Comment date: July 15, 1999, in accordance with Standard Paragraph E at the end of this notice.

30. Arthur Kill Power LLC

[Docket No. ER99–3375–000]

Take notice that on June 25, 1999, Arthur Kill Power LLC, tendered for filing under its market-based rate tariff two long-term service agreements with Consolidated Edison Company of New York, Inc., and one long-term service agreement with NRG Power Marketing, Inc.

Comment date: July 15, 1999, in accordance with Standard Paragraph E at the end of this notice.

31. Cinergy Services, Inc.

[Docket No. ER99–3376–000]

Take notice that on June 25, 1999, Cinergy Services, Inc., on behalf of its Operating Company affiliates, The Cincinnati Gas & Electric Company and PSI Energy, Inc. (COC), tendered for filing an executed service agreement between COC and Tenaska Power Services Co. (Tenaska), replacing the unexecuted service agreement filed on April 16, 1999 under Docket No. ER99–2511–000 per COC FERC Electric Market-Based Power Sales Tariff, Original Volume No. 7–MB.

Cinergy is requesting an effective date of May 1, 1999 and the same Rate Designation as per the original filing.

Comment date: July 15, 1999, in accordance with Standard Paragraph E at the end of this notice.

32. Astoria Gas Turbine Power LLC

[Docket No. ER99–3377–000]

Take notice that on June 25, 1999, Astoria Gas Turbine Power LLC, tendered for filing under its market-based rate tariff two long-term service agreements with Consolidated Edison Company of New York, Inc., and one long-term service agreement with NRG Power Marketing, Inc.

Comment date: July 15, 1999, in accordance with Standard Paragraph E at the end of this notice.

33. Michael L. Jines, James E. Hammelman, Rufus S. Scott and Lloyd A. Whittington

[Docket Nos. ID–3384–000, ID–3385–000, ID–3386–000 and ID–3387–000]

Take notice that on June 25, 1999, the following officers of El Dorado Energy, LLC tendered for filing with the Federal Energy Regulatory Commission (Commission) abbreviated applications pursuant to Section 305(b) of the Federal Power Act, 16 U.S.C. 825d(b) (1994), and the Commission's Order in El Dorado Energy, LLC, 85 F.E.R.C. (CCH) ¶61,006 (1998), to hold jurisdictional interlocks:

Michael L. Jines
James E. Hammelman
Rufus S. Scott
Lloyd A. Whittington

Comment date: July 26, 1999, in accordance with Standard Paragraph E at the end of this notice.

34. Air Products and Chemicals, Inc.

[Docket No. QF99–84–000]

Take notice that on June 22, 1999, Air Products and Chemicals, Inc., tendered for filing supplemental information to its application filed on May 28, 1999 in the above-referenced docket. No determination has been made that this filing constitutes a complete filing.

The supplement provides additional information pertaining to the technical aspects and the ownership of the cogeneration facility.

Comment date: July 22, 1999, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 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. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–17421 Filed 7–8–99; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Proposed Rate Adjustment

AGENCY: Southeastern Power Administration, DOE.

ACTION: Notice of rate order.

SUMMARY: The Secretary of Department of Energy, confirmed and approved, on an interim basis, Rate Schedules CBR–1–D, CSI–1–D, CEK–1–D, CM–1–D, CC–1–E, CK–1–D, CTV–1–D, and SJ–1–A. The rates were approved on an interim basis through June 30, 2004, and are subject to confirmation and approval by the Federal Energy Regulatory Commission on a final basis.

DATES: Approval of rate on an interim basis is effective through June 30, 2004.

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 December 14, 1994, in Docket No.EF94–3021–000, confirmed and approved Wholesale Power Rate Schedules CBR–1–C, CSI–1–C, CK–1–C, CC–1–D, CM–1–C, CEK–1–C, and CTV–1–C. By order issued August 11, 1997, in Docket No. EF97–3021–000, the Federal Energy Regulatory Commission confirmed and approved rate schedule SJ–1. Rate schedules CBR–1–D, CSI–1–D, CEK–1–D, CM–1–D, CC–1–E, CK–1–D, CTV–1–D, and SJ–1–A replace these schedules.

Dated: June 29, 1999.

Bill Richardson,

Secretary.

Southeastern Power Administration—Cumberland; Order Confirming and Approving Power Rates on an Interim Basis

[Rate Order No. SEPA–38]

Pursuant to Sections 302(a) and 301(b) of the Department of Energy Organization Act, Public Law 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. On November 4, 1993, the Secretary of Energy issued Amendment No. 3 to Delegation Order No. 0204–108, published November 10, 1993 at 58 FR 59716, which delegated (1) The authority to develop long-term power and transmission rates on a nonexclusive basis to the Administrator of the Southeastern (Southeastern); (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary of Energy; and (3) the authority to confirm, approve, and place into effect on a final basis, to remand, or to disapprove such rates to the Federal Energy Regulatory Commission (FERC). By subsequent

Order effective April 15, 1999, the Secretary rescinded all delegations of authority to the Deputy Secretary, whether contained in Delegation Orders, Departmental Directives, or elsewhere, concerning the Department's Power Marketing Administrations, including, but not limited to, authority delegated or affirmed in Delegation Order No. 0204–108, as amended. Existing DOE procedures for public participation in power rate adjustments are found at 10 CFR part 903. Procedures for approving power marketing administration rates by FERC are found at 18 CFR part 300. This rate is issued by the Secretary by pursuant to said notice.

Background

Power from the Cumberland System of Projects is presently sold under Wholesale Power Rate Schedules CBR–1–C, CSI–1–C, CEK–1–C, CM–1–C, CC–1–D, CK–1–C, CTV–1–C, and SJ–1. These rate schedules were approved by the FERC on December 14, 1994 and August 11, 1997, for a period ending June 30, 1999 (69 FERC 61333 and 80 FERC 62123).

Discussion

System Repayment

An examination of Southeastern's revised system power repayment study, prepared in January 1999, for the Cumberland System shows that with an annual revenue increase of $2,272,000 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

Opportunity for Public Review and Comment on Wholesale Power Rate Schedules CBR–1–D, CSI–1–D, CEK–1–D, CM–1–D, CC–1–E, CK–1–D, CTV–1–D, and SJ–1–A, was announced by notice published in the **Federal Register** February 9, 1999. A Public Information and Comment Forum was held March 16, 1999, in Nashville, Tennessee, and written comments were invited through May 10, 1999. The notice proposed rates with a revenue increase of $2,272,000 in Fiscal Year 1999 and all future years. Transcript of the Public Information and Comment Forum is included as Exhibit A–4. A review of comments is included as Exhibit A–5. The following is a summary of the comments.

Staff Evaluation of Public Comments

Comments and questions from four sources were received at the Public Comment Forum held in Nashville, Tennessee on March 16, 1999. These are included in the Forum Transcripts which are included as Exhibit A–4. Written comments and questions from four sources were received by mail and facsimile during the comment period and are attached. The comments were received pursuant to **Federal Register** Notice 64 Fed. Reg. 6341 dated February 9, 1999.

Comments have been condensed into six major categories. An outline of the six major categories and subcategories of each is as follows:

1. Justification of the TVA transmission rate
2. Rate design
   - A. Inclusion of the TVA transmission credit with the other costs of providing service
   - B. Comparative value of service provided
   - C. Cost recovery from energy and capacity
   - D. Disproportionate impact on the Kentucky Utilities Municipals
   - E. Phase-in of the rate adjustment
3. SEPA Power Marketing Policy
   - A. Allocation of Energy
   - B. Ability to negotiate power contracts
4. SEPA's contract with TVA and TVPPA
   - A. Use of TVA transmission facilities
   - B. Amount of Capacity Wheeled
5. Cost of Service Issues
   - A. Budgeted replacements
   - B. CSRS
6. Rate Implementation

1. Justification of the TVA Transmission Rate

Comment 1: Historically, Southeastern Power Administration's (SEPA or Southeastern) rate treatment of the SEPA transmission credit to TVA resulted in TVA realizing significantly less than the total cost to TVA of transmitting SEPA power across the TVA transmission system. This is a problem that needs to be corrected.

Comment 2: TVA's proposed transmission charges to SEPA are plainly excessive. When the current TVA transmission charges were established about five year ago, the rate under TVA's transmission tariff (or equivalent) was about $2.00 per kW/Month. In the intervening years, TVA's tariff rate has decreased to about $1.57 per kW/Month, yet TVA seeks an increase in its charges to SEPA of approximately $2.5 million, for a total of about $9.5 million. On its face, TVA's proposed increase is unjustified.

Comment 3: The purportedly cost-based TVA transmission charges contain many elements that are excessive or questionable. For example:

a. TVA has not properly determined the facilities to be include in transmission rate base for ratemaking purposes. For example, TVA has improperly included generator step-up facilities and has not justified its inclusion of such facilities as radial lines and customer-specific facilities.

b. TVA exclusion of certain loads from its rate divisors and its use of revenue credits for certain services, rather than allocating costs to those services, tend to inflate TVA's transmission rates.

c. TVA's inclusion of a 10% margin is unjustified.

d. TVA's inclusion of a 5% ''factor'' for payments in lieu of taxes has not been justified.

e. TVA's charges should be adjusted to reflect the limited service that TVA provides in the transmission of SEPA allocations, which include limitations on the amounts and scheduling of energy associated with the capacity being purchased. Alternatively, if SEPA and its customers are to be required to pay for transmission capacity year-round, they should be entitled to make full use of the transmission services for which they are paying.

f. The annual, levelized carrying charge rate implicit in TVA's revenue requirement as a percentage of gross plant investment appears excessive in relation to those of other utilities in the region, even before taking into account the fact that TVA does not pay income taxes.

g. With declining TVA transmission costs during recent years, its proposed rates based upon a single year's costs should be scrutinized for the applicability in SEPA rates that are to be in effect for five years.

h. Administrative and general expenses do not appear to have been properly functionalized prior to their allocation.

i. TVA's derivation of charges for scheduling service are not supported and appear excessive in relation to corresponding charges of other utilities.

j. TVA proposes to establish the new transmission rates applicable to SEPA based upon fiscal year 1997, which ended September 30, 1997, or nearly two years prior to the effective date of TVA's proposed rate increase.

k. It is SeFPC's understanding that TVA is proposing to apply its transmission tariff formula rate to SEPA's service and thus change SEPA's rate annually. TVA's formula rate procedures under its tariff call for annual rate changes effective January 1 of each year based upon data for the second preceding fiscal year. For example, rate changes under the tariff effective January 1, 1999 are based upon fiscal year 1997 data. The lag is only fifteen (15) months. Since adjustments to the rate applicable to SEPA would change each July 1, this makes the lag twenty-one (21) months without justification. If TVA is to use a formula rate which adjusts annually on July 1, it is reasonable, under facts specific to SEPA, to use a test year ending no earlier than the preceding fiscal year (e.g., fiscal 1998 for rates effective July 1, 1999).

l. SeFPC questions the inclusion of facilities with voltage less than 166 kV in the determination of TVA's proposed transmission rate.

Response: Section 9.1 of the TVA–SEPA–TVPPA Contract, executed

October 1, 1997, allows TVA to adjust rates for delivering power to the points of delivery to the ''Other Customers'' defined as customers outside the TVA area. Section 9.1 does not provide any means for SEPA to determine an appropriate transmission rate. TVA and the ''Other Customers'' are disagreeing over the appropriateness of the rate increase. SEPA's only recourse, when TVA and the Outside Customers disagree, is to try to determine an equitable split of the costs; therefore, SEPA has determined to allocate a comparable increase to all customers. SEPA will support discussions between TVA and the customers outside the TVA system in an effort to reach a negotiated settlement on an appropriate amount for the TVA transmission charge.

2. Rate Design

A. Inclusion of the TVA Transmission Credit With the Other Costs of Providing Service

Comment 1: TVA is paying approximately 60 percent of the increased charges for TVA transmission service to transport SEPA power to other SEPA customers. The proposed methodology fails to compensate TVA adequately for the use of its transmission facilities to deliver SEPA power to customers outside the TVA area and shifts costs from certain of SEPA's customer to TVA distributors and directly served customers.

Comment 2: It is entirely inappropriate for TVA to bear the costs for transmitting the SEPA power to others in what amounts to an arbitrary assignment of costs to TVA and its customers.

Comment 3: The manner in which SEPA charges TVA for power the Cumberland Projects results in discriminatory charges for use of TVA's system.

Comment 4: SEPA's proposed rate would mean that those who receive SEPA power over TVA's transmission system receive the benefit of firm transmission service on the TVA system but do not pay their fair share of TVA's cost-based transmission service, while TVA power customers and other transmission customers pay a higher rate for the same type of transmission service. This is an unfair shifting of costs.

Comment 5: The SEPA rate should pass through the TVA published cost-based transmission charges to those SEPA preference customers receiving power wheeled across the TVA system, as SEPA does with other transmission providers' charges.

Comment 6: By combining together TVA's transmission charges with the cost of SEPA's power, SEPA arbitrarily disregards Federal Energy Regulatory Commission (FERC) policy and utility industry practice of separating (unbundling new arrangements for) transmission charges from power and energy charges. SEPA is similarly arbitrary in singling out TVA transmission charges for this ''rolled in'' rate: those SEPA customers served through the transmission system of Carolina Power & Light Company (CP&L) have their transmission charge unbundled from the SEPA power cost as a separate pass-through, as do other SEPA customers taking power from projects other than the Cumberland Basin Projects.

Comment 7: The CP&L transmission cost component is clearly broken out as a separate charge in the very same rate proposal in which TVA's transmission cost component is deceptively buried. SEPA does not provide a reasoned basis for this arbitrarily disparate ratemaking treatment of transmission charges attributable to TVA.

Comment 8: The proposed SEPA methodology would have the effect of allowing the customers outside the TVA area to obtain a type of premium on-peak firm transmission service at charges that do not fully recover the costs of providing such service and that are less than charges that would be charged others requesting other types of premium service (point-to-point firm transmission service).

Comment 9: While TVA recognizes that ratemaking is a highly complex process, one basic premise is that customers should not be forced to pay for services or benefits provided for other customers. If the costs of providing services to one group are different from the costs of serving another, the two groups are, in one important respect, different, and it is appropriate for that difference to be addressed in the ratemaking process. TVA recommends remedying this defect in SEPA's proposed rates by treating TVA's transmission costs solely as a pass-through, like those of CP&L, rather than adjusting the energy charge, which effectively results in TVA paying some 53 percent of the increased costs of providing transmission service to SEPA customers outside the TVA area.

Comment 10: SEPA arbitrarily disregards FERC and industry practice of transmission unbundling.

Comment 11: To the extent that TVA does not recover from SEPA the costs for SEPA's use of TVA's transmission facilities to wheel power to SEPA's preference customers outside the TVA region, the those costs are unfairly and unlawfully shifted to TVPPA member systems. TVPPA opposes such cost-shifting to its members.

Response: SEPA will support continued discussions between TVA and the customers outside the TVA system in an effort to reach a negotiated settlement on an appropriate amount of the TVA transmission charge. TVA's proposed transmission charge appears to be substantially higher than the transmission charges SEPA pays to investor owned utilities in the southeastern region. TVA's transmission rates are not subject to the same review as investor owned utilities. Considering these factors, SEPA does not at this time consider it appropriate to treat the TVA transmission charges as a pass-through rate, which is how SEPA treats most of the transmission charges of other utilities. Rather, SEPA has determined to allocate a comparable increase to all customers.

B. Comparative Value of Service Provided

Comment 1: SEPA's allocation of energy has resulted in TVA receiving greater value from the Cumberland River System Projects than the customers outside the TVA area. This has not been taken into consideration in the development of the rate.

Comment 2: Please provide an explanation of why the energy allocation values were not considered in the development of the rate.

Response: Energy allocations are a part of the Southeastern Power Marketing Policy for the Cumberland System of Projects published in the **Federal Register** August 5, 1993, 58 FR 41762, and are not subject to review in these proceedings. A determination of the value of these allocations in the development of the rates would require an assessment of market rates for power in the relevant markets. SEPA is required to market power at cost-based rates, rather than at market-based rates. SEPA does not believe it can appropriately assess the relative value of the energy allocations.

C. Cost Recovery From Energy and Capacity

Comment: SEPA distorts transaction economics and arbitrarily disregards ratemaking practice by assigning significant fixed costs to energy charges.

Response: Traditional utility rate design practice assigns fixed costs to capacity charges and variable costs to energy charges. In a hydroelectric system, where there is no fuel cost and almost all of the costs are fixed, the capacity charge would be designed to recover nearly 100 percent of the cost. Having only a capacity charge is not a

common method of setting rates, and does not provide an incentive for the customers to manage energy wisely. SEPA looked for a more equitable way to allocate costs. For the period from 1984 to 1994, SEPA compared its rates to the wholesale rates charged by utilities in the Southeastern portion of the United States. Based on these results, a rate design that recovered 40 percent of the costs from capacity and 60 percent from energy. In 1994 TVA objected to this rate design. After negotiations between SEPA, TVA, and the customers outside the TVA system, a rate design that included 1500 hours of energy with each kilowatt of capacity and an additional energy charge for energy above 1500 hours use was implemented as a negotiated settlement. SEPA is proposing to continue this rate design to allow for equal sharing of the cost increase.

D. Disproportionate Impact on the Kentucky Utilities Municipals

Comment: SEPA's rate design imposes a disproportionate increase on the KU Area Preference Customers. Given that the KU Area Preference Customers were denied access to the benefits of SEPA power for years (because of the actions of Kentucky Utilities Company, not of SEPA), it seems unfair for these utilities to bear the greatest percentage rate increase, after receiving the power for only two and one-half years. To the extent that any rate increase is found to be justified, an equal percentage increase to all customers would be more equitable and more consistent with the principles of cost-based ratemaking.

Response: The Kentucky Utilities Municipals are unique among the customers outside the TVA area. They are the only group that receives more than 1500 hours use per kilowatt per year. The Kentucky Utilities Municipals receive 1800 hours use, which means that they incur an additional energy charge for 300 hours use per kilowatt per year. Because of this additional energy, the rate increase for the Kentucky Utilities Municipals is slightly higher (7% versus 6%) than for the other customers of the Cumberland System.

E. Phase-in of the Rate Adjustment

Comment: SEPA should allow its customers the option of phasing in the proposed rate increase over the five-year period.

Response: The total rate adjustment is an increase of about seven percent to the most adversely affected customer group, which is the municipal customer in the Kentucky Utilities area. Because of the continued disagreement over the TVA transmission costs, it is very likely the rate will be modified prior to expiration of the 5 year rate. SEPA does not believe it is appropriate to use a phase-in of a rate adjustment for an increase of this relatively small magnitude.

3. SEPA Power Marketing Policy

A. Allocation of Energy

Comment: TVA was already overcompensated for transmission services under the existing arrangement, which includes not only charges to SEPA for services, but also make available ''excess'' energy to TVA in substantial amounts. TVA's transmission charges are unjustified, even without consideration of these additional benefits to TVA not reflected in the charges SEPA pays to TVA.

Response: The comment links the allocation of energy from the Cumberland System with TVA's compensation for providing transmission. The allocation of energy, which is a part of Southeastern Power Marketing Policy for the Cumberland System of Projects published in the **Federal Register** August 5, 1993, 58 FR 41762, is not subject to review in these proceedings. These proceedings pertain only to the rates for Cumberland System Power.

B. Ability to Negotiate Power Contracts

Comment: SEPA should allow SEPA's customers an option to purchase transmission service directly from TVA, with a corresponding reduction in the price of SEPA power to eliminate the currently bundled component for TVA transmission charges that is included in SEPA's proposed rates.

Response: SEPA negotiates transmission service contracts in behalf of SEPA's customers when it is determined to be in the best interest of the customers for SEPA to do so. If the customers wish to negotiate for transmission service in their own behalf, SEPA will support their efforts. Such arrangements may require modification or replacement of existing contracts between SEPA, the preference customers involved, TVA and TVPPA, and other area utilities.

4. SEPA's Contract With TVA and TVPPA

A. Use of TVA Transmission Facilities

Comment 1: Customer's outside the TVA area are being asked to pay what is described as TVA's full transmission costs. Yet the customers outside the TVA area have firm use of that transmission capacity for only 1500 hours per year.

Comment 2: SeFPC believes the 1500 hours limitation on the annual use of TVA's transmission system is unreasonable and does not represent the true value of the availability.

Comment 3: SeFPC customers should be allowed to utilize this excess capacity reservation to engage in non-firm transactions to other customers and fully utilize TVA's transmission system.

Response: These comments relate to the use of headroom, or the difference in the capacity that SEPA has reserved on the TVA system and the capacity that SEPA is actually using in any given hour. The current contract between SEPA, TVA, and TVPPA does not allow the use of headroom. SEPA is willing to negotiate modifications to the existing agreement that will allow the use of headroom.

B. Amount of Capacity Wheeled

Comment 1: SEPA has previously indicated that, notwithstanding TVA's clear contractual commitment to transmit up to 475 MW for the SEPA customers outside TVA, TVA somehow actually transmits less than that amount because two of SEPA's Cumberland projects are directly connected to two systems receiving Cumberland output (Big Rivers Electric Corporation and East Kentucky Power Cooperative). Contrary to SEPA's contentions, TVA's commitment to transmit 475 MW of power to the periphery is not lessened because of the location of specific Cumberland projects on the TVA system since the fully integrated TVA transmission system (not isolated pieces of the system) is utilized in providing the service.

Comment 2: TVA allocates 475,000 kW of transmission capacity to SEPA each month of the contract year. SeFPC believes that there are months or periods during the month that the full 475,000 kW of transmission capacity is not required by TVA.

Response: The current contract between SEPA, TVA, and TVPPA provides for the delivery of 475 MW of capacity at the TVA border. This includes the delivery of 190 MW to Big Rivers Electric Corporation, which has an interconnection with the Barkley Project, and 100 MW to East Kentucky Power Cooperative, which has an interconnection with the Wolf Creek Project. TVA has the right to schedule the output of eight of the ten Cumberland Projects, including these two projects. The output of the Barkley Project is 158 MW, and the output of the Wolf Creek Project is 274 MW. Big Rivers could receive 158 MW of their delivered capacity from the Barkley Project without utilization of the TVA

transmission system, and East Kentucky could receive all 100 MW of their delivered capacity from the Wolf Creek Project without utilization of the TVA transmission system. Under the existing contract between SEPA, TVA, and TVPPA it is unclear how much capacity is being transmitted across the TVA system. Reducing the amount of capacity transmitted would likely require modification of the existing agreement. This is a contractual matter, and is not appropriately addressed in these proceedings, which pertain to rates for the Cumberland System capacity and energy.

5. Cost of Service Issues

A. Budgeted Replacements

Comment: SEPA has paid into the treasury over $62 million cumulatively which has been applied to reduce the long-term debt owed by SEPA. SeFPC requests that SEPA review its construction expenditures budget to collect only those revenues required to meet its actual construction requirements.

Response: The DOE Order RA6120.2 requires SEPA to include the cost of replacements in the repayment studies used to support rate filings. SEPA has used the best estimates that were available over the years to determine the levels of future replacement costs. Over the years, SEPA's estimates have been in excess of the actual replacement costs, and by end of fiscal year 1998, the difference between estimated and actual replacement cost has grown to $62 million for the Cumberland System of projects. SEPA agrees with this comment and has joined with the Corps and the customers' organized committees to examine the future rehabilitation of the projects. SEPA is using the best estimates of the Corps in this repayment study. The Corps is estimating that a large amount of replacements will occur in the near future.

B. CSRS

The preference customers have objected to the inclusion of Civil Service Retirement System Costs and Health Benefit Costs (CSRS) that are funded by the Office of Personnel Management (OPM) in a prior SEPA rate filing. The Georgia-Alabama-South Carolina Rates were filed with the Commission on September 22, 1998, and approved by the Commission on February 26, 1999. See Southeastern Power Administration 86 FERC ¶61,195 (1999). The customers have requested a rehearing and the request is currently pending before the Commission. Many of these issues were responded to in the prior rate filing. We will respond to each comment individually.

Comment 1: The members of the SeFPC do not believe that the collection of CSRS costs remains within the cost recovery guidelines which the PMAs must follow.

Response: On July 1, 1998, DOE General Counsel Mary Anne Sullivan responded to the issue of SEPA's discretion to collect the full CSRS costs in rates by a memorandum opinion of same date entitled, ''PMA Authority To Collect In Rates, and Reimburse To Treasury, Government's Full Costs of Post Retirement Benefits' (Opinion). The Opinion is cited hereafter as (Mem. Opinion, July 1, 1998). A copy of the Memorandum 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. The Opinion concludes at page 4:

> * * * 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.

The July 1, 1998 Opinion also concludes, at page 7:

> DOE policy, 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.

Comment 2: The failure to follow Financial Accounting Standards Board represents an unexplained departure from the existing regulations which pertain to the recovery of costs by the PMAs.

Response: As explained more fully at page 4 of the July 1, 1998 DOE General Counsel's Opinion, there was no ''articulated legal judgment'' to bar to the inclusion of the cost of unfunded post-retirement benefits in rates. As explained in said Opinion, and in SEPA's responses to comments 4 and 16, SEPA is implementing the said Opinion to recover in our rates such costs.

The July 1, 1998 Opinion concluded on page 10, that ''* * * monies received from power rates to recover costs of unfunded liabilities from power marketed by SEPA * * *, would be deposited into the general fund of the Treasury as miscellaneous receipts,'' and that such ''* * * (p)ayments would therefore offset the appropriation for unfunded liability made to the OPM Funds.''

In accordance with such Opinion, SEPA is including a component in our rates which will operate as an offset against the annual appropriations by Congress to the Office of Personnel Management to fund post-retirement benefits promised to Federal retirees under existing law.

In the view of SEPA, such actions as we are undertaking for the second time since the July 1, 1998 Opinion was issued, were in accordance with the Congressional mandate, applicable law, and the requirements of DOE Order RA 6120.2 that SEPA establish its rates in accordance with generally accepted accounting principles as adopted by the Financial Accounting Standards Board (FASB).

Comment 3: Information SEPA has relied upon in calculating the rate increase [regarding CSRS] fails to comport with the regulations that SEPA and other PMAs must follow.

Response: SEPA used the best estimates for future years of the CSRS costs by estimating that future years would be the same as the actual 1998 CSRS cost of $818,991. The actual costs for 1998 were determined by using the ratio of OPM's share of the costs applied to the actual annual salaries for each Corps employee allocated to power. The same method was used to compute SEPA's CSRS cost. It should be noted that this comment was directed toward estimated costs used in the proposed rate filing presented to the customers at the rate forum. The estimate at that time was $789,000.

Comment 4: The inclusion of CSRS costs in the proposed rate increase also raises questions whether SEPA may recover CSRS costs for Corps employees. By operation of law, each federal agency makes deductions, contribution and deposits for retirement benefits for the agency's federal employees. The SEFPC submits that the discretion afforded by the Flood Control Act of 1944 to collect (full) CSRS costs must yield to the more explicit statutes, *i.e.* 5 U.S.C. 8334, placing an obligation upon the employing agency to deduct a percentage of the employee's pay and to contribute an equal amount from the appropriation or fund used to pay the employee to fund retirement costs.

Response: The Department of Energy has made a determination that it is appropriate for the PMAs to include the CSRS costs and pension health benefits costs that are funded by the OPM in the rates charged to customers. Therefore, SEPA has included the costs in the repayment study and thereby included them in the rates that SEPA proposes to charge to the customers. The DOE General Counsel's July 1, 1998 Opinion

reviewed SEPA's statutory framework to determine whether SEPA, under current law, (1) may collect in rates the costs of post-retirement benefits, and (2) pay these rates revenues into a non-revolving Treasury account ''* * * as an effective offset to appropriations [1] into the OPM funds from which these benefits are financed.''

The July 1, 1998 DOE General Counsel's Opinion synopsized them as follows:

A. The Civil Service Retirement Act provides retirement and disability benefits for federal employees. The employing agency deducts a percentage of an employee's basic pay, combines it with an equal amount contributed by the appropriate governmental agency, and deposits it in the Treasury to the credit of the Civil Service Retirement and Disability Fund (Retirement Fund), citing *Clark* v. *United States*, 691 F.2d 837, 841 (7th Cir. 2d 1982), 5 U.S.C. § 8334. Mem. Opinion (July 1, 1998), at 2;

B. The Federal Employees' Health Benefits Fund (Health Fund) consists of funds withheld from employees plus specified contributions by the employing agencies, citing 5 U.S.C. 8906, 8909. *Id.* at 2; and

C. The Employees' Life Insurance Fund (Insurance Fund) consists of funds withheld from employees plus specified contributions by the employing agencies. 5 U.S.C. 8707, 8708, 8714. *Id.* at 2.

Congress provides in annual appropriations acts, as part of the appropriations to the OPM ''such sums as may be necessary'' for payments, to retirees to the extent these funds are underfunded. See, e.g., Omnibus Consolidated and Emergency Supplemental Appropriations Act, FY 1999, 112 Stat. 2681–509, Pub. L. No. 105–277, Act of October 21, 1998; and Treasury and General Government Appropriations Act, 1998; 111 Stat. 1303, Pub. L. No. 105–61, Act of October 10, 1997.

The DOE General Counsel took cognizance of the fact that at present the four PMAs are recovering in rates the cost of their own direct contributions to the three OPM funds with respect to their own employees.

The DOE General Counsel cited the statute, 5 U.S.C. 8334 (a)(1), establishing the Civil Service Retirement and Disability Fund, stating that it provides that ''* * * government contributions for an employee shall be 'contributed from the appropriation or fund used to pay the employee' * * *'' Mem. Opinion, (July 1, 1998) at 3, and that the statutes, 5 U.S.C. 8708(a) and 8906(f)(1), creating the Insurance and Health Funds ''contain similar language,'' Mem. Opinion (July 1, 1998), at 3. Also, with ''* * * respect to Bureau of Reclamation (Bureau) and Corps of Engineers (Corps) employees that are involved in power operations and maintenance, the Bureau and Corps make the agency contributions to the OPM Funds directly.'' Mem. Opinion (July 1, 1998), at 3. The General Counsel also noted that the four PMAs were recovering in rates the cost of their own ''* * * direct contributions to the three OPM funds with respect to their own employees.'' See *id.* at 6. The General Counsel likewise noted that the PMAs were ''* * * recovering in rates the power-related operation and maintenance expenses of the Corps and the Bureau,'' including ''* * * contributions by those two agencies to the OPM funds to the extent that their employees conduct these functions.'' See *Id.* at 6. There was a problem by reason of the fact 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 under-collected amounts are eleven percent in the case of Civil Service Retirement System employees. Mem. Opinion (July 1, 1998), at 1, 2 and 6.

The General Counsel reviewed the 1969 Congressional enactment, i.e., 5 U.S.C. 8348(f), which ''* * * 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.'' Mem. Opinion (July 1, 1998), at 2. The opinion noted that, ''* * * prior to 1969 * * *, the Retirement Fund had an unfunded deficit created ''by the Government's failure to contribute sufficient funds, the gradual increase in liability caused by past increased retirement benefits and salary increases.' '' Mem. Opinion (July 1, 1998), at 2. The General Counsel concluded, after an extensive review of all relevant factors, that the PMAs, including SEPA, have sufficient statutory authority to include unfunded costs in their rates and can deposit such funds into an appropriate Treasury account so as to effectively ''offset'' the said ''such sums as necessary'' appropriations made to the OPM funds from which these post-retirement costs are paid to retirees. Mem. Opinion (July 1, 1998), at 2, 7, 10, and 11.

The General Counsel noted that SEPA is required to set rates for electric power that cover costs, and the relevant statutes leave ''considerable discretion'' to the PMAs in applying this standard. The General Counsel cited Section 5 of the Flood Control Act of 1944, which applies to projects built by the Army Corps of Engineers, and power marketed by SEPA, provides that the rates ''shall be set 'having regard to the recovery * * * of the cost of producing and transmitting such electric energy.' '' '' 16 U.S.C. 825s. Mem. Opinion (July 1, 1998), at 3. The General Counsel emphasized that, under Section 12 of DOE Order No. RA6120.2, ''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*, '(all) costs of operating and maintaining the power system during the year in which such costs are incurred,' '' and that the said order further ''requires the PMAs to use accounting practices consistent with the principles prescribed by the Financial Accounting Standards Board.'' Mem. Opinion (July 1, 1998), at 5, citing Section 6 of RA6120.2. The General Counsel also observed that, ''* * * the requirement to set rates consistent with the DOE order has been judicially recognized,'' citing *Overton Power Dist. No. 5* v. *Watkins*, 829 F. Supp. 1523, 1530 n. 5 (D. Nev. 1993).'' Mem. Opinion (July 1, 1998), at 5.

The FASB, whose principles are referenced in DOE Order RA6120.2, 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 Company, 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). See also, SEPA Georgia-Alabama-South Carolina System Rate Order No. SEPA–37, 63 Fed. Reg. 53,409, 53,413 (October 5, 1998). The ''* * * '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,' '' Southwestern Bell Telephone Co., at 5, f.n. 5. See also, SEPA Rate Order 37, 63 Fed. Reg. 53,413.

FAS No. 106, * * * ''changes generally accepted accounting principle * * * for post retirement, medical and life insurance benefits from accounting on a pay-as-you-go basis to an accrual basis.'' *Pennsylvania Public Utility*

[1] The Government's full costs of the post retirement benefits not recovered by employer-employee contributions to the OPM Funds are funded by permanent and mandatory ''such sums as may be necessary'' annual appropriations to these funds. There are three such funds.

Commission v. *Metropolitan Edison Company*. (Case No. R–00922314) 78 Penn, PUC 124; 141 P.U.R. 4th 336 (January 21, 1993). See also, SEPA Rate Order 37, 63 Fed. Reg. 53,413, supra. The General Counsel, citing Section 106 of FASB Statement No. 106, stated that ''FASB has recognized post-retirement benefits to be broader than simply pensions, issuing in December 1990 standards regarding post-retirement benefits other than pensions.'' Mem. Opinion (July 1, 1998), at 5, f.n. 5. The General Counsel, who noted that under FAS 106, ''* * * post retirement benefits include post-retirement health care and life insurance provided outside a pension plan to retirees,'' also stated that under FAS 106, ''* * * '(a) post retirement benefit is part of the compensation paid to an employee for services rendered.' Thus, under FAS 106, ''* * * 'the cost of providing the benefits should be recognized over those employee service periods.' This was ''* * * '(b)ecause the obligation to provide benefits arises as employees render services * * *'' Mem. Opinion (July 1, 1998), at 5, f.n.5.

The DOE General Counsel emphasized that ''* * * FERC has recognized that the obligation for such retiree benefits is legitimately treated as a cost,'' and that ''FERC recognizes, as a component of cost-based rates, allowances for prudently-incurred costs of post-retirement benefits other than pensions (PBOPs) that are consistent with the accounting principles set forth in FASB Statement No. 106 (1991).'' Mem. Opinion (July 1, 1998), at 5, citing 61 FERC ¶61,330, at 62,200 (1992). Further, FERC ''interpreted the FASB statement to find 'that PBOP plans are deferred compensation arrangements whereby an employer promises to exchange future benefits for employees' current service and that their cost should be recognized over that employee's service periods for financial accounting and reporting purposes,''' Mem. Opinion (July 1, 1998), at 6, citing 61 FERC at 62,199.

The DOE General Counsel found it very significant that FERC had concluded that, ''PBOP are a form of deferred compensation to employees for the services that they provide during their working years * * * Therefore, * * * the costs of providing these benefits are properly included in the cost of service during the period that the benefits are earned.'' Mem. Opinion (July 1, 1998), at 6, citing 61 FERC, at 62,201. Also, ''FERC's uniform system of accounts recognizes accruals to provide for pensions as an element of operation and maintenance expenses where the utility has, by contract, committed to a pension plan.'' Mem. Opinion (July 1, 1998), at 6, citing 18 CFR 101.926.

The General Counsel stated that, under case law precedent courts, ''* * * in reviewing actions of the PMA's, 'give' substantial deference to PMA interpretations of their organic statute,'' Mem. Opinion (July 1, 1998), citing *Department of Water & Power of the City of Los Angeles* v. *Bonneville Power Administration*, 759 F.2d. 684, 690–91 [9th Cir. 1985] and 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.' ''*Id.*, citing *Alcoa* v. *Central Lincoln Peoples*'' Util. Dist., 467 U. S. 380, 389 (1994). *Id.* at 4. The court ''* * * need only conclude that the interpretation is a reasonable one,'' *Id.* at 4, citing *Chevron* v. *Natural Resources Defense Council*, 467 U.S. at 845. The relevant statute, i.e., Section 5 of the Flood Control Act of 1944 and DOE Order RA 6120.2, provides that the PMAs must set rates that fully recover costs. Because the statutes provide little direction as to how the agencies are to interpret the term ''costs,'' this confers discretion upon DOE and SEPA. There is no indication that Congress intended to preclude the collection of full costs. Congress appropriates such sums as may be necessary to OPM to provide promised post retirement benefits.[2] Congress provides additional sums to OPM to supply benefits to retirees whose costs are only partially recovered by the Government agency and its employees' contributions to the OPM funds.

Chevron, Inc. v. *National Resources Defense Council, Inc.*, supra, is the landmark case in determining judicial deference to administrative interpretation of statutes. See Thomas W. Merrill, Judicial Deference to Executive Precedent, 101 Yale L.J. 969, 975 (1992). In Chevron, the Supreme Court adopted a two-step analysis for determining whether to defer to agency interpretation of statutes. See Chevron, 467 U.S. at 842–43. First, the court determines whether Congress has ''directly spoken'' on the issue. If the court concludes that the intent of Congress is clear, it must enforce the ascertained intent. See *id.* at 842–43. If the court determines that Congress has not directly spoken on the issue, or has been silent or ambiguous, the court merely asks whether the agency's interpretation is reasonable.

[2] See discussion at f.n. 1.

The General Counsel reasoned that, ''* * * post retirement benefits 'are part of the compensation paid to an employee for services rendered,'' Mem. Opinion (July 1, 1998), at 5, f.n.5. The FASB '' 'believes that the cost of providing the benefits should be recognized over those employee service periods.'' *Id.* citing FASB 106.03 and 106.18). The obligation ''* * * 'to provide benefits arises as employees render services * * *'' *Id.* at 5, f.n. 5. Further, the DOE General Counsel was of the view 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'' and that, ''* * * recovering those costs in rates is entirely consistent with the congressional objective that the PMAs operate on a fiscally self-supporting basis.'' Mem. Opinion (July 1, 1998), at 5, citing *Department of Water & Power* v. *BPA*, 759 F.2d at 695 (9th Cir. 1985). It is entirely reasonable that agencies like SEPA be required to recover in their rates a component for costs attributable to retirement benefits of Federal employees producing power in the period covered by the rates, where such charges offset the appropriation of funds necessary to provide promised benefits to all retirees, including such future SEPA and Corps of Engineers retirees who are engaged in producing power sold by SEPA in the period covered by such rates.

The DOE General Counsel, concluding by way of summary, stated that the above-described DOE ratemaking policy, FASB 87 and FASB 106 Accounting Principles, and FERC ratemaking policy, ''indicate that the inclusion in rates 'in a given period of' all employer costs, 'including unfunded post-retirement costs' accruing in that period is a reasonable interpretation of the statutory obligation to recover costs.'' Mem. Opinion (July 1, 1998), at 6–7. Since DOE's General Counsel has upheld the reasonableness of the recovery of all such SEPA employer costs by the said July 1, 1998 Memorandum Opinion, SEPA must reject this objection.

Comment 5: Deposits into the Treasury of SEPA's charge for post-retirement benefits in rates violates the principle of cost-based rate making that there be a matching of costs collected with costs actually incurred. At page 19 of their May 10, 1999 comments, the Southeastern Federal Power Customers object to the collection of a separate post retirement component for post retirement benefits in rates. They stated:

Cost-based ratemaking requires a matching of costs collected with costs actually incurred. With respect to the PMA's, the collection of CSRS in rates, deposited in the Treasury, provides no assurance that amounts paid by ratepayers will match the benefits actually paid.

Response: The commenters fail to understand the matching principle in the context of FAS 106 as interpreted by FERC and the courts. The matching principle within ratemaking, as defined by Kohler's A Dictionary for Accountants, is '' * * * identifying related revenue and expense with the same accounting period.'' Accrual basis of accounting, as defined by the same dictionary, is, ''The method of accounting whereby revenues and expenses are identified with specific periods of time, such as a month or year * * *'' In the case of CSRS costs and post-retirement health benefits costs, the expenditures for these costs will be in the future after employees retire. However, accrual accounting would require that the current expenses should be recorded for these future costs.

Historically, for many organizations not including the Federal Government or SEPA, post-retirement benefit expenses have been recognized on a cash basis for both ratemaking and accounting purposes. Under the cash basis approach, the cost of post-retirement benefits ''provided to retirees (and their dependents and beneficiaries) is included in a utility's rates when the benefits are actually received by the retirees after retirement, i.e., when cash expenditures are made from general corporate assets in satisfaction of the company's obligation to provide such benefits.'' New England Power Company, 61 FERC ¶61,331, at 62,207. Under the cash method, these expenses are not recognized for ratemaking purposes (or for accounting purposes) during the current period if no cash outlay has been made. *Id.* at 62,207.

In December 1990, the FASB issued Statement of Financial Accounting Standards No. 106, Employers' Accounting for Postretirement Benefits Other than Pensions (FAS 106), which requires all companies subject to FASB accounting standards with over 500 plan participants to adopt accrual accounting for PBOP expenses no later than fiscal years beginning after December 15, 1992. FAS 106 applies to both regulated and unregulated companies. New England Power Company, 61 FERC at 62,207.

Under FAS 106, companies will be required, for financial reporting purposes, to recognize PBOP expenses as a current expense during the years an employee provides service to the employer (and, accordingly, earns such benefits) rather than when they are actually paid. FERC stated that ''FAS 106 requires that each accounting period be charged with the present value of the cost * * *'' [of post retirement benefits] ''* * * earned by the employees during that period.'' New England Power Company, 61 FERC ¶61,331, at 62,207.

FAS 106 instructed companies to adopt the accrual accounting method for determining post-retirement benefit. This method prescribes that companies must ''account now for the post-retirement benefits they expect to pay in the future to their current employees.'' Town of Norwood, 53 F.3d at 377, 378 (D.C. Cir. 1995).

The protestants are wrong when they assert that cost-based ratemaking requires a matching costs actually incurred. Such assertion is not necessarily so, in a case where the utility is attempting to apply FAS 106. In New England Power Company, the Commission recognized that the matching principle was not violated, even though rate payers in future rates would become liable for both costs of prior service, referred to as the transition obligation, and costs of current service, even though the costs of prior services far exceeded the cost of current service by nearly three and one-half times. See, 60 FERC ¶63,006, at 65,084 (A.L.J. initial decision) and 61 FERC ¶61,331 at 62,213–15.

The development of SEPA's rate does not involve the complicated step of calculating costs of prior service involved in their calculation of the transition obligation.[3] No such complication is presented by SEPA's rates. SEPA, under Administration policy, looks only to recovery of future costs for current service in rates to be approved as provided for in the subject Cumberland rates. As FERC stated:

When the accrual method is employed, the company first estimates the future liability of the PBOPs for the current employees, and then, collects the costs for that liability from current ratepayers.'' Note effects of Financial Accounting Standard 106 on Electric Ratemaking, 64, George Washington Law Review 1180, 1183 (1966) citing Town of Norwood, 53 F.3d 378–79.

SEPA need only take the first step in the accrual accounting system. This requires that the future costs for current service be calculated. The policy of matching has as its purpose to have ''ratepayers * * * pay for the production of the services they receive.'' Id., citing Town of Norwood, 53 F.3d 381 (D.C. Cir. 1995).

In SEPA's case, this means calculation of those future costs which are not recovered from the SEPA's and the employees' contributions to the Civil Service Retirement Fund, the Life Insurance Fund, and the Federal Employees Health Benefits Fund, described above. SEPA, in accordance with Administration policy, only recovers in this rate the costs of current service of those of its employees and the Corps of Engineers employees, who render services to the Cumberland rate payers over the period of the effectiveness of the Cumberland rate which are not recovered pursuant to the aforementioned laws. The OPM provides the instructions for the recording of accrual basis of costs for pension expense and for post-retirement health benefits. The cost factor applicable for CSRS employees for 1998 was 24.2% of the salary. The amount withheld from employees was 7.0% for part of the year and 7.25% for part of the year, and the amount paid by SEPA was 8.51% of the salary for the entire year. Therefore, the amount paid by the OPM was 9.69% for part of the year and 9.44% for the rest of the year. This 9.69% and 9.44% was multiplied times the salaries of the SEPA employees during the appropriate period for the employees during 1998. The post-retirement health benefits costs was computed by taking actual enrollment in FEHB on 10–1–97, 3–31–98, & 9–30–98. The number of enrollees on 10–1–97 and on 9–30–97 was multiplied times one (1), and the number of enrollees on 3–31–98 was multiplied times two (2). The total was divided by four (4), thereby creating an average enrollment for the year. The product is multiplied times the cost factor provided by the OPM of $2,493. Life benefits funded by OPM are computed by multiplying the salaries of the enrollees by two percent (2%). We have

[3] In the case of a private utility (but not of SEPA) an ''integral component of conversion to the accrual method is the calculation of (and recovery schedule for) the PBOP obligation associated with the past service of employees and retirees (known as the transition obligation). The transition obligation represents a company's accumulated liability for PBOP expenses for both present employees and current retirees during the period up to the date of conversion from a cash to an accrual method which had been deferred for future periods.''

Under FAS 106, companies have the option either to expense the transition obligation immediately or to recognize the expense over time (i.e., to amortize the transition obligation over a specified period of time). If recognized over time, a company has the further option to amortize the transition obligation on a straight-line basis over the average remaining service period of active plan participants over 20 years if greater. New England Power Company, 61 FERC ¶61,331 at 62,208.

The Federal Government has always been on an accrual basis and therefore no transition obligation is necessary.

confirmed that the Corps is using a similar method for fiscal year 1998 to determine their actual costs.

All SEPA must do is to take the first step, which is the establishment of reasonable estimate of the costs of post-retirement benefits currently earned by those utility employees serving SEPA's customers during the period of effectiveness of SEPA's proposed Cumberland rates, to the extent such costs are not covered in the future by said laws. SEPA has done this.

Comment 6: SEPA's CSRS proposal contains none of the customer protections that FERC has required.

Response: SEPA believes that the protection that FERC requires is that the cost be a true actual cost. The actual costs for Fiscal Year 1998 were $818,991, and SEPA has projected this amount for all future years. However, the actual cost that is recorded by SEPA and the Corps in future years will be the costs the customers actually repay according to the repayment recovery criteria set forth in DOE Order RA 6120.2.

Comment 7: Moneys collected go to the Treasury and are available for general purpose along with all other taxpayer receipts. They are not separately accounted for or held like Treasury payments or the illusory Social Security ''trust funds.'' They would be bookkeeping entries at best, nothing more. SEPA's proposal contains none of the protections that arise from ''irrevocable external trust funds[s]'' such as FERC has required to be established in the case of post-retirement benefits collected by regulated utilities from rate payers.

Response: SEPA can, under existing law, make no disposition of its post-retirement benefit collection, other than payment into miscellaneous receipts account. The DOE General Counsel recognizes that Section 5 of the Flood Control Act requires all SEPA revenues, ''received in rates to recover costs of unfunded liabilities would be deposited directly into the Treasury as miscellaneous receipts fund of the Treasury, and could not be expended without further appropriation.'' Mem. Opinion (July 1, 1998), at 7, citing 31 U.S.C. 3302(b). SEPA must comply with this requirement, as it is not subject to the Federal Power Act, pursuant to which FERC adopted such an irrevocable trust requirement for utilities subject to FERC jurisdiction. SEPA is exempt from FERC's Federal Power Act jurisdiction.

Payments of SEPA revenues into the Treasury, including the component thereof for unfunded retirement benefits, constitutes, in the view of DOE General Counsel, an ''offset'' to the appropriations to the OPM funds to meet the large unfunded liability of the Government for retirement benefits. Id. at 10 and 11. Congress meets this obligation by annual ''such sums as may be necessary'' appropriations to the Office of Personnel Management's Funds to assure retirement benefits are paid.

The Opinion addresses the authority of the Power Marketing Administrations (PMA) to collect in rates an amount that would offset the Government's full cost of post-retirement employee benefits. It stated, quoting the Testimony of William E. Flynn, Associate Director for Retirement and Insurance of the Office of Personnel Management Before the Senate Committee on Governmental Affairs, Subcommittee on Post Office and Civil Service (May 15, 1995), that:

> The elements of the historically under collected amounts are approximately 11 percent of salary for CSRS employees (cost of approximately 25 percent of salary less the 7 percent employee contribution and the 7 percent agency contribution), plus the FY 1998 accrual for the Government's share of post retirement health and life insurance benefits for current employees.

The DOE General Counsel, citing 5 U.S.C. 8348 (f), Pub. L. 91–93, Act of October 20, 1969, 83 Stat. 136, noted that, ''In 1969, Congress,'' had ''authorize(d) appropriations to the Retirement Fund to finance the unfunded liability'' for retiree benefits ''* * *by authorizing a permanent indefinite appropriation for transfer of general funds from the Treasury.'' Mem. Opinion (July 1, 1998), at 2.

Since FY 1998, Congress has, by a separate line item in Appropriations Acts to the Office of Personnel Management, pursuant to the authority of said 1969 Act, appropriated ''such sums as may be necessary'' to finance the unfunded Civil Service Retirement Fund obligation. See the Omnibus Consolidated and Emergency Supplemental Appropriations Act for FY 1999, Pub. L. 105–277, Act of October 21, 1998; 112 Stat 2681, 2681–509. This Act states:

> Payment to Civil Service Retirement and Disability Fund
>
> For financing the unfunded liability of new and increased annuity benefits becoming effective on or after October 20, 1969, as authorized by 5 U.S.C. 8348, and annuities under special Acts to be credited to the Civil Service Retirement and Disability Fund, such sums as may be necessary: Provided, The annuities authorized by the Act of May 29, 1994, as amended, and the Act of August 19, 1950, as amended (33 U.S.C. 771–775), may hereafter be paid out of the Civil Service Retirement and Disability Fund.'' *Id.*

See, also the Treasury and General Government Appropriations Act, for FY 1998 (PL 105–61; Act of October 10, 1997; 111 Stat. 1303) which states:

> Payment to Civil Service Retirement and Disability Fund
>
> For financing the unfunded liability of new and increased annuity benefits becoming effective on or after October 20, 1969, as authorized by 5 U.S.C. 8348, and annuities under special Acts to be credited to the Civil Service Retirement and Disability Fund, such sums as may be necessary: Provided, The annuities authorized by the Act of May 29, 1944, as amended, and the Act of August 19, 1950, as amended (33 U.S.C. 771–775), may hereafter be paid out of the Civil Service Retirement and Disability Fund.

The underlying Office of Personnel Management Budget Justification for FY 1998, in support of the FY 1998 Appropriation to the Civil Service Retirement Fund to meet the annual unfunded liability, stated that this was a mandatory appropriation. OPM estimated that $8.3 billion would be needed for this purpose in FY 1998. See, Hearings Before a Subcommittee of House Committee on Appropriations on Treasury, Postal Service and General Government Appropriations for FY 1998, 105th Congress, 1st Session, 732 (1997).

The statement of Honorable Janice R Lachance, Director, OPM, before the Subcommittee on Treasury, Postal Service, and General Government Committee on Appropriations, U. S. House of Representatives on OPM's Fiscal Year 1999 Appropriations Request stated:

> ''* * * as mandated by the financing system established in 1969 by Public Law 91–93, we are requesting a 'such sums as may be necessary' appropriation for the civil service retirement and disability fund. This payment, which we estimate to be $8.7 billion, represents the 30-year amortization of liabilities resulting from changes since 1969 (principally pay increases) which affected benefits.'' See Hearings Before a Subcommittee of the House Committee on Appropriations on Treasury, Postal Service, and General Government Appropriations for fiscal year 1999, 105th Congress, 2d Session 636 (1998).

The General Counsel noted the other two funds that provide benefits to retirees. These are funds for health and insurance benefits, which are likewise underfunded. Congress, likewise, makes provisions for them. The said FY 1999 Appropriations Act, appropriating funds to OPM, makes appropriations for the unfunded health and life insurance benefits. This Act provides:

> Government Payment for Annuitants, Employees Health Benefits
>
> For payment of Government contributions with respect to retired employees, as

authorized by chapter 89 of title 5, United States Code, and the Retired Federal Employees Health Benefits Act (74 Stat. 849), as amended, such sums as may be necessary.

See Public Law 105–277; Act of October 21, 1998, 112 Stat 2681–509.

Government Payment for Annuitants, Employee Life Insurance

For payment of Government contributions with respect to employees retiring after December 31, 1989, as required by chapter 87 of title 5, United States Code, such sums as may be necessary.

Id. at 112 Stat at 2681–509.

The FY 1999 Budget Statement of OPM Director Lachance stated:

''As always, the OPM budget request includes mandatory appropriations to pay the government's contributions to the federal employee life insurance and health benefits programs on behalf of annuitants since those enrollees have no employing agencies to contribute the government's share for them. We are requesting a 'such sums as may be necessary' appropriation for each of these accounts because of their mandatory nature. We estimate that $35.2 million will be required for the 323,000 non-postal annuitants retiring after 1989 and electing post retirement life insurance, while an estimated $4.6 billion will be needed to finance the government's contribution toward health benefits coverage for the 1.9 million participating annuitants.'' See FY 1999 House Treasury , Postal Service, and General Government Appropriations Hearings, supra, at 635–636.

So long as Congress continues to provide all retirees these health and life insurance benefits, SEPA's retirees and Corps retirees engaged in the production of power, will not suffer.

As indicated, payments of SEPA revenues into the Treasury, including the component thereof for unfunded retirement benefits, constitutes in the view of DOE's General Counsel an offset against the large unfunded liability of the government for retirement benefits. The General Counsel stated:

All PMA rate revenues are required to be deposited in a statutorily specified fund or account of the Treasury. Pursuant to Flood Control Act requirements, monies received from power rates to recover costs of unfunded liabilities from power marketed by SEPA * * * would be deposited into the general fund of the Treasury as miscellaneous receipts. Payments into the general fund from these sources would therefore offset the appropriation for unfunded liability made to the OPM funds.

See Mem. Opinion (July 1, 1998), at 10.

The comments are a basic attack against the Administration decision to charge ratepayers for unfunded post-retirement benefit liabilities. So long as Congress honors the federal government's commitments to all its retirees, SEPA's retirees and Corps retirees engaged in the production of power will receive the benefits as promised. The only difference is that SEPA's customers will bear the total estimated future government cost thereof attributable to current SEPA and Corps employees providing electric service to SEPA customers who retire in the future.

The DOE General Counsel Opinion states in detail how Administrator policy respecting post-retirement benefits in PMA rates may be legally implemented. SEPA must prepare its rates accordingly. It must reject the Southeastern Power Customers' challenge to SEPA's treatment of post-retirement benefits, as they embody Administration policy as set forth in the DOE General Counsel's Opinion.

Comment 8: SEPA's imposition of the post-benefit retirement charge fails to meet the requirement of the FERC rule that funds so collected be placed in an irrevocable trust.

Response: SEPA is not bound by such FERC rule, which is applicable to utilities subject to the Federal Power Act. See New England Power Company, 61 FERC ¶ 61,331, at 62,213 (1992). FERC stated:

We will require, however, that NEP use external funding in irrevocable trusts for all amounts collected for PBOP obligations as a condition of rate recovery under the accrual method. External funding in irrevocable trust will remove any incentive for NEP to overestimate its costs because NEP will not have use of the funds for any other corporate purpose. Moreover, external funding will ensure that the revenues collected will be available for their intended purpose—to provide post retirement benefits to employees. Additionally, to the extent that overfunding ever occurs, NEP is also directed to reserve any over-collection expressly for the benefit of customers, through reduced expense projections in subsequent filings. *Id.* at 62,213 (footnotes omitted).

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 FR 59716 (November 10, 1993). Hence, the foregoing rule has no application to SEPA. All SEPA can do under applicable law, is to place the post-retirement benefits it receives into miscellaneous receipts account of the treasury. This becomes an offset against annual ''such sums as may be necessary'' appropriations to OPM to finance unfunded but promised benefits. Mem. Opinion (July 1, 1998), at 10–11.

SEPA is required by Flood Control Act of 1944, as well as the Miscellaneous Receipts Act (31 U.S.C. 33020), to deposit all monies received to the Treasury of United States as miscellaneous receipts. It is, therefore, not possible for SEPA to establish an ''irrevocable external trust fund'' for these monies, as FERC has in some instances required of regulated electric and gas public utilities.

Comment 9: The data relied upon by SEPA illustrates how the proposed rate increase fails to comply with RA6120.2.

Response: RA 6120.2 says SEPA must recover costs. The Legal Opinion defines CSRS costs as reasonable costs. See response to 1 above.

Comment 10: Because SEPA has failed to incorporate any provisions that would adjust or modify CSRS rates on an annual basis which would ensure a more accurate representation of CSRS costs to SEPA, the customers have no assurances that the costs of operating and maintaining the system are incurred during the year in which the rates are effective.

Response: The customer will pay the actual CSRS costs. See response to 6 above.

Comment 11: Because a significant component of the CSRS costs includes cost recovery for Corps employees, the SeFPC requested background information from the Corps pertaining to the Corps's calculations of CSRS costs.

Response: The Corps has provided SEPA actual costs for FY 1998, which were used to estimate costs in future years.

Comment 12: SeFPC notes that there appear to be inconsistencies in the determination of Full-Time Equivalents (''FTEs''). SeFPC wishes to raise this specific issue to express its overall concern with its inability to determine (based upon the data provided to date) whether the CSRS costs are reasonable and whether the assumptions are justified. Absent such determination, and for other reasons explained by SeFPC, SEPA should not be allowed to flow-through the CSRS cost to its customers.

Response: The Corps and SEPA have determined actual costs of CSRS of $818,991 for fiscal year 1998.

Comment 13: SeFPC submits that recovery of CSRS costs for Corps employees is without legal basis and constitutes an illegal augmentation of both the Corps' and OPM's appropriations. SeFPC asks SEPA to explain how the discretion afforded by the Flood Control Act of 1944 allows

DOE to augment the appropriations of the Corps and OPM without violating statutory restrictions against augmenting appropriations. Government is in essence ''double-dipping'' into taxpayer's pockets to pay the costs of the retirement program.

Response: The legal basis for the recovery of costs of Corps and SEPA employees is set forth in SEPA's response to Comment 4.

There is no double dipping by the Government of the taxpayer. The simple fact of the matter is that employer-employee contribution to the three OPM funds fails to recover benefits of all Federal retirees, including SEPA employees and Corps employees whose efforts are attributable to production of Cumberland power. Congress must supply from general revenues of the Government the unfunded portion of such costs. SEPA's inclusion of component in its rates for unfunded liabilities, by reason of the fact that SEPA's revenues are deposited into miscellaneous receipts in the Treasury, offsets the amount that must be appropriated.

Congress places no dollar limits on appropriations from the general fund to assure full funding of these employee retirement benefits. SEPA's inclusion in rates of a component to recover unfunded retirement properly assigns to the SEPA customers the full costs of the post-retirement benefits of Federal employees producing the power which such customers consume. This reduces the burden on Federal taxpayers, and is justified by reason of the fact that SEPA customers enjoy the benefits of SEPA power.

There is no augmentation of appropriations. Congress appropriates ''such sums as may be necessary'' to fully fund retirement benefits.

The Flood Control Act requires that SEPA's power revenues be deposited in the miscellaneous receipts of the Treasury. The Miscellaneous Receipts Act is a general statute of like effect. The purpose of the Miscellaneous Receipts Act is to ensure that the Congress retains control of the public purse, and to effectuate Congress' constitutional authority to appropriate monies. See in Matter of Nuclear Regulatory Commission's Authority to Mitigate Civil Penalties, B–238419, 70 Comp. Gen. 17; 1990 U.S. Comp. Gen. Lexis 1060 (October 9, 1990).

The reason for the prohibition against augmentation of appropriation is to protect Congress' power of the purse and its prerogative to determine the level at which an agency of Federal programs may operate. See Nolan: Public Interest, Private Income: Conflicts and Control Unit on the Outside Income of Government Officials, 87 Nw. U.L. Rev. 57,122 (1992). The prohibition against augmentation of appropriation would not apply. Congress places no dollar limit on what OPM spends. OPM is free to draw from the Treasury such sums as may be necessary to pay the retirement benefits Congress has promised Federal retirees. Use of SEPA's component for unfunded retirement benefits in rates, as a source to pay these benefits, does not violate the power of Congress to determine how much shall be spent. Congress has agreed to allow OPM to spend what is needed to pay promised retirement benefits.

Comment 14: Until SEPA clears up the glaring discrepancies with existing legal authority to recover CSRS costs for SEPA and the Corps and sets forth a clear understanding of how the estimated figures for the Corps employees was determined and relates to the actual costs of the Corps in the future, SeFPC submits that the proposed rate increase should not include CSRS costs at this time.

Response: The Department of Energy has determined that it is appropriate for the PMA's to include CSRS costs in rates charged to customers. Therefore, SEPA has included the costs in the repayment study and thereby included them in rates that SEPA proposes to charge to the customers.

Comment 15: SeFPC submits that the statutory duty for the Corps to collect and pay retirement benefits obviates the need for SEPA to recover CSRS costs for the Corps. In different terms, if the federal government already imposes an obligation of the Corps to deduct funds for benefits, in addition to paying the remaining balance from appropriations, SEPA has imposed a burden on the customers of the Cumberland System of Projects.

Response: SEPA interprets Section 5 of the Flood Control Act of 1944, RA6120.2 and FAS 87 and 106 to mean that the full cost of post-retirement benefits of Corps of Engineers and SEPA employees, engaged in the production of power which SEPA markets, must be covered in SEPA's rates. As demonstrated in Responses to Comment 5, the statutorily-mandated deductions for retirement benefits and employee contributions for these purposes do not fully recover the costs or retirement benefits. To meet the gap, SEPA is of the view that it must add a component to recoup in rates being established by this rate order to fund the cost of future unfunded retirement benefits attributable to its current employees and current Corps employees who are engaged in the production of power during the effective period of such rate. See Response to Comment 5.

Comment 16: Due process of law, as interpreted by United States Circuit Court of Appeals decisions, i. e., *Sacred Heart Medical Center* vs. *Sullivan,* 958 F.2d 537 (3rd Cir. 1992) (holding that an agency must offer a ''reasoned justification'' for the change in its interpretation of statute or modification of its policy); and *Mobil Oil Corporation* vs. *EPA,* 871 F. 2d 129 (D. C. Cir. 1989) (requiring an agency to acknowledge and explain the departure from its prior views) obligates SEPA to ''* * * explain how the proposal to collect pension and health benefit costs comports with existing FASB guidance which requires the creation of separate accounts.''

Response: We interpret this due process of law assertion to at least require an explanation by SEPA why SEPA did not establish an irrevocable trust from the portion of SEPA's Cumberland rate attributable to unfunded retirement benefits earned by current SEPA and Corps employees who market and produce the power SEPA sells.

The use of revenues from SEPA rates 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. Because SEPA 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 SEPA to establish an ''irrevocable external trust fund'' for these monies as FERC has in some instances required of regulated electric and gas public utilities.

Such ''sums as may be necessary'', in the view of the Administration and DOE General Counsel Sullivan, offset the general fund of the Treasury made to the OPM Funds for unfunded retirement liabilities. Given the permanent and mandatory nature of the ''such sums as may be necessary'' appropriations to the three OPM funds identified in SEPA's Response to Comments 1, 4, 5, and 7. The use of such funds to ''offset'' appropriations of unfunded liabilities achieves the same purpose that an irrevocable trust would, were it legally possible for SEPA to create such a trust. Mem. Opinion (July 1, 1998), at 10-11. To the extent that an explanation is required of SEPA why it decided to include unfunded benefit costs in rates, SEPA states by way of historical

explanation. SEPA did not, prior to 1998, include in its rate the unfunded portion of employee benefit costs. It did so in the Georgia-Alabama-South Carolina (GA–AL–SC) rates in 1998. At that time SEPA first proposed recovery of CSRS costs. The rate increase for the Georgia-Alabama-South Carolina system was considered by FERC in Docket No. EF98–3011-000. FERC approved the inclusion of unfunded retirement benefits in SEPA rates in United States Department of Energy—Southeastern Power Administration, 86 FERC ¶ 61,195 (1999). On April 23, 1999, the Commission issued an order in this docket granting rehearing for the limited purpose of further consideration of SeFPC's request.

SEPA continues to include the unfunded portion of its employee benefit costs in the case of the subject Cumberland rate order for many of the same reasons. See In the Matter of Southeastern Power Administration-Georgia-Alabama-South Carolina System Power Rates, Rate Order No. SEPA–37, signed by Deputy Secretary Elizabeth A. Moler, on September 18, 1998, 63 Fed. Reg. 53409 (October 5, 1998). It also does so in light of Administration policy, as set forth in and confirmed by General Counsel Mary Anne Sullivan's July 1, 1998 Memorandum Opinion, referenced above in SEPA's responses to Comments 4.

The Financial Accounting Standards Board (FASB) in December 1985 Statement of Accounting Standards N. 87 (FAS 87) states that, 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.' '' See Southeastern Power Administration-Georgia-Alabama-South Carolina System Power Rates, Rate Order No. SEPA–37 at 53,413. 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.' '' *Id.* at 53,413.

The DOE General Counsel has concluded that under FASB 106.18, ''* * * 'a post retirement benefit is part of the compensation paid to an employee for services rendered * * *' '' and that, under FASB 106.03, ''* * * 'the cost of providing the benefits should be recognized over those employee service periods.' '' Mem. Opinion (July 1, 1998), at 5, f.n.5. In the view of SEPA and the DOE General Counsel, under Section 5 of the Flood Control Act of 1944, DOE Order RA6120.2 and the said FASB accounting principles, SEPA has an obligation to provide post-retirement benefits in its rates as its employees and those of the Corp render services by producing power that SEPA sells.

The Cumberland rates, as were the Georgia-Alabama-South Carolina rates, were prepared by SEPA in light of DOE's guidance, both as to interpretation of statues and DOE orders, as well as in accordance with Administration policy.

6. Rate Implementation

Comment: KU Area Preference Customers request that SEPA include an express commitment, as part of its implementation of the rates, that SEPA will refund and flow through to its customers any and all reductions that are achieved in TVA's charges to SEPA.

Response: SEPA cannot make a commitment regarding any future rate filings; however, SEPA will be more than willing to listen to any suggestions as to how any reductions in TVA charges to SEPA should be handled.

Environmental Impact

SEPA 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 July 1, 1999, and ending no later than June 30, 2004.

Order

In view of the foregoing and pursuant to the authority vested in me as the Secretary of Energy, I hereby confirm and approve on an interim basis, effective July 1, 1999, attached Wholesale Power Rate Schedules CBR–1–D, CSI–1–D, CEK–1–D, CM–1–D, CC–1–E, CK–1–D, CTV–1–D, and SJ–1–A. The Rate Schedules shall remain in effect on an interim basis through June 30, 2004, unless such period is extended or until the FERC confirms and approves them or substitutes Rate Schedules on a final basis.

Dated: June 29. 1999.

Bill Richardson,

Secretary.

Wholesale Power Rate Schedule CBR–1–D

Availability

This rate schedule shall be available to Big Rivers Electric Corporation and includes the City of Henderson, Kentucky, (hereinafter called the Customer).

Applicability

This rate schedule shall be applicable to electric capacity and energy available from the Dale Hollow, Center Hill, Wolf Creek, Cheatham, Old Hickory, Barkley, J. Percy Priest and Cordell Hull Projects (all of such projects being hereinafter called collectively the ''Cumberland Projects'') and sold in wholesale quantities.

Character of Service

The electric capacity and energy supplied hereunder will be three-phase alternating current at a nominal frequency of sixty hertz. The power shall be delivered at nominal voltages of 13,800 volts and 161,000 volts to the transmission system of Big Rivers Electric Corporation.

Points of Delivery

Capacity and energy delivered to the Customer will be delivered at points of interconnection of the Customer at the Barkley Project Switchyard, at a delivery point in the vicinity of the Paradise steam plant and at such other points of delivery as may hereafter be agreed upon by the Government and TVA.

Monthly Rate

The monthly rate for capacity and energy sold under this rate schedule shall be:

Demand Charge: $2.900 per kilowatt/ month of total contract demand

Energy Charge: None

Energy To Be Furnished by the Government

The Government shall make available each contract year to the customer from the Projects through the customer's interconnections with TVA and the customer will schedule and accept an allocation of 1,500 kilowatt-hours of energy delivered at the TVA border for each kilowatt of contract demand. A contract year is defined as the 12 months beginning July 1 and ending at midnight June 30 of the following

calendar year. The energy made available for a contract year shall be scheduled monthly such that the maximum amount scheduled in any month shall not exceed 240 hours per kilowatt of the customer's contract demand and the minimum amount scheduled in any month shall not be less than 60 hours per kilowatt of the customer's contract demand. The customer may request and the Government may approve energy scheduled for a month greater than 240 hours per kilowatt of the customer's contract demand; provided, that the combined schedule of all SEPA customers outside TVA and served by TVA does not exceed 220 hours per kilowatt of the total contract demands of these customers.

Billing Month

The billing month for power sold under this schedule shall end at 2,400 hours CDT or CST, whichever is currently effective, on the last day of each calendar month.

Conditions of Service

The customer shall at its own expense provide, install, and maintain on its side of each delivery point the equipment necessary to protect and control its own system. In so doing, the installation, adjustment, and setting of all such control and protective equipment at or near the point of delivery shall be coordinated with that which is installed by and at the expense of TVA on its side of the delivery point.

Service Interruption

When delivery of capacity is interrupted or reduced due to conditions on the Administrator's system beyond his control, the Administrator will continue to make available the portion of his declaration of energy that can be generated with the capacity available.

For such interruption or reduction due to conditions on the Administrator's system which have not been arranged for and agreed to in advance, the demand charge for capacity made available will be reduced as to the kilowatts of such capacity which have been interrupted or reduced in accordance with the following formula:

$$\text{Number of kilowatts unavailable for at least 12 hours in any calendar day} \times \frac{\text{Monthly capacity charge}}{\text{number of days in billing month}} \times \frac{\text{Contract demand}}{\text{880,000 kilowatts}}$$

July 1, 1999

Wholesale Power Rate Schedule CSI–1–D

Availability

This rate schedule shall be available to Southern Illinois Power Cooperative (hereinafter the Customer).

Applicability

This rate schedule shall be applicable to electric capacity and energy available from the Dale Hollow, Center Hill, Wolf Creek, Cheatham, Old Hickory, Barkley, J. Percy Priest and Cordell Hull Projects (all of such projects being hereinafter called collectively the ''Cumberland Projects'') and sold in wholesale quantities.

Character of Service

The electric capacity and energy supplied hereunder will be three-phase alternating current at a nominal frequency of sixty hertz. The power shall be delivered at nominal voltages of 13,800 volts and 161,000 volts to the transmission system of Big Rivers Electric Corporation.

Points of Delivery

Capacity and energy delivered to the Customer will be delivered at points of interconnection of the Customer at the Barkley Project Switchyard, at a delivery point in the vicinity of the Paradise steam plant and at such other points of delivery as may hereafter be agreed upon by the Government and TVA.

Monthly Rate

The monthly rate for capacity and energy sold under this rate schedule shall be:

Demand Charge: $2.900 per kilowatt/ month of total contract demand
Energy Charge: None

Energy To Be Furnished by the Government

The Government shall make available each contract year to the customer from the Projects through the customer's interconnections with TVA and the customer will schedule and accept an allocation of 1,500 kilowatt-hours of energy delivered at the TVA border for each kilowatt of contract demand. A contract year is defined as the 12 months beginning July 1 and ending at midnight June 30 of the following calendar year. The energy made available for a contract year shall be scheduled monthly such that the maximum amount scheduled in any month shall not exceed 240 hours per kilowatt of the customer's contract demand and the minimum amount scheduled in any month shall not be less than 60 hours per kilowatt of the customer's contract demand. The customer may request and the Government may approve energy scheduled for a month greater than 240 hours per kilowatt of the customer's contract demand; provided, that the combined schedule of all SEPA customers outside TVA and served by TVA does not exceed 220 hours per kilowatt of the total contract demands of these customers.

Billing Month

The billing month for power sold under this schedule shall end at 2400 hours CDT or CST, whichever is currently effective, on the last day of each calendar month.

Service Interruption

When delivery of capacity is interrupted or reduced due to conditions on the Administrator's system beyond his control, the Administrator will continue to make available the portion of his declaration of energy that can be generated with the capacity available.

For such interruption or reduction due to conditions on the Administrator's system which have not been arranged for and agreed to in advance, the demand charge for capacity made available will be reduced as to the kilowatts of such capacity which have been interrupted or reduced in accordance with the following formula:

$$\text{Number of kilowatts unavailable for at least 12 hours in any calendar day} \times \frac{\text{Monthly capacity charge}}{\text{number of days in billing month}} \times \frac{\text{Contract demand}}{\text{880,000 kilowatts}}$$

July 1, 1999

Wholesale Power Rate Schedule CEK–1–D

Availability

This rate schedule shall be available to East Kentucky Power Cooperative (hereinafter called the Customer).

Applicability

This rate schedule shall be applicable to electric capacity and energy available from the Dale Hollow, Center Hill, Wolf Creek, Cheatham, Old Hickory, Percy Priest and Cordell Hull Projects (all of such projects being hereinafter called collectively the ''Cumberland Projects'') and power available from the Laurel Project and sold in wholesale quantities.

Character of Service

The electric capacity and energy supplied hereunder will be three-phase alternating current at a nominal frequency of sixty hertz. The power shall be delivered at nominal voltages of 161,000 volts to the transmission systems of the Customer.

Points of Delivery

The points of delivery will be the 161,000 volt bus of the Wolf Creek Power Plant and the 161,000 volt bus of the Laurel Project. Other points of delivery may be as agreed upon.

Monthly Rate

The monthly rate for capacity and energy sold under this rate schedule from the Cumberland Projects shall be:

Demand charge: $2.900 per kilowatt/month of total contract demand

Energy Charge: None

Energy To Be Furnished by the Government

The Government shall make available each contract year to the customer from the Projects through the customer's interconnections with TVA and the customer will schedule and accept an allocation of 1,500 kilowatt-hours of energy delivered at the TVA border for each kilowatt of contract demand plus 369 kilowatt-hours of energy delivered for each kilowatt of contract demand to supplement energy available at the Laurel Project. A contract year is defined as the 12 months beginning July 1 and ending at midnight June 30 of the following calendar year. The energy made available for a contract year shall be scheduled monthly such that the maximum amount scheduled in any month shall not exceed 240 hours per kilowatt of the customer's contract demand and the minimum amount scheduled in any month shall not be less than 60 hours per kilowatt of the customer's contract demand. The customer may request and the Government may approve energy scheduled for a month greater than 240 hours per kilowatt of the customer's contract demand; provided, that the combined schedule of all SEPA customers outside TVA and served by TVA does not exceed 220 hours per kilowatt of the total contract demands of these customers.

Billing Month

The billing month for power sold under this schedule shall end at 2,400 hours CDT or CST, whichever is currently effective, on the last day of each calendar month.

Conditions of Service

The customer shall at its own expense provide, install, and maintain on its side of each delivery point the equipment necessary to protect and control its own system. In so doing, the installation, adjustment and setting of all such control and protective equipment at or near the point of delivery shall be coordinated with that which is installed by and at the expense of TVA on its side of the delivery point.

Service Interruption

When delivery of capacity is interrupted or reduced due to conditions on the Administrator's system beyond his control, the Administrator will continue to make available the portion of his declaration of energy that can be generated with the capacity available.

For such interruption or reduction due to conditions on the Administrator's system which have not been arranged for and agreed to in advance, the demand charge for capacity made available will be reduced as to the kilowatts of such capacity which have been interrupted or reduced in accordance with the following formula:

$$\text{Number of kilowatts unavailable for at least 12 hours in any calendar day} \times \frac{\text{Monthly capacity charge}}{\text{number of days in billing month}} \times \frac{\text{Contract demand}}{\text{880,000 kilowatts}}$$

July 1, 1999

Wholesale Power Rate Schedule CM–1–D

Availability

This rate schedule shall be available to the South Mississippi Electric Power Association and Municipal Energy Agency of Mississippi (hereinafter called the Customers).

Applicability

This rate schedule shall be applicable to electric capacity and energy available from the Dale Hollow, Center Hill, Wolf Creek, Cheatham, Old Hickory, Barkley, J. Percy Priest and Cordell Hull Projects (all of such projects being hereinafter called collectively the ''Cumberland Projects'') and sold in wholesale quantities.

Character of Service

The electric capacity and energy supplied hereunder will be three-phase alternating current at a nominal frequency of sixty hertz. The power shall be delivered at nominal voltages of 161,000 volts to the transmission systems of Mississippi Power and Light.

Points of Delivery

The points of delivery will be at interconnection points of the Tennessee Valley Authority system and the Mississippi Power and Light system. Other points of delivery may be as agreed upon.

Monthly Rate

The monthly rate for capacity and energy sold under this rate schedule shall be:

Demand Charge: $2.900 per kilowatt/month of total contract demand

Energy Charge: None

Energy To Be Furnished by the Government

The Government shall make available each contract year to the Customer from the Projects through the Customer's interconnections with TVA and the Customer will schedule and accept an allocation of 1,500 kilowatt-hours of energy delivered at the TVA border for each kilowatt of contract demand. A contract year is defined as the 12 months beginning July 1 and ending at midnight June 30 of the following calendar year. The energy made available for a contract year shall be scheduled monthly such that the maximum amount scheduled in any month shall not exceed 240 hours per

kilowatt of the Customer's contract demand and the minimum amount scheduled in any month shall not be less than 60 hours per kilowatt of the Customer's contract demand. The Customer may request and the Government may approve energy scheduled for a month greater than 240 hours per kilowatt of the Customer's contract demand; provided, that the combined schedule of all SEPA Customers outside TVA and served by TVA does not exceed 220 hours per kilowatt of the total contract demands of these Customers.

In the event that any portion of the capacity allocated to the Customers is not initially delivered to the Customers as of the beginning of a full contract year, the 1500 kilowatt hours shall be reduced 1/12 for each month of that year prior to initial delivery of such capacity.

Billing Month

The billing month for power sold under this schedule shall end at 2400 hours CDT or CST, whichever is currently effective on the last day of each calendar month.

Service Interruption

When delivery of capacity is interrupted or reduced due to conditions on the Administrator's system beyond his control, the Administrator will continue to make available the portion of his declaration of energy that can be generated with the capacity available.

For such interruption or reduction due to conditions on the Administrator's system which have not been arranged for and agreed to in advance, the demand charge for capacity made available will be reduced as to the kilowatts of such capacity which have been interrupted or reduced in accordance with the following formula:

$$\text{Number of kilowatts unavailable for at least 12 hours in any calendar day} \times \frac{\text{Monthly capacity charge}}{\text{number of days in billing month}} \times \frac{\text{Contract demand}}{\text{880,000 kilowatts}}$$

July 1, 1999

Wholesale Power Rate Schedule CC–1–E

Availability

This rate schedule shall be available to public bodies and cooperatives served through the facilities of Carolina Power & Light Company, Western Division (hereinafter called the Customers).

Applicability

This rate schedule shall be applicable to electric capacity and energy available from the Dale Hollow, Center Hill, Wolf Creek, Cheatham, Old Hickory, Barkley, J. Percy Priest and Cordell Hull Projects (all of such projects being hereinafter called collectively the ''Cumberland Projects'') and sold in wholesale quantities.

Character of Service

The electric capacity and energy supplied hereunder will be three-phase alternating current at a nominal frequency of sixty hertz. The power shall be delivered at nominal voltages of 161,000 volts to the transmission system of Carolina Power & Light Company, Western Division.

Points of Delivery

The points of delivery will be at interconnecting points of the Tennessee Valley Authority system and the Carolina Power & Light Company, Western Division system. Other points of delivery may be as agreed upon.

Monthly Rate

The monthly rate for capacity and energy sold under this rate schedule shall be:

Demand Charge: $3.301 per kilowatt/month of total contract demand
Energy Charge: None
Transmission Charge: $1,2828 per kilowatt of total contract demand

The transmission rate is subject to annual adjustment on April 1 of each year and will be computed subject to the formula in Appendix A attached to the Government-Carolina Power & Light Company contract.

Energy To Be Furnished by the Government

The Government will sell to the customer and the customer will purchase from the Government energy each billing month equivalent to a percentage specified by contract of the energy made available to Carolina Power & Light Company (less six percent (6%) losses). The Customer's contract demand and accompanying energy allocation will be divided pro rata among its individual delivery points served from the Carolina Power & Light Company's, Western Division transmission system.

Billing Month

The billing month for power sold under this schedule shall end at 2,400 hours CDT or CST, whichever is currently effective, on the last day of each calendar month.

July 1, 1999

Wholesale Power Rate Schedule CK–1–D

Availability

This rate schedule shall be available to public bodies served through the facilities of Kentucky Utilities Company, (hereinafter called the Customers.)

Applicability

This rate schedule shall be applicable to electric capacity and energy available from the Dale Hollow, Center Hill, Wolf Creek, Cheatham, Old Hickory, Barkley, J. Percy Priest and Cordell Hull Projects (all of such projects being hereinafter called collectively the ''Cumberland Projects'') and sold in wholesale quantities.

Character of Service

The electric capacity and energy supplied hereunder will be three-phase alternating current at a nominal frequency of sixty hertz. The power shall be delivered at nominal voltages of 161,000 volts to the transmission systems of Kentucky Utilities Company.

Points of Delivery

The points of delivery will be at interconnecting points between the Tennessee Valley Authority system and the Kentucky Utilities Company system. Other points of delivery may be as agreed upon.

Monthly Rate

The monthly rate for capacity and energy sold under this rate schedule shall be:

Demand Charge: $2.900 per kilowatt/month of total contract demand
Energy Charge: None
Additional Energy Charge: 8.631 mills per kilowatt-hour

Energy To Be Furnished by the Government

The Government shall make available each contract year to the Customer from the Projects through the Customer's interconnections with TVA and the Customer will schedule and accept an

allocation of 1,500 kilowatt-hours of energy delivered at the TVA border for each kilowatt of contract demand. A contract year is defined as the 12 months beginning July 1 and ending at midnight June 30 of the following calendar year. The energy made available for a contract year shall be scheduled monthly such that the maximum amount scheduled in any month shall not exceed 240 hours per kilowatt of the Customer's contract demand and the minimum amount scheduled in any month shall not be less than 60 hours per kilowatt of the Customer's contract demand. The Customer may request and the Government may approve energy scheduled for a month greater than 240 hours per kilowatt of the Customer's contract demand; provided, that the combined schedule of all SEPA Customers outside TVA and served by TVA does not exceed 220 hours per kilowatt of the total contract demands of these Customers. In the event that any portion of the capacity allocated to the Customers is not initially delivered to the Customers as of the beginning of a full contract year, the 1500 kilowatt hours shall be reduced 1/12 for each month of that year prior to initial delivery of such capacity.

For billing purposes, each kilowatt of capacity will include 1500 kilowatt-hours energy per year. Customers will pay for additional energy at the additional energy rate.

Billing Month

The billing month for power sold under this schedule shall end at 2400 hours CDT or CST, whichever is currently effective on the last day of each calendar month.

July 1, 1999

Wholesale Power Rate Schedule CTV–1–D

Availability

This rate schedule shall be available to the Tennessee Valley Authority (hereinafter called TVA).

Applicability

This rate schedule shall be applicable to electric capacity and energy generated at the Dale Hollow, Center Hill, Wolf Creek, Old Hickory, Cheatham, Barkley, J. Percy Priest, and Cordell Hull Projects (all of such projects being hereafter called collectively the ''Cumberland Projects'') and the Laurel Project sold under agreement between the Department of Energy and TVA.

Character of Service

The electric capacity and energy supplied hereunder will be three-phase alternating current at a frequency of approximately 60 Hertz at the outgoing terminals of the Cumberland Projects' switchyards.

Monthly Rates

The monthly rate for capacity and energy sold under this rate schedule shall be:

Demand Charge: $1.434 per kilowatt/month of total demand as determined by the agreement between the Department of Energy and TVA.
Energy Charge: None
Additional Energy Charge: 8.631 mills per kilowatt-hour

Energy To Be Made Available

The Department of Energy shall determine the energy that is available from the projects for declaration in the billing month.

To meet the energy requirements of the Department of Energy's customers outside the TVA area (hereinafter called Other Customers), 749,400 megawatt-hours of net energy shall be available annually (including 36,900 megawatt-hours of annual net energy to supplement energy available at Laurel Project) provided, that if additional energy is required to make a marketing arrangement viable for other customers which do not own generating facilities and which are within service areas of Kentucky Utilities Company and Carolina Power & Light Company, Western Division, such additional energy required shall be made available from the Cumberland Projects and shall not exceed 300 kilowatt-hours per kilowatt per year. The energy requirement of the Other Customers shall be available annually, divided monthly such that the maximum available in any month shall not exceed 220 hours per kilowatt of total Other Customers contract demand, and the minimum amount available in any month shall not be less than 60 hours per kilowatt of total Other Customers demand.

In the event that any portion of the capacity allocated to Other Customers is not initially delivered to the Other Customers as of the beginning of a full contract year, (July through June), the 1500 hours, plus any such additional energy required as discussed above, shall be reduced 1/12 for each month of that year prior to initial delivery of such capacity.

The energy scheduled by TVA for use within the TVA System in any billing month shall be the total energy delivered to TVA less (1) an adjustment for fast or slow meters, if any, (2) an adjustment for Barkley-Kentucky Canal of 15,000 megawatt-hours of energy each month which is delivered to TVA under the agreement from the Cumberland Projects without charge to TVA, (3) the energy scheduled by the Department of Energy in said month for the Other Customers plus losses of two (2) percent, and (4) station service energy furnished by TVA.

Each kw of capacity received by TVA includes 1500 kwh of energy. Energy received in excess of 1500 kwh will be subject to an additional energy charge identified in the monthly rates section of this rate schedule.

Billing Month

The billing month for capacity and energy sold under this schedule shall end at 2400 hours CDT or CST, whichever is currently effective, on the last day of each calendar month.

Contract Year

For purposes of this rate schedule, a contract year shall be as in Section 13.1 of the Southeastern Power Administration—Tennessee Valley Authority Contract.

Service Interruption

When delivery of capacity to TVA is interrupted or reduced due to conditions on the Department of Energy's system which are beyond its control, the Department of Energy will continue to make available the portion of its declaration of energy that can be generated with the capacity available.

For such interruption or reduction (exclusive of any restrictions provided in the agreement) due to conditions on the Department of Energy's system which have not been arranged for and agreed to in advance, the demand charge for scheduled capacity made available to TVA will be reduced as to the kilowatts of such scheduled capacity which have been so interrupted or reduced for each day in accordance with the following formula:

The agreement capacity related to the 76,000 kilowatts of capacity allocated to the Other Customers in the Carolina Power & Light Company and Kentucky Utilities service areas shall, irrespective of sale to Other Customers, remain in effect in the formula throughout the term of this rate schedule.

Power Factor

TVA shall take capacity and energy from the Department of Energy at such power factor as will best serve TVA's system from time to time; provided, that TVA shall not impose a power factor of

less than .85 lagging on the Department of Energy's facilities which requires operation contrary to good operating practice or results in overload or impairment of such facilities.

July 1, 1999

Wholesale Power Rate Schedule SJ–1–A

Availability

This rate schedule shall be available to Monongahela Power Company for energy from the Stonewall Jackson Project (hereinafter called the Project).

Applicability

This rate schedule shall be applicable to energy made available by the Government from the Project and sold in wholesale quantities.

Character of Service

The electric capacity and energy supplied hereunder will be three-phase alternating current at a nominal frequency of 60 cycles per second delivered at the delivery points of the customer.

Monthly Rate

The monthly rate for energy made available or delivered under this rate schedule shall be the lower of:

(a) The energy equivalent rate of Cumberland Rate Schedule CC–1–E, which is 34.2 mills per kwh, or;

(b) The sum, as reasonably determined by Monongahela Power Company (Buyer), of (1) and (2) below calculated for each period as to which the determination is being made, (normally monthly) based on costs and net generation of Buyer and other regulated subsidiaries of Allegheny Power System, Inc. to produce energy from: Ft. Martin Units Nos. 1 and 2, Hatfield Ferry Units Nos. 1, 2, and 3, Harrison Units Nos. 1, 2, 3, and Pleasants Units Nos. 1 and 2.

(1) The accrued expense in FERC Account 501 (fuel expense) or such appropriate similar account as the FERC may from time to time establish for fuel expense for steam power generation, divided by the actual net generation in kilowatt-hours, exclusive of plan use, plus

(2) One-half of the accrued expenses in FERC Accounts 510–514 (maintenance expense), inclusive, of such other appropriate similar accounts as FERC may from time to time establish for maintenance expense for steam power generation, divided by the actual net generation in kilowatt-hours, exclusive of plant use.

Energy Made Available

Project energy generated by the District at the Project except energy use in the production of such energy or utilized by the District for its operations at the location of the project.

Billing Month

Buyer shall read the metering devices within three business days of the end of each calendar month will render payment within 15 days of such reading.

Conditions of Service

The customer shall at its own expense provide, install, and maintain on its side of each delivery point the equipment necessary to protect and control its own system. In so doing, the installation, adjustment, and setting of all such control and protective equipment at or near the point of delivery shall be coordinated with that which is installed by and at the expense of the Monongahela Power Company on its side of the delivery point.

July 1, 1999

[FR Doc. 99–17500 Filed 7–8–99; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6244–4]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared June 14, 1999 through June 18, 1999 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 09, 1999 (64 FR 17362).

Draft EISs

ERP No. D–AFS–E65051–AL Rating LO, Longleaf Restoration Project, Implement a Systematic Five-Year Program for Restoration of the Native Longleaf Pine, Conecuh National Forest, Conecuh Ranger District, Covington and Escambia Counties, AL.

Summary: EPA expressed lack of environmental objections. ERP No. D–AFS–J65299–MT Rating EC2, Pinkham Timber Sales and Associated Activities, Implementation, Kootenai National Forest, Rexford Ranger District, Lincoln County, MT.

Summary: EPA expressed environmental concerns regarding some high projected peak flow increases in area streams and adverse wildlife impacts from exceedances of forest standards for open road density and from regeneration timber harvests that would leave many large forest openings. The EPA believed additional information is needed to fully assess and mitigate all potential impacts of management actions.

ERP No. D–BLM–G65051–NM Rating LO, New Mexico Standards for Public Land Health and Guidelines for Livestock Grazing Management, Implementation, NM.

Summary: EPA had no objection to the selection of the RAC or County alternative described in the DEIS. ERP No. DS–BLM–K67040–CA Rating EO2, Imperial Project, Open-Pit Precious Metal Mining Operation Utilizing Heap Leach Processes, Updated Information concerning ''Endangered, Rare or Threatened'' Biological Resources, Plan of Operations and Reclamation Plan Approvals, R–O–W Grants, Conditional Use/US COE Permits, EL Centro Resource Area, CA Desert Dist., Imperial Co., CA.

Summary: EPA expressed continuing environmental objections with the proposed project and its potential impacts, particularly regarding aquatic resources protected under Section 404 of the Federal Clean Water Act. EPA asked that BLM's Final EIS clarify the relationship between the endangered species issues addressed in the Supplemental DEIS and EPA's 1998 comments on the DEIS concerning Clean Water Act Section 404 issues.

Final EISs

ERP No. F–AFS–B65005–NH, Appalachian Mountain Club (AMC) Huts and Pinkham Notch Visitor Center (PNVC) Continued Operations, Special Use Permit and Possible COE Permit Issuance, White Mountain National Forest, Grafton and Coos Counties, NH.

Summary: Final EIS was responsive to EPA's comments and plan described avoids impacts to the water supply, ground water minimizes impacts to wetlands.

ERP No. F–AFS–E65049–FL, Florida National Forests, Revised Land and Resource Management Plan, Implementation, Apalachicola, Choctowhatchee, Ocala and Osceola National Forests, Several Counties, FL.

Summary: EPA expressed environmental concerns and supported an alternative which involves less harvested acreage and road construction