

Gulf Power Company  
500 Bayfront Parkway  
Post Office Box 1151  
Pensacola, FL 32520-0781  
Telephone 904 444-6231

ORIGINAL  
FILE COPY

Susan D. Cranmer  
Assistant Secretary and  
Assistant Treasurer

the southern electric system

*[Handwritten signature]*

August 1, 1996

Ms. Blanca S. Bayo, Director  
Division of Records and Reporting  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee FL 32399-0870

960000  
~~940835 TI~~

- ACK \_\_\_\_\_
- AFA \_\_\_\_\_
- APP 1
- CAF \_\_\_\_\_
- CMU \_\_\_\_\_
- CTR \_\_\_\_\_
- EAG \_\_\_\_\_
- LEG 1
- LIN \_\_\_\_\_
- OPC \_\_\_\_\_
- RCH \_\_\_\_\_
- SEC 1
- WAS \_\_\_\_\_
- OTH \_\_\_\_\_

Dear Ms. Bayo:

RE: The Southern Company - Amendments No. 6 and No. 7 to Form U-1 Relating to the Reorganization of SEI (SEC File No. 70-8733)

Enclosed for official filing are fifteen copies of Amendment No. 6 (Post-Effective Amendment No. 3) and Amendment No. 7 (Post-Effective Amendment No. 4) to Form U-1 relating to the reorganization of SEI as filed with the Securities and Exchange Commission (SEC File No. 70-8733) on June 25, 1996 and July 5, 1996, respectively. This filing is required by Rule 53(a)(4) of the General Rules and Regulations under the Public Utility Holding Company Act of 1935, as amended, 15 U.S.C. §§ 79a et seq. (the "Act").

Please mark the enclosed extra copy of this letter with the date and time the material was accepted in your office for filing and return same to the undersigned.

Sincerely,

*Susan D. Cranmer*

lw

Enclosures

cc: Florida Public Service Commission  
Cynthia Miller, Esq.  
Gulf Power Company  
G. E. Holland, Esq.

ADMINISTRATION MAIL ROOM  
Aug 5 9 32 AM '96

RECEIVED

DOCUMENT NUMBER-DATE

08135 AUG-5 96

FPSC-RECORDS/REPORTING

SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549

Amendment No. 6  
(Post-Effective Amendment No. 3)  
to  
APPLICATION OR DECLARATION  
on  
FORM U-1

under

The Public Utility Holding Company Act of 1935

THE SOUTHERN COMPANY  
270 Peachtree Street, N.W.  
Atlanta, Georgia 30303

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

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

SEI HOLDINGS, INC.  
900 Ashwood Parkway  
Suite 500  
Atlanta, Georgia 30338

SEI NEWCO 1, INC.  
900 Ashwood Parkway  
Suite 500  
Atlanta, Georgia 30338

MOBILE ENERGY SERVICES  
HOLDINGS, INC.  
900 Ashwood Parkway  
Suite 450  
Atlanta, Georgia 30338

SEI EUROPE, INC.  
900 Ashwood Parkway  
Suite 500  
Atlanta, Georgia 30338

(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  
270 Peachtree Street, N.W.  
Atlanta, Georgia 30303

Thomas G. Boren, President  
Southern Electric  
International, Inc.  
900 Ashwood Parkway  
Suite 500  
Atlanta, Georgia 30338

(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  
270 Peachtree Street, N.W.  
Atlanta, Georgia 30303

Thomas G. Boren, President  
Southern Electric  
International, Inc.  
900 Ashwood Parkway  
Suite 500  
Atlanta, Georgia 30338

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, as amended by Post-Effective Amendment No. 2, is hereby amended and restated in its entirety to read as follows:

Item 1. Description of Proposed Transaction.

1.1 Background. SEI Holdings, Inc. ("Holdings") is a wholly-owned non-utility subsidiary of The Southern Company ("Southern"), a registered holding company under the Act. Through Holdings and other direct and indirect subsidiaries of Holdings, Southern has acquired and currently holds interests in "exempt wholesale generators" ("EWGs"), as defined in Section 32, and "foreign utility companies" ("FUCOs"), as defined in Section 33. By order dated February 2, 1996 (Holding Company Act Release No. 26468) (the "February 1996 Order"), Holdings was authorized, among other things, to acquire the securities of one or more special-purpose subsidiaries (called "Intermediate Subsidiaries") organized exclusively for the purpose of acquiring and holding one or more EWGs or FUCOs or subsidiaries (called "Energy-Related Companies") which derive or will derive substantially all of their revenues from the ownership and/or operation of certain categories of non-utility businesses, namely: "qualifying facilities" (as defined in the Public Utility Regulatory Policies Act of 1978, as amended); steam production, conversion and distribution; and electricity brokering and marketing. Holdings

is also authorized to acquire and hold certain other kinds of non-utility subsidiaries.<sup>1</sup>

An organizational chart showing the ownership of Holdings and its direct and indirect subsidiaries at March 31, 1996, is filed herewith as Exhibit H-3.

1.2 Proposed Modification. Holdings now requests authority, for itself and on behalf of Domestic Holdings, Foreign Holdings, every current and future Intermediate Subsidiary of Holdings, every current and future Special Purpose Subsidiary of Holdings, and every Energy-Related Company hereafter organized to engage in the business of owning or operating a "qualifying facility" or a steam production, conversion or distribution business, to pay dividends with respect to the securities of such companies, from time to time through June 30, 1997, out of capital or unearned surplus (including revaluation reserve), to the extent permitted under applicable corporate law. Holdings requests that the Commission reserve jurisdiction over the payment of dividends out of capital or unearned surplus by any

---

<sup>1</sup> Specifically, one subsidiary of Holdings (called "Domestic Holdings" in the February 1996 Order) is the umbrella company for Holdings' domestic operations, and another (called "Foreign Holdings" in the February 1996 Order) is the umbrella company for Holdings' international operations. Holdings is also authorized to acquire from Southern the shares of Southern Electric International, Inc. ("Southern Electric"), and to acquire the securities of one or more direct or indirect subsidiaries (called "Special Purpose Subsidiaries") organized to engage in any of those activities or businesses in which Southern Electric has previously been authorized to engage by order dated December 30, 1994 (Holding Company Act Release No. 26212).

other category of Energy-Related Company that Holdings may hereafter be authorized by rule or order to acquire.

Holdings anticipates that there will be situations in which it or one or more of the above-enumerated categories of subsidiaries will have unrestricted cash available for distribution in excess of current and retained earnings. In such situations, the declaration and payment of a dividend would have to be charged, in whole or in part, to capital or unearned surplus. As an example, if Holdings (directly or indirectly through an Intermediate Subsidiary) purchases all of the stock of an EWG or FUCO, and following such acquisition, the EWG or FUCO incurs non-recourse borrowings some or all of the proceeds of which are distributed to the Intermediate Subsidiary as a reduction in the amount invested in the EWG or FUCO (*i.e.*, return of capital), the Intermediate Subsidiary (assuming it has no earnings) could not, without the Commission's approval, in turn distribute such cash to Holdings for possible distribution to Southern.<sup>2</sup>

Similarly, using the same example, if an Intermediate Subsidiary, following its acquisition of all of the stock of an EWG or FUCO, were to sell part of that stock to a third party for cash, the Intermediate Subsidiary would again have substantial unrestricted cash available for distribution, but (assuming no

---

<sup>2</sup> The same problem would arise where an Intermediate Subsidiary is over-capitalized in anticipation of a bid which is ultimately unsuccessful. In such a case, Holdings would normally desire a return of some or all of the funds invested.

profit on the sale of the stock) would not have current earnings and therefore could not, without the Commission's approval, declare and pay a dividend to Holdings out of such cash proceeds.

Further, there may be periods during which unrestricted cash available for distribution by Holdings or a subsidiary exceeds current and retained earnings due to the difference between accelerated depreciation allowed for tax purposes, which may generate significant amounts of distributable cash, and depreciation methods required to be used in determining book income.<sup>3</sup>

Finally, even under circumstances in which an Intermediate Subsidiary or other downstream subsidiary has sufficient earnings, and therefore may declare and pay a dividend to its immediate parent, such immediate parent may have negative retained earnings, even after receipt of the dividend, due to losses from other operations. In this instance, cash would be trapped at a subsidiary level where there is no current need for it.

Holdings, on behalf of itself and of such direct or indirect current and future subsidiaries, represents that it will not declare or pay any dividend out of capital or unearned surplus in contravention of any law (U.S. or foreign) restricting the payment of dividends or making of other distributions. In this regard, it should be noted that all U.S. jurisdictions limit to

---

<sup>3</sup> See e.g., *The Southern Company, et al.*, Holding Company Act Release No. 26440, dated December 28, 1995.

one extent or another the authority of corporations to make dividend distributions to shareholders.<sup>4</sup> Most State corporations statutes contain either or both an equity insolvency test or some type of balance sheet test.<sup>5</sup> Holdings also states that many of its subsidiaries (including Intermediate Subsidiaries, EWGs and FUCOs) have issued debt securities pursuant to the terms of credit agreements and indentures that also restrict the amount and timing of distributions to shareholders.<sup>6</sup>

Holdings' request, if granted, would not contravene the purposes of Section 12(c), which was primarily intended to safeguard the working capital of public-utility companies.<sup>7</sup> In

---

<sup>4</sup> To Holdings' knowledge, all foreign jurisdictions in which Southern currently holds interests in EWGs or FUCOs also restrict the declaration and payment of dividends and/or reduction of capital in some fashion. For example, in the United Kingdom, a company may only pay dividends in amounts up to "profits available for distribution," generally the equivalent of retained earnings (§263, Companies Act of 1985), and may reduce share capital only upon obtaining a court order authorizing it to do so. (§§ 135 - 150, Companies Act). Further, a "private" limited company may redeem its own shares otherwise than out of its distributable profits (that is, out of capital), provided that the company is not thereby rendered insolvent or left without adequate financial resources to continue to carry out its business. (§§ 171 - 173, Companies Act).

<sup>5</sup> See generally, *Fletcher Cyclopedia of the Law of Private Corporations*, § 5329 (1995 Revised Ed.).

<sup>6</sup> In a non-recourse project financing, the credit documents typically limit the borrower's ability to make any distribution during a default period, and limit distributions at other times to an amount determined after payment of all operations and maintenance expenses and debt service (including funding of any required cash reserves).

<sup>7</sup> See *Eastern Utilities Associates, Holding Company Act* Release No. 25330 (June 13, 1991), citing S. Rep. No. 621, 74th Cong., 1st Sess. p. 35 (1935); *Summary Report of the FTC to the U.S. Senate Pursuant to S.R. No. 83, 70th Cong., 1st Sess. Doc.*

contrast, there is no clear evidence that Congress was specifically concerned with the declaration and payment of dividends by non-utility subsidiaries of registered holding companies,<sup>1</sup> at least in the absence of evidence of any indirect impact that a non-utility subsidiary's dividend policy could have on the protected interests. Thus, even if it could be argued that the dividend policy of a non-utility subsidiary that is organized to sell services or goods to its associate public utility companies could somehow have an indirect negative impact on consumers and investors, such logic could not possibly extend to unregulated subsidiaries which do not engage in affiliate sales, such as the Intermediate Subsidiaries organized to hold investments in EWGs and FUCOs (whose dividend policies are, in any case, not subject to Section 12(c)).

Finally, it should be noted that the Division of Investment Management has itself recommended that the Commission study the continuing need for any rule restricting the payment of dividends out of capital or unearned surplus, particularly as such restriction may apply to the dividend policies of non-utility

---

92, vol. 73-A, pp. 61-62.

<sup>1</sup> In this regard, it should be noted that Section 1(b)(3) of the Act proclaims that the interests of consumers and investors may be adversely affected "when control of subsidiary public-utility companies affects the accounting practices and rate, dividend, and other policies of such companies so as to complicate and obstruct State regulation of such companies . . . ." (Emphasis added).



subsidiaries.<sup>9</sup> The applicants hereby encourage the Division of Investment Management to recommend to the Commission an amendment to or rescission of Rule 46.

1.3 Explanation of Accounting Treatment. Holdings represents that in all cases its accounting treatment for dividends paid from capital or unearned surplus will be consistent with Rule 46. Specifically, dividends paid by Holdings or any subsidiary of Holdings will first be charged (debited) to current and retained earnings, and dividends in excess of current and retained earnings will be accounted for by charging (debiting) capital surplus or paid-in-capital. This accounting treatment is also consistent with generally accepted accounting principles ("GAAP").

Applicable accounting principles in foreign countries may require or permit accounting treatment for dividends paid out of capital or unearned surplus that is different than allowed by U.S. GAAP, as described above. However, it has been Holdings' practice, consistently applied, to convert, in its consolidation, the financial statements of all of its foreign incorporated subsidiaries to conform to U.S. GAAP.

1.4 Other Matters. Under the terms of the February 1996 Order, Southern, Holdings, Southern Electric and Mobile Energy Services Holdings, Inc. ("Mobile Energy"), also a wholly-owned subsidiary of Southern, were authorized to carry out certain

---

<sup>9</sup> See "The Regulation of Public-Utility Holding Companies," Report of the Division of Investment Management (June 1995), pp. 56-57.

other proposed transactions relating to (i) the transfer of Southern Electric's common stock to Holdings, (ii) the transfer of the stock of certain subsidiaries of Southern Electric to other direct or indirect subsidiaries of Holdings, and (iii) the issuance by Mobile Energy to Southern of a series of preferred stock and contribution thereof by Southern to Holdings. These transactions have not yet been carried out in accordance with Rule 24(c). The applicants request authority to consummate these transactions at any time prior to June 30, 1997, and propose to certify that these transactions have been carried out as a part of the quarterly report pursuant to Rule 24 that is prescribed in the February 1996 Order.

**Item 2. Fees, Commissions and Expenses.**

The additional fees, commissions and expenses to be paid or incurred in connection with this Post-Effective Amendment are estimated not to exceed \$4,000.

**Item 3. Applicable Statutory Provisions.**

Section 12(c) of the Act and Rules 23, 46 and 54 thereunder are applicable to the proposed transaction.

**Rule 54 Analysis:** Rule 54 provides that, in determining whether to approve a proposed transaction by a registered holding company or subsidiary thereof other than with respect to an EWG or FUCO, the Commission shall not consider the effect of the capitalization or earnings of any subsidiary that is an EWG or

FUCO upon the registered holding company system if the requirements of Rule 53(a), (b) and (c) are satisfied. In this regard, Holdings represents that (i) Southern is currently in compliance with all conditions of Rule 53(a), and (ii) none of the circumstances described in Rule 53(b) that would render Rule 53(a) inapplicable has occurred or exists.

With respect to Rule 53(a), Holdings represents that, at April 30, 1996, Southern's "aggregate investment" in all EWGs and FUCOs was approximately \$931.4 million, or about 27.05% of Southern's "consolidated retained earnings" for the four consecutive quarters ended March 31, 1996. Further, Southern has complied and will continue to comply with the other requirements of Rule 53(a) regarding the maintenance of books and records, use of employees of domestic utility subsidiaries to render services to associate EWGs and FUCOs, and submission of certain filings under the Act with the appropriate retail rate regulatory commissions.

Furthermore, even if the effect of the capitalization and earnings of EWGs and FUCOs in which Southern has an ownership interest upon the Southern holding company system are considered, there is no basis for the Commission to withhold or deny approval for the proposal made in this Post-Effective Amendment. The action requested in the instant filing (viz. approval for payment of dividends out of capital and unearned surplus by certain non-utility subsidiaries of Southern) would not, by itself, or even considered in conjunction with the effect of the capitalization

and earnings of Southern's EWGs and FUCOs, have a material adverse effect on the financial integrity of the Southern system, or an adverse impact on Southern's public-utility subsidiaries, their customers, or the ability of state commissions to protect such public-utility customers. On the contrary, Holdings believes that approval of the proposal contained in this Post-Effective Amendment would have a modest beneficial effect on the Southern system, because it will enable Holdings to pay dividends to Southern out of distributable cash generated by EWGs and FUCOs and certain other categories of non-utility subsidiaries, which Southern, in turn, could use to reduce outstanding bank borrowings and/or to fund operations of other subsidiary operations.

**Item 4. Regulatory Approval.**

No state commission, and no federal commission other than this Commission, has jurisdiction over the transaction proposed herein.

**Item 5. Procedure.**

The applicants request that the Commission's order be issued as soon as the rules allow, and that there be no thirty-day waiting period between the issuance of the Commission's order and the date on which it is to become effective. The applicants hereby waive a recommended decision by a hearing officer or other responsible officer of the Commission and hereby consent that the

Division of Investment Management may assist in the preparation of the Commission's decision and/or order in the matter unless such Division opposes the matters covered hereby.

Item 6. Exhibits and Financial Statements.

(a) Exhibits:

G - Form of Federal Register Notice. (Previously filed).

H-3 - Organizational Structure of SEI Holdings, Inc. and Subsidiaries at March 31, 1996.

(b) Financial Statements.

Not applicable.

Item 7. Information as to Environmental Effects.

(a) In light of the nature of the proposed transactions, as described in Item 1 hereof, the Commission's action in this matter will not constitute any major federal action significantly affecting the quality of the human environment.

(b) No other federal agency has prepared or is preparing an environmental impact statement with regard to the proposed transactions.

**SIGNATURE**

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

Dated: June 25, 1996

THE SOUTHERN COMPANY

By: 

Tommy Chisholm  
Secretary

MOBILE ENERGY SERVICES HOLDINGS,  
INC.

By: 

Tommy Chisholm  
Secretary

SOUTHERN ELECTRIC INTERNATIONAL,  
INC.

By: 

Tommy Chisholm  
Vice President and Secretary

SEI HOLDINGS, INC.

By: 

Tommy Chisholm  
Secretary

SOUTHERN ELECTRIC WHOLESALE  
GENERATORS, INC.

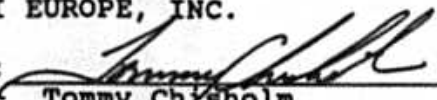
By: 

Tommy Chisholm  
Secretary

(Signatures Continued on Next Page)


SEI EUROPE, INC.

By:

  
Tommy Chisholm  
Secretary

SEI NEWCO 1, INC.

By:

  
Tommy Chisholm  
Secretary

SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549

Amendment No. 7  
(Post-Effective Amendment No. 4)  
to  
APPLICATION OR DECLARATION  
on  
FORM U-1

under

The Public Utility Holding Company Act of 1935

THE SOUTHERN COMPANY  
270 Peachtree Street, N.W.  
Atlanta, Georgia 30303

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

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

SEI HOLDINGS, INC.  
900 Ashwood Parkway  
Suite 500  
Atlanta, Georgia 30338

SEI NEWCO 1, INC.  
900 Ashwood Parkway  
Suite 500  
Atlanta, Georgia 30338

MOBILE ENERGY SERVICES  
HOLDINGS, INC.  
900 Ashwood Parkway  
Suite 450  
Atlanta, Georgia 30338

SEI EUROPE, INC.  
900 Ashwood Parkway  
Suite 500  
Atlanta, Georgia 30338

(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  
270 Peachtree Street, N.W.  
Atlanta, Georgia 30303

Thomas G. Boren, President  
Southern Electric  
International, Inc.  
900 Ashwood Parkway  
Suite 500  
Atlanta, Georgia 30338

(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  
270 Peachtree Street, N.W.  
Atlanta, Georgia 30303

Thomas G. Boren, President  
Southern Electric  
International, Inc.  
900 Ashwood Parkway  
Suite 500  
Atlanta, Georgia 30338

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



## INFORMATION REQUIRED

Amendment No. 6 (Post-Effective Amendment No. 3) is hereby amended by deleting the first paragraph of Item 1.2 - Proposed Modification, and substituting the following new paragraph in lieu thereof:

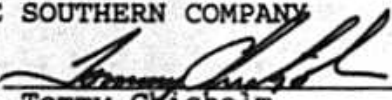
"1.2 Proposed Modification. Holdings now requests authority, for itself and on behalf of Domestic Holdings, Foreign Holdings, every current and future Intermediate Subsidiary of Holdings, every current and future Special Purpose Subsidiary of Holdings, and every Energy-Related Company hereafter organized to engage in the business of owning or operating a "qualifying facility" or a steam production, conversion or distribution business, to pay dividends with respect to the securities of such companies, from time to time through June 30, 1997, out of capital or unearned surplus (including revaluation reserve), to the extent permitted under applicable corporate law. Holdings requests that the Commission reserve jurisdiction over the payment of dividends out of capital or unearned surplus by any Energy-Related Companies engaged in power and/or energy commodity marketing or brokering that Holdings may hereafter be authorized by order to acquire, and by other categories of Energy-Related Companies that Holdings may by rule be permitted to acquire."

**SIGNATURE**

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

Dated: July 5, 1996


THE SOUTHERN COMPANY

By:   
Tommy Chisholm  
Secretary


MOBILE ENERGY SERVICES HOLDINGS,  
INC.

By:   
Tommy Chisholm  
Secretary

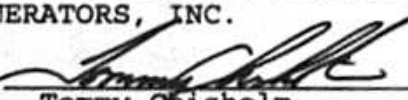
SOUTHERN ELECTRIC INTERNATIONAL,  
INC.

By:   
Tommy Chisholm  
Vice President and Secretary

SEI HOLDINGS, INC.

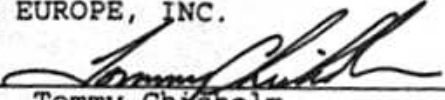
By:   
Tommy Chisholm  
Secretary

SOUTHERN ELECTRIC WHOLESALE  
GENERATORS, INC.

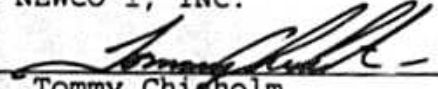
By:   
Tommy Chisholm  
Secretary

(Signatures Continued on Next Page)

SEI EUROPE, INC.

By:   
Tommy Chisholm  
Secretary

SEI NEWCO 1, INC.

By:   
Tommy Chisholm  
Secretary