

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

In the Matter of the Appeal of:

**INTERNATIONAL LINE BUILDERS, INC.
P.O. BOX 23729
PORTLAND, OR 97281**

Employer

Inspection No.
1484149

DECISION

Statement of the Case

International Line Builders, Inc. (ILB or Employer) constructs and repairs high voltage electrical lines and equipment. In July 2020, Pacific Gas & Electric Company (PG&E) upgraded and maintained several miles of transmission lines paralleling the I-80 freeway, in a remote and rocky area in Soda Springs, California (jobsite). PG&E subcontracted the upgrading and maintenance work at the jobsite to Employer. On July 20, 2020, the Division of Occupational Safety and Health (the Division), through Associate Safety Engineer Weiru Chen (Chen), commenced an inspection after a report of a serious accident that occurred on July 13, 2020, involving two ILB employees who fell approximately 40 feet from high voltage “H” structure power poles (the incident).

On January 7, 2021, the Division issued two citations to Employer, alleging three violations of the California Code of Regulations, title 8.¹ Employer filed timely appeals of the citations. Two of the alleged violations proceeded to hearing.² Citation 1, Item 2, classified as General, alleges that Employer “failed to implement and maintain an effective program in that unsafe work procedures and site[-]specific hazards were not identified and evaluated when electrical workers were performing maintenance work on power transmission structures.” Citation 2, classified as Serious, alleges that Employer “failed to ensure poles or structures [were] inspected and determined to be safe for climbing and shall not be climbed until made safe by guying, bracing or other adequate means.”

The appeals of Citation 1, Item 2, and Citation 2, assert that the safety orders were not violated, and the proposed penalties are unreasonable. Employer’s appeal of Citation 2 also asserts

¹ Unless otherwise specified, all references are to sections of California Code of Regulations, title 8.

² Citation 1, Item 1, was appealed by Employer but was settled by the parties prior to the hearing. Good cause appearing, the parties’ stipulated resolution of Citation 1, Item 1, is affirmed and is reflected in the attached Summary Table.

that the classification is incorrect. Additionally, Employer asserted the affirmative defense of Independent Employee Action.³

This matter was heard by Weiru Wang, Administrative Law Judge (ALJ) for the California Occupational Safety and Health Appeals Board (Appeals Board) in Sacramento, California, on March 25 and 26, 2025, and May 6 and 7, 2025, with all participants appearing remotely via the Zoom video platform. James S. Anderson, Attorney, of Cummins, Goodman, Denley, & Vickers, represented Employer. Melissa L. Viramontes, Staff Counsel, represented the Division. The parties stipulated that the transcript of the audio recording made by the Appeals Board will be the official record of the hearing. The matter was submitted on October 1, 2025.

Issues

1. Did Employer fail to implement its Injury and Illness Prevention Program to identify and evaluate unsafe work procedures and site-specific hazards when electrical workers performed maintenance work on power transmission structures?
2. Did Employer fail to ensure the power poles were inspected and determined to be safe for climbing before allowing its employees to climb the poles?

Findings of Fact

1. On July 13, 2020, (the date of incident) Employer dispatched five of its maintenance crew members to the jobsite for the upgrade and maintenance of high-voltage electrical transmission lines, including replacing guy lines and fishlines which anchored wooden transmission poles (poles) to the ground.
2. On the date of incident, two of the linemen replacing the guy lines sustained serious injuries when they fell from the tops of the wooden transmission poles to the granite boulder below.
3. Due to the rocky geography of the terrain at the jobsite, the transmission poles at the jobsite needed to be placed on top of rocky areas covered by large granite boulders. These poles sat atop the granite boulders, rather than in holes dug into the earth.
4. Prior to the date of incident, the crew had worked on poles set in holes dug into the earth.
5. At the tailboard meeting on the morning of the incident, the crew was present during discussion of the new process and procedure to be performed by the crew members at the

³ Affirmative defenses that are not pled in documents or presented during the hearing are deemed waived. (*RNR Construction, Inc.*, Cal/OSHA App. 1092600, Denial of Petition for Reconsideration (May 26, 2017).)

jobsite that day to address the hazard of poles sitting on top of rocks. The crew included linemen and injured employees Devin Norcutt (Norcutt) and Joshua Marquez (Marquez).

6. On July 13, 2020, the two linemen in the crew climbed an H structure, one on each pole. This H structure was set on top of a granite boulder, rather than dug into the ground.
7. This H structure had been visually inspected the day before the incident by Gabe Gilbert (Gilbert), the foreman of the crew, as well as by Marquez. Additionally, on the day of incident, Marquez and Norcutt visually inspected and hammer tested their respective pole.
8. Marquez and Norcutt determined their respective poles to be in safe condition prior to climbing the poles.

Analysis

- 1. Did Employer fail to implement its Injury and Illness Prevention Program to identify and evaluate unsafe work procedures and site-specific hazards when electrical workers performed maintenance work on power transmission structures?**

Section 3203, subdivision (a)(4), provides, in relevant part:

(a) Effective July 1, 1991, every employer shall establish, implement and maintain an effective Injury and Illness Prevention Program (Program). The Program shall be in writing and, shall, at a minimum:

[...]

(4) Include procedures for identifying and evaluating work place hazards including scheduled periodic inspections to identify unsafe conditions and work practices. Inspections shall be made to identify and evaluate hazards:

(A) When the Program is first established;

Exception: Those employers having in place on July 1, 1991, a written Injury and Illness Prevention Program complying with previously existing section 3203.

(B) Whenever new substances, processes, procedures, or equipment are introduced to the workplace that represent a new occupational safety and health hazard; and

(C) Whenever the employer is made aware of a new or previously unrecognized hazard.

In Citation 1, Item 2, the Division alleges:

Prior to and during the course of investigation, including but not limited to, on July 20, 2020, the employer failed to implement and maintain an effective Program in that unsafe work procedures and site[-]specific hazards were not identified and evaluated when electrical workers were performing maintenance work on power transmission structures.

a. *Section 3203, subdivision (a)(4)(B)*

The Division has the burden of proof to establish each element of an alleged violation by a preponderance of the evidence. In *Hamilton Iron Works*, Cal/OSHA App. 1497263, Decision After Reconsideration, (June 12, 2024), the Appeals Board held:

"Preponderance of the evidence" is usually defined in terms of probability of truth, or evidence that, when weighed against opposing evidence, 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.

In *General Dynamics NASSCO*, Cal/OSHA App. 1262720, Decision After Reconsideration, (May 8, 2023), the Appeals Board determined:

To establish a violation of section 3203, subdivision (a)(4)(B), the Division has the burden to demonstrate, by a preponderance of the evidence, that (1) "new substances, processes, procedures, or equipment ... that represent a new occupational safety and health hazard" were introduced into the workplace; and (2) the employer failed to inspect, identify, and evaluate hazards posed by these new substances, processes, procedures, or equipment. (*Barrett Business Services, Inc.*, Cal/OSHA App. 12-1204, Decision After Reconsideration (Dec. 14, 2016).) Both elements must be established by a preponderance of the evidence to uphold an alleged violation.

The Appeals Board determined, "the Division must establish two basic elements: a triggering event occurred requiring an inspection to identify and evaluate hazards, and Employer

failed to effectively implement its duty to inspect, identify and evaluate the hazard.” (*Hamilton Iron Works, supra.*)

Moreover, procedures to ensure compliance with safe and healthy work practices, including imminent hazards, are essential to the overall program. (See *GTE California*, Cal/OSHA App. 91-107, Decision After Reconsideration (Dec. 16, 1991); *David Fischer, dba Fischer Transport, A Sole Proprietorship*, Cal/OSHA App. 90-762, Decision After Reconsideration (Oct. 16, 1991).) Whether an employer has implemented its Injury and Illness Prevention Program (IIPP) is a question of fact. (*National Distribution Center, LP, et al.*, Cal/OSHA App. 12-0391, Decision After Reconsideration, (Oct. 5, 2016).

There is no dispute that Employer has a written IIPP. The Division asserts that Employer failed to implement its IIPP by not adequately identifying and evaluating a new work place hazard. Here, the “triggering event” pertaining to subdivision (a)(4)(B), was the new hazard of the poles set on top of rocks and boulders at the job site. Thus, performing the task of replacing the guy lines on these poles required new processes and procedures. This triggered Employer’s duty to “inspect, identify and evaluate the hazard.” Employer dispatched its foreman, Gilbert, and Marquez, to the site the day before the crew was to work at the job site. Gilbert and Marquez visually inspected the site and poles, identified the hazard it posed, and evaluated how to best address the situation. The inspection revealed that the poles were set on top of the rocks and each pole was secured in place by two guy lines attached to the poles and anchored to the ground at a 45-degree angle.

In this matter, the injured employees and their crew were dispatched to replace guy lines on electric transmission structures. The structure in this incident is called the H-structure because it consists of two long wooden vertical poles connected at the top by a horizontal crossbar and looks similar to the letter “H”. Each pole is connected to the ground by two guy lines to help stabilize the structure. The two poles are connected to the ground by a total of four guy lines. Guy lines are cables that connect the tops of the poles to the ground at a 45-degree angle to keep the poles and structure upright and stable.

After Gilbert and Marquez’s inspection of the jobsite the day before the incident, it was determined that the safest procedure to replace the guy lines was to attach a new replacement guy line to Norcutt’s pole, before he disconnected one of the two existing guy lines on his pole. A second replacement guy line would be sent up to Norcutt to be secured on his pole before Norcutt could disconnect the second existing guy line on his pole. The procedure was to be repeated on Marquez’s pole. The procedure required four to five guy lines to be attached to the two poles at all times, to keep the structure stable. The procedure was discussed at the tailboard meeting on the morning of the incident, with everyone in the crew attending the meeting. Each member of the crew was assigned a task in carrying out the procedure. Employer’s witnesses and Marquez testified that, had this procedure been followed, the structure would have remained safe and stable

during and after the guy lines had been replaced. However, when the first replacement guy line was secured to his pole, Norcutt removed both of his two existing guy lines, rather than just one, causing his pole to become unstable and tip over to Marquez's pole. This caused the entire H-structure to fall over towards Marquez's side.

In *Coast Waste Management, Inc.*, Cal/OSHA App. 11-2385, Decision After Reconsideration (Oct. 7, 2016), the employer inspected, identified, and evaluated hazards to its drivers, and created a policy to effectively mitigate the hazard to its drivers. The Appeals Board held that, although the Division may dispute whether the employer had done enough to comply with the regulation, the employer's conclusion that it had done enough to address and minimize the hazard to its drivers was reasonable, "given these unusual circumstances and the efforts Employer had put forth to improve its program...." Here, the Division argues Employer's actions in inspecting, identifying and evaluating the hazard were insufficient to meet Employer's obligations under section 3203, subdivision (a)(4), because Employer did not train Norcutt or Marquez, and Gilbert did not stop Norcutt from disconnecting both of the existing lines, rather than just one. However, the Division's arguments does not mean Employer failed to adequately identify, evaluate, or inspect the new hazard. As discussed above, it is found that Employer's actions in having Marquez, Gilbert and Norcutt inspect the site and the poles prior to climbing them were reasonable.

The Division also asserts a violation of 3203, subdivision (a)(4), because Employer did not document the identification or inspection of the new hazard. Although section 3203, subdivision (a)(4), requires that inspections be made to identify and evaluate hazards, it does not require documentation of an identified hazard or its inspection. Section 3203, subdivision (b), requires Employer to record the steps taken to implement and maintain the program by recording the periodic inspections and corrective actions required by section 3203, subdivision (a)(4); however, as that subdivision was not cited, added as an amendment, or appealed, this decision will not address the record-keeping requirements set forth in subdivision (b).

Additionally, the Division argues Employer failed to train its crew, specifically Marquez and Norcutt, on the unique hazard of poles set atop rock surfaces before dispatching them to work at the jobsite. Although section 3203, subdivisions (a)(2) and (3), require training, subdivision (a)(4) does not address training as a requirement of that subdivision of the regulation. It is well established that the Appeals Board will not read terms into or out of a safety order. (*United Parcel Service*, Cal/OSHA App. 315347864, Decision After Reconsideration (Sep. 6, 2017) [writ denied].) Further, the Division cannot satisfy its burden of proof if doing so would require reading terms into the cited safety order. (*ACCO Engineered Systems*, Cal/OSHA App. 1195414, Decision After Reconsideration (Oct. 11, 2019).) Since training is not required by the subdivision cited, the Appeals Board cannot expand the scope of the citation to include a training requirement.

Regardless of Norcutt's actions of deviating from Employer's procedure as outlined above, Employer followed the requirements for section 3203, subdivision (a)(4)(B), by implementing its procedures to inspect, identify and evaluate the new hazard.

b. Subdivision 3203, (a)(4)(C)

The Division also asserts a violation of section 3203, subdivision (a)(4)(C), alleging that foreman Gilbert was made aware of a new or previously unrecognized hazard when Norcutt disconnected the two existing guy lines from his pole, but then failed to act. Subdivision (a)(4)(C), requires implementation of procedures for inspecting, identifying and evaluating work place hazards, "[w]henver the employer is made aware of a new or previously unrecognized hazard." However, as discussed above, the new hazard in this matter is the poles falling as a result of sitting on top of rocks and boulders. The hazard is not whether Norcutt shook the pole as he climbed it or whether he disconnected the two existing guy lines instead of only one.

As discussed above, Employer met its duty to inspect and evaluate by dispatching Gilbert and Marquez to the site the day before the incident, and by having Marquez and Norcutt visually inspect and perform hammer tests on their respective poles on the day of the incident. The hazard of falling was not new and did not trigger the application of subdivision (a)(4)(C). Rather, the fall hazard caused by the poles sitting atop the boulder required a new procedure, as discussed in the analysis of section 3203, subdivision (a)(4)(B).

Ultimately, the Division did not carry its burden of proving a violation of section 3203, subdivision (a)(4), by a preponderance of the evidence, because the Division did not provide sufficient evidence that Employer failed to inspect, identify and evaluate hazards at the site. Accordingly, Citation 1, Item 2, and its associated penalty, is vacated.

2. Did Employer fail to ensure the power poles were inspected and determined to be safe for climbing before allowing its employees to climb the poles?

Section 2941, subdivision (d), provides:

(d) Inspection. Prior to climbing poles or other elevated structures supporting overhead electrical lines or equipment, an inspection shall be made to assure that such poles or structures are in safe condition for the work to be performed. Where poles or structures are determined to be unsafe for climbing, they shall not be climbed until made safe by guying, bracing or other adequate means.

In Citation 2, the Division alleges:

Prior to and during the course of investigation, the Employer failed to ensure poles or structures are inspected and determined to be safe for climbing and shall not be climbed until made safe by guying, bracing or other adequate means. As a result, on or about July 13, 2020, an employee who climbed a pole that was not effectively guyed sustained serious injuries when the pole collapsed, causing the employee to fall approximately 40 feet to the ground.

In *California Highway Patrol*, Cal/OSHA App. 09-3762, Decision After Reconsideration (Aug. 16, 2012), the Appeals Board held:

The rules of regulatory construction require courts and this Board "to give meaning to each word and phrase and to avoid a construction that makes any part of a regulation superfluous." (*Donley v. Davi* (2009) 180 Cal.App.4th 447, 465.) We construe the regulations by according words their common sense meaning based on the evident purpose for which the enactment was adopted. (*In re Rojas* (1979) 23 Cal. 3d 152, 155.) Under accepted canons of statutory construction, we must "give meaning to each word if possible and avoid a construction that would render a term surplusage." (*Sully-Miller Contracting Company v. California Occupational Safety and Health Appeals Board* (3d Dist. 2006) 138 Cal.App.4th 684, 695.) The same rules of construction and interpretation that apply to statutes govern the construction and interpretation of administrative regulations. (*Auchmoody v. 911 Emergency Services* (1989) 214 Cal.App.3d 1510, 1517; *Webcor Builders, Inc.*, Cal/OSHA App. 06-3031, Denial of Petition for Reconsideration (Jan. 11, 2010))

In *McCarthy Building Co., Inc.* Cal/OSHA App. 12-3458, Decision After Reconsideration (Feb. 8, 2016), the Appeals Board further held:

The rules of statutory construction apply to interpreting regulations. (*Auchmoody v. 911 Emergency Services* (1989) 214 Cal.App.3d 1510, 1517) The fundamental task in statutory and regulatory construction is to ascertain the intent of the lawmakers. (*Branciforte Heights, LLC v. City of Santa Cruz*, (2006) 138 Cal. App. 4th 914, 934). To determine the intent of the lawmakers, we begin by giving the words their usual and ordinary meaning. "If the terms of the statute are unambiguous, we presume the lawmakers meant what they said, and the plain meaning of the language governs." (*Ibid.*) "If possible, significance should be given to every word,

phrase, sentence and part of an act..." (*People v. Black*, (1982) 32 Cal. 3d 1, 5 [citations omitted].) "[A] construction making some words surplusage is to be avoided." (*Ibid.*) The words of a statute or regulation should also be construed in context. (*Ibid.*)

The Division alleges Employer violated section 2941, subdivision (d), because Employer failed to ensure the poles that Marquez and Norcutt climbed were effectively guyed when Norcutt removed the two existing guy lines attached to his pole while the two men were both at the tops of their poles. However, section 2941, subdivision (d), specifically requires: "**Prior to** climbing poles" an employer must evaluate the poles to ensure they are in safe condition, and if found to be unsafe for climbing, the poles "**shall not be climbed until made safe** by guying, bracing or other adequate means." (*Emphasis added.*)

There was no dispute that the poles were securely guyed before the men climbed them. The Division's assertion that the poles were unsafe was based on the changed circumstances that occurred once the men were already at the top and Norcutt removed the existing guy lines. Both Marquez and Norcutt inspected the poles and found the poles to be safe **prior to** climbing them as required by regulation. Two inspections were made to assure the poles were in safe condition for the work to be performed before Marquez and Norcutt climbed them. First, an inspection occurred when Marquez and Gilbert visually inspected the poles the day before the incident. Second, an inspection occurred when Marquez and Norcutt visually inspected and hammer tested their respective poles on the date of the incident. Both men determined their respective poles to be safe for climbing before they ascended the poles.

It is well established that the Appeals Board will not read terms into or out of a safety order. (*United Parcel Service*, Cal/OSHA App. 315347864, Decision After Reconsideration (Sep. 6, 2017) [writ denied].) Further, the Division cannot satisfy its burden of proof if doing so would require reading terms into the cited safety order. (*ACCO Engineered Systems*, Cal/OSHA App. 1195414, Decision After Reconsideration (Oct. 11, 2019).) Here, taking the Division's position would require reading a term into the safety order.

Statutory construction requires that the two sentences of the regulation be read in conjunction with one another. In doing so, it is clear the regulation intends for Employer to ensure the poles were in safe condition *before* Marquez and Norcutt commenced climbing their respective poles. Not only does the first sentence use the words "prior to climbing," but the second sentence states that unsafe poles "shall not be climbed until made safe." The plain meaning of this language creates the obligation on an employer to ensure the poles are safe before any climbing commences, not when conditions change that make them unsafe after they have already been climbed.

The Division did not carry its burden of proving a violation of section 2941, subdivision (d), by a preponderance of the evidence. The Division did not provide sufficient evidence that there was failure to inspect the poles to ensure they were in safe condition before Marquez and Norcutt climbed them. Accordingly, Citation 2, and its associated penalty, shall be vacated.

Conclusions

For Citation 1, Item 1, the Division established that Employer violated section 342, subdivision (a). The penalty, as modified herein, is reasonable.

For Citation 1, Item 2, the evidence does not support a finding that Employer violated 3203, subdivision (a)(4).

For Citation 2, the evidence does not support a finding that Employer violated section 2941, subdivision (d).

ORDER

It is hereby ordered that Citation 1, Item 1, is affirmed pursuant to the stipulation of the parties. The parties stipulated to a non-admission clause. Citation 1, Item 1, is sustained, along with the non-admission clause and the modified penalty of \$3,750.00.

It is hereby ordered that Citation 1, Item 2, and Citation 2, are vacated.

Dated: 10/31/2025

/s/ Weiru Wang

Weiru Wang
Administrative Law Judge

The attached decision was issued on the date indicated therein. If you are dissatisfied with the decision, you have thirty days from the date of service of the decision in which to petition for reconsideration. Your petition for reconsideration must fully comply with the requirements of Labor Code sections 6616, 6617, 6618 and 6619, and with California Code of Regulations, title 8, section 390.1. **For further information, call: (916) 274-5751.**

If no petition is filed, the penalty amount set forth in the Summary Table is due and payable 30 days after the Order or Decision is issued. If the Appeals Board approved a payment plan, all payments are due in accordance with the dates indicated in the Summary Table. If a Petition for Reconsideration is filed, no payment should be made until the final outcome of the appeal.