

§ 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 of:

(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.

[Order 453, [51 FR 24318](#), July 3, 1986, as amended by Order 699, [72 FR 45324](#), Aug. 14, 2007]