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October 25, 2002

Arthur S. Lujan
Labor Commissioner
Department of Industrial Relations
Division of Labor Standards Enforcement
455 Golden Gate Avenue, 9th Floor
San Francisco, CA 94102

Re: Public Works Case No. 2001-059
Utility Agreements for Relocation of Utilities
California Department of Transportation

Dear Mr. Lujan:

This constitutes the determination of the Director of the Department of Industrial Relations regarding coverage of the above-referenced project under California's prevailing wage laws and is made pursuant to Title 8, California Code of Regulations (CCR) section 16000(a). Based upon my review of the facts of this case and an analysis of the applicable law, it is my determination that the utility relocation work performed under contract between the California Department of Transportation ("CalTrans") and public utility ("Utility") companies, in which CalTrans reimburses Utilities that contract out utility relocation, is public work subject to the payment of prevailing wages.

When the relocation of utilities is necessary to a CalTrans project, CalTrans issues a "Notice to Owner" of the Utility to relocate specified utilities. CalTrans routinely enters into utility agreements with the Utility under which CalTrans will reimburse the Utility for part or all of the relocation costs. Although each agreement may differ regarding the specific work to be done, the work generally involves the removal, relocation and reinstallation of the utilities specified in the agreement. In some instances, the Utility performs all or part of the work with its own forces; in others, the Utility enters into contracts with contractors to perform the utility relocation work. Generally, CalTrans reimburses the Utility for the costs. Under limited circumstances, the Utility must pay 100 percent of the costs of an ordered utility relocation without any reimbursement from CalTrans.

The determination in this case applies only to a relocation of utilities under the utility agreements where all or part of the relocation costs is paid by CalTrans, and the Utility hires a contractor to perform the relocation work. This determination does not apply if no relocation costs are reimbursed or otherwise paid by CalTrans.

CalTrans argues that the work performed under the utility agreements are not public works contracts because they pertain only to Utility owners relocating their property upon order from CalTrans and to the narrow purpose of CalTrans' reimbursement for relocation of the Utility's property. CalTrans believes that the utility relocation work is a public works only where CalTrans develops plans and specifications and hires a contractor to relocate the utilities. In support of its position that the utility relocation is not public work, CalTrans asserts that it is not a party to utility relocation contracts, does not provide plans or specifications, does not supervise the work or otherwise control the relocation and has no oversight of or involvement in the public utility contracts.

Labor Code section 1720(a)(1)[1] defines "public works" in relevant part as: "Construction, alteration, demolition, installation or repair work done under contract and paid for in whole or part out of public funds, except work done directly by any public utility company pursuant to order of the Public Utilities Commission or other public authority."

In this case, the relocation of utilities clearly involves construction, alteration and/or installation being done under contracts between CalTrans and the Utility, and between the Utility and a contractor. The work is also being paid for in whole or part out of CalTrans funds, which are public.

Section 1720(a)(1) does not contain a requirement that a public entity develop the plans and specifications for a project to be a public work. Nor does it require that a public entity be a party to the construction contract. Section 1720(a)(1) simply requires that the work be done under contract and paid for in whole or part out of public funds. *SPCA-LA Companion Animal Village and Education Center*, PW 2000-006 (August 24, 2001).

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[1] All subsequent statutory references are to the Labor Code unless otherwise indicated.

Southern California Edison, a Utility, asserts that the work performed under the utility agreements may fall within the exemption from public works coverage under section 1720(a)(1) for "work done directly by any public utility company pursuant to order of the Public Utilities Commission or other public authority." The word "directly," however, applies only to work being done by a Utility's own forces. *Southern California Regional Rail Authority Lease of Union Pacific Right of Way*, PW 91-056 (November 30, 1993). In this case, the Utility is not doing the utility relocation work with its own forces but is hiring a contractor. Consequently, the exemption in section 1720(a) does not apply.

For the above reasons, the relocation of utilities under the circumstances described here is a public work that is subject to the payment of prevailing wages.

I hope this determination satisfactorily answers your inquiry.

Sincerely,

Chuck Cake

Chuck Cake
Acting Director