
Coates' Canons Blog: Federal Agency Utility Customers and the Prompt Payment Act

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A federal agency contracts with a North Carolina town to provide water services to the agency's facility in the town. The agency is routinely late in making its utility payments. The town finally decides to take action after the sixth late payment. In accordance with the town's customer contract, the town assessed a late fee penalty on the federal agency's account when payment was not received fifteen days after the bill was issued. The town disconnected service to the federal agency's facility ten days after the due date, which was twenty-five days after the bill was issued. (State law allows a county or municipality to disconnect service if a bill is delinquent for more than ten days. See G.S. 153A-277; G.S. 160A-314.)

A representative from the federal agency calls the town's utility director. She is irate and demands that the town reinstate the water service immediately. She claims that federal law allows any federal agency thirty days to pay an obligation. According to the federal agency employee, because federal law trumps state law the utility cannot penalize the federal agency for any payments made during the thirty-day window after the agency receives the bill. She further refuses to pay the late fee penalty imposed on the account due to the delinquency, arguing that even if the payment was late federal law specifies the amount of interest that is due in the event of a late payment. How should the town respond?

The town should continue to follow its policy and refuse to reinstate water service until the bill is paid in full, including any late fee penalty amounts.

Under the Supremacy Clause of the United States Constitution, federal laws made pursuant to constitutional authority constitute the supreme law of the land. If there is a conflict between federal and state law, the federal law must be applied. In this case, there is a federal law that governs when payments will be made by a federal agency—the Prompt Payment Act (PPA), 31 U.S.C. Sects. 3901-3905. However, the PPA does not conflict with state law or local ordinances governing payments for utility services.

According to the PPA, payment by a federal agency is due on whichever of the following four conditions apply:

1. the date specified in the contract;
2. in accordance with discount terms when the vendor has offered a discount and the agency has accepted those terms;
3. on an accelerated schedule when the conditions for accelerated payments apply; *or*
4. thirty days after the agency has received a property notice.

In this case, the federal agency employee is claiming that condition (4.) applies and the agency has thirty days from the date it received the water bill to pay. This is an incorrect interpretation of the PPA. Condition (1.) should apply to this situation. The provision of water service to the federal agency is a voluntary public service, pursuant to the town's public enterprise authority. The federal agency contracted with the town to provide the water service. The contract set forth the obligations of both parties and established the terms of service, including payment terms. The contract specified that payment be due fifteen days after the billing date, after which a penalty would be imposed. If payment was not received within twenty-five days of the billing date, the town was authorized to discontinue service. As long as the town proceeded according to the terms set forth in the customer contract, it was in compliance with the PPA.

What about the federal employee's claim that the PPA governs the amount of the penalty that can be assessed for late payments by a federal agency? It is true that 31 U.S.C. Sect. 3902 imposes specific interest penalties for late payments by federal agencies. However, the federal regulation that implements the PPA provides that "[w]here state, local or foreign

authorities impose generally-applicable late payment rates for utility payments, those rates shall take precedence.” 5 C.F.R. Section 1315.1(c). According to that regulation, because the town adopted a schedule of late fee penalties, those apply to the federal agency in this case.

This is just one of many examples that underscore the importance of a local government utility adopting clear billing and payment policies and incorporating those policies in the unit’s utility customer contracts. A customer contract does not have to be an extensive or elaborate document. Many units simply require an applicant for service to sign an agreement that incorporates by reference all of the utility’s policies and regulations. (Remember that the unit’s governing board must first adopt the policies and regulations by ordinance, though.)