

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM COLLETON COUNTY

Court of Common Pleas

J. Ernest Kinard, Jr., Judge

Appellate Case No. 2014-002733

Samuel Washington, Jr., Respondent,

v.

South Carolina Electric and Gas Company; and Emerson Electric Company d/b/a
Emerson Network Power, and/or Emerson Network Power, Defendants,

Of Whom South Carolina Electric and Gas Company is the Appellant.

RECORD ON APPEAL

August 17, 2015

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- #44

STATE OF SOUTH CAROLINA)
COUNTY OF COLLETON)

IN THE COURT OF COMMON PLEAS

CASE NO.: 2013-CP-15-0411

Samuel Washington, Jr.,)
Plaintiff,)

v.)

South Carolina Electric and Gas Company;)
and Emerson Electric Company d/b/a)
Emerson Network Power, and/or)
Emerson Network Power,)
Defendants.)

ORDER CONTINUING
SOUTH CAROLINA ELECTRIC AND
GAS COMPANY'S MOTION FOR
SUMMARY JUDGMENT

This matter came before the Court on the Motion of Defendant South Carolina Electric & Gas Company ("SCE&G") seeking Summary Judgment in its favor on the grounds SCE&G is immune from suit under the South Carolina Workers' Compensation Statute and the Statutory Employer Doctrine. (S.C. Code Ann. § 42-1-400). Plaintiff was represented by Attorneys Mark Morgan and Chuck Slaughter. SCE&G was represented by Attorneys John Massalon and Ryan Neville. Defendant Emerson Electric Company d/b/a Emerson Network Power, and/or Emerson Network Power was represented by Attorneys Mike Bowers and Ian Ramsey. This Court considered the facts, the law, the filings with this Court, the parties' briefs, and argument of counsel.

2014 FEB 11 10 35 AM
FARROW, GRANT
COLLETON COUNTY
COMMON PLEAS

IT IS HEREBY ORDERED that SCE&G's Motion for Summary Judgment shall be continued for 120 days to allow for discovery, and after that time, the parties will file supplemental memoranda and/or a proposed order, and the undersigned will then decide this Motion with a hearing, if requested.


The Honorable J. Ernest Kinard, Jr

This 23 day of Jan, 2014
South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF COLLETON	)	FOURTEENTH JUDICIAL CIRCUIT
	)	
Samuel Washington, Jr.,	)	Case No.: 2013-CP-15-411
	)	
Plaintiff,	)	
	)	
v.	)	ORDER
	)	
South Carolina Electric and Gas Company;	)	
and Emerson Electric Company d/b/a	)	
Emerson Network Power, and/or Emerson	)	
Network Power,	)	
Defendants.	)	

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SC Court of Appeals

This matter came before the Court on the Motion of Defendant South Carolina Electric and Gas Company's (hereinafter "SCE&G") seeking Summary Judgment in its favor on the grounds SCE&G is immune from suit under the South Carolina Workers' Compensation Statute and the Statutory Employer Doctrine, (S.C. Code Ann. § 42-1-400). Plaintiff was represented by Attorneys Kirk Morgan, Margie Bright Matthews and Chuck Slaughter. SCE&G was represented by Attorneys John Massalon and Ryan Neville. Defendant Emerson Process Management's (improperly identified as Emerson Electric Company d/b/a Emerson Network Power, and/or Emerson Network Power) ("Emerson") was represented by Attorneys Mike Bowers and Ian Ramsey.

Upon due consideration of the arguments of counsel, memoranda and accompanying, and accompanying materials submitted on behalf of both Plaintiff and Defendant SCE&G, Defendant's motion is hereby DENIED.

FACTUAL BACKGROUND

This is a negligence action arising out of an alleged electric shock incident involving the Plaintiff on September 28, 2011 at the SCE&G Canadys Station power plant located in Colleton County, South Carolina ("Canadys Station").

The undisputed facts establish that, in 2008, SCE&G entered into a contract with Defendant Emerson whereby Emerson would perform certain electrical installation/demolition work to upgrade SCE&G's Canadys Station power plant. Thereafter, in 2011 Emerson entered into a subcontract agreement(s) with Applied Control Technology, Inc. ("ACT") for the provision of, among other things, labor, supervision, materials and tools for the SCE&G Canadys's upgrade project(s). In turn, ACT hired the Plaintiff, an electrician, through the local chapter of the International Brotherhood of Electrical Workers.

On September 28, 2011, the Plaintiff was performing electrical demolition work on a panel box at Canadys Station. As the Plaintiff began removing wires from the junction box, which he contends he was informed had been de-energized, he was shocked by SCE&G's electricity. As a result of the contact with SCE&G's energized wire(s) and the severity of the shock he received as the electric current passed through his body, the Plaintiff suffered serious and permanent injuries and damages.

The day after the incident which is the subject of this action, the South Carolina Department of Labor, Licensing and Regulation, Office of Occupational Safety and Health ("S.C. OSHA") opened an investigation into the incident and, on December 20, 2011, cited SCE&G for two (2) serious violations of the Occupational Safety and Health Regulations of the State of South Carolina. (See S.C. OSHA Citations).

On May 28, 2013, Plaintiff filed a Summons and Complaint in the Colleton County Court of Common Pleas against Defendant SCE&G and Defendant Emerson Electric Company d/b/a Emerson Network Power, and/or Emerson Network Power (hereinafter "Emerson").

On July 9, 2013, Defendant Emerson filed a Notice for Removal on the basis of diversity jurisdiction, alleging that SCE&G, a South Carolina citizen, was a sham defendant named only to defeat diversity jurisdiction. According to Emerson, at the time of the incident which is the subject of this action, Plaintiff was SCE&G's "statutory employee" and thus his claims against SCE&G were barred by the South Carolina Workers' Compensation Act.

Plaintiff, thereafter, sought remand asserting that the non-diverse Defendant SCE&G had not been fraudulently joined and therefore the District Court lacked jurisdiction over this action. By Order dated September 9, 2013, the Honorable Judge Richard Gergel granted Plaintiff's Motion to Remand. According to Judge Gergel:

Construing all issues of law and fact in Plaintiffs favor, the Court finds that there is at least a "slight possibility" that Plaintiff is not a statutory employee of SCE&G. *Murphy*, 657 F. Supp. 2d at 690. Given the fact-intensive nature of the inquiry, the Court finds it is not absolutely clear at this stage that Plaintiff would have no possibility of relief against SCE&G in state court and that remand of this action is proper. *See Hartley*, 187 F.3d at 424-25.

In its present Motion, Defendant SCE&G contends that it is the Plaintiff's statutory employer, and as such, his exclusive remedy is under the Workers' Compensation Act, and SCE&G should be granted summary judgment in its favor

SUMMARY JUDGMENT STANDARD

Summary judgment is an "extreme remedy to be cautiously invoked" and is proper only when there exists no genuine issue of material fact and the moving party is thus entitled to judgment as a matter of law. *Holloman v. McAllister*, 289 S.C. 183, 186, 345 S.E.2d 723, 729 (1986); Rule 56(c), SCRPC. The party seeking summary judgment has the burden of

demonstrating the absence of a genuine issue of material fact. *Baughman v. American Tel. & Tel. Co.*, 306 S.C. 101, 102, 410 S.E.2d 537, 539 (1991). In ruling on a motion for summary judgment, the court must construe all ambiguities, conclusions, and inferences arising from the evidence against the moving party. *Johnston v. Bowen*, 313 S.C. 61, 64, 437 S.E.2d 45, 47 (1993).

"[I]n cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment." *Hancock v. Mid-South Mgmt. Co., Inc.*, 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009). "Moreover, summary judgment must not be granted until the opposing party has had a full and fair opportunity to complete discovery. *Baird v. Charleston County*, 333 S.C. 519, 529, 511 S.E.2d 69, 74 (1999); see also *Middleboro Horizontal Prop. Regime Council v. Montedison*, 320 S.C. 470, 480, 465 S.E.2d 765, 771 (Ct.App. 1995) ("Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law."); *Murphy v. Hagan*, 275 S.C. 334, 271 S.E.2d 311 (1980) (Summary judgment should not be granted even when there is no dispute as to the evidentiary facts if there is dispute as to the conclusions to be drawn from those facts.).

ANALYSIS

It is undisputed that the Plaintiff was not a direct employee of SCE&G. Rather, in its Motion, SCE&G contends that it was the Plaintiff's statutory employer and thus "is immune from suit under the South Carolina Workers' Compensation statute and the statutory employer doctrine." South Carolina courts have long recognized that no easily applied formula can be laid down for the determination of whether an individual is a statutory employee in a given case and, as such, "each case must be decided on its own facts." *Ost v. Integrated Prods., Inc.*, 296 S.C. 241, 244, 371 S.E.2d 796, 798 (1988).

South Carolina's statutory employer law will treat the "owner" of a business that hires contractors and sub-contractors as the direct employer of a sub-contractor's employees *only* when the subcontractor's employees are hired to do work that would normally be done by direct employees of the owner. See S.C. Code Ann. § 42-1-400. The purpose of the statutory employer doctrine is to prevent a business owner from subcontracting out the core work of its business in order to evade responsibility for workers compensation payments. *Harrell v. Pineland Plantation, Ltd.*, 337 S.C. 313, 322, 523 S.E.2d 766, 771 (1999). If an owner is treated as a statutory employer, then the owner will be responsible for paying workers' compensation benefits and also be entitled to the Act's immunity from suit in tort.

South Carolina has developed three tests to determine whether or not persons such as the Plaintiff were doing work that normally would be completed by a direct employee in the general "trade or business" of the owner such as SCE&G. See *Olmstead v. Shakespeare*, 354 S.C. 421, 581 S.E.2d 483 (2003). "To determine whether the work performed by a subcontractor is a part of the owner's business, this Court must consider whether[:]

- (1) the activity of the subcontractor is an important part of the owner's trade or business;
- (2) the activity performed by the subcontractor is a necessary, essential, and integral part of the owner's business; or
- (3) the identical activity performed by the subcontractor has been performed by employees of the owner."

Voss v. Ramco, Inc., 325 S.C. 560, 569, 482 S.E.2d 582, 586 (Ct. App. 1997); see also *Hopkins v. Darlington Veneer Co.*, 208 S.C. 307, 311, 38 S.E.2d 4, 6 (1946) ("[T]he guidepost is whether or not that which is being done is or is not a part of the general trade, business or occupation of the owner."). Each of these tests serves the overall purpose of the statutory employer doctrine:

preventing a company from outsourcing the core functions of its business to subcontractors as a way to avoid responsibility for workers' compensation payments.

When viewed in a light most favorable to the Plaintiff, an application of the facts of this case to the above-referenced tests reveal that the Plaintiff was not a statutory employee of Defendant SCE&G. As a result, the exclusivity provision of S.C. Code Ann. § 42-1-540 does not apply and Defendant SCE&G's Motion for Summary Judgment is hereby DENIED.

A. Major, Specialized Repairs are Not Part of a Manufacturer's Trade or Business.

While precedent states it is "difficult to lay down any hard and fast rule" in statutory employment cases, one rule the South Carolina Supreme Court has established is that, "where repairs are major, specialized, or of the sort which the employer is not equipped to handle with its own work force, they are not part of the business." *Glass v. Dow Chemical Co.*, 325 S.C. 198, 201, 482 S.E.2d 49, 50-51 (1997); *see also Raines v. Gould*, 288 S.C. 541, 543, 343 S.E.2d 655, 657 (Ct. App. 1986) ("Ordinarily construction work, such as building a factory structure or making electrical installations, is considered outside the trade or business of a manufacturer.").

According to the Plaintiff, at the time of his injuries, Plaintiff was one of several ACT employees performing demolition work as part of a major repair/upgrade project on SCE&G's Canadys Turbine No.3. SCE&G employees have testified that the work the Plaintiff and the other subcontractors were performing was "major" and "specialized" repair work:

Q. Okay. Stepping back a little bit, it's my understanding that during that time, in that September 2011 range, there was a project going on at the Canadys Station plant; is that correct?

A. Yes.

Q. What's your understanding as to the reason behind that? Like what was going on?

A. We were doing an upgrade on our DCS system as well as control valves that control the

steam going to the turbine which we use to turn the generator to generate the power. It was a major, major upgrade changing the valves out and controls and pulling new wire in, replacing wire.

Q. So this wasn't just a routine maintenance thing, it was a major repair?

A. Major, yes.

(Richard Wilson Dep. 10:23 to 11:13) (emphasis added).

Q. You've already agreed that this was a major project in the eyes of SCE&G, a major work project?

A. Major work project.

Q. All right. And would you agree that upgrading a control system is specialized work?

A. It is specialized in that, yes, it is specialized.

(Lawrence Purvis Dep. 42:18 to 42:24).

In contrast to specialized repair work, routine maintenance work can sometimes be covered by the statutory employment doctrine. For example, in *Wheeler v. Morrison Machinery Co.*, 313 S.C. 440, 438 S.E2d 264 (1993), the court found the removal of asbestos was part of the defendant's routine "ongoing maintenance program" and therefore part of the defendant's "trade or business." According to the court, "[p]reventive maintenance...has always been and always will be an ongoing process." *Wheeler*, 313 S.C. at 443, 438 S.E.2d at 266.

According to the Plaintiff, the work being performed by the Plaintiff and the other subcontractors was not routine maintenance; instead it was a specialized repair. In support thereof, the Plaintiff cites to documents obtained from S.C. OSHA, which indicate that the demolition/upgrade/repair work being performed by the Plaintiff and other contractors and subcontractors on the date of the subject incident generally only takes place every thirty (30) to forty (40) years. Moreover, Plaintiff points to testimony given by SCE&G employees who have

testified that this was not routine maintenance and, in fact, this specific demolition/repair work had never been done before on the subject equipment:

Q. Okay. Do you have any knowledge as to whether any other SCE&G employees have ever done any type of work on that panel?

A. I'm sure some of the other electricians have worked on that panel. I know they have as far as the switches.

Q. But as far as any sort of demo or pulling out wires or replacing the panel itself.

A. Not that particular one, no.

(Richard Wilson Dep. 14:10 to 14:18) (emphasis added).

Q. The project and the work that was being done on Unit 3, this wouldn't be considered routine maintenance, would it?

A. No.

Q. This is, again, a major overhaul or repair?

A. Yes.

(Richard Wilson Dep. 32:23 to 33:4) (emphasis added).

Q. Do you know if SCE&G has ever demolished, removed and upgraded that unit or units at Canadys at any time previous?

A. This particular unit?

Q. Yes, sir.

A. I would say no.

(Lawrence Purvis Dep. 12:24 to 13:4).

Q. All right. Would you agree that this was not routine maintenance that was going on at Canadys?

A. Yes.

(Lawrence Purvis Dep. 20:3 to 20:6).

Q. During your 13 years at SCE&G, were you ever assigned to work on this particular panel box?

A. I was.

Q. What kind of work would you be asked to

do?

A. It had some limit switches inside the box. There was a shaft that came through the box for valve positioning and those switches occasionally would fail or get a little out of adjustment and then we would go in and make an adjustment.

Q. So would it be fair to call that routine maintenance?

A. Yeah.

Q. But as far as removing, replacing the wires or actually removing, replacing the box itself, you were never asked to do that?

A. No, sir.

(Wendell Polk Dep. 16:24 to 17:16) (emphasis added).

Q All right. All right. And are you aware -- it's our understanding that this is the first time these controls were being updated with state of the art equipment -- controls since the Canadys Plant had come on line 40, 50 years ago. Is that your understanding?

A Yes. As far as the full update, yes.

Q All right. So there's no doubt that routine maintenance had ever done what Emerson was doing on this project?

A Correct.

(Joe Foster Dep. 28:15 to 28:24) (emphasis added); *see also* Richard Wilson Dep. 11:11 to 11:13

("Q. So this wasn't just a routine maintenance thing, it was a major repair? A. Major, yes.")).

Finally, a SCE&G employee has testified that this type of specialized work is typically done by independent contractors:

Q. During your time at SCE&G, was there ever a time when a project of this scale was undertaken at the Canadys plant?

A. Yeah, I mean, there was stuff like that -- I'm not exactly clear on what you're asking. Did the the company do it by itself or --

Q. As far as the six-week project that was going on during this time.

A. Oh, yeah. I mean, different -- there's different projects over the years. They'll do

upgrades on different systems at different times.

Q. And is that something usually, again,
that -- is it something SCE&G would do themselves
or would it be contracted out to --

A. Generally contracted out.

(Wendell Polk Dep. 11:5 to 11:19) (emphasis added).

After hearing oral arguments and reviewing the submissions of counsel, viewing the evidence in the light most favorable to the Plaintiff, the non-moving party, the Court finds that the work being performed by the Plaintiff and the other contractors/subcontractors was not routine maintenance. Instead, the testimony of SCE&G employees establishes that the subject demolition/repair project was major and specialized, and under *Glass*, such testimony precludes any ruling that the Plaintiff was a statutory employee of Defendant SCE&G.

B. The Demolition/Repair Work Performed by the Plaintiff was not an "Important" nor a "Necessary, Essential, and Integral" Part of SCE&G's Business of Providing Electricity to Customers.

SCE&G contends that because the equipment the Plaintiff was demolishing is used to power the generator SCE&G uses to produce the electricity, such work should be considered an important, necessary, essential and integral part of SCE&G's business of providing electricity to customers. In support of this contention, SCE&G cites to the deposition testimony of certain SCE&G employees who "testified that the work was necessary, essential, and integral to SCE&G's business of producing power." However, these self-serving legal conclusions are insufficient to carry SCE&G's burden at this stage. See *Shields v. S.C. Dep't of Highways and Pub. Transp.*, 303 S.C. 439, 443, 401 S.E.2d 185, 188 (Ct.App.), cert. denied, (April 24, 1991) (citing 32 C.J.S. Evidence § 453 at 91 (1964) ("As a general rule, a witness will not be permitted to state a conclusion, or opinion, of law...."))).

If, as SCE&G contends, demolishing/upgrading this particular equipment was an important part of the producing and providing of electricity, it would be expected to have been done in some form of routine or regular manner. That such work generally takes place every 30-40 years and is done by outside contractors that have no role in the production or providing of electricity shows that the task is not an "important" part of the business of providing electricity to customers. As explained by Chief Judge Sanders in *Raines v. Gould, Inc.*:

Every manufacturer must have a plant, but this fact alone does not make the work of constructing a plant a part of the trade or business of every manufacturer who engages a contractor to construct a plant. Otherwise, the employees of every contractor so engaged would be the statutory employees of every such manufacturer.

288 S.C. 541, 547, 343 S.E.2d 655, 659 (Ct. App. 1986).

Moreover, in *Dickerson v. Eastman Kodak Company*, 569 F. Supp. 1221 (D.S.C. 1983), the court addressed a situation where the contractor's work was "necessary" and even "absolutely indispensable" for the defendant business to operate, but the court still found the work was still not part of the "trade or business" of the defendant if it is not work the direct employees would regularly perform. Quoting from Larson's Workmen's Compensation Law § 49.12 (1982), the court held:

From these cases it will be readily seen that the test is not one of whether the subcontractor's activity is useful, necessary, or even absolutely indispensable to the statutory employer's business, since, after all, this could be said of practically any repair, construction, or transportation service. **The test ... is whether this indispensable activity is, in that business, normally carried on through employees rather than independent contractors.**

Id. (Emphasis added). Under Professor Larson's analysis, even assuming, *arguendo*, that SCE&G had to demolish/repair/upgrade the subject electrical panel box located on the valve that controlled Turbine No.3 at Canadys Station to be able to continue to power the generator

SCE&G utilizes to generate electricity, that fact does not transform Plaintiff's demolition work into part of the "trade of business" of "providing electricity to customers in South Carolina".

In *Abbot v. The Limited, Inc.*, 338 S.C. 161, 526 S.E.2d 513 (2000), the South Carolina Supreme Court used this same logical approach to hold that even though the transportation of goods was absolutely "essential" to the defendant's business, the subcontractor's employee was not a statutory employee because "[t]he mere fact that transportation of goods to one's place of business is essential for the conduct of the business does not mean that the transportation of the goods is a part or process of the business," *Abbott*, 338 S.C. at 163, 526 S.E.2d at 514. Chief Justice Toal in *Olmstead v. Shakespeare*, 354 S.C. 421, 426, 581 S.E.2d 483, 486 (2003) reiterated this point in holding:

[T]ransportation of goods is important to nearly all businesses, and, that transportation of goods by a common carrier alone, without something more, does not qualify as "part of [the owner's] trade, business, or occupation" under any of the three established tests for statutory employment.

Under our Supreme Court precedent, even though it may have been "absolutely essential," for Defendant SCE&G to demolish and replace the subject electrical panel box, that fact does not change SCE&G's entire *persona* as a provider of electricity into a demolition/construction company.

Under the particular facts and circumstances of this case, the Court finds that SCE&G fails to meet the criteria of the first test as the activities of the Plaintiff were not an important part of SCE&G's business or trade. Moreover, SCE&G fails to meet the criteria of the second test as such demolition/repair work was not a necessary, essential, and integral part of SCE&G's business.

C. The Specific Repair Work Being Performed by the Plaintiff Had Not Been Done by SCE&G Employees Before.

Defendant SCE&G likewise cannot meet the third test for statutory employment -- whether or not the identical activity performed by the Plaintiff has been performed by employees of SCE&G. *Voss*, 325 S.C. at 569, 482 S.E.2d at 586. As set forth above, it is uncontroverted that, on the date of the incident which forms the subject of this action, the Plaintiff was performing demolition work on an electrical panel box that was mounted to a control valve. SCE&G employees have testified as follows regarding the subject panel box:

Q. It's my understanding, and I'll represent to you he's -- he will testify that that day he was assigned to remove some wires from a panel box. Are you familiar with the panel box?

A. I am.

Q. Was that panel box being replaced?

A. Yes, sir. It was completely going away.

Q. I assume they were upgrading it, putting a new one in?

A. Yes. It was attached to that large valve that was completely removed.

Q. To your knowledge, had that panel box ever been replaced during your tenure?

A. Oh, no, sir. It was definitely 40 years old.

(Wendell Polk Dep. 11:25 to 12:15) (emphasis added).

Q. At that time, can you give me a rough estimate of how many SCE&G employees were at the plant on a daily basis, how many people were employed there?

A. At the plant would've been around 50.

Q. Among those 50, did SCE&G employ, at that time, anyone who would be responsible for doing any sort of demolition work?

A. No, sir.

(Wendell Polk Dep. 16:3 to 16:11) (emphasis added).

Q. Okay. During that time, did you ever have occasion to work on the particular panel box involved in this case?

A. That particular one, maybe once or twice.

Q. What type of work would you have done on that panel box?

A. It might have been checking the switches in it to tell if the valves open and closes.

Q. But nothing as far as demoing it or taking it apart or replacing it?

A. No.

(Richard Wilson Dep. 13:12 to 13:24) (emphasis added).

Q. Okay. Do you have any knowledge as to whether any other SCE&G employees have ever done any type of work on that panel?

A. I'm sure some of the other electricians have worked on that panel. I know they have as far as the switches.

Q. But as far as any sort of demo or pulling out wires or replacing the panel itself.

A. Not that particular one, no.

(Richard Wilson Dep. 14:10 to 14:18) (emphasis added).

Q. Do you know if SCE&G has ever demolished, removed and upgraded that unit or units at Canadys at any time previous?

A. This particular unit?

Q. Yes, sir.

A. I would say no.

(Lawrence Purvis Dep. 12:24 to 13:4).

While the above-referenced testimony of the SCE&G employees establishes that they may have performed routine maintenance on the subject panel box in the past, none of the employees had ever, or knew of any other employees who had ever, performed the specific work that the Plaintiff was doing at the time of his injuries. Moreover, as previously noted, the work being performed by the Plaintiff at the time of his injury was not routine maintenance. (See

Richard Wilson Dep. 32:23 to 33:4; Lawrence Purvis Dep. 20:3 to 20:6; Joe Foster Dep. 28:15 to 28:24).

The Court finds that Defendant SCE&G has failed to provide any evidence that the identical activity being performed by the Plaintiff when he was injured had been previously performed by SCE&G employees. Therefore, SCE&G has failed to carry its burden with regard to the third test utilized by South Carolina courts in the statutory employment context.

ORDER

It is therefore ORDERED that Defendant SCE&G's Motion for Summary Judgment is DENIED.


The Honorable J. Ernest Kinard, Jr.

This 24 day of Oct, 2014

Winnabow, South Carolina

2014 OCT 24

STATE OF SOUTH CAROLINA
COUNTY OF COLLETON

Samuel Washington, Jr.,

Plaintiff,

v.

SCANA Corporation and/or SCE&G Holding
Company, Inc., d/b/a South Carolina Electric
and Gas Company, and/or South Carolina
Electric and Gas Company; and Emerson
Electric Company d/b/a Emerson Network
Power, and/or Emerson Network Power,

Defendants.

) IN THE COURT OF COMMON PLEAS
) FOURTEENTH JUDICIAL CIRCUIT
) CASE NO.: 2013-CP-15- 411

**COMPLAINT
(JURY TRIAL REQUESTED)**

The Plaintiff, by and through his attorneys, make the following allegations against the
Defendants:

1. The Plaintiff, Samuel Washington, Jr., is a citizen and resides in the county of Colleton, state of South Carolina, and is subject to the jurisdiction of this Court.
2. That, upon information and belief, the Defendants SCANA Corporation and/or SCE&G Holding Company, Inc., d/b/a South Carolina Electric and Gas Company, and/or South Carolina Electric Gas Company, and/or South Carolina and Emerson Electric Company d/b/a Emerson Network Power, and/or Emerson Network Power (hereafter referred to as "Defendants") are corporations and companies licensed and existing in accordance with the laws of the state of South Carolina and which have offices and agents and servants in and do business in the county of Colleton, state of South Carolina.
3. Venue is proper and all matters herein are within the jurisdiction of this Court.

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2013 MAY 28 PM 4:53

PATRICIA C. GRANT
COLLETON COUNTY
COMMON PLEAS

FOR A FIRST CAUSE OF ACTION
(Negligence, Negligent Supervision and/or Negligent Training)

4. The allegations set forth in Paragraphs One (1) through Three (3) above are incorporated herein as if repeated verbatim.

5. That on September 28, 2011, and at all times mentioned herein and for years prior thereto, the Defendants were continuously owner(s), operator(s) and/or engaged in the business of providing electricity to various customers in the state of South Carolina. In furtherance of this business, the Defendants would, when appropriate, connect electricity lines through an "electrical meter" to various houses and businesses including the SCE&G Canadys Station, a power plant.

6. That, upon information and belief, the SCE&G Canady's Station is a mid-size fossil plant in SCE&G's system which generates approximately 300 megawatts of electricity by burning pulverized coal in two units. At full load, Canadys Station can produce enough power in one hour to supply the average electric needs of 300 residential customers for one month.

7. That on September 28, 2011, Defendants owned and/or conducted business and produced and/or provided electricity at the SCE&G Canadys Station which is a power plant located in Colleton County, state of South Carolina.

8. That it was the duty of the Defendants to exercise care at the time of connecting or disconnecting such electricity to the SCE&G Canadys Station so that people or a person such as the Plaintiff who would be repairing, working on and/or come in contact with the wire(s) from a junction box or power panel would not be injured or electrocuted by the defendant's electrical current(s).

9. That it was the duty of the Defendants to provide procedures, properly train and/or establish for employees and/or agents of the defendants as to the proper procedures and regulatory compliant energy program (and/or Lockout/Tagout) and has a duty to utilize these procedures.

10. On or about September 28, 2011, Plaintiff, an electrician, was employed by Applied Control Technology and assigned by the International Brotherhood of Electrical Workers to work on a turbine with junction boxes and/or power panels that needed to be removed at the SCE&G Canadys Station which was under control of the Defendants.

11. That Plaintiff went to remove wires from the junction boxes, and unbeknownst to the Plaintiff, the defendants had failed to disconnect power and/or had failed to disconnect power to wire(s) within the junction box even though they knew, or the exercise of reasonable caution should have known, that electrical work was being done at the time and it was not safe to have electricity connected.

12. That Plaintiff was informed and had a reasonable belief that the power to the junction box was turned off and the "Lockout/Tagout" procedure was complete and that he could remove the wires from the junction box. Plaintiff took all precautionary measures prior to attempting to remove the wires.

13. That the Plaintiff, while wearing proper personal protective equipment appropriate to the environmental condition, went to pull the wires out of the junction box and came in contact with a wire and/or wires which had electrical current and Plaintiff was electrocuted.

14. As a result of the electrocution, the Plaintiff received serious permanent bodily injuries and damages which required medical treatment. Plaintiff is currently receiving treatment for said injuries.

15. The injuries and damages to the Plaintiff were due to, caused by, and were the direct and proximate result of the omission, negligence, carelessness, recklessness, willfulness, wantonness, gross negligence of the Defendants herein, at all times, in the following particulars, to wit:

- a. That Defendants failed to disconnect power and/or had failed to disconnect power to all wires within the junction box even though they knew, or with exercise of reasonable care and/or caution should have known, that electrical work was being done on the junction box at the time and it was not safe to have power or electricity connected to the wires in the junction box;
- b. That the Defendants failed to properly warn or place warnings at/or around the Canadys Station's junction box that the power to the junction box was not disconnected, had been restored, and/or was connected and/or the wires were electrified;
- c. The Defendants failed to have a policy in place or failed to and/or negligently failed to properly train employees and/or agents as to the proper procedures and regulatory compliant energy program (and/or Lockout/Tagout);
- d. That the Defendants failed to follow and utilize a proper regulatory compliant energy program (and/or Lockout/Tagout);
- e. That Defendants violated their own policies by connecting the power to the junction box and/or failing to inspect the wires when they knew or should have known that Plaintiff was working on the wires within the junction box;
- f. In failing to give a warning to persons ordinarily coming into contact with the junction box and wiring therein that the junction box was electrified;
- g. In connecting electrical to the junction box when it knew, or by the exercise of reasonable care, should have known that the junction box area, including wires, was not safe to have the electrical power connected to it;
- h. That Defendants violated their own policies by having the power connected while having electrical work done and connecting the power to this area and/or failing to disconnect power to this area without performing any proper inspections;

- i. In allowing the connection of power to the junction box under the circumstances then and there existing;
- j. In failing to inspect the junction box and/or power source;
- k. In failing to adequately supervise and review its personnel to insure that they were carrying out their responsibilities in a reasonable fashion;
- l. In failing to adequately supervise and/or train the Defendants' employees, agents, and/or servants in how to exercise reasonable due care in situations complained of;
- m. In failing to adopt and implement proper rules, policies, and or procedures to protect Plaintiff, and others like the plaintiff, or if such policies and procedures existed, in failing to follow and abide by such policies and procedures;
- n. In failing to use reasonable precautions to avoid Plaintiff, and others like the plaintiff, from being electrocuted; and/or
- o. In failing to use the degree of care and caution that a reasonable and prudent person, agent, or business would have used under the circumstances then and there prevailing, all of which was the direct and proximate cause of the damages and injuries suffered by the Plaintiff here, said actions being in violation of proper protocol, policies and procedures.

16. By reason of negligence, carelessness, recklessness, wilfulness, wantonness, and gross negligence and/or by reason of said act of the Defendants, as a direct and proximate result thereof, the electrocution occurred, injuring the Plaintiff and causing him to suffer and continue to suffer great pain and discomfort, permanent physical injuries, and/or mental anguish. The Plaintiff has incurred substantial expenses for the medical care and treatment of his injuries; that the injuries sustained by the Plaintiff are permanent in nature; all to the damage of the Plaintiff in an amount to be determined by the trier of facts, and for punitive damages in an appropriate amount.

WHEREFORE, Plaintiff prays for judgment in Plaintiff's favor for actual and punitive damages in an appropriate amount, damages to pay for costs, attorney's fees and for such other relief as the Court may deem just and proper. The Plaintiff also now comes requesting a jury trial in this matter.

May 28, 2013


Margie Bright Matthews
Sabrina L. Williams
Bright Matthews Law Firm, LLC
205 East Washington Street
Post Office Box 499
Walterboro, SC 29488
(843) 549-6028 Office
(843) 549-6107 Fax

ATTORNEYS FOR PLAINTIFF

STATE OF SOUTH CAROLINA
COUNTY OF COLLETON

Samuel Washington, Jr.,
Plaintiff,

v.

South Carolina Electric and Gas Company;
and Emerson Electric Company d/b/a
Emerson Network Power, and/or
Emerson Network Power,
Defendants.

IN THE COURT OF COMMON PLEAS
CASE NO.: 2013-CP-15-0411

**SOUTH CAROLINA ELECTRIC AND
GAS COMPANY'S ANSWER TO THE
PLAINTIFF'S COMPLAINT**

Defendant South Carolina Electric & Gas Co. ("SCE&G") answers Plaintiff's Complaint as follows:

FOR A FIRST DEFENSE

1. That each and every allegation not specifically admitted is hereby denied and strict proof is demanded of the same.
2. SCE&G lacks knowledge and information sufficient to form a belief as to the allegations of Paragraph 1, therefore they deny the same, and demand strict proof thereof.
3. Answering the allegations of Paragraph 2, SCE&G refers Plaintiff to the Stipulation of Dismissal as to SCANA Corporation and/or SCE&G Holding Company, Inc., d/b/a South Carolina Electric and Gas Company. SCE&G admits it is a South Carolina Corporation that conducts business in Colleton County. To the extent Paragraph 2 alleges differently/additionally, SCE&G lacks knowledge and information sufficient to form a belief as to said allegations, therefore it denies the same, and demands strict proof thereof.
4. The allegations of Paragraph 3 are legal conclusions, and therefore require no response from SCE&G.

AS TO THE FIRST CAUSE OF ACTION

5. Answering the allegations of Paragraph 4, SCE&G repeats and reiterates the foregoing portions of the within Answer as fully as if repeated herein verbatim.
6. SCE&G admits the allegations of Paragraphs 5 through 7 to extent said Paragraphs suggest

- SCE&G is in the business of providing electricity to customers in the State of South Carolina and that it generates electricity at its plant in Canadys, South Carolina which is then distributed to its customers. To the extent said Paragraphs allege differently/additionally, SCE&G lacks knowledge and information sufficient to form a belief as to said allegations, therefore it denies the same, and demands strict proof thereof.
7. SCE&G denies the allegations of Paragraphs 8 and 9 and demands strict proof of the same.
 8. SCE&G lacks knowledge and information sufficient to form a belief as to the allegations of Paragraph 10 through 14, therefore it denies the same, and demands strict proof thereof.
 9. SCE&G denies the allegations of Paragraph 15 and 16 and demand strict proof of the same.

FOR A SECOND DEFENSE
(Failure to State a Claim)

10. The Complaint fails to set forth sufficient facts to constitute a cause of action and, therefore, should be dismissed pursuant to SCRPC 12(b)(6).

FOR A THIRD DEFENSE
(Comparative Negligence)

11. Even if SCE&G was negligent in any respect, which is expressly denied, and such conduct operated as a proximate cause of Plaintiff's injuries, if any, which is expressly denied, SCE&G alleges the Plaintiff's negligent, grossly negligent, reckless, willful, and wanton conduct contributed more than fifty percent (50%) to the cause of Plaintiff's alleged damages, and therefore, Plaintiff's claims are barred.
12. Even if SCE&G was negligent in any respect, which is expressly denied, and even if such conduct on the part of SCE&G operated as a greater than fifty percent (50%) cause of Plaintiff's injuries, if any, which is also denied, SCE&G is entitled to a determination as to the percentage which Plaintiff's negligent, grossly negligent, reckless, willful, and wanton conduct contributed to Plaintiff's alleged injuries, if any, and to a reduction of any amount awarded to the Plaintiff by an amount equal to the percentage of Plaintiff's own negligence.

FOR A FOURTH DEFENSE
(Sole Negligence)

13. Any injuries or damages sustained by the Plaintiff was due to and caused and occasioned by Plaintiff's own negligence, gross negligence, recklessness, willfulness, and wantonness

which was the direct and proximate cause of Plaintiff's alleged injuries or damages, if any, and without which the same would not have occurred, and therefore, due to Plaintiff's sole negligence, gross negligence, recklessness, willfulness, and wantonness, Plaintiff's claims are barred.

FOR A FIFTH DEFENSE
(Punitive Damages Unconstitutional)

14. Punitive damages, as currently awarded in South Carolina, are violative of the United States Constitution and South Carolina Constitution, as well as the holding of *State Farm Mutual Automobile Insurance Company v. Campbell*, 538 U.S. 408, 123 S.Ct. 1513, 155 L.Ed.2d 585 (2003), and the cases upon which it is based.
15. Pursuant to *Cooper Industries, Inc. v. Leatherman Tool Group, Inc.*, 522 U.S. 424, 121 S.Ct. 1678 (2001), if punitive damages are recoverable, which is denied, the amount of punitive damages "[are] not really a fact tried by the jury" therefore Plaintiff's request for punitive damages "to be determined by the jury" violates the United States Constitution.

FOR AN SIXTH DEFENSE
(Setoff and/or SC Code Ann. § 15-38-10 *et. seq.*)

16. Any recovery by Plaintiff must be reduced or offset by amounts Plaintiff has received or will receive from others for the same injuries claimed in this lawsuit.
17. Pursuant to SC Code Ann § 15-38-15, if SCE&G is found liable, which is expressly denied, SCE&G is entitled to an allocation of liability regardless of whether all liable parties are named in this lawsuit.

FOR AN EIGHTH DEFENSE
(Sole Negligence of 3rd party)

18. Any injuries sustained by Plaintiff might have been due to and caused by the sole negligence of third persons over whom SCE&G had no control, and therefore, SCE&G should not be liable to Plaintiff in any sum whatsoever.

FOR A NINTH DEFENSE
(laches, waiver, unclean hands, estoppel)

19. Plaintiff's claims might be barred by the doctrines of laches, waiver, unclean hands, and/or estoppel.

FOR A TENTH DEFENSE
(Intervening/Superseding Negligence)

20. Any injuries sustained by the Plaintiff was due to and caused by the intervening and superseding acts of negligence, carelessness, recklessness, and gross negligence on the part of third persons as a proximate cause of injuries as alleged, if any, and therefore, SCE&G should not be liable to Plaintiff in any sum whatsoever.

FOR AN ELEVENTH DEFENSE
(Statutory Employer)

21. Plaintiff's claims might be barred by the statutory employer doctrine.

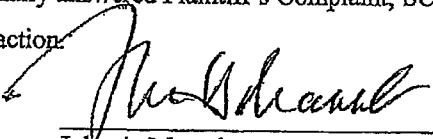
FOR A TWELFTH DEFENSE
(Incorporation of other Defenses)

22. SCE&G hereby incorporate by reference any additional/different defense raised by any other party to this action.

FOR A THIRTEENTH DEFENSE
(Reservation/Preservation)

23. SCE&G specifically reserves any additional and/or affirmative defenses as may be available to it or revealed to it during the course of the investigation and/or discovery in this case.

WHEREFORE, having fully answered Plaintiff's Complaint, SCE&G prays that the same be dismissed with costs of this action.



John A. Massalon
I. Ryan Neville
WILLS MASSALON & ALLEN LLC
Post Office Box 859
Charleston, South Carolina 29402
(843) 727-1144
jmassalon@wmalawfirm.net
rneville@wmalawfirm.net

ATTORNEYS FOR DEFENDANT
SOUTH CAROLINA ELECTRIC & GAS COMPANY

CHARLESTON, SOUTH CAROLINA

October 30, 2013

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on October 30, 2013, copies of the attached pleading/discovery have been served upon the following via:

XX	United States Postal Service
	Hand Delivery

Margie Bright Matthews, Esquire
Margie Bright Matthews, LLC
Post Office Box 499
Walterboro, South Carolina 29488
(843) 549-6028

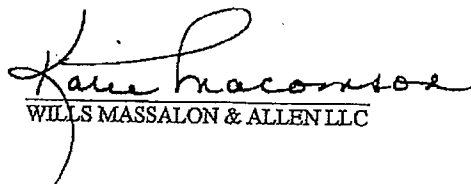
H. Michael Bowers, Esquire
Smith Moore Leatherwood LLP
25 Calhoun Street, Suite 250
Charleston, South Carolina 29401
(843) 577-9888

and

S. Kirkpatrick Morgan, Jr., Esquire
Charles T. Slaughter, Esquire
Walker Morgan
Post Office Box 949
Lexington, South Carolina 29071

ATTORNEYS FOR DEFENDANT
EMERSON ELECTRIC COMPANY

ATTORNEYS FOR PLAINTIFF


WILLS MASSALON & ALLEN LLC

PATRICIA C. GRANT
COLLETON COUNTY
COMMON PLEAS
2013 NOV -6 PM 2:59

PATRICIA C. GRANT
COLLETON COUNTY
COMMON PLEAS
2013 OCT 31 PM 1:43

STATE OF SOUTH CAROLINA

COUNTY OF COLLETON

Samuel Washington, Jr.,

Plaintiff,

v.

South Carolina Electric and Gas Company;
and Emerson Electric Company d/b/a
Emerson Network Power, and/or
Emerson Network Power,

Defendants.

IN THE COURT OF COMMON PLEAS

CASE NO.: 2013-CP-15-0411

**SOUTH CAROLINA ELECTRIC AND
GAS COMPANY'S MOTION FOR
SUMMARY JUDGMENT**

2013 OCT 31 PM 1:48
PATRICIA C. GRANT
COLLETON COUNTY
COMMON PLEAS
CLERK OF COURT

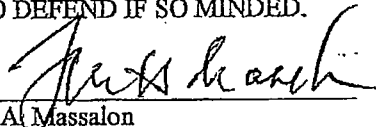
TO: S. KIRKPATRICK MORGAN, JR., ESQUIRE, CHARLES T. SALUGHTER, ESQUIRE,
WALKER MORGAN, MARGIE BRIGHT MATTHEWS, ESQUIRE, MARGIE
BRIGHT MATTHEWS, LLC ATTORNEY FOR THE PLAINTIFF:

PLEASE TAKE NOTICE that Defendant South Carolina Electric & Gas Company ("SCE&G"), by and through its undersigned counsel, will move before the Presiding Judge of the Court of Common Pleas for Colleton County in Walterboro, South Carolina, on the tenth (10th) day after service hereof, or as soon thereafter as the parties might be heard for an Order pursuant to Rule 56 of the South Carolina Rules of Civil Procedure granting it summary judgment on the grounds that there is no sufficient material issues of fact and SCE&G is entitled to a judgment as a matter of law in its favor.

The basis for this Motion includes, but is not limited to, the Affidavit of John Mellette filed herewith as Exhibit "A", discovery documentation/information made available between the date of filing this Motion and the date of the hearing on this Motion, the South Carolina Rules of Civil Procedure, applicable law, a memorandum of law, which will be filed with this Court, and arguments of counsel at a hearing on this matter.

2013 NOV 16 PM 2:56
PATRICIA C. GRANT
COLLETON COUNTY
COMMON PLEAS
CLERK OF COURT

PLEASE BE PRESENT TO DEFEND IF SO MINDED.


John A. Massalon
I. Ryan Neville
WILLS MASSALON & ALLEN LLC
Post Office Box 859
Charleston, South Carolina 29402
(843) 727-1144
jmassalon@wmalawfirm.net
rneville@wmalawfirm.net

2013 NOV -6 PM 2:56
PATRICIA C. GRANT
COLLETON COUNTY
COMMON PLEAS

ATTORNEYS FOR DEFENDANT
SOUTH CAROLINA ELECTRIC & GAS COMPANY

CHARLESTON, SC

October 30, 2013

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on October 30, 2013, copies of the attached pleading/discovery have been served upon the following via:

XX	United States Postal Service
	Hand Delivery

2013 OCT 31 PM 1:48
PATRICIA C. GRANT
COLLETON COUNTY
COMMON PLEAS

Margie Bright Matthews, Esquire
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Smith Moore Leatherwood LLP
25 Calhoun Street, Suite 250
Charleston, South Carolina 29401
(843) 577-9888

and

ATTORNEYS FOR DEFENDANT
EMERSON ELECTRIC COMPANY

S. Kirkpatrick Morgan, Jr., Esquire
Charles T. Slaughter, Esquire
Walker Morgan
Post Office Box 949
Lexington, South Carolina 29071

ATTORNEYS FOR PLAINTIFF


WILLS MASSALON & ALLEN LLC

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

Samuel Washington, Jr.,

Plaintiff,

v.

South Carolina Electric and Gas Company,¹
and Emerson Electric Company d/b/a
Emerson Network Power, and/or
Emerson Network Power,

Defendants.

CIVIL ACTION NO.: 2:13-CV-1886-RMG

AFFIDAVIT OF JOHN MELLETTTE

I, John Mellette, who, on oath, says:

1. I am over 18 years of age, and I am qualified and competent to make this Affidavit.
2. I make this Affidavit of facts based upon my personal knowledge.
3. I am employed at SCANA Corporation as Manager, Corporate Insurance.
4. SCE&G is a wholly-owned subsidiary of SCANA Corporation. SCE&G is the principal subsidiary for SCANA.
5. On behalf of its subsidiary SCE&G, SCANA secures payment of workers' compensation insurance and has been approved as "self-insured" by the South Carolina Workers' Compensation Commission, since June 18, 1949. (See Exhibit A- Certificate of Approval to Self-Insure Workers' Compensation Liabilities in this State).
6. The self-insurance certificate attached as Exhibit A contains the reference number SI#665, which corresponds with the Policy Number "WCSI0066500" as listed on the South

¹ Initially, the Plaintiff's complaint named "SCANA Corporation and/or SCE&G Holding Company, Inc., d/b/a South Carolina Electric and Gas Company." Those defendants were dismissed without prejudice by Stipulation of the parties on 8/23/2013.



Carolina Workers' Compensation Commission "verify coverage" report for SCANA CORP. (See Exhibit B- Employers Workers' Compensation Insurance Coverage Verification). Said Report also indicates said coverage was in effect on 9/28/2011 – the date of the accident in this action.

7. Each year, SCANA provides updated information to the SC Workers' Compensation Commission to maintain its approved status as self-insured.
8. This approved status was in effect on the date of the accident involved in this action, September 28, 2011.
9. In addition to its approved self-insured status, SCANA, on behalf of SCE&G and certain other subsidiaries, additionally procured two Excess Workers' Compensation Policy of insurance coverage: (1) AEGIS Policy #C0210A1A10, which provided up to \$35,000,000 in WC excess coverage; and (2) National Union Fire Ins Co of Pittsburg, PA Policy # XWC-488-05-29 which provided additional excess WC coverage up to the statutory limits of Workers' Compensation above \$35,500,000. See Exhibit C (Declaration Pages for 10/31/2010–10/31/2011 Excess WC policies, which is inclusive of the 9/28/2011 accident date).
10. The above referenced workers' compensation coverage would have provided coverage for any contract employees of SCE&G, had their direct employer, for any reason, not provided adequate coverage.

As allowed by 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on 10 Sept, 2013, (city) London, (country) England

Jean C. Mellette

SCANA, for its subsidiary SCE&G

By: *Jean C. Mellette*

Its: *Manager, Corporate Relations*

State of South Carolina
Workers' Compensation Commission

CERTIFICATE OF APPROVAL TO SELF-INSURE
WORKERS' COMPENSATION LIABILITIES IN THIS STATE

Scana Corporation
SCANA Corporation
Mail Code 128
Columbia, SC 29218
SIF: 665 REIN: 570784499

is subject to the Workers' Compensation Act, S.C. Code 42-1-10 et seq., (1976, as amended), and Chapter 67 of the Code of Regulations, (1980, as amended), and has established that it has the financial ability to pay compensation directly to its employees in the amount and manner as provided by the Act. Having filed the required surety and excess insurance, Scana Corporation, is approved to self-insure its workers' compensation liabilities in this State.

Scana Corporation, is subject to and shall abide by all requirements of the Workers' Compensation Act, amendments thereto, and regulations that now are or hereafter adopted by the South Carolina Workers' Compensation Commission.

This Certificate shall remain in force until withdrawn by Scana Corporation, or revoked by the Commission upon sixty days notice an opportunity for the employer to be heard.

This Certificate becomes effective on the 18th day of June, 1949.

SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

Gary E. Whitfield
Executive Director

EXHIBIT A -- SCWCC CERTIFICATE TO SELF INSURE

Vrxw#F durqd#Z runhuv#F rp shqvdwlrq#F rp p kvlrq

Employers' Workers' Compensation Insurance Coverage Verification

Coverage/Injury/Illness Date	09/28/2012	Default = Today's Date
Employer Name	SCANA	☒ Contains ☐ Starts With
OR		
Federal Employer Identification Number		
SEARCH RESET		

[Click here for claim processing information \(and register for mid-term cancellation notice\).](#)

Worker's Compensation Insurance Coverage Provider: SOUTH CAROLINA INDIVIDUAL SELF INSURED				
Policy Number: WCSI0088500				
Coverage/Injury/Illness Date: 09/28/11				
Return to Policy Results				
Employer Name	Street Address	City	State	Zip
SCANA CORP	PO BOX 100159	COLUMBIA	SC	29202-3159

EXHIBIT B

<https://www.ewccv.com/cvs/>

9/6/2013

Words and phrases which appear in all capital letters have the special meanings set forth in Section II. Definitions



POLICY NO. 880814100
DECLARATION NO. 01

- 7000 (Q1/2010)

[10F 2]

©1975-2010 ASSOCIATED ELECTRIC & GAS INSURANCE SERVICES LIMITED
AEGIS AND THE AEGIS LOGO ARE REGISTERED SERVICE MARKS OF ASSOCIATED ELECTRIC & GAS INSURANCE SERVICES LIMITED

37

AEGIS

DECLARATIONS

continued

POLICY NO. C0210A1A10

DECLARATIONS NO. 1

Item 8: Any notice to be provided or any payment to be made hereunder to the COMPANY shall be made to:

NAME AEGIS Insurance Services, Inc.
ADDRESS 1 Meadowlands Plaza
East Rutherford, NJ 07073

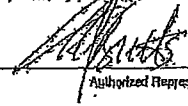
ENDORSEMENTS ATTACHED AT POLICY ISSUANCE: 1-3

Countersigned at East Rutherford, New Jersey

on October 23, 2010

AEGIS Insurance Services, Inc.

By


Authorized Representative

AEGIS

ASSOCIATED ELECTRIC & GAS INSURANCE SERVICES LIMITED
UNDERLYING LIMITS SCHEDULE

SCHEDULE NO. 1

This schedule is attached to and forms a part of Item 5 of the Declarations of POLICY No. 00210A1A10 and lists all underlying insurance or self-insured retentions maintained by the INSURED effective this 31st day of October, 2010 at 12:01 A.M. Standard Time at the address of the INSURED.

Insured or Uninsured

~~\$500,000~~ each accident or each EMPLOYEE for disease

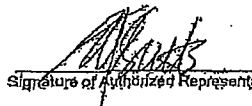
Coverage applicable to the following subsidiaries only:

- ~~South Carolina Electric & Gas Company~~ SCANA Services, Inc., Carolina Gas Transmission Corporation.

\$200,000 each accident or each EMPLOYEE for disease

Coverage applicable to the following subsidiaries only:

- Public Services of North Carolina Inc. d/b/a PSNC Energy


Signature of Authorized Representative

7300 (7/1989)

[1 of 1]

EXCESS WORKERS' COMPENSATION INSURANCE POLICY

*Words and phrases which appear in all capital letters have the special meanings set forth in
Section II, Definitions*



DECLARATIONS

POLICY NO. ~~CU00000000~~
~~DECLARATION NO. 272~~
REPLACING DECLARATIONS NO. 1
EFFECTIVE DATE July 1, 2011

- Item 1: **INSURED:** SCANA Corporation
and Subsidiaries
100 Scana Pkwy
Mail Code C405
Cayce, SC 29033-3712
- Item 2: **POLICY PERIOD:** from the 23rd day of October 2010 to the 23rd day of October 2011 both days at 12:01 A.M. Standard Time at the address of the INSURED.
- Item 3: This POLICY applies to the WORKERS' COMPENSATION LAW of each of the following STATES:
SC NC GA
- Item 4: **POLICY PREMIUM:**
- Item 5: **INSURED'S RETAINED LIMIT EACH ACCIDENT ON EACH EMPLOYEE FOR DISEASE:**
~~\$250,000~~
- Item 6: **COMPANY'S LIMIT OF LIABILITY EACH ACCIDENT ON EACH EMPLOYEE FOR DISEASE:**
~~\$250,000~~
- Item 7: Any notice to be provided or any payment to be made hereunder to the INSURED shall be made to:
NAME Mr. John C. Mellette
TITLE Manager of Corporate Insurance
ENTITY SCANA Corporation
ADDRESS 100 Scana Pkwy
Mail Code C405
Cayce, SC 29033-3712 USA

7001 (01/2010)

11 OF 21

01/7/2010 ASSOCIATED ELECTRIC & GAS INSURANCE SERVICES LIMITED
AEGIS AND THE AEGIS LOGO ARE REGISTERED SERVICE MARKS OF ASSOCIATED ELECTRIC & GAS INSURANCE SERVICES LIMITED

DECLARATIONS

continued

AEGIS

POLICY NO. 00210A1A10
DECLARATIONS NO. 2
REPLACING DECLARATIONS NO. 1
EFFECTIVE DATE July 1, 2011

Item 8: Any notice to be provided or any payment to be made hereunder to the COMPANY shall be made to:

NAME AEGIS Insurance Services, Inc.
ADDRESS 1 Meadowlands Plaza
East Rutherford, NJ 07073

ENDORSEMENTS ATTACHED AT POLICY ISSUANCE: 1-3

Countersigned at East Rutherford, New Jersey
on July 6, 2011

AEGIS Insurance Services, Inc.

by 
Authorized Representative

7011 (07/2010)

12 OF 21



**NATIONAL UNION
FIRE INSURANCE COMPANY
OF PITTSBURGH, PA**

A CAPITAL STOCK COMPANY
ADMINISTRATIVE OFFICES

178 WATER STREET, NEW YORK, NY 10038

**EXCESS WORKERS COMPENSATION AND EMPLOYERS LIABILITY POLICY
INFORMATION PAGE**



POLICY NUMBER:
~~XXXXXXXXXXXX~~

RENEWAL OF:
4890369

- ITEM 1: Named Insured and Mailing Address
SCANA CORPORATION
MAIL CODE C102
220 OPERATOR WAY
CAYCE, SC 29033
- ITEM 2: States in which coverage is to apply: SEE ATTACHED SCHEDULE
- ITEM 3: Policy Period ~~RENEWAL DATE: 12/31/2011~~ 12.01 A.M. Standard Time of the Mailing Address shown herein
- ITEM 4: Que Limit of Indemnity
PART ONE: WORKERS COMPENSATION
~~EXCLUDED~~ - Each Accident
~~EXCLUDED~~ - Each Employee For Disease
PART TWO: EMPLOYERS LIABILITY
~~EXCLUDED~~ - Each Accident
~~EXCLUDED~~ - Each Employee For Disease
- ITEM 5: Your Retention
PART ONE: WORKERS COMPENSATION
~~EXCLUDED~~ - Each Accident
~~EXCLUDED~~ - Each Employee For Disease
PART TWO: EMPLOYERS LIABILITY
~~EXCLUDED~~ - Each Accident
~~EXCLUDED~~ - Each Employee For Disease
- ITEM 6: Premium and Premium Computation
Estimated Total Annual Remuneration
Rates Per \$100 of Remuneration
Deposit Premium
Minimum Premium
Premium for Certified Acts of Terrorism Coverage Under Terrorism Risk Insurance Act 2002 as amended by the Terrorism Risk Insurance Program Reauthorization Act 2007:
Included in Equity Premium

THIS POLICY INCLUDES THESE ENDORSEMENTS: SEE ATTACHED SCHEDULE

PRODUCER NAME AND ADDRESS:
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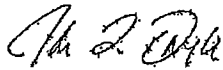
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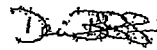
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NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PA



Secretary
NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PA

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Authorized Representative

SIGNATURE

STATE OF SOUTH CAROLINA)

COUNTY OF COLLETON)

Samuel Washington, Jr.,)

Plaintiff,)

v.)

South Carolina Electric and Gas Company;)
and Emerson Electric Company d/b/a)
Emerson Network Power, and/or)
Emerson Network Power,)

Defendants.)

IN THE COURT OF COMMON PLEAS.

CASE NO.: 2013-CP-15-0411

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Wills & Massaro

**SOUTH CAROLINA ELECTRIC AND
GAS COMPANY'S SUPPLEMENTAL
MEMO IN SUPPORT OF ITS MOTION
FOR SUMMARY JUDGMENT**

On January 14, 2014, this Court heard Defendant South Carolina Electric & Gas Company's ("SCE&G") Motion for Summary Judgment that Plaintiff Samuel Washington, Jr.'s ("Mr. Washington") Complaint of negligence is barred pursuant to the statutory employer doctrine. At the January hearing, this Court did not issue an Order granting or denying SCE&G's Motion, but rather, this Court continued the Motion to provide Mr. Washington time to try and uncover a scintilla of evidence to support its position that Mr. Washington was not SCE&G's statutory employee. For the reasons set forth herein, those stated in SCE&G's initial Memorandum, which is hereby incorporated by reference, and argument of counsel at a hearing on this Motion, SCE&G is entitled to summary judgment.

FACTS

SCE&G is in the business of providing electricity to customers in the State of South Carolina. Compl. ¶ 5. SCE&G generates electricity at its plant in Canadys, South Carolina which is then distributed to its customers. Id. ¶ 6. Mr. Washington was employed by Applied Control Technology and assigned by the International Brotherhood of Electrical Workers to work on a turbine at SCE&G's power plant in Canadys, South Carolina. Id. ¶ 10. While working there on September 28, 2011, Mr. Washington alleges that he was injured while performing electrical work on a turbine that powers the generator SCE&G utilizes to produce electricity. Id. ¶¶ 10-16. Mr. Washington alleges the electrical panel for this turbine was negligently energized thereby causing his injuries resulting in this lawsuit. Id.

All witnesses testified that SCE&G is in the business of producing power. Ralph Polk

Dep. 32:14-33:17; May 9, 2014; Richard Wilson Dep. 30:7-31:16, May 9, 2014; Larry Purvis Dep. 35:22-36:9; 40:2-42:17, May 21, 2014; Joe Foster Dep. 40:10-41:18, May 21, 2014. They also testified that the work Mr. Washington was performing was an important part of SCE&G's business. *Id.* Moreover, each one testified that the work was necessary, essential, and integral to SCE&G's business of producing power. *Id.* Finally, they stated that SCE&G could have performed the work itself but chose to sub-out the work for economic reasons, and that in subbing-out the work, SCE&G ultimately bore the costs of Mr. Washington's workers' compensation coverage in what it paid for the work to be done at its plant. *Id.*

STANDARD OF REVIEW

The determination of whether a worker is a statutory employee is a jurisdictional question of law. *Voss v. Ramco*, 482 S.E.2d 582 (S.C. Ct. App. 1997). "Summary judgment is appropriate where the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." *Christina G. deBordt v. Carlton Motor Cars, Inc.*, 536 S.E.2d 399, 403 (S.C. Ct. App. 2000). While the moving party bears the burden of demonstrating that there is not a genuine issue of material fact, once that burden has been met, the nonmoving party may not rest on the mere allegations contained in the pleadings. *Celotex Corp. v. Catrett*, 477 U.S. 317, 324 (1986). Instead, the nonmoving party must come forward with specific facts showing that evidence exists to support its position, and that there is a genuine issue for trial. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 256 (1986). All evidence must be viewed in the light most favorable to the nonmoving party. *Perini Corp. v. Perini Const., Inc.*, 915 F.2d 121, 123-33 (4th Cir. 1990). In cases where the material facts are not in dispute, a trial court may resolve disputed legal questions on summary judgment. *Thompson Everett, Inc. v. National Cable Advertising, L.P.*, 57 F.3d 1317, 1323 (4th Cir. 1995).

ARGUMENT

- I. Even when viewing the evidence in light most favorable to Mr. Washington, searching for a scintilla of evidence to support his position, this Court should grant SCE&G summary judgment as it is undisputed he was injured while performing work that is an important, necessary, essential, and integral part of SCE&G's business thereby making Workers' Compensation his sole relief.

The Act provides the exclusive remedy for employees who sustain work related injuries. S.C. Code Ann. § 42-1-540. Although coverage under the Act is generally dependent upon the

existence of an employer-employee relationship, S.C. Code Ann. § 42-1-400 provides that the Act is also the sole remedy for a worker who is not directly employed by the owner but rather is employed by a person or entity that is performing work for the owner. *McLeod v. Piggly Wiggly Carolina Co.*, 313 S.E.2d 38 (S.C. Ct. App. 1984). The rationale for this statutory provision is that costs incurred by the person or entity securing workers' compensation insurance coverage is ultimately borne by the owner as part of the contract costs regardless of whether the contract explicitly states it. See *Parker v. Williams & Madjanik, Inc.*, 267 S.E.2d 524 (S.C. 1980) (noting "[t]he owner who obtains the benefit of the work inevitably absorbs the costs of providing protection for the workers").

In order for the Act to be applicable as stated in S.C. Code Ann. § 42-1-400, only one of the following three conditions must be satisfied: the activity performed by the injured worker (1) must be an important part of the owner's trade or business; (2) must be a necessary, essential, and integral part of the owner's business; or (3) the owner's employees must have previously performed the activity. *Harrell v. Pineland Plantation, Ltd.*, 494 SE 2d 123 (S.C. Ct. App 1997). The three-part disjunctive *Harrell* inquiry focuses on the services performed by the subcontractor. *Carter v. Florentine Corp.*, 423 S.E.2d 112 (S.C. 1992) (emphasis added). Each case must be determined on its own facts, and importantly, only 1 of the 3 *Harrell* elements need be present to defeat a claim per the statutory employer doctrine. *Glass v. Dow Chem. Co.*, 447 S.E.2d 209 (S.C. Ct. App. 1994). Furthermore, Courts are required to resolve doubts about a worker's status in favor of including the worker under the jurisdictional reach of the Act. *Neese v. Michelin Tire Corp.*, 478 S.E.2d 91 (S.C. Ct. App. 1996).

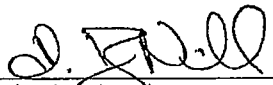
In *Bell v. South Carolina Electric & Gas Co.*, 109 S.E.2d 441 (S.C. 1959), the Court sustained SCE&G's demurrer to the plaintiffs negligence complaint. It held as a matter of law that the power company was the deceased workman's statutory employer because Plaintiff's intestate was killed while employed by a contractor who was transferring lines of the power company from one set of poles to another. *Id.* Of note, the Bell court stated, "[t]he defendant Power Company is a public utility engaged in the manufacture and transmission of electricity and uses poles and wires in its business and the repair and maintenance of such poles and wires or the transferring of such from one set of poles to another are part of its business, trade and occupation." Compare *Id.* with Compl. ¶ 5 (making very similar allegation as noted in Bell).

Applying this well-settled law to the case at hand, it is clear that this Court should barr

Mr. Washington's negligence claim as to SCE&G because he is its statutory employer. Compare Compl. ¶ 4-16 and Ralph Polk Dep. 32:14-33:17; May 9, 2014; Richard Wilson Dep. 30:7-31:16, May 9, 2014; Larry Purvis Dep. 35:22-36:9; 40:2-42:17, May 21, 2014; Joe Foster Dep. ___, May 21, 2014. with *Bell* 109 S.E.2d 441. SCE&G is in the business of producing and selling power. *Id.* The location where Mr. Washington was injured was a power plant SCE&G utilizes to generate electricity it then provides to its customers. *Id.* The equipment Mr. Washington was working on when he was injured is a turbine that powers the generator SCE&G utilizes to produce the electricity it then provides to its customers. *Id.* All witness testimony supports the position that Mr. Washington was performing work that was an important, necessary, essential, and integral part of SCE&G's business of providing power to customers in the State of South Carolina. *Id.* Accordingly, Mr. Washington's sole relief should be through the Act, and SCE&G should be granted summary judgment in its favor as to Plaintiffs claim for negligence against it.

CONCLUSION

For the foregoing reasons, this Court should grant summary judgment to SCE&G which should also decide SCE&G's Motion for Summary Judgment in Mr. Washington's wife's loss of consortium claim alleged in *Louise Washington v. SCE&G et al.* Case No.: 2013-CP-15-0412 because said loss of consortium claim is contingent upon Mr. Washington's negligence claim in this matter.



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CHARLESTON, SC

August 28, 2014

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on August 28, 2014, copies of the attached pleading/discovery have been served upon the following via:

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF COLLETON	)	FOURTEENTH JUDICIAL CIRCUIT
	)	
Samuel Washington, Jr.,	)	Case No.: 2013-CP-15-411
	)	
Plaintiff,	)	
v.	)	PLAINTIFF'S SUPPLEMENTAL
	)	RESPONSE IN OPPOSITION TO
South Carolina Electric and Gas Company;	)	DEFENDANT SOUTH CAROLINA
and Emerson Electric Company d/b/a	)	ELECTRIC AND GAS COMPANY'S
Emerson Network Power, and/or Emerson	)	MOTION FOR SUMMARY
Network Power,	)	JUDGMENT
Defendants.	)	
	)	

Plaintiff, Samuel Washington, Jr., by and through his undersigned counsel, hereby submits this Supplemental Response in Opposition to Defendant South Carolina Electric and Gas Company's (hereinafter "SCE&G") Motion for Summary Judgment. For the reasons stated herein, this Motion should be denied.

PROCEDURAL HISTORY

This is a negligence action arising out of an electrocution incident involving the Plaintiff on September 28, 2011 at the SCE&G Canadys Station power plant located in Colleton County, South Carolina ("Canadys Station"). On May 28, 2013, Plaintiff filed a Summons and Complaint in the Colleton County Court of Common Pleas against Defendant SCE&G and Defendant Emerson Electric Company d/b/a Emerson Network Power, and/or Emerson Network Power (hereinafter "Emerson"). On July 9, 2013, Defendant Emerson filed a Notice for Removal on the basis of diversity jurisdiction, alleging that SCE&G, a South Carolina citizen, was a sham defendant named only to defeat diversity jurisdiction. According to Emerson, at the time of the incident which is the subject of this action, Plaintiff was SCE&G's "statutory employee" and thus his claims against SCE&G were barred by the South Carolina Workers' Compensation Act.

Plaintiff, thereafter, sought remand asserting that the non-diverse Defendant SCE&G had not been fraudulently joined and therefore the District Court lacked jurisdiction over this action. By Order dated September 9, 2013, the Honorable Judge Richard Gergel granted Plaintiff's Motion to Remand. According to Judge Gergel:

Construing all issues of law and fact in Plaintiffs favor, the Court finds that there is at least a "slight possibility" that Plaintiff is not a statutory employee of SCE&G. *Murphy*, 657 F. Supp. 2d at 690. Given the fact-intensive nature of the inquiry, the Court finds it is not absolutely clear at this stage that Plaintiff would have no possibility of relief against SCE&G in state court and that remand of this action is proper. *See Hartley*, 187 F.3d at 424-25.

(Order attached hereto as Exhibit A).

FACTUAL BACKGROUND

Upon information and belief, in 2008, SCE&G entered into a contract with Defendant Emerson whereby Emerson would perform certain electrical installation/demolition work to upgrade SCE&G's Canadys Station power plant. Thereafter, in 2011 Emerson entered into a subcontract agreement(s) with Applied Control Technology, Inc. ("ACT") for the provision of, among other things, labor, supervision, materials and tools for the SCE&G Canady's upgrade project(s). In turn, ACT hired the Plaintiff, an electrician, through the local chapter of the International Brotherhood of Electrical Workers.

At all times relevant hereto, the Plaintiff was performing electrical demolition work/services at Canadys Station. On September 28, 2011, Plaintiff was assigned to demo/remove electrical wires from junction boxes and/or power panels at Canadys Station. As the Plaintiff began removing wires from a junction box, which he had been informed had been de-energized, he was shocked by SCE&G's electricity. As a result of the contact with SCE&G's energized wire(s) and the severity of the shock he received as the electric current passed through his body, the Plaintiff suffered serious and permanent injuries and damages.

The day after the incident which is the subject of this action, the South Carolina Department of Labor, Licensing and Regulation, Office of Occupational Safety and Health ("S.C. OSHA") opened an investigation into the incident and, on December 20, 2011, cited SCE&G for two (2) serious violations of the Occupational Safety and Health Regulations of the State of South Carolina. (S.C. OSHA Citations attached hereto as **Exhibit B**).

As set forth more fully in his Complaint, Plaintiff contends, *inter alia*, that the injuries and damages he sustained in the subject incident were the direct and proximate result of certain negligent acts and/or omission on the part of the Defendants. For instance, Plaintiff alleges that the Defendants were negligent and in breach of the duty of care owed to the Plaintiff in failing to disconnect the power to the junction box at the Canadys Station plant (which at all times relevant hereto was under the control of the Defendants) where the Plaintiff was performing electrical work even though they knew, or in the exercise of reasonable caution should have known, that such electrical work was being done at the time of the subject incident.

SUMMARY JUDGMENT STANDARD

Summary judgment is an "extreme remedy to be cautiously invoked" and is proper only when there exists no genuine issue of material fact and the moving party is thus entitled to judgment as a matter of law. *Holloman v. McAllister*, 289 S.C. 183, 186, 345 S.E.2d 723, 729 (1986); Rule 56(c), SCRCP. The party seeking summary judgment has the burden of demonstrating the absence of a genuine issue of material fact. *Baughman v. American Tel. & Tel. Co.*, 306 S.C. 101, 102, 410 S.E.2d 537, 539 (1991). In ruling on a motion for summary judgment, the court must construe all ambiguities, conclusions, and inferences arising from the evidence against the moving party. *Johnston v. Bowen*, 313 S.C. 61, 64, 437 S.E.2d 45, 47 (1993).

"[I]n cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment." *Hancock v. Mid-South Mgmt. Co., Inc.*, 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009). "Moreover, summary judgment must not be granted until the opposing party has had a full and fair opportunity to complete discovery. *Baird v. Charleston County*, 333 S.C. 519, 529, 511 S.E.2d 69, 74 (1999); *see also Middleboro Horizontal Prop. Regime Council v. Montedison*, 320 S.C. 470, 480, 465 S.E.2d 765, 771 (Ct.App. 1995) ("Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law."); *Murphy v. Hagan*, 275 S.C. 334, 271 S.E.2d 311 (1980) (Summary judgment should not be granted even when there is no dispute as to the evidentiary facts if there is dispute as to the conclusions to be drawn from those facts.).

ARGUMENT

I. Defendant SCE&G was not Plaintiff's Statutory Employer at the Time of his Injury.

It is undisputed that the Plaintiff was not a direct employee of SCE&G. Rather, in its Motion, SCE&G contends that it was the Plaintiff's statutory employer and thus "is immune from suit under the South Carolina Workers' Compensation statute and the statutory employer doctrine." South Carolina courts have long recognized that no easily applied formula can be laid down for the determination of whether an individual is a statutory employee in a given case and, as such, "each case must be decided on its own facts." *Ost v. Integrated Prods., Inc.*, 296 S.C. 241, 244, 371 S.E.2d 796, 798 (1988).

South Carolina's statutory employer law will treat the "owner" of a business that hires contractors and sub-contractors as the direct employer of a sub-contractor's employees *only* when the subcontractor's employees are hired to do work that would normally be done by direct

employees of the owner. See S.C. Code Ann. § 42-1-400. The purpose of the statutory employer doctrine is to prevent a business owner from subcontracting out the core work of its business in order to evade responsibility for workers compensation payments. *Harrell v. Pineland Plantation, Ltd.*, 337 S.C. 313, 322, 523 S.E.2d 766, 771 (1999). If an owner is treated as a statutory employer, then the owner will be responsible for paying workers' compensation benefits and also be entitled to the Act's immunity from suit in tort.

South Carolina has developed three tests to determine whether or not persons such as the Plaintiff were doing work that normally would be completed by a direct employee in the general "trade or business" of the owner such as SCE&G. See *Olmstead v. Shakespeare*, 354 S.C. 421, 581 S.E.2d 483 (2003). "To determine whether the work performed by a subcontractor is a part of the owner's business, this Court must consider whether[:]

- (1) the activity of the subcontractor is an important part of the owner's trade or business;
- (2) the activity performed by the subcontractor is a necessary, essential, and integral part of the owner's business; or
- (3) the identical activity performed by the subcontractor has been performed by employees of the owner."

Voss v. Ramco, Inc., 325 S.C. 560, 569, 482 S.E.2d 582, 586 (Ct. App. 1997); see also *Hopkins v. Darlington Veneer Co.*, 208 S.C. 307, 311, 38 S.E.2d 4, 6 (1946) ("[T]he guidepost is whether or not that which is being done is or is not a part of the general trade, business or occupation of the owner."). Each of these tests serves the overall purpose of the statutory employer doctrine: preventing a company from outsourcing the core functions of its business to subcontractors as a way to avoid responsibility for workers' compensation payments.

When viewed in a light most favorable to the Plaintiff, an application of the facts of this case to the above-referenced tests reveal that the Plaintiff was not a statutory employee of Defendant SCE&G. As a result, the exclusivity provision of S.C. Code Ann. § 42-1-540 does not apply and Defendant SCE&G's Motion for Summary Judgment should be denied.

A. Major, Specialized Repairs are Not Part of a Manufacturer's Trade or Business.

While precedent states it is "difficult to lay down any hard and fast rule" in statutory employment cases, one rule the South Carolina Supreme Court has established is that, "where repairs are major, specialized, or of the sort which the employer is not equipped to handle with its own work force, they are not part of the business." *Glass v. Dow Chemical Co.*, 325 S.C. 198, 201, 482 S.E.2d 49, 50-51 (1997); *see also Raines v. Gould*, 288 S.C. 541, 543, 343 S.E.2d 655, 657 (Ct. App. 1986) ("Ordinarily construction work, such as building a factory structure or making electrical installations, is considered outside the trade or business of a manufacturer.").

At the time of his injuries, Plaintiff was one of several ACT employees performing demolition work as part of a major repair/upgrade project on SCE&G's Canadys Turbine No.3. SCE&G employees have testified that the work the Plaintiff and the other subcontractors were performing was "major" and "specialized" repair work:

Q. Okay. Stepping back a little bit, it's my understanding that during that time, in that September 2011 range, there was a project going on at the Canadys Station plant; is that correct?

A. Yes.

Q. What's your understanding as to the reason behind that? Like what was going on?

A. We were doing an upgrade on our DCS system as well as control valves that control the steam going to the turbine which we use to turn the generator to generate the power. It was a major, major upgrade changing the valves out and controls and pulling new wire in, replacing wire.

Q. So this wasn't just a routine maintenance thing, it was a major repair?

A. Major, yes.

(Richard Wilson Dep. 10:23 to 11:13, excerpts attached as Exhibit C) (emphasis added).

Q. You've already agreed that this was a major project in the eyes of SCE&G, a major work project?

A. Major work project.

Q. All right. And would you agree that upgrading a control system is specialized work?

A. It is specialized in that, yes, it is specialized.

(Lawrence Purvis Dep. 42:18 to 42:24, excerpts attached as Exhibit D).

In short, SCE&G employees have testified that the subject demolition/repair project was major and specialized, and under *Glass*, such testimony precludes any ruling that the Plaintiff was a statutory employee of Defendant SCE&G.

In contrast to specialized repair work, routine maintenance work can sometimes be covered by the statutory employment doctrine. For example, in *Wheeler v. Morrison Machinery Co.*, 313 S.C. 440, 438 S.E.2d 264 (1993), the court found the removal of asbestos was part of the defendant's routine "ongoing maintenance program" and therefore part of the defendant's "trade or business." According to the court, "[p]reventive maintenance...has always been and always will be an ongoing process." *Wheeler*, 313 S.C. at 443, 438 S.E.2d at 266.

The work being performed by the Plaintiff and the other subcontractors was not routine maintenance; instead it was a specialized repair. For instance, according to documents obtained from S.C. OSHA, the demolition/upgrade/repair work being performed by the Plaintiff and other contractors and subcontractors on the date of the subject incident generally only takes place every thirty (30) to forty (40) years. Moreover, SCE&G employees have testified that this was

not routine maintenance and, in fact, this specific demolition/repair work had never been done before on the subject equipment:

Q. Okay. Do you have any knowledge as to whether any other SCE&G employees have ever done any type of work on that panel?

A. I'm sure some of the other electricians have worked on that panel. I know they have as far as the switches.

Q. But as far as any sort of demo or pulling out wires or replacing the panel itself.

A. Not that particular one, no.

(Richard Wilson Dep. 14:10 to 14:18) (emphasis added).

Q. The project and the work that was being done on Unit 3, this wouldn't be considered routine maintenance, would it?

A. No.

Q. This is, again, a major overhaul or repair?

A. Yes.

(Richard Wilson Dep. 32:23 to 33:4) (emphasis added).

Q. Do you know if SCE&G has ever demolished, removed and upgraded that unit or units at Canadys at any time previous?

A. This particular unit?

Q. Yes, sir.

A. I would say no.

(Lawrence Purvis Dep. 12:24 to 13:4).

Q. All right. Would you agree that this was not routine maintenance that was going on at Canadys?

A. Yes.

(Lawrence Purvis Dep. 20:3 to 20:6).

Q. During your 13 years at SCE&G, were you ever assigned to work on this particular panel box?

A. I was.

Q. What kind of work would you be asked to

do?

A: It had some limit switches inside the box. There was a shaft that came through the box for valve positioning and those switches occasionally would fail or get a little out of adjustment and then we would go in and make an adjustment.

Q. So would it be fair to call that routine maintenance?

A. Yeah.

Q. But as far as removing, replacing the wires or actually removing, replacing the box itself, you were never asked to do that?

A. No, sir.

(Wendell Polk Dep. 16:24 to 17:16, excerpts attached as **Exhibit E**) (emphasis added).

Q All right. All right. And are you aware -- it's our understanding that this is the first time these controls were being updated with state of the art equipment -- controls since the Canadys Plant had come on line 40, 50 years ago. Is that your understanding?

A Yes. As far as the full update, yes.

Q All right. So there's no doubt that routine maintenance had ever done what Emerson was doing on this project?

A Correct.

(Joe Foster Dep. 28:15 to 28:24 excerpts attached as **Exhibit F** (emphasis added); *see also* Richard Wilson Dep. 11:11 to 11:13 ("Q. So this wasn't just a routine maintenance thing, it was a major repair? A. Major, yes.")).

Finally, a SCE&G employee has testified that this type of specialized work is typically done by independent contractors:

Q. During your time at SCE&G, was there ever a time when a project of this scale was undertaken at the Canadys plant?

A. Yeah. I mean, there was stuff like that -- I'm not exactly clear on what you're asking. Did the the company do it by itself or --

Q. As far as the six-week project that was going on during this time.

A. Oh, yeah. I mean, different -- there's different projects over the years. They'll do upgrades on different systems at different times.

Q. And is that something usually, again, that -- is it something SCE&G would do themselves or would it be contracted out to --

A. Generally contracted out.

(Wendell Polk Dep. 11:5 to 11:19) (emphasis added).

Therefore the facts of this case, when viewed in a light most favorable to the Plaintiff, establish that the work being performed by the Plaintiff and the other contractors/subcontractors was not routine maintenance. Instead, this was a one-time major equipment replacement/upgrade of the kind that SCE&G regularly employs outside contractors to complete.

B. The Demolition/Repair Work Performed by the Plaintiff was not an "Important" nor a "Necessary, Essential, and Integral" Part of SCE&G's Business of Providing Electricity to Customers.

As set forth in its motion, SCE&G contends that because the equipment the Plaintiff was demolishing is used to power the generator SCE&G uses to produce the electricity, such work should be considered an important, necessary, essential and integral part of SCE&G's business of providing electricity to customers. In support of this contention, SCE&G cites to the deposition testimony of certain SCE&G employees who "testified that the work was necessary, essential, and integral to SCE&G's business of producing power." However, these self-serving legal conclusions are insufficient to carry SCE&G's burden at this stage. See *Shields v. S.C. Dep't of Highways and Pub. Transp.*, 303 S.C. 439, 443, 401 S.E.2d 185, 188 (Ct.App.), cert. denied, (April 24, 1991) (citing 32 C.J.S. Evidence § 453 at 91 (1964) ("As a general rule, a witness will not be permitted to state a conclusion, or opinion, of law....")).

If demolishing/upgrading this particular equipment was an important part of the producing and providing of electricity, it would be expected to have been done in some form of routine or regular manner. That such work generally takes place every 30-40 years and is done by outside contractors that have no role in the production or providing of electricity shows that the task is not an "important" part of the business of providing electricity to customers. As explained by Chief Judge Sanders in *Raines v. Gould, Inc.*:

Every manufacturer must have a plant, but this fact alone does not make the work of constructing a plant a part of the trade or business of every manufacturer who engages a contractor to construct a plant. Otherwise, the employees of every contractor so engaged would be the statutory employees of every such manufacturer.

288 S.C. 541, 547, 343 S.E.2d 655, 659 (Ct. App. 1986).

Moreover, in *Dickerson v. Eastman Kodak Company*, 569 F. Supp. 1221 (D.S.C. 1983), the court addressed a situation where the contractor's work was "necessary" and even "absolutely indispensable" for the defendant business to operate, but the court still found the work was still not part of the "trade or business" of the defendant if it is not work the direct employees would regularly perform. Quoting from Larson's Workmen's Compensation Law § 49.12 (1982), the court held:

From these cases it will be readily seen that the test is not one of whether the subcontractor's activity is useful, necessary, or even absolutely indispensable to the statutory employer's business, since, after all, this could be said of practically any repair, construction, or transportation service. The test ... is whether this indispensable activity is, in that business, normally carried on through employees rather than independent contractors.

Id. (Emphasis added). Under Professor Larson's analysis, even assuming, *arguendo*, that SCE&G had to demolish/repair/upgrade the subject electrical panel box located on the valve that controlled Turbine No.3 at Canadys Station to be able to continue to power the generator

SCE&G utilizes to generate electricity, that fact does not transform Plaintiff's demolition work into part of the "trade of business" of "providing electricity to customers in South Carolina".

In *Abbot v. The Limited, Inc.*, 338 S.C. 161, 526 S.E.2d 513 (2000), the South Carolina Supreme Court used this same logical approach to hold that even though the transportation of goods was absolutely "essential" to the defendant's business, the subcontractor's employee was not a statutory employee because "[t]he mere fact that transportation of goods to one's place of business is essential for the conduct of the business does not mean that the transportation of the goods is a part or process of the business." *Abbott*, 338 S.C. at 163, 526 S.E.2d at 514. Chief Justice Toal in *Olmstead v. Shakespeare*, 354 S.C. 421, 426, 581 S.E.2d 483, 486 (2003) reiterated this point in holding:

[T]ransportation of goods is important to nearly all businesses, and, that transportation of goods by a common carrier alone, without something more, does not qualify as "part of [the owner's] trade, business, or occupation" under any of the three established tests for statutory employment.

Under our Supreme Court precedent, even though it may have been "absolutely essential," for Defendant SCE&G to demolish and replace the subject electrical panel box, that fact does not change SCE&G's entire *persona* as a provider of electricity into a demolition/construction company.

Under the particular facts and circumstances of this case, SCE&G fails to meet the criteria of the first test as the activities of the Plaintiff were not an important part of SCE&G's business or trade. Moreover, SCE&G fails to meet the criteria of the second test as such demolition/repair work was not a necessary, essential, and integral part of SCE&G's business, pursuant to South Carolina case law.

C. The Specific Repair Work Being Performed by the Plaintiff Had Not Been Done by SCE&G Employees Before.

Defendant SCE&G likewise cannot meet the third test for statutory employment -- whether or not the identical activity performed by the Plaintiff has been performed by employees of SCE&G. *Voss*, 325 S.C. at 569, 482 S.E.2d at 586. As set forth above, on the date of the incident which forms the subject of this action, the Plaintiff was performing demolition work on an electrical panel box that mounted to a control valve. SCE&G employees have testified as follows regarding the subject panel box:

Q. It's my understanding, and I'll represent to you he's -- he will testify that that day he was assigned to remove some wires from a panel box. Are you familiar with the panel box?

A. I am.

Q. Was that panel box being replaced?

A. Yes, sir. It was completely going away.

Q. I assume they were upgrading it, putting a new one in?

A. Yes. It was attached to that large valve that was completely removed.

Q. To your knowledge, had that panel box ever been replaced during your tenure?

A. Oh, no, sir. It was definitely 40 years old.

(Wendell Polk Dep. 11:25 to 12:15) (emphasis added).

Q. At that time, can you give me a rough estimate of how many SCE&G employees were at the plant on a daily basis, how many people were employed there?

A. At the plant would've been around 50.

Q. Among those 50, did SCE&G employ, at that time, anyone who would be responsible for doing any sort of demolition work?

A. No, sir.

(Wendell Polk Dep. 16:3 to 16:11) (emphasis added).

Q. Okay. During that time, did you ever have occasion to work on the particular panel box involved in this case?

A. That particular one, maybe once or twice.

Q. What type of work would you have done on that panel box?

A. It might have been checking the switches in it to tell if the valves open and closes.

Q. But nothing as far as demoing it or taking it apart or replacing it?

A. No.

(Richard Wilson Dep. 13:12 to 13:24) (emphasis added).

Q. Okay. Do you have any knowledge as to whether any other SCE&G employees have ever done any type of work on that panel?

A. I'm sure some of the other electricians have worked on that panel. I know they have as far as the switches.

Q. But as far as any sort of demo or pulling out wires or replacing the panel itself.

A. Not that particular one, no.

(Richard Wilson Dep. 14:10 to 14:18) (emphasis added).

Q. Do you know if SCE&G has ever demolished, removed and upgraded that unit or units at Canadys at any time previous?

A. This particular unit?

Q. Yes, sir.

A. I would say no.

(Lawrence Purvis Dep. 12:24 to 13:4).

While the above-referenced testimony of the SCE&G employees establishes that they may have performed routine maintenance on the subject panel box in the past, none of the employees had ever, or knew of any other employees who had ever, performed the specific work that the Plaintiff was doing at the time of his injuries. Moreover, as previously noted, the work being performed by the Plaintiff at the time of his injury was not routine maintenance. (See

Richard Wilson Dep. 32:23 to 33:4; Lawrence Purvis Dep. 20:3 to 20:6; Joe Foster Dep. 28:15 to 28:24).

Defendant SCE&G has failed to provide any evidence that the identical activity being performed by the Plaintiff when he was injured had been previously performed by SCE&G employees. Therefore, SCE&G has failed to carry its burden with regard to the third test utilized by South Carolina courts in the statutory employment context.

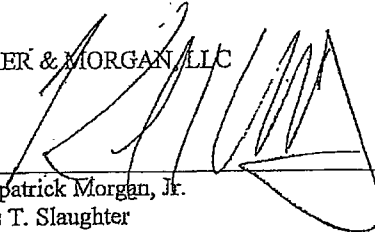
CONCLUSION

"The concept of statutory employment is designed to protect the employee by assuring workmen's compensation coverage by either the subcontractor, the general contractor, or the owner if the work is a part of the owner's business." *Parker v. Williams & Madjanik, Inc.*, 275 S.C. 65, 72, 267 S.E.2d 524, 528 (1980); *see also Harrell v. Pineland Plantation, Ltd.*, 337 S.C. 313, 322, 523 S.E.2d 766, 771 (1999)(The purpose of the statutory employer doctrine is to prevent a business owner from subcontracting out the core work of its business in order to evade responsibility for workers compensation payments.). This concept simply has no applicability in this case, and the stated purpose of the statutory employer statute would not be advanced by denying the Plaintiff a tort recovery against one of the companies responsible for his injuries, SCE&G.

For this reason, along with the reasons stated herein, Plaintiff respectfully requests that this Honorable Court deny Defendant SCE&G's Motion for Summary Judgment.

Respectfully submitted this 3rd day of September, 2014.

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EXHIBIT A

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

RECEIVED
U.S. DISTRICT COURT
CHARLESTON, SC

2013 SEP -9 P 2:36

Samuel Washington,

Plaintiff,

v.

South Carolina Electric and Gas Company,
and Emerson Electric Company d/b/a
Emerson Network Power, and/or Emerson
Network Power,

Defendants.

No. 2:13-cv-1886-RMG

This matter comes before the Court on Plaintiff's motion to remand pursuant to 28 U.S.C. § 1447(c). (Dkt. No. 15). For the reasons set forth below, the Court grants this motion.

Background

Plaintiff, a citizen and resident of South Carolina, filed this civil action on May 28, 2013, in the Colleton County Court of Common Pleas. In his complaint, Plaintiff alleges that he was employed by Applied Control Technology when he was electrocuted while performing work on a junction box at a facility owned or operated by the Defendants. Plaintiff alleges that Defendants were negligent in failing to shut off the power to the junction box. (Dkt. No. 1-1). Defendants subsequently removed this action to this Court asserting diversity jurisdiction under 28 U.S.C. § 1332. (Dkt. No. 1). Defendant Emerson Electric Company d/b/a Emerson Network Power, and/or Emerson Network Power ("Emerson"), is a citizen of Missouri and therefore diverse from Plaintiff. Defendant South Carolina Electric and Gas Company ("SCE&G") is a citizen of South Carolina and therefore not diverse; however, Defendants argue that SCE&G was fraudulently joined and therefore should not be considered in determining diversity under 28



U.S.C. § 1332. (Dkt. No. 1). Plaintiff then filed the present motion to remand. (Dkt. No. 15). Defendants then filed a response in opposition to the motion. (Dkt. Nos. 19, 23).

Legal Standard

The burden of demonstrating jurisdiction resides with “the party seeking removal.” *Dixon v. Coburg Dairy, Inc.*, 369 F.3d 811, 816 (4th Cir. 2004) (citing *Mulcahey v. Columbia Organic Chems. Co.*, 29 F.3d 148, 151 (4th Cir. 1994)). “Any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed . . . to [a] district court of the United States” 28 U.S.C. § 1441(a). A district court has original jurisdiction over civil actions “where the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and is between—(1) citizens of different States.” 28 U.S.C. § 1332. “The court is obliged to construe removal jurisdiction strictly,” *Murphy v. Jefferson Pilot Commc’ns Co.*, 657 F. Supp. 2d 683, 689 (D.S.C. 2008), and “[i]f at any time before final judgment it appears that the district court lacks subject matter jurisdiction, the case shall be remanded,” 28 U.S.C. § 1447(c).

A resident defendant who is fraudulently joined will not defeat diversity jurisdiction. *Hartley v. CSX Transp., Inc.*, 187 F.3d 422, 424 (4th Cir. 1999). “To show fraudulent joinder, the removing party must demonstrate either (1) outright fraud in the plaintiff’s pleading of jurisdictional facts or (2) that there is no possibility that the plaintiff would be able to establish a cause of action against the in-state defendant in state court.” *Id.* at 424 (internal quotation marks omitted). “The party alleging fraudulent joinder bears a heavy burden—it must show that the plaintiff cannot establish a claim even after resolving all issues of law and fact in the plaintiff’s favor. This standard is even more favorable to the plaintiff than the standard for ruling on a motion to dismiss under Fed. R. Civ. P. 12(b)(6). The plaintiff need not establish that he will

ultimately succeed on his claims; [t]here need be only a slight possibility of a right to relief.” *Murphy*, 657 F. Supp. 2d at 690 (citing *Hartley*, 187 F.3d at 424-25).

Discussion

Defendants assert that SCE&G was fraudulently joined because Plaintiff has no possibility of establishing relief against it in state court. Specifically, Defendants argue that any claim for negligence Plaintiff has against SCE&G is barred by the South Carolina Worker’s Compensation Act. S.C. Code § 42-1-540. Plaintiff, however, asserts that there is at least a question of fact regarding whether he would be considered an employee of SCE&G under the statute and that remand is therefore proper.

The relevant portion of the South Carolina Workers Compensation Act states that:

When any person, in this section and §§ 42-1-420 and 42-1-430 referred to as “owner,” undertakes to perform or execute any work which is part of his trade, business or occupation and contracts with any other person (in this section and §§ 42-1-420 to 42-1-450 referred to as “subcontractor”) for the execution or performance by or under such subcontractor of the whole or any part of the work undertaken by such owner, the owner shall be liable to pay to any workman employed in the work any compensation under this Title which he would have been liable to pay if the workman had been immediately employed by him.

S.C. Code § 42-1-400. If a worker is classified as a “statutory employee” under this section, he may not maintain a negligence action against his direct or statutory employer. *Hancock v. Wal-Mart Stores, Inc.*, 584 S.E.2d 398, 400 (S.C. Ct. App. 2003). To determine whether an employee is engaged in an activity that is part of the owner’s trade, business, or occupation as required by this section, South Carolina courts have applied the following three tests: “(1) is the activity an important part of the owner’s business or trade; (2) is the activity a necessary, essential, and integral part of the owner’s business; or (3) has the activity previously been performed by the owner’s employees?” *Id.* at 400-01.

Here, the Court must determine whether there is even "a slight possibility" that Plaintiff would not be considered a statutory employee of SCE&G under the South Carolina's Workers Compensation Act. *Murphy*, 657 F. Supp. 2d at 690. Plaintiff asserts that the statutory employee issue is a fact-intensive one which must be investigated through discovery, with each case being "decided on its own facts." *Ost v. Integrated Prods., Inc.*, 371 S.E.2d 796, 798 (S.C. 1998). Because such an inquiry is required, Plaintiff argues that remand is proper. *See Hartley*, 187 F.3d at 424-25 (finding remand proper when applicability of a defense may require factual investigation).

In response, Defendants cite a 1959 case in which the South Carolina Supreme Court upheld a trial court's grant of a defendant's demurrer to a plaintiff's complaint on the ground that the plaintiff was a statutory employee. *Bell v. S.C. Elec. & Gas Co.*, 234 S.C. 577 (S.C. 1959). However, more recently reported decisions suggest that this issue is fact-bound and is more properly determined after an opportunity to develop the record. For example, Defendants cite to *Hancock v. Walmart* in their response to Plaintiff's motion for remand, (Dkt. No. 19). In that case, the statutory employee issue was determined on summary judgment. *Hancock*, 584 S.E.2d at 399. Similarly, in *Poch v. Bayshore Concrete Products*, No. 27304, 2013 WL 4553497 (S.C. Aug. 28, 2013), the South Carolina Supreme Court affirmed a trial court's grant of summary judgment to a defendant on the basis that the plaintiff was a statutory employee.

Construing all issues of law and fact in Plaintiff's favor, the Court finds that there is at least a "slight possibility" that Plaintiff is not a statutory employee of SCE&G. *Murphy*, 657 F. Supp. 2d at 690. Given the fact-intensive nature of the inquiry, the Court finds it is not absolutely clear at this stage that Plaintiff would have no possibility of relief against SCE&G in state court and that remand of this action is proper. *See Hartley*, 187 F.3d at 424-25.

Conclusion

For the reasons set forth above, the Court grants Plaintiff's motion to remand. (Dkt. No. 15). Accordingly, this action, along with all pending motions, is remanded to the Colleton County Court of Common Pleas.

AND IT IS SO ORDERED.


Richard Mark Gergel
United States District Court Judge

September 9, 2013
Charleston, South Carolina

EXHIBIT B

SC Dept of Labor, Licensing & Regulation
Office of Occupational Safety and Health

Inspection Number: 315693465
Inspection Date(s): 9/29/2011 - 10/20/2011
Issuance Date: 12/20/2011
CSHO ID: Q4820
Optional Report No.: 0551-12

Citation and Notification of Penalty

Company Name: SCE&G
Inspection Site: 13139 Augusta Highway, Canadys, SC 29433

Citation 01 Item 001 Type of Violation: **Serious**

SCRR Chapter 71, 1910.269(d)(2)(iv): Failed to ensure that the procedure shall clearly and specifically outline the scope, purpose, responsibility, authorization, rules, and techniques to be applied to the control of hazardous energy, and the measures to enforce compliance including, but not limited to, the following (A) a specific statement of the intended use of this procedure; (B) specific procedural steps for shutting down, isolating, blocking and securing machines or equipment to control hazardous energy; (C) specific procedural steps for the placement, removal, and transfer of lockout devices or tagout devices and the responsibility for them; and (D) specific requirements for testing a machine or equipment to determine and verify the effectiveness of lockout devices, tagout devices, and other energy control measures, as follows:

A. On or about September 28, 2011, written specific procedure was not conducted to verify the isolation and deenergizing of the left hand reheat valve number three.

Date By Which Violation Must Be Abated:
Proposed Penalty:

1/23/2012
\$1,625.00



S.C. Dept of Labor, Licensing & Regulation
Office of Occupational Safety and Health

Inspection Number: 315693465
Optional Report No.: 0551-12
CSHO ID: Q4820
Inspection Date(s): 9/29/2011 -

10/20/2011

Establishment Name: SCE&G

Standard Number: 1910.269(d)(2)(iv)

Citation #: 01

Item #: 001

A. Brief Description of Hazard

accidental contact with live wires

B. Evidence Which Supports Basis for Alleged Violation 1,2

B1. How requirements of standard were violated (e.g. measurements):

no specific steps to show correct lockout tagout procedures to shutdown and remove and replace valve number three

B2. Evidence of employee exposure (e.g. names of exposed employees):

SCE&G hired comapany to design and oversee the installation of the new controls and valves and inturn they hired a company to conduct the labor portion of the installation.

B3. Employer knowledge of hazard:

Andy Green stated, "No we do not have any type of lockout tagout procedures in place for replacing the reheat valves this type of replacement only takes place every 30 to 40 years."
Kevin Young stated, "No we do not have LOTO procedures for this."

B4. Evidence of employer/employee relationship:

SCE&G employees are working with all contract workers on their site

B5. Basis for assigned abatement period:

existed: 1 day
last used: in use

S.C. Dept of Labor, Licensing & Regulation
Office of Occupational Safety and Health

Inspection Number: 315693465
Optional Report No.: 0551-12
CSHO ID: Q4820
Inspection Date(s): 9/29/2011 -

10/20/2011

Establishment Name: SCE&G

C. Rationale for Penalty Calculation

14a Severity (H/M/L/N)	H
14b Probability (G/L)	L
14c Gravity	03
14e Number of Times Repeated	0
14f Size	0%
14g Good Faith	25%
14h History	10%
14i IAPR	0%

D. Penalty Calculation

Gravity Based Penalty	Penalty Multiplier	S, GF and H Credits	Proposed Adjusted Penalty
2500.00	1	35%	1625.00

E. Evidence Which Supports Penalty Multiplier (Willful, Repeat, or Fatality):

Instance: ☐ A Description: ☐ No specific procedures in place

Equipment ID: ☐ left hand reheat valve 3 Serial #: ☐ n/a Brand: ☐ n/a

Number Exposed/Title: ☐ 1/electrician

Frequency: ☐ as needed Proximity: ☐ at equipment

Measurements:

☐ SCE&G did not develop written procedures for the shutdown, removal and new installation for valves such as but not limited to the left hand reheat valves number three. The company has a lock out tag out program and written specific procedures in place for various pieces of equipment. This valves only get replaced every 30 to 40 years per SCE&G Safety Advisor, CO asked if any SCE&G personnel and or team got together to develop and implement procedures before this shutdown and replacement was started and the answer was no it was not.

Surrounding Conditions: ☐ dry concrete slab on grade

PPE Provided: ☐ No ☐ Used: ☐ N/A ☐ Training: ☐ N/A ☐ Aggravated Hazard: ☐ N/A ☐ Mitigates Hazard: ☐ N/A ☐

PPE Type: ☐

Eng Controls: ☐ N/A ☐ Eng Type: ☐

Medical Surveillance/Testing/Training: ☐

Sampling: ☐ N/A ☐ Sample Type: ☐

Substance: ☐

Most Reasonably Predictable Injury or Illness: ☐ severe electrical shock

Additional Info:

☐ existed: 1 day

☐ last used: in use

SC Dept of Labor, Licensing & Regulation
Office of Occupational Safety and Health

Inspection Number: 315693465
Inspection Date(s): 9/29/2011 - 10/20/2011
Issuance Date: 12/20/2011
CSHO ID: Q4820
Optional Report No.: 0551-12

Citation and Notification of Penalty

Company Name: SCE&G
Inspection Site: 13139 Augusta Highway, Canadys, SC 29433

Citation 01 Item 002 Type of Violation: **Serious**

SCRR Chapter 71, 1-1910.269(d)(6)(vii): Failed to have the authorized employee verify that isolation and deenergizing of the machine or equipment have been accomplished before starting work on machines or equipment that have been locked out or tagged out. If normally energized parts will be exposed to contact by an employee while the machine or equipment is deenergized, a test shall be performed to ensure that these parts are deenergized, as follows:

A. On or about September 28, 2011, the isolation and deenergizing was not accomplished on the left hand reheat valve number three.

Date By Which Violation Must Be Abated:
Proposed Penalty:

12/29/2011
\$1,625.00

**S.C. Dept of Labor, Licensing & Regulation
Office of Occupational Safety and Health**

Inspection Number: 315693465
Optional Report No.: 0551-12
CSHO ID: Q4820
Inspection Date(s): 9/29/2011 -

10/20/2011

Establishment Name: SCE&G

Standard Number: 1910.269(d)(6)(vii)

Citation #: 01

Item #: 002

A. Brief Description of Hazard

possible shock from live wires and terminals

B. Evidence Which Supports Basis for Alleged Violation 1,2

B1. How requirements of standard were violated (e.g. measurements):

failed to visually inspect box to determine if all incoming wires and terminals were deenergized

B2. Evidence of employee exposure (e.g. names of exposed employees):

workers in the box removing all wires and terminals to replace with new equipment

B3. Employer knowledge of hazard:

Mr. Andy Green stated, "No we did not go to the box to visually verify that all wires in the reheat box were deenergized."

B4. Evidence of employer/employee relationship:

SCE&G works close with all contractors on their site

B5. Basis for assigned abatement period:

exist: 1day

last used: in use

S.C. Dept of Labor, Licensing & Regulation
Office of Occupational Safety and Health

Inspection Number: 315693465
Optional Report No.: 0551-12
CSHO ID: Q4820
Inspection Date(s): 9/29/2011 -

10/20/2011

Establishment Name: SCE&G

C. Rationale for Penalty Calculation

14a Severity (H/M/L/N)	H
14b Probability (G/L)	L
14c Gravity	03
14e Number of Times Repeated	0
14f Size	0%
14g Good Faith	25%
14h History	10%
14i IAPR	0%

D. Penalty Calculation

Gravity Based Penalty	Penalty Multiplier	S, GF and H Credits	Proposed Adjusted Penalty
2500.00	1	35%	1625.00

E. Evidence Which Supports Penalty Multiplier (Willful, Repeat, or Fatality):

Instance: **A** Description: **Did not visually verify wires were deenergized**

Equipment ID: **lft hnd reheat num 3** Serial #: **n/a** Brand: **n/a**

Number Exposed/Title: **1/operator**

Frequency: **as needed** Proximity: **at reheat box**

Measurements:

SCE&G did not develop written procedures for the shutdown, removal and new installation for valves such as but not limited to the left hand reheat valves number three. The company has a lock out tag out program and written specific procedures in place for various pieces of equipment. This valves only get replaced every 30 to 40 years per SCE&G Safety Advisor, CO asked if any SCE&G personnel and or team got together to develop and implement procedures before this shutdown and replacement was started and the answer was no it was not.

Surrounding Conditions: **metal platform**

PPE Provided: **No** ☒ Used: **N/A** ☒ Training: **N/A** ☒ Aggravated Hazard: **N/A** ☒ Mitigates Hazard: **N/A** ☒

PPE Type:

Eng Controls: **N/A** ☒ Eng Type:

Medical Surveillance/Testing/Training:

Sampling: **N/A** ☒ Sample Type:

Substance:

Most Reasonably Predictable Injury or Illness: **severe electrical shock**

Additional Info:

exist: 1 day

last used: in use

EXHIBIT C

STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

COUNTY OF COLLETON

SAMUEL WASHINGTON, JR.,

Plaintiff,

vs.

CASE NO. 2013-CP-15-411

SOUTH CAROLINA ELECTRIC & GAS; AND EMERSON ELECTRIC
COMPANY, d/b/a EMERSON NETWORK POWER, AND/OR
EMERSON NETWORK POWER,

Defendants.

DEPOSITION OF: RICHARD A. WILSON

DATE: May 9, 2014

TIME: 11:27 a.m.

LOCATION: Law Offices of Walker & Morgan
135 E. Main Street
Lexington, SC

TAKEN BY: Counsel for the Plaintiff

REPORTED BY: Christina L. Essi,
Registered Professional Reporter

A. WILLIAM ROBERTS, JR., & ASSOCIATES

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1 occurred or anything?

2 A. A little bit. We also just -- we
3 debriefed as far as how to respond to the scene,
4 just the first responders at that point.

5 Q. That would have been just the first
6 responders?

7 A. Yes.

8 Q. Was the other debrief, was that a
9 general everybody-that-was-in-the-area debrief?

10 A. Yes, I believe so.

11 Q. Who led that debriefing; do you recall?

12 A. I don't recall.

13 Q. In those type of circumstances, would
14 it normally be some sort of supervisor or manager?

15 A. Either a supervisor or a safety person.

16 Q. Okay. Do you recall any discussions
17 that were had about what may have happened or led
18 to this incident?

19 A. Yes.

20 Q. Do you recall those today?

21 A. Just that there was power on the wire
22 that he came in contact with.

23 Q. Okay. Stepping back a little bit, it's
24 my understanding that during that time, in that
25 September 2011 range, there was a project going on

1 at the Canadys Station plant; is that correct?

2 A. Yes.

3 Q. What's your understanding as to the
4 reason behind that? Like what was going on?

5 A. We were doing an upgrade on our DCS
6 system as well as control valves that control the
7 steam going to the turbine which we use to turn the
8 generator to generate the power. It was a major,
9 major upgrade changing the valves out and controls
10 and pulling new wire in, replacing wire.

11 Q. So this wasn't just a routine
12 maintenance thing, it was a major repair?

13 A. Major, yes.

14 Q. What does DCS stand for?

15 A. Distributive control system.

16 Q. Can you explain that in layman's term?

17 A. It takes signals in. It's basically a
18 computer, it brings signals into the computer, it
19 extrapolates what the signals are, what they're
20 doing, and it sends signals out for other items to
21 respond or valves to act certain ways.

22 Q. Okay. Do you know about how long that
23 project lasted? And it doesn't have to be exact.

24 A. It was a few months or a month to a
25 month and a half. I can't remember exactly.

1 sure the plant was running correctly and how the
2 operators wanted it to run.

3 Q. Was it usually reactionary, like
4 someone calls you and says, hey, we have an issue
5 with --

6 A. Some of it was. Some of it was
7 preventive. It was both.

8 Q. So you'd actually go to what seems like
9 a perfectly functioning machine and make sure
10 everything is --

11 A. Right.

12 Q. Okay. During that time, did you ever
13 have occasion to work on the particular panel box
14 involved in this case?

15 A. That particular one, maybe once or
16 twice.

17 Q. What type of work would you have done
18 on that panel box?

19 A. It might have been checking the
20 switches in it to tell if the valves open and
21 closes.

22 Q. But nothing as far as demoing it or
23 taking it apart or replacing it?

24 A. No.

25 Q. Did you ever do any type of demo or

1 work like that at that plant?

2 A. Yes.

3 Q. What type of --

4 A. It might've been replacing beck drives
5 which is just a different type of drive. It could
6 be other drives. I mean, there's a lot of
7 different things that we'll work on in demo, but
8 that particular one -- because that's a major,
9 major valve in the plant.

10 Q. Okay. Do you have any knowledge as to
11 whether any other SCE&G employees have ever done
12 any type of work on that panel?

13 A. I'm sure some of the other electricians
14 have worked on that panel. I know they have as far
15 as the switches.

16 Q. But as far as any sort of demo or
17 pulling out wires or replacing the panel itself.

18 A. Not that particular one, no.

19 Q. Have you ever met Mr. Washington?

20 A. Yes.

21 Q. Prior to this incident?

22 A. Yes.

23 Q. Do you know about how long he had been
24 working there?

25 A. I don't recall. From what I remember,

1 plant, my understanding is that the power company
2 contracted with someone to have that done; is that
3 correct?

4 A. That's correct.

5 Q. Do you know who they contracted with?

6 A. Emerson, I believe.

7 Q. All right. So in terms of doing the
8 renovations that were then in turn critical for the
9 generation of power, those things were being
10 undertaken by Emerson on behalf of the power
11 company; is that correct?

12 A. To my knowledge, yes.

13 Q. You weren't involved in the contract or
14 any of the --

15 A. No.

16 Q. -- the negotiations of those things?

17 A. No.

18 MR. RAMSEY: That's all I have.

19 MR. SLAUGHTER: I've just got a few
20 more.

21 RE-EXAMINATION

22 BY MR. SLAUGHTER:

23 Q. The project and the work that was being
24 done on Unit 3, this wouldn't be considered routine
25 maintenance, would it?

1 A. No.

2 Q. This is, again, a major overhaul or
3 repair?

4 A. Yes.

5 Q. Or upgrade, excuse me.

6 Could this incident have been prevented
7 had this equipment been locked out/tagged out?

8 A. Yes, but also the live-dead-live, which
9 was supposed to be done before anything is touched,
10 that was communicated to the groups each morning in
11 the meeting, would have also prevented it.

12 Q. But is the lockout/tag-out supposed to
13 be to primary safety mechanism to prevent this type
14 of incident?

15 A. Yes. But you're supposed -- even
16 though it's in place, you're supposed to check and
17 make sure it's de-energized before you work on it,
18 because there could be other feeds feeding it. And
19 if you do find power, then work stops and then you
20 work to remedy the problem and get the power off of
21 it.

22 Q. Is there any policy or procedure or
23 practice in place where any sort of -- once a piece
24 of equipment is locked out, anyone from SCE&G does
25 an inspection, a visual inspection or test, to make

EXHIBIT D

vs

Defendants.

D E P O S I T I O N

REPORTED BY: GINA M. SMITH
Certified Shorthand Reporter
Registered Professional Reporter

89

1 done during the outage and the amount of work that
2 our own employees have to do. So we may bring
3 someone in like Emerson to do this work or we might
4 do it ourselves in an outage.

5 Q. What was the work they were doing? What's
6 your understanding of what Emerson was doing at
7 Canadys on this project?

8 A. Working on the controls on the boiler feed
9 pump.

10 Q. Do you know what they were doing on the
11 controls?

12 A. No, I do not.

13 Q. If it's been described by other SCE&G
14 people that they were demolishing it and replacing
15 it with entirely new equipment for the first time
16 since Canadys facility opened, would that be new
17 information to you?

18 A. It would be to me, but might not have been
19 to my purchasing agent.

20 Q. Because you've just said we do this type
21 work and --

22 A. We do. We work on boiler feed pump
23 controls all the time, so --

24 Q. Do you know if SCE&G has ever demolished,
25 removed and upgraded that unit or units at Canadys

1 at any time previous?

2 A. This particular unit?

3 Q. Yes, sir.

4 A. I would say no.

5 Q. It had never been done before, so --

6 A. I would say no, but I'm not -- I'm not --

7 I wouldn't be a hundred percent sure of that.

8 Q. Well, if other people at SCE&G concur with
9 that statement that this had never been done
10 before, would you need to qualify your statement
11 that we've done this type work before, but sometime
12 when's we need extra people, we bring in Emerson?

13 A. I would have to go back and pull records
14 to see if we had done anything to this unit before.

15 Q. Okay.

16 A. Because I would not know that.

17 Q. All right. So you can't say for sure that
18 your previous statement that we've done this work
19 before is an accurate statement, the specific work
20 that Emerson was doing under this master service
21 agreement?

22 A. No, we have done work on boiler feed pumps
23 previously, yes. On this particular boiler feed
24 pump, no, I can't tell that you we have done it
25 previously.

1 find that out from, correct?

2 A. Yes.

3 Q. All right. Would you agree that this was
4 not routine maintenance that was going on at
5 Canadys?

6 A. Yes.

7 Q. It was not?

8 A. It wasn't routine in the fact that it's --
9 or in the context that it's something that would be
10 done every year or every two years or every three
11 years.

12 Q. Well, what if --

13 A. I mean, it's done.

14 Q. What if the record indicates it had never
15 been done before, would that help you to say it
16 wasn't routine maintenance?

17 A. It's been done on other plants before.

18 Q. Okay. Upgrading?

19 A. Yeah.

20 Q. Okay. So if the record indicates
21 objectively that this was the first upgrade of the
22 distributive control system since the plant was
23 originally built, you would agree that that was not
24 on a routine own maintenance schedule somewhere being
25 done once a year or once every five years, once

1 Q. And have you ever heard of the live dead
2 live test?

3 A. Live dead, yes.

4 Q. And could Mr. Washington have prevented
5 this accident if he performed the live dead live
6 test?

7 A. Yes.

8 Q. Okay. I got no further questions.

9 A. Electricians normally do that, but --

10 Q. Okay. Didn't mean to interrupt you there.
11 All right. I got no further questions.

12 BY MR. MORGAN:

13 Q. Mr. Purvis, if you come to trial and
14 testify, are you going to offer opinions on the
15 standard of care that electricians should or should
16 not follow in doing their jobs?

17 A. No.

18 Q. You've already agreed that this was a
19 major project in the eyes of SCE&G, a major work
20 project?

21 A. Major work project.

22 Q. All right. And would you agree that
23 upgrading a control system is specialized work?

24 A. It is specialized in that, yes, it is
25 specialized.

EXHIBIT E

STATE OF SOUTH CAROLINA
COUNTY OF COLLETON
SAMUEL WASHINGTON, JR.,
Plaintiff,

vs. CASE NO. 2013-CP-15-411

SOUTH CAROLINA ELECTRIC & GAS; AND EMERSON ELECTRIC
COMPANY, d/b/a EMERSON NETWORK POWER, AND/OR
EMERSON NETWORK POWER,
Defendants.

DEPOSITION OF: WENDELL RALPH POLK

DATE: May 9, 2014

TIME: 10:03 a.m.

LOCATION: Law Offices of Walker & Morgan
135 E. Main Street
Lexington, SC

TAKEN BY: Counsel for the Plaintiff

REPORTED BY: Christina L. Essi,
Registered Professional Reporter

A. WILLIAM ROBERTS, JR., & ASSOCIATES

Fast, Accurate & Friendly

Charleston, SC	Hilton Head, SC	Myrtle Beach, SC
(843) 722-8414	(843) 785-3263	(843) 839-3376

Columbia, SC	Greenville, SC	Charlotte, NC
(803) 731-5224	(864) 234-7030	(704) 573-3919

1 that anybody can do without any sort of
2 certification or licensing?

3 A. Well, you would have to know
4 electricals pretty good, yeah.

5 Q. During your time at SCE&G, was there
6 ever a time when a project of this scale was
7 undertaken at the Canadys plant?

8 A. Yeah. I mean, there was stuff like
9 that -- I'm not exactly clear on what you're
10 asking. Did the the company do it by itself or --

11 Q. As far as the six-week project that was
12 going on during this time.

13 A. Oh, yeah. I mean, different -- there's
14 different projects over the years. They'll do
15 upgrades on different systems at different times.

16 Q. And is that something usually, again,
17 that -- is it something SCE&G would do themselves
18 or would it be contracted out to --

19 A. Generally contracted out.

20 Q. Okay. During your time at SCE&G, were
21 you ever assigned to perform any of the type of
22 work that Mr. Washington was performing that day?

23 A. I've worked on that valve several
24 times.

25 Q. It's my understanding, and I'll

1 represent to you he's -- he will testify that that
2 day he was assigned to remove some wires from a
3 panel box. Are you familiar with the panel box?

4 A. I am.

5 Q. Was that panel box being replaced?

6 A. Yes, sir. It was completely going
7 away.

8 Q. I assume they were upgrading it,
9 putting a new one in?

10 A. Yes. It was attached to that large
11 valve that was completely removed.

12 Q. To your knowledge, had that panel box
13 ever been replaced during your tenure?

14 A. Oh, no, sir. It was definitely
15 40 years old.

16 Q. Okay. Going back to the incident
17 itself, after Mr. Washington was taken away by the
18 paramedics or the first responders, was any
19 discussion had about what happened or were you made
20 aware of anything that happened leading up to the
21 incident?

22 A. No formal discussion about that. You
23 know, we had a debriefing about the accident
24 itself, the first responders did. But not a whole
25 lot of discussion about that.

1 job, it would go to instrument people. But we
2 worked together as a group all the time.

3 Q. At that time, can you give me a rough
4 estimate of how many SCE&G employees were at the
5 plant on a daily basis, how many people were
6 employed there?

7 A. At the plant would've been around 50.

8 Q. Among those 50, did SCE&G employ, at
9 that time, anyone who would be responsible for
10 doing any sort of demolition work?

11 A. No, sir.

12 Q. When you got to Mr. Washington on the
13 day of the incident, and I don't know that we have
14 a picture of the area, but had he been moved from
15 the area where he was working; do you know?

16 A. He was laying -- his feet were closer
17 to it, but his feet were probably, I'm guessing,
18 three or four feet from it. So somebody -- yeah, I
19 guess he did get moved.

20 Q. Do you know if it was determined that
21 that area where he was working was still, I'm going
22 to say, hot; I mean, is that fair to --

23 A. It was not determined as far as I know.

24 Q. During your 13 years at SCE&G, were you
25 ever assigned to work on this particular panel box?

1 A. I was.

2 Q. What kind of work would you be asked to
3 do?

4 A. It had some limit switches inside the
5 box. There was a shaft that came through the box
6 for valve positioning and those switches
7 occasionally would fail or get a little out of
8 adjustment and then we would go in and make an
9 adjustment.

10 Q. So would it be fair to call that
11 routine maintenance?

12 A. Yeah.

13 Q. But as far as removing, replacing the
14 wires or actually removing, replacing the box
15 itself, you were never asked to do that?

16 A. No, sir.

17 Q. It's my understanding that the panel
18 box, and correct me if I'm wrong, was mounted to
19 the turbine?

20 A. To the valve, to the reheat valve.

21 Q. During that time, was that turbine
22 being ungraded?

23 A. Only the control valves.

24 Q. Okay. Help me out, what are the
25 control valves? What's their function?

EXHIBIT F

***** ROUGH DRAFT *****

DEPOSITION OF JOE FOSTER

MAY 21, 2014

THIS UNEDITED ROUGH DRAFT OF THE PROCEEDINGS
WAS PRODUCED AND IS NOT CERTIFIED. THE ROUGH DRAFT
TRANSCRIPT MAY NOT BE CITED OR USED IN ANY WAY OR AT ANY
TIME, TO REBUT OR CONTRADICT THE CERTIFIED TRANSCRIPTION OF
PROCEEDINGS.

THERE WILL BE DISCREPANCIES IN THIS FORM
BECAUSE THIS HAS NOT BEEN EDITED, PROOFREAD, CORRECTED,
FINALIZED, INDEXED, BOUND OR CERTIFIED.

THERE WILL ALSO BE A DISCREPANCY IN PAGE
NUMBER APPEARING ON THE UNEDITED ROUGH DRAFT AND THE EDITED,
PROOFREAD, CORRECTED AND CERTIFIED FINAL.

1 technical division, they do have electrical engineers.

2 Q When y'all do routine maintenance during
3 shutdowns, I'm assuming there's a list of everything --
4 all the tags you want to perform. Do you break them
5 down into areas of -- I say expertise, whether it's
6 mechanical, whether it's electrical, whether it's
7 plumbing? Is that how it's done so you know what type
8 person to task with that job?

9 A By the craft, we did. Rick -- that's why I
10 assigned Ricky this project. He was my --

11 Q And what was Ricky's area?

12 A Ricky is an instrument guy.

13 Q An instrument guy, control guy?

14 A Yes. Instrument and controls.

15 Q All right. All right. And are you aware --
16 it's our understanding that this is the first time these
17 controls were being updated with state of the art
18 equipment -- controls since the Canadys Plant had come
19 on line 40, 50 years ago. Is that your understanding?

20 A Yes. As far as the full update, yes.

21 Q All right. So there's no doubt that routine
22 maintenance had ever done what Emerson was doing on this
23 project?

24 A Correct.

25 Q Let me look at my notes. I'm almost through,

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM COLLETON COUNTY
Court of Common Pleas

J. Ernest Kinard, Jr., Judge

Case No. 2013-CP-15-0411

RECEIVED
DEC 22 2014
SC Court of Appeals

Samuel Washington, Jr.,

Respondent,

v.

South Carolina Electric & Gas Company,

Appellant,

Emerson Electric Company d/b/a Emerson Network Power,
and/or Emerson Network Power

Co-Defendant.

NOTICE OF APPEAL

Appellant South Carolina Electric and Gas Company appeals the Order of the Honorable J. Ernest Kinard, Jr., dated October 28, 2014. Appellant South Carolina Electric and Gas Company received an electronic copy of the Order on November 20, 2014.

December 19, 2014


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Attorney for Emerson Electric Company

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM COLLETON COUNTY
Court of Common Pleas

J. Ernest Kinard, Jr., Judge

Case No. 2013-CP-15-0411

RECEIVED

DEC 22 2014

SC Court of Appeals

Samuel Washington, Jr.,

Respondent,

v.

South Carolina Electric & Gas Company,

Appellant,

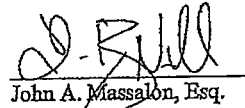
Emerson Electric Company d/b/a Emerson Network Power,
and/or Emerson Network Power

Co-Defendant.

PROOF OF SERVICE

I certify that I served the Notice of Appeal on Respondent Samuel Washington, Jr. by depositing a copy of it in the United States Mail, postage prepaid, on December 19, 2014, addressed to his attorneys of record, Margie Bright Matthews, Post Office Box 499, Walterboro, SC 29488 and S. Kirkpatrick Morgan, Jr. and Charles T. Slaughter, Post Office Box 949, Lexington, SC 29071, and that the same was also served on Co-Defendant Emerson Electric Company d/b/a Emerson Network Power, and/or Emerson Network Power by depositing a copy of it in the United States Mail, postage prepaid, on December 19, 2014, addressed to his attorneys of record, H. Michael Bowers, Esquire, Smith Moore Leatherwood LLP, 25 Calhoun Street, Suite 250, Charleston, SC 29401.

December 19, 2014

A handwritten signature in dark ink, appearing to read "J. Massalon", is written over a horizontal line.

John A. Massalon, Esq.
I. Ryan Neville
Wills, Massalon & Allen, LLC
97 Broad Street
P.O. Box 859
Charleston, SC 29402
843-727-1144
Attorneys for Appellant

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

Samuel Washington, Jr.,

Plaintiff,

v.

South Carolina Electric and Gas Company,¹

and Emerson Electric Company d/b/a

Emerson Network Power, and/or

Emerson Network Power,

Defendants.

CIVIL ACTION NO.: 2:13-CV-1886-RMG

AFFIDAVIT OF JOHN MELLETTE

I, John Mellette, who, on oath, says:

1. I am over 18 years of age, and I am qualified and competent to make this Affidavit.
2. I make this Affidavit of facts based upon my personal knowledge.
3. I am employed at SCANA Corporation as Manager, Corporate Insurance.
4. SCE&G is a wholly-owned subsidiary of SCANA Corporation. SCE&G is the principal subsidiary for SCANA.
5. On behalf of its subsidiary SCE&G, SCANA secures payment of workers' compensation insurance and has been approved as "self-insured" by the South Carolina Workers' Compensation Commission, since June 18, 1949. (See Exhibit A- Certificate of Approval to Self-Insure Workers' Compensation Liabilities in this State).
6. The self-insurance certificate attached as Exhibit A contains the reference number SI#665, which corresponds with the Policy Number "WCSI0066500" as listed on the South

¹ Initially, the Plaintiff's complaint named "SCANA Corporation and/or SCE&G Holding Company, Inc., d/b/a South Carolina Electric and Gas Company." Those defendants were dismissed without prejudice by Stipulation of the parties on 8/23/2013.

Carolina Workers' Compensation Commission "verify coverage" report for SCANA CORP. (See Exhibit B- Employers Workers' Compensation Insurance Coverage Verification). Said Report also indicates said coverage was in effect on 9/28/2011 – the date of the accident in this action.

7. Each year, SCANA provides updated information to the SC Workers' Compensation Commission to maintain its approved status as self-insured.
8. This approved status was in effect on the date of the accident involved in this action, September 28, 2011.
9. In addition to its approved self-insured status, SCANA, on behalf of SCE&G and certain other subsidiaries, additionally procured two Excess Workers' Compensation Policy of insurance coverage: (1) AEGIS Policy #C0210A1A10, which provided up to \$35,000,000 in WC excess coverage; and (2) National Union Fire Ins Co of Pittsburg, PA Policy # XWC-488-05-29 which provided additional excess WC coverage up to the statutory limits of Workers' Compensation above \$35,500,000. See Exhibit C (Declaration Pages for 10/31/2010 – 10/31/2011 Excess WC policies, which is inclusive of the 9/28/2011 accident date).
10. The above referenced workers' compensation coverage would have provided coverage for any contract employees of SCE&G, had their direct employer, for any reason, not provided adequate coverage.

As allowed by 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on 10 Sept, 2013, (city) London, (country) England

John C. Mellette

SCANA, for its subsidiary SCE&G

By: *John C. Mellette*

Its: *Manager, Corporate Relations*

State of Carolina
Workers' Compensation Commission

CERTIFICATE OF APPROVAL TO SELF-INSURE
WORKERS' COMPENSATION LIABILITIES IN THIS STATE

Scana Corporation
SCANA Corporation
Mail Code 128
Columbia, SC 29218
SIR# 665 EDIN# 570784499

is subject to the Workers' Compensation Act, S.C. Code 42-1-10 et seq., (1976, as amended), and Chapter 67 of the Code of Regulations, (1980, as amended), and has established that it has the financial ability to pay compensation directly to its employees in the amount and manner as provided by the Act. Having filed the required surety and excess insurance, Scana Corporation, is approved to self-insure its workers' compensation liabilities in this State.

Scana Corporation, is subject to and shall abide by all requirements of the Workers' Compensation Act, amendments thereto, and regulations that now are or hereafter adopted by the South Carolina Workers' Compensation Commission.

This Certificate shall remain in force until withdrawn by Scana Corporation, or revoked by the Commission upon sixty days notice an opportunity for the employer to be heard.

This Certificate becomes effective on the 18th day of June, 1949.

SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

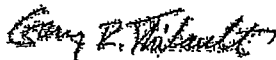

Executive Director

EXHIBIT A -- SCWCC CERTIFICATE TO SELF INSURE

Vrxwk#F duroqd#Z runhuv#Frp shqvdwlrq#Frp p kvlrq

Employers' Workers' Compensation Insurance Coverage Verification

Coverage/Injury/Illness Date	9/28/2012	Default = Today's Date
Employer Name	SCANA	☒ Contains ☒ Starts With
OR		
Federal Employer Identification Number		
SECRET MESSAGE		

[Click here for claim processing information \(and register for mid-term cancellation notice\).](#)

Worker's Compensation Insurance Coverage Provider: SOUTH CAROLINA INDIVIDUAL SELF INSURED				
Policy Number: WCS10066500				
Coverage/Injury/Illness Date: 09/28/11				
Return to Policy Results				
Employer Name	Street Address	City	State	Zip
SCANA CORP	PO BOX 100159	COLUMBIA	SC	29202-3159

EXHIBIT B

<https://www.ewccv.com/oys/>

9/6/2013

Words and phrases which appear in all-capital letters have the special meanings set forth in Section II. Definitions



POLICY NO. ~~600-000000~~

DECLARATION OF WORK

- 7000 (Q1/2010)

[1 OF 2]

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AEGIS AND THE AEGIS LOGO ARE REGISTERED SERVICE MARKS OF ASSOCIATED ELECTRIC & GAS INSURANCE SERVICES LIMITED

112

AEGIS

DECLARATIONS

continued

POLICY NO. C0210A1A10

DECLARATIONS NO. 1

Item 8: Any notice to be provided or any payment to be made hereunder to the COMPANY shall be made to:

NAME	AEGIS Insurance Services, Inc.
ADDRESS	1 Meadowlands Plaza East Rutherford, NJ 07073

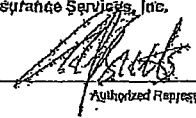
ENDORSEMENTS ATTACHED AT POLICY ISSUANCE: 1-3

COUNTERSIGNED AT East Rutherford, New Jersey

on October 29, 2010

AEGIS Insurance Services, Inc.

By


Authorized Representative

AEGIS

ASSOCIATED ELECTRIC & GAS INSURANCE SERVICES LIMITED
UNDERLYING LIMITS SCHEDULE

SCHEDULE NO. 1

This schedule is attached to and forms a part of Item 5 of the Declarations of POLICY No. CP270A1A10 and lists all underlying insurance or self-insured retentions maintained by the INSURED effective this 31st day of October, 2010 at 12:01 A.M. Standard Time at the address of the INSURED.

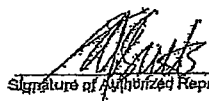
Insured or Uninsured

~~\$50,000~~ Each accident or each EMPLOYEE for disease
Coverage applicable to the following subsidiaries only:

- ~~South Carolina Electric & Gas Company~~ SCANA Services, Inc., Carolina Gas Transmission Corporation.

\$200,000 each accident or each EMPLOYEE for disease
Coverage applicable to the following subsidiaries only:

- Public Services of North Carolina Inc. d/b/a PSNC Energy


Signature of Authorized Representative

7889 (7/1989)

[1 of 1]

EXCESS WORKERS' COMPENSATION INSURANCE POLICY

Words and phrases which appear in all capital letters have the special meanings set forth in Section 1, Definitions



DECLARATIONS

POLICY NO. ~~0021021200~~
~~DECLARATION NO. 0021~~
REPLACING DECLARATIONS NO. 1
EFFECTIVE DATE July 1, 2011

- Item 1: **INSURED:** SCANA Corporation
and Subsidiaries
100 Scana Pkwy
Mail Code C105
Cayce, SC 29033-3712
- Item 2: **POLICY PERIOD:** from the date of issue to the date of expiration, both days at 12:01 A.M. Standard Time at the address of the INSURED.
- Item 3: This POLICY applies to the WORKERS' COMPENSATION LAW of each of the following STATES:
SC NC GA
- Item 4: **POLICY PREMIUM**
- Item 5: **INSURED'S RETAINED LIMIT EACH ACCIDENT OR EACH EMPLOYEE FOR DISEASE:**
~~\$50,000~~
- Item 6: **COMPANY'S LIMIT OF LIABILITY EACH ACCIDENT OR EACH EMPLOYEE FOR DISEASE:**
~~\$50,000~~
- Item 7: Any notice to be provided or any payment to be made hereunder to the INSURED shall be made to:
NAME Mr. John C. Mellette
TITLE Manager of Corporate Insurance
ENTITY SCANA Corporation
ADDRESS 100 Scana Pkwy
Mail Code C105
Cayce, SC 29033-3712 USA

7001 (01/2010)

11 OF 21

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AEGIS AND THE AEGIS LOGO ARE THE REGISTERED SERVICE MARKS OF ASSOCIATED ELECTRIC & GAS INSURANCE SERVICES LIMITED

AEGIS

DECLARATIONS

continued

POLICY NO. C0210A1A10
DECLARATIONS NO. 2
REPLACING DECLARATIONS NO. 1
EFFECTIVE DATE July 1, 2011

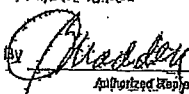
Item 8: Any notice to be provided or any payment to be made hereunder to the COMPANY shall be made to:

NAME AEGIS Insurance Services, Inc.
ADDRESS 1 Meadowlands Plaza
East Rutherford, NJ 07073

ENDORSEMENTS ATTACHED AT POLICY ISSUANCE: 1-3

Countersigned at East Rutherford, New Jersey
on July 6, 2011

AEGIS Insurance Services, Inc.


Authorized Representative

7081 (7/1/2011)

12 OF 21



NATIONAL UNION
FIRE INSURANCE COMPANY
OF PITTSBURGH, PA

A CAPITAL STOCK COMPANY
ADMINISTRATIVE OFFICES

179 WATER STREET, NEW YORK, NY 10038

EXCESS WORKERS COMPENSATION AND EMPLOYERS LIABILITY POLICY
INFORMATION PAGE



POLICY NUMBER:
~~XXXXXXXXXXXX~~
RENEWAL OF:
4890369

- ITEM 1: Named Insured and Mailing Address
SCANA CORPORATION
MAIL CODE 6108
220 OPERATION WAY
CAYCE, SC 29033
- ITEM 2: States in which coverage is to apply: SEE ATTACHED SCHEDULE
- ITEM 3: Policy Period: ~~12/01/2010 TO 12/31/2011~~ 12/01/11, Start of Time of the
Mailing Address Shown herein
- ITEM 4: QUL Limit of Indemnity
PART ONE: WORKERS COMPENSATION
~~AS EMPLOYER~~ - Each Accident
~~AS EMPLOYER~~ - Each Employee For Disease
PART TWO: EMPLOYERS LIABILITY
EXCLUDED - Each Accident
EXCLUDED - Each Employee For Disease
- ITEM 5: Your Retention
PART ONE: WORKERS COMPENSATION
~~AS EMPLOYER~~ - Each Accident
~~AS EMPLOYER~~ - Each Employee For Disease
PART TWO: EMPLOYERS LIABILITY
EXCLUDED - Each Accident
EXCLUDED - Each Employee For Disease
- ITEM 6: Premium and Premium Computation
Estimated Total Annual Remuneration
Rates Per \$100 of Remuneration
Deposit Premium
Minimum Premium
Premium for Certified Acts of Terrorism Coverage Under Terrorism Risk Insurance Act 2002 as Amended by
the Terrorism Risk Insurance Program Reauthorization Act 2007:
Included in Policy Premium

THIS POLICY INCLUDES THESE ENDORSEMENTS: SEE ATTACHED SCHEDULE

PRODUCER NAME AND ADDRESS:
HERBERT SEIBELS & WILLIAMS, INC.
PO BOX 10269
PITTSBURGH, AL 35802-0265

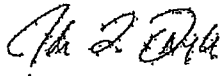
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STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

COUNTY OF COLLETON

SAMUEL WASHINGTON, JR.,

Plaintiff,

vs.

CASE NO. 2013-CP-15-411

SOUTH CAROLINA ELECTRIC & GAS; AND EMERSON ELECTRIC
COMPANY, d/b/a EMERSON NETWORK POWER, AND/OR
EMERSON NETWORK POWER,

Defendants.

DEPOSITION OF: WENDELL RALEH POLK

DATE: May 9, 2014

TIME: 10:03 a.m.

LOCATION: Law Offices of Walker & Morgan
135 E. Main Street
Lexington, SC

TAKEN BY: Counsel for the Plaintiff

REPORTED BY: Christina L. Essi,
Registered Professional Reporter

A. WILLIAM ROBERTS, JR., & ASSOCIATES

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Page 2

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19 ALSO PRESENT: Bryony B. Hodges,
20 SCE&G Associate General Counsel

21 John M. Mahon, Jr.,
22 SCE&G Associate General Counsel

23 Sandylynn Kammer,
24 SCE&G Claims Agent

25 Samuel Washington, Jr.

26 (INDEX AT REAR OF TRANSCRIPT)

1 WENDELL RALPH POLK

2 being first duly sworn, testified as follows:

3 EXAMINATION

4 BY MR. SLAUGHTER:

5 Q. State your full name for the record,
6 please.

7 A. Wendell Ralph Polk.

8 Q. Mr. Polk, we met briefly off the
9 record, but my name is Chuck Slaughter and I
10 represent Mr. Samuel Washington in this lawsuit.
11 Have you ever had your deposition taken before?

12 A. No, sir.

13 Q. Okay. I'll give you a little bit of
14 ground rules I'm required to go over. If at any
15 point in time today I ask you a question that you
16 don't understand or you didn't fully hear, if you
17 just ask me to repeat it or rephrase it, I'll be
18 more than happy to do so, okay?

19 A. (Moves head up and down.)

20 Q. And I don't know that we'll be all that
21 long, but if at any point in time you need a break
22 or want some water, just let me know.

23 Going back to the other -- if I ask you
24 a question and you don't ask me to rephrase it, I'm
25 going to assume that you understood the question as

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1 asked; is that fair?

2 A. Yes, sir.

3 Q. Where are you currently employed?

4 A. Robert E. Mason Company.

5 Q. How long have you been with Robert E.
6 Mason?

7 A. Since last October, October of '13.

8 Q. What is your job title at Robert E.
9 Mason?

10 A. Asset manager.

11 Q. I'm not familiar with the company.

12 What kind of business is that?

13 A. It's an industrial valve service
14 company and sales company.

15 Q. Prior to working with Robert E.

16 Mason -- can you just kind of walk me through your
17 work history, I guess?

18 A. I started at BP Chemical, it was Amoco
19 Chemical at the time, in '95, of college. Worked
20 there for five years and then I went to SCE&G
21 Canadys plant and was there for 13 years until now,
22 both as an E&I tech.

23 Q. What is an E&I tech, if you don't mind
24 my asking?

25 A. Any process control implementation in

1 electrical equipment.

2 Q. Okay. What does that stand for, E&I?

3 A. Electrical and instrumentation.

4 Q. So that was your full job title?

5 A. Yes.

6 Q. And what were your day-to-day duties in
7 that position at SCE&G?

8 A. To repair process equipment, control
9 equipment, calibrate equipment, things like that.

10 Q. And was that only at the Canadys plant?

11 A. Yes.

12 Q. So would it be fair to assume it was
13 kind of on a -- you were assigned different
14 maintenance duties on a day-to-day basis?

15 A. Correct.

16 Q. Okay. And I believe in some
17 information we have been provided from SCE&G's
18 attorneys, were you also a member of the SCE&G
19 first response team?

20 A. Yes, sir.

21 Q. And, I guess, what sort of training or
22 certification did you have for that?

23 A. We do bi-monthly training, eight-hour
24 training schedule, and each -- you do a different
25 topic each month, but it's basically an EMT-type

Page 6

1 training. And so we go bi-monthly and then every
2 two years we have to take a retest to be sure that
3 we still pass the certification.

4 Q. And would you be assigned shifts for
5 that or is it kind of just whenever something
6 arose, they notified the first responders?

7 A. That's correct.

8 Q. So you would be working your normal job
9 as an E&I maintenance --

10 A. Correct.

11 Q. -- and if something came up, you would
12 be dispatched to the area?

13 A. Correct.

14 Q. As you know, we're here about an
15 incident involving Mr. Washington on
16 September 28th, 2011. Were you working at the
17 plant that day?

18 A. I was.

19 Q. Where were you working in the plant?

20 A. I was all over the plant, but I
21 remember when the call came out, I was walking in
22 the back door.

23 Q. And I assume you all have some sort of
24 walkie-talkie system or short-range radio?

25 A. Did have a radio and we also have a

1 page phone system.

2 Q. So the call came out and you went to
3 the area where Mr. Washington was?

4 A. Actually, I initiated the call. As I
5 was coming in the back door, one of their guys, one
6 of the other electricians or construction guys, I
7 don't know who he was, he ran by and said that
8 somebody was electrocuted, and so I ran by. When I
9 saw he was up -- they were up the ladder and what
10 was going on, I ran to the page phone, hollered for
11 help, and grabbed the AED and then came back.

12 Q. Do you recall the gentleman's name who
13 alerted you to the incident?

14 A. Not a clue. Don't know who he was.

15 Q. So were you the first responder to get
16 to Mr. Washington?

17 A. Yes, sir.

18 Q. Can you kind of walk me through kind of
19 his situation, his status, and then kind of what
20 was done from there?

21 A. Yeah. I got up the ladder, it's a
22 straight ladder, it's about 15 feet tall. So I got
23 up to the top of the ladder, almost the top of the
24 ladder, and sort of stepped off on a pipe. He was
25 laying on some scaffold boards and wasn't breathing

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1 and I couldn't feel a pulse. And one of his guys
2 was there, one of the other electricians that was
3 working with him. I believe his name was Sam,
4 also. And he said, I know CPR. So he started
5 chest compressions.

6 My other guy showed up -- the other
7 first responder showed up with the rest of the bags
8 and they gave me a bag mask to force air in. And
9 so we did a round of CPR and a minute or so into
10 it, he coughed a little bit and we rolled him on
11 his side and he had a pulse. I don't know. Time
12 flies when things like that are going on.

13 But the county paramedics showed up;
14 they popped their head up the ladder and saw that
15 everything was under control, so they just stayed
16 on the ground 'til we put him in a -- it's like a
17 fold up skid-type thing, and lowered him down to
18 them, and then they put him on the health line and
19 flew him out.

20 Q. Do you have any knowledge as to the
21 work Mr. Washington was doing that day, the type of
22 work?

23 A. Yes, sir. They were -- they were
24 replacing -- they were demolishing the old
25 intercept and reheat valves because we were

1 upgrading all of the turbine controls.

2 Q. And is this the type of work that
3 Mr. Washington was doing that day, is this not
4 something that would be done by an SCE&G
5 maintenance employee on a regular basis?

6 A. We do maintain that equipment on a
7 regular basis. We could do -- but these large
8 projects like this, they come in as a whole, and
9 take out the old stuff and put in the new stuff.
10 It's usually contracted out.

11 Q. I guess that's a good jump off point.
12 I understand that during this time period, there
13 was a substantial upgrade project going on at the
14 Canadys plant; is that fair to say?

15 A. That's true.

16 Q. Do you know about how long from start
17 up to finish the process was, the entire project?

18 A. I'm just guessing around six weeks.

19 Q. And during that time, trying to get an
20 idea as to the -- the plant obviously wasn't shut
21 down fully, right?

22 A. That unit was, yes.

23 Q. So was it shut down in specific areas
24 where work was being done?

25 A. We have three -- there's three units on

Page 10

1 site. That whole unit was shut down.

2 Q. Okay. What is your understanding as to
3 the reason for all of this project?

4 A. The old controls were worn out. It was
5 a hydraulic driven system, hydraulic mechanical
6 driven system, and they put in whole type --
7 electric hydraulic controls actuators is what they
8 put on, individual actuators for each valve.

9 Q. So was it an upgrade --

10 A. Yes.

11 Q. -- of the existing --

12 A. Yes.

13 Q. Okay. And would it be fair to assume
14 that during that time there are a lot of different
15 individuals coming in to do different projects?

16 A. Not a great amount. I mean, we had --
17 you know, like that group was working on the
18 valves. I don't recall whether we were doing -- we
19 weren't doing a whole bunch of turbine work. I
20 don't believe it was a real big -- there was a
21 group working on the electrical portion and a group
22 working on the valves and stuff.

23 Q. And the work that Mr. Washington and
24 his coworkers were performing that day, is this
25 some sort of specialized work or is this something

1 that anybody can do without any sort of
2 certification or licensing?

3 A. Well, you would have to know
4 electricals pretty good, yeah.

5 Q. During your time at SCE&G, was there
6 ever a time when a project of this scale was
7 undertaken at the Canadys plant?

8 A. Yeah. I mean, there was stuff like
9 that -- I'm not exactly clear on what you're
10 asking. Did the the company do it by itself or --

11 Q. As far as the six-week project that was
12 going on during this time.

13 A. Oh, yeah. I mean, different -- there's
14 different projects over the years. They'll do
15 upgrades on different systems at different times.

16 Q. And is that something usually, again,
17 that -- is it something SCE&G would do themselves
18 or would it be contracted out to --

19 A. Generally contracted out.

20 Q. Okay. During your time at SCE&G, were
21 you ever assigned to perform any of the type of
22 work that Mr. Washington was performing that day?

23 A. I've worked on that valve several
24 times.

25 Q. It's my understanding, and I'll

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1 represent to you he's -- he will testify that that
2 day he was assigned to remove some wires from a
3 panel box. Are you familiar with the panel box?

4 A. I am.

5 Q. Was that panel box being replaced?

6 A. Yes, sir. It was completely going
7 away.

8 Q. I assume they were upgrading it,
9 putting a new one in?

10 A. Yes. It was attached to that large
11 valve that was completely removed.

12 Q. To your knowledge, had that panel box
13 ever been replaced during your tenure?

14 A. Oh, no, sir. It was definitely
15 40 years old.

16 Q. Okay. Going back to the incident
17 itself, after Mr. Washington was taken away by the
18 paramedics or the first responders, was any
19 discussion had about what happened or were you made
20 aware of anything that happened leading up to the
21 incident?

22 A. No formal discussion about that. You
23 know, we had a debriefing about the accident
24 itself, the first responders did. But not a whole
25 lot of discussion about that.

1 Q. Did you participate in any sort of OSHA
2 investigation?

3 A. Oh, I'm sorry, yes, later on. Is that
4 what you were referring to?

5 Q. No, no. Sorry. I should've been more
6 clear. I was referring to on that day or right
7 after?

8 A. Yeah, it was on that day, correct.

9 Q. Did you talk to any of the guys that
10 Mr. Washington was working with that were in the
11 area, after this incident?

12 A. The one gentleman, Sam, that helped
13 with CPR, I spoke to him a little bit. We asked
14 how Mr. Washington was doing and, you know, that
15 was it.

16 Q. And you remember what he told you?.

17 A. We was told that he was doing okay.

18 Q. Sorry, I misunderstood. I thought you
19 said he told you what Mr. Washington was doing.
20 Sorry.

21 A. Oh, yeah.

22 Q. After this incident, were any new
23 policies or procedures implemented with regard to
24 this type of work?

25 A. No, sir.

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1 Q. What was your involvement in the OSHA
2 investigation?

3 A. Just sat in an office with a gentleman
4 from OSHA and pretty much the thing I'm doing with
5 you right now; he just asked me a bunch of
6 questions and walked me through it. That was it.

7 Q. I'm kind of jumping around, but can you
8 kind of give me an overview of your educational
9 background?

10 A. I have an associate's degree in
11 mechanical engineering and I have an associate's
12 degree in electronic instrumentation, both from
13 Orangeburg Tech.

14 Q. When you went to work for SCE&G, did
15 that position require you to hold any
16 certifications or licenses?

17 A. It was all done on the job -- well, not
18 on the job. They had their own training division
19 and so they do their own training. So that was
20 gathered through on the job training and going to
21 classes with their training division.

22 Q. Would that be done, I guess, while
23 you're also working, or is that something that you
24 just go and spend several weeks doing?

25 A. It's while you're working.

1 Q. Okay. Is that the only position you
2 held at SCE&G during your 13 years?

3 A. Yes.

4 Q. Who was your direct supervisor?

5 A. I don't recall. I think -- if Greg
6 Cushing was still there at that time -- I don't
7 recall when he left. When David Sauls replaced
8 him. I don't recall who was in charge at that
9 time.

10 Q. At that time, do you know how many
11 instrument mechanics SCE&G employed at Canadys?

12 A. We had six instrument mechanics and
13 five electricians, is what they called them. And
14 then over the years we sort of cross-trained, so
15 now we do both, or did.

16 Q. Pardon my ignorance, how would the
17 electrician's job differ from the instrument
18 mechanic's job?

19 A. Well, because it's a union plant, it
20 was always divided as it started, but a person
21 could -- you could learn anything you wanted to.
22 They didn't hold you back from learning anything.
23 So we worked together on a lot of jobs. If it was
24 a job that had more high voltage electrical, it
25 would go to the electricians. If it was a controls

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1 job, it would go to instrument people. But we
2 worked together as a group all the time.

3 Q. At that time, can you give me a rough
4 estimate of how many SCE&G employees were at the
5 plant on a daily basis, how many people were
6 employed there?

7 A. At the plant would've been around 50.

8 Q. Among those 50, did SCE&G employ, at
9 that time, anyone who would be responsible for
10 doing any sort of demolition work?

11 A. No, sir.

12 Q. When you got to Mr. Washington on the
13 day of the incident, and I don't know that we have
14 a picture of the area, but had he been moved from
15 the area where he was working; do you know?

16 A. He was laying -- his feet were closer
17 to it, but his feet were probably, I'm guessing,
18 three or four feet from it. So somebody -- yeah, I
19 guess he did get moved.

20 Q. Do you know if it was determined that
21 that area where he was working was still, I'm going
22 to say, hot; I mean, is that fair to --

23 A. It was not determined as far as I know.

24 Q. During your 13 years at SCE&G, were you
25 ever assigned to work on this particular panel box?

1 A. I was.

2 Q. What kind of work would you be asked to
3 do?

4 A. It had some limit switches inside the
5 box. There was a shaft that came through the box
6 for valve positioning and those switches
7 occasionally would fail or get a little out of
8 adjustment and then we would go in and make an
9 adjustment.

10 Q. So would it be fair to call that
11 routine maintenance?

12 A. Yeah.

13 Q. But as far as removing, replacing the
14 wires or actually removing, replacing the box
15 itself, you were never asked to do that?

16 A. No, sir.

17 Q. It's my understanding that the panel
18 box, and correct me if I'm wrong, was mounted to
19 the turbine?

20 A. To the valve, to the reheat valve.

21 Q. During that time, was that turbine
22 being ungraded?

23 A. Only the control valves.

24 Q. Okay. Help me out, what are the
25 control valves? What's their function?

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1 A. Well, basically you have to inject
2 steam into the turbine to make it spin. So these
3 valves open or close. The one he was working on
4 was actually just an open-and-close, it didn't have
5 an actual control, so it was just open for flow or
6 closed to stop.

7 Q. This may be a dumb question, but do the
8 valves open from the pressure of the steam?

9 A. No. Hydraulic.

10 Q. Hydraulic?

11 A. Yes.

12 Q. Okay. So the turbine itself, during
13 that six-week period, it was not being repaired or
14 upgraded?

15 A. I don't know -- I'm pretty sure they
16 did not go into the turbine. Only the control
17 valves.

18 Q. Was that something that was being done
19 to -- there's three turbines; is that correct?

20 A. Correct.

21 Q. And Mr. Washington was working on the
22 panel box, I guess, that feeds to the valve to that
23 turbine; is that fair to say?

24 A. Yeah.

25 Q. Was that type of work being done on all

1 three turbines?

2 A. Just that one.

3 Q. Do you know why it was just that one?

4 A. It was the one that had the most
5 problems, or we had the most to gain from upgrading
6 it.

7 Q. Were the other components of the three,
8 were they all pretty similar as far as the --

9 A. That unit is little larger. Units 1
10 and 2 were identical. Unit 3 was a little larger.

11 Q. And this was Unit 3?

12 A. This was Unit 3.

13 MR. SLAUGHTER: Let's take a quick
14 break.

15 (A recess transpired.)

16 BY MR. SLAUGHTER:

17 Q. Did you do anything to prepare for your
18 deposition today?

19 A. I have a brief discussion with
20 Mr. Neville here and Mr. Mahon.

21 Q. Did you review any documents or
22 anything?

23 A. No, sir.

24 MR. SLAUGHTER: Those are all the
25 questions I have for you, then. I appreciate you

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1 coming up and accommodating us today.

2 THE WITNESS: Not a problem.

3 EXAMINATION

4 BY MR. RAMSEY:

5 Q. Hi, Mr. Polk. My name is Ken Ramsey.
6 I'm counsel for Emerson Power Management, and I
7 just have a few questions for you today just to
8 follow-up on the ones Mr. Slaughter had.

9 A. Okay.

10 Q. You said that in this process, the
11 power company had contracted with someone to do
12 this work in terms of the upgrade for Unit Number
13 3. Do you know who they contracted with?

14 A. It was contracted with Emerson.

15 Q. With Emerson?

16 A. Yeah.

17 Q. Do you know anything more? Do you know
18 if Emerson contracted with anyone?

19 A. There was a subcontractor on site, but
20 I don't recall their name.

21 Q. Okay. Does the name -- I think it's --
22 I know it as ACT, Applied Control Technologies.

23 A. I've heard of it.

24 Q. Before this incident, did you know
25 Mr. Washington?

1 A. I did not.

2 Q. You had not seen him working at the
3 plant before?

4 A. No, sir.

5 Q. Let's go back to September 28th. I
6 understand that you were the first to make the
7 phone call to alert that there had been an issue
8 that occurred here?

9 A. Correct.

10 Q. You also grabbed an AED and made your
11 way up the ladder; is that correct?

12 A. Correct.

13 Q. All right. When you made your way up
14 the ladder, how many people were on the scaffolding
15 deck?

16 A. There was just one more on the other
17 side of Mr. Washington, the guy that helped us with
18 the CPR. And I believe there was one guy further
19 off to my left on the scaffolding, but I don't know
20 remember -- I don't even know where he went, I
21 never saw him. And then my guys came up behind me
22 and there's a metal -- there is actually a platform
23 there and they got off on that platform.

24 Q. Okay. So let's describe a little, if
25 you can, the area that you're coming -- you're

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1 going up the ladder and you're -- and it's a
2 scaffolding; is that correct?

3 A. The ladder is permanent and it goes up
4 and there's a platform that goes underneath the
5 actual control valves.

6 Q. Is that permanent?

7 A. That's permanent. Very small, kind of
8 cramped, kind of dark area up under the turbine.

9 Q. Right.

10 A. And then these valves are -- well, the
11 one he was working on was over to the left. Like I
12 said, there's a bunch of pipes that we always use
13 to walk across the decks. They had scaffolding
14 there for this work. And the other identical set
15 was over on the opposite side of the turbine.

16 Q. Okay. So when you come up the ladder,
17 there's Mr. Washington?

18 A. Yes.

19 Q. There's someone that you believe was
20 called Sam?

21 A. Correct.

22 Q. And then there was another person that
23 was up there as well?

24 A. I just remember seeing somebody move
25 over to my side, but I did not pay them any

1 attention.

2 Q. Did they assist in any way?

3 A. No, sir.

4 Q. When you first climbed the ladder, what
5 is -- not Samuel Washington, the other Sam, what is
6 he doing; do you remember?

7 A. He was just there beside him. I don't
8 recall.

9 Q. Was he standing? Was he kneeling?

10 A. No, he was kneeling down.

11 Q. Can you describe Sam for me? Was he
12 older, young?

13 A. He was, I would say, upper 30s, white
14 guy, had a long, long hair and kept it in a
15 ponytail most of the time.

16 Q. Do you remember the color of his hair?

17 A. I believe it was brown, had maybe some
18 gray in it.

19 Q. Okay. Was he wearing a shirt that had
20 his name on it or a company name on it?

21 A. No. We had spoken to him on the job a
22 few times just in passing. You know, how you
23 doing, that kind of thing.

24 Q. Do you know who he was employed by?

25 A. I'm sure it was the same company that

Page 24

1 Mr. Washington was...

2 Q. Okay. Mr. Washington, you indicated,
3 was laying on the ground; is that correct?

4 A. He was laying on the scaffold board.

5 Q. He was laying on the scaffold board and
6 his feet were, you said, about three feet away from
7 where the electrical panel was?

8 A. Correct.

9 Q. So his feet were pointing towards where
10 the panels were?

11 A. Correct.

12 Q. When you first came up the ladder, was
13 there any personal protective gear on
14 Mr. Washington? Was he wearing gloves?

15 A. No, sir.

16 Q. He was not wearing gloves?

17 A. Not that I recall, no.

18 Q. Was he wearing any form, that you could
19 notice, of any personal protective gear when you
20 first came up on the scaffold?

21 A. He had a harness on.

22 Q. Okay. Now, is the harness supposed to
23 be locked into a line of some type; is that the
24 concept?

25 A. It is supposed to be tied off to

1 something over your head.

2 Q. Was his tied off to something over his
3 head?

4 A. I don't think so.

5 Q. Did you recognize him having any other
6 type of personal protective gear?

7 A. No, sir.

8 Q. When you first came up the scaffolding,
9 did you notice any tools either in Mr. Washington's
10 hands or close to where he was?

11 A. There was none in his immediate area
12 where he was at, at that time.

13 Q. Did you notice any tools on the ground
14 that were proximate to where the electrical panel
15 was that he was working on?

16 A. No, sir.

17 Q. For example, did you see, perhaps, a
18 wire cutter that was on the ground anywhere?

19 A. I never saw one.

20 Q. Did you see, for example, a voltage
21 tester? Do you know what I'm talking about, a
22 device that will test whether or not there's
23 current in the electrical wire?

24 A. Did not see that.

25 Q. Did you see around where -- the other

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1 Sam, with the ponytail, where he was, did you
2 notice any tools that were near him?

3 A. I did not.

4 Q. When you climbed up the scaffolding and
5 first came upon Mr. Washington and Sam, did you see
6 a tool box anywhere on the scaffolding?

7 A. Not that I recall.

8 Q. Okay. And you indicated that
9 Mr. Washington was not wearing gloves; is that
10 correct?

11 A. Correct.

12 Q. Is there a particular type of glove
13 that you would be wearing when you're doing work on
14 electricals, that you're aware of?

15 A. There's electrical rated gloves for
16 when you're working on a live system, yes.

17 Q. Did you notice any gloves that were
18 near where Mr. Washington was laying?

19 A. I did not.

20 Q. Was Sam, the gentleman with the
21 ponytail, was he wearing any gloves; do you
22 remember?

23 A. Not that I recall.

24 MR. RAMSEY: That's all the questions I
25 have for the moment. Thank you.

EXAMINATION

1

2 BY MR. NEVILLE:

3 Q. I've got few. The work that was being
4 done on this panel, had SCE&G worked on that panel
5 prior to the day Sam was working on it?

6 A. I've been in that panel myself, had
7 been in that panel several times to adjust those
8 limit switches in there.

9 Q. And when you worked on that panel, was
10 the unit de-energized?

11 A. No, it was not, not when I was on it.

12 Q. All right. Well, tell me how you would
13 work on the panel if it wasn't de-energized.

14 A. I would have to wear electrical rated
15 gloves and a face shield just for -- just in case.

16 Q. Now, on the day that Mr. Washington
17 worked on the panel, it was to be de-energized?

18 A. It was supposed to be de-energized.

19 Q. And when you're working on a panel
20 that's supposed to be de-energized, can you walk me
21 through kind of the steps that you take in order to
22 make sure that you're not electrocuted?

23 A. Okay. Well, the operations folks would
24 go around and lock or close, I should say, open the
25 breakers, turn the breakers off and lock them, and

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1 they would fill out a lockout sheet with every lock
2 that was installed.

3 And then you would have to go -- the
4 person who is a clearance holder would have to be
5 the main person on the job would go and identify
6 each lock with the number with the tag, be sure
7 it's off and be sure it's correct and initial on
8 that sheet, if you checked it, whoever the
9 clearance holder is going to be.

10 And then when you go to work on it,
11 you're supposed to take your personal meter and do
12 a live-dead-live check which means you're supposed
13 to check your meter on a live circuit, check it on
14 what you're going to work on and then you check it
15 on a live circuit again to make sure it works.

16 Q. And are there different types of
17 voltage readers?

18 A. Yeah. There's a meter that, you know,
19 most of the maintenance people carry that's going
20 to tell you exactly how many -- you know, 121.5
21 volts. There's a little tick tester you can take
22 in your pocket and you hold it to tell you if
23 there's some voltage there between 60 and 600.

24 Q. And you'll just have to excuse my poor,
25 butchering electrical terminology, if I do I it.

1 Is there a difference between a reader that will
2 read AC power or DC power or they all read the --

3 A. Some won't read both, some will.

4 Q. Okay. And which kind of reader are you
5 all supposed to carry around and do that
6 live-dead-live check with?

7 A. You have to use your meter for those.

8 Q. And so the meter that --

9 A. That will read everything.

10 Q. So you're supposed to go live-dead-live
11 with a meter that will read everything?

12 A. Yes. Well, you've got to know the
13 system you're working on. If you're working on
14 something that's going to have a potential to have
15 both voltages in it, which those valves do, then
16 you should check it with a meter that has both
17 voltages.

18 Q. And so that's what you do when SCE&G is
19 working internal on a panel like Mr. Washington was
20 working on that day?

21 A. Correct.

22 Q. And does SCE&G show subcontractors or
23 people like Mr. Washington any type of safety video
24 or go through any type of briefing that would tell
25 them, you know, let's not get shocked today, let's

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1 do live-dead-live, anything like that?

2 A. Everyone who comes on site has to watch
3 a safety video, but I don't know what all it
4 covers.

5 Q. Somebody else would be better to answer
6 that question?

7 A. Yeah.

8 Q. All right. This live-dead-live test
9 that you were talking about, is that common
10 knowledge in the electrical industry?

11 A. Yes!

12 Q. A reasonable electrician goes
13 live-dead-live before they cut into a wire?

14 MR. SLAUGHTER: Object to the form.

15 THE WITNESS: They should.

16 BY MR. NEVILLE:

17 Q. Had Mr. Washington gone live-dead-live,
18 this wire would've presumably, if it was hot,
19 would've tested as hot, don't cut into it?

20 MR. SLAUGHTER: Object to the from.

21 MR. NEVILLE: And, I'm sorry, he didn't
22 instruct you earlier. One of the other things that
23 you're supposed to do is, she cannot --

24 THE WITNESS: Head nods?

25 MR. NEVILLE: Head nods.

1 THE WITNESS: Sorry.

2 MR. NEVILLE: And the other thing is,
3 you and I can't talk over each other. So let me
4 ask the question again.

5 BY MR. NEVILLE:

6 Q. Had Sam gone and done the
7 live-dead-live test, he would have seen that this
8 wire was energized?

9 MR. SLAUGHTER: Object to the form.

10 THE WITNESS: I would think so, yes.

11 BY MR. NEVILLE:

12 Q. And that would have prevented his
13 electrocution?

14 MR. SLAUGHTER: Object to the form.

15 THE WITNESS: Yes.

16 BY MR. NEVILLE:

17 Q. So you testified that you had worked on
18 this panel before?

19 A. Yes.

20 Q. And several SCE&G people, in addition
21 to you, probably worked on this panel in the years
22 that the Canadys Station has been on?

23 MR. SLAUGHTER: Object to the form.

24 THE WITNESS: Yes.

25 BY MR. NEVILLE:

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1 Q. You've worked on this panel more than
2 one time?

3 A. Yes.

4 Q. And one of the other things is, try to
5 let me finish my question.

6 A. Oh, I'm sorry. I thought you were...

7 Q. It's all right. It's just
8 conversational. Sometimes we to try to help each
9 other finish answers and questions, but it's
10 difficult for this nice lady jotting everything
11 down. So at any rate, you've worked on equipment
12 several times before?

13 A. Yes.

14 Q. Have you ever seen anybody else for
15 SCE&G work on that panel before?

16 A. Yes.

17 Q. That was the panel that you all -- as
18 far as what that panel controlled, that panel
19 controlled what?

20 A. It controlled the reheat valve.

21 Q. And then the reheat valve in turn did
22 what?

23 A. It opened to let your reheat steam pass
24 through into the inside of the turbine.

25 Q. And then in return that did what?

1 A. Made the turbine spin.

2 Q. And the turbine spinning, is that what
3 generates power?

4 A. Yes.

5 Q. And SCE&G is in the business of selling
6 power to its customers?

7 A. Yes.

8 Q. And so the work that Mr. Washington was
9 doing was critical to the production of power?

10 MR. SLAUGHTER: Object to the form.

11 THE WITNESS: Yes.

12 BY MR. NEVILLE:

13 Q. Was the work that Mr. Washington --
14 that he was performing, was it critical to the
15 production of power?

16 MR. SLAUGHTER: Object to the form.

17 THE WITNESS: It was.

18 MR. NEVILLE: I'll pass the witness on
19 over to somebody else unless we're done with
20 questions.

21 RE-EXAMINATION

22 BY MR. SLAUGHTER:

23 Q. I've got a few follow-ups and, excuse
24 me, I'm going to jump around and kind of follow up
25 on some of the questions that you were just asked.

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1 Mr. Ramsey was asking you some
2 questions about whether you saw any tools or gloves
3 in the area around Mr. Washington when you got
4 there. Is it fair to assume that at that time, you
5 were more concerned with stabilizing Mr. Washington
6 than surveying the area?

7 A. Yes, sir.

8 Q. And then assuming there were no tools
9 there, is it possible someone could've moved them
10 from the area to make room for individuals to come
11 up there and help him?

12 MR. NEVILLE: Object to the form.

13 THE WITNESS: Mr. Washington was
14 several feet away from the valve, so my main
15 concern first was to make sure I was safe and then
16 it was him, so I wasn't looking for tools.

17 BY MR. SLAUGHTER:

18 Q. So it's possible there were tools
19 there, you just didn't see them?

20 MR. NEVILLE: Object to the form.

21 THE WITNESS: It's possible.

22 BY MR. SLAUGHTER:

23 Q. I know you testified that you had
24 worked on this panel before. Is it my recollection
25 from your testimony that you had never done this

1 specific type of work that Mr. Washington was doing
2 that day on that panel?

3 A. The panel had never been removed, so
4 I've never been in there just cutting wires.

5 Q. And you're not aware of anyone else
6 from SCE&G ever removing that panel?

7 MR. NEVILLE: Object to the form.

8 THE WITNESS: Not that particular
9 panel.

10 MR. SLAUGHTER: That's it.

11 RE-EXAMINATION

12 BY MR. RAMSEY:

13 Q. You had mentioned a type of voltage
14 tester. Is that something that can slip in your
15 front pocket?

16 A. Yes, sir.

17 Q. Now, Sam, with the ponytail, was doing
18 chest compressions. Was he doing chest
19 compressions when you first came up onto the --

20 A. No, sir, he was not.

21 Q. So you have in your hand -- you had an
22 AED bag. Did you have a breather to assist with
23 that?

24 A. I brought up an AED bag that had a bag
25 mouth -- mask, bag in it.

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1 Q. Before Sam began doing chest
2 compressions, and I assume at this point you're
3 focused on Mr. Washington, did Sam remove anything
4 from any of Mr. Washington's pockets before he
5 started doing chest compressions?

6 MR. SLAUGHTER: Object to the form.

7 THE WITNESS: The only thing that was
8 removed was -- his harness buckle was unbuckled and
9 moved out of the way of the chest.

10 BY MR. RAMSEY:

11 Q. Okay. But there wasn't anything taken
12 out of a front pocket or anywhere on his chest?

13 A. Not that I recall.

14 MR. RAMSEY: That's all I have.

15 MR. NEVILLE: Let's just take a quick
16 break and I think we'll be done.

17 (A recess transpired.)

18 RE-EXAMINATION

19 BY MR. NEVILLE:

20 Q. I want to be certain and so I'm just
21 going to ask you to clarify, you have worked on the
22 panel that Mr. Washington was working on, correct?

23 A. Yes.

24 MR. NEVILLE: That's it.

25 (The deposition was concluded at 10:54 a.m.)

1 (The witness, after having been advised
2 of his right to read and sign this transcript, does
3 waive that right.)

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CERTIFICATE OF REPORTER

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I, Christina L. Essi, Registered
Professional Reporter and Notary Public for the
State of South Carolina at Large, do hereby certify
that the foregoing transcript is a true, accurate,
and complete record.

I further certify that I am neither,
related to nor counsel for any party to the cause
pending or interested in the events thereof.

Witness my hand, I have hereunto
affixed my official seal this 9th day of May, 2014
at Lexington, Lexington County, South Carolina.

Christina L. Essi,
Registered Professional Reporter
My Commission expires
October 24, 2021

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REQUESTED INFORMATION INDEX

(No Information Requested)

E X H I B I T S

(No Exhibits Proffered)

STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

COUNTY OF COLLETON

SAMUEL WASHINGTON, JR.,

Plaintiff,

vs.

CASE NO. 2013-CP-15-411

SOUTH CAROLINA ELECTRIC & GAS; AND EMERSON ELECTRIC
COMPANY, d/b/a EMERSON NETWORK POWER, AND/OR
EMERSON NETWORK POWER,

Defendants.

DEPOSITION OF: RICHARD A. WILSON

DATE: May 9, 2014

TIME: 11:27 a.m.

LOCATION: Law Offices of Walker & Morgan
135 E. Main Street
Lexington, SC

TAKEN BY: Counsel for the Plaintiff

REPORTED BY: Christina L. Essi,
Registered Professional Reporter

A. WILLIAM ROBERTS, JR., & ASSOCIATES

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Page 2

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21 John M. Mahon, Jr.,
22 SCE&G Associate General Counsel

23 Sandylynn Kammer,
24 SCE&G Claims Agent

25 (INDEX AT REAR OF TRANSCRIPT)

1 RICHARD A. WILSON

2 being first duly sworn, testified as follows:

3 EXAMINATION

4 BY MR. SLAUGHTER:

5 Q. State your full name for the record,
6 please.

7 A. Richard Alan Wilson.

8 Q. Mr. Wilson, we met briefly off the
9 record. My name is Chuck Slaughter. I represent
10 Samuel Wilson in this lawsuit -- sorry. Samuel
11 Washington. Have you ever had your deposition
12 taken before?

13 A. Yes, I have.

14 Q. How many times?

15 A. Once, that I can remember.

16 Q. Was it a lawsuit you were involved in
17 or were you a witness?

18 A. It was against Colleton County, where
19 I'm a volunteer fireman, rescue squad. It was
20 against them.

21 Q. Okay. Well, the rules require me to go
22 over a few ground rules. When I ask you a
23 question, if you will try to give an audible
24 response as opposed to a nod of the head or huh-uh
25 or uh-huh. It's hard for the court reporter to

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1 interpret what you mean by that.

2 If at any point in time, which will
3 likely happen, I ask you a question that you don't
4 understand or you want me to rephrase or clarify,
5 please let me know and I'll be happy to do it.

6 A. Okay.

7 Q. And if you don't ask me to clarify or
8 repeat, I'm going to assume that you understood the
9 question asked; is that fair?

10 A. Okay.

11 Q. I doubt we'll be here too terribly long
12 today, but if at any point in time you need a break
13 or get some water, use the restroom, just let me
14 know, okay?

15 A. Okay.

16 Q. Can you give me a brief overview of
17 your educational background?

18 A. 12 years of high school, two years of
19 college at Trident Tech with an electrical engineer
20 degree and just ongoing training with the company
21 been with them for 20, 25 years now.

22 Q. Did you go straight to SCE&G after
23 Trident Tech?

24 A. No. I worked for six months for
25 another company.

1 Q. What company was that?

2 A. Moore Systems For Business, working
3 office equipment.

4 Q. And so you're currently employed by
5 SCE&G?

6 A. Yes.

7 Q. What is your position at SCE&G?

8 A. Now, I'm an LNG specialist, Level 2.

9 Q. Is that LNG?

10 A. Yep, LNG.

11 Q. Does that stand for something?

12 A. It's a liquid natural gas plant.

13 Q. Okay. You work at the Canadys Station
14 plant?

15 A. Not anymore.

16 Q. How many different positions have you
17 held in your 25 years at SCE&G?

18 A. Just those two, the instrumentation at
19 the Canadys plant and the LNG specialist 2 at the
20 LNG plant Bushy Park.

21 Q. So from when you started to when the
22 plant shut down, you were an instrument mechanic?

23 A. Yes.

24 Q. And then now you've since become an LNG
25 specialist?

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1 A. Correct.

2 Q. Where are you located at this point?

3 A. Bushy Park in Goose Creek.

4 Q. Okay. Did you receive any sort of
5 specialized training or did you obtain any
6 certificates as part of your becoming an instrument
7 mechanic at SCE&G?

8 A. Yes, we did -- constantly training.
9 They had an apprenticeship program. When I went
10 through, it was a four-year program, had to
11 complete that, and then we also did ongoing
12 training.

13 Q. As part of that apprenticeship program,
14 I assume it's on-the-job training, is there also --
15 are you required to do some tests or things of that
16 nature?

17 A. Yeah. There are tests as far as
18 classes and they test the classes, yes.

19 Q. Right, okay. And you've been at the
20 Canadys Station plant -- excuse me. Prior to --
21 was it 2012 that it closed?

22 A. No. It closed this past year.

23 Q. Oh, okay. During your tenure at SCE&G
24 up to now, you were at the Canadys Station?

25 A. Yes.

1 Q. I believe from some information we
2 obtained from your SCE&G attorneys, at the time of
3 this incident, were you also part of the first
4 responder team?

5 A. That's correct.

6 Q. Are you still?

7 A. Not with the company, no.

8 Q. I guess going back, are you a
9 electrician? Have you obtained any sort of
10 certificates or taken any specialized classes in
11 that area?

12 A. As far as electrical, yes. Did a
13 cross-training program with the company and I
14 completed that before I left the plant.

15 Q. Okay. And I guess in your role as the
16 first responder, was that also something that you
17 were trained in through the company?

18 A. Yes. Th? company and also outside
19 because I volunteer at the fire department.

20 Q. Okay. And what fire department are you
21 with?

22 A. Colleton County Fire Rescue and the
23 Walterboro City Fire Department.

24 Q. What do you do for them? Are you a
25 firefighter?

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1 A. Firefighter with the city, county
2 firefighter, muscle and rescue squad, specialty
3 rescue, high level, confined space, hazmat, diving.

4 Q. Wow. As you know, we're here about an
5 incident that occurred on September 28th, 2011
6 involving our client, Samuel Washington while he
7 was working at the Canadys Station. Were you
8 physically present at the plant that day?

9 A. Yes.

10 Q. Were you called to the scene of the
11 incident to respond to the incident?

12 A. Yes.

13 Q. Can you kind of walk me through from
14 the time you got there to the time everything kind
15 of calmed down?

16 A. Let's see. We got the call, started in
17 that direction, we got some of our first-aid
18 equipment. I wasn't the first person up the
19 ladder. I believe Ralph was already there when I
20 got up there. They were already administering CPR
21 to him. When I got there, we had gotten a rope bag
22 because it was elevated off the floor. We had a
23 rope bag sent up along with the Rollgliss and they
24 asked me to set up a harness or an anchor system so
25 we could lower him down to the ground safely to

1 EMS, and that's what I focused on.

2 Q. How many people were in the area when
3 you got up the ladder?

4 A. Maybe three or four. I'm not sure. I
5 know we had three first responders counting myself.
6 Had one of the other contractors up there; he was
7 administering CPR at the time. And there were
8 people down below us, I'm not sure how many. There
9 wasn't a lot of room up top where we were. And
10 there may have been a few more up there, I'm not
11 sure.

12 Q. Other than Mr. Polk, who was the other
13 first responder for SCE&G?

14 A. James Brown.

15 Q. And once you got Mr. Washington down in
16 the harness, at that point was he handed over to
17 the fire department -- or, excuse me, EMT?

18 A. I'm assuming so. I was still up there.
19 By the time I got down, he was already in the
20 ambulance. So, yes, he was. I remember because
21 one of the responders from the county actually came
22 up and asked if we needed anything or not.

23 Q. And as far as after the scene had
24 cleared, was there any sort of debrief that took
25 place or any discussion about what may have

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1 occurred or anything?

2 A. A little bit. We also just -- we
3 debriefed as far as how to respond to the scene,
4 just the first responders at that point.

5 Q. That would have been just the first
6 responders?

7 A. Yes.

8 Q. Was the other debrief, was that a
9 general everybody-that-was-in-the-area debrief?

10 A. Yes, I believe so.

11 Q. Who led that debriefing; do you recall?

12 A. I don't recall.

13 Q. In those type of circumstances, would
14 it normally be some sort of supervisor or manager?

15 A. Either a supervisor or a safety person.

16 Q. Okay. Do you recall any discussions
17 that were had about what may have happened or led
18 to this incident?

19 A. Yes.

20 Q. Do you recall those today?

21 A. Just that there was power on the wire
22 that he came in contact with.

23 Q. Okay. Stepping back a little bit, it's
24 my understanding that during that time, in that
25 September 2011 range, there was a project going on

1 at the Canadys Station plant; is that correct?

2 A. Yes.

3 Q. What's your understanding as to the
4 reason behind that? Like what was going on?

5 A. We were doing an upgrade on our DCS
6 system as well as control valves that control the
7 steam going to the turbine which we use to turn the
8 generator to generate the power. It was a major,
9 major upgrade changing the valves out and controls
10 and pulling new wire in, replacing wire.

11 Q. So this wasn't just a routine
12 maintenance thing, it was a major repair?

13 A. Major, yes.

14 Q. What does DCS stand for?

15 A. Distributive control system.

16 Q. Can you explain that in layman's term?

17 A. It takes signals in. It's basically a
18 computer, it brings signals into the computer, it
19 extrapolates what the signals are, what they're
20 doing, and it sends signals out for other items to
21 respond or valves to act certain ways.

22 Q. Okay. Do you know about how long that
23 project lasted? And it doesn't have to be exact.

24 A. It was a few months or a month to a
25 month and a half. I can't remember exactly.

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1 Q. What's your understanding regarding the
2 specific work that Mr. Washington was performing
3 that day?

4 A. He was de-terming wires to the old
5 valves for preparation of the valves being removed
6 for the new ones to be put in and then they were
7 going to rewire the new ones.

8 Q. Did you say he was deterring valves?

9 A. De-terming, disconnecting the wires so
10 they could pull the valves out.

11 Q. Okay. Is it your understanding that
12 the panel box that he was working in, that that was
13 being upgraded as well?

14 A. Yes. It was mounted to the valve
15 itself.

16 Q. He was basically demoing the panel?

17 A. Right, demoing, yes.

18 Q. Okay. In your time as an instrument
19 mechanic, can you kind of walk me through your -- I
20 know every day is different, but kind of what your
21 responsibilities were at the Canadys plant?

22 A. It is basically fixing any problems
23 with the DCS system; working on the valves,
24 different control valves, whether air-operated or
25 electrically operated; checking circuits; making

1 sure the plant was running correctly and how the
2 operators wanted it to run.

3 Q. Was it usually reactionary, like
4 someone calls you and says, hey, we have an issue
5 with --

6 A. Some of it was. Some of it was
7 preventive. It was both.

8 Q. So you'd actually go to what seems like
9 a perfectly functioning machine and make sure
10 everything is --

11 A. Right.

12 Q. Okay. During that time, did you ever
13 have occasion to work on the particular panel box
14 involved in this case?

15 A. That particular one, maybe once or
16 twice.

17 Q. What type of work would you have done
18 on that panel box?

19 A. It might have been checking the
20 switches in it to tell if the valves open and
21 closes.

22 Q. But nothing as far as demoing it or
23 taking it apart or replacing it?

24 A. No.

25 Q. Did you ever do any type of demo or

Page 14

1 work like that at that plant?

2 A. Yes.

3 Q. What type of --

4 A. It might've been replacing beck drives
5 which is just a different type of drive. It could
6 be other drives. I mean, there's a lot of
7 different things that we'll work on in demo, but
8 that particular one -- because that's a major,
9 major valve in the plant.

10 Q. Okay. Do you have any knowledge as to
11 whether any other SCE&G employees have ever done
12 any type of work on that panel?

13 A. I'm sure some of the other electricians
14 have worked on that panel. I know they have as far
15 as the switches.

16 Q. But as far as any sort of demo or
17 pulling out wires or replacing the panel itself.

18 A. Not that particular one, no.

19 Q. Have you ever met Mr. Washington?

20 A. Yes.

21 Q. Prior to this incident?

22 A. Yes.

23 Q. Do you know about how long he had been
24 working there?

25 A. I don't recall. From what I remember,

1 he was there just about from the beginning.

2 Q. How many other contract employees do
3 you recall that were working with him?

4 A. Might have been a dozen or half dozen.
5 I'm not sure exactly how many. I don't remember.
6 I remember seeing them in the morning meetings we
7 had with them, but as far as an exact number, I
8 can't remember.

9 Q. Is it your understanding that he's an
10 electrician?

11 A. Yes.

12 Q. Is the work he was doing on the day of
13 the incident, is that the type of work that would
14 require the use of a skilled electrician?

15 A. Yes.

16 Q. It's not just something anybody could
17 do, it's --

18 A. No.

19 Q. -- specialized work?

20 A. No, this work is -- anytime you're
21 disconnecting something, you're supposed to check
22 it to make sure it's de-energized.

23 Q. Okay. Is it your understanding that --
24 excuse me, strike that.

25 Do you have any knowledge as to

Page 16

1 whether this particular piece of equipment was
2 de-energized on the day of the incident?

3 A. Under the assumption it was, but
4 obviously it wasn't. But still, it was supposed to
5 be checked before they touch it. Before they
6 determine anything, they're supposed to check to
7 make sure it's not energized.

8 Q. Do you know if it had been locked out/
9 tagged out?

10 A. Well, it was supposed to have been
11 locked out/tagged out.

12 Q. Were you involved in any sort of --
13 excuse me. Were you involved in the subsequent
14 OSHA investigation at all?

15 A. Yes.

16 Q. Did they just interview you, or did
17 you -- what was your involvement?

18 A. They interviewed me because I was a
19 lockout/tag-out supervisor.

20 Q. So you would have been the
21 lockout/tag-out supervisor at the time?

22 A. Yes, for that particular job.

23 Q. And when you say that particular job,
24 do you mean the global job or the work they were
25 doing that day?

1 A. The global job for the DCS part of it,
2 the distributive control process part of that work
3 in the valves.

4 Q. So I know there's a lot of moving parts
5 going on in this project. I mean, you have a
6 global project, but then there were several
7 different -- I don't want to say sub-jobs, but
8 different categories of jobs or areas?

9 A. Right.

10 Q. Okay. Were they done at the same time
11 or was it kind of, we start here, finish it, and
12 then move to the --

13 A. No. We were kind of -- kind of going
14 together, because as they were removing valves,
15 they'd get the wires out of the way so the
16 mechanics can take the valves out, and they would,
17 you know, get that done and any piping they needed
18 to do. So it was a lot of work going on at the
19 same time.

20 Q. And this particular -- sorry, I'm
21 trying to find my notes. Is it Unit 3?

22 A. Yes.

23 Q. Was that the only -- I understand there
24 are three units, correct?

25 A. Correct.

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1 Q. Was that the only unit that was being
2 upgraded during that project?

3 A. Yes, as far as I can remember.

4 Q. So going back to saying you were the
5 lockout/tag-out supervisor for that job, where you
6 referring to the Unit 3 job --

7 A. Yes.

8 Q. -- or would it have been further?

9 A. No. And there would've been other jobs
10 going on in Unit 3. It wasn't for all of Unit 3.
11 It was just for the upgrade as far as to the valves
12 that control the turbine, and the DCS system.

13 Q. Okay. Is that part of your job as an
14 instrument mechanic or that's just a role that they
15 gave you to do?

16 A. We -- I mean, all of us had to do
17 lockout/tag -- we had to work on something, we had
18 to make a list of what needed to be locked out and
19 get the locks and everything.

20 Q. But I guess as the -- in your role as
21 the supervisor, what was your duty or
22 responsibility on a day-to-day basis?

23 A. Well, I mean, I wasn't the supervisor.
24 It was just the way it's worded on the
25 lockout/tag-out sheet. It was just for that sheet

1 as far as, my job was just to get a list of the
2 items needed to be locked out, get with operations.
3 to get the tags written, get the locks assigned,
4 and go lock out the equipment and hang the locks.

5 Q. Is that a daily process?

6 A. It's not done daily, but, I mean, it's
7 always done. I mean, any equipment we work on, we
8 lock it out.

9 Q. But, I mean, as far as when they
10 provide you some sort of list of all the machines
11 to be worked on and --

12 A. No. We come up with the list ourselves
13 and give them the list and then they write the --
14 they put the sheets in the form and print out the
15 tickets for us the tags for us.

16 Q. When you say them, who are you
17 referring to?

18 A. Operations, I'm sorry.

19 Q. So you all fill out the form and give
20 it to operations?

21 A. Yeah. We'll come up with a list and
22 say, this is the equipment we need locked out,
23 we'll give it to them and then there was a
24 lockout/tag-out program they use that will input
25 the data, and then it will print the tickets out,

Page 20

1 or the tags. It's got the name, you know, who is
2 going to be locking out. It's got a sheet to where
3 we go and hang the tags, check up on the sheet
4 where it's also as -- if multiple people are
5 working under you, they can get on the sheet so
6 that the tag cannot be released until everybody
7 agrees that it needs to be released. And then I
8 would -- being the supervisor on that tag out, I
9 was the final say-so that said it could be cleared.

10 Q. So your name would've gone on the --

11 A. Bottom of the sheet.

12 Q. As the supervisor?

13 A. Yeah, or clearance holder.

14 Q. Okay. As far as going back to the
15 sheet, is it a preprinted sheet, does it have all
16 the equipment, or you all just fill it out on your
17 own?

18 A. No. It's printed out. But it's a
19 specific program; you input the data, it puts it
20 into the sheet where it needs to be.

21 Q. Was this specific equipment that
22 Mr. Washington was working on, was it listed on
23 this sheet?

24 A. No, it was not.

25 Q. Do you know why that was?

1 A. It got overlooked.

2 Q. Okay.

3 A. But that's also why whenever you work
4 on something that may be energized, we emphasize a
5 live-dead-live test which is basically, you have a
6 meter, you check your meter, make sure it works to
7 a known source, you check and read what you're
8 working on to make sure it's de-energized, and then
9 you check your meter again with a known source so
10 you know the meter didn't break, have a chance of
11 breaking in between. So even though it's locked
12 out or supposed to be locked out, we always check
13 to make sure because if it gets overlooked or if it
14 gets some stray voltage from one wire to another in
15 the cable tray and induces voltage on it.

16 Q. In these types of circumstances in a
17 multi-worker job site with contractors and
18 subcontractors, as far as the lockout/tag-out, is
19 that something that the contractors have access to
20 or is it only SCE&G --

21 A. No, they have access to it also. They
22 hang their own lock on there or they can come
23 underneath us, underneath our locks. But, like I
24 said -- or either whoever their supervisor is, like
25 he can have a lock and have his own

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1 lockout/tag-out. So he'd be like the clearance
2 holder for his group. So they can do it that way,
3 that way you still -- the lock is not removed until
4 everybody knows it's removed.

5 Q. Is there any sort of, I guess, internal
6 policy or procedure whereby once you've locked out/
7 tagged out a machine, you go and test it to make
8 sure it's de-energized?

9 A. Depends on the piece of equipment, what
10 it is. Some things you can test, some things you
11 can't. But that's why we always have a meeting
12 after it's done, telling what's been locked out.
13 And then also, basically, everybody gets reminded
14 that you're supposed to check it, do a live-dead
15 check before you actually work and you put your
16 hands on it and touch it. Assume it's energized
17 until you read it and prove that it's not.

18 Q. Okay. Have any new policies or
19 procedures with regard to this equipment or area,
20 were any new policies or procedures implemented
21 after this incident?

22 A. The only thing was through the OSHA
23 investigation, was I believe the -- and I don't
24 know if it's been implemented yet or not, but they
25 were talking about changing the wording on the

1 lockout/tag-out as far as to where the individual
2 person is responsible for check everything.

3 Q. When you say the individual person, you
4 mean the --

5 A. The person doing the work.

6 Q. Okay. Regardless of whether it's a
7 contractor or --

8 A. Right. .

9 Q. -- or an SCE&G -- okay.

10 Did OSHA issue any citations that
11 you're aware of?

12 A. I do not know if they did or not.

13 Q. Going back to the work that was being
14 done on Unit 3 at that time, we've established that
15 the panel box that Mr. Washington was working on,
16 he was removing the wires and the panel box was
17 going to be replaced, correct?

18 A. The whole valve was going to be
19 replaced and the panel box was mounted to the
20 valve.

21 Q. Okay. And the turbine itself wasn't
22 being upgraded or replaced?

23 A. No, no, they weren't doing anything
24 with -- well, they were -- they had to do a lot of
25 work on what we call the front end standard which

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1 is what works as far as turning the other old
2 valves inside of there. A lot of them weren't
3 needed now because of the new valves being put on.

4 Q. Okay. And as far as the other two
5 units, do you have any understanding as to why they
6 weren't being upgraded at that time?

7 A. It's -- they do it -- the upgrade is
8 done every so many years. And we just put a new
9 DCS system, distributive control system, on the
10 Unit 3; we were upgrading the controls on that for
11 better operations. Just hadn't gotten to 1 or 2
12 yet.

13 MR. SLAUGHTER: I'm going to take a
14 quick break and read my notes. We'll be finishing
15 up soon.

16 (A recess transpired.)

17 BY MR. SLAUGHTER:

18 Q. Going back to the lockout/tag-out, is
19 there any one individual or group of individuals
20 that their job is to oversee lockout/tag-out at
21 this facility?

22 A. Explain to me what you mean by oversee.

23 Q. Well, is it something that everybody --
24 all instrument mechanics are involved in or is it,
25 you report to a supervisor who is in charge of the

1 lockout/tag-out procedures?

2 A. I mean, everybody in the plant is
3 trained in it. But operations -- what's the word
4 I'm looking for -- they will put it in the system,
5 they will print the tags out to be on the locks, we
6 will go with them when they hang the locks and
7 verify that they've been hung and everything like
8 that. But everybody in the plant is trained on it.

9 Q. Okay. To your knowledge, was there a
10 lockout/tag-out procedure for this equipment, this
11 particular piece of equipment?

12 A. You mean specifically for that
13 equipment?

14 Q. Uh-huh.

15 A. No.

16 Q. Is it a general lockout/tag-out policy
17 or do you have it for certain areas specifically?

18 A. You usually just get a lockout for what
19 you're working on. You look at what you're working
20 on, you try to go through and get a list of
21 everything that may be supplying power, whether it
22 be -- the power may be mechanical, electrical --
23 and what you need to get locked out.

24 Q. As far as like the, I'll call it
25 policies and procedures, are you guys trained or

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1 taught on just a general lockout/tag-out or is it
2 specific to certain areas?

3 A. It's generally lockout/tag-out.

4 (PLF. EXH. 1, lockout/tag-out permit,
5 Bates WMA/000084/1900-202 to Bates WMA/000085/
6 1900-202, was marked for identification.)

7 Q. Mr. Wilson, I'm going to hand you what
8 has been marked as Plaintiff's Exhibit 1 to your
9 deposition. This has been produced by your
10 attorneys. The Bates label is WMA/000084/1900-202.
11 Are you familiar with this document?

12 A. Yes. Lockout/tag-out.

13 Q. Is that the list we were referring to
14 earlier, the populated list?

15 A. Yes.

16 Q. And is this the specific list for the
17 date of the incident involving Mr. Washington,
18 September 28th?

19 A. The date on it, it's...

20 Q. I'm sorry? That was from the date of
21 the incident?

22 A. Yeah, I'm going by the date when I
23 signed, it was 9/28, so that's when they were
24 placed, these.

25 Q. And this is the sheet that came from

1 operations after you all submitted what needed to
2 be locked out/tagged out?

3 A. Yes.

4 Q. Is this sheet circulated, posted?
5 Where does it go from there?

6 A. This sheet would be -- control room
7 would keep this one. And I would get another one
8 that has a place for people underneath to sign on
9 to.

10 Q. And then this particular document, this
11 is for the area and the equipment where
12 Mr. Washington was working, that area?

13 A. Well, it was part of the job.

14 Q. Okay. And the specific equipment he
15 was working on is not listed, correct?

16 A. No, it is listed. This was done after
17 the incident. This wasn't done before. This was
18 done after the incident.

19 Q. Okay. Do you know when they started?
20 Was this the first day they started that job or did
21 they start --

22 A. No, no. It started a while back. It
23 had been going on for a few weeks. I don't
24 remember the exact time that it started.

25 Q. Do you remember about what time this

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1 incident occurred?

2 A. I do not.

3 Q. But this sheet or a sheet similar to
4 this would've been done at the start of the
5 project?

6 A. Yes.

7 Q. And it wouldn't be done again
8 because --

9 A. No, because the locks wouldn't have
10 been removed.

11 Q. So this was for another project that
12 started on the 28th?

13 A. No. This -- this -- what this one is,
14 this was done after the incident to lock out what
15 was sending power to that area, to that panel.

16 (PLF. EXH. 2, lockout/tag-out permits
17 Bates WMA/000082/1900-202, WMA/000083/1900-202 and
18 WMA/000086/1900-202 through WMA/000094/1900-202,
19 was marked for identification.)

20 Q. I'm going to hand you a group of
21 documents collectively marked as Plaintiff's
22 Exhibit 2. The Bates numbered starts at 82 and
23 goes to 94. If you would, could you look through
24 those and identify the lockout/tag-out sheet that
25 would've coincided with the start of this

1 particular job where Mr. Washington was working?

2 A. These were the ones, the initial ones
3 that were done before they actually started doing
4 the demo work here.

5 Q. So all of those relate to the same --

6 A. There's one in here that I think was a
7 duplicate of that one.

8 Q. Okay. Well, in reviewing those
9 documents relating to this demo work, is the
10 specific equipment Mr. Washington was working on
11 listed anywhere?

12 A. Well, on this sheet and then this one
13 which is a duplicate of that one, appears to be a
14 duplicate.

15 Q. Okay. What are those dated, if you
16 don't mind my asking?

17 A. These are the 26th.

18 Q. So as far as the September 26th, 2011
19 lockout/tag-out sheets, the equipment is not
20 listed; is that right?

21 A. No. The work hadn't -- they hadn't
22 started doing the lockout work yet, apparently.

23 Q. But would this be the sheet that this
24 piece of equipment should've been listed on?

25 A. Yes.

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1 Q. Okay. I think wanted today clarify
2 that.

3 MR. SLAUGHTER: Subject to any
4 follow-up, I don't have any other questions for
5 you. Thanks.

6 EXAMINATION

7 BY MR. NEVILLE:

8 Q. I've just got a few questions. Ricky,
9 my name is Ryan Neville. We've met and chatted
10 before. I represent SCE&G. Can you tell me about
11 the panel that Mr. Washington was working on, and
12 specifically what does that panel control?

13 A. It controls the main stream stop valve
14 which controls the steam going to the turbine,
15 which I say, let's the steam come in for the
16 turbine to turn, turns the generator that generates
17 the electricity that we produce.

18 Q. And so the panel is necessary to the
19 production of power?

20 MR. SLAUGHTER: Object to the form.

21 THE WITNESS: Yeah.

22 BY MR. NEVILLE:

23 Q. Is the panel that Mr. Washington was
24 working on necessary for the production of power?

25 MR. SLAUGHTER: Object to the form.

1 THE WITNESS: Yes.

2 BY MR. NEVILLE:

3 Q. Is the panel Mr. Washington was working
4 on essential to the production of power?

5 MR. SLAUGHTER: Object to the form.

6 THE WITNESS: Yes.

7 BY MR. NEVILLE:

8 Q. Is the panel Mr. Washington was working
9 on integral to the production of power?

10 MR. SLAUGHTER: Object to the form.

11 THE WITNESS: Yes.

12 BY MR. NEVILLE:

13 Q. Could Mr. Washington have prevented
14 this accident had he done the live-dead-live test
15 that you described earlier?

16 A. Yes.

17 MR. NEVILLE: I don't have any further
18 questions, I don't think, unless somebody gives
19 me...

20 MR. SLAUGHTER: Have you got anything?

21 MR. RAMSEY: I just have one question.

22 EXAMINATION

23 BY MR. RAMSEY:

24 Q. The work that was being done, the
25 upgrade that was being done at the Canadys power

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1 plant, my understanding is that the power company
2 contracted with someone to have that done; is that
3 correct?

4 A. That's correct.

5 Q. Do you know who they contracted with?

6 A. Emerson, I believe.

7 Q. All right. So in terms of doing the
8 renovations that were then in turn critical for the
9 generation of power, those things were being
10 undertaken by Emerson on behalf of the power
11 company; is that correct?

12 A. To my knowledge, yes.

13 Q. You weren't involved in the contract or
14 any of the --

15 A. No.

16 Q. -- the negotiations of those things?

17 A. No.

18 MR. RAMSEY: That's all I have.

19 MR. SLAUGHTER: I've just got a few
20 more.

21 RE-EXAMINATION

22 BY MR. SLAUGHTER:

23 Q. The project and the work that was being
24 done on Unit 3, this wouldn't be considered routine
25 maintenance, would it?

1 A. No.

2 Q. This is, again, a major overhaul or
3 repair?

4 A. Yes.

5 Q. Or upgrade, excuse me.

6 Could this incident have been prevented
7 had this equipment been locked out/tagged out?

8 A. Yes, but also the live-dead-live, which
9 was supposed to be done before anything is touched,
10 that was communicated to the groups each morning in
11 the meeting, would have also prevented it.

12 Q. But is the lockout/tag-out supposed to
13 be to primary safety mechanism to prevent this type
14 of incident?

15 A. Yes. But you're supposed -- even
16 though it's in place, you're supposed to check and
17 make sure it's de-energized before you work on it,
18 because there could be other feeds feeding it. And
19 if you do find power, then work stops and then you
20 work to remedy the problem and get the power off of
21 it.

22 Q. Is there any policy or procedure or
23 practice in place where any sort of -- once a piece
24 of equipment is locked out, anyone from SCE&G does
25 an inspection, a visual inspection or test, to make

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1 sure it's, in fact, de-energized?

2 A. Some of the equipment. Depends on the
3 equipment. But that's why the individual actually
4 doing the work on it is supposed to check it.
5 Whether it be live-dead-live depends on the type of
6 equipment it is.

7 Q. What would determine that -- what would
8 the equipment have to be?

9 A. For this instance?

10 Q. Well, to require a follow-up.

11 A. Well, it depends on what you're working
12 on, what's locked out. For this instance where
13 it's electrical, if he'd had an vol' meter and
14 tested the voltage on it, AC and DC, to see if
15 there was any power on the wire...

16 Q. But as far as -- this is probably a bad
17 question on my part. I was referring to SCE&G,
18 anyone who does any sort of follow-up inspection or
19 testing to ensure that a machine that they've just
20 locked out is, in fact, de-energized.

21 A. Usually the machine is locked out --
22 when you lock out a machine, it's one we're going
23 to be working on and we test it. This project, the
24 scope and the size of this project, with the number
25 of terminals, it -- you can't go to every

1 individual terminal and check them. That's why it
2 was the contractor's responsibility to check all
3 the terminals before they de-termed them to make
4 sure they were safe and de-energized.

5 MR. SLAUGHTER: That's it. That's all
6 I've got.

7 MR. NEVILLE: I don't have anything
8 unless.

9 MR. RAMSEY: No.

10 (The deposition was concluded at
11 12:18 p.m.)

12 (The witness, after having been advised
13 of his right to read and sign this transcript, does
14 waive that right.)

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CERTIFICATE OF REPORTER

I, Christina L. Essi, Registered
Professional Reporter and Notary Public for the
State of South Carolina at Large, do hereby certify
that the foregoing transcript is a true, accurate,
and complete record.

I further certify that I am neither
related to nor counsel for any party to the cause
pending or interested in the events thereof.

Witness my hand, I have hereunto
affixed my official seal this 9th day of May, 2014
at Lexington, Lexington County, South Carolina.

Christina L. Essi,
Registered Professional Reporter
My Commission expires
October 24, 2021

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(No Information Requested)

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STATE OF SOUTH CAROLINA

COUNTY OF COLLETON COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

SAMUEL WASHINGTON, JR.,

Plaintiff,

Case No.: 2013-CP-15-411

vs

SOUTH CAROLINA ELECTRIC AND
GAS COMPANY; AND EMERSON
ELECTRIC COMPANY d/b/a EMERSON
NETWORK POWER, AND/OR EMERSON
NETWORK POWER,

Defendants.

D E P O S I T I O N

WITNESS: LAWRENCE J. PURVIS

DATE: Wednesday, May 21, 2014

TIME: 11:07 a.m.

LOCATION: Law Offices of
Walker & Morgan, LLC
135 East Main Street
Lexington, South Carolina

TAKEN BY: Attorneys for the Plaintiff

REPORTED BY: GINA M. SMITH
Certified Shorthand Reporter
Registered Professional Reporter

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117 Haddon Creek Court
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803-359-5705.

Page 2

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17 NETWORK POWER AND/OR EMERSON NETWORK
18 POWER:

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22 Louisville, KY 40202

23 ALSO PRESENT:

24 BRYONY HODGES
25 SANDYLYNN KAMMER

(INDEX AT REAR OF TRANSCRIPT)

1 (DEPO. EXH. 1, Master Agreement, was
2 marked for identification.)

3 STIPULATION: It is stipulated by
4 and among Counsel that this deposition is being
5 taken in accordance with the South Carolina Rules
6 of Civil Procedure, and that the deponent waives
7 the right to read and sign the deposition
8 transcript.

9 -----

10 LAWRENCE J. PURVIS, being first
11 duly sworn, testified as follows:

12 EXAMINATION

13 BY MR. MORGAN:

14 Q. Would you state your full name for the
15 record?

16 A. Lawrence J. Purvis.

17 Q. And, Mr. Purvis, my name is Kirk Morgan.
18 I represent a man named Samuel Washington and his
19 wife who was injured at the SCE&G facility in
20 Canadys -- am I pronouncing that right?

21 MS. HODGES: Canadys.

22 BY MR. MORGAN:

23 Q. Canadys. And you have been identified as
24 a witness by South Carolina Electric and Gas who
25 may have some information relevant to this case,

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1 and that's the purpose for which we bring you here
2 today.

3 Have you ever had your deposition taken
4 before?

5 A. Yes.

6 Q. All right. So you know the process. If I
7 talk too fast, if you don't understand a question,
8 let me know. I'll assume the answers you're giving
9 me are factually based because you're under oath.
10 Don't guess. Don't speculate. Just the facts,
11 ma'am, I guess as Joe Friday used to say.

12 Tell me a little bit about yourself, if
13 you don't mind, before we start, which would be
14 your educational background and your work-life
15 experience.

16 A. Graduated from Presbyterian College with a
17 degree in biology, minor in physics. I taught
18 school for two years. Then I went to work with
19 Diamond Hill Plywood Company in Darlington, South
20 Carolina, management training program. I was in
21 sales and then in management with them until 1988.

22 And I went to work for Sonoco Products in
23 Hartsville and was the manager of import/export for
24 high-density film products division. Then I came
25 with SCE&G in 2001. I was hired as a facilities

1 maintenance procurement manager, worked -- also
2 worked with security and with construction of
3 pipelines, and then in 2005, I was transferred over
4 to fossil-hydro and in 2006 became the strategic
5 source manager for fossil-hydro.

6 Q. So you first came and did facility
7 maintenance manager when you came to work at SCE&G?

8 A. I was a procurement manager for facilities
9 maintenance.

10 Q. And then you said you went to
11 fossil-hydro?

12 A. As procurement manager.

13 Q. What's fossil-hydro?

14 A. Fossil-hydro generation in plants.

15 Q. Okay.

16 A. The 11, 12, 13 units we had.

17 Q. All right. And then relevant to this case
18 you were now a strategic -- you're the manager of
19 strategic sourcing?

20 A. Change of title, procurement manager
21 for -- instead of a procurement agent, I am now a
22 procurement manager for fossil-hydro.

23 Q. If you had to talk to someone who doesn't
24 know what managing strategic sourcing means like
25 myself, kind of tell me in lay terms what you do on

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1 a daily, weekly, monthly basis.

2 A. I have five procurement agents that work
3 for me that do the procurement for goods and
4 services for fossil-hydro generation plants.

5 Q. Do you have any electrical engineering
6 background?

7 A. No.

8 Q. Do you have any specialized skills that
9 you utilize at SCE&G of a technical nature in
10 regard to their operations other than the
11 procurement side?

12 A. No.

13 Q. And when you're saying procurement, I'm
14 assuming you're helping negotiate contracts with
15 vendors or suppliers or entities with which y'all
16 do business?

17 A. Yes.

18 Q. Is there any specific area -- we'll get to
19 this specific case in a minute and the contract
20 that this involves, but if SCE&G wanted to buy
21 light bulbs or buy trucks and cars, would you be
22 involved or your division with that issue?

23 A. No.

24 Q. Help me -- put me in the box that you're
25 in as to what you're helping procure.

1 A. Our procurement department is divided up
2 into five groups: a corporate group that handles
3 software, security, facilities, transmission and
4 retail electric, which procures goods and services
5 for these guys you see on the street working the
6 lines and whatnot.

7 Q. Right.

8 A. Procurement for gas, which of course is --
9 they buy pipes, shovels and backhoes. And as part
10 of the corporate group, corporate group has fleet,
11 so all the fleet and trucks and all that go under
12 that group.

13 With fossil-hydro, we handle all the
14 goods, services, parts, equipment, construction
15 that go on in the power plants other than the
16 nuclear.

17 Q. Okay.

18 A. And there's a separate group that handles
19 procurement for nuclear.

20 Q. So as it pertains to the Canadys facility,
21 if you're -- if SCE&G is looking to contract with a
22 third party to do a specific project within that
23 facility, your division of procurement would be
24 involved in either negotiating that contract or
25 finding that vendor? Is there a difference? I

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1 mean, do you help make the decision as to who you
2 hire or just work out the terms of the retention?

3 A. Both. It depends on how the engineers
4 with the project decide to handle it. Now, we do
5 have what's termed EPC contracts, engineer
6 procurement contract, where we may hire a company
7 to control a whole project, and those are large
8 construction projects like cooling towers or
9 scrubbers.

10 Q. Right.

11 A. But when we get into just the general
12 maintenance, the outage work and that type thing,
13 our groups handle the majority of that.

14 Q. Tell me what your division and you as
15 manager of that division of strategic sourcing had
16 to do with the Canadys project during which -- the
17 course of which Mr. Samuel Washington was injured.

18 A. My procurement agent would have written
19 the PO, would have handled the commercial terms,
20 would have made sure that all of the documents were
21 sent out to Emerson, would have been at the prebid
22 when everything was given out to Emerson, the
23 safety documents, to make sure that we had all the
24 insurance documents that covered general liability,
25 automobile, workmen's comp, that we had all of the

1 other documents inhouse before the project started,
2 and then once the purchase order was generated by
3 the purchasing agent, I would have approved it.

4 Q. You've got a document in front of you that
5 we've marked as Plaintiff's Exhibit 1 to your
6 deposition. Can you identify that document and
7 describe into the record what a -- it looks like
8 it's called a master agreement -- whether that is
9 unique to this contract with Emerson or generic to
10 many projects similar?

11 A. It would be generic to many projects that
12 deal with Emerson.

13 Q. Right.

14 A. And this master agreement was drawn up in
15 order that -- so that we don't have to negotiate
16 terms and conditions with Emerson on every order
17 that's sent to them.

18 Q. And within that document, I think it's
19 Bates number 202 there, for example, there begins
20 some purchase orders. And I would -- can you
21 explain to me whether the purchase orders would be
22 contemporaneous with this master agreement or
23 whether they just flow in the course of the project
24 and then become part of the contracts with Emerson?

25 A. The purchase orders become part of the

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1 contract as they're referenced at the bottom of
2 that purchase order as a master agreement. It's
3 referenced at the bottom of the purchase order.

4 Q. But they're not always done
5 contemporaneous with the master agreement, correct,
6 the purchase orders?

7 A. I'm not sure what you're asking.

8 Q. You reach a master agreement with Emerson.
9 They're going to do a project. They're going to
10 help renovate, demolish, update, modernize this
11 facility. And during the course of that project,
12 specific tasks are authorized by purchase orders?

13 A. Or by change order that would be
14 referenced by purchase order.

15 Q. And I guess what I'm saying is if on
16 Tuesday, September 1, 1965, you enter a master
17 service agreement, there might be purchase orders
18 executed, entered into at dates subsequent to the
19 master agreement?

20 A. Yes.

21 Q. Okay. And I guess what I was trying to
22 figure out just so I understand Exhibit 1, because
23 these documents were produced by your employer, is
24 these purchase orders -- for example, I'm seeing
25 one dated October 19, 2009, and I guess I could go

1 to the back, and it looks like there's a -- I'm
2 trying to figure out the date of the master service
3 agreement.

4 A. It was dated September 17, 2008.

5 Q. Okay.

6 A. As referenced on the front of this
7 purchase order.

8 Q. So I guess the purchase order answers the
9 question for me, if the date of the purchase order
10 is sometime in 2009 through '11, then clearly it's
11 something that was generated subsequent to
12 initiation of the relationship?

13 A. If we reference it on the purchase order,
14 yes.

15 Q. Okay. What is your understanding of what
16 SCE&G was contracting with Emerson to do at the
17 Canadys facility?

18 A. This was a control project that -- working
19 on control upgrade for the turbine-driven boiler
20 feed pump. From looking at this, it looks to me
21 like it was during an outage because of the amount
22 of work that is involved.

23 During an outage -- we do this type of
24 work ourselves, but during an outage, we may hire
25 people to do this same type work depending on the

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1 amount of work that has to be done during the
2 outage and the amount of work that our own
3 employees have to do. So we may bring someone in
4 like Emerson to do this work or we might do it
5 ourselves in an outage.

6 Q. What was the work they were doing? What's
7 your understanding of what Emerson was doing at
8 Canadys on this project?

9 A. Working on the controls on the boiler feed
10 pump.

11 Q. Do you know what they were doing on the
12 controls?

13 A. No, I do not.

14 Q. If it's been described by other SCE&G
15 people that they were demolishing it and replacing
16 it with entirely new equipment for the first time
17 since Canadys facility opened, would that be new
18 information to you?

19 A. It would be to me, but might not have been
20 to my purchasing agent.

21 Q. Because you've just said, "we do this type
22 work and" --

23 A. We do. We work on boiler feed pump
24 controls all the time, so --

25 Q. Do you know if SCE&G has ever demolished,

1 removed and upgraded that unit or units at Canadys
2 at any time previous?

3 A. This particular unit?

4 Q. Yes, sir.

5 A. I would say no.

6 Q. It had never been done before, so --

7 A. I would say no, but I'm not -- I'm not --
8 I wouldn't be a hundred percent sure of that.

9 Q. Well, if other people at SCE&G concur with
10 that statement that this had never been done
11 before, would you need to qualify your statement
12 that we've done this type work before, but
13 sometimes when we need extra people, we bring in
14 Emerson?

15 A. I would have to go back and pull records
16 to see if we had done anything to this unit before.

17 Q. Okay.

18 A. Because I would not know that.

19 Q. All right. So you can't say for sure that
20 your previous statement that "we've done this work
21 before" is an accurate statement, the specific work
22 that Emerson was doing under this master service
23 agreement?

24 A. No, we have done work on boiler feed pumps
25 previously, yes. On this particular boiler feed

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1 pump, no, I can't tell you that we have done it
2 previously.

3 Q. Okay. Would you consider this minor work
4 or a major project?

5 A. Well, from the scope of work, if you look
6 at the total scope of the job, I would say that was
7 a major outage.

8 Q. Do you have any -- strike that.

9 What is your understanding of what
10 happened to Mr. Washington on that day? And I
11 realize everything you know may be secondhand, and
12 I don't want to know anything that your lawyers
13 have told you.

14 A. Only thing I know for a fact is that
15 Mr. Washington was shocked, that we did -- that our
16 employees, our first responders, did treat him,
17 that -- it's my understanding that we called in air
18 support and had him flown out. Other than that,
19 that's really all I know.

20 Q. Do you have any experience in
21 safety-related issues at SCE&G or in your previous
22 areas of employment?

23 A. Yes.

24 Q. Tell me the scope of what that experience
25 would be.

1 A. At Sonoco, I worked with the safety
2 department on -- in the high-density film division
3 with training classes. When I was at Diamond Hill
4 Plywood, I was in -- I had to arrange training
5 classes for my employees. But other than that,
6 that's it.

7 Q. Do you have any specialized knowledge by
8 training or experience involving lockout tagout
9 procedures?

10 A. No.

11 Q. Do you have any specific knowledge in this
12 case as to what SCE&G was doing in or around the
13 time Mr. Washington was hurt as compared to what
14 Emerson's people were doing at the facility?

15 A. No.

16 Q. Where is your office?

17 A. In Columbia.

18 Q. Okay.

19 A. Cayce, excuse me.

20 Q. Sure. How often would you go to the
21 Canadys facility in the course of your job since
22 you came to work in 2001?

23 A. Four or five times a year.

24 Q. And when you go there, what are you doing?

25 A. Normally for a prebid meeting on projects.

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1 Q. Do you know if you ever went down there in
2 regard to either negotiating or finalizing or
3 implementing this contract with Emerson at the
4 Canadys facility?

5 A. I don't remember.

6 Q. We took the deposition of - I
7 apologize -- Richard Alan Wilson. Do you know him?

8 A. I know him when I see him, but that's it.

9 Q. All right. He described this project
10 during the course of which Mr. Washington got hurt
11 as an upgrade on our DCS system as well as the
12 control valves, you know, involving steam going to
13 the turbines and such. Is that a fair generic
14 description of what Emerson was involved with at
15 SCE&G's request?

16 A. From reading this purchase -- from reading
17 what's on the purchase order, I would have to say
18 yes, but --

19 Q. And he described it as a major upgrade
20 changing the valves out and the controls out. It
21 involved various tasks. Is that a fair description
22 from your point of view?

23 A. I don't know whether it was changing the
24 valves out or rebuilding valves.

25 Q. Okay.

1 A. From what -- you know, from what it says
2 on here, I can't tell. I mean, it says "removal,"
3 so I assume they did -- they did some removal of
4 something, but I don't know what.

5 Q. And so basically this upgrade -- this
6 major upgrade's talking about is, in essence,
7 Emerson is putting in a new brain, a new control
8 system, a modernized control system for running
9 this component of the facility. Is that a good
10 layman's description?

11 A. Yes.

12 Q. There's some acronyms that certainly are
13 new to me. He said DCS which stands for
14 distributive control system. You know, was that
15 the end goal of what Emerson was installing for
16 SCE&G, a new modern distributive control system?

17 A. It was upgrading distributive controls.

18 Q. Do you have any information that there had
19 ever been a previous upgrade of the control system
20 at Canadys at any time?

21 A. No, I don't -- wouldn't know one way or
22 the other.

23 Q. Would you consider this, the work that
24 Emerson was doing, specialized as it pertains to
25 demolishing and installing this new

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1 state-of-the-art distributive control system?

2 A. No. We could have done it, although it
3 would have -- due to the time that it would have
4 taken us to do it, might have extended past the
5 outage period. Understanding that when we go into
6 an outage, it's very limited time that we have to
7 complete this because of other unit -- other plants
8 in outage during the same time of the year. Our
9 window of opportunity for outages comes twice a
10 year.

11 Q. Right.

12 A. And it's only -- it's very limited in the
13 time. We have to be through, say, by May 1st
14 because, as you see, it's going to be mid-90s now,
15 so we have to have the plants up running and back
16 in -- and we have to have so much capacity
17 available and we have to have so much reserve
18 available.

19 So I think, as I said earlier, depending
20 on the amount of work that has to be done during an
21 outage determines -- it's a business call as to
22 whether we will come out and hire a contractor or
23 we'll do it ourselves.

24 Q. Do you know if anyone for SCE&G had ever
25 installed a distributive control system in any

1 portion of the Canadys plant?

2 A. No, I do not.

3 Q. Are you aware that this DCS was an Emerson

4 product, a computer product?

5 A. Yes.

6 Q. All right.

7 A. But there are other people that sell them

8 too.

9 Q. Sure. And these computer controls --

10 A. Yeah.

11 Q. -- whether it's --

12 A. All propriety.

13 Q. -- whether it's Honeywell, whether it's

14 Emerson --

15 A. It's all proprietary, so --

16 Q. And you think that there's someone at

17 SCE&G or some team that could install Emerson's

18 distributive control system computer system --

19 A. Yes.

20 Q. -- as opposed to Emerson?

21 A. As opposed to Emerson or --

22 Q. In lieu of.

23 A. In lieu of, yes.

24 Q. All right. And who would that have been?

25 What team would that have been?

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1 A. The E&I group at the plants.

2 Q. All right. And if the E&I group had done
3 this before, they would be the best ones for me to
4 find that out from, correct?

5 A. Yes.

6 Q. All right. Would you agree that this was
7 not routine maintenance that was going on at
8 Canadys?

9 A. Yes.

10 Q. It was not?

11 A. It wasn't routine in the fact that it's --
12 or in the context that it's something that would be
13 done every year or every two years or every three
14 years.

15 Q. Well, what if --

16 A. I mean, it's done.

17 Q. What if the record indicates it had never
18 been done before, would that help you to say it
19 wasn't routine maintenance?

20 A. It's been done on other plants before.

21 Q. Okay. Upgrading?

22 A. Yeah.

23 Q. Okay. So if the record indicates
24 objectively that this was the first upgrade of the
25 distributive control system since the plant was

1 originally built, you would agree that that was not
2 on a routine maintenance schedule somewhere being
3 done once a year or once every five years, once
4 every ten years?

5 A. Yes, I would have to say that it's not
6 done every one year, two years or three years.

7 Q. All right. And the original question was
8 do you consider this routine maintenance
9 periodically performed?

10 A. It is periodically performed when Emerson
11 upgrades their controls and comes out with a new
12 system, yes.

13 Q. Okay.

14 A. But, no, it's not done every -- on a, you
15 know, set --

16 Q. Right.

17 A. -- two-year, three-year, four-year.

18 Q. The -- can you look at the master service
19 agreement exhibit, and I want to make sure to look
20 at Bates numbers. It looks like it's page -- can
21 you look at page 6 of -- it looks like the original
22 document's a 17-page document, so page 6 of 17, and
23 I'm looking at the master service agreement, will
24 be the paragraph 17 dealing with independent
25 contractor status.

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1 A. Oh, you're talking about general terms and
2 conditions?

3 Q. Yes, sir. I apologize.

4 A. Okay.

5 Q. Why does SCE&G include a paragraph 17 in
6 its contracts, master service agreements?

7 A. We do it on every --

8 MR. NEVILLE: I'll object to the form to
9 the extent that it's asking him like a 30(b)(6)
10 type question there as far as SCE&G goes.

11 BY MR. MORGAN:

12 Q. Are you knowledgeable about the terms and
13 conditions of these master service agreements?

14 A. I have a general knowledge of them.

15 Q. All right. Within your general knowledge,
16 what's your understanding of why paragraph 17 is
17 included in this master service agreement?

18 A. So that it says that these are not our
19 full-time employees, that they are independent
20 contractors that we have hired to -- or a
21 company -- they work for a company that we've hired
22 to perform a task, that we have paid the company
23 they work for to cover their insurance, to cover
24 their liability, to cover their automobile
25 insurance, to cover their general liability,

1 workmen's comp, et cetera, so that they are not
2 deemed to be employees of SCE&G.

3 Q. And you said the procurement division
4 would make sure that all of the addendums to this
5 contract are satisfied such as give us proof that
6 you've got liability insurance coverage of a
7 certain amount, correct?

8 A. Correct.

9 Q. Give us proof that you've got a
10 certificate binding workers' compensation coverage,
11 correct?

12 A. Correct.

13 Q. Indemnification provisions I'm sure are
14 part of this contract too, are they not?

15 A. They would be in -- either in the general
16 liability or general terms and conditions or in a
17 master.

18 Q. All right. Do you know whether or not
19 indemnification -- strike that.

20 When this lawsuit arose, Mr. Washington
21 filed a claim against SCE&G, do you know whether or
22 not -- were you consulted in regard to any terms or
23 conditions of this contract as it pertained to
24 indemnification from Emerson?

25 A. From Emerson, no, no one's ever contacted

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1 me from Emerson.

2 Q. That would not be -- that would be someone
3 else, legal or --

4 A. Right.

5 Q. You're just not involved in that process?

6 A. Right. Well, Emerson has never contacted
7 me about anything, so --

8 Q. Okay. Has anybody at SCE&G other than
9 your lawyers ever said, all right, give me a copy
10 of, you know, the liability insurance policy
11 they're required to have?

12 A. No one other than our legal department.

13 Q. All right. Mr. Washington was employed
14 confusingly to me by maybe a company called ATS,
15 maybe Applied Technical Services, or some other
16 entity. If Emerson contracted with subcontractors
17 to perform their duties under the master service
18 agreement, are you involved in any of those
19 contractual relationships?

20 A. No.

21 Q. All right.

22 A. Our contract is with Emerson.

23 Q. So when you heard Mr. Washington got hurt
24 and he wasn't an Emerson employee, that's certainly
25 not -- didn't surprise you that he wasn't a direct

1 Emerson employee, he was an electrician for some
2 other entity?

3 A. I would have no reason to know whether he
4 was or he wasn't.

5 Q. All right. Can I assume that there are
6 either engineers or project managers for SCE&G who
7 were involved in both the scope of the contract
8 that you negotiated and then the implementation of
9 the contract?

10 A. Yes.

11 Q. And in those details, you would -- I would
12 get the -- who was Emerson bringing on site, why
13 were they bringing them and who was supervising
14 them?

15 A. Correct.

16 Q. All right. You have no specific
17 information about the OSHA investigation in this
18 case?

19 A. I do not.

20 Q. Except that you're just aware of it?

21 A. Well, I would -- I know that there was
22 one, and that's all -- the extent of what -- of my
23 knowledge.

24 Q. No one asked you any questions in regard
25 to the OSHA investigation?

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1 A. No.

2 Q. To your knowledge, who was your most
3 direct contact person in regard to implementation
4 or negotiation of this contract at Canadys?

5 A. At that time, I would imagine it would
6 have been Joe Foster, but that's a -- that's a
7 guess as much as anything else. Plant manager
8 Kevin Wicker would have some -- some knowledge of
9 it.

10 Q. Who would know if SCE&G had a workforce
11 capable of installing a distributive control system
12 manufactured by Emerson at the time of this
13 project?

14 A. I would think that it would be Steve Van
15 Vlack, Alyssa Hubbard, Joe Foster, Mike Summer.

16 Q. Okay. Again, your name was given to us as
17 a person who might have information relevant to
18 this lawsuit and might potentially be a witness in
19 this case, and again, with your experience, I
20 simply want to find out what you know and if you
21 came to testify what you might say.

22 They indicate that you -- you know, you're
23 manager of strategic sourcing and your role at
24 SCE&G includes managing contracts for work like
25 that being performed by Mr. Washington.

1 What ongoing management responsibility did
2 you have after this master service agreement --
3 master agreement was signed as the project was
4 being implemented, done, work being done?

5 A. We would handle any changes in the scope
6 of work that had to be dealt with on a purchase
7 order or with any signed agreement, if it was other
8 than these.

9 Q. So change order or a change or
10 modification that involved money?

11 A. Right, or if there was any additional time
12 and material, whatever.

13 Q. So contracts like this may be somewhat --
14 I use the term cost plus. They're not cost plus,
15 but they're somewhat fluid?

16 A. They could be fluid.

17 Q. If the scope of the work was more than
18 originally, Emerson might have contracted for that?

19 A. Or would have changed, whatever.

20 Q. How long was this project supposed to last
21 if things went well, the distributive --

22 A. I would say six to eight weeks.

23 Q. It's my understanding that there wasn't a
24 full shutdown of the Canadys facility when this was
25 ongoing, just maybe a unit?

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1 A. I don't remember. That could be correct.

2 Q. What would --

3 A. Normally an outage is one unit at a time,
4 yes.

5 Q. Help me understand what a full shutdown
6 would involve.

7 A. That would have been all these units of
8 the plant shut down at the same time.

9 Q. You unplug it, the whole thing?

10 A. Basically, yes.

11 Q. As opposed to part of the facility is
12 still generating?

13 A. Well, if it's a three-unit plant, you
14 might take one unit down at a time. Other two
15 units are running while that one unit is down, if
16 it can be operated safely.

17 Q. Do you know whether or not it was the
18 intention of SCE&G or did it come to fruition that
19 all the units were going to be upgraded?

20 A. I don't know. Mainly because that -- this
21 was in 2009. If you're aware, right now, that
22 plant is shut down completely.

23 Q. Right.

24 A. And so in 2009, I don't know what the
25 plans were for it.

1 Q. Yeah.

2 A. It may have been -- may have been that all
3 three units were going to be upgraded.

4 Q. This accident happened in 2011.

5 A. Uh-huh.

6 Q. All right? Help me understand --

7 A. Why it was 2011?

8 Q. Why it was 2011 and I'm seeing master
9 agreements that are 2009.

10 A. Mainly because -- one reason is Emerson --
11 General Electric, Emerson, and one other company
12 are extremely hard to negotiate with. We -- with
13 these major companies, we generally try to get a
14 master agreement. And at some point, normally on a
15 three- to a four-year basis or unless our legal
16 department decides that some part of it needs to be
17 renegotiated, we try to keep a master agreement
18 good for three to four years.

19 Q. And then you use the purchase orders for
20 more specific projects?

21 A. Correct.

22 Q. So you have a -- maybe that answers the
23 question. Master service agreement is kind of the
24 predicate for the ongoing relationship, and then as
25 you have a distributive control system project

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1 that's going to take six weeks with Emerson, that's
2 done on a purchase order basis?

3 A. Yes, and the scope of work in that
4 document that goes along with that purchase order
5 would make up the whole agreement.

6 Q. So that's why, if I looked at this master
7 service agreement, it doesn't talk about doing
8 distributive control systems at Canadys in
9 September of 2011, because that just evolved in the
10 course of the master service agreement?

11 A. That's correct.

12 Q. Okay. And you don't know whether or not
13 other units -- was envisioned that other units
14 would undergo the same demolition and upgrade as
15 that which was taking place when Mr. Washington got
16 hurt?

17 A. Other units at Canadys?

18 Q. Yes.

19 A. No, I do not know.

20 Q. I'm just curious, why would y'all upgrade
21 in 2011 and shut it down? Is that just a business
22 decision, just change of plans?

23 A. Business decision.

24 Q. Got you.

25 Let me look through some notes. I'm

1 getting close. Can we go off the record just five
2 minutes.

3 (A recess transpired.)

4 BY MR. MORGAN:

5 Q. I do not have any further questions for
6 you, but I always kind of in a deposition say is
7 there anything that you think is relevant that I
8 haven't asked you that you're just dying to tell
9 me?

10 A. No.

11 Q. And then hold your hand up when your
12 lawyer tries to hit you. Please answer any
13 questions anyone else has. Thank you very much for
14 your time.

15 EXAMINATION

16 BY MR. RAMSEY:

17 Q. It's Mr. Purvis, correct?

18 A. Yes.

19 Q. All right. My name is Ian Ramsey. I'm
20 counsel for Emerson, and I just have a few
21 questions for you.

22 My understanding is that you're the head
23 of the procurement department over the
24 fossil-hydro. Is that --

25 A. Correct.

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1 Q. All right. And my guess is is that you
2 did not specifically negotiate the master agreement
3 that was referenced earlier?

4 A. No, I did not.

5 Q. And you did not specifically negotiate the
6 purchase order which was part of that?

7 A. No, I did not.

8 Q. And you did not specifically negotiate the
9 terms and conditions which were also part of that
10 packet that we were looking at?

11 A. No.

12 Q. All right. Do you know who specifically
13 negotiated the purchase order that was related to
14 the work being done by Emerson in 2011?

15 A. Allison Spry.

16 Q. Allison Spry. And how do you spell that
17 last name?

18 A. S-P-R-Y.

19 Q. And so Allison would be the person that
20 would have had the daily contact relating to
21 preparing the initial request for quotation, having
22 the meetings concerning the scope of work,
23 collecting all the necessary information from
24 Emerson. That's the person that would be doing
25 that?

1 A. She would have been doing that from the
2 procurement end. Now, from the engineering end, it
3 could have gone through the E&I group, through
4 Alyssa Hubbard's group.

5 Q. Okay. And my guess is is that what
6 happens with contracts like this, you have the pure
7 procurement side where they're talking about just
8 what's going to be done and how much is it going to
9 cost, and then there are other people that might be
10 involved talking about the details of what
11 specifically is going to be done and then you can
12 discuss with them is the cost that we're being
13 quoted, is that a reasonable cost for industry
14 standards, things like that?

15 A. Yes.

16 Q. Okay. You had talked about a -- two
17 different types of contracts. One you had said was
18 an EPC contract, and that's one where the -- you
19 hire someone to do everything. Is that -- is that
20 a fair summation of that?

21 A. Yes.

22 Q. Was this an EPC contract?

23 A. No.

24 Q. This was not?

25 A. This was not.

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1 Q. Okay. So there was no expectation on the
2 part of SCE&G that Emerson would do everything, but
3 it was probably a joint project with SCE&G
4 employees as well as people who were -- Emerson was
5 supplying. Is that a fair statement?

6 A. Repeat that, please.

7 Q. I added a few --

8 MR. MORGAN: Ian, when you said EPC, is
9 that Emerson process --

10 THE WITNESS: No.

11 BY MR. RAMSEY:

12 Q. He referred to a type contract called an
13 EPC, and I apologize, what does that mean?

14 A. Engineering procurement construction.

15 Q. Okay.

16 A. Normally that is somebody like a Fluor
17 or --

18 Q. Okay.

19 A. That we contract with. We say, okay, we
20 need a new cooling tower at X station. They come
21 in and they do the engineering, they recommend the
22 equipment, and they do the construction.

23 Q. A complete design-build?

24 A. Right.

25 Q. All right. This was not a complete

1 design-build contract?

2 A. No.

3 Q. Okay. And that was distinguishing between
4 whether it was an EPC contract or not?

5 A. Yes.

6 Q. All right. My question about how -- and
7 you may not know this because my guess is is you
8 don't -- you weren't involved in sort of the
9 fine-line details on the contract, but in looking
10 at the PO here, my guess is is that Emerson would
11 supply personnel to do certain things for this
12 contract?

13 A. Correct.

14 Q. And that SCE&G would also have personnel
15 that would be performing things for this contract,
16 in assisting?

17 A. Normally we would not assist or direct the
18 work once the scope of work was --

19 Q. Okay. Only to the extent that it was
20 defined by the scope, then?

21 A. Right.

22 Q. Okay. All right. In terms of what SCE&G
23 does as a company -- let me be very general here.
24 My guess is is that SCE&G is in the business of
25 producing electricity, power?

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1 A. This business, yes.

2 Q. It's in the business of then transmitting
3 that power out whether it be to retail -- to
4 commercial or residential, for residential use, and
5 selling that power in that capacity. Is that a
6 fair statement of what --

7 A. Yes.

8 Q. -- of what SCE&G does?

9 A. Yes.

10 Q. Okay. Now, you've had an opportunity to
11 look at Exhibit Number 1, which is the master
12 agreement and the PO and the terms and conditions.
13 Do you feel like you have a comfortable sense of
14 the scope of what was being done by Emerson on this
15 project?

16 A. Generally?

17 Q. Yes.

18 A. Generally, yes. What specifically was
19 being done, no, but generally, yes.

20 Q. Would you say that the work that was
21 contracted to Emerson to do, would you say that
22 that work was an important part of SCE&G's trade or
23 business?

24 A. And how so? I mean, the --

25 Q. Going back to you're in the business of

1 producing power, transmitting power and selling
2 that power, would you say that Emerson in working
3 on upgrades to the control systems, working on
4 upgrading and improving your turbine system for
5 this hydro plant, would you say that that is part
6 of the trade or business of producing power,
7 transmitting power and/or selling power?

8 A. The plant could run without Emerson
9 controls.

10 Q. Okay.

11 A. There would have to be some tasks
12 performed manually that these controls do
13 automatically or can be through the control room
14 told to open or close a valve, but at the same
15 time, it could be done manually. So could the
16 plant run without Emerson, yes. Could it run --
17 would you have to have more people, yes.

18 Q. Well, I guess my question is was the idea
19 of entering into this contract with Emerson -- was
20 the concept of entering into this idea is that the
21 services that Emerson would be providing to SCE&G,
22 these would be improvements to the power plant and
23 therefore improve your ability to be able to
24 generate power, transmit that power or sell that
25 power ultimately to your end users whether it be

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1 retail or commercial consumers?

2 A. Yes.

3 Q. Okay. Would you -- would you say that --
4 strike that question.

5 Do you know whether what has been put in
6 front of you as Exhibit Number 1, whether that is
7 the totality of the agreement? Do you know whether
8 there were any change orders, modifications made?

9 A. I never saw any. If there were any change
10 orders, they were not given in writing.

11 Q. Okay.

12 A. And so I would have to say, no, because
13 generally nothing's paid without it being in
14 writing, so --

15 Q. Okay. So that -- what you're seeing
16 there, you believe that is the actual purchase
17 order, the scope of the work that was being
18 asked --

19 A. Yes.

20 Q. -- by Emerson to be done on this project?
21 Okay.

22 Did you have any direct knowledge of the
23 day-to-day operations in terms of the work being
24 done, the day-to-day work being done by Emerson --

25 A. No.

1 Q. -- on this project?

2 If I were to tell you that Emerson
3 contracted its responsibilities under the contract
4 to another -- a company called ACT, is that
5 something that is routine -- that you see that is
6 routine in your procurement position?

7 A. Routine with Emerson or routine with other
8 companies or what?

9 Q. Routine with Emerson.

10 A. It would -- I can't tell you for a fact
11 that they do contract everything out, but it would
12 not surprise me because they don't have -- they
13 normally just send in a technician to oversee, so
14 it would not surprise me to hear that they do
15 contract out with others.

16 Q. Do you have any personal knowledge as to
17 whether they did or did not contract out?

18 A. No, I do not.

19 Q. Okay.

20 A. Well, let me change that, now.

21 Q. Sure.

22 A. I do now after the fact because I
23 understand that Mr. Washington was working for
24 another company, so, you know, at the time that
25 Emerson would have contracted with somebody else,

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1 no, I did not, but now I do.

2 Q. Now, you had said that part of the
3 process, of the contracting process, is the idea
4 that you want to see insurance certificates,
5 whether it be general liability or work comp or
6 other types of insurance certificates, and is that
7 because those obligations -- you expect from the
8 people you contract with that they're going to have
9 insurance to cover if something occurs?

10 A. Yes.

11 Q. All right. And is that cost of that
12 coverage, in other words, the cost incurred by the
13 coverage, is that included in terms of the contract
14 price?

15 A. Yes.

16 Q. All right. It's anticipated that's going
17 to be an extra cost?

18 A. We anticipate that if there's any extra
19 cost, it's added into what we pay.

20 Q. In what you pay. And you're paying for
21 that when you sign these contracts, so you're
22 paying for the idea that Emerson or if Emerson
23 contracted with someone, whoever they contract
24 with, that they're going to have the requisite
25 insurance in place if an incident should occur?

1 A. Yes, that's correct.

2 Q. Okay. That's all the questions I have.
3 Thank you very much.

4 MR. NEVILLE: I've got just a couple of
5 questions I think.

6 EXAMINATION

7 BY MR. NEVILLE:

8 Q. Mr. Purvis, my name's Ryan Neville. We
9 met and spoke before we went on the record. I
10 represent SCE&G. I've got just a couple of
11 follow-up questions.

12 Could the work that was subbed out, could
13 SCE&G have done that work?

14 A. Yes, we could have done that work.

15 Q. And was the work that was done necessary
16 to the production of power at the Canadys plant
17 meaning that the turbine that was spinning as a
18 result of the valve that was opening and closing
19 which then operated the generator, was that
20 necessary to produce power out of that generator?

21 A. Yes, because it was a turbine-driven feed
22 pump.

23 Q. Okay. So the work that was being
24 performed was necessary to the production of power?

25 A. Yes.

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1 Q. Okay. It was integral to the production
2 of power?

3 A. Yes.

4 Q. And it was essential to the production of
5 power?

6 A. Right.

7 Q. And you're familiar with -- I know you're
8 in the procurement process, but you do work in the
9 electrical and power industry, correct?

10 A. Correct.

11 Q. And have you ever heard of the
12 live-dead-live test?

13 A. Live-dead, yes.

14 Q. And could Mr. Washington have prevented
15 this accident if he performed the live-dead-live
16 test?

17 A. Yes.

18 Q. Okay. I got no further questions.

19 A. Electricians normally do that, but --

20 Q. Okay. Didn't mean to interrupt you there.

21 All right. I got no further questions.

22 REEXAMINATION

23 BY MR. MORGAN:

24 Q. Mr. Purvis, if you come to trial and
25 testify, are you going to offer opinions on the

1 standard of care that electricians should or should
2 not follow in doing their jobs?

3 A. No.

4 Q. You've already agreed that this was a
5 major project in the eyes of SCE&G, a major work
6 project?

7 A. Major work project.

8 Q. All right. And would you agree that
9 upgrading a control system is specialized work?

10 A. It is specialized in that -- yes, it is
11 specialized.

12 Q. All right. Can you tell me if you have
13 specific knowledge of any time in the Canadys plant
14 life history where SCE&G employees had upgraded a
15 control system inhouse?

16 A. No. That is Steve Van Vlack's job, but I
17 can't tell you that he has done that on that
18 particular unit.

19 Q. All right. And can you think of a single
20 instance when the demolition of the control system
21 and the removal of the valves from the -- it's like
22 the elbow's connected to the knee bone -- the
23 valves connected to the turbines connected to
24 the -- had ever been done inhouse by SCE&G?

25 A. Yes.

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1 Q. You're saying that had occurred
2 previously, that the control system had been -- and
3 its components had been removed by SCE&G?

4 A. At Canadys or at another station?

5 Q. At Canadys.

6 A. Not at Canadys, no.

7 Q. Tell me if you know if this same project,
8 type project, demolition and upgrading to a
9 modernized control system, had been done inhouse at
10 another SCE&G facility?

11 A. Yes.

12 Q. Where was that?

13 A. Cope.

14 Q. Copeland?

15 A. No, Cope station.

16 Q. Oh, Cope, Cope, C-O-P-E.

17 And what -- was that apples to apples?
18 Was it the same exact type system?

19 A. Nothing is apples to apples in our
20 industry, so, no, it was not apples to apples.

21 Q. Was a third party company's control --
22 computerized control system being installed in Cope
23 by SCE&G?

24 A. Yes.

25 Q. Do you know which third party's product it

1 was?

2 A. No. I would have to go back and look.

3 Q. Who would be most knowledgeable about that
4 Cope project?

5 A. Alyssa Hubbard or Steve Van Vlack.

6 Q. And are you representing to me that that
7 was a project similar in scope and specialization
8 as what took place at Canadys?

9 A. It was valve controls, yes.

10 Q. All right. But of scope?

11 A. Exact amount, no, because this would have
12 been a larger scope than that scope, the Canadys to
13 Cope, simply because it's one unit compared to --
14 it's different equipment.

15 Q. Okay. I have no further questions.

16 (The deposition concluded at 12:10 p.m.)

17

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CERTIFICATE OF REPORTER

I, Gina M. Smith, Registered Professional Reporter and Notary Public for the State of South Carolina at Large, do hereby certify:

That the foregoing deposition was taken before me on the date and at the time and location stated on page 1 of this transcript; that the deponent was duly sworn to testify to the truth, the whole truth and nothing but the truth; that the testimony of the deponent and all objections made at the time of the examination were recorded stenographically by me and were thereafter transcribed; that the foregoing deposition as typed is a true, accurate and complete record of the testimony of the deponent and of all objections made at the time of the examination to the best of my ability.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

Witness my hand, I have hereunto affixed my official seal this 29th day of May, 2014, at Columbia, Richland County, South Carolina.

Gina M. Smith

Gina M. Smith
RPR, CSR, Notary Public,
State of South Carolina
at Large.
My Commission expires
October 1, 2023.



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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF COLLETON	)	FOURTEENTH JUDICIAL CIRCUIT
	)	
Samuel Washington, Jr.,	)	Case No.: 2013-CP-15-411
	)	
Plaintiff,	)	
vs.	)	
	)	
South Carolina Electric and Gas	)	
Company; and Emerson Electric	)	
Company d/b/a Emerson Network	)	
Power, and/or Emerson Network	)	
Power,	)	
Defendants.	)	

VIDEOCONFERENCE ORAL DEPOSITION

JOE FOSTER

May 21, 2014

VIDEOCONFERENCE ORAL DEPOSITION OF JOE FOSTER,

produced as a witness at the instance of the Plaintiff
and duly sworn, was taken in the above-styled and
numbered cause on May 21, 2014, from 12:25 p.m. to
1:25 p.m., before Margaret Raiford, Certified Shorthand
Reporter in and for the State of Texas, reported by
computerized stenotype machine at the offices of
Associated Court Reporters; 1716 Briarcrest Drive, 3rd
Floor; Bryan, TX 77802, pursuant to the Texas Rules of
Civil Procedure and the provisions stated on the record
or attached hereto.

Page 2

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21 ALSO PRESENT:

22 Sandy Cammer
23
24
25

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EXHIBITS

(None offered)

Page 4

1 MR. MORGAN: I'm Kirk Morgan. I represent
2 the plaintiffs.

3 MR. NEVILLE: And, Joe, my name is Ryan
4 Neville. I represent your former employer by SCE&G.

5 MR. RAMSEY: My name is Ian Ramsey. I
6 represent Emerson.

7 MS. CAMMER: I'm Sandy Cammer. I work in
8 the claims department for SCE&G.

9 MS. HODGES: I'm Bryony Hodges. I'm
10 in-house counsel for SCE&G.

11 MR. MORGAN: And do you mind if I call you
12 Joe?

13 THE WITNESS: Not at all.

14 MR. MORGAN: You look way too young
15 compared to many people. I'll be asking the questions;
16 and then when I'm finished, these lawyers, Ryan and Ian,
17 will have a chance to ask you questions. If -- if I ask
18 a question and you hear one of them say, "I object,"
19 just stop, pause, don't answer until they finish making
20 the objection; and then we'll pick it up and go from
21 there.

22 THE WITNESS: Okay.

23 MR. MORGAN: Is that a fair --

24 All right, Ms. Court Reporter. We're ready to
25 roll. You want to swear in the witness?

1 THE REPORTER: Yes, sir.

2 JOE FOSTER,

3 having been first duly sworn, testified as follows:

4 EXAMINATION

5 BY MR. MORGAN

6 Q Mr. Foster, my name is Kirk Morgan. I
7 represent Samuel Washington and his wife. As you
8 probably know, he was electrocuted at Canadys Plant back
9 in 2011, I believe in September --

10 A He was not electrocuted --

11 Q -- and --

12 A Electrocuted results in death.

13 Q We'll get into the specifics in a second.

14 A Okay.

15 Q Okay. We'll get into your opinions. I'm eager
16 to have them. You have been identified as a witness by
17 SCE&G, and I want to just talk about what you might know
18 and what opinions you might have and what they're based
19 on. Have you ever had your deposition taken before?

20 A I have not.

21 Q Okay. Briefly state your full name for the
22 record and then -- and tell me where you live and where
23 you work.

24 A Joe Thomas Foster, Jr. I live in College Station,
25 Texas; and I now work for TMPA, Texas Municipal Power

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1 Agency.

2 Q All right. And what is your job with TMPA?

3 A I'm the engineering and planning superintendent.

4 Q What's your educational background?

5 A Associate's degree from Trident Tech, bachelor's
6 degree from S.I.U., and an MBA from Carolina.

7 Q What fields of study were those respective
8 degrees in?

9 A The associate's was just a general associate's in
10 science. The B.S. was a mechanical engineering degree, and
11 then the MBA was general business.

12 Q Okay. But you don't have a master's in
13 mechanical engineering but you have a business degree
14 and master's?

15 A I do.

16 Q All right. What was the period of time that
17 you worked at SCE&G?

18 A I left in -- I believe I started in 2004 and worked
19 until 2011, 2012 time frame. About seven years.

20 Q How old are you?

21 A 44.

22 Q Okay. Where'd you go to high school?

23 A Coal City High School in Illinois.

24 Q Okay. How'd you end up in South Carolina?

25 A The Navy. I came to -- South Carolina originally

1 for the naval base.

2 Q Okay. So you were in Charleston; and then
3 after you got out of the Navy, just take me
4 chronologically through -- you got an honorable
5 discharge out of the Navy. What year was that?

6 A '92. I went in the Navy in '87 --

7 Q And where'd you go to work?

8 A -- and got out in 1992. And I worked various jobs,
9 shipyards, chemical plant industries around Charleston and
10 then I worked there for a few years while I got my
11 associate's degree and then I went back to Illinois and got
12 my bachelor's degree and then I worked for a company called
13 Babcock and Wilcox for a few years and after I left Babcock
14 and Wilcox, I came to SCE&G.

15 Q And what was your first job with SCE&G?

16 A Operations engineer.

17 Q Okay. And describe that job for me, please.

18 A Pretty much did a little bit of everything at the
19 facility around operations, working on procedures, things
20 where we were losing efficiency. Things that could make the
21 operators' lives a little bit easier and we could make the
22 process more efficient.

23 Q Was that a -- did you manage people in that
24 job?

25 A I did because I was also the unofficial water

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1 treatment supervisor, so I was also in charge of the water
2 treatment lab at that time. Water -- we just basically
3 monitored --

4 Q Did you at some point -- all right. Did you
5 progress to another job description or get a promotion
6 or as you stated SCE&G?

7 A Yes, my next with SCE&G was the maintenance
8 engineer slash fuels supervisor.

9 Q Was that your highest and best position with
10 SCE&G?

11 A No, after I was the maintenance engineer, I was
12 promoted to the maintenance superintendent position.

13 Q And how many maintenance superintendents were
14 there at Canadys Plant?

15 A One.

16 Q So -- so that -- you were the superintendent of
17 the maintenance division?

18 A Yes.

19 Q All right. Can you describe for me what
20 various tasks, areas maintenance was responsible for at
21 Canadys?

22 A We were responsible for everything from the control
23 systems to fuel handling to maintenance of heavy equipment,
24 maintenance outages, boiler tube component replacements, any
25 type of overhaul or upgrades that occurred at the facility

1 we were responsible for.

2 Q Okay. Were you working there when SCE&G hired
3 Emerson to upgrade and install a new control system in
4 various areas of the facility?

5 A Yes.

6 Q All right. And it's my understanding that
7 Samuel Washington was a subcontractor brought in as part
8 of this project on -- when they were working on Unit 3
9 to demolish and install a new Emerson control system.
10 Is that a fair and generic statement?

11 A Yes.

12 Q All right. And we were in a deposition earlier
13 today and I -- I -- I heard -- one of the previous
14 witnesses we deposed in this case talked about a
15 distributive control system. Is that a term that you're
16 familiar with?

17 A We call it a DCS, yes.

18 Q All right. Tell me, someone who does not know
19 anything about a DCS, what it does, what its purpose is,
20 where it's located specific to the Canadys' facility.

21 A Well, there's no central location for the DCS. It
22 wraps around the entire plant. I mean, I guess if you look
23 at the computer modules there in the relay room; but it
24 touches just about everything on that facility for that
25 unit, and it basically is the control system that operates

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1 the plant.

2 Q You mentioned that part of maintenance was
3 to -- you had some involvement with control systems.

4 Did I understand you correctly earlier?

5 A That is correct.

6 Q Did maintenance ever install control systems?

7 A We did work on them; but we never installed a
8 complete control system, no.

9 Q Was -- describe for me the work that you
10 understood Emerson was doing back in this September 2011
11 time frame as it pertains to this control system. What
12 were you under the impression they -- was doing and for
13 what purpose?

14 A My impression of what they were doing was that they
15 were to come into the facility and replace our existing
16 mechanical hydraulic control system with an electronic --
17 electrohydraulic control system and we had told them as part
18 of this process to treat everything like it was hot and live
19 and it was their responsibility to verify everything was
20 dead.

21 Q All right. And this electric hydraulic control
22 system, are you aware of SCE&G ever installing that type
23 of system in-house, or did they always use an outside
24 contract for that type work?

25 A I have no knowledge of that either way. I just

1 worked at Canadys.

2 Q Well, at Canadys did you ever become aware of
3 routine maintenance work installing a new DCS?

4 A Not in the time that I was there, no.

5 Q Would your department have known how to do
6 that?

7 A No, probably -- not -- that's kind of an odd
8 question because it's not something you can just go and
9 install a new system.

10 Q Would you consider it a specialized project
11 requiring some type of expertise?

12 A I would.

13 Q All right. Would you describe this project,
14 this undertaking that SCE&G, not Emerson, to be a major
15 project?

16 A It was only a small piece of the DCS.

17 Q But in terms of the scope of the work compared
18 to routine maintenance that takes place during shutdown,
19 was this a major project?

20 A Not by comparison to the other properties that were
21 going on at the time.

22 Q All right. And the reason I'm asking the word
23 major, frankly, is we took a deposition of a guy and I'm
24 asking if you know him -- bear with me. Alan Wilson --
25 or Richard Wilson or Alan Wilson. What'd you know him

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1 as?

2 A Ricky Wilson.

3 Q Okay. And -- and when we asked Ricky to
4 describe this project, he said it was -- it was not
5 routine maintenance. It was a major repair. And my
6 question is, do you disagree or are you basically it's
7 just -- it's in the words?

8 A I think it's a matter of perspective. I believe
9 Ricky being an instrument technician would consider it to be
10 a large project. Me being the maintenance superintendent
11 and knowing everything that was going on during the outage
12 would not have considered it to have been that massive
13 compared to other projects.

14 Q Is it a fair statement to say that routine
15 maintenance that happened periodically by schedule
16 during shutdowns in the time you were there never
17 included breaking and installing a new hydraulic control
18 system on any unit?

19 A Well, not for routine maintenance, no. I mean, we
20 did install one while I was there; but it was a capital
21 project.

22 Q And describe that project for me.

23 A That's the one we're talking about.

24 Q Oh, this one we're talking about?

25 A Yes.

1 Q The Emerson -- the Emerson hired the people to
2 install it?

3 A Yes.

4 Q And before they could install it, they had to
5 deconstruct or -- I don't want to use the word demolish.
6 It sounds a little too careless, but they had to remove
7 the previous system and the wiring in order to install
8 the new system; is that a fair understanding?

9 A That's correct.

10 Q All right. Do you remember this time frame
11 specifically when Samuel Washington was hurt?

12 A I remember vague pieces of it.

13 Q All right. Let's talk about the -- the safety
14 procedures that should have been in place to prevent
15 some event like this. Talk with me about the lockout
16 tagout process at SCE&G.

17 A Our lockout tagout process and -- well, I guess I
18 need to throw a disclaimer out there. It's been two years
19 since I worked for SCE&G, so what I specifically remember is
20 not verbatim the way that it works most likely; but the
21 process is that you would -- you meaning the person needing
22 the clearance, would go to the control room; and they would
23 work with them to develop a clearance. The clearance would
24 then be hung by an operator. Then the person requesting the
25 clearance would go behind the operator, sign on to the tags,

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1 verify that everything is locked out; and then they would go
2 to the control room and make the -- everything would go into
3 a lockbox and then when the contractors would come on site,
4 we would walk it down with them and let them put their lock
5 onto the lockboxes with everybody else's locks.

6 That's the generic overall sequence of how
7 things occur. On this project, Ricky spent a week or
8 two ahead of time working on the clearance procedure for
9 this one to make sure that he got everything that he
10 could think of for this project.

11 Q All right. Tell -- how would you describe the
12 area where Samuel Washington was hurt?

13 A It was on a platform right underneath a main
14 steam -- well, a control valve. So for somebody my size, it
15 wasn't too bad; but for somebody in the 250 range, it
16 probably would be a little cramped.

17 Q If -- well, I've seen this area described as
18 Unit 3?

19 A Yes.

20 Q Is that right?

21 A It was underneath Unit 3, yes.

22 Q And -- okay. And Ricky -- being Ricky
23 Wilson -- had before the work started on this process
24 that I understand involved pulling wires and
25 deconstructing handle boxes had worked up a list of what

1 should be locked and tagged out before the work began;
2 is that a fair understanding?

3 A Yes.

4 Q All right. And I think he also testified --
5 and I realize you haven't read his deposition and if I
6 misstate what he was saying, one of these lawyers will
7 correct me. But he basically said that they forgot to
8 put the area where Mr. Washington was working that panel
9 box on the lockout tagout list and that's why it was not
10 de-energized that day.

11 A I would say that that is probably a misspoken
12 phrase by Ricky Wilson. He did not forget anything.

13 Q Okay. If it was not locked and tagged out,
14 would he be correct in saying it should have been locked
15 and tagged out before anybody did any work around that
16 electrical system?

17 A I think it was more of an error of omission than if
18 somebody neglected to do something.

19 Q All right. Whatever the lay term is whether it
20 was negligence, whether it was omission, cohibition, is
21 it your understanding based on what you discovered in
22 talking about this incident after the event that the
23 panel box that Mr. Washington was working on had not
24 been de-energized?

25 A Portions of the panel box were not de-energized,

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1 yes.

2 Q And all portions within that Unit 3 area where
3 he was injured should have been de-energized, correct?

4 A In a perfect world, yes. However, we don't live in
5 a perfect world; and they were made aware of that.

6 Q Who is they?

7 A The contractors that were on site, both Emerson and
8 ACT, were made aware that we were not entirely 100 percent
9 certain that everything in there was dead and that they were
10 required to verify that before they touched anything.

11 Q I thought the lockout tagout system was a
12 foolproof method of the property owner like SCE&G making
13 sure that an area is safe to work in before people are
14 allowed to enter that zone. Am I misunderstanding
15 something about what the lockout tagout goal is?

16 A Yeah, I think that would go back to what your
17 opinion of what a lockout tagout is, yes. The opinion --
18 the reason for the lockout tagout is to get everything that
19 you know of, but we all know that as humans we have
20 fallacies; so, therefore, things can be omitted or
21 neglected.

22 Q Okay. Who was the first line of responsibility
23 for the lockout tagout at Canadys? And when I say the
24 first line, we've got SCE&G. We've got Emerson. We've
25 got ACT. Was SCE&G responsible for locking and tagging

1 out the areas where the ACT people were working?

2 A Yes, we were the owners of the system.

3 Q All right. Do you -- do you take the position
4 that Emerson also had a responsibility to verify SCE&G's
5 decisions? In essence by putting a -- putting a lock
6 and a tag on it?

7 A I do, but I would also take that one step forward
8 and say that every contractor that comes on-site is provided
9 the opportunity to review that in and of themselves and they
10 have that responsibility, as well.

11 Q All right. But you would agree that the
12 primary responsibility that cannot be delegated remains
13 with the entity that controls the site; and in this
14 case, it would be your former employer, SCE&G?

15 MS. HODGES: Object to the form.

16 MR. NEVILLE: Object to form.

17 A I believe -- go ahead. I believe --

18 Q (By Mr. Morgan) They had a couple objections
19 for the record. You can answer.

20 A I believe SCE&G owns it, but I don't believe that
21 they cannot be delegated.

22 Q All right. Were you involved in the OSHA
23 investigation?

24 A Briefly..

25 Q Are you aware of the citations that OSHA

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1 issued?

2 A I'm aware there were citations issued, but I'm not
3 aware of what they are at this time because I don't
4 remember.

5 Q All right. So whether they were objected to or
6 agreed to or paid or appealed, you don't know?

7 A I don't know for a fact, no.

8 Q Were you ever interviewed as part of that
9 investigation by OSHA?

10 A I believe I was.

11 Q And what did you tell OSHA about a lockout and
12 tagout procedure as it pertained to what Mr. Washington
13 was injured?

14 A I really can't remember that, but I would assume it
15 would be along the same lines of what I just told you with
16 the exception of your questions are probably a little bit
17 more pointed than theirs were.

18 Q That could be my second career. What is your
19 understanding of what happened to Samuel Washington?

20 A My understanding of what happened was that he was
21 working on the platform with an ACT guy, one of the ACT
22 employees. They went up to -- they were decommissioning
23 the -- I believe it was the Number 3 valve, can't swear to
24 that one. And one of the DC wires inside the panel box, he
25 either cut it or he brushed up against it and shocked

1 himself.

2 Q And this is where you and I can have some fun,
3 okay, Joe? Tell me the difference between getting
4 shocked and getting electrocuted.

5 A Well, you're still breathing after you get shocked.
6 You're dead after you get electrocuted.

7 Q You think all -- and I ask -- I like to -- my
8 late dad used to say, If you improve having learned
9 something new that you didn't know when you woke up,
10 it's a good day. I've represented lots of people who
11 have been electrocuted, and they're alive. Have I been
12 misusing that term electrocuted as opposed to shocked?

13 A If you were -- I would say yes.

14 Q And your lawyer's nodding their head; so if I
15 look up the term electrocution, then the dictionary's
16 going to say -- current resulting in fatality?

17 A Well --

18 Q -- something like that?

19 A -- according to Wikipedia, electrocution is death
20 caused by electric shock, either accidental or deliberate.

21 Q Okay. So electrocution equals death. What
22 is -- what happens to people who come in contact with an
23 energized line or energized current? What do I say
24 happened to them, shocked?

25 A Yes, but I guess it really depends on the voltage

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1 and amperage and --

2 Q All right. And that's just semantics, but
3 that'll be my thing I learned today. So I will stop
4 saying he got electrocuted. I will say he got shocked.
5 Do we agree that an energized current was transmitted
6 into some portion of his body by a live wire in this
7 panel box?

8 A We do.

9 Q Okay. And the introduction of that current
10 when he came in contact with this line is what you
11 understand caused whatever injuries he has?

12 A I wouldn't agree to that. I don't know what his
13 specific injuries were. I know that he got shocked, but I
14 don't know what caused whatever injuries he has.

15 Q Okay. And fair answer. We'll let the doctors
16 figure that out. Did you go to the scene that day?

17 A I went to the scene after everybody was cleared
18 out, yes.

19 Q And for what purpose did you go there?

20 A To try to figure out what happened.

21 Q And tell me about your investigation. Who did
22 you talk to? What did you do?

23 A We -- it's been a long time. I believe we got with
24 the shop immediately following that and started looking at
25 the drawings again and went up -- from there we went up to

1 the area where the shock occurred, and I believe they
2 started testing wires and found a hot wire.

3 Q Tell me at what spot that whole -- let me
4 rephrase that question. How would someone have
5 correctly made sure that that area where he was working
6 was de-energized?

7 A The person working on it should have done a
8 live-dead-live test on every wire; and by a live-dead-live
9 test, they --

10 Q I got it.

11 A Okay.

12 Q And assuming that's your position that Samuel
13 Washington or ACT or someone right there at that spot
14 should have tested the wires. I'm trying to figure out
15 at what point if they discovered a live wire, where
16 would they have gone to de-energize that area?

17 A They would have come and contacted me, and I would
18 have gotten it de-energized.

19 Q And where would you have gone specifically? Is
20 there a -- is there a panel box? Is there a -- you
21 know, where would you have killed the power to that unit
22 for that valve free area?

23 A My memory's not that good. I would have to go look
24 at the drawings and find the specific wire and tell you
25 where to go because there are numerous panel boxes

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1 throughout the facility.

2 Q Okay. All right. Was it your understanding
3 that Ricky Wilson, one of his jobs in preparation for
4 this work being done by Emerson and ACT was to make sure
5 that all areas in which they were working were
6 de-energized, that was the goal?

7 A It was Ricky's responsibility to get the clearance
8 in place, but to verify that everything was dead was not
9 within Ricky's job responsibility.

10 Q Okay. Is it not part of the protocols for
11 SCE&G to test the areas which they contend are
12 de-energized to make sure they haven't had an omission
13 as you said earlier?

14 A No, the reason why we pay a qualified contractor to
15 do that type of work is because we tell them they have to
16 test their own stuff; and we pay them -- well, we -- they
17 pay a good price for people who are qualified to do those
18 things.

19 Q All right. Would you agree that even under
20 your description of the work, it's a shared
21 responsibility, that SCE&G bears some responsibility and
22 you contend that the worker also has responsibility
23 ultimately?

24 MR. RAMSEY: Object to form.

25 A I believe SCE&G fulfilled their responsibility by

1 hanging the tagout and making the contractor aware that
2 there was a potential.

3 Q (By Mr. Morgan) And when you hang a tag, aren't
4 you saying it's locked out, which means it's
5 de-energized, it's safe to work? Isn't that what that
6 tag says?

7 A Well, you may be under the misunderstanding of what
8 the tagout does. The tagout -- there are multiple different
9 pieces within that box, and each tag will only cover a
10 certain piece of the system; so what had happened was the
11 tag -- everything that had tags hanging on them was dead.
12 The item that was live did not have a tag on it because it
13 was omitted.

14 Q Where would the tag have been? Help me, you
15 know, try and get my proximities. I've seen photos of
16 this area. How close in proximity to the actual spot
17 where Samuel Washington engaged an energized line would
18 a tag have been placed if on the list that Ricky Watson
19 -- Ricky Wilson was doing?

20 A Again, it's been a long time; but it could have
21 been anywhere from 50 foot to 150 foot away, wherever that
22 panel is at. And I don't know where that panel is at, but
23 that is part of the process of reviewing the tagout is to
24 walk all that down.

25 Q Do you know if Samuel Washington or any of the

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1 ACT people had conversations with Ricky Wilson or his
2 team about whether this area had been de-energized?

3 A I can guarantee you that somebody told ACT that
4 they had to treat this as a hot location because I'm the one
5 that had conversation with their supervisor -- electrical
6 supervisor.

7 Q And do you remember -- okay. So you had a
8 conversation with someone with ACT about even if it's
9 locked and tagged out, assume it's hot and take all
10 reasonable precautions?

11 A I did.

12 Q Words to that effect?

13 A I did.

14 Q Okay. Do you -- do you -- and again, we're
15 three years removed. You wouldn't remember the name of
16 the person you talked to?

17 A It was the guy that was kind of slender, wore the
18 electrician's round hat and long hair. And I -- you could
19 pick that guy out from the --

20 Q And you think he worked for ACT?

21 A I know he worked for ACT. Well, I don't know that.
22 I -- he had ACT logos on.

23 Q All right. Caucasian guy?

24 A Yes.

25 Q All right. Now, the documents we've seen and

1 Mr. Wilson identified in his deposition the lockout
2 tagouts for this area all seem to have, you know, his
3 initials on them and also J. D. -- these --

4 MR. MORGAN: Who's J. B.? I missed the
5 last depositions. Do you remember?

6 Q (By Mr. Morgan) Do you know who J. B. would
7 have been?

8 A Is it D or P? No, I don't know. I would be
9 speculating.

10 Q Okay. And we'll move on that. And if that's
11 the person that would have -- Ricky Wilson was verifying
12 the placement and J. B. was actually the person that
13 placed apparently the lock and the tag according to the
14 lockout tagout tags.

15 MR. MORGAN: And I'm looking for the
16 record at Exhibits 1 to the Wilson deposition and 2 to
17 the Wilson deposition and 3.

18 Q (By Mr. Morgan) And I know you don't have
19 these, just for these lawyers here making the record
20 clear. So you're not sure who J. B. is?

21 A I am not.

22 Q Do you know a guy named James Wilkinson?

23 A That name sounds real familiar. I think he worked
24 for -- I don't know. His name sounds familiar.

25 Q Do you know if he was an SCE&G employee?

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1 A I do not believe he was.

2 Q Okay. Have you ever -- tell me your -- how you
3 came to be so knowledgeable about lockout tagout
4 processes at SCE&G. What training have you had? Have
5 you taught courses, so forth?

6 A Working in the maintenance department, I've just
7 had a lot of interactions with the operations group working
8 on the tagouts and just going through the policy. And then
9 they have -- they do provide training --

10 Q Did you ever --

11 A -- annual training and refresher training for plant
12 employees.

13 Q As a maintenance supervisor and previous to
14 that a maintenance engineer, had you ever participated
15 in a lockout and tagout process?

16 A I had.

17 Q Okay. And it's my understanding that each
18 lockout and tagout has a goal of preventing some
19 specific injury, whether it be electrical shock or
20 rotating machinery, something like that, correct?

21 A Or numerous hazards.

22 Q Right. You would identify the hazard and then
23 you would try to find the lockout and tagout, isolate or
24 prevent that possibility from occurring?

25 A Yes.

1 Q All right. When I asked you earlier, I kind of
2 interrupted you. You said you got there after the scene
3 had been cleared on the day that Samuel Washington was
4 hurt. I think it was September 28th, 2011. Might be
5 September 29th, I apologize. Tell me who you talked to
6 to get your information.

7 A I can't remember exactly. I know I must have
8 talked to Ricky. I don't remember, to be honest.

9 Q Okay. Now when OSHA issued some citations,
10 what they contend was serious violations, were you still
11 working for SCE&G?

12 A When did they issue them?

13 Q Looks like January of 2012. Strike that.
14 That -- December 2011. So, close in proximity.
15 December -- several months after the accident?

16 A Yes.

17 Q All right. And you don't remember seeing any
18 of the citations?

19 A I must have seen them. I just don't remember them.
20 I mean, I couldn't quote them for you.

21 Q Fair. One of them says that SCE&G failed to
22 have an authorized employee verify the isolation and
23 de-energizing of a machine or equipment hadn't been
24 accomplished before starting the work and that the
25 equipment had been locked or tagged out. Do you

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1 consider that a serious violation? And that citation
2 was against SCE&G. Do you have a recollection of that?

3 A That sounds vaguely familiar

4 Q Do you know whether or not OSHA issued any
5 citations to Emerson?

6 A No specific knowledge of that, no.

7 Q Okay. So the same answer if I said ACT, you
8 wouldn't know?

9 A Correct.

10 Q All right. If OSHA is issuing a citation to
11 SCE&G, would you assume that's because they were in
12 control of the work site as the owner of the property?

13 MR. NEVILLE: Object to form.

14 A I don't -- I wouldn't make an assumption as to why
15 OSHA did anything.

16 Q (By Mr. Morgan) Okay. Fair answer. Tell me
17 what you contend Samuel Washington did wrong that
18 contributed to his -- can I say electrical shock? Is
19 that a fair description?

20 A You could do that. I don't know because I was not
21 there, but the only thing I could think of if I were to
22 guess is that he just didn't test the cable before he got
23 into it.

24 Q All right. And you don't know specifically if
25 Samuel Washington, for instance, says he actually was

1 testing a lot of wires and they were all dead and then
2 this occurred, is it possible that within this panel
3 there were some energized wires and some de-energized
4 wires? Is that possible within that same area?

5 A Well, I think it's absolutely the case that some of
6 it was dead and some of it was live.

7 Q Because you said there was numerous tags but
8 where one tag controls specifically and where the next
9 one begins would be hard to determine just from looking
10 at the tag?

11 A Yes.

12 Q I mean, I'm just trying to imagine that without
13 tracing the lines from their point of origin, energized
14 lines to their ending point, a room that's partially
15 de-energized could still have some energized components;
16 but you couldn't really be sure without testing?

17 A I would agree with that.

18 Q All right. Have you ever done any electrical
19 work yourself? You said you have a mechanical
20 engineering degree. Have you ever done any electrical
21 work during your maintenance engineering career?

22 A I've done no professional electrical work.

23 Q So you've never worked -- you've never done any
24 electrical maintenance work? Is that a yes?

25 A I've worked on -- I mean, I do some jobs. Like,

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1 I've replaced batteries, things of that nature; but I -- I
2 mean, I've never been a titled electrical engineer.

3 Q Does SCE&G have full-time employees who have a
4 description of electrical engineer or just a maintenance
5 engineer --

6 A Just maintenance.

7 Q -- with specialty?

8 A Well, in the -- I believe in their -- in the
9 technical division, they do have electrical engineers.

10 Q When y'all do routine maintenance during
11 shutdowns, I'm assuming there's a list of everything --
12 all the tags you want to perform. Do you break them
13 down into areas of -- I say expertise, whether it's
14 mechanical, whether it's electrical, whether it's
15 plumbing; is that how it's done so you know what type
16 person to task with that job?

17 A By the craft, we did. Rick -- that's why I
18 assigned Ricky this project. He was my --

19 Q And what was Ricky's area?

20 A Ricky is an instrument guy.

21 Q An instrument guy, control guy?

22 A Yes. Instrument and controls.

23 Q All right. All right. And are you aware --
24 it's our understanding that this is the first time these
25 controls were being updated with state of the art

1 equipment -- controls since the Canadys Plant had come
2 online 40, 50 years ago. Is that your understanding?

3 A Yes. As far as the full update, yes.

4 Q All right. So there's no doubt that routine
5 maintenance had ever done what Emerson was doing on this
6 project?

7 A Correct.

8 Q Let me look at my notes. I'm almost through,
9 okay? Would you defer to Ricky Wilson as to what
10 procedures he uses before he puts a lock tag on an area
11 if -- if that area he's trying to make sure he's going
12 to prevent electrical shock, would you defer to him as
13 to how he actually does that?

14 A No, we conferred ahead of time. Before this
15 clearance was ever honed, we conferred on it.

16 Q Do you think that SCE&G had any responsibility
17 to test the area that they are certifying has been
18 locked out and tagged out before releasing it to a
19 third-party contract to work on?

20 A I do not.

21 Q Okay. And so if Ricky Wilson says -- if he
22 says that, "If you're locking out a machine, if it's one
23 that we're going to be working on, we would test it."
24 He says you can't go to every individual terminal and
25 check them, though. Would that sound like the way it

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1 would normally be done?

2 A If it was stated exactly the way you said it, then
3 yes because what you said was, "When we are working on a
4 piece of equipment that we're going to work on, we would
5 test it," then I would agree with that; but if you were to
6 say, "We would test it if we locked it out for a contractor
7 to go work on it," I would disagree.

8 Q Okay. Because you believe the contractor has
9 a -- a -- an independent responsibility to verify the
10 lockout tagout?

11 A I believe everybody has their own responsibility to
12 protect themselves, yes.

13 Q Because we don't want to get electrocuted?

14 A I don't. I'm glad I could help you out today.

15 Q Thank you very much. I'm very happy. My late
16 father is smiling. I don't have any questions. Answer
17 any questions these other lawyers have.

18 MR. RAMSEY: Joe, this is Ian Ramsey --

19 MR. MORGAN: Can you see him?

20 THE WITNESS: I cannot.

21 MR. MORGAN: Can you see anybody besides
22 me?

23 Ian, do you want to sit here? Does it matter?
24 It may just be more comfortable for him, but now he's got to
25 look at you.

1 MR. RAMSEY: Now he's got to look at me.

2 EXAMINATION

3 BY MR. RAMSEY

4 Q Can you see me now, Joe?

5 A I can.

6 Q I know I'm younger and more attractive than the
7 last man. I understand that.

8 A No comment.

9 Q The -- my name is Ian Ramsey. I'm counsel
10 for -- for Emerson, and I want to go back to you were
11 very clear in your testimony that you just gave that you
12 spoke directly to a representative of ACT and told them
13 that they needed to test everything they were touching
14 to treat it as if it were live. Is that a fair
15 summation of what you said?

16 A It is. And to expand on that, they told me they
17 were covering it every morning at their tailboard meetings
18 because they had a trailer out back by -- oh, it was
19 under -- under the D. A. there on the west side of the
20 plant. They had a small trailer there and every morning
21 they would have tailboard meetings and he told me they had
22 covered that every morning at their meetings.

23 Q Okay. And when you say they, you're meaning
24 ACT?

25 A Yes.

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1 Q Okay. Let me rattle off a few names and see if
2 it jogs your memory. Mr. Wilson described a person who
3 had long hair and a ponytail that was working with
4 Mr. Washington at the time of his -- at the time of this
5 incident. And he said his name was Sam, I believe. Is
6 that the person that you recall speaking to, someone by
7 the name of Sam?

8 A That is not the guy that was the foreman over the
9 electrical group for ACT. The foreman over the electrical
10 group for ACT, I believe, was out of the Texas area here,
11 and I cannot remember his name for anything; but he had
12 long, dark hair, probably weighed in about 145, 150ish.

13 Q Would -- would the name Johnny Harper ring a
14 bell to you?

15 A Johnny sounds familiar. Can't swear to it, though.

16 Q Okay. All right. And you remember having a
17 conversation with him and, again, telling him you need
18 to treat everything as live?

19 A I do.

20 Q And did -- did you personally witness ACT
21 having these morning meetings where they were telling
22 their employees, "You need to treat everything as live"?

23 A I never saw them actually say it to their
24 employees, but I know they gathered up every morning because
25 I did see them gather up in passing.

1 Q Okay. And -- and you recall your conversation
2 with whoever this person was telling you we covered
3 every day --

4 A I do.

5 Q -- he was affirming back to you, echoing,
6 "We're doing that"?

7 A Yes, but to be --

8 Q Okay.

9 A -- perfect, he did tell me that after the fact.

10 Q Okay. Did you ever have a conversation with
11 him as to whether or not the ACT employees were using
12 voltage testing, the voltage testers? Do you know what
13 I'm talking about?

14 A I do. I don't remember having that conversation
15 with him, but I do know what you're talking about when
16 you're talking about a voltage tester.

17 Q Okay. Is there a difference between a voltage
18 tester that tests AC and DC power, to your knowledge?

19 A Well, you use a multimeter, which can test across a
20 wide array of things, or you can use just a standard wiggly;
21 and the standard wiggly is not a very good source, detection
22 device.

23 Q Okay. So when you say either a multi-testing
24 device or wiggly, you know what those look like?

25 A I do.

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1 Q Is that correct?

2 A Yes.

3 Q You indicated -- you indicated that after this
4 incident, you actually went up to where Mr. Washington
5 was shocked; is that correct?

6 A Yes.

7 Q How soon after he left the plant did you go up
8 and -- and look at that space?

9 A I'm thinking it had to be within 30 minutes, 40
10 minutes, something like that; but, again, my memory is
11 not -- that's been a couple years.

12 Q I understand. When you went up onto the space
13 where Mr. Washington was, do you recall seeing any
14 voltage testing device on the ground?

15 A For some reason I seem to remember that we saw a
16 wiggy but no real multimeter.

17 Q Okay. Did you see any -- any gloves on the
18 ground --

19 A I don't recall seeing any gloves.

20 Q -- personal protective gear, gloves?

21 A I don't recall seeing any.

22 Q All right. Do you know whether or not after
23 the fact that ACT employees came to the site with
24 multimeter tests?

25 A I don't recall.

1 Q Okay. In terms of the process of the lockout
2 tagout, we've been talking about placing locks; and I
3 want to make sure we're talking about the same thing.
4 It's actually a physical lock; is that correct?

5 A Yes, it is.

6 Q All right. And where is that lock placed? Is
7 it -- would it be placed where, for example, Mr.
8 Washington was working? Or would it be placed at where
9 the source of the power first started?

10 A It would be placed at the source.

11 Q Okay. Do you also follow a tagging procedure
12 where there's an actual, a paper tag that's attached to
13 something?

14 A The tag has a hole in it and the lock goes through
15 the hole in the tag and they go on as one item.

16 Q Okay. So in this instance, the lock and the
17 tag were not placed where Mr. Washington was standing
18 and working on this equipment; is that correct?

19 A That is correct.

20 Q All right. So there was nothing that
21 Mr. Washington was looking at while he was testing -- or
22 while he was working on this equipment that alerted him
23 or told him that that equipment was de-energized for him
24 to assume that?

25 A In the location that he was at, there was nothing

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1 that would immediately identify that there was a clearance
2 on anything; that is correct.

3 Q Okay. In the process of the lockout tagout,
4 you indicated that SCE&G would do the first step, which
5 is they would apply the lock and the tag to the
6 source -- the first source of the energy; is that
7 correct?

8 A Yes, it is.

9 Q There's a second step to the process, though;
10 and that is actually testing the -- either equipment or
11 the wire that you're going to be working on, and that is
12 something that needs to be done by the contractor that's
13 actually physically working in that space; is that
14 correct?

15 A That is correct.

16 Q And so here in the case of Mr. Washington, you
17 would have expected Mr. Washington in following the
18 normal process to be the one that should have been
19 testing the actual device to determine whether it was
20 de-energized or energized?

21 A Yes, I would have. Well, I did.

22 Q I'm sorry. You did --

23 A I did expect that he was doing that.

24 Q You did expect. And you received assurances
25 from the -- the top person at ACT who was handling the

1 electrical part of this project, you received assurances
2 from him that, in fact, that is what he was instructing
3 everyone to do?

4 A After the fact, I did, yes.

5 Q Is that correct? Okay. In your conversation
6 with the person from ACT, did he say anything to you
7 about what he thought caused the accident?

8 A He didn't say anything -- again, it's been a long
9 time. I remember specifically talking about the issue of
10 the live-dead-live because that became real important to
11 us -- important to them because like I said, they knew that
12 they had been told; and then when he got shocked, he was
13 kind of -- the guy I was talking to was kind of perturbed
14 because apparently he didn't think that somebody was doing
15 what they were told to do.

16 Q So in your conversation with -- with ACT, that
17 person was perhaps irritated that Mr. Washington in his
18 perspective wasn't doing what he should have been doing.

19 A That --

20 MR. MORGAN: Object to the form of the
21 question.

22 Q (By Mr. Ramsey) I know that's kind of two
23 layers of hearsay, but --

24 A That's kind of the way that I took it was that he
25 was upset that he wasn't checking the system like he was

Page 40

1 expected to.

2 Q Okay. Did Mr. Washington return to the project
3 site --

4 A He didn't, not to my knowledge.

5 Q -- after this incident?

6 A Not to my knowledge, he did not.

7 Q I'm done with the questions I had. Thank you.

8 EXAMINATION

9 BY MR. NEVILLE

10 Q All right, Joe. Good afternoon. My name is
11 Ryan Neville. I represent SCE&G; and you and I have
12 spoke before, but just a couple of questions I wanted to
13 follow up with. The electrical panel that Sam was
14 working on the day that the accident occurred, what did
15 that electrical panel control?

16 A It controlled, I believe, the Number 3 control
17 valve on the turbine.

18 Q Okay. And then that valve -- and straighten me
19 out here if I butcher the terminology -- but that valve,
20 as I understood it, opened and closed and let steam into
21 the turbine, correct?

22 A Correct.

23 Q And then that turbine in turn powered the
24 generator, correct?

25 A Correct.

1 Q Which in turn produced power, correct?

2 A Correct.

3 Q All right. And so this control panel that
4 Mr. Washington was working on was necessary to the
5 production of power, correct?

6 A Yes, without -- without the control valves or the
7 actuators or the control panels, there would be no electric
8 generation whatsoever.

9 Q Okay. And so the work that Mr. Washington was
10 doing was integral to the production of power, correct?

11 A Yes, it was.

12 Q Necessary to the production of power, correct?

13 A Yes, it was.

14 Q Okay. And had Mr. Washington done the
15 live-dead-live test, he would have known that the wire
16 he cut into was live, correct?

17 A I don't know how he could not have known had he
18 been doing the proper testing that the wire was live.

19 Q I don't think I have any more questions for
20 you. Chuck may have a few, and I'm sorry you didn't get
21 to see my face. I'm by far the worst one here; but I
22 just saved you that, so thank me later.

23 MR. RAMSEY: This is no beauty contest,

24 Joe.

25 *****

Page 42

1

EXAMINATION

2

BY MR. MORGAN

3

Q Is it your position that regardless of a
4 lockout tagout process that the contractor through any
5 electrical work is supposed to independently verify that
6 any component he's working on is not energized?

7

A It's my opinion or my stance, I guess, that I never
8 trust anybody, nor do I trust equipment; so I go back and
9 verify everything for myself, and I expect others to do the
10 same even if there is a clearance or whatever in place
11 that's supposed to take care of you.

12

Q And I understand the concept that all -- all
13 accidents are preventable in hindsight, but I'm trying
14 to understand SCE&G's position on locking and tagging
15 out this energized area and certifying that it was
16 de-energized. And is it your position as a former
17 maintenance supervisor that ATS [sic] was supposed to
18 assume that -- to disregard the locks and tags and
19 assume that everything was energized and work on that
20 assumption?

21

A Two statements there. I won't speak on behalf of
22 SCE&G, and I don't believe SCE&G ever certified that the
23 area was dead. Based on -- after that, though, I would say
24 that it is our -- it was my intent at that time that we
25 would make it as safe as possible given what we know because

1 that system was older than many of us, so we made it as safe
2 as we could. We told them that there were issues and that
3 they needed to verify because we could not guarantee that
4 everything was dead; so yes, I believe ACT had a
5 responsibility and the employees working for ACT had their
6 own responsibility.

7 Q And you would also agree that SCE&G had a
8 responsibility, also?

9 A They have a responsibility, I believe, under OSHA
10 to administer a program, yes.

11 Q And that responsibility was to provide a safe
12 work environment for the contractors brought into the
13 site, correct?

14 A Yes, but working on live electrical equipment is
15 not an unsafe act..

16 Q Understood. No other questions. I'm good.

17 A Okay. Thank you very much.

18 MR. NEVILLE: And nothing further from me,
19 Joe. Thanks for your time. Run.

20 THE WITNESS: All right. Appreciate it.

21 Bye.

22 THE REPORTER: Did you want to read and
23 sign this?

24 THE WITNESS: No, I'm okay.

25 (Proceedings concluded at 1:25 p.m.)

Page 44

1	STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
2	COUNTY OF COLLETON	)	FOURTEENTH JUDICIAL CIRCUIT
3	Samuel Washington, Jr.,	)	Case No.: 2013-CP-15-411
4	Plaintiff,	)	
5	vs.	)	
6	South Carolina Electric and Gas	)	
7	Company; and Emerson Electric	)	
8	Company d/b/a Emerson Network	)	
9	Power, and/or Emerson Network	)	
10	Power,	)	
11	Defendants.	)	

REPORTER'S CERTIFICATE

ORAL DEPOSITION OF JOE FOSTER

May 21, 2014

I, Margaret Raiford, Certified Shorthand Reporter in
and for the State of Texas, hereby certify to the
following:

That the witness, JOE FOSTER, was duly sworn and
that the transcript of the deposition is a true record
of the testimony given by the witness;

That examination and signature of the witness to the
deposition transcript was waived by the witness with the
agreement of the parties at the time of the deposition;

That the original deposition was delivered to Mr. S.
Kirkpatrick Morgan, Custodial Attorney.

\$_____ is the deposition officer's charges to the
Plaintiff for preparing the original deposition and any
copies of exhibits;

1 That pursuant to information given to the deposition
2 officer at the time said testimony was taken, the
3 following includes all parties of record and the amount
4 of time used by each party at the time of the
5 deposition:

6 Mr. S. Kirkpatrick Morgan (0:45)
Attorney for Plaintiff
7 Mr. Ryan Neville (0:03)
Attorney for Defendant, SCE&G
8 Mr. Ian Ramsey (0:10)
Attorney for Defendant, Emerson
9 Ms. Bryony Hodges (0:0)
Attorney for Defendant, SCE&G
10

11 That a copy of this certificate was served on all
12 parties shown herein on _____ and filed
13 with the Clerk pursuant to Rule 203.3.

14 I further certify that I am neither counsel for,
15 related to, nor employed by any of the parties in the
16 action in which this proceeding was taken, and further
17 that I am not financially or otherwise interested in the
18 outcome of this action.

19 Certified to by me on this _____ day of

20 _____, Margaret A. Raiford
21



22 Margaret Raiford, CSR
Texas CSR 9192
23 Expiration: 12/31/14
Associated Court Reporters-Bryan
24 Firm Registration No. 655
1716 Briarcrest Dr., Ste. 602
25 Bryan, TX 77802

1 In the Court of Common Pleas for the
2 State of South Carolina, County of Colleton
3
4 Case No.: 2013-CP-15-411
5 Samuel Washington, Jr.
6 Plaintiff(s),
7 vs. **Transcript of Record**
8 South Carolina Electric and
9 Gas Company,
10 Emerson Electric Company
11 d/b/a Emerson
12 Network Power, and/or Emerson
13 Network Power,
14
15 Defendant(s).
16
17
18 September 4, 2014
19 Walterboro, South Carolina
20
21
22
23
24 BEFORE:
25 The Honorable J. Ernest Kinard

1 APPEARANCES

2

3 REPRESENTING SCE&G:

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1 PROCEEDINGS

2 THE COURT: Washington versus SCANA Corporation.

3 MS. BRIGHT-MATTHEWS: Your Honor, I represent the
4 Plaintiffs along with Kirk Morgan. He's going to argue
5 that motion on our behalf. I'll request an additional
6 15, 20 minutes. He has called. He is on the way here.

7 THE COURT: All right.

8 (Case resumed after a break as follows:)

9 THE COURT: All right. Ms. Matthews, are you
10 ready?

11 MS. BRIGHT-MATTHEWS: Yes, we are, Your Honor.

12 MR. MORGAN: Your Honor, this is a hard copy of
13 our brief that we e-mailed to you yesterday.

14 THE COURT: Of course I didn't get it. How could
15 I get it?

16 MR. MORGAN: We mailed it to your clerk. We know
17 that she's read every word.

18 THE COURT: Nope.

19 MR. MASSALON: Good morning. I'm John Massalon.
20 We are representing SCE&G in this case and it's our
21 motion.

22 THE COURT: Okay.

23 MR. MASSALON: Your Honor, we were before you on
24 this motion back in January. This is a case where the
25 Plaintiff claims that he was injured working at the

1 Canadys plant. We filed a Motion for Summary Judgment
2 on the statutory employer defense. At that time you
3 didn't rule on the motion, you sent us away to do some
4 discovery and said that we could come back before you
5 for a ruling on the motion. So, here we are.

6 And just a couple of reminders about the
7 background. This accident happened in September of
8 2011 at the Canadys plant. SCE&G, as I'm sure you
9 know, owns this plant where it generates electricity.
10 The facts that brings us here, SCE&G hired Mr. Bowers
11 as his client Emerson to install some new controls on
12 some of the turbines, and some of that work was
13 subcontracted out to another company, Applied Control
14 Technologies, who hired the Plaintiff.

15 Mr. Washington was working on removing some wires
16 from a control panel for one of the turbines, he cut a
17 wire that was still live and got shocked. He filed a
18 lawsuit against the company and Emerson.

19 As Your Honor knows, the question of whether SCE&G
20 is the statutory employer is a jurisdictional matter of
21 law for the Court to decide. There's a three part
22 test: Is it important to the trade or business of the
23 company, is it a necessary, essential, integral part of
24 the business of the company, or is it something that
25 the owners or employees have the ability to perform on

1 their own. So, it is a disjunct of tests. Any one of
2 these three can qualify SCE&G's connection.

3 Here we have really the classic case of a
4 statutory employee. We have someone who is working for
5 an electric and gas utility in a plant that generates
6 electricity on a device that is used to generate or
7 control a turbine that generates electricity. He's
8 injured, he got comp, and yet he files this lawsuit to
9 claim that he has an independent negligence claim.

10 With the depositions that we have taken, and there
11 are excerpts attached to our brief that we have filed a
12 few weeks ago, and some to Ms. Morgan's brief, I think
13 that it's beyond dispute that we are in the business of
14 generating zonal electricity.

15 The argument that the Plaintiffs make really are
16 two things. First of all, they try to argue that
17 because this was an extraordinary and unusual repair
18 requiring special skill, that it's not part of SCE&G's
19 business. Now, in our view, the problem with that
20 argument -- they cite a couple of cases. One is a
21 Glass versus Dow case, and the other is a case
22 involving -- by the name of Gould. Neither one of
23 those cases are dispositive here for these reasons:
24 First, the Dow case was a situation where Dow Chemical
25 sold a mortar additive that was used to build a

1 building for MUSC and the panels cracked on the outside
2 and MUSC made a claim against Dow, and Dow settled that
3 claim. And as part of it agreed to replace the panels.
4 Dow then hired some contractors to do it because Dow is
5 a chemical company, not a contractor.

6 One of the Plaintiffs was injured and they filed
7 suit. The Court held there Dow is not a statutory
8 employer because it is a chemical company, it's not a
9 construction company. Here we do not have that
10 situation. We have an electrical company, an
11 electrical plant, somebody working on the equipment
12 which is used to generate electricity.

13 A better case, and it actually appears in the
14 Glass case, is a case called Marchbanks v. Duke, 2
15 S.E. 2d 825. In that case, the Court held that
16 somebody who was hired to weatherproof a pole is a
17 statutory employee. So, again, it just has to be
18 attendant or important to the business, it doesn't have
19 to be a core business operation.

20 Now, the Gould case, also not dispositive for this
21 reason: Gould was a battery company, and they built a
22 plant and hired a contractor to build it. One of the
23 workers was injured. The Court there held rules Gould
24 is a battery plant, not a contractor so they are not a
25 statutory employer. But again, we do not have that

1 situation here.

2 And I'll cite you one more case. There is a case
3 called McMillan versus SCE&G, 312 Federal Second 662,
4 it's a 1963 4th Circuit case. And there was a
5 subcontractor that was injured while building a power
6 plant. And the Court there said SCE&G's charter, among
7 other things, allows it to build and operate power
8 plants. As a core business operation it is important
9 to SCE&G's business. So, this gentleman was a
10 statutory employee. That case, I believe, was on all
11 fours in the situation that we have.

12 Now, the other argument that the Plaintiffs make
13 is a very, very fact-specific argument. We see it in
14 some of the deposition excerpts where they say nobody
15 from SCE&G ever repaired this exact piece of equipment.
16 The work that was done on this piece of equipment was
17 unusual, hadn't been done before. It only gets done
18 every 30 or 40 years. So, because that very thing
19 hadn't been repaired before, it's an unusual,
20 extraordinary event. It's not part of the business,
21 it's not something that they could do with their own
22 employees. But, again, that is too narrow of a view of
23 the doctrine of the statutory employer.

24 As you are also aware, I'm sure, doubts about the
25 application of it are to be resolved in favor of the

1 application of the act.

2 The other problem with that argument is -- and
3 I'll pass up a full copy of Mr. Purvis' deposition,
4 excerpts of which were attached to the Plaintiff's
5 memo. But what he says in part, and I'll refer you to
6 a few pages but I won't read them to you. It is
7 Page 20 and 21, and also on Page 43. The important
8 piece of information there that was not in Plaintiff's
9 memo is that Mr. Purvis testified that this repair had
10 been done by SCE&G at another SCE&G plant. So, while
11 that specific piece of equipment hadn't been repaired
12 at this plant before, Mr. Purvis' testimony shows that
13 it's part of their operations and they have people that
14 can do it.

15 So with Your Honor's permission I'll pass up
16 Mr. Purvis' May 21st deposition, and I've dog-eared the
17 pages that I referred to.

18 THE COURT: All right.

19 MR. MASSALON: Thank you.

20 MR. MORGAN: Your Honor, Kirk Morgan. Thank you
21 for waiting on me this morning.

22 Mr. Massalon makes our arguments, and he's right
23 on point of what he should be concerned about. The
24 Raines case, the Gould case directly set forth the
25 criteria that this Court needs to look at factually.

1 Is it major, is it specialized, is it normally done in
2 the normal course of business.

3 We went out, as you instructed in January, took
4 some depositions. Look at our brief on Page six.
5 Trying to fit this case within the Glass versus Dow
6 case and the Raines versus Gould case. Glass versus
7 Dow, repairs are major, specialized, the sort which the
8 employee [sic] is not equipped to handle with his own
9 work force, they are not a part of the business, that
10 creates a statutory employee relationship.

11 We've taken depositions of SCE&G employees,
12 Page 6. It was a major upgrade. Changing the valves
13 out of controls and pulling new wires. Yes, it was not
14 routine maintenance.

15 Going over to Page 8 of our brief. As far as the
16 sort of work of Jimbo (phonetic), pulling out the
17 wires, replacing the panel itself, no, we have never
18 done that. Was it considered routine maintenance? No,
19 this was a major overhaul.

20 Page nine. As far as removing, replacing the
21 wires, or actually removing, replacing the box, were
22 you ever asked to do that? No, sir. There's no doubt
23 that the routine maintenance like this had ever been --
24 routine maintenance by SCE&G had never done what
25 Emerson was doing on this project? Correct.

1 Page 10. And as that's something you usually
2 get -- it's something that SCE&G would never do
3 ourselves and would contract out. Yes, contract out.

4 Judge, the Raines case that Judge Sanders decided
5 said that construction, and reversibly, demolition,
6 obviously would make every single subcontractor of a
7 contractor brought in by a sophisticated entity a
8 statutory employee. They were deconstructing this
9 plant. They hired Emerson to do it. To not pull wires
10 in a box. It was the first time since the plant was
11 built that this work had been done. It had never been
12 done at any other plant. It had never been done by
13 anybody at SCE&G. The record that I think that this
14 Court has to rely upon, SCE&G's own employees, they say
15 it's important.

16 Well, it's important that your computer works.
17 Somebody that comes in and works on a computer for you
18 doesn't become a statutory employee of Richland County.
19 Working on your computer is important, and there's
20 probably somebody in Richland County that can work on
21 your computer. Send in the Geek Squad. That is a
22 crude analogy.

23 Judge Sanders makes that point. That is, to bring
24 in someone to do something that has never been done
25 before where they confirm in sworn testimony as opposed

1 to affidavits drafted by counsel that it's important.
2 It's important.

3 I have no doubt that SCE&G could probably build a
4 power plant. I have no doubt they've got people that
5 work there with the same skill set as my client. But
6 the fact that they went out and contracted a
7 multi-million dollar subcontract with Emerson to
8 deconstruct this component of their plant to install
9 upgrades in circuitry make the specialized component of
10 the work, the scope of the project, which was years,
11 made it major. And as the Raines case with Judge
12 Sanders said, to affix an electrician with doing
13 something electrical at SCE&G, would -- too many
14 analogies, having somebody with some medical knowledge
15 doing some work at a hospital would make him a
16 statutory employee.

17 So, I don't think as a matter of law the Court can
18 conclude that this specialized work that he was
19 doing -- now, Emerson filed a statutory employee motion
20 two weeks ago. I guess -- a second. I could say we
21 just got that two weeks ago. I'm not going to suggest
22 one versus the other, but clearly SCE&G didn't feel
23 that it had the specialization to do this work itself
24 and it had never done it before. That is why they
25 retained Emerson. Emerson might have a stronger

1 position that the sub that they hired to do the work
2 they were hired to do may be with more for the scope of
3 their project. But we have not had any discovery done
4 because we did not know that they were going to assert
5 statutory employment in this case.

6 So, if you will take the time to read the four or
7 five depositions excerpts of SCE&G employees, every
8 single buzzword that the Court of Appeals and the
9 Supreme Court says has to exist for you not to find
10 statutory employment, they have confirmed for the
11 record. And I believe construing them in the light
12 most favorable to us you have to conclude that Samuel
13 Washington who had this very severe electrical shock
14 injury was not a statutory employee of SCE&G on
15 September -- back in 2011.

16 MR. MASSALON: First about the issue of whether
17 the work had been done before, I invite you to look at
18 Mr. Purvis' deposition. But just briefly, on Page 20,
19 for example, he's asked, what if the record indicates
20 that it had never been done before, would that help you
21 say it was not routine maintenance? His answer was,
22 It's been done on other plants before. They say
23 upgrading, and he says, yeah, and then on Page 40 he
24 identifies the place where it has been done, and it's
25 the coke plant. So again, it is not accurate that it's

1 never been done anywhere before.

2 As far as the cases that Mr. Morgan relies on, I
3 made the argument about that. In what I call Gould,
4 but Raines is actually the Plaintiff's name, it's
5 Raines versus Gould. Gould was a battery company
6 building a plant. And in the other case that I
7 referred to, the Dow case, that is a chemical company
8 making repairs. Totally different situation here.
9 Here we have an electrical company hired to work on
10 electric turbines and a power plant. Thank you.

11 THE COURT: All right. You all do the file. Send
12 me an order. I don't have your brief. It may be in
13 the file.

14 MR. MASSALON: I can pass up a copy, if you like.

15 THE COURT: Okay. Send me a proposed order and
16 attach all cases that I should read. You send me a
17 proposed order and attach all of those cases that you
18 referred to.

19 I'm not interested in reading entire depositions.
20 Lord, no. I do so many non jury. But highlight the
21 portion that you think that I should consider.

22 MR. MASSALON: If you would like me to, I'll take
23 that back. There's just three pages that I would like
24 you to read.

25 MR. MORGAN: We have done that in our brief. Even

1 though we have attached the pages of the deposition we
2 have taken the language that I referenced you in the
3 brief and highlighted it. We will do that in a
4 proposed order also.

5 THE COURT: And a self-addressed, stamped
6 envelope. We will read the order and cases and make a
7 decision.

8 MR. MORGAN: Your Honor, can I ask Mr. Bowers what
9 Emerson's position is on their motions?

10 MR. BOWERS: Judge, Mike Bowers for Emerson, and
11 this is Ian Ramsey who has been admitted pro hac vice
12 who will address the Court on our position.

13 MR. MORGAN: Your Honor, Emerson has also filed a
14 Motion for Summary Judgment also.

15 THE COURT: You are not prepared for that?

16 MR. MORGAN: That's correct. We are trying to set
17 some depositions, but they just filed it two weeks ago.
18 I can't tell you I'm shocked, but they waited up to the
19 last minute. We need time to do some discovery in that
20 regard. Frankly, your disposition of this motion may
21 help us in that regard also.

22 MR. RAMSEY: I understand Mr. Morgan's position.
23 Let me suggest to you that my situation is not labored
24 by as many facts perhaps as the dispute between
25 Mr. Morgan and the power company. As Mr. Massalon and

1 Mr. Morgan both stated, we are in a position as a
2 contractor. We were hired by the --

3 THE COURT: It was filed two weeks ago and I can't
4 hear it over his objection, so I'm not listening to
5 you.

6 MR. RAMSEY: Your Honor, I understand.

7 THE COURT: Even though you went through all of
8 the hoops, got admitted pro hac vice, we still have
9 time. This is not on the docket.

10 MR. RAMSEY: Our motion was filed August the 12th,
11 Your Honor.

12 THE COURT: I understand. That is not enough
13 time.

14 MR. RAMSEY: Judge, if you were so inclined as
15 before with the power company, if he's going to be
16 wanting to do some discovery I'll ask this Court to
17 retain jurisdiction so that we can refile.

18 THE COURT: I retained it because I knew that I
19 was going to be down here. I don't know that I'll be
20 back down here, so I don't know if I'll retain it.
21 I'll retain it, if it's okay, to decide it on briefs
22 and orders, but I'm not convinced I can be here.

23 ATTORNEY3: Judge, there's nothing so unique about
24 this case that it needs to follow you around. So, I
25 think as it comes up in the normal course, it can be

1 reset.

2 THE COURT: If it comes up in the normal course.
3 But I'm not retained here; that's all. I'm in Camden,
4 South Carolina. I was going to be here the rest of the
5 year when I retained it, but I don't even know what the
6 schedule is for next year.

7 ATTORNEY3: Judge, we will get together on amended
8 schedule order so we can do some discovery on this
9 issue, and then, as I said, depending upon your ruling
10 and SCE&G's motion, that could have some practical
11 effect on the position that I take on their motion.

12 MR. RAMSEY: Judge, and perhaps -- I understand
13 that. Mr. Morgan and I both agree, there's nothing so
14 unique under my facts that requires us to appear before
15 you again for hearing, but could we submit it to you on
16 the briefs?

17 THE COURT: As I said, I'm willing to do that if
18 he is. If he's not, he says he's just going to bring
19 it to court.

20 ATTORNEY3: Obviously, Judge, I need a ruling on
21 this other one before I agree to send the next one to
22 you. I've known you too long.

23 THE COURT: I'm going to rule the same way twice.

24 ATTORNEY3: I hope so. Thank you, Judge.

25 MR. MASSALON: Thank you, Judge.

1 THE COURT: Okay. Now, I have your brief, which
2 I'll take with me.

3 ATTORNEY3: Yes, sir.

4 THE COURT: You are going to send me your brief
5 with attachments?

6 MR. MASSALON: I'll send you my brief with the
7 proposed order and attached excerpts.

8 ATTORNEY3: I will give your clerk another copy.

9 THE COURT: We don't need one.

10 MR. MASSALON: Judge, it looks like we have a copy
11 of ours. I'll hand it up to you now.

12 THE COURT: Okay.

13 ATTORNEY3: Judge, do you have a time frame of
14 when you'd like to get the proposed orders? Within a
15 couple of weeks, maybe?

16 THE COURT: Well, I don't really care. All I
17 want -- once I get one, the next person has ten days to
18 get theirs in, or I'll sign the first one.

19 ATTORNEY3: I'll write something out right now.

20 THE COURT: I'm just saying.

21 MR. MASSALON: Do you want to pick a time when we
22 can submit this thing?

23 ATTORNEY3: Today is the 4th.

24 THE COURT: You all should be able to get it
25 within 30 days.

1 ATTORNEY3: I was going to say by the first week
2 of October.

3 MR. MASSALON: We will calculate 30 days and get
4 them to you by then.

5 ATTORNEY3: October 3rd is a Friday.

6 THE COURT: I'm out of state two weeks in October,
7 then we are holding courts the other two weeks.

8 MR. MASSALON: October 3rd.

9 ATTORNEY3: We will have it to you by Friday,
10 October 3rd.

11 THE COURT: Well, I can't decide anything until
12 November by then because I'm not going to be here.

13 ATTORNEY3: All right. Thank you, Judge.

14 MR. MASSALON: Thank you.

15 (Whereupon, the hearing concluded.)
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1

2 CERTIFICATE

3

4 STATE OF SOUTH CAROLINA:

5 COUNTY OF COLLETON:

6 I, MONA L. MANLEY, Court Reporter, certify that I was
7 authorized to and did stenographically report the foregoing
8 proceedings and that the transcript is a true and complete
9 record of my stenographic notes.

10 DATED this 1st day of March, 2015.

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MONA L. MANLEY
Official 14th Circuit Court Reporter
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STATE OF SOUTH CAROLINA)
COUNTY OF COLLETON)

Samuel Washington, Jr.,)

Plaintiff,)

v.)

South Carolina Electric and Gas)
Company; and Emerson Electric)
d/b/a Emerson Network Power,)
and/or Emerson Network Power,)

Defendants.)

IN THE COURT OF COMMON PLEAS
CASE NO.: 2013-CP-15-411

DEFENDANT SOUTH CAROLINA
ELECTRIC & GAS COMPANY'S
ANSWERS TO PLAINTIFF'S FIRST
SET OF INTERROGATORIES

The Defendant South Carolina Electric & Gas Company answering the Plaintiff's First Set of Interrogatories dated November 5, 2013, states as follows:

1. Give the names and addresses of persons known to the Defendant or counsel to be witnesses concerning the facts of the case and indicate whether or not written or recorded statements have been taken from the witnesses and indicate who has possession of such statements.

ANSWER:

- a. Kevin Whicker, SCE&G; Plant Manager. Mr. Whicker manages/supervises the plant where Mr. Washington was injured. His testimony may include his knowledge of the Plant and Mr. Washington's accident.
- b. Richard Wilson, SCE&G, Instrument Mechanic and Internal First Responder. In addition to Mr. Wilson's role as instrument mechanic, he is one of SCE&G's first responders in the event accidents happen at the Plant. His testimony may include his knowledge of Mr. Washington's accident.
- c. Gene Varnadoe, SCE&G, Instrument Mechanic and Internal First Responder. In addition to Mr. Varnadoe's role as instrument mechanic, he is one of SCE&G's first responders in the event accidents happen at the Plant. His testimony may include his knowledge of Mr. Washington's accident.
- d. Ralph Polk, SCE&G, Instrument Mechanic and Internal First Responder. In addition to Mr. Polk's role as instrument mechanic, he is one of SCE&G's first

responders in the event accidents happen at the Plant. His testimony may include his knowledge of Mr. Washington's accident.

- e. Michelle Camburn, SCE&G, Environmental and Safety Supervisor. Ms. Camburn's role at the company includes working to prevent accidents like Mr. Washington's. Her testimony may include her knowledge of what SCE&G does to meet that objective as well as how Mr. Washington may have caused his own injuries.
- f. Wes Coker, SCE&G, Safety Advisor. Mr. Coker's role at the company includes working to prevent accidents like Mr. Washington's. His testimony may include his knowledge of what SCE&G does to meet that objective as well as how Mr. Washington may have caused his own injuries.
- g. Joe Foster, SCE&G, Maintenance Superintendent. Mr. Foster's role at the company includes working to prevent accidents like Mr. Washington's. His testimony may include his knowledge of what SCE&G does to meet that objective as well as how Mr. Washington may have caused his own injuries.
- h. Larry Purvis, SCE&G, Manager of Strategic Sourcing. Mr. Purvis' role at SCE&G includes managing contracts for work like that being performed by Mr. Washington.

This party expressly reserves the right to call the following persons as witnesses without further notice: (a) all persons identified by any other party to be a witness in this case; (b) all persons/entities deposed in this case; (c) Rule 30(b)(6) witnesses for any entity that is a party to this case; (d) records custodian witnesses for any entity that is a party to this case; (e) records custodian witnesses for any entity receiving a subpoena or FOIA request related to this matter, (f) Rule 30(b)(6) witnesses for any entity receiving a subpoena or FOIA request related to this matter, and (g) such additional witnesses as are identifiable through documents exchanged between the parties or otherwise. Discovery is on-going, and as such, further discovery and investigation of this matter may yield the identity of additional witnesses who may be able to address any of the claims and defenses alleged in the subject action.

- 2. For each person known to the Defendant or counsel to be a witness concerning the facts of the case, set forth either a summary sufficient to inform the other party of the important facts known to or observed by such witness, or provide a copy of any written or recorded statements taken from such witnesses.

ANSWER: Please see SCE&G's answer to interrogatory number one.

3. Set forth a list of photographs, motion pictures, videotapes, maps, plans, blueprints, charts, diagrams, models or other graphic representations in your possession that in any way relate to the claims or defenses in this case.

ANSWER: Please see the documents produced herewith.

4. Set forth the names and addresses of all insurance companies which have liability insurance coverage relating to the occurrence or any matters alleged in the Plaintiffs' complaint and set forth the number or numbers of the policies involved and the amount or amounts of liability coverage provided in each policy.

ANSWER:

SCE&G is self-insured for the amount at issue in this case.

5. Set forth the names and addresses of any expert witnesses whom the Defendant proposes to use as a witness at the trial of the case and state as to each such person:
 - a. the subject matter on which each such person is expected to testify;
 - b. the substance of the facts and opinions to which each such person is expected to testify; and
 - c. the specific facts on which the opinion of each such person is based.

ANSWER:

To date, SCE&G has not identified an expert to testify at the trial of this case. However, discovery is ongoing and SCE&G reserves the right to name such experts as they may be revealed during discovery. Additionally, to the extent certain witnesses may qualify as experts by virtue of skill, training, or experience, they may be called upon to render opinions, and SCE&G reserves the right to elicit opinion testimony from fact witnesses who have scientific, technical, or other specialized knowledge that will assist the trier of fact in understanding the evidence or issues in this matter.

6. After the incident which is the subject of this action, was an investigation conducted by or on behalf of the Defendant? If so, state:
 - a. the name, address, employer, and capacity in which employed, of all persons who conducted the investigation;
 - b. the identity of all individuals contacted during the investigation; and
 - c. the location of any written documents compiled as a result of the investigation, including all reports, statements, drawings, photographs, films, models or other items generated or obtained by or on behalf of the Defendant which in any way relate to the claims and defenses in this case.

ANSWER: SCE&G objects to this interrogatory on the grounds that it seeks information

protected by the work-product doctrine. Without waiving said objection, SCE&G directs Plaintiff to the OSHA investigation reports being produced herewith.

7. Is it the contention or allegation of the Defendant that the Plaintiff caused or contributed to cause the Plaintiff's alleged injuries? If your answer is anything other than an unqualified "no", please state in detail each act or omission by the Plaintiff which you contend caused or contributed to the Plaintiff's injuries.

ANSWER: Mr. Washington should have independently checked, tested, and verified that there was no power on the circuit prior to performing work. Discovery is ongoing, and as such, SCE&G reserves the right to amend/supplement this answer through the trial of this matter.

8. If the Defendant contends that the Plaintiff was not in the exercise of due care, but rather was negligent and contributed to or assumed the risk of the damages and injuries complained of herein, please set forth all of the facts in detail and identify separately and in detail each and every document which the Defendant alleges will support this contention or contentions.

ANSWER: Please see SCE&G's answer to interrogatory number seven.

9. If the Defendant contends that the Plaintiff's damages and injuries were caused, in whole or in part, by some person(s) or entity(ies) other than the Defendant or any agent or employee of the Defendant, please state separately for each such person or entity his/her/its full name and last known address, and please set forth any and all facts and please identify separately and in detail each and every document which the Defendant alleges will support this contention.

ANSWER: Mr. Washington, IBBW, ACT, and/or Emmerson may have contributed to Plaintiff's injuries for reasons including, but not limited to, their failure to follow industry standards.

10. Identify all independent contractors or any other non SCE&G personnel working at the plant on the day of the accident September 28, 2011, to include the name and address of the entity, the scope of work being performed by the entity on the day of the incident, and the name of the entity's employee supervising the work on the day of the incident.

ANSWER: Besides Plaintiff and Defendants, none.

11. For each entity or person described in the above Interrogatory, identify the SCE&G personnel responsible for monitoring and supervising the work performed by that person or entity on the date of the incident.

ANSWER: Please see answer to interrogatory number ten.

12. Identify all written contracts in existence between you, Defendant Emerson and any other entity relating to the work that was being performed at the SCE&G Canadys Station plant

on the date of the incident.

ANSWER: Please see the documents produced herewith.

13. Identify the person or entity responsible for the hiring and staffing of general contractors, civil engineers, and/or subcontractors for the work that was being performed at the SCE&G Canadys Station plant on the date of the incident.

ANSWER: SCE&G Strategic Sourcing Department

14. Identify the person or entity responsible for supervising and/or monitoring the work that was being performed at the SCE&G Canadys Station plant on the date of the incident.

ANSWER: Joe Foster, SCE&G, Maintenance Superintendent;

15. Identify and describe any and all site safety inspections of the SCE&G Canadys Station plant performed by Defendant, or by anyone on behalf of the Defendant, prior to September 28, 2011.

ANSWER: SCE&G is constantly observing and maintaining its facilities including, but not limited to, the portion of the Canadys Plant where Mr. Washington was injured, and to that end, it also performs a detailed annual site survey and walk-down of the portion of the Canadys Plant where Mr. Washington was injured.

16. Identify the entity responsible for the operation, maintenance, or control of the electrical energy, power lines, and power distribution system at the SCE&G Canadys Station plant on the date of the incident.

ANSWER: SCE&G

17. Identify all safety procedures, programs, and/or plans adopted by Defendant SCE&G to be incorporated in the work that was being performed at the SCE&G Canadys Station plant on the date of the incident.

ANSWER: Safety and Orientation materials provided by SCE&G, and upon information and belief, Emmerson does the same.

18. State the role, responsibilities, and relationship Defendant SCE&G had with regard to the project on which the Plaintiff was injured.

ANSWER: SCE&G contracted directly with Emmerson for the subject work, and upon information and belief, Emmerson then contracted with ACT, who then hired Mr. Washington from the local IBEW Hall.

19. Describe in detail each and every action taken by or on behalf of the Defendant to address and/or control the potential for accidental contact with energized conductors and/or

equipment on September 28, 2011.

ANSWER: There is a lockout/tagout procedure for the Canadys Plant where there are actual locks on the breakers and mechanical equipment to keep people informed of what is and is not energized.

20. State what actions, if any, were taken by the Defendant prior to the occurrence which is the subject of Plaintiff's Complaint, that were intended to eliminate, guard against, or warn of the potential for accidental contact with energized conductors and/or equipment.

ANSWER: See answers to interrogatories number seventeen and twenty.

21. State what actions, if any, were taken by the Defendant after the occurrence, which is the subject of Plaintiff's Complaint that were intended to eliminate, guard against, or warn of the potential for accidental contact with energized conductors and/or equipment.

ANSWER: SCE&G objects to this interrogatory to the extent it seeks documentation that is inadmissible at trial and/or irrelevant. Without waiving said objection, SCE&G located the source of energy and isolated it by placing a lockout/tagout on it for that job. Additionally, SCE&G later modified its logout/tagout procedures to coincide with OSHA suggestions.

22. State what actions, if any, the Defendant is aware of that were taken by persons, other than the Defendant, prior to the occurrence with is the subject of Plaintiff's Complaint that were intended to eliminate, guard against, or warn of the potential for accidental contact with energized conductors and/or equipment.

ANSWER: Upon information and belief, Emmerson was conducting pre-job briefings in the mornings with their subcontractors instructing its workers to independently test, verify, and check whether equipment is energized prior to working on it.

23. State what actions, if any, the Defendant is aware of that were taken by persons other than the Defendant after the occurrence which is the subject of Plaintiff's Complaint that were intended to eliminate, guard against, or warn of the potential for accidental contact with energized conductors and/or equipment.

ANSWER: Upon information and belief, ACT employees began carrying electrical testing equipment with them on a regular basis.

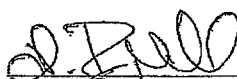
24. Without disclosing any names or personal health information, state whether or not the Defendant had any workers' compensation claims made against it resulting from burn injuries alleged to have been received at the SCE&G Canadys Station plant and provide the date, cause of burn and nature of injury incurred.

ANSWER: SCE&G objects to this interrogatory on the grounds that it is overly broad, unduly

burdensome, and unlikely to lead to the discovery of admissible evidence.

25. State the status of any OSHA or other federal or state regulatory agency investigations against SCE&G relating to this incident.

ANSWER: OSHA conducted an investigation after this incident, and it has since closed that investigation.



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SOUTH CAROLINA ELECTRIC AND GAS COMPANY

CHARLESTON, SOUTH CAROLINA

January 6, 2014

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on January 6, 2014, copies of the attached pleading/discovery have been served upon the following via:

XX	United States Postal Service
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WILLS MASSALON & ALLEN LLC

STATE OF SOUTH CAROLINA)
COUNTY OF COLLETON)

IN THE COURT OF COMMON PLEAS
CASE NO.: 2013-CP-15-411

Samuel Washington, Jr.,)
Plaintiff,)
v.)
South Carolina Electric and Gas)
Company, and Emerson Electric)
d/b/a Emerson Network Power,)
and/or Emerson Network Power,)
Defendants.)

DEFENDANT SOUTH CAROLINA
ELECTRIC & GAS COMPANY'S
RESPONSES TO PLAINTIFF'S FIRST
SET OF REQUESTS FOR
PRODUCTION

TO: S. KIRKPATRICK MORGAN, JR., ESQUIRE ATTORNEY FOR THE PLAINTIFF:

The Defendant, South Carolina Electric & Gas Company (hereinafter "Defendant SCE&G"), hereby responds to Plaintiff's Request for Production, dated November 5, 2013, and states that Defendant SCE&G objects to the production of documents sought by Plaintiff's Request, to the extent that Plaintiff's request documents which were prepared in anticipation of litigation or for trial by said Defendant SCE&G or its representatives and/or which contain the mental impressions, conclusions, or opinions of such representatives concerning anticipated litigation, so that any such documents are privileged as work product or would be within the attorney/client privilege, and thereby protected from disclosure under the provisions of Rule 26(b)(3), South Carolina Rules of Civil Procedure. Without waiving said objections, Defendant SCE&G states as follows:

1. All documents identified in or concerning your answers to Plaintiff's First Set of Interrogatories.

RESPONSE: SCE&G objects to this request for production to the extent it seeks information protected by the attorney-client privilege and/or work-product doctrine. Without waiving said objection, please see the documents produced herewith.

2. All records, memoranda, notations, drawings, affidavits, written or recorded statements, and any other documents relating to the incident which is the subject of this action which Defendant has obtained as a result of interviewing any persons having knowledge of the

incident.

RESPONSE: Please see the response to request number one.

3. All documents, correspondence, and internal memorandum either generated by or received by the Defendant or any other person or entity acting on behalf of the Defendant regarding the incident which is the subject of this action.

RESPONSE: Please see the response to request number one.

4. A complete copy of all policies of insurance (to include the declarations page) which do or may afford liability insurance coverage to the Defendant with respect to the occurrence or any matters alleged in the Plaintiff's Complaints. This request expressly includes primary insurance coverage, excess insurance coverage, umbrella insurance coverage, personal insurance coverage, business insurance coverage, or any other type of liability insurance coverage.

RESPONSE: Please see SCE&G's answer to interrogatory number four.

5. All emails, files, reports, power points, internal memos, articles, correspondence, or other documents regarding any inspection, examination, or investigation performed by you, or any other person or entity acting on your behalf, as a result of the incident which is the subject of this action.

RESPONSE: Please see the response to request number one.

6. All emails, files, reports, power points, internal memos, articles, correspondence, or other documents regarding any inspection, examination, or investigation performed by any insurance company as a result of the incident which is the subject of this action.

RESPONSE: Please see the response to request number one.

7. All reports or other documents received by you, your representatives or witnesses who will testify on your behalf which relate in any way to the incident which is the subject of this action, including reports of medical experts, engineering experts, economic experts, government agencies, investigators or insurance companies.

RESPONSE: SCE&G has not identified who will testify on its behalf.

8. All communications to and/or from insurers, underwriters and/or insurer representatives regarding the core out-feed conveyor, the incident, or any other related matters which are the subject of this action.

RESPONSE: None.

9. All photographs, slides, motion pictures, diagrams, maps, schematics, blueprints, charts, graphs, models, and other illustrative representations pertaining to the parties, the instrumentalities and/or physical objects involved, and the scene of the incident which is the subject of this action.

RESPONSE: Please see the response to request number one.

10. All documents describing, mentioning or in any way tending to prove or disprove any claims or defenses in this case.

RESPONSE: Please see the response to request number one.

11. Copies of the curricula vitae of all experts who are expected to testify on behalf of the Defendant.

RESPONSE: Please see SCE&G's answer to interrogatory number five.

12. Copies of the written or recorded reports of all experts who are expected to testify on behalf of the Defendant.

RESPONSE: Please see the response to request number eleven.

13. Copies of any and all documents, exhibits, etc. Defendant intends to introduce at the trial of this case.

RESPONSE: SCE&G has not identified what it intends to introduce at the trial of this case.

14. True, accurate and complete copies of any and all documents relating to any contention that you have that any other person or entity was guilty of any acts or failures to act that played any part in causing the incident which forms the subject of this action or the injuries or damages complained of in this matter.

RESPONSE: Please see the response to request number one.

15. Any and all codes of conduct, standard operating procedures, policy and procedure manuals and/or other standards governing the conduct of employees, agents and/or representatives of the Defendant regarding the work that was being performed at the SCE&G Canadys Station plant on the date of the incident.

RESPONSE: SCE&G will produce this information subject to a Consent Confidentiality Order.

16. Copies of any contract, agreement or any other tangible evidence of any agreement and/or contract which existed between Defendant SCE&G and Defendant Emerson at the time of the incident which is the subject of this action relating to the work that was being performed at the SCE&G Canadys Station plant.

RESPONSE: Please see the response to request number one.

17. Copies of any contract, agreement or any other tangible evidence of any agreement and/or contract which existed between Defendant SCE&G and any other entity at the time of the incident which is the subject of this action relating to the work that was being performed at the SCE&G Canadys Station plant.

RESPONSE: Please see the response to request number one.

18. All documents that set forth your role, responsibilities or relationship with regard to the work that was being performed at the SCE&G Canadys Station plant on the date of the incident.

RESPONSE: Please see the response to request number one.

19. Any and all reports, investigations and all other documents relating to electrocutions or accidents that have occurred at the SCE&G Canadys Station plant within the five (5) years prior to the date of the incident.

RESPONSE: SCE&G objects to this request for production on the ground that it is overly broad, unduly burdensome, and unlikely to lead to the discovery of admissible evidence.

20. All communications with, including documents sent to and/or received from, OSHA or any other federal or state regulatory agency relating in any way to the subject incident.

RESPONSE: Please see the response to request number one.

21. Copies of any and all communications, whether generated or stored in hard copy, electronically or otherwise, sent to or received by any of Defendant's representatives, employees or agents regarding the incident which is the subject of this action.

RESPONSE: Please see the response to request number one.

22. Copies of any and all safety materials, safety manuals, employee manuals, or training manuals of any kind whatsoever, stored electronically or otherwise, used by the Defendant over the last ten (10) years.

RESPONSE: SCE&G will produce this information subject to a Consent Confidentiality Order.

23. Identify and produce true and correct copies of any standard operating procedures which applied to your employees at the time of the incident which forms the subject of this action.

RESPONSE: SCE&G will produce this information subject to a Consent Confidentiality Order.

24. Copies of any and all correspondence, internal memoranda, studies, e-mails or other documents of any kind whatsoever, stored electronically or otherwise, regarding the implementation of new work rules or policies subsequent to the incident which is the subject of this action.

RESPONSE: Please see the response to request number one.

25. Copies of any and all documents of any kind whatsoever, stored electronically or otherwise, referencing training and/or safety procedures for the work that was being performed at the SCE&G Canadys Station plant on the date of the incident.

RESPONSE: SCE&G will produce this information subject to a Consent Confidentiality Order.

26. All documents which record, reflect, or otherwise evidence, in whole or in part, any statement your employees, agents, etc. have made to anyone concerning the subject incident.

RESPONSE: Please see the response to request number one.

27. Copies of any and all documents referring or relating to any federal or state codes or regulations that applied to the work that was being performed at the SCE&G Canadys Station plant on the date of the incident.

RESPONSE: The information sought in this request is public information.

28. Copies of any and all documents of any kind whatsoever, stored electronically or otherwise, referencing any actions taken by you prior to the occurrence which is the subject of Plaintiff's Complaint, that were intended to address and/or control the potential for accidental contact with energized conductors and/or equipment at the SCE&G Canadys Station plant.

RESPONSE: Please see the response to request number one.

29. Copies of any and all documents of any kind whatsoever, stored electronically or otherwise, referencing any actions taken by you after the occurrence which is the subject of Plaintiff's Complaint, that were intended to address and/or control the potential for accidental contact with energized conductors and/or equipment at the SCE&G Canadys Station plant.

RESPONSE: Please see the response to request number one.

30. Copies of any and all documents of any kind whatsoever, stored electronically or otherwise, relating to the site safety inspections of the SCE&G Canadys Station plant performed by you, or by anyone on your behalf, prior to September 28, 2011.

RESPONSE: Please see the response to request number one.

31. Copies of any and all safety procedures, programs, and/or plans adopted by the Defendant to be incorporated in the work that was being performed at the SCE&G Canadys Station plant on the date of the incident.

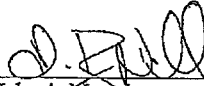
RESPONSE: Please see the response to request number one.

32. Any letters, emails, or other communications of any kind or type between you, or anyone on your behalf, and Defendant Emerson that in any way relate to the subject incident.

RESPONSE: Please see the response to request number one.

33. Copies of all documents obtained as a result of any subpoenas served by you in this case.

RESPONSE: None.


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SOUTH CAROLINA ELECTRIC AND GAS COMPANY

CHARLESTON, SOUTH CAROLINA

January 6, 2014

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on January 6, 2014, copies of the attached pleading/discovery have been served upon the following via:

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	Hand Delivery

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ATTORNEYS FOR DEFENDANT
EMERSON ELECTRIC COMPANY


WILLS MASSALON & ALLEN LLC

SC Dept of Labor, Licensing & Regulation Inspection Number: 315693465
Office of Occupational Safety and Health Inspection Date(s): 9/29/2011 - 10/20/2011
Issuance Date: 12/20/2011
CSHO ID: Q4820
Optional Report No.: 0551-12

Citation and Notification of Penalty

Company Name: SCE&G
Inspection Site: 13139 Augusta Highway, Canadys, SC 29433

Citation 01 Item 001 Type of Violation: **Serious**

SCRR Chapter 71, 1910.269(d)(2)(iv): Failed to ensure that the procedure shall clearly and specifically outline the scope, purpose, responsibility, authorization, rules, and techniques to be applied to the control of hazardous energy, and the measures to enforce compliance including, but not limited to, the following (A) a specific statement of the intended use of this procedure; (B) specific procedural steps for shutting down, isolating, blocking and securing machines or equipment to control hazardous energy; (C) specific procedural steps for the placement, removal, and transfer of lockout devices or tagout devices and the responsibility for them; and (D) specific requirements for testing a machine or equipment to determine and verify the effectiveness of lockout devices, tagout devices, and other energy control measures, as follows:

A. On or about September 28, 2011, written specific procedure was not conducted to verify the isolation and deenergizing of the left hand reheat valve number three.

Date By Which Violation Must Be Abated: 1/23/2012
Proposed Penalty: \$1,625.00



S.C. Dept of Labor, Licensing & Regulation
Office of Occupational Safety and Health

Inspection Number: 315693465
Optional Report No.: 0551-12
CSHO ID: Q4820
Inspection Date(s): 9/29/2011 -

10/20/2011

Establishment Name: SCE&G

Standard Number: 1910.269(d)(2)(iv)

Citation #: 01

Item #: 001

A. Brief Description of Hazard

accidental contact with live wires

B. Evidence Which Supports Basis for Alleged Violation 1,2

B1. How requirements of standard were violated (e.g. measurements):

no specific steps to show correct lockout tagout procedures to shutdown and remove and replace valve number three

B2. Evidence of employee exposure (e.g. names of exposed employees):

SCE&G hired company to design and oversee the installation of the new controls and valves and in turn they hired a company to conduct the labor portion of the installation.

B3. Employer knowledge of hazard:

Andy Green stated, "No we do not have any type of lockout tagout procedures in place for replacing the reheat valves this type of replacement only takes place every 30 to 40 years."
Kevin Young stated, "No we do not have LOTO procedures for this."

B4. Evidence of employer/employee relationship:

SCE&G employees are working with all contract workers on their site

B5. Basis for assigned abatement period:

existed: 1 day
last used: in use

S.C. Dept of Labor, Licensing & Regulation
Office of Occupational Safety and Health

Inspection Number: 315693465
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CSHO ID: Q4820
Inspection Date(s): 9/29/2011 -

10/20/2011

Establishment Name: SCE&G

C. Rationale for Penalty Calculation

14a Severity (H/M/L/N)	H
14b Probability (G/L)	L
14c Gravity	03
14e Number of Times Repeated	0
14f Size	0%
14g Good Faith	25%
14h History	10%
14i IAPR	0%

D. Penalty Calculation

Gravity Based Penalty	Penalty Multiplier	S, GF and H Credits	Proposed Adjusted Penalty
2500.00	1	35%	1625.00

E. Evidence Which Supports Penalty Multiplier (Willful, Repeat, or Fatality):

Instance:	A			Description:	No specific procedures in place		
Equipment ID:	left hand reheat valve 3		Serial #:	n/a		Brand:	n/a
Number Exposed/Title:	1/electrician						
Frequency:	as needed			Proximity:	at equipment		
Measurements:	SCE&G did not develop written procedures for the shutdown, removal and new installation for valves such as but not limited to the left hand reheat valves number three. The company has a lock out tag out program and written specific procedures in place for various pieces of equipment. This valves only get replaced every 30 to 40 years per SCE&G Safety Advisor, CO asked if any SCE&G personnel and or team got together to develop and implement procedures before this shutdown and replacement was started and the answer was no it was not.						
Surrounding Conditions:	dry concrete slab on grade						
PPE Provided:	No	Used:	N/A	Training:	N/A	Aggravated Hazard:	N/A
PPE Type:							
Eng Controls:	N/A	Eng Type:					
Medical Surveillance/Testing/Training:							
Sampling:	N/A	Sample Type:					
Substance:							
Most Reasonably Predictable Injury or Illness:	severe electrical shock						
Additional Info:	existed: 1 day last used: in use						

S.C. Dept of Labor, Licensing & Regulation
Office of Occupational Safety and Health

Inspection Number: 315693465
Optional Report No.: 0551-12
CSHO ID: Q4820
Inspection Date(s): 9/29/2011 -

10/20/2011

Establishment Name: SCE&G

Standard Number: 1910.269(d)(6)(vii)

Citation #: 01

Item #: 002

A. Brief Description of Hazard

possible shock from live wires and terminals

B. Evidence Which Supports Basis for Alleged Violation 1,2

B1. How requirements of standard were violated (e.g. measurements):

failed to visually inspect box to determine if all incoming wires and terminals were deenergized

B2. Evidence of employee exposure (e.g. names of exposed employees):

workers in the box removing all wires and terminals to replace with new equipment

B3. Employer knowledge of hazard:

Mr. Andy Green stated, "No we did not go to the box to visually verify that all wires in the reheat box were deenergized."

B4. Evidence of employer/employee relationship:

SCE&G works close with all contractors on their site

B5. Basis for assigned abatement period:

exist: 1 day

last used: in use

S.C. Dept of Labor, Licensing & Regulation
Office of Occupational Safety and Health

Inspection Number: 315693465
Optional Report No.: 0551-12
CSHO ID: Q4820
Inspection Date(s): 9/29/2011 -

10/20/2011

Establishment Name: SCE&G

C. Rationale for Penalty Calculation

14a Severity (H/M/L/N)	H
14b Probability (G/L)	L
14c Gravity	03
14e Number of Times Repeated	0
14f Size	0%
14g Good Faith	25%
14h History	10%
14i IAPR	0%

D. Penalty Calculation

Gravity Based Penalty	Penalty Multiplier	S, GF and H Credits	Proposed Adjusted Penalty
2500.00	1	35%	1625.00

E. Evidence Which Supports Penalty Multiplier (Willful, Repeat, or Fatality):

Instance: ☐ A Description: ☐ Did not visually verify wires were deenergized

Equipment ID: ☐ left hand reheat num 3 Serial #: ☐ n/a Brand: ☐ n/a

Number Exposed/Title: ☐ 1/operator

Frequency: ☐ as needed Proximity: ☐ at reheat box

Measurements:

☐ SCE&G did not develop written procedures for the shutdown, removal and new installation for valves such as but not limited to the left hand reheat valves number three. The company has a lock out tag out program and written specific procedures in place for various pieces of equipment. This valves only get replaced every 30 to 40 years per SCE&G Safety Advisor, CO asked if any SCE&G personnel and or team got together to develop and implement procedures before this shutdown and replacement was started and the answer was no-it was not.

Surrounding Conditions: ☐ metal platform

PPE Provided: ☐ No ☐ Used: ☐ N/A ☐ Training: ☐ N/A ☐ Aggravated Hazard: ☐ N/A ☐ Mitigates Hazard: ☐ N/A ☐

PPE Type: ☐

Eng Controls: ☐ N/A ☐ Eng Type: ☐

Medical Surveillance/Testing/Training: ☐

Sampling: ☐ N/A ☐ Sample Type: ☐

Substance: ☐

Most Reasonably Predictable Injury or Illness: ☐ severe electrical shock

Additional Info:

☐ exist: 1 day

☐ last used: in use

Emerson Process Management
Power and Water Solutions, Inc.
Pittsburgh, Pennsylvania 15238

Master Agreement

This Master Agreement Terms and Conditions of Sale of Equipment and Services in the USA Non-Nuclear Applications (the "Agreement") is entered into as of September 17, 2008 ("Effective Date") by and between:

South Carolina Electric & Gas Co., Inc. for itself and as agent for its corporate affiliates, a South Carolina corporation ("SCE&G"), with principal offices located at:
1426 Main Street
Columbia, SC 29201

and

Emerson Process Management, as Prime Contractor, a Delaware corporation ("Contractor"), with principal offices located at:

200 Beta Drive
Pittsburgh, PA 15238

The terms and conditions set forth in this Agreement are exclusive for equipment and/or services furnished hereunder. Return of a purchase order or other acceptance communicated to Emerson Process Management Power & Water Solutions, Inc., (Emerson) will be sufficient to form an agreement (Agreement) based exclusively on the terms set forth herein. Any additional or different terms and conditions submitted by one party to the other shall be deemed objected to by the receiving party and shall be of no effect nor in any circumstance binding upon the receiving party unless mutually agreed upon in writing by both parties.

TAXES - The price does not include any federal, state, or local property, license, privilege, sales, use, import duties, tariffs, fees, imposts, excise, turnover, added value, gross receipt, gross wages or similar taxes now or hereafter applicable in any manner to this transaction. SCE&G agrees to reimburse Emerson for any such taxes which Emerson is required to pay (other than corporate income taxes imposed on Emerson) upon submission of Emerson's detailed invoice. Emerson is a nonresident contractor, but is registered with South Carolina's Department of Revenue (File #20655505-7), therefore, is not subject to the 2% withholding pursuant to Section 12-8-550 of the Code of Laws of South Carolina (1976).

DELIVERY, TITLE AND RISK OF LOSS - All shipping dates are approximate and are based upon Emerson's prompt receipt of all necessary information timely requested from SCE&G to properly process the order. Delivery for Equipment shall be F.O.B. destination, prepaid and add. Title and risk of loss shall pass to SCE&G upon delivery. Delivery outside the USA shall be FCA port of export, freight collect as defined in "Incoterms 2000." Risk of loss shall pass to SCE&G upon delivery and title shall

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pass to SCE&G immediately after the goods have passed beyond the territorial limits of the United States.

PAYMENTS - Payments are due and payable net thirty (30) days from the date of receipt of the invoice and shall be based on the milestone payment schedule as mutually agreed for each individual purchase order. All payments shall be net cash in U. S. dollars. Emerson shall have the right, among other remedies, either to terminate the Agreement or to suspend further deliveries under this and/or other agreements with SCE&G in the event SCE&G fails to make any payment hereunder when due and SCE&G may suspend payment on failure of delivery and/or services.

When services (other than training) are provided on a per diem basis, invoices shall be itemized and in detail and rendered on a monthly basis, or as identified in the purchase order, and payment of per diem charges, plus applicable and reasonable travel and living expenses, which must be in accord with Emerson's Travel Expense Reimbursement guidelines, incorporated herein, shall be due net 30 days from the date of receipt of the invoice at the price agreed upon by the parties in advance and in writing. The commercial rate schedule for field engineering services is incorporated herein and shall govern the provision of services under this Agreement and (Price List PL21-040 for domestic or PL21-041 for international) is available upon request.

FORCE MAJEURE - Emerson will not be liable for failure or delay in performance resulting from any cause beyond its reasonable control including, but not limited to strikes, acts of God, the act, or failure to act of Government Authority, SCE&G, SCE&G's customer, or other contractors of SCE&G. In the event of such delay, the time for performance/delivery will be extended by a period of time reasonably necessary to overcome the effect of the delay, and Emerson shall be entitled to financial relief for increased costs resulting from the force majeure event.

WARRANTIES:

EQUIPMENT AND SERVICE WARRANTY - For equipment and services provided hereunder, Emerson warrants that the equipment shall be free of defects in material, workmanship and title which materially affect its utility; and that the services provided shall reflect competent knowledge and judgment. The warranty period shall expire 12 months from the date of installation of the equipment or performance of the service or 18 months from the date of delivery, whichever occurs first. The warranty period for repaired or replaced equipment or re-performed services during the warranty period shall be one year from the date of repair, replacement or re-performance.

REMEDIES - In the case of a nonconformity in these warranties and if Emerson is notified in writing of such nonconformity during the applicable warranty period, the non-conformity shall be promptly corrected at Emerson's option by; in the case of equipment, repair or replacement of defective part (s)/component (s) FCA Emerson shipping point; in the case of title, defense against claims of title defects and full indemnification of SCE&G for such defense as set forth herein; in the case of service, re-performance of the nonconforming portion of the service and Emerson shall further be responsible,

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subject to the Limitation of Liability provision below, for any other costs and damages incurred by SCE&G as a direct result of Emerson's failure to meet its warranty obligations hereunder. For equipment or components, which have failed due to normal electronic failure the prompt exchange and/or repair of such equipment or components are contingent upon receipt of those items. SCE&G is responsible for delivery of repair items to Emerson without damage due to shipping/handling following the manner and instructions provided to SCE&G by Emerson for such delivery of repair items. Any warranty specified herein is conditioned upon a) proper handling, installation and maintenance as set forth in the documentation incorporated herein; b) not having been subjected to accident, alteration, abuse or misuse; and c) SCE&G providing necessary access and assistance for Emerson to fulfill its warranty obligations which includes all costs of dismantling, reinstallation and freight to the Emerson facility. Emerson is responsible for the return freight to SCE&G and the time and expenses of Emerson's personnel and representatives for site travel and diagnosis under this warranty clause shall be borne by SCE&G unless authorized in writing by Emerson. This warranty does not apply to consumables and expendables such as, but not limited to, lamps, fuses, printer ribbon and batteries.

Unless stated otherwise herein, third party equipment shall be warranted and remedied on a pass through basis in the same manner and for the same period and extent provided by the original equipment manufacturer and, upon SCE&G's request, Emerson agrees that it shall notify SCE&G of any such third party manufacturers, the equipment provided by them, and the details of such warranties prior to shipment of the equipment.

Exclusivity of Warranties and Remedies - THE WARRANTIES SET FORTH ABOVE ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES WHETHER STATUTORY, EXPRESS OR IMPLIED (INCLUDING ALL WARRANTIES OF MERCHANTABILITY AND FITNESS FOR PURPOSE AND ALL WARRANTIES ARISING FROM COURSE OF DEALING OR USAGE OF TRADE). THE REMEDIES SET FORTH, FOR THE TIME AND IN THE MANNER PROVIDED ABOVE, SHALL BE SCE&G'S EXCLUSIVE REMEDIES FOR FAILURE OF EMERSON TO MEET ITS WARRANTY OBLIGATIONS, WHETHER BASED IN CONTRACT, IN TORT (INCLUDING NEGLIGENCE OR STRICT LIABILITY), OR OTHERWISE.

PROPRIETARY/CONFIDENTIAL INFORMATION- The parties recognize that they will be required to exchange Confidential and Proprietary Information during the performance or fulfillment of this Agreement and hereby consent to exchange Confidential and Proprietary Information in performing the work under this Agreement and subsequent Contracts and Purchase Orders. Confidential Information shall be clearly marked as confidential or proprietary. Each party shall retain ownership of its Confidential Information, including without limitation all rights in patents, copyrights, trademarks and trade secrets.

The term "Critical Energy Infrastructure Information" or "CEII" is used in this Agreement as defined in 18 C.F.R. § 388.113(c)(1). For purposes of this Agreement, CEII shall also include any information that may be described as specific engineering, vulnerability, or detailed design information including, but not be limited to, the following: diagrams of valve and piping details at compressor stations, pipeline

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Interconnections, flow diagrams and other drawings, maps of projects and drawings showing technical details of a project. All CII marked as confidential is also Confidential Information.

The term "Critical Infrastructure Information or "CII" is used in this Agreement as defined in 6 U.S.C. § 131 (3). All CII marked as confidential is also Confidential Information.

Licensed software, software related documentation and other materials provided by Emerson subject to Section titled "Software and Firmware" shall remain the Confidential and Proprietary Information of Emerson subject to use by the SCE&G in accordance with this Agreement.

CEII, CII, specifications, drawings, data, technical drawings, technical data, software and other information transmitted by the disclosing party to the receiving party in connection with a request for proposal, offer and any resulting sale under this Agreement shall remain the property of the disclosing party or its suppliers. Information marked as confidential or proprietary may also contain trade secrets, which shall be clearly marked as such and shall be disclosed in confidence on a need to know basis on the condition that it is not to be reproduced, copied or used for any other purpose than the purpose for which it is provided and shall not be disclosed to external third parties without the prior written permission of the disclosing party. The provisions of this Section shall not apply to information which: (i) is or becomes generally available to the public through no act or fault of the receiving party; (ii) is, prior to disclosure hereunder, already in the possession of the receiving party and was not received from the disclosing party; (iii) is hereafter rightfully received from a third party who did not receive the same from the disclosing party; or (iv) is required by law or governmental agency to be disclosed, after the receiving party notifies the disclosing party of the disclosure requirements and affords the disclosing party an opportunity to object to and minimize such disclosure.

The parties agree that if access is granted to either party's computer network or a segment thereof, that this access is solely and strictly for the business purposes described in this Agreement and any subsequent Contract and Purchase Orders. The parties agree that access for any other purpose or the use of a party's computer network to access other networks, without prior written consent of the hosting party, is strictly forbidden and that the accessing party is responsible and liable for all damages or unauthorized access resulting from these actions. This activity shall result in the discontinuation of any and all network connections, and the accessing party understands that it may be subject to civil and/or criminal prosecution. The parties further agree that any information that they obtain from the non-accessing party's computer network is subject to all of the terms and conditions of this Agreement.

If either party is ordered by a regulatory body or court to provide any information related to this Agreement and such information contains or may contain the Confidential or Proprietary Information of the other party, prior to any such disclosure, the Disclosing Party shall promptly notify the Non-disclosing Party in writing of such a requirement so that the Non-disclosing Party may deal directly with the court or agency to protect its Proprietary Information.

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The provisions and obligations of this Section as they apply to Emerson's and SCE&G's Confidential Information (excluding CEI and CII) exchanged by the parties shall survive the termination of this Agreement for a period of five (5) years from final acceptance of the work performed under any contract or purchase order issued pursuant to this Agreement or termination of this Agreement whichever occurs last while any license granted under the Section titled "Software and Firmware" of the Agreement shall remain in effect perpetually subject to the terms of the license agreement. Upon completion or termination of this Agreement, or any contract or purchase order issued pursuant to this Agreement, or at any other time, upon written request from the SCE&G, Emerson shall promptly return to SCE&G or destroy (and provide attested proof of destruction to SCE&G of) all SCE&G CEI or CII documents provided to Emerson by SCE&G and marked as confidential.

SOFTWARE AND FIRMWARE - Notwithstanding any other provisions herein to the contrary, Emerson or applicable third party owner shall retain all exclusive rights, interest and title to its respective firmware and software. Except as otherwise provided herein, SCE&G is hereby granted a perpetual, nonexclusive, royalty free license to use firmware and software, and copies of firmware and software, incorporated into the equipment in which it is initially installed. SCE&G's use of the firmware and software shall be governed exclusively by Emerson's and/or third party owner's applicable license terms except for the following modifications to the Emerson Software License, which shall modify the Emerson Process Management Power and Water Solutions Software License Agreement and apply exclusively to Emerson software furnished under a contract or purchase order subject to the terms and conditions of this Agreement.

The LICENSE TO USE Section is replaced by the following.

Emerson
Process
Management
Power and
Water
Solutions
Software
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LICENSE TO USE: The term LICENSEE includes an authorized user who accepts and agrees to be bound by the terms of this Agreement. Emerson Process Management Power & Water Solutions, ("EMERSON"), grants LICENSEE a perpetual, royalty-free, nonexclusive, nontransferable license to utilize one copy of all fully paid up licensed Software provided to LICENSEE (unless multiple copies or concurrent or simultaneous use rights are elsewhere authorized) for the intended purpose as set forth in the applicable contract or purchase order and LICENSEE's internal use in the equipment in which it is initially installed. "Software" as used herein shall mean any software program, firmware, or flash ROM licensed by EMERSON including, but not limited to, the EMERSON operating system software, application software, machine readable media on which the Software is contained, documentation, and/or written

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The TERMINATION Section is replaced by the following.

TERMINATION: LICENSEE may terminate this license at any time by destroying the Software and the related materials together with all copies and modifications in any form and if the termination is due to Emerson's breach, Emerson shall promptly refund to Licensee, on a pro rata basis, all licensing fees paid by Licensee. This license will also terminate upon conditions set forth elsewhere in this Agreement or if either party fails to comply with any material term or condition of this Agreement. LICENSEE agrees upon such termination and following the refund of licensing fees as set forth above, to destroy the Software and the related materials together with all copies and modifications in any form.

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The WARRANTY Section is replaced by the following.

WARRANTY: Unless otherwise agreed in writing by the parties, EMERSON warrants that the Software provided hereunder will be free from errors which materially affect its utility and shall perform in accordance with the EMERSON documentation as furnished under the applicable contract or purchase order. The warranty period shall expire 12 months from the date of completion of installation or 18 months from the date of delivery, whichever occurs first. Unless stated otherwise herein, third party software shall be warranted and remedied on a pass through basis in the same manner and for the same period and extent provided by the original software manufacturer. This Software warranty does not apply to any application software or set of instructions composed by LICENSEE; provided however, that this warranty will extend to any application software composed by EMERSON in accordance with LICENSEE's Instructions, but only to the extent of such Instructions.

Section YEAR 2000 WARRANTY is Deleted

The REMEDIES Section is replaced by the following.

REMEDIES: In the case of a nonconformity in this warranty and if EMERSON is notified in writing of such nonconformity during the applicable warranty period, it shall be remedied by correction or provision by Emerson of a procedure to correct material errors. If such remedies are impracticable, EMERSON shall promptly refund the purchase price for the nonconforming Software. Any Warranty specified herein is conditioned upon; a) proper handling, installation and maintenance; b) not having been subjected to accident, alteration, abuse or misuse; and c) LICENSEE providing necessary access and assistance for EMERSON to fulfill its warranty obligations.

The EXPORT RESTRICTIONS Section is replaced by the following.

EXPORT RESTRICTIONS: Both parties shall comply fully with all laws, regulations, decrees and orders of the United States of America that restrict or prohibit the exportation (or re-exportation) of technical data and/or the direct product of it to other countries, including, without limitation, the U.S. Export Administration Regulations.

The concluding Section is replaced by the following.

BOTH PARTIES ACKNOWLEDGE THAT THEY HAVE READ THIS AGREEMENT, UNDERSTANDS IT, AND AGREE TO BE BOUND BY ITS TERMS. BOTH PARTIES

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FURTHER AGREE THAT THIS IS THE COMPLETE AND EXCLUSIVE STATEMENT OF THE AGREEMENT BETWEEN EMERSON AND LICENSEE AND SUPERSEDES ANY PROPOSAL OR PRIOR AGREEMENT, ORAL OR WRITTEN, AND ANY OTHER COMMUNICATIONS BETWEEN EMERSON AND LICENSEE RELATING TO THE SUBJECT MATTER OF THIS AGREEMENT. LICENSEE AGREES THAT EMERSON MAY REASONABLY AUDIT THOSE RESOURCES AT LICENSEE'S FACILITY NECESSARY TO CONFIRM COMPLIANCE WITH THE FOREGOING PROVISIONS.

PATENTS - Emerson shall defend any action brought against SCE&G to the extent based on a claim that any item manufactured by it infringes any U.S. patent or copyright or from any claim caused by Emerson which arises under the valid laws of a foreign jurisdiction and, if notified promptly in writing and given authority and assistance for the defense of same, Emerson shall pay the damages and costs awarded therein against SCE&G. If the use of the item is enjoined, Emerson shall, at its expense and option, either procure for SCE&G the right to continue using it, replace it with a non-infringing item, modify it so it becomes non-infringing, or remove it and refund the purchase price. These provisions do not apply if the item is furnished in accordance with designs supplied by SCE&G or to the extent any item furnished hereunder is modified or combined by SCE&G or others, specifically excluding modifications or combinations made by Emerson or on Emerson's advice, with items not furnished hereunder. If a suit or proceeding is brought against Emerson arising out of such design, modification or combination, then SCE&G shall protect Emerson to the same extent that Emerson has agreed to protect SCE&G herein. This is an exclusive statement relating to the patent rights and all the remedies of the parties relating thereto.

LIMITATION OF LIABILITY - THE REMEDIES SET FORTH HEREIN ARE EXCLUSIVE AND UNDER NO THEORY OF RECOVERY, WHETHER BASED IN CONTRACT, IN TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY), UNDER WARRANTY, OR OTHERWISE WILL EITHER EMERSON OR ITS SUPPLIERS OF ANY TIER: (A) BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGE WHATSOEVER; DAMAGE TO OR LOSS OF PROPERTY OR EQUIPMENT; LOSS OF PROFITS OR REVENUE; LOSS OF USE OF SCE&G'S PROPERTY, EQUIPMENT OR POWER SYSTEM; INCREASED COSTS OF ANY KIND, INCLUDING BUT NOT LIMITED TO COST OF OPERATION AND MAINTENANCE, CAPITAL COST, FUEL COST AND COST OF PURCHASED OR REPLACEMENT POWER; OR CLAIMS OF CUSTOMERS OF SCE&G; AND (B) EXCEPT WITH REGARD TO THIRD PARTY CLAIMS FOR BODILY INJURY, INCLUDING DEATH, AND THIRD PARTY PROPERTY DAMAGE, AND CLAIMS FOR BREACH OF THE SECURITY AND CONFIDENTIALITY OBLIGATIONS SET FORTH HEREIN, BE LIABLE FOR AN AGGREGATE LIABILITY EXCEEDING THE TOTAL PRICE PAID TO EMERSON UNDER THE APPLICABLE CONTRACT OR PURCHASE ORDER. IN THE CASE OF BREACH OF SECURITY AND/OR CONFIDENTIALITY OBLIGATIONS UNDER THE TERMS OF THIS AGREEMENT, THE LIMIT OF LIABILITY SHALL NOT EXCEED \$1,000,000. THIS SECTION SHALL PREVAIL OVER ANY CONFLICTING OR INCONSISTENT PROVISIONS IN THE AGREEMENT.

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CHANGES -SCE&G may request or governmental laws and regulations may require changes in the scope of work or in the implementation/ performance of the work. The price, schedule and other pertinent provisions of the Agreement shall be adjusted by written agreement of the parties prior to implementation of any change.

GOVERNING LAW-The Agreement shall be governed by the laws of the State of Delaware, excluding both its rules or laws regarding choice or conflict of laws and the United Nations Convention on Contracts for the International Sale of Goods. The parties agree that The Emerson Software License Agreement shall be governed by the laws of the Commonwealth of Pennsylvania U.S.A., excluding both its rules or laws regarding choice or conflict of laws and the United Nations Convention on Contracts for the International Sale of Goods.

TRANSFER -SCE&G shall be able to transfer equipment serviced or furnished, provided that, prior to the transfer, SCE&G shall obtain for Emerson written assurances from the transferee of limitation of and protection against liability following the proposed transfer at least equivalent to that afforded Emerson and its suppliers hereunder. Transfer contrary to this article shall make SCE&G the indemnitor of Emerson and its suppliers against any liabilities incurred in excess of those that would have been incurred had no such transfer taken place.

SURVIVAL-The Limitation of Liability, Patents, Software and Firmware, Proprietary/Confidentiality Information, Transfer, Information provisions shall survive termination, expiration or cancellation of the Agreement or the purchase order to which these terms and conditions apply. No amendment, modification or alteration of these terms and conditions shall be binding unless the same shall be in writing and duly executed by the parties. If any term or condition is under any circumstances deemed invalid, the remaining terms and conditions shall be construed with the invalid provision(s) deleted.

NUCLEAR APPLICATION-UNLESS OTHERWISE AGREED, THE EQUIPMENT IS NOT FOR USE IN ANY NUCLEAR RELATED APPLICATION. SCE&G accepts the equipment with the foregoing understanding and agrees to indemnify and hold harmless Emerson and its suppliers of any tier from any claims, losses, suits, judgments and damages, including incidental damages, arising from such use, whether the cause of action be based in tort, contract or otherwise, including allegations based on negligence or strict liability.

GOVERNMENT REQUIREMENTS -SCE&G shall not, without the prior written permission of Emerson or the U.S. Government, provide any technology, equipment, or software received from Emerson pursuant to the Agreement, directly or indirectly, to any of the prohibited countries, restricted persons, or restricted end uses designated in the U.S. Government regulations or other applicable laws to which Emerson may be subject, as issued from time to time relating to the exportation, re-exportation, and resale of such technology, equipment, and software.

GENERAL PROVISIONS: (a) Neither party shall assign its rights or obligations under the Agreement without the non-assigning party's prior written consent which consent shall not be unreasonably

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denied, delayed, or conditioned. (b) There are no understandings, agreements or representations, express or implied, not specified in the Agreement. (c) No action, regardless of form, arising out of transactions of the Agreement, may be brought by either party more than three (3) years after the cause of action has accrued. (d) Any modification of these terms and conditions must be set forth in a written instrument signed by a duly authorized representative of both parties. (e) SCE&G shall be responsible for all dealings with any governmental authority including obtaining, maintaining and paying for all licenses, permits and authorizations for the services and/or equipment furnished under the Agreement which are personal and applicable to SCE&G. (f) The Agreement contains the entire agreement, incorporating the Emerson Process Management Power and Water Solutions Software License Agreement as modified herein, and understanding between the parties as to the subject matter of the Agreement, and merges and supersedes all prior agreements, commitments, representations, writings, and discussions between them. Neither of the parties will be bound by any prior obligations, conditions, warranties, or representations with respect to the subject matter of the Agreement.

* **INSURANCE** - Without limiting any of the other obligations or liabilities of Emerson, Emerson agrees to furnish and maintain for itself and to require any approved subcontractor to furnish and maintain at all times during the course of the services to be performed at SCE&G's facility hereunder, until all services under this Agreement are completed and accepted, by SCE&G the insurance at the limits required by this Section.

- Workers' Compensation and Employers' Liability, including an all-states endorsement and, where applicable, coverage under U.S. Longshoremen's and Harbor Workers' Act:

Workers' Compensation - Statutory; Employers' Liability - \$1,000,000.

- Commercial General Liability including Contractual, Independent Contractors, Broad Form Property Damage - \$1,000,000 Each Occurrence; Aggregate \$1,000,000; Personal Injury - \$1,000,000; Aggregate \$1,000,000.
- Automobile Liability coverage including all owned, hired, and non-owned automotive equipment used in connection with the insured operation - Bodily Injury and Property Damage Combined - \$1,000,000 Each Occurrence.
- Products and Completed Operations. Emerson is self-insured through a program administered by Emerson Process Management's parent organization, Emerson Electric Co., St. Louis, Missouri
- Excess Liability Insurance - \$5,000,000 Aggregate

Before any services at SCE&G's facilities are started under this Agreement, Emerson shall provide SCE&G's Strategic Sourcing Department an insurance certificate evidencing coverages as required

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Pittsburgh, Pennsylvania 15238

herein and in a form satisfactory to SCE&G. Such certificate shall show the certificate holder as: SCE&G Corporation and/or its subsidiaries, c/o Supplier Strategy - MC 032, Columbia, SC 29218, and shall provide that thirty days notice be given to the SCE&G's Strategic Sourcing Department, Mail Code (143), prior to any material change or cancellation of the insurance. In addition, except for Workers' Compensation coverage, it must list SCE&G Corporation and its subsidiaries as an additional insured subject to the limitations and restrictions as set forth in Section entitled "Limitation of Liability," and cover only third-party claims to the extent of the negligent acts or omissions of Emerson. All such insurance shall be with insurance companies authorized to do business in the state where the services are to be performed. The Emerson liability policies shall be primary with respect to SCE&G's self-insured retention or excess insurance to the extent of the negligent acts or omissions of Emerson. Neither a failure to provide the required certificate of insurance nor submission of a certificate of insurance not in conformance with the insurance requirements stated herein shall relieve Emerson from the obligation to have in force the required insurance coverage. The insurance requirements stated herein may be changed only by specific written agreement by SCE&G Corporation and/or its subsidiaries. None of Emerson's employees shall be deemed for any purpose to be solely or dually employed by SCE&G. If any employee of Emerson shall recover benefits under SCE&G's Workers' Compensation as a result of injury or disease sustained in, or Unemployment Insurance coverage resulting from performing the services under this Agreement while on Emerson's payroll, Emerson shall reimburse SCE&G for the full amount of such benefits.

SECURITY - SCE&G computer resources are "protected computers" which are defined by the Computer Fraud and Abuse Act (18 USC §1030), as amended by the USA Patriot Act (PL107-56, October 2001) to mean: "... a computer...which is used in interstate or foreign commerce or communication... ". A SCE&G computer resource may store, receive, maintain and/or have access to critical infrastructure information, which is defined by the Homeland Security Act (PL107-296, 2002) to mean "...information not customarily in the public domain and related to the security of critical infrastructure and protected systems." SCE&G's information technology resources bear the same definition as in the Clinger-Cohen Act (40 USC §1401): "...any equipment or interconnected system or subsystem of equipment, that is used in the automatic acquisition, storage, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information..." and includes "...computers, ancillary equipment, software, firmware and similar procedures, services (including support services), and related resources..."

EMERSON shall ensure that its employees do not use, access, or attempt to access SCE&G's computer resources and/or SCE&G's information technology resources except in strict adherence to the authorizations SCE&G has granted or in a manner that would be deemed to be a usage without authorization or one that exceeds authorization. EMERSON shall ensure that these SCE&G resources are not at any time used in a manner that is adverse to the interests of SCE&G. EMERSON also acknowledges that if SCE&G's Confidential Information is used in violation of confidentiality obligations, this usage shall be deemed to be unauthorized access.

Master Agreement

Return this Original to
SCE&G 12
For its Files

WMA/000105/1900-202

Emerson Process Management
Power and Water Solutions, Inc.
Pittsburgh, Pennsylvania 15238

EMERSON further warrants that to the best of its knowledge any software or code developed by EMERSON and provided to SCE&G contains no malicious code that could enable access to, disclosure of, or destruction of SCE&G corporate data or initiate and/or support denials of service to SCE&G networks and computers or third party networks and computers, unless SCE&G's authorized representative, specifically and in writing, authorized such code be provided. The destruction of data does not include deletion of data per provided documented system functions. Any SCE&G data and/or systems hosted by EMERSON must also be protected in a manner consistent with EMERSON'S policies and procedures which include policies and provisions against unauthorized access and access which exceeds authorization. Any installed devices and/or applications (such as PCAnywhere) shall not be accessible by EMERSON unless SCE&G specifically enables such access.

If EMERSON and/or its employees breach these security requirements, which include prohibitions against unauthorized access, exceeding of authorization, and/or unintended use of SCE&G's computer and information technology resources, SCE&G shall be entitled, in addition to all other rights and remedies which it may have at law or in equity, to seek damages and/or to seek to have a decree of specific performance or an injunction issued by any competent court, requiring the breach to be cured or enjoining all persons involved from continuing the breach. Further, breach of these security requirements may lead to the prosecution of civil and/or criminal actions.

EMERSON represents that the security policies, procedures, and practices implemented in their offsite location(s) that are and will be used to remotely access SCE&G's information technology and computer resources gaining access to SCE&G's Confidential Information, critical infrastructure information, and data, provide no less than the same level of security and safeguards and are as comprehensive and restrictive as the requirements contained in the applicable EMERSON policy and/or procedures.

INTENDING TO BE BOUND, the parties to this Agreement acknowledge they have reviewed and understand and agree to be bound by its terms and conditions and hereby execute it through their duly authorized representatives.

South Carolina Electric & Gas Co. (SCE&G)

Emerson Process Management Power &
Water Solutions, Inc.

Name: [Signature]

Name: [Signature]

Title: VP & CFO

Title: VP, Worldwide Supply Chain
Distribution & Logistics

Date: 9-17-08

Date: 9/18/08



Master Agreement

Return this Original to
Page 15 of 15
For its Files

WMA000106/1900-202

Purchase Order



SCANA Services, Inc.
as buying and paying
agent for:
SC ELECTRIC & GAS CO
MC D211
220 Operation Way
Cayce SC 29033

CHANGE ORDER		Dispatch via Print	
Purchase Order	Date	Revision	Page
PH-0100040103	10/19/2009	1 - 09/29/2011	1
Payment Terms	Freight Terms	Ship Via	
NET 30	DRST-NO FREIGHT	BEST MTD	
Buyer	Phone	Fax	
Bozy, Allison Solene	803/217-7742	803/733-2817	

Vendor: Fax: 412/983-4245 Phone: 412/983-4000
000008192
EMERSON PROCESS MANAGEMENT
POWER & WATER SOLUTIONS INC
200 BETA DRIVE
PITTSBURGH PA 15238

Ship To: SC ELECTRIC & GAS CO
13139 Augusta Highway
Walterboro SC 29488

Bill To: SCANA SERVICES INC.
PAYABLES@SCANA.COM or FAX: 803/733-2899
PO BOX 100257
COLUMBIA SC 29202

Tax Exempt? Y		Tax Certificate No. 1440572-000					
Line-Sch	Item Id	Description/Comments	Quantity	UOM	Unit Price	Extended Amt	Due Date

Attention: Dean Berardinelli - Reference Offer # PAM09080312,
Rev. 0 dated 7-22-08 (Unit 3 TDBFP fan controls upgrade)

Please note: This Purchase Order does not include training.

SUPPLIER IS REQUIRED TO ACKNOWLEDGE ITS ACCEPTANCE OF THE
PURCHASE ORDER/CONTRACT BY HAVING ITS AUTHORIZED REPRESENTATIVE
SIGN IN THE SPACE BELOW AND RETURN THE SIGNED COPY TO THE BUYER.

SUPPLIER REPRESENTATIVE SIGNATURE

DATE

SUPPLIER REPRESENTATIVE NAME (PRINTED)

1- 1	EHC software Unit 3 TDBFP fan controls upgrade	28,050.00	DO	1.00000	28,050.00	10/19/2009
2- 1	Base scope materials	46,617.00	DO	1.00000	46,617.00	10/19/2009
3- 1	Base scope labor	62,869.00	DO	1.00000	62,869.00	10/19/2009
4- 1	Solaris option	13,267.00	DO	1.00000	13,267.00	10/19/2009
5- 1	Removal Cost	6,159.00	DO	1.00000	6,159.00	10/19/2009
6- 1	Mobilization	7,310.50	DO	1.00000	7,310.50	10/19/2009
7- 1	Demobilization	7,310.50	DO	1.00000	7,310.50	10/19/2009

The applicable terms and conditions are specifically those set forth in the "Master Agreement by and between Emerson Process Management Power & Water Solutions, Inc., and South Carolina Electric & Gas Co., Inc., dated September 17, 2008. These Terms supersede those referenced at the bottom of this Purchase Order

Total PO Amount

171,583.00

Authorized Signature

PURCHASE ORDER NUMBER MUST BE ON EACH INVOICE OR IT MAY CAUSE PAYMENT DELAYS. FOR INVOICES TO BE PAID CORRECTLY, ITEM NUMBER ON INVOICE SHOULD CORRESPOND TO ITEM NUMBERS ON PO.

Unless otherwise specifically stated above, this Purchase Order incorporates by reference the "General Terms and Conditions for Purchases that Include Services" or the "Terms and Conditions for the Purchase of Goods Only" in effect as of the original date of the purchase order. These Terms and Conditions may be found at <http://www.scana.com/en/vendors-and-suppliers/process-and-policies/terms-and-conditions/default.htm>. If this is a change order, the Terms and Conditions in effect when the original Order was issued will apply unless otherwise mutually agreed.

Purchase Order



SCANA Services, Inc.
as buying and paying
agent for:
SC ELECTRIC & GAS CO
MC D211
220 Operation Way
Cayce SC 29033

CHANGE ORDER - REPRINT

Dispatch via Print

Purchase Order	Date	Revision	Page
PK-0100040102	10/19/2009	2 - 07/21/2011	1
Payment Terms	Freight Terms	Ship Via	
NRT 30	DEST-FRT PREPAID & ADD	BEST MTRD	
Buyer	Phone	Fax	
Spry, Allison Selena	803/217-7742	803/733-2817	

Vendor: Fax: 412/963-4245 Phone: 412/963-4000
0000006192
EMERSON PROCESS MANAGEMENT
POWER & WATER SOLUTIONS INC
200 BETA DRIVE
PITTSBURGH PA 15238

Ship To: SC ELECTRIC & GAS CO
13189 Augusta Highway
Walterboro SC 29488
Bill To: SCANA SERVICES INC.
PAYABLES@SCANA.COM or FAX: 803/733-2899
PO BOX 100257
COLUMBIA SC 29202

Tax Exempt? Y	Tax Certificate No.	1440572-000
Line-Sch	Item Id	Description/Comments

CHANGE ORDER #2
REVISION #2 - INCREASES LINE #1 BY \$29,000.00, LINE #2 BY
\$17,400.00, AND LINE #3 BY \$11,600.00. TOTAL P.O. INCREASES TO
\$871,498.00. AS 7/21/11

CHANGE ORDER #1
REVISION #1 - ADDS LINE #8 FOR \$16,574.00, INCREASING P.O. TOTAL
FROM \$858,924.00 TO \$871,498.00. AS 6/27/11

SUPPLIER IS REQUIRED TO ACKNOWLEDGE ITS ACCEPTANCE OF THE
PURCHASE ORDER/CONTRACT BY HAVING ITS AUTHORIZED REPRESENTATIVE
SIGN IN THE SPACE BELOW AND RETURN THE SIGNED COPY TO THE BUYER.

SUPPLIER REPRESENTATIVE SIGNATURE

DATE

SUPPLIER REPRESENTATIVE NAME (PRINTED)

1- 1	Material - Unit 3 conversion to EHC controls	288,977.00 DO	1.00000	288,977.00	10/19/2009
2- 1	Installation Labor - Unit 3 conversion to EHC controls	302,094.00 DO	1.00000	302,094.00	10/19/2009
3- 1	Removal - Unit 3 conversion to EHC controls	64,386.00 DO	1.00000	64,386.00	10/19/2009
4- 1	Software - Unit 3 conversion to EHC controls	237,379.00 DO	1.00000	237,379.00	10/19/2009
5- 1	SLC option	34,200.00 DO	1.00000	34,200.00	10/19/2009
6- 1	Mobilization	7,310.50 DO	1.00000	7,310.50	10/19/2009
7- 1	Demobilization	7,310.50 DO	1.00000	7,310.50	10/19/2009
8- 1	Solaris option	13,267.00 DO	1.00000	13,267.00	10/19/2009

The applicable terms and conditions
are specifically those set forth in
the "Master Agreement by and
between Emerson Process Management
Power & Water Solutions, Inc., and
South Carolina Electric & Gas Co.,

PURCHASE ORDER NUMBER MUST BE ON EACH INVOICE OR IT MAY
CAUSE PAYMENT DELAYS. FOR INVOICES TO BE PAID CORRECTLY, ITEM
NUMBER ON INVOICE SHOULD CORRESPOND TO ITEM NUMBERS ON PO.
Unless otherwise specifically stated above, this Purchase Order incorporates by reference the "General Terms and Conditions for Purchases that
Include Services" or the "Terms and Conditions for the Purchase of Goods Only" in effect as of the original date of the purchase order.
These Terms and Conditions may be found at <http://www.scana.com/en/vendors-and-suppliers/process-and-policies/terms-and-conditions/default.htm>.
If this is a change order, the Terms and Conditions in effect when the original Order was issued will apply unless otherwise mutually agreed.

Authorized Signature

Purchase Order



SCANA Services, Inc.
as buying and paying
agent for:
SC ELECTRIC & GAS CO
MC D211
220 Operation Way
Cayce SC 29033

CHANGE ORDER - REPRINT

Dispatch via Print

Purchase Order	Date	Revision	Page
PK-0100040102	10/19/2009	2 - 07/21/2011	2
Payment Terms	Freight Terms	Ship Via	
NET 30	DEST-FRT PREPAID & ADD	BEST METHOD	
Buyer	Phone	Fax	
Spry, Allison Selena	803/217-7742	803/733-2817	

Vendor: Fax: 412/963-4245 Phone: 412/963-4000
0000006102
EMERSON PROCESS MANAGEMENT
POWER & WATER SOLUTIONS INC
200 BETA DRIVE
PITTSBURGH PA 15238

Ship To: SC ELECTRIC & GAS CO
13139 Augusta Highway
Walterboro SC 29488

Bill To: SCANA SERVICES INC.
PAYABLES@SCANA.COM or FAX: 803/733-2899
PO BOX 100257
COLUMBIA SC 29202

Tax Exempt? Y		Tax Certificate No. 1440572-000				
Line-Sch	Item Id	Description/Comments	Quantity	UOM	Unit Price	Extended Amt Due Date
		Inc., dated September 17, 2008. These Terms supersede those referenced at the bottom of this Purchase Order.				
9- 1		Field Engineering for Canadys #3 main turbine & BFPT valve curve trip	16,574.00	DO	1.00000	16,574.00 06/27/2011
Total PO Amount					971,498.00	

PURCHASE ORDER NUMBER MUST BE ON EACH INVOICE OR IT MAY
CAUSE PAYMENT DELAYS. FOR INVOICES TO BE PAID CORRECTLY, ITEM
NUMBER ON INVOICE SHOULD CORRESPOND TO ITEM NUMBERS ON PO.

Authorized Signature

Unless otherwise specifically stated above, this Purchase Order incorporates by reference the "General Terms and Conditions for Purchases that
Include Services" or the "Terms and Conditions for the Purchase of Goods Only" in effect as of the original date of the purchase order.
These Terms and Conditions may be found at <http://www.scana.com/en/vendors-and-suppliers/process-and-policies/terms-and-conditions/default.htm>.
If this is a change order, the Terms and Conditions in effect when the original Order was issued will apply unless otherwise mutually agreed.



PURCHASE ORDER

PURCHASER :
 Emerson Process Management
 Power & Water Solutions
 200 Beta Drive
 Pittsburgh, PA 15238
 US

BILL TO :
 EMERSON PROCESS MANAGEMENT
 ATTN: ACCOUNT PAYABLES
 200 Beta Drive
 Pittsburgh, PA 15238
 US

SUPPLIER/VENDOR
 APPLIED CONTROL TECHNOLOGY INC
 5905 N STATE LINE AVE
 TEXARKANA, TX 75583
 US

E-mailed 3/4/11

Attention : BURNS, GEORGE
 Vendor Phone No. : 580-212-2335
 Vendor Fax No. : (903) 791-3002
 E-Mail Address : gburns@apptcontact.com

P.O.NO. : 4121009192 REV. : 0
 Page : 1 of 3
 P.O.DATE : 04 MAR 2011
 Date of Revision :
 Payment Terms : 5TH 3RD PROX
 Ship Via : Other
 FOB/INCO Terms : UCC; FOB Destination Collect
 Freight Terms : Prepaid & Allowed
 Currency : USD
 Buyer : KOPIELANSKI, EDWARD W
 Phone : 412-963-4277
 Fax : 412-963-4364
 E-Mail : Edward.Kopielanski@emerson.com

SHIP TO :

See Address Below
 US

Item	Part Number / Description	Del. Date	Qty	Units	Unit Price	Extended Price	Tax
Notes	REQUESTOR: KAMINSKI, ADAM K 3024086 TASK 21						
1	B-069-0260-B / / ENGINEERING - TURBINE CONTROL /	04 NOV 2011	520020	DEAL	1.00	\$20,020.00	N
Notes	Provide all necessary labor, supervision, equipment, materials and tools to perform installation services for the SOG & E Canadys Unit 3 Turbine Controls Upgrade Project in accordance with the attached Emerson Process Management Power & Water Solutions, Inc. Subcontract Terms and Conditions for Installation and Construction Services Purchase Order Number 4121009192, March 4, 2011 for the total firm-fixed F.O.B. delivered job site price of \$520,020 and consisting of the following scope of work price breakdowns: 1. Engineering - Turbine Control (Base Scope with New HPU) \$14,400 2. Field Installation - Electrical Construction (Base Scope with New HPU) \$122,279 3. Field Installation - Mechanical Construction (Base Scope with New HPU)						

Item	Part Number / Description	Del. Date	Qty	Units	Unit Price	Extended Price	Tax
	\$208,744 4. Engineering - Turbine Control (Main Turbine Control Valve Options) \$19,318 5. Field Installation - Electrical Construction (Main Turbine Control Valve Options) \$57,434 6. Field Installation - Mechanical Construction (Main Turbine Control Valve Options) \$84,445 7. Engineering - Turbine Control (Auto Sync Engineering Option) \$3,600 SPM project engineer is Kevin Kaminski at 412-862-4122. All project communications, schedule, submittals and approvals shall be conducted directly with Kevin. Job Site Location: South Carolina Electric & Gas Canadys Station 13119 Augusta Highway Walterboro, SC 29488 ACT shall submit one invoice per month for Work completed and performed in accordance with the Purchase Agreement during the prior month, subject to Article 9.24 Compensation and Payment. Company's payment terms shall be 5th-3rd Prox from Contractor's invoice date on all approved and undisputed invoices for Work performed in accordance with the Purchase Agreement.						

Total: \$ 920,020.00

THE PURCHASE ORDER NUMBER MUST APPEAR ON ALL INVOICES, SHIPPING PAPERS, PACKAGES AND CORRESPONDENCE.

THIS ORDER IS PLACED SUBJECT TO THE TERMS AND CONDITIONS OF THE PURCHASE ORDER ATTACHED HERETO WHICH ALSO CONSTITUTE A PART OF THIS PURCHASE ORDER AND SUPERSEDES ANY OTHER TERMS AND CONDITIONS EXCEPT AS PROVIDED IN THE DESCRIPTION OF THIS PURCHASE ORDER.

SEE SHIPPING INSTRUCTIONS FOR COLLECT SHIPPING METHOD AND ACCOUNT NUMBER. FAILURE TO USE SHIPPING METHOD REFERENCED IN THIS PURCHASE ORDER WILL RESULT IN FMS DEDUCTING SHIPPING CHARGES FOR THOSE INVOICES. FMS DOES NOT ACCEPT HANDLING CHARGES UNLESS PRIOR CONTRACTUAL CONSENT WAS GIVEN.

GENERAL TERMS AND CONDITIONS FOR PURCHASES THAT INCLUDE SERVICES

1. APPLICABILITY

These General Terms and Conditions for Purchases That Include Services (referred to herein as "Terms and Conditions") apply to Supplier's sale of services or goods which include services to SCANA Corporation and/or one or more of its subsidiaries. These Terms and Conditions consist of the following:

- A. Articles 1 through 46, which apply to all purchases;
- B. Supplement entitled "Nuclear," pertaining to goods and services relating to the V.C. Summer Nuclear facility, which applies if designated on the Purchase Order;
- C. Supplement entitled "Engineering Services," pertaining to certain engineering services, which applies if designated on the Purchase Order;
- D. Supplement entitled "Environmental," pertaining to certain environmental services, which applies if designated on the Purchase Order;
- E. Supplement entitled "Aviation," pertaining to certain aviation services, which applies if designated on the Purchase Order.
- F. Supplement entitled "Drug and Alcohol Testing for Pipeline Contractors" pertaining to substance abuse testing for pipeline contractors, which applies if designated on the Purchase Order.

2. DEFINITIONS

As used throughout the Contract, the following terms shall have the meanings set forth hereinafter:

- A. "Company" shall mean the affiliate of SCANA Corporation which is contracting for the Work, as identified on the Purchase Order.
- B. "Contract" shall mean the entire agreement between Company and Supplier, as set forth in the Purchase Order, these Terms and Conditions, and the Statement of Work (including any attachments, specifications, supplemental conditions, drawings, procedures or specifications contained or referenced in any of the foregoing). The order of precedence among these documents shall be (1) the Purchase Order; (2) these General Terms and Conditions For Purchases That Include Services; and (3) the Statement of Work.
- C. "Laws" shall mean all aspects of all ordinances, laws, statutes, requirements, codes, rules and regulations of all bodies of government and governmental agencies having jurisdiction over any aspect of the Work
- D. "Procurement Agent" shall mean Company's representative through whom commercial matters shall be channeled and who shall have sole authority to approve modifications of the Contract on behalf of Company.

- E. "Purchase Order" shall mean the document provided by Company which is labeled "Purchase Order," or in the absence of such a document, the document provided by Company which establishes the quantities and price of the Work.
- F. "Statement of Work" shall mean the document, if any, which sets forth the technical aspects of the Work.
- G. "Supplier" shall mean the person or entity providing the Work to Company pursuant to the Contract.
- H. "Work" shall mean the goods and/or services set forth in or necessary to perform the Contract.

3. LAWS AND REGULATIONS

- A. Supplier is responsible for knowing the requirements of all Laws. Supplier shall not rely on Company or the Contract for any information regarding the substance, existence, applicability, requirements or interpretation of any Laws.
- B. Supplier shall comply with all Laws applicable to its responsibilities under the Contract, including but not limited to worker employment eligibility laws. Supplier shall be solely responsible for supervision of its employees and subcontractors and their compliance with Laws, whether or not on premises owned or controlled by Company. Should Supplier become aware of any violations of any Laws, it shall promptly notify designated Company personnel.
- C. Supplier shall, at its own expense, obtain, and at all times during the term of this Contract, maintain as current, any and all licenses, permits, certifications and/or registrations required by federal, state and local governments, regulatory authorities, and commissions, including the applicable contractors' licensing board. Such licenses shall apply to the proper classifications required for undertaking the Work. Supplier shall, upon request by Company, furnish satisfactory evidence of being so licensed.

4. TAXES

- A. For purposes of this Article, "Taxes" shall mean all taxes, including income, gross receipts, unincorporated business income, payroll, employment compensation, Social Security, excise, ad valorem, sales, use, personal property (tangible and intangible), real estate, business license, excise and stamp, as well as any other assessments based on income, revenue, or gross receipts, imposed by any state, local or Federal government body. Additionally, the definition of "Taxes" includes any license, documentation, recording and registration fees, all levies, imports, duties, assessments, fees (customs or otherwise), charges and withholdings of any nature whatsoever, and all penalties, fines, additions to tax, and interest imposed by any local, state or Federal government body.
- B. Subject to subarticle C. below, Supplier shall be fully responsible and Company shall have no liability for any Taxes under the Contract, for the Work, or otherwise.
- C. Unless otherwise specified, Supplier shall exclude any sales and use tax in any submitted Contract price and on any resulting invoices to Company. If sales and use taxes are excluded, Company shall be responsible for the payment to the appropriate state of any sales and use taxes applicable to the Work. When required by the Company, Supplier shall itemize each invoice to show

as separate items, labor; material and equipment, freight, and other separable charges for the Work hereunder.

- D. For Work performed in the State of South Carolina on contracts of \$10,000 or more which involve labor, any nonresident contractor must comply with applicable laws regarding withholding or Company will withhold two percent (2%) of each payment made to the nonresident contractor.

5. EMPLOYMENT POLICIES

The parties hereby incorporate the requirements of 41 CFR 60-1.4(a), 41 CFR 60-741.5(a), 41 CFR 60-250.5(a), 48 CFR 52.219-8 and 48 CFR 52.219-9, if applicable.

6. SAFETY

- A. Supplier shall take all necessary or advisable precautions for the safety of all persons and property at, on, or near the Work. Supplier shall comply with all applicable provisions of Laws, building codes and safety regulations of Company. Supplier shall erect and maintain all necessary or advisable safeguards, as required by the conditions and progress of the Work, for the protection of workers and the public and shall post danger signs warning against the hazards created by the Work. In the event any situation arises which may involve danger to persons or property, Supplier shall act with good judgment to prevent or minimize injury to persons and damage to property.
- B. Upon request by Company, Supplier will provide to Company materials and documents to evidence the safety program of the Supplier, including but not limited to, OSHA 300 logs, injury logs, workers compensation experience modification ratings (EMRs), and copies of policies, programs and procedures for evaluation by the Company. A safety record indicating performance below industry average may be cause to disqualify Supplier or deem Supplier to be in default.
- C. In the event Supplier encounters in the performance of the Work materials or substances which Supplier recognizes or suspects may be hazardous or toxic, including, but not limited to, asbestos, lead or other regulated material and the presence of which was not specifically referenced in the Contract and recognized in the Statement of Work, Supplier will immediately cease that part of the Work which is affected and give notice to Company so that Company can give Supplier further direction.
- D. Supplier shall not permit or suffer the introduction of alcoholic beverages or liquors nor any narcotics in the vicinity of the Work nor upon any grounds owned or controlled by Company. Supplier shall not permit entry to the Work areas or to Company's grounds of any employee of Supplier or of any subcontractor who is under the influence of any alcoholic beverage or liquor or any narcotic (whether or not medically prescribed) or any non-narcotic drug or medication where the fact of such influence may be dangerous to the employee, to the public, to the Work or to Company's grounds, facilities, or personnel.
- E. Company shall have the right to require Supplier and its employees on premises owned or controlled by Company to undergo substance and alcohol abuse testing and shall also have the right to search Supplier and its employees' persons and personal property with regard to controlled substances and alcohol at all times and without prior notice. In the event that Company's requirement for a test with respect to any individual employee arose out of Company's reasonable suspicion of substance or alcohol use, the employee may not return to the Company's premises until the employee has satisfactorily passed the test. Supplier and its personnel testing positive for controlled substances or

alcohol shall not be used¹ performance of the Work. For purpose of this Section, the thresholds of a "positive" test are the same as the Company utilizes with its own employees, which thresholds are available to Supplier on request. All Work performed by the rejected personnel shall be subject to inspection and rejection by Company and rejected Work shall be reperformed by Supplier at no additional charge to Company. Supplier shall inform all of its employees of their being subject to substance and alcohol abuse testing and/or search and shall require each employee performing Work on Company's premises to consent, prior to being engaged in the Work, acknowledging Supplier and its employees compliance with Company's policies with regard to substance abuse and consenting to testing and/or search at any time as allowed herein.

7. OPERATION OF COMPANY'S EQUIPMENT AND SYSTEMS

Supplier's employees shall not utilize or attempt to utilize any of the Company's equipment and/or systems, unless expressly made a part of the Work as defined in the Contract or as directed by the Company. Failure to abide by this requirement shall be considered sufficient cause for the immediate removal of the employee or employees involved and for termination of the Contract for cause.

8. PROTECTION OF WORK AND PROPERTY

Supplier shall protect all Work and property from damage or loss that may result from the performance of the Contract. Should the Work be suspended temporarily, Supplier shall take such steps as may be necessary or advisable to protect it against damage or loss. Work or property destroyed, damaged, or lost by an act or omission of Supplier shall be replaced or repaired to Company's satisfaction at Supplier's expense. Should any Work or property require such replacement or repair prior to final payment, and Supplier fails or refuses to replace or repair it in accordance with the Contract, Company may replace or repair such Work or property, or in case of damage to the property of a third party reimburse the owner thereof, and deduct the cost of such replacement, repair or reimbursement from any funds due or to become due to Supplier under the Contract; or, if final payment has been made, Supplier shall reimburse Company such amounts.

9. SIGNS

The premises shall be maintained free from any and all advertising and signboards of every kind, except those approved by Company. The foregoing restrictions do not apply in the case of signage (a) which the Supplier reasonably believes are important in ensuring the safety of the public, Supplier, and/or Company; or (b) which is required by Laws.

10. PUBLICATIONS AND PHOTOGRAPHS

Publications and advertisements concerning the Work and/or the Contract shall not at any time be made by or on behalf of Supplier, unless prior written authorization therefor is obtained from Company. Picture taking shall not be allowed on the site except with written permission of Company.

11. COMPANY'S NAME AND INTELLECTUAL PROPERTY

Supplier shall not use Company's name as a reference or for any other purpose without obtaining prior written consent from an authorized representative of Company, and this consent shall be obtained separately for each proposed usage. Usage of Company's service marks, trademarks, logos or any other such intellectual property is specifically forbidden.

12. REPORTS

Supplier shall furnish Company periodic reports of Work progress, if requested by Company. Such reports shall be made as frequently as requested and in the form prescribed by Company.

13. AUDITS

- A. For purposes of this Article, "Records" shall mean Supplier's and subcontractors' books, records, correspondence, bids, purchase orders, invoices, accounting procedures and practices and any other supporting evidence relating to the Work and/or the Contract.
- B. All Records shall be open to inspection and subject to audit and/or reproduction, during normal working hours, by Company to the extent necessary to adequately permit evaluation and verification of any invoices, payments or claims based on Supplier's or subcontractor's actual costs incurred directly in the performance of Work under the Contract. Company shall have access to said Records from the effective date of the Contract, for the duration of the Work, and until three (3) years after the date of final payment by Company to Supplier pursuant to the Contract unless otherwise specified in the Contract. Company shall have access, during normal working hours, to all necessary Supplier and subcontractor facilities, and shall be provided adequate and appropriate work space, in order to conduct audits in compliance with the provisions of this Article. Company shall give Supplier or subcontractor reasonable advance notice of intended audits.
- C. Supplier shall require subcontractors to comply with the provisions of this Article by insertion of the requirements hereof in any subcontract arising out of the Contract.
- D. Supplier shall cooperate fully with Company in any such inspection or audit, as well as in any inspection, audit or investigation conducted by governmental authority or conducted by Company at the direction of any governmental authority.

14. SCHEDULING OF WORK

All Work shall be scheduled by Supplier subject to the approval of Company and within the completion date(s) required by Company. There shall be no deviation from the approved schedule without the Company's prior notification and authorization. Any Work performed without Company's authorization will be done at Supplier's risk and expense and shall be subject to rejection.

15. INSPECTION OF WORK

All Work shall be subject to inspection by Company. Company's authorized personnel shall have reasonable access to the Work at all times for the purpose of inspection. Supplier shall provide proper facilities for such access and inspection. The presence of Company's personnel and/or inspection of the Work shall not in any way alter, modify, or lessen the obligation of Supplier to comply with the requirements of the Contract. Any inspection by Company's personnel shall not be considered as an acceptance, approval, or waiver of warranty or other rights of the Work inspected. Company will be notified when Supplier determines that the Work does not conform to the Contract. In the event of a determination of unsatisfactory performance on the part of Supplier, the nonconforming Work shall be corrected in accordance with the requirements of the Contract at Supplier's expense.

16. APPROVAL OF WORK

All Work shall be subject to the approval of Company. The presence of Company's personnel and/or approval of the Work shall not in any way alter, modify, or lessen the obligation of Supplier to comply with the requirements of the Contract. Supplier shall perform all Work in such a manner as to comply with the Contract. Company shall have the authority to stop the Work without cost or liability whenever such stoppage is necessary to ensure proper compliance with the Contract.

17. INDEPENDENT CONTRACTOR STATUS

It is the intention of the parties to create between themselves the relationship of owner and independent contractor. Supplier shall control the manner and details of performance of the Work hereunder, subject to compliance with specifications, drawings, plans, and the reasonable rules, regulations and procedures of Company governing the operation of Company's facilities, Company's interest being in the result. No employees, contractors, subcontractors, or agents of Supplier shall at any time be deemed or have the rights of employees of Company, and neither Supplier nor any of its employees, contractors, subcontractors, or agents shall be eligible to participate in any employee benefit plan sponsored by or participated in by the Company. When required by Company, prior to any individual being assigned to the Work, the Supplier shall require that individual to execute the written acknowledgment required by the Contractor Authorization Form, Attachment I, hereof. The executed original of the Contractor Authorization Form shall be provided to Company prior to start of any Work.

18. FORMER SCANA EMPLOYEES

- A. For purposes of this Agreement, "Former SCANA Employee" means a former employee of SCANA Corporation or any of its subsidiaries.
- B. Supplier specifically agrees that in furtherance of the Work contemplated by this Contract neither it, nor any of its subcontractors, will employ, hire, contract with, or utilize the services (consulting, managerial or otherwise) of a Former SCANA Employee who left SCANA's employ less than one year before being assigned to work on this Contract without the express written permission of SCANA's Human Resources Department. Without limiting the foregoing, the terms of the "Independent Contractor Status" Article contained in these Terms and Conditions shall apply for any Former SCANA Employee utilized for any portion of the Work.

19. SECURITY

Supplier shall comply with all of Company's security programs and requirements.

20. SUBCONTRACTORS

Supplier shall not subcontract any portion of the Work without first securing the written consent of Company. Supplier must have disclosed any intent to subcontract any part of the Work prior to the execution of the Contract. When required by Company, Supplier shall provide a copy of the agreement with each subcontractor which shall be complete in every detail, including prices. Requests for consent shall include the names and addresses of all subcontractors and nature and extent of the Work to be performed. Supplier agrees to bind every subcontractor and every subcontractor shall be bound by terms essentially the same as the terms of the Contract so far as they apply to the work to be performed by the

subcontractor, unless specifically noted to the contrary in a subcontract approved by Company. Consent to any such subcontracting shall not relieve Supplier of full responsibility for the Work to be performed by the subcontractor.

21. COOPERATION WITH OTHER CONTRACTORS

Company may employ other entities or persons for those portions of related work which are not included as a part of the Work herein. Supplier shall cooperate with such other entities or persons working at or near the site of Supplier's operations and shall afford them reasonable opportunity for the delivery and storage of their materials in the execution of their work, shall coordinate its Work with theirs, and shall follow any directions given by Company in that regard. Where Supplier's Work depends on proper execution or the completion of a job or jobs by other entities or persons, Supplier shall promptly report to Company any defects or deficiencies in such other work that renders it unsuitable for proper execution of the Work included in the Contract.

22. DEMURRAGE

Demurrage on material caused by Supplier's acts or omissions shall be paid by Supplier.

23. FORCE MAJEURE

Neither party shall be liable to the other for any loss or damage due to any failure or delay in performance hereunder resulting from any cause beyond such party's reasonable control, including, but not limited to, acts of God; acts or omissions of civil or military authority; acts or omissions of the other party hereto; fires; floods; hurricanes; tornados; epidemic; quarantine restrictions; strikes or other labor disputes; wars or warlike circumstances; terrorism; or compliance with changes in applicable regulations or directives of national, state or local governments or any department thereof effective after the date of the Contract(s) affected by the force majeure. The party asserting the force majeure as an excuse from performance shall have the burden of establishing the existence of the force majeure event. That party must give the other party notice verbally within twenty-four hours of the occurrence of a force majeure event, confirmed in writing within ten days thereafter, such notice to state the nature of the event and the anticipated length of delay and shall include an outline of the remediation plan for approval. Such party shall take all reasonable steps to mitigate the effects of any force majeure event as soon as practicable (provided, however, that this shall not require settlement of labor disputes negotiated in good faith). Any written or verbal notice from the Supplier to the Company shall be directed to the Procurement Agent.

24. INSURANCE BY SUPPLIER

A. Supplier must provide and maintain, until the Work is completed and accepted, and to require any approved subcontractor to furnish and maintain at all times during the course of the Work to be performed hereunder policies of insurance, including Workers' Compensation, liability insurance, and other minimum insurance coverages as follows:

i. Commercial General Liability Coverage --

- (1) \$1,000,000 occurrence/\$2,000,000 aggregate Bodily Injury and Property Damage
- (2) Broad Form Property Damage, including Contractual Liability
- (3) Independent Contractors, if subcontractors will be utilized
- (4) Explosion, Collapse and Underground Hazard (XCU), if the Work involves excavation or underground construction

ii. Automobile Liability Coverage - \$1,000,000

- All owned, hired, and non-owned automotive equipment used in connection with the insured operation.
- iii. Workers' Compensation – Statutory
Employers' Liability - \$1,000,000
This coverage must include an "all-states" endorsement, as well as coverage under U.S. Longshoremen's and Harbor Workers Act where applicable. Suppliers must maintain Workers' Compensation coverage regardless of statutory requirements pertaining to the number of employees in Supplier's organization.
- B. The insurance requirements stated herein may be changed only by specific written agreement by Company.
- C. Before any Work is started under the Contract, Supplier shall provide Company an insurance certificate evidencing coverages as required herein and in a form satisfactory to Company. Such certificate shall provide that at least thirty (30) days written notice be given to Company prior to any material change or cancellation of the insurance. The certificate MUST show Contractual Liability spelled out. In addition, with the exception of Worker's Compensation and Professional Liability, the certificate must show "SCANA Corporation and/or its subsidiaries" as an additional insured and a Waiver of Subrogation in favor of SCANA Corporation. Copies of the insurance policies signed by the insurance companies or other authorized representatives shall be provided upon request. All applicable insurance certificates shall be on Acord forms showing the certificate holder as:
- SCANA Corporation and/or its subsidiaries
c/o Supplier Strategy - MCD211
220 Operation Way
Cayce, SC 29033-3701.
- D. All insurance shall be with sound insurance companies which have an AM Best rating of A-VII as the minimum and are authorized to do business in the state where the Work is performed.
- E. Neither a failure of Supplier to provide the required certificate of insurance nor Supplier's submission of a certificate of insurance not in conformance with the insurance requirements stated herein shall relieve Supplier from the obligation to have in force the required insurance coverages.
- F. None of Supplier's insurance policies shall have any "other insurance" clause or language which would jeopardize the primacy of Supplier's insurance with respect to Company's self-insured retention or excess insurance policies.
- G. Except for Workers' Compensation and Professional Liability (when required) coverage, all of Supplier's insurance policies must list "SCANA Corporation and its subsidiaries" as an additional insured.
- H. Coverage provided by Supplier shall be primary and non-contributory.
- I. None of Supplier's personnel shall be deemed for any purpose to be solely or dually employed by Company. If any employee of Supplier shall recover benefits under Company's Workers' Compensation as a result of injury or disease sustained in, or Unemployment Insurance coverage resulting from, performing Work under the Contract while on Supplier's payroll, Supplier shall reimburse Company for the full amount of such benefits and any cost or expenses incurred by Company related thereto.

- J. Supplier shall accept, in connection with the Contract, the provisions of all the workers' compensation laws of the state in which the Work is performed and any re-enactments and supplements thereto. In addition, Supplier shall maintain workers' compensation coverage for all Supplier employees performing the Work, regardless of whether required to do so by state law.

25. INDEMNIFICATION

Supplier, on behalf of itself, its affiliates, successors, assigns, directors, employees, and agents (collectively the "Indemnitor") hereby agrees to defend, indemnify and hold the Company and its affiliates, successors, assigns, directors, employees, and agents (collectively the "Indemnitee") harmless from and against any and all liabilities, demands, claims, suits, actions, proceedings, fines, penalties, awards, forfeitures, losses, damages and the costs and expenses incident thereto (including, but not limited to, costs of investigation, defense, settlement and attorney's fees) arising out of or resulting in any way from any defect in the Work or equipment furnished by Supplier hereunder, any breach of the Contract (including these Terms and Conditions), or any negligent or willful act or failure to act on the part of the Indemnitor, or the part of any agent, servant, or subcontractor of the Indemnitor, whether independent or otherwise.

26. PERFORMANCE AND PAYMENT BOND

If requested by Company, prior to undertaking any Work hereunder, Supplier shall advise Company of the actual cost, without any markup, of securing and maintaining while the Work is being performed, a performance and payment bond. Based on this information, Company may require Supplier to secure and maintain while the Work is being performed this performance and payment bond, in a form and with sureties acceptable to Company, insuring the full, proper performance of the Contract and the completion of the Work in a skillful and professional manner, and the payment of all obligations arising thereunder. Company's liability for the cost of such bond will not exceed the actual cost amount provided to Company by Supplier. Such bond shall be in an amount determined by Company, up to one hundred percent (100%) of the total price of the Work. Any increases in the bond amount must have prior written approval of Company. The determination of whether Supplier has failed to perform the Contract shall be made solely by Company. Company reserves the right to terminate the Contract in the event a required bond is not procured or is not maintained in effect until final acceptance of the Work.

27. LIENS

- A. Supplier shall, whenever requested to do so, furnish Company, in such detail as may be required by Company, statements in writing of all sums owed by Supplier or subcontractors for services rendered, labor performed or materials, supplies, tools or equipment furnished or used or to be used in the performance of the Contract.
- B. Supplier shall neither file nor cause to be filed any lien with respect to the Work to be performed or materials furnished hereunder and hereby waives any right to file or cause such a lien to be filed.
- C. In the event any claim has been asserted against Supplier or Company or any lien has been filed with respect to the Work, further payment under the Contract shall not become due until all such claims or liens have been satisfied, released and/or discharged of record without cost or expense to Company. If any lien is filed or remains unsatisfied after all payments are made, Supplier shall refund to Company all monies that the latter may be compelled to pay in discharging such a lien, including, but not limited to, all costs and attorney's fees associated therewith. At Company's option

and upon request by Company, Supplier shall discharge any lien related with respect to the Work by posting a bond as provided by applicable Laws at Supplier's expense. If Supplier fails to do so, Company may procure the release, satisfaction and/or discharge of any such claim or lien and deduct all costs and expense of Company associated therewith from any money due or to become due to Supplier on any account.

- D. If required by Company, the final payment shall not become due until Supplier delivers to Company a complete release of all liens arising out of its Work, or receipts showing payment in full in lieu thereof, and an affidavit showing that, so far as it has knowledge or information, the releases and receipts include all labor, materials, supplies and services for which a lien can be filed. Supplier may, where a complete release of liens is impracticable or receipts in full cannot be furnished, provide a bond satisfactory to Company to indemnify it against any lien or claim.

28. INTELLECTUAL PROPERTY

Supplier shall assume at its sole expense the defense of and shall indemnify and hold Company harmless from any and all claims, demands, costs, suits, actions, proceedings, fines, penalties and attorneys' fees (and interest thereon) resulting from or relating to any actual or asserted infringement by Supplier of any patent, design, trade name, trademark, service mark or copyright in connection with any Work or equipment furnished by Supplier hereunder, except to the extent the claim resulted from following directions, specifications, drawings, plans or procedures prepared by Company or by third parties for Company and selected solely by Company. Company may be represented by and actively participate through its own counsel in any such suit or proceeding if it so desires, and the costs of such representation shall be paid by Supplier. Supplier has an affirmative duty to promptly notify Company when Supplier is made aware of a claim of alleged infringement. In the event Work or equipment so defended is held to constitute infringement or its use is enjoined, Supplier shall, at its own expense, either: (a) procure for Company the right to continue to use such Work and/or equipment; (b) reperform the Work or replace the equipment with substantially equivalent noninfringing Work or equipment; or (c) modify the Work and/or equipment so that it becomes noninfringing; provided, however, that such Work reperformed and equipment replaced or modified conforms to the requirements of this Contract.

29. CONFIDENTIALITY

- A. For purposes of this Article, "Confidential Information" shall mean the discussions between the parties concerning the Work and/or the Contract; any and all written, electronic, printed or other materials disclosed (whether before or after the date hereof) by Company or its agents to Supplier or its agents and the substance and content thereof; all marketing, operational, economic or financial knowledge, information or data of any nature whatsoever relating to Work; all analyses, compilations, forecasts, studies or other documents which contain or reflect any such information; and any other information or material which, by its nature, should reasonably be understood by Supplier to be proprietary or confidential.
- B. In the event that CEII (as defined in 18 CFR §388.113(c)(1)) and/or CII (as defined in 6 USC §131(3)) is to be provided to Supplier, Supplier shall comply with the requirements of the aforesaid and will execute a supplementary confidentiality agreement with Company prior to receipt of such information.
- C. Confidential Information shall not include the following:

- i. information that at time of disclosure by Company is publicly available, or information that later becomes publicly available other than as a result of disclosure by Supplier;
 - ii. information received by Supplier on a non-confidential basis from a third party which, to the best of the Supplier's knowledge, did not acquire such information on a confidential basis either directly or indirectly from the Company; or
 - iii. information that the Supplier can demonstrate was independently developed by it or for it and not obtained, in whole or in part, from Company.
- D. Supplier agrees to keep confidential all Confidential Information and shall not, without Company's prior written consent, disclose to any third party such Confidential Information. Supplier shall limit the disclosure of the Confidential Information to only those of its employees and agents as is reasonably necessary to provide the Work after informing such employees and agents of the confidential nature of the Confidential Information and securing their agreement to act in accordance with the terms of this Article. Supplier shall use the Confidential Information solely for the purpose of providing the Work. Supplier shall not make any other use, in whole or in part, of any such Confidential Information without the prior written consent of Company. Supplier agrees that, in complying with its confidentiality obligations under this Article, Supplier shall use the same means it uses to protect its own confidential proprietary information, but in any event not less than reasonable means, to prevent the disclosure and to protect the confidentiality of the Confidential Information. Supplier agrees to take all reasonable steps to cause its employees and agents to observe the terms of this Article and to be responsible for any breach of this Article. Supplier may disclose Confidential Information to potential suppliers and subcontractors as necessary in connection with the Work, and all such suppliers and subcontractors shall be deemed Supplier's agents for all purposes hereof.
- E. After the completion of the Work, Supplier shall return to Company any and all Confidential Information upon written request, including all hardcopy originals, copies, translations, notes, computer generated reports, schematics, flowcharts, tape recordings, or any other form of said material, without retaining any copy or duplicate supplement thereof and shall promptly destroy any and all electronically stored information, and any and all written, printed or other material or information derived from the Confidential Information, and shall promptly provide attested certification from an authorized representative confirming such destruction.
- F. The obligations and commitments established by this Agreement shall remain in full force and effect (a) with respect to Confidential Information not constituting CEII/CII for a period of three (3) years from the date of disclosure, and (b) with respect to CEII/CII, until CEII/CII has been returned to Company and/or destroyed pursuant to this Article. However, notwithstanding the return or destruction of documents, Supplier is obligated not to recreate, or share information that constitutes CEII which it has learned through the sharing or disclosure of such information.
- G. Supplier agrees that the Confidential Information disclosed pursuant to this Article is of a special, unique, extraordinary, and intellectual character and that money damages would not be a sufficient remedy for any breach of this Article and that specific performance and injunctive or other equitable remedies for any such breach shall be available to Company. If there is a breach, then Company shall be entitled, in addition to all other rights and remedies which it may have at law or in equity, to seek to have a decree of specific performance or an injunction issued by any competent court, requiring the breach to be cured and/or enjoining all persons involved from continuing the breach. Supplier also acknowledges that the interests of Company in such Confidential Information may be irreparably injured by disclosure. The remedy stated above

may be pursued in addition to any other remedies applicable at law or equity for breach of this Article. The existence of any claim or cause of action which Supplier may have against Company shall not constitute a defense or bar to the enforcement of any of the provisions of this Article.

30. WARRANTY

By accepting this Contract, Supplier hereby expressly warrants that all Work performed pursuant to this Contract for a period of one (1) year from the date of completion shall be in full conformity with the Contract; shall comply with all applicable Laws at the time of performance; shall be free from defects in design, material and workmanship; shall conform to the applicable specifications, instructions, drawings, data, and samples; shall be fit and sufficient for the purposes intended by Company; and shall be free from all liens and encumbrances. Said warranties shall be in addition to all other warranties, express, implied or statutory. Warranties shall survive acceptance of payment for any and all Work required pursuant hereto and shall run to Company. If Supplier's Work is defective, Supplier shall, at no cost to Company, do one of the following at Company's option: (a) immediately reperform the defective Work to the extent necessary to correct the deficiency therein and any resulting deficiencies in other Work of Supplier, and Supplier shall, at Company's option, either repair, restore or replace, F.O.B. the Work site and any equipment or structure damaged as a result of such defective Work or shall reimburse Company for such damage; or (b) pay Company damages in an amount sufficient to allow Company to engage a third party to remedy the defective Work, including any equipment or structure damaged as a result of such defective Work. In addition Supplier shall reimburse Company for any and all other damages and costs arising from Supplier's failure to perform in accordance with the standard set forth herein. In the event of a remedial action to correct defective Work as provided herein, the warranty period for that portion of the Work affected by such remedial action shall be one (1) year after completion of the remedial work.

31. WORK FOR HIRE

All materials produced by Supplier for Company in connection with the Work are considered work made for hire and shall be deemed Company's property. Supplier agrees not to use or release to others any of such property for purposes other than the Work performed hereunder unless prior written consent to the contrary is given by Company. All originals of data, plans, specifications, computer programs, maps and drawings prepared and furnished by the Supplier which are not specifically prepared for use in the Work shall remain the property of the Supplier, but Company shall be provided copies of same without exception.

32. PAYMENT

Unless otherwise mutually agreed in writing, payment of the undisputed amount of a valid invoice shall be made within thirty (30) days after date of invoice. Invoices may not be submitted prior to shipment of all of the material, equipment and/or performance of services to which they relate. Invoices shall be itemized to show separate charges for material and equipment supplied to Company, freight and/or other incidental charges.

33. FORMATION OF CONTRACT

Supplier and Company shall be bound by this Contract and its terms and conditions when Supplier executes and returns the unaltered, Purchase Order acknowledgement. Alternatively, Company, at its

sole option, may deem the Contract to be valid when Supplier renders any of the services or delivers any of the items required under the Contract.

34. GOVERNING LAW AND VENUE

- A. This Contract will be governed by the laws of the State of South Carolina.
- B. In the event that the Company has its principal place of business in North Carolina, venue for any action arising out of this Contract that, for whatever reason is not resolved through arbitration, shall be resolved exclusively in the General or Superior Courts of Wake, Gaston or Buncombe Counties, North Carolina. In every other case, venue for any action arising out of this Contract that, for whatever reason is not resolved through arbitration, shall be resolved exclusively in the Circuit Court of Lexington County, South Carolina.

35. ASSIGNMENT

Supplier shall not assign the Contract without the prior, written consent of Company. Supplier shall not assign any monies due or to become due to it hereunder without the prior, written consent of Company.

36. TERMINATION

- A. Company may terminate this Contract for its own convenience, in whole or in part, at any time by written notice to Supplier. In the event of termination by Company for convenience, Company shall pay Supplier for actual costs incurred under this Contract up to the date of termination which Supplier cannot, despite reasonable efforts, avoid.
- B. Company may, by written notice to Supplier, terminate this Contract for cause if Supplier voluntarily files a petition in bankruptcy, is adjudicated as bankrupt in an involuntary bankruptcy proceeding, makes an assignment for the benefit of creditors, or has a receiver appointed for some or all of Supplier's property; if Supplier becomes involved in a merger, consolidation, or change of business form or if Supplier transfers substantially all of its assets to another person or entity; if Supplier fails to take action to cure a breach or default within the time specified in such notice or a reasonable amount of time if not specified; if Supplier refuses or fails to prosecute the Work or any part thereof with such diligence as will ensure its completion within the time specified or fails to complete said Work within such time; or if Supplier fails to satisfy a request of Company that Supplier demonstrate that it will be able to complete the Work and perform the Contract as provided in the Contract. In such event, Company may take over the Work and prosecute the same to completion by contract or otherwise, and Supplier shall be liable to Company for any excess cost occasioned Company thereby; and Company may take possession of and utilize in completing the Work such materials, appliances and plant as may be on the site of the Work and necessary therefor. In the event of default by Supplier, Company shall retain any and all rights available to it under the law.

37. WAIVER

The failure of Company to pursue any rights open to it by virtue of any breach of the Contract terms by Supplier shall not be construed as a waiver of any right by Company to exercise such rights at a later date for the same or any other breach of the Contract.

38. CHANGES, ALTERATIONS AND MODIFICATIONS

- A. Company may, at any time, by written order to Supplier and without notice to Supplier's sureties or assigns, make changes in the Work, the drawings, the specifications or other descriptions herein, or the time of completion. The written order authorized by this Article shall be effective notwithstanding the absence of Supplier's formal written acceptance thereof. Promptly upon the receipt of the details of any such changes, Supplier shall either advise that the change will not affect its costs, or furnish: (1) a breakdown of estimated cost and changes in the Contract price attributable to the change in the Work (along with supporting documentation), and (2) a statement of any necessary changes in the time of completion. Supplier's failure to advise Company within ten (10) days of the effect of any change hereunder shall constitute Supplier's consent to conform to the change without increase in the Contract price or delay in the time of completion and without change in the other terms and conditions of the Contract. If a change in Contract price or time of completion is requested by Supplier, Supplier and Procurement Agent shall negotiate an equitable adjustment to the affected parts of the Contract. Company shall have access to and the right to audit Supplier's records for the purpose of verifying to Company's reasonable satisfaction the accuracy of Supplier's assessment of changes in cost and/or completion date. Based on its review of the verified costs and expected delays, Company may elect not to proceed with the requested changes.
- B. In addition to Company required changes as described in the preceding subparagraph, Supplier shall notify Company in writing as soon as possible after determination of any changes in the scope of Work necessary or advisable to properly or more effectively perform the Work. Company shall advise Supplier if it agrees that any such changes were outside of the agreed upon scope of Work. If change accepted by Company causes a material increase or decrease in costs, then an equitable adjustment of the Contract price herein to be paid to Supplier shall promptly be negotiated by Supplier and the Procurement Agent and incorporated in a revision to the Contract. Such adjustments in price shall be determined based on changes in costs to Supplier directly related to the change in the scope of the Work. Supplier shall furnish the Procurement Agent a detailed breakdown of the changes in cost accompanied by sufficient supporting documentation. Company shall have access to and the right to audit Supplier's records for the purpose of verifying to Company's reasonable satisfaction the accuracy of Supplier's assessment of changes in cost.
- C. Except in situations where life or property may be endangered, no additional work or change involving time or cost not provided for in the Contract shall be performed unless pursuant to a Contract revision which will state the location and character of the Work, the amount and method of compensation, and changes in any of the other Contract terms and conditions which may be affected. No claim for an addition to the Contract price or an extension of the time of completion will be valid unless incorporated in such a revision signed by Company.

39. KICKBACKS AND GRATUITIES

Supplier and subcontractors are prohibited from providing, soliciting or accepting any kickback. Suppliers and subcontractors are prohibited from offering or giving a gratuity to an officer, official or employee of the Company. Supplier shall promptly report any violation or suspected violation to Company's Director – Corporate Security and Claims.

40. CREDITWORTHINESS

This Contract is conditioned upon and subject to Supplier maintaining its financial creditworthiness required to perform its responsibilities under the Contract. At any time during the Contract, Company

may request financial information to support its financial due diligence procedures. Supplier agrees to assist in this reasonable financial review. If reasonable grounds for insecurity of payment and/or performance arises or if Company believes in good faith that the creditworthiness of Supplier has been diminished, Company may demand satisfactory adequate assurance of payment and/or performance from Supplier.

41. RIGHT OF OFF-SET

Supplier acknowledges and agrees that Company has and reserves the right to off-set any amount(s) owed by Company to Supplier for Work performed in accordance with this Contract by any amount(s) which Company otherwise regards as payable by Supplier to Company for which Company has legal and/or equitable grounds for recovery against Supplier and as to which demand therefor has previously been made by Company. This right to off-set includes any amounts owed by Company to Supplier under this Contract, any other agreements with Supplier, and any agreements with any affiliates of Supplier which include a provision similar to this Article.

42. SHIPMENT

Unless otherwise specified in the Contract, all goods are shipped FOB Destination. Unless otherwise specified in the Contract, title and the risk of loss or damage to the goods supplied and Work performed shall pass to Company when such goods have been delivered to and Work accepted by Company. All transportation costs resulting from deviation from shipping instructions and any other costs incurred by Company because of Supplier's non-compliance with the terms and conditions, including, but not limited to shipping deadlines, of the Contract shall be charged to Supplier. Company shall not be charged for packing or drayage unless otherwise indicated on the face of the Contract.

43. ENTIRE AGREEMENT

The Contract, together with all referenced specifications, drawings and documents, which by this reference are all made a part hereof, constitute the entire agreement between the parties, and all prior negotiations, proposals, and writing pertaining to the Contract, or the subject matter hereof, are superseded hereby. Unless specifically incorporated herein by reference within the body of the Purchase Order, reference to Supplier's quotation, bid, or proposal does not imply and shall not constitute acceptance of any terms, conditions, or instruction contained in such document unless such terms, conditions or instructions are more favorable to Company than those contained in the Contract. Any invoice, acknowledgment or other communication issued by Supplier in connection with the Contract shall be construed to be for record and accounting purposes only, and no terms and conditions stated in such communication shall be applicable to the Contract and they shall not be considered to be Supplier's exceptions to the provisions of the Contract.

44. TIME OF THE ESSENCE

TIME OF DELIVERY IS OF THE ESSENCE FOR THIS CONTRACT. Supplier shall promptly notify Company of any actual or anticipated delay in performance and take all reasonable steps to avoid or end delays without additional cost to Company.

45. ARBITRATION

Any controversy or claim arising out of or relating to this Contract, or the breach thereof, shall be settled by arbitration administered by the American Arbitration Association under its Commercial Arbitration

Rules, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. The arbitration shall be conducted in accordance with the Federal Arbitration Act, 9 U.S.C. Section 1 *et seq*, and the venue for the arbitration shall be the Circuit Court of Lexington County, South Carolina.

46. SOFTWARE

- A. In the event software is procured through the submission of a Purchase Order, the parties agree that any pre-printed terms, shrink-wrap terms or click agreement(s) shall not be applicable, but the terms of this Contract shall apply.
- B. Company shall be granted a non-exclusive, fully paid, perpetual and irrevocable license to use the software for any business purpose. The license is deemed to be an enterprise license for Company and its Affiliates.
- C. Supplier warrants that the software shall operate per its intended purpose and that Supplier has the right to grant a license to use the software and that the software is free of all liens, claims, encumbrances, and other restrictions and without otherwise violating any rights of any third party, including any intellectual property rights, patent, copyright, trade secret or other proprietary rights.
- D. The parties expressly disclaim and waive the application of the Uniform Computer Information Transactions Act ("UCITA") to this agreement and any claims arising under or related to this Agreement.
- E. Supplier shall provide to Company, upon the delivery of the Software, all published documentation and specifications that are necessary to enable Company to operate the software. Company shall have the right to copy all documentation.

JAS-104
REVISION NewAttachment A
Training Certification Report for SCE&G EmployeesTSP-670 F/H Electrical Safety Program
Training Program (Code or Name)Program DurationName of InstructorInstructor SignatureInstructor position/affiliation and address

Employee Number	Employee Name	Date	Employee Initials
05043	HERBERT L. ICEWEDY	8/2/05	HIL
05374	Kenneth D. TAYLOR	8/2/05	KDT
40864	CHRISTOPHER M. RITCHIE	8/2/05	CR
04951	PAUL E DECKER	8/2/05	PED
40851	DARRELL ROSS	8/2/05	DR
04170	Richard R. Morris	8/2/05	RRM
15967	ROGER D. LAWRENCE	8/2/05	ROL
16409	John R. G. 164	8/2/05	JRG
16007	Alex Hall	8/2/05	AH
✓ 11690	Gary Connelly	8-2-05	GAC
15175	Ricky White	8-2-05	RW

Describe the training materials used or attach a copy:

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM COLLETON COUNTY

Court of Common Pleas

J. Ernest Kinard, Jr., Judge

Appellate Case No. 2014-002733

Samuel Washington, Jr., Respondent,

v.

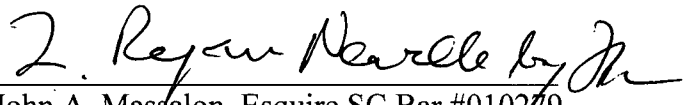
South Carolina Electric and Gas Company; and Emerson Electric Company d/b/a
Emerson Network Power, and/or Emerson Network Power, Defendants,

Of Whom South Carolina Electric and Gas Company is the Appellant.

CERTIFICATE OF COUNSEL

I certify that The Record on Appeal contains all materials proposed to be included
by any of the parties and not any other material.

August 17, 2015


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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM COLLETON COUNTY
Court of Common Pleas

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J. Ernest Kinard, Jr., Judge

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SC Court of Appeals

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Samuel Washington, Jr.....Respondent,

v.

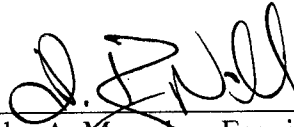
South Carolina Electric and Gas Company; and Emerson Electric Company d/b/a
Emerson Network Power, and/or Emerson Network Power, Defendants,

Of Whom South Carolina Electric and Gas Company.....Appellant.

PROOF OF SERVICE

I certify that the Record on Appeal was served on Respondent Samuel Washington, Jr. via United States Mail, postage prepaid, on September 1, 2015, addressed to his attorneys of record, Margie Bright Matthews, Margie Bright Matthews, LLC, Post Office Box 499, Walterboro, SC 29488 and S. Kirkpatrick Morgan, Jr. and Charles T. Slaughter, Walker Morgan, LLC, Post Office Box 949, Lexington, SC 29071, and that the same was also served on Co-Defendant Emerson Electric Company d/b/a Emerson Network Power, and/or Emerson Network Power via United States Mail, postage prepaid, on September 1, 2015 addressed to its attorneys of record, H. Michael Bowers, Esquire, Smith Moore Leatherwood LLP, 25 Calhoun Street, Suite 250, Charleston, SC 29401.

September 1, 2015



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