

SEP 27 2023

NC OSH Review Commission

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

<b>COMMISSIONER OF LABOR OF THE STATE OF NORTH CAROLINA,</b>	)	<b>DOCKET NO: OSHANC 2022-6452</b>
	)	<b>INSPECTION NUMBER: 31823162</b>
<b>COMPLAINANT,</b>	)	<b>CSHO ID: S0054</b>
	)	
<b>v.</b>	)	<b><u>STIPULATION AND</u></b>
	)	<b><u>NOTICE OF</u></b>
<b>CAROLINA POWER &amp; SIGNALIZATION, LLC, and its successors,</b>	)	<b><u>SETTLEMENT</u></b>
	)	
<b>RESPONDENT.</b>	)	

**NOW COME** the parties in the above-captioned action, by and through the undersigned counsel and pursuant to Rule .0701 of the Rules of Procedure adopted by the North Carolina Occupational Safety and Health Review Commission, respectfully show unto the Hearing Examiner as follows:

**FACTS**

1. Respondent is a foreign limited liability company, duly organized and existing under the laws of the State of Delaware. Respondent was authorized to do business in North Carolina and maintains a place of business in North Carolina.
2. Between October 27, 2021 and February 3, 2022, Lynn Stephenson, a Compliance Safety and Health Officer with the North Carolina Department of Labor, conducted an inspection of Respondent's business located at 1416 Middle River Loop, Fayetteville, North Carolina.
3. Respondent provides construction and maintenance services in North Carolina relating to the distribution of electricity and the installation and maintenance of traffic signals and related technologies.
4. Respondent is an "employer" within the meaning of N.C.G.S. § 95-127(11); all of the "employees" referred to herein were "employees" of Respondent within the meaning of N.C.G.S. § 95-127(10) at the time of the April 2, 2020 incident.

5. The inspection was initiated pursuant to a complaint alleging Respondent failed to report to the Department of Labor's Occupational Safety and Health Division (OSH) the inpatient hospitalization of two of its employees who were injured as a result of a work-related incident that occurred on April 2, 2020.
6. On April 2, 2020, a piece of equipment employees were using to position a metal pole became energized when the pole made contact with a live overhead electric power line. As a result of this incident, two employees were hospitalized.
7. Officer Stephenson conducted an opening conference on site with Joe Long, Safety Manager, and Mike McClure, Regional Director of Safety for Quanta Services, Inc., which acquired Respondent in the October of 2021.
8. Officer Stephenson explained that the scope of the inspection would be limited to items listed in the accident/referral report and anything in plain view.
9. McClure and Long consented to the inspection and accompanied Officer Stephenson during the inspection.
10. The North Carolina Department of Labor contends that its first record of the April 2, 2020 incident being reported to it occurred on October 18, 2021 as part of the complaint that prompted the inspection.
11. Respondent contends that it reported the incident the day it occurred at approximately 6 p.m. on April 2, 2020 and produced to Complainant internal email correspondence and other documentation that the report was made.
12. Complainant has no record of such a report on April 2, 2020. Respondent has not been able to provide sufficient corroborating telephone records to satisfy the Department of Labor that such a report was made.
13. As a result of the inspection, on February 4, 2022, Complainant issued the following Citation:

**CITATION NUMBER ONE (NonSerious)**

<u>Item</u>	<u>Standard</u>	<u>Abatement Date</u>	<u>Penalty</u>
001	29 CFR 1904.39(a)(2)	Corrected During Inspection	\$4,000.00

14. Respondent submitted a Notice of Contest, dated April 13, 2022.
15. Thereafter, Complainant received "Employer's/Respondent's Statement of Position," dated May 11, 2022, which requested that formal pleadings be served.
16. A Complaint and Answer were timely served.
17. The parties having reached a Settlement Agreement now seek approval of said Agreement by the Hearing Examiner.

**STIPULATIONS**

Effective upon approval of this Stipulation and Notice of Settlement, the parties to this action hereby agree and stipulate to the following settlement of the matters at issue herein:

1. Respondent agrees that the violations alleged in the Citation and Notification of Penalty, as amended, have been abated, and agrees to continue to use its best efforts to comply with the requirements of the Occupational Safety and Health Act of North Carolina (hereinafter referred to as the "Act").
2. Complainant agrees to make the following amendments to the Citation:
  - a. Reduce the penalty from \$4,000.00 to \$0.00.
3. The parties agree to bear their own attorney's fees, costs and other expenses that have been incurred in connection with any stage of these proceedings up to and including the filing of this Stipulation and Notice of Settlement.
4. The parties agree that this Stipulation and Notice of Settlement is a full and final settlement of the claims set out in the underlying Citation and Notification of Penalty, and none of the foregoing agreements, statements, stipulations and actions taken by the Respondent shall be deemed an admission by the Respondent of any of the allegations contained in the Citation and

Notification of Penalty or waiver of defenses; provided, however, that in any subsequent proceeding with respect to matters covered by this Stipulation and Notice of Settlement brought directly under the Act by Complainant, this Agreement shall have the full force and effect of a final order. The agreements, statements, stipulations and actions herein are made solely for the purpose of settling this matter economically and amicably without further litigation and shall not be used for any other purpose except for proceedings and matters arising under the Occupational Safety and Health Act and Article 21, Chapter 95 of the North Carolina General Statutes.

5. Respondent agrees that by signing this Stipulation and Notice of Settlement and upon approval of said Stipulation and Notice of Settlement by the Hearing Examiner, its Notice of Contest is withdrawn as a matter of law.

6. The parties agree that there are no other matters that remain to be decided, and there has been no employee objection to the reasonableness of any abatement period.

**WHEREFORE**, the parties to this action hereby respectfully request approval of this Stipulation and Notice of Settlement.

**NOTICE OF FILING  
BY WAY OF ELECTRONIC MEANS**

Under current safety measures taken in light of the COVID 19 pandemic, it is difficult to gather original signatures on a single document. Accordingly, the parties have agreed that all documents filed with the Review Commission related to this settlement may be filed through electronic means, in accordance with the Review Commission's temporary submission process with original hard copies to follow as soon as it is possible to do so.

Sep 27, 2023  
This the \_\_\_\_\_ day of September, 2023.

**APPROVED BY:**

*Chris Moore*

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Chris Moore  
District Supervisor  
Occupational Safety and Health Division

*Liz Alley*

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Employer Representative  
Name: Liz Alley  
Title: Safety and Training Manager

JOSHUA H. STEIN  
Attorney General

*Jonathan D. Jones*

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Jonathan D. Jones (Sep 27, 2023 10:57 EDT)

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Jonathan D. Jones  
Assistant Attorney General  
North Carolina Department of Justice  
Post Office Box 629/Labor Section  
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jdjones@ncdoj.gov  
919-716-0049

ATTORNEYS FOR COMPLAINANT

*Michael D. McKnight*

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Michael D. McKnight (Sep 27, 2023 10:55 EDT)

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Ogletree, Deakins, Nash, Smoak & Stewart  
Forum IV  
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Raleigh, NC 27615  
michael.mcknight@ogletree.com  
404-230-6784

ATTORNEY FOR RESPONDENT

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

COMMISSIONER OF LABOR OF THE	)	DOCKET NO: OSHANC 2022-6452
STATE OF NORTH CAROLINA,	)	INSPECTION NUMBER: 31823162
	)	CSHO ID: S0054
COMPLAINANT,	)	
	)	
v.	)	
	)	<u>CONSENT ORDER</u>
CAROLINA POWER & SIGNALIZATION,	)	
LLC, <i>and its successors</i> ,	)	
	)	
RESPONDENT.	)	

This cause comes on to be heard before the undersigned Hearing Examiner (the Court) and being heard upon consent of the parties hereto, upon consideration of the Stipulation and Notice of Settlement submitted by the parties (the Agreement), the Court makes the following:

**FINDINGS OF FACT**

1. That the Agreement is reasonable and supported by the underlying facts.
2. That no outstanding issues remain to be resolved by a hearing of this matter.

**CONCLUSIONS OF LAW**

1. This Court has jurisdiction over the parties to this action and over the subject matter.
2. That the Agreement is consistent with the purpose and objectives of the Occupational Safety and Health Act of North Carolina (The Act), and complies with Rule .0701 of the Rules of Procedure of the North Carolina Occupational Safety and Health Review Commission.

**NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED:**

1. That the Agreement is approved.
2. That both parties are hereby required to comply with the terms and conditions stipulated in the agreement.

This the Sep 27, 2023 day of September, 2023.

Reagan Weaver  
Reagan Weaver (Sep 27, 2023 13:00 EDT)  
Hearing Examiner

BY CONSENT:

JOSHUA H. STEIN  
Attorney General

Jonathan D. Jones  
Jonathan D. Jones (Sep 27, 2023 10:57 EDT)  
Jonathan D. Jones  
Assistant Attorney General  
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ATTORNEYS FOR COMPLAINANT

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Michael D. McKnight (Sep 27, 2023 10:55 EDT)  
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Raleigh, NC 27615  
michael.mcknight@ogletree.com  
404-230-6784

ATTORNEY FOR RESPONDENT

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this date served a copy of the foregoing Stipulation & Notice of Settlement & Consent Order upon:

MICHAEL D. MCKNIGHT  
OGLETREE DEAKINS  
FORUM IV  
8529 SIX FORKS RD, STE 600  
RALEIGH, NC 27615

JONATHAN JONES  
NC DEPARTMENT OF JUSTICE  
LABOR SECTION  
PO BOX 629  
RALEIGH NC 27602

By depositing a copy of 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

By email.

THIS THE 29 DAY OF September, 2023.

  
\_\_\_\_\_  
Karissa B. Sluss  
Docket and Office Administrator  
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