reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, D.C. 20426, or by calling (202) 208–1371. The application may be viewed on http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', ''MOTION TO INTERVENE'', as applicable, and the project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–21445 Filed 8–22–00; 8:45 am]

**BILLING CODE 6717–01–M**

## DEPARTMENT OF ENERGY

### Notice of Interim Approval

**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 JW–1–F and JW–2–C. The rates were approved on an interim basis through September 19, 2005, 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 September 19, 2005.

**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 November 17, 1995, in Docket No. EF95–3031–000, confirmed and approved Wholesale Power Rate Schedules JW–1–E and JW–2–B. Rate schedules JW–1–F and JW–2–C replace these schedules.

Dated: August 11, 2000.

**T. J. Glauthier,**

*Deputy Secretary.*

[Rate Order No. SEPA–39]

**Southeastern Power Administration—Jim Woodruff Project Power Rates; Order Confirming and Approving Power Rates on an Interim Basis)**

Pursuant to Sections 302(a) and 301(b) of the Department of Energy Organization Act, 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. By Delegation Order No. 0204–108, effective May 30, 1986, 51 FR 19744 (May 30, 1986), the Secretary of Energy delegated to the Administrator the authority to develop power and transmission rates, and delegated to the Under Secretary the authority to confirm, approve, and place in effect such rates on an interim basis and delegated to the Federal Energy Regulatory Commission (FERC) the authority to confirm and approve on a final basis or to disapprove rates developed by the Administrator under the delegation. On November 24,1999, the Secretary of Energy issued Delegation Order No. 0204–172, granting the Deputy Secretary authority to confirm, approve, and place into

effect Southeastern's rates on an interim basis. This rate order is issued by the Deputy Secretary pursuant to said notice.

**Background**

Power from the Jim Woodruff Project is presently sold under Wholesale Power Rate Schedules JW–1—E and JW–2–B. These rate schedules were approved by the FERC on November 17, 1995, for a period ending September 19, 2000 (73 FERC 62116).

*Public Notice and Comment*

Southeastern prepared a Power Repayment Study, dated February of 2000, that showed that revenues at current rates were not adequate to meet repayment criteria. A revised study with a revenue increase of $237,000 produced rates that are adequate to meet repayment criteria. On March 17, 2000, by **Federal Register** Notice 65 F. R. 14557, Southeastern proposed a rate adjustment of about 4.3 percent to recover this revenue. The notice also announced a Public Information and Comment Forum to be held May 3, 2000, in Tallahassee, Florida, with a deadline for written comments of June 15, 2000. Southeastern received five comments from one party. The following is a summary of the comments:

*Staff Evaluation of Public Comments*

No comments were received at the Public Information and Comment Forum held in Tallahassee, Florida, on May 3, 2000. Written comments were received from one source by facsimile during the comment period, which are included as part of the Administrator's record of decision as an attachment to Exhibit A–5, filed with the FERC. These comments were received pursuant to **Federal Register** Notice 65 Fed. Reg. 14557 dated March 17, 2000.

The comments, received from Southeastern Federal Power Customers, Inc. (SeFPC or SFPC), are regarding the Department of Energy (DOE) policy to recover Civil Service Retirement System costs and health benefits costs (CSRS) that are unfunded by DOE (unfunded) and funded by the Office of Personnel Management (OPM). Congress has addressed the problem of shortfalls in the sufficiency of funding for retiree benefits by authorizing a permanent indefinite appropriation for transfer of general funds from Treasury to the Retirement Fund administered by the OPM to finance such unfunded liabilities. It is DOE's position that the Power Marketing Administrations have sufficient statutory authority to include unfunded costs in their rates to offset such appropriations from the general fund of the Treasury made by Congress to the Retirement Fund administered by OPM from which post-retirement costs are paid retirees. See July 1, 1998 Memorandum, Department of Energy's General Counsel, Mary Anne Sullivan, ''PMA Authority To Collect In Rates, And Reimburse To Treasury, Government's Full Costs of Post-Retirement Benefits,'' at page 2. The Memorandum is cited hereafter as Memorandum Opinion. A copy of the Memorandum Opinion is included as part of the Administrator's record of decision as Exhibit A–5 filed with the FERC pursuant to 18 C.F.R. 300.10 *et seq.* in support of this rate action.

The preference customers have contended in two prior Southeastern rate filings that Southeastern does not have the legal authority to include such unfunded costs in their rates without specific Congressional authorization. They also contend these costs are beyond the boundaries of cost-based ratemaking authority established by the Flood Control Act of 1944; and that the term ''cost'' in the Flood Control Act should not be read to include such retirement and pension benefit costs.

The Georgia-Alabama-South Carolina Rates were filed with FERC on September 22, 1998, and approved by FERC 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 FERC. Many of these issues were responded to in that prior rate filing.

The preference customers also objected to the inclusion of such unfunded costs in the Cumberland System of Projects rates that were filed with FERC on July 1, 1999, and approved by FERC on March 17, 2000. See Southeastern Power Administration, 90 FERC ¶ 61,266 (2000). The customers requested a rehearing, which was denied by FERC on June 15, 2000. See 91 FERC ¶ 61,272 (2000). Many of these issues were responded to in that rate filing.

In its March 17, 2000, decision regarding Southeastern's Cumberland System Rates, FERC concluded that such contentions were without merit. It noted that it had so ruled in its first such challenge to Southeastern's rates, *i.e.* Southeastern's Georgia-Alabama-South Carolina Rates (SEPA–37). See Southeastern Power Administration, 86 FERC ¶ 61,195, p. 61,681 (1999). In the case of the Georgia-Alabama-South Carolina Rates (SEPA–37), FERC had ruled that the Flood Control Act of 1944 ''. . . does not contain any language prohibiting the recovery of these costs''and that the costs are ''. . . reasonably incurred by Southeastern and recoverable from Southeastern's customers. . . . '' See 86 FERC ¶ 61,195, p. 61,681 (1999).

In its March 17, 2000, Cumberland decision, FERC ruled that ''. . . SFPC had failed to demonstrate that the inclusion of these costs is arbitrary, capricious or unlawful.'' See 90 FERC ¶ 61,266, p. 61,894 (2000).

On June 15, 2000, in its denial of a rehearing of its March 17, 2000, Cumberland Rate case, FERC noted that the preference customers had reiterated the recovery of such costs in Southeastern's rates was arbitrary and capricious. FERC rejected this, saying that in its March 17, 2000, Cumberland Order, it had already rejected the argument that such costs are arbitrary and capricious. Since the preference customers had ''. . . not proffered any new arguments that demonstrate that the inclusion of these costs (in Southeastern rates) is arbitrary and capricious . . .,'' it denied their requests for a rehearing. See 91 FERC ¶ 61,272 (2000). See also 90 FERC ¶ 61,266 (2000).

The most detailed consideration of inclusion in Southeastern's rates of unfunded costs was set forth in FERC's February 26, 1999, Georgia-Alabama-South Carolina Rate Order. See 86 FERC ¶ 61,195, p. 61,681 (1999). In concluding that Southeastern's annual costs of CSRS and post-retirement health benefits were within Southeastern's cost-based ratemaking authority, FERC relied heavily upon the July 1, 1998, Memorandum Opinion of the Department of Energy's General Counsel. FERC essentially agreed with the Memorandum Opinion. The General Counsel's Memorandum Opinion noted, and FERC agreed, that Section 5 of the Flood Control Act of 1944 ''. . . leaves considerable discretion to Southeastern's Administrator regarding what expenses may be considered costs recoverable under the Flood Control Act.'' See 86 FERC ¶ 61, 195, p. 61,681 (1999).

FERC agreed with the DOE General Counsel's legal analysis which concluded that there also would seem to be ''. . . 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. . . .'' See 86 FERC ¶ 61,195, p. 61,681 (1999), citing the Memorandum Opinion at page 5, and ruled that CSRS costs and the costs of post retirement health benefits ''. . . are costs reasonably incurred by Southeastern and recoverable from Southeastern's customers. . . .'' See 86 FERC ¶ 61,195,

p. 61,681 (1999). FERC concluded that SFPC, ''. . . along with the other intervenors, have failed to demonstrate that the inclusion of these costs is arbitrary, capricious, or unlawful. Accordingly, we will deny the intervenors' request to eliminate these costs from Southeastern's rates.'' *Id.* p. 61,681.

FERC's approval of the Memorandum Opinion is not limited to Southeastern's rates. It has also been cited with approval in the case of Western Area Power Administration's (Western or WAPA) Pacific Northwest-Pacific Southwest Rates (Western's Rate No. 76). See 87 FERC ¶ 61,346 (1999). In that case, the certain Western's customers protested '' . . . the inclusion of the unfunded portion of the Civil Service Retirement Costs and Post-Retirement Health and Life Insurance Benefits (retirement benefits) in Rate Order WAPA–76.'' Western Area Power Administration (Pacific Northwest-Pacific Southwest Intertie Project), Docket No. EF99–5191–000, 87 FERC ¶ 61,346 (1999). Certain customers of Western argued that Western ''. . . does not have the legal authority to recover these costs without specific Congressional authorization. . . .'' See 87 FERC ¶ 61,346, p. 63,337 (1999).

In its approval of Western's Rate 76, FERC expressly followed its earlier Southeastern decision in the case of the Georgia-Alabama-South Carolina Rates, upholding the inclusion of such costs in Southeastern rates. See Southeastern Power Administration, citing 86 FERC ¶ 61,195 (1999). FERC stated that the same principle applied to Western's rates.

It stated, at 87 FERC ¶ 61,346, p. 62,338, ''FERC has previously held that the power marketing administrations (PMAs), such as WAPA, can include these costs in their rates.'' FERC placed heavy reliance upon the Memorandum Opinion, where the General Counsel stated that there would seem to be ''. . . 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.'' See Memorandum Opinion, p. 5. FERC concluded that such unfunded costs ''. . . are reasonably incurred by WAPA and are recoverable from WAPA's customers. Because APA and Arizona TDU have failed to demonstrate that the inclusion of these costs is arbitrary, capricious or unlawful, we will deny the intervenors' request to eliminate these costs from WAPA's rates.'' See 87 FERC ¶ 61,346, p. 62,338 (1999).

We will respond to each comment individually.

*Comment 1:* FERC must follow specific factors to ensure that the approved rate is ''the lowest possible rate to consumers consistent with sound business principles.''

*Response 1:* On July 1, 1998, DOE General Counsel Mary Anne Sullivan responded to the issue of Southeastern'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''

(Memorandum Opinion). The Memorandum Opinion concludes at page 4:

> ''[T]hat 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 Memorandum Opinion also concludes at page 7:

> DOE policy, FASB [Financial Accounting Standards Board] 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.

In both the Georgia-Alabama-South Carolina and Cumberland Rate filings, FERC explained the Flood Control Act of 1944 does not (1) contain any language prohibiting the recovery of unfunded costs, that (2) these are costs reasonably incurred by Southeastern and recoverable from Southeastern's customers. It emphasized that those customers that had protested inclusion of unfunded CSRS costs in Southeastern's rates ''. . . have failed to demonstrate that the inclusion of these costs is arbitrary, capricious or unlawful. . . .'' See United States Department of Energy-Southeastern Power Administration, 86 FERC ¶ 61,195, p. 61,681 (1999), and 90 FERC ¶ 61,266, p. 61,894 (2000).

*Comment 2:* SEPA's inclusion of CSRS costs contradicts Congressional directives that a portion of the costs should be recovered by appropriations.

*Response 2:* Southeastern rejects the premise of the Comment. Congress is well aware that appropriations to Southeastern to pay the Federal Government's share of civil service retirement benefits, even in combination with the matching employees' contributions, fails to recover their full cost. The Memorandum Opinion took this fully into account. It is stated at page 2:

> 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). *Clark* v. *United States*, 691 F. 2d 837, 841 (7th Cir. 1982), *citing* 5 U.S.C. 8334. Prior to 1969, however, 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.'' S. Rep. No. 339, 91st Cong. 1st Sess., reprinted in 1969 U.S. Code Cong. & Admin. News 1168, 1169.
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> In 1969, Congress addressed the problem of potential shortfalls in the sufficiency of funding for retiree benefits by authorizing a permanent indefinite appropriation for transfer of general funds from the Treasury. *Clark* v. *United States,* 691 F. 2d at 841. The statute authorizes appropriations to the Retirement Fund to finance the unfunded liability created by new or liberalized benefits payable from the Fund, extension of the coverage of the Fund to new groups of employees, or increases in pay on which benefits are computed. 5 U.S.C. 8348(f). The cost of CSRS retirement benefits is approximately 25 percent of the annual salary, while the combined agency and employee contributions are only 14 percent.

The Memorandum Opinion addresses the question of the Congressional intent of full cost recovery at page 5:

> On a practical, common sense level, there seems little room to dispute that the full amount of the retirees' benefits is a ''cost'' of hiring the employee to operate and maintain the PMA power systems. Thus, recovering these costs in rates is entirely consistent with Congressional objectives that the PMA's operate on a fiscally self-supporting basis.

The Commission has also stated in the Georgia-Alabama-South Carolina rate case, 86 FERC ¶ 61,195, p. 61,681 (1999) (footnotes omitted), that:

> The Flood Control Act does not contain any language prohibiting the recovery of these costs. In fact, as the Department of Energy's General Counsel explained in a memorandum accompanying SEPA's filing, section 5 of the Flood Control Act leaves considerable discretion to SEPA's Administrator regarding what expenses may be considered costs recoverable under the Flood Control Act. There also would seem to be ''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.'' In sum, therefore, these are costs reasonably incurred by SEPA and recoverable from SEPA's customers, and SFPC, along with the other intervenors, have failed to demonstrate that the inclusion of these costs is arbitrary, capricious or unlawful. Accordingly, we will deny the intevenors' request to eliminate these costs from SEPA's rates.

FERC noted that the SFPC had asserted, in the case of the Georgia-Alabama-South Carolina Rates, that

''. . . Southeastern does not have the legal authority to include such costs, without specific Congressional authorization. They argue that, under section 5 of the Flood Control Act of 1944, these costs are beyond the boundaries of cost-based ratemaking authority established for power marketing administrations and assert that the term 'cost' in the Flood Control Act should not be read to include such retirement and pension benefit costs.'' See 86 FERC ¶ 61,195, p. 61,681 (1999).

*Comment 3:* SEPA's CSRS policy is arbitrary and capricious and beyond the scope of its authority.

*Response 3:* The preference customers advanced precisely the same arguments before FERC as part of FERC's review of the Georgia-Alabama-South Carolina Rates. [86 FERC ¶ 61,195, p. 61,681 (1999)] and Southeastern's Cumberland Rates [90 FERC ¶ 61,266, p. 61,894 (2000)]. FERC rejected their contentions.

In the case of the Georgia-Alabama-South Carolina Rates, FERC stated:

> SFPC, along with the other intervenors, raises a number of issues concerning the inclusion of CSRS and post-retirement health benefits costs in their proposed rates. Intervenors argue that SEPA does not have the legal authority to include such costs, without specific Congressional authorization. They argue that, under section 5 of the Flood Control Act of 1944, these costs are beyond the boundaries of cost-based ratemaking authority established for power marketing administrations and assert that the term ''cost'' in the Flood Control Act should not be read to include such retirement and pension benefit costs. See 86 FERC ¶ 61,195, p. 61,681 (1999) (footnotes omitted).

In its February 26, 1999, Georgia-Alabama-South Carolina Rate decision, 86 FERC ¶ 61,195 (1999), FERC also rejected such assertion, stating that:

> The Flood Control Act does not contain any language prohibiting the recovery of these costs. In fact, as the Department of Energy's General Counsel explained in a memorandum accompanying SEPA's filing, section 5 of the Flood Control Act leaves considerable discretion to SEPA's Administrator regarding what expenses may be considered costs recoverable under the Flood Control Act. There also would seem to be ''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.'' In sum, therefore, these are costs reasonably incurred by SEPA and recoverable from SEPA's customers, and SFPC, along with the other intervenors, have failed to demonstrate that the inclusion of these costs is arbitrary, capricious or unlawful. Accordingly, we will deny the intevenors' request to eliminate these costs from SEPA's rates. See 86 FERC ¶ 61,195, p. 61,681 (1999) (footnotes omitted).

In its March 17, 2000, Cumberland Rate decision, 90 FERC ¶ 61,266, p. 61,894 (2000), the customers's contentions that inclusion of these costs was arbitrary and capricious were again rejected. It also stated, in its February 29, 1999, decision respecting Southeastern's Georgia-Alabama-South Carolina Rates, [United States Department of Energy-Southeastern Power Administration, 86 FERC ¶ 61,195, p. 61,681 (1999), reh'g pending], that ''. . . the Flood Control Act does not contain any language prohibiting the recovery of these costs.''

Also, in its June 15, 2000, denial of a rehearing of its March 17, 2000, Cumberland Rate Order, FERC, for the fourth time, rejected the contention that the inclusion of unfunded CSRS costs in Power Marketing Administration Rates was arbitrary and capricious. FERC, in denying rehearing, noted that it had already addressed these arguments in its March 17, 2000, Order. Denial of rehearing was appropriate because SeFPC ha(d) not proffered any new arguments that demonstrate that the inclusion of these costs is arbitrary and capricious. See 91 FERC ¶ 61,272 (2000). FERC, in its review of said Southeastern rates, as well as in its review of Western's Pacific Northwest-Pacific Southwest Intertie Project Rates (WAPA–76), [(87 FERC ¶ 61,346 (1999)], again made it abundantly clear that it agreed with the Memorandum Opinion (cited in our responses to Comments 2, 3, 4, and 5).

Accordingly, we reject the assertion that inclusion of such unfunded CSRS costs in rates is arbitrary and capricious beyond the scope of Southeastern's authority.

*Comment 4:* The DOE directives must be read *in pari materia* with OPM's statutory mandate to fund employee benefits.

*Response 4:* SeFPC's argument is that Southeastern should not rely entirely on the Flood Control Act of 1944 to determine which costs should be included in rates. Instead Southeastern should also rely on the OPM's statutory authority which provides for the funding of a portion of the costs through OPM's appropriation. The OPM's statutory authority is concerning how the CSRS costs will be funded. The statutory authority does not deal with whether the costs should or should not be recovered in rates. The comments by SeFPC on page 4 quote the OPM law, 5 U.S.C.A. 8334(a)(1) (1999) (footnote omitted):

> ''[T]he employing agency shall deduct and withhold 7 percent of the basic pay of an employee . . . . [A]n equal amount shall be contributed from the Appropriation or fund used to pay the employee . . .''

SeFPC on page 6 states that, ''SeFPC does not take issue with Southeastern over the recovery of these amounts.''

These costs are funded through Southeastern and the Corps of Engineers appropriations, and the DOE has determined that they are a legitimate cost of a PMA. Similarly, the OPM costs that are funded by OPM appropriations have been determined by DOE and FERC, in its review of the Georgia-Alabama-South Carolina and Cumberland Rates, to be legitimate costs and therefore should be recovered in the rate.

The customers protesting the rate appear to argue that two statutes must be read *in pari materia*. These are 5 U.S.C.A. 8334 and 5 U.S.C.A. 8348(f). The first one, 5 U.S.C.A. 8334, requires the employing agency to deduct a percentage of an employee's basic pay and to combine it with the specified amount contributed by the appropriate government agency. Such combined payment is paid to the OPM retirement fund. The second statute, 5 U.S.C.A. 8348(f), is the 1969 Act of Congress authorizing a permanent appropriation from the General Treasury to OPM to meet shortfalls in the sufficiency of funding for retiree benefits.

This argument that these two statutes be read *in pari materia* has some logic. Under the doctrine, statutes are to be read together ''. . . when they relate to the same person or thing, or to the same class of persons or things, or have the same purpose or object.'' See 2B Sutherland Statutory Const § 51.03 (5th Ed. 1992)(footnotes omitted). See also In the Matter of Robison, 665 F. 2d 166, 171 (7th Cir. 1981). Under the *in pari materia* canon of statutory interpretation, statutes which pertain to the same thing are to be ''harmonized.'' 2B Sutherland, *supra*, § 51.05. It is clear that the permanent appropriation statute to OPM to meet the costs of unfunded liabilities, 5 U.S.C.A. 8348(f), and the statute, 5 U.S.C.A. 8334, requiring employer and employee to make payments to the retirement fund, have a common purpose.

Also, the doctrine of *in pari materia* requires consideration of all relevant statutes and regulations. See *Chemical Bank New York Trust Co.* v. *U.S.*, 249 F. Supp. 450, 459 (S.D.N.Y. 1966), *Bzozowski* v. *Pennsylvania-Reading Seashore Lines*, 259 A. 2d 231, 233 (Superior Court of N.J. 1969). The other relevant statute which Southeastern believes must also be read *in pari materia* with 5 U.S.C.A. 8348(f) and 5 U.S.C.A. 8334 is section 5 of the Flood Control Act of 1944 (16 U.S.C. 825s) requiring Southeastern to return its costs to the Treasury. The proper

application of the doctrine of *in pari materia,* in Southeastern's opinion, requires that these statutes be read in light of DOE Order RA 6120.2 and the applicable Standards of the FASB.

DOE Order RA 6120.2 guides Southeastern in the establishment of its rates and is one of the criteria FERC uses in confirming these rates. See Southeastern Power Administration, 91 FERC ¶ 61,272 (2000). Also, DOE Order RA 6120.2 requires the PMAs to use accounting practices consistent with the principles by the FASB. As the result of new accounting rules issued by the FASB, ''{a} post-retirement benefit is part of the compensation paid to an employee for services rendered.'' Under such rules, unfunded pensions promised to current and retired employees are actual liabilities of Southeastern under the Flood Control Act of 1944, as construed by both DOE and FERC.

Under all relevant statutes and regulations, the inclusion in Southeastern rates for a given period of all employer costs, including the unfunded component accruing in the period is, in both the view of DOE and FERC, a reasonable interpretation of Southeastern's statutory obligation to recover costs.

Accordingly, Southeastern must reject the *in pari materia* argument advanced by the customers as too restrictive an interpretation of the statutes that have to be harmonized.

*Comment 5:* SEPA has deviated from past practice without sufficient justification.

*Response 5:* The Memorandum Opinion addressed this argument and stated:

> Given the PMAs' previous practice of not securing recovery in rates of the unfunded portion of employee retirement benefits, it may be argued that the PMAs' inclusions of such costs now would represent a change in agency interpretation. We do not understand this practice, however, to have been premised on an articulated legal judgment that it would be legally impermissible. See Memorandum Opinion, p. 4.
>
> Even if it had been, an agency ''is not locked into the first interpretation it espouses. *Sacred Heart Medical Center* v. *Sullivan,* 958 F. 2d. 537, 544 (3d Cir. 1992). ''[A]n Agency's reinterpretation of statutory language is . . . entitled to deference, so long as the agency acknowledges and explains the departure from its prior views.'' *Mobil Oil Corp.* v. *E.P.A.,* 871 F. 2d 149, 152 (D.C. Cir. 1989).'' See Memorandum Opinion, p. 4, f.n. 4.

There is no merit to the assertion that Southeastern has deviated from past practice without sufficient justification.

In the case of the Jim Woodruff rates, Southeastern is adhering to four FERC decisions, upholding the DOE General Counsel's Memorandum Opinion. As indicated above, the thrust of the Memorandum Opinion was the simple fact that the cost of CSRS retirement benefits is approximately 25 percent of the annual salary, while the combined agency and employee contributions are only 14 percent. See Memorandum Opinion, p. 2. The Memorandum Opinion took cognizance that in 1969, Congress addressed the problem of potential shortfalls in the sufficiency of funding for retiree benefits by authorizing a permanent indefinite appropriation for transfer of general funds from the Treasury ''to the'' Retirement Fund to finance the unfunded liability. See Memorandum Opinion, p. 2, citing 5 U.S.C.A, 8348(f).

The General Counsel indicated that as the result of new accounting rules issued by the FASB, ''[a] post-retirement benefit is part of the compensation paid to an employee for services rendered.'' See Memorandum Opinion, p. 5, f.n. 5. Under such rules, unfunded pensions promised to current and retired employees are actual liabilities. *Id.* The General Counsel also recognized that DOE Order No. RA 6120.2, ¶ 12 (September 20, 1979), requires the PMAs to use accounting practices consistent with the principles prescribed by the FASB. See Memorandum Opinion, p. 5. Thus, as a function of meeting the operating expenses of the PMAs, it was within the discretion of the PMA Administrators to include in rates the allocated undercollections for post-retirement benefits.

This result follows, in the Opinion of the General Counsel, because DOE policy, FASB principles, and FERC ratemaking policy indicate the inclusion in rates applicable for a given period of all employer costs accruing in the period is a reasonable interpretation of the statutory obligation to recover costs. See Memorandum Opinion, p. 7.

FERC, as indicated above in our response to the customers' objections, agrees with the General Counsel's July 1, 1998, Memorandum Opinion and Southeastern is applying both DOE's and FERC's well articulated principles to the Jim Woodruff rates. In no way are the Jim Woodruff rates an unexplained departure from past practice.

**Discussion**

*System Repayment*

An examination of Southeastern's revised system power repayment study, prepared in May 2000, for the Jim Woodruff Project, shows that with the proposed 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.

*Environmental Impact*

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

*Availability of Information*

Information regarding these rates, including studies, and other supporting materials is available for public review in the offices of Southeastern Power Administration, Samuel Elbert Building, Elberton, Georgia 30635.

*Submission to the Federal Energy Regulatory Commission*

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 September 20, 2000, and ending no later than September 19, 2005.

**Order**

In view of the foregoing and pursuant to the authority delegated to me by the Secretary of Energy, I hereby confirm and approve on an interim basis, effective September 20, 1995, attached Wholesale Power Rate Schedules JW–1–F and JW–2–C. The rate schedules shall remain in effect on an interim basis through September 19, 2005, unless such period is extended or until the FERC confirms and approves them or substitute rate schedules on a final basis.

Dated: August 11, 2000.

T. J. Glauthier

*Deputy Secretary.*

**Wholesale Power Rate Schedule JW–1–F**

*Availability*: This rate schedule shall be available to public bodies and cooperatives served by the Florida Power Corporation and having points of

delivery within 150 miles of the Jim Woodruff Project (hereinafter called the Project).

*Applicability*: This rate schedule shall be applicable to firm power and accompanying 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 capacity and energy made available or delivered under this rate schedule shall be:

*Demand Charge*: $5.51 per kilowatt of monthly billing demand

*Energy Charge*: 15.46 mills per kilowatt hour

*Billing Demand*: The monthly billing demand for any billing month shall be the lower of (a) the Customer's contract demand or (b) the sum of the maximum 30-minute integrated demands for the month at each of the Customer's points of delivery, provided, that, if an allocation of contract demand to delivery points has become effective, the 30-minute maximum integrated demand for any point of delivery shall not be considered to be greater than the portion of the Customer's contract demand allocated to that point of delivery.

*Capacity Made Available*: The capacity which the Government will supply to meet the demand of the Customer in any billing month will be the maximum amount of capacity required for that purpose up to the contract demand. Such maximum amount of capacity required will be determined by adding the maximum 30-minute integrated measured demands at all points of delivery of the Customer located within 150 miles of the Project power station. At such time as the demand of the Customer approximates the contract demand, the Government will allocate the contract demand among the Customer's then existing delivery points on the basis of the demands recorded as of that time at each such point of delivery adjusted to round each point's allocation to the nearest 10 kilowatts. The allocation of contract demand to delivery points shall become effective the billing month that the Customer's total demand at said delivery points exceeds its contract demand.

*Energy Made Available*: During any billing month in which the Government supplies all the Customer's capacity requirements, the Government will make available such when both the Government and the Florida Power Corporation are supplying capacity to a delivery point, each kilowatt of capacity supplied to such point during such month will be considered to be accompanied by an equal quantity of energy.

*Billing Month*: The billing month for power sold under this schedule shall end at 12:00 midnight on the 20th 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 the Florida Power Corporation on its side of the delivery point.

*Service Interruption*: When energy delivered to the Customer's system for the account of the Government is reduced or interrupted for 1 hour or longer, and such reduction or interruption is not due to conditions on the Customer's system or has not been planned and agreed to in advance, the demand charge for the month shall be appropriately reduced.

**Wholesale Power Rate Schedule JW–2–C**

*Availability*: This rate schedule shall be available to the Florida Power Corporation (hereinafter called the Company).

*Applicability*: This rate schedule shall be applicable to electric energy generated at the Jim Woodruff Project (hereinafter called the Project) and sold to the Company in wholesale quantities.

*Points of Delivery*: Power sold to the Company by the Government will be delivered at the connection of the Company's transmission system with the Project bus.

*Character of Service*: Electric power delivered to the Company will be three-phase alternating current at a nominal frequency of 60 cycles per second.

*Monthly Rate*: The monthly rate for energy sold under this schedule shall be equal to 60 percent of the calculated saving in the cost of fuel per KWH to the Company determined as follows:

Energy Rate = 63% x [Computed to the nearest $0.00001 (1/100mill) per KWH]

Where:

Fm = Company fuel cost in the current period as defined in Federal Power Commission Order 517 issued November 13, 1974, Docket No. R–479.

Sm = Company sales in the current period reflecting only losses associated with wholesale sales for resale. Sale shall be equated to the sum of (a) generation, (b) purchases, (c) interchange-in, less (d) inter-system sales, less estimated wholesale losses (based on average transmission loss percentage for preceding calendar year).

Method of Application: The energy rate applied during the current billing month will be based on costs and equated sales for the second month preceding the billing month.

*Determination of Energy Sold*: Energy will be furnished by the Company to supply any excess of Project use over Project generation. Energy so supplied by the Company will be deducted from the actual deliveries to the Company's system to determine the net deliveries for energy accounting and billing purposes. Energy for Project use shall consist of energy used for station service, lock operation, Project yard, village lighting, and similar uses.

The on-peak hours shall be the hours between 7:00 a.m. and 11:00 p.m., Monday through Sunday, inclusive. Off-peak hours shall be all other hours.

All energy made available to the Company, exclusive of transfers to the Georgia Power Company for the account of the Government, shall to the extent required be classified as energy transmitted to the Government's preference customers served from the Company's system. All energy made available to the Company from the Project shall be separated on the basis of the metered deliveries to it at the Project during on-peak and off-peak hours, respectively. Such on-peak energy as is made available to the Company at the points of interconnection with Georgia Power Company shall be determined from schedules of deliveries. Deliveries to preference customers of the Government shall be divided on the basis (with allowance for losses) of 77 percent being considered as on-peak energy and 23 percent being off-peak energy. Such percentages may by mutual consent be changed from time to time as further studies show to be appropriate. Deliveries made to the Georgia Power Company shall be on the basis (with allowances for losses) of schedules of deliveries. In the event that in classifying energy there is more than enough on-peak energy available to supply on-peak requirements of the Government's preference customers but less than enough off-peak energy available to supply such customers off-peak requirements, such excess on-peak

energy may be applied to the extent necessary to meet off-peak requirements of such customers in lieu of purchasing deficiency energy to meet such off-peak requirements.

Any on-peak and off-peak Project energy made available in any billing month over and above that required for transfers to the Georgia Power Company for the account of the Government and to meet the above requirements of preference customers shall be classified as energy sold under this rate schedule.

The energy requirements of the Government's preference customers shall be the total energy requirements of such customers so long as the Government is supplying the total capacity required. In any month when both the Government and the Company are supplying capacity to a preference customer, each kilowatt of capacity shall be considered to be accompanied by an equal quantity of energy. The energy supplied by the Government shall come from its own resources or from purchases from the Company and shall be accounted for as transmitted for the account of the Government. Energy delivered to preference customers by the Company shall be increased by 7 percent to provide for losses in transmission.

*Billing Month*: The billing month under this schedule shall end at 12:00 midnight on the 20th day of each calendar month.

*Power Factor*: The purchaser and seller under this rate schedule agree that they will both so operate their respective systems that neither party will impose an undue reactive burden on the other.

[FR Doc. 00–21507 Filed 8–22–00; 8:45 am]

**BILLING CODE 6450–01–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–6856–6]**

### Meeting of the Local Government Advisory Committee

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** The Local Government Advisory Committee will meet on September 7—8, 2000, in Alexandria, VA. The Committee will hear presentations on EPA's Unfunded Mandates Reform Act internal implementation guidance, the National Aeronautics and Space Administration's remote-sensing database (a possible tool for local planners), the Agency's Gap analysis (water infrastructure funding gap), and the land use State Implementation Plan (SIP) guidance. The full Committee will also vote on adoption of two sets of recommendations: (1) ''Building the Network'' recommendations developed by the former Outreach Subcommittee; and (2) recommendations concerning the Agency's arsenic regulation developed by the Small Community Advisory Subcommittee. The Issues and Process Subcommittees will meet on the afternoon of September 7 and the morning of September 8 to refine and complete their strategic plans and develop or complete recommendations.

The Committee will hear comments from the public between 11:30 a.m. and 11:45 a.m. on September 7. Each individual or organizations wishing to address the Committee will be allowed a minimum of three minutes. Please contact the Designated Federal Officer (DFO) at the number listed below to schedule agenda time. Time will be allotted on a first come, first serve basis.

This is an open meeting and all interested persons are invited to attend. Meeting minutes will be available after the meeting and can be obtained by written request from the DFO. Members of the public are requested to call the DFO at the number listed below if planning to attend so that arrangements can be made to comfortably accommodate attendees as much as possible. However, seating will be on a first come, first served basis.

**DATES:** The meeting will begin at 9:00 a.m. on Thursday, September 8 and conclude at 4:00 p.m. on the 9th.

**ADDRESSES:** The meetings will be held in Alexandria, Virginia at the Radisson Hotel located at 901 North Fairfax Street in the Washington Room.

Requests for Minutes and other information can be obtained by writing the DFO at 1200 Pennsylvania Avenue, NW (1306A), Washington, DC 20460.

**FOR FURTHER INFORMATION CONTACT:** The DFO for this Committee is Denise Zabinski Ney. She is the point of contact for information concerning any Committee matters and can be reached by calling (202) 564–3684 or by email at ney.denise@epa.gov.

Dated: August 7, 2000.

**Denise Zabinski Ney,**

*Designated Federal Officer, Local Government Advisory Committee.*

[FR Doc. 00–21525 Filed 8–22–00; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[PF–963; FRL–6738–9]**

### Notice of Filing a Pesticide Petition to Establish a Tolerance for a Certain Pesticide Chemical in or on Food

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

**DATES:** Comments, identified by docket control number PF–963, must be received on or before September 22, 2000.

**ADDRESSES:** Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–963 in the subject line on the first page of your response.

**FOR FURTHER INFORMATION CONTACT:** By mail: Shaja R. Brothers, Registration Support Branch, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–3194; e-mail address: brothers.shaja@epa.gov.

**SUPPLEMENTARY INFORMATION:**

#### I. General Information

*A. Does this Action Apply to Me?*

You may be affected by this action if you are an agricultural producer, food manufacturer or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

| Categories | NAICS codes | Examples of potentially affected entities |
|---|---|---|
| Industry | 111<br>112<br>311<br>32532 | Crop production<br>Animal production<br>Food manufacturing<br>Pesticide manufacturing |

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also