



United States
Department of
Agriculture

Forest
Service

R3 Regional Office

333 Broadway SE
Albuquerque, NM 87102
FAX (505) 842-3800
V/TTY (505) 842-3292

File Code: 1570-1/2720-2

Date: July 18, 2002

Allison M. Ellis and William P. Horn
Attorneys at Law
Birch, Horton, Bittner and Cherot
1155 Connect Avenue, NW
Washington, DC 20036

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RE: Appeal #02-03-00-0013-A251, Woods Canyon Lake Store, Black Mesa Ranger District, Apache-Sitgreaves National Forests

Dear Ms. Ellis and Mr. Horn:

This is my review decision on the appeal dated March 22, 2002, that you filed on behalf of your clients, Bette Castelluccio-Finger and Robert Castelluccio Jr. (Appellants), concerning a bill for collection for the amount due from the Woods Canyon Lake Store and Marina (the Store) as its proportional share of the power line annual facilities charge for 1999-2001.

On May 8, 2002, I asked the Deciding Officer and the Appellants for supplemental information. Documentation provided by the Deciding Officer and the Appellant was included in the record. Copies of meeting agendas from 1997 and 1999 had previously been provided to the Forest Service. The appellants were given an opportunity to comment on supplemental documentation provided by the Forest Supervisor. The Administrative Record (AR) was closed on May 23, 2002.

This appeal review is being conducted pursuant to 36 CFR §251.87(b)(1).

BACKGROUND

On July 30, 1992, Chevelon District Ranger John Macivor sent a letter addressed “Dear Forest Visitor” that proposed to construct a six-mile 21 KV power line to deliver electricity to campground facilities at Woods Canyon Lake and the Mogollon Rim Visitor Information Center. Also proposed was Service to the Forest Service administrative site, two new water wells and the amphitheatre at Woods Canyon Lake. The Chevelon Ranger District was to complete an environmental analysis pursuant to this proposal (AR 1). There is no documentation in the record that this letter was ever sent to the Appellants.

The Arizona Public Service Company (APS) provided the Forest Service with an Economic Feasibility Study dated August 3, 1992, that showed a gross cost of \$193,536 for the power line based on eight customers with annual revenue of \$11,040 (AR 2). The



Forest Service was advised by APS that, “This extension requires an advance from the customer of \$193,536 to be economically feasible. Also required is an annual facilities charge of \$8,386. This charge will continue until it is reduced or eliminated by subsequent Economic Feasibility Studies. The advance may be reduced or refunded only after the facilities charge has been eliminated on the basis of a subsequent economic feasibility study, not to exceed the amount advanced.”

After reviewing the project file, Ranger Macivor signed a Decision Memo on August 14, 1992, committing the Forest Service to constructing a power line from the Colcord/Forest Lakes power line to Woods Canyon Lake (AR 3). The line would provide electricity to two new water wells, the Forest Service Administrative site, amphitheater, dump station, the Mogollon Rim Visitor Information center, the Aspen, Spillway, Crook, Woods Canyon group, Spillway Group Campgrounds, and the Store. A portion of the line would be below ground to the Store.

These uses identified in the Decision Memo of August 14, 1992, constitute the seven customers (six Forest Service sites and the Store) used in the Economic Feasibility Study (AR 4).

A hand written note dated 8-92 in the Supplemental Appeal Record (SAR 1) states that Bob Costalencio [*sic*] was given a copy of the “Wds Cyn Lake Campground Power Line Env Analysis Decision Memo.” A hand written note dated June 18, 1992, contains the comment “power means no generator at store.”

An unsigned and undated note of accomplished tasks (SAR 2) appearing to be from early 1992 specifically leaves the impression that the following tasks were never accomplished: “talk to Costalutio [*sic*], challenge cost share or coop agreement” and “Debbie, short letter why generator won’t work.”

On July 14, 1994, APS provided a revised Economic Feasibility Study to the Forest Service that showed a gross cost of \$214,700 for the power line based on seven customers with annual revenue of \$14,506 (AR 4). In that study, the Forest Service was advised “This extension requires an advance from the customer of \$214,700 to be economically feasible. Also required was an annual facilities charge of \$3907 plus taxes for a total of \$4141.42. Note the annual facility charge is applied in situations where overall electrical use is not expected to meet minimum levels identified by APS.

On October 4, 1994, District Ranger Macivor wrote the Store in order to document the following; recent discussions pertaining to the pending expiration of the existing permit, the change in ownership, and the process by which a new permit would be issued (AR 5). However, no mention was made in this letter of the power line annual facilities charge.

On August 9, 1996, Deciding Officer Bedell approved a Decision Memo to issue a Special Use Permit for the Woods Canyon Store (AR 6). In the new permit, the permittee was required to take responsibility for some public services. There were ten items listed that were addressed in some detail. The payment of an annual facilities charge was not mentioned.

On May 8, 1997, District Ranger Kate Klein wrote Appellants to memorialize the following: her visit to the Store, the opportunity she had to learn about the store's history, becoming familiar with the current situation, hearing the concerns related to management of the store, and working with the Forest Service (AR 8). The payment of the annual facilities charge was not mentioned.

The calculations used by the Deciding Officer in June 1998, to determine the proportional share of the annual facilities charge are shown in AR 42 and summarized below:

Customer	Power Use Billing	Period	Percent
Woods Canyon Store	\$6,728.95	CY1997	74%
Campground Concessionaire	2,106.43	5-97-5/98	23
Forest Service	227.25	6/97-5/98	3
<i>Totals</i>	\$9,062.63		100%

On April 15, 1999, a new Term Special Use Permit to operate a store and a marina as authorized by the Act of March 4, 1915, as amended, was approved for the Appellants. This new permit contained clauses and provisions that were different from the superseded permit of May 6, 1985 (AR 17B and 17D).

On February 28, 2002, Forest Supervisor John Bedell (Deciding Officer) made the decision to send Appellants a bill for collection for a proportional share of the power line annual facility charge for 1999, 2000, and 2001 (AR 29).

ISSUE 1: Appellants consider the assessments for the annual facility charges for 1999, 2000, and 2001 to be improper and ask that the total annual facility charge be reduced to properly credit Appellants for their contribution to reducing utility charges for all users.

Discussion: The record indicates that a formal feasibility report was not prepared for this project. The District Ranger appears to have informally concluded that the power line was affordable, that receipts and costs made good business sense, and that there was no need to sign up any partners to share in the construction cost or in the annual facilities charge.

A prospectus for the concession operation of the Rim Lakes Recreation Area Facilities was sent to prospective applicants on February 1, 1996 (SAR 4). For the first time in the record, Appendix K documents the method to be used in calculation of the "yearly service fee" (annual facilities charge) according to amount of use. The estimated charge of approximately \$8,000 is erroneous since it was revised in July 1994 to \$4141.42. There is no documentation in the record that this prospectus was sent to the Appellants or that the Appellants were aware of the annual facilities charge obligations. In fact, the Appellants state in a January 1, 2002 letter to Congressman Hayworth that, "This utility facility fee was never disclosed when we were asked to tie into the line installed by APS" (AR 23). Apparently, the Store was connected to the power line in mid 1996 at the Store's own expense.

The Deciding Officer confirms in his May 17, 2002 letter accompanying the requested additional information that, “We can find no documentation in any form that indicates the store was actually in agreement when the decision to construct was finally made in 1992 or that they remained in agreement in 1996.”

The AR clearly reveals the benefits of bringing electric power to the vicinity of Woods Canyon Lake. It also appears evident that the Apache-Sitgreaves National Forests had the monetary resources to have the power line built and to be solely responsible for the annual facilities charge, since the Deciding Officer made no documented effort to sign up a partner.

Finding: All the users of electricity, including the store, benefit from electrical service and should share in the annual facility charge. However, it is unreasonable to assess an annual facility charge based on the amount of electricity used for 1999, 2000 and 2001, when the appellant had no documented knowledge of the amount of the charge nor its duration prior to the decision to construct the power line in 1992.

ISSUE 2: Review and revise the apportionment calculation to properly distribute the assessment among all three users on a proportionate use basis for the six-month season and equally for the remaining six months of the year.

Discussion: In their January 1, 2002 letter to Congressman Hayworth, the Appellants state that three years after the on-set of APS service, the Forest Service presented the Appellants a bill for a “utility facility fee” (AR 23). Three years after the on-set of APS service, the Appellants recall entering into discussions regarding a fair and equitable distribution of the annual facilities charge and offered to pay one third, however, the Forest Service rejected this proposal.

The only other documentation in the record showing an agreement between the two parties regarding the annual facilities charge is in the acceptance of the April 15, 1999 Term Special Use Permit (AR 9) even though Appellants later claim to have “serious concerns about the fairness of their permit” (AR 34). In addition, the “annual facilities fee” of approximately \$8,000 is misleading and in fact seems to be in error (AR 9 page A-1).

Finding: The record does not support the apportionment calculation of the annual facility charge and the 3-year billing assessed to the Appellants. Based on my review of the record, I am inclined to agree with the appellants that a recalculation of the 1999-2001 annual facility charges based on a proportionate use basis for the six-month season of operation and equally for the remaining six months of the year has merit.

ISSUE 3: Revalue Appellants’ GFA (Gross Fixed Assets) in order to properly account for utility expenses incurred by Appellants which are payments to the utility company for constructing, installing, and maintaining utility to the areas or grant Appellants a *pro rata* waiver or exemption for these charges.

Discussion: The decision rendered by the Deciding Officer on February 28, 2002 pertains exclusively to the subject of the Store's payment of a proportional share of the electric line annual facilities charge which cannot be used as GFA (AR 29).

However, the authorized officer has the sole discretion to establish and change the GFA used to generate sales (AR 17B page 9).

Finding: This issue is outside the scope of the decision being reviewed.

ISSUE 4: Request retroactive adjustment of Appellants' GFA and the fees based thereon for the years 1999, 2000, and 2001 to correct for the errors made in calculating the cost or [sic] Appellants' GFA.

Discussion: The decision rendered by the Deciding Officer on February 28, 2002, pertains exclusively to the subject of the Store's payment of a proportional share of the electric line annual facilities charge (AR 29).

Finding: This issue is outside the scope of the decision being reviewed.

ISSUE 5: Grant Appellants a fee waiver or exemption to offset the recurring expenses incurred by Appellants to maintain Forest Service improvements, such as the public bathroom at Woods Canyon, the parking lot and trash removal outside of Appellants' development area, or otherwise establish a credit for such expenses against Appellants' Permit fees.

Discussion: The decision rendered by the Deciding Officer on February 28, 2002 pertains exclusively to the subject of the Store's payment of a proportional share of the electric line annual facilities charge (AR 29).

Finding: This issue is outside the scope of the decision being reviewed.

DECISION

After a detailed review of the original record and the additional documents provided by the Deciding Officer and the Appellants, I am reversing the decision to send you a bill for collection for \$9,193.95 for the annual facilities charges for 1999-2001.

I am reversing this decision because the Forest Officer did not develop an agreement with the appellants, prior to committing to the power line construction. Therefore, the appellant had no prior knowledge of the financial commitment involved.

All of the electrical users, including the store, benefited from electrical service and should pay a portion of the annual facility charge. Therefore, I am directing the Forest Supervisor to sit down with the Appellants and negotiate an equitable share of the annual facility charge.

This decision does not preclude the Deciding Officer from negotiating a new agreement with the present or any new holder of the authorization to pay a proportional share of the power line annual facilities charge in the future.

The issues found to be outside the scope of this appeal review need to be addressed within the context of current Forest Service direction with any applicant for a new authorization.

Unless the Chief of the Forest Service exercises his discretion to review this appeal decision within 15 calendar days from the date of receipt, this is the final administrative determination for the Department of Agriculture (36 CFR 251.87(e)(1) and 251.100(c)).

Sincerely,

/s/Leonard S. Atencio
LEONARD S. ATENCIO
Reviewing Officer
Acting Deputy Regional Forester, Resources

cc: Apache-Sitgreaves NF
Black Mesa RD
cc: John C Bedell, Kathleen Klein, Christina Gonzalez