



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 6, 2017

Miriam Moses
REBOUND
2800 First Avenue
Suite 216
Seattle, WA 98121

RE: Scope of Work for Removal & Clean-up of Power Lines & Poles (File # 16-127-D)

Dear Ms. Moses,

Thank you for your October 14, 2016 letter requesting a determination of the appropriate scope of work applicable to the dismantling, moving, hauling, and clean-up of de-energized power transmission lines. You contend that such duties should fall within the scope of work for Power Line Construction Electricians, WAC 296-127-01320. You further express concern with the department's past decision to allow some work to be completed under the Laborer's scope of work.

RCW 39.12.020 requires "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 trade or occupation in the locality within the state where such work is performed."

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. Enclosed is a copy of the *Prevailing Wage Determination Request and Review Process* which outlines the procedures for requesting determinations and reviews of determinations.

Letter to Miriam Moses
April 6, 2017

It is my understanding that your request for a determination is not based on a specific job, but rather it requests a clarification for future work or projects. You described the work as involving “the dismantling, moving, hauling and clean-up of de-energized power lines (which may inadvertently become re-energized) where, at some time in the past, Power Line Construction work was performed to erect those lines and poles.” This determination addresses those specific facts.

The department maintains scope of work descriptions which serve as guidance regarding which prevailing wage rates are required for certain work activities. The scope of work for Power Line Construction Electricians, WAC 296-127-01320, begins with:

“For the purpose of the Washington state public works law, chapter 39.12 RCW, 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.”

I continue to regard that important opening paragraph as one of the clearest such opening paragraphs among all the various scope of work descriptions within chapter 296-127 WAC. It outlines the locations where this work is performed, the systems involved and the role of this trade in those systems. The phrases used are highly inclusive. The careful reader will conclude that any work on those electrical systems is required to be paid at the power line construction electrician prevailing wage rates.

The department has not made any formal determination of applicability of a Laborer prevailing wage rate for this work. I discussed this type of work on a previous project with the Clallam County PUD. In that conversation I was careful to clarify that I did not have enough information to determine a proper classification for the work under that project and that I was not making such a determination. I have now gathered what I believe to be sufficient relevant facts about work of this nature, and this letter is my determination and guidance applicable to future work of this specific type and nature.

The purpose of the work, according to the scope, is to “erect, repair and maintain.” The term “dismantle” does not appear in that phrase. At the time of my conversation with Clallam County I was unsure whether dismantling work is included in, or excluded from, the “erect, repair and maintain” phrase. Anecdotally, I can say that in my 25 years of analyzing construction industry classification conventions I am aware of few if any instances in which work on electrical transmission or distribution systems was not performed by line electrician crews. That said, I have now taken the time to consider this question and conduct inquiries.

SAFETY

I appreciate the various documents you have assembled and forwarded. Those documents relate to work performed under contracts with either private utility companies or federal agencies.¹ The documents you submitted discuss the qualifications of personnel that are required under those contracts and the safety regulations to be followed that are specific to this type and nature of work. Power line electricians possess those qualifications and are trained for the hazards and safety regulations that are unique to this work.

The electrical industry is regulated, including and especially the training, qualifications and certification of electricians. Electricians in the utility sector are not required to be certified under chapter 19.28 RCW, but they are required to be enrolled in, or graduated from, a state-approved outside line worker apprenticeship program that is recognized by the department and that qualifies a person to perform such work. [RCW 19.28.261(5)(b)]

29 CFR 1926 contains various federal regulations applicable to power line electrical work including but not limited to: hazard assessments and precautions, designation of work zones, preventing encroachment/electrocution, voltage information, operations below power lines, minimum clearance distances under various conditions for workers and/or equipment and spotter requirements.

29 CFR 1910 applies federal regulations in areas such as but not limited to: medical services and first aid, lockout/tagout procedure, enclosed spaces, evacuations, personal protective equipment (PPE), live-line tools, working on or near exposed energized parts, de-energizing lines and equipment, grounding, testing and test facilities, overhead and live-line barehand work, line-clearance tree trimming and other topics related to safety.

Chapter 296-45 WAC provides state safety regulations, similar to federal regulations, which are specific to this industry. Further, many other state safety regulations applicable to other industries also warn of the dangers and specific procedures when working near electrical utility apparatus. Those chapters include, but are not limited to, chapters 296-307, 296-869, 296-52, 296-874, 296-878 and 296-54 WAC.

Working on or near electrical transmission or distribution lines, poles and other apparatus is dangerous. Even supposedly de-energized systems are potentially dangerous. De-energized systems can become energized. Lightning strikes can do this. The movement of wind around electrical conductors can generate voltage. The observations mentioned above in the areas of training, qualifications, and safety regulations specific to electrical power transmission and distribution systems are evidence of the unique and specialized nature of this work.

¹ Federal and private projects do not require the submission of labor classification and wage/benefit data to the department. Data for Washington public utility projects is required to be submitted to the department. Analysis of those projects and data are discussed in a separate section of this letter.

WAGES PAID

As part of my review, I asked staff to identify projects that included, or may have included, dismantling of electrical power lines and apparatus (such as insulators, poles and cross beams). The information they gathered included the public utility company for which the work was performed, the name of the project, the names of the contractors and subcontractors, the classifications of labor used and rates of pay, and the number of hours reported. All contractors and subcontractors working on public utility projects are required to submit such data on Affidavits of Wages Paid which are filed with my office.

962,454 hours of labor were found. The majority (58%) of those hours (559,154) were paid at the Electricians – Power Line Construction prevailing wages. The balance of hours on these projects were paid at various rates including Inside Wireman Electrician, Telephone Line Construction and others. Presumably, these other (non-Power Line Construction) classifications were working on structures and systems that were not part of the electric power transmission or distribution system.

For example, Telephone Line Construction wages likely were paid for placing telephone lines on the poles. In any case, it seems clear to me that the established wage standard for electrical power line work, including dismantling of those lines and apparatus, is that of Electricians – Power Line Construction.

CLEAN-UP

Many scope of work descriptions defining the work of various trades and occupations for prevailing wage purposes, found in chapter 296-127 WAC, contain passages indicating that this trade performs all clean-up work in connection with the work of that trade. From the Power Line Construction Electrician scope (WAC 296-127-01320):

“All the cleanup required in connection with line construction electrician work.”

These passages have a specific meaning. In the course of construction craft work, various kinds of debris are created. Packages are opened and component parts are removed for installation. Excess materials such as lumber and sheet rock scraps and other materials are discarded. As these construction trade workers perform their work and debris is created, that debris must be picked up and moved out of the way. For safety reasons as well as aesthetic. Periodically, (end of the day, end of the week, end of the project) all debris, tools, equipment discarded items, items meant for salvage and other debris, must be removed from the work site. The passage given above and all other such passages within chapter 296-127 WAC scope descriptions, applies that trade’s wage rates to this clean-up work.

MORE SPECIFIC LANGUAGE

The Power Line Construction Electrician scope has more specific language for work of this particular type and nature than the general language of the Laborers scope. Here, the more specific language will control rather than the general language.

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CONCLUSION

Looking at the type, nature and character of the work within the totality of the circumstances, I find and determine that the proper prevailing rates of wage for erecting, repairing and maintaining (including construction, deconstruction, modification and dismantling) of electrical transmission or distribution lines (including all related apparatus such as conductors, poles, insulators, transformers, switch gear or any other system components) are found under the Electricians – Power Line Construction trade. This is true whether the circuits and systems are energized or de-energized.

Thank you for this opportunity to describe the proper prevailing rates of wage for power line electrical work, including dismantling of power lines inclusive of conductors, poles and all other apparatus. The required prevailing wage rates are found under Electricians – Power Line Construction. Those wages are also required for all clean-up work associated with electrical transmission and distribution systems. Please do not hesitate to contact me with any further questions you may have.

Sincerely,



Jim P. Christensen
Industrial Statistician/Program Manager
Prevailing Wage

Enclosures

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 296-127-01320

Power line construction electricians.

For the purpose of the Washington state public works law, chapter 39.12 RCW, 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.

The work includes, but is not limited to:

- The moving of men, tools, or equipment. The sorting, loading and moving of materials from the first drop. The handling, assembling and erecting of all necessary materials.
- The trenching, digging, and backfilling of vaults, holes for poles and anchors (by hand or mechanical equipment), guying, fastening to the stub-in on concrete footings or pads, assembling of the grillage, grounding of all structures, the stringing and installation of transformers.
- Constructing, repairing and maintaining highway and street lighting systems and highway and street traffic signal systems.
- Trimming trees and brush prior to the construction of new power lines, during repair of damaged lines, or as part of routine maintenance of the lines (tree trimmers).
- All the cleanup required in connection with line construction electrician work.

All the classifications listed below work under the supervision of linemen and assist linemen.

(1) Groundmen. Performs the following tasks:

- Manual digging of pole holes, anchor holes and trenches.
- Assists in framing of poles, pulling guys.
- Assembles and erects fixtures.
- Tamping and compacting.
- Driving of 1/2 to 3/4 ton pickup truck.

(2) Head groundman. Performs the following tasks:

- Manual digging of pole holes, anchor holes, and trenches.
- Assists in framing of poles, pulling guys.
- Assembles and erects fixtures.
- Tamping and compacting.
- Driving of 1/3 to 3/4 ton pickup truck for material or man haul.

(3) Line equipment operators. They operate caterpillars, trucks equipped with winch and/or boom, hydraulically operated backhoes with or without front end loaders, mounted booms, and any other equipment that does not come within the scope of heavy equipment operators.

(4) Heavy line equipment operators. They operate any piece of equipment which, in accordance with manufacturer's recommended specifications is capable of operating with one hundred or more aggregate feet of boom, be it crane, backhoe, clam shell, drag line, or shovel.

[Statutory Authority: Chapter 39.12 RCW, RCW 43.22.270 and 43.22.051. WSR 00-15-077, § 296-127-01320, filed 7/19/00, effective 7/19/00.]

RCW 39.12.020

Prevailing rate to be paid on public works and under public building service maintenance contracts—Posting of statement of intent—Exception.

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. For a contract in excess of ten thousand dollars, a contractor required to pay the prevailing rate of wage shall post in a location readily visible to workers at the job site:

PROVIDED, That on road construction, sewer line, pipeline, transmission line, street, or alley improvement projects for which no field office is needed or established, a contractor may post the prevailing rate of wage statement at the contractor's local office, gravel crushing, concrete, or asphalt batch plant as long as the contractor provides a copy of the wage statement to any employee on request:

(1) A copy of a statement of intent to pay prevailing wages approved by the industrial statistician of the department of labor and industries under RCW 39.12.040; and

(2) The address and telephone number of the industrial statistician of the department of labor and industries where a complaint or inquiry concerning prevailing wages may be made.

This chapter shall not apply to workers or other persons regularly employed by the state, or any county, municipality, or political subdivision created by its laws.

[2007 c 169 § 1; 1989 c 12 § 7; 1982 c 130 § 1; 1981 c 46 § 1; 1967 ex.s. c 14 § 1; 1945 c 63 § 1; Rem. Supp. 1945 § 10322-20.]

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.]

RCW 19.28.261**Exemptions from RCW 19.28.161 through 19.28.271.**

(1) Nothing in RCW 19.28.161 through 19.28.271 shall be construed to require that a person obtain a license or a certified electrician in order to do electrical work at his or her residence or farm or place of business or on other property owned by him or her unless the electrical work is on the construction of a new building intended for rent, sale, or lease. However, if the construction is of a new residential building with up to four units intended for rent, sale, or lease, the owner may receive an exemption from the requirement to obtain a license or use a certified electrician if he or she provides a signed affidavit to the department stating that he or she will be performing the work and will occupy one of the units as his or her principal residence. The owner shall apply to the department for this exemption and may only receive an exemption once every twenty-four months. It is intended that the owner receiving this exemption shall occupy the unit as his or her principal residence for twenty-four months after completion of the units.

(2) Nothing in RCW 19.28.161 through 19.28.271 shall be intended to derogate from or dispense with the requirements of any valid electrical code enacted by a city or town pursuant to RCW 19.28.010(3), except that no code shall require the holder of a certificate of competency to demonstrate any additional proof of competency or obtain any other license or pay any fee in order to engage in the electrical construction trade.

(3) RCW 19.28.161 through 19.28.271 shall not apply to common carriers subject to Part I of the *Interstate Commerce Act, nor to their officers and employees.

(4) Nothing in RCW 19.28.161 through 19.28.271 shall be deemed to apply to the installation or maintenance of telephone, telegraph, radio, or television wires and equipment; nor to any electrical utility or its employees in the installation, repair, and maintenance of electrical wiring, circuits, and equipment by or for the utility, or comprising a part of its plants, lines, or systems.

(5) The licensing provisions of RCW 19.28.161 through 19.28.271 shall not apply to:

(a) Persons making electrical installations on their own property or to regularly employed employees working on the premises of their employer, unless the electrical work is on the construction of a new building intended for rent, sale, or lease;

(b) Employees of an employer while the employer is performing utility type work of the nature described in RCW 19.28.091 so long as such employees have registered in the state of Washington with or graduated from a state-approved outside lineworker apprenticeship course that is recognized by the department and that qualifies a person to perform such work;

(c) Any work exempted under RCW 19.28.091(6); and

(d) Certified plumbers, certified residential plumbers, or plumber trainees meeting the requirements of chapter 18.106 RCW and performing exempt work under RCW 19.28.091(8).

(6) Nothing in RCW 19.28.161 through 19.28.271 shall be construed to restrict the right of any householder to assist or receive assistance from a friend, neighbor, relative, or other person when none of the individuals doing the electrical installation hold themselves out as engaged in the trade or business of electrical installations.

(7) Nothing precludes any person who is exempt from the licensing requirements of this chapter under this section from obtaining a journey level or specialty certificate of competency if they otherwise meet the requirements of this chapter.

[2013 c 23 § 37; 2007 c 218 § 83; 2003 c 399 § 302; 2001 c 211 § 19; 1998 c 98 § 2; 1994 c 157 § 1; 1992 c 240 § 3; 1986 c 156 § 16; 1983 c 206 § 21; 1980 c 30 § 12. Formerly RCW 19.28.610.]

NOTES:

***Reviser's note:** Interstate Commerce Act, see, now, 49 U.S.C.A. Sec. 10101 et seq.

Intent—Finding—2007 c 218: See note following RCW 1.08.130.

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