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PART 11—ANNUAL CHARGES UNDER PART I OF THE FEDERAL POWER ACT

Subpart A—Charges for Costs of Administration, Use of Tribal Lands and Other Government Lands, and Use of Government Dams

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Subpart A—Charges for Costs of Administration, Use of Tribal Lands and Other Government Lands, and Use of Government Dams

§ 11.1 Costs of administration.

(a) *Authority*. Pursuant to section 10(e) of the Federal Power Act and section 3401 of the Omnibus Budget Reconciliation Act of 1986, the Commission will assess reasonable annual charges against licensees and exemptees to reimburse the United States for the costs of administration of the Commission's hydropower regulatory program.

(b) *Scope*. The annual charges under this section will be charged to and allocated among:

(1) All licensees of projects of more than 1.5 megawatts of installed capacity; and

(2) All holders of exemptions under either section 30 of the Federal Power Act or sections 405 and 408 of the Public Utility Regulatory Policies Act of 1978, as amended by section 408 of the Energy Security Act of 1980, but only if the exemption was issued subsequent to April 21, 1995 and is for a project of more than 1.5 megawatts of installed capacity.

(3) If the exemption for a project of more than 1.5 megawatts of installed capacity was issued subsequent to April 21, 1995 but pursuant to an application filed prior to that date, the exemptee may credit against its annual charge any filing fee paid pursuant to § 381.601 of this chapter, which was removed effective April 21, 1995, 18 CFR 381.601 (1994), until the total of all such credits equals the filing fee that was paid.

(c) *Licenses and exemptions other than State or municipal*. For licensees and exemptees, other than State or municipal:

(1) A determination shall be made for each fiscal year of the costs of administration of Part I of the Federal Power Act chargeable to such licensees or exemptees, from which shall be deducted any administrative costs that are stated in the license or exemption or fixed by the Commission in determining headwater benefit payments.

(2) For each fiscal year the costs of administration determined under paragraph (c)(1) of this section will be assessed against such licenses or exemptee in the proportion that the annual charge factor for each such project bears to the total of the annual charge factors under all such outstanding licenses and exemptions.

(3) The annual charge factor for each such project shall be found as follows:

(i) For a conventional project the factor is its authorized installed capacity plus 112.5 times its annual energy output in millions of kilowatt-hours.

(ii) For a pure pumped storage project the factor is its authorized installed capacity.

(iii) For a mixed conventional-pumped storage project the factor is its authorized installed capacity plus 112.5 times its gross annual energy output in millions of kilowatt-hours less 75 times the annual energy used for pumped storage pumping in million of kilowatt-hours.

(iv) For purposes of determining their annual charges factor, projects that are operated pursuant to an exemption will be deemed to have an annual energy output of zero.

(4) To enable the Commission to determine such charges annually, each licensee whose authorized installed capacity exceeds 1.5 megawatts must file with the Commission, on or before November 1 of each year, a statement under oath showing the gross amount of power generated (or produced by nonelectrical equipment) and the amount of power used for pumped storage pumping by the project during the preceding fiscal year, expressed in kilowatt hours. If any licensee does not report the gross energy output of its project within the time specified above, the Commission's staff will estimate the energy output and this estimate may be used in lieu of the filings required by this section made by such licensee after November 1.

(5) For unconstructed projects, the assessments start on the date of commencement of project construction. For constructed projects, the assessments start on the effective date of the license or exemption, except for any new capacity authorized therein. The assessments for new authorized capacity start on the date of commencement of construction of such new capacity. In the event that construction commences during a fiscal year, the charges will be prorated based on the date on which construction commenced.

(d) *State and municipal licensees and exemptees.* For State or municipal licensees and exemptees:

(1) A determination shall be made for each fiscal year of the cost of administration under Part I of the Federal Power Act chargeable to such licensees and exemptees, from which shall be deducted any administrative costs that are stated in the license or exemption or that are fixed by the Commission in determining headwater benefit payments.

(2) An exemption will be granted to a licensee or exemptee to the extent, if any, to which it may be entitled under section 10(e) of the Act provided the data is submitted as requested in paragraphs (d) (4) and (5) of this section.

(3) For each fiscal year the total actual cost of administration as determined under paragraph (d)(1) of this section will be assessed against each such licensee or exemptee (except to the extent of the exemptions granted pursuant to paragraph (d)(2) of this section) in the proportion that the authorized installed capacity of each such project bears to the total such capacity under all such outstanding licenses or exemptions.

(4) To enable the Commission to compute on the bill for annual charges the exemption to which State and municipal licensees and exemptees are entitled because of the use of power by the licensee or exemptee for State or municipal purposes, each such licensee or exemptee must file with the Commission, on or before November 1 of each year, a statement under oath showing the following information with respect to the power generated by the project and the disposition thereof during the preceding fiscal year, expressed in kilowatt-hours:

(i) Gross amount of power generated by the project.

(ii) Amount of power used for station purposes and lost in transmission, etc.

(iii) Net amount of power available for sale or use by licensee or exemptee, classified as follows:

(A) Used by licensee or exemptee.

(B) Sold by licensee or exemptee.

(5) When the power from a licensed or exempted project owned by a State or municipality enters into its electric system, making it impracticable to meet the requirements of this section with respect to the disposition of project power, such licensee or exemptee may, in lieu thereof, furnish similar information with respect to the disposition of the available power of the entire electric system of the licensee or exemptee.

(6) The assessments commence on the date of commencement of project operation. In the event that project operation commences during a fiscal year, the charges will be prorated based on the date on which operation commenced.

(e) *Transmission lines.* For projects involving transmission lines only, the administrative charge will be stated in the license.

(f) *Maximum charge.* No licensed or exempted project's annual charge may exceed a maximum charge established each year by the Commission to equal 2.0 percent of the adjusted Commission costs of administration of the hydropower regulatory program. For every project with an annual charge determined to be above the maximum charge, that project's annual charge will be set at the maximum charge, and any amount above the maximum charge will be reapportioned to the remaining projects. The reapportionment will be computed using the method outlined in paragraphs (c) and (d) of this section (but excluding any project whose annual charge is already set at the maximum amount). This procedure will be repeated until no project's annual charge exceeds the maximum charge.

(g) *Commission's costs.* (1) With respect to costs incurred by the Commission, the assessment of annual charges will be based on an estimate of the costs of administration of Part I of the Federal Power Act that will be incurred during the fiscal year in which the annual charges are assessed. After the end of the fiscal year, the assessment will be recalculated based on the costs of administration that were actually incurred during that fiscal year; the actual costs will be compared to the estimated costs; and the difference between the actual and estimated costs will be carried over as an adjustment to the assessment for the subsequent fiscal year.

(2) The issuance of bills based on the administrative costs incurred by the Commission during the year in which the bill is issued will commence in 1993. The annual charge for the administrative costs that were incurred in fiscal year 1992 will be billed in 1994. At the licensee's option, the charge may be paid in three equal annual installments in fiscal years 1994, 1995, and 1996, plus any accrued interest. If the licensee elects the three-year installment plan, the Commission will accrue interest (at the most recent yield of two-year Treasury securities) on the unpaid charges and add the accrued interest to the installments billed in fiscal years 1995 and 1996.

(h) In making their annual reports to the Commission on their costs in administering Part I of the Federal Power Act, the United States Fish and Wildlife Service and the National Marine Fisheries Service are to deduct any amounts that were deposited into their Treasury accounts during that year as reimbursements for conducting studies and reviews pursuant to section 30(e) of the Federal Power Act.

(i) *Definition.* As used in paragraphs (c) and (d) of this section, *authorized installed capacity* means the lesser of the ratings of the generator or turbine units. The rating of a generator is the product of the continuous-load capacity rating of the generator in kilovolt-amperes (kVA) and the system power factor in kW/kVA. If the licensee or exemptee does not know its power factor, a factor of 1.0 kW/kVA will be used. The rating of a turbine is the product of the turbine's capacity in horsepower (hp) at best gate (maximum efficiency point) opening under the manufacturer's rated head times a conversion factor of 0.75 kW/hp. If the generator or turbine installed has a rating different from that authorized in the license or exemption, or the installed generator is rewound or otherwise modified to change its rating, or the turbine is modified to change its rating, the licensee or exemptee must apply to the Commission to amend its authorized installed capacity to reflect the change.

(j) *Transition.* For a license having the capacity of the project for annual charge purposes stated in horsepower, that capacity shall be deemed to be the capacity stated in kilowatts elsewhere in the license, including any amendments thereto.

[60 FR 15047, Mar. 22, 1995, as amended by Order 584, 60 FR 57925, Nov. 24, 1995]

§ 11.2 Use of government lands.

(a) Reasonable annual charges for recompensing the United States for the use, occupancy, and enjoyment of its lands (other than lands adjoining or pertaining to Government dams or other structures owned by the United States Government) or its other property, will be fixed by the Commission. In fixing such charges the Commission may take into consideration such factors as commercial value, the most profitable use for which the lands or other property may be suited, the beneficial purpose for which said lands or other property have been or may be used, and such other factors as the Commission may deem pertinent.

(b) Pending further order of the Commission and subject to adjustments as conditions may warrant, annual charges for the use of government lands will be payable in advance, and will be set on the basis of the schedule of rental fees for linear rights-of-way as set out in Appendix A of this part. Annual charges for transmission line rights-of-way will be equal to the per-acre charges established by the above schedule. Annual charges for other project lands will be equal to twice the charges established by the schedule. The Commission, by its designee the Executive Director, will update its fees schedule to reflect changes in land values established by the Forest Service. The Executive Director will publish the updated fee schedule in the FEDERAL REGISTER.

(c)(1) The annual land use charge payable for the nine month transition year of the implementation of this rule (1987) will be payable in three equal installments, with an installment included in the land use charges bills for 1988, 1989, and 1990.

(2) The charge for one year will equal an amount as computed under the procedures outlined in this section, or twice the previous full normal year's bill (not including the installments described in paragraph (c)(1) of this section), whichever is less.

(d) The minimum annual charge for use of Government lands under any license will be $25.

(e) No licensee under a license issued prior to August 26, 1935, shall be required to pay annual charges in an amount greater than that prescribed in such license, except as may be otherwise provided in the license.

[Order 560, 42 FR 1229, Jan. 6, 1977; 42 FR 6366, Feb. 2, 1977. Redesignated at 51 FR 24318, July 3, 1986; Order No. 469, 52 FR 18209, May 14, 1987; 53 FR 44859, Nov. 7, 1988]

§ 11.3 Use of government dams, excluding pumped storage projects.

(a) *General rule.* (1) Any licensee whose non-Federal project uses a Government dam or other structure for electric power generation and whose annual charges are not already specified in final form in the license must pay the United States an annual charge for the use of that dam or other structure as determined in accordance with this section. Payment of such annual charge is in addition to any reimbursement paid by a licensee for costs incurred by the United States as a direct result of the licensee's project development at such Government dam.

(2) Any licensee that is obligated under the terms of a license issued on or before September 16, 1986 to pay specified annual charges for the use of a Government dam must continue to pay the annual charges prescribed in the project license pending any readjustment of the annual charge for the project made pursuant to section 10(e) of the Federal Power Act.

(b) *Graduated flat rates.* Annual charges for the use of Government dams or other structures owned by the United States are 1 mill per kilowatt-hour for the first 40 gigawatt-hours of energy a project produces, 1½ mills per kilowatt-hour for over 40 up to and including 80 gigawatt-hours, and 2 mills per kilowatt-hour for any energy the project produces over 80 gigawatt-hours.

(c) *Information reporting.* (1) Except as provided in paragraph (c)(2) of this section, each licensee must file with the Commission, on or before November 1 of each year, a sworn statement showing the gross amount of energy generated during the preceding fiscal year and the amount of energy provided free of charge to the Government. The determination of the annual charge will be based on the gross energy production less the energy provided free of charge to the Government.

(2) A licensee who has filed these data under another section of part 11 or who has submitted identical data with FERC or the Energy Information Administration for the same fiscal year is not required to file the information described in paragraph (c)(1) of this section. Referenced filings should be identified by company name, date filed, docket or project number, and form, number.

(d) *Credits*. A licensee may file a request with the Director of the Office of Energy Projects for a credit for contractual payments made for construction, operation, and maintenance of a Government dam at any time before 30 days after receiving a billing for annual charges determined under this section. The Director, or his designee, will grant such a credit only when the licensee demonstrates that a credit is reasonably justified. The Director, or his designee, shall consider, among other factors, the contractual arrangements between the licensee and the Federal agency which owns the dam and whether these arrangements reveal clearly that substantial payments are being made for power purposes, relevant legislation, and other equitable factors.

[Order 379, 49 FR 22778, June 1, 1984, as amended by Order 379–A, 49 FR 33862, Aug. 27, 1984. Redesignated at 51 FR 24318, July 3, 1986; Order No. 469, 52 FR 18209, May 14, 1987; 52 FR 33802, Sept. 8, 1987; 53 FR 44859, Nov. 7, 1988; Order 647, 69 FR 32438, June 10, 2004]

§ 11.4 Use of government dams for pumped storage projects, and use of tribal lands.

(a) *General Rule*. The Commission will determine on a case-by-case basis under section 10(e) of the Federal Power Act the annual charges for any pumped storage project using a Government dam or other structure and for any project using tribal lands within Indian reservations.

(b) *Information reporting*. (1) Except as provided in paragraph (b)(2) of this section a Licensee whose project includes pumped storage facilities must file with the Commission, on or before November 1 of each year, a sworn statement showing the gross amount of energy generated during the preceding fiscal year, and the amount of energy provided free of charge to the Government, and the amount of energy used for pumped storage pumping.

(2) A licensee who has filed these data under another section of part 11 or who has submitted identical data with FERC or the Energy Information Administration for the same fiscal year is not required to file the information required in paragraph (b)(1) of this section. Referenced filings should be identified by company name, date filed, docket or project number, and form number.

(c) Commencing in 1993, the annual charges for any project using tribal land within Indian reservations will be billed during the fiscal year in which the land is used, for the use of that land during that year.

[Order 379, 49 FR 22778, June 1, 1984. Redesignated at 51 FR 24318, July 3, 1986; Order 469, 52 FR 18209, May 14, 1987; 52 FR 33802, Sept. 8, 1987; Order 551, 58 FR 15770, Mar. 24, 1993]

§ 11.5 Exemption of minor projects.

No exemption will be made from payment of annual charges for the use of Government dams or tribal lands within Indian reservations but licenses may be issued without charges other than for such use for the development, transmission, or distribution of power for domestic, mining, or other beneficial use in minor projects.

[Order 141, 12 FR 8492, Dec. 19, 1947. Redesignated by Order 379, 49 FR 22778, June 1, 1984. Redesignated at 51 FR 24318, July 3, 1986]

§ 11.6 Exemption of State and municipal licensees and exemptees.

(a) *Bases for exemption*. A State or municipal licensee or exemptee may claim total or partial exemption from the assessment of annual charges upon one or more of the following grounds:

(1) The project was primarily designed to provide or improve navigation;

(2) To the extent that power generated, transmitted, or distributed by the project was sold directly or indirectly to the public (ultimate consumer) without profit;

(3) To the extent that power generated, transmitted, or distributed by the project was used by the licensee for State or municipal purposes.

(b) *Projects primarily for navigation.* No State or municipal licensee shall be entitled to exemption from the payment of annual charges on the ground that the project was primarily designed to provide or improve navigation unless the licensee establishes that fact from the actual conditions under which the project was constructed and was operated during the calendar year for which the charge is made.

(c) *State or municipal use.* A State or municipal licensee shall be entitled to exemption from the payment of annual charges for the project to the extent that power generated, transmitted, or distributed by the project is used by the licensee itself for State or municipal purposes, such as lighting streets, highways, parks, public buildings, etc., for operating licensee's water or sewerage system, or in performing other public functions of the licensee.

(d) *Sales to public.* No State or municipal licensee shall be entitled to exemption from the payment of annual charges on the ground that power generated, transmitted, or distributed by the project is sold to the public without profit, unless such licensee shall show:

(1) That it maintains an accounting system which segregates the operations of the licensed project and reflects with reasonable accuracy the revenues and expenses of the project;

(2) That an income statement, prepared in accordance with the Commission's Uniform System of Accounts, shows that the revenues from the sale of project power do not exceed the total amount of operating expenses, maintenance, depreciation, amortization, taxes, and interest on indebtedness, applicable to the project property. Periodic accruals or payments for redemption of the principal of bonds or other indebtedness may not be deducted in determining the net profit of the project.

(e) *Sales for resale.* Notwithstanding compliance by a State or municipal licensee with the requirements of paragraph (d) of this section, it shall be subject to the payment of annual charges to the extent that electric power generated, transmitted, or distributed by the project is sold to another State, municipality, person, or corporation for resale, unless the licensee shall show that the power was sold to the ultimate consumer without profit. The matter of whether or not a profit was made is a question of fact to be established by the licensee.

(f) *Interchange of power.* Notwithstanding compliance by a State or municipal licensee with the requirements of paragraph (d) of this section, it shall be subject to the payment of annual charges to the extent that power generated, transmitted, or distributed by the project was supplied under an interchange agreement to a State, municipality, person, or corporation for sale at a profit (which power was not offset by an equivalent amount of power received under such interchange agreement) unless the licensee shall show that the power was sold to ultimate consumers without profit.

(g) *Construction period.* During the period when the licensed project is under construction and is not generating power, it will be considered as operating without profit within the meaning of this section, and licensee will be entitled to total exemption from the payment of annual charges, except as to those charges relating to the use of a Government dam or tribal lands within Indian reservations.

(h) *Optional showing.* When the power from the licensed project enters into the electric power system of the State or municipal licensee, making it impracticable to meet the requirements set forth in this section with respect to the operations of the project only, such licensee may, in lieu thereof, furnish the same information with respect to the operations of said electric power system as a whole.

(i) *Application for exemption.* Applications for exemption from payment of annual charges shall be signed by an authorized executive officer or chief accounting officer of the licensee or exemptee and verified under oath. An original and three copies of such application shall be filed with the Commission within the time allowed (by § 11.28) for the payment of the annual charges. If the licensee or exemptee, within the time allowed for the payment of the annual charges, files notice that it intends to file an application for exemption, an additional period of 30 days is

allowed within which to complete and file the application for exemption. The filing of an application for exemption does not by itself alleviate the requirement to pay the annual charges, nor does it exonerate the licensee or exemptee from the assessment of penalties under § 11.21. If a bill for annual charges becomes payable after an application for an exemption has been filed and while the application is still pending for decision, the bill may be paid under protest and subject to refund.

[Order 143, 13 FR 6681, Nov. 13, 1948. Redesignated and amended by Order 379, 49 FR 22778, June 1, 1984. Redesignated at 51 FR 24318, July 3, 1986; 60 FR 15048, Mar. 22, 1995]

§ 11.7 Effective date.

All annual charges imposed under this subpart will be computed beginning on the effective date of the license unless some other date is fixed in the license.

[51 FR 24318, July 3, 1986]

§ 11.8 Adjustment of annual charges.

All annual charges imposed under this subpart continue in effect as fixed unless changed as authorized by law.

[51 FR 24318, July 3, 1986]

Subpart B—Charges for Headwater Benefits

SOURCE: Order 453, 51 FR 24318, July 3, 1986, unless otherwise noted.

§ 11.10 General provision; waiver and exemptions; definitions.

(a) *Headwater benefits charges.* (1) The Commission will assess or approve charges under this subpart for direct benefits derived from headwater projects constructed by the United States, a licensee, or a pre-1920 permittee. Charges under this subpart will amount to an equitable part of the annual costs of interest, maintenance, and depreciation expenses of such headwater projects and the costs to the Commission of determining headwater benefits charges. Except as provided in paragraph (b) of this section, the owner of any non-Federal downstream project that receives headwater benefits must pay charges determined under this subpart.

(2) Headwater benefits are the additional electric generation at a downstream project that results from regulation of the flow of the river by the headwater, or upstream, project, usually by increasing or decreasing the release of water from a storage reservoir.

(b) *Waiver and exemptions.* The owner of a downstream project with installed generating capacity of 1.5 MW (2000 horsepower) or less or for which the Commission has granted an exemption from section 10(f) is not required to pay headwater benefits charges.

(c) *Definitions.* For purposes of this subpart:

(1) *Energy gains* means the difference between the number of kilowatt-hours of energy produced at a downstream project with the headwater project and that which would be produced without the headwater project.

(2) *Generation* means gross generation of electricity at a hydroelectric project, including generation needed for station use or the equivalent for direct drive units, measured in kilowatt-hours. It does not include energy used for or derived from pumping in a pumped storage facility.

(3) *Headwater project costs* means the total costs of an upstream project constructed by the United States, a licensee, or pre-1920 permittee.

(4) *Separable cost* means the difference between the cost of a multiple-function headwater project with and without any particular function.

(5) *Remaining benefits* means the difference between the separable cost of a specific function in a multiple-function project and the lesser or:

(i) The benefits of that function in the project, as determined by the responsible Federal agency at the time the project or function was authorized; or

(ii) The cost of the most likely alternative single-function project providing the same benefits.

(6) *Joint-use cost* means the difference between the total project cost and the total separable costs. Joint-use costs are allocated among the project functions according to each function's percentage of the total remaining benefits.

(7) *Specific power cost* means that portion of the headwater project costs that is directly attributable to the function of power generation at the headwater project, including, but not limited to, the cost of the electric generators, turbines, penstocks, and substation.

(8) *Joint-use power cost* means the portion of the joint-use cost allocated to the power function of the project.

(9) *Section 10(f) costs* means the annual interest, depreciation, and maintenance expense portion of the joint-use power cost, including costs of non-power functions required by statute to be paid by revenues from the power function.

(10) *Party* means:

(i) The owner of a non-Federal downstream hydroelectric project which is directly benefited by a headwater project constructed by the United States, a licensee, or a pre-1920 permittee;

(ii) The owner of a headwater project constructed by the United States, a licensee, or a pre-1920 permittee;

(iii) An operating agency of, or an agency marketing power from, a headwater project constructed by the United States; or

(iv) Any party, as defined in § 385.102(c) of this chapter.

(11) *Final charge* means a charge assessed on an annual basis to recover section 10(f) costs and which represents the final determination of the charge for the period for which headwater benefits are assessed. Final charges may be established retroactively, to finalize an interim charge, or prospectively.

(12) *Interim charge* means a charge assessed to recover section 10(f) costs for a specified period of headwater benefits pending determination of a final charge for that period.

(13) *Investment cost* means the sum of:

(i) Project construction costs, including cost of land, labor and materials, cost of pre- and post-authorization investigations, and cost of engineering, supervision, and administration during construction of the project; and

(ii) Interest during construction.

§ 11.11 Energy gains method of determining headwater benefits charges.

(a) *Applicability*. This section applies to any determination of headwater benefits charges, unless:

(1) The Commission has approved headwater benefits charges pursuant to an existing coordination agreement among the parties;

(2) The parties reach, and the Commission approves, a settlement with respect to headwater benefits charges, pursuant to § 11.14(a) of this subpart; or

(3) Charges may be assessed under § 11.14(b).

(b) *General rule*—(1) *Summary*. Except as provided in paragraph (b)(3) of this section, a headwater benefits charge for a downstream project is determined under this subpart by apportioning the section 10(f) costs of the headwater project among the headwater project and all downstream projects that are not exempt from or waived from headwater benefits charges under § 11.10(b) of this chapter, according to each project's share of the total energy benefits to those projects resulting from the headwater project.

(2) *Calculation; headwater benefits formula*. The annual headwater benefits charge for a downstream project is derived by multiplying the section 10(f) cost by the ratio of the energy gains received by the downstream project to the sum of total energy gains received by all downstream projects (except those projects specified in § 11.10(b) of this chapter) plus the energy generated at the headwater project that is assigned to the joint-use power cost, as follows:

$$P = C_p \times \frac{E_n}{E_j + E_d}$$

In which:

P=annual payment to be made for headwater benefits received by a downstream project,

C_p=annual section 10(f) cost of the headwater project,

E_n=annual energy gains received at a downstream project, or group of projects if owned by one entity,

E_d=annual energy gains received at all downstream projects (except those specified in § 11.10(b) of this chapter), and

E_j=portion of the annual energy generated at the headwater project assigned to the joint-use power cost.

(3) If power generation is not a function of the headwater project, section 10(f) costs will be apportioned only among the downstream projects.

(4) If the headwater project is constructed after the downstream project, liability for headwater benefits charges will accrue beginning on the day on which any energy losses at the downstream project due to filling the headwater reservoir have been offset by subsequent energy gains. If the headwater project is constructed prior to the downstream project, liability for headwater benefits charges will accrue beginning on the day on which benefits are first realized by the downstream project.

(5) No final charge assessed by the Commission under this subpart may exceed 85 percent of the value of the energy gains. If a party demonstrates, within the time specified in § 11.17(b)(3) for response to a preliminary assessment, that any final charge assessed under this subpart, not including the cost of the investigation assessed under § 11.17(c), exceeds 85 percent of the value of the energy gains provided to the downstream project for the period for which the charge is assessed, the Commission will reduce the charge to not more than 85 percent of the value. For purposes of this paragraph, the *value of the energy gains* is the cost of obtaining an equivalent amount of electricity from the most likely alternative source during the period for which the charge is assessed.

§ 11.12 Determination of section 10(f) costs.

(a) *for non-Federal headwater projects.* If the headwater project was constructed by a licensee or pre-1920 permittee and a party requests the Commission to determine charges, the Commission will determine on a case-by-case basis what portion of the annual interest, maintenance, and depreciation costs of the headwater project constitutes the section 10(f) costs, for purposes of this subpart.

(b) *For Federal headwater projects.* (1) If the headwater project was constructed or is operated by the United States, and the Commission has not approved a settlement between the downstream project owner and the headwater project owner, the section 10(f) cost will be determined by deriving, from information provided by the headwater project owner pursuant to § 11.16 of this subpart, the joint-use power cost and the portion of the annual joint-use power cost that represents the interest, maintenance, and depreciation costs of the project.

(2) If power is not an authorized function of the headwater project, the section 10(f) cost is the annual interest, maintenance, and depreciation portion of the headwater project costs designated as the joint-use power cost, derived by deeming a power function at the project. The value of the benefits assigned to the deemed power function, for purposes of determining the value of remaining benefits of the joint-use power cost, is the total value of downstream energy gains included in the headwater benefits formula.

(3) For purposes of this paragraph, *total value of downstream energy gains* means the lesser of:

(i) The cost of generating an equivalent amount of electricity at the most likely alternative facility at the time the headwater project became operational; or

(ii) The incremental cost of installing electrical generation at the headwater project at the time the project became operational.

§ 11.13 Energy gains calculations.

(a) *Energy gains at a downstream project.* (1) Energy gains at a downstream project are determined by simulating operation of the downstream project with and without the effects of the headwater project. Except for determinations which are not complex or in which headwater benefits are expected to be small, calculations will be made by application of the Headwater Benefits Energy Gains Model, as presented in *The Headwater Benefits Energy Gains (HWBEG) Model Description and Users Manual,* which is available for the National Technical Information Service, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161.

(2) If more than one headwater project provide energy gains to a downstream project, the energy gains at the downstream project are attributed to the headwater projects according to

the time sequence of commencement of operation in which each headwater project provided energy gains at the downstream project, by:

(i) Crediting the headwater project that is first in time with the amount of energy gains that it provided to the downstream project prior to operation of the headwater project that is next in time; and

(ii) Crediting any subsequent headwater project with the additional increment of energy gains provided by it to the downstream project.

(3) Annual energy losses at a downstream project, or group of projects owned by the same entity, that are attributable to the headwater project will be subtracted from energy gains for the same annual period at the downstream project or group of projects. A net loss in one calendar year will be subtracted from net gains in subsequent years until no net loss remains.

(b) *Energy generated at the headwater project.* (1) Except as provided in paragraphs (b)(2) and (b)(3) of this section, the portion of the total annual energy generation at the headwater project that is to be attributed to the joint-use power cost is derived by multiplying the total annual generation at the headwater project and the ratio of the project investment cost assigned to the joint-use power cost to the sum of the investment cost assigned to both the specific power cost and the joint-use power cost of the headwater project, as follows:

$$E_j = E \times \frac{C_j}{C_s + C_j}$$

In which:

E_j=annual energy generated at the headwater project to be attributed to the joint-use power cost,

E=total annual generation at the headwater project,

C_j=project investment costs assigned to the joint-use power cost, and

C_s=project investment costs assigned to specific power costs.

(2) If the headwater project contains a pumped storage facility, calculation of the portion of the total annual energy generation at the headwater project that is attributable to the joint-use power cost will be determined on a case-by-case basis.

(3) If no power is generated at the headwater project, the amount of energy attributable to the joint-use power cost under this section is the total of all downstream energy gains included in the headwater benefits formula.

§ 11.14 Procedures for establishing charges without an energy gains investigation.

(a) *Settlements.* (1) Owners of downstream and headwater projects subject to this subpart may negotiate a settlement for headwater benefits charges. Settlements must be filed with the Commission for its approval, according to the provisions of § 385.602.

(2) If the headwater project is a Federal project, any settlement under this section must result in headwater benefits payments that approximate those that would result under the energy gains method.

(b) *Continuation of previous headwater benefits determinations.* (1) For any downstream project being assessed headwater benefit charges on or before September 16, 1986, the Commission will continue to assess charges to that project on the same basis until changes occur in the river basin, including hydrology or project development, that affect headwater benefits.

(2) Any procedures that apply to § 11.17(b)(5) of this subpart will apply to any prospectively fixed charges that are continued under this paragraph.

§ 11.15 Procedures for determining charges by energy gains investigation.

(a) *Purpose of investigations; limitation.* Except as permitted under § 11.14, the Commission will conduct an investigation to obtain information for establishing headwater benefits charges under this subpart. The Commission will investigate and determine charges for a project downstream from a non-Federal headwater project only if the parties are unable to agree to a settlement and one of the parties requests the Commission to determine charges.

(b) *Notification.* The Commission will notify each downstream project owner and each headwater project owner

when it initiates an investigation under this section, and the period of project operations to be studied will be specified. An investigation will continue until a final charge has been established for all years studied in the investigation.

(c) *Jurisdictional objections.* If any project owner wishes to object to the assessment of a headwater benefits charge on jurisdictional grounds, such objection must:

(1) Be raised within 30 days after the notice of the investigation is issued; and

(2) State in detail the grounds for its objection.

(d) *Investigations.* (1) For any downstream project for which a final charge pursuant to an investigation has never been established, the Commission will conduct an initial investigation to determine a final charge.

(2) The Commission may, for good cause shown by a party or on its own motion, initiate a new investigation of a river basin to determine whether, because of any change in the hydrology, project development, or other characteristics of the river basin that effects headwater benefits, it should:

(i) Establish a new final charge to replace a final charge previously established under § 11.17(b)(5); or

(ii) Revise any variable of the headwater benefits formula that has become a constant in calculating a final charge.

(3) *Scope of investigations.* (i) The Commission will establish a final charge pursuant to an investigation based on information available to the Commission through the annual data submission requirements of § 11.16, if such information is adequate to establish a reasonably accurate final charge.

(ii) If the information available to the Commission is not sufficient to provide a reasonably accurate calculation of the final charge, the Commission will request additional data and conduct any studies, including studies of the hydrology of the river basin and project operations, that it determines necessary to establish the charge.

§ 11.16 Filing requirements.

(a) *Applicability.* (1) Any party subject to a headwater benefits determination under this subpart must supply project-specific data, in accordance with this section, by February 1 of each year for data from the preceding calendar year.

(2) Within 30 days of notice of initiation of an investigation under § 11.15, a party must supply project-specific data, in accordance with this section, for the years specified in the notice.

(b) *Data required from owner of the headwater project.* The owner of any headwater project constructed by the United States, a licensee, or a pre-1920 permittee that is upstream from a non-Federal hydroelectric project must submit the following:

(1) Name and location of the headwater project, including the name of the stream on which it is located.

(2) The total nameplate rating of installed generating capacity of the project, expressed in kilowatts, with the portion of total capacity that represents pumped storage generating capacity separately designated.

(3) A description of the total storage capacity of the reservoir and allocation of storage capacity to each of its functions, such as dead storage, power storage, irrigation storage, and flood control storage. Identification, by reservoir elevation, of the portion of the reservoir assigned to each of its respective storage functions.

(4) An elevation-capacity curve, or a tabulation of reservoir pool elevations with corresponding reservoir storage capacities.

(5) A copy of rule curves, coordination contracts, agreements, or other relevant data governing the release of water from the reservoir, including a separate statement of their effective dates.

(6) A curve or tabulation showing actual reservoir pool elevations throughout the immediately preceding calendar year and for each year included in an investigation.

(7) The total annual gross generation of the hydroelectric plant in kilowatt-hours, not including energy from pumped storage operation.

(8) The total number of kilowatt-hours of energy produced from pumped storage operation.

(9) The investigation costs attributed to the power generation function of the

project as of the close of the calendar year or at a specified date during the year, categorized according to that portion that is attributed to the specific power costs, and that portion that is attributed to the joint-use power costs.

(10) The portion of the joint-use power cost, and other costs required by law to be allocated to joint-use power cost, each item shown separately, that are attributable to the annual costs of interest, maintenance, and depreciation, identifying the annual interest rate and the method used to compute the depreciation charge, or the interest rate and period used to compute amortization if used in lieu of depreciation, including any differing interest rates used for major replacements or rehabilitation.

(c) *Data required from owners of downstream projects.* The owner of any hydroelectric project which is downstream from a headwater project constructed by the United States, a licensee, or pre-1920 permittee must submit the following:

(1) Name and location of the downstream project, including the name of the stream on which it is located.

(2) Total nameplate rating of the installed generating capacity of the plant, expressed in kilowatts, with the portion of total capacity that represents pumped storage generating capacity separately designated.

(3) Record of daily gross generation, not including energy used for pumped storage, and any unit outage which may have occurred.

(4) The total number of kilowatt-hours of energy produced from pumped storage operation.

(d) *Abbreviated data submissions.* (1) For those items in paragraphs (b) and (c) of this section in which data for the current period are the same as data furnished for a prior period, the data need not be resubmitted if the owner identifies the last period for which the data were reported.

(2) The Commission will notify the project owner that certain data items in paragraphs (b) and (c) are no longer required to be submitted annually if:

(i) A variable in the headwater benefits formula has become a constant; or

(ii) A prospective final charge, as described in §11.17(b)(5), has been established.

(e) *Additional data.* Owners of headwater projects or downstream projects must furnish any additional data required by the Commission staff under paragraph (a) of this section and may provide other data which they consider relevant.

§ 11.17 Procedures for payment of charges and costs.

(a) *Payment for benefits from a non-Federal headwater project.* Any billing procedures and payments determined between a non-Federal headwater project owner and a downstream project owner will occur according to the agreement of those parties.

(b) *Charges and payment for benefits from a Federal headwater project*—(1) *Interim charges.* (i) If the Commission has not established a final charge and an investigation is pending, the Commission will issue a downstream project owner a bill for the interim charge and costs and a staff report explaining the calculation of the interim charge.

(ii) An interim charge will be a percentage of the estimate by the Commission staff of what the final charge will be, as follows:

(A) 100 percent of the estimated final charge if the Commission previously has completed an investigation of the project for which it is assessed; or

(B) 80 percent of the estimated final charge if the Commission has not completed an investigation of the project for which it is assessed.

(iii) When a final charge is established for a period for which an interim charge was paid, the Commission will apply the amount paid to the final charge.

(2) *Preliminary assessment of a final charge.* Unless the project owner was assessed a final charge in the previous year, the Commission will issue to the downstream project owner a preliminary assessment of any final charge when it is determined. A staff technical report explaining the basis of the assessment will be enclosed with the preliminary assessment. Copies of the preliminary assessment will be mailed to all parties.

(3) *Opportunity to respond.* After issuance of a preliminary assessment of a final charge, parties may respond in writing within 60 days after the preliminary assessment.

(4) *Order and bill.* (i) After the opportunity for written response by the parties to the preliminary assessment of a final charge, the Commission will issue to the downstream project owner an order establishing the final charge. Copies of the order will be mailed to all parties. A bill will be issued for the amount of the final charge and costs.

(ii) If a final charge is not established prospectively under paragraph (b)(5) of this section, the Commission will issue an order and a bill for the final charge and costs each year until prospective final charges are established. After the Commission issues an order establishing a prospective final charge, a bill will be issued annually for the amount of the final charge and costs.

(5) *Prospective final charges.* When the Commission determines that historical data, including the hydrology, development, and other characteristics of the river basin, demonstrate sufficient stability to project average energy gains and section 10(f) costs, the Commission will issue to the downstream project owner an order establishing the final charge from future years. Copies of the order will be mailed to all parties. The prospective final charge will remain in effect until a new investigation is initiated under § 11.15(d)(2).

(6) *Payment under protest.* Any payment of a final charge required by this section may be made under protest if a party is also appealing the final charge pursuant to § 385.1902, or requesting rehearing. If payment is made under protest, that party will avoid any penalty for failure to pay under § 11.21.

(7) *Accounting for payments pending appeal or rehearing.* The Commission will retain any payment received for final charges from bills issued pursuant to this section in a special account. No disbursements to the U.S. Treasury will be made from the account until 31 days after the bill is issued. If an appeal under § 385.1902 or a request for rehearing is filed by any party, no disbursements to the U.S. Treasury will be made until final disposition of the appeal or request for rehearing.

(c) *Charges for costs of determinations of headwater benefits charges.* (1) Any owner of a downstream project that benefits from a Federal headwater project must pay to the United States the cost of making any investigation, study, or determination relating to the assessment of the relevant headwater benefits charge under this subpart.

(2) If any owner of a headwater or downstream project requests that the Commission determine headwater benefits charges for benefits provided by non-Federal headwater projects, the headwater project owners must pay a pro rata share of 50 percent of the cost of making the investigation and determination, in proportion to the benefits provided by their projects, and the downstream project owners must pay a pro rata share of the remaining 50 percent in proportion to the energy gains received by their projects.

(3) Any charge assessed under this paragraph is separate from and will be added to, any final or interim charge under this subpart.

Subpart C—General Procedures

§ 11.20 Time for payment.

Annual charges must be paid no later than 45 days after rendition of a bill by the Commission. If the licensee or exemptee believes that the bill is incorrect, no later than 45 days after its rendition the licensee or exemptee may file an appeal of the bill with the Chief Financial Officer. No later than 30 days after the date of issuance of the Chief Financial Officer's decision on the appeal, the licensee or exemptee may file a request for rehearing of that decision pursuant to § 385.713 of this chapter. In the event that a timely appeal to the Chief Financial Officer or a timely request to the Commission for rehearing is filed, the payment of the bill may be made under protest, and subject to refund pending the outcome of the appeal or rehearing.

[60 FR 15048, Mar. 22, 1995]

§ 11.21 Penalties.

If any person fails to pay annual charges within the periods specified in § 11.20, a penalty of 5 percent of the

total delinquent amount will be assessed and added to the total charges for the first month or part of month in which payment is delinquent. An additional penalty of 3 percent for each full month thereafter will be assessed until the charges and penalties are satisfied in accordance with law. The Commission may, by order, waive any penalty imposed by this subsection, for good cause shown.

[51 FR 24318, July 3, 1986]

APPENDIX A TO PART 11—FEE SCHEDULE FOR FY 2007

State	County	(Fee/acre/yr)
	.	
ALABAMA	ALL COUNTIES	$29.20
ARKANSAS	ALL COUNTIES	21.90
ARIZONA	COCHISE, GILA, GRAHAM, LA PAZ, MOHAVE, NAVAJO, PIMA, YAVAPAI, YUMA, COCONINO, (NORTH OF COLORADO R.).	7.28
	COCONINO (SOUTH OF COLORADO R.), GREENLEE, MARICOPA, PINAL, SANTA CRUZ.	29.20
CALIFORNIA	IMPERIAL, INYO, LASSEN, MODOC, RIVERSIDE, SAN BERNARDINO	14.60
	SISKIYOU	21.90
	ALAMEDA, ALPINE, AMADOR, BUTTE, CALAVERAS, COLUSA, CONTRA COSTA, DEL NORTE, EL DORADO, FRESNO, GLENN, HUMBOLDT, KERN, KINGS, LAKE, MADERA, MARIPOSA, MENDICINO, MERCED, MONO, NAPA, NEVADA, PLACER, PLUMAS, SACRAMENTO, SAN BENITO, SAN JOAQUIN, SANTA CLARA, SHASTA, SIERRA, SOLANO, SONOMA, STANISLAUS, SUTTER, TEHAMA, TRINITY, TULARE KINGS, TUOLUMNE, YOLO, YUBA.	36.49
	LOS ANGELES, MARIN, MONTEREY, ORANGE, SAN DIEGO, SAN FRANCISCO, SAN LUIS OBISPO, SAN MATEO, SANTA BARBARA, SANTA CRUZ, VENTURA.	43.81
COLORADO	ADAMS, ARAPAHOE, BENT, CHEYENNE, CROWLEY, ELBERT, EL PASO, HUERFANO, KIOWA, KIT CARSON, LINCOLN, LOGAN, MOFFAT, MONTEZUMA, MORGAN, PUEBLO, SEDGEWICK, WASHINGTON, WELD, YUMA.	7.28
	BACA, BROOMFIELD, DOLORES, GARFIELD, LAS ANIMAS, MESA, MONTROSE, OTERO, PROWERS, RIO BLANCO, ROUTT, SAN MIGUEL.	14.60
	ALAMOSA, ARCHULETA, DBOULDER, CHAFFEE, CLEAR CREEK, CONEJOS, COSTILLA, CUSTER, DENVER, DELTA, DOUGLAS, EAGLE, FREMONT, GILPIN, GRAND, GUNNISON, HINSDALE, JACKSON, JEFFERSON, LAKE, LA PLATA, LARIMER, MINERAL, OURAY, PARK, PITKIN, RIO GRANDE, SAGUACHE, SAN JUAN, SUMMIT, TELLER.	29.20
CONNECTICUT	ALL COUNTIES	7.28
FLORIDA	BAKER, BAY, BRADFORD, CALHOUN, CLAY, COLUMBIA, DIXIE, DUVAL, ESCAMBIA, FRANKLIN, GADSDEN, GILCHRIST, GULF, HAMILTON, HOLMES, JACKSON, JEFFERSON, LAFAYETTE, LEON, LIBERTY, MADISON, NASSAU, OKALOOSA, SANTA ROSA, SUWANNEE, TAYLOR, UNION, WAKULLA, WALTON, WASHINGTON.	43.81
	ALL OTHER COUNTIES	72.97
GEORGIA	ALL COUNTIES	43.81
IDAHO	CASSIA, GOODING, JEROME, LINCOLN, MINIDOKA, ONEIDA, OWYHEE, POWER, TWIN FALLS.	7.28
	ADA, ADAMS, BANNOCK, BEAR LAKE, BENEWAH, BINGHAM, BLAINE, BOISE, BONNER, BONNEVILLE, BOUNDARY, BUTTE, CAMAS, CANYON, CARIBOU, CLARK, CLEARWATER, CUSTER, ELMORE, FRANKLIN, FREMONT, GEM, IDAHO, JEFFERSON, KOOTENAI, LATAH, LEMHI, LEWIS, MADISON, NEZ PERCE, PAYETTE, SHOSHONE, TETON, VALLEY, WASHINGTON.	21.90
ILLINOIS	ALL COUNTIES	21.90
INDIANA	ALL COUNTIES	36.49
KANSAS	MORTON	14.60
	ALL OTHER COUNTIES	7.28
KENTUCKY	ALL COUNTIES	21.90
LOUISIANA	ALL COUNTIES	43.81
MAINE	ALL COUNTIES	21.90
MICHIGAN	ALGER, BARAGA, CHIPPEWA, DELTA, DICKINSON, GOGEBIC, HOUGHTON, IRON, KEWEENAW, LUCE, MACKING, MARQUETTE, MENOMINEE, ONTONAGON, SCHOOLCRAFT.	21.90
	ALL OTHER COUNTIES	29.20
MINNESOTA	ALL COUNTIES	21.90
MISSISSIPPI	ALL COUNTIES	29.20
MISSOURI	ALL COUNTIES	21.90

State	County	(Fee/acre/yr)
MONTANA	BIG HORN, BLAINE, CARTER, CASCADE, CHOUTEAU, CUSTER, DANIELS, MCCONE, MEAGHER, DAWSON, FALLON, FERGUS, GARFIELD, GLACIER, GOLDEN VALLEY, HILL, JUDITH BASIN, LIBERTY, MUSSELSHELL, PETROLEUM, PHILLIPS, PONDERA, POWDER RIVER, PRAIRIE, RICHLAND, ROOSEVELT, ROSEBUD, SHERIDAN, TETON, TOOLE, TREASURE, VALLEY, WHEATLAND, WIBAUX, YELLOWSTONE.	7.28
	BEAVERHEAD, BROADWATER, CARBON, DEER LODGE, FLATHEAD, GALLATIN, GRANITE, JEFFERSON, LAKE, LEWIS & CLARK, LINCOLN, MADISON, MINERAL, MISSOULA, PARK, POWELL, RAVALLI, SANDERS, SILVER BOW, STILLWATER, SWEET GRASS.	21.90
NEBRASKA	ALL COUNTIES	7.28
NEVADA	CHURCHILL, CLARK, ELKO, ESMERALDA, EUREKA, HUMBOLDT, LANDER, LINCOLN, LYON, MINERAL, NYE, PERSHING, WASHOE, WHITE PINE.	3.65
	CARSON CITY, DOUGLAS, STORY	36.49
NEW HAMPSHIRE	ALL COUNTIES	21.90
NEW MEXICO	CHAVES, CURRY, DE BACA, DONA ANA, EDDY, GRANT, GUADALUPE, HARDING, HIDALGO, LEA, LUNA, MCKINLEY, OTERO, QUAY, ROOSEVELT, SAN JUAN, SOCORRO, TORRENCE.	7.28
	RIO ARRIBA, SANDOUAL, UNION	14.60
	BERNALILLO, CATRON, CIBOLA, COLFAX, LINCOLN, LOS ALAMOS, MORA, SAN MIGUEL, SANTA FE, SIERRA, TAOS, VALENCIA.	29.20
NEW YORK	ALL COUNTIES	29.20
NORTH CAROLINA	ALL COUNTIES	43.81
NORTH DAKOTA	ALL COUNTIES	7.28
OHIO	ALL COUNTIES	29.20
OKLAHOMA	BEAVER, CIMARRON, ROGER MILLS, TEXAS	14.60
	LE FLORE, MC CURTAIN	21.90
	ALL OTHER COUNTIES	7.28
OREGON	HARNEY, LAKE, MALHEUR	7.28
	BAKER, CROOK, DESCHUTES, GILLIAM, GRANT, JEFFERSON, KLAMATH, MORROW, SHERMAN, UMATILLA, UNION, WALLOWA, WASCO, WHEELER,.	14.60
	COOS, CURRY, DOUGLAS, JACKSON, JOSEPHINE	21.90
	BENTON, CLACKAMAS, CLATSOP, COLUMBIA, HOOD RIVER, LANE, LINCOLN, LINN, MARION, MULTNOMAH, POLK, TILLAMOOK, WASHINGTON, YAMHILL.	29.20
PENNSYLVANIA	ALL COUNTIES	29.20
PUERTO RICO	ALL	43.81
SOUTH CAROLINA	ALL COUNTIES	43.81
SOUTH DAKOTA	BUTTE, CUSTER, FALL RIVER, LAWRENCE, MEAD, PENNINGTON	21.90
	ALL OTHER COUNTIES	7.28
TENNESSEE	ALL COUNTIES	29.20
TEXAS	CULBERSON, EL PASO, HUDSPETH	7.28
	ALL OTHER COUNTIES	43.81
UTAH	BEAVER, BOX ELDER, CARBON, DUCHESNE, EMERY, GARFIELD, GRAND, IRON, JUAB, KANE, MILLARD, SAN JUAN, TOOELE, UINTAH, WAYNE.	7.28
	WASHINGTON	14.60
	CACHE, DAGGETT, DAVIS, MORGAN, PIUTE, RICH, SALT LAKE, SANPETE, SEVIER, SUMMIT, UTAH, WASATCH, WEBER.	21.90
VERMONT	ALL COUNTIES	29.20
VIRGINIA	ALL COUNTIES	29.20
WASHINGTON	ADAMS, ASOTIN, BENTON, CHELAN, COLUMBIA, DOUGLAS, FRANKLIN, GARFIELD, GRANT, KITTITAS, KLICKITAT, LINCOLN, OKANOGAN, SPOKANE, WALLA WALLA, WHITMAN, YAKIMA,.	$14.60
	FERRY, PEND OREILLE, STEVENS	21.90
	CLALLAM, CLARK, COWLITZ, GRAYS HARBOR ISLAND, JEFFERSON, KING, KITSAP, LEWIS, MASON, PACIFIC, PIERCE, SAN JUAN, SKAGIT, SKAMANIA, SNOHOMISH, THURSTON, WAHKIAKUM, WHATCOM.	29.20
WEST VIRGINIA	ALL COUNTIES	29.20
WISCONSIN	ALL COUNTIES	21.90
WYOMING	ALBANY, CAMPBELL, CARBON, CONVERSE, GOSHEN, HOT SPRINGS, JOHNSON, LARAMIE, LINCOLN, NATRONA, NIOBRARA, PLATTE, SHERIDAN, SWEETWATER, FREMONT, SUBLETTE, UINTA, WASHAKIE.	7.28
	BIG HORN, CROOK, PARK, TETON, WESTON	21.90
ALL OTHER ZONES		5.74

[72 FR 1453, Jan. 12, 2007]

PART 12—SAFETY OF WATER POWER PROJECTS AND PROJECT WORKS

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AUTHORITY: 16 U.S.C. 792–828c; 42 U.S.C. 7101–7352; E.O. 12009, 3 CFR 142 (1978).

SOURCE: Order 122, 46 FR 9036, Jan. 28, 1981, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes to part 12 appear at 69 FR 32438, June 10, 2004.

Subpart A—General Provisions

§ 12.1 Applicability.

(a) Except as otherwise provided in this part or ordered by the Commission or its authorized representative, the provisions of this part apply to:

(1) Any project licensed under Part I of the Federal Power Act;

(2) Any unlicensed constructed project for which the Commission has determined that an application for license must be filed under Part I of the Act; and

(3) Any project exempted from licensing under Part I of the Federal Power Act, pursuant to subparts J or K of part 4 of this chapter, to the extent that the Commission has conditioned the exemption on compliance with any particular provisions of this part.

(b) The provisions of this part apply to a project that uses a Government dam only with respect to those project works, lands, and waters specifically licensed by the Commission.

§ 12.2 Rules of construction.

(a) If any term, condition, article, or other provision in a project license is similar to any provision of this part, the licensee must comply with the relevant provision of this part, unless the Commission or the Director of the Office of Energy Projects Licensing determines that compliance with the relevant provision of the license will better protect life, health, or property.

(b) A licensee may request from the Director of the Office of Energy Projects Licensing a ruling on the applicability to its actions of any provision of its license that is similar to a provision of this part. A ruling by the Director may be appealed under § 385.207 of this chapter.

[Order 122, 46 FR 9036, Jan. 28, 1981, as amended by Order 225, 47 FR 19056, May 3, 1982; 49 FR 29370, July 20, 1984]

§ 12.3 Definitions.

(a) *General rule.* For purposes of this part, terms defined in section 3 of the Federal Power Act, 16 U.S.C. 796, have the same meaning as they have under the Act.