

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

Bessie Hendricks, individually and as)
Personal Representative of the Estate of)
Anthony Hendricks for and on Behalf of)
All Beneficiaries of the Estate,)

Civil Action No. 2022-CP-10-01865

Plaintiff,)

v.)

**ORDER GRANTING DEFENDANT
DOMINION ENERGY SOUTH
CAROLINA, INC.'S MOTION FOR
SUMMARY JUDGMENT**

South Carolina Ports Authority;)
Dominion Energy, Inc.; Dominion)
Energy South Carolina, Inc. formerly)
known as South Carolina Electric & Gas)
Company; Dominion Energy Southeast)
Services, Inc. formerly known as)
SCANA Services, Inc.; SCANA)
Corporation; Metro Electric Co., Inc.;)
and e-Hazard Management, LLC doing)
business as e-Hazard and e-hazard.com,)

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May 29 2026

Defendants.)

SC Court of Appeals

Defendant Dominion Energy South Carolina, Inc.’s (“DESC”) Motion for Summary Judgment was heard by this Court on January 9, 2026. Counsel present at the hearing were Steven J. Pugh on behalf of DESC and Brooklyn O’Shea and Christopher J. McCool on behalf of Plaintiff.

Based on the pleadings, DESC’s Motion for Summary Judgment with Incorporated Memorandum in Support with attachments (the “Motion”), Plaintiff’s Opposition to DESC’s Motion, DESC’s Reply in Support of its Motion (the “Reply”), additional materials submitted by the parties including Plaintiff’s additional exhibits in support of its Opposition (Exhibits C-Q, South Carolina Port Authority Safety Manual (effective 1-2015) provisions, “5-03,

Lockout/Tagout” and “5-04, Electrical Safety”), the Court finds Summary Judgment in favor of Defendant is proper.

INTRODUCTION

This case arises from a tragic incident which occurred on April 27, 2020 (the “Incident”) at the South Carolina Ports Authority (the “Port” or “SCPA”) Wando Welch Terminal (“WWT”), in Mount Pleasant, South Carolina, in which longtime SCPA electrical engineering contractor Anthony “Tony” Hendricks (“Hendricks”) was severely burned by an arc flash¹ that occurred when he inserted a metal tape measure into an piece of potentially energized high-voltage SCPA equipment. Sadly, Hendricks subsequently died on May 27, 2020.

BACKGROUND

The incident occurred in the refrigerated section of the WWT (the “Reefer area”) which contained a “power distribution network” that included “14 electrical substations labeled R-1 through R-14.” Compl. ¶ 58. Plaintiff alleged that before the day of the Incident, a “redundant power loop” was created that powered R-1 through R-14, and, that this power loop was constructed by Defendant Metro Electric for SCPA, who both failed to properly document the modifications to the SCPA power distribution system. Compl. ¶¶ 59-61.

The effect of this redundant power loop, and alleged lack of accurate review of detailed drawings or affixed plaques regarding it, were a focus of Plaintiff’s Complaint. Because there was a redundant power loop, there were multiple potential sources of electricity into substation R-2 at the time of the Incident. As a result, to fully de-energize R-2, the entirety of the redundant power

¹ An arc flash is a dangerous electrical event which can occur if electrical currents jump between two conductors. NAT’L INST. FOR OCCUPATIONAL SAFETY AND HEALTH, PUBL’N NO. 2007-116D, ARC FLASH AWARENESS INFORMATION AND DISCUSSION TOPICS FOR ELECTRICAL WORKERS (2007), <https://www.cdc.gov/niosh/docs/mining/userfiles/works/products/videos/arcflash/afa.pdf>.

loop needed to be terminated (e.g., de-energized and grounded). This would have required checking the other substations, labeled R-1 through R-14, to isolate any alternate sources of power to substation R-2. Compl. ¶¶ 61-64. Plaintiff complains:

[That] the process of opening a switch^[2] in a compartment of a four-compartment manual electrical air switch for a substation labeled R-1 through R-14 at WWT would not completely remove energy in that compartment and the incoming terminals to the switch would be energized if the upstream or downstream switch in the redundant network was in the closed position....

Compl. ¶ 64.

Plaintiff alleges Hendricks was on the WWT premises at the invitation of the SCPA, an “NFPA 70E host employer,”³ Compl. ¶¶ 36-37, assisting an SCPA employee/electrician, Jose Ayala (“Ayala”), who was servicing substation R-2 (with the redundant power loop) on April 27, 2020. Hendricks was “inspecting, servicing, and/or repairing substation R-2,” when he was injured by a “an electrical arc flash event” that burned him severely, eventually resulting in his death (the “Incident”). Compl. ¶ 69.

Plaintiff’s allegations against DESC are that DESC “had the duty and obligation to properly train the employees of Defendant SCPA^[4] in electrical safety” in a number of particulars. *See* Compl. ¶ 199. While not specifically articulated in the complaint, Plaintiff also argued DESC was

² “Opening a switch” means to de-energize it. To do so requires the use of a wrench. Ayala Dep. at 108.

³ OSHA regulations define a host employer as “An employer that operates, or that controls the operating procedures for, an electric power generation, transmission, or distribution installation on which a contract employer is performing work covered by subpart V of this part.” 29 CFR § 1926.968

⁴ It is undisputed that Hendricks was not an SCPA employee and is not alleged to have been trained by DESC. It further appears undisputed that Hendricks had no interaction with DESC, and certainly none in connection with the subject Incident.

under an obligation to ensure that safety audits were performed regarding SCPA's employee practices and performance pursuant to NFPA 70E.

In their written submissions and in their arguments during the hearing, the parties addressed issues involving Plaintiff's claims against DESC as to the alleged duty of care owed, breach of duty, causation, intervening and superseding negligence, assumption of risk, comparative negligence, and other related matters. After a thorough review of the materials noted above and considering the arguments made during the hearing, the Court finds no question of material fact on the dispositive issue of causation. As such, DESC is entitled to judgment as a matter of law.

DESC does not own or operate the WWT or any of the SCPA electrical equipment involved in this Incident. DESC did not enter WWT property on the day this Incident occurred. No DESC employees were present at the time of the Incident, and there is no evidence that DESC had any interaction with Hendricks. While DESC provided—at the specific request of the SCPA—electrical safety training many years before the Incident to select SCPA employees, the relevant training materials and the testimony of those employees and others are unequivocal as to DESC's role—or lack thereof—in this Incident.

The record before this Court reflects no dispute that DESC last trained certain SCPA employees in electrical safety in connection with their work for SCPA at WWT in August 2014, and, that those SCPA employees were trained on a number of SCPA-specific electrical safety and lockout/tagout procedures, each of which, if followed, would have entirely prevented this arc flash Incident. Also, DESC never trained Hendricks.

Further, the record shows Hendricks was adequately knowledgeable and experienced as to the work he was performing at the time of the Incident. With almost 50 years as an electrical engineer, including decades of work with SCPA at WWT, he had integral roles in the design,

operation, troubleshooting and maintenance of the SCPA electrical power system at WWT—specifically including the refrigerated storage area in question. Hendricks was, therefore, knowledgeable as to the SCPA electrical system, SCPA protocols, including electrical safety procedures, and equipped to take such safety measures. Therefore, regardless of the existence of a duty, or breach, for the reasons set forth herein, the Court finds there is no question of material fact on the necessary element of causation, and as a result DESC is entitled to judgment as a matter of law.

FACTUAL FINDINGS

Although DESC provided some electrical safety training to SCPA employees at SCPA’s request—the most recent of which occurred in 2014—DESC never trained Hendricks, who was not a SCPA employee. But, because Plaintiff’s claim is based on DESC’s prior training of SCPA employees, a timeline of the numerous trainings provided to SCPA employees, including Ayala, from various sources is relevant. That timeline is attached to this Order as **Appendix A** and was not disputed by the Plaintiff, and is incorporated herein by reference.

As is apparent in Appendix A, DESC⁵ had only limited and remote involvement in certain electrical safety training of SCPA employees, including Ayala, who was the only person present with Hendricks at the time of the Incident. The last “blue” SCE&G involvement with the SCPA was in August 2014, and as is likewise apparent, multiple other trainings occurred in the intervening six years between the last SCE&G training and the Incident.

SCE&G assisted SCPA in creating the “2012 Heavy Lift Electrical Training,” which focused on the particulars of the SCPA cranes and attendant high-voltage electrical equipment at

⁵ For clarity, references to DESC also include South Carolina Electric & Gas Company, Inc., or, SCE&G, as the training alleged to be deficient was conducted before DESC’s existence. SCE&G is now known as DESC.

WWT. Email correspondence reflects SCE&G employees visited SCPA facilities, consulted with the SCPA, and created a proposed training module that would take three days to complete. SCE&G provided that training on SCPA electrical equipment “during the outside portion of each session” to include “switching cabinets, transformers, and breakers.” DESC_000114.⁶ This, again, reflects hands-on training with the SCPA’s electrical equipment and the very safety tools and SCPA electrical safety and lockout/tagout procedures, any one of which would have prevented this Incident had they been utilized as to R-2 where this Incident occurred. SCPA employee Ayala—again, the only potential connection between Hendricks, DESC, and the Incident—attended that 2012 training, *see* DESC_000179, scoring a perfect score of “100” on the SCPA electrical training exam. DESC_000114-000115. Email correspondence sent in follow-up to that training indicates that working on “switching and tagging” and “learning to read prints [electrical diagrams of SCPA equipment]” was “very beneficial” to those who attended, including Ayala. DESC_000129.

Another DESC (then, SCE&G) document, the “Proposed Training Outline” lists PPE—including hot sticks, rubber gloves, protective blankets, voltage detectors, clothing, and arc blast suits. DESC_000140. It also included “Safe [W]ork Practices” including electrical safety generally, tailboard meetings, insulating and isolating current, and effects of electricity to the body. *Id.* Under “Switching Procedures,” it listed “work rules” and lockout tagout procedures as well as a video regarding arc flashes. DESC_000141. The SCPA Heavy Lift Electrical Safety Training guide, DESC_000233-000267, included a number of items, all focused entirely on electrical safety, many of which were taken verbatim from the SCPA Safety Policies and Procedures, including 5-03 Lockout/Tagout and 5-04 Electrical Safety. This includes detailed descriptions of

⁶ These Bates-labeled documents were provided to the Court as exhibits to DESC’s Motion.

PPE including: proper clothing, insulated tools and hot sticks, rubber gloves, and all of the detailed storage and specifications related to them. The training included, the requisite skills and knowledge to be deemed “qualified” under OSHA 1910.331-335, the importance of safety when working on electrical equipment, the SCPA Electrical Safety (5-04) and Lockout/Tagout procedures (5-03) when working on SCPA equipment, the mandatory use of insulated tools, grounding equipment, lockout/tagout warning tags, interaction with SCPA outside contractors (like Hendricks), and other in-depth training relevant to the allegations in this case. DESC _000233-000267. While Plaintiff faulted DESC for failing to properly train as to these matters, which is not borne out by the undisputed evidence, this Court finds there can be no dispute that DESC’s training did not cause this Incident, or Plaintiff’s damages.

As to the 2014 SCE&G training, the invoice request reflects Ayala was again present during this training. DESC_000099; Ex. Q to Pl’s Opp. That training was held on August 19 and 20, 2014, and email correspondence reflects that SCE&G sent trainers to SCPA before the training to set up because as scheduled originally, that training involved both classroom instruction and field training on SCPA equipment. DESC_000101; DESC_000105.⁷

There is no dispute that Ayala, a master electrician (certified by the Municipal Association of South Carolina since February 2015), is the sole potential connection between DESC and

⁷ Former DESC employee David K. Ross testified that he prepared training materials at the request of the SCPA four months before the August 2014 training at SCPA by referencing “the SCPA... standard operating procedures, on switching and tagging and anything to do with electrical,” and referring to various industry safe work practices and specifications including OSHA, ANSI (the American National Standards Institute), NFPA (National Fire Protection Association), and IEEE (Institute of Electrical and Electronics Engineers). Ross Dep. at 25:5-17; 26:4-15. Ross even took photographs of certain SCPA equipment, including switchgear at the WWT, that would be worked on during the training for inclusion in the training guide he authored. Ross Dep. at 41:5-8. There is no question the training included “the circuitry that we were working on, the [electrical] cabinets, basically to get clearance, to test and to ground and to properly do it with the proper PPEs,” Ross Dep. at 42:12-15, holding tailboard meetings, de-energizing equipment, and, at the request of SCPA, lockout/tag out procedures, Ross Dep. 42:15-45:20.

Hendricks. Ayala testified that as a part of his SCPA employment (since April 2001), *see* Ex. A; Ayala Dep. 172:11-20, he was evaluated annually, Ayala Dep. 46:9-19, (an OSHA requirement, as detailed below) and that his supervisor at the time of the Incident—David Bowers—is *not* an electrician, Ayala Dep. at 45:20-25. As to training, Ayala testified that the SCPA coordinated his training. Ayala Dep. at 58:19-25. He stated that his “heavy lift maintenance” training was relative to safety procedures for working with high voltage equipment because “heavy lift” refers to high voltage equipment, such as SCPA cranes. Ayala Dep. at 60:13-61:19. This included “the power, where it -- where it came from, where to disconnect it, where to shut it off,” in Ayala’s words. Ayala Dep. at 61:21-15.

Ayala recalled that the Incident occurred at R-2, as alleged in the Complaint, which was a “four-compartment switch,” and was something that Ayala had been trained to safely work on during the heavy lift training and he worked on this specific equipment numerous times before the Incident. Ayala Dep. at 62:5-13; 63; 182:1-14. Importantly, he also testified that he was specifically trained to read schematics and maintaining or servicing electrical switchgear at trainings provided by SCPA. Ayala Dep. at 63:20-64:22; 65:9-14. Additionally, he testified he was also trained by SCE&G and subsequently e-Hazard at the WWT. Ayala Dep. at 67:15. The SCPA also conducted electrical safety meetings and provided Ayala access to videos from Defendant AP Safety in the time after DESC’s training. Ayala also testified that he was “high voltage qualified,” meaning he was qualified pursuant to the National Electrical Code and OSHA to work around high voltage equipment and that his “NFPA 70E” training to work on high voltage equipment was done “in-house” at SCPA. Ayala Dep. at 71:21-72:22; 161:16-164:12; 166:1-167:12.

As to the day of the Incident, Ayala testified that he received an early-morning text from fellow SCPA employee Darryl Spriggs that the WWT was without power and that he was to return to help restore power. Ayala Dep. at 75:11-76:9. He testified that DESC and others were at the gate to the substation—located outside of the WWT property, where electricity is supplied to service the SCPA terminal—to ensure “their side” had no issues. Ayala had a brief conversation which he described as “a minute” long exchange: “I asked [DESC] if they had any problems on their end of it, on their side of it. They told me no, and that was the end of the conversation.” Ayala Dep. at 78:8-25. That indicated to Ayala that the outage issue was “on the Port side,” not a DESC issue and was the entirety of DESC involvement on the day of the Incident. Ayala Dep. at 181. The substation location where DESC met the SCPA employees was “nowhere near” the Reefer, at least a half-mile away, outside of the SCPA property. Ayala Dep. at 181:21-182:10. Ayala testified that there was no further interaction between SCPA and DESC on the day of the Incident.

Ayala then went back to the WWT to the “main gear,” L-12, where power is distributed at the WWT, with Darryl Spriggs, Jeremy White, David Bowers, and Chuck Gillette—all SCPA employees—to troubleshoot the SCPA power system. Ayala Dep. at 79:20-81:21. At that point, Ayala testified they—SCPA employees, with no involvement by or further interaction with DESC—turned off switches that fed the WWT before turning each individual circuit on again. *See generally*, Ayala Dep. at 81:31. Through the process of turning switches—reenergizing certain areas—they eventually determined the issue was R-2 when the relevant switch (6) tripped. Ayala Dep. at 84. They then went to the Reefer area, turning the other switches (5 and 7) on but leaving switch 6 off. Ayala Dep. at 85:2-14. When they arrived at R-2, they “saw signs of malfunction” and proceeded to open and close switches in an attempt to isolate R-2. Ayala Dep. at 87:8-19;

89:21-90:11. As reflected in Ayala's own testimony, the Incident occurred not because they failed to properly de-energize R-2, but because they did not check compartment four within R-2 to ensure it was fully de-energized. Ayala Dep. at 93:17-24. Ayala attributed one failure to looking at the electrical schematic and understanding that "the switch at R-7 that fed R-2 was open" when that was not the case. Ayala Dep. at 96. Importantly, Ayala further confirmed that the relevant SCPA power system schematic, Ayala Dep. 139:14-17, and the R-2 cabinet had a plaque, permanently affixed to the outside of the cabinet, Ayala Dep. 225:9-226:24, both of which specifically detailed the redundant power loop flowing into R-2.

When asked whether an electrical shock risk assessment or job hazard analysis was conducted (another OSHA requirement), Ayala noted that if the R-2 compartment had been checked, (with a volt meter, as is specifically required by SCPA safety policies 5-03 and 5-04, and as he had been specifically trained to do by SCE&G, and others and had the necessary tools readily available to do so) they would have nonetheless discovered it was "hot," meaning energized. Ayala Dep. at 97:8-21 ("Tony [Hendricks] and I should have verified that R-2, compartment 4 was de-energized"); 122:23-25; *see also* Ayala Dep. at 126:9-10 ("The fact that Tony [Hendricks] and me didn't check that compartment in R-2 is what led to the incident."); *see also* Ayala Dep. at 130:4-7 ("Q: So you elected consciously and knowingly not to check in the necessary manner all switches to make sure that R-2 was de-energized, correct? A: We both [Hendricks and Ayala] did that.").

As to specific items listed in the Complaint, Ayala testified that they did not conduct a requisite job hazard analysis or tailboard meeting, did not utilize lockout/tagout safety procedures, did not utilize switching and tagging safety methods, did not utilize grounding cables, and did not

use a hot stick⁸ with a volt meter attached—all of which were required by the SCPA Lockout/Tagout (5-03) and Electrical Safety (5-04) procedures and all of which were readily available and known to him. Ayala Dep. at 133:5-134:1; 150:19-25. Importantly, Ayala testified that on the date of the Incident he was “qualified” to work with high voltage electricity (pursuant to the SCPA 5-04 Electrical Safety procedures, OSHA 1910.331-335 and NFPA 70E)—this would necessarily include determining nominal voltage of exposed conductors, having “decision-making process necessary to determine the degree and extent of the potential hazard,” and knowing “what personal protective equipment, insulating materials or tools and job planning you needed to have in place to do the job safely.” Ayala Dep. at 160:16-17; 162:11-163:23. And, as to each of these things, Ayala testified that he had known how to safely perform this high-voltage work for years before the Incident and had been specifically trained to take those necessary precautions. Ayala Dep. at 161-165. Additionally, Ayala testified that his last training by SCE&G—after which he knew how to do his job safely—was around six years before the Incident, in 2014. Ayala Dep. at 184:17-23; 185:4-14.

Moreover, Ayala testified unequivocally that he had no criticisms about any training he received, that he was qualified to do the work he was doing, and that he understood the potential hazards of working on the SCPA high-voltage electrical equipment he was working on that day, including knowing how to: conduct lockout/tagout procedures, determine whether equipment is energized, how to de-energize equipment, and how to prevent arc flashes. Ayala Dep. at 170-171. And, he had all of the necessary and proper safety equipment to safely perform all of those tasks. *Id.*

⁸ A “hot stick” is an insulated (non-conductive) pole that can be safely used near energized equipment and can have various other tools, including a volt meter, attached at the end.

Additionally, Ayala worked with Hendricks over the course of two decades at SCPA facilities, including WWT, and understood that Hendricks—a highly qualified and experienced electrical engineer—was also OSHA and NFPA 70E “qualified” and, therefore, knew how to safely work around high-voltage electrical equipment. Ayala Dep. at 173:12–174:15; 175:6-9. Ayala testified it was a mistake to not have used a hot stick with a volt meter attached—as he had been trained—and he had no reason to expect Hendricks would use a metal tape measure within the (energized) cabinet of R-2. Ayala Dep. at 175-177. At that time, use of a volt meter on a hot stick to determine whether the equipment was energized was required by the SCPA Lockout/Tagout (5-03) and Electrical Safety (5-04) procedures and NFPA 70E—something that he had done many times before, including earlier that same day—and, it would have taken seconds to do so which would have prevented the Incident entirely. Ayala Dep. at 179:15-20. And, both Ayala and Hendricks had successfully completed this exact task many times prior, while using a hot stick with an attached volt meter. Ayala Dep. at 183.

In short, and in addition to the above the following facts support the grant of summary judgment:

1. DESC never trained, nor was it asked to train, Hendricks;
2. DESC provided limited and adequate electrical safety training, which is all it was asked to do, only to certain SCPA employees;
3. DESC undisputedly trained SCPA employees, including Ayala, on multiple safe work practices, pursuant to the SCPA Electrical Safety (5-04) and Lockout/Tagout (5-03) policies and procedures, OSHA and NFPA 70E, that would have prevented this Incident had Ayala (and other SCPA employees) simply followed them;
4. DESC’s last SCPA training was in August 2014—multiple other entities provided training in the subsequent years, including Defendants SCPA, e-Hazard and AP Safety;
5. DESC did not contract with SCPA to provide safety training *ad infinitum*, and did not obligate itself to permanently guarantee the safety of unknown

persons invited onto an SCPA premises years later—especially when OSHA mandated obligations to employers and premises owners (like the SCPA) serve such a purpose;

6. DESC was not requested to provide, nor has it ever provided, a “Safety Manual” for the SCPA, which has had its own policies and procedures for decades before and after any training by DESC—notably the SCPA Safety Manual, including its Lockout/Tagout (5-03) and Electrical Safety (5-04) procedures, was revised and made effective January of 2015 after the last training by DESC in August 2014;
7. OSHA and NFPA 70E create non-delegable obligations for an employer (such as the SCPA);
8. DESC is a regulated electric and gas utility, not “a corporation in the business of developing NFPA 70E safety programs;”⁹
9. DESC did not, nor was it asked to, develop and implement a comprehensive safety or audit program for the SCPA, or, somehow ensure that SCPA employees are continuously following OSHA and NFPA 70E requirements *ad infinitum*;
10. The SCPA WWT electrical system drawings, since at least 2010, have reflected that R-2 had a redundant power loop. These drawings were “checked” and “approved” by “TH” (i.e., Tony Hendricks) *See* Ex. O to Pl.’s Opposition (2010 drawing); and
11. NFPA 70E was revised in 2015 and 2018, again, after the last training by DESC in August 2014.

STANDARD OF REVIEW

“The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder.” *Dawkins v. Fields*, 354 S.C. 58, 69, 580 S.E.2d 433, 438 (2003) (quoting *George v. Fabri*, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001)). Summary judgment is appropriate, where, as here, the pleadings, depositions, answers to interrogatories, and

⁹ Not only is this clear from the evidence in this case, but it is a matter of public record that DESC engages in the generation, transmission and distribution of electricity and gas, not the general creation of NFPA 70E programs for other entities (a responsibility, which, as set forth below, falls exclusively to employers).

admissions on file, together with the affidavits, if any, show that there is no genuine issue as to material fact and the moving party is entitled to judgment as a matter of law. Rule 56(c), SCRC.P.

“Once the party moving for summary judgment meets the initial burden of showing an absence of evidentiary support for the opponent's case, the opponent cannot simply rest on mere allegations or denials contained in the pleadings.” *Singleton v. Sherer*, 377 S.C. 185, 197–98, 659 S.E.2d 196, 203 (Ct. App. 2008). “Rather, the nonmoving party must come forward with specific facts showing there is a genuine issue for trial.” *Rife v. Hitachi Const. Mach. Co.*, 363 S.C. 209, 214, 609 S.E.2d 565, 568 (Ct. App. 2005). In so showing, “it is not sufficient for a party to create an inference that is not reasonable or an issue of fact that is not genuine.” *Kitchen Planners, LLC v. Friedman*, 440 S.C. 456, 463, 892 S.E.2d 297, 301 (2023). Thus, if a “factfinder would be required to speculate” as to a dispositive fact, a party is “entitled to summary judgment as a matter of law.” *Id.* at 464, 892 S.E.2d at 302.

“To determine if any genuine issues of fact exists, the evidence and all reasonable inferences must be viewed in the light most favorable to the non-moving party.” *Sauner v. Pub. Serv. Auth. of S.C.*, 354 S.C. 397, 404, 581 S.E.2d 161, 165 (2003). “Where ‘a party makes no factual showing in opposition to a motion for summary judgment, the court must grant summary judgment to the moving party if, under the facts presented, the latter is entitled to summary judgment as a matter of law.’” *Laughridge v. Parkinson*, 304 S.C. 51, 55, 403 S.E.2d 120, 122 (1991).

ANALYSIS AND CONCLUSIONS OF LAW

While DESC moved for summary judgment on a number of alternative grounds, this Court finds addressing issues of duty, breach, and other defenses unnecessary. The Court finds there is no genuine issue as to any material fact on the issue of causation in the record. Stated differently,

there is no issue as to any fact of whether any act, or omission, on the part of DESC, could have proximately caused this Incident.¹⁰ *Guinan v. Tenet Healthsystems of Hilton Head, Inc.*, 383 S.C. 48, 53, 677 S.E.2d 32, 35 (Ct. App. 2009) (“A court considering summary judgment neither makes factual determinations nor considers the merits of competing testimony; however, summary judgment is completely appropriate when a properly supported motion sets forth facts that remain undisputed or are contested in a deficient manner.” (citation omitted)).

“To establish a negligence cause of action under South Carolina law, the plaintiff must prove the following three elements: (1) a duty of care owed by defendant to plaintiff; (2) breach of that duty by a negligent act or omission; and (3) damage proximately resulting from the breach of duty.” *J.T. Baggerly v. CSX Transp., Inc.*, 370 S.C. 362, 368–69, 635 S.E.2d 97, 101 (2006). Failure to prove any one of those elements is fatal to a plaintiff’s claim. *See, e.g., Bloom v. Ravoir*, 339 S.C. 417, 422, 529 S.E.2d 710, 712 (2000) (noting requirement that “a plaintiff must prove” elements of negligence).

In South Carolina, “[a] negligent act or omission proximately causes an injury if, in a natural and continuous sequence of events, it produces the injury, and without it, the injury would not have occurred.” *Bailey v. Segars*, 346 S.C. 359, 366, 550 S.E.2d 910, 914 (Ct. App. 2001).

Proximate cause requires proof of: (1) causation-in-fact, and (2) legal cause. *Bramlette v. Charter–Medical–Columbia*, 302 S.C. 68, 72, 393 S.E.2d 914, 916 (1990). Causation-in-fact is proved by establishing the injury would not have occurred “but for” the defendant’s negligence, and legal cause is proved by establishing foreseeability. *Id.*

¹⁰ Part of Plaintiff’s allegations are that DESC’s training caused the Incident due to insufficient training of Ayala. DESC’s training included the very items Plaintiff alleges were omitted. To the extent relevant, the Court references and incorporates herein DESC’s chart (attached to DESC’s Motion) showing Plaintiff’s allegations and the direct citations to training materials which shows Ayala was trained in those procedures, as further confirmed by Ayala in his deposition.

Indeed, foreseeability is considered “the touchstone of proximate cause,” and it is determined by looking to the natural and probable consequences of the defendant's act or omission. *Koester v. Carolina Rental Ctr., Inc.*, 313 S.C. 490, 493, 443 S.E.2d 392, 394 (1994). However, while foreseeability of some injury from an act or omission is a prerequisite to establishing proximate cause, the plaintiff need not prove that the defendant should have contemplated **the particular event** which occurred. *Whitlaw v. Kroger Co.*, 306 S.C. 51, 410 S.E.2d 251 (1991).

J.T. Baggerly, 370 S.C. at 369, 635 S.E.2d at 101 (emphasis in original). Here, there is no genuine issue as to any material fact on whether “causation-in-fact” or “legal cause” exist.

I. No Genuine Issue of Material Fact as to But-For Causation.

The record before this Court reflects no action or inaction on DESC’s part which could be a “but-for cause” of Hendricks’ injuries and thereby, Plaintiff’s claims based in negligence fail on this ground alone.

In the causal chain, every action ascribed to DESC—relevant to either training or SCPA actions that took place at the WWT (where DESC was not present at the time and location of the Incident)—was not at all a factor in the SCPA requesting that Hendricks come to the WWT that day, or any other day, or what ultimately occurred at R-2 at the time of the Incident.

Relevant to this point, Plaintiff has presented no material which creates a genuine issue as to whether DESC properly trained SCPA employees, including Ayala, in every single thing that Plaintiff asserts should have been taught. It is also uncontroverted in the record before this Court that DESC never trained Hendricks. Ayala testified that SCE&G [DESC] trained SCPA employees—on more than one occasion—in the exact safety methods to avoid the Incident. *See generally*, Ayala Dep.; *compare* Compl. with DESC_000140 (listing relevant PPE for training, including: hot sticks, rubber gloves, protective blankets, voltage detectors, clothing, and arc blast suits) *and* DESC_000140 (noting “Safe [W]ork Practices” including electrical safety generally,

tailboard meetings, insulating and isolating current, and effects of electricity to the body); *and* DESC_000141 (noting “Switching Procedures,” “work rules,” and lockout/tagout procedures as well as a video regarding arc flashes). Moreover, the SCPA Heavy Lift Electrical Safety Training materials, DESC_000233, include a number of items, all focused entirely on electrical safety. This includes detailed descriptions of PPE including proper clothing, DESC_000237, insulated tools and hot sticks, DESC_000238, rubber gloves, DESC_000239, and all of the detailed storage and specifications related to them, DESC_000240.

The materials included training, qualifications, the importance of safety when working on energized circuits, the importance of lockout/tagout procedures when working on circuits that are de-energized, use of insulated tools, grounding, equipment warning tags, and other in-depth training relevant to the allegations in this case. DESC_000243-000268.

The deposition testimony in this case also clearly establishes that Ayala, who was the only other person at R-2 with Hendricks at the time of the Incident, was properly *trained* in *all* of the particulars which Plaintiff alleges SCE&G (DESC) did not properly train SCPA employees. Ayala testified that they did not have a requisite pre-job briefing or tailboard meeting, complete a checklist [job hazard analysis], did not utilize lockout/tagout safety, did not utilize switching and tagging safety methods, and did not use the readily available hot stick with a volt meter attached. Ayala Dep. at 133:5-134:1; 150:19-25.

Most importantly, Ayala testified that on the date of the Incident he was OSHA qualified to work with high voltage electricity—this would include determining nominal voltage of exposed conductors, having a “decision-making process necessary to determine the degree and extent of the potential hazard,” and knowing “what personal protective equipment, insulating materials or tools and job planning you needed to have in place to do the job safely.” Ayala Dep. at 160:16-

17; 162:11-163:23; *see also* SCPA 5-04 Electrical Safety, Defs' Ex. 1 to Ayala Dep. And, as to each of these things, Ayala testified that he had known how to safely do this work for years before the Incident and *had been specifically trained to take those precautions*. Ayala Dep. at 161-165; 184:17-23; 185:4-7 (emphasis added). Ayala testified unequivocally that he had no criticisms about any training he received, including the DESC training and subsequent training by others, that he was qualified to do the work he was doing, and that he understood the potential hazards of working on the WWT electrical equipment he was working on that day, including knowing how to properly: use SCPA *lockout/tagout procedures, determine whether equipment is de-energized, de-energize equipment, and prevent arc flashes*. Ayala Dep. at 170-171 (emphasis added). *And, he was properly equipped for all of those tasks*. *Id.* (emphasis added). The only person present at the time of the Incident that DESC ever had any interaction with was Ayala. And, Ayala testified clearly that he was fully and adequately trained, that he was "qualified" to do this high-voltage work, and that he had safely performed these exact tasks many times before. Ayala Dep. at 189:7-15 (answering "That's it," when asked "Other than not looking at R-7, and not utilizing the hot stick to verify the state of R-2, whether it was energized or de-energized, what else did you do wrong that day?" and following up that "We didn't use the lockout/tagout."); Ayala Dep. at 185:4-6 (noting that he knew how to do his job safely). In light of these facts, there is no dispute as to any material fact relative to causation as to DESC.

Further, Ayala believed (based on his numerous years of experience working with Hendricks) that Hendricks knew how to do his job safely. Ayala Dep. at 173:12-174:15; 175:6-9; 219:13-220:19. Hendricks had worked with Ayala at SCPA facilities, including the WWT, since 2001 and was involved in troubleshooting, modifications and upgrades to the SCPA power system throughout those years. *Id.*; *see also Savannah Bank, N.A. v. Stalliard*, 400 S.C. 246, 252 n.2, 734

S.E.2d 161, 164 n.2 (2012) (“Even if we had held that Bank owed Appellant a duty of care, it would be questionable whether Appellant can prove causation under these circumstances. The Record demonstrates that Appellant had many opportunities to correct false information submitted on his behalf by persons authorized by him under a valid power of attorney, and he failed to do so. Consequently, Appellant, rather than Bank, *appears to be the cause-in-fact* and proximate cause *of his own harm.*” (emphases added)); *Singleton v. Sherer*, 377 S.C. 185, 204, 659 S.E.2d 196, 206 (Ct. App. 2008) (affirming granting of summary judgment where record was entirely devoid of any evidence as to causation). Tragic as it is, that is the case here.

Plaintiff also faults DESC under NFPA 70E— National Fire Protection Agency, 70E *Standard for Electrical Safety in the Workplace*, (2024 ed.) [hereinafter NFPA 70E]. See Compl. ¶ 17. However, NFPA 70E, article 105.3, states clearly “**The employer** shall have the following responsibilities: Establish, document, and implement the safety-related work practices and procedures required by this standard. (2) Provide employees with training *in the employer’s safety-related work practices and procedures.*” (Emphases added).¹¹ NFPA 70E also states “An *employer* shall establish, document, and implement an electrically safe work condition policy that does both of the following: (1) Requires hazard elimination to be the first priority in the implementation of safety-related work practices (2) Complies with 110.2(B). NFPA 70E, art. 110.2.¹² This Court finds those obligations, by their very terms, are non-delegable as to the SCPA,

¹¹ The 2012 edition likewise placed the obligation on the employer, here, the SCPA: “The employer shall provide the safety-related work practices and shall train the employee, who shall then implement them.” NFPA 70E, art. 105.3 (2012 ed.). The 2015 edition of article 105.3 is identical. See NFPA 70E, art. 105.3 (2015 ed.). The 2018 edition also places the responsibility on the employer. See NFPA 70E, art. 105.3 (2018 ed.).

¹² Article 110 within the 2012 edition also places the obligations on the employer, whether the host employer (SCPA) or the contract employer. See NFPA 70E, art. 110 (2012 ed.); see also NFPA 70E, art. 110.3 (2012 ed.) (“The employer shall implement and document an overall electrical safety program that directs activity appropriate for the electrical hazards, voltage, energy level, and circuit conditions.). The

as the WWT premises owner, and Ayala's employer. Thus, they cannot be imputed or transferred to DESC in an attempt to establish that DESC caused this Incident. Again, Ayala was last trained by SCE&G in 2014. The SCPA implemented a revised Safety Manual effective January 2015, including 5-04 Electrical Safety, Defs' Ex. 1 to Ayala Dep. and provided to the Court during the hearing on DESC's Motion. The SCPA was required under OSHA to have "through regular supervision and through inspections," at least annually, ensured that Ayala was "complying with the safety-related work practices required by this subpart." This means that between 2014 and the Incident, SCPA was required to have met this obligation in 2015, 2016, 2017, 2018, 2019, and likely 2020—at least five (5) times. NFPA 70E, art. 110.3 contains an analogous annual work practice observation requirement as to the *employer*. During these years, Ayala received training from others, including Defendants SCPA, e-Hazard, and AP Safety—not SCE&G.¹³ OSHA 1910.132 and NFPA 70E also require retraining in the *employer's* safety-related work practices when necessary to ensure that an employee has the understanding and ability to perform their work safely. These obligations, by their terms, apply to the SCPA, not DESC.

Accordingly, this Court finds there is no genuine issue of material fact as to whether DESC trained SCPA employees in the exact electrical safety measures and SCPA safe work procedures Plaintiff alleges SCPA employees did not follow on the day of the Incident. *See David v. McLeod Reg'l Med. Ctr.*, 367 S.C. 242, 249, 626 S.E.2d 1, 5 (2006) (affirming granting of summary judgment when all evidence led to one conclusion).

employer obligation within Article 110 was also contained in the 2015 edition: "The employer shall implement and document an overall electrical safety program that directs activity appropriate to the risk associated with electrical hazards. The electrical safety program shall be implemented as part of the employer's overall occupational health and safety management system, when one exists. NFPA 70E, art. 100.1 (2015 ed.). Article 110 contained similar obligations in 2018. *See* NFPA 70E, art. 110.1 (2018 ed.).

¹³ Importantly, Ayala received his own copy of NFPA 70E after his February 2018 high-voltage training by Defendant e-Hazard. Ayala Dep. 198:8-199:22.

II. No Genuine Issue of Material Fact as to Legal Cause.

The Court also finds legal cause cannot exist here under the undisputed facts as “the evidence is susceptible of only one inference.” *Wright v. PRG Real Est. Mgmt., Inc.*, 426 S.C. 202, 222, 826 S.E.2d 285, 295 (2019). The touchstone of legal cause is whether the damages were foreseeable. *See Hill v. York Cnty. Sheriff's Dep't*, 313 S.C. 303, 308, 437 S.E.2d 179, 182 (Ct. App. 1993) (“[L]egal causation is proved by establishing foreseeability.”); *id.* at 309, 437 S.E.2d at 182 (“Liability exists for the natural and probable consequences of negligent acts and omissions proximately flowing therefrom.”).

“Ordinarily, proximate cause is a question for the jury, but when the evidence is susceptible to only one inference, it becomes a matter of law for the court.” *McKnight v. S.C. Dep't of Corr.*, 385 S.C. 380, 387, 684 S.E.2d 566, 569 (Ct. App. 2009)

There are, at least, two distinct reasons legal cause could not exist here. First, DESC could not—in its previous training of Ayala—foresee that the SCPA would, 6 years later, ask Hendricks to come to the WWT that day or that Hendricks would stick a metal tape measure into the R-2 cabinet without the SCPA’s Electrical Safety (5-04) Lockout/Tagout (5-03) or grounding procedures being followed or testing with a volt meter on a hot stick. *See Eadie v. Krause*, 381 S.C. 55, 66, 671 S.E.2d 389, 394 (Ct. App. 2008) (finding breach could not have been proximate cause since it followed the applicable standards at the time). As noted above, the SCPA—in between any trainings administered by DESC and even after—trained (or caused to be trained by others, including Defendants e-Hazard and AP Safety) its own employees in all of the things Plaintiff asserts were required here. This included: (1) lockout/tagout, DESC_000076 and SCPA Lockout/Tagout 5-03 and Electrical Safety 5-04; (2) restoring equipment to service, DESC_000077; (3) testing and isolating equipment, *id.*; (4) informing outside contractors—such

as Hendricks —as to lockout/tagout procedures, DESC_000078 and SCPA 5-03 Lockout/Tagout; and (5) utilizing fire resistant clothing and banning conductive apparel or metal tools, DESC_000086. *See Garvin v. Bi-Lo, Inc.*, 343 S.C. 625, 629, 541 S.E.2d 831, 833 (2001) (noting failures in case and stating accepting claims would be to render defendant an “insurer” of safety in premises liability context).

Second, DESC could not have foreseen that Ayala would fail to follow the subsequent 1-2015 SCPA Electrical Safety (5-04) and Lockout/Tagout (5-03) policies and procedures; would fail to consider and follow the redundant loop shown on the WWT diagram or plaque affixed to R-2; would fail to fully de-energize, lockout and ground R-2; that Ayala would ignore all of the safety training he had received, from whatever source, including DESC; that Ayala would fail to use the SCPA safety equipment he had available (including the specific equipment necessary (non-conductive hot stick with volt meter attached) to determine whether R-2 was energized or not); that Ayala and Hendricks would be working in, near, or around R-2 on the day of the Incident; or that Hendricks would unexpectedly stick a metal tape measure into the R-2 cabinet with energized, high voltage equipment. *See Wickersham v. Ford Motor Co.*, 432 S.C. 384, 390, 853 S.E.2d 329, 332 (2020) (“In causation, as in other contexts, ‘proximate’ is the opposite of ‘remote.’”).

Further, the testimony of Ayala and others establishes unquestionably in the record that Hendricks was experienced in electrical safety and knowledgeable of the redundant power loop of R-2 and was thus capable of avoiding this Incident. Again, DESC never had any contact with Hendricks. The actions that occurred involving R-2 on the day of the Incident can only be characterized as intervening and/or superseding causes. In South Carolina:

Evidence of an independent negligent act of a third party is directed to the question of proximate cause. For an intervening force to be a superseding cause that relieves an actor from liability, the intervening cause must be a cause that could not have been

reasonably foreseen or anticipated. If the original tortfeasor's negligence appears merely to have brought about a condition of affairs, or a situation in which another and entirely independent and efficient agency intervenes to cause the injury, the latter is to be deemed the direct or proximate cause, and the former only the indirect or remote cause.

Dawkins v. Sell, 434 S.C. 572, 581–82, 865 S.E.2d 1, 6 (Ct. App. 2021) (internal citations and quotation marks omitted).

While both tragic and deeply unfortunate, that is the only fair characterization of what occurred here. Ayala testified that he knew about lockout/tagout, knew the importance of ensuring high-voltage equipment was de-energized and grounded, was familiar with and provided with SCPA electrical safety policies, had the requisite knowledge, training, and adequate PPE, knew how to properly de-energize equipment, had arc-flash training, had specific safety tools to prevent arc-flash, and had been trained to prevent arc flashes. Ayala Dep. at 170-172. Yet, in spite of Ayala's knowledge, training, and experience, this Incident occurred.

Importantly, Ayala also testified as to Hendricks' electrical safety knowledge and ability. Ayala testified Hendricks was qualified under the OSHA regulations, NFPA 70E standard and SCPA safety policies, knew how to do work on electrical equipment safely, had observed Hendricks working safely at the SCPA and WWT for over two decades, had never seen him doing anything he considered unsafe, never saw any activity that made him question whether Hendricks was qualified, and that they collectively made a mistake by not using a hot-stick with a volt meter to test R-2 for its energized status. Ayala Dep. at 172-176; 205:14-21; 206:10-16.

Despite all the safety training, equipment, knowledge, and experience, Ayala agreed Hendricks "was attempting to take measurements inside the [R-2] cabinet with a *metal tape measure*" resulting in the arc flash. Ayala Dep. at 177:15-18 (emphasis added); 219:13-220:19.

And, he agreed that “[i]f the metal tape measure doesn't go into that cabinet near the energized components, the arc flash doesn't happen.” Ayala Dep. at 178:1-5.

The undisputed evidence demonstrates that this tragic and unforeseeable Incident was not caused by any alleged deficiency in training in August 2014 by DESC. Rather, this was just a very “tragic mistake.” Ayala Dep. 175:14-176:14; 249:6-24.

Each of the following occurred *after* DESC’s final training in 2014:

1. SCPA updates its Safety Manual, including the Lockout/Tagout 5-03 and Electrical Safety 5-04 procedures (Effective January 2015);
2. Ayala received his Master Electrician Certification from MASC (February 2015);
3. Defendant e-Hazard conducts training and issues Ayala certification in High and Low voltage (February 2018), as a result of which Ayala receives a copy of NFPA 70E;
4. NFPA 70E revised (2018) (copy provided by Defendant e-Hazard to Ayala);
5. SCPA employees, including Ayala, get access to AP Safety Training videos, including videos specifically on electrical safety (July 2018-August 2019); and
6. AP Safety Videos accessed by SCPA employees, including Ayala (August 2019).

In light of all of the training received by Ayala and Hendricks’ decades of electrical experience—conclusively established through Ayala’s testimony and Ayala’s training records—it is entirely unforeseeable that neither Hendricks nor Ayala would (1) not lockout/tagout the R-2 equipment; (2) not test the high-voltage equipment to ensure it was not energized; and (3) then use a metal tape measure inside that not locked out, untested high-voltage equipment at an obvious risk of an arc flash and covered with warnings to that effect. This is a textbook definition of intervening cause. *Small v. Pioneer Mach., Inc.*, 329 S.C. 448, 467, 494 S.E.2d 835, 844 (Ct. App.

1997) (“For an intervening force to be a superseding cause that relieves an actor from liability, the intervening cause must be a cause that could not have been reasonably foreseen or anticipated.”). Because these actions were entirely unforeseeable as to DESC *and* unrelated to anything DESC did, is alleged to have done, or could have possibly done, there is no question of material fact on the necessary element of causation.

CONCLUSION

For the reasons set forth herein, DESC’s Motion for Summary Judgment is **GRANTED**. This Order does not affect Plaintiff’s claims as to any remaining defendant in this action.

END OF ORDER.

APPENDIX A— TRAINING TIMELINE

In the chart below, items shaded in blue reflect DESC’s trainings of SCPA employees. Items shaded in orange indicate training provided by other entities to the relevant employees or the SCPA more generally.

As is evident from review of SCE&G’s trainings (shaded in blue) in the chart below shows they were long before the Incident. And, again, DESC/SCE&G never trained—and is never alleged to have trained—Hendricks.

Date	Event	Citation
April 2, 2001	Ayala begins employment with SCPA in its electrical maintenance department	SCPA_000720 ¹⁴
April 23, 2005	Ayala receives Powered Industrial Truck Certification	SCPA_000900
April 4, 2007	Ayala receives Powered Industrial Truck Certification	SCPA_000897
October 30, 2007	Container Yard Expansion at WWT by Metro Electric	Metro 901000020 ¹⁵
April 5, 2010	Ayala receives Powered Industrial Truck Certification and Aerial Lift Evaluation/Performance Checklist	SCPA_000888; SCPA_000890
June 3, 2010	Ayala receives Hazmat Awareness Refresher Training & Certification (from SCPA)	SCPA_000887
October 26, 2011	SCE&G employees tour SCPA facility to tailor training to SCPA’s needs	DESC_000107; DESC_000142 ¹⁶

¹⁴ Documents produced by the SCPA were compiled and attached to DESC’s Motion as **Exhibit A**.

¹⁵ Documents produced by Metro Electric were compiled and attached to DESC’s Motion as **Exhibit B**.

¹⁶ Documents produced by DESC were compiled and attached to DESC’s Motion as **Exhibit C**.

Date	Event	Citation
February 13-15, 2012	SCE&G conducts Heavy Lift Maintenance Training at SCPA (three eight-hour sessions in classroom and field at WWT) and a Certificate is issued to Ayala after he receives 100% on examination	DESC_000115; DESC_000130; DESC_000179
May 6, 2013	Ayala receives Powered Industrial Truck Certification and Lift Truck Operator Safety Training	SCPA_000883-884
August 19-20, 2014	SCE&G conducts refresher Heavy Lift Electrical Training at SCPA and a Certificate is issued to Ayala – “refresher course from 2012 training”	SCPA FOIA RESPONSE 000001; 000229; DESC_000098
February 9, 2015	Ayala receives MASC ¹⁷ Master Electrician Certification	SCPA 177
February 2, 2016	Subcontract executed between Metro Electric and HITT Contracting as subcontractor for “SCSPA/16/Refrigeration Racks” with project owner SCPA	Metro 901000022
June 9, 2016	Ayala receives Powered Industrial Truck Certification and Lift Truck Operator Safety Training	SCPA_000881-882
February 21, 2018	e-Hazard Low Voltage Training conducted and Certificate issued to Ayala (based on OSHA and NFPA 70E)	SCPA_000871
February 22, 2018	e-Hazard High Voltage Training conducted and Certificate issued to Ayala (based on OSHA and NFPA 70E)	SCPA_000872

¹⁷ MASC is the “Municipal Association of South Carolina.” Ayala Dep. at 75:6.

Date	Event	Citation
July 18, 2018 - August 13, 2019	SCPA Employees have access to AP Safety Training Videos	AP SAFETY 012; Deposition of Danny Robinson 41:16-20 ¹⁸
May 13, 2019	Ayala receives Powered Industrial Truck Certification	SCPA_000879
August 13, 2019	AP Safety Records reflect SCPA rented videos, including "Electrical Safety" and "Lockout/Tagout" training	AP SAFETY 011 (attached to DESC's Motion as Exhibit E)
November 2019	SCPA Maintenance Dept. 52's Monthly Safety Meeting on "Electrical Safety" by streamingsafety.com	SCPA_000875
December 2019	SCPA Maintenance Dept. 52's Monthly Safety Meeting on "Lockout/Tagout Training for Employees" by streamingsafety.com	SCPA_000876

¹⁸ Robinson's deposition transcript was attached to DESC's Motion as **Exhibit D**.



Charleston Common Pleas

Case Caption: Bessie Hendricks , plaintiff, et al VS Ports Authority South Carolina ,
defendant, et al
Case Number: 2022CP1001865
Type: Order/Summary Judgment

So Ordered

s/ T.J. Rode (#2792)