

152 FERC ¶ 62,124
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Hudson River-Black River Regulating District Erie Boulevard Hydropower L.P.	Docket No. HB81-09-2-002 Project Nos. P-12252-000 P-2318-002 P-2047-004 P-2482-014 P-2554-003 P-2385-002 P-2609-013 P-5461-000
Finch Hydro Holding, LLC Curtis/Palmer Hydroelectric Co. South Glens Falls Limited Partnership and Niagara Mohawk Power Corp.	P-5276-000
Northern Electric Power Co. and Niagara Mohawk Power Corp.	P-4226-002 P-4684-001
Fort Miller Associates Stillwater Hydro Associates, LLC GR Catalyst One, LLC	P-2934-000 P-6032-000 P-13-023
New York State Electric & Gas Corp. Albany Engineering Corp. Green Island Power Authority and Albany Engineering Corp.	

**ORDER CALCULATING DATES FOR COMMENCEMENT OF HEADWATER
BENEFITS ASSESSMENTS**

(Issued August 21, 2015)

1. On July 31, 2012, Commission staff issued an order determining headwater benefits in the Hudson River Basin.¹ The July 2012 order determined the extent of benefits the operation and maintenance of the Hudson River-Black River Regulating District's (District) Great Sacandaga Lake Project No. 12252 conferred to 13 downstream projects for the period from 2002 through 2008.² Those beneficiary projects are listed in Table 1. The order required the downstream beneficiaries to file individual agreements

¹ *Hudson River-Black River Regulating District*, 140 FERC ¶ 62,089, *reh'g denied*, 141 FERC ¶ 61,227 (2012).

² 140 FERC ¶ 62,089 at P 3.

that reflect: (1) Commission-determined headwater benefits assessments for the period from 2002 through 2008; (2) annual interim assessments beginning in 2009; and (3) payments made pursuant to state law that each of the 13 beneficiaries made to the District since Commission licensing of the Great Sacandaga Lake Project in 2002.³ This order addresses the filings in response to the July 2012 order.

Table 1. Beneficiary Projects

Hydroelectric Facility Name	Project No.	Licensee/Operator
E. J. West	P-2318	Erie Boulevard Hydropower, L.P.
Stewart's Bridge	P-2047	Erie Boulevard Hydropower, L.P.
Curtis/Palmer Falls	P-2609	Curtis/Palmer Hydroelectric Co.
Hudson River Project (Spier Falls and Sherman Island Developments)	P-2482	Erie Boulevard Hydropower, L.P.
Feeder Dam	P-2554	Erie Boulevard Hydropower, L.P.
Glens Falls	P-2385	Finch Hydro Holdings, LLC (Erie Boulevard Hydropower, L.P.) ⁴
South Glens Falls	P-5461	South Glens Falls Limited Partnership and Niagara Mohawk Power Corporation
Hudson Falls	P-5276	Northern Electric Power Co. and Niagara Mohawk Power Corporation
Fort Miller	P-4226	Fort Miller Associates
Stillwater	P-4684	GR Catalyst One, LLC ⁵
Upper Mechanicville	P-2934	New York State Electric and Gas Corp.
Mechanicville	P-6032	Albany Engineering Corp.
Green Island	P-13	Green Island Power Authority and Albany Engineering Corp.

I. Background

2. Regulation of stream flows by storage reservoirs such as the District's Great Sacandaga Lake on a river system's headwaters can increase the generation of electricity at downstream hydropower projects. Section 10(f) of the Federal Power Act (FPA) provides that, whenever a licensee is directly benefited in this way by the construction work of another licensee, a permittee, or the United States of a storage reservoir or other

³ 140 FERC ¶ 62,089 ordering paragraph B.

⁴ Headwater benefits assessments are included under Erie Boulevard Hydropower, L.P. Both Erie Boulevard and Finch Hydro Holdings, LLC are owned by Brookfield Renewable Energy Group.

⁵ As explained below, Commission staff approved the transfer of the license for the Stillwater Project No, 4684 from Stillwater Hydro Associates, LLC to GR Catalyst One, LLC.

headwater improvement, the Commission shall require that the licensee “reimburse the owner of such reservoir or other improvements for such part of the annual charges for *interest, maintenance, and depreciation* thereon as the Commission may deem equitable.”⁶ The Commission's regulations provide for an investigation to collect information for determining headwater benefits charges.⁷ These regulations also allow owners of downstream hydropower projects and headwater projects to negotiate a settlement for headwater benefits charges and file the settlement for Commission approval in lieu of an investigation.⁸

3. The District's operation of the Great Sacandaga Lake Project provides the headwater benefits in this proceeding. Although constructed in the early twentieth century, the Commission did not license the Great Sacandaga Lake Project until 2002.⁹ However, under authority of New York state law, the District had been assessing downstream licensees for headwater benefits for decades, and continued to do so after 2002.

4. In 2006, Albany Engineering Corp. (Albany Engineering), the licensee for one of the downstream beneficiary projects, the Mechanicville Project No. 6032, challenged the District's state assessments by filing a complaint against the District before the Commission.¹⁰ Albany Engineering asserted the District's assessments for headwater benefits pursuant to New York state law were improper because FPA section 10(f) completely preempted any state law assessments. The Commission agreed that FPA section 10(f) preempted the New York headwater benefits statutes to the extent the New York statutes allowed for assessments related to “interest, maintenance, and depreciation;” however, to the extent New York law allowed for assessments outside of “interest, maintenance, and depreciation,” the Commission found no preemption.¹¹ On appeal, the U.S. Court of Appeals for the D.C. Circuit ruled that FPA section 10(f)

⁶ 16 U.S.C. § 803 (2012) (emphasis added).

⁷ 18 C.F.R. § 11.15 (2015).

⁸ 18 C.F.R. § 11.14(a)(1) (2015).

⁹ *Hudson River-Black River Regulating District*, 100 FERC ¶ 61,319 (2002).

¹⁰ The complaint was actually filed by Albany Engineering's predecessor in interest, Fourth Branch Associates, and later assumed by Albany Engineering.

¹¹ *Fourth Branch Associates (Mechanicville) v. Hudson River-Black River Regulating District*, 117 FERC ¶ 61,321 (2006), *reh'g denied*, 119 FERC ¶ 61,141 (2007).

preempted all state assessments for headwater benefits, not just assessments that covered “interest, maintenance, and depreciation.”¹²

5. Following remand, the Commission found that it lacked authority to order refunds for the unauthorized state assessments and therefore declined to order the District to refund payments it had previously received pursuant to preempted state law.¹³ Instead, the Commission intimated that it may be able to allow amounts previously paid to the District to offset the Commission’s FPA section 10(f) headwater benefits assessments.¹⁴ After the licensees’ attempts to reach a settlement failed, Commission staff initiated a headwater benefits investigation to establish headwater benefits charges due the District from the owners of the downstream projects. Commission staff issued a draft headwater benefits determination report on January 19, 2012. The parties were given an opportunity to comment, and the July 2012 order determining headwater benefits followed. The July 2012 Order concluded that to the extent “downstream project owners made payments exceeding the [FPA section 10(f) amounts], those overpayments, equitably, should be offset against future charges.”¹⁵ The July 2012 order requested that the parties collaboratively determine a break-even point when the annual section 10(f) assessments determined in the July 2012 order would be offset by prior overpayments and when the licensees would begin making section 10(f) payments to the District.¹⁶

¹² *Albany Engineering Corp. v. FERC*, 548 F.3d 1071 (D.C. Cir. 2008).

¹³ *Albany Engineering Corp. v. Hudson River-Black River Regulating District*, 127 FERC ¶ 61,174 P 19 (2009) (“We continue to believe, as we concluded in our prior orders, that we do not have authority to order refunds of charges collected by the District without authority, although we may be able, at the conclusion of a headwater benefits investigation, to permit Albany Engineering to offset amounts it owes by the amounts it has paid to the District.”).

¹⁴ 127 FERC ¶ 61,174 at P 3 (“We may in the future consider whether it is appropriate to offset any amounts Albany Engineering owes the District to account for payments it has already made.”).

¹⁵ 140 FERC ¶ 62,089 at P 44.

¹⁶ On December 20, 2012, the Commission denied rehearing of issues not pertinent to this order. 141 FERC ¶ 61,227 (2012).

II. Filings Made Pursuant to the July 2012 Order

A. Albany Engineering

6. On November 22, 2013, Albany Engineering filed a letter indicating that it had reached a resolution with the District regarding overpayments to the District for the 2003 through 2008 time period. Albany Engineering explains that it secured a judgment against the District for the return of past unauthorized state assessments, including interest.¹⁷ Albany Engineering further explains that, as a result of the state court judgment, the District provided full and complete satisfaction for all excessive headwater benefits assessments paid for 2003 through 2008.¹⁸ Therefore, Albany Engineering states that, from 2009 forward, it will pay the District in accordance with the determinations in the July 2012 order.

7. On January 14, 2014, the District confirmed resolution of the matter and states that Albany Engineering will commence payments once the Commission authorizes the District to begin issuing bills. The July 2012 order set the annual headwater benefit assessment for the Mechanicville Project at \$7,857, so Albany Engineering owes the District a total of \$39,285 for 2009, 2010, 2011, 2012, and 2013.¹⁹ For subsequent years, Albany Engineering will owe the District interim assessments of \$7,857 annually.

B. Erie Boulevard Hydropower, L.P. (Erie Boulevard)

8. Erie Boulevard is the licensee of the E.J. West Project No. 2318, Stewart's Bridge Project No. 2047, Hudson River Project (Spier Falls and Sherman Island Developments) Project No. 2482, and the Feeder Dam Project No. 2554. The July 2012 order included Finch Hydro Holdings LLC, licensee of the Glens Falls Project No. 2385, under Erie Boulevard, because they are both owned by the same parent company, Brookfield Renewable Energy Group.

¹⁷ See *Albany Engineering Corp. v. Hudson River/Black Regulating District*, 973 N.Y.S.2d 391 (N.Y. App. Div. 2013).

¹⁸ Albany Engineering explained that it acquired the Mechanicville Project in July 2003 and became responsible for payment of headwater benefits at that time. Albany Engineering sought no credit for 2002, because the seller, Niagara Mohawk Power Corporation, paid the assessment for 2002.

¹⁹ The District's January 14, 2014 letter actually set the amount at \$38,285, which appears to be a typographical error. The July 2012 order set annual assessments at \$7,857, resulting in \$39,285 over 5 years. Including 2014, the amount owed would be \$47,142.

9. The July 2012 order determined section 10(f) headwater assessments to Erie Boulevard for the above five projects at:

Year	Amount
2002	\$46,898
2003	\$199,657
2004	\$241,342
2005	\$276,858
2006	\$353,400
2007	\$366,385
2008	\$365,100

10. The July 2012 Order then determined interim assessments of \$365,100 a year beginning in 2009. On October 31, 2012, Erie Boulevard filed a letter stating that attempts to reach an agreement with the District had failed. Erie Boulevard calculates it paid the District \$9,146,507.98, resulting in an overpayment of \$7,296,867.98 for the 2002 through 2008 period.²⁰

11. On November 13, 2012, the District responded that there has been no overpayment by Erie Boulevard. Rather, Erie Boulevard brought a suit in state court challenging the District's assessments, and the issue was resolved through a May 2006 New York state court Stipulation of Settlement and Order (2006 Settlement). The 2006 Settlement established by agreement Erie's payments to the District for the fiscal years beginning July 1, 2000, and ending June 30, 2009.

12. The District argues that the 2006 Settlement precludes Erie Boulevard from benefiting from the Commission's proposed method for offsetting section 10(f) headwater benefits assessments with past overpayments.²¹ With regard to the fiscal years covered by the lawsuit, the District states that the "release and forever discharge" language in paragraph 10 of the settlement precludes Erie Boulevard from benefitting from the Commission's offset mechanism for any overpayments it made for these fiscal

²⁰ Erie Boulevard also requests inclusion of the time value of money in the calculations and proffers the 9 percent interest rate used by the New York state courts as appropriate.

²¹ The District included a copy of the 2006 Settlement in its November 13, 2012 filing.

years.²² The District also states that in paragraph 13 of the 2006 Settlement Erie Boulevard has waived any claims it might have as to assessments for the three budget years beginning July 1, 2006, 2007, and 2008.²³

²² Paragraph 10 of the 2006 Settlement provides:

Each of the Parties, on behalf of itself and on behalf of any person or entity claiming by, through or under it, does hereby release and forever discharge each of the other Parties, ... (collectively, the “Released Parties”), from any and all claims, demands, judgments, liabilities, damages, and causes of action of every kind and character, whether such claims arise in contract or tort, are founded upon statutory or common law, or whether such claims are known or unknown, at law or in equity (“Claim” or collectively, “Claims”), arising out of or in any way related to the District’s budgets, assessments and apportionments for the budget years July 1, 2000 to June 30, 2001, July 1, 2001 to June 30, 2002, July 1, 2002 to June 30, 2003, July 1, 2003 to June 30, 2004, July 1, 2004 to June 30, 2005, and July 1, 2005 to June 30, 2006, which such Party may now have against the Released Parties (to the extent that such claims originated in whole or in part or, based on presently existing facts, that could have originated in whole or in part on or before that date hereof).

²³ Paragraph 13 provides as follows:

Petitioner agrees to waive any future challenges or claims with respect to the District’s July 1, 2006 to June 30, 2007, July 1, 2007 to June 30, 2008 and July 1, 2008 to June 30, 2009 budgets, assessments and/or apportionments and agrees not to bring any lawsuit or legal action of any kind challenging, contesting or disputing the District’s budgets, assessments and/or apportionments for the period July 1, 2006 to June 30, 2009.

Finally, the District states that paragraph 14 of the settlement refers to an executed Amendment to Reservoir Operating Agreement and Letter Agreement, which, according to the District, represents valuable consideration received by Erie Boulevard in exchange for the settlement.

13. On December 3, 2012, Erie Boulevard responded. It argues that paragraph 10 is inapplicable because its current claim of overpayment did not arise until the November 2008 federal court judgment and, therefore, did not exist at the time of the settlement and could not have been covered by the settlement. Further, Erie Boulevard argues that paragraph 10 is applicable only to causes of action and claims brought or asserted in adversarial court proceedings rather than non-adversarial processes such as the present administrative proceeding before the Commission. Erie Boulevard contends that paragraph 13 is inapplicable because the present administrative proceeding is not a lawsuit brought by Erie Boulevard or a claim advanced by Erie Boulevard. Finally, Erie Boulevard stated the District should have raised the waiver issue much earlier in these proceedings.²⁴

14. On December 18, 2014, Erie Boulevard supplemented the record. Erie Boulevard states the District initiated a declaratory judgment action in New York state court, which was dismissed after Erie Boulevard removed the action to federal court. The District originally filed the case, seeking declaration that the 2006 Settlement precluded Erie Boulevard's claim for a refund of assessments collected between July 1, 2000, and June 30, 2009. The federal court dismissed the action for two reasons. First, the court found the declaratory judgment case moot because Erie Boulevard was not pursuing a refund, but rather credits before the Commission. Second, even if the issue were not moot, the court determined the Commission should decide the matter. Erie Boulevard also states that, because the 2006 Settlement was not submitted to the Commission for approval as required by 18 C.F.R. § 11.14(a) (2015), the settlement cannot affect the equitable determination of FPA section 10(f) headwater benefit assessments.²⁵ Further, Erie Boulevard argues that using the 2006 Settlement would "resurrect the preempted and

²⁴ Erie Boulevard responds to the District's contention that Erie received valuable consideration in exchange for the settlement (*see id.*), contending that the Amendment to Reservoir Operating Agreement and Letter Agreement referred to in paragraph 14 of the settlement was of no consequence because, even if it was valuable consideration for the execution of the settlement, the waiver provisions of paragraphs 10 and 14 do not apply here.

²⁵ *See Fourth Branch Associates (Mechanicsville) v. Hudson River - Black River Regulating District*, 117 FERC ¶ 61,321 n.48 (2006) ("This settlement was not submitted to or approved by the Commission, and it does not affect our responsibility under section 10(f) to determine the proportion of the equitable charges for interest, maintenance, and depreciation that each downstream hydropower project owner receiving headwater benefits should pay the District."); 119 FERC ¶ 61,141 P 35 (2007) ("The settlement was not submitted to the Commission for approval and does not reflect a Commission determination of the charges that Erie should pay under section 10(f).").

defunct New York State scheme and retain for itself the vast majority of the payments it received from Erie in response to the District's assessments under that illegal scheme."²⁶

15. The District responded on December 24, 2014. It argues that, in the event the Commission finds that enforcement of the 2006 Settlement is preempted such that Erie Boulevard can take advantage of the crediting mechanism, the Commission should also find that the entire 2006 Settlement is preempted, in particular those provisions involving the Amendment to Reservoir Operating Agreement contemplated at paragraph 14 of the 2006 Settlement. The District explains that a Commission finding that the FPA completely preempts the 2006 Settlement "would negate the six year extension of the Reservoir Operating Agreement."²⁷ The District states that finding one section (Erie Boulevard's waiver) preempted without the other (Amendment to Reservoir Operating Agreement) would be inequitable. In the alternative, the District requests the appointment of a settlement judge to implement the state and federal court decisions affecting headwater benefit assessments.

16. In a February 10, 2015 filing, Erie Boulevard opposes the appointment of a settlement judge, arguing that: (1) there is nothing about the federal court's dismissal of the District's lawsuit that needs to be addressed by a Commission settlement judge; (2) the appointment of a settlement judge would contravene the process chosen in the July 2012 order; (3) and prior settlement conferences between Erie Boulevard and the District failed. Erie Boulevard reiterates its position that the District's reliance on the waiver in the 2006 Settlement has come far too late.

17. We agree with Erie Boulevard that there is no need for settlement proceedings. This order addresses the filings called for in the July 2012 order, and those filings provide a sufficient basis to resolve the issues herein.

18. Although not required to do so, the July 2012 order established a crediting mechanism to address prior overpayments for state headwater benefit assessments. As provided in FPA section 10(f), the purpose of the crediting mechanism is to require payments that the Commission "deem[s] equitable."

19. Erie Boulevard chose state litigation to challenge the amount of the District's state assessments. Erie Boulevard and the District resolved the issue and established assessments for July 1, 2000, through June 30, 2009, that both the District and Erie Boulevard believed were fair and reasonable, with both agreeing to give up "any and all claims, demands, judgments, liabilities, damages, and causes of action of every kind and

²⁶ Erie Boulevard December 18, 2014 filing at 8.

²⁷ District December 24, 2014 Filing at 2.

character, whether such claims arise in contract or tort, are founded upon statutory or common law, or whether such claims are known or unknown, at law or in equity ... in any way related to the District's ... assessments ..." for budget years 2002 through June 30, 2009.²⁸ Under these circumstances, it is reasonable and equitable to hold Erie Boulevard and the District to the bargain they struck regarding these payments. Accordingly, beginning July 1, 2009, Erie's section 10(f) assessments will be \$365,100 annually.

20. Contrary to Erie Boulevard's and the District's concerns, our determination of what is fair and equitable in this case in no way affects the validity of the 2006 Settlement. Nor, as Erie Boulevard argues, is the 2006 Settlement an offer of settlement under Rule 602 of the Commission's Rules of Practice and Procedure that requires Commission approval.²⁹ Rather, the District provided a copy of the 2006 Settlement to support its view of how the Commission should resolve the issue of how Erie Boulevard's headwater benefits assessments should be calculated.

C. Northern Electric and South Glens Falls, and New York State Electric and Gas Corp.

21. On March 15, 2013, South Glens Falls Limited Partnership and Niagara Mohawk Power Corp. (collectively, South Glens Falls) (Project No. 5461) and Northern Electric Power Co. and Niagara Mohawk Power Corp. (collectively, Northern Electric) (Project No. 5276) filed a joint letter asking the Commission to delay calculating a break-even point, explaining that pending litigation in New York state court might resolve the issue of unauthorized past assessments. Information submitted with the March 15, 2013 filing shows that South Glens Falls paid the District \$761,812.53, resulting in overpayment of \$359,330.53³⁰ and that Northern Electric paid the District \$2,753,816.51, resulting in overpayment of \$2,368,480.51.

²⁸ See 2006 Settlement, paragraph 10, n. 21, *supra*. Erie Boulevard instead could have chosen, as Albany Engineering did, to challenge the legality of the assessments under the FPA. But it did not.

²⁹ See 18 C.F.R. § 385.602 (2015).

³⁰ South Glens Falls actually calculates the amount to be \$359,329.52, which appears to be a typographical error.

22. Despite success in lower court rulings, on November 26, 2014, the New York Supreme Court, Appellate Division, dismissed the complaints filed by South Glens Falls and Northern Electric, finding that the claims were time-barred.³¹

23. New York State Electric and Gas Corporation (NYSEG), the licensee for the Upper Mechanicville Project No. 2934, filed a letter on October 31, 2012, indicating that its attempts to resolve the issue with the District failed.³² NYSEG indicated payment to the District of \$714,077.27, resulting in overpayment of \$587,616.27. However, NYSEG also filed a complaint against the District seeking a refund of state assessments, and on November 26, 2014 – the same day the New York Supreme Court, Appellate Division, dismissed the South Glens Falls and Northern Electric complaints – the court similarly held that NYSEG’s separate litigation against the District was likewise time-barred.³³

24. In its December 24, 2014 letter, the District argued the two New York state court opinions dismissing the Northern Electric and South Glens Falls, and NYSEG complaints mean the Commission should order these parties to “commence payment of headwater benefit assessments as specified from 2002 onward.”³⁴

25. However, these parties’ failure to secure a *refund* in New York state court based on state statute of limitations principles does not preclude the Commission from allowing these parties to participate in the crediting mechanism to determine headwater benefits assessments that it deems equitable. Accordingly, Northern Electric and South Glens Falls, and NYSEG will be treated like the other beneficiary licensees who have not resolved their issues through other avenues, meaning they will participate in the crediting mechanism.

D. Remaining Projects

26. Curtis/Palmer, the licensee of the Curtis/Palmer Falls Project No. 2609, filed a status update on August 15, 2013. Curtis/Palmer stated that it and the District could not agree on a remedy for the unauthorized state assessments. Curtis/Palmer stated it paid

³¹ *Northern Electric Power Co., L.P. et al. v. Hudson River - Black River Regulating District*, No. 518129, 2014 WL 6675590 (N.Y. App. Div 2014).

³² *New York State Electric & Gas Corp.*, 15 FERC ¶ 61,066 (1981).

³³ *New York State Electric and Gas Corp. v. Hudson River - Black River Regulating District*, No. 518432, 2014 WL 6675376 (N.Y. App. Div. 2014).

³⁴ District December 24, 2014 letter at 4.

the district \$4,202,648, resulting in overpayment of \$3,520,001.³⁵ Curtis/Palmer also argued in favor of interest, and stated that the New York statutory rate of 9 percent would be appropriate.

27. Fort Miller Associates holds an exemption from licensing for the Fort Miller Project No. 4226.³⁶ On November 5, 2012, Fort Miller filed a letter indicating it paid the District \$418,957, resulting in overpayment of \$382,943.

28. On January 8, 2015, Stillwater Hydro Associates, LLC³⁷ (Stillwater) filed a copy of its November 24, 2014 letter to the District indicating it paid the District \$317,561, resulting in an overpayment of \$301,203 for the 2002 to 2008 period.³⁸

29. Green Island Power Authority (GIPA) and Albany Engineering Corp.,³⁹ co-licensees for the Green Island Hydroelectric Project No. 13, filed a letter on

³⁵ Curtis/Palmer's filing states an overpayment amount of \$3,519,980, an FPA section 10(f) amount of \$682,648, and a total assessment paid of \$4,202,649. The actual FPA section 10(f) amount calculated in the July 2012 Order for Curtis/Palmer was \$682,647. July 2012 Order, 140 FERC ¶ 62,089 P 40, Table 4. The sum of the Assessment Paid column on page 3 of the filing is \$4,202,648. We recognize that rounding may account for the discrepancy. There also appears to be a typographical error in the Excessive Payment/Credit value for the assessment year beginning July 1, 2004.

³⁶ *Long Lake Energy Corp.*, 18 FERC ¶ 62,560 (1982).

³⁷ On October 21, 2014, Commission staff approved the transfer of the license for the Stillwater Hydroelectric Project No. 4684 from Stillwater Hydro Associates, LLC to GR Catalyst One, LLC. *Stillwater Hydro Associates, LLC*, 149 FERC ¶ 62,045 (2014).

³⁸ This order adjusts downward Stillwater's FPA section 10(f) assessment for 2002. In its filing, Stillwater must have accounted for the entire year; however, Commission staff prorated the 2002 assessment to include only 3 months because the District's project was not licensed until September 25, 2002. 140 FERC ¶ 62,089 at Table 4.

³⁹ On November 14, 2014, Commission staff approved the partial transfer of the license for the Green Island Project from Green Island Power Authority, as sole licensee, to Green Island Power Authority and Albany Engineering Corporation as co-licensees. 149 FERC ¶ 62,108 (2014).

November 6, 2012, indicating payment to the District of \$515,323, resulting in an overpayment of \$457,783.40.⁴⁰

30. Based on the filings, Curtis/Palmer, Fort Miller Associates, Stillwater, and GIPA and Albany Engineering were unable to fashion an agreement on payment for headwater benefits. Accordingly, they will participate in the crediting mechanism, as discussed below.

III. Resolution of Overpayments

31. Some of the beneficiaries have requested that the Commission compute interest on the overpayment amounts. However, the Commission does not compute interest in headwater benefits cases where licensees are assessed headwater benefits retroactively, where the same time value of money arguments would be applicable. The selection of the offset mechanism is an attempt to avoid an inequitable requirement of double payment on the part of the beneficiaries, rather than an attempt to make the beneficiaries whole because of an unauthorized application of state law.

32. Finally, this order determines the point at which annual assessments established in the July 2012 order would be completely offset by prior preempted overpayments and determines when FPA section 10(f) assessments should commence. In its October 31, 2012 letter, the District indicated that the numbers provided by the downstream beneficiaries were largely correct.⁴¹ Table 3 shows the amount of section 10(f) headwater benefits assessments calculated for the years 2002 to 2008 (column b). Next, based on the post July 2012 order filings, the table shows the amount the beneficiaries had paid the District for unauthorized state assessments (column c) followed by the resulting overpayment (column d). Dividing the overpayment by the Commission-determined section 10(f) assessments going forward (column e), the table next shows the number of whole years before the unauthorized assessments are offset (column f) and the year when such offset occurs (column g). This results in a remainder (column h) that partially reduces the following year's assessment (column i). After that partially-reduced year, the annual section 10(f) assessment going forward (column e) is applicable.

⁴⁰ GIPA's filing states an overpayment amount of \$457,782.40, using an FPA section 10(f) amount of \$31,541. The actual FPA section 10(f) amount calculated in the July 2012 Order for GIPA was \$31,540. July 2012 Order, 140 FERC ¶ 62,089 P 40, Table 4.

⁴¹ See District October 31, 2012 letter ("There exist only minor discrepancies between amounts claimed by each FERC licensee and amounts booked by the Regulating District."). However, the District did not specifically identify the "minor discrepancies."

Table 3. Offset Calculations

(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)
Beneficiary	Section 10(f) Owed (2002 - 2008)	Amount Paid to District	Overpayment	Annual Section 10(f) (2009 - Forward)	Years Fully Offset By Overpayment	Year Overpayment Offset	Remaining Overpayment	Payment for Year Overpayment Offset
Curtis/Palmer Hydroelectric Co.	\$ 682,647.00	\$ 4,202,648.00	\$ 3,520,001.00	\$ 171,694.00	20	2029	\$ 86,121.00	\$ 85,573.00
Ft. Miller Associates	\$ 36,014.00	\$ 418,957.00	\$ 382,943.00	\$ 9,690.00	39	2048	\$ 5,033.00	\$ 4,657.00
Stillwater Hydro Associates, LLC	\$ 16,358.00	\$ 317,561.00	\$ 301,203.00	\$ 4,190.00	71	2080	\$ 3,713.00	\$ 477.00
NY State Electric & Gas Corp.	\$ 126,461.00	\$ 714,077.27	\$ 587,616.27	\$ 35,205.00	16	2025	\$ 24,336.27	\$ 10,868.73
Green Island Power Authority and Albany Engineering Corp.	\$ 31,540.00	\$ 515,323.40	\$ 483,783.40	\$ 6,500.00	74	2083	\$ 2,783.40	\$ 3,716.60
South Glens Falls, L.P.	\$ 402,482.00	\$ 761,812.53	\$ 359,330.53	\$ 104,614.00	3	2012	\$ 45,488.53	\$ 59,125.47
Northern Electric, L.P.	\$ 385,336.00	\$ 2,753,816.51	\$ 2,368,480.51	\$ 83,117.00	28	2037	\$ 41,204.51	\$ 41,912.49

The Director orders:

(A) The agreement between Albany Engineering and the District is approved. Albany Engineering shall commence payments in accordance with this order and the July 2012 order.

(B) Interim Headwater benefits assessments for Erie Boulevard Hydropower, L.P. will be calculated beginning July 1, 2009, at the annual amount of \$365,100.

(C) Commencement of headwater benefits assessments for Curtis/Palmer Hydroelectric Co., Ft. Miller Associates, Stillwater Hydro Associates, LLC, New York State Electric and Gas Corp., Green Island Power Authority and Albany Engineering Corp. as co-licensees of the Green Island Project, South Glens Falls, and Northern Electric shall commence as set forth in Table 3 above.

(D) This order constitutes final agency action. Any party to this proceeding may file a request for rehearing of this order within 30 days of the date of its issuance, as provided in section 313(a) of the Federal Power Act, 16 U.S.C. § 8251 (2012), and the Commission's regulations at 18 C.F.R. § 385.713 (2015). The filing of a request for rehearing does not operate as a stay of the effective date of this order, or of any other date specified in this order. The licensees' failure to file a request for rehearing shall constitute acceptance of this order.

Kelly Houff
Chief, Engineering Resources Branch
Division of Hydropower Administration
And Compliance

Document Content(s)

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