

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

*In the Matter of the Appeal of:*

**MORROW-MEADOWS CORPORATION**

231 Benton Court  
City of Industry, CA 91789

Employer

**DOCKETS 12-R4D1-0717  
Through 0719**

**DECISION**

**STATEMENT OF THE CASE**

Morrow-Meadows Corporation (Employer) is an electrical contracting company providing services to a wide range of industries. On September 20, 2011, Associate Safety Engineer Hien Le (Le), employed by the Division of Occupational Safety and Health (the Division) began an inspection at a work site maintained by Employer at 600 World Way, Terminal 6, Los Angeles, California (work site). On February 27, 2012, the Division cited Employer for failure to ensure that suitable eye protection was provided to employees Pursuant to Section 2302.2, subdivision 2(a)(6); failure to ensure that approved and insulated gloves were available and worn by employees pursuant to section 2320.2, subdivision (a)(4); and failure to treat the installation of an electrical system as energized during the test process pursuant to section 2320.3.

The Employer filed an appeal contesting the existence of a violation of the safety orders, the abatement requirements and the reasonableness of the penalty for Citations 1, 2 and 3. Employer pleaded affirmative defenses and other defenses as indicated in Employer's Appeal filed with the Occupational Safety and Health Appeals Board (Exhibit 1).

The matter came on regularly for hearing before Clara Hill-Williams, Administrative Law Judge (ALJ) for the California Occupational Safety and Health Appeals Board, at West Covina, California on May 21, 2013, January 15, 2014, June 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup>, 2014 and November 13, 2014. Employer was represented by Attorney Kevin Bland. Staff Counsel James Clark represented the Division. The parties presented oral and documentary evidence.<sup>1</sup> The ALJ extended the submission date to November 23, 2015.

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<sup>1</sup> Unless otherwise specified, all section references are to Sections of California Code of Regulations, title 8.

## **ISSUES**

1. Did Employer allow work on exposed energized equipment without suitable eye protection and without approved insulated gloves?
2. Did Employer fail to treat electrical equipment as energized until tested or otherwise proven to be de-energized?

## **FINDINGS OF FACT**

1. Foreman Pete Ames (Ames) assigned Mark Machado (Machado) and Duane Pfannkuch (Pfannkuch) to supply power to a de-energized panel that was disconnected by another contractor, the previous night.
2. Ames instructed Pfannkuch and Machado to lockout and tagout the circuit to the existing wires prior to removing the caps, also known as wing nuts.
3. Machado as journeyman<sup>2</sup> assigned Pfannkuch as the apprentice<sup>3</sup> to test the existing wires in the fan room while Machado locked out the panel.
4. Before Machado could lockout and tagout the breaker, he was required to turn the power on to verify that the breaker actually controlled power to the circuit in the fan room.
5. The procedure for locking out and tagging out the breaker involved Pfannkuch testing the wires in the fan room, to ensure that the breaker to be locked out and tagged out in the electric room was correctly identified as the breaker that controlled the existing wires in the fan room.
6. The proper lockout/tagout procedure required Machado to turn on the circuit and verify with Pfannkuch's use of a tic tracer that the correct circuit was identified showing the wire was energized, then Machado was required to de-energize the circuit and lockout and tagout the breaker on the panel.
7. Once the breaker was locked out and tagged out, the new and existing de-energized wires in the fan room could then be spliced together and power resupplied to the transformer.

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<sup>2</sup> Electrical Journeyman is defined as a class of electricians who have completed advanced training and acquired a certain skill set. *electriciantraining101.com*

<sup>3</sup> Electrical Apprentice is defined as someone who works directly under the supervision of a qualified journeyman electrician in installing or maintaining a variety of approved wiring methods...*calapprenticeship.org*.

8. The wires Pfannkuch tested in the fan room before the accident, were all capped<sup>4</sup> with wire nuts.
9. Pfannkuch's testing the wires in the fan room to determine whether they were energized or not did not require eye protection or insulated gloves because the wires were insulated and capped with wire nuts.
10. After the accident, one of the previous capped wires before the accident was uncapped.
11. According to the coroner's report, Pfannkuch's cause of death was electrocution.
12. Employer had a well-established and enforced policy that no work is performed on exposed energized equipment without express written authority.
13. In testing the wires with a tic tracer, Pfannkuch could not unintentionally come in contact with exposed electrical gear because the wires were completely insulated and capped.
14. Pfannkuch was appropriately trained as an electrical apprentice.<sup>5</sup>
15. Employer has a safety program, which includes a detailed IIPP, with lockout/tagout provisions, a "hot Work Policy", and tailgate safety classes.

**1. Did Employer allow work on exposed energized equipment without suitable eye protection and without approved insulated gloves?**

Section 2320.2, Subdivision (a) Energized Equipment or Systems, provides:

- (a) Work shall not be performed on exposed energized parts of equipment or systems until the following conditions are met:

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<sup>4</sup> Mark Greenfield, the Division's expert, testified that the wire "probably had a cap twisted on it before the accident occurred." Employer's supervisor Ames and journeyman Machado's testimonies both corroborated that the wires were capped before the accident.

<sup>5</sup> The evidence showed Pfannkuch had approximately 310 hours of experience in testing wires, which he was assigned to perform on the day of the accident; over 1,000 hours of experience running conduits; attended numerous safety meetings in lockout/tagout proceedings; 5,000 hours of union hall training on proper lockout/tagout and tic tracer operations; and completed Employer's Qualified Safety Program (QSP) training that also included lockout/tagout and tic tracer usage.

- (4) Approved insulated gloves shall be worn for voltages in excess of 250 volts to ground.
- (6) Suitable eye protection has been provided and is used.

The Division alleged:

On or about September 20, 2011 at LAX Terminal 6, the employer did not ensure that approved and insulated gloves were available and worn by employee who worked on the 480-v, 3-phase, 30-A energized system. As a result, an employee received an electrocution while working on the said system in the mechanical room.

On or about September 20, 2011, at LAX Terminal 6, the employer did not ensure that suitable eye protection were provided and used by employees who worked on the 480-V, 3-phase, 30-A energized system in the mechanical room.

The Division has the burden of proving a violation, including the applicability of the safety order, by a preponderance of the evidence. (*Howard J. White, Inc.*, Cal/OSHA App. 78-741, Decision After Reconsideration (June 16, 1983).) "Preponderance of the evidence" is usually defined in terms of probability of truth, or of evidence that when weighted with that opposed to it, has more convincing force and greater probability of truth with consideration of both direct and circumstantial evidence and all reasonable inferences to be drawn from both kinds of evidence. (*Lone Pine Nurseries*, Cal/OSHA App. 00-2817, Decision After Reconsideration (Oct. 30, 2001), citing *Leslie G. v. Perry & Associates* (1996) 43 Clap. 4th 472, 483, review denied.)

The Division has the burden of proof to establish that there was employee exposure to a violative condition. (*Golden State Utility Co.*, Cal/OSHA App. 85-1435, Decision After Reconsideration (Jan. 22, 1985); *Moran Constructors, Inc.*, Cal/OSHA App. 74-381, Decision After Reconsideration (Jan 28, 1975).) To find exposure, there must be reliable proof that employees are endangered by an *existing* hazardous condition or circumstance. (*Huber, Hunt & Nichols, Inc.*, Cal/OSHA App. 75-1182, Decision After Reconsideration (July 26, 1977).)

To establish a violation of section 2320.2, subdivision (a) pertaining to energized equipment or systems, the Division must establish that (1) Employer failed to ensure work was not performed on exposed energized

parts or equipment<sup>6</sup> until (2) approved insulated gloves were worn for voltages in excess of 250 volts to ground and (3) suitable eye protection was provided and used by the employee(s).

The first requirement in establishing a violation of the safety orders is to determine whether the work was performed on exposed energized parts of equipment. Associate Safety Engineer Le concluded from her interview of supervisor Ames and journeyman Machado that Ames assigned Machado and Pfannkuch the work to be performed, which was to re-energize a panel that was disconnected by another contractor, the previous night. To resupply power to the panel, Ames instructed Pfannkuch and Machado to lockout and tagout the circuit to the existing wires prior to removing the caps, also known as wing nuts. Machado testified that before locking out and tagging out the breaker he was required to turn the power on to verify that the breaker actually controlled power to the circuit in the fan room. Machado stated Pfannkuch verified the power was on by touching the wires with a tic tracer<sup>7</sup>, which determines whether the wires are energized or de-energized. The Division and Employer agreed that the wires Pfannkuch tested before the accident were energized wires that were all capped and insulated and were not exposed. Thus, the evidence shows the work to be performed was to resupply the power to the panel, which was performed by Machado turning on the power and checking with Pfannkuch in the fan room to make sure the circuit was energized but was not exposed.

Here, in the context of testing energized insulated wires with caps, the zone of danger is the area where an employee could be injured from an accident caused by the violative condition if the cap was removed from the insulated wire. (See *Benicia Foundry & Iron Works, Inc.*, Cal/OSHA App. 00-2976, Decision After Reconsideration (Apr. 24, 2003).) Actual exposure to a hazard is not required. Exposure is established where it is reasonably predictable that employees have been, or will be, in the zone of danger. (*Benicia Foundry & Iron Works, Inc.*, Cal/OSHA App. 00-2976, Decision After Reconsideration (Apr. 24, 2003).) Access may be established whenever employees in the course of their work, their personal comfort activities while on the job, or their normal means of ingress and egress to their workplace are in a zone of danger. (*Id.*; *Nicholson-Brown, Inc.*, Cal/OSHA App. 77-024 Decision After Reconsideration (Dec. 20, 1979).) A zone of danger is established if Pfannkuch intentionally removed a cap from an insulated wire, which resulted in exposed energized wires.

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<sup>6</sup> Section 2300 (a) (As applied to live parts) Capable of being inadvertently touched or approached nearer than a safe distance by a person. It is applied to parts and not suitably guarded, isolated, or insulated. Section 2300(b) defines "live parts" as energized conductive components.

<sup>7</sup> Machado testified that Pfannkuch had the tic tracer in his hand when he entered the fan room to inquire if the wires were hot. Le testified that her investigation confirmed that a tic tracer was found near Pfannkuch after the fatal accident.

The Division and Employer agreed that after the accident, one of the wires was uncapped. The Division and Employer further agreed that the fatal accident occurred just moments after Machado and Nathan Rose (Rose), (another employee who had visited Pfannkuch in the fan room before the accident occurred) left the fan room with Pfannkuch on the ladder.

The Division asserted that the violation occurred just before the fatal accident when Pfannkuch removed the cap from one of the wires exposing energized wires. According to Le's investigation Rose stated and confirmed in his testimony that just before the accident he overheard Machado ask Pfannkuch if the wires were hot? Pfannkuch responded that the wires "were hot" and Machado responded that the wires "were not hot". Based upon Machado's communication with Pfannkuch the Division concluded that Pfannkuch, due to a miss-communication may have believed the wires were de-energized, which caused him to intentionally remove the cap from the wire, which meant Pfannkuch was working on exposed energized equipment. The Division concluded that the action of twisting the cap off established the element of working on energized equipment.

Contrary to the Division's position, Employer asserted that it had a well-established and enforced policy that work shall not be performed on exposed energized equipment without express written authority (See Exhibit A pages 5-7, A-5 and A-12). The Employer referenced *Sacramento Municipal Utility District*, Cal/OSHA App. 00-1136, Decision After Reconsideration (March 14, 2001) (*SMUD*), where the Board made a specific determination that the panel an employee was working on was exposed energized electrical equipment because at the time the work was performed, the employee could easily have inadvertently contacted any numerous exposed live wires. The entire panel that the employee worked on was exposed because it was capable of being inadvertently touched or approached.

The Employer pointed out that the instant matter differs from the facts in *SMUD, supra*, because the wires Pfannkuch tested with the tic tracer in the fan room were fully insulated and only became "exposed" after a cap was intentionally removed from one of the insulated wires. In *SMUD, supra*, the electrical components were never insulated to protect against inadvertent contact, and therefore the Board concluded that the wires were exposed because the wires did not require any intentional removal of insulation in order to make contact. Here, the capped wires in the fan room were insulated, and the hazard of electrocution only came "into existence due to the intentional removal of the cap" by Pfannkuch. Employer's Vice-President of Field Construction, Richard Jarvis (Jarvis)<sup>8</sup> conducted a

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<sup>8</sup> At the hearing ALJ Hill-Williams qualified Mr. Jarvis as an expert with 34 years of experience as a certified electrician with the same certification as electricians working in the trade. Jarvis also holds OSHA 30 certification.

demonstration at the hearing, showing that the caps could not be removed from the wires without intentionally twisting the caps off the insulated wires.

Employer also asserted that “accessible” referred to in the definition of “exposed” is defined in section 2300 (a) “(As applied to live parts) Capable of being inadvertently touched or approached nearer than a safe distance by a person. It is applied to parts and not suitably guarded, isolated, or insulated.” Section 2300(b) defines “live parts” as energized conductive components. Employer argued Pfannkuch’s testing the wires with a tic tracer to verify the correct circuit for lockout/tagout was not part of “installing, operating, maintaining, or inspecting” electrical apparatus. Employer concluded that even if the Pfannkuch’s testing the wires with the tic tracer qualified as “installing, operating, maintaining, or inspecting” there was not any possibility during the testing for “tripping or falling or otherwise coming in contact” with exposed electrical gear because the wires were completely insulated and capped prior to the accident.

In weighing the positions of the Division and the Employer, the weight of the evidence supports a finding that the work performed by Pfannkuch was not on “exposed energized parts of equipment or systems” prior to the accident. Pfannkuch’s actions in intentionally removing the cap placed him in a zone of danger, which resulted in his fatal injury. However, the evidence is clear Pfannkuch had a tic tracer that clearly detected whether the wires were energized or de-energized to prevent a fatal injury. Thus, the Division did not establish that Pfannkuch worked on exposed energized equipment. Since the Division did not establish that Pfannkuch worked on exposed energized equipment, a violation is not established, which negates establishing the required suitable eye protection required under section 2320.2, subdivision (a)(6 and wearing of insulated gloves required by section 2320.2, subdivision (a)(4) to prevent a fatal accident.

## **2. Did Employer fail to treat electrical equipment as energized until tested or otherwise proven to be de-energized?**

Section 2320.3 Tests provide:

All electrical equipment and systems shall be treated as energized as required by section 2320.2 until tested or otherwise proven to be de-energized.

The Division Alleged:

On or about September 20, 2011, at LAX Terminal 6, the employer’s employee did not treat the 480-V, 3-phase, 30-A system they were installing as energized during the test process. As a result, an employee received an

electrocution while working on the energized system in the mechanical room.

The Board in *Rick's Electric Inc.*, Cal/OSHA App. 95-136, Decision After Reconsideration (Sept. 24, 1997), held that an employer failed to determine if the parts of a system that were to be worked on by an employee were energized. The employer in *Rick's Electric*, *supra*, contended that because its foreman thought the line the employee was working on was de-energized, the foreman made a determination that adequately complied with section 2320.2, subdivision (a)(1). The Board held that an employer is required to treat any electrical system as energized unless it has made an adequate determination that it is not energized. Section 2320.3 provides: "All electrical equipment and systems shall be treated as energized as required by Section 2320.2 until tested or otherwise proven to be de-energized." Here, *Rick's Electric Inc.*, *supra*, is applicable.

To establish a violation of the safety order, the Division is required to show Employer failed to treat the electrical equipment and systems as energized until tested or otherwise proven to be de-energized. While the Division did not present any direct evidence at the hearing in support of the citation; other evidence was presented regarding whether the electrical equipment and systems were treated as energized or otherwise proven to be de-energized. As discussed above, the parties stipulated that the wires were treated as energized, as evidenced by the testimonies of Machado that he turned the power on the breaker panel and then verified with Pfannkuch that the wires were "hot" just before the accident occurred. Rose also confirmed that Pfannkuch responded to Machado's question of whether the wires were hot in the affirmative. As discussed above Pfannkuch had a tic tracer, which allowed him to test the wires in the fan room to determine if they were energized or de-energized. Here, the Division did not present any evidence that indicated Employer did not treat the wires as energized. While the evidence establishes that the wires were energized, Pfannkuch was protected because the wires were capped prior to the accident. Thus, a violation of the safety order cannot be established.

### **Conclusion**

The Division did not establish the first element of the safety orders in showing Employer allowed work on exposed energized equipment. The evidence established that the wires were energized; however, the wires were capped and were not exposed. Pfannkuch was protected because the wires were capped prior to the accident. Finally, the evidence established that Pfannkuch intentionally removed the cap that insulated the wire, despite acknowledging that the wire was energized before Machado left the fan room, moments before the fatal accident. Thus, a violation of Citations 1 and 2 cannot be established.

The Division did not establish that Employer failed to treat electrical equipment as energized until tested or otherwise proven to be de-energized, pursuant to Citation 3. The Division did not present any evidence to establish a violation of the safety order. As discussed above, the procedure assigned by Ames required Machado and Pfannkuch to test the wires before locking out the system. The Division and Employer stipulated that the wires were energized but were capped and insulated prior to the accident. Pfannkuch had access to his tic tracer<sup>9</sup> at all times before the accident occurred to determine whether the wires were energized.

**ORDER**

It is hereby ordered that Citation 1, Citation 2 and Citation 3 are dismissed and Employer's appeal is granted.

It is further ordered that the penalties indicated above and set forth in the attached Summary Table are dismissed.

**IT IS SO ORDERED.**

Dated: December 23, 2015

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**CLARA HILL WILLIAMS**  
Administrative Law Judge

CHW: ao

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<sup>9</sup> See FN#7 above.

## SUMMARY TABLE DECISION

In the Matter of the Appeal of:

**MORROW-MEADOWS CORPORATION**  
**Docket 12-R4D1-0717/0719**

Abbreviation Key: Reg=Regulatory  
 G=General            W=Willful  
 S=Serious            R=Repeat  
 Er=Employer        DOSH=Division

IMIS No. 314860552

DOCKET	C	I	T	I	SECTION	T	Y	P	E	MODIFICATION OR WITHDRAWAL	A	V	PENALTY PROPOSED BY DOSH IN CITATION	PENALTY PROPOSED BY DOSH AT HEARING	FINAL PENALTY ASSESSED BY BOARD
12-R4D1-0717	1	1			2320.2(a)(6)					Dismissed		X	\$8,435	\$0	<b>\$0</b>
12-R4D1-0718	2	1			2320.2(a)(4)					Dismissed		X	\$22,500	\$0	<b>\$0</b>
12-R4D1-0719	3	1			2320.3					Dismissed		X	\$22,500	\$0	<b>\$0</b>
<b>Sub-Total</b>													\$53,435	\$0	<b>\$0</b>

**Total Amount Due\***

(INCLUDES APPEALED CITATIONS ONLY)

**\$0**

NOTE: Please do not mail payments to the Appeals Board. All penalty payments must be made to:

Accounting Office (OSH)  
 Department of Industrial Relations  
 P.O. Box 420603  
 San Francisco, CA 94142

\*You will 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.

ALJ: CHW/ao  
 POS: 12/23/2015

**APPENDIX A**  
**SUMMARY OF EVIDENTIARY RECORD**

**MORROW-MEADOWS CORPORATION**

**Docket 12-R4D1-0717 - 0719**

**Date of Hearing:**

May 21, 2013; January 15, 2014; June 4-6, 2014; and November 14, 2014

**Division's Exhibits**

<b>Exhibit Number</b>	<b>Exhibit Description</b>	<b>Admitted</b>
1	Jurisdictional documents	X
2	C-10 Penalty Worksheet	X
3	Photos A-K	X
4	Sketch of work site rooms by Mark Machado	X
5	Photo – Junction Box	X
6	Exemplar yellow wire	X
7	Coroner's Report	X
8	Photo	X
9	Red wire	X
9A	Red wire cap	X
10	Schematic of line of sight chart	X

**Employer's Exhibits**

<b>Exhibit Letters</b>	<b>Exhibit Description</b>	<b>Admitted</b>
A - RRR	Reference the attached MOORROW-MEADOWS CORPORATION'S PROPOSED EXHIBIT LIST	X All admitted with the exception of Letter C (withdrawn) and Letter E (withdrawn)
SSS	Apprenticeship and Training Standards	X
TTT	Bare copper wire	X
UUU	Green Xtion Cord	X
VVV	Red insulated wire w/caps	X
WWW	Replica – Built to scale of apparatus junction box & panel room	X
XXX	Ladder 4 ft.	X
YYY	Product data sheet	X
ZZZ	Photo florescent light fixtime	X
AAAA	Photo close up florescent light	X
BBBB	Red wire	X
CCCC	Red nut	X

**Witnesses Testifying at Hearing**

1. Mark Machado
2. Nathan Rose
3. Richard Jarvis

4. Eric Brown
5. Hien Le
6. Michael Kirley
7. Marc Jay Greenfield
8. Christian Nguyen
9. Robert Zatorski
10. David Nott
11. Peter Drew Ames

**CERTIFICATION OF RECORDING**

*I, Clara Hill-Williams, the California Occupational Safety and Health Appeals Board Administrative Law Judge duly assigned to hear the above matter, hereby certify the proceedings therein were electronically recorded. The recording was monitored by the undersigned and constitutes the official record of said proceedings. To the best of my knowledge, the electronic recording equipment was functioning normally.*

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

