

[APPENDIX 44]

MEMORANDUM: ANALYSIS OF POWER CONTRACTS

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ANALYSIS OF CONTRACTS

A lease with the City of Los Angeles and the Southern California Edison Co., and a contract for electrical energy with the Metropolitan Water District.

Statement accompanying report of the Secretary of the Interior to the Committee on Appropriations

GENERAL

One hundred per cent of the firm energy generated at Boulder Dam is guaranteed to be paid for under these contracts, although 36 per cent for Nevada and Arizona, and 6 per cent for smaller cities must be yielded if demanded. The city's obligation is 37 per cent (13 per cent for itself, 6 per cent for other municipalities, and one-half of the 36 per cent allocated to the States until they use it). The company's obligation is 27 per cent (9 per cent for itself and other utilities, plus payment for one-half the unused State power until the States require it). The district's is 36 per cent. The total amounts received by the United States under the two power contracts (if the power rates of 1.63 mills per kilowatt-hour for falling water for generation of firm energy, and 0.5 mill for water for secondary energy, fixed under the contracts, continue to be justified by competitive conditions when the rates are readjusted as required by the act), will vary between \$327,000,000 and \$361,000,000, depending upon the quantity of secondary energy and stored water sold.

The Metropolitan Water District is a municipal corporation now comprising 12 cities in Southern California, with an assessed valuation in excess of \$2,300,000,000.

The City of Los Angeles is now in the power business and its total payments for purchase of power from other sources which Boulder Dam energy will supplant are in excess of the amounts which will be annually due the United States. In the operation of this power department it is adding over \$3,000,000 each year to its present surplus of over \$20,000,000.

The Southern California Edison Co. has assets in excess of \$300,000,000, is owned by 123,000 stockholders, and serves 450,000 consumers.

If these rates continue, performance by the two lessees will amortize the estimated cost within the required 50 years from completion of the dam, regardless of performance of any other allottee of power, and regardless of whether any secondary energy or stored water is sold. Similarly, performance by the Metropolitan Water District and the City of Los Angeles, even if all other allottees fail, will accomplish this result. Similarly, performance by the company and by the district under its power and water contracts will suffice even if all other contractors fail. These statements are based on maintenance of the rates established in the power contracts; these rates are, however, under the terms of section 5 of the act, subject to adjustment 15 years from the date of execution, and each 10 years

thereafter, either upward or downward, as may be justified by competitive conditions at distributing points or competitive centers.

As the price as readjusted can not exceed the standard fixed by competitive conditions at distributing points or competitive centers, these estimates are necessarily conditioned on maintenance of the present prices of competitive energy.

In the event that only 2 of these 3 primary contractors perform, postponement of amortization of some part of the flood control allocation will be required, but such postponement is permissible under the opinion of the Attorney General.

The rate fixed for storage of water for the Metropolitan Water District is 25 cents per acre-foot.

On the basis of the rates now set and the estimated costs there will have been paid into the Colorado River Dam fund out of excess revenues during the 50 years following completion of the dam, as provided in section 2 (b) of the act, between \$29,000,000 and \$66,000,000, depending on the quantity of secondary energy and stored water sold.

During the same period there will have been paid to each of the States of Arizona and Nevada under section 4 (b) of the act between \$22,000,000 and \$31,000,000 depending on the same factors.

The amount which would be paid by the Metropolitan Water District for power and water under present rates, if they should continue to be justified by competitive conditions, during the 50-year period would vary between \$118,000,000 and \$130,000,000. The amount similarly paid by the City of Los Angeles and the smaller municipalities would vary between \$121,000,000 and \$133,000,000, and the amount similarly paid by the utilities for their smaller allocation would vary between \$88,000,000 and \$97,000,000.

None of these contracts become effective until the first act of Congress making an appropriation for construction of the dam has become law.

Particular provisions.—(References are to articles of the lease.)

Machinery: Installation, repayment of cost, title, and recapture.—As required by section 6 of the act, title to the dam and power plant will forever remain in the United States.

Machinery will be installed and owned by the United States. (Art. 8.) As compensation for its use, the two lessees will pay an amount equivalent to the cost thereof, in 10 equal annual installments at the beginning of the lease period, amounting to a prepayment or rent for the whole lease period. This is in addition to the charge for falling water.

Under this arrangement no equitable interest in the machinery ever vests in the lessees and in the event of recapture no payment will be owing to them on account of the original installation.

Operation of the power plant.—The lease is a several, not joint, lease on separate units of a Government-built plant to the city and to the company (art. 10), operated separately by the two lessees under the general supervision of a director appointed by the Secretary. (Arts. 10 (c), 12.)

The two lessees will generate at cost for all other allottees. (Arts. 10, 12.) The cost will be determined by the Secretary. (Arts. 10 (iii), 12.)

Repairs and replacements.—In articles 12 and 13 the lessees assume the obligation to operate and maintain the plant, including repairs and replacements, at their own expense; except that replacements made after the last readjustment of rates will be considered at the end of the lease period and compensation made to the lessees for the unused life of such replacements.

Provisions in favor of States.—Under the allocation of energy made in article 14 Arizona and Nevada are each allocated 18 per cent, without the obligation to now contract for it. Each State may withdraw and relinquish energy in any amount until its full allocation is in use, on six months' notice if the amount required is 1,000 horsepower or less, until it has withdrawn 5,000 horsepower in any one year, and on two years' notice if larger quantities. Whatever right may be available to either State to execute a firm contract instead of accepting this drawback arrangement is left unimpaired. But under such a firm contract if, say, made for 33½ per cent of the energy, the minimum obligation of the States over the 50-year period may be compared with minimum payments expected from the Metropolitan Water District for 36 per cent of the firm energy, which amount to \$118,000,000, a firm obligation whether the energy is wanted or not. All the contracts of the States for electrical energy, like the contracts of all other contractors, will be made directly by the Secretary and enforced by the Government director at the plant. Generation for all allottees must be effected at actual cost, determined by the Secretary.

Either State may increase its allocation up to 22 per cent after 20 years if the other State does not take its full 18 per cent by that time.

Generation for other contractors.—Under article 14 the lessees undertake to generate at cost energy which the Secretary may contract to furnish to the other allottees, as follows: Metropolitan Water District, 36 per cent of the firm energy plus all the secondary energy, plus first call on unused State allocations, all limited to use for pumping; 11 smaller municipalities, 6 per cent of the firm energy; the States, 36 per cent of the firm energy. The City of Los Angeles generates, in addition to these allocations, 13 per cent for itself. The company generates 9 per cent for itself and other public utilities. The division of the 64 per cent allocated California is in accord with agreements submitted to the Secretary by all these California interests on March 20 and April 7.

Quantity and rates for energy.—Firm energy is defined as 4,240,000,000 kilowatt-hours (art. 15) based on a 575-foot dam and the best available studies of the river flow over the past 35-year period, decreasing annually not more than 8,760,000 kilowatt-hours, in anticipation of increasing upper-basin use. Additional energy is considered as secondary energy. Nevertheless, if the United States builds a higher dam and thus provides a greater quantity of firm energy it reserves the right to dispose of the excess to any municipality independently of the above allocations. The rate for falling water for firm energy is 1.63 mills; for secondary energy 0.5 mill (art. 16). These rates, as required by the act, will be readjusted at the end of 15 years and every 10 years thereafter, either upward or downward, as justified by competitive conditions at competitive centers but not to exceed the standard so fixed.

Minimum annual payments: Load-building provisions.—A minimum annual payment is required of each contractor for the firm energy allocated, equivalent to the number of kilowatt-hours allocated to it multiplied by 1.63 mills. Nevertheless, to provide an absorption period at the beginning of each lease period the requirement for the first year is fixed at 55 per cent of the ultimate obligation; for the second year, 70 per cent; for the third year, 85 per cent; and for the fourth year and subsequent years, 100 per cent. Energy taken in excess of these quantities will be paid for at the rate of secondary energy.

Duration of the leases.—Under article 9 the first energy available (expected some time in advance of completion of the dam) shall go to the city, with the district commencing to take one year thereafter and the company three years thereafter. Under article 26 all contracts terminate when the city contract ends, which means that the company is given a 47-year lease and the district a 49-year contract. Nevertheless, the rental paid by the company for its 47-year term is the same as that paid by the city for its 50-year term, per kilowatt of capacity; that is, an amount equal to the cost of the machinery used. (Art. 9.)

Remedies of the United States.—Under articles 19 and 20 generation of energy for any allottee in arrears must be stopped on demand by the Secretary. If the lessees themselves are in arrears more than 12 months or fail to furnish energy in accordance with the allocations to other contractors, the United States can enter and operate the plant and, on two years' notice, terminate the lease and make other disposition of the power, subject to a 10-year right of redemption under the lease. The lessees' prepayment of rent for the whole 50-year period in the first 10 years (art. 9) leaves the United States in possession of the machinery as a substantial guarantee of performance.

A provision for posting of security bond when and if required by the United States is inserted in the district contract, as it provides no machinery.

Monthly payments and penalties.—Under article 18 power bills must be paid monthly, subject to a 1 per cent penalty per month in arrears.

Interruptions in the delivery of water.—Under article 21 the United States is not liable for interruptions in the delivery of water caused by drought, act of God, etc., but the power bills are reduced to the extent of such interruption. All contracts are made subject to the Colorado River compact, subordinating the use of water for power to use for irrigation, flood control, navigation, etc.

Measurement and record of energy.—Records of energy generated and its distribution to the various allottees are to be kept by the lessees and reported monthly. (Arts. 22, 23.) Meters will be Government tested and inspected.

Inspection by the United States.—Full right of entry and inspection of all machinery and books is reserved by the United States. (Art. 24.)

Transmission.—The city agrees to transmit for the district and the smaller municipalities. The company agrees to transmit for the other utilities. Transmission for the States will be a separate problem, as the lines will run in different directions from those of the city, company, and the district. (Art. 25.)

Title to remain in the United States.—Under article 27 title to the dam, power plant, and incidental works, as required by section 6 of the act, remain in the United States forever.

Power reserved for United States.—Five thousand kilowatts from each lessee is reserved for the United States for construction purposes on this or other dams. (Art. 28.)

Use of public lands for transmission lines, as provided in the act (sec. 5), is permitted. (Art. 29.)

Claims of the United States have priority over all others, as required by section 17 of the act. (Art. 30.)

Contracts between the city and the company now in force are modified so as to remove any restrictions on either of them from entering into this contract with the United States. (Art. 31.)

Transfers of interests under these contracts are forbidden without the Secretary's consent. (Art. 32.)

The contracts are subject to the Secretary's rules and regulations, with a right of hearing to the contractors before modifications are made. (Art. 33.)

Agreement is subject to the Colorado River compact (art. 34).

Arbitration of disputes between contractors is provided; and also the procedure for arbitration between the United States and contractors, if both the United States and the disputant agree to arbitrate. (Art. 35.)

Performance by the United States and contractors is made contingent on appropriations. (Art. 36.)

Modifications in favor of one contractor shall not be denied to another. (Art. 37.)

Members of Congress are excluded from benefits in the contracts, except as shareholders of corporations, in accordance with specific statutory requirement.