



STATE OF WASHINGTON
DEPARTMENT OF LABOR AND INDUSTRIES

Prevailing Wage
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April 22, 2015

Ms. Karen Abbott
Contract Administrator
PUD No. 1 of Clallam County
P.O. Box 1090
Port Angeles, WA 98362-0207

Re: Prevailing Wage Determination – Clallam County PUD/Hoch Construction – Correct Prevailing Wage Rate for the Construction of a Spill Prevention Control and Countermeasures Structure

Dear Ms. Abbott:

Thank you for your September 9, 2014 letter. You have asked for a determination of the correct prevailing wage rate for the construction of a Spill Prevention Control and Countermeasures (SPCC) containment structure inside an energized, electric substation.

Determinations of the prevailing rate of wage are made by the Industrial Statistician of the Department of Labor & Industries (L&I). See RCW [39.12.015](#). See the enclosed document, "Prevailing Wage Determination Request and Review Process." Copies of the RCWs and WACs referenced in this letter are also enclosed.

In preparing this response to your request for determination, I reviewed a number of materials including, but not limited to:

- Forks No. 1 Substation SPCC Work Order 12-0538 dated June 2, 2014
- Quotation No. 141003 document dated June 27, 2014
- Statement of Intent Correction Notice dated August 21, 2014
- Your determination request letter dated September 9, 2014
- Photos of the worksite provided by you
- Your letter dated March 23, 2015

The information you provided describes the construction of a Spill Prevention Control and Countermeasures (SPCC) containment structure. The purpose of the structure is to prevent environmentally harmful substances from contaminating the surrounding soil and groundwater. The work includes excavation, the placement of a protective barrier, final grading and other

related work to provide a complete SPCC containment structure. The work will be performed at the Forks No. 1 Substation in Clallam County. The substation will remain energized and its normal operations will continue during the construction of the project. Clallam County PUD will provide a safety watch (See [WAC 296-45-035](#)) whose only duty is to ensure the safety of workers during the entire construction project. There will be no access to the construction site, work performed or equipment moved unless the safety watch is present.

Your letter cites to the Public Utilities District title, General Provisions chapter [54.04 RCW](#), specifically citing [54.04.080 RCW](#) and [54.04.085 RCW](#) and the Safety Standards For Electrical Workers' rules, [WAC 296-45-035](#) and [WAC 296-45-475](#). Generally, these statutes and rules provide information for bid proposals, electrical facility construction, definitions and rules pertaining to substations. Your letter also states that these laws indicate a division in the type of work performed on substations: (1) Electrical installation and (2) site preparation work (See [RCW 54.04.080](#)).

While these statutes and rules provide guidance to public utility districts they are not controlling for prevailing wage purposes even if the work in question is determined to be site preparation work. The regulations cited in your letter and prevailing wage regulations have their own distinct applications. The prevailing wage scopes of work descriptions are used to distinguish which wage rate or rates properly apply to the work described. The prevailing wage scopes of work do not regulate who may perform the work; it only regulates the wage for the work. I understand the confusion that can occur when two different types of regulations divide the same broad classifications of work into categories that do not correspond to each other, but here, their use of similar or identical terminology makes thinking separately about those distinct regulations vital to the correct understanding and use of each standard.

Additionally, I spoke with members of the IBEW Local 77 union for a better understanding of what their work entails and whether any disagreement may exist between them and Clallam PUD's assertion that the work in question is work not performed by Local 77 members. The union representatives agreed that "site preparation work" is generally performed by a "civil" (non-electrical) contractor at non-electrician wage rates and that their member electrical crews normally accomplish the erection of electrical systems (apparatus and equipment) "from the anchor bolts up."

Your letter requests that the Prevailing Wage Program consider the installation of the SPCC containment structure as site preparation work and not the work of a power line construction electrician due to the containment structure's overall purpose, that the containment structure does not directly involve the support of electrical structures, and that the work related to the SPCC's construction does not require electrical journeyman qualifications hence your request for the program to agree with the contractor's application of carpenter wage rates to this work.

The answer below is based on the information you provided. References to the Revised Code of Washington (RCW) and the Washington Administrative Code (WAC) are included. Again, this answer is based on your fact set. If the facts differ from those you provided, the answers may be different.

RCW 39.12.020 requires that “The hourly wages to be paid to laborers, workers or mechanics, upon all public works and under all public building service maintenance contracts of the state or any county, municipality, or political subdivision created by its laws, shall be not less than the prevailing rate of wage for an hour’s work in the same trade or occupation in the locality within the state where such work is performed.” Our program also evaluates the totality of the specific facts and circumstances related to the determination request when making policy and determination decisions.

The issue before the program is to determine the correct prevailing wage rate applicable to the construction of the SPCC containment structure in an energized substation.

Workers are constructing a Spill Prevention Control and Countermeasures (SPCC) containment structure inside an energized substation that requires a watchman to be on-site at all times during their work activities. As previously described, the work necessary to create this structure is work that electricians and electrical apprentices generally do not perform. Whether other state law classifies the construction of the SPCC containment structure as related to electrical installation or site preparation work is not the controlling factor for the program’s decision. Rather, the work being performed and the conditions surrounding the work that most closely resemble prevailing wage scopes of work descriptions are the scopes of work applicable to a project.

The power line construction electricians scope of work description states that “power line construction electricians erect, maintain and repair transmission poles (whether built of wood, metal or other material), fabricated metal transmission towers, outdoor substations, switch racks, or similar electrical structures, electric cables and related auxiliary equipment for high-voltage transmission and distribution power lines used to conduct energy between generating stations, substations and consumers...” See WAC 296-127-01320 (parts omitted). After reviewing the information specific to this project and consulting with industry leaders, I agree that the work related to the construction of the SPCC structure is not directly related to the high-voltage transmission and distribution of electricity, but related to site preparation work not requiring electrical certification or expertise. The work of power line construction electricians is electrical and construction work directly related to its scope of work description. Digging, trenching and backfilling are work performed by power line construction electricians, but in the context of their specialty as described in the scope of work. The construction of a containment structure is work typically performed in preparation for the construction of a substation, but, as in this case, it can also occur after a substation is constructed when regulation or maintenance requires so. The containment structure’s overall purpose is environmental protection of the land and water on and surrounding the substation. The containment structure’s purpose is not related to electrical distribution, and therefore, power line construction electrician is not the appropriate wage rate for this work.

“Carpenters construct, erect, install and repair structures, structural members and fixtures made of wood, plywood, wallboard and materials that take the place of wood, such as plastic, metals, composites, and fiberglass, using carpenter hand tools and power tools...” See WAC 296-127-01310 (parts omitted). This scope is also not the appropriate wage rate for the containment structure. The majority of the work involves excavation, the placement of a protective barrier and final grading. This type of work is not required to be paid at Carpenter prevailing wages.

The correct scopes of work applicable to the construction of the SPCC containment structure are those of laborers and operating engineers. See WAC [296-127-01344](#) and WAC [296-127-01354](#), respectively. Please ensure your contractor has complied and compensated his employees at the appropriate rates.

This determination addresses specific facts. If the facts vary, the answer could be different.

Washington State prevailing wage information, including the WACs, are available on the Department's web site: <http://www.lni.wa.gov/TradesLicensing/PrevWage/default.asp>

If you need additional information or have questions, please email or call me at Jim.Christensen@Lni.wa.gov or 360 902-5330.

Sincerely,



Jim Christensen
Program Manager
Industrial Statistician
360-902-5330



September 9, 2014

Jim Christenson, Industrial Statistician
Department of Labor and Industries
Prevailing Wage
P.O. box 44540
Olympia, WA 98504-4540

Re: Scope of work determination – Carpenters for the construction of a SPCC
Structure.
Request for Proposal Number 141003

Dear Mr. Christenson:

This letter requests a formal determination from your office regarding the correct wage determination based on the scope of work as detailed in the attached Request for Proposal and the Engineer's estimate for the construction of the District's SPCC (Spill Prevention Control and Countermeasures) containment.

On August 25, 2014 I was contacted by Hoch Construction regarding a correction notice they received after filing their Notice and Intent to Pay Prevailing Wage online with your Prevailing Wage Department. The correction notice came from Elsa McConnell, whom I spoke with also regarding this. The Notice indicates the work being done by Hoch Construction is building part of the electrical substation. The Notice instructs Hoch Construction to change the scope of work from Carpenter to Power Line Construction Electrician. I believe this to be in error for the reasons I put forth below.

Specifically relevant to this issue is that **RCW 54.04.080** allows the Public Utility District to let contracts to "construct or improve electric facilities". It goes further to define "construction or improvement of any electrical facility" as "the construction, the moving, maintenance, modification, or enlargement of facilities primarily used or to be used for the transmission or distribution of electricity...including structures *directly* (emphasis added) supporting transmission or distribution conductors but not including site preparation, housing or protective fencing..." It indicates a division of an electrical substation project into electrical installation work and site preparation work. This definition is applied to **RCW 54.04.085** to the effect that any entities desiring to bid on any electrical work provide a "statement of...experience...in performing electrical work"

These RCWs ensure that individuals working directly on the District's electrical system meet the high standard (journeyman qualifications) to construct or improve any electrical facility; and therefore the prevailing wage as determined by WAC 296-127-01320 for Power Line Construction Electricians does apply.

The District would argue that the installation of the SPCC containment applies to site preparation under **RCW 54.04.080**. It does not directly involve structures supporting electrical

facilities or require electrical journeyman qualifications to perform the work; and therefore the prevailing wage as determined by WAC 296-127-01310 for Carpenters does apply.

There remains an issue of the ability of a nonqualified (as defined by **WAC 296-45-035**) Carpenter to perform work in an electrical substation. This is addressed in **WAC 296-45-475 (6)(c)** and provides that "Nonqualified persons may only approach exposed energized electrical equipment...when under the direct supervision of a qualified person acting as a safety watch." The industry standard is to use the appropriate craft to perform nonelectrical work under the watchful eye of a qualified person acting as a safety watch. The District and all District prequalified contractors are held to this standard.

Thank you for your attention to this matter.

Sincerely,



Karen Abbott
Contract Administrator

Enclosure: a/s
Cc: Dennis Shaw
Quimby Moon
John Purvis
Carrie Priest – Hoch Construction