

February 18, 2010

Pennsylvania Public Utility Commission  
Attention: Secretary James J. McNulty  
P. O. Box 3265  
Harrisburg, PA 17105-3265

PA P.U.C.  
SECRETARY'S BUREAU

2010 FEB 23 AM 11:15

RECEIVED

M-2009-2140263

**Re: Comments on :**

**TITLE 52. PUBLIC UTILITIES**

**PART 1. PUBLIC UTILITY COMMISSION**

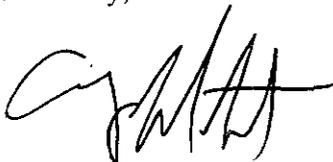
**Subpart C. FIXED SERVICE UTILITIES**

**CHAPTER 69. GENERAL ORDERS, POLICY STATEMENTS AND GUIDELINES  
ON FIXED UTILITIES**

**PENNSYLVANIA SOLAR PROJECTS**

Our comments can be summarized in the attached letter addressed to Mr. James Holzman at the Department of Labor and Industry. As of today we have not received a response. If not corrected, this policy will create a significant barrier to the use of Building-Integrated Photovoltaics installations in Pennsylvania. I hope by copying you on this letter it will be addressed. If I can provide any additional information or answer any questions, please feel free to contact me. Thank you.

Sincerely,



Cory Matchett

EnergyPeak



September 30, 2009

Office of Chief Counsel  
Department of Labor & Industry  
Labor Law Compliance Division  
651 Boas Street  
10<sup>th</sup> Floor  
Harrisburg, PA 17121

Attn: James A. Holzman

Re: Classifications/Pennsylvania Prevailing Wages

Dear Mr. Holzman,

I am writing to you to request an opinion on your letter addressed to Mr. John Van Den Elzen of ATAS International dated 8/26/09 regarding the classification, under the Prevailing Wage Act, for ATAS BIPV (Building Integrated Photovoltaic) ATA-Solar installation, as well as any other EnergyPeak distributor who may do business in the state of Pennsylvania.

According to your letter, installation of the metal roof panel with the Photovoltaic modules falls within the electrician's classification even before it is connected to the solar power system. In reaching this opinion you considered the actual work performed by workers, the tools of the craft, and the custom and usage in the building and construction industry. We would like to clarify a few of these items.

The actual work performed by the workers consists of installing metal roofing panels (with factory-applied PV laminates) in accordance with the metal roofing manufacturer's instructions in order to provide a warranty to the building owner for air and water infiltration through the roof. Since electrical contractors are not properly trained to install the roof panels they will not be able to provide these necessary warranties.

The tools of the craft include roofing equipment, metal cutting/folding tools, roof panel seamers, and safety harnesses for working over open roof purlins/steel beams. Again, the electrical contractors are not familiar with these tools, nor do we feel that they would be willing to complete this work.

It is important to note that all wiring/electrical connections, installation of balance of system electrical components, etc. is to be completed by a certified electrical contractor.

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Based on this additional information we respectfully request that you review your previous opinion that the metal roof panels with the Photovoltaic laminates falls within the electrician's classification and permit the trained metal roofing installers to complete this work.

If you have any questions or require any additional information please feel free to contact me. Thank you.

Sincerely,

Cory Matchett  
Product Manager  
EnergyPeak

Cc: J. Van Den Elzen – ATAS International  
R. Mowrey – EnergyPeak  
S. Maule – Fabral, Inc.



COMMONWEALTH OF PENNSYLVANIA  
GOVERNOR'S OFFICE OF GENERAL COUNSEL

August 26, 2009

John Van Den Elzen  
Sustainable Building Products Specialist  
ATAS International Inc.  
6612 Snowdrift Road  
Allentown, PA 18106

**Re: Classifications/Pennsylvania Prevailing Wages**

Dear Mr. Van Den Elzen:

The Bureau of Labor Law Compliance (Bureau) received your request for an opinion on classification, under the Prevailing Wage Act, for ATAS BIPV (Building Integrated Photovoltaic) ATA-Solar installation. You asked whether the complete installation would have to be done at the electrician's classification to qualify under the Pennsylvania Sunshine Residential and Small Business Solar Program.

According to your letter, the photovoltaic thin film amorphous modules are laminated to metal roof panels in a controlled environment in your plant. The roof panel with the Photovoltaic modules is then shipped to the site and installed by the roofing contractor. A certified electrician then connects the wiring and installs the balance of equipment. You specifically asked if only the electrical portion of the installation is to be done at the *electricians'* classification.

The Bureau determines prevailing wage rates in each locality (county) for each worker's classification based on the actual work performed. 43 P.S. § 165-7; 34 Pa. Code §§ 9.105, 9.106(a); *International Brotherhood of Electrical Workers, Local Union 98 v. Dep't of Labor and Industry*, 816 A.2d 1220 (Pa. Cmwlth. 2003). In reaching these determinations, the Bureau considers the actual work performed by workers, the tools of the craft, and the custom and usage in the building and construction industry. 34 Pa. Code

John Van Den Elzen

**Re: Classifications/Pennsylvania Prevailing Wages**

August 26, 2009

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§§ 9.102 (definition of *Craft*), 9.103(9); *Allied Mechanical v. Prevailing Wage Appeals Board*, 923 A.2d 1220 (Pa. Cmwlth. 2007); *Jackard Construction Company, Inc. v. Meyer Brothers, Co.*, 403 A.2d 618 (Pa. Cmwlth. 1979).

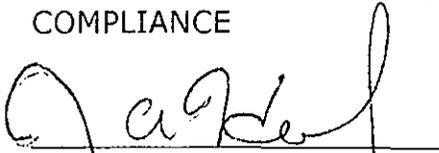
Installation of the roof panel with the Photovoltaic modules falls within the *electrician's classification* even before it is connected to the solar power system. Connecting the system to the remainder of the solar power system and the other installation also falls within the *electrician's classification*.

An interested party may file a grievance with the Prevailing Wage Appeals Board challenging the Bureau's opinions. 43 P.S. § 165-2.2(e)(1); 34 Pa. Code § 213.8; *Pennsylvania National Mutual Insurance Co. v. Dep't of Labor and Industry*, 552 Pa. 385, 715 A.2d 1068 (1998). An interested party may seek a hearing challenging a rate determination within 10 days from the publication and issuance of the specifications covering the contract for this project. A party challenging Labor and Industry's prevailing wage rates has the evidentiary and legal burden of establishing alternative rates at a formal administrative hearing. Failure to seek a section 8 hearing may constitute a waiver to the challenge of the rates for a specific project. 43 P.S. § 165-8; 34 Pa. Code § 9.107; *Mistick Construction v. Dep't of Labor and Industry*, 764 A.2d 95 (Pa. Cmwlth. 2000).

Prevailing wage rates and information about compliance may also be obtained from the Bureau at the following:

Bureau of Labor Law Compliance  
1301 Labor & Industry Building  
651 Boas Street  
Harrisburg, PA 17120-0019  
717-787-4671  
E-mail: [www.dli.state.pa.us](http://www.dli.state.pa.us) (Keywords "Prevailing Wage")

FOR THE BUREAU OF LABOR LAW  
COMPLIANCE



James A. Holzman  
Deputy Chief Counsel

John Van Den Elzen

**Re: Classifications/Pennsylvania Prevailing Wages**

August 26, 2009

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JAH/

cc: Daniel Griffiths, Deputy Secretary for Energy & Technology  
Development, DEP  
A Robert Risaliti, Director, Bureau of Labor Law Compliance  
Tom Bell, DEP