the General Accounting Office discussed in their report *Power Marketing Administrations: Cost Recovery Financing, and Comparison to Nonfederal Utilities* (GAO/AIMD–96–145). The relevant excerpt from this General Accounting Office Report is designated Appendix III at page 100 of the Report. The GAO ''Estimated 1995 Pension and Postretirement Health Benefit Costs Not Recovered from Power Customers.'' They state ''GAO estimates based on information provided by the PMA's, operating agencies and OPM.'' Southeastern recomputed the data using similar methodology. Southeastern received data on the hours allocated to power at the different projects in the Georgia-Alabama-South Carolina System and the percentage of employees that are covered by the CSRS for fiscal year 1995. Health Benefits were estimated by multiplying the number of Full Time Equivalents (FTEs) for Southeastern and the Power FTEs for the Corps of Engineers by the Federal Employee Health Benefits Plan (FEHBP) participation percentage (82%). The product was then multiplied by $1,973, which is the FY 1995 estimated cost of post-retirement health benefits provided to GAO by the OPM. The estimated annual health benefits costs for Southeastern and the Corps are $565,000 per year ($61,000 for Southeastern, $504,000 for the Corps). CSRS costs were estimated by multiplying the Southeastern and Corps payroll expenses for FTEs covered under CSRS times the estimated percentage shortfall by which combined employee and employer contributions toward CSRS pensions fell short of the normal cost of these pensions in FY 1995. The estimated percentage shortfall as provided by OPM for 1995 was 11.14 per cent. The estimated annual unrecovered pension benefits costs for Southeastern and the Corps are $970,000 per year ($109,000 for Southeastern, $861,000 for the Corps). The total estimated annual expenses for CSRS and pension health benefits for Southeastern and the Corps is $1,535,000 per year. Southeastern and the other Power Marketing Administrations are requesting more accurate numbers from the Corps of Engineers in the future.

14. *Comment:* Richard B. Russell pumped storage unit costs should be included only if the units are declared commercially operable first.

Response: One responder made several legal arguments about the ability of Southeastern to include the costs of the pumping units at the Richard B. Russell project prior to the time that the project is declared commercially operable. Southeastern has made no attempt to determine whether it is possible to include the costs in the study. However, Southeastern agrees with the responder that the project should be declared commercially operable before the costs are included in the repayment study. Accordingly the costs of the pumping units at the Richard B. Russell have not been included because the present estimate of the earliest time that the units could be declared commercially operable is after September 30, 1998. Southeastern will file for increased rates that include the costs of the pumping units as soon as the units are declared commercially operable.

15. *Comment:* If the Richard B. Russell pumped storage units costs are included, they should be phased in over a 5 year period.

Response: Southeastern has determined not to include the costs of the pumping units in the present rate adjustment. At the time of the next rate proposal, interested parties will have the opportunity to comment on the advisability of phasing in the rate increase.

16. *Comment:* If the Richard B. Russell pumped storage units costs are included, Southeastern should review the costs with the Corps of Engineers to make sure they are appropriate.

Response: Southeastern has determined not to include the costs of the pumping units in the proposed rates.

17. *Comment:* If the Richard B. Russell pumped storage units costs are included, the environmental litigation and mitigation costs should not be included in the amount allocated to power.

Response: Southeastern has made no attempt to determine the environmental litigation and mitigation costs and whether they should be included in the rates. Southeastern believes this issue should be addressed when the costs are included in a future rate filing.

18. *Comment:* If the Richard B. Russell pumped storage units costs are included, the interest during construction from the period from March 1993 until the units are declared commercially operable should not be allocated to power and should not be recovered in the rates.

Response: This issue is under discussion between the Corps of Engineers and Southeastern. Southeastern believes this issue should be readdressed when the costs are included in a future rate filing.

19. *Comment:* If the Richard B. Russell pumped storage units costs are included, the repayment study should be corrected to show that 260 megawatts will be marketed.

Response: Southeastern is in the process of examining the reserves and losses in all marketing areas of the Georgia-Alabama-South Carolina System. If reserves or losses have been inappropriately taken out of the capacity marketed Southeastern will restore them.

20. *Comment:* Southeastern should demonstrate that depreciation and interest for marketing expense capital expenditures are included in Southeastern's marketing expense component of the rate and not the capital expenditure lump sum.

Response: Financial statements for the Southeastern Federal Power Program are prepared in accordance with Generally Accepted Accounting Principles, including computation of depreciation and interest in Southeastern marketing expense and capitalizing items with a useful life of more than one year. Southeastern has received an unqualified opinion from its auditors since 1991.

21. *Question:* Does Southeastern foresee any other specific changes which would affect marketing expense, but are not in the 1999–2003 study?

Response: Marketing expenses have been changing markedly over the past few years primarily because of the Open Access Tariff orders promulgated by the Federal Energy Regulatory Commission. These changes have been complex and dramatic. Southeastern believes that changes like these may continue because of the volatility of the industry. However, Southeastern does not know of any specific changes which would affect the marketing expense.

22. *Comment:* Southeastern should return the losses to the customers that gave up the losses beginning in October 1, 1996.

Response: Southeastern agrees and plans to return the capacity to the customers in the Southern Company area during fiscal year 1999. The repayment study includes the return of the capacity effective the beginning of fiscal year 2000.

Environmental Impact

Southeastern has reviewed the possible environmental impacts of the rate adjustment under consideration and has concluded that, because the adjusted rates would not significantly affect the quality of the human environment within the meaning of the National Environmental Policy Act of 1969, the proposed action is not a major federal action for which preparation of an Environmental Impact Statement is required.

Availability of Information

The rates hereinafter confirmed and approved on an interim basis, together with supporting documents, will be submitted promptly to the Federal Energy Regulatory Commission for confirmation and approval on a final basis for a period beginning on October 1, 1998, and ending no later than September 30, 2003.

Order

In view of the foregoing and pursuant to the authority delegated to me by the Secretary of Energy, I hereby confirm and approve on an interim basis, effective October 1, 1998, attached Wholesale Power Rate Schedules SOCO–1, SOCO–2, SOCO–3, SOCO–4, ALA–1–I, MISS–1–I, Duke-1, Duke-2, Duke-3, Duke-4, Santee-1, Santee-2, Santee-3, Santee-4, SCE&G–1, SCE&G–2, SCE&G–3, SCE&G–4, and Pump-1. The Rate Schedules shall remain in effect on an interim basis through September 30, 2003, unless such period is extended or until the FERC confirms and approves them or substitute Rate Schedules on an final basis.

Dated: September 18, 1998.

Elizabeth A. Moler,

Deputy Secretary.

[FR Doc. 98–26463 Filed 10–2–98; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6172–4]

Agency Information Collection Activities: Proposed Collection; Comment Request; Recordkeeping and Reporting Requirements Under EPA's Energy Star Homes Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit the following proposed Information Collection Request (ICR) to the Office of Management and Budget (OMB): Recordkeeping and Reporting Requirements under EPA's Energy Star Homes Program, EPA ICR No. 1879.01

Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before December 4, 1998.

ADDRESSES: Commenters must send an original and two copies of their comments referencing EPA ICR No. 1879.01 Recordkeeping and Reporting Requirements under EPA's Energy Star Homes Program to: Air and Radiation Docket and Information Center, Atmospheric Pollution Prevention Division (Mail Code 6102), U.S. Environmental Protection Agency Headquarters (EPA, HQ), 401 M Street, SW, Washington, DC 20460. Hand deliveries of comments should be made to Room M1500 at this address.

Comments may also be submitted electronically through the internet to: a-and-r-docket@epamail.epa.gov. Comments in electronic format should also be identified by EPA ICR No. 1879.01 Recordkeeping and Reporting Requirements under EPA's Energy Star Homes Program. All electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

Public comments and supporting materials are available for viewing in the Air and Radiation Docket and Information Center, located at the address above. The Docket is open to the public on all federal government work days from 8:00 a.m. to 5:30 p.m. It is recommended that the public make an appointment to review docket materials by calling (202) 260–7549. The Docket will accept phone and fax requests for material. Phone requests may be made using the phone number listed above, and fax requests may be submitted to (202) 260–4400. A reasonable fee is charged for the duplication of materials.

The official record for this action will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into paper form and place them in the official record, which will also include all comments submitted directly in writing.

EPA responses to comments, whether the comments are written or electronic, will be in a notice in the **Federal Register**. EPA will not immediately reply to commenters electronically other than seek clarification of electronic comments that may be garbled in transmission or during conversion to paper form, as discussed above.

FOR FURTHER INFORMATION CONTACT: For more information on specific aspects of this collection of information, contact Glenn Chinery, Atmospheric Pollution and Prevention Division (Mail Code 620J), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, D.C. 20460, Ph. (202) 564–9784 or chinery.glenn@epa.gov.

SUPPLEMENTARY INFORMATION:

Affected entities: Entities potentially affected by this action are general building contractors, operative builders, utilities, HERS (Home Energy Rating System) providers and new homebuyers.

Title: Recordkeeping and Reporting Requirements under EPA's Energy Star Homes Program, EPA ICR No. 1879.01. OMB Control No. and expiration date are not applicable as this is a new ICR.

Abstract: EPA's Energy Star Homes Program is a voluntary, non-regulatory program initiated under the President's Global Climate Change Action Plan. The broad goal of the program is to demonstrate that energy efficient homes can help builders and related service providers meet key business objectives, improve home quality and homeowner comfort, lower energy demand, reduce air pollution and enhance the national economy. The program encourages residential home builders, developers, manufacturers, Home Energy Rating System (HERS) providers, utilities, service providers, government agencies and other organizations involved in the home building industry to promote energy efficiency in homes.