

Pacific Gas and Electric Company

77 Beale Street
San Francisco, CA
415/973-6656
Telecopier 415/973-9271

Kenneth Yang
Chief Counsel
Human Resources

Mailing Address

P.O. Box 7442
San Francisco, CA 94120



March 15, 1994

Tom Dalzell, Esq.
Staff Attorney
International Brotherhood of Electrical Workers
LOCAL 1245
P.O. Box 4790
Walnut Creek, CA 94596

Re: Computation of Regular Rate Under Fair Labor Standards Act

Dear Tom:

Thank you for your summary of Local 1245's position with respect to the six types of compensation that we discussed during our meeting on February 15, 1994. We understand that the Union believes that the Fair Labor Standards Act (FLSA) mandates the inclusion of each of these payments in the regular rate of pay for purposes of computing the overtime rate. I am writing now to set forth the Company's responses for each type of compensation that we discussed and that you identified in your correspondence.

Performance Incentive Plan (PIP)

We agree that PIP is an incentive payment under Section 7(e) (3)(a) of the FLSA, and as such payments made pursuant to the PIP must be included in the regular rate of pay. The issue remains whether PG&E has substantially complied with the FLSA by basing PIP payments on total earnings, i.e., straight time earnings and overtime earnings. You have asked us to share any authority that we have on this fine point.

PIP is paid for an employee's entire annual earnings, including weeks in which overtime was worked. By calculating the PIP as a percentage of both straight time and overtime pay, the Company has fully satisfied its obligation to include the PIP in the regular rate for overtime purposes. Section 778.210 of the regulations state in pertinent part as follows:

Tom Dalzell, Esq.
March 15, 1994
Page No. 2



[A] contract made prior to the performance of services may provide for the payment of additional compensation in the way of a bonus at the rate of 10 percent of the employee's straight-time earnings, and 10 percent of his overtime earnings. In such instances, of course, payments according to the contract will satisfy in full the overtime provisions of the Act and no recomputation [of the regular rate] will be required.

In addition, courts interpreting this regulation and the "percentage bonus rule" it describes have agreed that the concept dispenses with the need to recompute the regular rate. See e.g., Brock v. Two R Drilling Co., Inc. (5th Cir. 1986) 789 F.2d 1177.

Fire Brigade

We agree with your analysis that Section 778.207(b) of the Interpretive Bulletin requires the inclusion of premium payments for hazardous work. However, the Company's payroll system already adjusts the regular rate of pay on a daily basis for the Fire Brigade premium. For example, if an employee on Fire Brigade duty works 12 hours one day, the overtime rate for the last four hours would be 1.5 x (regular rate + Fire Brigade premium). This approach is similar to the "percentage bonus rule" in that the regular rate is only adjusted on the day that the employee works Fire Brigade and only impacts overtime worked that day; there is no permanent adjustment of the employee's regular rate. In 1993 the United States Labor Department conducted an informal audit of the Company's pay practices, including calculation of the regular rate for employees working Fire Brigade and found that the Company was generally in compliance.

Shift Premium, Sunday Premium, Relief Premium and Nuclear Premium

We agree with your position that the FLSA requires the inclusion of the following premium payments in computing regular rate for overtime purposes: shift, Sunday, relief, and nuclear. Specifically, 29 C.F.R. 778.207(b) requires that the regular rate include premium payments for undesirable hours or for hazardous, arduous, or dirty work. We have found that the Company's payroll system already adjusts the regular

Tom Dalzell, Esq.
March 15, 1994
Page No. 3



rate of pay on a daily basis for the foregoing premiums. As in the case of the Fire Brigade premium, United States Labor Department reviewed and accepted the Company's payroll system for adjusting the regular rate to reflect pay premiums.

Reimbursement for Remote Reporting Expenses

We disagree with your analysis that the flat rate reimbursement for remote reporting be included in the regular rate. Section 778.217 of the regulations provides that the regular rate of pay need not include reimbursements for actual expenses incurred by an employee on his employer's behalf or where the employee is required to expend sums solely by reason of action taken for the convenience of his employer. Such excluded expenses include reasonable payments for traveling. Section 778.217 (b)(3) states that reimbursements for the actual or reasonably approximate amount expended by an employee for transportation while traveling "over the road" on his employer's business need not be included in the regular rate.

We agree with your position that bridge tolls and parking fees should be excluded from the regular rate as expenses. However, we do not discern a difference between reimbursement for tolls and parking fees, on the one hand, and reimbursement for mileage, on the other hand. The mileage reimbursement amounts depend on the distance from the reporting headquarters to the remote reporting site (\$12.25 reimbursement for travel fewer than 15 miles and \$17.50 if more than 15 miles) and accordingly approximate the amount expended for actual "over the road" expenses.

Missed Meals

We disagree with your position that payments for missed meals are included in the regular rate. Section 104.10 of the physical agreement obligates the Company to provide a "meal reimbursement" whenever a particular work assignment causes the employee to miss a meal required under the labor agreement. As a general rule, reimbursements by an employer for any expense that an employee incurs on the employer's behalf are not considered compensation for services and are therefore not included in the employee's regular rate under 29 C.F.R. 778.217. One example of expenses listed identified in the regulations for exclusion is so-called "supper money" paid to reimburse an employee for the cost of supper whenever a work assignment requires the employee to work through a meal hour.

Tom Dalzell, Esq.
March 15, 1994
Page No. 4



Conclusion

In summary, the Union and the Company are in substantial agreement on the following payments: PIP, fire brigade, and shift premiums, and bridge and parking fees associated with remote reporting. The Company will continue to exclude from the regular rate, however, reimbursements for mileage associated with remote reporting and reimbursement for meals missed due to work assignments.

Please call me if you have any questions or responses to the Company's position. I look forward to our reaching agreement in the near future.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Ken Yang', with a stylized flourish at the end.

KEN YANG
KY:kp