

THIS CASE IS NOT A FINAL ORDER OF THE REVIEW COMMISSION AS IT IS  
PENDING COMMISSION REVIEW

Some personal identifiers have been redacted for privacy purposes.

UNITED STATES OF AMERICA  
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

SECRETARY OF LABOR,

Complainant,

v.

MASTEC SERVICES, INC.,

Respondent.

DOCKET NO. 20-0559

Appearances:

Josh Bernstein, Esq., U.S. Department of Labor, Office of the Solicitor, Dallas, Texas  
For Complainant

Jonathan L. Snare, Esq., Jason S. Mills, Esq., Morgan, Lewis & Bockius LLP,  
Washington, D.C.  
For Respondent

Before: Administrative Law Judge Brian A. Duncan

**DECISION AND ORDER**

**Procedural History**

Following an injury accident on October 3, 2019, the Fort Worth Area Office of the Occupational Safety and Health Administration (“OSHA”) opened an investigation of Respondent, MasTec Services, Inc. (“MasTec”). (Tr. 335-36, 493-94; Ex. C-1). OSHA Assistant Area Director (“AAD”) Timothy Minor initiated the inspection and investigation of the incident. (Tr. 335-37). He later assigned Compliance Safety and Health Officer (“CSHO”) Willie Cox to complete the investigation. (Tr. 492-95). OSHA determined that two employees had been exposed

to high-voltage electrical hazards when they were tasked with cleaning an underground electric utility vault in Fort Worth, Texas. (Tr. 508-10, 515-17, 519-21, 523-24, 527-32; Ex. C-1). At the time of the accident, [redacted] and [redacted], under the supervision of Marshall Cisneros, were instructed to clean the vault. (Tr. 103-06, 173-74). While attempting to clean the top of a 13,200 volt electrical reactor<sup>1</sup> within the vault, Mr. [redacted] sustained an electric shock resulting in severe burns to both of his arms, requiring one to be amputated. (Tr. 95-96; Ex. C-10). OSHA concluded that Mr. [redacted] approached energized parts closer than the Minimum Approach Distance (“MAD”) allowed by regulation, without rubber gloves and sleeves, leading to his severe injuries. (Tr. 95-96, 807-12; Exs. C-10, C-43 p.49, C-48 p.35).

Following the investigation, OSHA issued a six-item *Citation and Notification of Penalty* (“Citation”), alleging serious violations of 29 C.F.R. § 1910.269(c)(2); 29 C.F.R. § 1910.269(l)(3)(iii); 29 C.F.R. § 1910.332(b)(2); 29 C.F.R. § 1910.333(c)(5); 29 C.F.R. § 1910.333(c)(9); and a willful violation of 29 C.F.R. § 1910.335(a)(1). The total proposed penalties for the violations were \$202,407. Respondent timely filed a *Notice of Contest*, which brought this case before the Occupational Safety and Health Review Commission (“Commission”) pursuant to Section 10(c) of the Occupational Safety and Health Act of 1970 (“the OSH Act”).

A trial was conducted on February 1-2, 2022 and May 3-4, 2022,<sup>2</sup> in Dallas, Texas. The parties agreed, and the Court accepted, several stipulations at the beginning of the trial. (Tr. 63). Eight witnesses testified at trial: (1) [redacted] (“[redacted]”), the injured employee; (2) [redacted] (“[redacted]”), Respondent’s second alleged exposed employee; (3) Robert Oaks, the North Dallas Transmission Manager for Oncor; (4) Timothy Minor, OSHA Area Director for the Fort Worth

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<sup>1</sup> Throughout the trial both parties used the term “reactor” and “transformer” interchangeably. The parties agree the proper terminology is “reactor.” (Tr. 297-98, 319, 568-69).

<sup>2</sup> The original trial was delayed due to a winter storm in Dallas. The conclusion of the trial was rescheduled based on the parties’ and Court’s availability.

Area Office; (5) James Roberts, a former MasTec Construction Manager; (6) Willie Cox, OSHA Compliance Safety and Health Officer; (7) Rodney Fry, Respondent's Safety Training Director; and (8) Jarrett Quoyale, Respondent's Senior Director of Safety and Health. The parties filed post-trial briefs for the Court's consideration.

In accordance with Commission Rule 90(a)(1), 29 C.F.R. § 2200.90(a)(1), the Court now issues this *Decision and Order* setting forth its findings of fact and conclusions of law.

### **Jurisdiction & Stipulations**

The parties stipulated that the Commission has jurisdiction over this proceeding pursuant to Section 10(c) of the OSH Act and that Respondent was an employer engaged in a business affecting interstate commerce within the meaning of Sections 3(3) and 3(5) of the Act, 29 U.S.C. § 652(5). (Tr. 63). *See Slingluff v. OSHRC*, 425 F.3d 861 (10th Cir. 2005).

### **Factual Background**

#### **I. Respondent's Vault Cleaning Operations**

MasTec is a company engaged in the business of electrical transmission and distribution ("ET&D") services. As part of its regular business, MasTec contracts with Oncor Electric Delivery Company ("Oncor") to provide electrical vault cleaning in the Dallas-Fort Worth area. (Ex. C-54 p.10).

At all times relevant to this case, Respondent's process for electrical vault cleaning involved a crew of three employees, [redacted], [redacted], and their foreman, Marshall Cisneros ("Cisneros"). (Tr. 99-103, 172-76). Mr. [redacted], Mr. [redacted], and Mr. Cisneros were part of Respondent's underground electric group based out of its Dallas Leston Yard. (Tr. 659). This particular crew was tasked with, at various times of the year, cleaning electrical vaults, digging lines for cables, and occasionally running risers up poles. (Tr. 659-60).

Mr. [redacted] and Mr. [redacted] routinely and frequently cleaned underground electrical vaults under the supervision of Mr. Cisneros. (Tr. 173-75, 853). Respondent provided Mr. Cisneros additional training as a supervisor under their ET&D training program. (Tr. 853; Ex. C-37 p. 1-3). Foreman Cisneros was restricted to light duty tasks at the time of the accident. (Tr. 101). Before he was limited to light duty, he would occasionally enter the vaults himself to help [redacted] and [redacted] clean. (Tr. 101, 179-82). After going on light duty, he would remain outside of the vaults, but would still observe and supervise the crew while they worked. (Tr. 258-61).

This three-man crew had worked together for several years, and cleaned electrical equipment in many underground vaults, based on an assignment list provided to Foreman Cisnerous. (Tr. 99-100, 175-78; Exs. C-52, C-53). The underground vaults contained high-voltage electrical reactors, conductors, transformers, and wiring which often supplied electricity to nearby buildings. (Ex. C-12). They also occasionally cleaned residential, above-ground transformers. (Tr. 162-164).

Mr. [redacted] testified that they originally cleaned the underground vaults with a leaf blower, but were told by Foreman Cisneros that was no longer allowed, and they had to switch to brushes and rags. (Tr. 103-06, 124-25). Mr. [redacted] testified that the vaults and electrical equipment needed to be cleaned periodically because they became very dusty and dirty over time (often located underneath downtown sidewalks and wire grates). (Tr. 78, 180-82; Ex. C-12). If the reactors were too tall to clean the tops from the vault ground level, they used a ladder to reach the tops of reactors, which was carried to each worksite in Mr. Cisneros's truck. (Tr. 105-06). All of the tools and equipment the crew needed, including brushes, rags, the ladder, etc., were contained in Mr. Cisneros's truck. (Tr. 101-06, 119-20, 180-81). Mr. [redacted] testified that the

crew also had an insulated blanket and he was issued insulated rubber gloves and sleeves, but they would usually leave them in the truck while they cleaned the vaults. (Tr. 188-89).

Mr. [redacted] testified that he and Mr. [redacted] typically cleaned the vaults by sweeping the floors with a broom, cleaning the electric cables on the walls with a brush taped to the end of a pole, and cleaning the tops of reactors and conductors with hand-held brushes from a ladder. (Tr. 109-13, 129-33; Exs. C-10, p.5, C-11). Mr. [redacted] testified that he knew what he was supposed to clean each day because Foreman Cisneros told him what to clean. (Tr. 103-06). Mr. [redacted] corroborated Mr. [redacted]'s testimony – that they were assigned to clean everything in the vaults, including the walls, electrical reactors, conductors, and electrical cables. He also confirmed that they often use a brush taped to the end of a pole to clean the cables, reactors, and all around reactor bushings. (Tr. 181-82, 209-12; Exs. C-10, C-11 pp. 2-4).

## II. The Incident

At the time of the accident giving rise to the investigation, Respondent had contracted with Oncor, an electric utility company, to clean and remove dust/dirt/trash/leaves from their electrical vaults. (Tr. 573-74; Ex. C-54 p.10). Pursuant to the contract, Oncor provided Respondent with a “Vault Maintenance Route,” which identified the specific vaults to be cleaned. (Tr. 294-97; Exs. C-52, C-53, C-54 p.13). Oncor also provided Respondent with a “Statement of Work” and a “Vault Inspection List” which were intended to act as vault cleaning guidelines for the crew. (Tr. 293-300; Exs. C-52, C-53, C-54 pp.10-11).

The actual site of the accident was referred to as “Municipal Vault No. 2130” because it was located under a municipal building and delivered power to the building. (Tr. 309-12; Exs. C-52, p.1, C-53 p.203). Oncor's schematic for Municipal Vault 2130 provided the layout of the reactors inside and identified the maximum voltage as 13,200-volts. (Tr. 293-95; Ex. C-54 p.12).

At trial, Mr. Oakes testified that the 13,200-volts refers to the voltage coming into and out of the reactors within the vault. (Tr. 296-98). He further testified that the other vaults which Respondent's crew previously cleaned contained similar equipment with energized parts coming in and going out, with the potential for those energized parts to be exposed. (Tr. 318-20). The record shows all of the vaults Respondent cleaned, regardless of the vault configuration, whether reactors or transformers, had the potential for live, energized parts inside them. (Tr. 318-26).

On October 3, 2019, Mr. [redacted], Mr. [redacted], and Foreman Cisneros arrived at the jobsite to clean Municipal Vault 2130. (Tr. 99-103, 162, 172-76, 309-12). Mr. Cisneros, as a result of being on light duty, remained above the vault in his truck. (Tr. 101-03, 178-79). He could still see the crew working inside the vault from his vantage point in the truck with the door open. (Tr. 258-61). At the time of the accident, Mr. [redacted] was in the vault alone while Mr. [redacted] was up top - out of the vault. (Tr. 178). Mr. [redacted] testified on the date of the incident he had briefly gone down into the vault once, but only to urinate out of view of the street. (Tr. 276-77).

While in the vault, Mr. [redacted] used a broom to sweep the floors, a brush taped to the end of a pole to clean the cables on the walls, and a ladder and hand-held brush to clean the tops of the reactors. (Tr. 108-12; Ex. C-11 pp.1-6). Mr. [redacted] was wearing ordinary work gloves, which were not rated for electricity, as he cleaned. (Tr. 115-16, 188-89). He had previously been issued insulated rubber gloves and sleeves by MasTec, but they had been taken from him by Respondent for testing purposes and had not been reissued by the time of the incident. (Tr. 115-17, 120, 750-51).

While attempting to clean the bushings on top of a 13,200-volt reactor within the vault, Mr. [redacted] sustained an electric shock resulting in permanent and disabling injuries to both of

his arms, one of which had to be amputated. (Tr. 87, 95-96, 134-35; Ex. C-10). From outside the vault, Mr. [redacted] heard a noise, went into the vault to see what had happened, picked Mr. [redacted] up off the floor, and began yelling for help. (Tr. 197-98). Mr. Cisneros heard the yelling from his truck and called an ambulance. (Tr. 198-99).

### III. OSHA's Investigation and Citation

Following the accident, OSHA assigned the case to CSHO Cox to investigate the matter. (Tr. 493). During his investigation, CSHO Cox decided not go inside the vault because he did not have the proper certifications. (Tr. 494-95). He explained that in order for him to enter the electrical vault, he would need to be given knowledge and training on the specific vault hazards from the vault's owners (Oncor). (Tr. 493-95).

As part of his investigation, CSHO Cox took photographs of Mr. [redacted]'s injuries. (Tr. 494-95; Ex. C-10). He also received photographs taken inside the vault from Rich Taylor, Respondent's Dallas Training Manager at the time. (Tr. 494-98; Exs. C-10, C-12). Additionally, CSHO Cox requested and reviewed Respondent's own investigative documents. He also interviewed several of Respondent's employees, including Mr. [redacted], Mr. [redacted], Mr. Cisneros, Mr. Roberts, Mr. Fry, Mr. Cox, Mr. Tarango and Mr. Taylor. (Tr. 494-99, 537-38; Exs. C-23, C-24, C-26, C-28).

After conducting his investigation, CSHO Cox determined that Respondent's employees had been exposed to numerous electrical hazards while working inside the vault. (Tr. 518-20). Specifically, he concluded that employees were exposed to electrical hazards when they approached exposed energized parts within the Minimum Approach Distance ("MAD") of the reactors without proper training or equipment. (Tr. 516-18). As relevant to the violations proposed in this case, CSHO Cox determined that Mr. [redacted] was an "unqualified" employee, while Mr.

[redacted] was a “qualified” employee per the cited regulation’s terms and definitions. (29 C.F.R. § 1910.331(a); Tr. 67-71, 502-08).

CSHO Cox testified that Citation 1, Item 1 was recommended due to Respondent’s failure to provide an adequate safety briefing before the assigned job. (Tr. 508-10). The parties agreed that Citation 1, Item 1 is based only on exposure of Mr. [redacted] – as a “qualified” employee. (Tr. 67-69; Sec’y Br. 32-33, Resp’t Br. 18, 29-31). CSHO Cox testified that Citation 1, Item 2 was also specific to Respondent’s “qualified” employee, Mr. [redacted], for entering the Minimum Approach Distance (MAD) for the 13,200-volt reactor on the day of the accident, and other electrical equipment on prior jobs. (Tr. 516-18). Citation 1, Item 3 was issued for allowing Mr. [redacted], an “unqualified” employee, who was unfamiliar with electrical safety practices, to work inside the vault. (Tr. 519-21). CSHO Cox testified that Citation 1, Item 4 was issued for Respondent’s failure to provide protective shields, barriers, or insulating material to prevent Mr. [redacted], an “unqualified” employee, from inadvertently contacting exposed energized parts. (Tr. 523-26). Citation 1, Item 5 was issued for Respondent’s “unqualified” employee performing housekeeping duties inside the Minimum Approach Distance. (Tr. 527-29). Lastly, Citation 2 Item 1 was recommended for Respondent’s failure to provide the proper personal protective equipment (PPE) to Mr. [redacted], an “unqualified” employee, while working near potential electrical hazards and actually contacting high-voltage equipment. (Tr. 529-31).

As a result of the CSHO’s investigation, Complainant issued Respondent a *Citation and Notification of Penalty* for five alleged serious, and one alleged willful violations of the Act, with a proposed total penalty of \$202,407.

## Discussion

To establish a violation of an OSHA standard, Complainant must prove: (1) the standard applied to the work being performed; (2) the employer failed to comply with the terms of the standard; (3) employees were exposed to the hazard covered by the standard, and (4) the employer had actual or constructive knowledge of the violation (i.e., the employer knew or, with the exercise of reasonable diligence, could have known of the violative condition). *Atlantic Battery Co.*, 16 BNA OSHC 2131, 2138 (No. 90-1747, 1994).

Complainant has the burden of establishing each element by a preponderance of the evidence. *See Hartford Roofing Co.*, 17 BNA OSHC 1361 (No. 92-3855, 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.

BLACK’S LAW DICTIONARY (10th ed. 2014).

### Citation 1, Item 1

Citation 1, Item 1 alleges a serious violation of 29 C.F.R. § 1910.269(c)(2) as follows:

29 C.F.R. § 1910.269(c)(2) The employer did not ensure job briefing cover at least the following subjects: hazards associated with the job, work procedures involved, special precautions, energy-source controls, and personal protective equipment requirements.

On or about October 3, 2019, and at times prior thereto, the employer did not ensure the job briefing; covered hazards associated with the job, work procedures involved, special precautions, energy-source controls, and personal protective equipment requirements.

### The Cited Regulation Applied to the Condition

Commission precedent dictates that proving the application of the cited standard pertains to the cited work conditions, not the particular cited employer. *Ryder Transp. Servs.*, 24 BNA

OSHC 2061, 2064 (No. 10-0551, 2014) (concluding “that the Secretary has failed to establish that the cited general industry standard applies to the working conditions here”); *Active Oil Serv., Inc.*, 21 BNA OSHC 1092, 1094 (No. 00-0482, 2005)(finding “that the confined space standard applies to the cited conditions” because “the vault was a confined space”); *Arcon, Inc.*, 20 BNA OSHC 1760, 1763 (No. 99-1707, 2004)(“In order to establish a violation, the Secretary must show that the standards applied to the cited conditions.”).

Respondent is a company that provided support services in the field of electrical transmission and distribution, including the cleaning of electrical vaults, at the time the violation occurred. (Tr. 99-103, 172-76). The electrical vault cleaning services Respondent performed falls under the purview of Part 1910, Subpart R, § 1910.269 - Electric power generation, transmission, and distribution. The scope of the aforementioned “*section covers operation and maintenance of electric power generation, control, transformation, transmission, and distribution lines and equipment.*” 29 C.F.R. § 1910.269(a)(1)(i). The standard continues by stating that it applies to the, “[p]ower generation, transmission, and distribution installations, including related equipment for the purpose of communication or metering that are accessible only to qualified employees.”<sup>3</sup> 29 C.F.R. § 1910.269(a)(1)(i)(A).

It is undisputed that Respondent was hired by Oncor, the local electric distribution utility company, to provide cleaning services in the vault. (Tr. 99-103, 172-76, 340, 344-47; Ex. C-54 p.10). It is undisputed that the vault is a distribution vault for electricity. (Tr. 345-46). Further, the parties agreed Mr. [redacted] was a “qualified” worker – who was covered by the cited

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<sup>3</sup> The standard further states:

“Note to paragraph (a)(1)(i)(A): The types of installations covered by this paragraph include the generation, transmission, and distribution installations of electric utilities, as well as equivalent installations of industrial establishments. Subpart S of this part covers supplementary electric generating equipment that is used to supply a workplace for emergency, standby, or similar purposes only. (See paragraph (a)(1)(i)(B) of this section.)” 29 C.F.R. § 1910.269(a)(1)(i)(A).

regulation. (Sec’y Br. 27-27, Resp’t Br. 3-4). The cited standard at 29 C.F.R. § 1910.269(c)(2) applied to Respondent’s work activities, specifically with regard to Mr. [redacted].

#### Respondent Failed to Comply with the Standard

Section 1910.269(c)(2) requires pre-job briefings to cover, at minimum, “*hazards associated with the job, work procedures involved, special precautions, energy-source controls, and personal protective equipment requirements.*” While the parties seem to acknowledge that some form of pre-job briefing occurred, there is significant disagreement over the adequacy of the briefing. (Sec’y Br. 37-38, Resp’t Br. 27-29). Complainant argues the pre-job briefing was inadequate because the oral discussion and written documentation failed to include information pertaining to electrical hazards, Minimum Approach Distances, or electrical personal protective equipment. (Sec’y Br. 37-38). Respondent argues they exceeded the regulation’s requirements by putting the pre-job briefing in writing. They contend that because the crew was performing a routine job that had been completed hundreds of times before, an informal briefing was permitted under the standard.<sup>4</sup> (Resp’t Br. 27-29).

The record reveals that the pre-job briefing in this instance, for the task of cleaning a 13,200 volt electrical reactor in an underground vault, was inadequate. (Tr. 509-14; Ex. C-32). The pre-job briefing failed to identify any electrical hazards within the vault. (Ex. C-32). The pre-job briefing only vaguely identified traffic and slips/trips as potential hazards. (Ex. C-32). On the date of the incident, no instructions were given concerning the PPE required, work procedures to be used, special precautions to take, or potential energy sources within the vault. (Tr. 119-22, 182-83, 187-89; Ex. C-32). Mr. [redacted] testified that Mr. Cisneros just told them to “be careful with

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<sup>4</sup> Respondent references 29 C.F.R. § 1910.269(c)(4)(i) in support of its argument. 29 C.F.R. § 1910.269(c)(4)(i) states “[a] brief discussion is satisfactory if the work involved is routine and if the employees, by virtue of training and experience, can reasonably be expected to recognize and avoid the hazards involved in the job.”

what we were doing.” (Tr. 182). Assuming, *arguendo*, Mr. Cisneros’s pre-job comment “to be careful” was sufficient for a routine job,<sup>5</sup> the record shows that the assigned task and electrical equipment in this vault was *not* routine. (Tr. 107, 182, 188, 533-54, 786-90).

Although the crew had cleaned many electrical vaults together before, this vault was unique in design and contents. (Tr. 553-54, 786-90). The crew had never actually cleaned this particular electrical vault before the day of the accident. (Tr. 313-15, 332). Oncor’s schematic identified the layout of the underground vault and the maximum voltage of the equipment as 13,200-volts. (Tr. 293-96; Ex. C-54 p.12). Mr. Oakes testified that the vaults previously cleaned by the crew contained transformers, not reactors like the vault in question here. (Tr. 318-20). The vaults typically cleaned by the crew contained transformers which were also square in shape, with enclosed whereas the reactor being cleaned on the day of the accident was tall and cylindrical, with a different wiring configuration. (Tr. 87, 207-09, 278, 285-87, 441-42, 524; Exs. C-10; C-12). Both Mr. [redacted] and Mr. [redacted] testified that the October 3, 2019 vault contained equipment they were unfamiliar with. (Tr. 132, 207-09, 278, 285-87). Mr. [redacted] had even warned Mr. [redacted] that they had “never cleaned something like that” before when referring to the reactor in this particular vault. (Tr. 277-78). Clearly, the pre-job briefing, which listed only nearby vehicle traffic, tripping hazards, and an oral admonition to “be careful” was insufficient.

The Court finds Complainant established, by a preponderance of the evidence, that Respondent’s pre-job briefings failed to identify hazards associated with the job within the vault, required work procedures involved, special precautions to take, or energy-sources located within the vault. Accordingly, Complainant has proven a violation of the cited standard.

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<sup>5</sup> 29 C.F.R. § 1910.269(c)(4)(ii)(A) requires a “more extensive discussion shall be conducted [i]f the work is complicated or particularly hazardous.” Here, the electrical hazards are particularly hazardous as it was a new type of electrical equipment not cleaned before and exposure could result in serious injury, electrocution, or death. (Tr. 514, 535-37).

### Respondent's Employee was Exposed to a Hazardous Condition

“The Secretary always bears the burden of proving employee exposure to the violative conditions.” *Fabricated Metal Prods., Inc.*, 18 BNA OSHC 1072, 1074 (No. 93-1853, 1997). The Commission’s test for hazard exposure requires the Secretary to “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.” *Gate Precast Co.*, 2020 WL 2141954 (OSHRC, April 28, 2020).

The zone of danger is the “area surrounding the violative condition that presents the danger to employees.” *Boh Bros. Constr. Co., LLC*, 24 BNA OSHC 1067, 1085 (No. 09-1072, 2013) (citing *RGM Constr. Co.*, 17 BNA OSHC 1229, 1234 (No. 91-2107, 1995)). The zone of danger is determined by the hazard presented by the violative condition, and is normally the area surrounding the condition which presents the danger to employees that the standard was intended to prevent. *RGM Constr.*, 17 BNA OSHC at 1234; *Gilles & Cotting, Inc.*, 3 BNA OSHC at 2003.

Respondent’s “qualified” employee, [redacted], was exposed to the hazardous condition. Here, Mr. [redacted] had access to the electrical vault and the electrical hazards within. Although Mr. [redacted] was not helping Mr. [redacted] clean the electrical equipment in the vault at the time of the accident on October 3, 2019, Mr. [redacted] was exposed to the electrical hazards when he went into the vault to urinate out of view of the street. (Tr. 180; Sec’y Br. 32-33, Resp’t Br. 18, 30-31). As such, the Court finds that Complainant established employee exposure to the hazardous condition addressed in the cited regulation.

### Complainant Established Employer Knowledge

“To meet [his] burden of establishing employer knowledge, the Secretary must show that the cited employer either knew or, with the exercise of reasonable diligence, could have known of

the presence of the violative condition." *Pride Oil Well Serv.*, 1992 WL 215112 (OSHR, August 17, 1992). An employer is required to make a reasonable effort to anticipate the particular hazards to which its employees may be exposed during the course of scheduled work. *Automatic Sprinkler Corp. of Am.*, 1980 WL 10595 (OSHR, May 9, 1980). When determining whether an employer has been reasonably diligent, the Commission considers "several factors, including the employer's obligation to have adequate work rules and training programs, to adequately supervise employees, to anticipate hazards to which employees may be exposed, and to take measures to prevent the occurrence of violations." *Precision Concrete Constr.*, 2001 WL 422968 (OSHR, April 25, 2001). An employer's awareness may be shown through actual or constructive knowledge of the condition. It is not necessary to show the employer knew or understood the condition was hazardous – just knowledge of the condition. *Phoenix Roofing, Inc.*, 1995 WL 82313 (OSHR, Feb. 24, 1995).

The Secretary contends that Respondent had actual knowledge of this condition through Mr. Cisneros's close supervision at the jobsite. (Sec'y Br. 36-37). The actual or constructive knowledge of a foreman or supervisor is generally imputed to the employer. *Tampa Shipyards*, 1992 WL 52938 (OSHR, March 10, 1992). It is undisputed that Mr. Cisneros was the foreman of this crew, acting in a supervisory role for Respondent. (Tr. 853; Sec'y Br. 36-37, Resp't Br. 36-37). The Court finds that Mr. Cisneros directed the actions of the crew, knew exactly what they were doing, the type of equipment assigned to be cleaned, and the level of briefing which had (or had not) occurred. (Tr. 101-03, 177-80, 258-61, 509-514, 853).

Here, Mr. [redacted] and Mr. [redacted] both testified that Respondent did not provide any work rules or training specific to vault cleaning, for this or any other previous vault cleaning jobs. (Tr. 105-07, 182-83). Mr. Fry admitted that although he personally taught some classes to

Respondent's employees, he did not provide any specific vault cleaning training and did not have any knowledge of anyone else specifically providing vault cleaning training to Respondent's employees. (Tr. 837-40; Ex. C-37). Mr. Roberts provided corroborating testimony when he acknowledged that Respondent never developed, never provided him, and never provided this crew with any training on how to safely and properly clean underground electrical vaults. (Tr. 419-24).

For the purpose of employer knowledge, it is also worth briefly discussing Respondent's general handling of pre-job briefing documents. The record shows that once a pre-job briefing was completed, the briefing documentation was turned over to Respondent's safety department for review. (Tr. 514-15; Exs. C-32, C-33). Mr. Tarango or Mr. Roberts collected the briefing documents and were supposed to review them, to inform the crew if everything had been done correctly/incorrectly. (Tr. 454-58, 514-15, 800-01). If any of the pre-job briefings contained deficiencies pertaining to, *inter alia*, electrical hazards, PPE, hazardous energy sources, energized parts, or voltage, it would have been a higher level supervisor's responsibility to correct and mentor the crew on the deficiencies. (Tr. 454-58, 775-78, 801-02; Ex. C-33).

After the pre-job briefings were collected and reviewed by supervisors, they were also sent to safety managers, including Mr. Cox. (Tr. 442-43, 802-03). Mr. Cox was also supposed to point out any deficiencies. (Tr. 802-03). However, no one ever pointed out any pre-job briefing deficiencies to this crew. (Tr. 454-58, 802-03; Ex. C-32). Instead, Respondent's supervisors and safety personnel, who audited Mr. Cisneros's worksites and pre-job briefings, gave Mr. Cisneros a score of 100% on every single audit. (Tr. 779-81; Exs. C-56, C-57). It was only after this accident that Mr. Fry found the crew's pre-job briefings to be inadequate, missing information about potential electrical hazards, exposed energized parts, work procedures and assignments,

PPE, hazardous energy sources, voltage, and required clearances. (Tr. 454-58, 752-53, 765-66, 774-78, 800-03, 853; Exs. C-32, C-33). The Court finds that Foreman Cisneros had actual knowledge of the deficiencies in the pre-job briefing, and Respondent's managers to whom previous pre-job briefings were submitted, had constructive knowledge of their deficiencies. Their knowledge is imputed to Respondent. *Ga. Elec. Co. v. Marshall*, 595 F.2d 309, 321 (5th Cir. 1979); *N.Y. State Elec. & Gas Corp. v. Sec'y of Labor*, 88 F.3d 98, 105 (2d Cir. 1996); *Access Equip. Sys., Inc.*, 18 BNA OSHC 1718, 1726 (No. 95-1449, 1999); *Tampa Shipyards*, 15 BNA OSHC at \*6.

#### Citation 1, Item 1 Serious Classification

The Secretary classified Citation 1, Item 1 as a serious violation of the Act. A violation is serious under the Act if “there is substantial probability that death or serious physical harm could result.” 29 U.S.C. § 666(k). The Secretary need not show there was a substantial probability an accident would occur, only that if an accident did occur, death or serious physical harm could result. *Mosser Constr., Inc.*, 23 BNA OSHC 1044, 1046 (No. 08-0631, 2010); *Wal-Mart Stores, Inc., v. Sec'y of Labor*, 406 F.3d 731, 735 (D.C. Cir. 2005); *Brock v. L.R. Willson & Sons, Inc.*, 773 F.2d 1377, 1388 (D.C. Cir. 1985).

The record is clear that hazardous conditions existed in the vault on the day of the incident which could, and did, result in serious physical harm to one of Respondent's employees. However, the cited regulation in Citation 1, Item 1, only applied to “qualified” employee [redacted] – not injured “unqualified” employee [redacted]. (Tr. 95-96; Ex. C-10). The Court finds that Mr. [redacted], due to the deficient pre-job briefing, could have also been seriously injured, or killed. The Court also notes Respondent's counsel's statement at trial: “I don't believe there's a dispute about a serious injury.” (Tr. 496). Citation 1, Item 1 was properly characterized as a serious

violation of the Act. Citation 1, Item 1 will be AFFIRMED.

Citation 1, Item 2

Citation 1, Item 2 alleges a serious violation of 29 C.F.R. § 1910.269(l)(3)(iii) as follows:

29 C.F.R. § 1910.269(l)(3)(iii): The employer did not ensure that no employee approached or took any conductive object closer to exposed energized parts than the employer's established minimum approach distance, unless provisions described in (l)(3)(iii)(A)-(C) were followed:

On or about October 3, 2019, and at times prior thereto, the employer allowed employees to approach closer to exposed energized parts than the employer's established minimum approach distance (MAD), exposing employees to electrical hazards.

The Cited Regulation Applied to the Condition

As previously discussed, the electrical vault cleaning services Respondent performed would fall under the purview of Part 1910, Subpart R. Hazards associated with electric power generation, transmission, and distribution fall within the scope of this subpart including its relevant sections. 29 C.F.R. § 1910.269.

As with Citation 1, Item 1 above, the cited standard at 29 C.F.R. § 1910.269(l)(3)(iii) applied to Respondent's "qualified" employee work activities – namely Mr. [redacted]. It is undisputed that Respondent was hired by Oncor, the local electric utility company, to provide cleaning maintenance services in the electrical distribution vault. (Tr. 99-103, 172-76, 340, 344-47; Ex. C-54 p.10). Further, it is undisputed that Mr. [redacted] was a "qualified" worker. (Sec'y Br. 27-27, Resp't Br. 3-4). Therefore, the cited standard at 29 C.F.R. § 1910.269(l)(3)(iii) applied to the work activities of Mr. [redacted] as a "qualified" employee because he was part of the crew assigned to clean 13,200-volt electrical equipment in an underground vault.

The Record Fails to Show Respondent Violated the Standard

In Citation 1, Item 2, the Secretary alleges that Respondent violated the standard when Mr. [redacted] entered the Minimum Approach Distance (MAD) of the 13,200-volt reactor on October

3, 2019, when he entered the vault briefly to urinate. (Sec’y Br. 30-35). However, there was no evidence that Mr. [redacted] ever cleaned or contacted the reactor. Nor was there evidence of the precise distance Mr. [redacted] came within the reactor while he was briefly inside the vault. Complainant also argues that even if Mr. [redacted] did not encroach the MAD for this particular reactor, he violated MAD restrictions in other vaults on other jobs prior to October 3, 2019. (Sec’y Br. 30-35). Respondent argues there was no evidence in the record to support Complainant’s theory. (Resp’t Br. 29-32).

The Court finds that there is not sufficient evidence in this record to conclude that Mr. [redacted] entered the MAD for the 13,200 volt reactor when he briefly entered the vault on the day in question. (Tr. 180, 276-77, 588-89). There was no evidence that he ever cleaned or approached the reactor. CSHO Cox conceded that he did not have any knowledge of Mr. [redacted] violating the MAD while he was in the vault. (Tr. 588-89). CSHO Cox testified:

Q. Do you have any knowledge at all of Mr. [redacted] violating the MAD in connection with this vault?

A. No, sir.

(Tr. 588).

Similarly, there was no credible evidence to establish that Mr. [redacted] entered the MAD for electrical equipment at other previous vaults. (Tr. 131-33, 178-79, 188-89, 285-86). The record shows that many of the prior vaults, which were not investigated by OSHA, were actually configured differently, with different voltages, than the vault in question here. (Tr. 131-33, 178-79, 188-89, 560-61). The Court finds that this record lacks any specificity concerning Mr. [redacted]’s possible encroachment within the MAD on other jobsites. Therefore, the Court finds Complainant has not proven a violation of the cited standard. Citation 1, Item 2 will be VACATED.

Citation 1, Item 3

Citation 1, Item 3 alleges a serious violation of 29 C.F.R. § 1910.332(b)(2) as follows:

29 C.F.R. § 1910.332(b)(2): Employees, who were not qualified persons, were not trained in and familiar with electrically related safety practices not specifically addressed by 29 C.F.R. § 1910.331 through 29 C.F.R. § 1910.335, but which were necessary for their safety:

On or about October 3, 2019, and at times prior, the employer did not ensure that employees, who were not qualified persons, were trained in and familiar with electrically related safety practices.

This item was issued under regulations applying to “unqualified” employees engaged in electrical work activities. Therefore, unlike Citation 1, Items 1 and 2 above – which dealt exclusively with Mr. [redacted]’s work activities (as a “qualified” employee), this item and the remaining proposed violations described in Citation 1, Items 4, 5, and Citation 2, Item 1, deal only with Mr. [redacted]’s work activities. (Tr. 67-68). *Tower Maintenance Corp.*, 2016 WL 3746572 (No. 13-0777, May 16, 2016).

The Cited Regulation Applied to the Condition

The Secretary argues that 29 C.F.R. § 1910.332(b)(2) applied to Mr. [redacted]’s work activities only - as an “unqualified” employee. (Sec’y Br. 27-30). Respondent argues the standard does not apply to Mr. [redacted], because they argue he was a “qualified” employee under the regulations, just like Mr. [redacted]. (Resp’t Br. 2-12, 21-27, 32-34). The definition of a “qualified person” can be found in 29 C.F.R. § 1910.399:

(a) Qualified person. One who has received training in and has demonstrated skills and knowledge in the construction and operation of electric equipment and installations and the hazards involved.<sup>6</sup>

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<sup>6</sup> The following notes are added to help quantify a qualified person.

Note 1 to the definition of “qualified person:” Whether an employee is considered to be a “qualified person” will depend upon various circumstances in the workplace. For example, it is possible and, in fact,

The regulations at 29 C.F.R. § 1910.331 also distinguish “qualified” and “unqualified” workers for these electrical regulations. A “qualified” person includes “those who have training in avoiding the electrical hazards of working on or near exposed energized parts.” An “unqualified” person includes “those with little or no such training.” The regulations at 29 C.F.R. § 1910.269(a)(2) further detail the training requirements for a “qualified” person.

The record reveals that although Respondent produced a list of training courses for Mr. [redacted], he completely failed to demonstrate competent skills or knowledge in basic electrical safety at trial. (Tr. 668-76; Exs. C-29, C-30, C-31, C-39, R-1). While discussing the tools and ladder used to clean the 13,200 volt reactor, Mr. [redacted] was asked whether he knew which equipment he was using/contacting was considered conductive. (Tr. 112-13). After a few questions the Court asked Mr. [redacted] to clarify his answers:

Q: Mr. [redacted], I’m sorry to interrupt, but I want to ask a question. But do you know what he means when he says “conducting?”

A: Not exactly.  
(Tr. 113).

Mr. [redacted] further testified that he did not know what “conducting” or “conductive” meant in the context of electrical work, and could not determine whether his ladder, hand-held

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likely for an individual to be considered “qualified” with regard to certain equipment in the workplace, but “unqualified” as to other equipment. (See 1910.332(b)(3) for training requirements that specifically apply to qualified persons.)

Note 2 to the definition of “qualified person:” An employee who is undergoing on-the-job training and who, in the course of such training, has demonstrated an ability to perform duties safely at his or her level of training and who is under the direct supervision of a qualified person is considered to be a qualified person for the performance of those duties.

Section 29 C.F.R. § 1910.331.

brushes, or the brush taped to the end of a pole, were conductive or nonconductive. (Tr. 112-14, 503-04, 544-45, 549-50). He did not even understand the concept of Minimum Approach Distance (MAD). (Tr. 114). Mr. [redacted] also demonstrated very little knowledge regarding the type of protective gloves that should be used to protect an employee from certain voltages, when or whether he was required to wear such gloves, or even describe the type of electrical hazards he should have been protecting himself against. (Tr. 112-19).

Q: Do you know what the phrase “MAD” means:

A: No, sir.

Q: Do you know what the phrase “Minimum Approach Distance” means?

A: No, sir.

Q: Do you know how to determine the Minimum Approach Distance in a vault?

A: No, sir. Everything is together there, I can’t measure.

Q: Before you went into the vault on the date of the incident, did Marshall [Foreman Cisneros] tell you what the MAD was?

A: No, sir.

Q: On a typical day before you would go into the vaults, would Marshall [Foreman Cisneros] tell you what the MAD was?

A: I don’t remember if he ever told us. But, no, no – I’m not sure.

Q: How did you know if you did your job correctly?

A: Well, we just tried to get the transformers and the floors as clean as possible.

...

Q: Do you know the difference between Class 0; 1, 2 and 3 insulated gloves?

A: No, sir.

Q: Do you know what the limitations are of your regular gloves to protect against electrical hazards?

A: No, sir.

Q: Do you know what the limitations are of Class 0; 1, 2 or 3 gloves to protect against electrical hazards?

A: No, sir.

(Tr. 118).

...

Q: Do you know what arc, a-r-c, flash hazards are?

A: No, sir.

(Tr. 114, 119).

...

Q: Do you know what nominal voltage means?

A: No, sir.

(Tr. 147).

...

Q: Do you know what phase-to-phase means?

A: No, sir.

Q: Do you know what phase-to-ground means?

A: No, I don't remember.

(Tr. 147-48).

CSHO Cox testified that during his investigation, Mr. [redacted] was unable to answer even the most basic questions about electrical hazards, Minimum Approach Distances, and had a hard time understanding various basic electrical terminologies. (Tr. 502-05, 544-45, 548-50). CSHO Cox's investigative interview with Mr. [redacted], as well as his review of Mr. [redacted]'s employment and training file, convinced him that Mr. [redacted] lacked basic skills and knowledge in electrical matters. (Tr. 502-07, 544-45, 548-50, 840-46; Exs. C-29, C-30, C-31, C-39). CSHO Cox's impression of Mr. [redacted]'s complete lack of knowledge concerning basic electrical safety concepts was confirmed at trial by Mr. [redacted]'s own testimony.

As previously discussed, Respondent is a company that provides electrical transmission and distribution services, including the cleaning of underground high-voltage electrical vaults. (Tr. 99-103, 172-76). Mr. [redacted] was part of Respondent's crew hired to help clean high-voltage electrical equipment in underground vaults. (Tr. 103-06, 173-74). Mr. [redacted] was not adequately trained in, nor familiar with, electrical-related safety practices. (Tr. 502-05, 544-45, 548-50, 840-46; Exs. C-29, C-30, C-31, C-39). The record convinces the Court that Mr. [redacted] was "unqualified" as he could not demonstrate even the most basic knowledge of electrical safety, electrical equipment, electric installations, or electrical hazards. (Tr. 502-05, 544-45, 548-50, 668-76, 840-46; Exs. C-29, C-30, C-31, C-39). Thus, the cited standard at 29 C.F.R. § 1910.332(b)(2) for "unqualified persons" applied to this condition.

#### Respondent Failed to Comply with the Standard

Section 1910.332(b)(2) requires workers "who are not qualified persons" to "be trained in and familiar with any electrically related safety practices not specifically addressed by §§1910.331

through 1910.335 but which are necessary for their safety.” The explanation above, as to why Mr. [redacted] was “unqualified” is incorporated into this discussion of why the cited regulation was violated. Mr. [redacted]’s electrical knowledge not only fell short of the definition of a “qualified” person, but also fell short of the less-stringent training requirements for “unqualified persons” in 29 C.F.R. §§ 1910.331-335. Respondent argues that Mr. [redacted], who required a Spanish interpreter at trial, was provided extensive training, including its Cardinal Electrical Rules Training, covering all aspects of MAD, PPE, and electrical safety awareness, some of which was in Spanish. (Tr. 668-76; Ex. R-1; Resp’t Br. 2-12, 21-27, 32-34). However, it is unclear from the record which subjects were in Spanish, though it was clear that not all were. It was also unclear how effectively translated the training courses were. (Tr. 668-78). Mr. [redacted] testified that when he took courses and quizzes in English, that he would just copy someone else’s answers because he did not understand English. (Tr. 95-96, 148-49, 155-56).

Respondent argues it would use quizzes and field assessments to evaluate how much of the training Respondent’s employees understood and retained. (Tr. 679-85, 840-49; Resp’t Br. 5-11). However, Respondent failed to produce any quizzes or field assessments for any of the crew members, including Mr. [redacted]. (Tr. 840-46; Exs. C-38, C-39, C-40). All that was produced was Mr. [redacted]’s personnel file and a spreadsheet with a summary list of courses Mr. [redacted] attended. (Exs. C-37, pp. 79; C-39). Despite this long list of training courses, the Court weighs Mr. [redacted]’s trial testimony more heavily than the training course spreadsheet, for establishing that Mr. [redacted] was not adequately “trained in and familiar with electrically related safety practices” per the requirement of the standard. As discussed earlier, Mr. [redacted] was unable to answer the most basic questions about electrical hazards, minimum approach distances, conductivity, voltage, and other basic electrical concepts. (Tr. 107-124).

The record is clear from Mr. [redacted]'s testimony, and CSHO Cox's description of their investigative interview, that [redacted] was not adequately trained in, or familiar with, electrical related safety practices for the work he was performing (cleaning, with brushes, rags, and poles, 13,200 volt reactors which supplied electrical power to downtown buildings). (Tr. 668-76; Ex. C-29, C-30, C-31, C-39). Accordingly, the Court finds Complainant has proven a violation of the cited standard.

#### Respondent's Employee was Exposed to a Hazardous Condition

The Commission has long held that exposure is met by an employee's mere access to a hazardous situation. *Gilles & Cotting, Inc.*, 3 BNA OSHC 2002, 2003 (No. 504, 1976). Here it is undisputed that Mr. [redacted] was inside the underground electrical vault cleaning live 13,200-volt electrical equipment on October 3, 2019. (Sec'y Br. 30-36, Resp't Br. 2-4, 17-19). Unfortunately, the risk of injury is not theoretical in this instance, as he was severely shocked by the reactor, resulting in the amputation of one arm and severe damage to the other. (Tr. 95-96, Ex. C-10). Actual exposure to the hazardous condition with resulting injuries clearly establishes exposure. *See S & G Packaging, Co., LLC (S&G)*, 19 BNA OSHC 1503, 1506 (No. 98-1107, 2001).

#### Complainant Established Employer Knowledge

The discussion addressing employer knowledge above equally applies to this violation and is incorporated herein. Foreman Cisneros supervised Mr. [redacted] and directed the crew's work in this and other vaults. He was fully aware of Mr. [redacted]'s level of training and experience, as well as the specific contents of the vaults they were tasked with cleaning. (Tr. 101-03, 178-79, 258-61 853; Sec'y Br. 36-37, Resp't Br. 36-37).

In addition to Mr. Cisneros's actual knowledge, Respondent was specifically aware of Mr. [redacted]'s lack of training and familiarity with regard to electrical safety practices. (Tr. 419-24, 837-40; Ex. C-37). Mr. Fry and Mr. Roberts both testified that no work rules or training specific to underground electrical vault cleaning was ever provided to Mr. [redacted]. (Tr. 419-24, 837-40). Mr. Roberts specifically testified as follows:

Q: Did you ever receive any training from MasTec on how to safely and properly clean vaults?

A: No.

Q: Did you ever provide any training to this crew; Cisneros, [redacted], [redacted] on how to safely and properly clean vaults?

A: No.

(Tr. 421).

...

Q: After Mr. Cox did this assessment, did MasTec create any policies or procedures concerning vault cleaning?

A: No.

Q: Did MasTec develop any training specific to vault cleaning?

A: No.

(Tr. 422).

Mr. Fry corroborated Mr. Roberts' testimony concerning Respondent's lack of specific electrical safety training for the vault cleaning crew. (Tr. 838-39). Mr. Fry, who taught safety classes himself, testified:

Q: Is it true that you did not provide any specific vault cleaning training to this crew?

A: During those trainings?

Q: Ever?

A: No. No, I did not provide any.

Q: And it is true that you do not have any personal knowledge of anyone specifically providing vault cleaning training to this crew; is that true?

A: Yeah, that's true.

(Tr. 839).

The Court is convinced that Respondent did not provide Mr. [redacted] with any training specific to vault cleaning or the electrical hazards involved in that work. (Tr. 105-07, 182-83, 419-

24, 837-40; Ex. C-37). Complainant established Respondent's knowledge of the violative condition.

#### Citation 1, Item 3 Serious Classification

The Secretary classified Citation 1, Item 3 as a serious violation of the Act. As previously discussed, a violation is classified as serious if "there is a substantial probability that death or serious physical harm could result." 29 U.S.C. § 666(k). Here, the record shows that Mr. [redacted]'s lack of training and familiarity with electrical safety could, and did, lead to serious injuries. (Tr. 95-96; Ex. C-10). Citation 1, Item 3 was properly characterized as a serious violation of the Act. Citation 1, Item 3 will be AFFIRMED.

#### Citation 1, Item 4

Citation 1, Item 4 alleges a serious violation of 29 C.F.R. § 1910.333(c)(5) as follows:

29 C.F.R. § 1910.333(c)(5): When an employee worked in a confined or enclosed space (such as a manhole or vault) that contained exposed energized parts, the employer did not provide and/or the employee did not use protective shields, protective barriers, or insulating materials as necessary to avoid inadvertent contact:

On or about October 3, 2019, and at times prior thereto, the employer did not ensure that employees used protective shields, protective barrier or insulating materials as necessary to avoid inadvertent contact to exposed energized parts.

#### The Cited Regulation Applied to the Condition

In Citation 1, Item 4, the Secretary alleged that Respondent violated 29 C.F.R. § 1910.333(c)(5). The standard provides in full:

(c) Working on or near exposed energized parts—

(5) Confined or enclosed work spaces. When an employee works in a confined or enclosed space (such as a manhole or vault) that contains exposed energized parts, the employer shall provide, and the employee shall use, protective shields, protective barriers, or insulating materials as

necessary to avoid inadvertent contact with these parts. Doors, hinged panels, and the like shall be secured to prevent their swinging into an employee and causing the employee to contact exposed energized parts.

29 C.F.R. § 1910.333(c)(5).

On the day of the accident, the record clearly establishes that Mr. [redacted] was cleaning electrical equipment in an underground vault. (Tr. 99-103, 172-76). The vault contained live 13,200-volt reactors which supplied power to nearby buildings. (Tr. 309-12; Exs. C-52, p.1, C-53 p.203). The cited standard clearly applied to the working conditions.

#### Respondent Failed to Comply with the Standard

The regulation requires that, while Mr. [redacted] was cleaning the 13,200 volt reactor in the underground vault, Respondent was required to provide, and ensure the use of, protective shields, protective barriers, or insulating materials to avoid inadvertent contact with any exposed energized parts. However, Respondent failed to ensure Mr. [redacted] used any of the aforementioned methods of protection, resulting in his severe electrical shock. (Tr. 95-96, 101-06, 119-20, 180-81).

Respondent argues that the vault cleaning was not actually electrical work, should not have been performed on or near energized parts, and did not require PPE or the protective barriers listed in this regulation. (Resp't Br. 34-36). The Court rejects Respondent's argument that Mr. [redacted] should not have been working on or near energized parts when the record clearly establishes that he was specifically tasked with dusting and cleaning a 13,200-volt reactor and its connected electrical wiring.

During his investigation, CSHO Cox learned that Foreman Cisneros had an insulated blanket in his truck. (Tr. 524-26). However, the crew was not using the blanket to prevent accidental contact with energized electrical parts. (Tr. 524-27). Mr. [redacted] testified that although there was an insulated blanket in Mr. Cisneros's truck, they never used it when cleaning

vaults, no one ever told them to use it, and they were not using it on the day he was exposed to the bushings on the 13,200 volt reactor. (Tr. 95-96, 101-06, 119-20, 180-81). Mr. [redacted] also confirmed that they would routinely leave the insulated blanket in the truck when they went into the vaults to clean. (Tr. 188-89).

The record is clear, Mr. [redacted] was working in the precise type of confined space referenced in the regulation (underground vault) with exposed energized parts on a 13,200-volt reactor without any protective barriers or insulating blankets to prevent inadvertent contact with those parts. (Tr. 95-96, 101-06, 119-20, 180-81, 325-26). Accordingly, the Court finds Complainant has proven a violation of the cited standard.

#### Respondent's Employee was Exposed to a Hazardous Condition

As discussed in detail above, Mr. [redacted] was working inside the underground electrical vault, cleaning a 13,200 volt reactor. (Sec'y Br. 30-36, Resp't Br. 2-4, 17-19). Further, the record clearly establishes that Mr. [redacted] was not using any type of protective barrier, shield, or insulated blanket while performing his work. Respondent's employee was exposed to the hazardous condition.

#### Complainant Established Employer Knowledge

Mr. Oakes, Oncor's North Dallas Transmission Manager, testified that the underground vault Respondent was hired to clean had the potential for exposed energized parts. (Tr. 325-26). He further testified that each current limiting reactor within the vault had 13,200-volts coming into it and 13,200-volts coming out of it. (Tr. 297-98). The reactors within the vault provided electricity to an entire municipal building. (Tr. 311-12). CSHO Cox testified that the reactor in the vault had bushings on top and had some phases going in and some going out. (Tr. 524). He explained that these phases were the exact type of electrical parts you would want to cover with

barriers or shields to prevent inadvertent contact. (Tr. 524-25). The list of vaults Respondent's crew was assigned to clean came from Oncor, and was distributed through Respondent's management employees, down to this crew's foreman, Cisneros. (Tr. 292-300; Ex. C-54).

The Secretary argues that Respondent had actual knowledge of this condition imputed through Mr. Cisneros's direct supervision at the jobsite. (Sec'y Br. 36-37). On the day of the incident, Mr. [redacted] rode to the jobsite (the underground vault) in Mr. Cisneros's truck. (Tr. 101). Mr. Cisneros specifically assigned Mr. [redacted] to go into the vault to clean the reactor, knowing that he did not use the insulated blanket in the truck, nor any other type of protective shield or barrier. (Tr. 101, 103-06, 119-20, 180-81). The Court finds that Complainant established Respondent's actual knowledge of the violative condition.

#### Citation 1, Item 4 Serious Classification

The Secretary classified Citation 1, Item 4 as a serious violation of the Act. The record establishes that in this instance, failure to use protective shields, barriers, or other insulating materials while cleaning a 13,200 volt reactor could result in serious injuries or death. As stated earlier, Mr. [redacted] did in fact experience a severe electric shock, resulting in extreme burns and the amputation of his left arm. (Tr. 95-96, 109-13; Ex. C-10 p.1-2). Citation 1, Item 4 was properly characterized as a serious violation of the Act. Citation 1, Item 4 will be AFFIRMED.

#### Citation 1, Item 5

Citation 1, Item 5 alleges a serious violation of 29 C.F.R. § 1910.333(c)(9) as follows:

29 C.F.R. § 1910.333(c)(9): Where live parts presented an electrical contact hazard, employees performed housekeeping duties at such close distances to the parts that there was a possibility of contact:

On or about October 3, 2019, and at times prior thereto, the employer allowed employees to perform housekeeping duties at close distances to parts where there was an electrical contact hazard.

The Regulatory Requirements, Factual Condition, and Abatement Methods Referenced  
in Citation 1, Item 5 are Identical to Citation 1, Item 4

The cited standard in Citation 1, Item 5 provides:

(c) Working on or near exposed energized parts—

(9) Housekeeping duties. Where live parts present an electrical contact hazard, employees may not perform housekeeping duties at such close distances to the parts that there is a possibility of contact, unless adequate safeguards (such as insulating equipment or barriers) are provided. Electrically conductive cleaning materials (including conductive solids such as steel wool, metalized cloth, and silicon carbide, as well as conductive liquid solutions) may not be used in proximity to energized parts unless procedures are followed which will prevent electrical contact.

29 C.F.R. § 1910.333(c)(9).

The cited regulation applies to employees performing housekeeping (cleaning/dusting/sweeping) duties near live electrical parts where there is a possibility of contact, without using safeguards such as insulating equipment or barriers. This hazard and method of abatement appear identical to the cited hazard in Citation 1, Item 4 – failing to use protective shields or barriers when working near energized parts. The same methods of abatement would correct the hazards in both Citation 1, Item 4, and Citation 1, Item 5. *See Flint Engineering & Const. Co.*, 1992 WL 394727 (OSHRC, Dec. 21, 1992); *Capform, Inc.*, 1989 WL 223320 (OSHRC, April 26, 1989)(finding violations duplicative where abatement of one item will necessarily result in abatement of the other item as well). Accordingly, Citation 1, Item 5 will be VACATED as duplicative of Citation 1, Item 4.

Citation 2, Item 1

Citation 2, Item 1 alleges a willful violation of 29 C.F.R. § 1910.335(a)(1) as follows:

29 C.F.R. § 1910.335(a)(1): Employees working in areas where there were potential electrical hazards were not provided with, and did not use, electrical protective

equipment that is appropriate for the specific parts of the body to be protected and for the work to be performed:

On or about October 3, 2019, and at times prior, the employer did not ensure that employees working in areas where potential electrical hazards existed used appropriate electrical protective equipment.

The Cited Regulation Applied to the Condition

In Citation 2 Item 1, the Secretary alleged Respondent violated 29 C.F.R. § 1910.335(a)(1).

The standard states in relevant part:

(a) Use of protective equipment—

(1) Personal protective equipment.

(i) Employees working in areas where there are potential electrical hazards shall be provided with, and shall use, electrical protective equipment that is appropriate for the specific parts of the body to be protected and for the work to be performed.

29 C.F.R. § 1910.335(a)(1)(i).

Complainant argues that 29 C.F.R. § 1910.335(a)(1) applied to Mr. [redacted] as an “unqualified” employee. (Sec’y Br. 27-30). Respondent argues that the standard did not apply to Mr. [redacted] because he was a “qualified” employee and therefore Subpart S in its entirety did not apply to him. (Resp’t Br. 2-12, 21-27, 32-34, 38-39). As previously discussed, the Court finds that Mr. [redacted] was “unqualified” to perform work near or on energized electrical equipment. The record established that Mr. [redacted] was not adequately trained in, and could not demonstrate, basic electrical safety skills or knowledge sufficient to be labeled a “qualified” electrical worker. (Tr. 502-05, 544-45, 548-50, 668-76, 840-46; Exs. C-29, C-30, C-31, C-39). The record also established that Mr. [redacted] was specifically tasked with cleaning an underground electrical vault containing 13,200-volt reactors. (Tr. 104-06, 124). Mr. [redacted] was directed to complete this task without the appropriate electrical protective equipment - specifically electrically rated rubber gloves and sleeves. (Tr. 115-17, 120, 750-51). Thus, the

cited regulation applied to the condition.

Respondent Failed to Comply with the Standard

Section 1910.335(a) requires that employees “*working in areas where there are potential electrical hazards*” to be “*provided with, and shall use, electrical protective equipment...*” 29 C.F.R. § 1910.335(a)(1)(i). Complainant argues that Respondent should have provided Mr. [redacted] with the appropriate PPE, including Mr. [redacted]’s previously issued rubber gloves and sleeves, in areas where there were potential electrical hazards. (Sec’y Br. 43). Respondent argues that vault cleaning did not require insulated rubber gloves and sleeves because Mr. [redacted] should have never entered the Minimum Approach Distance for the 13,200 volt reactor. (Resp’t Br. 38-39). As discussed above, Respondent’s argument is rejected because Mr. [redacted] was specifically assigned the duty of cleaning (and therefore contacting) the 13,200 volt reactor and connected wiring inside the vault. The Court notes that this was not only his assigned task in this vault, but he and [redacted] apparently performed this exact same type of cleaning duty on live electrical equipment in previous vaults. (Tr. 100). Cleaning and dusting everything in these vaults was their primary, daily, assigned task.

The record clearly established that Mr. [redacted] worked in an electrical vault with actual 13,200-volt electrical hazards. (Tr. 293-98, 309-12, 318-26; Exs. C-52 p.1, C-53 p.203, C-54 p.12). Mr. Fry and Mr. Quoye both knew the vaults being cleaned had the potential for electrical hazards. (Tr. 771-74, 886-91, 904-06). Mr. Fry specifically acknowledged that all of the vaults the crew cleaned potentially contained exposed energized parts. (Tr. 773-74).

Q: Sure. The Oncor rep who testified in this courtroom testified that every single vault on the MasTec vault cleaning list had the potential for containing exposed energized parts in the vaults. Do you agree with that?

A: Yes.

Q: So in that – is that one of the reasons why these vaults are restricted access in addition to being owned by someone because there's the potential for having exposing energized parts inside?

A: That would be one of them.  
(Tr. 773).

He also testified that Respondent's policies specifically required the use of insulated rubber gloves and sleeves any time an employee encroaches the Minimum Approach Distance (MAD), even for live equipment under 600 volts. (Tr. 809-811; Ex. C-43, p. 43). The equipment Mr. [redacted] was cleaning was rated for 13,200 volts. Mr. Fry further testified that Respondent's training and policies required everything in an electrical vault to be considered energized until proven otherwise. (Tr. 813-15).

Through his investigation, CSHO Cox learned that Mr. [redacted] had previously been issued insulated rubber gloves and sleeves by Respondent for his work, that they were taken away from him, and that he had not been re-issued a new pair before the time of the accident – despite the fact that he continued to clean and contact high voltage equipment. (Tr. 115-17, 120, 513, 530-531, 627-628, 750-51). On the day of the incident, Mr. [redacted] was wearing common ordinary work gloves which were not rated at all for electricity. (Tr. 115-16, 188-89).

The record reveals that [redacted]'s co-worker, Mr. [redacted], had been issued insulated rubber gloves and sleeves prior to the accident as well. (Tr. 188-89, 199). Respondent took both Mr. [redacted]'s and Mr. [redacted]'s rubber gloves and sleeves away because they needed to be tested and re-issued based on their PPE expiration dates. (Tr. 457-63, 750-751; Ex. C-41). However, Respondent only reissued rubber gloves and sleeves to Mr. [redacted], despite knowing that he and Mr. [redacted] did the exact same work. (Tr. 461-63, 530-32; Ex. C-24). Mr. Roberts, who was in charge of exchanging employees' rubber gloves and sleeves, testified:

Q: Was it your understanding that Mr. [redacted] and Mr. [redacted] performed the same types of cleaning tasks in these vaults?

A: Yes.

Q: And it was your understanding that Mr. [redacted] had gloves and sleeves and Mr. [redacted] did not?

A: That's correct.

(Tr. 462).

When Mr. [redacted] asked Foreman Cisneros about getting replacement insulated rubber gloves, "he just said that they weren't giving any more, that only one person in the crew would have them." (Tr. 116). The record is clear that on October 3, 2019, Mr. [redacted] was working in an underground vault with potential electrical hazards without the proper PPE, specifically electrically rated, insulated, rubber gloves and sleeves. (Tr. 95-96, 101-06, 119-20, 180-81, 325-26, 807-12; Exs. C-10, C-43 p.49, C-48 p.35). Accordingly, the Court finds Complainant has proven a violation of the cited standard.

#### Respondent's Employee was Exposed to a Hazardous Condition

For the same reasons repeatedly discussed above, Mr. [redacted] was exposed to a hazardous condition while cleaning the 13,200 volt reactor inside the underground vault. (Sec'y Br. 30-36, Resp't Br. 2-4, 17-19). Further, it is undisputed that he was severely injured while cleaning the high-voltage reactor without using insulated, rated, rubber gloves and sleeves. (Tr. 95-96, 101-06, 119-20, 180-81, 325-26, 807-12; Exs. C-10, C-43 p.49, C-48 p.35; Sec'y Br. 1-2, 30-36, Resp't Br. 2-4, 17-19). Mr. [redacted]'s assigned work and resulting injuries clearly established employee exposure to the cited condition. *See S & G Packaging, Co., LLC (S&G)*, 19 BNA OSHC 1503, 1506 (No. 98-1107, 2001).

#### Complainant Established Employer Knowledge

The previous discussion of Respondent's knowledge of Mr. [redacted]'s work activities applies and is incorporated herein. Complainant contends that Respondent had knowledge of Mr. [redacted] working on and near high-voltage equipment without insulated rubber gloves and

sleeves, imputed through Mr. Cisneros's specific knowledge and close supervision at the jobsite. (Tr. 102-107, 115-116, 538, 619, Sec'y Br. 36-37). Additionally, Complainant argues that Mr. Roberts's knowledge that Mr. [redacted]'s rubber gloves were taken away and never re-issued should also be imputed to Respondent. (Tr. 457-62, 803-806; Ex. C-41; Sec'y Br. 12-15). Although Mr. Roberts' testimony has already been discussed above, the Court notes again that he acknowledged that he knew both Mr. [redacted] and Mr. [redacted] performed the same cleaning tasks in underground high-voltage electrical vaults, and that only Mr. [redacted] was reissued new gloves and sleeves during the change-out. (Tr. 460-63; Ex. C-41). Both Mr. Cisneros' and Mr. Roberts' knowledge is imputed to Respondent. Complainant established that Respondent had actual knowledge of this violative condition.

#### Willful Classification Citation 2, Item 1

The Secretary classified Respondent's violation in Citation 2, Item 1 as a willful violation of the Act. Willfulness is described in *A.E. Staley Manufacturing Co.*, 19 BNA OSHC 1199, 1202 (Nos. 91-0637 & 91-0638, 2000) as follows:

A willful violation is one "committed with intentional, knowing or voluntary disregard for the requirements of the Act, or with plain indifference to employee safety." *Falcon Steel Co.*, 16 BNA OSHC 1179, 1181, 1993-95 CCH OSHA ¶30,059, p. 41, 330 (No. 89-2883, 1993)(consolidated); *A.P. O'Horo Co.*, 14 BNA OSHC 2004, 2012, 1991-93 C.H. OSHA ¶ 29,223, p. 39,133 (No. 85-0369, 1991). A showing of evil or malicious intent is not necessary to establish willfulness. *Anderson Excavating and Wrecking Co.*, 17 BNA OSHC 1890, 1891, n.3, 1995-97 C.H. OSHA ¶ 31,228, p. 43,788, n.3 (No. 92-3684, 1997), *aff'd* 131 F.3d 1254 (8th Cir. 1997). A willful violation is differentiated from a non-willful violation by an employer's heightened awareness of the illegality of the conduct or conditions and by a state of mind, *i.e.*, conscious disregard or plain indifference for the safety and health of employees. *General Motors Corp., Electro-Motive Div.*, 14 BNA OSHC 2064, 2068, 1991-93 C.H. OSHA ¶ 29,240, p. 39,168 (No. 82-630, 1991)(consolidated).

Complainant argues that Respondent willfully failed to comply with the regulation because they issued Mr. [redacted] electrically rated, insulated rubber gloves for his assigned work of cleaning live, high-voltage equipment inside underground vaults, knowing they had potential electrical hazards, then took his insulated rubber gloves away for inspection, never reissued him new ones, and continued to assign him the task of cleaning live, high-voltage electrical equipment. (Sec’y Br. 42-44). Respondent argues it acted in good faith, and was not plainly indifferent to employee safety, on the belief that the vault cleaning duties did not require work inside Minimum Approach Distances, nor the use of insulated rubber gloves and sleeves. (Resp’t Br. 41-44). Respondent further argues that it is an industry leader in electrical safety, cooperates with OSHA to establish its training programs under the ET & D Partnership, and takes significant action to ensure its employees are adequately trained. (Resp’t Br. 44-45).

The Court is persuaded by Complainant’s arguments based upon this record. The Court concludes that Respondent possessed a heightened awareness of the illegality of its conduct based on the following: (1) Respondent’s clear knowledge of potential and actual electrical hazards in the underground vaults, (2) that Mr. [redacted] was specifically assigned to clean the live high-voltage equipment in the vaults, (3) that his assigned duties required him to repeatedly approach (and contact) high-voltage equipment inside the Minimum Approach Distances for the equipment, (4) that Respondent had previously issued Mr. [redacted] insulated rubber gloves for personal protection during this dangerous work, (5) that Respondent later took the insulated rubber gloves away from him and Mr. Gonzales, so the gloves could be inspected and re-certified, (6) that Mr. Gonzales, who performed the exact same high-voltage cleaning duties as Mr. [redacted], was re-issued rubber gloves and sleeves, (7) that Mr. [redacted] was never re-issued replacement rubber gloves and sleeves, (8) that despite never being re-issued rubber gloves and sleeves, Mr. [redacted]

continued to clean (and contact) high-voltage equipment as assigned by Respondent – resulting in severe injury when he was shocked, and (9) that Respondent’s supervisors Cisneros, Roberts, and Fry were specifically aware of these facts. (Tr. 101-03, 107, 115-17, 178-79, 182, 188-89, 199, 258-61, 457-63, 530-32, 750-51, 802-14, 853, 920-24; Ex. C-41). These facts also evidence a voluntary disregard for the requirements of the Act, and plain indifference toward Mr. [redacted]’s safety. Respondent’s argument that willfulness should be negated because it acted in good faith with respect to the cited conditions is REJECTED. Citation 2, Item 1 will be AFFIRMED as a WILLFUL violation of the Act.

Respondent Failed to Prove the Affirmative Defense of Unpreventable Employee Misconduct

Respondent pled numerous defenses in its *Answer*. Those defenses were not raised further at trial, nor in Respondent’s *Post-Trial Brief*. Affirmative defenses not raised at the trial are generally deemed waived and abandoned. *Corbesco, Inc. v. Dole*, 926 F.2d 422, 429 (5th Cir. 1991) (affirmative defenses not argued waived); *Ga.-Pac. Corp.*, 15 BNA OSHC 1127, 1130 (No. 89-2713, 1991) (“Commission declines to reach issues on which the aggrieved party indicates no interest.”). The Court finds all of Respondent’s pled affirmative defenses are rejected because they either lack merit, have been abandoned, or both.

Although not specifically argued in Respondent’s *Post-Trial Brief*, Respondent did make a few cursory statements concerning Mr. [redacted]’s failure to follow Respondent’s training and to “unknown misconduct.” (Resp’t Br. 37, 39). Therefore, the Court will briefly address the defensive concept of unpreventable employee misconduct.

In order to prevail on a claim of unpreventable employee misconduct, Respondent must show: (1) it established work rules designed to prevent the violation; (2) it adequately communicated those rules to its employees; (3) it took steps to discover violations of the rules; and

(4) it effectively enforced the rules when violations were detected. *Am. Eng'g & Dev. Corp.*, 23 BNA OSHC 2093, 2096–97 (No. 10-0359, 2012). In other words, it is incumbent upon Respondent to “demonstrate that the actions of the employee were a departure from a uniformly and effectively communicated and enforced work rule [sic].” *Archer-Western Contractors Ltd.*, 15 BNA OSHC 1013 (No. 87-1067, 1991).

None of the elements required for a showing of unpreventable employee misconduct were established in this case. There was no work rule requiring Mr. [redacted] to wear rubber gloves and sleeves to clean the 13,200 volt reactor in the underground vault on October 3, 2019. On the contrary, Respondent maintained at trial (though rejected by this Court) that Mr. [redacted] did not need such PPE because he was not supposed to encroach the Minimum Approach Distance for the high-voltage equipment he was cleaning. Mr. [redacted] and Mr. [redacted] testified that they never received any rules or training on how to safely clean the underground electrical vaults. Foreman Cisneros simply told them which vaults to clean each day, to “be careful”, never discussed required use of PPE, never discussed Minimum Approach Distances, and never required them to use rubber gloves or the insulated blanket in the truck. Mr. [redacted]’s testimony evidenced the simplicity of his assigned duties: “we just tried to get the transformers and the floor as clean as possible.” (Tr. 114). Even Mr. Roberts and Mr. Fry admitted they did not provide any specific vault cleaning training, and did not have any knowledge of anyone else specifically providing vault cleaning training to [redacted] or [redacted]. (Tr. 420-423, 839). There was no evidence of any established work rule requiring Mr. [redacted] to wear insulated rubber gloves while cleaning high-voltage equipment; nor any communication of such a rule to Mr. [redacted]; nor any steps to discover violations of such a rule; nor any disciplinary measures to enforce such a rule. Accordingly, even if Respondent’s comments in its *Post-Trial Brief* could be construed as

pursuing an unpreventable employee misconduct defense for Citation 2, Item 1, it is REJECTED.

#### Penalty Determination

Commission Judges must determine a reasonable and appropriate penalty based upon § 17(j) of the Act. The amount proposed by Complainant, however, merely becomes advisory when an employer timely contests the matter. *Brennan v. OSHRC*, 487 F.2d 438, 441–42 (8th Cir. 1973); *Revoli Constr. Co.*, 19 BNA OSHC 1682, 1686 n. 5 (No. 00-0315, 2001). 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.*, 17 BNA OSHC 1135 (No. 93-0239, 1995). Section 17(j) requires the Commission to give “due consideration” to four criteria when assessing penalties: (1) the size of the employer's business; (2) the gravity of the violation; (3) the good faith of the employer; and (4) the employer's prior history of violations. 29 U.S.C. § 666(j). Gravity is the primary consideration and is determined by the number of employees exposed, the duration of the exposure, the precautions taken against injury, and the likelihood of an actual injury. *J. A. Jones Construction Co.*, 15 BNA OSHC 2201 (No. 87-2059, 1993).

Complainant proposed a \$13,494 penalty for each of the affirmed serious violations in Citation 1, Items 1, 3, and 4. Complainant proposed a \$134,937 penalty for the willful violation described in Citation 2, Item 1. CSHO Cox testified that OSHA believed the gravity of all four violations was “high” because of the high-severity and greater-probability of serious injury, permanent disability, electrocution, or death from exposure to high-voltage electrical hazards. (Tr. 514, 535-36). The record supports finding that the gravity of the violations warrants a high penalty as serious injury from contacting live 13,200 volt equipment could, and actually did, occur. (Tr. 95-96, 514, 535-36; Ex. C-10). The CSHO repeatedly discussed exposure of *two* employees to all of the proposed violations, for three or four months prior to the accident. (Tr. 536). However, the

record established that Citation 1, Item 1 only applied to one employee ([redacted]) and Citation 1, Items 3 and 4, and Citation 2, Item 1, only applied to one employee ([redacted]). There was only summary evidence concerning exposure to these violative conditions on other jobsites prior to October 3, 2019. No reduction in the proposed penalties was made for Respondent's violation history because Respondent had not been previously inspected by OSHA. (Tr. 537). Nor were any adjustments made for the employer's size because Respondent employs approximately 20,000 workers, according to CSHO Cox. (Tr. 537).

Based on the totality of circumstances discussed above, Citation 1, Item 1 will be reduced to \$5,000 based on Mr. [redacted]'s exposure to the condition. Despite the deficient job briefing, [redacted] only entered the electrical vault briefly, and did not perform any cleaning of the electrical equipment. The penalties for Citation 1, Items 3 and 4 will be maintained at \$13,494 each due to the high probability of serious, if not fatal, injuries from the violative conditions. The penalty for Citation 2, Item 1 will be maintained at \$134,937 based on the facts discussed above in analyzing the willfulness of the violation.

### **Order**

Based upon the foregoing Findings of Fact and Conclusions of Law, it is ORDERED that:

1. Citation 1, Item 1 is AFFIRMED as a SERIOUS violation of the Act, with an assessed penalty of \$5,000;
2. Citation 1, Item 2 is VACATED;
3. Citation 1, Item 3 is AFFIRMED as a SERIOUS violation of the Act, with an assessed penalty of \$13,494;
4. Citation 1, Item 4 is AFFIRMED as a SERIOUS violation of the Act, with an assessed penalty of \$13,494;
5. Citation 1, Item 5 is VACATED; and

6. Citation 2, Item 1 is AFFIRMED as a WILLFUL violation of the Act with an assessed penalty of \$134,937.

SO ORDERED.

Date: March 7, 2023  
Denver, Colorado

*/s/ Brian A. Duncan*  

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**Judge Brian A. Duncan**  
U.S. Occupational Safety and Health Review Commission