Chapter VIII

BOULDER CANYON PROJECT ADJUSTMENT ACT

A. Background

The Boulder Canyon Project Adjustment Act[1] modified and superseded, without specific amendment, provisions of the Boulder Canyon Project Act relating to fixed charges, determination of rates, and disposition of revenues.

The act came into existence as the result of events intervening between the execution of the power contracts of 1930, and the first delivery of energy by the Government thereunder, in 1937.

This background is stated in the Senate report on the bill which became the Adjustment Act,[2] as follows:

Construction of Boulder Dam was initiated in 1930; the first unit of the power plants went into service on June 1, 1937, and the 50-year period covered by the power contracts began to run on that date.

During the 7-year interval between execution and initial operation of these contracts, however, several factors had developed which emphasized the excessive costs which were reflected in the power rates set in 1930. The competitive value of Boulder Dam energy had fallen, in consequence of improvements in the art of

[1] Act of July 19, 1940 (54 Stat. 774) (appendix 801 herein).

LEGISLATIVE HISTORY

H. R. 9877.—May 23, 1940, introduced by Mr. Scrugham, referred to the Committee on Irrigation and Reclamation; May 2, 4, 7, 9, 11, 14, 16, 21, 27, and 28, 1940, hearings by committee; May 28, committee report (H. Rept. No. 2328); June 17, passed House; June 18, placed on Senate Calendar; June 21, amended and passed Senate (in lieu of S. 4039); June 22, both Houses agree to conference; June 22, July 1, conference report submitted in Senate and debated; July 3, conference report recommitted; July 10, conference report (H. Rept. 2745) (second) submitted in House; July 11, conference report (second) submitted in Senate; July 11, conference report agreed to in House and in Senate; July 19, 1940, approved (Public Law No. 756, 76th Cong., 3d sess.) (86 Congressional Record (House), pp. 6766, 7071, 8437–8444, 9036, 9037, 9290, 9424, 9539, 9540, 9570; 86 Congressional Record (Senate), pp. 8460, 8844, 8845, 8955, 8983, 8993, 8999, 9006, 9102, 9209, 9479, 9485, 9494, 9495).

S. 4039.—May 24, 1940, introduced by Mr. Hayden (for himself, Mr. Ashurst, Mr. Johnson of California, Mr. Downey, Mr. Adams, Mr. Johnson of Colorado, Mr. Hatch, Mr. Chavez, Mr. Thomas of Utah, Mr. O'Mahoney, Mr. Schwartz, Mr. Pittman, and Mr. McCarran), referred to the Committee on Irrigation and Reclamation; May 28, 29, 31, and June 3, hearings by committee; June 6, committee report (S. Rept. No. 1784); June 21, indefinitely postponed (H. R. 9877 passed in lieu) (86 Congressional Record (Senate), pp. 6768, 7636, 8844, 8845).

[2] S. Rept. No. 1784 (76th Cong., 3d sess.) on S. 4039.

generating power by steam, decreases in the cost of fuel and in the capital costs of steam plants, and for other reasons. The United States had constructed the Tennessee Valley Authority and Bonneville projects and had initiated other projects, such as Fort Peck, on a rate basis which abandoned the competitive rate basis in force at Boulder Dam in favor of a rate fixed by the amount needed to amortize such part of the investment as is allocable to power, plus costs of operation, maintenance, replacements, etc. This policy was made general, as to reclamation projects, by the Reclamation Project Act of 1939 (Public, No. 260, 76th Cong., 1st sess., ch. 418). Consequently, the southwestern area served by Boulder Dam found itself obligated to pay, until 1945, a rate which was excessive whether measured internally by the requirements of the Project Act or externally by the standards of the newer projects.

Accordingly, the power allottees filed with the Secretary of the Interior, in 1937, a request for a review of the rates. In 1930, in making the initial allocation of energy, the Secretary of the Interior had proposed that "when the dam and powerhouse are actually in operation the lessees may have the right to ask for a review of the actual cost of units of power and be entitled to deductions which will still permit the charge made to return to the Government all advances and interest in accordance with the Boulder Dam Act: *And provided further*, That if such review indicates that a higher rate should be paid for power to meet the obligation to the Federal Government such an advance in rate will be put into effect."

The recasting of the rates on an amortization basis, however, involved differences of interest among the seven States of the basin, and 2 years of negotiation, from 1937 to 1939, were necessary before all these interests were brought into agreement, as they now are, upon the bill herewith reported.

The differences among the States arose from two provisions of the Project Act.

First, section 4 (b) of the Project Act provided that if, during the period of amortization, the Secretary should receive revenues in excess of amounts needed to meet the periodical payments to the United States "as provided in the contract or contracts executed under this act," then immediately after the settlement of such periodical payments he should pay 18¾ percent of such excess to Arizona and 18¾ percent to Nevada. These percentages are the complement of the 62½ percent of excess revenues payable on the flood-control allocation. The legislative history of this provision made it clear that these payments were in lieu of taxes which the States might have collected had the project been built by a taxable entity, and which they cannot collect because the project is a Federal one. Manifestly, if the rates were stabilized at the amortization level the chance of obtaining excess revenues would disappear.

Second, section 5 of the Project Act provided that—

"After the repayment to the United States of all money advanced with interest, charges shall be on such basis and the revenues derived therefrom shall be kept in a separate fund to be expended within the Colorado River Basin as may hereafter be prescribed by the Congress."

The elimination of excess revenues would eliminate the possibility, however remote, that the amortization period would be shortened by the application of the remaining 62½ percent excess revenues to the early retirement of the flood-control allocation under section 2 (b) and thereafter to the acceleration of the retirement of the balance of the investment.

The governments of the 7 States appointed a committee of 16, including 2 representatives of the power allottees, to reconcile these differences. In conference with the Interior Department a compromise bill was gradually evolved, approved by the Interior Department, the 7 States, and the power contractors. This is that measure.[3]

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B. Provisions of the Act

The Boulder Canyon Project Adjustment Act accomplished the following major objectives:

(1) *Stabilization of rates.*—In lieu of a rate adjusted every 10 years upon a basis of competitive conditions, the Adjustment Act substituted a rate stabilized for the period June 1, 1937, to May 31, 1987, calculated to provide revenues large enough to meet four requirements: (*a*) Operation, maintenance, and replacements (sec. 1 (a)); (*b*) repayment to the Treasury, with interest, of its reimbursable advances, excluding an allocation for flood control, referred to below (sec. 1 (b)); (*c*) payment of $300,000 annually to each of the States of Arizona and Nevada in commutation of the share of excess revenues which was earmarked for those States by section 4 (b) of the Project Act (sec. 1 (c) 2(c)); (*d*) payment of $500,000 annually to the Colorado River development fund, in substitution for the "separate fund" established by section 5 of the Project Act (secs. 1 (d), 2 (d)). The first $1.500.000 of income to this development fund was directed to be used for preparation of a plan for the comprehensive development of the basin; its receipts through the year 1955 were dedicated to the construction of projects in the four States of the upper division; and receipts thereafter were earmarked for the investigation and construction of projects in the basin generally (sec. 2 (d)).

(2) *Reduction of interest.*—The interest rate chargeable on the Treasury's advances, and carried forward into calculations of the rates, was reduced from 4 to 3 percent per annum (sec. 6).

(3) *Reimbursement.*—The reimbursement provisions of the Project Act were clarified through (*a*) definitely deferring (but not writing off) the $25,000,000 allocated to flood control by section 2 (b) of the Project Act, making that amount reimbursable (without interest) after the balance of the investment shall have been retired (sec. 7), and (*b*) stipulating a definite amortization period commencing June 1, 1937, and ending May 31, 1987 (sec. 7), in substitution for the somewhat indefinite provisions of the Project Act relating to the period of amortization (secs. 2 (b), 4).

Other portions of the act provided for diminution of payments to Arizona and Nevada in the event they should attempt to tax the project or certain features of its operations (sec. 2 (b)); stipulated feasibility standards for the projects receiving the benefit of the $500,000 annually paid to the development fund (sec. 2 (d)); provided

[3] See hearings of the House Committee on Irrigation and Reclamation on H. R. 9877 (76th Cong.).

for the diminution of payments to Arizona, Nevada, and the development fund in the event of reduction of revenues through unavoidable causes (sec. 3); provided for a retroactive adjustment of rates to June 1, 1937 (sec. 4 (a)), and for adjustments with allottees who might be burdened with taxes of Arizona and Nevada of the type provided against in section 2 (sec. 4 (b)); set up a fiscal system for readvances to the Colorado River Dam fund for the making of replacements (sec. 5); authorized the Secretary to promulgate regulations, provided "that no allotment of energy to any allottee made by any rule or regulation heretofore promulgated shall be modified or changed without the consent of such allottee" (sec. 8); authorized the Secretary to substitute an agency operating contract for the lease held by the City of Los Angeles and the Southern California Edison Co. (sec. 9), but protected their tenure by an authorization for a suit for specific performance against the Secretary (sec. 9 (c)); and directed the Secretary to place the act in effect by a proclamation if contractors responsible for 90 percent of its firm energy had executed contracts thereunder prior to June 1, 1941 (sec. 10).

The act also contained a section on definitions (sec. 12), one requiring an annual report (sec. 13), provisions preserving the Colorado River compact (sec. 14) and the right of the States to enact their own laws respecting appropriation, control, and use of waters within their borders (sec. 14), and a section on prevailing wages (sec. 15).

C. Operations Under the Act

The administration of the Adjustment Act is developed in more detail in chapter IX with reference to the 1941 contracts made thereunder.

The act was placed in effect May 29, 1941, by a proclamation of the Secretary (appendix 802) required by section 10, the required contracts having been executed that date, pursuant to regulations promulgated May 20, 1941 (appendix 901), following hearings and findings by the Secretary.

Section 13 of the act requires the Secretary of the Interior to render annual reports. These reports cover operation, maintenance, and construction activities of the project during the contract year which ends May 31. They also contain tables indicating the financial status of the project, and the calculation of the energy rates and generating charges for the year in question.

D. Amendments

(1) *Nonproject costs: Provisions of the Interior Department Appropriation Act for the fiscal year 1949.*—Boulder City, initially a construction camp for Hoover Dam, developed into a permanent city, the third in population of Nevada. The United States located a

number of activities there not directly related to the project, as defined in the Boulder Canyon Project Act and the Boulder Canyon Project Adjustment Act. These included large operations by the Bureau of Mines, the National Park Service, the War Department, and the establishment of the regional offices of the Bureau of Reclamation. The Secretary of the Interior construed the Adjustment Act as requiring the annual operation and maintenance appropriation for the project to be included in its entirety in the calculation of rates. notwithstanding the fact that a portion of the investment and operating costs of Boulder City was attributable to these nonproject activities.

After two earlier acts [4] directing the Secretary to make reports [5] segregating project and nonproject costs and expenditures, the Interior Department Appropriation Act for the fiscal year 1949 [6] (appendix 803) disposed of this question by requiring the Secretary of the Interior to submit annually to the Appropriations Committees a justification showing all investments and expenditures made or proposed out of the Colorado River Dam fund for the joint use of the project and of other Federal activities at or near Boulder City; directing that these investments or expenditures should be deemed nonproject items, in the proportion that they were made for the use of other Federal activities; and directing that the obligation under the provisions of section 2 of the Boulder Canyon Project Adjustment Act to repay advances, which in turn is the basis for computation of rates under section 1 of that act, be diminished in the amount that nonproject investments or expenditures are made from that fund. On June 17, 1948, the Comptroller General ruled that this provision "should be regarded as permanent legislation" (decision B-77260).

(2) *The McCarran Act, 1948.*—By the act of May 14, 1948,[7] section 2 (e) was added to the Boulder Canyon Project Adjustment Act (and is printed therein in appendix 801), authorizing appropriations for the fiscal years 1948, 1949, 1950, and 1951 for payment to the Boulder City school district of tuition not to exceed $65 per semester per pupil, who are dependents of any employee of the United States living in the immediate vicinity of Boulder City.[8] The Interior Department

[4] Act of July 12, 1943 (57 Stat. 451) (Interior Department Appropriation Act for fiscal year 1944), act of June 28, 1944 (58 Stat. 463) (Interior Department Appropriation Act for fiscal year 1945).

[5] A report was rendered under the first act, December 30, 1943, and under the second, on May 2, 1946.

[6] Act of June 29, 1948 (Public Law 841, 80th Cong., 2d sess.).

[7] Act of May 14, 1948 (Public Law 528, 80th Cong., 2d sess.).

[8] See hearings, House Committee on Appropriations, Interior Department Appropriation Act for fiscal year 1949, p. 2334 et seq., for the background of the McCarran Act and of the legislative provisions in the 1949 Interior Department Appropriation Act referred to above.

Appropriation Act for the fiscal year 1949 [9] conforms to that authorization.

(3) *The Barrett Act, 1948.*—By the act of June 1, 1948, [10] section 2 (d) of the Boulder Canyon Project Act was amended (and as amended appears in appendix 801), to direct that the $500,000 transferred to the Colorado River development fund annually, for the fiscal years 1949 to 1955, inclusive, shall be distributed for investigation among the four States of the upper division "on a basis which is as nearly equal as practicable." [11]

[9] Act of June 29, 1948 (Public Law 841, 80th Cong., 2d sess.).

[10] Act of June 1, 1948 (Public Law 570, 80th Cong., 2d sess.).

[11] The terms of the Boulder Canyon Project Adjustment Act, and of the contracts made under it, were actually negotiated to some extent simultaneously. The United States was represented, under the general direction of Secretary Harold L. Ickes and Commissioner of Reclamation John C. Page, by Nathan R. Margold, solicitor, Fred Kirgis and Bernard Kammerman, assistant solicitors, and Kennard Cheadle, Clifford E. Fix, chief counsel, Bureau of Reclamation. Leland Olds, Joel D. Wolfsohn, W F Durand, and Benjamin Cohen participated. The power contractors were represented by E. F. Seattergood, S. B. Robinson, James H. Howard, Roy V. Reppy, Alfred Merritt Smith, Alan Bible, and others; the "Committee of Sixteen" by Clifford H. Stone, Alma Davis, Donald Scott, R. J. Tipton, Grover Giles, and others.