



STATE OF WASHINGTON
DEPARTMENT OF LABOR AND INDUSTRIES

Prevailing Wage
PO Box 44540 • Olympia, Washington 98504-4540
360/902-5335 Fax 360/902-5300

April 17, 2014

Michael R. Scott
HCMP Law Offices
1221 Second Avenue, Suite 500
Seattle, WA 98101

Re: Prevailing Wage Scope of Work Determination – Laborers in Utilities Construction for Replacing Water Meters

Dear Mr. Scott:

Thank you for your January 23, 2014 letter. On behalf of your client, Pacific Meter Services, you have asked for a determination of whether the scope of work for Laborers in utilities construction, [WAC 296-127-01340](#), would be applicable to replacing water meters in a public utility easement while the worker remains on the surface.

This is a determination of the Industrial Statistician regarding coverage of the referenced work under Washington's prevailing wage laws and is made pursuant to [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 determination, I conducted an onsite visit on February 11, 2014 to see Pacific Meter staff performing this work, and I reviewed a number of materials including, but not limited to:

- January 23, 2014 request for determination
- [WAC 296-127-01340](#), scope of work for Laborers in Utilities Construction
- [WAC 296-127-01364](#), scope of work description for Plumbers, Pipefitters and Steamfitters
- Standards of apprenticeship documents from a variety of apprenticeship programs including the Chelan County Public Utility Apprenticeship Committee Standards and the Construction Industry Training Council of Washington plumber standards.
- Industry collective bargaining agreements
- Dictionary of Occupational Titles
- [RCW 18.106.010\(9\)](#)
- Declaration of Mr. Jack Robb, President, Pacific Meter Services
- Various other attachments and exhibits enclosed with your letter

You cited in your letter and its enclosures the sources mentioned in [WAC 296-127-013](#). Such sources are relevant to the drafting of the scopes. While not specifically controlling, they can also be persuasive, in the application of the scope of work as written. The specific authoritative sources you cite support the conclusion that utility laborers construct municipal sewer and water systems.

Description of the work subject to this determination

You describe the work to modernize city water utility systems. The work involves replacing old water meters with new water meters with radio transmitters. The new meters and the radio transmitters allow water usage to be determined without requiring the dispatch of a meter reader to obtain the data. The work involves a few minutes to turn off the water, loosening two swivel nuts to remove the old meter, and the reverse process to install the new meter. The radio transmitter is fastened to the meter box lid with a screw.

The department has provided guidance that work on the low voltage (battery powered) radio transmitter may be performed using the prevailing rate of pay for Electronic Technicians, [WAC 296-127-01322](#). A small portion of the work you describe falls within this scope of work. This letter, however, addresses the remaining water meter replacement work.

You and your client met with a prevailing wage specialist at the department on January 9, 2014. You were advised that the department had applied prevailing rate of pay for Plumbers, Pipefitters, and Steamfitters ([WAC 296-127-01364](#)) to water meter replacement work. You were advised that you could seek a determination by the Industrial Statistician on the allowable scope or scopes of work. Following that meeting, you sent your request for a determination of the scope of work. You contend that this work is firmly in the realm of utility work and, therefore, the Laborers in utility construction, General Laborer & Topman prevailing rate of pay ([WAC 296-127-01340](#)) is appropriate.

The Department's determination

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. 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 labor is performed."

You asked about the use of the Topman prevailing rate of pay. The Topman is described in the scope of work for Laborers in Utilities Construction, which is found in [WAC 296-127-01340](#). Since Topman, according to that scope of work description, assists the Pipelayer in the ditch, and since there is no Pipelayer or ditch involved in this work, I believe you probably intended to point toward the General Laborer classification which, as you may know, is paid at the same rate as Topman.

Michael R. Scott

April 17, 2014

Page 3 of 4

Traditionally, we have viewed this scope of work to apply to specific work on underground sewer and water line distribution systems. As an illustration, the title of this trade within our online wage listing is “Laborers – Underground Sewer & Water,” which includes a reference to sewer and water systems. Such utilities construction work includes (but is not limited to) construction, alteration, repair, or improvement of water mains for water utilities which includes the stub-outs for individual customers when that work is performed on a system that is not under pressure. The water meter work in your question takes place directly on such stub-outs and branch lines in the water distribution system. The water meter is a component of the utility’s water distribution system.

Water meters are not specifically mentioned in the Laborers in Utilities Construction scope and they are also not specifically excluded. The scope uses the phrase “...includes but is not limited to...” Again, the water meters are components of municipal water distribution systems and are commonly located within the utility’s easement or right of way, between water mains and buildings.

Prior clarifications from the department on water meter replacement work used the general language referring to equipment and the specific language on distribution lines in the Plumbers, pipefitter and steamfitter scope of work ([WAC 296-127-01364](#)) to apply the Plumber prevailing rate of pay to this water meter work.

The Plumbers, pipefitters and steamfitters scope mentions water mains and sewer mains but does not mention branch lines or stub-outs. However, the introductory paragraph of this scope uses the phrase “...includes, but is not limited to...” Also, the reference to water and sewer mains uses the terms “e.g.” and “etc.” Clearly this scope does not exclude branch lines or stub-outs.

The Plumbers, Pipefitters, and Steamfitters scope mentions valves and pumps within section (2) in the context of water and sewer mains (and, presumably also branch lines) but does not specifically mention water meters. Water meters are, however, components within these municipal water systems.

After some study of these facts and the scope or work descriptions, and using the department’s historical knowledge and expertise on the scopes of work, I determine that the type and nature of this water meter replacement work performed in the public utility easement work is consistent with the language of both the Laborers in utilities construction scope of work, [WAC 296-127-01340](#), and the Plumbers & Pipefitters scope of work, [WAC 296-127-01364](#).

The use of either the Laborers in Utilities Construction, General Laborer & Topman; *or* the Plumbers & Pipefitters prevailing rates of pay for this specific work will comply with the wage requirements in [chapter 39.12 RCW](#), the state prevailing wage law.

Michael R. Scott
April 17, 2014
Page 4 of 4

Again, 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

Enclosures

cc: Pacific Meter Services
David Brown, City of Yakima
Pamela Stokke-Ceci, Badger Meter
Andrew Murphy, HCMP

Prevailing Wage Determination Request and Review Process

RCW 39.12.015 is the basis for requesting a determination, since it provides:

All determinations of the prevailing rate of wage shall be made by the industrial statistician of the department of labor and industries.

If you disagree with a determination the industrial statistician provides, WAC 296-127-060(3) provides for a review process:

(3) Any party in interest who is seeking a modification or other change in a wage determination under RCW [39.12.015](#), and who has requested the industrial statistician to make such modification or other change and the request has been denied, after appropriate reconsideration by the assistant director shall have a right to petition for arbitration of the determination.

(a) For purpose of this section, the term "party in interest" is considered to include, without limitation:

(i) Any contractor, or an association representing a contractor, who is likely to seek or to work under a contract containing a particular wage determination, or any worker, laborer or mechanic, or any council of unions or any labor organization which represents a laborer or mechanic who is likely to be employed or to seek employment under a contract containing a particular wage determination, and

(ii) Any public agency concerned with the administration of a proposed contract or a contract containing a particular wage determination issued pursuant to chapter [39.12](#) RCW.

(b) For good cause shown, the director may permit any party in interest to intervene or otherwise participate in any proceeding held by the director. A petition to intervene or otherwise participate shall be in writing, and shall state with precision and particularity:

(i) The petitioner's relationship to the matters involved in the proceedings, and

(ii) The nature of the presentation which he would make. Copies of the petition shall be served on all parties or interested persons known to be participating in the proceeding, who may respond to the petition. Appropriate service shall be made of any response.

If you choose to utilize this review process, you must submit your request within 30 days of the date of the applicable industrial statistician's determination or response to your request for modification or other change. Include with your request any additional information you consider relevant to the review.

Direct requests for determinations, and for modification of determinations via email or letter to the prevailing wage industrial statistician:

Jim P. Christensen
Industrial Statistician/Program Manger
Department of Labor & Industries
Prevailing Wage
P O Box 44540
Olympia, WA 98504-4540
Jim.Christensen@Lni.wa.gov

Prevailing Wage Determination Request and Review Process

Direct requests via email or letter seeking reconsideration (redetermination) by the assistant director to:

Elizabeth Smith, Assistant Director
Department of Labor & Industries
Fraud Prevention and Labor Standards
P O Box 44278
Olympia, WA 98504-4278
Elizabeth.Smith@Lni.wa.gov

Direct petitions for arbitration to:
Joel Sacks, Director
Department of Labor & Industries
P O Box 44001
Olympia, WA 98504-4001

If you choose to utilize this arbitration process, you must submit your request within 30 days of the date of the applicable assistant director's decision on reconsideration (redetermination). Submit an original and two copies of your request for arbitration to the Director personally, or by mail. The physical address for the Director is 7273 Linderson Way, SW, Tumwater, WA 98501.

WAC 296-127-061 also contains the following provisions regarding petitions for arbitration:

In addition, copies of the petition shall be served personally or by mail upon each of the following:

- (a) The public agency or agencies involved,
 - (b) The industrial statistician, and
 - (c) Any other person (or the authorized representatives of such person) known to be interested in the subject matter of the petition.
- (2) The director shall under no circumstances request any administering agency to postpone any contract performance because of the filing of a petition. This is a matter which must be resolved directly with the administering agency by the petitioner or other party in interest.
- (3) A petition for arbitration of a wage determination shall:
- (a) Be in writing and signed by the petitioner or his counsel (or other authorized representative), and
 - (b) Identify clearly the wage determination, location of project or projects in question, and the agency concerned, and
 - (c) State that the petitioner has requested reconsideration of the wage determination in question and describe briefly the action taken in response to the request, and
 - (d) Contain a short and plain statement of the grounds for review, and
 - (e) Be accompanied by supporting data, views, or arguments, and
 - (f) Be accompanied by a filing fee of \$75.00. Fees shall be made payable to the department of labor and industries.

WAC 296-127-01340

Laborers in utilities construction.

For the purpose of the Washington state public works law, chapter 39.12 RCW, the work for laborers includes, but is not limited to:

(1) Pipe layer.

- Shoring, building of manholes and catch basins.
- Sealing, doping and wrapping of the pipe after the joints have been welded and before the pipe is lowered into the trench or ditch.
- Joining ductile iron pipe by using screws, bolts, fittings, caulking or any other method for making joints in the industry, when the pipe will not be under pressure. Lowering the pipe into the trench or ditch.

(2) Topman. Assists the pipe layer from the surface, he does not work in the trench or ditch.

(3) General laborer.

- Performs all other laborers' work which is not done by pipe layers and topmen.
- Responsible for all cleanup required in connection with utilities construction work.

[Statutory Authority: Chapter 39.12 RCW, RCW 43.22.270 and 43.22.051. WSR 00-15-077, § 296-127-01340, filed 7/19/00, effective 7/19/00.]

RCW 39.12.015

Industrial statistician to make determinations of prevailing rate.

All determinations of the prevailing rate of wage shall be made by the industrial statistician of the department of labor and industries.

[1965 ex.s. c 133 § 2.]

WAC 296-127-01364

Plumbers, pipefitters, and steamfitters.

For the purpose of the Washington state public works law, chapter 39.12 RCW, plumbers, pipefitters and steamfitters assemble, install, and maintain piping systems, fixtures and equipment for the transportation of water, steam, gas, air, sewage, oil, fuels, liquids, gases, or similar substances.

The work includes, but is not limited to:

(1) Piping systems installed in structures (e.g., buildings, industrial plants, etc.).

(a) The handling and moving of any plumbing, pipefitting and steamfitting materials, supplies, and equipment on the job site.

(b) Cutting, threading, and bending pipe.

(c) Joining pipes by use of screws, bolts, fittings, solder, welding and caulking, or any other method of making joints in the pipefitting industry.

(d) Assembling, installing, and repairing valves, pipe fittings, and pumps.

(e) Testing the piping system.

(f) Installing and repairing plumbing fixtures, such as sinks, bathtubs, water heaters, and water softeners.

(g) Cutting holes in floors and walls for pipes:

- With point and hammer.

- Core-drilled.

(h) Responsible for all cleanup required in connection with plumbers, pipefitters and steamfitters work.

(2) Distribution lines (e.g., water mains, sewer mains, oil and gas lines, etc.).

(a) The handling and moving of any plumbing, pipefitting and steamfitting materials, supplies, and equipment on the job site.

(b) Steel pipe: Welding of pipe joints and joining pipes with screws, bolts, fittings, solder, caulking, or any other method for making joints in the industry.

(c) Ductile iron pipe: Joining pipes by using any method for making joints in the industry, when the pipe will be under pressure.

Assembling, installing, and repairing valves and pumps.

(d) Testing the piping system.

(e) Responsible for all cleanup required in connection with plumbers, pipefitters and steamfitters work.

[Statutory Authority: Chapter 39.12 RCW, RCW 43.22.270 and 43.22.051. WSR 00-15-077, § 296-127-01364, filed 7/19/00, effective 7/19/00.]

RCW 18.106.010**Definitions.**

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

- (1) "Advisory board" means the state advisory board of plumbers.
- (2) "Contractor" means any person, corporate or otherwise, who engages in, or offers or advertises to engage in, any work covered by the provisions of this chapter by way of trade or business, or any person, corporate or otherwise, who employs anyone, or offers or advertises to employ anyone, to engage in any work covered by the provisions of this chapter.
- (3) "Department" means the department of labor and industries.
- (4) "Director" means the director of department of labor and industries.
- (5) "Journey level plumber" means any person who has been issued a certificate of competency by the department of labor and industries as provided in this chapter.
- (6) "Like-in-kind" means having similar characteristics such as plumbing size, type, and function, and being in the same location.
- (7) "Medical gas piping" means oxygen, nitrous oxide, high pressure nitrogen, medical compressed air, and medical vacuum systems.
- (8) "Medical gas piping installer" means a journey level plumber who has been issued a medical gas piping installer endorsement.
- (9) "Plumbing" means that craft involved in installing, altering, repairing and renovating potable water systems, liquid waste systems, and medical gas piping systems within a building. Installation in a water system of water softening or water treatment equipment is not within the meaning of plumbing as used in this chapter.
- (10) "Specialty plumber" means anyone who has been issued a specialty certificate of competency limited to:
 - (a) Installation, maintenance, and repair of the plumbing of single-family dwellings, duplexes, and apartment buildings that do not exceed three stories;
 - (b) Maintenance and repair of backflow prevention assemblies; or
 - (c) A domestic water pumping system consisting of the installation, maintenance, and repair of the pressurization, treatment, and filtration components of a domestic water system consisting of: One or more pumps; pressure, storage, and other tanks; filtration and treatment equipment; if appropriate, a pitless adapter; along with valves, transducers, and other plumbing components that:
 - (i) Are used to acquire, treat, store, or move water suitable for either drinking or other domestic purposes, including irrigation, to: (A) A single-family dwelling, duplex, or other similar place of residence; (B) a public water system, as defined in RCW 70.119.020 and as limited under RCW 70.119.040; or (C) a farm owned and operated by a person whose primary residence is located within thirty miles of any part of the farm;
 - (ii) Are located within the interior space, including but not limited to an attic, basement, crawl space, or garage, of a residential structure, which space is separated from the living area of the residence by a lockable entrance and fixed walls, ceiling, or floor;
 - (iii) If located within the interior space of a residential structure, are connected to a plumbing distribution system supplied and installed into the interior space by either: (A) A person who, pursuant to RCW 18.106.070 or 18.106.090, possesses a valid temporary permit or certificate of competency as a journey level plumber, specialty plumber, or trainee, as defined in this chapter; or (B) a person exempt from the requirement to obtain a certified plumber to do such plumbing work under RCW 18.106.150.

[2013 c 23 § 14; 2006 c 185 § 1; 2003 c 399 § 102; 2002 c 82 § 1; 2001 c 281 § 1; 1997 c 326 § 2; 1995 c 282 § 2; 1983 c 124 § 1; 1977 ex.s. c 149 § 1; 1975 1st ex.s. c 71 § 1; 1973 1st ex.s. c 175 § 1.]

Notes:

Part headings not law -- 2003 c 399: See note following RCW 19.28.006.

Effective date -- 1997 c 326: "This act takes effect July 1, 1998." [1997 c 326 § 7.]

WAC 296-127-013

Scope of work descriptions.

(1) In order to determine applicable prevailing wage rates, the director or his/her designee will issue scope of work descriptions for each trade and occupation recognized as being involved in public work.

(2) The scope of work descriptions shall be created using authoritative sources available to the department, such as:

- (a) Washington state apprenticeship and training council approved apprenticeship standards;
- (b) Collective bargaining agreements;
- (c) Dictionaries of occupational titles;
- (d) Experts from organized labor, licensed contractors, and contractors' associations;
- (e) Recognized labor and management industry practice.

(3) The applicable prevailing wage rates for workers employed on public works projects shall be determined by the scopes of work performed by those workers, and not by their specific job titles.

(4) The applicable scope of work description for a public works contract is the scope of work description that is in effect on the date that the bids are due to be submitted to the contract awarding agency. If the contract is not awarded within six months of the bid due date, then the applicable scope of work description shall be that which is in effect on the date that the contract is awarded. The same scope of work description shall remain in effect for the duration of the contract.

(5) In the event a dispute arises regarding a scope of work description following the award of a public works contract, the aggrieved party may request an arbitration hearing pursuant to the provisions of RCW 39.12.060, WAC 296-127-060, 296-127-061, and 296-127-062.

[Statutory Authority: Chapter 39.12 RCW, RCW 43.22.270 and 43.22.051. WSR 00-15-077, § 296-127-013, filed 7/19/00, effective 7/19/00. Statutory Authority: Chapters 39.04 and 39.12 RCW and RCW 43.22.270. WSR 92-01-104, § 296-127-013, filed 12/18/91, effective 1/31/92; WSR 88-22-046 (Order 88-22), § 296-127-013, filed 10/31/88.]

WAC 296-127-01322

Electronic technicians.

(1) For the purpose of the Washington state public works law, chapter 39.12 RCW, electronic technicians install, operate, inspect, maintain, repair, and service:

- (a) Radio, television and recording systems and devices;
- (b) Systems for paging, intercommunication, public address, wired music, clocks, security and surveillance systems and mobile radio systems; and
- (c) Fire alarm and burglar systems.

(2) When installed for the specific purpose of carrying low voltage wiring, the work identified in subsection (1) of this section includes:

- (a) Installing unlimited lengths of nonmetallic conduit;
- (b) Installing incidental metallic conduits of no longer than ten feet nor larger than one inch;
- (c) Pulling wiring through conduit, except as provided in subsection (3) of this section; and
- (d) All the cleanup required in connection with electronic technician's work.

(3) The work identified in subsection (1) of this section does not include pulling wiring through conduit that exceeds ten feet in length for the purpose of installing fire alarm systems.

[Statutory Authority: Chapter 39.12 RCW and RCW 43.22.270. WSR 09-19-118, § 296-127-01322, filed 9/22/09, effective 11/1/09. Statutory Authority: Chapter 39.12 RCW, RCW 43.22.270 and 43.22.051. WSR 00-15-077, § 296-127-01322, filed 7/19/00, effective 7/19/00.]

January 23, 2014

Via E-mail (chrj235@lni.wa.gov)
Via U.S. Mail

Jim Christenson, Industrial Statistician
Department of Labor and Industries
Prevailing Wage
PO Box 44540
Olympia, WA 98504-4540

*Re: Scope of work determination—Laborers in utilities construction for
replacing water utility meters
Public Works Project Number 2261*

Dear Mr. Christenson:

I write on behalf of Pacific Meter Services (“**Pacific Meter**”) to request a formal determination of what scope of work applies to replacing water meters in the public utility easement while the worker remains on the surface. The text of the prevailing wage scopes of work and standard industry practice support a determination that the laborers in utilities construction rate applies (“**Utilities Laborer rate**”).

A. Factual Background

1. Yakima Water Utility Metering Project Background

The City of Yakima contracted with Badger Meter, Inc. (“**Badger**”) to modernize the city’s water utility infrastructure system. See **Exhibit A**. Part of that contract involves replacing old water meters with new meters that contain radio transmitters. The new meters and radio transmitters allow the city to determine water usage without dispatching a person to read individual meters. Badger contracted with Pacific Meter to replace some of the water meters.

2. Pacific Meter Sought Guidance from the Department

Pacific Meter and Badger discussed prevailing wages during the bidding stage of the project. Pacific Meter, and its President, Jack Robb, specifically, contacted the Department for guidance on Washington's prevailing wage requirements. Mr. Robb had several telephone conversations with Department representatives. Among other things, Mr. Robb asked what scope of work applied to water meter replacements. The Department representative directed Mr. Robb to the Prevailing Wage website, and told Mr. Robb the Department would accept the scope of work Pacific Meter selected if the work performed fit within the scopes of work online.

Having performed water meter installations in five states for over six years, Mr. Robb selected the prevailing wage scope of work that applied for each of Pacific Meter's previous projects: the Utilities Laborer rate. The city agreed the Utilities Laborer rate applied, and Pacific Meter filed its Statement of Intent to Pay Prevailing Wage, which the Department approved on May 16, 2013. *See Exhibit B.* Pacific Meter completed the same process for a similar project in Olympia.

The Department initiated a prevailing wage audit of the Yakima project on December 12, 2013. The Department then sent several emails from previous water meter projects that indicated the Plumber, Pipefitters, and Steamfitters rate ("**Plumber rate**") applied to water meter replacements, and not the Utilities Laborer rate. The applicable Plumber rate is \$74.50 per hour, which is more than double the \$32.75 Utilities Laborer hourly rate. Facing a potentially business-ending penalty, Pacific Meter suspended work on the Yakima and Olympia projects pending resolution of the prevailing wage issues. The suspension of work unfortunately put the twelve people on Pacific Meter's crews out of work indefinitely.

Pacific Meter met with the Department's Industrial Relations Specialist, Laura Herman, on January 9, 2014, to discuss these issues. Ms. Herman explained that the Department has not made a formal determination of the scope of work that applies to water meter replacements, and invited Pacific Meter to make this formal determination request.

B. Replacing Water Meters is Unskilled Labor

Pacific Meter uses the same water meter replacement process for all of its projects, including Yakima. Pacific Meter dispatches a crew of six to seven people to replace the water meters. All of the workers remain above ground at all times. The workers use prefabricated factory-sealed water meters and radio transmitters that do not require any splicing or pipebending. The workers do not perform any work on the valves, water main, or pumps.

The process begins when one worker removes the meter cover in the public utility easement and places the new meter next to the open meter box. A second worker knocks on the residents' doors to inform them that their water will be turned off for a few minutes. Three to four workers replace the meters and then "leap frog" past one another to houses down the street that the first two workers have prepared.

The actual meter replacement is unskilled labor that takes approximately two minutes per meter. The worker kneels on the lawn or sidewalk, turns off the water so the pipes are not under pressure, loosens the two swivel nuts connecting the meter to the valve with a V-wrench (a specialized wrench for water meter replacements), and removes the old meter.¹ The new meter is installed by hand-tightening the swivel nuts to the valve and tightening the nuts again with the wrench. The worker then connects the radio transmitter to the lid using a screw, and completes the installation by replacing the lid onto the meter box. A video of an actual meter replacement in Yakima can be seen here: https://www.youtube.com/watch?v=tX_xnq42lPc. Pacific Meter trained the workers on its crew, and none of the workers are licensed plumbers.

C. Scopes of work textual analysis

1. Utilities Laborer rate applies

The Utilities Laborer rate applies to water meter replacements, and, more specifically, the Topman rate applies when the laborer installs the meter while remaining on the surface. To begin, the Utilities Laborer scope of work specifically applies to work on public utilities, which includes water meters. WAC 296-121-01340 specifies that the topman "[a]ssists the pipe layer from the surface, he does not work in the trench or ditch." Essentially,

¹ Photographs of the water meters, radio transmitter, V-wrench, and related equipment are enclosed as **Attachment 1 of Exhibit C**.

the topman performs the same work as a pipe layer, but without entering a ditch or trench. Pipe layers join pipes when the pipes are not under pressure. *Id.* Pacific Meters' workers joined the pipes by installing the water meter, which occurred when the pipes were not under pressure and while the workers remained on the surface. The water meter replacement project in Yakima falls squarely under the Utilities Laborer—Topman rate.

A possible but incorrect interpretation of the scopes of work would be that the Utilities Laborer rate applies only when the worker joins pipes that will not ever be under pressure. This interpretation is incorrect for two reasons. First, utility pipes that will never be under pressure are referred to as "conduit." The WAC acknowledges this fact by repeatedly using conduit in the context of electrical utilities. *See* WAC 296-127-01344 (assigning the installation of underground conduit to laborers).

Second, and more significantly, utility pipes for water, sewer, and gas will all be under pressure after the laborer joins them. The Utilities Laborer scope of work would not allow for joining utility pipes at all if laborers could not join pipe that would eventually be pressurized. The scopes of work instead recognize that the dispositive factor for classifying work is whether the pipes are under pressure at the time of joining. This dispositive factor reflects how joining pipes under pressure requires a higher degree of skill than joining pipes not under pressure.

A recent water main project in the City of Olympia, the Pearl Beach project, Public Works Project Number 1267P, offers a good example of why a higher degree of skill is needed for joining pipes under pressure. There, the City of Olympia replaced an old water main with a new main without disrupting water service to any house. The City paid a plumber to perform a "hot tap," which means the plumber cut into the water main while water flowed through it. The plumber used a specialized drill to cut a hole into the old water main and connected the water flow through pipes to the new water main. The task required skill that far exceeds the simple installation of water meters.²

² Notably, the Pearl Beach project also included water meter replacements. The City of Olympia classified the water meter replacement work as Utilities Laborer work and only the "hot tap" as Plumber work. The Department approved the Pearl Beach project Affidavits of Wages Paid. *See* Affidavit Numbers 472244, 482006, and 482333, attached as **Exhibits D, E, and F**.

The Utilities Laborer rate is appropriate for the Yakima water meter replacement project because it fits within the scope of work and reflects the skill level necessary to perform the work.

2. Plumber rate does not apply

The Department has asserted in informal email responses that the Plumber rate applies to water meter replacements. As support for that informal determination, the Department relied on the workers repairing equipment used for the transportation of water and the disassembly and assembly of water piping connections. Neither of these factors nor the Plumbers rate scope of work text support applying the Plumber rate to water meter replacements.

a. Bases cited in informal responses

First, presumably, the Department based its informal responses on the general language in the Plumber scope of work that states plumbers “assemble, install, and maintain piping systems, fixtures and equipment for the transportation of water...” WAC 296-127-01364. While that general language could be interpreted to include water meters, the Department should select the Utilities Laborer scope of work because it is more specific than the general language in the Plumber scope.

If the general language in the Plumber scope of work applied to all installation and maintenance of equipment for transporting water, then the Utility Laborers scope and several others would be superfluous. For example, the Utilities Construction scope of work, WAC 296-127-01389, includes the construction of water mains and sewer mains. Both mains involve constructing equipment used for transporting water, but, as your August 5, 1999 formal determination acknowledged, it is standard industry practice to pay Utilities Construction wages for that work.³

The Department has previously acknowledged that specific scopes of work should apply over general scopes of work. For example, you issued a formal determination on October 18, 2000, that acknowledged the Utilities Construction rate specifically applied to all work on a water main project,

³ Attached as **Exhibit G**. See also May 28, 2013 formal determination (**Exhibit H**), where the Department stated the Utilities Laborer rate applied to work on “a utilities system such as the water or sewer mains that a public or private utility might run down a street or road...” Page 4.

including restorative landscaping.⁴ You made that determination even though the Landscape Construction scope of work had general language that could have applied to the restorative landscaping.

Second, the Department's informal responses suggest the assembly and disassembly of water piping connections must be paid the Plumber's rate. Both the Utilities Laborer and Plumber rates allow for the disassembly and assembly of water piping connections, so that factor does not militate in favor of either scope of work. As discussed above, the dispositive factor for whether the Plumber or Utilities Laborer rate applies is whether the pipes are under pressure at the time of assembly.

b. Text of Plumber scope excludes water meter replacement

Taken as a whole, the Plumber scope of work does not apply to water meter replacements. As your September 9, 1998 formal determination acknowledged, the first paragraph of a scope of work generally states "what" is covered, and the remainder states the "how."⁵ The Plumber scope of work does not describe how water meters are replaced or installed. Because none of the illustrative examples listed in the Plumber scope of work apply to water meter replacements, then the general language in the first paragraph should not apply either.

Subparagraph (1) of the Plumber scope of work states it applies to "Piping systems installed in structures (e.g., buildings, industrial plants, etc.)." Water meter replacements occur entirely outside structures, and inside the public utility easement next to the sidewalk. Thus, none of the methods listed under Subparagraph (1) can apply to water meter replacements.

Subparagraph (2) includes work on "Distribution lines (e.g., water mains, sewer mains, oil and gas lines, etc.)" as Plumber work. While it is possible that some water meter replacement projects involve working with water mains, Pacific Meter's work in Yakima does not. Pacific Meter's work is limited exclusively to the water meter. Water meters are distinct from water mains, so all of subparagraph (2) should also not apply. In the interest of being thorough, however, we will address the remaining provisions.

Provision (2)(a) requires paying the Plumber rate for "... handling and moving of any plumbing, pipefitting, and steamfitting materials, supplies,

⁴ Attached as **Exhibit I**.

⁵ Attached as **Exhibit J**.

and equipment on the job site.” The only materials and equipment used by the Pacific Meter crew is the new meter, a V-wrench, and occasionally a small screwdriver-like tool used to replace register heads. The water meter and V-wrench are both tools used by utility workers and not plumbers, so the provision should not apply to water meter replacements.

If the Department disagrees and considers either the meter or the wrench plumbing equipment, the Department should still apply the Utilities Laborer rate because the type of work is firmly in the realm of utility work. Provision (2)(a) was included in the Plumber scope of work so plumbers would not be paid a lower rate when they were handling or otherwise moving their equipment. The provision was not included to pay a plumber’s wage to any worker who handles supplies related to water transportation.

Provision (2)(b) relates to welding steel pipes, and provision (2)(c) relates to joining ductile iron pipe under pressure. Pacific Meter’s laborers do not touch the pipes during the water meter replacement, and C-900 PVC pipe connects the water line to the water main in Yakima. Neither provision should apply because the Yakima project does not involve steel or ductile iron pipes.

Ductile iron pipe was previously common in water utility systems, but C-900 has been the main type of pipe used for over twenty years. It is possible the scopes of work do not contemplate the ubiquity of C-900, and the scope of work is meant to cover the types of pipe used for utilities. If that were true, then the provision still should not apply to Pacific Meter because the pipe joining occurs when the pipes are not under pressure.

Provision 2 contains flush language between subsections (c) and (d) that includes “assembling, installing, and repairing valves and pumps” as Plumber work. The positioning of the flush language suggests it is meant to include the subsections that come after it. Pacific Meter’s project in Yakima does not involve any assembly, installation, or repair of valves or pumps. The laborers use the valve to turn off the water through the meter, but that is not within the Plumber scope of work. If the valve on the water meter leaks, Pacific Meter stops work, and calls the city to dispatch a separate repair crew, which is employed by another entity.⁶

⁶ Compare April 8, 2013 formal determination (**Exhibit K**), which found the Plumber’s rate applied to “[r]emoving, replacing, or repairing a valve...” Pg. 6. Here, the valve was simply being turned by the Pacific Meter labor, and if any work on the valve is required, the city dispatches its own crew.

The Utility Laborer scope of work was written to cover unskilled labor on utilities. Installing water meters while the pipes are not under pressure is precisely the kind of unskilled labor meant for utility laborers, not plumbers.

D. Additional Support to Apply the Utilities Laborer Rate to Water Meter Replacement.

Beyond the textual arguments to apply the Utilities Laborer rate to water meter replacement, Pacific Meter presents additional support. WAC 296-127-013 directs the Department to consider the following “authoritative sources” when determining which scopes of work apply:

- (a) Washington state apprenticeship and training council approved apprenticeship standards;
- (b) Collective bargaining agreements;
- (c) Dictionaries of occupational titles;
- (d) Experts from organized labor, licensed contractors, and contractors’ associations;
- (e) Recognized labor and management industry practice.

Evidence from each category of sources demonstrates the Utility Laborer rate is the only appropriate rate for water meter replacements.

1. Washington state apprenticeship and training council approved apprenticeship standards

Approved Washington State Apprenticeship standards manifest the typical industry practice that plumbers generally work inside structures, and utility laborers work on utilities. For example, the Chelan County Public Utility Apprenticeship Committee Standards provides that a “Water Technician” must acquire work experience performing “Installation, repairs and maintenance of metering devices.”⁷ Compare that specific inclusion of water meter installation in utility worker apprentice standards with the Construction Industry Training Council of Washington plumber standards, which does not make *any* mention of water meters.⁸

⁷ Page 15. Standards available online at <http://www.lni.wa.gov/TradesLicensing/Apprenticeship/files/standards/0164.pdf>

⁸ Available online at <http://www.lni.wa.gov/TradesLicensing/Apprenticeship/files/standards/0636.pdf>

2. Collective bargaining agreements

The union that represents utility workers in Washington is the District Council of Laborers (“**Council**”). The Council has three chapters that cover all of Washington and parts of Idaho. Each chapter has a CBA between itself and the Associated General Contractors of Washington. Each CBA specifies that laborers’ work includes the maintenance and repair of all equipment used in water supply projects, which includes water meters.⁹ The union that represents utility workers across all of Washington recognizes water meter repair is part of its work.

3. Dictionaries of occupational titles

The United States Department of Labor maintains the “Dictionary of Occupational Titles” (the “**Dictionary**”). Like the Department’s scopes of work, the Dictionary’s definition for plumber is very broad, but there are also more specific definitions that assign related work to different occupations. The Dictionary’s definitions illustrate the standard industry practice that plumbers work inside structures, and laborers work on pipes outside of structures.

The Dictionary definition for Plumber has broad language, but reading the definition as a whole demonstrates it was written to reflect the sequence of tasks involved in plumbing projects inside structures.¹⁰ The first sentence of the definition assigns the work on pipes and fittings for water systems to plumbers, and requires the plumber to study building plans and working drawings to determine the sequence of installation. The second sentence directs the plumber to inspect the structure “to prevent weakening of structure from installation of pipe. The third sentence describes marking walls and floors for the pipe installation. The fourth sentence describes cutting into the walls and floors, and the remaining sentences describe the process for bending, assembling, and testing pipe systems. Although the first sentence of the Plumber definition has broad language, the remainder of the

⁹ See Article 5 of Eastern Washington and Northern Idaho District Council CBA, available online at <http://www.nwlaborers.org/agreements/wa-id/documents/2012-2016EasternWashingtonMasterLaborAgreement.pdf>;
Article 2 of Western and Central Washington District Council CBA, available online at <http://www.nwlaborers.org/agreements/wa-w-c/documents/2012-2015WesternCentralWashingtonMasterLaborAgreement.pdf>;
Article 4 of Southwestern Washington District Council CBA, available online at <http://www.nwlaborers.org/agreements/wa-sw/documents/SWWA2011-2014MasterLaborAgreement.pdf>

¹⁰ Available online at <http://www.occupationalinfo.org/86/862381030.html>

definition provides step-by-step instructions for plumbers to install pipes within structures.

The Dictionary also describes the duties of a "Water-Meter Installer."¹¹ The Dictionary states a Water-Meter Installer, not a Plumber,

Installs watermeters in consumer establishments, using handtools: Turns mainline valve to close waterflow through line. Disconnects water pipe and connects watermeter to outlet and inlet pipe unions, using wrench. Examines pipes to detect leaks and informs consumer to close faucets. Opens mainline valve to admit waterflow into building.

The definition directly tracks the meter replacement performed by Pacific Meter in the Yakima project. Creating separate definitions for Water-Meter Installers and Plumbers demonstrates the United States Department of Labor recognizes the types of work are distinct.

Washington State has repeatedly recognized the same distinction. In the laws describing plumber certification, the legislature defined plumbing as follows:

"Plumbing" means that craft involved in installing, altering, repairing and renovating potable water systems, liquid waste systems, and medical gas piping systems *within a building*.

RCW 18.106.010(9) (emphasis added). The legislature's public policy determination regarding the scope of plumbers' work should guide the Department in making its similar determination.

Washington State again recognized plumbers work inside structures when the state adopted the Uniform Plumbing Code in 2007. The Uniform Plumbing Code definition for "Plumbing System" broadly refers to "all potable water, building supply, and distribution pipes...including their respective joints and connections, devices, receptors and appurtenances within the property lines of the premises..." Washington State added a proviso when it adopted the Uniform Plumbing Code. The final sentence of Washington's Plumbing Code states: "*Provided*: that no certification shall be required for the installation of a plumbing system within the property lines

¹¹ Available online at <http://www.occupationalinfo.org/95/954564010.html>

and outside a building.” See **Exhibit L** (emphasis in original). Laborers generally perform work that does not require certification. Washington’s proviso to the Uniform Plumbing Code shows the State itself recognizes laborers work on pipe systems outside of structures, and plumbers work within structures. The Department can harmonize Prevailing Wage law with the state’s manifested public policy by generally limiting the Plumber’s scope of work to labor inside structures.¹²

4. Experts from organized labor, licensed contractors, and contractors’ associations; and Recognized labor and management industry practice.

The factors listed in WAC 296-127-013 demonstrate prevailing wage law was written to reflect industry practice, not to replace it. The standard national industry practice is to pay the Utilities Laborer rate for replacing water meters in the public utility easement.

Pacific Meter offers as an expert its President, Jack Robb. Mr. Robb has been involved with the public utility industry for over twenty years. He is a licensed contractor in Washington, Oregon, Nevada, and California, and was previously licensed in Hawaii.¹³ Robb Declaration at ¶ 3–4 (attached as **Exhibit C**).

Mr. Robb began his career in 1986 in subdivision underground construction. *Id.* at ¶ 5. In 1992, he began working with Sierra Pacific Power Company (“**Sierra**”), the power, gas and water utility company for the Reno, Nevada area. *Id.* at ¶ 6. While at Sierra, Mr. Robb’s responsibilities included negotiating construction and material contracts that related to water meter projects. *Id.* In 1997, Mr. Robb became the project lead on a water meter retrofit project. *Id.* Sierra sold its water division to Truckee Meadows Water Authority (“**Truckee Meadows**”), and Mr. Robb continued his work on water utilities with Truckee Meadows. *Id.* at ¶ 7. During his five years at Truckee Meadows, Mr. Robb oversaw the replacement of 85,000 water meters. *Id.* Mr. Robb also supervised new business construction inspections, which involved inspecting up to 5,000 new meter sets annually. *Id.* at ¶ 8. He

¹² We acknowledge that the Department has previously applied the Plumber rate to work that occurred outside of structures, despite how that application departs from standard industry practice. See **Exhibit H**. However, the Department should be reluctant to make findings that depart from industry practice, because doing so may cause severe disruptions in commerce, construction, and employment.

¹³ Mr. Robb allowed his Hawaii license to lapse after he replaced 30,000 water meters on Maui using the Utilities Laborer prevailing wage rate.

founded Pacific Meter Services in 2006 for the exclusive purpose of installing and replacing water meters. *Id.* at ¶ 9. Mr. Robb personally installs meters with his field crews, and has done so in each of the states where he is licensed. *Id.* at ¶ 10. Mr. Robb's licenses and professional experience qualify him as an expert in the water meter industry.

The standard national practice is to pay workers the Utilities Laborer rate when working on water meters. *Id.* at ¶ 13. This reflects the nationally recognized practice of limiting the plumber's domain to work inside structures, and assigning laborers work in the public utility easement. *Id.* at ¶ 15. An exception exists in the Northeast, because water meters are installed inside structures due to ground freezing concerns, and the plumber rate applies. *Id.* at ¶ 14. When the water meter is outside a structure and inside the public utility meter, the Utilities Laborer rate universally applies.

The logistics of standard industry practice also distinguish utilities laborer work from plumber work. The most evident distinction relates to the working drawings the two groups of workers use. Plumbers refer to one set of drawings, and utility workers look to a separate and distinct set of drawings. *Id.* at ¶ 15. Utility laborers also use different tools than plumbers. A water meter replacement requires only hands and a V-wrench, which is a tool plumbers do not use. *Id.* Similarly, plumbers use a variety of tools for pipebending, welding, cutting, and sealing that a water meter installer will never use. *Id.* The different drawings and tools used by plumbers and utility workers demonstrate the standard industry practice of distinguishing the two types of work.

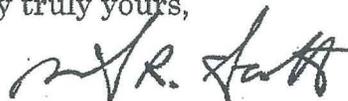
E. Conclusion

Prevailing wage law exists to prevent government contracts from eroding established local wage standards, which reflect standard industry practices. When a scope of work has specific language that covers the relevant nature of work, and that scope of work reflects the standard industry practice, the Department should apply that scope. Here, issuing a determination that applies the Utilities Laborer rate to water meter replacement will constitute a prudent textual application of the WAC and align Washington with established national labor and industry practice.

Jim Christenson
January 23, 2014
Page 13 of 13

We request a meeting with you to demonstrate the simplicity of water meter installations, answer your questions, and explain water meter industry practices. We also respectfully request an urgent determination so Pacific Meter can return its twelve employees back into the field as soon as possible.

Very truly yours,



Michael R. Scott

Enclosures

cc: Pacific Meter Services (via email)
City of Yakima (via email)
Badger Meter, Inc. (via email)
Laura E. Herman (via email)