

185 FERC ¶ 61,034
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Willie L. Phillips, Acting Chairman;
James P. Danly, Allison Clements,
and Mark C. Christie.

Erie Boulevard Hydropower, L.P.
Hudson River-Black River Regulating District

Project Nos. 2318-055
12252-038

ORDER ON REHEARING

(Issued October 19, 2023)

1. On June 15, 2023, the Commission issued an order addressing separate petitions for declaratory orders filed by the Hudson River-Black River Regulating District (District), licensee of the Great Sacandaga Lake Project No. 12252 (GSL Project), and Erie Boulevard Hydropower, L.P. (Erie), licensee of the E.J. West Project No. 2318.¹ On July 14, 2023, the District filed a timely request for rehearing of the Declaratory Order.
2. Pursuant to *Allegheny Defense Project v. FERC*,² the rehearing request filed in this proceeding may be deemed denied by operation of law. However, as permitted by section 313(a) of the Federal Power Act,³ we are modifying the discussion in the Declaratory Order and continue to reach the same result in this proceeding, as discussed below.⁴

¹ *Hudson River-Black River Regul. Dist.*, 183 FERC ¶ 61,187 (2023) (Declaratory Order).

² 964 F.3d 1 (D.C. Cir. 2020) (en banc).

³ 16 U.S.C. § 825l(a) (“Until the record in a proceeding shall have been filed in a court of appeals, as provided in subsection (b), the Commission may at any time, upon reasonable notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any finding or order made or issued by it under the provisions of this chapter.”).

⁴ *Allegheny Def. Project*, 964 F.3d at 16-17. The Commission is not changing the outcome of the Declaratory Order. See *Smith Lake Improvement & Stakeholders Ass’n v. FERC*, 809 F.3d 55, 56-57 (D.C. Cir. 2015) (*Smith Lake*).

I. Background

3. Erie's E.J. West and the District's GSL Projects, located on the Sacandaga River in New York, create a single unit of development. Water from the GSL Project Reservoir, the Great Sacandaga Lake, flows into the E.J. West Project generating facilities (as well as to additional, separately licensed generating facilities downstream). While the GSL Project creates 71 feet of hydraulic head⁵ and provides flood control and flows to the E.J. West Project—as well as to other downstream facilities⁶—it does not generate power.⁷ The two licensees have also entered into a reservoir operating agreement (ROA), which has not been submitted to the Commission for approval or made part of the license for either project.⁸

4. The GSL Project includes the Great Sacandaga Lake impoundment, the Conklingville Dam,⁹ and related facilities; the E.J. West Project includes an intake structure, penstocks, and a powerhouse containing two turbines connected to generators with authorized installed capacities of 10,000 kilowatt hours each.¹⁰ The E.J. West Project began using flow releases created by the GSL Project to generate power in November 1927. The District, as the state agency responsible for operating and

⁵ Hydraulic head is a measure of liquid pressure, expressed in terms of the height of a column of water, which represents total potential energy of the water. U.S. Dep't of Energy, Water Power Technologies Office, *Glossary of Hydropower Terms*, <https://www.energy.gov/eere/water/glossary-hydropower-terms>.

⁶ Downstream facilities include Stewart's Bridge, Curtis, Palmer Falls, Spier Falls, Sherman Island, Feeder Dam, Glens Falls, South Glens Falls, Hudson Falls, Fort Miller, Stillwater, Upper Mechanicsville, Mechanicsville, and Green Island. *Hudson River-Black River Regul. Dist.*, 140 FERC ¶ 62,089, at P 14, tbl. 1 (order determining headwater benefits in the Hudson River Basin) (Headwater Benefits Order), *reh'g denied*, 141 FERC ¶ 61,227 (2012).

⁷ *Erie Boulevard Hydropower, L.P.*, 100 FERC ¶ 61,321, at PP 15-16 (2002) (Settlement Order).

⁸ *Id.* P 32; *see also* Erie Boulevard Hydropower, LP, Offer of Settlement, March 27, 2000 at tbl. 1.2-1, "Sections of Settlement Offer to be Omitted from New Licenses" (Settlement Agreement). An ROA had been in effect since the projects were first constructed. The most recent ROA, agreed to in 2003 and amended in 2006, expired on June 30, 2023.

⁹ Settlement Order, 100 FERC ¶ 61,321 at P 16.

¹⁰ *Id.* P 17.

maintaining the Conklingville Dam, and Erie's predecessor in interest, New York Power and Light Corporation (Power Company), signed an agreement whereby the District would construct the impoundment and dam on land owned by the Power Company, and the Power Company would construct, maintain, and operate facilities to generate electricity at the dam. The Power Company conveyed certain lands to the District for construction of the dam and reserved 15 feet of hydraulic head, while the District granted Power Company the use of the remaining 56 feet of hydraulic head for power production, with the Power Company agreeing to pay a portion of dam construction costs as well as annual payments for operation and maintenance.¹¹

5. The E.J. West Project was not licensed until 1963, when the Federal Power Commission, the Commission's predecessor, issued an original license for the Project.¹² In 1992, during the relicensing proceeding for the E.J. West Project, the Commission determined that the GSL Project is part of the same "unit of development" and required that it be licensed as well.¹³ Because the GSL Project facilities are located on forest preserve and state park lands, Erie was unable to acquire those lands for the E.J. West Project, and the District requested a separate license for the GSL Project.¹⁴ On September 25, 2002, the Commission issued an original license for the GSL Project and a new license for the E.J. West Project, and approved an Offer of Settlement (Settlement

¹¹ Declaratory Order, 183 FERC ¶ 61,187 at P 3.

¹² *Niagara Mohawk Corp.*, 29 FPC 1290 (1963).

¹³ See Letter to Niagara Mohawk from the Director, Division of Project Review, Office of Hydropower Licensing, Docket No. P-2318-002 (Aug. 27, 1992). Section 3(11) of the FPA, 16 U.S.C. § 796(11) defines "project" as a "complete unit of improvement or development, consisting of a power house, all water conduits, all dams and appurtenant works and structures including navigation structures) which are a part of said unit, and all storage, diverting, or forebay reservoirs directly connected therewith, the primary line or lines transmitting power therefrom to the point of junction with the distribution system or with the interconnected primary transmission system, all miscellaneous structures used and useful in connection with said unit or any part thereof, and all water-rights, rights-of way, ditches, dams, reservoirs, lands, or interest in lands the use and occupancy of which are necessary or appropriate in the maintenance and operation of such unit."

¹⁴ As explained in the Declaratory Order, Federal Power Act (FPA) section 21 prohibits a licensee from using eminent domain to acquire lands that, prior to 1992, were owned by a state or political subdivision of a state and included in a public park, recreation area or wildlife refuge. Declaratory Order, 183 FERC ¶ 61,187 at P 5 n.13 (citing 16 U.S.C. § 814).

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Agreement)¹⁵ that included provisions related to both projects, as well as other downstream projects owned by Erie.

6. The GSL Project license and Settlement Agreement set forth the District's operational requirements for its project. Importantly, Article 402 of the District's license requires, among other matters, that, in addition to controlling flooding on the Hudson River, the District provide base flows in the Sacandaga River.¹⁶

7. Pursuant to the ROA, which, as noted, is not part of either project license, Erie paid the District an annual fee for the use of the additional 56 feet of hydraulic head created by the GSL Project; this is in addition to the headwater benefits charge Erie pays to the District pursuant to FPA section 10(f).¹⁷ In October 2022, Erie informed the District that it would no longer pay for the use of the District's 56 feet of head under the ROA, characterizing the charges as duplicative of the headwater benefits charge pursuant to the FPA.¹⁸

8. In response to this announcement, on January 25, 2023, the District filed a petition requesting that the Commission declare that Erie must maintain a property interest in the additional 56 feet of hydraulic head created by the GSL Project.¹⁹ On January 27, 2023, Erie requested that the Commission declare that FPA section 10(f) preempts charges against Erie by the District for releases from the GSL Project and that the District would violate the license for the GSL Project should it divert all water around the E.J. West Project or significantly change the timing of releases without Commission authorization.²⁰

¹⁵ *Erie Boulevard Hydropower, L.P.*, 100 FERC ¶ 61,322 (2002) (order issuing new license for the E.J. West Project) (E.J. West License); *Hudson River-Black River Regulating Dist.*, 100 FERC ¶ 61,319 (2002) (order issuing original license for the GSL Project) (GSL License); Settlement Order, 100 FERC ¶ 61,321 (2002).

¹⁶ See GSL License, 100 FERC ¶ 61,119 at art. 402.

¹⁷ 16 U.S.C. § 803(f). See Headwater Benefits Order, 140 FERC ¶ 62,089. Headwater benefits are the benefits that a downstream project realizes as the result of the operation of an upstream facility.

¹⁸ District November 30, 2022 Letter (attaching Erie October 13, 2022 Letter).

¹⁹ District Petition for Declaratory Order at 1.

²⁰ Erie Petition for Declaratory Order at 10-16.

9. The Commission addressed both petitions in the Declaratory Order. With respect to the arguments regarding whether the separate charges under the ROA are preempted by FPA section 10(f) payments, the Commission found that the ROA is an off-license, private agreement beyond the scope of the Commission's jurisdiction, and, therefore, any payments made pursuant to the ROA are independent contractual obligations not preempted by the FPA.²¹ The Commission further found that hydraulic head is not a property interest that must be obtained by a downstream licensee,²² and that Article 13 of the District's license does not provide a basis for the District to recover costs associated with the head created by the GSL Project.²³ Finally, the Commission determined that, consistent with the terms of its license and the Commission order approving the Settlement Agreement, the District may not divert water around the E.J. West Project without prior Commission approval.²⁴

II. Discussion

10. On rehearing, the District alleges that the Commission erred in the Declaratory Order by: (1) failing to distinguish the headwater flow benefit received by downstream licensees from the headwater flow benefitting the E.J. West Project; (2) determining that the Commission has no authority over the contractual relationship linking the power and non-power functions in the unit of development; (3) shielding Erie's non-performance under the ROA without providing compensation to the District; and (4) violating the Commission's procedures by accepting Erie's answer to the District's answer to Erie's petition for declaratory order.²⁵

A. Headwater Flow Benefits

11. Since the District's license was first issued, the Commission has required, pursuant to FPA section 10(f), that all downstream licensees, including Erie, that directly benefit from the District's facilities, reimburse the District for equitable portions of the District's interest, maintenance, and depreciation costs.²⁶ These headwater benefits charges are determined by the Commission in accordance with the Commission's

²¹ Declaratory Order, 183 FERC ¶ 61,187 at P 22.

²² *Id.* P 37.

²³ *Id.* P 38.

²⁴ *Id.* P 51.

²⁵ Rehearing Request at 1-2.

²⁶ GSL License, 100 FERC ¶ 61,319 at PP 33-34.

regulations at 18 C.F.R. § 11.10 through 11.17²⁷ and the current headwater benefits charge determination is based on a study undertaken in 2012.²⁸

12. The District does not allege that the Commission's calculation of headwater benefits charges is in error.²⁹ Nevertheless, the District alleges that the Commission failed to distinguish the flow benefit afforded the E.J. West Project as the first upstream facility from the flow benefits afforded to other downstream facilities.³⁰ According to the District, while each of the projects downstream of the Conklingville Dam receives a benefit that is recovered through the headwater benefit assessments made pursuant to FPA section 10(f), the E.J. West Project receives an additional benefit from the additional flow from the dam that benefits the E.J. West facility but not further facilities downstream.³¹ Citing *City of Kaukauna v. FERC*,³² the District argues that there is a distinction "between a 'stabilization of flow constituting a headwater benefit' and 'water power'" and that the Commission should recognize the distinction in this instance and ensure that the District is compensated for the additional power Erie is able to generate through the use of the additional head created by the Conklingville Dam.³³

13. We disagree that the District's proffered distinction between "headwater benefit" and "water power" is applicable to the Commission's evaluation of the present facts. *City of Kaukauna* concerned interpretation of terminology in a specific deed of ownership for water rights and the use of the term "water power" within that deed; the court expressly did not apply that term for use in interpreting the FPA as a whole.³⁴ Thus, this distinction is not relevant here.

²⁷ Headwater Benefits Order, 140 FERC ¶ 62,089 at P 1.

²⁸ *Id.* P 2.

²⁹ Nor, we note, did the District object to the 2012 study or the Headwater Benefits Order.

³⁰ *Id.* at 6.

³¹ *Id.*

³² 214 F.3d. 888, 897-98 (7th Cir. 2000).

³³ Rehearing Request at 6-7.

³⁴ 214 F.3d. at 899 ("What Congress intended in the FPA and the scope of FERC's jurisdiction under that statute are not our concern here because we are interpreting the 1872 Deed and related conveyances, *not* the FPA.").

14. In contrast, the difference between the headwater benefits fees levied pursuant to FPA section 10(f) and the additional payments by Erie pursuant to the ROA has been clearly delineated throughout the life of the licenses at issue in this proceeding with respect to what compensation is required by law and that which is the result of a private agreement between individuals. As the Commission stated in the Declaratory Order, the “ROA explicitly states that the payment is ‘in addition to, and does not, in any way, include, any charges, fees or costs ... pursuant to any statutory obligation.’”³⁵ Further, the Commission determined that the ROA is neither required by nor incorporated into the license for either the District or Erie, and, as such, it is an off-license agreement that the Commission cannot enforce.³⁶

15. The additional payments Erie previously made to the District pursuant to the ROA are not required by the license and are accordingly outside the Commission’s jurisdiction; thus, we continue to find that we have no authority to order additional compensation to be paid to the District by Erie for the use of the headwater created by the Conklingville Dam.³⁷

B. Relationship Between Power and Non-Power Functions

16. The District argues that the Commission erred in determining that it has no authority over the relationship linking the power and non-power functions in the unit of development, and, specifically, over the ROA between the District and Erie. The District asserts that the Commission retains jurisdiction over the ROA because the ROA is referenced in the Settlement Agreement that the Commission previously approved.³⁸

17. Although the Commission reviews and approves settlement offers, its approval of a settlement does not automatically convert every element of a settlement into an enforceable license condition.³⁹ The Commission does not adopt settlement provisions

³⁵ Declaratory Order, 183 FERC ¶ 61,187 at P 22 (citing District Petition for Declaratory Order at app. “2003 ROA” at section 5.3).

³⁶ *Id.* n.58. See *N. Y. Power Auth.*, 118 FERC ¶ 61,206, *reh’g denied*, 120 FERC ¶ 61,266 (2007), *aff’d*, *E. Niagara Pub. Power Alliance v. FERC*, 558 F.3d 564, 568 (D.C. Cir. 2009) (stating that Commission has no jurisdiction over “off-license” agreements and does not weigh them in acting on license applications).

³⁷ Declaratory Order, 183 FERC ¶ 61,187 at PP 22, 38.

³⁸ Rehearing Request at 8.

³⁹ *Settlements in Hydropower Licensing Proceedings under Part I of the FPA*, 116 FERC ¶ 61,270, at PP 3-4 (2006) (*Settlements in Hydropower Licensing*) (The Commission cannot accept all provisions of settlements but must instead consider

that it cannot enforce.⁴⁰ Moreover, parties cannot agree to extend the Commission's jurisdiction beyond its statutory bounds.⁴¹ The Commission includes only those settlement provisions within the Commission's statutory jurisdiction in an individual license; however, the Commission does not prevent the parties from entering into additional off-license agreements that are not enforceable by the Commission but may be enforceable by other means, for example, in state court.⁴²

18. In the Settlement Order, the Commission recognized the distinction between those provisions that were enforceable—and therefore incorporated into the license—and those outside the Commission's jurisdiction. Where settlement provisions were deemed to be consistent with the Commission's jurisdiction, they were specifically incorporated into individual licenses via license condition.⁴³

19. The District cites to Settlement Agreement section 8.4, which outlines reassessment of benefits charges to be paid to the District, as evidence that the matters covered under the ROA have been under the Commission's jurisdiction since the District received its license.⁴⁴ However, this provision was among those specifically excluded from the new licenses, both in the Settlement Agreement⁴⁵ and in the Settlement Order,⁴⁶

whether, in addition to meeting the wishes of the parties, each settlement provision is consistent with the FPA). *See also Niagara Mohawk Power Corp.*, 87 FERC ¶ 61,338, *reh'g denied*, *Erie Boulevard Hydropower, L.P.*, 88 FERC ¶ 61,176 (1999) (stating that only settlement provisions specifically adopted by Commission in a license order are part of license).

⁴⁰ *Settlements in Hydropower Licensing*, 116 FERC ¶ 61,270 at P 6 (“[P]roposed license conditions must be enforceable” because “the Commission can only exercise that authority given it by Congress”).

⁴¹ *Id.* P 14.

⁴² *Id.* PP 6-7.

⁴³ Settlement Order, 100 FERC ¶ 61,321 at P 37 (explaining that each license incorporates special license conditions based on the Settlement agreement that specify the licensees' obligations during the term of the licenses).

⁴⁴ Rehearing Request at 8.

⁴⁵ Settlement Agreement at tbl. 1.2-1.

⁴⁶ Settlement Order, 100 FERC ¶ 61,321 at P 32.

as being outside the Commission's jurisdiction. We continue to find that the Commission has no jurisdiction over the enforcement of the ROA.⁴⁷

C. Non-Performance Under the ROA

20. The District argues that in the Declaratory Order, the Commission erred by allowing Erie to ignore its obligations under the ROA while continuing to require the District to maintain and operate the Conklingville Dam and Great Sacandaga Reservoir.⁴⁸

21. The District argues that the Commission's determination that the District must comply with the terms of its license and may not divert flows around the E.J. West Project without prior approval constitutes a regulatory taking because Erie is no longer required to pay the annual fee for the additional feet of hydraulic head provided by the District's project.⁴⁹ The District asserts that since Erie has allowed the ROA to expire, the "degree of economic loss is the physical equivalent of a physical invasion or physical appropriation of [its] assets."⁵⁰ The District argues that because the existence of the dam and reservoir are based on New York's expectation that the costs associated with upkeep would be recouped through the fees collected per the ROA, the Declaratory Order has unjustly enriched Erie to the detriment of the District and state and local taxpayers.⁵¹

22. While the District may have suffered economic harm because of its current inability to collect additional payment for the additional feet of hydraulic head, the cause of this is not due to a lack of enforcement of the license conditions; rather, it is due to the expiration of the ROA which, as stated above, is not part of the license.⁵² As the District

⁴⁷ Declaratory Order, 183 FERC ¶ 61,187 at P 22.

⁴⁸ Rehearing Request at 9.

⁴⁹ *Id.* at 9-10 (citing *Penn. Cent. Transp. Co. v. N.Y.C.*, 438 U.S. 104, 124 (1978) (*Penn Central*)).

⁵⁰ *Id.* at 10

⁵¹ *Id.*

⁵² *E. Niagara Pub. Power All. & Pub. Power Coal.*, 558 F.3d 564, 568 (D.C. Cir. 2009) (where a party is injured by an off-license agreement, the Commission has not caused the injury-in-fact). Both the ROA and the GSL License have been in effect for decades; the only change is that the ROA—a private agreement—has expired. This contrasts with the facts considered in *Penn Central*, where a new action by a government body—the designation of Penn Central Station as a landmark—had a potential impact on private use of air rights over the terminal.

acknowledges, it has received compensation via a contractual relationship with Erie and its predecessor since 1927.⁵³ That agreement, continued through subsequent ROAs, has allowed the District to receive compensation in the form of an annual fee from Erie for the additional 56 feet of hydraulic head created by the GSL Project. This payment has been in addition to the headwater benefits charge pursuant to FPA section 10(f).⁵⁴

23. As discussed above, the Commission does not preclude parties from entering into “off-license” or “side” agreements with respect to matters that will not be included in a license, but the Commission has no jurisdiction over such agreements, including their negotiation and enforcement.⁵⁵ Because the ROA is an off-license, private contractual agreement, the Commission does not have authority over its negotiation and enforcement, and, therefore, the Commission will not address any economic injury allegedly suffered. As explained in the Declaratory Order, the fees required per the license in accordance with FPA section 10(f) are separate from the additional payments per the ROA, and the latter are outside of our jurisdiction.⁵⁶

24. The District requests that the Commission direct the parties to engage in alternative dispute resolution (ADR) to address the issue of additional payments.⁵⁷ While the parties may on mutual agreement avail themselves of the Commission’s ADR program, we cannot require an entity to do so. They may also seek other means to reach resolution outside the Commission or before a court of appropriate jurisdiction.⁵⁸

⁵³ Rehearing Request at 9.

⁵⁴ See Declaratory Order, 183 FERC ¶ 61,187 at P 6.

⁵⁵ *Settlements in Hydropower Licensing*, 116 FERC ¶ 61,270 at P 7; see also *Upper Yampa Water Conservancy Dist.*, 137 FERC ¶ 61,053, at P 14 (2011) (off-license agreements are solely between the parties and the Commission is not bound by them); *Pub. Util. Dist. No. 1 of Pend Oreille Cty, Wash.*, 177 FERC ¶ 61,183, at n.37 (2021) (“the provisions of the Off-License Settlement Agreement are outside the Commission’s authority to enforce”).

⁵⁶ In fact, the District specifically requested in its initial motion for declaratory relief that the Commission find that continued payments under an ROA would not be duplicative of payments under FPA section 10(f). District Petition for Declaratory Order at 10. The Commission so found. Declaratory Order, 183 FERC ¶ 61,187 at P 22.

⁵⁷ Rehearing Request at 11.

⁵⁸ See *Settlements in Hydropower Licensing*, 116 FERC ¶ 61,270 at P 6 (“contracts that the Commission cannot enforce may well be made enforceable by other means, such

D. Answers to Answer

25. On February 13, 2023, the District filed an answer to Erie's January 27, 2023 petition. On March 6, 2023, Erie filed an answer to the District's January 25, 2023 petition for declaratory order, which, in addition to answering the District's petition, also responded to the District's February 13 answer.⁵⁹ Although the Commission's Rules of Practice and Procedure do not permit answers to answers,⁶⁰ in the Declaratory Order the Commission accepted the portions of the Erie's March 6 answer responding to the District's February 13 answer because it "provide[d] information that assists in [the Commission's] decision-making."⁶¹

26. The District argues that the Commission did not articulate an adequate basis to waive its rules of procedure precluding answers to answers and therefore should have rejected Erie's March 6 answer.⁶² We disagree. As the court stated in *Portland General Electric Company*, the Commission is owed considerable deference for its interpretation and administration of its own procedural rules.⁶³ The Commission instituted the prohibition on answers to answers to address concerns that "its proceedings not become unduly complicated and burdensome,"⁶⁴ but the Commission will waive this rule when it finds that additional information from such a pleading will provide information that will aid in resolving a proceeding.⁶⁵ The District does not dispute the Commission's

as binding arbitration, or resort to state or federal court").

⁵⁹ Erie Answer to Petition for Declaratory Order at 3 n.8 (Mar. 6, 2023) (Erie Answer to Answer).

⁶⁰ 18 C.F.R. § 385.213(a)(2) (2022).

⁶¹ Declaratory Order, 183 FERC ¶ 61,187 at n.21.

⁶² Rehearing Request at 11 (citing *Portland Gen. Elec. Co.*, 854 F.3d 692, 703 (D.C. Cir. 2017) (*Portland*)).

⁶³ 854 F.3d at 703 (citing *TRT Telecommunications Corp. v. FCC*, 857 F.2d 1535, 1552 (D.C. Cir. 1988)); see also *W. Union Telegraph Co. v. FCC*, 815 F.2d 1495, 1503 (D.C. Cir. 1987) ("deference to such a finding is particularly appropriate where the rule concerns procedural matters").

⁶⁴ *Clarification of the Rules of Prac. and Proc.*, 49 Fed. Reg. 21,701, 21,202 (May 23, 1984).

⁶⁵ See, e.g., *Eagle Crest Energy Co.*, 183 FERC ¶ 61,199, at P 9 (2023); *Gulf S. Pipeline Co., LP*, 169 FERC ¶ 61,007, at P 10 (2019); *Algonquin Gas Transmission, LLC*, 161 FERC ¶ 61,196, at P 4 (2017); *Cheniere Creole Trail Pipeline, L.P.*,

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determination that Erie's answer to the District's answer assisted the Commission in its decision-making nor does the District distinguish prior proceedings where the Commission used its discretion to permit answers to answers.⁶⁶ The response provided helpful details explaining the history of the projects, including operations as a single unit of development, the operation of the ROA, and the import of particular sections of the Settlement Agreement, among other matters.⁶⁷ The Commission continues to find that the information in Erie's answer was helpful to its decision making and that waiver of Rule 213 was therefore appropriate in this instance.⁶⁸

The Commission orders:

In response to the request for rehearing filed by the District, the Declaratory Order is hereby modified and the result sustained, as discussed in the body of this order.

By the Commission.

(S E A L)

Debbie-Anne A. Reese,
Deputy Secretary.

142 FERC ¶ 61,137, at P 24 (2013); *Columbia Gas Transmission Corp.*, 123 FERC ¶ 61,254, at n.3 (2008); *S. Co. Servs., Inc.*, 116 FERC ¶ 61,231, at P 7 (2006).

⁶⁶ The District also argues that it is prejudiced by the Commission's decision without explaining how it was prejudiced or identifying any arguments made by Erie that it wishes to dispute or expand upon. Rehearing Request at 11.

⁶⁷ *See, e.g.*, Declaratory Order, 183 FERC ¶ 61,187 at P 46 nn.120, 123 (citing Erie Answer to Answer and discussing flow regime and provisions to minimize the loss of peaking energy output in the Settlement Agreement); *id.* P 49 nn.128, 129 (citing Erie Answer to Answer, GSL Project License and Settlement Agreement and discussing provisions related to supporting generation of electricity at the E.J. West Project); *id.* P 50 n.133 (citing Erie Answer to Answer and discussing analysis of releases of water from the Sacandaga River through E.J. West).

⁶⁸ Declaratory Order, 183 FERC ¶ 61,187 at P 9 n.21.

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