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# REBOUND

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October 14, 2016

Mr. Jim Christensen  
Industrial Statistician & Prevailing Wage Program Manager  
WA Department of Labor & Industries  
PO Box 44540  
Olympia, WA 98504-4540

Dear Mr. Christensen:

Re: Scope of Work for Removal and Clean-up of Power Lines & Poles.

This letter requests a determination of the correct scope of work for the removal and associated clean-up of power lines and poles, whether the lines are energized or de-energized, attached or separated from the poles, downed or standing. Based on our research, we believe that all of this work falls under the Scope of Work and related prevailing wage established for Power Line Construction Workers – WAC 296-127-01320. I have communicated with both you and Laura Herman regarding this question but have not, thus far, received a firm response to my request. Because there are several projects coming up in the very near future which will require this work, a firm determination of the appropriate scope of work is an imperative.

This scope of work determination request was originally prompted by a very specific project involving the removal of old, ostensibly de-energized Power Lines and Poles for the Clallam County PUD. When contacted by the PUD, the department initially provided an informal advisement by telephone, based on the information that had been provided to the it at the time of the contact. At that time, believing it to be a standard clean-up operation, L&I allowed for the work to be performed under the Laborer's Scope of Work and related prevailing wage.

REBOUND and the IBEW Local 77 disagreed with the scope advisement and, since that time, have provided additional information and references to the department in support of our position that the work in question appropriately falls under the established scope and wage for Power Line Construction Workers. Because the agency did its due diligence in contacting the department for a scope clarification; however, it is our intent to apply any revised advisement or determination prospectively to upcoming Power Line Construction projects. It is not our intent to use any determination retrospectively. For the purposes of this request, the work would involve 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.

In the specific case of Clallam County, at some point in time in the past, poles were raised and high voltage lines were connected to them. The lines were energized. At some later time, these lines were no longer used and, ultimately, became de-energized when they were no longer connected. Their becoming de-energized was not the result of the specific grounding and dismantling processes required to de-energize power lines. The site of the Power Lines, as a whole, ceased being used. The poles and lines were simply left to the elements. Some of the poles are still standing, some are not. Some of the lines are still connected to poles, some are not. Some of the poles and lines are simply lying on the ground. The Clallam County project involved the necessary dismantling of any remaining attached lines and/or standing poles and, ultimately, the removal of all lines and poles and the final clean-up of the site.

**Scope of Work – Power Line Construction Workers:**

The Scope of Work for Power Line Construction specifically includes “all the clean-up associated with line construction electrician work.” There is no mention of the time period during which this construction may have taken place, or the time lapse between its use as an active carrier of power and any deactivation resulting in the lines becoming de-energized. There is no other scope of work that is specific to the clean-up associated with power line construction. Therefore, irrespective of whether the lines and poles are old or new, energized or de-energized, any and all clean-up work involving those lines and poles should have been performed under the Power Line Construction Scope of Work.

This coverage of all clean-up work under this scope is also consistent with other Electrical Scopes of Work such as those for Inside Wiremen and Electronic Technicians. No other trade/scope can perform this work, thus demonstrating the specific and unique characteristics electrical power and currents and the specialized knowledge necessary to work with those materials. This interpretation is consistent with prior determinations by the department [See Selover 03/07/2012 & 09/13/2012] which hold that all of the handling of electrical equipment and materials falls within the specific purview of electrical workers irrespective of whether the equipment and/or materials are active, energized, or de-energized.

In performing our review of the Scopes that might be considered as potentially covering the work of dismantling, removal and clean-up of de-energized power lines and poles, we looked at three basic elements:

1. Language of potentially applicable Scopes of Work;
2. Collective Bargaining Agreement Scopes of Work;
3. Safety Regulations as related to Scopes of Work.

There are four scopes of work which have been considered as potentially applicable to all or some of the removal and clean-up work associated with de-energized power lines and poles. This includes both separated de-energized lines and poles that may be simply abandoned and left lying on the ground, as well as de-energized lines that are still attached to poles which may also be on the ground, or may still be standing. It also includes any work involved in hauling these materials away and all associated clean-up work.

The Scopes considered are: **Power Line Constructors, Laborers, Truck Drivers and Operating Engineers**. However, as will be demonstrated, all of the work and equipment that may be involved in the dismantling and clean-up of Power Lines and Poles is covered with specificity in the Groundmen, Head Groundman, Equipment Operator and Heavy Equipment Operator sub-classifications of the Power Line Construction Worker scope.

**Scope of Work for Power Line Constructors - WAC 296-127-01320: “[A]ll the cleanup required in connection with line construction electrician work [emphasis added.]”** There is no reference to the time period during which that construction might have taken place, in what condition the lines and poles are in when they are being removed, or where they might be located. Rather, consistent with the other electrical scopes, the specific note of the “clean-up” work itself recognizes the special expertise required to perform the work, as well as the dangers and related regulations associated with this work. So, while we do understand that in the prevailing wage arena, any workers can perform the work, with the application of the Line Construction scope, they would have to be paid the wages established under that scope.

**Scope of Work for Laborers, WAC 296-127-01344:** Currently, because clean-up work is frequently associated with the Laborer's scope, and because the department's initial advisement allowed for the use of the Laborer's scope and wage, the matter of whether the clean-up work associated with Power Lines and Poles can be performed under the scope of work and prevailing wage rate established for Laborers must be questioned.

There is precedent for certain scopes of work (Inside Wireman; Plumber; Elevator Constructor e.g.) to allow only the trade involved in the construction to perform the clean-up work associated with that construction. Power Line Constructors is among the specialized scopes (and trades) with this requisite.

**Laborer Scope of Work:**

The scope of work for Laborers, while it does include "General Clean-up," is very specific about the circumstances in which the scope can be applied to perform clean-up work. As stated in the scope, the work includes:

- General cleanup required after damage caused by water or fire.

*Assume that there is no water or fire damage associated with the Power Line clean-up.*

All clean-up work required in connection with the above [work defined in the Laborer scope] work. Clean tools, equipment, materials and work areas:

*The only reference in the Laborer Scope of Work to any electrical materials is "the placement and testing of plastic conduit for electrical cable, when the conduit is buried underground." Therefore, under this section, this is the only electrical clean-up work for which the Laborers scope may be considered, assuming there is no wire in the conduit.*

(1) When the cleanup is performed for more than one trade (usually employed by general contractor).

*Power Line Construction is acknowledged as being performed by a single trade – the Power Line Constructors who erect the site; therefore, this section cannot be applied.*

(2) When assisting those trades for which laborers have been specifically designated as tenders, e.g., carpenter tender, cement finisher tender, etc.

*There are no Laborer classifications designated to assist Power Line Constructors. Any work that may be "associated" with the Laborer scope is covered under the Groundman and Head Groundman sub-classifications, which fall exclusively under the scopes of work established for Power Line Constructors and Inside Wiremen.*

The removal of de-energized high voltage lines and poles does not fit into any of the clean-up work established under the Laborer scope and, because it is included with specificity in the Lineman scope, it is the Lineman scope that should be applied. *Expressio unius est exclusio alterius.*<sup>i</sup>

**Scope of Work for Truck Drivers – WAC 296-127-\_\_\_\_\_:** While a draft scope of work has been provided to the Scope of Work Sub-committee, and wages have been established for the work of Truck Drivers, there has been no scope of work formally adopted by the state for this work; and while there is a wage established for "Other Trucks," absent a scope, this generality cannot be interpreted as being applicable to special circumstances where the scopes make note of the specific circumstances and specific types of trucks that may be utilized. Therefore, because the Groundman and Head Groundman sub-classifications of the Linemen scope provide for the driving of ¼; ½; and 1½; ton pick-up trucks for the specific purpose of hauling and moving materials and people on Line Construction job sites, there is no other scope that can be better applied for this purpose on a Powerline Construction Project – inclusive of the clean-up work associated with that project – which would include hauling materials.

**Scope of Work for Operating Engineers – WAC 296-127-01352:** This scope provides for the work of operating both self-propelled and stationary equipment and notes the types of job sites and related situations in which the operation of this equipment would fall. These broader categories, which are covered with specificity in the Scope are: Heavy & Highway, Industrial Complexes, Refineries and Incidental Structures, Offshore Pipelines, and Buildings. This does not mean; however, that they are necessarily limited to those areas.

There is no note at all of any clean-up of the work associated directly with Power Equipment operation. This is likely because any clean-up that may require the use of the power equipment on other than an electrical clean-up site, would be performed under the Operating Engineers Scope. There is no conflict with the Power Line Scope in the performance of this work.

Because the Line Equipment and Heavy Line Equipment Operator sub-classifications of the Power Line Construction scope also provide for the operation of certain specific types of power equipment, when it is specifically associated with Power Line Construction, we may infer that, while it likely also falls under the scope for Operators, the matter becomes one of the payment of a prevailing wage rate that complies with the law. In this specific instance, if the Power Line rate is lower than the Operator rate, it may be utilized in these highly specific circumstances. Of course, when the equipment being used is not listed with specificity in the Power Line Constructors Scope, it would fall under the scope and wage established for Operators.

The specifically identified equipment in the Power Line scopes includes:

... caterpillars, trucks equipped with winch and/or boom, hydraulically operated backhoes with or without front end loaders, mounted booms, and 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.

The specific inclusion of Line Equipment Operators and Heavy Line Equipment Operators within the Scopes of Work established for both the Power Line Constructors and the Inside Wiremen speaks to the extreme hazards associated with any work performed within a certain proximity of electric lines, whether energized or de-energized. Work involving potentially dangerous power lines requires specific knowledge and skills.

**CBA – IBEW Locals 77, 125, 483, 659 [02/01/2015 – 01/31/2018]:**

The Collective Bargaining Agreement for Power Line Constructors is prevailing in all of Washington's 39 Counties. Therefore, the terms of the agreement are also prevailing for public works purposes.

WAC 296-127-013(2)(b) authorizes the department to utilize CBAs as authoritative sources in creating Scopes of Work. It follows then that these authoritative sources should constitute elements of consideration when developing new interpretations of the existing scopes of work – especially when no previous, specific determinations of coverage have been made.

Under subsection 5 of the “Purpose and Scope of This Agreement” of the Northwest Line Constructors Agreement [CBA,] the Scope of Work for Power Line Constructors states:

...it is understood the scope of this Agreement shall include not only new installation work but shall also govern the repair, maintenance, or dismantling of such structures, lines or equipment; the handling and operating of all equipment used to transport workmen, tools and/or materials on the job site, as well as the equipment used to move, raise or place materials used in the outside branch of the Electrical Industry, and shall be performed by workers under this Agreement [emphasis added.]

It is understood on dismantling of structures that after the structure has hit the ground, the remainder of the dismantling, if any, may be done by Groundmen and Apprentice applicants under the supervision of a Foreman who is a Journeyman Lineman. Hauling from the right-of-way to the first drop shall be performed by employees covered under the terms and conditions of this Agreement [emphasis added].

The language of the agreement moves directly from dismantling to hauling. Clearly, the element of clean-up falls precisely within the sequence of events contemplated within the CBA. After dismantling, the moving and hauling becomes the clean-up operation which is, again, covered under both the Scope and the CBA.

#### **Prevailing Wage Scopes and Other Considered Laws:**

We fully recognize that the prevailing wage scopes of work, themselves, do not necessarily contemplate the skill levels of the workers performing the work, or the licensing and safety requirements necessary to perform the work described in the Scope. Additionally, we fully understand that non-compliance with these requirements (Safety, Licensing, etc.) would not constitute violations of the prevailing wage law, as long as the correct wages are paid for the scope of work performed. But within the schema of prevailing wage law, we also note that the industrial statistician is directed to be cognizant of these other regulations and take note of them when establishing new scopes of work. It may well be argued that a new interpretation of an existing scope serves the same purpose as writing or amending a scope.

WAC 296-127-019(8)(b)(3) provides for the consideration of “changes or additions in licensing, safety, or other requirements of other state agencies, department or divisions” when alternative methods are used to establish a scopes. This reasoning can easily be extended to new interpretations of existing scopes, or policies as to their applications, where no such previous interpretations existed. Certainly, the utilization of these factors, must be considered, at the least, to be a part of the decision making process in determining the applicability of a given scope to a given body of work.

To further support the concept that L&I, as an enforcement agency, functions as a whole, and not as individual sections that are not cognizant of the regulations of other sections, it should be noted that strikes to contractors for violations of any of L&I’s regulations are cumulative from different divisions for the purposes of debarment. This fact establishes a clear departmental policy of looking at contractor adherence to all L&I regulations as part of a greater whole. In this way, all of the divisions: compliance, safety, fraud, industrial insurance, apprenticeship, employment standards & prevailing wage, work together as a single unit to ensure that contractors comply with all required laws, or can be debarred if they don’t.

As with Contractor Compliance and Licensing the same adherence to Safety Regulations holds true. While these regulations may not be explicitly included in the Scopes of Work, their omission does not mean that they can necessarily be excluded as factors in establishing new scopes of work or asserting new interpretations or policies regarding existing scopes of work.

In making determinations of coverage under a given scope L&I makes the assumption that, unless otherwise advised, the contractor already meets all of the other requirements established by the department. This assumption is the only way to ensure that the scopes of work and related prevailing wage rates are established, interpreted and utilized objectively.

**Safety Issues:**

As much as this request is being submitted to you as a prevailing wage scope of work issue, consideration must be given to the safety issues involved under WAC 296-45. The state rules recognize the danger of working on de-energized lines that may inadvertently become re-energized (Wind, Lightning, etc.) and includes requirements for grounding and inspection in its rules.

WAC 296-54-529(5) states that “All overhead wires shall be considered energized unless the line owner or the electrical utility authorities ensure that it is not an energized line and has been visibly grounded.” The lines in the Clallam County case had not been grounded. OSHA regulations also require employees to treat all de-energized power lines as energized parts,<sup>ii</sup> prohibiting employees from working on exposed de-energized parts until a qualified worker has tested the parts to verify that they have, in fact, been fully de-energized in accordance with the law. In this case, whether still attached to poles, or laying on the ground, the task of grounding the lines must be performed prior to removal of those lines. This required grounding work also falls under the Scope of Work for Power Line Constructors, and is in their CBA.

Therefore, reading the safety regulations and the scopes of work harmoniously, because even de-energized the lines must be treated as energized, all clean-up work related to their construction, irrespective of whether that construction is recent or decades earlier, must fall directly within the scope of Power Line Constructors. The requirement of grounding and the hazardous potential for the re-energizing of line causes it to fall directed within this scope. There is no other scope that even vaguely refers to this work.

The element of safety is so critical to the performance of this work that the NLRB ruled on the issue. Although not binding on the state, it is worthy to note that NLRB Certification, Case No. 36-RC-815, to which the Power Line Workers prevailing CBA refers, and to which the current NLRB Case 36-CD-119 refers, because of the dangers involved in operating machinery so close to power lines, specifically awards the operation of certain machinery on Power Line sites to the Power Line Construction Workers. The case is attached for your convenience.

While I realize that the prevailing wage scopes of work are not subject to the laws, rules, and regulations of other divisions or sections of the department of labor and industries or even of the USDOL, OSHA or other federal agencies, their rules must be observed in carrying out the work at hand.

Because removal of the power lines requires specific types of grounding and handling, awareness of these regulations, as well as the skills required to adhere to them, must certainly be given weight when determining the application of a given scope of work. It would be negligent to fail to ask whether special training, especially in light of the extreme danger of electrocution, is required when determining which scope of work would apply to a given body of work. Hence, consideration must be given to the related requirements for the performance of the work contemplated by the Scope.

As noted in my previously, although this request was triggered by a specific project that has already been bid and awarded based on the Laborer Scope of Work and related wage, we are not requesting that this determination, or interpretive policy guideline, be retrospective. Rather, especially in light of the extensive Power Line removal and clean-up work that will be taking place in the very near future, we are taking a prospective approach to this work so that it can be properly classified in the future.

As you are already aware of this issue and the related questions from previous communications, I hope to hear from you in the very near future regarding the assignment of the appropriate Scope for the work described – the clean-up of power-lines and poles.

If you need any additional information to assist you in making this determination or, if I may be of any further assistance, please do not hesitate to contact me.

Sincerely,



Miriam Israel Moses  
Executive Director

cc: Lou Walter, Business Manager, IBEW Local 77  
Rick Strait, Business Agent, IBEW Local 77  
Ernie LaPalm, Deputy Director, WA Dept. of Labor & Industries  
Elizabeth Smith, Assistant Director, WA Dept. of Labor & Industries  
REBOUND Board of Directors

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<sup>i</sup> a principle in statutory construction: when one or more things of a class are expressly mentioned others of the same class are excluded.

<sup>ii</sup> OSHA 1910.269(d)(1) *Hazardous energy control (lockout/tagout) procedures. Application.* The provisions of paragraph (d) of this section apply to the use of lockout/tagout procedures for the control of energy sources in installations for the purpose of electric power generation, including related equipment for communication or metering. Locking and tagging procedures for the deenergizing of electric energy sources which are used exclusively for purposes of transmission and distribution are addressed by paragraph (m) of this section.

1910.269(m) <sup>(1)</sup> *Deenergizing lines and equipment for employee protection. Application.* Paragraph (m) of this section applies to the deenergizing of transmission and distribution lines and equipment for the purpose of protecting employees. See paragraph (d) of this section for requirements on the control of hazardous energy sources used in the generation of electric energy. Conductors and parts of electric equipment that have been deenergized under procedures other than those required by paragraph (d) or (m) of this section, as applicable, shall be treated as energized. [Emphasis Added.]