

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission****Combined Notice of Filings No. 1**

June 10, 2010.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP10–832–000.

Applicants: Equitrans, L.P.

Description: Equitrans, L.P. submits tariff filing per 154.203: Baseline Filing to be effective 6/9/2010

Filed Date: 06/09/2010.

Accession Number: 20100609–5095.

Comment Date: 5 p.m. Eastern Time on Monday, June 21, 2010.

Docket Numbers: RP10–833–000.

Applicants: Alliance Pipeline L.P.

Description: Alliance Pipeline L.P. submits tariff filing per 154.204: NAESB Compliance Filing to be effective 7/8/2010.

Filed Date: 06/09/2010.

Accession Number: 20100609–5098.

Comment Date: 5 p.m. Eastern Time on Monday, June 21, 2010.

Docket Numbers: RP10–834–000.

Applicants: Transcontinental Gas Pipe Line Company,

Description: Transcontinental Gas Pipe Line Company, LLC submits Second Revised Sheet 1, Fourth Revised Sheet 82 and Fifth Revised Sheet 83 to FERC Gas Tariff, Fourth Revised Volume 1, to be effective 7/10/2010.

Filed Date: 06/09/2010.

Accession Number: 20100610–0206.

Comment Date: 5 p.m. Eastern Time on Monday, June 21, 2010.

Docket Numbers: RP10–835–000.

Applicants: CenterPoint Energy Gas Transmission Co.

Description: Petition of CenterPoint Energy Gas Transmission Company for a Limited Waiver of the Commission's Regulations and Request for Expedited Consideration.

Filed Date: 06/09/2010.

Accession Number: 20100609–5137.

Comment Date: 5 p.m. Eastern Time on Monday, June 21, 2010.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. 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. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at <http://www.ferc.gov>. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St. NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail FERCOnlineSupport@ferc.gov or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

[FR Doc. 2010–15123 Filed 6–22–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission**

[Docket No. EL10–68–000]

Resale Power Group of Iowa, WPPI Energy v. ITC Midwest LLC, Interstate Power and Light Company; Notice of Filing

June 16, 2010.

Take notice that, on June 15, 2010, Resale Power Group of Iowa and WPPI Energy filed a supplement to its complaint originally filed on May 18, 2010.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). 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 notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail FERCOnlineSupport@ferc.gov, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on July 6, 2010.

Kimberly D. Bose,
Secretary.

[FR Doc. 2010–15138 Filed 6–22–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY**Southwestern Power Administration****White River Minimum Flows—Addendum to Final Determination of Federal and Non-Federal Hydropower Impacts**

AGENCY: Southwestern Power Administration, DOE.

ACTION: Notice of addendum to final determination.

SUMMARY: Southwestern Power Administration (Southwestern) has finalized an addendum to its January 2009 Final Determination Report concerning the Federal and non-Federal

hydropower impacts of the White River Minimum Flows project. The addendum documents changes to Southwestern's final determination. The changes were made to account for the impacts that the increase in average pool elevation has on the operation of the Federal Bull Shoals and Norfolk projects and to include impacts to non-Federal hydropower resulting from the loss of renewable energy under the state renewable energy standard in Missouri.

Southwestern published a draft addendum to its final determination by **Federal Register** Notice (74 FR 27135) on June 8, 2009. Written comments were invited through July 8, 2009. The **Federal Register** notice stated that comments would be accepted only on the proposed changes in the draft addendum. Public comments received were considered in revising the June 2009 draft addendum and developing Southwestern's finalized addendum.

Based on an October 28, 2009, date of implementation for the White River Minimum Flows project as established by Section 314 of Public Law 111-85 and values for the specified parameters as of that date, Southwestern's modified final determination results in a present value of \$26,563,700 for the estimated future lifetime replacement costs of the electrical energy and capacity at Federal Energy Regulatory Commission (FERC) Project No. 2221. Southwestern's modified final determination results in a present value of \$52,576,600 for the estimated future lifetime replacement costs of the electrical energy and capacity for Federal hydropower at the Bull Shoals and Norfolk projects.

FOR FURTHER INFORMATION CONTACT: Mr. George Robbins, Director, Division of Resources and Rates, Southwestern Power Administration, U.S. Department of Energy, One West Third Street, Tulsa, Oklahoma 74103, (918) 595-6680, george.robbs@swpa.gov.

If you desire a copy of the addendum, submit your request to Mr. George Robbins, Director, Division of Resources and Rates, Southwestern, at the above-mentioned address for Southwestern's office or by electronic mail.

SUPPLEMENTARY INFORMATION: Originally established by Secretarial Order No. 1865 dated August 31, 1943, as an agency of the U.S. Department of the Interior, Southwestern is now an agency within the U.S. Department of Energy. Southwestern markets power from 24 multi-purpose reservoir projects with hydroelectric power facilities constructed and operated by the U.S. Army Corps of Engineers (Corps). These projects are located in the states of Arkansas, Missouri, Oklahoma, and

Texas. Southwestern's marketing area includes these states, as well as Kansas and Louisiana.

Section 132 of Public Law 109-103 authorized and directed the Secretary of the Army to implement alternatives BS-3 and NF-7, as described in the Corps' White River Minimum Flows Reallocation Study Report, Arkansas and Missouri, dated July 2004. The law provides that the Administrator of Southwestern, in consultation with the project licensee and the relevant state public utility commissions, shall determine any impacts on electric energy and capacity generated at FERC Project No. 2221 caused by the storage reallocation at Bull Shoals Lake. Further, the licensee of Project No. 2221 is to be fully compensated by the Corps for those impacts on the basis of the present value of the estimated future lifetime replacement costs of the electrical energy and capacity at the time of implementation of the White River Minimum Flows project.

The law also provides that losses to the Federal hydropower purpose at the Bull Shoals and Norfolk Projects shall be offset by a reduction in the costs allocated to the Federal hydropower purpose. Further, such reduction in costs shall be determined by the Administrator of Southwestern on the basis of the present value of the estimated future lifetime replacement cost of the electrical energy and capacity at the time of implementation of the White River Minimum Flows project.

Section 314 of Public Law 111-85, enacted October 28, 2009, amended the authorizing language for the minimum flows project and provided that the licensee of FERC Project No. 2221 will be compensated by Southwestern rather than the Corps based on the present value of the impacts to the non-Federal project as determined by Southwestern at the time of project implementation. Section 314 also provided that the time of project implementation is the date of the legislation's enactment, October 28, 2009. The final calculation will be based on the value of the specified parameters in effect at that time.

Southwestern developed a procedure for calculating projected energy and capacity losses for FERC Project No. 2221 and the Bull Shoals and Norfolk projects in accordance with Section 132 of Public Law 109-103. Input from affected parties and from the public was invited and utilized in the development of the determination.

Southwestern's draft determination was published on February 5, 2008 (73 FR 6717). Written comments were invited through March 6, 2008. All public comments received were

considered, and Southwestern's draft determination was revised as necessary to incorporate the public comments. Because there were significant changes to Southwestern's draft determination, Southwestern published a proposed determination for additional public review and comment prior to its final determination.

Southwestern's proposed determination was published on July 3, 2008 (73 FR 38198). Written comments were invited through August 4, 2008. After receiving several requests for additional time to provide public comments, Southwestern reopened the public comment period through September 18, 2008 (73 FR 46901, August 12, 2008). All public comments received were considered in revising the proposed determination and developing Southwestern's final determination.

Southwestern's final determination was published on January 23, 2009 (74 FR 4183). Southwestern's final determination is fully documented in its Final Determination Report dated January 2009, which was prepared in consultation with the non-Federal licensee and the relevant public utility commissions. The report documents the procedure to be used to calculate the present value of the future lifetime replacement cost of the electrical energy and capacity lost due to the White River Minimum Flows project at the non-Federal FERC Project No. 2221 and the Federal Bull Shoals and Norfolk projects.

Southwestern published a draft addendum to its final determination on June 8, 2009 (74 FR 27135). The June 2009 draft addendum proposed several changes to Southwestern's final determination. Written comments were invited through July 8, 2009. The **Federal Register** notice stated that comments would be accepted only on the proposed changes in the draft addendum. Public comments received were considered in revising the June 2009 draft addendum and developing Southwestern's finalized addendum. Changes to Southwestern's final determination are discussed here and documented in the addendum.

During an extensive internal review of its calculations in the final determination, Southwestern discovered an inadvertent omission of a portion of the energy benefits associated with the higher pools at the Federal Bull Shoals and Norfolk projects. A detailed review of the energy loss calculations revealed that a portion of the energy benefits at the Federal projects which were believed to be included in the calculations had been inadvertently omitted. While the gains from the

increase in head (the vertical distance between the lake, or pool elevation, and the river, or tailwater elevation) that resulted from the higher pool elevations were included in the computation of benefits received from the generation of minimum flows releases at Bull Shoals, including an additional gain from a lower tailwater, the head gains were omitted for the remainder of the generation. Southwestern's addendum corrects the computation of energy loss and associated replacement costs for both Federal projects to include those gains.

The portion of the energy benefits due to higher head from the raised pools that were omitted amounted to an additional 11,669 megawatt-hours (MWh) at Bull Shoals and 1,459 MWh at Norfolk. Inclusion of those benefits reduces the net energy losses at Bull Shoals and Norfolk, respectively. The net annual energy loss at Bull Shoals will be 12,186 MWh, and the net annual energy loss at Norfolk will be 12,065 MWh. As discussed in Southwestern's Final Determination Report, all of the lost energy at Bull Shoals is considered off-peak energy, and the lost energy at Norfolk is considered one-half on-peak energy and one-half off-peak energy. There are no changes in the capacity loss at Norfolk or in the capacity or energy loss at the non-Federal project.

As part of its review of the impacts that the average pool elevation increase has on the normal operation of the Federal projects, Southwestern concluded that it should quantify dissolved oxygen (DO) impacts due to the average increase in pool elevation. Southwestern's final determination recognized that generation at both Bull Shoals and Norfolk is impacted annually due to low DO conditions. Southwestern also noted that the higher pool elevations at both projects will cause the hypolimnion to be higher relative to the penstock elevations at both projects, causing water with lower DO levels to flow through the turbines during generation. Southwestern noted but did not quantify the value of the potential DO impact in its final determination.

Southwestern has developed a procedure for quantifying the estimated impacts and costs of lower DO levels on Federal hydropower. The procedure estimates the costs of mitigating the DO impacts resulting from the increased pool elevations at the Federal projects. A number of alternative solutions have been proposed for improving DO levels downstream of the Federal projects. Southwestern considered the initial capital cost and annual operation and maintenance expenses associated with

these systems in determining the total impacts of the White River Minimum Flows project on hydropower production. The procedure is based on historical DO level data and is detailed in Southwestern's addendum. Based on the procedure and on values of the specified parameters corresponding to the time of implementation specified in Section 314 of Public Law 111-85, the present value of the lifetime impact of lower DO levels on Federal hydropower is \$8,934,300. It should be noted that the \$8,934,300 amount only addresses the incremental impact of the increased pool elevation on DO levels and is not representative of an amount to satisfy all DO issues at the Federal projects.

Southwestern's final determination provided for the inclusion of the impacts of the minimum flows project with regard to a renewable portfolio standard, stating "If a state or Federal mandatory renewable portfolio standard that qualifies any of the three projects studied is implemented before the final payment or offset is completed, the impacts to both Federal and non-Federal hydropower should be quantified and included in the compensation calculation." Absent any established rules, it was not initially apparent to Southwestern that FERC Project No. 2221 qualified under Proposition C, a state renewable energy standard passed in Missouri in November 2008. The Missouri Public Service Commission (MoPSC) confirmed that FERC Project No. 2221 qualifies under Proposition C, a state renewable energy standard passed in Missouri in November 2008. As a result, Southwestern worked with the non-Federal licensee and the MoPSC to develop a procedure for quantifying an appropriate credit for the loss of renewable energy at FERC Project No. 2221 resulting from the minimum flows project. Based on the procedure defined in the addendum, the present value of the lifetime impact for the loss of renewable energy at FERC Project No. 2221 resulting from the minimum flows project is \$470,700.

Southwestern proposed a revised discount rate selection for calculation of the present value of the losses for both the Federal and non-Federal projects in its June 2009 draft addendum. Subsequently, Section 314 of Public Law 111-85 amended the authorizing language for the project, specifying that "At the end of each fiscal year subsequent to implementation, any remaining balance to be paid to the licensee of Project No. 2221 shall accrue interest at the 30-year U.S. Treasury bond rate in effect at the time of implementation of the White River Minimum Flows project." Consistent

with Section 314 of Public Law 111-85, Southwestern utilized the 30-year U.S. Treasury bond rate in its calculation as shown in its final determination rather than the discount rate selection proposed in the June 2009 draft addendum. Therefore, no change is required to the final determination related to the discount rate. The discount rate change proposed in the June 2009 Draft Addendum was not adopted, and the discussion in Southwestern's June 2009 draft addendum on the discount rate is removed from the addendum.

Based on an October 28, 2009, date of implementation for the White River Minimum Flows project as established by Section 314 of Public Law 111-85 and values for the specified parameters as of that date, Southwestern's modified final determination results in a present value of \$26,563,700 for the estimated future lifetime replacement costs of the electrical energy and capacity at FERC Project No. 2221. Southwestern's modified final determination results in a present value of \$52,576,600 for the estimated future lifetime replacement costs of the electrical energy and capacity for Federal hydropower at the Bull Shoals and Norfolk projects.

Dated: June 17, 2010.

Jon C. Worthington,
Administrator.

Comments on Southwestern's June 2009 Draft Addendum

Southwestern received comments from four entities and one individual during the public comment period. The comments, by category, and Southwestern's responses thereto, are set forth below:

A. Federal Energy Losses

1. *Comment.* The commenter stated they "believe that the most accurate and technically sound engineering methods must be used to determine capacity and energy losses from water storage reallocation impacts," and they "were pleased to see that Southwestern is continuing to question procedures and when an inaccuracy was discovered, Southwestern corrected the issue."

Response: Concur.

B. Low Dissolved Oxygen (DO) Impact Quantification

1. *Comment.* The commenter stated they "agree with Southwestern that the increase in average pool elevation at Bull Shoals will cause water containing lower DO levels to flow through the turbines during generation."

Response: Concur.

2. *Comment.* "It appears from the addendum that Southwestern has used

and evaluated the most current and accurate DO cost data available to them. When the White River Minimum Flow Project is implemented, negative impacts will occur from the low DO and those negative impacts should be offset with credit provided to hydropower."

Response: Concur.

3. *Comment.* The commenter stated they "believe that the procedure developed by Southwestern appears to be reasonable and sound and should be used in the determination for credits to hydropower."

Response: Concur.

C. Interest Rate Used for Present Value Determination

1. *Comment.* The commenter disagreed with the discount rate selection proposed in Southwestern's June 2009 draft addendum, stating "While increasing the discount rate from 4.5% to 6.1% certainly accomplishes the goal of lessening the economic cost of the project, the selection of Empire's embedded long-term debt costs is arbitrary and capricious, unduly places the economic impact of the project on Empire and its customers, and is quite frankly flawed in many ways."

Response: Southwestern reviewed the validity of using the discount rate selection in its June 2009 Draft Addendum for both the Federal and non-Federal projects based on the non-Federal licensee's comment referencing its "cost of cash" prior to the Final Determination. Consistent with Section 314 of Public Law 111-85 amending the White River Minimum Flows legislation, Southwestern utilized the 30-year U.S. Treasury bond rate as in its Final Determination. The discount rate change proposed in the June 2009 Draft Addendum was not adopted.

2. *Comment.* "First, the debt interest rate information SWPA gathered from Empire's FERC Form No. 1 is correct. However, the debt Empire reports relates to financing projects, events and circumstances related to the past and does not contemplate impacts on Empire due to the White River Minimum Flows Project. Any rates derived from debt placed in the past are irrelevant."

Response: The discount rate change proposed in the June 2009 Draft Addendum was not adopted. See previous response.

3. *Comment.* "Second, SWPA inappropriately puts themselves in the position of making management decisions for Empire. SWPA states 'If the discount rate drops below the cost of long term debt for either the Federal or non-Federal projects it is reasonable to assume that any offset or

compensation would wisely be used to pay off those debts rather than invest the funds in lower interest bearing accounts.' In this instance, SWPA makes a broadly incorrect assumption that Empire could pay off a pro rata portion of each of the 12 different long-term securitized debt issuances that are outstanding. SWPA furthers this mistake by not including any costs for debt prepayment or early redemption fees that would be due bond holders or whether the issues even allow for an early redemption without bond holder approval."

Response: The discount rate change proposed in the June 2009 Draft Addendum was not adopted. See response to comment 1.

4. *Comment.* "Third, the Addendum provided by SWPA utilized Empire's long-term debt as of December 31, 2008 to determine a discount rate which is inconsistent with the remainder of the damage calculation. The weighted-average maturity of Empire's debt is just under fifteen years while the impact utilized in the initial study was based on fifty years."

Response: The discount rate change proposed in the June 2009 Draft Addendum was not adopted. See response to comment 1.

5. *Comment.* The commenter "recommends the current rate (4.25% as stated by SWPA at the time of the Addendum issuance) be used as the discount rate. While SWPA contends 'The recent changes in the investment sector have resulted in the current rate being artificially lowered' (emphasis added), this is the real and currently effective rate and no one can accurately predict the future rate or even the future of the investment sector."

Response: The discount rate change proposed in the June 2009 Draft Addendum was not adopted. The 30-year U.S. Treasury bond rate on the date of implementation specified in Public Law 111-85 was 4.50%. See response to comment 1.

6. *Comment.* "* * * we believe SWPA's application of Empire's cost of debt is arbitrary and capricious."

Response: The discount rate change proposed in the June 2009 Draft Addendum was not adopted. See response to comment 1.

7. *Comment.* "The SWPA makes an error in using an estimate of Empire's opportunity cost as a basis for determining the non-Federal discount rate used to calculate the present value of the increase in fuel expense that Empire would incur from the loss of energy from the White River Minimum Flows project."

Response: The discount rate change proposed in the June 2009 Draft Addendum was not adopted. See response to comment 1.

8. *Comment.* "First, the issue is not the use to which Empire might or might not make of the upfront compensation for the loss. The issue is the cost of the upfront payment to the Federal government. To put this in clear language: If the Federal government were to take this lump sum payment and invest it to produce the payments due Empire over the fifty-year period, what rate of interest could it earn at zero risk to make those payments? The clear and unequivocal answer is the risk-free treasury rate, which in August 2008 was 4.5% and is currently 4.23%, not Empire's cost of long-term debt."

Response: The discount rate change proposed in the June 2009 Draft Addendum was not adopted. See response to comment 1.

9. *Comment.* "Second, even if it is incorrectly assumed that the relevant issue is Empire's opportunity cost, the rate used by the SWPA is an average rate from 12 different long-term securitized debt issuances that are outstanding at this time. The SWPA has no knowledge of when these debt issuances are due or of any early redemption fees that Empire would have to pay the bond holders. The SWPA should not be using a measure of opportunity cost for Empire, and in particular should not use a measure associated with instruments with which it lacks familiarity. While a lack of familiarity with private bond markets by a public agency that does not deal with these markets on a day-to-day basis is understandable, had the SWPA consulted with the MoPSC in a timely manner on this matter, because it does deal with these markets, the MoPSC could have provided expertise and information on private bond markets and perhaps this error could have been avoided."

Response: The discount rate change proposed in the June 2009 Draft Addendum was not adopted. See response to comment 1.

10. *Comment.* "Third, the risk at issue here is that of the Federal government, not Empire's risk, however if Empire's risk were at issue, its investment risk would not be relevant to operational issues related to its hydroelectric facility. Instead, the only plausible risk would be related to the expected loss of energy from the Ozark Beach facility, and not the investment risk associated with the debt that Empire is currently holding. Therefore, the MoPSC does not agree with the SWPA in using a different discount rates for Federal

versus non-Federal projects, as both types of projects have similar, if not identical, operational risks.”

Response: The discount rate change proposed in the June 2009 Draft Addendum was not adopted. See response to comment 1.

11. *Comment.* “Fourth, using embedded cost of long-term debt to lower the lump-sum payment to a non-Federal project and raise the amount paid to Federal project based on different investment risk profiles makes little sense. It assumes that because owners of the non-Federal project have a higher investment risk they can earn a higher rate of return on their lump sum payment. If Empire’s investment risk were at issue, a higher risk should demand a higher rather than lower up-front payment. The opposite result of the SWPA’s findings (higher risk means lower up-front payment) demonstrates the flaw in using the opportunity cost of the recipients in calculating the lump sum payment.”

Response: The discount rate change proposed in the June 2009 Draft Addendum was not adopted. See response to comment 1.

12. *Comment.* “Fifth, by the SWPA finding the current treasury rate to be ‘artificially lowered,’ this means that the SWPA has better knowledge of financial risk than the markets. To state it another way, if the SWPA were to make the investment of the lump-sum payment and pay Empire from that investment, can it in fact make the full payment(s) required? If not, then the SWPA is literally ‘gambling’ against what the markets say can be achieved with Empire’s, i.e., ratepayers’, money. This is not in Empire’s ratepayers’ interest, and is therefore contrary to the public interest.”

Response: The discount rate change proposed in the June 2009 Draft Addendum was not adopted. See response to comment 1.

13. *Comment.* “Sixth, the SWPA’s concern with the changes in the investment sector resulting in a low Treasury bill rate, as reflected in the SWPA’s mistaken use of Empire’s supposed cost of capital for a discount rate, is inconsistent with the SWPA’s lack of concern about the recent impact of the downturned economy on wholesale electricity prices, as reflected in the SWPA’s adoption of the revised Platts’ price forecast.”

Response: The discount rate change proposed in the June 2009 Draft Addendum was not adopted. See response to comment 1.

14. *Comment.* “SWPA proposes to use a discount rate for the non-Federal Ozark Beach hydroelectric project in

Missouri that is at least 160 basis points higher than the discount rate being used for the two Federal projects. This action unfairly discriminates against Empire and ultimately Empire’s customers who have been receiving the benefits of this low-cost electricity for more than half a century. Just this one change proposed by SWPA would, in effect, ‘cheat’ Missouri electric consumers out of more than \$7 million dollars in compensation for the taking of their hydroelectric capacity.”

Response: The discount rate change proposed in the June 2009 Draft Addendum was not adopted. See response to comment 1.

15. *Comment.* “SWPA should not treat the non-Federal Ozark Beach Hydroelectric Project any differently than the two other Federal projects. The correct discount rate to use and update is the Treasury 30-year bond rate as the discount rate in its calculation of the present value of the energy loss over the fifty-year period.”

Response: The discount rate change proposed in the June 2009 Draft Addendum was not adopted. See response to comment 1.

D. Replacement Cost of Energy

1. *Comment.* The commenter “concur[s] that the March 2009 Platts high fuel data is lower than the November 2008 Platts high fuel data. We agree with SWPA’s prior comment that prices should be updated at the time of implementation.”

Response: Concur.

2. *Comment.* “SWPA should continue to use the Platts’ price forecast, but should update that forecast prior to the final calculations.”

Response: Concur.

E. Missouri Renewable Energy Standard

1. *Comment.* “* * * one parameter that has changed is Missouri voters’ approval on November 4, 2008, via Initiative Petition Vote, of a Renewable Energy Standard (RES).” “Energy from Empire’s Ozark Beach hydroelectric facility would qualify as renewable energy under the draft MPSC rule for Missouri’s RES.”

Response: FERC Project No. 2221 did not initially appear to qualify under the new standard. The Missouri Public Service Commission (MoPSC) confirmed that FERC Project No. 2221 does qualify under the new standard. Southwestern’s Final Determination provides that an appropriate credit for a state or Federal renewal standard be quantified and included in the compensation calculation.

Subsequently, Southwestern worked with the non-Federal licensee and the MoPSC to quantify an appropriate credit

for the loss of renewable energy at FERC Project No. 2221 resulting from the minimum flows project. The credit is included in the Addendum.

2. *Comment.* “SWPA failed to take into account a recent initiative petition voted into law in Missouri requiring investor-owned utilities to meet certain renewable energy standards. Since the new statutes state that ‘hydropower (not including pumped storage) that does not require a new diversion or impoundment of water and that has a nameplate rating of ten megawatts or less’ 393.1025(5) RSMo Cum. Sup. 2008, meet the definition of renewable energy resources and Empire’s Ozark Beach hydroelectric facility consists of 4 identical units, each with nameplate ratings of 4 MWh, energy from the Ozark Beach hydroelectric facility should qualify as renewable energy under these standards, with the first compliance year being calendar year 2011.”

Response: Southwestern included a credit for the loss of renewable energy at FERC Project No. 2221. See previous response.

3. *Comment.* “Since the output from Ozark Beach will be reduced, Empire most likely will need to use 1.25 Renewable Energy Credits (RECs) from its out-of-state wind generation for each MWh of in-state lost Ozark Beach generation. In-state generation receives an additional 25% of renewable credit compared to out-of-state generation.”

Response: Concur. Southwestern included an additional 25 percent credit for the loss of energy from a renewable energy source within the state of Missouri as provided for in Proposition C.

4. *Comment.* “Empire’s other renewable energy resources are wind units in Kansas. Therefore, Empire will need an additional 1.25 Renewable Energy Credits (RECs) from other renewable energy sources to replace each MWh of lost energy from the Ozark Beach hydroelectric facility caused by the storage reallocation at Bull Shoals Lake. The addition of 25% is due to the fact that in-state sources of renewable energy get 1.25 times the credit as out-of-state renewable energy. The SWPA should add the cost of RECs to the energy prices it is using to value the Ozark Beach hydroelectric facility lost energy. This would be calculated at the estimated cost of the REC times 1.25 to compensate for the loss from a within state source of renewable energy.”

Response: Concur. See previous response.

5. *Comment.* “Although a market for the value of a REC to comply with the Missouri RES is not readily transparent,

a one-cent per kWh (\$10 per MWh) cost appears to be a reasonable estimate. SWPA should update their analysis to reflect the Missouri RES that is now law.”

Response: Southwestern worked with the non-Federal licensee, the MoPSC, and two of its Federal hydropower customers in Missouri in estimating the value of the renewable energy credits lost due to the minimum flows project. That process is described in Southwestern’s Addendum.

6. *Comment.* “A reasonable and conservative estimate of the cost of a REC that would be added to the market price of energy is approximately \$10 per MWh factored up to \$12.50 per MWh for the loss of an in-state renewable energy source. This estimate is conservative since the U.S. Environmental Protection Agency’s (“EPA’s”) Green Power Partnership Web site lists three Missouri programs with pricing from \$15 per MWh to \$50 per MWh and a national average of \$19.47 per MWh.”

Response: Southwestern updated the REC price to reflect the implementation date specified in Public Law 111–85. See previous response.

7. *Comment.* “SWPA should include a \$12.50 per MWh adder escalating at 2.1% per year to Platt’s energy prices to account for the lost RECs, and should increase this to \$38.50 per MWh if the Federal government removes production tax credits for renewable energy production.”

Response: See responses to Comments 5 and 6.

F. Federal Carbon Legislation

1. *Comment.* The commenter “continues to assert that an amount should be included for carbon tax risks. On June 26, 2009, the United States House of Representatives passed that Waxman-Markey Bill, HR 2454, now referred to as the American Clean Energy and Security Act of 2009, which places limits on carbon dioxide (CO₂). Although the Senate has not yet passed a similar bill, it is more and more likely that Empire’s customers will see increased CO₂ costs due to the White River Minimum Flows Project.”

Response: Southwestern’s Final Determination provides that an appropriate credit for a cap-and-trade system should be quantified and included if legislation is enacted into law before the final calculations and payment to the non-Federal licensee. However, no such legislation has been enacted.

2. *Comment.* “Because Federal carbon legislation has not passed both the U.S. House and U.S. Senate, it is not yet a

Federal mandate. However, the House has passed HR 2454 (Waxman-Markey Bill) that includes carbon caps restricting carbon output to be the following percentages of 2005 output by the following years: 97% by 2012; 83% by 2020, 58% by 2030; and 17% by 2050.”

Response: See previous response.

3. *Comment.* “* * * the Congressional Budget Office predicts a carbon price to be \$16/ton by 2012 and that escalates to a price of \$26/ton by 2019 or an escalation rate of approximately 7.1% per year. With Empire’s average production of carbon equal to 1 ton of carbon per MWh, this will increase the price of lost energy an additional \$16 per MWh starting in 2012 and escalate at a 7.1% annual rate until the end of the fifty-year period. If the Senate passes this legislation in similar form, then SWPA needs to add these costs to the lost energy from the Ozark Beach hydroelectric facility.”

Response: See response to Comment 1.

4. *Comment.* “SWPA should update its calculations for carbon legislation if such legislation is passed by both House and Senate and signed into law prior to the final calculations.”

Response: See response to Comment 1.

5. *Comment.* “SWPA should update its calculations for carbon legislation and use Waxman-Markey as the basis for those calculations. To my great dismay, either Congress is going to pass cap-and-trade legislation or EPA is poised to enforce even more onerous regulations under the Clean Air Act. It no longer appears to be a question of ‘if’ but ‘when’ and your analysis contains no recognition of what the President and Congress are doing. Accordingly, you should include a \$16 per MWh adder starting in 2012 with an escalation rate of 7.1% compounded for each subsequent year based on the present Waxman-Markey Bill.”

Response: See response to Comment 1.

G. Federal Income Tax Considerations

1. *Comment.* The commenter stated, “This issue has been neglected by all parties up until this time.” “* * * a lump sum receipt of an amount to compensate the Company for the loss of future revenues will be taxable income to the Company in the year received.” “Therefore, regardless of the SWPA’s final determination, the result needs to be grossed up for income taxes in order for Empire to be ‘fully compensated’ as required by Section 132 of the Energy and Water Development Appropriations Act, 2006.”

Response: Do not concur. Throughout three years of public review and consultation with the non-Federal licensee and the state public service commission prior to publication of the Final Determination, neither the non-Federal licensee nor the state public service commission provided any comments or methodology addressing income tax implications, and it was not considered in Southwestern’s Final Determination. Further, neither the original White River Minimum Flows legislation, nor more recent Congressional action in Public Law 111–85 provide that Southwestern address income tax considerations or provide additional compensation to the non-Federal licensee so as to in effect treat the non-Federal licensee as if it were tax exempt for the purposes of the legislation. Under Public Law 109–103, compensation to the non-Federal licensee is to be made “on the basis of the present value of the estimated future lifetime replacement costs of the electrical energy and capacity at the time of implementation of the White River Minimum Flows project.” Southwestern does not consider the exclusion of income taxes as an error in the compensation calculations. Southwestern calculated the compensation to the non-Federal licensee as directed in the authorizing legislation. Absent specific Congressional direction to treat the compensation to the non-Federal licensee as non-taxable or address income taxes in some manner, Southwestern will not include a provision to gross-up the compensation to the non-Federal licensee.

2. *Comment.* “The compensation received by Empire should be the funds necessary to recompense Empire for the increased fuel cost it is expecting to experience as a result of the White River Minimum Flows project. These funds should be provided from the lump sum payment Empire receives from the SWPA and the earnings Empire realizes by investing those funds at a risk free rate equal to the discount rate used in the analysis of the project. However, since the lump sum payment from the SWPA, barring some preferred tax treatment, will be fully taxable in the year received, Empire will lose over 38% of the lump sum payment due to income taxes. In addition, annual earnings on the remaining amount of the lump-sum are also likely to be taxable in the year received. As a result, the remaining amount of the lump sum that is available for investment at a risk free rate equal to the discount rate will not provide sufficient compensation for the

increase in fuel cost that is expected to occur. Therefore, the lump-sum payment from the SWPA should be factored-up to offset the effect of income taxes to ensure that Empire is adequately compensated for the increased fuel cost that Empire expects to experience as a result of the White River Minimum Flows project.”

Response: Do not concur. See previous response.

3. *Comment.* “SWPA should increase the lump-sum payment it determines is appropriate, based on the other variables, by factoring-up the amount for income taxes. This calculation will offset the loss of funds, as a result of income taxes, and ensure that Empire receives adequate compensation for the increased fuel cost that it expects to incur as a result of the White River Minimum Flows project.

Response: Do not concur. See response to Comment 1.

4. *Comment.* “SWPA should increase the lump-sum payment it determines is appropriate, based on the other variables, by multiplying the amount by a tax factor. As of today, I have not been able to determine what this factor should be. My point is that there should definitely be a calculation to off-set the loss of funds available for investment, as a result of the income taxes in the year Empire receives the lump-sum payment, and ensure that Empire receives adequate compensation for the increased fuel cost that it expects to incur as a result of the White River Minimum Flows project.”

Response: Do not concur. See response to Comment 1.

H. Lack of Consultation by Southwestern

1. *Comment.* The non-Federal licensee commented, “Section 132 of the Energy and Water Development Appropriations Act, 2006 states ‘The Administrator of the Southwestern Power Administration, in consultation with the project licensee and the relevant state public utility commissions, shall determine any impacts on electric energy and capacity generated at Federal Energy Regulatory Commission Project No. 2221 caused by the storage reallocation of Bull Shoals Lake, based on data and recommendations provided by the relevant state public utility commissions.’ To Empire’s knowledge, despite the fact Empire feels there was constructive dialogue during the development of the initial January 22, 2009 Final Determination, no consultation occurred between the Final Determination and the Draft Addendum to the Final Determination. Empire

stands ready to discuss any of our comments with SWPA before the Addendum to the Final Determination is finalized.”

Response: Southwestern consulted with the non-Federal licensee and the MoPSC in a September 28, 2009, meeting to discuss their comments and concerns with Southwestern’s June 2009 Draft Addendum. Southwestern subsequently consulted with the non-Federal licensee and the MoPSC in developing a source for REC prices to be utilized in the final compensation calculations.

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BILLING CODE 6450-01-P

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OAR-2007-0544; FRL-9167-3]

Agency Information Collection Activities: Proposed Collection; Comment Request; Information Request for Pulp and Paper Sector New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAP) Residual Risk and Technology Review; EPA ICR No. 2393.01, OMB Control Number 2060-NEW

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this action announces that the EPA is planning to submit a request for a new Information Collection Request to the Office of Management and Budget. This is a request for a new collection. Before submitting the Information Collection Request to the Office of Management and Budget for review and approval, EPA is soliciting comments on the proposed information collection as described below.

DATES: Comments must be submitted on or before August 23, 2010.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-HQ-OAR-2007-0544, by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail:* a-and-r-docket@epa.gov
- *Fax:* (202) 566-1741
- *Mail:* Air and Radiation Docket and Information Center, Environmental Protection Agency, Mailcode: 22821T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

• *Hand Delivery:* Air and Radiation Docket and Information Center, U.S. EPA, Room 3334, EPA West Building, 1301 Constitution Avenue, NW., Washington, DC. Such deliveries are only accepted during the Docket’s normal hours of operation and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA-HQ-OAR-2007-0544. EPA’s policy is that all comments received will be included in the public docket without change and may be made available on-line at www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through www.regulations.gov or e-mail. The www.regulations.gov Web site is an “anonymous access” system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through www.regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA’s public docket, visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

FOR FURTHER INFORMATION CONTACT: Bill Schrock, Office of Air Quality Planning and Standards, (E143-03), Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541-5032; fax number: (919) 541-3470; e-mail address: schrock.bill@epa.gov.

SUPPLEMENTARY INFORMATION:

How can I access the docket and/or submit comments?

EPA has established a public docket for this Information Collection Request (ICR) under Docket ID No. EPA-HQ-OAR-2007-0544, which is available for