

No. 72845-8-I

**THE COURT OF APPEALS, DIVISION I  
OF THE STATE OF WASHINGTON**

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POTELCO, INC.,

*Plaintiff/Appellant,*

v.

DEPARTMENT OF LABOR AND INDUSTRIES,

*Defendant/Respondent.*

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**REPLY IN SUPPORT OF OPENING BRIEF OF  
APPELLANT POTELCO, INC.**

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## I. ARGUMENT IN REPLY

As described in detail in Appellant's Opening Brief, the Citation at issue was the result of unpreventable employee misconduct. (Potelco's Opening Brief at 8-13.) For that reason, Potelco respectfully requests that the Court dismiss the Citation in its entirety.

Potelco writes separately to correct a factual misstatement in the Department's Brief. Citing to Mr. Rupe's testimony, the Department claims that bracket grounding is a form of system protective grounding only, and that bracket grounding provides no protection to workers. (Department's Brief at 5-6.) This allegation is not supported by substantial evidence. Mr. Rupe testified that he has been a foreman for over 40 years, and that linemen did not begin using EPZ until 2000. (Rupe Tr. at 76-77.) Before 2000, all linemen considered bracket grounding the proper way to protect employees against accidental energization. (Rupe Tr. at 77, Enger Tr. at 15.) If a line were to become accidentally energized, linemen expected to travel down the bracket grounds and into the earth, therefor not coming in contact with the employees. (Enger Tr. at 17-18.) Mr. Enger, for example, had worked in the industry since 1990 and had never seen an employee electrocuted when bracket grounds were in place. (Enger Tr. at 15, 18.) The Department wants the Court to

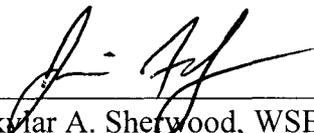
believe that a grounding method universally used and accepted in Washington until 2000 provides protection only to equipment, but no protection to employees. In reality, bracket grounding is a form of personal protective grounding.

## II. CONCLUSION

Potelco respectfully requests that the Court dismiss Citation No. 315093880 in its entirety.

DATED this 25<sup>th</sup> day of June, 2015.

RIDDELL WILLIAMS P.S.

By   
Skylar A. Sherwood, WSBA #31896  
Josias Flynn, WSBA #44130  
Attorneys for Appellant Potelco, Inc.

## CERTIFICATE OF SERVICE

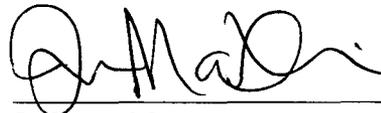
I, Jazmine Matautia, certify that:

1. I am an employee of Riddell Williams P.S., attorneys for Appellant Potelco, Inc. in this matter. I am over 18 years of age, not a party hereto, and competent to testify if called upon.
2. On June 25, 2015, I served a true and correct copy of the foregoing document on the following party, attorney for Appellant, via email and hand delivery, and addressed as follows:

Anastasia Sandstrom, Assistant Attorney General  
Washington Attorney General's Office  
Labor & Industries Division  
800 Fifth Avenue, #2000  
Seattle, WA 98104-3188  
anas@atg.wa.gov

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

SIGNED at Seattle, Washington, this 25<sup>th</sup> day of June, 2015.



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Jazmine Matautia