

Comments on the Prevailing Wage and Apprenticeship Requirements

Notice 2022-51 - .02 Prevailing Wage Requirement and .03 Apprenticeship Requirements

By David Brown Kinloch, President, Appalachian Hydro Associates, Inc.

Appalachian Hydro Associates, Inc. is a small Kentucky-based company that designs, licenses, constructs, owns and operates small hydroelectric power plants, primary in eastern Kentucky. As such, our construction projects specifically employ workers and sub-contractors to construct new small hydroelectric facilities. Appalachian Hydro Associates is made up of five partners, each with different special skills needed to develop new small hydroelectric facilities at existing non-power dams. In past we have worked on projects that range in size from 50 kW up to 2.64 MW. We are also presently constructing a new 3.0 MW hydro plant on the Kentucky River. Because of the small size of our company, we can only work constructing one project at a time, which takes multiple years for each project. Our company presently has plans to construct two additional new hydro plants in the future in eastern Kentucky. The ability to finance the construction of these projects is dependent upon the use of the Investment Tax Credit for new renewable energy facilities.

Our company has some significant concerns with respect to how the Prevailing Wage and Apprenticeship requirements will be applied to small businesses and small renewable energy projects like the ones we work on. While we can see how these requirements would apply and make sense for large projects that employ large contractors and subcontractor with hundred or even thousands of worker, but implementation for tiny projects in scale, compared to the large project, present real problems.

The problem of size is best illustrated with some examples. We hire many subcontractor that are just single individuals, or maybe a father and his son, or a small group of guys working together, to do tasks like dig a trench with a backhoe for cables, or do a small welding job for us, that takes just a few days. According to Worker's Compensation, each of these individuals or small groups of individuals are considered "sub-contractors", and we must pay for worker's comp insurance for them if they don't have their own policies. Are these folks also "sub-contractors" under this IRS requirement? If so, how does the welder working on his own meet a 15% Apprenticeship requirement if it is just one guy? Does he need to hire a qualified apprentice just to do a two day welding job for us? Or would we be banned for hiring him, and thus could only hire large companies with large work forces that would use an apprenticeship program? I can tell you that would bankrupt our projects to only be able to hire large contractors to do small jobs on small projects.

And keeping with this example of the welder that works on their own and works for us on a job for just a few days, does he pay himself a "Prevailing Wage"? How would he know or we know? We pay him an agreed to price for a welding job, and he has the cost of his

equipment and welding supplies that reduce what his actual pay is, and his remaining “rate per hour” would depend on how quickly he completes a job, at the set pre-bid price we pay him.

For another example, let’s take our company. We are five partners and we pay ourselves well, so I would assume we make more than “Prevailing Wage”, though I don’t know how high that is. But our concern would be the Apprenticeship requirement. We have all the bases covered with our combined skill sets, and don’t need to hire anyone. Will we have to hire someone, to do who knows what, just to meet the apprenticeship requirement, even though we have no need to hire anyone? Our projects are financially tight as is, and hiring someone just to meet an Apprenticeship requirement could make a project not financially viable.

While I can see how this would all work for large companies on large projects who hire a lot of workers, for small companies working on tiny projects, with very small and single person sub-contractors, we just don’t see how this will work. So is our only option to forgo using Investment Tax Credits because small projects could not meet the Prevailing Wage and/or Apprenticeship requirements? Yes we could still get a 6% credit and not get the Prevailing Wage/Apprenticeship 24% adder, but at that ITC level, our projects would not be financially viable. I can tell you that many small hydro projects will simply not work financially unless we can utilize these Investment Tax Credits at the 30% level, as we have done in the past. I don’t think it was the intent of Congress that the Investment Tax Credits, that used to be available to all size projects, are now only viable for large projects, and small companies like ours are cut out. We will not meet the Climate targets of the IRA if only large projects can participate.

I think there is a simple solution to the problem for small projects. If the Prevailing Wage and Apprenticeship requirements were designed with respect major contractors and subcontractors, it makes sense that these requirements applied to contractor and sub-contractor of a certain size, like 20 employees or more (or 10, I don’t know that magic number). I do know that these requirements just cannot be applied to small independent contractors like I describe above that are tiny and are not hiring anyone (they don’t need anyone, including apprentices) and don’t break out their work into specific hourly rates (that is not how they are paid).

Your attention to and consideration of these small business and tiny projects would be appreciated, because without these tax credits, our projects will not be financially viable and will not happen.