

121 FERC ¶ 61,271  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;  
Sudeen G. Kelly, Marc Spitzer,  
Philip D. Moeller, and Jon Wellinghoff.

Bangor Hydro-Electric Company

Docket No. HB131-04-1-001

ORDER DENYING REHEARING AND ON CLARIFICATION

(Issued December 20, 2007)

1. By letter of September 19, 2007, Commission staff dismissed a request filed by Bangor Hydro-Electric Company (Bangor) for approval of a headwater benefits settlement agreement between it and Great Northern Paper, Inc. (Great Northern). Bangor filed a request for rehearing or clarification of that letter. In this order, we are denying the request for rehearing but granting the request for clarification to the extent indicated.

**Background**

2. Section 10(f) of the Federal Power Act (FPA)<sup>1</sup> provides that, whenever a licensee is directly benefited by the construction work of another licensee, a permittee, or the United States of a storage reservoir or other headwater improvement, the Commission shall require as a condition of the license that the licensee reimburse the owner of such reservoir or other improvement for such part of the annual charges for interest, maintenance, and depreciation thereon as the Commission may deem equitable. The benefits received are in the form of increased energy production as a result of the regulation of river flows by the headwater projects. The Commission includes in each license an article requiring the licensee to reimburse the owner of any headwater improvement for headwater benefits at the time those benefits are assessed, as well as a standard article reserving its authority to assess headwater benefit charges.

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<sup>1</sup> 16 U.S.C. § 803(f).

3. Section 11.11 of the Commission's regulations<sup>2</sup> provides a methodology (the "energy gains" method) for the Commission to calculate headwater benefits charges. However, section 11.14(a)(1) of the regulations<sup>3</sup> allows owners of downstream and headwater projects to negotiate a settlement for headwater benefits charges and file it for Commission approval in accordance with Rule 602 of the Commission's Rules of Practice and Procedure,<sup>4</sup> which governs the submission of settlement offers, in lieu of an investigation conducted by the Commission. In addition, section 11.15(a) of the regulations<sup>5</sup> provides that, where the upstream storage project is a non-federal one, the Commission will investigate and determine charges for a downstream project only if the parties are unable to agree to a settlement and one of the parties requests the Commission to determine charges.

4. On August 6, 2004, Bangor filed a request for Commission approval of a headwater benefits settlement agreement between it and Great Northern. Although the staff letter dismissing Bangor's request was based on limited grounds, the context of Bangor's filing is complex and bears setting out here in view of the issues we must address.

5. In its settlement filing, Bangor explained that, in May 1999, Great Northern owned several licensed storage projects on the West Branch of the Penobscot River in Maine,<sup>6</sup> while Bangor owned several licensed hydroelectric projects on the Penobscot River downstream of the storage projects.<sup>7</sup> At that time, Great Northern was considering the construction and operation of a thermoelectric pulping facility and other improvements at paper mills that Great Northern owned within Bangor's service territory. The operation of this facility would have required Great Northern to have a larger

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<sup>2</sup> 18 C.F.R. §11.11 (2007).

<sup>3</sup> 18 C.F.R. §11.14(a)(1) (2007).

<sup>4</sup> 18 C.F.R. §385.602 (2007).

<sup>5</sup> 18 C.F.R. §11.15(a) (2007).

<sup>6</sup> Bangor identifies three Great Northern projects: Canada Falls, Seboomook, Caucomgomic, and Ragged Falls (known as the Great Northern Storage Project No. 2634), Ripogenus (Project No. 2572), and North Twin and Millinocket Lake (known as the Penobscot Mills Project No. 2458). A fourth project, the Mattaceunk Project No. 2520, is not a headwater project but also has storage capacity.

<sup>7</sup> Bangor identifies these projects as Medway (Project No. 2666), West Enfield (Project No. 2600), Milford (Project No. 2534), Stillwater (Project No. 2712), Veazie (Project No. 2403), and Orono (Project No. 2710). Bangor was part owner of the West Enfield Project, through Bangor Pacific Hydro Associates.

interconnection with the regional power grid through, among other things, construction of an interconnection with a Maine Electric Power Company transmission line running through Bangor's service territory and interconnection with a proposed Bangor transmission line.

6. On May 7, 1999, Bangor and Great Northern signed a memorandum of understanding (MOU) under which Great Northern agreed to design and construct the interconnection facilities subject to Bangor's review and Bangor agreed to take certain measures to reduce Great Northern's costs relating to the facilities' construction and operation.<sup>8</sup> In addition, section 5 of the MOU provided, as pertinent here:

Upon the execution of the Memorandum, GNP [Great Northern] relinquishes any right it may have to charge BHE [Bangor] any amounts for headwater benefits enjoyed by BHE prior to the effective date of this Memorandum due to the operation of GNP's hydro storage projects located on the West Branch of the Penobscot River.

Section 2 of the MOU provided that it would become effective as of the date of execution by the parties and would continue in effect for four years from the date of execution unless earlier modified or terminated by agreement of the parties.

7. By order issued April 1, 1999, Commission staff approved the transfer of the licenses for Bangor's projects to Penobscot Hydro, LLC.<sup>9</sup> By order issued October 31, 2000, Commission staff approved Penobscot Hydro's name change to PPL Maine, LLC, which remains the licensee for the former Bangor projects.<sup>10</sup> In June 1999, Great Northern decided not to pursue developing the interconnection and related facilities. By order of May 19, 2000, Commission staff approved the transfer of Great Northern's storage projects to GNE, LLC.<sup>11</sup> By order issued August 26, 2002, Commission staff

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<sup>8</sup> For example, Bangor would reimburse Great Northern for the cost of the facilities and enter into a special rate contract that would relieve Great Northern of operating and maintenance expenses.

<sup>9</sup> *Bangor Hydro-Electric Company and Penobscot Hydro, LLC*, 87 FERC ¶ 62,001 (1999). The transfer did not become effective until after the MOU was signed. This order did not include the West Enfield Project, which, Bangor states, was transferred to its affiliate PPL Global in September 1999 by means of a sale of Bangor's interest in Bangor Pacific Hydro Associates.

<sup>10</sup> *Penobscot Hydro, LLC and PPL Maine, LLC*, 93 FERC ¶ 62,076 (2000).

<sup>11</sup> *Great Northern Paper, Inc. and GNE, LLC*, 91 FERC ¶ 62,123 (2000).

approved GNE's name change to Great Lakes Hydro America, LLC (Great Lakes), which remains the licensee for the storage projects.<sup>12</sup>

8. In its August 6, 2004 settlement filing, Bangor sought approval of the MOU as a headwater benefits settlement agreement. Bangor stated that it had only become aware in 2003 of the requirement that headwater benefits settlements were subject to Commission approval. Bangor argued that the settlement agreement constituted a release of all of its liability to Great Northern for headwater benefits received before May 7, 1999, from any of Great Northern's storage projects on the West Branch of the Penobscot River, without any prior conditions, in exchange for Bangor's agreement to support Great Northern's interconnection. Bangor claimed that the settlement agreement was in the public interest because the interconnection it sought to advance would have produced substantial public benefits.

9. On August 24, 2004, Gary M. Growe, trustee for the Chapter 7 Estate of Great Northern (trustee), filed a motion to intervene in the settlement agreement proceeding. The trustee explained that, on January 9, 2003, Great Northern filed a petition for relief under Chapter 11 of the U.S. Bankruptcy Code, and that, on May 22, 2003, the U.S. Bankruptcy Court for the District of Maine (bankruptcy court) converted the proceeding to one under Chapter 7. The trustee argued that any claims of Great Northern for headwater benefits are assets of the bankruptcy estate and that the MOU should not be approved as a settlement of headwater benefits owed before May 7, 1999, because the undertakings set forth in the MOU, including the release of Bangor's headwater benefits liability, terminated shortly after Bangor and Great Northern executed the document.

10. The trustee also moved for a temporary stay of the settlement agreement proceeding pending a ruling by the bankruptcy court on a motion that he had filed on August 19, 2004. In that motion, the trustee asked the bankruptcy court to find that, in filing the MOU as a settlement agreement, Bangor had violated the automatic stay imposed in bankruptcy proceedings by 11 U.S.C. §362(a).<sup>13</sup> On August 26, 2004, Bangor and the trustee filed a joint motion with the Commission for an extension of time to file comments and replies, essentially agreeing to delay filing comments until the bankruptcy court ruled on a request of the trustee for examination of current and former Bangor officers about the MOU.

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<sup>12</sup> *GNE, LLC and Great Lakes Hydro America, LLC*, 100 FERC ¶ 62,142 (2002).

<sup>13</sup> 11 U.S.C. § 362(a) provides, as pertinent, that the filing of a bankruptcy petition operates as a stay of the commencement or continuation of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the bankruptcy proceeding and of any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate.

11. No action was taken on these motions. However, on September 10, 2004, the trustee filed with the Commission a September 8, 2004, order of the bankruptcy court finding that Bangor's filing of the MOU with the Commission violated the automatic stay imposed by the bankruptcy statute, staying the Commission settlement agreement proceeding pending further order of the court, and directing examination of former Bangor officers by the trustee. The bankruptcy court also ruled that either Bangor or the trustee could commence a declaratory judgment action or other appropriate proceeding before the court to determine if the MOU was an enforceable agreement. After conducting the examinations, the trustee, on December 8, 2004, asked the bankruptcy court to issue a declaratory judgment finding that the MOU and headwater benefits release were void and of no effect.

12. On February 28, 2005, Great Lakes filed a request for the Commission to conduct a headwater benefits study to determine the benefits attributable to its projects for the period 1977 through 2004.<sup>14</sup> Great Lakes acknowledged that, pursuant to terms of the Great Northern-GNE purchase agreement, Great Northern would be entitled to any headwater benefits from 1977 through 2008.<sup>15</sup> By filing of March 29, 2005, PPL Maine, joined by other downstream project licensees, PPL Great Works LLC and Bangor Pacific Hydro Associates, requested that any action on Bangor's offer of settlement be consolidated with Great Lakes' headwater benefits determination request.

13. On May 24, 2005, these downstream licensees filed a motion for an initial determination limiting the scope of investigation. In this motion, the downstream licensees asked the Commission to find the MOU a valid headwater benefits settlement that precludes claims by Great Lakes against the downstream licensees relating to the project interests that they acquired from Bangor because they had succeeded to any rights

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<sup>14</sup> Great Lakes apparently filed this request pursuant to a cooperation agreement it had signed with the bankruptcy trustee. In its motion to intervene in the settlement agreement proceeding, the trustee indicated that it would be submitting for approval by the bankruptcy court a cooperation agreement with Great Lakes, under which Great Lakes would ask the Commission to commence, at a minimum, an investigation of the headwater benefits associated with the former Great Northern projects after May 4, 1999, with a decision on whether to pursue payment of headwater benefits prior to that date to be determined after the trustee completed an examination of Bangor employees under the bankruptcy rules.

<sup>15</sup> In its motion to intervene in the settlement agreement proceeding, the trustee stated that, as part of the transfer of Great Northern's licenses to Great Lakes, Great Lakes promised to remit to Great Northern any headwater benefits that it recovered as successor licensee of those projects for any period prior to January 31, 2002, and for six years thereafter, while Great Northern agreed to bear the cost of recovering those benefits.

of Bangor, including the release conferred by the MOU. To resolve any doubt that Bangor might not have had standing to submit the MOU as a settlement agreement in 2004, after it had transferred the projects, these licensees themselves submitted the MOU as a headwater benefits settlement for any claims that Great Lakes was asserting against them for the period prior to May 7, 1999. The downstream licensees also stated that Great Northern had approached them about entering headwater benefits discussions in 2000, but they argued that, because Great Northern had not done so earlier, Great Lakes, as its successor, should be barred from asserting headwater benefits claims dating before that year.<sup>16</sup>

14. On June 10, 2005, Bangor filed with the Commission orders issued by the bankruptcy court on June 3 and 6, 2005. In those orders, the court lifted the prior stay on Bangor's pursuit of approval of the settlement agreement before the Commission and, declining to rule on the validity of the headwater benefits release provision of the MOU, dismissed the trustee's December 2004 request for declaratory judgment.<sup>17</sup> Thereafter, in June and July 2005, the trustee, Bangor, and PPL Maine filed with the Commission various comments and responses on the issue of whether the headwater benefits release provision remained valid after termination of the MOU.

15. In its September 19, 2007 letter that is the subject of Bangor's rehearing request, staff acknowledged the regulations providing for negotiated headwater benefits settlements. However, staff noted that Bangor and Great Northern had transferred their downstream and headwater projects, respectively, to other licensees well before Bangor filed for Commission approval of the MOU as a settlement agreement. Staff stated that the Commission determines headwater benefits assessments owing from and to current licensees, which succeed to the rights and obligations of prior licensees upon license transfer. Staff concluded that, since Bangor and Great Northern were not licensees when

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<sup>16</sup> The downstream licensees indicated that this pleading was intended to be filed in the docket that would be assigned to Great Lakes's headwater benefits investigation request.

<sup>17</sup> The bankruptcy judge dismissed the trustee's request on the grounds that the trustee lacked a sufficient direct economic interest in the subject of the adversary proceeding, because the property interest of the debtor, Great Northern, in headwater benefits had been conveyed to Great Lakes long before the filing of the Chapter 11 petition and did not exist on the date of bankruptcy. Therefore, whatever meaning the MOU had would directly affect parties other than the debtor and Bangor, and the MOU would properly be a subject for determination by the assignees, Great Lakes and PPL Maine, through the Commission or in some other forum. The judge stated that the MOU, by its own terms, travels with the assignment of license rights and headwater benefits rights. He declined to determine whether paragraph 5(b) of the MOU had survived the intervening circumstances, leaving that to the Commission if it chose to address the issue.

the agreement was filed, it would not be appropriate to approve a headwater benefits settlement agreement between those two entities. Staff added that it intended to initiate a headwater benefits study in response to the February 28, 2005 request by Great Lakes for a headwater benefits investigation.

### **Discussion**

16. Bangor argues that staff erred in dismissing its request for approval of the MOU as a settlement agreement. It asserts that the dismissal was in violation of accepted principles of administrative law that an agency must provide a reasoned basis for its decision and that decisions must not be arbitrary, capricious, or an abuse of discretion.

17. Bangor states that the sole rationale given for the dismissal was that Bangor and Great Northern were not the current licensees when the settlement agreement was filed and argues that the regulations do not require a dismissal on that basis. Bangor emphasizes that it and Great Northern were the owners of the relevant projects when they entered into the settlement agreement, that the settlement agreement addressed headwater benefits charges only for the period when Bangor was the licensee of the downstream projects, and that Bangor filed the settlement agreement with the Commission. Bangor notes that section 11.14(a) of the regulations allows for negotiation of headwater benefits settlements by “owners.” Moreover, Bangor contends, the regulations do not require that settlements be *filed* by owners, since section 11.14(a) refers to Rule 602, which provides that any “participant” may file a settlement. Further the regulations place no restriction on when a settlement must be filed. Therefore, Bangor asserts, its filing of the settlement agreement conforms to the Commission’s regulatory requirements.

18. In addition, Bangor notes that section 11.15(a) of the regulations provides that the Commission will investigate and determine headwater benefits charges for a project downstream of a non-federal headwater project only if the parties are unable to agree to a settlement and one of the parties requests that the Commission determine charges. Bangor argues that, on this basis, the settlement agreement is an appropriate settlement of the headwater benefits related to the project for the period prior to May 7, 1999, as there had been no requests for a determination of charges until Great Lakes filed its request in February 2005. Citing staff’s statement that current licensees succeed to the rights and obligations of prior licensees upon license transfer, Bangor contends that, as a party to the settlement agreement and the prior licensee, it was the appropriate entity to submit the settlement agreement. Bangor argues that it would not be appropriate to require the current licensee to be the party to file for a determination of what rights and obligations were transferred to it pursuant to an agreement entered into and filed regarding a period prior to the license transfer. Moreover, Bangor asserts, the Commission has typically allowed the parties in interest to file a settlement agreement.

19. The Commission is not required to accept any offer of settlement; the regulations simply permit offers of settlement to be filed. Whether it is appropriate to accept an offer

of settlement will depend on the circumstances of its submission. Far from being arbitrary, capricious, or unsupported by a reasoned basis, staff's decision to dismiss Bangor's offer of settlement was entirely appropriate and the reason for staff's decision was clearly set out.

20. As staff stated, the Commission determines headwater benefits assessments owing from and to current licensees, and neither Bangor nor Great Northern is now a licensee of any of the projects in the Penobscot River basin. None of Bangor's arguments overcomes this essential fact. As far as the Commission is concerned, any determination of headwater benefits in that basin would affect only the licensees of the projects at the time the assessments are determined. Bangor has no responsibility, and Great Northern no right, that the Commission would determine or enforce. Assuming that no other license transfers occur in the interim, any determination of headwater benefits assessments for this basin will decide what PPL Maine and the other downstream licensees owe to Great Lakes. If, as the record suggests, Great Lakes has incurred an obligation to pass on headwater benefits payments to Great Northern, or to its trustee, this is completely a private arrangement of no concern to the Commission. If, as the record also suggests, PPL Maine has a right to be reimbursed by Bangor for any pre-transfer headwater benefits payments, that reimbursement is likewise not a matter for Commission involvement.<sup>18</sup>

21. Bangor advances a strained interpretation of the pertinent regulations to justify acceptance of its filing. That section 11.14(a) of the regulations allows for the negotiation of headwater benefits settlements by "owners" does not imply that we should accept an offer of settlement filed by an entity after it has ceased to be an owner simply because it was an owner when it negotiated the settlement. That Rule 602, a general rule regarding offers of settlement, allows offers to be submitted by any "participant" does not imply that we should entertain a headwater benefits offer of settlement submitted by an entity that does not own any of the pertinent projects, especially since such an entity would in fact not be a participant in any proceeding determining headwater benefits for the basin. And that the regulations specify no deadline for filing settlements does not imply that we should entertain a settlement filed more than five years after it was signed, by a signatory that no longer holds the rights that the settlement purports to convey. In any event, the regulations certainly do not require that we entertain an offer of settlement under those circumstances.

22. While section 11.15(a) of the regulations does provide for a headwater benefits investigation only if the parties are unable to agree to a settlement and one of the parties requests that the Commission determine charges, this provision does not support

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<sup>18</sup> In its motion to intervene, the trustee states that, according to PPL Maine, Bangor is obligated to indemnify it for any headwater benefit assessments associated with Bangor's ownership of the downstream projects.

accepting Bangor's offer of settlement, because Bangor and Great Northern are not present licensees and would not be parties to a proceeding to determine headwater benefits in the Penobscot River basin. Any settlement would have to be agreed to by the present licensees, which would owe or be due the headwater benefits payments. Thus, there would be no basis for accepting Bangor's offer of settlement even if Great Lakes had not subsequently asked the Commission to begin a headwater benefits investigation. Similarly, Bangor's assertion that the Commission has typically allowed parties in interest to file a settlement agreement is not germane, because Bangor would not be a party in interest in a headwater benefits proceeding in which only present downstream licensees would be liable for charges.<sup>19</sup>

23. Bangor argues that it would not be appropriate to require the current licensee to request a determination of the rights and obligations that were transferred to it pursuant to a pre-transfer agreement. We would not actually require the current licensee to make such a filing. However, should it decide to do so, there is no reason why the current licensee should not be the entity making this filing since it is the entity that has succeeded to any obligations before the Commission to pay headwater benefits charges and it is the entity that would benefit from a determination that the MOU relieved it from liability for charges incurred before the MOU's execution.

24. In this regard, Bangor argues that, apart from its position that it should have been allowed to file the settlement agreement, staff's letter fails to address the fact that PPL Maine, in its May 24, 2005 filing, also submitted the settlement agreement for approval. Bangor contends that, since PPL Maine is the current licensee of the downstream projects and succeeded to the rights and obligations of Bangor, staff should have considered the settlement agreement for approval even under its own rationale.

25. It is true that staff did not address PPL Maine's filing of the MOU for approval. However, PPL Maine filed the MOU only in the context of Great Lakes's request for a headwater benefits determination, a proceeding that has not yet been initiated. Moreover, even though PPL Maine is the present downstream licensee, Great Lakes, the present headwater project owner, does not endorse the MOU as a settlement agreement limiting its entitlement to headwater benefits payments; rather, Great Lakes seeks a determination of headwater benefits going back to 1977. The fact that Great Northern signed the MOU, and that Great Lakes may be bound by whatever relief from headwater benefits payments Great Northern may have conceded to Bangor, does not elevate the MOU to a settlement agreed to by the present headwater and downstream project licensees.

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<sup>19</sup> Bangor fails to acknowledge that this situation is of its own making. Had Bangor filed the MOU when it was signed, and when Bangor and Great Northern still held the licenses for the projects, there would have been no reason to dismiss the filing on the ground that Bangor and Great Northern were not the affected licensees.

26. Although Bangor consistently refers to the MOU as a “settlement agreement,” the signatories titled it simply “memorandum of understanding.” The headwater benefits release provision was only one of many issues it addressed, and the MOU did not specify that either signatory would file it with the Commission as a settlement of headwater benefits charges. The delayed filing of the MOU, now styled as a “settlement agreement,” whether by Bangor or by PPL Maine (and with the opposition of the previous and present headwater project licensees), amounts to a request that the Commission confirm an interpretation of the MOU that the headwater project licensees do not support. Whatever Bangor and Great Northern had agreed to in the MOU in 1999, the present lack of agreement between downstream and headwater project licensees as to the appropriateness of filing it with the Commission prevents it from being a true settlement agreement.<sup>20</sup>

27. Bangor also contends that it was error for staff not to state in its dismissal letter that the upcoming investigation of headwater benefits charges would be limited to the period after 2000, as requested by PPL Maine in its filing of the MOU, or at least that the scope of the investigation would be determined prior to commencing the investigation. This omission was not error. Commission staff initiates a headwater benefits investigation by notifying the pertinent project owners of the investigation and requesting from them the data necessary to conduct the study. While it is Commission policy not to assess charges for headwater benefits received more than 25 years before the date of the assessment,<sup>21</sup> staff would not customarily determine in its initial notification whether it would assess charges for less than a 25-year prior period. In any event, in notifying Bangor that it would initiate a headwater benefits study in response to Great Lakes’s request, staff was merely informing Bangor of its intentions in connection with its disposition of Bangor’s offer of settlement, not initiating the investigation. Staff will initiate the investigation by notifying current project owners, which do not include Bangor.

28. Bangor argues that, if we decline to consider the merits of the settlement agreement, we should clarify that staff’s letter was not intended to affect or address the validity of the settlement agreement or the waiver of the headwater benefits charges contained therein. It asserts that we should further clarify that no party is precluded from submitting the settlement agreement as a settlement of headwater benefits charges or asserting the waiver of the headwater benefits charges set forth in the settlement agreement. Bangor argues that, prior to commencement of the headwater benefits study, we should resolve the threshold issues about the scope of the study that are raised by the MOU and by PPL Maine’s request for a limitation on the assessment of past charges.

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<sup>20</sup> See, e.g., *Duke Energy Carolinas, LLC*, 120 FERC ¶ 61,054 at n.14 (2007).

<sup>21</sup> *Louisville Gas & Electric Company*, 58 FERC ¶ 61,338, *order denying reh’g* 59 FERC ¶ 61,231 (1992).

29. We agree that staff's disposition of Bangor's offer of settlement did not address the merits or validity of the MOU. As we indicated above, the MOU cannot be regarded as a settlement agreement unless the project owners that have succeeded to its rights and obligations agree that it should be treated as such. However, this would not preclude headwater or downstream project owners from presenting arguments in the headwater benefits investigation proceeding about whether or not the MOU effected a waiver of headwater benefits charges incurred before the MOU was executed.

30. As noted, the Commission encourages headwater and downstream project licensees to negotiate headwater benefits settlements, especially where non-federal headwater projects are concerned. Great Lakes and the downstream licensees have significantly different views of the extent to which past assessments may be collected, based on their conflicting views of the validity of the MOU, and their ability to reach any negotiated settlement may well be affected by the uncertainty surrounding this issue.<sup>22</sup> Therefore, determining the validity of the MOU's headwater benefits release provision early in the proceeding would have some value.

31. However, staff does not generally determine the extent to which it will assess charges retroactively until it issues a draft headwater benefits study for comment.<sup>23</sup> Moreover, any such staff determination would be subject to Commission review, but not until after issuance of the final headwater benefits study, when staff actually determines the charges owed by the projects that received the benefits. In any event, these are matters for the headwater benefits investigation, which has not yet been initiated. The subject of the present proceeding is staff's dismissal of Bangor's offer of settlement.

32. Although Rule 713(d) of the Commission's Rules of Practice and Procedure does not allow answers to requests for rehearing, it also provides that the Commission may afford parties an opportunity to file briefs or present oral argument on issues presented by a request for rehearing.<sup>24</sup> On October 29, the trustee filed a motion for leave to brief and argue the following issues in this proceeding: whether a former licensee should be allowed to seek approval of a headwater benefits settlement after it has sold its project; whether the Commission staff erred in not specifying the scope of the upcoming

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<sup>22</sup> Indeed, in its request for preparation of a headwater benefits study, Great Lakes stated that it was requesting a Commission determination because it could not reach a settlement with PPL Maine.

<sup>23</sup> The number of years for which staff may request data necessary for the headwater benefits study does not necessarily correspond to the number of years for which it will ultimately assess charges, since the data received may be extrapolated over a different time period.

<sup>24</sup> 18 C.F.R. § 385.713(d) (2007).

headwater benefits investigation; and the factual background of the MOU. In light of our disposition here of these issues and of Bangor's rehearing request, it is unnecessary to entertain briefs or argument, and the trustee's request will be denied.

The Commission orders:

(A) The request filed October 19, 2007, by Bangor Hydro-Electric Company for rehearing or clarification of staff's September 19, 2007 letter in this proceeding is denied insofar as it seeks rehearing and granted to the extent indicated in this order insofar as it seeks clarification.

(B) The motion filed October 29, 2007, by the trustee for Chapter 7 Estate of Great Northern Paper, Inc., for leave to brief and argue issues in the event of rehearing is denied.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.