

**W. Dean Hudson**  
Comptroller and  
Chief Accounting Officer

**Southern Company**  
241 Ralph McGill Boulevard NE  
Atlanta, Georgia 30308-3374  
Tel 404.506.4302  
Fax 404.506.4310  
wdhudson@southernco.com



July 21, 2005

Mr. Lawrence W. Smith  
Director of Technical Application and Implem  
Financial Accounting Standards Board  
401 Merritt 7  
P.O. Box 5116  
Norwalk, CT 06856-5116

**Letter of Comment No:** /  
**File Reference:** FSP123R-A  
**Date Received:**

Dear Mr. Smith,

**Re: Proposed FSP FAS 123(R)-a “Classification and Measurement of Freestanding Financial Instruments Originally Issued as Employee Compensation”**

Southern Company (NYSE: SO) is a public utility holding company and one of the largest generators of electricity in the United States. Southern is the parent firm of Alabama Power, Georgia Power, Gulf Power, Mississippi Power and Savannah Electric, all integrated, cost-based regulated utility companies, as well as Southern Power, a market-based generation company.

We appreciate the opportunity to respond to the above referenced proposed FSP, and agree with the overall proposal to defer the requirement that freestanding financial instruments originally subject to Statement 123(R) become subject to other applicable GAAP when the rights conveyed by the instrument to the holder are no longer dependent on the holder being an employee of the entity.

However, we are concerned that the wording in paragraph 6 of the Proposed FSP FAS 123(R)-a may be interpreted incorrectly. Paragraph 6 states:

“Instruments *must be granted for substantive employee service* to be considered share-based payments to employees for purposes of applying Statement 123(R). That is, instruments granted as consideration for goods or services other than employee service shall not be considered share-based payments to employees, irrespective of the legal status of the recipient of the award on the grant date.”

The first sentence may be interpreted to mean that instruments granted to employees that are eligible for early retirement will fall outside the scope of SFAS 123(R) right from the outset, because the use of an explicit service period is considered nonsubstantive due to retirement provisions. This issue of a nonsubstantive condition is clearly stated in the example in Statement 123(R) paragraphs A57 where paragraph A58 states:

“Because the employee is eligible to retire at the grant date, *the award’s explicit service condition is nonsubstantive*. Consequently, Entity A has granted an award that does not contain a performance or service condition for vesting, that is, the award is effectively vested, and thus, the award’s entire fair value should be recognized as compensation cost

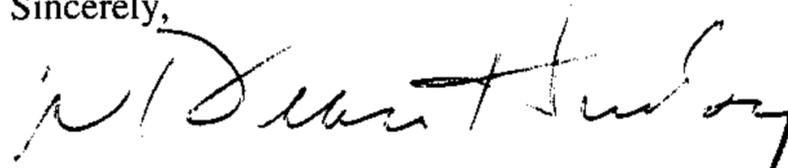
on the grant date. All of the terms of a share-based payment award and other relevant facts and circumstances must be analyzed when determining the requisite service period.”

This example stating that the explicit service period is considered nonsubstantive could be implied to mean that the instrument has been granted with no substantive employee service requirement, thus pushing the freestanding financial instruments to become subject to other applicable GAAP. We believe that this is not the intent of the FASB Staff, and thus would recommend that paragraph 6 of the proposed FSP be reworded or clarified, and suggest the following sentence be added to the end of paragraph 6:

“However, instruments that are granted to employees’ eligible to retire at the grant date and have an explicit service period shall also be considered share-based payments to employees, for the purposes of applying SFAS 123(R).”

We would be pleased to discuss this further with the Board or its Staff if required.

Sincerely,

A handwritten signature in black ink, appearing to read "W. Dean Hudson". The signature is written in a cursive style with a large, sweeping initial "W".

W. Dean Hudson  
Comptroller, Chief Accounting Officer and Senior Vice President  
Southern Company

cc: Thomas Fanning, Chief Financial Officer  
Southern Company