




**National Rural Electric  
Cooperative Association**

A Touchstone Energy® Cooperative 

January 22, 2009

OSHA Docket Office  
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Technical Data Center  
Room N-2625  
OSHA  
Department of Labor  
200 Constitution Avenue, N.W.  
Washington, D.C. 20210

Submitted electronically to:  
<http://www.regulations.gov>

**Re: Comments on Cranes & Derricks in Construction Proposed Rule  
OSHA-2007-0066  
Occupational Safety and Health Administration**

Dear Sir or Madam:

I am writing on behalf of the National Rural Electric Cooperative Association (NRECA) and its members in response to the Proposed Rule on Cranes and Derricks in Construction published in the *Federal Register* of October 9, 2008 (the Proposed Rule).

NRECA is the not-for-profit, national service organization representing approximately 930 not-for-profit customer-owned rural electric systems that provide electric service in 47 states. As operating electric utilities, NRECA's members frequently use the type of equipment that is the subject of the proposed rulemaking.

**I. THE FINAL RULE SHOULD EXCLUDE ELECTRIC UTILITY WORK ENTIRELY.**

*Simply put, the intent of the Proposed Rule appears to be to exclude electric utilities in circumstances where utility focus and expertise insures safe operations. The Proposed Rule does this through a confusing patchwork of exclusions and partial applications. The simpler, more understandable, and easier-to-comply-with alternative is to clearly exclude electric utility work entirely.*

The Proposed Rule is replete with exclusions for construction work done by electric utilities around power lines. Subpart V, for the most part, covers this work. Thus the Proposed Rule excludes Subpart V work from (a) encroachment and electrocution provisions, 1926.1408(b)(5); (b) deenergizing and grounding confirmation requirements, 1926.1408(d)(2)(i); and (c) minimum clearance requirements, 1926.1410(c)(2).

There is even an attempt at a more expansive electric utility exclusion covering use of certain equipment in certain electric utility activities. Thus, the Proposed Rule excludes “service trucks with mobile lifting devices” when used by an electric utility “for auguring holes to set power and utility poles, or handling associated materials to be installed or removed from utility poles.” 1926.1400(c)(4).

The intent of the Proposed Rule appears to be to exclude the construction work of electric utilities around power lines because “when employees are engaged in Subpart V work near energized lines, by the nature of the job, their full attention is on the power lines.” 73 *Federal Register* 59758. Unfortunately, the Proposed Rule’s haphazard, patchwork implementation of this intent is confusing and renders compliance far more difficult than need be.

The confusion begins with the employer’s initial assessment of whether the Proposed Rule covers a particular piece of equipment at all. Digger derricks “designed specifically for use in the power line and electric service industries” are eligible for exclusion, for example, but digger derricks not so “specifically designed” are not. How is an electric utility to ascertain if a particular digger derrick was “designed specifically” for power line use? What authority should the utility rely upon? And why should design matter, if the equipment does the job?

After assessing the eligibility of a piece of equipment for exclusion from the Proposed Rule, the employer then must determine if the operation in which the equipment is engaged is excludable. Unnecessary complications arise here as operation of the same piece of eligible equipment is sometimes excludable, sometimes not. The Proposed Rule excludes a digger derrick when it is used for auguring a hole, for example, but not when used for lifting a transformer into a substation.

If the employer determines that Proposed Rule applies – that is, that either the piece of equipment or the operation in which that equipment engages is not excludable -- the employer then must determine how much of the Proposed Rule applies. For example, an excludable digger derrick doing non-excludable Subpart V work (lifting a transformer in a substation, for example) would nevertheless be excluded from the encroachment and electrocution provisions of 1926.1408(b)(4), the deenergizing and grounding confirmation requirement of 1926.1408(d)(1), and the minimum clearance requirement of 1926.1410(c)(1).

It is simply unnecessary to require employers to dance through this dizzying patchwork of application, non-application and partial application to achieve the goal of excluding the operation of the Rule in situations where utility focus and expertise insure safe operation. It is far simpler, and thus more effective, to exclude utility work entirely from the Final Rule.

## **II. EXCLUDING ELECTRIC UTILITY WORK ENTIRELY COMPORTS WITH OTHER EXCLUSIONS IN THE PROPOSED RULE.**

*The Proposed Rule excludes tree trimming and tree removal work, 1926.1400(c)(13), stacker cranes, 1926.1400(c)(7), forklifts, 1926.1400(c)(8), and, in certain situations, mechanics' trucks with hoisting devices, 1926.1400(c)(9). The justification offered for each of these exclusions is that the otherwise covered activity or item would only very infrequently trigger the Proposed Rule. This justification also applies to excluding electric utility work not already excluded.*

At issue here is the justification for excluding work that otherwise would be covered by the Proposed Rule. That is, utility work that is not already excluded from the rule. Excluding all tree trimming and tree removal work offers the most direct comparison to excluding all electric utility work not otherwise excluded. OSHA recognizes that “since tree trimming and tree removal work so rarely falls within construction, it is appropriate to exclude tree trimming and removal from the proposed rule.” *73 Federal Register* at 59731. In the same vein, since electric utility work, not otherwise clearly excluded, so rarely falls within construction, it is appropriate to exclude it from the proposed rule. What work would this be? Construction work involving a digger derrick not “designed specifically” for power line work, for example, or using a specifically designed digger derrick, in construction, to lift a transformer in a substation.

It is not that the electric utility work that is not now excluded by the Proposed Rule would never trigger the Proposed Rule, but that it would not do it enough to justify coverage by the rule. Thus OSHA excludes stacker cranes because, in part, “these cranes are rarely used in construction.” *73 Federal Register* at 59730. Similarly OSHA excludes fork lifts because “this type of machinery is mostly used in a manner” not the concern of the Proposed Rule. *73 Federal Register* at 59730. Mechanics' trucks with hoisting devices, when used for equipment maintenance and repair, are excluded because their use in construction “would be very rare.” *73 Federal Register* at 59730. So the Proposed Rule itself justifies exclusion based on infrequency of triggering the rule. As for electric utility work, the Proposed Rule as written excludes a very large portion of electric utility work in construction. Excluding the small amount remaining comports with the Proposed Rule's exclusions of other activities and equipment not much caught by the Proposed Rule anyway.

**III. IF THE FINAL RULE DOES NOT EXCLUDE UTILITY WORK ENTIRELY, THE EXCLUSION FOR DIGGER DERRICKS SHOULD APPLY TO TRUCKS DESIGNED FOR USE IN *OR USED IN* THE POWER LINE AND ELECTRIC SERVICE INDUSTRIES.**

*Generally speaking, the Proposed Rule excludes digger derricks “designed specifically for use in the power line and electric service industries” when used for specifically named tasks. As alluded to in Part I above, wording the exclusion in this way creates unnecessary problems of design verification and equipment fitness for the task. Excluding trucks that are designed for use in, or actually used in, the industry solves the problems.*

Employers may have trouble ascertaining exactly the use for which a piece of equipment is designed. How is the use design to be verified? What evidence will be acceptable as to design? What if the equipment cannot be shown to be designed for a particular use, yet it functions perfectly well for that use?

In the Preamble, OSHA notes that ASME B30.5 excludes digger derricks and “cranes manufactured specifically for, *or when used for*, energized electrical line service.” 73 *Federal Register* at 59729 (emphasis added). The Final Rule should adopt this approach, if the Final Rule does not exclude utility work entirely. One way to do this would be to word the exclusion to apply to service trucks with mobile lifting devices “designed specifically for use in, or used in, the power line and electric service industries.”

**IV. IF THE FINAL RULE DOES NOT EXCLUDE UTILITY WORK ENTIRELY, THE EXCLUSION FOR DIGGER DERRICKS SHOULD INCLUDE ELECTRIC UTILITY WORK NOT INVOLVING POLES.**

*Generally speaking, the Proposed Rule excludes specifically designed digger derricks when used to set utility poles and when used to handle materials to be installed or removed from utility poles. There is no reason to limit the exclusion to work involving a pole.*

Electric utilities occasionally use the type of service truck excluded by 1926.1400(c)(4) of the Proposed Rule in work not directly involving a utility pole. Lifting a transformer in a substation or into an underground vault, for example. There is no reason not to exclude this type of work from the rule, once the decision is made to exclude the same type of work involving a utility pole.

**V. THE FINAL RULE SHOULD ALLOW UTILITY OWNERS TWO FULL WORKING DAYS IN WHICH TO RESPOND TO VOLTAGE REQUESTS.**

The Proposed Rule requires the utility owner/operator of power lines to respond to a request for voltage information made under Option 3 relating to equipment assembly/disassembly and equipment operations. The utility “must provide the requested voltage information within two working days of the ... request.” 1926.1407(e) and 1926.1408(c).

A request for voltage information can be quite involved and require a significant amount of time and effort to respond. Voltage can be different at different points on the system. In order to properly respond to a voltage information request, the utility should have at least two complete business days, beginning with the first full business day after the day of the request.

**VI. THE FINAL RULE SHOULD CONTAIN A GRANDFATHER CLAUSE FOR LONG-TIME SAFE OPERATORS.**

In many cases, operators of the types of equipment covered by the Proposed Rule have years of experience. Those experienced operators with safe operation records do not need additional training as set forth in the Proposed Rule.

In the case of the electric utility industry, the skill of many operators of the types of equipment covered by the Proposed Rule are subject to the annual review of 1910.269(a)(2)(iii). Those operators whose expertise passes this inspection likewise do not need additional training as set forth in the Proposed Rule.

For these reasons, the Final Rule should contain a grandfather clause excluding experienced operators with safe records.

Thank you in advance for your consideration of these comments.

Sincerely,



Jonathan Hemenway Glazier  
Association Counsel