



COMMONWEALTH of VIRGINIA
DEPARTMENT OF LABOR AND INDUSTRY

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February 22, 2017

Mr. Anthony Martinez
Shook Hardy & Bacon
2555 Grand Blvd.
Kansas City, Missouri

Dear Mr. Martinez:

Thank you for your February 2, 2017, letter to the Virginia Department of Labor and Industry's VOSH Program. You were seeking interpretation of OSHA's Selection and use of work practices standard, 29 CFR 1910.333, as it relates to the infeasibility of de-energizing equipment under certain circumstances. Your paraphrased scenario, question, and our response follow.

Scenario: Your client provides data center services to customers who may provide 911 services, airline traffic control, and critical healthcare systems. To perform electrical work on data center equipment in a de-energized state would cause a significant interruption to your client's services to their customers.

Question: Can our client provide a notice to their customers requiring them to identify themselves as having critical operations where de-energizing introduces additional or increased hazards, thus allowing your client to perform work while the equipment is energized.

Response: The proposed notice to be sent to your client's customers requires them to identify themselves as having critical operations such that de-energizing introduces additional or increased hazards. Further it requires these customers to complete and execute an "Energized Electrical Work Certification" which certifies that the customer has determined that they meet the requirements for an exemption for energized work. This agreement maintains that the customer will indemnify and hold harmless your client against any damages or losses from your client performing energized work related to the customer's services. Contractual arrangements concerning limitations on liability between third parties are not subject to the Virginia occupational safety and health laws and regulations enforced by this Department, so we will not comment on that portion of your interpretation request. Also please note that such a "hold harmless" clause in no way exempts your client from VOSH regulatory requirements concerning work performed on energized equipment. To qualify for the exception found in Note 1 of

1910.333(a)(1), the employer must, on a case-by-case basis, determine if the orderly shutdown of the related equipment and processes would introduce additional or increased hazards. If so, then the employer may perform the work using the electrical safe work practices found in 1910.331-1910.335, including, but not limited to, insulated tools, shields, barrier, and personal protective equipment. If the orderly shutdown of the related equipment and processes would not introduce additional or increased hazards, but merely alter or interrupt production, then the de-energization of the equipment would be considered feasible, and the exception found in Note 1 of 1910.333(a)(1) would not apply. These requirements apply to the employer whose employees perform the energized work. Therefore, it would be your client's responsibility to determine if de-energized work is infeasible. If it has been determined that de-energizing a circuit is not feasible and the work must be done energized the employer, your client, shall enforce the following practices as applicable, including but not limited to:

Work to be performed by a qualified person

Use of an Energized Electrical Work Permit

Completion of an Arc Flash Hazard Analysis

Labeling of electrical equipment for arc flash hazards

Use of PPE per arc flash labeling/information

Training of all employees

Providing safe electrical work practices can be accomplished by following the 1910.331-1910.335 standards as well as NFPA 70E consensus standard.

Based on the limited information you provided regarding the electrical safe work practices used by your client, it cannot be determined whether or not your client's energized work processes protect employees who may be exposed to electrical hazards, including, but not limited to electric shock and arc flash. Further, your request seeks an interpretation for "all data centers", which you state are located throughout the United States. This letter of interpretation only applies to work covered under the jurisdiction of the Virginia Department of Labor and Industry and may not apply in other states.

Thank you for your interest in occupational safety and health. We hope you find this information helpful. VOSH requirements are set by statute, standards, and regulations. Our interpretation letters explain these requirements and how they apply to particular circumstances, but they cannot create additional employer obligations. This letter constitutes VOSH's interpretation of the requirements discussed. If you have any further questions, please feel free to contact me at 804-786-7776.

Sincerely,



Jennifer L. Rose, CSP
VOSH Safety Program Director