

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

BEFORE THE INDIANA OFFICE OF
ADMINISTRATIVE LAW PROCEEDINGS,
SUBJECT TO THE ULTIMATE
AUTHORITY OF THE IOSHA BOARD OF
SAFETY REVIEW

IN THE MATTER OF:)
)
COMMISSIONER OF LABOR,)
)
Complainant,)
)
v.)
)
SERVICE ELECTRIC OF ALLEN CO.)
AND ITS SUCCESSORS,)
)
Respondent.)

OALP CASE NO. DOL-2307-001989
BSR DOCKET NO. 23-030

AGREED ENTRY

The parties to the above-captioned proceeding, the Commissioner of the Indiana Department of Labor (hereinafter "Complainant") and Service Electric of Allen Co. (hereinafter "Respondent"), through their duly authorized representatives, desiring to enter into this Agreed Entry as final settlement of this matter, do hereby stipulate and agree as follows:

PART I.

1. From March 1, 2023, through April 21, 2023, authorized employees of the Indiana Department of Labor conducted an inspection at the Respondent's worksite located at 3801 W. Ferguson Rd., Fort Wayne, Indiana 46809.

2. On April 25, 2023, Complainant issued a Safety Order and Notification of Penalty (hereinafter "Safety Order") resulting from Indiana Department of Labor Inspection No. 1653518 and alleging that Respondent had violated the Indiana Occupational Safety and Health Act (IC 22-8-1.1 *et seq.*) or the standards or rules thereunder. The Safety Order is attached hereto as Exhibit A and is incorporated herein.

3. On or about May 19, 2023, Respondent duly and timely petitioned for review of the Safety Order.

PART II.

4. The Safety Order consists of Safety Order 1, Item Nos. 1, 2, and 3; and Safety Order 2, Item No. 1.

5. Safety Order 1, Item 1 alleges a "Serious" violation of 29 CFR 1910.333(a)(1) and assesses a penalty of Four Thousand Nine Hundred Dollars (\$4,900).

6. Safety Order 1, Item 2 alleges a "Serious" violation of 29 CFR 1910.333(a)(2) and assesses a penalty of Four Thousand Nine Hundred Dollars (\$4,900).

7. Safety Order 1, Item 3 alleges a "Serious" violation of 29 CFR 1910.335(a)(2)(i) and assesses a penalty of Four Thousand Nine Hundred Dollars (\$4,900).

8. Safety Order 2, Item 1 alleges a "NonSerious" violation of 29 CFR 1904.39(a)(2) and assesses a penalty of Seven Hundred Dollars (\$700).

9. The total assessed penalty for Safety Order 1 and 2 combined is Fifteen Thousand Four Hundred Dollars (\$15,400).

PART III.

10. The Safety Order is hereby amended as follows.

11. Safety Order 1, Item 1 is upheld as amended Item 1a, re-classified to "NonSerious," and retains the penalty originally cited. This Item is grouped with Items 2 and 3 that together become amended Items 1a, 1b, and 1c, all sharing the penalty originally cited for Item 1.

12. Safety Order 1, Item 2 is upheld as amended Item 1b, grouped with amended Items 1a and 1c, is re-classified to "NonSerious," and assesses no additional penalty to what is assessed in amended Item 1a.

13. Safety Order 1, Item 3 is upheld as amended Item 1c, grouped with amended Items 1a and 1b, is re-classified to "NonSerious," and assesses no additional penalty to what is assessed in amended Item 1a.

14. Safety Order 2, Item 1 is upheld, but the penalty is reduced by 50%.

15. The AGREED total penalty for all violations and all subparts thereunder, subject to this Agreed Entry, is Five Thousand Two Hundred Fifty Dollars (\$5,250).

16. In consideration for reclassification and grouping of the citations, Respondent agrees to complete the following enhanced abatement and provide Complainant with proof of each within thirty (30) days of the issuance of a Final Order in this matter:

a. Work with Safety Resources to establish a rotating Safety Training Program offering company-wide safety certifications twice a year. NFPA 70E, Aerial Lift training, Confined Space, Fall Arrest...etc and complete a perception survey with all company employees to gauge how they feel about the safety program and start improvements based on the results.

b. Update our Safety Program and our Safety Onboarding Orientation. Provide a stronger presence with more job site visits between the Safety Director, Superintendent and Project Managers. Job visits will include checking Pre-Tasks, making sure all employees are wearing PPE, asking about any concerns they have with the project or the trades they are working around, seeking out individual employees to talk to about their foreman and their view of how he is running the project and job site audits.

c. Provide an in-house anonymous safety training survey to help establish a stronger safety culture and establish where we need to go.

d. Outside of safety audits and consultations offered in-house, invite Safety Resources to show up to our projects and do job walk-throughs and audits.

Provide our employees with contact information if they ever have any questions.

17. It is understood and agreed by the Respondent and Complainant that this Agreed Entry and attachments will constitute a final, enforceable OSHA Safety Order(s) and penalties for the purposes of the Indiana Occupational Safety and Health Act ("Act").

18. Respondent confirms Complainant's right to re-inspect its workplaces, in accordance with the Act, and to verify abatement of the alleged violations.

19. If not already identified in the Safety Order and Notification of Penalty as completed during the inspection, all abatement, including any enhanced abatement identified and agreed upon herein, must still be completed in a timely manner and certified to IOSHA by sending confirmation of abatement, including a detailed description of what was done along with any supporting documentation and photographs, to IOSHA by email to abatement@dol.in.gov.

20. Respondent hereby withdraws its petition for review previously filed in this matter.

PART IV.

21. Nothing contained in this Agreed Entry shall be construed to affect Complainant's interpretation of the Act or any standard or regulation enforced pursuant thereto or the applicable classification thereof.

22. Except for this agreement, and matters arising out of this agreement and any other subsequent IOSHA proceedings between the parties, none of the foregoing agreements, statements, findings, and actions taken by the Respondent shall be deemed an admission by Respondent of the allegations contained within the Safety Order(s) and Notification(s) of

Penalty. The agreements, statements, findings, and actions taken herein are made in order to compromise and settle this matter economically and amicably, and they shall not be used for any other purpose, except as herein stated.

23. The invalidity or unenforceability of any section, subsection, clause or provision of this Agreed Entry does not affect the remaining sections, subsections, clauses, or provisions of this Agreed Entry.

24. Respondent, upon full execution of this Agreed Entry, will post this Agreed Entry for three (3) working days or until abatement is completed, whichever period is longer, pursuant to Board of Safety Review Rules of Procedure, 615 IAC 1-2-18(b)(3)(C).

AGREED this 1st day of August 2023.

SERVICE ELECTRIC OF ALLEN CO.

By: Nick Gottfried

Printed: Nick Gottfried

Title: President

COMMISSIONER OF LABOR

By: Michelle L. Ellison for

Jeremy Galloway,
Director of Safety Compliance,
IOSHA

Approved as to Form:

By: J. Anthony Hardman
J. Anthony Hardman,
Counsel for Complainant

Indiana Department of Labor

Indiana Occupational Safety and Health Administration
402 West Washington Street, Room W195
Indianapolis, Indiana 46204
Phone: (317) 232-1979 FAX: (317) 233-3790



Safety Orders and Notification of Penalties

To:
Service Electric of Allen County
and its successors
4015 Meyer Road
Fort Wayne, IN 46806

Inspection Number: 1653518
CSHO ID: F2131
Optional Report No.: 8
Inspection Dates: 03/01/2023 - 04/21/2023
Issuance Date: 04/25/2023

Inspection Site:
3801 W Ferguson Rd.
Fort Wayne, IN 46809

The violations described in these Safety Orders and Notification of Penalties are alleged to have occurred on or about the days the inspection was made unless otherwise indicated within the description given below.

An inspection of your workplace of employment has revealed conditions which we believe do not comply with the provisions of the Indiana Occupational Safety and Health Act (Indiana Code Chapter 22-8-1.1) or the standards or rules adopted thereunder. Accordingly, enclosed please find safety orders and notification of penalties describing such violations with references to applicable standards, rules or provisions of the statute and stating the amount of any penalties.

Informal Conference – Please be advised that it may be possible to informally settle any potential dispute without initiating the more elaborate proceedings brought on by a petition for review. Prior to filing a petition for review, you may request an informal conference concerning any results of the inspection (safety orders, penalties, abatement dates, etc.) by contacting the Indiana Department of Labor/IOSHA, preferably by telephone, in a prompt manner. Please be advised that a request for an informal conference cannot extend the fifteen working day period for filing a petition for review. Informal conferences frequently resolve any disputes, and therefore you are urged to take advantage of this opportunity. Because of the limited time period and in order to facilitate scheduling, any requests for an informal conference should be made promptly upon your receipt of the safety orders and notification of penalties.

Right to Contest – You are hereby also notified that you are entitled to seek administrative review of the safety orders, penalties, or both by filing a written petition for review at the above address postmarked within fifteen working days of your receipt of the safety orders and notification of penalties. (“Working days” means Mondays through Fridays, but does not include Saturdays, Sundays, legal holidays under a state statute or days on which the Indiana Department of Labor’s offices are closed during regular business hours). If you do not file such a petition for review (contest), the safety orders and penalties

shall be deemed final orders of the Board of Safety Review and not subject to review by any court or agency. The issuance of a safety order does not constitute a finding that a violation has occurred unless no petition for review is filed, or if a petition for review (contest) is filed, it must contain a statement of its basis and should reference the above inspection number. Upon receipt of your petition for review, we will affirm, amend, or dismiss the safety orders and notification of penalties. If we affirm, your petition for review will be granted (unless it was not timely) and the dispute will be certified by the Board of Safety Review for further proceedings. The Board of Safety Review is an independent board appointed by the governor with authority to conduct legal proceedings leading up to and including administrative hearings or assign an Administrative Law Judge (ALJ) to conduct the same, and to issue decisions concerning disputed safety orders and notifications of penalties. If we amend the safety orders or notification of penalty, your petition for review shall be deemed moot. However, you will then be given an opportunity to file a petition for review concerning the amended safety orders and notification of penalties.

Please be advised that an employee or representative of employees may file a petition for review to contest the reasonableness of the time stated in the safety orders for the abatement of any violation.

Posting - Upon receipt of any safety orders you are required to post such safety orders, or a copy thereof, unedited, at or near each place an alleged violation referred to in the safety orders occurred. However, if your operations are such that it is not practicable to post the safety orders at or near each place of alleged violation, such safety orders shall be posted, unedited, in a prominent place where it will be readily observable by all affected employees. For example, if you are engaged in activities which are physically dispersed, the safety orders may be posted at the location from which the employees operate to carry out their activities. You must take steps to ensure that the safety order is not altered, defaced, or covered by other material. Posting shall be until the violations are abated, or for three working days, whichever is longer.

Penalties - Penalties are due within fifteen (15) working days of receipt of this notification unless contested. Abatement does not constitute payment of penalties.

Abatement - The conditions cited in the safety orders must be corrected (abated) on or before the date shown for each item on the safety orders and notification of penalties unless:

(1) You file a petition for review concerning the violation, in which case the full abatement period shall commence from the issuance of a final decision by the Board of Safety Review or the courts which requires compliance with the safety orders; or

(2) The abatement period is extended by the granting of a petition for modification of abatement date.

PMAs - The petition for modification of abatement date is a manner in which you may seek additional time to correct (abate) a violation without having to file a petition for review concerning the safety orders, or after the expiration of the time period to file such a petition for review when it becomes apparent that you need extra time to abate the violation. A petition for modification of abatement date shall be in writing and shall include the following information:

(1) All steps you have taken, and the dates of such actions, in an effort to achieve compliance during the prescribed abatement period.

(2) The specific additional abatement time necessary in order to achieve compliance.

(3) The reasons such additional time is necessary, including the unavailability of professional or technical personnel or of materials and equipment, or because necessary construction or alteration of facilities cannot be completed by the original abatement date.

(4) All available interim steps being taken to safeguard employees against the cited hazard during the abatement period.

(5) A certification that a copy of the petition has been posted, and if appropriate, served on the authorized representative of affected employees, and a certification of the date upon which such posting, and service was made.

A petition for modification of abatement date shall be filed with the Indiana Department of Labor/IOSHA no later than the close of the next working day following the date on which abatement was originally required. A later-filed petition shall be accompanied by the employer's statement of exceptional circumstances explaining the delay. A copy of such petition shall be posted in a conspicuous place where all affected employees will have notice thereof or near such location where the violation occurred. The petition shall remain posted until the time period for the filing of a petition for review of the Commissioner's granting or denying the petition expires. Where affected employees are represented by an authorized representative, said representative shall be served a copy of such petition.

Notification of Corrective Action - Correction of the alleged violations which have an abatement period of thirty (30) days or less should be reported in writing to us promptly upon correction. A "Letter of Abatement" form and an "Abatement Photographs" worksheet are enclosed for your assistance in providing adequate documentation of abatement. Reports of corrections should show specific corrective action on each alleged violation and the date of such action. On alleged violations with abatement periods of more than thirty (30) days, a written progress report should be submitted, detailing what has been done, what remains to be done, and the time needed to fully abate each such violation. When the alleged violation is fully abated, we should be so advised. Timely correction of an alleged violation does not affect the initial proposed penalty.

Follow up Inspections - Please be advised that a follow-up inspection may be made for the purpose of ascertaining that you have posted the safety orders and corrected the alleged violations. Failure to correct an alleged violation may result in additional penalties for each day that the violation has not been corrected.

Employer Discrimination Unlawful - The law prohibits discrimination by an employer against an employee for filing a complaint or for exercising any rights under this Act. An employee who believes that he/she has been discriminated against may file a complaint no later than 30 days after the discrimination occurred with the Indiana Department of Labor/IOSHA at the address shown above.

Notice to Employees - The law gives an employee or his/her representative the opportunity to object to any abatement date set for a violation if he/she believes the date to be unreasonable. The contest must be mailed to the Indiana Department of Labor/IOSHA at the address shown above within fifteen (15) working days (excluding weekends and State holidays) or receipt by the employer of these safety orders and penalties.

If you wish additional information, you may direct such requests to us at the address or telephone number stated above.

Indiana Department of Labor
Indiana Occupational Safety and Health Administration
402 West Washington Street, Room W195
Indianapolis, Indiana 46204
Phone: (317) 232-1979 FAX: (317) 233-3790



NOTICE TO EMPLOYEES OF INFORMAL CONFERENCE

An informal conference has been scheduled with IOSHA to discuss the Safety Orders issued on 04/25/2023.

The Informal Conference will be held:

Date: _____

Time: _____

_____ **Virtually/Telephonically via Microsoft Teams**

Call-in Number: _____

Conference ID: _____

_____ **In-person at the Indiana Department of Labor, located at the following address:**

402 West Washington Street, Room W195
Indianapolis, Indiana 46204

Meeting/Conference Room: _____

Employees and/or representatives of employees have a right to attend an informal conference.

Indiana Department of Labor
Occupational Safety and Health Administration

Inspection Number: 1653518
CSHO ID: F2131
Optional Report No.: 8
Inspection Dates: 03/01/2023 - 04/21/2023
Issuance Date: 04/25/2023



Safety Order and Notification of Penalty

Company Name: Service Electric of Allen County
Inspection Site: 3801 W Ferguson Rd, Fort Wayne, IN 46809

Safety Order 1 Item 1 Type of Violation: **Serious**

29 CFR 1910.333(a)(1): Live parts to which an employee may be exposed were not de-energized before the employee works on or near them, unless the employer can demonstrate that de-energizing introduces additional or increased hazards or is infeasible due to equipment design or operational limitations:

Electrical Room -3801 W Ferguson RD, FORT WAYNE, IN 46809- On or about, March 1, 2023, an employee who worked on the Main Switch Gear MSB1 480-volt AC, 2000-amp rating did not ensure the equipment was de-energized.

Date By Which Violation Must be Abated:
Proposed Penalty:

Corrected During Inspection
\$4,900.00

Indiana Department of Labor
Occupational Safety and Health Administration

Inspection Number: 1653518
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Safety Order and Notification of Penalty

Company Name: Service Electric of Allen County
Inspection Site: 3801 W Ferguson RD, Fort Wayne, IN 46809

Safety Order 1 Item 2 Type of Violation: **Serious**

29 CFR 1910.333(a)(2): Where exposed live parts were not de-energized, other safety related work practices were not used to protect employees who could be exposed to the electrical hazards involved:

Electrical Room -3801 W Ferguson RD, FORT WAYNE, IN 46809- On or about, March 1, 2023, an employee was permitted to run ground wire in a new Main Switch Gear MSB1 480-volt AC, 2000-amp rating. without utilizing safety related work practices, such as, but not limited to proper PPE (personal protective equipment), LOTO (lockout/tagout), and testing of circuits.

Date By Which Violation Must be Abated:
Proposed Penalty:

Corrected During Inspection
\$4,900.00

Indiana Department of Labor
Occupational Safety and Health Administration

Inspection Number: 1653518
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Safety Order and Notification of Penalty

Company Name: Service Electric of Allen County
Inspection Site: 3801 W Ferguson Rd, Fort Wayne, IN 46809

Safety Order 1 Item 3 Type of Violation: **Serious**

29 CFR 1910.335(a)(2)(i): When working near exposed energized conductors or circuit parts, each employee shall use insulated tools or handling equipment if the tools or handling equipment might make contact with such conductors or parts. If the insulating capability of insulated tools or handling equipment is subject to damage, the insulating material shall be protected:

Electrical Room -3801 W Ferguson RD, FORT WAYNE, IN 46809- On or about, March 1, 2023, an employee who worked on the Main Switch Gear MSB1 480-volt ac, 2000-amp rating did not ensure the equipment was de-energized while using non-insulated Allen Wrench set.

See OneNote file violation 1-4 Position of Non-insulated Allen Wrench set after Arc Flash and Non-insulated Allen Wrench set used.

Date By Which Violation Must be Abated:
Proposed Penalty:

Corrected During Inspection
\$4,900.00

Indiana Department of Labor
Occupational Safety and Health Administration

Inspection Number: 1653518
CSHO ID: F2131
Optional Report No.: 8
Inspection Dates: 03/01/2023 - 04/21/2023
Issuance Date: 04/25/2023



Safety Order and Notification of Penalty

Company Name: Service Electric of Allen County
Inspection Site: 3801 W Ferguson RD, Fort Wayne, IN 46809

Safety Order 2 Item 1 Type of Violation: **Non-Serious**

29 CFR 1904.39(a)(2): The in-patient hospitalization, amputation, or loss of an eye was not reported to OSHA within twenty-four (24) hours after the in-patient hospitalization of one or more employees or an employee's amputation or an employee's loss of an eye as a result of a work-related incident:

Jobsite - 3801 W Ferguson Road, Fort Wayne, Indiana 46809 - On or about, March 1, 2023, during construction activities, the employer failed to contact OSHA within twenty-four hours of one employee being admitted to the hospital after an employee suffered burns from an arc flash.

Date By Which Violation Must be Abated:
Proposed Penalty:

Corrected During Inspection
\$700.00


Jeremy Galloway
IOSHA Director



INVOICE/DEBT COLLECTION NOTICE

Company Name: Service Electric of Allen County
Inspection Site: 3801 W Ferguson RD, Fort Wayne, IN 46809
Issuance Date: 04/25/2023

Summary of Penalties for Inspection Number: 1653518

Safety Order 1 Item 1, Serious	\$4,900.00
Safety Order 1 Item 2, Serious	\$4,900.00
Safety Order 1 Item 3, Serious	\$4,900.00
Safety Order 2 Item 1, Non-Serious	\$700.00

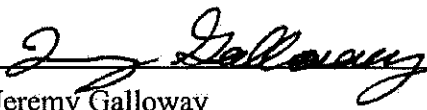
TOTAL PROPOSED PENALTIES: \$15,400.00

Penalties are due within fifteen (15) working days of receipt of this notification unless requested. Make your check or money order payable to: "Indiana DOL/IOSHA." Please indicate IOSHA's Inspection Number (indicated above) on the remittance. You may also make a payment online at <https://payingov.com/dol/>. Your account number is your inspection number.

IOSHA does not agree to any restrictions or conditions or endorsements put on any check or money order for less than full amount due and will cash the check or money order as if these restrictions, conditions, or endorsements do not exist.

Corrective action taken by you for each alleged violation should be submitted to this office on or about the abatement dates indicated on the Safety Orders and Notification of Penalties.

A worksheet has been provided to assist in providing the required abatement information. A completed copy of this worksheet should be posted at the worksite with safety orders.


Jeremy Galloway
IOSHA Director

04-25-2023
Date