UNITED STATES GOVERNMENT

GENERAL ACCOUNTING OFFICE

Memorandum

B-114839-O.M.

JAN ? 1975

TO : Regional Manager, Dallas Office

THRU : Director, FOD - Stewart D. McElyea

JAN 9 -

FROM : General Counsel - Paul G. Dembling

Paul G. Dembling

SUBJECT: Authority of Panama Canal Company to Collect Interest on Cash Deposited with U.S. Treasury. B-114839-O.M.

The question presented is whether the Panama Canal Company has any legal authority under the Government Corporation Control Act or the legislation establishing the Panama Canal Company to, in effect, collect interest indirectly on the funds which it is required to deposit with the United States Treasury.

The Panama Canal Company is a wholly owned Government corporation and is subject to the Government Corporation Control Act, 31 U.S.C. § 841 et seq. (1970). Section 867 of the Act requires Government Corporations to keep their banking and checking accounts with the Treasurer of the United States (or, with approval of the Secretary of the Treasury, with a Federal Reserve bank or a bank designated as a depositary or fiscal agent of the United States). It makes no provision for the payment of interest on those accounts, 31 U.S.C. § 867 (1970), nor are we aware of any other statutory authority which would allow Government corporations to receive--or the Treasury to pay--interest on Government corporation funds deposited in the Treasury. In our view no Government agency or instrumentality required to keep its funds with the Treasury is entitled to receive interest thereon in the absence of specific statutory authority.

Although unable to collect interest directly for the above reasons, on approximately $40 million which the Company maintained with the Treasury as a contingency fund, the Company devised a system to collect such interest indirectly at the beginning of fiscal year 1975. It imputed a payment of interest from the Government, applying the same rate at which the corporation is required to pay interest to the Government on its "net direct investment" and subtracted the imputed interest from the month-end balances on deposit with the Treasury. This credit for "interest" from the Government was recorded in the Company's accounts as revenue. Thus the interest payments which the Company was required to make to the Treasury on the Government's "net direct investment" in the Company were reduced by approximately $1.8 million.

Title 2, section 62(e) of the Canal Zone Code (C.Z.C.) (1963) provides in pertinent part as follows:

> "In order to reimburse the Treasury, as nearly as possible, for the interest cost of the funds and other assets directly invested in it, the Panama Canal Company shall pay interest to the Treasury on the net direct investment of the Government in it as defined by the subsections (a), (c) and (d) of this section, and shown by the receipt described therein, at a rate or rates determined by the Secretary of the Treasury as required to reimburse the Treasury for its cost.* * *"

Subsection (a) refers to a receipt which evidences ownership of the Panama Canal Company by the United States. Subsection (c) provides as follows:

> "The amount of receipt referred to by subsection (a) of this section shall be increased by subsequent additional direct investments of the United States in excess of repayments to the Treasury and extraordinary expenditures and losses applicable as offsets to such investments under the provisions of subsection (f) of this section, due to:
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> "(1) funds advanced to the Panama Canal Company from the Treasury within such appropriations as the Congress from time to time may make for the purpose of meeting increased capital needs; and
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> "(2) transfers to the Panama Canal Company from other Government agencies (or, conversely, decreased by transfers from the Company to other Government agencies), pursuant to applicable provisions of law, of business enterprises, facilities, appurtenances, and other assets, less liabilities assumed in connection with the transfers."

Subsection (f) provides in part that repayments to the Treasury as dividends and unreimbursed extraordinary expenditures or losses shall be applicable as offsets against directly contributed capital, in determining the base for interest payments under subsection (e). Subsection (d) concerns the manner of determining appropriate amounts to be credited or debited for transfers of property from or to other Government agencies pursuant to paragraph 2 of subsection (c).

Section 62 thus provides a specific statutory formula for determining the amount of the "net direct investment." While section 62 assigns to the Secretary of the Treasury the duty to determine the interest rate that is required to reimburse the Treasury for its cost, the Canal Zone Code specifically states a formula for determining the base upon which interest is to be computed. The Code lists certain offsets against contributed capital that may be considered. The implication of the statutory framework is that the enumerated offsets were intended to be exclusive and no offsets other than those enumerated were to be allowed.

Support for the above conclusion is found in the history of the legislative enactments concerning the Panama Canal Company. The Act of June 29, 1948, ch. 706, 62 Stat. 1076, which reincorporated the Panama Railroad Company, provided for a fund of $10 million to be maintained in the Treasury. The fund was established by the deposit of depreciation reserve funds of the predecessor corporation. The section provided that any part of that fund could be borrowed by the corporation and loans from the fund would not bear interest. However, the Company was obligated to pay interest on the entire $10 million, since it was considered part of the Government's "net direct investment," even if the fund remained intact in the Treasury.

In order to relieve the Panama Canal Company of the payment of interest on the $10 million fund, Congress passed the Act of August 25, 1959, Pub. L. No. 86-200, 73 Stat. 428. H.R. 4328, 86th Cong., 1st Sess., the derivative source of this Act, as originally introduced, would have provided for payment of the Panama Canal Company's excess funds into a special account in the Treasury from which the Company could borrow. Funds paid into the account by the Company would have reduced the interest bearing investment of the United States, and amounts withdrawn from the account would have increased the interest base until repaid. However, the House Merchant Marine and Fisheries Committee amended the bill to limit the borrowing authority. The Committee report, in part, read as follows:

> "* * * The Committee took the view that such a fund might be built up to far more than the present $10 million figure in the course of time and that to permit withdrawal of such increased amount without any control by the Congress was undesirable.
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> "Accordingly, the bill was amended to authorize a borrowing authority of $10 million, with interest payable on the amount borrowed. Since there had been no withdrawals from the original fund, the Committee

> was of the opinion that this limit was not likely to prove unduly restrictive. However, if future needs of the Company indicate that a larger sum would be desirable, application can be made to the Congress for enlargement of authority." H.R. Rep. No. 655, 86th Cong., 1st Sess. 2 (1959).

The 1959 law as enacted provided that the $10 million maintained by the Company in the Treasury pursuant to the Act of June 29, 1948, supra, be deemed to have been paid into the Treasury as a dividend of the Company. The law established borrowing authority not to exceed a total of $10 million outstanding at any time and provided that obligations shall bear interest at a rate determined by the Secretary of the Treasury, taking into consideration the rate on current obligations of the United States. The borrowing authority was increased to $40 million by the Act of January 2, 1975, Pub. L. No. 93-607, 88 Stat. 1966, 2 C.Z.C. 71.

It is apparent from the evolution of the law, as indicated above, that relief from interest paid on funds deposited to the account of the Company could not be accomplished by merely offsetting credit against the interest due on the Government's investment. If the Company had such authority, it would not have been necessary, for the purpose of relieving the Company from paying interest on the $10 million on deposit with the Treasury, to change the statute in the manner effectuated by the Act of August 25, 1959, supra. If offsetting credit was allowable under the language concerning the computation of "net direct investment," relief from the interest payment on the $10 million fund could have been accomplished administratively without an amendment to the law. If legislative clarification had been deemed necessary, all that would have been required was an amendment to the section involving the Government investment to include an offset for funds on deposit with Treasury in the computation of "net direct investment." Since Congress chose to deal only with the $10 million fund created by the Act of June 29, 1948, supra, and not with all funds on deposit with Treasury (including bank accounts required to be kept with Treasury by the Government Corporation Control Act), it appears that the payment of interest on funds other than the $10 million was intended to remain unchanged.

The computation of the "net direct investment" without an offset for funds required to be kept with Treasury under the Government Corporation Control Act has stood unchallenged until the present time although amendments affecting the investment, interest, and borrowing authority have been considered and passed by Congress during past decades.

The Panama Canal Company contends that the Treasury Department, with the concurrence of this Office, pays interest on funds deposited by the Bonneville Power Administration (BPA) in what it assumes is a parallel situation. We disagree that the circumstances are parallel. What appears to be involved in the BPA situation is an "inverse interest" computation, the effect of which is not the acutal payment of interest.

Section 11 of the Bonneville Project Act, as amended, 16 U.S.C. 832j (1970), requires that all receipts from transmission and sale of electric energy at the Bonneville project be covered into the Treasury to the credit of miscellaneous receipts. BPA deposited the revenues as received into the U.S. Treasury. At the end of each fiscal year, BPA assigned the revenue to operation and maintenance costs and to the payment of interest on the Federal investment. The remaining revenue was considered to be a repayment of part of the outstanding Federal investment.

Interest expense was computed at the end of each fiscal year for reasons of convenience. The principal amount used in computing the interest was the Federal investment outstanding at the beginning of the year and additions to the investment during the year. These computations resulted in an overstatement of the annual interest expense for BPA because the entire Federal investment had not been outstanding the entire year but, rather had been partly repaid at various times during the year as BPA deposited power revenues in the Treasury. In lieu of deducting power revenues from the Federal investment at the times (during the fiscal year) such revenues were deposited into miscellaneous receipts, BPA employed an alternate computation. BPA considered that the Federal investment was outstanding the entire year and that the revenues were on deposit with Treasury and earned interest income until applied by BPA at the end of the fiscal year to repayment of the Federal investment. This imputed interest was deducted by BPA from the annual interest expense due on the Federal investment in BPA.

This interest income credit (also referred to as inverse interest) is merely an expedient method for adjusting for the overstatement of interest expense that results from the failure to subtract from the outstanding principal repayments as they are made. We have not objected to the above procedure for computing inverse interest provided that the interest benefit considered to be derived from depositing power revenues into miscellaneous receipts does not exceed the interest detriment incurred because of the failure to deduct from the Federal investment the power revenues deposited into miscellaneous receipts at the time of such deposits.

Unlike the BPA situation, the funds upon which the Company computed an interest credit were not funds deposited into miscellaneous receipts in order to reduce the Federal investment but, rather funds deposited in an account at Treasury in the name of the Panama Canal Company. Moreover, the procedure employed in BPA was merely an alternate method of computation of the interest due on the Government's investment, while the interest credit taken by the Panama Canal Company affected the amount of interest actually paid on the Government's investment.

We conclude that offsetting credit for imputed interest on funds of the Panama Canal Company on deposit with the Treasury is not allowable under present law. If the Company desires to reduce its interest burden, there are several alternative actions it might take. It can reduce the size of its $40 million contingency fund by paying a portion of the fund into the Treasury to reduce the size of the Government's net direct investment. (Company spokesmen, at a meeting with us on November 12, 1975, contended that the Office of Management and Budget requires it to maintain that large a reserve fund. There is no written documentation of that requirement and we have been unable to confirm its existence to date.) The Company might also seek legislation similar to the Act of August 25, 1959, supra, which deemed the funds in the Company's account in the Treasury as paid to the Treasury to be a divident with a corresponding increase in borrowing authority. This alternative would be advantageous to the Company if repayment into the general funds without increased borrowing authority would create difficulties in meeting its liquidity requirements. Finally, the Company could request the Secretary of the Treasury to waive the requirement that the $40 million fund be maintained in a non-interest paying account in the Treasury, pursuant to 31 U.S.C. 867, supra. We express no opinion on the desirability of this alternative from the point of view of United States financial interests.

In view of your time constraints, we have not obtained the views of the Secretary of the Treasury or of the Office of Management and Budget. We would be glad to ask them for a report if you wish us to do so. In any event, we assume you will give Treasury and OMB the opportunity to comment on your draft report if it contains the views expressed above.