

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 32

PACIFIC GAS AND ELECTRIC COMPANY, INC.,)
)
Employer,)
)
And) Case No. 32-RC-213182
)
ENGINEERS AND SCIENTISTS OF CALIFORNIA,)
LOCAL 20, IFPTE, AFL-CIO/CLC,)
)
Petitioner.)

**EMPLOYER PACIFIC GAS AND ELECTRIC COMPANY, INC.'S
REQUEST FOR REVIEW OF THE REGIONAL DIRECTOR'S
DECISION AND DIRECTION OF ELECTION AND CERTIFICATION OF
REPRESENTATIVE**

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Pursuant to Section 102.67 of the Board's Rules and Regulations, Employer Pacific Gas and Electric Company, Inc. ("PG&E") respectfully requests review of the February 27, 2018, Decision and Direction of Election and the April 6, 2018, Certification of Representative. Compelling reasons for review exist under Section 102.67(d)(1)(ii) because the Regional Director's decision departed from governing Board precedent in two significant respects.

First, despite the Board's clear holding that the standard set forth in *PCC Structurals, Inc.*, 365 NLRB No. 160 (Dec. 15, 2017) would apply "in each case" in which the Employer contends that the smallest appropriate unit must include additional employees, the Regional Director erroneously concluded that *PCC Structurals* was inapposite in *Armour-Globe* elections. Second, the Regional Director wrongly concluded that the presumption in favor of system-wide units in the public utility industry did not apply in this matter, despite the Union petitioning for only a subset of the system-wide Information Technology ("IT") Project Manager classification. As a result of the Regional Director's error, the election included less than half of the current employees in PG&E's IT Project Manager classification.

As set forth below, the Board should grant the Employer's Request for Review to correct the legal errors made by the Regional Director in the instant matter and to clarify governing legal standards for the benefit of other employers, unions, and NLRB decision-makers.

I. RELEVANT PROCEDURAL HISTORY

On January 17, 2018, the Engineers and Scientists of California, Local 20 IFPTE ("Union" or "Petitioner") filed an RC Petition with Region 32, seeking to represent a subset of PG&E's Information Technology ("IT") Project Managers. More specifically, the Union

petitioned for an *Armour-Globe* election including only 36 IT Project Managers who worked within an Infrastructure and Operations (“I&O”) subgroup in PG&E’s Information Technology and Supply Chain Department (“IT Department”). The Union did not seek to represent all of PG&E’s IT Project Managers. Specifically, the Union sought to exclude all IT Project Managers who work within the Business Technology and Security subgroups of the IT Department.

On January 26, 2018, PG&E filed its Statement of Position, objecting that the proposed voting unit was inappropriately narrow. PG&E argued, as it does here, that any appropriate voting group must include *all* IT Project Managers. PG&E relied upon the recent decision in *PCC Structural, Inc.*, 365 NLRB No. 160 (Dec. 15, 2017) (“*PCC Structural*”) for the proposition that the Board would need to find that “excluded [IT Project Manager] employees have meaningfully distinct interests in the context of collective bargaining that *outweigh* similarities with [petitioned-for] unit members.” *Id.*, slip op. at 11 (emphasis in original) (quoting *Constellation Brands, U.S. Operations, Inc. v. NLRB*, 842 F.3d 784, 794 (2d Cir. 2016)). PG&E also argued that the Union failed to meet its burden to overcome the strong presumption in favor of system-wide units at public utility employers, relying upon *Baltimore Gas & Electric Co.*, 206 NLRB 199, 201 (1973) and *Alyeska Pipeline*, 348 NLRB 808, 809-10 (2006).

On January 29, 2018, a hearing was held before Hearing Officer Noah Garber, during which both parties presented witnesses and evidence and argued their respective positions.

On February 27, 2018, Regional Director Valerie Hardy-Mahoney issued the Decision and Direction of Election (“DDE”). The Regional Director concluded that a unit consisting only of the petitioned-for subset of I&O IT Project Managers was appropriate. The Regional Director held that the Board’s decision in *PCC Structural* was inapplicable to the instant matter because, in her opinion, *PCC Structural* is inapposite in the *Armour-Globe* context. (DDE, p. 6.)

Further, the Regional Director held that the Board's presumption in favor of system-wide units in the utility industry did not apply "in the context of a self-determination election involving an existing nonconforming unit." (*Id.*, p. 6-7.)

A mail-ballot election was directed amongst the petitioned-for subset of I&O IT Project Managers. Votes were tallied on March 28, 2018. The Certification of Representative was issued on April 6, 2018.

II. FACTUAL SUMMARY RELATING TO PG&E'S IT PROJECT MANAGERS

A. "IT Project Manager" Is A Single Job Classification At PG&E.

Indisputably, IT Project Manager is a single job classification at PG&E. IT Project Managers fall into six different "levels," which correspond with experience and skill level: (1) Associate, (2) Career, (3) Senior, (4) Expert, (5) Principal, and (6) Chief. Accordingly, *all* IT Project Managers share *the same* highly-detailed job description, or "Job Profile Matrix," which only distinguishes between IT Project Managers based on their "level," not based on what "subgroup" they might be in.¹

The two most recent Job Profile Matrixes for the IT Project Manager position span eight and eleven pages in length, respectively. The detailed Job Profile Matrixes demonstrate that all IT Project Managers, in all three subgroups within the IT Department (I&O, Business Technology, and Security) must possess the very same education, certifications, experience, and skillset, which again varies only based on "level," not based on "subgroup." (*See generally*, Job

¹ The Job Profile Matrixes were attached as Exhibits 1-A and 1-B to the Declaration of Carlos Cortes, submitted with the Employer's Attachment To Employer's Statement of Position, which was admitted as Board Exhibit 3 at the hearing. Henceforth, the Job Profile Matrixes will be cited as "Job Profile Matrix," followed by the bates number(s), as may be appropriate.

Profile Matrix; Tr. 202-203.²) The Job Profile Matrixes also demonstrate that all IT Project Managers perform the same set of job responsibilities. (Job Profile Matrix, pp. 2-3, 6-7, 11-16.)

For example, all Senior-level IT Project Managers, system-wide, are response for:

- “[T]he concurrent management of one or more small to medium to moderately complex projects. These projects are one-time, multitask jobs that have clearly defined start and end dates, a specific scope of work, a budget, [and] required resources[.]”
- “Gathering, defining and documenting project requirements”
- “Clearly defining and communicating roles, responsibilities and expectations for all members of the project team”
- “Obtaining and defining staffing requirements and forming project teams”
- “Independently planning all associated work to meet project goals”
- “Providing direction and leadership to project management analysts and schedulers”
- “Developing metrics, procedures, objectives and methods to assess project progress while utilizing established standards and quality objectives”
- “Conducting project kick-off meetings”
- “Recording, tracking and communicating issues, risks, changes, and status reports within a PG&E standard tool”
- “Accurately and consistently forecasting project resource, material and contract costs within a standard PG&E tool(s)”
- “Developing and Maintaining up-to-date detailed project schedules and work plans”
- “Monitoring critical project milestones, and identifying ways to resolve schedule issues”
- “Coordinating any required contract work within PG&E policy”
- “Communicating status of all projects to stakeholders and management”
- “Developing and maintaining a productive working relationship with project sponsors, vendors, and key clients”
- “Preparing all project documentation for closure, storage, and possible auditing activities, ensuring technical accuracy”

(*Id.*, pp. 2-3.) Likewise, job postings for IT Project Manager positions make no distinction between subgroups within the IT Department.³ The “Position Summary” section is practically

² The hearing transcript will be cited to as follows: “Tr.” followed by page number(s), as appropriate.

³ Three recent job postings for the IT Project Manager position were attached as Exhibit 2 to the Declaration of Carlos Cortes, submitted with the Employer’s Attachment To Employer’s Statement of Position, which was admitted as Board Exhibit 3 at the hearing. Henceforth, the Job Postings will be cited as “Job Postings,” followed by bates number(s), as may be appropriate.

identical across the job postings, with any significant differences between the postings being attributable to the *level* of IT Project Manager (Associate, Career, Senior, Principal or Chief), not the subgroup within the IT Department (I&O, Business Technology, and Security). (*See also* Attachment to Employer's Statement of Position, pp. 1-2, n.1 (elaborating upon the commonalities between the job postings)).

B. All IT Project Managers Perform The Same Basic Job Functions.

Considering the identical job titles and job descriptions, it is unsurprising that all IT Project Managers perform the same work. As confirmed by multiple witnesses, IT Project Managers' work can be broken into four categories of project management, which do not vary between subgroups within the IT Department: (1) Schedule; (2) Scope; (3) Budget; and (4) Quality. (Tr. 53-54, 200-202.) In order to standardize methods across all IT Project Managers, PG&E created a detailed IT Project Management Methodology, which discusses the various stakeholders involved in IT Project Management, the specific analysis and work processes that need to be applied by all IT Project Managers, and the shared software tools used by all IT Project Managers. (*See* Tr. 221-224, Employer's Exh. 1, p. 2.) PG&E's IT Project Management Methodology makes clear that the fundamental role of the IT Project Manager is always the same, no matter what projects he or she might be working on at a given time. (Tr. 229-241; Employer's Exh. 1, pp. 7-12.) The IT Project Manager job, system-wide, involves managing the scope, budget and schedule of the project, coordinating the routing and approval of deliverables, identifying issues and risks, preparing key deliverables, building project teams as needed, engaging stakeholders, and ensuring methodology compliance. (*Id.*)

All IT Project Managers utilize the same tools to perform their duties. (Tr. 206, 227-230; Employer's Exh. 1, pp. 4-6.) These shared tools include: ITM Sharepoint (the single source for

project management information); Microsoft Project (a project-management scheduling tool); Deliverable Responsibility Matrix; PPMc (a “master tool” that describes and keeps track of all projects); Shibumi; EDRS (a document-management routing system); JIRA; SMC; and Ariba (an ordering and procurement system). (*Id.*)

C. IT Project Managers Share The Same Terms And Conditions Of Employment.

IT Project Managers all share the same pay bands, which only vary based upon “level,” and they likewise receive identical benefits. (Tr. 195-96.) Moreover, the IT Project Managers are subject to the same PG&E employment policies, which include the Code of Conduct, Social Media Policy, and substation safety rules (*e.g.*, wear fire-retardant clothing if one is at a substation). (Tr. 196-197.) As discussed above, all IT Project Managers are subject to the same standardized IT Project Management Methodology and share the same written job description. In short, there are no policies or procedures or basic terms and conditions of employment in the record that are unique to the subset of I&O IT Project Managers who were allowed to vote in the election. Rather, all policies, procedures and basic terms and conditions of employment apply equally to *all* IT Project Managers. (Tr. 199.)

D. IT Project Managers Possess The Same Skills And Receive The Same Trainings.

As made clear by the identical Job Profile Matrixes, the requisite minimal education, certifications, experience, and skillset is uniform for all IT Project Managers, and the only significant variances relate to level, not subgroup. (*See* Job Profile Matrix, pp. 4-5, 7-9, 16-21.) For example, all Expert-level IT Project Managers must have 8+ years’ experience managing one or more complex IT product/software development cycles/projects, a Project Management Professional (“PMP”) Certification from the Project Management Institute (“PMI”), expert

understanding of project management principles and methodologies, understanding of PG&E's IT strategies, understanding of IT roles and responsibilities at PG&E, financial acumen, skills using PPMC and Microsoft Office Suite, and a minimum BA/BS in Computer Science, Business, or Engineering (although an advanced degree is desired). (*Id.*, pp. 4-5.) IT Project Managers are expected to possess a PMP Certification, which may be earned from the Project Management Institute after an individual has accumulated years of experience managing projects. (Tr. 54-55, 203-204.)

IT Project Managers receive the same core sets of training, including safety and onboarding training. (Tr. 242-243.) Any additional training relates to particular projects that are being worked on, such as safety trainings relating to work on substations, which apply to IT Project Managers inside *and* outside the I&O subgroup. (Tr. 196-198, 242-243.) IT Project Managers also undergo training in PG&E's "IT Boot Camp," in which they are taught PG&E's IT Project Management Methodology. (Tr. 219-221, Employer's Exh. 1.)

E. IT Project Managers Work Within The Same Department, Work Together To Complete Projects, And May Move Between Subgroups.

IT Project Managers are integral components of a functionally unified IT Department. As stated in all IT Project Manager Job Postings: "Information Technology Services is a unified organization comprised of various departments which collaborate effectively in order to deliver high quality technology solutions." (*See* Job Postings, pp. 2, 5, 8.) This Department is led by PG&E's Chief Information Officer, Karen Austin, who has supervisory authority over all IT Project Managers. (Tr. 189-190.) Chris Vana, who testified at the hearing and currently oversees IT Project Managers in the I&O subgroup, has supervised IT Project Managers from all three subgroups (I&O, Business Technology, and Security). (Tr. 185-186, 200.) Leaders from each subgroup within the IT Department confer weekly to discuss the projects being managed by

the IT Project Managers. (Tr. 189-190.) Every other week, the Chief Information Officer holds a meeting, called a Business Process Review, to discuss each project being worked on by IT Project Managers and issues relating to budget, scheduling, or scope. (*Id.*) Mr. Vana explained that “Forecasting” (*i.e.*, managing project budgets) is critical for IT Project Managers across all subgroups, as ultimately, all projects fall under a single IT Department budget, which the Chief Information Officer is ultimately responsible for managing. (Tr. 233-235.) In other words, if a project goes over budget within the I&O subgroup, that will have an impact on the projects in the Business Technology and Security subgroups. (Tr. 235.)

IT Project Managers in the I&O subgroup collaborate with IT Project Managers from the Business Technology and Security subgroups to manage projects. Mr. Vana was able to recall numerous recent examples of such collaboration. (Tr. 197-198, 211-215.) For example: the “CC&B Upgrade” to PG&E’s billing system required the collaboration of IT Project Managers from the I&O and Business Technology subgroups to deliver the project to completion. (Tr. 212.) A project relating to the Disaster Recovery of SAP, which technically fell under the Business Technology subgroup, also required IT Project Managers from the I&O subgroup to ensure that computers and infrastructure components were being worked on correctly. (Tr. 212-213.) The Feather River Project was likewise a project that was technically being run by the Business Technology subgroup, but which required support from IT Project Managers in the I&O subgroup. (Tr. 213.) The Data Center Modernization Project is ongoing and involves the upgrading of all servers in PG&E’s data centers. (Tr. 213.) IT Project Managers from the Business Technology subgroup are working to ensure that the data and application capabilities are retained during the migration of data, while IT Project Managers from the I&O subgroup are working in conjunction to ensure that the hardware and network speed is maintained. (Tr. 213.)

The Integrated Grid Planning Project is also currently underway, and involves “developing the grid of the future.”⁴ It is anticipated that IT Project Managers across all three subgroups could be needed to manage this project. (Tr. 197-198, 214.) IT Project Managers from the Business Technology team are laying out the strategy, roadmap, and application components of the Project. (Tr. 214.) IT Project Managers from the I&O team are ensuring that the hardware, network, and essential components are transported into the data centers and field. (Tr. 214.) IT Project Managers from the Security team are likely to be needed for security reasons, due to the sensitive nature of the project and necessary visits to substations. (Tr. 198.) Mr. Vana also described the Outlook-In-The-Cloud Project, which involves upgrading operating systems for PG&E’s computers. (Tr. 214-215.) This is another project that will require IT Project Managers from *all three* subgroups to work in conjunction to manage the effort. (*Id.*)

IT Project Managers, given their identical education, training and job function requirements, are interchangeable and may and do move between subgroups within the IT Department. During his testimony, Mr. Vana described four such instances that he was personally aware of. (Tr. 208-211.)

Geographically, IT Project Managers who work in the I&O subgroup work out of a wide range of locations in California, including: Fresno, Davis, Avila Beach, San Francisco, San Carlos, Concord, San Ramon, Rocklin, Walnut Creek, Fairfield, Santa Rosa, Marysville, and

⁴ As explained by Vana: “The grid, as you know, is the wires and infrastructure that make up the electrical network from our endpoints back to the power stations. The intent of this is to find better ways to identify stated devices which are monitoring points along the grid, find better opportunities to pull that into centralized systems, and automate more of the grid and allow it to grow because in California we’ve got—we’ve got challenges that other places don’t have related to 300,000 solar customers, which is the most in the country. We’ve got 150,000 electric vehicles in our territory, which is the most in the country. These change the way the grid works.” (Tr. 198.)

Chico.⁵ (The only petitioned-for employees that the Union presented as witnesses were from the Fresno location.) IT Project Managers from the Security and Business Technology subgroups also work out of a wide variety of locations, across PG&Es service territory, including: San Francisco, Davis, San Ramon, Rocklin, Avila Beach, Santa Rosa, Walnut Creek, Sacramento, and Richmond. (See Employer’s Initial List.) Physical work location thus provide no basis to limit the voting group to only the I&O IT Project Managers.

III. ARGUMENT

A. The Regional Director Erred By Holding That *PCC Structural*s Was Inapplicable Here.

The Regional Director erred in holding that *PCC Structural*s was inapplicable to this matter.⁶ In *PCC Structural*s, the Board made it clear that the opinion would apply to *all instances* where the Employer, as here, contends that the smallest appropriate unit must include additional employees than the petitioned-for group. In *PCC Structural*s, the Board stated, for example:

- “Today, we clarify the correct standard for determining whether a proposed bargaining unit constitutes an appropriate unit for collective bargaining **when the employer contends that the smallest appropriate unit must include additional employees.**” See 365

⁵ The work locations of the petitioned-for and excluded IT Project Managers are set forth in Attachments B and C to the Employer’s Statement of Position (hereinafter referred to as the “Initial List”), which was introduced at the hearing as Board Exhibit 3.

⁶ The Regional Director instead applied the test articulated in *Warner-Lambert Co.*, 298 NLRB 993, 995 (1990) (“A self-determination election is the proper method by which a union may add unrepresented employees in the contractual unit. In this regard, it is necessary to determine the extent to which the employees to be included share a community of interest with unit employees, as well as whether the employees to be added constitute an identifiable, distinct segment so as to constitute an appropriate voting group.”) PG&E has never disputed that IT Project Managers share some community of interest with employees in the existing unit. Instead, PG&E argues, under *PCC Structural*s, that the petitioned-for subset of I&O IT Project Managers do not have a *sufficiently distinct* community of interest from the *excluded* IT Project Managers (in the Business Technology and Security subgroups).

NLRB No. 160, slip op. at 1 (emphasis added).

- “We merely hold that **when it is asserted that the smallest appropriate unit must include employees excluded from the petitioned-for unit**, . . . the Board will determine whether the petitioned-for employees share a community of interest sufficiently distinct from employees excluded from the proposed unit to warrant a separate appropriate unit[.]” *Id.*, slip op. at 7 (emphasis added).

- “In short, the Board’s role ‘**in each case**’ should be to undertake a broader and more refined analysis, and to play a more active role, when determining whether or not a proposed unit is ‘appropriate[.]’” *Id.*, slip op. at 8 (quotations in original, emphasis otherwise added).

- “Henceforth, the Board’s determination of unit appropriateness will consider the Section 7 rights of employees *excluded* from the proposed unit and those included in that unit.” *Id.* (emphasis in original).

- “[W]e merely require that the Board undertake an examination of unit appropriateness ‘**in each case**’ in which a dispute arises’ over that issue.” *Id.*, slip op. at 10 (quotations in original, emphasis otherwise added).

As the above citations make clear, PG&E submits that *PCC Structuralists* applies to all circumstances in which an Employer contends that the smallest appropriate bargaining unit must include additional employees, regardless of whether or not the election at issue was in an *Armour-Globe* context. Here, the Regional Director incorrectly rejected the *PCC Structuralists* standard.

1. Under *PCC Structural*s, The Appropriate Voting Unit Must Include All IT Project Managers.

In *PCC Structural*s, the Board set forth “the correct standard for determining whether a proposed bargaining unit constitutes an appropriate unit for collective bargaining when the employer contends that the smallest appropriate unit must include additional employees.” *Id.*, slip op. at 1. The Board must now “determine whether the petitioned-for employees share a community of interest *sufficiently distinct* from employees excluded from the proposed unit to warrant a separate appropriate unit.” *Id.*, slip op. at 7 (emphasis added).

The Board reaffirmed that the community-of-interest test requires the Board in each case to determine:

whether the employees are organized into a separate department; have distinct skills and training; have distinct job functions and perform distinct work, including inquiry into the amount and type of job overlap between classifications; are functionally integrated with the Employer’s other employees; have frequent contact with other employees; interchange with other employees; have distinct terms and conditions of employment; and are separately supervised.

Id. slip op. at 11.

Critically, the Board held that that in conducting this analysis, the Board “must determine whether excluded employees have meaningfully distinct interests in the context of collective bargaining that *outweigh* similarities with unit members.” (Emphasis in original; quotations omitted) (quoting *Constellation Brands, U.S. Operations, Inc. v. NLRB*, 842 F.3d 784, 794 (2d Cir. 2016)).⁷

⁷ The Board also held that “at no point does the burden shift to the employer to show that any additional employees it seeks to include share an *overwhelming* community of interest with employees in the petitioned-for unit.” *Id.*, slip op. at 11. The Board criticized the *Specialty Healthcare* decision for placing the burden upon the employer in this analysis. *Id.*, slip op. at 10-11 (“Despite its rote recitation of the traditional test, the *Specialty Healthcare* majority shifted to the employer the burden with respect to the critical part of the analysis – whether employees in the proposed unit share a community of interest sufficiently distinct from the interests of the employees excluded from that unit to warrant a separate bargaining unit[.]”).

Here, the Regional Director never concluded that the excluded IT Project Managers have “meaningfully distinct interests in the context of collective bargaining that *outweigh* similarities with unit members.” Nor could she have so concluded, because the Union presented no evidence whatsoever regarding IT Project Managers in the Business Technology or Security subgroups (the Union’s only IT Project Manager witnesses were from a single location [Fresno] within the I&O subgroup). The Regional Director’s holding that *PCC Structural*s was inapposite to *Armour-Globe* elections was plain error. Under *PCC Structural*s, all IT Project Managers should be included in the voting group.

a. The IT Project Managers Perform The Same Work And Have The Same Job Functions As Each Other.

No matter what project(s) they are working on at a given time, IT Project Managers perform the same work (detailed above), in accordance with PG&E’s IT Project Management Methodology, and as detailed at length in the IT Project Manager Job Profile Matrix, which does not distinguish between subgroup. Indeed, IT Project Manager is a single job classification. These facts strongly suggest that the smallest appropriate voting group must include all IT Project Managers, and not mere subset of IT Project Managers. *Wheeling Island Gaming*, 355 NLRB 637, 641, 642 (2010).

b. The IT Project Managers Possess The Same Skills And Receive The Same Trainings.

As detailed above, IT Project Managers possess the same skills and qualifications (as indicated in their identical Job Profile Matrixes and Job Postings), and they receive the same trainings, including trainings on safety, substations, onboarding, and the IT Project Management Methodology (at the IT Project Manager “Boot Camp”). These facts further demonstrate that the smallest appropriate bargaining unit must include all IT Project Managers.

c. The IT Project Managers Share The Same Terms And Conditions Of Employment.

IT Project Managers share identical pay bands, and they likewise receive identical benefits. They are also subject to the exact same employment policies, including PG&E's Code of Conduct, Social Media Policy, safety rules, and the IT Project Management Methodology. In short, the petitioned-for IT Project Managers are not subject to any policies that do not also apply to IT Project Managers outside of their subgroup. These facts strongly support that the smallest appropriate voting unit must include all IT Project Managers. *See, e.g., Wheeling Island Gaming*, 355 NLRB at 642; *United Rentals, Inc.*, 341 NLRB 540, 541-42 (2004); *Seaboard Marine, Ltd.*, 327 NLRB 556 (1999); *Gateway Equipment Co.*, 303 NLRB 340, 342 (1991).

d. The IT Project Managers All Work Within The Same IT Department.

As recognized by the Regional Director, the IT Project Managers all work within the same Technology and Supply Chain Department ("IT Department"), led by Chief Information Officer Karen Austin. (*See DDE*, p. 2.) As noted above, the projects managed by all of these IT Project Managers impact a single IT Department budget. Leaders from within the IT Department regularly meet to discuss issues and progress relating to all projects within the IT Department, and IT Project Managers commonly work in conjunction with one another to complete IT Department projects.

The Union argues that the petitioned-for subset of I&O IT Project Managers work within a different *subgroup* of the same IT Department – but that speaks only to the "supervision" factor in the community of interest test.⁸ Indisputably, these IT Project Managers all work in the IT Department of PG&E.

⁸ Separate meaning must be given to the supervision and department factors in the community-of-interest test. Otherwise, the elements would be redundant.

e. The IT Project Managers Are Functionally Integrated.

Mr. Vana's unrebutted testimony, detailed above, described six projects within the last year alone that required IT Project Managers from within the I&O subgroup to work in conjunction with IT Project Managers from the other two subgroups. (Tr., 197-198, 211-215.)

The Regional Director would demand more from Mr. Vana: "The Employer submitted insufficient evidence to establish functional integration among IT project managers in the various subgroups ... [H]e provided no testimony to establish the number of such projects, or whether project managers from the various subgroups have any interaction with one another on such occasions."⁹ (DDE, p. 6.) This statement by the Regional Director ignores that Mr. Vana described six projects involving functional integration between IT Project Managers. Equally problematic, this statement by the Regional Director runs contrary to *PCC Structural*s in two ways.

First, under *PCC Structural*s, "at no point does the burden shift to the employer to show that any additional employees it seeks to include share an *overwhelming* community of interest with employees in the petitioned-for unit." *Id.*, slip op. at 11. While PG&E believes that it met this burden through the evidence in the record, under *PCC Structural*s, this is not PG&E's burden to bear.

Second, if the Region required Mr. Vana to go into finer detail in his already lengthy testimony, the Hearing Officer could have simply *asked* Mr. Vana to provide further detail. The Hearing Officer asked multiple questions to each witness at the hearing, so he could have asked Mr. Vana about the finer details of each of the foregoing projects, if the Region would find these particulars to be essential. It appears that the Region was happy to let questions it deemed

⁹ Notably, in the community-of-interest test, the frequency-of-contact consideration is a *different* consideration from the level of functional integration. *PCC Structural*s, 365 NLRB No. 160, slip op. at 11.

essential go unasked, in contravention of *PCC Structural*s, which makes clear that the Board's "role 'in each case' should be to undertake a broader and more refined analysis, and to play a more active role, when determining whether or not a proposed unit is 'appropriate[.]'" 365 NLRB No. 160, slip op. at 8.

Mr. Vana, who supervises all of the petitioned-for employees, clearly established that there is functional integration between the IT Project Manager subgroups. The Union presented two witnesses in the petitioned-for voting group (who worked at only *one of thirteen* locations at which I&O IT Project Managers work), each of whom stated that he has no knowledge whatsoever of what IT Project Managers in the Business Technology or Security subgroups do. In other words, the Union presented no evidence to rebut Mr. Vana's testimony establishing functional integration.

f. The IT Project Managers Are Interchangeable And Do In Fact Interchange.

The IT Project Managers are interchangeable, and Mr. Vana was able to recall four such instances of interchange between the IT Project Manager subgroups. (Tr., 208-211.) This distinguishes PG&E's IT Project Managers from the employees in *The Phoenician* and *Aerojet General Corp.*, where the Board held that excluded employees (in the petition) must be included in the bargaining unit despite a *complete* absence of interchange. *The Phoenician*, 308 NLRB 826, 827 (1992); *Aerojet General Corp.*, 131 NLRB 1094, 1095-96 (1961).

g. The Frequency-Of-Contact Consideration Does Not Warrant Excluding IT Project Managers From The Voting Group.

IT Project Managers in the I&O subgroup are already widely dispersed, spanning thirteen different locations across the state of California. (*See* Initial List; Tr. 199-200.) This geographical dispersion minimizes the significance of the frequency-of-contact factor in the

community-of-interest analysis. *See, e.g., Airco, Inc.*, 273 NLRB 348, 349 (1984) (“While the employees in different classifications thus have little contact, it is just as true that no two employees in the same classification have much contact. That factor therefore cannot negate a community of interest sufficient to allow collective representation.”) In any event, Mr. Vana’s un rebutted testimony established that IT Project Managers from the three subgroups do work on numerous projects together, as detailed above. Moreover, many IT Project Managers from the different subgroups work in the same locations as each other, such as San Francisco, Davis, San Ramon, Rocklin, Avila Beach, Santa Rosa, and Walnut Creek. (*See* Initial List.) At best, the Union’s evidence establishes that *two* I&O IT Project Managers *in Fresno* do not work alongside IT Project Managers in the Business Technology or Security subgroups.

h. The Union’s Evidence Did Not Establish A Sufficiently Distinct Community Of Interest Under *PCC Structural*s.

The Union presented only two witnesses from the petitioned-for group of IT Project Managers in the I&O subgroup: Albert Badalyan and Marco Antonio Lara Luna.¹⁰ Both of these employees had only worked out of the Fresno location. (Tr. 24, 109.) Both of these employees conceded that they would not be able to testify to distinctions between IT Project Managers in their subgroup and IT Project Managers in the other two subgroups. (Tr. 58-59, 108-109.)

In contrast, PG&E presented the testimony of Chris Vana, who currently supervises all of the petitioned-for IT project Managers, and who recently supervised IT Project Managers in the

¹⁰ It was apparent that the Union did not believe *PCC Structural*s to be applicable to their case, and therefore, did not present evidence to sufficiently distinguish the excluded IT Project Managers. (*See* Tr. 10: “We filed this petition after determining that the infrastructure and operations department PMs shared a strong community of interest, both among themselves and with our existing bargaining unit members, which is what we have to have to file an Armour-Globe petition.”)

other two subgroups, as well. (Tr. 185-186, 200.) Mr. Vana also regularly meets with leaders from within the IT Department and the three subgroups to discuss the status of all projects being managed. (Tr. 189-190.)

The Petitioner's inability to sufficiently distinguish the excluded IT Project Managers was evident at the hearing. Union *counsel* argued, without evidentiary support (again, no IT Project Manager from the Business Technology or Security subgroups testified), that the excluded IT Project Managers are distinguishable because the petitioned-for IT Project Managers manage construction projects which require them to make on-site visits to places like substations, while the excluded IT Project Managers sit behind computer screens and work on software. (Tr. 12, 21.) Mr. Vana respectfully corrected Union counsel, noting that (a) the excluded IT Project Managers also make on-site visits to places like substations, and (b) there are IT Project Managers in the I&O subgroup (*i.e.*, the petitioned-for group) who do not visit substations, and who focus *primarily* on software. (Tr. 196-198.) In other words, the Petitioner cannot draw lines between the IT Project Managers based upon who works on software and who visits places like substations.¹¹

The Union also presented a witness, Joaquin Moreno, who is a telecommunications engineer already in the existing bargaining unit. (Tr. 114.) Mr. Moreno testified that he does not regularly work with IT Project Managers outside of the I&O subgroup, and the Regional Director credited this testimony. (Tr. 131; DDE, pp. 3-4.) The Regional Director overlooked that Mr. Moreno was impeached on this point. Mr. Moreno conceded that when he works with IT Project Managers, *he generally does not know what specific subgroup* they are in. (Tr. 126.)

¹¹ The Union's lack of knowledge concerning the excluded IT Project Managers should not be surprising. The Union-employee witness who testified about the organizing efforts, Josh Sperry, conceded he never spoke to *any* of the excluded IT Project Managers in the Business Technology or Security subgroups. (Tr. 184.)

Mr. Moreno was asked on cross-examination to list out the names of IT Project Managers with whom he had worked in the last few years. (Tr. 125.) Mr. Moreno listed several names. (Tr. 125-126.) Mr. Vana confirmed that two of the IT Project Managers that Mr. Moreno listed as having worked with were actually *excluded* IT Project Managers, outside of the I&O subgroup. Thus, Mr. Moreno's testimony directly supports PG&E's position that all IT Project Managers should be included in the appropriate voting group.

2. PCC Structurals Can Easily Be Harmonized With Prior Board Law Regarding Armour-Globe Elections.

Under *Warner-Lambert Co.*, 298 NLRB 993, 995 (1990): "A self-determination election is the proper method by which a union may add unrepresented employees to the contractual unit. In this regard, it is necessary to determine [1] the extent to which the employees to be included share a community of interest with unit employees, as well as [2] *whether the employees to be added constitute an identifiable, distinct segment so as to constitute an appropriate voting group.*" (Emphasis added.)

In other words, whether the petitioned-for group in a self-determination election is an "appropriate voting group" has long been a fundamental consideration in the *Armour-Globe* context. As stated above, the first *Warner-Lambert* factor (community of interest between the petitioned-for group and the existing unit) is undisputed here.

Through this Request for Review, PG&E is asking the Board to clarify that it meant what it said in *PCC Structurals*: That *in each case* in which the Employer contends that the petitioned-for group is not an appropriate voting group because the petitioned-for group is too narrow, *PCC Structurals* applies. There are many examples of Board cases prior to *PCC Structurals* which evaluated the "appropriate voting group" prong in circumstances where the petitioning union sought to add employees to a pre-existing unit, and held the petitioned-for group was too narrow.

For example, in *Capital Cities Broadcasting Corp.*, 194 NLRB 1063, 1063 (1972), the petitioning union sought to add certain employees from the employer's art department to a pre-existing existing unit, which also included employees from the employer's engineering and production department. *Id.* The Board reversed the Regional Director and dismissed the petition, on the grounds that the petitioned-for artists did not have interests sufficiently separate and distinct from the excluded unrepresented employees to warrant a finding that the narrow petitioned-for group was appropriate. *Id.* at 1064.

In *Minneapolis-Honeywell Regulator Co.*, 116 NLRB 1324 (1956), the petitioning union had gradually added multiple different classifications to a pre-existing unit. The employer contended, as PG&E contends here, that the petitioned-for group was too narrow because it "exclude[d] a great many employees who do the same kind of work and have the same employment interests as the employees sought." *Id.* at 1325. The petitioning union contended, as does Petitioner here, that the petitioned-for employees were similar to the employees already represented, and distinguishable from the employees the employer wished to include. *Id.* at 1327. The Board dismissed the petition, holding: "In our opinion, these variances are outweighed by the similarities in the background, training, experience, functions, responsibilities, and job progression between the [petitioned-for employees] on the one hand, and the [excluded employees] and other similar categories on the other hand." *Id.* The Board continued: "Under all the circumstances of this case, we find that the coordinators sought by the Petitioner constitute only a segment of a broader group of employees with similar skills, duties, and interests. The Board will not add such a fragmentary group to the Petitioner's existing unit, nor establish it as a separate appropriate unit." *Id.* at 1328.

In sum, PG&E's request is not for a change in the *Armour-Globe* standard. PG&E

simply requests that the Board hold that because *PCC Structural*s applies “in each case” in which the employer argues that the petitioned-for group is too narrow, *PCC Structural*s equally applies in the self-determination election context.

B. The Regional Director Erred In Finding The *Baltimore Gas & Electric* Presumption Inapplicable.

PG&E is a public utility, responsible for delivering gas and electricity to the majority of California. (Tr., 243.) The Regional Director erred in this matter by failing to apply the well-recognized presumption in favor of systemwide units in the utility industry. As held by the Board in *Baltimore Gas & Electric Co.*, 206 NLRB 199, 201 (1973):

The line of Board precedents developed for the public utility industry contains frequent expression of the Board's view that a systemwide unit is the optimal appropriate unit in the public utility industry and of the strong considerations of policy which underlie that view. That judgment has plainly been impelled by the economic reality that the public utility industry is characterized by a high degree of interdependence of its various segments and that the public has an immediate and direct interest in the uninterrupted maintenance of the essential services that this industry alone can adequately provide. The Board has therefore been reluctant to fragmentize a utility's operations.

In order to rebut the *Baltimore Gas & Electric* presumption against less-than-systemwide units, the Union must present “compelling evidence” to show that the petitioned-for unit has a “substantial” distinct community of interest. *Alyeska Pipeline*, 348 NLRB 808, 809-10 (2006); *accord New England Telephone Co.*, 280 NLRB 162, 164 (1986) (holding, in the public utility context: “While each of the petitioned-for units does constitute an administrative subdivision of the Employer's operations, in neither case have the Unions shown that the employees in the respective subdivisions share a sufficiently distinct community of interest to warrant bargaining on a less than systemwide basis”); *Colorado Interstate Gas Co.*, 202 NLRB 847, 848-49 (1973) (holding that “compelling circumstances” are required to find a fragmented unit appropriate in the gas industry).

Specifically, when a Union seeks to organize a group of public-utility employees on a less-than-systemwide basis (as here), the burden is placed upon the Union to set forth “compelling evidence” showing that: “(1) employees in the petitioned-for smaller unit share a substantial community of interest . . . , (2) the boundaries of the requested unit conform to a well-defined administrative segment *and* could be established without undue disturbance to the company’s ability to perform its necessary functions, and (3) there is no opposing bargaining history on a broader basis.” *Alyeska Pipeline*, 348 NLRB 808, 809-10 (2006) (emphasis in original). Again, the Union, not the Employer, must prove that *all three* of the foregoing factors have been established. *Id.* Moreover, under the foregoing test, the “substantial” community-of-interest test must be “exacting.” *Id.* at 811.

The Regional Director did not hold that the *Baltimore Gas & Electric* presumption was overcome here – the Regional Director erroneously concluded that the presumption *did not even apply* in the first place. The Regional Director asserted that the presumption “does not apply in the context of a self-determination election involving an existing nonconforming unit.” (DDE, p. 7.) PG&E submits that this is plain error. Indeed, Union witness Josh Sperry confirmed that of the four *other* project manager classifications already in the existing unit (Gas and Electric Project Managers, Power Generation Project Managers, Nuclear Project Managers, and Environmental Remediation Project Managers), *all* of the employees falling into those classifications were added to the unit, not a fractured subset. (Tr., 140-141, 171-172.) In other words, there is no evidence in the record of any precedent under the existing collective bargaining relationship that a mere subset of an established classification may be added.

The Regional Director further stated, incredibly, that PG&E was not itself arguing for a system-wide unit, “but rather, seeks to fold in two additional subsets of the Employer’s project

managers from its IT Department into the existing unit.” This is incorrect. PG&E has consistently and steadfastly argued that if the Union wishes to represent PG&E’s IT Project Managers, which are indisputably a distinct and single job classification (*see* the Job Profile Matrixes), then the Union must represent *all* of them after a secret-ballot election in which all IT Project Managers, system-wide, are allowed to vote. Simply stated: (1) a system-wide unit of IT Project Managers would include all IT Project Managers; while (2) a fractured unit of IT Project Managers would only include one subset of IT Project Managers, such as the I&O subgroup who were allowed to vote here.

The *Baltimore Gas & Electric* presumption, and the logic underpinning the presumption, clearly applies here. The Board has consistently articulated the sound policy behind preventing the over-fragmentization of public utility’s’ operations. *Baltimore Gas & Electric Co.*, 206 NLRB 199, 201 (1973). As stated in *Aleyska Pipeline*, “The rule favoring systemwide units in public utilities reduces the number of units in which work disputes and stoppages could disrupt service across the system ... The Board’s presumption in favor of a systemwide unit is based, at least in part, on the judgment that an increase in the number of units leads to an increase in the number of potential labor disputes and work stoppages.” 348 NLRB at 812. As detailed in Mr. Vana’s testimony described in Section II(E) above, IT Project Managers from all three subgroups within PG&E’s IT Department work together on projects of great importance to every Californian in PG&E’s service territory. This case presents a classic example of a situation that the *Baltimore Gas* and *Alyeska Pipeline* system-wide unit presumption was designed to address.

In short, it was error for the Regional Director to fail to apply this presumption here. Had the presumption been applied, the Union clearly would have failed to overcome it. Among other reasons, the Union set forth no evidence to demonstrate that fragmenting the IT Project Manager

position would not create “undue disturbance to the company’s ability to perform its necessary functions,” nor was a “substantial” community of interest showing made.

Given *PCC Structurals*, PG&E need not rely upon the *Baltimore Gas & Electric* presumption here in order to demonstrate that the petitioned-for unit was inappropriate. Nonetheless, PG&E is entitled to this presumption under Board law. Failure to apply the presumption here would create unfortunate precedent that would allow unions to slice and dice public utility’s employee classifications in a manner inconsistent with the teachings of *Baltimore Gas & Electric* and its progeny.

IV. CONCLUSION

For the reasons set forth herein, the Board should reverse the DDE and Certification of Representative and set aside the results of the election.

Respectfully submitted,



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CERTIFICATE OF SERVICE

The undersigned certifies that on this 19th day of April 2018, the foregoing **Employer's Pacific Gas and Electric Company, Inc.'s Request for Review of the Regional Director's Decision and Direction of Election and Certification of Representative** was e-filed via the NLRB E-Filing system:

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