

DOCUMENT RESUME

03604 - [A2513653]

Payment of Elder Citizen Lifeline Utility Surcharge. B-189149.
September 7, 1977. 4 pp.

Decision by Robert F. Keller, Deputy Comptroller General.

Issue Area: Federal Procurement of Goods and Services:
Reasonableness of Prices Under Negotiated Contracts and
Subcontracts (1904).

Contact: General Government Div.

Budget Function: General Government: Other General Government
(806).

Organization Concerned: General Services Administration; Maine:
Public Utility Commission; Maine.

Authority: Elder Citizens Lifeline Electrical Services Law.
Public Laws of Maine, 1975, 35 M.R.S.A., sec. 2, ch. 585.
Public Laws of Maine, 35 M.R.S.A., sec. 81-85. Public Laws
of Maine, 35 M.R.S.A., sec. 51. B-178356 (1973). B-52531
(1945). B-105375 (1951). B-144078 (1960). B-148667 (1962).
B-144504 (1967). B-171756 (1971). B-186494 (1976). 27 Comp.
Gen. 580. 32 Comp. Gen. 577.

Operating Accountant Robert A. Sylvester, General
Services Administration (GSA), Region 1, requested a decision on
whether GSA may pay a "lifeline" surcharge on electric utility
billings in the State of Maine. GSA claimed that the surcharge
represents a subsidy for providing electrical services to the
elderly rather than services to the Government. The "lifeline"
surcharge does not constitute discrimination against Federal
agency users alone and, therefore, billings including the
surcharge may be paid. The Government is liable for late payment
charges approved by the State Public Utilities Commission which
become part of the utility rates payable under contract. (SW)

03604 3653

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

SEP 7 1977

FILE: B-180140

DATE:

MATTER OF: Payment of Older Citizen Lifeline Utility Surcharge

DIGEST: GSA is authorized to pay surcharge representing lost revenues to utility companies providing basic utility service at reduced rate to elderly persons whose income is below a certain level since surcharge results from duly authorized State program and does not unreasonably discriminate against Federal agency users.

Government is liable for late payment charges approved by State Public Utilities Commission which become part of the utility rates payable under contract.

This is in response to a request for a decision from Robert A. Sylvester, Operating Accountant, Region 1, General Services Administration (GSA), asking whether GSA may pay a "lifeline" surcharge on electric utility billings to GSA in the State of Maine. GSA has refused payment on the grounds that the Government can only pay for services rendered and the "lifeline" surcharge does not represent any services to the Government but, instead, represents a subsidy for providing electrical services to the elderly.

The Older Citizens Lifeline Electrical Services Law, 35 M.R.S.A. §§ 81-85 (Cumulative Pocket Supplement), as added by chapter 585, section 1 of the Public Laws of Maine, 1975, required the Maine Public Utility Commission (Commission) to establish rules and procedures, and to put into operation a demonstration "lifeline" electrical service program that includes the following:

- "1. Selection of size of municipality. Selection of a medium-sized municipality, 2,500 to 10,000 population, and a large municipality, population over 10,000, in each of the service areas of the Central Maine Power Company, the Bangor Hydro-Electric Company and the Maine Public Service Company, 6 municipalities in all. These 6 municipalities shall be the municipalities in which the demonstration program is conducted.

"2. Establish a lifeline rate for a period of 12 months. Establish the lifeline electrical service rate for a period of 12 months. The first rate step of the lifeline rate shall be not more than 3¢ per kilowatt hour for each of the first 500 kilowatt hours of electricity utilized in any monthly billing period.

A residential customer who is an older citizen shall pay not more than the lifeline rate for electricity utilized in any month at his principal dwelling. The rate provided by this section shall not be supplemented by any minimum charges, service charge, connection charge or other periodic charge to an older citizen who is a residential customer in a principal dwelling. Where any existing rate for a particular usage level is lower than the lifeline rate established by the commission, the lower rate shall prevail. No claim for lifeline rate otherwise allowable shall be granted to claimants of single member households with household income in excess of \$4,500 for the previous calendar year; and no claim otherwise allowable shall be granted to claimants of households of 2 or more members with income in excess of \$5,000 for the previous calendar year.

"All state agencies are authorized to provide whatever support services, informational support, evaluative services and other such assistance as may be requested by the Public Utilities Commission in carrying out the objectives of the demonstration lifeline electrical service program." 35 M.R.S.A. § 85.

Additionally, transitional provisions set forth by section 2 of chapter 585 of the Public Laws of Maine, 1975, 35 M.R.S.A. § 81 note, required the Central Maine Power Company, the Bangor Hydro-Electric Company, and the Maine Public Service Company to file with the Commission revised tariffs in conformance with chapter 585 and in accord with the Commission's direction, and required that in the event that implementation caused a loss of revenue to a utility, the additional revenue be obtained from all other classes of energy users in a just and reasonable manner.

The "lifeline" service rates were approved for use by the three utilities in two localities each. The three approved lifeline tariffs authorized each utility company to recover any revenues lost as a result

B-189149

of application of the "lifeline" service rate from all other users in the municipalities involved. Consequently, the Bangor Hydro-Electric Company and Central Maine Power Company billed the Government, in addition to the charges otherwise authorized and payable, a "lifeline" service surcharge totaling \$298.71.

Generally where rates for providing utility services are established by the legislature or a public service commission which has been delegated this power (as is the case in Maine, 36 M.R.S.A. § 51), such rates are controlling and unless unjust, unreasonable or discriminatory, should be paid by Federal agency users. See B-178356, October 31, 1973; 27 Comp. Gen. 539 (1948). This Office has approved the payment of bills based on utility rates which included: (1) a distributors surcharge added to each bill and based upon a straight 10 percent of the amount otherwise charged, B-52531, October 23, 1945; (2) a charge for a disaster fund added to each bill, based upon 2 percent of the amount otherwise charged, B-105375, October 18, 1951; (3) the recovery of franchise taxes assessed against the utility, 32 Comp. Gen. 577 (1953) and B-144078, October 16, 1959; (4) the recovery of a gross receipts tax assessed upon the utility by a taxing authority, B-148667, May 15, 1962 and B-144504, June 9, 1967; and (5) the recovery of other taxes assessed against a utility, B-171756, February 22, 1971.

The "lifeline" surcharge authorized by section 2 of chapter 585 of the Public Laws of Maine, 1975, was set forth in service rate schedules submitted to the Commission and found by it to be reasonable. Consequently, we are of the opinion that such surcharge can be viewed as constituting part of the authorized rate for electricity for the year involved. Compare B-171756, February 22, 1971. Therefore, unless unjust, unreasonable or discriminatory, payment of the surcharge is authorized.

While as a general rule, a public utility cannot discriminate unjustly in its rates to consumers similarly situated or of the same class for the same service or kind of service, 84 Am. Jur. 2d, Public Utilities § 110, p. 637-638, it is also true that there are occasions when rate-making authorities may decide that a substantial inequality in economic circumstances justifies a reasonable commensurate inequality of rates. Discrimination by a public utility as to rates is not unlawful when it is based upon a classification corresponding to actual differences in the financial situation of the consumers, or upon differences in the kind or amount of service furnished or other reasonable basis. *Id.* § 117, p. 643. We believe that the "lifeline" program represents a proper exercise of the State's legislative authority to achieve a social purpose; i.e., relief from the effects of inflation for elderly citizens subsisting on fixed

B-136140

incomes. We note too that the public utilities participating in the program were specifically authorized by the State's statute to recover revenues lost as a result of the program from other classes of users. Further, the resulting surcharge, which is apparently paid by all users in the participating localities other than "lifeline" beneficiaries, does not constitute discrimination against Federal agency users alone.

Accordingly, billings which include the "lifeline" surcharge may be paid if otherwise correct.

We have also been asked whether GSA is liable for and may pay "interest accrued and still accruing." The term "interest" we assume means late payment charges assessed against the unpaid balance of the bill at the rate of 1 percent per month. We have been informally advised that the procedures for assessing late payments and the rate have been approved by the Commission.

In the matter of Late Charges for Utility Services, B-136494 dated July 22, 1976, we considered the question of whether a late payment charge assessed by the Virginia Electric and Power Company (VEPCO) against the Coast Guard in accordance with applicable VEPCO rate schedules which had been filed and approved by the North Carolina Utilities Commission, could be paid when the contract between the Government and VEPCO precluded the payment of interest or penalty.

Noting that the late payment rates were neither total nor arbitrary, but merely recouped the costs that were directly attributable to payment delays, we found such charges to be an element of the utility rates payable under the contract. Since the construction of the contract was then also before a court for interpretation, the ultimate determination as to the propriety of payment in that case rested with the court. In the present case the same rationale would apply; i.e., the late payment rate of charge having been duly approved by the Commission, such charges become part of the utility rates payable under the contract. Nothing in the request for decision in the instant case indicates that the contract or agreement involved contains a specific provision precluding assessment of late payment charges. Clearly, absent such a contract provision there is no question but that the Government would be liable for late payment charges.

R. F. KELLER

DEPUTY, Comptroller General
of the United States