

## **Issue Paper for the AAPC Discussion on Accounting for “Appropriated Debt” between the Department of Energy and the Department of the Interior**

### PURPOSE

The purpose of this issue paper is to assist the AAPC (committee) in resolving a difference in the interpretation of legislative language between the Department of Energy (Energy) and the Department of the Interior (Interior) on the subject of “appropriated debt”<sup>1</sup>. The primary issue is to determine whether Energy should be recognizing a liability to Interior for amounts received from the Reclamation Fund managed by Interior. The objective of the committee is to provide guidance to Energy and Interior on the consistent application of the current FASAB standards.

### BACKGROUND

The Department of Energy (Energy) has four power marketing administrations (PMAs)<sup>2</sup>, which transmit and market hydro-electric power generated by federal facilities that are owned by the Department of the Interior (Interior) and the Army Corps of Engineers. Under annual appropriation language, one of Energy’s PMAs (the Western Area Power Administration) receives money from the Reclamation Fund managed by Interior. This money is used to finance investments in assets that transmit power and to operate and maintain these assets. By law, these PMAs are expected to set their rates at a level to cover an appropriate amount of construction and operations and maintenance costs. Receipts collected from subsequent power sales are then returned to the Reclamation Fund by the Western Area Power Administration.

Interior and Energy have interpreted the legislative language differently regarding PMAs, resulting in different accounting treatments. It is Interior’s view that the relevant laws do not cite a repayment requirement for money given to Energy, and that Energy does not have a liability to Interior until power receipts are collected from customers. Interior views the appropriated amount given to Energy as a cap on the dollar amount that should be returned to Interior and not a required repayment. Therefore, Interior treats the initial payment to Energy as a transfer-out, with any subsequent receipts that are received from Energy power sales recorded as a transfer-in. On the other hand, Energy has interpreted the relevant laws to mean that there is a liability to repay the full amount received from Interior, plus interest<sup>3</sup> on capital investments in transmission

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<sup>1</sup> “Appropriated debt” refers to appropriations received by Energy’s power marketing administrations from special receipt funds or the Treasury General Fund. Investments in assets made with these appropriations lead to the collection of power fees, which are remitted to the special receipt funds or the General Fund.

<sup>2</sup> The four power marketing administrations are the Bonneville Power Administration, the Western Area Power Administration, Southeastern Power Administration and Southwestern Power Administration.

<sup>3</sup> The authority to collect interest on construction costs is described in Section 9(c) of the Reclamation Project Act of 1939.

facilities. Consequently, Energy records a liability to Interior upon receipt of the appropriated funds.

For purposes of government-wide financial reporting, the U.S. Department of the Treasury (Treasury) reconciles the accounting differences between Energy and Interior through its government-wide elimination entries. However, the two entities should ideally be using the same accounting treatment for these transactions. OMB has heard both sides of the issue and has requested that the issue be researched and discussed by the AAPC, with a recommendation provided no later than April 30, 2004.

## CURRENT ACCOUNTING TREATMENT

The following is a summary of how Energy and Interior, respectively, describe their current accounting treatment. The committee may want to review whether Energy and Interior are following the accounting standards that apply to their respective interpretations of the legislative language.

Energy's Western Area Power Administration (Western) receives appropriations from the Reclamation Fund, a special receipt fund managed by the Department of the Interior<sup>4</sup>. This appropriation is expended by Western to support the transmission of power. The investment in power transmission (plus interest) is factored into the power rate and is recovered by Western and returned to the Reclamation Fund. Energy policy states that the capital investment may be recovered over a period as long as 40 years while the operations and maintenance costs are recovered in the year in which the expense is incurred. Energy currently accounts for the appropriation and the interest on construction as a liability owed to Interior's Reclamation Fund and records the amount in SGL 2990 – Other Liabilities. Energy views the substance of the appropriation as an amount requiring repayment.

Interior disagrees that the appropriation laws cite a repayment requirement. When appropriated funds are given to Western, Interior records it as a financing source transfer by debiting SGL 5745 – Appropriated Earmarked Receipts Transferred Out, and crediting their Fund Balance with Treasury. Interior views this transfer-out as a separate event from the transfer-in of receipts that are collected by Western from power sales. Interior does not believe that there is a liability owed to them until Western collects power receipts. Receipts coming from Western to the Reclamation Fund are recorded in one of two ways. Power transmission revenue that is earned by Western is credited to SGL 5750 – Expenditure Financing Sources Transfers In. Western also collects custodial revenues from power generation activities performed by Interior. Interior treats these receipts from Western as a credit to 5200 – Revenue for Services Provided.

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<sup>4</sup> Refer to Appendix A for sample FY03 appropriation language.

## STAFF ANALYSIS<sup>5</sup>

### **1. Does the appropriation transaction meet the definition of a liability/receivable?**

SFFAS 5 defines liability as, “a probable future outflow or other sacrifice of resources as a result of past transactions or events.” SFFAS 1 defines receivable as, “a claim to cash or other assets against other entities, either based on legal provisions, such as a payment due date (e.g., taxes not received by the date they are due), or goods or services provided.” This transaction appears to have the characteristics of a liability, however, the characteristics of a receivable are a matter of interpretation. Interior believes that the receivable is not created until WAPA actually collects fees from its power customers and Energy believes the receivable was created with the funds were appropriated to WAPA.

### **2. Was the appropriation transaction intended to function as a debt relationship between the Bureau of Reclamation and Western Power?**

DOE and DOI both interpret the legislation differently. DOE believes that there is a debt because the funds appropriated are to be repaid with interest to the Reclamation Fund as power fees are collected by WAPA. DOI interprets the legislation as a requirement of WAPA to transfer into the Reclamation Fund those power fees collected up to the amounts that have been remitted to WAPA, including interest.

### **3. Is this appropriation transaction different from other appropriation transactions where Federal entities receive appropriations and are required to reimburse the appropriated funds through fees collected from sources outside the Federal government?**

This appropriation transaction is different in that it is not a normal practice to require interest to be paid along with the original amount appropriated. However, this transaction is also different from the debt arrangement that Bonneville Power Administration (BPA) has with Treasury because the BPA/Treasury transaction includes a formal debt agreement between the two entities.

### **4. Is Energy properly recognizing a liability for the unpaid appropriations received from the Reclamation Fund? Should Interior be recognizing a receivable for the appropriations remitted to WAPA from the Reclamation Fund?**

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<sup>5</sup> The staff prepares meeting materials to facilitate discussion of issues at the AAPC meeting. This material is presented for discussion purposes only; it is not intended to reflect authoritative views of the AAPC, FASAB or its staff. Official positions of the AAPC and FASAB are determined only after extensive due process and deliberation.

At the last AAPC meeting most members stated that they believed the liability criteria were met from the standpoint of Energy. However, most members were also unsure if Interior met the criteria for a receivable. For consistency between the statements of the two entities and within the consolidated statements, Energy should remove its liability to the Reclamation Fund or Interior should recognize a receivable from WAPA.

## LEGISLATIVE INFORMATION

This section includes information on some of the legislation that is relevant to this issue. Although an interpretation from the FASAB General Counsel was not available as of the distribution of this issue paper, we will continue to work in conjunction with the lawyers to provide their legal interpretation in the near future.

The following includes the second paragraph of the 1939 Interior Department Appropriations Act (commonly referred to as the Hayden-O'Mahoney amendment), codified in USC Title 43, Chapter 12, Subchapter II, Section 392a, which discusses the treatment of payment of power fees into the Reclamation Fund:

### **Sec. 392a. - Payment into reclamation fund of receipts from irrigation projects; transfer of power revenues to General Treasury after repayment of construction costs**

All moneys received by the United States in connection with any irrigation projects, including the incidental power features thereof, constructed by the Secretary of the Interior through the Bureau of Reclamation, and financed in whole or in part with moneys heretofore or hereafter appropriated or allocated therefor by the Federal Government, shall be covered into the reclamation fund, except in cases where provision has been made by law or contract for the use of such revenues for the benefit of users of water from such project: Provided, That after the net revenues derived from the sale of power developed in connection with any of said projects shall have repaid those construction costs of such project allocated to power to be repaid by power revenues therefrom and shall no longer be required to meet the contractual obligations of the United States, then said net revenues derived from the sale of power developed in connection with such project shall, after the close of each fiscal year, be transferred to and covered into the General Treasury as "miscellaneous receipts": Provided further, That nothing in this section shall be construed to amend the Boulder Canyon Project Act (45 Stat. 1057), as amended ([43 U.S.C. 617](#) et seq.), or to apply to irrigation projects of the Office of Indian Affairs.

Selected passages from the Notes of Opinions on the Hayden-O'Mahoney amendment are included below. Refer to Appendix B for the full text.

"The Hayden-O'Mahoney amendment deals with the cash distribution of revenues in the Treasury as between the reclamation fund and the general fund. Its purpose was to assure that the reclamation fund would receive as to each reclamation project an amount of dollars equal to that required to amortize the power investment plus the irrigation assistance." [par. 1]

"Neither the Hayden-O'Mahoney amendment nor the power marketing statutes involved in the power operations of the Bonneville Power Administration require that the costs of each project

to be met from power revenues have to be amortized on the basis of a fixed annual obligation. The legal requirements are satisfied if such costs are returned within a reasonable period of years whatever accounting procedure is applied.” [par. 4]

“Under section 9 (c) of the Reclamation Project Act of 1939, as construed consistently with the Hayden-O’Mahoney amendment to the Interior Department Appropriation Act, 1939, the minimum rates for the sale of power must be such as will cover (1) an appropriate share of annual operation and maintenance costs and (2) an amount equal to 3 per cent per annum of the original power construction costs;” [par. 6]

At the time of the codification of the Hayden-O’Mahoney amendment, power-marketing functions rested with Interior’s management. Power marketing responsibilities were transferred to the Secretary of Energy with the Department of Energy Organization Act of 1977, USC 42, Chapter 84, Section 7152<sup>6</sup>. Refer to Appendix C for the full text.

## ACCOUNTING STANDARDS

Information that relates to the asset/liability treatment.

A. SFFAS #5, Accounting for Liabilities of the Federal Government, provides the following:

“19. A liability for federal accounting purposes is a probable future outflow or other sacrifice of resources as a result of past transactions or events.”

...

“22. An exchange transaction arises when each party to the transaction sacrifices value and receives value in return. There is a two-way flow of resources or promises to provide resources. In an exchange transaction, a liability is recognized when one party receives goods or services in return for a promise to provide money or other resources in the future.”

B. From SSFAS #6, Accounting for Property, Plant and Equipment:

“Assets – Tangible or intangible items owned by the Federal Government which would have probable economic benefits that can be obtained or controlled by a Federal Government entity.” (from Appendix E – Glossary)

C. From SFFAS #1, Accounting for Selected Assets and Liabilities:

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<sup>6</sup> Specifically, the Western Area Power Administration was established pursuant to Section 302 of The Department of Energy Organization Act.

“41. A receivable should be recognized when a federal entity establishes a claim to cash or other assets against other entities, either based on legal provisions, such as a payment due date (e.g., taxes not received by the date they are due), or goods or services provided. If the exact amount is unknown, a reasonable estimate should be made.”

D. FASB’s FAS71, Accounting for the Effects of Certain Types of Regulation states that:

“3 ...For general-purpose financial reporting, an incurred cost for which a regulator permits recovery in a future period is accounted for like an incurred cost that is reimbursable under a cost-reimbursement-type contract.”

...

“9. Rate actions of a regulator can provide reasonable assurance of the existence of an asset. An enterprise shall capitalize all or part of an incurred cost that would otherwise be charged to expense if both of the following criteria are met:

a. It is probable that future revenue in an amount at least equal to the capitalized cost will result from inclusion of that cost in allowable costs for rate-making purposes.

b. Based on available evidence, the future revenue will be provided to permit recovery of the previously incurred cost rather than to provide for expected levels of similar future costs. If the revenue will be provided through an automatic rate-adjustment clause, this criterion requires that the regulator’s intent clearly be to permit recovery of the previously incurred cost.”

...

“75. The board concluded that, for general-purpose financial reporting, the principal economic effect of the regulatory process is to provide assurance of the existence of an asset or evidence of the diminution or elimination of the recoverability of an asset. The regulator’s rate actions affect the regulated enterprises’s probable future benefits or lack thereof. Thus, an enterprise should capitalize a cost if it is probable that future revenue approximately equal to the cost will result through the rate-making process.”

2. Information that relates to the transfer-out/transfer-in treatment.

A. From SFFAS #7, Accounting for Revenue and Other Financing Sources:

“74. An intragovernmental transfer of cash or of another capitalized asset without reimbursement changes the resources available to both the receiving entity and the transferring entity<sup>7</sup>. The receiving entity should recognize a transfer-in as an additional financing source in its result of operations for the period. Similarly, the transferring

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<sup>7</sup> The applicability of the rest of this passage therefore rests on the determination of whether the activity between Energy and Interior is considered reimbursable.

entity should recognize the transfer-out as a decrease in its result of operations. The value recorded should be the transferring entity's book value of the asset. If the receiving entity does not know the book value, the asset should be recorded at its estimated fair value as of the date of the transfer.

75. To the extent that a Government entity's exchange revenue that is included in calculating net cost of operations is required to be transferred to the Treasury or another Government entity, the amount should be recognized as a transfer-out in determining the net result of operations."

...

"136. ...Sometimes, however, the exchange revenue is transferred to the General Fund or to other entities in whole or in part. For example, the Southeastern and Southwestern Power Administration transfer the revenue they collect from the public to the General Fund of the Treasury; similarly the Western Area Power Administration, while retaining some of the revenue that it collects, transfers the rest to the General Fund and various special funds designated by law."

...

"138. Any exchange revenue that is transferred to others, however, does not affect the collecting entity's net position. Therefore, as required by the standards for other financing sources, such exchange revenue is recognized as a transfer-out in calculating the entity's operating results."

#### B. From Section 2: Account Descriptions, of the USSGL TFM:

**Account Title:** Appropriated Earmarked Receipts Transferred Out

**Account Number:** 5745

**Normal Balance:** Debit

**Definition:** The amount in the unavailable receipt account of earmarked receipts appropriated, via warrant, to an expenditure account.

### ADDITIONAL FACTS FOR CONSIDERATION

Historically, there appears to be evidence that supports an understanding of a repayment requirement.

Some information that may prove useful includes:

- 1.) Historical recognition in GAO Reports that there is a requirement for repayment of the appropriation.
  - A. From GAO Report AIMD-00-114 Power Marketing Administrations, Their Ratesetting Practices Compared With Those of Nonfederal Utilities:

"[GAO] calls this appropriated debt because PMAs are required to set rates to repay appropriations used for capital investments with interest. However, these reimbursable

appropriations are not technically considered lending by Treasury.”<sup>8</sup> (page 5, footnote 5)

B. From GAO Report AIMD-98-164 Power Marketing Administrations, Repayment of Power Costs Needs Closer Monitoring:

“The PMAs’ costs and the power-related costs of the agencies that produce the power marketed by the PMAs are required by law to be repaid. Repayment is to be made through revenues from federal power sales.” (page 1, par. 1)

2.) Report 98-I-250<sup>9</sup>, released by Interior’s Office of the Inspector General (OIG) discloses information regarding legislation that was proposed by Energy and supported by Interior in 1990. From that report:

“In 1990, the Department of Energy proposed legislation intended, in part, to place all power repayment obligations, including irrigation assistance, on a straight-line amortization basis, with interest. The proposal stated:

The purpose of this legislation . . . [was] to place the repayment practices of . . . power marketing administrations on a more businesslike basis by establishing a regular schedule for retiring the Federal investment.

In an April 5, 1990, memorandum to the Department of the Interior's Legislative Counsel, the Acting Commissioner of Reclamation expressed the Bureau's support of the legislation. Specifically, the memorandum stated:

Reclamation supports the timely recovery of repayment obligations as being consistent with administration policy and good business practices. If enacted, the Department of Energy's proposed legislation would accomplish this goal.

However, the proposed legislation was not enacted, and similar legislation was not proposed for consideration in subsequent legislative sessions.”

It should be noted that, although Interior agreed in 1990 with the proposed legislation, Interior’s management did not concur with the OIG recommendation to again pursue the legislation as of the 1998 release of the aforementioned report.

### ADDITIONAL QUESTIONS FOR CONSIDERATION

1. *What are the implications, if any, for Energy and Interior when a decision is made one way or the other?*

Whatever the outcome of the issue, both Energy and Interior have stated that it would require substantial work to change their treatment in order to bring about

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<sup>8</sup> The determination that PMAs are required to set rates to repay their appropriations came from a review of relevant legislation by the GAO General Counsel assigned to work on the report.

<sup>9</sup> “Survey Report on Follow-up of Recovery of Irrigation Investment Costs, Bureau of Reclamation”

compliance with the committee's recommendation. Both agencies have indicated that their historical treatment goes down to a very detailed level, and that it would take enormous efforts and cooperation between the two to make their information agree. However, there may be more specific implications for each agency.

Energy pointed out that, in accordance with the Bonneville Power Administration (BPA) Refinancing Act of 1994, BPA entered into an agreement with Treasury with specific terms of repayment for the outstanding balance of unrepaid appropriations as of September 30, 1996. It is Energy's contention that the remaining three PMAs, although lacking any formal repayment agreements, have substantially the same liability to repay their appropriations. Energy is concerned that recording equity transfers instead of liabilities for the remaining three PMAs will lead to inconsistent accounting in their organization.

Interior pointed out that they also receive appropriations from the Reclamation Fund to build multipurpose water facilities. Some of these facilities generate revenue in the form of water delivery contracts. For these contracts, Interior has removed the unmatured receivables from their balance sheet. Interior contends that revenue is contingent upon future delivery of water, which is not guaranteed. Interior believes that the situation for Western is similar. There is no guarantee of receipts from power revenues and therefore there is no liability to Interior.

Interior also stated that they support the idea of making note in the footnotes to the financial statements an amount that they are *likely* to receive from Energy in the future from power receipts.

*2. What are the implications, if any, for other government entities with similar circumstances when a decision is made one way or the other?*

The Southwestern and Southeastern Power Administrations receive appropriations from Treasury and record a related payable to the Treasury's General Fund (much like Western records a payable to Interior). Although Treasury recognizes a repayment requirement, they do not record a receivable from Southwestern and Southeastern. Instead, they record "appropriations paid" when payments are made. Energy believes that both Treasury and Interior should be recording receivables from the PMAs. Treasury may need to revisit its policy of not recording a receivable from the Southwestern and Southeastern Power Administrations if the committee deems the asset/liability treatment to be most appropriate.

Interior stated that a decision to require the recording of an asset/liability could impact other funds that are required to recover the cost of projects that are funded by appropriations.

## APPENDIX A

The following is a sample of FY03 appropriations language from H.R.5431, Energy and Water Development Appropriations Act, 2003 (Reported in House).

### **Construction, Rehabilitation, Operation and Maintenance, Western Area Power Administration**

For carrying out the functions authorized by title III, section 302(a)(1)(E) of the Act of August 4, 1977 (42 U.S.C. 7152), and other related activities including conservation and renewable resources programs as authorized, including official reception and representation expenses in an amount not to exceed \$1,500, \$162,758,000, to remain available until expended, of which \$158,605,000 shall be derived from the Department of the Interior Reclamation Fund: *Provided*, That up to \$156,124,000 collected by the Western Area Power Administration pursuant to the Flood Control Act of 1944 and the Reclamation Project Act of 1939 to recover purchase power and wheeling expenses shall be credited to this account as offsetting collections, to remain available until expended for the sole purpose of making purchase power and wheeling expenditures.

## APPENDIX B

### NOTES OF OPINIONS

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#### 1. General

The Hayden-O'Mahoney amendment deals with the cash distribution of revenues in the Treasury as between the reclamation fund and the general fund. Its purpose was to assure that the reclamation fund would receive as to each reclamation project an amount of dollars equal to that required to amortize the power investment plus the irrigation assistance. It does not, however, purport to deal with payout requirements of reclamation projects. These, except for special requirements applicable to given projects, are governed by Section 9(c) of the Reclamation Project Act of 1939. Statement furnished by Assistant Secretary Holum for Hearings on H.R. 2937, to Provide for the Construction of the Lower Teton Division, Teton Basin, Federal Reclamation Project, Before the Irrigation and Reclamation Subcommittees of the House Committee on Interior and Insular Affairs, 88th Cong., 2d Sess. (1964).

The Hayden-O'Mahoney amendment of 1938 amends section 5 of the Act of April 16, 1906, by providing that after net power revenues have repaid project construction costs allocated to be repaid by such revenues, they shall then be covered into the General Treasury as miscellaneous receipts. Solicitor Harper Opinion, M-33504 (September 26, 1944), in re disposition of power revenues from Grand Valley project.

#### 2. Power revenues

The availability of power revenues to aid irrigation has, in one form or another, been a part of general reclamation law almost since its beginning. This is evident from section 5 of the Act of April 16, 1906, 34 Stat. 116, 117, 43 U.S.C. § 522; the Act of February 24, 1911, 36 Stat. 930, 43 U.S.C. § 522; and subsection I, section 4, of the Act of December 5, 1924, 43 Stat. 703, 43 U.S.C. § 501. This general trend has been reinforced by the Hayden-O'Mahoney amendment to the Interior Department Appropriation Act, 1939, the Act of May 9, 1939, 52 Stat. 322, 43 U.S.C. § 392a, and a provision in the Interior Department Appropriation Act, 1947, Act of July 1, 1946, 60 Stat. 366, as well as section 9 of the Reclamation Project Act of 1939, Act of August 4, 1939, 53 Stat. 1198, 43 U.S.C. § 485h. Memorandum of Chief Counsel Fisher, September 12, 1952, in re procedure on use of surplus power revenues for assistance in financing irrigation distribution systems.

Neither the Hayden-O'Mahoney amendment nor the power marketing statutes involved in the power operations of the Bonneville Power Administration (section 7 of the Bonneville Project Act, section 9(c) of the Reclamation Project Act of 1939, and section 5 of the Flood Control Act of 1944) require that the costs of each project to be met from power revenues have to be amortized on the basis of a fixed annual obligation. The legal requirements are satisfied if such costs are returned within a reasonable period of years whatever accounting procedure is applied. Statement furnished by Assistant Secretary Holum in

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regard to statutory authority for revised procedure for presenting Bonneville Power Administration rates and repayment data on a consolidated system basis, printed in *Hearings on H.R. 2337, to Provide for the Construction of the Lower Teton Division, Teton Basin Federal Reclamation Project, Before the Irrigation and Reclamation Subcommittee of the House Committee on Interior and Insular Affairs*, 88th Cong., 2d Sess. 36-38 (1964).

The requirements of the Hayden-O'Mahoney amendment are satisfied as to each reclamation project involved in the power marketing operation of the Bonneville Power Administration when each reclamation project has been compensated by being credited with so much of BPA's power revenues as have, over a reasonable period, repaid that portion of the project's investment allocated to power together with the irrigation assistance. Statement furnished by Assistant Secretary Holum for *Hearings on H.R. 2337, to Provide for the Construction of the Lower Teton Division, Teton Basin Federal Reclamation Project, Before the Irrigation and Reclamation Subcommittee of the House Committee on Interior and Insular Affairs*, 88th Cong., 2d Sess. 38 (1964).

Under section 9(c) of the Reclamation Project Act of 1939, as construed consistently with the Hayden-O'Mahoney amendment to the Interior Department Appropriation Act, 1939, the minimum rates for the sale of power must be such as will cover (1) an appropriate share of annual operation and maintenance costs and (2) an amount equal to 3 per cent per annum of the original power construction costs; however, if the 3 per cent factor is not enough to return power construction costs plus the irrigation subsidy (the amount of irrigation construction costs beyond the ability of the water users to repay) within a reasonable period of time, then the rates must be increased accordingly. There is no statutory obligation for the Government to recover a profit (in the form of interest) on the investment in power construction costs and therefore all of the power revenues are available to return power construction costs and the irrigation subsidy. Three per cent per annum is a minimum rate of return which continues without regard to pay-out. Solicitor Harper Opinion, M-33473. (September 24, 1944) and M-33473 (Supplemental) (September 10, 1945). [Editor's Note: Although this opinion has not specifically been overruled, it is not followed in two respects. First, the 3 per cent factor used in section 9(c) is regarded as annual interest on the unamor-

tized balance of power construction costs, rather than as a constant annual percentage of the original power costs. Second, the revenues represented by the interest component (that part of power revenues attributable to a recovery of interest on the power construction costs) are not considered to be available to return irrigation costs. This latter policy was adopted following a period of controversy culminated by the recommendation of the House Appropriations Committee against use of the interest component to return irrigation costs. H.R. Rept. No. 314, 83rd Congress, 1st Sess. 12 (1953).]

After repayment of construction charges of the Grand Valley Project and operation and maintenance costs during the repayment period, the net power revenues will be required under the Hayden-O'Mahoney amendment, to be covered into the General Treasury as miscellaneous receipts. Solicitor Harper Opinion, M-33504 (September 26, 1944).

### 3. Army projects

Inasmuch as the Hayden-O'Mahoney amendment does not apply to facilities constructed by the Department of the Army, an appropriate allocation of revenues should be made to the Department of the Army powerplants in the Missouri River Basin project, and as required by general provisions of law the sum represented thereby must be deposited in the general fund of the Treasury. Testimony of Assistant Solicitor Weinberg, *Missouri Basin Water Problems: Joint Hearings, Before the Senate Committee on Interior and Insular Affairs and Public Works*, 85th Cong., 1st Sess., pt. 1, 341-42 (1957). Accord: Letter of Administrative Assistant Secretary Beasley to Mr. A. T. Samuelsen, General Accounting Office, April 22, 1957; reprinted in *Joint Hearings, id.* at 364.

An appropriate share of revenues received in connection with contracts for irrigation service from Pike Flat Dam and other Department of the Army developments from which the Secretary of the Interior disposes of irrigation benefits pursuant to section 8 of the Flood Control Act of 1944, should be deposited in the general fund of the Treasury as miscellaneous receipts. Letter of Administrative Assistant Secretary Beasley to Mr. A. T. Samuelsen, General Accounting Office, April 22, 1957, reprinted in *Missouri Basin Water Problems: Joint Hearings Before the Senate Committee on Interior and Insular Affairs and Public Works*, 85th Cong., 1st Sess., pt. 1, at 364-66 (1957).

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4. Headwater benefits

Moneys received from power licenses, under assessments made by the Federal Power Commission pursuant to section 10(f) of the Federal Power Act for headwater benefits attributable to Reclamation reservoirs, shall be paid into the reclamation fund in accordance with the Hayden-O'Mahoney amendment of 1938. Des. Comp. Gen., B-156498 (May 24, 1966).

5. Exceptions

The legislative history of the Hayden-

O'Mahoney amendment indicates that the type of contract which was intended to be excepted from its application was that authorized to be entered into under subsection I of section 4 of the Act of December 5, 1924, that is, one where the power development has been financed by the Government and the water users have obligated themselves in fact to repay all of the costs. Solicitor Harper Opinion, M-33504 (September 26, 1944), in re disposition of net power revenues from the Grand Valley project.

\* \* \* \* \*

August 4, 1977

## 3056 DEPARTMENT OF ENERGY ORGANIZATION ACT

Control Act of 1944. *City of Fulton v. United States*, 690 F. 2d 115 (Cl. Ct. 1982). [Editor's note: This decision was affirmed by the Federal Circuit, 751 F.2d 1255 (1985), but reversed by the Supreme Court sub nom *United States v. City of Fulton*, 475 U.S. \_\_\_\_\_, 89 L. Ed. 2d 161, 106 S. Ct. 1422 (1986).]

The Federal Power Commission had the power to confirm Bonneville Power Administration rates on an interim basis. The Secretary of Energy inherited these powers through the Department of Energy Organization Act. *Montana Power Company v. Edwards*, 631 F. Supp. 9 (D. Ore. 1981).

The power to determine when interim rates are "necessary" lies within the discretion of the Secretary of Energy. *Pacific Power & Light Co. v. Duncan*, 499 F. Supp. 672, 678-79 (D. Ore. 1980).

Section 301(b) of the Department of Energy Organization Act, through section 402(a)(2) of the Act, authorizes the Secretary of Energy (in the exercise of the rate approval authority for the Bonneville Power Administration (BPA) formerly in the Federal Power Commission (FPC), to utilize the authority of the FPC under, among others, section 16 of the National Gas Act, 15 U.S.C. 717c, which authorized the FPC to perform all acts necessary to carry out its functions. The Supreme Court has held that this includes the authority to set rates on an interim basis. Therefore, the Secretary of Energy has authority to promulgate interim rates for BPA. *Pacific Power & Light Co. v. Duncan*, 499 F. Supp. 672, 678-79 (D. Ore. 1980).

### 2. Rate approval authority

Section 301(b) of the Department of Energy Organization Act transfers to the Sec-

retary of Energy the rate confirmation and approval function of the Federal Power Commission under section 5 of the Flood Control Act of 1944. *United States v. Tex-Lo Electric Cooperative, Inc.*, 693 F. 2d 392, 395-96 (5th Cir. 1982).

In plain and unambiguous language, Congress, in section 301(b) of the Department of Energy Organization Act, granted the rate approval authority of the Federal Power Commission for the Bonneville Power Administration to the Secretary of Energy, not to the Federal Energy Regulatory Commission. *Pacific Power & Light Co. v. Duncan*, 499 F. Supp. 672, 677-78 (D. Ore. 1980).

Pursuant to section 301(b) of the Department of Energy Organization Act, the confirmation and approval authority of the Federal Power Commission for Federal power marketing rates is vested in the Secretary of Energy. Memorandum of General Counsel Coleman, October 14, 1978, in re proposed delegation to the Federal Energy Regulatory Commission of rate confirmation authority for the Department of Energy's power marketing agencies.

### 3. Rate-making, generally

Despite the implication in sections 301(b)(2) and 501(a)(1) to the contrary, the unification in the hands of the Secretary of Energy of the separate functions of the Secretary of the Interior to prepare rates and of the Federal Power Commission to confirm and approve rates, amends section 5 of the Flood Control Act of 1944 to alter the strict procedural requirements of a bifurcated rate implementation scheme. *United States v. Tex-Lo Electric Cooperative, Inc.*, 693 F. 2d 392, 404 (5th Cir. 1982).

## TRANSFERS FROM THE DEPARTMENT OF THE INTERIOR

**Sec. 302. [Transfer of power marketing functions from Interior.]—(a)**  
(1) There are hereby transferred to, and vested in, the Secretary all functions of the Secretary of the Interior under section 5 of the Flood Control Act of 1944, and all other functions of the Secretary of the Interior, and officers and components of the Department of the Interior, with respect to—

- (A) the Southeastern Power Administration;
- (B) the Southwestern Power Administration;
- (C) the Alaska Power Administration;
- (D) the Bonneville Power Administration including but not limited to the authority contained in the Bonneville Project Act of 1957 and the Federal Columbia River Transmission System Act;

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(E) the power marketing functions of the Bureau of Reclamation, including the construction, operation, and maintenance of transmission lines and attendant facilities; and

(F) the transmission and disposition of the electric power and energy generated at Balcon Dam and Amistad Dam, international storage reservoir projects on the Rio Grande, pursuant to the Act of June 18, 1954, as amended by the Act of December 23, 1963.

(2) The Southeastern Power Administration, the Southwestern Power Administration, the Bonneville Power Administration, and the Alaska Power Administration shall be preserved as separate and distinct organizational entities within the Department. Each such entity shall be headed by an Administrator appointed by the Secretary. The functions transferred to the Secretary in paragraphs (1)(A), (1)(B), (1)(C), and (1)(D) shall be exercised by the Secretary, acting by and through such Administrators. Each such Administrator shall maintain his principal office at a place located in the region served by his respective Federal power marketing entity.

(3) The functions transferred in paragraphs (1)(E) and (1)(F) of this subsection shall be exercised by the Secretary, acting by and through a separate and distinct Administration within the Department which shall be headed by an Administrator appointed by the Secretary. The Administrator shall establish and shall maintain such regional offices as necessary to facilitate the performance of such functions. Neither the transfer of functions effected by paragraph (1)(E) of this subsection nor any changes in cost allocation or project evaluation standards shall be deemed to authorize the reallocation of joint costs of multipurpose facilities theretofore allocated unless and to the extent that such change is hereafter approved by Congress.

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(91 Stat. 578; 42 U.S.C. § 7152)