



STATE OF WASHINGTON
DEPARTMENT OF LABOR AND INDUSTRIES

Prevailing Wage
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April 8, 2013

James G. Zissler
Littler, Mendelson, P.C.
One Union Square
600 University Street, Suite 3200
Seattle, WA 98101

Re: Scope of work question – Valve and Valve Actuator Maintenance/Repair/Refurbishment,
Energy Northwest – Crane Nuclear – Columbia Generating Station

Dear Mr. Zissler:

Thank you for your September 17, 2012 letter on behalf of your client, Crane Nuclear, inquiring about the correct prevailing wage scope of work (trade and occupation classification) to be used for certain work at Energy Northwest's Columbia Generating Station. Thank you also for meeting with us on December 4, 2012 to further articulate the basis for your request. I apologize that it has taken me longer than anticipated to provide you with a response. However, as you know, the work at issue is complex and the additional time was necessary in order to carefully consider the matter. I appreciate your patience.

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 attached document, "*Prevailing Wage Determination Request and Review Process*."

In your September 17th letter you make the following statements I will specifically address:

The Millwright classification is appropriate for the work done under the Contract because: (1) the Millwright classification BEST Describes the work performed, and has been used by prior contractors with the Department's approval for identical work; (2) Crane relied in good faith upon information provided by the awarding agency prior to Crane commencing work; (3) the Awarding Agency, Energy Northwest, failed to specifically designate the statutorily required prevailing wage information in the Contract; and (4) the Department has advised Energy Northwest and other awarding entities that they are not required to designate the applicable prevailing wage in contract documents, contrary to statutory requirements.

I will respond to each of these assertions and carefully examine the scope of work question you raise. Since I do have no knowledge of the alleged interactions between Energy Northwest and your client, Crane Nuclear, I will not address those matters.

Department of Labor & Industries (L&I) Approval of Intent and Affidavit Forms

In reviewing and approving Intent and Affidavit forms, we rely on the information provided by the contractor filing the forms and we attach a disclaimer to those forms to that effect. Crane Nuclear filed their forms on-line. The disclaimer message that was accepted by Crane Nuclear when it filed its forms using L&I's on-line Prevailing Wage Intent and Affidavit (PWIA) forms filing system is attached. *See attached "Disclaimer in PWIA."*

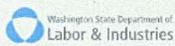
This disclaimer clearly informs the person filing the form that L&I approval of an Intent or Affidavit is not verification that the contractor (Crane Nuclear) used the correct trade and occupation classification for the work. While as part of the approval process L&I checks the wage rate stated, confirming that it corresponds with the effective date provided and the trade and occupation(s) listed by the contractor, L&I does not perform a detailed investigation of each form. The contractor is responsible for payment of the correct prevailing wage rate for each trade and occupation classification used.

You identify another contractor that performed work between 2005 and 2007 for Energy Northwest. Their Affidavit #147015 listed Millwrights and Laborers as the applicable worker classifications. You say that L&I's approval of the form constitutes approval of the use of the Millwrights wage rate for the work performed. As explained above, this is not accurate. The approval was not an affirmation that the contractor used the correct scope of work or trade and occupation classification. Rather, the form approval verified the wages were correct for the trades that the contractor listed.

Bid and Contract Statements of Prevailing Wage Rates

Your letter discusses in several places the requirement for the public contract awarding agency to provide a provision stating the required prevailing rate of wage in the bid and contract documents as provided in [RCW 39.12.030](#) and in [WAC 296-127-011\(5\)](#). As you indicate, the statute and rule are applicable regulations. You say the department informed Crane Nuclear in prevailing wage trainings "that they are *not* required to provide the applicable prevailing wage rates in the contractual documents." That statement misconstrues our communications.

In prevailing wage workshops we explain to public agencies two possible ways to comply with the law's requirements. They may meet their obligations by providing to contractors: (1) a printed list of all the possible rates of wage, or (2) a link to look up that list of the possible rates of wage on the L&I web site along with all the information necessary to look up the applicable rates. Here are the PowerPoint slides used for such workshops:



Contract Specifications – Prevailing Rates of Pay

Bid specifications now may provide the required prevailing wage rate information in this alternate format:

- Provide the URL to the Dept of L & I's prevailing wage rates
- Identify the exact wage publication date to use
- State the county in which the public works project is located
- Specify a copy is available for viewing in your office
- Explain that your agency will mail a hard copy upon request
- Retain a printed version of the rates as part of your records

Contract Specifications - Helpful Notes:

- The historical practice of inclusion of a list of the applicable prevailing rate(s) of wage rates in the bid and contract specification documents continues to be an option
- Reference the county where the work is to be performed
- Include in the specifications any specific scopes identified, and/or if residential rates (WAC 296-127-010(9) and RCW 39.12.100.) are permitted
- Provide all information that otherwise would be physically included in the specifications

Please note the provision stating the required prevailing rates of pay may be a list including all the trade and occupation classifications. Historically, that has been the norm for such public agency contract documents and it satisfies the requirements in statute. The contractor is responsible for using the correct trade and occupation classification(s) for the work their employees perform. See [RCW 39.12.020](#). If the contractor needs guidance on the correct wage by trade and occupation classification, questions should be directed to the Industrial Statistician. See [RCW 39.12.015](#).

Scopes of Work (Rates of Wage) for Valve and Valve Actuator Maintenance and Repair or Refurbishment at the Columbia Generating Station

The referenced work involves maintenance and repair or refurbishment of valves and valve actuators in the nuclear power plant's piping system. Crane Nuclear provided a document describing the work.

In April, 2012 Reasa Pearson, L&I Industrial Relations Agent reviewed an Affidavit of Wages Paid form (Affidavit #385892) submitted by Crane Nuclear for a \$9,838,049.00 contract with Energy Northwest. The initial Affidavit listed only the Electrical Fixture Maintenance Workers ([WAC 296-127-01325](#)) trade and occupation classification for work performed under that contract. Ms. Pearson indicated that the Electrical Fixture Maintenance Worker classification was incorrect. That scope of work description is attached. See "Electrical fixture maintenance workers" ([WAC 296-127-01325](#)). Since the work in question does not correspond to any of the work described in [WAC 296-127-01325](#), use of the Electrical Fixture Maintenance Workers trade and occupation classification for the work you describe is not correct. Ms. Pearson identified the Plumbers, Pipefitters, and Steamfitters ([WAC 296-127-01364](#)) as the correct wage and scope for most of the work with some work paid at the Inside Electrician ([WAC 296-127-01323](#)) rate likely. Both those scope of work descriptions are attached. Affidavit #385892 is still in correction notice status, with no trade and occupations listed.

In a September 17, 2012 letter to Ms. Pearson, you expressed the opinion that the correct prevailing wage scope of work and trade and occupation classification for this valve and valve actuator work is Millwrights, [WAC 296-127-01351](#).

On December 4, 2012, we met with you at L&I's Tumwater location to review the type and nature of the work at issue. The meeting included Ron Butler, Richard Shaff, Juan (Angel) Melendrez, and John Suing, all representing Energy Northwest; Kirk Kelhofer from Crane Nuclear; and you as the attorney for Crane Nuclear. You were all seeking a determination by the Industrial Statistician of the correct prevailing rate of wage and corresponding scope of work or trade and occupation classification for the valve and valve actuator work performed at the Columbia Generating Station. The position presented to L&I in your letter and in the meeting provided some rationale for your belief that the Millwrights, [WAC 296-127-01351](#), would be correct for all the work required for valve and valve actuator maintenance, repair, and refurbishment work at Columbia Station.

The scope of work and correct prevailing rate of pay question will be guided by the prevailing wage statute, rules, case law and legislative history including the scope of work descriptions adopted as rule for each prevailing wage trade and occupation classification. I value your opinion and thoughts on the scope of work issue and have carefully considered the information you provided. My staff and I also supplemented the information you provided with additional research. Your web site and other web sites, including the URL links listed below provided useful background:

<http://enertech.cwfc.com/brandproducts/spokes/PDF/LBernard/L.Bernard%20Nuclear%20Qualified%20Actuators%20Catalog.pdf>
<http://www.cranenuclear.com/services/actuator.php>
http://www2.emersonprocess.com/siteadmincenter/PM%20Valve%20Automation%20Documents/Valve_Automation/Magazine_feature/Valve_Automation_FocusOn_May2010.pdf
http://www.focus-nuclear.com/pdf/TP_AUMA.pdf

We sought similar input from labor groups that may have knowledge of work at Columbia Station. Contacts for information were made with Dave Rube of the Pacific Northwest Regional Council of Carpenters (Millwrights), Randy Walli of the United Association of Plumbers and Pipefitters, Local 598, Pete Marsh, IBEW Local 112, and Thomas McMahon, IBEW Local 77.

For more background information about work at Columbia Station we also looked at the collective bargaining agreement between Energy Northwest and IBEW Local 77, an old (1975) jurisdictional agreement between the United Brotherhood of Carpenters and the United Association of Plumbers and Pipefitters relating to turbine room work, a UA Local 598 copy of the Rochester Decision on work jurisdiction, and the AFL-CIO Green Book on the plan for settlement of jurisdictional disputes in the construction industry.

Your letter indicates that Mr. Thomas McMahon, Business Agent, IBEW Local 77 advised you on both Local 77 contract issues and on prevailing wage issues. Mr. McMahon tells us he recalls sharing contract information with you, but not any determination of the [chapter 39.12 RCW](#) prevailing wage rate of pay. He indicates the Local 77 agreement at Energy Northwest has a \$38.06 hourly wage, not including the benefits that add to that rate. Although I will not advise you on how the IBEW 77 contract with Energy Northwest will function, I will help with your questions about [chapter 39.12 RCW](#), consistent with the provisions of [RCW 39.12.015](#):

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

Please note that the prevailing wage worker classifications or scope of work descriptions are rules that guide us on the correct prevailing wage rate by trade and occupation classification, but that guidance on the rate of wage required under [chapter 39.12 RCW](#) does not regulate who may or may not be employed to perform the actual work. Put simply, a Building Service Employee (janitor) when performing work that requires a Carpenter rate of pay can perform that work but must be paid at the Carpenter prevailing wage rate of pay for such work.

Please see the attached scope of work description for Millwrights ([WAC 296-127-01351](#)), which is the scope of work description you assert applies to the work at issue.

As you will note, the general language in the Millwright ([WAC 296-127-01351](#)) scope of work deals with installation, alignment, assembly, dismantling, and moving of machines and equipment. There is more specific language about aligning machines and equipment and making precision measurements. The Millwright scope does not specifically mention maintenance or repair but the scope can be read to include such work.

The attached Plumbers, Pipefitters, and Steamfitters scope of work ([WAC 296-127-01364](#)) has general language about equipment and specific language about cutting, threading, bending and joining pipes; as well as language specific to assembling, installing, and repairing valves, pipe fittings, and pumps in industrial plants and testing piping systems.

The attached Inside Wireman Electrician scope of work description ([WAC 296-127-01323](#)) has language about work to plan, install and repair conduit, wiring, electrical fixtures, apparatus and control equipment that would include the handling of electrical materials, equipment, and apparatus on the job site, work on electrical conduit and raceways, pulling, splicing, and connecting wires, and work on switches, relays, junction boxes, circuit breaker panels, and related accessories and controls.

Our study of the work performed for the valve and valve actuator repair at Columbia Station finds that there are instances in which the scope of work descriptions for Millwrights, Inside Wireman Electrician, and Plumbers, Pipefitters, and Steamfitters may each have some application. There are also some areas in which the work overlaps and other areas in which one scope has specific language that controls (rather than the more general language in another scope).

Specific language in the Plumbers, Pipefitters, and Steamfitters scope includes work on valves, pipes, and fittings. That specific work is not shared with any other scope, but instead must be performed at the prevailing wage rate for Plumbers, Pipefitters, and Steamfitters.

Specific language in the Inside Wireman Electrician's scope includes work on wiring, conduit, switches electrical controls, and connecting and disconnecting wiring in buildings and adjacent yards. That specific work is not shared with any other scope, but instead must be performed at

the prevailing wage rate for the Inside Wireman Electrician. Specific language in the Millwright's scope includes precision measurement, and alignment of machinery and equipment.

The Millwrights scope of work also contains general language indicating the *possibility* of overlap with the Inside Wireman Electrician, and Plumbers, Pipefitters, and Steamfitters scopes of work, depending on the full facts, including the specific equipment, apparatus, or control equipment involved. The Millwright scope's general language, at least for some work in an industrial establishment, is broader than either the Inside Wireman Electricians scope (where the work would generally be on electrical aspects of equipment or materials) and also broader than the Plumbers, Pipefitters, and Steamfitters scope (where the work would generally be on piping systems and related equipment) since the Millwright would be able to work on machinery and equipment that may have some relation to electrical and piping systems as long as the work does not include any work that is specific to only one of the other scopes (the Inside Wireman Electricians or the Plumbers, Pipefitters, and Steamfitters scope).

Specific Examples of Wage Rates Applicable to Valve and Valve Actuator Maintenance and Repair or Refurbishment at the Columbia Generating Station

Let's look, in a roughly sequential order, at some examples of the wage rates applicable to this work to repair valves and valve actuators at Columbia Generating Station. The use of trade names here describes the prevailing wage rate required for the work:

Inspecting and performing precision measurements that evaluate the condition of a valve is correctly compensated at the Millwrights prevailing wage rate.

Wiring and using certain line voltage test equipment that evaluates the valve and actuator performance by measuring thrust and torque is correctly compensated at the Inside Wireman Electrician prevailing wage rate.

Removing the actuator from the valve after any electrical wires are disconnected is correctly compensated at the Inside Wireman Electrician; Plumbers, Pipefitters and Steamfitters; or the Millwrights prevailing wage rate.

Removing, replacing, or repairing a valve in a piping system is correctly compensated at the Plumbers, Pipefitters and Steamfitters prevailing wage rate.

Constructing, changing, repairing, and connecting and disconnecting conduit and wiring to control devices in the nuclear power plant is correctly compensated at the Inside Wireman Electrician prevailing wage rate.

Performing repairs on the internal components of mechanical, electric, pneumatic, or hydraulic valve actuators is correctly compensated at the Millwrights prevailing wage rate.

Performing electrical repairs on electric valve actuators is correctly compensated at the Inside Wireman Electrician prevailing wage rate.

Performing repairs on pneumatic systems internal or external to the valve actuators is correctly compensated at the Plumbers, Pipefitters, and Steamfitters prevailing wage rate.

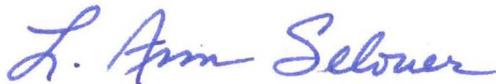
Precision alignment of parts is correctly compensated at the Millwrights prevailing wage rate.

Although there are significant amounts of the valve and valve actuator work which may be compensated at the Millwrights prevailing wage rate, as noted above I was not able affirm your position that all the work was appropriate for application of the Millwrights prevailing wage rate. Rather, there are some significant electrical aspects to this work that would need to be compensated at the Inside Wireman Electrician prevailing wage rate and also significant parts of the valve and piping work that would need to be compensated at the prevailing wage rate for Plumbers, Pipefitters and Steamfitters.

As you can see, the specific facts of the situation are vitally important to the correct prevailing wage answer. If the facts vary, the answer could be different.

I hope this information is helpful. Thank you again for your patience in awaiting this determination. If you have additional questions, please let me know.

Sincerely,



L. Ann Selover
Industrial Statistician/Program Manager
Ann.Selover@Lni.wa.gov
(360) 902-5330

Attachments

cc: Kirk Kelhofer, Crane Nuclear
Ron Butler, Energy Northwest
Richard Schaff, Energy Northwest
John Suing, Energy Northwest
Juan (Angel) Melendrez, Energy Northwest
Dave Rube, Pacific Northwest Regional Council of Carpenters (Millwrights)
Randy Walli, United Association of Plumbers and Pipefitters, Local 598
Pete Marsh, IBEW Local 112
Thomas McMahon, IBEW Local 77
Robert Koshman, L&I Industrial Relations Agent

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:

L. Ann Selover
Industrial Statistician/Program Manger
Department of Labor & Industries
Prevailing Wage
P O Box 44540
Olympia, WA 98504-4540
Ann.Selover@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.

Disclaimer in PWIA:

By accepting below, I

1. Certify that I am an authorized representative of the company for which I submit Intents and Affidavits through the Prevailing Wage Intent & Affidavit system.
2. Certify that all information I provide is correct and that all workers are paid no less than the prevailing wage rate as determined by the industrial statistician of the Department of Labor and Industries.
3. Understand that contractors who violate prevailing wage laws, i.e. incorrect classification/scope of work, improper payment of prevailing wages, etc., are subject to fines and/or debarment and will be required to pay back wages owed to workers.
4. Approval of Intents and Affidavits will be based on the information provided by you. It does not signify L&I approval of the classifications of labor used by the contractor.

WAC 296-127-01325.

Electrical fixture maintenance workers.

For the purpose of chapter [39.12](#) RCW, Washington state prevailing wage law, the prevailing wage for electrical fixture maintenance worker is required for the following work:

Cleaning of all types of lighting fixtures, luminous ceilings, all types of diffused areas and ceiling lighting. The work also includes replacement of lamps, ballasts, sockets and the installation of energy efficiency upgrades. This work must be limited to nonresidential fixture bodies, but may also include replacement or retrofitting of remote located ballasts with approved products.

Work beyond that which is described above must be paid at another electrical classification such as inside wireman electrician or residential electrician. Electrical fixture maintenance worker does not include installation of new fixtures or branch circuits, movement or relocation of existing fixtures, or alteration of existing branch circuits.

Millwrights.

For the purpose of the Washington state public works law, chapter [39.12](#) RCW, millwrights install machinery and equipment according to layout plans, blueprints, and other drawings in industrial establishments, using hoists, lift trucks, hand tools and power tools. They read blueprints and schematic drawings to determine work procedures.

The work includes, but is not limited to:

Dismantle machines, using hammers, wrenches, crowbars, and other hand held tools.

Move machinery and equipment, using hoists, dollies, rollers, and trucks.

Assemble and install equipment, such as shafting, conveyors, and tram rails, using hand tools and power tools.

Construct foundation for machines, using hand tools and building materials, such as wood, cement, and steel.

Align machines and equipment, using hoists, jacks, hand tools, squares, rules, micrometers, and plumb bobs.

Assemble machines and bolt, weld, rivet, or otherwise fasten them to foundation or other structures, using hand tools and power tools.

[Statutory Authority: Chapter [39.12](#) RCW, RCW [43.22.270](#) and [43.22.051](#). 00-15-077, § 296-127-01351, filed 7/19/00, effective 7/19/00.]

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](#). 00-15-077, § 296-127-01364, filed 7/19/00, effective 7/19/00.]

WAC 296-127-01323

Inside wireman electrician.

For the purpose of the Washington state public works law, chapter [39.12](#) RCW, inside wireman electricians plan the layout, install and repair conduit, wiring, electrical fixtures, apparatus, and control equipment in buildings and adjacent yards to provide electricity for power and lighting.

(1) They assemble, install and maintain all electrical lighting, electric heating and cooling equipment, standby motor generators, electric heat pumps, under-floor duct and luminous ceilings. They install, repair and maintain highway and street lighting systems and highway and street traffic signal systems.

The work includes, but is not limited to:

- The handling and moving of any electrical materials, equipment and apparatus on the job site.
 - Welding, burning, brazing, bending, drilling and shaping of all copper, silver, aluminum, angle iron and brackets to be used in connection with the installation and erection of electrical wiring and equipment.
 - Measuring, cutting, bending, threading, forming, assembling and installing of electrical conduit, using such tools as hacksaw, pipe threader and conduit bender.
 - Pulling wiring through conduit.
 - The installation of conduit and interduct raceways for fiber optic cable and the pulling of fiber optic cable through these raceways, except telephone conduit and cable.
- Cutting holes in floors and walls for electrical conduit:
- With point and hammer.
 - Core-drilled.
 - Chasing and channeling necessary to complete any electrical work, including the fabrication and installation of duct and manhole forms incidental to electrical installation.
 - Splicing wires by stripping insulation from terminal leads with knife or pliers, twisting or soldering wires together and applying tape or terminal caps.
 - Installation and maintenance of lighting fixtures.
 - Connecting wiring to lighting fixtures and power equipment.
- Assembling and installing of conduit switches, relays, junction boxes, circuit breaker panels, and related accessories and controls.
- Testing continuity of circuit to insure electrical compatibility and safety of components.
 - All cleanup required in connection with electrical work.

(2) The following power line construction classifications may assist journeymen wireman in the installation, repair and maintenance of highway and signal lighting systems and highway and street traffic signal systems:

(a) Groundmen.

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

(b) 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 or 3/4 ton pickup truck for materials or man haul.

(c) Line equipment operators. 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.

(d) Heavy line equipment operators. 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 or clam shell, drag line, or shovel.

[Statutory Authority: Chapter [39.12](#) RCW, RCW [43.22.270](#) and [43.22.051](#). 00-15-077, § 296-127-01323, filed 7/19/00, effective 7/19/00.]

WAC 296-127-01323.



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September 17, 2012

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Prevailing Wage Program
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Olympia, WA 98504-4540

Re: Crane Nuclear
Energy Northwest
Columbia Generation Station
Contract# 330757

For Settlement Purposes Only/Not To Be Used For Any Other Purpose

Dear Ms. Pearson:

Pursuant to our discussion, the purpose of this letter is to provide Crane Nuclear's ("Crane") basis for its determination that the Millwright classification is the correct Prevailing Wage classification for the work performed at the Columbia Generation Station under Contract #330757 ("the Contract"). Crane appreciates your willingness to consider this information.

I. INTRODUCTION

As I mentioned during our discussion, the Awarding Agency, Energy Northwest, has advised Crane that it has determined that Millwright is the proper classification.

Crane is aware, of course, that the Department of Labor & Industries ("Department") initially determined that at least some of the work performed under the Contract should be, in the Department's opinion, classified as "Plumber/Pipefitter/Steamfitter." Notwithstanding the Department's initial determination, Crane submits this letter to continue meaningful dialogue with the Department to resolve the matter in a mutually agreeable manner and without the necessity of litigation.

The Millwright classification is appropriate for the work done under the Contract, because: (1) the Millwright classification BEST Describes the work performed, and has been used by prior

contractors with the Department's approval for identical work; (2) Crane relied in good faith upon information provided by the awarding agency prior to Crane commencing work; (3) the Awarding Agency, Energy Northwest, failed to specifically designate the statutorily required prevailing wage information in the Contract; and (4) the Department has advised Energy Northwest and other awarding entities that they are not required to designate the applicable prevailing wage in the contract documents, contrary to statutory requirements.

II. BACKGROUND

Crane worked closely with Energy Northwest and the Local Union, IBEW Local 77, in particular, Local 77's Business Agent, Mr. Thomas McMahon, who told Crane that the wages the Union agreed to for the work done under the Contract complied with Washington state prevailing wage requirements. The Contract at issue in this case, obviously, is not the first contract awarded by Energy Northwest for the Columbia Generating Station. Rather, Energy Northwest had awarded numerous contracts that included work performed by Local 77 employees. Prior to Crane commencing any work under the Contract, Mr. McMahon contacted Crane and advised Crane of the applicable prevailing wage requirements and specified a wage rate for work done by Union members under the Contract. Crane strictly adhered to the information provided by Mr. McMahon with respect to all prevailing wage work under the Contract and Mr. McMahon assured Crane that by doing so it was complying with the Union's requirements and the prevailing wage requirements. Similarly, Crane informed Energy Northwest of its arrangement with the Union and Energy Northwest gave Crane indication that the arrangement was consistent with work done by other contractors for Energy Northwest at the Columbia Generation Station.

It was not until April 18, 2012, after Crane completed all work under the Contract, that Crane learned of the Department's concern regarding the wages paid by Crane under the Contract. At that time, the Department sent an e-mail communication indicating that the Department believed the "correct classification and wage rate that would apply to most, if not all, of the work is Plumbers, Pipefitters and Steamfitters."

Upon receipt of that e-mail from the Department, Crane sought to reconcile the information it had previously received from the Energy Northwest and the Union with the Department's correspondence. In doing so, Crane contacted Energy Northwest, which then confirmed its understanding that the work in question should be classified as Millwright. In addition, Crane contacted the Union, which also confirmed that the information the Union provided prior to Crane performing any work under the Contract was correct.

III. ANALYSIS

A. **The Awarding Agency, Energy Northwest, Failed to Include Prevailing Wage Rates In Contract# 33075 as Required by RCW 39.12.030**

Washington's Prevailing Wage Statute and related regulations, as shown below, require the awarding agency to specify for every contract the hourly minimum wage that the contractor must pay to laborers in each trade or occupation required to complete the work under the contract. Energy Northwest failed to provide the required wage information in the Contract# 33075.

RCW 39.12.030 provides:

(1): The specifications for every contract for the construction, reconstruction, maintenance or repair of any public work to which the state or any county, municipality, or political subdivision created by its laws is a party shall contain a provision stating the hourly minimum rate of wage, not less than the prevailing rate of wage, which may be paid to laborers, workers, or mechanics in each trade or occupation required for such public work employed in the performance of the contract either by the contractor, subcontractor or other person doing or contracting to do the whole or any part of the work contemplated by the contract, and the contract shall contain a stipulation that such laborers, workers or mechanics shall be paid not less than the such specified hourly minimum rate of wage. If the awarding agency determines that the work contracted for meets the definition of residential construction, the contract must include that information.

(2) If the hourly minimum rate of wage stated in the contract specifies residential construction rates and it is later determined that the work performed is commercial and subject to commercial construction rates, the state, county, municipality, or political subdivision that entered into the contract must pay the difference between the residential rate stated and the actual commercial rate to the contractor, subcontractor, or other person doing or contracting to do the whole or any part of the work under the contract.

(Emphasis added).

WAC 296-127-011(5) similarly requires:

A schedule of the applicable prevailing wage rates must be included by: (a) Contract awarding agencies in the bid specifications and contract documents for each contract.

(Emphasis added).

Energy Northwest did not provide the applicable prevailing wage rates in the bid specifications and contract documents for Contract #33075 as required by the above-quoted statute and regulation. Notwithstanding the statute's and regulation's express requirement that the awarding agency designate the applicable prevailing wage rates, the Department has informed Crane that the Department advises awarding agencies during prevailing wage training that they are *not* required to provide the applicable prevailing wage rates in contractual documents. If true, the Department's advice to the awarding agencies is directly contrary to the statutory and regulatory requirements.

B. The Department Should Approve the Millwright Classification for the Work Done Under the Contract

Most importantly, the work performed by Crane under the Contract is properly classified as Millwright and not Plumber, Pipefitter and Steamfitter. We discuss below the two classifications and the reasons that Millwright is the correct classification.

Listed below are the various job categories for the work performed by Crane and, following the job categories, we have highlighted the particular Millwright job duties applicable to those job categories, demonstrating that Millwright is the correct classification.

1. The Millwright Classification

The applicable regulation, WAC 296-127-01352, provides:

For the purpose of the Washington state public works law, chapter 39.12 RCW, millwrights install machinery and equipment according to layout plans, blueprints, and other drawings in industrial establishments, using hoists, lift trucks, hand tools and power tools. They read blueprints and schematic drawings to determine work procedures.

The work includes, but is not limited to:

- Dismantle machines, using hammers, wrenches, crowbars, and other hand held tools.
- Move machinery and equipment, using hoists, dollies, rollers, and trucks.
- Assemble and install equipment, such as shafting, conveyors, and tram rails, using hand tools and power tools.
- Construct foundation for machines, using hand tools and building materials, such as wood, cement, and steel.
- Align machines and equipment, using hoists, jacks, hand tools, squares, rules, micrometers, and plumb bobs.

- Assemble machines and bolt, weld, rivet, or otherwise fasten them to foundation or other structures, using hand tools and power tools.

a. Diagnostic Test Technician/Actuator Technician

These technicians used hoists, hand tools and power tools, read blueprints and schematic drawings, dismantled machines using hammers, wrenches, crowbars, and other hand held tools. They moved machinery and equipment using hoists, dollies, rollers and trucks. They assembled and installed equipment, using hand tools and power tools. They aligned machines and equipment, using hoists, jacks, hand tools, squares, rules, micrometers, and plumb bobs. Finally, their work included assembling machines and bolting them using hand tools and power tools. All of this work is properly classified as millwright.

b. Valve Technicians

Similarly, the Valve technicians job duties included installing machinery and equipment according to layout plans, blueprints, and other drawings; using hoists, lift trucks, hand tools and power tools; reading blueprints and schematic drawings; and dismantling work using hammers, wrenches, crowbars, and other hand held tools. They moved equipment using hoists, dollies, rollers and trucks. They assembled and installed equipment, using hand tools and power tools. They aligned machines and equipment, using hoists, jacks, hand tools, squares, rules, and micrometers. Finally, their work included assembling machines and bolting using hand tools and power tools. All of this work is properly classified as millwright.

c. I&C Technicians/AOV Diagnostic Tech

Finally, these technician's job duties likewise included installing machinery and equipment according to layout plans, blueprints, and other drawings; using hoists, lift trucks, hand tools and power tools; reading blueprints and schematic drawings; and dismantling work using hammers, wrenches, crowbars, and other hand held tools. They moved machinery and equipment using hoists, dollies, rollers and trucks. They assembled and installed equipment, using hand tools and power tools. In addition, their work included assembling machines and bolting using hand tools and power tools. All of this work is properly classified as millwright.

2. Plumber, Pipefitter, Steamfitter Classification

The Plumber, Pipefitter, Steamfitter regulation, WAC 296-127-01364, provides:

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.

Unlike the Millwright classification, which accurately describes the work that Crane employees performed, the Plumber, Pipefitter, Steamfitter job duties described above do not conform to the work performed by Crane's employees. For example, the Crane employees did not cut, thread or bend pipe; did not join pipes by use of screws, bolts, fittings, solder, welding or caulking or in other methods; did not test the piping system; did not install and repair plumbing fixtures, did not work on distribution lines; and did not weld pipes joints.

3. L&I Has Previously Approved the Millwright Classification for this Work

Finally, the work Crane performed was performed by Ames, Inc. in 2007. Labor and Industries approved the Millwright classification for that work, as demonstrated by Affidavit # 147015 which was approved on 9/4/2007. For ease of reference, a copy of the Affidavit is attached.

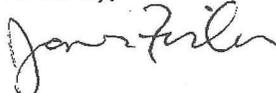
C. Crane Paid its Employees A Higher Wage Than The Millwright Classification Required

The Benton County Millwright Classification prevailing wage rate during the applicable time period was \$29.22. Crane paid the overwhelming majority of employees a regular hourly rate of \$36.95, far in excess of the millwright rate. Some employees were paid an even higher regular hourly rate, \$38.74. The six employees paid less than \$29.22 were all laborers/apprentices.

IV. Conclusion:

For all of the above reasons, the Department should approve the Millwright Classification for the work performed pursuant to Contract# 330757. I look forward to discussing this with you after you have had a chance to review. Thank you for your courtesy.

Sincerely,



James G. Zissler
JGZ

Cc: Inspector Koshman