20426) and must be served on each person whose name appears on the official service list. Please put the project name ''King Mill Project'' and number ''P–9988–015'' on the front cover of any motion. If no such motions are filed, the restricted service list will be effective at the end of the 15-day period. Otherwise, a further notice will be issued ruling on any motion or motions filed within the 15-day period.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–1357 Filed 1–22–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Southwestern Power Administration

White River Minimum Flows—Final Determination of Federal and Non-Federal Hydropower Impacts

AGENCY: Southwestern Power Administration, DOE.

ACTION: Notice of final determination.

SUMMARY: Section 132 of Public Law 109–103 (2005) authorized and directed the Secretary of the Army to implement alternatives BS–3 and NF–7, as described in the White River Minimum Flows Reallocation Study Report, Arkansas and Missouri, dated July 2004.

The law states that the Administrator, Southwestern Power Administration (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 Federal Energy Regulatory Commission (FERC) Project No. 2221 caused by the storage reallocation at Bull Shoals Lake. Further, the licensee of Project No. 2221 shall be fully compensated by the Corps of Engineers 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 states that losses to the Federal hydropower purpose of the Bull Shoals and Norfork Projects shall be offset by a reduction in the costs allocated to the Federal hydropower purpose.

Further, such reduction 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.

Southwestern's draft determination was published by **Federal Register** Notice (73 FR 6717) dated February 5, 2008. 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. Since 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 by **Federal Register** Notice (73 FR 38198) on July 3, 2008. 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. All public comments received were considered in revising the proposed determination, and Southwestern is publishing notification of its final determination. Southwestern's final determination is fully documented in its Final Determination Report dated January 2009, which was prepared in consultation with the licensee and the relevant public service commissions.

Southwestern's Final Determination 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 Norfork projects. The actual hydropower compensation values are to be calculated using the method presented in the final determination and current values for the specified parameters based on the official implementation date.

Assuming a January 1, 2011, date of implementation for the White River Minimum Flows project and November 2008 values for the specified parameters, Southwestern's determination results in a present value for the estimated future lifetime replacement costs of the electrical energy and capacity at FERC Project No. 2221 of $41,319,400. Southwestern's determination results in a present value for the estimated future lifetime replacement costs of the electrical energy and capacity for Federal hydropower of $109,920,200.

An electronic copy of Southwestern's Final Determination Report is available on Southwestern's Web site at *http://www.swpa.gov/pdfs/WRMF_SWPA_FinalDeterminationReport.pdf.*

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.robbins@swpa.gov.*

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 which was created by an Act of the U.S. Congress, entitled the Department of Energy Organization Act, Public Law 95–91 (1977). Southwestern markets power from 24 multi-purpose reservoir projects with hydroelectric power facilities constructed and operated by the U.S. Army Corps of Engineers. These projects are located in the states of Arkansas, Missouri, Oklahoma, and Texas. Southwestern's marketing area includes these states plus Kansas and Louisiana.

Southwestern developed a procedure for calculating projected energy and capacity losses for FERC Project No. 2221 and the Bull Shoals and Norfork projects, including additional losses related to the reallocation for minimum flows as appropriate. Based on November 2008 values for the specified parameters, the calculated compensation due to the licensee of FERC Project.

No. 2221 is $41,319,400, and the calculated credit due to Federal hydropower is $109,920,200. The values were calculated on the basis of the present value of the estimated future lifetime replacement cost of the electrical energy and capacity assuming an implementation date of January 1, 2011, for the White River Minimum Flows project.

The final calculation will depend on the official date of implementation as specified by the Corps of Engineers and the value of the specified parameters in effect at that time.

FERC Project No. 2221, the non-Federal Ozark Beach hydroelectric project, will be directly affected by the minimum flow plan. The implementation of the authorized plan will result in a reduction of the amount of gross head (headwater elevation minus the tailwater elevation) available for generation at the non-Federal project at Ozark Beach. The reduction in gross head will result in an annual energy loss of 6,029 megawatt-hours (MWh) of on-peak energy and 2,969 MWh of off-peak energy, or an annual total energy loss of 8,998 MWh. Also associated with the loss of gross head, there will be a

capacity loss of 3.00 megawatts (MW) at the project.

Section 132 of Public Law 109–103 (2005) authorized alternative BS–3 at Bull Shoals, as described in the White River Minimum Flows Reallocation Study Report, Arkansas and Missouri, dated July 2004. Under the authorized plan for the Bull Shoals project, five feet of storage for minimum flows will be reallocated from the flood control pool with provisions to provide a portion of the reallocated storage for hydropower's use to maintain the yield of the current hydropower storage. The current seasonal pool plan will be superimposed on the new top of conservation pool. As a result, both the conservation and seasonal pool levels at Bull Shoals will be raised five feet. The additional downstream releases for minimum flows will be accomplished by generating with one of the main units at a low, inefficient rate. Since the current hydropower yield will be maintained, there will be no loss of marketable capacity or peaking energy at Bull Shoals.

The energy loss, 23,855 MWh per year of off-peak energy, will be the result of making the required minimum downstream releases by generating energy at a much lower plant efficiency than normal generation.

Since the energy that is produced from the minimum flow releases will be generated at a time when the energy is not needed to fulfill Federal peaking energy contracts, it is similar in value to the off-peak energy normally generated during flood control operations.

Operating a main unit at the lower efficiency will also increase the average maintenance costs at the project by an estimated $68,000 per year. Section 132 of Public Law 109–103 (2005) authorized alternative NF–7 at Norfork, as described in the White River Minimum Flows Reallocation Study Report, Arkansas and Missouri, dated July 2004. Under the authorized plan for the Norfork project, 3.5 feet of storage will be reallocated for minimum flows. One-half of the storage for minimum flows will be reallocated from the flood control pool and the other half from hydropower storage. The reallocation portion from the flood control storage is similar to the storage reallocation at Bull Shoals in that the hydropower storage yield for that portion will be maintained and the existing seasonal pool plan will be superimposed on the new top of conservation pool. As a result, both the conservation and seasonal pool levels at Norfork will be raised 1.75 feet. Unlike Bull Shoals, all minimum flow releases at Norfork, whether from reallocated flood or hydropower storage, will be spilled through a siphon with no energy generated from the water. Although there is no marketable capacity loss associated with the flood control storage portion of the reallocation, there will be an off-peak energy loss. The portion of the reallocation from the hydropower storage will reduce the yield available to hydropower and will directly impact the marketable capacity and on-peak energy available at Norfork. The annual energy loss at Norfork associated with the reallocation will be 6,762 MWh of off-peak energy and 6,762 MWh of on-peak energy, for a total annual energy loss of 13,524 MWh. The marketable capacity loss will be 3.93 MW.

Dated: January 12, 2009.

Jon C. Worthington,

Administrator.

Comments on Southwestern's June 2008 Proposed Determination

Southwestern received comments from 176 entities and individuals during the public comment period. All of the comments received were considered, and responses to all comments are included in Southwestern's Final Determination Report. The major comments, by categories, and Southwestern's responses thereto, included the following:

A. Energy and Capacity Losses

1. *Comment.* The non-Federal licensee reiterated the comments they provided on Southwestern's Draft Determination Report concerning the SUPER program and Southwestern's calculation of the lost energy.

Response: Southwestern addressed Empire's previous comments in its **Federal Register** Notice (73 FR 38198) dated July 3, 2008. Responses to the comments are also included in Appendix K of Southwestern's Proposed Determination Report and Final Determination Report.

2. *Comment.* The non-Federal licensee stated its ''calculations have resulted in a lost energy value that is approximately 40% higher than the most recent lost energy value calculated by SWPA'' and suggested that ''there must be significant differences in the modeling process as well.''

Response: Southwestern's calculations were performed on a daily basis for the period of record modeled in SUPER and were based on the daily calculated value of head available at Ozark Beach. Empire's calculations were based on a different period of record and assumed that the loss of head would be five feet every day. The loss of head will vary on a daily basis and will not be a constant five feet. Southwestern's analysis correctly accounts for the daily variation in available head at the project. The different head calculation/assumption accounts for the majority of the difference in the energy loss determination noted by Empire.

3. *Comment.* The non-Federal licensee requested access to the SUPER model, including the data files used by Southwestern to calculate the lost energy at Ozark Beach, and the user's manual. It also requested copies of the model output showing benchmarking results that correlate the SUPER program output with the actual amount of energy generated at Ozark Beach through the historical period.

Response: Southwestern has provided the data files used in its SUPER analysis and the calculations and output used in comparing the SUPER output with historical generation at Ozark Beach. Southwestern advised Empire, and Empire acknowledged that the SUPER program and user's manual is the property of the Corps of Engineers and Empire would need to ask the Corps for that material.

4. *Comment.* The non-Federal licensee agrees with the 67% on-peak and 33% off-peak split for the lost energy at Ozark Beach.

Response: Concur.

5. *Comment.* The non-Federal licensee agrees with Southwestern's determination of the 3.00 MW capacity loss at Ozark Beach.

Response: Concur.

6. *Comment.* The commenters stated that they ''continue to support Southwestern's technical approach to the calculation of lost capacity and energy from water storage reallocations.''

Response: Concur.

7. *Comment.* The commenter ''strongly supports the process Southwestern uses for identifying and quantifying the energy and capacity lost due to reallocation of storage at Bull Shoals and Norfork, as well as the process for determining whether particular energy lost is peaking energy versus off-peak energy.''

Response: Concur.

8. *Comment.* The commenter ''concurs with the use of the drought of record to determine the loss of dependable capacity'' and also stated ''since Southwestern's system is entirely hydro-based and Southwestern markets firm capacity, use of the drought of record is the only acceptable method to determine capacity losses due to storage reallocation.''

Response: Concur.

9. *Comment.* The commenter questioned whether Southwestern's

calculations for Bull Shoals and Norfork included Hydropower Yield Protection Operation (HYPO) storage and Dependable Yield Mitigation Storage (DYMS) storage. They stated ''storage not available to meet minimum flow should not be included in the energy compensation calculations at Bull Shoals and Norfork.''

Response: Concur. Southwestern's determination of the hydropower impacts at Bull Shoals and Norfork due to the implementation of minimum flows was based on comparing current conditions and conditions after the implementation of minimum flows. The HYPO and DYMS storage provided as a result of the flood control storage reallocations has never been included as part of the minimum flows storage in the SUPER simulation or in Southwestern's calculations.

10. *Comment.* The commenter questioned Southwestern's characterization of all energy produced from minimum flow releases at Bull Shoals as off-peak. They noted that ''generation occurring between 6 a.m. and 10 p.m. (16 hours) is considered on-peak, and electricity produced between 10 p.m. and 6 p.m. (8 hours) is considered off-peak.'' They suggested that ''a split of 67% on-peak and 33% off-peak should be used to value energy produced by minimum flows at Bull Shoals.''

Response: Southwestern's marketing plan and the limited storage in Bull Shoals dictate that in a conservation pool operation, the Bull Shoals project may be run for only a few hours during the day to meet customers' contractual peaking energy demands. Releases for minimum flows will be made through one of the main units during all other hours of the day. Even though minimum flows may be released during the industry standard on-peak hours of the day (6 a.m. to 10 p.m. weekdays, excluding holidays), the energy that results from those releases will be produced at a time when it is not needed to fulfill Southwestern's contractual obligations. That energy will be marketed by Southwestern to its customers as ''supplemental'' energy. While supplemental energy is valuable to Southwestern's customers, it is not nearly as valuable to them as firm peaking energy. Southwestern will continue to consider all energy produced by minimum flows at Bull Shoals to be off-peak energy. If the lost energy were valued as on-peak energy as suggested, the credit to the Federal hydropower purpose would increase.

11. *Comment.* The commenter questioned the use of the current seasonal pool in the base condition SUPER run stating ''Base runs for the determining of energy loss at Bull Shoals and Norfork should not include seasonal pools. If included, we would consider the use of seasonal pools on both reservoirs a significant federal action and subject to NEPA.''

Response: Releases have been required from Bull Shoals and Norfork since the 1960s in order to maintain water temperatures suitable for the downstream trout fishery. Those releases are dependent on the forecasted air temperature to assure more cold water releases on hotter days. Since storage was not specifically allocated to the trout fishery, releases were made from hydropower storage. The increase in reliability of the cold water for the fishery reduced the flexibility of the hydropower operation. The water was still being used for power production, but the schedule was based on fishery requirements rather than electrical demand. Minimum release requirements from Bull Shoals and Norfork were increased in the late 1970s in an effort to achieve desired water temperatures in the river all the way down to Sylamore.

During the mid-1970s, the Corps and Southwestern negotiated the development of seasonal use of a portion of the flood control storage for hydropower use. That seasonal use of flood storage was an attempt to minimize the losses to power production caused by the releases necessary to maintain the trout fishery. The current seasonal pools at Bull Shoals and Norfork Lakes were officially implemented as a permanent part of the Corps' water control plan in the late 1970s in order to provide a more dependable supply of water from hydropower storage for the trout fishery, while partially mitigating the hydropower losses due to those releases. The seasonal pools are a part of the current approved water control plans as shown in the Corps' ''White River Basin, Arkansas and Missouri, Water Control Master Manual,'' dated March 1993. As such, the seasonal pools were included in both the base and minimum flow SUPER runs for the Corps' and Southwestern's analysis.

Exclusion of the seasonal pools from the base condition, as suggested, and inclusion of the seasonal pools in the ''with project'' condition, as authorized, would result in even higher energy and capacity losses to the non-Federal licensee of FERC project number 2221.

12. *Comment.* The commenter questioned Southwestern's computed capacity loss at Ozark Beach, stating that ''compensation for energy loss alone seems to be a more reasonable approach.''

Response: Since the Ozark Beach project is a run of river project and not a storage project, the capacity loss calculation was developed with a slightly different type of analysis than that performed at Bull Shoals and Norfork. The capacity loss was computed by comparing the plant capacity values in the base SUPER run and the minimum flows SUPER run. The average difference in capacity over the 23,376 days in the period of record is 1.87 MW. The median difference is 2.34 MW. A duration analysis of the daily differences in capacity revealed that the difference was 3.00 MW or greater about 30 percent of the time. In addition, the difference was 3.00 MW or greater about 30 percent of the time during the typically high electrical load months of July and August. For a storage project, a reduction of capacity during the critical period is considered to be a capacity loss to the project. For a run of river project, capacity that is unavailable 30 percent of the time, especially during the peak electrical demand months, is not reliable or marketable. Electrical consumers expect their lights to work 100 percent of the time, not 70 percent. Empire computed the capacity loss independently by a different method and also determined a 3.00 MW capacity loss. The capacity loss at Ozark Beach is 3.00 MW.

13. *Comment.* ''It appears as though worst case scenarios and drought environmental conditions were used to calculate all energy and capacity losses for both SWPA and Empire District Electric. When SWPA calculated energy losses what was the basis of these calculations?''

Response: Energy losses for both the Federal and non-Federal hydropower projects were computed based on average annual results over the 1940–2003 period of record modeled with the Corps' SUPER reservoir simulation model.

Capacity losses at the Federal projects were computed based on the 1953–1954 drought. Southwestern bases its marketable capacity on the worst drought in the period of record in order to provide reliable, dependable electrical capacity. The critical drought occurred in Southwestern's system during the period from June 1953 through August 1954, with August 1954 being the critical month. Thus, the computed capacity loss was also determined based on that drought period. Any reduction in the yield of the hydropower storage will result in a reduction of the marketable capacity that can be supported by the storage. A reduction in the supportable capacity results in a capacity loss. There was no

capacity loss at Bull Shoals. There was a capacity loss computed at Norfork that was due to the conservation storage portion of the reallocation.

The capacity loss calculated for the non-Federal project was discussed in the previous response.

B. Replacement Costs of Energy and Capacity

1. *Comment.* The non-Federal licensee agreed with Southwestern's use of the Platts High Fuel Value energy costs for replacement on-peak and off-peak energy and combined cycle plant capacity cost for replacement capacity.

Response: Concur.

2. *Comment.* The commenter stated that ''on average, the Platts forecast of electricity prices provides a reasonable basis for estimating the economic value of the energy lost by Empire District Electric Company at its Ozark Beach Hydroelectric Plant on the White River.''

Response: Concur.

3. *Comment.* The commenter stated that they ''believe that Platts Power Outlook Research Service offers as reliable a forecast as is currently available. We have no objection to the use of the Platts long-term forecast, on the understanding that the forecast will be updated at the time the minimum flow program is implemented.''

Response: Concur.

4. *Comment.* The commenter ''commends Southwestern for adopting recommendations it received in the previous comment period to utilize Platt's energy price forecasts as the proxy for the value of on-peak and off-peak energy losses.''

Response: Concur.

5. *Comment.* ''According to the SWPA report, energy and capacity losses were calculated utilizing the Platts and FERC methods. Is it prudent to assume that the methods used for calculating energy losses and capacity losses should be the same?''

Response: The Corps' Hydropower Analysis Center (HAC) is responsible for developing the energy and capacity values used by the Corps in their evaluation of hydropower projects. Prior to mid-2005, HAC typically used the PROSYM production cost model, a proprietary computer model, to develop energy values and used procedures developed by FERC to develop capacity values. The FERC model also computed energy values; however, HAC did not use those values in its computations. Southwestern concluded based on purchasing experience that the PROSYM model produced energy values considerably below market rates. Although the FERC method energy values were also typically below market rates, they better reflected market values than the PROSYM model values. Absent another source, Southwestern would typically use the FERC method energy values to determine the impacts of various changes on hydropower production. Southwestern, like HAC, used the FERC method in determining the value of capacity losses.

Southwestern used the FERC method calculations for valuation of both lost energy and capacity in its Draft Determination Report. Southwestern recognized that the FERC-based values for energy, particularly off-peak energy, were significantly below real-life market conditions. However, Southwestern used the FERC-based values to be consistent with its previous comments on Corps reallocation studies.

The Corps' HAC began exploring other sources to provide realistic energy values during the study period. In late 2005, HAC started using the Platts Power Outlook Research Service, a North American power market forecast subscription service, for determining energy values. Although FERC no longer supported its model, HAC continued using the FERC model for determination of capacity values by indexing upward to current prices. Southwestern began searching for more appropriate methods to determine both energy and capacity values when it was assigned responsibility of determining the hydropower impacts of the minimum flows to both the Federal and non-Federal projects. Comments on Southwestern's Draft Determination Report from electrical industry participants strongly supported the use of an industry source such as Platts to overcome the wide disparity between the low energy prices used in the initial report and actual market conditions. Southwestern's research revealed that the Platts values for on-peak and off-peak energy are much more reflective of the current market than the FERC values and closely match Southwestern's energy purchases during the 2005–2006 drought period. A discussion of Southwestern's research is included in Appendix L in Southwestern's Final Determination Report. Like HAC, Southwestern eventually concluded that Platts was the best source for energy values and, because of a lack of other sources, the FERC method would continue to be the best source for determining the capacity value.

Additionally, the Corps and Empire had agreed to the use of the Platts energy values prior to Southwestern's legislative obligation to determine the hydropower impacts. Electrical industry participants also commented that the FERC-based values for capacity were ''reasonable'' but ''conservative''. Sources for valuing energy and capacity are limited. Southwestern attempted to use sources that closely reflect market conditions.

6. *Comment.* ''According to the SWPA study, energy losses were calculated utilizing on peak energy replacement costs only. Since generation can occur at on and off peak times, shouldn't on and off peak rates be utilized in this calculation?''

Response: Both on-peak and off-peak energy rates were utilized in the calculation as determined appropriate according to when the losses were expected to occur. The energy loss at Bull Shoals was considered 100% off-peak. The energy loss at Norfork was considered 50% on-peak and 50% off-peak. The energy loss at Ozark Beach was considered 67% on-peak and 33% off-peak. The reasoning behind those on-peak/off-peak splits is detailed in Southwestern's report. Losses considered on-peak were valued as on-peak energy, and losses considered off-peak were valued as off-peak energy.

C. Maintenance Costs

1. *Comment.* ''The sources used by Empire do not include fixed O&M costs as part of the capacity costs. As long as there is agreement that the ultimate source is: a) reflective of the current market for construction costs and b) actually includes fixed O&M costs, Empire will accept this assumption.''

Response: Concur.

D. Inflation

1. *Comment.* The non-Federal licensee agrees that the inflation rate used by Southwestern is ''an acceptable assumption.''

Response: Concur.

2. *Comment.* The commenter stated that ''from 1982 to 2006, inflation has averaged 3.1 percent per year'', and reiterated their recommendation that Southwestern utilize ''an industry specific producer price index which more closely mirrors the increased costs associated with electric power generation.''

Response: Southwestern recognizes that historical inflation rates, including the Bureau of Labor Statistics data cited by the commenter, have been higher than the EIA ''reference case'' rate proposed by Southwestern in its proposed determination. Economic conditions over the next 50 years are difficult if not impossible to reliably predict. Southwestern has been unable to locate a long-term, energy-specific inflation forecast. The EIA is an independent statistical and analytical

agency within the U.S. Department of Energy, which is a recognized source of policy-neutral data, forecasts, and analyses. Southwestern will continue to use the ''reference case'' inflation rate in the latest Annual Energy Outlook in the determination of the Federal and non-Federal hydropower impacts.

3. *Comment.* The commenter urged Southwestern to ''search for another proxy that better reflects the anticipated cost increases to be expected in the electric utility industry.''

Response: See response to Comment 2.

E. Present Value Determination

1. *Comment.* The non-Federal licensee ''agrees with SWPA that the current rate on 30-year Treasury Notes at the time of implementation is the appropriate value to use in the calculation.''

Response: Concur.

2. *Comment.* The commenter stated that they ''support Southwestern's selection of the current rate on 30-year Treasury notes to be used as the discount rate in the present value calculation.''

Response: Concur.

3. *Comment.* ''Per the SWPA study, Empire's loss of hydropower and capacity calculations have been based on a 50 year time frame. Since Ozark Beach Dam's FERC license is only good for another 14 years—to 2022, why would the cost be calculated based on 50 years when their license (FERC license number 2221) expires in 14 years? There is no guarantee that Empire's FERC license will be reissued particularly in light of the potential for other energy options to materialize. Is it legal or ethical for Congress to appropriate taxpayer dollars to pay Empire District Electric for future power that they are not yet licensed to market?''

Response: Southwestern selected a 50-year period for its analysis of the impacts of the White River minimum flows project on hydropower production at the FERC Project No. 2221 and for its determination of the compensation owed to the FERC licensee. The 50-year period does exceed the 14 years remaining on the current FERC license for the project.

The period of analysis used by Southwestern in its determination of the impacts of the White River minimum flows on the Empire District Electric Company's FERC-licensed project is based in part on the Economic and Environmental Principles and Guidelines for Water and Related Land Resources Implementation Studies (Principles and Guidelines). The Principles and Guidelines were developed by the U.S. Water Resources Council in 1983 to guide the formulation and evaluation studies of the major Federal water resources development agencies.

Since Empire has successfully completed the relicensing process several times for the project and there are no known environmental or safety issues at the project, there is no reason to believe that the project would not be relicensed again in the future. Empire has stated its intends to continue operation of the project and pursue the relicensing effort when needed. Empire has recently invested heavily in upgrading the power facility with the installation of new turbines.

The non-Federal licensee provided the following response at the request of Southwestern: ''Empire agrees that our current license will expire in 2022. Empire and its predecessors have operated and maintained this plant since it became commercial in 1913. It is our intention to apply for and receive a new FERC license in 2022. Our conversations with FERC staff in Chicago and Washington, DC indicate that every expiring license in the Midwest that has been applied for in the last 20 years has been renewed and that given Empire's excellent record of compliance it would be highly unlikely that Ozark Beach's license would not be renewed. We are not aware of any other energy option that may materialize that would be more cost beneficial than hydroelectric power. The law as enacted requires compensation to Empire for the future lifetime costs to our customers. It is our belief that a dam will continue to exist at the location of the present Ozark Beach dam as long as society exists. Even if a new dam were constructed, there would be 5 feet less head and the new dam would have much less economic value. The economic and biological impacts of removing the Ozark Beach dam would be large.''

Regarding the legality of paying Empire for losses beyond the 14 years remaining on its current license, Southwestern believes the law is very explicit that payment to Empire be based on the ''future lifetime replacement costs of the electrical energy and capacity'' loss ''caused by the storage reallocation at Bull Shoals Lake.'' The legislation places no condition on the status of Empire's license.

F. Carbon Tax and Renewable Portfolio Standard

1. *Comment.* The non-Federal licensee reiterated previous comments concerning a carbon tax and renewable risk premium and requested ''that a methodology be implemented to compensate it for the loss of renewable capacity and energy associated with the White River Reallocation at its Ozark Beach dam.''

Response: Southwestern maintains the position stated in its response to the previous comments in its **Federal Register** Notice (73 FR 38198) dated July 3, 2008: Since there is no way to reliably estimate if, when, or how a carbon dioxide tax would be implemented, Southwestern did not include losses based on a carbon dioxide tax. The impacts to both Federal and non-Federal hydropower should be quantified and included in the compensation calculation if any carbon dioxide tax legislation is implemented before the final payment or offset is completed.

Also, since there is no way to reliably estimate if, when, or how a renewable portfolio standard would be implemented, the impacts would be difficult to quantify. At the time of Southwestern's Draft and Proposed Determinations, the state of Missouri had a voluntary standard for adopting renewable energy but no mandatory targets. Voters in Missouri approved a state renewable energy standard in November 2008, and the voluntary standard was repealed. However, the Ozark Beach project does not appear to qualify under the new standard. Southwestern maintains the same position on a renewable risk premium as on a possible carbon dioxide tax: 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.

The authorizing legislation for the White River Minimum Flows project states that Empire will be compensated with a one-time payment ''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.'' If the compensation to Empire were changed from a one-time payment to payments over a number of years, compensation for the impacts of a carbon dioxide tax or a renewable portfolio standard for the remainder of the payments should be computed and applied if either were implemented during that series of payments.

G. Operational Considerations

1. *Comment.* The commenter stated that they ''support Southwestern's analysis and recommendations concerning the operational considerations in Section 8.''

Response: Concur.

2. *Comment.* ''In Section 8.2 Water Temperature Control states minimum flows should be considered meeting a portion of the 3-day, 6,000 cfs-day generation releases designed to maintain suitable water temperatures in the downstream trout fishery and SWPA's generation requirements should be reduced accordingly, or additional compensation provided. We agree releases are needed to maintain suitable water temperatures and commend SWPA for providing these releases. However, we do not agree these volumes should be reduced since (1) seasonal pools have been provided to mitigate SWPA for these generations, (2) neither the timing nor volume of these releases are optimal for addressing temperature needs of the downstream trout fishery.''

Response: Southwestern does not concur. The 3-day requirement is for a specific amount of water to be released over each 3-day period. The modeling and computation performed by both the Corps and Southwestern of the hydropower impacts and associated compensation were based upon the assumption that the minimum flow releases would be used to help meet those downstream requirements. If it is decided that such an operation is not desirable, then the assumption would need to be changed, the impact to hydropower would need to be recomputed, and the compensation increased accordingly.

[FR Doc. E9–1454 Filed 1–22–09; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–RCRA–2008–0548; FRL–8765–4]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Criteria for Classification of Solid Waste Disposal Facilities and Practices (Renewal), EPA ICR Number 1745.06, OMB Control Number 2050–0154

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA)(44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before February 23, 2009.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–RCRA–2008–0548, to (1) EPA, either online using *www.regulations.gov* (our preferred method), or by e-mail to *rcra-docket@epa.gov,* or by mail to: RCRA Docket (28221T), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; and (2) OMB, by *mail to:* Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *Attention:* Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Craig Dufficy, Office of Solid Waste, (5306P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; *telephone number:* 703–308–9037; *fax number:* 703–308–8686; *e-mail address: Dufficy.Craig@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On September 05, 2008 (73 *FR* 51807), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments during the comment period. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–RCRA–2008–0548, which is available for online viewing at *www.regulations.gov,* or in person viewing at the Resource Conservation and Recovery Act (RCRA) Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the RCRA Docket is (202) 566–0270.

Use EPA's electronic docket and comment system at *www.regulations.gov*, to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *www.regulations.gov*.

Title: Criteria for Classification of Solid Waste Disposal Facilities and Practices (Renewal)

ICR numbers: EPA ICR No. 1745.06, OMB Control No. 2050–0154.

ICR Status: This ICR is scheduled to expire on January 31, 2009. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: The 1984 Hazardous and Solid Waste Amendments (HSWA) to the Resource Conservation and Recovery Act (RCRA), as amended, mandated that the U.S. Environmental Protection Agency (EPA) revise the Criteria for Solid Waste Disposal Facilities that may receive household hazardous wastes and conditionally exempt small quantity generator (CESQG) wastes. In order to effectively implement and enforce these regulations (found at 40 CFR part 257, subpart B) on a State level, owners/operators of construction and demolition waste landfills that receive CESQG hazardous wastes have to comply with reporting and recordkeeping requirements. This ICR documents the ongoing recordkeeping and reporting burdens associated with the location and ground-water