



United States of America
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION
U.S. CUSTOM HOUSE
721 19TH STREET, ROOM 407
DENVER, COLORADO 80202-2517

SECRETARY OF LABOR,

Complainant,

v.

CONTINENTAL ELECTRIC
CONSTRUCTION COMPANY, LLC,

Respondent.

OSHRC DOCKET NO.: 24-1734

Appearances:

Jonathan Hoffmeister, Esq., Department of Labor, Office of the Solicitor, Chicago, Illinois,
For Complainant

Matthew Horn, Esq., Michael Cocciemiglio, Esq., Amundsen Davis, LLC,
For Respondent

Before: Judge Joshua R. Patrick – U. S. Administrative Law Judge

DECISION AND ORDER

I. Introduction

Respondent Continental Electric Construction Company was hired to install electrical components for a data center being built in Elk Grove Village, Illinois. On July 3, 2024, one of Respondent's employees suffered an electric shock while installing cables in a battery cabinet. The Occupational Safety and Health Administration (OSHA) initiated an inspection after it received a report of the injury. As a result of that inspection, Compliance Safety and Health Officer (CSHO) John Cargill issued a Citation and Notification of Penalty (Citation), which alleged Respondent

willfully violated the lockout/tagout (LOTO) provisions of the Occupational Safety and Health Act of 1970, 29 U.S.C. § 651 *et seq.* (the Act). In response, Respondent contends the accident was the result of unforeseeable, intervening actions by a third-party contractor. Further, Respondent contends it was not authorized to lock out or tag out the necessary equipment, thus absolving it from liability.

Based on the following findings of fact and conclusions of law, the Court finds Complainant established a violation of 29 C.F.R. § 1926.417 but failed to prove Respondent's conduct was willful. For the reasons set forth in detail below, Citation 1, Item 1b will be affirmed as a serious violation, and a penalty of \$16,131 will be assessed.

II. Procedural History

On July 9, 2024, Complainant sent CSHO John Cargill to the worksite in response to a report that one of Respondent's employees had been injured in an accident that occurred on July 3, 2024. On November 19, 2024, Complaint issued a Citation and Notification of Penalty, alleging Respondent willfully violated 29 C.F.R. § 1926.417(b)¹ and proposing a penalty of \$161,323. Respondent filed a timely notice of contest on December 17, 2024, which brought this matter before the Commission. In its Amended Answer & Affirmative Defenses, Respondent asserted the multi-employer and infeasibility affirmative defenses.²

The Court held a two-day trial in Chicago, Illinois, on May 5-6, 2026. The following individuals testified: (1) John Cargill, CSHO; (2) Brian Swiatek, Field Operations Supervisor for Continental; and (3) Rich Swiatek, General Foreman for Continental. In addition, the deposition

¹ Prior to trial, the parties settled one of the citation items. (Tr. 10). Accordingly, only Citation 1, Item 1b is before the Court.

² Respondent also asserted the defense of duplicative citations. However, since only one Citation Item is before the Court, that defense was rendered moot.

of Taquonya Washington, the Commissioning Agent³ for the data center, was submitted in lieu of Ms. Washington's appearance at trial. Both parties submitted post-trial briefs for the Court's consideration.

III. Stipulations and Jurisdiction

Complainant and Respondent reached a number of stipulations prior to trial, both factual and legal, which the Court incorporates by reference.⁴ Among those, the parties stipulated that jurisdiction of this action is conferred upon the Commission pursuant to section 10(c) of the Act, and at all times relevant to this action, Respondent was an employer engaged in a business affecting interstate commerce as defined in section 3 of the Act, 29 U.S.C. §§ 652(3) & (5).

IV. Factual Background

A. Respondent's Business & Work Policies

Respondent is a family-owned electrical construction company that has been in business for 115 years. (Tr. 176). It specializes in "mission critical" work, meaning data centers and buildings for big tech companies that store power and require uninterrupted power sources. (Tr. 175). Respondent employs approximately 400 workers. (Tr. 96).

Respondent had in place an electrical safety policy, which ensured worker safety while working on equipment or circuits that could become energized. (Ex. J-6). It provided:

It is a requirement of [Respondent] that Lockout/Tagout must be used prior to performing any electrical work. Lockout/tagout must be used where any employee is exposed to contact with parts of fixed equipment or circuits which have been de-energized. The circuits energizing the parts must be locked out, tagged or both.

(Ex. J-6 at 002). The electrical safety policy then outlined specific duties and steps that had to be taken before and during the completion of electrical work. (Ex. J-6). Work could be performed on

³ A commissioning agent ensures quality control at the worksite. (Tr. 184).

⁴ The parties reached thirteen separate stipulations. (See Ex. J-1). Where applicable, the Court shall cite those stipulations as follows: Jt. Stip. No. ____.

exposed energized equipment or systems if: (1) “It can be demonstrated that de-energizing will cause additional or increased hazards;” or (2) “De-energizing is infeasible due to equipment design or operational limitations.” (Ex. J-6 at 003).

Respondent’s employees were trained on the electrical safety policy at the time of hire and reminded of its requirements at safety meetings. (Ex. J-6 at 001). In addition, Respondent’s management employees were trained on OSHA’s LOTO regulations and their implementation. (Tr. 85, 199, 275).

B. Respondent’s Work at the Data Center

Equinix was building a data center at a facility it owned at 1901 Lunt Avenue, Elk Grove Village, Illinois, 60007 (“Data Center”). (Jt. Stip. No. 5). Respondent was hired as the electrical subcontractor by Clune Construction, the general contractor for the project. (Jt. Stip. No. 7). Respondent was responsible for installing electrical equipment and assisting with the initial power-up. (Jt. Stip. No. 6). Other contractors were on site performing work at the Data Center. (Tr. 38). One of those contractors was Veolia, the commissioning agent for the Data Center. (Jt. Stip. No. 10). A commissioning agent is a third-party vendor hired by the owner of the project to “make sure that there was no shortcuts done, that the equipment is in good shape, [and] that the installation methods and means are done according to the code.” (Tr. 183). In other words, a commissioning agent serves as quality control. (Tr. 184). This work was performed by Veolia employee Taquonya Washington, who will hereinafter be referred to as “Commissioning Agent Washington.” (Tr. 44).

Vertiv was the manufacturer of the uninterruptable power supply (UPS),⁵ and its technician was onsite to service the UPS. (Tr. 112-13). Lastly, a technician from Anord, the switchboard manufacturer, was also present at the Data Center. (Jt. Stip. No. 10; Tr. 39; Ex. J-7 at 65-66, 69).

⁵ An “Uninterruptable Power Supply” (UPS) is designed to act like a dam, or system to stop power flowing from the breaker to the battery cabinets, or to otherwise control the flow of energy during power surges or losses. (Tr. 50).

Respondent's scope of work included bringing all utility and communications power inside the building and constructing and placing all the associated equipment for the Data Center. (Tr. 181). Generally, the installation process is separated into five "levels" or stages: (1) the "equipment acceptance" stage, i.e., the equipment is sent to the worksite and Respondent ensures it is undamaged; (2) the installation of the equipment stage, which involves Respondent placing the equipment and performing conduit entry, cable entry, and terminations work; (3) the first-time energization of the equipment stage, which is conducted by Respondent; (4) the review and acceptance of the work stage, which is done by a commissioning agent; and (5) the final testing and equipment activation stage, which is also done by the commissioning agent.⁶ (Tr. 182-83). Once testing is completed, the data center is turned over to the customer. (Tr. 183).

C. The Room, its Equipment, and Points of Energization

Respondent's work was limited to one specific room in the Data Center, identified as MSB-C8-O2A (the "Room"). The Room was a secure, controlled area that required badge access. (Tr. 254). It contained, among other equipment, a Main Breaker, two UPSs, and several banks of battery cabinets. (Tr. 42; Ex. J-7 at 155).

The Main Breaker⁷ controlled whether the power circuit for the UPS at issue was open or closed. (Tr. 49). If the circuit was closed, then the Main Breaker fed power "downstream" to the UPS, which, in turn, fed power "downstream" to the battery cabinets. (Tr. 50). The Main Breaker could also "open the circuit," or stop power from flowing downstream to the UPS. (Tr. 49-50).

The UPS at issue was located in a black cabinet with a computer touch screen, which operated the UPS. (Tr. 152, Ex. R). Power from the UPS to the battery cabinets could be stopped

⁶ Commissioning Agent Washington stated in her deposition that there was also a Stage 6, during which the commissioning agent would train the customer on the equipment. (Ex. J-7 at 19-20).

⁷ The Main Breaker is identified as "MSB C8" in Respondent's LOTO Form. (Ex. R-1; Tr. 270).

by manually disconnecting a wiring harness on the UPS.⁸ (Tr. 280). The wiring harness could be accessed from a panel at the top of the UPS cabinet. (Tr. 280). As the manufacturer of the UPS, only Vertiv's technicians were permitted to operate the touch screen or disconnect the wiring harness. (Tr. 188). The UPS had a setting called "control-power-only mode," in which the UPS itself was energized but the wiring harness was disconnected, thereby stopping power from going downstream. (Ex. J-8 at 158-59).

Power that flowed from the UPS to the batteries was conducted via a busbar, which is a piece of highly conductive material to which the circuit was connected. (Tr. 52). The busbar was located at the top of each battery cabinet. (Tr. 47). Each battery cabinet also had a dedicated breaker ("Battery Cabinet Breaker"), meaning an individual battery cabinet could be deenergized at the breaker even if the UPS was sending power downstream.⁹ (Tr. 241; Ex. J-7 at 132). Locks and tags could be applied to the Battery Cabinet Breakers. (Ex. J-7 at 134)

D. The Incident

On July 2, 2024, Respondent had completed Levels 1 through 3, meaning that it had accepted and placed all equipment and had successfully completed first-time energization of that equipment. (Tr. 182, 185). It had removed its locks and tags at the request of Commissioning

⁸ The CSHO believed during his investigation that power from the UPS to the battery cabinets could be controlled by a touch screen. (Tr. 152-53). However, in her deposition, CA Washington stated that the touch screen did not control power from the UPS downstream to the battery cabinets; instead, only removal of the wiring harness would stop power from moving downstream. (Ex. J-6 at 97-98). On this record, the Court concludes the touch screen was not the point of deenergization.

⁹ Commissioning Agent Washington's deposition testimony about whether the Battery Cabinet Breakers could stop power flowing from the UPS to the battery cabinet was inconsistent. For example, she stated that the Battery Cabinet Breakers were open on the morning of July 3 and that closing them would require operating a switch or breaker handle. (Ex. J-7 at 132-33). But later, she stated that the battery cabinets "were not independent of the UPS," and that the Battery Cabinet Breakers were automated, i.e., looking for a signal from the UPS to know whether to automatically close and receive energy. (Ex. J-7 at 202-03). R. Swiatek testified that "the battery cabinet had a dedicated breaker . . . the battery cabinet could be made safe either at the breaker or at the UPS itself." (Tr. 241). In light of R. Swiatek's demonstrated knowledge of the energization points in the Room, the Court credits his testimony over that of Commissioning Agent Washington on the point of whether the Battery Cabinet Breakers could deenergize the battery cabinets.

Agent Washington. (Tr. 242, 247). In short, from Respondent's perspective, it had completed its scope of work for the Data Center. (Tr. 212).

On the morning of July 3, 2024, Commissioning Agent Washington was performing quality control and testing the equipment (Levels 4 and 5). (Tr. 268-69). A Vertiv technician was working on programming the UPSs in the Room. (Ex. J-7 at 30). Commissioning Agent Washington asked R. Swiatek whether Respondent would be willing to run some communication cables, which had just been delivered,¹⁰ between the battery cabinets in the Room. (Tr. 291-92). This was beyond Respondent's scope of work on the project. (Tr. 251). However, R. Swiatek agreed to do the work as a favor to Equinix, a 20-year customer. (Tr. 212).

Installation of the communication cables required Respondent's workers to come into contact with the busbar atop the battery cabinets. (Tr. 257). Since Respondent's locks and tags had been removed the day before, R. Swiatek confirmed with Commissioning Agent Washington that the battery cabinets were or would be deenergized and "electrically safe" to work on while Respondent's workers ran the communication cables. (Tr. 252). Commissioning Agent Washington specifically assured R. Swiatek that there would be no power running to the battery cabinets because the UPS wiring harness was disconnected. (Tr. 252; Ex. J-7 at 135-36). She then instructed the Vertiv technician to leave the UPS in a "controlled safe state," meaning the wiring harness was disconnected, and she visually confirmed it was disconnected, thereby cutting all power to the battery cabinets. (Ex. J-6 at 135, 205). However, the UPS wiring harness was not locked out or tagged out. (Tr. 161). Similarly, neither the Main Breaker nor the individual Battery Cabinet Breakers were locked out or tagged out. (Tr. 161)

¹⁰ In her deposition, Commissioning Agent Washington explained that the communication cables had been backordered and arrived on July 1 or 2, so Respondent had not been able to run the cabling prior to July 3 during its scope of work. (Ex. J-6 at 157).

Two Continental apprentices started running communication cables through the top of the battery cabinets. (Jt. Stip. No. 11; Tr. 65; Ex. J-3 (video footage of the incident)). Meanwhile, the Anord technician was working on something related to the switchboard, and the Vertiv technician was working on the UPS. (Tr. 65, 188). In other words, there were six individuals employed by four different contractors working on different equipment in the same Room. (Jt. Stip. No. 10).

At one point, Commissioning Agent Washington notified everyone in the Room that she would be operating the Main Breaker. (Tr. 65-66). She primed then closed the breaker, thus energizing the UPS. (Tr. 66). However, since the wiring harness in the UPS was disconnected, the battery cabinets remained deenergized. (Tr. 51, 67). Then, Commissioning Agent Washington opened the Main Breaker, again deenergizing the UPS. (Tr. 67). Respondent's apprentices continued their work during Commissioning Agent Washington's testing. (Tr. 134-36).

At some point, the Vertiv technician reconnected the wiring harness in the UPS without notifying anyone. (Tr. 64, 149; Jt. Stip. No. 14; *see also* Ex. J-3 at 7:58-7:59; Ex. J-7 at 170). Since the Main Breaker was open at that time, no power traveled downstream from the UPS to the battery cabinets. (Tr. 128). Later, Commissioning Agent Washington—unaware that the UPS harness had been reconnected—walked back over to the Main Breaker, primed it a few times, and closed the circuit, which electrified the UPS and the battery cabinets downstream. (Tr. 69). Shortly afterwards, one of Respondent's apprentices came into contact with the busbar inside the battery cabinet he was working on. (Tr. 95-96). He suffered a 480-volt electric shock and was injured. (Tr. 96).

Commissioning Agent Washington promptly held a meeting with all of the contractors onsite. (Tr. 262-63). When confronted about reconnecting the UPS wiring harness without notifying anyone, the Vertiv technician “shrugged his shoulders” and said, “oops” and “I don’t

know what happened.” (Tr. 263). Commissioning Agent Washington ultimately attributed the accident to a miscommunication between herself and the Vertiv technician. (Ex. J-7 at 182).

E. The Inspection

The CSHO arrived at the Data Center on July 9, 2024, and conducted an inspection of the Room. (Tr. 73). He received documentation from Respondent as part of the investigation, and he conducted witness interviews and interviews with Respondent’s management. (Tr. 37). The CSHO learned that on July 3, 2024, workers from Continental, Veolia, Vertiv, and Anord were all working in the Room, but none of the work overlapped. (Tr. 38). The CSHO confirmed that there were no physical locks or tags on any of the energization points while the work was taking place that day. (Tr. 161). According to Respondent, this was due, in part, to the fact that Commissioning Agent Washington was conducting testing that required energization, and the Vertiv technician also needed the UPS to be energized to complete his work. (Tr. 113). Respondent’s management explained to the CSHO that its work in the Room that day was operating under a “human tag,” meaning R. Swiatek would stop anyone from connecting circuits and energizing the battery cabinets, thus ensuring Respondent’s workers would not come into contact with energized equipment. (Tr. 83).

The CSHO inquired about the timing of Respondent’s cabling work, trying to determine whether the work had to be performed on July 3 specifically. (Tr. 88). Respondent’s management admitted the work could have been performed on another day, and Commissioning Agent Washington stated that the work of any of the contractors could have been moved as well. (Tr. 90, 252; Ex. J-7 at 173). The CSHO also learned that the work being performed by Respondent was entirely separate from that being done by Commissioning Agent Washington and other contractors. (Tr. 87, 97).

Ultimately, the CSHO identified ten points in the Room that should have been tagged to ensure the battery cabinets remained deenergized while Respondent's workers ran the cables: (1) the Main Breaker; (2) the wiring harness within the UPS; and (3) the Battery Cabinet Breakers on each of the eight battery cabinets. (Tr. 57). OSHA issued a Citation to Respondent for willful violations of 29 C.F.R. § 1926.416(a)(1), which prohibited Respondent from allowing workers to work near an energized electric power circuit, and § 1926.417(b), which required Respondent to affix tags to all energization points while its workers ran cabling to the battery cabinets. (Tr. 70). OSHA cited the construction standard rather than the general industry standard because installation of the communication cables was done during the initial construction of the Data Center. (Tr. 71). Complainant proposed a grouped penalty of \$161,323 for the willful violations. Only Citation 1, Item 1b is before the Court.

V. Analysis

To establish a prima facie violation of a safety standard promulgated under section 5(a)(2) of the Act, Complainant must prove: (1) the standard applies to the cited condition; (2) the terms of the standard were violated; (3) one or more of the employees had access to the cited condition; and (4) the employer knew, or with the exercise of reasonable diligence could have known, of the violative condition. *Atl. Battery Co.*, No. 90-1747, 1994 WL 682922, at *6 (OSHRC, Dec. 5, 1994).

Complainant has the burden of establishing each element by a preponderance of the evidence. *The Hartford Roofing Co.*, No. 92-3855, 1995 WL 555498, at *5 (OSHRC, Sept. 15, 1995). Preponderance of the evidence has been defined as:

The greater weight of the evidence, not necessarily established by the greater number of witnesses testifying to a fact but by evidence that has the most convincing force; superior evidentiary weight that, though not sufficient to free the

mind wholly from all reasonable doubt, is still sufficient to incline a fair and impartial mind to one side of the issue rather than the other.

Preponderance of the Evidence, BLACK'S LAW DICTIONARY (12th ed. 2024).

A. Citation 1, Item 1b

In Citation 1, Item 1b, Complainant alleges a willful violation of 29 C.F.R. § 1926.417(b) as follows:

The equipment and circuits that are needing to be deenergized were not rendered inoperative and did not have tags attached to all points where such equipment or circuits can be energized.

a) On or about July 3, 2024, employees installing communications cable were permitted to work on equipment that was not rendered inoperative and did not have tags attached to all points which could be energized.

(Citation at 7).

The cited standard provides:

(b) Equipment and circuits. Equipment or circuits that are deenergized shall be rendered inoperative and shall have tags attached at all points where such equipment or circuits can be energized.

29 C.F.R. § 1926.417(b).

i. *The Standard Applies*

Respondent argues the standard does not apply because it was impossible to tag the touch screen or the internal circuitry of the UPS. Moreover, Respondent contends the UPS was in a deenergized safe state at the beginning of the day, so the regulation could not apply. Respondent also argues Complainant failed to amend the Citation to specifically include the failure to tag the UPS's internal circuitry, which "crippl[ed]" Respondent's ability to defend itself. Resp't Br. 14. Complainant argues the cited standard applied to Respondent because Respondent was (1) engaged in electrical work; (2) at a Data Center while it was under construction; and (3) working on equipment that could be energized.

Part 1926 of the OSH Act regulates safety and health during construction. Subpart K “addresses electrical safety requirements that are necessary for the practical safeguarding of employees involved in construction work.” 29 C.F.R. § 1926.400 (purpose and scope). Section 1926.417 regulates lockout and tagging of equipment and circuits, and the cited standard specifically requires tags to be attached at all points where deenergized equipment or circuits can become energized.

Here, the battery cabinets were deenergized on the morning of July 3, 2024. Deenergization of the battery cabinets could be accomplished by: (1) removing the wiring harness within the UPS; (2) opening the Main Breaker (i.e., no power flowing downstream to the UPS); or (3) opening the Battery Cabinet Breakers. Under the plain language of the regulation, its provisions applied to work on or around the UPS, the Main Breaker, and the Battery Cabinet Breakers, i.e., those points of energization that controlled whether the battery cabinets remained deenergized. Under the plain language of the regulation, those are the points of energization to which the regulation applied.

Respondent’s arguments do not alter the Court’s view. The fact that the Room was in an electrically safe state (i.e. all equipment was deenergized) when work started on the morning of July 3, 2024 is irrelevant because the regulation’s applicability is based on the existence of equipment or circuits that are deenergized and must remain that way for the duration of work. Inadvertent energization of equipment during work is a known hazard, and LOTO regulations are intended to ensure all equipment is put in—and remains in—an electrically safe state. *See* Control of Hazardous Energy Sources (Lockout/Tagout) (“LOTO Preamble”), 54 Fed. Reg. 36644-01, 36647-48 (Sept. 1, 1989) (to be codified at 29 C.F.R. pt. 1910) (identifying inadvertent energization as a known hazard and stating that LOTO was the best way to ensure worker safety). Workers make mistakes, and OSHA regulations are intended to protect workers from human error.

See S. Hens, Inc. v. OSHRC, 930 F.3d 667, 677 (5th Cir. 2019) (“Occupational safety regulations exist because people are distractible. Functioning with less than perfect focus and control is our ordinary condition. OSHA standards serve to protect workers from common human errors such as neglect, distraction, inattention or inadvertence.” (internal citation omitted)).

Moreover, the Citation Item does not, as Respondent claims, identify the UPS touch screen as the point of energization to which the regulation would apply. Rather, the Citation Item alleges that “employees installing communications cable were permitted to work on equipment that was not rendered inoperative and did not have tags attached to all points which could be energized.” (Citation at 7). Thus, any misunderstanding by the CSHO regarding the UPS touch screen does not affect the applicability of the regulation. *See GEM Indus., Inc.*, 17 BNA OSHC 1184, 1187 n.6 (No. 93-1122, 1995) (“[N]either the Secretary nor the Commission is bound by an erroneous interpretation of the Act made by a representative of the Secretary.”). And, Respondent had ample notice throughout discovery and depositions that the internal circuitry of the UPS, not the touch screen, was one of the energization points that required a tag. *See, e.g., Andrew Catapano Enters., Inc.*, 16 BNA OSHC 1949, 1951 (No. 89-1981, 1994) (holding citations are sufficiently particular unless “it appears from the full record that the employer was prejudiced in the preparation and presentation of its case”). Lastly, to the extent that Respondent argues infeasibility, the Court will address its arguments in a subsequent section discussing Respondent’s affirmative defenses. *See* Section V.B.i.

Upon review of the record, Complainant established the standard applied to the circumstances presented in this case.

ii. *The Standard Was Violated*

The duty imposed by the standard is clear: deenergized equipment or circuits shall be rendered inoperative and shall have tags attached to all points where such equipment or circuit can be energized. It is undisputed that there were no tags placed on any points of energization on July 3, 2024. The standard was clearly violated.

Yet, Respondent seemingly urges the Court to ignore the plain language of the regulation and instead read into it only a notice requirement, arguing there was no violation because “every individual working in the Room . . . knew that Continental had employees working on the Battery Cabinet.” Resp’t Br. 18. Moreover, Respondent claims there was no violation because R. Swiatek was acting as a “human tag” in the Room.¹¹ Lastly, Respondent maintains there was no violation because the equipment was in an electrically safe state when work began.

None of Respondent’s arguments are persuasive to the Court. The standard does not allow verbal notification in lieu of a tag, nor does it provide an exception if a “human tag” is present. The tag is intended to identify the equipment or circuits being worked on, as well as its energization points. *See* § 1926.417(b) and (c), to be read together. Moreover, inadvertent energization can occur even when everyone knows work is being done on equipment. *See, e.g., Am. Recycling & Mfg. Co., Inc.*, No. 13-1101, 2015 WL 6438288, at *5 (OSHR CALJ, Sept. 14, 2015) (detailing the accidental energization of a saw, resulting in injury), *vacated in part*, 676 Fed. App’x 65 (2nd Cir. 2017). That is what happened in this case and is exactly what the LOTO provisions in the OSH Act are intended to prevent. *See* LOTO Preamble, 54 Fed. Reg. at 36653 (*See* “Accidents Due to

¹¹ Respondent also asserted that (1) tagging the equipment here would have been infeasible because the other vendors needed the main breaker to open and close the circuit to complete their work that morning, and (2) Respondent did not—and could not—violate the standard because it was not in control of the room. These arguments intersect with Respondent’s affirmative defenses of multi-employer and infeasibility. Accordingly, the Court will address those arguments later in this Decision. *See* Section V.B.

Inadvertent Activation” Table: “Clearly, it is insufficient to simply shut off machinery...OSHA believes that some means must be utilized to ensure employees are safeguarded [from inadvertent activation].”).

Lastly, equipment being in a deenergized safe state when work begins does not absolve Respondent of its duty to comply with the regulation’s tagging requirement. A tagging requirement is different from a requirement that equipment be deenergized or rendered inoperative. *See* 29 C.F.R. § 1910.147(c)(7)(ii)(A) (“Tags are essentially warning devices . . . and do not provide restraint on those devices.”). Respondent by its own admission did not apply tags to any points of energization in the Room on July 3, 2024, despite demonstrating its ability to comply with the regulation in the months prior. Accordingly, the Court concludes Respondent violated the cited standard.

iii. *Respondent’s Employees Were Exposed to the Hazard*

To establish exposure, Respondent “must show that it is reasonably predictable, either by operational necessity or otherwise (including inadvertence), that employees have been, are, or will be in the zone of danger.” *Fabricated Metal Prods., Inc.*, 18 BNA OSHC 1072, 1074 (No. 93-1853, 1997). In this case, there is no dispute that Respondent’s apprentices were running communication cables, which required them to come into contact with the busbar atop the battery cabinets. One of the apprentices was, in fact, electrically shocked due to the inadvertent reconnection of the UPS’s wiring harness. *See S & G Packaging, Co., LLC*, No. 98-1107, 2001 WL 881250, at *3 (OSHRC, Aug. 2, 2001) (injuries establish actual exposure to the violative condition). Accordingly, the Court finds Respondent’s employees were exposed to the hazardous condition.

iv. *Respondent Was Aware of the Hazardous Condition*

In order to prove Respondent was aware of the hazardous condition, Complainant must show Respondent knew or, with the exercise of reasonable diligence, could have known of the hazardous condition. *See Pride Oil Well Serv.*, 15 BNA OSHC 1809, 1814 (No. 87-692, 1992). Complainant does not need to show Respondent knew the condition was hazardous, only that Respondent was aware of the conditions constituting a hazard. *Phoenix Roofing, Inc.*, 17 BNA OSHC 1076, 1079 (No. 90-2148, 1995), *aff'd*, 79 F.3d 1146 (5th Cir. 1996). The actual or constructive knowledge of one of Respondent's supervisors may be imputed to Respondent. *Propellex Corp.*, No. 96-0265, 1999 WL 183564, at *3 (OSHRC, Mar. 30, 1999).

Respondent's management knew the battery cabinets had to be deenergized for the apprentices to do their work. Management also knew they had not tagged any of the equipment in the Room. In other words, management knew: (1) its own safety procedures had not been implemented on July 3, 2024, and (2) other workers in the Room were energizing various pieces of equipment while the apprentices were working on or near the battery cabinets. Reliance on Commissioning Agent Washington's assurances that the battery cabinets remained in an electrically safe state is no defense to the existence of a violation.

Respondent maintains it cannot be responsible for the violation because the accident occurred due to an unforeseeable intervention by the Vertiv technician when he reconnected the UPS's internal wiring harness. Resp't Br. 21. The Court disagrees. Usually, this defense arises in cases involving an employer's own employee misconduct. The general idea is that "hazardous conduct is not preventable if it is so idiosyncratic and implausible in motive or means that conscientious experts, familiar with the industry, would not take it into account in prescribing a safety program." *Nat'l Realty & Constr. Co. v. OSHRC*, 489 F.2d 1257, 1267 (D.C. Cir. 1973).

However, Respondent places too much emphasis on the cause of the accident rather than management's knowledge of the conditions giving rise to the accident.

To start, R. Swiatek was in the Room the entire time and communicated with Washington, as well as his staff. He knew the UPS was not tagged, that various contractors were working on various equipment at the same time, that Vertiv's technician was working on the UPS, and that Commissioning Agent Washington was opening and closing the circuit via the Main Breaker. Thus, Management cannot claim ignorance of the conditions constituting a violation of the cited standard. *See Pressure Concrete Constr. Co.*, No. 90-2668, 1992 WL 381670, at *7 (OSHRC, Dec. 7, 1992) (affirming violation where "the potential dangers" that caused the possibly unforeseen drowning accident were known by the employer); *see generally* LOTO Preamble, 54 Fed. Reg. at 36647 ("Further, even though the machine or equipment has been shut off, and even if residual energy has been dissipated, an accident can still occur if there is an inadvertent activation of that machine or equipment. Inadvertent activation can occur due to an error on the part of the employee . . . *or by any other person.*") (emphasis added).

Moreover, R. Swiatek testified that he was in the Room to ensure the battery cabinets remained deenergized, i.e., to ensure inadvertent energization did not occur. And, Respondent had LOTO procedures in place precisely because inadvertent energization is a known hazard that can occur on worksites. Thus, it was entirely foreseeable that, in a single Room with multiple contractors working on different projects, equipment might be inadvertently energized in furtherance of one contractor's project, to the detriment of another worker downstream. The Court rejects Respondent's arguments to the contrary and concludes the Secretary established knowledge of the hazardous condition.

v. *The Violation Was Not Willful*

“A willful violation is one committed with either intentional disregard of or plain indifference to the requirements of the Act or a standard.” *J.A. Jones Constr. Co.*, No. 87-2059, 1993 WL 61950, at *9 (OSHRC, Feb. 19, 1993). “[I]t is not enough for the Secretary to show that an employer was aware of conduct or conditions constituting the alleged violation; such evidence is already necessary to establish any violation . . . A willful violation is differentiated by a heightened awareness of the illegality of the conduct or conditions and by a state of mind of conscious disregard or plain indifference.” *Hern Iron Works, Inc.*, 16 BNA OSHC 1206, 1214 (No. 89-433, 1993). In other words, Complainant must show that, at the time of the violative act, the employer was either actually aware that the act was unlawful or “that it possessed a state of mind such that if it were informed of the standard, it would not care.” *Propellex Corp.*, 1999 WL 183564, at *8. “[T]he Commission and courts make a distinction between mere negligence and willfulness, holding that the former is sufficient for affirming a non-willful violation, but that willfulness is characterized by an intentional, knowing failure to comply with a legal duty.” *Manganas Painting Co., Inc.*, No. 94-0588, 2007 WL 6113032, at *31 (OSHRC, Mar. 23, 2007).

Complainant contends there are multiple factors that contribute to its determination that the violation was willful. Respondent’s general foreman (R. Swiatek) was in the Room and knew no locks or tags had been applied, despite Respondent’s robust safety program. (Tr. 84). Nevertheless, R. Swiatek allowed work to take place based solely on Commissioning Agent Washington’s assurances that the Room was electrically safe for work. (Tr. 92). CSHO Cargill was particularly troubled by the fact that Respondent had, at all times prior to July 3rd, followed strict LOTO protocols and knew where the points of energization were in the Room. In CSHO

Cargill's view, this made Respondent's failure to follow its own safety procedures on July 3rd more egregious. (Tr. 84-85). In the CSHO's own words:

When we look at it -- looked at it from that wa[y] top view, we have a Continental manager in the room who's been trained, who's executed the [LOTO] program in the past, who knew of the risks of the electrical system of why they were dangerous and what was the purpose of the tags, still chose, with all that knowledge, all that training, all that experience with the program -- still chose when he walked in that room, knowing there was going to be two other vendors in the room, Veolia and Vertiv, working on the components that would electrify the equipment his employees were working on -- chose not to affix a tag, a tag that had been honored in the past by Ms. Washington.

(Tr. 107-08).

In response, Respondent argues that the quality of its safety program, training, lengthy history without major injury, and its repeated efforts to ensure the equipment was in an electrically safe working condition militate against a finding of willfulness. Respondent takes particular issue with Complainant's attempts to use the quality of its safety program—which CSHO Cargill agreed was “great”—evidence of prior compliance, and thorough training program as evidence that Respondent's actions were willful. (Tr. 106-107). Further, Respondent contends that these efforts were good faith, albeit incomplete, attempts at compliance with the standard. *See, e.g., Keco Indust., Inc.*, No. 81-263, 1987 WL 89096 at *11 (OSHRC, March 27, 1987) (“A willful charge is not justified if an employer has made a good faith effort to comply with a standard *or to eliminate a hazard* even though the employer's efforts are not entirely effective or complete.”) (emphasis added).

This case presents a close call, but the Court ultimately finds Complainant failed to establish Respondent's actions on July 3 were willful. On the one hand, there is no dispute that Respondent was aware of its obligations under the LOTO provisions of the construction standard. As previously noted, CSHO Cargill conceded that Respondent's LOTO policy and training was

effective. Consistent with that policy and training, the documentation illustrates Respondent followed its procedures when it was in control of the Room in the weeks prior to the accident. Its LOTO Form demonstrates that Respondent locked out and tagged twelve points of energization that were powered by the Main Breaker (MSB C8), including points of energization on one or more UPSs: “UPS C8A RIB,” “UPS C8A IOB,” “UPS C8A MBB,” “UPS C8B IOB,” “UPS C8B MBB,” and “UPS C8B RIB.” (See Ex. R-1, LOTO form dated 6/26/24; Tr. 270-71). In other words, Respondent clearly understood the workspace, the points of energization, and its obligations, but did not apply a tag and, instead, relied on the representations of Commissioning Agent Washington that she had confirmed the UPS’s internal circuitry was disconnected and in an electrically safe working condition.

On the other hand, “it takes a lot to be plainly indifferent.” *Dayton Tire v. Sec’y of Labor*, 671 F.3d 1249, 1256 (D.C. Cir. 2012). For example, in a case not too dissimilar from this one, a foreman disregarded his supervisor’s explicit instructions to use proper fall protection and was observed, along with his subordinates, working in an area without fall protection. See *L.R. Willson & Sons, Inc.*, No. 94-1546, 1997 WL 111084 (OSHRC, Mar. 11, 1997). The employer argued its good faith efforts at compliance negated a finding of willfulness. *Id.* The Commission evaluated Respondent’s safety and training programs and found them to be “excellent”. *Id.* at *6. Even though the Commission noted that the individuals, including the foreman, who violated the rules were aware of their failure to comply and the consequences for such a failure, the Commission found the company’s program and prior enforcement of the rules illustrated that the foreman’s conduct was not typical of the employer’s supervisory personnel and ultimately concluded the violation was not willful. *Id.*

Contrariwise, in those cases where courts or the Commission have upheld a finding of willfulness, the evidence typically shows the employer's complete lack of, or severely deficient, safety program; explicit disregard of prior warnings or incidents; failure to train employees; and/or extensive, unabated violation history. *See, e.g., Kaspar Wire Works, Inc. v. Sec'y of Labor*, 268 F.3d 1123 (D.C. Cir. 2001) (finding recordkeeping violation willful where employer intentionally failed to report numerous serious injuries over a long period of time); *Fluor Daniel v. OSHRC*, 259 F.3d 1232 (11th Cir. 2002) (finding failure to provide respirators willful where company was notified of hazard, knew other contractors provided respirators, and deliberately chose not to provide them); *Dukane Precast, Inc. v. Perez*, 785 F.3d 252 (7th Cir. 2015) (imputing willfulness to Respondent based, in part, on employer's failure to ensure management and employees were trained to recognize and address the obvious hazards in its workplace); *McKie Ford, Inc. v. Sec'y of Labor*, 191 F.3d 853, 857 (8th Cir. 1999) (finding violation willful where employer had "no meaningful safety program" and continued to expose its workers to a hazard despite its knowledge of an incident resulting in serious injuries).

As the foregoing cases illustrate, a supervisor's actions can be imputed to the employer, but it is the employer's actions that are assessed for willfulness. That is why the context in which the violation occurs—including prior efforts at compliance, safety programs, and training—matters. Departing from the manner in which the Commission, courts, and even the Secretary have typically evaluated an employer's efforts at compliance, Complainant seeks to use Respondent's otherwise clean history, training, and thorough safety program as a bludgeon. While these factors, to be sure, illustrate Respondent, through R. Swiatek, should have been aware that the failure to tag electric equipment was a violation, that does no more than prove the *prima facie* elements of a serious violation. *See, e.g., American Wrecking Corp. v. Sec'y of Labor*, 351 F.3d 1254, 1265 (D.C.

Cir. 2003) (“[T]he Commission may not find a violation to be willful on the ground that an employer “knew or should have known” of the hazardous condition, for to do so would erase the distinction between violations that are willful and those that are not.”); *J.A. Jones Constr. Co.*, 1993 WL 61950, at *10 (“Mere lack of diligence or carelessness in failing to discover or eliminate a violative condition does not make a violation willful in nature.”). Punishing Respondent for having a “great” safety program while the case law frames the lack of a proper program as support for a finding of willfulness places Respondent in an untenable position.

Setting aside the question of Respondent’s safety program, training, and prior compliance—all of which Complainant asserted were thorough and “great”—the context in which this accident occurred also undercuts Complainant’s argument that the violation was willful. In the Court’s mind, there is genuine debate over control and a clear lack of it exercised by the person making assurances. Respondent clearly had a good program that was, as illustrated by the logs, vigorously adhered to.

Respondent relinquished control of the Room the day before the incident when it removed its locks and tags at the direction of Commissioning Agent Washington. (Tr. 247). R. Swiatek did not have the authority to touch or tag the UPS, including its internal circuitry, on July 3, because that equipment was solely operated by Vertiv, who had the expertise to do so, and was under the control of Commissioning Agent Washington.¹² (Ex. J-7 at 29-30). Although tags could have been applied to the downstream Battery Cabinet Breakers, R. Swiatek had a conversation with Commissioning Agent Washington specifically addressing the electrical safety plan for the Room.

¹² Ms. Washington’s testimony on this topic was equivocal, depending on the question being asked. In one instance, she proclaimed that the scope of Vertiv’s work on the UPS was related to her commissioning activities, “so that was something that I was controlling.” (Ex. J-7 at 29). Just a few pages later in the transcript, Washington disclaims any such control. (Ex. J-7 at 34). In another instance, Washington says that Respondent could have performed its work at another time, which contradicted her earlier testimony that the cable installation needed to be done for her to perform her checks on the UPS. *Compare* (Ex. J-7 at 115) *with* (Ex. J-7 at 31-32).

(Tr. 252, 162). She confirmed the internal wiring harness of the UPS was disconnected and guaranteed that the UPS would remain deenergized, which would prevent the downstream battery cabinets from being energized. (Tr. 292). This was consistent with the coordination email sent out to the contractors, which indicated that the system was left powered down so that “[Continental] can safely run bus cabling through the conduit.” (Ex. J-7 at 128-29).

As the Court noted before, the characterization of this violation is a close call. There is no doubt that the facts of this case illustrate why LOTO is mandatory when multiple people have access to points of energization. However, short of Complainant’s reliance on Respondent’s admittedly thorough safety program, history of training, and documented history of previous compliance, there is very little evidence to suggest that Respondent consciously disregarded the law or was plainly indifferent to it.¹³ R. Swiatek relied, albeit mistakenly, on Commissioning Agent Washington’s representations that the UPS was in an electrically safe working condition. But, Commissioning Agent Washington, by her own admission, was in control of the process of programming the UPS, which affected the downstream batteries. (Ex. J-7 at 29). Therefore, she was in a position of authority to assert the components would be safe to work on and be trusted to make that assertion. (Ex. J-7 at 29). When those facts are viewed through the lens of CSHO Cargill’s assessment that Respondent’s safety program was “great”, that Respondent had done the requisite training, and that Respondent had documented its compliance on previous days, the Court finds Swiatek’s reliance on Commissioning Agent Washington under the circumstances above negates a finding of willfulness

In short, the Court sees no “substantial supporting evidence” of intentional disregard for or indifference to the law. *See Dayton Tire*, 671 F.3d at 418 (“We agree with Dayton, however, that

¹³ As stated above, the Court refuses, without more, to utilize Respondent’s positive efforts at compliance as a cudgel.

the Commission lacked substantial supporting evidence for its finding that the violations were willful.”). Instead, the Court sees a company that takes great pride in its safety practices and training but carelessly relied on a third party to ensure electrical safety while multiple vendors worked in a shared space. For the reasons set forth above, the Court vacates the willful characterization of the violation.

vi. *The Violation was Serious*

Although the violation may not have been willful, the violation was certainly serious. Section 17(k) of the Act, 29 U.S.C. § 666(k), provides that “a serious violation shall be deemed to exist in a place of employment if there is a substantial probability that death or serious physical harm could result” from the violation. Failure to deenergize, lock out, and tag equipment poses an electrocution hazard, which poses a substantial probability of death or serious physical harm. *Northwood Stone & Asphalt, Inc.*, No. 91-3409, 1994 WL 597394, at *3 (OSHRC, Nov. 1, 1994) (affirming injuries resulting from electric shock resulted in serious physical harm), *aff’d*, 82 F.3d 418 (6th Cir. 1996). Accordingly, the violation will be affirmed as serious.

B. Respondent’s Affirmative Defenses

Complainant satisfied his burden of proof with regard to Citation Item 1b. Now, the burden shifts to Respondent, who asserted multi-employer and infeasibility defenses in its Amended Answer & Affirmative Defenses to the Complaint, and reaffirmed those defenses at trial. (*See* Answer at 3-4; Tr. 22).

i. Infeasibility

To prevail on the infeasibility affirmative defense, “an employer must show that (1) the means of compliance prescribed by the applicable standard would have been infeasible under the circumstances in that (a) its implementation would have been technologically or economically

infeasible, or (b) necessary work operations would have been technologically or economically infeasible after its implementation, and (2) either (a) an alternative method of protection was used, or (b) there was no feasible alternative means of protection.” *Star Brite Constr. Co., Inc.*, No. 95-0343, 2001 WL 1668967, at *3 (OSHRC, Dec. 20, 2001).

As an initial matter, Respondent argues that “the Secretary failed to present any evidence supporting that it was required or feasible to tag the internal circuitry of the UPS.” Resp’t Br. 14. This misplaces the burden of proof, which lies with Respondent as the party asserting the affirmative defense. *See Pitt-Des Moines, Inc.*, No. 90-1349, 1993 WL 393505, at *5 (OSHRC, Sept. 30, 1993) (holding it is “not the Secretary’s burden to show feasibility as an element of his case”). Nevertheless, Respondent’s other arguments with respect to infeasibility are unpersuasive.

First and foremost, there is evidence in the record that Respondent’s cabling work, as well as the work performed by the other contractors, did not have to be completed on July 3. (Tr. 90, 252). Accordingly, to the extent Respondent complains it was not authorized to tag various points of energization in the Room, the Court finds Respondent could have postponed the work to another day when Respondent could be in complete control of the Room. Postponing the work was a feasible alternative means of protection.

Second, while there is evidence that the Main Breaker had to remain unlocked and untagged for Commissioning Agent Washington to complete her work, Respondent failed to introduce evidence that tagging the UPS internal circuitry or the Battery Cabinet Breakers was infeasible. On July 3, 2024, the UPS was energized, but the wiring harness was disconnected so energy could not flow downstream. Respondent claims it was infeasible to tag the wiring harness. Yet, Commissioning Agent Washington stated in her deposition that Continental would have been able to lock out and tag out the UPS (although it would have prevented the Vertiv technician from

completing his work). (Ex. J-7 at 226). And, Respondent's own LOTO logs indicate it had locked out and/or tagged out the UPSs in the Room, both in the weeks that Respondent was in control of the Room, as well as after the accident occurred. (Tr. 270; Ex. R-5 (photo of the UPS at issue with the label "UPS C8B"); Ex. R-1 (logs dated June 26, 2025 and July 7, 2024 showing locks applied to UPS C8B)). *See FMC Corp.*, 12 BNA OSHC 2008, 2012 n.5 (No. 83-488, 1986) ("[E]vidence of post-accident measures are admissible to establish feasibility."). Respondent does not offer any explanation for this discrepancy, instead holding steadfast to its position that it was not authorized to touch the UPS. This is insufficient where there is ample evidence to the contrary.

And, even if the Court were to find that tagging the UPS itself was infeasible, Respondent completely ignores other points of energization that the CSHO believed should have been tagged: the eight Battery Cabinet Breakers. There is evidence in the record that tagging the Battery Cabinet Breakers was feasible. According to R. Swiatek, a battery cabinet could be made safe at its dedicated breaker. (Tr. 241). And, Commissioning Agent Washington stated in her deposition that a lock or tag could be placed on the Battery Cabinet Breakers themselves. (Ex. J-7 at 133-34). Yet, nowhere in its briefing does Respondent discuss the feasibility of tagging the Battery Cabinet Breakers on July 3. Tagging the Battery Cabinet Breakers was an alternative means of protection on July 3. Again, Respondent failed to meet its burden to prove infeasibility.

ii. Multi-Employer Worksite

"The multi-employer worksite defense is an affirmative defense that requires the employer to prove by a preponderance of the evidence that it (1) did not create the hazardous condition; (2) did not control the violative condition such that it could have realistically abated the condition in the manner required by the standard; and (3) took reasonable alternative steps to protect its employees or did not have (and could not have had with the exercise of reasonable diligence)

notice that the violative condition was hazardous.” *Schuler-Haas Electric Corp.*, No. 03-0322, 2006 WL 1355469, at *9 n.5 (OSHRC, May 8, 2006).

Here, Respondent was not authorized to tag or otherwise deenergize the UPS. Accordingly, it did not create the hazardous condition, nor did it control the violative condition such that Respondent could abate it. However, Respondent fails on the third element. As the Commission stated in *Grossman Steel & Aluminum Corp.*, 4 BNA OSHC 1185 (No. 12775, 1975):

[E]ach employer has primary responsibility for the safety of its own employees. Simply because a subcontractor cannot himself abate a violative condition does not mean it is powerless to protect its employees. It can, for example, attempt to have the general contractor correct the condition, attempt to persuade the employer responsible for the condition to correct it, instruct its employees to avoid the area where the hazard exists if this alternative is practical, or in some instances provide an alternative means of protection against the hazard. We therefore expect every employer to make a reasonable effort to detect violations of standards not created by it but to which its employees have access and, when it detects such violations, to exert reasonable efforts to have them abated or take such steps as the circumstances may dictate to protect its employees. In the absence of such actions, *we will still hold each employer responsible for all violative conditions to which its employees have access.*

Id. at 1189 (emphasis added).

As established previously, Respondent knew of the hazardous condition, i.e., the presence of deenergized circuits and equipment without tags. Accordingly, Respondent must prove it took reasonable alternative steps to protect its employees. It cannot. The use of R. Swiatek as a human tag is not a reasonable alternative means to compliance recognized by the Court or Commission. Moreover, Respondent was aware of other points of energization, including the Main Breaker and the Battery Cabinet Breakers, that should have been deenergized and that it had tagged in the past. The record also establishes the cabling work could have taken place on another day when Respondent was in control of the Room. Yet, Respondent made no effort to tag anything in the Room, nor did R. Swiatek inquire about another time to complete the work. Instead, Respondent

simply relied on Commissioning Agent Washington to protect Respondent's workers. None of this satisfies Continental's burden to establish a multi-employer defense.

VI. Penalty

Under the Act, the Secretary has the authority to propose a penalty according to Section 17 of the Act. *See* 29 U.S.C. §§ 659(a), 666. The amount proposed, however, merely becomes advisory when an employer timely contests the matter. *Brennan v. OSHRC (Interstate Glass)*, 487 F.2d 438, 442 (8th Cir. 1973). Ultimately, it is the province of the Commission to "assess all civil penalties provided in [Section 17]", which it determines *de novo*. 29 U.S.C. § 666(j); *see also Valdak Corp.*, No. 93-0239, 1995 WL 139505, at *3 (OSHRC, Mar. 29, 1995), *aff'd*, 73 F.3d 1466 (8th Cir. 1996). "[T]he Act requires that "due consideration" be given to the employer's size, the gravity of the violation, the good faith of the employer, and any prior history of violations." *Briones Util. Co.*, No. 10-1372, 2016 WL 7424575, at *4 (OSHRC, Dec. 14, 2016) (citing 29 U.S.C. § 666(j)). These factors are not necessarily accorded equal weight. *J.A. Jones Constr.*, 1993 WL 61950, at *15 (citation omitted). Rather, the Commission assigns the weight that is reasonable under the circumstances. *See, e.g., Merchant's Masonry, Inc.*, No. 92-424, 1994 WL 723829, at *1 (OSHRC, Dec. 30, 1994). It is the Secretary's burden to introduce evidence bearing on the factors and explain how he arrived at the penalty he proposed. *Valdak Corp.*, 1995 WL 139505, at *4. "Gravity is typically the most important factor in determining an appropriate penalty and depends upon the number of employees exposed, the duration of the exposure, the precautions taken against injury, and the likelihood that any injury would result." *Capform Inc.*, 19 BNA OSHC 1374, 1378 (No. 99-0322, 2001), *aff'd*, 34 F. App'x 152 (5th Cir. 2002) (unpublished).

The CSHO explained how the proposed penalty was calculated. The severity was high due to the potential for severe injury from electrocution. (Tr. 95). The probability was also high given

the proximity of the apprentices to the busbar in the battery cabinets. (Tr. 95). Overall, the gravity was determined to be high, particularly in light of the fact that an apprentice suffered electrical burns that required skin grafts. (Tr. 95). There was no penalty reduction for size given that Respondent has 400 employees, and there was no good faith penalty reduction since the inspection was initiated in response to an accident, and the solution did not qualify as a quick fix. (Tr. 96). Respondent's lack of prior citations resulted in no increase in penalty for history. (Tr. 96).

The Court agrees with Complainant's assessment that the gravity in this case was high. There were multiple contractors working in a room with equipment that could be—and was—energized. No locks or tags were used. The risk of injury from exposure to electrical components was high, and an injury did, in fact, occur. Accordingly, the Court will assess a penalty of \$16,131, which is the maximum penalty allowed for a serious violation occurring on July 3, 2024, and a Citation issued on November 19, 2024. Fed. Civil Penalties Inflation Adjustment Act Annual Adjustments for 2024, 89 Fed. Reg. 1810, 1820 (Jan. 11, 2024) (to be codified at 29 C.F.R. pt. 1903).

VII. Order

The foregoing Decision constitutes the Findings of Fact and Conclusions of Law in accordance with Rule 52(a) of the Federal Rules of Civil Procedure. In accordance with those Findings of Fact and Conclusions of Law, it is ORDERED that Citation 1, Item 1b is AFFIRMED as a serious violation, and a penalty of \$16,131 is ASSESSED.

SO ORDERED.

Date: September 21, 2026
Denver, Colorado

/s/ Joshua R. Patrick

Joshua R. Patrick
First Judge, OSHRC