Appendix 904

POWER CONTRACTS:

ARIZONA POWER AUTHORITY, NOVEMBER 23, 1945

(Exhibits 1 and 2 omitted)

UNITED STATES DEPARTMENT OF THE INTERIOR

BUREAU OF RECLAMATION

BOULDER CANYON PROJECT

ARIZONA-CALIFORNIA-NEVADA

CONTRACT FOR THE SALE OF ELECTRICAL ENERGY

1. THIS CONTRACT, made this 23rd day of November 1945, pursuant to the Act of Congress approved June 17, 1902 (32 Stat. 388), and acts amendatory thereof or supplementary thereto, all of which acts are commonly known and referred to as the Reclamation Law, and particularly pursuant to the Act of Congress approved December 21, 1928 (45 Stat. 1057), designated the Boulder Canyon Project Act (hereinafter referred to as the "Project Act"), and to the Act of Congress approved July 19, 1940 (54 Stat. 774), designated the Boulder Canyon Project Adjustment Act (hereinafter referred to as the "Adjustment Act"), between THE UNITED STATES OF AMERICA (hereinafter referred to as the "United States"), acting for this purpose by Harold L. Ickes, Secretary of the Interior (hereinafter referred to as the "Secretary"), and the ARIZONA POWER AUTHORITY, a body corporate and politic (hereinafter referred to as the "State"), acting in pursuance of an Act of the Legislature of the State of Arizona entitled "An Act creating and establishing the Power Authority of the State of Arizona as a body corporate and politic, describing its nature, scope, general and special jurisdiction and authority, powers, government, personnel and routine: providing for the construction of power projects, works, and facilities; prescribing also functional and operating features; relating to surveys, plans, investigations, and construction; providing for its fiscal powers, income, revenue, tolls, and charges for electricity; and making an appropriation, repealing conflicting statutes, making provisions separable, and declaring an emergency,"

approved March 27, 1944 (Chapter 32, Session Laws of Arizona, 1944, Second Special Session of the Sixteenth Legislature);

Witnesseth that:

EXPLANATORY RECITALS

2. Whereas, pursuant to the provisions of the Project Act, the United States entered into a certain contract designated as "Contract for Lease of Power Privilege," dated April 26, 1930, with severally, The City of Los Angeles and its Department of Water and Power and Southern California Edison Company Ltd. (hereinafter referred to as the "City" and "Edison Company," respectively), which contract was thereafter amended by two certain contracts between the same parties, dated May 28, 1930, and September 23, 1931, and was also modified by a certain contract between the United States and the City, dated July 6, 1938, and consented to by Edison Company, which Contract for Lease of Power Privilege, dated April 26, 1930, together with said amendatory and modifying contracts, are hereinafter collectively referred to as the "Lease"; and

3. Whereas, by the terms of the Adjustment Act it is provided, among other things, that the Secretary is authorized to negotiate for and enter into a contract for the termination of the existing Lease of the Boulder Power Plant, and that the Secretary, in consideration of such termination of the Lease, is authorized to designate the City and Edison Company as the agents of the United States for the operation of the Boulder Power Plant; and

4. Whereas, under date of May 29, 1941, the United States and the City and Edison Company (hereinafter collectively referred to as "Operating Agents") have executed a contract designated "Contract for the Operation of Boulder Power Plant," a copy of which said contract is attached hereto, marked "Exhibit 1"; and

5. Whereas, under date of May 20, 1941, the Secretary approved and promulgated "General Regulations for Generation and Sale of Power in Accordance with the Boulder Canyon Project Adjustment Act," a copy of which is attached hereto, marked "Exhibit 2"; and

6. Whereas, at the joint request of the State of Nevada, the cities of Burbank, Glendale, and Pasadena (hereinafter referred to as "the Municipalities"), and the City, provisions substantially similar, in so far as applicable to this contract, to the provisions of Article 11 (b) hereof were incorporated in contracts, under the Adjustment Act, for the sale of electrical energy by the United States to the State of Nevada, the Municipalities and the City, respectively;

7. Now, therefore, in consideration of the provisions, covenants and conditions herein contained, the parties hereto agree as follows, to wit:

REGULATIONS AND AGENCY CONTRACT

8. (a) This contract is subject to all the terms and provisions of Exhibit 2 hereof which is hereby made a part hereof as fully and completely as though set out herein at length, and this contract is subject to such other rules and regulations as hereafter may be promulgated by the Secretary pursuant to law and to Article 27 of Exhibit 2 hereof.

(b) The State hereby consents that the United States shall, and the United States agrees that it shall, cause the energy agreed to be delivered hereunder to be generated and delivered in accordance with the provisions of Exhibit 1; and the parties hereto agree that the rights and obligations of the State under this contract shall be controlled by the provisions of Exhibit 1 to the extent that such provisions are applicable to the State as an allottee or contractor for electrical energy; provided, however, that in the event that such Exhibit 1 shall be terminated as to either or both of the Operating Agents therein named, the United States thereafter shall itself generate and deliver the energy agreed by the United States to be generated and delivered through the agent or agents as to which said Exhibit 1 shall have been terminated.

TERMS FOR WITHDRAWAL OF ENERGY

9. No notice of withdrawal of energy shall be given to the United States by the State unless and until the State shall have previously or simultaneously procured a purchaser or purchasers therefor and (1) such purchaser or purchasers shall have furnished an indemnity bond, by a corporation qualified under the laws of the State, payable to the State and the United States, jointly and severally, in an amount equal to the maximum obligation of such purchaser or purchasers for the energy withdrawn for its or their use and benefit for the period of time required by the State to effectively relinquish the energy withdrawn for such purchaser or purchasers, and conditioned for the full and faithful performance of the contract or other agreement of purchase, or (2) until such purchaser or purchasers shall have furnished in lieu of such indemnity bond other collateral satisfactory to the State and to the United States.

WHEN ENERGY REQUIRED TO BE RELINQUISHED

10. In event of termination or other abrogation of any contract or agreement of purchase of energy from the State, the State shall promptly give the United States notice of relinquishment of the energy withdrawn for such purchaser, unless within ninety (90) days there-

after the State shall enter into a contract or contracts with another purchaser or purchasers for the energy covered by such terminated or abrogated contract, and shall require such purchaser or purchasers to furnish bond in the same amount as though such energy had been withdrawn for its or their use and benefit.

DELIVERY OF ENERGY

11. (a) The United States agrees to deliver at transmission voltage at Boulder Power Plant, and the State agrees to take and/or pay for, electrical energy for use by it (directly or under contract) in accordance with the provisions of Article 8 hereof, for the period from the effective date of this contract to May 31, 1987, inclusive, in accordance with notices of withdrawal of energy and notices of relinquishment of energy given as provided in Exhibit 2.

(b) Section G–1 shall be used solely for the service of the City and the Municipalities and the United States, and Section G–3 shall be used solely for the service of the City and the United States, except that the States of Nevada and Arizona shall be entitled to generation of electrical energy by means of said Section G–3 up to but not exceeding a combined demand of 44,000 kilowatts, and such resale consumers of energy allocated to but not taken by The Metropolitan Water District of Southern California as were served by said Section G–1 on May 29, 1941, shall be entitled to generation of electrical energy by means of said Section G–3 up to but not exceeding a combined demand of 6,000 kilowatts plus such portion of said 44,000 kilowatts as is not in use or required by the States; provided, that such resale consumers shall not be entitled to take in excess of 70,000,000 kilowatt-hours of electrical energy in any one year of operation.

The fact that energy generated by means of Section G–3 may in fact reach any of said Municipalities, shall not be deemed to be in violation of the foregoing provisions.

The foregoing provisions of this Article 11 (b) relate only to operating conditions, and are not to be construed as an agreement, contemplated by Article 18 of Exhibit 2, relating to or affecting in any way the apportionment of generating charges. Notwithstanding the operating conditions provided for in this Article 11 (b), generating charges for Sections G–1 and G–3 shall be considered as charges for a single section and shall be apportioned in accordance with the provisions of Article 18 of Exhibit 2.

DELIVERY OF WATER FOR GENERATION OF ELECTRICAL ENERGY

12. (a) Subject to—

(i) The statutory requirement that Boulder Dam and the reservoir created thereby shall be used: First, for river regulation, improvement of navigation, and flood control; second, for irrigation and domestic uses and satisfaction of perfected rights mentioned in Section 6 of the Project Act; and third, for power; and

(ii) the further statutory requirement that this contract is made upon the express condition and with the express covenant that the rights of the State, as a contractor for electrical energy, to the use of the waters of the Colorado River, or its tributaries, shall be subject to and controlled by the Colorado River Compact;

the United States will deliver to the State energy in the manner required by this contract, in the quantity to which the State is entitled hereunder, and in accordance with the State's load requirements.

(b) The United States reserves the right temporarily to discontinue or reduce the delivery of water for the generation of electrical energy at any time for the purpose of maintenance, repairs and/or replacements, or installation of equipment, at the Project, and for investigations and inspections necessary thereto; provided, however, that the United States shall, except in case of emergency, give to the State reasonable notice in advance of such temporary discontinuance or reduction, and that the United States shall make such inspections and perform such maintenance and repair work, after consultation with the State, at such times and in such manner as to cause the least inconvenience to the State, and that the United States shall prosecute such work with diligence, and, without unnecessary delay, resume delivery of water so discontinued on reduced.

(c) Should the delivery of water, for any reason or cause, other than any act or omission of the State, be discontinued or reduced below the amount required for the generation of firm energy in accordance with the provisions of this contract, the total number of hours of such discontinuance or reduction in any year shall be determined by taking the sum of the number of hours during which the delivery of water is totally discontinued, plus the product of the number of hours during which the delivery of water is partially reduced and the percentage of said partial reduction below the actual quantity of water required for generation of firm energy. Total or partial reductions in the delivery of water which do not reduce the power output below the amount required at the time for generation of firm energy will not be considered in determining the total hours of discontinuance in any year. The minimum annual payment specified in Article 16 hereof shall be reduced by the ratio that the total number of hours of such discontinuance bears to eight thousand seven hundred sixty (8,760).

(d) In no event shall any liability accrue against the United States, its officers, agents and/or employees, for any damage, direct or indirect.

arising on account of drought, hostile diversion, Act of God, or the public enemy, or other similar cause; nevertheless interruptions in delivery of water occasioned by such causes shall be governed as provided in this Article 12. In the event of shortage of electrical energy at Boulder Power Plant due to shortage of water, the available electrical energy shall be prorated among all allottees concerned, on the basis of their respective obligations to take and/or pay for firm energy in the year of operation in which the shortage occurs.

MEASUREMENT OF ENERGY

13. All electrical energy shall be measured at generator voltage. In all instances in which energy shall be delivered to the State over the facilities of others, such energy shall be measured in combination with all energy delivered over such facilities. Suitable correction shall be made in the amounts of energy as measured at generator voltage to cover step-up transformer losses. Suitable metering equipment, satisfactory to the United States, for measuring the energy actually delivered to the State shall be provided, as agreed to by the owner or owners of the facilities over which such energy is transmitted and the State, and if necessary suitable correction shall be made to cover transmission and transformer losses to determine the amount of energy delivered to the State, at transmission voltage at Boulder Power Plant. The United States' determination of said amount shall be conclusive. The electrical energy delivered hereunder during any period in which the meters furnished to measure such electrical energy fail to register shall, for billing purposes, be estimated from the best information available. The testing of meters and calibration of testing equipment shall be in accordance with Article 19 of Exhibit 1. If said exhibit should be terminated, the same provisions shall apply as nearly as may be.

ENERGY RATES AND GENERATING CHARGES

14. The rates and charges to be paid by the State for electrical energy under this contract shall be in accordance with those specified in Exhibit 2.

BILLING AND PAYMENTS

15. (a) The State shall pay monthly for electrical energy and for the generation thereof in accordance with the energy rates and generating charges specified in Exhibit 2. The energy bill for each month shall be computed at the rate for firm energy in effect when such energy was taken on the basis of the actual amount of energy used during such month; provided, however, that the bill for energy for the month of May of each year shall not be less than the difference between the minimum annual energy payment, as provided in Article 16 hereof,

and the sum of the amounts charged for firm energy during the preceding eleven months. The United States will submit bills to the State by the tenth of each month immediately following the month during which the energy was generated, and payments shall be due on the first day of the month immediately succeeding. If such charges (less proper and applicable credits) are not paid when due, an interest charge of one per centum (1%) of the amount unpaid shall be added thereto, and thereafter an additional interest charge of one per centum (1%) of the principal sum unpaid shall be added on the first day of each succeeding calendar month until the amount due, including such interest, is paid in full, but nothing contained in this article shall be construed as in any manner abridging, limiting, or depriving the United States of any means of enforcing any remedy either at law or in equity for the breach of any of the provisions hereof which it would otherwise have.

(b) In accordance with the provisions of Section 4 (b) of the Adjustment Act, in the event payments to the States of Arizona and Nevada, or either of them, under Section 2 (c) of the Adjustment Act, shall be reduced by reason of the collection of taxes mentioned in said section, adjustments shall be made, from time to time, with each allottee which shall have paid any such taxes, by credits or otherwise, for that proportion of the amount of such reductions which the amount of the payments of such taxes by such allottee bears to the total amount of such taxes collected.

MINIMUM ANNUAL PAYMENTS

16. The minimum quantity of firm energy which the State shall take and/or pay for at firm energy rates in each year of operation under the terms of this contract shall be the total kilowatt hours stated in notices of withdrawal which are in effect as of June 1 of such year of operation as properly adjusted to account for the number of kilowatt hours for the remainder of such year of operation added or subtracted by notices of withdrawal or relinquishment becoming effective during such year of operation. No period of less than one day will be considered in making such adjustments. The minimum annual energy payment shall be reduced in case of interruptions or curtailment of delivery of water as provided in Article 12 hereof.

DURATION OF CONTRACT

17. This contract shall remain in effect to and including May 31, 1987, unless sooner terminated as elsewhere herein provided. The State, if this contract has not been terminated prior to said date, shall be entitled to a renewal hereof upon such terms and conditions as may be authorized or required under the then existing laws and

regulations, unless the property of the State dependent for its usefulness on a continuation of this contract be purchased or acquired, and the State be compensated for damages to its property, used and useful in the transmission and distribution of such electrical energy and not taken, resulting from the termination of the supply.

NO ENERGY TO BE DELIVERED WITHOUT PAYMENT

18. Unless an extension of time for payment has been first obtained from the Secretary, in writing, no energy shall be generated for, or delivered to, the State if it shall be in arrears for more than twelve (12) months in the payment of any charge due to the United States hereunder.

CONTRACT MAY BE TERMINATED IN CASE OF DEFAULT IN PAYMENT

19. If the State shall be in arrears for more than twelve (12) months in the payment of any charge, including interest, due to the United States hereunder, and shall not have obtained an extension of time from the Secretary for the payment thereof, or, if such extension be obtained, has not made such payment within the time as extended, then the Secretary shall have the right forthwith upon written notice to the State to terminate this contract; provided, that the State shall have the right at any time within four (4) years from date of the first of the defaults for which the contract is terminated, to become reinstated hereunder by payment to the United States of all arrearages including interest, if any, together with any and all loss incurred by the United States by reason of such termination and compensation to the allottees affected for property rendered idle by such reinstatement. If the State and the allottees affected fail to agree on such compensation, the disagreement shall be determined by arbitration as provided in Article 25 of Exhibit 2. Nothing contained in this contract shall relieve the State from the obligation to make the United States whole, for the period of this contract, for all loss and/or damage occasioned by the failure of the State to take and/or pay for energy as provided in this contract.

ACCESS TO BOOKS AND RECORDS

20. The Secretary or his duly authorized representatives shall have free access at all reasonable times to the books and records of the State relating to the transmission and disposal of electrical energy hereunder, with the right at any time during office hours to make copies of or from the same.

USE OF PUBLIC AND RESERVED LANDS OF THE UNITED STATES

21. The use is authorized of such public and reserved lands of the United States as may be necessary or convenient for the construction,

operation and maintenance of main transmission lines, to transmit electrical energy generated at Boulder Dam, together with the use of such public and reserved lands of the United States as may be designated by the Secretary, from time to time, for camp sites, residences for employees, warehouses and other uses incident to the operation and maintenance of such main transmission lines.

MODIFICATIONS

22. Any modifications, extension, or waiver by the Secretary, subsequent to May 31, 1941, of any of the terms, provisions, or requirements of any regulation or contract, promulgated or executed subsequent to May 19, 1941, for the benefit of any one or more of the allottees shall not be denied to the State.

DISPUTES AND DISAGREEMENTS

23. Disputes or disagreements between the United States and the State as to the interpretation or performance of the provisions of this contract shall be determined either by arbitration or court proceedings. If in any such arbitration or court proceedings or otherwise any sum or amount paid by the State on the demand or bill of the United States under this contract shall be held not to have been due or owing, payment shall not be deemed to have been voluntary, and such sum or amount shall be refunded. Whenever a controversy arises out of this contract, and the disputants agree to submit the matter to arbitration the Secretary shall name one arbitrator and the State shall name one arbitrator, and the two arbitrators thus chosen shall select a third arbitrator, but in the event of their failure to name such third arbitrator within five days after their first meeting, such third arbitrator shall be named by the Chief Justice of the Supreme Court of the United States. The decision of any two of such arbitrators shall be a valid award of the arbitrators, and shall be final and binding as to the parties hereto.

PRIORITY OF CLAIMS OF THE UNITED STATES

24. Claims of the United States arising out of this contract shall have priority over all others, secured or unsecured.

TITLE TO REMAIN IN UNITED STATES

25. The title to Boulder Dam and reservoir, Boulder Power Plant, and incidental works, including generating machinery and equipment, shall forever remain in the United States.

EFFECT OF WAIVER OF BREACH OF CONTRACT

26. The waiver of a breach of any of the provisions of this contract shall not be deemed to be a waiver of any provision hereof, or of any other subsequent breach of any provision hereof.

TRANSFER OF INTEREST IN CONTRACT

27. No voluntary transfer of this contract, or of the rights of the State hereunder, shall be made without the written approval of the Secretary; and any successor or assign of the rights of the State, whether by voluntary transfer, judicial sale, trustee's sale, or otherwise, shall be subject to all the conditions of the Project Act as modified by the Adjustment Act, and of the Adjustment Act, and also subject to all the provisions and conditions of this contract to the same extent as though such successor or assign were the original contractor hereunder; provided, that the execution of a mortgage or trust deed, or judicial or trustee's sale made thereunder, shall not be deemed a voluntary transfer within the meaning of this Article.

NOTICES

28. (a) Any notice, demand or request required or authorized by this contract to be given or made to or upon the United States shall be delivered, or mailed postage prepaid, to the Director of Power, United States Bureau of Reclamation, Boulder City, Nevada, except where, by the terms hereof, the same is to be given or made to or upon the Secretary, in which event it shall be delivered, or mailed postage prepaid, to the Secretary, at Washington, D. C.

(b) Any notice, demand, or request required or authorized by this contract to be given or made to or upon the State shall be delivered, or mailed postage prepaid, to the Secretary of the Arizona Power Authority, Phoenix, Arizona.

(c) The designation of any person specified in this article or in any such request or notice, or the address of any such person, may be changed at any time by notice given in the same manner as provided in this article for other notices.

CONTRACT CONTINGENT UPON APPROPRIATIONS

29. This contract is subject to appropriations being made by Congress from time to time of money sufficient to make all payments and to provide for the doing and performance of all things on the part of the United States to be done and performed under the terms hereof, and to there being sufficient money available in the Colorado River Dam fund for such purposes. No liability shall accrue against the

United States, its officers, agents, or employees, by reason of sufficient money not being so appropriated, or on account of there not being sufficient money in the Colorado River Dam fund for such purposes.

OFFICIALS NOT TO BENEFIT

30. No Member of or Delegate to Congress or Resident Commissioner shall be admitted to any share or part of this contract or to any benefit that may arise herefrom, but this restriction shall not be construed to extend to this contract if made with a corporation or company for its general benefit.

In witness whereof, the parties hereto have caused this contract to be executed the day and year first above written.

THE UNITED STATES OF AMERICA,
By HAROLD L. ICKES,
Secretary of the Interior.

ARIZONA POWER AUTHORITY,
By M. J. DOUGHERTY, *Chairman.*

Attest:
[SEAL] MILDRED MCCLAIN, *Secretary.*

COMMISSION RESOLUTION #5–45

Be it *Resolved,* That this Authority enter into that certain Agreement between the said Authority and the United States of America, acting in this behalf by the Secretary of the Interior, and constituting terms and conditions for obtaining Boulder Dam power by the said Authority as an agency of the State of Arizona and that, pursuant to the Routine Rules and Regulations, the Chairman and Secretary be, and they are hereby, directed and instructed to sign and deliver the same.

[SEAL] /s/ M. J. DOUGHERTY, *Chairman.*
Attest:

/s/ MILDRED MCCLAIN, *Secretary.*

* * *

I hereby certify that the foregoing is a true and correct copy of Resolution #5–45 adopted by the Arizona Power Authority Commission at a regularly called meeting, attended by all Commissioners, on the 23rd day of November 1945, and that the same has been filed in the records of said Authority.

[SEAL] /s/ MILDRED MCCLAIN, *Secretary.*