4. Finding 20—$157,417—exceeded statutory limitation for indirect costs.
5. Finding 21—$410,343—indirect costs not appropriately allocated.

On October 29, 1993 Ohio filed an application for review of the PDD with the Office of Administrative Law Judges (OALJ).

The Ohio Auditor of State conducted another audit covering the period July 1, 1988 through June 30, 1989. A final audit report was issued on October 1, 1992 (ACN: 05–23033G) (hereinafter ''Ohio II''). In Ohio II, the Regional Commissioner issued a PDD on August 31, 1993 in which he requested that Ohio repay $10,798 of funds under the Act. The demand for a refund was based upon Ohio using funds under the Act to pay late charges on overdue invoices. Ohio filed an appeal of the PDD with the OALJ on September 30, 1993.

On November 15, 1993 the Administrative Law Judge (ALJ) granted a motion to consolidate the two cases. On May 27, 1994 the Regional Commissioner filed a Notice of Reduction of Claim notifying the ALJ that, based upon new information submitted by Ohio, the claim in Ohio I was reduced by $106,840.86. The entire outstanding amount in Finding #18 of $77,962 was eliminated and the outstanding amount in Finding #20 was reduced by $28,878.86 to $128,538.14. Thus, the total amount outstanding in the two appeals was reduced to $787,474.14.

Ohio and ED have agreed to settle all of the issues in these cases with the exception of Finding #19 in Ohio I in the amount of $227,400. The parties will litigate this issue. The remaining amount of $560,074.14 is covered by the Settlement Agreement.

Under the terms of the proposed agreement, Ohio owes ED a total of $211,745.64. Of this amount, a total of $68,446.00 is credited to Ohio for overmatch reported on its SF–269 for fiscal year 1990. Under the Act, grant funds are awarded to States on a matching basis. Depending upon the fiscal year, the Federal Government contributes approximately 80 percent of the funding for the State's vocational rehabilitation (VR) program. (34 CFR 361.86.) The State is required to provide the remainder of the funding to earn the Federal contribution. State and Federal VR funds are commingled so that it is not possible to identify which funds are used for particular program expenditures. In this case, Ohio provided more State funds for VR services than was mandated by the matching requirement in § 361.86 of the regulations. These overmatch funds can be substituted for disallowed Federal expenditures on a dollar-for-dollar basis.

As a result, the repayment amount is $143,299.64, to be paid within 30 days of execution of the agreement by ED. Ohio would be assessed interest at a rate of 4 percent per year if full payment is not made within 30 days. Failure to make timely repayment within 40 days would result in a late payment fee of 10 percent of the $143,299.64 principal. Finally, under the agreement, the parties would jointly move for dismissal of the appeal. For the following reasons, ED recommends approval of the proposed Settlement Agreement.

A. Late Payment Penalties—100% Recovery

In both Ohio I and Ohio II, the State incurred late charges on invoices that were not properly paid. Ohio charged $10,395 and $10,798, respectively, to the VR Basic Support Program under the Act. Maintaining throughout the negotiations that there was no basis to use Federal funds for late charges, ED refused to compromise this portion of the findings. Ohio has agreed to repay the $21,193, in full, as part of the proposed agreement.

B. Unallowable Indirect Costs—100% Recovery

In Ohio I, the State exceeded the statutory limitation for indirect costs and charged the excess funds to the ED VR grants. ED maintained that the practice of charging unallowable costs to the VR program represented a substantial harm to the Federal interest of ensuring that Federal programs are not charged more than their fair and appropriate share of the costs. Ohio has agreed to pay the $128,538.14 outstanding on this violation, in full, as part of the proposed agreement.

C. Allocable Indirect Costs—15% Recovery

In Ohio I, the auditors found that all indirect costs were charged to ED grants, rather than to a centralized indirect cost pool. As a result, the auditors concluded that the State received duplicative reimbursement from ED and the U.S. Department of Health and Human Services (HHS). In particular, 33 employees of the State's Bureau of Disability Determination (BDD) Fiscal Accounting Section worked entirely on the HHS grant activities. The auditors found that the related indirect costs for these employees were charged inappropriately to the ED grants. A total of $410,343 was disallowed.

Ohio provided credible evidence that shows that this finding was based on some erroneous assumptions by the State auditors. Of the $410,343, a total of $26,018 was for telephone charges and a total of $115,116 was for rent charges. These expenses are clearly the type of expenses that are charged directly to grants, and the evidence submitted by the State demonstrates that these expenses were charged to the HHS grant. Thus, it appears that these charges should no longer be disallowed.

The remaining charges of $269,209 consisted of equipment, building maintenance, and consultants for the BDD. Documentation submitted by Ohio showed that the HHS grant was charged for substantially all of these costs.

There is no direct evidence that the ED grant was also charged. Even one of the auditors, who made the initial audit finding, expressed some doubt as to the validity of the initial findings.

There is clearly a high litigation risk in attempting to uphold the original finding. At this time, ED has no information to establish that any of the disallowed costs were charged inappropriately to the ED grant. Although there is clearly a problem with the State's recordkeeping with respect to this issue, Ohio has presented other less reliable and circumstantial evidence that could persuade a judge or a Federal court to rule in substantial part or in full for its position. Furthermore, it is highly unlikely that ED would have made the cost disallowance if this information had been available earlier.

Ohio has agreed to repay $62,014.50. Based upon the foregoing, ED believes that it is prudent to accept the settlement offer of 15 percent of the original costs disallowed in the PDD for this finding.

D. Other Considerations

If these issues are not settled, ED will incur further litigation costs. With respect to the back pay award that will be litigated further, there are no factual issues in dispute. The only area of contention is a legal issue—whether Federal funds can pay for costs if no services were provided and there was no benefit to the Federal interest. However, the allocable indirect costs issue is predicated upon factual disputes and the lack of corroborating documentation. Extensive discovery efforts would be necessary before this issue could be litigated. In addition, ED could hope to recover, at best, only the $269,209 that appears to be in dispute at this time. The recovery in the proposed agreement is almost 23 percent of this amount.

While the other two issues appear to be very strongly in favor of ED, there would be some litigation risk during the administrative process. Moreover, Ohio also would have the right to appeal any decision to the U.S. Court of Appeals. See 20 U.S.C. 1234g. There is no certainty that ED would recover 100 percent on these two issues as is contemplated in the settlement.

After weighing the risks in litigating the issues that are the subject of the settlement, it is ED's assessment that the proposed Settlement Agreement is the most advantageous resolution of these outstanding issues.

The public is invited to comment on the Department's intent to compromise these claims. Additional information may be obtained by writing to Jeffrey B. Rosen at the address given at the beginning of this notice.

Program Authority: 20 U.S.C. 1234a(j) (1990)

Dated: December 29, 1994.

Donald R. Wurtz,

Chief Financial Officer.

[FR Doc. 95–217 Filed 1–4–95; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

Energy Conservation Program for Consumer Products; Representative Average Unit Costs of Energy

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice.

SUMMARY: In this notice, the Department of Energy (DOE or Department) is forecasting the representative average unit cost of five residential energy sources for the year 1995. The five sources are electricity, natural gas, No. 2 heating oil, propane, and kerosene. The representative unit cost of these energy sources are used in the Energy Conservation Program for Consumer Products established by the Energy Policy and Conservation Act, Pub.L. No. 94–163, 89 Stat. 871, as amended, (EPCA).

EFFECTIVE DATE: The representative average unit costs of energy contained in this notice will become effective [Insert date 30 days after publication] and will remain in effect until further notice.

FOR FURTHER INFORMATION CONTACT:

Dr. Barry P. Berlin, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Forrestal Building, Mail Station EE–43, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586–9127

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Forrestal Building, Mail Station GC–41, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586–9507

SUPPLEMENTARY INFORMATION: Section 323 of the EPCA (Act) [1] requires that DOE prescribe test procedures for the determination of the estimated annual operating costs and other measures of energy consumption for certain consumer products specified in the Act. These test procedures are found in 10 CFR Part 430, Subpart B.

Section 323(b) of the Act requires that the estimated annual operating costs of a covered product be computed from measurements of energy use in a representative average-use cycle and from representative average unit costs of energy needed to operate such product during such cycle. The section further requires DOE to provide information regarding the representative average unit costs of energy for use wherever such costs are needed to perform calculations in accordance with the test procedures. Most notably, these costs are used under the Federal Trade Commission appliance labeling program established by Section 324 of the Act and in connection with advertisements of appliance energy use and energy costs which are covered by Section 323(c) of the Act.

The Department last published representative average unit costs of residential energy for use in the Conservation Program for Consumer Products on December 29, 1993. (58 FR 68901). Effective February 6, 1995, the cost figures published on December 29, 1993, will be superseded by the cost figures set forth in this notice.

The Department's Energy Information Administration (EIA) has developed the 1995 representative average unit after-tax costs of electricity, natural gas, No. 2 heating oil, propane and kerosene prices found in this notice. The cost projections for electricity and natural gas are found in the fourth quarter, 1994, EIA *Short-Term Energy Outlook*, DOE/EIA–0226 (94/4Q) and reflect the mid-price scenario. Projections for residential (No.2) heating oil, propane and kerosene are based on the *Short-Term Energy Outlook* net-of-tax projection for heating oil costs and the relative prices of those three fuels in 1992 (the most recent year available) in the *State Price and Expenditure Report*, DOE/EIA–0376 (92). Both the *Short-Term Energy Outlook* and the *State Price and Expenditure Report* are available at the National Energy Information Center, Forrestal Building, Room 1F–048, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–8800.

The 1995 representative average unit costs stated in Table 1 are provided pursuant to Section 323(b)(4) of the Act and will become effective February 6, 1995. They will remain in effect until further notice.

Issued in Washington, DC, December 29, 1994.

Christine A. Ervin,

Assistant Secretary, Energy Efficiency and Renewable Energy.

TABLE 1.—REPRESENTATIVE AVERAGE UNIT COSTS OF ENERGY FOR FIVE RESIDENTIAL ENERGY SOURCES (1995)

Type of energy	In common terms	As required by test procedure	Per million Btu [1]
Electricity	8.67¢/kWh [2, 3]	$.0867/kWh	$25.41
Natural gas	63.0¢/therm [4] or $6.49/MCF [5, 6].	.00000630/Btu	6.30
No. 2 Heating Oil	1.008/gallon [7]	.00000727/Btu	7.27
Propane	0.985/gallon [8]	.00001079/Btu	10.79
Kerosene	1.094/gallon [9]	.00000810/Btu	8.10

[1] Btu stands for British thermal units.

[1] References to the ''Act'' refer to the Energy Policy and Conservation Act, as amended by the National Energy Conservation Policy Act, the National Appliance Energy Conservation Act of 1987, the National Appliance Energy Conservation Amendments of 1988, and the Energy Policy Act of 1992. 42 U.S.C. §§ 6291–6309.

[2] kWh stands for kilowatt hour.
[3] 1 kWh = 3,412 Btu.
[4] 1 therm = 100,000 Btu. Natural gas prices include taxes.
[5] MCF stands for 1,000 cubic feet.
[6] For the purposes of this table, one cubic foot of natural gas has an energy equivalence of 1,030 Btu.
[7] For the purposes of this table, one gallon of No. 2 heating oil has an energy equivalence of 138,690 Btu.
[8] For the purposes of this table, one gallon of liquid propane has an energy equivalence of 91,333 Btu.
[9] For the purposes of this table, one gallon of kerosene has an energy equivalence of 135,000 Btu.

[FR Doc. 95–236 Filed 1–4–95; 8:45 am]
BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. ES95–16–000]

Cambridge Electric Light Co.; Notice of Application

December 29, 1994.

Take notice that on December 23, 1994, Cambridge Electric Light Company filed an application under § 204 of the Federal Power Act seeking authorization to issue not more than $35 million of short-term debt during a two-year period commencing on the effective authorization date and maturing less than one year after the date of issuance.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426 in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before January 23, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–178 Filed 1–4–95; 8:45 am]
BILLING CODE 6717–01–M

[Docket No. RP95–100–000]

Midwestern Gas Transmission Co.; Notice of Rate Filing

December 29, 1994.

Take notice that on December 22, 1994, Midwestern Gas Transmission Company (Midwestern), filed its Fourth Revised Sheet No. 5 and First Revised Sheet Nos. 35, 41, 52, 102, 103, and 104, of Second Revised Volume No. 1 of its FERC Gas Tariff, with a proposed effective date of December 1, 1994. Midwestern states that it is filing these sheets to eliminate its Take or Pay Volumetric Surcharge.

Midwestern states that it filed a Stipulation and Agreement governing resolution of take-or-pay matters in Docket No. RP91–78 on October 17, 1991, providing in part that Midwestern would collect $600,000 through its volumetric surcharge. The Commission approved the Stipulation by order dated June 25, 1992. *Midwestern Gas Transmission Co.*, 59 FERC 61, 358 (1994). Midwestern states that it has collected the $600,000 through its volumetric surcharge and now seeks to eliminate the volumetric surcharge charge and all references to it in its tariff.

Midwestern requests a waiver of the thirty day notice period for tariff changes so that the proposed changes can go into effect December 1, 1994.

Midwestern states that copies of the filing have been mailed to all of its jurisdictional customers and affected state regulatory commission.

Any person desiring to be heard or to make any protest with reference to said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214. All such petitions or protests should be filed on or before January 6, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to this proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file and available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–179 Filed 1–4–95; 8:45 am]
BILLING CODE 6717–01–M

Federal Energy Regulatory Commission

[Docket No. QF95–41–000]

Nelson Industrial Steam Co. Notice of Application for Commission Certification of Qualifying Status of a Small Power Production Facility

December 29, 1994.

On December 19, 1994, Nelson Industrial Steam Company of 3400 Houston River Road, Westlake, Louisiana, submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to Section 292.207(b) of the Commission's Regulations and Section 3(17) of the Federal Power Act. No determination has been made that the submittal constitutes a complete filing.

According to the applicant, the small power production facility, which will be located in Westlake, Louisiana, will consist of a circulating fluidized bed combustion boiler and a steam turbine generator. The net electric power production capacity of the facility will be approximately 150 MW. The primary energy source of the facility will be petroleum coke, a by-product from the refining of crude oil.

Any person desiring to be heard or objecting to the granting of qualifying status should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed within 30 days after the date of publication of this notice in the Federal Register and must be served on the applicant. 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 petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–177 Filed 1–4–95; 8:45 am]
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