



UNITED STATES GENERAL ACCOUNTING OFFICE  
WASHINGTON, D.C. 20548

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RESOURCES, COMMUNITY,  
AND ECONOMIC DEVELOPMENT  
DIVISION



124945

AUGUST 16, 1984

B-147365

The Honorable Joseph F. Friedkin  
Commissioner, International Boundary  
and Water Commission

Dear Mr. Friedkin:

Subject: International Boundary and Water Commission Employees Residing in Federal Housing Should Not Receive Electricity at Reduced Rates (GAO/RCED-84-172)

At the request of Senator Dennis DeConcini, Ranking Member, Subcommittee on Treasury, Postal Service, and General Government, Committee on Appropriations, we reviewed and compared the electricity rate charges of employees of the International Boundary and Water Commission (IBWC), who operate Falcon Dam and live in government-owned housing at Falcon Village, Texas, with the electricity rate charges of other government workers also living in Falcon Village. Specifically, the Senator asked us to determine (1) if federal employees living at Falcon Village are, in fact, paying different rates for residential use of electricity and (2) whether this practice is legal and fair. In addition, after we had conveyed our findings to the Senator, he asked us to write to you and convey the findings, including any recommendations we might have.

We have confirmed that IBWC employees living in housing at Falcon Village are paying a reduced rate for their residential use of electricity. Further, a decision rendered by the Comptroller General in 1961 suggests that the reduced electrical rate charges for IBWC employees are improper.

OBJECTIVES, SCOPE, AND METHODOLOGY

To complete this assignment, we met and discussed the Falcon Village electricity rate charges with cognizant IBWC officials at their El Paso, Texas, headquarters and with various federal employees (IBWC, Department of the Treasury's U.S. Customs, and Department of Justice's Immigration and Naturalization Service) residing at Falcon Village. We also met with officials of Medina Electric Cooperative<sup>1</sup> (Medina) in Rio Grande City and Hondo, Texas, to discuss how they bill their Falcon Village customers. In addition, we reviewed contracts and statutes pertaining to

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<sup>1</sup>Medina provides electricity to all residents of Falcon Village.

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Medina's billing of the federal employees in Falcon Village and obtained copies of all billings sent to its Falcon Village customers during a 3-month period in 1983. Finally, we identified several laws which were useful in determining whether it is legal and/or proper for IBWC residents of Falcon Village to receive reduced rates for residential electricity.

Our review was performed between September 22, 1983, and April 25, 1984, and was made in accordance with generally accepted government auditing standards.

### INTRODUCTION

Falcon Village facilities were first developed to house construction workers at the time the Falcon Dam was under construction. Construction of the U.S. portion of the dam was authorized by the American-Mexican Treaty Act of September 13, 1950, and the dam was completed in 1953. Later, due to the isolation of the dam, housing was built for IBWC employees and their families. At present, IBWC employees and employees of other federal agencies (U.S. Customs and Immigration and Naturalization Service) are housed at Falcon Village.

The Medina Electric and the South Texas Electric Cooperatives purchase hydroelectric power generated from Falcon Dam pursuant to an August 9, 1977, contract with IBWC. Contained in that contract is a provision that the cooperatives will supply the dam, reservoirs, offices, warehouses, shops, garages, gates, operations and maintenance facilities, area lights, and other project requirements with all required electric power without cost to IBWC. Employee housing units in Falcon Village are also to be supplied with electricity by Medina, but they are to be charged for the use.

Until recently, all electric power for employees' housing at Falcon Village was master metered (one meter recorded the usage for all of Falcon Village) and employees were apportioned a share of the power costs according to the size of their government-furnished quarters. Individual meters were installed in 1983, and in June of that year Medina started sending individual billings to residents of Falcon Village.

### DIFFERENCE IN RATES

In a letter to Medina dated March 4, 1983, IBWC suggested that its employees living in Falcon Village and housing at Amistad Dam<sup>2</sup> receive reduced rates for their home electricity. Medina

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<sup>2</sup>Amistad is another dam on the Rio Grande River under IBWC's jurisdiction where federal employees live in government-owned housing. While we did not review the specific conditions at Amistad, with regard to federal employees' electricity rate charges, the contract between IBWC and Medina indicates that conditions there are the same as those at Falcon Village.

agreed to the lower rates and now charges these employees no more than \$40 per month for power usage up to 1,500 kilowatt hours per month. Although they are charged normal rates for any usage above 1,500 kilowatts, the overall cost to IBWC employees is lower than the cost to other federal employees living in Falcon Village. For example, during a 3-month period in 1983 (July 15 - October 15), the 12 IBWC employees residing at Falcon Village were billed a total of \$1,813.38 (averaging about \$50 per month), whereas their bills would have been \$4,962.23 (averaging about \$138 per month) during that same period if they had paid the rate charged the other federally employed residents of Falcon Village. The rate charged to non-IBWC federal employees residing at Falcon Village is the same rate that the local residents are charged.

A Texas Public Utility Commission Staff Opinion of June 8, 1983, approved the lower than normal rate charged to IBWC residents of Falcon Village and housing at Amistad and agreed with Medina's proposal that the loss of revenue be recovered by allocating it among all other users. This practice, in effect, has all the other Medina customers paying for the difference between what the IBWC employees are paying and what they would pay if their rate was the same as the rate being charged to other Medina residential customers.

#### GAO's POSITION

In 1961, the Comptroller General rendered a decision on the appropriate method of charging employees for housing and other facility costs in Falcon Village. (See enc. I.) In that decision, we expressed the view that whenever facilities are provided to IBWC employees of Falcon Village, who in other circumstances normally would be expected to pay for such facilities as a personal expense, the charges made should represent the reasonable value to the user.

In addition, there are two federal laws which apparently prohibit federal employees from receiving any supplementation to their salaries for government service. (See enc. II.) It appears that one or both of these statutes may be applicable here, but we do not believe it is necessary to make such a determination at this time because of the 1961 decision.

#### CONCLUSIONS

It is our opinion that providing electricity at a reduced rate to IBWC employees residing at Falcon Village and at Amistad is improper. Electricity is normally regarded as a personal expense of an individual user; therefore, the home use electrical rate charges for IBWC employees residing in Falcon Village and at Amistad should be levied on the same basis as charges for other home users in those areas.

RECOMMENDATION

We recommend that you notify the Medina Electric Cooperative of the contents of this letter and work with them to ensure that corrective action is taken to begin charging IBWC employees residing at Falcon Village and Amistad the rate paid by other federal employees residing in government-owned housing and private residences in the area.

AGENCY COMMENTS

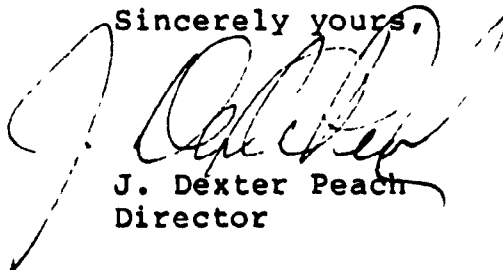
We provided you with a draft copy of this report for comments, and in your response of July 12, 1984 (see enc. III), you stated that the Commission agrees with our findings and will implement the recommendation as soon as possible.

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As you know, 31 U.S.C. §720 requires the head of a federal agency to submit a written statement on actions taken on our recommendations to the House Committee on Government Operations and the Senate Committee on Governmental Affairs not later than 60 days after the date of the report and to the House and Senate Committees on Appropriations with the agency's first request for appropriations made more than 60 days after the date of the report. We would appreciate receiving a copy of your statement when it is provided to the congressional committees and being informed of any action taken on our recommendation.

We are sending copies of this report to the Chairmen of the above mentioned committees; the Director, Office of Management and Budget; and the Secretary of State.

Sincerely yours,

A handwritten signature in dark ink, appearing to read "J. Dexter Peach", is written over the typed name and title.

J. Dexter Peach  
Director

Enclosures

COMPTROLLER GENERAL OF THE UNITED STATES  
WASHINGTON 25

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PUBLISHED

October 24, 1961

41 PUBLISHED  
Comp. Gen. 264

Mr. Leland H. Hewitt, Commissioner  
United States Section  
International Boundary and Water Commission  
United States and Mexico  
206 San Francisco Street  
El Paso, Texas

Dear Mr. Hewitt:

Your letter of October 6, 1961, presents several questions concerning the purchase of children's recreational equipment for employees living in a Government-owned housing facility (Falcon Village) in connection with the operation and maintenance of Falcon Dam on the Rio Grande in an isolated area.

The questions arise under section 102 of the American-Mexican Treaty Act of 1950, 64 Stat. 846, 22 U. S. C. 277d-2, which reads as follows:

"The United States Commissioner is authorized to construct, equip, and operate and maintain all access roads, highways, railways, power lines, buildings, and facilities necessary in connection with any such project, and in his discretion to provide housing, subsistence, and medical and recreational facilities for the officers, agents, and employees of the United States, and/or for the contractors and their employees engaged in the construction, operation, and maintenance of any such project, and to make equitable charges therefor, or deductions from the salaries and wages due employees, or from progress payments due contractors, upon such terms and conditions as he may determine to be to the best interest of the United States, the sums of money so charged and collected or deducted to be credited to the appropriation for the project current at the time the obligations are incurred."

The questions presented for our decision are stated in your letter as follows:

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"1. Does authorization of recreational facilities for 'employees' include the authorization of purchase of playground equipment for the children of said employees?

"2. Does the provision in the Act 'and to make equitable charges therefor' impose the requirement that equitable charges must be made for any facilities or equipment furnished?

"3. If charges must be made, does the word 'equitable' permit the charges to be made merely to defray partially the costs of any facilities or equipment, or must the charges be made in a manner to entirely amortize such costs?"

You refer to our decision appearing in 18 Comp. Gen. 147 wherein it was held, quoting from the syllabus, that—

"The use of appropriated funds for the furnishing of recreational and entertainment facilities for Government personnel is unauthorized in the absence of specific statutory authority or authority by necessary implication, notwithstanding it may be highly desirable to furnish such facilities because of the absence thereof otherwise and the location of the work—in this case, a river and harbor appropriation project at Midway Island."

While section 102 does not specifically mention families or children of employees, you state it is your view that the term employees as used in this section includes, by implication, families of such employees inasmuch as it is as essential, in order to carry out the purposes for which the funds for Falcon Project are appropriated, in your opinion, to provide for the needs of the employees' families as well as it is for the needs of the employees themselves.

In explaining the purpose of section 102, the Acting Secretary of State in a letter set forth in Senate Report 2095, 81st Congress, which accompanied this legislation, stated, among other things, that "Since most of these projects will be in localities remote from populated areas capable of providing for the needs of the employees involved, it is necessary to provide housing and other facilities for these employees at the site of the work."

In the light of this explanation and the broad authority contained in section 102 we believe there is ample support for the view that the housing and other facilities provided for employees were intended also to be occupied or made available to the families of such employees. Consequently, we agree with your views in this matter and your first question, therefore, is answered in the affirmative.

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The two remaining questions appear to involve matters entirely within your jurisdiction since the above-quoted section 102 provides in your discretion for the furnishing of recreational facilities and the making of equitable charges therefor. It would be our view, however, that whenever equipment or facilities are furnished employees who in other circumstances normally would be expected to furnish such equipment or facilities at personal expense a charge should be made therefor which would represent the cost or reasonable rental value thereof. On the other hand, with specific reference to playground equipment and on the assumption that it will be available to all children, such as equipment placed in a park by a municipality which is open to the public without charge, we do not believe that you are required by law to recover the cost of such equipment from the employees.

Sincerely yours,

R. F. KELLER

Accountant      Comptroller General  
of the United States

GAO ANALYSIS OF LAWS WHICH MAY BE APPLICABLE  
TO THIS REVIEW

The basic authority of IBWC over the operation, maintenance and control of Falcon Village is contained in 22 U.S.C. §277d-2 (1982), which provides in part:

"The United States Commissioner is authorized . . . in his discretion to provide housing, subsistence, and medical and recreational facilities for the officers, agents, and employees of the United States, . . . engaged in the construction, operation, and maintenance of any such project, and to make equitable charges therefor, or deductions from the salaries and wages due employees, upon such terms and conditions as he may determine to be in the best interest of the United States, . . ."

The provisions of 5 U.S.C. §5536 and 18 U.S.C. §209 may be applicable in this situation. Section 5536 of Title 5, United States Code, provides in part:

"An employee . . . whose pay or allowance is fixed by statute or regulation may not receive additional pay or allowance . . . for any other service or duty, unless specifically authorized by law . . ."

In 34 Comp. Gen. 445 (1955), which involved providing free residence quarters to certain federal employees by the then Canal Zone Government, we ruled that under 5 U.S.C. §§70 and 71 (the antecedent provisions to 5 U.S.C. §5536), since the salaries of the employees in question were set by law, such practice was considered to be in contravention of the prohibition and each must be charged a reasonable rental value for the quarters occupied.

While the matter here does not directly involve the charging by IBWC of rental costs for federally owned housing to federal employees, it does involve the charging of appropriate residence-related expenses by a nonfederal organization over which a federal activity, i.e., IBWC, has some control.

With regard to 18 U.S.C. §209, that section provides criminal penalties for any federal employee who receives any supplementation of salary from any outside source for his or her government services and for any outside person or organization making such salary supplement. This statute is enforced by the Department of Justice.



OFFICE OF THE COMMISSIONER  
UNITED STATES SECTION

INTERNATIONAL BOUNDARY AND WATER COMMISSION  
UNITED STATES AND MEXICO

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EL PASO, TEXAS 79902

Mr. J. Dexter Peach  
Director, Resources, Community and  
Economic Development Division  
U. S. General Accounting Office  
Washington, D.C. 20548

Dear Mr. Peach:

I concur in the findings of your draft report entitled, International Boundary and Water Commission Employees Residing in Federal Housing Should Not Receive Electricity at Reduced Rates. Accordingly this Section will implement your conclusions and recommendations as soon as possible.

I want to express my appreciation to you and to Messrs. John Brown and Harry Wolfe from your staff for their professional manner in dealing with the staff and the employees concerned in performing their review. The draft copy of the report is returned herewith.

Sincerely,

J. F. Friedkin  
Commissioner

Enclosure  
Draft Report