On January 18, 2019, the United Association of Journeymen and Apprentices of the Plumbing and Piping Industry, Local 38 (Petitioner) filed a petition seeking to represent maintenance technicians, operator technicians, planner/scheduler, and senior console operator employees employed by the CALPINE Operating Services Company, Inc. (Employer), excluding HVAC group, engineers, and all other employees. The Employer contends that the petitioned-for unit is not an appropriate unit, and that an appropriate unit must be systemwide and also include all full-time and regular part-time operations, maintenance, and technical service employees, including administrative assistants and technical workers.\(^2\)

Prior to the hearing, it was unclear whether the petitioned-for unit was systemwide in scope. As discussed below, Petitioner clarified on the record that the petitioned-for unit is indeed

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\(^1\) The name of the Employer appears as amended at the hearing.

\(^2\) The Employer argues that the appropriate Unit was previously stipulated in a 2011 stipulated election agreement in Case 20-RC-69933 between the Employer and another union (not the Petitioner), that was approved by the Regional Director for Region 20 at the time. The Petitioner was not a party to the petition in Case 20-RC-69933, and that case does not control here.
CALPINE Operating Services Company, Inc.
Case 20-RC-234355

systemwide. Additionally, Petitioner and Employer stipulated on the record that, should the Region determine that the petitioned-for unit is not appropriate, the following alternative systemwide unit would constitute an appropriate unit for collective-bargaining purposes:

All full-time and regular part-time Operator Technicians, Maintenance Technicians, Maintenance Planner/Scheduler, Admin Assistants, Chemical Technicians, Control Operators, Engineering Technicians, IC&E Technicians, Technical Trainees, Vehicle Mechanic Foreman, Warehouse Technicians; excluding all other employees, confidential employees, office clerical employees, professional employees, accounting department employees, managers, guards, and supervisors as defined by the Act.

The petitioned-for unit consists of approximately 116 employees. The alternative, stipulated unit consists of approximately 216 employees.\(^3\)

A Hearing Officer of the Board held a hearing in this matter on January 31, 2019, and the parties orally argued their respective positions prior to the close of the hearing. As explained below, based on the paucity of record evidence, and the application of extant Board law, I find that the petitioned-for unit is not an appropriate unit. Because the parties stipulated to the appropriateness of the above alternative unit in the event I were to find the petitioned-for unit to be inappropriate, I shall direct an election among the employees in the stipulated bargaining unit.

**Facts**

International Brotherhood of Electrical Workers Local Union 1245 Business Manager

Tom Dalzell, Petitioner’s Business Agent Frank Reardon, and Employer’s Vice President of

\(^3\) Petitioner presented a sufficient showing of interest to support conducting an election in either unit.
Operations' Jim Kleusener testified at the hearing. Neither party presented any employee witnesses.

**A. Employer's Operation**

The Employer is engaged in the business of generating electrical power from geothermal sources and distributing the generated electricity into the Northern California power grid.\(^4\) The Employer operates 15 geothermal power plants within a 45-square mile area straddling the Mendocino, Lake, and Sonoma Counties. The 45-square mile operation is known as "The Geysers." The Geysers consist of steam fields where the power plants are located, an Administrative building located on the southern end of The Geysers, the West Field Office building and the WAC building, both located several miles northwest of the Administrative building. The areas outside the administrative buildings are referred to as the steam fields.

Electricity is generated at The Geysers by tapping steam trapped underground. Wells are drilled to access the trapped steam. The extracted steam travels up the well and moves via pipes to one of 15 power plants at The Geysers. In each power plant, the steam turns turbines generating electricity. The steam is then cooled back into liquid water condensate at the plants. The water is treated for hydrogen sulfide (H\(_2\)S) and then travels via pipes to a reinjection well. At the reinjection well, the water is pumped back into the underground steam reservoir.

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\(^4\) The parties stipulated, and I find that the Petitioner is a labor organization within the meaning of Section 2(5) of the Act. The parties stipulated, and I find that the Employer is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act. The parties also stipulated that the Employer is a California corporation, with a place of business located at 10350 Socrates Mine Road, Middletown, California, the sole facility involved herein, and is engaged in the business of providing public electric utilities. During the past 12 months, a representative period, the Employer has received goods and materials valued in excess of $50,000 directly from points located outside the State of California.
B. Department Structure

The Employer's operations are divided into two general geographical areas at The Geysers: Area One (West Operations) and Area Two (East Operations).

Area One operations cover, generally, the western part of The Geysers operations. Area Two operations cover, generally, the eastern part of The Geysers operations. Areas One and Two each have Power Plant Operator Technicians, Instrument and Controls and Electrical (IC&E) Technicians, Steam Field Maintenance Technicians, Power Plant Maintenance Technicians, and Hourly Planner/Scheduler. The Employer's Central Operations, Central Maintenance, and Technical Services Departments cover all operations at The Geysers.

The Central Operations Department, consisting of Control Operator Technicians and Steam Field Operator Technicians, monitors and services all of The Geysers facilities. The Central Maintenance Department includes Civil Maintenance Technicians, Hourly Planner/Scheduler, Machine Shop Machinist Maintenance Technicians, Machine Shop Maintenance Technicians, Vehicle Maintenance Technicians, and Insulation and Coatings (I&C) Technicians. The Technical Services Department consists of Predictive Maintenance (PdM) Maintenance Technicians, CAD Engineering Technicians, High Voltage IC&E Technicians, HVAC IC&E Technicians, Distributed Control System (DCS) Technicians, Wireline Operator Technicians, and Chemical Technicians. The Employer also employs Administrative Assistants who work at the various administrative buildings who assist in operations, as well as Warehouse Technicians who supply off-the-shelf equipment and supplies to employees.

Steam Field Operators and Power Plant Operators have two 12-hour daily shifts starting at 6 am or 6 pm. All other employees work a 6:30 am to 5:00 pm shift, Monday through Thursday.
1. **Area One and Area Two Departments**

Area One and Area Two Department employees work in the steam fields at The Geysers. Power Plant Operators Technicians operate onsite the 15 power plants at The Geysers. Power Plant Operators Technicians monitor the power plants and may be assigned to one or two power plants each shift. IC&E Technicians are responsible for instrument programming and electrician duties in the steam fields. Power Plant Maintenance Technicians and Hourly Planners/Schedulers work together to maintain the power plant. The Hourly Planner/Scheduler coordinates with other department employees for power plant maintenance. Steam Field Maintenance Technicians work in the steam fields, primarily outside the power plants, maintaining the steam pipes.

2. **Central Operations**

Control Operator Technicians work primarily inside a central control room in the Administrative Building and monitor operations across both Area One and Two. Steam Field Operator Technicians work in the steam fields in both Area One and Two. Steam Field Operator Technicians monitor and operate the valves on the steam pipes that are not remotely controlled. Steam Field Operator Technicians are essentially the arms and legs of the Control Operator Technicians.

3. **Central Maintenance Department**

Civil Maintenance Technicians work in the steam fields. Civil Maintenance Technicians expose buried steam pipes. Hourly Planner/Scheduler employees plan and schedule maintenance jobs with other departments and the machine shop to coordinate maintenance work. Machine Shop Machinist Maintenance Technicians design and build the equipment as needed by
the other departments. Vehicle Maintenance Technicians maintain the vehicles used at The Geysers. I&C Technicians paint and insulate the steam pipes at The Geysers.

4. Technical Services Department

PdM Maintenance Technicians inspect the steam pipes and monitor the corrosiveness of the steam and its effect on the steam pipes. CAD Engineering Technicians design steam pipes and other equipment needed to maintain operations. High Voltage IC&E Technicians maintain the self-generated high voltage power system that powers the Employer’s operations at the Geysers. HVAC IC&E Technician employees monitor and maintain the cooling systems. Chemical Technicians monitor the pH levels in the steam.5

C. Management and Supervision

Jim Kleusener is the Employer’s Vice President of Operations and is responsible for operations at The Geysers. Reporting directly to Kleusener are the General Manager of Central Operations, the Area One Department Manager and Area Two Department Manager. The Employer also has a Central Maintenance Manager and Technical Services Manager.6

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5 There was no evidence on the record concerning the job functions of DCS Technicians.

6 The record did not indicate whether the Central Maintenance or Technical Services Managers reported directly to Kleusener. Kleusener identified generally that the Geysers operations had supervisors but only specifically identified the Power Plant Maintenance Supervisor. No other supervisor position was identified in the record.
ANALYSIS

A. Systemwide Unit in The Public Utility Industry

The Board considers a systemwide unit not just presumptively appropriate in the public utility industry, but the "optimal" unit. *Alyeska Pipeline Service Co.*, 348 NLRB 808, 809 (2006). The Board explained that the "economic reality [is] 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." *Baltimore Gas & Electric Co.*, 206 NLRB 199, 201 (1973). The Board observed that, "if [it] did not require comprehensive units, labor disputes or stoppages at any one facility could have a domino effect across the entire utility system, halting the provision of essential services to the public in places likely far removed from the situs of the dispute." *Verizon Wireless*, 341 NLRB 483, 484 (2004).

The Board's preference for a systemwide unit does not mean that all employees of an employer must be included in the same unit (i.e. that it be a wall-to-wall unit). Rather, a systemwide unit refers to a unit that includes named classifications across the employer's entire system or operation. *Baltimore Gas & Electric Co.*, 206 NLRB at 201. The Board will find less than systemwide units appropriate where "compelling evidence" shows that collective bargaining would be a feasible undertaking, i.e., where 1) employees in the petitioned-for smaller unit share a substantial and distinct 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 necessary functions, and 3) there is no opposing bargaining history on a broader basis. *Alyeska Pipeline Service Co.*, supra at 810. Because the petitioned-
for unit and the alternative stipulated unit are systemwide in scope, they both conform to the Board’s preference for systemwide units in the public-utility industry.

B. The Petitioned-For Unit

As the Board majority reiterated in *PCC Structurals, Inc.*, 365 NLRB No.160 (December 15, 2017), Section 9(b) of the Act mandates that the Board determine the appropriate unit "in each case," and that it only "approve a unit configuration that 'assure[s] employees their 'fullest freedom' in exercising protected rights." Slip op. at 3. The Board emphasized that the Board will approve the unit described in a petition, "provided that the unit's appropriateness is supported by the record and that the petitioned-for unit will help to assure employees their fullest freedom in exercising rights-protected by the Act." Id; slip op at 10.

To determine the appropriateness of the unit; i.e. whether the petitioned-for employees form an identifiable group and share a community of interest, the following factors are considered:

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. *PCC Structurals, Inc.*, supra at slip op. 5; citing *United Operations, Inc.*, 338 NLRB 123 (2002).

The *PCC Structurals* Board explained that the Board's inquiry into the community-of-interest question "necessarily proceeds to a further determination whether the interests of the
group sought are sufficiently distinct from those of other employees to warrant the establishment of a separate unit." Slip op at 5; citing Wheeling Gaming, 355 NLRB 642 (2010).

Petitioner argues that the petitioned-for unit of maintenance technicians, operator technicians, planner/scheduler, and senior console operator employees employed by the Employer, excluding HVAC group, engineers, and all other employees – is an appropriate unit.

Petitioner argues that the petitioned-for employees have a unique commonality of interest because there is no interchange between employees, and there is no common supervision between employees of different classification or competencies. However, Petitioner presented only one witness at hearing; Petitioner Business Agent Frank Reardon. Reardon had little, if any, direct knowledge of the Employer’s operations, including the duties and responsibilities of the petitioned-for unit employees. Reardon lacked direct knowledge of the management and supervisory structure at The Geysers. Reardon did not have direct knowledge or evidence of the interchange or contact, common supervision, or lack thereof, between petitioned-for employees and other employees at The Geysers.

Reardon testified that, when identifying which classifications to include in the petitioned-for unit, Petitioner tried to identify those who fit within the pipefitters craft and to exclude those employees who do not perform work within the pipefitter’s craft. However, as noted above, Reardon testified that he lacked direct knowledge of the Employer’s operations and the job duties of the Employer’s employees, and the record is thin in this regard. Without percipient witnesses with the necessary knowledge and evidence to establish that the petitioned-for employees share a sufficiently distinct community of interest from other employees at The Geyser, Petitioner has not met its burden of proof under PCC Structurals, Inc., supra.
Notwithstanding Petitioner’s inability to meet its burden of proof, the Employer presented Vice President of Operations Jim Kleusener to bolster its argument that the petitioned-for unit is inappropriate and that the alternative, stipulated systemwide unit is appropriate. Kleusener’s testimony was mostly conclusory in nature, but it provided the only insight into the Employer’s operations at The Geysers. Kleusener’s testimony supports the finding that the petitioned-for unit is not appropriate and that giving effect to the parties’ stipulation to the appropriateness of the alternative bargaining unit is warranted.

1. No Clear Administrative Division

As discussed above, it appears that Petitioner essentially seeks a craft unit of those who perform pipefitter work. However, the record does not contain sufficient detail to determine the exact nature of the work that the petitioned-for unit employees perform, such that it would constitute a “readily identifiable group.” Additionally, the petitioned-for unit does not conform to the well-defined administrative departments at The Geysers. The petitioned-for employees are spread among several departments. For example, Petitioner seeks to include three of four job classifications in both the Area One and Area Two Operations Department, one of two classifications in the Central Operations Department, three of six classifications in the Central Maintenance Department, and one of seven in the Technical Services Department.

2. Lack of a Sufficiently Separate and Distinct Community of Interest

As stated earlier, the Board considers the following factors when determining whether a group of employees have a sufficiently “separate and distinct” community of interest to constitute an appropriate unit: 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

The petitioned-for employees work different schedules. Certain petitioned-for employees
work one of two 12-hour shifts, seven days per fortnight, and typically rotate working four days
one week and three the next (or vice versa). The remaining petitioned-for employees work a
single 10-hour shift, Monday through Thursday.

The petitioned-for employees reportedly have considerable contact and interaction with
employees in classifications that the Petitioner seeks to exclude. According to Kleusener's
unrebutted testimony, the petitioned-for employees work consistently alongside and in
conjunction with employees Petitioner seeks to exclude. Many tasks require employees from
several job classifications for completion, including petitioned-for employees and those excluded
by the petition. For example, Kleusener stated that the petitioned-for Hourly Planner/Scheduler
plans and schedules maintenance work with Machine Shop Machinist Maintenance Technicians
and Civil Maintenance Technicians (both excluded classifications), as well as the petitioned-for
Steam Field Maintenance Technicians to repair and replace rock catchers on the steam pipes.

In sum, the record evidence does not establish that the petitioned-for employees enjoy a
sufficiently distinct community of interest from other classifications of employees it seeks to
exclude. Accordingly, the petitioned-for unit is not appropriate. PCC Structural, supra. I shall
thus give effect to the parties' stipulation to the appropriate alternative bargaining unit set forth
below.
CONCLUSION

Applying the Board’s *PCC Structurals* decision in the context of the Board’s preference for systemwide units in the public-utility industry, I find that the petitioned-for unit is not an appropriate bargaining unit. Petitioner and Employer having stipulated to the following appropriate alternative bargaining unit, I shall direct an election among those employees.

Based on the entire record in this matter and in accordance with the discussion above, I find and conclude that:

1. The Hearing Officer’s rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purpose of the Act to assert jurisdiction herein.

3. The Petitioner is a labor organization within the meaning of Section 2(5) of the Act and claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

   All full-time and regular part-time Operator Technicians, Maintenance Technicians, Maintenance Planner/Scheduler, Admin Assistants, Chemical Technicians, Control Operators, Engineering Technicians, IC&E Technicians, Technical Trainees, Vehicle Mechanic Foreman, Warehouse Technicians; excluding all other employees, confidential employees, office clerical employees,
Direction of Election

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. Employees will vote whether or not they wish to be represented for purposes of collective bargaining by United Association of Journeymen and Apprentices of the Plumbing and Piping Industry, Local 38.

A. Election Details

The election will be held on February 27 and 28, 2019, from 5:00 a.m. to 8:00 a.m., 11:00 a.m. to 1:00 p.m., and 4:00 p.m. to 8:00 p.m., simultaneously at the Unit 5/6 Building (McCabe Power Plant) and the SR-1 (Santa Rosa 1 Pump Station) at The Geysers.

B. Voting Eligibility

Eligible to vote are those in the unit who were employed during the payroll period ending February 3, 2019, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off.

Employees who worked an average of four or more hours per week during the calendar quarter preceding the end date of the above-referenced payroll period are eligible to vote. See Davison-Paxon, 185 NLRB 21 (1970).

Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced, are also eligible to vote. In addition, in an economic strike that commenced less than 12 months before the election date, employees engaged in such
strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

C. Voter List

As required by Section 102.67(1) of the Board’s Rules and Regulations, the Employer must provide the Regional Director and parties named in this decision a list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available home and personal cell telephone numbers) of all eligible voters.

To be timely filed and served, the list must be received by the regional director and the parties by February 12, 2019. The list must be accompanied by a certificate of service showing service on all parties. The region will no longer serve the voter list.

Unless the Employer certifies that it does not possess the capacity to produce the list in the required form, the list must be provided in a table in a Microsoft Word file (.doc or docx) or a file that is compatible with Microsoft Word (.doc or docx). The first column of the list must begin with each employee’s last name and the list must be alphabetized (overall or by department) by last name. Because the list will be used during the election, the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be
used but the font must be that size or larger. A sample, optional form for the list is provided on the NLRB website at www.nlrb.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015.

When feasible, the list shall be filed electronically with the Region and served electronically on the other parties named in this decision. The list may be electronically filed with the Region by using the E-filing system on the Agency’s website at www.nlrb.gov. Once the website is accessed, click on E-File Documents, enter the NLRB Case Number, and follow the detailed instructions.

Failure to comply with the above requirements will be grounds for setting aside the election whenever proper and timely objections are filed. However, the Employer may not object to the failure to file or serve the list within the specified time or in the proper format if it is responsible for the failure.

No party shall use the voter list for purposes other than the representation proceeding, Board proceedings arising from it, and related matters.

D. Posting of Notices of Election

Pursuant to Section 102.67(k) of the Board’s Rules, the Employer must post copies of the Notice of Election in conspicuous places, including all places where notices to employees in the unit found appropriate are customarily posted. The Notice must be posted so all pages of the Notice are simultaneously visible. In addition, if the Employer customarily communicates electronically with some or all of the employees in the unit found appropriate, the Employer must also distribute the Notice of Election electronically to those employees. The Employer must post copies of the Notice at least 3 full working days prior to 12:01 a.m. of the day of the election and copies must remain posted until the end of the election. For purposes of posting,
working day means an entire 24-hour period excluding Saturdays, Sundays, and holidays. However, a party shall be estopped from objecting to the nonposting of notices if it is responsible for the nonposting, and likewise shall be estopped from objecting to the nondistribution of notices if it is responsible for the nondistribution.

Failure to follow the posting requirements set forth above will be grounds for setting aside the election if proper and timely objections are filed.

RIGHT TO REQUEST REVIEW

Pursuant to Section 102.67 of the Board’s Rules and Regulations, a request for review may be filed with the Board at any time following the issuance of this Decision until 14 days after a final disposition of the proceeding by the Regional Director. Accordingly, a party is not precluded from filing a request for review of this decision after the election on the grounds that it did not file a request for review of this Decision prior to the election. The request for review must conform to the requirements of Section 102.67 of the Board’s Rules and Regulations.

A request for review may be E-Filed through the Agency’s website but may not be filed by facsimile. To E-File the request for review, go to www.nlrb.gov, select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the request for review should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review. Neither the filing of a request for review nor the Board’s granting a request for review will stay the election in this matter unless specifically ordered by the Board.
Dated: February 8, 2019

/s/ Daniel Owens

Daniel J. Owens, Acting Regional Director
National Labor Relations Board, Region 20
901 Market Street, Suite 400
San Francisco, CA 94103