

**BEFORE THE NORTH CAROLINA
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION
RALEIGH, NORTH CAROLINA**

FILED

DEC 11 2023

NC OSH Review Commission

<p>COMMISSIONER OF LABOR FOR THE STATE OF NORTH CAROLINA</p> <p style="text-align: center;">Complainant,</p> <p style="text-align: center;">v.</p> <p>PRIMORIS T & D SERVICES, LLC and its successors</p> <p style="text-align: center;">Respondent.</p>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p>DOCKET NO: 2022 - 6446</p> <p>INSPECTION</p> <p>NO: 318226727</p> <p>CSHO ID: I9042</p> <p><u>FINAL ORDER</u></p>
---	---	---

THIS CAUSE came on for hearing and was heard before the undersigned R. Joyce Garrett, Hearing Examiner for the North Carolina Occupational Safety and Health Review Commission, on December 11, 2023 at 10 a.m., via Lifesize teleconferencing platform, pursuant to a Notice of Hearing. Stacey Phipps, Special Deputy Attorney General, North Carolina Department of Justice, appeared remotely for Complainant. McCord Wilson, Attorney with Rader & Campbell, Dallas, Texas appeared remotely Pro Hac Vice and Bernard Tisdale, Attorney with Jackson Lewis, P.C., Charlotte, North Carolina, appeared remotely for Respondent. No affected employee of Respondent attended to have a say in, or participate as a party in, the Hearing.

The Commissioner of Labor For The State Of North Carolina, Complainant, is an agency of the State of North Carolina charged with the administration and enforcement of the provisions of the Occupational Safety and Health Act of North Carolina, Article 16, Chapter 95 of the General Statutes of North Carolina (N.C.G.S. § 95-126 et seq.). Complainant commenced this action by the issuance of a Citation and Notification of Penalty on February 17, 2022 (“Citation”). In the Citation Complainant alleged Respondent had violated 29 CFR 1926.960(e)(1) and proposed a penalty of \$5,000.00. Respondent timely filed a Notice of Contest. The case was docketed with the North Carolina Safety and Health Review Commission (the “NC Commission”), and by Notice of Hearing filed October 2, 2023 and posted as required

by the Rules of the NC Commission, this matter was scheduled for Hearing on December 11, 2023.

At the Hearing Complainant and Respondent notified the Undersigned that Complainant and Respondent had extensive discussions concerning this matter. Respondent informed the Court that as a result of such discussions, Respondent confirms and agrees that for the period of December 11, 2023 through and including December 10, 2024 with respect to projects of Respondent performed in North Carolina: Pre job briefing (PJB) hazard assessment shall be conducted, documented, and maintained on the jobsite in North Carolina; the PJB shall assess all potential energization sources, including backfeed and induction, and develop and implement appropriate control measures for each potential exposure, including appropriate PPE for linemen (such confirmation and agreement by Respondent herein referred to as "Respondent's Declaration").

Following Respondent's Declaration at the Hearing Complainant gave notice that it withdraws the Citation ("Withdrawal"). NC Commission Rule .0401 provides that Complainant may withdraw a citation "[a]t any stage of a proceeding". The Supreme Court in *Cuyahoga Valley Railway Co. v United Transportation Union*, 474 U.S. 3,7 (1985) held "the Secretary's decision to withdraw a citation against an employer under the Act is not reviewable by the Commission." Under *Cuyahoga*, the Undersigned does not have the authority to grant or deny Complainant's withdrawal of the Citation. The Withdrawal by Complainant is self-effectuating and terminates the case in and of itself; no order of the Undersigned is needed or required.

The Undersigned issues this Order for the purpose of memorializing Respondent's Declaration and providing record notice of Complainant's Withdrawal and closing of the case; with respect to the Withdrawal this is a ministerial function only – not a substantive one. Immediately effect is given to Complainant's Withdrawal of the Citation.

This the 11th day of December, 2023.

R. Joyce Garrett
R. Joyce Garrett (Dec 11, 2023 20:05 EST)

R. Joyce Garrett
Hearing Examiner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this date served a copy of the foregoing ORDER upon:

JAMES MCCORD WILSON
RADER & CAMPBELL, PC
2777 N. STEMMONS FREEWAY
STE 1125
DALLAS, TX 75207

By depositing same in the United States Mail, Certified Mail, Return Receipt Requested, postage prepaid at Raleigh, North Carolina, and upon:

H. BERNARD TISDALE III
JACKSON LEWIS P.C.
200 S. COLLEGE ST. SUITE 1550
CHARLOTTE, NC 28202

STACEY A. PHIPPS
NC DEPARTMENT OF JUSTICE
LABOR SECTION
PO BOX 629
RALEIGH, NC 27602-0629

By depositing a copy of the same in the United States Mail, first class, postage prepaid at Raleigh, North Carolina, and upon:

NC DEPARTMENT OF LABOR
LEGAL AFFAIRS DIVISION
1101 MAIL SERVICE CENTER
RALEIGH, NC 27699-1101
carla.rose@labor.nc.gov

via email.

THIS THE 13 DAY OF December 2023.



Karissa B. Sluss
Docket and Office Administrator
NC Occupational Safety & Health Review Commission
1101 Mail Service Center
Raleigh, NC 27699-1101
TEL.: (919) 733-3589
NCOSHRC@labor.nc.gov