United States Department of the Interior

NATIONAL PARK SERVICE
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Director's Order #35B: Cost Recovery for National Park Service Provided Utilities

Approved: Jonathan B. Jarvis
Director

Effective Date: December 31, 2011

Sunset: This Order will remain in effect until amended or rescinded

The provisions of Special Directive 83-2, and any other conflicting instructions previously issued, are superseded and replaced by this Director's Order and its implementation procedures.

Contents

1.0 Background and Purpose
2.0 Authorities
3.0 Policies, Procedures, and Requirements
- 3.1 Implementation
- 3.2 Measurement of Use
- 3.3 Existing Capital Assets
- 3.4 Accountability and Billing
- 3.5 Exceptions
- 3.6 Utility Rate Worksheets and Instructions
- 3.7 Date of Implementation
- 3.8 Additional Review
- 3.9 Limitation

1.0 Background and Purpose

Section 4 of the Act of August 8, 1953 (16 U.S.C. 1b(4)) grants the Secretary of the Interior the authority to "furnish, on a reimbursement of appropriation basis, all types of utility services to concessioners, contractors, permittees, or other users of such services, within the national park system." Utility services include the provision of electricity, natural gas, water, and solid-waste-disposal services. The National Park Service's (NPS) authority to sell utility services is discretionary, meaning that the NPS is at liberty to sell them, but may choose not to do so. Since there are many situations where there is compelling need for the NPS to provide utility services to non-NPS users, reasonable policies and procedures need to be in place, and applied consistently throughout the National Park Service.

The purpose of this Director's Order is to:

- Update NPS policies and procedures for recovering costs associated with providing utility services to non-NPS users.
- Be responsive to the Inspector General's recommendation that policy and procedural guidance to the field is revised so that they are aligned with OMB guidelines.
- Address a material weakness in accountability and reduce the deferred maintenance backlog in NPS facilities.

The provision of utility services by the NPS has considerable cost implications for both the NPS and those who obtain them from the NPS. In turn, it has cost implications for park visitors and the taxpaying public, who ultimately bear those costs. Therefore, this Director's Order is intended to provide an equitable balance between:

- Cost-recovery for providing utilities, including annual operating costs, cyclical repair and rehabilitation costs, and capital investment cost; and
- Reasonably priced visitor services and resource protection.

2.0 Authorities

The authority to issue this Director's Order is contained in 16 U.S.C. 1 through 4 (the NPS Organic Act), and Part 245 of the Department of the Interior Manual, in which the Secretary of the Interior delegates to the NPS Director the authority to supervise, manage, and operate the national park system.

The 16 U.S.C. 1b(4) authority to sell utility services under the procedures prescribed in this Director's Order shares some similarities with the authority contained in 16 U.S.C 1a-2(e), which allows the national park system to enter into contracts that provide for the sale or lease of services, resources, or water. The major distinction between the two authorities is that 16 U.S.C. 1a-2(e) is generally applicable <u>outside</u> the parks, whereas 16 U.S.C. 1b(4) is applicable exclusively <u>within</u> the parks. The implementation of 16 U.S.C. 1a-2(e) is the subject of <u>Director's Order 35A</u>: Sale or Lease of Park Services, Resources, or Water in Support of Activities Outside the Boundaries of National Park Areas. The implementation of 16 U.S.C. 1b(4) is the subject of this Director's Order 35B: Sale of National Park Service Produced Utilities.

Other references that are related in whole or in part to this Director's Order include:

- 31 U.S.C. 9701, which speaks to the recovery of costs for services and things of value.

- 48 CFR Part 41 (Acquisition of Utility Services), which gives the General Services Administration (GSA) the authority to manage utilities for the federal government. It also gives GSA the authority to allow the NPS to manage its own utilities if it benefits the NPS.

- NPS-48 Concession Guidelines

- OMB Circulars—
  A-25 - Policy guidance for federal agencies in setting fees.
  A-45 - Policy governing charges for rental quarters and related facilities.

- Director's Orders—
  32 - Cooperating Associations.
  36 - National Park Service Housing Management.
  81 - Maintenance Management.

[Not all of the documents referenced above are available at this time.]

3.0 Policies, Procedures, and Requirements

Utilities may be necessary to protect park resources and support appropriate visitor use, and contribute to the NPS mission of making parks available for use and enjoyment by the public. Because of regulatory, environmental, physical, and public policy reasons, park utilities are often more expensive to construct, operate, and maintain than services in cities and towns.

Whenever possible, the managers of NPS areas are expected to secure utilities from other agencies or entities. In other cases, where there are no outside providers, managers may generate or otherwise self-provide utility services, not only for direct NPS use, but also for non-NPS users under an operating agreement with the NPS within the park boundaries. Neither the law nor NPS policy obligates the NPS to sell or lease any utility services. The decision to sell is within the sole discretion of the Secretary of the Interior (or the Director, as the Secretary's designee). The NPS is generally required to recover the costs of utilities provided to non-NPS users.

3.1 Implementation - Park superintendents may exercise the Director's authority to provide utility services to non-NPS users, provided that the requirements contained in this Director's Order are met.

(a) Reference Manual - The Associate Director for Park Planning, Facilities, and Lands will prepare a reference manual containing detailed instructions, procedures, operational standards and sample forms required for administering this program.

(b) Definition of Utilities - Utilities generally include, but are not limited to, electric, fuel, natural gas, propane, water, wastewater, the collection and disposal of solid waste, and communication systems (NPS Management Policies, Chapter 10). Other services provided under a cost-reimbursable basis may be considered utilities ONLY if there is a substantial infrastructure required for the service and the park considers that—

(1) the services are best provided by the park;

(2) the service is not available from another provider; or

(3) the provision of the service by another provider is not feasible.

Cost reimbursement for such things as plowing snow, providing routine or non-routine maintenance work, or construction are NOT UTILITIES and any cost reimbursement for these services is not covered under this Director's Order.

(c) Costs to be Recovered - Utility costs for operations and maintenance, component renewal/repair and rehabilitation work, and capital expenditures will be recovered for the portion of the system that non-NPS users utilize and will be computed per the Utility

Worksheet (see Section 3.6). A definition and description of each cost follows:

(1) Operations and Maintenance - The cost of day-to-day operations and maintenance includes any task that occurs on a regular or irregular basis within a year. Any servicing, inspection, testing, minor-parts replacement, minor repairs, and labor that occur each year will be a part of operations and maintenance. If something occurs or is scheduled at intervals greater than one year, it is not to be included in operations and maintenance. Direct supervision and training are a part of operations and maintenance.

(2) Component Renewal/Repair and Rehabilitation - Any work, inspection, replacement of parts of components, or similar activities that occur less than once a year will be accounted for as component renewal/repair and rehabilitation. Replacement of infrastructure such as pumps, standby generators, solid waste containers, power poles, reroofing, painting, and minor equipment are examples of component renewal/repair and rehabilitation. The replacement of such items as sewage plants, primary generating systems, water plants, and solid waste trucks are not to be included in component renewal/ repair and rehabilitation.

(3) Capital Expenditures - The replacement or major upgrade of the infrastructure of the utility is considered a capital cost. This includes such things as replacing a wastewater or water plant, replacing large sections of pipe that has reached its useful life, replacing major pieces of equipment such as solid waste trucks and primary generators, or increasing the capacity or operational characteristics of a utility.

3.2 Measurement of Use - All utilities will be measured or metered for all users, including the NPS, so that a percentage of use can be accurately assessed. This will typically be accomplished with the use of meters or scales (e.g.: scales for the weight of solid waste; water meters for water and sewage use; electric meters; gas meters; fuel dispensers; telephone timers). A Utility Worksheet will be used in determining appropriate methods of measurement. Any losses in the system between the production and the actual user will be prorated to each user based on actual consumption.

3.3 Capital Assets - Capital assets installed after 2011 will be included as a Capital Expenditure in the cost-recovery calculation. Capital assets installed prior to 2012 are not included in the capital portion of the rate basis until they are upgraded or replaced. After implementation of this Director's Order, any replaced, upgraded or additional utility capital costs will be included as a Capital Asset.

3.4 Accountability and Billing - All costs will be based on a unit cost and on utility use records for a recent 12-month period. The rates will be computed and valid for one year. If for any reason, new rates are not developed and approved in a year's time, the previous rates will remain in effect. All rate changes will have a 90-day notice before implementation takes place.

3.5 Exceptions - Except as otherwise authorized by law, all utility users are expected to comply with this order.

(a) A waiver of all or part of the implementation requirements of this Director's Order may be granted by the Associate Director for Park Planning, Facilities, and Lands, in consultation

with the Assistant Director of Business Services and Associate for Interpretation and Education, after a careful feasibility analysis is conducted.

(b) Where complying with this Director's Order would jeopardize the economic viability of a non-NPS user's operation or result in unreasonable rates for visitor services, a waiver of this order must be requested. The request must include a financial analysis of the impact of the rates. The request for waiver must be completed within the 90-day notice of rate change, see 3.4.

(c) For procedures relating to concession operations, refer to NPS-48 Concession Guideline.

(d) NPS employees who occupy NPS owned housing units are exempt from paying full costs because utility costs are computed in accordance with OMB Circular A-45. The NPS is responsible for paying any difference in costs.

3.6 Utility Rate Implementation - Detailed instructions will be included in Reference Manual 35B to ensure that implementation is consistent throughout the NPS.

3.7 Date of Implementation - Implementation of this Director's Order will be instituted for all non-NPS users at the next yearly utility rate computation after the effective date of this Director's Order in accordance with the associated Reference Manual.

3.8 Additional Review - Regional directors may impose additional review procedures or considerations beyond those required by this Director's Order.

3.9 Limitation - As is the case with all components of the NPS directives system, this order is intended only to improve the internal management of the NPS and it is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, its departments, agencies, instrumentalities or entities, its officers or employees, or any other person.

---------*End of Director's Order* ------