

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suedeen G. Kelly.

United States Department of Energy --
Southeastern Power Administration
(Georgia-Alabama-South Carolina System)

Docket No. EF03-3011-000

ORDER CONFIRMING AND APPROVING RATE SCHEDULES
ON A FINAL BASIS

(Issued November 3, 2004)

1. In this order, we confirm and approve Southeastern Power Administration's (Southeastern) power sales rates on a final basis. This order will benefit customers because it ensures the power sales rates are consistent with applicable law and they are the lowest possible rates to customers consistent with sound business principles.

Background

2. On September 20, 2003, the Deputy Secretary of Energy (Deputy Secretary) filed a request for final confirmation and approval of Southeastern's Rate Schedules SOCO-1-B, SOCO-2-B, SOCO-3-B, SOCO-4-B, ALA-1-K, MISS-1-K, Duke-1-B, Duke-2-B, Duke-3-B, Duke-4-B, Santee-1-B, Santee-2-B, Santee-3-B, Santee-4-B, SCE&G-1-B, SCE&G-2-B, SCE&G-3-B, SCE&G-4-B, Regulation-1, Replacement-1, Pump-1-A, and Pump-2 for the sale of power from Southeastern's Georgia-Alabama-South Carolina System of Projects (System).¹ The Deputy Secretary placed the rates into effect on an

¹The system consists of ten multipurpose hydroelectric projects, whose power output is sold to preference customers in North Carolina, South Carolina, Florida, Georgia, Alabama, and Mississippi.

interim basis effective October 1, 2003,² and requests final confirmation and approval of the rates for the period October 1, 2003 through September 30, 2007.³

3. Southeastern explains that current rates at the present revenue level are not adequate to meet repayment criteria. Southeastern proposes to increase the annual revenues from \$140,130,000 per year to \$154,777,000 per year, to recover, among other things, increased operation and maintenance expenditures and costs for renewals and replacements.

Notice of Filing and Interventions

4. Notice of the application was published in the *Federal Register*, 68 Fed. Reg. 59,389 (2003), with comments, protests, or motions to intervene due on or before October 28, 2003.

5. Southeastern Federal Power Customers, Inc. (SFPC) filed a timely motion to intervene and comments. SFPC challenges Southeastern's inclusion of costs for a secant wall at the Walter F. George project.⁴ SFPC argues that Southeastern cannot include the total cost of the secant wall in the current rate study. SFPC requests the Commission to reject the inclusion of the total cost of the secant wall at the Walter F. George project as they do not conform to the Flood Control Act,⁵ and asks that the Commission remand Rate Order No. SEPA-44 for revision.

²Rate Order No. SEPA-44, placing the rate schedules into effect on an interim basis, was issued on September 26, 2003, under authority delegated to the Deputy Secretary by Department of Energy Delegation Order No. 00-037.00 (Delegation Order).

³Rate Schedules SOCO-1-B, SOCO-2-B, SOCO-3-B, SOCO-4-B, ALA-1-K, MISS-1-K, Duke-1-B, Duke-2-B, Duke-3-B, Duke-4-B, Santee-1-B, Santee-2-B, Santee-3-B, Santee-4-B, SCE&G-1-B, SCE&G-2-B, SCE&G-3-B, SCE&G-4-B, Regulation-1, Replacement-1, Pump-1-A, and Pump-2 supersede the present rate schedules, which were approved on a final basis in *United States Department of Energy – Southeastern Power Administration (Georgia-Alabama-South Carolina System)*, 104 FERC ¶ 62,028 (2003).

⁴Southeastern explains that the secant wall is necessary to prevent seepage of water under the dam.

⁵ See 33 U.S.C. § 467n (2000).

6. SFPC also disagrees with Southeastern's characterization of operations of the Richard B. Russell Project (Russell Project). Specifically, SFPC challenges Southeastern's assertion that the Russell Project units were "available for use" beginning in 1993 as depicted in its filing. SFPC points out that the Russell Project did not operate until 2002 due to protracted litigation. According to SFPC, the allocation and recovery of costs that accrued as a consequence of the protracted litigation raise concerns for SFPC's members. While the recovery of these costs is not at issue in this rate filing, SFPC requests that the Commission not preclude its members from the opportunity to comment on any future proposed recovery of such costs. SFPC, therefore, requests the Commission refrain from concluding that the Russell Project was, in fact, available for use when approving Rate Order No. SEPA-44.

Discussion

Procedural Matters

7. Under Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2004), the timely, unopposed motion to intervene makes SFPC a party to this proceeding.

Standard of Review

8. The Secretary of Energy has delegated the authority to confirm and approve Southeastern's rates on a final basis to the Commission,⁶ and established the scope of Commission review. The scope of Commission review is limited to:

whether the rates are the lowest possible to customers consistent with sound business principles;

whether the revenue levels generated by the rates are sufficient to recover the costs of producing and transmitting the electric energy including the repayment, within the period of cost recovery permitted by law, of the capital investment allocated to power and costs assigned by Acts of Congress to power for repayment; and

⁶Department of Energy Delegation Order No. 00-037.00, 1 FERC Stats. & Regs. ¶ 9,919 (2001).

the assumptions and projections used in developing the rate components that are subject to Commission review.⁷

The Commission is prohibited from reviewing policy judgments and interpretations of laws and regulations made by the power generating agencies.⁸ The Commission may reject the rate determinations of Southeastern's Administrator only if it finds them to be arbitrary, capricious, or in violation of the law, if they violate Department of Energy regulations (e.g., Department of Energy Order No. RA 6120.2, which prescribes financial reporting policies, procedures, and methodologies), or if they violate agreements between Southeastern's Administrator and the applicable power generating agency.

9. The Commission considers its role as that of an appellate body which reviews the record developed by the Administrator. In other words, the Commission does not develop a record on its own. Consequently, the Commission only affirms or remands the rates submitted to it for final review.⁹

Application of the Standards

10. The Commission has evaluated Southeastern's filing for conformance to the applicable standards and finds that it is consistent with those standards.

⁷*Id.*

⁸The power generating agencies include the Bureau of Reclamation, the Corps of Engineers, and the International Boundary and Water Commission. These agencies build and operate various projects. The Power Marketing Administrations, such as Southeastern, market the output of the projects.

⁹*See, e.g., U.S. Department of Energy - Western Area Power Administration (Boulder Canyon Project)*, 61 FERC ¶ 61,229 at 61,844 (1992), *aff'd in relevant respects, Overton Power District No. 5, et al. v. Watkins, et al.*, 829 F. Supp. 1523 (D. Nevada 1993), *vacated and remanded with directions to dismiss, Overton Power District No. 5, et al. v. O'Leary, et al.*, 73 F. 3d 253 (1996); *U.S. Department of Energy - Western Area Power Administration (Salt Lake City Area Integrated Projects)*, 59 FERC ¶ 61,058 at 61,240-41 & nn17 and 20, *reh'g denied*, 60 FERC ¶ 61,002 (1992).

11. By statute,¹⁰ Southeastern must repay the federal investment within a reasonable period of time, which as a general practice is 50 years. Our review of Southeastern's Power Repayment Study (PRS) indicates that the revenues to be collected under the proposed rates will be sufficient to recover Southeastern's costs, including the recovery of the remaining federal investment, with interest, over the remaining repayment period. Moreover, since the revenues generated by the proposed rates recover no more than Southeastern's annual costs and the remaining federal investment, the rates are the lowest possible to customers. Our review also indicates that the PRS was prepared in a manner consistent with Department of Energy Order No. RA 6120.2, which requires that Southeastern's financial statements must be prepared in accordance with generally accepted accounting principles, as appropriate, and that its PRS be prepared using sound forecasting techniques designed to approximate as closely as possible actual results. We also find that the rate determinations are neither arbitrary nor capricious. Therefore the Commission will grant the request for final confirmation and approval. In the discussion that follows, we address the issues raised by SFPC.

12. SFPC raises concerns with the inclusion of the total costs for a secant wall at the Walter F. George project and Southeastern's characterization of when the Russell Project was in operation. SFPC does not challenge the need for the secant wall nor the reasonableness of the costs incurred. Rather, SFPC claims essentially that the costs may be for purposes other than the production of electric energy and so the total costs are not properly recovered from power sales customers. However, it has not been finally determined by the Corps of Engineers which is responsible for construction and operations that these costs are, in fact, for other purposes. Accordingly, in the absence of such a determination, we cannot find that Southeastern erred in its treatment of these costs. In this regard, we again note our limited authority, described above, and the prohibition on review of policy judgments or interpretations of laws and regulations. We cannot, in short, find Southeastern's decision arbitrary, capricious or in violation of the law. Accordingly, we will deny the SFPC's request for a remand to Southeastern for revision. With regard to the Russell Project, as SFPC concedes, the recovery of costs related to that project is not at issue here. Accordingly, SFPC's concerns as to when the Russell Project was "available for use" are more appropriately raised when the recovery of such costs is at issue.

¹⁰ 46 U.S.C. § 825s (2000).

The Commission orders:

The Commission hereby confirms and approves on a final basis Southeastern's proposed Rate Schedules SOCO-1-B, SOCO-2-B, SOCO-3-B, SOCO-4-B, ALA-1-K, MISS-1-K, Duke-1-B, Duke-2-B, Duke-3-B, Duke-4-B, Santee-1-B, Santee-2-B, Santee-3-B, Santee-4-B, SCE&G-1-B, SCE&G-2-B, SCE&G-3-B, SCE&G-4-B, Regulation-1, Replacement-1, Pump-1-A, and Pump-2 for the period October 1, 2003 through September 30, 2007.

By the Commission.

(S E A L)

Linda Mitry,
Deputy Secretary.