

Matter of: Payment by Federal Highway Administration to Tennessee Valley Authority for Damage to Electrical Transmission Towers

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DIGEST

The Federal Highway Administration (FHWA) may pay the Tennessee Valley Authority (TVA) costs arising out of the collapse of two TVA electric power transmission line towers resulting from FHWA's Natchez Trace construction projects. Since TVA's power operations are wholly-consumer financed, and TVA's customers would ultimately bear the costs if the claim were disallowed, the interdepartmental waiver doctrine does not apply. 71 Comp. Gen. 1 (1991).

DECISION

The Federal Highway Administration (FHWA) requests our opinion on its authority to pay a claim by the Tennessee Valley Authority (TVA) for costs arising out of the collapse of two TVA electrical transmission towers. In February 1992, during the construction of a portion of the Natchez Trace Parkway in Tennessee, a division of the FHWA placed excavated material near electrical transmission towers owned and operated by TVA. Two of these towers collapsed, temporarily disrupting the transmission of power. TVA requests a payment totalling about \$720,971 in direct costs for the repair of the towers (\$643,971.71) and for rerouting power while the lines were out of commission (\$77,000). FHWA admits responsibility for the collapse, but questions whether the interdepartmental waiver doctrine prohibits paying TVA's claim. As explained below, we conclude that the doctrine does not prohibit FHWA from paying TVA.

The interdepartmental waiver doctrine prohibits a federal agency from paying for the use or repair of real property controlled by another federal agency, unless authorized by statute. 60 Comp. Gen. 406 (1981); 59 Comp. Gen. 93 (1979). The doctrine is based on the theory that there can be no reimbursement by the government to itself for damage to or loss of its own property.

This Office, however, has not applied the interdepartmental waiver doctrine where its application would be inconsistent with the financing scheme of the agency incurring the damage or loss. 71 Comp. Gen. 1, 3 (1991). In the cited decision, we concluded that the Bonneville Power Administration (BPA) could recover the cost of damages to its property caused by another federal agency. We reasoned that the statutory scheme for financing BPA's activities did not envision BPA's ratepayers covering costs generated by actions of other federal agencies wholly unrelated to the services BPA provides its customers. Under these circumstances, application of the doctrine would have resulted in BPA customers paying for government caused damages to BPA property, not in the government reimbursing itself.

TVA's statutory financing scheme is like that of BPA. TVA, a wholly-owned government corporation, is authorized by the Tennessee Valley Authority Act of 1933, to produce, distribute, and sell electric power. 16 U.S.C. § 831d(1) (1988). TVA finances its operations from funds secured from the sale of power, and from funds secured by the sale of bonds. 16 U.S.C. § 831n-4 (1988). TVA charges rates for power which will produce gross revenues sufficient to provide funds for operation, maintenance, and administration of its power systems, consistent with the objective that power shall be sold at rates as low as are feasible. (16 U.S.C. § 831n-4(f)). TVA bonds, by statute, "shall not be obligations of, nor shall payment of the principle thereof or interest thereon be guaranteed by, the United States" and are instead backed only by TVA's power revenues. 16 U.S.C. § 831n-4(b) (1988). See 44 Comp. Gen. 683, 686 (1965). TVA's statutory financing scheme, like BPA's, contemplates that TVA customers will finance TVA operations. Application of the intergovernmental waiver doctrine in this case would result not in the government reimbursing itself, but in the government avoiding liability for damages it caused, in effect shifting the cost of paying for the damages from FHWA to TVA's customers. Accordingly, the interdepartmental waiver doctrine does not bar FHWA's payment of TVA's cost resulting from the damage to TVA's transmission towers.

Comptroller General
of the United States