



UNITED STATES  
CIVILIAN BOARD OF CONTRACT APPEALS

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February 17, 2026

CBCA 8577-FEMA

In the Matter of PEDERNALES ELECTRIC COOPERATIVE, INC.

Erin Greten of Baker, Donelson, Bearman, Caldwell & Berkowitz, PC, Washington, DC; Charles Schexnaildre of Baker, Donelson, Bearman, Caldwell & Berkowitz, PC, Baton Rouge, LA; and Andrea Stover, Aisha Hagen, and Michael Butler of Pedernales Electric Cooperative, Inc., Johnson City, TX, counsel for Applicant.

Sherri LaCour, Division Chief, and Zachary M. Hood, Section Chief, Texas Division of Emergency Management, Austin, TX, appearing for Grantee; and Warren DeLuca, Office of General Counsel, The Texas A&M University System, College Station, TX, counsel for Grantee.

Vanessa Antoun and Emanuel Rier Soto, Office of Chief Counsel, Federal Emergency Management Agency, Department of Homeland Security, Washington, DC, counsel for Federal Emergency Management Agency.

Before the Arbitration Panel consisting of Board Judges **RUSSELL**, **GOODMAN**, and **NEWSOM**.

**GOODMAN**, Board Judge, writing for the Panel.

On August 29, 2025, Pedernales Electric Cooperative, Inc. (applicant or PEC) filed a request for arbitration (RFA). The RFA requested that the Board direct the Federal Emergency Management Agency (FEMA) to approve public assistance (PA) funding for costs incurred by applicant in response to Winter Storm Mara (Mara). Proceedings in this arbitration were stayed until November 12, 2025, while the parties attempted to resolve the matter without further arbitration proceedings. The parties resolved some issues and submitted the remainder to the arbitration panel for a decision on the written record.

BackgroundThe Storm and Request for PA

Mara impacted central Texas from January 30 through February 2, 2023, causing heavy ice accumulation on applicant's transmission and distribution system and widespread power outages. RFA at 3. To restore power to its members whose health and safety were threatened, applicant activated its Emergency Operations Plan (EOP) and mobilized its employees whose actions included answering customer outage reports, dispatching crews, disseminating information about the storm and storm response, identifying outages, delivering bulk meals to field crews, and operating the Supervisory Control and Data Acquisition (SCADA) system.<sup>1</sup> *Id.*

Applicant alleges that, as a result of performing emergency storm response activities during the emergency response period, which ended on February 8, 2023, it incurred substantial overtime and premium pay costs for its force account labor (FAL) and emergency protective measure costs for force account equipment (FAE) as well as costs for meals and contract services. The activation of its EOP invoked the emergency-response provisions in its Wage and Salary Policy. RFA Exhibit 4. Applicant asserts that the emergency-response provisions of this policy are consistent with the Fair Labor Standard Act (FLSA), 29 U.S.C. §§ 201-219 (2018), and required applicant to pay overtime pay to non-exempt employees working more than forty hours in a regular work week equal to one-and-a-half times the employee's regular base hourly rate (hereinafter, regular overtime pay). RFA at 4.

Applicant also asserts that its Wage and Salary Policy required it to pay FLSA non-exempt employees a premium "double-time" rate of two times the employee's regular base hourly rate for specifically identified "event response work" (hereinafter, premium pay or double-time pay). RFA at 4. Applicant paid premium pay for storm response work from January 30 through February 8, 2023. *Id.*

On April 21, 2023, the President declared Mara a major disaster for the state of Texas (DR-4705-TX). The initial declaration authorized category B emergency protective measures for thirteen counties in Texas and was followed by four amendments. On June 30, 2023, the

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<sup>1</sup> A SCADA report is a data-driven document or real-time dashboard for electric utilities that summarizes the performance, health, and status of power generation, transmission, and distribution assets. SCADA reports enable control room operators and engineers to make informed, split-second decisions to ensure grid stability, prevent blackouts, and reduce maintenance costs.

President added categories of eligible work for counties within applicant's service territory. RFA Exhibit 1 at 2. The Texas Department of Emergency Management (as grantee) and FEMA approved applicant's request for PA on May 30, 2023—more than three months after all work at issue in this arbitration was complete and after applicant had paid its employees regular overtime and premium pay in accordance with its Wage and Salary Policy. *Id.*

Applicant sought PA funding for category B emergency protective measures from FEMA for its FAL regular overtime and premium pay, FAE, meals, contract costs, and other emergency protective measure costs incurred in response to the disaster. On October 24, 2024, FEMA issued a determination memorandum (DM) denying applicant's request for PA funding. RFA Exhibit 5. Applicant appealed, providing additional information to support its claimed costs. On June 30, 2025, FEMA Region VI issued its first-level appeal decision, denying applicant's appeal and reiterating its previous findings. RFA Exhibit 2.

### The RFA

Applicant filed its RFA on August 29, 2025, in which applicant sought to overturn FEMA's denial of PA funding for (1) \$458,365.79 in FAL; (2) \$8470.20 in FAE; (3) \$85,416.52 in meal costs; and (4) \$45,402.98 in contract costs related to the operation of an automated telecommunications system used to log customer concerns and send notifications about power restoration (call center) that applicant alleges it paid in response to utility disruptions caused by severe winter storms from January 30 through February 2, 2023. RFA at 34.

### Discussion

#### Issues Resolved by the Parties

Applicant provided new documentation with its RFA. During the stay in this matter, applicant provided FEMA with additional documentation, including its SCADA report. FEMA assessed the new documentation and determined that \$185,523.18 in FAL (2942 hours of eligible emergency work performed during overtime hours at the regular overtime rate) and \$79,973.96 in meal expenses and related mileage expenses were eligible for PA funding. FEMA's Response at 2. Applicant agreed with FEMA's determination as to meal costs, and, therefore, no meal expenses remain at issue.

Applicant and FEMA agreed that the \$185,523.18 amount correctly reflects applicant's eligible FAL overtime hours at the regular overtime pay. However, applicant continues to request reimbursement for premium pay for those overtime hours and for employees' storm work during their normal forty-hour work week.

On November 12, 2025, the parties advised the arbitration panel of their partial resolution and requested a briefing schedule for the remaining issues. Applicant's revised request for reimbursement is: \$272,842.61 in premium pay FAL; \$8470.20 in FAE; and \$45,402.98 in call center contract costs. Applicant's Reply at 1-2. On December 30, 2025, after briefing was complete, the parties elected to have the arbitration resolved on the written record, and the record was closed. We resolve the remaining issues in this decision.

### FAL

After FEMA reimbursed applicant for FAL for regular overtime pay, applicant continues to request reimbursement for premium pay in the amount of \$272,842.61 of its FAL. Applicant's reply to FEMA's response—filed after the parties' partial resolution of the arbitration—reiterates its RFA argument that its obligation to pay employees premium pay, as stated in its Wage and Salary Policy, is neither discretionary nor reliant upon a FEMA-declared disaster. Applicant's Reply at 2-10; *see* RFA at 10-16.

FEMA rejects applicant's interpretation of its Wage and Salary Policy. It maintains that the policy does not meet FEMA's PA-eligibility criteria for premium pay because applicant's labor policy relies on a FEMA-declared disaster and applicant's discretionary activation criteria. FEMA's Response at 3; FEMA's Surreply at 4-6.<sup>2</sup>

The relevant portions of applicant's Wage and Salary Policy are:

#### **4.14. After-Hours Call Out**

4.14.1. In accordance with certain job descriptions, certain employees are subject to and must be available for after-hours call out duty to resolve business needs. Employees scheduled for call out must be available for immediate communication and reasonable response time.

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<sup>2</sup> FEMA also maintains that applicant's premium pay request includes hours worked by its employees during their regular forty-hour work week (straight time) but that only emergency work during overtime hours is eligible for PA. FEMA's Surreply at 6-7. We do not address this issue because the panel determines that applicant's Wage and Salary policy with regard to premium pay does not meet FEMA's eligibility requirements.

4.14.3. Double-Time Pay is paid when a Non-Exempt employee who must be available is called into work for After-Hours Call Out, or for an employee who is called into work after hours for a critical, time-sensitive event, not including scheduled shift coverage.

....

4.14.9. Non-Exempt Employees working a FEMA-recognized emergency event or situation may receive Double-time Pay for hours worked for the FEMA-recognized event. Exempt Employees working a FEMA-recognized emergency event or situation may receive Double-time Pay for hours worked for the FEMA-recognized event when authorized by the CEO.

RFA Exhibit 4 at 5-6.

FEMA's eligibility policy states:

FEMA determines the eligibility of overtime, premium pay, and compensatory time costs based on the Applicant's pre-disaster written labor policy, provided the policy:

- Does not include a contingency clause that payment is subject to Federal funding;
- Is applied uniformly regardless of a Presidential declaration; and
- Has set non-discretionary criteria for when the Applicant activates various pay types.

If these requirements are not met, FEMA limits PA funding to the Applicant's non-discretionary, uniformly applied pay rates.

Public Assistance Program and Policy Guide (PAPPG) (June 2020) at 69.

FEMA asserts that because applicant's premium pay policy is contingent upon federal funding, is discretionary, and is not applied uniformly, it does not meet FEMA's eligibility policy. FEMA states:

[Applicant's] employees may only claim this [premium] pay for hours worked when the President declares a disaster, which allows FEMA funding, and its issuance requires upper management's approval, demonstrating that the pay is both contingent and discretionary. The fact that the Applicant *may* nevertheless decide to pay its employees premium pay to which they are not entitled under its wage policy only further demonstrates the discretionary nature of that wage provision. Accordingly, the Applicant's arguments are without merit.

FEMA's Surreply at 4-5.

Applicant's Wage and Salary Policy was analyzed by another arbitration panel in *Pedernales Electric Cooperative, Inc.*, CBCA 8383-FEMA, 25-1 BCA ¶ 38,867. In that case, the arbitration panel rejected the same interpretation of the policy that applicant asserts here:

PEC's written pay policy provides that exempt and non-exempt employees may receive premium pay if the President declares an event a disaster, RFA Exhibit 5 ¶ 4.14.9, which would then allow FEMA to provide PA funding for responses to that disaster. Under paragraph 4.14.9 of the written pay policy, employees are not entitled to claim double-time pay for *all* hours worked *unless* the President declares a disaster. The PAPPG precludes PA funding for that type of pay structure. *See* PAPPG at 69.

Further, paragraph 4.14.9 provides that, if the President declares a disaster, PEC employees "*may*" receive double-time pay. There are no criteria set forth in PEC's pay policy that define how or when PEC will decide to provide premium pay for employees working in response to a declared disaster. Under the written policy, the decision to allow double-time pay is wholly discretionary. For exempt employees, the level of discretion is even greater, given that exempt employees will receive after-hours call out pay pursuant to paragraph 4.14.9 only if PEC's CEO authorizes it (without any guidance in the written pay policy defining how the CEO must evaluate the decision to authorize). RFA Exhibit 5 ¶ 4.14.9. Under the PAPPG, such pay, subject to a discretionary determination, is not eligible for PA funding. *Dallas Independent School District*, CBCA 8376-FEMA, [25-1 BCA ¶ 38,868, at 189,160]; *New York-Presbyterian Hospital*, CBCA 7412-FEMA, 22-1 BCA ¶ 38,207, at 185,553.

*Id.* at 189,151-52.

Rule 613 (48 CFR 6106.613 (2024)) states that the Board's arbitration decisions are not precedential. However, past decisions can be instructive. *See City of St. Cloud, Florida*, CBCA 7952-FEMA, et al., 24-1 BCA ¶ 38,559, at 187,408; *Unitypoint Health*, CBCA 8060-FEMA, et al., 25-1 BCA ¶ 38,471, at 188,336. We adopt the panel's analysis of applicant's Wage and Salary Policy in *Pedernales Electric Cooperative, Inc.* *See* 25-1 BCA at 189,151-52.

The Applicant's premium pay in the amount of \$272,842.61 for FAL for which it seeks reimbursement is not eligible for PA funding.

#### FAE

Applicant asserts that it has provided sufficient documentation to substantiate its claimed FAE costs of \$8470.20. RFA at 26-28. An applicant must provide documentation specifying the type of equipment, the hours used, and a clear connection between the equipment's use and eligible emergency protective measures. PAPPG at 65, 72.

Applicant alleges that its records include—for each piece of equipment—the type, year, make and model; operator's name; specific hours and locations of use; and narrative descriptions of the emergency work performed. By tying the equipment to the operator (RFA Exhibit 10) and the operator to the performance of emergency work via its “Job Titles . . . Description of Emergency Measures” table (RFA Exhibit 9), applicant alleges that it demonstrates that the equipment was deployed for essential emergency response activities. RFA at 27-28.

FEMA asserts that the requested force account equipment expenses contravene FEMA policy because they are not supported by the record as directly tied to the performance of eligible work. FEMA's Response at 3.

In its reply, applicant states:

Now that FEMA has agreed to reimburse the overtime cost for PEC's non-exempt employees performing eligible emergency work, we have revised our equipment summary to include a cross reference to the row of the labor file that corresponds to the equipment operator's timesheet [within Applicant's Reply, Exhibit 20 (Revised Equipment Summary)]. The number in column N “Hourly Employees CrosRef to row in Revised Labor File Cat B Project 725522 Labor Report for Appeal RFI 2025 03 at OT Rates” **identifies the row in FEMA Exhibit 1** that corresponds to the use of that particular piece of equipment to work FEMA has deemed eligible. The numbers in column M

correspond to the row in PEC’s original Labor File spreadsheet because the individuals who used those pieces of equipment are salaried employees. . . . [F]orce account equipment eligibility is tied to the use of that equipment in the performance of eligible work, not the cost of the labor. The salaried individuals were using the equipment to perform eligible work, as documented in PEC’s original labor file.

Applicant’s Reply at 11-12 (emphasis added).

FEMA does not specifically address applicant’s revised documentation in its surreply but reasserts that the documentation is not adequate. FEMA’s Surreply at 3, 9. We have reviewed the documentation to which applicant refers. The numbers in column N, except for one instance (no. 898), do not correspond to any row in FEMA Exhibit 1. We determine that the documentation does not support applicant’s FAE costs for which it seeks PA funding, and the costs are, therefore, not eligible for PA funding.

#### Contract Costs–Call Center

The applicant seeks PA funding for contract service costs of \$45,402.98 for call center support. RFA at 31-33. Cooperative Response Center, Inc. (CRC) provided emergency communication services to members of the public when call volumes exceeded applicant’s disaster surge staff capacity. *Id.* at 32. Applicant alleges that its invoice shows the claimed costs were incurred only for event-specific, per-call charges and charges for playing a “front end greeting.” RFA at 33; *see* RFA Exhibit 16.

FEMA asserts the requested reimbursement of contract costs for the call center support was not supported by sufficient documentation to show the costs were incurred for eligible emergency work and were thus determined to be ineligible as an increased operating cost. FEMA’s Response at 3.

The PAPPG states:

The Applicant may incur increased costs related to operating a facility or providing a service as a result of the incident because of an increased demand for the services the facility provides.

These additional costs are only eligible if:

- The services are specifically related to eligible emergency actions to save lives or protect public health and safety or improved property;

- The costs are for a limited timeframe based on the emergency or exigency of the circumstances; and
- The Applicant tracks and documents the additional costs.

PAPPG at 113.

Applicant asserts that these three requirements have been met as to its contract cost claim. The costs were related to eligible emergency action and for a limited time frame. During the disaster, applicant's contractor, CRC, provided emergency communication services to members of the public. Applicant explains that, during the event, applicant was inundated with calls, including those reporting outages and seeking status inquiries. Applicant assigned its account services, member relations, procurement, and energy services personnel to staff its call center to take these calls. However, when volume exceeded capacity, calls rolled over to CRC's call center. At peak call volume on Wednesday, February 1, CRC agents answered 2397 calls that PEC staff were unable to field and also placed outgoing calls. RFA at 32-33.

Applicant explains further that it provided an informational hotline, playing its "Front End Greeting" to callers, providing them information about outages and public safety information, reaching a peak of 6249 times on Thursday, February 2. These services were required as part of the execution of the EOP to handle call volumes that exceeded its disaster surge staff capacity. The claimed costs do not include the base fee but only the per-call charges incurred for the emergency communications needed during applicant's eight-day response to this disaster, January 31 to February 8, 2023. RFA at 33. We conclude that this explanation is credible.

Applicant has provided an invoice that shows the number of calls that CRC answered and made per day during the relevant time frame as well as a breakdown of the EOP-related costs. RFA Exhibit 16 (CRC invoice 148326 (Feb. 28, 2023)). We conclude that this documentation adequately tracks and documents the contract costs of \$45,402.98 for emergency protective measures. These costs are eligible for PA funding.

Decision

The contract costs incurred for emergency protective measure for the call center in the amount of \$45,402.98 are eligible for PA funding. Appellant's revised costs for FAL and FAE are not eligible for PA funding.

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*Allan H. Goodman*

ALLAN H. GOODMAN  
Board Judge

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*Beverly M. Russell*

BEVERLY M. RUSSELL  
Board Judge

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*Elizabeth W. Newsom*

ELIZABETH W. NEWSOM  
Board Judge