

SETTLEMENT AGREEMENT

On August 9, 2010, the Occupational Safety and Health Administration published the Cranes and Derricks Final Rule (the “Standard”). *See* 29 C.F.R. § 1926 subpart CC. The Standard imposes certain requirements on employers who use cranes and derricks in construction work. The Standard also contains a partial exemption for certain uses of digger derricks. 29 C.F.R. § 1926.1400(c)(4). On October 6, 2010, Edison Electric Institute (“EEI”) filed a Petition for Review in *EEI v. Occupational Health and Safety Administration and Secretary of Labor (OSHA)*, No. 10-1311 (D.C. Circuit) challenging various aspects of the Standard, including the scope of the exemption for digger derricks.

EEI and the Secretary of Labor and the Occupational Safety and Health Administration (OSHA) are in agreement that settlement of this matter is in the best interests of the parties, and have reached consensus on the following terms of this Settlement Agreement:

(1) **Non-Enforcement.** As of the date of this Settlement Agreement, and until final agency action is completed on the rulemaking described in paragraph (2) of this Settlement, OSHA will not enforce 29 C.F.R. § 1926 subpart CC with respect to digger derrick operations covered by subpart V of 29 C.F.R. § 1926.

(2) **Rulemaking to Expand the Current Digger Derrick Exemption.** Upon the signing of this Settlement Agreement, OSHA will begin the process of initiating a rulemaking (through a Direct Final Rule or other notice and comment

rulemaking) to expand the current digger derrick exemption contained in 29 C.F.R. § 1926.1400(c)(4). OSHA's rulemaking will propose to exempt from the requirements of the Standard all digger derrick operations covered by subpart V of 29 C.F.R. § 1926. This expanded exemption would cover digger derrick activities conducted by both electric utility companies and electric utility contractors.

(3) **Letter of Interpretation.** Within sixty days of the signing of this Agreement, OSHA will issue a letter of interpretation to EEI clarifying that:

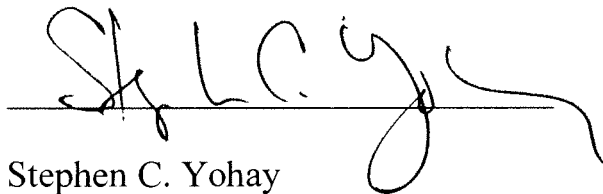
(a) The voltage information exchange requirements in 29 C.F.R. § 1926.1407(e) allow a utility company two *working days* to provide the requested voltage information; and

(b) 29 C.F.R. § 1926 subpart CC does not require utility companies to de-energize power lines.

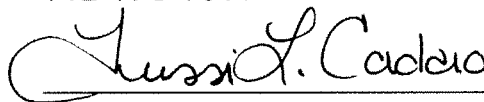
(4) **Dismissal of Petition for Review.** EEI will, within seven days of the publication of a Federal Register notice confirming the effective date of a Direct Final Rule or the publication of another final agency action, as contemplated by paragraph (2), move to dismiss its Petition for Review in *EEI v. OSHA*, No. 10-1311 (D.C. Circuit), with prejudice. This dismissal will not preclude EEI from pursuing such remedies as may be available to it upon the publication of a Direct Final Rule or other final agency action, as contemplated by paragraph (2).

(5) **Scope of Agreement.** This Settlement Agreement constitutes the complete and exclusive statement of agreement between OSHA and EEI with

respect to this matter. All prior or contemporaneous statements, understandings, and agreements by and between the parties, whether written or oral, are superseded by this Settlement Agreement. Nothing in this Agreement constitutes an admission by any of the parties for purposes of this litigation.



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