



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

July 25, 2025

CBCA 8383-FEMA

In the Matter of PEDERNALES ELECTRIC COOPERATIVE, INC.

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Before the Arbitration Panel consisting of Board Judges **LESTER**, **O'ROURKE**, and **KANG**.

LESTER, Board Judge, writing for the Panel.

Pedernales Electric Cooperative (PEC) seeks public assistance (PA) from the Federal Emergency Management Agency (FEMA) pursuant to the Robert T. Stafford Disaster Relief and Emergency Act (Stafford Act), 42 U.S.C. §§ 5121-5207 (2018). In February 2021, PEC incurred costs of restoring power outages in Texas caused by a presidentially-declared disaster. After FEMA issued a first appeal decision denying PEC's funding request, PEC

filed a request for arbitration (RFA) with the Board seeking PA funding of \$2,546,929.69,¹ but it has slightly reduced the requested amount during the course of this arbitration.

As we explain below, PEC has not established entitlement to PA funding for its force account labor (FAL) premium pay, but we return this matter to FEMA for further review and development of PEC's reimbursement request as overtime pay. With regard to PEC's funding request for bulk meal purchases, which FEMA partially granted in the first appeal decision, PEC is entitled to an increase in FEMA's previously authorized PA funding amount but not the full amount sought. As for PEC's force account equipment (FAE) funding request, PEC has not established a basis for increasing the authorized fuel cost funding or for funding a newly-asserted fuel tank rental cost, but PEC may receive PA funding for contract costs that FEMA incorrectly included in the wrong cost category.

Factual Background

PEC's Disaster Response Activity

Between February 11 and 21, 2021, Winter Storm Uri impacted much of the South, including the entire state of Texas, through sub-freezing temperatures, snow, and ice that disrupted utility and transportation services. The President declared the event a major disaster (4586-DR-TX) on February 19, 2021. Winter Storm Uri was the coldest winter storm since 1989 for the state of Texas and caused power outages for nearly 10 million people. *See* <https://www.ncei.noaa.gov/news/great-texas-freeze-february-2021> (last visited July 25, 2025).

PEC is a private, non-profit electric distribution cooperative serving Texas Hill country across central Texas. In response to the power outages caused by Winter Storm Uri, PEC conducted restoration efforts to affected areas, requiring the use of all PEC personnel and additional equipment and materials.

In response to the severe weather conditions, PEC activated its Emergency Operations Plan (EOP), *see* Applicant's Request for Arbitration (RFA) at 3, which "establish[ed] procedures for the restoration of electrical service in a systematic and efficient manner by utilizing all of the company's available human and physical resources, and[,] if necessary, by securing and utilizing outside resources." RFA Exhibit 3 at i. PEC instructed its employees to track their time for work performed in response to the storm, beginning

¹ PEC is waiving its claim to an additional \$603.94 in force account material costs that it originally claimed but that FEMA denied in the first appeal decision.

February 11, 2021, “[i]n light of . . . the increased possibility of insurance or FEMA claims.” RFA Exhibit 4 at 1. PEC established codes for its employees to differentiate between the types of work being performed. *Id.* at 1-2.

PEC’s activation of its EOP invoked the “Wage and Salary Policy” that PEC had in place at that time, which created pay categories for basic pay, overtime pay, “After-Hours Call Out” pay, and (as a category listed within its “After-Hours Call Out” pay section) increased pay for employees who were “working a FEMA-recognized emergency event or situation.” RFA Exhibit 5 ¶¶ 4.9, 4.14.1, 4.14.3, 4.14.8, 4.14.9. Specifically, the pay policy provided for each employee to receive “Base Pay” that was calculated “within the pay grade established for the assigned classification” under PEC’s wage scale. RFA Exhibit 5 ¶ 4.8.2. The policy further provided that, if an employee who was non-exempt under the Fair Labor Standards Act (FLSA), 29 U.S.C. §§ 201-219, worked more than forty hours in a regular work week, that employee would receive, for each hour that the employee worked in excess of forty hours, overtime pay equal to 1.5 times the employee’s regular base pay hourly rate:

Overtime Pay: Overtime is pay equal to 1.5 times the employee’s regular hourly rate. Non-Exempt employees shall be paid Overtime Pay for hours charged in excess of 40 hours in a work week.

RFA Exhibit 5 ¶ 3.11; *see id.* ¶ 4.9.1.

Separate from overtime, another section of the pay policy, which was titled “After-Hours Call Out,” addressed the amount of pay that PEC employees were entitled to receive when, while on call for possible late-hours duty, they were called in to perform “after-hours call out duty”:

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.

RFA Exhibit 5 ¶ 4.14.1. Even employees who were not regularly scheduled to be available for after-hours call out duty could still “be called into work after hours,” *id.* ¶ 4.14.2, and they too would be eligible for after-hours call out duty pay. *Id.* Employees who performed after-hours call out duty received double-time pay (rather than the 1.5-times overtime rate), “not including scheduled shift coverage” time:

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.

Id. ¶ 4.14.3. “Double-time pay” was pay that was two times (or double) the employee’s regular hourly rate and was to be paid for “those hours” for which the employee performed after-hours call out work:

Call out is paid at two times the employee’s regular hourly rate (“Doubletime Pay”). When an employee is called back in to work, *those hours* will be paid at Double-time Pay.

Id. ¶ 4.14.8 (emphasis added). “Double-Time Pay [was] based on actual time worked; however, a two hour minimum applie[d] once per day beginning at 12:00 a.m.” *Id.* ¶ 4.14.10.

Included within the section of the pay policy addressing after-hours call out work was a paragraph addressing double-time pay for hours that an employee spent working “a FEMA-recognized emergency event,” which read as follows:

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 [Chief Executive Officer (CEO)]*.

RFA Exhibit 5 ¶ 4.14.9 (emphasis added). Unlike regular after-hours call out duty, which provided for mandatory double-time pay if an employee was called in from off-duty status to spend time performing after-hours call-out work outside of scheduled shift coverage time, paragraph 4.14.9 provided that *all* hours spent by a non-exempt employee working a FEMA-recognized emergency (and by an exempt employee, when authorized by the CEO)—including hours that were expended during the employee’s regular business-hours working day—would be paid at the double-time rate. *See id.*

During the period following Winter Storm Uri, PEC tracked its employees’ hours specifically for work completed to address damage from the disaster. RFA Exhibit 4. PEC used multiple spreadsheets to track work for each employee, including hours worked, type of hours (regular vs. overtime vs. call out), and location of the work. RFA Exhibits 10-12, 23. Although workers’ time sheets also included a description of the work, those descriptions were typically fairly generic and non-specific. *See id.*

In addition to FAL, PEC incurred costs for materials purchased to assist in power restoration efforts. First, PEC incurred costs of meals for its workers during the period of the disaster. PEC's EOP states that PEC is responsible for providing food to its personnel working during the EOP's activation. RFA Exhibit 3 at 21. PEC provided food to its workers from various businesses in its service areas by ordering food, some of which it brought back to work sites. RFA Exhibit 7 at 2-3; Applicant Exhibit 143 at 1-2. Second, PEC incurred expenses for fuel as a result of a "Dedicated Equipment and Services Agreement" that it and a third-party contractor, Sun Coast Resources, Inc. (Sun Coast), executed on February 16, 2021. RFA Exhibit 13. This agreement provided PEC with a bobtail fuel truck and driver for twenty-four-hour-a-day fuel delivery. RFA Exhibits 13, 14. PEC also incurred costs to purchase fuel for equipment that it already owned. RFA Exhibit 15. PEC was unable to track the amount of fuel used during this time because of faulty gauges on its equipment pumps. Exhibit 7 ¶ 7.

PEC deactivated its EOP on February 22, 2021. Exhibit 7 at 1.

PEC's PA Funding Request

In September 2021, PEC submitted a project application to FEMA seeking more than \$7 million in PA funding to cover "costs associated with [FAL] overtime, and premium time, [FAE], food for emergency operating center and emergency contract workers, materials and hotel expenses for contractors clearing trees and limbs from electrical power lines and performing emergency repairs to provide electrical service to the public." RFA Exhibit 8 at 3. Between November 2022 and June 2023, FEMA sent several requests for information (RFIs) to PEC, seeking clarifications of PEC's FAL and FAE costs, to which PEC responded. *See id.* On February 27, 2024, FEMA issued a determination memorandum (DM) approving more than \$3 million in PA funding for some of PEC's claimed costs but denying PA for the costs at issue here—FAL, some of PEC's meal costs, and some fuel costs—and for FAE, citing PEC's inability to prove eligibility for PA funding. *Id.* at 5.² With regard to funding for FAL costs, FEMA reported that these costs were ineligible because PEC's "wage and salary policy indicates that double-time pay is contingent upon a FEMA-recognized emergency event, which violates FEMA's policy requiring that payment is not subject to federal funding," and because PEC had not adequately differentiated overtime hours from regular straight-time labor hours. *Id.* With regard to those meal, fuel, and FAE costs that FEMA did not fund in the DM, FEMA determined that PEC "did not

² Although the FEMA letter forwarding the DM to the Texas Division of Emergency Management and PEC is dated November 8, 2023, FEMA agrees that it was not actually sent until February 27, 2024. *See* FEMA's Response Brief (Apr. 16, 2025) at 10.

provide sufficient documentation to support its claim as eligible emergency protective measures” and because some claimed costs were incurred after the project end date. *Id.*

PEC submitted a first-level appeal of the DM to the Texas Division of Emergency Management (TDEM) in April 2024, RFA Exhibit 1, and the TDEM forwarded it to FEMA on or about May 17, 2024. *See* FEMA’s Response Brief (Apr. 16, 2025) at 10; RFA Exhibit 2 at 1. FEMA issued another RFI in September 2024 asking PEC to provide additional documentation supporting PEC’s FAL and material costs. *See* RFA Exhibit 10 at 1.³ On October 20, 2024, PEC responded to FEMA’s RFI with documentation that it asserted supported its eligibility for PA reimbursement, including a spreadsheet with at least some details about the employees who worked in response to the disaster event and a cover letter describing the submitted documents. RFA Exhibits 10, 11.⁴ On January 14, 2025, FEMA issued its first appeal decision, granting additional PA funding totaling just over \$1 million for PEC’s FAE costs, for contract crew lodging costs, and for some of PEC’s materials costs. RFA Exhibit 2 at 14. Nevertheless, FEMA denied PA funding for FAL costs, finding that, because the time sheets and spreadsheets that PEC provided did not include specific details about what work the employees performed while on shift, when working overtime, or when on after-hours call duty, PEC did not provide sufficient information to allow FEMA to determine whether the work performed was eligible. *Id.* at 7-10. In addition, changing the position that it took in its DM, FEMA rescinded PA funding for \$24,329.16 in meal costs that, in the DM, it had approved. *Id.* at 13 n.68. FEMA also denied PEC’s PA funding request for additional fuel costs. *Id.* at 11.

On March 14, 2025, rather than submitting a second-level appeal, PEC timely filed a request for arbitration with the Board. FEMA filed its response brief on April 16, 2025; PEC filed a reply brief on April 30, 2025, and FEMA filed a sur-reply brief on May 14, 2025. On May 21, 2025, the parties jointly indicated that they were submitting this matter for decision on the written record, without a live hearing, as permitted by Board Rule 611 (48 CFR 6106.611 (2024)). By order dated July 7, 2025, the panel requested supplemental information, which PEC submitted on July 9 and FEMA provided on July 11, 2025.

³ In their briefs, both PEC and FEMA refer to RFA Exhibit 9 as being FEMA’s RFI from September 30, 2024. The copy of RFA Exhibit 9 in the Board’s files is an RFI dated February 25, 2025, relating to a PA funding request for costs from FEMA-4705-DR-TX, a different disaster than the one before us here (FEMA-4586-DR-TX). The absence of FEMA’s September 30, 2024, RFI for PEC’s FEMA-4586-DR-TX costs from our record does not affect the panel’s decision.

⁴ In this arbitration, FEMA complains that the spreadsheet did not include any descriptions of the work that the employees performed. FEMA’s Response Brief at 11.

Discussion

I. Standard of Review

The Stafford Act sets forth the Board’s authority to conduct arbitrations. 42 U.S.C. § 5189a(d). FEMA is statutorily authorized to provide PA reimbursement to private, non-profit entities, like PEC, that “provide assistance essential to meeting immediate threats to life and property resulting from a major disaster.” *Id.* § 5170b(a), (a)(4). The Board reviews FEMA determinations de novo. *Monroe County, Florida*, CBCA 6716-FEMA, 20-1 BCA ¶ 37,688, at 182,980.

II. FAL After-Hours Call Out Pay

A. Pay Under Paragraph 4.14.9 of PEC’s Pay Policy

Although FAL costs may be eligible for PA funding in appropriate circumstances, “FEMA determines the eligibility of [FAL] overtime, premium pay, and compensatory time costs based on the Applicant’s pre-disaster written labor policy.” Public Assistance and Program Policy Guide (PAPPG) (June 2020) at 69. For PA funding to be appropriate, the applicant’s pre-disaster written labor policy must have provided the following:

- 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.

Id. “If these requirements are not met, FEMA limits PA funding to the Applicant’s non-discretionary, uniformly applied pay rates.” *Id.*

“FEMA’s criteria for reimbursing straight-time labor costs differ[s] depending on the type of employee and whether that employee is performing Emergency Work or Permanent Work.” PAPPG at 69. “For Permanent Work, both straight-time and overtime labor costs are eligible for both budgeted and unbudgeted employee hours. *Id.* (citing 42 U.S.C. § 5172 and 44 CFR 206.228(a)(2)(i)). Nevertheless, “[f]or Emergency Work, only overtime labor is eligible for budgeted employee hours.” *Id.* (citing 44 CFR 206.228(a)(2)(iii)).⁵ “Overtime

⁵ Although emergency work performed by unbudgeted employees—that is, employees who were reassigned from an external source, essential employees called back

is time worked beyond an employee's scheduled working hours as defined by the Applicant's pre-disaster pay policy." *Id.* at 70.

Here, PEC seeks PA funding for its payment to its employees of what its pay policy calls "after-hours call out" pay—essentially, a form of premium pay that provides employees with double their regular hourly pay. Under the plain language of PEC's pay policy, there appear to be two types of after-hours call out pay, the most generous of which covers *all* labor hours that an employee works during an emergency, including those that the employee would have worked even without the emergency. Specifically, "[n]on-exempt employees working a FEMA-recognized emergency event or situation," as well as similarly situated exempt employees if authorized by PEC's CEO, "*may* receive Double-time Pay for [all] hours worked for the FEMA recognized event." RFA Exhibit 5 ¶ 4.14.9 (emphasis added). Such pay is not limited to work in excess of the regularly scheduled work week but includes all hours addressing an emergency event.

FEMA argues that pay under paragraph 4.14.9 is not eligible for PA funding because, as written, PEC's "pre-disaster premium pay policy is contingent on a FEMA declared disaster, not uniformly applied regardless of a Presidential disaster declaration." FEMA's Response Brief at 13. We agree. FEMA determines eligibility of FAL costs "based on [the] applicant's pre-disaster written labor policy." *Joint Meeting of Essex and Union Counties, New Jersey*, CBCA 7407-FEMA, 22-1 BCA ¶ 38,223, at 185,644. 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

from a furlough, temporary employees hired to perform eligible work, and part-time or seasonal employees working outside normal hours or season of employment—might be eligible for PA funding for both straight-time and overtime labor costs, rather than just overtime costs, *see* PAPPG at 69-70, PEC has not claimed time for any unbudgeted employees. It is seeking PA funding only for budgeted employees.

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, slip op. at 2-3 (July 18, 2025); *New York-Presbyterian Hospital*, CBCA 7412-FEMA, 22-1 BCA ¶ 38,207, at 185,553.

PEC asserts that, despite the plain language of its policy, it was never PEC's intent to limit all-labor-hours double-time pay to presidentially-declared disaster events, as evidenced by its decisions to allow such double-time pay following *other* weather-related emergencies that the President never declared a disaster. See Exhibit 19 at 2 ¶¶ 7-8. Through the declaration of its Director of Human Resources, it represents that it paid more than 45,000 double-time hours in 2023 that were unrelated to federally-declared disasters. *Id.* ¶ 8. In addition, PEC declares that, with regard to Winter Storm Uri, it provided its employees with double-time pay before the President declared the storm a disaster, evidencing its intent to provide double-time pay without regard to disaster declarations. Yet, the defining document is PEC's pre-disaster written pay policy. Despite how PEC elected to apply it, the written policy provided PEC with unlimited discretion in deciding whether and when to provide double-time pay for all hours spent responding to a disaster. Under the PAPPG, that retention of discretion, particularly when there are no guidelines set forth in PEC's pay policy defining when and how authorization for double-time pay will be considered, precludes PA funding.

PEC also represents in its briefing that it has "removed from its claim the regular-time pay-rate costs associated with the first 40 hours of each employee's time" so that FEMA would only be providing PA funding for "the difference between the employee's regular time rate and premium pay rate." RFA at 13. As noted above, for emergency work, like that at issue here, PEC's regular straight-time FAL costs are not recoverable. PAPPG at 69 (citing 44 CFR 206.228(a)(2)(iii)). Because PEC is not entitled to PA funding for premium pay under paragraph 4.14.9 of its pay policy, the fact that PEC has removed from its claim those regular straight-time FAL costs that it would have incurred even if the disaster had not occurred does not automatically create entitlement to the *extra* pay that PEC elected to provide its employees. PEC's paragraph 4.14.9 FAL costs are not eligible for PA funding.

B. Pay Under Paragraphs 4.14.1 and 4.14.3 of PEC's Pay Policy

The other type of after-hours call out pay in PEC's pay policy is limited to labor hours that an employee spent working *outside of* scheduled shift coverage. RFA Exhibit 5 ¶ 4.14.3. Those PEC employees who "are subject to and must be available for after-hours call out duty

to resolve business needs” are entitled to receive a doubled hourly rate for hours *outside* of their scheduled shift if they are called in while on “call out duty” and are required to work after hours. *Id.* ¶¶ 4.14.1, 4.14.3.

Nothing in the record establishes that the employees for whom PEC is seeking PA funding met the requirements for such duty. That type of call out pay is limited, under PEC’s pay policy, to “certain employees [who] are subject to and must be available for after-hours call out duty to resolve business needs,” RFA Exhibit 5 ¶ 4.14.1, and who are then, while on standby, actually “called into work for After-Hours Call Out.” *Id.* ¶ 4.14.3; *see id.* ¶ 4.14.8. The current record does not identify who those “certain employees” are, show that they were assigned after-hours call out duty under paragraphs 4.14.1 and 4.14.3, or show that they were actually called into work while on such duty. Although other employees, even if not one of the “certain employees” who were required to be available for after-hours call out duty, can receive after-hours call out pay if they were “called into work after hours for a critical, time-sensitive event, not including scheduled shift coverage,” *id.* ¶ 4.14.3, such employees could receive that pay under the written policy only when they were “called back in to work” from a non-work status. *Id.* ¶ 4.14.8. Again, nothing in the record reflects which, if any, employees were pulled back into call out duty from a non-work status to perform critical duties. Further, looking at the documents in the record, which designate as active-duty call out time almost all labor hours (including regular shift duty hours) that employees worked on storm-related projects between February 11 and 22, 2021, it is impossible to extract or separate time working post-shift hours from time spent working regular duty hours. It is the applicant’s burden to support its application for PA funding. *City of Hattiesburg, Mississippi*, CBCA 7228-FEMA, 22-1 BCA ¶ 38,029, at 184,685. PEC has not established its entitlement to PA funding for this type of after-hours call out pay.

III. Overtime Pay

PEC requests that, if the panel finds that its after-hours call out pay is not eligible for PA funding, the FAL hours that its employees spent on storm-necessitated work beyond a forty-hour work week should be reimbursed at PEC’s standard overtime rate—1.5 times the employee’s regular hourly rate. Applicant’s Reply Brief (Apr. 30, 2025) at 9. As noted above, “[o]vertime is time worked beyond an employee’s scheduled working hours as defined by the Applicant’s pre-disaster pay policy.” PAPPG at 70. When an employee is performing emergency work required to respond to a disaster, “overtime labor is eligible for budgeted employee hours.” *Id.* at 69.

In its first appeal, PEC described a small subset of FAL hours as overtime, rather than after-hours call out hours. RFA at 14 n.54.⁶ FEMA denied that overtime request for lack of sufficient documentation, asserting that “the documentation provided lacks the specificity needed to determine the tasks performed and does not clarify if the tasks are directly tied to the performance of eligible emergency work,” RFA Exhibit 2 at 8, and that the available documentation did not identify which hours worked during the emergency period were regular time and which were viewed as overtime. *Id.* FEMA argues that PEC’s now-expanded request for overtime pay (encompassing its original overtime pay request plus, under its new alternative theory, all overtime hours originally identified as after-hours call out pay) should be denied for the same reason as the original denial of overtime pay: a lack of sufficient documentation. Even PEC, in its response to one of FEMA’s RFIs, acknowledged that, “[d]ue to [its] timekeeping system, there is not a simple way to separate the normally scheduled hours from which PEC declares an emergency and activates its Call Out pay policy” from overtime hours worked in excess of regular duty time. RFA Exhibit 10 at 2. Based on the information that FEMA had during the first appeal, it is understandable that FEMA was unable to distinguish overtime from regular time or to identify specific work being performed.

FEMA indicates in the PAPPG that an applicant seeking PA funding for FAL overtime must submit the following documentation “to support labor costs claimed (not an all-inclusive list)”: a “[s]ummary of actual costs for completed work (required)”; the name, job title and function, type of employee “(i.e., full-time exempt, full-time non-exempt, part-time, temporary, etc.)”; the “[d]ays and hours worked”; “[p]ay rates and fringe benefit rate”; a “[d]escription of work performed (required) with representative sample of daily logs/activity reports, if available”; timesheets; fringe benefit calculations; and the applicant’s pay policy. PAPPG at 69. A prior panel interpreted these provisions as requiring the applicant to show that its employees were “engaged in discernable, documented, eligible [emergency protective measures (EPM)] work related to the disaster” and “providing actual EPM work as opposed to performing normal work functions.” *Miami-Dade County, Florida*, CBCA 7204-FEMA, et al., 22-1 BCA ¶ 38,017, at 184,626. It is the applicant’s obligation to provide sufficient documentation to support recovery on claimed costs. *City of Miami Beach, Florida*, CBCA 8205-FEMA, 25-1 BCA ¶ 38,738, at 188,324-25. We do not dispute FEMA’s position that, during the first appeal, PEC did not meet that obligation.

⁶ Although PEC believes that the claimed overtime hours should have been recorded as after-hours call out hours, it elected as part of this arbitration not to correct the error to reclassify the hours as call out time or to increase its claim to reflect double-time rather than 1.5-time overtime. RFA at 14 n.54.

Nevertheless, during this arbitration, PEC provided documentation (as part of its submission of its reply brief) that it did not produce during the first-level appeal process, including a 1561-page report from PEC's Supervisory Control and Data Acquisition (SCADA) system showing outages, PEC employee work assignments, and PEC employee work descriptions for the period from February 11 through 22, 2021. *See* Applicant Exhibit 23. That data provides much more specific information about work that at least some of PEC's employees performed during the disaster than PEC had previously submitted. By statute, PEC is entitled to submit evidence to the Board in an arbitration that was not a part of the first-level appeal record. *See* 42 U.S.C. § 5189a(d)(2) (requiring the Board to "consider from the applicant all original and *additional* documentation, testimony, or other such evidence supporting the applicant's position at any time during arbitration" (emphasis added)). Accordingly, PEC's submission of this data to the Board is not untimely and is properly a part of the record before us.

FEMA requests that we discount PEC's SCADA data because it "does not provide work descriptions for *all* employees" whose labor hours are being claimed—specifically, FEMA asserts that the new information only identifies a single lineman by name and "does not contain work descriptions for *other* employees or identify who else, other than the named lineman, worked on that repair." FEMA's Sur-Reply Brief (May 14, 2025) at 8 (emphasis added). Even if the newly submitted documentation is limited in nature, the Board cannot ignore the fact that PEC's documentation, coupled with previously submitted data reflecting the number of hours that various named employees worked during the emergency work period, establishes entitlement to *some* allowable emergency overtime work, even if limited to a single lineman. Further review and evaluation of the SCADA data and the previously submitted listing of employee hours may cause FEMA to identify additional recoverable overtime for other workers. That the new documentation does not justify PA funding for *all* of PEC's claimed FAL costs does not mean that PEC is barred from receiving *any* PA funding. We return this matter to FEMA to evaluate the extent to which PEC, through its submission of SCADA data (coupled with other information that PEC previously submitted), has justified PEC's entitlement to some overtime pay PA funding. *See Charlotte County, Florida*, CBCA 8405-FEMA, 25-1 BCA ¶ 38,840, at 189,009 (returning matter to FEMA for further development and evaluation of a particular cost claim).

IV. Meals

During the disaster period, PEC incurred costs to purchase meals for employees who were providing disaster relief. In submitting its initial PA request, PEC sought reimbursement from FEMA of \$53,322.83 in meal costs, itemizing those costs in a chart within what it called the "CSC Cost Summary." In its DM, FEMA originally determined that, of the requested amount, \$45,806.01 was eligible for PA funding while \$7516.82 was

not. *See* RFA Exhibits 2 at 13, 17 at 13-18. In its first appeal decision, FEMA approved \$21,476.85 in meal costs, denied the same \$7516.82 in meal costs that it denied in the DM, and determined that \$24,329.16 in meal costs previously approved in the DM were actually ineligible (resulting in denial of a total of \$31,845.98 in meal costs). RFA Exhibit 2 at 10-11. PEC seeks to recover the meal costs for which FEMA denied PA funding, although, in its reply brief, PEC informed the Board that it was limiting its request for meal cost PA funding to meal costs of \$100 or more, represented that it had gathered all receipts for those meal purchases, and added those receipts to the record. Applicant's Reply Brief at 32. PEC's PA funding request for meals now totals \$39,419.51—that is, it is seeking, in addition to the \$21,476.85 in meal costs that FEMA has already approved, an additional \$17,942.66 in meal costs. *See id.*

As FEMA recognizes in the PAPPG, “[a]pplicants often provide meals for emergency workers,” both employees and volunteers. PAPPG at 117. Those meal costs are eligible for PA funding *if* “the individuals are not receiving per diem” during the disaster period and at least one of the following conditions is met: (1) meals are required based on labor policy or written agreement that meets cost eligibility requirements set forth in the PAPPG; (2) severe conditions “require[] employees to work abnormal, extended work hours without a reasonable amount of time to provide for their own meals”; or (3) “[f]ood or water is not reasonably available for employees to purchase.” *Id.* Additionally, “FEMA only reimburses the cost of meals that are brought to the work location and purchased in a cost-effective and reasonable manner, such as bulk meals.” *Id.* “A cost is reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the Applicant makes the decision to incur the cost.” PAPPG at 65. In evaluating cost reasonableness, however, FEMA must consider “[w]hether the cost is generally recognized as ordinary and *necessary* for the [applicant's] operation” and “[w]hether the individuals [making purchases] acted with prudence in the circumstances considering their responsibilities to . . . the public at large, and the Federal Government.” 2 CFR 200.404(a), (d) (emphasis added). The PAPPG specifically prohibits reimbursement for costs “related to group outings at restaurants or individual meals.” PAPPG at 117. Further, meal expenses must be adequately documented. PAPPG at 65 & n.117 (citing 2 CFR 200.403(g)).

FEMA concedes that PEC's employees were not receiving per diem during Winter Storm Uri; that PEC's EOP required PEC to provide meals for its employees once the EOP was activated, as it was during Winter Storm Uri; and that PEC's policy satisfies the requirements of the PAPPG. Nevertheless, FEMA argues that the meal costs for which FEMA denied PA funding in its first-level appeal decision were individual meals, group outings, inadequately supported, or simply not reasonable, rendering them ineligible for PA funding.

In its first appeal decision, FEMA did not identify which meal costs it had found eligible and which it had rejected. *See* RFA Exhibit 2 at 12-13. Similarly, in neither its arbitration response brief nor its sur-reply did FEMA identify how it calculated its \$21,476.85 figure or which PEC meal costs it found eligible. In response to a post-briefing request from the Board, FEMA identified the meal costs that support its first appeal decision to authorize \$21,476.85 in PA funding: item nos. 58, 95, 130, 216, 231, 274, 291, 364, 377, and 422 in the force account materials (FAM) chart in PEC's CSC Cost Summary. *See* FEMA Exhibit 6. Having reviewed the invoices associated with those item numbers, *see* Applicant Exhibits 32, 33, 54, 56, 64, 65, 67, 68, 70, 71, 73, 76, we will not question FEMA's determination that those meal costs are eligible for PA funding.

A review of PEC's documentation in support of the remaining \$17,942.66 in requested meal cost reimbursement, which consists of contemporaneous invoices or receipts, largely demonstrates sourcing of food from individual local restaurants or grocery stores. Applicant Exhibits 24-143. Even though PEC submitted a declaration from its Chief Financial Officer explaining that, during the emergency, "orders for meals were placed at the nearest available business with employees bringing it back to the work site for everyone on the nearby teams," RFA Exhibit 7 ¶ 9, some of the produced receipts indicate, or at least strongly suggest, that small groups of diners ate meals at the local restaurants rather than at work sites. *See, e.g.,* Applicant Exhibits 30 (item no. 104: burrito restaurant receipt for forty "For Here" burritos and two "To Go" burritos), 74 (item no. 413: \$126.54 receipt, including a \$21.09 tip, indicating that a named waitperson served five guests who "dine[d] in" at Table 41/1 at Chili's Grill & Bar), 102 (item no. 353: for "Dine-in" service), 130 (item no. 283: "Eat In" for twelve at Subway), 131 (item no. 27: "Eat In" for twelve). The PAPPG expressly precludes reimbursement for in-restaurant dining. PAPPG at 117; *see Baldwin County Electric Membership Corp.*, CBCA 7914-FEMA, 24-1 BCA ¶ 38,618, at 187,726.

Although some receipts from known food service businesses might seem, on their face, as though they probably relate to bulk meal purchases because of the large dollar amounts charged, the receipts do not identify what was purchased, and PEC provides no explanation supporting those charges, making eligibility pure speculation. *See, e.g.,* Applicant Exhibits 57 (item no. 392: \$147.67 credit card receipt, with nothing more), 111 (item no. 56: \$144.80 receipt from Kyle Donuts that does not identify what was purchased, with no written description from PEC), 119 (item no. 161: \$346.18 receipt from a pizza restaurant without identification of what was purchased), 127 (item no. 344: \$607.80 receipt from Spicy Bite for "50@ 10.69" and "25@ 9.69," with no further explanation), 134 (item no. 138: credit card receipt from The Branch for \$925.51, with no further information). Other receipts are illegible. *See, e.g.,* Applicant Exhibits 38 (item no. 325), 112 (item no. 158). "Under the PAPPG, '[t]o be eligible, costs must be . . . [a]dequately documented' in accordance with 2 CFR 200.403(g)." *Baldwin County*, 24-1 BCA at 187,726 (quoting

PAPPG at 65). The submission of a generic summary invoice or receipt, without any additional supporting explanation that would allow FEMA to identify what was purchased and to evaluate whether the purchase satisfies PAPPG requirements, does not meet the adequate documentation requirement. *See, e.g., Colonial Chevrolet Co. v. United States*, 161 Fed. Cl. 132, 146-47 (2022) (explaining that “generic invoices” for an expert’s travel expenses do not, without more, allow the court to evaluate whether costs were necessary and reasonable and, therefore, taxable as a recoverable expense); *Taylor v. City of Amboy*, No. 14-CV-0722, 2017 WL 4075163, at *6 (D. Minn. Sept. 14, 2017) (declining to allow “costs that are supported only by generic invoices with little or no description of the services provided or why such services are attributable” to the matter at issue).

Having reviewed all of the receipts that PEC submitted to the Board, we determine that the following items identified in PEC’s CSC Cost Summary FAM chart are eligible for PA funding: item nos. 2, 8, 9, 17, 75, 88, 101, 102, 103, 115, 119, 122, 125, 129, 148, 153, 160, 172, 174, 184, 189, 195, 199, 200, 204, 207, 217, 221, 227, 237, 256, 259, 277, 297, 311, 322, 351, 376, 381, 402, 421, and 426.⁷ The total cost of these items was \$8889.86.

We also find the following items eligible for PA funding but with reductions to account for sometimes extremely generous service tips that PEC employees provided as an addition to the cost of the purchased items. FEMA only provides PA funding for meal costs that are reasonable—that is, that “a prudent person under the circumstances prevailing at the time” would incur. PAPPG at 65. In making that determination, FEMA must consider whether the cost was “necessary” and was prudently incurred under the then-prevailing circumstances in light of the purchaser’s “responsibilities to . . . the public at large, and the Federal Government.” 2 CFR 200.404(a), (d). One of PEC’s meal purchases was for 240 “meals” plus eighteen pizzas, at a total cost of \$3289.30. Applicant Exhibits 121, 122.⁸ Although we view that bulk meal cost as reasonable in the circumstances, the employee who

⁷ These items are supported by receipts labeled Applicant Exhibits 25, 29, 31, 34, 35, 36, 37, 44, 46, 48, 49, 53, 58, 59, 60, 62, 63, 66, 69, 72, 75, 80, 83, 84, 85, 86, 87, 88, 89, 91, 93, 95, 96, 97, 98, 99, 100, 101, 106, 108, 113, 116, 117, 118, 123, 124, 125, 128, 129, 138, and 140.

⁸ Although the receipt indicates that this was an “Eat In Order,” Applicant Exhibit 121, the circumstances suggest that it was not. Because PEC provides no further detail about this cost, we have some uncertainty. In light of the Chief Financial Officer’s declaration about the location of meals, RFA Exhibit 7 ¶ 9, however, we will assume that this large order was taken to PEC’s call center.

paid for this order added a \$582.62 “[t]ip.” *See id.*⁹ In the circumstances of the emergency at issue, we do not view a \$582.62 tip for takeout food as a reasonable cost that is subject to reimbursement through PA funding. Although PEC is free to provide voluntary gratuities for service from outside vendors, that does not mean that the Federal Government must always reimburse them. Further, the wide variation in tipping practices reflected in the receipts that PEC included in the record, at least some of which reflect no tipping at all, indicates a lack of any consistent PEC policy on this practice. *See* 2 CFR 200.404(e) (indicating that costs incurred consistent with a written policy are more likely to be found reasonable). Here, we cannot see a basis for shifting financial responsibility to the Federal Government for somewhat large service tips that were not, in their strictest sense, “necessary” for PEC to obtain meals for its workers. We authorize PA funding for the following claimed costs for food taken to the work sites, with the reductions noted: item nos. 85 and 135 (\$3289.30, but not the additional \$582.62 tip (Applicant Exhibits 121, 122)), 176 (\$338.82, but not the additional \$46.95 tip (Applicant Exhibit 109)), 326 (\$274.66, but not the additional \$54.93 tip (Applicant Exhibit 39)), 343 (\$95.87, but not the additional \$14.38 tip (Applicant Exhibit 50)), and 357 (\$145, but not the additional \$20.64 tip (Applicant Exhibit 139)). The total for these partially funded items is \$4143.65.

Adding the fully-eligible items totaling \$8889.86 and the partially-eligible items totaling \$4143.65, PEC may receive PA funding for meal costs of \$13,033.51, in addition to the \$21,476.85 that FEMA previously authorized in its first appeal decision. The remaining meal costs that PEC has identified are not eligible for PA funding.

V. FAE Costs

A. Fuel Costs

“FEMA provides PA funding for the use of Applicant-owned (force account) equipment, including permanently mounted generators, based on hourly rates.” PAPPG at 72. “FEMA provides PA funding for [FAE] usage based on FEMA . . . equipment rates in accordance with the specific criteria” set forth in a FEMA website to which the PAPPG refers: www.fema.gov/schedule-equipment-rates. PAPPG at 73 & n.131.¹⁰ The components of an equipment rate for FAE include and encompass fuel for the equipment:

⁹ If the “tip” was actually some kind of mandatory service charge by the restaurant that PEC was required to pay to obtain the food, there is nothing in the record to evidence that fact. The receipt itself reflects a voluntary gratuity.

¹⁰ As an alternative to FEMA’s rate schedule, an applicant can rely on state, local, territorial, or tribal rates. *See* PAPPG at 73. Such rates are not requested here.

FEMA's rate schedule includes any item powered by fuel or attached to any item powered by fuel. FEMA develops equipment rates based on all costs associated with ownership and operation of equipment (except for operator labor). FEMA equipment rate components include depreciation, overhead, equipment overhaul (labor, parts, and supplies), maintenance (labor, parts, and supplies), lubrication, tires, ground engaging component (if applicable), and fuel.

Id. at 73.

During its first appeal, PEC presented FEMA with spreadsheets showing dates and hours that each piece of PEC-owned equipment was used in the disaster response; the names of employees operating each piece of PEC-owned equipment; each piece's type, year, make, model, size/capacity, and rates; and lists of reported outages during the winter storm. RFA Exhibit 2 at 10-11. Cross-referencing the outage spreadsheets that PEC provided with work order numbers in the equipment spreadsheet and contractor invoices, FEMA determined that PEC had demonstrated PA funding eligibility for \$945,252.48 in FAE costs tied directly to the performance of eligible work, inclusive of fuel costs for equipment. *Id.* at 11.

In the RFA that it filed with the Board, PEC alleged that FEMA should have found it eligible for an additional \$37,742.11 for fuel that "was delivered and filled into emergency fuel tanks which were then utilized by PEC and its contractors to fuel equipment during the disaster response." RFA at 18; *see* RFA Exhibit 15. PEC acknowledges, however, that, "[b]ecause the tanks did not have gauges to measure quantities pumped, it was not possible to track the volume of fuel to each piece of equipment." RFA at 18-19; *see* RFA Exhibit 7 ¶ 7 (declaration of PEC's Chief Financial Officer). Further, PEC could not accurately track how much of the purchased fuel was used in PEC-owned equipment and how much was used in contractor-owned equipment. RFA at 19. As a result, PEC relies on what it describes as a reasonable methodology for estimating how much fuel was used for its own and how much for contractor equipment. *Id.* at 19-20. In addressing complaints that FEMA made in its response brief about PEC's fuel claim, PEC reduced its claim to \$28,684 (a reduction of 24%) "to avoid any likelihood of duplication with FAE fuel costs." Applicant's Reply Brief at 20.

FEMA argues that the requested fuel costs are ineligible for PA reimbursement because they are duplicative of the PA funding that FEMA has already provided for PEC's FAE and because, beyond that duplication, the costs are unsupported by the record. FEMA is prohibited from duplicating funding of any kind, including PA, whether from outside sources or FEMA's own grants. PAPPG at 93-95. To support its request for additional FAE reimbursement beyond what FEMA has already authorized, PEC must show that its requested

reimbursement costs have not already been funded by FEMA or another source and are reasonable. *School Board of Bay County, Florida*, CBCA 7872-FEMA, 24-1 BCA ¶ 38,697, at 188,133; *Virgin Islands Housing Finance Authority*, CBCA 7610-FEMA, 23-1 BCA ¶ 38,378, at 186,426. PEC has failed to do so. By PEC's own admission, PEC's fuel tanks had no gauges, meaning that PEC was unable to distinguish fuel costs already reimbursed from those for which it is now seeking funding. Because of PEC's lack of sufficient documentation of fuel costs to prove that PA reimbursement would not be duplicative or unreasonable, PEC's additional fuel costs are ineligible for PA reimbursement.

FEMA also argues that, to the extent that fuel was used in contractor-owned equipment rather than PEC-owned equipment, FEMA has already reimbursed PEC \$3,019,731.53 for contract costs under this project. RFA Exhibit 2 at 5. At least some of the contract prices encompassed fuel that the contractor would use to operate its equipment, *see* FEMA Exhibits 2 at 42, 3 at 20, 4 at 25, making it difficult to understand why PEC is making contractor fuel claims outside the context of those contracts. Although PEC asserts that other contracts did not include the contractor's agreement to provide its own fuel, *see* Applicant's Reply Brief at 17, PEC has not presented sufficient documentation to establish that the claimed costs for contractor fuel, even if we could find the amount used to have been reasonably estimated despite the lack of any gauges, are not duplicative of costs that FEMA has already reimbursed.

B. Fuel Truck Costs

PEC seeks PA funding of \$51,005 to cover the cost of a "Dedicated Equipment and Services Agreement" with Sun Coast, which PEC says "was critical to ensure contractors and PEC equipment remained fueled—allowing for the response, restoration, and rerouting [of] power to protect lives and property." RFA at 18. That agreement with Sun Coast provided PEC with a bobtail fuel truck and driver for twenty-four-hours-a-day fuel delivery, RFA Exhibits 13, 14, and the cost at issue was incurred beginning 7:30 a.m. Central Time (CT) on February 16, 2021, and concluding at 9:15 a.m. CT on February 23, 2021. *Id.*

FEMA challenges this cost by arguing that it has already reimbursed fuel costs and that this cost is duplicative of those previously approved. FEMA's Response Brief at 27. Yet, as PEC explains in its reply, the costs at issue here are *not* fuel costs. They are contract costs for equipment and contractor labor time—that is, the \$51,005 cost at issue covers "the time the truck and the driver were used" and does not encompass the purchase of fuel. Applicant's Reply Brief at 18. When it was evaluating PEC's request for PA funding, FEMA did not include this cost as part of the \$3,019,731.53 in contract costs that it authorized under this project. It instead categorized it as a materials cost and denied PA funding, treating it as a cost of the fuel itself. In proceedings before the Board, FEMA has continued to

mischaracterize the nature of this cost. *See, e.g.*, FEMA’s Response to the Board’s July 7 Order (July 11, 2025) at 2. FEMA has provided no valid explanation of why the Sun Coast costs are not eligible contract costs for equipment and its hired driver. Based on the record before us, they are eligible for PA funding.

C. Fuel Tank Rental

In its reply brief, PEC added a request for PA funding that it had omitted from its RFA. It asserted in its reply brief that it was seeking “reimbursement of the cost for a temporary storage tank needed on-premises at its Marble Falls facility, from which its employees and contractors accessed fuel for the use of equipment in the performance of emergency work.” Applicant’s Reply Brief at 19. In support, it cited to an invoice for \$1275 from Techline, Inc. for a tank shipped on March 2, 2021, which it added to the record before the Board when it filed its reply. Applicant Exhibit 144 at 1.

Not only did PEC fail to raise this \$1275 funding request in its RFA, it expressly removed it from consideration in its first appeal. In one of the RFI responses that it submitted to FEMA during the first-appeal process, it informed FEMA as follows: “The identified invoice for fuel tank rental in the month of March [2021] can be removed for consideration in the appeal.” RFA Exhibit 10 at 4.¹¹ The panel cannot evaluate the eligibility of the fuel tank rental because it was not among the cost claims that FEMA was asked to consider in the first appeal. “Pursuant to statute, the panel serves as a second appeal authority to resolve disputes between applicants and FEMA on requests for PA.” *Housing Authority for the City of Fort Myers, Florida*, CBCA 8138-FEMA, 25-1 BCA ¶ 38,749, at 188,378 (citing 42 U.S.C. § 5189a; 48 CFR 6101.603). “Because FEMA has not made a determination regarding the [fuel tank rental], there is no dispute for the panel to resolve.” *Id.*

Decision

With regard to PEC’s requests for PA funding for FAL, PEC’s FAL after-hours call out pay is not eligible for PA funding, but we return this matter to FEMA for further review and development of PEC’s overtime pay claim.

¹¹ It appears from the RFI response that PEC replaced the March 2021 invoice with another invoice (not contained in the record before us) reflecting a \$3823.50 payment. *See* RFA Exhibit 10 at 4. The record does not indicate whether FEMA authorized PA funding for the \$3823.50 invoice. That issue is not before us.

With regard to PEC's bulk meal costs, PEC is eligible for \$13,033.51 in PA funding beyond the \$21,476.85 that FEMA previously authorized.

With regard to PEC's claimed FAE costs, its requested increase in fuel cost eligibility is denied, and its PA funding request for a fuel tank rental cost is not properly before us. Nevertheless, PEC is eligible for \$51,005 in PA funding for its Sun Coast contract cost.

Harold D. Lester, Jr.

HAROLD D. LESTER, JR.

Board Judge

Kathleen J. O'Rourke

KATHLEEN J. O'ROURKE

Board Judge

Jonathan L. Kang

JONATHAN L. KANG

Board Judge