§ 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. The application must be filed with the Secretary of the Commission in accordance with filing procedures posted on the Commission’s Web site at http://www.ferc.gov within the time allowed (by §11.20) for the payment of the annual charges. If the licensee or
§ 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