

**BEFORE THE  
STATE OF CALIFORNIA  
OCCUPATIONAL SAFETY AND HEALTH  
APPEALS BOARD**

In the Matter of the Appeal of:

**SOUTHERN CALIFORNIA EDISON  
dba SOUTHERN CALIFORNIA EDISON COMPANY  
2244 Walnut Grove Avenue  
Rosemead, CA 91770**

**Employer**

Inspection No.  
**1320327**

**DECISION AFTER  
RECONSIDERATION**

The Occupational Safety and Health Appeals Board (Board), acting pursuant to authority vested in it by the California Labor Code issues the following Decision After Reconsideration in the above-entitled matter.

**JURISDICTION**

Southern California Edison (Employer) is an electrical utility provider. Beginning on June 4, 2018, the Division of Occupational Safety and Health (the Division) through Senior Safety Engineer Robert Salgado, conducted an accident inspection at a place of employment maintained by Employer at 794 Bohnert, Rialto, California (the worksite).

On November 19, 2018, the Division issued Employer citations for alleged violations of the title 8 safety standards. Citation 1 alleges a General violation of section 3400, subdivision (f)(1) [failure to have an effective communication system for contacting emergency medical services]. Citation 2 alleges a Serious violation of section 2940, subdivision (d) [failure to have a qualified electrical worker or employee in training remain in close proximity to work location]. Citation 3 alleges a Serious violation of section 2940.9 [failure to eliminate all possible sources of backfeed voltages]. Citation 4 alleges a Serious violation of section 2940.9, subdivision (l) [failure to use procedures during a personnel change to ensure the continuity of lockout or tagout protection]. Citation 5 alleges a Serious violation of section 2943, subdivision (h)(3) [failure to use protective devices, adequate barriers, or isolation methods when employees worked on exposed energized equipment]. Citation 6 alleges a Serious violation of section 3203, subdivision (a)(2) [failure to ensure supervisory employees complied with safe and healthy work practices].

Employer filed a timely appeal contesting the existence of the alleged violations, the classifications, the time allowed to abate those alleged violations, the changes required to abate, and the reasonableness of the proposed penalties. Employer also alleged affirmative defenses.<sup>1</sup>

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<sup>1</sup> As noted within the ALJ's Decision, the Board will not consider affirmative defenses for which Employer did not present evidence at the hearing; they are deemed waived.

This matter came for hearing before Dale A. Raymond, Administrative Law Judge (ALJ) for the California Occupational Safety and Health Appeals Board, in Riverside, California on September 12 and December 3, 2019. Lisa Prince, Attorney, represented Employer. William Cregar, Staff Counsel, represented the Division.

On February 26, 2020, the ALJ issued a Decision affirming Citations 1 through 5, and dismissing Citation 6. The Employer timely filed a Petition for Reconsideration, and the Division filed a response. The Board took the matter under reconsideration.

In making this decision, the Board has engaged in an independent review of the entire record. The Board additionally considered the pleadings and arguments filed by the parties. The Board has taken no new evidence.

### **ISSUES**

1. Did the Division establish, by a preponderance of the evidence, a violation in Citations 1 through 5?
2. Assuming a violation is established, are the Serious classifications of Citations 2 through 5 appropriate?
3. Assuming a violation is established, are Citations 3 through 5 properly classified as accident-related?

### **FINDINGS OF FACT**

1. On May 25, 2018, an electrical crew was assigned to replace an underground cable between a riser pole and a buried underground residential distribution (BURD) in a residential neighborhood. The BURD is a structure that contains a transformer that steps down high voltage received from the riser pole to low voltage, so that it may be used in surrounding homes.
2. The transformer was disconnected from the riser pole and isolated from the electrical grid. The neighboring homes were receiving energy from a stand-alone generator that was connected to the transformer.
3. The generator provided voltage to the low voltage side of the transformer, and the backfeed from the generator stepped-up the voltage on the high voltage side of the transformer, which was re-directed to the distribution lines. The high voltage side was energized with 6.9 kv and the low voltage side was live with 240 v.
4. A crew installed new cable and removed the bad cable. When the task was over, two of the crew members left. This left Luis Chavez (Chavez), the foreman, at the site with a groundman (a non-electrical worker who serves as a helper, runs tools and materials, cleans up, and does other tasks).
5. Chavez decided to get a few tasks done while waiting for the fresh crew to arrive and help finish the job. He maneuvered the new, unconnected cable around the transformer, to get it ready for connection once the new crew arrived. Chavez stepped onto the transformer inside

the BURD while doing this. While standing inside the BURD on top of the transformer, Chavez coiled the cable and began removing old concentric cables.

6. Chavez inadvertently dislodged an insulated elbow that was protecting a terminal, leaving the terminal exposed. The insulated deadlock elbow assembly was found disconnected following the accident, which exposed the energized terminal. Chavez's leg then touched the now-exposed energized terminal, causing him to receive an electrical shock.

## DISCUSSION

### 1. Did the Division establish, by a preponderance of the evidence, a violation in Citation 1?

Citation 1 alleged a general violation of section 3400, subdivision (f)(1), which reads:

(f) Effective provisions shall be made in advance for prompt medical treatment in the event of serious injury or illness. This shall be accomplished by one or a combination of the following that will avoid unnecessary delay in treatment:

(1) A communication system for contacting a doctor or emergency medical service, such as access to 911 or equivalent telephone system. The communication system or employees using the system shall have the ability to direct emergency services to the location of the injured or ill employee.

The Division's alleged violative description states:

Prior to and during the course of the investigation, including but not limited to May 25, 2018, the Employers communication system for contacting emergency medical services, as outlined in its APM Rule P14a (Referenced in SCEs 2009 TBDU Other Confined Space Manual, p. 38) was not effective in that SCE personnel including but not limited to an SCE Groundman, SCE Electrical Crew Foreman, SCE Field Supervisor, and an SCE Operations Supervisor failed to immediately call 911 to ensure prompt medical treatment, resulting in unnecessary delay in treatment to an employee who sustained a serious injury.

No emergency call was made at the time of the accident. Two of Employer's supervisors drove out to the site after the accident, saw Chavez walking around, and then called 911 for help.

The issue raised by the Employer in its Petition for Reconsideration is a relatively narrow one: assuming the employer has the required provisions in place for prompt medical treatment in the event of a serious injury or illness, can a violation be upheld where the employer fails to implement that program in the event of an emergency? The Division argues that the word

“effective” in the regulation necessarily implies “implementation”, and that a plan cannot be called “effective” if it is not implemented in a real-world scenario such as this one. Employer argues that unlike the IIPP standard, section 3400 does not require implementation of a program, and that the Board should not read additional requirements into the rule.

The Board is in agreement with the ALJ and Division. The word “effective” can have several meanings: “adequate to accomplish a purpose; producing the intended or expected result, actually in operation or in force; functioning.” ([www.dictionary.com](http://www.dictionary.com) last accessed June 16, 2020). Employer’s safety program cannot be called effective, as it was not “actually in operation or in force”. A general violation of section 3400, subdivision (f)(1) is found.

**2. Did the Division establish, by a preponderance of the evidence, a violation in Citation 2?**

Citation 2 alleges a Serious violation of section 2940, subdivision (d):

(d) Observers. During the time work is being done on any exposed conductors or exposed parts of equipment connected to high-voltage systems, a qualified electrical worker, or an employee in training, shall be in close proximity at each work location to:

(1) act primarily as an observer for the purpose of preventing an accident, and

(2) render immediate assistance in the event of an accident. Such observer will not be required in connection with work on overhead trolley distribution circuits not exceeding 1,500 volts D.C. where there is no conductor of opposite polarity less than 4 feet there from, or where such work is performed from suitable tower platforms or other similar structures.

The following terms are defined in section 2700, and useful in considering the citations:

Conductor. A wire, cable, or other conducting material suitable for carrying current.

Exposed (as applied to energized parts). Energized parts that can be inadvertently touched or approached nearer than a safe distance by a person. It is applied to parts not suitably guarded, isolated, or insulated. (See Accessible and Concealed.)

High-Voltage System. Associated electrical conductors and equipment operating at or intended to operate at a sustained voltage of more than 600 volts between conductors.

Qualified Electrical Worker. A qualified person who by reason of a minimum of two years of training and experience with high-voltage circuits and equipment and who has demonstrated by performance familiarity with the work to be performed and the hazards involved.

The alleged violative description is as follows:

Prior to and during the course of the investigation, including but not limited to May 25, 2018, the employer failed to ensure that a qualified electrical worker (QEW) remained in close proximity to the work location (BURD structure) to act primarily as an observer for the purpose of preventing an accident or initiate a rescue operation in the event of an emergency. On or about May 25, 2018, an Electric Crew Foreman who became incapacitated when he contacted energized parts of a 6.9kV transformer, had to yell for help because his groundman was standing approximately 30 feet away with his back turned to the work location (BURD structure).

The ALJ concluded that there was an energized, exposed part of a high voltage system, and the Board adopts that finding. Although the insulating elbow was inadvertently dislodged, the ALJ noted that the regulation does not require that the energization be intentional, as opposed to accidental. Indeed, the most protective reading of the regulation would be to apply it even where accidental energization occurs, as the ALJ did in her Decision, and the Board does now. (See, *Carmona v. Division of Industrial Safety* (1975) 13 Cal.App.3d 303, 313; Decision, p. 8.)

The only employee on site, besides Chavez, was a groundman, Anton Savchenko (Savchenko), who was several feet away and was not watching Chavez in the BURD. Testimony adduced at hearing established that while Savchenko was in the general area where Chavez was working, he was not “acting primarily as an observer for the purpose of preventing an accident” as required by the section. (§ 2940, subd. (d)(1)). Moreover, Savchenko was not a QEW at the time of the accident as the term is defined in section 2700, although at the time of hearing he had become an apprentice. A violation of the safety order is found.

### **3. Did the Division establish, by a preponderance of the evidence, a violation in Citation 3?**

The Division alleges a Serious violation of section 2940.9, Protection From Backfeed Voltages, in Citation 3:

Before contacting the high voltage side of deenergized transformer(s), or conductor(s) connected thereto, all possible sources of backfeed shall be eliminated by:

- (a) disconnecting or grounding the high voltage side, or
- (b) disconnecting or short circuiting the low voltage side.

The Division's alleged violative description states:

Prior to and during the course of the investigation, including, but not limited to May 25, 2018, the employer failed to ensure that a supervisory employee (Electric Crew Foreman) eliminated all possible sources of backfeed voltages on a 6.9kV transformer (being backfed by a generator), by effectively disconnecting or grounding the high voltage side, or disconnecting or short circuiting the low voltage side. As a result, an employee while attempting to remove an old ground wire came in contact with an energized section of the transformer and suffered serious injuries.

Similar to Citation 2, the Employer argues that the regulation is not applicable here, because the cited regulation applies to elimination of backfeed before contacting a de-energized transformer. In the situation at hand, the transformer was energized, by a generator that was brought to the site to limit service interruptions to surrounding residences, and Chavez did not intend to contact the transformer.

The Division argues that regardless of Chavez's intent, there is a violation because Chavez did not eliminate the possible sources of backfeed voltage before working around the transformer in the BURD. The Division also argues that the Employer's interpretation of the standard would "make the standard meaningless. If the high voltage side of a transformer was de-energized at the time of the employee exposure, there would be no reason to disconnect or ground either the high or low voltage side." (Division Answer p.8.)

The ALJ concluded that even though insulated elbows were connected to the transformer, "these actions fell short of the safety order requirements. Employer did not take steps to disconnect or ground the high voltage side or to disconnect or short circuit that low voltage side, as required by the safety order." (Decision, p. 9-10.) The Board is in agreement. The requirement to take steps to disconnect or ground does not have an exception for inadvertent employee contact with equipment, and the Board declines to read such an exception into the regulation.

**4. Did the Division establish, by a preponderance of the evidence, a violation in Citation 4?**

Citation 4 alleged a Serious violation of section 2940.13 [Hazardous Energy Control Procedures], subdivision (I):

(I) Shift or Personnel Changes. Procedures shall be used during shift or personnel changes to ensure the continuity of lockout or tagout protection, including provision for the orderly transfer of lockout or tagout device protection between off-going and on-coming employees, to minimize their exposure to hazards from the unexpected energizing or start-up of the machine or equipment or from the release of stored energy.

The alleged violative description reads:

Prior to and during the course of the investigation, including but not limited to May 25, 2018, the employer failed to ensure that a supervisory employee (Electric Crew Foreman) utilized hazardous energy control procedures during a shift or personnel change to ensure the continuity of lockout or tagout protection, including but not limited to provisions for the orderly transfer of lockout or tagout device protection between off-going and on-coming employees, to minimize their exposure to energized parts of a 6.9kV transformer located in a BURD structure. As a result, an employee while attempting to remove an old ground wire came in contact with an energized section of the transformer and suffered serious injuries.

The ALJ also upheld Citation 4. At the time that the two QEWs left the worksite the transformer's energized parts were safe-ended, but because an orderly shift change did not occur, there was a gap in coverage that "eliminated the possibility of an orderly transfer or the possibility of lockout device protection between off-going and on-coming employees." (Decision, p. 11). The failure to have such procedures led the foreman to improperly engage in work on and around the BURD while no other QEW was on site, which resulted in employee exposure to an energized part. Citation 4 is upheld.

**Did the Division establish, by a preponderance of the evidence, a violation in Citation 5?**

The regulation at issue in Citation 5, an alleged violation classified as Serious by the Division, is section 2943, subdivision (h)(3):

(h) Working on Cables, Conductors or Equipment Energized at 7,500 Volts or Less.

[...]

(3) Suitable rubber gloves with protectors and protective clothing in accordance with Section 2940.11 shall be worn when working on exposed conductors or equipment energized at 7,500 volts or less. Other exposed energized or grounded conductors or equipment in the work area, with which contact can be readily made, shall be covered with adequate protective devices, barricaded or otherwise isolated.

Citation 5's alleged violative description states:

Prior to and during the course of the investigation, including but not limited to May 25, 2018, the employer failed to ensure that a

supervisory employee (Electric Crew Foreman) utilized protective coverings or devices, adequate barriers, or isolation methods while working on exposed underground cables, concentric ground wires, or conductors including but not limited to, equipment or parts of an energized transformer (located within a BURD structure having a working space of less than 36”), with an operating voltage of 6.9kV. As a result, an employee while attempting to remove an old ground wire come [sic] into contact with an energized section of the transformer and suffered serious injuries.

Chavez was not wearing gloves or other protective equipment prior to doing the preparation work with the cables in the BURD. Employer argues that because Chavez was not working on energized equipment, and protective devices, like the elbow, were used to protect employees from energized equipment, no violation should be found. The Board disagrees with the Employer’s argument. There is no dispute that Chavez failed to wear gloves, or use protective clothing while working around the energized equipment. A violation of the safety standard has been proven.

**5. Assuming a violation is established, are the Serious classifications of Citations 2 through 5 appropriate?**

A rebuttable presumption of a serious violation exists where “the division demonstrates that there is a realistic possibility that death or serious physical harm could result from the actual hazard created by the violation. The demonstration of a violation by the division is not sufficient by itself to establish that the violation is serious.” (Lab. Code, § 6432, subd. (a).) Once the Division has established a rebuttable presumption of a serious violation, the employer has the opportunity to rebut, by showing “the employer did not know and could not, with the exercise of reasonable diligence, have known of the presence of the violation.” (Lab. Code, § 6432, subd. (c).)

Employer did not raise the classification of Citations 2 through 5 in its Petition for Reconsideration; the Board finds the ALJ’s analysis of the classification to be well-reasoned and consistent with the requirements of Labor Code section 6432. The Board therefore upholds the ALJ’s finding of Citations 2, 3, 4 and 5 as Serious.

**6. Assuming a violation is established, are Citations 3 through 5 properly classified as accident-related?**

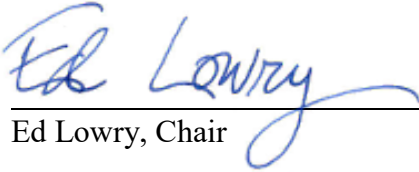
Citations 3, 4, and 5 are also classified as accident-related by the Division. To demonstrate that a violation is accident-related, the Division must make a “showing [that] the violation more likely than not was a cause of the injury. (Citations).” (*Duininck Bros., Inc.*, Cal/OSHA App. 06-2870, Decision After Reconsideration & Order of Remand (Apr. 13, 2012).) Here, the ALJ concluded that the three violations were each a cause of the injury suffered by Chavez. Employer did not challenge the ALJ’s conclusion in their Petition for Reconsideration; therefore, it waived any and all arguments on this point. (Lab. Code, § 6618.) And, the Board finds the ALJ’s reasoning to again be well-reasoned and consistent with prior Board case law. The accident-related classification is upheld in Citations 3, 4, and 5.

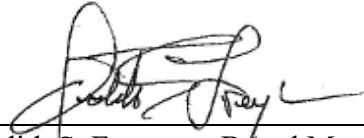


**DECISION**

The Decision of the ALJ is upheld in full.

OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD

  
Ed Lowry, Chair

  
Judith S. Freyman, Board Member

  
Marvin P. Kropke, Board Member



FILED ON: **12/28/2020**

## SUMMARY TABLE

### OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD

In the Matter of the Appeal of: <b>SOUTHERN CALIFORNIA EDISON dba SOUTHERN CALIFORNIA EDISON COMPANY</b>	Inspection No. <b>1320327</b>
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Citation Issuance Date: **11/19/2018**

CITATION	ITEM	SECTION	TYPE	CITATION/ITEM RESOLUTION	AFFIRMED	VACATED	PENALTY PROPOSED BY DOSH IN CITATION	FINAL PENALTY ASSESSED
1	1	3400 (f) (1 )	G	DAR issued. Violation affirmed.	A		\$935.00	<b>\$935.00</b>
2	1	2940 (d)	S	DAR issued. Violation affirmed.	A		\$13,500.00	<b>\$13,500.00</b>
3	1	2940.9	S	DAR issued. Violation affirmed.	A		\$22,500.00	<b>\$22,500.00</b>
4	1	2940.13 (l)	S	DAR issued. Violation affirmed.	A		\$22,500.00	<b>\$22,500.00</b>
5	1	2943 (h) (3 )	S	DAR issued. Violation affirmed.	A		\$22,500.00	<b>\$22,500.00</b>
6	1	3203 (a) (2 )	S	ALJ vacated violation.		V	\$13,500.00	<b>\$0.00</b>
<b>Sub-Total</b>							\$95,435.00	<b>\$81,935.00</b>

**Total Amount Due\*      \$81,935.00**

*\*You may owe more than this amount if you did not appeal one or more citations or items containing penalties. Please call (415) 703-4291 if you have any questions.*

#### PENALTY PAYMENT INFORMATION

1. Please make your cashier's check, money order, or company check payable to:  
**Department of Industrial Relations**

2. Write the **Inspection No.** on your payment

3. If sending via US Mail:  
 CAL-OSHA Penalties  
 PO Box 516547  
 Los Angeles, CA 90051-0595

If sending via Overnight Delivery:  
 US Bank Wholesale Lockbox  
 c/o 516547 CAL-OSHA Penalties  
 16420 Valley View Ave.  
 La Mirada, CA 90638-5821

*Online Payments can also be made by logging on to [http://www.dir.ca.gov/dosh/CalOSHA\\_PaymentOption.html](http://www.dir.ca.gov/dosh/CalOSHA_PaymentOption.html)*

**-DO NOT** send payments to the California Occupational Safety and Health Appeals Board-

**Abbreviation Key:**

G=General	R=Regulatory	Er=Employer
S=Serious	W=Willful	Ee=Employee
RG=Repeat General	RR=Repeat Regulatory	A/R=Accident Related
	RS=Repeat Serious	