

SECURITIES AND EXCHANGE COMMISSION

FORM POS AMC

Post-effective amendments for application or declaration

Filing Date: **1995-07-28**
SEC Accession No. **0000092122-95-000087**

([HTML Version](#) on secdatabase.com)

FILER

SOUTHERN CO

CIK: **92122** | IRS No.: **580690070** | State of Incorporation: **DE** | Fiscal Year End: **1231**
Type: **POS AMC** | Act: **35** | File No.: **070-08435** | Film No.: **95556721**
SIC: **4911** Electric services

Business Address
64 PERIMETER CTR EAST
ATLANTA GA 30346
4043930650

SECURITIES AND EXCHANGE COMMISSION
Washington, D. C. 20549

Amendment No. 5
(Post-Effective Amendment No. 4)
to
FORM U-1

APPLICATION OR DECLARATION

under

The Public Utility Holding Company Act of 1935

THE SOUTHERN COMPANY
64 Perimeter Center East
Atlanta, Georgia 30346

SAVANNAH ELECTRIC AND POWER COMPANY
600 Bay Street East
Savannah, Georgia 31401

ALABAMA POWER COMPANY
600 North 18th Street
Birmingham, Alabama 35291

SOUTHERN COMPANY SERVICES, INC.
64 Perimeter Center East
Atlanta, Georgia 30346

GEORGIA POWER COMPANY
333 Piedmont Avenue, N.E.
Atlanta, Georgia 30308

SOUTHERN ELECTRIC GENERATING COMPANY
600 North 18th Street
Birmingham, Alabama 35291

GULF POWER COMPANY
500 Bayfront Parkway
Pensacola, Florida 32501

SOUTHERN ELECTRIC INTERNATIONAL, INC.
900 Ashwood Parkway, Suite 500
Atlanta, Georgia 30338

MISSISSIPPI POWER COMPANY
2992 West Beach
Gulfport, Mississippi 39501

SOUTHERN NUCLEAR OPERATING COMPANY, INC.
40 Inverness Center Parkway
Birmingham, Alabama 35204

(Name of company or companies filing this statement
and addresses of principal executive offices)

THE SOUTHERN COMPANY

(Name of top registered holding company parent
of each applicant or declarant)

Tommy Chisholm
Secretary
The Southern Company
64 Perimeter Center East
Atlanta, Georgia 30346

Kirby R. Willis, Vice President,
Treasurer and Chief Financial Officer
Savannah Electric and Power Company
600 Bay Street East
Savannah, Georgia 31401

Art P. Beattie, Vice President,
Secretary and Treasurer
Alabama Power Company
600 North 18th Street
Birmingham, Alabama 35291

Tommy Chisholm, Vice President
and Secretary
Southern Company Services, Inc.
64 Perimeter Center East
Atlanta, Georgia 30346

Judy M. Anderson, Vice President
and Corporate Secretary
Georgia Power Company
333 Piedmont Avenue, N.E.
Atlanta, Georgia 30308

Art P. Beattie
Secretary and Treasurer
Southern Electric Generating Company
600 North 18th Street
Birmingham, Alabama 35291

Warren E. Tate, Secretary
and Treasurer
Gulf Power Company
500 Bayfront Parkway
Pensacola, Florida 32501

Tommy Chisholm, Vice President
and Secretary
Southern Electric International, Inc.
900 Ashwood Parkway, Suite 500
Atlanta, Georgia 30338

Michael W. Southern, Vice President,
Secretary and Treasurer
Mississippi Power Company
2992 West Beach
Gulfport, Mississippi 39501

John O. Meier, Vice President
and Corporate Secretary
Southern Nuclear Operating Company, Inc.
40 Inverness Center Parkway
Birmingham, Alabama 35204

(Names and addresses of agents for service)

The Commission is requested to mail signed copies of all
orders, notices and communications to:

W. L. Westbrook
Financial Vice President
The Southern Company
64 Perimeter Center East
Atlanta, Georgia 30346

John D. McLanahan, Esq.
Troutman Sanders LLP
600 Peachtree Street, N.E.
Suite 5200
Atlanta, Georgia 30308-2216

INFORMATION REQUIRED

Post-Effective Amendment No. 1 (Amendment No. 2) to the
Application or Declaration heretofore filed in this proceeding,
as previously amended by Post-Effective Amendment Nos. 2 and 3
(Amendment Nos. 3 and 4), is hereby further amended as follows:

1. The first paragraph of Item 1.2, Proposed Modification to 1994 Order, is amended and restated in its entirety to read as follows:

"Southern now proposes to issue and sell the additional shares of its common stock pursuant to the Plans from time to time on or prior to December 31, 1999. Southern intends to utilize the net proceeds from of the sales of the additional common stock to make investments in subsidiaries, including EWGs and FUCOs, and for other corporate purposes. Investments in subsidiaries would only be made in accordance with existing or future authorizations in separate proceedings, or in accordance with such exemptions as may exist under the Act and the rules and regulations thereunder, provided however, that the sum of (i) the net proceeds of sales of additional common stock used for the purpose of acquiring the securities of or other interests in any such entities, as authorized in this proceeding and in File No. 70-8277, (ii) the principal amount of securities of any EWGs or FUCOs at any time outstanding in respect of which Southern has provided a guarantee, as authorized in File No. 70-8277, and (iii) the proceeds of short-term and term loan borrowings and/or commercial paper sales at any time invested by Southern in EWGs and FUCOs, as authorized in File No. 70-8309, shall not, when added to Southern's direct or indirect "aggregate investment" in all EWGs and FUCOs, at any point in time exceed 50% of Southern's

"consolidated retained earnings" (hereinafter, the "Rule 53 Limitation"). Southern's "aggregate investment" and "consolidated retained earnings" shall be determined in accordance with Rule 53(a). The current Rule 53 Limitation, which is based on Southern's "consolidated retained earnings" for the four quarters ended March 31, 1995, and "aggregate investment" at July 28, 1995, is approximately \$903.9 million, as shown in Item 1.3, below."

2. The second paragraph of Item 1.3, Compliance with Rule 53, is amended and restated in its entirety to read as follows:

"Rule 53(a)(1): At July 28, 1995, Southern had invested, directly or indirectly, an aggregate of \$668.1 million in EWGs and FUCOs, inclusive of investments in certain intermediate subsidiaries.¹ The average of the consolidated retained earnings of Southern reported on Form 10-K or Form 10-Q, as applicable, for the four consecutive quarters ended March 31, 1995, is \$3.144 billion. Accordingly, based on Southern's "consolidated retained earnings" at March 31, 1995, the Rule 53 Limitation is currently about \$903.9 billion, calculated as follows: 50% of "consolidated retained earnings" (\$1.572 billion) less "aggregate investment" at July 28, 1995 (\$668.1 million) equals \$903.9 million."

3. Item 2, Fees, Commissions and Expenses, is amended and restated in its entirety to read as follows:

1 These investments are in companies or partnerships that are EWGs operating or constructing facilities in Hawaii, Virginia, and Trinidad and Tobago, and in FUCOs operating facilities and utility systems in The Grand Bahamas, Chile, Argentina, and England.

- 3 -

"The additional fees, commissions, and expenses paid or to be incurred in connection with the filing of this Post-Effective Amendment are estimated not to exceed \$4,000, which includes the Commission's filing fee and the estimated fees of counsel for the applicants."

4. Item 6, Exhibits and Financial Statements (Supplemental List), is completed with the filing if the following exhibit:

(a) Exhibits

F-1(a) - Opinion of Troutman Sanders, counsel for Southern.

SIGNATURES

Pursuant to the requirements of the Public Utility Holding Company Act of 1935, the undersigned companies have duly caused this amendment to be signed on their behalf by the undersigned thereunto duly authorized.

Dated: July 28, 1995

THE SOUTHERN COMPANY

By: /s/Tommy Chisholm
Tommy Chisholm
Secretary

ALABAMA POWER COMPANY

By: /s/Wayne Boston
Wayne Boston
Assistant Secretary

(Signatures continued on next page)

- 4 -

GEORGIA POWER COMPANY

By: /s/Wayne Boston
Wayne Boston
Assistant Secretary

GULF POWER COMPANY

By:/s/Wayne Boston
Wayne Boston
Assistant Secretary

MISSISSIPPI POWER COMPANY

By: /s/Wayne Boston
Wayne Boston
Assistant Secretary

SAVANNAH ELECTRIC AND POWER COMPANY

By: /s/Wayne Boston
Wayne Boston
Assistant Secretary

SOUTHERN COMPANY SERVICES, INC.

By: /s/Wayne Boston
Wayne Boston
Assistant Secretary

SOUTHERN ELECTRIC GENERATING COMPANY

By: /s/Wayne Boston
Wayne Boston
Assistant Secretary

(Signatures continued on next page)

- 5 -

SOUTHERN ELECTRIC INTERNATIONAL, INC.

By: /s/Wayne Boston
Tommy Chisholm
Secretary

SOUTHERN NUCLEAR OPERATING COMPANY, INC.

By: /s/Wayne Boston
Wayne Boston
Assistant Secretary

TROUTMAN SANDERS
600 PEACHTREE STREET, SUITE 5200
ATLANTA, GA 30308
404-885-3000

July 28, 1995

Securities and Exchange Commission
Washington, D.C. 20549

Re: The Southern Company - Post-Effective Amendment
to Application or Declaration (File No. 70-8435)

Ladies and Gentlemen:

We are familiar with Post-Effective Amendment No. 1 to the statement on Form U-1 referred to above, as amended by Post-Effective Amendment Nos. 2 through 4, and are furnishing this opinion with respect to the proposed issuance by The Southern Company ("Southern") of additional shares of its common stock, par value \$5 per share (the "Stock"), pursuant to certain employee and shareholder plans.

We are of the opinion that Southern is a validly organized and duly existing corporation under the laws of the State of Delaware and that, upon the issuance of your order or orders herein, and in the event that the proposed transactions are consummated in accordance with such statement on Form U-1 and your order or orders:

(a) all state laws applicable to the proposed transactions will have been complied with;

(b) upon compliance with the relevant provisions of the Securities Act of 1933, as amended, and the securities or "Blue Sky" laws of any jurisdiction applicable thereto, when certificates for the Stock have been executed by Southern, countersigned and registered by the transfer agent and registrar and delivered for a consideration in cash equal to or greater than the par value of the Stock in

accordance with resolutions duly adopted by the board of directors of Southern, the Stock will be validly issued, fully paid and nonassessable shares of Southern and the holders thereof will be entitled to the rights and privileges appertaining thereto set forth in the Certificate of Incorporation of Southern, as amended, defining such rights and privileges; and

(c) the consummation of the proposed transactions will not violate the legal rights of the holders of any

Securities and Exchange Commission

July 28, 1995

Page 2

securities issued by Southern or any associate company thereof.

We hereby consent to the use of this opinion in connection with the filing of such statement on Form U-1.

Very truly yours,

/s/Troutman Sanders LLP

Troutman Sanders LLP